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[This response to “Discussion Paper” of DIPP contains Twenty (20) pages only]

Detailed Responses – Discussion paper titled “Review of Organisational Structure of the Office of the Controller General of Patents, Designs, Trade Marks and Geographical Indications”

Background:

I am an active researcher in the field of technology and technological decision-making processes. Further, **I worked as an “Examiner of Patents & Designs” and was promoted to the rank of “Assistant Controller of Patents & Designs”**. I worked at the Patent Office, India for 8 years 8 months in its Mechanical Engineering division. I worked in the Designs Wing of the office too from 2002 December till 2008 January as an Examiner.

General Responses:

Sixteen “issues for consideration” have been raised in the Section VIII of the twelfth Discussion Paper in the consultation series of DIPP, i.e., the third paper dealing with issues relating to intellectual property rights (title of the paper: “Review of organisational structure of the office of the controller general of patents, designs, trade marks and geographical indications”). In response to the said sixteen issues constructive suggestions, facts and incontrovertible evidences have been delineated. Facts, figures and empirical evidences have been furnished in support of the responses elucidated hereinafter. A very careful review of the facts, figures and empirical evidences, based upon my tremendous experience and exposure with the staffs and officers of the Patent Office and the Designs Wing of the said office and the O/o CGPD TM for approximately nine (09) years, as a Group-A Gazetted Officer, assists me in building the framework for a revised organisation structure considering the current infrastructure of the said offices and quality of existing manpower and skill sets, within the context of the specific issues raised by DIPP. However, the instant discussion paper fails to elucidate the criteria responsible for the recent nourishment of the loop holes of the current administrative set up and soft areas of administrative, organisational, operational and structural set up by which the growth of corruption, nepotism, non-accountability of office actions (mostly taken by the officers who are in power and their coterie consisting of junior officers and staffs), non-transparent practices,

indulgence of unlawful activities within the office and vindictiveness of the officers (who are in power) towards colleagues, are growing in rapid pace. **Tables 1 & 2 illustrated in the discussion paper clearly show that the number of examined application and comparatively low in 2009-2010.** The pendency in both Patents and Designs is high in the said fiscal year. The lack of knowledge of IPR on the part of the newly recruited CGPDTM is the root cause. Further, the Examination and Supervision Modules of the Patent Office are very poor considering the elements of the software. NIC has not done their job properly as the feedbacks during building of the software were imparted by some non-computer or less-skilled technical officers of the Patent Office. In my opinion, the Modules must be re-validated and adequate measures should be taken to address lot of software errors (or errors in codes/storing data/search options etc) in the said Modules. Therefore, in order to improve the gross efficiency and effectiveness of the O/o CGPDTM, the Patent Office and the Trade Marks Registry, a vigilant, transparent, speedy and closed loop control is suggested so as to enhance the efficacy of the O/o CGPDTM and its subordinate offices in regard to administrative, managerial, structural and operational decision-making processes and actions considering the experiences of such vulnerable disruptions within the current framework.

Specific Responses – “VIII 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?

Responses:

It's not easy to answer the above question in a word. I am sorry to state that the question posed above clearly reflects **lack of administrative insightfulness** on the part of the **O/o CGPDTM**. Thus, a critical analysis of the current state of affairs along with other constraints should be kept in mind before answering to such an abrupt decision-making policy of DIPP.

During my tenure I observed that the nature of work in Patents, Designs and Trade Marks and GI registry is quite different. Patent wing deals with pure technological aspects, i.e., inventions, while design wing works with the aesthetic nature of articles, goods, products etc. These two wings might have a co-relation which is not the subject matter of discussion here. While dealing with the patents and designs wings of the patent office, it was observed that the nature of the work in Trade Marks and GI registry is more legal. Ideally the expertise required in the Patents and Designs wings are purely technical and it requires high skilled manpower (i.e., having post-doctoral / doctoral background in engineering / technology / science).

It has been observed from the **principle of management in large business houses** that **“operational difficulties”, functional difficulties and “skill requirements” are different islands of managerial capabilities which can not be compared / mingled up under the constraints of the real-world scenario.** The criteria emerged during

“operational difficulties” of an organisation **don’t promptly suggest to “divide and rule” the two wings**, i.e., patent-design wings, trade marks and GI registry. Operational difficulties are purely managerial in nature. A manager per se would say, based upon the question posed by the DIPP personnel, that it is the incapability of the present CGPDTM to handle the situation; rather to operate together the said three wings of the patent office, India. It’s the question of lack of knowledge in making managerial decisions in regard to the said three wings. Given the framework of the above question posed by DIPP in the discussion paper it seems that the present CGPDTM is incapable of handling the tree wings together due to his **lack of administrative insight!**

Within the ambit of the question posed in the discussion paper, the **following set of constraints/criteria of the O/o CGPDTM, and DIPP as well, are distinctly visible:**

(a) “*operational difficulties*” are the problem of the current manager, i.e., CGPDTM, to handle with the two major offices together under a common roof, i.e., Patents-Designs wings and Trade Marks & GI registries. **Such difficulties are not directly or indirectly related to “skill requirements” of the offices/wings;**

(b) “*skill requirements*” of the above two wings are set in the discussion paper as one of the key factors to tackle such “operational difficulties” thereby dividing out the office into two distinct wings, viz., Patents-Designs wings, Trade Marks and GI registry. **Based upon such a criterion, i.e., “skill requirements”, a crucial decision-making cannot be obtained;**

(c) “*present challenges being faced by the O/o CGPDTM*” may be the increased number of filing which have not been precisely elucidated in the above question of the discussion paper of DIPP.

