IP Strategies to Enhance Competitiveness: India's Experience

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Wednesday July 15, 2009

Innovation in Brazil, India and South Africa: A New Drive for Economic Growth and Development

Strategy

To establish a vibrant Intellectual Property (IP) regime that:

- Creates a conducive milieu for innovation and creativity
- Provides a legal and administrative framework for protection of Intellectual Property Rights (IPRs)
- Promotes larger public good through a balanced and effective utilization of IP.

Strategy…

- **Meet international obligations**
- **Safeguard national interests**
- **Modernize**
- **Create awareness**

Legislations - Comply with India's International Obligations

- The Patents Act, 1970 as amended by the Patents (amendment) Act, 2005
- The Trade Marks Act, 1999
- The Designs Act, 2000
- The Geographical Indications of Goods (Registration & Protection) Act, 1999
- The Copyright Act, 1957 as amended In 1999
- The Semiconductor Integrated Circuits Layout- Design Act, 2000
- The Protection of Plant Varieties and Farmers' Rights Act 2001.

Public Interest Safeguards

- The Patents Act seeks to effectively balance and calibrate IP Protection with public health, national security and public interest concerns.

Safeguards
Exemptions from Patentability

The exemptions, *inter alia*, include:

- new use of a known drug or substance [section 3 (d)]:
  - mere discovery of a new form/ use/ property/ process, etc., of a known substance which does not result in enhanced efficacy is not patentable
  - salts, esters, ethers, polymorphs, etc. of known substance are to be considered to be the same substance until these differ significantly in properties with regard to efficacy
- substance obtained by a mere admixture [section 3(e)]

Safeguards
Exemptions from Patentability

- any process for the medicinal, surgical, curative, prophylactic [diagnostic, therapeutic] or other treatment of human beings… [section 3(i)]
- plants and animals in whole or any part thereof other than micro-organisms… [section 3 (j)]
- a mathematical or business method or a computer programme *per se* or algorithms [section 3 (k)]
- an invention which in effect is traditional knowledge…. [section 3(p)].

Safeguards - Disclosure

Provisions establishing linkages between TRIPS and CBD:

- Disclosure of source and geographical origin of biological material used in the invention while applying for patent is **mandatory** [section 10 (4) (d) (ii) (D)]
- Non-disclosure entails rejection/revocation
  - opposition provisions under section 25 (j) and
  - revocation provisions under section 64 (p).

Safeguards- Compulsory Licences

- Provisions for issuance of CL at any time **after expiry of three years** from the date of grant of a patent, on the grounds:
  - That reasonable requirements of public with respect to the patented invention have not been satisfied, or
  - That the patent invention is not available to the public at a reasonably affordable price, or
  - That the patented invention is not worked in the territory of India [Section 84(1)].
- Provisions to deal with national emergency, extreme urgency and public non-commercial use under special circumstances [Section 92].

Safeguards - Other provisions

- Patent can be revoked on the ground of non-working or the patented invention not being available to the public at reasonably affordable price [section 85]
- For public purpose the Government can compulsorily acquire patent rights against payment of compensation [section 102]
- Bolar Provision [section 107]
- Patent can be revoked in the interest of security of India [section 157 A].

Modernization

- Objective
  - To create state of the art infrastructure
  - To build capacity including HRD
  - To create awareness
- First phase of modernization implemented at a cost of US$35 million.

Impact of Modernization

Particulars	Before Modernization	After Modernization	Impact
Filing of Applications			
Patents	4,800 (1999-2000)	35,067 (2007-08)	7 times increase
Trade Marks	40,000 (1999-2000)	1,23,000 (2007-08)	3 times increase
Average time for examination			
Patents	4-5 years	2-3 months	Speedy exami-nation
Trade Marks	2-3 years	3-6 months	

Impact

Particulars	Before Modernization	After Modernization	Impact
IPRs Granted/Registered			
Patents	1,500 (1999-2000)	15,261 (2007-08)	10-fold increase
Trade Marks	8,000 (1999-2000)	101,300 (2007-08)	12 times increase
Average time for Grant/Registration			
Patents	6-10 years	2-3 years	Reduced by 4 years
Trade Marks	7-10 years	2 years	Reduced by 5 years

Impact

Particulars	Before Modernization	After Modernization	Impact
Filing of applications	Only paper format	E-filing in addition to paper format	User-friendly, transparent
Journal for publishing of applications	Paper format	Electronic format	Easily accessible
Public Search Facilities	Not available	Available through website	Easily accessible
Training facilities	No separate institute existed	NIIPM established	Comprehensive training possible

Impact

Particulars	Before Modernization	After Modernization	Impact
Digitization of Records			
Patents	NIL	1.35 lakh	Speedy examination
Trade Marks	NIL	6.00 lakh	Speedy examination
Processing of Applications	Manual	Electronic	Speedy examination
Dedicated website	Did not exist earlier	Dedicated website	Easy access

Impact

Particulars	Before Modernization	After Modernization	Impact
Human Resources			
Examiners of Patents and Designs	36	140	4 - fold increase
Examiners of Trade Marks	37	64	2 - fold increase

Impact

Particulars	Before Modernization	After Modernization	Impact
Trainings abroad			
Patent Examiners	**2-3** per annum for short term	**20-25** per annum Short term and long term	Wider exposure to international systems and procedures
Trade Mark Examiners	**1-2** per annum for short term	**5-7** per annum for short term	

Impact – Seeing is believing

Entrance Area

Before

Now

Application Receiving Section

Before

Now

Information Kiosk

Digitization section

LIBRARY

Before

Now

MULTI-PURPOSE AREA

Before

Now

Storage Area

Before

Now

Modernization - Second Phase

Projects at a cost of US$80 million are under implementation:

- Develop infrastructure for Indian ISA/IPEA
- Comprehensive computerization
- Augmentation of Human Resources
- Establish National Institute of Intellectual Property Management (NIIPM) to cater to training, education, research and think tank functions.

International Cooperation

- Multilateral cooperation with WIPO intensified
- Bilateral cooperation agreements on Intellectual Property Rights entered into with leading countries/institutions
- Focus on human resource development, capacity building and public awareness creation.

Road ahead

- ISA/IPEA operationalization
- Acceding to Madrid Protocol
- Digitization
- Total on-line operations
- Operationalization of bilateral MOUs.

