

REPORT NO.

169



सत्यमेव जयते

PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE
ON COMMERCE

ONE HUNDRED AND SIXTY NINTH REPORT

**Action Taken by Government on the Recommendations/
Observations of the Committee contained in its One Hundred
and Sixty First Report on 'Review of the Intellectual Property
Rights Regime in India'**

(Presented to the Rajya Sabha on 6th April, 2022)
(Laid on the Table of Lok Sabha on 6th April, 2022)



Rajya Sabha Secretariat, New Delhi
April, 2022/ Chaitra, 1944 (Saka)

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COMPOSITION OF THE COMMITTEE
(Constituted w.e.f. 13th September, 2021)

1. Shri V. Vijayasai Reddy — *Chairman*
- RAJYA SABHA**
2. Shri P. Bhattacharya
3. Shri Anil Desai
4. Shrimati Roopa Ganguly
5. Shri Naresh Gujral
6. Shri Sushil Kumar Gupta
7. Shri Om Prakash Mathur
8. Shri Deepak Prakash
9. Shri Dharmapuri Srinivas
- *10. Shri Jugalsinh Lokhandwala
- LOK SABHA**
11. Shri Prasun Banerjee
12. Shri Raju Bista
13. Shri Rajkumar Chahar
14. Shri Rameshbhai Lavjibhai Dhaduk
15. Shri Arvind Dharmapuri
16. Shri Santosh Kumar Gangwar
17. Shri Manoj Kotak
18. Shri Ajay Kumar Mandal
19. Shrimati Manjulata Mandal
20. Shri Nakul Kamal Nath
21. Shri Hemant Shriram Patil
22. Shri Gautham Sigamani Pon
23. Dr. Manoj Rajoria
24. Shri Nama Nageswara Rao
25. Shri Ashok Kumar Rawat
26. Shri Magunta Sreenivasulu Reddy
27. Shri Prajwal Revanna
28. Shri Gowdar Mallikarjunappa Siddeshwara
29. Shri Kesineni Srinivas (Nani)
30. Shri Mansukhbhai Dhanjibhai Vasava
31. *Vacant*
- SECRETARIAT**
- Shri S. Jason, Joint Secretary
- Shri T.N. Pandey, Director
- Smt. Nidhi Chaturvedi, Additional Director
- Shri Kuldip Singh, Under Secretary
- Ms. Saraswati Saraf, Assistant Committee Officer

* Nominated w.e.f. 8th December, 2021.

INTRODUCTION

I, the Chairman of the Department Related Parliamentary Standing Committee on Commerce, having been authorised by the Committee, present this One Hundred and Sixty Ninth Report of the Committee on the Action Taken by Government on the recommendations/ observations of the Committee on Commerce contained in its One Hundred and Sixty First Report on 'Review of the Intellectual Property Rights Regime in India'.

2. The One Hundred and Sixty First Report of the Department Related Parliamentary Standing Committee on Commerce was presented to Rajya Sabha on 23rd July, 2021 and laid on the Table of the Lok Sabha on 23rd July, 2021.

3. The Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, furnished the Action Taken Notes on the One Hundred and Sixty First Report of the Committee on 9th December, 2021.

4. The Committee considered the draft Report and adopted the same at meeting held on 5th April, 2022.

NEW DELHI;
5th April, 2022
Chaitra 15, 1944 (Saka)

V. VIJAYASAI REDDY
Chairman,
Department Related Parliamentary
Standing Committee on Commerce
Rajya Sabha.

ACRONYMS

AI	Artificial Intelligence
ASSOCHAM	Associated Chambers of Commerce and Industry of India
ATN	Action Taken Note
ATR	Action Taken Report
AYUSH	Ayurveda, Yoga, Naturopathy, Unani, Siddha, Sowa-Rigpa and Homeopathy
CAU	Central Agricultural University
CBI	Central Bureau of Investigation
CDSCO	Central Drugs Standard Control Organisation
CGPDTM	Controller General of Patents, Designs and Trademarks
CII	Confederation of Indian Industry
CIPAM	Cell for IPR Promotion and Management
CISCE	Council For the Indian School Certificate Examinations.
COVID	Corona Virus Disease
CSIR	Council of Scientific and Industrial Research
CSR	Corporate Social Responsibility
DPIIT	Department for Promotion of Industry and Internal Trade
DRPSC	Department Related Parliamentary Standing Committee
DST	Department of Science and Technology
DU	Delhi University
ELCINA	Electronic Industries Association of India
E&IT	Electronics and Information Technology
EOUs	Export Oriented Units
TMR	Trade Marks Registry

EUIPO	European Union Intellectual Property Office
FAQs	Frequently Asked Questions
FDI	Foreign Direct Investment
FICCI	Federation of Indian Chambers of Commerce & Industry
FY	Financial Year
GDP	Gross Domestic Product
GI	Geographical Indication
ICAR	Indian Council of Agricultural Research
ICT	Information and Communication Technology
IDC	Inter-Departmental Committee
IESA	India Energy Storage Alliance
IIT	Indian Institute of Technology
INTA	International Trademark Association
IP	Intellectual Property
IPAB	Intellectual Property Appellate Board
IPD	Intellectual Property Division
IPERPO	Intellectual Property Education, Research and Public Outreach
IPFC	Intellectual Property Facilitation Centres
IPO	Indian Patent Office
IPR	Intellectual Property Rights
IPRPM	IPR Promotion and Management
JKEDI	Jammu & Kashmir Entrepreneurship Development Institute
JPO	Japan Patent Office
KVK	Krishi Vikas Kendras
KYC	Know Your Customer

LT	Long Term
MAIT	Maharaja Agrasen Institute of Technology
MCDCU	Maharashtra Cyber and Digital Crime Unit
MHRD	Ministry of Human Resource and Development
MIETY	Ministry of Electronics and Information Technology
MoHFW	Ministry of Health and Family Welfare
MoC	Memorandum of Cooperation
MoU	Memorandum of Understanding
MSMEs	Micro, Small and Medium Enterprises
NACIN	National Academy for Customs, Indirect Taxes and Narcotics
NASSCOM	National Association of Software and Services Companies
NCERT	National Council of Educational Research and Training
NER	North Eastern Region
NGOs	Non-Governmental Organisations
NIOS	National Institute of Open Schooling
NIXI	National Internet Exchange of India
NMIMS	Narsee Monjee Institute of Management Studies
OM	Office Memorandum
OTT	Over The Top
PCT	Patent Cooperation Treaty
PIC	Patent Information Centres
PMO	Prime Minister's Office
PPH	Patent Prosecution Highway
PPP	Public-Private Partnership
PPV&FR	Protection of Plant Variety and Farmers Right

QR	Quick Response
RGNIIPM	Rajiv Gandhi National Institute of Intellectual Property Management
R&D	Research and Development
RGNIIPM	Rajiv Gandhi National Institute of Intellectual Property Management
SAUs	State Agricultural Universities
SIPEIT	Support for International Patent Protection in Electronics and IT
SIPP	Start-ups Intellectual Property Protection
SLA	Service Level Agreement
SPRIHA	Scheme for Pedagogy and Research in IPR's For Holistic Education & Academia
ST	Short Term
STPs	Software Technology Parks
TISC	Technology and Innovation Support Centre
TKDL	Traditional Knowledge Digital Library
TRIFED	Tribal Co-Operative Marketing Development Federation of India Limited
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UK	United Kingdom
US	United States
USD	United States Dollar
USTR	United States Trade Representatives
UTs	Union Territories

WIPO World Intellectual Property Organisation

WTO World Trade Organisation

REPORT

The Action Taken Report of the Committee deals with the action taken by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry on the eighty two recommendations contained in One Hundred Sixty First Report of the Department Related Parliamentary Standing Committee on Commerce on 'Review of the Intellectual Property Rights Regime in India'. The Report was presented to Rajya Sabha and laid on the Table of Lok Sabha on the 23rd July, 2021.

2. Action Taken Note (ATN) has been received from Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry in respect of the recommendations/ observations contained in the One Hundred Sixty First Report.

This has been categorized as follows: -

Chapter I: Recommendations/Observations which have been accepted by the Government: Para:- 2.6, 4.5, 5.7, 5.8, 6.5, 7.7, 7.8, 10.6, 12.1{(i), (ii), (iv), (viii)}, 12.7, 12.8, 13.1{(ii), (iii), (iv), (v)}, 14.5, 14.6, 14.8{(i), (ii)}, 14.12, 14.14, 15.6, 15.7, 16.3, 16.5, 16.7, 16.8, 16.10, 16.12, 16.14, 17.4, 18.4, 18.8, 18.9, 18.11, 18.15, 19.6, 19.8, 20.2, 20.6, 20.7, 20.8, 20.9, 20.10, 20.11 (Total- 48).

Chapter II: Recommendations/Observations which the Committee does not desire to pursue in view of the Government's replies: Para:- 1.12, 1.14, 3.3, 3.4, 5.11, 5.12 { (ii), (iii), (iv), (v)}, 5.14, 6.7, 12.1{(iii), (v), (vi),(vii)}, 12.13, 12.18, 13.1(i), 14.7, 19.7, 20.3 (Total- 21).

The Committee is convinced with the explanation furnished by the Ministry and, therefore, does not want to pursue above-mentioned recommendations further.

Chapter III: Recommendations/Observations in respect of which replies of the Government have not been accepted by the Committee: Para:- 8.5, 8.7, 9.7, 9.8, 11.7, 11.8, 11.9, 11.12, 11.14, 12.14, 20.1, 20.5. (Total -12).

Chapter IV: Recommendations/Observations in respect of which final replies of the Government are still awaited: Para: - 5.12 (i) (Total-1)

3. The Committee desires that the Department should furnish pointed and detailed Action Taken Notes in respect of all the further Recommendations/Observations made by the Committee.

4. The details of ATR have been discussed in respective Chapters in succeeding pages.

CHAPTER – I
RECOMMENDATIONS/OBSERVATIONS, WHICH HAVE BEEN
ACCEPTED BY THE GOVERNMENT

CONTRIBUTION OF IPR IN ECONOMY

Recommendation/Observation

The Committee notes the significance of IPRs in increasing Foreign Direct Investment (FDI) of countries, mainly of the developing nations, wherein a 1 per cent improvement in protection of trademark, patent and copyright increases FDI by 3.8, 2.8 and 6.8 per cent respectively. It is of the opinion that strengthening IPRs in India would also spur economic development by encouraging foreign exchange inflow thereby increasing productivity and generation of employment opportunities in the country. Therefore, the Committee recommends the Department to undertake a comprehensive study of the resultant benefits of improvement in IPRs on the economy especially in terms of increase in GDP, employment generation, augmenting forex reserves, and boosting exports. The study must analyze the impact of IPR in creative and innovative sectors of India and its substantial contribution to the economy of the country. (Para 2.6)

Action Taken

1.2 With the increase in IPR filing, FDI inflow increased in India. In comparison to 42763 Patents filed in 2014-15, there has been 58502 Patents filed in 2020-21 and as compared to FDI inflow of USD 45,148 in 2014-15, there has been FDI inflow of USD 81,973 in 2020-21. On regular basis, CGPD TM has been taking

been taking steps to strengthen IPR filing in the country which will spur FDI inflow in the country as well as boost economy. As recommended by the Committee, the Department will undertake a study in consultation with stakeholders.

MARKING OF PRODUCTS AS 'PATENT PENDING'

Recommendation/Observation

1.3 *The Committee is of the view that labelling of products with 'patent pending' would acknowledge their credibility and authenticity hence yielding marketing benefits to the patentees. The marking of products as 'patent pending' would empower the patentee by acting as a deterrent to IP crimes of unauthorized copying or counterfeiting of products and avoiding unnecessary infringements. The Committee, therefore, recommends the Department to explore avenues in incorporating the practice of marking products with 'patent pending' in India to ensure maximum benefits to inventors or patentees.* (Para 4.5)

Action Taken

1.4 Stakeholders' consultation has been done on the above said recommendation for inclusion in drafting of Patent Amendments Bill.

AWARENESS OF IPRs

Recommendation/Observation

1.5 *The Committee notes with concern that a major share of 64 per cent of the patents filed in India are by non-resident or foreign entities wherein the patents filed by domestic entities occupies a portion of only 36 per cent. It is also*

worrisome to learn that the lack of awareness about IPRs amongst Indians is responsible for the low share of patents filed by domestic entities vis-à-vis foreign entities. As a result, the innovators and creators in the country are being denied the benefits of IPRs including the generation of revenues and gains from the creation of their products. The Committee recommends that a holistic approach should be taken by the Department for disseminating awareness amongst MSMEs, small businessmen, traditional artisans and craftsmen located in remote areas and providing them insights about creation, ownership and protection of their IPRs.

(Para 5.7)

1.6 *The Committee also recommends that NGOs associated with craftsmen, artisans and those working in hilly and tribal areas may be engaged in spreading awareness about IPR to the target group. Necessary tool kits for promoting IPR may be provided to facilitate them in training.*

(Para 5.8)

Action Taken

1.7 In this regard, the Department would like to state its conscious and organised efforts made to raise IPR awareness in India for the growth of industrial proletariat. CIPAM established as a professional body, under the aegis of DPIIT, has been working extensively towards creating IP awareness. A tabulation of various IPR awareness campaigns conducted at various levels by the Department during the last 4 years is as below:

S.No.	Target Group	2017-18	2018-19	2019-20	2020-21
1.	Academic Institutions (Schools, Colleges, Universities)	78	653	300	102
2.	Industry including MSMEs and Start-ups, commercialization	30	56	113	193
3.	Enforcement Agencies and Judiciary	26	23	42	20

1.8 The Department in collaboration with Ministry of Micro, Small and Medium Enterprises (MSMEs) has organised intensive IPR trainings for MSME Officers pan India; they can, in turn, provide IPR related services to MSMEs and small businesses. Over 190 such awareness programmes have been conducted. More such programmes are under pipeline which includes a basic training on all IPRs. It is proposed that in the second phase an advance training related to the concept of patentability will be introduced.

1.9 Several extensive outreach programmes have also been held in rural areas which have been centered towards guiding artisans, craftsmen and traditional rural innovators and creators. These programmes elucidated the process and benefits of registering and monetising an IP.

1.10 To promote IPR awareness, especially amongst MSMEs, CIPAM in collaboration with Global Trade Secrets Council and Centre for Responsible Enterprise and Trade, have put together a TRADE SECRET TOOLKIT, which will guide Indian businesses especially Micro, Small & Medium Enterprises (MSMEs) and Start ups regarding protection of trade secrets.

