

The 'ALL INDIA PATENT OFFICERS' WELFARE ASSOCIATION' takes this opportunity to highlight the issues which are very much crucial with respect to the discussion paper which need very deep introspection and implementation for larger public interest. While submitting the comments and suggestion the Association has duly considered the obligation of the officers of this system to greater public of India with respect to the Statutes. Looking into this aspect, the Association has also consulted various retired officials who have served for a long time in this office and have faced the hardest times without promotions for 15 to 20 years having scientific and technical qualifications, fund problems and other issues in their time.

But before going to questions which are the issues for the government it is very essential to highlight certain points of the discussion paper which need certain analysis and solutions first (because on the basis of these certain points, it appears the questionnaires were based):

The Background of the discussion paper highlights on page 4 that the *"the Controller General who has limited support to carry out his administrative functions."*

Analysis: With rapid progress of IPR and its global implications the strength of the office of the CGPDTM should be immediately increased to carry out its administrative functions..

Page 5 , para 11 a : As part of the commitments made under the TRIPS agreement these included calibrated amendments to the Patents Act and enacting the Trade Marks, Geographical Indications and Designs Act.

Analysis: This shows that even during the International obligations the core structure of the statutes were not changed.

Page 5 para c : Operationalization of the ISA/IPEA status will place demands on the institution.

Analysis: This is obvious, and immediate steps should be taken to upgrade search systems, QMS (Quality Management Systems) etc, so that the country can show the whole world that it is capable and ready to accept its responsibility. The time in which the infrastructure (building, etc) will be ready should be utilised to prepare for the other system requirements.

Page 5 , para 12 : The enhanced pressure has resulted in an increased pendency of applications in all the four branches of the office .

Page 8 para 15 : As may be seen 343 post -62 % of the total sanctioned posts are presently vacant. This is the primary reason for the large pendency of applications outlined in Para 12 above. However the Department has already taken the initiative to fill the 257 posts of patent Examiner.

Analysis: The paper clearly establishes that large number of posts was vacant and at the same time the number of applications and 'work' pressure increased thereby increasing the pendency to a large extent. Further initiatives should be *immediately* taken to fulfil the vacancies.

Page 8 para 16 : " A project for outsourcing of prior art search to CSIR Unit for Research on Information Products (URDIP) has been successfully implemented !!

Analysis: This is against the basic tenets of the Patents Act. Without any legal basis this was done. Further there should have been introspection of improvement of the searching strategy by providing necessary training to the officials and fulfilment or upgradation of infrastructure required. There is also no established report wherein the loopholes of infrastructure of search system in Patent Offices were identified or any recommendations being made.

Ideas on Restructuring of the Office of the CGPDTM :

Page 16 para 27 : “A number of ideas can be thought of for restructuring the office of CGPDTM which are not necessarily mutually exclusive or contradictory.

*Page 17 para 27 (a) end : “..... **Higher level officers including CGPDTM act as decision making authorities in most of the Patent matters including patents grants and hearing in opposition cases !!!!.***

Analysis: Actually the examination of any Patent application is carried out as per Section 12 and Section 13 of the Patents Act by Examiners. Officers (e.g. Assistant Controllers /Deputy Controllers / Joint Controllers) consider the report of the Examiner and grants/refuses the Patent as per the Patents Act. Further any Officers of the above category when ordered by writing by the CGPDTM to discharge any duties under the Act carry out the function as enshrined in the Patents Act only.

Page 18 para a : “ The controlling officers of TMR , including the Registrar of Trade Marks , must have legal knowledge and expertise apart from sound knowledge in the Trade Marks Act and need not be scientific or technical persons.

Analysis: This is true and is followed in principle in the Trade Mark Registry. Persons with relevant legal qualifications are only appointed in the Trade Mark registry. This is also followed in practice without any contradiction or conflict with respect to other independent Offices under the same umbrella.

Page 18 para b : “ This situation does not result in the optimum allocation of resources based on an assessment of the work requirements of each office.

Analysis: This is contradictory with various other offices and departments of government. The allocation of resources is a simple tabulation required to be made for optimum utilization of resources as per their requirements, and is an administrative job.

Establishment Matters : Page 18 para c : To begin with the number of employees in the patent Office far exceeds that of the Trade Marks Office. Since the trademarks office is less than a third the size of a patent office in terms of staffing, the administration of the two cadres is being looked after by the officials of the Patent Office. Invariably there are issues which lead to conflict in the day to day administration of Trade marks office due to control exercised on administration by the officials of the patent office.

Analysis: In any office of the government the number of posts and recruitment depend on the requirements and is fulfilled as per the recruitment rules. Hence, as per the requirements the required number of posts can be created and fulfilled.

Page 20 para 28: Another view is to make the institution into an autonomous agency of the government and allow it to generate and retain the revenue from its functions.

