

Proposed Rule amendment in SIPP (startup Intellectual property programme) & Startup certificate procedure to promote national filing. With other important suggestion to strength IPR system in India's.

Prepared for: DIPP, Govt. of India

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Disclaimer: This sheet is in continuation of previous suggestion and in reference to IPR stakeholder meeting on 14th December 2016 at Udyog Bhavan New Delhi. We are submitting this document to DIPP and Ministry of commerce as suggestion sheet our part as IPR stakeholder. We encourage positive response and small dialogue on the subject matter and proposal to underlying its feasibility.

EXECUTIVE SUMMARY

Objective

Recommendations for SIPP as alternative tool to promote innovation and solving complex system of startup certificate.

Goals

To achieve maximum output from SIPP programme to promote innovation (patent to inventor), restoring faith of investor and small business. Patent is key elements and establishes first impression of country protection system and legal remedies available to inventor.

Current system is creating frustration among small business and startups, obtaining startup certificate it is challenging and current system is not reaching its potential to assist first time inventor.

Project Outline

We proposing this recommendation sheet based on details discussion with various Govt. officials, IPR stakeholder, startups inventors and their representative, startup system, and other startup system involved with tech and innovation.

Report say 78% of patent filing done by non Indian as on date, its important to maintain interest of inventor as Indian first priority place also encourage invention which can be disruptive and important to India's economy and add value in technologies India at current sought for i.e. clean technology, e waste management, solar and social enterprise

<http://timesofindia.indiatimes.com/city/chennai/foreigners-dominate-indian-patents/articleshow/56304116.cms>

<https://www.lexorbis.com/78-of-the-patent-filings-in-india-by-non-residents/>

Project recommendations & suggestions summary

S.no	Steps/action to be taken	Reason	Impact
1	Recommend changes for provisional/complete application through SIPP.	To facilitate first time inventor through SIPP.	Promote national innovation and strength IPR between startups. Also help to protect small business and individual investor Connecting it with ATL/Innovation labs/ tinkering labs
2.	Connecting it with patent agent and Patent Facilitating center.	For quick solution on queries like product is patentable or not and prior art search	Friendly center provide awareness, assist startup on innovation queries and further assistance in patent filing
3.	Including copyright certificate (software protection) as alternative source to obtain startup certificate	90% startups are API, AI, IoT's and e commerce	Quick and easy alternative way of obtaining startup certificate. We have included patent I strongly recommend copyright (software) to be included.
4.	Guidelines on confidential & NDA clause as mandate among startup & VC/incubator	Transits between concept and execution involve lot of cross information with VC/Incubator	Protecting inventor interest/ IPR property.
5.	Guidelines to Govt. authority issuing startup certificate, include appellat authority.	Confusion on term innovation and no guidelines available to issuer on procedure & timeline guidelines.	Transparency of system, timeline and restoring protection procedure during first information disclosure
6.	Introducing IPR litigation insurance and small loans through banking and insurance	Startups/ SME/Micro business doesn't afford litigation against MNC/patent trolls	Cracking down patent trolls and IP as assets encourage business to consider IPR as priority assets of business.
7.	Startup legal incubation Centre at pan India level-link with Tinkering labs & Innovations	A detailed summary has already been submitted to DIPP J.Sec & CEO Niti Ayog in July 2016	Strength legal awareness and IPR among business and startups

