

Role Of Intellectual Property Rights In International Business With Special Reference To BRIC Countries

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INTELLECTUAL PROPERTY RIGHTS - A CLOSER LOOK

Intellectual property is an umbrella term encompassing various legal entitlements, which attach to certain types of information, ideas or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the intellectual property.

Intellectual property laws vary from jurisdiction to jurisdiction. However, these laws are becoming increasingly harmonized through the effects of international treaties such as the 1994 World Trade Organization (WTO), Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs).

A typical IPR tool kit includes- patent, copyrights, trade and service marks, geographical indications, industrial designs, layout designs of integrated circuits, protection of undisclosed information (trade secrets) and plant varieties (See Box 1 for details).

WHY CARE FOR IPRs?

Intellectual property protection is the key factor for economic growth and advancement in the high technology sector. There are several evidences in the literature, which show that IPR protection helps in technology diffusion, which in turn holds significant implications for economic growth (Nordhaus, 1969; Landes and Posner, 1989; Falvey, Foster and Greenaway, 2004; Grossman and Lai, 2004). Further, intellectual property adds value to all industrial as well as

Box 1: IPR Tool Kit	
TOOL	FEATURES
PATENT	It protects inventions that are novel, non-obvious with respect to the prior art and useful.
COPYRIGHTS	It protects creative works including literary, dramatic, musical, and artistic and certain other intellectual works, both published and unpublished.
TRADE AND SERVICE MARKS	A Trademark is a word, name, symbol or device which is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A service mark is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product.
GEOGRAPHICAL INDICATIONS	It protects goods that can be identified as originating or manufactured in the territory of a country or a region or locality in that territory where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin.
INDUSTRIAL DESIGN	It protects the shape, configuration, pattern, colour etc., of a registered industrial design.
LAYOUT DESIGNS FOR INTEGRATED CIRCUITS	It not only protects the chip, but also the articles incorporating it.
TRADE SECRETS	This provides protection to persons/institutions on information, which is lawfully under their control from being disclosed to or acquired.
PLANT VARIETIES	It provides protection to new plant varieties by an effective " <i>sui generis</i> " or any combination of " <i>sui generis</i> " and patents.
Source: (1) Ganguli (2006), Box 2.1 pg. 32 to 35. (2) USPTO: http://www.uspto.gov/web/offices/pac/doc/general/whatis.html	

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business concerns. It provides a fillip to invest in research and development. In the era of knowledge-based economy, information is of capital importance. With the proliferation of websites and growth in e-commerce, protecting information in the digital or non-digital form has become the top IPR issue. The same argument can be extended in case of companies who have earned consumer recognition for their brand names and trademarks. A recognized brand name or trade mark represents the goodwill that has been built into the product or service.

BRIC ECONOMIES: AN OVERVIEW

BRIC is an acronym that refers to the fast growing developing economies of Brazil, Russia, India, and China. The acronym was first coined and prominently used by the Goldman Sachs in 2003 (Goldman Sachs, 2003). Goldman Sachs argued that the economic potential of Brazil, Russia, India, and China was such that they may become among the four most dominant economies by the year 2050 (See Table 1). These countries encompass over twenty-five percent of the world's land coverage, forty percent of the world's population and hold a combined GDP (PPP) of 15.435 trillion dollars (See Table 2). The prediction made by Goldman Sachs is based on the logic that China and India respectively would become dominant global suppliers of manufactured goods and services. On the other hand, Brazil and Russia would become dominant as suppliers of raw materials.

RANK	COUNTRY	GDP (US\$ MILLION)
1	China	70,710,000
2	United States	38,514,000
3	India	37,668,004
4	Brazil	11,366,005
5	Russia	8,580,0007

Source: Goldman Sachs, 2007

Indicator	Brazil	Russia	India	China
Geographical Size	5th	1st	7th	3rd
Population	5th	9th	2nd	1st
GDP (PPP)	9th	7th	4th	2nd
FDI inflow	16th	12th	29th	5th
Number of mobile phones	6th	4th	2nd	1st
Number of internet users	5th	11th	4th	1st

Source: <http://en.wikipedia.org/wiki/BRIC> (accessed on 27/10/08)

EVOLUTION OF IPRs IN BRIC ECONOMIES

If the predictions of Goldman Sachs comes true, then it is reasonable to conclude that over the next four decades, the BRIC economies will increasingly influence the world's political, economic and military balance of power.

The past record of BRIC economies in protecting IPRs leaves much to be desired (Bird, 2006). In fact, these economies are ranked among the lowest in the world when it comes to safeguarding IPRs (See Table 3).

