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# MAKING INDIA EFFECTIVE

The country needs strong IPR policy to boost Modi's Make in India campaign

By Monica Behura

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**MAKE IN INDIA** was launched in 2014 with much fanfare by Prime Minister Narendra Modi to encourage local manufacture. The twin objects — to boost growth and provide employment — is laudable. However, with multiplying problems to guarantee manufacturers internationally recognised intellectual property rights (IPR), the roll-out of the Make in India movement might just hit some major speed bumps.

Firms need to be protected against theft and copying of manufacturing processes and patents. Modi had promised as much and has been harping on promulgating a National Intellectual Property Policy for the country. But large sections of industry see the IPR regulatory and monitoring

regime India as weak, and therefore, discouraging to a free flow of investment.

Sample this: Goenka Electric Motor Vehicles is a Haryana-based e-rickshaw company that has developed and produced the first commercial e-rickshaw branded as 'Prince'. Today the product has been copied and is sold as cheaper versions. A former Kolkata-based distributor of 'Prince', Kirti Solar, is manufacturing and marketing a copied version called 'Prime'. Meanwhile, the original manufacturers of 'Prince' are running from pillar to post to enforce their IPR over the original design. Goenka Electric Vehicles has also filed multiple court proceedings but with little relief coming their way. This is despite their



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product having been registered under the Design Act and being the first certified e-rickshaw model by the government-approved International Centre for Automotive Technology.

"It is an indigenous technology, researched and developed over two years. We were granted a patent too and now the courts are unable to protect us," says Zafar Iqbal, managing director of Goenka Electric Motor Vehicles.

### The IPR Deterrent

The plan to attract a large number of multinational companies to India under the Make in India campaign could be undermined by such rampant infringements. Patents allow firms with innovative products to benefit from their research and development by giving them exclusive right to make these products, for a pre-determined period of

time. If patents are infringed or the grant of patent registration delayed, it follows that the entry of companies into the Indian market with their products will be delayed, too.

At present, India has no specific legislation to deal with counterfeiting and piracy. Instead, there is a range of statutory, civil, criminal and administrative laws like the Trademarks Act, Copyrights Act, and Design Act which makes enforcement difficult and cumbersome.

The Indian IPR (Imported Goods) Enforcement Rules enacted in 2007 allows rights holders to make applications for customs action, to detain infringing goods and suspect consignments. However, enforcement and court procedures are perceived as slow. This together with lack of transparency and a backlog of cases in criminal courts can often cause frustration and confusion for rights holders. "For a government looking to encourage foreign companies to 'Make in India', reducing delays in decisions on patents may well be one of the first steps needed," says Salman Waris, Partner with the Delhi-based IP specialist firm TechLegis. India, Waris adds, needs to develop a culture of IP appreciation to produce world class products; otherwise we would neither be able to invent or develop world class technology; nor be able to fully convince the foreign inventors to share their technology and invest in India.

According to Jan Wrede, director at European Specialist IP firm, Dennemeyer & Associates, "In the European Union, the legal position of IPR protection is well-advanced, with well-established laws and treaties, easy customs interception, and specialised courts for IP infringements. In India, on the other hand, litigation and the whole enforcement procedure takes too much time. Logically, this increases overall cost, which is a deterrent".

### Counterfeiting Kills Creativity

The IPR scenario is scary, to say the least. In 2008, the value of counterfeit and pirated products was estimated to be \$650 billion, and this is expected to double to \$1.7 trillion by 2016-end. In a study commissioned by an Ficci committee against 'Smuggling and Counterfeiting Activities', the research identified seven sectors most vulnerable to counterfeiting — automotive parts, computer hardware, mobile phones, alcohol, personal goods, and packaged goods. The Automotive Component Manufacturers Association has estimated the value of fake spare parts in today's 'after-market' is between Rs 10,500-14,000 crore against Rs 8,500 crore three years ago. In effect, fakes account for a humongous 30-40 per cent of the overall aftermarket for spares



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**SHREEDHAR PARUNDEKAR**  
Head of brand protection, south-asia for Mercedes-Benz India

Commerce’s Global Intellectual Property Centre, India continues to languish at the bottom — at No. 29 of 30 countries.

### Where’s The Policy?

Experts point out that things may improve once the national IPR policy, drafted by the DIPP, is implemented. However, according to sources, the policy is still a long way off and is yet to get the Union Cabinet’s nod.

The objectives of the proposed IPR policy are to establish a dynamic, vibrant and balanced IP system in India. The IPR ThinkTank released its first draft report in December 2015, recognising the fundamental and vital links between IP, promotion, innovation and the successful development of innovative products.

These lofty goals are a significant step towards a progressive IPR regime. The challenge, however, lies

estimated at about Rs 35,000 crore.

Shreedhar Parundekar, head of brand protection, South-Asia for Mercedes-Benz India, raises some serious questions: Why would an international car maker come to India, when the country does not have adequate legislation to deal with IPR infringement, product infringement and product liability? Where most of the infringement cases go unnoticed, and it takes years and big bucks to trace out the culprits, where is the process or speed for enforcing IPR protection?

He points out that the legislation in India neither enforces any liability on the manufacturers; nor does it put into motion stringent measures and punishment to deal with counterfeiting. A few manufacturers, backed by local police, have taken the initiative and have begun conducting raids in order to curb counterfeiting. Tata Motors, for instance, had the premises of 33 producers of fake spare parts ‘raided’, who sold products under the ‘Tata Genuine Parts’ brand in Maharashtra.

It is estimated the government loses around Rs 2,200 crore a year in tax revenue, as the fake parts makers evade the country’s tax system. In the US, which has a stringent IPR protection regime to protect brands and products, those convicted of infringement are liable for imprisonment up to 10 years and/or fines up to \$200,000.

According to the 2015 IP index by the US Chamber of

in effective implementation. Predictably, the US has been goading India to adopt a faster pace. The two countries have agreed to establish an annual high-level IP working group as part of the Trade Policy Forum. But seriousness in India’s corridors of power can be gauged from the fact that a high-level IP working group met in November 2014 for the first time in four years!

Tabrez Ahmad, secretary general, Organisation of Pharmaceutical Producers of India, says the Indian pharmaceutical industry should move from being mere generic manufacturers to forward-looking, research-based companies. The Make in India vision cannot survive in the long-term without concrete measures. “To increase patent protection to global standards, it is necessary that innovations arising out of dedicated R&D are protected through patents, designs, copyrights and other IPs so as to create certainty in the minds of innovators and increase investor confidence,” says Ahmad.

India has all the essential elements for a successful Make in India’ programme — a large, young and skilled workforce, an enabling economic environment and competitive wages. But the one cog in the wheel that has gone missing is protection for innovation and creativity, without which the manufacturer cannot survive. **BW**

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