



Confederation of Indian Industry

TOWARDS GLOBAL COLLABORATION: WHAT IP INFRASTRUCTURE SHOULD BE DEVELOPED?

(Perspectives of Indian IP Owners)

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Executive Summary

The Global Community is working towards a conducive & facilitative environment to address the needs of IP users – the focus is to facilitate a Faster, accessible & affordable systems for Protection of IPRs. The debates in the International arena on Harmonization of legal Practices have encountered several Challenges. There are host of important issues which needs to be addressed before we are fully prepared to launch this important mission. *(Maybe we had placed the Cart before the Horse!)*

A Collaborative environment for developing IP Infrastructure should begin with few basic requirements :Charter a Common Development Agenda for IP Systems across the World, Effective Collaboration between IP Authorities & Users, Developing Patent Prosecution Highways, Training & Human Resource Development, Use of Information Technology, International Linkages & Best Practices & Successful Public Private Partnership Models for enhancing the efficiency of the existing IP Systems.

The Perspective of Indian IP Owners has been to advocate effective and affordable IP ownership rights, Help creating an “Eco System” fostering innovation, facilitate Public Private Partnerships in Capacity Building Initiatives for Harnessing IP for Socio economic prosperity of the nation. The Indian Industry is fast adapting its IP management Practices to leverage Intellectual Property to Compete in the World Market This is a continuous challenge and it needs significant investment in Infrastructure, Training & Resource Mobilization for IP.

The Challenge ahead for IP Authorities is to address several bottlenecks in grant of IP Rights: Delay in examination & Backlogs, Non Uniformity in Patent Examinations, Lack of Sufficient Examiners. This is also coupled with local Socio economic & Political & Business issues like affordability of Public goods, Monopolistic Prices, Domestic Industry Preparedness, and Anti Competitive Practices.

A Successful Public Private Partnership Model will help to create an effective linkage in bridging the gap between the IP Users & IP Authorities. The Role of private sector should be complimenting the efforts of Public authorities in terms of networking of World class expertise, expertise sharing & Infrastructure upgradation.

As Albert Einstein Quotes "Problems cannot be solved by the same level of thinking that created them". The above issues are more deep-rooted & need local consensus & strong leadership to address these concerns before we actually embark on the campaign to bring in a collaborative environment in IP Systems. The question is therefore is what is common platform on which the foundation for collaboration could be build for a sustainable Partnership in the International community?

1.0 Indian IP Owners perspective on issues confronting Business

1.1 Indicators of Internationalization of Indian IP Activity¹

- India is ranked 19 in terms of number of PCT International Applications (IA) filed in 2008

2008 Rank of IA Filings	Conversion Rate from Resident filings to IA filings	Conversion rate from IA filings to NPE ²	Share of NPE among Total Non resident filings	Share of NPE among World Wide NPEs
19	0.19	1.94	52.36 %	0.35 %

- It ranks third among Developing Countries where the applicants filed most PCT international applications in 2008

2004	2005	2006	2007	2008
724	679	831	901	753

- In 2008 - 4071 Indian Inventors of Indian Nationality were named in PCT International applications among a total of 47,339 Foreign Inventors.
- As cited by V.K Gupta, the number of countries in which Indian assignees have sought protection for their inventions through patents rose from 29 countries in 1990-1994 to 52 countries in 2000-2004 – a growth of 79% and 49 countries just in three year period 2005-2007.

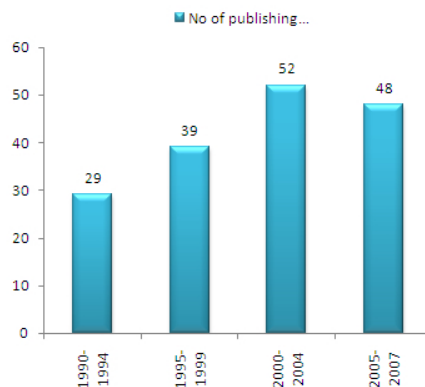


Fig 1: Expanding patent base across countries³

¹ WIPO International Patent System Yearly review – Developments & Performance in 2008

² National Phase entries

³ India, Science and Technology: 2008, S&T Output and Patents, Indian patent output 1990-2007, [V. K. Gupta](#)