1.11 Various school level awareness initiatives have also included students and teachers from rural/remote areas. Initiatives are being planned to reach out to less visible IP generators and holders in rural areas through collaborative efforts with agricultural research universities for identifying the needs and aid required by farmers in context with IP. This would also include associating with startups and civil society organisations involved in training and hand holding of farmers, designers, artisans, etc. for sensitisation on relevant IP rights such as patents, plant varieties and geographical indications.

1.12 Additionally, IPR Awareness programs have been conducted in various schools, colleges and universities pan India, including Atal Tinkering Labs to foster IP awareness and generation. Many of these programs have also been conducted online to ensure wider coverage. Over 3000 academic institutions have been covered till date. To reach out to the remotest corners of our country, awareness programs are being conducted using satellite communication. In one such program, in 2019, more than 700 colleges were connected online for IP awareness covering over 1,00,000 students. In another program in 2018, 46 rural schools of Rajasthan with over 2700 students were also reached online.

1.13 The Department has considered the Committee's recommendation and has already included a focused approach towards creating awareness among traditional artisans and craftsmen. The Department is presently considering several plans of action centered towards reaching out to grass root innovators including artisans

and craftsmen through various registered proprietors of Geographical Indications or TRIFED, which are intended to ensure increase in the number of authorized users simultaneously promote and sensitize them for using GI tags. Also, the Department is evaluating the proposal to prepare a kit for GIs users in multiple languages for easy understanding of artisans so as to enable them to understand procedural aspects and their rights with more certainty. Also, the Department has planned for a stakeholder consultation with agricultural universities and agro startups to augment the outreach to farmers and agriculturists.

COUNTERFEITING AND PIRACY

Recommendation/Observation

1.14 The Committee acknowledges that IP crimes including counterfeiting and piracy are the rising threats to IPRs which should be regulated and deftly handled by taking appropriate measures. It recommends the Department to stress upon capacity building of enforcement agencies on IP laws including strengthening of IPR cells in State police forces. It further urges the Department to ensure on-ground implementation of stringent IP legislations with a stronger Inter-Departmental collaboration on IP crimes for curbing such offences in an effective manner. It recommends the Department to consider establishing a Central Coordination Body on IP Enforcement for undertaking coordinative efforts by involving various Ministries, Departments, and Governmental agencies in enforcement and adjudication of IP laws to check IP crimes in the country.

(Para 6.5)

Action Taken

1.15 Counterfeiting and Piracy are two of the fastest growing economic crimes in the world today. To address the above issues, DPIIT through CIPAM has been taking initiatives in the form of Anti-Piracy and Anti-Counterfeiting campaigns to make the population aware of the malpractice and fight it by creating a distinction between the original and the fake product. As detailed above, CIPAM has been conducting various sensitization programs for the three pillars of the enforcement, judiciary, police and customs (**Annexure IV**).

1.16 The Department in association with Federation of Indian Chambers of Commerce & Industry (FICCI) has made an IPR Enforcement Toolkit for Police, which was released by Minister of Commerce and Industry. This toolkit aids police officials in dealing with IP Crimes, in particular, trademark counterfeiting and copyright piracy. A similar toolkit for Customs is ready and would be released shortly.

1.17 More than 100 training programs on IP Enforcement have been conducted pan India for various law enforcing agencies by DPIIT, in association with IP experts from law firms and the industry. In addition, an advisory has been issued by the Ministry of Home Affairs to all State Police Academies to incorporate IPR in their training curriculum for both regular and in-service police officers.

1.18 The Committee's recommendation regarding establishment of a Central Coordination Committee is under evaluation and a stakeholder consultation would be initiated with the concerned ministries.

VACANCIES IN PATENT OFFICE

Recommendation/Observation

1.19 *The Committee notes that to fulfill its commitment to the stakeholders, the Patent Office should be provided with adequate number of officials to expedite the process of patenting. Over the years, number of patent applications has increased considerably due to more innovation resulting in filing more patent applications, expansion of more areas under IPR and filing of patents by foreign nationals. The Committee also notes with concern that the increase in the number of examiners does not commensurate with the increase in the number of applications. (Para 7.7)*

Action Taken

1.20 The Department reviews the filling up of vacancy on regular basis as well as creation of additional posts in consultation with Department of Personnel and Training, Union Public Service Commission and Department of Expenditure, Ministry of Finance, etc.

Recommendation/Observation

1.21 *The Committee expects promptness from the Department in determining the existing vacancies and undertaking efforts to recruit and appoint officials in IP offices within a reasonable timeframe. The Department must ensure that officials are qualified and trained. It, therefore, recommends the Department to expedite*

procedures for filling up vacancies against the sanctioned strength of officials in order to facilitate the larger cause of dispensing IPR claims. The Committee also recommends that efforts must be made to retain the officials by providing good service conditions. Further, officials on deputation from research organization may be made as experts for a reasonable period of time. (Para 7.8)

Action Taken

1.22 Since last one year, five (05) Departmental Promotion Committee Meetings have been convened for promotion of officers at various levels in the Office of Controllers General of Patents, Designs & Trade Marks (CGPDTM).

1.23 Vacancy position at various levels is also reviewed actively in consultation with Department of Personnel & Training, Union Public Service Commission and Department of Expenditure, Ministry of Finance, etc.

PATENT PROSECUTION HIGHWAY

Recommendation/Observation

1.24 *The Committee observes that Patent Prosecution Highway (PPH) amongst nations is a mutual initiative which helps in creating a conducive environment for promoting and expediting filing of patents. PPH facilitates in exchanging information on norms and rules that are followed in granting patents in participating countries and thus enables the patentees and inventors to abide by the criterion of such nations while applying for patents. Also, PPH as a significant patent tool should be encouraged with nations in times of pandemic wherein the Covid-19 outbreak has led to rise in filing of innovations to grant them as patents*

in areas of vaccines, pharmaceuticals and medical devices. The Committee, therefore, recommends the Department to explore opportunities in establishing PPH with other nations as well which would be highly advantageous to India in expediting and processing of patent applications. The Committee, however, recommends that before venturing on PPH programs with other countries, impact assessment of the Japan PPH model may be made. (Para 10.6)

Action Taken

1.25 Office of the CGPDTM has entered into a Pilot PPH program with Japan Patent Office (JPO) for a period of 3 years in November, 2019 in some specified technical field, namely, electrical, electronics, computer science, information technology, physics, civil, mechanical, textiles, automobiles and metallurgy. The status update of PPH program is as under:

Status at Indian patent office:

Application received at IPO – 158

First Examination Report issued – 83

Patents Granted – 56

Abandoned – 2

Refused -1

Status at Japan Patent Office

Application received at JPO – 6

Patents Granted – 3

1.26 This recommendation has been noted for our bilateral negotiations. A PPH proposal has been received from Denmark and a working group has been formed.

THE PATENT ACT, 1970

Recommendation/Observation

1.27 *The Committee recommends the Department that the Section 3(b) of Indian Patent Act, 1970 should be amended so that a provision of a safeguard mechanism is included against the arbitrary exercise of power by the Controller in declining patents. A check and balance mechanism should be inserted under the Act which would ensure granting of patents to socially useful inventions or innovations. It, however, recommends that the provision be amended to limit the exclusion to only those inventions which are barred under any law for the time being in force.*

(Para 12.1 (i))

Recommendation/Observation

1.28 *The Committee recommends the Department to explore the feasibility of granting patents to non-living substances occurring in nature under the act and its subsequent impact on public interest.*

(Para 12.1 (ii))

Recommendation/Observation

1.29 *The Committee recommends the Department to examine the stringency of Section 122(2) and make necessary amendments to modify the stated provision of imprisonment of six months in case of furnishing false information.* (Para 12.1(iv))

Action Taken

1.30 Stakeholders' consultation has been done on the above said recommendations for inclusion in the drafting of Patent Amendments Bill.

Recommendation/Observation

1.31 *The Committee recommends the Department to take steps for modernization, upgradation and maintenance of the website of Indian Patent Office to make it user friendly enabling the patentees to easily navigate through the site for accessing requisite information on IPRs and for filing patents.* (Para 12.1 (viii))

Action Taken

1.32 Necessary directions have been issued in this regard to CGPDTM.

Public Interest Safeguards under the Act

1. Protection against Ever-greening

Recommendation/Observation

1.33 *The Committee is in agreement that Section 3(d) in India's patent regime has acted as a protector against any attempt of repetitive patenting or extending term of patents on spurious grounds. The provision is a catalyst for genuine innovations since it guards against frivolous successive patents intended to make an invention 'evergreen'. The Committee believes that the provision is in complete harmonization with the provisions of the international agreement of TRIPS and Doha Declaration as stated by Supreme Court of India in its landmark judgment of Novartis vs. Union of India. It appreciates that through Section 3(d), India*

strives to balance the international patent obligations and its commitments to protect and promote socio-economic welfare and public health. (Para 12.7)

Recommendation/Observation

1.34 The Committee is of the opinion that India must not compromise on the patentability criteria under Section 3(d) since India as a sovereign nation has the flexibility to stipulate limitations on grants of patents in consistence with its prevailing socio-economic conditions. It emphasizes that being a developing country, the provision has secured India's interests especially in the pharmaceutical sector against rampant secondary patenting by foreign pharmaceutical companies for increasing their profitability. Thus, it ensures the growth of generic drug makers and the access of public to affordable medicines. The Committee also observes the concerns flagged in the USTR Report pertaining to disqualification of incremental inventions under Indian Patents law and recommends to resolve the issue through bilateral dialogues with US. It also recommends that in order to avert any misinterpretation of the provision, the Department should examine the aspect on giving an expansive meaning to Section 3(d) for giving further clarity. (Para 12.8)

Action Taken

1.35 Stakeholders' consultation has been done on the above said recommendation for inclusion in drafting of Patent Amendments Bill.

THE TRADE MARKS ACT, 1999

Recommendation/Observation

1.36 *The Committee recommends the Department to curtail the time period of filing opposition against a trademark application from 4 to 2 months during which the application is in public.* (Para 13.1 (ii))

Action Taken

1.37 Stakeholders' consultation has been done on the above said recommendation for inclusion in drafting Trade Mark Amendments Bill.

Recommendation/Observation

1.38 *The Committee recommends the Department to take steps in modernization of trademark offices and workplaces by undertaking digitalization of work processes and facilitating e-services for speedy redressal of work.* (Para 13.1 (iii))

Action Taken

1.39 For up-gradation of better e-system, e-TMR project is under development.

Recommendation/Observation

1.40 *The Committee recommends the Department that the cumbersome procedures as regards to search and seizure operations in trademark infringements under Section 115 of the Act should be streamlined and simplified for improving and expediting investigations. It recommends that depending on the size and ongoing commercial activity of the district, one or more well-trained*

police officer specialized in tackling IP crimes should be deployed in place of a high ranking officer. The officers being appointed should have an added responsibility of enforcing IP laws in their respective jurisdiction. The Committee further recommends that a monitoring mechanism should be put in place to ascertain the reasons of delay in pursuing opinion from the Registrar along with a reasonable timeframe of 48 hours to render the opinion in a time bound manner. The Committee is also of the view that digitalization can help whereby, Police Department and Office of Registrar can be connected through a specific software and there is no leakage of data by doing end to end encryption. This can help in reducing the time taken in getting permission for search and seizure.

(Para 13.1 (iv))

Action Taken

1.41 A proposal to include a platform in e-TMR system, wherein the Police officers may file online request under Section 115 and concerned officer will provide its opinion within 24 hours, is being examined in consultation with CGPDTM.

Recommendation/Observation

1.42 *The Committee recommends that the Department should make a separate category for EoU products so that they are prioritized in getting the trademarks and can contribute in the national economy by exporting the products in time.*

(Para 13.1 (v))

Action Taken

1.43 There is a prescribed path for expedited processing of application with submission of prescribed fee. As regards to separate category for EoU products, matter is being examined taking into account the feedback from stakeholders.

THE COPYRIGHT ACT, 1957

Recommendation/Observation

1.44 *The Committee notes with distress that the conflict arising between copyright holders and educational institutions due to exceptions contained in Section 52(1) which intends to ensure access to literary works for educational purposes does not bode well for the overall literary culture and image of the country. Protecting copyrights of publishers and authors encourages enrichment of quality books and works which should be counterbalanced with public accessibility of such works at an affordable rate. The Committee recommends the Department to facilitate a fair and equitable ecosystem of literary culture in the country by bringing in necessary changes in Section 51(1) of the Act such as permitting reprographic works in Government owned educational institutions and storing it in libraries for their easy access to students as well as stipulating limitations to unrestricted commercial grants to copy books and literary works and storage of copied works in digital formats.* (Para 14.5)

Action Taken

1.45 This Department has received representations from the stakeholders representing the authors and owners of the published literary works, whereby it has been brought to the notice of this Department that they are unable to collect royalties arising out of photocopying of published literary works by educational institutions, in light of Section 52 (1) (i) and the judgment of the Delhi High Court, *The Chancellor, Masters & Scholars of the University of Oxford & Ors. vs. Rameshwari Photocopy Services & Ors.* [DU Photocopying Case]. Thus, they need assistance from this Department in enforcing their economic rights as against all educational institutions.

1.46 In this regard, Section 52 of the Copyright Act, 1957 provides for certain acts which are not to be construed as infringement of copyrights. Therein, under sub-section (1) (i), it has been provided that, reproduction of any work during the course of instruction by a teacher or a pupil shall not constitute infringement of copyrights. The instant provision reads as,

(1) “The following acts shall not constitute an infringement of copyright, namely, —.....

(i) the reproduction of any work—

(i) by a teacher or a pupil in the course of instruction; or

(ii) as part of the question to be answered in an examination; or

(iii) in answers to such questions”

1.47 Further, the Division Bench of the Delhi High Court on 9th December, 2016 had ruled in the DU photocopying case that the preparation of ‘course packs’ i.e. compilation of photocopies of the relevant portions of different books prescribed in the syllabus, and their distribution to the students by educational institutions does not constitute infringement of copyright in those books under the Copyright Act, 1957, as long as the inclusion of the works photocopied was justified by the purpose of educational instruction. It was held that such photocopying qualifies as reproduction of the work by a teacher in the course of instruction and thus does not amount to copyright infringement by virtue of Section 52(1)(i) of the Act. In effect, it was held that educational institutions do not require a license or permission from the publishers for making and distributing course packs to students if the copyrighted materials included in them are necessary for the purpose of instructional use by the teacher to the class. Thereafter, in a joint statement released by Oxford University Press, Cambridge University Press and Taylor & Francis have said that they withdrew as plaintiffs in the aforesaid case and that they refuse to submit an appeal to the Supreme Court of India, following the Delhi High Court Division Bench appeal decision of 9th December 2016.

1.48 The Department has been making concerted efforts to resolve the instant concern and thus inter-ministerial consultations are being held to resolve the matter.

