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National IPR Policy 2016

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ABSTRACT

India has been the cluster of both creativity and innovation since eons and it has never declined as to how creativity and innovation are the constant tool for economic growth in the any nation. India has a TRIPS compliant, robust, equitable and dynamic IPR regime. A sweeping IPR Policy will advance a comprehensive and helpful environment to catalyze the maximum capacity of licensed innovation for India's monetary development and socio-cultural turn of events, while securing open intrigue. The reason for the National IPR Policy lies in the need to make mindfulness about the significance of IPRs as attractive money related resource and financial apparatus. An India where inventiveness and development are invigorated by Intellectual Property to assist several aspects which includes, an India where protected innovation advances progression in science and innovation, expressions and culture, conventional information and biodiversity assets also where information is the fundamental driver of improvement, and information possessed is changed into information shared.

The reframed IPR policy focused on stimulating a dynamic, vibrant and balanced intellectual property rights system in India to foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

The researcher endeavors to reflect the ideology and objective behind resurrecting the former intellectual property rights policy of India which promulgated in the year 2016 and how the policy shall weave in the strengths of the Government, research and development organizations, educational institution, corporate entities including MSMEs, start-ups and other stakeholders in an creation of an innovation- conducive environment.

Keywords: *Intellectual Property Rights Policy, Information Technology, Innovation, Intellectual Property Rights, Startups.*

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I. INTRODUCTION

Intellectual Property rights (IPR) are a boss hotspot for any firm or association to fit the estimation of their creations. IPR helps in setting up lawful and enforceable select rights on the abuse of determined developments and imaginative works for restricted occasions and gives a motivator component to advancement. This empowers the pioneers and business people to suit the advantages of their developments. IPR helps in diffusing innovation and inventive substance the IPRs itself (OECD, 2004a; Ordovery, 1991; Bessen, 2005).

The improvised national IPR policy which is in compliance with WTO's (World Trade Organization) agreement on TRIPs (Trade Related aspects of IPs), aims to sustain entrepreneurship.

The peculiarities regarding novel IPR policy are delineated as follows²:-

- The Policy intends to push IPRs as an attractive budgetary resource, advance development and business, while ensuring open intrigue.
- The plan will be reviewed every five years in consultation with stakeholders.
- Unique push on awareness generation and successful authorization of IPRs, other than support of IP commercialization through different incentives.
- India will engage constructively in the negotiation of international treaties and agreements in consultation with stakeholders. The government will examine accession to some multilateral treaties which are in India's interest, and become a signatory to those treaties which India has de facto implemented to enable it to participate in their decision making process.
- It recommends making the department of industrial policy and promotion (DIPP) the nodal agency for all IPR issues. Copyrights related issues will also come under DIPP's ambit from that of the Human Resource Development (HRD) Ministry.
- Trademark offices have been modernized and the aim is to reduce the time taken for examination and registration to just 1 month by 2017. The government has already hired around 100 new examiners for trademarks. Examination time for trademarks has been reduced from 13 months to 8 months, with the new target being to bring the time down to one month by March 2017.
- Films, music, industrial drawings will be covered by copyright.

² <https://www.thehindu.com/business/all-you-need-to-know-about-the-intellectual-property-rights-policy/article8600530.ece> (17th of May 2020, 1:14 P.M.)

- The Policy seeks to facilitate domestic IPR filings, for the entire value chain from IPR generation to commercialization. It aims to promote research and development through tax benefits.
- Proposal to create an effective loan guarantee scheme to encourage start-ups.
- India will pursue to utilize the legislative space and flexibilities available in international treaties and the TRIPS Agreement.
- The IPR policy favored the government considering financial support for a limited period on sale and export of products based on IPR's generated from public-funded research.

II. OBJECTIVE

IPR plays a key role in the Innovation Policy, IPR are crucial incentives for innovation because they establish potential for commercial exploitation, and both by the inventor and through licensing IPR establish the exclusive rights to the inventor by granting innovation incentive and in the transfer of technology.

The objective behind rephrasing the national IPR policy is elucidated in the following manner³:-

(A) IPR Awareness and Promotion in the Society

The 21st century has a place with the information period and is driven by the information economy-an economy that makes, scatters and uses information to upgrade its development and advancement. Generally, adaptation of information has never been the standard in India. While commendable and unselfish, this doesn't fit with the worldwide system of ardently secured IPRs. Henceforth, there is a need to engender the benefit of changing information into IP resources. This requires a significant change in perspective of how information is seen and esteemed - not for what it is, however for what it can turn into.