IPRs & Economic Growth

"Globalisation, led by rapid advances in information and communication technologies, has resulted in the creation of knowledge economy - an economy that creates, disseminates and uses knowledge to enhance growth and development. Competitiveness of nations and corporations depends not just on their physical assets but also their ability to effectively capitalise their knowledge assets.

Knowledge economy is just not restricted to high-tech information and communication technologies (ICT) industries. It is an economy that leverages the existing knowledge to improve overall productivity across industries and human development."

-N. R. Narayana Murthy
Chief Mentor, Infosys Technologies Limited

GDP and Patents - A Comparison

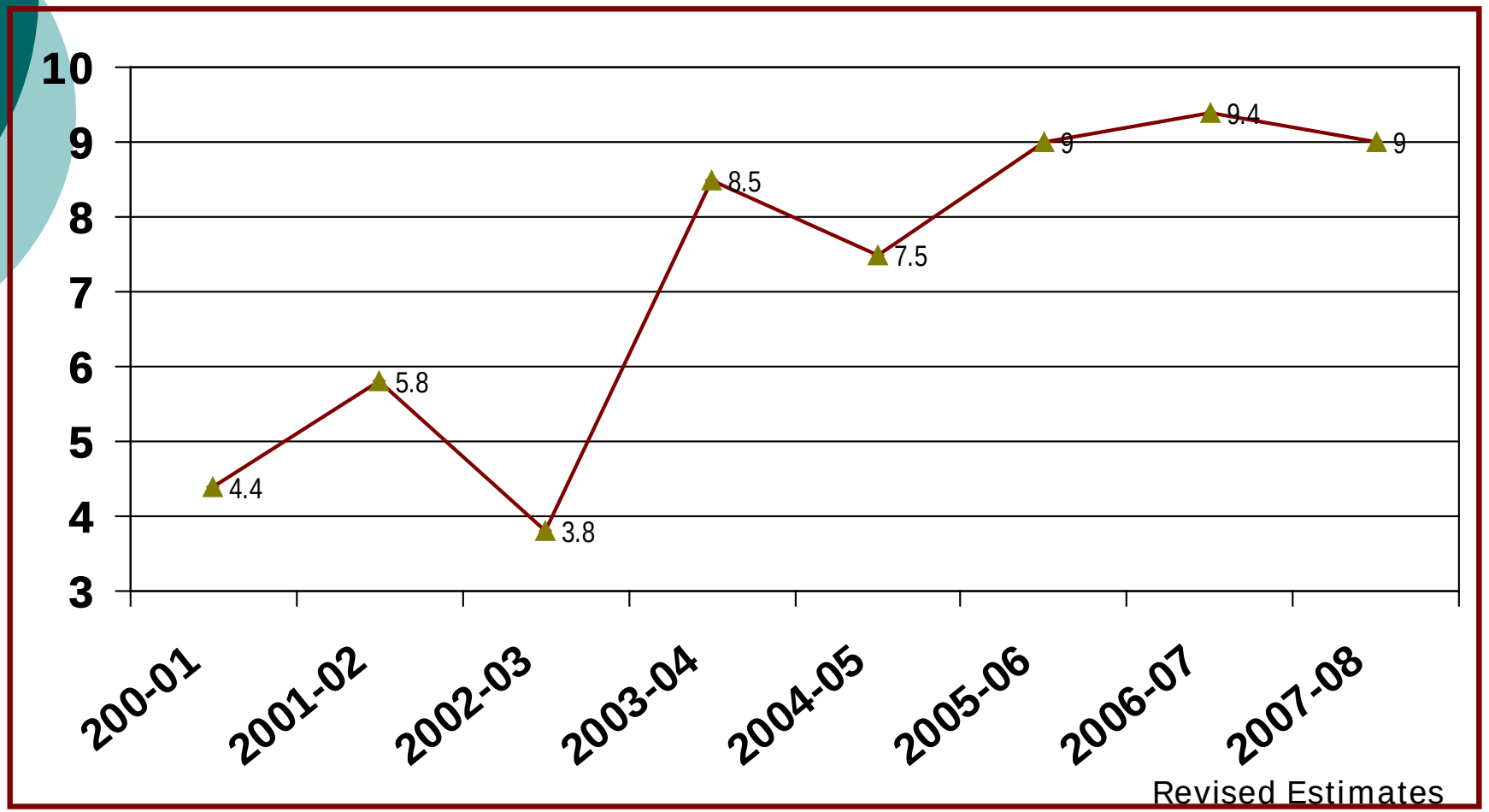
	GDP Billion US$* (2005)	Number of patent applications filed (2006-07)	Number of patents granted (2006-07)
USA	12,416	438,576	160,308
Japan	4,534	408,674	129,071
China	2,234	210,490	57,786
India	**805**	**28,882**	**7,539**

