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JAPANPATEMTOFFICE

**WIPOASIANREGIONAL WORKSHOPONTHEUSEOF
INFORMATIONTECHNOLOGYANDMANAGEMENTOF INDUSTRIAL
PROPERTYRIGHTSBYS MALLANDMEDIUM -SIZED
ENTERPRISES(SME s)**

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**ROLEOFSMESUPPORT INSTITUTIONSINPROM OTINGEFFECTIVEINDU STRIAL
PROPERTYMANAGEMENT; ACQUIRINGP ROTECTION,COMMERCIALIZING
INVENTIONS,MARKETINGBRANDS**

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Introduction

1. Since the very dawn of civilization, intellectual property has been propagated and protected through many forms. Mythological stories and tales of how intellectuals and artisans preserved their skills have been part of folklore and history. With the advent of the industrial revolution, the pace of inventions and their usage gathered speed. It was at this time that the commercial potential of inventions was actually appreciated. In today's context, time and resources being very valuable inputs in the knowledge economy, the management of Intellectual Property Rights (IPRs) has become a major issue to be addressed by the inventor, those who market an invention and the Government. As in many developing countries, an optimum exploitation of intellectual property is also a matter of concern and discussion in India. Being in a transitional phase, the Indian industry is still comprehending its IPR needs and experimenting with different approaches towards their management. Though the legal framework for the common intellectual properties has been in place since many years, the support systems have been established quite recently.

2. This paper attempts to bring out the recent initiatives and the various synergies that are operating to focus, develop and market industrial properties in India to the advantage of the industry, particularly the SME sector.

Industrial Property Management –Eco -Legal Framework in India

3. Apart from the uncoded intellectual property rights available to select classes during the ancient and medieval times, the first codified law that gave protection to an intellectual property in India was passed as early as in the year 1856 called the Act V of 1856 on the Protection of Inventions, which was based on the British Patent Law of 1852. Over the years, other legislation that addressed copyrights, trademarks and designs were put in place. These included the Indian Patents & Designs Act of 1911, the Indian Copyrights Act of 1957 and the Trade and Merchandise Marks Act of 1958.

4. After attaining independence in 1947, India chose the 'mixed economy' model, which gave pre-eminence to the public sector. Though the private sector was present in many sectors but it was the public sector that was in commanding heights in all the core sectors. Lack of infrastructure, lack of a manufacturing base and scarcity of private capital were some of the impediments, which India faced at the time of its independence. Coupled with this were poverty and health concerns and the necessity to build a scientific and technical workforce. Therefore, the economic thinking at the time was fully justified. It was expected that Government Research & Development institutions would carry out most of the R&D as the private sector did not have sufficient resources. Further, the nascent Small Scale Industries (SSI) sector neither possessed the necessary resources nor the human skills towards investing in R&D. Thus, the accent was on building up a sound industrial base at low cost and high dissemination of technology. The intellectual property laws were also tuned to be in line with these concerns and objectives. For example, the Patents Act of 1970, which is still under force, does not have provisions for product patents in chemicals, food and drugs. Further, the protection given for patentable processes under the Act is for a maximum period of 14 years only. As a result, a number of small companies were able to manufacture at low cost drugs and formulations that were patented in other countries. The small-scale sector could be built up on technologies that comprised reverse engineering. It is now that the Patent Act is being considered for amendments to bring it in line with the TRIPS Agreement. Likewise, infringement of copyright was not a cognizable offence till the amendment to the Act in 1999. The Geographical Indications Act has been passed only during 1999 and its Rules are being

notified. This is essentially after the basmati rice and turmeric controversies when the issue of bio-piracy came to the fore. What I meant to say is that due to the particular circumstances prevailing in the country, it was perceived that the country could not afford to have very strict IPR laws.

5. Since 1991 when the country embarked on economic liberalization and reforms process, the entire scenario has changed. By this time, the country had a good industrial base, self sufficiency in food grains and a competent and skilled workforce. It was ready to open its frontiers, offload public sector units that had outlived their purpose, attract Foreign Direct Investments and usher in an era of consumerism. The private sector, though initially apprehensive at the removal of protected barriers, welcomed the liberalization. WTO and TRIPS further paved the way for enhanced globalization. With the software, the music and the drugs industry asking for greater protection, a new line of thinking emerged with the policymakers. Welcoming greater FDI also meant providing greater protection and stricter IPR enforcement. In the post-liberalization era, IPR management has automatically become a priority with the Government and the Industry.

The Indian Small Scale Industries Sector

6. The Small Scale Industries (SSI) sector in India constitutes those industrial units that have an investment in plant and machinery up to \$200,000. There are around 3.3 million such units that contribute around 40% of the industrial production of the country by manufacturing more than 8000 products that range from the traditional artisan based to the most modern and hi-tech. In terms of providing employment, this sector provides jobs to around 19 million people. This sector has a 35% share in the country's export basket. There is no denying that this sector has a vital contribution to the development of the country.

