



Lakshmikumaran
& Sridharan
attorneys

Exceeding Expectations
Since 1985

Developments in the Intellectual Property Ecosystem for Greater Technology Collaboration





The Tree of Knowledge

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INDIA AS AN INVESTMENT DESTINATION

With its economy booming over the past two decades, India has become one of the favoured destinations for multi-national companies seeking to create value by developing new markets. India has seen an influx of companies in the consumer goods, consumer durables, luxury goods, and ancillary industry segments vying to gain a share of the increasing disposable income of the average Indian. As per the World Consumer Income and Expenditure Patterns 2013 report by Euromonitor International, the disposable income per household in India grew by over 275% from 1995 to 2011, making it amongst the fastest growing economies in the world.

In addition to its market attractiveness, in the past decade, India has also become an attractive destination for investment in hi-tech industries and research and development. The interest in establishing innovation centers in India has been largely fuelled by the availability of a skilled work force, access to world class information and communication technology (ICT) infrastructure, and a significant domestic market that is still largely under developed. The 2013 A.T. Kearney Foreign Direct Investment Confidence Index report places India in the top five countries for the third consecutive year.

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The foreign direct investment (FDI) interest in India is not restricted to a particular sector, but has been spread across domains like chemicals, food and beverages, pharmaceuticals, automobiles, software, electronics, renewable energy, and physical infrastructure. Moreover, as open and collaborative innovation becomes the norm rather than the exception, companies are able to better leverage the expertise of people from diverse geographic locations including India.

Keeping pace with the demand for investment in technology, India has significantly overhauled its intellectual property (IP) regime in the past decade to further boost investor confidence. The development of its IP ecosystem is also seeing a push from domestic Indian companies as they are becoming larger players in the global market and are relying more on IP for enhanced competitiveness. As a result, the IP ecosystem in India today is much more attuned to global IP practices and is set to only become better in the future.

IP FILING TRENDS

The Indian Patent System has matured by leaps and bounds since 2005 when the Patents Act of India was amended to become fully TRIPS compliant because of which both process and product patents are now being granted in India. The number of patent applications filed at the Indian Patent Office (IPO) has increased from about 17466 in 2004-05 to about 34287 in 2009-10, doubling over five years. In 2012-13 the patent filing reached 43663 showing a further 27% increase in the three year period from 2009-2012. On similar lines, the number of design applications filed in India more than doubled from 4017 in 2004-05 to 8337 in 2012-13.¹

Yet, in comparison to the US, China, and Japan, which received about 25%, 20%, and 17% respectively of the global patent applications filed in 2010, India received only about 2% of the global patent applications filed in 2010. Looking at the total global design filings in 2010, China, US and Japan received about 63%, 4% and 5% of the total applications, respectively, while India received only 1% of the total applications. Furthermore, over 85% of the patents filed in India are filed by non-residents. This indicates the tremendous growth potential in the patents and designs filing in India, both by resident firms and foreign firms.

In the area of trademarks as well, India has seen a similar trend in terms of increase in number of applications and registrations over the past decade. Specifically, the number of trademark applications increased from 78996 in 2004-05 to 194216 in 2012-13, a more than two-fold increase in a span of eight years.

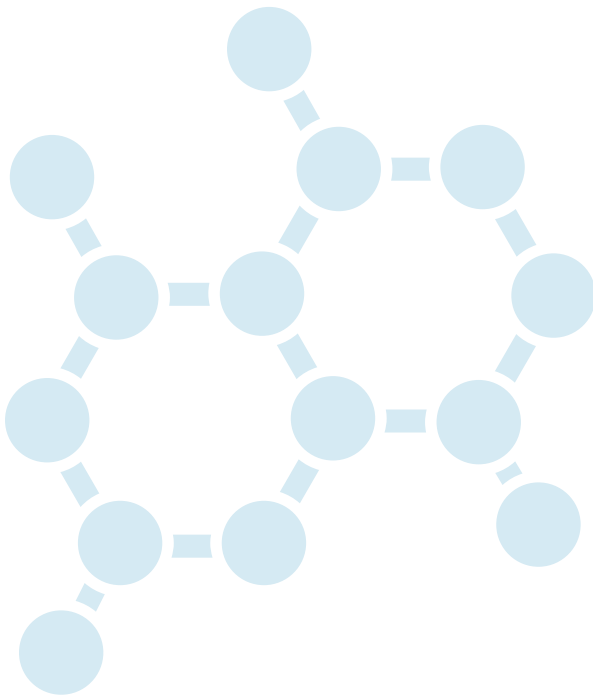
¹ All data on Indian filing taken from Annual Reports of the Indian Patent Office

