Public Funded Research In India—A Reckoner On Recent Legislative Actions

By Rajashree Sharma

Introduction

Post independence India has seen rapid development of human resources and infrastructure for science and technology, growth of indigenous industries in diverse sectors apart from other socio-economic aspects. To compete in a global environment, wherein it is necessary to promote creativity and innovation, India realized the need to protect and utilize the intellectual property created out of public funded research and development. It is thus necessary to develop a framework in which the protection and utilization of intellectual property is put in place.

With this intent the Government of India has introduced the "Protection and Utilization of Public Funded Intellectual Property Bill 2008"[1] (hereinafter the Bill) in the Upper House of Parliament. The Bill will provide the protection and utilization of intellectual property originating from public-funded research. The Bill has been modeled on the United States Patent and Trademark Law Amendments Act, commonly known as Bayh-Dole Act (BDA).[2] However, the Bill invited criticism from various stakeholders that a Bayh-Dole kind Act is not relevant in a developing nation such as India,[3] as the environmental conditions that prefaced the adoption of Bayh-Dole in the U.S. are different from those prevailing in India. Furthermore, there had been much criticism of this Bill even before it was introduced in Parliament as it received the assent of the Union Cabinet without benefit of a public debate.[4] Therefore, the Bill was referred to the Parliamentary Standing Committee for review, and recently the committee has come up with their comments after taking responses from various stakeholders. The Bill has been revised drastically relaxing patenting norms for inventions and giving the government more control over the institutions. A total of 52 amendments have been made to the original draft.[5] In August 2010, the Bill was laid on the tables of upper and lower house of the Parliament.

The *leit motif* of the bill is to create guidelines and institutional framework for stimulating research and innovations, ensure commercialization of the technology from lab to industry, earn royalty in return in academic and research organizations, and finally, to ensure access to innovation by all stakeholders for public good. After the review by the Standing Committee, the Bill now covers only patents and plant varieties. Trademarks, copyrights, designs and geographical indications have been removed.

Background

Currently in India, there were no proper guidelines or framework on how to manage patents and technology transfer. Furthermore, in 2007, the National Knowledge Commission recommended to the Prime Minister for enactment of legislation for creating a uniform legal framework for the government funded research and giving universities and research institutions ownership and patent rights.[6]

1. This will revitalize research in universities and give an impetus to public funded research, which would give universities and research institutions ownership and patent rights over inventions arising out of government funded research.

1. The Protection and Utilization of Public Funded Intellectual Property Bill, 2008 framed by Ministry of Science and Technology, Government of India to provide for the protection and utilization of intellectual property originating from public funded research and for matters connected therewith or incidental thereto. Source: *www.prsindia.org/.../1229425658_The-Protectionand_Utilisation_of_Public_Funded_Intellectual_Property_Bill__2008.pdf.*

2. Bayh-Dole Act (1980) Enacted on December 12, 1980, the Bayh-Dole Act (P.L. 96-517, Patent and Trademark Act Amendments of 1980) created a uniform patent policy among the many federal agencies that fund research, enabling small businesses and non-profit organizations, including universities, to retain title to inventions made under federally-funded research program. Source: *www.autm.net/Bayh_Dole_Act.htm.*

3. Sangeeta Chadha, Rajashree Sharma: Public Funded Research in India:- *A Retrospect Society for Technology Management Newsletter* July 2010 | Vol. 5 No. 2 ISSN 0974-3863.

4. Sangeeta Chadha, Rajashree Sharma: Public Funded Research in India:- *A Retrospect Society for Technology Management Newsletter* July 2010 | Vol. 5 No. 2 ISSN 0974-3863.

5. Parliament of India, Rajya Sabha, Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests; Two hundred eleventh report on "The Protection and Utilisation of Public Funded Intellectual Property Bill, 2008."

6. Legal Framework for Public Funded Research-recommendations-National Knowledge Commission of India.

2. This will create an enabling environment for commercialization of such inventions through licensing arrangements where inventors would also be allowed to receive a share of the royalty.