IPR Support Institutions

7. IPR management is not just the concern of individuals and companies. The complexities involved in the management of the various IPRs that include patents, trademarks, copyrights, geographical indications, industrial designs, integrated circuits and trade secrets, require specific expertise and support systems. For this purpose, in fact, many new Support Institutions have even emerged in the country. The basic functions of these Support Institutions are essentially twofold:

- a) To create awareness amongst the various stakeholders on IPR issues and concerns and to build public consciousness regarding their management;
- b) To facilitate the acquisition, protection and sustainability of the various IPRs by the stakeholders.

8. These Support Institutions belong to:

- i) Non Governmental sectors;
- ii) Sectors having linkages with International agencies;
- iii) Governmental and Public Sector.

Initiatives in the Non Governmental Sector

9. It was the NGOs in the software industry, which initially spearheaded awareness towards enforcement of IPRs in India. The National Association of Software and Service Companies (NASSCOM), an apex Association of software firms, lobbied with the Government to bring about amendments to the Copyright Act of 1957 to include software within its ambit. The aim was to bring in stringent measures to prevent piracy and infringement. The 1994 Amendment prohibits the sale or to give on hire, or offer for sale or hire, any copy of the computer program without specific authorization from the copyright holder. Infringement could bring about criminal charges against the infringer that may include fine up to \$4000 and a prison term up to 3 years. The Association assists law enforcing agencies in carrying out raids in different cities to detect infringement of copyrights. The Association has also established an Antipiracy hotline where callers can contact the Association for specific information that include information on Copyrights, sources to buy copyrighted software, assistance for copyrighting software, etc. The industry itself took a lead role in not only comprehending the importance of correctly managing IPR issues but has also assisted in its proper enforcement.

10. Let me give you another example of a initiative from an Industries Association that attempts at creating awareness amongst its members on the importance of intellectual property. The Federation of Indian Chambers of Commerce and Industries (FICCI), an apex Industries Association, recognize the importance of intellectual property and its protection and established the Institute of Intellectual Property Development (IIPD) at New Delhi. It was seen that very few corporate houses have industrial property cells, which furnish their engineers and technical staff with advice on the latest technological trends, R&D priorities and patent strategies. This reason was ascribed to the lack of IP awareness amongst the managers of corporate India. It was in this background that the IIPD was set up with the objectives of research and study of intellectual property, provide information on IPR laws in India and in other countries, information dissemination through conferences and conduct training programs. The Institute is very active in disseminating awareness amongst its members.

11. Besides the above, there are many National and State level Industries Association that have taken up the responsibility to provide support to their members in this area. The Confederation of Indian Industries (CII) has an IPR Cell, which is spearheading the idea of Utility Patent legislation. Associations of the Small Scale Industries like the Federation of Associations of Small Scale Industries of India (FASSII), the Federation of Indian Small and Medium Enterprises (FISME), etc all have conducted awareness programs on this subject.

12. The Vishwaroop experiment of the machine tool industry, which is a consortium of large, medium and small industries manufacturing machine tools is an example where few units have come together to form a consortium, under a common brand. The consortium jointly bids for orders and once orders are received, source the components from its members. The larger unit assembles the machines but smaller partner that supply the components benefit in terms of quality improvements in both products and processes. Custom Synthesis is another method for collaborative innovativeness and quality enhancement. The Indian Institute of Chemical Technology (IICT) has joined hands with other firms to form a registered company. The company bids for orders and then once an order is secured, the IICT through its R&D establishment tries to find newer and cheaper production methodologies, which in turn are imbibed by the partner units for production of the various components. Alternatively, the IICT allows these units to use one of their

patented processes to manufacture the desired product. These are good examples of collaborative efforts mutually benefiting through such tie-ups.

13. The above were illustrations of how Industries Associations and efforts by industrial units took up issues relating to IPR management with great earnestness. I will now give you an example of initiatives by the Civil Society wherein a private Trust that runs vocational institutions has started recognized diploma courses in intellectual property. Though Law universities and colleges offer some side paper on intellectual property law, these are essentially for those wanting a degree in law, while to the corporate manager, there are hardly any channels available wherein he could acquaint himself with intellectual property issues. To address this constituency, the Trust has recently started the Institute of Intellectual Property studies (IIPS) at Mumbai, which offers a Diploma in Patent Law and Practice. The course is for a year and classes are only on weekends. This is an indication wherein realization has dawned even amongst vocational institutes that intellectual property issues have to be addressed not purely from a legal or academic point of view but has to be linked with practical issues and implementation.

