
**Intellectual Property Rights in India:
Innovation and Competitiveness in the Indian Context**

Parvinder

Research Scholar, Faculty of Law, MDU, Rohtak

Abstract:

In looking at the needs for India's next stage of growth, both industry and policymakers are focusing on strategies for fostering capacity for innovation. The link between innovation and competitiveness can be clearly demonstrated at a national level, and at a subnational level there is also a growing need for understanding the dynamics of innovation and to take requisite steps accordingly. With this in mind, a stable IPR regime is the foundation of a globally competitive nation, drawing in investments, specifically from FDI. Ultimately, India will do well in the long term if it enables a robust IP ecosystem and protects the IP of its own companies. It will also provide a stable framework for multinational companies wanting to enter India. Yet there are some critical impediments, which have hampered prospects for broader acceptance of IPR norms, and if addressed may enable greater economic cooperation between countries.

Introduction:

Over the past 30 years, a number of major developments and transformations have taken place in Indian markets. The choices available to Indian consumers have gone up drastically, be it the number of cars that people can choose from, the number of hospitals they have access to or even the phones they use to connect to others or the Internet. All this is a result of market-oriented policy reforms that India undertook in the early 1990s, which enabled the telecom, automobile, and retail banking revolutions.

In looking at the needs for India's next stage of growth, both industry and policymakers are focusing on strategies for fostering the capacity for innovation. Innovation and competitiveness are linked at a national level as reflected by the strong correlation between the scores of countries on the Global Innovation Index and the Global Competitiveness Index.

IPR System in India:

India's IPR system is underscored by a number of policies, laws, and international agreements that shape protections for domestic rights holders as well as how the country views its global obligations. The origins of India's IPR system date back to British colonial rule, when as a colony the state enacted various rules and enforcement mechanisms pertaining to IP rights.

Post-independence, India retained elements of these structures while updating some guiding regulations and other bureaucratic structures. As India moved toward liberalization, privatization, and globalization in the 1990s and later, Indian policymakers made further adjustments to keep up with growing needs of domestic and international stakeholders. As a result, today the statutory foundation of India's IPR regime is composed of a patchwork of key laws, governing bodies, and international agreements. These structures are further detailed below.

Types of Protected IP and Their Coverage by Indian Law:

Under Indian law, there are six discernible major categories of innovations that are eligible for IP protections.

Patents¹

Patents are a set of exclusive rights that are granted to an inventor for making, selling, or using an invention. Three core pieces of legislation—the Patents Act of 1970, Patent Rules of 2003, and Patent Amendment of 2005—form the basis of patent law in India. The Patents Act has provisions with respect to compulsory licensing, the government’s rights to fix prices for patentable goods, and use of some patents for the government only. The Patent Amendment also allows petitioners to file applications through electronic media (though the paper copy should be filed within one month).

Of note, over the course of several decades, India’s patent law has taken a range of different approaches to the question of “process patents”—that is, whether processes (in contrast with products/molecules/chemical compounds) may be patented. The 1970 law granted process patents, and under its provisions, patents for chemicals, medicines, and drugs were initially granted for a period of fourteen years. This situation changed with the enacting of the Patent Amendment Act of 2002 and Patent Rules, which extended the patent term for a period of twenty years (as well as adding several other provisions related to fees and other questions). Yet with the Patent Amendment of 2005, process patents were completely abolished. This amendment has specific implications for chemical and pharmaceutical industries in particular, which will be discussed later.

Trademarks: Trademarks are recognizable signs, designs, or expressions that identify the goods and services of a producer as being distinct from another. In India, the Trademark Act of 1999 was a redrafted version of the Trademark and Merchandise Marks Act of 1958 that extended trademarks to services as well. Coverage for trademarks in India is ten years from the date the application is first made, while a 2010 amendment to the act enabled stakeholders to take advantage of provisions in the Madrid Protocol, a treaty that protects trademarks in multiple countries through the filing of one application with a single office.²

Copyrights: Copyrights are a form of intellectual property that grants the creator of an original work exclusive rights for distribution for a limited period of time. The first copyright act came to India in 1914, which was modelled on the British Act of 1911. After independence, India’s copyright regulations underwent thorough revisions, ultimately resulting in the Indian Copyright Act of 1957, which included (among other provisions) an extension of copyright protection to cover 50 years of protection. Since then, the act has been amended five times (most recently in 2012), with amendments covering further extensions of the copyright period, updates to reflect the digital environment, and coverage for other media forms, including radio diffusion, cinematographic film, and others.

Geographic indicators: A geographic indicator highlights a place of origin for a product and for the purpose of IP may be closely linked to the perceived value of the good. Examples of geographic indicators include Darjeeling tea, Banarasi Saree in India and Havana, and Champagne internationally. India’s Geographic Indications of Goods (Registration & Protection) Act is relatively new, as it first passed in 1999 and was made in fulfilment of obligations under GATT, to which India is a signatory. The purpose is to exclude unauthorized persons from misusing geographic indicators and protecting consumers against deception from passing off goods not related to any geographic area. The registration of such indicators is valid for a period of ten years and can be renewed for further periods of ten years successively.

¹ Intellectual Property India, “The Patents Act, 1970,” http://ipindia.nic.in/ipr/patent/patent_Act_1970_28012013_book.pdf. This section also draws from N.K. Acharaya, *Textbook of Intellectual Property Rights*, 7th ed. (Hyderabad: Asia Law House, 2014).

