

OFFICIALS OF DELHI PATENT OFFICE

Comments on Discussion Paper of DIIP

[Review of Organisational Structure of the Office of the Controller
General of Patents, Designs, Trade marks and Geographical Indications]

30th November 2011

Comments on Discussion Paper Circulated by DIPP

Sl No.	Issues	Comments
01	<p><i>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?</i></p>	<p>No.</p> <p><i>Keeping in view the Global approach for integrated IPRs, this will not be a proper move and may send wrong signals to the international IP community. Rather all the different forms of IPRs such as Patents, Designs, Trademarks, Geographical Indications, and if possible, Copyrights, The Semiconductor Integrated Circuits Layout Designs, Bio diversity and Plant variety protection and Farmers' Rights should be brought under single Ministry/ Department of Govt. of India for coherent and integrated IPR policy formulation and implementation of IPRs in the country. The present system involving various Ministries and offices requires great effort for achieving co-ordination which could be done away with.</i></p> <p><i>Further, only few years back substantial efforts have been initiated to unify Patent & Designs with Trademarks & GI and departure from this policy will put a great deal of resource crunch and lack of co-ordination. No major countries across the world follow separate office for Patent and Trademarks other than China; It is quite evident from discussion paper itself.</i></p>
02	<p><i>If so, what should be the organisational and reporting structure for each office?</i></p>	<p><i>At present the office of CGPDTM administers four IP related statues. The present challenges are mainly attributable to lack of sufficient man power in the office of the CGPDTM thereby causing lack of co-ordination in different offices under CGPDTM. A separate head one for administering</i></p>

		<i>Patents and Designs and the other for TMR and GI should be placed under CGPD TM having just a rank below him.</i>
03	<i>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 CGPD TM autonomous? Is it possible to bifurcate the two offices and make the Trade Marks Registry and the Patent and Design Office two autonomous organizations?</i>	<p>No.</p> <p>The IP Rights are statutory in nature and are conferred on the right holders by the Government of the country through IP Offices. The power to establish such IP offices, appointment of examiners and other officers for administering the statutes lies only with Central Government by the statutes themselves; therefore any deviation from the statutory provisions such as creation of autonomous bodies will be violative of the statutes.</p> <p>The question of bifurcating of office of CGPD TM into different IP offices has been already commented upon at Sl No.1 above.</p>
04	<i>What legal changes are required? What changes are required to the rules?</i>	<i>Keeping in view the statutory nature of work, and comments in the above paragraphs no changes are deemed necessary at this stage.</i>
05	<i>Can the reorganization of the office of CGPD TM be taken up within the existing framework without seeking any amendments to the law? If so, what can be an ideal model?</i>	<p>Yes.</p> <p>The restructuring of the office of CGPD TM is utmost necessary for better and improved functionality and co-ordination. The detailed structure is placed at annexure- A</p>
06	<i>How should the office of the Controller be strengthened?</i>	<p>The office of the CGPD TM should be strengthened only converting it as an attached office in place of subordinate office of the parent ministry and should be provided with sufficient infrastructure and supporting divisions on international, legal, financial and administrative matters together with senior management Team of IPRs as per proposal annexed.</p> <p>The inter- changeability of officials between IP Offices and parent Ministry at policy planning level , but not below the rank of Deputy Secretary and</p>

