Centre for CIPROM intellectual property management

NEWSLETTER

Volume No 6| Issue No. 9

SEP 2022

Intellectual Property advocacy in the fields of:

- IP Infrastructure
- IP Policy
- Patent Law
- Copyright
- IP Valuation
- Technology Transfer
- Licensing
- Collaborations
- M & A
- Innovation Research
- Data Management
- Balance for Rights & Obligations

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Editorial

Indian Patent Ecosystem – Problems identified and solutions recommended

It is indeed heartening that India's most high-powered committee has taken upon itself to identify the malaises including extreme delays in grant of patents (many patent applications of 2008-2009 onwards are still pending for grant) and propose pragmatic steps and actions to resolve the problems and to strengthen India's Patent Ecosystem.

The recent Report EAC-PM/WP/1/2022 "Why India Needs To Urgently Invest In Its Patent Ecosystem?" by the Economic Advisory Council to the PM issued this month, August, 2022 is indeed laudable and commendable. We are not only providing a link to this Report, herein https://eacpm.gov.in/wp-content/uploads/2022/08/Why-India-needs-to-urgently-invest-in-its-IPR-ecosystem-16th-Aug-2022_Final.pdf , but also reproducing the Report in this issue of CIPROM, as it clearly elucidates the current status and future needs and aspirations.

Mr. Sanjeev Sanyal and Ms. Akanksha Arora have prepared the report on behalf of the PM's Council with suggestions and comments from Dr Bibek Debroy, Mr. Rajendra Ratnoo, Ms. Shruti Singh, Dr. Unnat P. Pandit, Dr. Dinesh P. Patil, Mr. Sukhdeep Singh, Mr. P K Pandey, Mr. Rahul Matthan, Mr. Lal Ratnakar, Mr. Shri Ram Kannaujia. The fact that Prof. (Dr.) Unnat P. Pandit has taken the initiative soon after joining as Controller General of Patents, Trademarks and Designs, ably supported by Dr. Dinesh P. Patil, Mr. Sukhdeep Singh and others is indeed heartening and merits appreciation.

A brief summary of the findings and recommendations are reproduced.

Acute shortage of manpower

In 2016, consequent to the Nitto-Denko committee Report (Dr. Gopakumar G. Nair was a member), the technical staff (Examiners and Controllers) in the Patent Office was increased from a mere 100+ to nearly 900. The current strength is 860 in Indian Patent Office compared to 13704 in China and 8132 in USA. Nearly, 1.64lakh patent applications are pending for grant in India as on 31st March 2022, few of them, close to expiry date of 20years from date of application. We are aware of many pending

patent applications from the period 2006 to 2009. The high-power committee has observed that the lack of fixed timelines for various steps is the main reason for the delays, in addition to the lack of man-power. Unlike other committees this "Economic Advisory Council to the PM" has come up with concrete suggestions and recommendations.

Problems in Patent grants (delays) identified.

1. Man-power shortage In Trademarks And Patent Office,
2. No fixed timelines,
3. Cumbersome compliance requirements,

Solutions suggested

1. Increase manpower: From 860 to 2800 in 2 years,
2. Fixing Timelines,
3. Reduce/Remove cumbersome compliance requirements.

A chart suggesting time-lines in Patent grant process is reproduced below

Table 4: Suggested timelines for the patent grant process

Steps	Suggested timelines
Once an application is filed, the time provided for publication is 18 months. After that the following steps have to be taken by the patent office.	
Reference to an examiner and issue First Examination report	4 months
Time given to the applicant to give responses after FER has been issued	3 months +3 months*
Controller must notify and conduct a hearing to determine the validity of responses to the FER and any outstanding objections which may not have been adequately addressed by the applicant.	3 months
Any written submissions requested from applicant by controller	15 days from hearing
Pre-grant opposition window	6 months from issue of FER
Controller to notify applicant of objections	Should happen immediately
Preparing submissions and evidence by both applicant and party opposing the patent	3 months
Opposition hearing	2 months from submission of all pleadings by parties
Opposition Hearing Decision	1 month
Grant: The patent is granted and published once (i) all FER responses are accepted and (ii) no pre-grant oppositions are pending	1 month from completion of all proceedings

Note: * 3 +3 months here mean that the applicant can submit the response in 3 months to the first examination report. Afterwards, the examiner can issue a subsequent examination report in case some aspects are left uncovered and then the applicant can then submit the response within 3 months. This can also help in reducing the number of cases going for hearing.

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The PM's Advisory Council has also suggested

1. Introducing Utility Models (we had recommended this).
2. Improvements in portal and systems have also been suggested.
3. A proposal to outsource has also been made to reduce the work-load and expedite grants.
4. Detailed recommendations for Improving Trademark grants have also been made by this elite team of experts.
5. Making Various Improvements In Filing And IT Systems,
6. A System Existing Statutory Deadlines Mentioned In The Trademark Rules 2017 are Strictly Adhered,
7. Automation Of Some Steps To Increase The Speed Of Processing,
8. Improvements In E-Filling Portal,
9. Improvements In inPass Portal (Search Portal),
10. Improvements To Help Precise Classification And Allotment,
11. Automation of formal examination,
12. Standardization of objections in report preparation,
13. Improvements in the Hearing process,
14. Uniform format for decision documents and reports,
15. Upgrade the IT-infrastructure.

It is hoped that (unlike other long-pending bills), this high-powered committee's report will receive quick and positive response from the PM's Office and the Parliament.

Prime Minister Shri Narendra Modiji while inaugurating the finale of the Smart India Hackathon, 2022 has said that "Research and Innovation should be a way of living". Let us make the PM's dream come true.

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Patently inadequate: India grants patents too slowly. Every job filled at patent office can create hundreds outside

With India betting big on startups to drive innovation and create jobs, it is imperative that patenting becomes faster. A working paper published by the Prime Minister's Economic Advisory Council pinpoints some areas requiring GoI attention.

India's patent office had just 858 examiners and controllers in 2020 against over 13,000 in China and 8,000 in US. While patent applications have increased from 45,444 in 2016-17 to over 66,000 in 2021-22, corresponding 2020 numbers for China were 15 lakh and US 6 lakh.

Source: https://timesofindia.indiatimes.com/blogs/toi-editorials/patently-inadequate-india-grants-patents-too-slowly-every-job-filled-at-patent-office-can-create-hundreds-outside/

Research and innovation should be made a 'way of living': PM Modi

Prime Minister Narendra Modi on Thursday batted for research and innovation, saying it has to be made a "way of living" with increasing acceptance for it in society.

Addressing students at the grand finale of the Smart India Hackathon, he said social and institutional support will boost innovation and new ideas and original thinking should be respected.

Source: https://theprint.in/india/research-and-innovation-should-be-made-a-way-of-living-pm-modi/1100258/

EAC-PM/WP/1/2022

WHY INDIA NEEDS TO URGENTLY INVEST IN ITS PATENT ECOSYSTEM?

August 2022

Sanjeev Sanyal and Aakanksha Arora

Table of Contents

Executive Summary 2

I. Introduction 5

II. Where does India stand in terms of patenting 5

III. Issues in the patenting system 9

III (A). Manpower shortage 9

III (B). Issues in the process 11
III (B)(i). No fixed timelines for each step of the process 11
III (B) (ii). Cumbersome compliance requirements 11

IV. What needs to be done for patenting system? 12

IV (A). Increase the manpower in patent office 12

IV(B). Solve the issues in the process 13
IV (B) (i) Fixing timelines for various steps of the process 13
IV (B) (ii). Remove the Cumbersome compliance requirements 15

IV (C). Other improvements 15
IV (C) (i). Consider bringing in utility model of patents 15
IV (C) (ii). Improvements in portal and systems for filing 16
IV (C) (iii). Outsource the administrative process 16

V. Where does India stand in terms of Trademark activity 17

VI. Issues in Trademark system 21

VI (A). Shortage of manpower 21

VI (A). Issues in process 23
VI (A) (i). Compliance of rules and statutory deadlines as set by Trademark rules 2017 23

VII. What needs to be done for trademark system? 23

VII (A). Increase the manpower in Trademark registry office 23

VII (B). Solve the issues in the process 24
VII (B) (i). Strict compliance of rules and statutory deadlines as set by Trademark rules 2017 24

VII (C). Other improvements 24
VII (C) (i). Automation of some steps where no human analysis is required 24

