

Invitation of Views on the draft National IPR Strategy as prepared by the Sectoral Innovation Council on IPR

The Intellectual Property regime of the Government of India underwent significant changes after India's accession to TRIPS in 1995. Amendments were made to the Patents Act and the Trade Marks Act. The Designs Act as well as the Geographical Indications Act was enacted. The focus on the IPR regime is now on consolidation as well as promoting a fair balance between IP protection and public interest.

The Decade of 2010-2020 has been declared as the Decade of Innovation. The National Innovation Council was constituted to create a roadmap for 2020. The objective of this roadmap was to expand the space for dialogues and discourse by offering novel solutions which lead to inclusive growth and foster appropriate eco systems across domains and sectors. It was as a part of this exercise that a Sectoral Innovation Council on IPR was set up in May, 2011 with members from the corporate sector, academia, public sector undertakings and the Government. A copy of the composition is at Annexure-A. The Terms of Reference of the Council was as under:-

- a. To prepare a National IPR Strategy for encouraging innovation with a view to adequately address the key concerns of sustainable development, inclusive growth and food security.
- b. To formulate the medium term policy objectives that can be the building blocks of the envisaged IPR strategy.

A draft document of the National IPR Strategy has since been prepared on the basis of inputs provided by the Members of the Sectoral Innovation Council and is enclosed. The objective of this exercise is to prepare a policy statement on the steps that the Government needs to take to promote creation of IP and encourage its utilization.

Views and suggestions are invited on the draft document. These views/suggestions, facts figures and empirical evidence may be furnished by 31st October, 2012. The views expressed in this discussion paper should not be construed as the views of the Government. The Department hopes to generate informed discussion on the subject, so as to enable the Government to take an appropriate policy decision on this issue. The comments received will be further analyzed and the document will be further refined. The issue of medium term policy objectives as building blocks to the IPR strategy will be taken up subsequent to the finalization of the document on National IPR strategy.

National IPR Strategy

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A Introduction

Intellectual Property Right is a private right recognized within the territory of a country and assigned to an individual or individuals for a specific period of time in return for making public, the results of their creativity or innovation. India has a well established legislative, administrative and judicial framework to safeguard Intellectual Property Right which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns. India's comprehensive legal framework on IPRs includes the Patents Act 1970 as amended in 2005, the Trade Marks Act 1999, the Geographical Indications of Goods (Registrations and Protection) Act 1999, the Designs Act 2000, the Semiconductor Integrated Circuits Layout Design Act 2000, the Copyright Act 1957, and the Protection of Plant Varieties and Farmers Rights Act 2001. The Department of Industrial Policy and Promotion is responsible for four of the seven IP rights, i.e patents, trademarks, designs and geographical indications. The other IP rights are administered by Department of Higher Education (Copyright), Department of Information Technology (Semi Conduct and Integrated Circuits Layout Design), Department of Agriculture and Cooperation (Plant Varieties Protection and Farmers' Rights Act, 2001).

2. The emergence of globalization and constant technological changes are steadily transforming our society - making it more knowledge intensive than ever. The industrial landscape too is witnessing a similar evolutionary pattern. Importantly, the capacity to appropriately create, protect, utilize and transfer knowledge assets has become an important determinant of competitive advantage. The rapid development of information technology has connected firms, customers, suppliers and various other stakeholders in a complex and interdependent web of interactions. These developments have resulted in a paradigm shift in the nature and scope of economic progress.

3. The underlying basis of knowledge as a source of productivity gain and competitiveness has ensured a central place for Intellectual Property Rights (IPRs). Compared with the traditional factors of land, labor and capital responsible for production, it is the generation and management of knowledge and corresponding intellectual property rights, which is increasingly playing an important role in the

economic development of the country. This increasing importance of IP rights has started to change the way the national and the sub national governments view IP and Innovation system as a whole, making it a policy driven initiative in both developed and developing economies. Most developed economies already have strong systems and policies in place to encourage and protect IPRs, and developing economies are slowly but steadily moving towards creating similar ecosystems most suitable to their national needs.

4. India has also developed a national framework for creation and protection of IPRs, which is continuously evolving and is already meeting global standards. The challenge before the country is to scale up the process of IP creation and capture value from the scientific and technological creations to catapult the country into the league of most innovative and developed nations.

5. It is in this context that the hon'ble President of India declared the decade of 2011-2020 as the Decade of Innovation. Subsequently, the National Innovation Council was created with the objective to formulate a roadmap for innovation with focus on key parameters namely platform, inclusion, eco systems, drivers and discourse.

