

A COMPARATIVE INTERNATIONAL STUDY OF SELECT DIMENSIONS OF INTELLECTUAL PROPERTY RIGHTS

by

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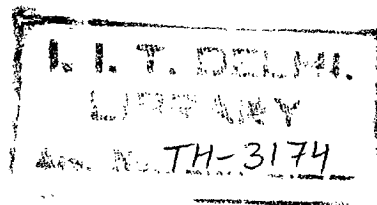
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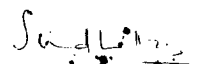
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CERTIFICATE

The thesis entitled “A Comparative International Study of Select Dimensions of Intellectual Property Rights” being submitted by Mr. Pushpendra Rai to the Indian Institute of Technology, Delhi for the award of the degree of Doctor of Philosophy is a record of bonafide research work carried out by him, under my guidance and supervision. He has fulfilled the requirements for the submission of the thesis that has attained the standard required for a Ph.D. degree of the institute. The research findings presented in this thesis have not been submitted anywhere else for the award of any other degree or diploma.


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ABSTRACT

In the 21st century, we have reached a stage where intellectual property permeates a wide spectrum of human activity. The tools of intellectual property are designed to stimulate commercial activity and encourage investment of funds for the development of innovation and creative expression. The development of new technology inherently bears greater risk than other commercial activity. Thus, through reduction of risk, these legal tools stimulate greater investment in the innovation process to usher in a new system of IPRs. With increasing deregulation and liberalization the world over, the concern for the protection of intellectual property rights has intensified. The main reason for this is the perceived importance of technology in the process of development.

Till now, research in the field of intellectual property has generally concentrated on the legal aspects and so there is a felt need to examine the administrative and management aspects of intellectual property in greater depth. The present study has attempted to analyze various management and economic aspects of patents in an international perspective.

This study has presented a brief analysis of various international treaties administered by WIPO, particularly the Paris Convention that deals with patents along with other industrial property rights. The internal and external challenges for international patenting have been discussed as also the implications of extending protection to the emerging areas of technology, namely biotechnology and computer software. It is concluded that the ultimate public policy objective would be to strike a strategic balance between the rights of inventors and that of the public.

The study has also examined global patenting for selected developed as well as developing countries. A significant trend perceived is that developing countries would face higher filings from non-residents in the future. It has been found that due to the rapid growth in patent filing and other factors, the Patent Grant Filing Ratio (PGFR) has been declining over the years for both developing and developed countries. The average PGFR for the 24-year period (1976 to 2000) is 0.366. It is concluded that if governments do not institute appropriate measures in time, users will be disillusioned with the patent system.

The Patent Cooperation Treaty (PCT) is perhaps one of the most important innovations in the field of patent filing systems. The relatively higher growth in the filing of international applications under the PCT, during the period 1995 to 2002, can be attributed to the seeking of new markets following the conclusion of the TRIPS Agreement, reengineering and deregulation policies undertaken by hitherto closed economies and rapid growth of the high tech sector. The study has projected that the global growth of patent filing through PCT would be about 89% between 2002 and 2010. This has important implications for various management aspects of patent systems in different countries. It shows a very robust growth for India, which is projected to have a rate of filing of PCT applications, higher than Australia, Austria, Belgium, Denmark or Israel.

The study attempts to develop a theoretical framework for establishing the relationship between the extent of patenting activity and the economic and technological development of a country. The theoretical model is transformed in to a Multiple Regression Model and is subjected to empirical estimation using data for 30 countries for three different years i.e. 1990, 1995 and 2000. Some hypotheses are accepted whereas a few are rejected and the primary reason for the rejection seems to be the significant changes in the patent regime as a result of TRIPS agreement. With the time series data for the six major countries of this study viz., Brazil, China, ROK, India, Japan and the USA, an attempt is made to estimate the Multiple Regression Model. The results enable further understanding of the relationship of patent filing with the economic variables that indirectly affect it.

The TRIPS Agreement brought several changes in the IPR systems of member countries. The study analyses selected cases regarding the use of Public Interest Provisions in these selected countries and also the position in respect of pharmaceutical product patents and EMRs. It is demonstrated that the Agreement is characterized by a balance between rights and obligations and affords flexibility to member states to uphold the public interest, while assuming commitments. A solution is also suggested to ensure the availability of essential drugs in countries with inadequate manufacturing capacities.

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