

REVIEW OF LEGISLATION

Responses from India to questions posed by Australia, the European Communities
and their member States and the United States

Addendum

By means of a communication from the Permanent Mission of India, dated 28 February 2002, the Secretariat has received additional responses to questions posed by Australia, the European Communities and their member States and the United States, as circulated in documents IP/C/W/328, 320/Add.1 and 316, respectively. These responses supplement those circulated in document IP/C/W/326/Add.1.

AUSTRALIA

A. COPYRIGHT AND RELATED RIGHTS

1. *What is the current duration of copyright in photographs? With regard to the term "Author's Life plus 50 years", when was this term enacted? Was the "Author's Life plus 50 years" term applied to all photographs currently protected by copyright at the date of force of the amendment? If so, were there any schemes or provisions to protect existing contractual arrangements, or mitigate damage to copyright users for arrangements existing prior to the amendment?*

In case of photographs copyrights subsists until 60 years from the beginning of the calendar year next following the year in which the photograph is published. The duration of the protection was made 60 years w.e.f. 28.12.1991. The term of 50 years was provided from 1957 itself.

2. *Does India grant WPPT standard performers' rights in audio fixations? If not, is the introduction of audio performers' rights under active consideration, and if so have any proposals been released for public comment? If yes, when were these rights enacted and was there an existing system of performers' rights (as opposed to Rome Convention anti-bootlegging rights) at that time? If there was no existing system of performers' rights, did the relevant legislation recognise rights in performances embodied in pre-amendment sound recordings (i.e. retrospectively apply the legislation)?*

India protects performers right based on TRIPS obligation. This protection was introduced from 1995 onwards. India has not yet jointed the WPPT.

3. *Has India enacted audio-visual performers' rights (beyond Rome Convention standards)? If not, is the introduction of audio-visual performers' rights under active consideration, and if so have any proposals been released for public comment?*

India protects audio-visual performers' rights in accordance with the provisions contained in Section 40 A & 42 A of Copyright Act. Under Article 3 of TRIPS Agreement, India is under obligation to provide national treatment for performers right. Extension of protection in accordance with WPPT is under consideration.

4. *To what extent does current copyright protection in India cover the use and dissemination of copyright works on digital networks such as the Internet? Are there any specific provisions in copyright law concerning the digital on-line environment, and are there any significant judicial or administrative decisions with bearing on this issue?*

Section 2(ff) of the Copyright Act, 1957 defines communication to public to mean making any work available for being seen or heard or otherwise enjoyed by the public directly or by means of display or diffusion other than by issuing copies of such work regardless whether any member of public actually sees, hears or otherwise enjoys the work so made available. Publication has been defined as making a work available to the public by issue of copies or by communicating the work to the public. These provisions are capable of interpreting dissemination of copyright works on digital networks. In addition to this, section 14 recognises reproduction to include storage as well. However, this interpretation does not have any judicial sanctions, as there has been no reported judgement on the issue.

5. *Are there any specific exceptions to copyright under the law of India to allow use of copyright materials by third parties for permitted purposes? Are there any significant judicial decisions with bearing on this issue? Are there any specific rules or findings concerning exceptions or limitations to copyright protection of computer software?*

Limitations and exceptions to the exclusive rights are contained in Section 31, 31 A, 32, 32 A and 52 of the Copyright Act, 1957. Section 39 deals with exceptions relating to broadcast reproduction right and performers' right. These exceptions and limitations are for special cases and without prejudice to the normal exploitation of rights by right holders and does not unreasonably prejudice the legitimate rights of the author. There are no significant judicial pronouncements from the Supreme Court of India in these matters. The exceptions in relation to computer programmes are provided in Section 52(1) (aa) to 52(1) (ad).

6. *Does the law of your country provide copyright protection for material created by government? If yes, does the law provide protection to government in the same way as protection is provided for other copyright creators or do different provisions apply? How does the law of your country deal with the use of copyright material by government? For example, is government subject to the same requirements as other users of copyright material or do different provisions apply?*

As per Section 17(d) of the Copyright Act, 1957 in the case of a government work, Government shall in the absence of any agreement to the contrary be the first owner of copyright therein. The law provides protection to Government works in the same way as protection is provided for other copyright holder, "Government work" has been defined as a work which is made or published by or under the direction and control of:

- (i) the Government or any department of the Government;
- (ii) any legislation in India;

- (iii) any court, tribunal or other judicial authority in India.