B Outline of the Present Intellectual Property System in India

i) Legislative History prior to the Agreement on Trade Related Intellectual Property Rights (TRIPS) in the WTO

6. The present legal framework in India has its roots in the system established by the British. Patent Right was first introduced through the Protection of Inventions Act, 1856 (Act VI of 1856) which had the objective of encouraging inventions and in inducing inventors to disclose secret of their inventions. This legislation was further modified and the Patent and Designs Protection Act, 1872 was enacted which brought in Design within the ambit of protection. A significant step was taken in 1911 when through a further amendment to the Patent and Design Act; Patent Administration was brought under the management of the Controller of Patents for the first time. Unlike the fairly long legislative history of Patents and Designs, prior to 1940 there was no statutory law relating to trademarks in India. The problems relating to passing off and infringement were decided on the basis of the common law as was applicable in England. Registration of Trade Marks was carried out under the Indian Registration Act, 1908. In 1940,

however a separate legislation for Trade Marks was enacted which was a replica of the UK Trade Marks Act, 1938. This Act was replaced in 1958 by the Trade and Merchandise Act, 1958.

7. After independence, the political and economic changes in the country prompted the enactment of a comprehensive patent law in 1950. Prior to this enactment, a Committee chaired by Justice (Dr.) Bakshi Tek Chand, a retired Judge of Lahore High Court was entrusted with a review of the patent law in India to ensure that the patent system is conducive to the national interests. The committee submitted its recommendations on 4th August, 1949, primarily addressing the prevention of misuse or abuse of Patent rights in India and ensuring the availability of food, medicine, and surgical and curative devices to the public at affordable prices. The amendment in 1950 specifically addressed the issue of working of inventions and compulsory license/revocation. Thereafter, in 1957, the Government of India appointed Justice N. Rajagopala Ayyangar Committee to examine the question of further revision of the Patent Law. This report formed the basis for the Patents Act, 1970 when both product and process patents were introduced for all sectors with the former not being available for inventions relating to food, medicine or drugs or substances produced by chemical process. The Patent Act 1970 and the Patent Rules 1972 were focused towards encouraging inventions and securing that these inventions are worked on a commercial scale without undue delay.

ii) Amendments to the IP legislations after India became a member of the WTO

8. India became a member of the World Trade Organization in 1995, and this brought about the next round of revisions in the Indian IP system. As per the transitional arrangement it was required to comply with the provisions of TRIPS within a period of 5 years except for the provision relating to extension of product patents to technologies that were hitherto exempt, for which an additional period of 5 years was given. This implied that all IP legislations were required to be compliant with the TRIPS Agreement by the year 2000 with the exception of the Patent legislation which had to be amenable to TRIPS by 2005. To achieve this, the Patents Act, 1970 was modified in a calibrated manner in 1999, 2002 and 2005. The first major amendment to the Patents Act 1970 was made in 1999 (brought into force retrospectively from 1st January, 1995) which allowed

for filing of applications for product patents in the areas of drugs, pharmaceuticals and agro-chemicals. The amendment provided for such applications to be examined only after December 2004 and granted exclusive marketing rights to the applicants till then, subject to certain conditions. The second and third major amendments were brought in 2002 and 2005, which included provisions relating to term of patent, incorporation of the provisions on parallel imports and extension of product patents to all technologies including pharmaceutical, agro chemicals etc.

9. The Trade Marks Act, 1999 was enacted incorporating the developments in trading and commercial practices and the TRIPS provisions. Some of the important amendments in compliance with the TRIPS provisions were the introduction of trade marks for Services and inclusion of the concept of well-known trade mark. The amendment also provided for setting up of the Intellectual Property Appellate Board (IPAB) for hearing appeals against the decision of the Registrar. After the Patent Amendment of 2002, appeals against the decision of the Controller also came to lie before the IPAB instead of the High Courts. In keeping with India's commitment under TRIPS, a new legislation on Geographical Indications namely the Geographical Indication of Goods (Registration and Protection), Act, 1999 was enacted. Further as mandated by TRIPS, Member Countries were required to provide protection to plant varieties either by patents or by an effective sui generis system or by any combination thereof. India having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights was obliged to make provision for giving effect to Article 27.3(b) relating to Protection of Plant Varieties. Considering this obligation and national requirement, the Protection of Plant Varieties and Farmers' Rights Act was enacted in 2001.

10. The Designs Act 1911 was repealed and a new legislation was enacted in the year 2000 with a view to provide more effective protection to registered designs and to promote design activity in the country. Besides these, amendments for which the Department of Industrial Policy and Promotion was the administrative Ministry, new law for Plant Variety Protection and Semi Conductor Layout Design were adopted and the Copyright Act was amended. These developments paved the way for the intellectual property system as it exists today, mirroring some of the key best practices from across the globe. Today, India's IP system ensures protection of intellectual property while promoting balance of rights and obligations.

