

# DRIVING INNOVATION FOR A STRONGER INDIA

## Summary and Findings from the Inaugural 2019 USA – India Intellectual Property Rights Symposium

Presented by



and



Supported by a Grant from the United States Consulate in Kolkata, India  
June 28 – July 2, 2019

## **Overview**

The first-ever United States-India Intellectual Property Rights Symposium was conducted June 28 through July 2 in Kolkata with a series of two workshops on the value, importance, and use of intellectual property rights (IPR) as a driver of economic success.

The first workshop, “Intellectual Property Practice Principles,” was designed for intellectual property practitioners, academics, and students of law and entrepreneurship. The goal of this program was to enhance understanding of international IPR dynamics and to convey the importance of intellectual property professionals as drivers of the Indian economy.

Workshop two was directed toward entrepreneurs and business professionals. The program, entitled “The Role in Intellectual Property in Business Transactions,” provided insights and tools on how to leverage IPR to succeed, grow and achieve competitive advantage, both in India and globally.

The program was promoted within the practitioner, academic, and business community. Promotion was primarily via email, Facebook, LinkedIn, and other social media including distribution channels of the local partners. A certificate of completion was offered and awarded to workshop attendees.

Both workshops were substantially oversubscribed, indicating both a strong need and desire for this type of programming. Program outcomes were assessed by participant review. Reviews exceeded expectations, particularly with regard to the speakers who received a ninety percent (90%) or higher approval rating for both courses.

## **Objective of the Program**

Supported by a grant from the U.S. Consulate in Kolkata, the objective of the program was to present a comprehensive four-day workshop to bring together U.S. and Indian IPR experts and practitioners to discuss IPR, copyright infringement, and patent and trademark law issues in the Indian context. The workshop was designed to create awareness about IPR issues, promote IPR-related partnerships, and convey the value of IPR as a driver of economic growth and competitiveness.

## **Background**

In the 1994 India became a signatory to the World Trade Organization’s Trade Related Intellectual Property Rights Agreement (TRIPS)<sup>1</sup> and began the process of working to elevate IPR law and practice to meet international standards. Two decades later, India has made substantial progress and continues toward its goal to achieve standards established by both TRIPS and by the World Intellectual Property Organization,<sup>2</sup> of which the country is also a member.

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<sup>1</sup> [https://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/trips_e.htm)

<sup>2</sup> [https://www.wipo.int/standards/en/part\\_03\\_standards.html](https://www.wipo.int/standards/en/part_03_standards.html)

### *Indian Achievements*

Among India's achievements, and according to the 2016-2017 annual report released by the Office of the Controller General of Patents, Designs and Trademarks,<sup>3</sup> India has substantially increased the number of patent examiners and controllers, both to allow elimination of patent backlog and to speed up the application process. The country has also made substantial changes to make it easier and cheaper for entrepreneurs and startups to file for protection. India has become a Patent Cooperation Treaty International Search Authority as well.

In April 2019 a report from the Office of the U.S Trade Representative<sup>4</sup> stated "Over the past year, India took steps to address intellectual property challenges and promote IP protection and enforcement. However, many of the actions have not yet translated into concrete benefits for innovators and creators, and long-standing deficiencies persist." The report also states "India's commitment to bilateral dialogue remains strong, and the United States intends to continue to engage with India on IP matters."

Finally, in keeping with India's dedication to meet IPR standards and goals, on June 7, 2019 India acceded to three WIPO treaties: the Nice Agreement, the Vienna Agreement and the Locarno Agreement.<sup>5</sup> "The accessions underline India's strong multilateral engagement with the World Intellectual Property Organization," stated WIPO Director General Francis Gurry.

### *Indian Entrepreneurship and Higher Education Initiatives*

According to the IBM Institute for Business Value and Oxford Economics<sup>6</sup> 90% of Indian startups fail within the first five years. The most common reason given for failure is lack of innovation. Other reasons for failure include lack of skilled workforce and funding, inadequate formal mentoring, and poor business ethics. To address this, the Indian Government has created a number of programs to support entrepreneurial education, mentoring and startup incubators, as well as investment in infrastructure. These programs are both stand-alone efforts through government agencies and in partnership with industry and research institutions, and do not include a technology transfer component.

