
Intellectual Property Rights Regime In India:

Government Policies

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India

Presentation Topics

Indian IP Regime

- **Pre- TRIPS : Indian IP laws before 1995**
- **Post-TRIPS: Three phases-**
 - 1. 1995-2005**
Updating IP Legislations
 - 2. 2005-2015**
Strengthening and Modernization of IP Offices
 - 3. 2015- 2017**
 - **National IPR Policy**
 - **Bringing IP Regime to world level.**

IPR in India

Ministry of Commerce & Industry

Department of Industrial Policy and Promotion

IPR Laws administered by Office of CGPDTM

The Patents Act, 1970 (as amended)

The Trade Marks Act, 1999 (as amended)

Controller General of Patents, Designs and Trademarks (CGPDTM)

The Geographical Indications of Goods (Registration & Protection) Act, 1999 (GI)

The Designs Act, 2000

The Copyright Act, 1957 (as amended)

The Semiconductor Integrated Circuits Layout-Design Act, 2000

Patent Offices- Chennai, Delhi, Kolkata & Mumbai

Trademarks Offices- Ahmadabad, Chennai, Delhi, Kolkata & Mumbai

Geographical Indications Registry- Chennai

Rajiv Gandhi National Institute of Intellectual Property Management-Nagpur

Laws administered by other Ministries

Ministry of Environment and Forests

Biological Diversity Act, 2002

Deptt. of Agriculture and Cooperation

Protection of Plant Varieties and Farmers' Rights Act, 2001

Pre- TRIPS: Indian IP Laws

- | | |
|-------------------------------|------------------------------|
| • Patents | Patents Act 1970 |
| • Designs | Patents and Designs Act 1911 |
| • Trade Marks | Trade & Mercantile Act 1940 |
| • Copyright | Copyright Act 1957 |
| • Geographical
Indications | No Indian law |

Patent- Post Independence Developments

- The Government of India constituted a **Patents Enquiry Committee (PEC)** in **1949** under the **Chairmanship of Justice (Dr.) Bakshi Tek Chand**, a retired Judge of **Lahore High Court**, to review the patent law in India.
- Based on the **recommendations** of the Committee's report, the **1911 Act** was **amended** in relation to **working of inventions and compulsory licence/revocation, in 1950** and, further amendments for compulsory licence in relation to patents in food , medicines, insecticides, germicides and fungicides, **in 1952**

Patents Act 1970

- **Justice N. Rajagopala Ayyangar Committee (1957):**

The Government appointed Justice N. Rajagopala Ayyangar Committee in 1957 to examine the question of **revision of the Patent Law** and advise government.

- **Report of the Committee (September, 1959):**

The committee recommended **retention of the patent system**, despite its **shortcomings**, along with **major changes**.

- **The Patents Bill, 1965** was introduced in the Lok Sabha on 21-9-1965, which lapsed.
- **In 1967, Amended Bill** was introduced which was referred to a **Joint Parliamentary Committee** and on the final recommendation of the Committee, the **Patents Act, 1970** was passed.
- **1970 Act repealed and replaced the 1911 Act**, so far as the **patents** law was concerned. However, the 1911 Act continued to be applicable to **Designs**. Most of the provisions of the 1970 Act were brought into force on **20th April, 1972** with the publication of the **Patents Rules, 1972**.

Salient features of Patents Act, 1970

- **No product patents** available for food, drugs and medicines including the product of chemical processes
- **Term** of patent reduced from **16 years to 14 years**
- **Term** of patent for the processes for **drugs/foods maximum 7 years**
- Provision for **non-working** as ground for **compulsory licences, licences of right, and revocation of patents**
- **Government** empowered to use inventions for its **own use**
- Provision for **use of inventions** for the purpose of **Government** or for **research** or instruction to pupils
- Endorsement of '**LICENSE OF RIGHT**' to the patents related to drugs, foods and products of chemical reaction

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- **Codification** of certain **inventions** as non-patentable
 - **Expansion of the grounds for opposition** to the grant of a patent
 - **Exemption from anticipation** in respect of certain categories of **prior publication, prior communication and prior use**
 - **Provisions for secrecy** of inventions relevant for defence purposes
 - Mandatory furnishing of **information** regarding **foreign applications**
 - Prevention of abuse of patent rights by making **restrictive conditions** in licence agreements/contract **as void**
 - Provision for appeal to **High Court** on decisions of Controller
 - Industrial **Designs** was separated from The Act

OBJECT OF THE PATENT LAW- Supreme Court

Hon'ble Supreme Court while deciding the appeal in “***Bishwanath Prasad Radhey Shyam v. H.M. Industries***” in respect of infringement of the patent entitled, "Means for holding utensils for turning purposes” (13 December, 1978) [Ref. A.I.R. 1982 S.C. 1444 at paragraph 17] , has, interalia, stated:

“The object of the patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for the limited period, stimulates new inventions of commercial utility. The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the monopoly passes into public domain.”

This is the most important case in the patent jurisprudence in India, decided by the Apex court as early as in 1978. The principles laid down in the case are followed even today and have been codified in the Indian Patent Act.

Post TRIPS IPR Regime in India

Trade Related Aspects of Intellectual Property Rights (TRIPS) and Doha Declaration

Bedrock of current Indian IP Regime

Effective from 1st January 1995

Most comprehensive multilateral agreement on IP to date

Minimum standards agreement: Members may provide a more extensive protection of IP, if they wish to do so

Members free to determine appropriate methods of implementing within the ambit of their own legal system

Doha Declaration on Public Health to be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all

TRIPS Agreement

-
- Part I: **General Provisions** and Basic Principles
- Part II: **Standards** Concerning the Availability, Scope and Use of Intellectual Property Rights
- Part III: **Enforcement** of Intellectual Property Rights
1. General Obligations
 2. Civil and Administrative Procedures and Remedies
 3. Provisional Measures
 4. Special Requirements Related to Border Measures
 5. Criminal Procedures
- Part IV: **Acquisition and Maintenance** of Intellectual Property Rights and Related *Inter-Partes* Procedures
- Part V: **Dispute Prevention** and Settlement
- Part VI: **Transitional Arrangements**
- Part VII: **Institutional Arrangements**; Final Provisions

Post TRIPS-Evolution of IPR Laws in India

YEAR	PATENT
1999	TRIPS Obligations; Filing of application for Product Patents in areas of drugs, pharma and agro-chemicals allowed as mailbox applications; EMR.
2002	Introduction of 18 months' Publication; Examination of applications by request; Establishment of IPAB; Uniform term of 20 years irrespective of the field of invention.
2005	Product patents introduced in areas of drugs, pharmaceuticals and agrochemicals; Pre/Post- grant Opposition system.
	TRADEMARKS
1999	New Act in view of TRIPS agreement, new developments in trading practices- service, well-known marks registered
2013	Introduced provisions of Madrid Protocol
	DESIGNS
1970	Patents Act was separated from Designs Act
2001	Design Act 2000
	Semiconductor Integrated Circuit Design Layout
2000	Semiconductor Integrated Circuits Layout Design Act was enacted in 2000 to provide protection for semiconductor IC layout designs

COPYRIGHT Law in India

1914	Indian Copyright Act was enacted for the first time in 1914 primarily based on the U.K. Copyright Act, 1911.
1957	After Independence the Comprehensive Copyright Act was enacted in the year 1957 to consolidate the laws related to copyrights in India.
1994	<ul style="list-style-type: none">• To make definition of “Literary work” consistent with definition of “Computers” and “Computer Programmes”.• to harmonize with Rome Convention, 1961 by providing protection to rights of Performers. Producers of Phonograms and Broadcasting organizations.• introduced the concept of Registration of Copyright Societies for Collective Management of the rights.
2012	<ul style="list-style-type: none">▪ The copy Right (amendment) Act 2012 was notified on 8-6-2012▪ To make provisions in conformity with the WIPO Treaty and WIPO Performances and Phonograms Treaty.▪ Defines “Copyright” as Exclusive Right and states that the author of a work is the first owner of copyright.

Salient features of Patents (Amendment) Act, 2002

- **20 years term** of patent for all technology
- Deletion of provision of **licence of right**
- Introduction of system of **Deferred Examination(upto 48 months)**
- **Mandatory publication** after 18 months from the date of filing
- Establishment of **Appellate Board**
- **Burden of proof in case of suits concerning infringement** [S. 104-A]: Burden of Proof is on the defendant provided that patentee first proves that the process that has produced a product so desired, is identical to be patented products .
- Provision for **parallel imports**
- No infringement proceedings for use of a patented invention for obtaining **regulatory approval for a patented product**
- Provision **to protect biodiversity and traditional knowledge**
- **Compliance with Budapest Treaty:** Deposit of **biological material** for completing the disclosure to be made before the date of filling and reference to be given in the application. Access to material available upon publication.

