



Intellectual Property Rights Regime in India: Government Policies and Practices

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Trade Related Aspects of Intellectual Property Rights (TRIPS) and Doha Declaration



Bedrock of Indian IP Regime

Effective from 1st January 1995

Most comprehensive multilateral agreement on IP to date

Minimum standards agreement: Members may provide a more extensive protection of IP, if they wish to do so

Members free to determine appropriate methods of implementing within the ambit of their own legal system

Doha Declaration on Public Health to be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all

Judicial and Administrative Setup



Judicial

- Commercial Courts
- Intellectual Property Appellate Board
- Copyright Board
- ADR

Centre and State



- IP Cells
- Patent Facilitation Centres



Implementing Authorities

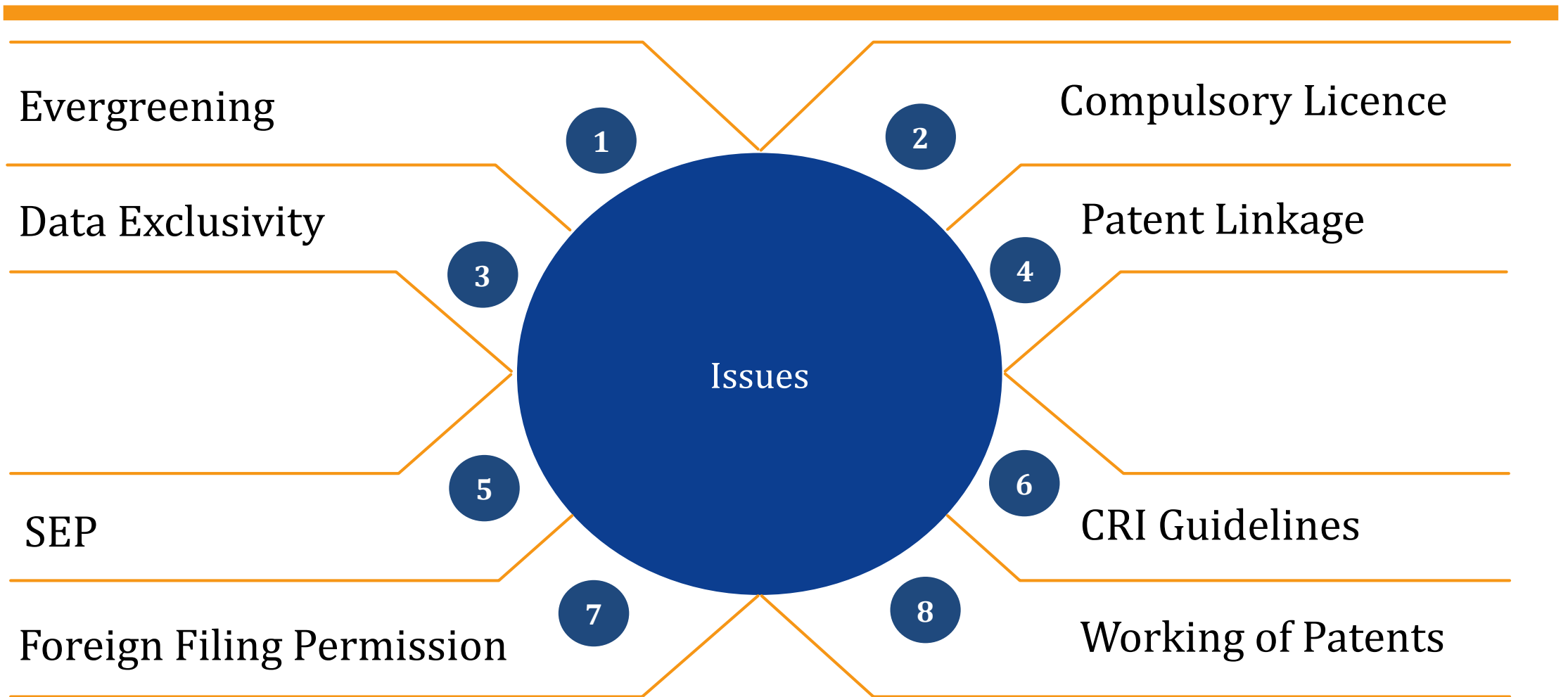
- National Biodiversity Authority
- Controller General of Patents, Designs & Trade Marks
- Protection of Plant Varieties and Farmers' Rights Authority

Enforcement



- Police
- Customs

Patents - Issues





Evergreening

Section 3(d) of the Patents Act- to prevent 'evergreening' of patents (extension of life of a patent over products that are about to expire on account of minor and incremental improvements in the invention, or a new form of known substance)

Salts, esters, ethers, polymorphs, etc. of known substance are same substance until these differ significantly in properties w.r.t. efficacy

Novartis vs. Union of India- The Apex Court went on to state that efficacy in case of a medicine can only refer to 'Therapeutic Efficacy'

Similar provisions in other jurisdictions- **Philippines, Argentina, Mexico, Japan, European Patent Office**



Compulsory Licenses

Compliant with Article 31 of the TRIPS agreement and Article 15 of the Paris Convention

Section 84 empowers the Controller of Patents to grant a CL

Section 92 provides for CL on notifications by Central Govt

Section 92A provides for export of patented pharmaceutical products

Section 100- Power of the Central Government to use inventions for purposes of Government

Only 1 compulsory license has been granted in India – Nexavar

Compulsory Licenses issued in other jurisdictions, namely: **USA, Germany, Canada, Italy, Indonesia**



