



## **Confederation of Indian Industry**

The Confederation of Indian Industry (CII) is the largest industry body in India and has been responsibly working towards the development and growth of the Indian industry through a large number of initiatives. There is a sharp focus on raising the global ranking of India for ease of doing business. CII is firmly of the opinion that intellectual property rights and the related environment in the country play a crucial role in achieving this goal along with many other parameters such as overall legal frame work in the country, growth in GDP and investment in research and development in science and technology. CII is concerned about poor ranking of the Indian IPR eco-system among several nations as has been carried out by USTR from time to time as this presents a negative picture of India in respect of ease of doing business not only in the minds of developed countries but also of developing countries.

CII has made its submission to USTR in the last few years putting forward India's ever- improving IPR eco-system in all fronts. We would again like to make a submission to USTR to present a realistic picture which may help develop a better understanding of the Indian IPR system which has responded positively to global and domestic needs. Being the biggest democracy in the world, we are committed to and bound by a strong legal frame work supported by efficient courts. Some of the major initiatives taken up by the government are Make in India, Start-up India and Digital India aimed at infusion of technology in the process of development. Further, all the above initiatives will need strong backing by a robust IPR system.

### **Confederation of Indian Industry**

Confederation of Indian Industry (CII) is one of the largest industry associations in India with around 100,000-member companies (through direct and indirect membership) including the multinational companies which have their registered offices in India. CII has to consider the interest of all its members while preparing its policies, action plans, evolving advocacy plans, projecting achievements of industries etc. CII works very closely with the central and state governments in policy

formulation and implementation. A few important areas are intellectual property rights (IPR), international R&D collaboration, business innovation, higher education and start-ups. It needs to be appreciated that CII follows the contours of existing laws, government policies and goals and practices and rules laid down.

All the above areas are inter-related and therefore, IPR needs to be viewed from that perspective. CII has a National Committee on IPR having membership from industry, members, governments and academics. The Committee has helped in developing papers on varied issues such as trade secrets, SME and IPR, counterfeiting in publishing sector, position paper on guidelines on computer related inventions (CRI) and other subjects.

CII has been working closely with USPTO, EUIPO, JPO, UK Patent Office and WIPO for conducting advanced level workshops in topics related to IPR.

In order to promote the culture of IP protection in Indian industries, CII has been bestowing IPR awards to Indian companies. These awards are given to companies which have excelled in patents, trademarks and design based on an evaluation over the last five years. Awardees are selected by a well experienced jury.

CII recently conducted an International Conference on IPR with a focus on artificial intelligence where experts from India, EU, Japan and UK participated and was attended by a large number of professionals. CII has also generated papers on IPR issues affecting Make in India and Digital India programmes and a position paper on AI and IPR.

### **Computer Related Inventions (CRI)**

Active fruitful discussions were held between the government, industry and other stakeholders on the guidelines for examining patent applications in the field of CRI. The office of the Controller General of Patents Designs and Trademarks (CGPDTM) in August 2015 issued guidelines for the examination of patent applications in the field of CRIs with an aim to foster unanimity and consistency in the examination of such applications. However, after proponents of open source software expressed concerns to these guidelines, they were stayed and fresh guidelines were issued in February 2016. After examination of suggestions made by industry, law firms and other stakeholders, revised guidelines were issued in June 2017. As a result, these

guidelines are compatible with those of other countries. These guidelines will certainly help patent grants in areas such as artificial intelligence, internet of things and machine to machine learning. This is an excellent example of how industry needs are catered by the government.

### **Special incentives for Start-ups**

Special provisions have been made for startups whereby they will get 80% rebate in fees vis-à-vis other companies and the examination will also be expedited. These facilities are also available to start-ups from any other country member of TRIPS, thus ensuring national treatment to all such start-ups. Under the new Trademark rules, Startups have been given a 50% rebate in filing fees vis-à-vis other companies. 50% fee concession is provided for MSMEs vis-à-vis large entities on patent as also trademark fees.

