

An overview of intellectual property policies of academic institutes in India

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Abstract

Both in academic institutions as well as public funded research institutions, Intellectual Property is of utmost importance. The educational institutions are the source house of an organized sector that builds up human resources needed for creating such mind storming innovations which add on to the existing market value of the institution. This creates a dynamic relationship between industries and educational institutions ‘the existing market players.’ The existing interface of industry and the research institutions work via various modes like contract research, sponsored researches. This relationship finally leads to commercialization of Intellectual Property which is required to obtain tangible and intangible output from academic research. Effective and efficient commercialization, institutions may require technology transfer unit, and eventually, the Intellectual Property Policy is required to be framed by the research and development part of the PRIs and industry relationship. The main aim of the Intellectual Property Policy is to harmonize between the conflicting interests of the stakeholders at different levels and the commercialization of Intellectual Property. The economic justification behind IP law include incentive and reward theory. The same can be achieved with basis of IP policy.

Keywords: IP Policy, Academic Institutions, Public funded research institutions, Economic Justification

Introduction

An Intellectual Property Policy is drafted to promote the progress of science and technology; to ensure that discoveries, inventions and creations generated by staff and students of academic institutions are utilized in such manner that will be beneficial to the society at large. Collaborative research between academics and industry or other bodies is an ordinary practice. The other side of the coin has a dark reality of exploitation of the inventors by the benefactors. Hence, this symbiotic relationship should be a smooth flow between the walls of a well framed Intellectual Property Policy [1]. A strong IPR policy in institutes should be in place to prevent the stakeholders of the institute from being exploited by such large industries.

Need of IP policy for academic institutes

An IP policy provides predictability, structure, and a beneficial environment in which researchers can share and access technology, knowledge and IP. Bringing research

results and identifying and creating IP to the next stage of Development have become institutional objectives in many universities. Public research institutions and Universities seeking to partner with industry or other organizations need a policy for knowledge transfer and effective intellectual property. For successful collaboration between commercialization partners and academia, an institutional IP policy is a prerequisite for successful collaboration. An institutional IP policy is a formally-adopted document which clarifies the ownership and right to use the IP resulting from the institution’s own or collaborative R&D activities.

The different stakeholders in a university (Researchers/Visiting Researchers/Students/Professors etc) and commercialization partners (Non-profit organizations, industrial sponsors, consultants, SMEs or governments) would have no guidance on how to make decisions concerning IP, without a formal document regulating the use and ownership of IP rights [2].

