

# IP

# Update

A Quarterly Publication

EDITION 6

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## Narendra Sabharwal

Chairman, FICCI IP Committee & Former Deputy Director General, WIPO

FICCI, as the voice of Indian Industry, has been working closely with the Government of India to combat the impact of COVID-19 on various segments of the economy - including the IP sector - through wide-ranging engagements on policy and support services for the business community. The focus has also been on supplementing the Government's efforts in promoting global IP cooperation through engagements with organizations such as WIPO, WTO, WHO, WCO; and by forging links with business institutions like ICC, OECD and other European, US, Japanese industry organisations; enforcement related institutions, etc. For instance, FICCI has a Permanent Observer status in WIPO and FICCI's delegations have attended WIPO's General Assembly meetings on several occasions to present the Indian industry perspective, which have helped foster mutual cooperation at a higher level. FICCI, WIPO and Government of India have also jointly organised a number of conferences over the years on various IPR aspects. Further, FICCI has hosted WIPO Director General and other senior officials on several occasions, the last being in 2018 for an interaction with Indian industry on the Industrial Revolution 4.0 and its likely impact on IP related areas.

A special mention should be made of the annual Webinars conducted in cooperation with the US and Indian Governments and the Annual India-US Dialogue on IP jointly organized with the US Chamber of Commerce. The Fourth IP Dialogue, held in November 2021 with the participation of senior government functionaries, eminent experts and IP professionals from both countries, discussed a wide range of subjects, both national and international, with a view to exploring practical solutions to IP issues of concern to both sides, particularly involving business and industry.

Similarly, seminars and specialised training programs on Patent Cooperation Treaty (PCT), the Madrid and Hague systems and the registration processes followed by various countries are regularly organised by FICCI in different Indian locations, in association with WIPO, EPO, USPTO, UKIPO etc., which are addressed by experts from these agencies. Also, the IP conferences and training programs that FICCI frequently organises, including those in association with overseas organisations that host high-level delegations, have provided

important forums for international experts to interact and share global perspectives with Indian stakeholders. The discussions have been extremely useful to discuss specific IP concerns of industry from India and abroad, and in forging cooperation with IP Offices of our trading partners, particularly in the areas of capacity building including teaching and training, skill building, research, public outreach and awareness generation and commercialization.

The engagements have also helped convey India's national IP standpoint and inform global audiences of developments taking place in India's IP ecosystem, besides helping domestic businesses to gain from developments overseas and related best practices. Importantly, the learnings from these interactions have also helped FICCI to sensitize the Government on IP issues in international negotiations while engaging with our partner countries on policy development, operational matters, IP reforms in administration, enforcement and related issues.

The world since the onset of Covid-19 has not been the same. The pandemic so far has infected over 30 crore people globally and taken over 5.5 million lives, while critically impacting economies worldwide, and drastically transforming the way we live our lives. As India navigates through the crisis, the outlook on the economy by and large remains positive. The second quarter of 2021-22 witnessed the economy bouncing back strongly, with GDP surpassing its pre-pandemic levels, accompanied by the revival of demand-supply conditions. The current year is expected to achieve over 9% economic growth as several sectors have already reached the pre-coronavirus levels. FDI has also gone up substantially with India registering the highest ever annual inflow of US\$ 81.97 billion (provisional figure) in the financial year 2020-21. All these are positive signs. Nonetheless, with the Omicron strain heightening global economic uncertainty, the looming threat calls for greater caution and readiness to respond swiftly, despite India's healthy pace of vaccinations.

Covid-19 has made global cooperation in intellectual property and the role of institutions like the WTO more important than ever in addressing the current challenges. This is in view of the existing inequalities among countries in areas like access to vaccines and economic stability, and the need for international cooperation and relaxation of IP rights, illustrating the need for coordinated efforts to advance non-traditional mechanisms, like patent and technology access pools, and to make full use of flexibilities available to tackle the pandemic. It is concerning that the long-pending "TRIPS waiver" proposal for temporary easing of IP norms on Corona vaccines, technologies, equipment and medical supplies, suggested by India and South Africa more than a year ago in October 2020 and supported by over 100 countries, continues to elude a resolution. Meanwhile, many are wondering if a key reason for emergence of the new Omicron variant is the lack of global cooperation and failure of some nations to share Covid-19 vaccines quickly and widely with developing countries. It is becoming increasingly important that WTO delivers a solution without any further delay, for a more equitable distribution of vaccines and medical products which would alleviate problems of the resource-poor and vulnerable nations.

It is assuring that the Government of India continues to actively engage globally to allay concerns on the IP waiver proposal, including with nations that have opposed it like EU, Australia, Japan and Switzerland. The effort has been to underline that the flexibility offered in TRIPS for compulsory licensing was not sufficient to boost vaccine access quickly enough to meet the massive inequality in its availability. It is notable that only around 7% of the population in low-income countries have received a single dose of a Covid-19 vaccine, compared to over 70% in developing ones. For a more equitable distribution of vaccines and medical products, which can significantly arrest the worldwide spread of the virus, it is vital that IP norms are temporarily waived. Meanwhile, the Government should keep up the efforts till a desired decision is arrived at on this crucial need. With the Omicron cases rising swiftly, the time for ideological debates on whether waiver would be effective or compulsory licensing flexibilities are sufficient may be over.

As the world navigates through Covid-19, the severity of the pandemic would necessitate innovators, IP offices and business enterprises to devise strategies for intellectual property in these times and going ahead. Although India's IP system maintains a fine balance between private and social rights through IPRs, and the TRIPS Agreement does grant the due policy space to evolve its legal regime, it will have to be ensured that IP- as an innovation & technology driver - continues to provide the incentive framework that encourages innovation through various stages - from invention to commercial products or services. The Government must also identify the obstacles for effective management of crisis in the interest of health, human welfare and safety; and analyse existing laws to modify with the emerging scenario. Further, public-private partnerships should be encouraged to overcome challenges like funding, capacity-building and legal compliances. A conducive environment between companies and stakeholders should be promoted to enhance the business models and facilitate relationships/transactions between them.

The economic and social challenges in the post-pandemic era world be daunting across the world. For India, an increased level of international IPR cooperation will be crucial, by way of broader and deeper opening-up of the IP sector- through increased participating in global IPR governance, strengthened international IP rules and promotion of multi/bilateral IP negotiations related to the economy and trade. Also, efforts must be stepped up to strengthen cooperation/consultations with WIPO, WHO, WTO and various national IP authorities, while improving IP rules and standards related to global business and investment. The present moment may, therefore, be opportune to take necessary steps in initiating negotiations while the world governments are increasingly resetting their approach to trade agreements in the post-pandemic scenario. It is important for India to proactively step-up efforts to rearrange global economic relations, including those that impinge on IP rights & related areas, in a manner that addresses issues of mutual concern and encourages business communities and investors both in India and those of our trading partners to look at a greater degree of engagement.