However certain exceptions are provided under section 52(c) and (d) for the purpose of a judicial proceeding and in a work produced for the use of the legislature respectively. In all other circumstances all the provisions of Copyright Act apply to the use of materials by government the same way it applies to other users.

7. *How does the law of your country deal with the copying of material by educational institutions? Are educational institutions subject to the same requirements as other users of copyright material or do different provisions apply? Are there exceptions to the general rules regarding infringement of copyright which apply in respect of copying by educational institutions?*

Section 52(h) & (i) provides for special exceptions for the use of materials for educational purpose. In all other circumstances the normal rules apply.

8. *How does the law of your country implement the obligations under Article 14.3 of the TRIPS Agreement in respect of broadcasting organisations?*

The Copyright Act, 1957, provides broadcasters with "broadcast reproduction right" under section 37 of the Act, which meets the obligations under the TRIPS Agreement.

9. *Does the law of your country provide criminal sanctions for copyright infringement? If yes, please describe the operation of these provisions.*

Yes, both direct and indirect infringements are recognised under the Copyright Act. The criminal remedies are available for infringement of copyright or any other right (except the right conferred under section 53 A, which is the right to share in the re-sale price of the original copy) recognised under the Copyright Act. This includes moral rights of authors, performers right and broadcast reproduction right.

B. PATENTS (INCLUDING PLANT VARIETY PROTECTION)

10. *How does your country provide protection for new plant varieties as required under Article 27.3(b)? If your legislation is based on the UPOV system, on which UPOV Act was it modelled? Can new plant varieties be protected by patent in your country?*

As required under Article 27.3(b) of TRIPS Agreement, new plant varieties are protected under the newly enacted "Protection of Plant Varieties & Farmers' Rights Act, 2001". This legislation is based on a Sui-generis System having many provisions of UPOV, 1978 Act. There is no provision in the country for Protection of New Plant Varieties by Patent.

EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

A. GENERAL PROVISIONS

1. *Please confirm whether your legislation includes measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to your socio-economic and technological development as mentioned under Article 8 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the "TRIPS Agreement"). Please explain how such measures are consistent with the provisions of the TRIPS Agreement.*

Implementation of provisions of Article 8 of the TRIPS Agreement is the subject matter of the Patents (Second Amendment) Bill, 1999.

B. COPYRIGHT AND RELATED RIGHTS – THE COPYRIGHT ACT 1957 AS AMENDED BY THE COPYRIGHT (AMENDMENT) ACT 1999; THE INTERNATIONAL COPYRIGHT ORDER 1999 AS AMENDED BY THE INTERNATIONAL COPYRIGHT (AMENDMENT) ORDER 2000.

8. *Please indicate whether or not procedures are available to suspend the exporting of counterfeit goods.*

Please refer to reply to Question No. 18

C. TRADEMARKS – TRADE MARKS ACT 1999

18. *Please indicate whether or not procedures are available to suspend the exporting of counterfeit goods.*

Section 135 of the Trade Marks Act, 1999 provides for relief which a court may grant in a suit for infringement of a trademark which include injunction and at the option of the plaintiff either damages or an account of profit together with or without an order for delivery up of the infringing labels and mark for destruction and erasure. However, courts have inherent powers to grant relief relating to suspension of export of counterfeit goods in specific cases if requested for by the plaintiff.

19. *Please indicate whether or not your legislation provides for a de minimis imports exception.*

There is no specific provision in the Trade Marks Act 1999 to provide for *de minimis* imports exception.

D. GEOGRAPHICAL INDICATIONS – GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT 1999

24. *Please confirm whether the same protection is given to geographical indications that are registered and those that are not registered under the Act. Please explain any dissimilarities. In particular please explain the scope of Articles 20(1) and 23(2) of the Act.*

The Geographical Indications of Goods Act, 1999 extends protection to only such goods, which are registered under the Act. Therefore, while protection for infringement would be available to only those goods, which are registered, unregistered goods can only claim protection under the law of passing off under the common law.

