



WORLD INTELLECTUAL PROPERTY DAY

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Organised by

FEDERATION OF INDIAN CHAMBER OF COMMERCE & INDUSTRIES

With

INTELLECTUAL PROPERTY OFFICE

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FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY (FICCI)

FICCI since 1927 has been the rallying point for free enterprises in India. It has empowered Indian Businesses in the changing times, to shore up their competitiveness and enhance their global reach. With a nation wide membership of 500 chambers of business association, FICCI stands for quality, competitiveness, and transparency, accountability and business – government-civil society partnership to spread ethics based business practices and to enhance the quality of life of common people.

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EXECUTIVE SUMMMARY

Intellectual Property Rights is quintessential for the economic, cultural and social development of the society. Therefore, a strong enforcement mechanism is needed for the protection of these rights.

India is an emerging economy with a myriad of unique problems of its own. We have a unique lifestyle and hence a unique economy. This uniqueness imbibes a need for innovation. India has a very vibrant innovation culture, however, there is an urgent need to take the knowledge of innovation and most importantly, protection of innovation to these grass root levels.

Media Industry is one of the largest producers of intellectual property. Without a proper Intellectual Property Rights framework, there won't be any entertainment industry. Further, the immense potential in the media industry, particularly film industry, with regard to merchandizing and licensing should be tapped.

Commercialisation is the most important aspect one looks at when thinking of Intellectual Property. IPs are considered as intangible assets. Hence, its valuations are not easy. There are various approaches towards valuating IP, however, it's not an exact science, it is rather a work of art. Companies having a strong profile of IP are valued at 3 to 6 times while those without have valuations at around 1.5 to 3 times only. This shows the importance of Intellectual Property assets.

This report gives an account of valuable presentations made during different sessions of the Conference held on 26th April 2014 remarked as the World IP Day.

OPENING SESSION



Shri Sidharth Birla, President FICCI; **Shri Amitabh Kant**, Secretary, Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, New Delhi; **Shri Chaitanya Prasad**, Controller General of Patents, Designs and Trademark, Government of India and **Ms. Jyoti Vij**, Deputy Secretary General, FICCI at the inaugural Session.

Shri Sidharth Birla, President, FICCI delivered the Welcome Address at the World IP Day 2014. He pointed out that an IP compliant regime can encourage more innovations and quoted the example of South Korea and Taiwan. He said “South Korea is probably a good example of a developing economy leaping into the realm of the very advanced, with companies like Samsung and LG becoming true leaders in their fields. Taiwan recognizes that a shift from manufacturing efficiency to innovation and added value is imperative. Taiwan announced a Presidential Innovation Award for “innovations or designs” that are turned “into profitable businesses.”” He also emphasised on the US modal and said that “The United States uses three “C’s” – *Create*, *Communicate* and *Catalyze* – towards *creating* new knowledge; *communicating* this to political, corporate, educational and labor leaders; and *catalyzing* action to implement economic development strategies.”



He highlighted the recent upgrading of IP Offices in accordance with international standards has been one of the significant steps taken by the Government towards service orientation and user friendliness. With effect from Oct 15, 2013, the Intellectual Property Office also functions as an International Search Authority (ISA) and International Preliminary Examining Authority under PCT. Today, India has a climate conducive for innovation.

Opening Address by Shri Chaitanya Prasad, Controller General of Patents, Designs and Trademark, Government of India

World IP day provides us an opportunity to discuss the role of innovation and creativity and offers us a chance to demonstrate how the IP system drives the technological innovation, flourishing of art and culture, bringing about socio economic changes that helps shape our world. FICCI has done a tremendous job in organising title which is of great relevance to the Indian industry. Creativity is the process of generating new ideas or combining, re-arranging existing ideas. Creativity may be in the form of an idea, artistic or literary work, a painting, a musical composition or an invention. Some creative ideas may be exceptional and brilliant, while others may be quite simple. But good practical ideas that no one has thought of before, new knowledge creation, generation of innovative outputs, creativity is thinking of new things, while innovation is doing new things. Innovation is the process of bringing in the best ideas. Holder of IPR although distorts the competition in the market. This distortion is compensated by the

availability of new technologies which opens new avenues for technology transfer. It is said that price of the brand of the monopoly is the disclosure of the invention at the patent office which after the expiry of the fixed period of the monopoly passes into the public domain. IPR thus provides the balance of rights and obligations for the creators and users of innovation. In today's world they have cross cutting implication in numerous areas of public policy and considering its strong impact on the economy and IP rights needs to be tailored to suit according the needs of the country. The immediate need of developing country like India is to make maximum efforts to find out ways to transform innovation into affordable products in order to serve the public way back in 1950s. Justice Iyengar in his report "**reforming the patent system**". He commented it would not be an exaggeration to say that the industrial progress of a country, stimulated or retarded by its patent system according to if the system is suited to it or not and observing that industrial counties are underdeveloped counties have different demands and requirements. Justice Iyemgar pointed out that some patent law would operate differently in the two countries with two different levels of development and hence there is a need to regulate the patent laws in accordance with the necessity of the country. In fact in the post TRIPS regime the Indian Patent Act went through three amendments in 1999, 2002 and 2005. These statements for objects and reasons for amendment in 2002 said development of technological capability of India coupled with the need for integrating the IP system in India with international practices and IP regimes. Is it that the act be modified into a modern harmonised and user friendly legislation to adequate protect our national and public interest. While simultaneously meeting India's international obligations under the TRIPS agreement this amendment of the India patent act were a matter of concern not only for the people of India but for the global industry. You would note that because of our robust generic industry in pharmaceuticals in India had already earned the title of pharmacy in the world by that time. At the time of the amendment the WHO wrote a letter to the ministry of health and welfare expressing its concern about the amendment of the Indian Patent Act and the transition of the product patent act regime. It said that it could harm the availability of its essential essence in HIV and related diseases in the countries. WHO recommended that the Government of India might take advantage of the flexibility of the TRIPS agreement. It said as India is the leader in the global supply of affordable and anti retro viral drugs and medicines we hope that the Indian government will take necessary steps

to continue to account for the needs of poorest nations urgently need access to anti-retroviral without adopting unnecessary restrictions that are not required under the TRIPS agreement. That would impede access to medicine the Indian Patent Act subsumes all this and provides a perfect balance between the private rights of the patentee and social needs for industrial growth and development while preserving the need for protecting public interest industrial growth than development while preserving the need for industrial development.