VIII. Conclusion 25

Annexure: List of suggested improvements in portal and systems for filing 27

References 29

Sanjeev Sanyal is Member, Economic Advisory Council to PM (EAC-PM) and Aakanksha Arora is Deputy Director, EAC-PM. *This paper has been published as a part of EAC-PM paper series for information and public debate. The contents of the paper including facts and opinions expressed are sole responsibility of the authors. EAC-PM or Govt of India does not endorse the accuracy of the facts, figures or opinions expressed therein. We would like to place on record our sincere appreciation to several people who helped us by providing useful information, suggestions and comments for this paper- Dr Bibek Debroy, Mr. Rajendra Ratnoo, Ms. Shruti Singh, Dr. Unnat P. Pandit, Dr. Dinesh P. Patil, Mr. Sukhdeep Singh, Mr. P K Pandey, Mr. Rahul Matthan, Mr. Lal Ratnakar, Mr. Shri Ram Kannaujia.*

Executive Summary

An evolved Intellectual Property Rights regime is the basic requirement for a knowledge-based economy. Technological innovation and scientific research require a robust patenting system. India is seeing a surge in start-ups and unicorns, and an efficient IPR system is an essential prerequisite for a healthy startup ecosystem. In this paper, we focus on analyzing India's performance in terms of patents and trademarks.

There have been significant improvements in the patent application process in the last few years, such as simplification of procedures, allowing expedited examination to various categories of applicants, electronic delivery of certificate, facility for video-conferencing etc. Similarly, there have been procedural improvements for trademark applications such as automatic allotment of applications to examiners, automating of renewal etc. The results of these reforms are visible in terms of higher filings and grants of both trademarks and patents.

As a result, there has been an increase in the number of patent applications up from 45,444 in 2016-17 to 66,440 in 2021-22. Similarly, the patents granted in India have gone up from 9,847 to 30,074 during the same time period. Simultaneously, there has been an increase in the share of residents in the applications from less than 30 percent in 2016-17 to 44.5 percent in 2021-22.

Despite these improvements, note that India lags behind its global peers. In 2020, the number of patents filed in India was 56,771, merely 4 percent of China where 14.97 lakh applications were filed and 9.5 percent of US where 5.97 lakh applications were filed in the same year. Similarly, the patent granted in India were 26361 as compared to 5.3 lakh in China and 3.5 lakh in US. Moreover, in India, it takes about 58 months on average to dispose of a patent application as compared to about 20 months in China and 23 months in US.

The analysis in this paper suggests that the major cause of this delay is the shortage of manpower in the patent office. Only 860 people were employed in the patent office in India at the end of March 2022, including both examiners and controllers, as compared to 13704 in China and 8132 in US. Thus, approximately, 1.64 lakh applications were pending at the controller level as on 31st March 2022.

Apart from the shortage of manpower, the paper identifies certain other procedural issues in the patent application process. First is the lack of fixed timelines for various steps, for instance there is no fixed timeline for filing an opposition against any patent application, leading to delays. Second, there are some cumbersome compliance requirements like submitting information pertaining to processing of foreign patent applications which is not important now in case of PCT applications, as India is a member of WIPO Centralized Access to Search and Examination where consolidated information related to status of PCT applications in large number of jurisdictions is already available. Apart from this, we discuss the option of bringing in utility model of patents, outsourcing the administrative part of process and improvements in portal and filing system to provide a push to the overall patenting ecosystem in India.

In terms of trademark activity as well, there has been a substantial increase in filing and registration over the last few years. Filing of applications increased from about 2.8 lakhs in 2016-17 to 4.5 lakhs in 2021-22. Most of the trademark applications are from Indians, with less than 3 percent foreign applications. India has moved up in position in terms of size of trademark activity, reaching the fifth place in the number of applications in 2020. China is the largest office for trademark applications with 93.4 lakh applications and US is at the second position with 8.7 lakh applications in 2020.

India is one of the fastest in giving the first examination report for trademark applications and even the time for final disposal/registration is on average 12-18 months in cases where no opposition is filed, which is comparable to China and US. Thus, under normal circumstances, the Indian trademark system works reasonably well. The delays happen in case an opposition is filed against the trademark application. The hearing is scheduled in accordance with the chronological order of the applications filed and the opposition proceedings are disposed of by the officers authorised for this purpose, who are mostly Assistant Registrar and above. The waiting time is long and it takes somewhere between 5 to 10 years for such applications to be processed.

The delays in opposition cases happen mainly due to a shortage of manpower, especially at the senior level. Even the sanctioned posts are not filled and there are a lot of vacancies, more so at senior levels. There are currently only 12 people out of the sanctioned strength of 54 at the post of Assistant Registrar and above currently in the Trademark registry office. Even at the examiner level, India has 156 examiners, whereas China has 2000 and USA has 633 examiners respectively.

In addition to shortage of manpower, a few procedural issues in trademark application procedure are identified, resolving which can help provide a philip to the entire trademark system. For instance, our discussion with practitioners in the sector indicated that certain deadlines mentioned in the Trademark Rules 2017 are not strictly adhered to in practice leading to delays. The paper further identifies few places in the registration system, where no human intervention is required- for instance, giving notice of opposition, abandonment of application in case response to opposition notice has not been received in the stipulated time, etc and argues for putting in place an automatic process to reduce the processing time further.

To address the concerns in the patenting and trademark system, the first and most important step is to hire more manpower in the Office of Controller General of Patents, Designs & Trade Marks. As a rough guidance, the manpower in patent office needs to be increased from about 860 currently to 2800 in the next two years. In case of Trademark Registry office, the sanctioned posts should be filled immediately, which will increase the manpower from 168 currently to 289. Further, more people can be added in the next few years based on the requirement. It is important to note here that this office is a revenue surplus office, with revenue of almost 5 times that of cost in 2020-21 and increased expenditure to hire more people in the office will actually be a revenue generating activity. Hence, hiring more people should not be

delayed on account of financial reasons. In addition to this, changes to address the issues identified in the processes should also be carried out.

Moreover, the Office of Controller General of Patents, Designs & Trade Marks is currently a subordinate office of the Ministry of Commerce. There is a need to provide more autonomy to the office by providing more financial and staffing flexibility.

While we have taken into account several drawbacks in IP system in India, it should be noted that there have been various improvements in recent years and some of the criticism by international observers in not always tenable. It is important to therefore not accept external criticism as it is, but to study the matter from the first principles.

I. Introduction

There are two main economic objectives of any system of intellectual property protection. The first is to promote investments in knowledge creation and business innovation by establishing exclusive rights to use and sell newly developed technologies, goods and services. Not providing such rights would mean that the economically valuable information could be appropriated without compensation by competitive rivals; hence institutions and individuals would be reluctant to invest money and effort into research and commercialisation of activities. The second goal is to promote the widespread dissemination of new knowledge by encouraging or requiring rights holders to place their inventions and ideas on the market. Intellectual Property Regime is key to the creation of a knowledge economy and nurturing the start-up ecosystem, technological innovation and scientific research.

In this paper, we discuss where India stands in comparison to its global peers in terms of patenting activity and trademark activity. We further identify issues where India lags and suggest solutions to address those issues.

II. Where does India stand in terms of patenting

There has been a gradual increase in the filing and granting of patents in India. The number of patents filed in India has gone up from 39,400 in 2010-11 to 45,444 in 2016-17 to 66,440 in 2021-22 and the patents granted in India has gone up from 7,509 to 9,847 to 30,074 during the same time period (Table 1). Further, the number of patents application is increasingly coming from Indian residents rather than MNCs. The share of Indian residents in total applications has more than doubled in the last decade. The share of residents in patent applications increased from 20 percent in 2010-11 to around 30 percent in 2016-17 and further to 44 percent in 2021-22. For the first time in the last 11 years, the domestic patent filing has surpassed the number of patents filed by non-Indians at the Indian Patent office in last quarter (Q4) of 2021-2022. It is important to note that these improvements of the last few years are largely due to the process reforms[1] undertaken in the last 5 years. Consequently, India's ranking in Global Innovation Index has climbed 35 ranks, from 81st in 2015-16 to 46th in 2021.

[1] Some of the key changes include online processing of forms, new timelines for disposal of applications, hearing of patenting cases through video-conferencing for speedy and contact-less proceedings, certain category of inventors applying for expedited of examination (like startups, small entities, Government departments) etc.

