

स्वदेशी जागरण मंच

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From

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To

Smt. Nirmla Sitharaman
Hon'ble Minister of Commerce and Industry
NirmanBhawan,
New Delhi 110001

Sub: Draft National IPR Policy

Respected Nirmla Sitharaman ji,

We take this opportunity to convey our concerns with regard to the IP Think Tank in general and the Draft National Intellectual Property (IP) Policy (draft policy). We feel there is an undue hurry to finalise the IP policy without adequate research and consultation with Indian stakeholders especially academia and public interest groups. This rush has resulted in a draft policy, which does not reflect the development realities and needs of India. The draft policy seriously undermines India's technological progress in critical areas to address the development challenges of the nation.

It is a well-recognised fact that in spite of technological progress in areas such as space technology and pharmaceuticals India is technologically dependent on several critical areas especially to revival of manufacturing sector, which is necessary to transform the economy. The current scenario calls for a series of policy measures to facilitate technology catching up and dissemination to promote domestic entrepreneurship across the various sectors of the economy. Therefore the domestic IP regime should play a facilitative role to support technology catching up and dissemination.

The history of industrial and technological development shows unequivocally that the countries emulate technologies as strategy for technological catch up in order to move away from the technology dependency to technology generation. The latest example includes not only Japan and South Korea but also China. A domestic IP regime tilted towards protection and enforcement of IP rights without optimal use of limitations and exceptions would retard the attempts of technological catching up. The draft policy proposes an IP maximalist agenda and if implemented would further the technology dependency. In other words the draft IP policy does not gel well with even with Hon'ble Prime Minister's 'Make in India' initiative.

We would also like to point out the following major issues with the draft IP policy.

1. According to the draft policy "The National IPR Policy Envisages IP as an integral part of India's overall development policy". However, the policy does not make any analyses to identify the development needs of India and implications of IP on meeting the development needs. Policy makers of all shades identify the poor state of manufacturing sector in India. The Hon'ble Prime Minister has initiated the 'Make in India' initiative to revive the manufacturing sector. One of the important issues identified by the Prime Minister's Group on Manufacturing is the technological dependency. The same satiation is visible in the

agriculture sector. Therefore it is clear that technology catching is required to revive manufacturing and agriculture. The policy does not address this need at all and advocate for more IP protection and enforcement. The draft IPR policy is IP maximalist in approach and turns a blind eye to India's development needs.

2. There is no rationale provided in the document how did the Think Tank zeroed on six objectives. It seems the objectives are driven by a very narrow version view about IP and development. In other words the Think Tank driven by a view that maximum protection and enforcement of IP is an essential condition for growth and knowledge economy. All objectives are problematic. However, the most dangerous are:
 - Objective 1 (Awareness and promotion),
 - Objective 2 (Creation on of IP)
 - Objective 3 (Legal and Legislative Framework)
 - Objective 6 : Enforcement and adjudication) .As result there is complete disconnect between the need of the hour and the identified objectives. The objective should be anchored on the development needs of India especially the socio economic, which includes health, education, food, industrial and agriculture sector,
3. The draft IP policy contradicts the objectives mentioned in many other policies related to use of flexibilities in the IP statutes. For instance, even though there is a reference to national manufacturing policy there is nothing in the draft policy to complement the IP related elements in the national manufacturing policy. Many existing policies in sectors like electronics, telecom etc. promotes domestic manufacturing. The policy prescriptions in the Draft IPR Policy would contradict with these policies and even hamper the “Make in India “ initiative by building wall on technology transfer by stressing on IP protection and enforcement.
4. The draft IP policy makes a passing reference on the use of flexibilities that too with caution. The draft policy states “ The policy space and flexibilities available under the international instruments will continue to be used judiciously to keep IP laws updated”. Instead of use of flexibility as a strategy to fill the technology gap the policy advocate for a judicious use. None of the recommendations in the policy proposes the effective and optimal use of flexibilities available in the national and international IP law to achieve development goals or to build capabilities in the use of flexibilities.
5. Finally we would like to pointy out the conflict of interest among the members of the Think Tank. The Convenor of the Think Tank Mr.Y K Sabarwal, an ex WIPO bureaucrat, is the Convenor of the IPR Committee of FICCI, a body dominated by Multi National Companies. His membership in the Think Tank compromises its neutrality. Similarly another member Smt. Prathiba Singh appears for telecom and pharmaceutical multinational firms also raises serious concern of conflict interest. The conflict of interest of these members of the Think Tank would act a s a barrier to draw a National IPR Policy to address the development needs of the nation.

Against this background we request you to

- Reconstitute the Think Tank to remove the conflict of interest and also to ensure the involvement of academics especially with exposure to development economics, industrial policy, technology policy and innovation
- Reorient the approach of the Think Tank and National IPR Policy to address the technological and development needs of the nation
- Put an end to the unreasonable hurry in the formulation of National IPR Policy and commission studies and consultations to identify the development and technological needs of the nation
- Direct the reconstituted IP Think Tank to identify the suboptimal flexibilities in the national IP regime and make recommendation to optimise the use of flexibilities

With Regards

Ashwani Mahajan
Co-Convenor