Recommendation/Observation

1.49 *The Committee further recommends the Government to promote establishing of community libraries and upgradation of existing libraries in the country for easy access to works of foreign publishers that are exorbitantly priced and difficult for the students and academics to access. Also, National Mission on Library, a venture of Central Government to strengthen the library system, should be implemented at the earliest.* (Para 14.6)

Action Taken

1.50 Availability of accessible literary content as a knowledge source is imperative for the socio-economic development of the country. Accordingly, this Department duly takes note of the recommendations of the DRPSC and is examining the issues being faced in implementation and establishment of community libraries and obtaining access to foreign works. In this regard, inter-ministerial consultations are being held to decide future course of action.

Recommendation/Observation

1.51 *The Committee recommends the Department to increase the renewal time of Copyright Societies from 5 to 10 years.* (Para 14.8 (i))

Action Taken

1.52 Section 33 (3A) of the Copyright Act, 1957 provides that every copyright society must be granted registration for a term of 5 years and the same be renewed

from time to time before the end of every 5 years, after examination of the request made by such society in the prescribed form and considering the Report of Registrar of Copyrights on the working of the copyright society under Section 36. Further, renewal of registration be granted by the central government subject to continued collective control of the copyright society being shared with the authors of the works in their capacity as owners of copyrights or of the right to receive royalty. The instant provision regarding the renewal of copyright societies was introduced with the Copyright (Amendment) Act, 2012. Prior to the introduction of Copyright (Amendment) Act 2012, a one-time registration was granted to a copyright society without any requirement for its renewal of the registration.

1.53 In this regard, the 227th Report of Parliamentary Standing Committee on Human Resource Development on the Copyright (Amendment) Bill, 2010 noted that there are inherent problems in the administration and functioning of copyright societies which have been continuing since long. Situation has deteriorated to such an extent that the owners of works/music companies are dominating these societies denying equity shares to the performers/authors. The Parliamentary Standing Committee also observed that in spite of there being provisions in the Act and rules framed thereunder regulating the copyright societies, over the years, a disturbing trend in their functioning had been developing which led to disputes between the major stakeholders and resultant court cases. In view thereof, the existing provisions were amended to include a mechanism whereby registration is granted

to a society for a fixed term and is renewed upon compliance of certain pre-requisites as prescribed under the Act and the Rules.

1.54 The Department is consulting stakeholders on the same for implementation.

Recommendation/Observation

1.55 *The Committee recommends the Department to amend Section 31D for incorporating 'internet or digital broadcasters' under statutory license in wake of the rise in digital or OTT platforms with manifold increase in music as well as movie apps and its significant contribution to economy. This would ensure a level playing field by making content accessible on similar terms to both traditional and internet broadcasters alike.* (Para14.8 (ii))

Action Taken

1.56 Section 31D was introduced by the way of Copyright (Amendment) Act of 2012 which provides that, any broadcasting organisation which desire to communicate to the public by way of a broadcast or performance, of a literary, musical or sound recording work, which has already been published, may do so by giving a prior notice of its intention to the owner, to broadcast the work stating the duration and territorial coverage, and payment of royalties in the manner and rate fixed separately for radio and television broadcast by the Commercial Courts.

1.57 Owing to the technological advancement in the field of broadcast and the advent of internet streaming, an attempt was made to bring internet within the scope of statutory licensing. Accordingly, an Office Memorandum dated 6th

September, 2016 was issued by this Department wherein it was stated that; *“the provisions of section 31D are not restricted to radio and Television broadcasting organisations only but cover internet broadcasting organizations also.”*

1.58 Subsequently, the aforesaid Office Memorandum became a subject matter of contention in case before the Bombay High Court, who adjudicated upon a question that, whether online streaming services are eligible for being granted statutory licenses for broadcasting under Section 31D of the Copyright Act and opined that internet as a medium is not included within the scope of statutory licensing. As regards to the bearing of Office memorandum issued by DPIIT on the instant matter, the Hon’ble Court held that *“The Office Memorandum lacks a ‘statutory flavour’ and cannot prevail over an interpretation which is drawn under the Act and the Rules. The interpretation of Section 31D in the said Memorandum is inconsistent with the interpretation drawn by this Court and this Court is not bound by the said Memorandum.”* Hence, the OM issued by DPIIT could not be implemented. Presently, the instant matter is subjudice before the division bench of the Bombay High Court, who had granted a stay on the effect of the judgment passed by the single bench.

1.59 In view of the recommendations of the Committee, the Department is consulting stakeholders on the same for implementation.

Academia and Industry

Recommendation/Observation

1.60 *The Committee recommends that the Department should assign a devoted agency for establishing linkages between industry and academia so that India can be positioned on top in the field of innovations and inventions of our research and educational institutes.* (Para 14.12)

Action Taken

1.61 RGNIIPM and CIPAM are taking action in this regard in consultation with stakeholders.

Recommendation/Observation

1.62 *The Committee, therefore, recommends that the catapult system of UK may be emulated along with scaling up funding by Government Sector and industries along with defining modalities and sector. The Committee also recommends that to encourage innovation, certain schemes may be introduced by applying a lower rate of corporate tax to any profits from patented inventions and tax incentive on R&D.* (Para 14.14)

Action Taken

1.63 The Department is consulting stakeholders on the same for implementation.

GEOGRAPHICAL INDICATIONS

Recommendation/Observation

1.64 *The Committee takes cognizance of downtrend in registration of GIs in recent years in spite of the measures being undertaken to expedite the registration of GIs in India. It recommends GI Registry to issue periodic advisories consisting of necessary information on compliance requirements for the assistance of GI applicants. This would check undue delay and pendency in approving GI registrations. The Committee also recommends that concerted efforts should be taken by both DPIIT and GI Registry to generate awareness in the country about the importance of GI in imparting uniqueness to a product related to its place of origin. In this regard, kiosks and training centers should be established in various parts of the country especially in remote regions. Marketing strategies highlighting the GI tag products may be framed to capitalise its economic potential.* (Para15.6)

Action Taken

1.65 It is informed that the GI Registry has already worked on advisories in the form of GI Manual, guidelines regarding filing of GI applications, registration process and FAQs on GI for the benefit and information of public including the GI applicants. The same are already hosted on the official website. In addition, GI Registry also regularly publishes General Information and Registration process about GI in the GI Journal. Further, the GI Registry organizes/ participates/ co-

ordinates in various awareness programs/ exhibitions on GI, wherein handouts and booklets on GI are issued to the general public. However, keeping in view the concern and recommendations, steps are being taken to further augment the information about GI application filing and registration process requirement to be regularly published in the GI Journal for the benefit and information of the GI applicants.

Recommendation/Observation

1.66 The Committee recommends that a stringent enforcement mechanism through a centralized agency should be authorized to ensure compliance of GI tagged products to the stipulated standards under GI Act while they are being marketed and commercialised. This would help in preventing duplicity, infringement and unfair competition of GI tagged products causing economic losses to genuine GI holders and denting the image of GI tagged products in international markets. (Para 15.7)

Action Taken

1.67 CGPDTM and GI Registry have been sensitized regarding this recommendation.

TRADITIONAL KNOWLEDGE AND IPRs

Recommendation/Observation

1.68 The Committee feels that individuals, communities and manufacturers exhibiting traditional knowledge and indigenous inventions in their creations

should not be bereft of benefits or royalties due to their exclusion from IPR regime. In this context, it recommends the Department to review Section 3(p) of the Patents Act for including traditional knowledge of these entities under patents ensuring growth of an inclusive IPR regime in India. In this regard, provisions to investigate such claims of patents should be incorporated to prevent the misuse or exploitation of enriched traditional knowledge of the country. (Para 16.3)

Action Taken

1.69 It may be noted that Section 3(p) of the Patents Act excludes inventions which in effect are traditional knowledge or which are aggregation/duplication of known properties of traditionally known component/components. In other words, inventions which are not mere traditional knowledge or which are not mere aggregation/duplication of known properties of traditionally known component/components do not falls within the scope of Section 3(p) of the Act. Such value added, novel, non-obvious and industrially applicable inventions may still qualify for patent protection despite Section 3(p) exclusions, if properly presented. Two rounds of consultations have been done with CSIR-TKDL.

Recommendation/Observation

1.70 *The Committee notes that the registration of traditional knowledge as Geographical Indication if it exhibits linkages to a geographical location would be highly beneficial to consolidate traditional knowledge into IPRs. The Committee recommends the Department to undertake steps in this regard. (Para 16.5)*

Action Taken

1.71 Two rounds of consultations have been done with CSIR-TKDL.

Recommendation/Observation

1.72 The Committee envisages that absence of any proper mechanism for the documentation of traditional knowledge and inefficiency in executing Traditional Knowledge Digital Library (TKDL) has resulted into the neglect of traditional knowledge. It recommends the Government to address the structural issues in implementing a systematic mechanism of documentation and preservation of traditional knowledge in the country along with taking measures to strengthen TKDL as an effective database. (Para 16.7)

Action Taken

1.73 Two rounds of consultations have been done with CSIR-TKDL.

1.74 Further, the Department has been pursuing efforts for inclusion of TKDL as part of the PCT minimum documentation. While the Access Agreements between the concerned patent offices and CSIR-TKDL allows utilization of the TKDL database as a prior-art tool, it does not make it mandatory for these offices to use the database while examining patent applications. The PCT minimum documentation would provide this benefit for mandatory referral to the TKDL.

1.75 The Department is representing the country at both the ‘Meeting of International Authorities under the Patent Cooperation Treaty (PCT)’ and ‘Inter

Governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore’ and is continuously taking efforts for including TKDL as part of the PCT minimum documentation.

Recommendation/Observation

1.76 *The Committee also observes that indigenous knowledge of drugs and pharmaceuticals, artistic handcrafts, traditional cultural expressions in products and creations as well as traditional practices and inventions in agriculture and forestry is abundant in India. It is, however, disappointed to note that the knowledge and awareness to claim IPR rights for earning monetary benefits from it is highly inadequate in the country. It, therefore, urges that the creators and holders of traditional knowledge, especially tribal communities, forest dwellers, artisans and craftsmen, should be made aware of the novelty or inventive steps involved in traditional expressions or work to facilitate a fair IPR regime in the country. The creators or communities practicing traditional knowledge should be mobilized in claiming IPRs wherein the Government should play a role of joint owner thereby restricting their misappropriation and exploitation.*

(Para 16.8)

Action Taken

1.77 Two rounds of consultations have been done with CSIR-TKDL.

TRADITIONAL KNOWLEDGE AND IPRs

Recommendation/Observation

1.78 *The Committee recommends that India should engage at international level for the protection of Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources to prevent the other countries to exploit them.* (Para 16.10)

Action Taken

1.79 Two rounds of consultations have been done with CSIR-TKDL.

Utility Models

Recommendation/Observation

1.80 *The Committee recommends the Department to undertake a comprehensive analysis and study of the Utility Models and its implementation in various countries for ascertaining their advantages to India as an alternate form of IPR.* (Para 16.12)

Action Taken

1.81 India has a large number of inventions that may not satisfy the criteria of patentability under the Patents Act. Such inventions can be protected by a law on ‘utility models’ – a form of IP successfully applied in many countries but not available in India. This leaves out a large number of inventors from protecting their inventions by IPRs, particularly the MSMEs and in the unorganized/informal sectors, MSMEs account for about 45% of manufacturing output, but their potential IP assets are recognized only in a limited, often informal, manner.

Therefore, the need exists for a new law on utility models with defined applicability, in harmony with other IP laws and easy to administer and enforce.

Recommendation/Observation

1.82 *The Committee is of the view that the research and inventions being conducted at the level of schools and colleges should be registered under a separate category other than IPR whereby these inventions could have commercial value. This will incentivize the young generation to go into Research and Development.* (Para 16.14)

Action Taken

1.83 Training/awareness programs for imparting training on IPRs for students is being actively examined in consultation with CGPDTM, CIPAM and other stakeholders. It is also submitted that the recent patent fee reduction that has been extended to eligible educational institutions (brought about by amendment in the act in 2021 itself), will benefit the educational institutions and students as well.

TRADE SECRETS

Recommendation/Observation

1.84 *The Committee underlines that securing data and maintaining its confidentiality in business and trade is of paramount importance for companies possessing secret formulas, business strategies, algorithms, etc. Also, a separate statute or framework for trade secret protection in India is imperative in wake of*

rising frauds and misappropriation in digital world. In this regard, the Committee recommends the Department to consider enacting a separate legislation or a framework for protection of trade secrets. It further recommends the Department to examine the relevant and best practices being followed in statutes of various countries for their implementation in India. (Para 17.4)

Action Taken

1.85 The Department is consulting stakeholders on the same for implementation.

IPR IN PHARMACEUTICALS

Discovery of new drugs

Recommendation/Observation

1.86 The Committee notes with concern that out of 16,134 patents filed during the last 5 years, only 4,345 were granted patents. The Committee recommends that necessary steps may be taken to expedite the process of examining/ granting patents. (Para 18.4)

Action Taken

1.87 Various initiatives such as amendments in rules, modernization of Patent Office, manpower augmentation, use of IT enabled processes and expedited examination, etc., have been undertaken for faster and expedited examination and grant of patents applications.

1.88 As far as patent applications filed and granted under pharmaceuticals are concerned, patentability of inventions is examined *vis-à-vis* provisions in the Patents Act and rules. Thus, patent applications which pass scrutiny of patent law could only qualify for grant of patents. It cannot be concluded that despite large number of patent applications being filed, less patents are granted due to delay in examination and grant. In some applications, it may be due to the fact that multiple pre-grant oppositions are filed in some of the pharmaceuticals related application.

Recommendation/Observation

1.89 *The Committee appreciates the initiatives of the Department of Pharmaceuticals in bolstering Research and Development activities in pharmaceuticals sector. The Committee acknowledges the fact that the research in generic segment of medicines as well as its successful patenting under Indian Acts has made India a strong generic player in the world. It, however, opines that for sustaining growth in global pharmaceutical market, research should be oriented towards niche segments and new drugs discovery. In this direction, joint research with global pharma players on discoveries of new molecules and compositions should be undertaken by the Department.* (Para 18.8)

Action Taken

1.90 Department of Pharmaceuticals is in the process of formulation of Research & Development Policy. The inputs from the various institutes and stakeholders

will be taken by the Department of Pharmaceuticals for formulation of effective policy.

Recommendation/Observation

1.91 *The Committee recommends that to encourage research and development in the Pharmaceutical Sector, policies for attracting investments from both the public and private sector may be explored by providing incentives such as tax rebate, reducing processing time and through industry academia partnership. (Para 18.9)*

Action Taken

1.92 Department of Pharmaceuticals is in the process of formulation of Research & Development Policy. The inputs from the various institutes and stakeholders will be taken by the Department of Pharma for formulation of effective policy.

