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# IP NEWSLETTER

## Chair's Message



### Mr. Narendra Sabharwal IAS (Retd.)

Chair, FICCI IPR Committee  
Former Deputy Director General, WIPO

**F**ICCI, as the voice of Indian Industry, has been working closely with the Government of India on diverse issues of national interest through wide-ranging engagements on policy, implementation and capacity creation, undertaking various programs and activities that contribute to redefining the future of

India. One of the key areas where FICCI has made significant contribution has been Intellectual Property Rights (IPR). As we are aware, innovation and creativity, catalysed by IP, pervades all fields of human endeavour ranging from science & technology, arts and literature, trade and industry, education, health, food and environment. Leveraging IP and innovation provides the cutting edge to industry and business including MSMEs and Startups, for becoming more profitable, competitive and sustainable.

FICCI has been acting as a platform for continuous interaction between industry and the Government with a view to providing an interface for businesses to discuss and resolve their issues on IP rights, providing inputs on policy development; modernisation of IP administration, organizing major conferences/seminars on critical IP issues, conducting IP awareness, training programs; and addressing the issues pertaining to protection and enforcement of IP rights in India. It regularly engages with India's trading partner as well as global institutions like WIPO, WTO, WCO, ICC, USPTO/USTR, UKIPO, EPO, JPO on IP matters and explores best practices on IP suitable for India.

**I am pleased to inform you that with a view to inform, interact and engage with its members and the IP community on a regular basis on current and emerging IP issues, FICCI has decided to launch a Quarterly FICCI IP Newsletter.**

The IP Newsletter will aim to enhance FICCI's outreach to key IP stakeholders including Indian industry, Government and policy makers, thought leaders and diplomats, academia, educational institutes, IP professionals, innovators, researchers, MSMEs, Startups and the informal sector. The newsletter will cover a wide range of subjects on IPR including policy initiatives and recent trends, IP news, views and updates on FICCI's initiatives and activities in this key area, and other important developments like policy announcements, IP judgments, topical IP issues concerning industry and business, among others.

At present, COVID 19 pandemic is confronting India and the entire world, having a massive impact on global and national healthcare systems and medical infrastructure and resulting in significant downturn in the economy. The role of intellectual property and innovation today has become doubly crucial to combat these two challenges. The first issue of the newsletter would focus, among other topics, on how IP stakeholders, particularly industry and business, MSMEs & Startups, research institutions, academia, global institutions, are contributing to minimizing the rigors of the pandemic while providing stimulus to the economy to rebound.

I am hopeful that the FICCI IP Newsletter will help provide timely updates on developments, views, trends and policy issues related to intellectual property rights and will meet the objective of strengthening information dissemination to all stakeholders of the IP sector.



# Role of IP during COVID-19 & Economic Downturn

COVID-19 is affecting each and every aspect of our daily lives. Apart from the health risk, it has been disrupting our social and economic lifestyle, and severely interrupting business operations. On the economic front, the impact of the pandemic has been felt all across, with travel restrictions enforced, factories shut down, school and colleges closed and supplies of essential items severely hit. The crisis has also disrupted the demand and supply chains countrywide, and its significant economic impact can be clearly seen on financial markets and vulnerable industries such as manufacturing, aviation, tourism, travel and hospitality, among several others. Moreover, the closing down of cinema theatres and declining footfalls in shopping complexes have affected the retail sector, thereby impacting the manufacture and consumption of both essential and discretionary items. Besides, with factories not being fully functional and retailers closing down their services, jobs of large number of employees are at huge risk.

Amid this situation, there's one thing which continues to stay increasingly relevant for business and industry, and that is Intellectual Property (IP). It, therefore, becomes imperative for all of us to continue to take due cognizance of the importance of intellectual property rights during these unprecedented times.

As is well-recognized, Intellectual property protection is the key to fostering innovation. Without adequate protection of creative ideas and intellectual assets, entrepreneurs and researchers would not get the expected return on their creative inventions and related investments, which would ultimately undermine research and development efforts in any economy. This is something that no progressive nation can afford, particularly so in the current pandemic situation.

With COVID-19 severely impacting economies across the world and there being no clarity on how long the present situation would persist, it is not surprising that the various industry sectors are doing their best to develop and adopt innovative models for their operations to stay competitive and even thrive.

In the midst of all this, several issues relating to intellectual property have come to the fore. It has become amply clear that in the light of people fearing for their safety, important concepts such as IP flexibilities, openness and access have become much more significant in people's minds. Since innovation and intellectual property go hand in hand and because IP protection incentivizes innovation, we are stuck in a face-off between affordability and accessibility, on one side, and financial profits and high R&D costs, on the other.

The challenge now for India is to rapidly build up a stockpile of materials that can cater to the present need amid this outbreak. The cost of such a reserve is likely to be enormous for a country of 1.34 billion people. While most of the older technologies should be out of their patent terms and hence more than affordable, the newer technologies are likely to cost the country a king's ransom. This is because most of the advanced technology items, say even for something like respirator masks required by medical staff dealing with highly contagious diseases such as COVID, are covered by patents, thereby increasing their price.

Apart from the high price of such technologies, there is also the fact that many of these patented technologies are not

manufactured in India. In times of a global epidemic, it goes without saying that overseas companies are going to cater first to their domestic needs and understandably so. This face-off has brought up issues which the global community is combating through several measures. From start-ups joining hands to fight the pandemic and its financial impact, to proposing the creation of technology access pool for sharing knowledge, intellectual property and data, the world must now come together to fight the crisis that's affecting millions using benefits of intellectual property rights.

It is a fact that the advent of advanced technologies such as AI, IoT and Big Data have spurred a new wave of innovations in the healthcare sector. However, more concerted efforts are required to bring to the fore the idea of 'sustainability' in all aspects of public health innovation. Despite the substantial progress in some areas of global public healthcare, the access to medicines remains insufficient in many countries and, therefore, the role of intellectual property and innovation becomes all the more significant. In this context, the use of medicinal plants-based traditional systems of medicines has always played an important role in meeting global healthcare needs. The Indian Systems of Medicine including Ayurveda, Yoga, Siddha, Unani, Naturopathy and Homoeopathy are among the well-known global traditional systems of medicine that are playing a significant role in providing healthcare to large section of population in India and other developing countries. It continues to play a key part in global healthcare systems due to its well-defined conceptual framework that has been consistent throughout the ages.

The use of traditional knowledge (TK) is another prospect which is gaining prominence in the current global health crisis. The medicinal properties, especially the antiseptic qualities of neem, turmeric and lime, already acknowledged in India, are now well accepted by modern-day science as well. It is remarkable that the communities in India are using their age-old practices and traditional knowledge systems to fight the outbreak of COVID-19. Given the urgency of addressing global health concerns, the use of this form of intellectual property (traditional knowledge) cannot be underestimated.

There is no denying that COVID-19 has greatly affected all aspects of our lives, and the intellectual property arena is no different. However, to ensure that the IP regimes continues to be a support, and not a hindrance to humanity's united efforts to fight out this life-threatening pandemic, the right holders must take the initiative and come forward to discreetly remove licensing restrictions that inhibit remote education, research (e.g. text and data mining and artificial intelligence projects) and access to healthcare, including across borders, both to help address the global pandemic and to minimize the disruption caused.

