

India & Intellectual Property

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India & IP

- India's tryst with IP is a combination of two major factors:
 - External expectations
 - Internal demands

This is a CHALLENGE.

India has tried to strike a BALANCE, over the years.

Trade marks

India has walked the extra mile.....



- Trans border reputation
- “Well-known marks”
- Well-known remedies (Anton-Piller, Mareva etc.,)
- Shape, colour marks registrable
- Foreign use recognised as PRIOR USE.
- On-line data available
- On-line filing & Madrid Protocol



- Statute is very modern
- Very high level of protection
- Broadcasting, internet webcasting, publishing, movie piracy, software etc., - strides have been made.
- Legislature & Judicial decisions are proactive
- Better implementation needs greater cooperation and training. It is a continuous process.

Designs

- Online filings
- Decisions are very progressive
- Passing Off in designs recognised
- Enforcement is on international lines

Patents



- Aspirational
- India wishes to promote innovation
- Climate is being created
- Several schemes by the Government
- Start-Up India, Digital India – not just names – but an Aspiration

Patents



- Steps taken:
- IP Policy
- Expedited examination of Patents
- IPO being beefed up
- Waivers for start-ups
- IPAB – Delhi office estd in record time period (March 2014 to Sept 2015)

Patents



- Pro-patentee orders both in Pharma & SEPs
- Commercial Courts Act, 2015
- Court orders – both by SC and HCs – expedited trials

IP Policy - Recommendations



- September 2014 – Think tank constituted
- First draft – December 2014
- Comments – More than 500
- Consultations – More than 60 delegations
- Final draft – April 2015
- Circulated to Ministries
- Government has to take further steps to finalise and release the Policy – Media reports – final stages

IP Policy - Recommendations



- To create one Nodal Ministry to oversee IP
- To give autonomy to the IPO
- IP awareness on a broad basis including in schools, colleges & initiatives recommended
- IP audits to be carried out
- Public funding to be linked to creation of IP
- Enactment of laws for trade secrets and utility models
- Effective systems for Data protection – not extending to Data exclusivity

IP Policy - Recommendations



- Enhance international and bilateral cooperation
- Establish the IP Promotion and Development Council and Units under it – a platform for IP owners and Users – for commercialisation of IP
- Valuation of IP rights and monetisation thereof
- Multi-agency task force for strengthening enforcement and intelligence-sharing

IP Policy - Recommendations



- Create a IP – friendly environment – Government has tied up with WIPO
- Setting regional benches of IPAB - (High Court order dated 4th March 2015)
- Strengthen human capital in IP – various skill sets required. Training of patent agents etc.,

Criticisms of India



- Another round of consultation before announcing IP Policy
- Section 3(d)
- Data exclusivity
- Enforcement against Counterfeiting and Internet piracy
- Undisclosed test data

Criticisms of India



- History of using compulsory licensing for commercial and non-emergency situations
- Poor application and enforcement of civil remedies and criminal penalties
- Patentability requirements outside international standards
- Not a contracting party to any of the major international IP treaties

COOPERATION IS KEY



- Several recommendations of the Policy appear to have been implemented
 - Courses in colleges
 - Fee waivers
 - Strengthening of IPO
 - Commercial courts
 - Tying up with WIPO

DIRECTION IS RIGHT

- The human capital exists
- Government has the will
- Consultative process is time consuming
- All the initiatives point in the right direction
- Aberrations – not to be magnified



DIRECTION IS RIGHT



- No CL granted
- Most orders in patent cases are pro-patentee
- High disposals in IP cases
- Patent litigations have gone up at least 20 times
- Shows the trust in the system



- Greater cooperation and partnerships are key to create the right environment
- Policies are being put in place
- Repeated criticism by ignoring the positives results in mistrust
- Message:
 - Notice the positives
 - Focus on the `doables`
 - Communicate on the negatives.

TRUSTING PARTNER OR ANGRY WIFE?



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