

PROMOTING INNOVATION AND COMPETITION FOR EFFICIENT USE OF INTELLECTUAL PROPERTY IN INDIA (COMP-IP PROGRAMME)



REPORT OF THE LAUNCH CONFERENCE FRIDAY, 11TH MARCH, 2016 NEW DELHI, INDIA

BACKGROUND

CUTS Institute for Regulation & Competition (CIRC) organised a conference on March 11, 2016, at New Delhi, to mark the launch of its research project supported by Qualcomm Inc. on ***Promoting Innovation and Competition for Efficient Use of Intellectual Property in India (Comp-IP Programme)***. The project is being implemented in partnership with CUTS International.

The Comp-IP Project is a three year research programme (2015-2018) which is envisaged to provide a sustained platform for discourse and discussions on Intellectual Property, Innovation, Competition and Growth in India, and their inter-linkages. The platform would involve stakeholders from industry, government/regulators (former/current), academia, media, etc.

The half-day launch conference was divided into two sessions. The first session focussed on discussion on the true meaning of “Make” in “Make in India” initiative, launched by the government of India. The second session involved senior experts, deliberating over the correlation between the existing Indian IP regime with the scope of “Design” in India. During the conference, the project details were shared with the aim to solicit specific inputs from stakeholders.

The conference was attended by almost 50-60 people who comprised of policy makers, regulatory bodies, research institutions, practitioners, industry, media, and CSOs, etc.

OPENING SESSION

Realising “Make” in Make in India

“Make in India is a key development initiative in India. While the focus is primarily on boosting manufacturing and innovation, the initiative’s “true” progress is restricted by limited manufacturing but extensive assembling and limited R&D ecosystem in India. Notable experts shared their views on this issue and provided valued inputs for the panel discussion “

Mr. Pradeep S Mehta, Secretary General, CUTS International, initiated the proceedings by providing a brief overview about the objectives of CompIP programme, with regards to IP, Innovation, Competition and Growth in India. To substantiate, he provided the examples of various government initiatives such as Make in India (MII), Digital India (DI) and Startup India (SI), which highlight the government’s perspective of economic growth of India.

He mentioned that the Government of India seems highly ambitious to achieve the desired objectives of job creation, promoting innovation, and increasing FDI. To achieve these objectives, he said there would be requirement of substantial investments flowing into the country, especially in the field of R&D and manufacturing. To highlight the innovation scenario in India, he quoted that, while the world’s average investment on R&D was 2.1 percent of the national GDP in 2011, India invested only 0.8 percent. He also mentioned that India stands 4th in terms of investing on R&D among the BRICS nations.

Quoting the current drift towards a new development trajectory, he said that it has become very crucial for India to promote innovation; thus it is important to ease the access to IP for the manufacturers/innovators. He mentioned that, considering the competitive market that exists, there

are various factors that need to be addressed, such as; lack of innovation in MSME, complexities in management, respecting the IPR, licensing of patents and suggested that there is a need for platforms to deliberate on such issues.

He explained that the primary research, for CompIP programme, has been divided into two interconnected research themes:

Theme 1: Mobile Revolution in India: Role of Technology and Its Economic Impact: This will focus on analysing the mobile technology and its economic impact in India. This will also analyse the existing IPR policies and regulation and its possible impact on the initiatives of MII, DI and SI. The objective of this theme would be to gather evidence to inform relevant policy changes to aid design in India.

Theme 2: Analysing Regulatory Framework for Standard Essential Patents in India: This theme would analyse the existing mechanism of standard setting. This would include contemplating the optimum role of SSOs and ensuring of FRAND principles for set standards as well as standards setting. This theme will also assess the litigations regarding SEP infringements and the injunctive relief granted by Indian courts.

He concluded by thanking the representative of Department of Industrial Policy and Promotion (DIPP), other dignitaries and participants for attending the event and contributing to the debate. Further he thanked Qualcomm Inc for supporting the project.

Mr. G R Raghavender, Joint Secretary, DIPP, commenced his speech by highlighting the importance of various Government initiatives, primarily the MII. Acknowledging the inputs provided by Mr. Mehta, on potential benefits of MII, Mr. Raghavender explained the rationale behind putting Lion as the logo of MII. He said that according to Hindu philosophy, whenever a lion walks, it takes a halt and looks back towards the journey covered, to understand where it has come from or what has it achieved and what is yet to be achieved, in the remaining journey. Quoting MII as PM Modi's brain child, he said that the government had planned the initiative envisaging minimum government and maximum governance with a focus on manufacturing.

He touched upon the importance of IP and its inter-linkages with twenty five sectors. He mentioned that there are reports which showcase India to have one of the weakest IP protection regime across globe. Having said this, he added that Indian IP regime conforms to TRIPS agreement, as India has adopted all the minimum standards. Moreover, he clarified that since no country has ever challenged India under Dispute Resolution Body of WTO for non-compliance, it can be inferred that India's IPR regime is in compliance with TRIPS.