E. INDUSTRIAL DESIGNS – DESIGNS ACT 2000

25. *Please explain whether or not your legislation extends to the protection of designs dictated essentially by technical or functional considerations. Please explain how textile designs are protected.*

Designs dictated essentially by technical or functional considerations are not protected under the Designs Act, 2000. "Design" is defined in section 2(d) to mean only features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article in either two or three dimensional forms. Its specifically excludes any mode or principle of construction or anything which is mere mechanical device.

Textile designs are protected under Section 5 of the Designs Act, 2000. The scope of protection of textile designs is similar in respect of cost, examination or publication to the non-textile designs. The system of registration of a textile design is similar to that for a non-textile design.

Examination of textile design applications and their publication in the official Gazette is done in a manner similar to non textile design applications. The filing fee for an application for registration of textile design is also the same as in the case of non-textile application and which is Rs. 1000/-.

26. *Please explain the scope of the phrase "scandalous or obscene matter" and how it will be applied as a reason to prohibit the register of certain designs (Article 4(d) of the Act).*

The scope of scandalous or obscene matter would include offending public sentiments, hurting religious susceptibilities, libellous marks, marks which threaten breach of peace in society etc. The application of this principle would depend upon the examination of the designs and the assessment of the Controller of Designs. Case law in this regard has to develop.

27. *Please define in more detail novelty and originality of industrial designs for the purposes of the Act.*

Section 4(a) of the Designs Act, 2000 prohibits the registration of designs that are not new and original. Novel and original designs would be those which meet the criteria of section 4(b) and (c) i.e. those which have not been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use in any other way and is not significantly distinguishable for non-designs or combination of non-designs.

28. *Please explain how your legislation protects right holders of a design against importing of articles bearing embodied or copied design.*

Section 11 of the Designs Act, 2000 provides for rights conferred to registered proprietor and Section 22 provides for legal proceedings in case of infringement of registered design by third parties engaged in the unlawful making, selling or importing of the registered designs.

29. *Please state whether or not your legislation provides for the right to issue a compulsory licence for industrial designs.*

The Designs Act, 2000 does not provide for the right to issue a compulsory license.

F. PATENTS

30. *Please describe how your legislation defines the notions of novelty, inventiveness and industrial application.*

Section 2(1)(j) of the Act states that invention means any new and useful:

- (i) art, process, method or manner of manufacture;
- (ii) machine, apparatus or other article;
- (iii) substance produced by manufacture,

and includes any new and useful improvement of any of them, and an alleged invention. This issue is also a subject matter of the Patents (Second Amendment) Bill, 1999.

31. *Please explain whether or not in your legislation, patent or otherwise, patent rights are enjoyed without any exclusions (for example, exclusions based on ordre public or moral grounds, or in relation to diagnostic, therapeutic and surgical methods; animals; essentially biological processes, and pharmaceutical and agricultural chemical products). If exclusions are provided for, please describe in detail how these exclusions are applied in legal as well as practical terms.*

Section 3 of the Act states the inventions, which are not patentable under the Act.

"Section 3. The following are not inventions within the meaning of this Act:

- (a) an invention which is frivolous or which claims anything obvious contrary to well-established natural laws;
- (b) an invention the primary or intended use of which would be contrary to law or morality or injurious to public health;
- (c) the mere discovery of a scientific principle or the formulation of an abstract theory;
- (d) the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- (e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- (f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- (g) a method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient or for the improvement or restoration of the existing machine, apparatus or other equipment or for the improvement or control of manufacture;
- (h) a method of agriculture or horticulture;
- (i) any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products."

This provision is subject matter of amendment by the Patents (Second Amendment) Bill, 1999.

Further product patents on food, drugs/medicine and chemicals are excluded from patentability by Section 5 of the Patents Act, 1970. But methods or processes for producing such substances are patentable under the present Act.

"Section 5(1). In the case of inventions:

- (a) claiming substances intended for use, or capable of being used, as food or as medicine or drug, or
- (b) relating to substances prepared or produced by chemical processes (including alloys, optical glass, semi-conductors and inter-metallic compounds),

- (c) no patent shall be granted in respect of claims for the substances themselves, but claims for the methods or processes of manufacture shall be patentable.
- (2) Notwithstanding anything contained in sub-section (1), a claim for patent of an invention for a substance itself intended for use, or capable of being used, as medicine or drug, except the medicine or drug specified under sub-clause (v) of clause (1) of sub-section (1) of section 2, may be made and shall be dealt, without prejudice to the other provisions of this Act, in the manner provided in Chapter IVA."