Working of a Patent

Section 146 of the Patents Act provides that every patentee and every licensee shall furnish information periodically whether such patented invention has been commercially worked or not

Intent to ensure that inventions patented are commercially worked in India to the fullest extent within a practicable reasonable time

Article 27 (1) of TRIPS states- patents shall be available and patent rights enjoyable without any discrimination as to the place of invention, the field of technology and whether products are imported or locally produced

Details of working to be given on Form 27 in respect of every calendar year within three months of the end of each year



Data Exclusivity

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 – different from data exclusivity

A TRIPS plus provision

TRIPS - non-disclosures of data by the market regulator

Data Exclusivity - non-reliance by the regulator on this data submitted for according marketing approvals to another applicant

Data exclusivity provisions will impact access to medicines



Patent Linkage

TRIPS-Plus measure; undesirable – will delay introduction of generics

No provision to link patent rights to marketing approvals for product

The Drugs and Cosmetics Act does not require the Drug Controller General of India (DGCI) to see whether a patent exists on a drug for which an application seeking marketing approval has been received, nor is he empowered to do so

Patent rights are private rights - enforcement by interested parties through civil courts

A private right cannot be enforced suo-moto by a public authority



Standard Essential Patents (SEP)

A patent is essential to a standard, if use of the standard requires infringement of that patent

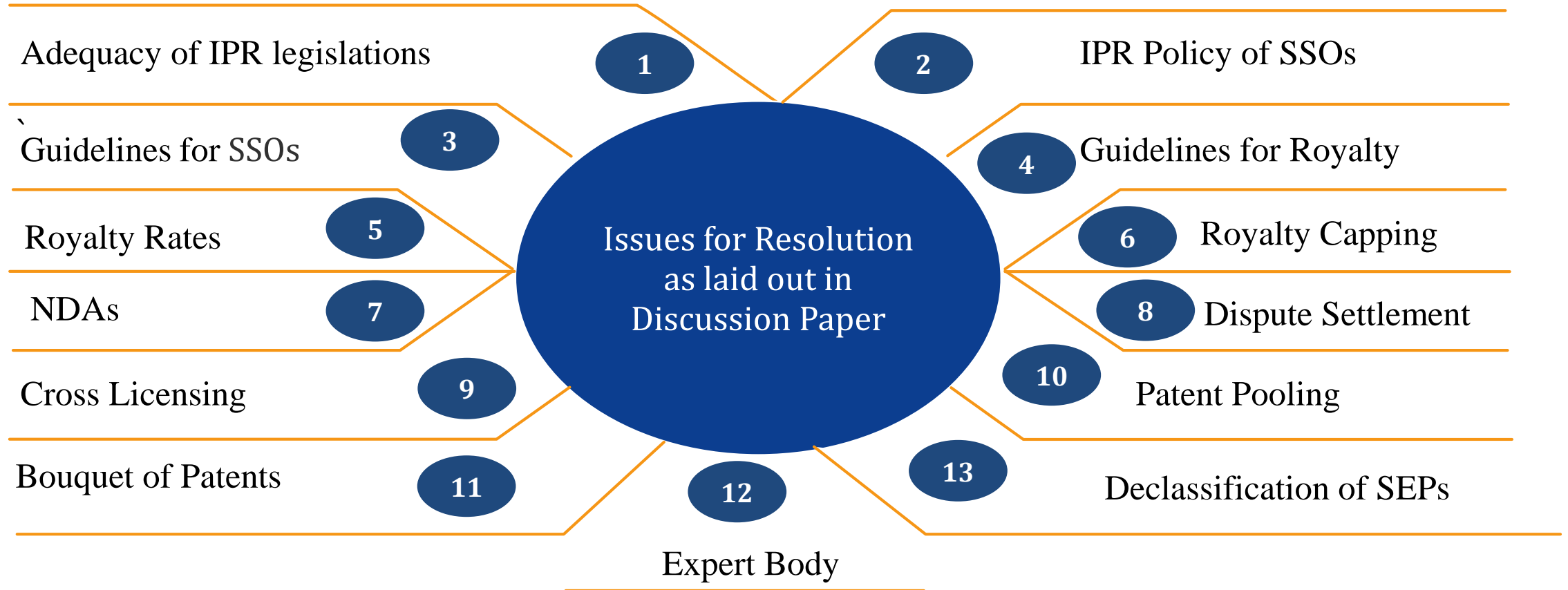
Relevant standards set out by Standard Setting Organizations (SSOs)

To promote application of the standard and to avoid any anti-competition concerns, such licenses must be made available under Fair, Reasonable and Non-Discriminatory (FRAND) terms

DIPP had issued a Discussion paper as a step towards creating awareness and resolving such issues

Comments were received from 69 domestic and international stakeholders, including the US Government. The said paper is under consideration

Issues for Resolution in SEPs





Key Questions

How should issue of SEPs be addressed in IPR legislation?

Should royalty be based on Smallest Saleable Patent Practicing Component (SSPPC)?

