Effective Utilization of Research and Inventions of Public Funded Institutions in Sri Lanka: A Patent Law Perspective

H. A. Menaka Harankaha

Department of Commercial Law, Faculty of Law

Background

The scientific and technological progress of a country depends vastly on the government's actual approach towards promoting these factors. The right to development, a human right of the people of a country which is expected to be recognized and upheld by direct intervention of government, can also be achieved, to a certain extent, through the government's direct involvement in the promotion of research and development (R&D). In one way, advancement of science and technology could be accelerated by promoting R&D in the private sector by means of liberalization of tax principles, providing incentives and encouragements to local and foreign investors and investments, imposing viable and firm intellectual property right system etc. In another way, promotion of R&D of a country can be expedited by providing government funds to state- run research institutions and universities which are traditionally molded on the conventional research system that does not basically encourage patent oriented researches or market and industry oriented inventions. Effective handling of public funded research by these institutions will further help to build up university-industry cooperation, patent oriented research environment in universities and cooperative research culture among university academics and national/international research institutions and industries. Having a system for ownership and licensing of patents on outputs of public funded research is a topic that has resulted in much debate among both developed and developing countries today.

Objectives

There are several legislative attempts made by both developed and developing countries to streamline institutional framework to support the university-industry cooperative environment. These laws attempt to make university research, inventions and 'discoveries' to be patent qualified and industrially utilizable through providing public funds and recognizing ownership rights of these institutions and employees. Among these legislative attempts, the most prominent and authoritative one is US Bayh-Dole Act of 1980. The Act was supposed to facilitate patenting and licensing of university research in the US. In USA, this law was seen to be the much needed instrument that would ensure the best development and application of university generated research results. It is obvious that in late 1990s, the US Bayh- Dole Act has been used as a guide to formulating intellectual property polices in some of the other nations e.g. Austria, Denmark, China, South Africa, Japan and, most recently India. Along the lines of the US Bayh- Dole Act, India also has introduced a proposed Act called *The Protection and Utilization of Publicly funded Intellectual Property Bill 2008*, especially for ownership and licensing of patents on outputs of public-funded research.

While some developing countries in the Asian region including Malaysia, Singapore and Thailand are in the process of expanding their laws and regulations on university-industry interface and technology transfer from public funded research, Sri Lanka is yet to identify and determine these legal regulations towards an effective framework of intellectual property protection. This paper will analyze the need for such a legal framework for Sri Lanka in the face of promoting R &D in public funded institutions with special reference to the university system in Sri Lanka. This analysis will be made in intellectual property law perspective which requires some legal reforms/amendments in the law if government's aim to promote marketable research out puts and products in universities.

Issues/problems

Several issues/problems in the area of patenting public- funded research and promoting marketability of research in collaboration with private sector and industries were identified and analyzed. Among them, most of the issues are relevant to intellectual property rights protection. Some salient issues can be identified as follows:

i.) What are the most imminent intellectual property principles in the present legal arena that require some broader classification, definition or interpretation, in the process of developing a research culture in public-funded universities in which more patentable inventions could be produced?

ii.) What are the most applicable intellectual property principles in the course of promoting transfer of technology between universities and industries?

iii.) Issues relating to the inventions that are generated out of public funded research which remain unnoticed by industry, and even when noticed, not picked up by them due to heavy development costs and their uncertain and "embryonic" nature (this is a common allegation made by many industries that follow-up research to be done on many inventions of universities to convert them into an utilizable or workable one).

iv.) Is there any possibility to justify the idea of promoting a 'profit-earning' research environment in universities against the common premise that the benefits or knowledge derived from university scientific discoveries and inventions would remain in the public domain in non- profitable status as they are run by public funds?

Limitations

Among the above mentioned issues, the researcher is of the opinion that the third and fourth issues should be answered in sociological and policy wise perspectives rather than in a legal perspective of intellectual property rights which emphasizes some aspects of patent law. Hence, the research mainly focuses on analyzing intellectual property issues which derive from the first two issues such as 'Ownership of patent', 'Concept of Joint Ownership', 'Novelty determination', 'Disclosure requirement', 'Licensing of Patent' and 'Benefit sharing' which require more conceptual and doctrinal clarification under the present patent law of the country.

Conclusion/Recommendations

This research discusses different intellectual property relationships among different organizations such as the government as a 'funding agency' for research and inventions,

universities/research institutions as ‘recipients’ of funds provided by the government for research and their commercialization and researchers/lecturers/professors or employees of universities as ‘creators’ or ‘inventors’ of public funded research in different perspectives of ownership of patent, joint ownership and equitable benefit sharing concepts. It is found that the existing intellectual property legislation of the country, due to its limited wording, non-explanatory nature of some vitally important concepts and inadequate interpretation clauses of the Act, is not sufficient to provide a broad meaning to the above concepts of patent law which are crucial in promoting the relationship between industries and universities. In a comparative analysis, some recommendations are made to broaden these patent law concepts.

Keywords: Research and Development, public funded institutions, university-industry interface, inventions, transfer of technology

References

Bacchiocchhi, E. and Montobbio, F. (2009), “Knowledge Diffusion from University and Public Research: A Comparison between US, Japan and Europe using patent citations,” *Journal of Technology Transfer*, 34(2), pp169-181.

Ray, Amit Shovon and Sabyasachi, S. (2010), ‘Patenting Public-Funded Research for Technology Transfer: A Conceptual-Empirical Synthesis of US Evidence and Lessons for India”, *Working Paper No. 244*, Indian Council for Research on International Economic Relations (ICRIER).

“National Knowledge Commission (NKC)- Recommendations- Legal Framework For Public-Funded research” (2007), (http://www.knowledgecommission.gov.in/recommandations/legal.asp).