The **constraints/criteria** brought out above **CANNOT** be emerged in deciding an easy and bespoke solution like “**divide and rule**” policy. However, considering the following real-world **criteria/factors/aspects (which have never been elucidated / considered by instant discussion paper as criteria for solving such operational difficulties etc.)** of the patents-designs wings, trade marks registry and GI registry, one can envisage a more moderate “divide and rule” policy that may have two separate Heads for the Indian Patent Office and Trade Marks & GI Registries:

(i) **the nature of work** of the patents-designs wings, trade marks registry and GI registry are completely different;

(ii) **space of inventory in one office** (e.g., combined patents-designs and trade mark & GI registry offices) is being decreasing drastically with the volume of paper patents-designs and trade marks application which warrants a new space (for accumulating inventory) for the trade mark & GI registries or the patents-designs wing;

(iii) the **ease of keeping a vigilant eye on a dedicated computer-system room** for a single office and the **accountability of keeping secrecy of information of the system-softwares and the large volume of data** can be achieved (**which is not at all present in the current system**);

(iv) the **increasing volume of filing** in the above three wings is not possible to handle within the present framework of the combined office;

(v) better **accountability of staffs and officers** of a single office can be achieved with such a division rather than a mixed-nature office;

Considering all the aspects of the current state of affairs of the Patents wing, Designs wing, Trade Marks and GI Registry, and considering the lack of the administrative insightfulness of the O/o CGPDTM, it is believed that **the Patent Office, India should have two separate wings, viz., Patents-Designs wing, Trade Marks and GI Registry, with two separate and independent (non-interfering) heads accountable to the Ministry under Govt of India.**

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

Responses:

The principal organisational structure should look like as that of Figure 1 below.

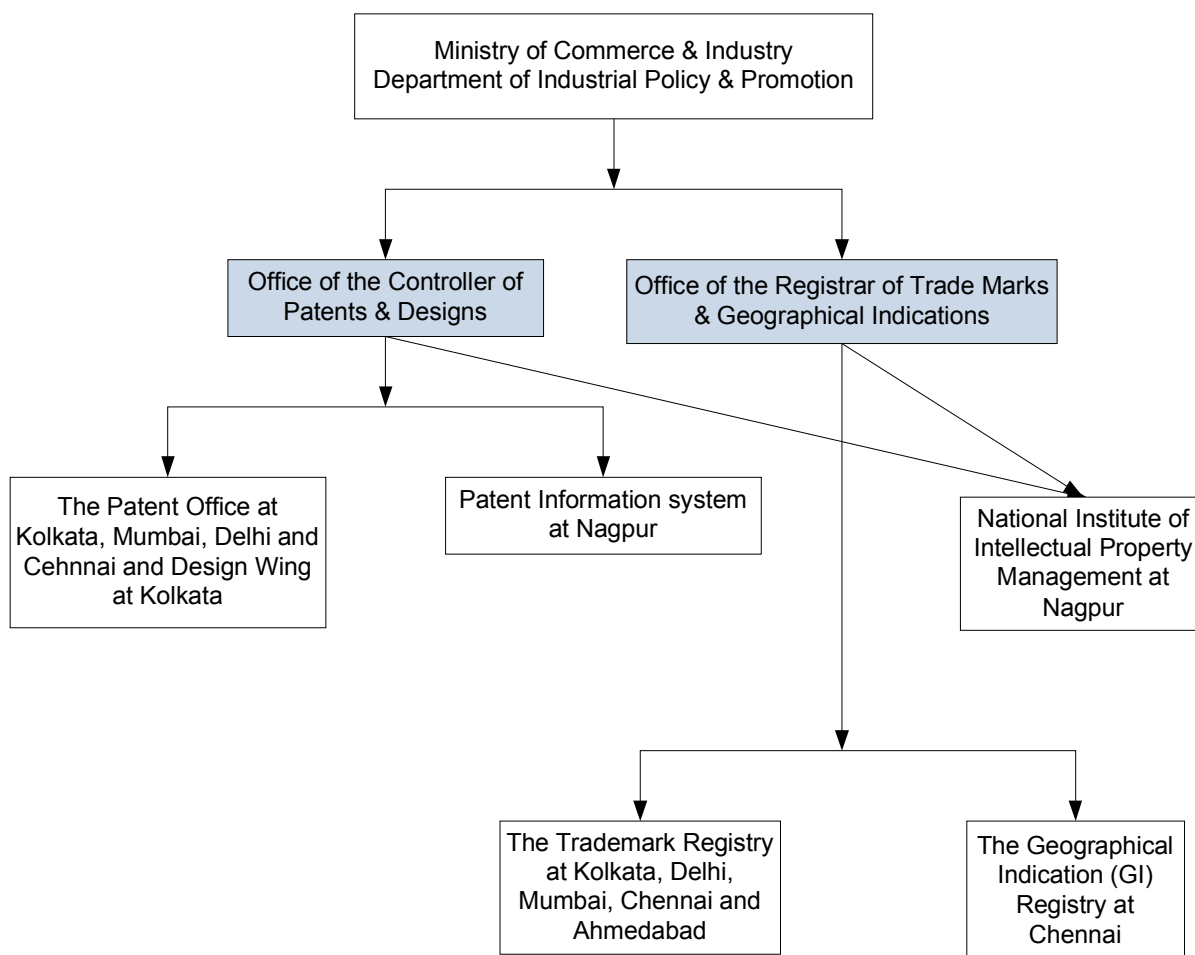


Figure 1: Proposal for the principal organisational structure of the two offices under one ministry

The principal organisational structure, as envisaged in Figure 1, should include three major divisions, viz., **Technical Division**, **Legal Division** and **Human Resources (HR) division**. Currently Patent Office, India has only a **Technical Division** and that too in a very scattered

manner. **The existing technical division mingles up with administration and work allocation task force which is not at all healthy for an organisation.** Technical Officers are not administrators. However, some of them are deployed to carry out administrative work. The said technical division contains few groups. The current groups are not so strong in respect of the expertise of the respective officers. The authority, i.e., CGPDTM, has not classified the technical officers, i.e., Examiners, Assistant Controllers (AC), Deputy Controllers (DC), according to their specialised field of studies. For example, an examiner or AC or DC having degree in Mechanical engineering is often asked to examine/supervise the patent cases (beside Mechanical engineering) belonging to Textile engineering, or Civil engineering, Metallurgical engineering, Mining Engineering, Structural engineering, Bio-medical Engineering or sometimes even Physics or Chemistry. **Even a highly specialised Mechanical Engineer having post-doctorate or doctoral qualification is not allowed to stick to his/her specialisation during examination of patents or its supervision after examination. This is completely ridiculous and it is a mere wastage of man power. All these happen in the Patent Office due to lack of appropriate insight during making decisions in regard to work allocations by the incompetent superiors.** As a post-doctorate research experience-holder I faced these troubles in the Patent Office, Kolkata in the Mechanical Engineering division under the supervision of a mere Textile engineer having M.Tech degree! **Therefore, technical division should again be re-structured according to the specialised disciplines and patent classifications.**

The Patent Office, the Design wing of the said office and the Trade Marks and GI Registry must have a strong **Legal Division** consisting of highly specialised advocates working under the two Offices, i.e., Office of the Controller of Patents & Designs and the Office of the Registrar of the Trade Marks & GI respectively. The Legal Division will deal with the legal cases related to patents and designs only and give feedback to the technical division as and when sought in deciding the cases.