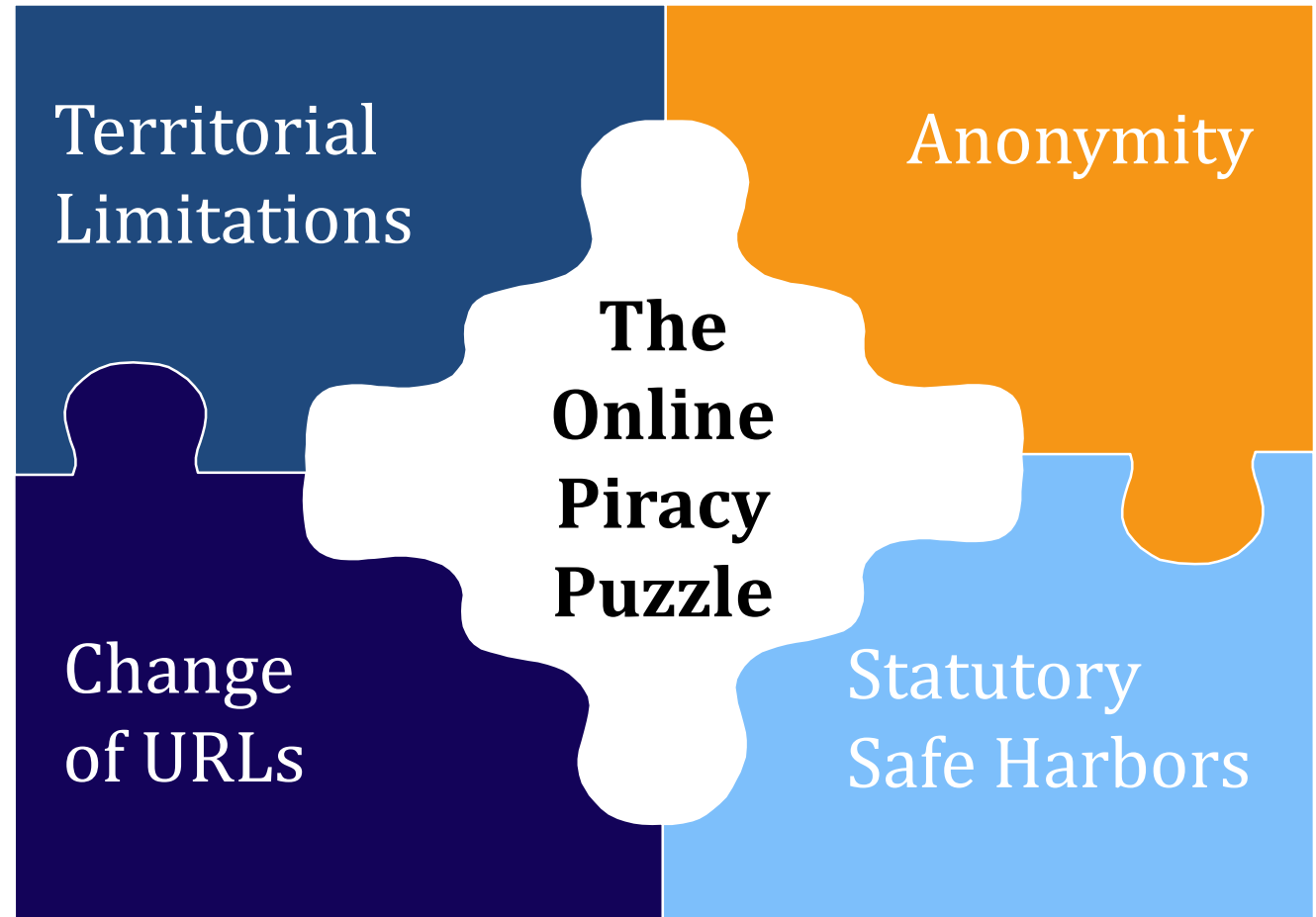
Appropriate mode and remedy for settlement of disputes in matters related to SEPs, especially while deciding FRAND terms?

Whether Injunctions are a suitable remedy in cases pertaining to SEPs and their availability on FRAND terms?

Steps to make the practice of Cross-Licensing and patent pooling transparent so that royalty rates are fair & reasonable?

Online Copyright Piracy: Enforcement Issues

There are a number of intricacies involved in taking enforcement action against online copyright piracy