Numerous IP holders are unconscious of the advantages of IP rights or of their own capacities to make IP resources or the estimation of their thoughts. They are frequently disheartened by the complexities of the way toward making defensible IP rights. Then again, they might be unconscious of the estimation of others' IP rights and the need to regard the equivalent. The strategy proposes to handle the two points of view through effort and advancement programs.

³ http://iitk.ac.in/siic/d/sites/default/files/National_IPR_Policy_12.05.2016.pdf
5:10P.M.)

(17th May 2020,

To provide more emphasis on the objective certain steps have been adopted which are delineated:-

- a) Usurp the national slogan “ *Creative India; Innovative India* ” and also include by nixing the campaign with other nation initiatives such as “ Make in India”, “ Digital India”, “Skill India” and other new initiatives in the near future.
- b) For promoting IP’s strengths among the stakeholders is by customizing programs for specific needs of industries, MSMEs, start-ups, R&D institutions, science and technology institutes, universities and colleges, inventors and creators, entrepreneurs. By reaching out to less diligent and silent IP generators and holders, especially in the remote areas. By promoting through radios, advertisement in multiple linguistics, by making famous personalities as an ambassador to promote awareness and so on.
- c) Creating awareness programs especially for the industry, R&D entities both private and public sector by providing researchers and scientists an understanding about the need of protecting their inventions. By encouraging MNCs to come up with IP programs for their employees. By creating material for MSMs and providing special support to protect their IPs.
- d) Creating public events and campaigns with the help of MNCs, industry bodies and announcements by the state government to spread the importance of IPs. By instituting prizes and awards to encourage IP creation activity in certain sectors.
- e) Create educational material for the institutions and also integrate in the curriculum of the schools regarding the importance of IPs and with the help of the media sector it is easy to spread awareness regarding IPs to several sections of the society.

(B) To invigorate the Generation of IPRs

India has a huge ability pool of logical and mechanical ability spread over R&D organizations, endeavors, colleges and specialized establishments. There is a need to tap this prolific information asset and invigorate the formation of IP resources. A complete gauge study or IP review across areas will empower appraisal and assessment of the potential in explicit divisions, and in this manner plan and actualize focused on programs. The focus will be set on encouraging analysts and pioneers in regards to territories of national need. The corporate part likewise should be urged to create and use IPRs. Steps likewise should be taken to devise systems with the goal that advantages of the

IPR system arrive at all designers, particularly MSMEs, new companies and grassroots

trailblazers.⁴

(C) Legal and Legislative Framework

It envisioned the thought of having effective IPR laws, which balance the interests of rights owners with larger public interests. The legal framework may be utilized to enhance transparency and efficiency in the administration and enforcement of IPR laws.

The steps to be taken towards attaining this objective are outlined below⁵:-

- a) Review the existing IPR laws and update from time to time and reform them in case of any anomalies in the statute.
- b) Notified with any international treaty in consultation with stakeholders and also examined the accession of multilateral treaty which includes India's interest so that India can become the signatory member.
- c) Engage in the activity and deliberations at several international fora to develop legally binding international instruments to protect *Traditional Knowledge (TK)*, *Genetic Resources (GR)* and *Traditionally Cultural Expression (TCE)*.
- d) Pursue transfer of clean technology and know-how from developed countries to India, as per the provisions of Article 4 of the UNFCCC, in order to meet the objectives of reducing anthropogenic emissions of GHGs and support activities of climate change adaptation.
- e) Review and update IP rules, guidelines, procedures and practices for clarity, simplifications, streamlining transparency and time bound process in administration and enforcement of IP rights.
- f) Thorough study to identify the appropriateness and extent of applying existing laws in TK, GR and TCE and to propose change if required.
- g) Amendment in the act Indian Cinematograph Act, 1952 to integrate the penal provisions for the illegal duplication of films.
- h) Identify important areas of study and research for future policy development for instance, Competition law, jurisdiction ambiguities in the Patent and biodiversity and protection of trade secrets and so on.

Examine the issues of technology transfer, know-how and licensing relating to SEPs on fair and reasonable terms and provide a suitable legal framework to address these issues.