### **Global Innovation Index (GII)**

In the recently released GII-2017 report, India's rank has improved by 6 places from that of 2016. India's rank in the year 2015 was 81st and in the year 2017 it has jumped 21 places to the 60th position. India has retained top rank in Information and Communication Technology Service Export for the last four years. India is the top-ranked economy in Central and Southern Asia and has now outperformed on innovation relative to its GDP per capita for seven years in a row. Report mentions that "The emergence of innovative new Asian Tigers, an innovative India, and better innovation networks in the region are likely to be among the most encouraging developments for worldwide innovation in the next few decades".

### **Growth in the R&D Sector<sup>1</sup>**

The Gross Expenditure on R&D (GERD) has seen a significant jump in the last few years. It moved from INR 85326 million to INR 94516 million in 2015-16 (estimated) and INR 1048640 million in 2016-17 (estimated). There was a significant growth in the number of Ph.D, it rose from 18603 in 2013-14 to 23519 in 2014-15. India's scientific publications output has shown a rising trend during the last decade. The research output increased by 68% from 62955 in 2009 to 106065 in 2013. India ranked at the 6<sup>th</sup> position in the world in scientific publications ahead of France, Italy

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<sup>1</sup> SCOPUS Database

and Spain. These number indicate a potential for India emerging an IPR driven country.

### **Compulsory licensing**

India has granted only one compulsory license in respect of a patent in its entire history of patents. Subsequent to that several requests for compulsory licenses have been turned down. This establishes India's tight scrutiny of such requests without compromising on the basic principle behind compulsory licenses in public interest as stipulated in the Indian Patent Act.

### **Improved Institutional Mechanism**

The administration of all IPRs except protection of new plant variety has been brought under one umbrella within the ambit of the Department of Industrial Policy and Promotion. Until recently, the administration of Copyright Act, 1957 and Semiconductor Integrated Circuits Layout-Design Act, 2000 was with the Ministry of Human Resources and Ministry of Electronics and Information Technology respectively. This responsibility has now stands transferred to DIPP. This action has been welcome by the Indian industry. This has led to formation of one Intellectual Property Appellate Board (IPAB). The IPAB Chairman has been appointed and he has taken charge. The process for engaging members has been initiated.

### **Clearing Backlog/ Reducing Pendency**

A number of steps have been taken to reduce backlog and pendency in patent and trade mark examination such as addition of examiners and other procedures driven by technology. Some of these are:

#### a) Addition of human resources

The Government of India is serious on the augmentation of manpower in Indian Patent Offices. 459 new Patent Examiners in various fields of technology have been appointed in addition to the existing 130. Also, 27 posts of Deputy Controllers and 49 posts of Assistant Controllers in Patent Office, have been filled up through promotion. This exponential increase is already bringing down the pendency.

Manpower has also been augmented manifold on the trademark front with recruitment of 4 Senior Examiners and 55 Examiners being made in addition to

existing 63. Apart from this, services of 84 Trademark Examiners are being utilized on contractual basis. This has already cut down the examination time drastically from 13 months to just 1 month, as also pendency at later stages.

- b) Pendency in Patent examination is targeted to be brought down from the present 5 to 7 years to less than 18 months. The technical manpower has been accordingly augmented. Already for the 1st time in the past few years, the actual number of patent applications examined exceeded the number filed in any one month.
- c) To promote ease of doing business, the office of CGPDTM has introduced automatic issuance of electronically generated patent certificate and trademark certificate.
- d) Pendency in Trademark examination has already been brought down from the erstwhile 13 months to just 1 month, much earlier than the target month of March 2017.

### **Business Process Re-engineering**

The Patent Rules, 2003 have been amended to streamline processes and make them more user friendly. Provisions have been included for condonation of delay due to war/ natural calamities. Refund of fees in certain cases has been permitted, as also withdrawal of application being permitted without any fees. Timelines have been imposed to ensure speedy disposal, the number of admissible adjournments have been limited. Applications can be transferred electronically from any of the Patent Office branches to another. Expedited Examination is now permitted on certain grounds. Hearing through video conferencing.