- As per Evaluate Serve Report - 'The Top Indian Private Sector Patent applications (January 2005 -07) has been ⁴

Company	Published Inventions		Patent applications	
	IPO	US	PCT	EPO
Ranbaxy Labs	320	108	458	194
Dr.Reddy'	315	27	113	39
Orchid Chemicals & Pharmaceuticals	149	17	47	11
Cadilla Health Care	148	17	67	23
Cipla ltd	138	27	67	39
Laresen & Toubro	123	2	2	0
Sun Pharma	121	18	81	12
TVS Motors	121	0	0	0
Tata Steel	119	1	10	3
Aurobindo Pharma	84	3	52	2
Tata Motors	66	0	0	0
Torrent Pharma	54	4	20	9
Lakshmi Machine Works	52	0	0	1
Matrix Labs	43	3	47	10

1.2 Commercialization of Public funded research Institutions

- The Interesting Statistical Analysis of number of Scientific Publications made by Indian Scientist (*as per R & D Statistics by DST for 2007 -08*) for 5 year period between 2001 -05 - There is Increase from 60,000 Scientific Publications to about 90,000& Corresponding Patent applications being filed during the same Period at the Indian IP Office is a small fraction. A Visible Change in India in the Present IP Regime especially among Scientific Institutions is that there is a Shift from Publish to Patent. The CSIR pioneered Indian patenting activity during 1990-2007 and is the leading patent assignee with more than four thousand patents to its credit. Most other government S&T departments and institutions increased their patenting activity particularly after 2000. These include DRDO, DBT, DST National Institute of Immunology, Sree Chitra Tirunal Institute for Medical Science & Technology, Jawaharlal Nehru Centre for Advanced Scientific Research, Centre for DNA Fingerprinting and Diagnostics, and the Department of Atomic Energy.
- The emerging role of Scientist & Research Institutions in “Incentivising Innovations” is exemplified in the Efforts by Govt. of India to Introduce the Protection & Utilization of Public funded Intellectual Property Bill 2008.⁵

⁴ Evaluate serve white Paper – Patenting Trends in India

⁵ The Bill was introduced in the Rajya Sabha on December 15, 2008. The Bill has been referred to the Parliamentary Standing Committee on Science & Technology, Environment & Forests (Chairperson: Dr V. Maitreyan), which is scheduled to submit its report by the constitution of the 15th Lok Sabha

