INDIA
FASTEST GROWING
FREE MARKET DEMOCRACY

INTELLECTUAL PROPERTY RIGHTS

Patent Protection and India's Preparedness

PATENT PROTECTION AND INDIA'S PREPAREDNESS

Enforcement against intellectual property rights' violations has never been particularly strong in developing countries. In India this has significantly improved in recent years. Enforcement does not improve if the intellectual property rights issue is perceived to be an issue that is thrust down India's throat as a result of external pressure. It improves when internal pressures for better compliance are generated and this has begun to happen in the case of software and copyrights. To the extent that the TRIPs agreement requires better compliance, there is nothing to complain about.

Intellectual property is usually associated with civil law. But the mention of criminal procedures and penalties in the Uruguay Round agreement does not cause any problems, because the necessary legislation does exist in India. For example, in the Copyright Act, there are provisions to treat all forms of infringement of copyright as offences. The police also have powers to take action. Any person who knowingly infringes or abets the infringement of copyright is treated as an offender and is punishable with a minimum of six months' imprisonment, which may extend to three years, and a fine of between Rs 50,000 and Rs 200,000. As in the case of copyrights, the Trade and Merchandise Marks Act incorporates penal provisions and there are no substantive legal problems here either.

The Copyright Act has provisions to treat all forms of infringement of copyright as offences. Any person who knowingly infringes or abets the infringement of copyright is is punishable with a minimum of six months' imprisonment, which may extend to three years

While other sectors of industry have not been very disturbed, the pharmaceutical industry in India and the healthcare sector are affected.. The core issue being discussed is the possibility of a huge increase in drug prices and therefore in the access to drugs. In 1999 amendments were made to accept applications for product patents from 1995 and to provide exclusive marketing rights in India for a period of five years or till the grant of product patents of other WTO member countries. However, it must be pointed out right away that TRIPS allows for compulsory licensing, price controls and a competition policy. There is a clear consensus now that the new patent regime helps the private sector, benefits the private health care system benefit and additionally the consumer does not lose out.

In the Indian context, there is enough empirical evidence to note that free access to foreign technology has led to a great deal of complacency on the part of domestic industry. The industrial policy of import substitution had envisaged a great deal of effort and investments in innovativeness. But free access to foreign technology, in the face of poor

PATENT PROTECTION AND INDIA'S PREPAREDNESS

IPR implementation, has enabled Indian industry to succumb to the temptation of using foreign technology, tinkering with it and adapting it with minor changes to suit the Indian market. Coupled with licensing and entry barriers, this policy has ensured that most of the manufacturing sector has remained backward, capital intensive and technologically archaic.

There is a popular impression that through the Uruguay Round agreement, India has had to grant an enormous lot in the area of intellectual property rights. There is also an impression that India has no tradition or legislation of protecting intellectual property. As the above sections indicate, both of these propositions are inaccurate. In any process of multilateral trade negotiations, there is an element of quid pro quo. There are both costs and benefits and one has to trade off the benefits against the costs. The Uruguay Round discussed fifteen different areas and these can be thematically divided into three different heads – market access that is tariffs, non-tariff barriers, textiles and garments, agriculture, tropical products and natural resource based products, rules of GATT and the new areas.

When India went into the process of negotiations in 1986, the expectation was that India would generally gain in the areas of market access and rules of GATT and lose in the new areas. This perspective has changed somewhat since economic reforms were introduced in India in 1991. Barring the area of intellectual property rights, there is nothing in the Uruguay Round agreement that conflicts with the thrust of India's unilateral reforms. And even within intellectual property rights, the deviation primarily exists for patents and not for other forms of intellectual property. Stated more precisely, the argument is that even if India has lost out on patents, this loss is more than compensated by the gains that have been made in other sectors. However, this debate about the pros and cons of the Uruguay Round agreement is now dysfunctional as the agreement has become fait accompli. One needs to look forward and remove systemic problems associated with the administration of an intellectual property rights regime. This is best illustrated in the case of patents.

Compared with ten years earlier, it now takes between one to six years to obtain a patent in India. The patents office is modernising its facilities and working towards easing the legal process

Compared with ten years earlier, it now takes between one to six years to obtain a patent in India. Because of antiquated systems and procedures in the offices of the Controller General of Patents, Designs and Trademarks are being revamped.. An enormous amount of modernisation and computerisation is being carried out in the patent

PATENT PROTECTION AND INDIA'S PREPAREDNESS

offices, apart from speeding up the legal process. One cannot have a global norm for patent protection if the systems are not global. The government has now begun a programme for modernisation of patent offices with the use of the Patent Information System (PIS), based in Nagpur.

The modernisation and computerisation issue is also linked to the question of patent fees. Indian patent fees are among the lowest in the world. It costs Rs. 300 to file a patent application, Rs. 200 for sealing the patent, Rs. 150 for obtaining a certified copy and Rs. 100 as an annual fee for maintaining the patent. If the patent is maintained for fifteen years, this is a total of Rs. 2150, approximately 60 US dollars. Comparable figures are around 4000 dollars for the European Union, 3000 dollars for the United States, 2000-2500 dollars for Japan and South Korea and 1000 dollars for China, for filing the patent application alone.

There is growing realisation that there are many grey areas in intellectual property rights. It is thus also clear that there will be large numbers of cross-border litigation involving intellectual property rights. The turmeric case, which ended in a ruling in India's favour, is only one example of this. Apart from the question of costs, such litigation cannot be handled without systemic improvements. One should therefore welcome the move to undertake such improvements. There is also a great inclination towards developing a patent culture in both private and public research institutions. Indigenous knowledge is being captured in databases and all this goes a long way in preparing a new patent friendly mindset in the Science and Technology community in India.

There is a great inclination towards developing a patent culture in both private and public research institutions. This will go a long way in preparing a new patent friendly mindset in the science and technology community in India

AUGUST 2005

The India Brand Equity Foundation is a public - private partnership between the Ministry of Commerce, Government of India and the Confederation of Indian Industry. The Foundation's primary objective is to build positive economic perceptions of India globally.

India **B**rand **E**quity **F**oundation
c/o Confederation of Indian Industry
249-F Sector 18
Udyog Vihar Phase IV
Gurgaon 122015 Haryana
INDIA

Tel +91 124 501 4087 Fax +91 124 501 3873
E-mail india-now@ibef.org
Web www.ibef.org