

# Preface

Without sounding my opinion on the patent system—on whether it is good, bad or anything in between—as an interested observer of the innovation sphere, I am overwhelmed by the preponderance of evidence that unequivocally point towards one conclusion: that the patent system is far from being perfect. That patent reform is on everyone's lips may be inconsequential at times when bigness of the number of granted patents overshadows any initiative to maintain their quality. And patent systems of the world have been on a quest to achieve better quality without curbing the markets' desire to have more patents.

Not long ago, Peter Drucker said that an innovation opportunity would arise where there is an incongruity within the logic of a process. The incongruity within the process of patent grant was all too well-known ever since the first patent was granted probably to the surprise of a competitor who would have exasperatedly sighed: 'I was never told about it'. Patent grants are cosy affairs involving the patent office and the applicant. What transpires between them is not too clearly known, at least not until the patent is granted. But look at the impact that follows the grant. Despite being an internal affair between the patent office and the applicant, the moment a patent is granted it gives a legally enforceable right against the world at large.

This incongruity in the grant process has a telling effect on the quality of the patents granted. Often we come across patents applications which skilfully mask a prior art to claim a known invention as new. One cannot blame the patent office for such fiascos. The information asymmetry from which every patent office chronically suffers has been diagnosed long ago as an irremediable ill. Despite their speciality in the sciences and their technology-focussed backgrounds, patent offices cannot be the repository of radical, ground-breaking technological knowledge on which patents are granted. One remedy for this information asymmetry lies in inviting knowledge about the art from the market—to have a competitor have its say before an invention is granted a patent. The Indian patent law provides for such a mechanism to supply the patent office with special knowledge and to empower it to make quality decisions. Pre-grant opposition is one such ingenious, innovation opportunity the Indian Patent Act has provided, which seeks to remedy the incongruity in the grant process.

There exists a prevailing misconception that pre-grant opposition is unnecessary, dilatory of the grant process and could become an instrument of abuse. When one sees the purpose behind the process, ie supply of information to an otherwise ill-equipped patent office, one can see the wisdom behind it and how it helps in strengthening the patent system towards its avowed objective—the fostering of genuine innovation. In retrospect, this book appears to be the inevitable outcome of the clash between two related but incompatible developments in my life: the writing of my first book 'The Law of Patents—With a Special Focus on Pharmaceuticals in India' and my dissatisfaction with the role played by

the industry in taking pre-grant opposition seriously. Though my first book was received well, I had reasons to feel that the message on pre-grant opposition was lost. Not that I expected every executive interested in patent law to gleefully read through a 1000-page legal reference book to understand what pre-grant opposition stood for. But when I realised that the very success of pre-grant opposition procedure was so intricately linked to the industry's role in supplying information on different fields of technology, it required the writing of a different kind of book altogether. This book, as you will hopefully figure out when you finish it, makes a case for pre-grant opposition as a vital cog of the patent system and encourages the industry to understand and utilise the procedure more constructively.

Given this genesis, it is inevitable that you will find elements from my earlier work in this book. Yet this book departs from my earlier work significantly as all the decisions cited in this book are home-grown. You will be surprised to see that there is not a single foreign case law that is analysed in this book. As difficult it was to find a foreign case law, so was it to find a country which incorporated pre-grant opposition into its patent laws the way India did.

Many ideas discussed in this book were developed over the course of my profession work. The book substantially benefits from many workshops on pre-grant opposition in which I have participated and conducted. This book is replete with examples and illustrations of the best and avoidable practices of many companies and organisations in India—I have taken the liberty to mention their names in this book as they have never been my clients or the event concerning them is already in the public domain. The names of the companies and organisations with which I have done professional work, have been otherwise concealed.

The approach of this book may come as a surprise to some readers. You have with you a practical book which deals with the what, why and how of pre-grant opposition. This book attempts to bring together ideas from law and business management. I have tried to present this work as a unique legal book written for special business needs. This book abandons legalese, logomachy (whatever that means to you) and every other technical complexity that keep business people away from legal works. There is a wide and almost insurmountable gap between legal writing and business writing today. If you have tried digesting something from Harvard Law Review after living on a diet of Harvard Business Review, you will know what I mean. It would be a touch too grandiloquent to call this book a modest attempt to bridge that gap. Rather, the existence of this book will be justified if you read it and liked it.

Like my earlier book, *The Law of Patents – With a Special Focus on Pharmaceuticals in India* ([www.thelawofpatents.blogspot.com](http://www.thelawofpatents.blogspot.com)), I hope this one too will have a life beyond its printed pages. Towards this end, I have started an exclusive weblog at [www.thetouchstoneeffect.blogspot.com](http://www.thetouchstoneeffect.blogspot.com) for the book where you can find more information about this book and things surrounding it.

As with my earlier work, I was fortunate to have a host of talented people to help me with this book. Ananth Padmanabhan (Pappan) willingly shouldered the unenviable task of reading thorough my initial thoughts and suggesting improvements to the written word. At times, the tracked Microsoft word file of my draft chapters that contained his innumerable corrections looked like coloured pages! If there is something as ghostediting a book, he deserves the credit for having done that for this work. I thank him wholeheartedly for dedicating his time and effort for this book. Mr Arvind P Datar, Senior Advocate, with whom I have the privilege of spending a considerable portion of my professional time, read portions of this book and suggested valuable improvements. I thank him for his support and guidance. I am also thankful to Adarsh Nigam who helped me with some timely clarifications on patent databases.

As always, the folks at LexisNexis have been at their supportive best. I thank the entire team at LexisNexis Butterworths Wadhwa Nagpur for all the help, especially Mr Chaitanya Kalbag, Publishing Director, for constantly encouraging me to finish the book on time. My sincere thanks are due to Ms Sheeba Bhatnagar, who took great care and effort in bringing out this book.

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