⁴ Id, 2

⁵ https://dipp.gov.in/sites/default/files/National_IPR_Policy_English.pdf (17th May 2020, 8:13 PM)

(D) Administration and Management

To modernize what's more, reinforce service oriented IPR organization. The Offices that control the distinctive IPOs are the foundation of a productive and adjusted IPR framework. Initial public offerings presently have twin difficulties of making their tasks increasingly productive, smoothed out and savvy, with extending remaining tasks at hand and mechanical multifaceted nature on one hand, and improving their ease of use by creating and offering some incentive added administrations to the client network on the other. The organization of the Copyright Act, 1957 and the Semiconductor Coordinated Circuits Layout- Design Act, 2000 is being brought under the aegis of DIPPP, other than establishing a Cell for IPR Promotion and Management (CIPAM). This will encourage increasingly compelling and synergetic working between different IP workplaces, as moreover advancement, creation and commercialization of IP resources.

The steps delineated towards attaining the objects are⁶:-

- a. The administration of the Copyright Act 1957 along with the office of the Registrar of Copyrights, under the Department of Higher Education, is being transferred to the Department of Industrial Policy and Promotion.
- b. The administration of the Semiconductor Integrated Circuits Layout-Design Act 2000 along with the office of the Semiconductor Integrated Circuits Layout-Design Registry (SICLDR), under the Department of Electronics and Information Technology, is being transferred to the Department of Industrial Policy and Promotion.
- c. Restructure, upgrade and modernize IPOs taking into account the swift growth and diversity of IP users and services, higher responsibilities and increased workload.
- d. Increase manpower after analyzing projected workload, speedy liquidation of backlog, requirements of global protection systems and productivity parameters.
- e. Modernize further the physical and ICT infrastructure taking into account the expanding needs of the IPOs and to accelerate e-filings, e-processing and other e-services.
- f. Promote interaction between various IP offices and public R&D institutions for sensitization of personnel and scientists.
- g. By collaborating with various R&D Institutions, Universities, Funding Agencies,

⁶ https://dipp.gov.in/sites/default/files/National_IPR_Policy_English.pdf (17th May 2020, 8:13 PM)

Chambers of Industry and Commerce in providing advisory services to improve IP creation, management and utilization.

- h. Make endeavors to include TKDL as a part of PCT minimum documentation.
- i. To establish close cooperation between IPOs and create a common web portal for ease of access to statutes, regulations, guidelines and for better coordination.
- j. Institute approaches and mechanisms so that benefits of the IP system reach all inventors including MSMEs, informal innovators and holders of traditional knowledge.
- k. To generate a Cell for IPR Promotion and Management (CIPAM) under the aegis of DIPP to facilitate promotion, creation and commercialization of IP assets.
- l. To explore the possibility of expedited examination of patent applications to promote manufacturing in India and enhance international and bilateral cooperation and coordinate with Indian Missions abroad to follow IP developments and advice on IP related matters.
- m. The Protection of Plant Varieties and Farmers' Rights Authority will, Support increased registration of new, extant and essentially derived varieties of plants and streamline procedures, Facilitate development of seeds and their commercialization by farmers and establish links between the Authority and Agricultural Universities, Research Institutions, Technology Development & Management Centers and Krishi Vigyan Kendras.
- n. Registrar of Semiconductor Integrated Circuits Layout Design will study the reasons for lack of interest in filings under The Semiconductor Integrated Circuits Layout Design Act, 2000 and suggest appropriate remedial measures and Liaise with the concerned Group in the Patent office and Design wing under the CGPDTM for further working.
- o. In National Biodiversity Authority ,the Government will formalize a consultation and coordination mechanism between the NBA, IPOs and other concerned Ministries/ departments like AYUSH, with a view to harmonious implementation of guidelines for grant of IP rights and access to biological resources and associated traditional knowledge and benefit sharing and the NBA will streamline approvals for expeditious grant of IP rights, monetary and non-monetary benefit-sharing and introduce efficient and user friendly mechanisms for a meaningful interface

between the NBA and applicants.

- p. Re-designate the institution of the Controller General of Patents, Designs and Trademarks as Controller General of Intellectual Property Rights to reflect its mandate in view of the proposed change in its scope of responsibilities.

(E) Commercialization of IPR

The worth and monetary prize for the proprietors of IP rights comes just from their commercialization. Enterprise ought to be supported with the goal that the budgetary estimation of IPRs possibly caught. It is important to associate financial specialists and IP makers. Another requirement confronted is valuation of IP and evaluation of the capability of the IPRs to showcase it. Endeavors ought to be made for production of an open stage to interface makers and trend-setters to potential clients, purchasers and financing foundations.

