

INTELLECTUAL PROPERTY RIGHTS

(Updated on 1st October 2009)

Background

- The term Intellectual Property (IP) reflects the idea that its subject matter is the product of the mind or the intellect. These could be in the form of Patents; Trademarks; Geographical Indications; Industrial Designs; Layout-Designs (Topographies) of Integrated Circuits; Plant Variety Protection and Copyright.
- IP, protected through law, like any other form of property can be a matter of trade, that is, it can be owned, bequeathed, sold or bought. The major features that distinguish it from other forms are their intangibility and non-exhaustion by consumption.
- IP is the foundation of knowledge-based economy. It pervades all sectors of economy and is increasingly becoming important for ensuring competitiveness of the enterprises.

International Organisations & Treaties

- A UN agency, namely, [World Intellectual Property Organization](#) (WIPO) based in Geneva administers treaties in the field of intellectual property. India is a member of WIPO.
- Department of Industrial Policy & Promotion is the nodal Department in the Government of India for all matters concerning WIPO.
- India is also member of 2 major treaties, namely, Paris Convention for the Protection of Industrial Property (relating to patents, trademarks, designs, etc.) of 1883 and the Berne Convention for the Protection of Literary and Artistic Works (relating to copyright) of 1886. Apart from these, India is also a member of the Patent Cooperation Treaty (PCT) which facilitates obtaining of patents in several countries by filing a single application.
- India is also a member of the World Trade Organization (WTO). The WTO agreement, *inter-alia*, contains an agreement on IP, namely, the Agreement on Trade Related Aspects of Intellectual Property (TRIPS). This Agreement made protection of intellectual property an enforceable obligation of the Member States. TRIPS Agreement sets out minimum standards of intellectual property protection for Member States.
- India has complied with the obligations contained in the TRIPS Agreement and amended/enacted IP laws.

Department of Industrial Policy and Promotion (DIPP) and Intellectual Property Rights (IPRs)

- DIPP is concerned with legislations relating to Patents, Trade Marks, Designs and Geographical Indications. These are administered through the [Office of the Controller General of Patents, Designs and Trade Marks](#) (CGPDTM), subordinate office, with headquarters at Mumbai, as under:
 - a) The Patents Act, 1970 (amended in [1999](#), [2002](#) and [2005](#)) through the Patent Offices at Kolkata (HQ), Mumbai, Chennai and Delhi.
 - b) The [Designs Act, 2000](#) through the Patent Offices at Kolkata (HQ), Mumbai, Chennai and Delhi.
 - c) The [Trade Marks Act, 1999](#) through the Trade Marks Registry at Mumbai (HQ) Chennai, Delhi, Kolkata and Ahmedabad.
 - d) The [Geographical Indications of Goods \(Registration & Protection\) Act, 1999](#) through the Geographical Indications Registry at Chennai.
- The Controller General of Patents, Designs and Trade Marks (CGPDTM) is also in-charge of the Office of the Patent Information System, Nagpur and the Intellectual Property Training Institute, Nagpur. The office has 446 personnel in the patents and designs Offices and 291 personnel in trademarks and geographical indication Offices.
- Necessary safeguards have been built into the IP laws, in particular in the Patents law, for protection of public interest including public health.
- Along with the legislation, rules have also been amended to install a user-friendly system for processing of IP applications. All rules and forms are available on the website: <http://www.ipindia.nic.in>

Intellectual Property Appellate Board (IPAB)

- An Intellectual Property Appellate Board ([IPAB](#)) has been set up at Chennai to hear appeals against the decisions of Registrar of Trademarks, Geographical Indications and the Controller of Patents.

Other IP Legislations

- Copyright is protected through [Copyright Act, 1957](#), as amended in 1999 - administered by the Department of Higher Education.

