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INTELLECTUAL PROPERTY RIGHTS: A CASE FOR MONETIZATION

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FOREWORD

Mr Arvind Thakur
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Confederation of Indian Industry (CII) has been closely and actively engaged with IPR policy making, advocacy, awareness and services for many years now. It has taken many new initiatives in the recent past through its National Committee on IPR. It has been watching the global development in the IPR space including laws, technologies, policies, international discourses and geo-political scenario. Some of the important ones in the technology space have been understanding emerging IPR laws and rules in the vast field of artificial intelligence and computer related inventions. The other initiatives involve encouraging mediation process in IP related disputes in the country which can bring down litigation costs substantially and reduce dispute settlement time. In order to create an awareness about using IPR as collateral for getting loans from financial institutions, CII has been discussing with multiple players. CII has decided to prepare state of the art reports in these areas with the help of industry, law firms, chartered accountants and IPR professionals for its members.

Singh and Singh has prepared a comprehensive report “Intellectual property rights- a case for monetization” in close association with CII capturing a large canvass of global practices in utilizing IP as collateral by financial institutions a subject not frequently discussed in the country. The report discusses various instruments available in India, little known in the IP circles, for utilizing IP as an asset for seeking loans from banks and other financial institutions. The report shares a number of practices followed in other countries. CII firmly believes that IPR should be central in a meaningful manner to compete at the global stage

I hope that CII members will find this report useful and encourage them to examine the connected IPR needs carefully and design future plans. I wish to congratulate the Singh & Singh and CII teams to bring out this report.

INTELLECTUAL PROPERTY RIGHTS – A CASE FOR MONETIZATION

Technology is transforming the way nations/economies work in the 21st century. The corporate world is increasingly being dominated by tech companies like Facebook, Amazon, Alphabet, etc., which have no factories producing goods, little physical assets and are run by a group of few but well-paid workers. Their fortunes are built on intangible assets like software and data and they need little resources or time to scale up globally. Market economy, marked by intangibility, behaves distinctively and has profound social and economic implications.

A corporation's assets can be divided into two broad categories i.e., physical/tangible assets – buildings, machinery, infrastructure, etc., and intangible assets - such as intellectual property rights. Intellectual property includes:

1. Patents i.e., invented product/process;
2. Trademarks i.e., brands, logos, words, slogans, goodwill, domain names, etc.;
3. Copyright i.e., literary/artistic works, cinematograph films, etc.;
4. Designs i.e., industrial design of a product;
5. Integrated Circuit Layout Design;
6. Geographical Indications;
7. Trade Secrets, etc.
8. New Plant Variety

Intellectual property, earlier considered to a bundle of enforceable "rights" conferred under a statute, are now considered to be viable corporate and business assets as well. With globalization and innovation, Intellectual Property is often the determining and identifying factor associated with a business. The fast-emerging knowledge-based economy has recognised intellectual property as the driver of productivity and economic growth, leading to a new focus on the role of information, technology and learning in economic performance of an entity, which has resulted in driving IP towards mainstream of business management. Intellectual property incentivizes innovation, spurs creativity, and boosts the economy by providing rights holders with an exclusive property right—an ability to invest in, build, and exploit a work, brand, or invention and exclude others from doing so. When protected and enforced properly, the commercial value in IP can be great.

INTELLECTUAL PROPERTY FINANCING

Intellectual Property Financing[1] refers to the act of using Intellectual Property to generate revenue for the business. There are various methods to monetise/finance Intellectual Property i.e., licensing, franchising, assignment, etc. However, to be able to best cash in on the value of IP, all businesses require management of IP, which involves identification of the IP portfolio of a particular business and creating economic benefits out of it, by integrating IP into business strategy and maximising its economic worth.

Many companies not keen on traditional financing options, such as licensing and assignment, may want to continue with the exclusivity. Using IP as collateral is an emerging business option that may offer an opportunity for companies with valuable IP assets seeking alternative sources of capital or monetization of IP.

[1] Intellectual property Financing – An introduction, WIPO Magazine 05/2008

Businesses can maximize on their capital by using IP as collateral for funding. Companies, large and small, may need additional capital for a variety of purposes:

1. For many start-up companies in the technology industry particularly, intellectual property assets are often primarily the most valuable asset, without which the company may not be able to obtain initial capital necessary to start the business. Smaller companies and Start-ups may need capital for such reasons as starting up or expanding operations, sustaining or expanding their research and development spending, or for interdependent acquisitions. In addition, start-ups often need short- or mid-term loans to augment various rounds of funding.

2. For established companies, financing requirements may stem from marketplace challenges, the need to expand, or a legion of other reasons. For instance, following the 2009 recession, companies experienced difficulty in securing capital as banks restricted the number and amount of loans to businesses. Fortunately, for some businesses, collateralization of their IP assets was a realistic alternative to traditional financing.

In the context of IP, collateral can be defined as a borrower's pledge of specific property, such as future cash flows from existing IP assets, or rights to the underlying IP itself, in order to provide recourse for the lender in the event of loan default. One well-known instance of using IP as collateral occurred when Thomas Edison used his patent on the incandescent electric light bulb as collateral to secure financing to start his company, the Edison General Electric Company.[2]

ADVANTAGES OF USING IP AS COLLATERAL

- **A wider pool of assets:** lenders often face situations where existing good customers want to borrow more than established asset lending ratios will allow. The value contained within core intangible assets provides a means to lend more, but with increased security.
- **Potential for value appreciation:** the IP assets of a well-run business will increase in value over time, whereas most of their tangible assets will reduce in value. It may be more attractive to finance the IP assets on a basis that is predicated on the strength and performance of the IP assets rather than the creditworthiness of the borrower.
- **Improved security:** at present, any charge placed over a business's IP and intangibles tends to be floating rather than fixed, weakening its effect if the business gets into difficulties. Defining IP assets as part of a lending agreement puts a bank in a much stronger position with an administrator or insolvency practitioner. IP-based financing may offer some options for businesses to hedge themselves from risks. With securitization, for instance, the obligation of the IP's performance is shifted away from the originator and the assets are safeguarded from bankruptcy proceedings.
- **Stronger repayment incentives:** where intangibles are core to business activity, they provide a powerful incentive for borrowers to honour their repayment commitments.
- **Alternative to personal guarantees (PGs):** lenders recognise the complications which arise from requesting PGs for business transactions. IP and intangibles provide an additional source of security and/or "comfort" which is directly related to the company, not an individual.

[2] Brian W. Jacobs, Using Intellectual Property to Secure Financing after the Worst Financial Crisis Since the Great Depression, 15 MARQ. INTELLECTUAL PROPERTY L. REV. 449 (2011).