India has time till 31 December 2004 to introduce product patent as Mail box and EMR provisions in respect of Pharmaceuticals and agricultural-chemicals have been made by the Patents (Amendment) Act, 1999.

32. *Please describe how micro-organisms, non-essentially biological processes, microbiological processes and plant varieties are protected by your legislation. Please explain, in this respect, the relevant sections of your legislation.*

The question of patenting of micro-organisms, etc is a subject matter of the Patents (Second Amendment) Bill, 1999.

The protection of micro-organisms, non essentially biological processes, & microbiological processes are covered under the Patents Act. However plant varieties, are protected under the "Protection of Plant Varieties & Farmers' Rights Acts". Section 24 of this Act provides for issue of certificate of registration for Protection of Plant Varieties based on the criteria of Distinctiveness, Uniformity and Stability (DUS) test.

33. *Please clarify if the patent protection of a process, as provided for in your legislation, covers the product obtained directly by that process.*

As per provisions under section 48(2)(b) where a patent is for a method or process of manufacturing an article or substance, the patentee gets an exclusive right by himself, his agents or licensees to use or exercise the method or process in India. This issue is a subject matter of the Patents (Second Amendment) Bill, 1999.

34. *Please explain the additional conditions, if any, in your legislation other than the sufficient disclosure of the invention in Article 29 of the TRIPS Agreement (e.g. submission of justification for access to genetic material or prior informed consent to its use). If such additional conditions exist, please point out the relevant legislation.*

None in the existing Patents Act 1970.

35. *Please describe if your legislation provides for limited exceptions to the exclusive rights conferred by a patent. If affirmative, please make a reference to the relevant legislation.*

Exceptions to patent right are provided under Sections 47 & 49 of the Act. Section 47 provides that the grant of a patent under this Act shall be subject to the condition that:

- 1. any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;

2. any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;
3. any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and
4. in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

Section 49 states that patent right is not infringed when used in foreign vessels, etc.

36. *Please explain whether or not your legislation provides for compulsory licensing. If so, please explain in detail the conditions under which a compulsory licence may be granted. In particular, please explain how your national legislation considers individual merits in the authorization of such use.*

The compulsory licences provisions are covered under Chapter XVI of the Patents Act 1970. Apart from the provisions covered under Section 87 and Section 88 (relating to "licences of right") and Section 97 (relating to special provisions for grant of compulsory licence on notification by the Central Government), all the cases are decided on the merits of the case by the Controller. This issue is also subject matter of the Patents (Second Amendment) Bill, 1999.

37. *Please explain how your legislation provides for the reversal of the burden of proof in relation to process patents.*

This issue is subject matter of the Patents (Second Amendment) Bill, 1999. However, civil law relating to evidence is also applicable.

I. ENFORCEMENT

49. *Please explain if and how judges have the authority to order that infringing goods are placed outside channels of commerce or destroyed.*

Please refer to reply to Question. No. 21 in the "Checklist of Issues on Enforcement" (IP/N/6/IND/1 dated 29 November 2001)

54. *Please indicate whether or not your legislation provides for a de minimis imports exception.*

The Copyright Act, 1957 provides for *de minimis* exception for import of one copy of any work for the private and domestic use of the importer. There are no specific *de minimis* exceptions provided in other IPR laws.

UNITED STATES

A. GENERAL

1. *Please describe, in relation to each form of intellectual property covered by the TRIPS Agreement, including plant variety protection, the manner in which national treatment and most favoured nation treatment are provided to nationals of other WTO Members.*

Trademark

Section 18(1) of the Trade Marks Act, 1999 provides that any person, Indian or foreign, claiming to be the proprietor of the trademarks used or proposed to be used can file an application for registration of a trademark. Section 154 provides for priority for registration of trademark applications from citizens of convention countries.

Geographical Indication

The Geographical of Indications of Goods (Registration and Protection) Act, 1999 provides under Section 11(1) that any association of persons or producers may apply for registration of a geographical indication. This provision provides for national treatment as envisaged under Article 3 of the TRIPS Agreement. The most favoured nation treatment is extended to applicants from Convention countries as per provision of Section 84 of the Act.