The future India IP scenario in the country and progress in the IP nation protection is quite encouraging. India has been consistently showing growth in the filing of patents designs as well as trademarks and there has been some very interesting developments in the past one year. The first is that India has now exceeded to the Madrid protocol for international registration of trademarks and with the accession an individual or a company. In India anyone can file a trademark application in over 90 countries in one single language and with one set of fees and application. In fact India has also become only the 15th country in the world to start working as an International searching authority in the preliminary examining authority. Now an Indian applicant can get the benefit of the international search report before filing an international and without approaching any foreign office and without the need of a foreign exchange. We hope that Indian investors take advantages of these. We have also introduced comprehensive online filing for both patent and trademarks due to which applicants can now file all forms online. Earlier the only the first form could be filled online further the government has also introduced search hours on offline filing as compared to online

filing and to encourage patent filing for SMEs. The government has introduced a new category of small entity with a special fee filing structure between February and March 14 the online filing has gone up from 40% to 78% and only for patents. We have introduced also a number of dynamic utilities on our website in order to increase transparency none of these interesting dynamic utilities request all of you to see you can see all the patents which are expiring or lapsing on a real time basis. These patents become free to use by the country by students, researchers and industries. Through another dynamic utility we can see the starting of working of patents in the country and you can also see the dynamics status of all patent and trademark applicants in our office just through our website and to tackle the continuous offspring of applications IPO has embarked on an ambitious project on recruitment of even more examiners. Last year we recruited around 150 examiners and this year we are going to recruit many more hopefully you would see many more changes in both the TN and the patent sites. We are also making efforts to organise the service conditions of the technical organisations of the system.

Inaugural Address by: Shri Amitabh Kant, Secretary, Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, New Delhi.



I compliment everyone on world Intellectual Property Day, it is a unique day as today is the day WIPO convention officially came into force on this day in 1972. Future stakeholders worldwide unite to celebrate this day, and it is an occasion to remember

human creativity and innovation. This day should inspire us to further consolidate our efforts to safeguard and promote IP creations and to provide a greater understanding of the role of IP. IP right is a balance mechanism between the rights of the creator and the interests of the society and the benefits they derive. The human mind is bestowed with the ability to create new ideas and when these ideas are transformed to knowledge creations that are techno commercially valuable, and then they take the shape of Intellectual Property. Intellectual Property Rights is an important driving force for the economic, cultural and social development that contribute to the enrichment of the society through new and useful goods and services and tech information. All the IP rights - patent, design, trademark, and geographical indicators are protected by the respective rights and thus all of them are legally enforceable. The same has also been amended from time to time to make them TRIPS compliant after India became a signatory and now our acts are fully TRIPS compliant.

Creativity is defined as the capability to conceive something original and unusual, generation of new and potentially useful ideas. No innovation until something is implemented, thus innovation is the implementation of something new. You can innovate with a new product process, business model, consumer services or marketing method. Innovations can be incremental or radical. Every invention is an innovation but every innovation is not an invention. In the present day economy enterprises needs to encourage creativity to ensure good health of an organization and sustainability. Therefore people in the organisation should be given the liberty to device new methods and not adhere only to the old rules. If India has to grow at 9-10% per annum it has to create job opportunities for the population and for that we have to drive our manufacturing industry. That will happen only when India becomes an innovation led economy. Innovation has to be the backbone of India's growth. The present decade of India, has been termed as the decade of innovation and steps have to be taken to meet this objective. Therefore we look forward to taking the recommendations of the panels. It is a glorious moment for India for it has joined Madrid protocol. We recently amended the patent rule to give concession to small entities. Online filing has been introduced and we have the state of the art IP officials in Delhi, Mumbai, Kolkata and Chennai. The department has managed to march towards transparency. Further, re-engineering of the IP procedures and additional manpower has resulted in removing the backlog of IP

applications. There has been a steady growth in filing of IP and reflects the increase in efficiency of the office.

Vote of Thanks by Ms. Jyoti Vij, Deputy Secretary General, FICCI

Intellectual property has the potential to empower individuals, businesses and nations, alike. Intellectual property has become a dominant force for economic, social and cultural development of every nation. Today's conference theme talks about creation, protection and commercialization of IP. Creation and Protection are two sides of the same coin. Protection of intellectual property is as important as creating it. Innovating and protecting innovations are smart business strategies that will enable companies to successfully commercialize IP. Creators and innovators should be proactive in protecting their intellectual assets. Globalization & digital revolution have magnified the role of innovation & knowledge in the development process of Human Ingenuity. Innovation & technology have become key drivers of economic growth and competitiveness in the knowledge based innovative economy. It is also recognized that a well functioning and balance Intellectual Property system is an essential requisite for long term development of a global & national innovation & creativity.



An effective intellectual property system is indispensable for flourishing trade, in promoting investments and in developing industries. Intellectual property though permeates into everyone's life, and has contributed significantly in improving our lives, there is little awareness about this branch of law, therefore, the respect accorded to these intangible assets is much less. However there is a need to change this perception.

Intangible property also merits the same level of protection and respect as tangible property. There is a need for spreading awareness about IP and the need for respecting IP. There is also need to build the capacities of our enforcement officials.

Presently, there are hardly any Economic Offence Wing (EOW) in district police stations to look into the matters of intellectual property crimes. Police force which is already facing human resource crunch does not accord enough priority to IP cases. Police is neither educated, nor sensitized on IP matters and hence lacks the interest to appropriately deal with IP matters. The only EOW that we have in Delhi is not sufficient enough to deal with IP crimes happening in across the country. Thus, there is a need to have special IP cells in police stations in each district where the officers are trained on IP issues and laws so that they immediately take cognizance of the matter.

A recent FICCI study on 'Socio-economic Impact of Counterfeiting, Smuggling and Tax evasion in seven key Industry Sectors', mentioned that the estimated annual tax loss to the government in the year 2012 was estimated at Rs. 26,190 crore. The study further estimates an annual sales loss to industry at a whopping Rs. 1,00,000 crore. The key sectors which were included in the study were auto components, alcohol, computer hardware, FMCG (personal goods), FMCG (packaged goods), mobile phones and tobacco. The highest loss to industry in terms of revenue is from FMCG (packaged goods) at Rs. 20,378 crore and maximum tax loss on account of smuggled and counterfeit products to the government is from the tobacco sector at Rs. 6,240 crore followed by FMCG (Fast Moving Consumer Goods).

