

I am submitting the comments and suggestion by duly considering the main concern of the greater public of India with respect to the statutes and socio economic condition of this country.

But before going to the questionnaires I think that it is very essential to highlight certain points of the discussion paper which needs certain analyses

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

Now it is the time to upgrade search systems, uniformity in the prosecution, speedy procedure so that it is capable to accept its responsibility and competitiveness according to the international standard. At the same time the infrastructure should be modernised to cope up with progressive challenge and to fulfil the 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.*

It is prudent from the fact that large number of posts were vacant and at the same time I heard that the number of applications have been increased and thereby the pendency has been increased to a large extent. Adequate measure i.e well advanced planning in this regard should be immediately taken to fill 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 .*

This is against the Patents Act and Rules. Without any legal basis this was done rather it is a duplication of work and wastage of man power in The Patent Office because as far as my knowledge is concerned there is no binding among the examiners to obey those search reports also.

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 .*

Actually examiners are responsible to examine any Patent application and Controllers are empowered to grant/refuse/abandon the patent application as per the Patents Act.

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.*

This comment is not based upon any facts and figures. The allocation of resources is required to be utilized as per their need only, such that it can be used in an optimum and economic way.

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.

Basically before the discussion I want to explain the basic purpose or the main aim of the Government of providing Patent to any Patentee:

- a) Providing of reward to patentee for the achievement and to motivate him for further development.
- b) Help the researchers for further research by exploiting the full discloser of the invention.
- c) The process is never ending; by recognizing the problem solving of problem by further research/development.
- d) Commercialization of the Patent and ultimately it is utilized for the common public.

Similarly with that intend of the Patent, the Indian Patent Act confers powers to the statutory authorities to protect the interests of the Patentee and also the human nation as a whole.

But this broad and great aim of the Government can not be based upon the revenue based model or fees earning model which is the main motive of any autonomous agency. Hence this broad aim of the Government can never be matched with that of any autonomous agency. On the contrary if revenue-based model or autonomy is proposed, it implies that Government proposes to 'sell' the patents merely to generate revenues, and not to utilize them for the purpose of the nation. On the other hand this model is applicable for corporate and competing firms, but such model can not be applicable in a Granting Authority (Government) without addressing to serve the nation for the greatest intend of the patent.

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 corroborate 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.

Basically our country is receded from any developed country due to lack in planning. Here planning and execution occurs side by side and thus failure is inevitable in every step. Not only well advance planning but proper enthusiasm to the robust workforce is absolutely essential for the success. It is pertinent to mention that the fact that the developed offices are not autonomous, still they have a robust planning for execution and policy for career progress. I think that the autonomy is not the solution to solve the problem but the proper management and execution of the vision and mission to strive for taking India ahead as a world class IP office is very much needed.

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”

The above statement has been made with respect to comparisons based on SEBI and IRDA which is absolutely vague.

SEBI and IRDA functions are no way linked with the statutes of IP offices. For instance, SEBI has a function where huge amount of financial transactions are carried out in day to day operation.

The Patents Act and other Acts in the field of IP are the most balanced Acts throughout the world. Here the Central Government has a role to play by making rules as per the Sections. 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 and he has to obey only the Act and Rule in the techno-legal atmosphere. Thus there is a fine tune balance in terms of the statutory functions which have been provided by the Parliament after considering the greater public interest in the socio economic environment. Again it is pertinent to mention 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?

Comments : 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 with each other and all the activities of trademarks, patent and GI registry are guided by different Acts and Rules. More financial power may be given to the CGPDTM by following the due procedure of the Government. The Government may also consider to make a separate department of IPR under the Ministry of Commerce and Industry with dedicated officials to look after the administration of the different form of IPRs.

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

The situation does not arise, because separate establishment may create unforeseen complex situation. 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 it may create a new problem. Trademarks, patent and GI registry are the essential and indispensable parts of IPR and should be under the same umbrella.

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.

- a) Providing of reward to patentee for the achievement and to motivate him for further development.
- b) Help the researchers for further research by exploiting the full discloser of the invention.
- c) The process is never ending; by recognizing the problem solving of problem by further research/development.
- d) Commercialization of the Patent and ultimately it is utilized for the common public.

Similarly with that intend of the Patent, the Indian Patent Act confers powers to the statutory authorities to protect the interests of the Patentee and also the human nation as a whole.

But this broad and great aim of the Government can not be based upon the revenue based model or fees earning model which is the main motive of any autonomous agency. Hence this broad aim of the Government can never be matched with that of any autonomous agency. On the contrary if revenue-based model or autonomy is proposed, it implies that Government proposes to 'sell' the patents merely to generate revenues, and not to utilize them for the purpose of the nation. On the other hand this model is applicable for corporate and competing firms, but such model can not be applicable in a Granting Authority (Government) without addressing to serve the nation for the greatest intend of the patent.

Comparison with other Patent Offices, such as, USPTO: Here, two issues are carefully examined: So far as USPTO is 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 are unique. Hence, before rushing onto such comparisons, very careful thinking and wide engagement with the general public is required.

Since, it is a consideration of 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 is fuelled by Small enterprises and start-up firms. But same is not true for India, where still international applications and multinational companies far outnumber the domestic applicants. Generally IPR is mainly country specific. It is, therefore, not clear how USPTO model is going to influence the patent cause in India after considering the socio-economic condition of this country.

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

I think no 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 attractive pay packages.

Alternatively a new cadre called Indian Intellectual Property Services may be established so that assured promotion opportunities are available for the technical officers after completion of term.

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

Though the officials of Patents, Trade Marks, GI should always be there for consultation to the CGPD TM for any issue but there should be a dedicated workforce under the CGPD TM office and hence necessary posts should be immediately created and appointed in the office of the CGPD TM.

In order to meet the aspirations of the inventors, applicants, public and the country the office need to have a radically different organizational structure than today. I think four separate divisions like legal cell, system administration cell and quality management cell and inventor support cell are very much needed to strengthen the office of CGPD TM.

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?

This is against the Patents Act and Rules. Without any legal basis this was done rather it is a duplication of work and wastage of man power in The Patent Office because as far as my knowledge as concerned there is no binding among the examiners to obey those search reports also. It is observed that CSIR is one of the Patent Applicants both at the IPO and abroad and if the search is made by CSIR then biased search report may be the outcome. Hence, outsourcing of Search is not only unlawful or biased, but also useless and exploitation of money. Moreover as India was recognised as ISA/IPEA by WIPO so for the respect of this country outsourcing is not desirable.

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?

No, office of the CGPD TM is one of most important offices internationally, fundamentally statutory responsibility cannot be out sourced ,it is better to think about the proper and

meaning full recruitment policy at the basic level and career enhancement plans for the office.

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 adequate with the International Patent Classification (IPC). Available manpower should be further utilised according to their specialized field.

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 .

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.

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 well advanced and the only solution is strong recruitment policy in a time bound manner to meet the backlog of applications. Attractive financial package with lucrative promotional prospect and better employment condition are required not only for recruitment but also for retaining of those Officers. Separate HR or recruitment cell or wing may be established in the Ministry.

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, same policy may be implemented to address the problem.

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

More manpower may be employed for the smooth functioning of the office.

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 I think it is not preferred to have a single window at the front end for applicants for all kind of IPRs.

16. Any other views on the subject.

I think the existing system is sufficient to cater the problems if properly managed and sufficient manpower is provided along with up gradation of Infrastructure as suggested above.