Therefore, when this Bill becomes an Act and comes into force, it will immensely facilitate research and tech transfer by academic institutions, and it is inevitable in view of the fact that in the innovation ranking, India is at the bottom. Furthermore, this is the need of the hour to become a discovery–innovation nation rather than copying others. Apart from elite scientific institutions that have institutionalized some policies and practices, only 5 percent of the research organizations have technology transfer offices like in Indian Institute of Technology (IITs). There are very few skilled people to handle technology transfer and licensing in India, and academic institutions do not have patent cells except a few academic institutions. According to the Department of Biotechnology (DBT) almost 60 percent of institutions do not have policy guidelines for patent cells.[7]

Characteristics of the Bill

The Bill will spur economic development in the technology sector by creating a system that facilitates commercialization of government funded research, leading to new products and services for consumers and businesses and resulting economic growth. Thus, a legal regime that permits patenting by recipients is a necessary first step to drive commercialization and resulting economic development. Definitely, the bill will enhance Indian innovation and competitiveness in the global economy.[8]

The Bill further aims to provide for patenting as an obligation, technology transfer as a responsibility and royalty as a right to the scientists. This Bill further gives an obligation to the scientists to patent when there is something patentable because a lot of scientists do not want to patent or do not patent. Further, it makes obligatory on the scientists and the institutions to negotiate with companies for technology transfer. Additionally, royalties will benefit educational institutions, increasing technological innovation and the growth of a skilled workforce. The income from intellectual property will promote self-reliance and will minimize dependence of universities, academic and research institutions and other recipient organizations for Government funding.

As an outcome, this Bill will give rise to a number of patents because now every scientist getting public money would be under an obligation by law to patent what is patentable. It will also increase the flow of knowledge to industry.

The Bill also seeks to address technology transfer issues by providing an intellectual property management committee within the organization within one hundred and eighty days of the receipt of public funds. Additionally, not less than 30 percent of the income or royalty has to be given to the intellectual property creator. Further, the legislation will facilitate commercialization of Intellectual Property generated out of Government funded research and development and will also promote an innovation culture within the country. The income from intellectual property will promote self-reliance and will minimize dependence of universities, academic and research institutions, and other recipient organizations for Government funding

■ Rajashree Sharma,
Corporate Law Group,
Partner and Patent Attorney,
New Delhi, India
E-mail: rajashreesharma@clgindia.com

Criticism

The Bill has attracted both positive and negative feedback from various quarters with regard to the pharmaceutical R&D sector, which is currently in its nascent stage in India. At this point in time, if a Bayh Dole like act is adopted, then there are chances that research will be driven by market rather than necessity. While the industry works on the principle of profit making and operates in an environment of competition, the industry-academic association might deviate the latter from the path of knowledge dissemination to revenue generation. Another apprehension is that by providing discretionary power to the Universities involved in research, the government may lose their authority over inventions which should be used for the general masses.

Furthermore, organizations like Universities, such as Activists for Essential Medicines, raised its concern that Bayh Dole does not have much of a role in innovation of neglected diseases. Owing to the fact that the treatment for neglected diseases is not commercially viable, Bayh Dole does not offer any additional

7. Parliament of India, Rajya Sabha, Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests; Two hundred eleventh report on "The Protection and Utilisation of Public Funded Intellectual Property Bill, 2008."

8. Rajashree Sharma—"Protection and Utilization of Public Funded Intellectual Property (Bill 2008)" The Indian Version of Bayh Dole Act—An overview-presentation made at Bayh-Dole Act in the Asian Region-A Work in Progress and looking forward, June 8, 2009, LESI Conference, Manila.

incentive which can promote research in this area; and India while enacting the Act should incentivise the research and innovation of drugs related to neglected diseases. However, the Standing Committee report has taken care of these concerns by providing recommendations to overcome the shortcomings.[9]

Final Comments

The Bill will provide a uniform legal framework within the country for protection and utilization of the Intellectual Property generated out of public funded research and development and innovations. The new draft proposes to give the government the right to use any invention patented by a state-funded institution, and to issue non-exclusive licenses for the technology to any third party in the public interest. It also mandates that public-funded institutions disclose all their patents as well as licensing and commercialization details on their Web sites for public scrutiny. Secondly, the mandatory patenting of all inventions has been removed because all of them may not be potent enough to be converted into a product or technology. Furthermore, the punitive clauses where public funded research organizations that fail to meet the terms and conditions have to pay back 50 percent of the grant to the Government and may lose future funding have been removed from the Bill.

The authority, who is framing the Bill, has felt that the knowledge flow from laboratory to industry is not happening effectively in the public funded research institutions. The Bill will facilitate to institutionalize processes by bringing a uniform practice to provide a balance and effective mapping of intellectual property, patent, tech transfer and provide royalty as a right to the scientists. This way the flow of knowledge to industry is seamless and guided by some principles, and the universities, academic and research institutions can handle it efficiently. ■

9. Shailly Gupta, Centad, October 20, 2008-*Critique on Public Funded R&D Project Bill: Indian Version of U.S. Bayh Dole Act.*