

FEDERATION OF INDIAN CHAMBER OF COMMERCE AND
INDUSTRY (FICCI)

FICCI's Suggestions on Proposed National Intellectual Property Policy

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PROPOSED NATIONAL IP POLICY

Vision Statement

By 2030, India should be considered one of the best jurisdictions in the world for creation, protection and exploitation of IP.

Introduction

Over the recent years and post liberalization of its various economic policies, India has achieved a sustained economic growth and as a result of which, come to be a significant player amongst the various developed nations. As a consequence, developed nations now consider India to be a credible haven for investment purposes, be it either through foreign direct investment or through joint venture collaborations with its domestic industries, in each of the cases within the permissible limits laid down by the applicable laws.

Post India becoming a member of the World Trade Organization, it has necessarily had to adhere to its various commitments as a Member State and one of which is ensuring that its Intellectual Property Regime is in conformity with the other Member States in all material respects. This has led to India having in place various Intellectual Property legislations and which have been amended from time to time and Intellectual Property Offices regulating the grant of Intellectual Property Rights to proprietors asserting the same. India already has in place a competent judiciary protecting the very intellectual property rights conferred upon proprietors asserting the same in accordance with the rule of law, principles of equity, fair play and natural justice.

The need for India to have in place a National Intellectual Property Policy:

It may however be stated that unless and until certain basic and fundamental issues that are clearly an impediment to India having a state of the art and comparable world class Intellectual Property Regime, investors may tend to shy away from investing in India in as much as this may cause or lead to an erosion or dilution of their otherwise highly valuable intellectual property rights. In the event such situation prevails and / or is continued to be permitted to prevail, India will undoubtedly lose out on opportunities of developing itself into a fully independent and developed economy ideally competing toe to toe with the economies of nations of the likes of Korea, Taiwan, Japan, The Peoples Republic Of China, Germany and The United States Of America, The United Kingdom, Member States Of The European Union, just to mention a few. The necessity for India to have in place a National Intellectual Property Policy is a must if it is to be recognized and respected as a developed nation.

OBJECTIVES:

The objectives of the National Intellectual Property and Innovation Policy (NIPIP) ("IP Policy) are to:

- 3.1 Facilitate, mobilize, protect and grow the use of IPRs for economic and social development in India by supporting and creating an innovative and creative culture;
- 3.2 Enhance the knowledge, scientific and IT based skills and competencies to enable India to compete effectively globally in step with the fast changing economic and business environment;
- 3.3 Encourage indigenous, sustainable, useful and affordable innovation practices and culture, at all levels of private and public contribution, for the overall growth of the economy and society.

SCOPE:

Scope of the IP Policy covers all enacted IPR laws of India and the Government Ministries and Agencies which are responsible for adjudication, formulation, implementation, interpretation, and execution of the IPR Laws and covers the following:

- Central Ministry of Industry & Commerce
- Central Ministry of Human Resource Development
- Central Ministry of Science & Technology
- Central Ministry of Information Technology
- Ministry of Agriculture
- Ministry of Environment and Forests
- Central Ministry of Law & Justice
- Central Ministry of Home Affairs
- States/UTs Departments and agencies thereunder
- Public Sector Undertakings
- Public R&D Organizations
- Publicly funded institutions and organizations
- Private Sector
- Academia

ESTABLISHMENT OF NATIONAL IP COUNCIL (NIPC) UNDER PMO:

Intellectual property in India is administered by five central Ministries in terms of the Allocation of Business Rules of the Government. It is therefore important that a centralized body NIPC is established which shall be responsible for liaising with different Ministries so as to ensure proper implementation appropriate implementation of the proposed National IPR Policy.

The role and responsibilities of NIPC

- ✓ To liaison with the key ministries and key Government agencies under the direction and control of PMO
- ✓ To monitor the implementation and execution of the IP Policy
- ✓ To commission research reports/papers/commentaries/fact sheets
- ✓ To provide advisory and guidance to the Government and industry
- ✓ To submit periodic progress report to the PMO and the Cabinet

5.1 The structure and composition of the members of NIPC

- ✓ The NIPC should constitute of no more than 6-8 members.
- ✓ Industry leaders, IP champions, thinkers, researches etc to be selected from across industry by the PMO to comprise the NIPC.
- ✓ NIPC to be headed by a Chairman, selected amongst the Council.
- ✓ NIPC members to be appointed for a maximum period of 3 years.

BROAD COUNTOURS OF THE POLICY

I. Creation of IP: "Promotion of a Culture of Enterprise and Innovation"

Intellectual creations at all levels should be nurtured so as to develop an innovation culture. Innovation and creativity are sources of value added products and services and it is important to afford appropriate intellectual property protection to them. Such protection will lead to revitalization of the economic and social system. Creation of IP is very critical and is a challenging task. Research institutes and universities can play a crucial role in creating IP. Though several researches are conducted in universities, many a times they are not protected under IP or effectively used for the development of society due to a variety of reasons.