INTELLECTUAL PROPERTY AS COLLATERAL

A security interest is a security given in addition to the direct security, and subordinate to it, intended to guarantee its validity or convertibility or insure its performance, so that, if the direct security fails, the creditor may fall back upon the collateral security.[3] Most security interests are granted by the person who is the owner of the property to secure their own indebtedness, however, it is possible to grant a security interest over one's own property as collateral for debts of another person. Thus, a parent corporation may create a security interest over its own asset for a debt of its subsidiary.

Security interest: Types & Effect

The different types of security interests which can be created and the rights which they confer will vary from country to country, however, under English Law and most common law jurisdictions, the types of security interests that can be created are as follows:

a) **"True" legal mortgage** – assets are conveyed to the secured party as security for an obligation, but the assets are re-conveyed when the obligations are performed by the debtor. Under this type, there is actual conveyance of title over the asset to the secured party, however the party creating the mortgage will remain in possession of the same and the possession is transferred only in the event of default by the mortgagor.

b) **Equitable mortgage** – unlike a True legal mortgage, there is no transfer of title in the secured asset by the mortgagor, but only an acknowledgement of a future right of the secured creditor in the asset. Thus, only upon default by the mortgagor, is the title in the property transferred.

c) **Statutory mortgage** – assets are mortgages without transfer of title to the secured creditor. The rights conferred on the secured creditor are the same as a traditional true mortgage, but the manner of enforcement is usually regulated by the statute.

d) **Charge** – is a security interest created without transfer of title or possession of the underlying asset. It represents an agreement between a security provider and security taker, under which the security taker has the right to resort to the asset to realise it towards payment of the debt. It can be thought of as an encumbrance over the asset. Charges can be of two types:

    i. **Fixed charge** – it attaches immediately to the charged asset and gives the security taker control over it. The key is control of the secured creditor. If the secured creditor does not have control over the charged asset, the charge will be floating and not fixed.

    ii. **Floating charge** – it sits above a shifting pool of assets and is a charge on an identified class of assets, present and future, belonging to a security provider. The secured asset(s) changes from time to time. It is assumed that the until some future steps are taken by those who are interested in the charge, the security provider would continue to carry on its business in the ordinary way in relation to that class of assets, including disposing of some such assets and

[3] Black's Law Dictionary (8th ed. 2004) at pg. 328

acquiring others. Only when a default occurs, then the floating charge crystallises and a fixed charge comes into effect over the security interest.

e) **Pledge** – it is a form of possession security and the assets which are being pledged are physically delivered to the beneficiary. It is also sometimes called pawn. In the event of default, the beneficiary has the power to sell the pledged asset. If the pledged asset is sold for a value greater than what is stipulated in the pledge document, the beneficiary must pay to the pledger any surplus after realisation of the debt, unless agreed to otherwise.

f) **Legal Lien** – is a security interest on property, which gives the secured creditor a passive right to retain the asset conferred. Here, the possession of the asset is transferred to the secured creditor. Under a lien, the secured creditor has no right to sell the asset, but can merely refuse to return it until paid.

g) **Hypothecation** – the underlying assets are pledged, not by delivery of the asset, but by delivery of a document or other evidence of title to the secured creditor. The debtor does not part with either ownership, title or possession rights over the asset. However, the lender can seize the asset if the terms of the agreement are not met with.

Classification	Type	Created by	Basis
Non-possessory right	Legal Mortgage	By agreement	Law
Non-possessory right	Statutory Mortgage	By agreement	Law
Non-possessory right	Equitable Mortgage	By agreement	Equity
Non-possessory right	Fixed Charge	By agreement	Equity
Non-possessory right	Floating Charge	By agreement	Equity
Possessory Right	Pledge	By agreement	Law
Possessory Right	Lien	By operation of law	Law
Non-Possessory right	Hypothecation	By agreement	Equity

The above is an illustrative list of types of security interests that can be created in different kinds of property.

TAKING SECURITY OVER IP

It is likely that IP will be considered more valuable where such IP is long-lasting, easy to secure, registered, generates regular, if not constant, revenue and retains value independently of the business that owns and uses it.

Notwithstanding this, there are many different types of intellectual property, both registered and unregistered, over which security can be taken – the main categories of these are considered separately below.

A) PATENTS

Patents give protection for inventions (both products and processes)[4]. Patents must be registered in order to exist. Once granted, patents give a very clear proof of title and typically have a strong value independent of the business fortune of the owner. It is necessary to apply for patent protection before the invention is "disclosed" to the public and if a disclosure is made then any subsequent patent application will be invalid. This means that if security is being

[4] Taking Security over IP, February 2015. Field Fisher Waterhouse LLP

taken over future patents it is necessary to ensure that the relevant processes are in place so that potential patents are not invalidated through inadvertent disclosure.

Patent rights last up to 20 years and so consideration should be given to how much of this period remains when taking security over a patent.

The Patents are registered by The Patent Office under the Office of the Controller General of Patents, Designs and Trademarks. A single unified patent registration has been enabled and care should be taken by lenders to check registration of a patent.

B) TRADE MARKS

Trade marks give protection for words, logos and lots of other things such as colours, sounds, shapes, etc. There can be both registered and unregistered trade mark rights and these rights can last forever, although they must be renewed every 10 years if registered. If trademarks are licensed, they can give a very secure and consistent income. The downside of using trademarks as security is that they are often business-dependent since they are linked with goodwill and reputation; and if a business fails the value of the trademarks that business uses will fall. One such popular case is that of Kodak whose brand valuation which was estimated at $11.8 billion in 2000 plummeted to $2 billion by 2008, post its declaration of bankruptcy.[5]

Notwithstanding this, trademarks can give very valuable security if a business is successful. By way of an example in the late 1990s both DreamWorks and the Tussauds Group granted security over their IP to secure around $320 million - both grants of security covered both existing IP and future IP. Big news was made in August 2002 by Steven Spielberg's DreamWorks, the Los Angeles entertainment group, which secured a US$1 billion funding by securitizing its future film revenues. According to a report in Financial Times, DreamWorks will securitize its new live action output and films already in its library, which typically generate revenue for years, from releases in home video formats and repeat showings on Television. The 30 films that have been placed in the transaction include Gladiator, Shrek, American Beauty and Saving Private Ryan. The securitization depends on a well-established formula that allows several years' worth of revenues to be accurately predicted in the first few weeks following a film's theatrical release. Funds will be advanced in accordance with these calculations. The transaction has a three years' revolving period. The funding was arranged by JP Morgan and FleetBoston.

The consolidated database of the Trademark register for the marks registered in India is maintained by the Trade Marks Registry and a Public search in the same enables to retrieve the details of the Proprietor of the Registered Trademarks.

C) DESIGNS

Designs give protection for shapes, lines, patterns, texture and lots more. As with trademarks, there are both registered and unregistered design rights. Registered designs can last for a period up to 15 years. It is relatively easy to secure design registration and, once registered, there is clear proof of title. Also, unlike trademarks designs typically have a value independent of a business.