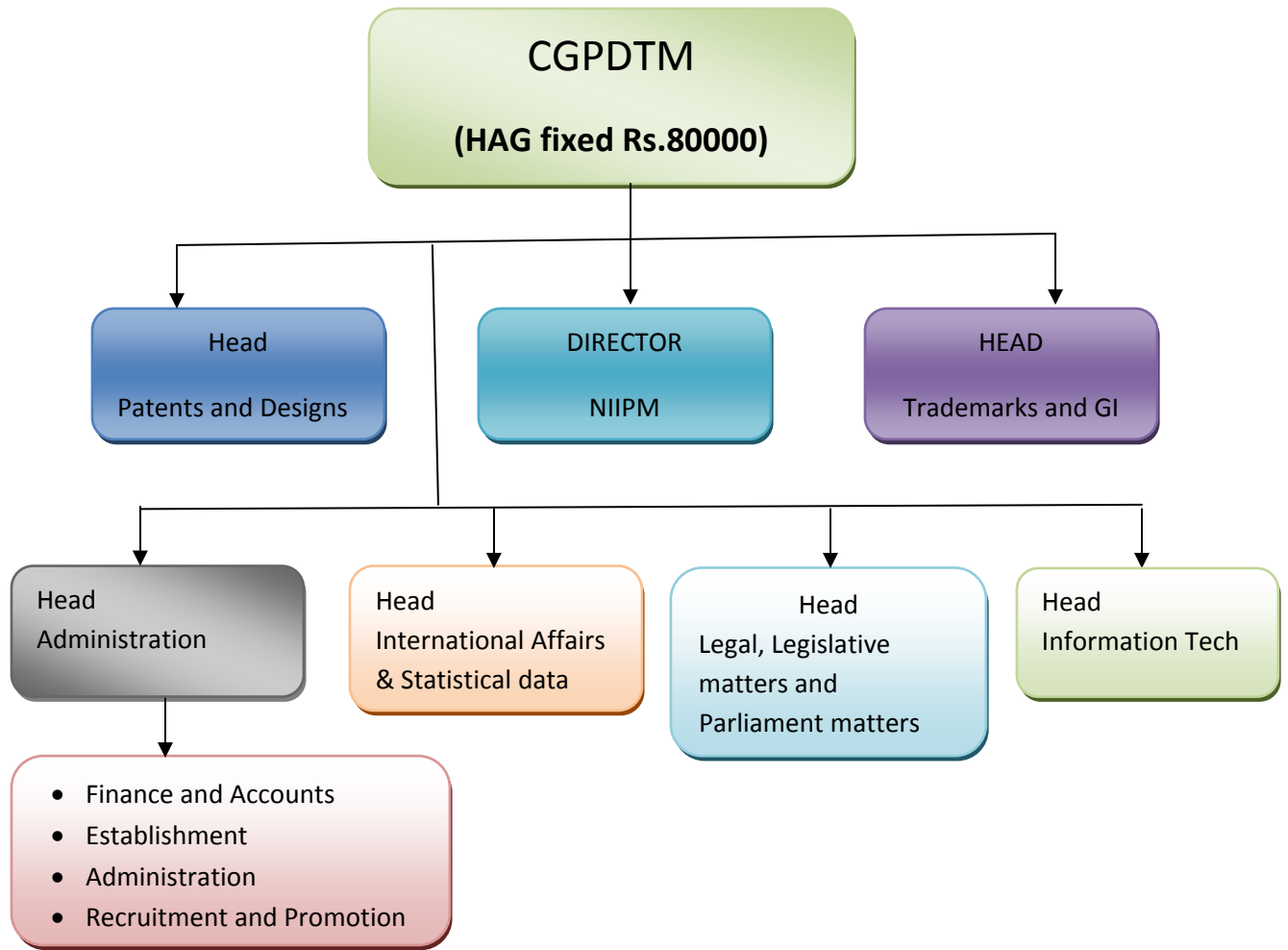
		<p>Deputy Controller/Deputy Registrar, and above should be adhered to for better policy formulation and implementation. This system is effectively followed in USPTO, Japan Patent Office and some other IP offices</p>
07	<p>The Department had taken an initiative to outsource some part of the prior art 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?</p>	<p>While the efforts taken by the department to strengthen patent offices in recent past is praiseworthy, the initiative to outsource prior art search is not proving fruitful, for want of statutory mandate and more particularly due to lack of any search analysis on novelty and inventive step by URDIP, CSIR as the searchers are sending only the cited document number which is of no practical use to examiners.</p> <p>Further the report send by CSIR are not in user friendly format requiring double time consumption by examiners. The Patent Act provides for search and examination to be conducted by the same examiner – a practice which even EPO has recently adopted under their BEST (Bringing Examination and Search Together) practices. As stated above, the search reports received from CSIR hardly serves the required purpose as the concerned examiner has to conduct fresh search for assessment of novelty and inventive step to satisfy himself as mandated under statute. Therefore no outsourcing can be probably thought of without bringing suitable changes in the statutory provisions. Alternatively outsourcing agencies for digitization, searches should be brought under CGPDTM on the pattern of JPO as internal agencies working for CGPDTM</p>

08	<p>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?</p>	<p>No, the solution of pendency lies in the recruitment of the qualified and competent workforce at different stages of administration of the statute.</p> <p>Outsourcing may appear to yield quick fix solution temporarily but it degenerate the system through incomplete, wrongful, erroneous, and non-accountable work interferences.</p>
09	<p>What other measures can be used to improve the base of examination of applications within the framework of the existing legislation?</p>	<ol style="list-style-type: none"> 1. Recruitment of qualified work force 2. Proper training environment 3. International exposure. 4. Enhancement of promotional avenue.
10	<p>In spite of e-filing for patents etc. and streamlining of the examination process, is there a need for setting up additional offices?</p>	<p>Keeping in view the vast geographical area of India, presently it is not possible to effectively expand the horizon of IPRs in remote places. Therefore there exist a need to open at least one IPR office in each state capital and Union Territories.</p> <p>Example: In china apart from one office (SIPO) at Beijing, there exist IP Offices in every state Capitals and every district headquarters for promoting IP at Grassroots level. This has resulted in large number of IP applications filed by domestic applicants (nearly 60-70%)</p>
11	<p>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?</p>	<p>The National Institute of Intellectual Property and Management was set up with a vision to develop as a world class Institution for excellence and so were Indian IP offices. The Institution which has to impart training to IP professionals including officers of the IP Offices in India and probably in future to IP Officials of other developing or least developed countries, needs to be under direct supervision of CGPDTM. The idea of having direct control of Ministry on such Institution may not be a better proposition keeping in view the technical nature of the Institution.</p>

