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**INTELLECTUAL
PROPERTY INDIA**
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GEOGRAPHICAL INDICATIONS

*Office of Controller General of
Patents, Designs and Trademarks, India*

निर्मला सीतारमण
NIRMALA SITHARAMAN



वाणिज्य एवं उद्योग राज्य मंत्री (स्वतंत्र प्रभार)
भारत
MINISTER OF STATE (Independent Charge)
COMMERCE & INDUSTRY
INDIA

September 4, 2014

MESSAGE

It is indeed a pleasure to know that the Intellectual Property office of India, under the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India is going to publish a technical magazine named "IP Expressions" which benefits the stature of the organisation and augurs well for the good governance of the nation.

The Intellectual Property Office plays a crucial role in the industrialization of the country and acts as an important player in the transfer and dissemination of technology. While the offices under the umbrella of the office of the Controller General of Patents, Designs and Trademarks, operating under different intellectual property laws are discharging their own statutory functions, it is nice to see that they are coming forward to enhance public awareness through this publication. Such an effort will not only be beneficial to the hundreds of researchers and other stakeholders, but will also throw open the different aspects of Intellectual Property related matters to the public domain.

I convey my compliments to all those who have been involved in this important initiative and hope that the magazine is brought out on a periodic basis.

(Nirmala Sitharaman)

अमिताभ कांत
AMITABH KANT
सचिव
Secretary



भारत सरकार
औद्योगिक नीति और संवर्धन विभाग
वाणिज्य एवं उद्योग मंत्रालय
उद्योग भवन, नई दिल्ली-110 107
Government of India
Deptt. of Industrial Policy and Promotion
Ministry of Commerce & Industry
Udyog Bhawan, New Delhi-110 107
Tel. : 23061815, 23061667 Fax : 23061598
e-mail : amitabh.kant@nic.in, secy-ipp@nic.in

MESSAGE

The Intellectual Property System of India, with 157 years of existence, stands on a firm foundation. In the last two decades, the Intellectual Property System of India underwent several amendments and the present Acts relating to the Patents, Designs, Trade Marks and Geographical Indications came into existence as a result of such amendments. Today's Intellectual Property Laws of India are a perfect blend of the International Treaty obligations as well as India's policy objectives commensurate with the socio-economic priorities of the country that encompass the protection of public health and interest. In conformity with its legal changes, the organization has been modernised, and is being continuously strengthened in terms of infrastructure as well as human resources.

The IPR Systems have deep cross cutting implications in several areas of public life. Transparency and public awareness is one of the mechanisms through which the various sections of the society can participate in formulating appropriate IPR Policies. In the process, the endeavour to publish a technical magazine named 'IP Expressions' by the office of the Controller General of Patents, Designs and Trademarks under the Department of Industrial Policy and Promotion, Ministry of Industry and Commerce, Government of India is a noteworthy step towards achieving the larger goal of creating a platform for interaction on IPR matters.

I hope that through the continuance of this publication in the years ahead, the Intellectual Property Office of India will not only elevate its stature at the international level, but it will also ignite the zeal of hundreds of interested people of the field.

I extend my congratulations to the resource persons who have contributed their articles in the journal. I also express my best wishes for the success of this endeavour.

(Amitabh Kant)



D.V. PRASAD, IAS

Joint Secretary

Phone : 23063571

Fax : 23063017

e-mail : dv.prasad@nic.in



वाणिज्य एवं उद्योग मंत्रालय
(औद्योगिक नीति और संवर्धन विभाग)
उद्योग भवन, नई दिल्ली - ११००११
Ministry of Commerce & Industry
(Deptt. of Industrial Policy and Promotion)
Udyog Bhawan, New Delhi-110011

Message

Intellectual Property is widely recognized as an essential tool for growth of businesses across the world. As innovation, creativity, and knowledge are becoming key elements of competitiveness, key stakeholders of IP such as researchers, scientists & industry are increasingly facing the need to find ways to manage their innovations and knowledge effectively. The range of tools offered by the legal system of Intellectual Property (IP) provides the owners of IP rights a multiplicity of options to manage their innovations. The IP system enables owners of IP rights to have exclusivity over their trade secrets, trademarks, designs, inventions and literary or artistic creations.

The Intellectual Property regime of India has well established legislative, administrative and judicial framework to address the requirements of all stakeholders. Its strengths and standing are best evidenced by the fact that India's IPR regime is well-recognised globally. The IPR administrative system has been modernised extensively and can now boast of an efficient, e-enabled office comparable to the best in the world.

The intent of the Office of the Controller General of Patents, Designs and Trademarks (CGPDTM) to publish a technical magazine is commendable and this magazine will not only provide information of the development on Intellectual Property Rights related matters but will also enable various stakeholders to present their points of view. It is my sincere hope that this publication will in the years ahead achieve the twin objectives of enhancing awareness of IPRs and also inculcate a culture of innovation.


(D. V. Prasad)



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PREFACE

The Intellectual Property (IP) system stands at the crossroad of technology, law, ethics, economics, politics and many other important emerging issues such as environment, food security, women empowerment, poverty eradication, public health, etc. India plays an extremely important role in the intellectual property ecosystem related to world trade and economy, especially after the WTO Agreement.

The Intellectual Property system plays a pivotal role in the industrial and economic growth of a country by utilizing the latest technology developed through research and development efforts and the system is gaining importance with the passage of time. The literature surrounding IPR has a long history and, particularly after the post-globalization period, it has snowballed into a large volume. Yet there is considerable demand of further literature focusing on various areas of IPR. Moreover, since the Indian Patent office has started functioning as International Searching Authority (ISA) as well as International Preliminary Examining Authority (IPEA) since 15th October 2013, it has become imperative to disseminate the updated information to the public. Further, the Trade Marks Registry has started functioning under the Madrid Protocol for international registration of trademarks and it is essential to educate the current and prospective users of the system about the various facets of the facility. The inspiration and idea of this magazine was from Secretary DIPP who suggested its publication as a means to improve IP administration and to disseminate more and more information to the public. Accordingly, it has been decided by the Intellectual Property Office of India to bring out a biannual publication of a technical magazine, which discusses various matters related to the Indian as well as the Global Intellectual Property Systems.

This is an august opportunity to bring about the first of its kind 'e-Patrika' named as 'IP Expressions' as a web publication of the Intellectual Property Office, under the Department of Policy and Promotion, Ministry of Commerce & Industry, Government of India.

The resource persons of this office have put in their best efforts in contributing the articles covering the various aspects of Intellectual Property for IP fraternity, the employees of this Office, scholars in particular and for the public in general. The Editorial Board has also done a commendable job in selecting and culling the articles. This office will continue its efforts to publish more articles through ensuing issues.

These humble efforts will be successful if they add fire, whatever little in terms of quality and quantity, to the fuel of genius. On this occasion, I extend my best wishes to all the persons who have contributed their efforts to bring out the publication

NEW DELHI

(Chaitanya Prasad, IAS)
Controller General of Patents, Designs & Trade Marks



THE HISTORY OF PATENT SYSTEM IN INDIA (1832 – 1947)

BY

TAMAL KANTI BOSE
OFFICE SUPERINTENDENT, THE PATENT OFFICE, KOLKATA

Introduction

A Patent System can play a pivotal role in the industrial progress of a country if it is designed to serve the needs and address the aspirations of the inventive genius of that country. The National Patent System of UK, USA, Germany, France, Russia and Japan gave tremendous impetus to the industrialisation of all these countries. The Patent System was one of the important components behind the Industrial boom of the United Kingdom. 'The Patent Law gave an immense impetus and aid to the development of German Industry. The fact that in Germany henceforth chemical process only, not however chemical products as such were patentable, thus leaving an open field for the search for new methods of manufacturing known chemicals, was of great advantage to the chemical industry. Technical progress in general was fostered by the excellent mental schooling which the combined examination and opposition proceedings gave to inventors.'¹ In case of the USA, the Patent System was closely related with the industrialisation of America. Hence, Mr. Ramon A. Klitzke remarks that "The history of the American Patent System is the history of the growth of our country."² However Justice Ayyangar had other thoughts about the Patent System. In his report for reforming the Patent System in India in 1960, he commented, "It would not be an exaggeration to say that the industrial progress of a country is considerably stimulated or retarded by its patent system according as to whether the system is suited to it or not." Observing that industrial countries and under-developed countries had different demands and requirements, Justice Ayyangar pointed out that the same patent law would operate differently in two countries at different levels of technological and economic development, and hence there was a need to regulate the patent law in accordance with the necessity of the country.³

The Patent System was designed and developed by the British in India but it failed to achieve the desired goal. In the final Report submitted in 1950, the Patent Enquiry Committee observed "...we felt that the Indian Patent System has failed in its main purpose, namely, to stimulate invention among Indians and to encourage the development and exploitation of new inventions for industrial purposes in the country, so as to secure the benefits thereof to the largest section of the public."⁴

However, the impact of the Patent System in the history of India cannot be ignored altogether. In fact, it is a known fact that on the foundation of this system, the nationalist Patent System was built up after Independence and has been seeing continuous changes by the enactment of Acts, Rules and amendments in response to the needs of the country from time to time.

PREPARATORY PERIOD⁵ OF THE PATENT LEGISLATION IN INDIA⁶ (1832-53)

This period passed through a prolonged controversy, intense deliberations and uncertainties towards the embodiment of the first Patent legislation in India. During the British rule, the first evidence of granting an exclusive right to a person is found in the year 1825. It has been reported that one Mr Josiah Marshall Heath was granted the exclusive right to smelt iron and produce steel in the Company's domains in 1825 on the request of the Government of Madras.⁷ It is to be noted that although this right of manufacture was an example of exclusivity, however, possibly this is not an IPR related exclusivity. The question of IPR related exclusivity was perhaps already in the mind of the colonial entrepreneurs by that time. The idea of granting patents in India through legislation arose in the minds of the rulers in the year 1832. No record in support of this is available except reference in the subsequent correspondence as stated by the Patent Enquiry Committee (1948-50).⁸ The first available reference to the patent system in India is contained in a letter dated the 23rd September, 1835 from the Governor General- in- Council to the Advocate General of India soliciting his opinion as to the power of the Government of India for granting patents in the country. From the spirit of the letter, it may be presumed that the Government of India was in mind to introduce a separate Bill for conferring

¹Extract from the Survey of Principal National Patent Systems' by Jan Vojacek (Patent Enquiry Committee -1948-50).

²History of Patents-US by Ramon A. Klitzke, The ENCYCLOPEDIA OF PATENT PRACTICE and INVENTION MANAGEMENT Edited by Robert Calvert, The Borden Company New York,

³Report on the revision of the Patent Law by Shri Justice N. Rajagopala Ayyangar

⁴Report of the Patent Enquiry Committee (1948-50)

⁵1832-53, Patent Enquiry Committee described this period as pre-legislation period

⁶The information of this phase was collected from National Archives of India by the Patent Enquiry Committee (1948-50)

⁷Smt Usha Rani Bansal and Shri B.B. Bansal, "Industries in India during the 18th and 19th Century", Indian Journal of History of Science, 19(3):pp. 215-233(1984).

⁸Report of the Patent Enquiry Committee (1948-50)



patent rights for each separate invention, as and when there was an application for such rights. Aiming to enact a general legislation for empowering the Governor General to grant patent rights appears to have been a later development. Constitutionally, the Government of India i.e. the Governor General-in-Council was not empowered to make any laws which would "in any way affect the Prerogative of the Crown". When the matter was referred to the Advocate General of India, he opined that the Government of India had no power to grant patents for new inventions in view of the fact that interference with the Royal Prerogative might take place if the Crown grants a British patent for an invention and extends it to the "colonies" and the Governor General also grants a patent for the same invention. Consequent upon the view of the Advocate General, the Governor General restrained himself from granting patents until the East India Company had obtained for him the requisite power for doing so, if it deemed it desirable that he should possess such power. This did not close the chapter. With pressure from persons who enjoyed patent protection in England and who were about to export their patented products from England to India, the question of granting patents in India had to be taken up again. However, a controversy churned up in view of the opinion expressed by the Advocate General of India particularly in relation to the "Prerogative powers" of the Crown. The concerned parties in the controversy were:

- i) The Attorney General and the Solicitor General of England
- ii) The Legal Advisers of the Court of Directors of East India Company
- iii) The Governor General-in-Council

The Attorney General and the Solicitor General held with utmost cautious that the question pertaining to King's Prerogative was by no means free from doubt and they observed that it was "very inadvisable" for the Governor General-in-Council to pass any measures on the subject of patents or even any measure to attempt to confer "exclusive privileges" in particular cases.

The Legal Advisers of the Court of Directors thought it unnecessary to express any opinion on the general question as to the Prerogative of the Crown, or as to its operation in the territories under the Government of the East India Company. They were of the opinion that it was competent for the Legislative Council of India to enact a regulation for enforcing and protecting in the territories subject to the legislative authority of the Government of India, the patent rights already granted by the Crown. They considered that such a course of proceeding "would avoid any conflict of speculative rights, and secure every object of practical utility."

Based on the advice received from their Legal Advisers and in spite of the opinion given by the Attorney General and the Solicitor General of England, the Court of Directors went ahead to encourage persons who applied to them for patent protection in India with a conviction that the Legislative Council of India had the authority "to enact regulations for enforcing and protecting, within the British territories in India, patent rights granted by the Crown for Great Britain and extended to the Colonies", and that it rested, therefore, with those who wanted patent rights in India to satisfy the Governor General in Council that in the case of the inventions for which they held British patents, there were sufficient grounds for the exercise of that authority.

The Governor General-in-Council did not subscribe to both the views. They could not appreciate how the Government of India could on the one hand be under a disability to legislate for the granting of patents in India, and on the other hand, have at the same time power for extending to India the protection granted by the Crown in England. They cited that the proposal that the patent protection granted in England should be extended to India was not only illogical but also injurious to the millions of Indians, as a British patent might very well be granted for a machine which was new in England but which was in everyday use in India.

The Councillors of the Governor General felt that the enactment of a legislation for the granting of patents in India would not interfere with the Prerogative powers of the Crown and they put forward irresistible arguments in support of this contention; the Governor General pressed the Directors either to accept this contentions of theirs, or to take such as would, even on the assumption that the King's Prerogative Powers of granting patents extended to India.

Facing the persistent persuasion from the Governor General, the Court of Directors felt obliged to get a special measure enacted in Parliament in 1853 for ending the uncertainty and the unsatisfactory state of law with regard to the power of the Governor General in Council to legislate an enactment of legislation for the purpose of granting patents for new inventions. The said special measure was contained in Section XXVI of 16 and 17 VIC. C.95. Thus, legal hurdles for a period of more than twenty years towards enactment of legislation for the granting of patents in India could be removed. The legal issue was the prime subject of deliberation of the period, yet there have also been occasional references to the "expediency of providing for the grant of patents in India. The following extract is typical of the views held at that time, as to the suitability of the introduction of patent system in the Indian environment.



In the minute by the Governor General dated 3rd February, 1841, His Excellency observed:-

"I look upon India as a country to the circumstances of which the laws of Patent are very inapplicable, and in which, if such laws were in force within it, any projector depending upon them would except in very rare cases, meet with certain disappointment, India is yet so backward that, with any invention requiring mechanical art, it will long be far cheaper to import than to imitate; and the intermixture of foreign settlements and of independent States with the British Territories is such, as would otherwise greatly impair the power of interference".

"...I should be most unwilling in a Territory so wide, so backward, with means of administration so imperfectly organized to pass stringent laws for the protection of any exclusive rights".

"I would not enter into a nice discussion of the equity of protection to an Inventor in England. It has been the theory of Patents that such a person is to make a disclosure of the process of his inventions, and that his Sovereign is to secure to him exclusively, in compensation, the profits to be derived from it, for a term of years. It might perhaps be argued that the market of England, Ireland and Scotland and the exclusive right of manufacture within their limits would afford an ample compensation for such disclosure and that more of injustice, than justice, would accrue if the millions of India, only within the limits of the British dominion, are to be taxed and harassed for the imperfect chance of a further reward."

In his minute dated the 5th February, 1841, the Hon'ble Mr Amos, Member of the Governor General's Council said as follows:-

"On the subject of the policy of the patent Laws with reference to India, I should doubt whether the stimulus of a monopoly would, at the present moment, produce so much benefit by promoting native inventions and the introduction of English or Foreign manufactures, as it would occasion general inconvenience. This subject, however involves a question whether of common right, there ought not to be perpetual property in a man's inventions, of which the Copyright and Patent Laws are merely restrictive, and conferring no new privilege."

"But I think the time is very near when Patent Rights may be of considerable utility in India. Great progress has been made within the last few years in the scientific education of the native youth, I think it is to be fully expected that with a short period inventions and discoveries of great practical use in developing the resources of the Country and contributing to the convenience of life will be result of the instructions which are now imparted in our schools and colleges. Still I doubt whether the love of science will, for a long time, have much general influence along the native of India, unless it be kept alive and stimulated by the prospect of gain."

"I am inclined to think that the cases in which patents would be most beneficially granted in India, would be where a Patent had not been obtained in England, and could not, owing to climate, prior use, or other local circumstances, pretend to a Patent Right or even possess utility, except in India."

In his minute dated 14th February, 1841, the Hon'ble Mr Princep, Member of the Governor General's Council said as follows:-

"But if the principle be admitted that every man has a right and property in his invention which is entitled to protection, there can surely be no objection to establishing a form of procedure whereby the possessor of such a right and property may obtain redress in case of its being infringed. The law, I would suggest, should be based on this general principle as prima facie evidence that the property in the invention was in the Patentee."

Responding to the above minutes, Mr Amos added a minute on the 15th February, 1841. The extract of the minute as follows:

"But I think it will be expedient only to allow of limited monopoly and that subject to a previous investigation of merits and the publishing of a specification. This policy has the advantage of being in unison with that which prevails in England."

Reviewing whole gamut of deliberations, it may safely be stated that persistent pressure from those who desired protection in India for goods and machinery made in England under patent protection in that country made the first legislation in India into reality. However, endeavour on the part of the successive Governor Generals and their Councillors towards enactment of Patent legislation in India cannot be forgotten.



THE BIRTH OF THE EXCLUSIVE PRIVILEGES ACT (1853-1856)

Completing the prolonged periods of deliberation as discussed above, ultimately the legislation for the protection of inventions in India saw the light of the day. With a view to remove legal obstacles for legislating for grant of Patents in India, a Select Committee was set up. The Committee was entrusted with the task of submitting a report on the law relating to Patents for inventions and to prepare such Bill or Bills as may be necessary to authorise their granting in India. The Bill as prepared by the Select Committee was introduced in the Legislative Council on the 7th July, 1855 and in view of some criticism, the bill was revised and subsequently passed by the Legislative Council. The bill finally received the assent of the Governor General on 28th February, 1856. This was the first legislation for the protection of inventions in India, and was designated as Act No. VI of 1856.

