

Establishment of an IP stock exchange in India India - Anand and Anand

National procedures Policy

August 02 2017

As part of the new national IP rights policy, India is set to get its own IP rights exchange (IPRX), like the United Kingdom and Hong Kong. The Federation of Indian Micro, Small & Medium Enterprises (FISME) supported by the British High Commission had previously initiated a portal for this purpose at www.iprexchange.in. The new IPRX will, however, be operated under the aegis of the Ministry of Science and Technology through the National Research Development Corporation which suggests that it will be more centralised, comprehensive and effective.

This is a promising development for both IP holders and potential purchasers which have agreed there is a need for a centralised forum for purchasing, selling and licensing intellectual property.

At present, the absence of an effective centralised marketplace to purchase, sell or license intellectual property creates a situation where licensees must be identified by right holders and approached with a proposal.

Similarly, businesses which require acquisition of intellectual property to legitimise their operations may not have easy access to or even knowledge of the existence of the relevant intellectual property. In such a situation, the licence may be valued in an arbitrary manner with the resulting negotiations being unsuccessful.

Where the parties cannot reach a consensus on the terms of a transaction or licence, right holders often resort to litigation in order to restrain the other side from using their intellectual property. While these proceedings may culminate in a compromise where the violator eventually agrees to take a licence from the right holder, such litigation increases the burden on the courts.

It is also common for a number of patents to expire without ever being monetised simply because the patentee did not have access to the right channel to contact those who required the patent and vice versa.

Given these problems, the establishment of a new IP exchange which is essentially an open forum for licensing, purchasing and selling all types of intellectual property such as trademarks, patents, copyrights and designs will be very welcome. The advantages of an IP exchange include:

- An opportunity for right holders to maximise the value of their intellectual property;
- The acquisition of the correct IP licence will legitimise businesses which may otherwise infringe a proprietor's rights. This in turn could reduce the burden on the courts as right holders would no longer need to resort to litigation to protect or monetise their intellectual property;
- Purchased or licensed intellectual property can be easily resold and traded in;
- The exchange will provide a platform for transparent and reasonable pricing. Prospective buyers will also have the opportunity to compare prices of different intellectual property and acquire the same accordingly;
- Innovators in particular are likely to be motivated to dedicate more time and resources to developing new technology knowing that there is now an accessible platform to monetise this.

Another interesting possibility is that the IP exchange may become the means of informing the public of existing intellectual property. The availability of intellectual property on the exchange could be construed as constructive notice of the asset to the public.

In addition to educating people about the existence and availability of the intellectual property, unauthorised users will be unable to plead ignorance of its existence and avoid paying damages for any infringement.

The meteoric rise in IP filings over the last year or so in India suggests that the establishment of an IP exchange at this stage in the country's development could be just what the doctor ordered.

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