Apart from stepping up efforts to strengthen cooperation with multilateral bodies, the Government of India's efforts to forge Free Trade Agreements (FTAs) with our main trading partners e.g. EU, USA and UK, and other important nations like UAE,

Australia, Canada, Israel and some of the GCC countries, is a step in the right direction. FTAs provide effective platforms for constructive discussion that can help deepen understanding of each other's positions on diverse issues and in addressing areas of concerns among trading partners and respective business communities. It is encouraging that in the FTA discussions held so far, IP protection and enforcement figure among the key issues examined – a critical area that contributes to promoting innovation as also trade and investment in IP-intensive industries.

As the world economy faces its worst crisis in the last 100 years, the two critical, era-defining challenges that humanity is faced with are overcoming the pandemic and reversing the global recession. The immediate need is to produce, distribute and administer billions of vaccine doses worldwide, which national solutions alone cannot meet. What is notable is that the disease is unlikely to be fully crushed unless it is tackled everywhere, owing to the highly contagious nature of the virus. Similarly, given the deep economic linkages, national economic recoveries will require a global revival, and this may be possible only through coordinated, transnational and multilateral cooperation. Indeed, Covid-19 has created an unprecedented human experience where, for the first time, the entire world is together facing the same set of challenges. It is hoped that the situation fosters the much-needed spirit of solidarity, a sense of shared humanity and common imperative where all nations not only look after its own people, but also the citizens across the world.

## Webinar on “Countering IP Infringement in the Fashion Industry”

3 December, 2021

**F**ashion industry is much more than just trendy apparels and accessories. It is the ability of a company to create, build and monetize its distinctive brands and other creations, which go on to become valuable business assets. With the sector investing significantly in creating innovative products, intellectual property represents an important body of law in this industry, which protects its unique creations and plays a crucial role in the proliferation of fashion. However, despite the caution exercised by brands to protect their creations, the issue of IP infringement and counterfeiting is growing rapidly, drawing serious concerns of rights owners and law makers globally.



To deliberate on the significance of IP in the fashion industry and to understand how IP rights can be strategically managed to reduce infringement risks and enhance competitiveness in this creativity-driven sector, FICCI organised a webinar on ‘Countering IP Infringement in the Fashion Industry’ on 3 December 2021. The discussions were led by prominent fashion and IP experts who spoke on the forms of IPR which were key for fashion businesses, types of protection available to creators and the related compliances, impact of counterfeiting and measures needed to tackle it as well as emerging concepts like sustainable fashion, among other important features of the fashion industry.

Ms. Sakala A. Debrass, Career Fashion Personality, who moderated the panel-discussion, touched upon the importance of addressing the IP infringement issue in fashion industry in terms of both the creators’ rights as well as sustainability. While drawing out perspectives of the panellists on several crucial areas that impacted fashion businesses, she also invited them to share their views on the significance/relevance of fashion law, and changes that could be thought of in India’s Copyright and Design Acts to ease the application and enforcement of the existing laws and regulations.

Mr. Prashanth Shivadass, Partner, Shivadass & Shivadass, emphasized on the need for a top-down approach in the Indian fashion industry, rather than a bottom-up approach, in view of the low IP awareness in this sector. Also, the infringement and

counterfeiting issue could be addressed if such offences were streamlined with IPC, consider these as a crime, and hence be enforceable under law. Further, there was a need for congruence in IPR, with the elements of trademark, copyright, patent being covered under one law. The provision of the GI tag to items like Mysore Silk Sarees, Kanchipuram Sarees and Banaras Silk has been encouraging, helping local industries to move up the value chain. Efforts in sustainable fashion through promotion of vegan leather usage, etc. were also reassuring.

Ms. Irene Calboli, Professor of Law, Texas A&M University School of Law, stressed that fashion was more than a business, or brand or sheer style, but a national identity and a major source of revenue for several countries, like as Italy and France. The ill-effects of IP violation thus extend to a nation’s creativeness and its economy, besides promoting human rights violation. Social media, she observed, has played a key role in amplifying the issue of counterfeiting in the fashion industry. Unaffordability and unwillingness of customers to buy original products also contributed to this menace.

Ms. Sugata Ghosh, Legal Counsel, Mark & Spencer Reliance India Private Limited, was of the view that though IP laws pertaining to fashion in India were consistent with the European laws and India was a signatory to the various international IP conventions, the implementation of these laws required attention, starting from registration processes to identifying infringements. As regards sustainability in fashion, while companies were making significant efforts in this area, the harmonization of industry’s efforts with those of the Government’s was necessary. Currently, there was a gap between industry’s activities and the concerned government policies.

Mr. Huw Watkin, Head of Asia Policy, Intellectual Property Office, United Kingdom, extended the discussion to the distinction between the factions of IP infringers of fashion industry, one that was working to exploit the consumers, and the other indulging in the counterfeiting trade for the purpose of making a living. Further, he elaborated on the efforts made by UK to strengthen its enforcement units within the IP framework, noting that a similar arrangement could be implemented in India as well if the Indian Government was prepared to collaborate in this regard.

Mr. Jamshed Mistry, Counsel & Founder, International Legal Alliance, spoke on transnational counterfeiting of fashion and the supply chain issues arising thereof. The lack of a centralised data agency was a key reason that led to gaps which, among other things, impacted the fight against infringers and counterfeiters of fashion products. Even after a centralised data structure is prepared and put in place, the efforts in enforcement and policy making must be carried forward in tandem so that both complemented each other. As regards sustainability in fashion, there is a need for correlated efforts at the municipal, national and international levels.

## IP Dialogue: Opportunities for India-U.S. Collaboration

18 November, 2021

India-US economic relations through the years have developed into a Global Strategic Partnership, riding on mutual democratic values and the growing convergence of interests on bilateral, regional and global issues. With the world economy becoming progressively innovation-driven powered by knowledge, creativity and technology, and each supported by intellectual property rights, it is in the interest of both countries- the world's two leading economies, to continuously engage on bilateral IP issues for mutual interest.



FICCI organized the fourth edition of “IP Dialogue: Opportunities for US-India Collaboration” on 18 November 2021, in association with U.S. Chamber of Commerce, through a virtual session. The discussions featured experts from the Department for Promotion of Industry and Internal Trade (DPIIT) and Office of the Controller General of Patents, Designs & Trade Marks, Government of India, US Patent & Trademark Office, US Trade Administration, US Department of State, and Office of the U.S. Trade Representative, along with other government, private sector and academic experts from the two countries. The deliberations were focused on the challenges in addressing the Covid-19 pandemic, collaboration in fighting copyright and trademark infringement, best practices for technology transfer and IP commercialisation, the “next generation” of IP policy in the digital economy, and the role of India-US partnership in salvaging global and mutual economic revival.

Mr. Narendra Sabharwal, Chair, FICCI IPR Committee, in his introductory address, observed that the Indo-US ties have now reached new heights and the process had been aided by the growing level of collaboration in Intellectual Property through interactions like the US-India IP Dialogue. Underlining that India-US cooperation was now broad-based and multi-sectoral, including in key areas e.g., defense & security, science & technology, he expressed confidence that the growing partnership would help find ways to confront the current pandemic as also in facilitating the economic recovery & growth process in both the countries. The Dialogue provides the occasion to not only discuss the shared aspirations of the two countries, but also the ways to get there, he said.

