

REPORT NO.

161



PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE
ON COMMERCE

ONE HUNDRED AND SIXTY FIRST REPORT

Review of the Intellectual Property Rights Regime in India

(Presented to the Rajya Sabha on 23rd July, 2021)
(Laid on the Table of Lok Sabha on 23rd July, 2021)



Rajya Sabha Secretariat, New Delhi
July, 2021/ Shrawana, 1943 (Saka)

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**DEPARTMENT RELATED PARLIAMENTARY STANDING
COMMITTEE ON COMMERCE**

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COMPOSITION OF THE COMMITTEE

(Constituted w.e.f. 13th September, 2020)

1. Shri V. Vijayasai Reddy — *Chairman*
- RAJYA SABHA**
2. Shrimati Priyanka Chaturvedi
3. Shrimati Roopa Ganguly
4. Shri Sushil Kumar Gupta
- # 5. Shri Mallikarjun Kharge
6. Shri Jugalsinh Mathurji Lokhandwala
7. Shri Om Prakash Mathur
8. Shrimati Mausam Noor
9. Shri Deepak Prakash
- \$10. Shri Vayalar Ravi
- &11. Shri John Brittas
- LOK SABHA**
- @ 12. Shrimati Sumalatha Ambareesh
13. Shri Prasun Banerjee
14. Shri Raju Bista
15. Shri Rajkumar Chahar
16. Shri Rameshbhai Lavjibhai Dhaduk
17. Shri Arvind Dharmapuri
18. Shri Manoj Kishorbhai Kotak
19. Shri Ajay Kumar Mandal
20. Shrimati Manjulata Mandal
21. Shri Nakul K. Nath
22. Shri Hemant Patil
23. Shri Gautham Sigamani Pon
24. Dr. Manoj Rajoria
25. Shri Nama Nageswar Rao
26. Shri Ashok Kumar Rawat
27. Shri Magunta Sreenivasulu Reddy
28. Shri Prajwal Revanna
29. Shri Gowdar Mallikarjunappa Siddeshwara
30. Shri Kesineni Srinivas
- *31. Shri Shantanu Thakur
32. Shri Mansukhbhai Dhanjibhai Vasava

SECRETARIAT

Dr. P. P. K. Ramacharyulu, Secretary

Shri S. Jason, Joint Secretary

Shri T.N. Pandey, Director

Smt. Nidhi Chaturvedi, Additional Director

Shri Kuldip Singh, Under Secretary

Ms. Saraswati Saraf, Assistant Committee Officer

Resigned w.e.f. 18th March, 2021

\$ Retired w.e.f. 21st April, 2021

& Nominated w.e.f. 14th June, 2021

@ Nominated to Committee on Information Technology w.e.f. 30th December, 2020.

* Inducted in Council of Ministers w.e.f. 7th July, 2021

INTRODUCTION

I, the Chairman of the Department Related Parliamentary Standing Committee on Commerce, having been authorised by the Committee, present this One Hundred and Sixty First Report on 'Review of the Intellectual Property Rights Regime in India'.

2. The Committee selected the subject for detailed examination on 15th October, 2020 and the same was notified *vide* Parliamentary Bulletin Part-II dated 26th November, 2020. As a part of examination of the subject, the Committee considered the subject in detail in its five meetings wherein it heard the views of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry; Confederation of Indian Industry (CII); legal associates i.e. Amarjit & Associates, Ajay Sahni & Associates, and Subramaniam & Associates; Department of Pharmaceuticals, Ministry of Chemicals & Fertilizers; Department of Agriculture Research and Education, Ministry of Agriculture and Farmers' Welfare and Federation of Indian Chambers of Commerce and Industry (FICCI).

3. The Committee also undertook one study visit to Goa from 21st to 23rd January, 2021 on the subject and had interactions with various stakeholders as well as representatives of the State Governments of Goa and Maharashtra.

4. The Committee considered the draft Report and adopted the same at its meeting held on 20th July, 2021.

5. The Committee expresses its sincere gratitude to the representatives of the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry and to the various organizations for placing before it the valuable suggestions, materials and information required in connection with the examination of the subject.

NEW DELHI;
20th July, 2021
Ashadha 29, 1943 (Saka)

V. VIJAYASAI REDDY
*Chairman,
Department Related Parliamentary
Standing Committee on Commerce
Rajya Sabha.*

ACRONYMS

AI	Artificial Intelligence
ATARI	Agricultural Technology Application Research Institutes
AYUSH	Ayurveda, Yoga, Naturopathy, Unani, Siddha, Sowa-Rigpa and Homeopathy
CDSCO	Central Drugs Standard Control Organisation
CGPDTM	Controller General of Patents, Designs and Trademarks
CIPAM	Cell for IPR Promotion and Management
CL	Compulsory License
CSIR	Council of Scientific and Industrial Research
CSR	Corporate Social Responsibility
DARE	Department of Agricultural Research and Education
DBT	Department of Biotechnology
DoP	Department of Pharmaceuticals
DPIIT	Department for Promotion of Industry and Internal Trade
DSP	Deputy Superintendent of Police
DU	Delhi University
EoU	Export Oriented Unit
EU	European Union
EUIPO	European Union Intellectual Property Office
FDI	Foreign Direct Investment
FICCI	Federation of Indian Chambers of Commerce & Industry
FY	Financial Year
GDP	Gross Domestic Product
GI	Geographical Indication
GRs	Genetic Resources

HIV	Human immunodeficiency virus
ICMR	Indian Council of Medical Research
IDC	Inter-Departmental Committee
IGC	Intergovernmental Committee
IIT	Indian Institute of Technology
IP	Intellectual Property
IPAB	Intellectual Property Appellate Board
IPFS	Intellectual Property Financing Scheme
IPMTT/C	Intellectual Property Management and Technology Transfer/ Commercialization
IPR	Intellectual Property Rights
IPRPM	IPR Promotion and Management
ITMUs	Institute Technology Management Units
KVKs	Krishi Vigyan Kendras
MoUs	Memorandum of Understandings
MSMEs	Medium, Small and Micro Enterprises
NGOs	Non-Governmental Organizations
NIPERs	National Institutes of Pharmaceutical Education & Research
NITI	National Institution for Transforming India
NMPB	National Medicinal Plants Board
OECD	Organisation for Economic Cooperation and Development
OTT	Over The Top
PFI	Participating Financing Institutions
PPH	Patent Prosecution Highway
PPV&FR	Protection of Plant Varieties and Farmers Rights
R&D	Research and Development
SARFAESI	The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest
SBI	State Bank of India
SPRIHA	Scheme for Pedagogy and Research in IPRs for

	Holistic Education and Academia
TCEs	Traditional Cultural Expressions
TK	Traditional Knowledge
TKDL	Traditional Knowledge Digital Library
TRIPS	Trade Related Aspects of Intellectual Property Rights
UK	United Kingdom
UN	United Nation
UPSC	Union Public Service Commission
USA	United States of America
USAID	United States Agency for International Development
USD	United States Dollar
USPTO	United States Patent and Trademark Office
USTR	United States Trade Representative
UTs	Union Territories
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

REPORT

INTRODUCTION

Innovation and creativity influencing different spheres of society are highly essential for the holistic growth and development of a country. The evolution of new creations and innovative ideas, research and development and their application in production of goods and services as well as in generating knowledge is the basis of progress of any nation. Hence, promotion and protection of such creations and innovations in the form of intellectual property and intellectual rights is significant for not only safeguarding them from adverse exploitation but also manage them as precious knowledge assets. This calls for the need to establish a robust and an effective Intellectual Property Rights (IPR) regime that encourages and incentivizes innovation and creativity along with securing collective interest of the society.

1.2 As per the Paris Convention for the Protection of Industrial Property, the intellectual property represents patents, utility models, industrial designs, trademarks, service marks, trade names, copyrights, geographical indicators and confidential information. Intellectual Property Rights (IPR) are the rights given to persons over the creations of their minds and are critical in fostering innovation and creativity. Hence, the rights provide the creator

or innovator an exclusive right over the use of his/her creation for a certain period of time.

1.3 India, being the largest democracy in the world, aspires to safeguard public interest in the face of industrial and technological growth. It is, therefore, imperative for India to maintain a fine balance between private rights through IPRs on one hand and rights of the society as public interest on the other hand. This could only be achieved by establishing an IPR ecosystem that facilitates an environment of research and innovation that is consistent with larger public interest while ensuring a fair competition in industrial, economic, social, scientific and technological spheres.

1.4 The strengthening of IPR regime has gained further significance in light of the Government's focus on 'Make in India' and 'Atmanirbhar Bharat' (a self-reliant India). Also, the power of innovation leveraged by IPR has been amply demonstrated during the ongoing Covid-19 pandemic, particularly in the medical and health sector, and in technological and digital areas which are required in recovering from the resultant economic slowdown.

1.5 In view of significance of a strong IPR regime, the Department Related Parliamentary Standing Committee on Commerce, in this Report, has observed and analysed the overall scenario of IPR regime in India and its contribution in promoting innovation and entrepreneurship in the country.

The Report also examines the challenges in strengthening IPR regime, the related procedural and substantive constraints, legal aspects and other issues such as low awareness of IPR, counterfeiting and piracy, IP Financing, IPRs in agriculture and pharmaceutical sector, etc.

Role of Department for Promotion of Industry and Internal Trade (DPIIT)

1.6 Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, is the nodal Department in India for administration of various laws related to IPRs such as Patents, Trade Marks, Industrial Designs, Geographical Indications of Goods, Copyrights, Semiconductor Integrated Circuit Layout Designs. It is also mandated for the vetting of Memorandum of Understandings (MoUs) signed with various Ministries/ Departments of Government of India in terms of IPR issues and at international negotiations. The Department also deals with international organizations pertaining to IPR such as World Intellectual Property Organization (WIPO).

1.7 India has a Trade Related Aspects of Intellectual Property Rights (TRIPS) compliant, robust, equitable and dynamic IPR regime. India has a well-established legislative, administrative and judicial framework to safeguard Intellectual Property Rights (IPRs), which meets its international

obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns.

1.8 The office of the Controller General of Patents, Designs and Trademarks (CGPDTM), a subordinate office under DPIIT, carries out statutory functions related to grant of Patents and registration of Trademarks, Designs and Geographical Indications. The registration of Copyrights is administered by the Registrar of Copyright Office, working under the CGPDTM. It functions out of offices situated in Delhi, Kolkata, Mumbai, Chennai and Ahmedabad while the Central IP Training Academy is in Nagpur.

1.9 The Intellectual Property Appellate Board (IPAB), established in September 2003, was the appellate tribunal to hear appeals against decisions of the Controller of Patents as also Registrar of Trade Marks and Geographical Indications. However, through the Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, the IPAB Board has been abolished w.e.f. 4th April, 2021.

Intellectual Property Legislations administered by DPIIT

- The Patents Act, 1970;
- The Trade Marks Act, 1999;
- The Copyright Act, 1957;

- The Geographical Indications of Goods (Registration & Protection) Act, 1999;
- The Designs Act, 2000; and
- The Semiconductor Integrated Circuits Layout-Design Act, 2000.

National IPR Policy, 2016

1.10 A comprehensive National IPR policy was adopted in May 2016, to stimulate innovation and creativity across sectors, and provide a clear vision regarding IPR issues. Objectives enshrined in the policy are hereunder:

- IPR Awareness - Outreach and Promotion - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society;
- Generation of IPRs - To stimulate the generation of IPRs;
- Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights' owners with larger public interest;
- Administration and Management - To modernize and strengthen service-oriented IPR administration;
- Commercialization of IPRs - Get value for IPRs through commercialization;

- Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements; and
- Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

1.11 It was suggested to the Committee that after five years of its implementation, a review and evaluation of the IPR policy is necessary in order to evaluate the progress achieved in strengthening IPR regime. The review of the Policy would assist in identifying gaps in its implementation, new challenges and developments and the areas that require speeding up besides working out progressive measures and to strategize the way forward.

1.12 The Committee is of the opinion that a review of IPR policy should be undertaken. The re-assessment of the policy is imperative in the wake of new and emerging trends in spheres of innovation and research which requires concrete mechanisms to protect them as IPRs. The review also acquires salience to identify the existing challenges in the implementation of the policy and the corrective measures that need to be taken for its effective execution. The Committee, therefore, recommends the Department to undertake a holistic review of IPR policy at the earliest. The Committee also recommends that the

revisiting of policy should be intended at instituting changes such as elaborating more on expanding innovation ecosystem of the country, organization of awareness drives on IPR, comprehensive advisories on increasing R&D activities, encouraging IP financing and involvement of State Governments in evolving a robust IPR regime.

1.13 It was also suggested that the State Governments should be encouraged and assisted in formulating IPR policy for its implementation within their respective regimes. The involvement of State Governments would help in strengthening IPR Regime in the country.

1.14 **The Committee is of the view that State Governments could play the role of constructive partners in evolving a strong IPR regime by formulating their own strategies and policies within the broad framework of India's policy on IPR. It recommends that the State Governments should actively participate in evolving policies that focus on sensitizing people on significance of IPRs, encouraging innovation in educational institutions and establishing State level Innovation Councils, enforcement of IPR laws and curbing IP crimes. In this regard, the Department should ensure extending adequate cooperation and support to State Governments in terms of financial and other means in implementing such policies and strengthening IPR regime in states. The Department should also hold annual meetings with all**

States/UTs so that the implementation of the policy is properly monitored.

CONTRIBUTION OF IPR IN ECONOMY

2.1 In its deliberations with various stakeholders, the Committee was informed of the valuable contribution of IPRs on the economy of a country. It was apprised that a study of Organisation for Economic Cooperation and Development (OECD), namely, ‘Policy Complements to the Strengthening of IPRs in Developing Countries, 2010’ states that (i) 1 per cent increase in trademark protection increases Foreign Direct Investment (FDI) by 3.8 per cent; (ii) 1 per cent improvement in patent protection increases FDI by 2.8 per cent; and (iii) 1 per cent improvement in copyright protection increases FDI by 6.8 per cent.

2.2 Also, based on the study of International Trademark Association, titled, ‘Economic contribution of trademark intensive industries in Indonesia, Malaysia, the Philippines, Singapore and Thailand (2017)’, contribution of trademark industries to Gross Domestic Product (GDP) varies between 20 to 33 per cent and the main contributing sector has been the manufacturing industry.

2.3 Further, as per a study of World Intellectual Property Organisation (WIPO) in 45 countries on copyright industries, it was found that copyright

industry contributes about 2 to 10 per cent to GDP and 5.34 per cent to national employment creation.

2.4 The Committee, in its interactions with different organisations, was informed about the absence of any study undertaken by India to analyse the economic impact of IPRs on its GDP, growth of industries, generation of employment, trade and commerce, etc. It was stated that such a study needs to be undertaken in wake of immense contribution of creative sectors and innovations and its impact on the economy.

2.5 In another study submitted to USAID, it was informed that for all sectors and all types of investment a significant number of firms reported that intellectual property protection was a factor in their decisions about where to invest. Importance of IPR protection was greater for high-technology industries and for investments with the greatest potential to transfer technology.

2.6 The Committee notes the significance of IPRs in increasing Foreign Direct Investment (FDI) of countries, mainly of the developing nations, wherein a 1 per cent improvement in protection of trademark, patent and copyright increases FDI by 3.8, 2.8 and 6.8 per cent respectively. It is of the opinion that strengthening IPRs in India would also spur economic development by encouraging foreign exchange inflow thereby increasing productivity and generation of employment

opportunities in the country. Therefore, the Committee recommends the Department to undertake a comprehensive study of the resultant benefits of improvement in IPRs on the economy especially in terms of increase in GDP, employment generation, augmenting forex reserves, and boosting exports. The study must analyze the impact of IPR in creative and innovative sectors of India and its substantial contribution to the economy of the country.

INDIA'S IPR REGIME vis-à-vis US AND CHINA

3.1 On being enquired about the less number of patents being filed in India as compared to US and China, the Committee was informed by the Department that the reasons for lesser filing of patent applications is low expenditure on the overall Research and Development (R&D) in India along with lesser participation by the business community of India in R&D activities and also in promoting innovation.

3.2 The Department further informed that as per a report of the Department of Science and Technology, on R&D expenditure, India spends a mere 0.7 per cent of its GDP on R&D which is lesser than the other countries such as, China(2.1%), Brazil(1.3%), Russia (1.1%), and South Africa(0.8%). It was also apprised by the Department that the total R&D funding in USA was USD 580 billion in 2018. Hence, the Committee was informed that the higher spending on R&D in these countries leads to

higher claims for patents and thus higher grants. It was further learnt that in countries like China, involvement of local bodies in strengthening IPR regime has boosted registration of IPRs. Extending tax rebates and incentives to the companies and innovators at the local level on filing of patents and granting additional rewards on their approvals by local Governments in China has increased IPR participation in that country. The data regarding Patents, Trademarks and Designs as regards to the filing, examination and registration in China, U.S. and India:-

Patents

Year	China		United States of America		India	
	Filing	Grants	Filing	Grants	Filing	Grants
2016	13,38,503	404,208	605,571	303,049	45,444	9,847
2017	13,81,594	420,144	606,956	318,829	47,854	13,045
2018	15,42,002	432,147	597,141	307,759	50,659	15,283
2019	14,00,661	452,804	621,453	354,430	56,284	24,936

Source: DPIIT.

Trademarks

Year	China		United States of America		India	
	Filing	Registrations	Filing	Registrations	Filing	Registrations
2016	Not available	Not available	393,242	234,262	278,170	250,070
2017	5,748,175	2,792,072	448,214	258,488	272,974	300,913
2018	7,370,709	5,007,395	464,833	278,197	323,798	316,798
2019	7,837,441	6405840	492,729	320,562	334,815	294,172

Source: DPIIT.

Designs

Year	China		United States of America		India	
	Filing	Registrations	Filing	Registrations	Filing	Registrations
2016	650,344	446,135	42,908	30,920	10,213	8,276
2017	628,658	442,996	43,488	32,251	11,837	10,020
2018	708,799	536,251	44,385	30,850	12,585	9,483
2019	711,617	556,529	46,827	35,047	14,272	12,268

Source: DPIIT.

3.3 The Committee is distressed to note that in the year 2019, only 24,936 patents were granted in India which is considerably low as

compared to 3,54,430 and 4,52,804 patents granted in U.S. and China respectively. Also, the rate of increase in number of patents in India in the last four years has not been very impressive compared to that seen in U.S. and China. It is a matter of concern that less filing and grants of patents in India is co-related to a microscopic spending on Research and Development activities which is a meager 0.7 per cent of India's GDP. The Committee recommends the Government to emphasize upon increasing the spending on Research and Development (R&D) activities by allocating specific funds on R&D in each Department/Ministry. Also, R&D activities should be encouraged not only in Governmental and educational institutions but also in businesses and private companies. It recommends the Government to provide incentives to private businesses and companies for undertaking R&D activities which would be a proactive step in augmenting research capabilities of the country. The Committee also recommends that every industry with certain specified turnover may be directed to put funds under CSR for R&D activities.

3.4 The Committee recommends that an exclusive apex level Institution for IPR Development should be established in the country which would enable a multi-disciplinary approach in analyzing and harnessing the full potential of IPRs for economic and social growth.

The Institution would assist in developing a pool of IPR professionals and experts in spheres such as policy and law, strategy development, administration and enforcement. This would also enhance institutional capacities in IPRs in areas such as policy development, teaching, training, research, and skill building.

MARKING OF PRODUCTS AS 'PATENT PENDING'

4.1 The provision for status of 'patent pending' has been provided in the Patent Laws of USA when the patents are filed with the United States Patent and Trademark Office (USPTO). It refers to an application for an innovation to be patented, either provisional or non-provisional, and for which the patent has yet to be granted by USPTO. Marking a product as 'patent pending' indicates existence of the pending application for the product and an inventor, by labeling his product as 'patent pending' could safely market his product without any fear of loss as such marking acts as a deterrent for competitors from copying and warns of consequential penalties once the patent is granted.

4.2 The Committee enquired about the reasons for absence of any such provision of marking the product as 'patent pending' in India. In response, it was informed that on account of wide-awareness in developed countries like USA and lack of such awareness in developing countries like India,

allowing the status of ‘patent pending’ may invoke a fear psychosis which may have an adverse effect on the innovation ecosystem of the country.

