
Trend In Intellectual Property Generation And Disposal Of IP Applications

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Abstract

Intellectual Property (IP) is assuming a greater importance with the rise of the knowledge economy. Technology and innovation are value drivers in the dynamic environment in this day and age. In the emerging knowledge economy worldwide the paradigms are shifting from physical to knowledge resources. Nature of the businesses is undergoing change on this count as increasingly the businesses are turning from being capital-intensive to knowledge-intensive. Thus, there is a pertinent need on the part of the enterprises to consciously manage the activities related to IP. With the emergence of knowledge economy and rapid technological changes, creation of IP is becoming indispensable for the modern day businesses, even for survival. In this backdrop, it is expected for a developing country like India to have in place a strong IP system to boost faster the socio-economic progress of the country through stimulation of innovation, research and creativity. A strong IP system contributes to GDP growth of a country through increased sectoral output. It facilitates knowledge-based industrial growth and creates favourable climate for technology transfer. A strong IP system could also influence the inflows of Foreign Direct Investment (FDI). Most significantly, it enables a country to achieve

self-sufficiency especially in strategic sectors and thereby, it provides a competitive edge. Moreover, a strong and balanced IP system is one of the key means to support innovation and development objectives of a country. Hence, the present study made an attempt to explore the trend in IP generation and disposal of IP applications in India. Above all, the present study seeks to analyse the working of IP system in the country.

Keywords: *Property, Knowledge Economy and Foreign Direct Investment*

Introduction and Background

The word Intellectual Property (*IP*) may sound alien to someone's ears. But when we pick any product around us from the routines of our life it forms as part of an intellectual property. IP in common parlance is the creative work of the human intellect. World Intellectual Property Organisation (WIPO) defines IP as the creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs, used in commerce¹.

IP is assuming a greater importance with the rise of the knowledge economy. Technology and innovation are value drivers in the dynamic environment now days. In the emerging knowledge economy worldwide the paradigms are

¹ *About IP*, World Intellectual Property Organisation (Feb. 22, 2019, 8:00 PM), <https://www.wipo.int/about-ip/en>.

shifting from physical to knowledge resources. Nature of the businesses is undergoing change on this count as increasingly the businesses are turning from being capital-intensive to knowledge-intensive.

At enterprise level IP assets such as, Patents, Copyrights and Trade Marks now account for a majority proportion of market capitalisation. According to the available estimates, by late 1990s approximately 75% of market capitalisation of the Fortune 100 companies was accounted for by such IP assets². Thus, there is a pertinent need on the part of the enterprises to consciously manage the activities related to IP. With the emergence of knowledge economy and rapid technological changes, creation of IP is becoming indispensable for the modern day businesses, even for survival.

In this backdrop, it is expected for a developing country like India to have in place a strong IP system to boost faster the socio-economic progress of the country through stimulation of innovation, research and creativity. A strong IP system contributes to GDP growth of a country through increased sectoral output. It facilitates knowledge-based industrial growth and creates favourable climate for technology transfer. A strong IP system could also influence the inflows of FDI. Most significantly, it enables a country to achieve self-sufficiency especially in strategic sectors and thereby, it provides a competitive edge. Moreover, a strong and balanced IP system is one of the key means to support innovation and development objectives of a country. Hence, the

present study is undertaken with the following aims and objectives.

Objectives of the study

- To present an overview of Genesis of IP and working of IP system.
- To study IP generation activity in India- exploring the trend in IP filing and composition thereof.
- To explore the trend in disposal of IP applications over the study period.
- To analyse in a nutshell the working of IP system in India.

Research Methodology

The present work is an analytical construct and data for this have been collected from diversified sources which include existing *secondary* sources such as, books, reports and publications of relevant national agencies and international organisations and other published web based resources accessed through internet.

