



SUBMISSION

On

SPECIAL 301 REVIEW, 2018



FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY

A non-government and not-for-profit organization, FICCI acts as the voice of India's business and industry. Established in 1927, FICCI is India's largest and the oldest apex business organization. Its history is closely interwoven with India's independence struggle, its industrialization process, and its emergence as one of the most rapidly growing global economies.

FICCI influences policy, encourages debate, engages with policy makers and civil society, and articulates the views and concerns of Indian industry. It represents members from the Indian private and public corporate sectors as well as multinational companies, and draws its strength from diverse regional chambers of commerce and industry across states, by reaching out to over 2,50,000 companies.

FICCI provides a vital platform for networking and consensus building within and across sectors, and is the first port of call for Indian industry, policy makers and the international business community. In the sphere of intellectual property issues, FICCI works closely with various stakeholders, including Indian and foreign government departments/agencies such as USPTO, among others.



INTRODUCTION

FICCI forwards this submission in response to the Notice by the Trade Representative, Office of United States (USTR) requesting comments from the public for the Special 301 Review of 2018.

FICCI is of the opinion that India should no longer be placed under the Special 301 review process. India's first National IPR Policy, announced in May 2016, was a milestone in the country's IP regime. The policy has been welcomed by all stakeholders, and the initiative by the Government of India has been widely acknowledged worldwide as a commendable proactive vision which has endeavored to synergize Intellectual Property with India's various policy initiatives. Further, subsequent to the Policy accouchement, the government of India have undertaken extensive exercises to ensure that the recommendations made in the policy are rolled out in right earnest. In this backdrop, USTR continuing to

India in its Special 301 review process is uncalled for. This, in fact, may undermine the spirit of the ongoing bilateral dialogue between India and US.

Through this submission, FICCI aims to address the various unsubstantiated assertions that USTR has levied against India's IP Regime. The object is to put forth an objective picture of India's intellectual property regime specially keeping in view the many constructive developments made in recent years in further strengthening the country's IP system. The document outlines a range of key developments which the Government of India, the Indian Industry and the other stakeholders have been undertaking to further strengthen and modernize India's IP ecosystem.



INDIA'S IP REGIME AND ITS NATIONAL IPR POLICY

India has a well-established legislative, administrative and judicial framework for safeguarding Intellectual Property Rights. Being a member of WIPO since 1975, and subsequently a WTO member from 1995, India has been meeting the country's international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns. Accordingly, India's IPR regime is TRIPS-compliant, robust, equitable and dynamic, and maintains a fine balance between private rights through IPRs, on one hand, and rights of the society, on the other. Further, as part of the 'Make in India' campaign, there is renewed focus on improving India's IP set up to figure among the best in the world standards by establishing a regime which maximizes the incentive for generation and protection of IP for all type of inventors.

Of late, the IP scenario in India has undergone a number of significant developments with respect to laws and policies. Some of the noteworthy developments are the announcement of India's first National IPR Policy in May 2016, amendments in Patents and Trademark Rules, thrust on stronger IP enforcement and administration, the move towards establishment of a National IP exchange and the significant modernization of its IP offices.

The National IPR Policy has stimulated the impetus towards protecting and generating revenue from IP. The Government has been putting serious efforts into modernizing the country's IPR ecosystem, to make it conducive to innovation, creativity and towards promoting IP commercialization. Initiatives like Start-Up India, Make in India and Digital India too are encouraging domestic companies to focus on out-of-the-box thinking. The Policy has been largely welcomed as a comprehensive, substantive and a balanced enunciation of government's vision and approach relating to IP. It provides IP the prominence that it deserves as a policy and strategic tool for national development, besides envisaging IP as an integral part of the overall development policy of India. While it is progressive and futuristic, it is rooted in the strong legislative framework of India which underpins its IP policy evolution and which balances its development priorities with international obligations.

POLICY IMPLEMENTATION

The Indian government, meanwhile, have taken many significant initiatives to roll out the recommendations made in the IPR Policy. Department of Industrial Policy and Promotion (DIPP), the nodal government agency in India that is responsible for IPR, has been aggressively organizing IPR Awareness Programs across the country, focused training programs for enforcement agencies (police, customs) and sensitization of judiciary.

▪ IP Awareness Programs

Cell for IPR Promotion and Management (CIPAM), a Government created professional body under the aegis of DIPP, has aggressively taken these initiatives of creating public awareness, promoting the filing of IPRs through facilitation, providing inventors with a platform to commercialize their IP assets, and coordinating



the implementation of the National IPR Policy recommendations in collaboration with concerned Government Ministries/Departments and other stakeholders.

The objectives of these IP awareness programs have been to build an atmosphere where creativity and innovation are encouraged in public and private sectors, R&D centers, industry and academia, leading to generation of IP that can be commercialized. Efforts have been made to also reach out to the less-visible IP generators and holders, especially in rural and remote areas. FICCI has collaborated with the government in organizing a number these IP awareness programs for industry, enforcement officials and the youth/students across the country, and the response received have been very encouraging in terms of participation and stakeholders' interface.

▪ **IPR Enforcement Toolkit for Police**

FICCI, in association with DIPP/CIPAM, has also prepared "IPR Enforcement Toolkit for Police" and subsequently organized capacity building programs for Police Officials on Enforcement of IPRs. The toolkit has been distributed widely to the police departments across the country to help them deal with IP crimes, specifically Trade Marks counterfeiting and Copyrights piracy. IPR Modules for Customs & Judiciary have also been developed by DIPP in association with other industry bodies.

▪ **Technology and Innovation Support Centre**

DIPP has established India's second Technology and Innovation Support Centre (TISC) at the Centre for Intellectual Property Rights (CIPR), Anna University, Chennai, under the WIPO-TISC program. The objective of the TISC is to create a dynamic, vibrant and balanced Intellectual Property Rights (IPRs) system in India to encourage creativity and innovation, thus promoting entrepreneurship and enhancing social, economic and cultural development by establishing a network of TISCs in India.

▪ **Booklet on Intellectual Property Rights & Technology Transfer**

The Indian Council of Medical Research (ICMR) has brought out a booklet on Intellectual Property Rights & Technology Transfer which will help increase awareness among ICMR scientists for protecting new technologies. This document, which has detailed FAQs on Intellectual Property Rights (IPR), is an effort by the ICMR to increase awareness of IP protection before publication.

▪ **Government IPR website – set up by CIPAM**

An IPR website has been launched by the government to effectively implement the National IPR Policy. The interactive website provides regular updates on all upcoming events of CIPAM including awareness and sensitization programs, and also provide regular updates on the latest IP trends, including data on applications filed, examined, grants and disposal for various IPRs. The website is available at www.cipam.gov.in .



▪ **National Workshop on Enforcement of IPRs**

A three-day IP Enforcement Workshop was organized in August 2017 by DIPP to increase awareness about IP rights amongst officials of enforcement agencies such as police and customs. The objective was to help enforcement agencies across the country understand and appreciate the importance of their role in IPR enforcement. The event, inaugurated by the Union Home Minister and attended by the Minister of Industry and Commerce, provided a platform for the police officials from across the country to share their experiences, exchange views on best practices and provided the opportunity to improve inter-agency coordination.

Important programs organized by the Government

- A session on Govt policies at 'Colloquium on Commercial Law for High Court Judges' in National Judicial Academy, Bhopal
- A three-day workshop for Police Officials and Assistant Prosecution Officers (APOs) at Police Training College, Anantapur, Andhra Pradesh; 7 batches taken up by State.
- Three-day workshop for Police Officials and APOs organized by CIPAM at Police Training College, Moradabad, Uttar Pradesh. 150 Police Officials and APOs participated.
- Three-day workshop from 11th – 13th April 2017 for West Bengal Police Officials in Kolkata, including specific sessions on Counterfeiting and Piracy.
- A workshop conducted at Sardar Vallabhbhai Patel National Police Academy, Hyderabad, for IPS officers from all States and the neighbouring countries of Nepal, Bhutan and Maldives.
- Trainings have also been conducted at North Eastern Police Academy (NEPA), where officials from nine states participated. CIPAM's plans include conducting such trainings across the country in future as well.
- IPRs have now been made a part of the training calendar at Sardar Vallabhbhai Patel National Police Academy, Hyderabad, and North-Eastern Police Academy, Meghalaya.

FICCI, on its part, has been working actively with the Indian Government in the policy recommendation roll-out process, which is based on seven key focus areas: promoting overall awareness on IPR; generation of IP; putting in place a strong and effective Legal and Legislative Framework, including a modern and strong Administration and Management structure; augmenting IP commercialization, strengthening enforcement and adjudicatory mechanisms to combat IP violations, and strengthening human resources, institutions and capacities for teaching, training, research and skill building in IP.

