



CHANGING PERSPECTIVES REGARDING IPR IN INDIAN IT INDUSTRY

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ABSTRACT

Indian government has undertaken significant modifications in the Intellectual Property (IP) regime of the country. This is leading to a realignment of business strategies by firms in several sectors. Similarly, with liberalization and globalization, new opportunities for IP creation seem to be emerging for Indian firms. The new Intellectual Property Act facilitates active participation of Indian firms in the global technology and production networks are desirable. IPR has an increasing role on several sectors in the economy especially the pharmaceutical, chemical, biotechnology, and information technology (IT)-related sectors. IT is a growth sector for the country, one needs to assess the utility of various TRIPS compatible policy alternatives. The role of IPR on IT sector can be better understood by checking the emerging perspectives of IPRs in the Indian IT industry and also by understanding the factors that are capable of being driving the change in those perspectives.

KEY WORDS

- Intellectual Property Rights
- Information Technology
- Public and Private Sector Interface
- Trips

INTRODUCTION

India today is known worldwide for its IT-related capabilities. It is one of the most important outsourcing destinations. Very few Indian firms, however, have been creating IP over the years and IP-related issues have not been very important for the Indian IT firms. IP rights facilitate appropriation of rents by the inventors. Larger the share of benefits accruing from an invention that the inventor is able to garner higher is the appropriability of that invention.

Intellectual property is a category of property that includes intangible creations of the human intellect. Intellectual property encompasses two types of rights; industrial property rights and copyright. A right that is had by a person or by a company to have exclusive rights to use its own plans, ideas, or other intangible assets without the worry of competition, at least for a specific period of time. These rights can include copyrights, patents, trademarks, and trade secrets.

The legal framework of Intellectual Property (IP) regimes within a country plays an important role in fostering the direction and the quality of entrepreneurial innovation across all sectors of the economy. The incentives for invention provided by stringent IP regimes are well known. The scope of IP coverage can also have a salient impact on the nature of invention and innovation.

Intellectual Property Creation and Protection in Indian IT Industry

This does not mean that a large number of IT firms are creating and protecting IP in a big way. But, the fact remains that patenting activity in India is on the rise. In 1997, Indian firms and/or individuals filed only 183 patents at the US patent office. In 1999, this number had gone up to 285 and in 2001, the number of applications filed was 883. Apart from pharmaceuticals and chemicals, electricals and electronics were the other sectors where patenting increased substantially. Electricals and electronics include the fast growing software sector. A few small IT firms from India filed as many as 35 patent applications in the US in 2003. Patent applications filed in India also increased rapidly during this period.

PERSPECTIVES REGARDING IPR IN INDIAN IT INDUSTRY

1. Indian firms are being protected through various IPRs; a significant share of the IP generates value but firms do not always utilize IP protection tools like copyrights and patents. But, one thing is quite clear that a lot of IP-related activity is being undertaken in India, both by the Indian firms and the MNC subsidiary.
2. Another interesting perspective is that the IP regime in the US (or other Western nations) may be more important for the Indian IP creating firms than the regime in India. Most Indian firms that do create IP, either on their own or through alliances with foreign firms, tend to protect their IP in the US and other large markets and not necessarily in India. This is essentially due to two reasons. One, it is essential to protect the invention where the market is and most of the IP in India is being created for the Western markets. Two, some IT related inventions (like algorithms, business methods) are not patentable in India. Thus, the Indian IP regime will become more important as its market expands and as the legal regime gets modified.

FACTORES THAT ARE CAPABLE OF MAKING CHANGES IN PERSPECTIVES**1) Seeking Changes in Legal Regimes**

Recently, the Ministry of Industry, Government of India, organized discussions on the new IP regime

2) Changing profile of IT Activities in India

The importance of IPRs also varies across activities. It has been argued elsewhere that, over time, Indian firms have moved from less to more complex, risky, investment-intensive, and profitable IT activities.

3) Changes in Industrial Structure

IT industry has largely been fuelled by their participation in export markets through outsourcing or other types of inter-firm alliances.

Liberal FDI and merger and acquisition (M&A) policies facilitate these transitions and provide some certainty to foreign firm.

Tier1 Indian IT service firms would need to acquire (or ally with) Tier-2/3 (typically front-end marketing or consulting) firms in the US or Europe. Such entry into high-end and product-related activities would further enhance the importance of IPRs for Indian IT firms.

4) The R&D partnerships between the private sector firms (often MNCs) and local public sector labs/educational institutions.

Such partnerships facilitate the maturing of the venture capital-related institutions; existence of an IPR regime that provides comfort to investors and inventors seems desirable. All these reasons seem to be changing the perceptions of Indian firms regarding IPRs.

5) Emerging Technological Opportunities

Technologies underlying the IT industry are changing very rapidly. In many instances, these technological changes bring in possibilities of a change in the global industrial structure. While there are many instances of this type, we will focus on just two to highlight the potential impact on IPR needs of Indian IT firms It is argued that changes in these technologies and the associated changes in the Industrial structures are likely to throw up new entrepreneurial opportunities for Indian IT firms which might require a different perspective on IP-related issues.

6) Use of IT in Other Sectors

With technological change, several new opportunities for IT firms to work on the boundaries of other sectors like the pharmaceutical, biotechnology, and auto are becoming available .The following developments are particularly important to understand the potential use of IT in drug discovery processes:

- Increasing use of combinatorial chemistry to develop gene libraries that can be hired for IT-based screening resulting in significant reduction in the entry barriers in initial screening business.
- Use of computer-aided development of molecular designs to filter molecules and compounds for testing with wet chemistry. This biotechnology-software interface has meant higher success rates and speedier selection of compounds.
- Design of actual drugs with the help of computers .Software used to reduce uncertainty in drug development.
- Use of new IT-based technologies in pre-clinical development to reduce the drug development cycle. For example, cassette dosing and simultaneous optimization of toxicity, bioavailability, and pharmacokinetics has reduced the time required for clinical trials. Service firms have emerged to do such trials.
- Computerized safety and efficacy trials conducted on patients avoid useless regimes to reduce number and size of trials. This saves time and money. These new technologies have also facilitated the emergence of contract research organizations (CROs).Like the changes in the semiconductor industry, changes in the drug discovery processes also entail new opportunities for Indian IT firms to enter these domains. All these domains are very IP-intensive and would require a more proactive participation of Indian firms in IP protection. This will obviously lead to enhanced participation of these firms in IP generation and creation There is evidence to show that Indian IT firms are increasingly exploiting these domains as well.¹⁵ Similar processes are under way in sectors like auto, where use of IT is on the rise creating new market opportunities for Indian firms to make IP-based entry or expansion.

FINDINGS AND SUGGESTIONS

It may be noted that some of our perspectives may limit the creation and protection of intellectual properties in Indian IT firms. But we have several choices to inculcate a good culture of IPR over Indian IT industry.

- a) We need to understand the complex interplay between traditional patenting, software patenting, copyrights, and integrated circuit protection.
- b) IT firms that want to have IP-based growth will need to do a lot of learning.
- c) Effective participation of Indian firms in the emerging inter-firm networks in different domains may require in the future a more IP-savvy mindset.
- d) The policy makers also need to make some strategic choices.

CONCLUSION

All available evidence seems to suggest that Indian IT entities, both private and public, are gearing up for IP creation and protection. They still have a long way to go but the process seems to have started. The experience of other nations, the Indian firms will increasingly have to deal with a variety of strategic issues relating to IPRs.

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