The Patent Office, the Design wing of the said office and the Trade Marks and GI Registries have mostly inexperienced staffs who deal with service matters and thus, confusions are created amongst the officers due to lack of knowledge of the administrative rules of the dealing staffs or assistants. Further, the officers appointed in the Patent Office, Design wing of the said office and the Trade Marks and GI Registry are not administrators. In the present system the Head of Office takes the burden of work allocation without understanding the competency of the task force/human resource. **This way is obsolete now-a-days and it doesn't allow a functional system to gain much from the existing task force.** Therefore, **a separate division/cell (HR Division) should be introduced within the system containing very specialised professionals who will deal with the matters related to human resources, service matters, transfer & promotion, recruitment, retirement, division of labour within office, 360 degree work appraisal, implementation of total quality management (TQM), six-sigma for better routing of the human resources and allocation of human resources.**

This wing will have direct control of the Controller of Patents & Designs only.

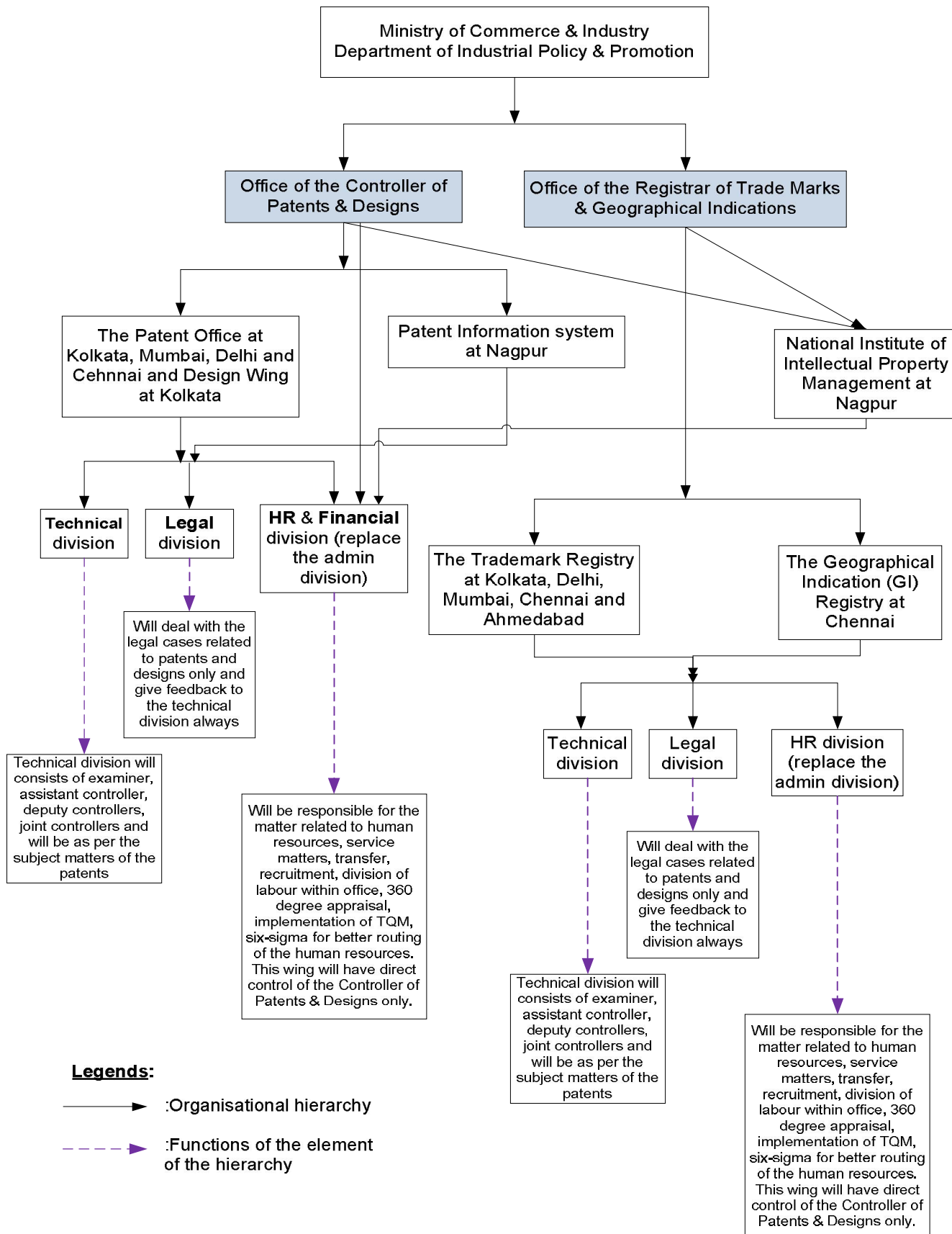


Figure 2: An outline of the organisational and reporting structure and their functions of the two offices under one ministry

Further, I am really sorry to point out that in the long history of the Patent Office the task of work allocation, transfer posting, service matter related decisions etc., which are generally taken by Head of Office or any other deputed officer/staff, **are mostly biased and often guided by personal interests**. *Instances can be given as and when sought*. Therefore, these duties should not be assigned to the Head of Office and other officers. The control of the proposed HR Division should not be delegated to the respective Head of Office or any officer/staff in the four (04) offices. **DIPP or the Ministry should aim at maximum gain**, within the prevailing laws of the land, **maintaining its fullest transparency in the system thereby keeping away the scopes of an Officer or a staff to act in an irrational, vindictive, illegal and corrupt manner (which is a long tradition in the Patents, Designs and Trade Marks!)**. **I am quite sure that the strong and vigilant task force will enhance the efficacy of the system within a short period of time.**

3. (a) 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?