India-US Webinars by FICCI

Despite the extensive developments taking place in the country's IP regime, India continues to be viewed as IP non-compliant by the US. One reason for this could be the differing views of the two trading partners on the approach to IPR protection. In order to update the US stakeholders on the progress made in India's IP regime, FICCI has been organizing a series of webinars specifically for American industry and govt. officials, providing updates on the progress made on IPR regulations and enforcement in India, and the anticipated



way forward. The most recent webinar was held on 1st December 2017 on the theme 'An Update on Progress Made on Intellectual Property Regulations in India'. From the Indian side, the webinar was addressed by Mr. Rajiv Aggarwal, Joint Secretary, Department of Industrial Policy and Promotion (*he is the nodal government officer in India that is responsible for IPR*) and Mr. Narendra Sabharwal, Chair, FICCI IPR Committee, Former Deputy Director General, WIPO. These webinar, which were attended by representatives of American companies, officials of USPTO and the US State Department provided a unique opportunity to representatives of American companies, officials of USPTO, US State Department and other IP stakeholders to get an update on the various steps that DIPP is taking to improve administration, enforcement and the overall IP ecosystem in the country, and the results that have been achieved as a result.

COPYRIGHT PROTECTION AND ENFORCEMENT

In 2012, the Copyright Act, 1957, was amended for a sixth time, to bring it at par with international benchmarks, as well as to reform and refine the functions of the erstwhile Copyright Board (appellate board for adjudicating copyright disputes). The Amendment brought Indian copyright Act into conformity with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (also known as “WIPO Internet Treaties”) to protect the Music and Film Industry and address its concerns; to address the concerns of the physically disabled and to protect the interests of the author of any work; incidental changes; to remove operational facilities; and enforcement of rights. Further, the National IPR Policy, which is a visionary document enumerating several deliverables on the copyright front, also aims at reinvigorating India’s Copyright landscape.

The Copyright Act provides the owners of copyright with dual legal machinery for enforcement of their rights in the form of both civil and criminal remedies. Civil remedies available to owners of copyright are provided for in Chapter XII of the Copyright Act. These are in the nature of grant of injunctions, damages, declaration of authorship etc.

Important Copyright Provisions:

S. No.	Provisions on Civil Remedies in the Copyright Act, 1957
1.	Section 55- Provides for the civil remedies by way of injunction, damages, rendition of accounts etc. Further, sub-section (3) extends discretion to the Courts with respect to costs of the legal proceedings.
2.	Section 58 Provides for additional safeguards for owners of copyrights by creating a deeming fiction in their favour. According to the provision, all infringing copies of any work in which copyright subsists, and all plates used or intended to be used for production of such infringing copies, shall be deemed to be the property of the owner of the copyright.



3.	Section 66- Empowers the Court trying an offence of copyright infringement to order delivery up of all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies, or plates for the purpose of making infringing copies, to the owner of the copyright.
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India is adequately sensitive towards all forms of IP and copyright infringement, and the Copyrights Act prescribes criminal sanctions of imprisonment and fine for infringement of copyrights. Criminal remedies available to owners of copyright are provided for in Chapter XIII of the Copyright Act. Legal remedies include imprisonment and/or monetary fines depending upon the gravity of the crime, as follows:

S No.	Provision on Criminal Remedies in the Copyright Act, 1957
1.	Section 63 - Any person who knowingly infringes or abets the infringement of copyright is considered as an offender and is punishable with a minimum of six months' imprisonment which may extend to three years and a fine between fifty thousand and two lakh rupees.
2.	Section 63A - Provides for an enhanced penalty in case of second and subsequent convictions. On conviction, a subsequent offender is punishable with a minimum of one-year imprisonment which may extend to three years and a fine between one to two lakh rupees
3.	Section 63B - Any person who knowingly uses an infringing copy of a computer programme an offence which is punishable with a minimum of seven days' imprisonment which may extend to three years and a fine between fifty thousand and two lakh rupees.
4.	Section 65 - Any person who knowingly makes, or has in possession, any plate for the purpose of making infringing copies of any work in which copyright subsists shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.
	Section 65A - Any person who circumvents an effective technological measure



In addition to the offence of copyright infringement under Section 63 of the Copyright Act, the following offences/provisions under the Indian Penal Code, 1860 are also relevant for effective protection of copyright.

Sl. No.	Provisions under the Indian Penal Code, 1860 for effective protection of Copyright
1.	Section 107 - Abetment of a thing Whether Cognizable/ Bailable - Depends as per the offence of which there was a abetment - Triable by Court by which offence abetted is triable - Non – compoundable
2.	Section 120B -Punishment of Whether Cognizable/Bailable - Depends as per the offence criminal conspiracy of which there was a criminal conspiracy - Triable by Court by which abetment of the offence which is the object of conspiracy is triable - Non – compoundable.
3.	Section 174 - Non-attendance in Non-Cognizable - Bailable - Triable by any Magistrate – Non-obedience to an order from public Compoundable servant
4.	Section 177 - Furnishing False Non-Cognizable - Bailable - Triable by any Magistrate - information Non- Compoundable
5.	Section 179 - Refusing to answer Non-Cognizable - Bailable- Triable by any Court - Triable by public servant authorized to any Magistrate - Non- Compoundable question
6.	Section 204 - Destruction of Non-Cognizable - Bailable- Triable by Magistrate of the first document to prevent its class - Non-Compoundable production as evidence
7.	Section 206 - Fraudulent Non-Cognizable - Bailable- Triable by any Magistrate-Non-removal or concealment of Compoundable property to prevent its seizure as forfeited or in execution
8.	Section 217 - Public Servant Non-Cognizable - Bailable- Triable by any Magistrate-Non-disobeying direction of law with Compoundable intent to save person from punishment or property from forfeiture
9.	Section 417 - Punishment for Non-Cognizable - Bailable - Triable by any Magistrate -cheating Compoundable by the person cheated with the permission of the court
10.	Section 420 - Cheating and Cognizable - Non-bailable-Triable by Magistrate of the first dishonestly inducing delivery class - Compoundable by the person cheated with the of property permission of the court.



11.	Section 465 - Punishment Non-Cognizable - Bailable -Triable by Magistrate of the first for forgery class - Non-Compoundable
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The Copyright Amendment 2012:

The amendment introduced many changes in the Copyright Act, 1957. Some important changes are:

- Extension of copyright protection in the digital environment such as penalties for circumvention of technological protection measures and rights management information
- Liability of internet service provider and introduction of statutory licenses for cover versions and broadcasting organizations; ensuring right to receive royalties for authors, and music composers
- Exclusive economic and moral rights to performers, equal membership rights in copyright societies for authors and other right owners and exception of copyrights for physically disabled to access any works.

The Copyright Rules, 2013:

The Copyright Rules, 2013 was notified on 14 March 2013 replacing the old Copyright Rules, 1958. The Rules provide for procedure for relinquishment of Copyright; grant of compulsory licenses in the matter of work withheld from public; to publish or republish works (in certain circumstances); to produce and publish a translation of a literary or dramatic work in any language; license for benefit of disabled; grant statutory license for cover versions; grant of statutory license for broadcasting literary and musical works and sound recordings; registration of copyright societies and copyright registration.

Counterfeiting and Piracy

Some Recent Enforcement Measures taken w.r.t. Curbing Film Piracy:

- Formation of the country's first anti-piracy unit - the Telangana Intellectual Property Crime Unit (TIPCU) to curb piracy and infringement crimes (on the lines of PIPCU - the Police Intellectual Property Crime Unit, a specialized unit of the City of London Police). *A similar body, MIPCU (Maharashtra Intellectual Property Crime Unit) is also being set up.*
- Mumbai police and anti-piracy officials raided a famous market in Mumbai and a total of 62 fake Louis Vuitton bags worth ₹4, 47000 were seized, and two people arrested.
- In 2017, the Central Crime Branch as registered 73 cases in which fake products were being sold; over 80% of them garments, and 121 persons were arrested.
- The Crime Branch of the Delhi Police raided a commercial hub in Karol Bagh, and found counterfeit iPhones and all kinds of assembling material for other smartphones. The shop was seized and a huge scam unearthed.



- More recently, in early February 2018, the IPR Enforcement Unit of the Coimbatore Police booked three local cable TV channels owners for telecasting new Tamil films in Tirupur district, based on complaints from the producers. All the three cases were registered under various sections of the State's Cable TV Acts, while the channel offices were raided, sealed and many equipment seized.

