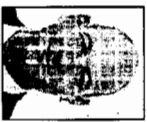


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On intellectual property, a new strategy

India could use IP rights to take its rightful place as a leader in global innovation

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BACK in 2007, when I visited India for the first time, I had the privilege of meeting some of the brightest and most talented minds in the fields of science and technology. I also had the pleasure of discussing and debating India's level of intellectual property (IP) protection. Essentially, what we were debating boiled down to one matter: the extent to which India's IP environment allows it to unleash and leverage the huge brain power and creativity of its citizens, not to mention being able to attract the knowledge, know-how and funds of global innovators. Fast-forward to 2014, and the answer is still not satisfactory.

Earlier this year, the Global Intellectual Property Centre released the second edition of the GIPC International IP Index, "Charting the Course". The GIPC Index measures and compares the strength of IP environments in 25 countries, including India. The 30 indicators measured by the index are based on the rights that have been identified as critical to a variety of business sectors, such as the music, content, pharmaceutical and

brand industries.

According to the GIPC Index, India was ranked the lowest among 25 countries surveyed — with a score of 6.95 out of a maximum score of 30. Interestingly, the discussion in India that followed the release of the index was characterised by two distinct reactions, which can be categorised as "contemplative" or "critical".

Contemplative reactions sought to focus on the challenges that exist in India with regard to IP, for example, concerning the relatively weak level of enforcement of existing rights, as well as the limited level of protection afforded to the different technological sectors included in the index.

Critical reactions sought to reject the findings of the GIPC index altogether, arguing that there is nothing really wrong with India's IP environment. In an attempt to undermine the legitimacy of the GIPC index and its findings, local critics argued that the index is biased, that it was a priori designed against India (and that the other 24 countries were just used as a pretext), that it focuses only on pharmaceutical issues (ignoring the other 25 indicators that do not relate to this field), etc.

But why are local critics so angry with the GIPC index and its results? One explanation is that India's score provides a serious challenge to the narrative that India has a balanced and adequate IP environment. According to the index, India falls short in almost all of the 30 indicators measured, perhaps even too short to be able to continue and defend this narrative. Indeed, in India and elsewhere, there is a growing disconnect between rhetoric and the increasing amount of empirical evidence suggesting that by improving its IP environment a country such as India is likely to benefit significantly from foreign direct investment, greater technology transfer flows and economic growth. OECD modelling, for example, suggests that, on average, for every 1 per cent increase in the strength of its IP protection, a country may expect a 2.5 per cent increase in its FDI inflows.

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Critics have also said that it is not comprehensive enough or out of tune with other international benchmarks. But looking at the Global Innovation Index, for example, India was ranked 66th in 2013 — hardly a world-beating position to begin with. This was also two spots lower than in 2012 and four lower than 2011. India's innovation score has deteriorated in the last few years, much like its IP environment.

There were also some attempts to argue that the GIPC index scores ill capture the level of protection provided to original medicines in India. Local critics argue that by refusing to grant IP protection to such medicines India is actually protecting true innovations in the field, while deterring itself against trivial innovation. Some paradoxical arguments were also made stating that, while these medicines are too trivial to be eligible for protection, they should nonetheless be subject to compulsory licenses, since the medicines are too important to be left in the hand of one company (usually an international innovator). But we can hardly treat breakthrough medicines — such as Glivec, Sutent and Nexavar — as trivial. Yet, all these medicines, as well as others, suffer from a lack of protection in India in one form or another.

One can like or dislike the GIPC index and its scores. One can also disagree with its methodology or analysis. But rather than attacking the messenger maybe it is also time to consider the message. A country like India, with its vast technological, technical and creative potential, should not try to divorce itself from the global IP system. Rather, India should consider using IP rights in order to leverage its huge untapped potential to take its rightful place as a global leader in innovation. The time is ripe for charting a new course.

The writer, professor of intellectual property, innovation and entrepreneurship at the University of Massachusetts, Netherlands, is managing director, Pugatch Consultium. He was part of the team that constructed the GIPC index.

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