



WTO-IPR Bulletin

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From the Vice-Chancellor's Desk

In the decade of 1990's, India signed various Agreements, necessary for securing Membership of the World Trade Organization (WTO) formed in 1995. One of such Agreements was Trade Related Aspects of Intellectual Property Rights & Trade in Counterfeit Goods, popularly known as TRIPS Agreement. The TRIPS Agreement set out an elaborate agenda for the Member countries for putting in place necessary legislation for the protection of various intellectual property rights (IPRs). India, like other Developing countries was given a transition period of 10 years to put in place various legislative requirements pertaining to IPRs.

Over the last two decades a number of steps have been initiated in respect of various intellectual properties. For example, the Indian Patent Act of 1970 was amended many times and provisions were made for Exclusive Marketing Rights; the term of protection was extended from 14 years to 20 years. Products in all fields of technology became patentable and so on. The Indian Patent Act of 1970 was thus extensively amended with various sections omitted/ repealed and new ones added to it in 2005. Similarly, in other areas of intellectual properties many changes/amendments took place. The Trade Marks Act was extensively modified in 1999. The Industrial Design Act and also the copyright Act were amended in 2000.

Besides brand new legislations came up for intellectual properties in plants, biodiversity, geographical indications and semiconductor integrated circuits layout designs. The Geographical Indication of Goods (Registration & Protection) Act was passed in 1999; the Semiconductor Integrated Circuits Layout Design Act was passed in 2000 and the Plant Variety Protection & Farmers' Right Act (PVP & FR) was passed in 2001. The Biological Diversity Act was passed in the year 2002. In the area of Patent, India became a Member of Patent Cooperation Treaty (PCT) in 1998.

Concomitant with the above developments, the administrative framework for implementation of the Acts has been put in place and extensively revamped in case of patents, trademark & design. As a result India is now being recognised as an active member in matter of the protection of intellectual properties; so much that Indian Patent Office has become an

International Search Authority and an International Preliminary Examinants Authority under the PCT.

The above developments are indeed salutary. However, all the developments have occurred at different times and in isolated manner. As a result, there is a possibility of confusion in protection of intellectual properties. Generally people think that the Indian Patent Office alone is handling all the intellectual properties. This is not so. Intellectual Property are handled by different Ministries in Govt of India. For example, copyright is handled by the Ministry of HRD; The PVP&FR of 2001 is handled by the Ministry of Agriculture; the Biological Diversity Act of 2002 is handled by the Ministry of Environment & Forests and the Semiconductor Integrated circuit Layout Designs of 2000 is handled by the Ministry of information Technology. Patents, Trademarks, Industrial Designs and Geographical indication are handled by the Ministry of Commerce & Industry. Thus consolidated account of intellectual property protection is necessary.

Against the above back drop, the Govt. of India has constituted a Think Tank on **National IPR Policy** headed by Justice Prabha Sridevan and comprising eminent persons as members. The Think Tank has submitted its report. Overlooking the present intellectual property (IP) system in India, the Think Tank has come out with clear statements on 'Vision', 'Mission' and 'Objectives' on intellectual properties in India. Broadly The objectives comprise (i) promotion of Entrepreneurship and Competitions, (ii) Creation of IPs, (iii) Legal & legislative framework (iv) Administrative & management (v) Commercialization of IPs (Enforcement & Adjudication) and (vii) Human Capital Development. The Report also discusses integration of IPs with Government initiatives and coordination, implementation, bench marking, monitoring & evaluation of IP Policy.

The Time is now ripe for a National IPR Policy. It is heartening that the Think Tank has submitted recommendations. Once approved by in Cabinet Committee of the Govt. of India, the policy will go a long way in improving the pace of protection of intellectual properties and rewards to the creators of intellectual properties and at the same time ensuring faster economic growth consistent with social justice.

(Mangala Rai)
Vice-Chancellor

II. INTERNATIONAL NEWS

I. India Dismisses Regional Pacts Threat, Puts its Faith in WTO

India has reposed its faith in the multilateral trading system of the World Trade Organization, dismissing any threats from the regional trading arrangements such as the Trans-Pacific Partnership (TPP).

Commerce Minister Ms. Nirmala Sitharaman recently said that India is fully committed to the WTO. Shishir Priyadarshi, Director at the WTO, on his part said that the debate over multilateralism versus regionalism is no more relevant as in the current scenario both are going to stay.