Administrative Measures taken by Governments

- All IP-related functions (including copyright) are consolidated under DIPP, to reduce possible conflicts owing to multitude of jurisdictions and to ensure uniformity in decision making at national and international levels. Earlier, DIPP used to administer patents, trademarks, designs and geographical indication and also matters relating to the WTO and WIPO, while copyright used to be under another ministry/department.
- More recently, the Finance Act has merged the Copyright Board with the Intellectual Property Appellate Board (IPAB). Retired Delhi High Court judge, Justice Manmohan Singh has been appointed as the IPAB Chairperson.
- The Central Government of India has re-registered IPRS as a copyright society, under Section 33(3) of the Copyright Act, 1957 (Act). The Deputy Registrar of Copyrights issued the certificate on 28 November 2017. This re-registration of IPRS is likely to have positive impact in relation to the grant of licenses in the literary and musical works incorporated in a cinematographic films and sound recordings.
- A Copyright Enforcement Advisory Council (CEAC) was set up by the Ministry of Human Resources Development (MHRD) for advising Government on measures to improve the enforcement of the Copyright Act, and to review the progress of enforcement periodically.

Judicial Opinion

John Doe Orders against Infringing Websites

- Online copyright piracy is assuming gigantic proportions across the globe, and no country is immune to this menace. A possible and substantially effective solution to this problem lies in the civil remedy of website blocking orders or John Joe orders.
- The judicial orders, "John Doe orders" in effect as they are issued against persons, whose identity is unknown, are targeted at specific websites, so-called "pirate" or "rogue websites", as the overwhelming majority of the content hosted on such sites infringes copyright. Notices, even if ineffective, are still issued to the ISP and, if identifiable, to the owner of the domain and/or website in accordance with the statutory provisions. Plaintiffs are then able to obtain court injunctions ordering specific named websites to cease the infringement of their copyright.



- ISPs providing Internet bandwidth connectivity are directed to enforce the injunction by blocking the access of Indian subscribers to the websites subject of the order. The concerned Government Departments are directed by the court to require ISPs act as per court orders, in accordance with terms and conditions of the license agreement they have with the Department of Telecommunication for the provision of internet services.
- The recent past has seen a rising trend in Indian Film Industry to obtain “John Doe” orders prior to release for blocking access to any website which might be deemed to host links to pirated content.

Anton Piller orders

- Other than the extensive police powers under the Copyright Act, plaintiffs have various civil powers to enforce their right. Copyright owners and associations can employ civil procedure to search the defendant’s premises as seize the pirated copies.
- This is done via ‘Anton Piller’ orders obtained from civil courts which permit court-appointed officers, accompanied by representatives of the plaintiffs, to search premises and seize evidence without prior warning to the defendant.
- Similar to John Doe Orders, these orders can be obtained unilaterally (ex-parte).

In *Cartier International AG and Ors. V. Gaurav Bhatia and Ors.* : The Court observed that the defendants are guilty of offering for sale on their website www.digaaz.com and supplying massive quantities of counterfeit products bearing several registered trademarks of various luxury brands including those of the plaintiffs. The court inter alia awarded penalty of INR 1 crore (Approx. US\$ 149,667) against the defendants and held that the matter was a case of dishonesty where piracy committed by defendants was apparent on the face of the record.

The National IPR Policy, also highlighted the intrinsic linkages between commercialization, consumer choice and creativity. India has made piracy and counterfeiting criminal offences being subjected to the judiciary awarding imprisonment and fines for violators widespread, besides compensatory damages to plaintiffs. Aggrieved companies are also being encouraged to file more cases against infringers. However, the primary responsibility of enforcement remains that of right holders since IPRs are private rights.

Meanwhile, FICCI has been actively working in the copyright sphere, providing industry inputs to government and organizing interactive forums on topical issues like digital advertising, e-commerce challenges, brand protection and strengthening of Copyright industries with an objective to facilitate a constructive dialogue between relevant Copyright stakeholders, including the government. Also, FICCI’s Committee against Smuggling and Counterfeiting Activities Destroying the Economy (CASCADE) is working



with International organizations such as WIPO, WCO, ICC-BASCAP - among others, for fact finding studies and working on further tightening up IPR enforcement.

Continuous developments in the copyright regime such as facilitating e-filing of copyright applications, shifting of departments under the National IPR Policy and significant efforts taken by the judiciary to bring out a landmark change in IP jurisprudence, indicate that Copyright Law in India is fast reaching new heights.

INDIAN PATENT SYSTEM

The Indian Policy framework is driven by the public policy and needs of its people. The Constitution of India mandates that India become a Welfare State and hence all its policy decisions are driven by the same ideology. It would be erroneous to infer that Indian IP policies will be being emulated by other developing countries. Indian law and policies are made keeping in view Indian needs, priorities and international obligations and the available policy space. Its policies are framed within the framework of international treaties and agreements. In that context, each country is sovereign and may adopt or reflect or emulate as per its needs.

Indian Patent (Amendment) Act, 2005

The Patent Act of 2005 introduced some important changes on the legal regime of patent protection so as to address patent issues in technology, chemicals and pharmaceuticals sectors. FICCI reiterates that India favors strong patents, which is evidenced by the strict scrutiny and procedure of granting patents by the Indian IP Office. There has been only one instance of issue of a Compulsory License (CL), which should not warrant a discussion on unilateral trade sanctions especially as the action was TRIPS compliant. The provision of 3(d) in the Indian Patents Act and CL provisions have worried international pharmaceutical companies since the amendment to the Indian Patent Act in 2005, that it may encourage other developing and even some developed countries to introduce similar provisions in their laws. However, such bilateral pressures are now considered globally as pressure tactics on developing countries driven by a few 'big' international pharma companies.

Patentability Criteria

The TRIPS agreement and Doha declaration has provided policy space to the member countries to exclude certain subject matter from being granted patents. Thus, under Section 3 of the Patents Act, 1970, inventions based on traditional knowledge, patenting of animals, plants, plant variety and seeds etc. are not allowed.



Section 3 (d) of the Patents Act, 1970

- In order to prevent 'ever greening' (extension of the life of a patent over products that are about to expire on account of minor and incremental improvements in the invention) of patents, section 3 (d) of the Act provides that:
- A mere discovery of a new form/ use/ property/ process etc. of a known substance which does not result in enhanced efficacy is not patentable.
- Salts, esters, ethers, polymorphs, etc. of known substance are to be considered to be the same substance until these differ significantly in properties with regard to efficacy.
- Mere use of a known process, machine or apparatus is not patentable unless such known process results in a new product or employs at least one new reactant.

Similar Provisions in Other Countries

In some countries, the features of patent legislation are similar to India's Section 3(d). Countries in the Asia Pacific regions are also planning to adapt similar provision of Section 3(d) to patent those drugs only which are breakthrough inventions.

Philippines:

To toughen the criteria of patentability, Philippines have proposed to amend its law on identical lines.

Brazil:

Brazil Patent Office drafted guidelines to restrict the patentability of new forms of compounds (polymorphs) or new property or new use of a known process unless this known process resulted in new product.

Argentina:

The guidelines for patentability in Argentina for pharmaceutical and chemical inventions also exclude subject matter of polymorphs, hydrates and solvates as it is considered to be the intrinsic property of the substance so not an invention but a mere discovery. Further, in Argentina new form, new use, and new formulations are not patentable. The description of the product in accordance with the pre-existing formulation is not eligible for patent protection. The patent office of Argentina also provides definition for new form, new use, and new formulation in their Patents Act.

Japan:

Japan's patent legislation mentions the subject matter as the new use of a drug can be patented if the usage is absolutely novel over the original and its use must be clearly differentiated.



Mexico:

Mexico IP law in Article 19 (Mexican Industrial Property Law, 1991) mentions that “Juxtaposition of known inventions or mixtures of known products, or alteration of the use, form, dimensions or materials thereof, except where in reality they are so combined or merged that they cannot function separately or where their particular qualities or functions have been so modified as to produce an industrial result or use not obvious to a person skilled in the art”.

European Patent Office:

EPO had also given guidelines regarding patentability of polymorphs. For polymorphs to be considered as inventive it must produce extraordinary technical effect compared to already known.

Compulsory License (CL) and Access to Medicine

Indian Patent Office has granted a CL to Nacto Pharma Ltd. for producing the generic version of Bayer Corporation’s patented drug Nexavar and the decision was backed by public policy, i.e., the multinational innovator could not make its invention available in India at affordable price and commercial scale. It is important to note that the Indian patent office, as a mark of its careful scrutiny, has rejected two other applications on compulsory licenses, namely Saxagliptin and Dasatinib.

S.No.	Drug	Details
1.	NEXAVAR (BAYER)22 Kidney/liver cancer drug	NATCO was granted a CL on Bayer patented drug Nexavar on the ground of public policy as the German Innovator was unable to provide the lifesaving drug at affordable prices in the domestic market.
2.	DASTINIB (BMS) - immunologic and oncologic disorders	The CL application for the Bristol-Myers Squibb(BMS) drug by BDR pharmaceutical Int. Ltd. was rejected by the Indian Patent Office. Injunction was awarded by Indian court in infringement proceedings brought by BMS against Natco, Hetero Pharma and BDR pharmaceutical Int. Ltd.
3.	PYRROLE (SUGEN INC) - cancer drug	Post grant opposition was filed by M/s Cipla Ltd. India. The Patent was revoked under section 2(1)(j) of Patent.



