



Approach to intellectual property rights in India

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INTRODUCTION

The Indian government has taken several initiatives to create a conducive environment for the protection of intellectual property rights of innovators and creators by bringing about changes at legislative and policy level. In addition, specific focus has been placed on improved service delivery by upgrading infrastructure, building capacity and using state-of-the-art technology in the functioning of intellectual property offices in the country. This measure has resulted in sweeping changes in IP administration within the country (Ramanna, 2003). One of the primary steps towards the development and evolution of the national IPR regime could be building the institutions and capacity in various fields related to the IPR area, such as, research and development, enterprise, industry, general administration, and judiciary. A harmonious, efficient and effective institutional mechanism for building capacity and trained human resource would be desirable so to derive full advantage of the Indian IPR regime. There are five central ministries/ departments besides two national authorities that oversee the implementation of various IPR legislations in the country (Manchikanti and Mahasweta, 2011). The largest nodal point is the Intellectual Property India, administered by the Patent Office and controlled by the Ministry of

Commerce and Industry. The Protection of Plant Varieties and Farmers' Rights in the country is at a juvenile stage and requires building its institutional mechanism and capacity.

Why IPR need :

- Establishing a vibrant IP regime in the country.
- Efficient processing of IP applications by inducting additional manpower, augment IT facilities and automation in intellectual property offices.
- Adopt best practices in IP processing.
- Strengthening public delivery of IP services.
- Highest levels of transparency and user-friendliness.

Benefits of Indian IPR :

- The IPR framework in India is stable and well established from a legal, judicial and administrative point of view and is fully compliant with the Agreement on trade-related aspects of intellectual property rights.
- India is committed to wide range of international treaties and conventions relating to intellectual property rights.

- Wide range of awareness programmes are being conducted by the government
- During the last few years, Indian IP offices have undergone major improvements in terms of up gradation of IP legislation, infrastructure facilities, human resources, the processing of IP applications, computerization, databases, quality services to stakeholders, transparency in functioning and free access to IP-data through a dynamic website.
- State of the art, integrated and IT- enabled office buildings have been created during the last few years in New Delhi, Kolkata, Chennai and Mumbai and Ahmedabad, housing central wings for Patents and Designs and Trademarks and Geographical Indications. The Patent Office is headquartered at Kolkata with branches at New Delhi, Chennai and Mumbai. The Trade Mark Registry, headquartered at Mumbai has branches in Ahmedabad, Chennai, New Delhi and Kolkata. The Design Office is located in Kolkata and the GI Registry is at Chennai. Separate facilities house the ISA/IPEA in New Delhi and additionally, there is an Intellectual Property Office Archives is at Ahmedabad.
- Simplified procedure for filing, E-filing facilities and incentives for SMEs are some of the other initiatives in the area of intellectual property rights in India.
- Letters, numbers, words, colours, phrase, sound, smell, logo, shape, picture, or combination of these: Trademark
- Art, literature, music, broadcast and computer programs: Copyright
- 2D/3D product design: Design Registration
- New plant varieties: Plant Breeder's right
- Confidential information: Trade secret

Patent :

A patent is granted for an invention which is “a new product or process, that meets conditions of novelty, non-obviousness and industrial use. Inventive step is the feature(s) of the invention that involves technical advance as compared to existing knowledge and that makes the invention not obvious to a person skilled in the art. Industrial use means that the invention is capable of being made or used in an industry.

Design :

A design refers only to the features of shape, configuration, pattern, ornamentation, composition of colour or line or a combination thereof, applied to any article, whether two or three dimensional or in both forms by any industrial process or means which, in the finished article, appeal to and are judged solely by the eye.

Trade mark :

A trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. It can be a device, brand, heading, label ticket name, packaging, sign, word, letter, number, drawing, picture, emblem, colour or combination of colours, shape of goods, signature or a combination thereof.

Geographical indications :

A geographical indication identifies agricultural or natural or manufactured goods as originating or manufactured in the territory of a country or region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities

Classification of IPR :

The IPR regime in India is regulated through the following acts and laws :

- The Patents Act 1970 (as amended)
- The Copyright Act 1957 (as amended)
- The Trade Marks Act 1999
- The Designs Act 2001
- The Geographical Indications of Goods (Registrations and Protection) Act, 1999
- The Semiconductor Integrated circuit Layout-Design Act 2000
- The Protection of Plant Varieties and Farmers Rights Act 2001
- The Biological Diversity Act 2002

Intellectual property rights are generally classified as follows :

- Invention: Patents

of either. The production or of processing of preparation of the goods concerned takes place in such territory, region, or locality as the case may be.

Copyright :

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.

