

Dear Sir,

Sub: Comments on the Discussion Paper

**Reg: Review of Organisational Structure of the Office of the
Controller General of Patents, Designs, Trade Marks and
Geographical Indications.**

This has reference to the captioned subject matter released by you and the issues for consideration therein. While we will be briefly dealing with individual points and issues raised therein, we request your kind attention to the general scenario in the Global as well as Indian context.

Intellectual Properties (IPs) and recognition for Intellectual Property Rights (IPRs) (distinguished from Industrial properties) originated in Uruguay round and culminated through WTO and TRIPs which have been ratified by India in 1995. Consequent to the WTO and TRIPs, all IPRs including Copyrights have been brought together for the 1st time under TRIPs and WIPO.

In line with the global development and initiatives, and compliance of the procedures therein, India also set up Intellectual Property Offices (IPO-Boudhik Sampada Bhawan) in all the four metros. However, along with the physical developments which have been implemented and initiated by India, it would be only appropriate that all IPRs are brought together under the aegis of the IPO of India (Boudhik Sampada Bhawan), which will be headed and manned by highly qualified, competent and upright person with high integrity and competency. **We suggested that Copyrights should also be brought under one roof under the IP establishment constituting the Office of the Commissioner, Indian**

Intellectual Property Organisation (IIPO) or Intellectual Property Organisation of India (Autonomous).

Copyright is no more an HR matter in view of the development and advancement in telecommunication, software, computer programme and automation in audio and video components. Even after bringing in Copyrights under the Indian IPO, the Registrar could be reporting to head of the IPO.

Similarly, Registrar of Trademarks, Registrar of Designs and Layout designs (Topographies) of Integrated Circuits could all report to the Commissioner of IIPO. The designation could be Controller General instead of the Registrar. We, therefore, suggest that a (autonomous) Commissioner of IIPO should be appointed and all the IPRs should be brought under the same roof with designated officers and supporting staff, for the Central Office as well as for the individual IP offices.

Reply to specific queries.

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

No.

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

As briefly suggested above.

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?

The office of the Commissioner of IPO should be made autonomous under which the CGPDTM as well as Controller General (CG) of Copyrights (earlier known as registrar of CR) could be reporting to the autonomous office of the Commissioner of IPO. The suggested centralization with delegation is the best option.

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

Legal changes including changes to the rules should be minimum and should be with the aim to achieve objective of centralization, wherein, all the individual CGs will report to the Commissioner of IPO. The present Acts and Rules pertaining to individual IP will not need detailed amendments, except the Authority of Commissioner, I IPO.

- 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?*

If reorganization of the office for centralization under the Commissioner of I IPO can be made without amendments to the act and rules, but should be made only with regard to the Commissioner of IPO to govern office / individual departments.

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

The office can be strengthened by instituting the office of the Commissioner of IIPO.

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?*

While the outsourcing may appear to be beneficial, monitoring and review of the quality of the work will need to be done periodically. It will be beneficial to identify organizations which are not likely to be biased to some or more of IP/ Patent Applicants or have any vested interest. Additionally, care and caution should be taken to ensure 100% confidentiality.

It could be recommended that a survey should be undertaken to elicit views of the examiners as to the relevancy of the prior art documents quoted by the outsourced agency and what percentage of the prior art documents are found to be relevant to the invention.

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?*

Yes, similar outsourcing in case of TM is 100% possible. Unlike patents, TM are relatively free from scientific and technical bias and are possible to be done by experienced offices outside

the Government. However, the preliminary scrutiny should be subject to final review by the TM office before releasing for acceptance/ publication/grant (to avoid prejudice , bias and conflict of vested interests).

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

The strengthening of the examination procedures can be done within the existing organization if final decisions in the Patent / TM cases are finally made by the concerned authorities under the existing acts and rules.

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

India is the only country in the world with multiple IP offices. With the introduction of e-filing and strengthening of the examination process, there is no need for setting up of additional offices. On the contrary, each IP office can be administered nationally, thereby reducing existing room for mal-practice, mis-communication and non-communication, multiple applications by overseas applicants, double patenting and multi-centric divisional filings.

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 CGPD TM?

The NIIPM at Nagpur should be made an educational and training wing of the Commissioner of IIP O. NIIPM could also evolve as a source for technical and qualified personals for employment in the various departments of IPO. (The NIIPM could, however, be managed directly under the Ministry DIPP, if beneficial to fund and operate independently).

A well drafted curriculum for each subject of IPRs should be introduced with recruitment in the IPO as an objective. Training and graduation of degree / diploma at NIIPM under the IPO should be made compulsory for all recruits with the provision for credits for experienced candidate.

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?*

Please refer to answer in point no 11.

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?*

Recruiting existing lawyers with IP diploma from reputed organization and institutes along with training from NIIPM before confirmation.

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?*

TM Office in India could be centralised, either in Delhi or Mumbai with up-to-date and modern facilities of search. Abundantly availability of qualified persons should be considered as prime parameter. Multiple IP offices have actually been a deterrent for effective working.

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 ?*

We answer in affirmative. Centralization as in other countries will substantially eliminate the current opportunities for intentional mal-practice.

16. *Any other views on the subject.*

Generally and casually, there has been an implicit acceptance of the fact that certain offices in India are corrupt and many even accept them, as such as a *fait accompli*. Such resignation to issues of governance would do great harm to not only the system, but also to the beneficiaries and the public at large. This will also lead to undue exploitation by the 'all-powerful'. This also gives wrong message to the public, since, people involved at corruption in the grass root level claim that benefit travels all the way upwards to the Ministry. Even though this may not be true, it is in the interest if the

Government of India and the concerned Ministry, that, persons of integrity must head such organization and must be allowed to work independently without any interference, similar to that of the Election Commissioner of India. While the government of the Developed countries claim to be absolutely free from corruption, sensitive organizations like IPO should be beyond influence from overseas governments and from Ministers, Politicians and Power brokers. The Commissioner of IPO should be appointed by the Ministry of Commerce in consultation with the PM's office. The Commissioner of IPO should be one with efficiency and integrity as the prime criteria for selection. A selection committee of the ex-officio National personalities must clear the appointment of the Commissioner of Indian Intellectual Property Organisation.

With best regards,

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