



Confederation of Indian Industry

SUBMISSION FOR THE USTR-2017

A. INITIATIVES TAKEN BY CII IN INTELLECTUAL PROPERTY IN 2016

1. The Confederation of Indian Industry (CII) is India's oldest and largest industry association with over 8000 direct members as well as thousands of indirect members including from the Indian private sector, public sector firms and multi-national companies. CII considers the interest of all its members equally while preparing its policy positions, action plans, evolving advocacy plans, and so forth while working very closely with the central and state governments in India in terms of policy formulation and implementation. Intellectual property rights (IPR), international R&D collaboration, innovation, higher education and technology promotion are important elements of CII's work. CII adheres to and follows the contours of existing Indian laws, government policies and rules in all areas of engagement, including IPR, with industry and other stakeholders.
2. CII has a National Committee on IPR comprised of representatives from member companies, governments and academics. The Committee has contributed to varied issues such as trade secrets, SMEs and IPR, counterfeiting in the publishing sector, guidelines on computer-related inventions (CRI) and other subjects.
3. CII works closely with organizations like USPTO, EUIPO, JPO, the UK Patent Office and WIPO to conduct advanced level workshops on topics related to IPR. CII has conducted several round tables in collaboration with USPTO, USTR, industries and law firms on trade secrets. CII has also organized IPR sensitization programs for judges attended by district courts of Maharashtra and Tamil Nadu and few judges from respective High Courts. Several sensitization workshops were also held for police and custom officials. Summaries of these

round table discussions have been shared with the Government of India and USPTO. CII has also conducted an IPR sensitization program in Bhutan, in association with the USPTO. CII has additionally collaborated with USPTO for roundtables on the implementation of India's National IPR policy and stakeholders' expectations. To support this mission, CII, along with DIPP, have organized road shows across India on IPR awareness and the National IP Policy.

4. To assist and promote IPR filings in India, CII has established IPR facilitation centres in association with the Central and State governments in different parts of the country that are helping SMEs protect their IPs by filing for patents, trademarks, designs, copyrights and geographical indications.
5. CII also works with the EU in different areas of IPR, and together have hosted seminars on branding and IPR in Bengaluru, Delhi, Kolkata and Mumbai. Recently workshops on design and geographical indications were held. These workshops focused on the importance of design protection and geographical indications.
6. The Indo-UK Technology Summit organized by CII and the Department of Science and Technology was held in November 2016 and addressed by the Prime Ministers of both countries. During the Summit, technical IPR sessions were held in areas such as trade secrets, the sharing of best practices in IPR protection, technology transfer and licensing, higher education and innovation management.
7. To promote a culture of IP protection within Indian industries, CII has been conferring IPR awards to commemorate those Indian companies which have excelled in patents, trademarks and design based on a five-year, jury evaluated process. The awardees in 2016 were Wockhardt for patents and trademarks and Siddhi Vinayak Knots & Prints Pvt. Ltd. for designs in the large company category. Concept Medical Research Private Ltd., Quick Heal Technologies Ltd. and Resil Chemicals Pvt. Ltd. were awarded in the SME category for patents, trademarks and designs. CII's IPR awards are open to all companies

registered in India.

8. With WIPO, CII has published a global innovation index report for several years. The Minister of State for Commerce and Industry presided over the 2016 volume release.
9. India is one of the world's largest economic players and its perception and opinion on global development cannot be overlooked. Initiatives like Make in India and Digital India, present be large win-win opportunities for companies across the globe including U.S companies. However, as a nation India would like to benefit from the IP held by foreign companies either through the sharing of commonly-developed IP or through the reasonable licensing of IPR. Therefore, CII expects that the sharing of IPR of companies given access to the Indian market would be welcomed and not seen as a stumbling block.
10. CII has been reviewing global reports on the indexing of IPR. We acknowledge that improvement is required in IPR enforcement, however, we do not agree to prevailing indexing methodologies and philosophy. Particular parameters of interest to CII are patentability requirements, the legislative criteria for granting compulsory licensing, patent restoration terms for pharmaceuticals, accession to international treaties including the Patent Law Treaty, political stability and market access. It may be noted that many countries have endorsed the compulsory licensing regime being followed in India.
11. The new CRI guidelines have raised concerns among ICT industry professionals. CII has shared the concerns of its members with the Government of India, and a response is forthcoming. The submission made by CII is reproduced below:

The Confederation of Indian Industry (CII) has examined the CRI guidelines issued on February 19, 2016 by the Office of the Controller General of Patents, Designs and Trade Marks. CII conducted a meeting with its members as many members expressed their reservations about the guidelines. We present below the salient points as identified by CII based on discussion with the members

held on March 9, 2016, which sets up a ground for revisiting the guidelines in the overall interest of industries of all types. CII does appreciate that while revising the guidelines the Controller General would have taken all aspects related to law and technology into account and have prepared them keeping the provisions of the Patent Act in mind. However, the need for issuing new guidelines is not understood, that too in such a short interval of time of few months. At the same time, it is not understood why the two guidelines issued now and the one issued in 2015 are so different in concept and approach.

a) The terms algorithm and per se should be defined clearly rather than indicating unclear meanings from time to time.