There is also a greater need for countries to enact and use exceptions to intellectual property rights. The endeavour should be towards facilitating better access to manufacturing information, cell lines in biomedical research, confidential business information, data, software, product blueprints, manufacturing processes and other subject matters that are needed to achieve universal and equitable access to COVID-19 medicines and medical technologies as soon as reasonably possible.



## LAUNCH OF FICCI IP FORUM



FICCI, since its inception in 1927, has been the rallying point for free enterprises in India. It has empowered Indian businesses in the changing times, to shore up their competitiveness and enhance their global reach. As industry's voice for policy change, FICCI has been working very closely in the area of IPR with the Government of India, including DPIIT and the IP Office, national and overseas industry and business, enforcement agencies, the judiciary, academia and other IP stakeholders across the globe to promote creativity and innovation, while working with IP owners in bringing to the fore the issues related to the IP rights. FICCI has also been instrumental in offering substantive and comprehensive inputs and feedback to the Government on policy issues related to intellectual property rights.

### BACKGROUND

With a view to provide an interface for businesses to resolve their issues pertaining to intellectual property rights and also developing a pool of professionals in the area of IPR, whose knowledge and expertise will benefit the industry at large, FICCI recently announced the launch of its unique initiative - **FICCI IP FORUM** – a community of IP experts.

The core objective of establishing the forum is to create a national association of legal professionals who are keen to support IP and encourage innovation, brand protection and creativity among various stakeholders. The forum also envisages to work towards further strengthening of the IP ecosystem in India and thus play an important and more comprehensive role in addressing the existing and evolving issues in intellectual property rights in India.

### KEY BENEFITS

The key benefits of FICCI IP Forum membership, among others, include:

- **Engagement in IP Policy Advocacy:** An opportunity to advise, suggest, deliberate on emerging IP issues and to be involved in the policy drafting and recommendation to Government together with FICCI.
- **Networking through FICCI's national & international seminars/conferences:** Speaking and networking opportunities at various events organized by FICCI with stakeholders involved - from Government, Industry and related organizations/institutions.
- **Speaking and participating opportunities in FICCI Webinars:** (Maximum 2): Opportunity to be part of the prestigious "*FICCI-CIPAM 100 Webinar Series on IP*" focusing on a range of IP-related subjects and its significance for all stakeholders including Corporates, Start-ups, MSMEs, R&D institutions and academic institutes.
- **Enhanced Visibility:** Opportunity to contribute an article on IPR related topics in FICCI's IP Newsletters with personal quotes on the Indian IP scenario. This apart, enhanced digital presence through various social media platforms of FICCI.
- **FICCI IP Talks:** Opportunity to be covered in one episode of 'FICCI IP Talks' which is on the professional journey of an IP expert.
- **Several other Benefits:** The forum members will be regularly informed of all the upcoming IP programs by FICCI, including webinars, seminars, conferences, workshop across the country and the participation opportunities available therein. They will be invited to provide their inputs/suggestions on any topic of their interest related to IPR, as and when they are required.

### CONTACT US

For more information on FICCI IP Forum Membership, please contact:

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# RECENT INITIATIVES

## FICCI IP Forum Members



**ARCHANA SHANKER**  
Senior Partner & Head -  
Patents & Designs, Anand & Anand



**MANISHA SINGH**  
Founder Partner  
LexOrbis



**NITI DEWAN**  
Head - Patents &  
Business Development,  
R K Dewan & Co.



**SAFIR ANAND**  
Sr. Partner & Head - TM  
Contractual & Commercial IP  
Anand and Anand



**AMEET DATTA**  
Partner  
Saikrishna & Associates



**ESNESE OBHAN**  
Managing Partner  
Obhan & Associates



**PANKAJ SONI**  
Partner  
Remfry & Sagar



**SUNITA K SREEDHARAN**  
Founder & CEO  
SKS Law Associates



**SAIF KHAN**  
Partner - IP Enforcement  
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**NAVNEET MOMI**  
Managing Partner  
Intellect Juris



**SHRIDHAR PARUNDEKAR**  
Director  
Brand Defence Consulting



**B NAVEEN KUMAR VARMA**  
Managing Partner  
Zeus IP Advocates



**SANJAY KUMAR**  
Managing Partner  
Perfexio Legal



**SUNEET SABALE**  
Founder & CEO  
Brainiac Global Consulting



**GAURAV CHOUBEY**  
Partner  
Choubey & Co.



**DEEPA VOHRA BAHL**  
Managing Attorney  
Lex Intelli



**SHHAURYA SAH**  
Founding Partner  
Sah & Mehrotra Associates



**ARPITA SAWHNEY**  
Partner  
Perfexio Legal



**MEENAL KHURANA**  
Senior Associate  
Perfexio Legal



**MATHEWS VERGHESE**  
Managing Associate  
Inttl Advocare



**YASHVARDHAN RANA**  
Associate  
Inttl Advocare



# FICCI 100 WEBINAR SERIES ON INTELLECTUAL PROPERTY – In Collaboration with DPIIT & CIPAM

Federation of Indian Chambers of Commerce and Industry (FICCI) along with Department of Promotion of Industry and Internal Trade (DPIIT), Government of India and Cell for IP Promotion and Management (CIPAM) have joined hands to launch the “100-Webinar Series on Intellectual Property” in March 2020. The objective is to raise the awareness in the area of Intellectual Property Rights, facilitating a key objective of the National IPR Policy 2016, and to get stakeholders involved in deliberations across diverse topics on IPR.

The speakers participating in the Webinar series are experienced IP professionals, academicians and researchers and legal experts who have been engaged with the development and evolution of intellectual property rights in India. This prestigious and joint project between FICCI and the Government, with a timeline of one year, aims to address around 20,000 stakeholders by the end of the year 2020, making them increasingly aware of the importance of intellectual property rights and the role it plays in strengthening India's economic ecosystem. For these knowledge sharing interactions, FICCI brings on board the best of IP experts to address the participants and also share their experiences, while ensuring that the instructions and knowledge provided are exhaustive, informative and beneficial for the webinar audience.

Since inception of the Webinar Series in March 2020, FICCI has productively conducted 21 webinars so far on a wide range of IP topics, with several more planned in the coming months ahead. The objective is to organize 100 webinars by the end of year 2020.