Patents (Amendment) Act 2005

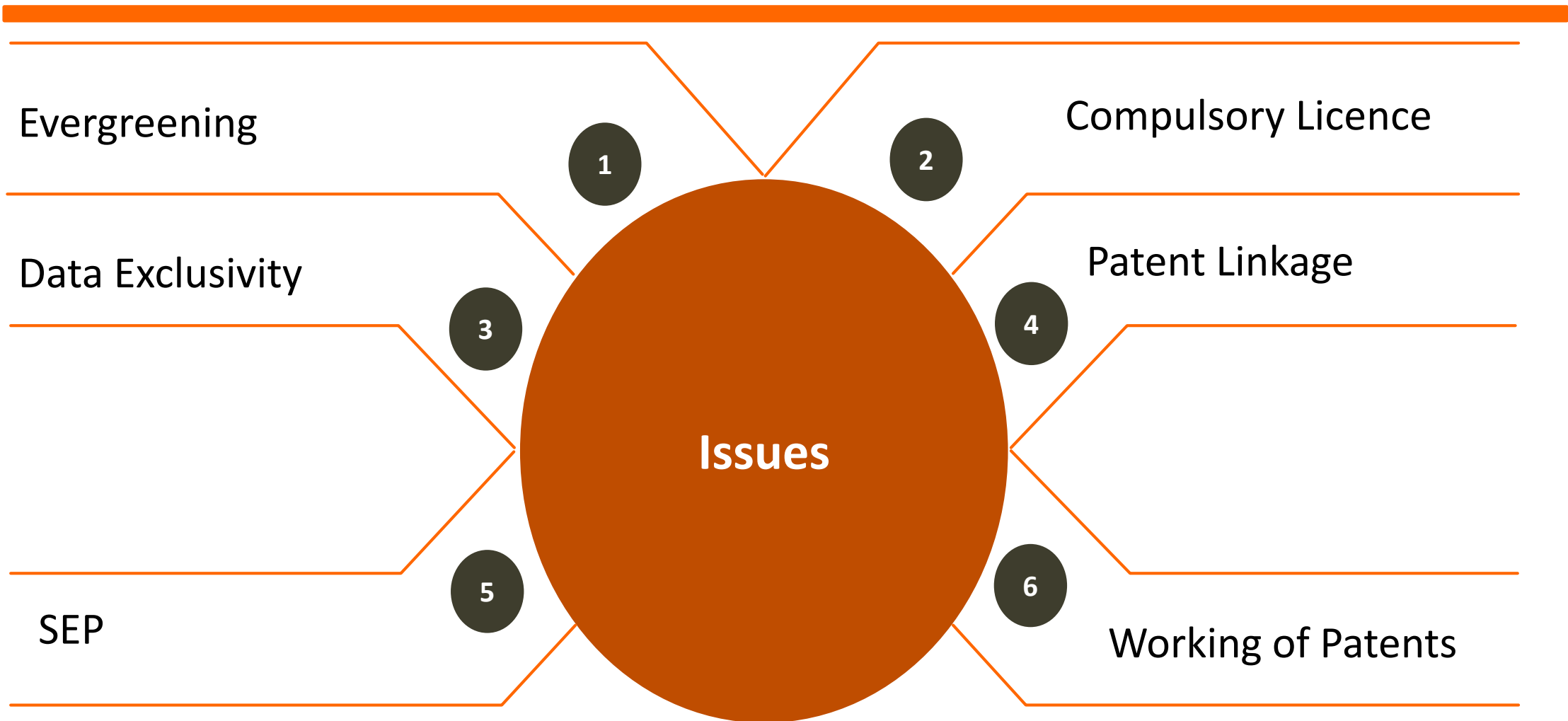
- Extension of **product patents** to all fields of technology including food, drugs, chemicals and micro organisms
- Deletion of the provisions relating to **Exclusive Marketing Rights**
- Introduction of a provision of **compulsory licence for export of medicines** to countries having insufficient or no manufacturing capacity to meet emergent public health situations
- Modification in opposition procedures by having **both pre-grant and post-grant opposition** in the Patent Office
- Strengthening the provisions relating to national security to guard against **patenting abroad** of dual use technologies
- Rationalisation of **provisions relating to time-lines** with a view to introducing flexibility and reducing the processing time for patent application

Public Interest Provisions in Indian Patents Law

- **No ever greening:** No patent for a new use of a known drug or substance: **[Section 3(d)]**
- **Revocation of Patent by the Government in public interest: (Section 66)**
- **Bolar provision:** To facilitate generic version of the patented product at competitive prices immediately on expiry of the patent: **[Section 107-A (a)]**
- **Compulsory licences :** Availability of products at reasonable price ensured: **(Section 84)**
- **Special Provision of Compulsory license** during national emergency, extreme urgency or public non-commercial use : **(Section 92).**
- **Use and acquisition of patents by Government** for public purpose : Compensation by mutual agreement between the Government and patent holder, failing which by the High Court: **(Section 102)**

Key Issues in Patents

Patents - Issues



Evergreening

Section 3(d) of the Patents Act- to prevent 'evergreening' of patents (extension of life of a patent over products that are about to expire on account of minor and incremental improvements in the invention, or a new form of known substance)

Salts, esters, ethers, polymorphs, etc. of known substance are same substance until these differ significantly in properties w.r.t. efficacy

Novartis vs. Union of India- The Apex Court went on to state that efficacy in case of a medicine can only refer to 'Therapeutic Efficacy'

Similar provisions in other jurisdictions— **Philippines, Argentina, Mexico, Japan, European Patent Office**

Compulsory Licenses

Compliant with Article 31 of the TRIPS agreement and Article 15 of the Paris Convention

Section 84 empowers the Controller of Patents to grant a CL

Section 92 provides for CL on notifications by Central Govt

Section 92A provides for export of patented pharmaceutical products

Section 100- Power of the Central Government to use inventions for purposes of Government

Only 1 compulsory license has been granted in India – Nexavar

Compulsory Licenses issued in other jurisdictions, namely: **USA, Germany, Canada, Italy, Indonesia**

Working of a Patent

Section 146 of the Patents Act provides that every patentee and every licensee shall furnish information periodically whether such patented invention has been commercially worked or not

Intent to ensure that inventions patented are commercially worked in India to the fullest extent within a practicable reasonable time

Article 27 (1) of TRIPS states- patents shall be available and patent rights enjoyable without any discrimination as to the place of invention, the field of technology and whether products are imported or locally produced

Details of working to be given on Form 27 in respect of every calendar year within three months of the end of each year

Data Exclusivity

Article 39.3 of the TRIPS relates to the 'data protection' when data pertinent for seeking approval of the authority is shared with the marketing regulator – different from data exclusivity

A TRIPS plus provision

TRIPS - non-disclosures of data by the market regulator

Data Exclusivity - non-reliance by the regulator on this data submitted for according marketing approvals to another applicant

Data exclusivity provisions will impact access to medicines

Patent Linkage

TRIPS-Plus measure; undesirable – will delay introduction of generics

No provision to link patent rights to marketing approvals for product

The Drugs and Cosmetics Act does not require the Drug Controller General of India (DGCI) to see whether a patent exists on a drug for which an application seeking marketing approval has been received, nor is he empowered to do so

Patent rights are private rights - enforcement by interested parties through civil courts

A private right cannot be enforced suo-moto by a public authority

Standard Essential Patents (SEP)

A patent is essential to a standard, if use of the standard requires infringement of that patent

Relevant standards set out by Standard Setting Organizations (SSOs)

To promote application of the standard and to avoid any anti-competition concerns, such licenses must be made available under Fair, Reasonable and Non-Discriminatory (FRAND) terms

DIPP had issued a Discussion paper as a step towards creating awareness and resolving such issues

Comments were received from 69 domestic and international stakeholders, including the US Government. The said paper is under consideration

Key Questions

How should issue of SEPs be addressed in IPR legislation?

Should royalty be based on Smallest Saleable Patent Practicing Component (SSPPC)?

Appropriate mode and remedy for settlement of disputes in matters related to SEPs, especially while deciding FRAND terms?

Whether Injunctions are a suitable remedy in cases pertaining to SEPs and their availability on FRAND terms?

Steps to make the practice of Cross-Licensing and patent pooling transparent so that royalty rates are fair & reasonable?

STRENGTHENING AND MODERNIZATION SCHEME FOR INTELLECTUAL PROPERTY OFFICES

Modernisation Scheme for Intellectual Property Offices

Objectives

- Infrastructure development and Restructuring of IP Offices for efficient handling of multifaceted activities.
- Computerization and IT-enabled functioning of IP Offices
 - (a) Re-engineering of IP Procedures to reduce backlog and achieve timely disposal
 - (b) Dissemination of IP information to achieve complete transparency
 - (c) Strengthening public delivery of IP services and achieving best standards and practices in IP processing and
 - (d) Updating IPO website for maximizing IP data availability
- Inducting sufficient manpower to handle the ever- increasing workload at IPO.

Major Achievements through Modernisation

1. Infrastructure development
2. Computerisation & IT – enabled Functioning of IP Office
 - a. Re-engineering of IP Procedures
 - b. Dissemination of IP information
 - c. Quality Management, Public Service and Transparency
 - d. Dynamic Utilities
3. Human resources development

- **New Buildings for Intellectual Property Offices:**

State of the art, modern and integrated office buildings constructed at Delhi, Kolkata, Chennai and Mumbai for housing Patents, Designs, Trademarks and Geographical Indications offices

- **ISA/IPEA Building at Delhi:**

Construction of ISA/IPEA Building completed as an extension to IPO building and made fully functional.

- **TMR Complex Ahmedabad:**

A new building for Trade Marks Office and Intellectual Property Office Archives has been constructed at Ahmedabad.

IT Enablement and Automation

- **Digitization** of IP records has been achieved. All **current IP records** are digitized soon after they are received to enable computerized processing of applications.
- **Electronic processing** of Patents and Trademarks applications through specialized modules
- **State of the art ICT infrastructure** including data centre, high-end servers, computers, data storage facility etc. established at all IPOs.
- **System of QR Code(s)** has been introduced. The code is printed on receipts issued by Patents Office and CBR and also on notices and renewal intimation issued by TMR Offices.
- **Patent Databases for Search:** Global patent databases and non-patent literature databases subscribed at all Patent Offices to strengthen patent search facility.
- **Real time status of IP applications** with entire file wrappers provided
- **Computerization and IT-enabled functioning** has resulted in the enhanced speed of patent processing, improved service to stake holders and transparency

Comprehensive E-Filing

- Comprehensive E-filing system is fully compatible for online filing of all 28 forms and entries of the first Schedule of Patents (Amendment) Rules 2014.
- Comprehensive Payment Gateway provides access to 70 banks through net-banking including Debit and credit card facility.
- 10% rebate in fees provided for online filing of patent applications and all further procedures .This has caused increase in online filing from around 30% to around 82%.
- E-filing facility is available for all Trade Mark Forms.
- Facility for online filing is available on 24x7 basis.
- Online filing of GI and Design applications has been introduced recently.