C Prominent Entities involved in Creation, Protection and Commercialization of IPRs and the Institutional Framework

11. Intellectual capital is a key source of productivity gain and global competitiveness. Today, creation, management and commercialization of intellectual property rights are facilitated by several institutional frameworks. The Open Innovation paradigm too is gradually fuelling collaborative R&D and concomitant IPR creation across organizations. Innovation and IPR landscape largely extends over the academia and publicly funded research laboratories, SMEs, large corporate and start-ups/innovators. Any strategy that proposes to discuss IP creation must first focus on the characteristics of the major players:

i) Large Organizations and Multinational Corporations (MNCs)

12. India is host to several large corporations both of Indian and foreign origins. The foreign players have a much larger share in domestic IP registrations and their success is to a large extent attributable to the Intellectual Property they own. Indian organizations are also using their IPR portfolios to create a niche for themselves and gain a competitive edge. They also realize the importance of carefully managing their business practices to avoid infringement on other's intellectual property. Several such companies have incorporated business intelligence tools and IP management systems to safeguard their businesses and intellectual capital. Others are increasingly becoming aware of the importance of IP and, with needful external support, can swiftly catch up. However, innovation- seeking R&D is still at a low level in the country. This therefore, poses a huge challenge to the future development of globally competitive technology.

ii) Micro, Small and Medium Enterprises :

13. Micro, Small and Medium Enterprises (MSMEs) form the economic backbone of the Indian economy constituting about 50% of the country's industrial production (about 13 million MSMEs in India), employing over 30 million people and forming over 40% of India's total merchandise exports. The intellectual capital of micro, small and medium enterprises in India is often embedded in processes/routines, and the existing methods for managing the intellectual property are highly diverse ranging from formal to informal protection methods. At time semi-formal means are also used.

14. The formal protection of intellectual output entails creation of legal rights acquired through, inter alia, Patents, Trademarks, and Registered Designs, infringement of which has civil and criminal remedies. The semi-formal methods entail some legal mechanisms but without formal registration (contracts is an example of this method). Informal protection practices include developing high-trust relationships with customers, maintaining lead time advantage over competitors and building specialized know-how into products. These informal practices have been embedded within broader managerial practices, and form an integral component of the business approaches of the small business owners in India. This is because most MSMEs prefer to allocate their limited resources to the development of products and processes. Lack of awareness and formal education on the intellectual property rights, and an inclination to reduce transaction cost of acquiring legal IP rights also contributes to high prevalence of such practices.

15. Majority of these MSME produce and sell within local markets, which in the past has shielded them from global competition while offering significant cost advantage. Today, cost-effectiveness and local presence alone does not guarantee a customer base. Globalization and attendant sustainability issues have caused a significant increase in competition from the global players and MSMEs have started to realize the importance of innovation and IPRs. There have also been several instances of MSMEs acquiring or in-licensing technologies or IP either from local markets or even global players to enhance their performances.

iii) Academic Institutions and Publicly Funded Research laboratories :

16. Academia is at the forefront of knowledge creation, and alongside the national research laboratories lead the scientific activity in the country. With innovation as a central theme driving the growth of economies and businesses, the role of academic and publicly funded research laboratories is already witnessing a gradual expansion particularly in respect of their outreach to business community. This is generally true of the leading academic institutions and most of the national laboratories.

iv) Start-ups and Individual Innovators :

17. The country is waking up to the world of start-up companies – both technical ventures and those offering services including venture finance and angel investors. A large number of these technology entrepreneurs are based out of Technology Business

Incubators (TBI) or Science and Technology Entrepreneurship Parks (STEP). Many are academic spin-offs who are leveraging their intellectual property rights to create a niche for themselves and gain a competitive edge. Quite a few have grown from public sector research resultants.

18. While Government/private funding do provide financial assistance to start up, this support is woefully inadequate to leverage IPRs as a strategic tool.

v) **Office of the Controller General of Patents, Design and Trademarks**

19. The CGPDTM, a field formation of the Department of Industrial Policy and Promotion, is responsible for registration and management of four Intellectual Property Rights, namely Patents, Trade Marks, Geographical Indications and Designs. It maintains 11 Offices in 5 cities i.e. Delhi, Mumbai, Chennai, Kolkata and Ahmadabad. At present, the office is headed by the Controller General of Patents Design and Trademarks and each of the 11 offices which include 5 branch offices of the Trade Marks Registry, 4 branch offices of Patent and one office each for Registry of Design and Geographical Indications. Besides this, National Institute of Intellectual Property Management (NIIPM) has also been setup at Nagpur which at present addresses the training needs of the o/o CGPDTM and in the future is also proposed to play a role of an IPR think tank. Nagpur also houses the Patent Information System (PIS). Branch heads of both NIIPM and PIS report to the CGPDTM, directly.

20. In recent times, there have been a number of external impulses which have placed considerable demands on the office. These include:

a. Increase in filings for IPRs in all the four categories due to legislative changes that have widened the scope of intellectual property protection in India. This has systematically resulted in an increase in the work load for the office over the past ten years.

b. The growing importance of intellectual property in the backdrop of an increasingly globalized and buoyant Indian economy has simultaneously placed greater demands on the IP institutional structure. Increase in foreign investment and expansion of trade has accelerated demands of producers to seek exclusive rights over technology,

products, designs and ideas as an essential tool for gaining market access in competitive markets.