Responses:

(a) As I had seen the Patent Office, India very closely for nearly nine (09) consecutive years as a very active and hard-working Group-A Gazetted Officer, my straightforward answer to this question, for the gross interests of the Patent Agents, multi-national firms, technical institutes/universities, individuals who invents, all stake holders, and the Government as well, is **“NO”!**

Further, my long involvement with the patent office and its staffs & officers, and the current state of affairs of the officers holding “power” ask my conscience to categorically state, in an unambiguous term:

“NO, it would NOT BE appropriate to consider making the Office of CGPDTM and the Trade Marks Registry autonomous”.

In order to illustrate the reasons behind the above statements, I would now traverse a set of horrified, illegal, vindictive, utter lawlessness and corrupt practices perpetrated by a coterie-driven senior officials (who are in power now) in the Patent Office, Kolkata and Mumbai (the O/o CGPDTM) so as to obtain personal gains. For the gross interests of the general “public” (as defined in the Constitution of India and the laws of the land) I have no option but to elucidate the said experiences. These would precisely elucidate why it is not the time to give “autonomy” to the two offices.

DIPP should not place such an injudicious proposal before the Ministry of Commerce & Industries or the Government of India. As noticed from the discussion paper, the sole intention of DIPP (and the Ministry as well) may be to ease the process of administration of the O/o CGPDTM and the Trade Marks Registry; but, the discussion paper doesn't reflect

considerations of the social norms, values, socio-economic conditions and the psychology of the workers in the said office while proposing such an administrative, financial and structural autonomy of the O/o CGPDTM. I am afraid to state that the decision of giving autonomy to the O/o CGPDTM and the Patent Office, India will be a great blunder within the current mental set up of the officers and the staffs. A minute study on the level of corruption, nepotism and willingness of the officers in “power” to act without maintaining the letter and spirit of the laws of the land clearly indicate that the **autonomy of power MUST NOT BE GIVEN to the Office of CGPDTM**. If such a foolish act is done by the Government or the Ministry of Commerce & Industries, the consequences will be disastrous towards destruction of the present economy, creed, culture and legal system of the country. **Such “autonomy”, if given, will dramatically increase the level of corruption, lawlessness, nepotism preached by the “power” of the current set of officers in the said office.** A strong coterie-driven network exists within some of the officers who are in power explicitly or implicitly.

I am sure that DIPP seeks an example in support of the contentions narrated above in regard to corruption, nepotism and lawlessness of the “power” acting for gaining some “personal interests” in the office. I believe that DIPP is well aware of the fact, from my near 9-month long communications with the Patent Office, the O/o CGPDTM, DIPP and Ministry of Commerce & Industries. One strong coterie-driven network, beginning from the O/o CGPDTM to the senior officials of the Patent Office, Kolkata greatly harmed me (an ex-Group-A Gazetted Officer) mentally and financially with their corrupt, unlawful, highly illegal acts. Repeated communications requesting to correct their illegal, corrupt, unlawful and coterie-driven actions to Mr. CGPDTM (Mr. P.H. Kurian), the O/o CGPDTM, Vigilance Officer of the Office, Head of the Office, Patent Office at Kolkata (Mr. D.K. Rahut) and many other officials of the Indian Patent Office didn't melt the ice. Finally, in August 2011, based upon a complaint lodged at CVC, Govt of India, the coterie-driven network refunded me Rs 1 Lakh without any interests. Still now I have not received the money accumulated in my GPF account as I DIDN'T PAY BRIBE (Rs 50,000/-) which was sought by Mr. D.K. Rahut (Head of Office, IPO, Kolkata) and Dr. B. K. Singh (O/o CGPDTM) on the 2nd March 2011. As I didn't pay them BRIBE, Mr. Rahut, Dr. Singh, in connivance with Mr. P.H. Kurian and the O/o CGPDTM made a **clever ploy** to frame a **FICTITIOUS “BOND”** that doesn't exist in the Patent Office, Govt of India and in the eye of law also. On 28 February 2011, Mr. D.K. Rahut **framed this fictitious “BOND” in his “Office Note” written to Mr. P.H. Kurian and the O/o CGPDTM** asking me to **pay a sum of Rs. 1 Lakh “urgently”**. On 2 March 2011, Mr. Rahut (in his office at the 4th Floor) and Dr. Singh (over phone) started verbal negotiation in respect of a “BRIBE” amount of Rs. 50,000/- which I refused to pay. As I refused to pay the coterie the BRIBE amount of Rs. 50,000/- the coterie served me two office directives [thereby harassing me tremendously] on the 2nd March 2011 evening asking me to pay Rs 1 Lakh “urgently” for the FICTITIOUS “BOND”. Repeated requests, starting from 22 March 2011 till date, to Mr. Kurian and the O/o CGPDTM didn't melt the ice; rather Dr. Singh, on behalf of the O/o CGPDTM, wrote me on 25 March 2011 indulging in the highly illegal, wrongful, callous, vindictive and highly corrupt activities of Mr. Rahut and his coterie. **Numerous incontrovertible documentary evidences are with me** showing the gross illegal, vindictive and corrupt activities of a section of officers of the Patent Office, **if DIPP and**

the Ministry of Commerce & Industries are genuinely interested to curb corruption, nepotism, unlawful activities of the corrupt officers of the Patent Office, India.