Conclusion of the Trans-Pacific Partnership (TPP), which has brought common and higher standards for nearly 40 per cent of the world economy, has made India cautious of losing market share in the US to countries such as Vietnam. There are also apprehensions over issues related to labour, environment and investment protection gradually creeping into the WTO. India's concerns have increased because seven countries in TPP are also negotiating with it under the Regional Comprehensive Economic Partnership Agreement.

II. IPR Policy Will Give Industry the Confidence to Invest

Patrick Kilbride, Executive Director-International Intellectual Property, Global Intellectual Property Centre, US Chamber of Commerce has recently observed that US Chamber values the International IP Index very highly because it is an objective, empirical assessment of each country's legal environment for IP measured against a consistent and transparent benchmark. The downfall, as with any similar Index, is that it represents an image of a particular moment in time. It is not always possible to capture important changes or trends in the political environment with such a metric. Over the past year, we have seen the Modi administration sending out important signals about its commitment to innovation in India, including through a re-calibration of India's IP policy. For instance, it is possible, maybe even likely, that the much-anticipated National IPR Policy will include measures that could increase India's score on the US Chamber Index considerably. However, until those policy measures are enacted, and implemented, they will not be reflected in India's scores on the Index.

Mr. Kilbride went on to say that this is a year of major transition for India's IP policy and its future as an innovative economy. We are optimistically awaiting the National IPR Policy, and we look forward to recognising the progress that we hope it represents in the next edition of the US Chamber Index.

Mr. Kilbride added that leading multinational companies in innovative industries are eager to work more closely in, and with India. Any signs of an improving political and regulatory environment for innovators will be welcomed enthusiastically. Candidly, we have seen that the process has begun, in response to only the most indirect signs of policy change over the past year. Investors are realistic and pragmatic about the pace of change, but they are also focused on their accountability to the bottom line, and their business decisions will ultimately be guided by current realities.

III. NATIONAL NEWS

I. IPRs May be Used as Collateral to Raise Funds

A major development is in the offing in the area of IPRs. The country's first Intellectual Property Rights (IPR) Policy has proposed securitisation of innovation rights, allowing them to be used as collateral to raise funds for their commercial development. The Policy also suggests financial support for developing intellectual property assets through banks, venture capital and angel funds and crowdfunding mechanisms.

The National IPR Policy, drafted by the Department of Industrial Policy & Promotion (DIPP), is likely to be taken up for cabinet approval soon. Securitisation is a process by which various assets are consolidated into an instrument that can be issued to investors. "Countries such as the US and Japan do allow mortgaging of intellectual property assets," says R Saha, Senior Advisor with the Confederation of Indian Industry, backing the idea.

Intellectual property could be in the form of patents, trademarks and copyrights. The valuation of IPRs could still be an issue. The valuation of IP can be done by a company or an external body by analysing the cost incurred in acquiring it and assessing the amount it can fetch over the next five years.

The Government plans to create cells in agricultural universities, technology and management institutes and design and fashion technology institutes to expand its human resource pool of IPR professionals and experts. The focus of the policy will be to enhance access to sectors of social, economic and technological importance such as healthcare, food security and environmental protection. "The IPR policy will promote a holistic and conducive ecosystem to catalyse the full potential of intellectual property for India's economic growth and socio-cultural development," as envisaged in the draft policy.

II. GI tag for Basmati to Stabilise Prices

The Geographical Indication (GI) recognition for the Basmati rice grown in North Indian states is expected to stabilise the price of Basmati and boost exports. Basmati prices had been fluctuating in the global market because of excess supply. With GI tag, supply of spurious varieties of Basmati will be restricted. A drastic plunge in the price of Basmati in the export market caused distress to the traditional growers and their realisations fell by about 25 per cent.

Basmati rice is grown in Punjab, Haryana, Himachal Pradesh, Uttarakhand, Jammu and Kashmir, and parts of Uttar Pradesh. The states of Punjab and Haryana grow over 70 per cent of Indian Basmati. The farm gate price of Basmati crashed in kharif 2015 because of oversupply. Prices in Punjab and Haryana touched a rock-bottom and government intervention was sought to lift the crop at minimum support price (MSP) of Rs 1,450 per quintal. The farmers earned between Rs 3,000 to Rs 3,500 per quintal or even more for same varieties of rice in Kharif 2014.