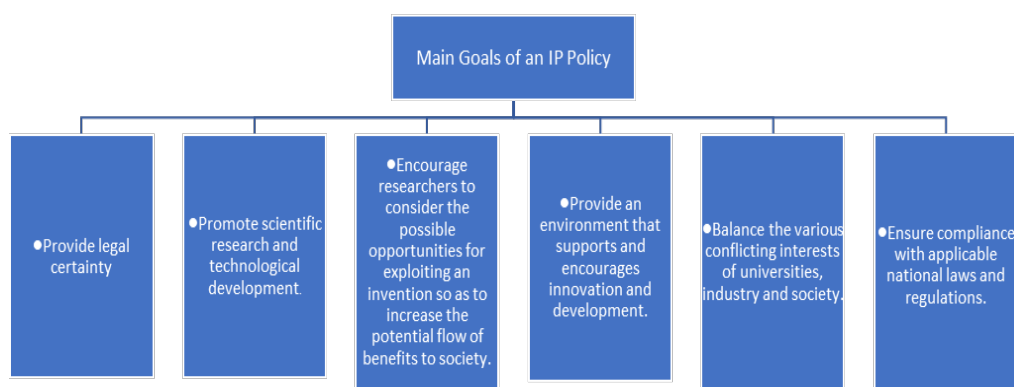


Fig 1

The IP policy left the country’s patent laws intact and specifically did not open up Sec 3(d) of the Patents Act, which sets the standard for what is considered an invention in India, for reinterpretation [3]. In consultation with stakeholders, India will engage constructively in the negotiation of international treaties and agreements. The government will examine accession to some multilateral treaties which are in India’s interest, and become a signatory to those treaties which India has de facto implemented to enable it to participate in their decision making process. It suggests making the department of industrial policy and promotion (DIPP) the nodal agency for all IPR issues. Copyrights related issues will also come under DIPP’s ambit from that of the Human Resource Development Ministry. Trademark offices have been modernised, and the aim is to reduce the time taken for examination and registration to just one month by 2017. The government has already hired around 100 new examiners for trademarks. Examination time for trademarks has been reduced from 13 months to 8 months, with the new target being to bring the time down to one month by March 2017. Industrial drawings, Films, music will be all covered by copyright [4]. India will continue to utilise the legislative space and flexibilities available in international treaties and the TRIPS Agreement. These flexibilities include the sovereign right of countries to use provisions such as Sec 3(d) and compulsory licensing for ensuring the availability of essential and life-saving drugs at affordable prices [5].

Problem with existing policies in India as compared to Developed nation

In India, the model guidelines on implementation of IPR policy in Academic Institution have been prepared by the Cell for IPR Promotion & Management (CIPAM), under the commerce and industry ministry. These guidelines shall apply to all IP created at the academic institution, as well as, all IP rights associated with them, from the date of implementation of these norms. These guidelines are floated with an objective to foster creativity and innovation in the areas of science and technology, and humanities by nurturing new ideas and research, in an ethical environment. A patent right will rest with the academic institution if a researcher, student or faculty member has used its resources

and funds for developing a product, according to draft guidelines floated by the government on the implementation of IPR policy for academic institutions [6]. The invention shall vest with the individual or inventor, if an institution determines that an invention was made by an individual on his or her own time and unrelated to his or her responsibilities towards the institution and was conceived without use of its resources.

The ownership rights on IP may vary according to the context in which the concerned IP was generated. A two-tier classification is suggested for adoption. In case of copyright, the draft has suggested that the ownership rights in scholarly and academic works generated utilising resources of academic institution, including lecture notes, books and dissertations, shall ordinarily be vested with the author [7]. On the other hand, the ownership rights in lecture videos or massive open online courses, musical works, films and plays, shall ordinarily be vested with the academic institution. If a student, faculty member or researcher have used its resources and funds for developing the product, ownership rights over integrated circuits and plant varieties; and industrial designs will rest with the academic institution. In cases of commercialisation of innovation, and creation as per the advice of IP Cell, the guidelines also said the academic institution is free to enter into revenue sharing agreement with the researcher [8].

The National Innovation Council was setup under the chairmanship of Mr. Sam Pitroda, designated to act as adviser to the Prime Minister to analyse, discuss and help implement strategies for inclusive innovation in India and prepare a Roadmap for Innovation 2010-2020. Government of India approved the new IPR Policy 2016 on May 13, 2016.

We still need to strike a balance in the IPR regime, even after taking some major steps towards improving the overall IPR environment in the country. Indian IP laws have many provisions for administrative, civil and criminal remedies for infringement of the IPR; however, ineffective enforcement is one of the biggest problems that inhibit the growth of IP in the country. Some of the policies and decisions seem to be against the protection of IP rights, even though the government and officials make public statements to encourage the innovators.

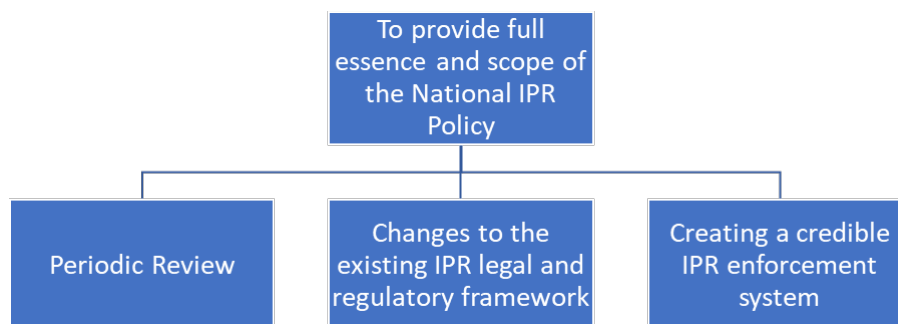


Fig 2

The Index which created by the Chamber’s Global Intellectual Property Center (GIPC) has around thirty principles critical to innovation including copyright, patent, trademark protections, enforcement, and engagement in international treaties. According to the report the reason India scoring low rank was non-proliferation with the