In order to show the trend in IP filing, composition and disposal thereof, the data for 7 years covering the period 2010-11 to 2016-17 ("*study period*") have been taken into consideration since lot of policy changes took place during the same period. However, data for 2017-18 have been excluded as data for the whole year are not available in the public domain. Further, data in respect of copyright excepting for the year 2015-16 and 2016-17 are available on calendar year basis, and therefore, excluded.

The data gathered from various sources have been reviewed and summarised before processing. Tables have been used in relevant places to depict the statistical data relevant for the study. Statistical tools and calculations like percentage,

² Pandey, N. and Dharni, K., *Intellectual Property Rights* 129 (PHI Learning, 1st ed. 2014).

arithmetic mean, growth rate etc., have been used for analysis of data.

Genesis Of IP And Working Of IP System (An Overview)

As noted earlier, WIPO defines IP as creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. However, IP is divided into two categories namely, Industrial Property and Copyright. The following chart shows in detail what actually constitutes IP.

IP	<p>Industrial Property</p> <p>Covers</p> <p>Patents, Trade Marks, Industrial Designs and Geographical indications</p>
	<p>Copyright</p> <p>Covers</p> <p>Literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures), architectural design etc</p>

In addition, for the purpose of Agreement on TRIPS, the term “intellectual property” refers to all categories of intellectual property that fall within the ambit of following [AGREEMENT ON TRIPS, art. 1]:

IP	Copyright and Related Rights
	Trade Marks
	Geographical Indications
	Industrial Designs
	Patents

Layout-Designs (Topographies) of Integrated Circuits
Protection of Undisclosed Information

IP rights like any other property right allow creators or owners of Patents, Trade Marks or Copyrighted works to benefit from their own work. These rights are outlined in Article 27 of the Universal Declaration of Human Rights which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.

Recognition to importance of IP was first given by the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). These two Conventions are administered by the WIPO at this moment in time. In India, the Department of Industrial Policy and Promotion (DIPP) is responsible for administering legislations concerning Patent, Design, Trade Mark, Geographical Indication (GI), Copyright and Semi-Conductor Integrated Circuits Layout Design. However, these are administered through Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM), a subordinate office under DIPP, Ministry of Commerce and Industry, with headquarters at Mumbai. It is noted that the administration of Copyright is shifted to Office of the CGPDTM *w.e.f.*, 17.03.2016.

Thus, Office of the CGPDTM is primarily concerned with the administration of Patent, Design, Trade Mark, Geographical Indication, Copyright and Semi-Conductor Integrated

Circuits Layout Design Registry and functioning of IP offices in the country. The Office of the CGPDTM has been working in streamlining the processes of IP administration in the country in order to provide better services to stakeholders.

The Government has taken multiple steps over the years to strengthen IP system in the country in line with International best practices. National IPR policy was launched recently in the year 2016 which aims at fulfilling several objectives which include, *inter alia*, administration and management of IPRs. Amendments aiming at simplifying the procedures were made in the existing IP laws.

Exploring trend in IP generation and composition

Table 6.1 shows the IP applications filed in IP offices in India between 2010- 11 and 2016-17. Data clearly indicates a consistent rise in IP filing in India during the study period except in the year 2016-17 in which there was a sharp decline in total number of applications filed by 1.5243 % as compared to 2015-16.

Table 6.1: Trend in IP Filing in India (Between 2010-11 and 2016-17)

Cate gorie s	Number of Applications Filed						
	201 0- 11	201 1- 12	201 2- 13	201 3- 14	201 4- 15	201 5- 16	201 6- 17

Pate nt	39, 400	43, 197	43, 674	42, 951	42, 763	46, 904	45, 444
Desi gn	7,5 89	8,3 73	8,3 37	8,5 33	9,3 27	11, 108	10, 213
Trad e Mark	1,7 9,3 17	1,8 3,5 88	1,9 4,2 16	2,0 0,0 05	2,1 0,5 01	2,8 3,0 60	2,7 8,1 70
GI	27	148	24	75	47	17	32
Copy right	-	-	-	-	-	14, 812	16, 617
Tota l	2,2 6,3 33	2,3 5,3 06	2,4 6,2 51	2,5 1,5 64	2,6 2,6 38	3,5 5,9 01	3,5 0,4 76

Source: Annual Report³

Thus, Table 6.1 shows Trade Mark accounts for a major portion of IP filing which consisted of 79.3693 % of total IP filing in 2016-17. Table 6.2, however, shows the composition of IP filing and percentage share of each in total.

