

# A NEW ROADMAP

INDIA HAS FACED SCRUTINY IN RECENT YEARS OVER ITS ABILITY TO PROTECT THE IP RIGHTS OF ALL STAKEHOLDERS AND EFFICIENTLY FOSTER INNOVATION. AT THE END OF 2014, A DRAFT NATIONAL IPR POLICY WAS RELEASED FOR PUBLIC COMMENT. THE DRAFT PROVIDES A CLEAR ROADMAP FOR INDIA'S IP REGIME, AND LAYS THE INITIAL GROUNDWORK FOR STRENGTHENING THE COUNTRY'S IP ECOSYSTEM. **KANISHK VERGHESE** REPORTS

In December 2014, a six member IP Think Tank formed by India's Department of Industrial Policy and Promotion (DIPP), comprising judges, lawyers and academics, released a draft National IPR Policy, detailing a blueprint for India's IP regime going forward, and the key objectives it needs to achieve. At the heart of the draft, in its mission statement, the Think Tank aims to establish a dynamic, vibrant and balanced IP system in India in order to foster innovation, accelerate economic growth and employment, enhance socio-cultural development, and protect public health and other areas of socio-economic importance. In order to achieve these goals, the policy lays out key objectives in seven different areas: IP Awareness and Promotion; Creation of IP; Legal and Legislative Framework; IP Administration

dealt with significant IP changes in India for the past 10 years, ever since we became TRIPS (Trade-Related Aspects of Intellectual Property Rights) compliant in 2005. But the IP fraternity really had no documented government policy backing their position. One of the benefits of the draft is that the Think Tank has shared their thoughts on where they think India should be going, which is a positive start because dialogue can only take place once one knows what the direction is," says Soni.

## KEY PROPOSALS

The draft is certainly helpful in steering India's IP regime in the right direction, stakeholders say. It also acknowledges that India's national development goals are a priority as far as IP policy is concerned. In recent years, several decisions in pharmaceutical patent cases

and has made immense contribution in enforcing IP rights...India has adopted a balanced approach towards patent law. It is committed to protect innovation while promoting the larger goal of welfare of its citizens," the policy adds. The draft also reiterates India's commitment to its international treaties and conventions, including the TRIPS agreement. "In future negotiations in international forums and with other countries, India shall continue to give precedence to its national development priorities whilst adhering to its international commitments and avoiding TRIPS plus provisions," the draft says.

The policy also proposes the introduction of utility models, or "petty patents", which would give potential rights holders a fresh opportunity to obtain exclusivity and protection – albeit for a shorter period of time – for their inventions. Debate over utility models has been ongoing in India for several years. In its written submission to the DIPP, The Centre for Internet and Society, a non-profit research organisation based in Bangalore, noted that utility models have been criticised for causing a spike in litigation, which can be financially draining, especially for small businesses. In addition, it says that utility models can be, and have been, used by companies to cordon off entire areas of research.

For his part, Soni says that the introduction of utility models in India would help in achieving the draft's objective of increasing IP awareness. "Because of the nature of innovation we see in India, utility models would give the average domestic investor something to look forward to, encourage innovation and lead to the creation of IP," says Soni. However, he adds that while utility models make sense on paper, the issue needs to be



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and Management; Commercialisation of IP; Enforcement and Adjudication; and Human Capital Development. "The draft is very comprehensive and incisive," says Pankaj Soni, a partner at Indian IP boutique firm Remfry & Sagar. "If we take a step back, we will realise that this IP policy is being tabled much later than it should have been. We have

gone in favour of the domestic generic drug makers, which has led some international innovators to accuse India's IP regime and judiciary as being unfairly protectionist. However, the draft policy asserts that India's statutory framework is robust, effective and balanced. "The Indian judiciary is a strong and independent pillar of the government



People gather outside the Taj Mahal hotel in Mumbai. REUTERS/Punit Paranjpe

debated further. "There are certain instances and industries where it may not make sense to allow utility models. But, I think at least in the electrical and mechanical industries, there is a lot to gain," he adds.

Under the objective of enforcement and adjudication, the draft recommends establishing specialised patent benches in the regional High Courts, as well as regional benches of the Intellectual Property Appellate Board (IPAB) in the regions where India's Intellectual Property Offices are located. The proposal has been welcomed by most stakeholders, although some in the community believe that more could be done. "We support the recommendations to facilitate IP dispute resolution. Our suggestion would be that the proposed "patent benches" become broader in scope and become "specialised IP judiciary" that cover all forms of intellectual property, including trademarks," the International Trademark Association wrote in its submission to the DIPP. "If we

are going to set up specialised courts, then we should look at IP in general and include trademarks, copyright and designs, because these are also specialised fields that deserve the same amount of attention," agrees Soni.

#### 'PRIORITISE THE OBJECTIVES'

While the draft has been praised for its detailed information, some lawyers note that more clarity about the timeframes and prioritisation of the objectives is needed. "The policy has listed objectives, a vision and a mission, but we don't know which objectives are of greater importance. Understandably, all objectives cannot be equally important, and cannot be achieved in the same timeframe. I did not necessarily expect this to be in the policy, but it is something that has to naturally come next," says Soni, who adds that the IP administration and management as well as the IP awareness objectives should be prioritised.

Given the sheer amount of detail in the

policy, it will likely take a considerable amount of time to collate and mull over all the submitted comments and additional information. As a result, practitioners are hopeful that a revised version of the draft will be released in the next few months. Nonetheless, IP professionals on the ground agree that the draft is a positive step for India, and praise the policy for its inclusivity and willingness to engage with all IP stakeholders ranging from government and corporations – both local and international – to small business owners, education institutions and other members of society. Perhaps most importantly, the policy views IP rights as a vital cog in enhancing India's overall development, and recognises that synergies can be created between India's IP policy and the government's other initiatives in order to foster both innovation and economic growth. "The challenge now is how do you convert the detailed policy into action? That is something we have to look forward to," says Soni. Stay tuned. 