

Countering US pressures on India's IP regime: act now!

November 16, 2014, Hotel Shervani

Minutes of the Meeting

Introduction

Mr. Anand Grover (Director, Lawyers Collective) briefly outlined to the participants the objectives of the meeting. He stated that, recently, there has been a lot of pressure from the United States of America to dilute flexibilities under India's patent laws. This pressure has escalated since the Prime Minister's visit to the United States. As result of these pressures, the Department of Industrial Policy and Promotion (DIPP) is now holding meetings without involving community or civil society groups. Since this meeting was a follow-up to the Third World Network (TWN)'s meeting held in October this year, he requested Mr. Gopa Kumar (TWN) to give a brief update on the previous meeting.

Mr. Gopa Kumar said that when the government completed 100 days, there was an announcement from the government on bringing out a National IP policy. He mentioned that this was as a result of the joint statement issued after the meeting between US President Mr. Barak Obama and Indian Prime Minister Mr. Narendra Modi. He said that the announcement also noted a setting up of the US-India joint working group on Intellectual Property. One of the major concerns of the Working Group was that they had 'decision making powers'. He also mentioned that there was a recent meeting held on the guidelines on pharmaceutical patents by the patent office and all the law firms were able to pressurize the patent office to accept certain terms and conditions. He also mentioned that the Working Group is only set-up to look into IP issues. He raised concerns over the issue that the working group had decision making powers even at the technical level meetings.

In the previous meeting, he said, it was decided that a sign-on letter will be sent from the civil society to the government. This has already been done when a sign-on letter was sent to the Prime Minister and other government officials. He also said that a small booklet will be published, which would explain the context in which the US has been imposing pressures on India and the booklet will also highlight the fact that the existing laws in India should not be compromised and if at all there is to be a policy from the government, the booklet should be a concrete response to the draft which will be put out by the government. He also mentioned that a national level meeting is being planned held on this issue in January 2015.

Mr. Gopa Kumar mentioned that the latest development includes the establishment of the IP Think tank. This think tank is permanent and they have a long TOR, including the mandate to look into the anomalies in the law.

Mr. Gopa Kumar mentioned that one of the troubling developments recently is the order from the Delhi high court in the case of *Nitto Denko Corporation vs. Union of India* in which the Court seems to be favourably consider the option of patent term extensions. Anand responded that this was not true. While a Committee has been set up, on which he has also been appointed as a Member, the question before the Committee is on the delay in deciding IP related court cases which effectively reduce the term of patents. The Committee might have their first meeting on

Friday the 21st of November after which Anand will send in the list of members of the committee to everyone at the meeting.

NOTES FROM THE DISCUSSION

After this brief update, Anand asked all the participants if we ourselves have a clear idea about our apprehensions about the IP Think Tank? Do we know for sure whether the law will be amended in the first place? He also asked whether participants thought DIPP going to adopt the TRIPS Plus measures. Is there really a threat to Section 3(d)?

To this, Mr. Dinesh Abrol responded saying that there are two issues. One, we need to take a stand on how the think tank has been constituted in the first place. And two, the implications of the TOR of the Think Tank.

Ms. Rajeshwari Hariharan commented that it is not clear on what basis the Members of the think tank have been appointed and that some of the Members are related to Cabinet Ministers which smacks of nepotism in the selection process. She questioned why, despite there being numerous capable IP practitioners, none of them were appointed to the Think tank. She proposed filing of RTI applications to the DIPP asking for information related to the selection of the Members.

Mr. Dinesh Abrol added that other than Srim. Prabha Sridevan, no other Member of the Think tank has any credible record of having written anything on IP policy. He lamented that it was a matter of great concern that the Members do not have any expertise to come up with a IP policy and yet have been appointed to do so. He also read out the terms of reference under which the think tank has been set up.

Mrs. Hariharan said that she heard from some sources that all these developments are only intended to satisfy the US government that India is taking steps to address their concerns but it is really only window-dressing.

Mr. Abrol said that there are a number of steps that are being anticipated. He said for example, Anand referred to a specific issue (delay in IP matters in courts) and even such small changes could alter the course of the law dealing with patents.

Mr. Zakir Thomas said that the major issue is that there are certain groups of people who are advising the government to take stand, which caters to their vested interest. Like in the guidelines for pharmaceutical patents, law firms were aggressive and got what they wanted in the guidelines.

Anand cautioned against prematurely assuming that the government would be willing to change the patent system. While the government maybe divided on some issues and maybe taking a different stands during the 2005 amendments all parties were united in their support for the patent law. The BJP and Arun Jaitley supported the stand taken by the UPA government. He wondered if we should raise the question of the Modi led BJP government now deviating from their earlier position on the patent law?

Mr. Dinesh said that we need to look at what BJP's manifesto said about IPR and use that to our advantage if possible. He cautioned, however, that DG Shah himself mentioned that, Mr. Modi is of the view that, having a strong IPR regime is better.