4.3 It was also apprised that alternatively, in order to ensure a safe haven to inventors, the provision in Section 11A of the Indian Patents Act, 1970 provides that on and from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have similar privileges and rights as if a patent for the invention had been granted on the date of publication of the application. However, the applicant is not entitled to institute any proceedings for infringement until the patent has been granted.

4.4 On being asked about the advantages of labeling product as ‘patent pending’, the Committee was informed by various stakeholders that marking products as ‘patent pending’ would encourage patentees to notify in public that the article is yet to be patented. Also such marking would serve as a notice in notifying potential infringers that they may be liable for damages, seizure, and injunction once a patent is granted. Hence, the labelling would not only avoid unnecessary infringements but advantageously could be a good marketing tool which would establish authenticity and genuineness of the product thereby encouraging further inventions and innovations in the country. However, it was informed that while making it a practice in India, any wrongful declaration should be prevented by the patentees.

4.5 The Committee is of the view that labelling of products with ‘patent pending’ would acknowledge their credibility and authenticity hence yielding marketing benefits to the patentees. The marking of products as ‘patent pending’ would empower the patentee by acting as a deterrent to IP crimes of unauthorized copying or counterfeiting of products and avoiding unnecessary infringements. The Committee, therefore, recommends the Department to explore avenues in incorporating the practice of marking products with ‘patent pending’ in India to ensure maximum benefits to inventors or patentees.

AWARENESS OF IPRs

5.1 The Committee was informed by the Department that the domestic filing of patents in the year 2019-20 accounted for 36 per cent of the total patent filings while a major share of patents of remaining 64 per cent had been filed by foreign entities.

5.2 The details of filing of patents for the last five years by domestic and foreign applicants are as following:-

	Indian Resident Applications	Non-Resident Applications	Total Application Count	Filing by Residents as % of total filing
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FY 2015-16	13066	33838	46904	27.9%
FY 2016-17	13219	32225	45444	29.1%
FY 2017-18	15550	32304	47854	32.5%
FY 2018-19	17005	33654	50659	33.6%
FY 2019-20	20857	35410	56267	37.1%

Source: DPIIT.

5.3 The Committee was apprised that the main reason for such low filing of patents by Indian entities is the lack of awareness of IPRs in India. One of the major issues is in the context of determining novelty of a creative work. The task of determining novelty requires proper awareness and pursuit of knowledge as well as scientific temperament and guidance. However, imparting of such knowledge of establishing novelty in any creation or innovation in India is inadequate.

5.4 The Committee was apprised that the legacy of sourcing technology from foreign players rather than developing similar technology indigenously is a hindrance in strengthening the IPR regime in the country. Also, the education sector of India suffers with shortage of funds to boost R&D activities on account of which the investment in R&D by both Government-owned as well as privately-owned universities is considerably low.

5.5 It was informed that generating awareness of IPRs amongst Medium, Small and Micro Enterprises (MSMEs) is crucial to create a robust IPR

regime in the country. However, due to lack of appreciation amongst MSMEs about the significance of IPRs as a major business tool for furthering innovation and competition which would generate more profits and revenue, the filing of IPRs by MSMEs is quite low in the country. Moreover, procedural issues in obtaining a patent application as well as high investment in converting a patent into a final product and marketing the same compels the MSME sector to refrain from focusing on IPRs.

5.6 In response to query of the Committee about awareness generation amongst less-visible IP generators and holders, especially in rural and remote areas and amongst small businesses especially the designers and artisans, the Department informed about undertaking measures such as organization of awareness programmes across the country covering all strata of society, outreach programmes for authorised and registered users as well as skill up-gradation programmes by National Institute of Design for local artisans and craftsmen. The Department submitted that there has been a positive trend in filing of patents and designs in Tier-II and Tier-III cities and smaller regions indicating greater awareness of IPR amongst them.

5.7 The Committee notes with concern that a major share of 64 per cent of the patents filed in India are by non-resident or foreign entities wherein the patents filed by domestic entities occupies a portion of only 36 per cent. It is also worrisome to learn that the lack of awareness

about IPRs amongst Indians is responsible for the low share of patents filed by domestic entities *vis-à-vis* foreign entities. As a result, the innovators and creators in the country are being denied the benefits of IPRs including the generation of revenues and gains from the creation of their products. The Committee recommends that a holistic approach should be taken by the Department for disseminating awareness amongst MSMEs, small businessmen, traditional artisans and craftsmen located in remote areas and providing them insights about creation, ownership and protection of their IPRs.

5.8 The Committee also recommends that NGOs associated with craftsmen, artisans and those working in hilly and tribal areas may be engaged in spreading awareness about IPR to the target group. Necessary tool kits for promoting IPR may be provided to facilitate them in training.

5.9 The Department informed the Committee that a dedicated Cell for IPR Promotion and Management (CIPAM) under the IPR Promotion and Management (IPRPM) scheme, had been set-up in 2017-18 mainly for promoting IP culture in the country, spreading awareness, and improving understanding of IPRs amongst youth and the industry. CIPAM, since its inception, has been engaged in carrying out a large number of promotional and awareness campaigns with different target groups such as academic

institutions (Schools, Colleges, Universities), Industry including MSMEs and Start-ups, Enforcement Agencies and Judiciary. The Department has also implemented a scheme, namely, Scheme for Pedagogy and Research in IPRs for Holistic Education and Academia (SPRIHA) for setting up IPR Chairs in Universities and Institutes of Higher learning on a pan India basis for encouraging study, research and promoting outreach on IPR matters.

5.10 SPRIHA was thus set up to promote outreach on IP matters, organize seminar and workshops, develop inputs, research and inculcate a long-standing recognition and respect for one's IP and others' IP in the students' minds. The Committee was informed that presently 18 universities from across India have been made part of the scheme and are provided budgetary support to set up an IPR chair to carry out various functions under the scheme. IPR chairs are set up in universities and institutes of higher learning on a pan-India basis.

5.11 The Committee is, however, not aware of the term of IPR chairs being instituted. If it is for a short duration, the purpose of setting it up is defeated as sufficient time for research will not be available. The Committee is also not aware as to how many chairs have been set up or is functioning and the process of monitoring the scheme. **The Committee desires that a detailed note on the functioning of IP Chairs being established in Universities in India may be furnished by the Department.**

5.12 The Committee recommends the following interventions need to be taken by the Department for building greater awareness about IPRs:-

- (i) IPR Facilitation Centers should be established in Tier-I, Tier-II and remote regions of the country with a focus on enhancing the awareness of MSMEs, small businessmen and traders;**
- (ii) The training programmes and workshops being organized by the Department (especially for MSMEs, small tradesmen, local artisans) should be oriented towards inculcating scientific temperament and knowledge about identification of novelty in their products and protection of such novelties as IPRs;**
- (iii) MSMEs registering for IPRs in foreign countries, where they have the potential to expand their trading base, should be encouraged and given assistance thereby making them globally competitive;**
- (iv) IP courses and curriculum should be introduced in schools, colleges, management schools and IPR trainings, workshops and conferences should be organized for students along with professors and teachers; and**
- (v) The Committee further notes that print and visual media plays a crucial role in creating awareness regarding IPR. The Committee**

recommends that interactive workshops for journalists may be organized to make them aware of the need for protecting IPR.

Creation of IP Fund and Fostering IP Culture

5.13 The Committee desired to know the significance of creation of an IP Fund in instilling IP culture in the country. In response, it was informed that the creation of IP Fund is an important aspect whereas the bigger challenge would be to effectively channelize the fund to support IP initiatives in the country. An IP fund, if directed towards fostering IP creation in the remotest parts of country such as the tribal hilly and border states, North East Region, etc. which are rich in traditional knowledge, culture and biodiversity, would act as a significant tool in strengthening IPR regime by facilitating protection of IPRs in such areas thereby encouraging creation and transfer of benefits to the local producers and owners of intellectual property.

5.14 **The Committee recommends the Department that a provision of IP funds should be created in the country which would help in supporting initiatives specifically for instilling IP culture in the remotest parts of India including tribal belts, hilly and border states, North East Region. Developing an IP culture in such regions which are the storehouse of traditional and indigenous knowledge, would not only accomplish the objective of protecting their natural and cultural assets but would also promote the overall IP generation in the country.**

COUNTERFEITING AND PIRACY

6.1 The Committee was informed that the majority of IP related crimes being committed in India are counterfeiting (resembling of things to practice deception) and piracy (original work is copied through unaccredited means and marketed at cheaper rates). Both counterfeiting and piracy are recognized as criminal offences under the Indian legislations i.e., Indian Penal Code 1860, Trademarks Act 1999, Copyright Act 1957 and Information Technology Act, 2000. These legislations establish an effective framework to curb the menace of piracy and counterfeiting and to control the extent of such crimes.

6.2 The Department submitted that it is making sustained efforts to prevent counterfeiting and piracy in the country and in spreading awareness about IPR. Training programmes on IPR enforcement are being conducted for law enforcing agencies like Police, Judiciary, and Customs in order to create a better understanding on the role of these agencies in IP infringements. Street plays and social media campaigns as well as campaigns in collaboration with schools and colleges are also being conducted to inculcate awareness about the serious health issues on the usage of unsafe counterfeit products and to highlight the adverse effects of piracy.

6.3 The Department, in association with Federation of Indian Chambers of Commerce & Industry (FICCI), has developed an IPR Enforcement Toolkit for the Police to facilitate IP enforcement in India. Further, in collaboration with International Trademark Association, the Department has organised a 3-part webinar series on ‘Anti-Counterfeiting and Enforcement in the wake of Covid- 19 disruption in India’ to create awareness towards the changing trends of counterfeits and the challenges faced in enforcement of IPR.

6.4 The Committee was informed about the seizure cases of IPR infringement booked by CBIC (Central Board of Indirect Taxes and Customs) which is given below:

	Number of seizure cases	Value in Rs. lakh (estimated retail price)
2017	173	6184.44
2018	230	4451.55
2019	187	27143.88

Source: DPIIT.

6.5 The Committee acknowledges that IP crimes including counterfeiting and piracy are the rising threats to IPRs which should be regulated and deftly handled by taking appropriate measures. It

recommends the Department to stress upon capacity building of enforcement agencies on IP laws including strengthening of IPR cells in State police forces. It further urges the Department to ensure on-ground implementation of stringent IP legislations with a stronger Inter-Departmental collaboration on IP crimes for curbing such offences in an effective manner. It recommends the Department to consider establishing a Central Coordination Body on IP Enforcement for undertaking coordinative efforts by involving various Ministries, Departments, and Governmental agencies in enforcement and adjudication of IP laws to check IP crimes in the country.

6.6 In its query on formulating specific legislation to check counterfeiting and piracy, and to resolve such IP crimes, the Committee was informed that a separate legislation along with efforts for its effective implementation is the need of the hour. It was also informed that assessment of losses incurred due to piracy remains rudimentary in India as highlighted by certain industrial experts post the release of the 2019 status report on IPR infringement by the European Union Intellectual Property Office (EUIPO). Hence, no prescribed method of calculating the quantum of piracy as well as the losses incurred due to the same exists in the country. Also, a reasonable estimate of the contribution of the copyright industry to the national GDP and employment generation is not available.

6.7 The Committee recommends that a specific legislation to curb counterfeiting and piracy should be enacted to restrain the growing menace of such IP crimes in India. It is of the opinion that a determinate method to estimate the revenue losses being incurred due to counterfeiting and piracy and the level of such crimes being committed in India should be devised. This would act as a significant tool in analyzing the adverse impact of Counterfeiting and Piracy on India's economy and for implementing corrective measures to curb the rising incidents of such crimes.

VACANCIES IN PATENT OFFICE

7.1 Nations' economic strength and progress depends on protecting investments in innovation and creativity. An efficient and capable patent office is a crucial element in guaranteeing these protections.

7.2 The Department for promotion of Industry and Internal Trade informed the Committee about the steps being taken to significantly augment the manpower for reducing the backlog in IPR offices and enable speedy examination and disposal of IP applications through recruitment on regular and contract basis.

7.3 The details of recruitment of examiners, controllers and registrars are as following:

Timeline	Patents		Trademarks	
	Examiners	Controllors	Examiners + Senior Examiners	Registrars
As on 31 st March, 2015	183	89	64	13
As on 10 th October, 2020	619 (673*)	245(265*)	159 (235*)	15 (54*)

(*): Sanctioned posts.

7.4 The Committee noted that against the sanctioned posts of 673 Patent Examiners and 265 Patent Controllors the appointments are 619 and 245 respectively, the rest of the posts, therefore, remains vacant. Further, vacancy also lies in the posts of Examiners and Senior Examiners as well as Registrars in respect of Trademarks as against the sanctioned posts of 235 Examiners and 54 Registrars, only 159 and 15 respectively, have been filled up.

7.5 On being enquired about the efforts for the filling up of these vacancies, the Department informed that the vacancies of 89 posts (65 post of Examiners, 10 post of Senior Examiners, 11 post of Assistant Registrars and 3 posts of Deputy Registrars) had been forwarded to UPSC for initiating the process for filling these vacancies and the same is at an advanced stage which is likely to be completed by the first half of 2021.

7.6 It was informed that in order to further strengthen the manpower of Intellectual Property Rights office, a number of posts that were deemed abolished as there was no eligible officer in the feeder grade for promotion

have been revived with the approval of the Department of Expenditure, Ministry of Finance. The process for filling up of these vacancies is being initiated by promoting officers in the feeder grade who are eligible for promotion w.e.f January, 2021.

7.7 The Committee notes that to fulfill its commitment to the stakeholders, the Patent Office should be provided with adequate number of officials to expedite the process of patenting. Over the years, number of patent applications has increased considerably due to more innovation resulting in filing more patent applications, expansion of more areas under IPR and filing of patents by foreign nationals. The Committee also notes with concern that the increase in the number of examiners does not commensurate with the increase in the number of applications.

7.8 The Committee expects promptness from the Department in determining the existing vacancies and undertaking efforts to recruit and appoint officials in IP offices within a reasonable timeframe. The Department must ensure that officials are qualified and trained. It, therefore, recommends the Department to expedite procedures for filling up vacancies against the sanctioned strength of officials in order to facilitate the larger cause of dispensing IPR claims. The Committee also recommends that efforts must be made to retain the officials by

providing good service conditions. Further, officials on deputation from research organization may be made as experts for a reasonable period of time.

ARTIFICIAL INTELLIGENCE AND IPR

8.1 Artificial Intelligence (AI), a discipline of computer science, mainly aims to develop systems as well as mechanisms that perform the tasks which generally requires human intelligence. It refers to the ability of machines and technologies to perform cognitive tasks like thinking, perceiving, learning, problem solving and decision making. AI based programs can produce music, draw paintings, write literature, conceive inventions and automate, speed up and ease day-to-day tasks for humans. Evolution of AI and its expansion as well as its utility in a growing number of fields has increased exponentially in present days.

8.2 As regards the economic impact of AI, the Committee was informed that an Accenture research report had estimated that the benefits from AI related innovations, if drawn in an optimal manner, would add USD 957 billion by 2035 to the Indian economy. However, in order to extract benefits from AI, revisiting of IPR legislations and implementing a strong IPR framework is desirable.

8.3 Presently, The Indian Patents Act, 1970 as well as the Copyright Act, 1957 are not well equipped to facilitate inventorship, authorship and ownership by Artificial Intelligence. As per Section 3(k) of the Indian Patent Act, 1970, a mathematical or a business method or a computer programme or algorithms run by Artificial Intelligence are not patentable. Further, the condition to have a human inventor for innovating computer related inventions (innovations by AI and machine learning) hinders the patenting of AI induced innovations in India. Therefore, there is a need to review the provisions of both the legislations on a priority basis.

8.4 During the deliberations with relevant stakeholders, the Committee was informed that the protection of both AI-generated works and AI solutions should be permitted under patent laws of India as it would incentivize innovation and R&D thereby significantly contributing to creativity and economic growth of the country. It was informed that rendering protection to works generated by AI either autonomously or with the assistance and inputs of a human being would incentivize and encourage the creator of the AI which in turn would further encourage creativity and development of more AI solutions.

8.5 The Committee notes that the relevance and utility of cutting edge technologies such as Artificial Intelligence (AI) and machine learning would increase manifold in the present world especially in the times of

Covid-19 pandemic wherein the digital applications are playing a crucial role in responding to the crisis. Moreover, the huge benefits of AI and its applications in India's revenue generation and economy as well as its impact on technological innovation necessitate its expansion in a secured manner. In view of this, the Committee recommends that a separate category of rights for AI and AI related inventions and solutions should be created for their protection as IPRs. It further recommends that the Department should make efforts in reviewing the existing legislations of The Patents Act, 1970 and Copyright Act, 1957 to incorporate the emerging technologies of AI and AI related inventions in their ambit.

8.6 The Committee was informed that a framework needs to be developed for patenting of algorithms by associating their use to a tangible result. For example, under the AI guidelines of European Patent Office, abstract mathematical methods cannot be patented. However, it is patented if the mathematical method involves the use of technical means or a device such as computers. Also, linking the mathematical applications and algorithms to practical application makes them a process which could be patented as being practiced in US.

8.7 **The Committee recommends the Department that the approach in linking the mathematical methods or algorithms to a tangible technical**

device or a practical application should be adopted in India for facilitating their patents as being done in E.U. and U.S. Hence, the conversion of mathematical methods and algorithms to a process in this way would make it easier to protect them as patents.

INTELLECTUAL PROPERTY APPELLATE BOARD (IPAB)

9.1 Intellectual Property Appellate Board (IPAB), constituted in 2003, mainly functioned as an appellate body to hear the appeals and applications against the decisions of Controller of Patents under the Patents Act, 1970, the decisions of the Registrars under the three Acts, namely, Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999 and the Copyright Act, 1957 as well as the decisions of Plant Varieties Protection Authority under the Protection of Plant Varieties and Farmers Right Act 2001. As per the provisions of Section 84 and Section 87 of the Trademarks Act, 1999, IPAB consists of a Chairman, a Vice-Chairman and such number of other members as the Central Government may deem fit and subject to the other provisions of this act.

9.2 IPAB with its headquarters at Chennai conducted its Circuit Bench sittings periodically at Ahmedabad, Delhi, Kolkata and Mumbai to reach out the needy litigants to protect their intellectual property rights.

9.3 The Committee was apprised about the issues that plagued proper functioning of IPAB in speedy disposal of IPR appeals and rectification applications. It was informed that undue delay in appointment of members and experts at all levels of IPAB has affected its optimal performance causing disruptions in adjudication of IPR cases. The Department further highlighted that IPAB has faced issues in the appointment of the Chairperson that had fallen vacant on 31st December, 2020.

9.4 As regards the issue of abolition of IPAB, the Committee was informed that the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 has abolished certain tribunals including IPAB wherein the pending cases of IPAB will be transferred to the Commercial Courts and the High Courts for adjudication. On being enquired about the impact of shifting of pending cases from IPAB to the Commercial Courts or the High Courts, the Department stated that transferring of such cases would have a negative impact on their speedy disposal and may further increase pendency. This would have an adverse effect on Commercial Courts and High Courts which are already overburdened with pending cases.

9.5 In their response to a query of the Committee about the advantages in strengthening IPAB with requisite manpower and expertise rather than abolishing it altogether, the stakeholders stated that the IPAB, which has been a critical part of India's IP eco-system, should be restructured and

empowered and its abolition should be reconsidered. The Committee was further informed by the stakeholders that IPAB has played a significant role in rendering decisions to complex issues involving IP Rights while contributing to speedy and effective hearing and disposal of IPR matters.

9.6 It was stated that during the last decade or so, many landmark and path breaking judgements were delivered by IPAB and, therefore, the decision of scrapping IPAB should be replaced by strengthening its present structure. Hence, timely recruitment and augmentation of experienced officers and staff, improving its functioning by leveraging digital technologies and facilitating appeals and proceedings through digital media, and development of e-IPAB forums to improve the spread and outreach would enhance its present structure.