4.	Erlotinib Hydrochloride (Pfizer, OSI) - Epidermal Growth Factor Receptor	Patent was granted disposing pre-patent opposition by Natco Ltd.
5.	Gifitinib (AstraZeneeca) - lung cancer drug	Pre-grant opposition was filed by Natco pharma Ltd. and G.M. Pharmaceuticals. AstraZeneeca's patent application was refused due to lack of novelty, non-obviousness and inventive step.
6.	Asthma Combination Product (M/s Merck Sharp & Dohme Corp.)	Patent granted and then was subsequently revoked on 10 th December, 2012 based on the post grant opposition by Cipla Ltd.
7.	DP-IV Inhibitors (M/s Merck Sharp & Dohme Corp)	MSD has filed infringement suit against Glenmark and Aprica Pharmaceuticals. MSD won the infringement suit against generic diabetes drug.
8.	Gliver (Novartis)- Cancer drug	Supreme Court of India denied the grant of patent for Gleevec on ground of failure in the test of invention and patentability under Section 2(1) (j) and (ja) and Section 3(d).
9.	Combigan (Allergan Inc.)	Patent was granted on 7 th May, 2008 and revocation application was filed by Ajanta Pharma Ltd. The patent stands revoked by IPAB.
10.	Ganfort (Allergan Inc.)	Patent was granted on 20 th October, 2013 but was later revoked under Section 64 read with section 117D of Patent Act on the basis of application filed by Ajanta Pharma.

Cases of Compulsory Licensing granted in other countries:

Compulsory Licenses have been used as a tool against anticompetitive activities and enforcement of affordable commodities globally. The benefit of CL has been used by Canada, United States and Germany in the recent past.

1. United States of America

The US Government has wide powers under several legislations to exercise Compulsory License for reasons such as government use, public purpose or anti-competitive remedies. Besides this, CL provisions exist under the Clean Energy Act, Atomic Energy Act and the Federal Insecticide, Fungicide and Rodenticide Act.



The courts have had progressive equitable doctrines to deny injunctions to patentees with valid patents that are admittedly infringed. Such actions are akin to compulsory licenses.

One such observation was made by Justice Rader in **Paice LLC Vs. Toyota Motor Corp** wherein he observed:

“District courts have considerable discretion in crafting equitable remedies, and in a limited number of cases, as here, imposition of an ongoing royalty may be appropriate. Nonetheless, calling a compulsory license an “ongoing royalty” does not make it any less a compulsory license.”

Various judgments have been pronounced by the Courts in the US in similar light. A list of instances which highlight the pro-public stance dating back to as early as the year 1934 are enumerated below:

- In May 2017, the US Court of Appeals in **Nichia Corporation Vs. Everlight Americas Inc.**, held that the patentee was not entitled to an injunction or a restraining order and stated that monetary damages could adequately compensate Nichia for Everlight’s infringement of its patent.
- In 2008, the FTC obtained an open compulsory license to patents held by Negotiated Data Solutions LLC (NData), for use in Ethernet technologies.
- In September 2006, a court granted Johnson and Johnson a compulsory license to use three of Dr. Jan Voda’s patents on guiding-catheters medical devices for performing angioplasty.
- In August 2006, a court granted Toyota a compulsory license on three Paice patents for hybrid transmissions, for a royalty of \$25 per automobile.
- In July 2006, a court granted Direct TV a compulsory license to use the Finisar patent on integrated receiver decoders (satellite set top boxes), for a royalty of \$1.60 per device.
- In June 2006, a US court granted Microsoft a compulsory license to use two patents owned by z4 Technologies that relate to Digital Rights Management systems used by Microsoft for its Windows and MS Office software programs.
- In 2005, **Ebay Inc Et Al Vs. Merckexchange LLC**, the Supreme Court of the United States did not grant an injunction in light of public interest.
- In 2005, **Johnson & Johnson Vs. Ciba** Vision refusing to enjoin the use of patented contact lens technology on the ground that “millions of innocent lens wearers will suffer real adverse consequences if sale of ACUVUE®OASYS is enjoined”.
- In 2001, ExxonMobil and the National Petrochemical & Refiners Association asked the US Federal Trade Commission (FTC) to force Unocal, another oil company, to grant licenses to patents on reformulated gasoline. The patents were necessary to be in compliance with clean air regulations in California. In 2005, the FTC obtained a zero-royalty compulsory license on a portfolio of patents, as a condition of Chevron acquiring Unocal.



- In 1934, **City of Milwaukee v. Activated Sludge Inc.**, US court refused to enjoin the City of Milwaukee from infringing a patent relating to the treatment of sewage on the ground that this would cause grave harm to the public interest, as citizens would have no other option than to dump their garbage in Lake Michigan. While denying the injunction, the court appeared to suggest that damages would suffice, effectively paving the way for a de facto Compulsory License.

2. Thailand

2006 - Issued CL to import generic and locally produce Efavirenz from India.

2007- Issued CL to the heart disease drug Plavix (Clopidogrel bisulphate) and for AIDS drug Kaletra.

3. Brazil

In 2007, Issued CL to import generic efavirenz from India rather than buy Stocrin – the brand name for patented efavirenz – from its US-based manufacturer Merck & Co.

4. Ecuador

In 2009, CLs were issued by the national Ecuadorian Institute of Intellectual Property (IEPI), and the term of application of the license for ritonavir/lopinavir. In 2012, CL issued for abacavir/lamivudine.

5. Germany

In August 2016, German Federal Patent Court (FPC) granted the pharmaceutical company Merck Sharp & Dohme / MSD (US) the right to use the European Patent of Shionogi and allowed sales of the AIDS drug Isentress in Germany.

6. Malaysia

In August 2017, Malaysia's government issued a CL in an effort to offer a less-expensive version of Gilead's hepatitis C drug and increase access.

7. Canada

On May 7, 2004, Torpham successfully appealed a rejection of a compulsory license application involving Merck patents for the manufacture and sale of Lisinopril. Torphan had sought a license to the use the patents for purposes of manufacturing and exporting to the United States.

8. Italy

On 23 February 2005, the Autorità garante della concorrenza e del mercato (the AGCM) opened an investigation into abuses of a dominant position by refusals to license rights to active pharmaceutical products by two large pharmaceutical companies -- GlaxoSmithKline and Merck & Co Inc (Cases A363 and A364). On 21 June 2005, the AGCM ordered a compulsory license for Merck patents on antibiotics that use the active ingredients Imipenem Cilastatina.



The US and other countries have constantly set precedence of using CL as a tool to curb anti-competitive activities and for providing to its citizen availability of commodities at affordable prices thereby signaling that it would not enforce exclusive rights in patents at the cost of public interest or other domestic concerns. Hence, India cannot be held deficient in terms of TRIPS Agreement, when India has issued just one CL under the Indian Patent Act, based on the rationale of public policy and access to affordable life-saving drug to the citizens; especially when there is precedence in International Patent jurisprudence to support such actions.

The United Nations Secretary-General's High-Level Panel on Access to Medicines Report

The United Nations Secretary-General Ban Ki-Moon constituted a High-Level Panel on Access to Medicines in November 2015, with the proposed objective “to review and assess proposals and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies.” In summary, the main recommendations of the report are as follows:

- WTO members must make full use of the TRIPS flexibilities as confirmed by Doha Declaration to promote access to health technologies when necessary.
- WTO members should make full use of the policy space available in Article 27 of TRIPS agreement by adopting and applying rigorous definitions of invention and patentability that are in the interests of public health of the country and its inhabitants. This includes amending laws to curtail the ever greening of patents and awarding patents only when genuine innovation has occurred.
- Multilateral organizations such as UNCTAD and WTO should strengthen the capacity of patent examiners to apply rigorous public health-sensitive standards of patentability taking into account public health needs.
- Governments should adopt and implement legislation that facilitates the issuance of compulsory licenses. The use of CL should be based on the provisions found in the Doha Declaration and the grounds for the issuance left to the discretion of the governments.
- Governments and the private sector must refrain from explicit or implicit threats, tactics or strategies that undermine the right of WTO Members to use TRIPS flexibilities.
- Governments engaged in bilateral and regional trade and investment treaties should ensure that these agreements do not include provisions that interfere with their obligations to fulfil the rights to health.