He recalled that lawyers like Ms. Prathibha Singh who earlier appeared only for generics now appear for MNCs such as Gilead, owners of sofosbuvir.

Whether it is the patent manual or examination guidelines, there is pressure at every level by vested interests led mainly by MNC lobbyists. Anand will write and publish in the newspapers about the "Make in India" campaign where he will take a slightly different stand that the campaign should focus not only on "Make in India: but also "by Indians, for Indians and for the rest of humanity". This will emphasize the need to preserve the competitiveness of Indian generic industry which is known the world over. He stressed that the pressures being exerted are not static but dynamic and we need to address the constant small changes being constantly pushed for and one way is to push for the make in India campaign.

Mr. Abrol said that we need to be very vigilant to all these developments but at the same time we should not remain on the back foot. We must create a countervailing (counter) agenda.

Mr. Gopa Kumar said that, informally, officials claim that they are taking steps but we cannot rely on what they say. It's particularly concerning that most current officials who would be unwilling to change existing IP policies in DIPP people are going to move out soon. So there might not be many officials who will be aligned on the issues with us.

Mr. Kumar said that he was informed that the IP policy will be drafted within six months. So, even if the government is trying to give the impression that they are acting upon the pressures by the US government without actually intending to do so, we need to act soon.

Ms. Shalini apprised the participants that there are different sectors who have a stake in IP policy. But there is limited focus on these sectors- agriculture, Geographical Indications, etc. She said that we should not limit this discussion to pharmaceuticals and there are other issues as well which the think tank should be asked to consolidate and present as a single policy.

Dr. Mira Shiva added that we should also pitch these issues as that which concerns women and children, an area to which policy-makers are more sympathetic.

Mr. Zakir said that, we need to question who the Members of the think tank are. Has DIPP looked at this issue at all? We need to divert the Ministry's attention to other issues so that the ministry doesn't focus just on pressures from the US. He said that we should write to the ministry regarding the Working of patents. Nothing in being done in this regard to ensure compliance with the law. We also need to bring in issue of Traditional Knowledge. He also said that we need to look into what have been court's pronouncements on IP underlining the public interest and this should be highlighted and presented to the ministry. Young lawyers should take this up.

Ms. Kajal agreed with Mr. Zakir that a lot of these developments are surreptitious. The government is trying to advance non- controversial issues such as licensing.

Ms. Rajeshwari – We also need to draw the government’s attention to issues such as laws on designs which needs a major revamp of infrastructure etc. and civil societies should also contribute to this.

ACTION POINTS

IP Think Tank

- **One page sign-on letter** questioning the credibility of members of the IP think-tank.
 - Rajeshwari and Dinesh – **24th NOVEMBER?**
- **DIPP has already called for submissions.** As many submissions as possible need to go in. There will be a lot of submissions from US and Indian law firms. **1 DECEMBER?**
 - Atleast 20-30 submissions to be made including individuals and organizations.
 - In patent laws, the agenda should be – 3 (d), patent oppositions, Border measures, patent term extensions etc.
 - **Brief template for submission on IP and access** – Lawyers Collective. Other groups can base their submissions of the template- **24 NOVEMBER.**
 - Rajeshwari to work on submissions on Trademarks and designs.
 - Shalini to make submissions on Biodiversity and Agriculture.
 - Anubha Sinha (CIS) and Zakir to make submissions on the copyright issue.
 - Zakir Thomas and Dinesh Abrol to make submissions on neglected diseases.
 - In 2005, there were many institutions who wrote to Indian government preserve laws which ensures access to medicines. WHO, UNITAID – Africa and Latin America advised not to change the law. We should ask them as well as groups like UAEM to make such submissions.
- Frontline is doing an article on the IP think tank. They will interview Anand for his inputs.

Engaging with DIPP

- Shaily (MSF) to **request for the minutes of the meetings of the previous DIPP meetings** to be circulated to everyone.
- **Mobilization within the US should be started.** We should get in touch with our contacts in the US and ask them to mobilise on this issue.
- MSF - Shaily – to do a **global sign on letter** in the next few days. ???
- **Arvind subramaniam** - Mr. Gopa Kumar to write about him being appointed the Chief Economic Advisor at the time when he took a stand against India during his time in the US and said that India should be taken to the WTO.
- **Issue of government paying from consolidated fund to others for meetings etc.** public interest is not being taken into consideration. Civil society not invited and government is putting in money. – **LC to do a letter and circulate. 21 NOVEMBER.**
- **Meeting with parliamentarians to advise them on this issue** – parliamentary group on AIDS and standing committee on health can help in this advocacy. (Raman – Surekha from Lawyers Collective) and to ask MPs to raise questions such as – why is Arvind Subramaniam involved and who are the people in the IP think tank etc. Parliament Session next – 24 Nov onwards.