

**VIEWS & CONCERN ON THE DISCUSSION PAPER
-:AN EYE OPENER:-**

Once a vision statement for the Indian Patent Office was remarked –
' Indian Patent Office should be a world class business like organization of dedicated and highly skilled personnel providing customer valued and globally respected services to inventors, industries and other in granting patents, registering design and in facilitating the effect use of the patent system.'

To cherish the vision apart from making the law harmonious with various International obligations, the procedure and practice of the Patent Office have been modified for providing efficient and better services to the inventors, innovator, R & D Institutions, Industries and other users of the Patent System. The effort has resulted in substantial increase in filing of application for patents and designs which in turn the Patent Office is now a revenue surplus office. The increase revenue is substantial to meet the expenditure for maintenance of the modernized system in vogue, including the expenditure required to cater the need of human resources. Apart from this the time frame for grant of patents is reduced to prove that in a computerized and modernized environment speedy disposal of applications would be taken place to cater the legislation interest of the investing public. But after a long run with the modernized Patent System in vogue the system has becoming questionable day by day not only from the hapless inventors and applicants but from different corners of Convention countries towards the procedural dysfunction of the office, although the Government has rendered a huge amount of public ex-chequer for the system. However, it is better late than never, a discussion paper was thrown to review the organizational structure of the office, calling invitation of views, although after a huge drainage of money in these days of hard economy. The question now comes why the Government requires another discussion paper? To get the answer of the above question kind attention is being drawn to a circular No.4 of dated 21st Sept.,2011 published by Controller General of Patents, Designs & Trade Marks in the website which reflects that the entire system after so many years of modernization has to be dictated to teach how applications to be examined and how to proceed with grant. It is a self explanatory note that the system is in question and why. Moreover, is there any judicial system that is being dictated like this? It proves that the techno-judicial powers of the Controllers who are suppose to take decisions in granting patents strictly abiding with The Patent Law along with the application of brain are being dictated by a person who is not suppose to be a hearing officer in any respect of the examination and granting of an application for a patent. The reason is therefore, best known to the concerned officer and the department in question.

The examination system and the granting procedure as recently being dictated in many of the orders and circulars seem to be that The Indian Patent Office is being modernized with a definite intention to grant a patent in a more mechanical way rather than application of brain, or better to say to work as a post office. The system demands that any application if filed should be immediately stamped and to be granted within a fixed time frame, failing which the Examiners and the Controllers will be under scanner. Moreover, it is also being warned in the said circular that the report of the examiners and decisions of the Controllers are liable to be audited by the auditors appointed by The office of CGPDTM. Accordingly, the sovereignty of the Indian Patent Law is in question.

May I therefore request the concerned authorities of the government to go through the administration and the procedural administration of the system.

Moreover thinking of autonomous administration appears to be a dictated term and under the biased coverage of relation without application of brain in the judiciary of the sovereign patent system.

An organization which had started its journey since 1912 and had the reputation of good governance in many parts of the world with the help of esteemed and learned persons has to be reconsidered in a discussion paper in public. The legislation which provides technical and judicial function in the WIPO and TRIPPS needs adequate and skilled personnel in discharging the function with due diligence.

As per The Patent Law all over the world any application for patent filed in the Patent Office is completely confidential and could not be disclosed before publication, and accordingly, under what circumstances it is not clear how the work of the Patent Office is being outsourced. The word 'Public Service' under the Union and States draws detailed rules for recruitment or conditions of Services under strict provisions of The Indian Constitution and specific legislation under Art.309. If any stake holder visits any of the Patent Office it will be noticed that the entire office is being experienced as a shopping mall which goes beyond the legislation of confidentiality.

The ignorance, negligence, carelessness and whimsical approach towards the functionary method in recruiting human resources to run the modernized system could easily be established if properly enquired.

The basic logic behind establishing The Patent Office in a under-developed or developing country like India lies in the true spirit laid down under the provision Section-146 of the Indian Patent Act. But owing to malfunctioning of the system the public of India have never ever seen any of the patent lapsed or revoked owing to non-working of the patent and has been notified. The main reason is that the provision under reference is not being worked at all. The system has never ever provided during any calendar year or financial year the data towards using, exercising, manufacturing, marketing of the patents in force, neither there is any inspection or enquiry towards working and non-working of patents in India. The reason is that renewal fee is being paid to keep the term of the patent in force. If you ask the office a simple question e.g. how many patents are in force during any calendar year, none could reply correctly, and if at all answered, the figure, if enquired properly will be in question. The question looks so simple but it has a broad aspect to know the utilization of the patents in public use and in public interest, although the countrymen know that the system is being run to cater the need of industrial development , Research & Development and in a whole boosting up the economical growth the country.

