

Bilateral interactions with India

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India - Category 2

Background

Some limited improvements have been noted in Indian IPR legislation: In May 2016, amendments to India's Patent Rules 2003 entered into force. In September 2016, India ratified the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. Furthermore, in March 2017, India's new Trade Mark Rules 2017 entered into force.

India is currently focusing its efforts on administrative improvements, awareness raising and capacity building with a view to improving the efficiency of its IPR system. The Ministry of Commerce has created a cell for IPR Promotion and Management (CIPAM), whose aim is to supervise and support those efforts.

However, various areas of concern remain: In particular in patent law, restrictive patentability criteria combined with difficulties to enforce patents granted, as well as very broad criteria being applied for granting compulsory licenses or for revoking patents, make effective patent protection in India very difficult, notably for pharmaceuticals and chemicals but also for other sectors where local innovation is being promoted. Even if some positive measures have been undertaken by the Indian Patent Office to improve registration efficiency, there is still a worryingly large patent backlog.

Another area of continued concern is the absence of an effective system for protecting undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agrochemical products against unfair commercial use, as well as their unauthorized disclosure. To date, there seems to be no statute that specifically addresses regulatory data protection for pharmaceuticals and for the protection of trade secrets.

Strong engagement from the authorities to enforce IP and to improve the implementation of civil, criminal and customs procedures will remain very important not only for right-holders but also for creating a climate favourable to innovation.

Bilateral Negotiation-EU-India Free Trade Agreement (FTA)

The EU remains committed to negotiating an ambitious *Free Trade Agreement* (FTA) with India, but so far, no political decision to resume negotiations has been taken. The EU continues its attempts to engage with India also beyond FTA discussions, but so far progress has remained limited. An IP Dialogue was agreed with India in 2005, but has regrettably never been implemented due to

reticence on the Indian side. The existing *EU-India Sub-Commission on Trade* is a forum in which IP issues could be discussed, although India has proved reluctant in this respect.