The law says that computer program per se is not patentable without defining the term per se. This still remains an unexplained term. There is a need to distinguish between a software programme written in an academic environment which may not be aimed at solving any practical problem for which the market or industry is looking for a solution. Such academic effort may relate to solving an equation or a problem like inversion of a large sized matrix which may remain a mathematical solution without any practical application. A computer program may not be per se if the software finds a solution to a real-life problem through exploitation of some kind of hardware. It is also essential to define the term technical effect often used in literature and the guidelines.

b) The requirement of a novel hardware to be integrated a novel software to allow patenting of CRI is highly restrictive and goes against the intent of law consolidated over a period of time.

In the industrial context, computer programmes (software) are aimed at solving some specific problem(s) which are essential to be solved for meeting the immediate or prospective needs of the market. Let us take an example of optimizing the performance of a car engine. In order to do that multi-parameters analysis is called for which can help in controlling engine working like fuel flow or engine speed. There can be a microprocessor which uses signals received from different types of sensors mounted in the engine

measuring temperature, air pressure, air humidity, impurity levels in air and fuel on real time basis and then controls rpm and torque and fuel supply to engine. These kinds of microprocessors are commonly used. Suppose there is a new piece of knowledge which suggests that some more sensors sensing other parameters and more number of sensors already being used should be deployed for more efficiently controlling the engine performance. In that scenario, software will have to be written with new features and utilized accordingly which would render the software novel and inventive. Every time a new knowledge is discovered, new software will be developed. It may be noted that the engine and sensors are known but a combination of sensors and software has become an essential tool for optimizing the performance of the same engine. In other words, there is no new hardware. It is something similar to devising a new formulation with a known molecule.

The situation becomes more complex and relevant in case of networking technology such as the smart phone. Without efficient and complex software, it may be difficult to achieve what these technologies are achieving-global connectivity, fast connectivity (within 150 milliseconds) and reliable connectivity. There is an impression that writing software is easy, quick and straight forward. On the contrary, software imbedded in modern technologies takes few years to develop and test before putting into use. They are very complex and entail understanding of hardware architecture and functions it performs.

Hardware and software are like warp and weft of the modern technology fabric; in the absence of one, the technology will fail to deliver the desired technology fabric i.e., the product. For generating a new fabric one may have a new weft without changing the warp. It is not essential to have a new hardware for coming up with a new technology and product. Thus, denying patents to an invention having new software but old or known hardware will be a retrograde step in adopting and innovating new technologies. The benefits of modern technology cannot be enjoyed with an incomplete package.

All effects of these guidelines need to be looked at from the perspective that

Indian IT industry usually do not work at 'Core technology' but 'Operating technology'. Usual innovations do not lead to invention of novel hardware. Almost never! This will lead to significant fall in number of patent applications being filed by IT industry.

- c) **This requirement would seriously hamper the interest of the Indian start-ups which are heavily dependent on developing competitive software and not hardware.**

It is being observed that the most Indian start-ups and the SME have been focusing on developing software for different applications in the e commerce space. This has not given rise to any IP for them to attract stage funding from VC and financial institutions. By codifying that software without residing in a novel hardware is not patentable will worsen the situation of start-ups seriously affecting the GOI's programmes on Start-up India and Make in India. A large portion of tax concessions announced recently for start-ups would go unutilized.

- d) **It may also negatively affect the R&D efforts in the country if enough patent protection for software is not available.**

The Indian software companies are concerned as they have invested heavily in software development through investment in human resources and infrastructure. This kind of restrictive interpretation of the Act may render the investments by industries non-productive as the inventions made by them are not necessarily around novel hardware. Industries are seriously concerned on this issue.

- e) **The guidelines should speak of positive examples rather than only negative examples**

It may be recalled that the first draft of the CRI guidelines released in 2015 also suffered with this shortcoming but it was rectified in the final guidelines. We have come to the same situation where we are only talking of negative examples i.e., what cannot be patented. On one hand, it may bias the

thoughts of an examiner and on the other hand it sends negative message to inventors.

- f) The frequent change in the guidelines signals uncertainty and instability in the interpretation of the Act.**

- g) FER issued by the Patent Office are not elaborate enough to guide the applicant understanding the objections. A statement that the invention is not in accordance with Section 3(k) is most commonly used by examiners. The fundamental points of novelty, inventiveness and applicability are seldom mentioned in FER.**

It is most essential for patent examiners to determine whether the invention proposed to be patented is really novel, inventive and useful. In order to achieve this goal, application knowledge residing with examiners, patent databases and technical journals would be called for. The most important thing is to recognize the invention. The rate at which the technology in various sectors is changing and new tools are emerging for efficient application of the technology forces us to be updated on a regular basis. They should be equipped to carry out a cause and effect analysis for understanding the novelty and particularly inventiveness. It is not advisable to have a tool (a blanket rejection of CRI deploying an old and known hardware) which can be used without discretion for an easy disposal of cases coming for examination. Examiners should write their objections explicitly in FER rather than briefly stating that the invention is not patentable according to Section 3(k).

- h) The guidelines seem to undo some of the decisions of courts and IPAB.**

An attempt seems to be made to step into judiciary shoes because interpreting an Act is the responsibility of judiciary. Therefore, earlier decisions of courts should be utilized while preparing the guidelines. This would certainly add to the process of evolving jurisprudence.

i) Many innovations may become ineligible for patenting

Following innovations, which are otherwise very useful for IT industry, will arguably become patent **ineligible**

- Method for detection of network security threats
- Method of integration testing in cloud environment
- Methods for creating a virtual environment
- Method for improving network traffic analysis
- Method for log or data obfuscation
- Method of rationalizing and transforming data
- Method of predicting event in an IT environment

B. RECENT DEVELOPMENTS IN THE FIELD OF IPR IN INDIA AND INITIATIVES TAKEN BY THE GOVERNMENT

- **National IPR Policy**
 - A comprehensive National IPR policy has been approved that will not only stimulate innovation and creativity across sectors, but also provide a clear vision regarding IPR issues. The Policy document is available on the website of the DIPP <http://dipp.nic.in>.