Thus, all such Government initiatives are important to create a conducive environment where IP can foster and innovation can spur in India, making India a trusted and safe destination for IP protection and commercialization in the coming 20 years.

The FICCI IP Division dedicates its efforts to creating awareness and incentivizing the masses to innovate and create new IP, through its awareness building programs for the industry, Intellectual Property Education Centre for students and Intellectual Property Facilitation Center for MSME's and individual Innovators.

FICCI has been focusing on curbing the problem of growing illicit trade in counterfeits, pass offs and smuggled goods, and accordingly has dedicated a forum by establishing CASCADE - Committee Against Smuggling and Counterfeiting Activities Destroying the Economy. FICCI CASCADE is working closely with the Industry and Government to create awareness on how counterfeiting and smuggling has become a serious menace to public health and safety and that all concerned must address these important issues.

May I conclude ladies & gentlemen by saying that in this forum there will not only be an in-depth & detailed debate on challenges that face the IP system but also on the opportunity which can be generated by the strategic use of IP through promotion of innovation & creativity. I would like to thank shri Amitabh Kant, Secretary DIPP, Shri Chaitanya Prasad, Controller General of Patents, Designs and Trade Mark, Shri Sidharth Birla, President, FICCI & all the participants & experts in this forum for their valuable presence here.

PRIZE DISTRIBUTION FOR THE DEBATE COMPETITION

In today's time, Intellectual Property Right plays a pivotal role in the growth and development of a nation's economy. FICCI along with Intellectual Property Office is sensitizing youth by involving them as equal partners in promoting the need of IP and innovation in the country. A Debate competition was organized on 19th April, 2014

The college students debated upon "Whether Public funded R&D contributes to IP promotion better than Private Funded R&D". And school students debated upon "Plagiarism: bane or boon".

The Jury consisted of the following members:

S.No.	Name	
1.	Mr. Dipankar Barkakati	FICCI
2.	Mr. Deep Chand	FICCI CASCADE Advisor
3.	Mr. Sachin Gupta	Advocate, Intl Advocare
4.	Ms. Nilanjana Mukherjee	IP Office
5.	Shri B.P. Singh	IP Office
6.	Shri Naveen Mathur	IP Office



The Winners as follows were felicitated during the ceremony by Mr. Amitabh Kant:

School Name	Student Name	Position
Indraprastha International School	Pooja Iyer	1st
Ryan International, Vasant Kunj	Abhishek Arora	2nd
DPS International	Dhwani Kachru	3rd
College Name	Student Name	Position
Christ University, School of Law	Rahul Raman	1st
OP Jindal Global University.	Gautam Sundaresh	2nd
IIT , Delhi	Aditya Priyadarshi	3rd

Session 1

Innovators in India- on the road to Innovation Hub

**Chair- Shri Chaitanya Prasad, Controller
General of Patents, D Designs & Trademark,
Government of India**



Mr. Tabrez Ahmed- Secretary General, OPPI

Pharma sector is a very competitive sector. There are a large number of brands and products and moreover new products are being introduced continuously. The industry is growing at an impressive rate of 14% CAGR. A very major challenge in India is low levels of life expectancy and immunization levels. This is perhaps is the biggest challenge in front of us. Another important issue is that of access. Despite having one of the largest pharma sectors in the world, we still are not able to cater to the medicine needs of the country. To add to the list of problems, we also invest very little on our healthcare system. Most of the investments is out of pocket expense- which is perhaps the biggest challenge. Also, insurance coverage in India is phenomenally low. Disease burden is increasing as we haven't conquered the communicable disease problem. Lifestyle changes also cause increasing number diseases. There are also a number of new emerging diseases. Today India is considered to be the diabetes capital of the world. We have a disease burden of 20% globally greater than our population share in the world, while on the other hand China is doing much better with a larger population. For all these challenges, innovation and innovation only can solve the problem.



Our IP base income is very low. Earlier pharma, software etc were considered to be IP centric but now all the sectors are dependent on various forms of IP.

Patent pendency is a big problem in the IP scenario of India. Off course, India has improved on this but still there is long way to go. Pre-grant opposition which though is a recognised right, delay the process of patent grant and rejection without giving justification gives no interim relief.

This is a balancing act and if we don't balance it appropriately, it would lead to a big problem. It's important that the pharma companies play their part and the state, private sector, social sector too must play its own part. The answer lies in bringing new solutions for new emerging diseases. Some pharma companies are doing a good job in creating wealth for the shareholders as well as sharing the disease burden - this is a bright side (ex - Dr. Reddy's and Piramal Healthcare).

Innovation is necessary to solve the disease problem in India. Secondly weak IP regime is not only bad for the MNCs but also harms the domestic companies. Thirdly and most importantly, investment will happen only when there is assurance that sunk cost will be recovered.

Mr. T.C. James- Consultant, FICCI

We do have an innovation culture and there's a lot of innovation going in India. The real challenge is finding out a way to capture the market. There's no doubt about how IP fosters innovation but the question is how affordable innovation is in terms of health care, clean energy, sustainable agriculture and in terms of solutions for water problems. The problem with innovation is that it is concentrated around a few major industries and thus the incremental innovations are completely sidelined; owing to which the overall state of development of the nation is not taken into account. It is through imitation that a country develops. Imitation is not about copying something but what it is really about is of developing a local innovation system. "Adapt and adopt a technology suitable for us" is how he puts it. In this regard, MSMEs have done a good job not only in India, but also globally. He remarks that 80% of the innovation is, in fact, accounted by the MSME sector and 8000 valuable products come out of the same. It is observed that all the big corporations started in garages and were developed owing to innovation. For example, Toyota and other such companies in this regard. That is how, Intellectual Property, MSMEs and Innovation merge together.



The level of education of managers matters and is in a way directly proportional to their risk taking ability. Firstly, the thing with small scale industry is that they are need based and this is where our government can provide various facilities. Also, the buyers are not just from India and therefore the SMEs should be trained to deal with foreign buyers and concretizes his point by giving example of various small scale innovators from distant villages in India and how inept they are in terms of resources to get their innovations patented. Secondly, these things are not innovations as per the strict definition of innovations. So, the question is, what is the alternative for the protection of such innovations? The answer is being a utility model which developed nations like Germany and Japan use over patents. The discussion over innovation does not encompass entrepreneurship development, marketing research, software and design as of now. Also, a number of non-traditional fields such as fashion designing and culinary offer no IP protection.