D) COPYRIGHT

Copyright gives protection for recorded material of whatever nature, including written and artistic works, sound and video recordings and broadcasts. Protection arises automatically, the benefit of which is that protection is very easy to secure and coverage worldwide can be obtained without cost. The downside is that it is often very difficult to prove ownership and

[5] The rise and fall of Kodak's moment. University of Cambridge Research, 14 March 2012.

infringement, which affects the value of many forms of copyright. Registration of Copyright is not mandatory.

In most cases, copyright lasts for up to 60 years after death, so that once ownership and the value of copyright is proven, this can give good security and generate consistent and valuable revenue streams until it expires. For example, one of the first known security interests taken over IP in respect of copyright was when David Bowie sold "Bowie bonds"[6] covering royalty payments for his back catalogue, which at that time gave him a regular income of more than $1 million per year (the bonds raised David Bowie around $55 million).

Given that copyright is not usually registered, a prudent lender placing value on copyright as security should check that the chain of title to the copyright verifies the security provider's interest in the copyright.

E) CONFIDENTIAL INFORMATION

Confidential information gives protection in respect of trade secrets and, as a result, can potentially last forever. Confidential information can be very valuable, but it is also very fragile as it only has a large value, if any value at all, while the information remains confidential. This makes this form of IP very business-dependent and, because the information cannot be shared with many people, there is limited revenue potential through licensing. This also makes confidential information very difficult to value.

As the above shows, IP can be a very valuable form of security, but if this is the main security to be relied on then very careful due diligence needs to be undertaken to ensure that the IP is valuable and secure. This can be very difficult when considering a business that operates in multiple jurisdictions, as IP mostly is country-specific. Thought needs to be given as to the effect of default on the value of the IP, in particular the effect this will have on the value of the brand. It is also necessary to consider (especially in new, patent-heavy businesses) the costs that will be incurred to protect the IP assets over which security is being taken – both in terms of registration costs and litigation costs (which can be higher than the value of the security itself in some cases).

HOW TO PROTECT YOUR SECURITY OVER IP

In order for a lender to take the benefit of any security over IP, the mortgage or charge over IP must be properly perfected.

a) Perfection – legal mortgage

For a legal mortgage, this means that:

1. Title to the IP must be transferred to the lender pursuant to the mortgage document, ensuring that all local formality requirements are met.
2. For registered IP, the transfer of title will need to be recorded at each relevant IP registry (under the Office of the Controller General of Patents, Designs and Trademarks).
3. It will be the responsibility of the Lender to maintain the IP by renewing any necessary registrations, in order for its security to continue to be protected.

b) Perfection – equitable mortgage

For an equitable mortgage, this means that:

[6] The Pullman Group, LLC https://www.pullmanbonds.com/

1. A lender (or a third party on behalf of the lender) should take possession of the relevant certificates and other title documents to the IP together with the mortgage instrument.
2. The mortgage instrument (or primary loan instrument) should include the agreed terms as to any triggers for when further steps may be taken to perfect the security interest.

c) Perfection – fixed and/ or floating charge

For a fixed or floating charge, this means that:

1. The lender's charge should be recorded as soon as possible after the charge has been granted.
2. With respect to a charge over registered IP, it may also be prudent for a lender to obtain a blank transfer form for the IP signed by the transferor with the transferee details and date left blank – to be held in escrow and used in the event of enforcement of the relevant IP. However, with an appropriately drafted power of attorney, such form is not strictly necessary.

Foreign IP

If the relevant IP rights exist outside India or in multiple jurisdictions, then consideration should be given to additional requirements for perfection of security for the particular IP in relevant foreign jurisdictions.

In particular, with respect to registered IP, lenders considering taking security over registered IP rights should check whether the relevant IP is registered, not only in India but in any other relevant jurisdictions. As foreshadowed earlier in this briefing, care needs to be taken to ensure:

1. IP is registered in all appropriate jurisdictions. If not registered, the value of the relevant IP as security will be diminished.
2. The lender's interest either as transferee (under legal mortgage) or as chargee should be noted on each register on which the IP is registered.
3. There may be additional jurisdiction-specific steps that need to be taken and which should be considered on a relevant country-by-country basis.

ENFORCING SECURITY OVER IP IF THE SECURITY PROVIDER DEFAULTS

In an enforcement scenario, there are numerous options available to a lender to enforce its security depending on what type of security was taken, including:

1. Transfer of legal title by a legal mortgage means a lender as mortgagee can sell and transfer the legal title to the IP and use the proceeds towards repayment of the loan.
2. A charge or equitable mortgage can also provide a lender with a power of sale exercisable under a power of attorney under the charging document.
3. A lender can also exercise its right to appoint a receiver, who will have the power to take possession of the IP and/ or sell the charged IP.
4. If a floating charge is taken, a lender may exercise its right to appoint an administrator (as long as the floating charge covers substantially all of the assets of the company and not just the IP), who will likely sell the business, which will include the IP, and use the proceeds towards loan repayment.
5. Alternatively, a lender could exploit the IP rights by granting licences and collecting licence fees.

The method of enforcement will depend on the nature of the sale, the type of IP rights, and whether the IP rights are held in a separate IP holding company and therefore easily separable from the business as a whole, or whether the IP rights reside with the operating company and

are not easily severed from the business (in which case the IP rights would be sold or dealt with as a package with the rest of the business).

Negative pledge undertakings, disposal undertakings and IP

- A negative pledge clause[7] is a type of negative covenant that prevents a borrower from pledging any assets if doing so would jeopardize the lender's security.
- Negative pledge clauses help the lenders protect their investments. When a security agreement includes a negative pledge clause, it prevents the security provider from taking on future debt that could compromise its ability to meet obligations to existing lenders.
- A negative pledge clause also limits the likelihood that a particular asset will be pledged more than once, preventing conflict over which lending institution has the right to the asset if the borrower defaults.
- Lenders generally give an allotted amount of time, such as 30 days, to remedy a covenant break before moving ahead with default procedures.

The loan agreement and also the security agreement over a security provider's assets will typically include both:

1. A negative pledge clause, being a promise by the security provider not to create a security interest over its assets (including its IP assets) in favour of another party.
2. A clause prohibiting the disposal (by sale, lease, licence etc) of assets (which includes IP rights) without the Lender's consent.

THE GLOBAL POSITION OF INTELLECTUAL PROPERTY FINANCING

The World Intellectual Property Organization (WIPO) was founded in the year 1967 at Stockholm to protect Intellectual Property Rights throughout the world. Later it became one of the agencies of the United Nations in 1974. WIPO regulates various policies relating to IPR across the globe. The economic, social and sustainable cultural development with preservation of biodiversities, traditional knowledge through a balance and effective international IP system is the main objective of WIPO. Besides this, it is responsible to harmonise differences amongst various countries especially between the developed and developing nations by amending international regulations so that each of them get an equal opportunity in the emerging commercial landscape.

