



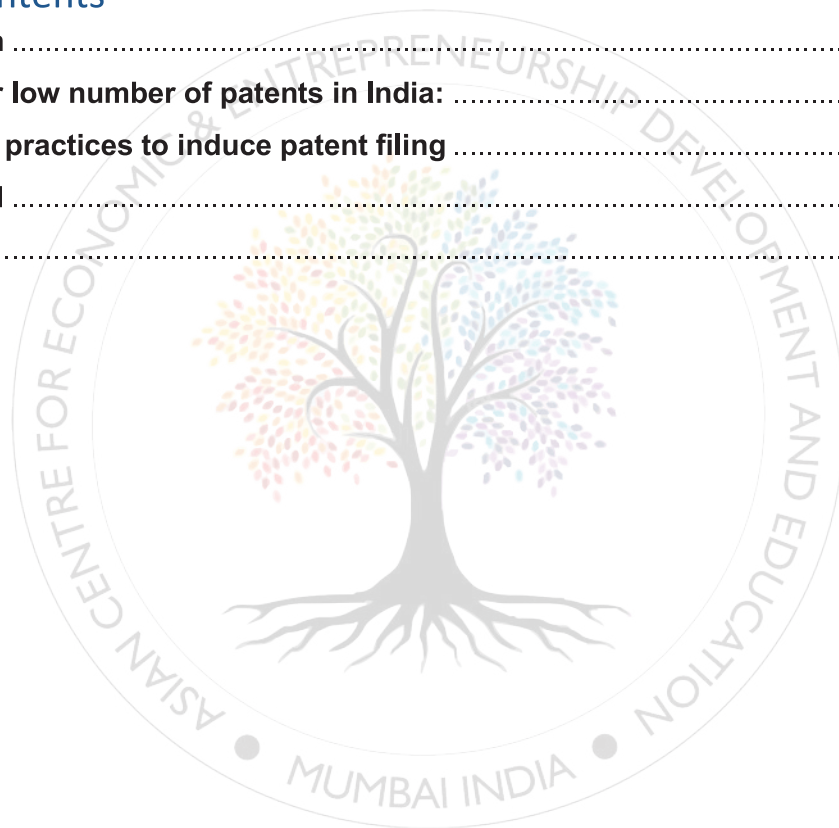
ASIAN CENTRE FOR
ECONOMIC & ENTREPRENEURSHIP
DEVELOPMENT AND EDUCATION
AN INDIA SME FORUM INITIATIVE

Why India still lacks number of patents filed when compared to global filings?



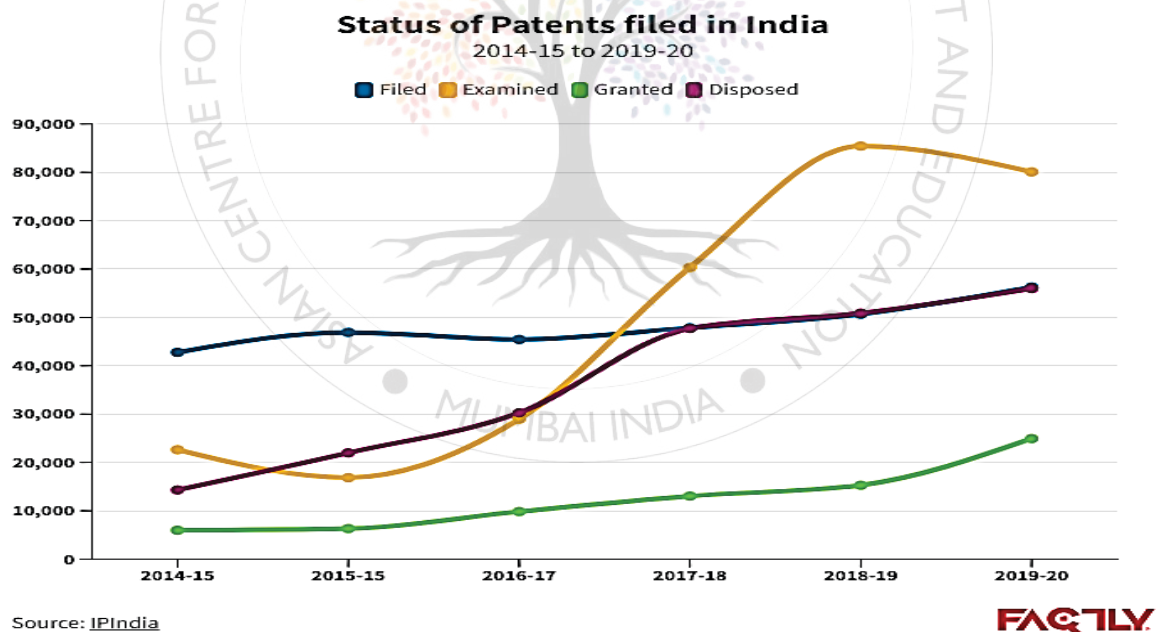
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Introduction