Initiatives of Institutions having linkages with International Agencies

14. There have been some initiatives towards IPR management that have been launched in India, which are supported by or have linkages with international agencies. I would cite the specific instance of programs launched in collaboration with the United Nations Industrial Development Organization (UNIDO). The Cluster Development Programs implemented by UNIDO, aim to create and strengthen collective trademarks for special products. For example, prints made out of vegetable dyes are the hallmark of the Bagru print cluster, near Jaipur. The UNIDO program aims to internationalize the Bagru brand for product emanating from the cluster. Likewise, the National Program for the Development of the Toy Industry in India aims at creating a Toy Mark that shall distinguish toys from India in terms of safety and quality. Further, the creation of a design bank is also one of its objectives. Small Industries Development Organization of India (SIDO)'s collaborative effort with WIPO to spread awareness about IPR management is yet another example.

Governmental and Public Sector Initiatives

15. In this context, to begin with, the National Research Development Corporation, a Government of India enterprise, was set up to serve as a vital link in the innovation chain and to act as a vehicle for technology transfer. The Corporation markets technologies of over 200 R&D institutions in India. Apart from this, the Corporation provides the necessary resources to an inventor to convert his idea into reality and market it. Thus, in order to promote indigenous inventive activity, the Corporation provides financial and technical assistance to the Indian inventors for patenting inventions in India without any obligation of assignment of the patent to the Corporation. For those who are interested in obtaining patents outside the country, the Corporation offers online search facilities at a nominal cost. Further, if the product is patentable, the Corporation bears 50% of the cost of patenting abroad. As royalty, the Corporation takes 2-5% of the value of exports of the patented product to those countries where the Corporation has assisted in filing the patent. The patent would have to be assigned to the Corporation and such royalty would be paid to the Corporation till such time the patent is in force. In addition, the Corporation also explores avenues for licensing the technology/patent to foreign countries and bears the initial expense. The inventor and the Corporation share royalty at mutually accepted terms. Thus, the Corporation provides facilities for patenting in India and abroad, conducts patent searches, assists in the commercialization of

patents and creates IPR awareness. This facility is of great use to the Small -Scale sector units as the initial costs of patenting, licensing, etc., are borne by the Corporation.

16. The Technology Information Forecasting and Assessment Council (TIFAC), under the Department of Science and Technology, provides search facilities for Indian, European and US patents. The Council also maintains databases on Indian patent applications filed and open for opposition. The Council has also drawn a panel of experts and assists in the filing of patents. It also conducts awareness programs for industry, educational institutions and scientific establishments.

17. The Patent Information System (PIS) under the Ministry of Commerce and Industry maintains a comprehensive collection of patents specification and patent related literature on a worldwide basis to meet the needs of technological information of various users including the industry. The PIS has search facilities for prospective patentees and those interested in technology transfers.

18. In addition, there are some public sector institutions that assist the small units to improve upon their technologies and provide them with a platform towards innovativeness. The PATSER and the Home Grown Technologies (HGT) Schemes of the Government provides assistance to units to develop technologies and their precommercial launch tests. The Ministry of Small Scale Industries, too, has established Process and Product Development Centers in specific sectors for inventing newer processes, their adaptation and dissemination. These centers also have the mandate to assist units to develop new processes and products. The Tool Rooms established in more than 10 cities in the country with state of the art facilities for tooling assist the small units for development of new products and precision tooling requirements. The testing centers under the Ministry are capable of performing tests as stipulated by international standards. Besides, infrastructure and common facilities, software support to the industry is also provided. SIDO has also conducted 16 IPR Sensitization workshops during the last 4 months. A panel of experts, who would be available on call for the IPR requirements of the small industries sector is also maintained. CD-ROMs containing information on the concept of IPRs and their management are on the anvil. It is also proposed to hold an international conference with WIPO's support wherein experts from the Small -scale sector from similarly placed economies would be invited towards experience sharing in the management of IPRs.

19. Other agencies that are actively involved in creating awareness and consciousness are the State Governments. The Government of the State Government of Andhra Pradesh has formed a Corporation that is engaged in IPR awareness and provides search facilities while the Government of the State of Gujarat has offered financial help towards the acquisition of patents. Financial Institutions like the Export -Import Bank and the Small Industries Development Bank (SIDBI) not only provide financial help to individual companies towards IPR acquisition and protection, but also have their own IPR Cells. The Waterfalls Institute of Technology Transfer, sponsored by the Ministry of Science & Technology also conducts sector specific IPR awareness campaigns.

