

Indian “Bayh Dole”: An Overview of the Issues

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Indian Bayh Dole: Key Provisions

- Rationale: To Help Unlock Academic Research
 - Assumption: Patents over Acad Research enable Technology transfer
 - And therefore the creation of innovative products
- Universities/publicly funded institutions can patent the results of publicly funded research
 - But notify the govt
 - If university fails, govt gets the right to patent
- Scientist to get 30% (cannot be contracted away)
- Attempts to regulate public funded research (1st time)



Indian Bayh Dole: The Rationale

- Converting Universities to Cash Cows?
 - The CSIR Example
 - 2004–2005: Licensing revenues (USD 1 million) vs Filing Patents (USD 2 Million)
- Making them More Accountable?
 - Killing ants with elephant gun
- Creating innovative products for society?
 - Rational Nexus: Theory of Patents.



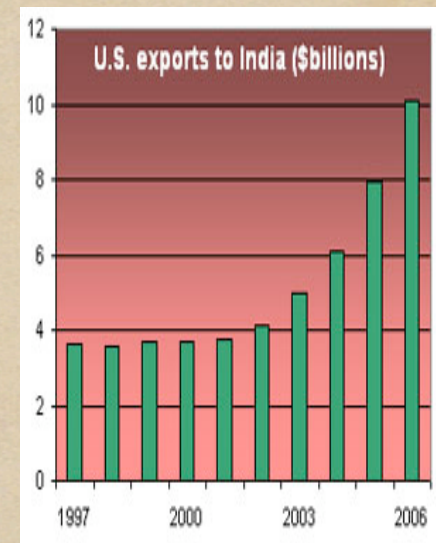
Bayh Dole: The US Experience



- How has it worked in the US?
- Evidence is not conclusive
- Evangelists (Marie Thursby) vs Skeptics (Bhaven Sampat)
 - Number of Patents Certainly Increased: but causal link with Bayh dole contested
 - In any case, whether increased patenting is a necessarily a good thing is contested
 - Rate of technology transfer:
 - Shift from basic research to applied research?
- Prof Josh Sarnoff and Susan Finston

Bayh Dole: A Model US Export?

- How do we “Indianise” the “legal transplant”
- What are the ground realities in India?
- The nature of publicly funded research?
- The extent of patenting and technology transfer?
- The nature of disputes?
- Econometric evidence (Dr Amit Ray)
- Tech transfer
 - Dr Vivek, Dr Chaturvedi, Dr Premnath, Dr Parthiban and Shaswat



Indian Bayh Dole: Suggestions for Reform

- Assumption: this will pass
 - But we have some potential of influencing the form
- Prof NSG: Extension of Bayh Dole to copyrights and trademarks?
- Definitions: Intellectual Property: they cover them only after registration
 - Notification Requirements: Why have them for copyright and trademarks?
 - Why TM's and GI's at all?
 - A very "formalistic" approach to law without thinking

Injection of More “Public Interest”

- Non Exclusive Licensing
 - Focus on the “process”: Distinguishing is difficult
 - NIH guidelines: notify the public
- Compulsory licensing: Stanford (rDNA) “platform” patent
 - Section 91 (CL) + Section 47 (Expt Use): Sept Platform?
 - Cipla: Automatic Compulsory License?



Stanley Cohen and Herb Boyer were the first to successfully insert the genetic material from one species into another to bring about heterologous gene expression.

Reforming Indian Bayh Dole?

- Create a Nodal Authority to manage this legislation
- Possible constituents
 - Secretary, DST
 - Controller General, Indian Patent Office
 - Representative from IIT, UGC, Industry, TTO Forum
 - Legal academic from one of the law schools

Extra Mural vs Intra Mural

- CSIR example



Suggestions

- Assumption that patents are the best incentive
- More leeway for other non patent “knowledge transfers”
 - CSIR (The Open Source Drug Discovery Model)
- Vesting More Discretion in the Hands of the Scientists
- Samir Brahmachari Example: SARS genome put in a public database
- Can we induce more socially useful innovations?
- To really use IP in a creative/different way?

Conclusions

- From “Faith” Based IP to “Fact” based IP
- Need for Empirical Work
- How best to better the current bill?