Analysis: ‘Revenue-based Model’ for Patent Office: To critically examine this issue, we need to first study the purposes that ‘Patent’ intends to achieve.

The principal purposes that Patents serve¹ can be broadly classified as under:

- (i) Providing encouragement to inventors so as to motivate them for innovating better techniques enabling technological and industrial development.
- (ii) To disclose invention so as to allow public dissemination of knowledge.
- (iii) To provide inducement, such as, enabling patentees to raise finance for invention commercialization.
- (iv) To enable researchers scope for exploration of further inventions i.e by identifying the associated problem and further modification/development to improve the product, process etc. This further development is an endless process of development.
- (v) At the end utilization of the Patent for the development of the human nation.

Identical with the purposes that Patents intend to serve, the Indian Patent Act confers powers onto the statutory authorities to ensure the interests of the Patentee (for instance, sec. 48, sec. 52, sec. 53 etc.), National security and public interests (for instance, sec. 4, sec. 11, sec. 25, sec. 35, sec. 39, sec. 47, sec. 66, sec. 83-102 etc.).

The Act confers on to the Central Govt. the power to prescribe fees (sec. 142(1) and sec 159(2)(iii)), which should be viewed in the aforementioned context only. Hence, the objective of charging ‘fees’ is never any revenue generation, but rather as a processing or prosecution fees as also followed in the Hon’ble Courts and other quasi-judicial set-ups. In any case, whatever revenues are obtained, they are always available to the Government for the best allocation as it deems fit.

If again looked in the context of the purposes of Patent, it is a ‘grant’ made by the ‘Government’ to an ‘inventor’ or ‘assignee’ securing him the exclusive right to make, use and sell his invention for a definite term (now 20 years). We should now examine the issue of ‘Revenues’ per se. Revenues are a result of ‘sales’ of products, services etc. If ‘Revenue-based Model’ is proposed, it implies that Government proposes to ‘sell’ patents merely to generate revenues, and not ‘grant’ them. A direct implication of separation of fees from the aforementioned context may result in shift in focus from the purposes that patents intend to serve to merely revenue generation.

It must be remembered that ‘revenue-based models’ are appropriate for corporate and competing firms, but how such model can be replicated in a Granting Authority (Government) without addressing to serve the principal purposes of such ‘grant’ as ‘Patents’ is very disturbing and ambiguous. It may, therefore, be reasoned that the ‘Revenue-based model’ premise for ‘Autonomy’ is fallacious.

Page 20 para 29: The statement reflects the world wide pressure on IP management institutions and the need to respond in a timely and effective manner. At the same time, it is also a fact that Intellectual property is a sensitive matter not only in developing country but also in developed countries. This fact is corroborated by the fact that most of the IP offices including the prominent ones such as the US Patent and Trade Marks Office , Japan Patent Office , German Patent and Trade marks Office are not autonomous.

Analysis: It should be kept in mind that “CHANGE IS A PROCESS AND NOT AN EVENT”. Any pressure and challenge need to be worked out with the help of proper vision planning and execution. The paper is highlighting the sensitivity again and again but what should not be forgotten is any department needs an enthusiastic and robust workforce to move ahead .All the over world any department or office gives its employees opportunity for career progress. But unfortunately till date the department could not formulate any concrete promotion policy to boost the morale of its officers.

Notwithstanding the fact that the developed offices are not autonomous, still they have a robust policy for career progress. The issue is not the autonomy here but the proper management and execution of the vision to strive for taking India ahead as a WORLD CLASS IP OFFICE.

Each of the statute is a central legislation and has been made by the Parliament looking after our country's socio-economic concerns. Also at present, statutes of India are fully attuned to all relevant International treaties and agreements.

Page 21, para 32 : “ Indian Intellectual Property Office is mainly implementing the four IP legislations with its role limited to registration of the IP rights and to adjudication in opposition cases that may be filed in the process of registration of the IP rights or within a certain period after the grant of rights . Given the limited scope of functioning of the Office CGPDTM, statutory body status of the Office may not be required”

Analysis: The above statement has been made with respect to comparisons being carried out SEBI and IRDA which is having no basis at all.

SEBI and IRDA functions are no way comparable with the statutes of IP offices. For instance, SEBI has to play a role where there are multiple players and huge amount of financial transactions are carried out in day to day operations.

The Patent Act and other Acts in the field of IP are the most balanced Acts all over the world. Here the Central Government has a role to play by making rules as per the Sections as have been mandated in the Acts. The Central Government is also the Authority who has to appoint the Officers. It should also not be forgotten that this is a Central Legislation and not a State legislation. Further the Central Government cannot play any role in terms of the functions of the statute; the CGPDTM has to carry out its statutory function as per the Acts and Rules. As far as the Patents Act is concerned even an Officer who is discharging his duties under the Act is independent has to follow only the Act and Rules.

