Awareness of Intellectual Property Rights (IPR) in India

Surekha M Thacker  
Vice Chancellor, Dr. CV Raman University, Kota-Bilaspur, Chhattisgarh  
India  
&  
Kshitij M Thacker  
Research Scholar, RTM Nagpur University, Maharashtra, India

As Confucius had said “He who learns but does not think, is lost! He who thinks but does not learn is in great danger” So it’s a time to learn and also think- with reference to IPR - Invent and hold.

In India, IP awareness is very low hence IP culture is required to an enabling environment. Many scientists, highly skilled & technocrats educated persons don’t know about patents. Hence there is urgent need to increase the awareness of IP in academics & industries.

The future focus of research is going to be on mutual relationship with academic institutions /university & industry cooperation. Intellectual property (IP) has emerged as a key driver in knowledge economy. Firms view IP as a valuable corporate asset and a strategic business tool.

Intellectual Property means the property (Intangible Assets) represented by the product emanating from creativity of the human mind, human intellect and creative ideas. It refers to the ideas, knowledge, invention, innovation, creativity, and research etc, all being the product of human mind and is similar to any property, whether movable or immovable, wherein the proprietor or the owner may exclusively use his property at will and has the right to prevent others from using it, without his permission. The rights relating to intellectual property are known as 'Intellectual Property Rights'. Intellectual Property Rights, by providing exclusive rights to the inventor or creator, encourages more and more people to invest time, efforts and money in such innovations and creations.

Intellectual property rights are customarily divided into two main areas:-

- Copyright and rights related to copyright:- the rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) and rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations.

- Industrial property, which is divided into two main areas:-
  - One area can be characterized as the protection of distinctive signs, in particular trademarks (which distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin).
  - Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. This category includes inventions (protected by patents), industrial designs and trade secrets.

The IP is an asset and, as such, it can be bought, sold, mortgaged, licensed, exchanged or gratuitously given away like any other form of the property. IP facilitates exclusive right to make, use, exercise, sell or distribute an invented article or Process in India i.e. these rights can be shared, licensed or sold. Thus IP serves as an indicator of achievements in Research & Development institutions and ability of individual researcher. Management of Intellectual Property is IPM.
Hence there is need to allow academic institutions, rather than the government body, to patent publicly funded research and would reward institutions and inventors with a share of the royalties i.e. around 30% and licensing fees generated from the commercial products to the inventor and commercialization of the invention.

In today's intellectual era, India has shown a considerable growth in its research and development. The presence of well established state-of-the-art labs of Indian as well as multinational companies in the country has clearly proved the Indian IP status in the world. The rise in Indian economy is a clear impact of Intellectual Property (IP) influence in the country. By setting up new technology, incubation centers in various parts of the country and providing financial aids to the technologist, the Research & Development (R&D)status of the country has been boosted up.

India being a developing nation, has taken giant leaps in competing towards Trade Related Intellectual Property Rights (TRIPS) agreement and in compliance of US and European Intellectual Property Right (IPR) structure.

The 21st century can be referred to as the century of technology, knowledge and in fact the regime of intellect. The country's ability to translate knowledge into innovation to gain wealth will determine its future. Thus, the innovation is supposed to be the key to create knowledge into wealth. Therefore, issues of generation, evaluation, protection and exploitation of IP would become critically important all over the world. Emphasis has to be given on the IPRs impact in creating a strong backbone of the country.

Technology transfer offices between the university & Industry and mechanisms to enhance technology commercialization are required with financial support for which IP bill has been approved by the Government on 30th Oct. 2008. Further, it is highlighted that there may be special fee reduction for the university or students to boost the research activity.

A Recent research indicates that over 50% of the value of many business organizations or assets is attributed to IP. The purpose of IP system mostly, patents are to protect and promote the development of science & technology and to promote the dissemination & use of Science & Technology.

IPM identifies, the precautions to be taken after inventing the technology

- **Not to publish the research work anywhere before filing of patent application,**
- **File provisional / complete specification in patent offices,**
- **Check for technical/commercial viability of inventions**
- **After complete development of invention file request for examination (within 48 months),**
- **Get patent & maintain the enforcement of patent by paying the renewal fee**
- **Commercialize the invention (make / sell / license / assign, etc.),**
- **Field watch (regular search of patent / non-patent documents & watch on technological advancements)**
As per the above figure there was increase in university and Public Research Organizations, filings of the total patents obtained by Indian assignees during 2011, about 22% patents were jointly owned by industry, university or government sectors. Thus now a day’s universities and PROs have also experienced growth in licensing revenue by way of mutual agreements. There are several difficulties the universities face in the implementation of patenting and patented technology commercialization. They do not have operative guidelines about disclosure and patenting. Increasing autonomy of institutions, decentralizing recruiting, providing performance based incentives and acknowledging technology transfer activities in researchers’ career is essential. There is a need to redraft the university regulations on IP. Performance incentives for researches are needed for balancing entrepreneurial activity and scientific achievements.