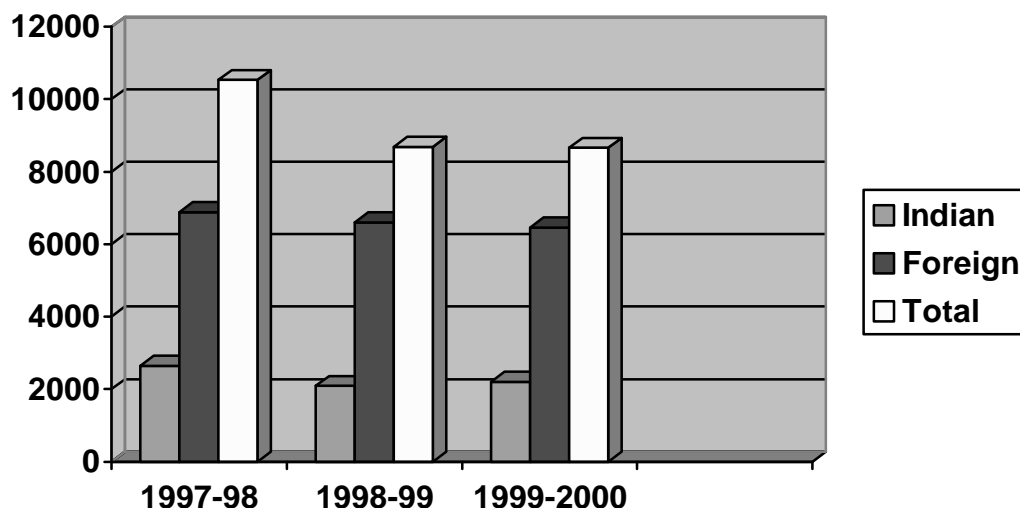
20. Another important segment of intellectual property which is an integral part of all firms is brands. The issues of brand equity, brand imaging and brand positioning have now acquired very important proportions. Many large transnational corporations spend millions of dollars not only towards brand building but also for their protection. In India, too, the SSI sector has understood the importance of brand building and the enhanced value added condition that accompany it. Though most of the financial requirement for brand imaging has to be

generated from the resources of the units, the Government supports a Brand Equity Fund towards brand building and imaging in export markets. The National Small Industries Corporation, a public sector enterprise under the Ministry of SSI, is using the consortia approach towards brand building. Under a common brand, the NSIC markets products of different SSI units, so that this is done with lesser marketing costs. The Khadi and Village Industries Commission is currently engaged in brand building for Khadi, which is a hand spun cloth, has great emotional value. The Commission is now internationalizing the Khadi brand and is not restricting its products to only hand spun cloth but also to herbal cosmetics and other cottage industry products.

Patents, Trademarks and Copyrights in India

21. As the above efforts are recent and as in other developing countries, the total number of patents filed in India is still dismal. Moreover, the number of patents filed by indigenous inventors is small when compared to the foreign applicants. This may be seen in the chart given below in respect of the last three years:

Number of patents in force granted to Indians and Foreigners



Source: Annual Report – Patents, Designs and Trademarks

22. As regards Trademarks, the consciousness amongst businesses toward trademarks is more than the patents. The chart below is an indication:

Trademark Registration

	1998-99	1999-2000
Application filed for registration	43234	46712
Number of applications advertised in the Trade Marks Journal	4490	4706
Number of marks in respect of which registrations were renewed	8022	16000
Request on Form TM -54 for search under Rule 24(1)	59271	74060

Source: Annual Report of the Registrar of Trademarks

23. In terms of Copyrights, the table below gives an indication of the increase in such registrations in the last three years:

Number of works registered in each category, 1998 -2000

Sl No.	Class of Work	1998	1999	2000
1	Literary, Dramatic, Musical	692	583	903
2	Computer Program (Software)	--	120	195
3	Artistic	1025	1824	1813
4	Sound recording (Records)	88	259	296
5	Cinematographic Films	10	--	--
	Total	1815	2786	3027

Source: Ministry of HRD, Dept. Of Education (Copyrights Office)

Conclusion

24. India today is witnessing the winds of change in its IPR management practices. From an era of protectionism where risk aversion was a national trait, the country is now looking towards innovation in all sectors. From the classical closed-door lab based innovation to the open bazaar type model where innovations from different areas converge freely into the organization. The demand for this change has been led by the growth of communications, media and physical linkages with different markets. Globalization has given the consumers the right to choice and the desire for improved products and services. Consequently, the mindset of the industry is also undergoing a change. From a production based economy, India is moving towards a consumer centric economy. The SSIs are also a part of these changes. As a response, new support institutions for them have emerged through various initiatives of Civil Society, NGOs, national and international organizations. Governments, on their part, too, cannot ignore these forces of change to which public policy is fine-tuned. While these Support Institutions support the SMEs in their management of IPRs, it becomes imperative for Governments to strengthen them. They may have resource and international experience limitations, and to address these concerns, Governments and International Agencies like WIPO need to strengthen them. Their role and responsibility of the Civil Society need to be both recognized and encouraged. In the knowledge economy, greater emphasis is on the individual, his creativity and the returns from this creativity, and that is what is 'entrepreneurship' all about.

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