CHAPTER – 6

FINDINGS, SUGGESTIONS
AND CONCLUSION
The current chapter is based on the findings, suggestions and conclusion of the study. The findings and suggestions of the study have been presented objective-wise.

**Objective 1**
To learn the different types of business combinations and the underlying motives for them.

**Findings**
1. Business combinations are mainly of two types – horizontal and vertical.
2. The mergers and acquisition deals in the pharmaceutical industry are mostly horizontal. The top 10 companies of India and the top 10 companies in the world have not done any vertical merger or acquisition in the past 9 years.
3. The following main motives have been found for M&As in the pharmaceutical industry, both at the national and international level:
   - To increase revenue and market share so as to grow bigger in size and fight competition.
   - To acquire the profitable products of a rival firm
   - To enhance R&D capabilities.
   - To establish itself in a foreign market.
Objective 2
To understand the basic pharmaceutical aspects and ascertain the role and importance of pharmaceutical industry.

Findings
The contribution of the pharmaceutical industry has been studied under the following heads

A. Contribution to the foreign exchange of the country
During the course of study it was found that the foreign exchange earnings of the pharmaceutical industry is increasing each year. If the present trend continues the industry is expected to contribute a total of Rs. 50740 crores to the economy by the end of 2009 and Rs. 57765 crores by the end of 2010.

B. Attracting foreign direct investments
The pharmaceutical industry relies heavily on the research of new molecules or New Chemical Entities (NCEs). A large number of foreign companies are coming to India to outsource their discovery process to Indian companies because the costs of research and development in India are very less. This process is known as clinical research outsourcing. In return of doing contract research for foreign companies. Indian companies are earning huge profits and also developing technical know-how.
If the present trend continues then the economy is expected to earn a total of Rs. 234 crores from this business alone during the current year 2009 and Rs. 284 crore during the year 2010.

C. Provision of healthcare
The Indian pharmaceutical industry meets over 95% of the country's pharmaceutical needs. Because of the presence of a large number of players in the industry, there is huge competition in the market. Prices of some of the drugs are lowest in India as compared to other countries.
Further there are certain issues related to pharmaceutical industry that need to be addressed immediately

1. There are hurdles in the form of regulatory, non-tariff and trade barriers, which are hampering export growth prospects.

2. Some countries have increased the import tax, prohibitive registration charges for each product and waiting period, which are the major problems faced by exporters. In addition, some countries have raised duty/import tax substantially without applying a similar duty hike on local manufacturers.

3. On the European front, the major hurdle is in relation to the import of Hops (Humulus Lupulus Extract) by the European community. According to this legislation, Hops imported into Europe, which is not grown in Europe cannot be imported into the region, unless it is accompanied by an equivalence certificate, issued by the specified authorities of the exporting country.

4. There is paucity of awareness about Indian pharmaceutical industry as a major manufacturing hub.

5. Besides these barriers, the counterfeit market is also a major hurdle. WHO estimates that 10 percent of global pharmaceutical commerce or $21 billion involves counterfeit drugs and 35 percent of all detected counterfeit cases come from India.

6. The laws related to clinical trials business lack a clear line of action and are quite vague.

7. Administrative machinery to implement laws governing clinical trials is inadequate.

8. Over the years there has been a tie between the government and the pharmaceutical industry over price control of drugs.

9. Environmental pollution by drug factories in India is quite rampant.

Suggestions

1. As per the provisions of Central Excise Rules read with CENVAT credit rules, credit of duty paid on inputs (including Bulk Drugs and APIs) used in
the manufacture of finished drugs is not available. This adds to the cost of drugs manufactured even in excise free zones. Further a custom duty of 7.7% is levied on the import of APIs in the country. The government should exempt the excise and customs duty on bulk drugs and APIs so that the cost of manufacture of drugs comes down.

2. State levies and taxes such as octroi, mandi tax, electricity duty etc., are not reimbursed to the exporters. The Government should examine a scheme to rebate/reimburse these taxes to exporters.