IP Process Re-engineering: Patent & Trademark Rules Amended



PATENT RULES

- Refund of RQ fees, as also withdrawal of application without any fees
- Applications can be transferred electronically from one Patent Office branch to another
- Expedited Examination on certain grounds: startups/ selecting India as ISA/ IPEA

COMMON FEATURES

- Hearing through video conferencing
- Timelines imposed for speedy disposal – No. of adjournments limited
- Special provisions for start-ups

TRADEMARK RULES

- Process for determination of well-known mark laid out
- 74 existing forms replaced by 8 consolidated forms
- Express provision for filing applications for sound marks
- E-filing encouraged through 10% rebate in fees
- Email recognized as Mode of Service
- Expedited processing of an application right up to registration stage

**SIMPLIFIED &
STREAMLINED
PROCESSES**

National IPR Policy and Bringing IP Regime to world level (2015-2017)

National Intellectual Property Rights Policy 2016

7 Objectives

- IPR Awareness: Outreach and Promotion
- Generation of IPRs
- Legal and Legislative Framework
- Administration and Management
- Commercialization of IPR
- Enforcement and Adjudication
- Human Capital Development



Vision document that encompasses all IPRs



To create and exploit synergies between all IPs



Institutional mechanism (dashboard) for implementation, monitoring & review: 170 action points- nodal departments



Incorporating and adapting global best practices



Cell to facilitate the creation and commercialization of IP assets

- Need for an in-depth study on the IPR scenario in the country: Think Tank constituted.
- Prepared draft IPR Policy after stakeholder consultations.
- Based on inputs from various departments, Think Tank and internal discussions, the National Intellectual Property Rights (IPR) Policy approved by Union Cabinet on 12th May, 2016.

National IPR Policy

“Creative India; Innovative India: रचनात्मक भारत; अभिनव भारत

• VISION STATEMENT

An India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

• MISSION STATEMENT

- Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:
- foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

OBJECTIVE 1: IPR Awareness: Outreach and Promotion – To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.

- To launch nation-wide program of promotion for improving awareness about the benefits of IPRs and their value to the rights-holders and the public.
- To build an atmosphere where creativity and innovation are encouraged in public and private sectors, R&D centers, industry and academia, leading to generation of protectable IP that can be commercialized.
- to reach out to the less-visible IP generators and holders, especially in rural and remote areas.

OBJECTIVE 2: Generation of IPRs - To stimulate the generation of IPRs.

- To tap a large talent pool of scientific and technological talent spread over R&D and stimulate the creation of IP assets.
- To conduct a comprehensive base line survey or IP audit across sectors that will enable assessment and evaluation of the potential in specific sectors, and thus formulate and implement targeted programmes.
- To focus on facilitating researchers and innovators regarding areas of national priority.
- To encourage corporate sector to generate and utilize IPRs.
- To take Steps to devise mechanisms so that benefits of the IPR regime reach all inventors, especially MSMEs, start-ups and grass-root innovators.

OBJECTIVE 3: Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.

- To strengthen further the legal framework for protection and promotion of IPRs
- To ensure that India 's rich traditional medicinal knowledge which exists in diverse forms in our country is fully protected from misappropriation.

OBJECTIVE 4: Administration and Management - To modernize and strengthen service-oriented IPR administration.

- To strengthen Intellectual Property Offices (IPOs) and administration of different Intellectual Property Rights including Copyright Act, 1957 and the Semiconductor Integrated Circuits Layout-Design Act, 2000 to set up efficient and balanced IPR system.
- IPOs to make their operations more efficient, streamlined and cost effective, with expanding work load and technological complexity and enhance their user-friendliness by developing and providing value added services to the user community.
- To facilitate more effective and synergetic working between various IP offices, as also promotion, creation and commercialization of IP assets.

OBJECTIVE 5: Commercialization of IPR- Get value for IPRs through commercialization.

- To make efforts to realise the value and economic reward for the owners of IP rights to through their commercialization.
- To encourage the Entrepreneurship so that the financial value of IPRs maybe captured.
- To make efforts for creation of a public platform to connect creators and innovators to potential users, buyers and funding institutions.

OBJECTIVE 6: Enforcement and Adjudication – To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.

- To build respect for IPR among the general public and to sensitize the inventors and creators of IP on measures for protection and enforcement of their rights.
- To build the capacity of the enforcement agencies at various levels, including strengthening of IPR cells in State police forces.
- To identify and undertake measures to check counterfeiting and piracy. To arrange regular IPR workshops / colloquia for judges to facilitate effective adjudication of IPR disputes.
- To adjudicate on IPR disputes through specialised commercial courts and explore Alternative Dispute Resolution mechanism.

-
- ❑ **OBJECTIVE 7: Human Capital Development** - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.
 - To develop a pool of IPR professionals and experts in spheres such as policy and law, strategy development, administration and enforcement.
 - To increase generation of IP assets in the country and their utilization for development purposes and to harness the full potential of IPRs for economic growth with the help of a reservoir of experts.

Cell for IPR Promotion and Management (CIPAM)

- CIPAM - A professional body under the aegis of the Department of Industrial Policy and Promotion (DIPP) which ensures focused action on issues related to IPRs and addresses the objectives of the policy.
- Created in 2016.
- CIPAM assists in simplifying and streamlining of IP processes, apart from undertaking steps for furthering IPR awareness, commercialization and enforcement.
- The National IPR Policy entails 7 objectives to be achieved through 170 Action Points; assigned to various Departments and Ministries along with DIPP. A dashboard has been created by CIPAM where nodal Departments/ Ministries can upload the status report to monitor the progress on a real-time basis.
- CIPAM is working in collaboration with 19 Departments/ Ministries, 21 PICs under DST, 37 IPFCs under MeitY and MSME, along with industry bodies and IP Offices across the country and of other nations.

IPR Awareness and Promotion

- Content Creation -
 - School level: Presentation, posters, pamphlet, games and puzzles, etc. created in collaboration with International Trademark Association (INTA).
 - University and Industry level: Presentations, Brochure, Specific IP Booklets, etc.
 - Translating content in various regional languages for wider reach.
 - Programs Conducted -
 - Conducted 19 awareness roadshows in 18 states for the industry in June-July, 2016.
 - First batch of Training of Trainers in collaboration with TIFAC.
 - Launched IPR awareness campaign in Schools– conducted workshops in 18 schools in NCR.
 - Organized and participated in workshops at various Colleges/ Universities.
- Translation of National IPR Policy in Hindi, Gujarati, Telegu and Bengali done.



PROMOTION

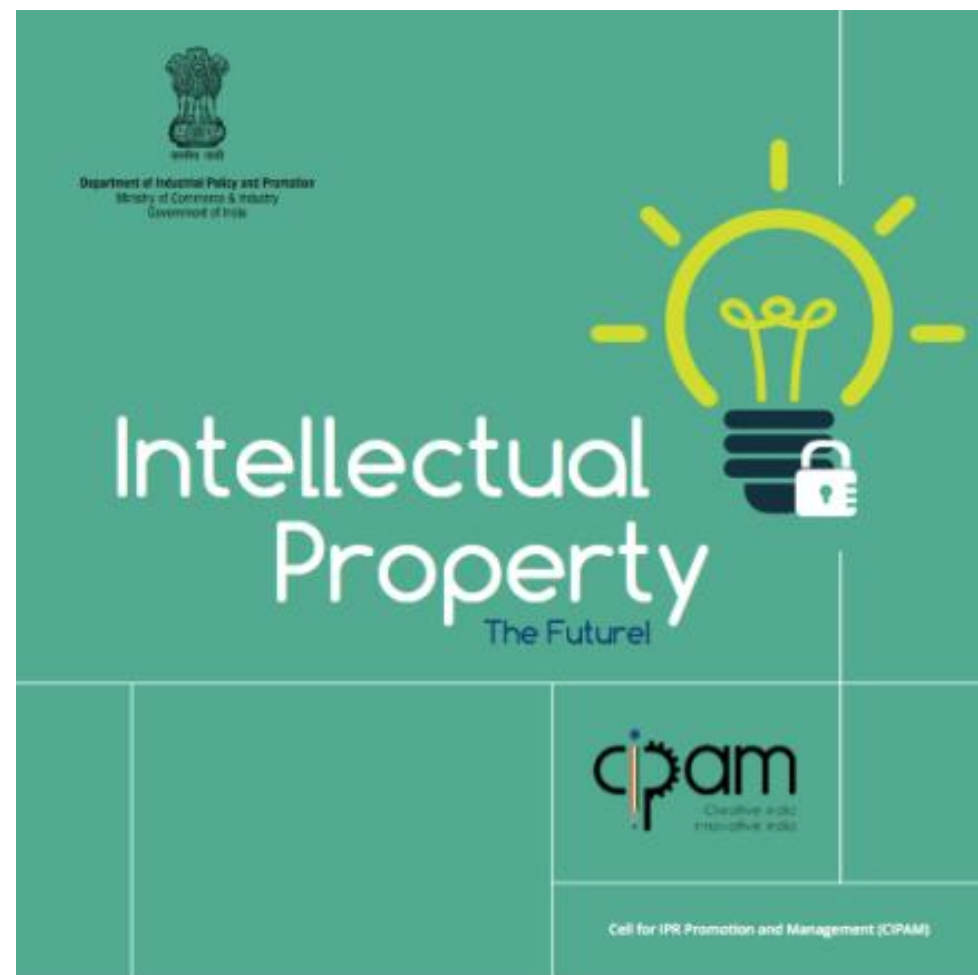
Social Media Campaign **#LetsTalkIP**
launched

Over 200 Twitter Seva queries resolved on IPRs

Live Twitter Chat organized on World IP Day

IPRs in School Curriculum

- Working with NCERT for inclusion of IPRs in school curriculum for classes 11 and 12.
- Content for NCERT's Textbook on Business Studies (Commerce Stream) approved and shared with MHRD.
- Content being prepared for other streams.
- Interesting Anecdotes, Illustrations, Table on Overall Glance at IPRs, Success Stories, Activities, Project Work, Quizzes and Short Assignments included.



