IP Market Expansion: Need a robust IPR ecosystem

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Creative India, Innovative India" is the goal that India wishes to achieve. Strengthening the protection of intellectual property (IP) rights will help expand the market. To achieve this, India has been making continuous efforts to allow the market to function as a powerful way to utilise IP. A step taken by India in fulfilling this goal was the release of the National IPR Policy in 2016, focusing on awareness, generation of IPRs, commercialisation, enforcement, human capital development, legal and legislative reforms, and management of IPRs. The Cell for IPR Promotion and Management is a body set up by the Department of Industrial Policy and Promotion for the effective implementation of the IPR policy, and they have successfully conducted several awareness drives for existing and potential users of the IP system. These efforts are indeed commendable, but there is still more work to do.

Issues of patentability of life sciences, concerns around online piracy, clarity on the supporting evidence to substantiate supplication of enlisting well-known trademark still need attention. To some extent, these issues reflect lack of faith in the patent system and enforcement mechanisms. While intense debate rages to balance access, affordability and availability of pharmaceutical drugs and devices, recent government policies have eroded incentives to innovate. Scholars claim that India witnesses significant delays in marketing of drugs. There is more work to be done to provide further clarity in assessing and granting tags of geographical indication. An index of IPRs created by two scholars—Ginarte and Park, in 1997 (followed by a revision in 2008)—is one of the earliest cross-country empirical works to assess strength and protection of IPRs. Among other parameters, they relied on coverage, enforcement mechanisms, membership in international treaties and restriction of patent rights. India's score in the index improved more than three times from 1990 to 2005.

For quite some time, an unsettled issue had been patentability of computer-related inventions (CRIs). With the release of revised guidelines for examination of CRIs last year, more clarity has been provided to the contentious Section 3(k) of the Patent Act. This has been a major indicator in pushing India up the ladder in the US Chamber International IP Index, 2018. Enforcement of standard essential patents has also made things easier for stakeholders. According to this Index, India saw a growth of 30%, compared to the last year. Because of the initiatives included in the IPR policy, India obtained a full point on the indicator on consultation with stakeholders and education campaign, and raising awareness on IPR. India scores ahead of 21 other economies benchmarked in the Index in the systemic efficiency category. India ranked 60 out of 127 countries in the Global Innovation Index, 2017, released by WIPO. Aptly titled “Innovation Feeding the World”, the focus of this study was on innovation and socio-economic development.

Although there have been several positive developments in India, we still need to produce stronger and clearer legislative provisions and enforcement mechanisms. There is a need to have an effective mechanism for technology transfer and for commercialisation of IP assets. Confidence of investors in India’s market seems to be high, resulting in high expectations from all kinds of stakeholders. There is still some ambiguity in IP rule-making. There are many who do not appreciate the fundamental reality that IP laws are meant to incentivise innovation by establishing enforceable boundaries to protect new products, processes, and original works of expression. Such beliefs and approaches must change for the sake of the ambitions articulated in this government's many initiatives—from make in India to startup India and smart cities.

There is empirical evidence suggesting that stronger IPRs positively affect the volume of FDI and exports, particularly in countries that have technical absorptive capabilities in place, but where the risk of imitation is high. Studies show that stronger IPRs seem to encourage FDI in production and R&D (rather than in sales and distribution), encourage international tech transfer through market-based channels in developing countries and encourage domestic innovation. Several countries, including the US, Germany and Sweden, have worked hard to ensure that their IP ecosystem is not just easily accessible and efficiently administered, but that it keeps pace with
the new challenges that are faced by the users and owners of IP. We need to continue to identify the shortcomings within our IP ecosystem, and find solutions.

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