THE PERIOD OF EXCLUSIVE PRIVILEGES(1856-1911)

The first Indian Patent Legislation was introduced as Exclusive Privileges Act but not as the Patent Act. From the minutes of Mr Amos, Member of the Governor General-in-Council, it is amply clear that they were of the opinion of introduction of limited monopoly not in the form of granting of patent but in the form of exclusive privileges. In fact, the Patent legislation in India evolved to a full grown Patent Act in the year 1911.

First Indian Patent Law "Act for granting exclusive privileges to Inventors" Act VI of 1856⁹

The first Indian Patent law was an "Act for granting exclusive privileges to Inventors" (Act VI of 1856). This was passed by the Legislature of India and received the assent of the Governor General of India on the 28th February, 1856.

Preamble - As per the preamble of the Act of 1856 'Whereas it is expedient, for the encouragement of Inventors of new manufactures, that certain exclusive privileges in their inventions should be granted to them in India. It is enacted as follows':¹⁰

Inventor – Originally the Select Committee introduced that only the actual inventors should be entitled to the exclusive privileges and that 'importers' of the inventions should not be entitled to the grant. In the revised Bill, the right to apply for exclusive privileges was extended also to 'importers', but a distinction was made between the 'inventor' and the 'actual inventor'. The expression 'inventor' included the 'actual inventor' as well as the 'importer' of a new invention and both the expressions included their executors, administrators and assigns. As between the inventors and the actual inventors the rights of the actual inventor prevailed over the rights of the inventor.

Manufacture – This was deemed to include any part, process, or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture.

Invention –An invention was deemed a new invention if before the time of applying for leave to file the specification it was not publicly used in India or made publicly known there by means of a printed publication. But public use or knowledge would not be deemed a public use or knowledge within the meaning of the Act if the knowledge had been obtained surreptitiously or communicated in fraud of the actual inventor or in breach of confidence, provided that the inventor applied for leave within six months from such use. The use of an invention in public by the actual inventor or his agent or licensee was not deemed public use with the meaning of the Act.¹¹

Appropriate Authority– According to the Act the inventor of any new manufacture could petition to the Governor General in Council.

Enquiry -Upon the petition, the Governor General in Council was required to make an order authorising the petitioner to file a specification of the invention. The order could be made subject to any condition or restriction. Before making the order he could refer the petition to any person or persons for enquiry and report. A reasonable fee as charged by such person or persons was required to be borne out by the petitioner. In case of any dispute for the fee, it was settled by a Judge of Her Majesty's Court of Judicature.

Terms - If within six months from the date of the order the petitioner had filed a specification, he, his executors, administrators or assigns, was or were entitled to the sole and exclusive privileges of making, selling and using the invention in India, and of authorising others so to do for a term of 14 years from the time of filing the

⁹Law for the Protection of Inventions in India (1856-1956) by H.N.Ghosh, Controller of Patents and Designs, (From 21.10.54), Souvenir, Indian Patents Centenary (1856-1956) Patent Office, Calcutta

¹⁰Ibid, p. 17

¹¹Ibid, p.17



specification. In the case of an importer, the exclusive privilege ceased unless the invention was put into practice within two years from the date of the petition.

Extension of Term - On a petition being made not more than one year and not less than six months, before the expiration of the exclusive privilege, the term could be extended for a further period not exceeding 14 years as the Governor General in Council deemed fit.

Specification - Five copies of the specification were required to be filed of which one was sent to a Secretary to the Government of Bengal, one to a Secretary to the Government of Fort St. George, one to a Secretary to the Government of Bombay, one to a Secretary to the Government of North Western Provinces and the other to be retained by the Secretary to the Government of India in the Home Department. These specifications were kept open for public inspection in the offices of the said Secretaries at all reasonable times on payment of a fee of Re. 1/-.

Amendment of Specification – At the hearing of the application, the Court had the power to order amendment of the specification, to remove any error, defect or insufficiency. It could be done without injury to the public. An exclusive privilege was not defeated on the ground of misdescription of the invention in the petition unless it was fraudulent.

Inspection -A book was kept in the office of the said Secretary to the Government of India which was made of every petition and specification and every order relating to the invention. This book was open for inspection at all reasonable times also on payment of Re. 1/- and the Secretary could give certified copies of the entries on payment of the expenses of copying. Such certified copy was prima facie evidence of the document which it was a copy.

Novelty, disclosure and other requirements¹² – No person was entitled to any exclusive privilege if the invention was not new, if the petitioner was not the inventor or if the specification did not describe and ascertain the nature of the invention and in what manner the same was to be performed. Exclusive privilege ceased if the Governor General in Council declared it to be mischievous to the State or prejudicial to the public or if there was a breach of condition.

Infringement Suits and other legal proceedings – An action could be maintained by an inventor against any person who during the continuance of the exclusive privileges made, used, sold or put in practice the invention *without the license of the inventor*. Such action could not be maintained in any court of the East India Company other than the principal court of the original jurisdiction in civil cases within the local limits of which the cause of action did arise or the defendant was a fixed resident.¹³ Defence could be availed of on the ground of wrongful obtaining and that the invention lacked in novelty. Surprisingly insufficiency or defect in the specification could not be availed of as grounds for countering infringement suits.

Any person could apply by motion to any of Her Majesty's Court of Judicature for a rule to show cause why the Court should not declare that an exclusive privilege was not acquired under the Act by reason of any of the objections, viz. that the invention was not new, that the petitioner was not the inventor and either that the applicant was the inventor or that the inventor had dedicated or made known the invention to the public or had acquiesced in the public use thereof, that the specification did not particularly describe and ascertain the nature of the invention or in what manner it was to be performed, that the petitioner had fraudulently included in his petition or specification something which was not new or whereof he was not the inventor, that the petitioner had wilfully made a false statement in his petition or that some part of the invention or the manner in which it was to be performed was not sufficiently described and ascertained and that such defect was fraudulent and injurious to public. Similar application could also be made in respect of a part of the invention.

The Advocate General of the East India Company in any of the Presidencies of Fort William, Fort St. George and Bombay, or any other person by order of the Governor General in Council could apply to any Court of Judicature for a rule calling upon the petitioner or his executors, administrators or assigns to show cause why the question of breach of any condition or any other question of fact on which revocation of the exclusive privilege did depend, should not be tried as an issue directed by the Court. If the rule was made absolute the Court could direct an issue to be tried and certify the result of trial to the Governor General in Council. A Court of Judicature could direct an issue for trial before the same Court or any other Court of Her Majesty or any principal Court of original jurisdiction in civil cases of the East India Company¹⁴.

¹²Ibid, p. 18

¹³Ibid

¹⁴Ibid



Fee— The petition was made in a form given in the Schedule to the Act on stamped paper of the value of Rs. 100/-

The petition for an extension of the term was also to be made on a stamped paper of the value of Rs. 100/-
In case of Enquiry and report as referred by the Governor General-in-Council to any person, a reasonable fee for such enquiry to such person was to be borne out by the petitioner.
However, there was no provision for the payment of any Renewal Fees after the filing of the specification¹⁵.

Address Book- The Act provided that a book should be kept in the office of Secretary to the Government of India in the Home Department wherein every person filing a specification had to enter an address in India for service of any rule and proceeding under the Act. All persons, partnership and companies having shares or interests in such exclusive privileges had also to enter in that book their names and addresses for service.

Royal Prerogative - The Act also provided that nothing therein should abridge or affect the Prerogative of the Crown in relation to the granting or withholding of Letters Patent for inventions.

However, the above act was repealed by the **Act of IX of 1857** on the plea that it did not obtain the sanction of the Crown.

Act for granting exclusive privileges to inventors – Act XV of 1859

This Act received the assent of the Governor General on the 17th May, 1859 and kept the provisions of Act of 1856 intact except some modifications. The only additional provision made in this Act which had not been made in the Act of 1856, was that the petitioner was allowed to petition to the Governor General-in-Council for leave to file a memorandum pointing out any error, defect or insufficiency in the specification and disclaiming any part of the alleged invention or to file an amended specification in case of any defect or insufficiency. The same restriction was also imposed upon an amended specification filed under the orders of a Court, a restriction which was not imposed in the corresponding cases under the 1856 Act.

Besides, there were other modifications as follows:

- a) No exclusive privilege should be acquired in respect of an invention which was of no utility. This could be taken as an objection in a proceeding before Her Majesty's Court of Judicature for a declaration that the exclusive privilege had not been acquired¹⁶.
- b) Importer was not an inventor unless he was the actual inventor, that the invention would be new if there was no prior public user or prior public knowledge not only in India but also in any part of the U.K. and that an inventor who had obtained Her Majesty's Letter Patent for the exclusive use of the invention in U.K. could petition for leave to file a specification under this Act within 12-months from the date of such Letter Patent and not within only 6-months, and the exclusive privileges would cease if the Letters Patents had been revoked or cancelled and would not extend beyond the term of the said Letters Patent.
- c) The special provision enacted in the Act of 1856 for saving the Royal Prerogative Power was omitted from this Act.
- d) This Act not only validated the exclusive privileges granted by the Act of 1856 but extended their term to 14-years from the passing of this Act¹⁷.

Patterns and Designs Protection Act – Act XIII of 1872¹⁸

From the foregoing discussion, it is evident that both the Acts of 1856 and Act of 1859 were limited within the scope of protection for inventions only. The question of protection of Design did not engage the attention of the Government. Through this act, for the first time, the need for protection of design was acknowledged and accordingly this new act was named as **Patterns and Designs Protection Act**. This act received the assent of the Governor General-in-Council on the 28th April, 1872. **Mr H.G. Graves, Esq.,** Controller of Patents and Designs in his report of calendar year 1911 published 26th April, 1912 remarks "The registration of designs, which was also effected under the 1888 Act, has a shorter history as it only dates back to the Patterns and Designs protection Act of 1872."¹⁹

Act XV of 1859 incorporates certain changes by the amendment of 1872 which are as follows:-

- a) **It gave a definition of 'new manufacture'** to include any new and original pattern or design or the application of such pattern or design to any substance or articles of manufacture.

¹⁵Report of Patent Enquiry Committee (1948-50) p.19

¹⁶H N Ghosh, p.19

¹⁷Report of Patent Enquiry Committee (1948-50), p.21

¹⁸H N Ghosh, p. 19,

¹⁹Extract from Gazette of India, Part II, dated 25th May, 1912

b) Term of Exclusive Privilege – For a pattern or design the exclusive privilege was granted for three years and no more

c) Privileges to Invest Persons in UK – Any person entitled in the U.K. to an exclusive right in any pattern or design or in the application of such pattern or design to any substance or article of manufacture, was entitled to the sole and exclusive right in such pattern or design or in application thereof, in British India and was also entitled to the same civil remedies in respect of any infringement in British India as he would be entitled in the U.K.

Protection of Inventions Act -Act XVI of 1883²⁰

Through the introduction of this act further amendment was made in the Act of 1859. This Act received the assent of the Governor General-in-Council on 4th October, 1883.

The most prominent feature of this Act was to protect the novelty of the inventions which prior to making applications for their protection, were disclosed at the Exhibitions in India, if the inventor and exhibitor had petitioned to the Governor General-in-Council, under Act XV of 1859, for leave to file a specification from within six months from the opening of the exhibition. Such petitioning would preserve the novelty under that Act.

The Inventions and Designs Act, Act-V of 1888²¹

In 1888 all the previous Acts for the protection of inventions and designs were repealed and were consolidated in this Act. This Act received the assent of the Governor General in Council on 16th March, 1888. It came into force on the first day of July, 1888.

Though the history of registration of designs dates back to the Patterns and Designs Protection Act of 1872, but it became effective under this Act. As per Patent Enquiry Committee "... Act of XXX of 1872 relating to Designs had been so defective that not a single pattern or design had been registered under it and the Act had thus failed to achieve the object for which it was passed."²² Here we can also attribute the report on the working of the Patent Office during the calendar year 1911 published in 26th April, 1912 made by Mr H.G. Graves, the then Controller General of Patents. Mr Graves stated that "owing to high fees, no great advantage was taken of the provisions of the law for safeguarding proprietorship in designs."²³

This Act was divided into parts, one dealing with Inventions and the other with Design. Following are the salient features of this Act:-

Extent of the Act –It extended to the whole of British India. This Act was also declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890) and also declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898)²⁴

Invention- includes an improvement.

Inventor- does not include the importer into British India of a new invention unless he is the actual inventor.

Applicant- means a person who has applied under this Part for leave to file a specification of an invention, whether he has filed the specification or not.

Assign- includes a grantee of the exclusive privilege of making, selling or using an invention, or of authorizing others to do so, during the term for which the privilege is to continue or may be extended or for any shorter term.

Inventor, Actual inventor and Applicant include the executors, administrators or assigns of an inventor, actual inventor and applicant, as the case may be.

Manufacture- includes any art, process or manner of producing, preparing or making an article, and also any article prepared or produced by manufacture.

²⁰Law for the Protection of Inventions in India (1856-1956) by H. N. Ghosh, Controller of Patents and Designs, (From 21.10.54), Souvenir, Indian Patents Centenary (1856-1956) Patent Office, Calcutta

²¹Administration of the Act, Memorandum and Directions for the guidance of parties applying for protection of Inventions and ²Designs, Inventions and Designs Act, 1888 (Act of 1888), Department of Commerce and Industry, Government of India, Kolkata

²²Report of the Patent Enquiry Committee (1948-50)

²³Report on the Patent Office, Gazette of India, 1912

²⁴Foot note Page 5, The Inventions and Designs Act, 1888 (Act V of 1888) foot note 22 supra.



Administration of the Act-²⁵The protection of inventions and designs in India is regulated by the provisions of this Act. All business connected with the administration of this Act is allotted to the Patent Office which is now a branch of the Department of Commerce and Industry and is permanently stationed in Calcutta. Every application, letter or other communication on the subject of an invention or design, whether addressed to the Governor General-in-Council, to a Secretary to the Government of India or to the Secretary under this, should be transmitted to the Patent Office under cover superscribed as follows:- **"The Patent Secretary, 2, Bankshall Street, Calcutta"**. Patent Enquiry Committee (1948-50) observed "The authority to administer the Act was shifted from the Home Department to a Secretary....."²⁶ It may be noted that although the Patent Office under the Control of Controller of Patents and Designs was statutorily established by the Indian Patents and Designs Act (Act-II of 1911) and functioned from 1, Council House Street, Kolkata but the Patent Office started functioning under control of Patent Secretary, Department of Commerce and Industry, Government of India from 2, Bankshall Street, Kolkata under the Act of The Inventions and Designs Act, 1888 (Act V of 1888). The said office used to remain open for the transaction of business from 11 AM to 3 PM on all days except Sundays and gazetted holidays. One room was set apart for the use of the public. Mr Henry George Graves was Patent Secretary in 1907 under the Act of 1888 and subsequently he became the Controller of Patents and Designs from 01.01.1912 to 27.11.19 under the Act of 1911.^{27,28,29}

Secretary – Under this Act, 'Secretary' means a secretary to the Government of India appointed by the Governor General in Council to discharge the functions of the Secretary under this Act, and includes any undersecretary, assistant secretary or other officer subordinate to the Government of India to the extent which such officer may be an authorized by general or special order of the Governor General in Council to discharge any of those functions.

Application for leave to file a specification- The inventor of a new manufacture, whether he is a British subject or not, may apply to the Governor General in Council for leave to file a specification thereof.

The application must be in writing signed by the applicant and in the form or to the effect of the second schedule if the inventor has not obtained a patent in the United Kingdom, and in the form or to the effect of the third schedule if he has obtained a patent in the United Kingdom.

It must state the name, occupation and address of the applicant, and where a patent has been obtained in the United Kingdom, the date of the patent and the date of the actual sealing thereof, and must describe with reasonable precision and details the nature of the invention, and of the particular novelty whereof it consists, and be supplemented by such further particulars relating to the invention, and by such drawings or photographs illustrative thereof, as the Governor General in Council may see fit to require from the applicant.

Model- If any case it appears to the Governor General in Council that an application ought to be further supplemented by a model of anything alleged to constitute an invention, he may require the applicant to furnish such a model neatly and substantially made of durable material and of dimensions not exceeding those, if any, specified in the requisition thereof.

Fees- This act revised the amount of fees in such a way that the cost of securing an exclusive privilege enduring for four years was kept at Rs. 40/-, Rs. 10/- being payable on filing the applications and Rs. 30/- on filing the specification. A period of four years was deemed sufficient whether the exclusive privilege was worth maintaining or not. If worth maintaining, it was provided that the inventor should make annual payment of Rs. 50/- for the next five years and Rs. 100/- for the last five years of the term. In case he obtained an extension of the term, he had to Rs. 100/- for each year of the extended term. Provisions were included for the grant of extension of time, not exceeding three months, for paying the renewal fees on payment of Rs. 10/- for one month, Rs 25/- for two months and Rs. 50/- for more than two months. By omitting payment at any stage, the exclusive privilege became abandoned. The fee on application for extension of the term of the privilege was reduced from Rs. 100/- to Rs. 50/-.

Fee for Enquiry – This Act made a difference and provided that when an enquiry before the grant of leave was made by a person not in government service the applicant was to pay his fee.

²⁵Administration of the Act, Memorandum and Directions for the guidance of parties applying for protection of Inventions and Designs, Inventions and Designs Act, 1888(Act of 1888), Department of Commerce and Industry, Government of India, Kolkata

²⁶Report of the Patent Enquiry Committee (1948-50)

²⁷Advice on Procedure and Law, Memorandum and Directions for the guidance of parties applying for protection of Inventions and Designs, Inventions and Designs Act, 1888(Act of 1888), Department of Commerce and Industry, Government of India, Kolkata

²⁸Indian Patents Centenary (1856-1956), Souvenir, Patent Office, Kolkata

²⁹Gazette of India, Part II, 1912



Time for filing Specification – A specification could be filed within six months from the date of the order of the Governor General in Council but it was to be accompanied by a fee. The time for filing a specification could be extended beyond six months to the extent of three months on payment of a fee in that behalf. As many copies of specification as required but not fewer than four copies, were required to be filed. Out of these one copy was retained by the Secretary and the other copies were sent to the Governor of Fort St. George in Council, the Governor of Bombay in Council, the Chief Commissioner of Burma and other authorities as appointed by the Governor General-in-Council.