Work pressure is also likely to further increase in the future as:-

(a) CGPDTM has been designated as an International Search Authority/International Preliminary Examination Authority (ISA/IPEA) under the Patent Cooperation Treaty. Operationalization of the ISA/IPEA status will place demands on the institution.

(b) The proposed accession to the Madrid Protocol, will increase filings in the long run and this accession also comes with attendant issues of mandated reduction in response time for the Trade Marks Registry as the office would need to respond to all trademark application within 18 months.

21. The Government has been responding to the challenges of increasing workload by implementing plan schemes for modernization and strengthening of the IP Offices during the X Plan and in the XI Plan. In the XI Plan (2007-2012) an allocation of Rs 300 crore was made towards modernization and strengthening of IP Offices. In addition to resources for construction of new offices, computerization and purchase of IP databases, a significant component of the scheme was allocated for human resource development. 414 plan posts were created at various levels. Thereby envisaging increase in the core strength of the office, by more than 100% as compared to the posts available till then. The intervention is to be continued in the 12th Plan also.

22. In addition, steps have been taken to bring about greater efficiency and transparency into the IP system. The processing of Trade Marks and Patent Applications and post-registration activities has been fully e-enabled. Complete e-enablement of Designs Applications is at an advanced stage. A project for outsourcing of prior art search to CSIR Unit for Research on Information Products (URDIP) has been successfully implemented. All records such as examination reports and specifications relating to published trademarks and patents have now been made available online. Details including e-Register in case of granted patents and trademarks are also available.

D Innovation and IPRs in Economic Development

23. Speed of creation of IP and development has a strong correlation. This seems to be borne out from the fact that the developed countries today such as the US and EU are also among the most innovative. However, anecdotal evidence also suggests that the rate of technical change and of economic growth depends on efficient diffusion of innovation. Further, evidence also supports the need for institutional/organizational innovation and social innovation as much as technological innovation for obtaining and sustaining a high correlation between IP and development. Clearly, the national policies and frameworks play an important role in ensuring diffusion of innovation.

E Recommendations for a National IPR Strategy for India

Introduction

24. India is an emerging economy which has been witnessing unprecedented levels of economic expansion, alongside China, Brazil, Russia, South Africa and Mexico. It is the third largest economy in the world and is expected to be the third largest economy of the world after US and China by 2035. As a cost effective and labor intensive economy, India has benefited immensely from outsourcing of work from developed countries, and has maintained a reasonably good manufacturing and export oriented industrial framework. While India is currently amongst the most attractive destinations globally, for investments and business, it is innovation and efficiency that shall increasingly play a key role in ensuring long-term economic survival and success.

25. Realizing the importance of a strong and balanced IP system, several initiatives have been undertaken at the policy level over the last decade, to foster an environment which is conducive for development of technology and trade in India. However, as most would acknowledge, innovation and IPR is an ever-evolving subject and there is a definite need for constantly reviewing national framework and policies to keep abreast with the global developments while paving the way for a robust economy. Although the IP system in India has come a long way since its inception in 1856 and continues to evolve, a critical analysis of the situation of IPR creation, management and protection in India vis-a-vis the global practices points to the need for both improvement and strengthening of the Indian IP system.

Objective of the IPR Strategy

26. The objective of the IPR strategy is to transform India into an innovative economy as would reflect in high rankings in appropriate development and innovation indices from a global standpoint and develop, sustainable and innovation-promoting IPR management system in India while ensuring that the IP system continues to have the appropriate checks and balances conducive to social and economic welfare, and to a balance of rights and obligations. Besides measures that need to be taken, the strategy also needs to have an implementation matrix and a time bound schedule.

27. The aforementioned objectives are proposed to be addressed through the following four-pronged approach.

- a. Promoting respect for Intellectual Property and stimulating creation of IP Rights
- b. Creation of new IP regimes to address the specific needs of the country and the existing gaps
- c. Strengthening protection of IP
- d. Facilitating Commercialization of Intellectual Property

28. The IP strategy should outline the various facilitative measures that need to be taken by the Government to stimulate creation of IPRs, its protection and management as also its commercialization. It includes development of associated infrastructure and capacities to support innovators and creators of IP and for utilization of knowledge-based resources.

a. Promoting respect for IP and stimulating creation of Intellectual Property Rights

28. In the knowledge economy, creation of IP and its incorporation in designs, products and production techniques are increasingly becoming important for commercial competitiveness and economic growth. Credible national IP system thus calls for social awareness amongst the people about the stakes involved in IPRs. More particularly, the Indian academia, industry, the innovator/entrepreneur community ought to be increasingly made aware of the value of IPRs both from national and global contexts.