The steps take to attain the objective elucidating the following manner⁷:-

- a. CIPAM shall undertake the following tasks;
 - i. Provide a platform for IPR owners and users of IPRs by acting as a facilitator for creators and innovators to be connected with potential users, buyers and funding agencies, Undertake a study to examine the feasibility of an IPR Exchange and establish links among different organizations for exchange of information and ideas as also to develop promotional/educational products and services.
 - ii. Facilitate access to databases on Indian IP and global databases of creators/innovators, market analysts, funding agencies, IP intermediaries and study and facilitate implementation of best practices for promotion also commercialization of IP within the country and outside and promote public sector initiatives for IPR commercialization.
- b. Promote licensing and technology transfer for IPRs; devising suitable contractual and licensing guidelines to enable commercialization of IPRs; patent pooling and cross licensing to create IPR based products and services and provide support for MSMEs, Individual Inventors and Innovators from the informal sectors with enablers like facilitation centers for single window services to help them commercialize their IPRs.
- c. Incentivize Indian inventors, MSMEs, start-ups to acquire and commercialize IPRs in other countries also, examine availability of Standard Essential Patents (SEPs) on

⁷ Id. 4

fair, reasonable and non- discriminatory (FRAND) terms and identify opportunities for marketing Indian IPR-based products, especially GIs, and services to a global audience also by promoting collaborative IP generation and commercialization efforts between R&D institutions, Industry, Academia and Funding Agencies.

- d. Support the financial aspects of IPR commercialization by: -
- i. Enabling 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.
 - ii. Facilitating investments in IP driven industries and services through the proposed IP Exchange for bringing investors/ funding agencies and IP owners/users together.
 - iii. Providing financial support to the less empowered groups of IP owners or creators like farmers, weavers, artisans, craftsmen, artists etc. through financial institutions like rural banks or cooperative banks offering IP friendly loans.
 - iv. Providing financial support for development and commercialization of IP assets through links with financial institutions including banks, venture capital funds, angel funds, crowd funding mechanisms.
 - v. Utilizing Technology Acquisition and Development Fund under the Manufacturing Policy for licensing or procuring patented technologies and taking stock of all IP funding by the Government and suggesting measures to consolidate the same to the extent possible; scaling up the funding as needed and avoiding duplication; enhancing the visibility of IP and innovation related funds so that utilization is increased; performance based evaluation for continued funding.
- e. Promote going-to-market activities by:
- i. Creating mechanisms to help MSMEs and research institutions to validate pilots and scale up through market testing and by providing seed funding for marketing activities such as participating in trade fairs, industry standards bodies and other forums;
 - ii. Provide guidance to IPR owners about commercial opportunities of e- commerce through internet and mobile platforms and by encouraging enterprises to create brand equity from their IP rights, such as trademarks and GIs.

(F) Enforcement and Adjudication

To fortify the requirement and adjudicatory instruments for battling IPR infringements, there is a need to construct regard for IPR among the overall population and to sharpen the designers and makers of IP on measures for security and implementation of their privileges. Simultaneously, there is likewise a need to manufacture the limit of the implementation organizations at different levels, including fortifying of IPR cells in State police powers. Measures to check duplicating and theft likewise should be distinguished and attempted. Standard IPR workshops/colloquia for judges would encourage successful mediation of IPR questions. It is alluring to arbitrate on IPR questions through specific commercial courts. Elective Dispute Resolution system may likewise be investigated.

The means to be taken towards accomplishing this goal are sketched out beneath:-

- a. Create awareness of the value of IP and respect for IP culture by educating the general public, especially the youth and students, on ills of counterfeit and pirated products and engage with all levels of industry, including e-commerce, in order to create respect for IP rights and devise collaborative strategies and tools also by sensitizing inventors, creators of IP on measures for protection and enforcement of their rights.
- b. Take strong measures against attempts to treat generic drugs as spurious or counterfeit also undertake stringent measures to curb manufacture and sale of misbranded, adulterated and spurious drugs and public awareness as also legal and enforcement mechanisms, including technology based measures, which will be reinforced to combat offline and online piracy.
- c. Small technology firms will be supported in safeguarding their IP rights; for instance, support for IPR in ICT focus areas will be provided through easy-to-use portals; and by assisting to smaller firms for protection of their IPRs internationally will be enhanced, such as **DeitY's Support for International Patent Protection in Electronics and IT (SIP-EIT)** also pursue incidents of misappropriation of TK, GR and TCE in other countries vigorously.
- d. Strengthen the enforcement mechanisms for better protection of IP rights by enhanced coordination between the various agencies and providing direction and guidance on strengthening enforcement measures, coordinating with and sharing of intelligence and best practices at the national and international level, studying the extent of IP violations in various sectors, examining the implications of jurisdictional difficulties among enforcement authorities and introducing appropriate technology

based solutions for curbing digital piracy.