Patent plays an important role in fostering technology transfer as countries develop their research capabilities. Technology transfer by patent licensing, collaboration can entail cross-fertilization between academics and industry, synergies in research and new ideas for science, avoiding wasteful duplication of efforts, and create employment and new market opportunities for firms. Hence there is a need to have substantial private investment in developing such a strategy.

On 1 January 1995, the full impact of WTO along with the Agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS) was felt. The Indian system rose to the new challenge and through its many efforts has taken successful steps towards transition to a new culture by updating its existing laws, enacting new legislations, instituting new mechanisms for enabling creation of new intellectual property and its protection and even evolving novel methods and schemes to promote innovations at grass roots levels. Managing creativity within the innovation process is not easy. From providing initial impetus for new ideas and a means of collating and evaluating them through to determining the most appropriate exploitation strategy and selecting delivery partners, innovation is a process and can therefore be managed.

Aims of publicly funded institutions such as universities, colleges, autonomous bodies and public sector undertakings are multifaceted: not purely driven by economic considerations but by considerations of social obligations and political objectives and will of a nation. India has stuck to these aims since independence. On one hand, the above approach has helped in creating a pool of
highly educated population and also building an inherent strength in research and development and core competency in basic industries like steel, power, fertilizers, etc. However on the other hand, an insulated system breeds complacency, which blunts the spirit of innovation and fire to be ahead of others. Globalization has taught many new lessons by opening our eyes to the existing and forthcoming ground realities, which cannot be shunned away just because we do not happen to like them. These realities are going to stay. The likely impacts of globalization started becoming a part of our age old thought process and lifestyle when India decided to become a member of the World Trade Organization.

![IPR Strategy Diagram](image)

Efforts made so far

- MHRD providing support for IPR awareness workshops in various universities and institutions & has also established IPR chairs in 7 universities
- Over 350 IPR Awareness workshops are conducted by TIFAC (Technology Information Forecasting & assessment council)
- Establishment of Patent Facilitating Cells by TIFAC in various places to facilitate the use of Patent information and also to help investors to obtain patents for their inventions
- IPR cells in the Deptt.s of Electronics, ICMR, ICAR to spread awareness
- NRDC facilitating the process of obtaining IPR and also executing technology transfer to commercialization of home grown technologies
In the above Figure the proposed structure of the national intellectual property system has been outlined. Those government departments and ministries that would have a role to play have been identified, as well as the functions expected to be performed.

Indian Government to Frame New IPR Policy
Recently, India has proposed a national intellectual property rights (IPR) policy to safeguard its interests and bring clarity to existing laws. "We are going to have a national IPR POLICY in place soon. It will not be restrictive but promote national interest. India has well-established IPR laws, but it is important to spell it out in the form of a policy for the entire world to see," commerce & industry minister Mrs. Sitharaman has said recently. Developed countries, particularly the US, have been critical of India's intellectual property laws. The US is threatening to downgrade India's intellectual property environment in an out-of-cycle review expected shortly. On the other hand, India maintains its laws are consistent with WTO rules. On the structure of the IPR policy, Sitharaman said, "All laws and rules will come within the framework of the policy. We want to strengthen IPR and upgrade IPR officers." The policy is expected to be posted on the website for comments within four months. Differences over the patents issue widened after India denied a patent to Swiss drug maker Novartis for its anti-leukaemia drug Glivec, a decision that was upheld by the Supreme Court last year. “India has become a brand in terms of pharma... automobile... We are very strong in IPR and we certainly want to protect our interest... Just because we do not have a policy, they are picking holes in our IPR regime," said she.

False Claims of IPR
The claim made by a US multinational company on the usefulness of turmeric, apple, basil (tulsi) for the treatment of inflammation, psoriasis and gastritis has been foiled by India, thanks to the efforts of the Traditional Knowledge Digital Library. The Traditional Knowledge Digital Library (TKDL), a unit of Council of Scientific & Industrial Research (CSIR) submitted prior art evidences in the form of references in books from 18th century to the 20th century citing evidences that turmeric, apple, basil, kalamegha (Bhui neem) and licorice (Mulethi) have been used alone or in combination with a few other ingredients for the treatment of inflammation, psoriasis, gastritis and as anti-inflammatory in the Indian systems of medicine.
Historical Controversies – Were they true?
There are a few controversies dating back to centuries…
**Galileo Galilei’s ‘telescope’** was not invented by him. In 1608, Hans Lippershey completed the first ever telescope and attempted to receive a patent for it, but was denied for no discernible reason. When Galileo heard about Lippershey's work, he quickly built his own telescope in 1609. A telescope, it should be noted, that could see just a little bit further than Lippershey's.