In the recent past there are several instances where some highly corrupt officials of the Trade Mark Registry were caught red handed by CBI and CVC. There are the instances of increasing corrupt and illegal practices prevailing in the office. There are many other facts which I can cite. In view of the facts stated above, **it is stated that if the autonomy is given to the O/o CGPDTM and the Patent Office as well, the level of corruption, nepotism, illegal activities and vindictiveness of the officers in “power” will alarmingly rise.** I, therefore, strongly opine that DIPP **MUST NOT place such an INJUDICIOUS proposal** before the Government of India to empower the O/o CGPDTM with financial, administrative and structural “autonomy” which will, in turn, directly indulge in providing a strong support to India’s parallel **economy of black money collected from BRIBES, CORRUPTION etc.**

One aspect of the instant “Discussion Paper” of DIPP, Government of India clearly reveals that the officers of DIPP **are quite interested in copying the experience / structure / framework of foreign countries although India has a good number of experts in the arena of technological, legal and economic decision-making procedures.** I would like to ask the officers who prepared this so-called discussion paper, **how long will we be copying from other countries instead of developing something indigenously that suits Indian culture, Indian economy and Indian people as well?** It is quite relevant to note that still now there are a couple of Acts and Rules in India which were passed by the British Parliament during British regime in India (for example, *Indian Evidence Act 1872*). Still now these old and colonially biased legislations are being amended retaining the essence of the colonial framework. It is unfortunate that all of my above apprehensions have been proved correct by the actions of the **set of injudicious decision-makers in DIPP, the O/o CGPDTM and the Patent Office, India who are suggesting (in an implicit manner) and struggling in the “discussion paper” implicitly to consider the “experiences” of other countries while India has tremendous experiences from the inception of the Patent Office in 1856.**

India has a different culture, creed, economy, technology, geography and man power. Experience differs from country to country and this happens all due to the soil of the land. India should do something which is not obtained from other countries by mere copying or re-arranging their experiences/thoughts.

3(b). Is it possible to bifurcate the two offices and make the Trade Marks Registry and the Patent and Design Office two autonomous organizations?

Responses:

YES, it is possible to bifurcate the two offices and make the Trade Marks Registry and the Patent and Design Office **two separate and NON-AUTONOMOUS organisations** under the umbrella of DIPP. In this connection, Figures 1 & 2 are referred to wherein a clear outline is provided in regard to such a bifurcation.

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

Responses:

The question of making the Office of CGPDTM “autonomous” is undoubtedly injudicious. Further, this question is quite irrelevant as the criteria for making the Office of CGPDTM have NEVER been set out hierarchically or judged scientifically (*in the discussion paper of DIPP*) as per the basic principles of decision science.

As I was deeply involved in working with the Patent Office, India for almost 9 years, I categorically state that **it would be an utter detrimental step if the set of Officers in DIPP and the O/o CGPDTM take such a drastic step without analysing the criteria in-depth.** Being in the field of technology and economic decision-making & operations research for the last 11 years with a publication track of a large volume of real-world research in outstanding international journals/conferences/books, I strongly opine that the **process of decision-making of DIPP is completely wrong, injudicious, unscientific and highly detrimental to the system in the present set up and mental make up of the unscrupulous officers in power.** The “discussion paper” doesn’t elucidate any mode of making such a drastic decision which is covered under the discipline “decision science”. I would suggest DIPP and Government of India to first jot down the individual criterion and sub-criterion responsible for such a decision and make a hierarchical decision-tree before reaching to a definite conclusion. The decision makers in DIPP and the O/o CGPDTM should have enough experience in dealing with such group-decision-making process using standard tools like Analytic Hierarchy Process (AHP). **Trade off among the different criteria for such decision-making is essential for the purpose of proposing “autonomy” of the O/o CGPDTM.**

It is reiterated, in the current context of the Patent Office and Trade Marks Registry, that the drastic rise of corrupt, vindictive, illegal and coterie-driven practices would be noticed in the corridors and cubicles of the Patent Office if such a injudicious step is taken by the Office of CGPDTM and DIPP, Govt of India. Please DO NOT TAKE ANY STEP, for the gross interests of public and the citizens of India, WHICH WILL GIVE RISE TO UNPRECEDENTED CORRUPTION, NEPOTISM and ILLEGAL ACTIVITIES in the Patent Office and the Trade Marks Registry as well.

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

Responses:

The framework (mental framework of the officers and the physical infrastructure) present in the O/o CGPDTM (i.e., the Patents Office, Design wing of the said office) and in the Trade Marks Registry is not sufficient enough to have “autonomy”. However, the re-organisation (I would rather say re-orientation of the structure of the present organisation) can be adopted without amending the Patents Act, the Designs Act. Rules are required to be changed. The ideal model is indicated in Figures 1 and 2. DIPP should follow the outline delineated in those figures and amend few Rules accordingly.

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

Responses:

DIPP is appreciated for raising this issue. A major restructuring is required in the O/o CGPDTM. Before 2009, CGPDTM was selected among officers who were in the office of the patents, designs and trademarks. Instance is present where CGPDTM was selected from academia and research. IPR is a much specialised subject area. It's not possible for a person to lead the IPR office without having expertise in the field of study. My experience says that an examiner of patents & designs gains some knowledge after working in the IPR office for a period of at least 5 years. I have seen that some officers who work for a period of consecutive ten (10) years in IPR office don't have skill sets to understand the intricacies of techno-legal matters. A Civil Servant, who roam around from one department to another in Central Govt services, are NOT CAPABLE of understanding the intricacies of the patents, designs and trademarks. Civil servants may have administrative capabilities; but it's not possible for them to acquire a thorough understanding and practical expertise of various techno-legal intricacies and litigations in regard to IPR. **Therefore, in order to strengthen the O/o CGPDTM, as a first step of its implementation, the O/o CGPDTM requires to welcome as a CGPDTM a learned person either from judiciary or from research organisation with an expertise in IPR.**

The composition of the O/o CGPDTM is to be restructured in order to strengthen the O/o CGPDTM. Besides the knowledge of Patents, Designs and Trade Marks laws, the O/o CGPDTM requires persons who are skilled in administration to cater service to the offices located at different places in India. Currently non-administrators, who are experts in the field of patents and trade marks, are involved to serve the purpose of the office. A doctorate degree holder in chemistry or a masters degree holder in basic science or a graduate in engineering is a mere wastage of human resource if he/she is appointed to take a position in the O/o CGPDTM. Such wastage of technical manpower has never been analysed by CGPDTM or the ministry in the recent past. Therefore, administrative professionals, who are capable of managing both legal and managerial aspects of an organisation are the most suitable for the O/o CGPDTM. Hence, it is suggested to recruit manpower skilled in managing human resources having basic knowledge of legal system in India.

Further, the O/c CGPDTM should have three basic divisions in order to maintain links with various offices on different aspects:

- (i) HRM (human resource management) professionals (those who have working knowledge in the domain of administrative laws in India) who can have specific ideas on work allocation;
- (ii) Legal professionals expertise in IPR laws and litigations;
- (iii) Technical division that can give feedback to the office.

