Intellectual Property Office

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IPDOME
IP STRATEGY ADVISORS

Toolkit and Resources

UK Intellectual Property Office

The IP SMART Approach

to doing business in India

SWAPNA SUNDAR

THE IPSMART APPROACH TO DOING BUSINESS IN INDIA

Toolkit and Resources

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Supported by the
UK Intellectual Property Office

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The IP SMART APPRAOCH TO DOING BUSINESS IN INDIA: Toolkit and Resources

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Introduction

This toolkit is the outcome of the Accountable Grant Agreement dated 13.08.2015 between the UK Intellectual Property Office and Swapna Sundar, CEO, IP Dome. Two proposals were made by the author, one contemplating a study of IP strategies used by foreign companies in India, and a second providing a toolkit for UK companies to profitably deploy their IP in India. The Toolkit proposal was chosen for the grant. However, during subsequent discussion, the grant administrators enquired if it would be feasible to integrate the two proposals to enhance its value as a resource. Initially the IP Dome team felt that it would be difficult to combine the two proposals within the time and resources provided by the grant. Even so, in the course of our research, we found it advantageous to undertake a basic study, though not an elaborate one[1] of IP strategies that have been successful in India. This would ensure authenticity of the toolkit towards evolving an effective IP strategy.

The additional advantage is the wide canvas that has emerged in the toolkit which has broadened its purpose and improved its quality. From an IP perspective, it has expanded into several market-entry strategies, that are peculiar to India. Many studies and toolkits in the last few years have focussed on the interplay of IP Rights and Legal Enforcement of IP in India. Obviously, such toolkits have inherent value. However, the present toolkit focusses on the intersection of IP and

[1] An elaborate study would still be rewarding and of immense value.

the Market, towards enhancement of value and building a sustainable competitive advantage[2]. The distinguishing feature of this toolkit is based on the belief that advantageous enforcement of IP is directly relatable to its strength in the market – strength is assessed not merely in terms of legal parameters, but in relation to competing IP assets in the market and on strategic alliances. The toolkit sheds the preoccupation with the interaction between IP and the enforcement agencies, and instead focusses on the market dynamics and stakeholders who enable IP owners and licensees to benefit from their Intellectual Property.

The objective of the toolkit is to encourage a partnership informed and enhanced by IP and technology transfer between UK companies and Indian companies. This toolkit is a guide for UK firms, and in particular SME firms to deploy their Intellectual Property in India in a manner that enables them to increase the value of their enterprise and protect their competitive advantage in the market of India. It is presumed that the reader has a basic knowledge of the process of creating or generating, filing and prosecuting IP applications in India. It is also presumed that the reader understands the basic legal procedures surrounding commercial activity in India, including setting up companies and enforcing contracts – or that she has access to such relevant knowledge through her lawyers or auditors. To gain a general understanding of the use and protection of IP in a commercial context, the reader is encouraged to read the 'IP SMART WORKBOOK – *The Lab to Market Guide to Inventing*[3]' by Swapna Sundar.

The toolkit and resource provides a glimpse of the different IP Strategy approaches used successfully by companies in India. While there are lessons to be learnt from the strategic approaches, many of them may not independently work for you. Instead, the objective of the toolkit is to allow you to determine which IP strategy, or combination of strategies work best for you. Ideally, you should get further advice about your particular requirements and decisions from your IP or marketing consultant in customising your strategy. This toolkit does not give either legal advice or market advice, but would highlight some areas where you may need legal assistance or market expertise from Indian professionals.

[2] A competitive advantage is an advantage over competitors gained by offering consumers greater value. Michael Porter defined the two types of competitive advantage an organization can achieve relative to its rivals: lower cost or differentiation.

[3] http://www.lexisnexis.in/the-lab-to-market-guide-to-inventing.htm

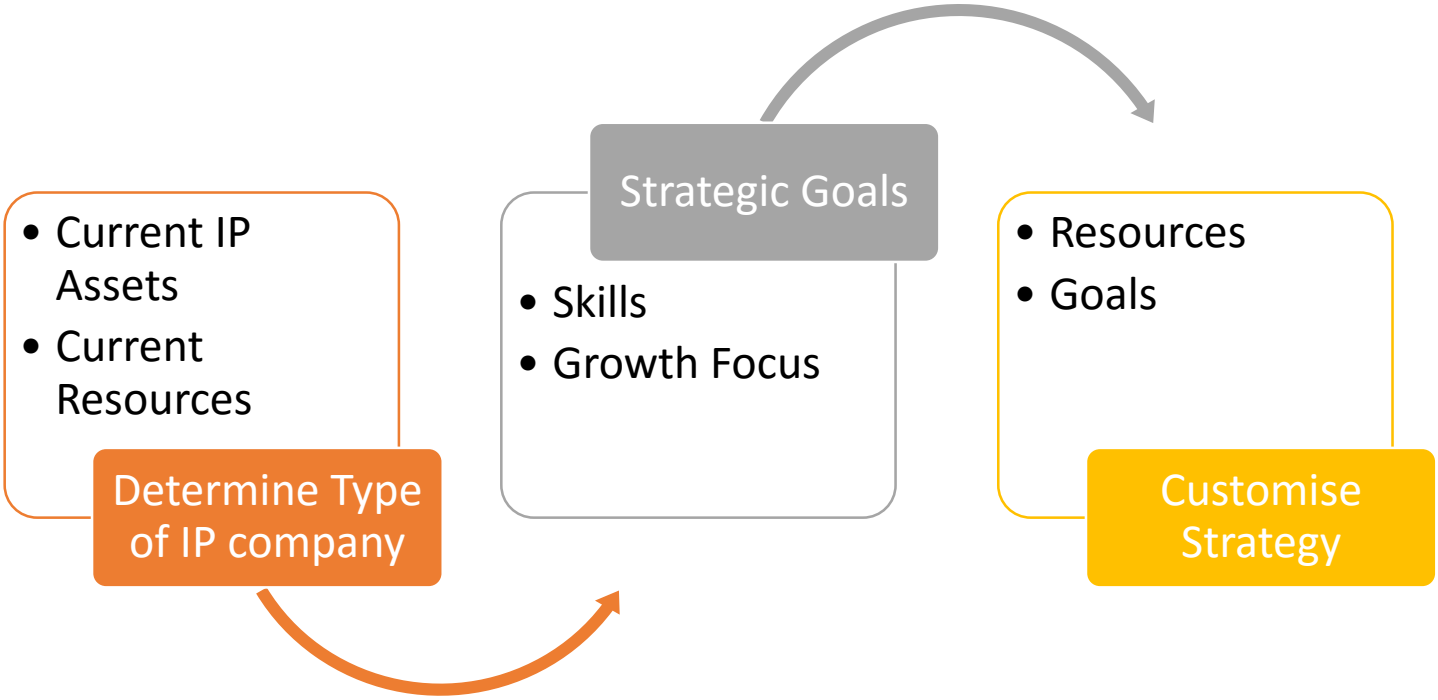
Using the Toolkit

It is recommended that you go through the resource document before using the toolkit. The resource document provides the context and the documentation to support the suggested strategy approach. Get your marketing consultants, lawyers and other professionals to support you in this process through data and expertise. To study your assets and resources in order to find an appropriate strategy approach, use recognised tools and statistical methods applicable to your industry. Seek professional help where required.

This toolkit identifies four approaches by which IP assets have been used successfully in India, and how these can be customised for your company. It does not attempt to influence your goals or focus, nor does it determine the ways in which resources or funding may be attracted. What may work for another firm or company, may not work for you, so be sure to customise the strategy to fit your requirements perfectly. As you proceed, you may find that there are new approaches that may be effective; reflect on how you may be able to incorporate these in your IP strategies. Inviting members of your sales, production and technology team to participate in this process could be highly rewarding.

Step 1: Understanding the Methodology

This tool helps you to get a simple understanding of the process. The flowchart gives a basic overview of the various stages in creating an IP Smart strategy for your IP in India. It lists the input and activity required during each stage. The overview tool helps you to review where you are in the process and to organise the next steps towards your strategic goals.



Step 2: Identifying the Type of IP Company that You Are

Identifying the type of IP company that you are is crucial to the methodology suggested in this toolkit. Identifying your resources, IP assets and the extant market conditions are necessary to identify the right approach or combination of approaches for your IP. To understand what type of IP company you are, go through the Taylor and Silberston classification extracted in Chapter 1 of the resource book. You would have to

- Audit your IP assets. These include patents, copyrights, trademarks, designs, trade secrets, data, confidential information and any other process that adds value to your company and provides you a sustainable competitive advantage.
- Audit your tangible assets and see what resources can be allocated to IP generation, IP prosecution and IP enforcement.
- Determine your strategic goals. You may have market or technology-led goals. Identify the skills in your company that may assist in achieving your goals, and what additional skills or resources you may require.

Based on your resources and your goals, start working on your IP strategy.

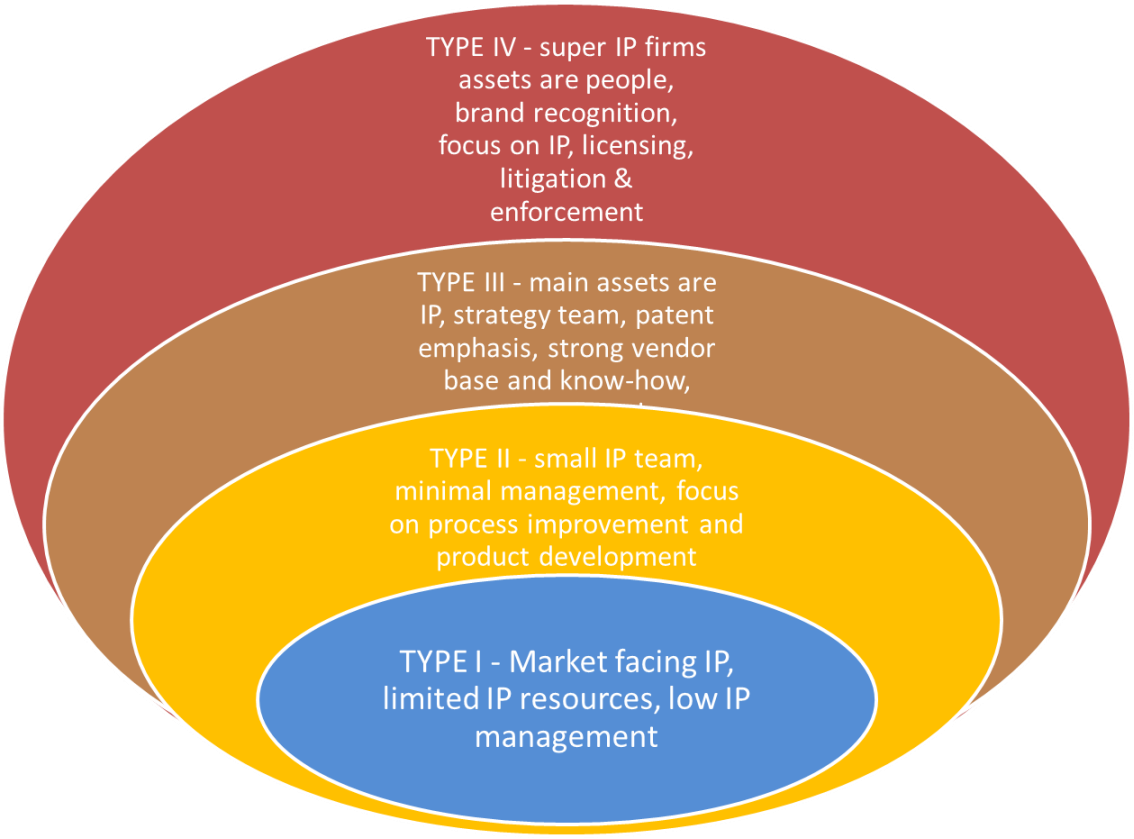
The accompanying artwork identifies the specific IP characteristics of the four types of IP companies. Please do go through the classification provided in Chapter 1 for a more complete understanding of each Type of IP company. This tool provides a simple and effective way of reviewing your current IP position.

While Type I companies may have one or few market facing IP assets, Type II, III and IV may have more than a few market facing IP assets. Market-facing IP is the result of market-facing innovation. Such market-facing IP is developed by identifying and satisfying of market gaps and unmet needs in targeted markets or product categories. Market-facing IP requires high investment and is focussed on greater returns in the long-term. This kind of IP is useful for a market player to address new markets, new customers and potential new revenue streams, and therefore create licensing and technology transfer opportunities for Type I companies. These may include technology, brand name, designs, processes and copyrights.

Each type of IP company, may demonstrate characteristics from the types of companies below them. For instance, a Type II company may have characteristics similar to a Type I company. However, it is not the similarities that provide the strategic advantage but the differences. Therefore, it may be the additional resources in Type II companies which enable strategic flexibility or better leverage for them in the market over a Type I company. Both Type III and Type IV companies are mature models. Type I or Type II companies may evolve into Type III or Type IV companies with added resources, technology and market expertise.

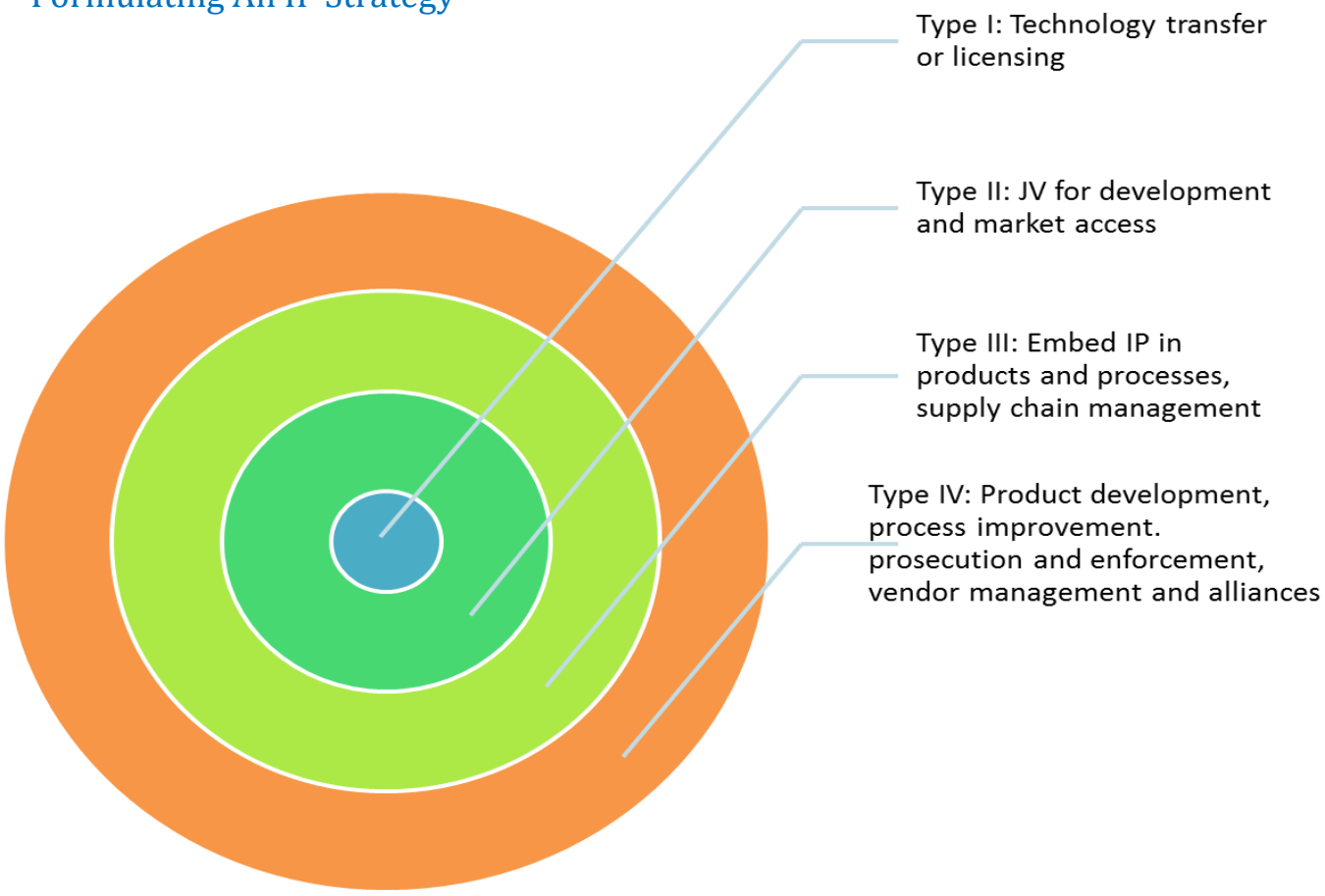
Before attempting to craft and implement an IP strategy for India, it is important for a UK company to know about itself. Use reports and guidance documents from market research firms and government sources to help you determine your goals and focus.

1. Using the classification provided by Taylor and Silberston, could you classify yourself as a Type I, II, III or IV company? Use the chart in Chapter 1 to make your decision.
2. Based on the classification, can you choose areas of focus which align with your strategic goals and also the trend in your industry in India and globally?
3. Can you identify what competencies you may need to evolve your strategy further?



Characteristics	Team size	Focus Areas	Type of Company

Step 3: Using Type of IP Company Data to Suggest Early Approaches To Formulating An IP Strategy



The above tool provides an early approach to formulating an IP strategy in India. Using the tool, a company having determined its IP Type can begin to identify the areas in which the company can develop an early advantage in the Indian market. Further, the company can determine how the early advantage could lead to a sustainable competitive advantage. It may be noted that while Type III or Type IV companies may have flexibility to engage in Type I strategy, the latter may not be in a position to undertake a Type III or Type IV strategy.

Below is a classification of SME industries provided by the UK Department for Business, Innovation and Skills. Your areas of interest may fall in only one or more than one category. Identify potential industry partners, collaborators and competition using the table in Chapter 3.

UK SME Industry classifications	Strategic goals Globally	Strategic goals in India
A Agriculture, Forestry and Fishing		
B, D and **E** Mining and Quarrying, and Utilities		
C Manufacturing		
F Construction		
G Wholesale and Retail Trade; Repair of Motor Vehicles and Motorcycles		
H Transportation and Storage		
I Accommodation and Food Service Activities		
J Information and Communication		
K Financial and Insurance Activities		
L Real Estate Activities		
M Professional, Scientific and Technical Activities		
N Administrative and Support Service Activities		
P Education		
Q Human Health and Social Work Activities		
R Arts, Entertainment and Recreation		
S Other Service Activities		

Making a Decision to Bring IP to India

You should bring IP to India, only if IP is critical to your operations in India, and you have sufficient resources and/or a good strategy, to protect your IP in India. Consider the following:

1.	**What are the benefits of transferring/licensing your IP to your Indian entity?**
	Improving access to market
	Increasing value of your entity
	Seeking funding for Indian operations
	Protecting your technology in a relevant market
	Joint or co-development of an India-specific product
2.	**Who is likely to infringe your IP?**
	Vendors or component manufacturers
	OEM
	Retailers
	Industry users
	Consumers
	Competitors
3.	**Where do you position yourself in the value chain? What is your market position?**
	OEM
	Designer/developer
	Inventor
	Mature market player
	Technology start-up
	Industry user
4.	**Are your global competitors already operating in India?**
5.	**Are your well protected in your global market?**
6.	**Are you bringing your supply chain with you? Do you already have adequate contractual arrangements with them?**

7.	**Is your patent portfolio well-integrated with your production process? Do you have an IP inventory?**
8.	**Has an internal audit been done of your IP protection mechanisms including IT and data protection and access control? Do you have an IP hierarchy?**
9.	**Have you registered the IP in India?**
10.	**Are your employees covered by valid confidentiality agreements?**
11.	**Is direct referral more important to your marketing campaign than SEO?**
12.	**Are you competitively aggressive or innovative?**
13.	**Would you take risks? Be proactive in the market?**
14.	**Do your employees share the firm's vision? Are they committed to learning?**
15.	**Do you have a consultant or advisor to advise on marketing, funding, operations and managerial support?**
17.	**Do you adopt an employee and supplier due diligence and monitoring framework? Have you done a background check on your existing employees?**
18.	**Do you have a strategy to counter IP loss, theft of information or espionage?**
19.	**Have you informed your colleagues, employees and partners about your products and how they can easily identify counterfeits?**
20.	**Have you prepared documentation on your technology and protocols and put protective measures in place in respect of confidential information and trade secrets?**
21.	**Have you developed processes to assess the risks of the market, and react to infringement?**
22.	**Have you budgeted for IPR enforcement?**
23.	**What part of your work do you feel comfortable outsourcing?**
24.	**Are you dependent on third party contractors or suppliers for your finished product? If so, do they add value to your product or help you lower the cost over other suppliers?**
25.	**What technology gaps in Indian industry could you help to close?**

Creating an IP Strategy for India

Do you intend to stay for a reasonably long period in India? A significant period would be 25 to 30 years. If you have decided to stay in India for a reasonably long period, please answer the following questions:

A What are the focus areas of the Government of India in which you could participate to your own benefit?

B Can you identify the initiatives of the Indian Government that could help further your goals in India?

C What crucial challenges in Indian society and in the economy could you help overcome, while adding value to your company?

