

Current Trends of Intellectual Property Law in India

Parvinder

Research Scholar, Faculty of Law, MDU, Rohtak

Abstract:

The twenty-first century will be the century of knowledge, indeed the century of the intellect. A nation's ability to translate knowledge into wealth and social good through innovations will determine its future. Thus, innovations hold the key to the creation as well as processing of knowledge. Intellectual property can be characterised as the property of ideas or their expression. It is a creation of the mind, which protects the rights of individuals and businesses who have transformed their ideas into the property by granting rights to the owners of those properties. Intellectual property can be classified into the following four categories: patents for inventions, copyrights for literary works, trademarks, and trade secrets. In recent years India has made robust progress not only in implementing its obligations under the WTO Agreement on TRIPs Rights but also in developing its own IP regime which endeavours to balance the trade-off between monopoly rights and free access to knowledge. Although no new IP laws have been enacted over the last year, it would be wrong to say that there have been no parliamentary developments with respect to intellectual property.

Introduction:

Intellectual property is the key to India's expanding knowledge economy. Having grown in leaps and bounds, the Indian IP industry is fast reaching new heights. With the advent of the new knowledge economy, the old and some of the existing management constructs and approaches would have to change. From striking a balance between IP rights protection and public policy to promoting IP rights education, Alfred Marshall¹ believed that with advancements in technology, commodities alone would no longer be the primary factor in determining the real value of money: "But if inventions have increased man's power over nature very much, then the real value of money is better measured for some purposes in labour than in commodities."² Today, the intrinsic labour value exists in the form of knowledge. India is a member of the World Trade Organisation's and a signatory to the Trade-Related Aspects of Intellectual Property Rights Agreement. In the last few years, India has been in the process of modifying its Intellectual Property laws to ensure adequate protection for Intellectual Property owners. Indian legislature has made efforts to implement better IP rights enforcement and protection. On the other hand, the judiciary has not been far behind in contributing to the development of IP rights.

Important IP Development in India in Last 12 Months

In recent years the Indian economy has opened up and grown dramatically. As a result, India's prominence in the global economy has increased significantly, sparking huge interest from foreign investors.³ In almost all industry sectors, multinational companies are now doing business in India. As a result, India's intellectual property laws and enforcement regime are being brought into the limelight and subjected to scrutiny for their adequacy and compliance with established global standards. The development of intellectual property in India has always been the heated debate and keen interest around the world. In recent years India has made vigorous progress not only in implementing its obligations under the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual

¹ Ankit Prakash, India: IP Value 2009: Recent Developments in Intellectual Property, available at <http://www.mondaq.com/article.asp?articleid=76022>

² Id.

³ Rouse, IP environment in India, available at <http://www.inhouselawyer.co.uk/index.php/intellectual-property/7552-ip-environment-in-india>

Property Rights, but also in developing its own IP regime and to balance the trade-off between monopoly rights and free access to knowledge.

On October 15, 2010, Federation of Indian Chambers of Commerce and Industry had launched an Anti-Piracy Coordination Cell with the approvals of Government of India. In order to curb piracy, the three important pillars i.e. the legislation, enforcement and awareness need to be properly dealt with. The cell will act as a platform where stakeholders can interact. The four main segments i.e. the film industry, music industry, publishing and software industry are getting adversely affected by piracy.⁴

Geographical Indication tags are given to goods based on their geographical uniqueness. GI tag in general, is thus a certification of uniqueness of a product either by its origin, process or availability.

These tags usually help in enhancing the marketability. In September, 2010 Geographical Indications Registry in Chennai has recorded GI for a record number of products which includes Central Travancore Jaggery, Wayanad Gandhakasala Rice and Jeerakasala Rice from Kerala, Champa Silk Saree and Fabrics from Chhattisgarh, Kota Doria (Logo) Handicraft from Rajasthan, Nashik Grapes from Maharashtra, Bikaneri Bujia from Rajasthan, Phulkari from Punjab⁵, Surat Zari Craft from Gujarat, Cheriya Painting and Pembarti Metal Craft from Andhra Pradesh.⁶ In 2010 alone about 37 products have received GI tags which include the Bhadohi Carpets from Varanasi. The All India Carpet Manufacturers Association (AICMA), Great Bhadohi Handicraft Society and the office of Joint Director of Industries are the applicants for GI over the Bhadohi carpets.