Recommendation/Observation

1.93 *The Committee appreciates the endeavours being undertaken by the Department of Pharmaceuticals in the field of traditional and indigenous medicines which has become a potential thrust area in pharmaceuticals and drugs sector in wake of covid-19 pandemic. It recommends the Department to undertake an intensive research on AYUSH medicines and drugs including herbal remedies that would lead to advancement in availability of innovative drugs and medicines for treatment of novel diseases. (Para 18.11)*

Action Taken

1.94 Department of Pharmaceuticals is in the process of formulation of Research & Development Policy. The inputs from the various institutes and stakeholders will be taken by the Department of Pharmaceuticals for formulation of effective policy. Ministry of AYUSH is also part of drug discovery Mission and inputs from Ministry of AYUSH will also be taken in R&D Policy being formulated by the Department.

Spurious Drugs

Recommendation/Observation

1.95 The Committee expresses its concern on the rising incidences of spurious and adulterated drugs in India which is not only a potential threat to the lives of its citizens but also dents its image as being one of the largest supplier of drugs and pharmaceuticals in the world. It, therefore, recommends the Government to roll out a track and trace mechanism at the earliest for the detection of authenticity and genuineness of medicines and medical devices from manufacturers to end users in supply chain. (Para 18.15)

Action Taken

1.96 An Inter-Departmental Committee (IDC) was constituted by Ministry of Health and Family Welfare (MoHFW) on the issue of implementation of Barcode/QR Code on packaging of drugs including Medical Devices. The IDC has prepared a report containing various recommendations after detailed deliberation

and the report/recommendations of the IDC has also been shared with Cabinet Secretariat and PMO. As per recommendations of IDC, pragmatic way to roll out a track and trace mechanism, in phase-wise manner is being considered by CDSCO/Ministry of Health and Family Welfare.

IPR IN AGRICULTURE

Recommendation/Observation

1.97 The Committee appreciates the supportive measures being undertaken by Indian Council of Agricultural Research (ICAR) in mobilizing agricultural researchers and scientists in the ambit of IPRs. It, however, notes that acculturation of Indian farmers and farming communities in IPRs is far from being achieved in India. In this direction, the Committee recommends that the Government should make all out efforts in creating awareness amongst farmers and farming communities so that they voluntarily embrace IPRs in protecting their rights in areas of farming innovations, breeding and varieties. (Para 19.6)

Action Taken

1.98 Department of Agriculture has informed that acculturation of farmers on IPR related to plant variety protection in India is being done by inculcating the provisions available in the PPV&FR Act, 2001 successfully, as the number of registered farmer's varieties is a significant proportion of the total registered varieties with IP protection of the farmer's rights. Further very few disputes have been filed by farmers against other farmers or private companies on IPR issues in

seeds, which is also a sign of existence of awareness amongst farmers on the IPR issues. Further the PPV&FR Authority has so far organized 1817 awareness programmes among farmers and farming communities in India.

Recommendation/Observation

1.99 The Committee also recommends that more governmental efforts through legislation and implementation of law may be made in favour of farmers since they are not aware of the legal system and sometimes get trapped in IPR issues by private companies.

(Para 19.8)

Action Taken

1.100 Department of Agriculture has informed that the PPV&FR Act, 2001 protects and guards the rights of farmers zealously. The Act is in existence for 16 years and several efforts have been made to ensure that farmers do not get trapped in IPR issues. The PPV & FR Act 2001 protects farmers against any innocent infringement or violation resulting from their unawareness about IPRs. Therefore, it may be concluded that the PPV&FR Act, 2001 sufficiently protects the IPR interest of farmers including innocent violations. Efforts are being made for better implementation of this Act and increased awareness of IPR issues among farmers.

SUMMATION

Recommendation/Observation

1.101 *Unless the entire population is sensitized, it will be difficult to foster a culture of respect for IPR laws.* (Para 20.2)

Action Taken

1.102 Various awareness programmes have been made on a pan India basis with educational institutions, enforcement agencies and judiciary through CGPDTM and CIPAM.

Recommendation/Observation

1.103 *In this regard, IP audit should be conducted for assessing and evaluating IPR potential in specific sectors which would help in formulating targeted IP programmes.* (Para 20.6)

Action Taken

1.104 CGPDTM has been sensitized.

Recommendation/Observation

1.105 *A serious view needs to be taken towards the commercialization of IPRs as has been done in many countries. The steps taken in this direction should be in tandem with reforms in banking regulations.* (Para 20.7)

Action Taken

1.106 The Department is consulting stakeholders on the same for implementation.

Recommendation/Observation

1.107 *Also, ensuring active co-ordination and collaboration between the enforcement agencies like State Police and Customs (who work within their limited jurisdiction) and CBI (which mostly takes up high end crimes) would efficiently counter the rising IP crimes of counterfeiting and piracy.* (Para 20.8)

Action Taken

1.108 Various awareness programmes have been made on a pan India basis with educational institutions, enforcement agencies and judiciary through CGPDTM and CIPAM.

Recommendation/Observation

1.109 *Further, the Committee is of the opinion that the establishment of dedicated benches at High Courts for IP matters would ensure disposal of IPR disputes in a time bound and efficient manner. There also needs to be a panel of amicus curiae for assisting the courts in dealing with IPR matters.* (Para 20.9)

Action Taken

1.110 The Department is consulting stakeholders on the same for implementation.

Recommendation/Observation

1.111 *To foster IP-Cooperation between nations, collaborative efforts with other countries and international organisations through MoUs are required which*

would result into exchange of crucial information of the best practices and expertise in IPR. (Para 20.10)

Action Taken

1.112 This Department currently has 12 MoUs/MoCs on IP cooperation with foreign countries/organization under which Work plans have been formulated on activities covering expertise in IPR sharing of best practices on Patents, Industrial Design, Trade Marks, Copyrights, Geographical Indications, Traditional Knowledge, Awareness raising, Outreach activities, Enforcement of IPRs.

Recommendation/Observation

1.113 Hence, consolidated efforts on the part of Government, industry, civil societies as well as educational and research institutions functioning at the level of schools, colleges and universities would be the cornerstone in evolving a robust IPR regime in India thereby having a desired impact on the development in social, cultural and economic fronts. (Para 20.11)

Action Taken

1.114 Initiatives taken by CIPAM have already been mentioned in earlier paras.

CHAPTER – II

RECOMMENDATIONS/OBSERVATIONS WHICH THE COMMITTEE DOES NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLY

National IPR Policy, 2016

Recommendation/Observation

2.1 *The Committee is of the opinion that a review of IPR policy should be undertaken. The re-assessment of the policy is imperative in the wake of new and emerging trends in spheres of innovation and research which requires concrete mechanisms to protect them as IPRs. The review also acquires salience to identify the existing challenges in the implementation of the policy and the corrective measures that need to be taken for its effective execution. The Committee, therefore, recommends the Department to undertake a holistic review of IPR policy at the earliest. The Committee also recommends that the revisiting of policy should be intended at instituting changes such as elaborating more on expanding innovation ecosystem of the country, organization of awareness drives on IPR, comprehensive advisories on increasing R&D activities, encouraging IP financing and involvement of State Governments in evolving a robust IPR regime.*

(Para 1.12)

Action Taken

2.2 The IPR Policy was adopted by the Government of India on 12th May 2016. Several measures have been undertaken to strengthen the IPR ecosystem. The

Department submits that before initiating a review process, it is necessary that we comply with all the objectives explicitly mentioned in the National IPR policy. Phase I was utilized effectively to introduce several administrative and legal reforms to strengthen and safeguard the IPR framework, thereby bringing the same in conformity with the international frame of reference while utilizing the flexibilities provided therein to address developmental concerns.

2.3 Various reforms have been carried out since 2016 to promote IP filing and registrations to expedite the process, and reduce compliance burden, which are as following:

- i. Patent (Amendment Rules 2021):- Patent filing and prosecution fees have been reduced by 80% for educational institutions.
- ii. Patent (Amendment) Rules, 2020:- Filing of statement on the commercial working of patent within 6 months instead of 3 months as prescribed earlier. Further, it facilitated for filing only one form in respect of multiple patents provided all of them are related patents and are granted in the name of the same patentee.
- iii. Patents (2nd Amendment) Rules 2020:-Patent filing and prosecution fees have been reduced by 80% for small entities.
- iv. Patent Amendment Rules, 2019:-Enabled certain categories of patent applicants, including female applicants, small entity, Government

- departments, institution owned or controlled by the Government, to seek expedited examination of their patent applications.
- v. GI Rules, 2020:-To boost registration of “*authorised users*” of any Geographical Indications product, the application fee for the registration of an authorized user of a registered geographical indication and renewal has been reduced to ₹10 which was earlier ₹500 and ₹1000 respectively. Further, the fee levied for the issuance of the registration certificate was waived.
 - vi. Design (Amendment) Rules, 2021:-To promote design filing and registration by MSMEs, reduction in fee payable by small entities.
 - vii. Copyright (Amendment) Rules, 2021:-Copyright societies will be required to draw up and make public an Annual Transparency Report for each financial year.
 - viii. Amendments in Trademark Rules, 2017:-The Trade Marks Rules, 2002 were revamped and The Trade Marks Rules, 2017 were notified on 6th March, 2017. 50% lower fares for filing Trade Mark Applications by Individuals/ Startups/ Small Enterprises vis-à-vis Companies. The 74 separate forms and applications have now been replaced by 8 consolidated forms. Process of determining a well-known mark has been laid out for the first time. E-filing encouraged through 10% rebate in fees for e-filing *vis-à-vis* physical filing of Trade Mark Applications.

2.4 In addition to the aforesaid, several administrative reforms have been carried out by the Department to further strengthen the institutional mechanism such as convergence of all Intellectual Property Offices, modernization of IP offices and manpower augmentation. These reforms have led to a significant improvement in IP filing and registration as well as reduced pendency.

Increase in IP Filings

- Patent filings increased by around 37% in 2020-21 *vis-à-vis* 2014-15.
- Trademark filings shot up by around 111% (approx.) in 2020-21 compared to 2014-15.

Reduced Pendency

- Patent applications from certain fields of technology, like Chemistry, Biochemistry, Polymer, Electrical, Mechanical, Physics, Civil and Metallurgy are being examined in less than 12 months from the date of request for examination.
- Period of examination of new trademarks applications is reduced from 13 months to less than 30 days.
- Trademark is registered in about 6 months, if there is no objection or opposition filed, as compared to 3-5 years required earlier.

- Copyright registration has increased more than 300% in FY 2020-21 *vis-à-vis* FY 2016-17.

2.5 Further, the department has been coordinating with various contributors across States to extend the scope of outreach and achieve the objectives set out under the National IPR Policy. Through consistent dialogues these contributors assist the Department in understanding the issues being faced by the different sectors of the creative and innovation industry and provide effective solutions for the same. The particulars of such contributors are as under:

- a. IPR Chairs - 18 IPR Chairs have been established under the Scheme for Pedagogy and Research in IPR's For Holistic Education & Academia (SPRIHA) Scheme which are responsible for creating public awareness about the economic, social and cultural benefits of Intellectual Property Rights amongst all sections of the society. The IPR Chairs formulate credit as well as specialized courses on IPR, organize seminars and workshops on IPR matters, develop on inputs and conduct research on important IPR issues. The IPR Chair activities are regularly monitored by the Department.
- b. Technology and Innovation Support Centre– Apropos to a Service Level Agreement (SLA) signed between DPIIT and the World Intellectual Property Organisation (WIPO) for establishing Technology and Innovation Support Centre (TISC) network in India, 110 IP cells have been instituted so far in collaboration with various Universities. Process of setting up of more

such cells is underway. These cells aim to provide a diverse range of technology and innovation support services to inventors, researchers, and entrepreneurs and also undertake activities that increase awareness on IP and contribute to economic growth in the country. **(appended at Annexure II)**

2.6 To extend States' participation in effective implementation of IPR Regime, CIPAM in collaboration with TISCs have instituted 110 IPR Cells in various States under TISC network.

Recommendation/Observation

2.7 *The Committee is of the view that State Governments could play the role of constructive partners in evolving a strong IPR regime by formulating their own strategies and policies within the broad framework of India's policy on IPR. It recommends that the State Governments should actively participate in evolving policies that focus on sensitizing people on significance of IPRs, encouraging innovation in educational institutions and establishing State level Innovation Councils, enforcement of IPR laws and curbing IP crimes. In this regard, the Department should ensure extending adequate cooperation and support to State Governments in terms of financial and other means in implementing such policies and strengthening IPR regime in states. The Department should also hold annual meetings with all States/UTs so that the implementation of the policy is properly monitored.* (Para 1.14)

Action Taken

2.8 Various awareness programmes are being conducted in States/ UTs to sensitize their participation in innovation and IPR filings by CGPDTM and CIPAM. Other Ministries/ Departments like Department of Science and Technology, M/o Electronics and Information Technology, etc., are also taking such initiatives.

2.9 A professional body under the aegis of Department for Promotion of Industry and Internal Trade (DPIIT), namely Cell for IPR Promotion and Management (CIPAM) which ensures focused action on issues related to IPRs and addresses the identified objectives of the National IPR Policy. CIPAM assists in simplifying and streamlining of IP processes, apart from undertaking steps for furthering IPR awareness, commercialization and enforcement.

2.10 A tabulation of various IPR awareness campaigns conducted at various levels by the Department during the last 4 years is as below:

S.No.	Target Group	2017-18	2018-19	2019-20	2020-21
1.	Academic Institutions (Schools, Colleges, Universities)	78	653	300	102
2.	Industry including MSMEs and Start-ups, commercialization	30	56	113	193
3.	Enforcement Agencies and Judiciary	26	23	42	20

INDIA'S IPR REGIME vis-à-vis US AND CHINA

Recommendation/Observation

2.11 *The Committee is distressed to note that in the year 2019, only 24,936 patents were granted in India which is considerably low as compared to 3,54,430 and 4,52,804 patents granted in U.S. and China respectively. Also, the rate of increase in number of patents in India in the last four years has not been very impressive compared to that seen in U.S. and China. It is a matter of concern that less filing and grants of patents in India is co-related to a microscopic spending on Research and Development activities which is a meager 0.7 per cent of India's GDP. The Committee recommends the Government to emphasize upon increasing the spending on Research and Development (R&D) activities by allocating specific funds on R&D in each Department/Ministry. Also, R&D activities should be encouraged not only in Governmental and educational institutions but also in businesses and private companies. It recommends the Government to provide incentives to private businesses and companies for undertaking R&D activities which would be a proactive step in augmenting research capabilities of the country. The Committee also recommends that every industry with certain specified turnover may be directed to put funds under CSR for R&D activities.*

(Para 3.3)

Action Taken

2.12 The recommendation has been examined in consultation with stakeholders concerned. Various awareness initiatives have been taken by CIPAM and CGPDTM on a pan India basis which encourage R&D initiatives in States/ UTs for benefits of industry bodies, educational institutions, Enforcement Agencies as well as judiciary. Further, this Department *vide* Patents Amendments Rules 2020 has reduced Patent filing and prosecution fees by 80% for educational institutions to encourage R & D activities in educational institutions. Department of Science and Technology (DST) has also established Patent Information Centres (PIC) in the States to provide support and facilitations of IPR to the public.