Countries	RANK
U.K.	1
U.S.A	2
Germany	3
Netherlands	4
Australia	5
India	19
Brazil	20
Russia	21
China	22

Source: Taylor Wessing's (2008), pg. 02

There are several reasons for infringement of IPRs in these economies, including poverty, lack of adequate laws, inadequate enforcement mechanism, etc. However, the most important reason is sociological. In these societies, given that there is widespread indifference to issues related to intellectual property rights, violating such rights is not considered as a heinous crime. In fact, at times the same is encouraged. The BRIC economies have different economic and political histories (Bird and Cahoy, 2007).

✿ After its independence from Portugal in 1822, Brazil experienced fast pace industrialisation through much of the twentieth century. Between 1970 and 1980, it survived oil shocks and its domestic output expanded by average 8 per cent. During 1980s, it suffered the impact of global commodity downturn, inflationary pressures and high interest rates. The 1990s and 2000s were marked with widely fluctuating growth rates, a depreciated currency, and poor administrative reforms (Kedia, Lahiri and Mukherjee, 2003).

✿ Russia, by contrast, emerged from the disintegration of the Soviet Union in 1991, with little history of democratic governance and legal free markets (Bird and Cahoy, 2007). Russian leaders dismantled the centrally planned economy and distributed ownership of state enterprises to managers and other citizens. Private property ownership in Russia brought abuses through dubious loans-for-shares schemes in which powerful citizens "purchased" state assets from government officials in rigged auctions. The result was the emergence of a cadre of oligarchs, who controlled most of Russia's most valuable natural resources and industrial assets (McCarthy and Puffer, 2003).

✿ India has been the cradle of democratic governance for centuries. However, in the post-independence period, it suffered from a command and control planning system that had generated large bureaucratic governments, inefficient production and distribution methods, and a stifling restriction on imports. This resulted in India's share of international trade declining from 2.5 per cent in 1947, to 0.5 per cent in 1980. Weak returns on investments in large, capital-intensive projects arising from delay and cost overruns also contributed to India's economic malaise. With the adoption of the economic reforms programme since 1991, the country has experienced remarkable growth and has been successful in breaking the taboo of the "Hindu rate of growth" (Majumdar, 2004 and Sheth, 2004).

✿ Since 1949, the People's Republic of China has repeated attempts to boost economic growth its economy. Under Mao Zedong's "Great Leap Forward", a program of collectivization of agriculture and promotion of small-scale rural industry after an initial success, resulted into an economic disaster. Mao's successor, Deng Xiaoping, reversed the economic policies of Mao and launched wide-spread economic reforms. Today, China follows what is known as market socialism.

✿ Given the vastly different political histories, the BRIC treatment of intellectual property law and enforcement remains unsatisfactory, especially by American and European standards. It is no coincidence that all four economies have been subjected to scrutiny from the United States of America.

✿ Till early 1980s, Brazil's intellectual property law lacked patent protection for pharmaceutical products and processes. In 1988, President Reagan placed a 100 per cent tariff on \$39 million dollars worth of Brazilian imports to the United States. Only when the Brazilian government announced that it would draft legislation protecting pharmaceutical products and processes, and that it would ensure a bill would be presented to the Brazilian National Congress by March 20, 1991, did the U.S. government lift the sanctions (Bass, 2002 and Bird and Cahoy, 2007).

✿ Russia has also experienced U.S. pressure. In 1995, the United States Trade Representative (USTR) placed Russia on its Watch List in 1995 and then elevated Russia to its Priority Watch List in 1997. Furthermore, Russia is a major beneficiary of the U.S. Generalized System of Preferences (GSP) program, designed to promote the economies of developing countries through the allowance of duty-free products. Cited by the International Intellectual Property Association (IIPA) as having the worst copyright piracy problem in the world, the IIPA has recommended that the USTR suspend GSP benefits for Russia (Mertens, 2006 and Bird and Cahoy, 2007).

✿ India acceded to the provision of TRIPS due to its BOP crisis in early 1990s (Foster, 1998). In 2000, pharmaceutical representatives demanded that the USTR place India on its Priority Watch List. As of 2007, India remains on the USTR's Priority Watch List, cited for weak copyright laws, inadequate enforcement, and slow judicial resolution of criminal action (Bird and Cahoy, 2007).

✿ The USTR placed China on its first Priority Watch List in 1989 (Hindman, 2006 and (Bird and Cahoy, 2007)). China continues to remain on the USTR's Priority Watch List.

IPRs PROTECTION IN BRIC ECONOMIES

With its coercive tactics, the United States has succeeded at least in part in improving the protection of intellectual property rights in the BRICs over the past 20 years. All four BRICs relented somewhat under U.S. pressure to pass new laws and improve enforcement.