* Source: UNDP Human Development Report 2007/2008

Advantage India
Some Indicators of Economic Growth

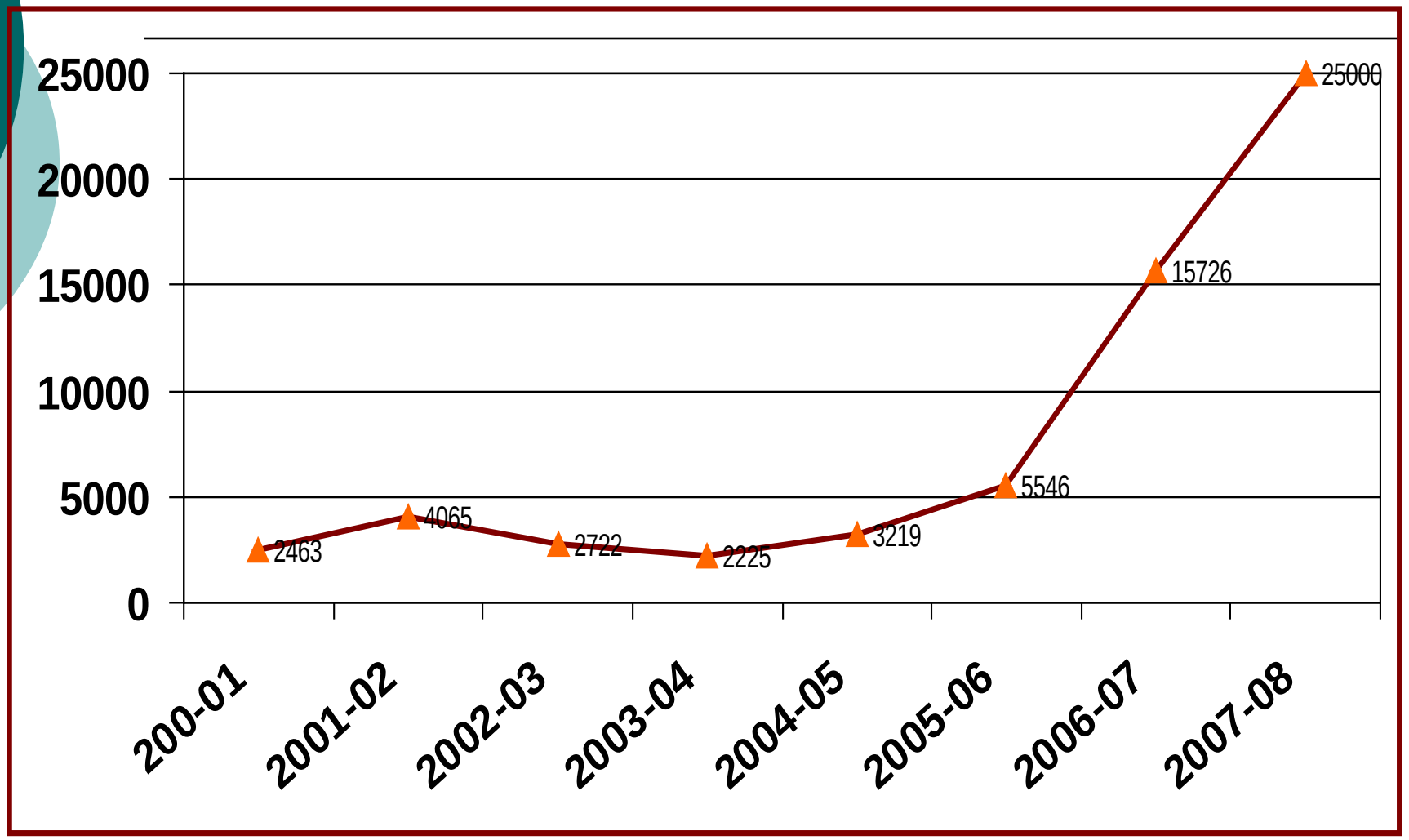
- Gross Domestic Product (GDP)
- Foreign Direct Investment (FDI)
- Industrial growth rate
- Foreign exchange reserves.