Complementing the research agenda for the CompIP programme, he said that fusion of innovation and competition shall foster in making India, a manufacturing hub. He suggested that innovation should not only be assessed with protection but also with the commercialization, utility and trading process. He also referred to a 2015 report by WIPO, WHO and WTO which discussed the push and pull mechanisms to boost innovations. He added that innovation may also be boosted by virtue of regional reforms in IP regime and economic policies. He also discussed the Article 8 of TRIPS, which relates to the issues regarding abuse of IP by the right holders or indulging in anti-competitive practices.

He quoted MII to be the best of all initiatives and said that it addresses the ease of doing business and also ensures minimum government and maximum governance, and thus, brings in a paradigm shift in the functioning of government. He highlighted the other ancillary measures, which the government has taken, by the virtue of reforms in FDI policies. He claimed that India's FDI policy is one of the best across globe, which has facilitated a strong IP regime and has also resulted in approximately 40 percent rise on economic statistics.

Besides MII, Mr. Raghavender shared that PM Modi has announced “zero defect and zero effect” directive. This directive, influenced by the one that exists in the U.S.A, has now been associated with MII. He further explained that it is a pilot project to prepare MSME's for an active participation in MII, thus agreeing to the observation by Mr. Mehta that importance needs to be given to MSME sector.

Mr. Anupam Khanna, Former Director General, NASSCOM, started by saying that MII is often couched with manufacturing *vis-a-vis* services. He said that there should not be competition between the two, but rather they should complement each other. He commented that policy makers often ignore fundamental economic structures, which results in inducing lapses in the policies.

He emphasised that IPR policies, needs to be balanced on two factors namely: promoting innovation and ensuring accessibility. He added that India should also work on facilitating and enhancing competition. He drew attention towards the export market which has helped the Indian manufacturing sector to grow, as quoted in a report by IMF. The report showcases the changes in India's export market for last 20 years. Mr. Khanna commented that India's potential growth in electronic/technology sector would lead to making it the second largest import contributor, after oil.

He further suggested that CUTS, while focusing on MII, should also focus on import of services as well. Referring to issues pertaining to IT innovation, he quoted the example of Japan during 1990s, when it was a leading nation on IT innovation. After 1990s, Japan disappeared from the list as they could not keep up the pace with the ever-changing dynamics of the IT industry. He also analysed that Japan kept its research ongoing, confined only to the areas where they were good at, but not on IT. He further added that, post 1990s, patenting of software also increased and Japan lost its track. As a result, China and Korea took advantage and became leaders on innovation in IT sector.

He said that IT and software patent have grown tremendously in recent years, and have been discussed extensively in various papers prepared by NASSCOM. He further added that, unless India's policy provides extensive room to these, India will keep lagging behind on manufacturing, as compared to United States and China. Quoting Mr. Raghavender's on the measures taken by the government to promote innovation and manufacturing, Mr. Khanna claimed that India has still been trying to find recourse on software patents. India does not allow software patents but allows copyright. He said that different stakeholders have got different views on allowing software patents and India requires a clear understanding on the issue. Further he suggested that CUTS should cover the following research areas as part of their project: right policy in order to balance software patents; increase in research laboratories; issue of SEPs, as interoperability has become a crucial factor and; quantum of royalty for SEPs.

In conclusion, he said, that to achieve success out of MII, India needs to revisit its policies with the issues highlighted above.

PANEL DISCUSSION

Role of a Robust IP Regime to Boost Design in India

“The discussion was to focus on the critical role IP regulations may play in realisation of key developmental initiatives in India. With the on-going comparisons of India’s IP framework to the global standards, the IP regime of India may need some reforms to turn India’s developmental aspirations into reality. This shall also involve striking a balance between keeping innovations on an ascending track while also ensuring affordability of innovations based products for consumers.”

Panellists:

- Dr. Amit Kapoor, Honorary Chairman, Institute for Competitiveness
- Dr. Payal Malik, Associate Professor, University of Delhi, Former Economic Advisor Competition Commission of India
- Mr. Parag Kar, Vice President (Government Affairs India & South Asia) Qualcomm Inc.
- Dr. Sheetal Chopra, India Lead for IPR Advocacy, Ericsson
- Dr. Shubha Ghosh, Professor, The University of Wisconsin Law School
- Mr. Santanu Mukherjee, Partner, Luthra & Luthra Law Offices
- Mr. Yogesh Pai, Assistant Professor, National Law University, Delhi



Dr. Ghosh started the discussion with briefing the panellists on the theme of the discussion: *the factors associated with Intellectual Property (IP) and areas of law which are critical to ensure success of “Make in*

India” (MII) initiative. With this, he went from left to right of the panel, requesting each panellist to express their views on the subject.