3. The Government should examine the feasibility of introducing zero duty EPCG Scheme replacing the present 3% concessional duty EPCG Scheme. This may be justified on account of continuous reduction in customs duty on import of capital goods.

4. The Government should examine whether incentives under Focus Product and Focus Market Schemes can be increased from the present level of 1.25% and 2.5% respectively. This will help exporters in tackling the adverse impact of rupee depreciation to a certain extent. The Government should include more markets under the Focus Market Scheme. At present no European country is included under this basket.

5. The Government should consider all ports notified by the customs for general import/export with valuation facilities to be treated as ports under Export Promotion Schemes.

6. The government should encourage the setting up of USFDA compliant plants by providing tax holidays for a specific period (as was given to Baddi (Himachal Pradesh)). This will help Indian companies to exploit the opportunity arising out of patented drugs and take up marketing of generics in developed countries like USA.

7. There has to be an increase in awareness by showcasing India as a major manufacturing hub for formulations and APIs through an apex export promotion council like Pharmexcil. Such programs need to be held in African third world countries because these are the countries that rely mostly on foreign drugs for their healthcare.
8. The government has set up a National Biomedical Research Authority to look into the matters of clinical trials. But there are no state level organisations. Looking at the quantum of clinical trial business in India such state level organizations are very much needed. There should be a separate Biomedical Research Authority for every state. All state authorities should come directly under the purview of National Biomedical Research Authority. The structure of state authorities should be parallel to the national authority like-

i. A chairperson - An eminent scientist to be appointed by the state government

ii. Vice chairman elected by members

iii. 6 eminent persons from basic sciences, clinical sciences, community health and behavioral and social science

iv. 2 persons representing NGO and social organisations

v. 1 eminent person from legal field

9. All clinical trials being conducted in the state should be routed through the state biomedical research authority. The organisation conducting the research in the state should give the committee complete information on the individuals under trial. Further the committee should conduct a meeting of all the volunteers in their area before the trial begins, informing them about the risks involved in the trial, the precautions to be taken care of etc.

10. The committee should ensure that all participants are provided with insurance cover in case of any mishap. The committees in all states of India should be connected through computers and other electronic media so that they remain in touch with each other.

11. Moreover the committee should also ensure that the participants are provided their due remuneration after the completion of the trial be it successful or unsuccessful. This is important because many times companies refuse to pay any remuneration in case the trial has failed.
12. The committee should also be empowered to decide on cases on clinical trials. This shall help in the speedy trial of such cases which keep pending for years or go unnoticed. Any party who wants to file against the decision of the state authority should go directly to the National Biomedical Research Authority. Any further hearing should be directly to the Supreme Court.

13. The laws regarding punishment on violation of rules or negligence on the part of companies and doctors conducting trials as formulated by the National Biomedical Research Authority is imprisonment upto 6 months or a penalty of Rupees 10,000 only. This is too less. Such crimes should be made non-bailable and imprisonment extended to life –term.

14. **Reducing spurious drugs** - Efforts are needed to bring awareness amongst all those who are directly or indirectly affected by this trade. This should be done component wise- chemists and stockists, hospitals, state governments, pharmaceutical companies, allied industry and the consumers.

  - The working of the **chemists** should be modernised.
  a. No person having any criminal background should be issued a licence for selling drugs.
  b. Maintaining information regarding the stocks, batch numbers of the drugs, expiry dates etc. should be made compulsory and computerized. Any failure on this regard should be seen as a non-bailable offence.
  c. Chemists should not be allowed to sell any medicine without the prescription of a registered medical practitioner and without a cash memo.
  d. Any substitution of medicine prescribed by the doctor should be treated as an offence.

  - **Hospitals** dispensing medicines should purchase them directly from the companies or their authorised stockists only and not from open markets.
There should be a control on allied packaging industry such as labels manufacturer/carton manufacturer. Any unauthorised printing leading to manufacture of spurious drugs should be considered a cognisable offense. Use of only printed capsules be permitted and un-printed capsules should not be permitted.