Table 1: Patent applications in India

	Indian	Non-Indian	Share of domestic applications
2016-2017	13,174	32,270	29.0
2017-2018	15,377	32,477	32.1
2018-2019	16,968	33,691	33.5
2019-2020	20,838	35,429	37.0
2020-2021	24,279	34,224	41.5
2021-2022 (Prov.)	29,514	36,926	44.4

Source: Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM)

This may seem like remarkable progress when compared over time, however India lags far behind its global peers. The number of patents applied and granted in India is still a fraction compared to the patents granted in China, USA, Japan, and Korea. The number of patents filed in India is merely 3.8 percent of China and 9.5 percent of USA in 2020 (Table 2).

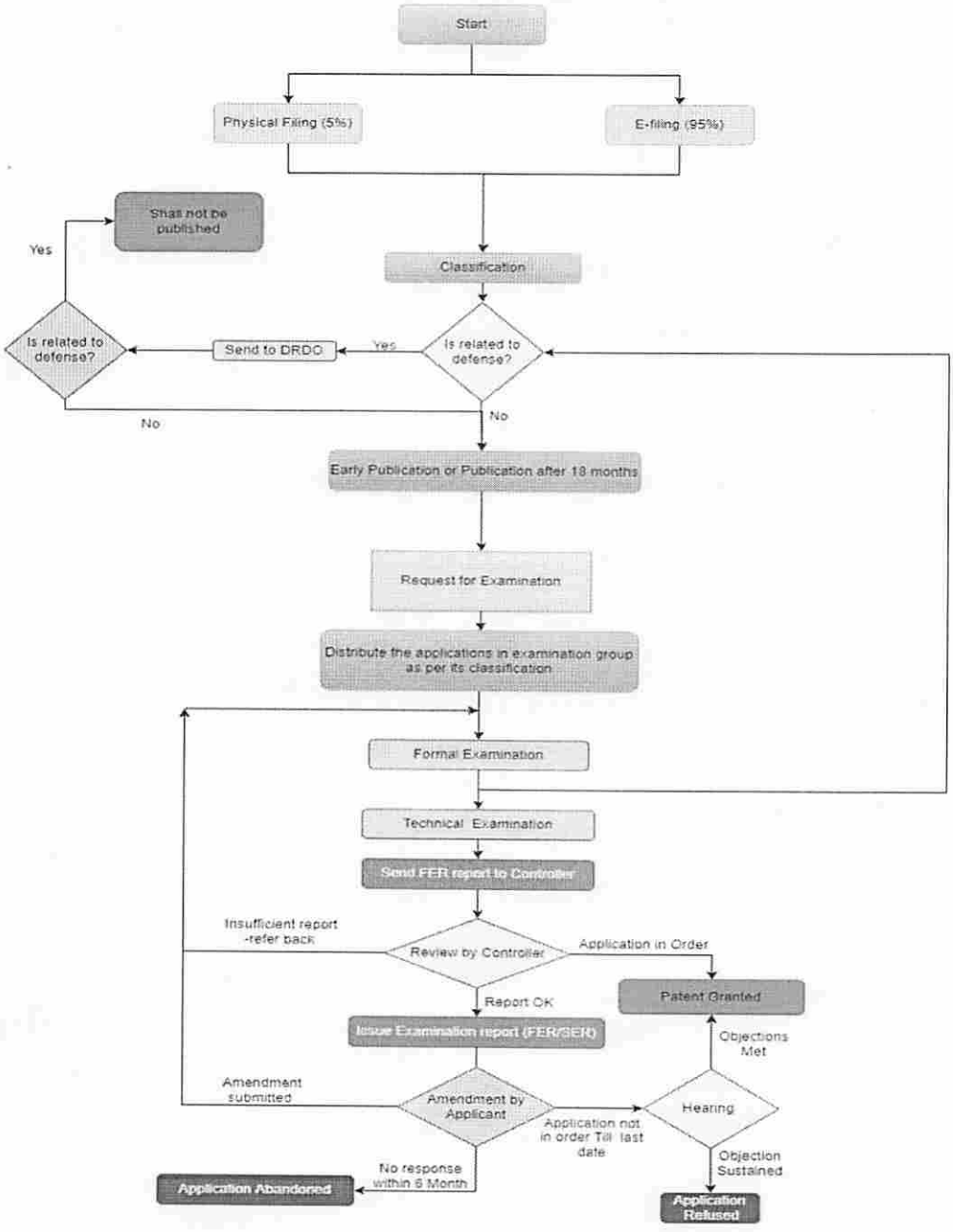
Table 2: Patent applications and grants in India, China and US

Year	China		United States of America		India	
	Filing	Grants	Filing	Grants	Filing	Grants
2016	13,38,503	4,04,208	6,05,571	3,03,049	45,444	9,847
2017	13,81,594	4,20,144	6,06,956	3,19,829	47,854	13,045
2018	15,42,002	4,32,147	5,97,141	3,07,759	50,659	15,283
2019	14,00,661	4,52,804	6,21,453	3,54,430	56,284	24,936
2020	14,97,159	5,30,127	5,97,172	3,51,993	56,771	26,361
2021	-	-	-	-	66,440	30,074

Source: World Intellectual Property organization (WIPO) and Office of the Controller General of Patents, Designs & Trade Marks (CGPDTM) for India

The National Intellectual Property Administration of the People's Republic of China (CNIPA) received close to 1.5 million patent applications in 2020. This is 2.5 times the amount received by the United States Patent and Trademark Office (USPTO). The USPTO – with 597,172 applications – ranked second, followed by Japan Patent Office (JPO) (288,472), Korean Intellectual Property Office (KIPO) (226,759) and European Patent Office (EPO) (180,346). Together, the top five offices accounted for 85.1 percent of the applications in the world in 2020, which is 7.7 percentage points higher than their combined share in 2010. This is mainly due to strong growth in China, whose share of the world total more than doubled during this period, from 19.6 percent in 2010 to 45.7 percent in 2020. Within these offices, the share of residents and non-resident applications vary widely. For example, only one in ten applications received in China was by non-residents in 2020 whereas the share was 54.8 percent in European Patent Office and 54.9 percent for US.

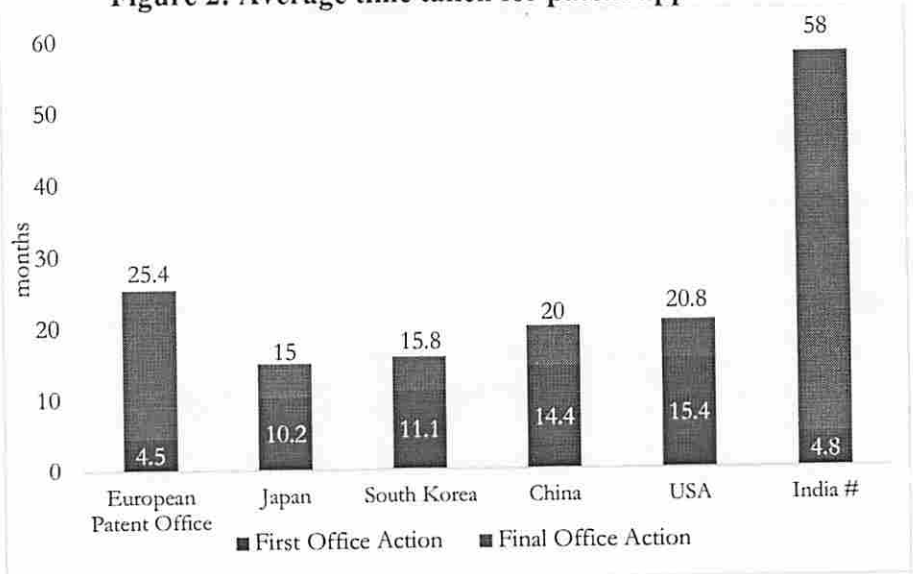
Figure 1: Summary of Patent application process



Not only the scale of patenting activity in India is smaller when compared to global leaders, the time taken for processing a patent application in India is also much higher. The Global best practice is disposal within 2 to 3 years, whereas in India, the average time taken is just under 5 years and is up to 9 years in some categories like biotech, and this is primarily due to the manpower shortage.