A patent is an exclusive right to exploit (make, use, sell, or import) an invention over a limited period of time (20 years from filing) within the country where the application is made. Patents are granted for inventions that are novel, inventive (non-obvious) and have an industrial application (useful). There are other types of exclusive rights over intangible assets, notably copyright, design protection and trademarks, but patents provide broader protection that extends beyond the specific expression of an invention to the invention itself. Due to this control over the technology, the patent holder is in a position to set a higher-than-competitive price for the corresponding good or service, which allows recovery of innovation costs. In return, the applicant must disclose the invention in the text of the application, which is published 18 months after the application.

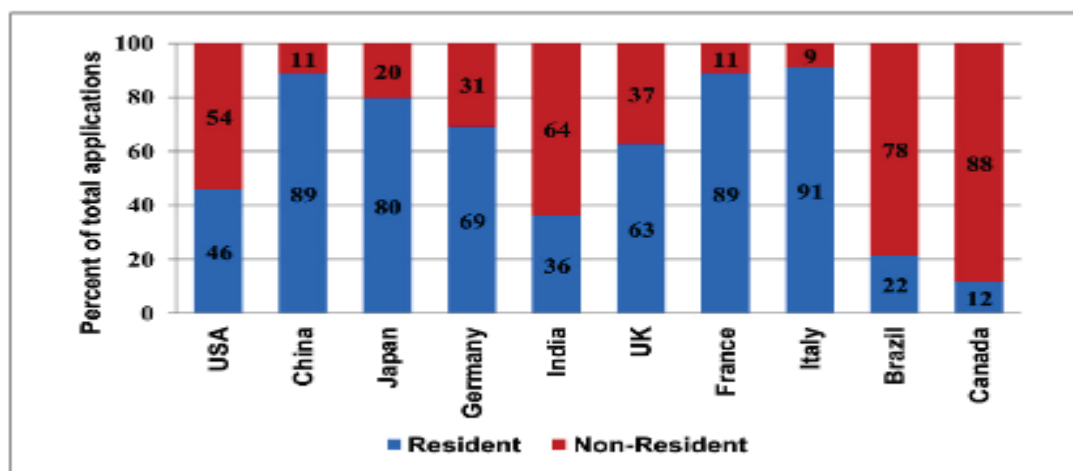


There has been a gradual increase within the filing and granting of patents in India. the quantity of patents filed in India has gone up from 39,400 in 2010-11 to 45,444 in 2016-17 to 58,502 in 2020-21 and therefore the patents granted in India

have gone up from 7,509 to 9,847 to 28,391 during the identical fundamental measure. Further, the quantity of patents application are increasingly coming from Indian residents instead of MNCs. The share of Indian residents in total applications has increased from 20 per cent in 2010-11 to around 30 per cent in 2016-17 and 40 per cent in 2020-21. Consequently, India's ranking in Global Innovation Index has climbed 35 ranks, from 81st in 2015-16 to 46th in 2021. India is placed at the 2nd position in Innovation performance at the Lower middle income group level as per GII.

This is a remarkable progress, but the number of patents granted in India is still a fraction compared to patents granted in China, USA, Japan, and Korea. According to World Intellectual Property Organization (WIPO), the number of patents granted in China, USA, Japan, Korea stood at 5.30 lakh, 3.52 lakh, 1.79 lakh, 1.35 lakh respectively for 2020. Moreover, In the last three years — 2017-18 to 2019-20 — as many as 53,399 patent applications were filed from India of which 27,934 applications, that is 52 per cent, were from Maharashtra, Tamil Nadu and Karnataka reflecting the uneven development of patent regime. Also the below given figure, illustrates that the majority number of patents filed in India were filed by non-residents (Foreign firms). However, the picture is steadily changing. More Indians filed for patents than multinational companies, according to the Union Economic Survey for 2021-22. Indian residents' share rose to 40 per cent in 2020-21 from around 30 per cent in 2016-17.