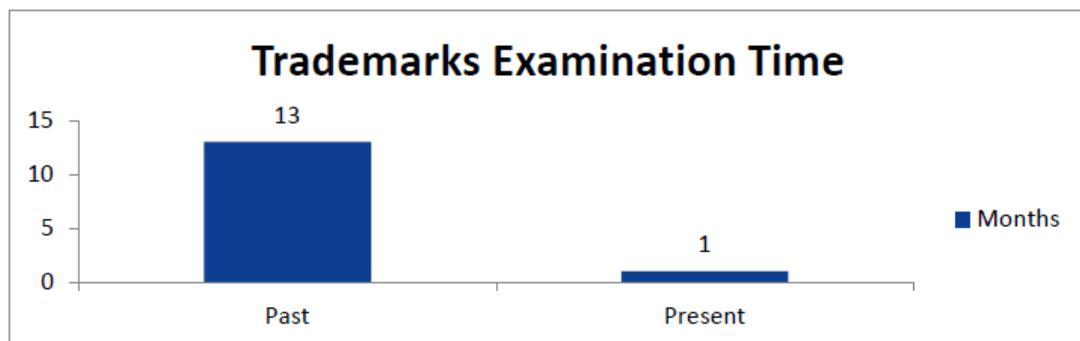
- **Transparency**
 - Transparency has been ushered in by providing for dissemination of information through dynamic web-based innovative utilities. This can be freely accessed by the public.
 - The queuing system has been strictly enforced for taking up applications for examination and disposal. A common 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. Social media outreach also allows for instantaneous feedback and interaction with stakeholders.

- **Facilitation of Intellectual Property Rights of Start-Ups; Provisions for MSMEs**
 - A scheme has been launched for facilitating Start-Ups Intellectual Property Protection (SIPP) to encourage innovation and creativity in Start-Ups – the Government shall bear the entire costs of the facilitators for any number of patents, trademarks or designs by start-ups.
 - 50% fee concession is provided for MSMEs vis-à-vis large entities.

- **International obligations**
 - Operationalization of Madrid Protocol: India has operationalized the Madrid Protocol for registration of Trademarks internationally through a single application.

- Recognition and functioning of Indian Patent Office as the 17th International Search Authority and International Preliminary Examining Authority in the world: this provides high quality reports at lowest cost in the international arena within fixed time frame.
- **Augmentation of Human Resources**
 - The Government of India is serious on the augmentation of manpower in Indian Patent Offices. 459 new technically competent Patent Examiners in various fields of technology have been appointed on regular basis in addition to the existing 130. Already the first batch of 288 has started examination work after training. This exponential increase will bring the pendency down drastically.
 - Manpower has also been augmented manifold on the trademark front with 100 Trademark Examiners are added on contractual basis; 62 regular appointments are in pipeline through UPSC.
- **Amendments in Patent Rules and Trademark Rules**
 - 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.
 - For the first time, 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, utilizing specialized technical manpower more efficiently.
 - Expedited Examination is now permitted on certain grounds.
 - Hearing through video conferencing.
 - Special provisions have been made for start-ups whereby they will get 80% rebate in fees vis-à-vis other companies as also expedite their application. So far, 61 Start Ups have availed benefit of fee rebate.

- The Trademark Rules, 2002 are being amended to allow for accelerated examination of applications and simplification of procedures, after extensive stakeholder consultation.
- These amendments will greatly streamline processes and improve functioning.
- **Clearing Backlog/ Reducing Pendency**
 - Pendency in Patent examination is targeted to be brought down from the present 5 to 7 years to 18 months of workload by March 2018.
 - Pendency in Trademark examination has already been brought down from the erstwhile 13 months to just 1 month already, much earlier than the target date of March 2017.



- **Cell for IPR Promotion and Management (CIPAM)**
 - Created to address the 7 identified objectives of the policy.
 - A professional body under the aegis of DIPP to ensure quick and focused responses on issues related to IPRs.
 - Assists in simplifying and streamlining of IP processes by formulating and implementing a focused strategy for each policy objective.
 - Undertake IPR awareness campaigns across all sectors
- **IPR Awareness Programmes**
 - The Cell for IPR Promotion and Management (CIPAM) in partnership with industry associations has conducted 19 IPR awareness roadshows in 18 states.
 - These roadshows have received a very positive feedback from the audiences. The audiences comprised of business owners, students,

academicians etc. Demands were made at various locations for conducting more awareness programmes.