Current procedure for obtaining startup procedure for SIPP

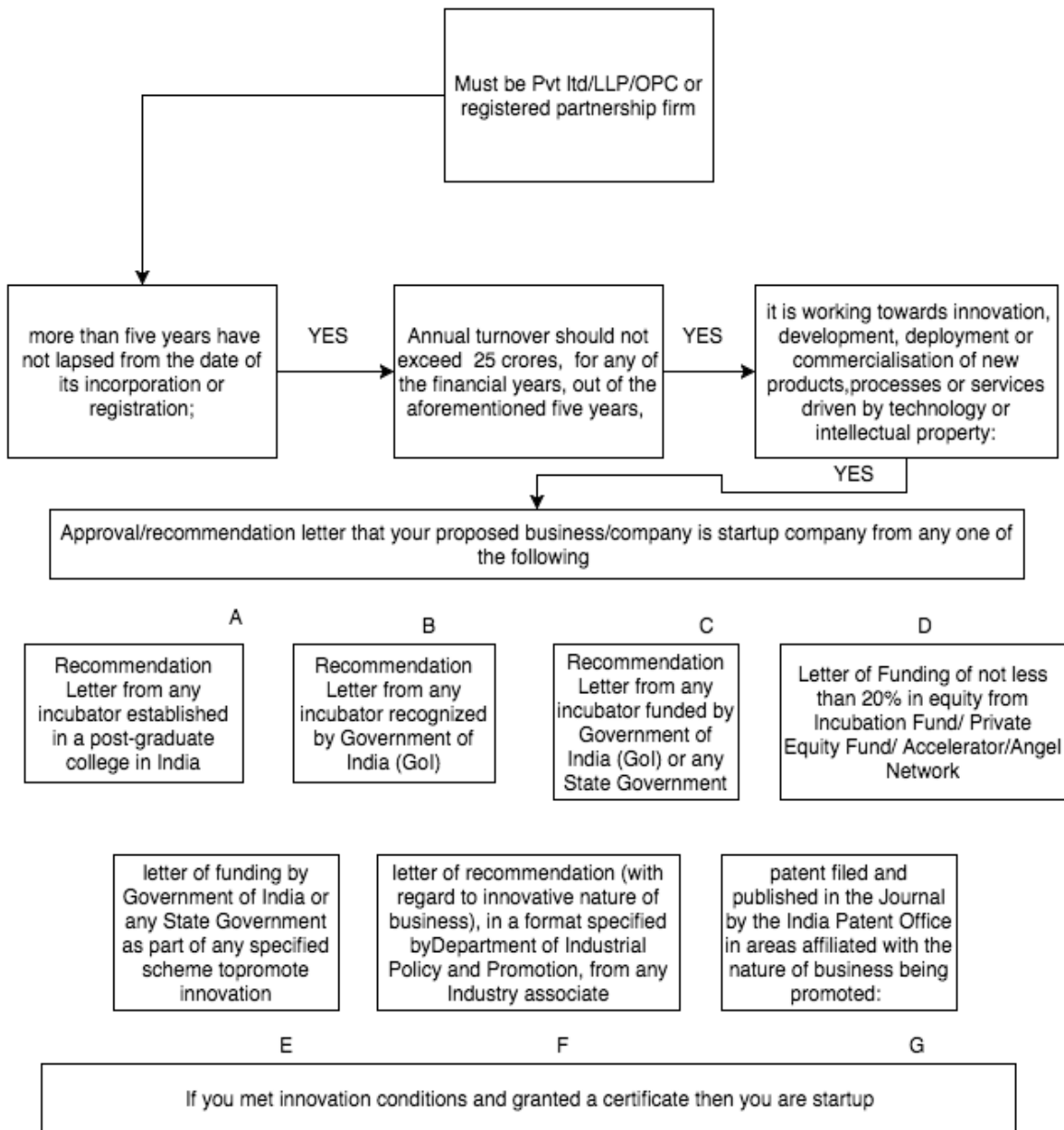


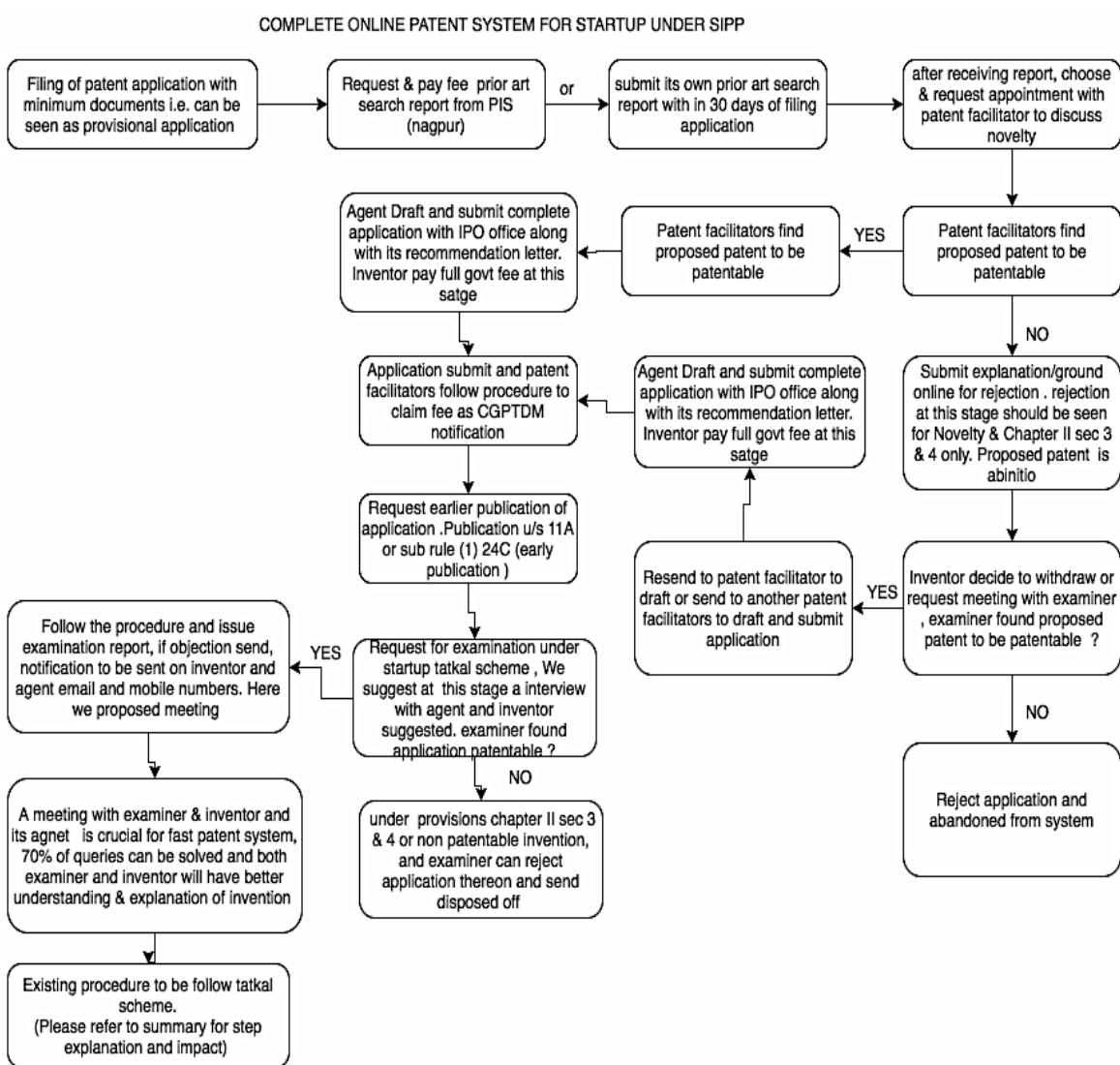
FIG 1

Concern with current model for SIPP

The aim of SIPP is to facilitate startup to promote national patent filing as well as provide financial aid at same time, but startup certificate as condition for SIPP is an obstacle to promote innovation in the country also the seeking letter from specially VC/incubator ignores the confidentiality clause.