9.7 The Committee desires that the abolition of a prominent appellate body of IPAB under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 should be reconsidered in wake of its pivotal role in adjudication of IPR appeals and cases. The overall scrapping of IPAB, which efficiently had been dealing with proceedings involving complex IPR issues, may create a void in appellate resolution of cases leading to their shift to Commercial or High Courts thereby increasing pendency of cases. The Committee also opines that inordinate delay in appointment of officials at higher level and the

resultant pause in functioning of IPAB affected the optimal performance of IPAB. The Committee, therefore, recommends the Government that IPAB should be re-established, rather than being abolished and should be empowered and strengthened with more structural autonomy, infrastructural and administrative reforms, as well as ensuring timely appointment of officials and experienced manpower.

9.8 The Committee notes with distress the absence of any Judicial Impact Assessment, or active consultations with stakeholders, being conducted by the Government prior to the abolishing of tribunals under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021. It strongly recommends that the Government, before scrapping of significant tribunals through an ordinance, should undertake a Judicial Impact Assessment along with wide consultations with relevant stakeholders to ensure building a systemic perspective on abolishing an established system in the country.

PATENT PROSECUTION HIGHWAY

10.1 Patent Prosecution Highway (PPH) is an initiative amongst nations aimed at accelerating patent prosecution through sharing of information between patent offices of participating countries. PPH has been designed to harmonize patent examination system amongst participating countries. It

grants permission to such countries to examine the data and research available of other countries to check the novelty and exclusiveness of a patent.

10.2 By exchanging the knowledge of methods and best practices in granting patents as well as through conduct of orientation programmes for the examiners of the patent offices of participating countries, a bilateral PPH program reduces the disposal time and pendency of patent applications. It develops a mutual understanding in speedy examination and prosecution of patent applications. However, PPH between countries is non-binding in nature, and the examination and disposal of patent applications is strictly as per the domestic laws of participating countries.

10.3 The Committee was informed that a pilot Patent Prosecution Highway (PPH) project with Japan has been signed and initiated in the month of December, 2019. In this way, a collaboration with the Japanese Patent Office would help Indian innovators and inventors especially in MSME sector to get their patents registered and examined in Japan expeditiously. In the first year of three year's Pilot PPH Program with Japan which allows 100 applications from Japan in a year, 100 patent applications were received. Second year of the three years' program started from December, 2020.

10.4 The Committee notes that PPH may pave the way for encouraging more Japanese companies to invest in India and thereby helping the Indian

economy and Industry as the disposal time in getting patents would be accelerated.

10.5 It was suggested that more PPH Programs should be established with countries in the present times of Covid-19 pandemic which would help in fast-tracking and prioritizing processing of patent applications in areas such as pharmaceuticals, medical devices, vaccines, etc. This would ensure availability of best vaccines, medicines and medical devices to the public at large in India as well as converting India into a global pharma export hub.

10.6 The Committee observes that Patent Prosecution Highway (PPH) amongst nations is a mutual initiative which helps in creating a conducive environment for promoting and expediting filing of patents. PPH facilitates in exchanging information on norms and rules that are followed in granting patents in participating countries and thus enables the patentees and inventors to abide by the criterion of such nations while applying for patents. Also, PPH as a significant patent tool should be encouraged with nations in times of pandemic wherein the Covid-19 outbreak has led to rise in filing of innovations to grant them as patents in areas of vaccines, pharmaceuticals and medical devices. The Committee, therefore, recommends the Department to explore opportunities in establishing PPH with other nations as well which would be highly advantageous to India in expediting and processing of

patent applications. The Committee, however, recommends that before venturing on PPH programs with other countries, impact assessment of the Japan PPH model may be made.

IP FINANCING

11.1 The act of using Intellectual Property to gain access to financial benefits, credit and generating revenue is referred to as IP Financing and the use of IP as collateral in business transactions is known as IP financing transactions. IP financing is an emerging business option that may offer an opportunity for companies with valuable IP assets seeking alternative sources of raising capital. In the recent past, a paradigm shift has been observed in the working and functioning of business corporations and companies wherein the finances and revenue is generated from IP which acts as intangible assets.

11.2 Financial innovations, such as creation of new financial instruments and financial technologies, new derivative contracts, corporate securities or new forms of pooled investment products for financing or raising loan, if claimed as IP rights, would become an alternative form of crucial economic and financial tool thereby ensuring maximum economic benefits to a nation. Hence, IP as intangible assets need to be protected and regulated so that the ecosystem of IP financing and insurance is nurtured in India. However,

despite having great potential, IP backed financing or utilization of the IP base for financing or raising loans in India is quite dismal.

11.3 In its deliberations with financial institutions, the Committee was apprised about the advantages of IP backed financing such as increase in value of IP (intangible) assets over a period of time as against value of tangible assets which tends to depreciate, providing a better and alternative means to traditional financing.

11.4 IP backed financing has also been given due credence by Government of India in National IPR Policy wherein one of the slated objectives of the IP Policy is to "enable valuation of IP rights as intangible assets by application of appropriate methodologies and guidelines; facilitating securitization of IP rights and their use as collateral by creation of enabling legislative, administrative and market framework".

11.5 Despite favourable provisions for IP based financing, it is not very popular in India in practice. Major reason being lack of awareness wherein either the owner is not aware of the value of the intangible assets he owns or the banks/financial institutions themselves do not wish to undertake the risk of lending against IP assets. This is on account of the lack of clarity and uniformity in the methods adopted for IP valuation and the complexity of applicable rules and procedures. Also, valuation of IP asset and assessing the

value of IP-holdings including its market resale value by any financial institutions or companies is difficult and requires hiring of IP experts.

11.6 It was further informed that IP financing in India is still in a nascent stage wherein tangible properties are more established form of collateral in financial sphere and companies still rely on traditional tangible asset-based financing. Further, the lack of IP infrastructure and inconsistencies in valuation is a deterrence to companies opting for IP based financing. Also, validity of an IPR could be challenged at any point in time which makes it vulnerable as an asset in finance. It was further apprised that at the time of default by owner identity, realizing any substantial part of the advanced amount by lenders from the charged IP, becomes very difficult. A recent example in this regard was the difficulty faced by State Bank of India (SBI) in auctioning of one liner tag of Kingfisher airlines "Fly with Good Times" which found no bidders.

11.7 The Committee notes that utility of IPRs as intangible assets in the financial sphere is a way forward in improving finances of a country and in enhancing financial innovation, easy availability of credit, and increasing capital base. It, however, observes that despite great potential to accrue economic benefits to a nation, IP backed financing is still an evolving area in India. It further views that the Government *vide* its National IPR Policy, 2016 has slated the objective of boosting IP

commercialization in India, yet it has been lackadaisical in executing it on ground. The Committee opines that such a halfhearted approach needs to be replaced by earnest efforts by Government in buttressing financial institutions and business community to adapt to non-traditional methods of IP backed financing.

11.8 The Committee is of the opinion that deeply embedded traditional methods in financial sphere and the ignorance amongst business community to treat IP as an intangible financial resource at par with tangible assets like land or property are the major impediments in the growth of IP backed financing in India. In this regard, the Committee recommends that the Department should undertake committed measures in generating awareness and better understanding of IP financing, value and monetization of intangible assets in the country by inculcating management of IP portfolio of businesses, thereby enhancing its economic worth and making the business community aware of the compliances.

11.9 The Committee also recommends that the Department, in close coordination with financial institutions/ stakeholders or banks, should encourage adaptation to non-traditional forms of collateralization and securitization by conducting trainings and workshops on scrutinizing and regulating IP financing and extending necessary support to business

community. It also urges the Government to explore plausible ways to devise a uniform system of valuation of IP as an intangible asset in the country which would ensure a better evaluation of assets by financial institutions. A mechanism also needs to be put in place to recognize and appoint IP evaluators in the country. The Committee also recommends that Insurance sector may be involved in covering/ protecting against the rise of financial losses faced by an IP to minimize monetary risks by suitable amendments in Insurance Act.

11.10 As regards legislation on IP financing, SARFAESI (The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest) Act, 2002 is a significant legislation which facilitates creation of security rights on intangible properties. 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. The Act has, therefore, assisted in setting up a system for creating security interests in Intellectual Property and maintenance of records pertaining to such transactions. Better implementation of provisions of the Act could be very useful in increasing IP backed financing.

11.11 It was also informed that several legislations of India including The Patents Act, 1970; Trademarks Act and Designs Act need to be revisited and

amended to incorporate specific provisions related to IP Financing. Proper enforcement of specific provisions on IP backed financing in these laws would encourage IP financing in India.

11.12 The Committee takes cognizance of the absence of any specific legislation on IP Financing that exclusively covers IP Financing, creation of security interest in IP Financing, statutory protection to financial innovation and intangible assets as IPRs, rights and obligations on IP financial transactions, etc. It recommends the Department that such a specific law on IP Financing should be promulgated at the earliest which would provide a concrete framework and determine standards for the protection and promotion of IP backed financing in India.

11.13 On being enquired about the initiatives to be undertaken to encourage IP backed financing in India, the Committee was apprised of the steps taken by the countries like Singapore and China who have been successful in establishing and administering IP backed financing in their respective domains.

- (i) **Singapore:** An IP Financing Scheme (IPFS), launched in 2014, has been crucial in providing a much-needed impetus to the intangible asset-based marketplace in the country. Under the scheme, Participating Financing Institutions (PFIs) or banks are allowed to

advance loan to companies using IP as collateral and the risk of such IP backed loans is shared by the Singapore Government with the PFIs. The Government also provides valuation subsidies to defray the cost of IP valuation which may at times is upto 50% of the IP valuation cost. The Scheme has benefited a number of businesses in Singapore by helping them raise capital during crucial junctures through pledging their IPs as collateral.

(ii)**China:** In 2019, an IP-Pledge Financing Framework was jointly released by the Chinese National Intellectual Property Administration, the China Bank Insurance Regulatory Commission and the National Trademark Administration of China. The framework aims at strengthening and setting up new parameters for IP pledge loans from various banks. The objectives include extending support to commercial banks and financial institutions that accept IP as collateral for loans and by introducing a risk management framework through IP financing specialists, strengthening the management of collaterals and closely monitoring the business of borrowers.

11.14 The Committee recommends the Government of India to consider the facilitative measures and policies being taken by countries of Singapore and China in successfully endorsing IP financing in their

financial spheres through active participation such as sharing the risks involved in IP financing transactions, extension of subsidies to financial institutions to adjust to higher costs of invaluable IP assets, etc. It recommends that necessary initiatives on similar lines and as per the country's requirements should be undertaken in India to boost IP financing.

THE PATENT ACT, 1970

12.1 Patents are exclusive rights given to the owner of an invention which bars the use of the invention by others for a limited period of time. The term of every patent in India is 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. The Patent Act was enacted in 1970. However, India's accession to the TRIPS Agreement in 1995 led to fundamental changes in our patent regime. Subsequently, the Patents (Amendment) Act, 2005 came into force on 1st January, 2005 for meeting the international obligations and flexibilities under the TRIPS Agreement. Since the provisions were made almost 15 years back, revisiting and reviewing of provisions in The Patent Act, 1970 is essentially needed. The Committee was apprised of the following amendments to be made in The Patent Act, 1970:-

- (i) It was informed that Section 3(b) of the Patents Act, 1970 prohibits patenting of technology, use or application at the sole discretion of the Controller if found by him to be 'contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment'. Hence, the widely worded provision of Section 3 (b) is without any sufficient guidance or safeguards against arbitrary exercise of power by the Controller. It, therefore, may lead to refusal of socially useful inventions under patent protection. For example, nicotine chewing gums, which are used for deaddiction to smoking, are denied patent on the ground of section 3(b). Furthermore, smoking devices which make smoking less hazardous are denied patents in India. It was suggested that that the provision should be amended wherein patents are not granted to inventions that are considered as against the law being in force. **The Committee recommends the Department that the Section 3(b) of Indian Patent Act, 1970 should be amended so that a provision of a safeguard mechanism is included against the arbitrary exercise of power by the Controller in declining patents. A check and balance mechanism should be inserted under the Act which would**

ensure granting of patents to socially useful inventions or innovations. It, however, recommends that the provision be amended to limit the exclusion to only those inventions which are barred under any law for the time being in force.

- (ii) Section 3 (c) of the Patent Act, 1970 stipulates the prohibition of patenting of mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature. It was suggested that the patenting of discoveries of non-living substances should be allowed under the law.

The Committee recommends the Department to explore the feasibility of granting patents to non-living substances occurring in nature under the act and its subsequent impact on public interest.

- (iii) As per Section 3 (j), the patenting of plant, seeds, varieties, species and essentially biological processes for production or propagation of plants is barred. The Committee was informed that patenting of plants and seeds in India should be allowed wherein the Government of India should become a stakeholder in the patent with private players as co-owners. The said patent should then be made available at subsidized rates to farmers in

need. This would allow the farmers of the country to enjoy subsidies while private players can be charged market value for use of patent. **The Committee recommends that a thorough analysis should be conducted by the Department on approving the patents on plants and seeds favourable to agriculture sector of the country with a pre-condition of making Government of India as a participant in the patent. It recommends the Department to hold proper discussions and wide consultations with farmers groups/ associations and necessary stakeholders to examine the plausibility of allowing the patents on plants and seeds that yields benefits to the farmers of the country.**

- (iv) The provision of Section 122(2) of The Patents Act, 1970 provides punishment by way of imprisonment up to six months for a person who furnishes information or statement which is false, and which he either knows or has reason to believe to be false or does not believe to be true. The Committee was informed that the said provision is too stringent and may be amended to replace imprisonment with a substantial monetary penalty for non-compliance. **The Committee recommends the Department to examine the stringency of Section 122(2) and**

make necessary amendments to modify the stated provision of imprisonment of six months in case of furnishing false information.

- (v) Section 11B of the Patents Act, 1970 read with Rule 24B of the Patents Rules, 2003 stipulates that a request for examination of a patent application must be made within 48 months from date of priority or the date of filing of the application (whichever is earlier) otherwise the application will be not examined and treated as withdrawn by the applicant. It was however stated that the time line is vast and results in delay in filing, examination and grants of patents.

The Committee notes that the timeline of 4 years to file an examination report by the patent applicant is too extensive and recommends the Department to shorten it to a reasonable time frame to avoid any unnecessary delay in examination and grants of patents.

- (vi) It was highlighted that the inflexibilities in Patent Act does not leave any room for errors thereby affecting the filing of patents. It was informed that in countries like US any delay in filing of patents could be condoned with an appropriate petition, fees, timely hearing and disposal. However, in India, once a due date

has elapsed for filing request for examination report or a complete specification after a provisional one, there exist no remedy. Hence, as per Section 21(1) of the Patent Act, 1970, an application for a patent shall be deemed to have been abandoned unless the applicant has complied with all the requirements imposed on him by or under this Act within such period as may be prescribed. This inflexibility affects number of patents filed. **The Committee opines that abandoning of patents, without allowing hearing or petition, may demoralize and discourage the patentees in the country to file patents. It recommends the Department that certain flexibility should be incorporated in the Act to make room for allowance of minor errors and lapses to prevent outright rejection of patents being filed. Hence, a revised petition with penalty or fee may be permitted under the Act for minor or bona fide mistakes that had been committed in the filed patents.**

- (vii) Section 104 under the Patent Act states that no suit for a declaration under section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit. The

Committee was apprised that directly approaching district courts leads to adding to an already over-burdened judicial system and therefore a zonal IPR mediation or a dispute resolution body with experts should be established for fast resolution of cases. **The Committee is of the view that increase in patents in the country owing to technological advancements and innovation would lead to precipitous rise of IPR disputes and infringements posing a threat to the judicial system. It, therefore, recommends the Department that the provision of jurisdiction under Section 104 of the Patent Act should be amended to promote establishing of alternative dispute resolution mechanism in India such as arbitration, mediation, etc. for ensuring speedy justice to patentees in IPR litigations. The modification in the Act should also be followed by setting up of zonal IPR mediation or arbitration centers in districts with expertise in IPR matters.**

- (viii) During the interactions with the Committee, certain law firms flagged the issue of lack of simplicity and lucidness of the information available on the website of Indian Patent Office making the process of filing patents and online search of

information cumbersome and taxing. **The Committee recommends the Department to take steps for modernization, upgradation and maintenance of the website of Indian Patent Office to make it user friendly enabling the patentees to easily navigate through the site for accessing requisite information on IPRs and for filing patents.**

Public Interest Safeguards under the Act

1. Protection against Ever-greening

12.2 Section 3(d) of the Patent Act, 1970 acts as a safeguard against frivolous inventions in accordance with the flexibility provided in TRIPS Agreement. It states that “mere discovery of any new property or new use for a known substance” is not an invention unless it enhances the efficacy of the substance. Hence, it prevents ‘evergreening of patents’ by prohibiting patents of incremental inventions involving only minor or slight improvements that extends the life of patents which are about to expire. It, therefore, ensures generic competition by patenting only novel and genuine inventions.

12.3 In its deliberations with stakeholders and legal associations, the Committee was apprised that many times the patent applications are

objected under Section 3(d) in ascertaining that whether or not claimed compounds or their derivatives are novel and involving inventive step or are secondary compounds and derivatives with marginal improvements over previously known compounds and derivatives for which primary patents exist. This restricts the protection of inventions especially in the areas of new and novel drugs and pharmaceuticals and, therefore, should be revisited to ensure a more liberal legal framework.

12.4 It was informed that there had also been debates about its compliance with the TRIPS Agreement. United States Trade Representative (USTR), in its Special 301 Report, has stated that Section 3(d) fails to incentivize innovation that could benefit Indian patents. It has been argued that the provision is incompatible with the TRIPS Agreement, as it does not provide patent protection to incremental innovation.

12.5 The Committee however notes that the Supreme Court of India *vide* Novartis vs. Union of India has upheld the validity of section 3 (d) and its compliance with the TRIPS Agreement and the Doha Declaration wherein the member countries have been provided policy space to exclude certain subject matters from getting patents. The patent application of Novartis which claimed the final form of Gleevec (a cancer drug) was challenged in Supreme Court. The case was a landmark judgment which held that Gleevec is a beta crystalline form of a known drug, namely, imatinib mesylate and

does not differ significantly in properties with regard to efficacy. Hence, it could not be patented in India.

12.6 The landmark verdict in Novartis case has also been referred in the UN Report, namely, United Nations Secretary-General's High-Level Panel on Access to Medicines Report, 2016, which validated India's stand on Section 3(d). The said Report recommends that member countries of WTO must make full use of the policy space available in the TRIPS agreement by adopting and applying rigorous definitions of invention and patentability that curtail 'evergreening' and ensuring that patents are only awarded when genuine innovation has occurred.

12.7 The Committee is in agreement that Section 3(d) in India's patent regime has acted as a protector against any attempt of repetitive patenting or extending term of patents on spurious grounds. The provision is a catalyst for genuine innovations since it guards against frivolous successive patents intended to make an invention 'evergreen'. The Committee believes that the provision is in complete harmonization with the provisions of the international agreement of TRIPS and Doha Declaration as stated by Supreme Court of India in its landmark judgement of Novartis vs. Union of India. It appreciates that through Section 3(d), India strives to balance the international patent obligations

and its commitments to protect and promote socio-economic welfare and public health.

12.8 The Committee is of the opinion that India must not compromise on the patentability criteria under Section 3(d) since India as a sovereign nation has the flexibility to stipulate limitations on grants of patents in consistence with its prevailing socio-economic conditions. It emphasizes that being a developing country, the provision has secured India's interests especially in the pharmaceutical sector against rampant secondary patenting by foreign pharmaceutical companies for increasing their profitability. Thus, it ensures the growth of generic drug makers and the access of public to affordable medicines. The Committee also observes the concerns flagged in the USTR Report pertaining to disqualification of incremental inventions under Indian Patents law and recommends to resolve the issue through bilateral dialogues with US. It also recommends that in order to avert any misinterpretation of the provision, the Department should examine the aspect on giving an expansive meaning to Section 3(d) for giving further clarity.

2. Compulsory Licensing

12.9 Section 92 of the Patent Act, 1970 provides special provision for issuing compulsory license (CL) on notifications by Central Government, "if

it is satisfied, in respect of any patent in force in circumstances of national emergency or in circumstances of extreme urgency or in case of public non-commercial use, that it is necessary that CL should be granted at any time after the sealing thereof to work the invention, it may make a declaration to that effect, by notification in the Official Gazette”. Hence, by invoking Section 92, the Government may provide the patent rights of a patentee to an individual or companies in times of national emergency or crisis.