The Indian Government recently committed to overhaul its higher education system via the New Education Policy (NEP). A major focus of the NEP is to develop the infrastructure to encourage research at universities via the National Research Foundation (NRF) through a competitive grants process (similar to the U.S. National Institutes of Health and National Science Foundation). Even though India has become the third-largest economic ecosystem<sup>7</sup> in world, it lacks successful innovation and significantly lags in funding research as compared to

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<sup>3</sup> [http://www.ipindia.nic.in/writereaddata/Portal/IPOAnnualReport/1\\_94\\_1\\_1\\_79\\_1\\_Annual\\_Report-2016-17\\_English.pdf](http://www.ipindia.nic.in/writereaddata/Portal/IPOAnnualReport/1_94_1_1_79_1_Annual_Report-2016-17_English.pdf)

<sup>4</sup> [https://ustr.gov/sites/default/files/2019\\_Special\\_301\\_Report.pdf](https://ustr.gov/sites/default/files/2019_Special_301_Report.pdf)

<sup>5</sup> [https://www.wipo.int/portal/en/news/2019/article\\_0021.html](https://www.wipo.int/portal/en/news/2019/article_0021.html)

<sup>6</sup> <https://www.forbes.com/sites/suparnadutt/2017/05/18/startups-in-india-fail-due-lack-of-innovation-according-to-a-new-ibm-study/#27a7b679657b>

<sup>7</sup> <https://www.vccircle.com/titan-backed-wearable-tech-firm-kaha-raises-6-2-mn>

other similarly developed countries<sup>8</sup>. Data from the Indian Ministry of Science and Technology<sup>9</sup> shows that India has invested 0.60-0.70% of Gross Domestic Product versus 2-3% for other major economies. Growth in research is essential for India<sup>10</sup>, and necessary to grow and maintain global competitiveness. This major expansion, to occur over the course of the next fifteen years, will require significant research infrastructure and capacity-building in many areas of the higher education system.

The anticipated increase in research under NEP is intended to create a culture for growth in science and technology research. However, the NEP does not account for development of infrastructure to improve academic technology transfer. As demonstrated time and again, effective technology transfer is critical to global competitiveness. While the top universities in India file robust numbers of patent applications, with 817 filed by the top ten universities in 2016-2017 alone<sup>11</sup>, academic licensing and startups in India lags comparative countries.

#### *U.S. Consulate in Kolkata IPR Program Goals*

With this background in mind the U.S. Consulate in Kolkata crafted a Notice of Funding Opportunity to create an IPR program that underscores U.S. support of India's efforts to grow the strength of its IPR ecosystem. The grant was awarded to The AUTM Foundation<sup>12</sup> and Apio Innovation Transfer (APIOiX)<sup>13</sup> with local support from the firm of Biswajit Sarkar Advocates – IP Attorneys<sup>14</sup>. Program goals were as follows:

1. Strengthen people-to-people ties between the United States and India through exchanges of information, experiences and expertise.
2. Provide hands on information to practitioners regarding intellectual property rights and protection policies for global partnerships.
3. Build capacity and knowledge of Indian practitioners and create linkages with U.S.-based practitioners.
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#### **Program**

The program was opened with a speech by the Consul General of Kolkata, Ms. Patricia Hoffman, who greeted participants and discussed the importance of intellectual property rights and protection to “innovation and creativity, which are drivers of job creation and for increasing

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<sup>8</sup> <https://www.firstpost.com/tech/science/india-needs-to-invest-more-in-scientific-research-and-development-isf-5534401.html>

<sup>9</sup> DST 2017, “Research and Development Statistics At A Glance”, Ministry of Science and Technology, GoI, 2017, 4, Accessed on November 28

<sup>10</sup> <https://www.hindustantimes.com/analysis/create-a-research-culture-for-the-growth-of-science-in-india/story-QKaufTdiDOWtxfBTqsdrBL.html>

<sup>11</sup> [http://www.ipindia.nic.in/writereaddata/Portal/IPOAnnualReport/1\\_94\\_1\\_1\\_79\\_1\\_Annual\\_Report-2016-17\\_English.pdf](http://www.ipindia.nic.in/writereaddata/Portal/IPOAnnualReport/1_94_1_1_79_1_Annual_Report-2016-17_English.pdf)

<sup>12</sup> <https://autmfoundation.com>

<sup>13</sup> <http://apioix.com>

<sup>14</sup> <https://www.biswajitsarkar.com>

high value production and exports.” She then went on to discuss the four pillars of intellectual property: creation, protection, commercialization, and enforcement.

Ms. Hoffman stated that “economies with robust IP regimes are more likely to attract venture capital and private equity funding; economies with favorable IP protection possess an average of 2.5 times more research and development-focused personnel in their work force and economies with IP systems that are robust receive an average of 45 times higher Standard and Poors credit rating than economies who IP systems lagged behind.”

She also noted the steady increase in India patent examiners and that India has become an International Search Authority for the PCT. Finally, Ms. Hoffman noted that it is important for all Indian creators and innovators to have strong enforcement mechanisms in place to assure revenues from their IPR with minimal threat from infringement.