D What are the specific advantages of the Indian market that you could exploit? Volume, niche areas or premium markets, industry users or export oriented growth?

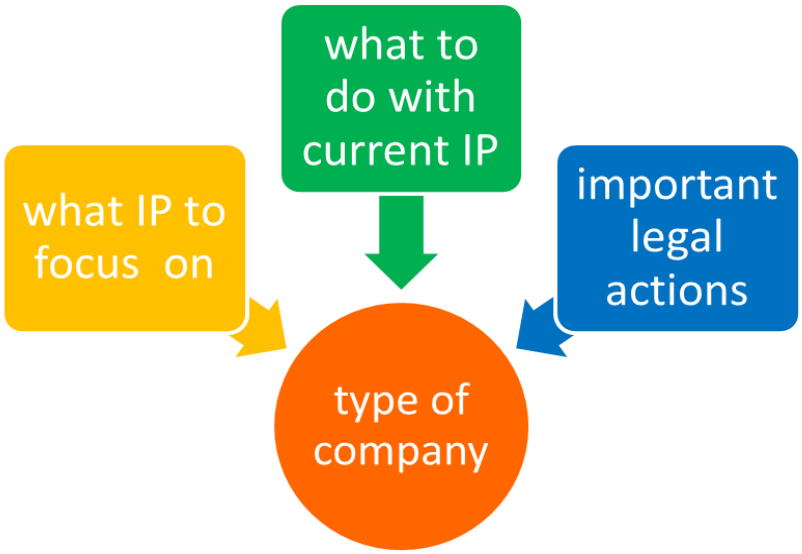
E Have you asked a legal consultant or lawyer to explain the relevant Indian laws to you? Review India's IP laws and regulations, particularly those relevant to your business. Laws in India may not be identical to the laws in the UK particularly with regard to software, data protection and pharmaceuticals.

F Has your legal consultant or lawyer explained Indian contract law to you? Review India's laws with regard to contracts and contract enforcement, including employment contracts, vendor contracts, licensing agreements and alternative dispute resolution (ADR).

With these input in mind, consider the following:

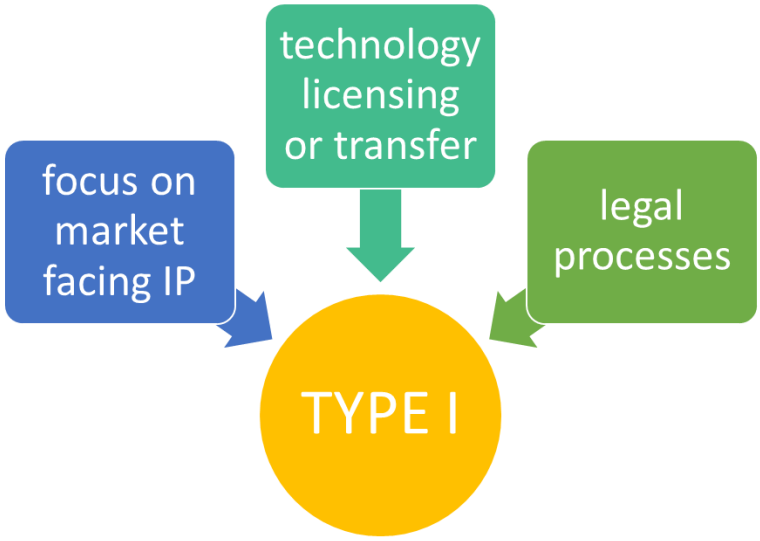
1. If you are a Type I or Type II firm, create strategies around your market-facing technology, brand and design, connecting with your customer on an emotional level.
2. If you are a Type III firm, consider bringing your technology into the country embedded in the process and the product.
3. If you are a Type IV firm, create an IP strategy that includes close and secure relations built on fair and equitable contracts and welfare of those in your value chain.

Using this simple tool, the different types of strategic models covered in the resource can be explained. The tool can help companies to create unique strategic models by focussing on different areas. A Type I IP company with minimal financial and infrastructural resources should ideally concentrate on the earliest and least expensive (both in terms of time and man power) strategy to take the technology to market. An ideal pathway would be to develop a working prototype or a proof of concept, and license the market facing technology to an Indian entity with market access, and infrastructural and financial resources to brand and market the product.



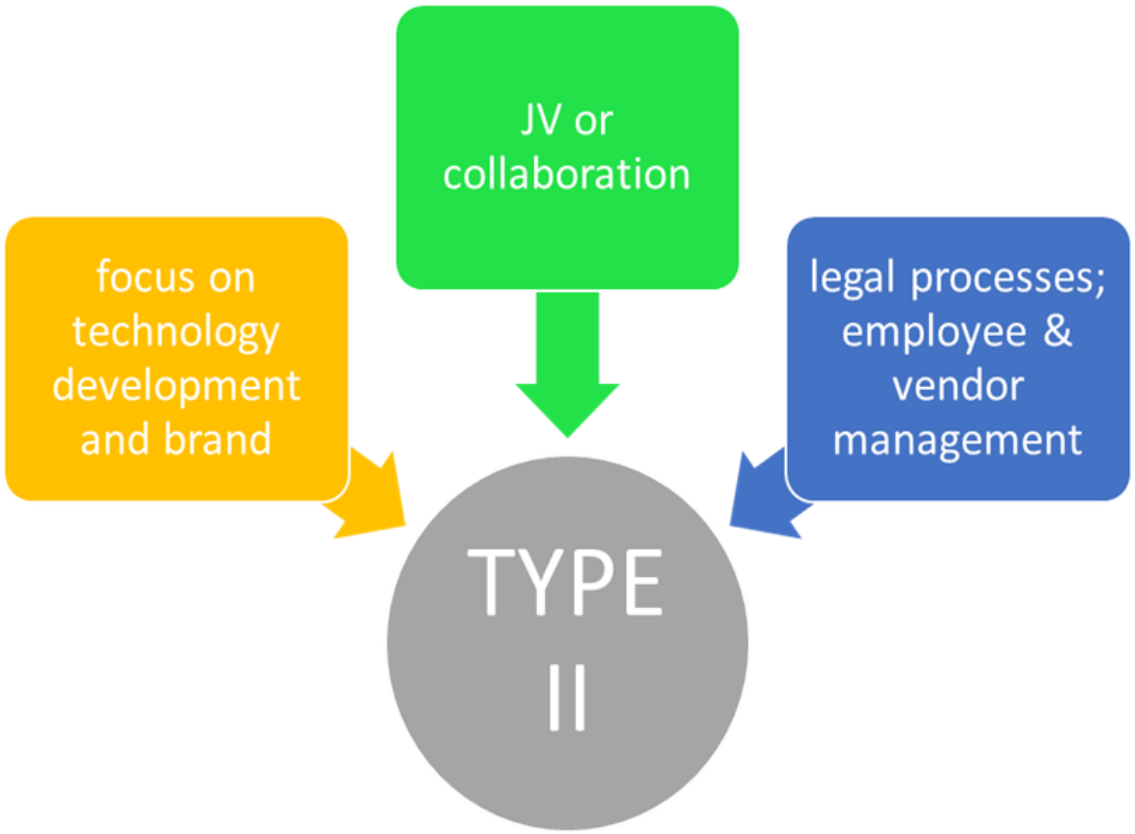
A minimal Type I Strategic model

The strategy would ideally lead the Type I company to many similar licensing opportunities with either the same entity or different entities. The company would have to deploy resources towards legal services to craft agreements and ensure royalty payments.



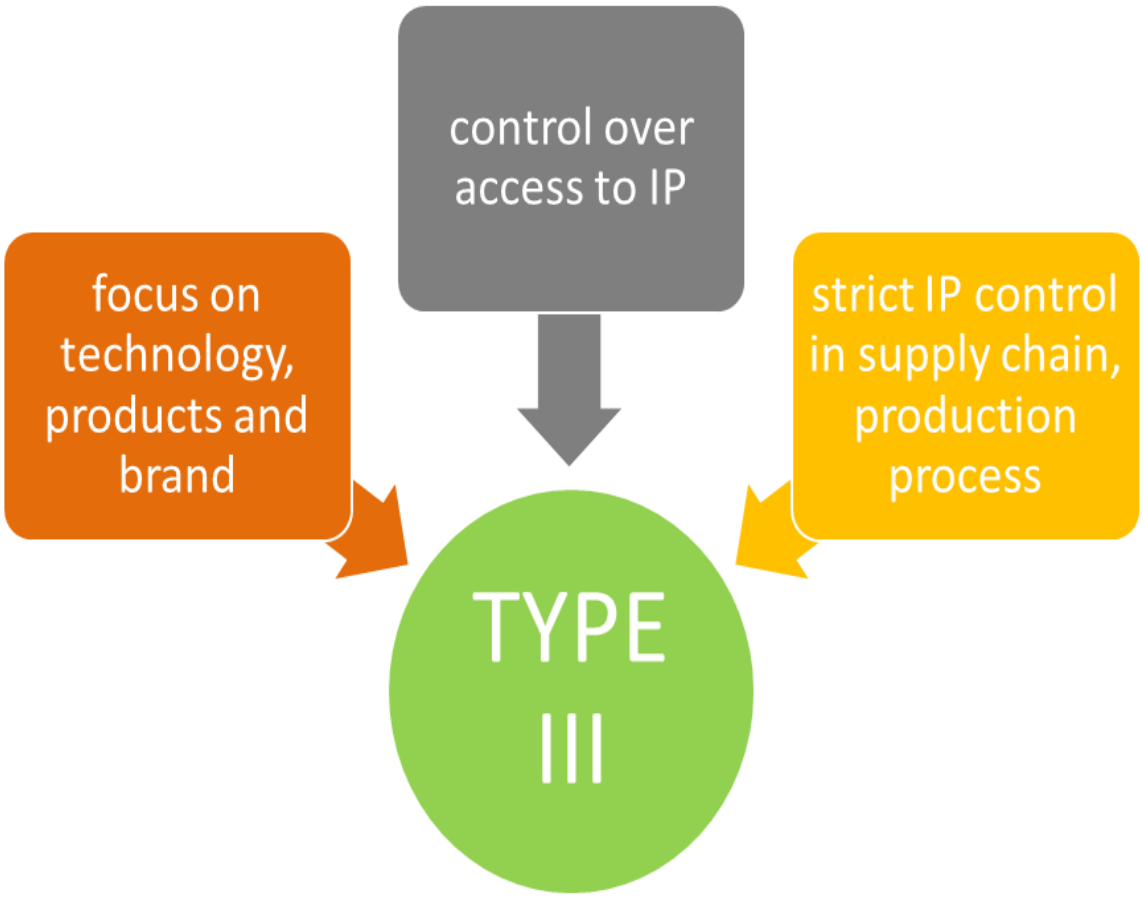
Type II Strategic Model

This tool envisages a Type II Strategic model for a company with more resources than a Type I company. The resources can be deployed towards continuous IP creation or improvement. Further the company would have the ability to enter into and maintain a mutually beneficial Joint Venture with an Indian entity. Resources would have to be deployed towards legal processes including agreements with employees, staff and vendors. The company would also have the flexibility to undertake branding activity and licensing of brands.



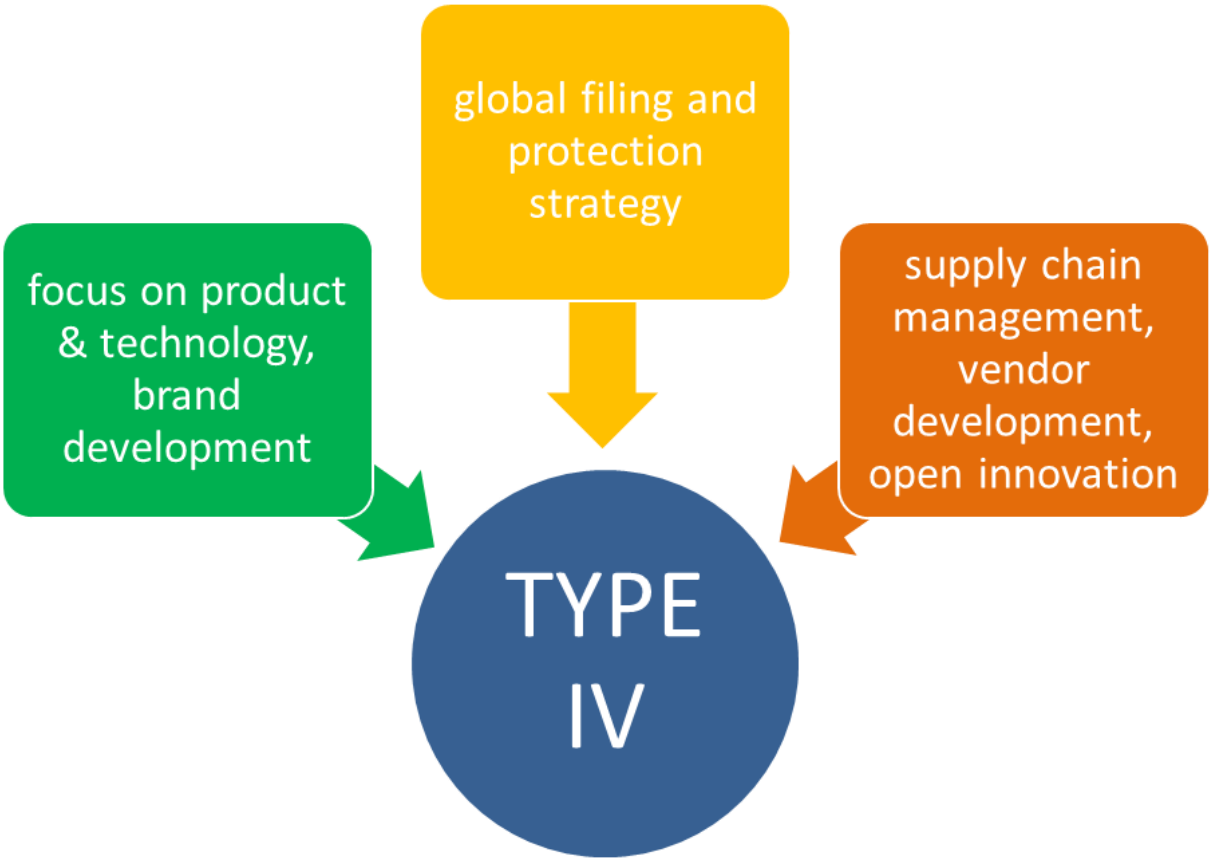
Type III Strategic Model

This tool provides the basic structure of a typical Type III Strategy model, where the IP assets of the company are embedded in the product or production process. The company expends resources in designing products and technologies for specific geographies. The company also integrates different IP Rights in its products such as designs, patents and brand names, thereby enhancing their easy recognition in the market. The legal resources of the company are not expended in filing, prosecution and enforcement of IP, but rather in contracts with vendors in the supply chain and logistics. Strict control is maintained over all IP and confidential information.



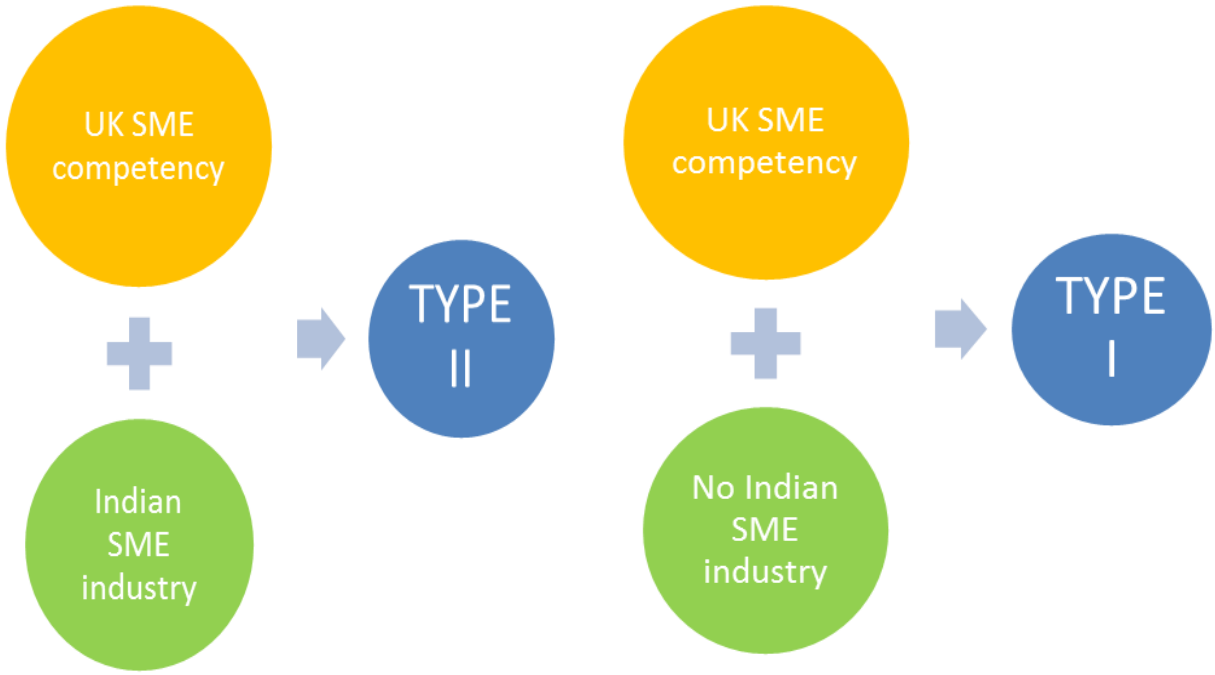
Type IV strategic model

A Type IV strategic model is essentially, a Super-IP firm's global strategy customised to enhance its effectiveness in Indian markets. The company focusses equally on brand, technology and continuous evolution of products and processes. The company's global strategies for IP filing, protection and management are customised for the Indian filing offices and enforcement agencies. The company expends large amounts of money on enforcement, liaising with enforcement agencies, IP awareness and education, prosecution of counterfeiters and pirates, and confiscation of fakes. They undertake branding on a large scale and may have different branding strategies for different products. Their strategy may include many or all elements of the other types of strategies.



Creating an IP Strategy Based on Market Conditions

This tool enables UK SMEs an initial approach to considering market dynamics in creating an appropriate IP strategy for a UK SME. An existing Indian industry may be a competitor or a potential collaborator. Where there is a possibility of collaboration with existing Indian industry players, a Type II model may be initiated with a JV. However, if the existing Indian industry players are likely to be competitors, further resources may have to be expended to create a Type III strategy. The models may be evolved with influx of resources or talent into a mature Type III or Type IV strategy model.



Evolving Strategic Models

This tool envisages the steps that a Type I firm may take to evolve a Type III strategy, or a Type II firm may take to evolve a Type IV strategy. In general, it is assumed that there is an influx of resources, perhaps funding, into the company to enable growth and evolution. A mature Type III model may or may not further evolve into a Type IV model.