Further, there is a need to develop a general understanding of different processes involved in creation of IP assets.

29. In seeking to establish to establish an IP culture, it would be critical to take the following sector/stakeholder specific interventions :

 Micro, Small and Medium Enterprises

(i) With increasing globalization, there is an immediate need to encourage the MSMEs to protect their IP through formal methods. A healthy mix of education and incentives is needed to encourage MSMEs to create new IP and to formalize the existing ones based on expert advice.

(ii) The Govt. intervention in existing mechanisms like the setting up of IP facilitation centres would have to be significantly scaled up to improve impact. One of the effective ways of achieving this would be by synergizing these services with the activities of the existing industrial clusters and thereby develop these facilitation centres as effective nodal points for knowledge dissemination and for hand holding the small of medium enterprises sector in the process of IP creation.

(iii) Access to Database on patent and non patent literature to enable prior art search should be provided to premier institutions such as, inter alia, IITs, National Institutes of Technology by the Government free of cost. For this purpose 15-20 such institutions should be identified. Such a database would be helpful in scouting the technology landscape to identify white spaces and thereby help promote invention activities in uncovered areas. From a purely strategic plan perspective it appears useful to search worldwide patent databases and prepare technology landscapes for our industry segments to help them assess India's relative strength and then suitably plan for attaining Global Leadership in those areas. The roles and responsibilities of the institutions that are provided such access would be to provide assistance to the SME sector/individual innovators by preparing technology landscape with a view to guide inventions, conducting preliminary search and examination to determine novelty of an innovation free of cost and to assist the innovators to file patent applications, for a nominal fee.

(iv) Favourable tax treatment for R& D Expenditures incurred could play a positive role in incentivizing innovation and IP creation.

(v) Since innovations and creation of IP comes at a cost, state support mechanisms need to be tailored towards offsetting bonafide IP costs and in facilitating technology transfer including through in-licensing from publicly funded research institutions.

Academia and Public research laboratories

30. Academia and public research laboratories potentially form the largest source of technology and intellectual property. The country should establish institutional mechanisms to encourage and propel universities and public research laboratories to not only do top quality research but be inventive as well. For this to happen, the Indian academia needs to be educated about the importance of IP and about the processes involved in creation of and for commercial exploitation of technology innovations. Specific actions such as the following are proposed:

(i) Indian researchers/ innovators must be made aware of basic precautions that need to be exercised before applying for a patent, such as not publishing or demonstrating their research/invention to the public before filing for a patent and also by sensitizing them about not selling out their early stage research to companies/organizations.

(ii) Talented scientists and engineers ought to be motivated to create intellectual property and be encouraged to license technologies/partake in creation of technology ventures Promoting university start-ups can also be an effective technology transfer mechanism.

(iii) Significant part of academic research particularly in IITs and other institutions should increasingly focus on addressing national priority issues in poverty, healthcare, food security, energy, potable water, agriculture, homeland security etc. Key leverage technologies such as information technology, biotechnology and materials science should be accorded due importance.

iv) IP creation in sponsored/collaborative research and technology development/transfer should be made a component of the scientific role of a research institution. This should be included as a key performance indicator for the institution. This could be introduced gradually from Tier-1 to Tier-2 institutions.

v) From a fundamental long term perspective an intervention in the mainstream education system is needed. Basic concepts of IP creation and respect for IP needs to be introduced as a component of formal education at school, college, university and at vocational level thereby fostering a culture of creativity in future generations. Such education should focus on the economic as well as the social aspects of IP. While attempts are already being made in premier institutes which offer this education as a part of their curriculum, it is mostly limited to optional courses and professional subjects. A more focused and gradual expansion of this is necessary to create a robust innovation ecosystem that would lend itself to capacity building, skill enhancement and a sustainable learning platform. It is therefore essential to introduce a course on IPR in the curriculum of all the technical programmes that are duly recognized by the AICTE and in the post graduate/research programme in science and applied fields in Universities.

Large Organizations

31. Large organizations have the know-how and the resources required for creation and protection of IP. With increasing globalization, their key challenge will be to create world-class IP and utilize this IP for both organizational and national benefits. Such organizations have to be encouraged to take a long term view of R&D and make necessary research investments to create not just strong self-reliant technology portfolio but, acquire the scale to build strategic global positions. Moreover, the Government should encourage these organizations to share their expertise and resources for national benefit through public-private partnerships.

32. Development of high technology base requires much more than access to codified knowledge. It may call for strategic relationships even with overseas players. Such large organizations ought to be encouraged through state-level intervention to leverage their standing and global reach to facilitate inflow of best practices (including tacit knowledge) and investments from all over the globe. For most large organizations, particularly the ones in strategic areas, it should be mandated to align their innovation strategies to national innovation system.