The Patent Office & Design wing of the said office has a technical division that examines patent and design applications. Therefore, selected officials, who have sound knowledge in technology and science, can be asked to provide the feedback from the respective offices. Technical division need not to be placed in the O/o CGPDTM. The assistance can be sought from the offices, depending upon the field of studies. The first two divisions are required to be set up in the O/o CGPDTM immediately in order to strengthen the said office.

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?

Responses:

Firstly, in order to discuss this issue, I should take help of my examination experiences during my tenure in the Patent Office. I was working as an Examiner of Patents & Designs for almost 9 years in the Patent Office. My qualification is PhD in mechanical engineering and I have post-doctoral research experience from Europe. I had seen that the service rendered by CSIR is not of high standard as compared with other patent offices in developed countries. With high regards towards the scientists working in CSIR I state that DIPP is requested to find out the quality of search report prepared by myself during my tenure (till 9 March 2011) and compare those with that of the report provided by CSIR people.

Secondly, CSIR is an organisation that files several patents round the year. An applicant has become a search authority as per the actions of DIPP. Would you allow me or someone who has applied for a patent to conduct the search on the applications if I can provide high quality search reports? Would you allow patent agents to prepare search reports for the Patent Office? It is to be remembered that the Patent Agents who build the drafts for patent applications are the best searchers round the globe. If the analogy of DIPP or the O/o CGPDTM is adopted, in future agent houses would ask you to outsource the searching process.

Thirdly, I strongly suggest DIPP and O/o CGPDTM to increase the number of skilled examiners in the patent office immediately and stop outsourcing of prior art search. **If the prior art searches are conducted by CSIR or other agencies, what is the utility of Examiners?** Perhaps the very purpose of the jurisprudence is misunderstood by the concerned personnel of DIPP and O/o CGPDTM. The jurisprudence follows the laws of nature and set of rules

governing the society. In the legal system an alleged person is not asked to judge his/her actions; rather a competent authority judges his/her actions. **Based upon this analogy and the laws of nature CSIR or other agencies must not be allowed further to conduct prior art search.** If such practices are allowed, I am sure that the responsibility of one examiner will diminish thereby impacting on the quality of the service rendered by the officer. The work of search belongs to an examiner and thus, he gets remuneration. **A huge amount of public money is being wasted by DIPP, Ministry and O/o CGPDTM. It should immediately be checked.**

8. Is a similar outsourcing (including employment of temporary but qualified personnel) exercise possible in case of trademarks where more than 40000 trademark applications are pending at various stages? If so, what could be the safeguards that should be put in place?

Responses:

Few years back, this was a standard practice of the trade marks registry. They used to hire legal personnel for a temporary period of time to clear the pendency. I appreciate this decision of DIPP. **Qualified personnel may be appointed with adequate safeguards, as in the previous times, to dispose off the pendency.** Prior art search should NOT BE OUTSOURCED in case of Trade Marks Registry.

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

Responses:

Please refer to Figures 1 & 2 wherein you will find a detailed answer to this issue.

Beside this, the following facts and constructive comments are added in order to improve the base of examination of application:

(a) In order to improve the base of examination, prior art search (in Patent system) **should not be outsourced.** Such outsourcing will devalue the skill sets and brain storming process from the Examiners of Patents & Designs. You have cited the procedures of USPTO, UK Patent Office and JPO in your discussion paper. Please note that such outsourcing is not present in those offices. I visited European Patent Office in 2007 and interacted with sets of examiners of patents and other prominent figures. EPO tries to hold qualified and skilled examiners **wherein in India, CGPDTM, Mr. P.H. Kurian, and one Office Mr. D.K. Rahut ask (in May 2010 at the Patent Office, Kolkata sitting in the Conference room of the said office) Officers to quit the Office. Therefore, a section of Senior Officers of the Patent Office and O/o CGPDTM and CGPDTM himself are not able to provide a good work environment within the office.** This is the basic difference in the mentalities of a developed country and the officers of DIPP, the O/o CGPDTM and the Patent Office, India. **DIPP or Ministry didn't ever analyse the psychology of the examiners or the officers who perform the most tedious job of examining a large number of patent and design applications in the Patent Office, India.** In

order to alleviate this trouble, good and experienced administrators, from different Govt offices, should be appointed in the managerial positions who can understand the psychology of the examiners in order to elevate the base of examination procedures.

During my tenure **I used to take the burden of examining 26 new patent applications every month with a detailed search report and in-depth analysis.** My resource of providing such strong search reports and analysis was some search engines of various online libraries of some universities of international repute. In my group (Mechanical Engineering Division) we had only 3 officers who had basic degrees in Mechanical Engineering. The other two officers had degrees in Civil and Textile engineering. Therefore, in order to dispose of the large volume of new applications, I had no option but to perform a quite impossible task.

While I was in the Patent Office, we had chat amongst officers. I asked the officers if they used to conduct prior art search using **Sciendirect, or SciVerse or iFirst or Springer online etc.** Many officials answered me “what are these”! My experience says that preliminary researches (while in laboratory stage) in recent times are first reported in prominent non-patent literature. **Therefore, most of the officers should first be educated to go through the available search engines/options (except the standard Google search engine) available with non-patent literature. This option is worst in all the patent offices in India.**

(b) Base of examination can be improved if the analytical abilities of the Technical Officers are widened. My near 9-year-experience in the Patent Office says that the lack of analysing a technical document is the major shortfall of the technical manpower in the system. Therefore, it is suggested to form a discussion forum, within inter-group and intra-group, in order to raise and discuss the issues every Friday fortnightly. [I understand that some officers would say that they had some “administrative” work. I would suggest DIPP not to distribute any administrative work amongst Technical Officers. These Officers should only be dedicated towards Techno-Legal matters. As suggested previously, a separate wing with highly skilled administrators/HR professionals will look after the administrative tasks of the office.] This discussion forum will exchange ideas and the ideas are to be exchanged through email system of the Offices. This is one of the easiest way to improve the base of the examination.