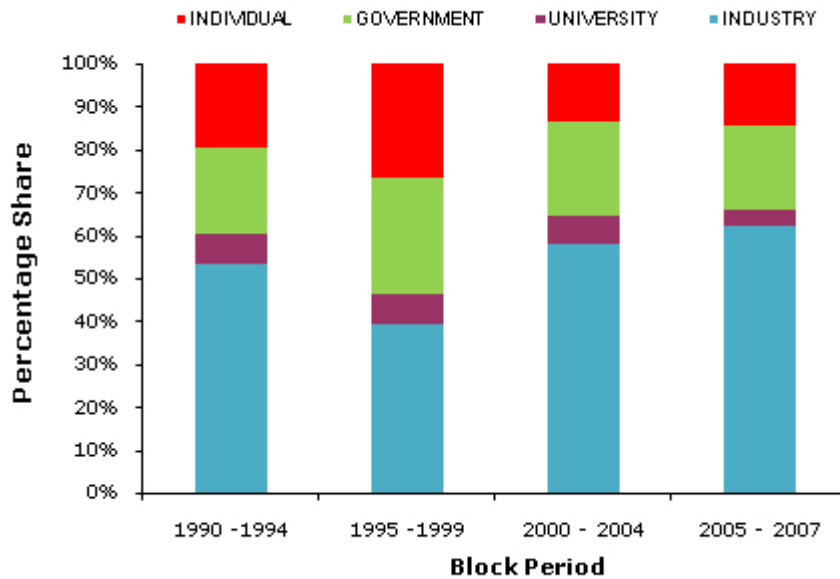


Figure 2: Analysis of Indian Patent Output

- Analyzing the Report submitted by VK Gupta, during 1990-2007, Indian patent output was 26,250 patents wherein the patentees from industry sector contributed 57% of the total patents, from university sector 5% and from the government sector 21% of the total patents. Individual inventors contributed 17% of the total patents during this period.
- The analysis indicates that the patenting activity of the government research institutes has broadly remained in the range of 20% - 30% of the total Indian patents. Of the total patents obtained by the patentees from the industry sector (57% of the total patents), domestic Indian firms owned about 70% patents and Indian affiliates of foreign companies about 10% patents. Foreign firms jointly owned the remaining 20% of the patents, which were either with the Indian companies or with their affiliates in the country. The share of domestic Indian firms decreased from about 74% during 1990-1999 to about 57% during 2000-2007 while the share of foreign affiliates in India during the two periods, remained same as around 20%. In contrast, the share of joint patents between foreign companies and domestic Indian companies or foreign affiliates showed an increase from just 3% patents during 1990-1999, to about 23% of the total patents during 2000-2007. The foreign firms have played a positive role in the growth of Indian patenting activity wherein their joint patents with domestic Indian firms as well as with their affiliates have increased significantly.
- Of the total patents obtained by Indian assignees during 1990-2007, about 15% patents were jointly owned by performers in industry, university or government sectors. The foreign firms were joint owners of patents largely with their own affiliates (88% patents) in comparison to the Indian companies (11% patents). Indian firms jointly owned just about 1% of these joint patents between themselves. The

domestic industry had joint ownership of patents with Indian universities (42 patents) and with government institutions (77 patents) during 2000-2007, which is a rise from 12 patents with universities and 4 patents with government institutions, respectively, during 1990-1999. Similarly, the joint ownership of patents between government institutions shows an increase (82 patents) during 2000-2007 over 4 patents during 1990-1999. The joint ownership of patents between Indian universities was almost negligible

1.3 Indian IP Regime – A SWOT Analysis

<p><u>Strength</u></p> <ul style="list-style-type: none"> • IP Regime : Forward Looking for Collaboration • Potential to tap Scientific & Technology Professionals 	<p><u>Weakness</u></p> <ul style="list-style-type: none"> • Transparency in Patent Prosecution • Indian Corporation < 10 % IP filings • Individual Inventors/ MSMEs : Incentive to file • Cross Verification Systems • Pre grant system : Unforeseen Cost
<p><u>Opportunity</u></p> <ul style="list-style-type: none"> • Outsourcing hub : R & D/ Design/ Knowledge Industry • Potential for Cross Over :Emerging Breed of Scientific & Legal Professionals • Expanding Base of IP Expertise 	<p><u>Threat</u></p> <ul style="list-style-type: none"> • Counterfeiting & Piracy

- **Analysis of Patent Outlook**
- Growth Trends : 90 % Foreign Corporations
- Need Incentives for Domestic Companies to file more Patent Application

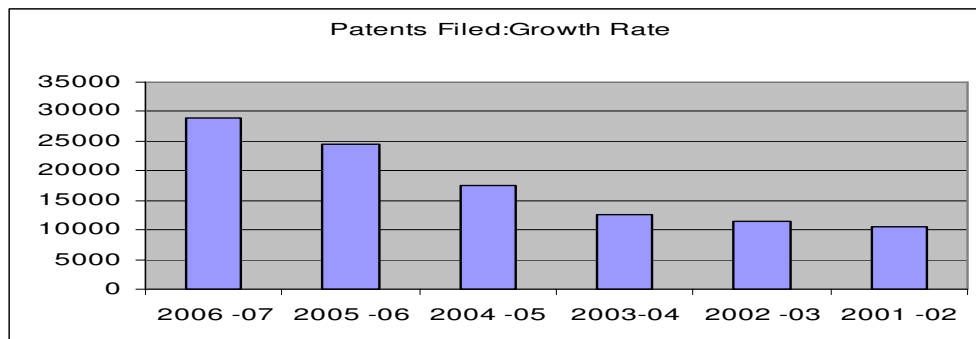


Figure 3: Patents filed: Growth Rate

1.4 MSMEs & IPRs:

- MSMEs need to correlate the IP to business growth. There is a huge gap to understand this important correlation. Successful Case of MSME' who have leveraged IP to business advantage is need of the hour. Mapping of IP within the Organization with special emphasis on all forms of IP (*not just Patents*) like Trademarks, Trade Secrets & Copyrights. There is also a lack of Institutional mechanisms at local level to handhold MSME Companies. There are very few IP Cells which are focused towards facilitation of IP Protection Services for the benefit of MSMEs like CII APTDC has an IP Cell at Hyderabad and CII proposes to establish similar cells with the support of local Govt.