Figure 39: Patent Applications Filed by Residents and Non-Residents, 2019

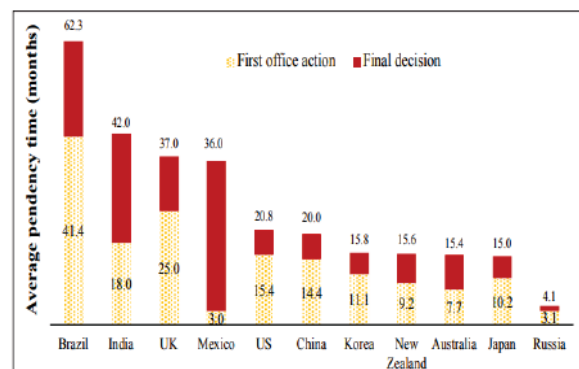


Source: WIPO

Reasons for low number of patents in India:

- I. India's low expenditure on Research and Development (R&D) activities, which was 0.7 per cent of its GDP in 2020. Nations like China, USA, UK dedicate more than 3% of their GDP towards R&D. Moreover close to 63% of this expenditure is borne by the government largely focused on Space, Defense, biotechnology etc rather than on Industrial Inventions.

Figure 11: Average Pendency times for final decision in 2020

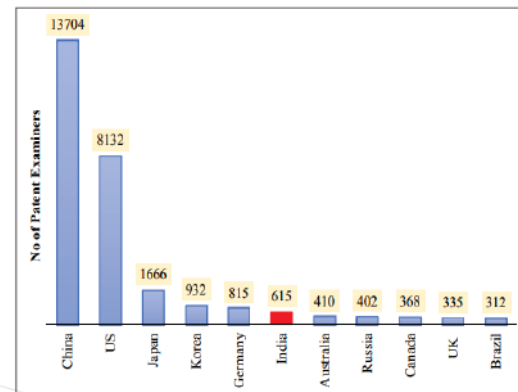


Source: World Intellectual Property Indicators, 2021

- II. The procedural delays and complexity of the process is also a major cause for lesser patents filed in India. The average pendency for final decision in acquiring patents in India is 42 months (2020). This is much higher than 20.8, 20, 15.8 and 15 months respectively for USA, China, Korea and Japan (Figure 11). However that average pendency for final decision in acquiring patents has reduced in India from 64 months in 2017 to 52 months in 2019 and further to 42 months in 2020, but compared to global standards the picture still remains gloomy.

III. Poor infrastructure and limited resources have created a big hurdle. In 2005, when India amended its patents Act to bring it in compliance with World Trade Organization requirements, there were at least 56,171 pending applications. That number has more than doubled to an estimated 194,000 in 2013. The simple reason is that the increase in the number of examiners has not been in tune with the increase in the number of applications. As of 2012-13, India had a only 201 Patent examiners, this was only slightly up from 140 examiners in 2005-06. Successive governments have promised to address this issue. However, the patent department completely dependent on its parent ministry (Ministry of Commerce and Industry), even for internal issues such as hiring and promotions, hence it is a slow walk.

Figure 12: Number of patent examiners in 2020



Source: World Intellectual Property Indicators, 2021

IV. Discouraging of Evergreening of patents- As far as the Patents Act 1970 is concerned, the much-debated and broadly worded Section 3 – which excludes several inventions and discoveries from patentability – has long been considered the greatest deterrent for innovators. This section is commonly used by examiners to object to or reject patent applications. Inventors often do not file applications in view of this provision as the chances of success are remote due to the blanket restrictions imposed by it. IPR regime in India needs a major push with strong legislative reforms for patents. There are other provisions that unnecessarily burden an applicant or a registrant with providing irrelevant information and create unnecessary hurdles.