Further, there is a need to improve collaboration between universities and industry bodies. Large number of innovative technologies has emerged from academic circles rather than from large private firms. Effective collaboration between universities and industry can further creation of IP.

The proposed National IPR Policy should envisage to work towards the following:

- a. Increasing awareness of IP in university R&D environment and culture
- b. Integration and collaboration between universities and IP offices
- c. Promotion of academic R&D with a focus on IP creation and protection for breakthrough technologies and inventions
- d. Evaluation system for IP generated out of academic R&D
- e. Securing necessary human resources and funds for filing, obtaining and managing IP grants
- f. Improving the quality of the university R&D resources and facilities
- g. Monetary incentives to university researchers for IP creation
- h. Development of researchers and improvement of their mobility and diversity.
- i. Establishment of University Technology Transfer Offices (TTOs)
- j. Building a Trust model between public funded R&D organizations and the private sector
- k. Develop a Legal-aid program for public funded R&D institutions to develop appropriate processes and licensing competencies

II. Strengthening Measures to Stop Counterfeiting and Piracy

Issues of intellectual property violations have always been a predicament to all nations, since time immemorial. These are the illicit activities in which criminal networks thrive. Technology has always played a role in the advent of new crimes and in the development of law. There is currently lack of statistical data which could reveal at which piracy and counterfeiting is actually taking place India is always shown in poor light with respect to enforcement of IPRs in India.

There is a need of a concerted move to address the issue of counterfeiting and piracy, and at the same time, to coordinate and showcase to the international community the various efforts taken by the Government and the industry in addressing piracy. Therefore, the National IPR Policy should envisage to taking up appropriate measures which can strengthen the enforcement of IPRs in India leading to Zero level tolerance to Piracy and Counterfeiting. This may be achieved by a way of establishing specialized IP cells at Police offices, ensuring availability of adequate enforcement resources and competent authorities for effective implementation of measures, encouraging holders of IP to support the competent enforcement agencies, raising awareness of public besides building capacities of enforcement agencies, carrying out empirical studies on the rate and impact of piracy and counterfeiting, making the punishment more deterrent (such as amending the IP Laws to include statutory damages; inclusion of per copy violation model of calculating damages; introduction of treble damages for willful or repeat infringement and exploring the model of plea bargaining in IP criminal matters), strengthening legislative measures, database of potential offenders etc.

III. Ensuring Fair Balance

IP laws seek to strike a balance between the interests of the right holder and the society. This balance guarantees flow of information to the users and enable Government to take appropriate steps in public interest. Various provisions of the IP Acts, such as, section 84, Patent Act 1970, section 52, Copyright Act, 1957, etc, ensures this by way of limitations to the rights of the IP holders. There should be continuous monitoring to ensure that this balance which the IP laws seek to achieve is maintained with changing times. India should closely examine various new initiatives by the industrialized countries for protection and enforcement of IP rights and evaluate their impact on free trade, the public health and access to medicines. This should cover WIPO, ACTA, IMPACT, EU Regulation 1383 of 2003, BIAC, FTAs, etc.

Public Policy and Intellectual Property Protection:

- **Introduction to “IP & Public Policy”**
 - a. Highlighting the interface between public policy and IP rights in terms of dissemination of innovation and information
 - b. How Public Policy balances the needs of the society against very strong IP protection
- **Striking a right balance between IP protection and Public Policy**
 - a. Identifying core areas of public policy which are impacted by the IP rights
e.g. - *climate change, public health, biodiversity and food security*

- b. Establishing dialogue and collaboration between major stakeholders – international organizations, government, industry and civil society
 - c. Importance of government's neutrality and objectivity in their decision making and balancing of IP rights with public policy
- **Enforcement of the balance and continuous monitoring**
 - a. Effective and consultative implementation of public policy during times of crisis and emergencies
 - b. Periodic assessment of the balance and effectiveness of each IP law serving the interests of the IP creators/owner and the society at large.
 - c. Need basis revision and amendments of Public Policy to align IP laws with the changing times and demands.

IV. State of Art Redressal Mechanism for IPR Violations

Efficient and expeditious disposal of IP cases is an important aspect, considering the limited period for which rights are granted to the IP holder, it is essential that IP related cases are decided expeditiously. Specialized IP Courts in High Courts and Tribunals should be set up to deal with IP cases, in view of the pendency and complexity of the IP cases. Alternate dispute resolution (ADR) methods needs to be encouraged in IP matters. Other agencies, like, the police and Customs, should have qualified and efficient personnel to check violations of IP.