Plant variety protection :

Protection granted for plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

The demand for extending intellectual property protection to agriculture in developing countries has met with counterclaims for granting farmers' rights. Developing countries are currently attempting to fulfill these demands by evolving new IPR regimes that simultaneously protect the rights of breeders and farmers. What are the possible implications of establishing such a system of multiple rights on the utilization and exchange of genetic resources among various actors? Could the attempt to distribute ownership rights to various stakeholders pose the threat of an 'anticommons,' where resources are underutilized due to multiple ownership? The answers to these questions have important implications for the future of agricultural growth in developing countries (Kochhar, 2008). India is one of the first countries in the world to have passed a legislation granting rights to both breeders and farmers under the Protection of Plant Varieties and Farmers' Rights Act, 2001. The law emerged from a process that attempted to incorporate the interests of various stakeholders, including private sector breeders, public sector institutions, non-governmental organizations and farmers, within the property rights framework. India's Act allows four types of varieties to be registered reflecting the interests of actors: New Variety, Extant Variety, Essentially Derived Variety and Farmers' Variety.

Semiconductor integrated circuits layout design :

The aim of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to provide protection of intellectual property right (IPR) in the area of Semiconductor : Integrated Circuit Layout Designs and

for matters connected therewith or incidental there to.

International agreement membership :

India is a member of the World Trade Organisation and Committed to the Agreement on Trade Related Aspects of Intellectual Property. India is also a member of World Intellectual Property Organization, a body responsible for the promotion of protection of intellectual property rights throughout the world.

India is also a member of the following important WIPO-administered International Treaties and Conventions relating to IPRs:

- Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure
- Paris Convention for the Protection of Industrial Property
- Convention Establishing the World Intellectual Property Organization
- Berne Convention for the Protection of Literary and Artistic Works
- Patent Co-operation Treaty
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks- Madrid Protocol
- Washington Treaty on Intellectual Property in respect of Integrated Circuits
- Nairobi Treaty on the Protection of the Olympic Symbol
- Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms

Patents :

- India has taken strong steps in strengthening the patent system in the country. The government aims at establishing a patent regime that is conducive to technological advances and is in line with its global commitments.
- Patent application filing at Indian Patent Office has been increasing consistently over the years which demonstrates the confidence of the global industry in the Indian patent ecosystem.
- Filing and processing of patent applications viz., examination, grant and post-grant proceedings are carried out at all the four Patent Office locations independently through a virtual network

system which links all four Patent Offices; however, there is only one virtual Patent Office for the purpose of grant of patents. A patent is granted for a uniform period of 20 years from the filing date of the patent application for inventions in all fields of technology and it is a territorial right.

- The Indian Patent Office has been recognized as an International Searching Authority and an International Preliminary Examining Authority (ISA/IPEA) by World Intellectual Property Organization in October, 2007 under the Patent Co-operation Treaty, and has operationalised the status since 15th October, 2013, thus, joining an elite group of 17 countries.

It enabled processing and computerized work-flow:

All the records are digitized and freely available through the official website, www.ipindia.nic.in. Every document received in the office is scanned and digitised before taking any action on the document and is made available through the official website to the public. The entire processing of patent applications is electronic and information relating to processing is made available on the website in real time, thereby providing valuable information to the applicants.

Instant electronic communication with applicants :

Consequent to filing of a document, instant e-mail is sent to the applicant at the mail IDs and numbers registered with the office. Such messages are QR coded to preserve their authenticity.

Dynamic information :

- Dynamic utilities are available on the website which provide useful real-time information such as issue of examination reports in a given month, disposal of applications, information about lapsed and ceased patents etc.
- The entire record in all matters, which are not prohibited from publication by the statute are made available to the public on the website. All the documents are digitized as soon as they are received in the Office to enable computerized processing of applications and are made available to the public in real time through the official website.

- The Patent Office has a strong pool of experts for processing of patent applications. At present it has strength of 192 Examiners and 89 Supervising Officers. Among them, 42 have Doctorate degree, 75 are Post-Graduates in different branches of science, 25 have Post-Graduate degree in Engineering and 139 have Degree in Engineering/ Technology.

For Patents, complete stock and flow information is available on the website.

