Exclusive marketing rights revisited in India

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Interest in the repealed exclusive marketing rights provisions has been revived by a Supreme Court ruling clarifying the effect of the repeal cases on pending and decided applications. On 1st January 2005, the Indian Parliament passed the Patent (Amendment) Act, which repealed Chapter IV A of the parent act. Under Section 78 of the amending act, all pending applications for exclusive marketing rights (EMR) made under Chapter IV A were to be treated as claims for patent under Section 5(2) of the Patent (Amendment) Act 1999 act and were to be deemed requests for examination for the grant of patents under Section 11(B)(3) of the amendment act. The new patent regime generated lively debate upon implementation. Following its repeal Chapter IV A was almost forgotten; but interest in the provision has since been rekindled by the recent Supreme Court decision in GlaxoSmithKline LC and others v Controller of Patents and Designs and others. The case clarifies the effect of the repeal of the EMR provisions on the litigation of pending and decided applications for the grant of EMR. *Authored by Nupur Maithani and Priyanka Vyas. This article was published in the Life Sciences Industries 2009.* Read more

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