

Patent Law in Bangladesh

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Intellectual Property (IP), especially patents may be the cornerstone for innovation and development, currently in Bangladesh, the Patents and Designs Act, 1911, enacted under British times still stands as current law. In 2004, a new draft of Patents and Designs Act, 2003 is finalized by the Law Commission of Bangladesh in cooperation with World Intellectual Property Organization (WIPO), which is under process to place before the Parliament¹.

It is important for policy makers as well as stakeholders to comment and frame the legislative process of bringing the Bangladesh Patent act upto World Intellectual Property Organization (WIPO) standards, as it is a critical foundation for development. Thus various stakeholders must influence shaping the rights, framework and long-term vision of the Patent Law in Bangladesh.

There are various policy factors that influence the scope of Patent law in Bangladesh.

1) Knowledge Transfer and a move to knowledge based economy:

A robust and thriving patent regime may facilitate a cyclical innovative cycle from the entrepreneurial society to the saturated Bengali intellectually vibrant academy and cultural institutions, an incentivized and structured procedure forth from labs to the manufacturing floor, from art institutes to textiles, from the new programs and research chairs at universities such as the Asian University for Women to the average consumer in the rural or developed areas. “The new government policy needs to adjust to a “total knowledge policy,” Gurry, said, starting with education, which is the first step before getting to the commercialization of knowledge and then using IP to convert this knowledge into commercial assets.”²

With IP culture the role of universities is also growing with more technology transfer offices within universities and national legislation being enacted in many countries to encourage transfer of knowledge from universities to the productive sector. Gurry said. Id. IP is “the space in which all countries would like to compete,” he said. “Nobody wants to compete on the cost of labor and not everyone can compete on the basis of physical resources, so the value added by the intellect, essentially, is the space which is available to all countries in which to compete.” Id.

Therefore with a thriving and carefully designed and enacted Patent Act, Bangladesh would be positioned to compete globally with the faster dissemination of knowledge, research and expertise and heightened innovation in a rapidly developing nation.

2) *Patent law in Bangladesh may illuminate innovation, entrepreneurship and competition.*

With a growth in the IP there may be a rush to propertize excellent patentable mechanisms that may spring forth the next microfinance, climate change, community based water purification, clean energy or food safety tool. Surging towards development, this may also create new jobs. Patenting and monetizing inventions will enable access to further research funds. Additionally confident entrepreneur-inventors would skillfully translate their knowledge to commercial gain through the patent system, this may prevent intellectual and capital flight and further enhance local intellectual and innovative output. The local industries may be influenced through the competitive drive to provide goods, services and products to invest in research and give back to community under a mutually beneficial patent regime. This may be the birth of excellent public/private partnerships.

3) *Integration into the global marketplace of ideas.*

Bangladesh would further enhance in its international image as an intellectual property based and empowered nation and this would add further value to the ideas that may solve global issues. Bangladesh would thus possess a strong foundational pillar for healthy growth and development in the information age. The WIPO has released its first report in what is expected to be a series of publications seeking to explain, clarify and contribute to policy relating to intellectual property. In its debut report, WIPO presented figures that show a growing global demand for patents, a soaring increase in licensing and royalty fees revenues, and an increase in low and middle-income economies' share of global spending on research and development.³

4) *Public awareness of stakeholders.*

The growth of modern Bangladesh may be nourished in the powerful cooperation of the beneficiaries of an innovation and development focused Patent Act. This may be achieved through an initial focus on community involvement as a well-developed approach to awareness rising. Various stakeholders are critical, including,

a) Educational policy makers: The new generation raised in the post telecom era are versed in IP language, they understand the value of IP, and would like to see the country meet the Millennium Development Goal's, and thus would be well positioned to understand and exploit the information and IP globalized world.

b) Trade bodies and industry: Members of trade bodies such as the Chamber of Commerce as well as multinationals are aware of the value of their IP and seek further to enhance assets through commercially attractive IP legislation.

c) Scientific community/institutions: Research in consumer product/ pharmaceuticals/ university labs must be included in the policy formation and negotiation. This would

ensure rapid partnerships in innovations and output with other stakeholders in the IP laws.

d) Non Governmental institutions (NGO's): the Legislation must be designed to ensure access for indigent and vulnerable groups therefore NGO involvement in shaping the legislation is very critical.

5) Foreign Direct Investment:

With a healthy IP enforcement system and legislation in place, there may be an increase in FDI into the country with additional support from international trade and exports organizations sanctioning a push towards including IP Bangladesh into the globalized finance streams. Multinational company decision makers, cross border lenders and legal counsel versed on the blossoming IP climate will invest with confidence if they believe that their output would be protected against infringement and garner additional IP value.