Term of Exclusive Privilege- The term of an exclusive privilege was fourteen years from the date of filing of specification. This term could be further extended by the Governor General-in-Council, either by himself or at the advice of the High Court, in case the right holder was not adequately remunerated. Such extension was limited ordinarily to seven years, and fourteen years in exceptional cases. Such extension could be opposed in the High Court.

Notification- The title of the invention was notified in the Gazette of India.

Publication- To ensure proper publication of the invention in India, it was provided that the specification should be filed not only in Calcutta, Madras and Bombay, but also in Rangoon and such other places as the Governor General in Council may from time to time appoint.

Public Inspection- After formal examination by the Secretary for formal matters, the application was exposed to public inspection in the Secretary's Office for ten days, so that any member of the public could have an opportunity of objecting to the grant of leave to file the specification.

Jurisdiction of Courts – The jurisdiction exercised by the High Courts at Calcutta, Madras and Bombay under the Act of 1859 was extended to the High Court of Allahabad, the Chief Court of the Punjab and Recorder of Rangoon.

Exclusive Privileges to bind the Government- Exclusive Privilege had the same effect against the Crown as it had against a subject. But officers of the Crown had authority to use the invention for the services of the Crown on terms to be agreed upon before or after use, with the approval of the Governor General-in-Council or in default of agreement to be settled by him.

Acquisition of Exclusive Privilege by Government Servants-The Governor General-in-Council could impose any conditions he may deem expedient in respect of the exclusive privileges acquired by the Government Servants.

Provision for UK Patent –Where a patent was obtained in the UK it was necessary that the date of the Patent and the date of its actual sealing should be mentioned in the application.

The time for filing a petition for leave to file a specification in respect of an invention already patented in the United Kingdom was altered from 12-months from the date of the Letters Patent to 12-months from the date of sealing the Patent.

Novelty of Inventions- The Act contained a provision for the protection of inventions, who might have used their inventions in the public prior to the date of their patent, for leave to file the specification.

Contemporaneous Inventions- Provisions were included to allow concurrent applications for contemporaneous inventions; and the first of the applicant in respect of such inventions was allowed a preferential claim.

Grant of Compulsory Licence – The Governor General-in-Council was empowered to grant compulsory licences in case where an inventor who had acquired exclusive privileges did not make his invention accessible to the public on reasonable terms.

Agents and Assignment- With a view to encourage foreign inventors, provisions were made to enable them to act through Agents in India and also to make assignment of their interest in any province or other local area as they saw fit.

Designs- Provisions for the protection of "New or Original Designs" were made in Part II of this Act.



Exhibitions—Act XVI of 1883 was repealed and provisions were included in the consolidating Act to protect inventors who exhibited their inventions at any Industrial and International Exhibition defined in the Act, not merely from the date of the opening of the Exhibition, but the date of admission of the invention into the Exhibition.

Power to make Rules—Provision was made for empowering the Governor General-in-Council to make such rules and prescribe such forms as he thought necessary for carrying out the purposes of the Act, or alter or amend the forms provided in the schedules to the Act.

Growth and Development of the Patent Legislation in India

Leaving behind a period of 55-years of Exclusive Privileges to inventors, the Patent system in India started its journey from the Indian Patents and Designs Act, 1911. The Exclusive Privilege Act in India underwent several changes in line with the development of the English Patents Act, but British Raj did not introduce the British Patent Practice in its entirety during the period of granting 'Exclusive Privileges to Inventors'. Through the Act of 1911, for the first time, the then Government introduced the Indian Patent System in close conformity with English Patent System. In the following discussion, it will be evident how this Act regulated the patenting of inventions and the registration of design in the forthcoming years.

The Bill on 3rd January, 1911 was referred to a Select Committee comprising of Hon'ble Mr Syed Ali Imam, the Hon'ble Mr Macpherson, the Hon'ble Mr H.G. Graves, Hon'ble Sir V.D. Thakersay, the Hon'ble Mr Graham, Hon'ble Mudholkar and the Hon'ble Robertson. In Committee, in deference to opinion in India, a Section was introduced under which **a Patent was liable to revocation if not worked in the country**.³⁰ The Select Committee reported on 23rd January, 1911 and the report was presented by the Hon'ble Mr Robertson in Council on the following day. On the 1st March, 1911 the report was taken into consideration, the Bill as amended was passed and received the assent of the Governor General on the 2nd March, 1911. This Act had since been amended from time to time. Certain major amendments were carried out by Acts XXIX of 1920, VII of 1930, IX of 1945, XXXII of 1950 and LXX of 1952 and LV of 1953. There were minor amendments also in XVII of 1914, XI of 1923, XII of 1939, III of 1951 and XLVIII of 1952. Amendments were also done by the adaptation of Laws Orders at different times due to changes in the Constitution of India.

Indian Patents and Designs Act - Act II of 1911^{31,32}

This Act along with Indian Patents and Designs Rule, 1912 came into force on the 1st January, 1912.³³ In September, 1912, the Patent Office was moved from 2, Bankshall House Street, Kolkata to **1, Council House Street, Kolkata**.³⁴ Mr Henry George Graves, the erstwhile Patent secretary assumed the charge of **First Controller of Patents and Designs**. In the words of Mr Graves "With the able assistance of the staff the move was effected with the minimum dislocation of business."³⁵

Establishment of the Patent Office—Through this Act for the first time a separate office by the name of 'Patent Office' under the Controller of Patents and Designs was established to administer the Act.

The Public Room was opened from 11AM to 4PM and 11AM to 1 PM on Saturday.³⁶

Division of the Act- This Act had been divided into three parts, the first dealing with Patents, the second with Designs and the third with General Patent Matters.

Invention- As per this Act, any manner of new manufacture and includes an improvement and an alleged invention.

Manufacture- This Act did not require that an invention to be deemed as a new invention, it shall not be known or used in UK also. This was clear departure from earlier acts.

³⁰Report on the Patent Office dated 26th April, 1912 from Mr. Graves, Controller of Patents & Designs to The Secretary to the Government of India, Department of Commerce and Industry. Gazette of India, Pat—II, 1912.

³¹Law for the Protection of Inventions in India (1856-1956) by H.N.Ghosh, Controller of Patents and Designs, (From 21.10.54), Souvenir, Indian Patents Centenary (1856-1956) Patent Office, Calcutta

³²Report of the Patent Enquiry Committee (1948-50)

³³Gazette of India, Part II, Calcutta

³⁴Report on the Patent Office dated 26th April, 1912 from Mr Graves, Controller of Patents & Designs to The Secretary to the Government of India, Department of Commerce and Industry.

³⁵Report on the Patent Office dated 26th April, 1912 from Mr Graves, Controller of Patents & Designs to The Secretary to the Government of India, Department of Commerce and Industry.

³⁶Notices, The Patent Office, Gazette of India, 1912



Grant of Patent- Acquiring of Exclusive Privilege by filing of specification was replaced by grant of Patent by the Central Government.

Patentee- The grantee or the proprietor whose name was for the time being entered in the Register kept under the Act was the 'Patentee' within the scope of the Act.

Applicant- Any person may apply for a patent either alone or jointly with any other person and if the true and first inventor is not a party to the application it must contain statement of his name and other particulars for identification and the applicant must show that he is the legal representative of such inventor. The application is to be made in a form prescribed in the Rules made under the Act and can be made by a person to whom the invention has been communicated from abroad. The communicatee can describe himself as a true and first inventor.

Application- The Application and the specification should be submitted at the same time accompanied with the prescribed fee.

Procedure- When an Application accompanied with specification with prescribed fee is filed, the Controller refers the application to an Examiner who has to report on matters specified in the Act as follows:-

- a) Whether the nature of the invention or the manner in which it is to be performed has been particularly described and ascertained in the specification
- b) Whether the application, specification and drawings have been prepared in the prescribed manner
- c) Whether the invention prima facie is manner of new manufacture etc.

Acceptance- The application should be accepted within twelve or fifteen months.

Refusal- When there is objection, Controller may refuse to accept the application or require the application to be amended. If an application is not accepted within eighteen months or within extended period of three months thereafter it shall be deemed to have been refused.

From above, it is clear that every application was scrutinised carefully before the grant of a Patent under this Act. However, this kind of scrutiny was not existent during the period 'exclusive privilege'.

Inspection- On acceptance of an application, it is advertised and the application, specification and drawings become open to public inspection.

Notice of Opposition- Within four months from the date of advertisement any person may give notice of opposition to the grant on the ground as follows:-

- a) That the applicant obtained the invention from him or from a person of whom he is the legal representative or assign
- b) That the invention has been claimed in any specification which is or will be of a prior date
- c) That the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described
- d) That the invention has been publicly used in any part of India or has been made publicly known in India.

Reviewing the 'opposition proceedings', the Patent Enquiry Committee opined that the proceedings were intended to provide on one hand an opportunity to any member of the public to prevent the grant of a patent which would be unfairly prejudicial to his interest, and on the other hand, to enable the applicant to restrict his claim to what was properly his invention, thus obviating to some extent his risk in subsequent infringement and revocation proceedings.

Sealing- Through this Act, Patent rights were brought into existence by the sealing of a 'patent', instead of mere operation of law, as in the case of 'exclusive privileges'. As a result, protection of inventions could be granted in a form which was more suitable for commercial purposes than the 'certificates of the filing of specification' issued under the earlier Acts. As per the provision of this Act, when there is no opposition or when the decision is in favour of the applicant, the Controller causes the patent to be sealed with the Seal of the Patent Office. Normally the sealing should be done within twenty four months from the date of application or within an extension of time not exceeding three months. A patent is dated and sealed as of the date of the application and confers on the patentee the exclusive privilege of making, selling and using the invention throughout India and of authorising others so to do.

Term of a Patent -The term of patent was for fourteen years.



Restoration- If a patent lapsed for non-payment of the renewal fees within the prescribed time, i.e. before the expiry of the fourth year in respect of the fifth year and in likewise manner for subsequent years, the patentee may apply for restoration of his patent. If it appears that the omission to pay the fee was unintentional and unavoidable and that no undue delay has occurred the patent may be restored subject to conditions and restrictions deemed advisable.

Surrender of Patents – provision was made for this purpose.

Amendment- The law has laid down the criterion for amendment of an application, specification or drawings which may be by way of disclaimer, correction or explanation. No amendment can be allowed that will make the application or specification claim an invention substantially larger than or substantially different from the invention claimed before amendment. In these proceedings opportunity is given to the public for opposition.

Certificate of Validity of Patents – Provision was made for granting such certificate in certain cases, with a view to give protection against wilful infringer.

Maintenance of Secrecy – As per provision of this Act, for the protection of the applicant, it was provided that the application was to be kept secret until it was accepted.

British Inventor³⁷–through this Act, anomalies in favour of British inventors was removed. Further, the duration of Indian patents was made independent of the duration of foreign patents.

Compulsory Licensing- Provisions relating to compulsory licences for the working of invention were elaborated and the scope of obtaining the same was broadened.

Exclusive Privileges acquired by the Government- the provision of the Act of 1888 was elaborated in this Act.

Designs – Important changes were brought about following the Statute of 1907 of United Kingdom.

Amendment Acts XXIX of 1920^{38,39}

Reciprocal Arrangement-By this Act, provision was made for a reciprocal arrangement with the United Kingdom and other parts of His Majesty's dominions. As per this provision, any person who has applied for protection for any invention in the UK, he or his legal representative or assignee shall be entitled to claim that the patent that may be granted to him under this Act for the said invention shall be in priority to other applicants and shall have the same date as the date of the application in the U.K., provided that the application is made within 12-months from the applications in the U.K. The patent granted for the invention shall not be invalidated by the publication in India of a description of the invention during the period within which the application may be made. If the application is not accepted within eighteen months from the date of application in the U.K., the specification with the drawings will be open to public inspection at the expiration of that period. Where the legislature of any part of His Majesty's dominions has made satisfactory provision for the protection of inventions patented in India the Central Government may by notification direct that this provision shall apply for the protection of inventions patented in that part.

Amendment Act VII of 1930^{40,41}

This amendment was based on the British Patents and Designs Act, 1919.

Extension of the term of Patent-By this Act, the term of a patent extends to Sixteen years instead of Fourteen Years as it was.

However, the patentee may present a petition to the Central Government for an extension of the term of his patent at least six months before the expiration thereof. The patent may be extended for a term not exceeding five years but in exceptional cases it may be extended up to ten years.

³⁷Report of Patent Enquiry Committee (1948-50), p 28

³⁸Law for the Protection of Inventions in India (1856-1956) by H.N. Ghosh, Controller of Patents and Designs, (From 21.10.54), Souvenir, Indian Patents Centenary (1856-1956) Patent Office, Calcutta

³⁹Report of Patent Enquiry Committee (1948-50)

⁴⁰Report of Patent Enquiry Committee (1948-50)

⁴¹Law for the Protection of Inventions in India (1856-1956) by H.N.Ghosh, Controller of Patents and Designs, (From 21.10.54), Souvenir, Indian Patents Centenary (1856-1956) Patent Office, Calcutta



Patent of Addition- An applicant or patentee may apply for a patent for an improvement in or modification of his original invention and request that the term limited for the duration of the further patent may be the same as that original patent or so much of it as is unexpired. If he does so a patent known as patent of addition no fees for renewal are paid but it remains in force so long as the original is in force.

Secret Patent—This Act provided for the grant of a secret patent where the inventor of any improvement in instruments or munitions of war, assigns to the Central Government all the benefit of the invention and of any patent obtained or to be obtained and the Central Government before the publication of the specification certify that in the interest or public service the particulars of the invention and the manner in which it is to be performed should be kept secret. The application and specification with drawings are delivered to the Controller in a packet sealed by the Central Government. On the expiry of the term of the patent the sealed packet is delivered to the Central Government. No proceeding by petition or otherwise shall lie for the revocation of a secret patent.

Privilege of the Government- Under the modification, disputes in respect of the terms for the user of the patented invention by the Government was to be settled by the High Court and not by the Government.

Rectification of Register- the Controller was given power of rectifying the Register of Patents, save in exceptional cases, which could be referred by him to the High Court.

Reciprocal Arrangements with Indian States—Provision was made for enabling British India to enter in reciprocal arrangements with the Indian States for granting priorities to patents.

Amendment Act IX of 1945⁴²

Filing of Provisional Specification-The provision for filing a provisional specification was made by this Act.

National Patent System

After the Independence, it was felt by the Government of India that the Patent System as introduced by the British rulers failed to achieve its objectives. Mr K. Rama Pai, Controller of Patents and Designs, India (16.02.24 to 15.07.1948) advocated for National Patent System which could respond to the need of development of the country. Even, Dr Pai did not hesitate to indicate ulterior objects towards enactment of the Patent Legislation in India by the British. As Indian Patent System during colonial rule failed to become popular and become in the words of Dr Pai "like the Top Hat and the Morning Coat of the foreigner".⁴³ Therefore, the Government of India immediately after Independence appointed a Patent Enquiry Committee in the year 1948. The Committee was chaired by Dr Bakshi Teckchand and other Honourable members were Shri Gurunath Bewoor, Tata Industries Ltd., Member; Shri Major Gen S.S. Sokhey, Director, Haffkine Institute, Bombay, Member; Shri S.M. Basu, Solicitor, Calcutta, Member; Mr N. Barwell, Solicitor, Kolkata, Member; Shri S.P. Sen, Bengal Chemical and Pharmaceutical Works, Calcutta, Member and Shri K. Rama Pai- Member Secretary.⁴⁴

Conclusion

The history of Patents in India as described before is prepared based on information as available in Patent Office Technical Library and other libraries of Kolkata. A lot of space remains unexplored which needs to be traversed for detailed history of Patents. With proper opportunity, time and space, more information can be retrieved based on which a well-documented history of Patents can be prepared. The need of the hour is to retrieve all these documents in urgent manner otherwise those documents will be lost in the oblivion of dust. When India is playing a pivotal role in the arena of international trade, preparation and presentation of detailed history of the Patents in India is very much needed so that proper correlation between industrial development in India and intellectual protections can be framed. This would also fascinate the research students in the field of intellectual property law.

⁴²Law for the Protection of Inventions in India (1856-1956) by H.N.Ghosh, Controller of Patents and Designs, (From 21.10.54), Souvenir, Indian Patents Centenary (1856-1956) Patent Office, Calcutta

⁴³Is there a future for the Patent System in India? by K. Rama Pai, Souvenir, Indian Patents Centenary (1856-1956)

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Intellectual Property Protection: Regional Cooperation under SAARC

By

Dr K. S. Kardam

Senior joint Controller of Patents and Designs, Patent office, New Delhi

- 1. Background:** The intellectual Property (IP) is the intangible asset moulded through human creative efforts. The protection of such intellectual property confers upon the creator or his assignee a legal right known as Intellectual Property Rights (IPRs) to enjoy the fruits of such intellectual property and its commercialisation leads to social, economic and technological development. Therefore, Intellectual Property Rights (IPRs) are legal and institutional mechanism to protect creation of minds for a limited period in consideration of new and useful disclosure. These rights contribute to the enrichment of society through the widest possible availability of new and useful goods, services and technical information and can greatly boost up the competitiveness of industries. In the modern world, IPRs are considered a key component for success in business-driven economic growth, tool for competitiveness and industrial trade. The intellectual property protection system provides balance of rights and obligations for creators and users, and the society at large. However one needs to remember that if the society is not benefitted from intellectual creations, the balance of rights and obligations on which the system rests may be disturbed. In the language of Michel, "....patents play the role of the pike in the carp pool; they prevent stagnation and stimulate progress. Industrialists are forced to forge ahead to improve their machines and processes for the further reason that each one fears that if he does nothing some other will do something and exclude him from the field for a considerable number of years. This result produced by the patent systems is sound because it requires, as nothing else would require that industry go forward; it gives primarily the true justification for patent protection."¹
- 2. Recently India has achieved few major global milestones in the field of Intellectual property. One of them is the functioning of Indian Patent office as International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) under Patent Cooperation Treaty (PCT) for conducting and preparing the international search and preliminary examination (ISRs and IPER) in respect of International patent applications and other one is functioning of Trademarks Registry as office of origin after India's accession to the Madrid Protocol, an international system for registration of trademarks administered by WIPO to provide statutory protection of a trademark in various countries by filing a single application in the country of origin.**

India has also established Rajiv Gandhi National Institute for Intellectual Property Management (RGNIPM) as a National centre of excellence for training, management, research, education in the field of Intellectual Property (IP) Rights with the objective to cater to the need of training of Examiners, higher officials of IP Office, IP professionals, Scientists, government functionaries and stake holders involved in creation, commercialization and management of intellectual property rights. The institute has conducted several training programs for newly recruited patent examiners in the past in cooperation with WIPO and some foreign patent offices besides other training programs for IP professionals, scientists and other stakeholders.