In 2003, WIPO was requested by the UNCITRAL (The United Nations Commission on International Trade Law)[8] to cooperate on the development of a Legislative Guide on Secured Transactions, and particularly to provide expertise in the field of secured financing and IP law. The purpose of the UNCITRAL Legislative Guide which was adopted in December, 2007, is to assist States to develop their own law, so as to promote IP financing through secured transactions. UNCITRAL Legislative Guide on Secured Transactions provides guidance to legislators with respect to security rights in movable assets in general. However, UNCITRAL came out with a Supplement to the said document called Security Rights in Intellectual Property in 2010 that deals specifically with the creation, third-party effectiveness, priority and enforcement (even in case of the grantor's insolvency) of a security right in intellectual property. The objective of the Supplement was to facilitate extension of secured credit for IP assets, without interfering with the fundamentals of the particular laws. The Supplement was created on the basis of a WIPO questionnaire on Security Interests over Intellectual Property,

[7] Thomson Reuters Practical law RESOURCE ID 2-107-6875
[8] A Guide to UNCITRAL. United Nations, January 2013.

which received a response from 66 nations. From the responses to the Questionnaire it was clear that there was no uniformity amongst nations in their treatment of security interest over IP. Thus, the IP Supplement was created. It contains more than 240 recommendations concerning security transactions in general, and six specific recommendations with respect to creating security interest over intellectual property.[9] The said recommendations can be summarized as under:

a) In respect of a tangible asset with respect to which an IP is used, a security right in the tangible asset would not automatically extend to the intellectual property, and vice versa [Recommendation 243];
b) Law should provide that the registration of a notice of security right in IP in the general security rights registry remains effective, notwithstanding a transfer of the encumbered intellectual property. [Recommendation 244];
c) Law should provide that the grantor and secured creditor may agree that the secured creditor is entitled to take steps to preserve encumbered intellectual property [Recommendation 246];
d) Provisions with respect to an acquisition security right in a tangible asset should also apply to an acquisition security right in IP or a license thereof [Recommendation 247];
e) Applicable law to the security right in Intellectual Property should be the law in which the IP is protected, or may also be the law under which the grantor is located and may also be made effective under that law against third parties other than another secured creditor, a transferee or a licensee [Recommendation 248].

Position of law in the national laws of various countries

The current law prevalent in various jurisdictions on creation of security interest in IPR is as under:

1. **Australia** – Security interests in IP are covered under a mixture of national IP laws and other laws. Earlier, security interests in IP were recorded in the IP registers themselves, however, with the enforcement of the Personal Property Securities Act, 2009, which came into effect in 2012, a single national online personal property securities (PPS) Register with electronic registration and search processes replaced over 40 different registers of security interests in Australia.[10] Under the PPS Act, a security interest is an interest in personal property provided for by a transaction that secures payment or performance of an obligation.[11] Personal property, in turn, includes both tangible and intangible property. The PPS Act covers a wide range of IP, including patents, designs, trademarks, copyright, circuits, etc. The protection of security interest in IP is called perfection. A security interest is "perfected" when the second party has done everything it can to protect its security interest. Perfection under the Act can be achieved by registration of the security interest, control over the asset or temporary possession.[12] The main form of perfection of security interest in IP will occur by registration on the PPS Register. When there is more than one security interest in the same collateral, the general rule under the PPSA is that the first secured party to 'perfect' its security interest in the collateral obtains priority. Under Section 20 of the PPS Act, a security interest is enforceable against a third party in respect of a particular collateral as well.

[9] Recommendations 243-248 of the IP Supplement
[10] https://blog.patentology.com.au/2014/01/recording-security-interests-in.html
[11] Section 12 of the PPS Act, 2009 – "A security interest means an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of transaction or the identity of the person who has title to the property. ……..."
[12] Section 21 of the PPS Act, 2009

2. **Canada** – Security interests are not covered by IP law alone, but by a mixture of IP law and other laws. The Canadian Personal Property Act provides for creation of a security interest, as well as methods for making it effective against third parties. Security interests in IP will have to be recorded in an IP-specific register in order to become effective against third parties. To obtain protection of the security interest created, the parties must execute a security agreement, then "perfect" it – register the security agreement in the appropriate provincial registry. The rights and liabilities of the parties are governed by the terms of the security agreement. Upon default in making re-payment, the security taker can realise the security interest as per the terms of the agreement. Thus, if the IP is being infringed by a third party, the security taker cannot enforce any rights in the same, before default on the part of the borrower. In such a case, only the borrower has the right to sue for infringement. Thus, there can be no assignment of any right in the IP given as security, before event of default by the borrower. Typically, under the security agreements, the proprietors have the obligation to ensure and maintain the registrations and applications of the IP are in good standing. Any failure to do so may lead to a claim for breach of contract and consequent damages.

3. **China** – Promotion of use of IP as security is not reflected in any legislation, however, over the past two years, the government has rolled out multiple policies to promote IP mortgage financing. Earlier, IP asset valuation was regulated and controlled by National Intellectual Property Administration, and the China Appraisal Society. These institutions built a framework for IP valuation through publishing documents such as "Asset Valuation Standards for Intangible Assets", "Guidance for Patent Asset Valuation", "Guidance for Trademark Asset Valuation", and "Guidance for Copyright Asset Valuation". These documents were created with the aid and advice of experienced and practicing IP valuation professionals. These standards are scientific and instructive and effectively standardise IP valuation work across all appraisal companies. A fund was set up in 13 Guangdong cities to help banks reduce lending risk. Since, 2018, the total amount of patent-collateralised loans in the province was around 30 billion yuan. To make the lending process more efficient, the Guangdong branch of the China Construction Bank has developed a special model for tech companies, which "automatically collects big data, such as information about patents of a specific enterprise, and generates an evaluation."[13]
   Even in the Daxing district of Beijing, an IP financing project was launch by the Beijing Branch of the Bank of Communications and Hartend, an IP service company. The project *"exempts service fees during the process of IP mortgage financing, The service includes assets appraisal, legal service and an examination for the enterprise's IP."*[14] Due to the above project, Gridsum, a provider of big data and AI solutions, has been able to secure a loan of 5 million yuan with one patent as collateral.
   Furthermore, the National Intellectual Property Administration is promoting IP-collateralised financing services. *"Government data show that the use of patents and trademarks as collateral is already popular across China with 58.35 billion yuan ($8.49 billion) in loans granted in the first half of 2019, an increase of 2.5 percent year-on-year, benefiting more than 3,000 projects. The number of the projects funded with patent-collateralized loans surged 33 percent year-on-year to nearly 2,710 during the six-month period, involving 13,000 patents."*[15] Under the law, as it stands, an IP pledge is subject to a written agreement, which must be registered with a government authority. Failure to register invalidates the pledge.[16] Furthermore, IP holders are not free to assign or license any pledged IP without the lenders consent.[17] However, currently, challenges such as

[13] http://www.chinadaily.com.cn/cndy/2019-09/12/content_37509580.htm
[14] Ibid
[15] http://www.chinadaily.com.cn/cndy/2019-07/18/content_37492757.htm
[16] Jiangsu Jinmao v. ZHU Hongwei and Suzhou Anding, Nan-jing Gulou District Court [2014] 551.
[17] Fuzhou Nashida, Jiuxing Henglong v. YE Jinxing, Fuzhou High Court [2007] 460.

assessment of IP assets, accessing information of ownership of IP and maintaining the IP collateral's value are still being faced.