The report also elucidates the following aspects as being TRIPS Plus provisions; this reiterates India's steadfast stand regarding such provisions:

- Patents for new uses or methods of using a known product (ever greening)
- Prohibition on pre-grant patent opposition
- Test data exclusivity periods
- Patent term extensions for 'unreasonable' regulatory or marketing delays
- Patent linkage
- Limits on compulsory licensing grounds
- Limits on parallel imports
- Enhanced obligations regarding border measures, civil and administrative procedures, remedial provisions and the criminalization of certain violations beyond what is required by the TRIPS Agreement

New Patent Rules, 2016

The Government of India has published Patent (Amendment) Rules, 2016 (Rules) vide notification dated May 16, 2015 amending the Patent Rules, 2003. Some of the notable amendments are as under:

- Applications can be transferred electronically from any of the Patent Office branches to another, utilizing specialized technical manpower more efficiently.
- Refund of fees in certain cases has been permitted, as also withdrawal of application being permitted without any fees.
- Provisions have been included for condonation of delay due to war/ natural calamities.
- Timelines have been imposed to ensure speedy disposal
- The number of admissible adjournments have been limited
- Expedited examination is now permitted on certain grounds
- Hearing through video conferencing is now possible
- Special provisions have been made for start-ups whereby they will get 80% rebate in fees vis-à-vis other companies as also provision for expedited examination of their application.
- Start-Ups Intellectual Property Protection Scheme (SIPP) has been launched to encourage innovation and creativity in Start-Ups in which the Government shall bear the entire costs of the facilitators for any number of patents, trademarks or designs filed by start-ups.

CRI Guidelines for software patents

The Patent Office recalled the 2015 guidelines on examination of Computer Related Inventions (CRI) and issued a new set of guidelines that are in line with the provisions of the Patents Act. The new guidelines provide that the inventive step in any invention must be a feature that is not an excluded subject itself. For the purposes of interpreting 'technical advance' as provided under Section 2(1)(ja), the Guidelines state



'that comparison should be done with the subject matter of invention and it should be found that the advancement is not related to any of the excluded subjects'.

Government Intervention on Standard Essential Patents - FRAND terms

The Department of Industrial Policy & Promotion (DIPP) with the aim of developing a suitable policy framework to define the obligations of Essential Patent holders and their licenses issued a paper on the subject. The paper elaborated on a number of topics including the basics of Standard Essential Patents, Competition laws, Standard Setting Organization, Ongoing recent SEP cases and ends with a list of "Issues for Resolution" seeking the opinion of concerned stakeholders on those issues.

Traditional Knowledge Digital Library

- India's Traditional Knowledge Digital Library (TKDL) was established in the year 2001. It was a collaborative project between the Council of Scientific and Industrial Research (CSIR) and the Department of AYUSH. The same is a home-grown effort to ensure patent offices around the world do not grant patents for applications founded on India's wealth of age-old Traditional Knowledge.
- TKDL is a unique, proprietary database that integrates diverse knowledge systems and languages. It is based on 359 books of Indian Systems of Medicine, which are available at a cost of approx US\$ 1000, in open domain and can be sourced by any individual/organization at national/international level2.
- Access to around 3,30,044 Traditional Medicinal Formulations is available in patent compatible format in five international languages under TKDL Access Agreement to 10 Patent Offices, namely EPO, USPTO, JPO, CIPO, UKPTO, IP Australia, IPO, DPMA-German, Chile and Malaysia.

Important Judicial Pronouncements

In India, various court decisions demonstrate efforts by the Indian judiciary in protecting the rights of IP owners. The Indian judiciary has made significant progress in interpreting some complex but important statutory provisions of IP legislation, which would have far-reaching implications on the nature and extent of IP protection and enforcement in India. Some of these decisions are as follows:

Novartis Case: There was a series of cases filed by Novartis against multiple defendants for infringement on its patent on anti-diabetic drug Vildagliptin. Defendants challenged the validity of the patent under section 3(d), but different courts in India have granted injunctions in favour of Novartis and thereby protected the rights of patentee, Novartis.

Therefore, in the case of a medicine that claims to cure a disease, the test of efficacy can only be "therapeutic efficacy". Section 3(d) is fully in conformity with the TRIPS agreement. It does not lay down a fourth requirement of patentability; rather it is a second-tier requirement in cases of new uses of a known



substance covered by the section. Hence, the Indian Stance on the Section 3 (d) is sound in terms of TRIPS, Public policy and Health policy. The Novartis Judgment is well reasoned, reasonable and TRIPs permissible.

Markush claims ought to be held valid: In *Merck v Glenmark*, October 2015, the Delhi High court observed that Markush claims of the patent to be valid and on this basis the court held the defendants product to be infringing.

SEP and FRAND Licensing - *Ericsson v. CCI* – The Delhi High Court delivered a well-reasoned judgment refusing to set aside the CCI order directing investigation into Ericsson’s conduct of demanding excessive royalties etc. in respect of its SEPs that was prima facie found to constitute abuse of dominance. The court importantly clarified that CCI does not lack jurisdiction to deal with complaints on abuse of dominance in respect of patent rights as there is no irreconcilable conflict between the Patents Act and the Competition Act. It further noted that there is nothing in the law that prevents a party from challenging the validity of a patent or apply for a compulsory license under Patents Act and simultaneously instituting a CCI complaint against the patent holder alleging anti-competitive behavior.

OTHER RECENT DEVELOPMENTS

- **Expired/ Ceased Patents:** To provide access to the Patents that have ceased to be in effect under section 53 (2) of the Patents Act, 1970. The status of the patent is updated dynamically and the user has access to the complete patent document and e-register.
- **Disposal of Patent Applications:** To provide disposal reports for patents granted, refused and applications abandoned under section 21(1). The reports are available location-wise and group-wise based on a particular month of a year or between a particular set of dates.
- **Request for Examination status of issued FERs (First Examination Reports):** To display information about month and year of ‘Request for Examination’ (RQ) being examined and ‘First Examination Reports’ (FERs) being issued. This information is available location wise and group wise on real- time basis. The user can intimate the office if the RQ has not been examined yet by clicking on a button for the purpose.
- **Dynamic FER view:** To display the ‘First Examination Report (FER)’ dynamically. Reports can be accessed for particular year and month, location wise, group-wise. One can also access all the FERs issued in a particular month and for a particular group in that year.
- **Dynamic status of Patent Application (As per field of invention):** This tool provides information on ‘Working of Patents’ (under section 146) and access to the information received from patentee regarding working of patented inventions. It can be accessed location-wise and year-wise based on various parameters.



- **Stock and Flow based Dynamic Patent Utility:** A utility which existed for trademarks, has now been extended to patents also. Reports suggest that the Indian Patent Office is the first in the world to achieve such transparency. This facility allows the public to see the actual status of IP applications on a real-time basis.

DATA PROTECTION AND TRADE SECRET

Data Exclusivity

TRIPS agreement does not refer to data exclusivity, nor does it refer to any period of data protection. Article 39.3 of the TRIPS relates to the 'data protection' when data pertinent for seeking approval of the authority is shared with the marketing regulator. The text of this Article does not specifically state that member countries would need to comply with the requirement of 'data exclusivity'. It only states that the regulator will need to protect it from unfair commercial use. Therefore, no additional obligations such as 'data exclusivity' which are not present in text can be interpreted.

The obligation on the authorities is to keep the test data secret and not allow it to be accessed by third parties through unfair means. Data exclusivity includes both non-disclosure of data by the market regulator and non-reliance of the regulator on this data submitted for according marketing approvals to another applicant, which would be a TRIPS plus provision.

A large proportion of the Indian Pharmaceutical industry is producing generic drugs. Extending data exclusivity at this stage would have a considerable impact on the Indian industry especially in the short run. More importantly data exclusivity provisions will impact access to medicines which is a major social/ human cost for a country which still has a large population living below the poverty line.

Trade secret

Trade Secret, at present, is protected through the contract law in India and is part of the concept of protection against unfair competition. Section 27 of the Contract Act, provides the remedy and it restricts a person from disclosing any information which he acquires at the time of employment or through a contract. Trade Secret is an important form of intellectual property and most innovative companies rely upon this 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.

In October 2016, FICCI in partnership with Government of India had organized an India-USA workshop on Protection of Trade Secrets, in New Delhi, coinciding with the India-US Trade Policy Forum (India-US TPF). The purpose was to have a constructive discussion among stake holders to evaluate industry viewpoint on the existing legal framework of trade secrets protection in India and to deliberate on the key challenges faced by the Industry under the existing Indian legal landscape. Attended by Government officials from



India and US, industry representatives, Policy Analysts and IP Attorneys, there were deliberations on the US and global legal scenarios on trade secrets protection as well.

TRADEMARKS

The Trademarks Act, 1999 provides for registration and protection of trademarks for goods and services and for the prevention of the use of fraudulent marks. The Trade Marks Rules, 2017 were notified on 6th March, 2017, the amendments have resulted in streamlining the process and will lead to improved functioning.

