

INTELLECTUAL PROPERTY ISSUES

Why healthcare sector is wary of the Obama visit

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To an average American, China is a foreign power; while India is where my next-door neighbour's parents live ... only a bit foreign, and more (of a) partner than rival," is the light-hearted yet insightful observation by a US patent attorney, Mr J. Mark Pohl, on how the President, Mr Barack Obama's India visit is being viewed back home.

Several "desi (read Indian) politicians" are in "high levels of the US Government", he says, illustrating the "partner" status.

The US President's visit is likely to be about national security, and not contentious issues such as intellectual property (IP) protection, for instance, Mr Pohl observes.

Intellectual property issues have been giving sleepless nights to the healthcare sector and IP advocacy groups in India.

But Mr Pohl's view is not being bought by all in India, as Mr Obama is scheduled to give a keynote address at a meet organised by the United States India Business Council (USIBC). The US President's participation in the meeting could be viewed by Indian authorities as an endorsement of the USIBC, an Indian patent lawyer says.

So, what would have passed off as a regular interaction with Indian and American business honchos is now taking on an added significance, against the backdrop of the IP environment in the country.

LITIGATIONS

India had amended its patent laws in 2005 to respect product-patents. There have

been patent-related litigations since.

A patent allows the holder a 20-year monopoly on the sale of the product. In terms of medicines made in the country, this means generic drug companies would not be allowed to make similar versions of patented drugs; and therein the concern that monopolies would increase medicine prices. As a result, IP is an emotive issue in India. IP laws have hurt makers of Indian generic drugs abroad as well.

COMPULSORY LICENSING

A recent discussion paper from the Department of Industrial Policy and Promotion had sought views on using compulsory licensing (CL) as a tool to make drugs affordable. A CL allows a third party to make a drug, overruling the patent, on the payment of royalty to the patent holder.

The paper came against the backdrop of Indian domestic drug companies selling their operations, in part or entirely, to multinationals and the concern that stemmed — on if medicine prices could increase.

The USIBC, and other multinational groups, had said that CLs should be issued only in an extreme emergency, else it undermined innovations and investments in research. Indian industry groups and patient organisations, however, argued in favour of CLs, in the interest of public health.

With this being the slippery track before the US President, the signals coming out from Mr Obama on innovation and health are expected to give fodder for fresh IP-related backroom activity between the two countries.

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