State governments need to take notice of the following issues.

a. All vacancies in the state Drug Control Organisations should be filled with immediate effect. There should be one inspector for every 25 manufacturing units and one for every 100 sales premises.

b. Each state should have an intelligence-cum-legal cell to monitor the quality of drugs coming in the market. At present the facility is available only in 10 States of the country.

c. The state governments should make earnest efforts to set up proper testing laboratories in each and every district. At present only 15 of the 26 states of the country have well equipped testing laboratories of which only 7 are well staffed.

Pharmaceutical companies also need to take steps in this regard.

a. Companies should use holograms, bar codes, special inks for printing; emboss logo on the tablets and capsules etc. to make it difficult for the spurious drug manufacturers to copy them.

b. Month and year of manufacturing should be embossed on bottles also and not only on their labels to prevent their recycling.

c. Companies should keep proper record of their stockists and keep testing their random samples to prevent mixing of spurious drugs in their stocks.

The consumers should be educated against the menace of spurious drugs. They should be taught to remain alert and vigilant while purchasing medicines. Some of the cautions they can follow are-
a. To buy drugs from reputed chemists who issue cash memo for purchases.
b. To check the batch number and the expiry date of the medicine on the label and cash memo.
c. Do not buy if the packing is loose
d. Do not buy if the price is lower than the routine price.
e. Do not buy if there is an additional mark on the name unless prescribed by the doctor.
f. Avoid doctors who themselves dispense loose medicines and do not write a prescription.
g. Do not buy the medicine if the label looks old or is mutilated.
h. Illiterate patients should get the medicine checked by the doctor before consuming them.
i. Destroy the label and container of the medicine after using them.

15. **Issue of price control** -The following suggestions are made-

- Instead of fixing the price of a drug the government should fix the
  a. maximum margin a manufacturer can charge on his basic cost price
  b. maximum margin a company can give to its dealer, carrying and forwarding agents, stockists and chemists.
  c. Maximum amount of free samples that a company can distribute of a drug
  d. All incentives to the doctors and others in the supply chain like free gifts, free trips etc. should be banned.

Also this will lead to a reduction in the substitution of drugs by the doctors. It will also lead to a reduction in the total healthcare costs incurred by the patients.

16. The government should completely ban the combination of drugs in order to get the fair value of the basic cost of the drugs. Doctors should prescribe single drugs and not combinations. This is because when a company sells a combination drug it increases the price unnecessarily.
17. Use of generic drugs should be thoroughly imposed as these do not involve unnecessary corrupt sales promotional activities to the medical professionals which lead to price rise which the patient has to bear at the end.

18. **Issue of environmental pollution** In this regard the following steps need to be taken

- Wherever such cases of law breakage and environmental pollution are found the local public should bring them to the notice of media. The media should bring such cases in limelight. The administrative people in charge of that area should be booked and asked the reasons for their negligence. The media- newspapers, radio stations and news T.V. channels should telecast or print the names of such corrupt officials so that these people face social criticism.

- The Central Drugs Control Department of India under the Ministry of Health and Family Welfare should create more awareness programmes for the pharmaceutical companies so that they realise the importance of environmental and social welfare.

- The Ministry of Environment and Forests should create awareness among the local people regarding the hazards of environmental pollution in the form of
  - programmes on T.V. and radio stations.
  - Advertisements regarding reward to persons who bring cases of such environmental pollution to the knowledge of government authorities,
  - Road shows, hoardings etc.
**Objective 3**

To review the M&A policies both in developed and developing nations and review their strengths and weaknesses.

**Findings**

The following main differences were found in the accounting standards related to mergers and acquisitions in India, USA, UK and those issued by IFRS

**Differences between IGAAP and other Accounting standards (USGAAP, UKGAAP and IFRS)**

1. In AS-14 the shares issued as consideration are recorded at their fair values, which in appropriate cases is fixed/ determined by statutory authorities. However, the other three methods require the published price of the shares or market price over a certain period to be taken.

