

CIPROM/SK/318/14-15

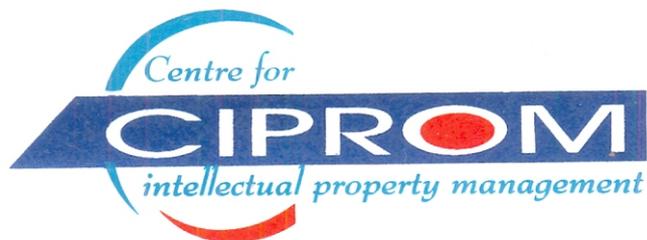
29th November 2014

Comments in respect of proposed National IPR Policy

CIPROM (Centre for Intellectual Property Management) is a registered charitable, non-profit organization engaged in assisting, formulation of Intellectual Property policies and practices. CIPROM conducts seminars, workshops on important subjects related to Intellectual Properties.

India has emerged not only as Global Generic Pharma leader, but also as a model IPR, especially Patent Policy formulator for rest of the world, comprising emerging Developing Countries as well as Least Developed Countries. Till now, the various amendments to the Patents Act & Rules etc. were being keenly watched and emulated by the rest. Even the recent US & EU judgments in Patent cases were indirectly applying the theory of fine balance between Patent Rights versus People Rights including the need for evaluating the patentability criteria by broader interpretation of obviousness or lack of inventiveness. In light of recent developments, it is essential for India to reiterate its stand and position through declaration of balanced National Intellectual Rights Policy. The move by the Ministry of Commerce and Industry through the DIPP, to appoint a Think Tank to draft the National Intellectual Property Rights Policy on IPR issues is most timely and appropriate. We congratulate the Government for this initiative. The Think Tank has been constituted most appropriately and the Terms of Reference have been drawn out most thoughtfully and diligently, which we appreciate. Our specific comments are as follows;

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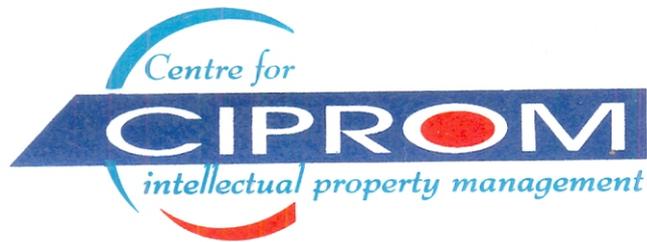


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1. The Think Tank is constituted most appropriately and in a well-balanced manner.
 - a. Justice (Retd) Prabha Sridevan, having been the Chairperson of IPAB has immense experience in IPR. She is the most appropriate and knowledgeable person of eminence to head the IPR Think Tank in India.
 - b. Shri Narendra K. Sabharwal, has rich WIPO experience and can contribute effectively as the convenor.

2. Our views on Terms of Reference
 - a. Drafting of the National IPR Policy involves extensive research and deliberations. The 2012 initiative from DIPP may be revisited, though the current exercise may be more relevantly dealt with. Since India's Patent Policy is well articulated through the TRIPs compliant amended Patents Act, 1970 and Rules thereunder, the Think Tank may not need to disturb the existing well-balanced much-lauded Patent Policy of India. To the extent needed, the Copyright policy may need to be made more stringent. The Trademark law may also be made tighter to prevent passing off and similar offence.

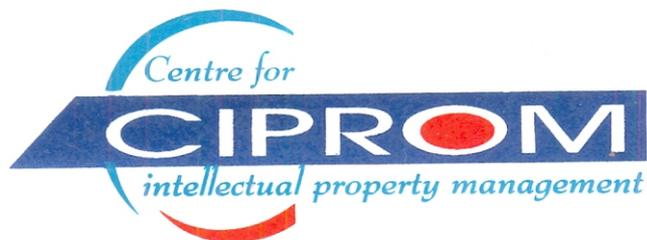
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- b. Recommending road-map for studying areas discerning such attention is welcome.
- c. Implications of demands by negotiating partners on India must be studied and explained to these countries, in light of India's sovereign rights and duties under the Constitution and also with regard to public interest and patient concerns on affordable access
- d. It is the duty of the Think Tank to evaluate the extremely adverse developments taking place in Patent Cases in the Indian High Courts. Existing exemptions and specific provisions under the Act and Rules, are being ignored and given "goby" in long-pending unresolved Patent cases in Indian Courts, adversely impacting the rights of generic pharma industry and increasing the litigation (defending) costs. The Think Tank may call for views from the public and look at this area more precisely and come out with strong recommendations.
- e. This is a procedural proposal. Strengthening and streamlining the working of the IP offices in the country is in progress since 2009. This should be further be boosted. While there is improving transparency, there is increasing delays and lapses on account of poor human resources, planning and infrastructure. This should be reviewed for resolving the road blocks.

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- f. Recommendations for periodic reports can be made by the Task Force.
- g. The present IPR legislations are TRIPs compliant and public-friendly. There are hardly any “anomalies”. Anomalies, if any, if perceived by overseas entities is due to their “coloured glasses” and imbalanced approach on IPR enforcement. This Think Tank may explain and justify the validity of India IP/Patent provisions.
- h. Suggestions and concrete proposals from the Think Tank to improve infrastructure in IP offices and IPAB are most welcome.
- i. The Think Tank may meet the Associates/stakeholders, in person to elicit views and resolution of problems in IPR front.

Representatives of CIPROM would be pleased to meet the Think Tank, if given an opportunity to express their views.

With best regards,

Dr Gopakumar G. Nair

Chairman

Centre for Intellectual Property Management
(CIPROM)