12	<p>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?</p>	<p>The recruitment of all IP officers was initially through UPSC. With an idea to lessen the time of recruitment the department pulled itself out so far the patent is concerned on the plea that the Patent Office is scientific organisation and it should recruit its work force through its own recruitment agency. More than a decade has passed but neither the benefit of scientific institution such as Flexible Complementing Scheme (FCS) has been extended to the officers of the Patent Office nor the indigenous recruitment agency has been formed resulting in recruitment of patent examiners through foreign agencies such as EdCIL , CSIR and causing both financial and time constraints.</p> <p>It is therefore proposed that if the department is scientific, a separate recruitment and assessment Wing should be established in the office of CGPDTM under the Head of Administration to cater the need of timely recruitment and promotions without causing undue delay or else the recruitment should be given back to the esteemed and elite Central Government Recruitment Commission i.e. UPSC.</p>
13	<p>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?</p>	<p>The administration of any statute demands certain quasi-judicial functions to be performed by the concerned officials.</p> <p>For example, patents, designs are also administered in quasi-judicial capacity. The delay in the recruitment of man power is probably not due to UPSC but probably due to delayed proposals submitted by Department to UPSC because of non-existence of administrative set up in office of CGPDTM. The huge amount of pendency of vacant posts can be</p>

		effectively addressed by recruitment of work force at all levels of administration of statute. In the absence of any separate establishment under CGPDTM, it is proposed that the recruitment through UPSC will be a better option.
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?	The Intellectual Property Offices in India were augmented with four new buildings at four metros encompassing all four types of IPRs i.e. Patents, Designs, Trade Marks and Geographical Indications. The Designs and Geographical Indications were to be extended to all other offices where it is not administered as of now. An integrated archive together with Trade Marks Registry at Ahmedabad was to be formed. If these measures are effectively implemented the enhancement of manpower can be taken up in XII Plan to address the need.
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 ?	Yes. In fact, this is the only approach which the Government should foster in best public interest i.e. Integrate all IPRs at front end for public and at back end processing the particular application under the corresponding law by the qualified and competent officials for the purpose. This could be achieved only when all these statutes are governed by a single head i.e. CGPDTM under whom the different sub-heads functions at back end.
16	Any other views on the subject.	<ol style="list-style-type: none"> 1. The promotional avenues for the officials should be streamlined and made faster to raise morale of work force and to reduce attrition rate. 2. Adequate Budget allocation should be made under non- plan in proportion to the revenue generated by IP Offices.

ANNEXURE-A



Scales of other officials under CGPDTM

Patent

Sl. No.	Posts	Proposed Scales of Pay
1.	Additional Controller General Patents & Designs	PB 4 GP Rs. 12,000
2.	Senior Joint Controller	PB 4 GP Rs. 10,000
3.	Joint Controller	PB 4 GP Rs.8900
4.	Deputy Controller	PB 4 GP Rs. 8700
5.	Assistant Controller	PB 3 GP Rs.7600
6.	Principal Examiner	(PB 3 GP Rs.6600
7.	Examiner	PB 3 GP Rs.5400

Designs

Sl. No.	Posts	Proposed Scales of Pay
1.	Senior Joint Controller	PB 4 GP Rs. 10,000
2.	Joint Controller	PB 4 GP Rs.8900
3.	Deputy Controller	PB 4 GP Rs. 8700
4.	Assistant Controller	PB 3 GP Rs.7600
5.	Principal Examiner	(PB 3 GP Rs.6600
6.	Examiner	PB 3 GP Rs.5400

NIIPM

Sl. No.	Posts	Proposed Scales of Pay
1.	Director General	PB 4 GP Rs. 12,000
2.	Additional Director General	PB 4 GP Rs. 10,000
3.	Joint Director	PB 4 GP Rs.8900
4.	Deputy Director	PB 4 GP Rs. 8700
5.	Assistant Director	PB 3 GP Rs.7600
6.	Faculty Professor/Asstt Professors/ Lectures	GP Rs 5400-10000/-

Trademarks

Sl. No.	Posts	Proposed Scales of Pay
1.	Additional Controller General TMR & GI	PB 4 GP Rs. 12,000
2.	Senior Joint Registrar	PB 4 GP Rs. 10,000
3.	Joint Registrar	PB 4 GP Rs.8900
4.	Deputy Registrar	PB 4 GP Rs. 8700
5.	Assistant Registrar	PB 3 GP Rs.7600
6.	Senior Examiner	(PB 3 GP Rs.6600
7.	Examiner	PB 3 GP Rs.5400

Head Administration/Finance/ International Division/ Legal Division/IT should be of The Level of Senior Joint Controller/ Senior Joint Registrar.

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