### **Highlights of the Amendments in Trademark Rules**

The Trade Marks Rules, 2002 have been revamped and The Trade Marks Rules, 2017 were notified on 6th March 2017. 50% lower fares for filing Trade Mark Applications by Individuals/ Startups/ Small Enterprises vis-à-vis Companies. The 74 separate forms and applications have now been replaced by 8 consolidated forms. Process of determining a well-known mark has been laid out for the first time. E-filing encouraged

through 10% rebate in fees for e-filing vis-à-vis physical filing of Trade Mark Applications. Email now recognized as a Mode of Service. Allowance of Video Conferencing for Hearings. Provisions relating to expedited processing of an application for registration of a Trade Mark have been extended right up to registration stage (before, it was only up to the examination stage). The new Rules have an express provision for filing applications for sound marks which must now be submitted in an MP3 format, not exceeding 30 seconds in length. This is also to be accompanied with a graphical representation of the sound notations. In this regard, the definition of “graphical representation” has also been revised to include representation in digitized form. Number of adjournments in opposition proceedings has been restricted to a maximum of two by each party, which will help dispose-off matters in time. Number of entries in the Fees has reduced.

### **Transparency**

Transparency has been ushered in by providing for dissemination of information through dynamic web-based innovative utilities. This can be freely accessed by the public. The queuing system has been strictly enforced for taking up applications for examination and disposal. A common queue is now being maintained across all patent offices, ensuring efficient use of available resources and manpower. Grievances are addressed through the Government of India portal (CPGRAMS) as also Twitter Seva, etc.

### **Expedited Examination of Patent Applications**

Permitting Expedited examination of patent applications for the first time has shown remarkable results. The shortest time taken to grant a patent recently has been **just 113 days** from the filing of the request for examination. As on 31 December 2017, 225 of the 323 expedited applications received had already been examined and 45 Patents granted; of these, 9 have been granted to startups.

### **WIPO CASE and DAS**

India is already an Accessing Office for WIPO CASE, and is in the process of becoming a Depositing Office. The Indian Patent office will soon be able to access Priority documents from WIPO DAS, for which necessary steps are underway. India signed an MoU with WIPO in October 2017 on Data Exchange and Data Quality.

## **Sensitization Programs for Judiciary**

The training of Judges on IP Enforcement and adjudication has also been undertaken. Two colloquiums on commercial laws for High Court Judges were held at National Judicial Academy of Bhopal. DIPP officials sensitized the participating judges on government policies vis-à-vis IPRs. Further, training programs are being planned in conjunction with National Judicial Academy (NJA) and various State Judicial Academies. DIPP in collaboration with WIPO and NJA organized a 3-day conference for High Court Justices on IPRs in November 2017.

## **Combating Online Piracy**

To counter online piracy, CIPAM collaborated with National Internet Exchange of India (NIXI) to pull down 80 infringing websites on the basis of incomplete KYC (referred to as WHOIS) and 6 websites have submitted their WHOIS credentials.

An Anti-Piracy Video Campaign in collaboration with Viacom 18 Media Pvt. Limited using the popular cartoon characters –Motu and Patlu, to raise awareness in kids on piracy.

## **Dynamic Utility Facilities available on Website of O/o CGPDTM**

The Controller General of Patents, Designs and Trademarks (CGPDTM) in 2014 launched various features to provide online search services for patents and trademarks in order to make the process easier, and to provide transparent and accurate results. The website of O/o CGPDTM is now updated to provide more user-friendly interface.

The features include innovative tools such as “Stock and Flow”- a utility which existed for Trademarks, has now been extended to Patents also. Reports suggest that the Indian Patent Office is the first in the world to achieve such transparency. The stock and flow facility has made work happening in the Patent Office public and, shows stock and flow at different locations on a real-time basis on the official website.

### Dynamic Utility Facility under Patents

**Expired/ Ceased Patents-** This is a tool to provide access to the Patents that have ceased to be in effect under section 53(2) of the Patents Act, 1970. The status of the

patent is updated dynamically and the user has access to the complete Patent Document and E-register.

**Disposal of Patent Applications-** This is a tool to provide disposal reports for patents granted, refused and applications abandoned under section 21(1). The reports are available location wise and group wise based on a particular month of a year or between a particular set of dates.