2.13 The philosophy of Corporate Social Responsibility (CSR) is to engage corporates as partners by leveraging their managerial efficiency, best practices, technology and innovation in the delivery of public goods and services. Ministry of Corporate Affairs provides the broad framework for CSR through section 135 of the Companies Act, 2013 (the Act), Schedule VII and Companies (CSR Policy) Rules, 2014. Section 135 of the Act mandates every company having net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more, or net profit of Rs. 5 crore or more during the immediately preceding financial year, to spend at least two per cent of the average net profits of the company towards CSR as per the CSR Policy of the Company.

2.14 Schedule VII of the Act indicates the activities that can be undertaken by the company as CSR. These activities, *inter-alia*, include major development

sectors such as health, education, livelihood, poverty, malnutrition, sanitation, rural development slum development, etc., which are equally important to maintain a balance development. Item no. (ix) (a) of Schedule VII already includes "contribution to incubators or research and development projects in the field of science, technology, engineering and medicine" as eligible CSR activity.

2.15 However, it may be noted that the permissible activities in Schedule VII are consistent with national priorities of sustainable and inclusive development. Accordingly, Ministry of Corporate Affairs *vide* General Circular no. 14/2021 dated 25.08.2021 issued a comprehensive FAQs on CSR wherein in reply to question no 3.13, it has been clarified that the items enlisted in Schedule VII of the Act are broad-based and are intended to cover a wide range of activities. The entries in the said Schedule VII must be interpreted liberally to capture the essence of the subjects enumerated in the said Schedule.

2.16 It is further submitted that CSR is a Board driven process and the Board of the Company is empowered to plan, decide, execute and monitor CSR activities based on recommendation of its CSR Committee. The Government does not issue any specific direction to the Companies to spend in any particular activity or geographical area. Thus, it is felt that earmarking of funds for a particular activity would vitiate Board's prerogative to select and carry out the activities it so desires.

Recommendation/Observation

2.17 The Committee recommends that an exclusive apex level Institution for IPR Development should be established in the country which would enable a multi-disciplinary approach in analyzing and harnessing the full potential of IPRs for economic and social growth. The Institution would assist in developing a pool of IPR professionals and experts in spheres such as policy and law, strategy development, administration and enforcement. This would also enhance institutional capacities in IPRs in areas such as policy development, teaching, training, research, and skill building. (Para 3.4)

Action Taken

2.18 The Rajiv Gandhi National Institute of Intellectual Property Management (RGNIIPM) has been established at Nagpur as a National center of excellence for training, management, research, education in the field of Intellectual Property (IP) Rights. The main objectives of this institute are to cater to the need of training of Examiners of Patents, Designs, Trademarks and Geographical Indications, IP professionals, IP managers, imparting basic education to user communities, government functionaries and stakeholders involved in creation, commercialization and management of intellectual property rights, facilitate research on IP related issues including preparation of study reports and policy analysis of relevance to Government.

2.19 Apart from this, RGNIIPM addresses the need of increasing the general awareness and understanding of Government officers and users of IP systems

including in universities and other educational institutions. It also works towards research in IP and prepares study reports and policy analysis papers on subject of current relevance for policy and lawmakers.

2.20 RGNIIPM imparts training to newly recruited Examiners of IP as well as senior examiners. It also imparts training to scientists, R&D Organizations, Government Institutions, IP professionals such as lawyers, attorneys, and agents and IP managers, i.e., personnel within the industry who have responsibility for management of the IP within their organization including other stakeholders.

2.21 RGNIIPM does research activities as part of the activities of RGNIIPM in the field of IP on a number of socio-economic parameters, strata of the society, technological fields, R & D trends, etc. In addition to this, the RGNIIPM also organizes IP Awareness/campaign in the country in collaboration with IP Offices, Government Organizations and R & D Institutions.

AWARENESS OF IPRs

Recommendation/Observation

2.22 *The Committee desires that a detailed note on the functioning of IP Chairs being established in Universities in India may be furnished by the Department.*

(Para 5.11)

Action Taken

2.23 The Ministry of Human Resource and Development (MHRD) had established a Central Scheme of Intellectual Property Education, Research and Public Outreach (IPERPO) under which IPR Chairs were set up with an objective to encourage the study of IPRs in educational institutions and promote research and training. The term of the erstwhile Scheme for Promotion of Copyright and IPR ended with the 12th Five Year Plan (2012-17). Consequent upon the amendment in Allocation of Business Rules, 1961 *vide* gazette notification S.O.1163 (E) dated 17.03.2016, the subject of Copyright Act, 1957 was transferred to DPIIT from Ministry of Education.

2.24 In view of the holistic development of IPRs in the country, DPIIT launched Scheme for Pedagogy & Research in IPRs for Holistic Education and Academia (SPRIHA) in 2016 in order to strengthen 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.

The IPR Chair has been mandated to take up the following activities:-

- i. Introducing and promoting IP education in Institutions of higher learning/ universities, for which DIPP-IPR Chairs may be appointed in eligible institutions selected under the Scheme;
- ii. Creation of an IPR knowledge database by compiling global best practices on all IPR matters;

- iii. Collaborations of Indian academic institutions with other Universities/ Colleges/ Institutions across the world;
- iv. Develop, formulate and collate inputs/ recommendations industry, practitioners and academia on IPR issues for policy makers;
- v. Foster research in IPR and related matters and highlight the policy relevance thereof;
- vi. Co-operation between IPR Chairs to facilitate joint research, shared lecturing arrangements and student/ academic exchanges;
- vii. Dissemination of research and promoting discussion on IPR; and
- viii. Facilitate increase in domestic IPR filings.

2.25 Initially 32 proposals were received from different Universities and Institutes, out of which 12 Universities/ Institutes were approved for establishment of IPR Chairs under SPRIHA. Thereafter, 6 more universities were shortlisted by this Department as per the SPRIHA norms to establish IPR Chair.

2.26 On the basis of the recommendations of the committee constituted to evaluate the previous MHRD Scheme of Promotion of Copyrights and IPR beyond the “Five Year Plan Period (2012-17), the revised SPRIHA norms were finalised by the Department in October, 2018. Thus during 2017-18, no scheme was in operation and NIL expenditure was incurred. During FY 2018-19 only 04 universities were able to complete the procedure of appointment of IPR Chairs in

their Institutes, thus, grants to the tune of Rs. 21.62 lakh were released during 2018-19 on pro-rata basis of admissible annual grants.

2.27 Thereafter, during FY 2019-20 the grantee universities were increased from 04 to 10 whereby the total disbursement of grants for IPR Chair activities was increased to Rs. 1.135 crore. In year FY 2020-21 the total operational IPR Chairs were 14, thus an amount of Rs. 1.57 crore was disbursed as grants. In the Current FY i.e. 2021-22 Grant-in-aid to the tune of Rs. 1.49 crore has been disbursed to 8 Universities till October, 2021.

2.28 For Monitoring of IPR Chairs, a monitoring pro forma has been prepared by this Department and circulated among the active IPR Chairs. Monitoring reports received from 12 IPR Chairs have been examined by this department. A Quantitative analysis of the monitoring reports has been done. It is found on examination of monitoring reports submitted by all active IPR Chair Universities that a total of 1009 activities/works were conducted by the Universities/Institutes in the FY 2020-21 which include publishing of Books/Journals, conducting Seminars/ Conference/ Workshops, Academic works, patent works registered, Internships/training, Research activities, etc.

2.29 The IPR Chair activities are regularly monitored by the Department. A List of Institutes selected under SPRIHA Scheme for IPR chair is provided at **Annexure-I.**

Recommendation/Observation

2.30 *The Committee recommends the following interventions need to be taken by the Department for building greater awareness about IPRs:-*

- ii. The training programmes and workshops being organized by the Department (especially for MSMEs, small tradesmen, local artisans) should be oriented towards inculcating scientific temperament and knowledge about identification of novelty in their products and protection of such novelties as IPRs;*
- iii. MSMEs registering for IPRs in foreign countries, where they have the potential to expand their trading base, should be encouraged and given assistance thereby making them globally competitive;*
- iv. IP courses and curriculum should be introduced in schools, colleges, management schools and IPR trainings, workshops and conferences should be organized for students along with professors and teachers; and*
- v. The Committee further notes that print and visual media plays a crucial role in creating awareness regarding IPR. The Committee recommends that interactive workshops for journalists may be organized to make them aware of the need for protecting IPR.*

(Para 5.12)

Action Taken

2.31 (ii) & (iii) Regarding encouraging and aiding MSMEs for filing of IPRs in foreign countries, Ministry of MSME's Scheme on "Building Awareness on Intellectual Property Rights (IPR)" provides funding support in the form of grant on Patent/GI Registration. Similarly, MIETY under its scheme "*Support for International Patent Protection in E&IT*" for MSMEs and technology startup units provides financial support for international filing in Information Communication Technologies and Electronics sector. Details related to both the schemes is provided in **Annexure-III**.

2.32 Through the Department's concerted efforts and coordination with the Department of School Education and national level boards for school education has resulted in the inclusion of content on IPRs in textbooks. Content on IPR has been included in the NCERT curriculum of Business Studies for Commerce stream. Also, the CISCE has incorporated IPR as a topic in the curriculum for Legal Studies. Content on IPR will be made a part of National Institute of Open Schooling (NIOS) curriculum for Entrepreneurship at senior secondary level. A chapter on 'IPR, Innovation & Creative Works' is proposed for inclusion in NCERT's "Handbook on Entrepreneurship for North Eastern Region (NER)".

2.33 This Department has conducted several IPR Awareness programs in various schools and colleges/ universities pan India wherein over 5000 students have participated. Further the Department has collaborated with Atal Tinkering Labs to

further broaden the awareness outreach. Many of these programs have also been conducted online to ensure wider coverage. Over 3000 academic institutions have been covered till date.

2.34 Also, faculty development advanced programs are conducted regularly for teachers and professors. Training of Teachers programmes on Intellectual Property Rights were held for 400+ teachers of National Institute of Open Schooling (NIOS). Offline and online resources for IP Education have been created and printed which include brochures, activity booklets, pamphlets, posters, FAQ book and a teachers' manual.

2.35 (iv) Understanding the importance of print and visual media, 'IP Nani' was created in collaboration with the European Union Intellectual Property Office (EUIPO). A series of interactive videos as well as comics of IP Nani along with her sidekick (and grandson) 'Chotu' was created and released. These videos have received a lot of appreciation and are regularly used for CIPAM's IP Awareness initiatives.

2.36 Further, to create awareness about Geographical Indication among general public, an article was published in 45th Edition of India Today English published in Jan. 2021 issue.

2.37 In context of Committee's recommendation regarding organizing an interactive workshop for journalists on importance of IPR, it is submitted that this has been scheduled in December, 2021.

Creation of IP Fund and Fostering IP Culture

Recommendation/Observation

2.38 *The Committee recommends the Department that a provision of IP funds should be created in the country which would help in supporting initiatives specifically for instilling IP culture in the remotest parts of India including tribal belts, hilly and border states, North East Region. Developing an IP culture in such regions which are the storehouse of traditional and indigenous knowledge would not only accomplish the objective of protecting their natural and cultural assets but would also promote the overall IP generation in the country.* (Para 5.14)

Action Taken

2.39 In consonance with the vision of the National IPR Policy, the Cell for IPR Promotion and Management (CIPAM) was established for focused action towards promoting a culture of IP and implementing the objectives envisioned in the Policy document. The IPR Promotion and Management (IPRPM) scheme has been created in this regard and funds allocated for carrying out activities for promotion of IP. Special budget allocation is made for taking up initiatives pertaining to IP Awareness and promotion of Geographical Indications.

2.40 It is to add that various awareness programmes are being conducted by CGPDTM as well as DPIIT on regular basis. Incentives are provided to facilitators through SIPP scheme of the Department for filing IP applications.

COUNTERFEITING AND PIRACY

Recommendation/Observation

2.41 *The Committee recommends that a specific legislation to curb counterfeiting and piracy should be enacted to restrain the growing menace of such IP crimes in India. It is of the opinion that a determinate method to estimate the revenue losses being incurred due to counterfeiting and piracy and the level of such crimes being committed in India should be devised. This would act as a significant tool in analyzing the adverse impact of Counterfeiting and Piracy on India's economy and for implementing corrective measures to curb the rising incidents of such crimes.* (Para 6.7)

Action Taken

2.42 Realizing the harm, these practices pose to the economic development of the country, the law of the land provides wide array of remedies against counterfeiting under various statutes. India provides various statutory, civil, criminal and administrative remedies through the already existing provisions under different IPR laws (Details are provided in **Annexure V**).

2.43 Legislation dealing with digital piracy is dealt with Information Technology Act, 2000 that provides punishment with 3 years of imprisonment and fines up to Rs 2 lakh for illegal online distribution of copyrighted content, under section 66 of the Information Technology Act. Further to strengthen the legislation for piracy,

recent introduction has been made of ‘Dynamic Injunction’ against the rogue websites wherein the right holders can avoid the cumbersome process of judicial order to ensure the blocking of rogue websites. Amendments have also been made to the existing Cinematographs Act, 1952 for the inclusion of penal provisions for illegal duplication of films and also underlined the need for public awareness and stringent enforcement mechanisms to combat offline and online piracy.

THE PATENT ACT, 1970

Recommendation/Observation

2.44 The Committee recommends that a thorough analysis should be conducted by the Department on approving the patents on plants and seeds favourable to agriculture sector of the country with a pre-condition of making Government of India as a participant in the patent. It recommends the Department to hold proper discussions and wide consultations with farmers groups/ associations and necessary stakeholders to examine the plausibility of allowing the patents on plants and seeds that yields benefits to the farmers of the country.

(Para 12.1 (iii))

Action Taken

2.45 Article 27(3)(b) of TRIPS agreement provides that members may exclude from patentability “plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the

protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof’.

2.46 Accordingly, India has enacted the Protection of Plant Variety and Farmers Right Act, 2001 (PPVFR Act) as *sui generis* system to provide for an effective system for protection of plant varieties, the rights of farmers and plant breeders, and to encourage the development and cultivation of new varieties of plants.