4. **United Kingdom** – It is possible to grant security over both registered and unregistered IP rights. Due to their very nature, in England, it is not possible to grant security over IPRs which requires the lender to obtain physical possession of the relevant right (such as contractual liens or pledges). Security may be transferred by way of mortgage, but requires the transfer of title in the asset from the rights-holder to the lender. This option is not attractive to both the lender and the borrower. In such an event, an option is to create a Special Purpose Vehicle, whereby the IP rights are assigned and transferred to the SPV, in exchange for a lump sum payment made to the owner. The lender, in order to monetize the IP, on the basis of the estimated cash flow associated with a particular asset, is issued a security receipt for its investment in the SPV. This is known as securitization. However, the most common practice is to either creating a fixed or floating charge of the concerned IP in the U.K.

   Specific Legislations in the U.K.

   a. Part 25 of the Companies Act, 2006 provides that a company registered in England, Wales or Northern Ireland can grant a charge, including a mortgage, over its assets – expressly including patents, trademarks or registered design [Section 860]. The Companies Act further provides that a charges register be maintained by Companies House for any charge granted over any company's asset. Further, as per Section 874, failure to record the charge within 21 days of its creation results in the charge being void against any liquidator, administrator or creditor of the company.
   b. Section 30 of the Patents Act, 1977 provides that any patent/patent application may be mortgaged. Further, under Section 130, mortgage includes any charge for securing money or money's worth.
   c. Section 24 of the Trade Marks Act, 1994 provides that a registered mark or application thereof may be the subject of a charge in the same way as other personal or moveable property, and can be assigned by way of security.
   d. Section 15B(6) of the Registered Designs Act, 1949 provides that a registered design may be the subject of a charge in the same way as other personal or moveable property, and can be assigned by way of security.

5. **United States of America** – The Uniform Civil Code (UCC) governs issues such as creating/grant of security interests and together with the United States Code, it provides for a system for making security interests effective against third parties, the priority to be given to them and their enforcement. Article 9 of the UCC deals with creation of security interest over all kinds of personal property, and its main purpose is to protect the secured party against purchasers and creditors of the debtor. Much like in other jurisdictions, Article 9 of the UCC contemplates protection of the security interest by perfecting it. Perfection entails registration of the security interest, which has the effect of putting a subsequent purchaser/creditor on constructive notice that a prior interest has been created in the property of the debtor. Security interests in IP can be recorded in an IP specific or other register, in order to make it enforceable against third parties. Such a step gives priority over all others when it comes to realization of debt. A security interest in IP does include the proceeds realised from the exercise of the IP. If there is infringement of the IP by a third party, which is subject to a security interest, the secured creditor can take legal action independently if the security interest is registered as the legal/beneficial owner of the IP. Such a right can be conferred on the secured creditor in the security agreement itself.
   In the United States, a large number of cases have come to be filed in respect of security interests created over IP, however, the scope of these cases, under the Uniform Civil Code is limited to the question of registration and perfection of the security interest. Thus, the

Courts have grappled with the question of which system – federal or state – controls the filing requirements for security interests in intellectual property. The right to create such security interest is well recognised.

From the above, it is clear that there is no one system in place across jurisdictions that uniformly deals with security interests over IP. However, one thing is clear that the viability and importance of IP as an asset is slowly but surely gaining importance, with governments across the world taking active steps to help finance a business on the basis of the strength of its IP. For example, it was only on the strength of the patent in the light bulb.

CURRENT POSITION IN INDIA

Security interest can be defined and created in India both under general law as well as specific law. Several statutes contemplate creation of security interests over intangible property, which include IPRs. However, there is no express mention of creation of security interest over IPRs and license and assignments are the preferred ways of monetisation.

Relevant Legislations

1. **Companies Act, 2013** – Chapter VI of the Act allows a company to create a charge on its *"**property or assets**……**whether tangible or otherwise**."*[18] Such charge created has to be registered with the Registrar of companies, within 30 days of its creation.[19] Further, Section 85 of the Act provides that every company shall keep at its registered office a register of charges affecting any property or assets of the company. Additionally, Schedule III of the Act classifies intangible assets under Clause (j) and includes:
    a. Goodwill;
    b. Brands/trademarks;
    c. Computer Software;
    d. Mastheads and publishing titles;
    e. Mining rights;
    f. Copyrights, patents and other intellectual property rights, services and operating rights;
    g. Recipes, formulae, models, designs and prototypes;
    h. Licenses and franchise;
    i. Others.

    From a reading of the above, it is clear that the Act contemplates creation of a charge, whether fixed or floating, on intangible assets. Even otherwise, a person may create other types of security interests via contractual arrangement, and the nature of such security is then governed by the contract terms.

2. **SARFAESI (The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest) Act, 2002** – The SARFAESI Act was enacted to allow banks and other financial institutions to auction residential or commercial properties of the Defaulter to recover loans. Under this act secured creditors (banks or financial institutions) have many rights for enforcement of security interest under section 13 of SARFAESI Act, 2002. It contemplates creation of security interests at or during the time of debt restructuring. Under the Act "Property" has been defined under Section 2(1)(t)(v) to include *"intangible assets, being know-how, patent, copyright, trade mark, license, franchise or any other business or commercial right of any nature."* Further, 2(1)(zf) of the Act defines "security interest" to mean *"right, title and interest of*

[18] Section 77 of the Companies Act, 2013
[19] Ibid.

any kind whatsoever upon property created in favour of a secured creditor and includes mortgage, charge, hypothecation, assignment…..".
Section 20 of the Act envisages creation of a Central Registry for the *"purposes of……..creation of security interest under this Act."*[20] The particulars of every creation of security shall be filed with the Central Registrar, in the manner as prescribed.[21] Further, section 31 (which deals with exceptions to application of the Act in respect of certain security interests), also does not exclude any IP from the application of the Act. From a reading of the above, it can be concluded that security interest can be created over IP under the said act, which provides for an enforcement mechanism for the same.

