



India National Intellectual Property Policy

Introduction

The IP Federation represents IP-intensive companies in the United Kingdom (see list of members attached). This includes companies which are active in India, both as local manufacturers, with research and development bases in India, and importers to India. Thus the members of the Federation, although based in the UK, have extensive knowledge of the Indian market and patent system, as well as being contributors to the Indian economy.

The Consultation

The Indian Department of Industrial Policy and Promotion (DIPP) has constituted an IPR Think Tank to draft a National Intellectual Property Policy and to advise DIPP on IPR (intellectual property rights) issues. The Indian Government is now consulting on the National Intellectual Property Policy, and the first official [draft](#) was released by DIPP on 25 December 2014. Stakeholders have been invited to submit comments on the Policy by **30 January 2015**.

IP Federation Response

The Federation welcomes the fact that the IPR Think Tank recognises the benefits that a strong IP regime can bring economically, socially and culturally to India.

The Think Tank notes that an objective of the Draft IPR Policy should be to “guide and enable all creators and inventors to realize their potential for generating, protecting and utilizing IP which would contribute to wealth creation, employment opportunities and business development.” It also aims to “foster predictability, clarity and transparency in the entire IP regime in order to provide a secure and stable climate for stimulating inventions and creations, and augmenting research, trade, technology transfer and investment.”

These are important goals not only for the Draft IPR Policy, but also because of what the National IPR Policy, appropriately implemented, can do to support growth in India.

Economic research consistently confirms that developing countries benefit tremendously from respecting IPRs.¹ There is a strong, positive, and well-

¹ See, e.g., L. Branstetter and K. Saggi, Intellectual Property Rights, Foreign Direct Investment and Industrial Development, *Econ. J.* 121 (Sept. 2011) at 1161-1191, available at www.researchgate.net/publication/46466845_Intellectual_Property_Rights_Foreign_Direct_Investment_and_Industrial_Development/ (last visited Jan. 29, 2015); S. Adams, “Intellectual Property Rights, Investment Climate and FDI in Developing Countries,” *Int’l Bus. Research* 3:3 (July 2010), available at

recognised correlation between foreign direct investment inflows and reliable IP regimes.² It is also well established that developing countries gain from high-quality and high-quantity technology transfers associated with foreign direct investment (FDI). Further, R&D expenditures rise at an increasing rate, so that strong IPR protections stimulate effectively greater gains in developing countries than in high-income ones.³ We note, positively, that the Draft IPR Policy recognises the importance of collaboration with industry to achieve its goals.⁴

The seven main objectives identified in the Draft IPR Policy encompass key elements in providing a “legal framework for strong, effective and balanced protection of IP rights and to impart predictability, transparency and efficiency in the administration and enforcement of IP laws.”⁵

If these objectives are met, the Draft IPR Policy will represent a positive and important step toward building the architecture of an IP regime in India that has the potential to support and derive the kind of economic and social benefits described above.

The Think Tank pays tribute to the legislative, institutional and judicial framework for IP in India. Certainly, there are many features of this framework that are strong and our members report favourably on the functioning of the court system for anti-counterfeiting issues, particularly the ability to obtain a preliminary injunction. However, care should be taken not to ignore concerns that exist and may serve to undermine the benefits that improving the framework can bring. These concerns include:

- While the administration of the granting process for patents and trademarks and the judicial system is often efficient, demand on resources can on occasion lead to backlogs with respect to examination and mean determination of disputes is prolonged. The focus on institutional improvements is welcome. These will require commitment of resources and expertise. We appreciate the great efforts that have been undertaken to improve the efficiency of the patent granting process. In our view, this efficiency could be further increased by the introduction of an accelerated system for selected patent applications. In addition, consideration should be given to streamlining procedures. For example,
 - The question of whether there is a need for both pre and post-grant opposition in the patent system

<http://www.ccsenet.org/journal/index.php/ibr/article/download/6515/5131> (last visited Jan. 29, 2015).