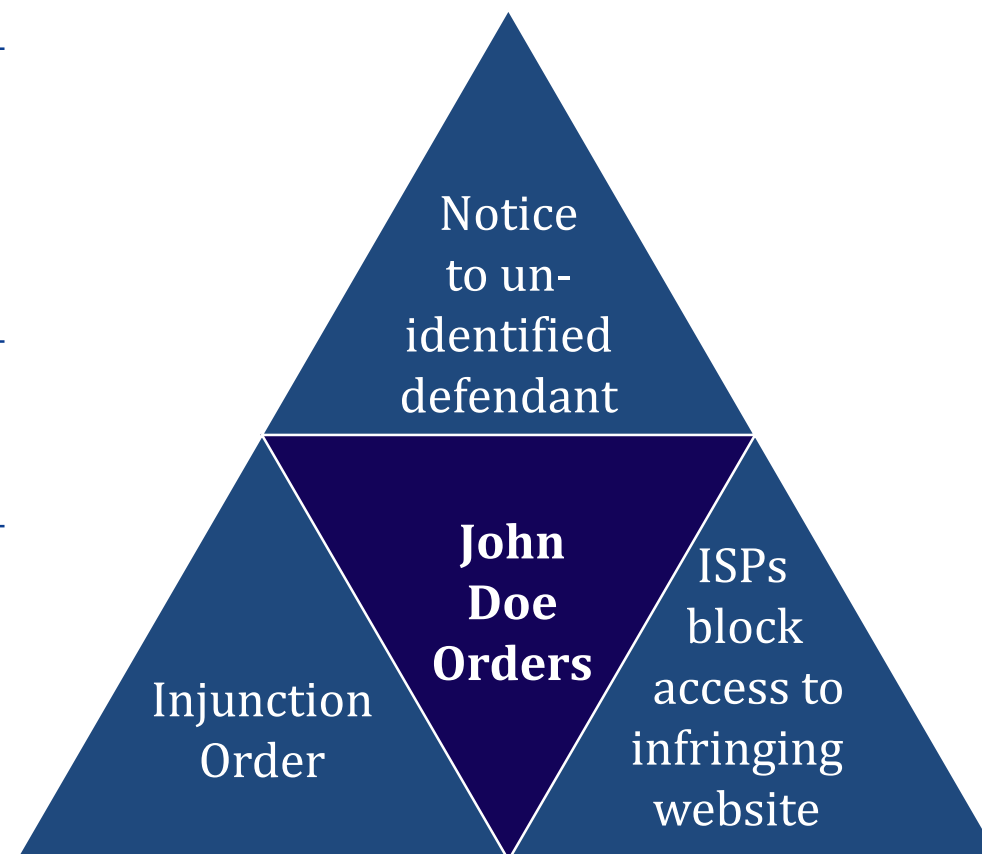


John Doe Orders

John Doe orders emerged as an effective judicial remedy for protecting copyrighted material online

Restraining order against unknown defendants

Orders prohibit all known and unknown defendants from communicating, making available, displaying, release, uploading and downloading copyrighted work



Geographical Indications & Traditional Knowledge



Geographical Indications

- India is home to some of the most vibrant and diverse Geographical Indications in the world with
- *sui generis* Indian legislation to help artisans realize true economic value of their labour

282

GIs registered in India

3,30,044 *medicinal formulations*



Traditional Knowledge Digital Library (TKDL)

- Pioneering initiative to prevent misappropriation of the country's traditional medicinal knowledge
- Enhanced the quality of search and examination of prior-art



National Intellectual Property Rights Policy

A vision document, adopted on May 12, 2016



One Document - Guide for times to come

Need felt to undertake an in-depth study on the IPR scenario in the country: Think tank constituted

Draft IPR Policy prepared after stakeholder consultations

IPR Policy finalized based on inputs from various departments, Think Tank and internal discussions – 300 stakeholders, incl. 5 foreign Governments

Vision document: single document that encompasses and brings to a single platform all IPRs

Lays down 170 actionable points, with nodal Ministry/ Deptt for each

Sets in place an institutional mechanism for implementation, monitoring and review

Vision and Mission

VISION STATEMENT

- An India where creativity and innovation are stimulated by intellectual property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where **knowledge is the main driver of development**, and **knowledge owned is transformed into knowledge shared**.

MISSION STATEMENT

Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- focus on enhancing **access to healthcare, food security and environmental protection**, among other sectors of vital social, economic and technological importance

Clarion Call : “Creative India; Innovative India: रचनात्मक भारत; अभिनव भारत”

Seven Objectives

1

IPR Awareness: Outreach and Promotion

2

Generation of IPRs

3

Legal and Legislative Framework

4

Administration and Management

5

Commercialization of IPR

6

Enforcement and Adjudication

7

Human Capital Development

Cell for IPR Promotion & Management



Created as a professional body to effectively implement the National IPR Policy 2016



Conducted Awareness Programs in 18 states. CIPAM to conduct targeted IPR awareness programs across the country – schools, colleges, industry



Undertaking sensitization of Police and Customs; Toolkit for Enforcement prepared



Reaching out to strengthen IPR courses in Police and Judicial Academies



IPR Dashboard

Home

Contact Us

Welcome iprdipp

Overall Status

Overall Action Point Status

Progress Reports

Planned Vs Actual Progress - By Milestones Weightage

Department Status Report

Delay Report

Update Task-Details

Update Task-Details

170 actionable points assigned to 22 Ministries/ Departments for creation of achievable milestones

Department of Industrial Policy & Promotion



INTELLECTUAL PROPERTY RIGHTS (IPR)

S.NO.	Objective	Action Point No	Action Point/Milestones	Planned Start (DD/MM/YYYY)	Planned Finish (DD/MM/YYYY)	Actual Start (DD/MM/YYYY)	Actual Finish (DD/MM/YYYY)	Task Completion (YES/NO)	Weightage(%)	Responsibility Center-Ministry/ Department	Dependency on other Ministry/ Department	Remarks
1.	IPR Awareness: Outreach and Promotion	1.1	Adopt the national slogan "Creative India; Innovative India" and launch an associated campaign on electronic, print and social media, including by linking the campaign with other national initiatives such as "Make in India", "Digital India", "Skill India", "Start Up India", "Smart Cities" and other new initiatives in the future						0			Add Remarks
1.1	IPR Awareness: Outreach and Promotion		Electronic Media						30			Add Remarks
1.1.1	IPR Awareness: Outreach and Promotion		Engage a creative agency for producing/ making content for print, social and electronic media	01/10/2016	01/04/2017			No	15			Add Remarks
1.1.2	IPR Awareness: Outreach and Promotion		Air awareness advertisements on 5 leading radio stations (to start with, in Tier 1 cities. Tier 2 and Tier 3 cities may	01/02/2017	01/06/2017			No	10			Add Remarks

Dashboard created in association with NIC

Milestones

Clearing Backlog/ Reducing Pendency

Patent Amendment Rules, 2016/ Trade Mark Rules Amendment under process

Facilitation of IPR of Start-Ups & MSMEs

Augmentation of Human Resources

Increase in Patent & Trade Marks Filings

Synergy between IP Offices

Augmentation of Human Resources: Reduction in Pendency



459 new technically competent Patent Examiners in various fields of technology appointed in addition to the existing 130. Already the first batch of 286 has started examination work after training