Following are the list of webinars completed so far:-

- **Basics of Intellectual Property**  
(15-Mar-20)
- **Intellectual Property - International Treaties & Agreements**  
(20-Mar-20)
- **Intellectual Property - A Trading Tool for Business Success**  
(25-Mar-20)
- **Synergies Linking IP and Competition Law in India**  
(12-Apr-20)
- **Copyright and Neighboring Rights**  
(17-Apr-20)
- **Drafting Intellectual Property Applications**  
(20-Apr-20)
- **Commercialization of IP**  
(4-May-20)
- **Patenting in the Pharmaceutical Industry**  
(8-May-20)
- **IP and its Licensing**  
(20-May-20)
- **Art Law & IP**  
(28-May-20)
- **Career as a Patent Agent**  
(5-Jun-20)
- **Artificial Intelligence & IP**  
(10-Jun-20)
- **Comparative Advertisement – An Essential Element of IP**  
(29-Jun-20)
- **Grounds of Refusal of Trademarks**  
(30-Jun-20)
- **Importance of IPR for IoT Startups**  
(9-Jul-20)
- **Patenting and Strategies for Industries & Universities** (17-Jul-20)
- **Trademark Opposition Procedure in India**  
(10-Aug-20)
- **Role and Importance of IP in the Fashion Design Industry**  
(16-Aug-20)
- **Understanding the Madrid System for International Registration of Trademarks**  
(29-Aug-20)
- **Protection and Promotion of Geographical Indications of India**  
(1-Sep-20)
- **Intersection of IP in the Pharmaceutical Industry**  
(7-Sep-20)



## WEBINAR ON

### IP Sector Imperatives during Covid-19

April 13, 2020

With COVID-19 pandemic impacting the businesses across sectors globally, it has not spared the domain of intellectual property either. However, the crisis has not brought the IP sector to a complete halt, as the IP activities continue to function world over, though at a slower pace. In order to underline the role of IP during the current pandemic and to deliberate on the significance of the intellectual property in addressing the present challenges, and the key role that IP could play in saving human lives in these unprecedented times, FICCI organized a **Webinar on 'IP Sector Imperatives during COVID-19' on 13th April 2020**. Mr. Arun Chawla, Deputy Secretary General, FICCI, made the opening remarks followed by several distinguished speakers addressing the participants including Mr. Narendra Sabharwal, Chair, FICCI IPR Committee and Former Deputy Director General of WIPO; Dr. Malathi Lakshmikumaran, Executive Director and Practice Head, Lakshmikumaran & Sridharan Attorneys; and Ms. Vijaylakshmy Malkani, Senior IP Counsel, Hindustan Unilever Ltd. The discussions revolved around the challenges that had arisen in the intellectual property sphere with the onset of COVID-19 pandemic in the country's IP administration and management, the significant role that IP rights can play during the present crisis and the support required from the Government by IP professionals and the industry in general to carry out their research and innovations that would help find early solutions to the pandemic. The webinar was attended by over 100 participants including IP professionals, researchers, innovators, law firms, academia and representatives from a wide range of industries.



## WEBINAR ON

### World IP Day - Green IP for Global Health Innovation

April 27, 2020

The World Intellectual Property Day is organised every year to celebrate the role that IP rights play in encouraging innovation and creativity. Keeping the theme proposed by WIPO for 2020 as backdrop - how innovation aided by IPR supports the creation of a green future - FICCI organized a **Webinar on 'Green IP for Global Health Innovation' on 27th April 2020** to commemorate the 20th WORLD IP DAY anniversary, to underline the significance of IP in promoting green technologies, particularly in the health sector. The webinar was addressed by eminent leaders from Government and Industry, including Justice Manmohan Singh, Chairman, Intellectual Property Appellate Board; Mr. O P Gupta, Controller General of Patents, Designs & Trademarks; Mr. NK Sabharwal, Chair, FICCI IPR Committee and, Former Dy. Director General, WIPO; Mr. Deepak Jacob, Chief Regional Counsel, The Walt Disney Company; Ms. Vijaylakshmy Malkani, Senior IP Counsel, HUL; Mr. Huw Watkins, Head-Asia Policy, UKIPO and Mr. Ravi Bhola, Partner, K&S Partners.



The discussions centered around the current IP issues faced by business and industry with onset of the current pandemic like rising levels of counterfeiting & piracy, challenges in IP administration, copyright issues, the strategies needed to confront the challenges and the opportunities expected to emerge post COVID-19. The webinar saw the participation of over 150 representatives from a wide range of industries, academia, legal fraternity and other IP stakeholders.



WEBINAR ON

## E-filing in Courts & Data Privacy Issues during Lockdown

May 12, 2020

With COVID-19 pandemic resulting in extended lockdowns in the country forcing courts to issue various e-filing guidelines for urgent mentioning of matters and the global spread of the pandemic driving organisations to resort to remote-working environments and adopt new data privacy and disclosure practices, FICCI in association with Remfry & Sagar organized a Webinar on 'E-filing in Courts and Data Privacy Issues during Lockdown' on 12th May 2020. The webinar talked about the E-filing guidelines for urgent mentioning of matters in various courts, including the Delhi High Court, Bombay High Court and the Supreme Court along with the filing procedures at Intellectual Property Appellate Board (IPAB). This apart, the webinar also had discussion on the other critical concerns of cyber security and data privacy that have emerged in large numbers in recent days. The webinar had the Opening Remarks from Mr. Arun Chawla, Deputy Secretary General, FICCI and the other eminent guest speakers from Remfry & Sagar including Mr. C.A. Brijesh, Partner & Head of IP Litigation; Mr. Cyril Abrol, Partner - Corporate Law; Mr. Vishnumohan Rethinam, Partner-Copyright and Ms. Aarti Aggarwal, Associate-IP Litigation etc. The webinar had participation of over 150 people consisting of industry representatives, Legal & IP professionals, Law firms, Advocates, Lawyers, Data protection officers, Cyber security managers, Information security officers, students and other key stakeholders.



WEBINAR ON

## IP & Collaborative Research in Pharma Industry

May 29, 2020

With COVID-19 crisis impacting all sectors of economy, the Pharma sector has been going through a challenging times. With no vaccine and antidote yet available for coronavirus, the scientists and researchers worldwide have been working tirelessly to find a vaccine against the disease. This has also given rise to many collaborative researches in pharma sector. FICCI in association with LexOrbis organized a Webinar on "Impact of COVID-19 on IP & Collaborative Research in Pharma Industry" on 29th May 2020. The webinar discussed about the impact of COVID-19 on Pharma sector and the subsequent collaborative researches in pharma industry and the legal and IP system to handle IP ownership and revenue sharing issues arising out of it. The webinar also touched upon the opportunities available for Indian Pharma sector during post COVID-19. The webinar had the Opening Remarks from Mr. Arun Chawla, Deputy Secretary General, FICCI and the other eminent guest speakers from LexOrbis including Dr. Ramani V Marakani, Associate Partner, LexOrbis; Mr. DPS Parmar, Special Counsel, LexOrbis and Mr. Rajeev Kumar, Partner, LexOrbis. The webinar was attended by over 100 participants consisting of pharma industry representatives, Legal & IP professionals, Law firms, Advocates, Lawyers, key business associations and other key stakeholders.





### WEBINAR ON

## IP Enforcement in India: Changing Trends

June 24, 2020

The IP sector in India has been faced with various issues and challenges particularly in Patents, Designs, Trademarks & Copyright. However, the trend seems to be changing in recent years with Indian courts showing dynamism and zeal for effective protection of IP rights. FICCI in association with LexOrbis organized a **Webinar on "IP Enforcement in India: Changing Trends" on 24th June 2020**. The webinar discussed about various enforcement issues in IP sector in India, particularly in Patents, Trademarks and Copyright and the recent case laws and emerging trends in the enforceability of IP rights in India. The webinar had the Opening Remarks from Mr. Arun Chawla, Deputy Secretary General, FICCI and the other eminent guest speakers from LexOrbis including Mr. Omesh Puri, Partner, LexOrbis; Mr. Varun Sharma, Associate Partner, LexOrbis and Ms. Aprajita Nigam, Senior Associate, LexOrbis. The webinar was attended by over 100 participants consisting of industry representatives, legal & IP professionals, brand owners, patent attorneys, copyright holders, law firms, legal experts, law students from academic institutes and other key stakeholders etc.



