

Creative India: Innovative India

India gearing towards a progressive Intellectual Property Rights Regime



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Krishan Singhania
Founder and Managing Partner



Srishti Singhania
Senior Associate



Vasundhara Gupta
Associate

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Introduction

India being a developing country has been experiencing rapid economic development, driven by a combination of 'domestic innovation' and 'foreign direct investment.' In order to continue on this growth trajectory, it is essential to constantly update and innovate in technology facilitated by a robust framework for protecting intellectual property rights. For stimulating innovation and spurring economic growth, India has taken cognizance of the IP rights of these innovators and is taking steps to provide a regulatory system, which can provide them a safe market to float their ideas and help in the overall development of the economy.

Consequently, the Indian legal system has undergone several changes to accommodate the needs of these creators/ innovators and ensure that their rights are protected. The Indian IP office has digitalised the registration and prosecution processes and certain High Courts have set up a specialised Intellectual Property Division to ensure that the intellectual property of various innovators/ creators are protected in an effective manner and the market remains competitive.

India has also formulated the National Intellectual Property Rights (IPR) policy in 2016. The main object of this policy is "Creative India; Innovative India" It helps in setting up an institutional mechanism for reviewing, assessing and implementing all forms of IP. Through this policy, efforts are being made to modernize and strengthen the existing IPR laws with a view to balance the interest of the IP owners and the interests of the public, strengthen the system for combating IPR infringements and to create awareness on the subject of IPR at large.

Over the years, India has made a significant progress in developing an IPR regime, which is proving to be successful in protecting the rights of the innovators and creators. We aim at celebrating these achievements of India in the week of World IP Day 2023. Through this piece, we shall throw light upon various developments and efforts made by the Indian government and legal system to align India's IP regime with international standards.

Developments in the field of IPR over the years

Introduction of the National IPR Policy

responsible for managing various portfolios of IPR, including Patents, Designs, Trademarks, Copyright, Geographical Indications, and Semiconductor Integrated Circuits Layout Design.

Under the DPIIT, the Cell for IPR Promotion and Management has been established to implement India's National IPR Policy. The Cell's primary focus has been on streamlining the IPR process, increasing awareness about IP, promoting commercialisation, and enhancing enforcement of IPR laws.

Furthermore, it is pertinent to note that the Parliamentary Standing Committee on Commerce of Rajya Sabha has been authorised to review the Intellectual Property Rights Regime in India and assess the implementation of the National IPR policy at regular intervals. Through their 161st Report in 2021, they have shed light on the economic impact on a country's GDP due to IPR regime. It highlights the benefits of strengthening IPR regime in a developing country, namely:

- 1) 1 % percent increase in trademark prosecution results in a 3.8% increase in the Foreign Direct Investment (FDI),
- 2) an improvement in patent prosecution by 1% results in the FDI increase by 2.8% and
- 3) an improvement in the copyright protection by 1% results in FDI increase by 6.8%.

Based on this analysis the Report helps in formulating the country's IPR regime in such a way that it directly adds to the country's GDP and helps the markets develop. This initiative has been effective in improving India's ranking by 41 points in the Global Innovation Index from 81st position in 2015-16 to 40th position in 2021-2022.

Digitalising IP Registration and Prosecution

The Indian government has taken several steps to make the IP registration process more efficient. These measures include the modernization of IP offices, increasing workforce, using IT and technology to facilitate e-filing of applications, delivering certificates of grant and registration of patents and trademarks in a digital format, reducing the number of trademark forms, using video conferencing for hearing of IP applications, and creating expedited examination procedures.

On the recommendations given by the Parliamentary Standing Committee in their 161st Report, the Controller General of Patents, Designs and Trademark (CGPDTM) took active steps to streamline the IPR filing system in India, which has led to a spur in the inflow of the FDI. As a result, there has been a significant increase in the patent filings from 42763 in 2014-15 to 58502 in 2020-2021 and an inflow of FDI from USD 45,148 in 2014-15 to USD 81,973 in 2020-21.

Furthermore, the Committee's recommendation on curtailing the time period of filing opposition from 4 months to 2 months is being included in the draft of the Trademark Amendment Bill 2022. Another important change, which is being examined by the CGPDTM, is a platform in e-TMR system where a Police Officer may file an online request under Section 115 (4) of the Trade Marks act, 1999, and the Trademark Registrar will give an opinion within 24 hours with regard to search and seizure of the infringing goods. This will give power to the police officer to search and seize without warrant the infringing goods based on the opinion of the Trademark Registrar in an expedited manner.