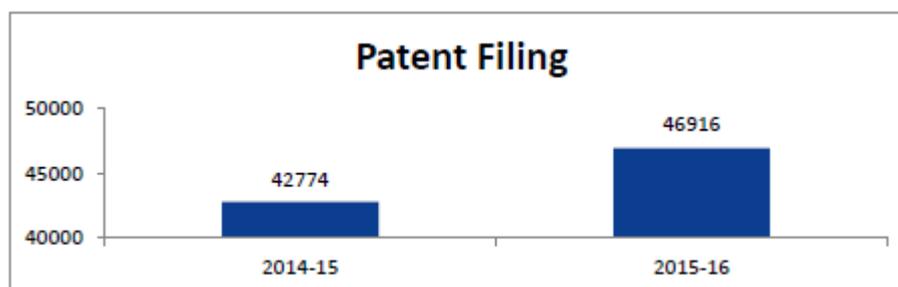
- Awareness programmes focused on sensitizing inventors in Tier-2 and Tier-3 cities and making them aware about the IP rights. Similar programmes for Schools, Colleges and Universities as also industry are planned.
- CIPAM is collaborating with the International Trademark Association (INTA) to launch an IPR Awareness campaign for schoolchildren. Campaign will be through the use of presentations and creatively illustrated posters and pamphlets which cover the basics on IPRs and the need to protect IPRs.

- **IPR Enforcement**

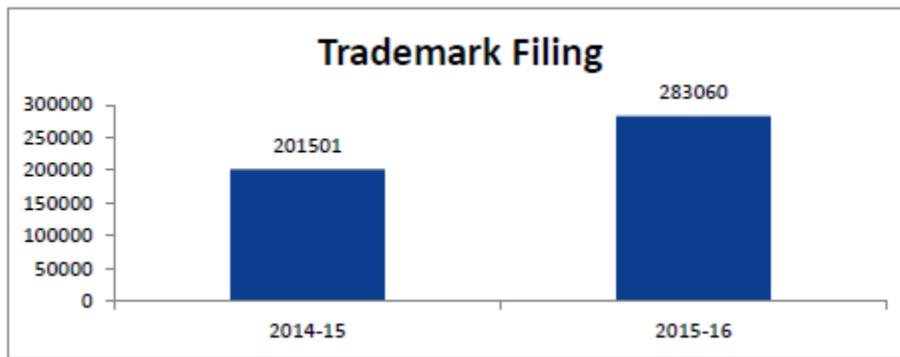
- CIPAM in association with Andhra Pradesh Police has organized 7 batches of Training of Police Officials on Enforcement of IPRs at PTC Anantapur.
- CIPAM in association with Uttar Pradesh Police organized three-day Training of 150 Police Officials and APOs at Dr. Bhim Rao Ambedkar Police Academy, Moradabad.
- CIPAM in association with National Judicial Academy India has included Intellectual Property Rights in Colloquium on Commercial Laws for High Court Justices scheduled on 28– 29 January, 2017.
- Training of Enforcement agencies in other states will be started soon.

- **Increase in Filings**

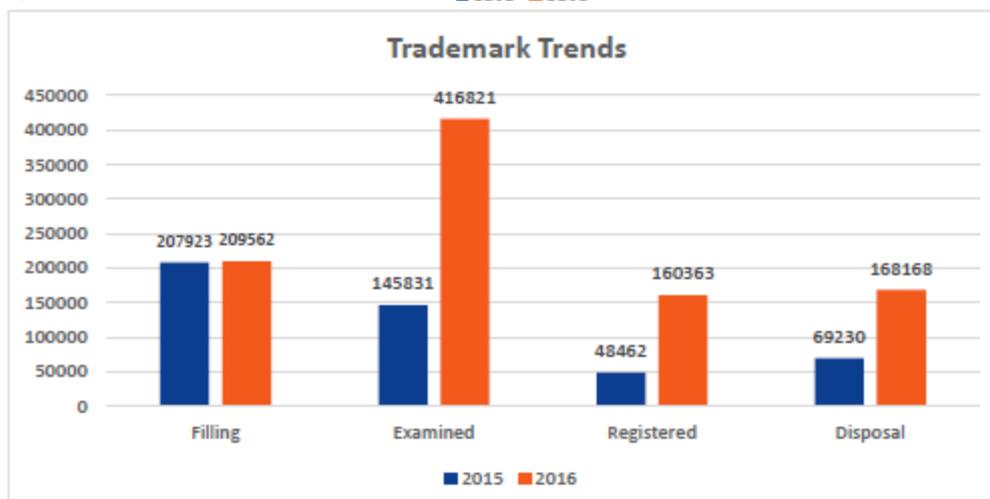
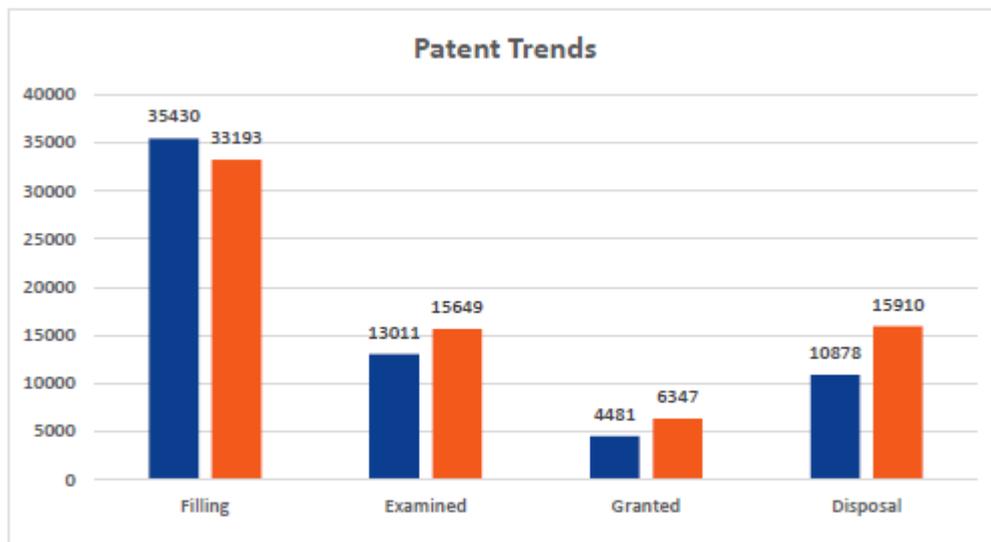
- Patent filings increased by 10% in 2015-16 vis-à-vis 2014-15.

