

Current trends of intellectual property law in India

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Abstract— The twenty-first century will be the century of knowledge, indeed the century of the intellect. A nation's ability to translate knowledge into wealth and social good through innovations will determine its future. Thus innovations hold the key to the creation as well as processing of knowledge. Intellectual property can be characterized as the property in ideas or their expression. It is a creation of the mind, which protects the rights of individuals and businesses who have transformed their ideas into property by granting rights to the owners of those properties. Intellectual property can be classified into the following four categories: patents for inventions, copyrights for literary works, trademarks, and trade secrets. In the paper the researcher will be dealing with the following issues as the development of intellectual property in India has always engendered heated debate and keen interest around the world. In recent years India has made robust progress not only in implementing its obligations under the WTO Agreement on TRIPs Rights, but also in developing its own IP regime which endeavors to balance the trade-off between monopoly rights and free access to knowledge. Although no new IP laws have been enacted over the last year, it would be wrong to say that there have been no parliamentary developments with respect to intellectual property.

United States Trade Representative's Special 301 Watch List in 2010? ; What further legislation is necessary to bring India's IP regime up to international standards and recent efforts have been made to improve enforcement of IP legislation in India? Fair, strong and non discriminatory IPR enforcement only create economic incentives that encourage innovation thus it's necessary to bring India's IP regime high up to international standards and the paper gives certain recommendations like awareness among right holders, policy dealing machinery etc.

Keywords- India's IP regime, Development, Legislation

I. INTRODUCTION

Intellectual property is the key to India's expanding knowledge economy. Having grown in leaps and bounds, the Indian IP industry is fast reaching new heights. With the advent of the new knowledge economy, the old and some of the existing management constructs and approaches would have to change. From striking a balance between IP rights protection and public policy to promoting IP rights education, Alfred Marshall believed that with advancements in technology,

commodities alone would no longer be the primary factor in determining the real value of money: "But if inventions have increased man's power over nature very much, then the real value of money is better measured for some purposes in labour than in commodities." Today, the intrinsic labour value exists in the form of knowledge. The knowledge economy places a tag of urgency on understanding and managing knowledge based assets such as innovations and know-how. Intellectual property rights have become important in the face of changing trade environment which is characterized by the following features namely global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development, production and marketing and need for highly skilled human resources. India is a member of the World Trade Organization's and a signatory to the Trade Related Aspects of Intellectual Property Rights Agreement. In the last few years India has been in the process of modifying its Intellectual Property laws to ensure adequate protection to Intellectual Property owners. Indian legislature has made efforts to implement better IP rights enforcement and protection.

II. IMPORTANT IP DEVELOPMENT IN INDIA IN LAST 12 MONTHS

In recent years the Indian economy has opened up and grown dramatically. As a result, India's prominence in the global economy has increased significantly, sparking huge interest from foreign investors. In almost all industry sectors, multinational companies are now doing business in India.

The development of intellectual property in India has always been the heated debate and keen interest around the world. In recent years India has made vigorous progress not only in implementing its obligations under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights , but also in developing its own IP regime and to balance the trade-off between monopoly rights and free access to knowledge.

On **October 15, 2010** Federation of Indian Chambers of Commerce and Industry had launched

Anti Piracy Coordination Cell with the approvals of Government of India. In order to curb piracy the three important pillars i.e. the legislation, enforcement and awareness needs to be properly dealt with. The cell will act as a platform where stakeholders can interact. The four main

segments i.e. the film industry, music industry, publishing and software industry are getting adversely affected by piracy.

The International Searching Authority and International Preliminary Examining Authority is to provide reports on a unique search and examination reports on a variety of inventions for patenting. India has been discussed in the plan to get recognition for Indian Patent and Trademark Office as International Searching Authority and International Preliminary Examining Authority under the Patent Cooperation Treaty Office.