12.10 Further, there exists a provision of compulsory license for export of patented pharmaceutical products in certain exceptional circumstances. As per Section 92A of the Patent Act “Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India”.

12.11 The Committee was informed that the provisions relating to Compulsory Licenses under the Patents Act are fully compliant with the TRIPS agreement. It was also highlighted that Compulsory License was issued only once in India to Indian company, namely, Natco Pharma Ltd, for

producing generic version of Bayer Corporation's patented drug of Nexavar which is a life-extending drug in the treatment of liver and kidney cancer.

12.12 In response to a query of the Committee that the existence of issuing Compulsory License in India's patent legislation has always loomed as threat for innovators and patentees, it was informed that no such issues persist since the incident has occurred only once and the decision was backed by public policy of making the invention affordable to people. The decision was also upheld by the Supreme Court of India. Further, the Indian Patent Office has been careful in its scrutiny to grant Compulsory Licenses in other cases and has rejected several other applications of Compulsory Licenses for drugs such as Saxagliptin and Dasatinib.

12.13 The Committee notes the significance of issuing Compulsory Licenses to manufacturers and individuals for utilizing the patents to serve public needs during circumstances of emergency and crisis. It further observes that prudence has been shown by India in invoking the provision of Compulsory Licensing only once when the patent was for generic production of a life-saving drug of Nexavar at an affordable cost.

12.14 The Committee is of the opinion that although a careful stance is needed to be adopted in issuance of Compulsory License on a patent, it could, however, be considered in case of production of medicines and

vaccines for the treatment of Covid-19 since the pandemic has led to a national health emergency in India. Generic production in large quantities without any obligation of patents would help in removal of supply constraints in availability of affordable drugs, medicines and vaccines at times of high case load and death toll due to Covid-19. The Committee, therefore, recommends that the Government should delve into the prospect of temporarily wavering patents rights and issuing Compulsory Licensing to tackle the inadequacy in availability and accessibility of Covid-19 vaccines and drugs during an emergency like situation induced by the pandemic.

3. Form 27

12.15 As per Section 146 of the Indian Patents Act, 1970 and Rule 131(1) of the Indian Patent Rules, 2003 a patentee is required to furnish a statement regarding the working of the patented invention on commercial scale in India to ascertain whether the patented invention has worked sufficiently. Such statement regarding working of the patented invention is to be furnished in Form 27. In conditions when the patent granted to the patentee, as per Form 27, is not being implemented in an adequate manner, the Patent Act may allow grant of compulsory license of patents to third parties.

12.16 The Department informed that certain amendments in Form 27 *vide* Patents (Amendment) Rules, 2020 streamlined the requirements of the Form

such as flexibility to file a single Form-27 for a single or multiple related patents; filing of joint Form-27 by two or more patentees; increasing the timeline to 6 months from 3; requirement to declare accrued revenue in place of quantum and allowing submission of forms by authorised agents.

12.17 In order to ensure better compliance to Form 27, it was suggested that submission of the information on a yearly basis by universities, R&D institutions, small enterprises, and start-ups should be relaxed as they do not have organized system to handle the task.

12.18 The Committee notes that the provision of Form 27 is crucial as it seeks to ensure adequate working of a patented invention on a larger scale to cater to the demands of public at large. It recommends the Department to consider relaxing the requirement to furnish information under the form on a yearly basis to ease the compliance burden on universities, R&D institutions, startups and small enterprises. It further recommends the Department to take steps for ensuring that the recent amendments in Form 27 is implemented properly without affecting the spirit of patenting and public interest.

THE TRADE MARKS ACT, 1999

13.1 Trademarks are marks certified by a proprietor for the goods or services and are used in the course of trade. It is registered in India under the

provisions of The Trade Marks Act, 1999. The Committee was informed that by amending the Rules, procedures have been simplified, made more compact, time-bound, user-friendly and compatible for e-transactions. In this regard, 74 existing Forms under Trademark Rules have been replaced by 8 consolidated Forms; single application form for all types of trademark applications have been provided; process for determination of well-known trade-mark laid out; express provision for filing applications for sound marks provided; procedures relating to registration as Registered User of trademarks simplified; and expedited processing of an application right up to registration stage has been provided. On being enquired about the modifications required in the present Trade Marks Act, 1999 for its better implementation, the Committee was apprised of the following by various stakeholders:-

- (i) It was informed that the classification of goods and services under the Trademarks Act should be made more elaborate and specific. The Act should have a better classification if the classification is synchronised with the MSME Act. It was further suggested that three categories of classification i.e. Manufacturing, Retail and Services should be made and specified in the Act. **The Committee recommends the Department that further categories of classification should**

be incorporated in the Trademarks Act corroborating to the requirements of industry and trade. Also, such classification should have detailed specification and clarity to avoid any complexities in their interpretation.

- (ii) In order to ensure speedy grants of trademark registration, it was proposed that the period for which an application remains published and open for a third party to file an opposition should be reduced from 4 to 2 months. This would be at par with other nations such as U.K., Spain, Belgium, Netherlands, Luxembourg, South Korea, Japan, Denmark, Singapore, etc. **The Committee recommends the Department to curtail the time period of filing opposition against a trademark application from 4 to 2 months during which the application is in public.**
- (iii) Communication to and from Registrar or designated Officer at the Trademarks Registry ought to be expedited using technology and encryption tools to ensure their speedy redressal. **The Committee recommends the Department to take steps in modernization of trademark offices and workplaces by undertaking digitalization of work processes and facilitating e-services for speedy redressal of work.**

- (iv) Section 115 (4) of the Act provides for cognizance of offences under the Trademarks Act and the powers of police officer of the rank of not less than a Deputy Superintendent of Police (DSP) to determine the existence or risk of an infringement and the enforcement action. Besides, the opinion of the Registrar of Trademarks should be obtained before any action is initiated. However, it is seen that a senior officer at the level of DSP is often overwhelmed with administrative and supervisory responsibility and is unable to personally conduct the investigation or search/ seizure in a time-bound manner. Therefore, the provision should be amended to replace DSP with a lower level officer having the required understanding of the nature and importance of the criminal matters involved in trademarks. This is also consistent with the position under Section 64 of Copyright Act, 1957. It was further highlighted that the mandatory provision of seeking the opinion of the Registrar by the Police Officer before conducting search and seizure within 7 days is a hindrance in taking prompt action against trademark infringement. It was stated that the delay in seeking opinion from the Registrar by the police generally results in loss of critical evidence. In view of this, it was

suggested to reduce the timeline from 7 days to 48 hours and to permit the right holder to directly apply for such opinion from the Registrar. **The Committee recommends the Department that the cumbersome procedures as regards to search and seizure operations in trademark infringements under Section 115 of the Act should be streamlined and simplified for improving and expediting investigations. It recommends that depending on the size and ongoing commercial activity of the district, one or more well-trained police officer specialized in tackling IP crimes should be deployed in place of a high ranking officer. The officers being appointed should have an added responsibility of enforcing IP laws in their respective jurisdiction.**

The Committee further recommends that a monitoring mechanism should be put in place to ascertain the reasons of delay in pursuing opinion from the Registrar along with a reasonable timeframe of 48 hours to render the opinion in a time bound manner.

The Committee is also of the view that digitalisation can help whereby, Police Department and Office of Registrar can be connected through a specific software and there is

no leakage of data by doing end to end encryption. This can help in reducing the time taken in getting permission for search and seizure.

- (v) On a query regarding expediting of trademarks for Export Oriented Units (EoUs), the Department informed that there is no separate category or privilege for the same. **The Committee recommends that the Department should make a separate category for EoU products so that they are prioritised in getting the trademarks and can contribute in the national economy by exporting the products in time.**

THE COPYRIGHT ACT, 1957

14.1 The Committee, in its deliberations with legal associates and other relevant stakeholders, was informed that Section 52 (1) of the Copyright Act, 1957 which stipulates widely-scoped exceptions to infringement of literary works is posing a detrimental impact on the publishing industry and authors who are mainly dependent on royalties. Section 52(1) provides exceptions and limitations to copyright for the purposes of creating certified copies made or supplied in accordance with any law, for reading and recitation of any literary or dramatic work in the public domain and for

publication of any non-copyright matter with a bona fide intention of its use in educational institutes, etc.

14.2 It was informed that the provisions of Section 52(1) was challenged *vide* the case *The Chancellor, Masters and Scholars of the University of Oxford and Others vs. Rameshwari Photocopy Services and Others*, popularly known as the DU Photocopy Case, by the academic publishers of Oxford University Press, Cambridge University Press and Taylor & Francis against Rameshwari Photocopy Services and the University of Delhi. The case considered the legality in the act of making numerous copies of a course material drawn from different books of the publishers by a photocopying store that was authorized by Delhi University.

14.3 The case has been a matter of debate in ascertaining the efficacy of the Copyright Act, 1957 in ensuring balance between copyright protection of the publishers and public access to affordable educational study material. The publishers argued that the universities should have approached Indian Reprographic Rights Organisation, a registered copyright society, to obtain license for photocopying the material prior to making numerous copies.

14.4 The Committee was informed about the amendments to be made to limit the benefit of exception in the provision of the Copyright Act as a part of corrective measures. It was suggested that the exception should be

applicable in creation of print copies of the literary works only in the libraries of government-owned educational institutions to avoid any commercial gains from the work of publishers. Also, the reprography of a single book should be restricted to 10 per cent of the total number of pages of the book and should be barred from being stored in the form of scanned or digital versions.

14.5 The Committee notes with distress that the conflict arising between copyright holders and educational institutions due to exceptions contained in Section 52(1) which intends to ensure access to literary works for educational purposes does not bode well for the overall literary culture and image of the country. Protecting copyrights of publishers and authors encourages enrichment of quality books and works which should be counterbalanced with public accessibility of such works at an affordable rate. The Committee recommends the Department to facilitate a fair and equitable ecosystem of literary culture in the country by bringing in necessary changes in Section 51(1) of the Act such as permitting reprographic works in Government-owned educational institutions and storing it in libraries for their easy access to students as well as stipulating limitations to unrestricted commercial grants to copy books and literary works and storage of copied works in digital formats.

14.6 The Committee further recommends the Government to promote establishing of community libraries and upgradation of existing libraries in the country for easy access to works of foreign publishers that are exorbitantly priced and difficult for the students and academics to access. Also, National Mission on Library, a venture of Central Government to strengthen the library system, should be implemented at the earliest.

14.7 It was further suggested to the Committee that Berne Convention for the Protection of Literary and Artistic Works, an international agreement governing Copyrights, should be referred to in matters of exceptions to Copyrights in the country. **The Committee recommends the Department that a comprehensive study of provisions under Berne Convention for the Protection of Literary and Artistic Works should be undertaken to establish a copyright regime which is beneficial to both copyright holders and public.**

14.8 Further modifications in the Copyrights Act, 1957, as suggested to the Committee are as following:-

- (i) The provisions pertaining to renewal of Copyright Societies every 5 years, as provided under Section 33(3A) imposes an administrative burden to them. Owing to long delays in

processing of renewal applications, irreparable harm is suffered by the authors as well as publishers. **The Committee recommends the Department to increase the renewal time of Copyright Societies from 5 to 10 years.**

- (ii) Section 31D of the Act deals with statutory licensing for radio and television broadcasting of literary and musical works as well as sound recordings wherein the broadcasters pay royalties to the copyright owner at a rate fixed by the Copyright Board for broadcasting any content. It was informed that digitization and internet culture in India has led to increase in digital content service providers and Over The Top (OTT) video apps, internet music/ podcast apps, etc. in terms of revenue contribution from OTT, India would be the tenth-largest market globally with around 805 million internet subscribers by 2022. Hence, it was suggested that Section 31D should be amended to include OTT platforms, music apps, etc. as ‘internet or digital broadcasters’ under the benefit of statutory license along with traditional broadcasters. **The Committee recommends the Department to amend Section 31D for incorporating ‘internet or digital broadcasters’ under statutory license in wake of the rise in digital or OTT**

platforms with manifold increase in music as well as movie apps and its significant contribution to economy. This would ensure a level playing field by making content accessible on similar terms to both traditional and internet broadcasters alike.

Academia and Industry

14.9 Research Institutes like IIT and other educational institutes undertake research in various scientific fields and inventions in collaboration with industries. The problem faced by academicians is that they require publications at every step to improve their profile and get acknowledgements in their institutes. This is their prized possession which they cannot compromise for their career and ambitions. Another problem is that the funding is stopped midway and academia's interest is jeopardized as the project is not complete.

14.10 The industries, capital driven, are more focused on return on their investments made in R&D given to the projects of institutes. The industries hold the copyright and publication rights on the research invention under the funding given to academia. However, to promote research and inventions, it is necessary to push forward the academia by funding and collaboration and giving their due share.

14.11 It is important that links are strengthened between academia and industry, to aid the exchange of knowledge and to enable researchers to work more easily at the interface between the two.

14.12 The Committee recommends that the Department should assign a devoted agency for establishing linkages between industry and academia so that India can be positioned on top in the field of innovations and inventions of our research and educational institutes.

14.13 The House of Lords Science and Technology Select Committee in its 2nd Report of Session 2019-21 on "Catapults: Bridging the Gap Between Research and Industry" has dwelt on the subject:

The UK's innovation 'Catapults' are independent, not-for profit technology and innovation centres. They are intended to foster collaboration between research organizations in the public and private sectors, in order to assist in turning innovative ideas into commercial products. The first Catapults were established in 2011 by the Technology Strategy Board. There are nine Catapults operating in various sectors. They form the 'Catapult Network' and are overseen by Innovate UK.

Regarding funding, it states that:

The innovation activities involving catapults are intended to be funded using a 'thirds model': one third from a core grant from the

Government (provided via Innovate UK); one third from industry partners; and one third from collaborative R&D funds bid for by consortia involving Catapults.

14.14 The Committee, therefore, recommends that the catapult system of UK may be emulated along with scaling up funding by Government Sector and industries along with defining modalities and sector. The Committee also recommends that to encourage innovation, certain schemes may be introduced by applying a lower rate of corporate tax to any profits from patented inventions and tax incentive on R&D.

GEOGRAPHICAL INDICATIONS

15.1 As defined under World Intellectual Property Organisation (WIPO), a Geographical Indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or reputation that are due to that origin. The characteristics and qualities of the products are attributable to the geographical place of production. In case of manufactured goods, one of the activities of either the production or processing of the goods concerned should take place in such territory, region or locality as the case may be.

15.2 The office of the GI Registry is a quasi-judiciary authority established to administer the Geographical Indications of Goods (Registration & Protection) Act, 1999 and Geographical Indications of Goods (Registration & Protection) Rules, 2002. Under the framework of the said Act and Rules,

GI Registry registers goods which could be agricultural, natural, manufactured, handicraft, industrial and foodstuff as GI. An applicant needs to provide complete details relating to a product that is sought to be registered as GI as per the provisions of the two Acts. The year-wise details of GI in India are as following:-

	Geographical Indications				
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21 (Till October 31, 2020)
Filed	32	38	32	42	27
Examined	28	18	43	51	0
Registered	33	26	23	22	5

Source: DPIIT.

15.3 The Committee noted that the number of registered GI in India has been dismal, manifesting a declining trend from the year 2016-17. It further enquired about the issues of delay in registration of GIs. The Department informed that the delay and pendency is primarily due to the non-compliance of the necessary legal requirements by the applicants.

15.4 The Department further informed about the steps being undertaken by the office of GI Registry to augment and expedite the process of GI registrations in India. The issuance of Formality Check/ Preliminary Examination report by the office is to be done within 7 days of receipt of GI

Application before undergoing complete examination. The report of examination based upon the recommendations of the Consultative Group of Experts constituted to evaluate GI application is issued to the applicant. It should be complied within 2 months which could be further extended. It, thereafter, proceeds for advertisement within 15 days after the deficiencies in the examination report had been rectified. The Application is electronically notified in the GI Journal and if no objections are filed within 4 months' time, the application proceeds for registration. The whole procedure has reduced the total timeframe of registration from 12 months to 8 or 9 months.

15.5 In its interactions with stakeholders, it was submitted that the process of registration of “authorised users” (producer of goods in respect of which GI has been registered) should be expedited. It was apprised that there is a need for properly studying the quality assurance systems for each GI which should be undertaken by the GI Registry.

15.6 The Committee takes cognizance of downtrend in registration of GIs in recent years in spite of the measures being undertaken to expedite the registration of GIs in India. It recommends GI Registry to issue periodic advisories consisting of necessary information on compliance requirements for the assistance of GI applicants. This would check undue delay and pendency in approving GI registrations. The

Committee also recommends that concerted efforts should be taken by both DPIIT and GI Registry to generate awareness in the country about the importance of GI in imparting uniqueness to a product related to its place of origin. In this regard, kiosks and training centers should be established in various parts of the country especially in remote regions. Marketing strategies highlighting the GI tag products may be framed to capitalise its economic potential.

15.7 The Committee recommends that a stringent enforcement mechanism through a centralized agency should be authorised to ensure compliance of GI tagged products to the stipulated standards under GI Act while they are being marketed and commercialised. This would help in preventing duplicity, infringement and unfair competition of GI tagged products causing economic losses to genuine GI holders and denting the image of GI tagged products in international markets.

TRADITIONAL KNOWLEDGE AND IPRs

16.1 India is an abundant source of traditional knowledge in form of information that had been transmitted within communities or families from one generation to other. This traditional as well as indigenous knowledge has been passed on without any adequate documentation. The Committee was informed that traditional knowledge and indigenous inventions by innovators at the grassroot level in India often fail to meet the stringent

criteria of patentability. In the absence of any proper statute providing for the protection of such inventions, the same are rendered without protection.

16.2 The Committee further noted that Section 3(p) in The Patents Act, 1970 prohibits patenting of an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components. It was stated that the exclusion under Section 3(p) pertaining to traditional knowledge is too prohibitively worded which results in non-patenting of many useful inventions that involve innovation or improvements over the existing traditional knowledge. It was suggested that the said provision should be revised so that the research and development involving traditional knowledge could be incentivised and the public at large may draw benefit from such innovations.

16.3 The Committee feels that individuals, communities and manufacturers exhibiting traditional knowledge and indigenous inventions in their creations should not be bereft of benefits or royalties due to their exclusion from IPR regime. In this context, it recommends the Department to review Section 3(p) of the Patents Act for including traditional knowledge of these entities under patents ensuring growth of an inclusive IPR regime in India. In this regard, provisions to

investigate such claims of patents should be incorporated to prevent the misuse or exploitation of enriched traditional knowledge of the country.

16.4 The Committee was also suggested to incorporate provisions under the GI Act for registering traditional knowledge and traditional cultural expressions as Geographical Indications if the description of a product or process is closely linked to that of a traditional knowledge of a specific geographical location.

16.5 The Committee notes that the registration of traditional knowledge as Geographical Indication if it exhibits linkages to a geographical location would be highly beneficial to consolidate traditional knowledge into IPRs. The Committee recommends the Department to undertake steps in this regard.

16.6 The Committee was apprised about misappropriation cases of traditional knowledge by other countries. For example the patents in countries like US and China have claimed ayurvedic compositions of a mixture of *ajwain*, *harad* and *tulsi* as a cure to various diseases. The Committee was further briefed about the issue of inaccessibility to India's Traditional Knowledge Digital Library (TKDL) and its ineffectiveness to become an efficient source of traditional knowledge in the country.

16.7 The Committee envisages that absence of any proper mechanism for the documentation of traditional knowledge and inefficiency in executing Traditional Knowledge Digital Library (TKDL) has resulted into the neglect of traditional knowledge. It recommends the Government to address the structural issues in implementing a systematic mechanism of documentation and preservation of traditional knowledge in the country along with taking measures to strengthen TKDL as an effective database.