SEBI and IRDA are recently formed bodies and there is no comparison between patent office functions and SEBI & IRDA, because patent office function is major public interest i.e. dealing with interest of more than 100 crore of the people of India and by way of dealing pre grant representation (opposition) from the public of entire world of 700 crore, whereas SEBI and IRDA looks after the interest of may be less than 30% of the Indian population.

So there is a delicate balance in terms of the statutory functions which have been provided by the Parliament looking after greater public interest and India's socio economic concerns.

It must not be forgotten that the majority of patent applications are coming from abroad and the statutory functions cannot be considered as a mere registration or grant process. The Controller also has the power of a civil court in terms of the decision making process.

ISSUES FOR CONSIDERATION:

1. Given the radically different skill requirements of trade mark and patent office staff, the operational difficulties and the present challenges being faced by the O/o CGPDTM, is it desirable to establish an independent office for the Trade Marks and GI registry?

No, it is not required to establish an independent office for each trademarks, patent and GI registry because the functioning of these departments are not interdependent or conflicting with each other and all the activities of trademarks, patent and GI registry are guided by different Acts and Rules.

Observation and Suggestion: More financial power should be given to the CGPDTM by following the due procedure of the Government. The Government may also consider making a separate department namely "Department of IPR" under the Ministry of Commerce and Industry with dedicated officials. Officials from IPO may also be deputed accordingly for helping in different IPR related aspects.

2. If so, what should be the organisational and reporting structure for each office?

The situation does not arise, because separate establishment would create complex situation, miscellaneous problems. Rather, it would be prudent to tackle the present problems or issues at hand, than to face unforeseen problems that may arise due to such a radical change in the present scenario. The case would be for solving one problem we are creating a new problem. Trademarks, patent and GI registry are the essential and indispensable parts of IPR and should be under one umbrella.

However in order to streamline the administration of the different IPR legislation bodies as mentioned and discussed in the Discussion paper a separate "Department of IPR" may be created under the Ministry of Commerce and Industry with dedicated officials as suggested above so that greater coordination can be made as per the present International Scenario.

3. Given the sensitivity of Patent law and practice in India and also the experience in other major IP Offices such as the USPTO, would it be appropriate to consider making the Office of CGPDTM autonomous? Is it possible to bifurcate the two offices and make the Trade Marks Registry and the Patent and Design Office two autonomous organizations?

No, it is not appropriate to make autonomous organizations (patent office and trademarks registry) because in case of autonomy in the purview of the present scenario is not appropriate for the following reasons and analysis already made above.

Further sensitivity cannot be a reason for making an Office autonomous. It may be pertinent to mention here that there is worldwide sensitivity, particularly with respect to Section 3 (d) and 3(k) of the Indian Patents Act. But it is well known that the Act is passed by the Parliament with respect to India's own concern and this is the law of the country to be followed.

a) 'Revenue-based Model' for Patent Office: To critically examine this issue, we need to first study the purposes that 'Patent' intends to achieve.

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If again looked in the context of the purposes of Patent, it is a 'grant' made by the 'Government' to an 'inventor' or 'assignee' securing him the exclusive right to make, use and sell his invention for a definite term (now 20 years). We should now examine the issue of 'Revenues' per se. Revenues are a result of 'sales' of products, services etc. If 'Revenue-based Model' is proposed, it implies that Government proposes to 'sell' patents merely to generate revenues, and not 'grant' them. A direct implication of separation of fees from the aforementioned context may result in shift in focus from the purposes that patents intend to serve to merely revenue generation.

It must be remembered that 'revenue-based models' are appropriate for corporate and competing firms, but how such model can be replicated in a Granting Authority (Government) without addressing to serve the principal purposes of such 'grant' as 'Patents' is very disturbing and ambiguous. It may, therefore, be reasoned that the 'Revenue-based model' premise for 'Autonomy' is fallacious.

b) Comparison with other Patent Offices, such as, USPTO:

So far as experiences of other Patent offices, such as, USPTO are concerned, it may be noted that the cultural and socio-economic contexts vary with countries. For instance, the cultural context and socio-

economic environment of India (a non-OECD country) are unique. Hence, before rushing onto such comparisons, very careful thinking and wide engagement with the general public is required.

Since, we are considering the issue of innovation, it is first important to deliberate on the agents that bring innovations in different environments. For instance, innovation in the US (and some other OECD countries) is fuelled by Small enterprises and start-up firms. But same is not true for India, where still international applications and MNCs far outnumber the domestic applicants. In this regard, it should be noted that studies³ have shown that IPRs/ Patents are country-specific.

It is, therefore, not clear how emulating USPTO (and other comparable offices) model is going to help the patent cause in India after considering the socio-economic condition of this country.

Rather if we want to follow the USPTO model we should concentrate to allot the Patent Applications of particular IPC to a particular Examiner and this way quality will be improved as he would be to concentrate on a particular subject within the field of the particular subclasses and would finally emerge as an expert in that particular area.