Mr. Samik Mukherjee -Policy Strategist, Intel Technology India Pvt Ltd.

The Indian IP regime which is related to the European regime that does not gives patent protection to software. However they are protected by copyright laws. To increase patent filing in India one way is to grant protection to software which will give more incentive to file patent applications. Since, in India, the software industry is the largest (in terms of contributions to GDP), it is really important that we start granting patent

protection to the software industry before we start focussing back into manufacturing. It's important to notice that software and services sector are not those different from the hardware sector. Today you have more and more hardware companies acquiring the software companies and also the other way around.



We need a consultation process for trade secrets protection like the European Union. Currently in India trade secret is protected via contracts and NDA (Non-Disclosure Agreements). We would like to get into a discussion with the government and the industry stakeholders to discuss these topics with the government. Enforcement too has been an area with significant development, however it still continues to be a major problem. Some states have taken a lead and come with laws which are easily enforceable. We need to implement the same at the central level. It's important that as far as IP creation and protection is concerned. We are going the other way round, by forcing the big companies to come up with patenting, when we should actually encourage the small sector enterprises to develop and nurture Intellectual Properties.

Mr. Ashok Shukla- Partner, S.P.A. Associates

For a car that is priced at Rs. 10 lakhs. The real worth would not be more that Rs. 80-90,000 (combining the cost of all the raw materials used in manufacturing the car). The reason for this huge margins are the IPs associated with the cars. The creators, manufacturers, assemblers etc of both the car and of the parts will be the ones benefitted. There is a lack of awareness in India regarding the laws. We Indians keep on creating IPs without even being aware of the same. Internet plays a huge role in

spreading awareness. Japan claims that their economic growth has a direct relation to their patent filing and hence underlines the importance of IPR for SMEs.



Asset creation is a three step evaluation process. One, the value enhancement of a product i.e., the extra price of customer is willing to pay for one particular product. Two, number of products sold in one year and then the multiplication of one by two. Three and finally, we calculate the product life cycle i.e., how a product will grow, when will the saturation point come and when the product will degenerate followed by multiplication of the annual value by the product life cycle. The final value is called the IPR value of the produce.

Today, we are moving towards equitisation of IPR. Dedicated exchanges like the Chicago IP exchanges are coming up these days. is new for the whole world where they are putting the whole IP as a block instead of equitizing it. They are trying to break it into small IPR shares and concluded by iterating that an environment is coming up in which SMEs have to be very much aware to protect themselves.

SESSION 2

Intellectual Property to boost Creativity and Economic Contribution in Indian Film industry

Chair- Uday Singh, Managing Director, Motion Picture Association, India



Mr. Jagdish Sagar- Advocate

Media Industry is one of the largest producers of intellectual property, perhaps the biggest in India. It is the largest export of the United States. The gross output reflects the combined revenue of the film & television industry participants and the gross value added represents the value added by the key factors of production like capital labour in the form of EBITDA & wages. Total value added is the sum of the gross value added and the indirect taxes represents the total contribution of Indian film and television industry to the GDP.



The film industry is one of the highly taxed industries. It is taxed along with alcohols and cigarettes. Despite that it has been growing, in most cases it can be seen that the government is a sleeping partner who collects taxes while the industry is actually at work creating all these products. The media entertainment industry is a huge generator of employment as well. Statistics conclusively show how labour intensive this industry is. It is also highly collaborative in nature and is spawning its own economy. Every place it goes it creates a whole new local economy. Among the films and televisions it is the television where the big numbers are come from. The contribution of media entertainment industry is 0.5% of GDP and given the right kind of impetus it can clearly become an outlier. It has a CAGR of 17% against GDP growth rate of 4.8%. Combined with the right regulatory set up it could grow even better. Such is the situation when we have not even added the allied sector that goes with it. If you see the music industry, 70% of music is film led. Add to it, merchandise, foreign film shooting in India, combined figures could be even bigger. If we allow FDI into this industry, the scope for growth increases furthermore. Canada got US \$2.8 billion dollar in FDI. In India, right now to shoot even a single frame, about 70 clearances are needed! With the right regulatory set up, film industry can be a huge engine of the Indian economy. Right now government brought out single screen clearance. Despite that if you look into other regimes, they provide incentives like tax breaks tax credits, and all kinds of allowances for producers to go and shoot. It is not just about simplifying, its about creating the right kinds of incentives and promoting India with the fabulous destinations that we have.

Mr. Uday Singh- Managing Director , Motion Picture Association, India

IPR is a matter of law and without law there will be no IPRs and without IPR no entertainment industry, in particular no film industry. He touched on issues which clients in film industry have consulted him about, the major issue being internet and the problem of infringing websites. He asserts that there are two ways in which we can deal with infringing websites, one, by getting the website down or blocked and two, if we target the infringing content and keep it out of the infringing website. He observed that temporary injunctions in India have been granted in large number to block websites most of them being at the instances of music industry and a few others on instances of film industry. He is of the view that such provisions are difficult in the United States because of safe harbour but ascertained that it is not impossible to get something like this in our jurisdiction. While in some countries the respective telecom regulatory authorities can do it, in India the TRAI is only concerned with carriers and not with content regulations. It also cannot be done under the Information Technology Act or under IP Infringement Act.



He added that injunctions in India are temporary and not final and the problem lies with the fly by night websites. He iterates the trouble with these kinds of websites being firstly that they are usually offshore so one can target the website but not the people behind it and secondly about blocking a particular website and the same person coming up with a different URL. His concluding remarks included a consideration that will affect strategy; blocking large pirated websites which are dedicated solely for piracy should

certainly be considered so one must look at alternative options of working with content over the internet.

Mr. Ranjan Narula- Founder, Ranjan Narula Associates

There is a huge scope in Indian film industry when it comes to licensing and merchandising. Disney (generating 28.6 billion USD), Pixar etc have benefited a lot by means of licensing and merchandising. On the other hand, in India only Krissh and RaOne have generated tremendous revenue when it comes to merchandising. It is observed that culturally we are a bit poor in monetizing our IP even though we are highly creative. There are reasons as to why such licensing and merchandising is not evolving in India, the main aspects being both commercial and legal aspects. When we talk of the legal aspects, one thing stands out: the absence of a codified law. When cases come to court it is not that the courts shy away from it and gives example of one case regarding Daler mehendi where even without any proper registration courts considered a prima facie case of infringement. But, on the other side films like Ram Gopal Varma's Sholay reflect the lack of IP attitude.



