

The Mashelkar Report – vs – the INTERPAT funded IP Institute Report

Mashelkar Report	Interpat/ IP Institute Report
<p><u>5.6</u> Granting patents only to NCEs or NMEs and thereby excluding other categories of pharmaceutical inventions is likely to contravene the mandate under Article 27 to grant patents to all 'inventions'. Neither Articles 7 and 8 of the TRIPS Agreement nor the Doha Declaration on TRIPS Agreement and Public Health can be used to derogate from this specific mandate under Article 27.</p>	<p><u>Section II, Part A</u></p> <p><u>1.</u> Limiting the grant of patents only to NCEs or NMEs and thereby excluding other categories of pharmaceutical inventions (<i>'the proposed exclusion'</i>) is likely to contravene the mandate under Article 27 to grant patents to all 'inventions'. Neither Articles 7 and 8 of the TRIPS Agreement nor the Doha Declaration on TRIPS Agreement and Public Health can be used to derogate from this specific mandate under Article 27.</p>
<p><u>5.9</u> If the aim of limiting patents to new chemical entities is to prevent a phenomenon loosely referred to as 'ever-greening', this can be done by a proper application of patentability criteria as present in the current patent regime.</p>	<p><u>Section II, Part A</u></p> <p><u>3.</u> If the aim of the <i>proposed exclusion</i> is to prevent a phenomenon loosely referred to as 'ever-greening', this can be done by a proper application of patentability criteria as present in the current patent regime.</p>
<p><u>5.10</u> It is important to distinguish 'ever-greening' from what is commonly referred to as 'incremental innovation'. While 'ever-greening' refers to an extension of a patent monopoly, achieved by executing trivial and insignificant changes to an already existing patented product, 'incremental innovations' are sequential developments that build on the original patented product and may be of tremendous value in a country like India.</p>	<p><u>Section II, Part A</u></p> <p><u>4.</u> Lastly, it is important to distinguish the phenomenon of 'ever-greening' from what is commonly referred to as 'incremental innovation'. While 'ever-greening' refers to an undue extension of a patent monopoly, achieved by executing trivial and insignificant changes to an already existing patented product, 'incremental innovations' are sequential developments that build on the original patented product and may be of tremendous value in a country like India.</p>