Brazil in a major piece of legislation, i.e. Law 9.279 of May 14th 1996 enacted what is known as the Brazilian New Patent Law. It comprises of a complete code of industrial property and replaced the existing law of 1971. It establishes the rules for patents, protection for models of utility, industrial design, trademarks, geographic indications; time-limits of protection for each one of them; voluntary and compulsory licenses, rights of the employers and employees; technology transfer and registration at the official agency (Instituto Nacional da Propriedade Industrial - INPI); unfair competition; and criminal and administrative sanctions (Arcanjo, 2000 and Bird and Cahoy, 2007).

Russia enacted the Federal Patent Law on September 23, 1992. It protects patents, trademarks, geographical indications, software databases, integrated circuit layout designs and copyrights.

Among, the four BRIC countries, India probably was the first to enact comprehensive laws protecting IPRs. As part of its commitment to the WTO, it brought about several important changes. This included the following:

- 1) The Indian Patent Act, 1970 was amended to allow product patent regime by 2005. Today, the Act allows both product and process patent.
- 2) The Indian Patent Act, 1970 also allows exclusive marketing rights to MNCs in the field of pharmaceuticals and agricultural chemicals. These rights are granted for five years.
- 3) The Copyrights Act, 1957 was amended in 1994 to comply with Agreement on TRIPs.
- 4) A legislation giving protection to layout designs was introduced in 1999.
- 5) The Trade and Merchandise Marks Act, 1958 was amended to comply with the TRIPs requirement.
- 6) A bill was passed in Parliament in 1999 to provide protection to service marks.
- 7) India's legislation on Customs Valuation Rules, 1998, has been amended to conform to the WTO agreement.

There was no sustained indigenous intellectual property protection system in China for long. The People's Republic of China (PRC) began to establish an intellectual property protection regime based on the Soviet model during the year 1949. In 1978, China adopted the open-door policy. The Patent Law of China was first promulgated on March 12, 1984. There are three types of patents: patents for inventions, utility models and designs. According to the Article 5 of the Patent Law, no patent right is granted for any invention-creation that is contrary to the laws of the State or social morality or that is detrimental to public interest (Bird and Cahoy, 2007). Also, no patent right is granted for any of the following:

- ✿ Scientific discoveries;
- ✿ Rules and methods for mental activities;
- ✿ Methods for the diagnosis or for the treatment of diseases;
- ✿ Animal and plant varieties;
- ✿ Substances obtained by means of nuclear transformation.

According to article 22 of the Patent laws, the basic requirement for grant of a patent is; "Any invention or utility

Countries	2002	2003	2004	2005	2006
USA	41,296	41,029	43,350	46,772	50,089
JAPAN	14,063	17,414	20,264	24,864	26,906
GERMANY	14,326	14,662	15,216	16,009	16,866
RUSSIA	29,225	31,573	30,192	32,254	37,691
CHINA	1,018	1,295	1,706	2,449	3,910
INDIA	525	764	724	679	780
BRAZIL	201	219	278	280	328