Further, it takes a very long time to come to a decision even though interim injunctions are granted timely and there aren't a huge number of cases where damages were paid. Whereas on the commercial side, the short life span of a movie in India has to be considered. In the west right from the moment of scriptwriting planning is started as to

how to merchandize the characters and who would be the target audience. The fact that until and unless there is a monetary aspect attached to IP there is less incentive for people to create and protect it and so we need to bring about a culture where people are thinking about monetizing and for that we need to create a culture of protecting IP with all the stakeholders needing to realize that it is an industry with a huge potential.

Session 3 Commercialization of IP Assets

**Chair- Shri K. S. Kardam,
Joint Controller of Patents & Designs,
Government of India**



Mr. P.V.G. Menon- CEO, VANN Consulting Pvt. Ltd.

The electronics industry is very important in India. Electronics industry in India has transformed from a vertical sector to a horizontal resource. Electronics industry is a very important industry for the growth of the economy. Any economic sector where you want to increase the productivity, electronics becomes a game changer, in the sense that you need to improvise the technology setup, be it pharma or textile and when you are upgrading, electronics plays a key role in it. So it is extremely important that this industry looks at new ways of doing business. Today we are at about \$ US80 billion. India is one of the largest chip designers after US globally. This industry will grow at the CAGR of 20% or more to hit \$ US400 billion dollars by 2020. This sector has enormous capacity to generate employment, roughly 28 million people to be employed by 2020 with 1:4 is the ratio of direct to indirect employment. Unfortunately the fast growth of the sector hides within it a ticking time bomb. The electronics sector is the third highest contributor to the Current Account Deficit (CAD). Over the next few years the sector is supposed to take over oil as the highest contributor to CAD. Therefore there is an urgent need to kick-start manufacturing of electronics in India.



In this sector we cannot play by the price games because China will beat us any day in price wars, so the only way to go forward is the innovation game. Paradoxically we are one of the largest providers of semiconductor designing services, still we don't have a single Indian chip company, there is some movement happening with the central govt proposing the setting up of manufacturing zones for wafer-thin sec.

If you look at the cost of any electronics product you buy 10-15% is cost of royalty, so by 2020 India is looking forward to pay like US \$50 billion royalty, "innovation led design design led manufacturing" is the only mantra to move forward, one of the suggestions for the govt is to hold workshops throughout the country to sensitize people because a lot engineers are good very engineers but they wouldn't be able to see innovation even if they hit a bus. So we have to sensitize people for a.) To identify innovation b.) To protect it. The government of Karnataka has started giving subsidies on the filing on patents and other IP rights. Whether it is Wall Street or Dalal Street the market loves the companies based on IPs. A company with IP will get evaluations from 6x to 10x, while for pure manufacturing or service based company the evaluations are somewhere around 1.5x to 3x. Software industry in India is blooming and is well established, however the IP part of it is a difficult place to be in. For one, there is no specification coming from the market so you need to have very deep market insight. The characteristic of this industry is that it designs wins. Third, scaling is a huge challenge you need to constantly innovate someone in China can always reverse engineer the product and have an R&D cost.

Mr. Nitin Masilamani- Partner, Amarchand Mangaldas

Just because a product is unavailable in the market does not mean that the required technology to manufacture that product is also unavailable. Therefore when a company addresses a technical need it also has to look for alternative solutions to address that technical need and whether, if they actually venture into that space, they are legally permitted to do so. The question is whether anybody already has a blocking patent on that. There may be cases where a particular company has a patent in something and regardless of that you get into that market. Short point being before deciding commercial matters on where to focus your innovative efforts it is important to look into where others are focusing their efforts. One of my fairly proliferative clients actually ventured into such already patented technology because they knew that despite the fact that the tech is already patented, their solution is completely different from what is prevailing in the market. So that is a decision best left to the innovators of the team or the business development people on that team but it is a factor everybody needs to be aware of before they make a decision to adhere to a particular commercial strategy. Let us say we have moved from stage 1 to stage 2, we have found the solution

we believe nobody else is doing, what do we do next? If you're a fairly small company, and you have to boost your evaluations, the most usual way is by inviting venture capitals.



A lot of first time innovators are puzzled when they go through their first round of discussions with the venture capitalists because the question that they ask themselves is why this person is not as excited about my product as I am?? There can be two reasons for the same, the first and the easy answer being you failed to communicate the genius of the product to the other person. The second more difficult question that needs to be answered is the time period required for you its time period between entering the market and capturing the market -- what we have to understand is that a lot of venture capitalists are not keen on a long term gain -- A few of them are, but most of them look for a gestation period 3-7 years. The question that they need immediate answer to is the time period I as a VC can exit the market. If you go up to them without any such projections or with projections that do not match the chronological expectations of the venture capitalist. The task of inviting a venture capitalist will be far more uphill. Once the venture capitalists are convinced and the path gets easier then it depends upon your performance and on that of the intellectual property i.e, how successful you are in protecting your intellectual property in various jurisdictions . The important factor is that you need to plan out your IP life-cycle. It is observed that young innovators are usually keen in filing a patent application what they don't realise is that the cost incurred at this point is just the initial part of the total cost from year one to year three. When they actually go for international patent filing application where they have to enter foreign jurisdictions for filing international patents, the costs are exponentially high. It has to be realised that the cost of filing a patent is the least of our cost. When you

make your business pitch to a venture capitalist, you have to factor in the cost incurred between year 1 and year 5, which is typically the gestation period in securing the IP rights - and between year 5 and 10 when you have fully secured the IP and after year 10 when you are into payments of annuities. If you cover all those bases, you have a predictable financial plan you can sell to someone. If you don't, you are going to run a very serious risk with promises that you have no way of keeping. There is very little that can happen to a company, which is yet more unnerving and then five years down finding out that the money while well spent is not going to be enough to take you the market position that is required. There are several other modes and modalities that can be used for leveraging other than inviting the venture capitalists which I have already talked about. One such route is the litigation route. Especially if you are a startup one of your main concern is - do you run a risk of suit. And how do you control that risk? There are different and fairly unsatisfactory answers to this. There are very few times that you can guarantee that you don't run a risk of running into a lawsuit. It is standard practice when companies enter into technological licensing, there is some form of third party patent indemnity in case the company files a lawsuit. We have seen this a lot in the past 10 years with software companies in India. Many Indian software companies have been called upon to indemnify purchasers for their services. It is to be noted that all of them if given a choice would not like to sign those agreements, but given the scenario and the revenue model as to how these companies work, they have no choice but to sign the agreement. What the company can do is completely identify the white spaces and try to work in those areas along with making a projection of their potential financial needs. To end this is a thought: it is not an impossible task to make an IP work for you; what is usually critical and keen in situations like these is to chart out each step over the next three to five years to what scenarios are you likely to face and secondly in leveraging that commercially.