Ms. Shruti Singh, Joint Secretary, Department for Promotion of Industry & Internal Trade (DPIIT) gave an overview of the

initiatives undertaken by the Government to further bolster the country's IP system and elaborated on the positive outcomes. She informed that despite the pandemic, IP filings across sectors had shown an upward trend, among other positive developments. She also spoke about the key amendments in the legislation that the Government had undertaken over the years, including modernization of the IP offices. Emphasizing the importance of the event, she observed that forums such as the India-US IP Dialogue not only facilitated bilateral economic ties, but also helped identify & foster further collaboration opportunities between the two countries.

Ms. Mary Critharis, Chief Policy Officer & Director, International Affairs of the U.S. Patent & Trademark Office, who presented the US Government viewpoint, said that the IP Dialogue provided an ideal forum for the US and Indian governments to come together to discuss issues that were critical to enhancing the bilateral relationship and in deepening strategic cooperation on IP policy. Appreciating India's efforts at strengthening its IP ecosystem, she stated that these would greatly support the success of Digital India, Make-in-India, among the country's other cornerstone initiatives.

The India-US IP Dialogue has been enabling both sides to periodically discuss important IP-related issues and areas of concern in an open and transparent manner. Such bilateral interactions provide the much-needed occasion for constructive engagement on issues of interest not only to India but also of the partner countries, which help strengthen global partnerships. FICCI is committed to explore areas of bilateral cooperation with the US that will further facilitate a favorable innovation and IP ecosystem in India; and will continue to address concerns of the business communities of India and the US to boost bilateral trade and economic relations.

## Webinar on IP Infringement: Shift in Seeking Remedies - Then and Now

9 September, 2021

The ever-changing economic environment has influenced development of business models where Intellectual Property (IP) is a key element that establishes value and potential growth. Accordingly, protection of these intangible assets has become a core component for success and viability of a modern firm. However, with the use of the Internet and digital technologies, the ways IP rights are now illegally exploited by infringers have also changed. Notably, the remedies pursued earlier to protect IP may not be adequate now as the outreach of goods and services is no longer confined to conventional boundaries. Meanwhile, judicial pronouncements have started taking cognizance of this change; focusing on effective application of IP laws to ensure a congenial environment for trade & commerce in the digital ecosystem. Businesses too should have comprehensive litigation strategies, to protect their IP.

To generate a discussion on how IP rights were infringed earlier and measures actions taken by right holders vis-à-vis the current situation where there are wide horizons available to infringers to hinder businesses, and the legal provisions available to preempt this problem, FICCI in association with Y. J.

Trivedi & Co., organized a webinar on the theme "IP Infringement: Shift in Seeking Remedies - Then and Now" on 9 September 2021.



Ms. Viji Malkani, Co-Chair, FICCI IPR Committee and Senior IP Counsel, Hindustan Unilever Ltd., providing the industry perspective, said that detecting cases of infringement was becoming difficult as illicit operators were now taking advantage of new technologies to exploit IP rights. The proactive approach adopted by the judiciary, through ex-parte injunctions, John Doe Orders, dynamic injunctions etc. to tackle online IP infringement cases was assuring for industry, helping them to take timely remedial measures. Another positive development was that the courts now allowed affected parties to directly implead the ISPs, DoT etc. in such cases. Importantly, while the ultimate remedies like injunctions, damages, destruction of counterfeit goods, remained the same, what had changed for the better were the means/applications being provided with these remedies for the affected parties.

Mr. Pratik Chaudhari, Partner, Y.J. Trivedi & Co., said that due to the shift from the earlier simple landscape to a complex digital space, identification of infringers and subsequent enforcement of IPR were now a challenge. Reassuringly, given that laws tended to follow rather than precede the changes required due to evolving technologies, it was the Courts that had emerged as strong IP enforcers through judicial activism, to meet the inherent limitations associated with the legislature in amending laws to meet the changing technological dynamics. As regards IP enforcement in the Internet age and associated remedies, the parties must adopt a holistic approach by combining provisions of the other laws like IT Act, Customs Act, IPC, the Code of Criminal Procedure etc. to ensure a comprehensive litigation strategy. He also elaborated on the cyber squatting issue and its resolution through the Uniform Domain Name Dispute Resolution Policy.

Mr. Akshat Shah, Associate, Y.J. Trivedi & Co., who moderated the Panel Discussion, brought out several useful observations from the speakers drawing from their experiences on subjects such as conducting due diligence of IP rights by companies, the remedies available under various IP laws and regulations, among others. Further, the speakers were invited to enunciate on some of the recent judicial trends in allowing the types of remedies prayed for in IP cases as well as the prominent judgments by the Supreme Court and High Courts in this area.

## IPR Workshop for Delhi Police Officials

5 November, 2021

FICCI joined hands with the Office of Joint Commissioner, Delhi Police Academy in conducting a workshop on 'Intellectual Property Rights' for the officers of Delhi Police, on 5 November 2021. The subject of discussion was 'Trade Mark Act: Investigational Formalities & Precaution' while initiating action under these Acts.

On behalf of FICCI, Mr. Manish Kumar Mishra, Associate Partner, Intl Advocare & Member-IPR Committee, first took the participating officers - by way of a detailed presentation - through the relevant provisions of the Indian Trade Mark Act including the definitions of mark, trade mark, identifying the features of similarity in the competing marks, the concepts like deceptive similarity; as well as the way FIRs are filed and the various penal provisions under the Act, to ensure a better understanding of the regulations. It was followed by an interactive-session where the participating officials highlighted the various ground-level challenges that they encountered in the registration, investigation and in lodging of complaints under the TM Act. They also actively interacted with Mr. Mishra and among themselves regarding the difficulties faced in terms of identifying the features of similar/different marks, while filing of FIRs, and in the process of prosecution of offenders under the Act, among other issues.



Over 30 Inspectors & Sub-inspectors of Delhi Police participated in the training, which was organised at the Specialised Training Center, Rajendra Nagar Police Station, New Delhi.

## IP Roundup for 2021



### Manisha Singh

Member, FICCI IP Forum  
Partner, LexOrbis IP Attorneys & Advocates



### Dheeraj Kapoor

Managing Associate, LexOrbis  
IP Attorneys & Advocates

The past two years have been strange for everyone and everywhere. We witnessed one of the biggest public health crises during March-May 2021 which resulted in unprecedented loss of lives and resources for living. Our vibrant society and the resilience of our communities, however, rebounded back with no loss of time and within these uncertain times, we witnessed some path breaking changes and reforms in the Indian IP space.

We have captured some of the important developments that have taken place in Indian IP space in 2021.

#### Abolishment of IPAB

The news for abolition of Intellectual Property Appellate Board (IPAB) by way of an Ordinance came with mix reactions. IPAB was formed in 2003 by way of amendment in Trademarks Act, 1999 to act as specialized tribunal and appellate body for resolution of IP disputes except for infringement cases. The Board had the original and appellate jurisdiction. Although, formed under the trademark laws, the jurisdiction of the Board was later expanded to include patents, copyright, geographical indications. One of the objectives of the Board was to expedite the disposal of long pending appeals and lower the burden of the already overburdened court system. The functioning of the Board, however, remained a question due to extensive delays in filling up the vacancies of the Board, be it the position of chairman, the vice-chairman or the member (technical). The Government, therefore, in its wisdom decided to do away with a forum which was not fulfilling its objective yet remained a cause of burden to the exchequer. The abolition of IPAB was made by way of an Ordinance which was later ratified by the Parliament and the abolition became effective from April 4, 2021. With this, all pending appeal matters and revocation/rectification actions before the IPAB were brought back to the court systems mainly to the High Courts at Delhi, Mumbai, Chennai and Kolkata.

