

The IPR way

The intellectual property rights (IPR) movement is steadily gaining ground within the Tata group. In 2004, the Tata IP Management Programme was instituted to create awareness, stimulate IPR plans and foster strategies on the various elements of IPR within Tata companies. The aim is to demystify the subject and make it a universal movement within the group.

The programme encourages inter-company collaboration and extends support to Tata companies by providing processes, guidelines and checklists for the protection and leveraging of IP assets. It has recently introduced certificate courses to address the needs of people involved in generating patents and managing IP assets.

As part of the Tata IP Management Programme, in February 2010, Judge **Randall R Rader**, a federal judge on the United States Court of Appeals for the Federal Circuit, and an expert on patent law, visited Bombay House to talk to Tata executives and legal representatives on intellectual property rights. He also met *Subramaniam Vutha*, a consultant with the Tatas on Tata IP Management Programme, and *Sujata Agrawal* for an extensive interview, spanning a wide range of issues concerning India and IPR.

You have a long and strong association with India. Could you tell us about it?

The first time I visited India was about 10 years ago. I came with the George Washington University programme to meet Indian judges and legal officials. We visited the Supreme Court and the Mumbai High Court. I also visited some universities to encourage them to come to George Washington University, and also, in my capacity as a judge, to encourage them to apply patent law in an international way.

We were received very warmly and I made many friends. And of course as I come back and meet these friends, they would introduce me to others and before long I had many friends in the judicial and the

university community. Then the Confederation of Indian Industry started to sponsor annual IP forums that bring Indian industries together to discuss how to pursue a stronger IP policy. I have just attended the seventh annual IP forum.

What would you say would be the state of readiness of India and China respectively in relation to globalising markets?

Well, India has some wonderful advantages — it has a democracy, it has the rule of law, it has contracts and legal institutions that can facilitate domestic and international business. And then of course you can't overlook the English language capability, English being the international language of commerce.

However, India has not kept pace with China which has devoted vast resources to becoming a technological leader. I expect India will catch up, and at some point pass it, but at this point China has invested vastly greater resources in patenting and trademarking its products.

You have talked about infrastructure investment in IPR. What are some of the things that the Chinese government has done in terms of setting up infrastructure that the Indian government could look at seriously?

Of course, government-to-government comparisons are always difficult, but China has done a number of things. It has directed its corporations to set goals to achieve 1,000 to 15,000 patents a year depending on how large the institution is. It has ordered them to create extensive research and development programmes. And it has sent a great many students to the United States to gain education in intellectual property and its implementation — and those students who have come back to China have created intellectual property departments in each of their major corporations.

Some of these are good ideas for Indian industry to also pick up — such as setting goals for how many patents they want to achieve in a year and to have legal departments that are capable of handling international intellectual property problems.

The marketplace will force you in that direction inevitably, but it might be better to get ahead of the marketplace and start doing these things even before you are required to.

What about the patent and trademark offices in China?

They have committed quite a lot to the creation of a very strong office called the State Intellectual Property Office and they have offices throughout the country.

China has just recently become the third ranking nation in terms of the number of patents filed in the United States, Japan, Europe and other great patenting centres of the world. It is right behind Japan and the United States; it has recently surpassed South Korea, and I think South Korea will try to grab the initiative back in the next year or two.

What are the lessons that Indian companies can learn from Chinese companies?

Chinese companies have extensive IP departments with legal expertise and engineers coordinating their activities to make sure they meet the goals in terms of the number of patents filed in a year. They recognise that these patents can become a portfolio that allows them to deal with the leaders in the world market. They can take their innovative technology to Microsoft, Intel or IBM to use their technology in exchange. This is a kind of ticket to the international marketplace — an entry to play at the major league level.

The US and Europe are the leaders in technology. How do you think they leverage IPR to get to where they are, and to sustain leadership?

The value of every major international institution is primarily in its intellectual property — in the know-how, the trade secrets, the patents, the trademarks and the copyrights it has. It is the central value of most international corporations and they have learnt to

protect that value and to use that value to create more value.

In other words, with your patents protected by trademarks, you can require others to license your technology, pay you to use your technology and you can also use your technology to gain access to the technology of other companies — as you allow them to license your technology, they allow you to license theirs. And together you cooperate to create the next generation of products that the whole world wants to buy.

And the world always wants to buy the best, the fastest and the most environment-friendly products. So the group of cooperating innovators that can produce that product is going to control the market.

What Indian companies need to do is make sure they are part of that team that is cooperating around the world to create those products. And the patent system facilitates all of this. It takes ideas and converts them into intellectual property rights that you can trade.

If I am Tata, I can trade my property rights to obtain property rights from IBM, Microsoft, Huawei, Samsung or Sony or whoever. By obtaining their leading technology and combining it with my leading technology, I make products that compete not just in India but in every market in the world.

And certainly India is a world-class creator of world-class products — that's really what you need to aspire to be.

Backed by world-class patents?

Absolutely. It's almost the other way around — you have to have world-class patents before you can even enter the game. It's a kind of ticket to enter the upper levels of economic competition.



“You have to have world-class patents before you can even enter the game. It's kind of a ticket to enter the upper levels of economic competition”



You mentioned bringing property rights to the table and being part of the leadership that creates certain products in the markets. What connection do you see between IP, particularly patents, and standards?

There are very complex legal relationships here. Of course, when you make a new product it has to be compatible with other products in the area, and that leads to the creation of standards.