2.0 How the international community (IP Offices and users of IP system) could collaborate in enhancing the efficiency of IP system:

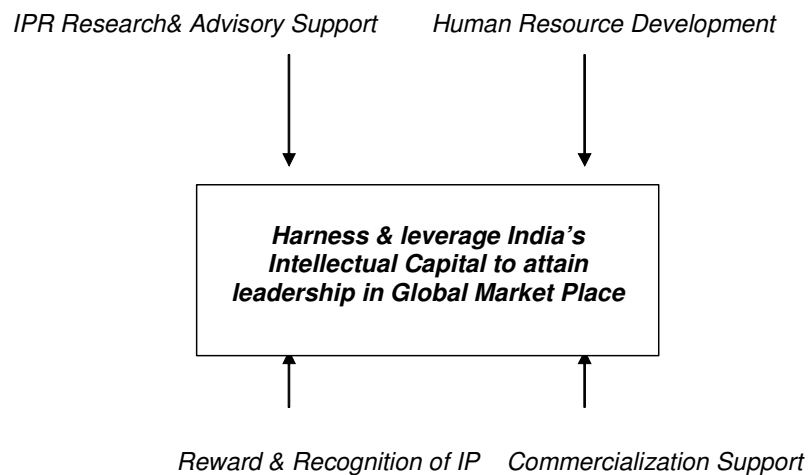
- ❖ The Efficiency of the IP System is to be directed towards the needs of the IP users. In today' Globalization Context, the IP users emanate from different parts of the world not specific to any particular nation, sector, Industry. Therefore, the best practices are to be captured which address the needs of a Global Inventor/ IP Rights Seeker.
- ❖ In this context, there has to be an effective platform to voice the concerns of IP users to the authorities & help them in building a stronger & effective user driven IP system.
- ❖ Modern networking of IP Offices and desired regional framework for international collaboration :
 - ❖ Use of Information Technology/ Digitization/ Online facility will be one of the important tools. India has taken a lead by Introducing online filing of applications, digitization of records & online access of Journals.
 - ❖ A Constant effort to upgrade the systems & practices is necessary. Sharing of best practices from around the world would bring the latest developments to the benefits of IP Rights seekers across the world. Therefore networking & sharing of knowledge & resources holds the key. The role of WIPO to LCD/ developing countries is definitely ushering a new hope and direction
- ❖ IP infrastructure for enhancing the global IP protection systems (PCT, Madrid and the Hague systems) :

- ❖ PCT System/ Madrid Protocol/ Hague Systems have created conducive administrative for Global IP right seekers in the filing of Patents/ Trademarks & Designs.
- ❖ PCT system has been widely used by Indian Corporations for filing of IP Rights in multiple countries. The Accession to Madrid Protocol is yet to receive the final nod from the Govt of India. It will be worthwhile to analyze how much India will actually benefit from these accessions & what are the possible- An India specific analysis is essential
- ❖ Future collaboration and services for cost-effective and expeditious procedures of IP Offices in granting and registering high quality IP rights for instance, international collaboration among IP authorities and users of the system, taking advantage of recently developed web tools is the need of hour.

3.0 Role of Public Private Partnership :

- A Successful Public Private Partnership Model will help to create an effective linkage in bridging the gap between the IP Users & IP Authorities. The Role of private sector should be complimenting the efforts of Public authorities in terms of networking of World class expertise, expertise sharing & Infrastructure upgradation.
- IP system much more updated for catching up with the reality in business which became more global and dynamic than what the current international legal system could cater
- CIP role

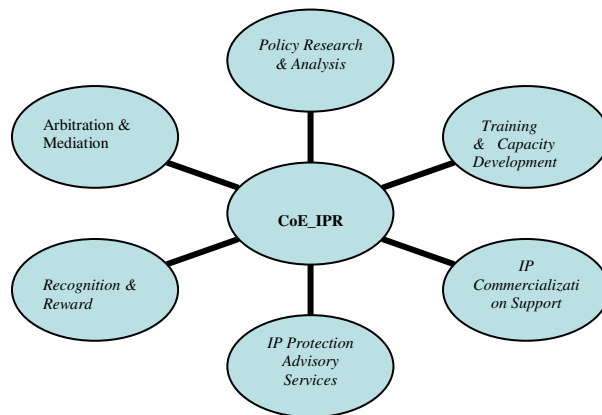
Public Private Partnerships in Capacity Building Initiatives - Harnessing IP & Leveraging IP for Competitiveness