#### Creation of Intellectual Property Division at the High Court of Delhi

Expecting many IP appeals and revocation/rectification actions to be transferred from the erstwhile IPAB, in July 2021, the Hon'ble Chief Justice of Delhi High Court announced creation of the Intellectual Property Division (IPD) to deal with IP matters including those which were to be transferred to the Delhi High Court from erstwhile IPAB. On October 8, 2021, the Delhi High Court had circulated IPD Rules, 2021 for inputs from the members of the Bar. The Rules will regulate the matters listed before IPD and prescribe the practice and procedure for the exercise of the original and appellate jurisdiction of IPD, and for other miscellaneous petitions arising out of specific IP statutes.

Some of the salient features of the proposed Rules are:

- Registered Patent agents or Trademark agents and any professional having knowledge of the said subject matter of the dispute has been given with a right of audience before the IPD, to assist the Court along with the counsels/legal practitioners representing the parties.
- For cases other than patent cases, the IPD can pass summary judgment, without the requirement of filing a specific application seeking summary judgment on principles akin to those contained in Order XIII A, Code of Civil Procedure, 1908 as applicable to commercial suits under the Commercial Courts Act, 2015.
- For patent cases, summary adjudication maybe considered by the Court if the case is falling in any of the following categories.
  - Where the remaining term of the patent is 5 years or less;-
  - A certificate of validity of the said patent has already been issued by any High Court or the Supreme Court;-
  - If the Defendant is a repeated infringer of the same or related Patent;-
  - If the validity of the Patent is admitted and only infringement is denied.

#### Copyright Amendment Rules, 2021

The Copyright Amendment Rules, 2021 were brought into force in 2021. Under the new Rules, some crucial changes were brought, such as, an obligation was imposed on copyright societies to prepare and publish Annual Transparency Report for each financial year. The copyright societies were further obligated to keep the royalties of those authors who could not be identified or located separate in its accounts; to take all necessary measures to locate such authors and owners; and at the end of the three years, transfer undistributed royalties of such unidentified persons to the welfare fund of the copyright society. Also, the compliance requirements for registration of copyright in software have been relaxed with a view to addressing the confidentiality concerns of registration seekers. As such, every application for registration of copyright in a computer program may now be accompanied by the first 10 and last 10 pages of the source code (instead of the entire source code and object code) where the source code is longer than 20 pages.

## Online Hearings at IPO

With the advent of video-conferencing hearings conducted by the Indian Trade Marks Registry and Patent Office, and the ongoing recruitment of a large number of designated Examiners on regular and contractual basis, the Indian IP offices have embarked on a journey of smoother work flow, fast-tracking of examinations and hearings, and rendering of more sound and prompt decisions. Thirty new vacancies of hearing officers on contractual basis for the Trade Marks Registry was published in the month of December 2021.

## Recommendations of the Parliamentary Standing Committee on Commerce on IPR

The Department-related Parliamentary Standing Committee on Commerce presented its 161st Report on “Review of the Intellectual Property Rights Regime in India” in Rajya Sabha on 23rd July 2021. The report acknowledged the need to establish a robust and effective Intellectual Property Rights (IPR) regime that encourages and incentivizes innovation and creativity along with securing collective interest of the society.

With the aim to strengthen the regime, major challenges and areas which need attention like the need for public awareness, IP Fund, and IP financing; supplying more workforce to the IP Office; increasing the term of copyright societies; and amending some problematic provisions have been identified, and recommendations have been given thereon. Relaxing some restrictions on patentable subject matter under Section 3 of the Patents Act; expanding the scope of statutory licensing under Section 31D of the Copyright Act to internet platforms;

expediting investigations and search/seizure process by empowering a well-trained lower rank police officer to do the job under Section 115 (currently only a DSP level police officer can undertake the process) of the Trade Marks Act are some of the key areas which the Committee has touched upon.

## Designs (Amendment) Rules 2021

The Designs (Amendment) Rules, 2021 came into force on 25th January 2021 wherein Start-ups were made eligible for a 75% reduction in official fees. The amended Rules also adopted the current edition of WIPO's International classification for industrial designs (Locarno Classification) in Indian Design laws, with a proviso that the registration of a design in India would remain subject to the fulfilment of Sections 2(a) (definition of article) and 2(d) (definition of design) as provided under the Designs Act, 2000. In other words, the articles defined under Class 32 of Locarno classification (Graphic symbols and logos, surface patterns, ornamentation) would still need to undergo the test of “article” and “design” as prescribed under the Designs Act, 2000.

The year 2021 witnessed many progressive strides in the Indian IP space across all major domains despite the hurdles of the pandemic. The same would go a long way in creating a more robust and conducive milieu for IP rights to be regulated and governed in a manner comparable with international standards.

**Disclaimer:** This article contains the views of the authors alone.

## Intellectual Property Division and Rules: A Welcome Initiative by the Delhi High Court



### Mamta Rani Jha

Member, FICCI IPR Committee  
Senior Partner & Head-Litigation  
Inttl Advocare

Intellectual Property (IP) is the heart and soul of innovation, particularly in the current digital economy, and the Intellectual Property Rights Division (IPD) is a welcome and far-sighted initiative by the Delhi High Court to ensure that IP rights are protected, recognized and enforced efficaciously. On 10.12.2021, the Delhi High Court released the draft Intellectual Property Rights Division Rules, 2021 (IPD Rules) for final comments/suggestions, concluding widespread deliberations between the Bar and Bench regarding manner of functioning of the IPD and cases thereunder.

The need to establish the IPD arose earlier this year, with the promulgation of The Tribunals Reforms (Rationalization and Conditions of Service) Ordinance which abolished the Intellectual Property Appellate Board (IPAB). The IPAB was the Appellate Tribunal that dealt with appeals arising out of the IP Statutes, cancellations/revocations, statutory licensing of copyright and other such matters. The Ordinance envisaged that the cases pending before the IPAB would be transferred back to the appropriate High Courts.

Consequently, there was little clarity in how and when the IPAB docket would be entertained and heard by the High Courts. Additionally, the issue of registration/cancellation of IP rights was closely tied to enforcement thereof by way of infringement suits. Therefore, a need was felt to holistically look at IPR cases and streamline their disposal in order to avoid multiplicity of fora, conflicting decisions as well as effectively decide such multi-faceted disputes.

The Delhi High Court proactively took note of these challenges and constituted a Committee to recommend effective measures for expeditious disposal of IPR matters. Consequently, vide Press Release dated 06.07.2021, the Hon'ble Chief Justice notified the creation of the IPD which would deal with writ petitions, miscellaneous applications and appeals as well as original side IPR cases.