And when you have a standard that gives additional value to this single way of doing things, this single product, this single patent — the standard-creating body wants to ensure that the patented technology is not exploited beyond its value. So it will ensure that this standard technology is now equally licensed to everyone at a fair rate.

Of course the patent owner has won because even if the fair licensing value is lower than what they might have achieved as a patented technology alone, it's now licensed to everyone so they may have achieved a market exclusivity that is unparalleled.

The lesson here is that you're going to need some real legal expertise to negotiate the complex relationships between standards, patenting and the marketplace.

So you think having a powerful patent portfolio is not

enough, but it gets you to the meetings which set or influence standards, and then you can direct those towards your standards, which is a powerful tool, considering there are standards for everything, from telecom to power consumption, to environment and everything in between?

That's true. You need to have something to contribute in order to be a part of the community that's creating the new technology. The new technology then becomes a standard somewhere down the line. And all those standards need to be backed by technology, and the technology, to the extent that it is Tata technology, will propel your company to the leading tables of the world. That's a powerful tool to progress.

At one time, Europe, and maybe the UK, was the leader in IP. Then the power shifted to the US. Then the Japanese captured the US markets and the US got back at them through technology licensing. Then we had the South Koreans doing what the Japanese did and now we have the Chinese. What are the lessons for India?

You have described in a few sentences the exact process of the marketplace — that the nation that controls the innovation and the intellectual property has controlled the markets.

China is very aggressive in wishing to become a larger player and gain a larger share of the world market. India needs to rise to that challenge and progress just as fast as or faster than China and its other competitors.

Do you think differences in cultural influences can explain why China looks at intellectual property from a different perspective than India?

There are always cultural influences. We are a product of our past, our religion, our culture and all the other influences which make us who we are. But I often say that some of the most brilliant people, or maybe most of the most brilliant people, are Indians.

There is tremendous talent in this country but I don't think it has been adequately harnessed; it has not received all the protection that it deserves. For this reason many of the great Indian minds have moved to places where they can get more protection for their ideas. India needs to strive more to protect that talent.

Is this because of a lack of trust in the system?

I think the system still needs to improve but that's true of the system anywhere (the United States system needs to improve too). That's the nature of human endeavour — that we are always trying to improve and we don't always succeed.

But India has a vast potential to be a leader in IP. It has brilliant scientists and technology; it has brilliant engineers and magnificent companies like Tata. And that combination should be propelling India more and more into leadership conferences and world markets.

Maybe it's a part of Tata's role to become a leader among Indian companies in setting goals for IP, which will, in turn, lead the group to the leading tables in economic cooperation.

India is planning something which is loosely the equivalent of the Bayh-Dole Act. Would you like to tell us some of the things we could learn from the act?

I helped create the act in the United States when I worked for the senate, more than 20 years ago. It has worked very well in the US. The Bayh-Dole Act allows innovation which takes place under government research grants to be converted into usable technology through the patent system. So the innovator, who is working on government projects, reports his work to the government and they give the benefit of that.

But he can also patent those unique, innovative ideas and those patents can again become intellectual property rights that can be sold in the marketplace to create products and be converted into technology that isn't just used by the government but by consumers around the world.

This idea started with the Bayh-Dole Act but it has been implemented in China and Japan, and elsewhere around the world, as government-funded research that has through patenting been converted into technology.

So we have examples to look at, such as Japan and China...

Yes, you can look to some of these countries to see what they have done. For example, look at the way it has worked in the United States: Silicon Valley is a function of this process where universities like Stanford created new ideas, often with government funding. Those new ideas were converted into patents; the patents were then sold to start-up companies in Silicon Valley that became world-renowned names as they developed products that now control the marketplace.

So it all started with the ideas in the universities, some of it funded by the government, and through patenting became technology that governs the US and world markets. India can do the same.

In your talk earlier, you mentioned that some Indians are in key positions in research in companies in the United States.

Yes, when I visit corporations such as Monsanto, Dow or Microsoft, I always find a leader or a group of

leaders who are of Indian origin.

Do you feel that a better patenting system and a more vigorous IP focus in India would induce some of them to come back to India? What we call reversing the brain drain.

Yes, I do. I like that thought, brain recapture, and I think it is happening already. A large number of young, professional, creative people are coming back from their US education to settle in Bangalore and other research centres.

There is a sense of confidence that things can now happen in India also.

I think that is true and the world market is facilitating that as well. You can now harness services in India that are actually being used in North America or Europe because of our quick communication systems.

Tata companies have recently started on their IPR journey. How can we institutionalise IPR practices, encourage employees to focus on it? What are some of the key messages that you would like to give Tata companies?

I liked your choice of words, 'institutionalising IPR practices'. Because that's what you need — you need institutions. You need an IP department that regularly visits your engineering departments and teaches them how to convert their ideas into property rights that can again be 'traded' in the marketplace.

You need goals; your research and development departments need to have goals — 1,000 or 10,000 patents per year. And finally, you need leadership at the top that goes all the way to the bottom, that says this is the future of our company, that we cannot maintain our market position just by copying what others do; we must improve ourselves and be a world leader.

We have started by explaining IPR to our employees and building their skills in this area. We have also set up annual Innovista awards that encourage employees to be innovative.

Well, that's an excellent start. You need the education, you need pamphlets and books. You need to teach your people their roles in this whole system. The awards are an excellent idea. It is very prominent in companies in the US, China and Japan, where they give awards annually to the top innovators, the top departments that have captured the most patents and to the divisions that have improved their processes the most. This sort of mentality is what makes your company consistently better. ●