

# Inventive times

India acceded to the Madrid Protocol in July, at a time when its IT industry is blooming. Lucy Rana of SS Rana & Co reports

The economic reforms of 1991 kindled the growth of Indian industries and the nation witnessed significant changes such as the eradication of import restrictions, the genesis of foreign competition, privatisation of public sector industries, and a fostering of the production of fast moving consumer goods (FMCG). Indian industry accounts for 28 percent of the country's GDP and employs approximately 14 percent of the total workforce. In view of the immense growth, Indian industries can be perceived as a key factor in escalating the Indian economy to a developed status.

Indian industries are constantly witnessing technological advancements, as well as strong competition internationally as a consequence of which most of the industries and firms in high-end niche areas are proactively seeking intellectual property-based growth strategies. Most of Indian industries are relying on intellectual property rights as effective tools for growth and advancement. In recent times, the filing of

patents and trademarks by Indian industries has significantly increased, representing an increased attention by Indian inventors and creators towards new ideas and concepts. The recent accession of India to the Madrid Protocol is also expected to lead to impetus growth and re-alignment of business strategies by Indian companies in order to beneficially adapt them to the changing regime.

## IT industry and IP

The formulation of laws and policies governing IP has a huge impact on the various sectors of the economy, including information technology.

The Indian IT industry has been one of the key driving forces that has been inching-up India's economic growth. The IT industry in the past few decades has gradually evolved as a major contributor to India's GDP and has played a vital role in driving growth of the economy in terms of employment, exports, revenue generation and standard of living. Reportedly, the

domestic IT market grew 16.7 percent between the fiscal years of 2009-2010 and 2011-2012.

As there has been widespread innovation in the field of IT, IP-focused growth strategies are being widely adopted and retaining intellectual capital is becoming, day-by-day, a critical issue. In comparison to other nations, the use of IP as an effective tool for protection has been relatively low. However, numbers show that in recent times, there has been a steady growth in the number of patents filed by IT companies. Numerically, Infosys, which is one of the largest IT services companies in India, topped the list of Indian IT companies filing patents. According to the data compiled by equity research firm Barclays (from January to September 2012), Infosys filed 159 patents, followed by TCS and Wipro, which filed 43 and 4 patents respectively at the US Patent and Trademark Office. Thus, there has been an upsurge in IT firms creating and protecting IP, and a large number of IT-based multinational corporations are also exploiting the IP creating potential of the Indian IT industry.

## India's accession to the Madrid Protocol

On 8 April, the Minister of Commerce and Industry, Anand Sharma, deposited India's instrument of accession with World Intellectual Property Organization (WIPO) director general Francis Gurry. The accession would be effective from 8 July 2013.

The Madrid System of International Registration entails that after a trademark has been registered by the international bureau, it will be equivalent to a national application, which implies that any contracting party can accept or refuse the protection of the mark in its territory as per the law prevailing nationally. Thus, trademark refusal will only relate to the contracting party issuing it and it will not affect other designated contracting parties.

The accession implies that a person applying for a mark through the Madrid System has to file only one application, in one language, with one set of fees (including basic fee, complimentary fee in respect of each designated contracting party and a supplementary fee for each class of goods beyond the third) in one currency.

Moreover, there will be one expiry date with respect to all the designated countries and the mark can be renewed only through a single registration. Post-filing changes in the mark such as change in ownership or in the name or address of the holder or limitation in the list of goods and services can also be affected through a single simple procedural step, which would be recorded with respect to all the designated contracting parties.

In this way, the international registration of marks would definitely provide a platform to Indian industries for international branding and provide them with an opportunity for enhancing brand recognition in the international market.

Since the accession, there has been widespread speculation among industries as well as legal fraternities in India that the Madrid System would lead to a decline in national trademark applications in India. However, the figures as made available by the Madrid System indicate that it has actually augmented application figures in the past few years.

We believe that Indian IP professionals will be incentivised by the accession to the Madrid System and Indian companies will benefit from the wide variety of opportunity it offers. We hope that Indian companies will explore the possibilities of growth and augmentation of export of their products by seeking IP protection through the Madrid System, which would ensure protection as well as brand recognition in all the designated countries.

It has been observed that foreign-owned firms operating in India seek IP protection more frequently than IT companies of Indian origin. However, in the last few years the nation has witnessed an escalation in the rate of patenting activity in India and the search for IP protection by more and more IT firms. Meanwhile, in order to encourage emerging ventures and offer support for innovations, the government of India has recently announced a scheme that aims to provide financial support to developing technology companies in filing international patents.

### Software patenting in India

Software per se is not patentable, however, specific software products that have a useful practical application are patentable. The Indian Patents Act of 1970 does not protect mere ideas. Moreover, the act also provides certain items that although can be categorised as inventions are not patentable. Thus, the legislative intent behind drafting the act was to

eliminate spurious claims aimed at creating unfounded monopolies and encourage innovation that benefits the public.

### Protection under the Copyright Act

Software/computer programmes are entitled to protection under the Copyright Act of 1957 as computer programmes/code fall under the definition of "literary work" in the Copyright Act. Apart from being prone to copyright infringement, computer programme are also susceptible to the vices of modern technology facilities, which include not only piracy but also plagiarism of the entire programming code.

### The road ahead

With the increase in international competition and recent upsurge in innovations by Indian IT companies, it is expected that in the near future the Indian IT industry will create new and valuable IP and accord adequate protection to them through relevant IP tools. The

government initiative to encourage innovations by conferring financial support to Indian IT companies in filing international patents is praiseworthy. [IPPro](#)



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