III. INDIA'S LAW EVOLVING TO PROTECT IP DOMESTICALLY

India has adopted a unique set of legislations for IPR in line with prevailing socio economic condition of the country, not only they are exhaustive but they have been interpreted by judiciary in such a way as to balance the rights of the individual as well as public on the other hand. IP laws are not enforced internationally they are for the nation's own interest that is the fundamental principles in Berne and TRIPS and thus government has the freedom to choose their IP regime. The Government of India has taken **several measures to streamline and strengthen the intellectual property administration system** in the country These remedies include civil, criminal and provisional remedies. when a party proposed to take a civil action against any infringer, it has to file a Suit for infringement or passing off in a High Court or a District Court. Upon a successful suit for patent infringement, the court will order an injunction restraining the infringer from working the patented invention for the entire term of the patent. In addition, the court will either order the infringer to pay damages for infringing the patent or give account of the profits. The holder of an exclusive license is also entitled to damages or account of profit. Further, the court has the power to seize, confiscate and destroy the infringing goods without payment of any compensation. If the infringer can show that the infringement was innocent, the court will not order the payment of either damages or account of profits. The remedies of injunction and damages/account of profits are also available for trade mark and copyright violation. In addition to these civil remedies, the court has in the case of Time Incorporated v. Lokesh Srivastava, awarded punitive damages for infringement of „Time“ trade mark. The courts are not averse to considering foreign jurisprudence in arriving at a conclusion and in this case, American jurisprudence regarding punitive damages was applied. In another case, the court allowed Whirlpool Corporation to recover damages against a trade mark owner who had wrongfully registered the „Whirlpool“ mark in India.²¹ A similar decision was reached in a case involving Allegan Incorporation where the court recognized that in case of passing off of an unregistered trade mark, worldwide reputation of the product/mark was an important factor. The court has also decided that the premises of an alleged infringer may be searched if the claimant can show the court that abstention from such a search may result in the destruction of the infringing goods. This court can pass such an order even in an ex parte proceeding. Thus, the Indian courts have donned

the mantle of protecting IP rights in India. The willful disobedience of any judgment of the Court amounts to contempt of court and it attracts penal consequences under the Contempt of Court Act, 1971.

IV. CRIMINAL ACTION

In so far as criminal actions are concerned, in case the counterfeiting goods are available on a large scale in the market, and a Mark, or a copyright is infringed at different places, generally the clients is advised to file a Criminal Complaint before the Court of Metropolitan Magistrate and obtain Search & Seizure Orders against Unknown persons/firms etc..

Further, provisional measures, such as injunctions and 'Anton Piller' orders, are available through the Indian courts to stop infringement and to contain any damages.

Civil proceedings against piracy have been quite effective - a result unique in the global enforcement against copyright piracy. In keeping with international practice and in order to harmonies IP legislation with the Customs Act 1962, on May 8 2007 the Ministry of Finance and the Department of Revenue implemented the IP Rights (Imported Goods) Enforcement Rules 2007. The new rules give the Customs Authority the power to adjudicate on issues involving the import or export of infringing products. Under Rule 3, if a rights holder learns of the import of goods that infringe its IP rights, it may notify a customs officer at the port of entry of the infringing goods, requesting the detainment or clearance of the infringing goods. Once such a request has been made, Customs will notify the rights holder of the rejection or acceptance of that request within 30 working days of receipt, during which time Customs will provide assistance to the rights holder. The new rules provide that if a rights holder alleges that certain goods infringe its IP rights, it must execute a bond with Customs to cover any charges incurred for the destruction, demurrage and/or detention of the infringing goods if it is later found that the goods are non-infringing. In addition, Customs has the power to suspend the customs clearance of the goods if it has *prima facie* evidence or reason to believe that the imported goods are infringing IP rights. Sunglasses Company Ray Ban filed the first notice under the new rules in order to prevent the import of counterfeit sunglasses into India. The significant powers awarded to Customs allow it to tackle the counterfeiting and piracy of goods at international level.