In order to maintain an IP System which is dynamic with global standard, it requires a huge investment in the infrastructure, human resources, training, global IP and non IP database. In the past, Government of India has invested several hundred crores to put in place a modern infrastructure, additional human resources and digitization of IP records to meet the global challenges and obligations in terms of processing of IP applications, while ensuring quality services to stakeholders and provide access to Indian IP-data. Of late, the government has further approved MSIPO project of Rs 309 Crores in order to modernise and strengthen the intellectual property office during the current 12th Five year plan.
- 3. Regional Cooperations for IP Protection:** The countries with common cultural, political, economic background have entered into regional cooperations in the field of Intellectual Property especially in patents. This includes the establishment of academy for training of the IP officials working in the offices of these countries, utilising the services of these offices for conducting the international search and preliminary examinations under Patent Cooperation Treaty for the international patent applications filed by their nationals. Such cooperation reduces the burden of the countries of that region to make huge investment in duplicating the efforts in providing the infrastructure which could meet and sustain the global standards as well as their other

¹Michel on Principal National Patent Systems, Vol. I, page 21 (quoted from Report on the Revision of the Patents Law by Shri Justice N. Rajagopala Ayyangar)



requirements. At present there are four inter-governmental organisations effectively working in the field of intellectual property under such regional cooperation.

- a) **European Patent office:** The European Patent Office was established under European Patent Convention with 16 countries signing the European Patent Convention (EPC).² This multilateral treaty created the European Patent Organization and the European Patent Office (EPO) with a objective that patent protection may be obtained in those States by a single procedure for the grant of patents and by the establishment of certain standard rules governing patents so granted. Under this convention, applicant can file a single patent application with the EPO for the grant of patent. However if the patent is granted, it is applicable in all the member states that they choose. Member states retain the right to enforce and revoke individual patents. This has greatly reduced fees and paperwork associated with filing of patent application in several European countries.³ Previously this required costly translations and time-consuming search and grant procedures in each country. The establishment of EPC, at the same time, allowed member countries to have their own national intellectual property offices for those applicants who intend to seek protection only in that country.

In order to meet the training requirement, the European Patent Academy has been set up in 2004 as an external education and training arm of the European Patent Office with a view to improve intellectual property training and education structures in Europe. The Academy operates in partnership with national and international institutions, including the Office for Harmonization in the Internal Market (OHIM). The activities of the academy cover the target audiences namely (i) National Patent offices and related institutions (ii) Professional representatives (iii) Judges and legal professionals (iv) Universities and research centres, and (v) Businesses and SMEs.

- b) **Eurasian Patent Office:** The Eurasian Patent office has been established in order to administer the functioning of the Eurasian Patent System and the grant of Eurasian patents under the Eurasian Patent Convention, which came into force with effect from August 1995. The main purpose of the Eurasian Patent Convention is to strengthen the cooperation in the field of protection of inventions and to create an interstate system for obtaining the legal protection on the basis of a single patent valid in the territory of the Contracting States.⁴ Similar to the provisions of European Patent Convention, the Eurasian Patent Convention also allows the Contracting States to maintaining their complete sovereignty to develop their national systems for protection of inventions, while establishing a Eurasian Patent System.⁵
- c) **African Regional Intellectual Property Organization:** The African Regional Intellectual Property Organization (ARIPO), formerly African Regional Industrial Property Organization, is an intergovernmental organization for cooperation among African states in patent and other intellectual property matters. ARIPO was established by the Lusaka Agreement of 1976. It has the capacity to hear applicants for patents and registered trademarks in its member states that are parties to the Harare Protocol (patents and Utility Models) and Banjul (marks) protocols. At present there are 19 member states to ARIPO⁶. This allows filing one application for the grant of patent, which is valid in all the member states. However if an applicant intends to file the national phase application in ARIPO, he has to pay the designation fee for each member states. Where the ARIPO designation fees are not paid for all the States designated for an ARIPO patent, the applicant must indicate the States to which the designation fees are to be applied. If the patent is granted by ARIPO, the same has to be renewed in each member state by paying the renewal fee.
- d) **African Intellectual Property Organization (OAPI):** The African Intellectual Property Organization (better known under the acronym OAPI for its French name, *Organisation Africaine de la Propriété Intellectuelle*) is the main organization that ensures the protection of intellectual property

²European Patent Convention signed on 5th October 1973 and came into force in 1977

³European Patent Convention, The European Patent Office (EPO) offers inventors a uniform application procedure, which enables them to seek patent protection in up to 40 European countries

⁴At present, there are 9 member states namely, Turkmenistan, the Republic of Belarus, the Republic of Tajikistan, the Russian Federation, the Azerbaijan Republic, the Republic of Kazakhstan, the Kirghiz Republic, the Republic of Armenia and the Republic of Moldova. (<http://www.eapo.org/en/history.html>)

⁵Article-1 of the Eurasians Patent Convention

⁶Botswana, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia, Zimbabwe and São Tomé and Príncipe (will enter into force on August 19, 2014),



rights in most francophone countries of Africa. OAPI was created on March 2, 1977 under the Bangui Agreement⁷ to introduce a uniform law on intellectual property and to create a common industrial property office in Yaoundé, Cameroon. OAPI replaces the African and Malagasy Intellectual Property Organization (better known during its existence under the acronym OAMPI for its French name, (*Office Africain et Malgache de la Propriété Industrielle*), which was established by the Libreville Agreement of September 13, 1962. OAPI is composed of 17 Member States namely, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Gabon, Guinea, Equatorial Guinea, Mali, Mauritania, Niger, Guinea Bissau, Senegal and Togo.⁸ In each Member State, OAPI serves as both the National Office of Industrial Property and the Central Agency for documentation and information regarding Intellectual Property. The Organization also provides intellectual property training and participates in the development of policies for its Member States. The Bangui Agreement comprises of various intellectual property rights namely, Patents, Utility, Trademarks and services, Industrial Designs, Trade Names, Geographical Indications, Literary and artistic property, Unfair Competition, Layout Designs of Integrated Circuits and New Varieties of Plant. The Bangui Agreement acts as a common Code of Intellectual Property as the principles and provisions of the said Agreement have the force of national laws in each Member State. The intellectual property rights set forth in the Bangui Agreement are independent national rights, subject to the legislation of each Member State. No domestic legislation is issued to give effect to the Bangui Agreement, as it constitutes the national law in each Member State⁹

From the above, it is evident that the above-mentioned organizations under regional cooperation for the protection of intellectual property rights are working effectively and smoothly in protecting the intellectual property rights without invading upon the sovereign rights enjoyed upon under national legislations.

- 4. South Asian Association for Regional Cooperation (SAARC):** The South Asian Association for Regional Cooperation (SAARC)¹⁰ was established on December 8, 1985 with the understanding *inter-alia* that the regional cooperation among the countries of South Asia is mutually beneficial, desirable and necessary for promoting the welfare and improving the quality of life of the people of the region and also that economic, social and technical cooperation among the countries of South Asia would contribute significantly to national and collective self-reliance.¹¹ The one of the objectives of the SAARC is to strengthen cooperation among themselves in international forums on matters of common interests; and to cooperate with international and regional organisations with similar aims and purposes.¹²

The issue of cooperation relating to the preservation and protection of intellectual property has perhaps assumed the significance directly or indirectly in various SAARC Summits and SAARC agreements such as Agreement on the Establishment of South Asian Regional Standards Organisation (SARSO), South Asian Free Trade Area (SAFTA), etc. in the one form or other such as training and human resource development in trade related areas under capacity building, and Legislative and policy related measures, assistance for improvement of national capacity that includes TRIPS and Intellectual Property Rights.

It will not be out of place to mention that under the BRICS cooperation¹³, India on 24th September 2013 at Geneva has formally signed the Road Map prepared by the BRICS countries for promoting bilateral cooperation among the five IP offices during the 2nd BRICS Head of IP Office (HIPO). This road map had earlier been signed by the other four offices in South Africa in May 2013. The area of cooperation under BRICS Road Map *inter-alia* includes, the training of intellectual Property staff, IP/Patent processes and procedure including search, classification and translation services, and promotion of public awareness on IP in BRICS countries. National IP Strategy and IP Strategy for enterprises, information services -exchange of patent documents, examiners exchange programs, etc.

⁷The Bangui Agreement of 1977 was signed and adopted in Bangui, Central African Republic. It entered into force on February 8, 1982.

⁸http://www.wipo.int/wipolex/en/outline/oapi.html#_ftn6

⁹*ibid.*

¹⁰The South Asian Association for Regional Cooperation (SAARC) is an economic and geopolitical organization of eight member countries namely Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka and Afghanistan. Afghanistan joined and become the 8th Member besides some observer members.

¹¹SAARC Charter

¹²Article (g) and (h) of the Charter

¹³BRICS is the acronym for an association of five major emerging national economies namely Brazil, Russia, India, China, and South Africa. The foreign ministers of the initial four BRIC states (Brazil, Russia, India, and China) met in New York City in September 2006, beginning a series of high-level meetings. A full-scale diplomatic meeting was held in Yekaterinburg, Russia, on 16 May 2008. The BRIC grouping's first formal summit, also held in Yekaterinburg, commenced on 16 June 2009. In 2010, South Africa began efforts to join the BRIC grouping, and the process for its formal admission began in August of that year. South Africa officially became a member nation on 24 December 2010.



The patent system in India, Pakistan and Bangladesh emanates from the Indian Patents and designs Act of 1911, the legislation introduced under British India Era which in turn was based on British Patent law. Later on their legislations have been amended after TRIPS came into force. Patent system in Sri Lanka introduced in 1979 and became effective from 1982. The intellectual Property law was further enacted in 2003 considering the obligations and flexibilities under the TRIPs Agreement. Patent system in Nepal and Bhutan is still in very nascent stage whereas Afghanistan and Maldives do not have any IP system so far. In fact World Intellectual Property Organization (WIPO) in 2011 has looked into how intellectual property (IP) could be used to protect and promote economic and trade interests of the Republic of Maldives and to enable Maldives to establish an intellectual property regime. Out of all nine states only India seems to be a lone member of Patent cooperation treaty. However besides India, Bangladesh, Bhutan, Nepal, Pakistan and Sri Lanka are also a member of Paris convention for the protection of industrial Property. Since Afghanistan and Maldives do not have any IP System yet therefore they are not members of Paris Convention.

Given the above mentioned circumstances, the following regional cooperation in the field of intellectual property under SAARC can be envisaged

- (a) Training of IP officials
 - (b) Exchange program for examiners
 - (c) Technical and legal assistance to member countries to assist them in capacity building including establishment of IP legislations and IP offices
 - (d) promotion of public awareness on IP
 - (e) Exchange of IP Information.
 - (f) Establishment of SAARC Patent office.
- a) **Training of IP officials:** The National Institute of Intellectual Property Management formerly known as Intellectual Property Training Institute (IPTI) at Nagpur has been functional since 2002 imparting the training to the Patent examiners which has been renamed in 2013 as Rajiv Gandhi National Institute of Intellectual Property Management (RGNIIPM) and housed in the new building with modern infrastructure. Recently, the institute conducted the regular as well as advance training programs for newly recruited patent examiners. The institute has also developed well designed training material to cover all aspect of search and examination. The Institute is also organizing from time to time the training programs for professionals, scientific community, R & D organizations and other stakeholders. Therefore, the institute has already demonstrated its capability as well as competence for training to the examiners and other IP Officials from SAARC member countries. If given an opportunity to train the IP officials of the SAARC members, the Institute would once again have chance to prove itself at international level as a strong training ground for the various IP officials.
- b) **Exchange program for examiners:** The exchange program for examiners is one of the ways for the examiners to share the views and experience in the field of search and examination with their counter parts in other member countries. At present India is having exchange program with USPTO and Japan Patent Office that has been a very useful exercise. Considering the India's experience, the exchange program for examiners among SAARC members could be very useful exercise for sharing the experience and learning the best practices from each other's.
- c) **Technical and legal assistance to member countries:** India has a strong legislative background as the IP law has been in place since the 18th century. In the recent past, India has either enacted or amended quite a good number of IP Legislations in this decade. Thus India has developed a strong expertise to provide IP legislative advice to the countries, which would be keen to amend their existing laws or the countries which intend to enact the IP legislation to introduce the IP system. Further India has been a member to PCT and Paris Convention since 1998 and therefore attained the expertise in dealing with the technical and legal issues under these treaties. India has also successfully implemented the functioning of Indian Patent office as International Searching Authority and International Preliminary Examining Authority (ISA/IPEA) and experience gained during this period has further enhanced the confidence of Indian Patent Office. Due to a strong jurisprudential acumen, India could also advise the SAARC countries which avidly want to introduce IP laws in their respective countries.
- d) **Promotion of public awareness:** A strong IPR regime is a tool to bring about economic prosperity as well as Industrial development. Indian Patent office has engaged itself in coordination with various Industry Associations to create IP awareness in the public. This has resulted into a well-developed faculty and well-crafted IP programs to cater the need of R&D Institutions, Academic institutions & Universities, SMEs sector, and legal fraternity to promote intellectual property culture. The promotion of IP awareness in SAARC countries would inculcate prowess to establish IP system whereby the stakeholders and public



in general would be benefitted. The IP awareness outreach programs allow the innovators to take advantage of IP System who otherwise due to lack of awareness and understanding are unable to utilize the IP System to their advantage.

- e) **Exchange of IP Information:** The information relating to IP, particularly, patent is very useful to industry, Research and Development (R&D) organizations, inventors, scientists, and patent agents. The early access to the information by the scientists would avoid the duplication of the efforts in searching for a solution to the problem which might be already available in published patent documents. The industry would also gain economic and technological advantages by knowing the legal status of the patents, trademarks and industrial designs. Since the IP system is based on the system of disclosure and transparency, it is imperative that there should be an exchange of IP information at all levels among SAARC countries that would be tremendously useful due to regional similarity in problems faced by them.
 - f) **Establishment of SAARC Patent office:** At present all members of SAARC do not have Intellectual Property Offices. Therefore it seems to be extremely difficult at this stage to think of having a Convention for establishing a SAARC Patent office, similar to the one established in Europe, Eurasia or Africa regions. However it does not seem to be impossible. In future if a common Patent office is established for all SAARC member countries that would certainly allow them to avoid the multiple processing of IP applications and at the same time would allow each member country to retain or upheld their sovereignty to have their national patent office intact functioning as being done in other regional cooperation.
5. **Conclusion:** Intellectual Property related issues are gaining importance at global level and therefore major countries are trying to resolve these issues through bilateral or multilateral levels. Today the IP related databases have become quite expensive. For some countries it has also become difficult to invest in creating the IP infrastructure. Therefore the regional cooperation in this field becomes very important in order to share the resources to harness the advantages. Considering the geographical, and economic similarities of the members, the SAARC countries can come forward to have dialogue under SAARC summit for considering the regional cooperation in the field of Intellectual property.



An Analysis of Design Law Treaty and Indian Designs Act and Rules

By

D.K. Rahut

Ex. Joint Controller of Patents & Designs

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indication is one of the several committees under the World Intellectual Property Organization, which discuss several aspects of the Intellectual property related matters. It stems from a decision taken in the thirty-second series of meeting of the Assemblies of the Member States of WIPO and the Unions administered by WIPO, held in Geneva from March 25 to 27, 1998, while approving the Program and Budget for the 1998-99 biennium in which a proposal for the establishment of "Standing Committees" was included. The introductory portion of the Program and Budget contains the following paragraph:

"The progressive development of international intellectual property law and international harmonization will be facilitated by the rationalization and amalgamation of the existing multiple Committees of Experts to form Standing Committees of Member States to examine questions of substantive law or harmonization in WIPO's main fields of activity. As the Standing Committees will deal with clusters of interlocking issues rather than working in isolation on single issues, they will also give Member States a more effective mechanism for setting priorities and allocating resources, and ensure the coordination and continuity of interrelated on-going work. As with the existing committee system, the expertise and breadth of representation of Member States would enable the Standing Committees to advance discussion on the substance of an issue to the point where the main characteristics of the possible solution are clear, and then to formulate recommendations for consideration by the General Assembly (or other Assembly) on the appropriate form and procedural steps for the solution to be adopted and implemented, whether by a formal treaty or by other means. Each Standing Committee would be established by the relevant Assembly through the adoption of this program and budget, and its agenda determined during its first meeting, based on the relevant program objectives, to be reviewed in subsequent meetings. To ensure a wide range of representation, WIPO would finance participation by some Member States¹"

It was decided further that the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (herein referred to as the "SCT"), established in the context of a Sub-program, Law of Trademarks, Industrial Designs and Geographical Indications, will serve as a forum to discuss issues, facilitate coordination and provide guidance concerning the progressive international development of the law of trademarks, industrial designs and geographical indications, including the harmonization of national laws and procedures. The SCT will submit its recommendations and policies to the WIPO General Assembly for approval.

The first session of the SCT held in Geneva from July 13 to 17, 1998. The Work on industrial designs more specifically the Design Law Treaty began at its fifteenth session SCT, held in Geneva from November 28 to December 2, 2005, in which a number of delegations expressed their interest in commencing work on the harmonization and simplification of design registration procedures. Whereas other delegations, while agreeing on the issues of harmonization and simplification in design registration procedures, were of the view that any such move required the preparatory work. Accordingly, the International Bureau of WIPO submitted to the SCT a preliminary information document on formalities concerning the procedures for design registration (document SCT/16/6), at its sixteenth session in 2006, as well as two questionnaires on industrial design law and practice, which were circulated among the members in 2007.

The replies to the questionnaires were compiled in document WIPO/STrad/INF/2 Rev.1. An analysis of the replies so received against the questionnaires was presented in the document SCT/19/6, which was placed to the SCT at its twentieth session, held in Geneva in December 2008. This was followed by a document describing existing practices in SCT Members, as well as identifying possible areas of convergence on industrial design law and practice in such members (document SCT/21/4), which was presented to the SCT at its twenty-first session in June 2009. A further revised document on possible areas of convergence (document SCT/22/6) was presented to the SCT at its twenty-second session, in November 2009.