² R. Cavazos Cepeda, et al., Policy Complements to the Strengthening of IPRS in Developing Countries, OECD Trade Policy Papers No. 104 (Sept. 2010), OECD Publishing, available at <http://dx.doi.org/10.1787/5km7fmwz85d4-en> (last visited Jan. 29, 2015); S. Claessens and L. Laeven, Financial Development, Property Rights, and Growth, World Bank, Policy Research Working Paper Series 2924 (Nov. 2002), available at <http://elibrary.worldbank.org/content/workingpaper/10.1596/1813-9450-2924> (last visited Jan. 29, 2015); J. Lee and E. Mansfield, Intellectual Property Protection and U.S. Foreign Direct Investment, Review of Economics and Statistics, Vol. 78 (1996).

³ R. Falvey, et al., Intellectual Property Rights and Economic Growth, Internationalisation of Economic Policy Research Paper No. 2004/12 (2004), available at <http://ssrn.com/abstract=715982> (last visited Jan. 29, 2015).

⁴ e.g. ¶¶ 1.3.3, 2.8, 2.12 and pg. 27

⁵ Draft IPR Policy at 12.

- The obligation to regularly provide updates on co-pending cases, many of which are readily available to examiners today⁶
- Exploring work-sharing initiatives with other patent offices, such as the Patent Prosecution Highway (PPH)
- India's trade secret regime is limited to protection against disclosures by those with a close relationship, either through contract or an implied duty of confidence. In this regard, we note with appreciation the references to improving trade secret protection in the Draft IPR Policy.⁷ The ability to exchange information freely between partners and customers without risk of further disclosure can help enable deeper collaboration between and across firms, to the benefit of India and beyond. The Draft IPR Policy should further identify elements of trade secret protection that should be codified, such as the availability of both criminal and civil remedies, the ability to preserve evidence and confidentiality of legal proceedings.
- Whether aspects of the law pertaining to the pharmaceutical sector, for example, Section 3(d) Patents Act, the lack of regulatory data protection and compulsory licensing represent an optimal policy balance. In addition, notwithstanding the Think Tank's view that India's laws are fully compatible with her international obligations, we would note that this is by no means universally accepted.
- An apparent preference towards involuntary technology transfer arises throughout the document. For example, the Draft IPR Policy suggests using flexibilities to "judiciously keep IP laws updated and includes a variety of studies including on "exceptions and limitations."⁸ Similarly, it references the Technology Acquisition and Development Fund in the National Manufacturing Policy which encourages compulsory licensing.⁹ These positions send a negative signal to potential investors and discouraging comprehensive technical exchanges which can accelerate technology development for all those involved.

We would like to comment specifically on the proposal for a new law on utility models. While such a law may be superficially attractive, the Federation has concerns about this. Utility model systems can lead to a proliferation of rights which can increase the risk of litigation, create uncertainty and ultimately inhibit innovation. This is particularly the case if utility models are to be available without examination, and the negative effects of utility models are felt most by small enterprises. We are aware that the introduction of utility models in India was the subject of a consultation in 2011. We would urge that before introducing legislation a further consultation should take place.

We are grateful for the opportunity to submit these comments and thank you for your consideration of them.

IP Federation
30 January 2015

⁶ See Section 8 of the Patent Act

⁷ Draft IPR Policy, ¶¶ 3.2, 3.6.3

⁸ Draft IPR Policy, pg. 2 and ¶3.6, respectively

⁹ Draft IPR Policy, ¶5.4.1



IP Federation members 2015

The IP Federation represents the views of UK industry in both IPR policy and practice matters within the EU, the UK and internationally. Its membership comprises the innovative and influential companies listed below. The CBI, although not a member, is represented on the Federation Council, and the Council is supported by a number of leading law firms which attend its meetings as observers. It is listed on the joint Transparency Register of the European Parliament and the Commission with identity No. 83549331760-12.

AGCO Ltd
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ARM Ltd
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British Telecommunications plc
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BTG plc
Caterpillar U.K. Ltd
Dyson Technology Ltd
Element Six Ltd
Eli Lilly & Co Ltd
Ericsson Limited
ExxonMobil Chemical Europe Inc.
Ford of Europe
Fujitsu Services Ltd
GE Healthcare
GKN plc
GlaxoSmithKline plc
Glory Global Solutions Ltd
Hewlett-Packard Ltd
IBM UK Ltd
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Johnson Matthey PLC
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