100 Trademark Examiners added on contractual basis; 62 regular appointments are in pipeline through UPSC

Pendency in Patent examination is targeted to be brought down from the present 5 years to 18 months of workload by March 2018

Pendency in Trademark examination has already been brought down from the erstwhile 13 months to just 1 month



Patent Rules, 2016

Amended to streamline processes and make them more user friendly

Provisions have been included for condonation of delay due to war/ natural calamities

For the first time, refund of fees in certain cases has been permitted, as also withdrawal of application being permitted without any fees

Timelines have been imposed to ensure speedy disposal, the number of admissible adjournments have been limited

Electronic Transfer of applications from any of the Patent Office branches to another

Expedited Examination is now permitted on certain grounds

Hearing through video conferencing

Special provisions for start-ups, whereby they will get 80% rebate in fees vis-à-vis other companies as also expedite their application



Trade Mark Rules (proposed)

TM Forms to be reduced from 74 to 8

All forms can be submitted online by the applicant

Lower fees for individuals, MSMEs and startups

Redundant and obsolete provisions deleted: Rules reduced from 185 to 158

Modalities for determination and maintenance of Well-known trademarks introduced

Limiting number of adjournments

Hearing through video conferencing introduced

E-filing being encouraged with 10% rebate vis-à-vis physical filing

IPR Enforcement Toolkit

About

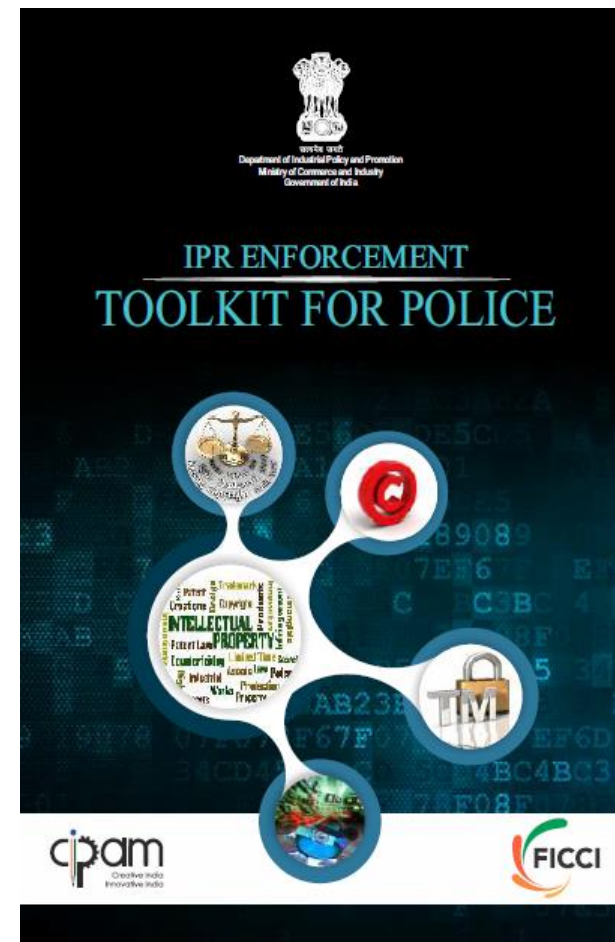
A ready reckoner for Police for IPRs enforcement in India

Objective

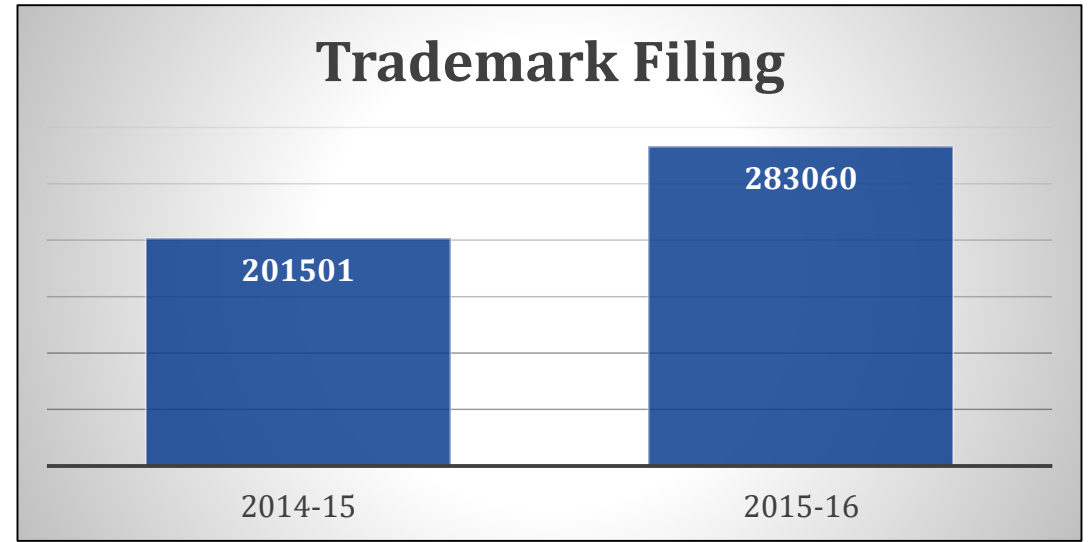
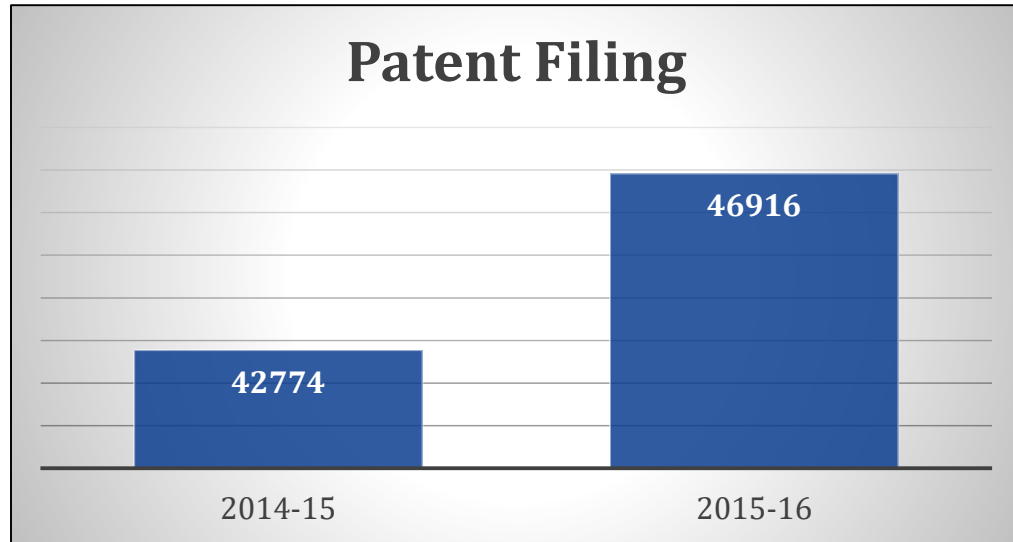
To aid in dealing with IP Crimes - Trade Mark counterfeiting and Copyright piracy in particular