The twenty-third session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) held on June 30 to July 2, 2010 at Geneva concluded that "all delegations attached great importance to the work of the SCT on possible convergences in industrial design law and practice of Member States and that the

¹SCT/1/2, WORLD INTELLECTUAL PROPERTY ORGANIZATION, GENEVA, DATE: May 14, 1998



SCT supported the advancement of that work. To that effect, the Secretariat was requested to prepare a revised working document, for consideration and future work in this area by the SCT at its twenty-fourth session, taking into account the conclusions presented in document SCT/23/5, as well as the comments made by delegations at the twenty-third session of the SCT.” (Summary of chair of 23rd session)

In accordance with the above-mentioned conclusion by the Chair of the twenty-third session of the SCT, the Secretariat prepared the working document in the twenty fourth sessions. The document contains draft provisions for industrial design law and practice in the following areas: (a) application, (b) representation of the industrial design, (c) requirement to file the application in the name of the creator, (d) division of application, (e) filing date, (f) grace period for filing in case of disclosure, (g) deferment of publication of the industrial design, (h) communications, (i) initial term of protection and renewal, (j) relief in respect of time limits, (k) reinstatement of rights after a finding by the office of due care or unintentionality, (l) request for recording of a license or a security interest, and (m) request for recording of a change in ownership. (SCT/24/3)

The draft provisions on the last two issues, namely “request for recording of a license or a security interest” and “request for recording of a change in ownership,” are the corresponding provisions in the Singapore Treaty on the Law of Trademarks (“the Singapore Treaty”) and in the Patent Law Treaty (“PLT”). The inclusion of those draft provisions were included to initiate the discussion on topics which were not, thus far, been dealt with in detail by the SCT.

The documents presented so far to the SCT have centered on a comparison and analysis of industrial design laws and practices in SCT members, as well as on categorizing such laws and practices as areas of convergence or common trends. By proposing draft provisions, the present document attempts to respond to the objective of advancing work on industrial design law and practice, as expressed by the SCT at its twenty-third session.

The draft provisions taken into consideration with respect to the existing areas of convergence and common trends were identified in document SCT/23/5. But it should be understood that certain of the draft provisions, do not reflect completely the law and practice of some members. In this respect, as stated in the document, it should be understood that it is not the aim of this document to further work out in the all possible areas of convergence or common trends. Rather, the document prepared with an intention to propose draft provisions which respond adequately to the goal or aim of simplification of industrial design procedures, for the benefit of users and offices. Accordingly, due consideration has been given to the positions put forward by all delegations in past sessions of the SCT, as well as to strike a balance between the interests of designers and their representatives, offices and third parties.

At its twenty-fourth session, held in Geneva from November 1 to 4, 2010, the SCT examined draft provisions concerning industrial design law and practice (document SCT/24/3). The Chair of the session concluded that “all delegations supported the advancement of the work of the SCT on industrial design law and practice and that the twenty-fourth session made significant progress in that regard. He noted that the Secretariat was requested to prepare a revised text for consideration at the next session of the SCT, which would take into consideration all comments made at the current session and which should present provisions on two levels, namely one general level setting out provisions of a broader and general nature, and a second subordinate level of provisions addressing in detail specific aspects of the general provisions. Moreover, the revised text should address certain horizontal issues that were not dealt with in the present text, such as definitions, representation before the Office, communications in general and electronic communications. As to the continuation of the work, the Chair noted that a number of delegations called for the convening of a diplomatic conference for the adoption of a treaty on industrial design registration formalities in the next biennium 2012-2013, while other delegations were of the view that further discussions were needed on the revised text before considering the convening of a diplomatic conference. The Chair concluded that, on the basis of the revised text, the next session of the SCT should be in a position to decide its future work concerning that aspect.”

At its twenty-fifth session, held in Geneva from March 28 to April 1, 2011, the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (hereinafter referred as “the Standing Committee” or “the SCT”) considered a set of draft provisions on industrial design law and practice (see document SCT/25/2). At that session, the Chair concluded that “the Secretariat was requested to prepare a revised working document for consideration at the twenty-sixth session of the SCT. That document should reflect all comments made at the present session and highlight the issues that needed more discussion. Furthermore, delegations were requested to consult extensively with national user groups in order to obtain their views and to inform the work of the Committee. A substantive portion of the twenty-sixth session will be dedicated to work on industrial designs.”

During the discussions held at the twenty-fifth session of the SCT, a number of delegations suggested splitting the



revised working document into two documents, for ease of reference. The first document was to contain draft Articles and the second draft Regulations. Accordingly, the Secretariat has prepared two working documents in the 26th Session held in October, 2011. The first is the draft Articles (SCT/26/2) on industrial design law and practice, i.e. provisions of a general nature. The second is document (SCT/26/3), containing draft Regulations, which further elaborate upon certain details of a technical and administrative nature raised in a number of the draft Articles.

The two-level structure followed in the document is intended to facilitate the analysis of the issues under consideration and to establish a dynamic and flexible framework for the subsequent development of design law, so as to keep pace with future technological, socio-economic and cultural changes.

The document (SCT/26/2) also contains the horizontal provisions, as requested by the SCT such as: (a) abbreviated expressions (b) applications and industrial designs to which the draft provisions apply (c) representation, address for service or address for correspondence, and (d) communications.

This document considered also the comments that were made, and the suggestions that were put forward, by delegations at the twenty-fourth session of the SCT. However, the draft provisions as contained in the document cannot reflect the entire law and practice of all SCT Members. The document only proposed the draft provisions which at least fulfil need or the goal of simplification and unification of industrial design procedures. Without losing sight of that goal, the document further taken into account the different needs and interests of countries, by including flexibilities such as those provided for in draft Articles 3(3) (conditions for so-called "multiple applications"), 6 (requirement to file the application in the name of the creator), 8(1) (maximum period for maintaining an industrial design unpublished), 9(1)(a) (requirements for representation before the office), and (3) (requirement of address for service or address for correspondence), and 10(1) (means of transmittal and form of communications). Finally, due consideration was given to the need to strike a balance between the rights and interests of designers and their representatives, on the one hand, and the interests of the general public, on the other.

In the 27th Session held in September, 2012, the Chair stated that the SCT had made progress on the draft Articles and draft Rules. The Secretariat was requested to prepare revised working documents for consideration of the SCT at its twenty-eighth session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes, as appropriate.

The chair further stated that no delegation had expressed opposition to the possibility that this work could result in an international instrument. Likewise, there was no opposition expressed to considering in this work technical assistance and capacity building. The SCT was not in agreement as to any further work on the Study on the Potential Impact of the Work of the SCT on Industrial Design Law and Practice Likewise, the SCT was not in agreement on a recommendation to the WIPO General Assembly concerning the convening of a diplomatic conference.

In the 28th Session held in December, 2012, The Chair stated that the SCT had made good progress on the draft Articles and draft Rules. All statements made by delegations would be recorded in the report of the twenty-eighth session. The Secretariat was requested to prepare revised working documents for consideration of the SCT at its twenty-ninth session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes.

The African Group submitted a proposal for draft articles on technical assistance and capacity building to be integrated in the Industrial Design Law and Practice Treaty.

The Representative of the European Union, on behalf of the European Union and its member States, presented a proposal for a Resolution by the Diplomatic Conference Supplementary to the Treaty on Industrial Design Law and Practice.

The Chair further concluded that the Secretariat would prepare a separate document describing the relationship between the Hague System for the International Registration of Industrial Designs and the draft Design Law Treaty.

In the 29th Session held in May, 2013, The Committee reviewed in detail the draft Articles and Rules contained in documents SCT/29/2 and 3. The Chair stated that all statements made by delegations would be recorded in the report of the twenty-ninth session.

As regards technical assistance and capacity building, the Chair presented a non-paper combining element from the



proposals by the African Group, the European Union and its member states and the Republic of Korea, contained in documents SCT/28/5, SCT/29/6 and SCT/29/8, respectively.

The Chair requested the Secretariat to prepare revised working documents for consideration of the SCT at its thirtieth session, which should reflect all comments made at the present session and highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes, including a draft Article or Resolution in square brackets on technical assistance and capacity building, based on the Chair's non-paper. Footnotes will indicate that this draft Article is proposed by the Chair, and that some delegations preferred the subject matter of this draft Article to be covered by a resolution.

The Chair concluded that the SCT had made good progress on the draft Articles and draft Rules included in documents SCT/29/2 and 3 and that the work on technical assistance and capacity building had advanced. A number of delegations stated that sufficient progress had been made by the SCT to recommend to the WIPO General Assembly the convening of a diplomatic conference in 2014. Other delegations, expressing the view that there was a need for more progress on technical assistance and capacity building in order to reach a concrete outcome, were of the opinion that the General Assembly would take stock of and consider the text, progress made, and decide on convening a diplomatic conference.

In the 30th session held in November, 2013, all member delegations and representatives of observer organizations that made general statements expressed broad support for the work of the SCT on design law and practice and the conclusion of this work in the form of a Design Law Treaty. All delegations expressed support, in principle, for making available technical assistance and capacity building measures to developing countries and Least Developed Countries (LDCs) in the context of the implementation of the future Treaty.

The Committee reviewed in detail all provisions which were presented in the form of alternative options, or for which footnotes indicated proposals or reservations of individual delegations. The Chair stated that all statements made by delegations would be recorded in the report of the thirtieth session.

The Chair noted that the SCT had made further progress on the draft provisions that it had considered and requested the Secretariat to prepare revised working documents for consideration of the SCT, or a possible preparatory conference, as the case may be, which should reflect all comments made at the present session in the following form: provisions for which alternative options existed would be redrafted in accordance with the decision taken by the Committee; individual proposals presented in footnotes for which there was support by other delegations would be elevated into the text and presented in square brackets with an indication of the delegations having supported the proposal; individual proposals for which there was no support would be recorded in the form of footnotes.

With regard to technical assistance, the Chair noted that progress was made on the provisions in draft Article 21/Resolution and requested the Secretariat to reflect the new draft Article 21/Resolution in the revised working document.

Concerning the convening of a diplomatic conference for the adoption of a Design Law Treaty, the Chair noted that all delegations that had taken the floor were in favour of convening such a diplomatic conference. A large number of delegations were of the view that an agreement to address technical assistance in the form of an article in the treaty had to be reached prior to convening such a diplomatic conference. Other delegations were of the view that the SCT could already recommend to the General Assembly the convening of a diplomatic conference. Among the latter, a number showed flexibility as to whether technical assistance should be addressed in a resolution or an article, whereas one delegation was of the view to defer this matter to the diplomatic conference itself.

In the 31st Session held in March, 2014, the Committee reviewed in detail all provisions which were presented within brackets, or for which footnotes indicated individual proposals or reservations of individual delegations. The Chair stated that all statements made by delegations would be recorded in the report of the thirty-first session.

With regard to technical assistance and capacity building, all delegations stated that progress was made on this matter. A number of delegations expressed the view that technical assistance provisions had to be in the form of an article. On this particular issue, other delegations said they were flexible. Some other delegations said that, although they preferred a resolution, they would consider an article, but not as a precondition for convening a diplomatic conference.

Concerning the convening of a diplomatic conference for the adoption of a Design Law Treaty, while a number of delegations were of the view that an agreement to address technical assistance in the form of an article in the treaty



had to be reached prior to convening such a diplomatic conference, other delegations were of the view that the draft Treaty was mature enough in order to convene a diplomatic conference.

The Chair concluded that the SCT had made further progress towards cleaning up the draft DLT and that the WIPO General Assembly, at its extraordinary session in May 2014, will take stock of, and consider the text, progress made and make its decision.

However, the 53rd session of WIPO GA held in May 2014 could not decide on conveying the diplomatic conference as the standoff continued with USA not agreeing to decide on the nature of provision on technical assistance in the proposed treaty i.e. a legally binding provision or an Article. USA prefers that this decision be left open for the Diplomatic Conference. The 53rd GA requested the delegations to continue informal consultations prior to the 54th session of WIPO GA to resolve the issue of Article/Resolution on the Provision of Technical Assistance. There have been no formal/informal consultations on the issue.

The WIPO has not so far announced the date for next session (32 Session of SCT). The following paragraph has been described on the basis of draft Article and Regulation as presented in the document of 31st Session of SCT.

Salient features of the Design Law Treaty (DLT) under negotiations at SCT

The proposed Design Law Treaty is intended for harmonization of the procedural matters with respect to industrial law and practice across the globe. The Design Law Treaty, through its process of harmonization, intends to simplify the procedural aspect of filing of the application for design registration. The primary intention is harmonization of filing procedures with a minimum requirement as prescribed in the DLT. The procedures prescribed in the DLT fall within the following general categories:

- a. Procedure for registration or grant of protection of industrial designs, including issues relating to the contents of applications, the representation of the industrial design, filing date requirements, grace period for filing of an application in case of disclosure, division of an application and publication of the industrial design;
- b. Procedures for renewal of industrial design, in those jurisdictions where the renewal provision is provided for;
- c. Procedures to manage the industrial designs after registration or grant or protection, such as the formalities for the recording licenses, changes in ownership, changes in name or address etc.; and
- d. Other procedures like the appointment of a representative, communication with offices, relief measures in cases of missed time limits and correction of mistakes.

Overview in relation with Indian Designs Act and Rules

It may be noted that the draft provisions of DLT are not intended to touch upon matters of substantive industrial design law and its provisions. The draft provisions of DLT do not deal with the subject matter of protection, the scope of protection, possible exception of protection or duration of protection. However the provision of DLT may serve to simplify the procedures related to filing of design applications and enhance the ease of use by the design community. However, there are some proposed provisions in the Treaty which are incompatible with the Indian Design Act and Rules.

Areas of incompatibility with the Indian Designs Act & Rules

- a. Article 3(3) of DLT refers to 'Several Industrial Designs in the Same Application' and states that 'Subject to such conditions as may be prescribed under the applicable law, an application may include more than one industrial designs'. The Indian Designs Rules does not allow more than one design in an application although there is a concept of a 'set', which is defined under Rule 2 (e) as 'a number of articles of the same general character ordinarily sold together or intended to be used together, all bearing the same design, with or without modification not sufficient to alter the character or substantially to affect the identity thereof'. The Indian law permits registration of "set" in single application but do not allow more than one design applied to any article in prescribed class article. However it allows other articles in the same prescribed class in the separate design application (section 6 of the Designs Act).
- b. Article 8(1) provides that if an application that includes more than one industrial design (hereinafter "initial application) does not comply with the conditions prescribed by a Contracting Party in accordance with Article 3(3), the Office may require the applicant, at the option of applicant, to either:
 - (i) amend the initial application to comply with those conditions; or
 - (ii) divide the initial application into two or more application (hereinafter "divisional application") that comply with those conditions by distributing among the latter the industrial designs for which protection was claimed in the initial application.



This provision of dividing the application is not compatible with the Indian Designs Act and Rules.

- c. Grace period for filing in case of a disclosure (Article 6). This provision of the DLT prescribes that in case of a disclosure of the design prior to filing of an application, the six or twelve month time period is provided from the date of disclosure within which period the novelty or originality would not be considered to be destroyed. While for normal disclosure by the creator there is no conflict with the Indian Designs Act with the provisions of DLT. However, disclosure of designs by any person in breach of good faith or confidentiality, the Indian Law does not (Section 16 of the Designs Act 2000) provide any time period to file the application by the creator. However it is felt that this provision is substantive in nature and not a procedural issue.
- d. Publication of industrial design – (Article 9). This provision of DLT prescribed that a Contracting Party shall allow an applicant to maintain the industrial designs unpublished for a period fixed by its applicable law, subject to minimum period prescribed in the Regulations. The minimum period as fixed in the regulation is six months from filing date or priority date, where priority date is claimed. There is no provision of deferment of publication under the Indian Designs Law. Whereas as per Indian Designs Act and rules provides that publication took place after the examination and acceptance of the application. This provision of DLT can be accepted provided we allow deferment of acceptance of the design application. This can be done by amendment in the rule, which does not conflict with our statutes.
- e. Correction or addition of priority claim, restoration of priority right (Article 14). This article is introduced in the DLT in the 28th session by US and Canada and it was discussed in the 29th session. There is no conflict with Indian Designs Law as far as the correction or addition of priority claim in an application is concerned. However, the Article 14 (2) also provides for relaxation in the time period prescribed for restoration of priority rights (six months in India), which is not permissible under the Indian Designs Law and is also against Article 4 of the Paris Convention.

Conclusion

The DLT is still under negotiation in the SCT. Normally before acceptance of any treaty, the cost and benefits of the treaty is always weighed vis-à-vis the needs and policy objectives of the country. Every Law is passed with certain priorities as felt by the legislators, however, with the passage of the time and with the increase in competence of the people of the country the priorities and objectives change. There is a need, therefore, to assess the present day needs and competency of the Design innovators and entrepreneurs. Also their needs are to be judged against the DLT and decisions may be taken accordingly.



Patents And Public interest

By

B. P. Singh

Deputy Controller of Patents and Designs, Patent Office Delhi

Summary: Patents rights are often termed as private rights conferred on the patentee who has right to exclude others from exploiting such rights without his permission. At times, there are apprehensions that patents are negative rights. This paper establishes that patent is a positive right conferred on to patentee which serves public good in many ways. Further, the aim of this paper is to establish that the patents rights not only benefit the inventor or patentee but in the long run benefit society as a whole. The Patents Laws are balanced legislations between the private and public right. The paper also focuses on the topic of poor domestic filing and tries to show how growth of indigenous filings will improve the nation economy.