Area of concern with model	What is the problem/why its obstacle.	Negative impact of system
<p>SIPP programme:</p> <p>Available only after obtaining startup certificate : every startup starts with idea and concept which need to protect early as possible not at the second stage of DIPP current SIPP scheme</p>	<ol style="list-style-type: none"> 1. Startup certificate conditions lay down as FIG 1 is harsh on startup who not getting funding, nor getting incubate even proposed product/project is innovative 2. Financial assistance not available at early stage to protect inventor interest not later stage. 3. If startup as per F1G 1 secured option C, D, E, G why they need SIPP assistance. The entire startup business based on one innovation. 4. Many invention required more finance & research for patent drafting, minimum assistance from SIPP should be easily available in such cases i.e. healthcare, pharmacy –clinical; trials etc. 	<ol style="list-style-type: none"> 1. No financial aid available to individual inventor. 2. The scheme is not facilitating low-income based individual inventor/startup. 3. Doesn't promote individual invention lead to commercialization as startup company and licensing model
<p>Concern on letter from Incubator/VC</p> <p>The absence of confidentiality clause and monitoring issues is missing to retain the confidence of inventor while processing recommendation letter</p>	<ol style="list-style-type: none"> 1. Only few startups may be 10% get funded and get incubate. 2. VC/incubator office likely chances of cheating or misuse startup confidential information in its favor. 3. Confidentiality clause /NDA is highly excused as VC/incubate take position advantage. Both offline & online, don't give acknowledgment. You can check yourself 4. For Startup & micro industries litigation costs is very high against giants VC, and its take year to protect inventor interest in between the invention may be of no use considering fast tech in startup business. 	<ol style="list-style-type: none"> 1. Transparency and fair practice are missing in trade. 2. Increase number of instance on patent trolls as later claim.
<p>Concern on letter from Govt. or college incubator</p> <p>Non-establishment of separate committee/team and guidelines for granting and rejection recommendation letter.</p>	<ol style="list-style-type: none"> 1. Guidelines required on <ul style="list-style-type: none"> • Process to grant • Timeline of issue such certificate and appeal for rejection is missing among govt. incubator/and other authority. • Non Exhaustive definition of innovation/ certificate is chargeable or not etc 2. Separate team not establish by DIPP, DIPP outsource the work without procedural guidelines, the prof who appointed by college is already too busy with their project, at least one dedicated person required in these center to handle such cases. 3. Conflict of interest between self funded startup-what if institutional incubator decline application as innovation? What next ? Can S/he appeal ? appellant authority details. 	<p>Create confusion among startups, delay the process, as they're no procedure guideline that binds such incubator to grant certificate on timeline.</p>

Solution: SIPP Amended PILOT PROJECT



Online system with illustrations & reasoning:

- Step 1 New application file with minimum documents system* without any applicable fee, the application will generate a receipt of patent application* but applicant has to initiate paid search report within 1 months of filing application and within 3 months from the date of filing application has to pay a patent application fee in final. This automatically classified as provisional application while filing the application.
- Minimum documents will be defined as:** The minimum documents means; abstract, summary of invention, background of invention, invention title , drawings or the documents which can be interpret as meet the conditions of understanding of invention. In normal course for prior art search report many organisations PFC (patent facilitating center-CSIR and Gurgaon center etc) required inventor to fill

invention disclosure forum, that is excluding drawing required these entire document. If application doesn't meet minimum documents requirement will reject as first screening its same as checking documents on counter.

3. **Generating application no:** provide first evidence & legal protection on invention concept, even if miss out/unable to force confidentiality clause with others for funding etc. Not be ignore many startup establish there company on concept or proposed patentable one product. Protecting inventor interest. In second step applicant within 30 days of such request for search report, and search report will be provided to applicant online within system and via email no post mail, with SMS notification. Post initiation of search report through IPO office (ISA/IPE) - <http://ipindiaservices.gov.in/isaweb/agreement.pdf>.
4. In third step applicant should get initiate an appointment request with the examiner/patent agent, within one month of receiving prior art/novelty search report, to discuss any discrepancies or question s/he has to decide whether the invention can be patent or not or s/he want to continue the application. If patentable patent agent draft & submit application along with is recommendation letter if not update remark/reason for negative recommendation letter under SIPP online (*if agent issue recommendation letter and fail to observe sec 3 & 4 provisions the fee will not reimbursed to agent, no fee will be paid by inventor at any stage*).
5. In fourth step if applicant don't agree with patent agent recommendation and believe it to be patentable can approach examiner with appointment request to discuss, the examiner provide such request appointment in one month time, if examiner found it patentable update recommendation and sent back to agent or other agent to draft application, if not rejection application thereon
6. **In third step and fourth step ground for rejection or approval of application under SIPP on the basis of section 3 & 4 under chapter II.** It will reduce the ad initio application and reduce que and administration cost of such application.
7. SIPP registered patent facilitator will raise it attorney fee as per current procedure.
8. The applicant has to submitted application within 6 months time, considering two months for obtaining the prior art and discussion with agent and examiner (in dispute) and one or two month for filing application. Total of 6 months, if failed to file and pay fee the application will be rejected and abandoned from system.

Reasoning: Benefits/ what it solved?