Contents

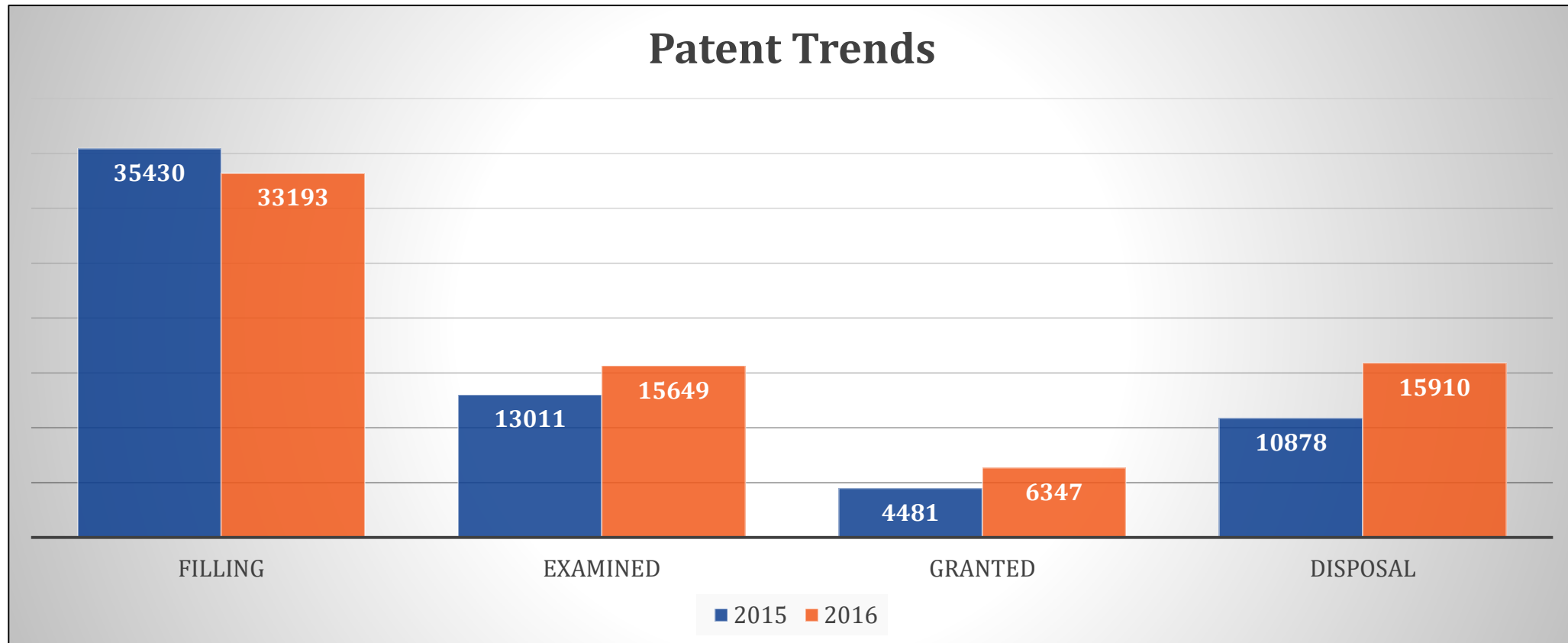
Criminal Offences under Trade Mark and Copyright Acts
General Guidelines for Search And Seizure
Checklist for Registering Complaint
Checklist for Search And Seizure