2.47 Globally, out of nearly 180 member countries of WTO, only 6 countries provide for patents on plants in addition to Plant Variety Protection system, while all others including India offer only plant variety protection. India offers Plant variety protection under Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPV & FR Act) enacted to give effect to the TRIPS (The Agreement on Trade-Related Aspects of Intellectual Property Rights) which is legally binding under WTO and India is a signatory to it. PPV & FR Act, 2001 recognizes the contribution made by farmers in conserving, improving and making available plant genetic resources for the development of the new plant varieties and therefore, it provides for the protection of rights of farmers. This Act also encourages and stimulates investment in research & development for the development of new plant varieties and therefore protects plant breeders’ rights.

2.48 Article 27(3)(b) of the TRIPS deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties. This article provides a member country an option where plants are excluded from patentability

if instead the country provides for the protection of plant varieties on similar lines as in the case of patents through an effective *sui generis* system by enacting a national legislation for the purpose.

2.49 India having analyzed its own situation in agriculture and the importance of plant varieties to be developed, commercialized and access made available at affordable price by small farmers who are in maximum proportion, opted for the effective *sui generis* system and enacted the Protection of Plant Varieties and Farmers Rights Act, 2001 which accorded Intellectual Property Rights to Plant Breeders and Farmers who have bred and developed new and extant plant varieties. Further Section 3(j) of Patents Act excludes plants and parts thereof including seeds, varieties and Propagating materials from the scope of patentability.

2.50 Thus, though the patent has been excluded for plants in India, since these are integral to the livelihood security of more than half of its population directly, the PPV &FR Act 2001 provides for certain rights to the innovative breeders and creative farmers for their contribution to the development of new plant varieties in addition to protecting farmers' rights over the protected varieties as was enjoyed by them before coming into force of this Act.

2.51 The rights of farmers on plants and seeds are assured like in no other part of the world. Farmers are given the same power of breeders rights on the new varieties bred by them or on traditional variety selected and multiplied by the

farmer for the desired variant in the population under the category of extant farmer's variety as well as the rights to the entire community or village or group of villages on a local landrace, also in the category of extant farmers' variety.

2.52 The authority also takes care of the farmers' ingenious ability of conserving and maintaining native traditional plant types or varieties in India by annual conferment of Plant Genome Savior Community Award (Five awards of Rs 10 lakh each)/Farmer Reward (Ten rewards each of Rs 1.50 lakh /Farmer Recognition (20 numbers each of Rs 1.0 lakh each). Recognizing the farmers as donor of genes and contributors to varietal development also clearly proves that patent for plants is not necessary in India. Hence, it is submitted that interest of the stakeholder farmers as well as that of the plant breeders are adequately covered in India by fully adopting the unique system of *sui generis* legislation for protection of plant varieties without any particular requirement for patent on plants or seeds. So far, 11114 applications by farmer(s)/farming communities have been received over last thirteen years for registration of farmers' varieties out of which 1847 farmers or farming communities have already obtained variety protection registration of traditional varieties, in addition to 2918 plant breeders from public and private organizations. More than 11000 applications are under process of testing and registration as required under the PPVFR Act (2001).

Recommendation/Observation

2.53 *The Committee notes that the timeline of 4 years to file an examination report by the patent applicant is too extensive and recommends the Department to shorten it to a reasonable time frame to avoid any unnecessary delay in examination and grants of patents.* (Para 12.1 (v))

Action Taken

2.54 It may be noted that after making first time ever provision for mandatory request for examination in the Patents Act by enacting the Patents (Amendment) Act, 2002 and notifying the Patents Rules, 2003, a period of 48 months from date of filing was prescribed for filing request for examination. It was subsequently reduced to 36 months from date of priority or date of filing by enacting the Patents (Amendment) Act, 2005 and notifying the Patents (Amendment) Rules, 2005. However, the same period is again increased to 48 months from 36 months in view of the stakeholders' request and by considering timelines for filing national phase applications based on PCT international application, which is 31 months from date of priority or filing.

Recommendation/Observation

2.55 *The Committee opines that abandoning of patents, without allowing hearing or petition, may demoralize and discourage the patentees in the country to file patents. It recommends the Department that certain flexibility should be incorporated in the Act to make room for allowance of minor errors and lapses to*

prevent outright rejection of patents being filed. Hence, a revised petition with penalty or fee may be permitted under the Act for minor or bona fide mistakes that had been committed in the filed patents. (Para 12.1 (vi))

Action Taken

2.56 It may be noted that a time period to reply to or comply with examination report has been reduced to a period of 6 months (extendable to 3 months further) from the earlier period of 12 months in order to streamline and shorten the overall patent grant process. Application gets abandoned u/s 21(1), if no reply to examination report is submitted within a period of 6+3 months.

Recommendation/Observation

2.57 *The Committee is of the view that increase in patents in the country owing to technological advancements and innovation would lead to precipitous rise of IPR disputes and infringements posing a threat to the judicial system. It, therefore, recommends the Department that the provision of jurisdiction under Section 104 of the Patent Act should be amended to promote establishing of alternative dispute resolution mechanism in India such as arbitration, mediation, etc., for ensuring speedy justice to patentees in IPR litigations. The modification in the Act should also be followed by setting up of zonal IPR mediation or arbitration centers in districts with expertise in IPR matters. (Para 12.1 (vii))*

Action Taken

2.58 There are adequate rules in place to ensure speedy and effective alternative dispute resolution processes. Thus, there appears to be no immediate necessity of amending Section 104 as there are sufficient mechanisms available. Parties who are not seeking urgent relief in any case have to mandatorily exhaust the remedy of pre-litigation mediation before instating a commercial suit, under Section 12A of the Commercial Courts Act, 2015.

Public Interest Safeguards under the Act

2. Compulsory Licensing

Recommendation/Observation

2.59 The Committee notes the significance of issuing Compulsory Licenses to manufacturers and individuals for utilizing the patents to serve public needs during circumstances of emergency and crisis. It further observes that prudence has been shown by India in invoking the provision of Compulsory Licensing only once when the patent was for generic production of a life-saving drug of Nexavar at an affordable cost. (Para 12.13)

Action Taken

2.60 No Comments.

3. Form 27

Recommendation/Observation

2.61 *The Committee notes that the provision of Form 27 is crucial as it seeks to ensure adequate working of a patented invention on a larger scale to cater to the demands of public at large. It recommends the Department to consider relaxing the requirement to furnish information under the form on a yearly basis to ease the compliance burden on universities, R&D institutions, startups and small enterprises. It further recommends the Department to take steps for ensuring that the recent amendments in Form 27 is implemented properly without affecting the spirit of patenting and public interest.* (Para 12.18)

Action Taken

2.62 Form-27 contents have been simplified *vide* Patent (Amendment) Rules 2020 published in Gazette of India on 19th October, 2020 *vide* G.S.R. 652(E) to streamline the reporting requirements related to working of patented inventions on a commercial scale in India. These amendments provide more clarity to stakeholders and rationalize the reporting requirements contributing towards ease of doing business, while also giving a fillip to the Make in India, Startup India and Digital India initiatives of the Government of India.

THE TRADE MARKS ACT, 1999

Recommendation/Observation

2.63 *The Committee recommends the Department that further categories of classification should be incorporated in the Trademarks Act corroborating to the requirements of industry and trade. Also, such classification should have detailed specification and clarity to avoid any complexities in their interpretation.*

(Para 13.1(i))

Action Taken

2.64 India is a signatory of “NICE classification system” and follows the international acceptable classification system. So, any further classification may create complication in the system. Trademarks Registry is also consulting with stakeholders to provide a Guideline note related to use of the classification of goods and services on Registry's official website.

THE COPYRIGHT ACT, 1957

Recommendation/Observation

2.65 *The Committee recommends the Department that a comprehensive study of provisions under Berne Convention for the Protection of Literary and Artistic Works should be undertaken to establish a copyright regime which is beneficial to both copyright holders and public.*

(Para 14.7)

Action Taken

2.66 Section 52 of the Copyrights Act, 1957 prescribes certain limitations and exceptions on the exercise of several rights vested with the copyright holders by the Copyright Act, with an intention to balance the rights of the copyright holders as against public interest. These limitations and exceptions are already prescribed under the Act in compliance with India's obligations under the Berne Convention.

2.67 The Berne Convention allows certain limitations and exceptions on economic rights, whereby copyright protected works may be used without the expressed authorization of the owner of the copyright, and without payment of any remuneration. These limitations are generally referred to as "free uses" or "fair use" of protected works, and are provided under Articles 9(2) - Reproduction in certain special cases; Article 10 - Quotations and use of works by way of illustration for teaching purposes; Article 10bis - Reproduction of newspaper or similar articles and use of works for the purpose of reporting current events; and Article 11bis(3)- Ephemeral recordings for broadcasting purposes.

IPR IN AGRICULTURE

Recommendation/Observation

2.68 *For disseminating information about the role of patent in agriculture, KVK (Krishi Vikas Kendras) can play a significant role as they work at block level and the farmers also consider them as local. Exclusive videos/ multimedia options/ bill*

boards may be used to create awareness. In this digital age, the videos in local language can be sent on their cell phones to upgrade their knowledge. (Para 19.7)

Action Taken

2.69 Department of Agriculture has informed that KVKs can indeed play a very crucial role of reaching out to farmers in innovative ways. The use of digital medium, videos will simplify the meaning of IPR, patents and plant variety protection and thus would increase farmer awareness. Recognizing the same, the PPV&FR Authority regularly organizes several awareness programmes among farmers in collaboration with KVKs, SAUs and CAUs as well as farmer organizations. In addition, the PPV&FR Authority regularly organizes several awareness programmes among farmers in collaboration with KVKs, SAUs and CAUs as well as farmer organizations.

SUMMATION

Recommendation/Observation

2.70 A fair and equitable growth of IPRs in India needs improvisation and streamlining of legislative, administrative, adjudicative and enforcement mechanisms. Conformity of legal provisions to the changing dynamics of innovation, recruitment and appointment of adept officials, swift handling of IPR cases and an efficient judicial system are imperative to build a robust IPR regime in India. This should also be in compliance with International agreements, rules and norms as well as compatible with other nations and foreign entities.

(Para 20.3)

Action Taken

2.71 This recommendation deals with the multiple issues concerning the policies on IPR legislations, administration, adjudication and enforcement. The Department reviews such policy issues including recruitment and appointment of adept officials on a regular basis.

CHAPTER – III

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE

ARTIFICIAL INTELLIGENCE AND IPR

Recommendation/Observation

3.1 *The Committee notes that the relevance and utility of cutting edge technologies such as Artificial Intelligence (AI) and machine learning would increase manifold in the present world especially in the times of Covid-19 pandemic wherein the digital applications are playing a crucial role in responding to the crisis. Moreover, the huge benefits of AI and its applications in India's revenue generation and economy as well as its impact on technological innovation necessitate its expansion in a secured manner. In view of this, the Committee recommends that a separate category of rights for AI and AI related inventions and solutions should be created for their protection as IPRs. It further recommends that the Department should make efforts in reviewing the existing legislations of The Patents Act, 1970 and Copyright Act, 1957 to incorporate the emerging technologies of AI and AI related inventions in their ambit. (Para 8.5)*

3.2 *The Committee recommends the Department that the approach in linking the mathematical methods or algorithms to a tangible technical device or a practical application should be adopted in India for facilitating their patents as being done in E.U. and U.S. Hence, the conversion of mathematical methods and*

algorithms to a process in this way would make it easier to protect them as patents. (Para 8.7)

Action Taken

3.3 Artificial intelligence (AI) is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with humans, such as the ability to reason, discover meaning, generalize or learn from experience or environment. Robotic or computer-generated works have been involved in creation of copyright works, although earlier these have heavily relied on the creative inputs of the programmer. The advent of technology had led to a rapid evolution of machine learning process in AI whereby an AI is capable of generating creative content with minimal to no intervention by the programmer.

3.4 However, the extant law does not define computer generated works. The Copyright Act, 1957 provides that the copyrights arising out of any creative work is vested with the author or owner of the work. Thus, in case of creative works which are computer generated, the copyrights are vested with the person who causes such work to be created. Section 2 (d) (vi) of the Copyright Act, 1957, provides that, author in relation to any literary, dramatic, musical or artistic work which is computer generated, shall be the person who causes the work to be created. Further Section 17 of the Act recognizes the author as the first owner of any copyright work subject to any agreement to the contrary.

3.5 The Delhi High Court, while interpreting the term 'author', has observed that a mechanically reproduced printed carton was not a subject matter of copyright for the reason that it was not possible to determine who the author of such carton was. The Court further opined that “*copyright is conferred only upon authors or those who are natural person from whom the work has originated.*” Further, in another case the Court has held that a juristic person is incapable of being the author of any work in which copyright may exist, however, the juristic person could become the owner of the copyright in the work under a contract with its author.

3.6 As AI is not a natural person it is difficult to ascertain in whom does the rights arising out of an AI generated creative work be vested. Since, an AI cannot execute or authorize its creator or any other person, to become the owner of the work. Also, an AI may not be capable of enforcing its rights, at the same time an AI cannot be accounted or tried in a suit for enforcement of rights in case an act of infringement.

3.7 The Department understands that presently, there is no provision regarding protection of AI generated works which often leads to a situation where AI related works are commercially utilised in ways without incurring any costs causing loss of revenue to companies who invest in AI related R&D activities.

Further Recommendation/ Observation

3.8 The Committee is of the view that the increase in application of Artificial Intelligence (AI) based tools such as Aarogyasetu, CoWin, etc. in recent times for utilizing and extending essential services implies the likely surge in AI based patent filings in the days to come. Hence, granting proprietary rights to AI innovators and protecting AI driven innovations by enforcing regulations and standards in the country should be the way forward. The Committee, therefore, recommends that the Department should channelise efforts to encourage and empower AI innovators by enacting suitable legislations or modifying the existing laws on IPR in order to accommodate AI based inventions.