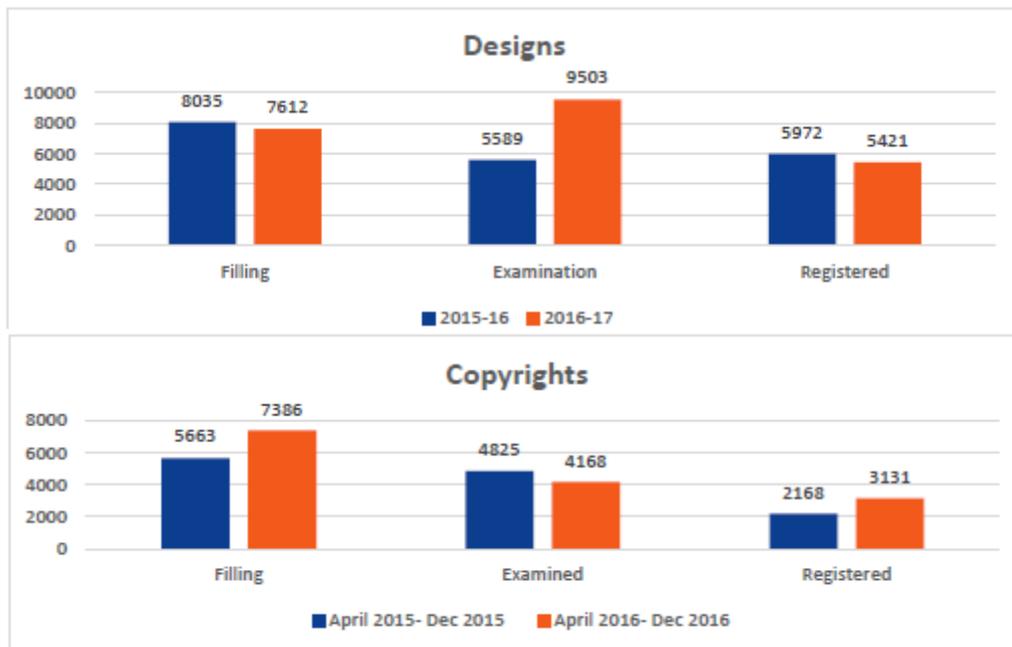


- Trademark filings shot up by 35% in 2015-16 compared to 2014-15; reflecting the buoyancy in the Indian economy.

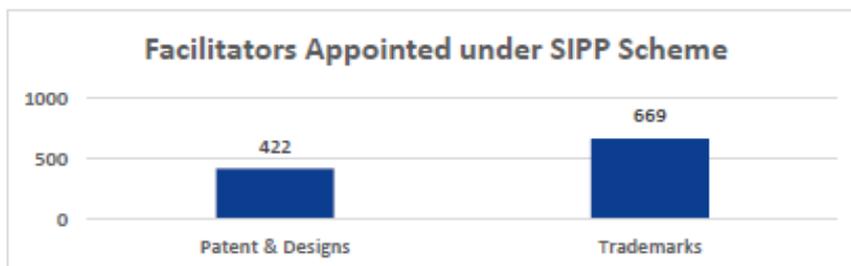
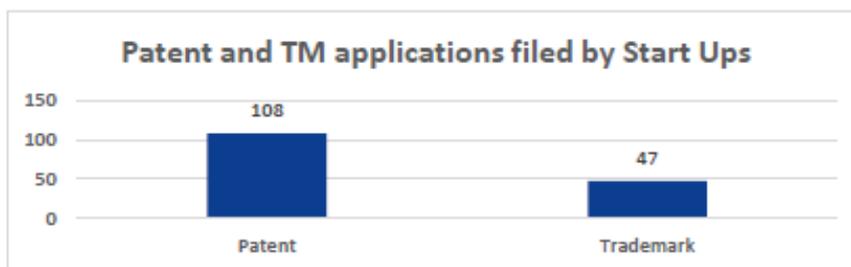
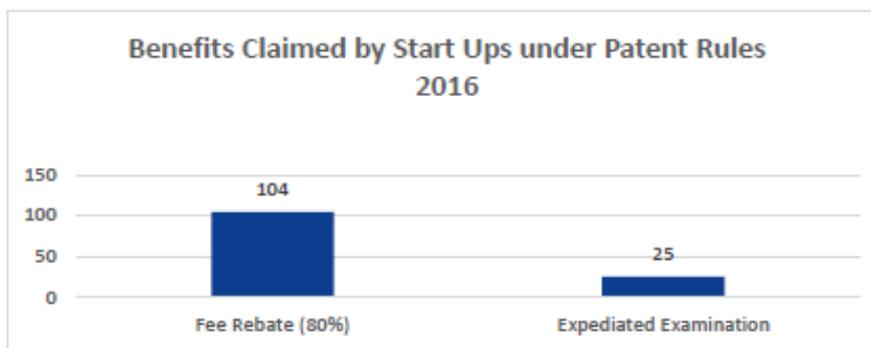


- There has been a stratospheric increase in Trademarks examinations, with 185% more examination this financial year (F.Y.) 2016-17 till December as compared to same period in 2015-16.
- **IPR Trends** (F.Y. 2016-17 till December vis a vis same period last F.Y. 2015-16)





- **Start-ups & IPRs (F.Y. 2016-17 till December)**



- **Synergy between IP offices**

- The administration of Copyright Act, 1957 and Semiconductor Integrated Circuits Layout-Design Act, 2000 has been transferred to the DIPP. This shall enable an integrated approach and synergy between different IP offices and Acts.