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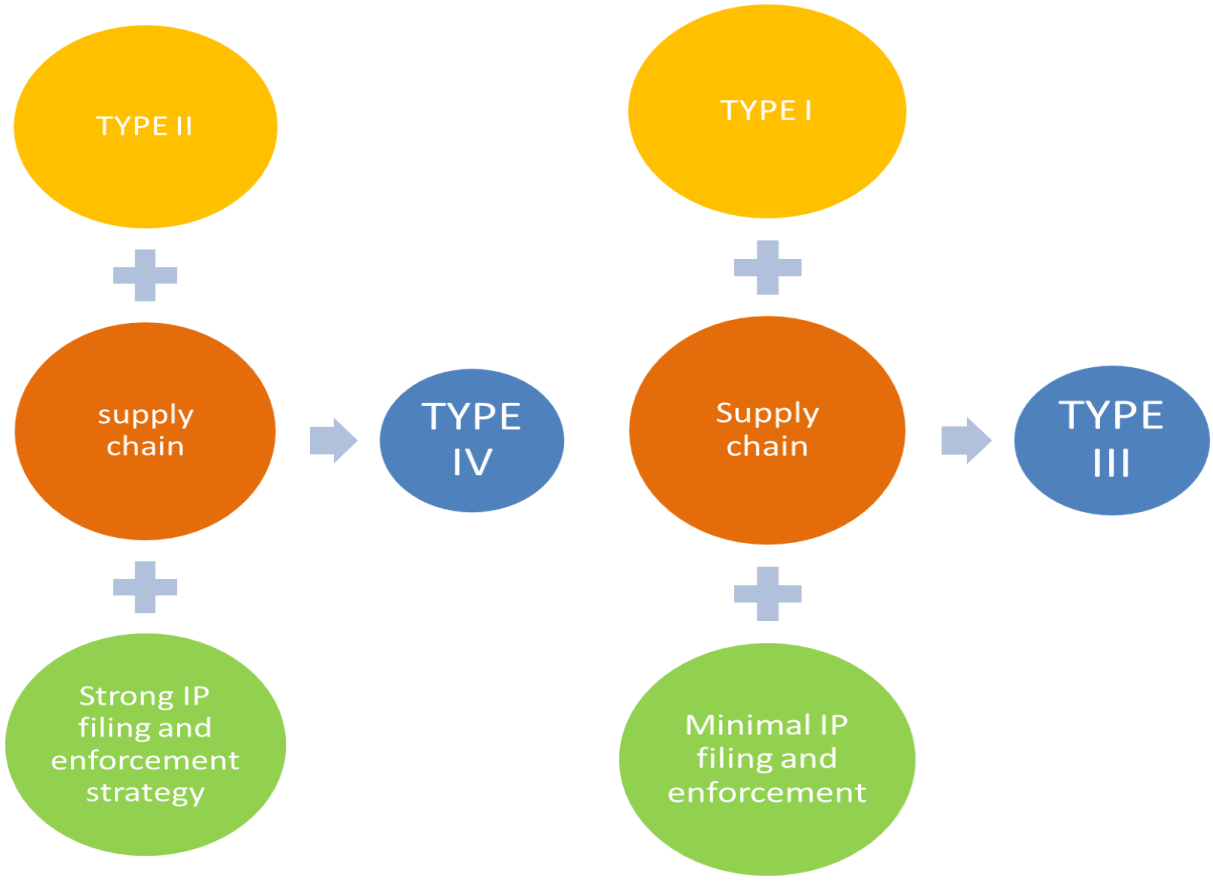
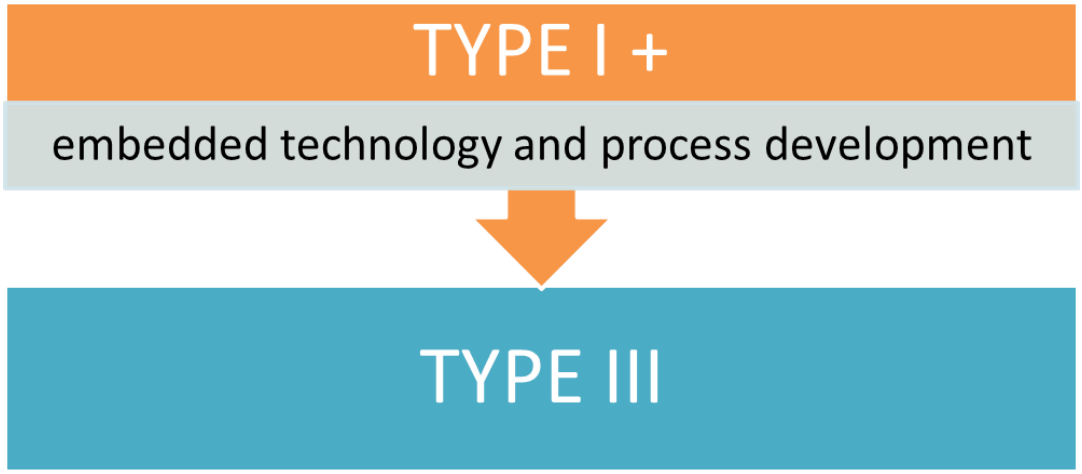
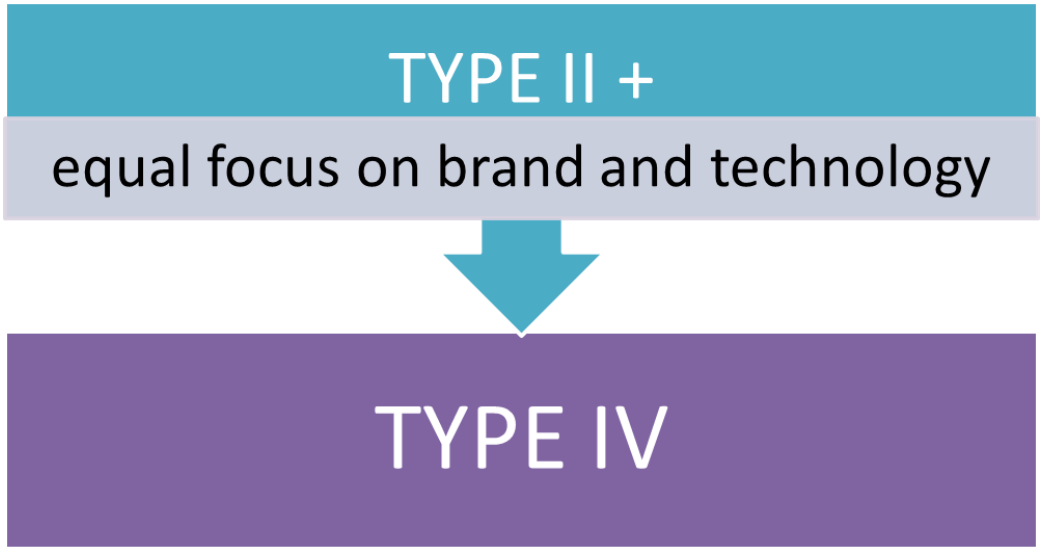



TYPE I +
embedded technology and process development
TYPE III


TYPE II +
equal focus on brand and technology
TYPE IV

Notes

The Market of India

The glaring gap between the potential of India and the reality of India has been widely commented upon. India's manufacturing sector has the potential to touch US$ 1 trillion by 2025 according to a 2012 McKinsey report. In the last two years, the NDA government has set an ambitious goal of enabling India's transition from a net importer of high-technology goods and services, to a global hub for manufacturing. The Government of India has an ambitious plan to locally manufacture as many as 181 products, including in the defence and aerospace sector. A critical overview of India's investment climate is helpful in evolving unique strategies for sustainable outcomes for UK companies intending to invest technology and capital resources in India.

The Prime Minister of India, Mr. Narendra Modi, has launched the 'Make in India' initiative to place India on the world map as a manufacturing hub. The Government of India has set a target of increasing the contribution of manufacturing output from 16% to 25% of Gross Domestic Product (GDP) by 2025. Other initiatives include

- the Digital India Programme to develop India into a knowledge economy
- the Start-up India initiative to promote entrepreneurship and enable financing of start-ups
- the setting up of the NITI (National Institution for Transforming India) Aayog in place of the erstwhile Planning Commission to better serve the needs and aspirations of the people
- the provision of the Skill India Portal to enable upskilling of citizens by publishing and sharing relevant information.
- the financial inclusion initiative, Pradhan Mantri Jan Dhan Yojana.

Mr. Modi is also showcasing India as a business friendly destination to attract foreign businesses to invest and manufacture in the country. In a bid to push the 'Make in India' initiative to the global level, the Prime Minister has pitched India as a manufacturing destination in thirty-seven foreign trips on five continents since taking office. Countries that Mr. Modi visited include Australia, Afghanistan, Brazil, Canada, China, Germany, Ireland, Japan, Kazakhstan, Kyrgyzstan, Malaysia, Mongolia, Myanmar, Pakistan, Seychelles, Sri Lanka, South Korea, Tajikistan, Turkey, Turkmenistan, United Arab Emirates, United Kingdom, Uzbekistan, Russia, Singapore and the United States.

The IP initiatives expected to support Make in India, include easing of access to the IP system, efficiency in processing of IP applications, uniformity and consistency in the examination of applications, transparency and dissemination of IP information, bilateral cooperation at the international level, and raising public awareness levels. Efforts have been made to modernise the administration, deal with backlog and encourage innovation in MSMEs by providing concessions and IP training.

Industry bodies such as the CII and FICCI are working closely with the initiatives. FICCI and DIPP have jointly set up 'Invest India.' An Investor Facilitation Cell has been created to assist, guide, hand-hold and facilitate investors during the various phases of the business life cycle. This Cell provides necessary information on a vast range of subjects to help companies take investment decisions. Information is provided on, inter alia, government policies at the Centre and State levels, and incentive schemes. Similarly, the CII is partnering with the government on several Make in India initiatives, including the Global innovation and Technology Alliance (GITA) platform and the recently concluded Make in India Week.

The initiatives cover most of the critical requirements for employment generation and industrial growth in India, such as funding, skill-development, access to modern means of communication and improvement of the IP administration ecosystem. The Make in India initiative has also resulted in increased Foreign Direct Investment (FDI) according to newspaper reports.[4] Gross FDI inflows amounted to $62.6 billion, 31% higher than the $47.6 billion in the preceding 15 months. A sizeable amount is estimated to have gone to the manufacturing sector, including consumer goods

[4] http://articles.economictimes.indiatimes.com/2016-01-29/news/70178080_1_portfolio-inflows-private-investment-manufacturing-sector

and food processing. Economists feel that a significant part of the higher FDI has come in as PE and VC funding, which helps finance entrepreneurs.

Advantage India

According to the website of the Investment and Technology Promotion (ITP) Division of the Ministry of External Affairs[5], Government of India, India is an attractive investment destination for overseas investors owing to the prospects of high returns. Both Indian and multinational firms have registered higher profits, increased turnover and higher sales over the years inducing them to reinvest profits and inject fresh capital into their processes and reap significant benefits from India's growth story. They list the following as advantages of investing in India:

- World's largest democracy with 1.2 billion people.
- Stable political environment and responsive administrative set up.
- Well established judiciary to enforce rule of law.
- Land of abundant natural resources and diverse climatic conditions.
- India's growth will start to outpace China's within three to five years and hence India will become the fastest growing large economy with 9-10 per cent growth over the next 20-25 years (Morgan Stanley).
- Investor friendly policies and incentive based schemes.
- India's economy will grow five-fold in the next 20 years (McKinsey).
- Cost competitiveness; low labour costs.
- Total labour force of nearly 530 million.
- Large pool of skilled manpower; strong knowledge base with significant English speaking population.
- Young country with a median age of 30 years by 2025: India's economy will benefit from this "demographic dividend".
- The proportion of population in the working age group (15-59 years) is likely to increase from approximately 58 per cent in 2001 to more than 64 per cent by 2021.
- Huge untapped market potential.
- The urban population of India will double from the 2001 census figure of 290 million to approximately 590 million by 2030 (McKinsey).
- Progressive simplification and rationalization of direct and indirect tax structures.

[5] http://indiainbusiness.nic.in/newdesign/index.php?param=advantage/183

- Reduction in import tariffs.
- Full current account convertibility.
- India is a member of WTO.
- Robust banking and financial institutions.

India's current population profile is categorized as a demographic dividend. According to Arthapedia[6], a demographic dividend occurs when the proportion of working people in relation to the total population is high. This indicates that more people have the potential to be productive and contribute to growth of the economy. However, the demographic dividend does not automatically translate to economic growth. Focused policy action towards health, education, financial inclusion and adequate employment opportunities are essential pre-requisites to ensure that the country reaps the benefits of the dividend.

Some stakeholders feel that India has not sufficiently prepared herself for this great opportunity. A Forbes India article featuring interviews with Indian CEOs dated Nov 24, 2015[7] perfectly summarises the problems. Given India's demographic trend, 30,000 people get into the workforce each day, which number may rise to 40,000 very soon. According to experts, only 10 percent of the Indian workforce is in the organised sector; just 2.5% of the country's working population has any vocational training, compared to the average of 60 to 70 % in developed countries. Basic education and vocational skills are essential for the employee to be able to add value to the workplace. Only 20% of the 11 million students graduating from colleges each year get jobs relevant to their skill sets. Women form only 21% of the workforce although they are 49% of the population. Adding to the employability woes is the challenge of retention of trained workers, as competitors are willing to pay higher salaries to trained employees instead of spending on training. Service industries, including hospitality, retail chains and multiplexes also do not find appropriately skilled persons. Stakeholders suggest that there should be investment into the quality of primary, secondary and vocational education. Students, recruiters and academic institutions have to align visions and outcomes. Infrastructure and training faculty have to be upgraded at

[6] http://www.arthapedia.in/index.php?title=Home_Page, This portal is managed by government economists of India (known as Indian Economic Service (IES) Officers) and is intended to cater to the requirements of their counterparts in other countries as well as to academicians, economists, policy practitioners, financial journalists, students and to any interested citizen, both within the country and abroad.

[7] Datta, Aveek, Features/Forbes India Ceo Dialogues, Nov 24, 2015, *India's youth: Demographic dividend or disaster?* http://forbesindia.com/article/forbes-india-ceo-dialogues/indias-youth-demographic-dividend-or-disaster/41595/1#ixzz40W9OD9vh

Industrial Training Institutes (ITI) to provide relevant skills. With regard to low costs of production too, several industry participants have expressed misgivings. Ashok Chadha, president of Noida-based start-up, *Ringing Bells*, announcing the launch of Freedom 251 - the world's cheapest smart phone, claimed that the company would not only sell the smartphone for INR 251 but also make a profit of INR 31 from each unit. He stressed that the "economies of scale, domestic manufacturing and online sales without much marketing expenses" is allowing them to deliver the world's cheapest smartphone. Datawind CEO Suneet Singh Tuli, disagrees. He says Make in India costs more than Made in China[8].

Labour costs in China have risen by 20% adversely impacting China's manufacturing competitiveness according to Alekh Tiwari, Associate Director, Management Consulting, KPMG. Starting salaries in the Chinese mobile manufacturing industry are equivalent to INR 25,000 per month, while in India similar jobs are paid INR 7,000 - 8,000 per month. As the economy moves up the value chain, fewer Chinese people are willing to do manual low-paying jobs. These factors are working in India's favour. India's manufacturing sector further supported by the weakening Rupee, while the Yuan strengthens against the dollar.

However good this news might sound, it is important to note that India is currently a centre for assembling of mobile phones rather than manufacturing. Manufacturing entails making components such as processors, cameras and touch screens. Without a component base in India, the freight costs will be high as an Indian manufacturer would have to import 80% of the components, while a Chinese manufacturer would import only 10%. The cost of finance, power and water is lower in many other Asian countries, including China where it is 30% cheaper.[9] Indian-origin Chancellor of the University of California, Pradeep K Khosla, has called 'Make in India' more nationalistic than realistic[10], owing to the lack of an aligned bureaucracy, infrastructure and logistics to realise the goals of Make in India. He pointed out that having become a low cost manufacturing hub, China invested in its universities. It also invested in research. Today China is the number two producer of research after the US in the world.

[8]http://timesofindia.indiatimes.com/tech/tech-news/Make-in-India-costs-more-than-made-in-China-Aakash-tablet-maker/articleshowprint/51089770.cms ½

[9]http://www.businesstoday.in/current/corporate/india-set-to-become-a-phone-manufacturing-powerhouse/story/221123.html

[10] http://economictimes.indiatimes.com/opinion/interviews/make-in-india-more-nationalistic-than-realistic-university-of-california-chancellor-pradeep-k-khosla/articleshow/51075753.cms

Yet, the reason why India is attractive for overseas investors is because India appears to be the most successful emerging market among the BRIC. With 1.2 billion people and the world's fourth-largest economy, India's recent growth and development has been one of the most significant achievements of our times. A sizeable middle class has emerged. The country is in the midst of the largest rural-urban migration of the century: some 10 million people move to towns and cities each year in search of jobs and opportunity. According to 2014 World Bank statistics, India's GDP is $2.049 trillion and is growing at 7.3%[11]. India's economy is heavily reliant on fossil fuel imports. India is the fourth-largest energy consumer in the world, according to the Energy Information Administration. The sharp drop in crude and natural gas prices has helped curb India's estimated $120 billion annual energy bill and keep inflation in check.

IBEF reports that revenues in the Consumer durables sector have been growing at a healthy pace reaching US$ 9.7 billion in the financial year 2015-16 and is expected to reach US$ 12.5 billion in the current year. Around two-thirds of the total revenue is generated from urban population. A recent study by the McKinsey Global Institute (MGI) suggests that if India continues to grow at the current pace, average household incomes will triple over the next two decades, making the country the world's fifth-largest consumer economy by 2025, up from the current 12th position. According to a report by Boston Consulting Group (BCG) and the Confederation of Indian Industry (CII), India's robust economic growth and rising household incomes would increase consumer spending to US$ 3.6 trillion by 2020. The maximum consumer spending is likely to occur in food, housing, consumer durables, and the transport & communication sectors.

The two-thirds of the increasing middle class, who still reside in rural areas, represents enormous business potential. It is the strong domestic demand that ensured that India was not hit as hard by the global financial crisis as other countries. Make in India is therefore useful for companies who want to reduce time for the delivery of the products to their consumers, such as for mobile phone manufacturer, Xiaomi[12] and Hyundai Motors India Limited (HMIL), the largest passenger car exporter in India and the second largest car manufacturer. Hyundai India trails only Maruti Suzuki by market share, and has two factories in Chennai.

[11] http://www.worldbank.org/en/country/india

[12] http://indianexpress.com/article/technology/tech-news-technology/e-commerce-make-in-india-more-phones-xiaomis-manu-jain-on-the-india-priorities-for-2016/#sthash.lzkOMAk3.dpuf

In February 2016[13], the car maker announced an increase in the production of its new vehicle, Creta, which has been in great demand in India since its launch in July 2015. Currently, the Creta's production rate is below 10,000 units per month, with about 7,000 units going into the domestic market and 2000-3000 units being exported. Hyundai plans to increase this to 12,500 units with 10,000 units for the Indian and the rest for export markets. In spite of logistical and infrastructural deficiencies and a less than supportive bureaucracy, Hyundai sees advantage in manufacturing in India owing to the strong domestic consumption. Hyundai exports only about 30% of the cars manufactured in India.

Reserve Bank of India Governor, Raghuram Rajan during a lecture organised by Federation of Indian Chambers of Commerce and Industry (FICCI) [14] cautioned against "Too much focus on manufacturing and an export-led growth path." He said that "the focus should be 'Make for India', which will produce for the internal market," adding that the demand coming from US and the EU is weak and not enough to sustain export led growth.

Rationalisation of direct and indirect taxation regimes in India is bound to improve the attractiveness of India as a manufacturing destination. According to a CII - Ernst & Young report[15] the Government has already embarked on the journey to deliver a litigation-free and a certain tax environment. During the Make in India Week in February 2016, Prime Minister Modi assured investors that India would not resort to retrospective taxation and that the government would work towards a transparent, stable and predictable tax regime. Mr. Modi also assured investors that India is committed to making India an easy place to do business.

The use of 'Ease of Doing Business' data in literature promoting Make in India, encourages the misconception that better performance on the Doing Business indicators implies greater inflows of foreign direct investment (FDI). The doingbusines.org document - '***Does Doing Business***

[13] http://indianautosblog.com/2016/02/hyundai-creta-production-increase-219544

[14] http://www.financialexpress.com/article/healthcare/cover-story-healthcare/make-in-india-or-make-for-india/62118/

[15] Enabling Make in India Through Effective Tax Reforms, http://www.ey.com/Publication/vwLUAssets/EY-cii-whitepaper-17-dec/$FILE/EY-cii-whitepaper-17-dec.pdf

matter for foreign direct investment?[16]'- states that the methodology is not explicitly designed to create associations between higher rankings and FDI. India is currently ranked 130 (out of 189) in the World Bank Ease of Doing Business index. While India has moved up 4 places in the overall rankings and 9 places in Ease of Starting a Business, its ranking in Ease of Paying taxes and Ease of Enforcement of Contracts is abysmal at 157 and 178 respectively. Both parameters are important for a collaboration that is IP-led. In the same parameters, China is ranked 132 and 7 respectively.

The sub-national economy rankings for doing business in India are led by Ludhiana, followed by Hyderabad. Bengaluru is ranked 13. The Metros stand at

- New Delhi 6
- Mumbai 10
- Chennai 15
- Kolkata 17

In spite of improving ranking, India lags behind some of the most competitive destinations for manufacturing including the BRICs. In actual fact, the Doing Business indicators reflect the quality of the investment climate at a broader level. This supports a broader claim that economies which provide a good regulatory environment for domestic firms tend to also provide a good environment for foreign-owned firms. On the other hand, grouping economies by the Doing Business *distance to frontier score* shows that those closest to the frontier in regulatory practice received substantially more FDI than those in the middle, which in turn received substantially more than those furthest from the frontier. The top ten economies in the *distance to frontier rankings are*

Singapore	87.34
New Zealand	86.79
Denmark	84.4
Korea, Rep.	83
Hong Kong SAR, China	83.67
United States – New York City	83.13
United Kingdom	82.46
United States	82.15
Sweden	81.72

[16] http://www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB13-Chapters/DB13-CS-Doing-Business-matter-for-FDI.pdf

India's distance to frontier score is 54.68 (ranked at 144). It appears India is quite far below on the list for the ranking to have a positive impact on FDI.

The regulatory climate for Indian SMEs also shows improvement. According to the Indian Government[17], the emphasis has been on simplification and rationalization of the existing rules and introduction of IT to make governance more efficient and effective. The focus is mainly on cutting out the tedious documentation and unnecessary paper work and getting the work done expeditiously. DIPP has requested all Secretaries of Government of India and Chief Secretaries of the States and Union Territories to simplify and rationalize the regulatory environment. Important changes in the regulatory environment include the following:

1. The application for Industrial License (IL) and Industrial Entrepreneur Memorandum (IEM) has been simplified and can be made online, facilitating applications and online payment of service charges. Fourteen services are brought into one single window portal. The initial validity period of IL has been increased to three years from two years in order to give the licensees enough time to procure land and obtain the necessary clearances/ approvals from authorities. In case the production has not commenced within three years of issue of IL, a further extension of two years would be granted provided certain requirements are fulfilled. However, if the business has not commenced for five years from the issue of the IL, the IL will lapse automatically.
2. The Ministry of Home Affairs (MHA) has stated that it will grant security clearance on IL applications within twelve weeks. In matters other than those concerning explosives and Foreign Investment Promotion Board, security clearances are valid for three years unless there is a change in composition of management or shareholding.
3. The DIPP has now adopted the new National Industrial Classification (NIC) 2008 instead of the old NIC 1987 for the purpose of classification for IL and IEM. The change to NIC 2008 is to ensure a contemporary classification system.
4. In order to facilitate investment by investors and reply to their queries, the DIPP website has provided Frequently Asked Questions (FAQs) for grant of IL.
5. Initially about 11 documents were required for clearing export and import of goods. Now

[17] http://dipp.nic.in/English/Investor/Ease_DoingBusiness/EoDB_Intiatives_11December2015.pdf

the number of documents required for export and import of goods are limited to three documents.