international best practices in IPR. From online piracy, India needs to provide ample protection and should strive to have proper law enforcement. For commercial and non-emergency situations, the use of compulsory licensing, which is government’s permission to allowing entities to see, manufacture, use or imported a patented invention

without the permission of the patentee, is a topic for discussion at various platforms^[9].

National IP policy suffers from a lack of conceptual clarity. Beyond India's international obligations, India has continued to be under pressure from the US pharmaceutical lobby and the US Trade Representative with suggestions to tighten IPR laws and regulations. The GOI reassured critics that it would not succumb to foreign pressure in instituting IPR amendments, in response to fears expressed by non-governmental organisations. It specifies that all 'knowledge' should be transformed into IP assets. Sadly, it betrays an imbalance in the IPR regime that can tilt the balance away from access to important public goods.

India needs a clear vision and guidelines on how scientists work using public money can be commercialised and covered through IPRs. An IPR policy has to balance the concerns of all stakeholders in a reasonable manner. The policy in its current form fails to take note that an IPR

policy has to balance the concerns of all stakeholders in a reasonable manner and may not be seen as an instrument offering absolute protection for products in the market. To generate more property rights through IPR, the policy lays undue emphasis on publicly funded research institutions such as those under the Council of Scientific & Industrial Research (CSIR). US has exerted pressure on the National Institute of Health (NIH) to ensure drugs developed by federally funded projects are sold at a reasonable price. Traditional Knowledge is not universally recognised as an IP right yet. Merging the debate over Traditional Knowledge with IPR or TRIPS is incongruous. A policy that uniquely posits IP as the central fulcrum or the key to innovation lacks a holistic understanding of the complexities attached to knowledge/science generation and how IP laws and norms impact them.