4. What legal changes are required? What changes are required to the rules?

Legal changes are not required as question to make autonomous bodies does not arise as per the above analyses and comments.

5. Can the reorganization of the office of CGPTDM be taken up within the existing framework without seeking any amendments to the law? If so, what can be an ideal model?

Yes, it is possible to reorganize the office of the CGPTDM with the existing frame work by making proper recruitment policy and career advancement policies with proper pay packages.

Attrition of examiners has been a serious impediment to the backlog clearance plan. Examiners have been languishing without promotion even after almost 8 years. Almost 80 examiners were recruited in the first phase, 120 in the second phase and 250 is expected in the third phase. One more reason for attrition is temporary posts. Since mass recruitment has been made at one go, the promotional opportunities of Examiners are limited in the present cadre structure. In view of this a cadre restructuring is proposed with starting grade pay of Examiner should be upgraded to GP Rs. 6600/- and all other cadre levels will have to be stepped up by one level including that of the CGPDTM. Attrition of Examiners is because of temporary nature of posts. Required changes have to be incorporated in the recruitment rules for this purpose.

Measure A - Non-Functional up gradation for Officers like in Organized Group 'A' Services in PB-3 and PB-4

The Government can consider and declare the Patent Officers as an “Organized Group ‘A’ Services and implement non-functional up gradation of Group A Officers.

More number of posts should be created in the in the hierarchy and different posts should be properly filled in proper time.

Measure B-IIPS (Indian Intellectual Property Service)

Alternatively a new cadre called Indian Intellectual Property Services could be established so that assured promotion opportunities are available for the Technical Officers after completion of term. In this regard, the following quote may be considered from the *Ayanganar Committee's report*:

“... The examiners recruited on this basis should all be classified as gazetted class I service and may constitute a separate all India service to be named Indian patents service (class I) just as in the case of other all India services”

Measure C- Yes, it is possible to reorganize the office of the CGPTDM with the existing frame work by making proper recruitment policy and career advancement policies with proper pay packages. This can be done by upgrading the CGPDTM post from JS level to Additional Secretary level and by upgrading post of Examiner of Patents & Designs to the Grade pay of Rs.6600/- this should be the starting grade pay for technical and scientific officers in the Patent Office like in CSIR, DRDO and Botanical Survey of India etc and by upgrading the grade pay Asst Controller(Rs 6600 to 7600/-), Dy Controller (Rs 7600 to 8700/-), Joint Controller(Rs 8700 to 8900/-) and Senior Joint Controller(Rs. 8900 to 10000/-) by one step along with proper promotion policies..

6. How should the office of the Controller be strengthened?

In the existing system there are no dedicated officials in the Office of the CGPDTM and thereby officers from Patent and Trade Marks office has to be deputed therein which results in shortage of officials for discharging their statutory functions. Though the officials of Patents, Trade Marks, GI should always be there for consultation to the CGPDTM for any issue but there should be a dedicated workforce under the CGPDTM office and hence necessary posts should be immediately created and appointed in the office of the CGPDTM or temporarily deputation from other office may be applied under the present International Scenario.

In the last 10 years the Indian patent office has undergone a radical change in terms of increase in number of employees, infrastructure and work practices. The rapid changes in the laws, rules and policies have put immense pressure on IPO to be agile and constantly restructuring to meet the challenges posed to it every day. In order to meet the aspirations of the inventors, applicants, public and the country the office need to have a radically different Office structure than today.

The following needs immediate attention:

1. **Appointment of Legal Officers:** With India opening its arms for IPAB and there are various other court cases the Officials has to frequently rush to Law Ministry and Lawyers. The office should have dedicated Legal Professionals who will look after the Court cases related matters and also defend the department in the IPAB and coordinate with Law ministry and different lawyers in case the case is in other lower courts /High Courts and Supreme Courts.

Four Legal Officers may be appointed at the Four Offices.

2. **System Administrators (IT):** The Indian IP Offices are going through the modernization phase and NIC is upgrading its software and looking after other Computerization. But its time to have dedicated System Administrator at the four locations from Computer Science or Computer Engineering background who will look after the daily to daily Module related problems as well other Software and Hardware related problems for present as well as future. This is the usual scenario in all the major developed IP offices.

System Administrators to be appointed at each Location.

3. **Quality Management System :** The office will strive to achieve improved quality standards by various quality enhancement measures. The quality assurance cell will monitor and control these activities. The quality assurance cell will undertake in-process reviews of search and

examination reports on random sample basis to check the quality standards. The cell will also work with NIIPM to add modules or amend the existing modules to the training programs for Examiners and Controllers. The quality assurance cell will be headed by a Controller on rotation basis.