Industrial designs :

Agricultural machinery involves use of equipment and machines that are required to perform various crop production activities. The use of agricultural machinery leads to better utilization of inputs and improvement in agricultural operations, particularly in large scale crop production. Most of the earlier innovations in India in this sector were on tractors and drillers. There has been an increase in the innovations in machinery in the pre-harvest as well as post-harvest operations. The present study attempts to analyse patenting activity to identify current innovations on agricultural machinery in India. Analysis of published applications revealed that the area of irrigation and post-harvest processing had the maximum filing. In the case of granted patents, majority of the patents belong to the area of plant growth and post-harvest operations. The analysis reveals the specific patent portfolios and the scope of future innovations in the agriculture engineering sector (Manchikanti *et al.*, 2011). IPRs are valuable and they help in grooming the economic conditions of the country only if they are well protected and enforced and the World is surely moving towards it. Large IT firms and firms in high-end niche areas are proactively seeking IP based growth strategies. While they typically seek IP protection in western nations and not so much in India, this has led them to perceive restrictive IP regimes more positively. IP regimes in the west are more relevant for IP creating Indian IT firms today but this may change in the near future as Indian market expands. Survey data show that an average IT firm in India also perceives IP protection as an important appropriability mechanism, but access to markets and relevant complementary assets continue to be more important for appropriating profit from their economic activity (Basant, 2004). The

understanding of Indian IP firms of the complexities of IP regimes remains rudimentary and they will need significant preparation to deal with these IP related challenges.

- Every design to be registrable must pass the universal test of novelty. A registered design is valid for 10 years and can be further extended by another 5 years.
- A design cannot be registered if it is not new or original or has been disclosed to the public in India or anywhere in the world by publication.

Trade marks :

- A trademark is used or proposed to be used to distinguish the goods or services of one person from those of others in the course of trade. Though the registration of trademark is not compulsory, registration is a prima facie proof of the title and it gives the registered proprietor an exclusive right to use the trademark and take legal action in case of infringement.
- If a trademark is not registered and if someone not having the right in the trademark uses that trademark, the proprietor of the trademark can take the common law action of passing off.
- The initial registration is valid for a period of 10 years which is renewable for an indefinite period of time.
- India also acceded to the Madrid Protocol which allows applicants to file in other countries that are members of the Protocol through a simple form and by payment in one currency foreign applicants can also file indicating India as the designated country in forms. This also enables time-bound processing of Trade Marks applications.

Madrid protocol :

Indian office is receiving applications for protection of trademarks under the Madrid Protocol and making all correspondence relating there to online through the gateway provided by this office, similarly all communications from the International Bureau regarding international applications or registration under the Madrid Protocol are made by Indian office through electronic means only.

Automated and transparent functioning of the trade marks registry :

All the functions of the TMR are performed through a Trade Marks System (TMS). The Data Entry of all vital information relation to trademark application or a registered trademark has been done and all available paper records relating to trademark applications or registered trademarks have been digitized and these are linked with the relevant application or registered trademarks, in the system.

Other information :

- The IPO website contains separate Gateway for E- Filing of trademark applications and free online public search facilities for search of identical or similar trademarks.
- Trade Mark E-Journal is published every Monday giving the details of accepted applications for registration of trademarks and other information.
- Details of all trademark applications or registered trademarks, status of applications/registered trademarks, public notices, copies of important office orders, circulars and other useful information are available on the website of the Office of the Controller General of Patents, Designs and Trade Marks. The complete stock and flow information is also available on the website.
- Public can see on real time basis the details of examination of trademark applications, show cause hearings, publication in the trademark journal, registration of trademarks, disposal of applications by way of abandonment, refusal etc.

Geographical indications :

- The geographical indications registry is a statutory organization set up at Chennai for administration of the GI Act with the objective of providing registration and protection of geographical indications (GI) relating to goods.
- Applications for registration of geographical indications can also be filed by foreign entities for registration of their GI in India in accordance with the provisions of TRIPS.
- A Manual of Practice and Procedure is in place to ensure uniformity and consistency in practice.

Role of federation of Indian chambers of commerce and industry (FICCI) in IPR :

IPR plays a key role in almost every sector and has become a crucial factor for investment decisions by many companies. All the above Acts and regulations are at par with international standards. India is now TRIPS-compliant. This is an international agreement administered by the World Trade Organization (WTO), which sets down minimum standards for many forms of intellectual property (IP) regulations as applied to the nationals of other WTO Members. The very well-balanced IPR regime in India acts as an incentive for foreign players to protect their Intellectual Property in India. This can be established by the very fact that approximately 80 per cent of patent filings in India are from the MNCs. While the IPR regime in India consists of robust IP laws, it lacks effective enforcement, for which “least priority given to adjudication of IP matters” is often quoted as a reason. The key challenge is to sensitize the enforcement officials and the Judiciary to take up IP matters, at par with other economic offences, by bringing them under their policy

radar. Further, it is imperative that there be established a ‘Think Tank’ or a group, which can bring the varied sets of stakeholders on to a common platform, leading to extensive/exhaustive and an all inclusive debate/discussion, facilitating well-informed policy decisions in accordance with India’s socio-economic-political needs. The challenges also lie in having an IP fund, which can be utilized for further developing the IP culture in the country. There is also the need to have a National IP Policy for India, which will help in working towards realizing the vision of India in the realm of IP. This will facilitate the creation of a strong socio-economic foundation and deep international trust. FICCI’s efforts emphasize the enhancing of the working of the Indian Patent Office, thereby, bringing greater transparency in its working, and facilitating the government in developing a policy for India. The IPR division tries to provide proactive business solutions through research, interactions at the highest political level while facilitating global networking. Further, since the IPR provides exclusive rights over assets, it is a major challenge for the country

