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POLICY PIECE

Intellectual Property (IP) Policy in India Affecting the Appliances and Consumer Electronics (ACE) Industry

While the number of gadgets in consumer's lives is constantly increasing, industry stakeholders have not lost sight of the Intellectual Property (IP) ecosystem of the country

From the days of adjusting television antennas to carrying the world in our pockets via mobile devices, India has witnessed a breathtaking evolution of consumer electronics, and is currently one of the largest electronics markets in the world. While the number of gadgets in consumer's lives is constantly increasing, industry stakeholders have not lost sight of the Intellectual Property (IP) ecosystem of the country. The manifestation of any country's IP policies defines the fabric of its industries. While India's traditionally settled industries, such as Pharma, have their IP equilibrium fairly settled today, that of the ACE industry is just ending its first lap. Understanding the criticality of IP and the need for a policy, the Government of India released the National IPR Policy in 2016. This policy lays down a multitude of deliverables including IPR administration capacity building, increasing innovation through incentives and awareness, and strengthening the actualization of IPR through commercialization and enforcement. The policy draft does seem all encompassing in theory, however, the on-ground reality of the ecosystem is what we need to examine to understand the journey that IPR has traversed in India.

The fortification that the Indian economy has undergone in the last two decades has affected the IP regime as well. Once a topic of minimal interest, IP is very relevant today and influences business on several levels. Today businesses are more aware of their IP rights. They send/receive legal notices on a regular basis; integrate their R&D with in-licensing of technologies, and liaison closely with authorities to eradicate piracy, all of which is platformed on an effective enforcement structure.

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Ever since the courts started taking IP matters seriously and delivered speedy verdicts, the IP ecosystem has undergone a complete makeover. Several IP infringement cases have seen a primary directive pronounced within a month of case institution. Legal notices often reach a point of out-of-court settlement and a fair amount of those which reach the court get decided in favour of the IP owner. From 1995 to May 2014, there were reportedly 2150 cases, of which approximately 1430 verdicts were in favour of IP owners. The Judiciary has also crystallized solution-based approaches on several complex issues, one example being royalties in Standard Essential Patents (SEP) for mobile phones in the Ericsson litigations (Micromax is to pay around 1% to Ericsson on every mobile phone sold for SEP licenses). The next endeavor for the Indian Judiciary should be to match the standards of American and European courts, especially with respect to the technical depth and building of assertive jurisprudence. The state policy

should be directed towards technical capacity building among judges/lawyers, and foster legal research and training in this direction.

The judiciary does stand at the forefront of strengthening the IP regime; however, the administration has contributed immensely as well. Today, the IP Office (IPO) allows one to search, file, and even complain online. Increasing the number of examiners as well as continued efforts to reduce the backlog has helped mitigate the frustration associated with a lengthy registration process. However, the lack of proficiency in examinations and inconsistency in interpretation of patent law, as well as the time taken for registration, ends up diluting the IPO's effectiveness.

POLICY
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On the capacity building and awareness front, the government machinery can be praised for initiating a lot of schemes (e.g., Support for International Patent Protection in Electronics & IT (MeitY), institutions (e.g., Cell for IPR Promotion and Management (CIPAM)) and partnerships with other stakeholders (e.g., India Innovation Growth Program). However, while substantial effort is taking place, the output appears limited in terms of reach and depth. Basic concepts, such as Provisional patent, Patent Cooperation Treaty (PCT), **Uniform Domain-Name Dispute-Resolution Policy (UDRP)** for domain name trademark disputes and sui generis rights of databases, are barely known in the industry. Hopefully, this lack of knowledge of the nuances of IPR will ameliorate with time and proper direction of resources.

Legislative enablements, however, continue to move at snail's pace. The Protection and Utilization of Public Funded Intellectual Property Bill, 2008, still awaits its due process and enactment. This bill which is intended to potentially revamp the manner in which research is conducted in public-funded institutes, an underutilized repository of technical resources in our country, has been analyzed everywhere but in the two houses of parliament. Similarly, the proposal to initiate a new

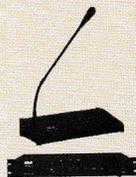
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form of IP, namely Utility Model, was initiated with active stakeholder participation in 2011 only to fall into oblivion. The utility models, (of great importance to the ACE industry) is an IP right for inventions that get issued within a span of few months and last for a few years, as opposed to patents that are valid for 20 years but take around 3-5 years for registration, a period in which Electronics & IT inventions become not only obsolete but move to a different paradigm altogether. An effective utility model system could largely change the landscape of ACE IP in India, much like it has done in many other countries including Japan, Germany, South Korea and China. Policy reflection is imperative if meaningful strides have to be taken in making Indian IP efficient.

While inching closer to the dream of an economic superpower, India has to carry its IP ecosystem ahead in a steadfast manner, and while the journey seems possible, it shall require a lot more groundwork from its IP policy in times to come.



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