State of Indian Intellectual Property*

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Paper discusses the present state of Indian IP, importance of IPR for small scale sector, and patenting activity in India.

Indian IP

I will start by asking one basic question, do we have an Indian intellectual property (IP)? If we have one, in what state is it? I will give you a couple of quick examples which may present the rough state of Indian IP. A few days ago, I had somebody walk into my office, a very senior officer of the Chandigarh Government, saying that Le Corbusier’s plans of Chandigarh city have been copied by someone in Holland, who was planning to build a city on similar lines and that they were now contemplating taking action, in Holland or in other appropriate forum, to stop that city from being constructed.

A couple of years ago, we had a very interesting case, when an American company in London, started a Bukhara restaurant. We tried to stop them in passing off. But, a few years before, Badwin decision had come, which had said that if you do not carry on business in the United Kingdom, you cannot file a suit for passing off. We examined the papers and found that the restaurant had also copied the logo. So, there was a copyright claim, but the copyright had not been assigned from the advertising agency, Ulka Advertising, which had many years ago changed. So, in the middle of the night, we had to wake up the Managing Director of the erstwhile advertising agency and get an assignment of copyright in favour of ITC’s Hotel Division, rush to London and file an action for infringement of copyright. As it happened, the restaurant was an American company, which was going on in the unlisted securities market. So, they could not afford

bad publicity and the matter got settled. So, we succeeded.

Of course, since then, the Indian courts said that the Badwin decision of England is wrong and recognized in a large number of cases trans-border reputation, so that if a well-known trademark is not registered or had not been used in India, still it is protected, although it is not protected in England or even in the United States. That is the state of Indian intellectual property.

Take Indian music. We came across several examples of Lata Mangeshkar’s songs being copied in various countries; huge amounts of money are being collected by overseas collecting societies and not being disbursed to Indian copyright owners. This is the Indian intellectual property.

There was a recent joint venture between an Indian and a Swiss company and the joint venture has discovered a new chip for white goods industry which can completely change the way in which the white goods industry works. We are now exploring the possibility of filing patents in every possible conceivable market in the world. This is the state of Indian intellectual property.

We do have Indian intellectual property. Do we not have intellectual property in this country? Well, to start with, take the film industry. I think, last year we made about 850 films, as opposed to the United States, which made about 400, and China made about 70. So, we have the largest film industry. In terms of music, it is the largest in Asia. In the book publishing industry, we publish books in more languages than any other nation does. A World Bank study says that in computer software, by the year 2015, India may become the largest manufacturer of computer software. So, we do have a comparative advantage in the copyright industry.

The United States claims that, after its automobiles and aeroplanes, the copyright industries are the third largest. What about India? Does intellectual property play a role in our copyright industries?

**IPR in Small Scale Sector**

Now the truth is, small and medium industries are given the opportunity to compete with the largest companies in the world. I was just reading the statistics casually and I do not have the exact figures but out of US exports the medium and small industries contribute a substantial proportion, and the Fortune 500 companies contribute something like 9 per cent of the total exports.

So, the possibility of small and medium industries exporting and earning valuable foreign exchange by making comparative products is a realistic possibility. In order to make a good comparative product, we need to have innovation, and that innovation needs to be protected, otherwise, we will suffer the syndrome of the Faridabad stove industry. When they started making stoves, they came out with new innovative products. But the industrial design protection of this country is so weak that the first company it sued, it was not able to protect, the second company that sued, it was not able to protect. In due course of time, everybody started copying everybody’s innovation and the whole industry collapsed.

So, the small industries need intellectual property in order to survive. It is a question of survival. The large ones need it to propel them to invest huge amounts of money. We heard a lot about that. For a new molecule you need $250 million. Certainly, that is one very important angle. When a huge invest-
ment is required, if there are no returns on that investment, then nobody is going to put in investment of that magnitude, at least not in our country, at least in diseases which are prevalent in our country.

The other angle is, for a small company it is a matter of survival. Otherwise, anybody can copy their innovative product and make a better and cheaper product, or even undercut them for a couple of years, and completely kill the small company. Therefore, that is a matter of intellectual property.