#### **Request for Examination status of issued FERs (First Examination Reports)**

This is a tool to display information about month and year of 'Request for Examination' (RQ) being examined and 'First Examination Reports' (FERs) being issued. Again this information is available location wise and group wise on real-time basis. The user can intimate the office if the RQ is yet to be examined, by clicking on a button for this purpose.

**Dynamic FER view-** This is a tool to display the 'First Examination Report' (FER) dynamically. Reports can be accessed for particular year and month, location-wise, group-wise. You can also access all the FERs issued for a particular month and a particular group in that year.

**Dynamic status of Patent Application (As per field of invention) -** This tool provides information on 'Working of Patents' (under section 146) and access to the information received from Patentee regarding working of Patented Invention. It can be accessed location wise and year wise based on various parameters.

**Stock and Flow based Dynamic Patent Utility-** This tool provides the applicant with a facility to view the patents under different stocks and the flow of patent applications pending at various stages of the functioning of the patent.

#### **Dynamic utility facility in Trademarks**

Various tools have been introduced to make it convenient for the public to track status of various functions performed by the Trademarks registry on real time basis.

One can access the Examinations of Trademark applications, Show Cause hearings, publications in the Trademark Journal, Registrations of Trademarks, otherwise disposal of applications (i.e. by way of abandonment, refusal etc.) done, Notices issued (month-wise or date-wise), International registrations designating India, etc.

using the tools made in this regard.

### **Stock and Flow based Dynamic Trademark Utility**

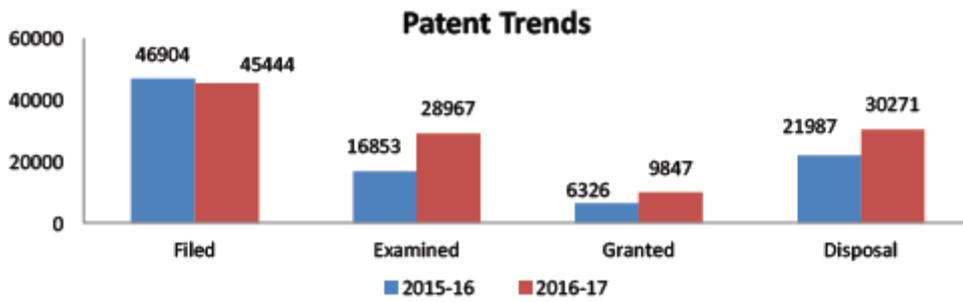
This tool provides applicants with a facility to view a particular trademark under different stocks and the flow of trademark applications pending at various stages of the functioning of the Registry. The reports may be obtained in the following categories:

New applications received for registration of Trademarks, awaiting examination, under examination, post examination, under show-cause hearing, published and awaiting oppositions, etc.

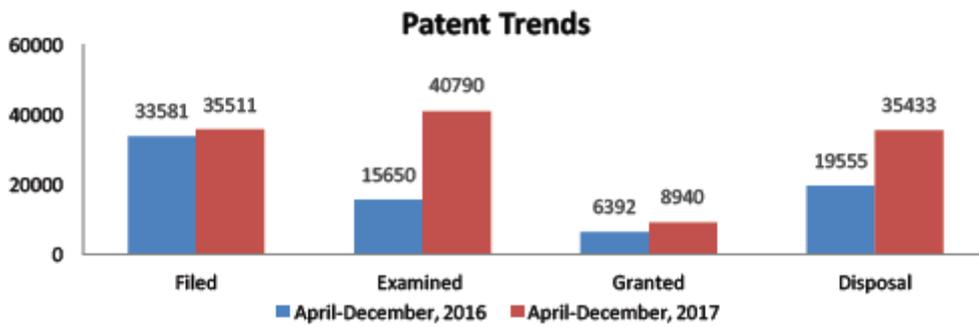
### **IPR Trends**

IP wise statistics for F.Y. 2016-17 vis-à-vis F.Y. 2015-16 and April-December, 2017 vis-à-vis April-December, 2016 are highlighted below