6. A narrowed-down list of defence products requiring an IL has been issued. Products with dual use (i.e. having military as well as civilian applications), unless classified as defence item, will also not require an IL. In case of these items only an IEM has to be filed.
7. The Department of Defence Production, MOD, has issued 'Security Manual for Licensed Defence Industry'. This has removed the requirement of an affidavit from applicants.
8. The Companies Amendment Act, 2015 has been passed, bringing important changes including removing the requirements of minimum paid-up capital and common seal for companies.
9. The MCA has introduced an integrated process for incorporation of a company. Now the applicants can apply for Director's Identification Number (DIN) and company name availability simultaneously with the application for incorporation of a company.
10. The process of applying for Environment and Forests clearances has been made online through MOEF portal.
11. The Labour Ministry has set up a unified portal for registration of Units for Labour Identification Number, reporting of Inspection, submission of returns and grievance redressal.
12. The registration with Employees Provident Fund Organization and Employees State Insurance Corporation (ESIC) has been automated. The ESIC registration number is being provided on a real-time basis.
13. The Ministry of Micro Small and Medium Enterprises has issued an order facilitating revival and rehabilitation of MSMEs, through a banker's committee to enable MSMEs to seek standard as well as customized relief and concession and thereby revive itself.
14. A checklist with specific time-lines for processing all applications filed by foreign investors (in cases relating to retail trading/ Non-Resident Indian / Export Oriented Units), is placed on the DIPP website.
15. An Investor Facilitation Cell has been created to guide, assist and hand-hold investors during the entire life-cycle of the business.
16. In Maharashtra, the registration process of Value Added Tax and professional tax has been merged into a single process with a single ID. In Delhi, the registration for VAT has been

made online. Tax Information Network allotment is done on a real-time basis and business can start immediately on receipt of TIN number.

17. The time required for giving a new electric connection in Mumbai has been reduced to twenty-one days from sixty-seven days. The number of procedures for obtaining the connection is reduced to three from seven.

India's membership of the WTO is listed as an advantage with regard to accessing FDI. India has been a WTO member since 1 January 1995 and a member of GATT since 8 July 1948 and is currently one of 161 member-countries of WTO. According to the UNCTAD'S 2015 World Investment Report, while inward FDI tends to increase significantly following WTO accession it is also noteworthy that economies joining the WTO since 1995 account for roughly one-fifth of global trade and world GDP[18].

The steady increase in WTO membership over the past 20 years suggests that the overall "cost of exclusion" from the WTO outweighs the "cost of joining". WTO accession negotiations do enable new business opportunities for the acceding economies by increasing the competitiveness, transparency and predictability of their economies. Members who benefit the most are those that are domestically well-organized and coordinated, and are able to direct their accession negotiating structures to the ends of Post-Accession and operational active membership goals.

Post-Accession gains also accrue to those with a sustained long term commitment to domestic reforms, implementation of their accession specific commitments and, self-binding commitments to core WTO values. These countries progressively integrate a competitive, rules-based global market economy, good governance and the rule of law. Benefits multiply with pro-active engagement in the regular work of the Organization and its agreed work programmes, based on the platform that membership is a contractual balance of rights and obligations[19].

In its sixth trade policy review of India, the WTO urged India to undertake greater tax reform and liberalise the country's Foreign Direct Investment policy[20]. They welcomed the steps to introduce

[18] http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf
[19] https://www.wto.org/english/thewto_e/acc_e/ITICCHIEDUOSAKWEPOSTACCESSIONBENEFITS.pdf
[20] http://www.business-standard.com/article/economy-policy/wto-urges-india-greater-tax-reform-fdi-liberalisation-115060401046_1.html

nationwide goods and services tax and the government's initiative to increase FDI limits in insurance and railways. The WTO also appreciated India for taking steps to facilitate trade under the Trade Facilitation Agreement (TFA) which is yet to be ratified.

Some members urged India to provide timely public consultations on draft regulations, submit notifications on a regular basis to the WTO, and provide a reasonable period between the announcement of new regulations and their entering into force. They also expressed concerns over the "complexity and uncertainty" in the country's tariff structure, including an additional duty and a special additional duty, and the large difference between applied and bound rates. Some of the members also complained against India's customs valuation and import licensing requirements on particular products.

Contrary to many assertions that encourage the belief that India as an economic destination can enable short-term gains for companies, it appears from the study of market conditions, that India's complex market and resource intensive industry requires committed engagement to derive benefits. Companies would also have to identify the right business models and strategic niches to deploy their IP profitably and to take advantage of the market and industry conditions.

Takeaway

- *Determine that you have a market in India.*
- *Identify the real advantages of entering India versus another market or your home market.*
- *Ensure that you have the resources and reserves to commit to longer term investments in India.*

What is Good for India is Good for Your Firm

The real advantages of India become apparent when we sift through the rhetoric and the data glut. The advantages that foreign companies have utilized successfully for several decades in India are:

- Large and growing market
- An inexperienced labour and vendor pool
- Technology appetite in the industry
- Minimal competition from local products
- Growth in the infrastructure and logistics sector

The improving business environment within India affords a smoother journey for companies to fill the gaps in the Indian industry and also access the large market. Interestingly, both the current state of industry and labour in India, and the emphasis on the manufacturing sector, provide excellent opportunities for UK companies to enter India with technology expertise and Intellectual Property. A UK company wishing to exploit these advantages with the intention of creating a strategic business model in India should take time to understand the deployment of IP at various levels in the supply chain from the OEM vendor to the customer.

A strategic positioning of IP would include all species of Intellectual Property.

1	Large and growing market	Design, copyrights and trademarks
2	An inexperienced labour pool	Automation and robotics, copyrighted manuals, contracts, training and culture
3	Technology appetite in industry	IoT, ERP, statistical tools and inventory control
4	Minimal competition from local products	Copyrights and trade secrets, patents and co-development
5	Infrastructure and logistics	Software, servers, JIT, management techniques

Not every company is equally rich in IP or skilled in the management and use of IP. Very few small and medium enterprises (SME) may have more than one or two elements of IP and generally operate with a small and insufficient capacity in IP creation and management. It is necessary for companies to conduct an assessment of IP assets owned by the company and to know their capacity for IP creation, protection and monetisation. It is also important that the company estimate and plan the resources that they would deploy in India to protect and enforce their IP. Companies should also preferably be able to decide which IP assets they would license or transfer to India and whether they would file applications to protect the same in India. Based on how rich they are in IP and how much more the company can invest in IP, a company could classify its resources and deploy it appropriately. Below is a chart that could provide initial guidance to companies. The classification is provided by Taylor and Silberston (1973).

Type	Characteristics	Team size	Focus IP areas
I	Limited IP resources and low levels of IP internationalisation in the employees. No systematic IP resource management, or resources to sustain a long litigation in India.	Small size of IP Staff and small number of specialists.	Market facing IP and IP-led products

II	Comparatively stronger in resources than Type I. Perhaps no IP manager.	Small IP team with around 12 members with in-house IP specialists such as patent attorneys, chief engineers and support staff. Seek outside support in IP creation and protection, such as IP agents, valuers etc.	Market facing IP and IP-led products. Concentration on process improvement and product development.
III	Greater IP resources. IP team coordinates and liaises with other departments including R&D, production and marketing. The IP department is supported and encouraged from the top, and also networked well with external agencies such as foreign IP offices of the firm in their international IP operations.	The company is likely to have its own largely adequate patent department of about 40 people, led by high-calibre patent managers, with combined experience in business and legal matters. The team may include specialists in engineering, IP law and management. The IP division would be capable of planning & coordination, drafting technology contracts and applications and management. The licensing team and the patent information centre analyses competitors and provides data services.	Market facing IP, IP-led products and further focus on creating a strong vendor base for components and some areas of the supply chain. Their main emphasis is on patents and technology leadership.
IV	Super IP firms. Generally, large multinationals with strong financial foundation and active global operations. More balanced IP resources than Type III. The firm's main assets are its people, for example software engineers, software designers and programmers. The Company controls the protection of all major IP rights.	They have an IP department of over 50 employees, including specialists dedicated to different IP fields, with a clear management structure cross different IP Activities, such as trademarks, patents and so on. In addition, they tend to have sub-divisions within the department for matters such as licensing, litigation and anti-piracy.	Market facing IP, IP-led products, use and development of the labour and vendor pool, creating strong technology driven supply chain and gradual reliance on local supply chain and logistics. They also develop and protect supply chain IP, and software for training and quality control. The company deploys a strong IP force to supervise IP activities and IP enforcement which demonstrates commitment to preventing IP violations.

Understanding the IP capabilities of your company would enable appropriate utilisation and profitable deployment of IP resources in India. Factors impacting IP deployment in India have been discussed widely in the media and governmental and policy bodies. Concerns about IP protection and enforcement remain major factors influencing decisions of companies to enter India and their market strategies. While some of the negative factors may be true and uncomfortable to users of IP in India, they do not foreclose strategic deployment of IP in the country, towards greater profits and market share.

Western countries, particularly the US and the UK have been identifying certain characteristics of the market and regulatory framework of India as being obstacles to their use of their IP in India. IP enforcement has been consistently placed among the top handful of issues raised by the US and UK every year. Despite formal structures becoming increasingly streamlined with international best practices, challenges in enforcement remain, particularly in extremely long litigations and the sophistication of counterfeiters and infringers. Indians have long been able to utilize advanced reverse engineering techniques in a variety of domains and industries and have been able to build and exploit parallel networks across borders, particularly with the Chinese industry.

IP indices have been ranking India low on IP protection and enforcement for several decades. For instance, The Global Intellectual Property Center (GIPC) established in 2007 as an affiliate of the U.S. Chamber of Commerce, identifies the following factors as the reason why India is ranked 37 out of 38 in its February 2016 ranking. According to the GIPC

1. Patent protection in India remains outside of international best practices,
2. Indian law does not provide adequate enforcement mechanisms to combat online piracy.
3. India suspended implementation of Final Guidelines for Computer Related Inventions.
4. A key area of weakness is the use of compulsory licensing for commercial and non-emergency situations.
5. Another area of weakness was “poor application and enforcement of civil remedies and criminal penalties.”

Without going into the merits of the above statements, it needs to be clarified that the Indian

government supports the IP regime on the ground that India is in full compliance with her obligations under the TRIPs agreement. In spite of India's assertion, the opinion of stakeholders, similar to that arrived at by GIPC, lends support to the perspective that India is an unhealthy jurisdiction for use of IP. The US Trade Representative (USTR) keeps India on a list of countries it says present the "most significant concerns" regarding weak IPR laws. The 2014 *IP Attaché Evaluation Report: Programme Review*, states that 'In India's burgeoning economy, companies report struggles with IP protection, enforcement and counterfeiting.' Other areas of concern appear to be timeliness and certainty around rights granting. Businesses feel that some processes should be quicker. Further, access to IP enforcement mechanisms are difficult to navigate[21].

In spite of challenges, companies also realise that there is appetite in the growing market for their technology, products and brands, and that capturing the market could ensure enormous profitability. Experience in similar jurisdictions, such as China, has taught multinational corporations to deploy geography-specific strategies. The Chinese experience in particular has equipped American companies with expertise in deploying IP in hard-to-protect jurisdictions. They have learnt to employ strong preventive best practices, including internal controls and external engagement with key stakeholders. The US China Business Council report – *Best Practices: Intellectual Property Protection in China*[22]states that to be successful in China, companies should develop an integrated IP protection strategy that reflects the nature and extent of the IP problems they face. The strategy ought to be grounded in a realistic assessment of internal goals and resources.

While every lesson applicable to a US entity operating in China, cannot be applied to a UK entity operating in India, one crucial lesson must be learnt: *that to be successful in India, companies should develop an IP strategy that reflects the nature and extent of IP issues they face and one that is grounded in a realistic assessment of the jurisdiction*. Lessons can also be learnt from companies that have had a long and successful commercial history in India.

[21] http://blogs.fco.gov.uk/viyer/2016/01/28/interview-with-adam-williams-uk-intellectual-property-office/
[22] https://www.uschina.org/reports/best-practices-intellectual-property-protection-china

India's oldest multinationals have survived the upheavals that came with independence, and the economic ups and downs leading to liberalization and globalization. Many of these companies have become so integrated in the history and growth of India, that Indians often consider them Indian entities. Further, the market leadership of the Indian entities has made them extremely valuable parts of the global parent companies. "The long stay of MNCs is ample proof of companies improvising their products, strategies and processes according to the local culture, demands and economic environment," says Richard Rekhy, CEO, KPMG India[23]. The lessons they have learnt in good corporate governance and their ability to adapt to different economic policies and regulations can help new companies make sense of the Indian market and culture.

Companies such as Hindustan Unilever exploit strategies that have historically evolved through their long connection with India. Unilever is a leading supplier of Food, Home and Personal Care products with sales in over 190 countries. Over half of the company's footprint is in the faster-growing developing and emerging markets (57% in 2013). These jurisdictions generated annual sales of €49.8 billion in 2013. The Unilever portfolio includes some of the world's best known brands, 14 of which now generate a turnover of €1 billion or more. Hindustan Unilever (HUL) is the market leader in Indian consumer products with presence in over 20 consumer categories such as soaps, tea, detergents and shampoos amongst others with over 700 million Indian consumers using its products. The company has more than 50 well-known branded products in these categories.

The multinational corporation uses key strategies and tactics to identify and protect its IP in India, both to prevent IP infringement before it occurs and to take immediate action against infringers once discovered. Industry estimates suggest that 3-5% of all products sold in the INR 2.4 Lakh Crore FMCG market in India are counterfeit, resulting in a loss of over INR 8,000-12,000 crore per annum for branded products.

With over 400 brands, Unilever has a structured brand enforcement team with approximately 15-20 people engaged full-time in their brand protection effort worldwide. In addition, there are number of people in the legal, customer development, supply chain and communications functions,

[23] http://www.businesstoday.in/magazine/special/the-oldest-multinationals-in-india/story/194699.html

who are involved, for at least part of their jobs, in brand protection. The company also take steps to overcome brand dilution and loss of reputation due to counterfeits by customer education and recruitment to other brands of the company.

Emerging markets are tricky even for highly sophisticated global companies like Unilever. In 1999, Unilever decided to bring down the number of brands it owns from 1600 to a manageable 400 'power brands'. The move was aimed at increasing operational efficiency, reducing brand clutter, increasing promotional activities for the power brands, and encouraging users to migrate from small brands to power brands. The result of the strategy, unfortunately, was the forfeiture of strong regional brands in favour of 'global power brands,' an outcome that resulted in losses in the developing and emerging markets. HUL, which had promoted regional low-priced brands, like 'Rexona', to fill the gaps left by the larger brands preempting competition in the segment, lost its presence in the smaller markets when these were withdrawn. Distribution channels also broke down leading to substitution by other brands. Further, the users of smaller brands did not migrate to power brands, like 'Lux' but moved away from the company's brands to competitors' products. In 2005, Unilever modified the 'power brands' strategy and revived the popular small brands.

Priority was restored to emerging markets, where Unilever had historically been strong and new products were developed to meet local needs. Products that were developed and launched in emerging markets were selectively rolled out in high-growth markets. 'Clear' was first marketed in the emerging markets before it was introduced in the US and Europe. Unilever is also a member of BASCAP (Business Action to Stop Counterfeiting and Piracy). The company engages on a continual basis with enforcement agencies to conduct raids and seizures.

HUL's patent strategy is a unique mix enabling vendor development strategy and product enhancement. HUL can be classified as a Type IV IP user in India. With a strong focus on innovation, Unilever currently has a network of R&D centres spread around the world (UK, Netherlands, US, China and India) employing over 6,000 people. Hindustan Lever Limited has a total of 115 patents filed with India as priority country, while HUL has a portfolio of 194 patents. Unilever plc. and Unilever NV have filed 907 and 1188 patents in India respectively. PCT data shows that these patents have also been designated for Mexico, Brazil, China, Argentina and UK.

Hindustan Unilever has filed 720 PCT filings designating India, with UK as priority country in similar classes, while Unilever plc. and Unilever NV together hold a portfolio of approximately 22,321 patents, primarily filed in UK, Spain, EPO, Germany, Brazil and South Africa. They have about 500 patents filed in US and Canada. Other countries where Unilever has sought patent protection include Portugal, Vietnam, Israel, Japan, Korea, Russia, Singapore, Kenya, ARIPO, Morocco, Panama and Peru.

It can be surmised that the Unilever group files patents with regard to local needs, requirements and preferences. The majority of patents are primarily filed in C11D (detergent compositions, use of single substances as detergents, soap and soap making, recovery of glycerol); A61K (deodorization, disinfection, sterilization, absorbent pads, bandages and dressing); A61Q (specific use of cosmetics or similar toilet preparations, make up preparations, body powders, preparations for removing makeup, preparation for hair care, preparation for teeth and oral cavity, formulations and additives for perfumes, preparations brought into direct contact to skin, for affording protection against external influences such as sunlight, harmful rays, bacteria or insect stings). Further, the purpose of filing in China, Vietnam and Indonesia appear to be for the purpose of setting up local manufacturing units in those countries.

Countries	
Name	No
European Patent Office	6185
United Kingdom	5830
Spain	5478
PCT	5114
Germany	4094
Brazil	3252
South Africa	2563
Canada	2139
United States	2096
Argentina	1996
China	1474
Mexico	1258
Portugal	375
Republic of Korea	320
Viet Nam	277

Main IPC	
Name	No
C11D	15267
A61K	10528
A61Q	7027
A23L	4324
B65D	2739
A23D	2397
A23G	2012
D06M	1109
C07C	943
A23C	916

Main Applicant	
Name	No
UNILEVER PLC	23002
UNILEVER NV	15568
UNILEVER N.V.	10123
UNILEVER LTD	1838
HINDUSTAN LEVER LIMITED	1695
HINDUSTAN UNILEVER LIMITED	1274
荷兰联合利华有限公司	1170
Unilever N.V.	1030
CONOPCO, INC., D/B/A UNILEVER	668
Unilever PLC	655

Japan	166
EAPO	164
Israel	148
Colombia	98
Chile	72
Singapore	49
Russian Federation	46
Egypt	18
Panama	16
Morocco	14
Kenya	12
Germany(DDR data)	9
ARIPO	7
Peru	4
Dominican republic	3
Costa Rica	1
Uruguay	1
Estonia	1

The primary aim of patent filing in India appears to be defensive, with an intention to prevent competition in core areas of operations. HUL faces competition from highly regarded Indian brands such as Dabur, Godrej, Marico, Emami, Bajaj, Nirma, ITC and Jyothy Laboratories. Foreign competitors include Colgate, P&G and Gillette. By cutting costs in their Indian manufacturing units, the company is able to lower prices and improve margins, reporting a 50% share of developing and emerging economies in its revenues.

The Unilever group appears to follow a strategy for patent protection that enables local Unilever entities to proceed with filing and protection in specific jurisdictions. For instance, the Indian priority application 385/MUM/2007 '*Novel Cosmetic Cream Composition Comprising C-12, C-20 fatty acids*' has been filed in India by HUL. However, it has been assigned to Unilever plc for PCT filing in certain jurisdictions such as Australia, Brazil, Canada and Singapore, and to Unilever NV for such countries as Germany, Japan, Korea, Poland and China.

The patenting strategy reflects the manufacturing localization strategy of the Unilever group. Based on local trends and competencies of the suppliers, HUL files patents on technologies relating products or processes, methods of use and treatment, devices, compositions and formulations, and finishing of products. On the other hand, Unilever NV files patents in China relating to value addition of products and chemical and physical characteristics of primary compounds, materials and compositions. HUL is enjoying the benefits of an increasing stream of new products and innovations, backed by technology and knowhow from Unilever. HUL is also receiving support and guidance to drive functional excellence in, among other things, marketing, supply management and media buying. This is helping HUL to remain competitive and further step-up its overall business performance. The total estimated royalty cost for HUL is about 2.15% of turnover for licensing of technology, trademark and other services from Unilever.

A study of HUL's strategy demonstrates the many interesting lessons it has learnt in its 82-year history in India. Primary among them are the ability of the company to align its growth strategy with fulfilling the expectations of the market, and adapt to changing policies and regulations.

1. *What is good for India is good for HUL*. Mr. Harish Manwani, COO of Unilever and non-executive Chairman, Hindustan Unilever Limited, in his speech on the occasion of HUL's 75th year in India in 2008, asserted that this belief continues and would continue to be the guiding principle of HUL in everything they do now and in the future. He adds further that the company has earned the love and respect of India by making a real difference to every Indian. The company embraced the needs of the country as its own and in the process moulded and shaped itself to become better and stronger.