Once an application has been filed, it is published by the Controller within 18 months, until which the applicant can withdraw the application. After this, the application is processed for examination. The time taken for first office action has reduced drastically over the last few years. In fact, the average time taken for the first office action has reduced from 18 months in 2020 to 4.8 months now, which is the fastest in the world. But this has not improved the final outcome as major delays happen after that. The time for final disposal had decreased from 64 months in 2017 to 42 months in 2020, however it has started to increase thereafter and now stands at 58 months. In contrast, the average time taken for disposing of an application in China and US is 20- 21 months, which is almost 1/3rd of the time taken in India. The other 3 IP-5 offices, European Patent office, Japan and South Korea also process the application in 25.4, 15 and 15.8 months respectively (Figure 2).

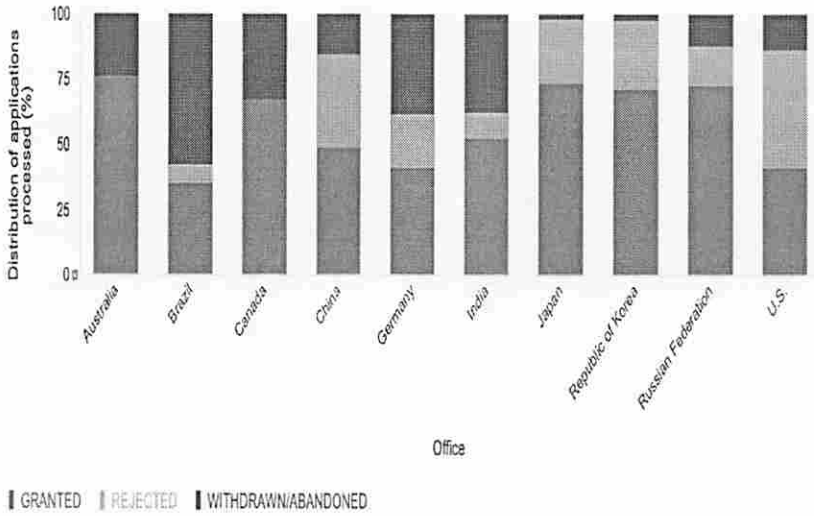
Figure 2: Average time taken for patent applications



Source: WIPO for other countries and Office of the CGPDTM for India
Note: # Numbers for India is at the end of 2021-22 and for other countries is for 2020

World Intellectual Property Organization (WIPO) in its annual report noted that the share of patent application withdrawn is one of the highest in India. Our discussion with people in the sector indicates that delays in the process are a major reason for this. The share of application withdrawn in India was about 66 percent in 2018, though numbers came down after some decline in processing time and some process simplification in processes was done. The withdrawal share reduced to 54 percent in 2019 and 38 percent in 2020, though it is still one of the highest in world and much higher than its global peers- US, Japan, Korea, China (Figure 3).

Figure 3: Status of patent applications



Source: World Intellectual Property Indicators 2021 report

III. Issues in the patenting system

III (A). Manpower shortage

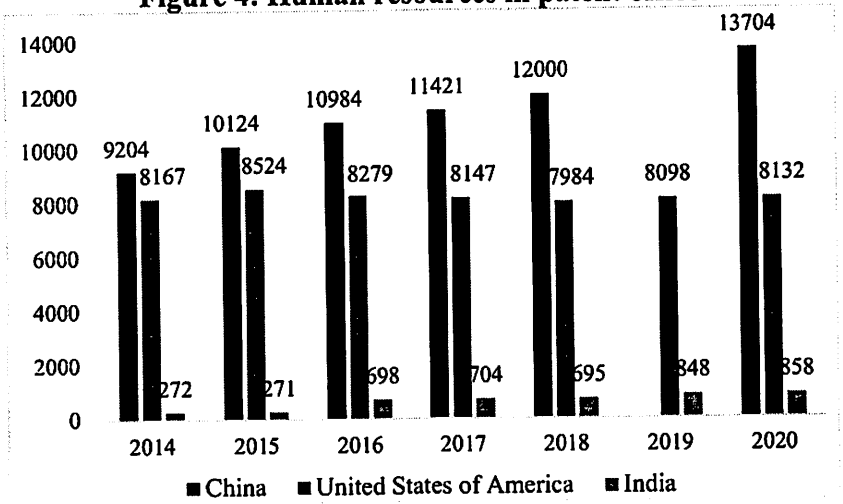
The major reason for delays is the lack of sufficient manpower in patent office. Though some additional workforce was added in the patent office in the last few years (Table 3) especially at the examiner level, it is very small when compared with China, US etc. (Figure 4).

Table 3: Manpower in the patent office

Year	Examiners	Controllers
2015-16	132	139
2016-17	564	134
2017-18	572	132
2018-19	449	246
2019-20	601	247
2020-21	611	247
2021-22	611	247

Source: Office of CGPDTM

Figure 4: Human resources in patent office

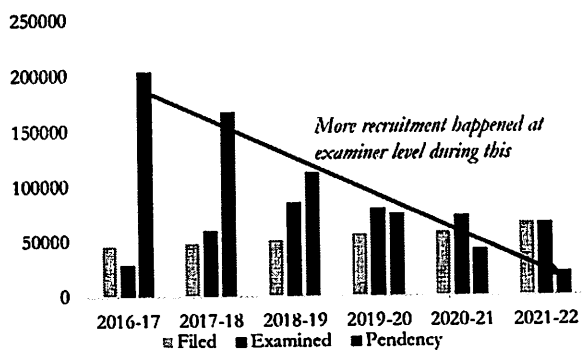


Source: WIPO for China and US; Office of CGPDTM for India
Note: The number for China is not available for 2019.
In India, the manpower indicates sum of examiners and controllers.

Since a greater number of people were added at the examiner level, the time taken for first office action and the pendencies at the first stage reduced drastically. In 2016-17, more than 2 lakh applications were pending at first examination level. Gradually, pendency reduced at the first examination level with more examiners available. However, there wasn't a commensurate increase in manpower at the controller level, this merely shifted the pendency from first examination level to the next stage. There are approximately 1.64 lakh applications pending at the controller level as of end March 2022 for which preliminary examination has already been done, up from 40 thousand in March 2017 (Figure 5).

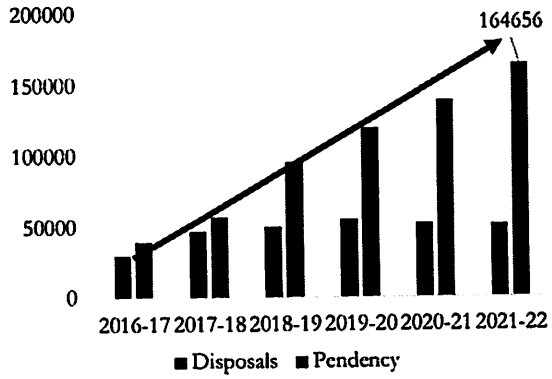
Figure 5: Pendencies in patent office

At examiner level
First Examination Level



Source: Office of CGPDTM
Note: Pendency means unexamined applications

At controller level
Final Examination (Disposal) Level



Source: Office of CGPDTM
Note: Pendency at this stage means Preliminary Examined but pending for final examination and disposal

Even the Parliamentary Standing Committee on Commerce's Review of Intellectual Property Rights Regime in India (2021) also noted that that is an urgent need to increase the manpower in patent office.

III (B). Issues in the process

III (B) (i). No fixed timelines for each step of the process

Apart from the shortage of manpower, another reason leading to delays in processing is the lack of fixed timelines for each step in the procedure. The lack of timelines for each step leads to various issues. For instance, Section 25(1) of the Patents Act 1970 provides that a pre-grant opposition can be filed by any person opposing the patent at any time after the patent application has been published and before the grant. There is no fixed time frame for this, leading to build-ups and delays. This provision is in some cases used by people for making frivolous complaints which keeps delaying the process[2].

Another example is that there is no time limit prescribed in the statute for controller to conduct a hearing to determine the validity of responses to the First Examination Report and any outstanding objections which may not have been adequately addressed by the applicant. It was found that this usually takes about 6-9 months. Additionally, the decision after the opposition hearing by the controller which should usually happen in 1 month typically takes about 3-4 months. However, these issues also arise due to shortage of manpower.