a. Patents



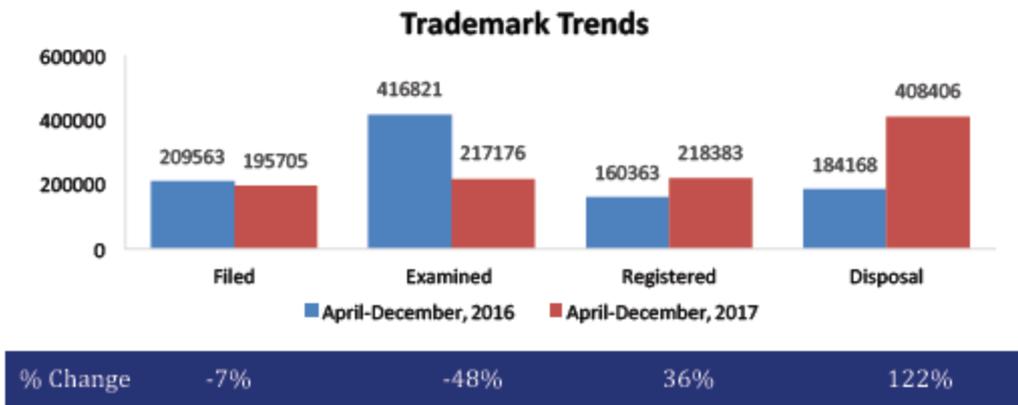
% Change	-3%	72%	56%	38%
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% Change	6%	161%	40%	81%
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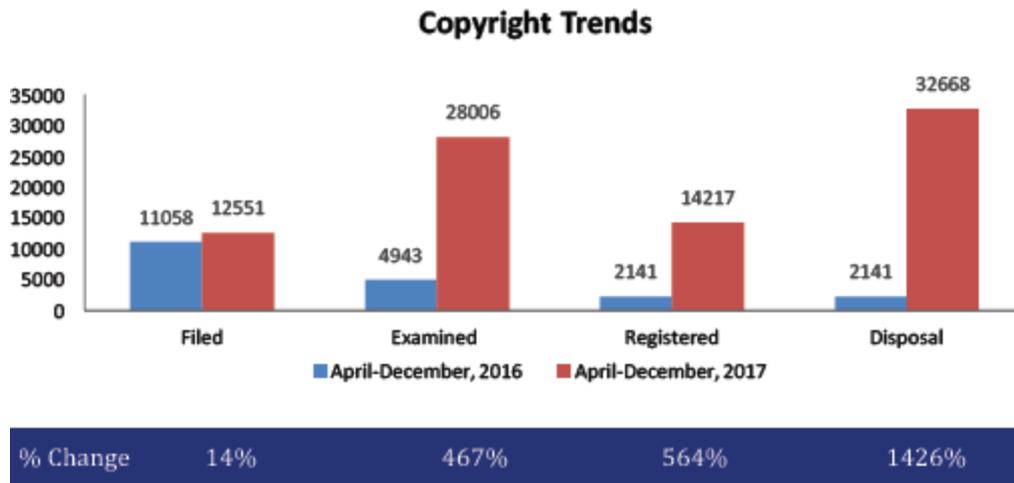
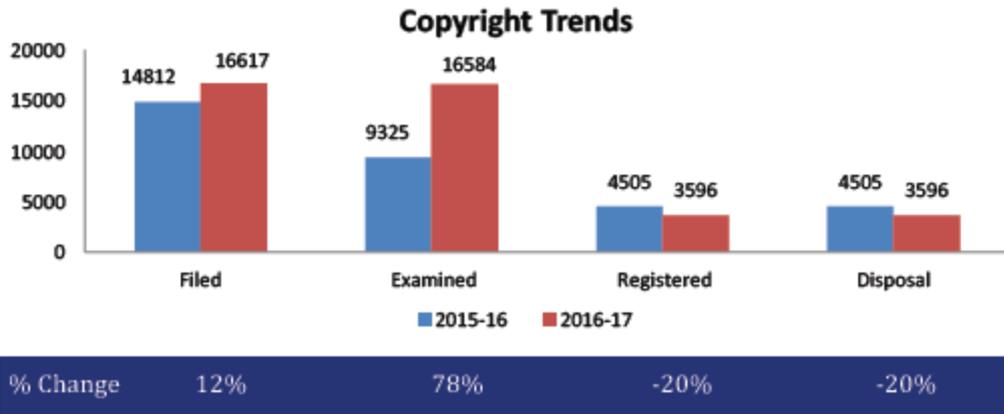
1. Patents granted have increased by 56% in 2016-17 vis-à-vis 2015-16
2. Examination of patent applications in the first nine months of this F.Y. 2017-18 has more than doubled to 40,790 compared to the same period in F.Y. 2016-17.
3. Disposal of patent applications has increased by 81% in the last nine months compared to the same period last year.