India's Laws Evolving to Protect IP Domestically:

India has adopted a unique set of legislation for IPR in line with prevailing socio economic condition of the country, not only they are exhaustive but they have been interpreted by the judiciary in such a way as to balance the rights of the individual as well as the public on the other hand. IP laws are not enforced internationally they are for the nation's own interest that is the fundamental principles of Berne and TRIPS and thus government has the freedom to choose their IP regime. The Government of India has taken several measures to streamline and strengthen the intellectual property administration system in the country These remedies include civil, criminal and provisional remedies. when a party proposed to take a civil action against any infringer, it has to file a Suit for infringement or passing off in a High Court or a District Court. Upon a successful suit for patent infringement, the court will order an injunction restraining the infringer from working the patented invention for the entire term of the patent.

The Patents Act, 1970 grants power to the courts for making a declaratory judgment as to noninfringement. The validity of the claims contained in the patent cannot be the subject matter of such proceedings. Thus, the declaration of non-infringement does not affect the validity of the patent in question. Further, the court has the power to grant relief by way of a declaration to the effect that the allegations of infringement of patent made by a person are unjustified. Such declaratory judgments are also available under the trade mark and copyright laws. The courts can also order interim relief pending final settlement of the matter. A court may order is the grant of an interim injunction whereby the defendant may be restrained from using the plaintiff's invention, or mark or work until hearing of the suit or further order.

Steps Taken by the Government to Improve Enforcement of IP

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 GI Status for Phulkari, Times of India, Jan.19, 2011.

⁶ Daniel P George, Scotch whisky, Karnataka's Byadgi Chilli get GI tag, Times of India, Feb 16, 2011.

To make IP work for countries and business organizations, the governments of respective countries must take strong positive action and impose stringent punishment on the infringers. Some of the measures that could be taken to protect IP would include the provision of a transparent and enforceable IP rights ownership, irrespective of nationality. The accessibility of national and global IP systems has to be enhanced by ensuring that the costs of applying, maintaining and enforcing IP rights are minimal; by simplifying the procedures; and by harmonizing the IP systems globally and reducing the costs of obtaining IP rights in multi-countries.

The government has to patronize and implement effective IP policies with proper financial management and infrastructure of IP institutions. It has to take up the task of educating local communities, business enterprises, and the general public on the potential benefits of an efficient IP system. The government should offer assistance to innovators, producers, creators of the use, protection and commercialization of IP. It has to take rigorous steps against counterfeiting and piracy and strengthen the legal framework to ensure effective implementation and enforcement against IP theft.

Conclusion:

India has charted its own IP path over the last 35 years, attempting to foster the growth of a domestic pharmaceutical industry and access to medicine while more recently also addressing the requirements of the international IP regime. Multinational pharmaceutical firms have responded to the Indian movement towards TRIPS compliance by increasing the quantity and quality of FDI in the areas of R&D and manufacturing. The Indian IP regime has come a long way in recent months, IP rights in India has never looked more positive. With the Indian judiciary showing enthusiasm for and commitment to the protection of IP rights, IP owners have become more proactive in enforcing their rights by all means, and are exploring uncharted waters to obtain unique remedies from the courts. Although the benefits of specialised IP courts are still under debate in India. While much still remains to be done regarding the criminal justice system, the Indian civil system for the protection of IP rights is improving daily. Although recent substantive developments have reaped significant rewards for IP owners in India, there are still uncharted waters waiting to be explored in the worldwide IP pool

Reference:

1. Copyright Amendment Bill 2010. Available at <http://www.prsindia.org/uploads/media/Copyright%20Act/The%20Copyright%20Bill%202010.pdf>
2. Special 301 report, available at http://ustraderep.gov/Document_Library/Reports_Publications/2004/2004_Special_301/Special_301_Priority_Watch_List.html, Also See <http://www.ustr.gov/about-us/press-office/pressreleases/2010/april/ustr-releases-2010-special-301-report-intellectual-p>
3. Ambassador Ron Kirk, Prepared by the Office of the United States Trade Representative, 2010 special 301 report, April 30 2010, available at http://www.ipophil.gov.ph/document/8dfdf5ee_301Reports_2010.pdf
4. Soni Vijay, "Indian Patent Law Relevance to global pharmaceutical industry", available at http://www.pharmafocusasia.com/strategy/indian_pharma_patent_law.htm
5. Copyright Amendment Bill 2010. Available at <http://www.prsindia.org/uploads/media/Copyright%20Act/The%20Copyright%20Bill%202010.pdf>