Table 6.2: Composition of IP Filing and Percentage Share of Each in Total

Categories	Applications Filed During 2016-17	Percentage of Total
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³ Annual Report, Controller General of Patents, Designs, Trade Marks and Geographical Indications [GOI] (23 Jan. 2019, 3:00 PM), <http://www.ipindia.nic.in/annual-reports-ipo.htm>.

Patent	45,444	12.9663 %
Design	10,213	2.9140 %
Trade Mark	2,78,170	79.3693 %
GI	32	0.0091 %
Copyright	16,617	4.7413 %
Total	3,50,476	100

Consequently, major categories of IPs in respect of which applications are being filed for registration comprises of Trade Mark followed by Patent, Copyright and Design with a very less percentage that is, 12.9663 %, 4.7413 % and 2.9140 % respectively of total applications filed in 2016-17, and a few applications are filed with respect to GI with a very insignificant percentage of 0.0091%. However, Tables 6.3, 6.4, 6.5, and 6.6 respectively show the trend in each of the major categories of IP.

Table 6.3: Trend in Trade Mark Filing

Trade Mark	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	1,79,317	1,83,588	1,94,216	2,00,005	2,10,501	2,83,060	2,78,170
Growth Rate (%)	-	2.3818	5.7890	2.9807	5.2478	34.4696	(-1.7275)
AA GR (Average Annual Growth)	8.1902 %						

with Rate)	
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Table 6.3 exhibitstrend in Trade Mark filingat all five locations of Trade Mark Registry. Trade Mark generation activity in India is rising consistently with average annual growth rate of 8.1902%. However, the year 2016-17 recorded a sharp decline by 1.7275 % as comparedto 2015-16.

Table 6.4: Trend in Patent Filing

Patent	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	39,400	43,197	43,674	42,951	42,763	46,904	45,444
Growth Rate (%)	-	9.6370	1.1042	(-1.6554)	(-0.4377)	9.6836	(-3.1127)
AA GR	3.0552 %						

Table 6.4 shows trend in Patent generation activity in India is not consistent. Although, the year 2011-12, 2012-13, and 2015-16 recorded a positive growth rate in Patent filing, yet the same declined during 2013-14 and 2014-15. In 2016-17, number of filing again has gone down by 3.1127% as compared to 2015-16. However, Patent generation activity in India recorded an average annual growth rate of 3.0552% during the study period.

Table 6.5: Trend in Design Filing

Des ign	20 10- 11	201 1-12	201 2-13	201 3- 14	201 4- 15	201 5-16	201 6-17
File d	7,5 89	8,37 3	8,33 7	8,5 33	9,3 27	11,1 08	10,2 13
Gro wth Rat e (%)	-	10.3 307	(-)0.4 299	2.3 509	9.3 050	19.0 951	(-)8.0 572
AA GR	5.4324 %						

Table 6.5, however, indicates that Design generation activity in India recoded an average annual growth rate of 5.4324% during the study period. The year 2015-16 recorded an all time highest growth rate of 19.0951%.

Table 6.6: Trend in Copyright Filing

Copyright	2015-16	2016-17
Filed	14,812	16,617
Growth Rate (%)	-	12.1860

Table 6.6 indicates a total of 16,617 Copyright applications were filed during the financial year 2016-17. Copyright generation activity is gone up by 12.1860% during 2016-17 as compared to 2015-16.

Exploring trend in disposal of ip applications

Table 7.1 drawn below exhibits trend in Trade Mark applications filed vis-a-vis examined, registered and disposed. The figures shown in Table 7.1 under disposal category include Trade Marks registered and refused by the office, and

also applications withdrawn and abandoned by the applicants.