Gauging the high returns, cultivation of Basmati varieties, which are not agro-climatic zone specific, has gone up in other parts of India in the past few years. An area of about five lakh hectares has been added in non-Basmati growing areas creating an artificial glut in the market, sources in Agricultural and Processed Food Products Export Development Authority (APEDA) told Business

Standard. The GI tag for the Basmati grown in Indo-Gangetic plains, known for its aroma and length, would protect farmers from sudden price variations. Sources in APEDA confirmed that GI registration has been provided for the area that has been growing Basmati for over a hundred years and falls in Indo-Gangetic river basin.

An APEDA official said the supply of Basmati has increased 30-40 per cent in the past two years and much of that has been sourced from non-traditional Basmati growing areas. Because of the commercial advantage of Basmati, new areas in different parts of the country were also brought under this export-oriented premium quality rice, undermining the interests of traditional growers. The GI tag will also arm APEDA with relevant credentials to challenge the infringement by third parties from various other countries trying to sell deceptive varieties of Basmati. After getting the coveted GI tag at home, APEDA will now apply in EU, USA and Gulf countries, which are major consumers of Indian Basmati. "As we already have the certification, it will not take long to get the same in other countries. Earning a GI tag in India implies that the supply chain management is being supervised," he added. The official said that APEDA had challenged the attempts of similar certification by non-Basmati growing entities in 40 countries to safeguard the interests of the traditional Basmati growers. India has already exported three million tonnes of Basmati rice in the current season from April to December 2015 and projects estimated four million tonnes exports by the end of March 2016.

This will have tangible repercussions as the exports earnings on Basmati slipped by 25 per cent in 2015-16 over the last year, leading to farmers' distress in Punjab and Haryana. Stability in prices as a consequence of GI recognition of Basmati will help farmers in maintaining area under Basmati and other Kharif crops, leading to higher income generation.

III. Controller's office Tries to Bring Down Trademark Pendency Cases

Dhanpat Rai Arora, trading as Delhi Trading Syndicate in Delhi, has filed a trade mark application on February 14, 1996, for a trade mark for his toothpick product. It could have gone unnoticed as thousands of other trade mark applications, but for the opposition raised by the multinational beverages firm Pepsico after several years. The reason - Arora's application is for the trade mark Pepsi. This could be read along with the Hindustan Lever's opposition against Chakrapani Hosiery's trade mark application for Sunsilk, Societe Des Products Nestle S A against Gautam Sons (P) Ltd on the trade mark Kitkat and Hindustan Latex Ltd's opposition against Raj Pal Bansal & Sons for the trade mark Saheli. If a new initiative of the Controller General Patents, Designs and Trade Marks (CGPDTM) becomes success, many such long pending disputes over trademarks may come down in the country.

The Controller's office, in collaboration with Delhi State Legal Service Authority (DSLISA) has undertaken an initiative to liquidate such pendency through mediation, conciliation under the Legal Services Authorities Act, 1987. The pilot initiative is on 500 trade mark disputes. According to officials from the Trade Mark Registry, there are around 1.3 lakh trade mark disputes pending with the Registry across the country at present. In a public notice issued of late, Om Prakash Gupta, CGPDTM, said that the initiative is in view of the pendency of the Opposition/Rectification matters at Trade Mark Registry, Delhi. "Initially, it has been decided to undertake the project on pilot basis by taking up 500 pending Opposition/Rectification matters," he said. A senior official from the registry said that it is an experiment and out of the 500 cases, in which there are at least 1000 parties including the applicants and the opponents. Only those cases where both the sides give their consent to go for a conciliation process could be taken forward for further procedure. The official said that the expectations are that at least 300 cases could be settled through conciliation. Once an

agreement on conciliation is arrived at, the case will be handed over to the registry, since it is mandatory that only the registry shall issue an order on the Trade Mark applications. If the mediation is not fruitful, the case would go back to the normal procedure under the Registry. Officials said that it would take at least six months to one year to get some of these cases finalised, even through conciliation. At present, the registry has only one or two officers in each of its five offices in the country - in Delhi, Mumbai, Kolkata, Ahmedabad and Kolkata who can handle opposition matters, said officials and lawyers. This means the number of officials who are eligible to handle the entire trade mark oppositions at present are around seven to 10, they say. These officials are also burdened with administrative works, which in effect reduce the time spent on the opposition matters. "Trying to give it for mediation is a good thing. But then, singling out Delhi is a bad thing," said Mohan Dewan, principal, Patent and Trade Mark Attorney, R K Dewan & Co. He said that the other offices also have large number of trade mark opposition's pending and Chennai office could have more such cases pending than any other office.