III (B) (ii). Cumbersome compliance requirements

There are certain provisions of the Patent Act 1970 which lead to cumbersome compliance requirements on the applicants. For instance, some provisions require an applicant to keep submitting information relating to the prosecution of foreign patent applications in a periodic manner. This may have been an important requirement in the past, however, this is not required now for Patent Cooperation Treaty (PCT) applications as there are tools made available by WIPO, called WIPO CASE (Centralized Access to Search and Examination) which provide consolidated information for such applications related to the status of patent applications and related details in a large number of jurisdictions and India is already a part of this initiative.

[2] https://www.mondaq.com/india/patent/1092108/frivolous-pre-grant-oppositions-ipab39s-order-provides-guidelines-on-dealing-with-frivolous-pre-grant-oppositions

IV. What needs to be done for patenting system?

IV (A). Increase the manpower in the patent office

First of all, there is a need to immediately sanction additional posts at the controller level to clear the current backlog of 1.64 lakh applications (which have already undergone preliminary examination) as on end March 2022. Merely redistributing the existing manpower will not address the issue. Further, a substantial increase in manpower is required in the patent office in the next few years to be able to compete with our global peers in terms of scale of patent applications and the time taken to process them. As a rough estimate, the manpower in patent office should increase from existing 860 to about 2800 in the next two years.

In order to expand the available pool of trained workforce, a short certificate course (like a diploma) may be developed in collaboration with some academic/technical institutions that may be done concurrently with the existing graduation courses. Those who have done this course, after fulfilling the minimum qualification criteria, would then be eligible for hiring for the role of examiners on contractual basis. In addition to this, there is a need to build the career path of the employees in the patent office to attract good talent to the patent office. In this regard, there is a need to revisit the Modified Flexible Compensation Scheme (MFCS).

It is important to note that the Office of CGPDTM is a cash positive organisation and adding more manpower is revenue positive for Government (Figure 6). Bulk (approximately 60 percent) of the revenue of the Office of CGPDTM is received from the patents (Figure 7). Hence, financial reasons should not be thought of as a hindrance to adding more manpower in the patent office. In fact, due to addition of technical manpower, delay in grant of patents will be expedited which in turn add more revenue.

Figure 6: Revenue and expenditure of Office of CGPDTM

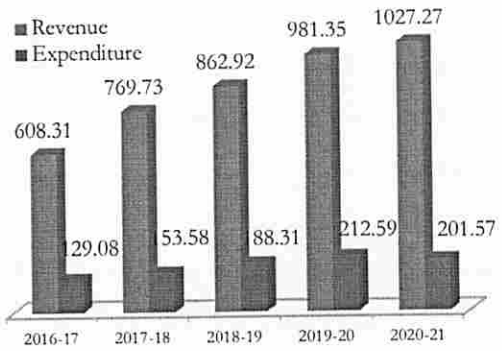
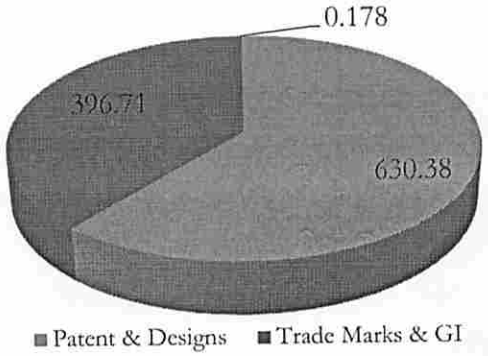


Figure 7: Revenue in Office of CGPDTM in 2020-21

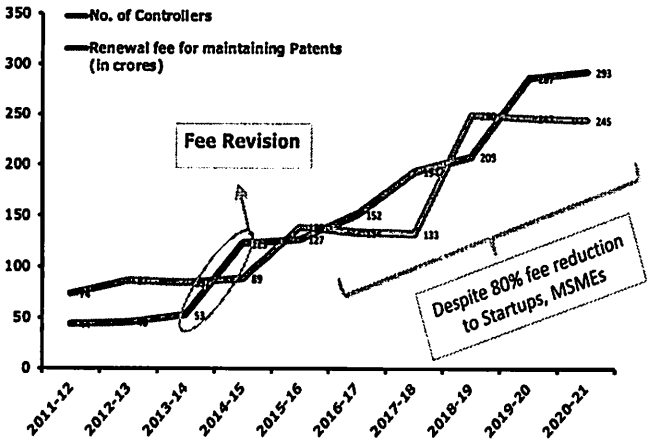


Source: Office of CGPDTM
Note: Figures in Rs crore

Source: Annual report of Office of CGPDTM
Note: Figures in Rs crore

The increase in manpower has already demonstrated a positive impact on revenue generated. For instance, an increase in controllers means more applications could be processed and hence the patent office received higher renewal fee for maintaining patents (Figure 8) despite large fee reductions for startups, MSMEs, etc.

Figure 8: Number of controllers and renewal fee for patents



Source: Based on Annual Reports of CGPTDM
Note: Fee revision here indicates the increase in patent fees

IV(B). Solve the issues in the process

IV (B) (i) Fixing timelines for various steps of the process

Lack of fixed timelines also leads to delays, hence an important step that needs to be taken to address the delays in processing of patent applications is that timelines need to be fixed for each step of the process. For instance, as mentioned in the previous section, a pre-grant opposition can be filed by any person opposing the patent application at any time after the application has been published and before grant. There is no fixed time frame for this, leading to build-ups and delays. Instead, there is a need to have fixed timelines. For example, as per 35(e) U.S. Code § 122, the time limit for any party to submit any material of potential relevance to the examination of the application is within 6 months after the date on which the patent application is first published under section 122 by the Office.

Another issue is that for various procedures, there are timelines prescribed in the rules, but they are not adhered to due to large pendencies owing to manpower shortage. For instance, as per

Rule 55 (5), the opposition hearing decision should be given within 1 month etc., however, in practice, is not followed in various cases due to shortage of manpower. Same is the case with various other steps.

An illustrative timeline which could be prescribed step-wise is provided in table 4 below. Though it is important to note that in practice, the timeline can be adhered to only after adequate manpower has been added.

Table 4: Suggested timelines for the patent grant process

Steps	Suggested timelines
Once an application is filed, the time provided for publication is 18 months. After that the following steps have to be taken by the patent office.	
Reference to an examiner and issue First Examination report	4 months
Time given to the applicant to give responses after FER has been issued	3 months +3 months*
Controller must notify and conduct a hearing to determine the validity of responses to the FER and any outstanding objections which may not have been adequately addressed by the applicant.	3 months
Any written submissions requested from applicant by controller	15 days from hearing
Pre-grant opposition window	6 months from issue of FER
Controller to notify applicant of objections	Should happen immediately
Preparing submissions and evidence by both applicant and party opposing the patent	3 months
Opposition hearing	2 months from submission of all pleadings by parties
Opposition Hearing Decision	1 month
Grant: The patent is granted and published once (i) all FER responses are accepted and (ii) no pre-grant oppositions are pending	1 month from completion of all proceedings

Note: * 3 +3 months here mean that the applicant can submit the response in 3 months to the first examination report. Afterwards, the examiner can issue a subsequent examination report in case some aspects are left uncovered and then the applicant can then submit the response within 3 months. This can also help in reducing the number of cases going for hearing.

While there is a need to put fixed time limits to all the steps in the procedure, it is important to keep in mind that this should not lead to dilution of the any safeguard like pre-grant opposition. Specifically, in case of pharmaceuticals industry, where companies apply for new patents with minor changes in the composition etc. of the existing old drugs – dubbed "evergreening" of patents- pre-grant opposition plays an important role. This is a widely known issue. One solution to easy identification of compounds in the drugs to help prevent evergreening of patents that has been proposed is the use of International Nonproprietary Names (INN), however it has not yet been broadly used anywhere in the world. The future changes in the rules of pre grant opposition should take these challenges into account.

IV (B) (ii). Remove the Cumbersome compliance requirements

There are certain provisions of the patent acts which lead to cumbersome compliance requirements on the applicants. For instance, there are requirements on applicants to keep submitting information relating to the prosecution of foreign patent applications in a periodic manner leading to high compliance requirements.

Considering that now India is a part of WIPO Centralized Access to Search and Examination (CASE), such information can easily be accessed by the patent office for PCT applications. Hence, instead of this, the provision should be amended such that the controller can ask for specific information for these PCT applications which the applicant may submit. In fact, the use of information from WIPO CASE by the patent office should be promoted to get information about the patent application decisions in other important jurisdictions which will help expedite the national application.