3. **Banking Regulation Act, 1949** –For the purposes of the Act, "banking" is defined as *"accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise"*[22] Section 6 of the Act prescribes an exhaustive list of businesses that the bank can undertake, other than the business of banking. The bank may not undertake any other kind of business. Section 6 allows the banks to indulge in lending or advancing of money either with or without security[23], or to manage, sell and realise any property which may come into the possession of the company in satisfaction or part satisfaction of any of its claims,[24] as also to acquire, hold or generally deal with any property or right, title or interest in any such property which may form the security or part of the security for any loans or advances or which may be connected with any such security.[25] Thus, from a reading of Section 6, it is clear that the bank has wide powers to deal with security interests created in any kind of property. However, Section 8 of the Banking Regulation Act, 1949, prescribes that *"no banking company shall directly or indirectly deal in the buying or selling or bartering of goods, except in* ***connection with the realisation of security*** *given or held by it……"* Banks cannot, by virtue of this Section engage directly or indirectly in the buying or selling of goods, except in connection with realization of security. However, there is nothing in the Banking Regulation Act that prohibits creating a security interest over intellectual property.

4. **Patents Act, 1970** – Section 68 of the Act provides that *"an assignment of a patent or a share in a patent, a mortgage, license or the creation of* ***any other interest in a patent*** *shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced in the form of a document……".* Section 69(1) of the Act prescribes, *"where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee* ***or otherwise*** *to any* ***other interest in a patent****, he shall apply in writing in the prescribed manner to the Controller for the registration of his title, or as the case may be, of notice of his interest in the register."* Same has to be registered as per Section 69(2). Such disclosures can be made to the Registrar in Form 16. Thus, the Patents Act does not prohibit creation of a security interest in IP, but merely requires that the same be captured in writing and be registered with the Registrar.

5. **Designs Act, 2000** – Section 30(2) of the Act provides for recordal of security interest created by way of mortgage, license or other interest apart from assignment, much like

[20] Section 20 of the SARFAESI Act, 2002
[21] Section 23 of the SARFAESI Act, 2002
[22] Section 5(b) of the Banking Regulation Act, 1949
[23] Section 6(1)(a) of the Banking Regulation Act, 1949
[24] Section 6(1)(f) of the Banking Regulation Act, 1949
[25] Section 6(1)(g) of the Banking Regulation Act, 1949

what is prescribed under the Patents Act. Further, the creation of such security interests must be in writing and necessarily communicated to the Registrar of Designs in the form prescribed being Form-12.

6. **Trade Marks Act, 1999** - There is no specific provision prescribing creation/recordal of security interests/mortgage of trade marks. The only provision for creating the interest is by way of assignment of trade mark. Under Indian Law, assignment of trade mark can be conditional and/or time-bound. Therefore, parties may create security interests over trade marks for limited period of time and as per conditions agreed upon and thereafter re-assign such trade mark in lieu of security interest. Section 37 of the said Act allows a proprietor of a registered or unregistered trade mark to assign his rights in said trade mark, either with or without the goodwill associated with such trade mark.

From the above statutes, it is clear that even though there is no special legislation that deals with creating a security interest in Intellectual property, the power to do the same finds basis and can be derived from both the general and specific laws related to IP and its protection prevalent in India.

Recently, the Supreme Court in ***Canara Bank v. N.G. Subbaraya Setty & Anr***[26], held that a trademark cannot be assigned to a bank by a borrower who has defaulted on the loan. In the said case, R1 had availed of a credit facility from the Petitioner Bank in 2001. As R1 defaulted in payment, the Bank filed a petition before the DRT (Debt Recovery Tribunal), however, R1 in order to repay the dues of the Bank executed an assignment deed with the Bank for its trademark "EENADU" in respect of agarbattis. However, shortly after execution of the assignment deed, R1 was informed by the Bank that it cannot be "patent right-holder" and the assignment deed was cancelled. Two suits for recovery came to be filed by both parties, which were consolidated and common judgment was passed. It was held that the Bank had no right to rescind or cancel the assignment deed. After discussing Sections 6 and 8 of the Banking Regulation Act, 1949, and Section 45 of the Trademarks Act, 1999, the Hon'ble Supreme Court held as under:

> *"41. Equally, a reference to Section 6, 8 and 46(4) of the Banking Regulation Act would also make it clear that a bank cannot use the trade mark "EENADU" to sell agarbathis. This would be directly interdicted by Section 8, which clearly provides that notwithstanding anything contained in Section 6 of in any contract, no banking company shall directly or indirectly deal in selling of goods, except in connection with the realisation of security given to or held by it. Also, granting permission to third parties to use the trade mark "EENADU" and earn royalty upon the same would clearly be outside Section 6(1) and would be interdicted by Section 6(2) which states that no bank shall engage in any form of business other than those referred to in sub-section (1)."*

The court further went on to hold that the trademarks in the present case were not part of any security for loan or advances made to R1.

The above judgment was rendered in the peculiar facts of the above case, where instead of giving the trademark as a security for availing of a loan, the Respondent sought to repay the loan by entering into an assignment deed with the bank. This is clearly hit by section 8 of the Banking Regulation Act. However, this does not mean that the intellectual property cannot be used as collateral for a loan.

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[26] (2018) 16 SCC 228

Government Policy

The Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI)[27] is a Government of India Company, with the object of maintaining and operating a Registration System for the purpose of registration of transactions of securitization, asset reconstruction of financial assets and creation of security interest over property, as contemplated under the SARFAESI Act. Currently, the portal provides facility to file security interest in immovable created through all types of mortgages, filing of security interests in movables, **intangibles** and factoring transactions is also available on the portal.

Vide Gazette Notification issued by the Government of India dated 22.01.2016, it was contemplated that the – *"Particulars of creation, modification or satisfaction of security interest in intangible assets, being know how, patent, copyright, trademark, licence, franchise or any other business or commercial right of similar nature"* be filed with the CERSAI.

Recently, the Reserve Bank of India vide Circular No. RBI/2018-19/96 dated 27.12.2018, whereby it advised banks/FIs to register transactions relating to securitization and reconstruction of financial assets and those relating to mortgage by deposit of title deeds with CERSAI, and advised CERSAI to complete filing the charges pertaining to subsisting transactions by March 31, 2019, and to file charges relating to current transactions with CERSAI on an ongoing basis.

Thus, there is already a system in place in India which allows for creating security interest in IP. The need of the hour is to educate IP holders in the manner in which their assets can be used as collateral for financing the business. There is a need to incentivize businesses, especially start-ups, who come up with new inventions to use their technology as collateral for availing loans.

VALUATION

The biggest hurdle faced by the banks in giving loans as against IP is valuation. Often lending value on the securitized intangible is open for an intense debate and has become very subjective as it is possible that no two banks/bankers may agree to value in a similar fashion. Such uncertainty creates great anxiety among the bankers to fund against the intangibles, be it a matured asset or under development. Often regulatory agencies have castigated bankers for funding against the intangibles especially when lending becomes a non-performing asset. The argument from the regulatory agencies would be that intangibles carry no value and is always looked with suspicion. In the absence of established valuation touchstones, judiciary is put to great difficulty to render justice in an objective manner especially one is alleged of questionable practices or irresponsibility. These factors have impeded the orderly development of a lending value and intangibles as an enforceable realizable collateral. The latest developments have made a significant attempt in addressing these anxieties in Valuation. The key developments are enactment of section 247 of the Companies Act 2013 and the formulation of the Indian Valuation Standards 2018.[28]

The Ministry of Corporate Affairs (MCA) vide its notification dated October 18, 2017, brought into force the provisions of Section 247 of the Companies Act, 2013, which deals with the Valuation of, inter alia, property, stocks, shares, debentures or net worth of a company by the Registered Valuers.