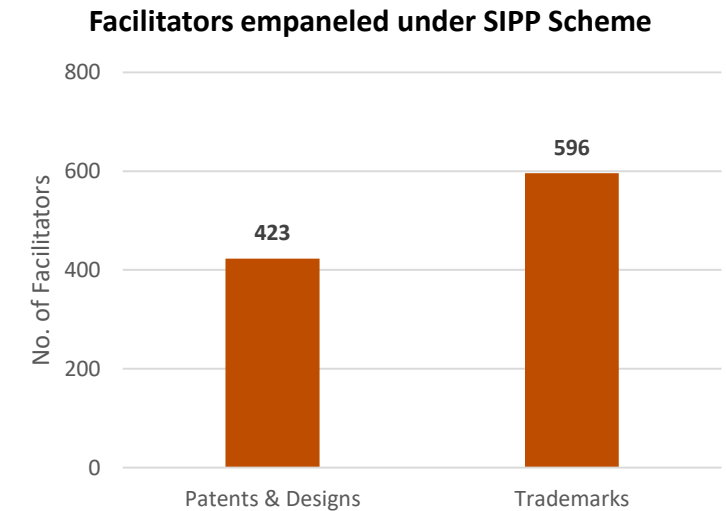
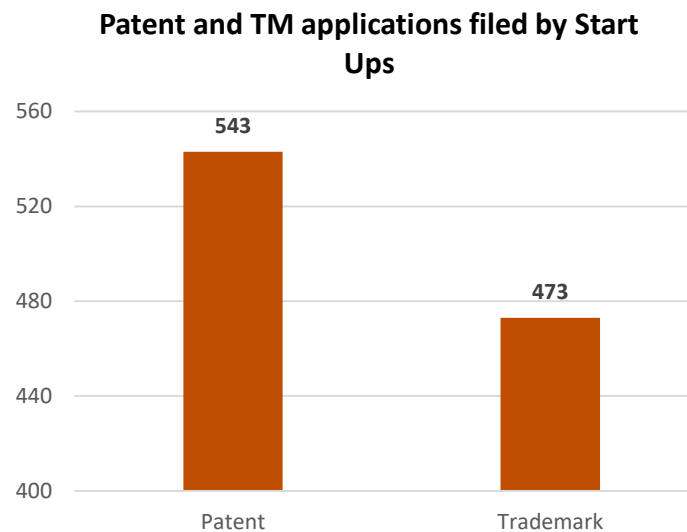
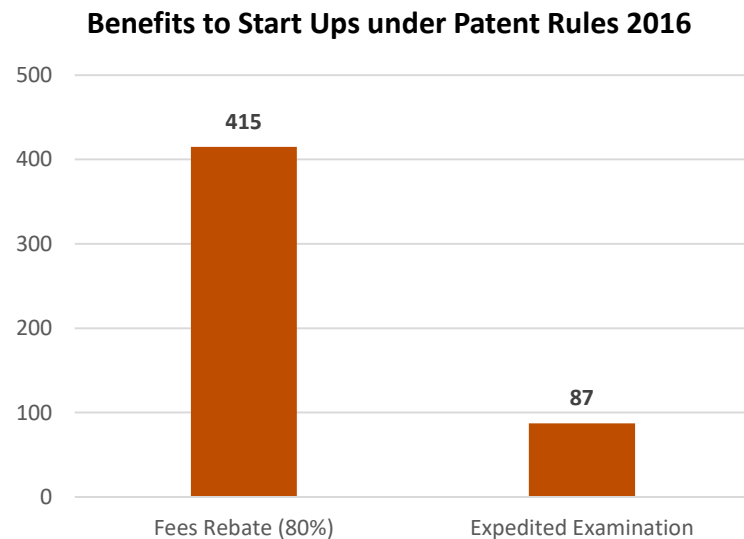
Commercialization

- WIPO & DIPP have signed agreements to setup **Technology and Innovation Support Centers (TISC)** in India.
- CIPAM to be the National Focal Point for the TISC national network: 2 TISCs established at Patent Information Centre, PSCST, Chandigarh and Anna University, Chennai.
- To accelerate commercialization of IPs, CIPAM, MIETY and Industry associations are jointly working to create a platform that brings together IP owners, IP buyers and other stakeholders.
- CIPAM is working closely with Councils of Science & Technology of Gujarat, Punjab, U.P, H.P, J&K & Telangana for promotion & commercialization of IP.
- CIPAM plans to establish IPR cells in universities and academic institutions across different states of India.

IPRs and Startups

- 50% rebate in Trademark fees
- 80% rebate in Patent fees
- Expedited examination of patent applications
- SIPP Scheme being extended for 3 years

Figures as on 31st October 2017



Capacity Building of Enforcement

- Training programs for Police officials organized in **Andhra Pradesh, Uttar Pradesh, West Bengal, Madhya Pradesh, and Telangana**. Police officers trained already using knowledge in field. Trainings in other states scheduled.
- Additionally, Training program also conducted at **North Eastern Police Academy (NEPA) and Sardar Vallabhai Patel National Police Academy**.
- An advisory has been issued by MHA to all Police Departments of states and union territories to include IPRs in their training curriculum.
- IPRs made part of the training calendar in North Eastern Police Academy and National Police Academy, Hyderabad.
- Training of IPR issues for judiciary taken up at National Judicial Academy, Bhopal and State Judicial Training Academies. WIPO has also joined in training of judges.

Police Training



National Workshop on Enforcement of IPRs



Inaugurated by
Hon'ble Home
Min(I/C) for
Commerce &
Industry and
Hon'ble Minister of
State

Police officials
and Public
Prosecutors from
pan India
participated in
the workshop

Will help
Enforcement
agencies
understand their
role in effective
enforcement of
IPRs

IPR Enforcement Toolkit

1

About

A ready reckoner for Police for IPRs enforcement in India.

2

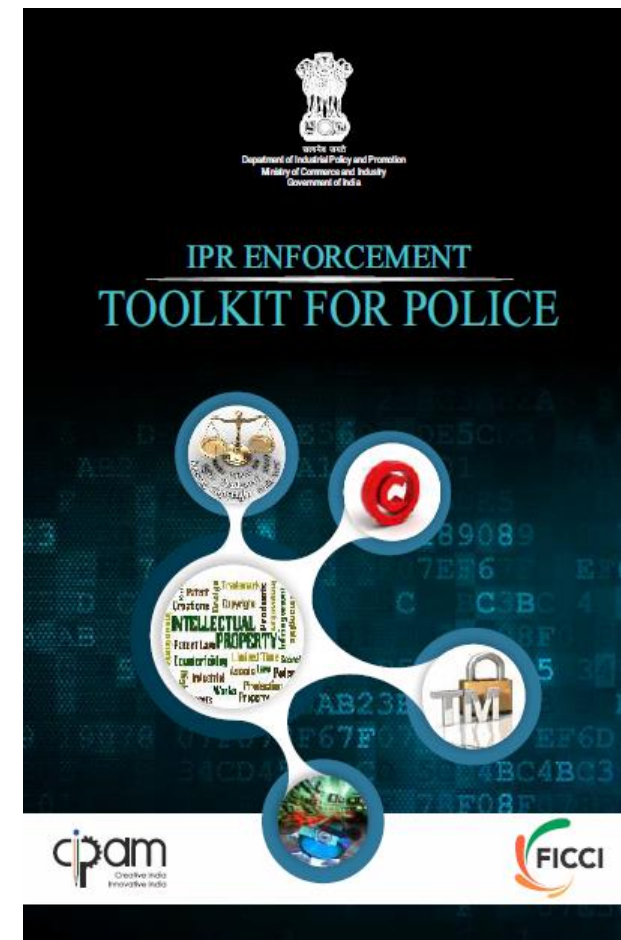
Objective

To aid in dealing with IP Crimes - Trade Mark counterfeiting and Copyright piracy in particular