4. INVENTORS SUPPORT CENTRE :

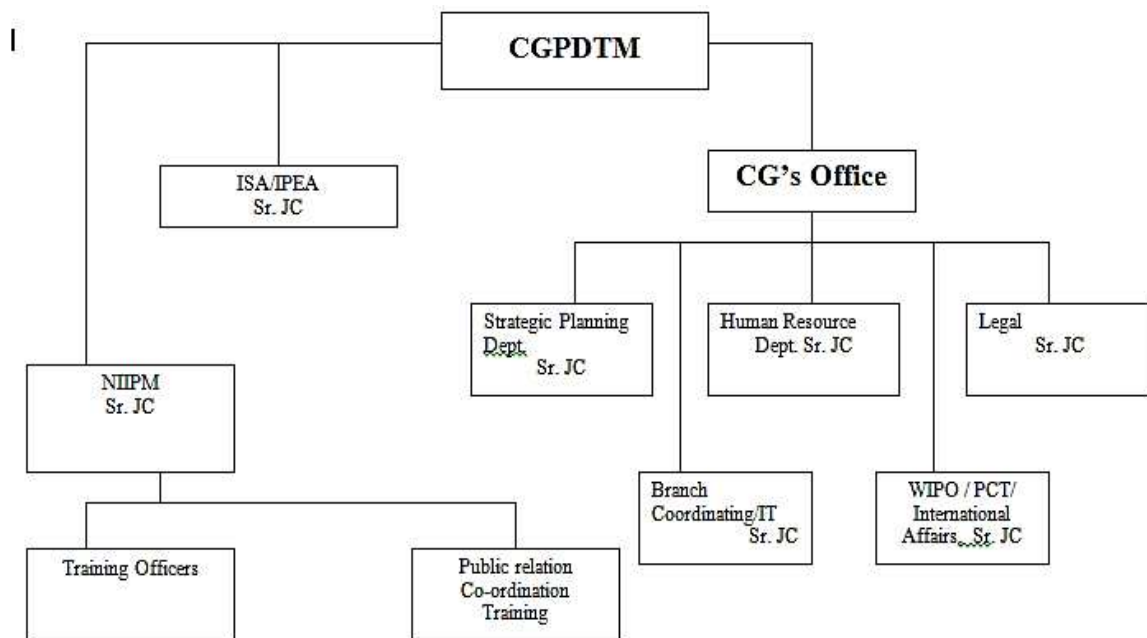
The office may set up an inventor support centre to assist individual applicants and Indian applicants. The centre will have the following functionalities:

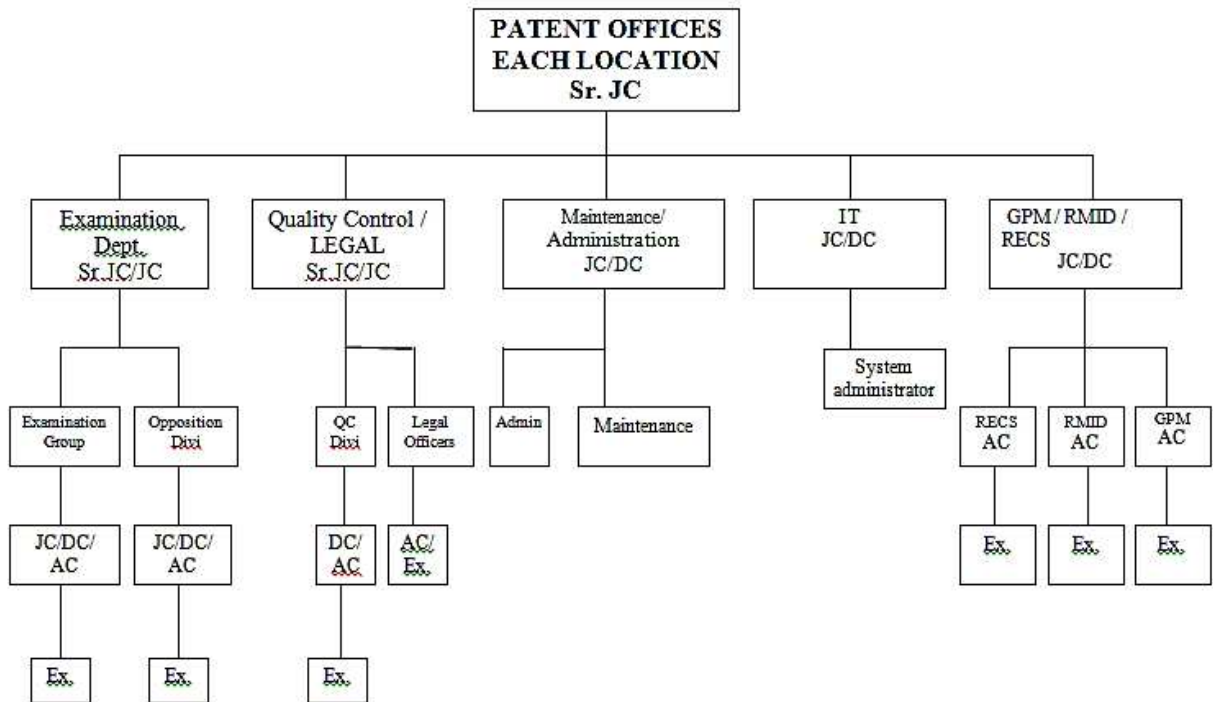
- Applicant’s guides
- Assistance to sell inventions
- Awards for best inventions
- Search and advice centre

5. **MAINTANENCE WING :** There should be a separate Maintenance wing.