***ICAI Valuation Standard 302* – Intangible Assets**

[27] https://www.cersai.org.in/CERSAI/

[28] *"Valuation: Professionals' Insight – Series -3",* Institute of Chartered Accountants of India, New Delhi.

The objective of this standard is to prescribe specific guidelines and principles which are applicable to the valuation of intangible assets that are not dealt specifically in another standard. This provides specific guidance on valuation of an intangible asset including Goodwill, brand value, license etc which are not covered by any other standard. The standard defined an intangible asset as an identifiable non-monetary asset without physical substance. It lays down significant considerations for the valuation of intangible assets e.g. to determine the and objective of the overall valuation assignment, consideration of the legal rights of the intangible asset to be valued, evaluation of the highest and best use considerations, etc. The interplay of goodwill with intangible assets and their distinct natures is well enshrined in the standard.

The standard discusses the three approaches of valuation:

Market approach- is a valuation approach that uses prices and other relevant information generated by market transactions involving identical or comparable (i.e., similar) assets, liabilities or a group of assets and liabilities, such as a business.

Under the market approach it highlights two methodologies and they are

- price/valuation multiples/capitalization rates, and
- guideline pricing method.

Income approach - is the valuation approach that converts maintainable or future amounts (e.g., cash flows or income and expenses) to a single current (i.e. discounted or capitalised) amount. The fair value measurement is determined on the basis of the value indicated by current market expectations about those future amounts.

Under the income approach, commonly used valuation methods are

- Relief-from-royalty-method
- Multi-period excess earning method
- With-and without method or premium profit method
- Greenfield method and
- Distributor method.

Cost approach - is a valuation approach that reflects the amount that would be required currently to replace the service capacity of an asset (often referred to as current replacement cost).

For cost approach, commonly used valuation methods are

- reproduction cost method and
- replacement cost method

Additionally, it provides that the cost approach is generally adopted when market and income approach cannot be applied. It is required to be used with discretion and generally for intangible assets that are not the primary business drivers and for which a market participant may not be willing to pay a significant premium.

Ind AS 38-Intangible Assets provides guidance regarding recognition and measurement of intangible assets. Ind AS 103 provides guidance on intangible assets acquired in a business combination i.e. at fair value. A separately acquired intangible asset is recognized at either cash paid or at the fair value of any other consideration given. Under Ind AS 38, an entity cannot adopt revaluation model for an intangible asset that does not have an active market.

Ind VS 302 is wider in scope and considers various situations for valuation of intangible assets and accordingly, has elaborated on various valuation methodologies.

The convergence of Indian Accounting Standards with IFRS (International Financial Reporting Standards) has brought Valuation of intangible assets to the fore as they comprise a significant asset class in the allocation of the purchase price in case of Business Combinations under Ind AS 103 and Ind AS 38 which deal with the accounting treatment of intangible assets.

World's five most valuable brands as recognized by Forbes magazine for 2019 are: Apple: $205.5 billion, Google: $167.7 billion, Microsoft: $125.3 billion, Amazon: $97 billion & Facebook: $88.9 billion. A study by Interbrand in association with JP Morgan concluded that on an average brands account for more than one-third of shareholder value.[29] Thus, brands are one of the most important strategic assets of an organization may require Valuation under following circumstances: Financial Reporting - Purchase Price Allocation, M&A Decisions, Licensing, Tax Planning, Dispute Resolution, Liquidation, Litigations, Raising Funds, Collateral lending & transactional support engagements etc

While the recent developments on Valuation has the impact of reducing the uncertainty and increasing the predictability, it has the framework for creating mega corporations whose market cap may match the global majors considering the demographic dividend in India. It is desirable that a kind of a registry is developed for capturing the myriad rights emanating in an intangible asset so as to firmly anchor the ownership rights. It augurs well to take section 74(2) of the Evidence Act which speaks about public document of a private person with suitable amendments to Information Technology Act, Evidence Act etc. or in the alternative create a special enactment capturing the entire gamut of issues which goes a long way to develop India as a global power house on the intangibles. Needless to say, such an effort would create a new class of asset and has the impact of pushing the GDP and market capitalization higher. It may also bring in new untapped avenues for revenue and taxation.

The increased transparency and fairness in the Valuation system would also boost stakeholder confidence by bringing uniformity. In conclusion, the field of Valuation is witnessing a revolution and conduct of Valuations by quality Valuation professionals will improve public confidence in Valuations.

CHALLENGES OF USING IP AS COLLATERAL

- **Volatility:** More established forms of collateral, such as tangible property, are generally more stable and often provide lenders with readily-available market information when assessing the value of the property. Because the valuation of IP is generally more difficult than for tangible assets, potential creditors are less willing to invest because they know less of how the market will react to the property in the future.
- **Value identification:** For an asset to have value, it must be able to be discretely identified. For certain IP assets, there may be difficulty in meeting this requirement. For instance, the success of a product may reflect its use of patents, trade secrets, copyrighted materials, and marketing assets such as trade names or trademarks.
- **Due Diligence:** In order to evaluate whether an IP portfolio is valuable enough to secure a loan, lenders should obtain a detailed schedule on the types of IP claimed to be owned by a borrower. An independent firm/organisation must individually audit a borrower's IP portfolio to confirm, for example: owners of any claimed registered or unregistered rights, any outstanding and unresolved infringement claims, whether the

[29] *"Business Valuation Management",* Group IV, Paper – 18, Institute of Cost and Works Accountants of India, Kolkata.

IP rights are subject to an assignment or a license, and whether there are other security interests registered against assets in the portfolio.

- **Visibility:** despite its importance, and the amount invested in it by large and small businesses, internally generated IP is seldom represented on company balance sheets. It is, therefore, incumbent on a company's Directors to understand and explain their IP and intangibles in language a lender will understand. If awareness is lacking in either or both parties, this acts as a hurdle.
- **Better informed lending decisions:** obtaining insights into off-balance sheet assets provides lenders with a more representative picture of a company's resources and value.
- **Value attribution:** unquoted companies do not have access to a market mechanism to measure and demonstrate the intangible value attributable to their businesses.
- **Value realisation:** many tangible assets have a realisable disposal value, even if it is a fraction of the new (originally funded) cost. Markets for resale of IP and intangible assets exist, but are presently less formalised and offer less certainty on realisable values.
- **Value risk:** some intangible assets, such as brands, can be subject to rapid value changes depending on the fortunes of the companies that own them. If the IP is the company's primary asset and pledged as collateral, a default on the loan could result in the loss of the IP and a termination of the company.
- **Value understanding:** lenders need to gain confidence in managing the particular risk profiles associated with these assets. This involves familiarisation, training, and the adoption of recognised standards for intangible asset value management.
- **Recovery:** In the event that a borrower defaults, lenders should ensure that they will be able to dispose of the assets, and assess whether there is a potential market appetite. For instance, lenders should identity any potential investors or buyers to assess demand should the lender need to recover.