In order to adopt the best practices, well-harmonized with rest of the world, the Committee conducted a comprehensive analysis of the practice and procedure in other jurisdictions qua IP disputes and disposal. Resultantly, on 08.10.2021, the Hon'ble Court published the first draft of the IPD Rules, for public comments and review. After detailed deliberations with practitioners, law firms and industry persons, the final draft has been published on 10.12.2021. Once notified, the IPD Rules would govern a wide variety of cases arising out of, or incidental to IPR filed before the Delhi High Court, which would be handled by the IPD benches exclusively.

### Salient Provisions:

The IPD Rules clarify that the IPD would not only deal with appellate matters arising out of registration of various IP rights before the various Intellectual Property Offices, but also matters pertaining to enforcement thereof, including those which overlap with other non-IP statutes. Specifically, Rule 2(i) states that "IPR subject matter" includes:

- *Matters pertaining to Patents, Copyrights, Trademarks, Geographical Indications, Plant Varieties, Designs, Semiconductor integrated circuit layout-designs, Traditional Knowledge and all rights under common law, if any, associated therewith;*
- *Matters relating to passing off, acts of unfair competition, disparagement, comparative advertising etc.;*
- *Protection of trade secrets, confidential information and related subject matters;*
- *Tortious actions related to privacy and publicity rights involving intellectual property issues;*
- *Matters pertaining to data exclusivity, domain names and other matters relating to data protection involving intellectual property issues, as also those arising under the Acts as defined in Rule 2(a);*
- *Matters involving internet violations relating to any of the subject matters under clauses (i) through (v) above.*

The recognition of the internet as a critical aspect for adjudication of IPRs reflects the Court's acknowledgment that technology-driven issues, online commercial activities and rights over the internet are essential facets of IPR in the present times.

The IPD Rules further provide for videoconferencing for hearings as well as recording and transcription of evidence, 'hot-tubbing' qua expert testimony, duty to preserve and disclose all evidence, whether tangible or electronic, requirement of advance service, summary judgment, third-party intervention, consolidation of proceedings and other such measures, all of which are aimed at expeditious disposal of IPR cases.

The IPD Rules also provide for appointment of Law Researchers to assist in techno-legal matters and envisage maintenance of its own Panel of Experts (not limited to India or the list maintained by the Patent Office) who may be called upon to assist the Court. Another positive aspect is the right of audience granted to Patent and the Trademark Agents or any other professional having subject matter expertise, along with the counsels of the parties, which would lead to greater understanding of technical matters and clarity in judicial decision-making.

Lastly, the Rules acknowledge that in case of any procedure specifically not provided therein, such matters will continue to be governed under the Code of Civil Procedure, 1908, The Commercial Courts Act, 2015 and Delhi High Court (Original Side) Rules, 2018, thus leaving no lacuna in the procedural law.

The Rules are thoughtfully drafted, and their simplicity confirms the collective experience and wisdom of the past several decades, as they are imbued with flexibility, foresightedness and dynamism. The IPD Rules allow litigants to present their best case, without the constraints of physical presence and distance, which is crucial not only in the present pandemic, but a key factor in ensuring complete and efficient justice and finality of judgment.

### Conclusion:

The creation of the IPD and the notification of the IPD Rules, 2021 only reaffirms the long-felt need to have expert benches to deal with IP matters, which is in line with global best practices. Incidentally, the IPAB was also created to further the same

objective. However, on account of delay in appointments of Technical and Judicial Members, the same remained defunct for a considerable period of time. The IPD carries on the same vision of a specialized forum and would doubtless lead to effective and expeditious relief to litigants. Hearing of cases pertaining to niche areas of law by specialized benches ensures consistency of adjudication and certainty of expectation of outcome, which is crucial for the industry as well as IP right-holders. The IPD and its Rules are yet to be tested in actual practice before the court. However, it is undoubtedly a futuristic first step giving hope to IP right-holders and practitioners.

**Disclaimer:** This article contains the views of the author alone.



## Synergies Between Corporate Law & IPR



### Anand Verma

Member – FICCI IP Forum  
 Founder, LLL Knowledge Venture Pvt. Ltd.  
 (DPIIT Recognized Start-up) &  
 Managing Partner, Team Legal

Intellectual Property Rights (IPR) and Corporate Law have a lot of synergies between them, and it hardly needs a mention that both are in tandem with each other. An IPR practitioner must be aware about the provisions of Corporate Law and a Corporate Law Practitioner must be aware about the different facets of the IPR.

An individual while visualizing an idea to start a business by forming any legal entity (sole proprietor, partnership, LLP, private limited company or OPC), the first thing which comes to mind is the name of the entity/brand by which the business will be known. The first and foremost step is to ensure that the name of the business and brand must not be similar to any existing name or brand which is already present in the market. Here comes the role of the legal advisor to advise its client whether the name suggested by the client is not similar to the name of any existing company, and do not contravene any existing trademarks.

The table below depicts the basic frameworks of Corporate Law & IPR:

Corporate Law	IPR
Corporate law is the body of laws, rules, regulations and practices that govern the formation and operation of corporations. It is the body of law that regulates legal entities that exist to conduct business.	Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. There are 8 types of IPR viz Trademark, Copyright, Patent, Industrial Designs, Geographical Indications, Trade Secrets, Plant Varieties and Semiconductor Integrated Circuit Layout Design.

Rule 8 of the Companies Incorporation Rules 2014 (as amended from time to time) contains specific provisions about the “Names which resemble too nearly with the name of an existing company”. As per the Rule 8 the following matters will be disregarded while comparing the names:

- The plural or singular form of words in one or both names;
- Use of different tenses in one or both names;
- Use of different phonetic spellings including use of misspelled words of an expression;

- Use of host name such as 'www' or a domain extension such as 'net', 'org', 'dot' or 'com' in one or both names;
- Slight variation in the spelling of the two names including a grammatical variation thereof;
- Complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English; and
- Addition of the name of a place to an existing name, if the existing name does not contain the name of any place.

There was an important amendment made vide Companies (Incorporation) Fifth Amendment Rules, 2019 on 10 May 2019 and a Clause 8A (b) by the heading “Undesirable Names” was inserted which states as under:

**“The name shall be considered undesirable if save as provided in section 35 of the Trade Marks Act, 1999 (47 of 1999), the name includes a trade mark registered under the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters”.**

These amendments serve as a check list of sorts for companies while considering what to name themselves.

### Trademark Search & MCA (Ministry of Corporate Affairs) Search:

- Equally, trademark applicants can also benefit from these rules. Indeed, as a precautionary step, trademark applicants are always advised to check the records of the MCA while conducting availability searches for trademarks.
- Similarly, the person desiring to get its company or LLP registered is advised to conduct the trademark search so that the complexities with respect to name which might arise in future could be avoided at the initial stage only.
- This will further help in smooth running of business post incorporation without any fear of getting sued by the company which is operating already in the similar name.

If inadvertently the Registrar of Companies registers any name which is already existing or falls under any provisions of the Companies Incorporation Rules 2014 then as per **Section 16** of the **Companies Act, 2013** there is provision for the rectification of name of the company.