Key word: Patents, Public Interest, TRIPs, Balanced legislation, Economic Growth

- 1. Introduction :** Patents are often termed as private rights as against public rights. The right conferred to patentee should be commensurate with the technical contribution made by disclosing his invention to public, which passes on to public domain on expiry of term of patent. Therefore, though apparently these rights are used in private sense but ultimately used for larger public gain. "The object of Patent Law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial utility. The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the monopoly, **passes into the public domain.**"¹ (Emphasis added)
- 2. International agreements on balanced legislations:** International agreements on patents are consistent with structure of balanced approach. For example, the TRIPs Agreement safeguards patent rights, but only for a limited term; it envisions national exceptions to patent protection; and permits some compulsory licensing. Indeed, in the recent Doha Declaration, TRIPs members agreed to broaden the compulsory licensing possibilities so that one member can manufacture essential medicines to meet the health needs of another. Most important, the objectives of the TRIPs Agreement are cast in utilitarian, rather than human rights, terms; the Agreement also specifies that these rights must be balanced against social welfare concerns. Thus, the Agreement² lists its objectives as follows:
*"The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge in a manner **conducive to social and economic welfare, and to a balance of rights and obligations.**"* (Emphasis added)
- 3. Patent –a right:**
 - 3.1** A patent has been held to be a movable property by the Supreme Court³. The court, after having considered the definition of "goods" in the Constitution, in the Sales of Goods Act 1930, the Central Sales Tax Act, 1956, the Tamil Nadu General Sales Tax Act, 1959, the Karnataka Sales Tax Act, 1957, as well as the Kerala General Sales Tax Act, 1963, said that all these definitions provided that goods mean inter alia all kinds of moveable property. The definition of property in several authorities was thereafter considered and it was concluded that the material on record showed a uniform emphasis on the expansive manner in which the expression 'property' was understood. It was noted that debts, contracts and other choses in action were chattels no less than furniture or stock in trade. **Similarly, patents, copyrights and other rights in rem were also included within the meaning of movable property.** (Emphasis added)
 - 3.2** The Supreme Court⁴ referred to R.C. Cooper's Case in the following words: "in its normal connotation "property" means "highest right a man can have to anything, being that right which depend on another's courtesy: It includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value." (Emphasis added).

¹Biswanath Prasad RadheyShyam vs Hindustan Metal Industries [A.I.R. 1982 S.C. 1444 at paragraph 17]

²Article 7 of TRIPs Agreement

³Appeal (Civil) 4552 Of 1998 in the matter of M/S. Sunrise Associates v. Government of NCT of Delhi &Ors, on 28th April, 2006.

⁴In Writ Petition (Civil) 12598 of 1985 in the matter of Shri Kirshna Gyanoday Sugar Ltd. & Anr. v. State of Bihar, decided on 18th February, 2003



3.3 Unlike other property rights, a patent right may be revoked, amended or abandoned.

4. History of balanced Patents legislation in India⁵:

- 4.1 Though, history of patents in India dates back to 1856 when inventions were protected through "exclusive privileges". After Independence, much emphasis was attached to have a balanced legislation relating to patents to cater the need of granting exclusive rights to the inventors at one hand while protecting public interest at the other. This concept is evident by the constitution of a committee by Government of India, to review the patent law in India, under the Chairmanship of Justice (Dr.) Bakshi Tek Chand, a retired Judge of Lahore High Court, **in order to ensure that the patent system is conducive to the national interest.** (Emphasis added). The terms of reference included inter alia :
- to survey and report on the working of the patent system in India;
 - to examine the existing patent legislation in India and to make recommendations for improving it, particularly with reference to the provisions concerned with the prevention of **abuse of patent rights**;
 - to examine the working of the Patent Office and **the services rendered by it to the public** and make suitable recommendations for improvement;
- 4.2 The Committee submitted its interim report on 4th August, 1949 with recommendations for prevention of **misuse or abuse of patent right in India through grant of compulsory licenses or revocation of patents.** The Committee further recommended setting up of ad-hoc Special Tribunal for obtaining relief against **abuse of patent rights.**
- 4.3 Based on the above recommendation of the Committee, the 1911 Act was amended in 1950 (Act XXXII of 1950) in relation to **working of inventions and compulsory licence/revocation.**
- 4.4 Justice N. Rajagopala Ayyangar Committee was appointed by Government of India to examine patenting system in the country and based on its recommendations a comprehensive Patents Act was finally enacted in 1970 having balancing character as under:
- Codification of certain inventions as non-patentable in public interest.
 - Expansion of the grounds for opposition to the grant of a patent
 - Exemption of certain categories of prior publication, prior communication and prior use from anticipation
 - Provisions for secrecy of inventions relevant for defence purposes
 - Provision for use of inventions for the purpose of Government or for research or instruction to pupils
 - Enlargement of the grounds for revocation of a patent
 - Provision for non-working as ground for compulsory licences,
 - licences of right, and revocation of patents
 - Additional powers to Central Government to use an invention for purposes of government including Government undertakings
 - Prevention of abuse of patent rights by making restrictive conditions in licence agreements/contract as void
- 4.5 The balancing character of legislation was further strengthen through second amendment to the 1970 Act by the Patents (Amendment) Act, 2002 (Act 38 Of 2002) by
- Further codification of non patentable inventions
 - Provision for reversal of burden of proof in case of process patents
 - Provisions of compulsory licences to meet public health concerns
 - Establishment of Appellate Board
 - Provision for parallel imports
 - Provision for exemption from infringement proceedings for use of a patented invention for obtaining regulatory approval for a product based on that patented invention
 - Provision to protect bio diversity and traditional knowledge.

⁵Patent Law by P Narayanan



4.6

The third amendment to the Patents Act, 1970 by the Patents (Amendment) Act, 2005 (Act 15 Of 2005) furthered balancing character of the legislation as evident by the following provisions:

- Introduction of a provision for enabling grant of compulsory licence for export of medicines to countries which have insufficient or no manufacturing capacity to meet emergent public health situations
- Modification in the provisions relating to opposition procedures with a view to streamlining the system by having both pre-grant and post-grant opposition in the Patent Office
- Strengthening the provisions relating to national security to guard against patenting abroad of dual use technologies

4.7

Thus, it could be seen that ever since Independence, the effort are made so that the law relating to patents are strengthened to ensure that the rights and obligations of inventors/applicants are balanced and the rights are not abused against public interest.

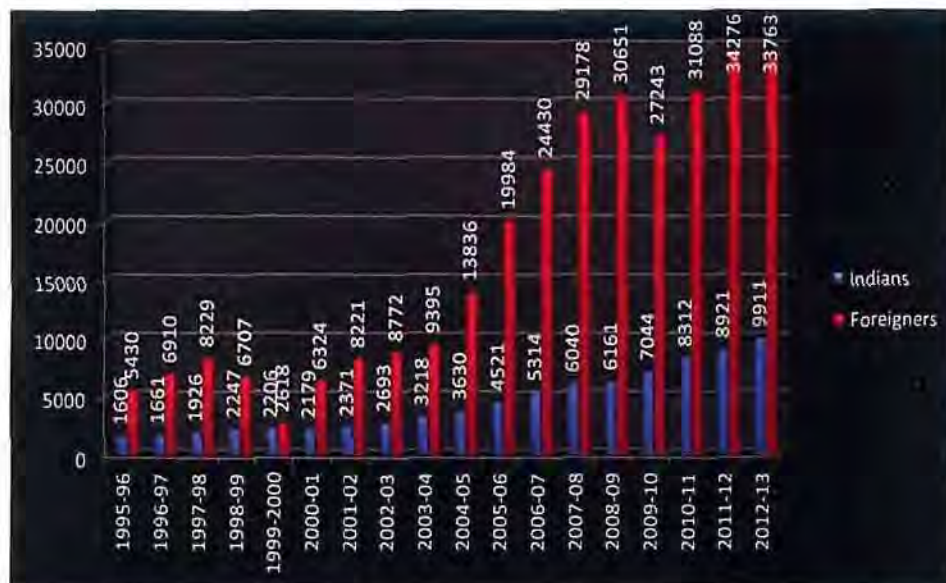
4.8

The Patents law has sufficient built in mechanism such as rigorous patent examination, pre-grant opposition etc. to ensure that the rights granted should be commensurate with the contribution made by the inventors/ applicants. While every effort is made to ensure a better patent grant, there are enough remedies to revoke a wrong grant and stop abuse of the rights through grant of compulsory licenses etc. The remedial measures in the law are as follows:

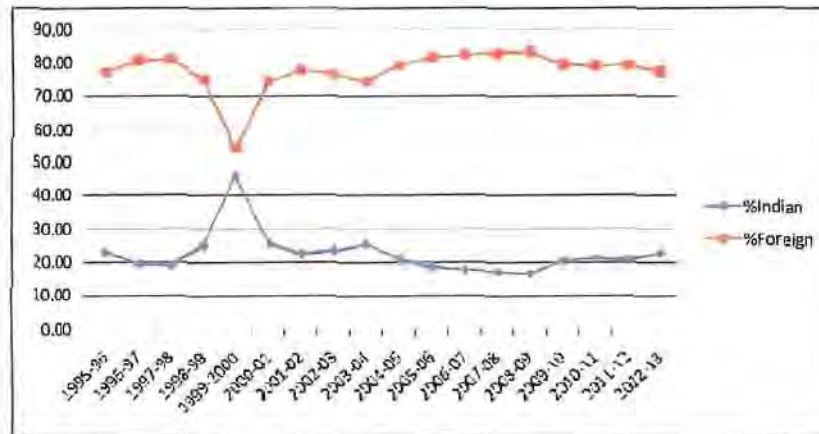
- Crucial formal and substantive patent examination by skilled and technically qualified examiners
- Pre-grant opposition
- Post- grant opposition
- Revocation of patents for non working
- Compulsory licenses in case of
 - National emergency
 - Extreme urgency
 - In case of public non- commercial use
 - for export of patented pharmaceutical product
- Use of invention for the purpose of the Government
- Suit for infringements in court of law.

5. Justice N. Rajagopala Ayyangar Committee on indigenous Patents: The report focused on domestic inventions and on highlighted the dis-proportionate grant of patent to domestic applicants as against foreign counter parts, the latter being higher.

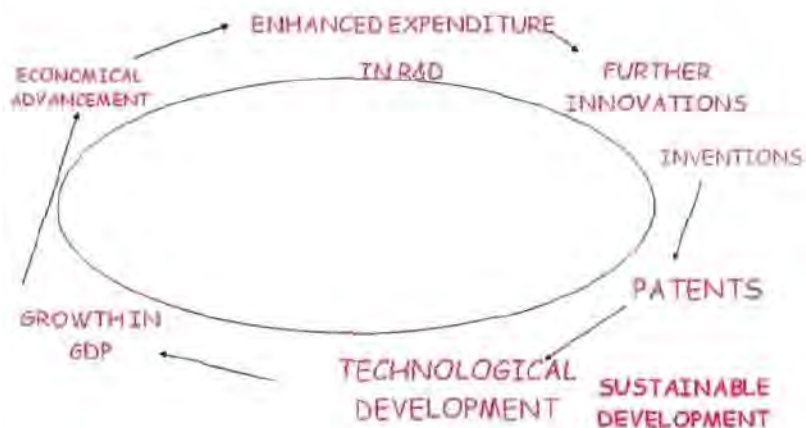
5.1 The scenario has not changed much even over 5 decades. The following chart shows patent filing between domestic and foreign filers from 1995-96 to 2012-13.



5.2 The following chart shows the percentage of Indian filing in comparison to the foreign applications. It is evident that barring one year i.e. 1999-2000, when the foreign filing dipped to remain little over 50% and the domestic filing went very close to 50 %, all other years the ratio between Indian and foreign patent applications is 20:80. A country of 1.25 billion population files less than 10,000 patent application in a year is a serious cause of concern.



5.3 Patent system has direct bearing on the economical development of the country. If planned and utilised properly, the country can not only be technologically advanced but economically strong as well. The sound patent regime can be instrumental in economic growth and result in sustainable development of the nation. Inventions, if patented and worked, results in technical advancement, resulting further in growth in GDP and in turn economical advancement of the nation. With enhanced capacity the country invests more in R&D and creates further inventions and the cycle continues. The main emphasis is to be attached to the scientific development and creativity and to protect the invention through patents to make India a developed nation.



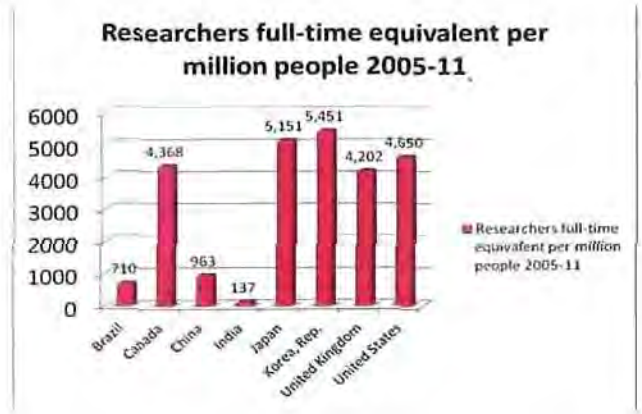
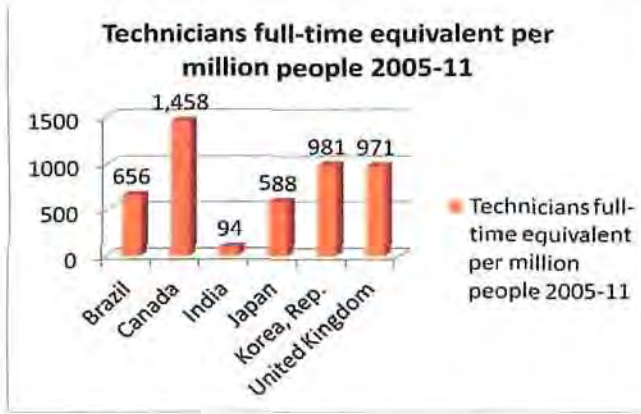
6. World Bank Development Indicators:⁶

6.1 The world development Indicators from World Bank shows the development in the field of science and technology globally. Few select countries have been chosen to show the comparisons. The figures are much alarming. Since, the figures of patent filing etc. are taken on calendar year basis there could be slight variation as Indian figures are on financial year basis.

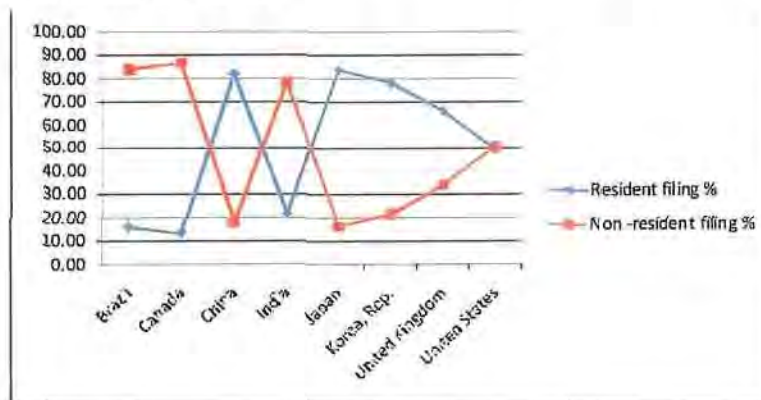
⁶World bank development indicators



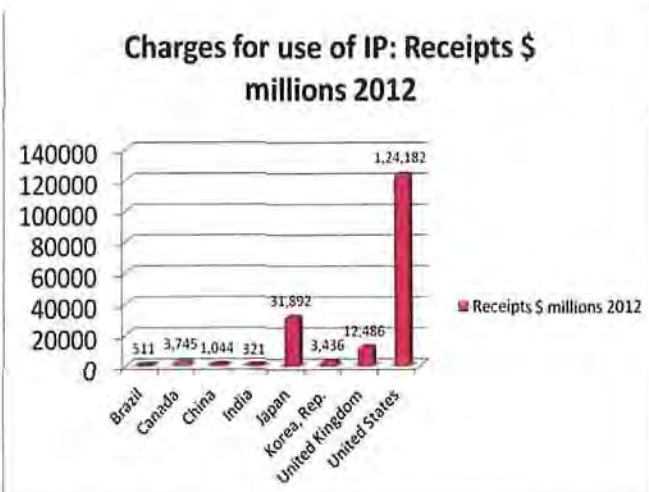
6.2 Skill Development: If we take the population of technicians full time equivalents per million population on an average from 2005-11, Indian figure is lowest 94 as against 1458 highest in Canada. These figures for researchers are again 137 for India which is lowest as compared to 5451 in Korea. It shows that the massive human resource that the country possesses require **suitable technical training and skill development** to meet the global challenges and to ensure that the country can be a developed nation in near future.



6.3 The following tables show the comparative figures of patent filing by residents and non-residents and their percentage in few select countries.



6.4 Economic significance of the Patents: The following figures are showing the charges for use of the Intellectual property both Receipt and payment in terms of US dollars. We see that while India receives 321 million USD in 2012 for use of its IP, it pays a hefty sum of 3990 million USD as payments for use of other IP.





Conclusion

7. Therefore, it may be appreciated that the provisions of the Patent Law is equally balanced between the right of patentee and that of general public. Though, the patentee enjoys the exclusive monopoly through patent rights in lieu of his disclosure, this right is conferred on to him after due examination process ascertaining his contribution to the field of science and technology so as to ensure that right conferred should be commensurate to the contribution made and he should not get any exclusivity for any subject matter which is already in public domain and for which he has not contributed through his labour and skill. The Patent Law further guarantees that the patentee should not abuse his rights and provided a number of provisions discussed above as remedial actions. The Patented information too passes in the public domain after expiry of the term of Patent and serves a great deal of public interest as this information is used as threshold knowledge for future research and developments in scientific field.

Further, it had been shown that how the patent filing by residents is important for the country for upward scaling its economy. A country of 1.25 billion human resource and nearly a million engineering graduate per year which is higher than many other developed countries, has immense potential and if the resources are channelized properly Indian can prove that they are second to none in the world. The need of the hour is therefore to develop adequate skill and encourage Indian residents to invent more file more patent applications and ensure that country scales further heights of development.

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1. Biswanath Prasad Radhey Shyam vs Hindustan Metal Industries [A.I.R. 1982 S.C. 1444 at paragraph 17]
2. TRIPs
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4. In Writ Petition (Civil) 12598 Of 1985 in the matter of Shri Kirshna Gyanoday Sugar Ltd. & Anr. v. State of Bihar, decided on 18th February, 2003
5. Patent Law by P Narayanan
6. World bank development indicators



Role of Pharmaceutical Industry in Present IPR Era

By

Dr. S. K. MITRA

Dy. Controller of Patents and Designs, Patent Office, Kolkata

Intellectual Properties and their effects on the economy and the desirable development and direction in the 21st century are crucial to address the health issue particularly for pharmaceutical sector in new product patent regime.

India has adopted the legislation that provides the protection to all kinds of inventions for the processes and products irrespective of nature of technology from 01.01.2005 by virtue of the Patents (Amendment) Act, 2005 with the amendment of certain provisions to accelerate the granting procedure in one hand and safeguard of country's interest in other hand.

It is understood from the recent amendments in the Patents Act, 1970 that gives an opportunity to the pharmaceutical industry to develop their products after putting time, skill and money in one hand and providing protected market in new IPR regime on the other hand.