CONCLUSION

In the current legal landscape, especially with the introduction of the provisions for intangibles in Companies Act 2013, SARFAESI Act 2002, Banking Regulation act 1949, etc., lot of air of uncertainty has been cleared. However, there appears to be a requirement for effective communication of the changes. Though IP rights have specifically been recognised as a business asset of a company, people in India do not have sufficient knowledge about the regimes in place, and their obligations thereunder. Either the owner is not aware of the value of the asset, or the banks/financial institutions themselves do not wish to undertake the risk of lending against IP. Thus, there is a need to evolve clear practice and rules to bring in about certainty to encourage the creation of security interest in IP. Improvements can be brought in alongside the recent developments, so as to encourage depth in the market for creation of security interests in IP.

Some of the reforms that may be incorporated in the existing system dealing with security interests in India are as under:

1. Under the current legal regime, security interest may be registered in respect of all properties with the Registrar of Companies or the CERSAI. However, awareness can be created about the changes, both amongst the owners and the banking institutions in the viability of using IP as security. Further, even though the SARFAESI Act allows for creation of security interest in respect of intangibles, the CERSAI created under Section 20 of the Act, allows for asset-based search, which includes immovable properties only and there is no mention of intangibles, which can be cured. The Registrar of Companies maintains a register of charges which encompasses all assets. A separate register of charges for intangibles can be made compulsory which may augment the market for security interest

on intangibles. In Australia and Canada, there is a central nodal agency specifically for regulation over creation of security interests over personal property including IP, other than immovable property, and India may reflect on the same. The said agency would be tasked with registration of creation of security interest, verification of an earlier charge over the same asset, and maintenance of proper records of the same. The records so maintained, must be available to the general public to verify existence of security interest created and the records may be made available in respect of one entity with payment of nominal fee. The statutory powers of the said agency must specify compulsory registration of security interest created by any companies/corporations/individuals.

2. The valuation guidelines by the ICAI applies to intangibles in general. The practitioners of valuation and the banks may want to have asset specific guidelines such as guidelines for Patents, Trademarks and Copyrights individually, which may increase the effectiveness of the guidelines.
3. Guidelines must be put in place as to how the banks/financial institutions can use the asset in the event of default, subject to the security agreement executed and legal recognition should be accorded to same.
4. Government may constitute study groups to take up study on the desirability of a comprehensive law that can be legislated to govern the entire gamut of ownership, creation of security interest, or in the alternative, amendments be made to existing laws for recognition and registration of security interest, use and disposition into a single legislation to avoid any lack of clarity, uncertainty, etc.

A growing body of research shows rapid expansion of investment in intangible assets by companies in the United States, Japan and Europe, with significant impacts on productivity. The global economic crisis placed a new focus on how accumulation of intangible assets provided new sources of growth. While India undertakes several structural reforms to achieve the target of $5 trillion economy, creating an enabling regime in the Intellectual Property arena would definitely be an important contributor, thereby facilitating the country's aspiration of joining the bandwagon of superpower nations.

Singh and Singh Law Firm LLP is an Indian law firm with years of experience in providing services inter alia in the field of Intellectual Property Law, Media and Telecommunications Laws, Arbitration, Competition Law, Law of Taxation, Drug Regulatory Laws. With a highly qualified and experienced team of legal professionals, the firm is able to identify the core of a client's issues to provide suitable solutions.

Singh & Singh was founded by Mr. Maninder Singh, Senior Advocate (Former Additional Solicitor General of India) and Mrs. Prathiba M. Singh in the year 1997. Mr. Maninder Singh, was designated as Senior Advocate in the year 2008 and had since retired from Singh & Singh. In the year 2012, the Firm was converted into LLP with 5 partners; however, upon designation of Mrs. Prathiba M. Singh as Senior Advocate in December, 2012, the LLP was reduced to 4 partners. Since then, the Firm is running as a professionally managed firm and currently has 6 partners and 4 associate partners each an expert in their respective practice area. The firm further has over 50 attorneys and patent agents.

The expertise and experience brought in by the Founding Partners, coupled with their desire to create a youthful and energetic law firm, has inspired the aggregation of a dynamic team of lawyers and professionals within the firm, who continue to successfully take the legacy of Singh and Singh forward. Highly experienced and qualified individuals make up the respective teams at the firm who have rich experience in handling intricate and crucial matters. The Firm has rich experience in Litigation, Advisory, Regulatory, Prosecution and Enforcement.

The Firm has grown over the years, to become one of India's leading Law Firms in the field of Intellectual Property litigation, Information Technology, TMT and related aspects, as also technology, Media and Telecommunication Laws and have been awarded both individually and as a firm, in the past years. The firm has been ranked in top tiers by various international and national publications.

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Confederation of Indian Industry

The Confederation of Indian Industry (CII) works to create and sustain an environment conducive to the development of India, partnering industry, Government, and civil society, through advisory and consultative processes.

CII is a non-government, not-for-profit, industry-led and industry-managed organization, playing a proactive role in India's development process. Founded in 1895, India's premier business association has more than 9100 members, from the private as well as public sectors, including SMEs and MNCs, and an indirect membership of over 300,000 enterprises from 291 national and regional sectoral industry bodies.

CII charts change by working closely with Government on policy issues, interfacing with thought leaders, and enhancing efficiency, competitiveness and business opportunities for industry through a range of specialized services and strategic global linkages. It also provides a platform for consensus-building and networking on key issues.

Extending its agenda beyond business, CII assists industry to identify and execute corporate citizenship programmes. Partnerships with civil society organizations carry forward corporate initiatives for integrated and inclusive development across diverse domains including affirmative action, healthcare, education, livelihood, diversity management, skill development, empowerment of women, and water, to name a few.

India is now set to become a US$ 5 trillion economy in the next five years and Indian industry will remain the principal growth engine for achieving this target. With the theme for 2019-20 as 'Competitiveness of India Inc - India@75: Forging Ahead', CII will focus on five priority areas which would enable the country to stay on a solid growth track. These are - employment generation, rural-urban connect, energy security, environmental sustainability and governance.

With 68 offices, including 9 Centres of Excellence, in India, and 11 overseas offices in Australia, China, Egypt, France, Germany, Indonesia, Singapore, South Africa, UAE, UK, and USA, as well as institutional partnerships with 394 counterpart organizations in 133 countries, CII serves as a reference point for Indian industry and the international business community.

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