Recent amendment in trademark rules

- **Dynamic Utility Facility in Trademarks:** Various tools have been introduced to make it convenient for the public to track status of various functions performed by the Trademarks Registry on real time basis.
- One can now access the examinations of trademark applications, show cause hearings, publications in the Trademark Journal, Registrations of Trademarks, disposal of applications (i.e. by way of abandonment, refusal etc.) done, notices issued (month wise or date wise), international registrations designating India etc. using the tools provided in this regard.
- **Stock and Flow based Dynamic Trademark Utility:** This tool provides applicants with a facility to view a particular trademark under different stocks and the flow of trademark applications pending at various stages in the Registry. The reports may be obtained in the following categories: new application received for registration of trademarks, awaiting examination, under examination, post examination, under show-cause hearing, published and awaiting oppositions etc.
- Process for determination of well-known mark laid out
- 74 forms that existed earlier replaced by 8 consolidated forms
- Express provision for filing applications for sound marks
- E-filing encouraged through 10% rebate in fees
- Email recognized as Mode of Service
- Expedited processing of an application right up to registration stage

Madrid Protocol

India became the Madrid Protocol's 90th member when it joined the System in July 2013. **Notably, it was in at a program organized in July 2015, jointly by FICCI, WIPO and the Government of India, in New Delhi that the 1.25 millionth International Registration Number was conferred on an Indian company (Micromax Informatics Limited) in 2015.** Till 31st December 2017, 44225 international applications seeking protection of trademarks in India have been forwarded by WIPO to the Indian Trademark Office for confirming protection of such marks in India. On the other hand, Indian Trade Marks Registry received 793 Indian applications for international registration of trademarks under the Madrid Protocol, out of which



680 applications have been certified and forwarded to the WIPO; 598 such applications have already been registered at the International Bureau of WIPO.

IP FILINGS AND TRENDS IN INDIA

Upsurge in IPR filing

- The latest data available (Government website- cipam.gov.in) shows that total 2, 24,619 applications were filed from April-October 2017.
- Patent filings, which were 25,675 during April-October 2016, saw a 4 % surge during the reporting year with 26,666 filings in April-October 2017.
- Patent filings increased by 6% (approx.) in 2016-17 vis-à-vis 2014-15.
- Trademark filings shot up by 40% (approx.) in 2016-17 compared to 2014-15; reflecting the buoyancy in the Indian economy.
- There has been a stratospheric increase in Trademarks examinations: the numbers have almost doubled in the financial year (F.Y.) 2016-17 as compared to same period in 2015-16.
- Keeping in line with past years trends, copyrights saw the largest number of filings with over 15,476 applications in April-October 2017, an increase of 77 % in the filing of Copyright applications as compared to the previous year.

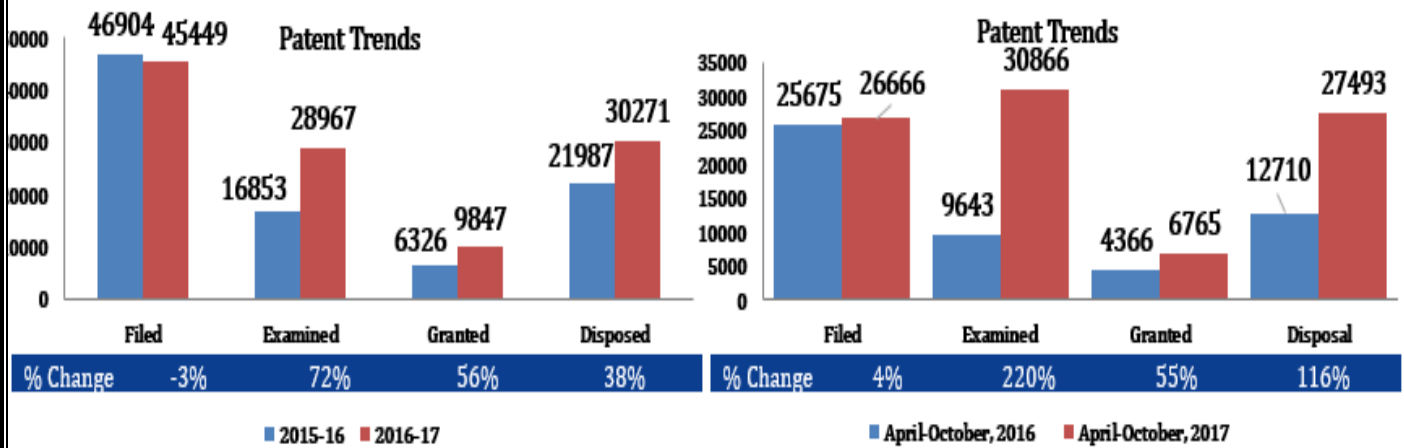
Clearing Backlog/ Reducing Pendency

- Pendency in Patent examination is targeted to be brought down from the present 5 to 7 years to less than 18 months.
- The technical manpower has been accordingly augmented.
458 technically competent Patent Examiners recruited in addition to the existing 130.
59 Trademark Examiners also recruited in addition to the 100 contractual examiners
- Already for the 1st time in the past few years, the actual number of patent applications examined exceeded the number filed in any one month.
- To promote ease of doing business, the office of CGPDTM has introduced automatic issuance of electronically generated patent certificate and trademark certificate.
- Pendency in Trademark examination has already been brought down from the erstwhile 13 months to just 1 month, much earlier than the target month of March 2017.
- The reduction in pendency is also evident from the IPR trends enumerated ahead.

