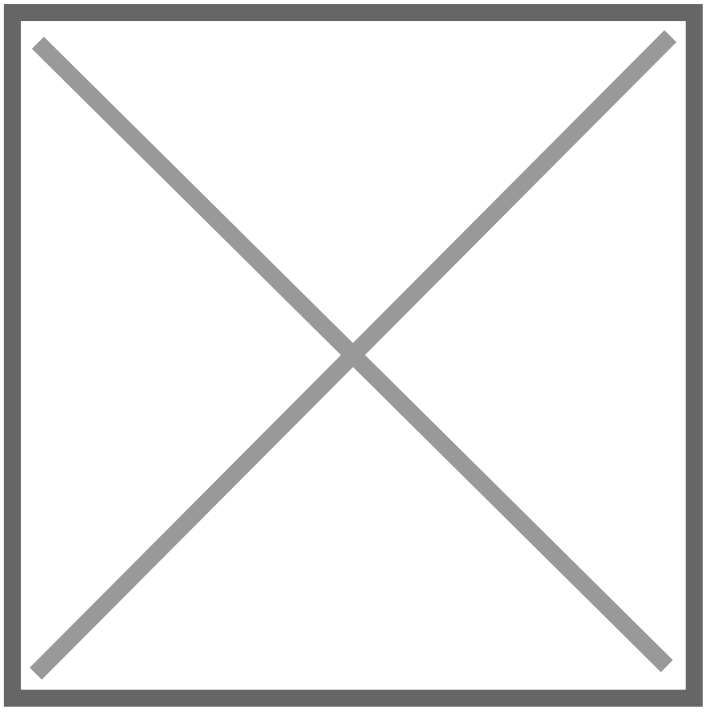
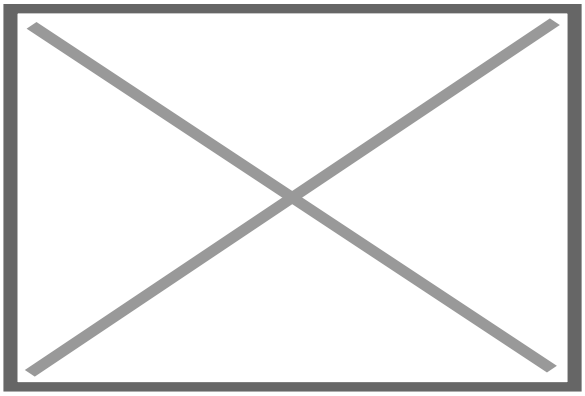
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Will it fast track research?

14 November 2011 | News



There are certain advantages to the Protection and Utilization of Public Funded Intellectual Property (PUPFIP) Bill. But will it fast track or stifle research with too much emphasis on intellectual property



The government is believed to have introduced the Protection and Utilization of Public Funded Intellectual Property (PUPFIP) Bill with a view to promote innovation in research. The PUPFIP Bill would also lay down a framework for protection and utilization of intellectual property arising out of public funded research, the ultimate objective being public good. Although majority of experts agree that the PUPFIP Bill has certain advantages, which surely are expected to foster innovation in the academia, there are lot of disagreements too on the present form of the Bill.

Advantages of the Bill

- Research institutions will, in a way, be obligated to protect and utilize intellectual property that is created by contribution of public funds if they want to retain title over the intellectual property (IP). These will focus on utility based research, which will, in turn, promote private collaboration with research institutions.
- Chances of utilization of products of public funded research will grow substantially due to the existence of an IP management committee, prescribed under the Indian Bill, to be established by every research institute that receives public funding.
- Inventors will be incentivized to pursue research because the Indian Bill prescribes that at least 30 percent of the royalty or profits generated from any public funded IP should go to researchers.
- The Indian people will certainly enjoy the fruits of public funded research since the Bill imposes heavy governmental regulations on assignment and exclusive licensing for using or selling products borrowed from public funded IP in India.
- As a result of the requirement to report to the government by the research institutions, the government will have a record of IP generated by public funded research as well as its value. Disputes are likely to decrease since the research institutions and the government are aware of their individual as well as inter se rights (the legal rights between or among the two parties that are involved).

According to Mr KV Subramanium, president, Reliance Life Sciences, Ã¢â?¬Å?One of the important benefits of the Bill is that it provides greater clarity on title and ownership of IP where government funds are used. It also provides a legal framework for interface between the government agencies, academia and the industry. The new system is expected to improve the flow of innovation from the laboratory to the marketplace and also help institutions recover their research expenditures.Ã¢â?¬?