6. IP TRAINING AND IP ACADEMY:

The Intellectual Property Training Institute in Nagpur may be expanded and developed into a full-fledged IP Academy by merging IPTI and PIS. The academy can develop a yearlong program schedule for training programs in IPR. The IP academy will also be responsible for the internal training programs for the staff of IPO. The IP academy can be headed by a Joint Controller and can have Dy. Controllers, Assistant Controller, and Examiners. The academy will also host search and advice centre to cater to the requests for search and information on patents.





7. Creation of an opposition division:-

One of the salient features of the 2005 amendment of the Patents Act has been the introduction of Pre-grant opposition of patent applications. Almost 600 pre-grant oppositions have been filed since 2005.

The number of post grant oppositions is also increasing. At the end of 2009-10, 146 post grant oppositions were pending for disposal.

Opposition proceedings involve complex legal and technical issues at like proportions. The hearing officers for these cases should be able to spend sufficient time studying each case. They should also keep abreast of the latest decisions by courts and IPAB in patent matters. These controllers are expected to have reasonable understanding of legal matters like the evidence act, civil procedures etc. Therefore it is proposed to have separate opposition divisions in each office with 2 Deputy Controllers from each group.

Additional posts at DC level- $8 \times 4 = 32$ (for 4 branches).

8. Other issues:

RECS, GPM and RMID

The patent office procedure (POP) was brought out in 2009 for streamlining the office procedures. POP envisaged 3 separate divisions to carry out all office procedures other than examination and grant. Creation of these divisions has markedly improved the service levels of the office and has removed several bottlenecks. Additional AC and supporting Examiner posts have to be created for these divisions.

ISA/IPEA

WIPO recognized IPO as ISA for PCT applications a few years back. Though national offices which were subsequently recognized have started operations, IPO is yet to operationalize the ISA. Additional posts for ISA/IPEA - Director Sr. JC (1), Deputy directors – DC (3- ISA, IPEA, Quality) , group heads –AC(4), Examiners (16)

7. The Department had taken an initiative to outsource some part of the prior art search of the Patent office to CSIR. This project is proving to be beneficial. Which other organizations could be tapped for the purpose. Are there likely pitfalls that the department must take precautions against? What could be such precautions?

Basically outsourcing some part of the work of Examiner is against the section 12 and 13 of Patents Act 1970, because as per the Act, only Examiner has to carry out the search, since it is statutory responsibility of the Examiner and he is the only person to do it ,since he has been well trained internally and externally through WIPO and JPO training programmes carried out by other national patent offices, more over it is just duplication of work because even though other agency is doing search, as per the Act again Examiner has to do the same since it is a statutory duty of the Examiner. As such, these Search Reports have no value-addition for Examination purposes .

Search by CSIR: It is observed that CSIR is one of the Patent Applicants both at the IPO and abroad.

However, without prejudice, this is to categorically state as trained and experienced Officials of the IPO that CSIR Search Reports are at best ‘amateurish’. With regard to prior Art citations, particularly the Non-Patent literature, there is little substance as relevant citations are often absent from the report.

Therefore, outsourcing of Search is not only unlawful, but also useless, and the money should be utilised for more up gradation of search system.

India was recognised as ISA/IPEA by WIPO so department has to promptly recruit examiners and staff members to meet the international standard of Examination practices. So, in the wake of India becoming an ISA/IPEA outsourcing of search would only give a wrong signal to the international community and devalue the stature of Indian IP office.

8. Is a similar outsourcing (including employment of temporary but qualified personnel) exercise possible in case of trademarks where more than 400000 trademark applications are pending at various stages? If so, what could be the safeguards that should be put in place?

Office of the CGPDTM is one of most important offices internationally; fundamentally statutory responsibility cannot be out sourced, it is better to think about the proper and meaningful recruitment policy at the basic level and carrier enhancement plans in both the offices.

9. What other measures can be used to improve the base of examination of applications within the framework of the existing legislation?

The appointment of examiners should be made more precisely with respect to specialized field in line with to International Patent Classification. Available manpower should be further utilised according to their specialized field. The resource of search should be upgraded more in tune with International Developed Search systems.

