The Spirit of Patenting – Form 27

What is the issue?

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- A PIL in Delhi HC has sought for better disclosure of ‘local working requirements’ for pharma patents in India through ‘Form 27’ .
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- This might open another avenue for ‘compulsory licensing’ of products and also facilitate innovation in the country.
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What is the spirit of patenting legislations in India?

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- Countries like India signed up to the intellectual property bandwagon to maximise opportunities for technology transfer.
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- Part of this exercise involves allowing local firms to compete and improve innovation, especially on life-saving pharmaceuticals.
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- Patents are not for the benefit of companies but for the promotion of research and betterment of the health metrics of the public.
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- There is hence no wisdom in enacting patent laws that mainly enable foreign companies to import products, without helping in our scientific progress.
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What is Form 27?

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- A PIL was filed before the Delhi High Court – stressing the importance of “Working requirements” in the patents Act, 1970 (mainly drugs & medicines)
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- In essence, it stressed the need for making '**Form 27**' (that seeks to ensure working of patented invention on a commercial scale) more rigorous.
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- Patented invention needs to cater to the demands of the public and this is also mandated in the patent law (and Form 27 merely verifies compliance to this).
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- If the demand is not met, then it can be a ground for **'compulsory licensing'** of the product within India for enhancing supply and protecting public health.
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- Under a compulsory license, an individual or company seeking to use another's intellectual property can do so without seeking the rights holder's consent.
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- While patent owners usually have the right to decide on granting licenses for their products, compulsory licensing route is an exemption to the general rule.
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- A licence fee is paid to the rights holder as fixed by the licence granting authority (Controller General of Patents – under the Ministry of Commerce).
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What is 'working requirement' of patents?

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- Patent law grants to the patentees the privilege of enjoying a limited monopoly in order to achieve the objective of public benefit.
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- As part of the disclosures, patentees are required to disclose if they are locally working their patented invention in exchange for the conferred benefits.
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- Patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale to the fullest practicable extent.
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- Hence, it needs to be stressed that the monopoly granted to the patentees is not merely to import the invention but to make them locally too.
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- Historically, India has considered that "working" the invention is important

for enjoying monopoly and non-working could enable compulsory licensing.
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Will the working requirement violate WTO's TRIPS?

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- In streamlining the local working requirement, especially in the field of pharmaceuticals, India is in line with its international trade obligations.
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- In fact, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides flexibilities to contries in honouring trade commitments.
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- Doha Declaration also outlines the right of national governments to compulsorily license patents as per their sitational needs and discretion.
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- Thus, lack of local working of a patent can be grounds for granting a compulsory licence, along with others such as high prices and lack of supply.
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- Doha Declaration hence allows the exercise of sovereign rights to define when patent rights could be curtailed to achieve a larger public interest result.
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What needs to be done?

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- The country is obligated to protect the right to life of its citizens under Article 21, and this duty is heavier than its commitements to the patentees.
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- As monopoly holders, patentees shold contribute to the promotion of technological innovation and balance their rights and obligations.
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- Indian Patents Act through Form 27 requires a patentee (or licensee) to furnish statements of how the invention is been commercially worked in India.
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- But as the Form is bereft of crucial details, there is a need to revice it to ensures the spirit of patenting is observed and innovation is promoted.
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- Conversly, 'Controller General of Patetnts' also has the right to publish the

information received in the public domain.
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Source: The Hindu

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