Terming it as a step in the right direction, Dr Vijay Chandru, chairman and CEO, Strand Life Sciences, and president,

Association of Biotech Led Enterprises (ABLE), says, Ã¢â?¬Å?There is no doubt that there will be a push towards patenting resulting in filing of frivolous patents, but eventually the cost of patenting will dissuade people from getting frivolous patents.Ã¢â?¬?

Hopeful on the positive effects of the Bill, Dr Paul Ratnasamy, former director, National Chemical Laboratory, said, Ã¢â?¬Å?I strongly support an Indian Bayh-Dole Act since it provides incentives for the innovators and patent inventors. The dismal performance of our academia (unlike that in the US, where the universities are major engines of technical innovation) in generating IPR and filing patents is to a significant extent, due to the total absence of incentives.Ã¢â?¬? Dr Ratnasamy is currently at Conn Center for Renewable Energy Research, University of Louisville, Louisville, US.

Ã¢â?¬Å?The Bill would hopefully provide for the protection and utilization of IP originating from public-funded research,Ã¢â?¬? says Dr Ravi Dhar, senior consultant, IP Cell, BIRAP. He adds that it would, therefore, need modifications or revision of the existing IP rules and technology management strategy.

Talking optimistically about the Bill, Professor Shiv Shankar, faculty member, material science department, nanosciences engineering, chairman, IPR cell, Indian Institute of Science, says, Ã¢â?¬Å?This Bill won't compel the scientists to go for patent protection, rather it will make it possible for institutes, which get government grants, to own the IP that they have generated. The DBT requires all the recepients of its grants to co-share the IP and gain 50 percent of the royalty. The DST has no set rules for the same.Ã¢â?¬?

Burning issues

Some scholars and stakeholders point out that the legislation is unnecessary because the Indian government does not have a vast number of patents in its databases and that IP protection alone is not the best way to ensure technology transfer. The major disadvantages could be one or any of the following:

- The enormous penalties proposed to be imposed at every stage on the researcher as well as the research institutions under the Indian Bill may discourage research. The Bill seems to penalize the scientists who publicly disclose IP without a 30-day notice, and institutions that fail to protect IP, if it has a commercial potential. This could also lead the institutions to focus more on commercial research and ignore basic research, which may fuel innovations in the next 30-50 years.
- This Bill at the moment is being followed by many autonomous organization including the DBT. Copyright, trademark and others seem to be covered under the definition of 'public funded IP'. This might impair the basic research activity, which forms the basis of future industrial research. Requirement of compulsory protection of any intellectual property also gives rise to enormous amount of paperwork and may lead to administrative issues.
- Non-disclosure, which is a requirement in the Bill, restricts the dissemination of research within the academic community, and curtails freedom of openly discussing their research findings. Apart from this, since scientists cannot publish their research finding immediately, the findings get outdated, and promotional avenues for scientists get delayed. Exclusive licensing enables restrictions on the dissemination of academic research in the marketplace, and increase in cost of products based on public-funded research.

Expressing serious doubts, Dr B V Ravi Kumar, managing director, Xcyton Diagnostics, says, Ã¢â?¬Å?This Bill will be detrimental for scientific research as it will put unnecessary pressure on research institutes to produce something which is patentable. Of late, the cost of patenting has shot up and and institutes which have a fixed budget for intellectual property issues will not be able to afford the costs of patenting. Most institutes actually cannot judge what intellectual property is useful and patentable and hence can run into losses if they try to obtain a patent for all their research.Ã¢â?¬?

Even Dr Vijay Chandru, who favors the Bill but has certain reservations, cautions, Ã¢â?¬Å?Some points, such as the fine imposed if the research is not commercialized, are worrisome. There are some issues that need to be worked out. We need to be careful as it is not the first-to-file but rather the first-to-use who should be awarded the patent, an issue which is highly debated in the US.Ã¢â?¬?

Ã¢â?¬Å?The whole idea of a patent was to share the information so others can build and improve on the invention and reward people for the invention and essentially help build value for society. But when the same structure is used to block people from carrying out research, that's when society needs to worry. In India, if people go ahead and patent stuff, it's ok,Ã¢â?¬? adds Dr Chandru.

The Bill aims to incentivize innovation by sharing at least 30 percent of the royalty with scientists. Dr Ravi Dhar, senior consultant, IP Cell, BIRAP, said that despite the similar mechanism of sharing followed by numerous institutions for the last 20 years or so, the level of commercialization is very low.

Ã¢â?¬Å?Many of the autonomous institutes share a much higher percentage of royalty than the 30 percent mentioned in the

Bill. The government needs to understand the reasons for low productivity, lacunae in the implementation and fair distribution of the royalty by stake holders, including the ones dealing with technology management,Ã¢â?¬? says Dr Dhar.

Rahul Koul in New Delhi