3

Contents

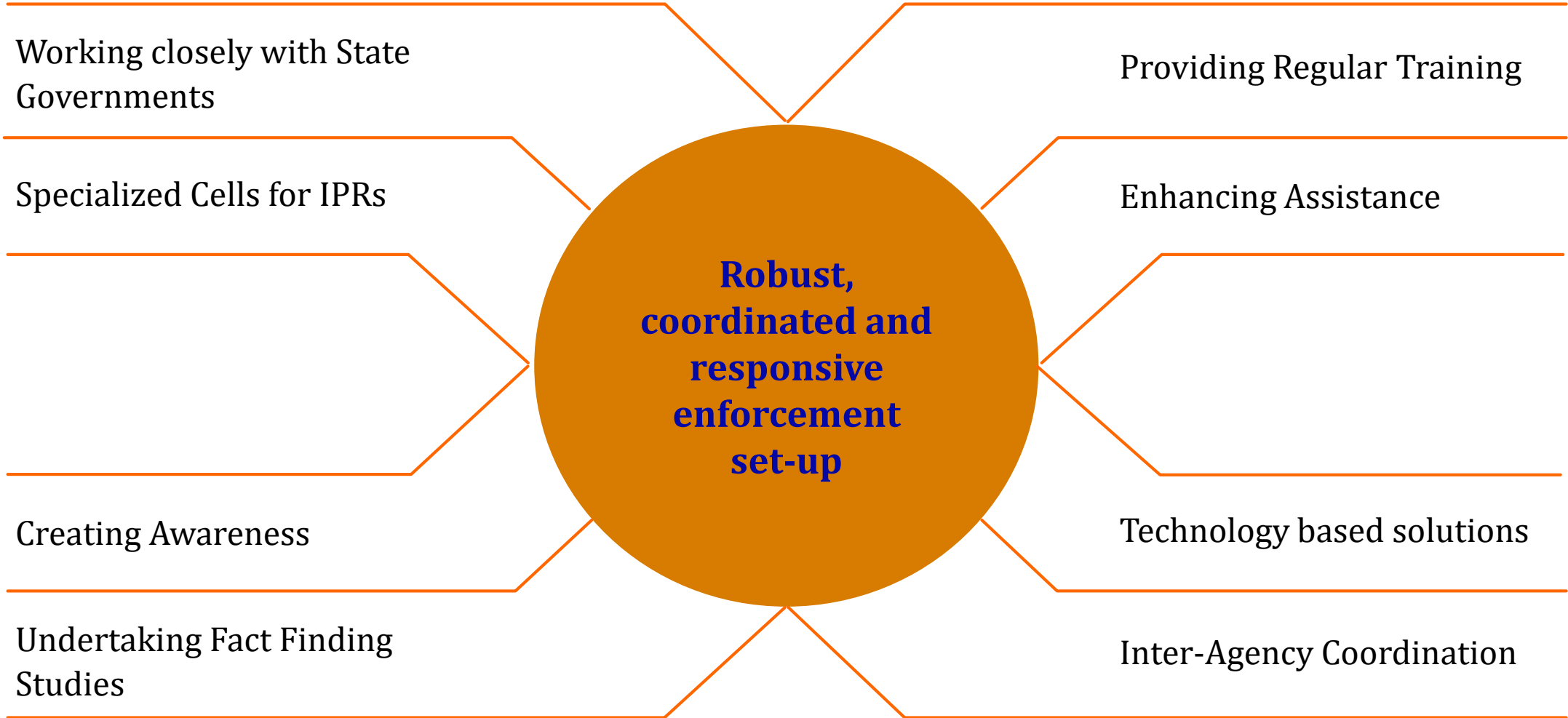
Criminal Offences under Trade Mark and Copyright Acts
General Guidelines for Search And Seizure
Checklist for Registering Complaint
Checklist for Search And Seizure



Civil & Criminal Remedies under IP Legislations

S. No.	Act	Civil Remedy	Criminal Remedy
1	The Copyrights Act, 1957	✓	✓
2	The Trade Marks Act, 1999	✓	✓
3	The Patents Act, 1970	✓	✗
4	The Designs Act, 2000	✓	✗
5	Semiconductor Integrated Circuits Layout Design Act, 2000	✓	✓
6	The Geographical Indications of Goods (Registration & Protection) Act, 1999	✓	✓
7	The Protection of Plant Varieties and Farmer's Rights Act, 2001	✓	✓
8	The Biological Diversity Act, 2002	✓	✓

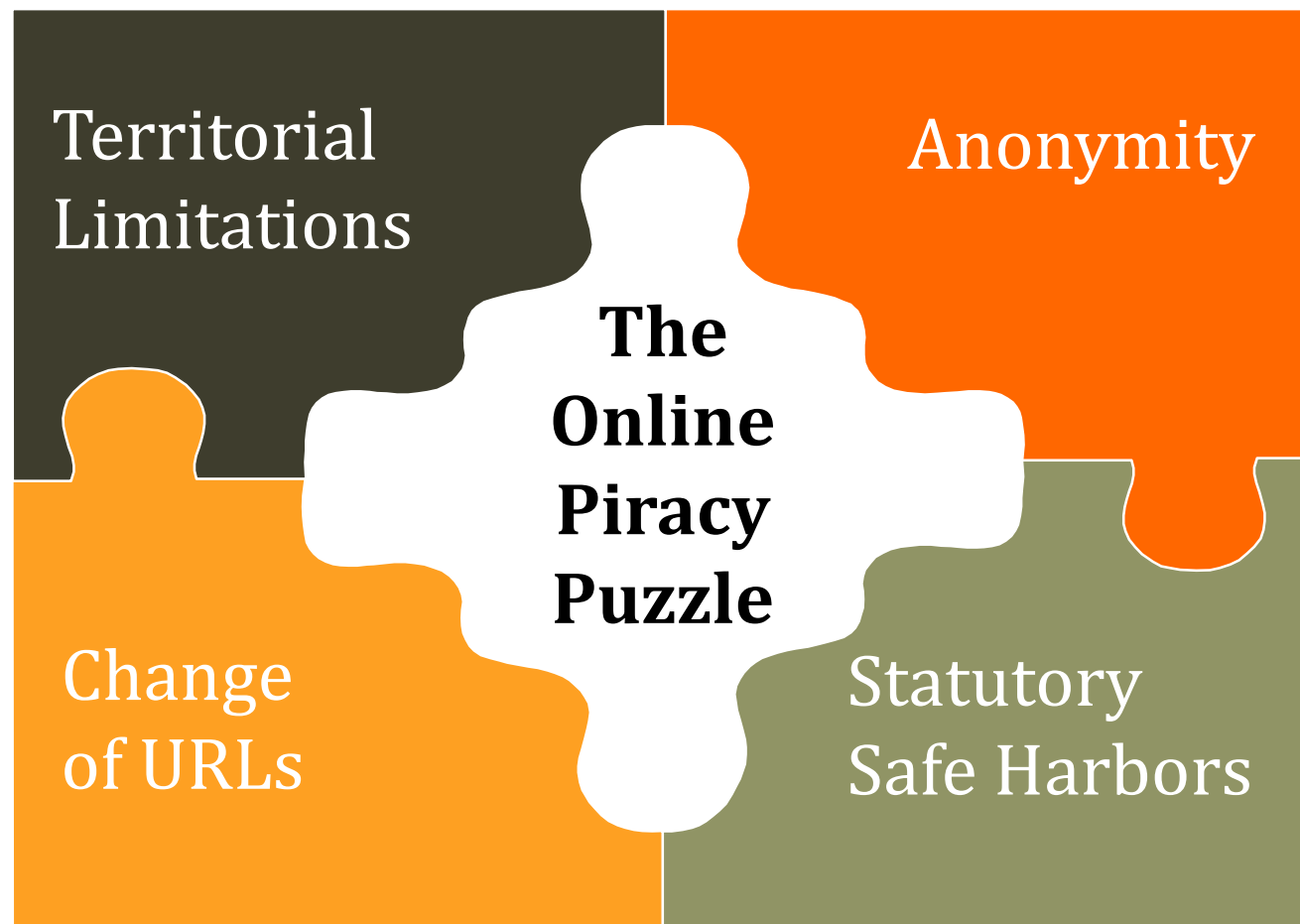
Strengthening Enforcement Mechanism



Online Copyright Piracy: Enforcement Issues

There are a number of intricacies involved in taking enforcement action against online copyright piracy

CIPAM working closely with NIXI to combat piracy on .IN domain

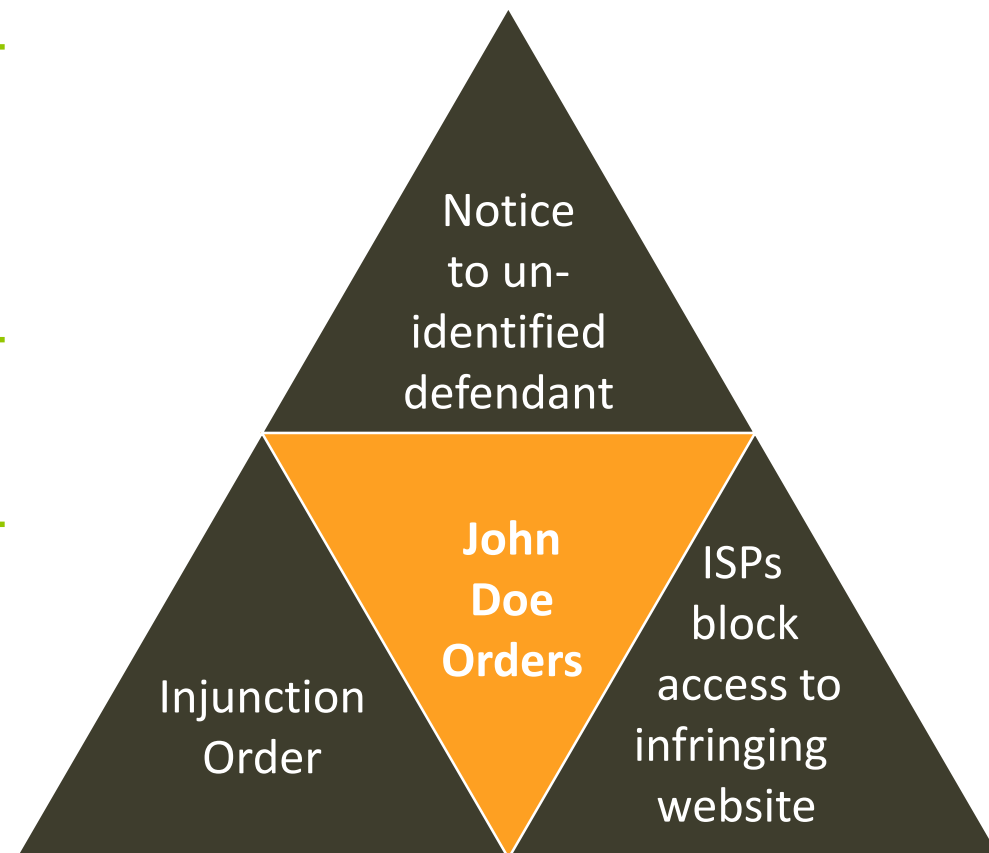


John Doe Orders

John Doe orders emerged as an effective judicial remedy for protecting copyrighted material online

Restraining order against unknown defendants

Orders prohibit all known and unknown defendants from communicating, making available, displaying, release, uploading and downloading copyrighted work



Future International cooperation

1. Increasing International cooperation in IP protection :

- i. Patent cooperation treaty (PCT) - for patents
- ii. Madrid Protocol – for Trademarks
- iii. Marrakesh agreement- Exemption for visually impaired

2. Under consideration :

- i. joining Hague Agreement- for Designs
- ii. Lisbon Agreement – for GI

3. Under negotiation:

- i. Design Law Treaty
 - ii. International Convention for TK, TE and TCE
- International Treaty on Broadcasters' rights



THANKS !