2. According to AS-14 assets and liabilities of the acquiree are transferred to the acquirer at the existing carrying amounts or at fair values. However the other three accounting standards require the assets and liabilities to be transferred at fair values only.

3. AS-14 does not recognise contingent liabilities at all. However the other three methods recognise contingent liabilities if they can be measured reliably at the time of acquisition.

4. AS-14 provides that amortisation period of goodwill arising on amalgamation should not normally exceed 5 years unless a bigger period (not more than 10 years) can be justified. Impairment testing is done only in some specific cases. However the other three methods require that goodwill arising on amalgamation should be tested for impairment annually.

5. AS-14 requires that in purchase accounting, if there is a negative goodwill, then it should be treated as a capital reserve by the transferee company. Capital reserve is not recognised as an income at any point of time. It is
also not amortised. However, the other three methods recommend negative goodwill to be written off immediately or within a specified period in the income statement.

6. AS-14 recognises pooling of interests method. The other three methods strictly prohibit the use of this method and recommend only purchase accounting method.

Strength of AS-14

The strength of India’s Accounting Standard over the other three accounting standards lies in the fact that in case of purchase accounting it allows the transferee company to incorporate the assets and liabilities of the transferor company at their existing carrying amounts or, allocate the consideration to individual identifiable assets and liabilities on the basis of their fair values at the date of amalgamation. Unlike SFAS- 141 or FRS-6 or IFRS it does not force fair valuation of all assets and liabilities. There is no doubt about the fact that fair value accounting makes the financial statements transparent and facilitates better decision making, whereas in historical cost accounting the financial assets are stated at outdated values and hence are not relevant or reliable. However in case of depression in the economy, fair value method does a lot of harm.

Weakness of AS-14

1. The weakness of AS-14 lies in the fact that it allows both – pooling of interests method and the purchase accounting method for mergers and acquisitions. However, the pooling of interests method does not show a true picture of the accounting statements. The EPS reported under this method is more than the actual figures. This means that depending on the type of method used (purchase accounting method or pooling of interests method) the same transaction can have different EPS.

2. India is expected to adopt IFRS completely by April 2011. Hence the same principles of fair value accounting shall be implemented in India also. Looking at the repercussions of fair value accounting which played some role
in the global economic crisis, its implementation in India shall be a difficult task for the government.

**Findings from Competition Act**

A study of the Competition Act of India was done because in India the Competition Act governs the M&A deals. During the course of study it was found that

1. The definition of “combinations” is unnecessarily repetitive and gives rise to confusion. The turnover limits are biased against Indian companies and favour foreign companies.

2. No combination is regarded as effective until CCI approves the combination or the lapse of 210 days from the date of notification to CCI—whichever is earlier. The lengthy 210-day wait impacts time lines for closing transactions, and raises the costs involved in waiting.

3. The commission is very much thinly staffed. Against the recommended strength of 480 professionals, the CCI is recruiting just 120 staffers.

**Suggestions**

1. Looking into the fact that pooling of interests method inflates earnings per share, it is suggested that AS-14 should also abolish this method and only purchase accounting method be used.

2. India should adopt IFRS; however certain precautions should be used while implementing fair value accounting.

   a) Fair value model should be applied only to those assets and liabilities that have real and determinable market value. Fair valuation of all intangible assets like prospective customers, computer softwares under development etc. shall make financial statements a lot more predictive. A list of assets and liabilities that shall be fair valued and those which shall be measured at historical cost should be made. Every entity should use the same method for fair valuation of a particular asset. This shall avoid any contradiction.
b) Companies should explain their reasoning behind the inputs they use for fair valuation. If they have not plugged in the best observable data to come up with their assessments, they should show why their measurement choice was more appropriate.