*Summary of Session Content*

Session content was designed by APIOiX, a worldwide expert in innovation transfer, technology transfer, and entrepreneurship; and in consultation with local attorney Biswajit Sarkar to assure appropriate coverage of India IPR and case law.

Sessions were experiential and interactive, with ample opportunity for dialog between the presenters and participants. Following is a summary of each Workshop:

Workshop 1: Intellectual Property Practice Principles	
Copyrights, Trademarks and Patents	These primers were designed as introductions to the topics for individuals with some, but not detailed knowledge of the subject matter. Effort was made to highlight specific cases from both US and Indian case law relevant to the attendees (law students, university representatives, Indian patent office representatives and business executives).
Geographical Indications	Given the unique position of geographical indication IP in Indian commerce, specific focus was placed on the detail of its use and protection under Indian law. This session detailed several specific cases and planned to have a healthy Q&A component. Session leaders observed what was expected and more. This was in the top three sessions for the four day workshop.
Design Patents and Industrial Design	The Indian Patent Office in Kolkata leads the nation’s design patent review and examination. The object in this session was to provide a primer to the topic, cover case law in both countries (Such as Apple v. Samsung), and have significant participation from the Indian Patent Office. Again this session met and exceeded expectations.
Comparison of US and Indian Patent Law and Recent Decisions	The final sessions of the first two days covered a multitude of recent cases from both the US and India with emphasis on where the two countries laws diverge. Leaders expected to have some Q&A, but

	the attendees, many from local law programs, were highly engaged in debating the decisions and what they mean for the legal profession going forward.
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Workshop 2: The Role in Intellectual Property in Business Transactions	
Software	Starting on day 3, the discussion turned toward using IP as an essential building block of business development. Copyright and patent IP was discussed within the context of IP strategy. The object was to provide guidance as to which should be used as well as when and how.
Business Methods	Even though there isn't coverage under Indian IP law, the objective of this session was to provide an overview of the case law and the return of business method patent viability in the US. There was general interest in this topic area. More specifically there was an extension of the software conversation from the first session and a lot of dialog related to the types of software claims that can be claimed in the US.
Biotechnology	Although the session on biotechnology was warmly received, the attendees present were not particularly knowledgeable of the field. This limited the conversation to more general questions of biotechnology and the case law.
Negotiation, Licensing Agreements, Contracts, and Relationship Management	On day four the presentations turned to the topics of negotiation, licensing agreements, contracts and relationship management. All of these presentations were of great interest to the attendees of the conference. In addition to the basic knowledge, the presenters were able to give numerous examples of real situations in contract negotiation and contract management based on personal experiences.
Closing Q&A Session	The conference ended with an open Q&A long session, which was also attended by Indian officials in charge of IPR enforcement also available for questions. Attendees were allowed to ask any question they wanted to discuss and/or debate. This was an extremely dynamic session as there was a nonstop evolution of questions, answers and discussions of everything from case law to hypothetical situation.

### *Rousing Discussion*

According to Liz DiVito, Development Associate at the AUTM Foundation, "There was a lot of passion in the room. Each time the trainers, Arundee Pradhan and Michael Batalia of APIOiX, opened the floor to questions there were multiple hands in the air." Interestingly, many questions were direct to topic but there were also questions – which were sometimes

expressed as challenges – about how or why a certain topic or approach might not work in India.

Based on the questions raised it is clear that practitioners and entrepreneurs continue to struggle with mechanisms, processes, and cultural issues associated with IPR. Specific observations by the trainers are that there is:

- Great interest in how to combine patents, copyrights, and trademarks into a comprehensive IPR strategy as well as how to enforce them
- Still a gap at universities between obtaining IPR and achieving successful commercialization
- A strong continuing need for resources and infrastructure to support IPR training and development for entrepreneurs.

### *Local Engagement*

Symposium leadership had the opportunity to meet local stakeholders, including representatives from local India and U.S. patent, trademark, copyright, and design authorities as well as representatives from India Customs and Police IPR enforcement agencies. A number of these authorities participated in opening and closing sessions for the event. These interactions enabled even greater impact and engagement.

The inclusion of multiple governments and agencies allowed for a blending of ideas and priorities that elevated the value of the course, both for participants and for US-India relations. Participants gained important insights and contacts to assist them in their careers, and the inter-governmental interaction built connections between speakers and agencies. The outcome was a sense of US-India “team” in collaboration to advance the cause of IPR in India.