Objectives

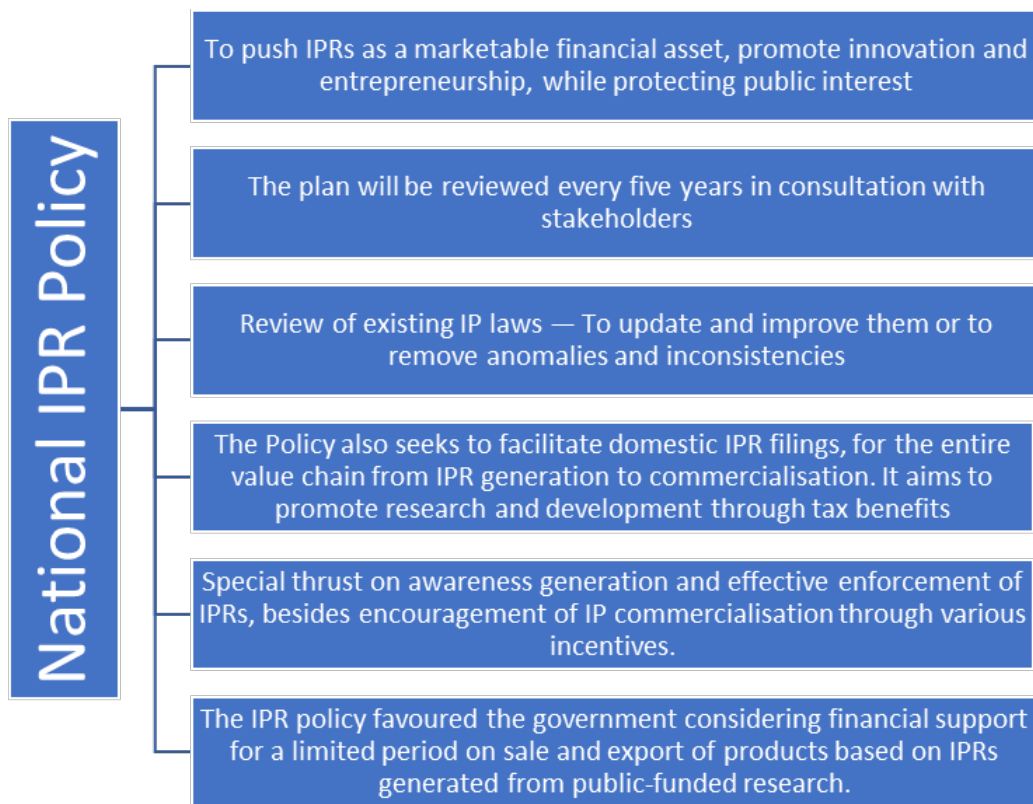


Fig 3

Universities and public research institutions are among the direct contributors towards innovation and research, particularly in emerging economies. The potential pool of talent for innovation in these economies also emanates largely from educational institutions and research institutions. The primary focus of this Policy is towards promoting innovation and creativity, especially amongst entrepreneurs and in higher education institutions. The Policy brief specifically mentions synergising all forms of IPR, concerned statutes and agencies for tapping the creativity and innovative energies in India with a special emphasis on start-ups and educational institutions^[10].

The University Grants Commission (UGC), the nodal authority for determining and maintaining of standards of university education in India, issued a letter for inclusion of

the Intellectual Property Rights (IPR) as a generic elective subject under the Choice Based Credit System (CBCS).

In addition, the National Institutional Ranking Framework (NIRF), a ranking system adopted by the Ministry of Human Resource Development (MHRD), ranks institutions of higher education in India.

These rankings act as mechanism for the institutions to include promoting innovation, research and development while assessing their performance beyond academics. One of the parameters considered while ranking and which is significant to our discussion is Research and Professional Practice that includes IPR and patents - both published and granted, by students and faculty members which has a weightage of about 15 marks. Publications and patent applications have been found to be highest from engineering

and technology institutes. The ranking of top educational institutions was found to be proportional to the number of applications filed for patents ^[11]. There has been significant increase in the applications filed for patents and also research publications compared to previous two years since the first announcement of this ranking system in 2016.

Matter need to be addressed

Scientific development and Innovation are the basic for technological, economic and social mobility as well as for economic growth. Universities and research institutions have a fundamental role in socio-economic development. Research Institutions and Universities are a main arena in which scientific development and innovation takes place and IP system is the main mechanism that enables universities and society at large to capture the value of innovation. It is the IP system that assists Universities and research institutions to commercialize their knowledge assets and by doing so potentially obtain additional sources of funding, which may be channelled into, amongst other, further research. At the same time, partnerships with the private sector and other organizations can ensure that academic research outcomes have broader impact, including competitiveness of industry and the regions, establishment of new companies, or addressing a variety of socio-

economic challenges such as food security, energy, and health ^[12].

This is the primary reason for Research institutions and Universities in a developing and least developed context for engaging in the commercialization of their research outcomes, to ensure relevance of the research for impact in society. This approach requires support for the entrepreneurial dimension of knowledge transfer, where strategies that leverage IP assets at the same time place emphasis on how academic research and the resultant IP best provide environmental, economic and social benefits for society at large.

Creating General IP Structure

Countries and institutions are still experimenting with a mix of different institutional IP policies and practices, trying to gather evidence on what works and what does not. No one model policy can be applied across all institutions or countries, since there are important country-specific institutional differences as well as different levels of absorptive capacity (ie., the capacity of local businesses to recognize the value of new external information, assimilate it and apply it to commercial ends).