Table 7.1: Trend in Trade Mark Filing vis-a-vis Examination, Registration and Disposal

Trade Mark	201 0- 11	201 1- 12	201 2- 13	201 3- 14	201 4- 15	201 5- 16	201 6- 17
Filed	1,7 9,3 17	1,8 3,5 88	1,9 4,2 16	2,0 0,0 05	2,1 0,5 01	2,8 3,0 60	2,7 8,1 70
Exa mine d	2,0 5,0 65	1,1 6,2 63	2,0 2,3 85	2,0 3,0 86	1,6 8,0 26	2,6 7,8 61	5,3 2,2 30
Regi stere d	1,1 5,4 72	51, 735	44, 361	67, 876	41, 583	65, 045	2,5 0,0 70
Disp osal	1,3 2,5 07	57, 867	69, 736	1,0 4,7 56	83, 652	1,1 6,1 67	2,9 0,4 44

Source: Annual Report⁴

Examination of Trade Mark applications recoded an increase by 98.6963% in 2016-17 than 2015-16. The number of Trade Marks registered also increased significantly by 284.4569 % and number of applications disposed increased by 150.0228% in 2016-17 than 2015-16.

⁴ Annual Report, Controller General of Patents, Designs, TradeMarks and Geographical Indications [GOI](25 Jan. 2019, 5:00 PM), <http://www.ipindia.nic.in/annual-reports-ipo.htm>.

Table 7.2: Trend in Patent Filing vis-a-vis Examination, Grant and Disposal

Patent	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	39,400	43,197	43,674	42,951	42,763	46,904	45,444
Examined	11,208	11,031	12,268	18,615	22,631	16,851	28,967
Granted	7,509	4,381	4,126	4,227	5,978	6,326	9,847
Disposal	12,851	8,488	9,027	11,411	14,316	21,987	30,271

Table 7.2 indicates examination of Patent applications gone up by 74.6999% in 2016-17 than 2015-16. The number of Patents granted during 2016-17 also increased by 55.6591% as compared to 2015-16. Total number of applications disposed which includes Patent granted and refused by the Patent office, and also applications withdrawn and abandoned by the applicants increased by 37.6768% in 2016-17 as compared to 2015-16.

Table 7.3: Trend in Design Filing vis-a-vis Examination, Registration and Disposal

Design	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	7,589	8,373	8,337	8,533	9,327	11,108	10,213
Examined	6,277	6,511	6,776	7,281	7,459	9,426	11,940
Registered	9,206	6,590	7,252	7,178	7,147	7,904	8,276
Disposal	9,221	6,705	7,300	7,226	7,218	8,023	8,332

Table 7.3 depicts during 2016-17, number of Design applications examined increased by 26.6709%, Design registrations, however, increased by 4.7064% and number of applications disposed increased by 3.8514%, as compared to 2015-16.

Table 7.4: Trend in GI Filing vis-a-vis Examination and Registration

GI	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	27	148	24	75	47	17	32
Examined	32	37	30	42	60	200	28
Registered	29	23	21	22	20	26	34

Between 15th September 2003 and 31st March 2017, 543 (nos.) GI applications have been filed, of which 32 (nos.) applications filed in 2016-17. However, during 2016-17, 34 (nos.) of GIs were registered as compared to 26 (nos.) in 2015-16,

which recorded an all time highest increase by 30.7692%.

Table 7.5: Trend in Copyright Filing vis-a-vis Examination, Registration and Disposal

Copyright	2015-16	2016-17
Filed	14,812	16,617
Examined	9,325	16,584
Registered	4,505	3,596
Disposal	16,203	16,236

Table 7.5 indicates although the examination of Copyright applications increased by 77.8445% during 2016-17 as compared to 2015-16, the number of Copyrights registered during the year, however, declined by 20.1775% than 2015-16. A total of 16,236 (nos.) Copyright applications were disposed during 2016-17 which recorded an increase by less than 1% as compared to 2015-16. Summary of IPs registered/granted vis-a-vis disposed study period shown in Table 7.6 below. The figures in bracket represent number of applications disposed.