16.8 The Committee also observes that indigenous knowledge of drugs and pharmaceuticals, artistic handicrafts, traditional cultural expressions in products and creations as well as traditional practices and inventions in agriculture and forestry is abundant in India. It is, however, disappointed to note that the knowledge and awareness to claim IPR rights for earning monetary benefits from it is highly inadequate in the country. It, therefore, urges that the creators and holders of traditional knowledge, especially tribal communities, forest dwellers, artisans and craftsmen, should be made aware of the novelty or inventive steps involved in traditional expressions or work to facilitate a fair IPR regime in the country. The creators or communities practicing traditional knowledge should be mobilized in claiming IPRs

wherein the Government should play a role of joint owner thereby restricting their misappropriation and exploitation.

16.9 The Committee was informed that India as a member of WIPO has for long been demanding adequate protection of Traditional Knowledge and genetic resources. India being a member of WIPO's Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) has been negotiating with other member states to come up with an international legal instrument(s), legally binding for all participating nations, for the protection of traditional knowledge (TK), traditional cultural expressions (TCEs) and genetic resources (GRs).

16.10 The Committee recommends that India should engage at international level for the protection of Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources to prevent the other countries to exploit them.

Utility Models

16.11 The Committee was informed that inventions in various countries are being protected through Utility Models which are an alternative form of patents. It is also known as 'short-term patent', 'petty patent' or 'incremental patent'. Utility Models are particularly useful for inventions with marginal

inventiveness where the invention patents may be unavailable or difficult to obtain. It does not undergo a formal registration and is easy to be registered for a reasonable timeframe of 10 to 15 years. In its interactions with legal associates, on promoting patents of traditional knowledge, the Committee was informed that introduction of a Utility Model rights regime may be explored in India to encourage the role of small scale innovators, inventors and artisans for protecting their innovations as IPRs.

16.12 The Committee recommends the Department to undertake a comprehensive analysis and study of the Utility Models and its implementation in various countries for ascertaining their advantages to India as an alternate form of IPR.

16.13 The Committee, during its deliberations, was informed that science fairs, Hackathon and other events promoting inventions and innovations are held in school and colleges under various schemes of Government of India. Sometimes these inventions are good but they do not qualify for patents.

16.14 The Committee is of the view that the research and inventions being conducted at the level of schools and colleges should be registered under a separate category other than IPR whereby these inventions could have commercial value. This will incentivize the young generation to go into Research and Development.

TRADE SECRETS

17.1 National IPR Policy of India emphasizes upon the need to enhance efficiency in the enforcement of IPR laws, including the protection of trade secrets. Also, as a member-state of TRIPS Agreement, India has recognised the value of protecting undisclosed information in businesses and trade against unfair competition. Hence, India has attempted to protect trade secrets by enacting laws such as Indian Contracts Act, 1872; the Indian Patents Act, 1970; the Copyright Act, 1957; and through judicial rulings.

17.2 The Committee was informed that the current framework of protecting trade secrets suffers from lack of clarity on several aspects. For example, there is no legal mechanism for protecting the formula for Coca Cola in India. It was apprised that with the advent of digitization, confidential information on trade could now be more easily misappropriated. Due to the increased risks, businesses are investing in protection of trade secrets in order to maintain a competitive advantage. These include the scope of damages in case of a breach of confidential information, remedies for the theft of trade secrets by business competitors and procedural safeguards during litigation, etc.

17.3 It was suggested that a separate legislation on trade secrets would bring clarity in securing trade secrets in the country. An enactment on trade secrets would help India to protect its business environment along with becoming an attractive investment destination for trade in the world. It was

also apprised that enacting separate statutes by other countries such as US, EU and South Korea have ensured effective protection of trade secrets in their respective jurisdiction.

17.4 The Committee underlines that securing data and maintaining its confidentiality in business and trade is of paramount importance for companies possessing secret formulas, business strategies, algorithms, etc. Also, a separate statute or framework for trade secret protection in India is imperative in wake of rising frauds and misappropriation in digital world. In this regard, the Committee recommends the Department to consider enacting a separate legislation or a framework for protection of trade secrets. It further recommends the Department to examine the relevant and best practices being followed in statutes of various countries for their implementation in India.

IPR IN PHARMACEUTICALS

Discovery of new drugs

18.1 Pharmaceutical industry is one of the prime beneficiaries of the IPR. The Committee was informed that three departments/ agencies are involved in managing the issue of IPR.

- (i) Department of Pharmaceuticals, responsible for policy, planning, development and regulation of pharmaceuticals in the country.
- (ii) Central Drug Standard Control Organisation (Department of Health and Family Welfare) responsible for regulating the drugs, i.e. giving the approvals for manufacturing, marketing, maintaining the quality and safety of drugs; also provide license for marketing of drugs, both for global and domestic stakeholders.
- (iii) DPIIT which is looking after the IPR.

18.2 Indian Pharmaceutical Sector is third largest in volume at international level and is called the pharmacy of the world.

18.3 The Committee was informed about the number of patent application filed under Pharmaceuticals.

Year	Application filed	Patents Granted
2015-16	2966	370
2016-17	2122	551
2017-	2741	733

18		
2018-19	2683	761
2019-20	5622	1930
Total	16,134	4,345

Source: DPIIT.

18.4 The Committee notes with concern that out of 16,134 patents filed during the last 5 years, only 4,345 were granted patents. The Committee recommends that necessary steps may be taken to expedite the process of examining/ granting patents.

18.5 The Committee noted that despite gaining technical expertise in reverse engineering, the manufacturing process of existing medicines, India has gained prominence in global markets of generic medicine. It, however, learnt that drug discovery and innovation of new drugs still remains a big challenge to India. In this regard, the Department of Pharmaceuticals (DoP), Ministry of Chemicals and Fertilizers informed the Committee about the efforts in enhancing research and development of new drugs in India.

18.6 It was apprised by DoP that seven National Institutes of Pharmaceutical Education & Research (NIPERs) have been established in

the country along with allocation of funds for enhancing research and development in drug discovery and development of new drugs. The Department has also proposed to set up three national centres of excellence for anti-viral drug discovery, medical devices, and for R&D in bulk drugs.

18.7 DoP further conveyed that based on the recommendations of 46th Report of the Departmental Parliamentary Standing Committee on Commerce, an inter-Departmental Committee (IDC) has been constituted to undertake cooperative efforts in areas of pharmaceuticals research which include periodic review and coordination of research work by various Governmental research organisations. DoP is also collaborating with NITI Aayog to devise Research & Development Policy for pharmaceuticals, medical devices and traditional medicines.

18.8 The Committee appreciates the initiatives of the Department of Pharmaceuticals in bolstering Research and Development activities in pharmaceuticals sector. The Committee acknowledges the fact that the research in generic segment of medicines as well as its successful patenting under Indian Acts has made India a strong generic player in the world. It, however, opines that for sustaining growth in global pharmaceutical market, research should be oriented towards niche segments and new drugs discovery. In this direction, joint research with

global pharma players on discoveries of new molecules and compositions should be undertaken by the Department.

18.9 The Committee recommends that to encourage research and development in the Pharmaceutical Sector, policies for attracting investments from both the public and private sector may be explored by providing incentives such as tax rebate, reducing processing time and through industry academia partnership.

18.10 On a query by Committee on the research being conducted on indigenous pharmaceuticals including Ayurveda, DoP informed that all the seven National Institutes of Pharmaceutical Education and Research in India are already working on indigenous pharma research such as Ayurvedic medicines, biopharmaceuticals, natural products, herbal drugs and traditional medicine.

The endeavours being undertaken by DoP includes the following:-

- (i) Phytopharmaceutical Mission to promote development of phytopharmaceuticals in North East Region;
- (ii) An Inter-Ministerial Cooperation program of CSIR, DBT and ICMR on 'Phytopharmaceutical' drug development;
- (iii) A Turmeric Mission programme to generate high quality raw material for developing nutraceutical products and dietary supplements

from turmeric as well as for developing curcuminoids or curcumin-based therapeutics for various disease segments;

(iv) An Inter-Ministerial Cooperation between Department of Biotechnology and National Medicinal Plants Board (NMPB) under Ministry of AYUSH on biotechnological intervention in AYUSH sector; and

(iv) A joint network programme between DoP and Ministry of AYUSH to develop plant-based therapeutics from indigenous medicinal plants to treat COVID-19 disease.

18.11 The Committee appreciates the endeavours being undertaken by the Department of Pharmaceuticals in the field of traditional and indigenous medicines which has become a potential thrust area in pharmaceuticals and drugs sector in wake of covid-19 pandemic. It recommends the Department to undertake an intensive research on AYUSH medicines and drugs including herbal remedies that would lead to advancement in availability of innovative drugs and medicines for treatment of novel diseases.

Spurious Drugs

18.12 The DoP informed that the Drugs and Cosmetics Act, 1940 and Drugs and Cosmetic rules, 1945 deals with import, manufacture, distribution and

sale of drugs, cosmetics and notified medical devices in the country. As per the Act, Central Drugs Standard Control Organisation (CDSCO) is responsible for approval of drugs, conduct of clinical trials and in laying down the standards of drugs.

18.13 The Committee raised its concern on the rise in manufacturing of spurious and adulterated drugs in the country. In this regard, DoP informed that various measures are being taken by CDSCO to address the issue of spurious drugs and ensure the quality of drugs in the country. Since five years, the reforms are being undertaken by CDSCO in the drugs regulatory system which include strengthening of testing capacities of Central Drugs Testing Laboratories under CDSCO and amendments in the Drugs and Cosmetics Rules, 1945 to bring in stricter rules pertaining to manufacturing of pharmaceuticals such as submission of bioequivalence study when applying for license of oral dosage form of certain drugs, joint inspection of manufacturing establishment by Drugs Inspectors of both Central and State Government, etc.

18.14 The details of sub-standard quality, spurious/ adulterated drugs and percentage of thereof during the three years (from 2015-19) are as following:

Year	No. of drugs samples tested	No. of drugs samples declared not of standard quality	% of drugs samples declared not of standard quality	No. of samples declared spurious/ adulterated	% of drugs samples declared spurious/ adulterated
2015-16	74586	3703	4.96	234	0.31
2016-17	76721	2780	3.6	123	10.16
2017-18	82599	2783	3.36	236	10.28
2018-19	76101	2549	3.35	205	10.27

Source: DoP.

18.15 The Committee expresses its concern on the rising incidences of spurious and adulterated drugs in India which is not only a potential threat to the lives of its citizens but also dents its image as being one of the largest supplier of drugs and pharmaceuticals in the world. It, therefore, recommends the Government to roll out a track and trace mechanism at the earliest for the detection of authenticity and genuineness of medicines and medical devices from manufacturers to end users in supply chain.

IPR IN AGRICULTURE

19.1 Protection of IPRs in farming and cultivation sector, especially securing the plant breeding rights of farmers and farming innovations, is essential for the sustainable development of agriculture. In this regard, the Committee enquired Department of Agricultural Research and Education

(DARE) about the measures of the Government to encourage and protect IPRs in the field of agriculture.

19.2 The Department informed the Committee that Indian Council of Agricultural Research (ICAR) is implementing guidelines for Intellectual Property Management and Technology Transfer/ Commercialization (IPMTT/C) in India including the policy framework for systematic management of IP available and created by researchers in ICAR institutes. An IPR Cell has also been created at ICAR for the purpose.

19.3 Also, a three-tier IP management mechanism in ICAR has been constituted and accordingly Institute Technology Management Units (ITMUs) have been established in all ICAR institutes in India to undertake initiatives pertaining to filing of IPRs generated in research work as per Indian legislations. It was further apprised that Agrinnovate India Limited, a registered Company of the Department of Agricultural Research and Education (DARE) deals with the commercialization of IPRs generated in agricultural research.

19.4 On a query of the Committee about awareness generation of IPRs amongst farmers, DARE informed that ICAR Agricultural Technology Application Research Institutes (ATARI) in cooperation with their Krishi Vigyan Kendras (KVKs) is making efforts to create awareness of Intellectual Property Rights (IPRs) amongst the farmers. It was also informed that

Protection of Plant Varieties and Farmers Rights (PPV&FR) Act, 2001 which became operational in the year 2007 has significant provisions to protect the farmers' interest and plant varieties. ATARIs and PPV&FR Authority have also jointly launched the programme for creation of awareness among the farmers and other stakeholders about the provision of PPV&FR Act.

19.5 The Committee was further informed that the grant of Plant Breeders Rights by PPV&FR authority has impacted the agricultural development by accelerating the agricultural development and to stimulate investment for research and development both in public and private sector for the development of new plant varieties. This protection facilitates the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting materials to the farmers.

19.6 The Committee appreciates the supportive measures being undertaken by Indian Council of Agricultural Research (ICAR) in mobilizing agricultural researchers and scientists in the ambit of IPRs. It, however, notes that acculturation of Indian farmers and farming communities in IPRs is far from being achieved in India. In this direction, the Committee recommends that the Government should make all out efforts in creating awareness amongst farmers and farming

communities so that they voluntarily embrace IPRs in protecting their rights in areas of farming innovations, breeding and varieties.

19.7 For disseminating information about the role of patent in agriculture, KVK (Krishi Vikas Kendras) can play a significant role as they work at block level and the farmers also consider them as local. Exclusive videos/ multimedia options/ bill boards may be used to create awareness. In this digital age, the videos in local language can be sent on their cell phones to upgrade their knowledge.

19.8 The Committee also recommends that more governmental efforts through legislation and implementation of law may be made in favour of farmers since they are not aware of the legal system and sometimes get trapped in IPR issues by private companies.

SUMMATION

20.1 An inclusive and balanced IPR ecosystem with emphasis on both formal and informal innovations is the foundation of a robust IPR regime in India. Conferring rights to formal innovations which are being conducted in research establishments, scientific and educational institutions should harmonise with recognition of informal innovations that embraces traditional and indigenous knowledge and cultural expressions in form of valuable IPRs. Instilling a culture of IPR in the entire country, encompassing rural and remote regions, by generating

awareness to claim rights on innovations and inventions is the key for strengthening IPR regime.

20.2 One of the major problem being faced is the lack of awareness. This leads to frequent violation and disregard for IPR laws. With the easy availability of low cost digital access in the country, piracy and copyright violations has seen an unchecked rampant increase. The huge population base and the geographical area spread across the rural areas too has become a challenge for the implementing/enforcement agencies. **Unless the entire population is sensitized, it will be difficult to foster a culture of respect for IPR laws.**

20.3 **A fair and equitable growth of IPRs in India needs improvisation and streamlining of legislative, administrative, adjudicative and enforcement mechanisms. Conformity of legal provisions to the changing dynamics of innovation, recruitment and appointment of adept officials, swift handling of IPR cases and an efficient judicial system are imperative to build a robust IPR regime in India. This should also be in compliance with International agreements, rules and norms as well as compatible with other nations and foreign entities.**

20.4 The changes made in India's IPR legislations are in consonance with TRIPS and other international agreements albeit in a *sui generis* way. A different approach to IPRs has been adopted by India as per its geo-

economic and societal considerations suitable to its own distinctive concerns. Adoption of both product and process patents by India has led to its becoming a world leader in generic medicines and drugs. This was also demonstrated in times of HIV pandemic in Africa in the early 20th century wherein India came to the rescue of treating the pandemic by its low cost generic medicines. The act was acclaimed by the world over especially developing countries.

20.5 In this regard, the present efforts of India seeking temporary waiver of provisions under TRIPS agreement along with South Africa to facilitate fair, affordable and universal access of Covid-19 vaccines and medicines for all countries in the world is laudable. **However, immediate steps by India should be undertaken at domestic level such as issuing of compulsory licenses and encouraging the mechanism of voluntary licensing to share Covid-19 technology to other producers and manufacturers. This would help in scaling up of production and manufacturing of Covid-19 vaccines and medicines in the country at times of national health emergency of Covid-19 pandemic. The Government must avoid any chance of delay in invoking compulsory licenses on crucial drugs and vaccines in case of an emergency like situation in future. Proactive steps should also be taken for technology transfers to manufacturing companies once the trials of medicines or vaccines are completed in**

order to prevent delay in their availability which would be detrimental to the country's interest.

20.6 A strong IPR regime consistent with larger public interest would play an instrumental role in spurring economic, technological, and industrial growth of the country. **In this regard, IP audit should be conducted for assessing and evaluating IPR potential in specific sectors which would help in formulating targeted IP programmes.** Involvement of local bodies and Panchayats at the level of villages and small towns through skill development on IPRs would persuade the people to come forward in claiming their rights on indigenous and traditional innovations.

20.7 It must also be stated that there has not been much importance paid to or work done on the aspect of IP backed financing. The Department was not able to put forth any views in the matter, so much so, that the Committee feels that issue has remained untouched and only on papers. **A serious view needs to be taken towards the commercialization of IPRs as has been done in many countries. The steps taken in this direction should be in tandem with reforms in banking regulations.**

20.8 **Also, ensuring active co-ordination and collaboration between the enforcement agencies like State Police and Customs (who work within their limited jurisdiction) and CBI (which mostly takes up high end**

crimes) would efficiently counter the rising IP crimes of counterfeiting and piracy.

20.9 Further, the Committee is of the opinion that the establishment of dedicated benches at High Courts for IP matters would ensure disposal of IPR disputes in a time bound and efficient manner. There also needs to be a panel of *amicus curiae* for assisting the courts in dealing with IPR matters. This would ensure a better understanding of the technical issues involved and delivering faster judgment by courts.

20.10 To foster IP-Cooperation between nations, collaborative efforts with other countries and international organisations through MoUs are required which would result into exchange of crucial information of the best practices and expertise in IPR.

20.11 Hence, consolidated efforts on the part of Government, industry, civil societies as well as educational and research institutions functioning at the level of schools, colleges and universities would be the cornerstone in evolving a robust IPR regime in India thereby having a desired impact on the development in social, cultural and economic fronts.