c) To provide financial statement users with additional fair value information, a separate disclosure containing each entity's fiscal year-end balance sheet with all financial assets/liabilities at fair value and each entity's fiscal year-end income statement reporting the effects of all fair value changes in earnings should be made.

d) Unrealised losses on financial instruments measured at fair value should be recorded and shown under a separate head. This shall help investors understand existing economic conditions in a better way.

e) Since investors in India are not used to understanding financial statements prepared completely on the basis of fair valuation hence in the beginning period for 2-3 years when IFRS is adopted, companies can make accounts in two separate sets; one on the basis of assets and liabilities measured on historical cost and the other on the basis of fair valuation. This shall help the investors understand the difference in the two valuation techniques better.

3 It is suggested that Section 5 of the Competition (Amendment) Act, 2007, be modified and a single sales/turnover test be adopted

4 The 210 days waiting period for a company to get acceptance from the CCI is too long. The waiting period should not be more than 90 days. This is because SEBI Takeover Regulations require the acquirer to complete all procedures relating to the public offer including payment of consideration to the shareholders who have accepted the offer, within 90 days from the date of public announcement.

5 All vacant posts in the commission should be immediately filled in view of the current workload.
Objective 4
To study the motives for mergers and acquisitions in pharmaceutical industry, mechanics of M&As and review the cost – benefit analysis.

Objective 5
To study the research & development that took place in the consolidated firms & the economies & diseconomies of large scale and its comparison to the situation before consolidation.

Objective 6
To analyse the impact of mergers and acquisitions on individual firm’s profitability, market share, taxes accrued to the government etc.

Findings

M&As done to increase revenue and market share, grow bigger in size and fight competition

a. Approximately 77% of the respondents agree that mergers and acquisitions help to increase revenue and market share.

b. If we summarise the positions of sample companies in 2000 as compared to their positions in 2008 we get the following status

Table 4.10
Table comparing rank of sample companies in 2000 with rank in 2008
(Figures in percentages)

<table>
<thead>
<tr>
<th>Company Name</th>
<th>2000</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pfizer (global rank)</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>GSK (global rank)</td>
<td>9</td>
<td>7</td>
</tr>
<tr>
<td>Wockhardt (national rank)</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>PHL (national rank)</td>
<td>7</td>
<td>5</td>
</tr>
</tbody>
</table>

(Source: Table 4.6 and Table 4.8)

c. Thus it can be said that M&As help to increase revenue and market share so as to grow bigger in size and fight competition. Both primary and secondary data results prove this.
➢ To acquire the profitable products of a rival firm
   a. Approximately 40% of all respondents surveyed were of the opinion that product based mergers and acquisitions should take place as these are profitable for the acquiring company and its investors.
   b. Approximately 23.4% of all respondents said that such mergers and acquisitions should not be allowed to take place and 17.8% of all respondents said that they are not always beneficial.
   c. Apart from an exceptional case (Pfizer), M&A deals done to acquire the profitable products of the rival firms have proved to be beneficial as economic profits of individual sample companies have increased over time.
   d. In case of Pfizer and GSK the EVA becomes negative because
      ✓ Litigation suits were filed by patients on the companies due to side-effects of products.
      ✓ The companies lost patent protection on their profitable products.
   e. If a trend analysis for the whole pharmaceutical industry is done and Net profit ratio for the entire pharmaceutical industry is calculated, we find that the ratio is slowly increasing over the years. This means that the pharmaceutical industry is gaining as a result of merger and acquisition deals done to acquire the profitable products of the rival firms.