In the light of recent global financial turmoil, adverse foreign policy implementations such as the Stop Online Piracy Act (SOPA) in the US would be prevented if developing countries are perceived to value and adhere to IP laws. Additionally more research and studies should be carried out long term IP benefits in terms of FDI, Peru also proposed that “studies be carried out to measure the real impact of development on legislation concerning enforcement measures (increased sanctions or sentences, the establishment of regular procedures, etc.), as well as their implementation by the authorities as a part of their efforts to reduce piracy and counterfeiting.”⁴

6) Tailoring of IP Bangladesh:

Bangladesh must seize the excellent opportunity to create dynamic hybrid, multifaceted systems, leveraging and learning from mistakes and successes of other relevant patent regimes such as India and the US. Bangladesh would thus be able to design the patent system most geared towards economic and social development by establishing clear development and innovation focused patentability criteria. It is also crucial to determine how strong the current system is in place in order to harness the strengths while designing the future legislation. A nuanced and thoroughly researched grasp of the goals would determine the standards and scope of patentability.

In designing the system the underlying dual role for the system to act as an incentive to innovate and also reduce the burden to gain patent rights must be born in mind. This may be achieved by reducing fees, improving access basic information into the process to patent, the value of patents, the key functional knowledge bases available such as disclosure systems, update prior art databases linked to a broader patent community. In addition to simplifying and demystifying the system, clear step and strategy to monetize the patent, through the creation of spinoff enterprises, or licensing to large companies and more avenues for rapid innovation must be outlined and provided as a template for patent investment and enforcement. In the enforcement arena, the system must be designed to reduce litigation, engender strong rights as to validity of patents and infringement criteria.

It is also important to set up a strong system with judicial precedent, as has been the case in India, Patent litigation in India has grown considerably and has led many Indian firms to enforce or oppose patents. In general, the awareness about patents and its commercial exploitation is being increasingly used by companies in formulating competitive strategy. As a result, an increased number of patent disputes are landing in courts, playing a very important role in ultimately resolving the disputes and interpreting the law.⁵

It is also important to determine the scope of governmental property rights and thus defining the system and vision for development at the outset.⁶

7) IP funding from global institutions:

IP funding from global institutions should be harnessed. It is an optimal yet short window of opportunity for Bangladesh to fly alongside the spurt of development in this area of the law occurring with the least developed countries around the world. By promoting and supporting a distinguished and high quality patent regime, Bangladesh may have an impact as an example in the universe of global IP standard setting.

It is also a tremendous boast for Bangladesh to harness WIPO resources such as the IP services that provide development assistance to developing countries. This would encourage dialogue and standard setting and policy dialogue and negotiations with WIPO. This would ensure that the patent regime is strong so as to withstand validity attacks from other countries. "Taking maximum advantage of modern information and communications technology, including the establishment of common technical and software standards for electronic filing and processing of PCT applications;"⁷

These factors are among a few that may bear witness to Bangladesh meeting the MDG's on the basis of a powerful Intellectual Property law.

¹ IP ADMINISTRATION AND ENFORCEMENT SYSTEM TOWARDS MODERNIZATION OF IP PROTECTION IN BANGLADESH-AND A COMPERATIVE ANALYSIS OF IP ADMINISTRATION BETWEEN JAPAN AND BANGLADESH, Md. Farhad Hossain Khan, Government of the People's Republic of Bangladesh, WIPO FUND-IN-TRUST/ JAPAN RESEARCH FELLOWSHIP PROGRAM April 01 to September 30, 2004.

² Intellectual Property Creates Space For Competition In Innovation, WIPO Head Says, Catherine Saez, Intellectual Property Watch, 29 March 2011.

³ WIPO: IP Policy Moves To Forefront Of Global Innovation, Rachel Marusak Hermann, for Intellectual Property Watch, 15 November, 2011.

⁴ Lines Of Global Enforcement Debate Surface at WIPO Meeting, William New, Intellectual Property Watch, 5 December 2011.

⁵ Inside Views: A Glance At Current Patent Litigation In India, Kamakhy Srivastva, Intellectual Property Watch, 29th July 2011.

⁶ Globalizing Standards of Patent Protection in WTO Law and Policy Options for Bangladesh: An Appraisal, Monirul Azam, 27th July 2011.

⁷ THE WIPO PATENT AGENDA: THE RISKS FOR DEVELOPING COUNTRIES, Carlos M. Correa of the University of Buenos Aires and Sisule F. Musungu of the South Centre, Paper 12 2002.