- e. Licensing practices or conditions that may have an adverse effect on competition will be addressed through appropriate measures, including regulation of anti-competitive conduct in the market by the **Competition Commission of India**.
- f. Facilitate effective adjudication of IP disputes through different measures by including adjudication of IP disputes through Commercial Courts, set up at

appropriate level also create IP modules including case laws for the benefit of judges who deal in IP, conducting regular IP workshops / colloquia at the judicial academies and to promote ADRs in the resolution of IP cases by strengthening mediation and conciliation centers, and developing ADR capabilities and skills in the field of IP.

(G) Human Capital Development

To fortify and extend human resource, establishments and capacities with respect to instructing, preparing, research and expertise working in IPRs and so as to saddle the maximum capacity of IPRs for monetary development, it is fundamental to build up an expanding pool of IPR experts and specialists in circles, for example, arrangement and law, system improvement, organization and implementation. Such a store of specialists will encourage the expanding age of IP resources in the nation and their usage for advancement purposes.

The steps provided to accomplish the above mentioned objective are elucidated in following manner⁹-

- a. To strengthen and empower RGNIPM, Nagpur to conduct training for IPR administrators and managers in industry and business, academicians, R&D institutions, IP professionals, inventors and civil society, train the trainers and develop training modules, develop links with other similar entities at the international level and provide legal training for examiners.
- b. Strengthening IP Chairs in educational institutes of higher learning to provide quality teaching and research, develop teaching capacity and curricula and evaluate their work on performance based criteria and introduce multi- disciplinary IP courses/ modules in all major training institutes such as Judicial Academies, National Academy of Administration, Police and Customs Academies, Institute for Foreign Service Training, Forest Training Institutes also making IPR an integral part of the curriculum in all legal, technical, medical and management educational Institutions,

NIFTs, NIDs, AYUSH Educational Institutes, Agricultural Universities, centres of skill development and the like.

- c. To strengthen existing and create new IPR cells and technology development and management units in NIDs, NIFTs, Agricultural Universities, Technology and Management Institutes and centres of skill development, encouraging formulation of institutional IP Policy/ Strategy in Government Departments, Higher Education, Research and Technical Institutions and progressively introduce IP teaching in schools, colleges and other educational institutions and centres of skill development.
- d. To facilitate Industry Associations, Inventor and Creators Associations and IP support institutions to raise awareness of IP issues and for Teaching, Training and Skill Building and also to develop distance learning and on-line courses on IP for all categories of users, strengthen IP teaching in open universities and centres of skill development.
- e. To strengthen IP Teaching, Research and Training in collaboration with WIPO, WTO, other International Organizations and reputed Foreign Universities and procure encouragement and support capacity to build among Women Creators, Innovators, Entrepreneurs, Practitioners, Teachers and Trainers .

III. EXECUTION OF THE POLICY

The current IP Policy means to coordinate IP as an approach and key instrument in national advancement plans. It predicts a planned and incorporated advancement of IP framework in India and the requirement for an all encompassing way to deal with IP legitimate, authoritative, and institutional and authorization related issues. While DIPP will be the nodal point to organize, control and direct usage and future advancement of IPRs in India, the duty regarding real execution of the game plans will stay with the Ministries/Departments worried in their relegated circle of work. Open and private party organizations and different partners, including State governments, will likewise be associated with the execution procedure.

IV. CONCLUSION

According to the above mentioned study the researcher concludes that the current IP Policy expects to coordinate IP as a strategy and key instrument in national improvement plans. It predicts an organized and incorporated improvement of IP framework in India and the requirement for an all-encompassing way to deal with IP legitimate, managerial, and

institutional and implementation related issues. Along these lines, the Department of Industrial Policy and Promotion will be the nodal point to facilitate, manage and administer usage and future improvement of IPRs in India.