INFRASTRUCTURE IMPROVEMENTS AT THE IPO AND TRADEMARKS REGISTRY

Recognizing the importance of IP for investment and economic growth, and foreseeing a robust growth in the number of applications filed in the future, the IPO has undertaken a massive modernization project. The modernization project includes digitization of records, improvements in the information technology (IT) and physical infrastructure, and creation of a state of the art search database. Some examples of the improvements in infrastructure include:

- › E-filing of patent applications has been possible for a number of years.
- › Now, it is possible to file all documents online, including response to examination reports, making it easier for applicants to comply with various formalities and deadlines.
- › The IPO website now has a multi-field interface for patent searches.
- › Information on patent status, patent renewals and the as-filed documents are available online for most applications.
- › There is a tracker on the IPO website to provide transparency about which applications are currently undergoing examination at the different branch offices based on year of filing of request for examination.
- › Another tracker on the IPO website provides transparency on how many first examination reports (FERs) have been generated by each technology division in each branch office.
- › The IPO has started functioning as an International Search Authority (ISA) for applications filed under the Patent Cooperation Treaty (PCT) from October 2013. It is expected that this will further boost the number of international applications filed by Indian residents by significantly reducing the cost for search in the international phase.

On similar lines, the trademarks filing and registration infrastructure has also seen a number of changes including digitization and availability of e-filing. Moreover, with the notification of the provisions related to the Madrid Protocol, the Trademarks registry in India has now started receiving international applications as well. As a result, it expects to see a significant increase in the number of international applications being filed by Indian residents, and in the number of incoming trademark registration applications from foreign applicants.



HUMAN RESOURCE DEVELOPMENT

Particular attention has been given by the IPO to human resource development through recruitment and training. About 200 patent examiners having technical expertise from various technology domains have been recruited and are being trained at the IPO's training institute at Nagpur. Most of the recruited examiners have domain expertise in life sciences and chemistry, followed by electronics, computer science, and mechanical engineering. Further, the IPO also works closely with patent offices from around the world, including the US patent office, the European patent office, and the Japanese patent office for sharing of examination resources, such as patent databases, and training of examiners.

In making all these improvements, the IPO also routinely provides opportunities to external stakeholders to provide their suggestions and voice their concerns. The IPO has been issuing guidelines for filing and examination of applications to streamline these processes and provide transparency on the examination criteria being used by the IPO. Whenever such guidelines are released, the stakeholders are invited to provide comments and due consideration is given to the stakeholders comments before any guidelines are finalized for use by the IPO.

ENFORCEMENT AND LEGAL REMEDIES FOR IP OWNERS

India has a well developed multi-tiered legal system based on Common Law Principles. As the patent system has matured significantly over the last decade, important questions of law that would fundamentally affect the ecosystem as a whole are coming up before courts. The Indian jurisprudence is evolving on multiple fronts and, at the same time, attempts are being made to seek balance of interests and ensure fairness to all stakeholders. The Supreme Court of India has recognized the time sensitivity of IP cases and there is a trend towards speedy resolution of intellectual property rights disputes, though there is still a long way to go in this regard.

The significant increase in the number of patent litigation cases in India is proof of the confidence of the patent owners in the legal system. Since 2010 alone 166 new cases related to patents were filed at the Intellectual property Appellate Board (IPAB). Post 2005, more than 60 patent cases have been filed at various High Courts and six patent cases have been taken up by the Supreme Court to resolve important questions of law. This has greatly helped in furthering jurisprudence on claim construction and patentability.

In contrast to patents, the Indian copyright law and the Trademark law have had a rich history in terms of jurisprudence. For instance, the Indian Copyright regime has maintained its pace with the international standards and the law is compliant with most international conventions, including the Berne Convention, Phonograms Convention, etc. However, even on these fronts, newer issues have arisen in the context of the digital age and Indian courts now have to deal with the finer aspects of trademark and copyright law. Particularly with respect to well known marks, the Indian courts are taking into consideration the effects of globalization as a result of which trademarks that may not have been used in the past in India may also be granted protection due to them being globally well known marks.