India's key strength is in incremental inventions especially in pharmaceutical formulation and new drug delivery system. Recent debates started after the explanation given in the provision of non patentable invention under Section 3 (d) whether only new chemical entity should be patentable or formulation can be considered as a subject matter for patent or even include diverse structural forms of molecules or polymorphs or derivatives or different salts. In that respect it can be concluded that the subject matter is to be judged not only by examining mere definition of the Act but also the surprising effect of the said different forms is to be considered judiciously for credible and substantive use of the product.

Every wrong grant in the pharmaceutical product could suffer a major social loss. So all the applications in the area of pharmaceutical claiming product and process are now examined in a cautious manner with a clear guideline under the new provisions of Act.

India's pharmaceutical sector should now use the skills it has acquired during the past forty years as a period of foundation and look at the new IPR regime as a strategic tool to face global players and view it as an opportunity but not a threat.

Many of our large and medium sized companies have developed different formulations and drug delivery system and successfully taken patent rights in USA and other developed countries not only on substantive inventions but also on incremental innovations. Those companies will be encouraged also in the new IPR regime.

In the recent amendment of the Act different safeguard provisions like Compulsory license, Rights of patentee, Certain acts not be considered as an infringement, are provided to address the health issues and to protect the interest of Indian generic industry.

Over 95% of the drugs in WHO list of essential drugs are already out of patent protection and will be available at normal prices.¹ So the apprehension of high price of medicine is not of a major concern on the point of availability of the drug already manufactured by different companies in India. Moreover National Pharmaceutical Pricing Authority (NPPA) is monitoring the price of the medicine and Drug Controller General of India (DCGI) is looking for the availability of the drug in India.

Major safe guard provisions to control frivolous patent in the field of pharmaceutical is brought by introducing pre-grant opposition through representation by any person and post-grant opposition by any interested person as before. It will not only check the abuse of patent rights but also respect intellectual capability of the pharmaceutical industry.

India is also growing as a station of choice for outsourcing of many pharmaceutical processes starting from synthesis of bulk drugs to clinical trials, bio-informatics and R&D activity for manufacturing different intermediates.

It is observed from the filing of the patent applications in India that foreign nationals or companies file 75 to 80%

¹ <http://apps.who.int/medicinedocs/en/d/Jh2945e/11.htm>



applications. But in Japan, the picture is just reverse where the national companies or individuals file the 80% applications. In Europe and USA, the picture is 50% foreign applicants and 50% national applicants. So, it is clearly understood that the monopolistic right exist in the hand of foreign companies particularly, for the new product and new process in the emerging field of technology. This is a great issue for the pharmaceutical industry in India beyond 2005.

Now the question is what is the alternatives and direction to the pharmaceuticals industries to survive beyond 2005? It is the great opportunity for our Indian indigenous industries to follow the direction on the development of drugs and new drug delivery system which are not covered as a product patent in our country. 80% of the Rs. 90,000 Crores of pharmaceuticals sales within the countries is held by 300 odd, medium and large scale pharmaceutical units on the off patent drug and the drugs, which are not covered under Indian Patent Law.² Only Rs. 18,000 Crores of drug business in our country is held on patented medicine. It is also observed that 90% of present marketed drug has no valid patent (i.e. off patent/ceased patent/patent not covered as Indian patent/no product patent). So, our pharmaceutical industry should take the opportunity to work with those molecules under different formulation to capture the domestic and global market as well. Simultaneously, the part of the fund is required to invest in R&D for continuous development of their product.

It is needless to mention that the companies who are now engaged only on synthetic medicines or formulation of drugs are required to divert their product range to herbal medicine also as India is one of the twelve leading biodiversity countries. So, the judicious use of our medicinal plants with proper standardization and clinical trial is essential to address the public health issue and to fulfil the vision of pharmaceutical industry as a global player.

Our pharmaceutical industry will get a strong footing if they can develop proper herbal medicine because of gaining importance presently for the treatment of many tropical diseases. Government of India has already undertaken a project to create a database for Traditional Knowledge Digital Library (TKDL) for proper documentation. This is an opportunity for the herbal manufacturers to exploit our natural resources for the benefit of industry and address the public health issue particularly in the remote area where the basic health care Programme solely depends upon the herbal medicine. The pharmaceuticals manufacturers using the TKDL database in a proper manner can develop different herbal products to address different dreadful diseases localized in this country and neighbouring countries. This practice will not only revamp Indian pharmaceuticals industry but also economic development of the country in order to address public health issue which are most essential beyond 2005. World Health Organisation also recommend the use of herbal medicine in health care programme particularly for developing and least developed countries on the point of availability in the remote area. This practice will reduce the health budget about 40% of present expenditure.³ It is estimated also that in India about 8,000 crores of domestic business & \$62 million business in global market open for Indian herbal industries because of availability of more than 5,000 medicinal plants and other species.⁴

The pharmaceutical companies have the potential and may create a good network among academia, industries & R&D institutes to use the available knowledge for the development of the product because it is not feasible to bring all kinds of knowledge under a single umbrella for creating a commercial work. Pharmaceutical industry may develop new drug delivery system for block buster drugs where no patent rights exist and on development of herbal medicines with business network capture domestic and global market judiciously without any pitfall.

In view of above discussion, it may be concluded that in the present scenario, the pharmaceutical industry in India should take appropriate decision in investing their fund in Research & Development not only for survival but also to address the public health issues which are not addressed by MNCs and achieving market leadership to compete with global players.

² http://pharma.about.com/od/Sales_and_Marketing/ss/Top-Emerging-Pharmaceutical-Markets_5.htm

³ <http://apps.who.int/medicinedocs/pdf/s2283e/s2283e.pdf>

⁴ <http://www.itmonline.org/arts/ayurind.htm>



BALANCE OF RIGHTS

By

T. V. Madhusudan

Dy. Controller of Patents and Designs, Patent Office, Kolkata

Scientific development is the backbone for the economic development of a nation. One can see from the past to the present and definitely into the future too regarding the development of science which has made the life easier for the human beings. It is not beyond the scope to say that the average life span of the Homo sapiens has increased drastically with the advent of modern pharmaceutical science.

Scientific developments happen through inventions and innovations. The basic requirement behind the development is the burning desire and the enthusiasm of the inventors and innovators. There is a constant urge of these inventors and innovators that is contributing towards the overall development of the society.

Apart from scientific development there are other inventions which need to be understood through this paper. "MONEY" is also one of the inventions probably which can be equated to the "INVENTION OF A WHEEL". These two types of inventions are so interlinked sometimes it causes confusion among the inventors and innovators.

With respect to scientific inventions a lot of hard work, dedication, determination and hope are required to be strictly followed by the pursuer. In addition the pursuer needs to incur some expenditure in his/her endeavour. The quantum of money to be spent on any research and development is unpredictable. There are certain inventions which are accidental in nature and were not expected to happen. There are some other inventions wherein the goal is fixed to be achieved and many trials are being made to reach the goal. Failures generally excel the success.

Invention does not stop at the invention stage itself. The products of the invention should reach the public for their use thereby increasing the standards of their life. How it can happen? It happens by bulk production and followed by sales. This further activity brings back the expenditure incurred by the inventors and innovators thus motivating them for further inventions and innovations. The next question arises on how to fix a "Price" of a product. Beyond any doubt the inventor has to calculate the money incurred on the research and development that may include the failures, if at all any; cost of manufacture; marketing expenditure; cost on transport; government taxes whatever and wherever applicable and lastly but not the least is some profit for survival.

The age old problem as identified is the urge of third parties for directly copying the invention made by the inventors and thereby consequently becoming competitors of the original inventors and innovators in the market. This creates an innovative sluggishness by discouraging the inventors.

The solution to the above problem is patent system. The patent system is a carefully crafted bargain that rewards an inventor in lieu of the contribution of the inventor to the society. Patent is one of the Intellectual Property Rights wherein the right granted to the applicant, known as Patentee derives the right on fulfilling certain obligations under the Patents Act wherein the Patentee can stop others from manufacturing, selling, offer to sell, licencing and importation of their inventions. There are two types of patents viz., Product patents and Process patents.

A product patent ordinarily consists of a process as well which is known to the applicant on the priority date. There can be further cost effective processes that may be invented by the same or different inventors. Product patent is expected to be having higher or stronger protection than the Process patents. Therefore a patent is a "thanks giving" by the Government to the inventor or innovator for the contribution made to scientific development thereby leading to the economic and social development of the society. A patentee upon noticing the infringement, if any, can send notice to the infringer to stop the activities and on failure on the part of the infringer, can seek the legal remedy for the same. Therefore the inventors and innovators are protected from copying their inventions and innovations and fearlessly can regain the expenditure incurred in the development of any product or process, the entire process of which motivates them for further inventions and innovations.

The story does not end here. Inventors and innovators are also human beings and they are not out of emotions. They too can become passionate and may misuse the granted monopoly right. Such situation is taken care of by the legislators who have introduced "Compulsory Licence" system in the Patents Act. Under the given circumstances, like when the patentee is not working the invention or the patentee is not able to meet the needs of the society because he is incapable of producing the required need of the society or the price fixed by the patentee is too high for the public to take the benefit of the invention or a combination of these facts, the Government can intervene and grant a licence to others who are capable of manufacturing the patented goods thus meeting the requirements of the public.



One has to understand here that the Government is trying to balance between the interests of inventors and innovators on one hand and the interests of the society on the other hand. Therefore the system is perfectly balanced. On the one hand there is public safety concern and on the other hand the patentee is capable to enforce his right through infringement suits. Whatever be the case, question of the preservation of balance of rights arise only after the grant of patent right to the applicant. But what steps can be taken before the grant of patent. Or are there any methods to take care of such issues before the grant of patent right to any applicant?

As such there is no system or methodology available before the action of grant of a patent right to the applicant because misusing the right comes only after the grant. No law is above to the basic principle of maintaining the basic needs of the public. Patents Law is not an exception.

Many countries became members of the Paris Convention and Patent Cooperation Treaty who have accepted on the general guidelines applicable to all the member countries for granting patent right to the applicant. These guidelines refers to minimum criteria to be fulfilled by the applicant viz., Novelty [as on the date of priority, not on date of further filings], Non-obviousness, Industrial Applicability or Utility and certain flexibilities provided for each member country to decide upon grant of patent right to any applicant depending on their socio economic nature. Leaving the flexibilities aside there is no common agreement on the definition of so called simple criteria, "Industrial Applicability or Utility" among the member countries. For example "a method of treatment" is considered to be industrially applicable by some member countries and not by some other member countries. Likewise some member countries follow "absolute novelty" and some other member countries follow "relative novelty" to ascertain novelty. Similarly there is no uniform definition to define "a person skilled in the art" which makes difficult to assess the "Obviousness" of the invention. Therefore it was agreed among the member countries that criteria for the grant of patent right is agreed upon but not the inferences or conclusions on the interpretations of the said criteria. Therefore each member country can follow its own definitions in respect of these fixed criteria. Regarding "Flexibilities" the Indian Legislature has introduced "Chapter II" in the Patents Act wherein the Sections 3 and 4 have been directing the executing officials of the Patents Act not to grant patent right even if the disclosures have passed the tests of the fixed criteria, which are Novelty, Non-obviousness and Industrial Applicability? The provisions of the Section 3(d) was discussed, debated and decided in various forums in favour of the Indian legislature.

Further the grant of patent right is subjected to certain general principles as laid in the Section 83 [Chapter XVI] of the Indian Patents Act. According to this section of the Act the patent right is not granted merely to enjoy the right to importation and is expected to work the invention in Indian territory; encouraged for transfer and dissemination of technology which shall be conducive to social and economic welfare and to a balance of rights and obligations; do not impede the protection of public health and nutrition; do not in any way prohibit Central Government in taking measures to protect public health; do not restrain trade or adversely affect the international transfer of technology; and shall be made available at reasonably affordable prices to the public. Therefore it is very clear from the view of the legislators that a stringent compliant patent system is required for the benefit of the public.

A foreign company, which does not have any infrastructure for the manufacture of the invented product within Indian territory, can also be an applicant for the patent under the provisions of the Section 6 of the Patents Act. No provision has been provided and no clause is applicable for the rejection of the patent right for such type of applicant and Section 83 is only a general guideline to be followed by the applicant when the patent right is granted. Therefore violation of Section 83, if any, will come only after the grant of patent right to the applicant. Therefore, prima facie it may appear that there are some lacunae in the Act. But, in fact, there is no such void in the Act. The reasons are very obvious because the applicant may develop the infrastructure after the grant of patent within Indian territory. Further if the applicant opines that the manufacturing the required amount of goods is relatively cheaper and may import to India thus making higher profits to the company or the requirement is so low that creating infrastructure is economically not a viable option and whatever may be the reasons the patentee is fulfilling the requirements of the public through importation. Further technology can be transferred to a competitor through licencing and other means. Therefore a freedom is given to the patentee even to meet the general principles. The same logic is applicable to the individual inventors of the country who are not capable of working their invention on their own. Hence no ground is required to reject a patent application on the background of the applicant.

Sections 3, 4 and 83 clearly provides the view of the legislators and the guidelines to the executives of the Patents Act on how to take and execute a balanced decision on the grant of patent right to the applicant.

In view of the above discussion it shall not be construed that the Government is giving monopoly right in one hand and taking away the monopoly right on the other hand. The Indian Patents Act is scrupulously balanced between the creator and the consumer thus is a laudable Act.



Geographical Indications of India – Icons of our Cultural Heritage

By

Chinnaraja G. Naidu

Assistant Registrar of Geographical Indications, GIR Chennai

The cosmic cultural heritage and historical significance of India, which has been carried forward through generations, have bestowed to us, a wonderful array of products be it meticulously made out handicrafts, exquisitely woven handlooms or Agricultural products carrying the aroma of the land of its produce or food products, titillating the taste buds of millions. As we are in a fast paced world, the Government of India has realised well the pressing need for fostering such traditional products, in all various possible manners. The enactment of Geographical Indications of Goods (Registration & Protection) Act 1999 can be termed as a landmark step in achieving that goal. Protection of our traditional products, through Geographical Indications act is not only a means of providing livelihood to the large number of people involved in these sectors but also, a noble effort in keeping these traditional clusters alive without getting faded into the oblivion and washed away, lost perpetually in the floods of time.

It can be seen that more than a decade has passed by ever since the Indian Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003. It can be stated with great level of confidence that Indian Geographical Indications registry has been able to safeguard and nurture many traditional products and a host of people involved in the supply chain of these products emanating from various nook and corners of our vast and ancient country.

The range of products and the places from which the traditional products of our country have sought protection under Geographical Indications legislation has been mind boggling. The applications for **Geographical Indications** have reached us virtually from all regions spread over in all directions of our country, which makes us smile and also gives us a feeling of great responsibility. The collection of products, seeking the prestigious GI tag, have come from all categories viz., already highly popular products, commanding great monetary value, like **Darjeeling Tea, Kanchipuram Silk, Hyderabad Haleem, Pochampally Ikat, Nagpur Oranges** to name a few which have already carved out a niche for themselves in their region and at other places, and the motive for seeking GI for these products, might be securing a permanent indelible impression among the people from various regions of our country and abroad, that there cannot be any impersonations of such products which would even have any faint resemblance other than the products manufactured in the particular regions with typicity and knowhow only familiar to the people involved in their manufacture over centuries. Other products which have sought GI protection like GI applications such as, Joynagar Mocha, Kolhapur Jaggery, Navara Rice from Palakkad, Palcova from Srivilliputhur etc, which are much popular in their regions of produce as of now, have tremendous potential for spreading their tentacles of popularity all over the country and even worldwide. So, it can be termed as a right step taken in the right time for the promoters of Geographical Indications for these products. If appropriate measures are applied by the authentic producers of these GI products, then, it would not be a wonder to see those products, getting far economic gains, say in a decade from now, as the GI tag envisaged for these products, would enhance their popularity tag far and wide.

Candid approach in fostering & developing a GI product :-

One can see from the success stories of GI's in Europe, (Appellation of origin as they are called there) they have been promoted by the producer groups of such products in the most meticulous manner and all steps have been firmly footed towards maintaining all aspects of the supply chain intact. One can say, No stone has been left unturned in the efforts taken up by the **AOC** products in Europe (especially going by the French and Swiss examples). It must be observed that in Switzerland, the GI related legislation of that country dates just a decade prior to our Country's legislation and the popularizing of **AOC** concept too has been in vogue since the early nineties or so. But, now one can see, there has been gigantic strides taken by the **AOC** products from Switzerland be it the Cheese varieties of **Gruyere, Raclette or Tete De moine** or the wine varieties from Valais or Vaud cantons. Thanks to the Swiss diaspora living in countries especially in US, have ensured that these **AOC** products are being sought after greatly and no wonder these producers of AOC products from Switzerland, the dairy farmers and Vineyard people / Vintners are a happier lot as they find themselves in an enviable position in the export markets for their produce.

If one closely observes, the AOC products of Switzerland and France have very painstakingly done their homework and arrived at 'Code of Practice' (we are mentioning as Statement of Case) which are very clearly defining documents for the ways and means of methodically manufacturing, preserving and packaging of these products for keeping the heritage and other genuineness aspects intact. They have understood that the AOC tag, for those products has been granted based upon certain criteria which can never be parted away and they have resolved to never ever compromise under any circumstances and are thus wedded to their traditional ways of manufacture.



Likewise, it would be a very wise & timely decision if the Indian GI producers of various products unite together sinking their internal differences for the larger and better interests of their welfare and chalk out plans including coming out with a well drawn 'Code of Practice' (COP) which can be a well laid out document describing in detail the roles and responsibilities of each and every player in the entire supply chain involved in manufacture of the product. By bringing out such COP documents and publicizing them, the actual fruits of the painstakingly achieved GI status can be achieved.

At this juncture, a very pertinent query may strike upon many of us as to whether procuring a Geographical Indication (GI) status, aims and attempts to make uniform products, in that entire cluster, killing and wiping out any room for creativity and application of ingenuity? **NO**. Grant of GI status never envisages such a result. Definitely, the creativity and individuality of the producers be given adequate room in any GI product cluster, but care should be taken that such efforts are carried out well within the structure and without tampering the very basic principles of traditional and authentic manufacture of the product which has been in practice for many centuries / decades for which the GI status grant has been made.

For example, in a handloom cluster, with a GI status, there can be no restrictions what so ever for the never ending list of exquisite designs magically created by the master weaver and craftsmen as long as the basic material, procedure, dyeing and method of manufacture for which the GI status has been granted is kept intact. In fact, grant of GI status has nothing to do with the individual designs woven out by the weavers in the cluster, and designs are being done to cater to the liking of the customer and the preferences and choices of larger group of people.