GDP

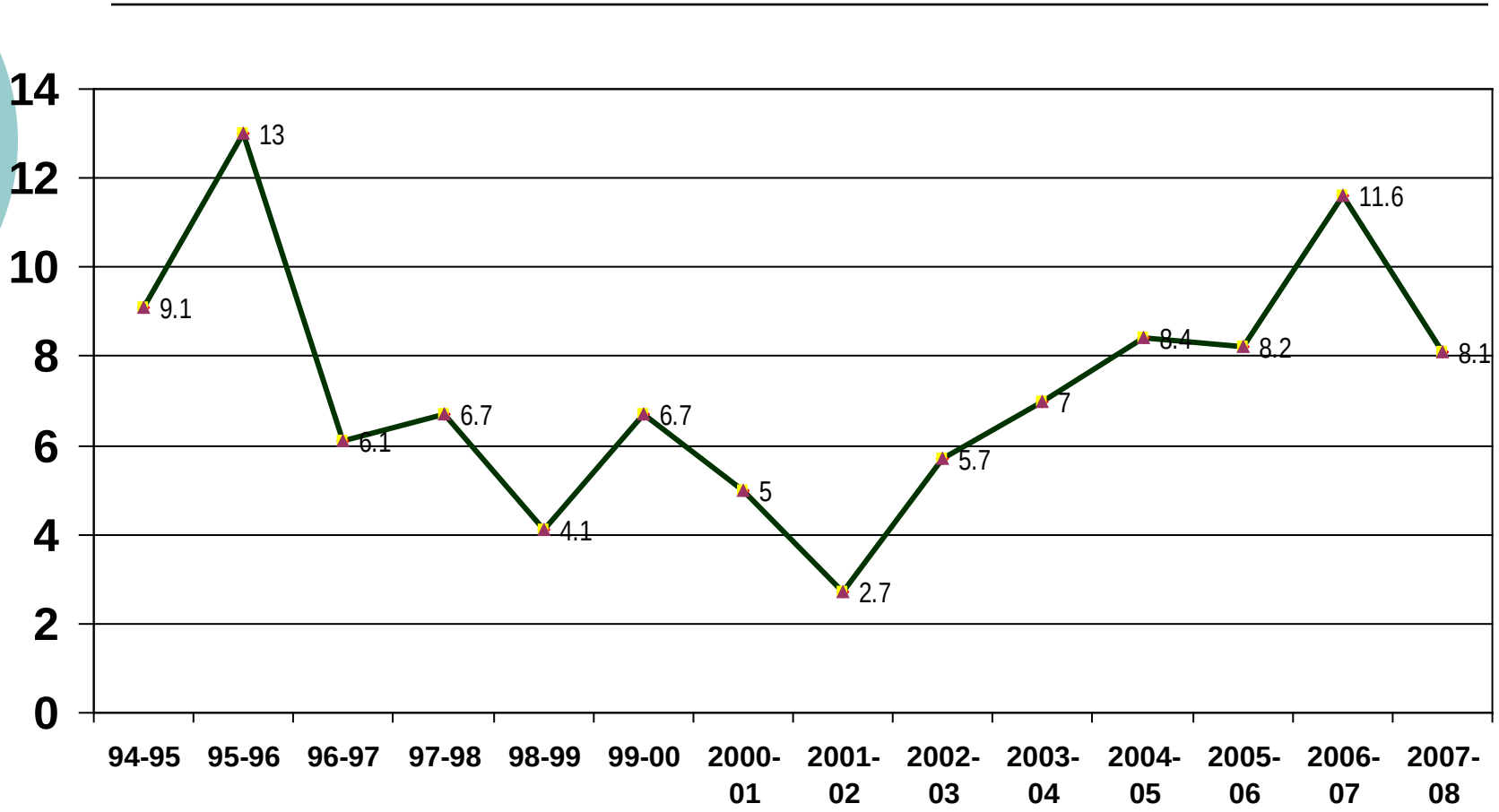


Revised Estimates
RBI

FDI In US$ million

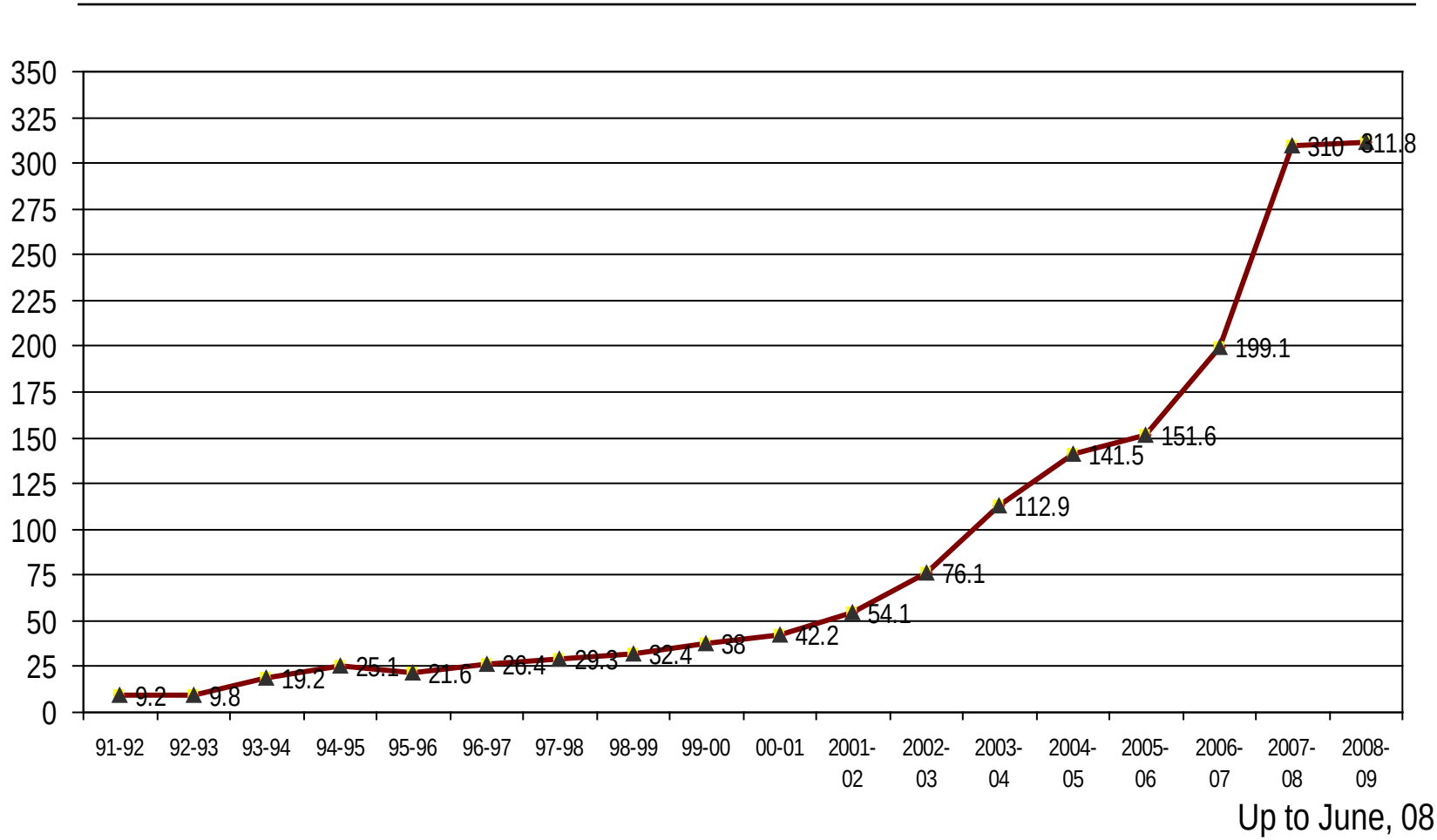