IP STATISTICS

PATENTS

Year	Filed	Examined	Granted	Disposal (Granted+ Abandoned+ Withdrawn + Refused)
2007-08	35218	11751	15261	15795
2008-09	36812	10296	16061	17136
2009-10	34287	6069	6168	11339
2010-11	39400	11208	7509	12851
2011-12	43197	11031	4381	8488
2012-13	43674	12268	4126	9027
2013-14	42950	18306	4225	11672
2014-15	42774	22631	5978	14532
2015-16	46904	16851	6326	21987
2016-17	45444	28962	9847	30271
2017-18 (April- Oct. 2017)	26666	30866	6765	27493

TRADEMARKS

Year	Filed	Examined	Registered	Disposal (Registered+ Abandoned+ Refused+ Withdrawn)
2007-08	123414	63605	100857	
2008-09	130172	105219	102257	126540
2009-10	141943	25875	54814	76310
2010-11	179317	205065	115472	132507
2011-12	183588	116263	51735	57867
2012-13	194216	202385	44361	69736
2013-14	200005	203086	67873	104753
2014-15	210501	168026	41583	83652
2015-16	283060	267861	65045	116167
2016-17	281886	532230	250070	290444
2017-18 (Apr-Oct 17)	175840	168438	170992	211383

DESIGNS

Year	Filed	Examined	Registered
2007-08	6402	6183	4928
2008-09	6557	6446	4772
2009-10	6092	6266	6025
2010-11	7589	6277	9206
2011-12	8373	6511	6590
2012-13	8337	6776	7252
2013-14	8533	7281	7178
2014-15	9382	7459	7171
2015-16	11108	7545	7904
2016-17	10213	11940	8276
2017-18 (Apr-Oct 17)	6637	6883	5461

GEOGRAPHICAL INDICATIONS

Year	Filed	Examined	Registered
2007-08	37	48	31
2008-09	44	21	45
2009-10	40	46	14
2010-11	27	32	29
2011-12	148	37	23
2012-13	24	30	21
2013-14	75	42	22
2014-15	47	66	20
2015-16	17	200	26
2016-17	32	28	34
2017-18 (Apr-Oct 17)	19	15	6

New Applications

Year	Previous Pendency (as on 31-3-2016)	New applications received	Total Applications Available for Examination	Application examined	ROC generated	New discrepant letter issued	Total disposal
2016-17	33243	16617	21396	6584	369	6215	369

Discrepant Applications

Year	Previous Pendency as on 31-3-2016	New Discrepant Letters issued	Reply Received	ROC generated	Re-discrepant letter issued	Applications abandoned	Total disposal
2016-17	18422	2856	2960	3227	2856	1847	5074

International Cooperation- Recent Developments



International Searching and Preliminary Examining Authority (ISA/IPEA)

- Operationalised from 15th October, 2013.
- Indian Patent Office is one of 17 ISA/IPEAs.
- High quality reports within time frame
- Lowest international search fee among all ISA/IPEAs.
- Recognised as ISA/IPEA for nationals of Iran-----others are welcome.

Madrid Protocol

- International registration of trademarks brought into force from 8th July, 2013.
- Application can be made in over 90 countries through a single application in one language with one set of fees filed at the Trademarks Registry.
- Time-bound processing and registration of Trademarks.
- All applications filed online and processed electronically through software module.

Paris Convention, WTO and TRIPS Agreement

- After 1994 Uruguay Round of the General Agreement on Tariffs and Trade, the World Trade Organization (WTO) was created .
- TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement was adopted along with WTO agreement in 1994 and **entered into force on January 1, 1995.**
- India became a member and became obligated to amend its domestic intellectual property laws in order to comply with TRIPS Agreement.
- It has been made mandatory for the member countries of the TRIPS Agreement to comply with the Article 1 to 12 and Article 19 of the Paris Convention.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

- TRIPS applies basic **international trade principles** to member states regarding **intellectual property**, including national treatment and most-favoured-nation treatment.
- TRIPS establishes **minimum standards for the availability, scope, and use of seven forms of intellectual property**: copyrights, trademarks, geographical indications, industrial designs, patents, layout designs for integrated circuits, and undisclosed information (trade secrets).
- It spells out permissible **limitations and exceptions** in order to balance the interests of intellectual property with interests in other areas, such as public health and economic development.

Significance of TRIPS Agreement

- **Pre- TRIPS** : Patent issues like, Patentability criteria, Scope of protection, process and/or product patents, exceptions and exemptions, checks and balances vs. abuse of IPRs, **were treated differently in each country.**
- TRIPS establishes **minimum standards of protection for 7 forms** of intellectual property for all member countries
- It is a frame-work for national implementation but not the uniform international law or uniform legal requirement.
- Mandates civil, criminal, and border **enforcement** provisions;
- Provides **Dispute Settlement Mechanism**
- Uses **national treatment** (treating nationals and foreigners equally), and MFN (most favored nation-equal treatment for nationals of all trading partners in WTO),
- Includes **administration, enforcement, transition periods**

Patents and TRIPS Agreement

- **Minimum standards for patent protection and enforcement of with a view to reducing distortions and impediments to international trade.**
- Patents to protect inventions, in all fields of technology
- Patentability criteria: novelty, inventive step, industrial application (**TRIPS Art.27**)
- Patents for both products and processes
- Patent Term – minimum 20 years
- Patents and the promotion of public interest

TRIPS Flexibilities-Article 30

Exceptions to rights conferred

- Limited exceptions to the exclusive rights conferred by a patent
- provided that such exceptions do not **unreasonably conflict** with normal exploitation of the patent and **do not unreasonably prejudice the legitimate interests of the patent owner**, taking account of the legitimate interests of third parties.
- **Specified and limited use of patent permitted**
- **"Bolar" Provision:** Use of patent prior to expiry for approval for generic product for report to the regulatory authority,
- **Other uses:** research, experimental,
- **Not defined,** Automatically applicable if provided for in legislation, no further conditions

TRIPS Flexibilities- Article 31

Other Use Without Authorization of the Right Holder

- **Public non-commercial (Government) Use - Government right** (Govt. agency, dept. or contractor) **to use patent in the public interest**
- **Compensation** to patent holder
- Scope and duration **limited to the purpose**
- **Compulsory licence:**
 - Government can grant licence to third party to use patent **without consent of patent holder.**
 - **Conditions for grant:** prior negotiations, compensation to patent holder, appeals process
 - **Non-exclusive, non-assignable**, authorized predominantly for supply to domestic market **[31(f)]**.
 - **Liable to be terminated** when the circumstantial need ends excepting to prevent anti-competitive practice determined after judicial or administrative procedure
 - To correct the anti-competitive practice, the judicial authority may refuse termination.

TRIPS and Amendments to Indian Patents Act

- India became a **member of the TRIPS effective January 1, 1995** and became obligated to amend its domestic IPR laws in compliance with TRIPS Agreement.
- India got **grace period (10 yrs)** till 2005 to amend its laws to be TRIPs compatible
- Accordingly, **Amendment** of Patents Act 1970 was done in **3 stages: 1999, 2002 and 2005 amendments**.
- **Patents (Amendment) Act, 1999** was brought into force from **1st January, 1995**.
The Amended Act provided for **filing of applications for product patents** in the areas of drugs, pharmaceuticals and agro-chemicals as **Mail-box applications**, though product patents were not allowed. Such applications were **to be examined only after 31-12-2004**.
- Meanwhile, the applicants could be allowed **Exclusive Marketing Rights (EMR)** to sell or distribute these products in India, subject to fulfilment of certain conditions.

COPYRIGHT law in India

(continued...)

2012

- To protect **performer's right** by allowing him to make sound or visual recording of the performance and allow its reproduction in any medium, issuing copies to the public or selling or renting a copy of the recording.
- Expands the definition of “**Copyright**” to allow artistic works, cinematograph films and sound recording to be saved in electronic forms.
- Provision of **Compulsory License** of any copyrighted work
- Introduction of **Statutory Licensing** for cover version of sound recording to protect right of copyright holder of literary or musical work.
- Provision for **Registration of Copyright Societies** for a period of five years in the first instance and its further renewal shall depend on its performance during last five years.
- **Penal provisions for Infringement** : Imprisonment up to 2 years and fine.
- Enhance **the term of copyright** for photographers to “life plus Sixty years”.
- Strengthen **enforcement of rights** and control of importing infringing copies.

Criteria and Duration of Copyright

- The work must be original and First published in India
- When it is first published outside India, the author at the date of publication must be a citizen of India
- If a publication was made after the author's death, the author must have, at the time of his death, been a citizen of India
- **Duration:**

For Literary, Dramatic, Artistic and Musical works

- Lifetime of the creator and 60 years after his death

For films and sound recording

- 60 years from the date of their first publication

Dissemination of IP Information In Website



- Designed to be most informative to achieve the highest level of transparency in IPO functioning
- All Information available to public on login free basis
- **Weekly online publication** of IPO journals.
- **Separate portals** for Patents, Designs, Trademarks and GI
- **Free Public search** facility in Patent , Designs, Trademark and GI databases
- Information available includes:
 - Filing, grant/registration,
 - Applications status, litigation, etc.
 - Acts and Rules with regular updation
 - Annual Reports
 - IP Procedures and FAQs
 - Information through various resources like manuals, guidelines, research articles etc.
 - Dynamic utilities for patents and Trademarks
 - **Day-to day developments in IPO** like systemic improvements, IT– related facilities, events, IP commercial activities, News Notifications/Circulars .

