October 15, 2007

Dear Mr. Prime Minister,

A nation's future and its ability to compete in the global market depend greatly on how it generates new ideas and innovates in science and technology. Intellectual Property creation and protection are critical issues in global knowledge based competition. Countries like China, Japan and Korea have improved their respective IPR systems through intense capacity building efforts, with a view to achieving greater innovation. It has become imperative for India to scale up efforts to build a world class IPR infrastructure and ensure that IPR is used in the best national interest for more extensive innovative research, technology transfer, wealth creation and overall benefit of society. Our consultations with various stakeholders have helped to identify some key areas that will facilitate such systemic reform. Some of these areas involve the granting of product and process patents, in which both the configuration of the state mechanism for patent examination and the systematization of a substantive perspective of patent examination keeping both treaty obligations and national interests in mind are crucial issues. Other critical areas involve alternative non-patent modalities for the creation and sharing of knowledge and inventions. Below, one area, namely, the configuration of the patent examination mechanisms, is discussed, with some reference to allied issues in patent utilization.

1.0 Modernization of IP offices

1.1 The processes in the IP offices need to become more accessible and user friendly and therefore, the ultimate objective of all efforts to modernize the patent offices must be to facilitate more transparency and procedural ease for the inventor as well as the common man. The NKC is aware of the initiatives proposed by the Ministry of Commerce and Industry in this regard, especially those pertaining to modernization of infrastructure, computerization, digitisation, e-filing, reengineering of procedures with information technology integration, human resource development, efficiency, transparency of procedures and creation of an operational environment of global standards. The need to be sensitive to the needs of the everyday citizen is crucial if the IP offices have to transform themselves into service providers delivering solutions with the greatest efficiency and highest quality standards. In this respect, some suggestions are as follows:

- The patent offices must be adequately e-enabled in real time with adequate search facilities so that all its transactions are transparent and publicly accessible.
- The examination procedures, practices and decisions in the IP offices should be streamlined and consistent
- A new detailed and clear manual of the examination procedure and practice, accompanied by full text versions of all the relevant IP laws of the country, should be created, periodically updated and made available to the public, in soft and hard copy. Interested stakeholders, particularly including civil society as the major stakeholder, must be

involved in its preparation This is particularly important since new Indian patent examination procedures will need to be devised keeping both treaty obligations and national interests in mind, and the creation of an adversarial process of patent examination will be crucial in these procedures.

- There must be an educational section for public awareness on IP (including the current status of IP law on various topics) made available in the public domain in all official languages of the country
- The patent granting procedure must involve adequate web based notification of an application with complete details to give sufficient opportunity for any pre grant objections to be filed. It is particularly essential to provide e-access in real time to all steps of a patent application, from the detailed patent description, examination reports at each stage and all amendments introduced at various points, in order to maintain complete transparency.
- There is urgent need to develop a comprehensive patent database that provides the latest information on patents, including patent applications and decisions of patent offices. At the same time, the patent offices must have access to relevant international databases and search engines, including databases with prior art literature
- To achieve the best global standards in quality and access, the IP offices should aim to become International Search Authority (ISA) and International Preliminary Examination Authority (IPEA) under the PCT and to this end, aim to conform to the PCT standards in respect of possession or access to minimum documentation, number of administrative and technically qualified staff and IT support systems
- Efforts should also be made to develop quantifiable indices for measuring, monitoring and managing quality and efficiency
- To ensure that the services of the IP offices reach the common people engaged in rural technologies, artisanry, crafts and traditional knowledge, there should be special schemes and establishments in the patent offices to deal with claims involving the creation and protection of traditional knowledge in its various forms. Since ensuring effective and competent legal representation is a critical problem for such groups, mechanisms should be evolved that incentivise such representation by the best patent lawyers in the country
- For each sector of highly technical patents, it may be necessary to constitute specific empowered committees of experts as part of the patent evaluation process in the patent office to decide on the suitability of granting a patent, in accordance with the provisions of the law. These committees must adhere to strict time bound procedures of examination and sufficient safeguards must also be maintained to ensure confidentiality and prevent any subversion of the process

2.0 Incentive mechanisms to attract and retain quality talent

2.1 An incentive driven system of human resources management, including fast track career structures for deserving staff should be developed within the IP offices to attract and retain competent personnel. As the IP Offices will be competing with the private industry to attract qualified scientists and engineers, they will need to reach out proactively to institutions of eminence. Candidates applying for the post of a patent examiner must be tested on a combination of skills, such as scientific/technical knowledge, practical experience of such knowledge, critical analysis, written and oral communication skills and problem solving. Further, to ensure the availability of trained personnel in all technology sectors, the appointment of such personnel should be done periodically in a manner that ensures adequate proportional representation of each sector, by considering as an illustrative benchmark, the volume of applications and grants in the sector.