   Other companies with similar long histories in India, like Tractors and Farm Equipment (TAFE) Ltd. also follow similar strategies. With a presence in over 75 countries manufacturing iconic brands like Massey Ferguson, Eicher and TAFE, one of the company's core missions is to improve the lives of Indian farmers. ITC too states that its vision is to 'Sustain ITC's position as one of India's most valuable corporations through world class performance, creating growing value for the Indian economy and the Company's stakeholders.'

2. *Focus on areas of research that would strengthen the economy and catalyse local industry*. The company has prioritized strategies and operations that reflect national goals. The company followed the government's focus on investments in high technology areas by backward integration into the technology intensive domestic chemicals sector. HUL supported the import substitution drive by, for instance, substituting edible oils with non-edible oils such as rice bran and castor in soap making.

3. *Addressing the country's challenges in ensuring balanced economic growth and access to basics*. The company launched Pureit which puts safe drinking water within the reach of every Indian home at INR 0.20 per litre. By diversifying their manufacturing base and setting up units in remote and rural areas, HUL has catalyzed development of backward regions and enhanced livelihoods.

4. *Supporting vendor development*. HUL has supported vendors to produce goods and equipment such as chemicals, specially structured lamitubes, liquid sachet-filling machines and eutectic freezers. HUL provides technology support, underwrites investment and provides a secure market for the output[24]. HUL vendors also export to Unilever companies in other countries thus forming international linkages for India's intermediate industries.

5. *Leveraging the full opportunity that India presents by serving the 'many Indias' within the country*. The long term growth of the company depends on supporting businesses to contribute to the national cause and pioneering initiatives towards integrated rural development or manufacturing investments in backward areas.[25]

6. *Brand building on historical connections*. HUL's long history in India and local management means that many of its best known brands are considered homegrown. Products such as skin lightening cream 'fair and lovely' are specially developed for Indian

[24] https://www.hul.co.in/Images/hindustan-lever-growing-with-india-15thmay98__tcm1255-434455_1_en.pdf
[25] https://www.hul.co.in/news/press-releases/2015/serving-many-indias.html

consumers (though their societal impact has been debated widely for promoting discrimination). Such affinity is a huge advantage over relative newcomer brands from other multinational companies.

7. *Litigation management and brand protection*. Litigation management focusses on combating unfair competition with a series of actions to protect the Company's Brands from counterfeits, look–alike and grey imports. Brand competitiveness is also achieved by ensuring consumer education and awareness, loyalty of consumers and value chain, judicious pricing, brand expansion, developing ethnic brands and promoting well-known Unilever brands.

The Unilever strategy depends on collaboration with suppliers and supplier development. Unilever works with more than 76000 suppliers in 190 countries. In 2011, Unilever launched the *Partner to Win* strategic Programme focused on building a deeper level of collaboration with 200 of its most important suppliers. The scheme centred around five pillars - innovation, sustainability, service, value and capacity.

According to the company's vice-president of procurement, Biswaranjan Sen,[26] 70% of Unilever innovations have been contributions from suppliers, including innovations that have lowered of costs in the end-to-end value chain. The company also encourages suppliers to work together, instead of building the traditional one-on-one relationship only with the company. The group depends on the capacity and capability of suppliers to fulfil the demand in the emerging markets, which are expected to bring in up to 70% of the turnover by 2020. Suppliers are also commended for making contributions in the categories of sustainability, business integration, enterprise support and capacity, innovation, and capability development. Further, after indigenization of technology, specialty chemicals and formulations, developed in collaboration with Indian suppliers have been exported to other countries. As suppliers invested in expansion of their capacities, HUL's local requirements dovetailed with the requirements of its parents to qualify them to become global suppliers. The Programme is also aimed at enabling capabilities in strategic supply partners that

[26] http://www.cips.org/en-SG/Supply-Management/News/2014/September/Unilevers-innovative-supplier-collaboration-programme-looks-to-the-future/

are specifically engineered to support Unilever group.

As multinationals are increasingly looking to move their production to India, Unilever is preparing to protect its production base. Suppliers are routinely asked to sign agreements where they are required to protect and safeguard Unilever IP from abuse and infringement. The *General Terms and Conditions for the Purchase of Products and Services* specifically states that suppliers must have in place valid licenses for the use of Unilever IP and third party IP and that they should ensure that suppliers shall not sell, market or distribute counterfeits or infringing copies.

Takeaway

- Identify and focus on areas where your interests coincide with the growth of the Indian economy.
- Aim at long-term value addition to your Indian customers.
- Co-develop products and processes along with your vendors and supply chain.

Make in India for India

It is impossible to create a 75-year history with India, if you don't already have one. Yet the country may give you opportunities which you wish to exploit. One apparent strategy that has emerged from the entry of the Asian Tigers into India is 'Make in India for India' - a strategy that is helping Foxconn and Hyundai to reap rich dividends. Both companies are driven by technology and have rich IP assets, ensuring global competitive advantage in their domains. Yet the two advantages that the companies are looking to exploit in India are:

1. The consumer-driven Indian market and the consumer spending which is anticipated to more than double by 2025; and
2. The cost of labour which is lower compared to the labour costs in their home country.

Several global companies are exploring the possibility of having or using local production facilities in important markets. Sony is one of the companies that in 2015 signed an agreement to manufacture Bravia TVs at the Foxconn facility in India.[27]Sony India Managing Director, Kenichiro Hibi felt that with the growing importance of India for Sony worldwide local production will help the company be more competitive, lower costs and allow faster turnaround time to launch newer models. India is Sony's fourth largest market; rivals Samsung and LG already manufacture in India. The company will, for the present, use the Foxconn facility to make for India, and

[27] http://articles.economictimes.indiatimes.com/2015-08-04/news/65204508_1_sony-india-kenichiro-hibi-sony-corp

subsequently for export. But eventually, the company may set up their own production facilities too. Other companies exploring the export market in SAARC and African countries, with India as the base, would also provide good opportunities for Foxconn manufacturing units.

With brand name players seeking local manufacturing facilities, Foxconn sees great opportunities in India. By defining itself as a service company rather than a manufacturing concern, Foxconn defines company products as Speed, Quality, Engineering Services, Flexibility and Monetary Cost Saving – products which make the company attractive to branded product companies. Foxconn is also looking at Indian mobile phone brands and telecom equipment vendors for contract manufacturing. In the mobile phone sector, localization of production could change the game. India will exceed 204.1million smartphone users, topping the US as the world's second largest smartphone market by 2016 according to eMarketer's latest report. China will continue to lead the rankings in 2016 with 624.7 million smartphone users. US would follow India with 198.5 million. Foxconn is committed to localization globally and is 'devoted' to the customer's long term success and pride in its hardworking culture. With its well-developed logistics planning and e-supply system adopted for the global supply chain management and sales channel solutions, Foxconn is prepared for monopoly in manufacturing as a service.

For Hyundai, currently No. 2 in the Indian market with a 20% market share, courtesy of largely mass-market offerings like Santro and Eon, localization means not only bringing production closer to the customer but also offering tailor-made models to suit local needs, while utilizing the platform strategy to the maximum. Hyundai saw its domestic sales grow by 9.1% on the strength of strong performance of the three '*Indian Car of The Year*' brands Creta, Elite i20 and Grand in spite of logistic challenges for transportation of vehicles to North India[28].

The company is now using Chennai as a critical site in their Asia-Pacific regional strategy. Having suppliers close to Hyundai's Chennai plant enhances Hyundai's ability to maximize the lean manufacturing philosophy and utilize Just-In-Time manufacturing principles. To support the revitalized Just-In-Time manufacturing process, which enables Hyundai to operate with an average inventory of less than 0.6 days of production, Hyundai enhanced their supply chain management.

[28] http://www.hyundai.com/in/en/MediaCenter/PressReleases/index.html

The company brings out one car every 72 seconds in its Chennai plant; approximately 1200 cars per day in each of the two Chennai plants. Korean parts and components suppliers to Hyundai faced pressure from the company to contain or reduce the prices of their components and the cost of transportation, in order to reduce the cost of the automobile. Suppliers set up their facilities jointly with local Indian partners near the Chennai Plant to provide the component at the site.

Growth in sales of passenger vehicles in India was the fastest among the eight largest auto markets in the world in the first 11 months of 2015, while vehicle purchases slowed in China and declined in Japan and the US. Hyundai Motors India Limited is also the largest exporter of passenger cars in India. In 2015, it exported 167,268 cars. While Indian operations continues to be the hub for Asia, Latin America and Australia, in September 2015, Hyundai stopped shipments to Europe from its Chennai facility, assigning the task to its plants in Turkey and the Czech Republic. An HMIL spokesperson attributed this to the sharper focus on domestic markets[29].

Interesting insights into the IP management practices of Foxconn India and HMIL can be acquired by studying patent filing data. Foxconn and Hyundai in India could be categorized as Type III IP firms based on their use of IP in India. The two companies do not deploy their intellectual property confidently in India, and rely on internal processes and access control to prevent IP infringement. Foxconn in 2014 had around 128,400 pending and over 64,300 granted patents. Foxconn has also been busy transacting in the IP market, building up its portfolio by buying in patents and selling off those it no longer needs. In 2013, Foxconn became Microsoft's biggest patent licensee.

Meanwhile, Foxconn's US affiliate MiiCs and Partners are taking forward the solid IP monetisation strategy the company has had in place for some time. Hyundai has been filing large numbers of patents in the last five years narrowing the gap with industry leader Toyota[30]. Hyundai's patent filings more than doubled to 1,200 in 2013, from 500 in 2010. Hyundai was among the leaders in every category namely, propulsion, navigation, handling, safety and security, and entertainment. While Google Inc. has dominated headlines in self-driving cars, Toyota, GM and Hyundai received the most patents in this area. GM and Hyundai lead the advances in

[29] http://www.livemint.com/Industry/pbuvkFgL1SCmvNkruQAlZN/Auto-exports-at-a-record-high-in-FY15.html
[30] The State of Innovation in the Automotive Industry 2015

telematics. Foxconn's largest patent portfolio comprises its US patents, followed by its Chinese patents, while 85% of Hyundai's patents are in South Korea. Foxconn appears to have filed only 8 patents in India, while Hyundai appears to have filed no patents in India.

Global strategies of the companies, therefore, are less likely to impact their India operations. In 2015, Terry Gou, Foxconn Chairman and Founder, explained that his company was filing fewer patents from 2014 onwards in an effort to build a quality-oriented patent portfolio. Further, he added that Foxconn had made some mistakes in the past in terms of patenting, particularly by submitting applications for products or product features that did not require patent protection, which had allowed some competitors to 'copy' some of the company's innovations[31]. This has had no significant impact on the company's India operations.

It can be surmised that neither Foxconn nor Hyundai face serious competition from Indian competitors. There also appears to be less likelihood of Indian competition developing in the near future as Indian companies have insufficient research capabilities and fewer patent reserves. As preferred partner for the global computer, communication and consumer-electronics industry for joint-design, joint-development, manufacturing, assembly and after-sales service, Foxconn's patent strategy is aimed at contributing to the product and service models of its customer, rather than defending its turf in India. Customers of Foxconn services file patents aggressively in other jurisdictions such as the US, and only file about 15% of their portfolio in India. Xiaomi, for instance, has filed about 1949 patents in China and only 308 have been filed through PCT designating India. Apple has about 23371 filed patents, only 3289 of which have been filed through PCT designating India. Interestingly, the large number of India designated patents appear to be ancillary production related patents as well as indigenization of the device for Indian conditions such as those covered by IPC classification G6F (input-output arrangements for transferring data, IO interface arrangements, cooling means, power supply means, display related, drag-and-drop, typewriters).

Hyundai Motors Company, on the other hand appears not to see the relevance of their 71929 patent portfolio for their Indian operations. Only 26 Hyundai patents appear to have been filed through

[31] http://www.iam-media.com/blog/detail.aspx?g=b8d9ed07-e50a-402d-831f-f14ba330199d

PCT designating India. This can be explained by the division of the company's activities into Strategic Activities - which are still performed in Korea, or in the US - and routine activities, which have been off-shored to the Indian subsidiary in an effort to lower production costs.

'Make in India' invites companies to undertake activities which cannot be automated, or are more expensive to automate in India. The initiative highlights the cost advantages the country has vis-à-vis China. Using Foxconn services, even with the high cost of importing components from China, mobile phone companies are able to supply their products at lower cost to Indian customers, because packaging and delivery is easier. Further, the cost of assembly is cheaper given that labour costs are only one-third of Chinese labour costs. As Chinese wages are becoming more expensive, people are looking at productivity enhancements. However, European countries, in particular Germany, is undertaking initiatives that will revolutionize manufacturing and will reduce the amount of labour required for manufacturing.

Yet, for the present, Foxconn and Hyundai with their India operations have enlivened the Indian manufacturing landscape by creating processes and routines that enable them to productively use workforce with differing levels of education alongside high-levels of technology and standardisation. They have shown that investment in IP and R&D is not related to how the workers use the technology. Treating Knowledge Management as a strategic asset, they capture, develop, share and effectively use organizational knowledge to achieve organizational objectives. These companies thus control the rate and mode of innovation. Their refined methods of technology integration prevent the vendors, workers and management in their Indian units from acquiring or even accessing critical technologies.

While focussing on improving performance, building competitive advantage, and integrating innovation, they also create discrete units of knowledge and application. Foxconn and Hyundai use human and machine (or robotic) resources on the same platform, keeping productivity high and the diffusion of high-end technologies low. Those working on the continuously moving assembly line, do so seamlessly with robots that reduce decision making and encourage repetition. Skills, such as working with routines and safety protocols, are proliferated among the workforce and workers do attain competency in working with standard technologies at the state of the art.

Very little technology absorption takes place at the higher levels. Early studies in absorptive capacities of firms demonstrated that investment in the area of expertise and R&D would bear fruit only if there is prior related knowledge in the firm. However, recent studies confirm that absorptive capacity is determined by "a set of organizational routines and processes by which firms acquire, assimilate, transform and exploit knowledge to produce a dynamic organizational capability." Workers at Foxconn and Hyundai are assimilated into the technology-led industry through a set of routines and organizational culture. Technical education is not essential in the majority of the workforce.

Foxconn's process innovations are directed at improving the production process and hence have a direct impact on productivity and unit costs. Using software and digital technologies, and complex algorithms to guide robots, assembly lines and inventory, the company is able to decouple production processes from decision making capacity and technology skill. Rising productivity in the manufacturing unit enable expansion of production and entry of new workers with low skill and poor industrial experience.

HMIL has adopted a minimum standards approach to terms and conditions in their Chennai plant, with a majority of the workers employed as trainees for the first three years. Chennai was also a good location, as unions in South India are weak and poorly organized[32]. Most of the jobs are fragmented into relatively simple, repetitive tasks and there is a highly detailed division of labour. Training beyond basic skill development is used to promote employee loyalty and harmony at the workplace. At executive level, management development programmes are conducted to improve the capacity of managers to think strategically, manage their time effectively and improve work methods and quality. Performance appraisal in non-executive groups measured discipline, attitude to work, cooperation, punctuality and attendance. Key roles remain under Koreans, though at the level of managers, the ratio of Koreans to Indians has come down from 1:19 to 1:46. By 2000, the ratio of Koreans to Indians in the production division had come down from 1:26 to 1:172, keeping with the goal of lower reliance on Koreans at the plant level. The net impact in HMIL of

[32] Holland et.al, edit. Employment Relations in the Asia-Pacific Region: Reflections and New Directions, Routledge, 2007

automation has been to make human workers more efficient.

Both Foxconn and Hyundai established vertically integrated production systems in India. Foxconn's entry is likely to pull in other players in the supply chain including semiconductor suppliers, passive component vendors and other hardware manufacturers. Most of the vendors and suppliers of both companies are currently supplying to their home production bases and are familiar with the protocols regarding Intellectual Property and transfer of know-how for manufacturing. Data centres and IT infrastructure units have also been transplanted from their home country.

While the companies use processes to enhance their revenue and their productivity in India, IP issues such as licensing and enforcement are not relevant in their manufacturing model. Prior experience of the Chinese market and industry has taught them to hold their IP and intellectual assets close to their chest.

Takeaway

- Ensure that your product or service has a large market in India.
- Customise your products for your Indian market.
- Identify local and global competition in India.

Partnership in IP Development

The two strategies discussed in the previous chapters highlight the fact that deployment of IP in India is a decision to be made by the deploying company after considering

- The relevance of IP licensing to their operations in India, and
- The disadvantages of an inability to secure their IP rights in India.

For a Type III or Type IV IP user in India, India provides opportunities that may not be accessible to Small and Medium UK Enterprises.

For companies like Foxconn and Hyundai, IP enforcement is only minimally relevant; they cite land prices and the difficulty of acquiring land, political climate, taxation, labour issues, logistics and poor supplier quality as issues that impact their operations in India. Type IV companies with a long history of operating in India such as HUL have invested in vendor and supplier development and continue to improve their ties to the country. Their close relations with their suppliers and customers enables market-led innovation thereby improving the value of their IP in India. They have global enforcement teams with jurisdiction specific litigation management strategies, education programmes and large advertising budgets.

Without a solid IP strategy, the exploding growth of India would be an opportunity lost to smaller entities with valuable IP critical to their success in India. Type I and Type II IP users in India are less likely to be able to make large investments, convincing their supply chain to relocate to India,

or integrate automation and human workers on the same platform. Lessons may be learnt however from the operations of the two strategies previously discussed. A UK SME with intent to enter into India should first have clarity on the desired outcome of their India operations:

- Would their India operations be a *production base* for their Indian market or their global market?
- Would their India operations be *involved in developing products and processes* for their India operations, the Indian market or for their global market?

With these questions answered, the SME can look at options to open their India operations. From a strategic IP perspective, the two options that UK SMEs have to operate in India are:

- Working with Indian SMEs
- Working with larger Indian entities

Working with SMEs in India

The 2013 PWC-UKIBC report *'Route to the Indian Market: Opportunities for UK manufacturing SMEs*[33]' finds UK SMEs more R&D and innovation oriented - and technology driven - than Indian SMEs. The report focused on three areas in the advanced engineering and manufacturing sector – aerospace & defense, automotive and low carbon technologies. Since 2015, British businesses are increasingly trading more with Asia, and almost half the SMEs now list China as a primary import market and key export market. Nearly one in five UK SMEs list India as a key import market, almost double the number that did in 2012[34]. This reflects the confidence that they have on Asian manufacturers and markets.

According to Union Commerce Minister, Nirmala Sitharaman, Indian SMEs need capacity building, cheaper credit, better marketing, robust infrastructure, technology and an environment that is conducive to their growth, where they can develop skill and innovation abilities. Indian SMEs need support to enhance their global competitiveness. Although SMEs employ 40% of India's overall workforce, they contribute only 17% to the nations GDP. This may be compared with the German Mittlestand sector which accounts for almost 60% of the employment and

[33] https://www.pwc.co.uk/assets/pdf/ukibc-sme-report.pdf
[34] http://www.bmmagazine.co.uk/news/british-smes-trading-globally-looking-beyond-continent-for-growth/

contributes more than 50% to the national economic output. It is surmised that Mittelstand firms have achieved success through investments in innovation and through product specialization in niche areas within electrical engineering and industrial products. Similarly, UK SMEs provide 60% of all private sector employment in the UK, and have a combined annual turnover of 47% of all private sector turnover in the UK.

A 2015 Goldman Sachs report '*Unlocking UK Productivity'* provides some insights into the UK SME sector. The report states that the UK has seen the highest number of start-ups of OECD countries. But just 18% of UK SMEs express high ambitions to grow, compared to 27% in the US[35]. In fact, data from the Global Entrepreneurship Monitor (GEM) shows that early-stage entrepreneurs in the UK have the second-lowest growth ambitions among G8 economies. Further, just 28% of British firms innovate, placing the UK 24th out of 34 European countries and making the UK's innovation rate comparable to that of Turkey and Serbia – way behind the leading countries such as Germany, Belgium and Iceland. Many of the issues that the UK SMEs face are similar to what Indian SMEs face, including challenges in recruitment, shortage of skills and expertise, not being able to raise prices, taxation and regulatory environment, obtaining finance, late payment, the state of the economy and availability of suitable premises.

India has a starkly bifurcated labour force, with a large proportion of population having had the benefit of only the most basic education. At the same time, India also possesses a sophisticated and highly trained workforce in science and research, engineering, education and health services, IT & ITES and many types of business service. While the Make in India initiative has stressed employment in the lower-skilled manufacturing units and basic BPO, much less attention has been paid to higher-end sectors where the country has significant advantages such as science and technology, R&D, IT & ITES, and the business and finance sector.