### WEBINAR ON

## Design Protection & Enforcement in India

June 30, 2020

Design as an IP holds immense value to the businesses as it is the simplest way of differentiating one's products from competing products. Today, it is important for businesses to protect this important form of IP through various provisions available under The Indian Design Act. FICCI in association with K&S Partners organized a **Webinar on "Design Protection & Enforcement in India on 30th June 2020**. The webinar discussed about the design protection & enforcement scenario in India and the issues and challenges in enforcing design rights along with the recent case laws and changing trends in the enforceability of design rights in India. This apart, the webinar also touched upon the design registration procedures in India and the common law remedies available to the IP holders under Design Act' 2000. The webinar had the Opening Remarks from Mr. Arun Chawla, Deputy Secretary General, FICCI and the other eminent guest speakers from K&S Partners including Mr. Gopinath A S, Partner, K&S Partners; Mr. Saurabh Anand, Senior Associate, K&S Partners & Mr. Adithya Jayaraj, Senior Associate, K&S Partners. The webinar was attended by over 150 participants including industry representatives in industrial and product design, design professionals, legal & IP experts, students from design institutes and other IP stakeholders etc.





WEBINAR ON

## IP & Emerging Technologies: AI, IoT, Big Data

July 15, 2020

**E**merging technologies such as AI, IoT, Big Data, ML and Blockchain have all been considered to be a revolution in the field of technological developments and expected to grow to have an unparalleled importance in all spheres of life in future. FICCI in association with LexOrbis organized a **Webinar on “IP & Emerging Technologies: AI, IoT, Big Data” on 15th July 2020** to deliberate and understand the role and importance of emerging technologies in creation of intellectual property and current IP issues associated with emerging technologies such as, patentability, inventorship, legal framework and patent laws etc. The Opening Remarks were made by Mr. Dipankar Barkakati, Director, IPR Division, FICCI followed with technical sessions addressed by eminent guest speakers from LexOrbis including Mr. Joginder Singh, Partner, Mr. Piyush Sharma, Managing Associate, LexOrbis and Mr. Rahul Sharma, Associate Partner, LexOrbis. The webinar was attended by over 100 participants consisting of industry members, legal & IP professionals, patent attorneys, software professionals, technocrats, law firms, legal experts, law students from academic institutes and other key stakeholders.



WEBINAR ON

## Intellectual Property Rights & Social Media

July 24, 2020

**S**ocial Networking is an important part of our lives. At a time when physical distances have been negated by augmented proximity, social media has become an invincible part of our daily routine. However, while social media presents tremendous growth opportunities for businesses today, it is also fraught with various unlawful activities leading to infringement of IP assets. FICCI in association with L S Davar & Co. organized a **Webinar on “Intellectual Property Rights & Social Media” on 24th July 2020**. The webinar discussed about IP issues in social media, particularly in copyright sector and the current legal framework and remedies available to IP owners to deal with such issues. The webinar also discussed upon social media laws and their correlation with IP rights and how brand owners and organisations can safeguard their brands in social media in these challenging times. The webinar had the Opening Remarks from Mr. Arun Chawla, Deputy Secretary General, FICCI followed with the presentations from the eminent guest speakers from LS Davar & Co. including Mrs. Kajal Sinha, Trademark Attorney, LS Davar & Co. and Mr. Govind Chaturvedi, Trademark Attorney, LS Davar & Co. The webinar was attended by over 130 participants consisting of industry members, legal & IP professionals, trademark attorneys, brand owners, law firms, legal experts and students from academic institutes and other key stakeholders etc.





### WEBINAR ON

## IP & Access to Technology & Resources by MSMEs

August 7, 2020

Small & Medium Enterprises (SMEs) occupy an important and strategic place in economic growth and equitable development in all countries. However, SMEs in India, today continue to be in technological backwaters vis-à-vis advances in science & technology and suffer from problems of sub optimal scales of operations and technological obsolescence. Hence, in order to enable SMEs tide-over the problems of technological backwardness and enhance their access to new technologies and intellectual property resources, it is imperative to offer them a conducive environment through robust science and technology infrastructure, formulation of appropriate national policies and programs, building up technological capacity, knowledge flows and technology databases and finally, R&D and industry-academia collaborations etc. FICCI in association with



LexOrbis organized a **Webinar on “IP & Access to Technology & Resources by MSMEs” on 7th August 2020**. The webinar discussed about the current issues and challenges with respect to access of technologies and intellectual property resources by Indian MSMEs and how the current ecosystem enables the technical capabilities of Indian MSMEs and help enhance their competitiveness. The webinar had an interesting discussions on science & technology infrastructure for SMEs in India and the relevance of industry-academia collaboration for innovation in MSMEs. This apart, the webinar also touched upon the novel concept of Sovereign Patent Funds in India and how it can be effectively utilized to facilitate technology access to MSMEs, even though it is still in a nascent stage in India. The webinar had the Opening Remarks from Mr. Dipankar Barkakati, Director, IPR Division, FICCI followed by the technical session by other eminent guest speakers from LexOrbis including Mr. C R Jacob, Senior Strategist, IP & Business, LexOrbis; Dr. Ramani V Marakani, Associate Partner, LexOrbis; Mr. DPS Parmar, Former Technical Member, Intellectual Property Appellate Board and Special Counsel, LexOrbis. The webinar was attended by nearly 100 participants consisting of industry representatives, members of small and medium enterprises, legal & IP professionals, law firms, academic researchers, research heads and students, scientific professionals and other key stakeholders etc.



# THE INTANGIBLE PATH TOWARDS BECOMING INVINCIBLE



## Safir Anand

Member – FICCI IP Forum &  
Sr. Partner & Head, Trademark,  
Contractual & Commercial IP,  
Anand and Anand



We are collectively witnessing a predicament that has turned the world upside down. In this COVID struck world, industries ranging from tourism to infrastructure are the ones hit enormously. The clear awakening that is coming out of this crisis is that disruption is inevitable. One of the prominent effective tools, leading us ahead are the intangibles. Amid these intangibles and the globally mandated closure of brick-and-mortar stores, there seems to be a new form of intellectual property (IP) brewing, which is a platform. This refers to the technology driven platform which may be protected by patents, trade secrets, trademarks, copyrights, amalgamation of several laws and layers including data privacy, branding, unique algorithms enabling better searches, or even digital advertising, which end up creating multiple layers of uniqueness.

Brands are now able to create a virtual marketplace which is like a world of its own. This virtual world while it grows, enables a stronger form of IP with more and more users being connected with it.

In other words, a platform does not incur a cost to bring a new client, the client comes to the platform because it is developed and advanced. This eventually empowers the platform to do something which is unique in its own way, by addition of clients, it reduces the cost for the next client. This has triggered off unique business models where there is uniqueness in multiple levels of the business and as such, the IP is layered to create multiple moats around the business model. Not all IP can be protected statutorily and much of which has to be protected strategically. This also requires the businesses to develop a keen eye to identify IP, not just to add it to its own repertoire of IP but also to ensure that it does not violate any third party unprotected IP.