2.2 In order to deal with the existing problem of attrition of trained examiners to scientific/technical institutions and the private sector, Flexible Complementing Scheme which has been applied to scientific and technical group "A" posts should also be implemented for the technical staff of the IP Offices. Furthermore, pay scales of patent examiners should be increased for those who successfully undergo IPR training. Additionally, a fast track career should be provided to examiners who consistently perform exceptionally better than average. To this end, a transparent annual confidential reporting system should be introduced. In this context, it is important that performance in IP offices must be measured on the basis of turnaround time for applications and decisions as well as the sustainability and tenability of the decisions made, and not on the basis of the rate of rejection/acceptance of applications.

3.0 Training and Human Resources Development for IP Offices

3.1 There is need to intensify IPR training efforts in the IP Offices and the IPTI, including induction sessions for new staff, mid career courses and regular exposure to global best practices in IPR, wherever available, keeping in mind the best national interest. At the same time, there must be relevant safeguard procedures in place to avoid potential conflict of interest issues between trainer and trainee. The overriding aim of IPR training is to ensure legal and technological competence consistent with the best international standards. For training of IP Office personnel, an in-house Professional Development Committee (PDC) should also be formed. The PDC should identify training requirements of the IP Offices and collaborate with IPTI to impart up-to-date IP training. Steps could also be taken to invite Indian scientists located in India and abroad who have experience in patent examination processes to participate in training initiatives with Indian patent examiners. However, in-country expertise must be urgently developed for training and sensitizing IP regulatory staff in the new India-specific treaty-compliant patent examination procedures that will be required for the new IP offices.

3.2 The IPTI should, with active involvement from stakeholders, prepare a comprehensive induction-training course for new patent examiners on various

IP topics such as patent searches (including international databases), substantive requirements for patentability of an application, examination procedure as well as drafting of objections to the grant of a patent, where a list of standard clauses of objections could be developed. Such a course could be of duration of three/six months. The course material should be standardized and could be made available on the Intranet. Once again, procedures for maintaining the adversarial nature of the new India-specific treaty-compliant patent examination process must form a major component of these programmes.

After the completion of the induction-training program, a senior patent examiner could be assigned to each examiner as a training officer who would act as a mentor by supervising work, providing further training on a case-by-case basis and eventually reporting on the work of the examiner. Such training could last for a period of about six months. The IPTI should also provide advanced level courses in examination and international IPR issues after about a year to eighteen months, including courses on pre-grant and post grant opposition procedures.

The IPTI should also collaborate with legal associations and organizations to set up specialized certificate and diploma courses in IPR and hold qualifying examinations for a patent attorney to act before the IP Offices. This would ensure that highest professional standards are maintained. Appropriate public private partnerships (PPPs) could also be evolved for this purpose.

4. IPR Education and Development of IPR Cells

4.1 Educational efforts on IPR must go beyond the IP offices and reach out to scientists and engineers working in national research institutes, universities, industry, the Bar, as well as to researchers and students, not just in the metropolitan areas but also in the smaller towns and rural areas of the country. Law schools throughout the country must also design specialized up-to-date courses and programs on IPR and the process of creating faculty chairs on the subject must also be intensified through better incentives for academia. Business schools also need to incorporate IPR dimensions in their curricula.

4.2 There is also an urgent need to set up IPR Cells in major scientific and educational institutions in the country with trained staff, competent in the law and technical aspects of relevant disciplines.

5.0 Establishment of a new institution for cutting edge policy expertise

5.1 The sheer complexity and scale of IPR capacity building for the 21st century require an independent world-class institute exclusively devoted to the field of IP. Once established, a National Institute of Intellectual Property Management (NIIPM), located in New Delhi, would be responsible for imparting training on a regular basis to various stakeholders, conducting cutting edge research, serving as a think tank to advise the government on IPR issues as well as conducting public awareness on IPR. Crucial parameters to set up the NIIPM include the establishment of an infrastructure of international standards,

development of human resource expertise and aspects relating to finance. Initially, the NIIPM could be funded by the central government. Gradually through public –private partnerships and other innovative financial mechanisms, the revenue generated from training programs would aim at ensuring self- sufficiency in the long run. The mandate of such an institution must involve policy research on the procedures to be adopted for patent examination so as to yield crucial input for periodic revision of these procedures. Also, this mandate must transcend the limited purview of the patent-oriented process for intellectual property management and must address itself innovatively to systematic exploration of other modalities for social utilization of knowledge and inventions through structures such as copyrights and commons.