RECOMMENDATIONS/OBSERVATIONS - AT A GLANCE

National IPR Policy, 2016

1. The Committee is of the opinion that a review of IPR policy should be undertaken. The re-assessment of the policy is imperative in the wake of new and emerging trends in spheres of innovation and research which requires concrete mechanisms to protect them as IPRs. The review also acquires salience to identify the existing challenges in the implementation of the policy and the corrective measures that need to be taken for its effective execution. The Committee, therefore, recommends the Department to undertake a holistic review of IPR policy at the earliest. The Committee also recommends that the revisiting of policy should be intended at instituting changes such as elaborating more on expanding innovation ecosystem of the country, organization of awareness drives on IPR, comprehensive advisories on increasing R&D activities, encouraging IP financing and involvement of State Governments in evolving a robust IPR regime. (Para 1.12)

2. The Committee is of the view that State Governments could play the role of constructive partners in evolving a strong IPR regime by formulating their own strategies and policies within the broad framework of India's policy on IPR. It recommends that the State Governments should actively participate in evolving policies that focus on sensitizing people on significance of IPRs, encouraging innovation in educational institutions and establishing State level Innovation Councils, enforcement of IPR laws and curbing IP crimes. In this regard, the Department should ensure extending adequate cooperation and support to State Governments in terms of financial and other means in implementing such policies and strengthening IPR regime in states. The Department should also hold annual meetings with all States/UTs so that the implementation of the policy is properly monitored. (Para 1.14)

CONTRIBUTION OF IPR IN ECONOMY

3. The Committee notes the significance of IPRs in increasing Foreign Direct Investment (FDI) of countries, mainly of the developing nations, wherein a 1 per cent improvement in protection of trademark, patent and copyright increases FDI by 3.8, 2.8 and 6.8 per cent respectively. It is of the opinion that strengthening IPRs in India would also spur economic development by encouraging foreign exchange inflow thereby increasing productivity and generation of employment

opportunities in the country. Therefore, the Committee recommends the Department to undertake a comprehensive study of the resultant benefits of improvement in IPRs on the economy especially in terms of increase in GDP, employment generation, augmenting forex reserves, and boosting exports. The study must analyze the impact of IPR in creative and innovative sectors of India and its substantial contribution to the economy of the country. (Para 2.6)

INDIA'S IPR REGIME vis-à-vis US AND CHINA

4. The Committee is distressed to note that in the year 2019, only 24,936 patents were granted in India which is considerably low as compared to 3,54,430 and 4,52,804 patents granted in U.S. and China respectively. Also, the rate of increase in number of patents in India in the last four years has not been very impressive compared to that seen in U.S. and China. It is a matter of concern that less filing and grants of patents in India is co-related to a microscopic spending on Research and Development activities which is a meager 0.7 per cent of India's GDP. The Committee recommends the Government to emphasize upon increasing the spending on Research and Development (R&D) activities by allocating specific funds on R&D in each Department/Ministry. Also, R&D activities should be encouraged not only in Governmental and educational institutions but also in businesses and private companies. It recommends the Government to provide incentives to private businesses and companies for undertaking R&D activities which would be a proactive step in augmenting research capabilities of the country. The Committee also recommends that every industry with certain specified turnover may be directed to put funds under CSR for R&D activities. (Para 3.3)

5. The Committee recommends that an exclusive apex level Institution for IPR Development should be established in the country which would enable a multi-disciplinary approach in analyzing and harnessing the full potential of IPRs for economic and social growth. The Institution would assist in developing a pool of IPR professionals and experts in spheres such as policy and law, strategy development, administration and enforcement. This would also enhance institutional capacities in IPRs in areas such as policy development, teaching, training, research, and skill building. (Para 3.4)

MARKING OF PRODUCTS AS 'PATENT PENDING'

6. The Committee is of the view that labelling of products with 'patent pending' would acknowledge their credibility and authenticity

hence yielding marketing benefits to the patentees. The marking of products as ‘patent pending’ would empower the patentee by acting as a deterrent to IP crimes of unauthorized copying or counterfeiting of products and avoiding unnecessary infringements. The Committee, therefore, recommends the Department to explore avenues in incorporating the practice of marking products with ‘patent pending’ in India to ensure maximum benefits to inventors or patentees. (Para 4.5)

AWARENESS OF IPRs

7. The Committee notes with concern that a major share of 64 per cent of the patents filed in India are by non-resident or foreign entities wherein the patents filed by domestic entities occupies a portion of only 36 per cent. It is also worrisome to learn that the lack of awareness about IPRs amongst Indians is responsible for the low share of patents filed by domestic entities *vis-à-vis* foreign entities. As a result, the innovators and creators in the country are being denied the benefits of IPRs including the generation of revenues and gains from the creation of their products. The Committee recommends that a holistic approach should be taken by the Department for disseminating awareness amongst MSMEs, small businessmen, traditional artisans and craftsmen located in remote areas and providing them insights about creation, ownership and protection of their IPRs. (Para 5.7)

8. The Committee also recommends that NGOs associated with craftsmen, artisans and those working in hilly and tribal areas may be engaged in spreading awareness about IPR to the target group. Necessary tool kits for promoting IPR may be provided to facilitate them in training. (Para 5.8)

9. The Committee desires that a detailed note on the functioning of IP Chairs being established in Universities in India may be furnished by the Department. (Para 5.11)

10. The Committee recommends the following interventions need to be taken by the Department for building greater awareness about IPRs:-

- (i) IPR Facilitation Centers should be established in Tier-I, Tier-II and remote regions of the country with a focus on enhancing the awareness of MSMEs, small businessmen and traders;
- (ii) The training programmes and workshops being organized by the Department (especially for MSMEs, small tradesmen, local

- artisans) should be oriented towards inculcating scientific temperament and knowledge about identification of novelty in their products and protection of such novelties as IPRs;
- (iii) MSMEs registering for IPRs in foreign countries, where they have the potential to expand their trading base, should be encouraged and given assistance thereby making them globally competitive;
 - (iv) IP courses and curriculum should be introduced in schools, colleges, management schools and IPR trainings, workshops and conferences should be organized for students along with professors and teachers; and
 - (iv) The Committee further notes that print and visual media plays a crucial role in creating awareness regarding IPR. The Committee recommends that interactive workshops for journalists may be organized to make them aware of the need for protecting IPR.

(Para 5.12)

Creation of IP Fund and Fostering IP Culture

11. The Committee recommends the Department that a provision of IP funds should be created in the country which would help in supporting initiatives specifically for instilling IP culture in the remotest parts of India including tribal belts, hilly and border states, North East Region. Developing an IP culture in such regions which are the storehouse of traditional and indigenous knowledge, would not only accomplish the objective of protecting their natural and cultural assets but would also promote the overall IP generation in the country.

(Para 5.14)

COUNTERFEITING AND PIRACY

12. The Committee acknowledges that IP crimes including counterfeiting and piracy are the rising threats to IPRs which should be regulated and deftly handled by taking appropriate measures. It recommends the Department to stress upon capacity building of enforcement agencies on IP laws including strengthening of IPR cells in State police forces. It further urges the Department to ensure on-ground implementation of stringent IP legislations with a stronger Inter-Departmental collaboration on IP crimes for curbing such offences in an effective manner. It recommends the Department to consider establishing a Central Coordination Body on IP Enforcement for undertaking coordinative efforts by involving various Ministries, Departments, and Governmental agencies in enforcement and adjudication of IP laws to check IP crimes in the country.

(Para 6.5)

13. The Committee recommends that a specific legislation to curb counterfeiting and piracy should be enacted to restrain the growing menace of such IP crimes in India. It is of the opinion that a determinate method to estimate the revenue losses being incurred due to counterfeiting and piracy and the level of such crimes being committed in India should be devised. This would act as a significant tool in analyzing the adverse impact of Counterfeiting and Piracy on India's economy and for implementing corrective measures to curb the rising incidents of such crimes.

(Para 6.7)

VACANCIES IN PATENT OFFICE

14. The Committee notes that to fulfill its commitment to the stakeholders, the Patent Office should be provided with adequate number of officials to expedite the process of patenting. Over the years, number of patent applications has increased considerably due to more innovation resulting in filing more patent applications, expansion of more areas under IPR and filing of patents by foreign nationals. The Committee also notes with concern that the increase in the number of examiners does not commensurate with the increase in the number of applications.

(Para 7.7)

15. The Committee expects promptness from the Department in determining the existing vacancies and undertaking efforts to recruit and appoint officials in IP offices within a reasonable timeframe. The Department must ensure that officials are qualified and trained. It, therefore, recommends the Department to expedite procedures for filling up vacancies against the sanctioned strength of officials in order to facilitate the larger cause of dispensing IPR claims. The Committee also recommends that efforts must be made to retain the officials by providing good service conditions. Further, officials on deputation from research organization may be made as experts for a reasonable period of time.

(Para 7.8)

ARTIFICIAL INTELLIGENCE AND IPR

16. The Committee notes that the relevance and utility of cutting edge technologies such as Artificial Intelligence (AI) and machine learning would increase manifold in the present world especially in the times of Covid-19 pandemic wherein the digital applications are playing a crucial role in responding to the crisis. Moreover, the huge benefits of AI and its

applications in India's revenue generation and economy as well as its impact on technological innovation necessitate its expansion in a secured manner. In view of this, the Committee recommends that a separate category of rights for AI and AI related inventions and solutions should be created for their protection as IPRs. It further recommends that the Department should make efforts in reviewing the existing legislations of The Patents Act, 1970 and Copyright Act, 1957 to incorporate the emerging technologies of AI and AI related inventions in their ambit.

(Para 8.5)

17. The Committee recommends the Department that the approach in linking the mathematical methods or algorithms to a tangible technical device or a practical application should be adopted in India for facilitating their patents as being done in E.U. and U.S. Hence, the conversion of mathematical methods and algorithms to a process in this way would make it easier to protect them as patents.

(Para 8.7)

INTELLECTUAL PROPERTY APPELLATE BOARD (IPAB)

18. The Committee desires that the abolition of a prominent appellate body of IPAB under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 should be reconsidered in wake of its pivotal role in adjudication of IPR appeals and cases. The overall scrapping of IPAB, which efficiently had been dealing with proceedings involving complex IPR issues, may create a void in appellate resolution of cases leading to their shift to Commercial or High Courts thereby increasing pendency of cases. The Committee also opines that inordinate delay in appointment of officials at higher level and the resultant pause in functioning of IPAB affected the optimal performance of IPAB. The Committee, therefore, recommends the Government that IPAB should be re-established, rather than being abolished and should be empowered and strengthened with more structural autonomy, infrastructural and administrative reforms, as well as ensuring timely appointment of officials and experienced manpower.

(Para 9.7)

19. The Committee notes with distress the absence of any Judicial Impact Assessment, or active consultations with stakeholders, being conducted by the Government prior to the abolishing of tribunals under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021. It strongly recommends that the Government, before scrapping of significant tribunals through an ordinance, should undertake a Judicial Impact Assessment along with wide consultations

with relevant stakeholders to ensure building a systemic perspective on abolishing an established system in the country. (Para 9.8)

PATENT PROSECUTION HIGHWAY

20. The Committee observes that Patent Prosecution Highway (PPH) amongst nations is a mutual initiative which helps in creating a conducive environment for promoting and expediting filing of patents. PPH facilitates in exchanging information on norms and rules that are followed in granting patents in participating countries and thus enables the patentees and inventors to abide by the criterion of such nations while applying for patents. Also, PPH as a significant patent tool should be encouraged with nations in times of pandemic wherein the Covid-19 outbreak has led to rise in filing of innovations to grant them as patents in areas of vaccines, pharmaceuticals and medical devices. The Committee, therefore, recommends the Department to explore opportunities in establishing PPH with other nations as well which would be highly advantageous to India in expediting and processing of patent applications. The Committee, however, recommends that before venturing on PPH programs with other countries, impact assessment of the Japan PPH model may be made. (Para 10.6)

IP FINANCING

21. The Committee notes that utility of IPRs as intangible assets in the financial sphere is a way forward in improving finances of a country and in enhancing financial innovation, easy availability of credit, and increasing capital base. It, however, observes that despite great potential to accrue economic benefits to a nation, IP backed financing is still an evolving area in India. It further views that the Government *vide* its National IPR Policy, 2016 has slated the objective of boosting IP commercialization in India, yet it has been lackadaisical in executing it on ground. The Committee opines that such a halfhearted approach needs to be replaced by earnest efforts by Government in buttressing financial institutions and business community to adapt to non-traditional methods of IP backed financing. (Para 11.7)

22. The Committee is of the opinion that deeply embedded traditional methods in financial sphere and the ignorance amongst business community to treat IP as an intangible financial resource at par with tangible assets like land or property are the major impediments in the growth of IP backed financing in India. In this regard, the Committee

recommends that the Department should undertake committed measures in generating awareness and better understanding of IP financing, value and monetization of intangible assets in the country by inculcating management of IP portfolio of businesses, thereby enhancing its economic worth and making the business community aware of the compliances. (Para 11.8)

23. The Committee also recommends that the Department, in close coordination with financial institutions/ stakeholders or banks, should encourage adaptation to non-traditional forms of collateralization and securitization by conducting trainings and workshops on scrutinizing and regulating IP financing and extending necessary support to business community. It also urges the Government to explore plausible ways to devise a uniform system of valuation of IP as an intangible asset in the country which would ensure a better evaluation of assets by financial institutions. A mechanism also needs to be put in place to recognize and appoint IP evaluators in the country. The Committee also recommends that Insurance sector may be involved in covering/ protecting against the rise of financial losses faced by an IP to minimize monetary risks by suitable amendments in Insurance Act. (Para 11.9)

24. The Committee takes cognizance of the absence of any specific legislation on IP Financing that exclusively covers IP Financing, creation of security interest in IP Financing, statutory protection to financial innovation and intangible assets as IPRs, rights and obligations on IP financial transactions, etc. It recommends the Department that such a specific law on IP Financing should be promulgated at the earliest which would provide a concrete framework and determine standards for the protection and promotion of IP backed financing in India. (Para 11.12)

25. The Committee recommends the Government of India to consider the facilitative measures and policies being taken by countries of Singapore and China in successfully endorsing IP financing in their financial spheres through active participation such as sharing the risks involved in IP financing transactions, extension of subsidies to financial institutions to adjust to higher costs of invaluable IP assets, etc. It recommends that necessary initiatives on similar lines and as per the country's requirements should be undertaken in India to boost IP financing. (Para 11.14)

THE PATENT ACT, 1970

26.(i) The Committee recommends the Department that the Section 3(b) of Indian Patent Act, 1970 should be amended so that a

provision of a safeguard mechanism is included against the arbitrary exercise of power by the Controller in declining patents. A check and balance mechanism should be inserted under the Act which would ensure granting of patents to socially useful inventions or innovations. It, however, recommends that the provision be amended to limit the exclusion to only those inventions which are barred under any law for the time being in force.

- (ix) The Committee recommends the Department to explore the feasibility of granting patents to non-living substances occurring in nature under the act and its subsequent impact on public interest.
- (x) The Committee recommends that a thorough analysis should be conducted by the Department on approving the patents on plants and seeds favourable to agriculture sector of the country with a pre-condition of making Government of India as a participant in the patent. It recommends the Department to hold proper discussions and wide consultations with farmers groups/ associations and necessary stakeholders to examine the plausibility of allowing the patents on plants and seeds that yields benefits to the farmers of the country.
- (xi) The Committee recommends the Department to examine the stringency of Section 122(2) and make necessary amendments to modify the stated provision of imprisonment of six months in case of furnishing false information.
- (xii) The Committee notes that the timeline of 4 years to file an examination report by the patent applicant is too extensive and recommends the Department to shorten it to a reasonable time frame to avoid any unnecessary delay in examination and grants of patents.
- (xiii) The Committee opines that abandoning of patents, without allowing hearing or petition, may demoralize and discourage the patentees in the country to file patents. It recommends the Department that certain flexibility should be incorporated in the Act to make room for allowance of minor errors and lapses to prevent outright rejection of patents being filed. Hence, a revised petition with penalty or fee may be permitted under the Act for minor or bona fide mistakes that had been committed in the filed patents.

- (xiv) The Committee is of the view that increase in patents in the country owing to technological advancements and innovation would lead to precipitous rise of IPR disputes and infringements posing a threat to the judicial system. It, therefore, recommends the Department that the provision of jurisdiction under Section 104 of the Patent Act should be amended to promote establishing of alternative dispute resolution mechanism in India such as arbitration, mediation, etc. for ensuring speedy justice to patentees in IPR litigations. The modification in the Act should also be followed by setting up of zonal IPR mediation or arbitration centers in districts with expertise in IPR matters.
- (xv) The Committee recommends the Department to take steps for modernization, upgradation and maintenance of the website of Indian Patent Office to make it user friendly enabling the patentees to easily navigate through the site for accessing requisite information on IPRs and for filing patents. (Para 12.1)

Public Interest Safeguards under the Act

1. Protection against Ever-greening

27. The Committee is in agreement that Section 3(d) in India's patent regime has acted as a protector against any attempt of repetitive patenting or extending term of patents on spurious grounds. The provision is a catalyst for genuine innovations since it guards against frivolous successive patents intended to make an invention 'evergreen'. The Committee believes that the provision is in complete harmonization with the provisions of the international agreement of TRIPS and Doha Declaration as stated by Supreme Court of India in its landmark judgment of Novartis vs. Union of India. It appreciates that through Section 3(d), India strives to balance the international patent obligations and its commitments to protect and promote socio-economic welfare and public health. (Para 12.7)

28. The Committee is of the opinion that India must not compromise on the patentability criteria under Section 3(d) since India as a sovereign nation has the flexibility to stipulate limitations on grants of patents in consistence with its prevailing socio-economic conditions. It emphasizes that being a developing country, the provision has secured India's interests especially in the pharmaceutical sector against rampant secondary patenting by foreign pharmaceutical companies for increasing their profitability. Thus, it ensures the growth of generic drug makers and the access of public to affordable medicines. The Committee also observes the concerns flagged in the USTR Report pertaining to

disqualification of incremental inventions under Indian Patents law and recommends to resolve the issue through bilateral dialogues with US. It also recommends that in order to avert any misinterpretation of the provision, the Department should examine the aspect on giving an expansive meaning to Section 3(d) for giving further clarity. (Para 12.8)

2. Compulsory Licensing

29. The Committee notes the significance of issuing Compulsory Licenses to manufacturers and individuals for utilizing the patents to serve public needs during circumstances of emergency and crisis. It further observes that prudence has been shown by India in invoking the provision of Compulsory Licensing only once when the patent was for generic production of a life-saving drug of Nexavar at an affordable cost. (Para 12.13)

30. The Committee is of the opinion that although a careful stance is needed to be adopted in issuance of Compulsory License on a patent, it could, however, be considered in case of production of medicines and vaccines for the treatment of Covid-19 since the pandemic has led to a national health emergency in India. Generic production in large quantities without any obligation of patents would help in removal of supply constraints in availability of affordable drugs, medicines and vaccines at times of high case load and death toll due to Covid-19. The Committee, therefore, recommends that the Government should delve into the prospect of temporarily waiving patents rights and issuing Compulsory Licensing to tackle the inadequacy in availability and accessibility of Covid-19 vaccines and drugs during an emergency like situation induced by the pandemic. (Para 12.14)

3. Form 27

31. The Committee notes that the provision of Form 27 is crucial as it seeks to ensure adequate working of a patented invention on a larger scale to cater to the demands of public at large. It recommends the Department to consider relaxing the requirement to furnish information under the form on a yearly basis to ease the compliance burden on universities, R&D institutions, startups and small enterprises. It further recommends the Department to take steps for ensuring that the recent amendments in Form 27 is implemented properly without affecting the spirit of patenting and public interest. (Para 12.18)

THE TRADE MARKS ACT, 1999

- 32.(i) The Committee recommends the Department that further categories of classification should be incorporated in the Trademarks Act corroborating to the requirements of industry and trade. Also, such classification should have detailed specification and clarity to avoid any complexities in their interpretation.
- (ii) The Committee recommends the Department to curtail the time period of filing opposition against a trademark application from 4 to 2 months during which the application is in public.
- (iii) The Committee recommends the Department to take steps in modernization of trademark offices and workplaces by undertaking digitalization of work processes and facilitating e-services for speedy redressal of work.
- (iv) The Committee recommends the Department that the cumbersome procedures as regards to search and seizure operations in trademark infringements under Section 115 of the Act should be streamlined and simplified for improving and expediting investigations. It recommends that depending on the size and ongoing commercial activity of the district, one or more well-trained police officer specialized in tackling IP crimes should be deployed in place of a high ranking officer. The officers being appointed should have an added responsibility of enforcing IP laws in their respective jurisdiction.

The Committee further recommends that a monitoring mechanism should be put in place to ascertain the reasons of delay in pursuing opinion from the Registrar along with a reasonable timeframe of 48 hours to render the opinion in a time bound manner.

The Committee is also of the view that digitalisation can help whereby, Police Department and Office of Registrar can be connected through a specific software and there is no leakage of data by doing end to end encryption. This can help in reducing the time taken in getting permission for search and seizure.

- (v) The Committee recommends that the Department should make a separate category for EoU products so that they are prioritised in getting the trademarks and can contribute in the national economy by exporting the products in time.

(Para 13.1)

THE COPYRIGHT ACT, 1957

33. The Committee notes with distress that the conflict arising between copyright holders and educational institutions due to exceptions contained in Section 52(1) which intends to ensure access to literary works for educational purposes does not bode well for the overall literary culture and image of the country. Protecting copyrights of publishers and authors encourages enrichment of quality books and works which should be counterbalanced with public accessibility of such works at an affordable rate. The Committee recommends the Department to facilitate a fair and equitable ecosystem of literary culture in the country by bringing in necessary changes in Section 51(1) of the Act such as permitting reprographic works in Government-owned educational institutions and storing it in libraries for their easy access to students as well as stipulating limitations to unrestricted commercial grants to copy books and literary works and storage of copied works in digital formats. (Para 14.5)

34. The Committee further recommends the Government to promote establishing of community libraries and upgradation of existing libraries in the country for easy access to works of foreign publishers that are exorbitantly priced and difficult for the students and academics to access. Also, National Mission on Library, a venture of Central Government to strengthen the library system, should be implemented at the earliest. (Para 14.6)

35. The Committee recommends the Department that a comprehensive study of provisions under Berne Convention for the Protection of Literary and Artistic Works should be undertaken to establish a copyright regime which is beneficial to both copyright holders and public. (Para 14.7)

36. (i) The Committee recommends the Department to increase the renewal time of Copyright Societies from 5 to 10 years.