Table 1 : Office of the controller general of patents, designs and trade marks (CGPDTM)		
	Address of the office	Designated officer under RTI
Office of the controller general of patents, designs and trade marks	Office of the Controller General of Patents, Designs and Trade Marks Boudhik Sampada Bhawan, S. M. Road, Antop Hill, Mumbai - 400 037	Appellate Authority Central Public Information Officer Central Assistant Public Information Officer
	Patent office Patent Office, Intellectual Property Office Building, CP-2 Sector V, Salt Lake City, Kolkata-700091	Designated Officer under RTI Appellate Authority
	Patent Office, Intellectual Property Office Building, Plot No. 32, Sector 14, Dwarka, New Delhi-110075 Patent Office, Boudhik Sampada Bhawan, S. M. Road, Antop Hill, Mumbai – 400 037 Patent Office, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai-600032	Central Public Information Officer Central Assistant Public Information Officer
Trade marks	Trade Marks Registry, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai-600032	Designated Officer under RTI Appellate Authority
	Trade Marks Registry, Boudhik Sampada Bhawan, S.M. Road, Antop Hill, Mumbai - 400 037	Central Public Information Officer Central Assistant Public Information Officer
	Trade Marks Registry, Intellectual Property Office Building, Dwarka, Plot No. 32, Sector 14, New Delhi-110075	
	Trade Marks Registry, Intellectual Property Office Building, CP-2 Sector V, Salt Lake City, Kolkata-700091	
Patent information system	Rajiv Gandhi National Institute of Intellectual Property Management and Patent Information System, Plot No 03, Opposite to State Board Office, Hislop College Road, Civil Lines, Nagpur - 440001	Designated Officer under RTI
Geographical indications	Geographical Indications Registry, Intellectual Property Office Building, G.S.T. Road, Guindy, Chennai – 600032	Appellate Authority Central Public Information Officer Central Assistant Public Information Officer

Information booklet under Right to Information Act, 2005 [Section-4 (1) (b)]

to balance the interests of the innovators and the interests of the society at large. In today's highly competitive global economy, IPRs are giving companies the cutting edge and increasing their competitiveness. With recent changes in IP laws, various IP related issues have sprung up, which are highly complex in nature. FICCI envisions itself as the 'thought' leader in the field of IPR. FICCI also views itself as being capable enough to assist the government and the industry captains in all IP related matters. Showcasing its unparalleled capabilities in this sphere, FICCI's IPR division organizes the World IP Day on April 26th every year. In fact, on World IP Day 2010, FICCI

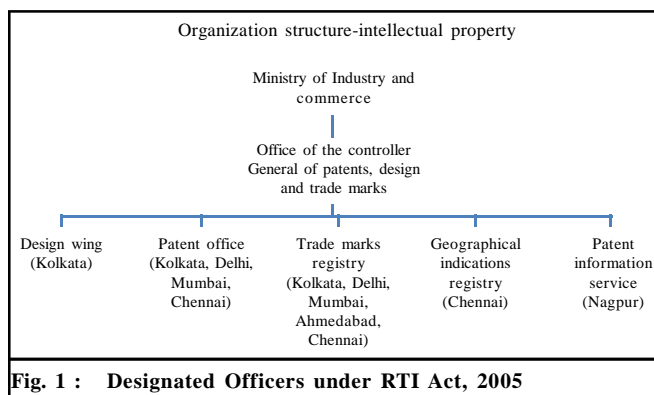


Fig. 1 : Designated Officers under RTI Act, 2005

prepared and submitted a discussion paper on the National IP Policy to the government of India. In 2011 as well, FICCI submitted a brief report to the government of India, with a view to safeguarding India's interests in the fields of traditional knowledge and traditional cultural expressions, at the International governmental Committee meeting at WIPO.

Agriculture in developing economies is rural based with a majority of poor people dependent on it. Hence, any new technology that would result in improving the crop yield or reducing the cost will be highly useful. Particularly, biotechnology innovations have several useful applications in agriculture and are useful for developing

countries. However, when such new technologies are protected by intellectual property the implications are different. (Ravishankar and Archak, 2000). The plant protection system available in India enables the farmer to save, use, sow, resow, exchange, or share the seeds of protected variety, besides offering protection on farmers' variety, extant variety and essentially derived variety (Lalitha, 2004). Biotechnology represents hope for those who believe that new technology can contribute to overcoming a range of pressing productivity and environmental constraints facing poor farmers.

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