6.0 IPR Tribunal, special rules of procedure and judicial training

6.1 Efficient enforcement is an indispensable facet of a strong IPR regime. IPR has emerged as a specialized area within law with urgent demands for speedy and efficient disposal of cases. It has become necessary to create a separate tribunal with jurisdiction over disputes in all aspects of IPR and develop a pool of competent judges who are trained in the legal as well as the technical aspects of IPR. The IPR Tribunal should be designed to deal with the appeals arising from the decisions of IP offices. In case of appeals where issues to be decided involve technical considerations, the tribunal should consist of three judges having considerable experience in law, where at least two of them also have technical qualifications.

6.2 To avoid undue delays and legal uncertainties, detailed and streamlined procedures with fixed time limits should be chalked out for the IPR Tribunal after consultations with stakeholders, including civil society. There should be a strict adherence to these procedures.

6.3 Training of the judiciary in IPR needs to be viewed as an essential IPR enforcement issue. The National Judicial Academy is already engaged in training judges on a variety of areas, including IPR. Such training efforts have to be intensified and the establishment of the NIIPM would be a significant step in this regard.

7.0 Protection of Traditional Knowledge through Traditional Knowledge Digital Library and promoting incentives for wealth creation from TK

7.1 The creation of the TKDL database is a significant effort to codify and classify traditional knowledge of the country. While there is increasing recognition of the important role of the TKDL to prevent misappropriation and grant of ‘wrong patents’ as well as to provide incentives for innovation and wealth creation, the key challenge here is to ensure its effective utilisation to achieve these objectives.

7.2 The Government of India has also already taken steps to allow access of the TKDL database to some international patent offices under non-disclosure agreements for the purpose of search and examination. Steps need to be taken

for the use and incorporation of TKDL into the minimum search documentation lists of International Search Authorities and other patent offices, while processing patent applications. Further, to prevent misappropriation and to facilitate more transparency, it is also necessary to disclose and declare all pertinent sources of information relating to TK in patent applications.

7.3 To create incentives for commercialization of TK, companies should be able to access the TKDL upon payment of adequate user fees and subject to the condition that inventions arising out of the TKDL would require royalty sharing with the government. The government should also take active steps to encourage investments in TK through collaborative efforts with industry and civil society. Innovative financial mechanisms should be evolved so that the revenue generated by the government from commercialisation of TKDL and other commercially synergistic initiatives is used to create a TK Development Fund. The proceeds of the fund would be used to conserve TK generally, conduct research on TK, expand the TKDL and benefit communities that have contributed to the creation of TK.

8. IP and Small and Medium Enterprises (SMEs)

8.1 It is crucial at the governmental level to invest in the IP needs of SMEs. There is need to facilitate better awareness on the strategic aspects of creating, managing, protecting and leveraging IP as a tool to further business opportunities and enable wealth creation. SMEs are emerging as crucial players in the global knowledge economy and unlike larger firms, they may not have the necessary resources to make the best use of IP. In this context, it is essential for special awareness campaigns for SMEs so that they are made fully aware of the various implications of IP and optimally translate such understandings into their everyday business practices.

9.0 Global Technology Acquisition Fund

9.1 The strategic positioning of India as a technology superpower will depend not just on development indigenous technological expertise, but also on the ability to make crucial technology acquisitions in the global market. Countries like Japan and Korea have successfully used such acquisitions to expand their IP portfolio and some Indian companies, especially in the pharmaceuticals and biotech sectors, have already been engaged in such acquisitions. However, such examples are sporadic and there is need for a national strategy on technology acquisition, with the aim of leapfrogging our expertise in key areas. A Global Technology Acquisition Fund, created by the central government, could be a significant step forward in facilitating such acquisitions, especially for the SMEs. The funds could be parked with a financial institution or a special purpose vehicle (SPV) could be created to manage the fund, with members of industry and S&T invited as board members. Relevant financial instruments, including support in the form of loans and equity, could be evolved, for such technology intensive acquisition.

10.0 IPR and New Technologies

10.1 It has become imperative for technical institutions, scientists, examiners and other relevant stakeholders to be fully aware of the IPR dimensions of new and rapidly changing technologies, especially in ICT, biotechnology, nano-technology, electronics, engineering, bio-informatics etc. There is therefore, need for high powered expert bodies that can help identify IPR issues arising out of each of such areas, with a view to evolving necessary IPR policies that would optimally foster greater global competitiveness for Indian industry as well as ensure faster innovation, wealth creation and overall development.

NKC views the aforesaid recommendations as necessary for India's continued growth as a leading knowledge economy in the 21st century and looks forward to being involved in consultations for their speedy implementation.

Thank you and Warm Personal Regards,

Sam Pitroda
Chairman,
The National Knowledge Commission

CC: Dr. Montek Singh Ahluwalia, Deputy Chairman, Planning Commission
Mr. Kamal Nath, Minister for Commerce and Industry