V. Since the creation of the Intellectual Property appellate board, it has not been able to perform efficiently as in the past 17 years of its existence, IPAB didn't had a Chairperson for more than 3 years. Separate from the long gap

between the appoint of Chairpersons of the IPAB, it did not have technical member for Patents since 2016. The law prescribes for a minimum number of quorum of members to hear any kind of case. Due to the absence of technical members for patents, it has not been able to hear any case for revocation or appeal of Patents for 4 years in a row. Lastly in 2021, Government abolished IPAB thereby paving direct way of dispute resolution to High Courts. High Courts being the constitutional courts can also settle disputes on constitutional aspects related to IP. The need for the speedy disposal of patent cases is very important as the owner of the patent gets less time to reap the benefits of the it if there is a long-standing litigation.

- VI. Poor Awareness about the IPR regime amongst SMEs that are the backbone of the Indian Economy comprising of more than 30% of India's GDP. Thousands of small and medium enterprises (SMEs) in India are reported to be losing millions in revenues due to a lack of awareness about IPRs (intellectual property rights). About 40,000 IP applications are filed in India annually and 85 percent of these are filed by multinational corporations, leaving a sizable number filed by SMEs. In the developed world, due to high awareness levels, small entrepreneurs approach private equity funds and venture capital to meet the expenses incurred on the cost of acquisition, protection and enforcement of IPRs. In India, the lack of awareness among SMEs effectively denies them the fruits of the intellectual property they create.
- VII. IP crimes including counterfeiting and piracy are the rising threats to IPRs that should be regulated and deftly handled by taking appropriate measures. As per NCRB report, in 2019 there were 32715 IP related crimes reported in India.
- VIII. Deeply embedded traditional methods in financial sphere and the ignorance amongst business community to treat IP as an intangible financial resource at par with tangible assets like land or property are the

major impediments in the growth of IP backed financing in India

Global Best practices to induce patent filing

Growth in patenting corresponds to a new organization of research that is less centered on the individual firm and more based on knowledge networks and markets: innovation processes throughout the OECD area have become increasingly competitive, co-operative, globalised, and more reliant on new entrants and technology-based firms. Market mechanisms play a more central role in technology diffusion. Businesses have been demanding more and more patents to accommodate these new conditions. Thus mostly efforts as a nation are more required to be successful in promoting Patent regime.

1. **USA-** The provision for status of 'patent pending' has been provided in the Patent Laws of USA when the patents are filed with the United States Patent and Trademark Office (USPTO). It refers to an application for an innovation to be patented, either provisional or non-provisional, and for which the patent has yet to be granted by USPTO. Marking a product as 'patent pending' indicates existence of the pending application for the product and an inventor, by labeling his product as 'patent pending' could safely market his product without any fear of loss as such marking acts as a deterrent for competitors from copying and warns of consequential penalties once the patent is granted.
2. **CHINA-** In 2019, an IP-Pledge Financing Framework was jointly released by the Chinese National Intellectual Property Administration, the China Bank Insurance Regulatory Commission and the National Trademark Administration of China. The framework aims at strengthening and setting up new parameters for IP pledge loans from various banks. The objectives include extending support to commercial banks and financial institutions that accept IP as collateral for loans and by introducing a risk management framework through IP financing

specialists, strengthening the management of collaterals and closely monitoring the business of borrowers.

3. **Singapore:** An IP Financing Scheme (IPFS), launched in 2014, has been crucial in providing a much-needed impetus to the intangible asset-based marketplace in the country. Under the scheme, Participating Financing Institutions (PFIs) or banks are allowed to advance loan to companies using IP as collateral and the risk of such IP backed loans is shared by the Singapore Government with the PFIs. The Government also provides valuation subsidies to defray the cost of IP valuation which may at times is upto 50% of the IP valuation cost. The Scheme has benefited a number of businesses in Singapore by helping them raise capital during crucial junctures through pledging their IPs as collateral.

Road Ahead

- I. Government must emphasize upon increasing the spending on Research and Development (R&D) activities by allocating specific funds on R&D in each Department/Ministry at least 2% of GDP. Also, R&D activities should be encouraged not only in Governmental and educational institutions but also in businesses and private companies.
- II. Government should provide incentives to private businesses and companies for undertaking R&D activities which would be a proactive step in augmenting research capabilities of the country. Every industry with a certain specified turnover may be directed to put funds under CSR for R&D activities.
- III. An exclusive apex level Institution for IPR Development should be established in the country which would enable a multi-disciplinary approach in analyzing and harnessing the full potential of IPRs for economic and social growth.

