



SOFTWARE FREEDOM LAW CENTER

K-9, Second Floor, Birbal Road

Jangpura Extension

New Delhi-110014

Tel. :+91-11-43587126

Fax :+91-11- 24323530

www.softwarefreedom.in

Mishi Choudhary

President

direct : +91- 9811793530

mishi@softwarefreedom.org

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Mr D V Prasad

Joint Secretary

Department of Industrial Policy and Promotion

Ministry of Commerce & Industry

Government of India

Sub: Comments on the discussion paper on the review of the organisational structure of the office of the Controller General of Patents, Designs, Trade Marks and Geographical Indications

The discussion paper on the review of the organisational structure of the office of the CGPDTM & GI brings to light the issues faced by the patent and trademark offices and we appreciate the efforts taken by the DIPP in publishing this and seeking comments on it. The major problem highlighted in the paper is that of pendency of patent and trademark applications.

The need of the hour is to find solutions to improve the efficiency and quality of services provided by these offices. The steps taken to implement e-enabling of the services at these offices need to be appreciated and these have definitely made it easier for the general public to access these services.

Patent office

In the case of patent office, the major work involves the examination of the patent application. This is a time consuming process and involves subject expertise in the

field of the application. The Patent office has already successfully implemented outsourcing part of the work to CSIR. This model can be extended by tying up with Government organisations who have expertise in various technical fields. Thus, in the case of applications related to information technology and electronics, the resources of the Department of Information Technology could be utilised so that the department's expertise could be used for an efficient and thorough prior art search. The resources of departments and organisations who have expertise in fields like biotechnology, pharmaceuticals and mechanical engineering could be utilised to a large extent in doing prior art search. However, when such an outsourcing model is used, it should be seen that there is no conflict of interest, e.g., CSIR is also a major applicant and has filed 162 applications in 2009-'10.

The quality of prior art search can be improved by opting for a crowd-sourcing model like the peer-to-patent project (<http://peertopatent.org>) which allows the general public to submit prior art for the applications being examined. Such a model could ensure that the quality of granted patents improve as a result of better prior art search. This may not directly result in reducing the work-load of the patent office as the submissions by the public will have to be reviewed by the examiners or other experts. However, the quality of granted patents will definitely improve as a result of examiners gaining access to relevant prior art.

The patent office should aim for reduced first action pendency and total pendency and has to fix achievable targets. The annual report of the office of the Controller general of patents, designs, trade marks and geographical indications should provide details of average first action pendency from the time of filing the examination request and average total pendency as is provided in the case of USPTO reports.¹

Trademark office

As the examination of trade marks is more in the nature of a legal work, it may not be advisable to outsource the work. However, the problem of pendency could be solved

1 <http://www.uspto.gov/about/stratplan/ar/2011/USPTOFY2011PAR.pdf>

by opting for qualified temporary staff who could be trained in the procedure. A work study could be conducted to estimate the manpower required to process pending applications. Based on the results of such a study adequate staff could be employed across offices to process pending applications. This can only be a temporary solution to solve the pendency problem and the issue of filling up vacancies at senior and middle management levels will have to be taken up at the earliest.

Organisational structure

Although the discussion paper mentions the option of bifurcation of the patent and trademark offices, the paper has not really brought out a case for such a move. As the paper explains that both the offices enjoy a fair amount of independence in their activities, a bifurcation might only result in unnecessary expenditure and duplication of administrative functions.

The patent and trademark offices definitely require more manpower and financial resources as the number of applications are increasing steadily over the years. The creation of an autonomous body could improve the financial resources that are available for use. However, this involves an amendment of the Patent Act, 1970 and hence could be a time-consuming procedure. The prime advantage of making the patent and trademark office an autonomous body, is easier availability of funds. If the required funds could be allocated by the Government then there is not much of a case for making it an autonomous body.

Opening up new offices is not a solution for the pendency and administration issues as a new office with its added administrative expenses will only be a further drain on the limited financial resources. The patent and trademark offices as well as other offices handling intellectual property matters like copyright and plant rights should focus on providing easy to use web applications that reduce the work-load on the offices and make it easier for users to access the services of these organisations. Although the patent and trademark offices currently provide web-based access to their services, these services are not reliable and user-friendly. The prime concern of DIPP should be

to make these online services reliable and user-friendly. If easy online access is made available for services related to the different kinds of IPRs, a single window procedure may not be required.

We hope that DIPP continues to engage in a constructive dialogue with the various stake holders resulting in improved working of the various offices administering intellectual property rights in the country . We would be more than willing to discuss the issues in detail and provide any further assistance .

Yours sincerely,

Mishi Choudhary
President
Software Freedom Law Center
K-9, Second floor, Birbal Road,
Jangpura Extension,
New Delhi-110014
Phone# +91-11-43587126
Cell: +91 9811793530
Email: mishi@softwarefreedom.org