10. In spite of e-filing for patents etc. and streamlining of the examination process, is there a need for setting up additional offices?

E-filing of Patent etc. cannot be made mandatory because people from remote villages of INDIA cannot have access to internet and they do not know how to proceed with e-filing and also as per Act it is not mandatory requirement, Yes it is better to set up additional supporting offices/mechanism at major cities.

11. The National Institute of Intellectual Property and Management, which is housed in Nagpur, is at present under the supervision of the CGPDTM. This institute needs to be developed into a world class institution for research and training in the field of IP. Would it be better for such an institution to be directly controlled by the Ministry or should it continue as one of the offices of CGPDTM?

NIIPM should be under the supervision of the CGPDTM and it should be provided suitable man power to meet the standards of world class institution for research and training in the field of IP to train both IP officials and public.

Or otherwise it could be made an autonomous Institute under the Ministry in the line with IIM, IIT etc with sufficient number of Officers from IPO in the Governing Council.

12. The recruitment of officers has been delayed inordinately by the complicated, prolonged procedures involving interdepartmental approval. What could be the options to address this problem? Should a special dispensation be sought to address this issue. If so, what could be the possible course of action?

Yes, it is a fact that recruitment of officers has been delayed inordinately, so it better to take up issue as urgent and only solution is strong recruitment policy should be enacted in both the offices and accordingly every year officer recruitment should be taken up by govt. recognized agency in a time bound manner to meet the backlog of applications. The process should be initiated in well advance and recruitment of Officers should be adequate with the number of backlog of applications. Practically new examiners who are going to join are very apprehensive above the employment condition including promotional avenue of this office. Attractive financial package with lucrative promotional prospect is required not only for recruitment but also for retaining of those Officers.

As is clear from the statistics given in the discussion paper the creation and recruitment of posts has clearly lagged the curve of applications leading to huge pendency. Strangely, in spite of creating additional posts in the past 3 instances, the backlog of patent applications has been rapidly increasing. Indeed the backlog has tripled since the first plan was initiated.

The recruitment has not been in accordance with the requirement. Even by the last round of recruitment, the number of examiners in some fields like electrical and Bio-technology was disproportionate to the requirement. Appallingly even the present recruitment too many posts have been earmarked for these subjects.

The process of recruitment presently followed resulted in unwarranted delays and cost over runs. Even if the recruitment were to be made on the basis of a written examination, patent office could have relied on the GATE or JRF scores. But recruitment through written examinations carries an inherent risk of excluding experienced candidates in specific fields.

So, a suitable recruitment model for patent office would be to ascertain the specific requirements based on filing (like thermal, automobile, manufacturing, Design, Industrial etc. than broad mechanical engg.) and then recruit through direct interview as being done at EPO and USPTO.

Looking into that aspect only the Department has already come out of UPSC for faster recruitment. So what is required is that proper and dedicated monitoring.

Further as per the statutes the Central Government is the authority who makes the appointment in the offices. However there is till date no recruitment cell or wing established in the Ministry. There should be a committee which will have regular meetings (at least in 4 months gap) with CGPDTM as the member to review the vacancies and instruct the wing to initiate steps immediately.

13. Since Trademark registration is a quasi- judicial process involving opposition cases and hearings, what can be done to address the large number of vacancies for the post of Assistant Registrar and above? If it is not possible to select new officers immediately, what can be done to remedy the situation?

As indicated above, recruitment agency has to address the problem.

14. Considering the importance of trademarks in India and the fact that a majority of the application are made by Indian applicants, should the size of the Registry be addressed in the XII Plan? What could be an appropriate structure.

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15. In view of the fact that some innovations can qualify for different kinds of IPRs, would it be better to have a single window at the front end for applicants for all kind of IPRs while the specific IPR issues could be handled by different offices at the back-end ?

At present to facilitate the process for applicant the office is accepting fee for Patent, Design, Trade Mark from the same place with different counters adjacent to each other. So it is not clear what additional advantages the single window will bring because Single window is practically not possible because nature of fulfilling requirements of each registration is different, better to maintain status quo. However though the number of applications for GI is very small but still another window may be opened up at each location so that people can submit the GI applications also like Design applications at other places.

16. Any other views on the subject.

Existing system is sufficient to cater the problems if properly managed and sufficient manpower is provided along with up gradation of Infrastructure. Though in the future more number of officials are going to join this office as also provided in the discussion paper, surprisingly no thought was given for arrangement of space for the same. So as a vision it is suggested that the office should immediately look for arrangement of additional land adjacent to offices.

The office of the CGPTDM can be reorganized within the existing frame work by making proper recruitment policy and career advancement policies.