Industrial Growth in %



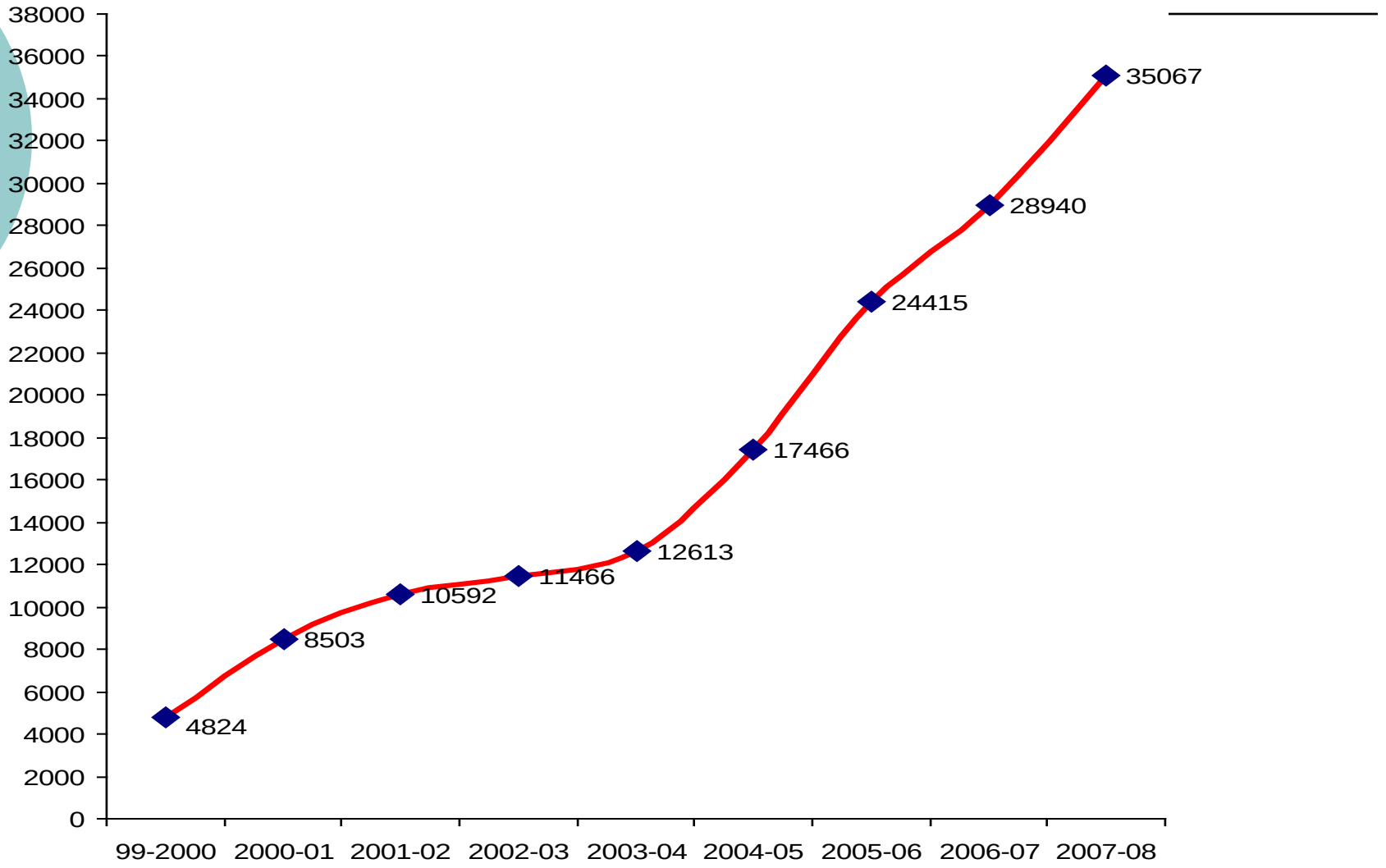
Source: Central Statistical Organisation