- **Global Innovation Index (GII), 2016**

- In recently released GII-2016 report, India has moved up by 15 places. India has reversed the declining trend to rank 66th globally.
- India has retained top rank in Information and Communication Technology Service Export for last three year.
- India is ranked second in quality innovations among Middle Income Economies.
- India moved up by 2 ranks to 6th position in Lower Middle Income Economies.
- Report mentions that “India is a good example of how policy is improving the innovation environment”.
- A Task Force on Innovation has been constituted with industry experts to take suggestions through crowdsourcing, and thereafter suggest ways to strengthen the innovative eco-system in the country, as also improve the GII ranking.

- **Dynamic Utility Facilities available on Website of o/o CGPDTM**

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

- **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 has not been examined yet by clicking on a button for the 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 in a particular month and for 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 –** 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. This facility allows the public to see the actual status of IP applications on a real-time basis.

- **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 in the Registry. The reports may be obtained in the following categories: New application received for registration of Trademarks, awaiting examination, under examination, post examination, under show-cause hearing, published and awaiting oppositions etc.

C. STATEMENTS/ COMMENTS/ VIEWS FAVORING INDIA'S STANCE ON ACCESS TO HEALTH CARE

1. The United Nations Secretary-General's High-Level Panel on Access to Medicines Report

- The United Nations Secretary-General Ban Ki-Moon constituted a **High-Level Panel on Access to Medicines** in November 2015, with the proposed objective “to review and assess proposals and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies.”
- The Report issued in September 2016 has been structured in 4 chapters including a) Health Technology Innovation and Access, b) Intellectual Property Laws and Access to Health Technologies, c) New Incentives for Research and Development of Health Technologies, d) Governance, Accountability and Transparency.
- In summary, the main recommendations of the report are as follows:
 - WTO members must make full use of the TRIPS flexibilities as confirmed by Doha Declaration to promote access to health technologies when necessary.
 - WTO members should make full use of the policy space available in Article 27 of TRIPS agreement by adopting and applying rigorous definitions of invention and patentability that are in the interests of public health of the country and its inhabitants. This includes amending laws to curtail the evergreening of patents and awarding patents only when genuine innovation has occurred.
 - Multilateral organizations such as UNCTAD and WTO should strengthen the capacity of patent examiners to apply rigorous public health-sensitive standards of patentability taking into account public health needs.

- Governments should adopt and implement legislation that facilitates the issuance of compulsory licenses. The use of CL should be based on the provisions found in the Doha Declaration and the grounds for the issuance left to the discretion of the governments.
 - WTO members should revise the paragraph 6 decision in order to find a solution that enables a swift and expedient export of pharmaceutical products produced under compulsory license.
 - Governments and the private sector must refrain from explicit or implicit threats, tactics or strategies that undermine the right of WTO Members to use TRIPS flexibilities.
 - Governments engaged in bilateral and regional trade and investment treaties should ensure that these agreements do not include provisions that interfere with their obligations to fulfil the rights to health.
- The report also elucidates those aspects which have been considered TRIPS Plus provisions; these reiterate India's steadfast stand against such provisions.
 - **Patents for new uses for methods of using a known product-** Governments must provide patent protection for new uses or methods of using known products. (Section 3(d)) of Patents Act, 1970)
 - **Prohibition on pre-grant opposition-** Prohibition on challenges to the validity of a patent prior to issuance (Section 25(1) of Patents Act, 1970).
 - **Test data exclusivity periods-** Drug regulatory authorities cannot use or rely on clinical studies and data developed by the originator company, to register the generic equivalent of a medicine for a given period of time following registration.
 - **Patent term extensions for unreasonable regulatory or marketing delays-** Patent terms are extended in case of unreasonable delay caused by drug regulatory authorities or patent offices in granting regulatory or marketing approval.
 - **Patent linkage as an example of TRIPS-plus provisions-** Drug regulatory authorities cannot approve a generic version of a medicine that is under patent without the consent of the patent holder, thereby obliging public authorities to 'enforce' private intellectual property rights.

- **Limits on compulsory licensing grounds-** The use of compulsory licenses is confined to specific circumstances, for example, remedying anti-competitive practices.
- **Limits on parallel imports-** The importance of pharmaceutical products from other markets under the principle of international or regional exhaustion is restricted or entirely prohibited.
- **Enforcement of Intellectual Property Rights-** Enhanced obligations regarding border measures, civil and administrative procedures, remedial provisions and the criminalization of certain violations beyond what is required by the TRIPS Agreement.

