



March 2010 issue

Innovation and research to steer India's economy

Highlights

Government nod for "Protection and Utilisation of Public Funded Intellectual Property Bill"

This Bill seeks to boost research and development in public funded research institutes by permitting the sharing of the right to intellectual property with the institutes and scientists who created them. The Bill is based on the Bayh-Dole Act, a landmark 1980 reform that allowed American scientists to own the rights to discoveries made while using government funding.

Highlights of the Bill

- The Protection and Utilisation of Public Funded Intellectual Property (PFIP) Bill, 2008 seeks to provide incentives for creating and commercialising intellectual property from public funded research.
- The Bill requires the scientist who creates an intellectual property to immediately inform the research institution. The institution shall disclose this information to the government within 60 days.
- The institution is required to inform the government of the countries in which it proposes to retain the title to the PFIP. The title in all other countries will vest in the government.
- The scientist shall be paid a minimum of 30 % of net royalties received from the PFIP.
- Failure of the scientist to intimate the institution, and of the institution to inform the government carries penalties, which include fines and recovery of the grant funds.

The Bill presents an opportunity to regulate publicly funded research and patenting. The Council of Scientific and Industrial Research follows the model at present with no law in place. Scientists and critics do feel that mandatory patenting and exclusive licensing will be counter productive. Thus, the debate continues over the Act referred to as the Innovation Bill.

- The proposed Protection and Utilization of Public Funded Intellectual Property Bill, 2008. If passed, the law would apply to all scientific innovations discovered by scientists who receive government grants. The Bill is based on the Bayh-Dole Act, that allowed American scientists to own the rights to discoveries made while using government funding.
- After a spate of M&As in 2007, companies are taking a good look at leveraging their IP assets. For instance, Tata Steel's acquisition of Corus; Essar Steel buying out Algoma Steel or Hindalco's acquisition of Novelis — all acquisitions that appear to have earned major IP credits for these companies, who are now increasingly becoming aware of its value.
- India is looking to recast provisions relating to mergers and acquisitions. The industry recommendations include, pre-merger consultation by industry with the (CCI), moving to a single-form clearing mode instead of the two sets currently required, expansion of exempted category of industries that will need CCI's ratification, and reduction of notice fee from Rs 40 lakh to Rs10 lakh.
- The Aviation industry wants the government to give the sector infrastructure status in the Budget 2010-11. A new proposal that allows foreign airlines to pick up to 25 % in Indian carriers and demand to rationalize taxes on aviation turbine fuel (ATF), which constitutes over 40% of the operating cost, compared to 20% globally.
- The patent regime is likely to see better enforcement,. The industry has more clarity on patent laws and the country will gradually move towards a better system. Over 80 per cent of India's patent applications are from foreign firms. Of the 6,000 plus applications that reached patent offices in 2008-09, only 17 per cent were Indian filings.



Companies build IP asset base through M&As

After a spate of mergers and acquisitions M&As in 2007, companies are taking a good look at leveraging their IP assets. For instance, Tata Steel's acquisition of Corus; Essar Steel buying out Algoma Steel or Hindalco's acquisition of Novelis — all acquisitions that appear to have earned major IP credits for these companies. And, are now increasingly becoming aware of its value.

It has triggered a higher IP asset base, The Essar brand is now visible around the world. In fact, post-acquisitions, the value of each Essar business has increased and is now higher than what they were at the individual level, both in terms of processes and technical skills. Similarly, with Corus in its fold, Tata Steel is also waking up to its full IP potential. The group's intellectual asset base has grown following its merger with Corus, which is a leading patent holder in the European steel business.

The company has amassed an IP portfolio comprising some 850 patents and copyrights with an equal number of applications in a bid to channelise its knowledge base into a potentially lucrative revenue stream. Armed with its IP base, Tata Steel plans to commercialise its IP assets and are scouting for opportunities globally to commercialise some of their patents. There's huge revenue potential in this. In particular, a number of companies have shown interest in their training packages.

Novelis buy also gave Hindalco the right to use world-class technology for making aluminium beverage cans. That apart, Novelis also happens to be a world leader in recycling used beverage cans, a technology that can prove valuable to Hindalco.

Cross-fertilisation of ideas between Corus and Tata Steel also saw its IP kitty extend to some 250 pending trademark applications and over 1,500 registered trademarks in FY09. This includes premium products like 'Shaktee', galvanized corrugated steel; and 'MagiZinc', a newly-developed corrosion resistant steel coated with aluminium, magnesium and zinc and 'Colourcoat' range of pre-finished steel products. Compared with this, Tata Steel's total IP portfolio consisted of 32 trademarks in FY2000.