The chain started with **Dr. Malik** expressing her views. She said that MII shall create new jobs and manufacturing shall add 15-25 percent to the GDP. She said it still would be less as compared to South-East Asian manufacturing counterparts, for whom manufacturing contributes to more than 30 percent of their respective GDP. She said MII is based on manufacturing, which in turn is dependent on designing and designing finally depends on the IP protection scenario that exists in the country. An indicator for this can be the patents granting in India and then a comparison may be drawn with China. She highlighted India’s dismal performance on designing and emphasised on how designing is critical for Indian growth.

Dr. Chopra said that design is the key to growth but for it to start in India it shall take time. She quoted “assembling” of products to be a trigger for MII and said that the current tax regime, that incentivises manufacturers, is causing a huge capital flux from India. She added that mobile handset manufacturing requires the use of embedded technology and Indian entities are using this technology without the permission of the tech providers. She referred to the technology providers as “*earthworm engineers*” as they act as catalyst to promote growth.

Mr. Pai said that there are 4 pertinent questions which need to be answered, in order to enable success of MII. The questions were

1. How the markets are shaping and how IP regime will evolve in India?

He said that this question shall answer on what should be the right market structure for innovators and what are the factors that drive IP strategies?

2. What are the concerns related to IP access and civil liberty?

He said that excess protection and abuse would harm competition and the IP treaties should ideally cover potential criminal offences, before going any further on the growth trajectory. He said that the innovation happens through various ways including decentralised channels which aid in innovation activities.

3. Geopolitical and national competitiveness

He said that India should have started thinking on the right IP environment 10-15 years back. He said it should also be thought about on what is the next type of innovation to happen?

4. How the technology in itself would change the IP?

He said that the patents get 20 years of protection irrespective of their type. Even the relevance of the product is not assessed before granting the protection duration. Given that the technology is growing at a rapid rate, he asked if the laws are in pace with this rate? He added that accountability and transparency are key to inducing innovation in existing strategy.

Mr. Kar was up next. He said that what MII is lacking a better cost structure. This would mean incentivising the manufacturers with an environment conducive enough to help them in providing cheaper devices. This shall also define the intensity of manufacturing (which currently is centred in China and India is primarily an assembler). For this, he emphasized that existing IPR environment is irrelevant to take care of all these aspects. He added that actual manufacturing shall only start when the assembling stops and value additions on devices start happening in India.

Mr. Mukherjee spoke after Mr. Kar. He said that it is important to understand where have we come from and where do we stand today in terms of IPR. He said that the definition of designing differs across stakeholders. He said that innovations are critical to growth and the question that needs to be asked is how they would matter to India. For the MII to be successful, it is important to ensure affordability in market and affordability of technology. Transfer of technology, is again, important, especially for the technology which is protected by IPR. It is imperative to question on what the government is doing to protect technology and facilitating transfer of technology. He said that for design in India, there is a need to enhance the private sector contribution and raised a question on how can India facilitate participation of private entities. He concluded by saying that for growth to happen, it is only possible through two channels, one is to bring it technology from outside or second is to make it here, in India.

Dr. Kapoor said that it is important to understand the true meaning of competitiveness for which he said that a country can only become competitive when the firms existing in it become competitive. He said that country's stand on protecting design is very important. India is associated with a high level of privacy/copying and trust issues. Thus, there exist low trust levels between India firms and thus, they don't share knowledge between them and this sharing is a key for innovation. He said that software enterprises are mostly replicating and not innovating much; the education sector is not being reformed enough. He said Indian entities are copying existing business practices from abroad which doesn't count as innovation and referred to Indian Businesses/Institutions as non-performing assets. He said there is a need to respect IP in India to be a part of global competitiveness which shall be defined with more innovations and thus more competition.

Mr. Mukesh Kumar from the audience said that the solution for everything in Indian context is "to set them free" taking about the innovators and institutions governing innovations. He said that he read somewhere that 60 percent of the R&D work that happens globally, originates in India for which the panel disagreed.

Dr. Anupam Khanna, former Director General, NASSCOM, said that there is need for a creative economy and a conducive atmosphere for technology absorption in the country.

Mr. Ricardo Tavares, CEO, Techpolis, raised a question saying that manufacturing is shrinking globally (quoting the example of China), and if India can, in reality, become a manufacturing hub, given the current scenario. He also highlighted that China had joined a global IPR licencing regime and thus was successful in becoming a manufacturing giant. He said India needs to take similar actions. India needs to comply with the standards of global chains with an intention to lead the manufacturing in various sectors.

Dr. Chopra responded that there is a requirement of complete change in mind-set in India on innovations. It is also important to understand that not all inventions are successful and only the ones which reach market and create demand may be claimed to be successful. There should also be a policy to promote the sharing of licenses and this sharing should not be regulated by the law.