Foreign Exchange Reserves in US$ Billion

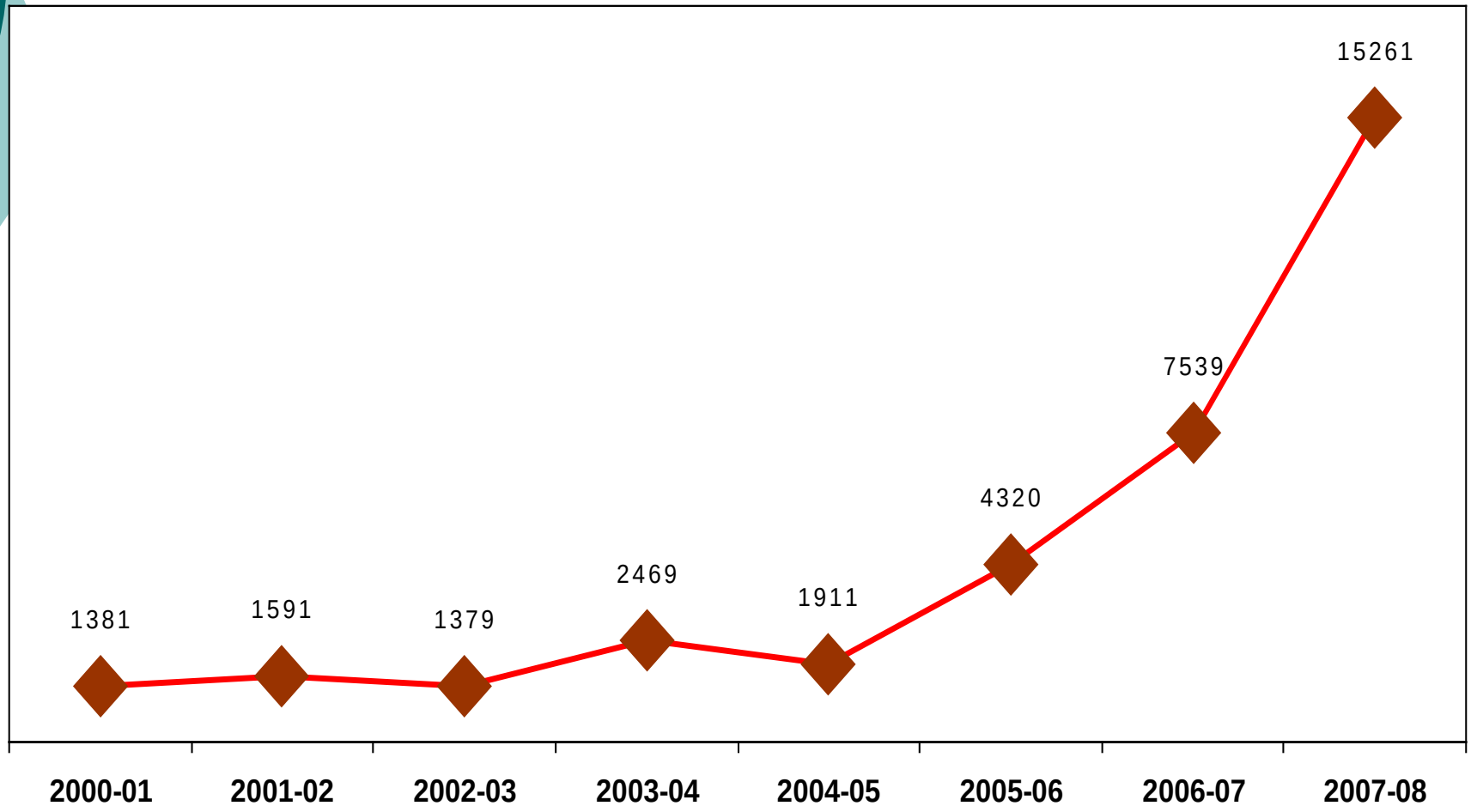


Source: Reserve Bank of India

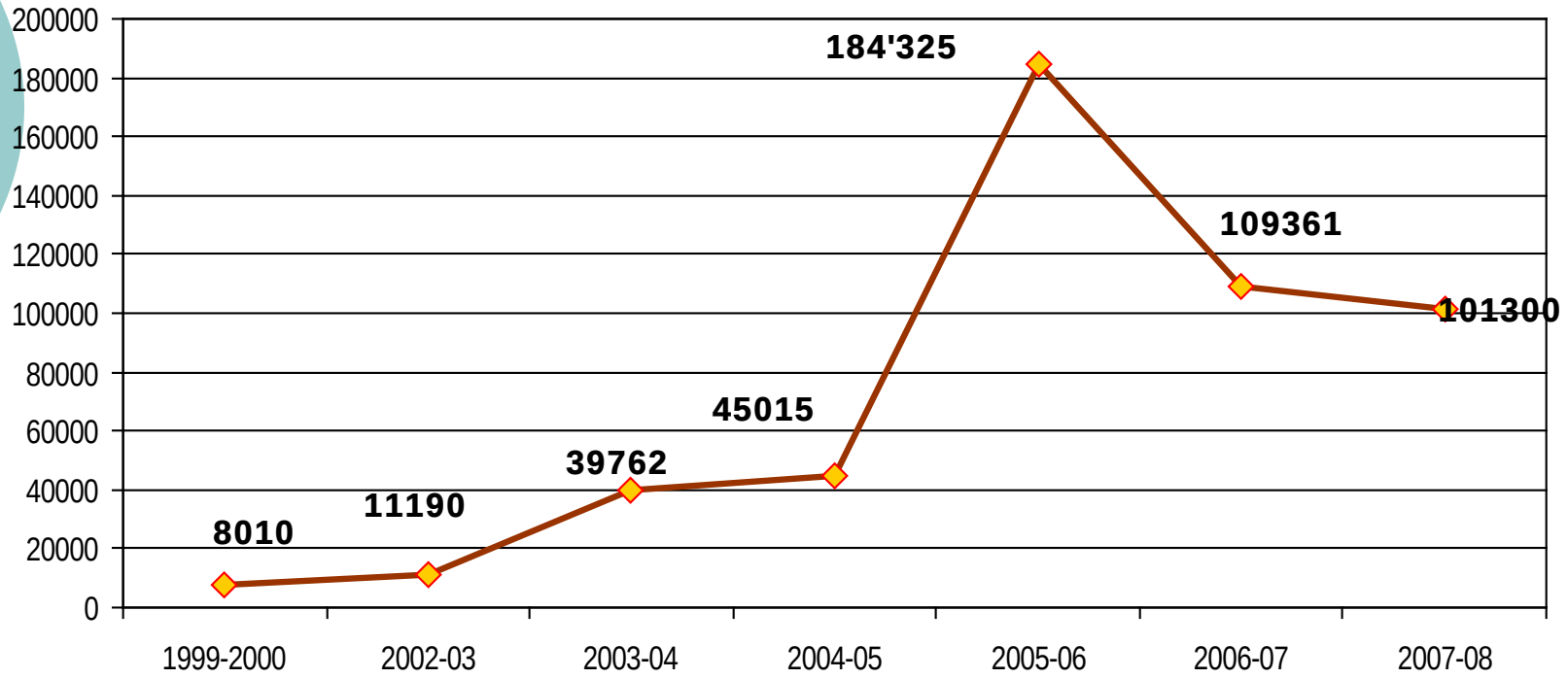
Trends: Patent Applications



Trends: Patents Granted