➢ M&As done to enhance R&D capabilities
   a. During the primary data survey 45.2% of the total respondents said that mergers and acquisitions help in increasing the R&D output of the firm. 27.8% of the respondents said that R&D is a chance effect and does not depend on mergers and acquisitions. The remaining 27% of the respondents gave no reply stating that they had no idea over the issue.
   b. If a coefficient of correlation is calculated between the number of new molecules discovered and the R&D budget of the pharmaceutical industry as a whole we find that the value of r is +0.72. This means that there is a medium degree of positive correlation between the number of new
molecules discovered and the R&D expenditure involved. This means that
*the probability of discovering an NCE increases if the R&D budget is
increased but the number of NCEs discovered shall not be directly
proportional to the amount of R&D budget increased.*

- **M&As done to establish itself in a foreign market.**
  
  a. Indian pharmaceutical companies are buying foreign firms in order to
establish themselves in the foreign markets. The primary data survey
indicates that the majority of respondents were in favour of more such
mergers and acquisitions by the Indian companies. Their main plea was
that such deals shall make the Indian companies more competitive.
  
  b. Acquiring already established foreign firms seems to be a better option
than establishing on their own. This reduces their time and also gives them
a ready market and many customers.
  
  c. In foreign markets Indian pharmaceutical companies sell not only their
own products but also the products of the acquired company. Some of
these products also enjoy patent protection. This is helping Indian
companies increase their sales. Calculations show that on an average the
business of Indian companies in foreign markets is growing at a rate of
53.8% each year as compared to their domestic business which is growing
at 11.4% per annum. Hence, *the strategy of Indian companies to buy
foreign firms and establish themselves in foreign markets is proving to
be successful.*

2. **Cost – benefit analysis.**

   a. 43.4% of all respondents surveyed feel that mergers and acquisitions are
helpful in decreasing the costs i.e. they bring synergistic economic gains.
39.1% of the respondents feel that costs of affecting a merger or
acquisition deal are sometimes more than the benefits derived from it.
Moreover very large size companies are difficult to manage and hence
there may be diseconomies of large scale.
b. Karl Pearson's method of calculating the coefficient of correlation between sales and operating costs in the industry has been used. *There is a high degree of positive correlation between sales and operating costs. This means that if sales increase then the operating costs also increase.*

The above calculations for coefficient of correlation have been calculated for companies that have undergone mergers and acquisitions in the pharmaceutical industry.

**Suggestions**

1. Before a company enters into a merger and acquisition deal it must ensure that the products of the target company do not face any pending litigation suit.

2. Pharmaceutical companies should always maintain a separate contingency reserve to face any litigation suit that is filed against the company by any party or a person.

3. Investors of companies that acquire firms in foreign markets should ensure that they gather all possible information regarding the foreign exchange exposure of the company and the risks attached to their investments.

4. The investors should try to analyse the price of assets mortgaged by companies for foreign exchange transactions. This price disclosure should be in three forms

- the historical price of the asset less depreciation/amortisation
- the fair value of the asset as on the date of preparation of the balance sheet. While reporting the fair value, the company should also disclose the variable that it has used for calculating fair value of the asset along with the justification for using those variables. The highest and lowest fair value of the asset during the period it has been under mortgage should also be reported
- the present value of the asset on the basis of discounted cash flow techniques

These variable price quotations of an asset shall help the
investor to understand the changing market conditions and the amount of risk attached to his investment.

5. During the course of study it has been found that Indian companies are very poor in doing the R&D of NCEs. It is suggested that Indian pharmaceutical companies should enter into alliances with each other and with the scientific universities. Alliances are being suggested instead of M&A deals because during the course of study, it could not be proved that M&As increase the chances of discovering NCEs. However it was found that the chances of discovering an NCE increased if the R&D budget was increased. Further R&D alliances shall have many benefits:

- The costs of doing R&D and the risks involved in clinical trials on molecules will be divided.
- Entering into alliances shall create a pool of more talented scientists and a higher R&D.
- In case the alliance does not work well the collaborating companies can always separate without facing much risk of loss to the company and its shareholders.
- 20% of the respondents feel that in alliances shall free the managers from the job of proving a merger effective and hence they can concentrate on improving the productivity of the company.
Objective 7
To study the impact of WTO Patents Regime in India.