Mr. Rajat Chawla- CEO & Partner, J.P. Chawla & Co.

While valuation, intellectual property is categorized as an intangible asset. Intangible assets are technology related patents processes, marketing related brand names and trade names. There are companies in India who are making supernormal profits and then there the companies in India making normal profits, the difference are intangibles.

Why would facebook pay US \$19 billion dollars to whatsapp? They wanted to access their customer data and that is an intangible. Lets come to a local example. Why would CNN India take Microsoft Analytics to analyze election process in India? Because they want to create a differentiation in the market using technology. That is the power of intangibles.



There are some questions that need to be answered before valuation. First, you have to recognize the need of new technology in business. Second you have to identify the potential license, then you have to identify if licensing arrangement is the most appropriate strategy, it might be better that you may partner with the licensor. After answering these questions, then the issue of valuation arises. Valuation is just an indication for the price you want to pay, you have to decide how much you can afford to pay, in which ways can you pay the licensor. There are some companies which offer stock options to the licensors, then there are companies who would pay cash to the licensor. How much you should pay is the negotiation part, which takes place after valuation. Now coming to valuation, there are very different analyses, there is no specific method of valuation. It is very subjective and also depends upon the underlying data, the ability to reject data. There can be different results from different valuers; there can be different results from different methods. Valuation is not an exact science, it is more of an art. There are three major approaches to valuation, cost approach, income approach and market approach. The cost approach has three subsets, the first is the historical cost, another is reproduction cost and the third one is replacement cost. Cost technique is more of a negotiation strategy which should be taken into account when the potential licensor is not negotiating in your favour. Coming to the most famous technique that is the income approach. While evaluating through an income

approach it has to be taken into consideration the amount of income that the new technology will generate. There are basically two subsets of the income approach, they are the thumb based rule and DCF method. In case of rule of thumb one basically estimates the gross margin that the licensee will earn and allocate 25% of the gross margin to the licensor. The second method is more scientific, it's the DCF method where you calculate the NPV (Net Present Value) subjected to incremental earnings and appropriate timed discount rate, discount rate is your cost of capital which is equal to cost of equity plus cost of debt. The third technique is valuation through market approach, it is a difficult technique, where you scout for other license agreements from databases like royalty stag or other foreign databases. Every intangible is a unique intangible where you won't get an exactly similar licensing agreement. You can only get a similar license agreement. You can have the idea of royalty rates, these are the few things that you need to take care while valuations. I have a recommendation to make, while valuation is not an exact science and there are different approaches to it, so i would like to recommend that we as an industry come to standard method of technology valuation in a more scientific way.

Dr. Ajay Batra- Managing Partner and CEO, World IPR Bank

The believers of the anti-patent system believe that whatever had to discovered has already been discovered and now we are only fighting battles over nothing. Why does IBM create so many patents with 65% Indians but then what happens to us Indians? We looked at the top 15 companies which were the highest producers of quality IPRs in the world and based on our observations, we created something called the "I two kick framework" which works intellectual information knowledge capital framework. India lacks innovations; we don't have processes to capture innovation. We don't have processes to capture knowledge. We don't have processes that can make this elitist system of patent filing to the poor of this country where the real innovation is striking. Indians are very good at following standards but when it comes to creativity we don't know what to do next. Monetization is just one element of process area.



There are five distinct stages to Intellectual Property commercialization anywhere in the world. The first is to assemble a team. In the team we need to have the highest executives involvement. We need to have the legal involvement, business development and taxation people also included in team. The second stage is called the penetration and discovery stage, this stage is for the companies that know they have something but don't know where to go with it. We combine Intellectual Property and Technology Transfer. then we create a baseline using a questionnaire. This is phase 1. In phase 2, on the basis of the questionnaire, we identify a portfolio that shall be more suitable. Everyone in the team has to make a contribution to create a smart management system that will make the intellectual property multiply and hence generate multiple revenues. This is the reason why Intellectual Property based companies have 6x to 9x valuations while a typical run of the mill company has 1.5-3x. A very important aspect of the valuation is to find if it is a current technology or a future technology. Third phase is actually something very interesting, here we try to understand the attributes of the portfolio the company has. We look at very simple things such as if it is a balanced portfolio is it a lucrative technology area profiling? Has it got a favourable technology maturity cycle? Then we think where do we go out and sell the technology. In the monetization strategy there are two things. Every company starts in quadrant "I want to save it for me" then come to quadrant 2 , " I have an idea and I have done an IP on it let me monetize it" - this is revenue centric response, still reactive. The third quadrant is to move up the value chain, "let me go and block a competitor and I recommend that you be in quadrant 4, where you have inculcated all these above strategies.