**Patent or Copyright**

Secondly, there are over 30 million patents out there, of which four-fifths are open. They have expired their term and are open to be copied by anyone. The patents are the first technical documents that are published and are of the greatest importance. Now it is a matter of simple logic that if somebody in industry wants to become competitive, he must look at patents and try and discover innovations from patents.

What is an innovation? The difference between an invention and innovation is extremely important. I give this example of Thomas Edison, who had a turn-pipe installed in his garden, so that anyone who would walk into his house would automatically propel one litre of water into his overhead tank. That is innovation and that is the kind of innovation culture that we need in this country. Not only do we need to invent, but we need to convert our inventions into commercial products, which have a good market in the world.

We are told sometimes that patents are being misused. We are given the examples of neem and haldi. We have heard lot of comments on them. I will given just one example of software patents. Take companies like IBM, Fuji, Cannon or Motorola. In the software world, a lot of our industries rely upon copyright laws for their protection. We are missing opportunities there.

Throughout the world, companies are applying for patents for software, and those software are being collected into portfolios, which are then used in cross-licensing schemes as bargaining chips, in order to prevent companies or permit companies to cross over technology of others, using them for cross licensing purposes. Unfortunately, in India, the belief is that software is best protected by copyright laws and we need not protect software by patent laws. What happens in the mean time? There are important opportunities that we are losing. I think the time has come when we need to address these questions seriously, from no other point of view but from our own perspective, and to see if we can convert these challenges into opportunities.

**Patent Activity in India**

I think patents reflect the state of health of the innovation culture of any enterprise. Therefore, the number of patents that are filed are important. From 1970 to 1992, the R&D figures in this country increased 50 times, but the number of patent applications that were filed by domestic companies remained static at about 1,000. Of course, the figures have gone up ever since liberalization started in 1991. To day the total number of patent applications that are filed are about 8,500, of which 20 per cent are domestic. Broadly, for almost 20 to 30 years, it was a plateau and the number of patent applications were not proportional to the R&D expenses.

In contrast, take a country like China, where over 70,000 patent applications were filed, of
which 75 to 80 per cent were filed by their domestic companies. Why are not our domestic industries filing patent applications, when they are actually investing money in research and development? What is the answer? The answer is, the domestic industries are completely disillusioned with the strength of our patent system, or they were ignorant. Of course, to an extent they were ignorant. Because, in a large number of industries, when we conducted a series of seminars, we found that the number of applications filed by those companies went up. So, the companies were actually ignorant. They did not know that their important inventions could actually become innovations, they could also become marketable products, which can earn the profits.

To give you one quick example, a person came to me from Chandigarh and showed me a butane gas bottle. He had invented a reading metre, which would tell you the quantity of gas in the cylinder. It worked on rack-and-pinion principle, which is a known principle in watches, but had been applied to the flow metre for the first time. It was quite interesting. At first I did not think that he could get a patent for it, but he tried. We filed the first application in the United Kingdom. Then he paid a very casual visit to the largest manufacturer of these bottles in Denmark, the largest in the world. He came back, informed us that he received an order for two million pieces. Now this was a small person in Chandigarh, who will in all probability would not have applied for a patent. It is a small thing, where your neighbour would have said there is no patent here, this is too simple, and he would have missed the opportunity.

**Conclusion**

Therefore, to conclude, IPR industries can help us leap frog into the next century. We have a lot to gain from our software, biotechnology and space research industry. Take the space research industry. We have a law in this country which protects data. In America, they have Fiest vs Rural Telephones case, which says that the white pages of a telephone directory cannot be protected under their copyright law, because their copyright law does not protect anything which is based purely on labour, or what is known as the sweat of the brow. But the Indian courts differed from that dictum and said “no, we would protect not only white pages, but computer data base”. This was the massive thrust to our computer data base industry and to our satellite industries. We have remote sensing satellites, which collect important data, which has been the subject matter of various international transactions, where other countries have wanted to buy the satellite data from us. So, in our space research programmes, we need intellectual property, so also in our biotechnology, in our software, in all our major industries, the ones which will propel us to go to the next century, for which we need intellectual property.