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# Patent regime in India

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**Why is in news?** Indian court turns down PepsiCo's appeal against revocation of FC5 potato patent

An Indian court rejected PepsiCo Inc.'s appeal against an order that revoked a patent for a potato variety grown exclusively for the New York-based company's popular Lay's potato chips.

The Protection of Plant Varieties and Farmers' Rights (PPVFR) Authority in 2021 **revoked intellectual protection granted to PepsiCo's FC5 potato variety**, saying that India's rules do not allow a patent on seed varieties.

The U.S. snacks and drinks maker, which set up its first potato chip plant in India in 1989, supplies the FC5 seed variety to a group of farmers who in turn sell their produce to the company at a fixed price.

PepsiCo has maintained that it **exclusively developed the FC5 variety and registered the trait in 2016**. The FC5 variety has a lower moisture content required to make snacks such as potato chips.

In 2019, PepsiCo sued some Indian farmers for cultivating the FC5 potato variety, accusing growers of infringing its patent. The company also sought more than ₹1 crore each for alleged patent infringement.

Within months, PepsiCo withdrew lawsuits against farmers. In its order, the **Delhi High Court did not uphold accusations of any public interest violation by PepsiCo**. PepsiCo is the second large U.S. company to face patent infringement issues in India.

After a long-standing intellectual property dispute, seed maker Monsanto, now owned by German drugmaker Bayer AG, withdrew from some businesses in India.

## Patent regime:

A patent is an exclusive set of rights granted for an invention, which may be a product or process that provides a new way of doing something or offers a new technical solution to a problem.

Indian patents are governed by the **Indian Patent Act of 1970**. Under the act, patents are granted if the invention **fulfils the following criteria:**

It should be novel

It should have inventive step/s or it must be non-obvious

It should be capable of Industrial application

It should not attract the provisions of sections 3 and 4 of the Patents Act 1970.

India has **gradually aligned itself with international regimes** pertaining to intellectual property rights.

It became a party to the **Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement** following its membership to the World Trade Organisation on January 1, 1995.

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It amended its internal patent laws to comply with TRIPS, most notably in 2005, when it **introduced pharmaceutical product patents** into the legislation.

The **original Indian Patents Act did not grant patent protection to pharmaceutical products** to ensure that medicines were available to the masses at a low price.

India is **also a signatory to several IPR related conventions** including:

The Berne Convention which governs copyright,

The Budapest Treaty,

The Paris Convention for the Protection of Industrial Property

The Patent Cooperation Treaty (PCT) all of which govern various patent-related matters.

### **Issues in India's IPR regime:**

**Section 3(d) of the Indian Patent Act 1970** (as amended in 2005) **does not allow evergreening of patents**. This has been a cause of concern to the pharma companies. Section 3(d) was instrumental in the Indian Patent Office (IPO) rejecting the patent for Novartis' drug Glivec (imatinib mesylate).

**Issue of Compulsory licencing (CL):** CL is **problematic for foreign investors** who bring technology as they are concerned about the misuse of CL to replicate their products. It has been impacting India-EU FTA negotiations.

CL is the grant of permission by the government to entities to use, manufacture, import or sell a patented invention without the patent-owner's consent. Patents Act in India deals with CL.

India continues to **remain on the United States Trade Representative's (USTR's) 'Priority Watch List'** for alleged violations of intellectual property rights (IPR).

**Data Exclusivity:** Foreign investors and MNCs allege that **Indian law does not protect against unfair commercial use of test data or other data submitted to the government** during the application for market approval of pharmaceutical or agro-chemical products. For this they demand a Data Exclusivity law.

**Enforcement of the Copyright act is weak**, and piracy of copyrighted materials is widespread.