For instance, if Indiamart, the Indian e-commerce platform gets more and more subscribers then it only has to incur the cost for maintenance of technology, it may then be at a better position to give rebates to its clients and in turn attract the next lot of subscribers. Intellectual property (IP) and Intellectual Capital (IC) driven platform companies like Amazon, Google, Netflix, Jio, etc. create jobs, have market advantages and drive innovation through dissemination and use of new technology.

As part of the overall business strategy, Netflix aggressively employs intellectual properties in its effort to innovate and protect its long-standing competitive lead.

Trade secrets and gathered user database forms a primary part of Netflix's IP. An instance of this would be Netflix's first original show, House of Cards where it worked in collaboration with the production house, MRC. In order to tactically appeal the viewers, Netflix served important data from its preference analytics database about user preference and behaviour during the production period. Further, partnering with MRC gave an added benefit in the sense that the proprietary data and the technical know-how could be shared, just enough to reduce the risks of simultaneous developments and eventually produce a strong hit.

Basis the varied service offerings, Netflix prudently built its business model upon a blanket of intellectual properties and strategies rather than focusing on just one such strategy. This allows the entity to utilize a variety of IPs in order to protect itself from potential infringement suits as well as shield its core services from any sort of misappropriation.



# ARTICLE

The exclusivity of Amazon, the e-commerce giant besides its web page, delivery model, packaging, Prime services, etc. lies in its Brand Registry feature. Amazon Brand Registry enables accurate brand representation that gives a brand better control over its product listings on Amazon, powerful search tools that enables one to easily find content in different Amazon stores, search for content using images, keywords, etc. It even allows reporting of suspected violations through a simple, guided workflow and a system for proactive brand protection. Amazon has thus, created a strong intellectual property around its verification system.



Similarly, Google doodle is a very unique feature for Google. A Google Doodle is a short-term modification of the logo on Google's homepages proposed to memorialize holidays, events, notable historical achievements, etc. This in itself is an intellectual property that is not only creative but informative. In addition, Google has a look and feel for its homepage that is denoted as their trade dress. All the user information fed in this search engine is the accumulated data that is further turned into Google trends. These trends are then sold to third parties. Thus, Google's intellectual property has multiple ingredients like its search engines, algorithms, trade secret, data processing, confidentiality agreements, customer lists and this also includes its trademark being a famous brand, which overall creates an enormous value.



Indiamart's intellectual property is its data which it can segregate according to a district, or based upon the type of vendors, or even by providing any sort of micro information. Consequently, Indiamart has effectively created an intellectual property around its data segregation tool.

Even, Facebook has momentous intangibles to account for. For example, Facebook's acquisitions of smaller firms have brought in new tools and capabilities. In addition, the social network purchased at least 1,300 patents from Microsoft and IBM for an undisclosed amount of money that has eventually added up to its intangible bunch. The database store, however, may be the most invaluable asset, allowing Facebook to deliver targeted advertising to users in innovative ways. The data and the potential to use the same is how Facebook derives its value.



What is propelling these businesses is indeed a unique combination of Intellectual Property. In fact, Federation of Indian Chambers of Commerce & Industry (FICCI) can also be identified as a platform, a platform that requires membership. The members of the federation are renowned in their respective fields and accordingly the quality creates an IP of relevant data. FICCI becomes credible by the fact that their voice is heard by the government and this voice is FICCI's intangible asset. If FICCI was to be sold as an enterprise, it will not just be sold for its brand name, it will be sold for the multiple layers of intellectual property that it has built over all these years.

All these instances shed light upon the creation of an interwoven web of intellectual property, which eventually makes it difficult to demolish an established brand reputation and makes it next to impossible for an infringing element to come in the market. Supposedly such a platform plans to extend its business to a new territory where one of the intellectual property is not yet available, despite this the entity will not be impaired because it already has an established intangible army that protects its existence and this army is not dependant on any one thing.

When you have so many layers of intellectual property like patent, trademark, copyright, trade secret, trade dress, etc. you become almost invincible. The potential infringer will have to break all the layers of IP to come ahead of you. Multiple layers of IP create a shield which is very difficult to pierce. As a result, such businesses are becoming invincible in that sense, making the cluster of intellectual properties invaluable.



# FINANCIAL ASSISTANCE PROVIDED BY INDIAN GOVERNMENT FOR GRANT OF INTELLECTUAL PROPERTY RIGHTS



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## INTRODUCTION

Intellectual Property (IP) is a class of intangible property which is created using human intellect, and has been shown by various studies to have a direct impact on world economy. As per the 7th Annual International Intellectual Property (IP) Index, which is a yearly study conducted by the US Chamber of Commerce, India improved its ranking from 44th place in 2018<sup>1</sup> to 36<sup>th</sup> place in 2019<sup>2</sup>. This is likely a direct outcome of the National IPR (Intellectual Property Rights) Policy<sup>3</sup>, which was announced by the Indian government in 2016. The National IPR Policy aimed to sustain entrepreneurship and boost the 'Make in India' initiative. Existing infrastructure and legislation was reviewed and various IP offices operating in India were modernized. There was a special focus on spreading IPR awareness which included setting up a specialized body CIPAM, as well as encouragement of IP registration and commercialization with financial incentives.

It is essential to understand that protection of IPR is of utmost importance to an organization, regardless of its size and would not be incorrect to state that it is even more crucial to have IPR protected from the very beginning. Every entrepreneur should leave no stone unturned to protect their tangible asset. However, at times IPR takes the back-seat and

are generally not amongst the top priorities whereas it is essential to understand that protection of intangible assets such as IPR must also be one's prerogative. The government's policies encourage companies to protect and understand the importance of their IPR and these should be utilized and exploited by Indian businesses to innovate and create a strong economy.

The National IPR Policy provides for commercial incentives and financial support with the objective of stimulating the generation of IPRs. The most notable incentives provided by the Indian government for various types of IP rights such as Patents, Trademarks, Designs, Geographical Indications, and Education and Training include:

- Scheme for Facilitating Start-Ups Intellectual Property Protection (SIPP)<sup>4</sup>
- Scheme for "Building Awareness on Intellectual Property Rights" (IPR) for the Micro, Small & Medium Enterprises (MSME)<sup>5</sup>
- Patent Acquisition and Collaborative Research and Technology Development (PACE)<sup>6</sup>

A brief look at the financial incentives provided to various IPRs are outlined herein below:

<sup>1</sup> <https://www.uschamber.com/press-release/us-chamber-releases-sixth-annual-international-ip-index>

<sup>2</sup> <https://www.uschamber.com/press-release/us-chamber-releases-2019-international-ip-index>

<sup>3</sup> [https://dipp.gov.in/sites/default/files/National\\_IPR\\_Policy\\_English.pdf](https://dipp.gov.in/sites/default/files/National_IPR_Policy_English.pdf)

<sup>4</sup> [http://www.ipindia.nic.in/writereaddata/Portal/News/323\\_1\\_Scheme\\_for\\_facilitating\\_start-ups.pdf](http://www.ipindia.nic.in/writereaddata/Portal/News/323_1_Scheme_for_facilitating_start-ups.pdf)

<sup>5</sup> <http://www.dcmsme.gov.in/schemes/IPRDetail.html>

<sup>6</sup> <http://14.143.90.243/dsir/patent-acquisition-and-collaborative-research-and-technology-developmentpace#:~:text=The%20PACE%20scheme%20provides%20catalytic,can%20be%20launched%20for%20commercialization>



# ARTICLE

## ❖ PATENTS:

One of the IPRs is by way of patents. A patent is a form of intellectual property that enables its possessor to exclude others from making, selling, using, offering for sale and importing goods and/or services that cover the patented technology or invention. In India, patents have a term of twenty years from the filing date, and offers rich dividends to those who hold granted patents in key technology areas with high demand in the market.