In spite of the fact that most SMEs are led by entrepreneurs - some second or third generation entrepreneurs - with at least one higher education degree (Engineering, Commerce or Science),

[35] High growth businesses and their perspectives on Europe, Goldman Sachs 10000 Small Businesses UK Programme, in association with Aston Centre for Growth, Aston University,

adoption of technology in production and logistics is low. This is due to a combination of factors, according to an ASSOCHAM – Ernst & Young report[36]:

1. Lack of understanding of the business benefits that technology can deliver across end-to-end value chains
2. Lack of guidance on the inherent abilities of technologies and how these can be integrated and institutionalized in their businesses
3. Resistance to incurring upfront investment-related costs to implement technology
4. Lack of skilled manpower to manage technology set ups

Studies conducted by IP Dome among 40 SMEs working in the auto-components sector in SIDCO industrial estate and 40 SMEs in the Tirupur-Coimbatore knitted materials cluster demonstrated that:

1. SMEs are aware of retail brands, but not the benefit of branding and protecting trademarks. SMEs in the knitted material cluster justify counterfeiting by smaller players as not impacting the market of global brands.
2. Many Micro and Small Enterprises in the knitted garments sector do not recognize the benefit of building a customer-facing brand, and do not understand the loss caused to the branded retailer. Moreover, as they do not have brands and reputations in their market, they are indifferent to the brand they counterfeit. Their choice depends on whether it is cricket season or festival season.
3. The SMEs studied claimed that their long relationship and consistent quality of service and product are more important than their trademark. IP DOME found in the Mango cluster of Krishnagiri and the jewellery cluster of Coimbatore that SMEs feel that the ability to price their product lower than the competitor is more important than IP.
4. SMEs in the auto components sector are suspicious and fearful of licensing technologies, as they believe that they may have to pay a large amount of money as royalty. Moreover, they believe that the technology is so basic that it can be re-developed or re-engineered by the Indian SME in-house without entailing legal liabilities.

[36] http://www.ey.com/Publication/vwLUAssets/EY-SMAC-the-next-growth-driver-for-SMEs-in-India/$FILE/EY-SMAC-the-next-growth-driver-for-SMEs-in-India.pdf

5. Further, SMEs believe that if they had a stake in the brand or IP, they would protect it against third party counterfeiters and infringers. Often Indian SME entrepreneurs feel slighted by the overly inflexible agreements they are forced to sign with foreign collaborators and buyers to keep the cash flowing. They assert that if they had a choice of collaborators, they would demand better terms in agreements.

The SME entrepreneurial sector is vastly different from the newly emerging start-up sector. While both benefit from nimble operations, and small teams, SMEs are unwilling to take risks or change their mode of operations if it is capital intensive. In general, they lack bold leadership and fast decision-making capacity – both critical to innovative thinking - owing to operational stresses and difficulty in managing cash resources.

Where Indian SMEs are not prepared to license innovative products to alter their mode of operations, British SMEs can exploit opportunities to collaborate with them by adapting modern production techniques to the Indian business environment. In the process, UK SMEs would be able to intimately understand Indian market needs and demands and work collaboratively with Indian SMEs to provide India specific products. Productivity increases will be driven by additional investments in technological know-how from UK, indigenous innovation, and improvements in human capital.

Below is a comparison of SME sectors in India and the UK, which could provide initial insights with regard to collaboration and joint ventures.

Indian SME Sectors (2014)[37]	UK SME Sectors (2015)[38]
Agricultural Products	Agriculture, Forestry and fishing
FMCG	
Engineering	
Manufacturing	Manufacturing
Pharmaceuticals	
Steel and steel products	
Automotive components	
IT & ITES	Information and communication

[37] http://insideiim.com/is-it-the-right-time-for-smes-to-implement-erp/; 2014

[38]https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467443/bpe_2015_statistical_release.pdf

Education	Education
Health	Human health and social work activities
Electrical equipment	
Construction	Construction
Textile and apparel	
	Mining and Quarrying and utilities
	Wholesale and retail trade
	Repair of motor vehicles
	Transportation and storage
	Accommodation and food service activities
	Financial and insurance activities
	Real estate activities
	Professional, scientific and technical activities
	Administrative and support service activities
	Arts, entertainment and recreation
Others	Other Service Activities

The Engineering sector is the largest in the overall industrial sectors in India. The engineering sector is relatively less fragmented at the top, as the competencies required are high, while it is highly fragmented at the lower end (e.g. unbranded transformers for the retail segment) and is dominated by smaller players. Dun & Bradstreet India in collaboration with SMERA (SME Rating Agency of India), further break down the engineering sector into heavy engineering and light engineering[39].

- Of the companies profiled in the publication, at least 61% of the companies were exporting their products, and of whom 28% were exporting over 80% of their produce.
- Close to 10% of the profiled companies had joint ventures with domestic or international partners. Companies have collaborated for reasons ranging from technical know-how, manufacturing knowledge to marketing arrangements.
- In terms of future, 55% companies indicated plans for capacity expansion, 27% for diversification while 12% showed interest in venturing into new markets.

[39] http://www.dnb.co.in/engineering/overview.asp

- 72% of the companies preferred to bank with PSUs/nationalised banks, while almost 11% preferred to arrange for funds internally. Further, co-operative banks were the next in preference with almost 9% companies seeking finance from co-operatives.

Most of the products in the light engineering industry serve as inputs for the capital goods industry. The health of the light engineering industry is therefore dictated by the demand for capital goods. The growth drivers are:

- Growth of key user-industries
- Government's thrust on sectors of the industry
- Preference of global companies for India as an outsourcing destination owing to lower labour cost and better designing capabilities.
- Inputs and raw materials are mainly local/domestic in origin

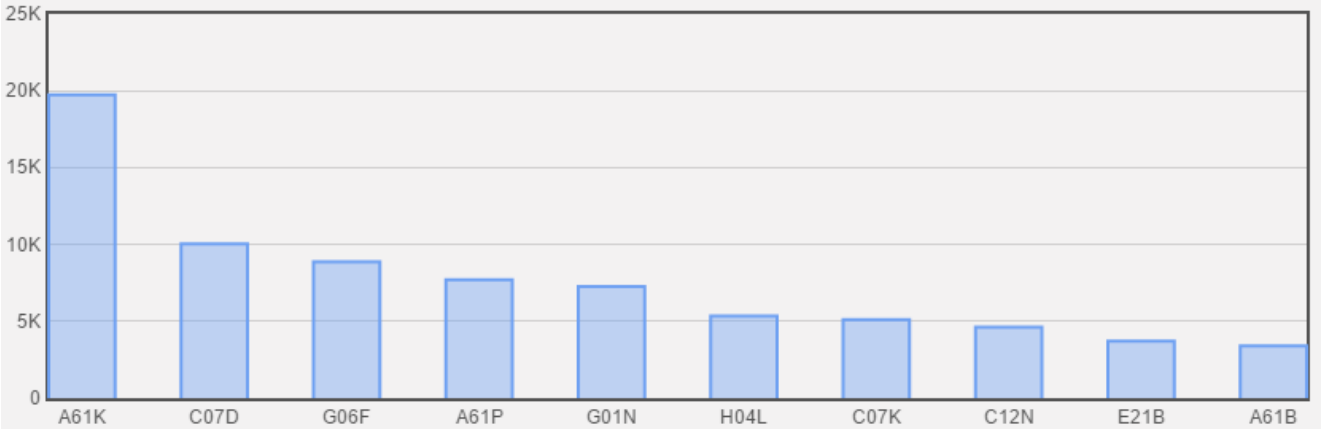
The key challenges for Indian SMEs in the engineering sector are:

- Low technological competitiveness
- Relative lack of sub-contracting arrangements, despite large scale SME presence in the sector
- Taxation and regulatory environment
- Lags in strong institutional mechanisms for export credit and promotion
- Public Sector Enterprises (PSE) have dominance in heavy engineering, machine tools and boiler manufacturing. On the other hand, private firms prevail in industrial machinery segments such as cement, sugar and most other non-electrical machinery
- Focus is on domestic market with less thrust on export
- Most items produced compare functionally with those manufactured elsewhere in the world, but lag behind as far as finish is concerned
- Focus/investment in branding, marketing and customer orientation is low

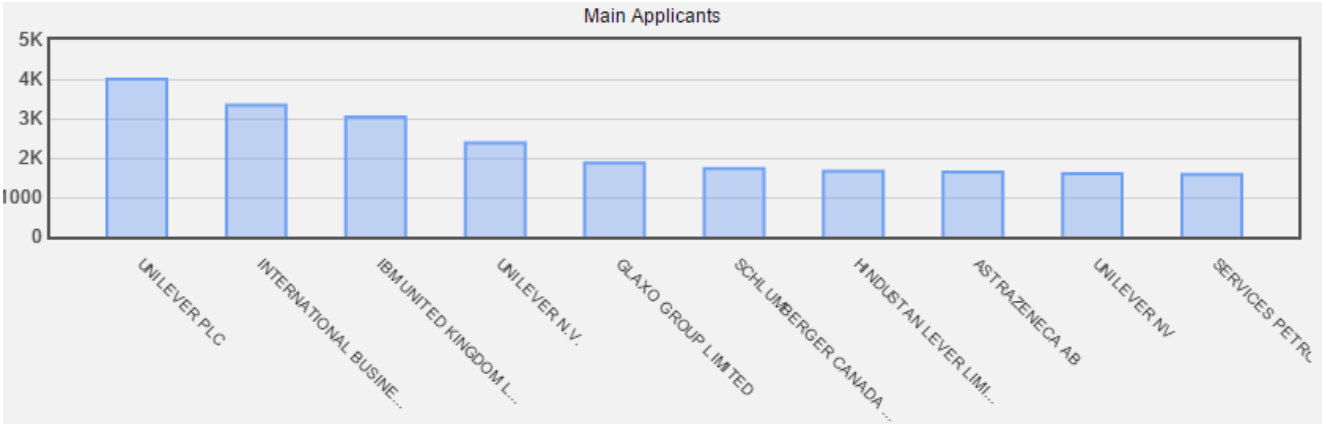
Despite the opportunity for UK SMEs in the engineering sector, only a minority of British companies are filing patents in the relevant IPCs in India. Major classifications in which British companies are filing PCT applications designating India are:

A61k	preparations for medical, dental, or toilet purposes
C07d	Macro-molecular compounds and heterocyclic compounds
G06f	electric digital data processing
A61p	specific therapeutic activity of chemical compounds or medicinal preparations
G01n	investigating or analysing materials by determining their chemical or physical properties
H04l	transmission of digital information, e.g. Telegraphic communication
C07k	peptides
C12n	microorganisms or enzymes; compositions thereof
E21b	earth or rock drilling; obtaining oil, gas, water, soluble or melt-able materials or a slurry of minerals from wells
A61b	diagnosis; surgery; identification

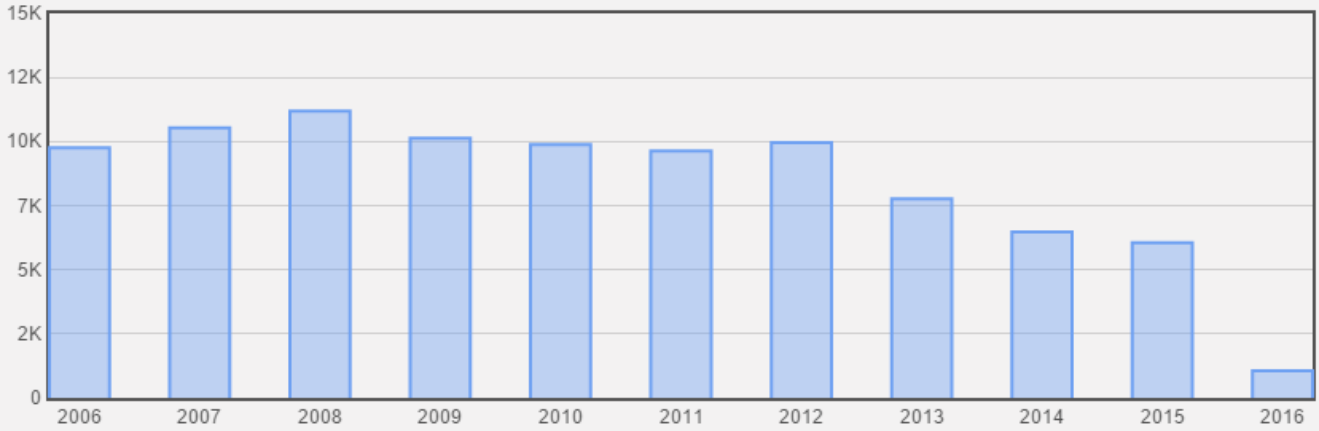
Approximately 53% of patents of British companies are in the above IPCs.



The major filers designating India are



We also find that the number of patents being filed through the PCT designating India has been falling since 2012.



Areas where UK SMEs could deploy their IP safely are:

1. Methods and processes, including software and IT/ITES that can enable productivity increases and process control. UK IP and know-how can help to close the technology gap between technology adopted in India and that adopted in the UK. Indian technology and processes tend to be obsolescent, non-standardised and belonging to different generations of technology evolution.
2. Methods and processes that would ensure quality control. The product should be robust and have the ability to overcome infrastructural inefficiencies
3. Technology, know-how and design for manufacture of special purpose and niche products which are currently being imported by Indian industry. Manufacture of these products requires high initial investment in infrastructure, training and licensing of technology. Further, the demand for such products is lower in volume than mass produced products within India. A UK SME could leverage the advantages of lower production cost and their ability to provide higher quality and precision to manufacture both for the Indian market and for export.
4. The collaboration should form the foundation of meaningful and transformative economic interaction and growth. The goal of the collaboration should be to improve the pool of talent and skill in the joint enterprise through sharing of knowledge and technology transfer. The collaboration should facilitate a two-way process of inspiration and ideas, where each side needs to contribute new ideas for an exchange to be fruitful and in turn generate innovation. The outcome should be such that a third party cannot

easily and cheaply appropriate the gains through reverse engineering. The innovative environment and the resulting joint IP enforcement would present entry barriers to new entrants enabling existing players in the industry to enjoy the benefits. This high entry barrier would make the ecosystem attractive to funding and investment.

Partnering with larger entities

For a UK company, partnering with a larger entity, such as a private corporation, a Public Sector Unit (PSU) or a government department would bring its own difficulties and obstacles, as well as advantages. Larger units typically take many months to make decisions. A large number of PSUs would choose to buy a product or technology that was lowest priced if it met the qualifications. Larger or older entities would have strategic goals and agenda which would have to be met. For instance, PSUs and government departments such as the Ministry of Defence would be keen to ensure that a vendor or technology partner aligns their role with the goal of indigenization of technology and imports.

Larger Indian entities would generally be comfortable out-sourcing highly technical processes, implementation of new processes or innovations, or process management to UK SMEs. These are areas which are critical to the larger entity's productivity and customer satisfaction, but peripheral to its core activities such as manufacturing. By bringing in a UK partner, the larger entity would not have to increase its team size for a process that may be implemented in a short period. Larger partners would typically outsource projects worth about US$ 100,000-300,000 to UK companies.

Partnering with larger units and corporations may also require the SME to be supported by the UK government through joint policies or programmes. The UK partner may also have to collaborate in the CSR activities and other social, training and educational activities of the larger Indian partner. In terms of IP, the UK SME would have to ensure that it retains control over the technology and know-how through contracts and documentation. Larger entities do not typically buy or procure known fakes or counterfeit products, and once its criteria are met, the larger entity would consider the UK SME to be a long-term partner.

For the larger Indian entity, a technology-led collaboration would have to fulfil a technology appetite, while furthering strategic goals. The goals could be improved manufacturing output

through automation, developing products for the Indian market, or to improve global market access and reach.

While large mergers and acquisitions between Indian and UK entities are cheered triumphantly in India as a show of corporate and economic strength, what is often forgotten are the strategic and technology outcomes, which are sometimes worth more over the long run than markets, and brand. Tata Motors has several R&D projects going on both at the company and inside many global universities, start-up companies, and different vendor partners that Tata has collaborated with across the US, Europe and India. The domains of research including electric vehicles, fuel cells, engine development, hybrid technology to battery research and simpler things like a remote-controlled door opening device or boot lid. The acquisition of Jaguar Land Rover was a game-changer in this technology game. The goal is "to optimise the synergetic strengths between JLR and Tata Motors in India." Both companies are co-developing smaller displacement engines which comply with tighter emission norms[40].

Technical collaboration with a bigger entity would provide market access to the technology of the UK SME. Brand strength and logistical and infrastructural support would enable higher and longer-term growth in revenues, than setting up an independent entity in India.

Takeaway

- Is there an SME industry or industry partner with whom you can partner to co-develop products?
- Is there a larger Indian entity, or foreign entity in India with whom you can partner to access the market?
- Can you find the technology gap that you can fill with your product?

[40] http://forbesindia.com/printcontent/32332

Fair and Equitable Relations

According to an IBEF report[41], India's low-cost and highly talented pool of workforce is the key differentiator between India and western countries. India adds 6000 PhDs, 200,000 engineers, 300,000 non-engineering postgraduates, and 2,100,000 other graduates to its workforce annually. The business language used is English, which creates a comfortable environment for foreign firms to set up their base in the country. The cost of hiring a researcher in India is one-fifth of that in the US. Annual salary of a senior engineer in the US is in the range of US$ 150,000-200,000, while it is about US$ 30,000-40,000 in India. Moreover, Indian graduates work for longer hours. Compared to their US and German counterparts, who work for 1,900 and 1,700 hours, respectively, an Indian graduate works on average for 2,350 hours a year.

The UK has been partnering in the process of bringing technology to India as well as laying the foundation for joint collaboration and R&D. Programmes include the India-UK Collaborative Industrial Research & Development which provides a grant of INR 1.50 Crores available to Indian

[41] http://www.ibef.org/download/India-as-the-Global-RD-Hub-for-Manufacturing-140512.pdf

companies and up to £300k to UK Companies for joint co-development of Industrial R&D and innovation projects in the areas of:

a. Cleantech
b. Affordable Healthcare
c. Use of ESDM technologies, to provide solutions to particular societal challenges

Technology-led companies enter India with the intention of exploiting the growing Indian market and lower cost of labour. Several companies have set up R&D collaborations in India including Texas Instruments (TI) who in August 1985, set up a R&D facility in Bangalore and became the first global technology company to establish its presence in India. TI found India to be rich in talent and innovation. Many of the TI's strategic businesses globally are integral to the R&D work that takes place in TI India. Almost every product that TI develops has the involvement and contribution of the company's engineers in India. TI India is involved in developing state-of-the-art solutions for applications like wireless handsets, wireless infrastructure (base stations), video (security and surveillance, IP phones, set-top boxes), and High Performance Analog systems. Since 2006, in addition to being a significant and critical R&D center for TI globally, TI India has increased its focus on the Indian semiconductor market and started filing patents in India. The company is working closely with its customers in India in a wide array of sectors such as industrial electronics (UPS, inverters, energy meters, lighting, etc.), medical electronics (ultrasound scanners, x-ray machines, ECG machines, MRI scanners, etc.), consumer, telecom and the automotive sector.

Yet, the greatest opportunity for ROI from India comes not from developing products for the global market, but from glocalisation and reverse innovation – models of R&D cooperation that can be better utilized by UK companies. A February 2016 Gartner report[42], states that India's consumer market and economic dynamics are completely different from the consumer dynamics observed in western markets. While consumer-facing companies in mature western markets are driven by value drivers, such as superior customer experience and product/service design, consumer-facing companies in India and other emerging markets, are driven by value drivers such as lower cost, being able to handle the problem of volumes and being able to effectively reach the masses. The basic needs in digital technology are affordability, availability and ease of access. Gartner advises a reinventing of their business models to address these key issues to ensure ROI. Making a decision

[42] http://www.gartner.com/newsroom/id/3204017

to enter India with an R&D agenda requires clarity on the goals of the R&D project and an understanding of the value drivers in the market.

Glocalisation has been incredibly successful in BorgWarner. Leader in powertrain solutions, BorgWarner set up wholly-owned subsidiary, BorgWarner Cooling Systems India (P) Ltd. in 2001 as a sales office that imported products, which helped in thermal management of engines used in SUVs and heavy vehicles. Subsequently, in 2004 the company set up an interim manufacturing facility at Ayanambakkam, Chennai. BorgWarner has close relations with most of the diesel engine manufacturers and OEMs in India. As the company works on expanding the existing clientele, its focus is on delivering better operating economics for its customers by increasing the localisation level and stepping up its service back-up. In the initial three years, the company bought into India derivatives of products existing in Europe. The base design in these products was already established and in production in Europe. BorgWarner started building local application engineering and designing, and began testing and validation work in India. The Indian entity took accountability and responsibility to do that locally with the customer by adopting and modifying the product to fit it for a local Indian customer. In 2014, the company started manufacturing the customer's complete module solutions locally. This enabled BorgWarner to provide solutions for the upcoming Euro V and Euro VI emission norms to the Indian market. The company's Indian testing facilities helped to speed up the process. The company also started developing new product additions by continuing with its localization drive. The India arm evolved to become self-reliant in design, sourcing, manufacturing and also validation, thereby reducing dependence on imports.

Reducing Research Costs Through JV.

It can be surmised that India may hold cost advantages where the project size is small and the area of focus is narrow. These advantages are lost where Chinese partners of the foreign party are able to provide larger scale, or deploy larger resources towards identical goals.

In January, 2012, Indian contract research services firm, Jubilant Life Sciences bought US drug maker Eli Lilly's stake in the early-stage development focused JV – Vanthys pharmaceuticals. Vanthys had been set up in 2008. The JV had begun work on about a dozen molecules, transferred from the research portfolios of the two companies. Lilly also withdrew from its partnership with

Zydus Cadila. The collaboration had been formed with the intention of developing potential new drugs for cardiovascular diseases.