1. The filing of patent without any fee protects the interest of small business, individual, startup business. Generally the confidentiality clause or NDA agreement are not used in practice and VC and other investor deny signing the same. Much invention required funding to continue but during seeking funding the applicant interest is not safe guard and information is not protected or have any legal right. As per India's law the inventor or true inventor needs to prove that s/he is the inventor. Small business cannot afford the litigation fee as compare to VC/Investor. This lead to frustration and faith in system, the system discourages innovation. In short Applicant interest is protected, after do prior art search report have time to find investor and continue application. Also many applicants without knowing the fact the proposed patent is invalid and pay heavy fee on drafting as well as increasing piling and consume time of IPO officer.

Please note: the application will not publish till than the applicant pay a patent fee and forming a que in system. **As mention by DPS Parmar in WIPO presentation we are doing immediate formality check of formal requirements done by examiner if applications can be accepted or not.**

Similar way patent application number will be generated, as record and if minimum documents condition not meet the application will outright rejected on IPO counter or within 2 -7 days if made through online application. The minimum documents means; abstract, summary of invention, background of invention, invention title , drawings or the documents which can be interpret as meet the conditions of understanding of invention, exp a car engine running on fossil fuels etc. This way we can eliminate such application out of system within 6 months time and protect inventor interest during IP funding or commercialization process.

2. This 3 months window give applicant enough time to conduct a prior art search within him/herself or ask IPO office to do it for applicant by paying appropriate fee. Prior art search report will be provided by IPO office & application will highlight invention as “true invention” or practicality of its invention whether it can be protected or not or already cover etc. The patent agent or law firm minimum charges for such search required INR 6k-12k, in such case the applicant ignore search report and file application, it may be from day one the proposed patent is infringing other rights or doesn't fall under/qualify Indian patent act. IPO office by such initiative can avoid piling up of invalid patent application which going to be reject at later stage and just increase administration cost.
3. Such application will adhere application with prior art search report that save examiner time and easy availability of information as reference material on faster decision on application, prior art search is first document to decide novelty of application. When application que for examination the novelty search report is search by examiner later stage on application by little more effort the examiner can update application with remark of as not meeting novelty or sec 3 or 4 for ready reference. This way the same search can be done with monetary benefits to IPO offices at initial stage.
4. Next stage the applicant can decide to go ahead or not by his own judgment or by meeting IPO examiner/patent agent, post novelty search through requesting an appointment or meeting. This help inventor and examiner to understand the invention and guide or recommend that the invention can be patentable or not, based on documents submitted. Again within 6 months time we can avoid the invalid application in reasonable timeline. The examiner is the authority to grant application patent or not, the only concern will that this meeting recommendation is provided without claim and complete application. But as expertise they have enough experience to come to conclusion and also it save the applicant for unreasonable investment of 40-50k in patent drafting.

This way applicant did not wait for 18 months or 48 months to reach the conclusion of publication or examination. This way the applicant will know on fast track basis whether applicant is worth taking forward or opt for withdrawal. The process of FER and examination request is shifted to initial 6 months there is no point lingering on application for 18 months etc when it can be done through such initiative and or as we recommend via legal incubation Centre or patent facilitation Centre in our past reports to DIPP joint Sec & CEO niti ayog to support Tinkering labs.

- The initial application and post interview with examiner/patent agent/PFC to discuss patentability of proposed patent with recommendation letter and arrange registered patent agent under SIPP and set benchmark of good governance and its act like a friendly center.
- Examiner and IPO center cannot be in every state but registered patent agent can be/PFC can also play same role.
- Its very important to understand that startup business are not Tesla or Honda who invent Patent product in every 3 months time, for them the first patentable idea itself a company and the SIPP as such failed to provide assistance when they needed the most when they are starting the

entrepreneur journey not when they settled down or do well. In such way in true means we can provide them technical assistance and friendly center. Similar way it restore faith in our own people and foreign investor as patent tatkal scheme apply to foreign startup also.

- But current process of granting startup certificate required conditions of funding, incubation, existing patent (we have proposed suggestion and problem in our last report). To protect and drafting innovation or patent agent take minimum of 40-50k and many innovation required more funding therefore an inventor need to look for investor that also increase the risk of lost, theft of confidential information. And SIPP scheme is not achieving objective of promoting first time innovation/inventor under such system, if applicant already obtain patent on his/her cost what SIPP is achieving then

The above system resolve:

1. Complex system of obtaining startup certificate for patentable invention, encourage individual inventor and startups and can be crucial for invention under tinkering labs. (Suggestion no .1, 2 & 7)
2. Maintain and protect confidentiality clause even if ignore or not complied by VC/incubator. (Alternate to suggestion no.4)
3. SIPP under Startup certificate only facilitates startup already incorporated or vice versa, this way the startup that incorporation purely based on innovate product has to bear all necessary cost by them, SIPP scheme objective ignoring the necessity of startup certificate, fulfill under such system.