IV (C). Other improvements

IV (C) (i). Consider bringing in utility model of patents

A utility patent is a special form of patent right granted by a state to an inventor for a fixed time period where the eligibility requirements are less stringent and the term of protection is shorter and these are cheaper to acquire as well. These are essentially 'jugaad' kind of innovations done by amateur inventors. It secures protection for small innovations, which does not require the strict novelty and invention condition as required by patent law. This helps spur innovation, specifically for individual & small-scale innovators. Various countries in the world use this model. In 2020, 3 million utility patents were filed across the world.

A new legislation granting protection to incremental innovation through utility models can be considered to be brought about in India. This will also help push innovation done in Atal Tinkering Labs and Atal Incubation Centers under the Atal Innovation Mission as well by rewarding innovation done. India is already a hub of start-ups and small-scale enterprises, and utility patent model will promote incremental innovation in this category. Thus, there is a case for bringing in a utility patent model in India- which should be much cheaper than patents, provided at a much faster pace and has less stringent criteria for patentability.

However, it is important to note that this should be made very clear that this is a separate patent category from the regular patents, so that it does not dilute the rigour of the existing system. Again, this can only work after additional manpower is put in office so that the introduction of utility patent models does not result in further strain on the existing system.

IV (C) (ii). Improvements in portal and systems for filing

The processing system used in the patent office has been upgraded substantially over the years and there has been almost 95 percent movement of applications via the online mode. Even hearing is now being done in the online mode for a lot of cases.

Still, there is a significant scope of improving the overall system. Overall, the system needs to be made user-friendly to make it easier to use for applicants as well as examiners and controllers. It may be useful to outsource the whole IT system to a private player to get access to the latest infrastructure. A list of steps that could be taken for the improvement in the portal and filing systems is detailed in the Annexure.

IV (C) (iii). Outsource the administrative process

The administrative process of patent application process can be outsourced to a third party, like has been done in the case of passport office, so that the examiners and controllers can focus on the core technical work. Further, there is a case for extensive use of machine learning/automation of administrative steps so that the process can become more streamlined.

V. Where does India stand in terms of Trademark activity

"Trade Mark" is defined in Sec. 2 (1) (zb) of The Trademarks Act, 1999 as "a mark capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others".

There has been a substantial increase in trademark filing and registration in the last few years. Filing of applications increased from about 2 lakhs in 2013-14 to 4.5 lakhs in 2021-22. Simultaneously, the registrations increased from slightly less than 68 thousand in 2013-14 to 2.6 lakhs in 2021-22. Most of the trademark applications are from Indians, with less than 3 percent foreign applications in 2021-22 (Table 5). In fact, at most offices across the world, trademark applications are filed mainly by residents seeking protection within their domestic jurisdiction. In 2020, residents filing at their respective home or regional office accounted for 86.1 percent of global filing, with the remaining 13.9 percent associated with non- resident filings.

Table 5: Trademark filing and registration

	TOTAL FILING	RESIDENT	NON-RESIDENT	TOTAL REGISTRATION	RESIDENT	NON-RESIDENT	OTHER DISPOSAL
2013-14	**200005**	188927	11078	**67796**	60931	6865	39430
2014-15	**210501**	201938	8563	**41583**	37488	4095	42585
2015-16	**283060**	273034	10026	**65045**	59820	5225	145716
2016-17	**278170**	266814	11356	**250070**	226905	23165	47031
2017-18	**272974**	261033	11941	**300913**	281047	19866	176579
2018-19	**323978**	310156	13822	**316798**	297572	19226	236612
2019-20	**334805**	320702	14103	**294172**	278506	15666	165851
2020-21	**431213**	418446	12767	**254513**	241811	12702	43488
2021-22	**447805**	433997	13808	**261406**	251479	9927	60375

Source: Controller General of Patents, Designs and Trade Marks

It is important to note here that India reached the fifth highest place in the number of applications in 2020. For international comparison, WIPO in its reports recommends comparison by class count.[3] The trademark filing in the office of China (by class count) was 9.3 million followed by a count of 8,70,306 at the office of the U.S. (Table 6). These two top-

[3] A trademark application may refer to different classes of goods or services. Many offices use the Nice Classification, an international classification of goods and services for registering trademarks and service marks. Applications received at these offices are classified according to one or more of the 45 Nice classes (see www.wipo.int/classifications/nice). Some offices allow single-class filing only, meaning applicants have to file a separate application for each class. Others permit multi-class filings, enabling applicants to file a single application in which a number of classes can be specified. To improve international comparisons of the numbers of applications received, it helps to compare class counts across offices. Class counts are also used to make trademark registration internationally comparable. This method for comparing offices began in 2004, the first year for which complete class count data are available.

ranked offices were followed by the office of the Islamic Republic of Iran (541,750), the European Union Intellectual Property Office (EUIPO) (438,511) and the office of India (424,583).

Table 6: Trademark filing in various countries (by class count)

	China	USA	India
2013	18,78,389	4,41,059	2,00,392
2014	22,84,219	4,72,060	2,37,730
2015	28,68,581	5,17,105	2,89,730
2016	36,97,723	5,45,266	3,13,448
2017	57,39,679	6,13,902	2,83,574
2018	73,65,356	6,40,108	3,42,667
2019	78,33,010	6,72,644	3,67,768
2020	93,45,757	8,70,306	4,24,583

Source: WIPO
Note: Number includes both residents and non-residents

Table 7: Trademark Granted (by class count)

	China	USA	India
2013	10,20,257	2,73,940	61,975
2014	13,82,087	2,88,089	70,222
2015	22,39,412	3,11,925	86,304
2016	22,70,747	3,26,431	2,01,917
2017	28,17,571	3,61,748	3,39,753
2018	49,95,767	3,84,749	3,59,799
2019	64,05,623	4,39,484	3,23,006
2020	57,79,076	4,00,220	2,58,511

Source: WIPO
Note: Number includes both residents and non-residents

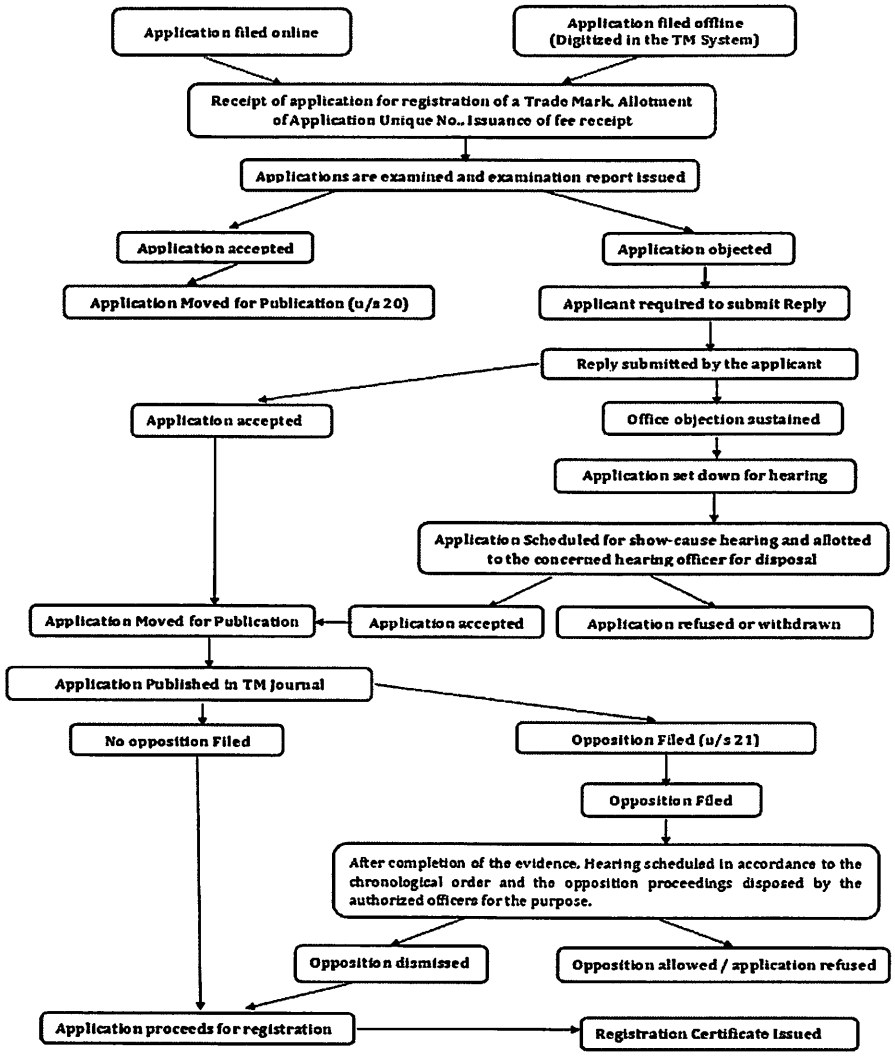
China (301.7 lakh) , followed by USA (26 lakh) and then India (24 lakh) have the highest number of trademarks in force as of 2020 (Table 8).