Evolving of GI based product clusters in India :-

Though, efforts have been made in many traditional products regions in India, to bring out clusters, the sizes of these clusters and uniformity in adhering to the well established manufacturing guidelines have not been up to the mark so far. Henceforth a traditional product upon getting the GI status, the Proprietors of the GI certification, should earnestly strive for establishing clusters based upon the GI status achieved by them. The individual members of the manufacturing cluster should essentially be members of the Association / Society who are registered proprietors of the GI status. The help from various other Government departments (both Centre and state) and other bodies, can be sought in all possible ways for developing such GI based manufacturing clusters. It can be observed that in European AOC models, even while entering a Canton/ City/ Town or even village, there are hoardings welcoming any one, indicating that the place is AOC territory for a particular variety of Cheese, Bread or Wine.

Promoting GI based tourism and GI products exhibitions:-

As stated earlier, Geographical Indications (GI's) are everlasting imprints of our country's rich heritage & glorious past; efforts can be taken by the GI producer groups to promote tourism based upon Geographical Indication (GI) products. This measure can have far reaching implications in boosting the entire economy of a particular region of our country. Again citing a Swiss example, one can say, the excellent success reaped by the Valais Canton, which is an Alpine region in Switzerland in promoting AOC based tourism as it has got three prominent AOC products viz., Rye bread of Valais, Raclette Cheese and Valasian Wine. Further, one can see three AOC products conveniently joining hands together and mutually complimenting as Raclette Cheese and Rye Bread of Valais go perfectly well with Valasian Wine.

Likewise, GI producer groups in India also can find out ways and means of mutually complimenting each other and can thus accrue collective benefits.

Further, producer groups of traditional products with GI tag, can group themselves together for arranging GI products based expositions which can have a great impact among the visitors of such exhibitions / expositions who can be exhorted to safeguard and foster traditional products. It can be observed that recently a '**Hyderabad Haleem**' festival was organized by Greater Hyderabad Municipal Corporation, during the holy month of Ramzan (when the GI product of '**Hyderabad Haleem**' is made in large quantities by various producers) and the registered proprietor of the GI product (Hyderabad Haleem) have given pamphlets explaining the GI status granted to the product and its significance etc. to thousands of visitors to that festival.

GI products pavilion in State Arts and crafts Emporiums :-

Also, it can be observed that certain State Handicrafts departments in their emporiums located in select cities, have set up GI products pavilion for handicrafts products granted with GI status, thus giving an opportunity for the customer to know about the traditional and cultural history behind the product and the no. of artisans / craftsmen involved in the cluster who would be the beneficiaries, when such a GI product is purchased.



Seeking assistance from Government for promoting export of GI products :-

As it has been observed that the components of customs / excise duties and similar taxes levied are a bit on the higher side when, a product is exported to any country abroad, naturally it results in the increased selling price of the product in that particular country to which it is exported. This is certainly a deterrent factor for the commoner from purchasing that product as the product becomes invariably out of the reach of the common man. Even, traditional products from handicrafts, handlooms, agriculture and food products are facing such a situation in markets abroad. Moreover, the great increase in Indian expatriate population in many countries worldwide has kindled the enthusiasm of traditional products manufacturers in India to export those products more and more to countries abroad keeping in mind the larger number of Indians living there would naturally be having affinity towards products of Indian Origin. For example, a South Indian (say from Karnataka) settled in United States of America would be having special affinity for '**Dharwad Peda**' a GI product from his / her state or purchasing '**Channapattana Toys**' for the children in his/ her family. Given that nature, it is the earnest endeavour of traditional product manufactures for the Countries involved in export & import, while inking Memorandums of Understanding (MOU's) between them give preferential treatment to traditional Products (with GI certification) and can consider giving sops and exclusions from routine tariffs and duties for traditional GI based products in a mutual basis.

Thus, an integrated approach from all possible levels, if adopted can result in creating a most favourable '**Win Win situation**' for the GI based traditional products in our country. It must not be forgotten that GI certified products not only benefit the producers and manufacturers and the entire group of people involved in its product cycle, **But also, the Customers too are benefitted by the GI tag** as it gives them an assurance for total value for their hard earned money for having purchased the most authentic and genuine product from the region, the product is most famous for and sought after.



Trade Marks Trends in India

**By Dr. B. C. Rathore, Deputy Registrar of Trade Marks & G. I.
Trade Marks Registry, Delhi.**

An overview

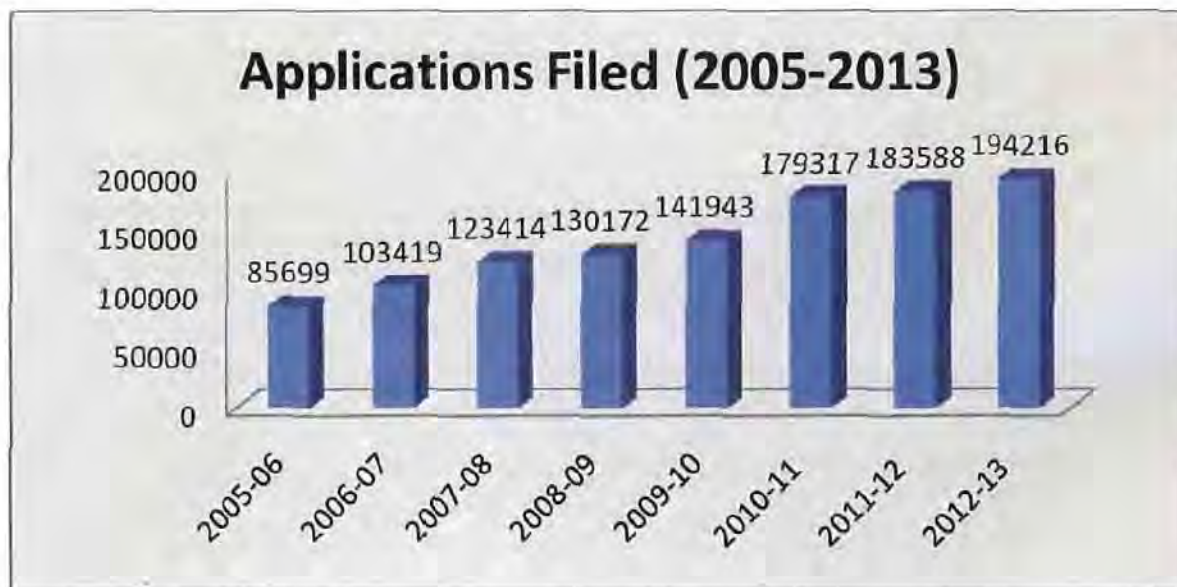
In recent years, the Indian Trade Marks Registry has made robust progress in order to facilitate filing of trade marks. Several initiatives have been taken in this field including digitization of the records relating to the IPR Offices, introduction of Dynamic Trade Marks Utility enabling the public to look in real time basis the stock and flow with respect to trade marks applications etc. The government agencies, industries, associations and non-government organizations are actively playing their roles to develop tools to enable India to improve and expand its own pro-IP regime. Training programs and workshops on IPR focusing especially on Micro, Small and Medium Enterprises are being organized by various Government ministries and non-government organizations in many parts of India.

A shift in worldwide economies along with a swelling Indian middle class and rising consumerism has made the Indian market paramount. Reflecting the country's rapid rise as a commercial economic player. India has experienced dramatic growth with regard to filling of applications for trademark registration in the past few years.

The present article highlights the trends across important facts of trademark filing practice in India and its effects on both domestic and international brand owners.

Analysis of trends from 2005-06 to 2012-13

I. Application Filed



As evident from the above graphical representation, the trade marks filing in India has been on a consistent rise. In the year 2012-13, a record of **194216** trade marks applications were filed which is an increase of about **5.79%** compared to the previous year. It is important to note here that **200005** trade marks applications have been filed in the year 2013-2014.

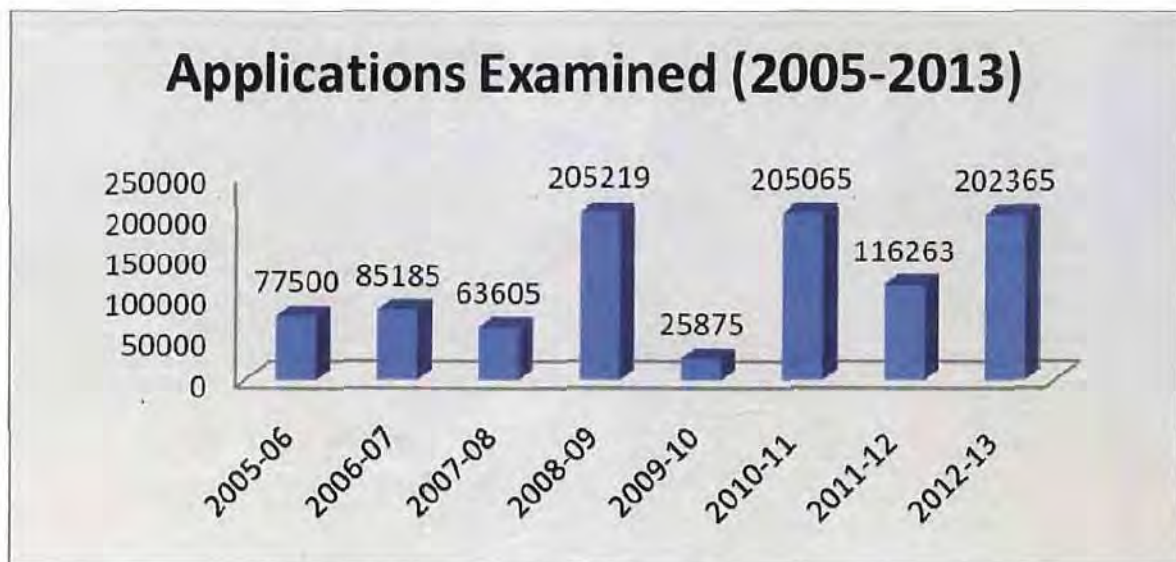


II. Indian Applicants v. Foreign Applicants



It may be observed from the above graphical chart that there have been a huge difference in number of applications filed by the Indian applicants as compared to the foreign applicants. In 2012-13 the number of applications filed by Indians were 1,79,436 (92.39%) whereas applications originating from foreign applicants were 14,780 (7.61%).

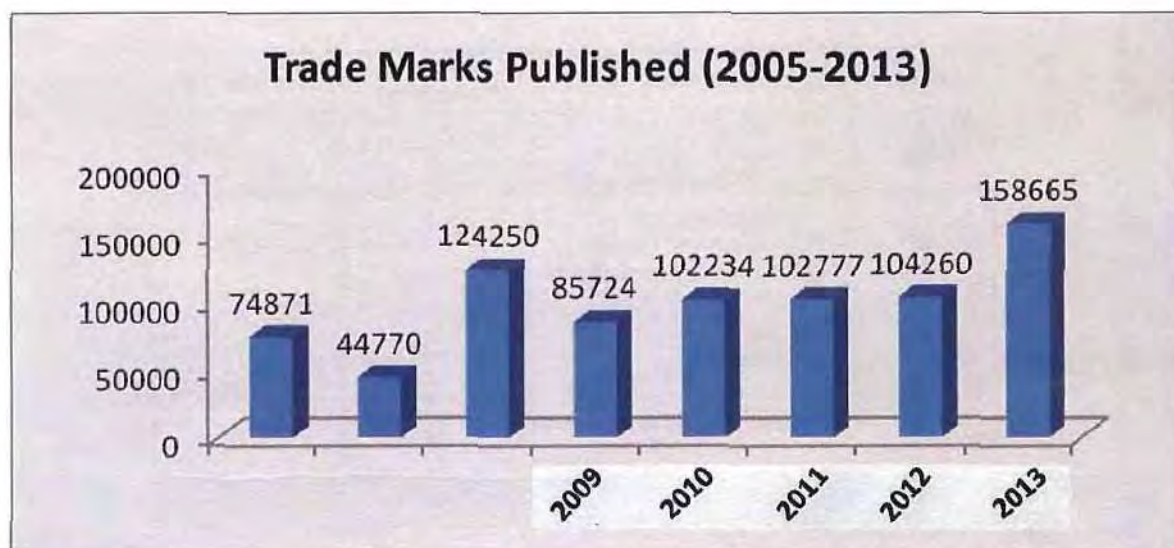
III. Applications Examined



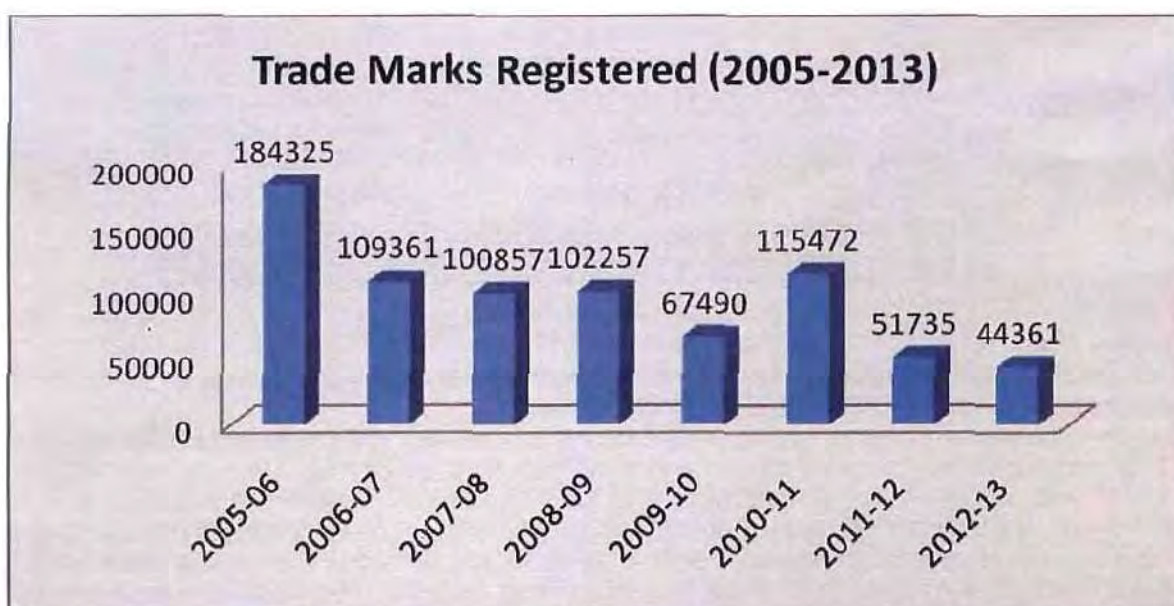
The trend in examination of applications has not been consistent for the period 2005 to 2013 (2009-10 and 2011-12 witnessed a dip in the number of applications examined). However, in the year 2012-13, the number of applications examined witnessed a robust growth.



IV. Number of Trade Marks Published in the Journal



V. Number of Trade Marks Registered





VI. Top 5 Classes in which trade marks were filed

The table as shown below, list the top five classes, which recorded the highest number of trade marks applications in the year 2012-13. Class 5 dealing with Medical, Pharmaceuticals, Veterinary and Sanitary substances etc. recorded the highest percentage of filing at 16.45% of the total filing followed by classes 35, 25, 30 and 9 in order.

Class	Goods	Trade Marks Registered	% of Total filing
5	Medical, Pharmaceuticals, Veterinary and Sanitary substances etc.	7015	15.81
35	Advertising, business management, business administration, office functions	3091	6.97
9	Scientific, Nautical, Surveying and Electrical Apparatus etc.	2156	4.86
25	Clothing including Boots, Shoes and Slippers	1805	4.07
30	Coffee, Tea, Cocoa etc.	1730	3.90

VII. Top 5 Classes in which trade marks were registered

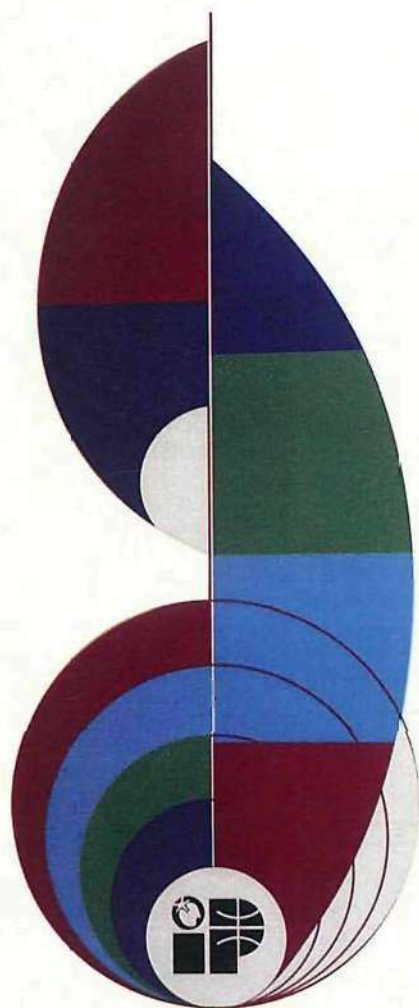
The table as shown below, list the top five classes in which trade marks were registered. Class 5 also recorded highest number of registration with 7015 registrations in the year 2012-13.

Class	Goods	Applications Filed	% of Total filing
5	Medical, Pharmaceuticals, Veterinary and Sanitary substances etc.	31942	16.45
35	Advertising, business management, business administration, office functions	15330	7.89
25	Clothing including Boots, Shoes and Slippers	10498	5.41
30	Coffee, Tea, Cocoa etc.	10248	5.28
9	Scientific, Nautical, Surveying and Electrical Apparatus etc.	9419	4.85

Conclusion

The trade marks trends in India show that trade marks filing has been stable and positive even during the global recession period and is looking forward towards a consistent trend.

Steps are continuously being taken up to improve transparency and efficiency at the Trade Marks Office. On March 13, 2014 The Hon'ble Controller General of Patents, Designs and Trade Marks issued Public Notice regarding release of all TM Forms through comprehensive e-filing of Trade Marks. Comprehensive e-filing service of Trade Marks is an online service provided by the Trade Marks Registry on the IP India web-portal, which allows filing of TM Forms and other documents required for registration/ renewal/ rectification/ opposition/ correction to be done online in a soft copy form rather than a physical copy to be filed with the Registry office. Earlier, the documents were required to be filed at concerned registry office (on the basis of jurisdiction) in the physical form which required additional cost of postage as well as the time consuming procedure to reach the same to the pertinent office. At present scenario, E-filing is cost effective and time efficient way for filing documents with the registry.



**INTELLECTUAL
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GEOGRAPHICAL INDICATIONS