The JVs came to an end soon after Lilly's China-based discovery services contractor – ShangPharma – increased capacity in October 2011 in order to service the drug maker's contract. The newly opened plant adds 110,000 sq.ft. of laboratory and office space. The CRO also signed a multi-year extension of its contract with Lilly. One of the areas of expansion included in-vivo pharmacology – an area of focus similar to that of Vanthys. The original strategic partnership between Lilly and ShangPharma had begun in 2002. The outcome was Shanghai PharmExplorer, dedicated exclusively to collaborating with Lilly on product research and development in the areas of process chemistry, analytical chemistry and pre-formulation development. A high percentage of compounds previously wholly synthesized by Eli Lilly chemists were being synthesized by ShangPharma, whose productivity is greater than Lilly's own. In September 2015, the Chinese Contract Research firm pumped in US$60 million into its Qidong biologics plant for international clients.

Glocalisation and Reverse Innovation.

Gillette recognized an opportunity to better serve the shavers in emerging markets. Having watched 1000 Indian men shave 'without running water while balancing a hand-held mirror - an intense, tedious and time-consuming process' that resulted in nicks and cuts,[43] the 20 US-based executives learnt that Indian men are price sensitive and more concerned about not cutting themselves during shaving than the closeness of the shave. The multi-functional innovation team spent 3000 hours with consumers in India and other emerging markets to better understand what the product should be.

The lean-design product launched in 2010 in India, comprises a single-blade system lined with a safety comb designed to prevent nicks and cuts; a flexible pivoting razor head that helps the user better maneuver the curves of the face and neck, and tackle the hair under the chin; and an easy to maneuver handle with a lightweight, ribbed design that offers one-handed control. Further, the easy-rinse cartridge prevents clogging, the hang hole at the end of the razor handle provides

[43] https://www.pg.com/en_US/downloads/innovation/factsheet_final_Gillette_Guard.pdf

convenient means of storage, and the easy-click docking makes it faster and easier to connect the blade to the razor versus the complexity of assembling a double-edge razor. With only 4 components instead of the 25 needed for Mach 3, and a hollow handle, the cost came down drastically. The Guard costs less than 3% of the Fusion ProGlide razor. P&G also built an India-tailored business model with all manufacturing done locally. The company built a distribution network consisting of local shops. Packaging was redesigned to reduce cost and to make it easier for small vendors to stock the items. Word of mouth and traditional advertising using Bollywood actors are used to influence purchase.

Using Indian resources for India-specific development enables lowering of cost and intimate understanding of culture and customer, thereby enabling better products for the Indian market. As Gillette found with the Guard razor, the small-margin-large-volume product has a global appeal and market too. The Indian partner must have the ability and authority to make decisions regarding which products to develop, and how to make, sell and service them. They should also have the freedom to choose other local and global partners and draw assistance from the UK company. Once tested and proven, the products may be taken to global markets.

Product Development for The Global Market.

The US and UK product designers are concerned about using Chinese manufacturing for fear that this may encourage future Chinese competitors. New products require considerable development work, including high-level engineering and related work needed to take the design to the point where it can be mass manufactured. It may also require prototyping to determine mechanical issues and confirm the practicality or utility of the design. In general, Chinese manufacturers agree to do development work free of charge in exchange for a commitment from the customer to purchase the product from the Chinese manufacturer. If the developed product is unacceptable to the customer, the customer finds another manufacturer. Generally, the Chinese company is a manufacturer of the same type of product and there is a fear, borne out by several prior examples that the manufacturer might make the new product for its own use. Chinese manufacturers with sophistication and maturity would be likely to protect their designs and patents, and cover them with their own trademarks.

Interestingly, India, with its lack of expertise in mass manufacture, is a better option for product development and design. Design and development expertise is increasing in India and Indian vendors are more amenable to legal and contractual obligations. Research cooperation has a positive effect on R&D investment, conversely an increase in research productivity positively impacts research-oriented JV formation and expenditure. For the JV, the expected net benefits that are generated from R&D efforts depend on the size of the joint venture, the R&D expenditures and the actual product market payoffs. The company's ability to learn from its collaborators and leverage them can become sources of competitive advantage.

Creating Winning Relationships

It is always useful to attempt to leverage an existing relationship when attempting to enter India. a UK company can ask itself, if they have an historical association with India, independently, or through an entity with which you have or could build close links? If so, identify the strengths and weaknesses of networking with such entity. Determine the advantages and disadvantages of such a relationship.

Possible advantages	Type of relationship	Possible disadvantages
Brand recognition and customer faith	Licensing of brand and devices	Association with previous brand failures
Access to market	Buy a controlling interest	Loss of market in case of termination of relationship
Access to manpower/HR	Appoint Indian company or entity as agent	Indian consumer may not recognise or accept the brand
Technology licensing opportunities	Wholly owned subsidiary/ independent franchise/ technology licensing	Loss of IP/technology or Know-how. Dilution of brand or device
IP enforcement support	Any form that includes licensing of IP from UK entity	Association of IP with the Indian entity and its other products

Financial support	Acquisition or funding	Loss of control over assets of the company including IP
Co-develop technologies and service models for India and similar markets	Joint ventures, collaborations or subsidiary	Sharing of IP with Indian entity

The ability of your company to realise the benefits of your collaborative relationships will be dependent on how well you manage routines and processes with your partners.

1. Have you identified your vision clearly? Have you communicated it to your partners and brought them in alignment with your aims?
2. Have you determined the structure of your partnership and what each partner will bring to the partnership?
3. How do you hope to engage with global knowledge networks, regional ecosystems and local industry?

It is important that there should be agreement on important aspects of the relationship. A written agreement is better. The agreement should communicate the strategic intent, identifying goals and milestones, and also what contributions are required from either party. Possible areas of conflict should be identified and dispute resolution mechanisms should be put in place. In India, litigations take enormous time and resources, hindering both growth and value.

Strong interpersonal relationships are essential in any collaboration. Where the collaborators come from different cultures, it is essential that there is clarity and alignment between the parties. Good relations will also help in resolving difficult issues and managing disputes. Indians are not averse to signing agreements and they are well-informed about the processes of the law relating to contracts. The core team in the collaboration should be aware of the projects and the IP surrounding the projects.

It is advantageous to ensure that any development outsourcing work should be based on a written agreement. The design proposed by the UK company should be documented by written Product Development Agreement. Specifications of design and standards should be provided, along with clear standard of performance and specific milestones to ensure timely completion of the project. A formal OEM agreement should be drafted and executed if the product developed is acceptable to the customer. The product is normally purchased under a purchase agreement. It is important that the agreement ensures non-disclosure, non-compete and non-circumvention (an NNN agreement). There should be agreement on who owns the Intellectual Property on the product, and who is responsible for enforcement of the IP Rights.

Sample Clauses Compatible with Indian Contract Law Are Provided Below:

Types of clauses	Ingredients
Parties	1. Parties should specify the source of their right and authority to enter into the contract. 2. Parties includes heirs, legal representatives, successors, executors, successors-in-office, administrators and permitted assigns. Understand the law relating to families and family-owned businesses of different types in India such as Hindu families, Muslim families, Sikh and Christian families. Creation of families, control over the business, inheritance, partnership and family structures differ from community to community.
Execution and commencement	1. The dates of execution and commencement of the agreement may be different. 2. Commencement date of each project under the master agreement may be specified in the work order or in a separate schedule. 3. Commencement date of a license agreement may be specified, and it normally terminates on the date specified. 4. The agreement may specify the conditions under which the license may be extended or terminated.
Prototyping,	1. Technical specifications of the product provided in the agreement. 2. Right to employ other parties for the same activities.

design and development	3. No exclusive rights of the developing company over the product developed. 4. Work orders from time to time with technical product specifications, delivery terms, price and payment terms. 5. Confirmation of acceptance to terms and conditions in the work order. 6. The design and development company may be, by agreement, permitted to disclose or prohibited from disclosing, that they are the developers of specific items for the buyer in their marketing literature, or other media such as newspapers. 7. The agreement may stipulate that out of pocket expenses may be borne by the Indian company. 8. The agreement may require the company undertaking design and development to represent and warrant that it has the necessary skills, knowledge, experience, expertise, equipment, required capital and net worth to perform its obligations in accordance with the terms of the agreement.
License	1. The agreement may specify whether sub-license is permissible or not. 2. The agreement should specify what the licensee can do with the technology or information. 3. The agreement should specify whether the license is exclusive, non-exclusive or exclusive in respect of a particular territory. 4. The licensee may terminate the license by a notice in writing to the licensor if the right of the licensor in the technology ceases. 5. The license may be terminated by the licensee if the patent in respect of which the license is granted is surrendered, revoked or otherwise terminated, during the term. 6. The license may include the number of units to be manufactured or sold. 7. The license may include the condition that the licensee comply with all applicable laws and industry standards; the product must be new (unless otherwise specified), must be constructed of suitable material, in accordance with professional standards of skill, of

merchantable quality and fit for the purposes for which the customer buys the product.

8. The licensee is required to comply with applicable laws, regulations, by-laws and government requirements.
9. The licensor is required to provide to the licensee updated data on manufacturing and performance of the licensed technology.
10. The agreement may specify the ownership over improvements or changes in product or method of production of the product.
11, The agreement may specify that the licensee may not make any modifications to the licensed product, or its components; that no new attachments or accessories may be applied to the product, unless engineering approval for the same has been given by the licensor.
12. Specific protocols may be laid down for modifications to the licensed products.
13 The licensee is required to keep accurate and complete records, which must be available for examination by the licensor.

Non-compete

1. The design and development company agrees not to sell the product manufactured with exclusive process know-how.
2. Period of restriction may be provided such as "for a period of 1 year from the date of completion of the last work order given pursuant to this agreement."
3. Jurisdiction may be specified, for instance, "agrees not to supply the product to any other person within India."
4. The design and development company agrees not to undertake similar activity for a competitor of the party desirous of having the product design or developed.
5. Similar also includes 'understood to be similar in nature by means of ordinary prudence during the course of the activity.
6. Competitor may be a manufacturer, distributor or supplier.
7. Period may be specified as in "for a minimum period of 1 year from the date of completion of the last work order under this agreement."
8. Jurisdiction may be specified.

Non-

1. The supplier, vendor or employee may be prohibited from

circumvention	canvassing, soliciting, attempting to entice away or otherwise accept the custom or business of any client of the principal and with whom the supplier has had business dealings on behalf of the company within a stipulated period (e.g. 24 months).
Background patent rights and technical information	1. Parties shall remain sole owners of their background patent rights, and nothing in the agreement shall be regarded as express or implied transfer or license of such rights. 2. Background information may include information freely and generally available to the public, or has come into the possession of the receiving party from a third party, or independently developed by the receiving party.
Confidentiality and Non-disclosure	1. A mutual confidentiality and non-disclosure agreement may be considered where both parties are bringing in IP and confidential information or trade secrets. 2. Confidential information may include technical details or other information. 3. Information may not be considered confidential unless the disclosing party informs the receiving party that it is confidential. For instance, a document may be titled 'confidential.' 4. The receiving party may be required to store such information in a particular manner or format, for instance, "all material transmitted from the disclosing party to the receiving party containing confidential information shall be recorded and clearly marked as 'confidential information' and stored appropriately by the receiving party.' 5. The ownership over the confidential information transmitted by the disclosing party may be determined by the contract, for instance, "all material transmitted by the disclosing party shall remain the property of the disclosing party and shall be returned to the disclosing party upon request or at the end of the project, whichever is earlier." 6. When it is not possible to return any portion of the confidential information, the receiving party may be required to delete/destroy all copies, including electronic copies, and certify to the disclosing party

as to the destruction of that portion and identity of the person who performed such destruction.

7. The disclosing party may decide to whom the information can be disclosed, and may require that each of the employees, agents, consultants and contractors of the receiving party having access to the information shall be informed of the obligations of the receiving party.
8. The disclosing party may require that the receiving party enter into 'personal agreements' with the agents, consultants and contractors to protect the confidential information.
9. The disclosing party may require in addition to confidentiality and non-disclosure that the confidential information may be used for no other purpose than as set forth in the agreement 'during the term of the agreement and thereafter.'

Foreground technical information and Know-how

1. Ownership of tools, dyes, molds and other devices provided by either party may be decided by the agreement. For instance, tools may be financed by and owned by the buyer, but the molds may be the property of the designer/supplier.
2. The providing company may require return of such items.
3. Payment pending from the providing company for any services rendered by the receiving company would not entitle the receiving company to retain such items.
4. Ownership of foreground technical information and patent rights generated from the project may be decided by the agreement.
5. Right of first refusal
6. The license of technology may include initial training and assistance, ongoing consultancy and assistance, and general technical and engineering advice or suggestions.

Sub-contracting of work

The agreement may provide that the Indian entity may not assign or sub-contract the work without prior written consent of the UK entity.

Due diligence

1. The agreement may specify that the obligations pursuant to the agreement shall be performed with utmost care and diligence and shall be of high quality and standards, say industry standards.
2. Standards of performance and product may be specified.
3. Documents identifying the source and standards; and instructions for use, storage and maintenance, transportation and supply may be supplied by the UK company. The agreement may stipulate that reports and information will be supplied on a mutually agreed format.
4. Compliance with all statutory provisions and regulations, and any particular laws, such as the IT Act, may include desisting from any conduct which would constitute an offence under the said law.
5. Third party IP not to be infringed.

Liabilities

1. Liability may be determined by losses suffered or that may be suffered.
2. Loss may include loss of profit suffered or that may be suffered.
3. Responsibility for consequences of violations.
4. The agreement may stipulate that the Indian company shall indemnify the UK company against claims, liabilities, damages and losses arising from gross negligence or willful default of the Indian company or its staff.

Term and termination

1. The term of the agreement may be decided by the agreement.
2. Whether the agreement is automatically renewed upon the end of the term is decided by the agreement, which will also specify the further period of extension.
3. Right to terminate by either party may be decided by the agreement. Right to terminate without notice to the other party in certain cases such as not 'fulfilling obligations,' may also be decided by the agreement.
4. Renewal instructions may be specified.
5. Post termination responsibilities may be specified, such a return of documents and data, demobilisation of staff, removal of materials, and settlement of all outstanding bills.
6. The agreement may specify what constitutes default, breach and non-

	performance. The agreement may include instructions for termination of the agreement pursuant to any of the above.
Dispute and dispute settlement	1. The agreement may specify that disputes arising out of or in connection with the contract shall be settled by arbitration or mediation. 2. Disputes may include breach, termination or invalidity. 3. Arbitration may be in accordance with the Indian Arbitration and Conciliation Act, 1996. 4. Venue of the proceedings may be decided by the agreement. The applicable law and jurisdiction may be that of the country where the buyer is registered, where the deed was executed or a neutral jurisdiction like Singapore. Cities preferred in India are Mumbai, Delhi, Chennai, Bengaluru and Kolkata. 5. The language of the proceedings is English. 6. Provision may be included for urgent interlocutory relief in any appropriate jurisdiction. 7. Governing law and jurisdiction are generally India, according to which law any final determination of issues may be made. 8. Agreement may include a force majeure clause.
Manpower and talent	1. Parties should inform in writing of the replacement of critical members of the project team. 2. The parties may, by agreement entrust recruitment and employment of staff and labour to the Indian company. 3. The employees may have no claim on the UK company. The Indian company may warrant the UK company against financial consequence of any claim or complaint. 4. The agreement may prohibit inter-poaching by either party; when an employee resigns s/he can be recruited by either party only on completion of a specific period (e.g. 6 months) from the date relieved. 5. The Indian company commits to be in accordance with all laws and regulations relating to labour law in India and international conventions, including the UN convention on the Rights of the Child and regulations relating to employment of foreigners.

6. If the law of the UK requires any submissions or certifications regarding labour regulations in the Indian entity, the same may be mentioned in the contract and cooperation of the Indian entity sought in fulfilling the requirement.
7. As per Indian law, an employee may agree by contract not to initiate actions to terminate the employment agreement during the term of an onsite engagement.
8. An employee may undertake and covenant that s/he shall work with the company for a minimum period after the completion of any training or onsite engagement which would benefit the employee or help him gain experience. In the event that the employee fails to fulfil this obligation, the company may terminate the employment agreement and the employee shall pay the company liquidated damages in full and final settlement of all amounts that are expended by the company for training of the employee and any other expenses incurred by the company including, without limitation, travel and accommodation, and losses suffered by the company. The employee may also be liable for costs.
9. An employment agreement may stipulate a quantified sum towards damages in the event of a material breach. The employee may undertake not to dispute the legality or quantity of the same.

Address and service

1. It may include an email address.
2. Parties may specify circumstances where written service by registered post may be required, in addition to email. Such circumstances may include payments, material breaches of agreement and termination.
3. Effective email transmission may be specified to have occurred when it is recorded as delivered to the other party.

Amendment

The agreement may specify that amendment may only be by writing, through a document signed or under seal by each party.

Trademarks and labelling

1. The licensor may require that all products manufactured by the licensee carry a specified mark identifying the origin of the technology embedded in the product.

2. The use of any trademark licensed, may be required to be in the manner specified by the owner of the mark.
3. The licensee must not do, or permit to be done any acts of things which tend to cause the trademark not to be distinctive of the products for which it is registered.
4. Licensee may be required to use its best endeavours to advertise, promote, and to create a demand for the trademarked product.
5. The mark may not be used for or affixed to any products, goods or services not covered by the agreement.
6. Trademark is the beneficial property of the licensor. Goodwill arising from the trademark is the property of the proprietor of the mark.
7. The trademark may be licensed for use in specific jurisdictions.
8. Labelling requirements are required to comply with relevant laws/regulations like Legal Metrology Act, FSSAI etc.

The above table would guide discussions with your lawyer in crafting your crucial IP contracts with employees, vendors and collaborators.

Achieving IP-Led Advantage Lessons from The Market

Having decided on the strategy that best suits your company and the goals of your India operations, specific questions regarding implementation of the strategy should be considered. During the course of this project several interviews were conducted which addressed issues of implementing an India-specific IP Strategy. Speaking to the management and promoters of Indian companies, it is apparent that there is a great appetite for technology and technology led competitive advantage in India. Indian companies are largely unprejudiced about which country is providing the technology and competence.

There have been several examples of successful technology-led collaborations between Indian companies and companies from other countries, in particular Japan, UK, USA, France and Germany. The interviewees shared more than just IP strategy input. As conversations developed between the IP Dome team and the respondent, they traversed the wide field of business strategy, emerging market entry and the vast and competent talent pool of India. In the following pages, you may find many areas relating to business, labour and vendor management, along with IP development, deployment and protection. The profile of the interviewees is provided at the end of this Chapter. Please note that this chapter contains the opinions of the interviewees, not supported by data.

Why should you enter India?

UK Companies should enter India with their IP only if they find India has a big market for their product. They should be ready to invest time and resources to develop both operations and the market. Beyond financial returns, UK companies can also benefit from India as a strategic investment that can yield access to global players and talent in high-end technology.

The Indian experience can be leveraged globally. India is a tough market. New products must overcome infrastructural inefficiencies, variations in the market and demand. If it does so successfully, then they may be valuable in the global market.

Should you partner with an Indian company or operate independently in India?

If you intend to operate in India over the long term (20-25 years), it is better to start your own entity. All the interviewees agreed that the person recruited to initiate and run the operations – CEO or COO - should be Indian and preferably someone who is known to the UK promoter or promoting team in a professional context. The COO's area of expertise should match your requirements to start operations in India and she must be intimately acquainted with the technology and IP to be deployed and must align with standards, ethics and quality that the UK entity delivers in its home country. It would be preferable if the COO has worked with the promoter or promoting team in the UK.

The COO should understand India, Indian employees, Indian customers and the Indian economy in operation. The COO should be involved in and responsible for the hiring of the core team. Your team should also be directly involved in the hiring of the core team.

A JV would ensure that there is joint investment of resources on product development and enforcement of IP. Opinion was also expressed that if you are entering the company independently, it may be a good idea to get a good Indian executive or Indian advisors to advise you.

Choosing an Indian Partner

A UK mid-size company should seek to work with professional and efficient companies with similar backgrounds. Small Indian companies are sometimes better than large companies with big names who may not live up to their reputation. In some industries, the partner or vendor may

already be working with competitors. This would imply that the partner or vendor has the competency and complies with the standards required for complex components. Type III Indian companies are looking for technology partners who can provide project implementation of the size of US$100,000 and US$300,000. Indian Type III companies are comfortable paying UK vendors according to agreed-upon schedules.

Interviewees differed in their opinion of how big the Indian partner should be, from INR 60 Crore to INR 100 Crore. The core management team should speak and understand English. Membership of trade bodies and social list of UKTI should not be the only consideration. It is advantageous if the proposed Indian partner has had previous experience of working with Western European or American entities with similar standards of ethics and quality.

Western European customers of Indian companies often require an internal audit on standard forms. They visit the factory. The preliminary audit is on capacity and whether the company uses appropriate instruments to measure and inspect parts. The customer also wants to know whether the Indian company can manage the vendor base. Sub-vendors may also be audited. The inspection team generally consists of both Indian and foreign employees of the customer.