In a bid to strengthen and facilitate growth of small businesses across the country, the government has initiated the schemes of Start-Ups Intellectual Property Protection (SIPP) and Patent Acquisition and Collaborative Research and Technology Development (PACE), which seek to increase awareness and provide financial assistance to small businesses for protecting their IP rights. They also aim to assist any startup with developing their innovative technologies with a view to protect their IP rights. They would be required to submit a declaration of not having availed of any other government funding to pay the agent for filing and prosecuting their application(s).

To ensure smooth functioning of the SIPP scheme, the government has empowered the Controller General of Patent, Trademark and Design (CGPDTM) to devise panels with lists of facilitators. These facilitators are responsible for assisting businesses with filing and prosecution of patents, and other aspects relevant to protection of IP for them. The functioning of these facilitators is directly monitored and governed by the CGPDTM, with removal of a facilitator for non-compliance and improper conduct following a complaint. A facilitator under this scheme is a registered patent agent, an advocate or a government department working through an authorized representative.

For a business seeking to capitalize on technology developed in-house, facilitators would provide all IP assistance such as providing advice and information related to acquiring and protecting patents on pro bono basis, handling all aspects of filing and prosecution of patent applications at the Indian Patent Office (i.e. drafting patent applications, filing responses, attending hearings, oppositions and all other matters). No startup business would be charged for the fees of facilitators, and all patent rights shall wholly and completely belong to the startup. However, the statutory fees for each patent would have to be borne by the startup itself. The fees for the facilitators (all borne by the Government) are summarized below:

Stage of payment		Patents
At the time of filing of application		10,000/-
At the time of final disposal of application	Without Opposition	10,000/-
	With Opposition	15,000/-

Start-ups and small entities can also claim reduced statutory fees for Patent filing. Applicants are required to be recognized either as a start-up by the competent authority under Start-up India initiative, or as a small enterprise under the Micro, Small and Medium Enterprises Development Act, 2006 or a mere Company's incorporation certificate would suffice. The reduction in costs for those Applicants meeting the requirements for major activities is shown as below:

PARTICULARS	PATENTS
Filing of Application for individual	Rs. 1,600
Filing of Application for start-up/ small enterprise	Rs. 4,000
Filing of Application for all other entities	Rs. 8,000

PARTICULARS	PATENTS
Request for Examination for individual	Rs. 4,000
Request for Examination for start-up/ small enterprise	Rs. 10,000
Request for Examination for all other entities	Rs. 20,000

PARTICULARS	PATENTS
Expedited Request for Examination for individual	Rs. 8,000
Expedited Request for Examination for start-up/ small enterprise	Rs. 25,000
Expedited Request for Examination for all other entities	Rs. 60,000

To move a step forward to assist in research, the PACE scheme aims to support and nurture any technology that is industrially useful, or geared towards energy efficiency, low cost automation, or in emerging technology areas such as Internet of Things, AV/VR etc. Loans (to industry) and grants (to R&D organization, academic institution or university) would be granted through a bank guarantee. Collaborative projects between industry and an institution such as those mentioned above would be eligible for funding. The scheme also aims to support projects that would provide a proof of concept of a technology that provides a solution for or fulfills an unmet need. Furthermore, projects aimed at benefitting women and led by women scientists would be given special consideration.

The eligibility for an industry to avail the PACE scheme is that it should be registered in India and demonstrate a good financial track record and be able to furnish bank guarantee for loan. Certain other criteria have also been put in place for funding eligibility such as half of the company's shares being owned by an Indian/NRI, IP ownership, evidence of being able to raise its share of funds and, if the project is in collaboration with another institution, it should be Indian public funded research institution.



## ❖ TRADEMARKS AND DESIGNS:

The other major IP rights are trademark followed by designs. A trade mark is a word, symbol, letter, logo etc. which is a symbolic representation of an organization and goes on to become identified as a distinguishing feature of the goods/services offered (commonly referred to as the Brand identity). It stands as a testament to the quality of goods/services which has the capability of being protected for perpetuity. Whilst there is protection of unregistered trade marks as well, it goes without saying that the ambit of protection is colossal for registered marks under the Indian Trade Marks Act, 1999.

Designs, on the other hand are visually appealing features applied to any article, which stand out as “eye-catching”. For example, ornamental patterns applied to clothing, or style and pattern of colors applied to sandals, or a chocolate in the shape of an elephant, i.e. visual features which do not have any utility or function, and are only created to appeal to customers. India only allows for protection of registered designs, under the Designs, Act, 2000.

Under the Scheme for Facilitating Start-Ups Intellectual Property Protection, start-ups can apply for assistance with facilitators for registration of Trade Marks and Designs. The Government has published a list of facilitators who are experts in their field. The statutory fees will have to be paid by the start-up, however, the professional fees for the facilitator who will advise and help the start-up to register their Trade Marks and Designs, will be completely borne by the Government.

The necessary requirement is that the Applicant has to be registered as a start-up with the Government and then they can select a facilitator as listed. The facilitator's costs which will be reimbursed by the Government are approximately **INR 8,000**<sup>7</sup>, to be paid in parts depending on the filing and disposal of the application.

Stage of Payment	Trademarks &
At the time of filing of Application	Rs 2,000
At the time of final disposal of Application (Without Opposition)	Rs 2,000
At the time of final disposal of Application (With Opposition)	Rs 4,000

Start-ups and small entities can also claim reduced statutory fees for registration of Trade Marks and Designs. Applicants are required to be recognized either as a start-up by the competent authority under Start-up India initiative, or as a small enterprise under the Micro, Small and Medium Enterprises Development Act, 2006. The reduction in costs for those Applicants meeting the requirements is shown as below:

Particulars	Designs	Trademarks
Filing of Application for individual	Rs. 1,000	Rs. 5,000
Filing of Application for start-up/ small enterprise	Rs. 2,000	
Filing of Application for all other entities	Rs. 4,000	Rs. 10,000

## ❖ GEOGRAPHICAL INDICATIONS (GI):

GI's are names associated with goods originating from a particular territory, e.g. Darjeeling Tea, Kolhapuri Chappal, Kashmir Saffron, etc. Under the Government's IPR scheme, one time financial support for **INR 1.0 Lakh**<sup>8</sup> will be provided as reimbursement, for registration under the Geographical Indications of Goods Act. It is important to note that the applicant would be able to apply for reimbursement once the registration is granted.