2. Reasoning for Procedure guidelines to Govt. incubator or PG colleges incubator:

The current scheme is to get startup certificate that means a startup certificate will be given to a business entity used technology or innovation in their service or goods, and govt approved incubation Centre if qualified will issue the same.

Now there is two parts

- a). The startup may be using technology but may not patentable i.e. software protection, API etc
- b). The technology or innovation is new and required immediate protection

The rejection or issue of such certificate doesn't have any guideline what if the applicant face rejection where he go next or appeal and what are guidelines to award such certificate, timeline ? What about individual or business can start or based only after having patent invention or their invention itself an entire concept of company it can be healthcare products, waste management.

What we recommend:

1. Procedure guidelines to Govt. and non govt. incubator include timeline, detail of contact person and email id on their website, exhaustive definition of innovation for better understanding (is it same of patent invention product under patent law or explain under startup scheme), in conflict or rejection appellant authority and mandate for signing ND/confidentiality clause with applicant. These details on their website for transparent system.
2. Dedicate team in such center as the prof who review the application is itself very busy with their project, what if they delay the application –timeline to be mention maximum one month etc. We acknowledge the timeline on Startup certificate for issue of certificate but recommendation letter also we request same time line.

3. Please also issue procedure recommendation guideline to all authorities and as well as confidentiality clause to be sign by all of these authority for transparent system and restoring the faith, protecting IPR interest of inventor and fair trade practice in general for better startup ecosystem.

3. Promoting API, App based invention and software innovation

As India pushed itself for digitation, and taking advantage of world largest smart phone user market its time if we acknowledge API, application, software based startup where the intellectual property protection covered under copyright.

Recommendation:

1. IOT things to be considered as important sector and software copyright protection should be included as qualification for startup certificate as equivalent to patent.
2. Can be limited to mathematical or business method or a computer programme per se or algorithms; - logistics or app/API based industry should be included for startup certificate Icloud content delivery method. Java, C++ also protected under copyright. Case oracle America Inc Vs google |limelight Networks Vs Akami Tech

4. Introducing IPR litigation insurance and small loans through banking and insurance:

A. Intellectual Property Insurance: Given the volatile nature of intellectual property and the time take for procuring registration leaves the claim to be only about the costs for the legal proceedings. Intellectual property is gaining prevalence and pace in the market and industry and given the growing field like India, the scope of development is very promising. Worldwide IP insurance cover- Before the event' or 'BTE' legal expenses insurance (LEI) policies can cover against own legal costs and/or the legal costs of someone you are in dispute with.

Research report on why we need IP insurance, unfortunately the paper published in 2012 still no progress has been made [http://nopr.niscair.res.in/bitstream/123456789/13720/1/JIPR_17\(2\)_152-156.pdf](http://nopr.niscair.res.in/bitstream/123456789/13720/1/JIPR_17(2)_152-156.pdf)

Commercial General Liability is already in market by ICICI Lombard under business risk unfortunately General Liability Insurance Policies should Cover IP Claims vice versa <https://www.icicilombard.com/businessinsurance/>

B. Banking on IP: The investor/lender, be it a bank, a financial institution, a venture capitalist, or a business angel, in undertaking an appraisal of the request for equity assistance or loan, will assess whether the new or innovative product or service offered by the SME is protected by a patent, a trademark, an industrial design, or copyright or related rights. Such protection is often a good indicator of the potential of your SME for doing well in the marketplace. We need encourage Banking on IP and IP audit, by banking my reference to small names SME loan or car loan for SME/startup, ref http://www.wipo.int/wipo_magazine/en/2008/05/article_0001.html

5. Introducing Startup legal incubation center:

Legal incubation/ legal accelerators with law school at pan India level to promote IPR and legal awareness as well as Strength legal awareness and IPR among business and startups to be link with tinkering Labs & Innovations labs. A detailed summary has already been submitted to DIPP J.Sec & CEO Niti Ayog in July 2016.