(c) During recruitment of Technical Officers, DIPP should look into the matter that sufficient research background is there within the selected candidates. I am in research from 1997 till date. Even during the hard times at the Patent Office, I performed regular research so as to keep me updated with the latest findings. **I strongly feel that understanding of a Patent document involves rigorous understanding of research and inventive step of the same. Thus, qualified professionals having sufficient research background should be inducted in the Office. Even the position of CGPDTM demands the same background to understand the technical aspect of the Patents.** This will enhance the base of examination.

(d) Many Technical Officers just cite patent documents as prior art copying from WIPO preliminary examination reports. It appears from their examination reports that even a little

understanding of the said documents is lacking. The international applications, when entering into India, often contain materials after an amendment. It is quite unfortunate that the Technical Officer doesn't understand that an amendment has been made. I had seen that this **happens all due to the excess work load (high quota per month)**. EPO or USPTO don't put too much burden on a technical officer compromising the quality of examination. **The lack of proper administration in the Patent Office is the sole reason for this cause. It is to be re-structured as elucidated in Figures 1 & 2.**

(e) Scheme for lateral entry of Assistant Controllers should be introduced in order to induct qualified, experienced people who are willing to work in the Patent Office. I am sorry to state that the current task force is inadequate and quite unprofessional. This would enhance the base of examination as the new set of people would share their expertise in the system.

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

Responses:

There is no need to set up additional offices within this administrative set up. **This would be a mere wastage of man power and money.** Right at this moment IPR offices require places to put their hard copy of applications (examined and unexamined). Therefore, they may need spaces to put the documents only.

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?

Responses:

NIIPM should work independently. Technical Officers and administrators should not poke their noses into the work of NIIPM. Technical Officers and Administrators can only be asked to share their experiences when the institute is run in a nice pace. **Govt of India should recruit highly qualified and experienced faculty members who are technically and legally experienced and dedicated to serve the nation for the benefit of economic growth of the country.**

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?

Responses:

Right at the moment, every technical officer may be asked to extend their help, irrespective of their seniority. Actually lack of technical manpower wouldn't have such a big problem had the Senior Officials of the Patent Office acknowledge and provide respect towards Technical Officers. Lack of respect, dignity, professional mis-conduct on the part of existing senior officials forced many highly qualified and very skilled technical officers to leave the organisation from 2004 onwards. The latest case is of mine in March 2011. Once the newly recruited officers are placed in position, DIPP should look into the matter vigilantly. Existing Senior Officials always make a ploy to demean the dignity and integrity of the Junior Officials of the Patent Office thereby creating such a big mess.

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?

Responses:

Lateral entry should be allowed to fill up such vacancies for Trade Marks registry. There are many highly qualified and trained persons who work in private sectors. These people can be inducted into the Registry taking adequate safe guards. A strong and vigilant HR, Legal and Administrative divisions of the Office can monitor the persons entered through lateral entry mode.

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?

Responses:

Pendency indicates that the size of the Registry should be broadened by inducting new entrants. However, temporary staffs may not be suitable to manage the pendency. This should be addressed in the XII Plan.

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?

Responses:

This is a great approach of DIPP. I am quite sure that this would solve a number of problems. However, staffs having basic knowledge of patents, designs and trade marks should be present in the single window to cater the service.

16. Any other views on the subject.

Responses:

(A) In Section VII (under the heading "*Ideas on Restructuring of the Office of the CGPDTM*"), paragraph #27, the restructuring idea may work if and only if a closed loop, very structured, vigilant, accountable and speedy system is developed to enhance the gross efficiency of the

Offices. Following issues should be considered by the officials of DIPP and the Ministry while considering the issues of “restructuring”:

Firstly, questions are raised on the accountability of the senior officers and the staffs as well. It can be seen frequently that the Officers, including CGPD TM, (and Officers of DIPP and the Ministry) **are quite reluctant to answer to the e-mails received by them [adequate proofs can be provided if sought]**. Therefore, **it is a mere wastage of money of the tax payers by providing them with the internet and e-mail system in the office.** I don't believe that **such a defunct administration would enhance the efficacy of the whole system unless highly skilled, functionally motivated and dedicated officers and staffs are inducted.** **Therefore, it is stressed that power should be given rotationally for a maximum period of TWO years (02) to new incumbents (depending upon the skill sets exhibited by them, not by mere seniority or merits) of the Patent Office and Trade Marks Registry.** Further, for a long period a section of Technical Officers (*who are in good book of a coterie-driven network*) are enjoying the benefit of sitting in the O/o CGPD TM without having a single technical work. **These officers are not administrators. Why these officers are engaged in some odd work by virtue of wasting the technical manpower in the subordinate offices?**

Secondly, a good number of officers and staffs frequently roam around in the office premises without doing any fruitful work while other junior officers and staffs put their tremendous efforts to clear the burden of work load. All staffs and officers are paid by the tax payers' money. **Who will be accountable for the cause and sufferings of the public?** I understand that DIPP is a body that is not able to supervise the operational and tactical level of work of the offices. Therefore, specialised **HR division, Legal division, Financial division** (*having specialised staffs dealing with Financial matters of the Office*) and **Technical division should be incorporated in the organisational structure** and a specific accountability of the system should be given to a body (not only to CGPD TM) who can supervise the daily progress and operational plans of the O/o CGPD TM and the other subordinate offices.

Thirdly, **in the Patent Office, transfer posting, or promotional posting is for those hapless officers who are NOT IN THE “GOOD BOOK” of the Head of Office and the O/o CGPD TM** as well (example: *the transfers of few officers without maintaining the merit list on the 14th January 2009*). This is an instance of mere “**personal gain**” [I can cite numerous evidences in connection to this statement]. This is a sheer example of nepotism, victimisation of “personal interests” of the superior officers. A person who sits in the power should be neutral. Unfortunately, **vast pool of documents say that the power holders in the Patent Office don't have such ability to maintain neutrality.** **Therefore, immediate re-structuring of the transfer policy is required.** For example, a section of Senior Officers are sitting in the same Office at a stretch for at least 14 years by applying their strong influence in the O/o CGPD TM, the Ministry and DIPP. Other officers are being transferred randomly. **Why is this**

discrimination in transfer posting? Doesn't it indicate a severe nexus with the O/o CGPDTM, DIPP, the Ministry and the said Officers? **Please adopt the structure as illustrated in Fig. 2 so as to stop this nexus for the gross interests of the citizens of India.**