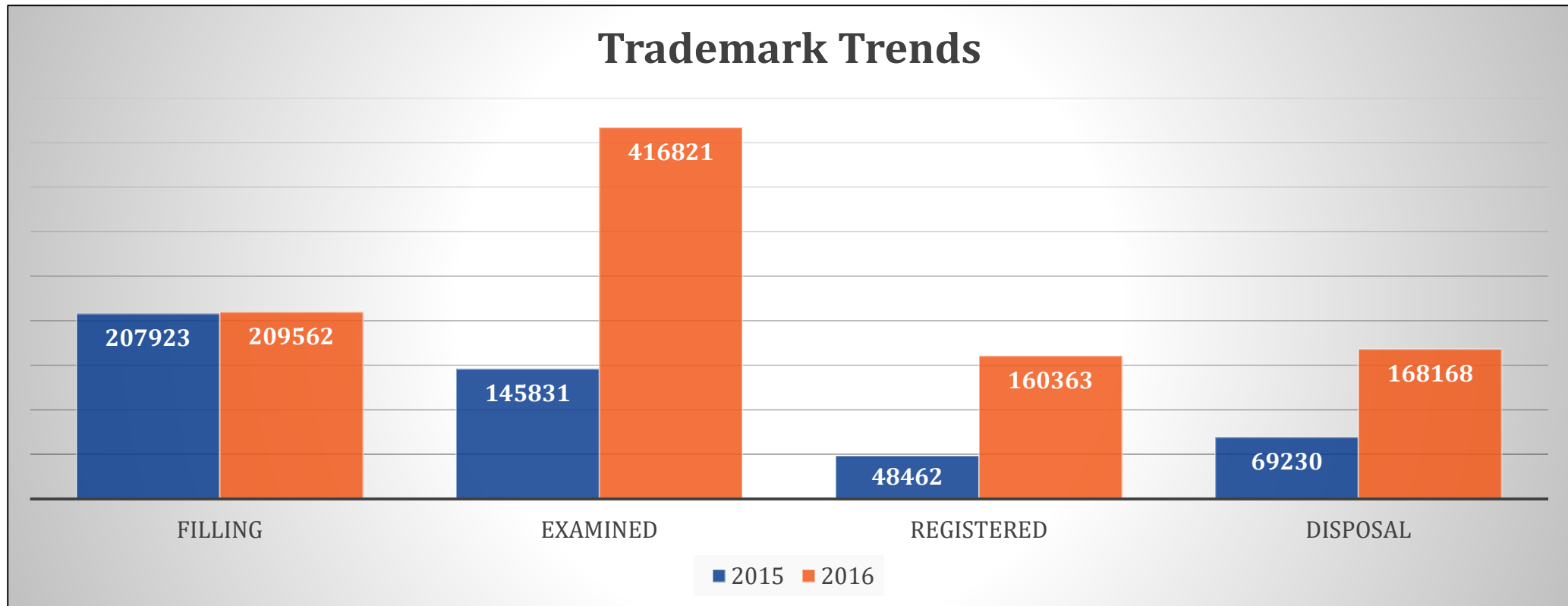
Increase in Filings: Patents and Trade Marks



IPR Trends (F.Y. 2016-17 till December vis-à-vis same period last F.Y. 2015-16)



IPR Trends (F.Y. 2016-17 till December vis-à-vis same period last F.Y. 2015-16)



Startups & IPRs (F.Y. 2016-17 till December)

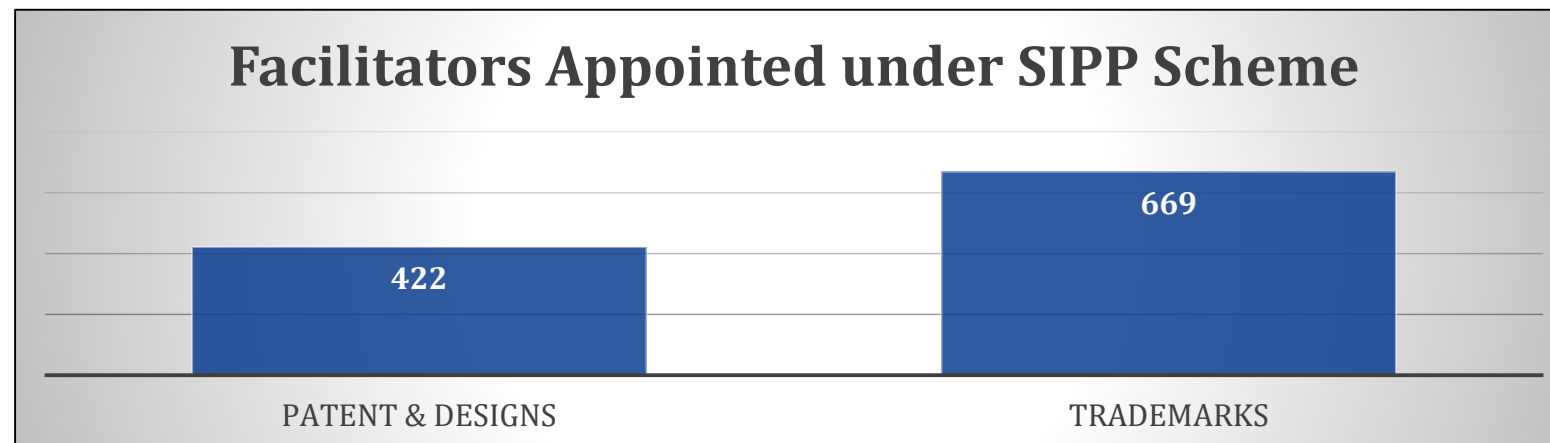
Benefits Claimed by Start Ups under Patent Rules 2016



Patent and TM applications filed by Start Ups



Facilitators Appointed under SIPP Scheme



R&D in India at a Glance



India's 2016 R&D expenditure increased to USD 71.48 billion from USD 61.85 billion in 2014



In 2015, India became the world's sixth largest annual R&D spending country, accounting for 3.53 percent of global R&D expenditure



R&D spending is anticipated to grow from 0.9% to 2.4% of the country's GDP from 2014 to 2034 respectively



In Global Innovation Index (GII) Report 2016 by WIPO, India's position moved up from 81st to 66th



Steps that need to be taken

Make funds under R&D Cess Act, 1986 available for research activities.