The main highlights which we can consider for IP policies are as follows;

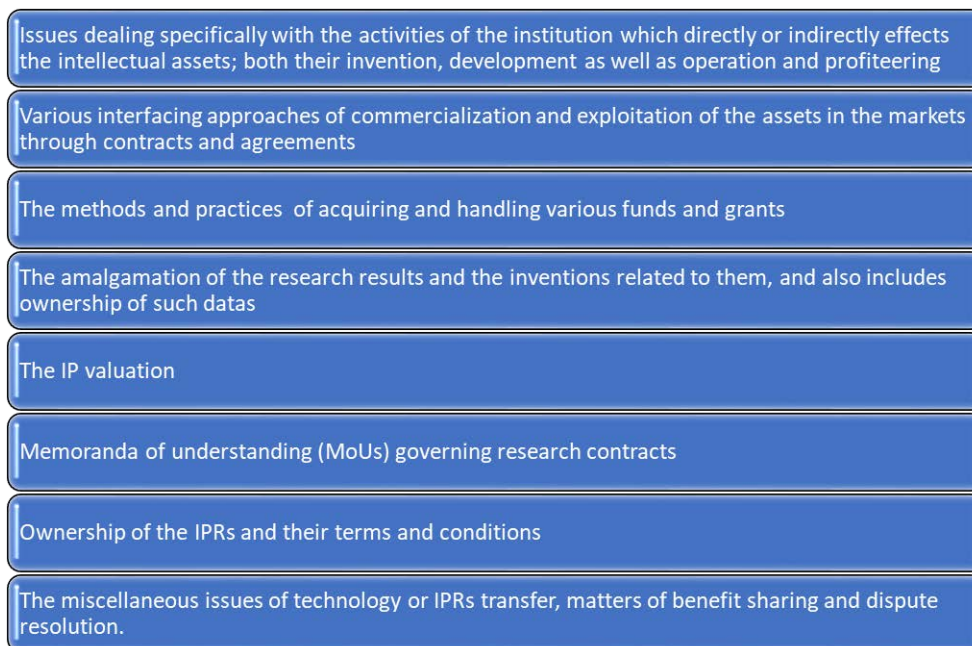


Fig 4

IP Policy - Drawbacks

IP awareness should be made a part of the curriculum in schooling. This will ensure that an effort at ingraining IP awareness in the education systems begins at an early stage. Regrettably there are numerous key segments which have minimal awareness about the benefits they can accrue by protecting their rights. It was disappointing to note that nearly 35% respondents were still not aware about the IPRs though they belong to an intellectual class. Hence, the lack of awareness raises an alarm. Among the group which was relatively more aware were mostly the ones who just think as part of their course. Real understanding of IP and its value was 5% only. The responses also pointed out that most people are not aware of the existence of an IP

department in their college and more than 70% people in institutes have no thoughts of registering an IP, this shows that they have minimal awareness of the benefits that they would gain from IP ^[13].

The Study recommends that to fulfil the need of spreading awareness about IPRs, the budding professionals/entrepreneurs and other stakeholders need more information, orientation and facilities for protecting their intellectual powers. Einfoolge conducted the survey both online and offline among students and technical staffs to know how knowledgeable they are on Intellectual Property Rights ^[14]. From the responses, it's good to know that Intellectual Property Rights has been made as a part of the curriculum. Even though the knowledge on IPRs is

spreading through awareness programs and curriculums, we can identify few areas which need attention to spread awareness on key areas such as Design Patents, Geographical Indication and Trade Secrets ^[15].

Conclusion

Many of IPR policies even outside US follow the ownership policies similar to the Bayh-Dole Act. It is seen generally the institutes hold the proprietary right to the IPR when the funding is of the state. It has been observed that with reference to the following issues are remain un-addressed in any of those policies.

- Graduate student involvement
- Adhoc/ contractual staff
- Internship
- Evidential issues in case of conflict over inventorship/ authorship

In Technical Institutes Patents are emphasized with less emphasis on copyright. Institutes which are more research oriented and have though emphasized on Copyright the output and rank of such institutes depend heavily on the published works.

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