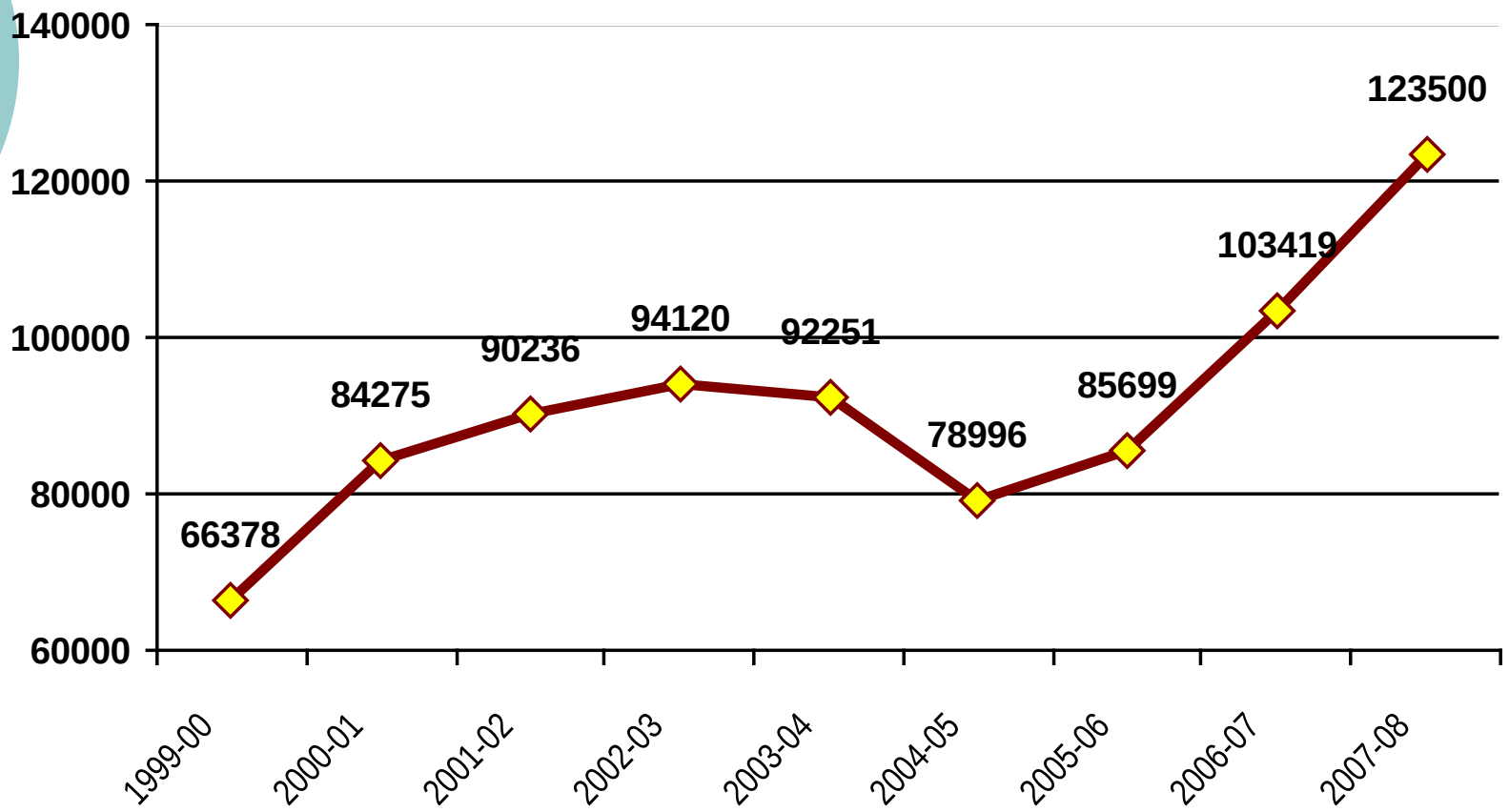


Trends: Trade Marks Registered

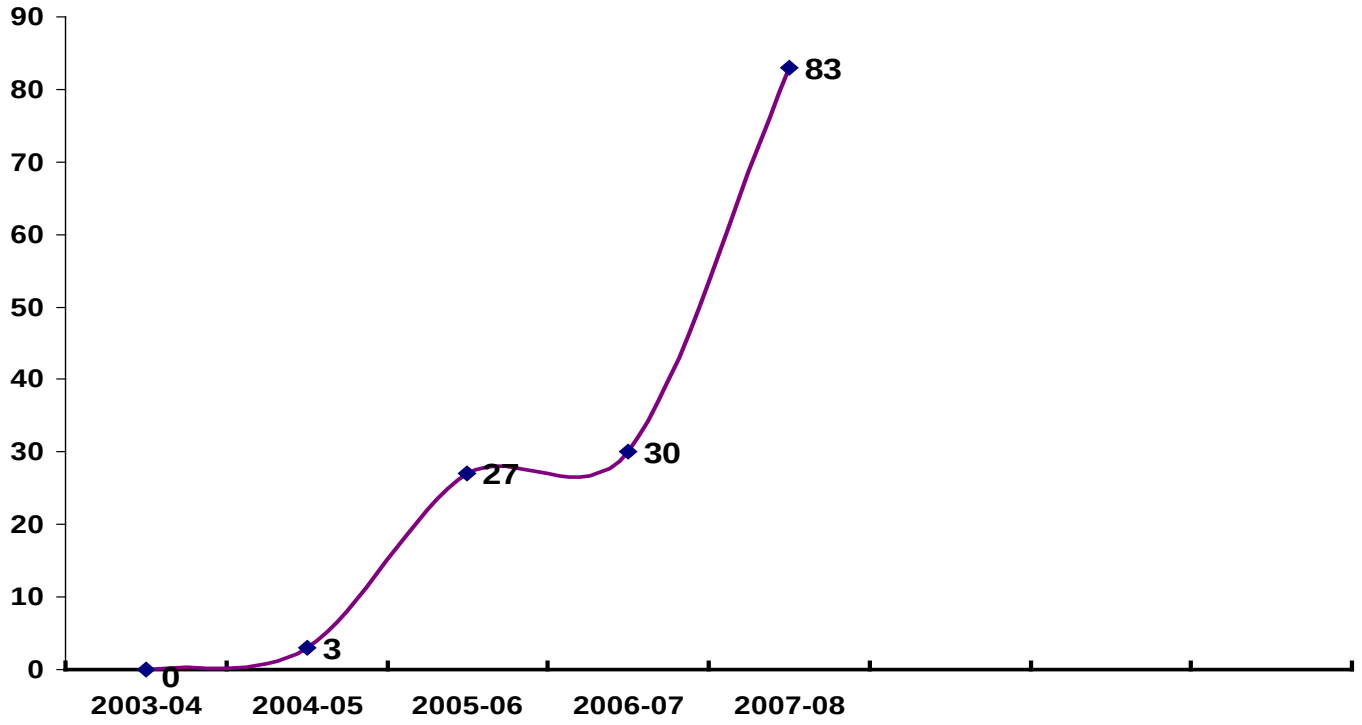


In the last 3 years about 4,00,000 trade marks registered – more than those registered in the preceding 50 years.