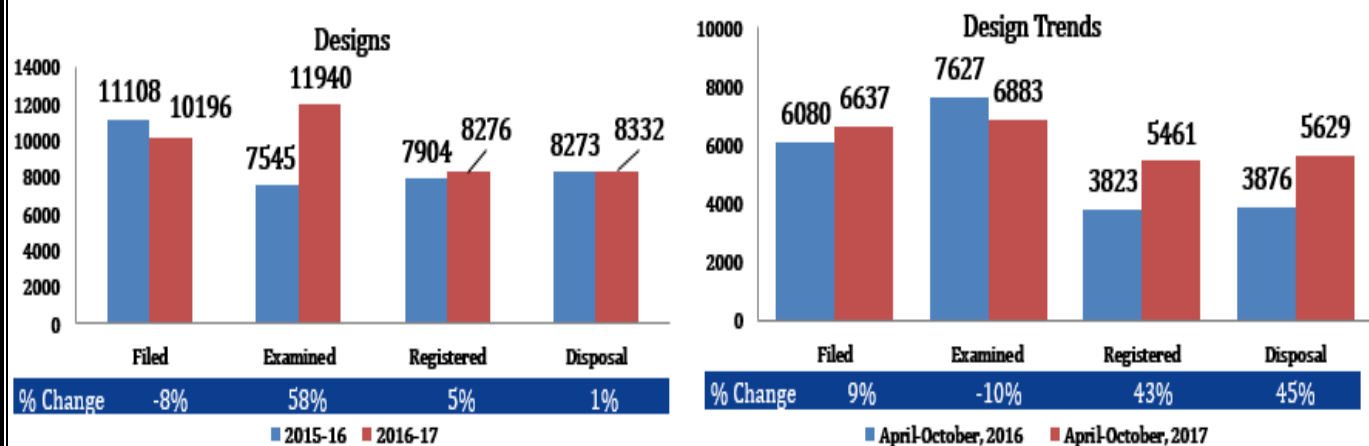


RECENT IP REGISTRATION TRENDS

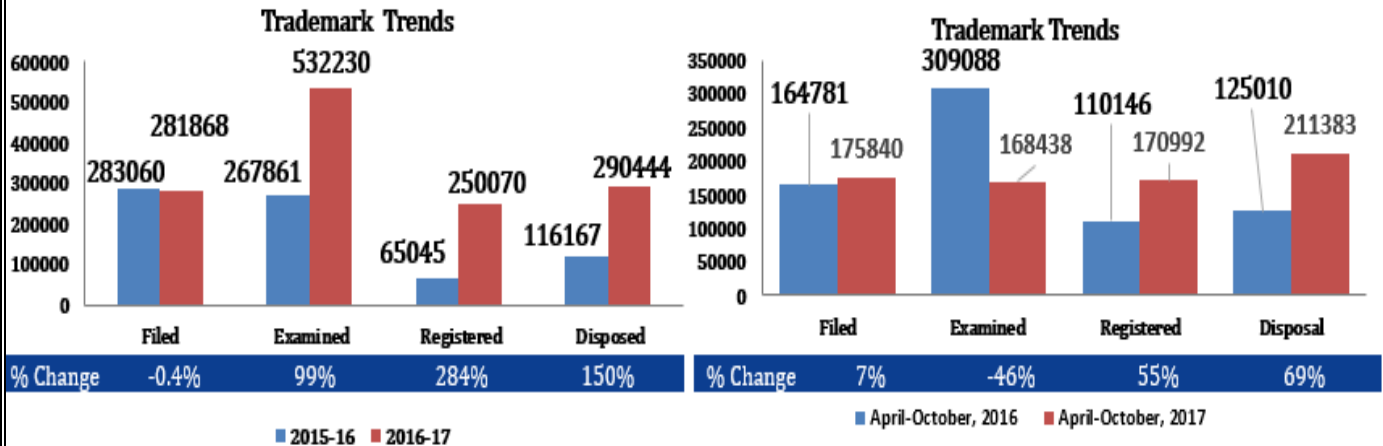
Patents



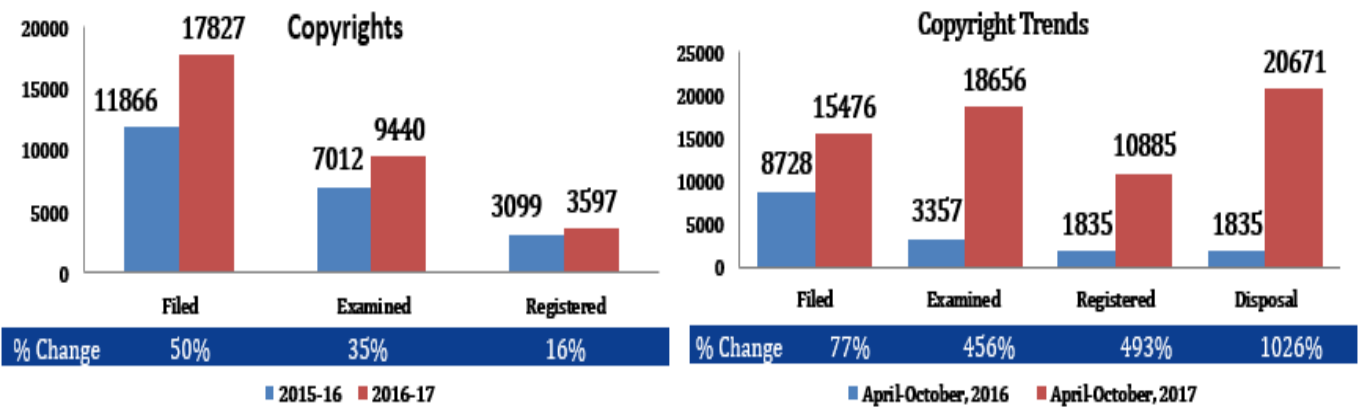
Designs



Trademarks



Copyright



Geographical indications: last five years

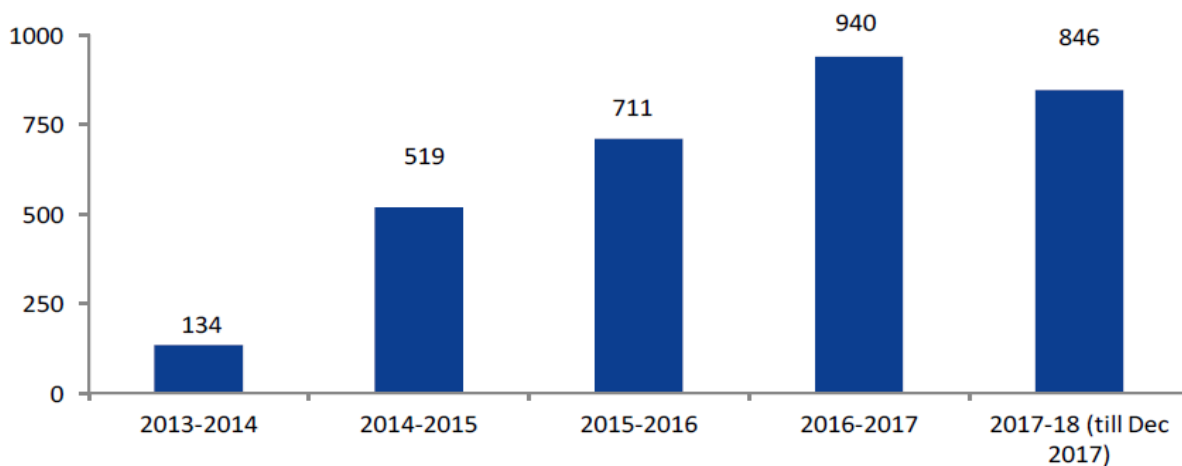
Year	2011-12	2012-13	2013-14	2014-15	2015-16
Filed	148	24	75	47	17
Examined	37	30	42	60	200
Registered	23	21	22	20	26



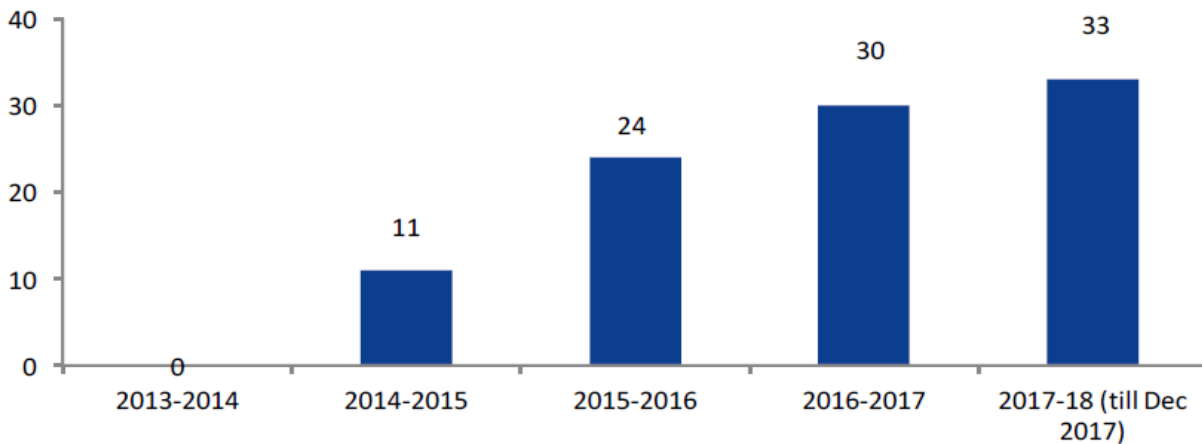
Trends in functioning of Indian patent office as ISA (International Searching Authority):

IPO started functioning as ISA from October 2013. A total of 1365 international applications were received in IPO till 31.03.2016 for establishing International Search Reports (ISR). As on 31st December 2017, the Indian Patent Office as ISA, has received 3150 international applications choosing India as ISA, requesting for international search reports and 98 applications choosing India as IPEA for international preliminary examination.

Indian Patent office (ISA) has successfully improved the timeliness of establishing International Search reports (ISR) over the years. During the year 2015-16, about 41% search reports were issued within time i.e. 3 months from search copy received by ISA, whereas during 2016-17, about 68% reports were issued in time. During 2017-18, the percentage of timeliness in issuing ISRs has increased to about 97 %.



Total applications in ISA received till 31st December 2017 =3150



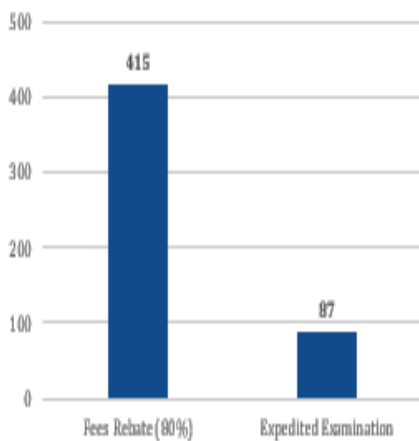
Total applications received in IPEA till 31st December 2017 = 98

Special Incentives for Startups

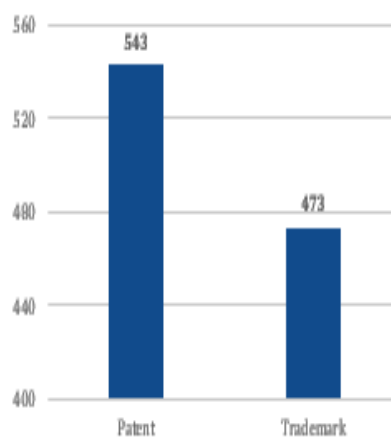
- 50% rebate in trademark fees
- 80% rebate in patent fees
- Expedited examination of patent applications

Figures as on 31st October 2017

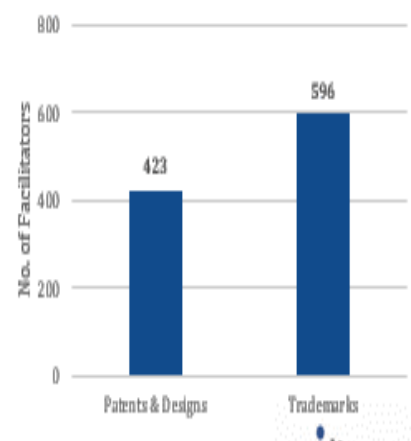
Benefits to Start Ups under Patent Rules 2016



Patent and TM applications filed by Start Ups



Facilitators empaneled under SIPP Scheme



Global Innovation Index (GII)

Innovation is widely recognized as a central driver of economic growth and development. The Global Innovation Index (GII) aims to capture the multi-dimensional facets of innovation. India's ranking in GII-2017 jumped 6 places to 60th position. Aiming to strengthen the eco-system of innovation in the country, and



thereby further improve India's ranking in GII, the Department of Industrial Policy & Promotion has decided to set up a Task Force on Innovation.