INTELLECTUAL PROPERTY APPELLATE BOARD (IPAB)

Recommendation/Observation

3.9 The Committee desires that the abolition of a prominent appellate body of IPAB under the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021 should be reconsidered in wake of its pivotal role in adjudication of IPR appeals and cases. The overall scrapping of IPAB, which efficiently had been dealing with proceedings involving complex IPR issues, may create a void in appellate resolution of cases leading to their shift to Commercial or High Courts thereby increasing pendency of cases. The Committee also opines that inordinate delay in appointment of officials at higher level and the resultant pause in

functioning of IPAB affected the optimal performance of IPAB. The Committee, therefore, recommends the Government that IPAB should be re-established, rather than being abolished and should be empowered and strengthened with more structural autonomy, infrastructural and administrative reforms, as well as ensuring timely appointment of officials and experienced manpower. (Para 9.7)

3.10 The Committee notes with distress the absence of any Judicial Impact Assessment, or active consultations with stakeholders, being conducted by the Government prior to the abolishing of tribunals under the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021. It strongly recommends that the Government, before scrapping of significant tribunals through an ordinance, should undertake a Judicial Impact Assessment along with wide consultations with relevant stakeholders to ensure building a systemic perspective on abolishing an established system in the country. (Para 9.8)

Action Taken

3.11 With the passage of Tribunal reforms Act, 2021, the IPAB stands dissolved. No further action is warranted.

Further Recommendation/ Observation

3.12 The Committee notes that the dissolution of IPAB would lead to transferring of all IP-related appeals including the pending cases to High Courts and Commercial Courts (in copyright matters). This may create additional burden on such courts which are already reeling under huge

backlog of cases with inadequate expertise in hand to deal with IPR matters. It, therefore, opines that establishing an Intellectual Property Division (IPD) with dedicated IP benches as done by Delhi High Court in the wake of abolition of IPAB would ensure effective resolution of IPR cases on a timely basis. The Committee, therefore, recommends that the Government should take appropriate measures to encourage setting up of IPD in High Courts for providing alternative solution to resolve IPR cases.

IP FINANCING

Recommendation/Observation

3.13 The Committee notes that utility of IPRs as intangible assets in the financial sphere is a way forward in improving finances of a country and in enhancing financial innovation, easy availability of credit, and increasing capital base. It, however, observes that despite great potential to accrue economic benefits to a nation, IP backed financing is still an evolving area in India. It further views that the Government vide its National IPR Policy, 2016 has slated the objective of boosting IP commercialization in India, yet it has been lackadaisical in executing it on ground. The Committee opines that such a halfhearted approach needs to be replaced by earnest efforts by Government in buttressing financial institutions and business community to adapt to non-traditional methods of IP backed financing.

(Para 11.7)

3.14 *The Committee is of the opinion that deeply embedded traditional methods in financial sphere and the ignorance amongst business community to treat IP as an intangible financial resource at par with tangible assets like land or property are the major impediments in the growth of IP backed financing in India. In this regard, the Committee recommends that the Department should undertake committed measures in generating awareness and better understanding of IP financing, value and monetization of intangible assets in the country by inculcating management of IP portfolio of businesses, thereby enhancing its economic worth and making the business community aware of the compliances.*

(Para 11.8)

3.15 *The Committee also recommends that the Department, in close coordination with financial institutions/ stakeholders or banks, should encourage adaptation to non-traditional forms of collateralization and securitization by conducting trainings and workshops on scrutinizing and regulating IP financing and extending necessary support to business community. It also urges the Government to explore plausible ways to devise a uniform system of valuation of IP as an intangible asset in the country which would ensure a better evaluation of assets by financial institutions. A mechanism also needs to be put in place to recognize and appoint IP evaluators in the country. The Committee also recommends that Insurance sector may be involved in covering/ protecting against the rise of financial losses faced by an IP to minimize monetary risks by suitable amendments in Insurance Act.*

(Para 11.9)

3.16 *The Committee takes cognizance of the absence of any specific legislation on IP Financing that exclusively covers IP Financing, creation of security interest in IP Financing, statutory protection to financial innovation and intangible assets as IPRs, rights and obligations on IP financial transactions, etc. It recommends the Department that such a specific law on IP Financing should be promulgated at the earliest which would provide a concrete framework and determine standards for the protection and promotion of IP backed financing in India.*

(Para 11.12)

3.17 *The Committee recommends the Government of India to consider the facilitative measures and policies being taken by countries of Singapore and China in successfully endorsing IP financing in their financial spheres through active participation such as sharing the risks involved in IP financing transactions, extension of subsidies to financial institutions to adjust to higher costs of invaluable IP assets, etc. It recommends that necessary initiatives on similar lines and as per the country's requirements should be undertaken in India to boost IP financing.*

(Para 11.14)

Action Taken

3.18 One round of consultation has been done with the stakeholders.

Further Recommendation/ Observation

3.19 The Committee is disappointed to note that an unsatisfactory reply has been furnished by the Department wherein no pertinent response on promoting IP financing has been given. It is of the considered opinion that IP financing that involves financial innovation and creation of financial tools for gaining benefits in matters of finance, is an emerging area that needs to be nurtured in the country. Also, as a slated objective of National IPR Policy, the Department should endeavour to facilitate protection, evaluation and commercialisation of intangible IP assets by devising a suitable legislative and administrative framework. The Committee strongly recommends the Department to undertake efforts in inculcating the significance and advantages of IP financing and intangible IP assets amongst the financial institutions, business and trading communities in India.

THE PATENT ACT, 1970

Public Interest Safeguards under the Act

2. Compulsory Licensing

Recommendation/Observation

3.20 The Committee is of the opinion that although a careful stance is needed to be adopted in issuance of Compulsory License on a patent, it could, however, be considered in case of production of medicines and vaccines for the treatment of Covid-19 since the pandemic has led to a national health emergency in India.

Generic production in large quantities without any obligation of patents would help in removal of supply constraints in availability of affordable drugs, medicines and vaccines at times of high case load and death toll due to Covid-19. The Committee, therefore, recommends that the Government should delve into the prospect of temporarily wavering patents rights and issuing Compulsory Licensing to tackle the inadequacy in availability and accessibility of Covid-19 vaccines and drugs during an emergency like situation induced by the pandemic. (Para 12.14)

Action Taken

3.21 Provisions such as Section 84, 92, 92A, 100 and 102 in the Patents Act are adequate to deal with issues relating public health and have provided the flexibilities to the Government of India for issuing Compulsory Licensing, Government-used authorization and acquisition of inventions by Government to tackle the inadequacy in availability and accessibility of vaccines and drugs during an emergency like situation induced by the pandemic.

3.22 The above said provisions in Indian Patents Act are fully complying India's obligations under the TRIPS agreement and also utilizing the flexibilities provided under the Doha Declaration on the TRIPS Agreement and Public Health. Further, Department of Health and Family Welfare is of the opinion that over the years Indian pharma industry has developed a strong capacity as a producer of good quality and affordable medicines at large scale due to policy of reliance without

having any exclusivity. Therefore, in this context, there is a need to strike balance between the needs of public for access to affordable medicines.

SUMMATION

Recommendation/Observation

3.23 However, immediate steps by India should be undertaken at domestic level such as issuing of compulsory licenses and encouraging the mechanism of voluntary licensing to share Covid-19 technology to other producers and manufacturers. This would help in scaling up of production and manufacturing of Covid-19 vaccines and medicines in the country at times of national health emergency of Covid-19 pandemic. The Government must avoid any chance of delay in invoking compulsory licenses on crucial drugs and vaccines in case of an emergency like situation in future. Proactive steps should also be taken for technology transfers to manufacturing companies once the trials of medicines or vaccines are completed in order to prevent delay in their availability which would be detrimental to the country's interest. (Para 20.5)

Action Taken

3.24 Provisions such as Section 84, 92, 92A, 100 and 102 in the Patents Act are adequate to deal with issues relating public health and have provided the flexibilities to Government of India for issuing Compulsory Licensing, Government used authorization and acquisition of inventions by the Government to tackle the inadequacy in availability and accessibility of vaccines and drugs during an emergency like situation induced by the pandemic. Further, the above

said provisions in Indian Patents Act are fully compliant with India's obligations under the TRIPS agreement and are also utilizing the flexibilities provided under the Doha Declaration on the TRIPS Agreement and Public Health.

3.25 However, it may be noted that whether such emergency arises wherein the Government of India has to invoke such provisions, is dependent on inter-ministerial purviews/involvements. Besides, some voluntary licenses on COVID-19 products/drugs are also given by patentees to other producers and manufacturers in emergency situation.

Further Recommendation/ Observation on Paras Nos. 12.14 and 20.5

3.26 The Committee notes that ensuring easier access and mass availability of COVID-19 therapeutics, drugs and vaccines becomes a challenge in times of pandemic as witnessed during the three pandemic waves on account of sudden outbreak of COVID-19 cases. It is of the opinion that issuing of compulsory licenses and encouraging voluntary licensing in extraordinary circumstances of public health crisis would be instrumental for ramping up affordable production and accessibility of such drugs and vaccines. The Committee, therefore, recommends that the Government should resort to plausible mechanisms of compulsory or voluntary licensing in situations when the dangerous variants of COVID-19 virus pose severe threat to lives. This would authorise production of a drug or vaccine on a mass scale and would address any supply side constraints during such times.

SUMMATION

Recommendation/Observation

3.27 Conferring rights to formal innovations which are being conducted in research establishments, scientific and educational institutions should harmonise with recognition of informal innovations that embraces traditional and indigenous knowledge and cultural expressions in form of valuable IPRs. (Para 20.1)

Action Taken

3.28 The Committee is informed that Patent filing fees has been reduced by 80 per cent for eligible educational institutions.

Further Recommendations/ Observations

3.29 The Committee is disappointed to note that the reply furnished by the Department is not as per the recommendation made in the Report. It is of the opinion that informal and grassroots innovations represent a culture of mainly individual innovators located in rural, hilly, tribal, backward and far-flung remote areas which includes local and experiential knowledge. Such innovations are generally made out of adversity and needs which do not get recognised formally as Intellectual Property and at times are imitated and exploited by big sector firms and institutions. The Committee is of the view that the IPR regime should enable a mechanism at regional level suitable to accommodate the informal and grassroots innovations and to diffuse, protect and popularise them on a large scale. It also recommends the Department to

synergize efforts with National Innovation Foundation, Department of Science and Technology to mobilise informal innovators in the IPR regime.

CHAPTER – IV
RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH
FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

AWARENESS OF IPRs

Recommendation/Observation

4.1 *The Committee recommends the following interventions need to be taken by the Department for building greater awareness about IPRs:-*

- i. *IPR Facilitation Centers should be established in Tier-I, Tier-II and remote regions of the country with a focus on enhancing the awareness of MSMEs, small businessmen and traders.* (Para 5.12(i))

Action Taken

4.2 The Ministry of Micro, Small and Medium Enterprises has established Intellectual Property Facilitation Centres (IPFC) across India which provide consultancy services to various Entrepreneurs and MSMEs on trademarks, copyrights, industrial designs, geographical indications, patents for both national and international filings. These centres offer services *inter-alia* including, providing information, organising awareness and sensitization events, IP counseling and advisory services, IP filing services, patent searches and landscaping, etc.

4.3 This Department has sought information from the Ministry of MSME on the number of IPFC established till now across the Tier I/II and remote regions and their plan for expansion.

RECOMMENDATIONS/OBSERVATIONS - AT A GLANCE

ARTIFICIAL INTELLIGENCE AND IPR

1. The Committee is of the view that the increase in application of Artificial Intelligence (AI) based tools such as Aarogyasetu, CoWin, etc. in recent times for utilizing and extending essential services implies the likely surge in AI based patent filings in the days to come. Hence, granting proprietary rights to AI innovators and protecting AI driven innovations by enforcing regulations and standards in the country should be the way forward. The Committee, therefore, recommends that the Department should channelise efforts to encourage and empower AI innovators by enacting suitable legislations or modifying the existing laws on IPR in order to accommodate AI based inventions. (Para 3.8)

2. The Committee notes that the dissolution of IPAB would lead to transferring of all IP-related appeals including the pending cases to High Courts and Commercial Courts (in copyright matters). This may create additional burden on such courts which are already reeling under huge backlog of cases with inadequate expertise in hand to deal with IPR matters. It, therefore, opines that establishing an Intellectual Property Division (IPD) with dedicated IP benches as done by Delhi High Court in the wake of abolition of IPAB would ensure effective resolution of IPR cases on a timely basis. The Committee, therefore, recommends that the Government should take appropriate measures to encourage setting up of IPD in High Courts for providing alternative solution to resolve IPR cases. (Para 3.12)

IP FINANCING

3. The Committee is disappointed to note that an unsatisfactory reply has been furnished by the Department wherein no pertinent response on promoting IP financing has been given. It is of the considered opinion that IP financing that involves financial innovation and creation of financial tools for gaining benefits in matters of finance, is an emerging area that needs to be nurtured in the country. Also, as a slated objective of National IPR Policy, the Department should endeavour to facilitate protection, evaluation and commercialisation of intangible IP assets by devising a suitable legislative and administrative framework. The Committee strongly recommends the Department to undertake efforts in inculcating the significance and advantages of IP financing and intangible IP assets amongst the financial institutions, business and trading communities in India. (Para 3.19)

THE PATENT ACT, 1970

Public Interest Safeguards under the Act

Compulsory Licensing

4. The Committee notes that ensuring easier access and mass availability of COVID-19 therapeutics, drugs and vaccines becomes a challenge in times of pandemic as witnessed during the three pandemic waves on account of sudden outbreak of COVID-19 cases. It is of the opinion that issuing of compulsory licenses and encouraging voluntary licensing in extraordinary circumstances of public health crisis would be instrumental for ramping up affordable production and accessibility of such drugs and vaccines. The Committee, therefore, recommends that the Government should resort to plausible mechanisms of compulsory or voluntary licensing in situations when the dangerous variants of COVID-19 virus pose severe threat to lives. This would authorise production of a drug or vaccine on a mass scale and would address any supply side constraints during such times. (Para 3.26)

SUMMATION

5. The Committee is disappointed to note that the reply furnished by the Department is not as per the recommendation made in the Report. It is of the opinion that informal and grassroots innovations represent a culture of mainly individual innovators located in rural, hilly, tribal, backward and far-flung remote areas which includes local and experiential knowledge. Such innovations are generally made out of adversity and needs which do not get recognised formally as Intellectual Property and at times are imitated and exploited by big sector firms and institutions. The Committee is of the view that the IPR regime should enable a mechanism at regional level suitable to accommodate the informal and grassroots innovations and to diffuse, protect and popularise them on a large scale. It also recommends the Department to synergize efforts with National Innovation Foundation, Department of Science and Technology to mobilise informal innovators in the IPR regime. (Para 3.29)

ANNEXURE

Annexure I

List of Institutes selected under SPRIHA Scheme

Serial No.	Name of the Institutes
1.	National Law University & judicial Academy, Assam.
2.	Gujarat National Law University, Gandhinagar, Gujarat
3.	National Law School of India University, Bangalore, Karnataka
4.	Cochin University of Science & Technology, Kerala
5.	Maharashtra National Law University, Mumbai, Maharashtra
6.	Punjab University, Punjab
7.	National Law University (Jodhpur), Rajasthan
8.	IIT Madras, Tamil Nadu
9.	NALSAR University Of Law, Hyderabad, Telangana
10.	IIT Roorkee, Uttarakhand
11.	West Bengal National University Of Juridical Sciences, West Bengal
12.	National Law University, Delhi
13.	URDIP, Pune
14.	Osmania University
15.	Tezpur University
16.	IIT Kharagpur
17.	Maharashtra National Law University, Nagpur
18.	Andhra University

TISCs in India

- PCSCT Punjab State Council for Science & Technology, Punjab
- Anna University, Chennai
- Gujarat Council of Science and Technology, Gujarat
- National Research Development Corporation, Andhra Pradesh
- Kerala State Council for Science, Technology and Environment, Kerala
- Patent Information Centre, Rajasthan State Council for Science, Technology, Rajasthan
- Karnataka State Council for Science & Technology, Karnataka
- International Crops Research Institute for the Semi-Arid Tropics, Telangana
- Central Tool Room and Training Centre, Odisha
- Jammu & Kashmir Entrepreneurship Development Institute (JKEDI)
- Gujarat Technical University, Ahmedabad

Support for International Patent Protection in Electronics and IT (SIPEIT)

First component of SIPEIT Scheme

1. Support for International Patent Protection in E&IT

Brief background of the scheme: Support for International Patent Protection in E&IT-II(SIP-EIT-II) is a scheme by MeitY to provide support to MSMEs and Startups that are trying to secure intellectual property rights on a global level. SIP-EIT scheme provides financial support to MSMEs and tech startups for international patent filing so as to encourage innovation and recognize the value and capabilities of global IP and establish competitive advantage. The scheme is for a period of 5 years with the mandate to support 200 international ICT patent applications. Reimbursement is upto a maximum of Rs.15 lakhs per invention or 50% of the total expenses incurred in filing and processing of patent application upto grant whichever is lesser.