Ms. Sunita K. Sreedharan- CEO, S.K.S. Law Associates

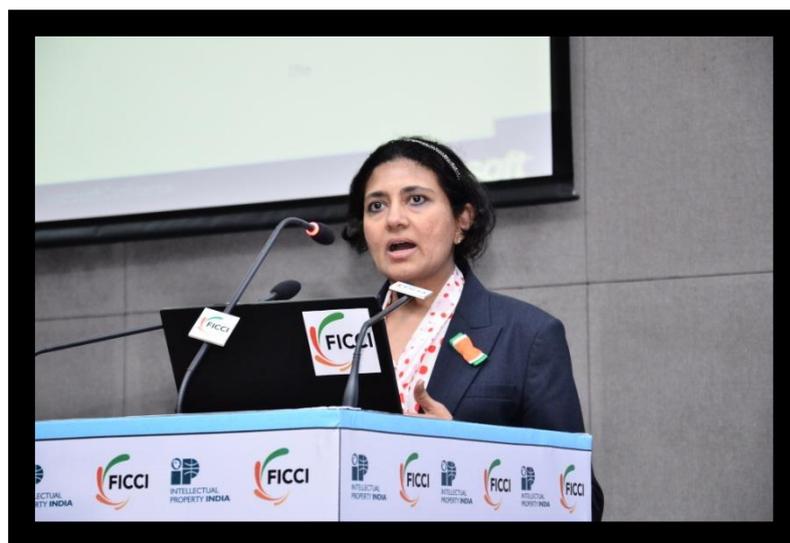


IP management starts with the germ of an idea. At the beginning, we look at the germ of the idea and decide, if it can go for a successful IP or there are already a lot of things going on in that field, in which case we do an IP landscaping. There is a difference: there are companies which are doing a market based research, which is basically trying to fill in the market needs - but then they also want to protect those ideas and go for licensing. This is one aspect of IP management and is fairly difficult as it requires a fairly clear idea of what is happening in the country and what are the laws that are in place. There are intellectual assets and then there are intellectual properties - intellectual properties are where a government gives you an authority in return of an annuity, just like normal property; but before an IP there is something called the intellectual asset. Where you have no government authority, you keep them as trade secrets. It is very difficult to protect something as a trade secret because there is insecurity as to how the courts will behave. One of the issues is the timelines of various government authorities like the patent office and the biodiversity offices are clashing with the ground reality being that though the law is elegant, when it comes to execution it becomes very messy.

Ms. Simone Misra- Director, IP Licensing & Sales, Microsoft Corporation USA

To a large extent the IP strategy is the business strategy. Microsoft depends upon IP because IP system is critical to its ability to ensure recovery of ongoing investments as expressed in Bill Gates 1976 'open letter'. Monetization of IP can be done by various

methods like IP licensing, Patent cross licensing, IP sales, IP contribution and Leverage IP. Microsoft solves its customer's problems by licensing their IP or through their partners, monotype imaging and Ascender corporation. Patent cross licensing enables customers to have unique features in their cell phones while patent sales is to analyze the overall patent portfolio. Microsoft licenses Patents, Protocols, Technology, i.e. specifications, source code, technical documentation etc and Trademarks and Brands. Licensor and Licensee have different goals of licensing. Licensor's goals include strategic use of IP, Revenue generation and ecosystem of products . On the other hand, Licensee's goals include commercialization for gain and technical know-how. IP licensing should be done because it can give a company a head start on product design and market introduction and also provides compatibility of design broadening a market product. Microsoft's internal process of IP licensing program includes identifying IP, market analysis and then a stake holder team is created to pursue opportunity.



Microsoft's external process of marketing an IP licensing program includes market strategy which is basically many different ways to market, IP valuation and deal negotiation. IP has a short life cycle in the technology space, thus a built in team should be ready to license when necessary with product, price, promotion and place. IP created from labs or product groups can be licensed through cross examination effort e.g IT Tools, product features, fonts etc. A stakeholder team will be appropriate to the significance of the licensing program or its complexity. Mr Bill Gates said "At a lot of companies, it is only the legal department that gets involved with IP issues. But not at Microsoft, because IP is central to who we are and what we do." Microsoft is the winner of the 2014 In-House Patent Licensing Team. Each company needs to determine how its

intellectual property must support its macro and micro business strategies, IP licensing is a tool that helps achieve this objective.

RR Hirwani-Head, CSIR Unit for Research and Development of Information Products.



He started by emphasising on the benefits of commercialization of IP Assets. He talked about the various ways for the same; and gave the examples of various contractual agreements like licensing. He also talked in brief about the risks involved in commercialization of the IP assets thereby giving due importance to management and business planning. Among various IPs, he focused majorly on patents and discussed in detailed the commercialization of the same. One of the major points of his speech was the commercialization of expired patents. Innovation requires a huge sunk cost without any guarantee of returns. Developing economies like India cannot take such investments in the scale of developed countries like US and Europe. However, what we can do is re-invent or re-engineer the innovations already done to suit our economies. Patent is a bilateral process whereby the governments allow a monopoly to the inventor for a fixed amount of time in exchange for complete disclosure of his innovation; and emerging economies like India need to make greater use of this disclosed information.

**SESSION 4: Countering Piracy and
Counterfeiting to safeguard society and
economy**

**Chair- Mr. Ameet Datta, Partner, Saikrishna
& Associates**



Ms. Lohita Sujith- Director, Corporate Communications, Motion Picture Association, India

She starts by raising the question: what is the source of piracy in films? She answers it by telling that most movies are pirated at the cinema halls using camcorders. They then go to the hard good markets and are accompanied in the online piracy networks. She is of the view that it is a multi-layer process where in as soon as the content hits the network, a number of cyber-lockers become involved in this complex process of sharing and re-sharing the pirated work. She observes that there has been a huge increase in people looking out for infringed contents, and the numbers are only increasing. It is found that most of the users going to the infringing website are guided via the search engines, i.e., even the consumers who were not actively looking out for infringing websites were directed to them.



Almost 82% of the infringed content came from Google. Therefore, we all need to look at the enforcement mechanisms as we are going to be the second largest internet market in cinemas with 12000 screens and 300 million English speaking population. Also, by 2015 75% of the country will access internet via mobile phones. It has to be duly noted that in 2012, only Indore, Ghaziabad and Ahmedabad were responsible for camcording but now this process is mushrooming in the smaller cities. There have been cases where the movies have been available on the internet even before their release. Two very successful strikes were conducted last year in Ahmedabad and Indore owing to which there was an almost 36% decrease in online piracy. She added that most of the rogue sites depend heavily on advertisements with other revenue models including subscription and affiliate programs. It highlights that authentic payment gateways are also a part of these operations for which an intermediary strategy to target the intermediaries like the payment gateways needs to be devised. Her concluding remarks included talking about the best practice that is encouraging implementation of specific camcording legislations looking at public awareness campaigns and training of stakeholders like law enforcement and judiciary.

Mr. Rohit Kumar- Managing Director – South Asia, Health Science Division, Reed Elsevier India Pvt. Ltd. & President, Association of Publishers in India; Co-Chair-Publishing Committee, FICCI

In publishing industry, the biggest problem we used to face was piracy in print, now the problem has shifted to piracy online. In the online world unfortunately, books does not takes a long time to download. The biggest problem that we face is that the pdf version of a book is available online within a couple of weeks of its launch. There have been

cases where pdf of books which have not even been released for the markets have been available online. The only good news is that for every pdf downloaded illegally, people seem to look out for real hard copies. Now a days, you have a person having a very good printer and a collection of thousands of books on a hard disk drive and its all very hard to trace. Its all mail order world today. The original book may cost Rs 9000. The online pirated book costs maybe around Rs300 and students are buying those. Its very impossible to crack the raid, we have tried almost 3 times in the last year and failed almost every time.