Industrial Design

The Designs Act, 2000 complies with the requirements for National treatment and most favoured national treatment as per Articles 3 & 4 of the TRIPS Agreement since no limiting definition of "person" is provided in the Act, "person" includes any individual or legal entity irrespective of nationality. Any person may apply for the registration of Design under Section 5 of the Designs Act, 2000.

Patent

Section 6 of the Patents Act, 1970 complies with the requirement of national treatment and most favored nation treatment as per Articles 3 and 4 of the TRIPS Agreement as it provides that any person is entitled to apply for patents.

Plant Variety Protection

Section 34 of the Protection of Plant Varieties & Farmers' Rights Act, 2001, provides for national treatment and reciprocity for protection of Plant Varieties as under:

- (1) With a view to the fulfillment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizens, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purpose of this Act.
- (2) Where a person has made an application for the granting of a breeder's right to a variety or for entering such variety in the official register of varieties in a convention country and that person, or any person entitled to make application on his behalf under section 14 or section 23, makes an application for the registration of such variety in India within twelve months after the date on which the application was made in the convention country, such variety shall, if registered under this Act, be

registered as of the date on which the application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.

- (3) Where applications have been made for granting of a breeder's rights to a variety, or for entering such variety in the official register of varieties in two or more convention countries, the period of twelve months referred to in sub-section (2) shall be reckoned from the date on which the earlier or earliest of those applications were made.

Copyright

Works of other WTO members get "national treatment" as provided in sections 40 and 40 A of the Indian Copyright Act, 1957 read with para 3 of International Copyright Order, 1999. Copyright of works first made or published in a country or the author of which was, at the date of such publication, a national of a country who is Member of the World Trade Organisation are protected in India as if they are Indian works, based on section 40 of the Indian Copyright Act, 1957 read with International Copyright Order, 1999. Accordingly all provisions of the Indian Copyright Act, 1957 will apply as if they are Indian works. Indian Copyright Law does not extend any MFN status.

Integrated Circuits Layout-Designs

Section 8 of the Integrated Circuits Layout-Designs Act complies with the requirement of MFN and National treatment as per Articles 3 and 4 of the TRIPS Agreement as it provides that any person is entitled to apply for the registration of his layout-designs.

F. PATENTS

18. *Please describe in detail the way in which the patent law of India implements Article 27 of the TRIPS Agreement, indicating any exceptions provide for, and including details regarding the protection for micro-organisms and non-biological and microbiological processes and plant varieties. Please cite the relevant provisions of the law.*

Section 3 of the Patents Act 1970 states the inventions which are not patentable under the Act. This is reproduced below:

"Section 3. The following are not inventions within the meaning of this Act:

- (a) an invention which is frivolous or which claims anything obvious contrary to well-established natural laws;
- (b) an invention the primary or intended use of which would be contrary to law or morality or injurious to public health;
- (c) the mere discovery of a scientific principle or the formulation of an abstract theory;
- (d) the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- (e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;

- (f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- (g) a method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient or for the improvement or restoration of the existing machine, apparatus or other equipment or for the improvement or control of manufacture;
- (h) a method of agriculture or horticulture;
- (i) any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products."

Further product patents on food, drugs/medicine and chemicals are excluded from patentability *vide* Section 5 of the Patents Act, 1970. However, methods or processes for such substances are patentable under the present law.

"Section 5(1). In the case of inventions:

- (a) claiming substances intended for use, or capable of being used, as food or as medicine or drug, or
- (b) relating to substances prepared or produced by chemical processes (including alloys, optical glass, semi-conductors and inter-metallic compounds),
- (c) no patent shall be granted in respect of claims for the substances themselves, but claims for the methods or processes of manufacture shall be patentable.
- (2) Notwithstanding anything contained in sub-section (1), a claim for patent of an invention for a substance itself intended for use, or capable of being used, as medicine or drug, except the medicine or drug specified under sub-clause (v) of clause (1) of sub-section (1) of section 2, may be made and shall be dealt, without prejudice to the other provisions of this Act, in the manner provided in Chapter IVA.

India has time till 31 December 2004 to introduce product patent as Mail box and EMR provisions in respect of pharmaceuticals and agricultural-chemicals have been made by the Patents (Amendment) Act, 1999.