Due to the changes enacted in the amended Patent Act 2005, increase in number of cases for oppositions under section 25, increase in number of cases for hearing under section 14 and increase in refusal orders under section 15 had increased the workload of the controllers considerably. India has unique sections like 3(d) & 3(k) which had increased the number of cases under section 25, 14 & 15. Taking into the consideration of the work load of the controllers the ratio of Controllers and Examiners shall be reduced to 1:3 accordingly the number of post for controllers AC/DC/JC/Sr. JC shall be created in 12th five year plan. Increase in number of posts leads to quality patents. It also provides a logical solution to the promotion problems/issues, which could be addressed easily to keep the young, experienced & technical persons within the system. As explained before due to the bad promotional avenues many had left the organisation.

Non-Functional up gradation for Officers of Organized Group 'A' Services in PB-3 and PB-4 (Necessary documents attached) – Annexure 1.

The Government can consider and declare the Patent Officers as an “Organized Group ‘A’ Services and implement non functional up gradation of Group A Officers.

More number of posts should be created in the hierarchy and different posts should be properly filled up in proper time as per the Recruitment Rules. Looking into that aspect and to strive for excellence it is suggested that under XII plan 1:3 ratio may be implemented for each level which, Examiner : AC= 3:1 ; AC:DC=3:1; DC: JC=3:1; JC: Sr.JC=3:1.

Major problem is manpower shortage at each stage of the operation, so it is suggested that sufficient staffs should be provided, to cope up with the enhanced work.

It is pertinent to say that the patent right has been equated to fundamental right by the courts in number of the patent cases in the High Courts.

Patent grant/refusal is a quasi-judicial function as stated by the number of high courts so there is no comparison of the functions of the patent office to limited functions of the SEBI and IRDA considering the public interest at large.

OFFICE OF THE CGPD TM should be retained with statutory body status, so that it can function freely without unlawful interference from various sources.

IPO do not have a quality policy in place. Quality assurance measures may be implemented after appropriate reduction in per month quota of applications to accommodate increased expectations.

Indian IPO should strive for excellence and prove it as a 'WORLD CLASS IPO'

ANNEXURE I

**No. I-11019/12/2008-CRD
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training**

**Room No. 341, Lok Nayak Bhawan,
New Delhi-110003.**

November 19, 2009

Office Memorandum

20 NOV 2009

Subject: Attributes of Organised Group 'A' Central Services- Clarification regarding.

The Department of Personnel and Training has been receiving a number of references seeking clarifications about the attributes and definition of the Organised Group 'A' Central Services. Many service associations have also filed applications in various courts claiming the status of an Organised Group 'A' Service and the consequential benefits. It appears that the difference between an Organised Group 'A' Service and other Services/Cadres has not been appreciated in its true sense. The attributes of an Organised Group 'A' Service are clearly laid down in the existing Monograph on Cadre Management published by this Department. In order, however, to remove any doubt, the same are reiterated below:

- (i) The highest cadre post in such services is not below the level of Rs.37400-67000 plus Grade pay of Rs.10000 (SAG);
- (ii) Such services have all the standard grades namely, Rs.15600-39100 plus Grade pay Rs.5400 (JTS), Rs.15600-39100 plus Grade pay Rs.6600 (STS), Rs.15600-39100 plus Grade pay Rs.7600/Rs.37400-67000 plus Grade pay of Rs.8700 (JAG/NFSG) and Rs.37400-67000 plus Grade pay of Rs.10000 (SAG);
- (iii) At least 50% of the vacancies in Junior Time Scale (JTS) in such services are required to be filled by direct recruitment;
- (iv) All the vacancies above JTS and upto SAG level in such services are filled up by promotion from the next lower grade;

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- (v) While a service may comprise one or more distinct cadre (s), all such cadres should be governed by composite Service Rules facilitating horizontal and vertical movement of officers of a particular cadre at least upto SAG level. The cadre posts of an Organised Service expressly belong to that service. The posts not belonging to any service are classified as General Central Service and, therefore, an Organised Group 'A' Service cannot have posts/grades classified as General Central Service; and
- (vi) Such a service consists of two distinct components, namely Regular Duty Posts and Reserves. The Reserves are generally of four types, viz (i) Probationary Reserves, (ii) Leave Reserve, (iii) Training Reserve and (iv) Deputation Reserve. The various types of reserves are usually created and accounted for in the Junior Time Scale.

Note:- The existing Organised Group 'A' Services have evolved over a period of time and may have minor deviations owing to their respective functional requirements. The services already declared as such need not, however, be reviewed.

2. The above are certain basic attributes of an Organised Group 'A' Service. There is, however, nothing to suggest that the services/cadres fulfilling these criteria would be automatically conferred the status of an Organised Group 'A' Service. An Organised Group 'A' Service is one which is constituted consciously as such by the Cadre Controlling Authorities and such a service can be constituted only through the established procedures.

P Tyagi

(Pratima Tyagi)

Under Secretary to the Government of India

Tel: 24622461.

To

All the Cadre Controlling Authorities.
(As per standard mailing list)