SIPP (Start-Ups Intellectual Property Protection) Scheme

The Indian Government has launched the Start-Ups Intellectual Property Protection (SIPP) Scheme to provide legal and financial support to start-ups for filing and prosecution of their patents, trademarks and designs. The SIPP Scheme is administered by DPIIT and is implemented by a network of facilitators. The SIPP Scheme was initially launched for five years until 2021, but was extended until 31 March 2023. The government has empanelled patent attorneys and trademark agents as IP facilitators under the SIPP Scheme. Technology Business Incubators (TBIs), Centers of Excellence (CoEs), start-up incubators or accelerators, and government-funded academic institutions, may also register themselves as facilitators under the SIPP Scheme.

Under the Scheme, the start-ups were required to pay 20% of the fees for filing and prosecuting trademarks, patents and designs to the IP facilitator, and the remaining 80% fee was subsidised by the government. The Scheme also provided a fast-track examination of patent applications of start-ups and 80% rebate in filing of patents by them.

This Scheme has been effective in encouraging start-ups to protect their IP. There has been an increase Patent applications filed by Start-ups from 179 in 2016-17 to 1500 in 2021-22. Similarly, Trade Mark applications filed by Start-ups have increased from 4 in 2016-17 to 8649 in 2021-22.

Introduction of IPR toolkits for proper enforcement

In addition, DPIIT had launched an IPR enforcement toolkit in association with the Federation of Indian Chambers of Commerce and Industry to help the police in handling IP crimes, particularly counterfeiting and piracy. The Maharashtra Cyber Digital Crime Unit, established in August 2017, is a public-private partnership that facilitates industry working directly with state police to combat digital piracy. It serves as a model for other Indian states to emulate and replicate.

DPIIT has also created a Trade secret toolkit which has been made in order to guide Indian businesses especially MSMEs and start-ups regarding protection of their trade secrets.

Ministry of Education's Innovation Cell

The Ministry of Education's Innovation Cell have also taken steps to foster innovation and promote IP literacy and awareness in classrooms across the country. By encouraging students to develop innovative ideas and teaching them about the importance of protecting their IP. The Innovation Cell is helping create a new generation of innovators and entrepreneurs.

Another important development is the dissolution of the Intellectual Property Appellate Board in April 2021. Although the Board was established with a view to provide structural autonomy in IP matters, it had started collapsing due to high pendency of cases, overlapping litigation, the insignificant technical expertise and infrastructural constraints. In order to mitigate this situation, the jurisdiction of IPAB has been transferred to the High Courts. The Delhi and Madras High Court have established an Intellectual Property Rights Division (IPD) and the Delhi High Court has also enacted a comprehensive set of Intellectual Property Division Rules 2022 for the smooth adjudication of IP matters.

According to these Rules, the Delhi High Court's Intellectual Property Division has been vested with powers to entertain all matters pertaining to intellectual property rights, including patents, copyrights, trademarks, geographical indications, plant varieties, designs, semiconductor integrated circuit layout-designs, traditional knowledge, trade secrets, confidential information, privacy and publicity rights, domain name disputes, and all rights under common law associated with such intellectual property rights. Additionally, matters pertaining to the Information Technology Act, 2000 dealing with intermediaries, online marketplaces, and e-commerce platforms will also be within the ambit of intellectual property rights.

The establishment of the IPD has helped in expediting the resolution of IP disputes and also helped in clearing the backlog of matters that were pending before the IPAB.

Conclusion

In conclusion, India has made a significant progress in strengthening its IPR regime over the past few years. However, there are certain recommendations given by the Standing Committee in their 161st Report, which can create a more conducive environment and IPR framework for promoting innovation.

Some of these notable recommendations given by the Standing Committee include

- 1.) Endorsing IP financing i.e. using a company's IP assets as an alternative source for raising capital and gaining financial benefits is an emerging business option
- 2.) establishment of IPR Facilitation Centres and training programmes/workshops in the remote regions of the country with a view to enhancing the awareness of MSMEs, small businessmen and traders on the subject of IPR and its protection
- 3.) Allocating specific funds for the Research and Development sector of the country which in turn increases innovation and increases the number of IP protection filings.

With the establishment of the Cell for IPR Promotion and Management and the introduction of various measures to streamline the IPR process, increased awareness, and enhanced enforcement, the Indian government has made rigorous efforts in rebuilding the IPR landscape of the country. The steps taken by the government to combat digital piracy and promote IP literacy are further proof of its commitment to creating a robust IPR regime. We are hopeful that these improvements in Indian IPR Regime will increase FDI in the country manifold.

Footnotes

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Authors – Mr. Krrishan Singhania, Founder and Managing Partner; Ms. Srishti Singhania, Senior Associate; Ms. Vasundhara Gupta, Associate

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