Industry – academia tie-up crucial for furthering R&D, as also commercialization

CIPAM has taken steps towards promotion of commercialization of IPR

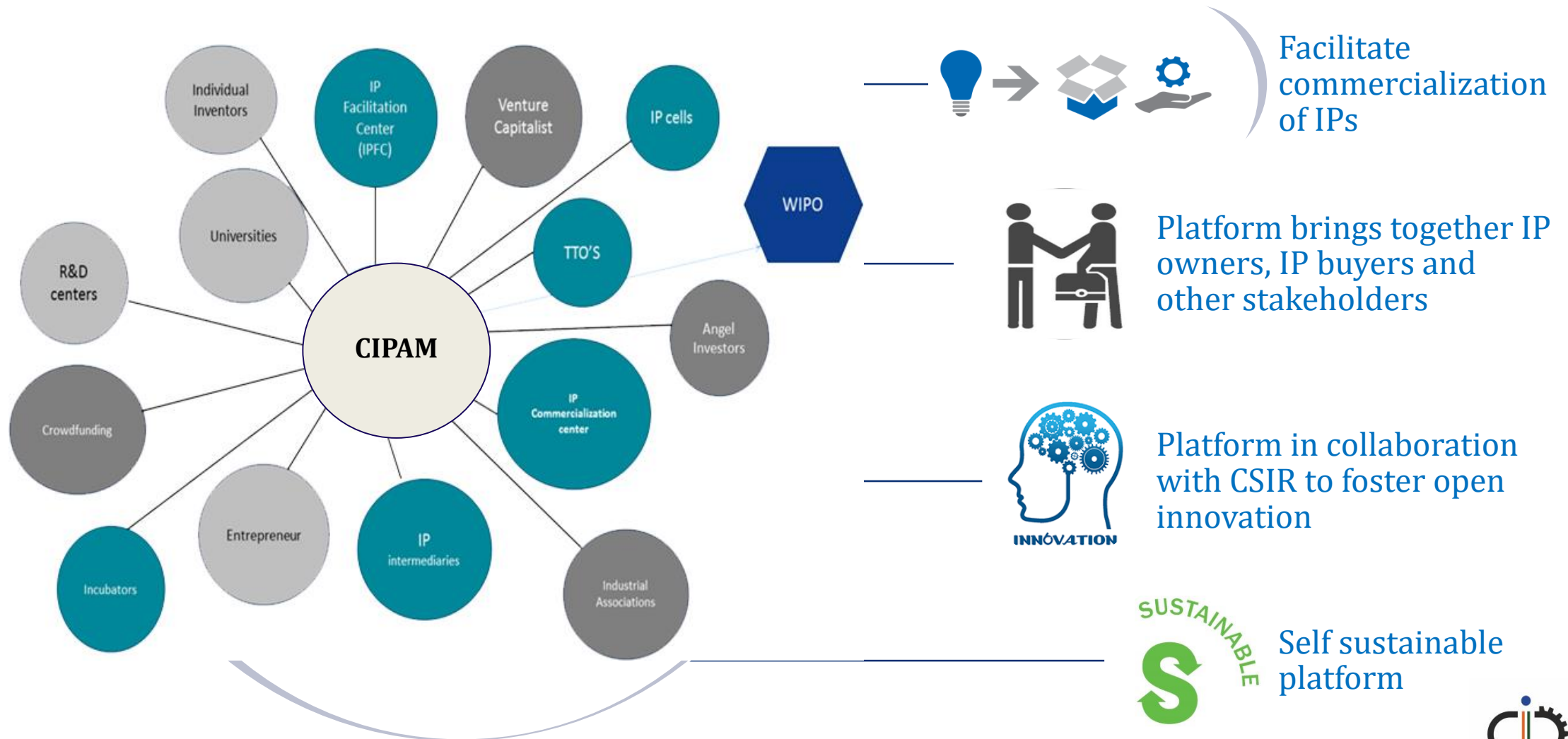
Linking public R&D organizations with industry for commercialization of R&D outcomes

R&D should be focused on Industrial challenges, so that there is high probability of innovation getting commercialized

IPR Cells should be created in each institution to foster innovation culture among the youth



IP Commercialization Platform



Department of Industrial Policy and Promotion



Global Innovation Index 2016

01  Global Innovation Index 2016 Ranking

in Central and Southern Asia

overall 66th among 128 countries

02 Innovation Quality 

among Middle Income countries in the Global Innovation Index 2016

Overall 25th among 128 countries

01 ICT services exports as % of total trade 

among 128 countries in the Global Innovation Index 2016

Reversing the trend, India moved up by 15 places to 66 from 81 in 2015

“India is a good example of how policy is improving the innovation environment”



To a Creative and Innovative India!

Thank You