Patent Dynamic Utilities help to view the following details (Location & Examination Group- wise):

- **Dynamic RQ Status** i.e. Month of Request for Examination for which FER is being issued
- **FERs generated** by the respective Examination Groups during the specified period.
- **Disposal of Patent Applications** i.e. granted, refused and abandoned during the specified period
- **Patents Expired** due to term expiry or non-payment of renewal fee
- **Dynamic Stock and Flow** (Stock as on Date and Flow for the Current Month)
- **Information on ‘Working of Patents’** (U/s 146)
- **Pending and Grant status of patent applications** - upgraded to include status in all available fields of inventions.

Dynamic Utilities in Trademark Registry

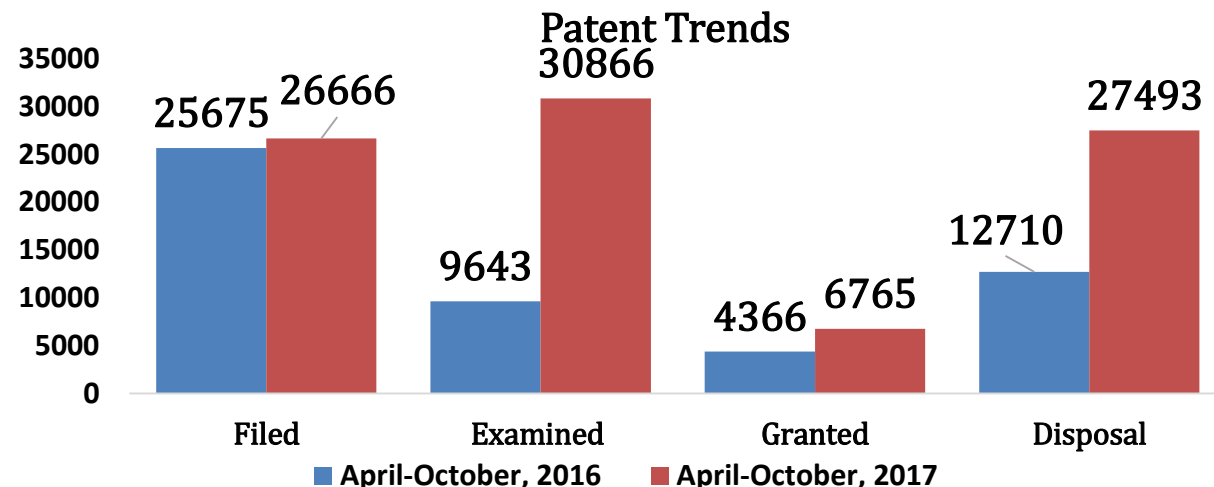
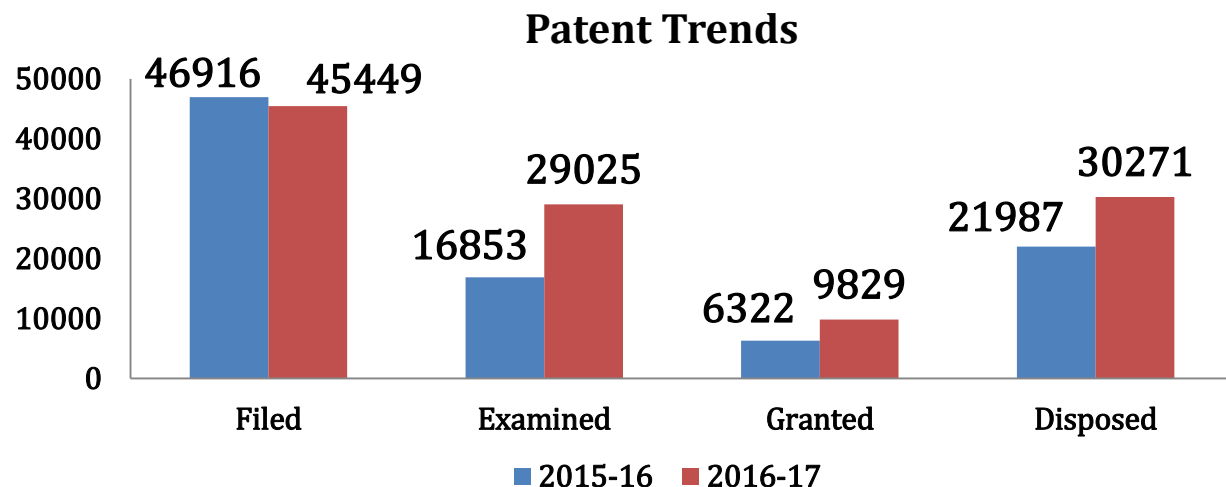
- Provides facility to applicants/stakeholders to view Trade marks under different stocks and flow of TM applications pending at TMR.
- Following reports at various stages of functioning can be accessed:
 - Stock as on date
 - Flow of Stock during the specific period in Following categories:
 - New Application received for registration of Trademarks
 - Awaiting Examination,
 - Under Examination,
 - Post Examination,
 - Under Show cause Hearing,
 - Published and awaiting oppositions,
 - Under opposition,
 - Under registration process,
 - Registered.

Quality Monitoring in Processing of IP applications



- **Four Examination Groups** set up in Patent Office for uniformity.
- **Electronic module-based examination** in Patents and Trademarks
- **Auto-allocation of Requests of Examinations** among the Examination groups in Patent Office
- **Quality monitoring cells** established
- **IT Help desk and support system** set up for IT-related complaints
- **Manuals and Examination Guidelines** available
- **Online real time status of IP applications** with entire file wrappers
- **“Indian Patent Advanced Search System (InPASS)”**, with Full Text Search capability.
- **Instant e-mail communication** to applicants.
- **QR coded office communication** for authentication.
- **Feedback mechanism** available in website
- **Exposure for officials to International best practices** through in-house and foreign training in collaboration with WIPO, EPO and JPO

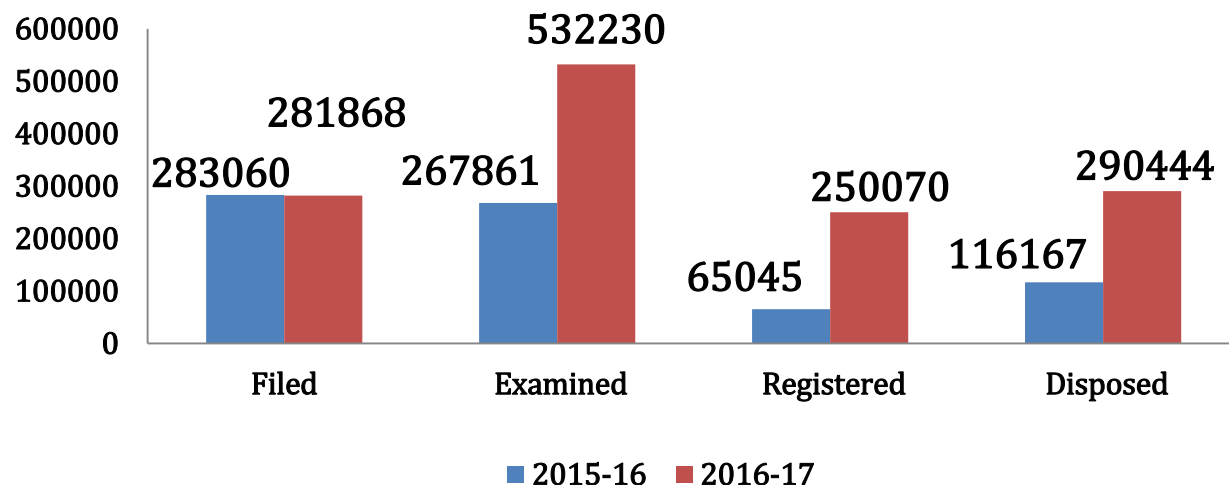
Patents on fast track



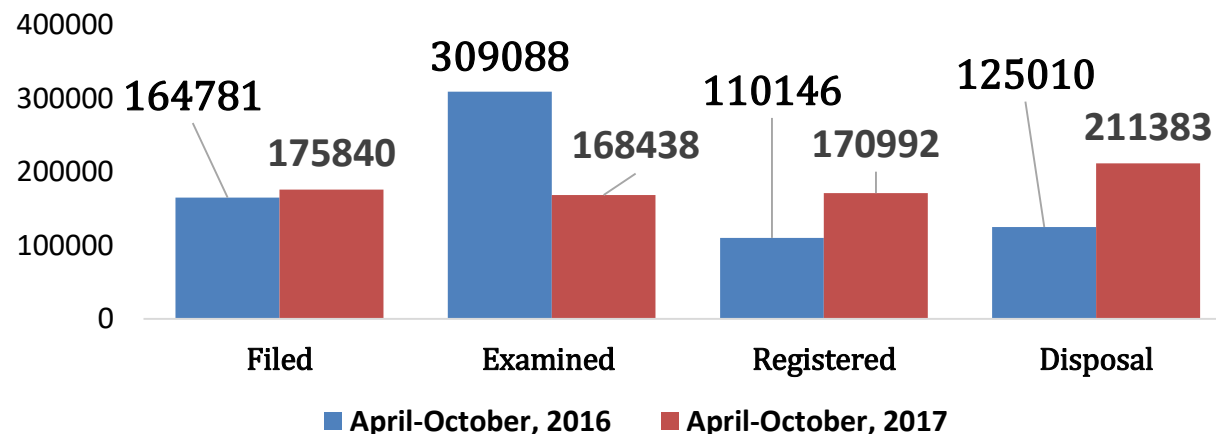
- Patent filings increased by 6% (approx.) in 2016-17 vis-à-vis 2014-15
- Patents granted have increased by 55% in 2016-17 vis-à-vis 2015-16
- Patent **applications examination has increased over 3 times** in the last seven months compared to the same period last year.
- Pendency in Patent examination targeted to be brought down from the present 7 years to 18 months by 2019, at par with world economies
- Through expedited examination, 29 patents granted – fastest in just 113 days from date of request for examination.
- 10% reduced fees provided for online filing of patent applications: online filing shot up from 30% in 2013-14 to 90% this year.