2. Joseph Stiglitz, Nobel Prize for Economics (2001)

Source: Stronger IPR is about Big Pharma profits, not health. Economic Times, March 01, 2015

- “If patent rights are too strong and maintained for too long, they prevent access to knowledge, the most important input in the innovation process. In the US, there is growing recognition that the balance has been too far tilted towards patent protection in general (not just in medicine).”
- “Greater IP protection for medicines would, we fear, limit access to life-saving drugs and seriously undermine the very capable indigenous generics industry that has been critical for people's well-being in not only India but other developing countries as well”.

3. Bernie Sanders, Senior U.S Senator

- “Access to health care is a human right, and that includes access to safe and affordable prescription drugs. It is time to enact prescription drug policies that work for everyone, not just the CEOs of the pharmaceutical industry. Americans pay, by far, the highest prices for prescription drugs in the entire world.¹”

¹ Source: IP Watchdog Blog. Available at: <http://www.ipwatchdog.com/people/bernie-sanders/>

- “Health care must be recognized as a right, not a privilege. Every man, woman and child in our country should be able to access the health care they need regardless of their income.²”
- “We pay, by far, the highest prices in the world for prescription drugs. One out of five Americans can't even afford the prescriptions their doctors are writing.in my view healthcare is a right of all people, not a privilege, and I will fight for that”³.

² Source: <https://berniesanders.com/medicareforall/>

³ Source: http://www.ontheissues.org/2016/Bernie_Sanders_Health_Care.htm

D. SUMMARY OF A FEW OF THE RECENT JUDGEMENTS:

Patent

1. **Merck Sharp & Dohme Corporation & Anr Vs. Glenmark Pharmaceuticals Ltd**

Merck Sharp & Dohme (MSD) was granted an injunction against Glenmark's "patent violation" of its diabetes drugs namely Zita and Zita-Met.

2. **3M Innovative Properties Ltd. v. Venus Safety and Healthcare Pvt. Ltd**

The injunction prevents Venus from manufacturing medical/surgical masks that allegedly infringe 3M's patent. The patent in dispute is for such a mask, or more specifically a "Flat Fold Personal Respiratory Protection Device" and the process to prepare it, granted to 3M in 1999.

3. **Drug: Sovaldi (Sofosbuvir)- Gilead**

The Indian Patent Office dismissed the multiple pre-grant opposition claims and consequently approved Gilead's application for the grant of a patent for its Hepatitis C drug- Sovaldi.

4. **Drug: Etanercept- Pfizer**

The Indian Patent Office granted two process patents to Pfizer. Pfizer won against pre-grant oppositions filed by Mylan and Biocon. The decision was taken on two patent applications, one for production of polypeptides and another for production of TNFR-Ig Fusion Protein.

5. **Pfizer Vs. Union of India (WP (C) No. 2212 of 2016**

Impugning Notification No.SO-909 (E) with respect to FDC of Chlopheniramine Maleate + Codeine Syrup.

There were a total of 344 petitions that were filed by pharma companies. It was held that "All 344 Notifications dated 10th March, 2016 purportedly in exercise of power under section 26A of the Drugs Act are found to have been issued without following the procedure statutorily prescribed to be followed prior to issuance thereof and resultantly it is held that the Notifications are not based on satisfaction of the Central Government prescribed to be on the advice of an in consultation with the DTAB and DCC. "

6. Bayer Intellectual Property GMBH Vs. Ajanta Pharma Ltd & Ors

Injunction granted by the Delhi High Court from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in VARDENAFIL and VARDENAFIL HYDROCHLORIDE and any product that infringes the subject-matter claimed in the suit patent IN 225529 or from using the process claimed in IN 225529 and in IN 188419 and from making, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly dealing in VARDENAFIL and VARDENAFIL HYDROCHLORIDE and any product that is directly CS(COMM) 1648/2016 Page 2 of 3 obtained from the process claimed in patent IN 225529 and IN 188419.

7. F.Hoffmann-La Roche Ltd & Anr. Vs. Cipla Ltd

The matter has been sent back for trial. The decision dismissing the suit for injunction filed by Roche was set aside by the Division Bench.

8. Novartis AG Vs. Wockhardt Ltd

Novartis AG Vs. Bajaj Healthcare Ltd

The Plaintiff received an injunction against the Defendant from manufacturing, importing, selling, offering for sale, export directly or indirectly the drug containing the active pharmaceutical ingredient (API) vildagliptin and vildagliptin in combination with Metformin Hydrochloride and has been selling the same under the brands VYSOV and VYSOV-M in India.

9. Dolby International AB & Anr Vs. GDN Enterprises Pvt Ltd & Ors

Dolby International AB & Anr Vs. Das Telecom

Dolby International AB & Anr Vs. Mitashi Edutainment

Dolby International AB & Anr Vs. Shreeji Tradelinks & Anr

Dolby International AB & Anr Vs. Universal Digital Connect

Delhi High Court recognizing Dolby's Standard Essential Patents restrained all the above-mentioned Defendants from selling or offering from sale tablets, phones and televisions which are endorsed with ISO/IEC 14496-2009 (E) or HE-AAC V1/ HE-AAC V2.

10. Telefonaktiebolaget LM Ericsson (PUBL) and Anr Vs. Micromax Informatics Ltd

Telefonaktiebolaget LM Ericsson (PUBL) and Anr Vs. Mercury Electronics & Anr

Telefonaktiebolaget LM Ericsson (PUBL) and Anr Vs. Gionee Communication Equipment Co Ltd & Anr

Telefonaktiebolaget LM Ericsson (PUBL) and Anr Vs. Xiaomi Technology & Ors

The plaintiff was the registered owner in Indian of eight patents referred to as AMR Patents, 3G Patents and EDGE Patent. The Delhi High Court granted an injunction against the Defendants restraining them from using products which contain the Plaintiff's patents. The Court also directed the Customs Authority to inform the Plaintiff's counsel of the consignments under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007.