Table 7.6: Trend in IP Registered/Granted and (Disposed) at a Glance

Categories	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Trade Mark	1,15,472	51,735	44,361	67,876	41,583	65,045	2,50,070
	(1,32,507)	(57,867)	(69,736)	(1,04,756)	(83,652)	(1,16,167)	(2,90,444)
Patent	7,509	4,381	4,126	4,227	5,978	6,326	9,847

	(12,851)	(8,488)	(9,027)	(11,411)	(14,316)	(21,987)	(30,271)
Design	9,206	6,590	7,252	7,178	7,147	7,904	8,276
n	(9,221)	(6,705)	(7,300)	(7,226)	(7,218)	(8,023)	(8,332)
GI	29	23	21	22	20	26	34
Copyrights	-	-	-	-	-	450	3,596
						(16,203)	(16,236)

Concluding remarks

It is therefore, noted that the year 2015-16 recorded an all time highest growth rate in IP generation activity in India in terms of number of applications filed for registration in all categories. During this year only “*Start-up India*”, a flagship initiative, was launched by the Government of India to build a strong eco-system for nurturing innovation and start-ups in the country. This rising trend continued in respect of GI and Copyright even in 2016-17. However, number of applications filed in respect of Patent, Design and Trade Mark fell down in 2016-17 as compared to 2015-16.

Yet on the other, it is to be noted that the year 2016-17 recorded an all time highest increase in disposal of IP applications in respect of all major categories of IPs. This may be attributed to procedural reforms brought about during the year in the working of IP system especially in connection with filing, processing and disposal of IP applications. The year 2016-17 has recorded several achievements at policy level with the aim of establishing a favourable environment for creation as well as protection of IPRs and

streamlining the working of IP system in the country.

Amendments aiming at simplifying the procedures, inclusion of start-up as a new category of applicant with 80% concession in fees, expedited examination of patent applications filed by start-ups etc were made in the Patent Rules, 2003 by the Patent (Amendment) Rules, 2016 which notified in May 2016. Patent Rules, 2003 were further amended by DIPP w.e.f., 1st December 2017 called as the Patent (Amendment) Rules, 2017. The definition of “start-up” under rule 2(fb) has been substituted with a new definition. A more liberal definition of start-up has been provided that allows domestic as well as foreign entities to claim benefits such as fast-track mechanism and lower fee for filing Patents.

Trade Mark Rules, 2017 (notified in March 2017) which repealed earlier Trade Mark Rules, 2002, again have brought about significant changes namely; number of forms brought down from 74 to 8, promotion of e-filing, expedited processing of applications, allowing video conferencing for hearings, reduced adjournments, e-service of documents, etc.

Moreover, the National IPR Policy 2016 laid down the future roadmap for IPRs in India. The policy of 2016 in totality aimed at to promote stable IP regime in the country and to encourage innovation to achieve the country’s developmental goals.

Expedite disposal of IP applications and satisfactory delivery of services to stakeholders are pillars of IP framework. During 2016-17, the Office has made noteworthy achievements in

terms of delivery of IP services and IT-enabled functioning. As a result, the number of applications examined and disposed has gone up during the year. Pendency in examination of Trade Mark applications has been brought down from 14 months to less than 1 month. In Designs, pendency in examination of new applications again has gone down from 8 to 1 month. During 2016-17, e-filing has increased to 80% in Trade Marks and 90% in Patents. Further, as reported by the Office of CGPDTM, out of total 45,444 Patent applications filed during 2016-17, the number of applications filed by Indian applicants was 13,219 which represent 29.2% of the total applications filed.

At last, it can be concluded that policy initiatives taken in the recent past are expected to yield desired result in the days to come.

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