### *Pre-and Post-event Webinars*

The program included virtual engagements to acquaint the participants with each other prior to the event, prepare them for the workshop, and provide follow-up education and connectivity to facilitate ongoing awareness of IPR issues. Virtual engagements were accomplished via two webinars – one pre-event and one post-event. All webinars were lively and highly attended. Based on this, webinars were proven to be an excellent, low-cost IPR training mechanism for outreach to target audiences.

### *Evaluations*

Participants were asked to rate the course in four categories on a scale of 1 to 5, with “1” as not satisfied and “5” as highly satisfied. Overall the course was highly rated, especially with regard to the structure and speakers.

Workshop 1 Satisfaction	Average on a Scale of 1 to 5
Date	4.54
Location	4.21
Structure	4.50
Speakers	4.50

Workshop 2 Satisfaction	Average on a Scale of 1 to 5
Date	4.45
Location	3.95
Structure	4.36
Speakers	4.68

The composite score for Workshop 1 was 4.44 with location being ranked most poorly. The composite score for Workshop 2 was 4.36, again with the location ranked lowest. Workshop structure and speakers were well-ratings with the exception being the structure for Workshop 2 (details below).

Overall scores met or exceeded expectations, except venue (something to keep in mind should future workshops be held). Participants recommended that any future venue be closer to the city center. Note: during the time of the Symposium there was an Uber strike and there is limited access to public transport in this (new) sector of Kolkata.

The date, structure, and speakers all had strong ratings with the structure for Workshop 2 receiving slightly lower ratings. In reviewing the comments on structure there was no single reason or set of reasons given for this with comments ranging from “get more speakers on more topics,” “collaboration with more governing bodies,” and several mentions of excessive or “irrelevant questions from participants.” However, with regard to the latter, one participant requested even greater audience-speaker interaction and increased Q&A.

Among the comments from the speakers was this from Michael Batalia of APIOiX “There was solid basic knowledge of IPR among the attendees. This shouldn’t be surprising since we screened for basic knowledge [at registration in order to attend], but not expert knowledge. The level of debate of current case law was surprising to me as was the connection of private IP to community benefit.”

### *Suggested Topics for the Future*

In addition to rating the program, participants were asked what topics should be addressed in the future. The list was wide-ranging. After full review and sorting of topics by category, the following workshop topics are in highest demand:

- India and international IP law, with specific requests for more 1) PCT and EU laws 2) treaties and regulations 3) U.S. case law
- University IP development and commercialization/technology transfer
- Enforcement, both patent and copyright, plus mechanisms used in enforcement or contract disputes such as arbitration and mediation.
- IPR valuation

### **Conclusion**

Based on AUTM Foundation and APIOiX experience conducting trainings across the globe, this symposium was exceptionally well-received. Comments from participants were overwhelmingly



positive, which was reflected in the high ratings, and especially with regard to the quality of the speakers. Many participants requested that this symposium should be held again and that they would recommend participation to their friends and colleagues. A number of participants requested that the program be presented at their own universities. More specifically, the AUTM Foundation and APIOiX have received many requests, both at the symposium and in the form of follow-up messages via LinkedIn, that the event and team return to Kolkata.

It is clear that the community is keenly interested in the subject matter. Following are AUTM Foundation/APIOiX final notes and recommendations:

- Program attendance could be doubled or tripled. The size of the venue was limited by program budget and so attendance was capped and registration closed well before the event. A larger venue, closer to mass transportation is encouraged for future events.
- One-time meetings are not sufficient to create a culture change. In order for the Indian community to take advantage of the benefits of IPR in their respective businesses and sectors, it is vital to provide information regularly in forms that can be implemented. One such channel is webinars. Others include tools and resources that help to identify, assess, and strategize on IPR strategies.
- This course should be held on an annual basis and widely promoted as an All-India event. If held annually it will begin to build reputation and prestige. As an all-India event corporate sponsorship will be attainable. The course could be held in other locations or major cities as well.
- Participant request for return to Kolkata was very strong. Strong enough to warrant an annual event. Kolkata makes a unique and compelling venue, for both a regional or an All-India event.
- More frequent programming in several locations is also an alternative. There is a heightened level of interest to learn how to effectively use intellectual property and the need to increase technology transfer capacity to accommodate India's research growth objectives.
- Webinars are an excellent, low-cost way to engage stakeholders and to encourage development of cohorts. Webinars, both live or recorded (on-demand), would be a meaningful way to expand outreach and impact. This aspect of the program should be expanded for future programs. It is possible to consider a pilot for a stand-alone online initiative.
- Indian businesses, academics, entrepreneurs and students are hungry for this type of programming. Every effort should be made by the U.S. to assist India in its growth in this area.