### Case Laws on Section 16 of the Companies Act, 2013:

- K.P. Pathrose Vaidya v. Kandamkulathi
- Mondelez Foods Private Limited vs. The Regional Director (North), Ministry of Corporate Affairs & ors

**Similar Sections under the Companies Act 2013, Trademarks Act, 1999 and Patents Act 1970:**

- **Companies Act 2013 - Section 16: Rectification of name of company**
- **Trademarks Act 1999 - Section 57: Rectification and Correction of the Register:** On application made in the prescribed manner to the Appellate Board or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the register in relation thereto.
- **Patents Act 1970 - Section 19: Power of Controller in Case of Potential Infringement** - If, in consequence of the investigations required under this Act, it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in the applicant's complete specification by way of notice to the public.

**Case law under Section 16 of the Companies Act, 2013, Section 57 under the Trade Marks Act 1999 & Section 19 under the Patents Act 1970:**

- TATA SKY LIMITED Vs. NATIONAL INTERNET EXCHANGE OF INDIA and Ors

**Copyright and Companies Act:** An important part of IPR is Copyright Law and the Company must ensure that its work must be copyrighted if it falls under the ambit of Copyright Act 1957. The following points will showcase the importance of copyright for the company:

- The Companies operating in print media, electronic media, writers, artistic presentation, literary work, cinematographic work, publishers, website creation, digital marketing, painters, music, software programs etc., must ensure to get its work copyrighted under the Copyright Act 1957.
- A company can enjoy the commercial value of its intellectual property only when its work is properly copyrighted.
- In a company the copyright of the work is a continuous process and the company to safeguard its interest must ensure to get its content or work copyrighted so that its misuse be protected.

**Trademark and Companies Act:**

- The Companies before getting registration under the Companies Act 2103 must ensure itself that no infringement of any registered trade mark or trade name is being done.
- If by mistake the Company is registered with a name which is already a known mark or trade name then after initiation of business activities, changing name and involving in unwanted litigation would be very challenging.
- A company can enjoy the commercial value of its intellectual property only when its trade name or trade mark is registered under Trade Marks Act.
- Once registration under Trade Mark Act is done the company could smoothly do the business without any legal hassle.

**Trade Secret and Companies Act:**

- Trade Secrets are capable of being considered within the framework of contract, competition and intellectual property laws simultaneously. They can be protected by way of restrictive covenants, non-disclosure agreements and other contractual means.
- The goodwill and fame of the business depends mostly on the trade secret.
- There is no specific law governing the trade secret. So, it is the duty of the legal consultant of the company to advise how to protect its trade secret under Companies Act, 2013, under intellectual property law and contract act.
- The company which cannot protect its trade secret effectively will run into losses and could not survive the cutthroat competition in the market.

In a nutshell, it could be established that both Corporate Law and IP rights protect the business, its brand, its value and assist in the smooth operation of business if proper care is taken at the time of registering a company or getting registration under different IP laws.

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## Delhi High Court Intellectual Property Division Rules 2021

The 'Tribunals Reforms (Rationalization & Conditions of Service) Ordinance, 2021', notified on 4 April 2021, abolished the Intellectual Property Appellate Board (IPAB) while also transferring the jurisdiction of the IPAB under various IP statutes to the High Court. Subsequently, in August 2021, the Ordinance was replaced by the 'Tribunal Reforms Act, 2021'. Following this, the Hon'ble Chief Justice of the Delhi High Court constituted a committee to comprehensively review the situation in view of the Ordinance. Based on the committee's suggestions, the Intellectual Property Division (IPD) of the Delhi High Court was established in July 2021 and the first draft of the 'Delhi High Court Intellectual Property Rights Division Rules, 2021' was published on 8 October 2021, seeking comments/suggestions.



The establishment of IPD is a key step towards successfully resolving IPR issues, besides benefiting many appellants or applicants for revocation of patents whose petitions were pending before the now annulled IPAB. Although there is no international obligation under the TRIPS Agreement to do so, there is a global trend towards specialised courts for the resolution of different types of IP disputes. IP Divisions or IP Courts dedicated only to IPR disputes can also be found in countries such as the UK, Japan, Malaysia, Thailand, and China.

FICCI submitted its recommendations on the draft rules to the Delhi High Court in November 2021, after several consultations with the members of the IPR Committee and other industry stakeholders. The recommendations included modifications/clarifications in some of the proposed Rules, the treatment of repeat offenders, the procedure to impose penalties, among other suggestions. The complete set of FICCI's recommendations on the draft rules are available on our website [www.ficci.com](http://www.ficci.com).

Post receipt of the recommendations, on 20 December 2021, the Hon'ble Chief Justice of the Delhi High Court, Justice D. N. Patel, and the members of the Committee invited all stakeholders for a discussion on the modalities for dealing with matters transferred from the IPAB as well as the notification of the Rules. FICCI also participated in this interaction, represented by members of the IPR Committee, Mr. Nishant Sharma of Dolby Laboratories, and Mr. Prashant Gupta of K&S Partners where, among other suggestions, the need for inclusion of a mechanism in the rules to curb the practice of repeated adjournments in litigations, one of the reasons for delays in disposal of matters, was proposed.

The meeting was presided by Hon'ble Justice Prathiba M. Singh. The participants were informed that a final version of the rules would be released soon.

## Become a Member !



### BACKGROUND

- FICCI Launched its unique initiative - FICCI IP FORUM - in May 2020 to provide an interface for businesses to resolve their issues pertaining to intellectual property rights and also develop a pool of IP professionals whose knowledge and expertise will benefit the industry at large.

### OBJECTIVE

- To create a consortium of legal professionals who are keen to support IP and encourage innovation, brand protection and creativity among various stakeholders.
- To strengthen the IP ecosystem in India and play an important and more comprehensive role in addressing existing and evolving issues in the area of IP in India.

### BENEFITS

- Engagement in IP Policy Advocacy
- Networking through various FICCI national & international seminars/conferences
- Speaking/ participating opportunities in various FICCI Webinars
- Enhanced Visibility for forum members
- FICCI IP Talks
- Several other Benefits

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## **Dr. Reddy's Laboratories Limited V. Sunlife Sciences Pvt Ltd.<sup>1</sup>**

In this case, the Plaintiff filed the suit for passing off, unfair trade competition, damages, rendition of accounts, dilution, delivery up etc. for their registered trademark, NISE, seeking to restrain the defendant from using it.

The plaintiff commenced its business in pharmaceutical services with producing APIs in 1984 and in 1995; and adopted and started using the mark NISE. During subsequent years, the plaintiff also obtained registrations of other NISE marks. On November 11, 2015, the defendant applied for registration of impugned mark SONICE and on 18 March 2019, the Registrar of Trademark passed an order and refused the trade mark application for registration of the impugned mark SONICE. During the last week of November 2021, plaintiff's representative came to know about the infringing activities of the defendant of manufacturing, marketing, supplying and selling the medicinal products under the mark SONICE in respect of providing anti-inflammatory tablets using the same salt/active ingredient Nimesulide. The plaintiff contended that the defendant had intentionally adopted the impugned mark to leverage on the strength of the plaintiff's brand and make illegal profit. It was also alleged the marks of the plaintiff and the defendant were phonetically and conceptually similar and that conduct of the defendant was clearly mala fide to encash on the reputation and goodwill of the plaintiff's well-known trade mark NISE.