The system never ever enquired whether the granted patents are in work, use, exercise, manufacture, if not, whether any action towards non-working has taken place. Accordingly, the R & D & Industrial Development of the country have no such effectiveness from the system in vogue.

Have you ever visited a Indian Patent Office for inspection of a granted patent file as under the provision of The Indian Patent Act, you will find the record management system towards file management of such an important office is in a distressing condition, where record management is an utmost importance. If you go through the digitize process of the granting files and the documents in files uploaded in the software modules in use,

anyone would feel disgusted. Although, the provisions to receive information under the Indian Patent Act is there, it adds more with the Right to Information Act in the system procedure. The software in use in the system lags behind the true spirit of the law and full of errors. Moreover, it is also noticed that the software in use has not become friendly users even to the personnel in the organization apart from the public. The software is not only included with mechanical errors but not at per with the procedural function of granting a patent. Would it be more surprising to learn that a huge number of application for patents which have been duly examined and accepted to proceed for grant are left pending with no fault of the applicants for the reason best known to the concerned governance. The hapless applicants, maximum of them are of Indian origin tried their level best to pursue but with vain, even if the applicants tried to get a copy of such applications, they will not, and if at all answered the reply would be the files are left misplaced. Is any of the concerned officer has any reply to its justification? The organization is particularly depends upon the examination and search system and for which a good record management has to be established before taking any thing in concern, but the same is lacking from the beginning of the modernization system in vogue. The amendments took place to extend the term of the patents from 7 or 14 to 20 years. The date of patents from the term of any patent is effective has also been amended from date of complete specification to date of filing of application. But nothing have been amended to the register of patents towards corrections of the date of patents which were already been granted prior to amendment and are in force owing extended term of the patents, which could easily be noticed from the E-register of patents publicly viewed in the website of the organization, and hence the patentees are enjoying extra-ordinary extended period of the term of the patents going beyond the law or it may be said benevolence of ignorance or negligence.

Now, comes the application of brain towards the provisions under The Patent Act in force. I will cite a simple example towards an extra-ordinary decision taken by the concerned department recently going beyond the law in force for the reason best known to them, which has rendered a huge loss in the income of the government. The law has the provision that any person may inspect the Register of Patents and could get extract of the same by way of application along with a prescribed fee therein. But the said register is now been open to public who could inspect the same in the organization website without any fee, and hence could not be understood under what provision the concerned department has become so generous and to whose interest the law in force is being denied. This is one of the salient example in running the administration of the organization and if properly enquired a large number of irregularities and unlawful activities from recruitments, appointments, system management, establishment and examination and granting procedures of patents will be unveiled. To my opinion a system administrator should be selected from a well time bound experience personnel from it's own system who is well acquainted with the Patent law and in adjudicating procedural function of the system as earlier established, not a person who may be a learned person but not a long run experienced person of the system. It is well proven now if not otherwise thought.

Accordingly, the objective to examine what steps are required to enhance the efficiency and effectiveness of the organization comes thereafter when the system administrators are properly been trained within the experience gathered and application

of brain in adjudicating the legislation in force. Due knowledge with proper application of the same effectually brings efficiency and effectiveness of the system. Nor a dictator to run a system of such a highly profiled organization to the development of a nation.

Although the discussion paper has been dictated with 16 points for consideration, my submission is this, before going for a review towards the point, it is to be established the basic drawbacks of the system, otherwise, there would be more discussion papers from the government in count, but the system would be in stake, as it is now, which could easily be understood from piling up of grievances and publishing eleven discussion papers.

It may be reminded a high level committees were established under the Chairmanship of hon'ble justice Tek Chand and others while making The Patent Law, now to implement the said law in a true spirit under the obligation of TRIPPS a high level enquiry committee may be considered to get through the drawbacks of the system and accordingly definite principle to be laid down in adjudicating the Patent system.

I, sincerely hope, that my submission would be considered with due consideration to the Indian people and to the interest of economical growth of the country.