India-UK Future Tech Festival

Session on Future Tech and IP

CIIPC

20 December 2018

The session, titled **Future Tech and IP: Turning Ideas into Impact**, was part of the India-UK Future Tech Festival organized by the British High Commission. Moderated by Mr. Adam Williams, Director, International Policy Directorate, UK Intellectual Property Office, the session focused on discussions around navigating the IP framework for successful innovation and the importance of IP enforcement in incentivizing trade and investment.

Mr. Williams stated that it is important to make sure that the ownership of IP remains with the business and therefore it is critical to carefully review the details that go into a commercialization agreement.

The session commenced with opening remarks from Mr. Rajiv Aggarwal, Joint Secretary, Department of Industrial Policy and Promotion, (DIPP) who expressed belief in the power of technology but also stated that the best of technology may not provide all the answers and some human intervention may still be required. He gave the example of the proscription laid down by the Patent Office guidelines stating that Software per se is not patentable. However, advancements in technology have blurred the distinction between hardware and software and there is a need to relook at the patent regime. He also spoke about the issue of digital piracy. Citing the Bahubali example, where the piracy-gang attempted to extort money from the producers, he stated that new technology and means to counter digital piracy are the need of the hour. Speaking on Industry 4.0, including Blockchain and AI, he stated that interesting days lie ahead for the industry. There are some issues cropping up in the field of data piracy and SEPs. But, it is important to convert challenges into opportunities. He concluded by highlighting the technological developments at the Indian IP office, including the transition from physical filing to online filing of patents and scheduling of hearings through video conferencing.

Mr. Yaduvendra Mathur, Additional Secretary, NITI Aayog, speaking on the challenges NITI Aayog is facing, highlighted how ATAL Innovation Mission is supporting schools across the country to set up tinkering labs. It is also working on setting up a national strategy to leverage AI and other technology such as Blockchain and sharing big data with institutions to support creation of knowledge with developmental impact. Some examples include sharing digital x-rays to detect TB and sharing and ownership of machine generated data.

On commercialization, he stated that Ministry of Commerce has specific interventions on commercialization and NITI Aayog is supporting innovators through handholding and encouraging them to approach the NITI Aayog. He also stated that although funding is made available for incubators, there is no specific programme on the table. Aayog is only looking at Blockchain and AI. With respect to Make in India program, he stated that the real value capture is in commercializing your design.

Akhilesh Rai, Head of Intellectual Property, AZB & Partners, expressed concern on how the businesses are lethargic in maintaining their IP, primarily due to a lack of definitive guidelines or sufficient information on how to approach protection of IP.

He also highlighted some practical issues in the use of IP, for example, patents becoming redundant due to advancements in technology and yet businesses having to spend money on yearly renewals of these patents. Speaking on big data, he shared that Research & Development companies are thrilled about big data and that IP and technology go hand in hand for generating more revenue. He also expressed satisfaction over the marked change that has taken place in the functioning of Indian IP offices, highlighting how the registration of a trademark, which earlier used to take as long as 7 years in some cases, is now being done within a span of 6 months, which is one of the fastest in world.

Mr. Yogesh Pai, Co-Director, Centre for Innovation, Intellectual Property and Competition, National Law University Delhi, speaking on legal challenges in the tech-transfer and commercialization ecosystem stated that 2018 is exactly 10 years after India unsuccessfully tried to introduce its own version of Bayh-Dole and that there have been some fascinating developments since then. He highlighted the legal challenges from a four-dimensional perspective namely: IP as an incentive for commercialisation, geo-political and access related issues, regulatory issues, new challenges because of open and closed models of innovation, and the challenges due to rise of digital platforms and two-sided markets.

He highlighted the need for a different kind of IP ecosystem for tech-transfer and commercialization. He also highlighted the lack of effective data protection through data exclusivity and stated that concerns have been expressed in Government meetings on the lack of incentives for commercialisation which require creation of data, particularly in situation of grant of non-exclusive licenses by public funded R&D institutes. On trade secret protection, he expressed concern on the lack of codified trade secret protection, specifically in the context of contrary Supreme Court decisions on non-compete clauses and the issues arising in connection with third party liability, which are essential elements involved in tech-transfer agreements.

With respect to the regulatory environment, he stated that there is need to look into boilerplate provisions in tech-transfer agreements in the light of pending investigations by the CCI. This he said could impede effective tech-transfer, particularly in situations where there are no market effects. He also narrated how the use of essential commodities Act, not only to impose price control, but also to maintain supply of donor seeds could threaten voluntary licensing and tech-transfer activities in India. Finally, on open and closed source models of innovation, he shared that a lot of tech-transfer is effectively taking place through Standard Setting Organizations (SSOs). However, India's participation in SSOs is minimal and Universities should participate in the process of standard setting. Similarly, with the rise of digital platforms and two-sided markets, where incentives and business models are differently aligned, the landscape for IP and tech-transfer ecosystem is fast changing.

Pippa Hall, Director of Innovation and Chief Economist, UK Intellectual Property Office, speaking on IP and trade stated that there is a lot of interest in IP and trade. However, IP valuation is expensive and that is a challenge. In order to encourage innovation this problem needs to be fixed.

Adding to this, Tim Stovold, Head of India Group, Kingston Smith Limited, stated that there are certain barriers to commercialization. UK has got a good ecosystem for fundraising. But, most companies do not have the capability to spend millions and resort to exiting too soon. He concluded by saying that he would like to see an ecosystem to ensure that risk takers benefit from the risks that they take.

Answering one of the questions from the audience on the lack of government initiatives on IP securitisation, Yaduvendra Mathur stated that this is an evolving area and the government cannot intervene in the functioning of banks. Ms. Rekha Chaturvedi, from Delhi University, as part of comments/questions from the audience remarked that the issue of translation of patents/designs into an actual product is a challenge. To this, Mr. Pai responded by suggesting that Tech-transfer offices (TTOs) must be seen as cost centres and specific budgets must be assigned to pick the best firms for commercialisation and product development.

The session concluded with the moderator, Mr. Williams thanking the panelists and the audience for the insightful discussion.

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