Trends: Trade Mark Applications

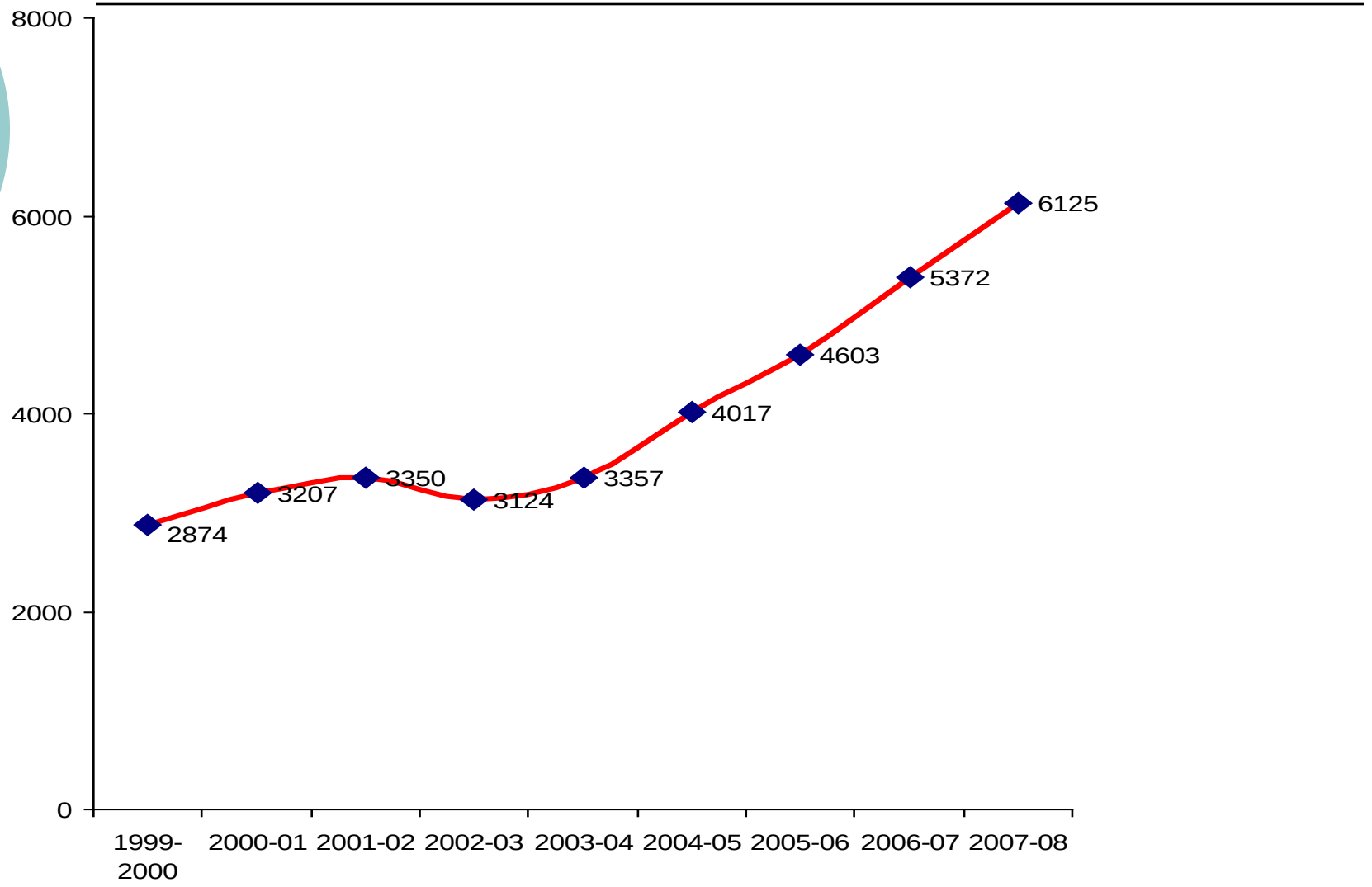


Trends: Geographical Indications Registered

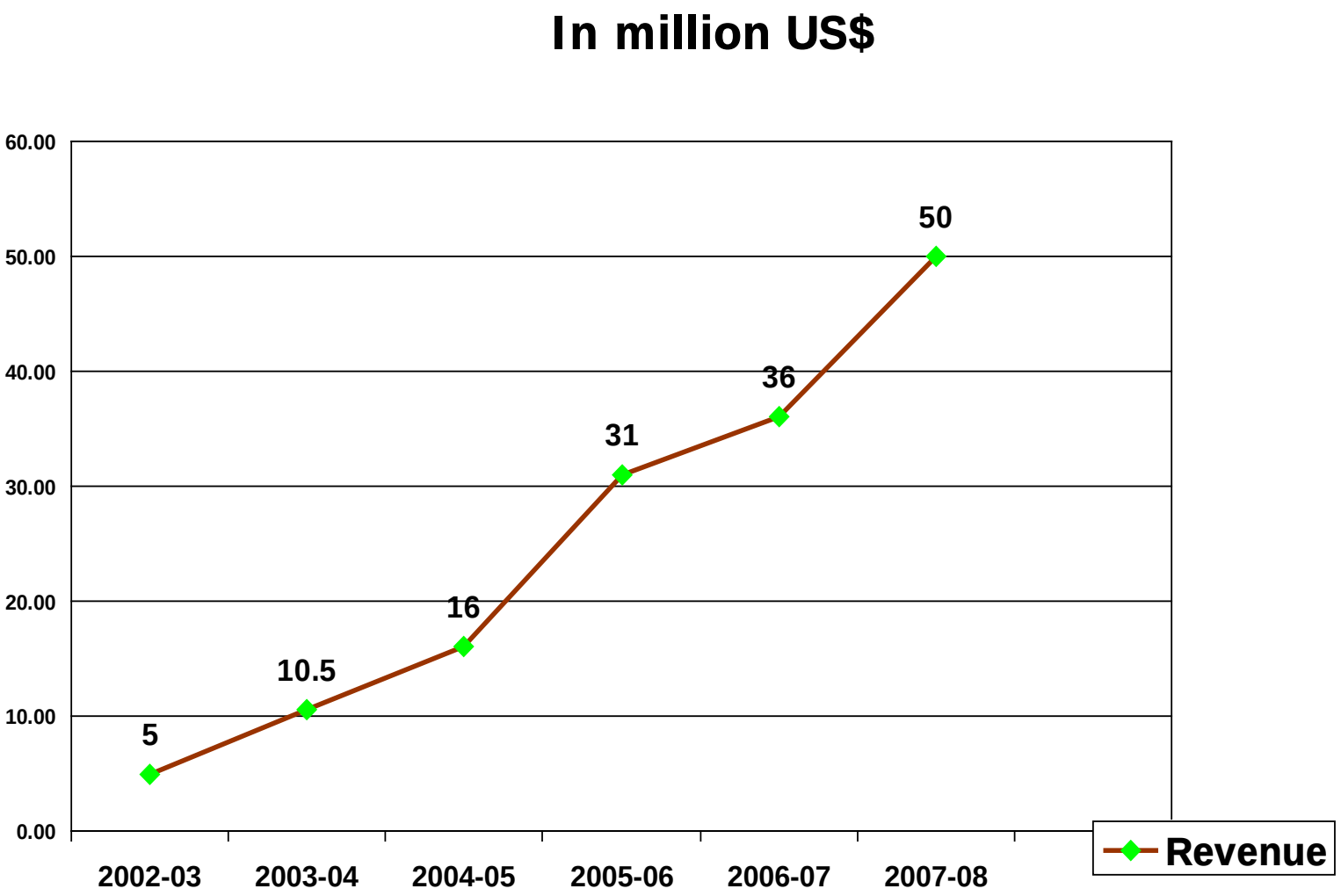


up to July, 2008

Trends: Design Applications



Trends: Revenue



To conclude…

"Intellectual Property is not an end in itself, but one of the instruments to encourage innovation for technological, industrial and economic and social development."

In the above context, India's **Prime Minister Dr. Manmohan Singh** stated that "the Government wants to create a culture that rewards risk taking, innovation and product development … so that it can compete effectively on the global plane."

Thank You