The Court was convinced that the plaintiff had a prima facie case and the balance of convenience also lied in its favour, thus the Court, on December 22nd, 2021, granted an ex-parte interim injunction in the plaintiff's favour.

## **Tata Sons Private Limited V. Hakunamatata Tata Founders & Ors.<sup>2</sup>**

As regards this case, the defendants were situated in the U.K. and the U.S. They dealt in crypto currency, under the name "TATA coin/\$TATA" and they did not have any outlets in India. The plaintiff filed an interim application seeking permanent injunction to restrain the defendants from using the trademark "TATA", as part of the name under which their crypto currency is made available to the public, or as part of their corporate name or domain name.

The question before Delhi High Court was whether a plaintiff can seek an injunction against the defendants' mark when the defendants are located outside the sovereign borders of India and, therefore, statutorily outside the reach of the Trademarks Act, 1999 and also the Code of Civil Procedure, 1908 (CPC).

The defendants' mark "TATA coin/\$TATA" is not registered in India. The Court observed that just based on the fact that the defendant's services can be availed by an Indian customer, which would hamper the plaintiff's reputation when viewed collectively, does not provide a reasonable justification to interfere with the defendant's mark and business. The Court ruled that a case concerning registered trademark infringement shall be instituted in a district court or a superior court that possesses the jurisdiction to institute and hear the suit in that particular matter. On 16 December 2021, the Court refused to issue directions or interim relief sought to the defendants, as

they are located outside the territorial jurisdiction of the Court and thus, dismissing the suit.

## **Agatha Christie Limited V. Registrar of Trade Marks<sup>3</sup>**

In this case, the appellant, Agatha Christie Limited, is a company established in 1955 by Agatha Christie who is fondly known as the "Queen of Crime". She is, unarguably, the best-selling fiction writer of all times as per the Guinness Book of World Records. The most famous work of Agatha Christie and one of the top selling books of all time is "And Then There Were None", originally published on 6 November 1939 as "Ten Little Niggers". It was described, by Agatha Christie herself as the book she found most difficult to write, and is widely regarded as a classic by enthusiasts of the genre. The appellant had filed an application for registration of the trademark "AND THEN THERE WERE NONE" under Classes 9, 16 and 41. The Registrar rejected the registration of mark on ground that there was no substantive evidence that the mark had been used as a trademark ever and the mark lacked distinctiveness. The appellant appealed before the Delhi High Court against the order of the Registrar.

On 8 December 2021, the Delhi Hon'ble Court observed that there is no finding or observation that the name "AND THEN THERE WERE NONE" is not capable of being represented graphically or is incapable of distinguishing the services being provided, or intended to be provided, by the appellant, from those provided or intended to be provided by others. In fact, the name being the title of the most well-known work of fiction written by Agatha Christie, it is also capable, prima facie, of creating an association between the name and the appellant, which is a company established by Agatha Christie herself. It can, therefore, legitimately be used in the context of services which the said company provides or intends to provide. The Court asked the Registrar to register the mark.

## **Star India Pvt. Ltd. V. Extramovies. Click & Ors.<sup>4</sup>**

The plaintiff, in this case, was a leading entertainment company which was then waiting for the release of the cinematograph film, "Tadap" across all theatres in India. The film had been jointly produced by Fox Star Studios, a division of the plaintiff and the defendant No. 33. The plaintiff had spent large sums in the production and promotion of the film and claimed that it has exclusive rights to communicate to the public. The Plaintiff contented those rights in its content, including films in which the Plaintiff holds exclusive rights (e.g., Bhoot Police), were infringed by one or more of the defendants and the defendants No. 1-32 (Rogue Websites) were continuously infringing Plaintiff's rights by illegally and unauthorisedly making available for download/streaming/communicating to the public the plaintiff's content. Based on past experience, the plaintiff apprehends that the said defendants will also infringe the plaintiff's exclusive rights in the film, thereby directly impacting the plaintiff's business and also eroding the value of the film. The plaintiff filed the suit for permanent injunction in infringing its exclusive rights & copyright, rendition of accounts and damages etc against the defendants.

The Court observed that plaintiff made out a prima facie case and in case the defendants are not restrained ex parte, to use the trademark, the plaintiffs shall suffer irreparable loss and

injury and thus, the Court, on 24 November 2021, granted ex parte injunction in favour of the plaintiff.

## **Supercell OY V. Nand Lal Modi Proprietor Global Estate Tea and Exports & Anr.<sup>5</sup>**

The plaintiff, founded in 2010, is one of the fastest growing mobile game development companies. In 2012, the plaintiff adopted the mark "HAY DAY", artistically created and conceptualized the HAY DAY Stylized logo and also obtained various registrations for its HAY DAY Marks around the world with the registration in India since 2015.

In this case, the plaintiff filed an application seeking an ex parte ad interim injunction to restrain the defendants, their partners, etc. from using the mark HAY DAY, HAYDAY, HAVDAY, HAV DAY or any other mark, device, logo, domain name which was deceptively or confusingly similar to the plaintiff's well known registered trademarks HAY DAY. The Court observed that mala fide of the defendants was evident from the fact that the defendants have filed applications for registration of the mark which were deceptively similar to the plaintiff's marks and thus, the Court, on 29 October 2021, restrained the defendants from using the marks by granting an ex parte injunction in favour of plaintiff.

## **Sabyasachi Calcutta LLP V. Mr. Ankit Keyal Proprietor Asiana Couture & Ors.<sup>6</sup>**

In this case, the plaintiff was a Limited Liability Partnership concern under the leadership of a well-known designer, Mr Sabyasachi Mukherjee, who claims to have a significant presence in the Indian fashion industry and enjoys a global reputation. The plaintiff claimed that the defendants are using a design similar to the registered designs of the plaintiff to constitute piracy within the meaning of Section 22 of the Designs Act, 2000.

On a plain viewing, the designs of the defendants appeared to be an obvious imitation of the plaintiff's design and an attempt to link the products of the defendants with those of the plaintiff. These designs were also being marketed on the social media websites of the defendants, and material in that regard were also placed on record. The plaintiff moved to the Court for an order of injunction, restraining the defendants from infringing the plaintiff's registered designs, which are marketed by the plaintiff under the names, "Rusheeda Lehenga" (Reg. No. 85668) and "New Botanical Lehenga/ P.C. Lehenga" (Reg. No. 83943).

The defendants sought ad interim reliefs and the court, on 27 October, restrained the defendants from manufacturing, applying/causing to be applied, selling, offering for sale, importing, advertising/publishing, directly or indirectly, dealing in the infringing garments or any other garments or similar article which are identical and/or obvious/fraudulent imitation of the plaintiff's registered designs. It also directed the defendants to remove all the infringing designs and garments from all online platforms, including Facebook, Instagram and other third-party websites.