² “Madrid Protocol Takes Effect in India,” *World Intellectual Property Review*, August 7, 2003, <http://www.worldipreview.com/news/madrid-protocol-takes-effect-in-india>.

Industrial Designs: Indian law also safeguards IP protections for industrial designs based on the unique look or feel of an invention, such as its pattern, shape, or texture. For the purpose of registration, design-related IP protections can be conferred on fourteen classes of goods. Once registered the period of design is fifteen years with renewals at every five-year period. After fifteen years the design becomes open and public property. Additionally, within the field of design, the Semiconductor Integrated Circuits Layout Design Act and Rules of 2000 seeks specific protections for semiconductors.³ This act gives an owner an exclusive right to create layout design for a period of ten years. The act enables the owner to commercially exploit their creation and, in the cases of infringement, seek relief under its provisions.

Agriculture: Under Indian law, IPR related to innovation in crops and planting are covered by the Protection of Plant Varieties and Farmers' Rights Act of 2001.⁴ This act seeks to provide for the "establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants." The duration of protection of registered varieties is different for types of crops. For trees and vines, the protection is eighteen years, while for other crops it is fifteen years. Similarly, for extant varieties, protection is fifteen years from the date of notification.

Recent Developments in IP Issues in India:

Several changes have been seen in India's IPR regime since the formation of the new national government in May 2014. The first of these was Prime Minister Modi's five-day visit to the United States that started on September 27, 2014, after which the Prime Minister's Office of India and the White House on September 30 issued a joint statement. The statement mentioned the need to "establish an annual high-level Intellectual Property (IP) Working Group with appropriate decision-making and technical-level meetings as part of the Trade Policy Forum."⁵

Next, the United States conducted an out-of-cycle review of India's IPR regime. The review had proposed a deadline for submission of written comments by the public by October 30, 2014, and had set a deadline for submission of written comments by foreign governments by November 7, 2014. Meanwhile, in another significant step, the Department of Industrial Policy and Promotion (DIPP) on October 22 constituted an IPR think tank (comprising one chairperson and five other members) to draft the National Intellectual Property Rights Policy and to advise DIPP on IPR issues. The think tank submitted the draft legislation to DIPP and put this up on its website on December 19, 2014.

Also, the U.S. Chamber of Commerce's Global Intellectual Property Centre in February 2015 released its annual report on IP, which placed India as a country having the second-weakest IP environment out of the 30 countries considered for making the international index. The index ranked countries on 30 parameters, with countries assigned one point for each parameter. India scored a dismal 7.23, just ahead of Thailand (7.10).

This Index was followed by the USTR's Special 301 Report, which came out in April 2015. The report placed India again on the Priority Watch List in 2015 and further encouraged progress on IPR issues. The report was also positive about the draft IP policy and the progress made so far.

³ Ministry of Law, Justice and Company Affairs (India), The Semiconductor Integrated Circuits Layout-Design Act, 2000, Act of Parliament no. 37 of 2000, no. DL-33004/2000 (New Delhi, September 4, 2000), <http://sicldr.gov.in/Resources/SICLDRA1.pdf>.

⁴ Ministry of Law, Justice and Company Affairs (India), The Protection of Plant Varieties and Farmers' Rights Act, 2001, Act of Parliament no. 53 of 2001, no. DL-33004/2000 (New Delhi, October 30, 2001), <http://agricoop.nic.in/PPV&FR%20Act,%202001.pdf>.

⁵ "U.S.-India Joint Statement," White House, Office of the Press Secretary, September 30, 2014, <https://www.whitehouse.gov/the-press-office/2014/09/30/us-india-joint-statement>.

Considering the changes that are underway, India is indeed on the cusp of a major IP revolution of sorts that may change the dynamics of IP protection and enforcement, thus leading to greater innovation.

Conclusion:

The broad level contours of IP policy are now visible in the form of the national IP policy. India now needs to improve the IPR regime both from the side of the legislation and also from the side of enforcement of laws. This improvement will help in the creation of a better environment for improving the overall innovation in the country. The need also exists to start looking at and understanding the IPR regimes abroad and, more importantly, bringing in the requisite changes, such as better digitization, in the present regime. For this, Indian states, as well as industry, will have to play a proactive role in asking the central government for a better IP protection regime so that there is greater innovation at the state level, which contributes toward the future competitiveness of India. Particular industries' performance, namely the pharmaceutical industry, will depend on the kind of IPR regime prevalent in India. It is important, however, that the likely impacts of introducing various measures are taken into account before framing and implementing IP policy.

References:

1. Amani, B. (2009). State Agency and the Patenting of Life in International Law: Merchants and Missionaries in a Global Society. Ashgate.
2. Commission on Intellectual Property Rights (2002). Integrating Intellectual Property Rights and Development Policy. Available at: http://iprcommission.org/papers/pdfs/final_report/CCPR.
3. Ankit Prakash, India: IP Value 2009: Recent Developments In Intellectual Property, available at <http://www.mondaq.com/article.asp?articleid=76022>
4. Mr. T.C James, Consultant FICCI IPR Division & Former Director, Department of industrial Policy & Promotion, Government of India, available at http://www.ficci.com/sector/24/Add_docs/ipr-dec2010.pdf
5. Intellectual property and its importance to development in India, available at <http://collegeproperty.info/intellectual-property-and-its-importance-to-development-inindia.html>
6. Anand Pravin and Sumeera Raheja, "India: The Changing Face Of Intellectual Property", available at http://www.buildingipvalue.com/08_AP/203-206Anand.pdf