- IV. The concept of Patent pending could be introduced in India. Products labeled as 'patent pending' would encourage patentees to notify in public that the article is yet to be patented. Also, such marking would serve as a notice in notifying potential infringers that they may be liable for damages, seizure, and injunction once a patent is granted. Hence, the labeling would not only avoid unnecessary infringements but advantageously could be a good marketing tool that would establish the authenticity and genuineness of the product thereby encouraging further inventions and innovations in the country.
- V. A holistic approach should be taken by DPIIT for disseminating awareness amongst MSMEs, small businessmen, traditional artisans and craftsmen located in remote areas and providing them insights about the creation, ownership and protection of their IPRs. Also, NGOs associated with craftsmen, artisans and those working in hilly and tribal areas may be engaged in spreading awareness about IPR to the target group. Necessary tool kits for promoting IPR may be provided to facilitate them in training. SPRIHA was thus set up to promote outreach on IP matters, organize seminars and workshops, develop inputs, research and inculcate a longstanding recognition and respect for one's IP and others' IP in the students' minds. More such efforts are required on similar lines.
- VI. The training programs and workshops being organized by DPIIT (especially for MSMEs, small tradesmen, local artisans) should be oriented towards inculcating scientific temperament and knowledge about identification of novelty in their products and protection of such novelties as IPRs.
- VII. MSMEs registering for IPRs in foreign countries, where they have the potential to expand their trading base, should be encouraged and given assistance thereby making them globally competitive.
- VIII. DPIIT should create a provision of IP funds in the country which would help in supporting initiatives specifically for instilling IP culture in the remotest parts of India including tribal belts, hilly and border states, North East Region.

Developing an IP culture in such regions which are the storehouse of traditional and indigenous knowledge, would not only accomplish the objective of protecting their natural and cultural assets but would also promote the overall IP generation in the country.

- IX. IP crimes including counterfeiting and piracy are the rising threats to IPRs that should be regulated and deftly handled by taking appropriate measures. Stress upon the capacity building of enforcement agencies on IP laws including strengthening of IPR cells in State police forces. It further urges the Department to ensure on-ground implementation of stringent IP legislations with a stronger InterDepartmental collaboration on IP crimes for curbing such offenses in an effective manner. a Central Coordination Body on IP Enforcement for undertaking coordinative efforts by involving various Ministries, Departments, and Governmental agencies in the enforcement and adjudication of IP laws to check IP crimes in the country. A specific legislation to curb counterfeiting and piracy should be enacted to restrain the growing menace of such IP crimes in India.
- X. Promptness from DPIIT should be shown in determining the existing vacancies and undertaking efforts to recruit and appoint officials in IP offices within a reasonable timeframe. DPIIT must ensure that officials are qualified and trained. DPIIT should expedite procedures for filling up vacancies against the sanctioned strength of officials in order to facilitate the larger cause of dispensing IPR claims.
- XI. Patent Prosecution Highway (PPH) amongst nations is a mutual initiative which helps in creating a conducive environment for promoting and expediting filing of patents. PPH facilitates in exchanging information on norms and rules that are followed in granting patents in participating countries and thus enables the patentees and inventors to abide by the criterion of such nations while applying for patents. Thus, more opportunities in establishing PPH with other nations as

well which would be highly advantageous to India in expediting and processing of patent applications should be explored.

- XII. DPIIT should undertake committed measures in generating awareness and a better understanding of IP financing, value and monetization of intangible assets in the country by inculcating management of IP portfolio of businesses, thereby enhancing its economic worth and making the business community aware of the compliances. The Department, in close coordination with financial institutions/ stakeholders or banks, should encourage adaptation to non-traditional forms of collateralization and securitization by conducting trainings and workshops on scrutinizing and regulating IP financing and extending necessary support to businesses.
- XIII. The Committee also recommends that Insurance sector may be involved in covering/ protecting against the rise of financial losses faced by an IP to minimize monetary risks by suitable amendments in Insurance Act.
- XIV. Promote establishment of alternative dispute resolution mechanism in India such as arbitration, mediation, etc. for ensuring speedy justice to patentees in IPR litigations.

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