Findings

1. Majority of respondents from company employees’ category, pharmaceutical distributors, chemists, doctors and registered medical practitioners are all very optimistic about the Patents (Amendment) Act, 2005. Very few of them have complained that the new Act has resulted in an increase in the prices of drugs or lead to a shortage of drugs or harmed the Indian pharmaceutical industry. The patients and the general public interviewed are also of the opinion that they have not observed any steep rise in the prices of drugs or faced any shortage of medicines.

2. Majority of drugs being used in India are off-patent. A lot of drugs being sold in India are the ones that got patent protection before 1995 and hence do not come under TRIPS purview. Moreover, apart from the above mentioned issues, the government has kept the whole pharmaceutical industry in the country under its control through NPPA and DPCO. Hence there is no immediate health crisis in India as was being presumed before the enactment of the Patent (Amendments) Act, 2005.

3. The Patent (Amendments) Act has lead to a steep rise in the merger and acquisition activity in the Indian pharmaceutical industry. Indian companies are using the option of M&As to survive in the patent regime. M&As are helping Indian firms
   a. To explore foreign markets as Indian companies fear losing their market share in India to patented drugs.
   b. To gain control over patented molecules of foreign companies
   c. To gain control over the prospective research compounds of foreign companies to enhance their R&D capability so as to survive in the patent regime.

4. There are certain issues regarding the Patents (Amendment) Act, 2005 that need to be addressed. They are as follows-
a. Section 2 (1) (ja) of the Act says that "inventive step" means ‘a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art’.

b. Section 11(A) of the Act makes use of the terms ‘significant investment’ and ‘reasonable royalty’. However the terms are neither explained nor defined.

c. The provisions related to pre grant opposition are biased against the applicant for patent.

d. The Patent Office has put on its website a ‘Draft Manual of Patent Practice and Procedure’ issued by the Patent office of India in 2008. The Manual is intended to provide detailed information to the public and users of patent system on the practices and procedures followed by Patent Office for processing of patent applications. However the 1st page of the Manual says that the statements made in the Manual are not in themselves an authority for any action by an officer of the Patent Office. If this is true then the relevance of putting a manual on its website cannot be understood.

Suggestions

a. The provision in Section 2 (1) (ja) should be "inventive step" means ‘a feature of an invention that involves technical advance as compared to the existing knowledge and having economic significance and that makes the invention not obvious to a person skilled in the art’.

b. The Act should be amended to include the definition of the two terms and these should also be explained numerically. This means the government should set a limit to maximum royalty that a patent holder can charge.

c. India has the provision for both pre-grant and post grant opposition. Hence, the patent office should entertain only those applications for pre-grant opposition that are received within the first 6 months only.

d. The Draft Manual should either be taken off the website; or the office should make it authentic enough for everybody to rely on it.
Conclusion of the Study

The study concludes on the following note:

1. Mergers and acquisitions are taking place in the pharmaceutical industry both at the national level and at the international level.

2. Of the two types of M&A deals-horizontal and vertical, horizontal deals occur with a higher frequency in the pharmaceutical industry.

3. The Indian pharmaceutical industry contributes a lot to the growth of the economy in terms of:
   a. Providing healthcare to the citizens of the country
   b. Earning foreign exchange for the country
   c. Attracting foreign Direct Investment in the country

4. M&A accounting in India is mostly historical as compared to developed nations like USA and UK, which rely mainly on fair value accounting.

5. There are 4 main motives for M&As in pharmaceutical industry:
   - To increase revenue and market share so as to grow bigger in size and fight competition.
   - To acquire the profitable products of a rival firm
   - To enhance R&D capabilities.
   - To establish itself in a foreign market.

Most M&A deals have been found to be achieving their objectives.

6. The biggest challenge facing the pharmaceutical industry is R&D of new molecules; especially the Indian companies have been found to be very poor in R&D of new drugs.

7. The TRIPS compliant Patents (Amendment) Act was enacted in India in 2005. A study of the law and its impact on the Indian pharmaceutical industry reveals that the government has been successful in implementing the new law to the benefit of the common man and pharmaceutical industry.