- Layout of transistors and other circuitry elements is protected through the [Semi-conductor Integrated Circuits Layout-Design Act, 2000](#) - administered by the Department of Information Technology.
- New varieties of plants are protected through the [Protection of Plant Varieties and Farmers' Rights Act, 2001](#) - administered by the Department of Agriculture and Cooperation.

Modernization of IP Offices under 9th and 10th Five year Plans

- The Government of India has taken several initiatives to modernize the IPR administration in the country. For this purpose a project costing **Rs.153 crores** was implemented in the 9th and 10th Five year Plans. The major achievements during this period include:
 - Construction of the state of Art IPO buildings at four locations namely Delhi, Mumbai, Kolkata and Chennai.
 - Augmentation of Human Resources by creation of posts of Examiners, Controllers/Registrars and supporting staff.
 - Up gradation of Library facilities.
 - Initial level of computerization providing internet connectivity.
 - Integration of offices through net working and video conferencing facilities.
 - Launching of dynamic IPO web site.
 - Re-engineering of workflow of procedures for grant of IP Rights.
 - Development of Modules for on-line processing of IP applications.
 - On-line facility for filing Patent and Trade Mark applications.
 - Digitization of IP records and creation of database.
 - Creation of separate Manuals for Patent and Trademark to standardize the procedures.
 - IPR awareness programmes

Modernization of IP Offices under 11th five Year Plan

- Under 11th five year Plan the Government of India has sanctioned a budget of **Rs.320 crores** for modernization and re-structuring of Intellectual Property offices. The objective is to further strengthen the capabilities of Intellectual Property Offices and to develop a vibrant intellectual property regime in the country. The project also aims at developing infrastructure to facilitate functioning as an ISA and IPEA by the Patent Office and also for the Trade Marks Registry and Intellectual Property archives at Ahmedabad.
- Government has set up a National Institute of Intellectual Property Management (NIIPM) at Nagpur and it is expected to be fully functional by next year. The NIIPM, envisaged as a world class institution, will undertake wide-ranging

activities such as training, education, research and would also function as an IP think tank.

- The major activities are as under:
 - Construction of buildings for Trademarks Registry & IP warehouse at Ahmedabad, **NIIPM** at Nagpur and **ISA/IPEA** Complex at Delhi.
 - Acquisition of database covering patent and non-patent literature for enhancing search capabilities of IPO to function as ISA and IPEA. The data bases procured include, QPAT & QWEB and Merged Markush Structure (MMS) and Non Patent literature Files of Questel - Orbit, Delphion / DWPI of Thomson Scientific & STN of CAS. 137 journals of International repute have also been subscribed to fulfill the minimum documentation under PCT.
 - In addition to above, IPO has acquired European Patent Database namely Epoque.net with 5 clients access at IPO Delhi
 - Further augmentation of Human Resources to achieve the enhanced target by creating 414 additional posts including 200 posts of Examiner of Patents and 37 posts of Trade Marks Examiners. The recruitment of Patent and Trade Mark Examiners is under process.
 - Fully computerized and digitized environment enabling functioning as a virtual office. The entire data of Patents and Trade Marks records is being digitized and consolidated in the server.

International Cooperation

- [Bilateral cooperation agreements](#) on Intellectual Property Rights were signed with leading countries/IPOffices such as UK, France, European Patent Office (EPO) and US Patent and Trademark office (USPTO), Japan Patent Office, German Patent & Trade Mark Office and Switzerland. At the same time, cooperation was intensified with the European Union, World Intellectual Property Organisation (WIPO) and Japan Patent Office (JPO).
- These agreements focus on human resource development, capacity building and public awareness creation and are expected to facilitate the modernization process.

Enforcement of Intellectual Property

- Civil and criminal provisions exist in various laws for dealing with counterfeiting and piracy.
- The Department of IPP has set up an Inter-ministerial Committee to coordinate IP enforcement issues.

Impact of Modernisation

- Modernization and re-structuring of offices resulted in increased filing and grant of Intellectual Property Rights, increased awareness among stakeholders and increased income to IP offices.