33. Further, Indian organizations with a demonstrable culture of IP creation may be offered additional sops and, be given preferential treatment in public contracts. Such organisations should be encouraged to tap open innovation platforms and tie-ups with

academia in particular, ought to be encouraged and supported. Research led organization should be guided into strategic tie-ups with Government to foster co-creation of critical IP. A mechanism similar to corporate social responsibility may be encouraged in the country to foster a culture of open innovation.

Start-ups and Individual Innovators

34. While synergy and close interaction between universities, research institutions and innovation driven industry units is extremely important for promoting techno entrepreneurs, following measures may need to be taken to boost this interaction:

- i) information dissemination and delivery mechanism for support services including venture capital funding ought to be made expedient.
- ii) Dedicated public institutions which offer end to end support for creation, protection and commercialization of IP is vital for start ups. There is need to identify such institutions and enhance their ability to provide such services.
- iii) procedural mechanism adopted for giving financial support for patent filings should be made smoother and quantum of assistance provided should be augmented.

b. Strengthening Protection of Intellectual Property

35. Protection of Intellectual Property is both a scope and a depth issue. While establishing new instruments and addressing gaps in the available instruments is a scope issue, efficiency and strength of institutions that grant/protect IPR and extent of protection available is the depth issue. Therefore strengthening of IP protection regime will involve improvement in the institutions that grant IPRs and in those that are responsible for its enforcement as also expansion of rights to include new IPRs.

Improvements in the institutions that grant and protect IPRs

36. Office of the Controller General of Patents Design and Trademarks is responsible for grant of patents and registration of design, trademarks and geographical indications. At the operational level, there is a need to address growing pendency especially in the Trade Marks and the Patents side. There are at present more than 4 Lakh applications pending at various stages in the Trade Marks office. On the Patent side also, the pendency of more than 80000 applications is a cause of concern. Besides this, action for improving the transparency and efficiency of the system also needs to be emphasized. At

the operational level, following actions may be required to improve the functioning of the IP Offices:

- i) Complete digitization of IP records and uploading it for public view is important for improving transparency in the IP office. Communication with the applicant/agents should be improved with a view to bring greater transparency and meticulousness in the system.
- ii) Database should be made searchable in an effective manner over a number of fields so that the industry, researchers are in a position to conduct effective searches be it for patenting, landscaping, technology tracking or to identify the state of the art technology.
- iii) Electronic filing of applications and its subsequent examination through electronic mode should be made mandatory.
- iv) While filing fees needs to be increased to make it comparable with fees charged in other countries, there could be specific discounts for certain identified sectors such as the Micro and Small Enterprise Sector.
- v) Quality of Examination of IP applications need to be improved significantly. Grant/registration procedure should be quickened through new recruitment and by augmenting the capacity through human resource development.
- vi. A reassessment of the procedures followed in the IP Office must be taken to reduce timelines towards statutory actions.

37. A similar action will also be required from the other IP institutions such as, inter alia, the Registrar of Copyrights, the Plant Variety and Farmers' Rights Authority and the Registrar for Semi Conductor Layout Design.

38. Intellectual Property Right being private right needs to be enforced by its owner through the enabling legal, administrative and judicial framework available for protection of these rights. The Indian IP laws provide for both civil and criminal remedies and the provisions are largely enforced by the State Governments in accordance with the procedures laid down in India's Criminal Procedure Code, the Code of Civil Procedure and the Rules and Regulations framed for the functioning of the

judiciary at various levels. The Central Government is, however, responsible for enforcement of border measures.

Strengthening of the institutional set up to improve enforcement of IPRs

39. At the organizational level also, there is a need to evaluate whether restructuring of the institutions including possible merger of all IP issues under one umbrella would be required to improve efficiency and effectiveness.

40. The legislative measures are supplemented by appropriate administrative measures by the Governments both at the Centre and in the States for enforcement of IPRs. An Inter-Ministerial Committee on Enforcement of IPR laws under the chair of the Department of Industrial Policy & Promotion has been set up to deliberate on the IPR enforcement issues. Similarly, a Copyright Enforcement Advisory Council (CEAC) with industry representatives, representatives of police forces and Ministries/Departments concerned, as an apex advisory body, has been set up by the Ministry of Human Resources Development for advising Government on measures to improve the enforcement of the Copyright Act and for reviewing the progress of enforcement periodically. Besides at the State Government level, enforcement Cells have been set up in the police headquarters and nodal officers have been appointed by the State Governments to handle copyright related offences. To expedite the resolution of IP disputes, the Intellectual Property Appellate Board (IPAB) was also established for hearing appeals arising from the decisions, orders or directions of the Registrar of Trade Marks and Geographical Indications and the Controller of Patents.