One of the important legal remedies available to IP owners in India is that of injunctions. While concerns have been voiced about whether Indian courts would be amenable to granting injunctions, an analysis of the past cases of injunctions reveals that there have been almost as many cases where injunctions have been granted as where injunctions have been denied. The courts have taken an unbiased and fact specific decision on a case-to-case basis in granting or rejecting requests for injunctions.

India also has provisions for border enforcement under the Border Enforcement (IPR) Rules, 2007, which provides for suspension of import clearance of goods allegedly infringing IP rights in copyright, trademark, design, and patent by Customs Authorities. Under these provisions, IP owners can register their IP rights in copyright, trademark, design, or patent with customs authorities and have the allegedly infringing goods seized by the customs authorities at the port of entry itself, thereby mitigating possible loss of revenue due to the sale of the allegedly infringing goods. These provisions have been successfully used by a number of consumer goods companies to protect their IP rights.

Thus, the Indian laws provide a multitude of legal remedies for IP owners seeking to assert their IP rights. In addition, alternate dispute resolution mechanisms, negotiations, and licensing are also gaining popularity as means for amicable resolution of IP related disputes.

CONCLUSION

Economic and industry trends indicate that investment in technology and R&D in India by foreign companies is likely to increase multi-fold over the next decade. Along with investments, a number of technology transfer and licensing arrangements are also likely to be formed. In such a scenario, protection and enforcement of intellectual property rights gains particular significance. The administrative and judicial framework in India is undergoing a number of changes to be able to meet the new challenges and is geared up to meet the demands placed on it by the rapidly changing business environment.



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Lakshmikumaran & Sridharan (L&S) is a full service Indian law firm specializing in the areas of Taxation, Intellectual Property, Corporate and International Trade laws. Founded by V. Lakshmikumaran and V. Sridharan in 1985, the firm serves clients globally, through its 31 Partners and 250 professionals, from eight offices located in India. The firm is well-known for its high ethical standards, quality work and transparency in all its business dealings.

Intellectual Property Practice

Lakshmikumaran & Sridharan has an established top tier Intellectual Property Practice in India. The practice consists of attorneys, scientists and engineers holding advanced degrees from reputed institutions in India and abroad. We provide end-to-end services from searching, drafting, filing, prosecution and opposition, to valuation, licensing and litigation and enforcement across all intellectual property laws. Our clients include several large technology companies, Indian corporations, technology start-ups, publishing and media houses.

PATENTS

We have a strong patent team consisting of technologists with patent agent qualifications and patent attorneys who work closely with our clients at every stage of patent life-cycle from drafting & filing to opposition & litigation. We are able to provide technical support and expertise across all technology industries particularly software & information technology, electronics & telecom, mechanical & automobile engineering, chemistry and life sciences. The firm has offices in all the four patent office locations in India, which enables it to provide effective support and representation to clients across India.

TRADEMARK

Protection of trademark and brand in India is crucial to the success of a company. We provide all services relating to trademark including trademark filing, prosecution, maintenance and enforcement. Our attorneys regularly provide comprehensive legal advice on transactions and issues relating to trademark, passing off, trade dress and domain name.

COPYRIGHT

The Copyright Team assists clients in registering and licensing copyrights, providing legal opinions and handling disputes before different forums. The work encompasses all forms of copyright materials such as computer programs, visual, literature, art and music.

PLANT VARIETY PROTECTION

The plant variety protection (PVP) laws are designed to provide protection to plants and plant varieties as an alternative to patent protection. We have an experienced team providing drafting and prosecution services in this area. Our firm is also the largest filer of PVP applications in India.

LITIGATION

The Litigation Team consists of accomplished senior attorneys with rich experience. With a strong background in US and EP laws, our attorneys have been at the forefront of developing IP jurisprudence in India. The team handles a wide variety of actions including infringement suits, declaratory suits, invalidation proceedings, border protection and enforcement.

LICENSING & VALUATION

Intellectual property is not anymore utilized only for protecting technologies defensively. Companies are striving to unlock the potential of intellectual property by licensing, cross-licensing, bartering, pledging and monetizing their portfolio. Our licensing attorneys help our clients in expanding and monetizing their IP portfolios. They have expertise in handling matters such as acquisitions, transfer, licensing and joint development.

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