(ii) The Committee recommends the Department to amend Section 31D for incorporating ‘internet or digital broadcasters’ under statutory license in wake of the rise in digital or OTT platforms with manifold increase in music as well as movie apps and its significant contribution to economy. This would ensure a level playing field by making content accessible on similar terms to both traditional and internet broadcasters alike. (Para 14.8)

Academia and Industry

37. The Committee recommends that the Department should assign a devoted agency for establishing linkages between industry and academia so that India can be positioned on top in the field of innovations and inventions of our research and educational institutes. (Para 14.12)

38. The Committee, therefore, recommends that the catapult system of UK may be emulated along with scaling up funding by Government Sector and industries along with defining modalities and sector. The Committee also recommends that to encourage innovation, certain schemes may be introduced by applying a lower rate of corporate tax to any profits from patented inventions and tax incentive on R&D. (Para 14.14)

GEOGRAPHICAL INDICATIONS

39. The Committee takes cognizance of downtrend in registration of GIs in recent years in spite of the measures being undertaken to expedite the registration of GIs in India. It recommends GI Registry to issue periodic advisories consisting of necessary information on compliance requirements for the assistance of GI applicants. This would check undue delay and pendency in approving GI registrations. The Committee also recommends that concerted efforts should be taken by both DPIIT and GI Registry to generate awareness in the country about the importance of GI in imparting uniqueness to a product related to its place of origin. In this regard, kiosks and training centers should be established in various parts of the country especially in remote regions. Marketing strategies highlighting the GI tag products may be framed to capitalise its economic potential. (Para 15.6)

40. The Committee recommends that a stringent enforcement mechanism through a centralized agency should be authorised to ensure compliance of GI tagged products to the stipulated standards under GI Act while they are being marketed and commercialised. This would help in preventing duplicity, infringement and unfair competition of GI tagged products causing economic losses to genuine GI holders and denting the image of GI tagged products in international markets. (Para 15.7)

TRADITIONAL KNOWLEDGE AND IPRs

41. The Committee feels that individuals, communities and manufacturers exhibiting traditional knowledge and indigenous inventions in their creations should not be bereft of benefits or royalties

due to their exclusion from IPR regime. In this context, it recommends the Department to review Section 3(p) of the Patents Act for including traditional knowledge of these entities under patents ensuring growth of an inclusive IPR regime in India. In this regard, provisions to investigate such claims of patents should be incorporated to prevent the misuse or exploitation of enriched traditional knowledge of the country. (Para 16.3)

42. The Committee notes that the registration of traditional knowledge as Geographical Indication if it exhibits linkages to a geographical location would be highly beneficial to consolidate traditional knowledge into IPRs. The Committee recommends the Department to undertake steps in this regard. (Para 16.5)

43. The Committee envisages that absence of any proper mechanism for the documentation of traditional knowledge and inefficiency in executing Traditional Knowledge Digital Library (TKDL) has resulted into the neglect of traditional knowledge. It recommends the Government to address the structural issues in implementing a systematic mechanism of documentation and preservation of traditional knowledge in the country along with taking measures to strengthen TKDL as an effective database. (Para 16.7)

44. The Committee also observes that indigenous knowledge of drugs and pharmaceuticals, artistic handcrafts, traditional cultural expressions in products and creations as well as traditional practices and inventions in agriculture and forestry is abundant in India. It is, however, disappointed to note that the knowledge and awareness to claim IPR rights for earning monetary benefits from it is highly inadequate in the country. It, therefore, urges that the creators and holders of traditional knowledge, especially tribal communities, forest dwellers, artisans and craftsmen, should be made aware of the novelty or inventive steps involved in traditional expressions or work to facilitate a fair IPR regime in the country. The creators or communities practicing traditional knowledge should be mobilized in claiming IPRs wherein the Government should play a role of joint owner thereby restricting their misappropriation and exploitation. (Para 16.8)

45. The Committee recommends that India should engage at international level for the protection of Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources

to prevent the other countries to exploit them. (Para 16.10)

Utility Models

46. The Committee recommends the Department to undertake a comprehensive analysis and study of the Utility Models and its implementation in various countries for ascertaining their advantages to India as an alternate form of IPR. (Para 16.12)

47. The Committee is of the view that the research and inventions being conducted at the level of schools and colleges should be registered under a separate category other than IPR whereby these inventions could have commercial value. This will incentivize the young generation to go into Research and Development. (Para 16.14)

TRADE SECRETS

48. The Committee underlines that securing data and maintaining its confidentiality in business and trade is of paramount importance for companies possessing secret formulas, business strategies, algorithms, etc. Also, a separate statute or framework for trade secret protection in India is imperative in wake of rising frauds and misappropriation in digital world. In this regard, the Committee recommends the Department to consider enacting a separate legislation or a framework for protection of trade secrets. It further recommends the Department to examine the relevant and best practices being followed in statutes of various countries for their implementation in India. (Para 17.4)

IPR IN PHARMACEUTICALS

Discovery of new drugs

49. The Committee notes with concern that out of 16,134 patents filed during the last 5 years, only 4,345 were granted patents. The Committee recommends that necessary steps may be taken to expedite the process of examining/ granting patents. (Para 18.4)

50. The Committee appreciates the initiatives of the Department of Pharmaceuticals in bolstering Research and Development activities in pharmaceuticals sector. The Committee acknowledges the fact that the research in generic segment of medicines as well as its successful patenting under Indian Acts has made India a strong generic player in the world. It, however, opines that for sustaining growth in global pharmaceutical market, research should be oriented towards niche

segments and new drugs discovery. In this direction, joint research with global pharma players on discoveries of new molecules and compositions should be undertaken by the Department. (Para 18.8)

51. The Committee recommends that to encourage research and development in the Pharmaceutical Sector, policies for attracting investments from both the public and private sector may be explored by providing incentives such as tax rebate, reducing processing time and through industry academia partnership. (Para 18.9)

52. The Committee appreciates the endeavours being undertaken by the Department of Pharmaceuticals in the field of traditional and indigenous medicines which has become a potential thrust area in pharmaceuticals and drugs sector in wake of covid-19 pandemic. It recommends the Department to undertake an intensive research on AYUSH medicines and drugs including herbal remedies that would lead to advancement in availability of innovative drugs and medicines for treatment of novel diseases. (Para 18.11)

Spurious Drugs

53. The Committee expresses its concern on the rising incidences of spurious and adulterated drugs in India which is not only a potential threat to the lives of its citizens but also dents its image as being one of the largest supplier of drugs and pharmaceuticals in the world. It, therefore, recommends the Government to roll out a track and trace mechanism at the earliest for the detection of authenticity and genuineness of medicines and medical devices from manufacturers to end users in supply chain. (Para 18.15)

IPR IN AGRICULTURE

54. The Committee appreciates the supportive measures being undertaken by Indian Council of Agricultural Research (ICAR) in mobilizing agricultural researchers and scientists in the ambit of IPRs. It, however, notes that acculturation of Indian farmers and farming communities in IPRs is far from being achieved in India. In this direction, the Committee recommends that the Government should make all out efforts in creating awareness amongst farmers and farming communities so that they voluntarily embrace IPRs in protecting their rights in areas of farming innovations, breeding and varieties. (Para 19.6)

55. For disseminating information about the role of patent in agriculture, KVK (Krishi Vikas Kendras) can play a significant role as

they work at block level and the farmers also consider them as local. Exclusive videos/ multimedia options/ bill boards may be used to create awareness. In this digital age, the videos in local language can be sent on their cell phones to upgrade their knowledge. (Para 19.7)

56. The Committee also recommends that more governmental efforts through legislation and implementation of law may be made in favour of farmers since they are not aware of the legal system and sometimes get trapped in IPR issues by private companies. (Para 19.8)

SUMMATION

57. Conferring rights to formal innovations which are being conducted in research establishments, scientific and educational institutions should harmonise with recognition of informal innovations that embraces traditional and indigenous knowledge and cultural expressions in form of valuable IPRs. (Para 20.1)

58. Unless the entire population is sensitized, it will be difficult to foster a culture of respect for IPR laws. (Para 20.2)

59. A fair and equitable growth of IPRs in India needs improvisation and streamlining of legislative, administrative, adjudicative and enforcement mechanisms. Conformity of legal provisions to the changing dynamics of innovation, recruitment and appointment of adept officials, swift handling of IPR cases and an efficient judicial system are imperative to build a robust IPR regime in India. This should also be in compliance with International agreements, rules and norms as well as compatible with other nations and foreign entities. (Para 20.3)

60. However, immediate steps by India should be undertaken at domestic level such as issuing of compulsory licenses and encouraging the mechanism of voluntary licensing to share Covid-19 technology to other producers and manufacturers. This would help in scaling up of production and manufacturing of Covid-19 vaccines and medicines in the country at times of national health emergency of Covid-19 pandemic. The Government must avoid any chance of delay in invoking compulsory licenses on crucial drugs and vaccines in case of an emergency like situation in future. Proactive steps should also be taken for technology transfers to manufacturing companies once the trials of medicines or vaccines are completed in order to prevent delay in their

availability which would be detrimental to the country's interest. (Para 20.4)

61. In this regard, IP audit should be conducted for assessing and evaluating IPR potential in specific sectors which would help in formulating targeted IP programmes. (Para 20.6)

62. A serious view needs to be taken towards the commercialization of IPRs as has been done in many countries. The steps taken in this direction should be in tandem with reforms in banking regulations. (Para 20.7)

63. Also, ensuring active co-ordination and collaboration between the enforcement agencies like State Police and Customs (who work within their limited jurisdiction) and CBI (which mostly takes up high end crimes) would efficiently counter the rising IP crimes of counterfeiting and piracy.

(Para 20.8)

64. Further, the Committee is of the opinion that the establishment of dedicated benches at High Courts for IP matters would ensure disposal of IPR disputes in a time bound and efficient manner. There also needs to be a panel of *amicus curiae* for assisting the courts in dealing with IPR matters.

(Para 20.9)

65. To foster IP-Cooperation between nations, collaborative efforts with other countries and international organisations through MoUs are required which would result into exchange of crucial information of the best practices and expertise in IPR.

(Para 20.10)

66. Hence, consolidated efforts on the part of Government, industry, civil societies as well as educational and research institutions functioning at the level of schools, colleges and universities would be the cornerstone in evolving a robust IPR regime in India thereby having a desired impact on the development in social, cultural and economic fronts. (Para 20.11)

MINUTES

***VII**
SEVENTH MEETING

The Department-related Parliamentary Standing Committee on Commerce met at 2.30 P.M. on Thursday, the 10th December, 2020 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri V. Vijayasai Reddy – *Chairman*

RAJYA SABHA

2. Shrimati Priyanka Chaturvedi
3. Shri Jugalsingh Mathurji Lokhandwala
4. Shir Om Prakash Mathur
5. Shri Deepak Prakash

LOK SABHA

6. Shri Prasun Banerjee
7. Shri Raju Bista
8. Shri Arvind Dharmapuri
9. Shri Manoj Kishorbhai Kotak
10. Shri Nakul K. Nath
11. Dr. Manoj Rajoria
12. Shri Nama Nageswar Rao
13. Shri Magunta Sreenivasulu Reddy

SECRETARIAT

Shri Sunil Dutt Nautiyal, Joint Secretary
Shri S. Jason, Director

WITNESSES

**REPRESENTATIVES OF DEPARTMENT FOR PROMOTION OF
INDUSTRY AND INTERNAL TRADE, MINISTRY OF COMMERCE
& INDUSTRY**

1. Shri Guruprasad Mohapatra, Secretary
2. Shri Ravindra, Joint Secretary
3. Shri Rajendra Ratnoo, Joint Secretary

* 1st to 6th Meetings of the Committee pertain to other matters.

2. At the outset, Chairman welcomed Members of the Committee and informed them about the agenda of the meeting. As the Committee had taken up a new subject, i.e., 'Review of the Intellectual Property Rights Regime in India', the Chairman drew the attention of Members to Rule 294(1) of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha) and requested them to declare any personal or pecuniary interest pertaining to the subject. None of the Members present declared any personal or pecuniary interest.

3. Chairman, thereafter, welcomed Secretary, Department for Promotion of Industry and Internal Trade (DPIIT) and his colleagues to the meeting and sought their views on the issues concerning the subject such as low awareness amongst Indians on IPRs, more filing of patents by foreigners as compared to domestic entities in India, counterfeiting and piracy cases, less spending on Research and Development activities, the divide between developing and developed nations on IPRs as well as other related issues.

4. Secretary, DPIIT while giving an overview of the IPR regime in the country apprised the Committee about the low spending on R&D and the measures taken by Government of India on IPRs in India as compared to other countries in the world such as China, Japan, US and certain European Nations. He further elaborated on the administrative set up of IPR in India and the functions of the Comptroller General of Patents, Designs and

Trademarks (CGPDTM) which is tasked with granting IPR rights and overseeing legal provisions, quasi-judicial functions of the Intellectual Property Appellate Board (IPAB) and the role of the Cell for IPR Promotion and Management (CIPAM) for generating awareness on IPR.

4. Secretary, DPIIT further highlighted the efforts being made to strengthen the IPR regime by promoting digitalization of filing system, increasing manpower and expediting granting of approvals. He briefed about the achievements such as improvement in ranking of India in Global Innovation Index from 81st in 2015 to 48th position in 2020, which signifies a rise in filing of IPRs in the country. On being enquired about the approval time for IPRs in India vis-à-vis other countries, the Secretary informed that except trademarks, the time duration for the approval of IPRs takes much longer in India.

5. He apprised the Committee about generating awareness of IPR in the country and capacity building by introducing curriculum and conducting training programmes on IPRs. He also informed about collaboration of the Department with National Exchange of India and Maharashtra Cyber and Digital Crime Unit to check fraudulent activities in IPR. He further elaborated upon international collaboration and agreements with WIPO and other countries on IPR.

6. The Committee, thereafter, further dwelt upon the issues such as the need to raise the awareness level of IPRs amongst MSMEs, Start-ups and

enforcement authorities such as police, customs and judicial officers; labeling products with ‘pending patents’, lack of adequate faculties in Design Institutes and protection of IPRs in agriculture sector by granting patents and Geographical Indications to boost innovation and secure traditional farming practices.

7. The Committee further discussed the issues such as need to resolve IP disputes through alternate dispute resolution mechanisms, policy changes required to ensure expediting of patents and trademarks approvals in case of 100 per cent export oriented units, lesser spending on R&D to an extent of only 0.7 per cent of GDP in India, protection of IPRs in ayurveda, existing vacancies of examiners and controllers in the country, Societies/Associations formed under the Copyright Act to secure the rights of performers and singers as well as measures to prevent evergreening of patents in computer algorithms.

8. The Chairman thanked the representatives of DPIIT and requested them to furnish replies in writing to the issues raised by the Committee but not addressed during the interaction. The witnesses then withdrew.

9. A verbatim record of the proceedings of the meeting was kept.

10. The Committee then adjourned at 4.59 P.M.

NEW DELHI
DECEMBER 10, 2020

S. JASON
DIRECTOR

VIII EIGHTH MEETING

The Department-related Parliamentary Standing Committee on Commerce met at 11.00 A.M. on Thursday, the 11th December, 2020 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri V. Vijayasai Reddy — *Chairman*

RAJYA SABHA

2. Shrimati Priyanka Chaturvedi
3. Shrimati Roopa Ganguly
4. Shri Sushil Kumar Gupta
5. Shri Jugalsingh Mathurji Lokhandwala
6. Shri Deepak Prakash

LOK SABHA

7. Shri Prasun Banerjee
8. Shri Raju Bista
9. Shri Manoj Kishorbhai Kotak
10. Dr. Manoj Rajoria
11. Shri Nama Nageswar Rao

SECRETARIAT

Dr. P.P.K. Ramacharyulu, Secretary
Shri Sunil Dutt Nautiyal, Joint Secretary
Shri S. Jason, Director

WITNESSES

CONFEDERATION OF INDIAN INDUSTRY (CII)

1. Dr. Ramesh Datla, Chairman
2. Shri R. Saha, Senior Advisor
3. Shri Ranjit Jabbi, General Manager

2. At the outset, the Chairman welcomed Members of the Committee and informed them about agenda of the meeting. The Committee then had a brief internal discussion regarding the list of stakeholders to be call for subsequent meetings. The Committee decided that besides major legal firms, the Chief Secretaries along with Advocate Generals of all the States may be called for hearing their views on the subject, ‘Review of Intellectual Property Rights (IPR) Regime in India’. In case the Chief Secretaries and Advocate Generals are not available, they may be requested to depute the respective deputies. Thereafter, the witnesses were called for discussion.

3. The Chairman welcomed the representatives of the Confederation of Indian Industry (CII) and flagged various issues pertaining to the Intellectual Property Rights (IPR) regime in India. He solicited suggestions from the representatives regarding the issue of overlapping of IPRs, lack of separate Intellectual Property courts and scientific advisor for assisting in patent cases, bottlenecks in registering patents, etc. He further desired that the Committee be briefed regarding the dominance of patent applications by foreigners, measures to be taken for increasing R&D spending by private sectors, etc.

4. The Committee was informed that R&D spending by private sector has increased over the years, yet it needs to be further increased. The representatives also suggested that the number of fellowships granted by the

Ministry of Science and Technology to joint PhDs programmes for working on industry related problems may be increased to foster industry and academia partnership in R&D. Further, incentive in the form of lower licensing cost may be provided to MSMEs.

5. The Committee was also informed that though the low number of patent applications filed by domestic companies in India is a matter of concern, significant number of patent applications were being filed by Indians in foreign countries.

6. The Committee was apprised about the ‘prior experience’ clause wherein newly patented products are excluded from participating in tender due to the said clause, which hinders the marketing of the patented products and needs to be rectified.

7. With regard to the issue of lack of separate Intellectual Property courts, the representatives informed the Committee that this has resulted in prolonged litigation process and lack of confidence of foreign companies in protection of their intellectual property. The representatives, therefore, suggested that specialized IP courts and Alternate Dispute Resolution Mechanism as well as mediation cells in courts may be provided to resolve dispute related to IPR quickly and economically. The Committee was also apprised that recruiting more number of experts to deal with new technology will speed up the process of patent examination

8. The Committee was then apprised regarding the need for decriminalization of Copyright Act as well as the need to address the issue of conflict between the Patent Act and the Competition Act to balance the need for fostering technological development and restricting unfair competitive practices. The Committee was further apprised about the need for resolving the infirmities between Biodiversity Act and the Indian Patent Act which hindered the industries working in the area of Ayurveda and other nutraceuticals.

9. The Committee was informed about the absence of a well defined system for transfer of technology from publicly funded institutions such as Council of Scientific & Industrial Research (CSIR), Indian Institute of Technology (IIT), etc. to the industry as Article 223 of the General Financial Rule specified that any intellectual property developed with Government funds belongs to Government. The representatives, therefore, highlighted the need for having a well defined system for sharing of IPR and also of royalties on a long term basis.

10. The Committee was also apprised about the prevalence of counterfeit Chinese products, labeled as 'Made in India' and sold in e-market place. The representatives highlighted the need for developing a mechanism to identify these counterfeit products from the e-market place.

11. The Committee, thereafter, discussed the issue of lack of awareness of IPR, difficulties in getting Geographical Indications (GI) products registered in foreign countries under Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, patentability of software with the rise of Artificial Intelligence (AI) and other newer technologies, etc. The Committee also dwelt on the need for having a separate law on trade secrets or amending the Contract Act to suit the current scenario.

12. The Chairman then thanked the representatives of the CII and requested them to furnish replies in writing to the issues raised by the Committee but not addressed during the interaction. The witnesses then withdrew.