**Sir Alexander Fleming** is the name people think of when penicillin is brought up. But North African tribesmen had been using penicillin for thousands of years.
Also, in 1897, Ernest Duchesne used the mold *penicillum glaucoma* to cure typhoid in guinea pigs. A proof that he understood the possibilities of penicillin. But due to his age and strange preoccupation with guinea pigs, he never received a patent for his work.

**Alexander Graham Bell**. The man behind the telephone.
In 1860, an Italian named Antonio Meucci first demonstrated his working telephone, (though he called it the "teleetrofono")

Eleven years later, (still five years before Bell's phone came out), he filed a temporary patent on his invention. In 1874, Meucci failed to send in the $10 necessary to renew his patent, because he was sick and poor and Italian.

Two years after that, Bell registered *his* telephone patent. Meucci attempted to sue, of course, by retrieving the original sketches and plans he sent to a lab at Western Union, but these records, quite amazingly, disappeared.

According to all of your science books, **Albert Einstein**, *Time* Magazine's Man of the Century, invented the theory of relativity.

Henri Poincaré was the foremost expert on relativity in the late 19th century and was most likely the first person to formally present the theory of relativity.

According to Einstein's famous *On the Electrodynamics of Moving Bodies*, which contains his theories on relativity, Poincaré, despite publishing 30 books and over 500 papers, is not worth mentioning.

**Thomas Edison** - Described as one of the "world's most prolific inventors" with a record-breaking 1,093 patents to his name. Edison exploited and took advantage of the poor, but brilliant Nikola Tesla. Plenty of people messed around with the *idea* of the light bulb, (Jean Foucault, Humphrey Davy, J.W. Starr, some other guys you'll never read about in a history text book), but Heinrich Goebel was likely the first person to have actually invented it, back in 1854.

He tried selling it to Edison, who saw no practical use in Goebel's invention and refused. Shortly thereafter, Goebel died and, shortly after that, Edison bought Goebel's patent, (the one he saw no merit in), off of Goebel's impoverished widow at a cost much lower than what it was worth.

**Going further on IPR Awareness we wish to borrow a military word -Situation awareness**
Although the term itself is fairly recent, the concept has roots in the history of military theory—it is recognizable in Sun Tzu's *The Art of War*, for instance. The term itself, can be traced also to World War I, where it was recognized as a crucial component for crews in military aircraft (Press, 1986).

thus it is mainly used for aviation, air traffic control, ship navigation, health care, emergency response and military command and control operations and offshore oil and nuclear power plant management.)

I take liberty to use it with reference to IPM. Situation Awareness is the perception of environmental elements with respect to time and/or space, the comprehension of their meaning, and the projection of their status after some variable has changed, such as time, or some other variable, such as a predetermined event.

IT involves being aware of what is happening in the vicinity, in order to understand how information, events, and one's own actions will impact goals and objectives, both immediately and in the near future.

Thus, situation awareness is especially important in work domains where the information flow can be quite high and poor decisions may lead to serious consequences. (Hijacking the project, academic
frauds, cheating) Situation awareness is often studied in the context of leadership and roles involving time-critical applications, however it is often referenced in other fields as well.

To quote from Mr. Hisamitsu Arai’s most recent book titled ‘Intellectual Property Revolution’

“Small differences in IP strategy sometimes make a big difference in the competitiveness of a State”

**There is an old adage that says:**

“When rain comes down and puddles pool, cover up – protect your tool”

When there is incessant rain and we see the puddles start over-flowing… its time for us to be alert. Time to protect our things from getting damaged.

Its time we are cautious about our Intellectual Property Rights and save our Intellectual Property from getting hijacked, stolen, plagiarized and compromised.

Please keep abreast of all new laws and Policies….That’s how we need to manage our resources !!!

**REFERENCE**

**Internet sites:**
1. www.ipidnia.nic.in
2. www.google.com
3. www.indianpatents.org.in
5. www.wipo.int

**Books & Publications:**
1. Patents, TradeMarks, Copy Right Designs & Geographical Indications – B.L.Wadera
2. Intellectual Property Law in India - P.S.Narayana
4. WIPO Intellectual Property Handbook
6. NIIPM/ IPO, India training
7. IPO, India - Annual report
8. Original Bayh-Dole Bill
9. Gearing Up For Patents - The Indian Scenario – Dr Prabuddha Ganguli
10. Proposed Protection and Utilization of Public Funded IP Bill