Dr. Malik claimed that the government has failed to dispense the innovation planning effectively despite providing support on innovations. She also claimed that India is not creating enough indigenous knowledge. Thus, she highlighted that there is a need to incentivise university partnerships in order to create knowledge in India.

Mr. Mukherjee said that innovations have been increasing post GATT and opening of India economy. He also said that the legal enforcement scenario is such in India where entities prefer to get into litigation whereas the scenario in China is totally different.

Mr. Kar added that in case of ICT, IP has never been a barrier to access. He said ICT has still flourished exponentially, even if the Indian IPR regime was restrictive. He said that the policy framework in India, despite being bad previously, needs consolidation and there is a requirement for a proper policy to propel manufacturing in India. He claimed that growth in China is stagnating and India has become a dumping ground. He said that this situation needs to change and India needs to add more value to the products being assembled in India, which stand at 2 percent right now.

Mr. Pai said that the IP policy design should generate a strong domestic environment for innovating and designing in India.

Dr. Ghosh emphasised that FDI is critical for manufacturers and there is a need for meaningful manufacturing to happen in India. He said that the value chain within the country has to be enhanced and based on contracts. He also said that the start-up story is altogether different from manufacturing.

Dr. Malik said that capital accumulation is important for Indian growth which shall require a predictable IPR system in India. Currently the system offers no scaling effects and there is no productivity increase happening as yet.

Mr. Kar disagreed with the panel and said that patents are tools to diffuse technology and not to hold it. He added that manufacturing in China has been misunderstood and that its manufacturing has been mainly riding on four major products. He also discussed about the Indians filing for patents in US and vice versa. He claimed that the geographic influence on patenting has increased because the investors push for filing of patents at specific geographic locations.

Dr. Ghosh clarified that different jurisdictions allow certain protective features which others don't. Giving the example of software, which are not eligible for patents in India while in some other jurisdictions they are. This is one of the reasons why Indians move to different jurisdictions to get their innovations patented from countries like USA.

Dr. Chopra said that in ICT, there is no concept of denying licenses to the requesting entities, as the industry cannot work without licensing of standards which allow interoperability. The Standard Development Organisation imposes an obligation for sharing of technology but the level of licensing may differ.

Mr. GC Mathur raised a question, giving the example of a colour printer, where the consumer is bounded to purchase the associated parts from the product manufacturer only. Thus designing of products also impacts the end consumers where the consumer choice is restricted. He claimed that the price of main product is genuinely kept low to bind the customers to the ancillary components associated to the main product, which contribute majorly to their revenues.

Dr. Malik differentiated between holdups and holdouts of IP. She said that in case of SEPs, the holders obliged to share the technology under the FRAND terms. She added that the IPR policy alone cannot take care of all aspects of consumer protection with relevance to the case for printers suggested by Mr Mathur. She also said that the pricing for innovations/IP should also be kept out from the regulatory aspects.

Dr. Kapoor raised the issue of genetic IP transfer to which Mr. Mukherjee said that it was a broad topic to be discussed at different panel discussion but it is important to find a resolution to it as well, if India has to grow faster.

To conclude the session, the following points were raised by the Panellists:

Dr. Malik said that there should be more focus on contractual law and not just patent/competition law. For the issues related to negotiations, they should be best adjudicated by the courts.

Dr. Chopra said that to promote innovations, there should exist a mechanism, which rewards and remunerates innovations. She said that there should be a complete end to copying in India

Mr. Kar said that the government should keep away from pricing issues and should only get involved if there is a market failure. He said that there should be more emphasis on real manufacturing to happen in India than the current assembling scenario.

Mr. Mukherjee said that there exist different business models and to protect these business models, these should be included in the competition/patent/copyright laws etc.

Dr. Kapoor said that the government should let people to work in order to create wealth and there is also a need to bring in reforms to the education system to promote innovations.

With this the panel discussion concluded with a vote of thanks by Dr. Ghosh.



About CIRC

CUTS Institute for Regulation & Competition (CIRC) was established in 2008 by CUTS International. With the vision to promote fair markets to enhance consumer welfare and economic development, CUTS & CIRC has been advocating for fair and competitive market promotion and effective regulations. Both CUTS and CIRC have been active players in designing the competition regime in India. They have access to a wide network of CSOs and academic institutions in India and globally, through professional collaborations.

With the mission to be a Centre of Excellence on Regulatory and Competition Issues, CIRC primarily focuses on economic regulation in infrastructure sectors, and competition policy and law with an objective of reaching out to the target audience in India and other developing countries in Asia and Africa. Its crucial role in research and capacity building in the area of competition policy and law and regulatory reforms has created an intellectual knowledge base. Since its inception, CIRC has been undertaking several trainings, seminars and public lectures on competition law policy and regulation in India and abroad.



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