13. A verbatim record of the proceedings of the meeting was kept.

14. The Committee then adjourned at 12.42 P.M.

NEW DELHI
DECEMBER 11, 2020

S. JASON
DIRECTOR

IX

NINTH MEETING

The Department-related Parliamentary Standing Committee on Commerce met at 2.30 P.M. on Monday, the 28th December, 2020 in Main Committee Room, Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri V. Vijayasai Reddy — *Chairman*

RAJYA SABHA

2. Shrimati Roopa Ganguly
3. Shri Sushil Kumar Gupta
4. Shri Mallikarjun Kharge
5. Shri Jugalsingh Mathurji Lokhandwala
6. Shri Deepak Prakash

LOK SABHA

7. Shri Prasun Banerjee
8. Shri Rajkumar Chahar
9. Shri Rameshbhai Lavjibhai Dhaduk
10. Shri Arvind Dharmapuri
11. Shri Manoj Kishorbhai Kotak
12. Shri Nama Nageswar Rao
13. Shri Kesineni Srinivas

SECRETARIAT

Dr. P.P.K. Ramacharyulu, Secretary
Shri Sunil Dutt Nautiyal, Joint Secretary
Shri S. Jason, Director
Shri Kuldip Singh, Under Secretary

WITNESSES

AMARJIT & ASSOCIATES

1. Shri Amarjit Singh

2. Ms. Shubhi Sharma

AJAY SAHNI & ASSOCIATES

1. Shri Ankit Sahni
2. Shri Somitra Kumar

SUBRAMANIAM & ASSOCIATES

1. Shri Philip Abraham
2. Ms. Aditi Subramaniam

2. At the outset, Chairman welcomed Members of the Committee and informed them about the agenda of the meeting. Thereafter, the Committee decided to undertake a study visit to Goa from 21st to 23rd January, 2021 on the subject 'Review of the Intellectual Property Rights Regime in India' for its detailed examination and to interact with State Government officials of Goa, Maharashtra and UT of Dadra and Nagar Haveli and Daman and Diu, and other stakeholders. The Committee also decided to hear the views of Chief Secretaries and Advocate Generals of the States/ Union Territories on the said subject in its ensuing meeting.

3. The Chairman, thereafter, welcomed the representatives of law firms, namely, Amarjit & Associates, Ajay Sahni & Associates and Subramaniam & Associates and flagged various issues on the subject 'Review of the Intellectual Property Rights Regime in India'. He sought their views on procedural and substantive challenges to achieve a robust IPR regime in India, revisiting of extant IPR laws, arbitration of IPR disputes, low

awareness about IPR, overlapping of IPRs, counterfeiting and piracy issues and other concerning matters on the subject.

4. Shri Amarjit Singh, Amarjit & Associates informed the Committee about the problems in arbitration of IPR laws by a third party or an arbitrator due to technicalities existing in the IPR laws. He highlighted some procedural, administrative and legislative issues which are the major hindrances that affect the strengthening of IPR regime in India.

5. Shri Amarjit also apprised that the domestic applicants registering for trademark are at a disadvantageous position than their foreign counterparts on account of the proviso to Section 9 (1) (b) of the Indian Trade Marks Act, 1999. He emphasized on the need for amending the Section to ensure clarity on the territorial distinctiveness of the trade mark. He further dwelt upon the hurdles in IPR cases due to Section 115 (4) of the Trade Marks Act, 1999.

6. Shri Philip Abraham, Subramaniam & Associates emphasised upon the need for increasing the number of skilled personnel as examiners of IPRs on a long-term basis. He further informed the Committee about the difficulties posed by Section 115 (4) of the Trade Marks Act in taking action against trademark infringement. He stressed upon the need to bring changes in the Section by designating a lower rank officer for enforcing action against infringement cases that are primarily cognizable offences. He expressed the need for creation of a National IPR Agency which would act

as a central co-ordination unit and facilitate co-ordination between industries, government offices and international agencies to address the issues of counterfeiting and piracy.

7. Shri Ankit Sahni, Ajay Sahni & Associates put forth his suggestion on reducing the time period to file an opposition on trademark from 4 to 2 months from the date of its publication for expediting trademark registration in the country. He also submitted that the Commercial Courts may be encouraged in the country for the time-bound disposal of commercial disputes. While referring to the *Rameshwari Photocopy Services* case, he dwelt on the need to amend the Copyright Act to allow marketing of only printed copies and not the scanned ones. Also, the usage of such copies of publications should only be done by the government owned educational institutions on a limited scale. He also suggested that the subject of IPR should be taught in primary and secondary schools to promote the spirit of innovation and creativity among the students at an early stage.

8. The Committee further discussed the issues such as trademark squatting, lack of expert judges in courts dealing with IP cases, need to generate awareness about patents and trademarks amongst MSMEs, small artisans and farmers, the rising cases of IP crimes and enhancing the skill of examiners and personnel being appointed to handle the IPR matters.

9. A verbatim record of the proceedings of the meeting was kept.

10. The Committee then adjourned at 5.07 P.M.

NEW DELHI
DECEMBER 28, 2020

S. JASON
DIRECTOR

X
TENTH MEETING

The Department-related Parliamentary Standing Committee on Commerce met at 11.00 A.M. on Tuesday, the 29th December, 2020 in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri V. Vijayasai Reddy — *Chairman*

RAJYA SABHA

2. Shrimati Roopa Ganguly
3. Shri Sushil Kumar Gupta
4. Shri Mallikarjun Kharge
5. Shri Jugalsingh Mathurji Lokhandwala
6. Shri Om Prakash Mathur

LOK SABHA

7. Shri Prasun Banerjee
8. Shri Rajkumar Chahar
9. Shri Rameshbhai Lavjibhai Dhaduk
10. Shri Arvind Dharmapuri
11. Shri Manoj Kishorbhai Kotak
12. Dr. Manoj Rajoria
13. Shri Nama Nageswar Rao
14. Shri Kesineni Srinivas

SECRETARIAT

Dr. P.P.K. Ramacharyulu, Secretary
Shri Sunil Dutt Nautiyal, Joint Secretary
Shri S. Jason, Director
Shri Kuldip Singh, Under Secretary

WITNESSES

REPRESENTATIVES OF DEPARTMENT OF PHARMACEUTICALS, MINISTRY OF CHEMICALS & FERTILIZERS

1. Ms. S. Aparna, Secretary
2. Shri Navdeep Rinwa, Joint Secretary

REPRESENTATIVE OF DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE (DPIIT), MINISTRY OF COMMERCE AND INDUSTRY

Shri Ravinder, Joint Secretary

REPRESENTATIVE OF CENTRAL DRUGS STANDARD CONTROL ORGANISATION (CDSCO), MINISTRY OF HEALTH AND FAMILY WELFARE

Dr. Eswara Reddy, Joint Drug Controller General of India

12.00 Noon

REPRESENTATIVES OF DEPARTMENT OF AGRICULTURE RESEARCH AND EDUCATION, MINISTRY OF AGRICULTURE AND FARMERS' WELFARE

1. Dr. Trilochan Mohapatra, Secretary (DARE) & DG (ICAR)
2. Shri Sanjay Singh, Additional Secretary (DARE) & Secretary (ICAR)
3. **Dr. Sanjeev Saxena**, Assistant Director General (ICAR)

I ORAL EVIDENCE OF REPRESENTATIVES OF DEPARTMENT OF PHARMACEUTICALS, MINISTRY OF CHEMICALS & FERTILIZERS, REPRESENTATIVE OF DPIIT, MINISTRY OF COMMERCE AND INDUSTRY AND REPRESENTATIVE OF CDSCO, MINISTRY OF HEALTH AND FAMILY WELFARE

2. At the outset, Chairman welcomed Members of the Committee and informed them about the agenda of the meeting. He, thereafter, welcomed the representatives of Department of Pharmaceuticals, Department for

promotion of Industry and Internal Trade, and Ministry of Health and Family Welfare and sought their views on strengthening IPR regime in the Pharmaceutical sector of the country and also on challenges in IPR from foreign drug companies, monopolization of Pharmaceutical companies due to changes in patent system, challenges in innovation of new drugs, problem of fake drugs, exploration of new avenues in pharma sector, encouraging IPR in pharmaceutical research, and temporary suspension of provisions in international IPR agreements for development of Covid vaccine.

3. The Secretary, in response, informed the Committee about the strategic importance of pharmaceutical sector in ensuring drug security of the country. She also informed that Indian pharmaceutical industry is the third largest in the world by volume and India is a large exporter of generic medicines, vaccines and anti-retroviral drugs, however, there is no single patent issued to a domestic player in pharmaceutical drug due to our focus on generics and the requirement of long gestation period and high capital involved in R&D in production of patented drugs. The Committee was also apprised about the steps taken for improving regulatory process, preventing evergreening of patents, tackling monopolization in pharmaceutical sector along with issues of data exclusivity and patent linkage. The representative from DPIIT also highlighted reasons for inordinate delay in granting patents and the steps taken in this regard.

4. The Committee also dwelt on the issues of improving business environment, promoting R&D, increasing patent filing, reducing compliance burden for easier approval, simplification and digitization of the process, granting of tax holidays for newly formed States and eradication of corruption in IP regime, particularly in an export zone.

5. The Committee, thereafter, flagged various issues such as development of single window for speeding up patent process and timely approval thereof, formation of dispute management system for resolving patent issues arising among Ministries/Departments, providing R&D platform to small scale trader for developing drugs, generating awareness of patents among different stakeholders, improving ease of doing business for speeding up granting of patents, and price fixation of pharmaceutical products.

6. The Chairman thanked the representatives of Department of Pharmaceuticals, Department for promotion of Industry and Internal Trade, and Ministry of Health and Family Welfare and requested them to furnish replies in writing to the issues raised by the Committee but not addressed during the interaction. The witnesses then withdrew.

II. ORAL EVIDENCE OF REPRESENTATIVES OF DEPARTMENT OF AGRICULTURE RESEARCH AND EDUCATION (DARE), MINISTRY OF AGRICULTURE AND FARMERS' WELFARE

7. The Chairman welcomed the representatives of Ministry of Agriculture and Farmers' Welfare and sought their views on strengthening IPR regime in agricultural sector of India. The Committee flagged the issues of generating awareness on significance of IPR amongst farmers, Geographical Indications (GI) registration among producers especially from rural India, and legislative change required in the GI Act to ensure post registration quality control of GI products.

8. The Secretary apprised the Committee about developments since 1985 for IP protection in the country such as Convention on Biological Diversity, TRIPS Agreement, Protection of Plant Varieties and Farmers' Rights Acts and National Biodiversity Act, etc. He also informed about development of a three-tier system for promoting protection of intellectual property, and conducting of awareness programmes, spreading IP awareness through their institutions, KVKs and universities, preserving and protection of indigenous material. It was also apprised that incubation centres and start-ups have been developed to attract youth and women entrepreneurs from IIT and handhold them in agricultural production.

9. The Committee desired to be briefed on the issues of inclusion of tribal products for patents, work done by Kisan Vikas Kendras in IP regime parameters for patenting different crops, reducing cluster area prescribed for organic farming and certification thereof, educating farmers on patent registration, and issuing guidelines to officials for implementing government agricultural schemes at grassroot level farmers and distribution of booklets containing agricultural schemes and their benefit to farmers. The issues of necessary steps needed for developing interest of youth in taking agriculture as a profession , raising farmers' income, effects of WTO and TRIPS agreement on farmers' subsidy, and establishment of testing laboratories for organic products were also discussed.

10. The Chairman thanked the representatives of Ministry of Agriculture and Farmers' Welfare and requested them to furnish replies in writing to the issues raised by the Committee but not addressed during the interaction. The witnesses then withdrew.

11. A verbatim record of the proceedings of the meeting was kept.

12. The Committee then adjourned at 2.15 P.M.

NEW DELHI
DECEMBER 29, 2020

S. JASON
DIRECTOR

***XIV**
FOURTEENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 10.30 A.M. on Thursday, the 25th March, 2021 in Room No. '63', First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shri V. Vijayasai Reddy — *Chairman*

RAJYA SABHA

2. Shrimati Priyanka Chaturvedi
3. Shri Sushil Kumar Gupta
4. Shri Jugalsinh Mathurji Lokhandwala
5. Shri Om Prakash Mathur

LOK SABHA

6. Shri Rajkumar Chahar
7. Shri Rameshbhai Lavjibhai Dhaduk
8. Shri Arvind Dharmapuri
9. Shri Manoj Kishorbhai Kotak
10. Shri Nakul K. Nath
11. Shri Hemant Patil
12. Dr. Manoj Rajoria
13. Shri Ashok Kumar Rawat
14. Shri Magunta Sreenivasulu Reddy
15. Shri Prajwal Revanna
16. Shri Mansukhbhai Dhanjibhai Vasava

SECRETARIAT

Shri Sunil Dutt Nautiyal, Joint Secretary
Shri S. Jason, Director
Shrimati Nidhi Chaturvedi, Additional Director
Shri Kuldip Singh, Under Secretary

2. At the outset, the Chairman welcomed the members of the Committee and informed about the agenda of the meeting. * * *

* 11th to 13th Meetings of the Committee pertain to other matters.

*** Pertain to other matter.

The Committee then decided to call off deliberation with Chief Secretary and Advocate General from different States/UTs on the ongoing subject, namely, 'Review of the Intellectual Property Rights Regime in India' since the Committee had interacted with the Chief Secretary and Advocate General from two states and there is not much information that would be gathered from others.

3. * * *

4. The Committee then adjourned at 11.10 A.M.

NEW DELHI
CHATURVEDI
MARCH 25, 2021
DIRECTOR

NIDHI

ADDITIONAL

*** Pertain to other matter.

XV

FIFTEENTH MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 3.00 P.M. on Wednesday, the 7th April, 2021 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri V. Vijayasai Reddy — Chairman

RAJYA SABHA

2. Shri Sushil Kumar Gupta

LOK SABHA

3. Smt. Manjulata Mandal
4. Dr. Manoj Rajoria
5. Shri Nama Nageswar Rao
6. Shri Kesineni Srinivas

SECRETARIAT

Shri Sunil Dutt Nautiyal, Joint Secretary

Shri S. Jason, Director

Shrimati Nidhi Chaturvedi, Additional Director

Shri Kuldip Singh, Under Secretary

WITNESSES

Representatives of Federation of Indian Chambers of Commerce and Industry (FICCI)

1. Shri Narendra Sabharwal, Chairman, IPR Committee
2. Shri Dipankar Barkakati, Director

Representatives of Department for Promotion of Industry and Internal Trade (DPIIT)

1. Dr. Guruprasad Mohapatra, Secretary
2. Shri Shailendra Singh, Additional Secretary
3. Shri Sachin Dhanania, Deputy Secretary

I Oral evidence of representatives of Federation of Indian Chambers of Commerce and Industry (FICCI)

2. At the outset, the Chairman welcomed the Members of the Committee and apprised them about agenda of the meeting. Thereafter, he welcomed the representatives of Federation of Indian Chambers of Commerce and Industry (FICCI) to the meeting and in his introductory remarks flagged various pertinent issues on the subject ‘Review of the Intellectual Property Rights Regime in the country’. He sought suggestions for strengthening Intellectual property rights regime in India and the strategy to be adopted to deal with challenges impeding its implementation. Further, he sought to be apprised of the measures that need to be undertaken to augment domestic filing of patents and policy reforms envisaged to deal with the instances of IPR related offences.

3. The representative of FICCI thanked the Chairman and informed the Committee that tremendous development has been witnessed in all the areas of Intellectual Property regime and steps have been taken to streamline and make the administration more service oriented. However, various reasons still exist for less number of domestic filing of patents such as low level of percentage of GDP in R&D. It was also submitted that inconsistency in laws must be resolved to curb overlapping of IPRs, and concerns were also

raised over scrapping of Intellectual Property Appellate Board (IPAB) and vacume created thereafter. The representative also suggested for having a relook and appraisal of the National IPR Policy and plugging the existing gaps arising due to developments that occurred in different spheres with the passage of time. The need for inculcating importance of innovations in the students at school level, carrying out sector-wise national IP audit to tackle problems of specific industries/associations, and deficiencies in commercialisation and securitization of IP rights were also put forth by the association. Problems arising in enforcement of IP rights, lack of coordination between the Central and State Governments on IPR related matters, absence of a dedicated IP institute were also underscored by the Association.

4. The Committee, thereafter, dwelt on the issues related to the need for raising expenditure on Research & Development (R&D) for enhancing innovation through Corporate Social Responsibility (CSR), efforts required to bring down the time in granting patents, poor performance of the country in terms of global patent applications, and adoption of best IP related practices available globally after needful modifications as per requirement of the country.

5. The Chairman, then, thanked the representatives for providing the information and requested them to furnish written submission on additional issues on the subject.

(The witness then withdrew)

II Oral evidence of representatives of Department for Promotion of Industry and Internal Trade (DPIIT)

6. The Chairman, thereafter welcomed the Secretary, Department for Promotion of Industry and Internal Trade and his colleagues to the meeting of the Committee. He sought to know about the measures taken by the Department to develop formal and informal innovation ecosystem for having a robust IPR regime in the country. He also invited views in relation to feasibility of setting up dedicated IPR benches in courts for fast-track resolution of IPR disputes, development of IP backed financing, and the efforts made to address grievances of associations that are opposing scrapping of IP appellate boards.

7. The Secretary, Department for Promotion of Industry and Internal Trade informed the Committee that various inherent difficulties led to the abolition of IPAB and setting up of dedicated benches in High Courts for dealing IPR cases would be pursued through Ministry of Justice. It was also assured that the issue of treating IP rights as collateral would be followed up with the

Ministry of Finance along with other concerned regulatory authorities. The issue of re-examination of IPR applications after their rejection was also discussed along with the matter related to fast tracking mechanism for granting patent. It was also informed that financial assistance is provided only to reputed university/institutes for creation of IP Benches and allotment of IP chair to generate awareness about IPR. On the matter of decriminalization of provisions under the Copyright Act and its disincentivizing impact on potential investors, the Secretary submitted that as of now the subject-matter is under consideration.

8. The Chairman then thanked Secretary, Department for Promotion of Industry and Internal Trade and his colleagues for the information provided and requested them to furnish the replies in writing on supplementary issues not addressed during the interaction.

9. A verbatim record of proceedings of the meeting was kept.

10. The Committee then adjourned at 5.15 P.M.

NEW DELHI
APRIL 07, 2021

NIDHI CHATURVEDI
ADDITIONAL DIRECTOR

TWENTY FIRST MEETING

The Department Related Parliamentary Standing Committee on Commerce met at 10.30 A.M. on Tuesday, the 20th July, 2021 in Room No. '63', First Floor, Parliament House, New Delhi.

MEMBERS PRESENT

1. Shri V. Vijayasai Reddy — *In the Chair*

RAJYA SABHA

2. Shrimati Priyanka Chaturvedi
3. Shrimati Roopa Ganguly
4. Shri Sushil Kumar Gupta
5. Shri Jugalsinh Lokhandwala
6. Shri Deepak Prakash
7. Shri John Brittas

LOK SABHA

8. Shri Raju Bista
9. Shri Rajkumar Chahar
10. Shri Arvind Dharmapuri
11. Shri Manoj Kishorbhai Kotak
12. Shrimati Manjulata Mandal
13. Shri Hemant Patil
14. Shri Gautham Sigamani Pon
15. Dr. Manoj Rajoria
16. Shri Nama Nageswar Rao
17. Shri Ashok Kumar Rawat
18. Shri Magnuta Sreenivasulu Reddy

SECRETARIAT

Shri S. Jason, Joint Secretary

Shri T.N. Pandey, Director

Shrimati Nidhi Chaturvedi, Additional Director

Shri Kuldip Singh, Under Secretary

* 16th to 20th Meetings of the Committee pertain to other matters.

2. The Chairman welcomed the members of the Committee to the meeting and informed them about agenda of the meeting. The Committee, thereafter, took up for consideration (i) the draft 161st Report on ‘Review of the Intellectual Property Rights Regime in India’; (ii) * *
 *; and (iii) * *
 *.

3. The Committee adopted the draft 161st * * *
 Report without any changes * *
 *.

4. The Committee decided to present the 161st * * *
 * Report on Friday, 23rd July, 2021. It was also
 decided that the Report will be presented in Rajya Sabha by Shri John
 Brittas, M.P. and in his absence by Shrimati Roopa Ganguly, M.P. In Lok
 Sabha, Dr. Manoj Rajoria, M.P. and in his absence Shri Ashok Kumar
 Rawat, M.P. would lay the Report.

5. The Committee then adjourned at 10.50 A.M.

NEW DELHI
 JULY 20, 2021

NIDHI CHATURVEDI
 ADDITIONAL DIRECTOR

*** Pertain to other matters.