IV. Concerns over IPR Gaps in Indian intellectual property rights need to be plugged

The US Chamber of Commerce's Global Intellectual Property Centre (GIPC) has ranked India second to last among the 38 countries included in its fourth annual intellectual property rights (IPR) index. In other words, it holds the patent protection regime in India as not being in line with the international best practices. Among the limitations mentioned in India's IPR environment are the absence of specific IP rights for the life sciences sector; weak enforcement environment; lack of mechanisms to effectively combat online piracy; flawed data protection norms; and non-participation in the international IPR-related treaties referenced in the index. Besides, it has cited the usual objections raised by US industry and the office of the US Trade Representative (USTR) concerning the patent requirements and the provision for compulsory licensing in the Indian patent law.

The GIPC's ranking uses statutory, regulatory and enforcement criteria that are, naturally, based on the IPR perceptions of the developed countries - which occupy the top positions in the ranking, too. There are complaints that small, yet significant, steps being taken by various countries to improve their IPR enforcement and grievance redressing systems are not captured in the index. It is true that India has poor enforcement mechanisms. But it has strengthened its patent office by hiring more people, and is reforming the system of seeking judicial remedies to commercial disputes. That has not been reflected in the rankings. Another possible step forward is the country's long-promised new IPR policy. Much depends upon the quality of the policy - will it allay major concerns about Indian IPR without changing the basic tenets of Indian patent law? After all, while aspects of the Indian patent law are outliers in the global discourse, they have not been challenged in the relevant international forums, and so India's claim that its law is TRIPs-compliant is difficult to counter. Certainly, both precedent and the Doha declaration protect compulsory licensing on the ground that there is a pressing public health need. It is, therefore, futile to object to the Indian patent law on this ground.

However, many genuine concerns remain to be addressed, especially in matters related to online piracy and copyright infringements in the information technology, knowledge and entertainment sectors. The patent regime must become more transparent and effective, and patent-holders who feel their intellectual property has been trespassed upon must be able to find redress in India much quicker than they do now. Once the policy is suitably reformed and such lacunae in the IPR regime are removed, it is to be hoped that India will be able to make the case that it no longer needs to be on a watch-list for IPR issues.

The above is an editorial comment of Business Standard.

V. Lee Pharma's Compulsory Licence Plea Shot Down

The Indian Patent Office has rejected the application of little known, Hyderabad-based drug maker Lee Pharma for a compulsory licence to make a copy of AstraZeneca's antidiabetes drug saxagliptin, which is branded Onglyza. Lee moved the first filing for the compulsory licence in June 2015. Under the Indian Patent Act, a compulsory licence allows an entity other than the patent owner to reproduce the patented product or process, without the patent holder's consent. However, the process is a protracted one and needs to meet several conditions.

While the Patent Office had heard Lee's case in August 2015 and denied a compulsory licence, it was heard afresh after Shri OP Gupta, the new Controller General of patents, who assumed office in November 2015. In the August hearing, his predecessor Shri Rajiv Aggarwal had turned down the application. In the latest order of January 19, 2016, Shri Gupta said, "As the applicant has failed to provide evidence along with application or during hearing or by supplementary submissions and failed to satisfy the controller regarding any of the grounds as specified in Section 84(1) of the Act, I am therefore of the view that a prima facie case has not been made out for making of an order U/S 84 of the Act. Therefore, the application for grant of compulsory license by the applicant is hereby rejected." Lee had filed the application on the grounds that the requirements of the public weren't being met, the drug wasn't available to the public at an affordable price and that it had not worked in India.

As part of its 15-page order, the patent authority noted Lee had not shown how the reasonable requirement of the public for saxagliptin and other similar drugs like linagliptin, sitagliptin and vildagliptin were not met. Besides, the order termed as assumptions Lee Pharma's argument that the product was not made available in sufficient quantity and marketed at an affordable rate.