## **S.S. Appliances Pvt. Ltd. & Anr. V. S.N. Raju<sup>7</sup>**

The plaintiff, in this case, was a company that manufactured

meters/instruments for conservation and test of oil/petroleum products. The meters were sold and marketed under the trade name and style "KENT OIL METER" since 1988 and it has trademark registration in class 9 also. The plaintiff came to know about illegal usage of the mark "KENT METER" by the defendant in July 2020. In order to restrain the defendant from using the said mark, a cease and desist notice dated 9 July 2020 was sent to Defendant No. 1. Although the same remained unanswered, the plaintiff could not find the defendant's products in their market search thereby giving an impression that they had abandoned the infringing mark and complied with the demands of the legal notice. Later, Defendant No. 1 applied for registration of the mark "KENT METERS" vide two applications. In June 2021, it came to the knowledge of the plaintiff that defendant has resumed selling products under the mark which were still unregistered. Accordingly, a fresh notice was issued to Defendant No. 1 by the plaintiff, to which again there has been no response. The plaintiff filed the suit for permanent injunction restraining infringement of trademark, unfair competition, damages, rendition of accounts, delivery up and other related reliefs.

The Court observed that the defendant's mark was prima facie deceptively similar to the plaintiffs' registered mark. So, the Court, on 8 October 2021, restrained the defendant, his distributors, dealers, stockists, retailers, servants, agents and all others acting for and on his behalf from using the mark "KENT METERS" and "KENT METER" or any other mark similar to plaintiff's mark.

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<sup>1</sup>*Dr. Reddys Laboratories Limited vs. Sunlife Sciences Pvt Ltd., CS (COMM) 684/2021.*

<sup>2</sup>*Tata Sons Private Limited V. Hakunamatata Tata Founders & Ors., CS (COMM) 316/2021.*

<sup>3</sup>*Agatha Christie Limited vs. Registrar of Trade Marks, C.A. (COMM.IPD-TM) 10/2021.*

<sup>4</sup>*Star India Pvt. Ltd. vs. Extramovies. Click & Ors., CS(COMM) 588/2021.*

<sup>5</sup>*Supercell OY vs. Nand Lal Modi Proprietor Global Estate Tea and Exports & Anr., CS(COMM) 541/2021.*

<sup>6</sup>*Sabyasachi Calcutta LLP vs. Mr. Ankit Keyal Proprietor Asiana Couture & Ors., CS(COMM) 533/2021.*

<sup>7</sup>*S.S. Appliances Pvt. Ltd. & Anr. vs. S.N. Raju, CS(COMM) 502/2021.*



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## Pfizer Trade Secrets leaked

Pfizer Inc. has recently sued its long-time employee for allegedly stealing numerous confidential documents that include some of the most important secrets related to its COVID-19 vaccine. A complaint was filed on 23 November 2021, in San Diego Federal Court.

The alleged materials include the following:

- September 24 playbook containing all internal assessments and several recommendations about the Pfizer/BioNTech COVID-19 vaccine,
- Relationship between Pfizer and its German vaccine partner, and
- Presentations regarding cancer antibodies.

**Source:**

<https://www.latestlaws.com/intellectual-property-news/an-ex-employee-leaked-trade-secrets-of-pfizer-181164>

## Activists urge Biden to push for intellectual property waiver for COVID-19 vaccines

15 Medical and Human Rights groups are urging US President Joe Biden to get personally engaged in a long-running fight to enact an intellectual property waiver for COVID-19 vaccine at the World Trade Organisation calling his leadership 'a moral leadership'.

Amnesty International, Doctors Without Borders, Human Rights Watch, Public Citizens and 11 other groups told President Biden in a letter that an emergency waiver is urgently needed to combat the pandemic, noting that fewer than 7% of people in low-income countries have received a dose of COVID-19 and the vaccines remained scarce.

**Source:**

<https://m.economictimes.com/news/international/world-news/activists-urge-biden-to-push-for-intellectual-property-waiver-for-covid-19-vaccines/articleshow/87854923.cms>

## Google's victory in Profectus' Patent Infringement Case

A plot twist in the Google and Profectus Case, jury of courts in Waco, Texas found that Google LLC's Nest Hub products did not infringe any patent owned by Profectus Technology LLC dealing with a picture frame for displaying digital images. The jury of U.S. District Judge Alan Albright's court also found that the relevant parts of the patent were not valid for registration. The jury of U.S. District Judge Alan Albright's court is famously known as a hotspot for patent litigation.

Profectus is based in Texas and Google in California. Profectus sued Google last year putting allegations on its Nest Hub and Nest Hub Max of infringing its patent. Both these technologies of Google control smart-home functions, display pictures, and play music, among other things. Profectus' patent deals with a mountable picture frame for displaying several digital images in motion.

**Source:**

<https://www.latestlaws.com/intellectual-property-news/victory-is-on-google-side-in-profectus-patent-infringement-case-178664/>

## AI cannot be an inventor under US Laws

Recently U. S. District Judge Leonie Brinkema in Alexandria, Virginia ruled: "The computer using artificial intelligence can't be listed as an inventor on patents because only a human can be an inventor under U.S. Law". This ruling was given in the first

American decision that is also an integral part of a global debate over the question 'how to handle computer-created innovation.

**Source:**

<https://www.latestlaws.com/intellectual-property-news/artificial-intelligence-cannot-be-an-inventor-under-the-u-s-laws-177651/>

## Pepsico's IPR on Potato revoked

In a setback to PepsiCo India, the plant varieties protection authority PPV&FR on Friday revoked its varietal registration certificate which was granted to the food and beverages major on a potato variety 'FL-2027' in the country. Reacting to the development, PepsiCo said it is in the process of reviewing the order passed by the Protection of Plant Varieties & Farmers' Rights (PPV&FR) Authority.

PPV&FR is a statutory body set up under the Protection of Plant Varieties and Farmers' Rights Act, 2001. The authority ruling came over a petition filed by farm activist KavithaKuruganti, contending that the grant of the certificate of registration to PepsiCo India was based on incorrect information furnished by it. She has also contended that the IP right granted to PepsiCo India on a potato variety was not as per provisions laid down for registration and was against the public interest.

**Source:**

<https://www.moneycontrol.com/news/business/pepsicos-intellectual-property-right-on-fl-2027-potato-variety-revoked-7790571.html>

## China amended measures for registration of pledge on patent rights

China National Intellectual Property Administration (CNIPA) on November 16 released the amended Measures for the Registration of Pledge of Patent Rights, which became effective in 2010.

The measures were published in response to the announcement by the State Council of China of the 14th Five-Year Plan for the Protection and Use of Intellectual Property Rights on October 28, 2021.

Substantial changes were made to Articles 6, 7, 10, 11, 13, 14, 16, 19 and 20 of the amendment.

According to the amended Measures, registration can be made using the online platform, where the parties may submit electronic copies of the documents, on the premise that an undertaking is given to ensure consistency between the electronic copies and the originals, following which the originals must be submitted (Articles 6 and 7).

The CNIPA will grant the pledger and pledgee access to review or duplicate the pledge registration documentation, where such an application is justified by reasonable causes (Article 16). During the patent pledge period, the CNIPA is obligated to promptly notify the pledgee if any of the following occur:

- The pledged patent is declared invalid or terminated;
- The pledger failed to pay the annuity of the pledged patent within the prescribed time;
- Due to the disputes arising over the ownership of the pledged patent, a request has been made asking the CNIPA to stay the relevant procedures or preservation measures have been ordered by the people's court (Article 19)

**Source:**

<https://www.lexology.com/library/detail.aspx?q=8a87547a-fb24-4dab-9635-31ebfd9bf132>