

SECTION 31 OF PATENT ACT 1983 AND THE OPPORTUNITY TO PROMOTE GREEN TECHNOLOGY

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Organization of Presentation

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- Introduction

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- Background facts

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- Recommendation

Intro ; Comparison

- Between Article 27 of TRIPS & Section 31 of Patent Act 1983 (Malaysia)
- There are few missing terms in section 31
- Small facts with significant effect
- A (miss) opportunity to promote green technology for better environment

WHY

TRIPS- Agreement on Trade Related Intellectual Property issues

- The 1st international patent document to allow refusal or rejection of perfectly patentable invention on environmental grounds

TRIPS

Art. 27(1)

- Art. 27(1) minimum standard requirement
- Patent for all inventions

- Except on certain grounds

Art. 27(2)

Significance of Art. 27(2)

- A filtering system
- Allows government via PTO to re-evaluate their initial findings & decision to patent
- Based on non-legal considerations

So What

The wordings of s.31 are not exactly as Art.27

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Small facts with significant effect

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A miss opportunity to promote green technology for better environment

Methodology

Approach

- **Qualitative**
- Literature reviews – Documents (TRIPS, EU Directive on Biotechnology Patent 1998, Patent Act 1983), judicial decisions
- Interviews- semi-structure questions
- Focus group discussions with experts (lawyers, legal advisors, policy makers, decision makers, academicians)

Why

- **Suitable**

Justifications

- **New subject matter**
- **To explore and gather new info**

Wordings of Art 27(1)

Subject to the provisions of paragraphs 2 and 3, **patents shall be available for any inventions**, whether products or processes, in **all fields of technology**, provided that they are

(i) new,

(ii) involve an inventive step and

(iii) of industrial application.

Article 27 (2)- exception

Art 27 (2)

- Refuse or reject a perfectly patentable invention from patent

Refusal or rejection

- On certain grounds

2 major grounds

- necessary to protect *ordre public* or morality.....**including** to protect human, animal or plant life or health or

Objective

- **to avoid serious prejudice to the environment**

Wordings of S. 31(1) of Patent Act 1983 – amd 1998

The grant of a patent SHALL NOT be refused and a patent SHALL NOT be invalidated on the ground that the performance of any act in respect of the claimed invention is prohibited by any law or regulation, **EXCEPT** where the performance of that act would be **contrary to public order or morality.**

Difference In terms

Art. 27 uses the term *ordre public*

S. 31 uses public order instead

They are not synonymous

Ordre public is legally defined as **public policy**

Legally **public order** refers to an **orderly society**

Meaning of terms

Art. 27 partially defines the meaning of ;-

i- *ordre public*

ii. Morality

They are to includeprotection of human,
animal or plant life or health

S. 31..... moralityopen for interpretation

Reasons for rejection

Art. 27;

The **reasons** for rejecting or refusing patentability is made **very clear**

S. 31 ;

The reasons for rejecting or refusing patent is
NOT STATED at all

Lack of objective

- Art. 27(2)- is a clear cut policy
- i.e -To promote green and better environment
- The original objective of patent law in promoting green technology for better environment as demanded by Art. 27 is not stated anywhere in s. 31

Effect of Missing Terms

- Grounds for refusing and rejecting patent automatically becomes narrower
- Could ONLY do so when
 - i- invention is contrary to moral values of locals
 - ii- invention is against public order (threat to orderly life of the society)

Nullify the objective & agenda

- Section 31 could have misinterpreted the intention of Art. 27 thus not able to discharge the national obligations towards promoting environmental agenda and protecting local interest for greater benefits of humankind

S. 31 is without teeth

- By right, s. 31 should be able to translate the intention of Art 27 at domestic level
- The provisions act as a filter system @ precautionary measures
- To ensure technological advancement & developmental progress are not done at the expense of the environment

In the End.....The bigger picture

- Few inventions may end up being rejected or refused
- Greater potentials for most inventions to be protected
- **EVEN when the invention might cause prejudice to environment**
- **A small overlook but with costly repercussions and irreversible damage**

Recommendation

- Insertion of the missing terms of Art. 27(2) in s. 31
- When s. 31 is termed properly, it could be the most powerful & effective legal provision in promoting green technology
- In long term it would inculcate a change in attitude or better attitude towards protection and conservation of environment

THANK YOU