Tenure of the scheme: The scheme was for a period of 5 years starting from 01/12/2014 to 30/11/2019. This was subsequently extended till 30/11/2020 without any enhancement in the budgetary outlay.

Total Project Outlay: Rs 1846.62 Lakh over the scheme duration

Salient Features of the SIPEIT Scheme:

- Providing financial support for international patent filing in Information Communication Technologies sector
- Reimbursement upto maximum of Rs 15 Lakhs per invention or 50 % of the expenses incurred in filing patent, whichever is less
- The applicant can apply for the support at any stage of international patent filing.
- Facility to apply online through web-portal <http://ict-ipr.in/>
- One application for foreign filing in all countries for a particular invention is considered under the scheme
- Option of 5 applications per financial year from a single entity
- This is a pure grant subject to approval by MeitY and no stake in the supported patent is envisaged under the scheme

Eligibility Criteria

- The Applicant should be registered under the MSME Development Act 2006 of Government of India as amended from time to time as a MSME unit as per the criteria for such registration(the applicant would be required to furnish the proof of such registration).

Or

- The applicant should be a registered company under the Companies Act of Government of India and should fulfill the investment limits in plant and machinery or equipment as defined in the MSME Development Act 2006 of Government of India as amended from time to time (this criteria will be ascertained from the proof of such registration and last audited balance sheet of the applicant).

Or

- The applicant should be a registered STP Unit and should fulfill the investment limits in plant and machinery or equipment as defined in the MSME Development Act 2006 of Government of India as amended from time to time (this criteria will be ascertained from the proof of such registration and last audited balance sheet of the applicant).

Or

- The applicant should be a technology incubation enterprise or a startup located in an incubation centre/ park and registered as a company (a certification from the incubation centre/ park in this case is mandatory)and should fulfill the investment limits in plant and machinery or equipment as defined in the MSME Development Act 2006 of Government of India as amended from time to time (this criteria will be ascertained from the proof of such registration and last audited balance sheet of the applicant).

Status:

Meetings conducted	15
Applications Time stamped	104
Applications approved	67
Fund Released	24.20 Lakhs

Second component of SIPEIT Scheme

2. Scheme to Support IPR Awareness Workshops/ Seminars in E&IT Sector

Brief of the Scheme: In order to enhance innovation, competitiveness and economic growth in India, it is imperative to harness IP. More specifically, with the phenomenal growth of Indian E&IT sector and its need to move up the value chain it is important to foster innovation and legally protect and exploit IPRs generated in India.

To address specifically these challenges Ministry of Electronics and Information Technology (MeitY) has initiated a scheme to provide financial support to academic institutions, industry bodies and MeitY's autonomous societies for conducting IPR awareness workshops pan India.

Salient features of the scheme

- Proposals for support under the program will be received online. Application forms are available at <http://www.ict-ipr.in/sipeit/IPRForm>
- Educational institutes providing technical education in Electronics & Information Technology domain, Industry bodies like MAIT, ELCINA, CII, NASSCOM, FICCI, IESA, ASSOCHAM etc. and MeitY Societies or MeitY's Autonomous bodies are eligible for support for conducting awareness programs
- Financial assistance in the form of Grant-in-Aid will be provided to eligible institutions for organizing IPR Awareness workshops/seminars. The funding will be restricted as per following criterion:
 - (i) Support for awareness programs in educational institutes will be limited to Rs.2.0 Lakhs per program
 - (ii) Rs 3.0 Lakhs for awareness program to be organized by industry bodies.
 - (iii) Rs 5.0 Lakhs for workshops to be organized by MeitY Societies and MeitY Autonomous bodies and involving international experts

Total Budgetary Outlay: 240 Lakhs within the budgetary outlay of Rs 1846.62 Lakh

Targets:

- 75 IPR awareness programs by educational institutes.
- 50 IPR awareness programs by industry bodies.
- 5 international workshops by MeitY Societies and MeitY Autonomous bodies

Status:

Total programs	84
Programs by Academia	50
Programs by Industry body	32
International Seminars	02
Total funds disbursed:	170.46 Lakhs

Scheme Under MSME

Ministry of MSME's Scheme on "Building Awareness on Intellectual Property Rights (IPR)" provides funding support in the form of grant on Patent/GI Registration. Similarly, MIETY under its scheme "*Support for International Patent Protection in E&IT*" for MSME's and technology start up units provide financial support for international filing in Information Communication Technologies and Electronics sector.

The objective of the scheme is to enhance awareness of MSME about Intellectual Property Rights (IPRs) to take measure for the protecting their ideas and business strategies. Effective

utilisation of IPR tools by MSMEs would also assist them in technology upgradation and enhancing competitiveness

SALIENT FEATURES:

S No.	Activity	Maximum grant per application/proposal (Rs. in lakh)
A	Awareness/ Sensitisation Programmes on IPR.	1.00
B	Pilot Studies for Selected Clusters/ Groups of Industries.	2.50
C	Interactive Seminars / Workshops.	2.00
D	Specialized Training. (i) Short term (ST) (ii) Long term (LT)	ST – 6.00 LT – 45.00
E	Assistance for Grant on Patent/ GI Registration.	(i) Domestic Patent - 0.25 (ii) Foreign Patent – 2.00 (iii) GI Registration - 1.00
F	Setting up of ‘IP Facilitation Centre for MSME’	65.00
G	Interaction with International Agencies. (i) Domestic Intervention (ii) International Exchange Programme	(i) 5.00 (ii) 7.50

These initiatives are proposed to be developed through Public-Private Partnership (PPP) mode to encourage economically sustainable models for overall development of MSMEs. Under this programme financial assistance is being provided for taking up the identified initiatives. Eligible applicants/beneficiaries will have to contribute minimum 10% of the GoI financial support for availing assistance under the scheme. The detail guidelines, eligibility criteria, funding pattern and prescribed format etc. are available on this office web site www.dcsmse.gov.in.

Measures Against Counterfeiting and Piracy

- To create a better understanding on the role of law enforcing agencies in IP infringement, an advisory has been issued by the Ministry of Home Affairs (MHA) to all State Police Academies to incorporate IPR in their training curriculum for both regular and in-service police officers.
- Taking this momentum forward, CIPAM has organized more than 100 training programs pan India on IP Enforcement for various law enforcing agencies (Police, Judiciary and Customs) in association with the National Police Academy (Sardar Vallabh Patel Academy, Hyderabad), State Police Academies, National Academy for Customs, Indirect Taxes and Narcotics (NACIN), Faridabad and their Zonal Training Institutes, National Judicial Academy, Bhopal and State Judicial Academies.
- In association with Federation of Indian Chambers of Commerce & Industry (FICCI) an IPR Enforcement Toolkit for Police, which was released by Commerce and Industry Minister.
- In association with International Trademark Association (INTA) a booklet on Frequently Asked Questions (FAQ)- “A-Z of Intellectual Property Rights” with a focus on enforcement of IP laws has been published.
- To counter online piracy, CIPAM collaborated with National Internet Exchange of India (NIXI) and Maharashtra Cyber and Digital Crime Unit (MCDU), to suspend over 380 infringing websites on the basis of incomplete KYC (or WHOIS norms).

Apart from creating legal deterrence, a large number of awareness and sensitization programmes are carried out to encourage customers to buy original products and inform them about the consequences of buying fake and counterfeit products.

- In collaboration with Hindustan Unilever and Narsee Monjee Institute of Management Studies (NMIMS) organized a street play at Juhu Beach and around college campuses in Mumbai to spread awareness on Counterfeiting and IP.
- CIPAM organized a street play in Delhi presented by law students from JIIMS College of Law, Greater Noida, to highlight the serious health issues that may be caused by counterfeit products.
- In collaboration with INTA a 3-part webinar series on “Anti-Counterfeiting and Enforcement in the wake of Covid- 19 disruption in India” was recently organized to create awareness towards the changing trends of counterfeits and the challenges faced in enforcement.
- In addition, anti-piracy videos were shot with film stars such as Mr. Amitabh Bachchan, Ms Vidya Balan etc. which were screened in cinema halls and on TV to dissuade people from engaging in piracy.
- Sustained social media campaigns are undertaken by the department through official Twitter and Facebook handle to create awareness and educated consumers on this front and help them distinguish between original and counterfeit products.
- Animated videos explaining the importance of IP rights have been produced in collaboration with the European Union Intellectual Property Office (EUIPO)

- Organized a campaign in cooperation with the Film and Television Producers Guild of India and Viacom18 on anti-piracy.
- An annual IP competition called IPRISM was launched to engage college and university students in its anti-piracy campaign.

Counterfeiting and Piracy Provisions under various Legislations

Counterfeiting

IPC - As per Section 28 of the Indian Penal Code, "a person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practise deception or knowing it to be likely that deception will thereby be practised." Further Section 483, provides for the punishment of Counterfeiting a property mark used by another, as imprisonment of either description for a term which may extend to two years, or with fine, or with both. Making or possession of any instrument for counterfeiting a property mark is punishable under Section 485 of IPC, and the person liable shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Selling goods marked with a counterfeit property mark is punishable under Section 486 and the person liable shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. Making a false mark upon any receptacle containing goods is punishable under Section 487, and the person liable shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Trademarks Act 1999 – Section 103 of the Trademarks Act, provide for Penalty for applying false trademarks, trade descriptions, and any person who is found to be liable under the instant provision is punishable with Imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees.

Further Section 104 of the Act, provide for Penalty for selling goods or providing services to which false trade mark or false trade description is applied, and any person who is found to be liable under the instant provision is punishable with Imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Further, there is an exclusive provision for Enhanced Penalty on second or subsequent conviction under Section 105 of the Act, under which any subsequent convict shall be punishable with Imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

The court may also grant an injunction under Section 135 of the Trade Marks Act, 1999 by which a person is required to perform or is restrained from performing a particular act like stopping the sale of counterfeit product or destroying them.

Piracy

Copyright Act, 1957 – The Indian law deals with piracy through provisions relating to copyright infringement. As per Section 51 of the Copyright Act, 1957, a copyright in a work is deemed to be infringed when any person, without a licence granted by the owner of the Copyright or the

Registrar of Copyrights does anything which is the exclusive right of the copyright owner, permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work, or makes for sale or hires or sells or lets for hire or distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright or imports into India, any infringing copies of the work.

Section 63 of the Act provides for punishment of infringement or abetment of the infringement of the copyright in a work, and any person who is found to be liable under the instant provision is punishable with Imprisonment for a term which shall not be less than six months and may extend to three years and with fine which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees.

Further, the Act also lays an exclusive provision regarding enhanced penalty for second and subsequent conviction under Section 63A, whereby the subsequent infringer is Imprisoned for a term which shall not be less than one year, but which may extend to three years and with fine which shall not be less than one lakh rupees, but which may extend to two lakh rupees.

Information Technology Act, 2000 provides punishment with 3 years of imprisonment and fines up to Rs 2 lakhs for illegal online distribution of copyrighted content, under section 66 of the Information Technology Act. Further to strengthen the legislation for piracy, recent introduction has been made of ‘Dynamic Injunction’ against the rogue websites wherein the right holders can avoid the cumbersome process of judicial order to ensure the blocking of rogue websites. Amendments have also been made to the existing Cinematographs Act, 1952 for the inclusion of penal provisions for illegal duplication of films and also underlined the need for public awareness and stringent enforcement mechanisms to combat offline and online piracy.

Provisions under Other Acts:

The Drugs and Cosmetics Act makes the sale of “misbranded” and “spurious” drugs and cosmetics a criminal offense. In-fact, in view of dramatic growth in counterfeit drugs, the government has also introduced a “whistleblower” program with rewards for those providing information on counterfeit products.

The Prevention of Food Adulteration Act regulates food safety and provides harsh penalties for “misbranded” food products-including life imprisonment for cases of counterfeit products resulting in death.

The Patents Act of 2005 protects the rights of owners of patented products, such as technology and pharmaceutical products.

In 2007, government adopted the Intellectual Property Rights (Imported Goods) Enforcement Rules (IPR IG), a set of regulations designed to stop the importation of infringing goods into the country. These rules give the Customs Authorities the power to deal with counterfeit and pirated goods at the borders. IP rights holders can file IPR notices that enable Customs to inspect incoming shipments from any of country’s 35 major ports against a database of registered rights holders.

The Geographical Indication of Goods (Registration & Protection) Act, 1999 provides provision related to offences and penalties related to GI counterfeits. The Act penalizes falsifying and falsely applying GIs, selling goods to which false GI is applied, false representation that a GI is registered, improper description of the place of business as connected with the GI Registry, falsification of entries in the register.

The Consumer Protection Act, 2019 can also be invoked by the consumer against the counterfeiters by filing complaints in the appropriate consumer court.

The Bureau of Indian Standards Act, 2016 also contains penalties those who use the standards (ISI) Mark without obtaining the requisite license. The bureau investigates and detects the case of misuse of the ISI Mark and prosecutes the offenders wherever required