Thus the increasing awareness of IPR and it's portfolio in various companies bodes well for the Indian companies and it is a trend that is only going to grow in leaps and bounds as this awareness spreads.

Govt considering liberalizing M&A norms

India is looking to recast provisions relating to mergers and acquisitions (M&As) that require ratification by the Competition Commission of India (CCI).

The industry recommendations include, pre-merger consultation by industry with the (CCI), moving to a single-form clearing mode instead of the two sets currently required, expansion of exempted category of industries that will need CCI's ratification, and reduction of notice fee from Rs40 lakh to Rs10 lakh.

The CCI recommendations also ask that no penalty be imposed on firms that do not inform CCI of their intention to merge and where CCI investigations show that it did not violate the Competition Act.

Industry has also asked for an expansion in the exempt categories of M&As. These include deals where acquisitions of less than 25% of shares or voting rights in unlisted companies and less than 15% in case of listed companies. The current regulation has no such bifurcation. Industry has also suggested that acquisition of dead or dormant companies, of intangibles such as intellectual property rights, and companies primarily into exports, be exempt from CCI ratification. It further suggested that companies in the exempt category be allowed to consult CCI with a fee of Rs25,000 if there might be a problem on the competition issues at the time of the merger and later.





FDI in Aviation industry to be liberalized

The Centre for Asia – Pacific Aviation has predicted that India's domestic traffic will grow at 25 – 30% a year until 2010 and international traffic by 15%, taking the overall market to more than 100 million passengers by the end of the decade. The aviation industry wants the government to give the sector infrastructure status in the Budget 2010-11. Meanwhile, the Federation of Indian Airlines (FIA) had recently met the finance ministry to reiterate its demand to rationalize taxes on aviation turbine fuel (ATF), which constitutes over 40% of the operating cost, compared to 20% globally. The industry is affected by two issues mainly -

FDI liberalization: The Aviation Minister appears to be in no hurry to push for an early green signal for removing the bar on foreign airlines buying stakes in Indian carriers. This Budget could clear this matter with a new proposal that allows foreign airlines to pick up to 25 % in Indian carriers. As of now, foreign airlines are not allowed, but clearly, FDI being allowed itself is a step in the right direction. On the other hand, the FDI regime for cargo airlines.

Aviation Turbine Fuel: Airlines are bleeding on ATF, with taxes in the range of 30-40 %. This brings pressure on margins. With this backdrop, the industry has been long demanding 'declared goods' status, which would help reduce the applicable VAT to 4 % or lower.

Clearly, the importance of civil aviation is being recognized. It is also recognized that good airports, a choice of airlines and good ground handling facilities are integral parts of infrastructure and are needed if the growth rate is to be sustained. With the Commonwealth Games nearing, airline traffic is expected to grow substantially and the government needs to propel the sector by liberalizing the FDI norms.

Patent regime set for changes

India's product patent regime for drugs, which is now five years old, is set to enter a phase in which there will be a distinct change in the kind of patents sought as well as patent challenges.

Last five years have seen our patent examiners scrutinising the applications that were submitted from 1995 onwards. A good number of these were challenged as they did not merit patent protection. The backlog is almost over. In last five years, there have been over 470 pre-grant oppositions and 200 post-grant oppositions. The second phase of India's patent regime will be marked by less pre-grant oppositions and more post-grant oppositions. There has, been an improvement in the quality of patent examination due to the specialised systems that are in place now,. We have specialised groups looking into each category of patent applications today. The scrutiny is rigorous and may even result in the number of patent grants slowing during the current year. Yet, credibility and transparency of the decisions are on the rise.

The next phase of the patent regime is also likely to see better enforcement. The industry has more clarity on patent laws and the country will gradually move towards a better system.

Over 80 per cent of India's patent applications are from foreign firms. Of the 6,000 plus applications that reached patent offices in 2008-09, only 17 per cent were Indian filings.

Disclaimer

The contents of this newsletter should not be construed as legal opinion. This newsletter is prepared by summarizing news items appearing in various news papers. The information contained herein is provided by Singhania & Co. and is intended to provide general information on a particular subject or subjects. It is not an exhaustive treatment of such subject(s). The information in this newsletter is not intended to constitute legal or other professional advice or services. The information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your business, you should consult a qualified professional adviser. Singhania & Co. shall not be responsible for any loss whatsoever sustained by any person who relies on the information contained herein.