Fourthly, officers and staffs are placed in selected roles based upon the personal choice of the concerned Head of the Office [*it happened in the Patent Office, Kolkata many times*]. I am sure that DIPP knows these facts and DIPP is maintaining silence just to encourage the non-transparent behaviour of the concerned officers. **May I suggest DIPP NOT to indulge in such unlawful, irrational and vindictive acts please?**

Fifthly, the passwords for Computer Servers, the Examination Modules, Administrative Modules and Office E-mails are randomly used by Officers who are not in-charge of the same. Even in the evening (7 PM), a set of coterie-driven Officers used the server password to allow submission of the last-date patent case (amended) by an attorney house with some personal interests. **If this happens, what is the utility of making "secured" modules?** This happened in the Patent Office, Kolkata with the indulgence of the Head of the Office just a year back. Further, the Computer Server is frequently monitored by a person in his personal capacity, in the Patent Office, Kolkata, who examines patent applications in the arena of Bio-Technology. This officer used to stay in the Office even at 2 AM in the morning during 2005-2007. **Why a non-computer person is allowed to use the password of the Computer Server?** **He is not expected to know the intricacies of a Computer Server as he is not a Computer Engineer.** **This case clearly elucidates a ploy to make corruption within the current set up of the Patent Office.** Furthermore, the said officer has been engaged by a Senior Assistant Controller **to allocate tasks amongst Officers (even his superior officers) using a latter's Supervision/Examination Module ID and password.** The said Senior Assistant Controller roams around putting the burden of work on the hands of the said Examiner of Bio-technology. CGPDTM and the Head of Office know this very well and they are reluctant to take any action against the said senior AC. Why does this happen? **Isn't a very clear case of nepotism?**

Sixthly, a **quite visible discrimination by the Head of Office and O/o CGPDTM in allocating the work** is noticed (although this is not much spoken by any of the current officers *as the fear of random transfer has been impregnated into their minds by the Head of Office and CGPDTM*). **Why this has been done to impregnate a fear psychosis amongst the officers?** **Management principle says that this is the worst possible way to manage an organisation.** Discrimination is not an element which is indulged in by the holy Constitution of India. However, **discrimination is being preached randomly by a set of senior officers who are in power.** **My suggestion is to remove the officers who hold power for 2 years and replace them by the fresh blood in the system.**

Seventhly, one Group-B Officer, Mr. R. Jha, was removed from the post of Drawing and Disbursing Officer (DDO) in the Patent Office, Kolkata sometime **two years back** as he enhanced his salary by way of allowing increment in his tenure. Mr. Jha is basically a Hindi Officer. He doesn't have any qualification or expertise in handling the DDO position. **The post of DDO is a very specialised one as it involves handling of financial matters of the Officers and the staffs of the office.** Why is this Officer selected for the position although he doesn't have any sense of acting as a DDO? So far I know (I am sure DIPP knows this fact very well), this Group-B officer brought a legal suit against the Office and the Ministry in 2009 after his removal from the said position. Interestingly, the said Office was re-instated in the position by the recommendation of Mr. D.K. Rahut (HO of the Patent Office, Kolkata), although Mr. Jha had made some gross unethical and unlawful activities. Further to this, Mr. Jha was appointed to look after the patents and design litigations, deputed by Mr. Rahut, during the period when he was terminated by the Ministry to act as a DDO in 2009. **This is a sheer case of nexus, nepotism, unlawful act and non-transparent act by the head of office, the patent office, Kolkata in connivance with the O/o CGPDTM.** **DIPP must remove the coterie-driven network to function the Patent Office, Trade Marks Registry and the O/o CGPDTM smoothly and efficiently under the supervision of a bold and vigilant task force.**

In view of the above incidents and the psychological nature of the existing manpower in the O/o CGPDTM, the Patent Office, Designs Wing of the Patent Office and the Trade Marks Registry, it is strongly opined that **two separate and NON-AUTONOMOUS Offices should be structured under the supervision of a very strong and vigilant department, say DIPP, so as to first reduce the acts of unlawful activities, corruption, nepotism and vindictiveness over others. Directives should be given to all officers and staffs to reply back (with sufficient contents) to the emails/communications received by them immediately.**

(B) Under the sub-heading "Subject Matter and Skill Sets" on page #16 of the discussion paper it is written:

"Higher level officers including CGPDTM act as decision making authorities in most of the patent matters including patents grants and hearing in opposition cases."

It is to be stated that if the incumbent for the post of CGPDTM is chosen from Civil Servants, the provision to allow him/her to decide a patent case should not be given. A civil servant per se is an administrator and he/she is not capable of deciding a techno-legal matter in a particular branch of engineering, technology and science. The decisions for granting and hearing the opposition cases should be given only to the technical officers who nurture the specific branches of engineering, technology or science on regular basis. If decision is written by a CGPDTM who is just an administrator, the Patent Office would face lot of litigations. DIPP is suggested not to adhere to such a bad and infeasible policy.

Based upon the contents stated in the afore-stated sub-heading it is stated that “large pool of examiners and controllers” is not the criteria for building an “infrastructure” in the Patent Office. The Patent Office requires man power who can well understand the technological know-how and the jurisprudence as well. **The training imparted by the officers in Nagpur is so poor that an examiner can't be trained with some incompetent manpower.** Examiners and Controllers require skills from well experienced trainers in NIPM in order to gain sufficient skill sets in the basic search processes. Trainers in NIPM don't have idea on the ways of search in Industrial Designs. My experiences at the patent office, Kolkata tells that a thorough survey of examiners and controllers would reveal that basics of search procedures are not known to them. **Thus, skilled and highly professional manpower from Google or Yahoo can be hired for a temporary period of time to teach the modes of basic search.** Thereafter, specialised, based upon the disciplines, search professionals can be hired to delineate branch-wise prior art search. **I was an Examiner in the Mechanical Engineering. I was asked several times by the Head of Office to attend “training” imparted for the Chemical / Drug disciplines. This is a big anomaly and this wastes precious time of an examiner and wrong message is given to him. Therefore, the patent office requires a strong HR Division to allocate tasks and hire right professional for imparting training for the right Officer.**

(Dr Arijit Bhattacharya)

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