## ❖ EDUCATION/TRAINING:

The government has set up schemes for facilitating and supporting MSME's, industry associations and concerned stakeholders in raising awareness about IPR related issues. The Government has announced grants of various amounts to agencies and bodies who will undertake seminars / events / workshops for increasing awareness about IPR. These seminars / events / workshops may be attended by any such entities for developing broader understanding of the IP system in India, to improve their protection and to protect themselves from infringements. Ministry of Electronics and Information Technology (Meity) has a scheme to support IPR awareness for those entities involved in conducting workshops / seminars. Applicants who desire to engage in such events may apply to the Government for grants for undertaking training<sup>9</sup>. For instance:

- Awareness programs on IPR **INR 1.0 Lakh** maximum grant
- Initial studies for a cluster of MSME - **INR 2.5 Lakh** maximum grant
- Interactive seminars and workshops **INR 2.0 Lakh** maximum grant
- Specialized short/long term training **INR 6.0 Lakh - INR 45 Lakh**
- Setting up a facilitation center **INR 65 Lakh** maximum grant

## ❖ CONCLUSION

As a result of the National IPR Policy, the Indian government has announced various financial incentives and schemes intended to promote the utilization and registration of IPRs by companies, especially by MSME's. Companies should strategically plan for identification, creation and registration of IPRs to be aligned with such schemes, to ensure that they are able to take the maximum benefit of the financial incentives being offered by the government.

For any further queries, kindly contact: [info@zeusip.com](mailto:info@zeusip.com)

<sup>7</sup>[http://www.ipindia.nic.in/writereaddata/Portal/News/323\\_1\\_Scheme\\_for\\_facilitating\\_start-ups.pdf](http://www.ipindia.nic.in/writereaddata/Portal/News/323_1_Scheme_for_facilitating_start-ups.pdf)

<sup>8</sup><http://www.dcsmse.gov.in/schemes/Guidelines-UK.pdf>

<sup>9</sup><http://www.dcsmse.gov.in/schemes/Guidelines-UK.pdf>



## KEY IP JUDGEMENTS

### Monsanto Holdings Pvt. Ltd. v. Competition Commission of India

The Single-Judge of the High Court in the case **Monsanto Holdings Pvt. Ltd. v. Competition Commission of India** on 20th May, 2020 dealing with the question of overlap of jurisdiction between Competition Commission and Patents Controller Relying upon its decision in the case of **Telefonaktiebolaget L.M. Ericsson**, the Delhi High Court has rejected the contention that the remedies against alleged abuse of any rights by the patentee would fall exclusively within the remedies as provided under the Patents Act and, therefore, the jurisdiction of the **Competition Commission of India (CCI)** to entertain such disputes is impliedly excluded.

#### Examination by CCI not contingent on findings of statutory regulator

The Court also distinguished the Supreme Court judgment in the case of **Bharti Airtel Ltd.** while rejecting the plea that Controller of Patents was to first determine whether the agreements were an abuse of the rights under the Patents Act before the CCI could proceed further. It noticed that the role of TRAI as a regulator is materially different from that of a Controller of Patents inasmuch as a Controller does not regulate the exercise of patent rights in a pervasive manner because patents is not an industry.

The Court was of the view that the decision of the Supreme Court in **Bharti Airtel Ltd.** was not an authority for the proposition that wherever there is a statutory regulator, the complaint must be first brought before the Regulator and examination of a complaint by the CCI is contingent on the findings of the Regulator.

#### Review of Order under Section 26(1) on merits not permissible

Dismissing the writ petition, the Court in its judgment dated **May 20, 2020**, also found that there was no reason to interfere with the impugned order passed by the CCI under **Section 26(1) of the Competition Act**. It held that such an Order is an administrative order and, therefore, unless it is found that the same is **arbitrary, unreasonable and fails the Wednesbury test**, no interference is warranted. The Court was of the view that a review on merits is impermissible at this stage.

### Sameer Wadekar & Anr. vs Netflix Entertainment Services Pvt. Ltd.

The Bombay High Court on **22 May, 2020** dismissed interim application seeking ad-interim injunction from streaming web series **BETAAL** by Netflix, alleging copyright infringement of the plaintiff (alleged author) by the defendants.

The Bombay HC refused to grant an interim injunction, thereby not restraining the Defendant from releasing the web series '**BETAAL**'. The dispute between the Parties arose on account of the Defendant's alleged infringement of the Plaintiff's copyright in his script titled '**VETAAL**', through its adaptation in a web series to be released on the Defendant's platform as '**BETAAL**'. The Court noted that the Plaintiff had failed to establish a link to indicate that his script was copied. Moreover, the Court observed that the Plaintiff should have been aware of the Defendant's web series, as it was advertised

on numerous occasions before the release of the trailer. The Court also noted that it is common knowledge that '**Vetaal**', a Hindu mythological character is associated with super natural powers. Accordingly, the Court refused to grant an interim injunction in favour of the Plaintiff.<sup>11</sup>

### Georgia, et al., Petitioners v. Public.Resource.Org, Inc

In **Georgia, et al., Petitioners v. Public.Resource.Org, Inc. (No.18-1150)**, the Supreme Court on **27th April, 2020** ruled that the published version of Georgia state law code along with annotations could not be copyrighted.

In a 5-4 decision, the Court found the annotations published under the code to be ineligible for copyright protection under the "government edicts" doctrine. Under this doctrine, work by government officials acting within their roles according to law cannot be protected by copyright. Since laws, statutes, and court decisions are edicts of government, such works are considered to be in the public domain, freely available to the public and not protected by copyright.

In this case, Georgia made its code available on-line, but had worked with Lexis-Nexis to publish a version of the code that was accompanied by annotations beneath the code that included case notes and commentary describing cases where the code was applied. When PRO copied, scanned, and made available online the entire annotated version of the Georgia state law code, Georgia sued them for copyright infringement. Georgia argued that the annotations of the code themselves were entitled to copyright protection. Importantly however, the annotations were done as a work for hire for the Georgia state legislators. The Court determined Lexis-Nexis was acting an extension of the state legislators in drafting the annotations, and that therefore the government edicts doctrine applied.

This decision fosters a high degree of public access to work done by or for state governments in the interest of avoiding access by only those who can pay.<sup>12</sup>

### Reckitt Benckiser vs Mohit Petrochemicals

The Delhi High Court has passed an order on **28th May 2020** that a company to stop using the mark '**Devtol**' for manufacturing and selling its hand sanitizers, saying it infringes the trademark and logo of well-known antiseptic '**Dettol**'.

The High Court's order came on a suit by Reckitt Benckiser (India) Pvt. Ltd. manufacturer of a well-known antiseptic which is sold under the registered trademark and logo '**Dettol**', against Mohit Petrochemicals Pvt. Ltd. for selling hand sanitizers under the brand name '**Devtol**'. It passed the order after the counsel for Mohit Petrochemicals made a statement that they will not manufacture and/ or sell the product, the hand sanitizer under the infringing mark '**Devtol**'. The defendant's counsel also said the company have taken steps to withdraw the infringing mark and have already written to their agents and dealers to withdraw the product bearing the infringing mark from the market.