- The CII National Committee of IP Owners met for the first time on **16 August 2007** in New Delhi at the CII Headquarters. It was formerly a Task Force on IPR. This Committee has been constituted with support of Captains of Indian IPR Initiatives from more than 50 top Class Industry, Law Firms, International agencies, academic Institutes and Policy making bodies. The Objectives have been to advocate effective and **affordable IP ownership rights** and help creating an “**Eco System**” fostering innovation in the country
- **Capacity building** is going to be one of the major issues in Coming years. In addition to capacity building the Committee should also focus on the infrastructure issues. Institutionalisation of IPR is the step in this direction. CII will focus on building **International Linkages** for the Initiatives outlined. This is in view to facilitate International best practices & Cooperation in the field of IPR.

Govt. Departments	Private Organizations
<ul style="list-style-type: none"> • Ministry of Industry & Commerce • Ministry of Human Resource Development • Ministry of Micros Small & Medium Enterprises • Ministry of Textiles/ Ministry of ICT • Ministry of Food/ Agriculture • World Intellectual Property Organization • European Patent Office • JPO/KIPO/ USPTO 	<ul style="list-style-type: none"> • National Committee of IP Owners of Confederation of Indian Industry • NASSCOM/ OPPI/ IDMA/ABLE • Quality Brand Protection, China • US Chambers of Commerce • US India Business Council • The George Washington Law University • International Trademark Association • Business Software Alliance

- Analyzing the above requirement CII National committee of IP Owners proposes a COE Model which will facilitate mechanisms to address the Infrastructure gaps and pave way for strengthen International linkages.



- IP Creation & Protection :Analysis of Patent Outlook in India

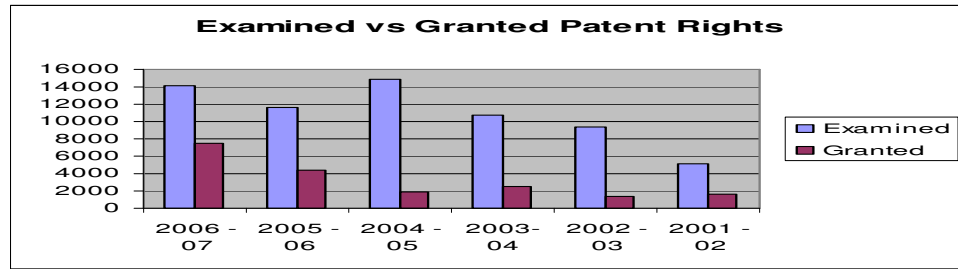


Figure 4: Patent Examined vs. Granted Patent Rights in India Source: IPO Annual Report

- Grant of Patent Rights in 07 -08 double than the Previous Year
- Examiners/ Patent Grant : Needs a fillip
- Focus on Quality vs. Quantity
- Effective Collaboration between IP Authorities & Users: A User Interface & feedback on the effectiveness of the IP System is Vital to facilitate the IP Authorities to fine tune the systems to address the needs of IP Users.
- Developing Patent Prosecution Highways: One of the effective tools is to adopt the sharing of Prior Art/ Examination Procedures/ Reports to enable save time/ cost & money in the grant of IP Rights.
- Training & Human Resource Development: Especially in the Context of Developing Countries, it is essential that there is a continuous human resource development of Patent examiners/ authorities/ prior art search specialists so that we have professional & trained human resources to address the growing needs of IP users across the world.
- Use of Information Technologies: This tool has come in very handy. In the context of India, we have seen that e-filing Procedures/ Online Guidance/ Online access of Journals & file access have brought in a lot of transparency in the IP Prosecution system.
- The need of the hour is to develop new common tools and instruments for regional cooperation; a database for sharing patent search and examination results, a database for facilitating IP rights licensing & to promote commercial exploitation of IP Assets.

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