Copyright act of 1914 actually started with protection of literary works. Patents and even copyrights for motion pictures came only later. The challenges are similar in the movie industry as is in the software industry. Earlier it used to be CDs, now its downloads. The only thing we can do as an industry is to make legal copies available to people in an easier manner. This is what Steve Jobs was able to do with iTunes. In the music and the movies industry, websites dedicated to renting online are coming up, however for books, there are no such thing. Though we have Kindle now where you can buy books cheaper than the print version, this needs to propagate. We need to do something about it, otherwise we will always be struggling.

Dr. Gandhi P C Kaza- Chairman, Truth Labs

Truth Lab is a private investigation company, recognised by most major governments in the world which undertakes non-partisan investigation of subjects brought to its concern. The organisation has an array of experts which deals with various branches of forensics, including cyber forensics.



Truth Lab undertook a study in association with Microsoft to analyse the piracy conditions prevalent in the country. We took samples from companies across the country. In India the situation is very difficult because the culture is different. Most of us cannot say for sure that we have never used pirated or counterfeited software. how many of us consciously using softwares which are legal and licensed -- Most people cannot say for sure if they are using only licensed software. The culture of buying a licensed copy is not present in our country. As per a recent survey by IDC, 65% of the software used in Indian companies is pirated. India ranks 6th in the countries using P2P (Peer to Peer) websites to download illegal content. Websites hosting such content simply migrate to other URLs or altogether alter jurisdictions. A large number of people are not willing to pay for software. Most counterfeited software are laced with malwares that can be disastrous for its users. The malwares may cause data loss, data theft, firewall breakage etc



Program Outline- World IP Day-2014

Fostering Innovations and Creativity in Indian Industry through Intellectual Property for Higher Growth Trajectory

Venue: FICCI, Federation House, Tansen Marg,

New Delhi, 26th April 2014

09.30 am – 10.00 am	REGISTRATIO
10.00 am -11.00 am	Welcome Address by Shri Sidharth Birla, President, FICCI
	Opening Address: Shri Chaitanya Prasad, Controller General of Patents, Designs and Trademark, Government of India
	Inaugural Address by: Shri Amitabh Kant, Secretary, Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, New Delhi
	Distribution of Awards to debate competition winners representing College and School by Shri Amitabh Kant, Secretary, Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India
	Vote of Thanks by Ms. Jyoti Vij, Deputy Secretary General,
11.00 am-11.15 am	Tea/Coffee
11.15 am – 12.15 pm	<p>Session 1: Innovators in India- on the road to Innovation Hub Chair- Shri Chaitanya Prasad, Controller General of Patents, Designs & Trademark, Government of India Panelists:</p> <ul style="list-style-type: none"> • Mr. TC James, Consultant, FICCI • Mr. Tabrez Ahmed, Secretary General, OPPI • Mr. Samik Mukherjee, Policy Strategist, Intel Technology India Pvt Ltd. • Mr. Ashok Shukla, Partner, S.P.A. Associates

12:15 pm- 12:30 pm	Open House Discussion
12:30 pm -01:00pm	<p>Session 2: Intellectual Property to boost Creativity and Economic Contribution in Indian Film industry</p> <p>Chair- Uday Singh, Managing Director , Motion Picture Association, India</p> <p>Panelists</p>
01:00pm- 01.15 pm	Open House Discussion
01.15 pm – 02.00 pm	Lunch Break
02.15 pm – 03.30 pm	<p>Session 3: Commercialization of IP Assets</p> <p>Chair- Shri K. S. Kardam, Joint Controller of Patents & Designs, Government of India</p> <p>Panelists</p> <ul style="list-style-type: none"> • Mr. PVG Menon, CEO, VANN Consulting Pvt. Ltd. • Dr. R.R. Hirwani, Head, CSIR Unit for Research and Development of Information Products. • Mr Nitin Masilamani, Partner, Amarchand Mangaldas • Ms. Simmone Misra, Director, IP Licensing & Sales, Microsoft Corporation USA • Mr Rajat Chawla, CEO and partner at J P Chawla & Co • Mr. Ajay Batra, Managing Partner and CEO, WIPR Bank • Ms. Sunita K Sreedharan, CEO, SKS Law Associates
03.30 pm -03.45 pm	Open House Discussion
03:45 pm- 04:00pm	Tea/Coffe
04.00pm- 05.00 pm	<p>SESSION 4: Countering Piracy and Counterfeiting to safeguard society and economy</p> <p>Chair- Mr. Ameet Datta, Partner, Saikrishna & Associates</p> <p>Panelists:-</p> <ul style="list-style-type: none"> • Dr. Gandhi P C Kaza, Chairman, Truth Labs • Ms. Lohita Sujith, Director, Corporate Communications, Motion Picture Association, India • Mr. Rohit Kumar, MD – South Asia, Health Science Division, Reed Elsevier India Pvt. Ltd. & President, Association of Publishers in India; Co-Chair-Publishing
05.00 pm – 05.30 pm	Open House Discussion

BRIEF PROFILE OF THE DIVISION

Intellectual Property Rights Division at FICCI is intensively involved in issues pertaining to protection and enforcement of Intellectual Property Rights. It has taken a lead role in raising awareness on Intellectual Property Rights amongst the citizens of India along with various capacity building and training programmes for the industry, judiciary and enforcement agencies. Further, the IPR division is a platform for continuous interaction between the industry and the Government with a view to provide an interface for the businesses to resolve their various issues pertaining to IPRs. Most importantly, it also provides constructive inputs and feedback to the Government on policy related matters.

Facilitate the Industry	Facilitate the Government
Providing strategic policy and advice	Providing Policy Development through continuous research and global networking
Increasing awareness about the role of Intellectual Property in today's knowledge economy	Assisting Intellectual Property Offices in raising their standards at par with International level
Training police and custom officers on effective protection of Intellectual Property Rights	Providing with inputs on current IP issues and on effective protection of national interests at International fora
Sensitizing Judiciary on adjudication of IP disputes	Reviewing the existing IP regulations/legislations and advise amendments, if any