India has retained the top rank in Information and Communication Technology Service Export for more than last three years. India is the top-ranked economy in Central and Southern Asia, and shows particular strengths in tertiary education and R&D, including global R&D intensive firms, the quality of its universities and scientific publications. India also over-performs in innovation relative to its GDP. India ranks second on innovation quality amongst middle-income economies.

Performance of India in GII



RECENT INITIATIVE BY THE GOVERNMENT

Enforcement: Sensitization of Enforcement Agencies & Judiciary

- Training programs for Police officials organized in Andhra Pradesh, West Bengal, Uttar Pradesh, Madhya Pradesh, and Telangana. Two rounds of trainings each in North East Police Academy (NEPA) and three rounds at National Police Academy, Hyderabad.
- IPR Cells created under the State Police Department in Karnataka, Punjab and Jammu & Kashmir.
- An advisory has been issued by MHA to all Police Departments of states and union territories to include IPRs in their training curriculum.
- Collaborated with National Internet Exchange of India (NIXI) to pull down 17 infringing websites in a pilot project.
- Three Anti-piracy videos for children launched in collaboration with Viacom 18 Media Pvt. Ltd.



IPR Awareness and Promotion

- IPR Awareness programs have been conducted in 49 schools till now. The campaign uses presentations and creatively illustrated posters and pamphlets which cover the basics on IPRs and the need to protect IPRs.
- Similar programs for Colleges/ Universities and industry are also being taken up. One such workshop on IPR Awareness was organized in King George's Medical University, Lucknow.
- 51 Programs have been conducted by RGNIPM and 2 programs have been conducted in collaboration with WIPO, till November, 2017 by O/o CGPDTM.
- First batch of the 'Training of Trainers' was conducted in collaboration with TIFAC. These certified Trainers will in turn conduct the awareness workshops in schools, colleges and industries.

IPRs in School Syllabus

Content on IPR is being included in the NCERT curriculum of Commerce for Class XII. Also, a chapter on 'IPR, Innovation & Creative Works' is being included in NCERT's "Handbook on Entrepreneurship for Northeast Region (NER)". Work is ongoing to include IPRs in other academic streams too.

Social Media Campaign

CIPAM launched a social media campaign - "LetsTalkIP" which received an overwhelming response from the IPR fraternity and has helped in the organic growth of followers on Twitter, Facebook and You Tube.

Modernization and strengthening of IP offices

Recognizing the importance of the modernization of IPOs, the Government has implemented projects for modernization of Patent Offices, Trade Marks Registry (TMR) and Geographical Indications Registry (GIR). The focus of these projects was commissioning of four state-of-the-art offices in Delhi, Kolkata, Chennai and Mumbai, creation of additional posts in the Patent Office and TMR, providing initial level of computerization and Internet facilities, launching of electronic filing (e-filing) of patent and trade mark applications, establishment of online search facilities, establishment of Intellectual Property Training Institute (IPTI) to provide training and develop strategies for awareness creation. As a result of these initiatives, timelines for patent and trade mark processing have come down considerably and backlog of patent applications and trade mark applications was liquidated. The initiatives for creation of awareness have triggered IP activity in the country in terms of increased filing of the applications for grant of intellectual property rights. The impacts of these initiatives are mentioned below.

IP Protection and Commercialization

Among the 7 objectives of the policy, objective 5 is Commercialization of IPRs. Encouragingly, the National IPR Policy of India has delineated IP rights as marketable assets that can generate revenues provided they have the appropriate platform to do so.



Ministry of Science and Technology through the National Research Development Corporation (NRDC) has proposed the establishment of an IP Exchange in India, which will enable IP owners to list and sell/license their works, while cutting down bilateral and arbitrary negotiations between parties. This will further add transparency and simplicity to the IP buying, selling and licensing processes.

The IP Exchange would provide a speedy, efficient and cost-effective process for licensing of Intellectual Property, and theoretically, it shall provide an alternative to tedious paperwork, litigation and save both time and money for both the inventor and the corporation/purchaser. Another aspect of establishing an IP Exchange would be the benefits it would present to inventors who do not have the means to showcase their invention, as well as for research laboratories and universities. These inventors/institutions do not show up on the radar generally unless an invention is ground-breaking, and contribute to one of the largest sources of patent registrations in our country.

FICCI is also in the process of setting up an IP commercialization centre to facilitate the exchange the IP between the IP owners & IP seekers. FICCI is in discussion with DIPP to jointly undertake this project.

Encouraging creativity and innovation

- The IPR policy promotes an innovation-conducive ambience for research and development organizations, educational institutions, corporations, MSMEs, start-ups and other stakeholders.
- Government launch of scheme for facilitating Start-Ups Intellectual Property Protection (SIPP) demonstrates Indian government's commitment to fostering innovation and to make India an IP friendly nation.
- The scheme aims to promote awareness and adoption of IPRs among Start-ups and to provide Start-ups with high quality IP services and resources. The government has extended the SIPP scheme till March 2020, for a period of 3 years.
- The Government has also empanelled IP Facilitators (Patent Agents and Trademark attorneys) who will be working with start-ups in filing and prosecuting Patent applications.
- Special provisions have also been inserted in The Patents Act, 1970 for start-ups whereby they will get 80% rebate in fees vis-à-vis other companies as also expedite their application, till now 61 Start Ups have availed benefit of fee rebate.

Global trends and Indian IP ecosystem

- Ease of Doing Business 2018 rankings: Notably, India jumped 30 spots to secure a place among the top-100 countries on World Bank's Ease of Doing Business Ranking list in 2018. With this, India became the first ever country to record the highest jump in World Bank's ease of doing business ranking
- The Indian government has identified policies and practices that can further improve ease-of-doing-business in India and incentives trade. This includes addressing issues such as enhancing the protection



and enforcement of intellectual property rights, rationalizing taxes and tariffs, and harmonizing standards with international best practices.

- Foreign investment has also risen to unprecedented levels, with total FDI (foreign direct investment) flows between the US and India at \$37 billion in 2016.
- The Indian IP laws are in conformity with the International IP laws as India is a signatory to international conventions and treaties including Paris Convention for the Protection of Industrial Property, Berne Convention on Copyright and TRIPS Agreement. After India's accession to the WTO, regulations relating to all forms of IP have been amended or re-issued in recent years making India compliant with international laws. *But, it is important to note that being a developing nation, India cannot adopt exact standards as that of the developed nations.*

CONCLUSION

In India, there is now a growing recognition by all stakeholders, including the government, that intellectual property is the key to competency of business and industry, and that it is by catalyzing innovation and creativity that competitiveness can be enhanced in domestic as well as international markets. Indeed, with the National IPR Policy envisaging IP as an integral part of the country's overall development policy, the Indian IP landscape is witnessing a paradigm shift. With each passing year, the foundation of the Indian IP regime is gaining momentum and strengthening itself for an innovation and technology driven economy.

An assessment by FICCI of the Indian legal framework and practices for IP enforcement vis-à-vis "25 Best IPR Enforcement Practices" revealed that India is largely compliant with international standards provided under the TRIPS agreement, though there is considerable scope improvement in IP enforcement. Nevertheless, the recent government initiatives have set the metaphorical stage. India is ready to see how these initiatives are implemented and what their effect on its socio-economy will be. The Government also is taking necessary cognizance that all IP initiatives must go hand in hand with the corresponding statutory/administrative changes in the regime, as it will not be enough to strengthen laws without an efficient system to enforce them.

The need to sort out the IPR issues between India and the US is crucial for our bilateral trade relations to flourish further. However, the IP dialogue between the two sides need to be based on a footing that appreciates each other's point of view. There may not be ready solutions. Though India recognizes the need for a policy aligned with global standards, it cannot accept discriminatory and unfair imputations, nor act in disregard of its overriding national interests. Improving on the IPR irritants is an aspirational goal, but must be consistent with India's priorities. Deepening the engagement between India and the US will help dispel misunderstanding and secure acceptance of what we genuinely believe is both responsible and reasonable.

FICCI, on behalf of Indian industry, strongly recommends productive and continued bilateral India-US dialogue on IP issues for a better understanding of India's development priorities, public policy objectives



and the desired delicate balance of rights and obligations. A reciprocative and transparent way to address IP issues will open the way to a more meaningful Indo-US cooperation and collaboration. Meantime, in view of the wide-ranging initiatives embarked upon to reinforce its IPR laws as well as to protect patents and all forms of IP in the country, FICCI recommends that India should immediately be taken off the USTR Priority Watch List. This will be important to maintain and indeed further enhance the positive spirit of the ongoing bilateral dialogue between India and US.

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