41. IP owners have increasingly realized the need to mobilize themselves to ensure effective protection of their rights and this has led to the national level industry chambers setting up IP Owners Associations and IPR Committees with a view to generate awareness on issues relating to infringement of trademark and piracy. The Committees are also expected to undertake market intelligence studies and identify action programmes to improve the enforcement of the rights of the IP owners. Besides this, a number of industry level organizations especially in the sphere of music and films have become pro-active in ensuring protection of their rights. Industry organizations such as Film Federation of India, Motion Picture Association and Indian Music Industry

cooperate and collaborate with the police in anti-piracy programmes. The State Governments of Tamil Nadu, Kerala, Andhra Pradesh, Maharashtra, where the film and music industry is prominent, have introduced the Prevention of Dangerous Activities of bootleggers, drug offenders, goondas, forest offenders, immoral traffic offenders and slum grabbers Act, which includes video piracy as an offence under the Act.

42. Thus, the efforts at enforcement are being taken by disparate group of actors at the State and the Centre level. Involvement of stakeholders in enforcement of IPRs is also a healthy trend which is likely to be reinforced in the future. However, there is perhaps a need for a Centrally managed National Intellectual Property Enforcement Taskforce that could:

- i) maintain database on criminal enforcement measures instituted for trademark infringement and copyright piracy. Besides this information on civil cases filed should also be collated.
- ii) be mandated to deliberate upon operational issues of enforcement with the concerned Central and State agencies
- iii) to conduct periodic industry wise infringement surveys.
- iv) coordinate capacity building programmes for the Central and State enforcing agencies.

43. At the organization or enterprise level, all types of enterprises particularly the more vulnerable smaller and niche businesses should be encouraged to formulate their trademark strategies and establish quality attributes with their Brands. This will help them leverage their corresponding brand value towards business and social advantage. They should also be encouraged to seek international protection to participate in global competition and contribute to international trade activities. Service sector, which is one of the fastest growing contributor to the GDP, and the highest contributor of FDI in the country, needs to be encouraged to adopt strategies for registration of trademarks marks for ensuring local and global competitiveness and for strong business presence. It is to country's advantage to leverage the goodwill of its strong indigenous brands which have acquired sufficient traction (even if with suitable Government support) in the international markets. In order to ensure that a patent is not issued on unprotected

innovations already in public domain, SME clusters could be encouraged to develop comprehensive database/catalogue on their products.

44. In so far as geographical indications are concerned, India is bestowed with a rich tradition of arts, handicrafts, agricultural practices, characteristic foods, ethnic produce etc. Besides, it has a vast repository of information on IP embedded in local practices and procedures. A large pool of such IP is dispersed across the length and breadth of the country, and it ought to be protected in the form of Geographical Indications wherever feasible. While Darjeeling Tea, Mysore Silk, Kashmir Papier Mache etc has made a mark in the global markets, countless such indigenous creations are still untapped from an IP perspective. An awareness initiative is needed to further promote the significance of such local assets, so that they can be leveraged towards the economic benefit of the community and the country. Such an initiative should specifically target local communities (including the rich and yet unexplored tribal products/processes). Central public bodies in partnership with suitable district-level entities and Panchayat Institutions:

i) should undertake the task of educating communities on the benefits of registering the GIs. Special emphasis on building brands will also be essential to safeguard the rights of the GI owners.

ii) should put in place examination protocols to ensure that the GI owners comply with the prescribed quality standards.

iii) should develop a road map for building brands to enable better market access and penetration for the products registered as GIs.

iv) should also coordinate for enforcement matters with the relevant state level authorities and should provide periodical updates to the Enforcement Taskforce on issues that need redressal.

45. Protection of industrial designs has an important bearing in economic development as it helps expand the commercial scope by greatly encouraging creativity in the industrial sector. In fact creative designs sustain marketability of products and help the indigenous products compete with foreign goods. Stupendous success of companies like Apple and hundreds of others attests to the power of design innovations at the market place. In the Indian context, as the large consumption basket continues to

grow designs are going to be increasingly relied on in influencing the choice of consumer and industrial goods. The existing informal practices of protecting designs through trust based relationships need to be translated to formal protection methods to avoid business conflicts and to ensure proper protection for innovations in designs.

46. Protection of Plant varieties is essential to encourage the development of new plant varieties and to protect the extant varieties. Such protection will protect the rights of the farmers in respect of their contribution made in conserving, improving and making available plant genetics resources for development of new varieties. Such protection will facilitate the growth of seed industries and ensure availability of quality seeds and planting material to the farmers. While PPV & FR Authority has initiated the process of registration of new, extant and essentially derived varieties, extensive awareness generation programmes are also necessary to encourage filings.