The court also imposed a cost of ₹1 lakh on the manufacturer of '**Devtol**' hand sanitizers and directed that the amount be deposited to the Juvenile Justice Fund within a week.<sup>13</sup>

<sup>11</sup><https://www.hindustantimes.com/india-news/bombay-hc-refuses-to-interfere-with-release-of-web-series-betaal/story-coLbJQl5RgKx9LEzgPOK5K.html>

<sup>12</sup>[https://www.supremecourt.gov/opinions/19pdf/18-1150\\_7m58.pdf](https://www.supremecourt.gov/opinions/19pdf/18-1150_7m58.pdf)

<sup>13</sup><https://www.barandbench.com/news/litigation/delhi-hc-imposes-rs-one-lakh-costs-on-devtol-hand-sanitizer-manufacturer-in-trademark-infringement-suit-by-dettol>



## Statistics related to trademark registration amidst COVID-19 Lockdown

6255 trademark applications were filed in the week ending 28th May 2020. Latest analysis has found that there has been a decrease of 65 percent from the previous week while the number of show cause hearing disposals has gone up by 9 percent. While examining the data from the first half of the previous month when there were reportedly no examinations and registration of applications due to nationwide lockdown it was observed that 3802 filings were made compared to 12385 applications filed during the same 15 day time period in 2019 which concluded a decline by 69 percent.

## Patent filed for low cost Personal Protective Equipment by Navy

The novel low-cost personal protective equipment (PPE) designed and produced by the Indian Navy has received patent. Efforts to commence mass production of the PPE, have been employed and eligible firms are being identified for taking up licensed production, the Navy stated. The low-cost PPE was developed by a doctor posted at the recently created Innovation Cell at the Institute of Naval Medicine (INM), Mumbai.

The patent was successfully filed by the Defense Ministry in association with the National Research Development Corporation (NRDC).

## ISRO obtains patent for 'Moon Soil'

ISRO received patent for its method of manufacturing highland lunar soil stimulant or simply lunar/moon soil on the 18th of May. The Soil Stimulant, referred to as 'Moon Soil' was invented during the surface testing for the Vikram Lander and Pragyaan rover, for the Chandrayaan-2 mission. The lunar soil stimulant is to be used for scientific studies of lunar terrain.

## WIPO Revises and Expands AI Policy Issues

WIPO has released a Revised Issue Paper on Artificial Intelligence and IP Policy. The Revised Issues Paper updates the Draft Issues Paper published in December 2019. The Revised Issues Paper acknowledges the increasing role of AI in the invention process and that 'inventions can be autonomously generated by AI'. It notably identifies a total of eight questions relating to 'AI-generated inventions,' including whether the law should permit an AI application to be named as an inventor.

## WHO's C-TAP Initiative endorses Non-Exclusive Global Licensing amid Pharma Industry Concerns

On Friday, May 29, the World Health Organization (WHO) officially launched the COVID-19 Technology Access Pool (C-TAP), a patent pooling initiative intended to improve access to treatments, vaccines and other medical technologies which are developed in response to the global COVID-19 pandemic. It advocates for increased access to medicine, in light of the economic concerns created during the global shutdown.



## The Difference in Legal Standards across the Globe regarding Word-mark Registration Highlighted in Recent Case

A single alphabet letter mark may face a bigger challenge to trademark registration in some jurisdictions than others. A stylized word mark in one country may be too simple and common in another. Prince Sports International Company Ltd's stylized letter 'P' was rejected in Korea, while the same mark has been registered in the United States, Australia, and China, among other countries. The case inspired renewed conversation on the matter.

## Recent decision by USPTO spurs debate on the Patentability of Inventions by AI

On July 29, 2019, a patent application was filed with the U.S. Patent and Trademark Office (USPTO), with the sole inventor identified as artificial intelligence named "DABUS." The assignee, Stephen Thaler, acknowledged that the invention was made by the creativity machine, without any human input. The USPTO denied the application stating that the patent laws require a natural person as an inventor. The decision asserts that conception is the touchstone of invention, as the formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is to be applied in practice.

This led to debate online as many citing 35 U.S.C. §103, declared the decision to be too narrowly focused, and believed it should be reversed by the U.S. Court of Appeals for the Federal Circuit.

## Pfizer, AstraZeneca and other pharma giant's express concerns over COVID-19 patent pool

In an effort to provide equitable access to COVID-19 health products, the World Health Organization (WHO), with certain nations, announced the establishment of a new voluntary technology pooling initiative on 29th May. With regard to the same, pharmaceutical giants like Pfizer, AstraZeneca and certain other companies have begun to oppose the establishment of the voluntary pool, essentially stating that if you don't protect IP, then there is no incentive for anybody to innovate, and that it is important for companies to volunteer to provide their products at no profit.



## POLICY RECOMMENDATIONS

### FICCI Recommendations to Govt. on Standard Essential Patents (SEPs)

Standard Essential Patents (SEPs) has been a subject of intense discussion recently, in view of concerns raised by the local industry. FICCI has recently submitted its recommendations to the DPIIT on the issues and concerns related to SEPs stating that there is enough guidance, such as industry practice and judicial precedents globally regarding SEP related issues, suggesting no imminent need for any new policy framework in India to guide on FRAND licensing. Also, the issues like determination of FRAND royalty rate should be left either to the parties involved to mutually decide or to a Court of Law to adjudicate in the event of breakdown of discussions between the parties. The reason behind this approach is that there is no one-size-fits-all formula that can be applied to any FRAND rate determination scenario.

As per FICCI, considering the ever-changing scenario, especially in India where final decisions on SEP matter are expected, it would appear that the time is not ripe for the Government to intervene in any manner as of now. The guidelines released by various jurisdictions heavily rely on the legal position established by the courts in such jurisdiction. The prevailing situation in India does not warrant any drastic changes of now.

### FICCI Recommendations to Govt. on Decriminalization of Copyright Act Provisions

FICCI welcomes the initiatives by Government of India to decriminalize non-compliances of minor, technical or procedural nature, aimed at facilitating and promoting 'ease of doing business' in the country. However, while taking note of the Government's laudable intent to decriminalize certain minor offenses under the Companies Act 2013, FICCI has recently submitted its recommendations to the DPIIT stating that the criminal offenses under the Copyright Act 1957 would not fall within the above description, given that these offenses are serious economic offenses, often related to organized crime, which if decriminalized would undercut the incentive to invest in India. Also, the decriminalization of copyright offenses would, in fact, remove a key deterrent for infringers, weaken the copyright law and thus disincentivize investments in the creative industries. Global experience, for instance in the entertainment sector, demonstrates that criminal enforcement has a significant deterrent effect on offenses of copyright infringement, with infringing websites shutting down once a pirate site is prosecuted and taken off-line. Decriminalizing copyright infringement will not only promote copying / content-theft and misappropriation, but will hurt the creative industry and adversely impact the overall IP industry and should not be considered, especially considering that counterfeits and piracy are rampant and increasing with time.



The FICCI IPR Division is intensively involved with addressing the issues pertaining to protection and enforcement of Intellectual Property Rights in India. It has taken decisive steps in raising the levels of awareness about Intellectual Property Rights amongst the citizens of India. In this regard, FICCI's constructive contributions span various capacity building exercises and training programs for the industry, the judiciary, the law enforcement agencies and other IP stakeholders in the country. Further, the IPR division is a platform for continuous interaction between the industry and the Government with a view to providing an interface for businesses to resolve their issues pertaining to IPRs. Most importantly, FICCI is also instrumental in offering substantive and comprehensive inputs and feedback to the Government on policy-related matters.

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