b. Trademarks



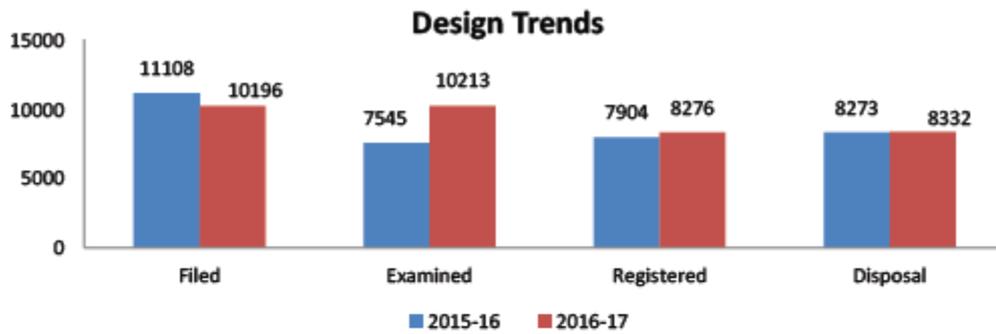
1. Trademark registrations increased almost 4 times in 2016-17 to 2,50,070 vis-à-vis 2015-16.
2. There has been a 36% increase in Trade Mark Registration in the last nine months compared to the same period last year.
3. The drop in Trademark examination in 2017-18 is due to the elimination of pendency and examination of an application is just one month.
4. Another major change has been the acceptance of over 40% Trademarks at the first instance of examination itself, vis-à-vis just 7% earlier. This has the effect of reducing pendency and unclogging the system at later stages too.

c. Copyrights



1. Applications examined for Copyrights have increased by 78% in 2016-17 vis-à- vis 2015-16.
2. Examination of Copyrights has gone up by about 6 times in the last nine months compared to the same period last year.
3. Disposal of Copyrights has gone up by over 15 times in the last nine months compared to the same period last year.

d. Designs



% Change	-8%	58%	5%	1%
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% Change	12%	-10%	37%	42%
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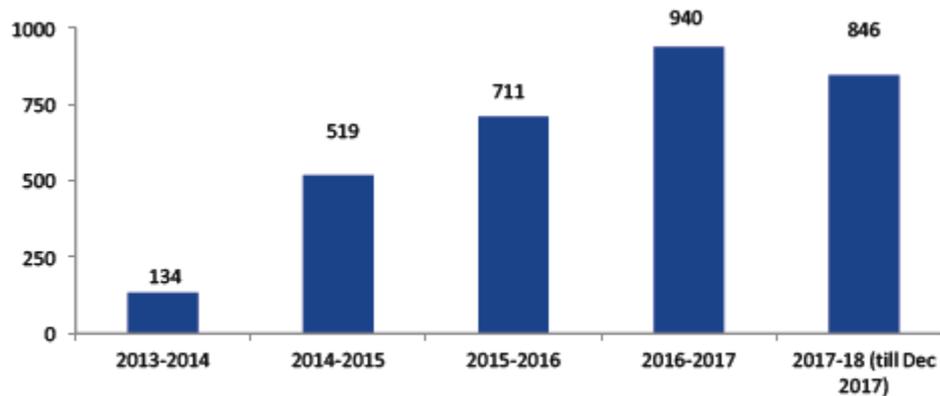
1. Design application examinations have increased by 58% in 2016-17 vis-à-vis 2015-16.
2. There has been a 42% increase in disposal in the last nine months compared to the same period last year.
3. The target is to maintain the pendency of examination under a month.