Table 8: Trademarks in force (as of 2020)

China	3,01,73,085
United States of America	26,05,916
India	24,09,005
Japan	19,73,640
France	15,72,726

Source: WIPO

Figure 9: Summary of Trademark application process



After the application is filed, each application is given a unique number and then allotted to examiners. Applications are then examined and an examination report is issued. As per the current situation, in India, the first stage examination of the application happens within 2-3 months, which is the fastest globally. After that, if the examiner has no objections and the application is accepted, it is moved for publication and a time of 4 months is provided for any objection to be raised by the public. In case no objection is received, the trademark is registered. So, this entire process of registration is finished in approximately 8-10 months. In case, there is any query or objection from examiners' side, a communication of examination report is sent to the applicant who has to submit a reply within 1 month. Post that, once the reply is submitted and is acceptable, the application is moved for publication and in case no objection is received in 4 months, the trademark is registered. However, in case the reply submitted by the applicant is not satisfactory, a show cause hearing is called. Also, in case there are some objections to

the application, the applicant can request a hearing in response to the examination report, which the Registrar must provide. No time limit has been prescribed for the completion of these steps in the existing rules. The notification of the date of hearing often takes several weeks. The hearing process also takes time given that in some cases multiple hearings are required. **Still, on average, in such cases, it takes about 18 months for the application to be processed. This is comparable to global peers.**

The main issue arises when any opposition is filed. Out of the total trademark applications, about 14-16 percent get opposed. Under the trademark rules, any person can give notice of opposition to the registration of a trademark to the Registrar within 4 months from the date of advertisement. After the opposition is filed, the notice of opposition is sent to the applicant, who then has to file a counter statement within 2 months pursuant to section 21(2) of the Trademarks Act[4]. After the submission of counterstatement/evidence by the applicant, the Registrar must then provide a copy of this counter-statement to opponent, who must respond with evidence within one month of receiving notice.

The hearing is scheduled in accordance to the chronological order of the applications filed and the opposition proceedings are disposed by the officers authorised for this purpose, which are mostly Assistant Registrar and above. In such cases, there is a long waiting time and **it takes somewhere between 5 to 10 years for such applications to be processed.**

Box 1: Procedure of opposition

1) **Opposition can be filed under Section 21** within 4 months from date of publication in Trademark Journal
2) **Notice of Opposition:** as per Rule 42 on form TM-O which shall be served to the applicant by the Registrar
3) **Counter Statement:** as per Rule 44 on form TM-O by applicant within 2 months of the receipt of Notice of Opposition
4) **Evidence in support of opposition:** as per Rule 45 within 2 months from service of Counter statement otherwise abandoned u/r 45(2)
5) **Evidence in support of Application:** as per Rule 46 within 2 months on receipt of opponent's evidence otherwise abandoned u/r 46(2)
6) **Evidence in reply by opponent**: as per Rule 47 within 1 month from receipt of applicant's evidence
7) **Further evidence** as per Rule 48: with leave of Registrar
8) **Hearing & Decision** as per Rule 50
   - After closure of evidence
   - Not more than 2 adjournments to each party.

[4] In case the applicant does not respond to the opposition query within 2 months, application is abandoned.

- Applicant not appearing on adjourned date: Application abandoned u/r 50(3)
- Opponent not appearing on adjourned date: opposition dismissed u/r 50(4)
- Decision in writing u/r 50(6) and Reasoned u/s 18(5)

VI. Issues in Trademark system

VI (A). Shortage of manpower

There is a shortage of manpower in Trademark Registry Office, more so at senior levels. The manpower in Trademarks Registry Office is even less than sanctioned posts and a lot of places are still lying vacant. For instance, there is not even a single Senior Joint Registrar against 2 sanctioned posts, only 1 Joint Registrar against 5 sanctioned posts, 8 Deputy Registrars against 15 sanctioned posts and only 3 Assistant Registrars against 32 sanctioned posts. At the senior examiner and examiner level as well, 43 out of 75 and 113 out of 160 posts are filled respectively (*Table 9*). Further, not all people hired at various posts are available for examination/hearing process. Some of them are involved in administrative roles as well, reducing the effective strength at disposal for trademark application related work even further.

Table 9: Manpower in Trademark Registry Office in India

Post	31st March						01.07.22	Sanctioned strength as on date
	2017	2018	2019	2020	2021	2022		
Sr. Joint Registrar	0	0	0	0	0	0	0	**2**
Joint Registrar	0	0	3	1	1	1	1	**5**
Deputy Registrar	5	5	9	9	6	8	8	**15**
Asst. Registrar	10	14	7	7	7	4	3	**32**
Sr. Examiner	13	8	37	36	36	43	43	**75**
Examiner	48	95	68	65	60	62	113	**160**

Source: Office of CGPDTM

Since there was a shortage of examiners, some examiners were hired on a contractual basis since 2017 (*Table 10*). This increase in manpower at examiners due to hiring on a contractual basis helped in bringing down the time for issuing first examination reports to around 1-2 months. Though the contract of existing examiners ended on 30th June and has not been extended, hence as on 1st July 2022, there were no examiners on contract in Trademark Registry Office.

Table 10: Examiner on contract in Trademarks registry

Post	31st March						01.07.22
	2017	2018	2019	2020	2021	2022	
Examiner on contract	83	52	76	88	62	57	0

Source: Office of CGPDTM

The manpower in trademark registry office is inadequate when compared internationally. China has 2000 examiners, USA has 633 examiners and in contrast India has 156 examiners (*Table 11*).

Table 11: Comparison of Manpower in Trademark registry Office

	Number of examiners
China	2000
USA	633
Europe	254
Japan	161
India	156
Korea	141
UK	93

Source: WIPO for other countries and Office of CGPDTM for India

Since there is a huge shortage of manpower, specifically at senior level, only a small percentage of opposition cases are disposed of through hearing every year (*Table 12*).

Table 12: Opposition disposals

	FILED	DISPOSED	
		HEARING	THROUGH 21(2)
2013-14	14099	8793	4053
2014-15	15267	9539	8174
2015-16	18409	11404	34850
2016-17	43450	10882	26177
2017-18	43450	10882	26177
2018-19	51961	21462	44951
2019-20	51969	35203	39203
2020-21	61963	8030	9602
2021-22	55825	6525	4748

Source: Office of CGPDTM

As a consequence, the applications where opposition is filed keep getting accumulated. At end June 2022, about 2.4 lakh applications were pending at opposition stage, with a total of about 2.8 lakh objections. Another 2.6 lakh applications are pending at showcause hearing stage (*Table 13*). Hence, 30 contractual hearing officers have been hired recently to expedite the work and tackle the pendency in applications.

Table 13: Pendency of number of applications as of end June 2022

EXAMINATION	101648
POST EXAMINED	193090
PENDING APPLICATION RECORD MANAGEMENT	63263
SHOWCAUSE	265666
OPPOSITION	239484 (Applications), 283044 (Oppositions)

Source: Office of CGPDTM

VI (A). Issues in process

VI (A) (i). Compliance of rules and statutory deadlines as set by Trademark rules 2017

Our discussion with the people from the sector showed that some of the statutory deadlines set by Trademark Rules 2017 are not followed fully in practice, such as:

- The deadline for submission of reply as mentioned under Rule 33 of Trademark Rules 2017 is 30 days from the date of receipt of notification of the Examination report. However, replies are submitted after the deadline without status of the application being changed.
- In some cases, parties take more than prescribed time than mentioned in the Rule 45-47 of Trademark Rules 2017 for submission of evidence at times which delays the opposition process.
- The Rule 50 of Trademark Act, 2017 states that "provided that no party shall be given more than two adjournments and each adjournment shall not be more than 30 days". However, in practice, in some cases, more than 2 adjournments are filed and are granted by the Trademark Office.