Patents:

- The filing of patent applications has increased from 4824 in the year 1999-2000 to 36,877 in the year 2008-2009.
- The number of applications examined has gone up from 2824 in the year 1999-2000 to 10,296 in 2008-09.
- The grant of patents increased from 1,591 in 2001-02 to 18,161 in 2008-09.

Statistics:

Details	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Applications filed	10592	11466	12613	17466	24505	28940	35218	36877
Applications Examined	5104	9538	10709	14813	11569	14119	11751	10296
Granted	1591	1379	2469	1911	4320	7539	15261	18161

Trademarks:

- The backlog of unexamined applications of approximately 5 lakh cases brought down to zero.
- The filing of applications increased from 90,236 in 2001-02 to 1,30,172 in 2008-09.
- As against 8,010 registrations in 1999-2000, 1,02,257 trade marks were registered in 2008-09.

Statistics:

Details	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Application filed	90236	94120	92251	78996	77980	97375	123483	130172
Examined	159735	249003	89958	72091	77500	94100	55500	93127
Registered	6204	11190	39762	45015	184325	96351	101300	102257

Geographical Indications

- Though the of Goods (Registration and Protection) Act was enacted in 1999 no Geographical Indication (GI) was registered until 2004. By the end of 2008-09, 106 Geographical Indication of products have been registered. The registered

products represent a wide variety of goods such as Darjeeling Tea, Pochampally Ikat and Chanderi Sarees, Mysore Agarbathi, Kullu Shawl, Coorg Orange, Aranmula Mirror, Kancheepuram Silk, etc.

Statistics:

Details	2003	2004	2005	2006	2007-08	2008-09
Applications filed	4	15	27	32	42	45
Registered	0	3	24	3	31	45

Designs

- The filing of applications for Design has increased from 2874 in 1999-2000 to 6,557 in 2008-09.
- The number of applications examined has also gone up from 2067 in 1999-2000 to 5,895 in 2008-09.
- The number of Designs registered has also increased from 1382 in 1999-2000 to 4,772 in 2008-09.

Statistics:

Details	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Applications filed	3350	3124	3357	4017	4949	5521	6125	6557
Applications Examined	3480	3124	3228	4017	4400	5179	6183	5895
Registered	2426	2364	2547	3728	2852	4250	3271	4772

Current Issues

Madrid Protocol on Trademarks

- Madrid Protocol, administered by WIPO, is a simple, facilitative and cost effective system for registration of International Trademarks. India's membership of Madrid Protocol will help Indian companies to register their trade marks in the member countries of the Protocol through a single application.
- An exercise to amend the Trade Marks Act is underway to enable joining the Madrid Protocol.

ISA and IPEA

- The Indian Patent Office has been recognised as an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) under the Patent Co-operation Treaty of World Intellectual Property Organisation. ISA and

IPEAs provide search reports on novelty and examination reports on patentability of inventions.

- As part of the Modernisation project, the Patent Office is being equipped to function as an ISA/IPEA.

Mashelkar Committee

- Government has set up a Technical Expert Group (TEG) under the chairmanship of former Director General of CSIR (Dr. R.A. Mashelkar) to examine the following two patent law issues:
 - (a) whether it would be TRIPS compatible to limit the grant of patent for pharmaceutical substance to new chemical entity or to new medical entity involving one or more inventive steps; and
 - (b) whether it would be TRIPS compatible to exclude micro-organisms from patenting.
- TEG has submitted its revised report in March, 2009, which is available on the website of the Department of Industrial Policy & Promotion (<http://www.dipp.nic.in>)
- The Government has accepted TEG's view that it would not be TRIPS compliant to limit the grant of patent for pharmaceutical substance to new chemical entity or to new medical entity involving one or more inventive steps and that it would also not be TRIPS compliant to exclude micro-organisms from patenting.