**International Search Authority & International Preliminary Examining Authority**

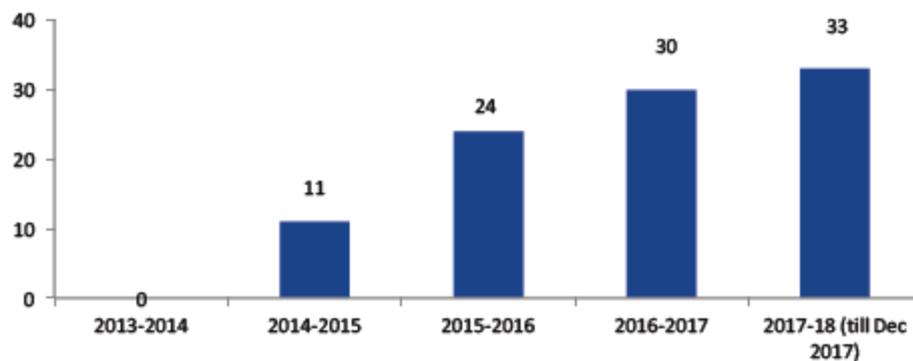
India started functioning as an International Search Authority/ International Preliminary Examining Authority (ISA/ IPEA) under PCT from 15th October 2013. The ISA/ IPEA functions with a full-fledged set up at the new IPO premises at Delhi having all operational facilities of international standards, including dedicated manpower,

establishment of digital database of patent records, access to major patent databases and modern search engines.

As on 31st December 2017, the Indian Patent Office as ISA, has received 3150 international applications choosing India as ISA, requesting for international search reports and 98 applications choosing India as IPEA for international preliminary examination.



Total applications in ISA received till 31<sup>st</sup> December 2017 = 3150



Total applications received in IPEA till 31st December 2017 = 98

Indian Patent office (ISA) has successfully improved the timeliness of establishing International Search reports (ISR) over the years. During the year 2015-16, about 41% search reports were issued within time i.e. 3 months from search copy received by ISA, whereas during 2016-17, about 68% reports were issued in time. During 2017-18, the percentage of timeliness in issuing ISRs has increased to about 97 %.

The Indian ISA develops high-quality reports at the lowest possible cost among all ISAs in the international arena within the stipulated time frame.

## **Madrid protocol**

India became the Madrid Protocol's 90th member when it joined the System in July 2013. The 1.25 millionth International Registration Number was conferred on an Indian company in 2015. Till 31st December 2017, 44225 international applications seeking protection of trademarks in India have been forwarded by WIPO to the Indian Trademark Office for confirming protection of such marks in India. On the other hand, Indian Trade Marks Registry received 793 Indian applications for international registration of trademarks under the Madrid Protocol, out of which 680 applications have been certified and forwarded to the WIPO; 598 such applications have already been registered at the International Bureau of WIPO.

## **Judiciary and enforcement**

The Indian courts have been pro-active in passing judgments which would promote a robust IPR culture in the country and encourage companies from foreign countries to invest and do business in India. Some examples of such judgments are given below:

### **a) *Cipla Limited vs. Novartis AG & Anr* – 09 March 2017 – (Division Bench of Delhi High Court)**

In the patented chronic obstructive pulmonary disease (COPD) drug, INDACATEROL, branded and marketed as Onbrez, the Appellate Bench of the Delhi High Court reaffirmed the interim injunction granted to Novartis against Cipla by a Single Judge of Delhi High Court. While upholding validity of the Patent, it was specifically held that importation of a sufficient quantity for meeting the demands for the product, particularly in the case of pharmaceutical products is adequate to establish "working" in India. Manufacturing in India is not mandatory for that purpose. In the present case, Novartis had challenged Cipla's projected figures of demand for a patient size of 1.5 million. It was further held that public interest is only one of the factors in considering the grant of an injunction. Cipla was unable to show that public interest would be adversely affected by the grant of an injunction.