Trademarks on fast track

Trademark Trends

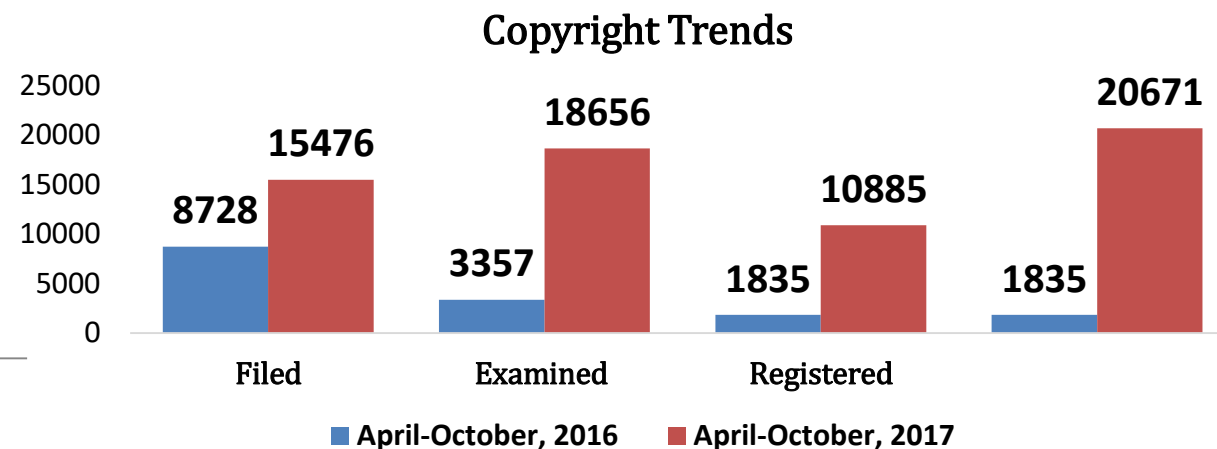
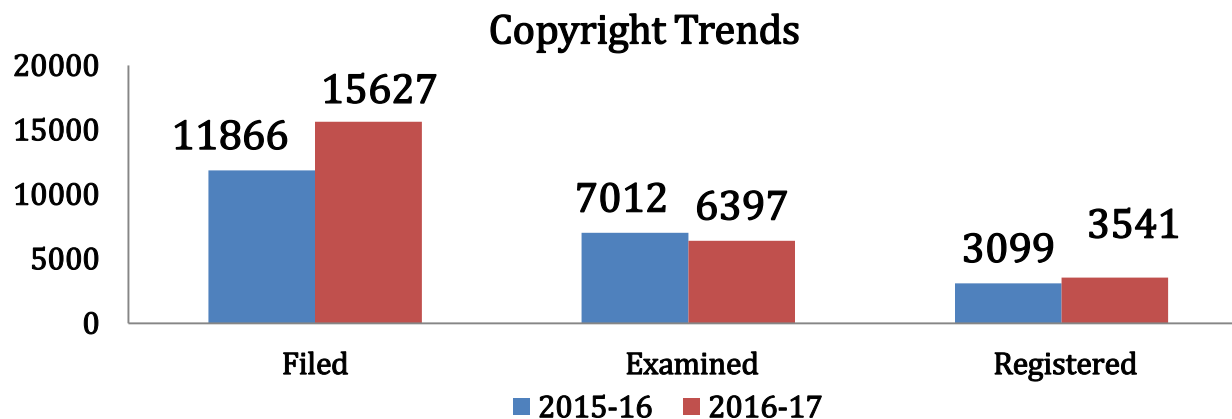


Trademark Trends



- Trademark filings shot up by 40% in 2016-17 compared to 2014-15: indicator of buoyancy in economy.
- Pendency in Trademark examination down **from 13 months to just 1 month – amongst the fastest globally.**
- Acceptance of Trademark applications at stage of 1st examination shot up from just 7% in Sept. 2015 to 45% in 2017-18.
- Trademark registrations have increased almost 4 times in 2016-17 vis-à-vis 2015-16.
- There has been a 55% increase in Trade Mark Registration in the last six months compared to the same period last year.
- Online filing of Trademark applications also up from 38% in 2014-15 to 86% this year.

Copyrights on fast track



- Copyrights filings shot up by 32% in 2016-17 compared to 2015-16
- Copyright examinations have increased by almost 6 times in the last seven months compared to the same period last year.
- Copyright registrations have increased by almost 6 times in the last seven months compared to the same period last year.
- Copyright examination time was 6 months in March, 2017 and will be 1 month by December, 2017.

Early Achievements

Clearing Backlog/ Reducing
Pendency

IPR Awareness Programs

Increase in Patent & Trade
Marks Filings

RECENT



ACHIEVEMENTS

Simplifying procedures

Augmentation of Human
Resources

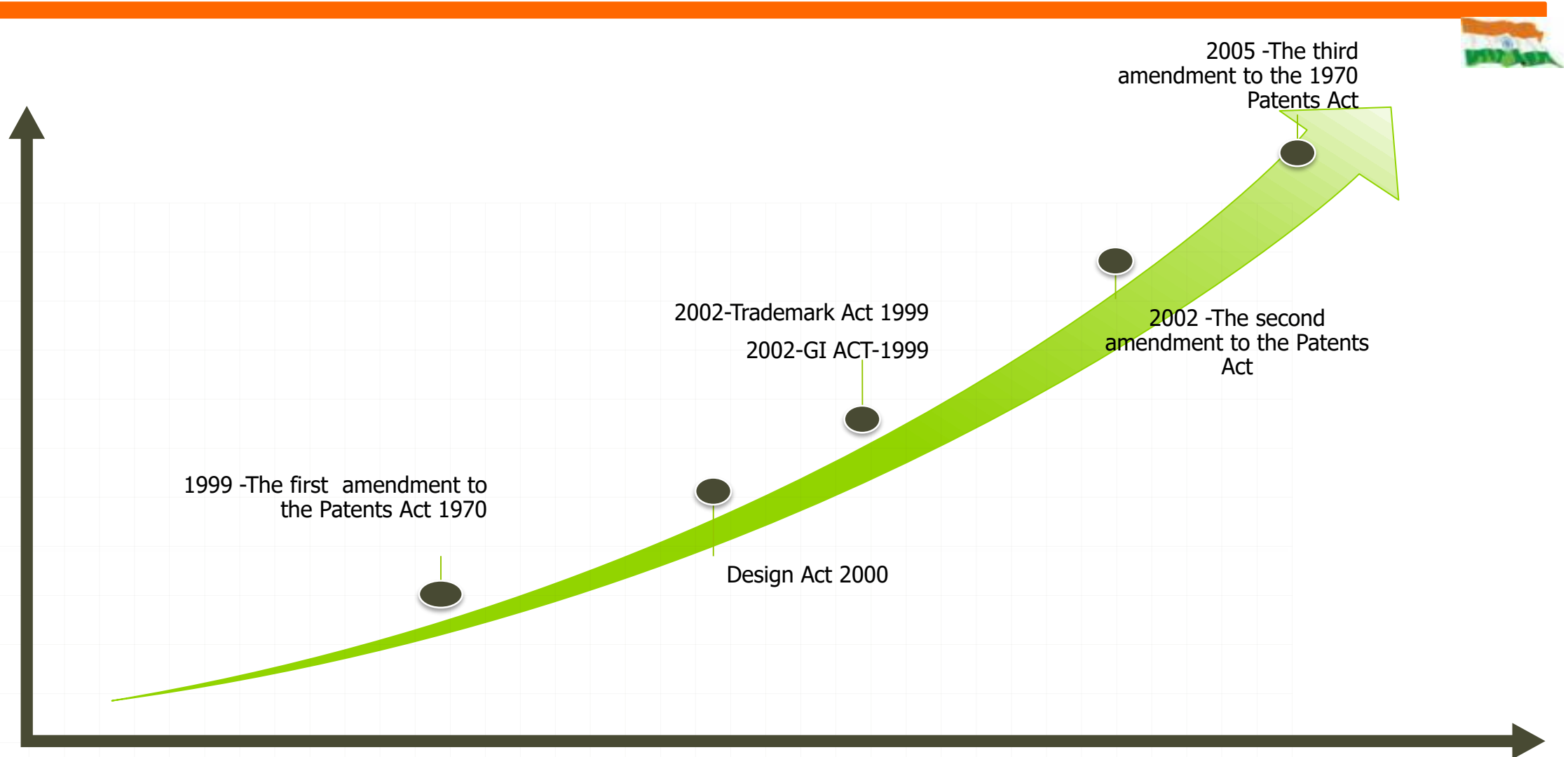
Synergy between IP Offices

HUMAN RESOURCES IN PATENT & TMR OFFICE

PATENTS				
Designation of post	Sanctioned	Working	Vacant	Newly created
Sr. Joint Controller of Patents & Designs	2	1	1	3
Joint Controller of Patents & Designs	3	0	3	10
Deputy Controller of Patents & Designs	42	41	1	9
Assistant Controller of Patents & Designs	123	90	33	73
Examiner of Patents & Designs	589	577	12	84

TRADEMARKS				
Designation of post	Sanctioned	Working	Vacant	Newly created
Sr. Joint Registrar	2	0	2	0
Joint Registrar	4	0	4	2
Deputy Registrar	10	5	5	7
Assistant Registrar	20	10	10	14
Senior Examiner	40	39	1	35
Examiner	123	70	53	38

Post- TRIPS Evolution of IPR in India - Milestones



Issues for Resolution in SEPs