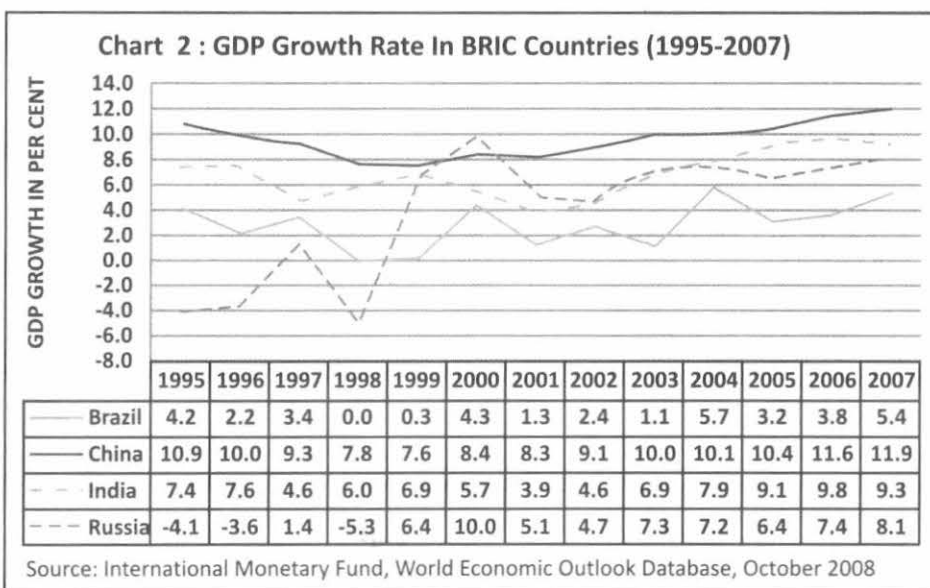
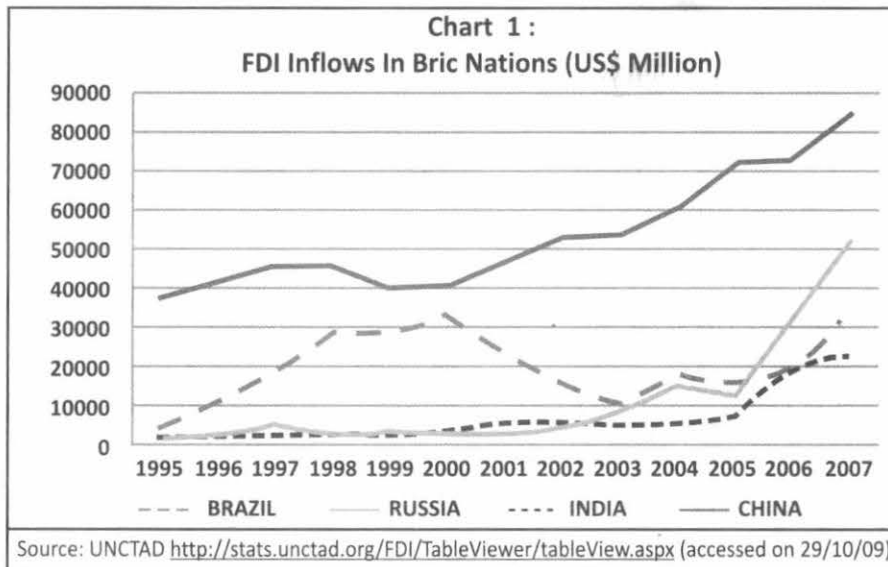
Source: WIPO (2008)

model for which patent right[s] may be granted must possess novelty, inventiveness and practical applicability.” (<http://english.ipr.gov.cn/en/index.shtml>)

All the four BRIC economies have tried to create an institutional and legal mechanism for creation and protection of IPRs. The positive impact of the same could be seen from the increase in number of patents filed in these countries (See Table 4). Patent statistics are a reliable indicator of innovative activity. Therefore, it has become standard practice to use patent statistics for monitoring innovative activities and the development of new technologies (WIPO, 2008).

FDI INFLOWS AND ECONOMIC GROWTH IN BRIC COUNTRIES

It is claimed that foreign direct investment (FDI) inflows and technology transfer have strong complementarities with creation and protection of IPRs (Maskus, 1997). Among the BRIC economies, China stands the tallest in terms of maximum FDI inflows, especially since 2000. Russia has experienced a take-off in FDI inflows since 2005. The inflows of FDI reached its peak in 2000 for Brazil and then for next three years, it tapered downwards again to pick up from 2003. India has seen steady inflows during the period under consideration, albeit far less than other economies within the BRIC (See Chart 1).



It is worth keeping in mind that FDI inflows in the post WTO regime became substantial only after 2000. This coincides with the period during which these economies took a number of steps to strengthen their respective IPR laws. To an extent, this corroborates the hypothesis of linkage between FDI and IPR protection. The next obvious question is whether the inflow of FDI has accelerated the economic growth in these economies?

During the period 1995 to 2007, only China's domestic output experienced a double-digit growth (10%) on an average. India (7%), Russia (4%) and Brazil (3%) came second, third and fourth respectively (See Chart 2). It seems that strong domestic economic performance is a catalyst for encouraging FDI inflows (especially in case of China and India) rather than FDI accelerating economic growth. What follows from the above discussion is that strengthening of IPR regimes in BRIC economies have led to greater inflows of FDI. However, the economic performance of these economies is not only dependent on FDI inflows. This is not to say that FDI inflows do not have a role in accelerating economic growth. In probability, these economies have yet to leverage foreign capital and technology, which may prove to be vital in the assumed ascendancy in the decades to come.

CONCLUSION

In the modern day knowledge based economy, IPRs play an important role in stimulating national level competitiveness and growth. WTO's TRIPS has laid down detailed rules governing these rights. The BRIC economies are expected to play a dominant role on the global stage in the next few decades. Given the past socio-economic and political conditions, BRIC economies have got themselves enlightened about the need to respect knowledge based assets only in the recent years. These economies have taken measures to comply with the requirements of TRIPS, albeit of varying degrees. This has helped them to attract greater FDI inflows in the recent years. However, the evidence for role of FDI in accelerating economic growth is weak. Therefore, in the coming years, it is reasonable to assume that the ascendancy of BRIC economies would depend to a large extent upon their ability to leverage foreign capital and technology. This in turn would depend upon their ability to create and protect intellectual properties in their respective economies.

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