Copyright

- ✚ In an effort to curb internet & film piracy, Indian Courts have passed various John Doe orders before the release of films. This unique concept under the alias "John Doe/Ashok Kumar" orders has been availed by numerous film producers and production houses in order to punish certain class of unknown infringers.
- ✚ Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908 (CPC), which refers to court's power to grant a Temporary Injunction *read with* Section 151 of CPC and Part III Chapter VII of the Specific Relief Act, 1963 pertaining to permanent injunction, are the legal provisions backing John Doe orders.
- ✚ Indian Courts have laid down certain restrictions and conditions for the plaintiff to comply, with before obtaining the John Doe orders.
- ✚ Some cases where John Doe orders have been obtained are:

- (i) **Tej Television Limited vs. Rajan Manda**⁴ – This was the very first case wherein the very first John Doe order was passed in the year 2002. The matter dealt with unauthorized transmission of channel (Ten Sports) by unlicensed cable operators without entering into agreements with marketing partners of the plaintiff. Around 1377 cable operators had taken licenses but several prominent cable operators had not signed up and broadcasted the same without any approvals. The plaintiff was the owner of the registered broadcasting rights⁵ of the channel for the Soccer World Cup, 2002. The unauthorized broadcasting caused losses to the plaintiff and also strained their relationship with the other licensees.
- (ii) **UTV Software Communications Limited vs. Home Cable Network Ltd. and Ors.**⁶ – While granting a John Doe order against the cable operators, who illegally telecast pirated version of the films, the Court relied on the fact that a single telecast by the defendant would simultaneously reach several hundred thousand homes resulting in loss which are irreparable and cannot be computed in terms of money.
- (iii) **Satellite Singapore PTE Ltd. vs. Star Cable Network & Ors.**⁷ – The Delhi High Court in order to check piracy and unauthorised transmission passed orders prohibiting the respondents from broadcasting/using unauthorized signals of the appellant for downloading/ telecasting purposes during the Indian Premier League (IPL) cricket tournament. A similar order was passed by the Delhi High Court in the case of **ESPN Software India Pvt. Ltd. v. Tudu Enterprise and Ors.**,⁸ wherein the Plaintiffs had the sole right to telecast the ICC Cricket World Cup 2011.
- (iv) **Red Chillies Entertainments Private Limited vs. Hathway Cable & Datacom Limited & Ors.**⁹ – the High Court of Bombay granted an order restraining any person from *inter alia* telecasting/broadcasting/distributing/ putting on the cable TV network/disseminating/reproducing or otherwise making available to the public, the film ‘Happy New Year’ or dealing in any manner whatsoever which would violate/infringe the Plaintiff’s copyright.

⁴⁴⁴ [2003] F.S.R 24.

⁵ Rights are statutorily recognized as per the provisions of Section 37 of the Copyright Act, 1957.

⁶ CS(OS) No. 821/2011.

⁷ Order in FAO(OS) 211/2010.

⁸ MANU/DE/1061/2011.

⁹ Suit (L) No 993 of 2014.

- (v) Approximately 200+ Bollywood films were released in 2016, whereby in June alone, 4 John Doe orders were passed to prevent piracy. Movies like '*Bombay Velvet*', '*Masaan*', '*Azhar*', '*Dishoom*' and '*Flying Jatt*' got John Doe orders passed as a pre-emptive measure to stop film piracy. The movies '*Great Grand Masti*' as well as '*Udta Punjab*', also brought to light the problem of pre-release piracy, whereby websites (including torrent sites) were restrained and blocked to prevent film piracy prior to release. This activity of tracing pirate sites has led to an entire new business to prevent online piracy, at least to a large extent by sending notices to the infringing sites and/or the ISPs for blocking the links if not the sites.
- (vi) It is also pertinent to mention that the Motion Pictures Association of America (MPAA), which represents major film studios of the US, has been working closely with exhibitors to educate them against cam-cording and using watermarking technology to track sources of leaked content.¹⁰
- (vii) India has been committed in fulfilling its obligations under the TRIPS Agreement and has been revamping its copyright laws where necessary. Moreover, in the Trade Policy Forum (TPF) joint statement by the Indian and US governments in 2015, both countries "agreed to deepen cooperation on copyright, recognising the shared interest of the largest entertainment industries in the world to promote and protect their artistic and creative content". At the ground level, for Indian film and movie producers, it has become a common norm to approach the courts, before every film release, to seek pre-emptive orders by filing John Doe cases, to be sent to Internet Service Providers (ISPs) for blocking online pirate links after the theatrical release of a film, for the limited effort of containing piracy in India.

✚ Additionally, in a move to consolidate all IP related functions, the government of India transferred copyrights from the ambit of the Human Resource Development Ministry (HRD) to the Department of Industrial Policy and Promotion (DIPP) and semiconductors from the purview of the Department of Information Technology (IT Ministry) to DIPP.

¹⁰ *Box Office India*, Vol. 8 Issue 3, Sept. 24, 2016, Available at: <http://boxofficeindia.co.in/e-magazine/issue367-old.pdf>.