VII. What needs to be done for trademark system?

VII (A). Increase the manpower in Trademark registry office

Lack of adequate manpower is the key issue creating issues in the process- despite providing the fastest first examination reports, the processing time of the applications increases to somewhere between 5-10 years in case there are objections/oppositions against any applications. This is because first, there is a considerable lag in the listing of an opposition hearing due to lack of manpower at Assistant Registrar and above, and secondly, even after the start of the hearing, multiple hearings are often conducted for the same opposition, which makes this process last several months. Hearings are often adjourned for months at a time due to lack of manpower as each Registrar in India has various matters on their docket in one day. In jurisdictions like the United States, hearings are often completed within one sitting since each official only has 2-3 matters on their docket. Hence, the key step to solve the problem of pendency of applications at the opposition stage is to hire more manpower.

As an interim measure, 30 contractual hearing officers have been hired recently. There is a need to immediately fill in the sanctioned seats, which will increase the manpower from 168

currently to 289. Further, the manpower needs to be scaled up going forward based on the requirement to cater to the increase in trademark filing in the coming years.

VII (B). Solve the issues in the process

VII (B) (i). Strict compliance of rules and statutory deadlines as set by Trademark rules 2017

Our discussion with the people from the sector showed that some of the existing statutory deadlines set by Trademark Rules 2017 are not followed fully in practice. An effort must be made to put in place a system so that the statutory deadlines are followed completely. However, it is important to note here that for this to work, adequate manpower needs to be added.

VII (C). Other improvements

VII (C) (i). Automation of some steps where no human analysis is required

No examination or human analysis/ intervention is required to provide opposition notice to the applicant and counter-statement to be submitted to the person who has opposed. In practice, serving notices by the Registrar to the applicant and opponent during the opposition process takes about 2-3 weeks in each instance. Hence a system for notice of opposition/counter-statement to be automatically mailed to the applicant/opponent will help save the processing time.

Similarly, in case response to the examination report or the response/evidence in reply of an opposition is not submitted in the stipulated time, there should be an automatic deemed abandonment of the application. On the registration of a trademark, the Registrar issues a certificate to the applicant in the prescribed form of the registration thereof, sealed with the seal of the Trade Marks Registry. No time limit has been prescribed for the completion of this step. Registration should happen immediately upon (i) 4 months lapsing from advertisement with no opposition; or (ii) completion of successful opposition hearings. Given that no further examination or human analysis or intervention is required at this stage, a process for automatic registration should be put in place so that registration can take place on the next working day of the completion of either of the above events. The automation of these steps will reduce the processing time of applications.

VIII. Conclusion

There have been significant improvements in the patent and trademark application process in the last few years, the results of which are already visible in terms of higher filings and grants of patents and registration of trademarks and reduced processing times.

Despite the fact that the patent filed and granted have increased in the recent years, yet they are much lower when compared to the global peers- US, China. Moreover, the average time taken for disposing off a patent application in China and US is 20- 21 months, which is almost 1/3rd of the time taken in India. There are approximately 1.64 lakh patent applications pending at controller level as of end March 2022 for which preliminary examination has already been done.

Similarly, the trademark applications and registration has increased considerably over the years. India has become the fifth largest office in terms of filing trademark applications. Even in terms of processing, India is not far behind the global peers in cases where no opposition is filed against a trademark application. The issue arises in case any opposition is filed, where the applications take about 5-10 years for processing. At end June 2022, about 2.4 lakh trademark applications were pending at the opposition stage.

In both, patents and trademarks, the key issue is the shortage of manpower. Hence, the first step that needs to be undertaken is to increase the manpower immediately, with higher focus at the controller level in patents and with higher focus at the assistant registrar level and above in trademarks to clear the backlog/pendencies. Going forward, the manpower needs to be increased at all levels to keep in line with the increased filing trends and be able to compete with global peers. As a rough estimate, the manpower in patent office should increase from around 860 to 2800 in the next two years and in trademark office, the sanctioned posts should be filled immediately taking the manpower from 168 currently to 289. The hiring of more manpower should not be delayed on financial grounds as this is a revenue generating activity for the government. Also, a short certificate course (like a diploma) may be developed in collaboration with some academic institutions that may be done concurrently with the existing graduation courses. Those who have done this course, after fulfilling the minimum qualification criteria, would then be eligible for hiring for the role of examiners on contractual basis. Furthermore, to attract good talent, there is a need to build the career path of the

employees in the Office of CGDTPM. One option is to revisit the Modified Flexible Compensation Scheme.

Apart from increasing manpower, there is a need to address issues in the patent application process including fixing time for various stages of the process including for pre-grant opposition, and reducing compliance requirements. Further, there is a need to look at introducing utility model of patents, making various improvements in filing and IT systems, and outsourcing the administrative part of the process which can simplify and fasten the process.

In addition, there are few procedural changes that can be brought about to improve the overall trademark process as well. A system need to be put in place so that existing statutory deadlines mentioned in the Trademark Rules 2017 are strictly adhered to. Further, automation of some steps where possible will also increase the speed of processing.

Overall, it is important to note here that the key is to first increase the manpower as some of the other suggestions will work only if adequate manpower is put in place.

Annexure: List of suggested improvements in portal and systems for filing

(i) Improvements in e-filling portal

- Filing of patent applications can be made simpler by introducing Aadhar based signature along with Digital Signature Certificate. This will particularly help small entrepreneurs, individuals etc.
- A proper helpdesk/chat bot can be created along with displaying some FAQs on the application process on the website for guiding applicants.
- A fee calculator can be made available on the e-filing portal so that the applicant can get a prior idea for required fees reducing the chance for errors and objections later on.
- Mandatory documents list before filing like in Passport application can be made available on the website. Mandatory documents check box at the time of filing will reduce the chance of missing something which later on leads to delays in processing.

(ii) Improvements in InPASS portal (search portal)

- InPASS can be made more user-friendly with an improved system for contextual search. A multilingual search option is also need of the hour.

(iii). Improvements to help precise classification and allotment

- This is a very crucial step as precise classification leads to the application being given to the intended examiner, otherwise the application keeps on getting reallotted among the officers before finally reaching the relevant examiner. Using IT tools and semantic analysis, it is possible to find a more relevant classification of the application.

(iv). Automation of formal examination

- The formal examination is mostly rule-based and is the examination on legal aspects. Example of formal application includes checks like whether application was filed on time, compliance of timelines for different forms, fees etc. A lot of this process can be automated and this will save a lot of time of the examiner and controllers and they can focus on technical aspects of the process.
- Formatting and segregation of uploaded documents: The documents should be uploaded in particular names. Segregating documents into various groups like formal forms, technical forms etc. will save a lot time of examiners.

(v). Improvement in search tools

This search if any patent has been filed for the same or similar thing is the key work of examiners. The search has to be done for both patent literature and non-patent literature (for instance research papers etc.). There is a proper strategy for patent literature search, however no such strategy is available for non-patent literature. Nowadays most of the inventions are based on very new technology and non-Patent literature documents give more relevant citations for these. So, there is a need to have a proper search tool and access to all non-patent literature. This will help fasten the process at the amended application stage as well as the search can begin after the stage it had already been completed for.

(vi). Standardization of objections in report preparation

Creating a standard format for objections based on guidelines so that reports are generated in a unified format throughout the office will help in creating set quality of reports and fast disposal of applications by saving a lot of formatting efforts etc. The same thing is already implemented for International Search Authority applications.

(vii). Improvements in the Hearing process

- Hearing Video Conferencing (VC) license should be increased so that the disposal can be made quicker.
- No of people allowed in VC should be increased: A hearing involves participation from the controller, examiner, applicant, attorney and inventor. A pre and post-grant opposition further involve the opposing party and its attorney as well. Therefore, the number of people participating in a VC hearing needs to be increased.

(viii). Decision writing

- There is a need for having a uniform format for decision documents and reports.

(ix). Upgrade the IT-infrastructure

The current model is built on older technologies like .net and JSP which are less user-friendly and are slower. There has been an introduction of revolutionary technologies in IT in recent years. Shifting the module to advanced technologies like Node JS, HTML5 etc. will improve productivity and user experience.

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