### ***IPO rejects double opposition petitions against Pfizer's patent for Plevnar13***

The Controller held that the opponents' argument, that the inclusion of serotype in a vaccine formulation is a 'simple arithmetic progression', is nothing but a speculation in hindsight. He further observed that a skilled person would be aware of various issues faced in multivalent conjugate vaccine formulations namely: carrier induced epitope suppression, antigen competition, immune interference and epitopic load. Thus, he would never take a risk of increasing these serotypes or the epitopic load. On the contrary, PCV13 claims a higher 13-valent vaccine that not only increases the coverage from 9 to 13 but is also successful in including serotype 6A, 19A and 3 in addition to 7 F. Thus, the claimed invention is novel and inventive.

**b) *Louis Vuitton vs. Gaurav Bhatia & Ors.***

In a civil suit filed by the French luxury giant Louis Vuitton against local defendants, the Delhi High Court has granted an injunction against the defendants, not only directing to pull down the infringing website but also to desist from manufacturing, selling, advertising and directly or indirectly dealing with the infringing goods bearing Louis Vuitton's marks. Since there was no evidence placed before the Court by Louis Vuitton to ascertain actual damages suffered by it, the Court refused to grant damages stating that only actual damages could be awarded.

**c) *Paramount Surgimed Ltd. Paramount Bed India Pvt. Ltd. & Ors.***

The plaintiff, Paramount Surgimed Limited, established in 1993 claimed to be in the business of surgical equipment as also in intensive care hospital beds. The defendant was a Japanese company incorporated in 1987 and was in the business of manufacture, sale and export of hospital beds under the trade mark PARAMOUNT. While admonishing the plaintiff for serious note of the concealment of material facts about the known reputation of Japanese Defendant (trademark owner), the Court noted that equitable considerations must be weighed on the same balance even for a registered mark holder. Considering the evidence placed on record by the defendant, the Court held that the plaintiff failed

to establish a prima facie case in its favour and declined an injunction as the same will bring to a stand-still the business built up by the defendant over the years, which the plaintiff was well aware of.

**d) *Intercontinental Great Brands LLC and Ors. Vs. Dunn Foods Private Limited and Ors.***

A single Judge of the Delhi High Court granted a decree to Intercontinental Great Brands LLC (IGBL), the owner of the famous cookie brand, OREO, against infringement of, among others, its trade dress by a local defendant. IGBL had alleged in the suit that the defendant's cookies branded as 'LICK N DIP', bearing a similar trade dress and packaging design was a clear attempt to copy its registered trademarks including the trade dress of the OREO cookies. Though the defendant had agreed to amicably settle the matter on the first date of hearing, it subsequently reneged on the same and stopped appearing before the Court.

**e) *Satyam Infosys Ltd. v Sifynet Solutions Pvt Ltd***

The rights of IPR holders are well protected by the passing off regime within Sections 27-29 of the *Trade Mark Act 1999*<sup>2</sup>, as affirmed in *Satyam Infoway Ltd. vs Sifynet Solutions Pvt. Ltd.* In *Satyam*, the Supreme Court affirmed the notion that a domain name is a core part of a brand identity and therefore its IP, and that cybersquatting can be covered by the passing off regime of the *Trade Mark Act*. This judgment is significant in view of the fact that the domain name industry in India has had 12% growth between 2013-16, which is significantly more than the global trend of 8.7%.

## **Conclusion**

Based on the facts and information CII strongly feels that the Indian IPR eco-system is strong, robust and comparable to any other system in the world within the framework of WTO. The IPR eco-system needs to be viewed with an overall perspective of investment in R&D, legislative framework in the world's largest democracy, political stability, impartial and forward-thinking courts, investment made

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in the industry sector and attraction for FDI for industrial growth. By taking a limited view, there is a danger to rank a country low in the assessment which in turn reduces the comparative position in the ranking in ease of doing business. That is unfair. CII urges that USTR should make a fair judgment of the India IPR system and come to right conclusions based on an overall assessment.