47. Existing Government interventions which support start ups and SMEs to protect IP has to be enhanced many times over to achieve a fair degree of scale. As the design aspects become more sophisticated, the protection, rights and remedies may have to be suitably viewed and administered under different national laws related to say competition and copyrights. In short, protection of industrial designs needs to be both encouraged and facilitated by needful administrative intervention.

c) Creation of new IP rights to address the specific needs of the country and the existing gaps

✚ Protection of Utility Model

48. Indian is one of the largest markets in the globe, and while advanced concepts borrowed from developed countries find their audience in India, the bulk of the trade is centered around indigenous products and services. A salient feature of such products and services is incremental innovation - either in technology or business models. Introduction of a separate legal regime that recognizes and protects these incremental improvements which are otherwise not fit for patent grant can address this Indian requirement. Utility Patents or Utility Models with their less stringent patentability criteria, and faster examination/grant although with shorter term of protection of 5-7 years could also be an efficient and a cost effective way to incentivize incremental innovation and encourage creation of IPRs. Needless to say, there could however be

certain sector specific exemptions to ensure that objectives and principles enshrined in Article 7 and 8 of the TRIPS Agreement are respected and followed.

49. A glaring gap in Indian IP system is the lack of awareness and hence adoption of formal methods of IP creation which are expensive from the point of view of individual innovators and small industry units. Utility patents are an answer as they can potentially bridge this gap by reducing the effort, time and cost, which are considered the key entry barriers to creation of IPRs. Consequently, in the longer term, a utility patent system is bound to develop awareness on benefits of procuring patents which have more stringent requirements of inventive step. Such a model can especially be useful for small industry units, schools and colleges, NGOs and thousands of grass-root innovators who are silently transforming the lives of the under-privileged and under-empowered.

Protection of Trade Secret.

50. Any confidential business information which provides an enterprise a competitive edge may be considered a trade secret¹. Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret. Depending on the legal system, the protection of trade secrets forms part of the general concept of protection against unfair competition or is based on specific provisions or case law on the protection of confidential information.

51. The subject matter of trade secrets is usually defined in broad terms and includes sales methods, distribution methods, consumer profiles, advertizing strategies, lists of suppliers and clients, and manufacturing processes. While a final determination of what information constitutes a trade secret will depend on the circumstances of each individual case, clearly unfair practices in respect of secret information include industrial or commercial espionage, breach of contract and breach of confidence would come within its ambit.

52. At present trade secret is protected through the contract law in India and is part of the concept of protection against unfair competition. Trade Secret is an important form of intellectual property and most innovative companies rely upon this

¹ As define in www.wipo.int/sme

confidential/proprietary information to gain business advantage. A predictable and recognizable trade secret regime will improve investor confidence and create a facilitative environment for flow of information.

D. Facilitating Commercialization of IPRs

53. For Innovation to create any impact, it is imperative to take the idea/innovation from mind/laboratory to the market, where their true intrinsic value is realized – through products and services. While larger organizations have the intent and capabilities to take their technology/IP to markets, several others do not. Hence, it becomes imperative to establish facilitative mechanisms that can address such limitations of several SMEs and individual innovators and thus help put knowledge into practice in a big way. Hence, policy interventions are needed to create strong and transparent national systems that encourage and facilitate i) licensing of rights to another entity for commercialization (ii) Cross-licensing agreements where two or more companies can exchange rights to their IP (iii) leveraging the Intellectual assets for future R&D growth and improved products/services; (iv) sale/merger/acquisition of either the Intellectual property rights or the entire business distinguished and appropriately valued by their intellectual capital; (v) patent pooling which allows two or more companies to pool their technologies/IP and join in common interest to create some product that is to their combined benefit and (vi) reinforcing the stability of IP license contracts.

54. National research laboratories, academia and other public funded institutions should stimulate commercialization of their research resultants. They ought to be suitably state-supported in the development and deployment of their intellectual property and know-how in the market place – more particularly their application into industrial production. The intervention could be in building/strengthening the institutional capacity of research-led organizations to enable optimal utilization of intellectual property whether formal or informal. Importantly, the institutional platforms or other market entities should establish value assessment, data management and accounting system for intellectual property. Their IP Management systems should increasingly be guided by market intelligence philosophy.

55. National Level Policy changes are required to encourage development of indigenous technologies . Towards this the Government should fund (through grants / soft-loans) demonstration projects of new technologies requiring large investments. Indigenously developed and commercialized products may be allowed suitable tax breaks till attainment of some maturity levels or for some initial period. It is also being argued that qualification requirements during tendering process should accord acceptance to indigenously developed products where heavy development investments have been incurred. In such cases user's interests can be safeguarded by manufacturers through appropriate insurance cover/deferred payment/extended warranty etc. Moreover, towards strengthening the indigenous R&D ecosystem, policy frameworks should provide for flexibility in outsourcing technical expertise in niche areas as well as type-testing of prototypes.

56. Interestingly, IPRs have also become an important tool in addressing any dichotomy between cooperation and competition in the Standard creation process more particularly in the ICT industrial sector where there are large number of inter dependent vendors and technology suppliers. This situation also gets aggravated due to rapid pace of technological obsolescence. Thus, emergence of open innovation systems and the role of voluntary Standard Setting Organizations are visualized.

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