Lee Pharma had argued that even if the other three drugs in the same class--linagliptin, sitagliptin, vildagliptin--were prescribed to 90% of diabetes patients and only 10% were prescribed saxagliptin, six million patients would still require the drug. It argued that even if one million patients were prescribed saxagliptin, the total tablets of Onglyza and Kombiglyze supplied by the patentee (i.e. 823,855 tablets as per Form 27 data) would be inadequate to meet the requirements of the public and lead to a shortage. Specific to Lee's plea that saxagliptin was in short supply in the Indian market, the patent authority said, "These are only applicant's assumptions... in absence of any authentic data/statistics, I am of the opinion that such assumptions are not sufficient or could not form the basis to prove that the reasonable requirements of the public with respect to the patented drug are not satisfied."

The Company says the decision was disappointing for Indian patients, saying it had planned to offer the drug at a price of Rs. 11 per tablet. That compares with Rs. 38 per branded tablet in Mumbai drug stores. To date, India has granted one compulsory licence to Natco Pharma against Bayer's Nexavar. Compulsory licences are controversial and opposed by overseas drug makers, who are of the view that they violate globally accepted provisions of intellectual property and deny the legitimate rights of patent holders.

IV. IPRS AT THE UNIVERSITY CAMPUS

I. Breakthrough in yield through New Basmati varieties of Pantnagar

Two rice varieties of Basmati have been released from GBPUA&T, Pantnagar in the month of September, 2015. These varieties were released by Central Variety Release Committee for Basmati rice growing areas particularly for Delhi, Punjab, Haryana, Western UP and Uttarakhand Plains. They have crossed the yield levels set by Pusa 1121 and Pusa Basmati 1509 hithertofore, very prominent high yielding varieties of Basmati in this region. Therefore, both these Basmati Rice Varieties will be the mile stones for plant Breeders and will contribute to export of quality Basmati rice significantly because both these varieties are at par in quality as well as in yield. The kernel length is 7.97 mm and length breadth ratio is around 4.2. Both varieties are resistant to bacterial blight and tolerant to stem borer. As far as the grain yield is concerned these varieties produce around 15-19% more yield than the ruling Basmati rice varieties viz; Pusa Basmati 1 and Pusa Basmati 1509. They mature in 125-135 days. These new varieties have been development by a team headed by Dr. Surendra Singh, Professor & Senior Breeder, Deptt. of Genetics & Plant Breeding, College of Agriculture. The entire team was publically recognised by Hon'ble Governor of the State of Uttarakhand Shri K.K. Paul at the time of inauguration a mega-conference on **Hill Agriculture in Perspective** on the 26th February, 2016 in Dr. Ratan Singh Auditorium of the University. These varieties will go a long way in boosting export earnings of the country and at the same time will ensure good returns to the Basmati growing farmers of the county.

II. Progress in filing Patent Applications of the University

Three applications for patents have been filed by the Intellectual Property Management Centre (IPMC) since the publication of the last issue. The inventions relate to (i) a food item viz. Pant Low Glycemic Index buns with low glycemic index, extremely suited to diabetic persons, developed by Dr. Neha Tiwari and Dr. Sarita Srivastava of the Home Science College. (ii) A Device to scare away wild animals from crop damage invented by Dr. Arvind Tyagi of the College of Agriculture and (iii) A new fabric developed from the a Novel Milkweed Floss/ Lyocell Blended Fabric invented by Dr. Jyoti Joshi & Dr. Alka Goel of the Home Science College. The total number of applications filed by the new IPMC now works out to four. All the inventors deserve rich appreciation from IPMC and also from the University.

III. Lecture by Dr. R.P. Singh, HOD, Biological Products & Head-ITMU, IVRI-Izzatnagar, Bareilly on Patenting of Inventions

On the 23rd January, 2016 a lecture on **Patenting of Inventions** was delivered by Dr. R.P. Singh in the Conference Hall of the College of Basic Science & Humanities. The lecture was organised by the IPMC with active collaboration of the Office Bearers of P.G. Society and Professor Dr. A.K. Upadhyay of the College of Veterinary & Animal Science. The lecture was attended by Deans and Professors and also by Ph.D. and Masters Students of various Colleges. In all, 106 persons attended the lecture. Dr. R.P. Singh highlighted the scope of protection of inventions, and also discussed the prospects of rewards to inventors through patenting. The lecture was well received and it indeed served the purpose of sensitising the staff and students about the prospects of patenting of invention, as emphasized by the Hon'ble Vice-Chancellor from time to time on various occasions in the University.