V. INDIA ON THE UNITED STATES TRADE REPRESENTATIVE'S SPECIAL 301 WATCH LIST IN 2010

The Special 301 Report is an annual review of global state of Intellectual Property Rights protection and enforcement, conducted by Office of United States Trade Representatives pursuant Section 182 of the Trade Act, 1974. This report reflects the administration's resolve to encourage and maintain effective IPR protection and enforcement worldwide. USTR has created „Watch List“ and „Priority Watch List“ under special 301 provisions.

India remains on the Priority Watch List in 2010. India continues to make gradual progress on efforts to improve its legislative, administrative, and enforcement infrastructure for IPR. India has made incremental improvements on enforcement, and its IP offices continued to pursue promising modernization efforts. Among other steps, the United States is encouraged by in the Indian government's consideration of possible trademark law amendments that would facilitate India's accession to the Madrid Protocol. The United States encourages the continuation of efforts to reduce patent application backlogs and streamline patent opposition proceedings. Piracy and counterfeiting, including the counterfeiting of medicines, remains widespread and India's enforcement regime remains ineffective at addressing this problem. Amendments are needed to bring India's copyright law in line with international standards, including by implementing the provisions of the WIPO Internet Treaties

VI. STEPS TAKEN BY THE GOVERNMENT TO IMPROVE ENFORCEMENT OF IP

To make IP work for countries and business organizations, the governments of respective countries must take strong positive action and impose stringent punishment on the infringers.

Some of the measures that could be taken to protect IP would include the provision of a transparent and enforceable IP rights ownership, irrespective of nationality. The accessibility of national and global IP systems has to be enhanced by ensuring that the costs of applying, maintaining and enforcing IP rights are minimal; by simplifying the procedures; and by harmonizing the IP systems globally and reducing the costs of obtaining IP rights in multi-countries. The government has to patronize and implement effective IP policies with proper financial management and infrastructure of IP institutions. It has to take up the task of educating local communities, business enterprises, and general public on the potential benefits of an efficient IP system. The government should offer assistance to innovators, producers, creators on the use, protection and commercialization of IP. It has to take rigorous steps against counterfeiting and piracy and strengthen the legal framework to ensure effective implementation and enforcement against IP theft.

VII. STEPS TAKEN BY FICCI

Workshop on Border Measures on Enforcement of Intellectual Property Rights for customs officers were held at Kolkata, Chennai and Mumbai.

FICCI-NIAPC has done mass awareness campaigns against Piracy and Counterfeiting through interactive events, PR and advertising campaigns. They have shot two small ad films on Anti – Piracy, (30 Secs & 60 Secs) which were telecast on National Television (Doordarshan) and Channels like Star TV, Fox TV, SONY TV etc, Trying to increase airing frequency and involve more channels.

VIII. CONCLUSION

The Indian IP regime has taken great strides towards the increased protection and enforcement of IP rights. Protection of Intellectual Properties is a very critical element in the offshore business model. India has charted its own IP path over the last 35 years, attempting to foster the growth of a domestic pharmaceutical industry and access to medicine while more recently also addressing the requirements of the international IP regime. Multinational pharmaceutical firms have responded to the Indian movement towards TRIPS compliance by increasing the quantity and quality of FDI in the areas of R&D and manufacturing. The government should give incentives like tax rebates, besides taking steps to protect copyright laws, in order to boost India's animation and gaming industry. The Indian IP regime has come a long way in recent months, IP rights in India has never looked more positive. With the Indian judiciary showing enthusiasm for and commitment to the protection of IP rights, IP owners have become more proactive in enforcing their rights by all means, and are exploring uncharted waters to obtain unique remedies from the courts. Although the benefits of specialised IP courts are still under debate in India. While much still remains to be done regarding the criminal justice system, the Indian civil system for the protection of IP rights is improving daily. Although recent substantive developments have reaped significant rewards for IP owners in India, there are still uncharted waters waiting to be explored in the worldwide IP pool.

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