The proposed National IPR Policy should envisage the following:

- a. Specialized Training and improving judicial capacity in the field of IP
- b. Establishment of IP education courses in all judicial academies
- c. Appointment of Judges based on exam and prior experience in IP
- d. Independent and neutral expert assistance program to the IP benches
- e. Inter-jurisdiction Judges exchange program on IP Law

V. Indian Traditional Knowledge

India witnessed umpteen numbers of cases regarding the misuse/misappropriation of Traditional Knowledge which causes harm to the Indian Economy and serves as disincentive for the holders of TK who have conserved and preserved. One of the aspects of National IPR Policy should envisage achieving the appropriate protection of traditional knowledge through legislative measures which can ensure the free flow of equitable benefits to the custodians of TK.

VI. Transfer of Technology and IP Collaboration

TRIPS Article 7: The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the

transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Technology transfer is one major mandate of TRIPS, but least followed. Continuous dialogue between the developed and developing and least developed world have been happening around this contentious issue over the past few years. Concerns about transfer of technology are becoming increasingly important, not only from the context of creativity and innovation, but also because they can offer solutions to contemporary problems, such as, climate change. Transfer of environmentally sound technologies (EST) is a contentious issue and needs to be addressed at the earliest. Tech transfer is also important to reduce the technology gap between nations. There is a need to ensure that IP rights are not serving as a barrier to tech transfer but as an aid for inventing newer technologies.

VII. Modernization of IP Offices

The National IPR Policy should envisage for modernization of the Intellectual Property Office be it for the purposes of Patent Cooperation Treaty or the Madrid Protocol, the quality of examination, enhancing the rate of IPR grants, the standards of infrastructure, human resources, installation of databases and computerization, creation of awareness, maintenance of the buildings and facilities offered at the Intellectual Property Office.

VIII. Human Resource Development

Intellectual Property Offices across the country should have qualified and competent personnel managing and regulating its functions. The Intellectual Property Offices should also be well equipped with the state of the art mechanisms which its personnel should in the first instance be trained to use. Neither of the two requirements can be compromised in as much as each tends to complement the other. Yet another important facet relating to qualified and competent persons manning the Intellectual Property Offices are the number of persons required bearing in mind the quantum of filings that take place.

IX. Support To SMEs

The role played by SMEs in our socio-economic development is enormous, considering its contribution in providing employment, manufacturing products, exports, etc. In today's competitive economy, for enterprises, both big and small, it is important to have their intellectual properties well protected. SMEs deserve a different treatment considering the fact that they are differently placed. Appropriate training on IPRs, financial assistance, tax rebates, etc., can boost the growth of this important sector.

X. Improving Public Awareness And Knowledge On Intellectual Property

Strengthening Awareness Programs and Development of Expertise Public IP Education/Awareness Programs and Development of Expertise

- a. IP education curriculum at school, colleges and universities
- b. Re-orient IP courses in Law schools and make them application oriented through introduction of modules addressing Interface of IP and Business Strategy.
- c. Enhancement of specialized human resources including patent attorneys, agents, counselors and strengthening of their functions
- d. Public IP evangelism programs in collaboration with Industry Associations; Govt. shows commitment through consistent participation in public forums
- e. Development of intellectual property-related statistics to study, track and support national progress
- f. Enlightened higher education policy making by MHRD encouraging Faculty exchange programs and Chairs enabling best in class global faculty engage with the issue of Faculty development and IP expertise building in India.

IP Sensitization Programs for Government, Judiciary and Enforcement Agencies at both central, state and district levels

Induction administrative courses on the role of IP in national's economic development and competitiveness

- a. Public-Private partnerships to share knowledge and experience around IP with Government Officials at all levels
- b. Ready reference templates and tools on IPR for Government officials
- c. IP week in Government celebrating entrepreneurship; national message by Commerce and Industry Minister

XI. Benefits of Flexibilities under TRIPS

The National IPR Policy should envisage to introspect with reference to the TRIPS Agreement and Doha Declaration whether it has taken full benefits of the flexibilities contained in these documents and, if not, identify and analyze reasons thereof. Such flexibilities comprise, compulsory licensing, parallel import, exemptions to patentability, exceptions to patent rights and competition policy. In addition, IP laws of countries can have flexibilities on which TRIPS is silent, like grounds for revocation of patents.

XII. Obligations Under TRIPS Agreement

While accepting obligations under the TRIPS Agreement, the developing countries were promised access to markets of the developed countries. However, over the last few years the developed countries have become increasingly protectionist. They are creating new non-tariff

barriers to entry of goods in their markets. They are creating hurdles to outsourcing of services to protect jobs, and even introducing discriminatory practices to protect domestic companies. The IPR Policy should envisage to achieve on how best the measures can be taken to have an access for market.