

Discussion paper on the review of Organizational Structure of the Office of the Controller General of Patents, Designs, Trademarks and Geographical Indications

We would like to share with you the salient features of the discussion paper issued by the Department of Industrial Policy and Promotion (DIPP), Govt. of India on reviewing the organizational structure of the Office of Controller General of patents, designs, trademarks and GI's. The paper concludes by raising several issues for consideration on which stakeholders are invited to submit their response by November 30, 2011.

HIGHLIGHT OF DISCUSSION PAPER

The Department of Industrial Policy and Promotion (DIPP) has recently issued the discussion paper with the objective of examining the steps required to enhance the efficiency and effectiveness of the Office of the Controller General of Patents, Designs and Trade Marks, including through reorganization. The Department also intends to generate informed discussion on the subject through the discussion paper, so as to enable the Government to take an appropriate policy decision.

The paper delineates the organizational structure of the Intellectual Property Office and presents a brief report on the historical perspective and roots of the present Intellectual Property legal and organizational framework in India.

The important parameters discussed in the paper are outlined below:

a) Operational Issues:

It discusses the external impulses that have placed considerable demands on the office, including:

- Legislative changes made as a part of the commitments under the TRIPS agreement resulting in an increase in work load for the office over the past ten years.
- Increase in foreign investment and expansion of trade has accelerating demands of producers to seek exclusive rights over technology, products, designs and ideas as an essential tool in competitive markets.



- Operationalization of the impending ISA/IPEA status would ultimately place demands on the institution.
- With the proposed accession to the Madrid Protocol, the office would be expected to meet international standards and would need to respond to all trademark applications within 18 months.

b) The paper further describes the reasons behind huge backlog and pendency of applications pertaining to Patents, Trademarks and in all branches of patent office along with the statistical details.

c) Steps Already Taken:

- Allocation of Rs 300 crore towards modernization and strengthening of IP Offices in the XI Plan (2007-2012).
- Allocation of resources for construction of new offices, computerization and purchase of IP databases.
- Creation of 414 plan posts at various levels
- E-enabling the processing of Trade Marks and Patent Applications and post-registration activities.
- Complete e-enablement of Designs Applications is at advanced stage.
- Implementation of a project for outsourcing of prior art search to CSIR Unit for Research on Information Products (URDIP).
- Online availability of all records such as examination reports and specifications relating to published trademarks and patents.
- Online availability of details including e-Register in case of granted patents and trademarks.
- Steps are also being taken to make e-filing of patent and trademark applications mandatory



The paper further discusses the organizational structure of several international intellectual property offices including that of USPTO, JPO, DPMA, IP Australia, SIPO etc., in a bid to adopt globally accepted best policies and practices.

Ideas on re-structuring the office of the Controller General of Patents, Designs and Trademarks (CGPDT).

The paper suggests constitution of a separate full-fledged Registry for Trademarks and Geographical Indications as a distinct and independent entity from the office of the Controller of Patents and Design with a view to consolidate its functioning and bring synergy in its operations.

Following facts are stated as rationale behind the aforementioned proposal:

- The disparate subject matter and skill sets required at two sets of the office: While the work in the Patent Office is largely technical and scientific; the work in the Trade Marks Registry and the GI Registry is largely legal.
- Dissimilar and independent functioning of the two offices: The two offices have always functioned independently, under a combined head, in accordance with their respective laws. They have their own dedicated workforce, there are no inter office transfers and the two offices have separate recruitment and promotion policies, different work study units and are considered separate institutions for the purpose of Audit.
- Establishment matters complicating the relationship between the Patents and Trademark offices: As the number of employees in the Patent Office far exceeds that of the Trade Marks Office, the administration of the two cadres is being looked after by the officials of the Patent office. It invariably leads to conflict in the day to day administration of the Trade Marks office due to control exercised on administration by the officials of the patent office.
- Operational Issues: There has been a significant increase in the number of filing of applications for trademarks, patents and designs with consequent increase in the volume of respective statutory proceedings. The work on a single authority of the CGPDTM arising out of all these statutes has become unmanageably heavy. It is reported that each

trademark examiner would be expected to do 5459 examinations in a year. Since this is an impossible task, pendency has been increasing.

- The enforcement of the new Amending Act of 2010 along with accession to the Madrid Protocol is likely to impose a heavy burden on the Registry to handle international applications within strict time limits. To administer the provisions of the amended Act, the infrastructure at the Registry will have to be augmented.

The paper further suggests that the institution be made into an **autonomous agency** of the government and allow it to generate and retain the revenue from its functions. It suggests that autonomy will ease the operational problems and give the flexibility to hire technically qualified personnel.

In the Indian context, at present, the administration of legislations relating to Patents, Trade Marks, Designs and Geographical Indications, are being carried out by the office of CGPDTM under the Department of Industrial Policy & Promotion, whereas the legislation relating to copyright, plant variety and farmers rights protection, biological diversity and integrated circuits are being carried out by the Ministry of Human Resources Development, the Department of Agricultural Research & Education, the Ministry of Environment & Forest and the Ministry of Information Technology, respectively. In order to streamline the administration of above mentioned legislations in a coordinated and smooth manner, creation of an autonomous office which would administer all the IPR legislations is suggested as a viable option.

The creation of such an autonomous organization is suggested to have a significant, positive impact among the international and domestic users of Indian IPR systems.

Creation of an autonomous body will entail amendments to all the IPR laws in existence and compliance with other legal/governmental formalities. Alternatively, it is also suggested that the Office of CGPTDM can be given complete financial and administrative autonomy with minor modifications in the rules which can increase efficiency and give flexibility in decision making.