Indian companies are looking for partnerships with UK firms too. Mid-sized Indian companies are looking for technology collaboration to enhance their R&D capacity, file patents and design registrations and build innovative products for their current market. Indian companies select partners who are able to take the company up the value chain with technology and knowledge. The UK entity should be around the same size as the Indian company. The UK company would normally be able to benefit from the market of the Indian entity. Your Indian partner may already be working with partners in other countries. Interviewees have responded saying that they have distributorships and factories in other parts of the world. Indian entities find China to be a difficult market owing to their unwillingness to negotiate. China is also stringent on contracts and advances. They have found Japanese companies to be fair and receptive. Most respondents stated that it is preferred that the Indian entity should be responsible for labour issues and must indemnify the foreign partner.

The Core Team

The core team must comprise medium to high calibre persons. Their training should be of UK standard. If they have been recruited from industry, they must be retrained to UK standard. The training may preferably be undertaken in the UK. Training should include demonstration of home country standards, expectations, ethics and processes. When they return to India to begin operations, they should operate as champions of the standards/processes/ethics they learnt. Special emphasis may be placed on training related to documenting, accessing, maintaining and using IP and confidential information. Smaller teams from UK locations must be sent periodically to India to reinforce ethical standards and IP protection and mentor the core team.

If your UK company is working on sensitive matters such as defence-related products for the UK government, then the core team must be informed about and trained in the security protocols involved. If the UK entity is fulfilling demands of other (global) customers, the core team must also be trained in the standards and quality required by the UK company's customers.

Employee Training

For a Type III strategy employees should be trained in processes and process discipline. No design capabilities are sought during recruitment, nor transferred to the employees. Type IV companies may build and implement an R&D unit and strategy in India with a focus on developing products for the Indian market. Type IV companies initiate legal processes and systems checks on employees to ensure access on a need to know basis to drawings and other IP.

Employees are paid well in companies that manage their IP well. They receive training and constant refreshers on quality and IP matters. They should be allowed to move up the ladder according to their mental capabilities. Outbound training and other refreshers are important to keep the enthusiasm and loyalty of the employee high. A visit to a home country location is highly motivating for an employee and reinforces the value of IP.

Type IV companies also consider Employee Stock Options Plans (ESOP) and good packages to attract and retain high-quality talent.

While employees are trained and receive refreshers on quality and other matters, systematic IP training is not provided. And Type II and Type III Indian companies are looking at the possibility of providing appropriate IP training at all levels.

Bringing IP into India

If you are only looking to outsource manufacturing to an Indian entity, you must ask whether the cost and infrastructure in India would support such a project. Type I, II and IV firms are more likely to file IP in India than Type III.

Most interviewees expressed an opinion in favour of setting up units in the South and West of India as the two regions have been more compatible with the requirements of IP protection and confidentiality. The regions are also more appreciative of IP generally. Opinion was also expressed in favour of 'policing' Indian partners and vendors in their use of UK IP.

A determination must be made whether the Indian partner shares your expectations and ethics in the use of your IP. The ethics and processes in the use of IP must be introduced early in the setting up of joint operations and must be reinforced constantly. UK and US companies are afraid to enter India because Indians are good at reverse engineering and Indian courts are prone to long delays and possibly corruption. Further, Indian vendors are believed to be unaware of the value of IP and infringe IP with impunity. They have heard that India is not a good country to work with IP. Further, they believe Indian enforcement agencies to be corrupt and inefficient.

Indians have a natural inclination to repeat what they are used to doing. If your employee has experience in a similar industry, he is likely to carry knowledge in his mind from his previous employment. The same is true when he leaves your company.

If a vendor is found to default on IP protection, all interviewees agreed that no further work would be allotted to the vendor. Vendors only receive manufacturing drawings and standards documents. Conceptualization and abstract thinking are lagging in R&D engineers in India, where Engineering courses focus on theory. A technology led UK company can strategize to grow in India.

Protect the IP of Indian collaborators

Several interviewees stated that Indian companies have their own Intellectual Property which has been the basis of their competitive advantage in the market. Indian engineering companies use old, out-of-patent, well-documented processes, with customization and design to suit customer requirements. The IP is to be found in trade secrets and confidential information. At least one Indian engineering company responded that they do not set up plants, in India, China or West Asia fearing infringement and abuse of IP. The company's design team is based in the US. At least one Indian SME responded that they have been requested by a Western European buyer to reverse engineer the design-for-manufacture of another Indian SME in an effort to find a lower cost vendor.

Some Indian companies rely on filing and registering patents, designs and copyrights where possible and Non-Disclosure Agreements and Confidentiality agreements with employees, consultants, vendors and collaborators. Interviewees also responded that small companies may not be able to afford the patenting process to protect their IP. Indian companies also explain the sensitivity of the information transmitted to the customer and the user industry. They also protect their IP by providing the designs only after the product and project are approved by the customer or user industry.

Type III Indian companies often have old British connections. Where the British principal has been taken over by companies in other countries, the Indian company is now collaborating with the new entity. Large Indian product companies routinely engage with boutique design firms in the UK and USA for designing products for the Indian market. They work closely with the design, prototyping and development, part of which activities may be carried out in India. They also work with government research bodies. The designs resulting from the collaboration are held jointly or licensed exclusively to the Indian companies. When Indian companies enter into distribution arrangements for other countries, they ensure that their IP is protected.

Vendors assist in co-developing or design for manufacture to make the process compatible with the Indian manufacturing industry. Indian vendors may find that they cannot use the specified methods, which may require that they bring special purpose machines or provide specialized

training. If volumes are small, methods known to Indian industry may be used meeting the specified parameters of the output.

Do Indians prefer counterfeits if they are cheaper

While this may be so in certain categories of retail products, in larger contracts including government contracts, there are processes to ensure that only original and non-infringing products are procured. Government bodies and companies may have rules against procurement from foreign vendors in certain categories, and may undertake rigorous steps to ensure that only capable and reputed contractors supply to the government.

Where technology-led products are required, the government body or company may directly contact the foreign company for products. Often, large international companies such as Siemens or Philips display products for government purchase along with catalogues. When bids are received from contractors, they are checked against these charts and catalogues.

Maintaining Confidentiality

The employee must be informed about confidentiality, and non-disclosure at the earliest point. Offer of employment and employment contract must inform the employee of such issues. Training should be provided on use and storage of documents.

IP should be protected securely by both physical means (vaults with biometric access controls) and by legal means (contracts). Access to documents and purpose of such access should be closely monitored. In India, an access hierarchy is essential.

Documents and technology should be access-control protected. Employees should be taught not to attempt to access confidential information not meant for them. They should be trained in protocols to protect documents that have become accessible to them by mistake and alert the concerned authority for further action. Documents to be saved or shredded should be maintained carefully and shredded under supervision.

Teams working on different projects for different clients must be separated geographically. The

teams should not be allowed to mingle or exchange notes. When a team member is being shifted to another team, there should be a cooling-off period (6 months is recommended), where he works in an unrelated area before joining his new team. Clients must be allowed to interact with or visit the locations of, only the teams working with them.

Vendor management

Vendors must be selectively picked. They should be pre-approved and assessed on the basis of delivery time and quality. One criterion emphasized by most interviewees is that the vendor should be already working for partners form the US or Western Europe. Competition among vendors is generally limited by geography, as customers generally look for local vendors. The type of component may also determine the vendor. Some vendors like to be challenged with complex components. Vendors are also selected on the basis of their online presence, English communication abilities of promoters and sales persons, and certification standards like ISO. Quality vendors are paid in the upper percentile although the variation is rarely more than 10-15%.

The number of employees may vary from 30 to 200. Such vendors are used to dealing with IP and are used to the types of demands that may be made by you. Vendors are given due respect for their quality and professionalism and paid market rates. Indian companies find that awareness of IP Rights is low among their vendors. They train vendors in the use of IP. Registered vendors may be expected to attend internal workshops, generally free, on process control and standardization. Vendors generally encourage employees to go to these workshops.

UK Type II and Type III companies prefer to work with Independent SME vendors over the long term. They prefer vendors to be dependent on the work that the UK company provides and ensure that turnarounds are faster. Most Type II UK firms build competitive advantage around data and clients. They may have policies to use and disclose confidential information.

Trust is important. The vendor's background must be studied carefully and the vendor should show a blemish-less track record in the use of proprietary drawings and designs. The study of the vendor's processes in maintaining confidentiality may also be studied, and if necessary further processes may be recommended. Primary components are outsourced to exclusive long-term

vendors.

Type III companies prefer vendors who are fully dependent on their work. Type III and Type IV companies also prefer to work with single suppliers until they have used up their full capacity. Vendor management strategy depends on creating a heavy stake on both sides. By ensuring large volumes, Type III and IV companies can ensure binding commitment to IP protection and quality.

Type III joint-venture companies ensure that not a single change is made in their product. The product development or evolution for India and like markets takes place in India though the design is finalized in the R&D lab in the home country or in the US. Any IP generated is held in the home country. Only drawings for manufacture are generally brought to India. The Indian JV partner is not provided an opportunity to learn any technology legally. Most vendors think providing components for the aftermarket is legal, even when they are protected by IP.

Some Type II and III companies use a large number of vendors for different components. Vendors prefer volume estimates to be reasonably accurate. Many vendors are also manufacturing similar components for other companies in the same domain. Vendors are given manufacturing drawings under tightly crafted agreements. Type III Indian companies may have long contracts with the vendors – up to 30 pages, including specifications of materials, transport, refunds, quality and insurance. 10-15 annexures including IP contracts are also part of the of the contract. Vendors are trained in quality, and international standards for export. Contracts require non-disclosure of designs or knowledge, but do not in general require return of manufacturing drawings. Agreements may require that the drawings may not be used to develop any related products in the same industry.

Some Type III companies also provide designs for dyes. The designs are the property of the company and are prepared by engineers who are employed by the company. Most vendors would not be able to understand how the component is going to be integrated in the final product. This protects the design. Vendors must be made to understand the sensitivity of the information being transferred to them and must be conscious that they have received confidential information and the requirement for due diligence.

Vendors prefer to speak directly to the head of the purchase department who has the power to close the deal. The promoter or promoter team does not make decisions at the purchase level.

Technology transfer

Technology may be transferred to Indian vendors and component manufacturers to ensure quality and efficiency. In such cases, the vendor or component manufacturer may be permitted by the terms of his license to sell products to other industries in the sector. Few Indian companies and research institutions are capable of taking primary research and converting it into a market-ready product, or incorporating market or industry requirements in technology. Technology transfer to be effective requires transfer or other knowledge – knowhow and know why.

Most interviewees expressed the opinion that Indian vendors have not developed the quality and research standards to be in true partnership with the UK JV partner. Indian companies have to build such abilities from the bottom up. A Type I and Type II UK company with market relevant IP or technology may be a target for acquisition by a large Indian company with the goal of acquiring the technology knowledge. Type I and II Indian companies are capable of adapting technology to add value to their current products but are not interested in disturbing their current market in favour of a better product. Indian industries, particularly in light engineering and devices often do not worry about IP infringement and are comfortable requesting research institutions to reverse engineer products protected by IP.

Vendors who work for technology-led customers and align with their processes and standards benefit from absorbed learning of process and technology, even though there is no systematic technology transfer. Customers often accept input on processes, designs and optimization of parts, from vendors. Further, while Chinese products are cheaper than European products, they are of identical or nearly same quality as the European product. Indian products do not meet the same standards. As a technology-led UK company, you must be prepared for the China-India economy. Vendors may also have to deal with employees of foreign companies who may not speak English fluently.

Working for your competitors

Your Indian partner, joint venture company or subsidiary may have spare capacity and additional capabilities that could be valuable to your competitor and to the Indian entity. Whether the Indian entity is allowed to work with another company in the same industry is a decision that must be jointly taken and adhered to.

It was the opinion of some interviewees that working with other players in the industry would improve the Indian entity's experience and value. Larger players may consider the experience and reputation of the Indian entity positively when deciding to use their services. While this would motivate the Indian entity, it is not recommended that they should work with a serious competitor in your flagship category.

Autonomy of the Indian Unit and IP Development

Interviewees agreed that India's managerial capabilities and skills are good, and that close monitoring or day-to-day involvement in management is not required after the initial operational phase. In fact, close monitoring delays processes. UK companies insist on strict adherence in documentation but allow some flexibility. Technology-led UK and US entities prefer an Indian SME subsidiary and long term partner with a capitalization of less than INR 70 crore. The foreign entity would like to interact directly with the proprietor or person in charge of operations. Initially, the Indian partner may outsource activities to sub-vendors, but the strategy would be to move the manufacturing in-house over time.

Whether the Indian entity can autonomously file and protect IP should be decided by both parties concerned. Perhaps IP in the flagship products should be only in the hands of the UK entity. However, designs and manufacturing processes that help only in Indian operations could be filed and maintained by the Indian entity. Having IP in India also improves the market of the Indian entity's services to others in the surrounding and peripheral industries.

Indian Professionals

Indian professionals can support the operations adequately. It is not necessary for your UK lawyers or consultants to support the Indian operations beyond the initial operational phase. Indian professionals are necessary for Human Resources strategy and management. One opinion was expressed that if the UK entity has to have a litigation budget, they have not done their homework well. Prior preparation must be thorough and the UK entity must have an intimate understanding of Indian conditions.

A preferred Indian IP firm would be one that is small and boutique, with experience in similar industries and the ability to file and manage IP globally. The firm must be able to understand past and active IP issues and senior experts must be accessible.

Enforcement of contracts through courts of law is a long and tedious process. If the documentation is not adequate, the contract is not sufficient to protect IP. If the vendor is found to be greedy or unethical, lawyers can initiate legal proceedings but the management should ensure that operations are not impacted. Contracts are generally drafted only in English. Regional languages are also used. Both vendors and employees normally understand sufficient English. Vendors are used to signing agreements without reading the document. It is necessary to have your lawyer explain the terms clearly to avoid future litigation.

Short contracts (3 to 5 pages) with clear and simple English is better than a 24-page document providing for every eventuality. The contract should be tightly crafted to meet specific needs and be compatible with Indian law.

A mid-sized UK firm would not need an expensive lawyer or a big firm, which would, at the end of the day, deliver ‘cut-and-paste’ solutions. A smaller firm with boutique capabilities, and an agile or flexible work culture is better. A company would generally choose a large firm with a big reputation because they are likely to have processes and demonstrate capabilities, which may not be apparent in a small firm. But working with a small firm of consultants or lawyers

enablescustomization of solutions and strategic flexibility, besides better cost comfort. Some of the SME respondents stated that they would prefer to work eventually with in-house consultants.

It was also suggested that the Deputy High Commission could set up a small legal cell with a panel of young professional and ethical law firms to support UK firms. Opinion was expressed that UK entities which are assisted in their entry into India by industry bodies are well-supported in their protection of IP. While large entities may have a battery of lawyers to protect them, smaller entities can benefit from a panel of experts set up by UKTI.

At least one interviewee responded that the lawyer should have expertise in the relevant technology and technology law. s/he should be able to provide guidance on protecting the information that is being put on websites and promotional material. The lawyer should have knowledge of how to protect electronic transactions and communications.

Large multi-national consultants would be engaged to provide global perspectives, and create and implement market entry strategies. Smaller regional firms would also be engaged for local requirements. Boutique firms and experts are preferred for specific consultations on technology or niche markets.

Type III firms work with different types of Indian professionals – large legal firms, mid-size firms and boutique law firms. Boutique firms are brought in to provide non-litigation and strategy services. The firm should have specific expertise and competency and it should be possible for the Type III firm to work with the senior practitioners in the firm. Mid-sized firms are preferred for the resource and competency to field multiple litigations in different courts. This means they would not have to find different lawyers in different states or districts. Fees are also a consideration. Tactically, for some litigations, large-size firms with established profile are preferred. At least one Type III firm respondent expressed unhappiness that some lawyers force the filing of numerous applications and cases unnecessarily.

Alternate Dispute Resolution is normally used by Type II and Type III Indian firms in non-IP commercial cases as they feel that mediators would not understand the nuances of IP law and technology. While cost is a consideration, lawyers with expertise in the market domain and knowledge of technology are preferred.

Type II and Type III Indian companies prefer the jurisdiction of courts in India. Mumbai is preferred. Chennai is preferred for IP litigation because of the presence of the Intellectual Property Appellate Board. They believe that UK companies would not prefer India because the duration of litigation is long. Singapore is a preferred jurisdiction for a JV between Indian an UK companies. Hong Kong is also a preferred jurisdiction, however UK and US companies are wary because Chinese law is applicable in Hong Kong.

Contractual Obligations

Most respondents stated that they would prefer to jointly own co-developed IP with Indian partner. They would not prefer alternate dispute resolution in IP matters. They would prefer liabilities to be limited to payments made. Indian courts are preferred if the issues deal with local vendors, however if the issues arise between the UK entity and the Indian entity, a friendly jurisdiction like Singapore may be preferred. Contracts must have definite duration.

For their input, I thank

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Jansi Rangaraj*, Executive –Compliance and Intellectual Property, Levergent Technologies. Levergent focuses on process performance consulting. They offer innovative solutions that improve performance of business processes, extract more value from the firm's IT investments, and extend the life span of your IT systems.*

Conclusion

India is a dynamic and exciting market with many opportunities that companies from the UK can utilise effectively to ensure long-term benefits. Yet, the impression that the country is not friendly to IP reduces its attractiveness to companies who wish to deploy IP-led technologies in India. This toolkit is an attempt to identify and deconstruct some strategic approaches to the optimal use of IP in India. It is hoped that UK companies would be able to use the approaches independently or in combination in their India strategy.

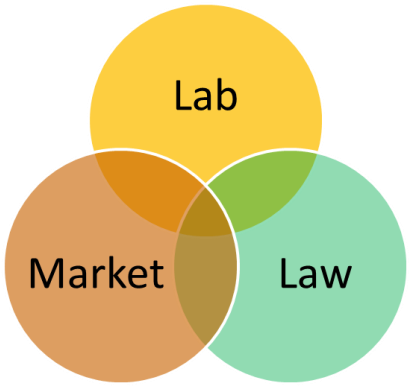
The toolkit has evolved from the experience of IP Dome in the Indian market. Every week we encounter Indian clients – corporates, entrepreneurs, researchers and MSMEs – who express grave misgivings about using IP in India. They are afraid that their product will fail in the market, that their competitors or even collaborators will steal their IP, and that the resulting litigations will entail fearful expense of time and resources.

On the other hand, they cannot deny that IP provides the most rewarding path to success and value in the Indian market. Companies that provide enviable returns to shareholders and promoters do so on the strength of their brand and the new products they bring out. Through technology-led collaborations and indigenisation of foreign products, they are able to meet the cultural and infrastructural demands of the user industry or consumer, and maintain customer

loyalty over long periods. The strategy of successful companies suggest that they treat IP as an investment and commit to providing real value across their customer base.

IP Dome operates *at the intersection of the Law, the Lab and the Market*®. Within our framework, IP is an asset when

a. derived from first class commercial science and market-led product development in the Lab;
b. appropriately and adequately protected through contracts, registrations, trade secrets, different layers of IP; and
c. through creating a strong co-enforcement and market position based protection in the market.



We understand that the economy, the IP regime, and the market of India are realities which cannot be escaped by our clients, and that while we can argue that the ecosystem can be better, the customer will not wait till the IP is secure. Our technical team provides detailed data and analysis on markets and the IP landscape, while the research team provides the clients with support on research design and product development keeping in mind the trends and threats in the market. The legal team enables clients to make PCT decisions, and identifies best practices across the globe with the help of our overseas associates. Through market research, we are able to suggest possible collaborations and partners in India and abroad. In our consultation, we constantly strive to ensure that each of the three arms – the Lab, the Law and the Market – support and guide activity in the other two, thereby creating robust vehicles to drive business growth with India-specific IP strategies.

In this toolkit we have put together a number of lessons that we have learnt from the Indian market and we hope that it is useful to UK companies who wish to enter the country with IP. We sincerely hope that the toolkit enables stronger technology cooperation between companies in the UK and India evolving into a stronger partnership between the two countries.

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Chennai

Notes

Are you considering entering into India with your IP?

- What are the key questions to ask when framing an India-specific IP Strategy?
- What are the most important factors to consider in bringing IP to India?
- How can scarce resources be allocated to ensure a strategic outcome?

The *IP Smart Approach to Doing Business in India* is a toolkit and resource designed specifically for UK companies to create and implement an India-specific IP strategy. The toolkit examines some approaches to IP use and deployment in India by foreign companies resulting in value for the company and for the Indian customer.

The resource provides examples and data to support the toolkit. The IP Smart approach envisages IP strategy as integrated into the larger market strategy of the company, and therefore explores a wide range of issues including contracts, confidentiality, employee relations, vendor management and collaborative IP development and enforcement.

About the Author

Swapna Sundar *is the CEO of IP Dome Strategy Advisors Pvt. Ltd., Chennai. The company advises corporates, research institutions, MSMEs and independent inventors on IP development, audit, protection and monetisation. Swapna is also the author of* ***the IP SMART Workbook: The Lab to Market Guide to Inventing****.*

About UKIPO

Intellectual Property Office
Intellectual Property Office is an operating name of the Patent Office

The Intellectual Property Office (IPO*) is the official* ***UK government*** *body responsible for intellectual property (IP) rights including patents, designs, trademarks and copyright.*

UK IPO *operates and maintains a clear and accessible intellectual property system in the* ***UK****, which encourages innovation and helps the economy and society to benefit from knowledge and ideas. It helps people get the right type of protection for their creation or invention.*