However, the question of implementing the obligations concerning patenting of micro-organisms is the subject matter of the Patents (Second Amendment) Bill, 1999.

Protection to plant varieties is provided through a sui generis system under the Protection of Plant Varieties and Farmers' Rights Act.

19. *Please describe in detail the rights provided to patent holders under the patent law of India and cite to the relevant provisions of law.*

Section 48 of the Patents Act contains provision relating to the rights of the patentee. According to this provision, a patent granted under this Act confers upon the patentee:

- (a) where the patent is for an article or substance, the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute such article or substance in India;
- (b) where a patent is for a method or process of manufacturing an article or substance, the exclusive right by himself, his agents or licensees to use or exercise the method or process in India.

20. *Please describe in detail any provisions in the laws of India permitting unauthorized use of a patent, citing to the relevant provisions of law, and describe in detail the conditions under which such use can occur.*

Use without authorization of right holder is permitted in the Patents Act, 1970 under sections 47, 84, 86, 87, 88, 96, 97 and 100 of the Patents Act, 1970. Out of these provisions sections 47 and 100 are related to Government use, sections 86, 87 and 88 are related to Licence of Right, section 84, (grant of compulsory licence), section 96 (licensing of related patents) and section 97 (compulsory licence on notification by Central Government).

21. *What term of protection does the patent law of India provide for patents? Please describe any provisions for extension of the term of protection and cite to the relevant provisions of the law.*

According to section 53 of the Patents Act, 1970 process patents on food or drug or medicines are granted for 5 years from the date of sealing or 7 years from the date of patent whichever period is shorter and patents in other fields are granted for 14 years from the date of the patent. There is no provision for extension of the term in the Act. This issue is also a subject matter of the Patents (Second Amendment) Bill, 1999.

J. SPECIAL REQUIREMENT RELATED TO BORDER MEASURES

31. *Please indicate if border enforcement is available to owners of other forms of intellectual property and if so, please describe the procedures and remedies available in relation to each form of intellectual property, citing the relevant provisions of law.*

Section 11 of the Customs Act, 1962 empowers the Government to prohibit importation and exportation of goods for the protection of patents, trademarks and copyrights. It does not cover other forms of intellectual property rights. Under this section, the government has issued Noftn. No. 1/Cus/dated 18 January 1964 prohibiting import of goods having applied thereto false trademarks within the meaning of Section 77 of the Trade and Merchandise Marks Act, 1958 and Indian Patent & Design Act, 1911. Similarly, a notification No. 135 dated 31 December 1960 has been issued prohibiting export of good in violation of Trade and Merchandise Marks Act, 1958 under section 11(2)(n) of Customs Act, 1962. In respect of other intellectual property rights, no notifications have been issued.

K. CRIMINAL PROCEDURES

34. *Article 61 also requires that remedies in appropriate cases include the seizure, forfeiture and destruction of infringing goods and any materials and implements the predominant use of which has been the commission of the offence. Please describe the provisions in the laws of India that provide for such remedies, and describe the circumstances in which those remedies would be imposed, citing to the relevant provisions of law or regulation.*

Please refer to reply to Question No 21 on the Checklist of Issues on Enforcement submitted by India in document No. IP/N/6/IND/1 dated 29 November 2001.

L. STATISTICAL QUESTIONS

36. *Please provide statistical information related to civil copyright, trademark, geographical indication, industrial design, patent, integrated circuit layout-design, and trade secret enforcement for 2000, including the number of cases filed; injunctions issued; infringing products seized; infringing equipment seized; cases resolved (including settlement); and the amount of damages awarded.*

Statistical information in respect of injunction, infringements, seizures, cases resolved, etc. are not maintained by the IP Offices in the country since they fall under the purview of the Civil and Criminal justice system and are administered in various different courts in the country. This information is not compiled centrally.

37. *Please provide statistical information related to criminal enforcement in the area of copyright piracy and trademark infringement for 2000, including the number of raids, prosecutions, convictions, and the amount of fines and/or jail terms (including whether the fines were paid and whether the jail term was actually served or was suspended) and any other information establishing that the criminal system operates effectively to deter copyright piracy and trademark counterfeiting.*

Please refer to the reply to Question No. 36.
