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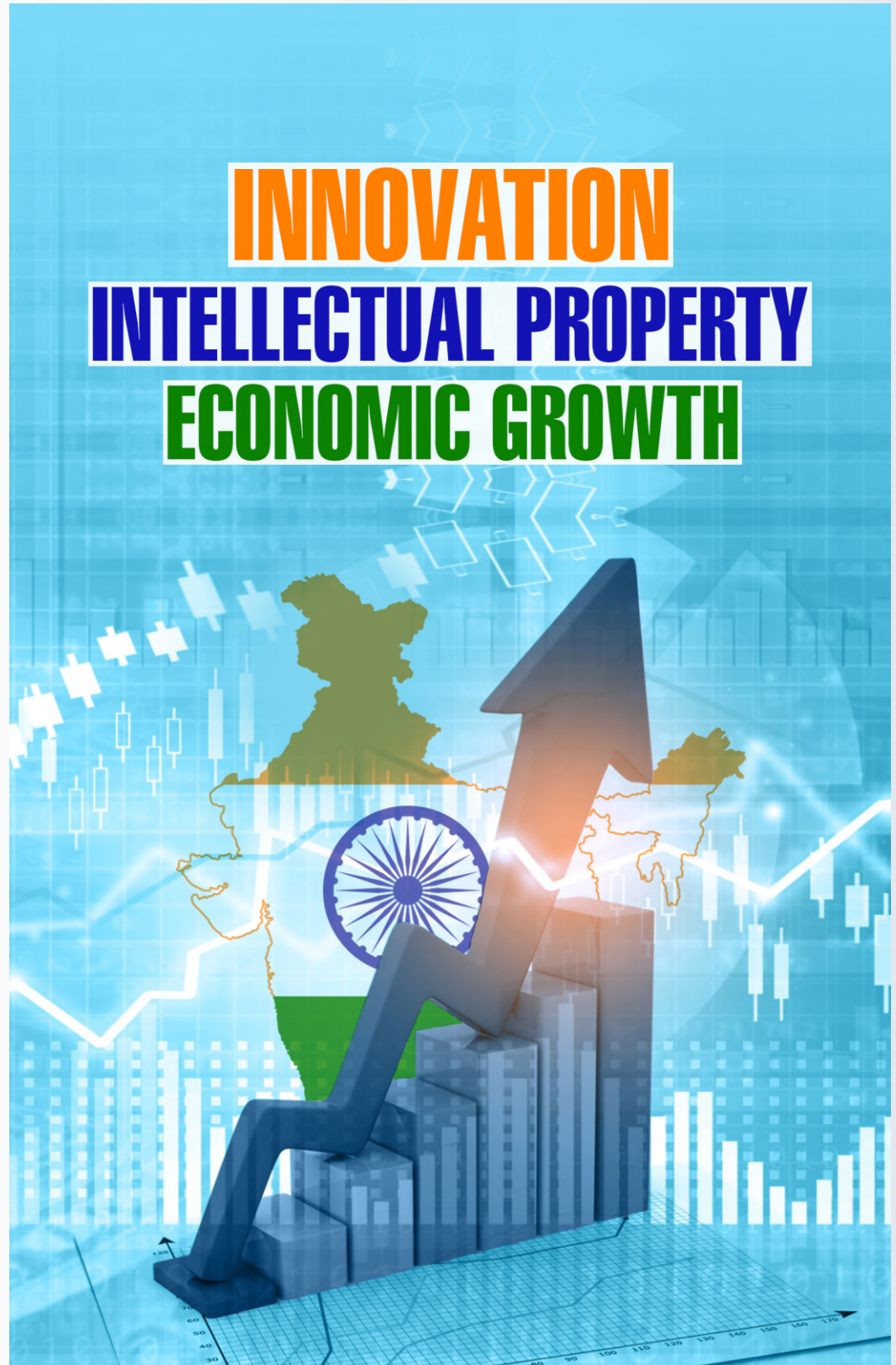
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INNOVATION INTELLECTUAL PROPERTY ECONOMIC GROWTH



Narendra Sabharwal

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

Dear Readers,

As I have had the opportunity to point out earlier, Intellectual property (IP) has become especially relevant for the innovative activities across the world not just at the Government level but also for industry, startups, and young entrepreneurs, underlining that creativity and the innovative zeal did not take a back seat during the Covid crisis and the economic downturn. Indeed, some of the sectors have witnessed faster innovations, like in vaccine development, medical equipment, healthcare, digital and green technologies. These innovative economies and enterprises have been able to not only withstand and smoothen the ill-effects of COVID pandemic but also quickly put their industries on the revival path. Once again, it has been shown that innovative and creative activities should never be put on the back burner during any crisis as these activities are the anti-dote needed to neutralize the adverse situations.

India too has been quite at the forefront of this innovation surge, with creative thinking and research done domestically helping to bring about several vaccines and important drugs as well as equipment and technology to the market. The industrialized world also did quite well in this sphere, with a number of useful collaborative events and models emerging among them and with India. However, the question of equity in access to vaccines is still unresolved, implying that a large section of the world remains bereft of the manufacturing capability, accessibility, or affordability to get coronavirus vaccinations in time – a concern that needs urgent consideration.

It was on this issue that India and South Africa had made a proposal to WTO for a waiver on IP rights not only on vaccines, which is what some countries wanted, but also on its technology, equipment and know how. But, despite many rounds of negotiations during several months at WTO on the subject, the members still appear far from arriving at a consensus. However, according to some newspaper reports (THE HINDU, 23 March 2022), a 'compromise outcome' proposed by EU is now ready to be put before the WTO members for their consideration. It is understood that India, South Africa and USA

have supported this move. The compromise formula is based on the liberal use of compulsory licenses to cover situations where such licenses cannot normally be granted, for example, without the need for negotiating a voluntary license or having inadequate provision for issue of CL or issuing them through executive orders. There are several 'eligibility member' criteria: it has to be a WTO developing country member that had exported less than 10% of world exports of COVID vaccine doses in 2021. This may debar not only China but also LDCs, which may have some manufacturing capability such as Bangladesh. India's share in global exports of vaccine is 2.4% at the start of 2022. This may be accompanied by waiver of Article 31(f) of the TRIPS Agreement for manufacturing predominantly for the domestic market. The proposal is also applicable only to vaccines thus reducing the scope of the original proposal. There are also several other restrictive conditions, for example non transfer of knowhow, which would make this proposal lose its effectiveness. It will be interesting to watch how further negotiations will unfold in WTO.

Among other note worthy developments in the IP sphere, the annual report of World Intellectual Property Organization (WIPO) shows international filings rising significantly during 2021 under the Patent Cooperation Treaty (PCT), the Madrid System and the Hague System. This is an achievement that the IP community can be proud of that regardless of the economic and other crisis facing the world, the filings which represent innovation and creativity, emanating from regions across the globe, remained especially robust. It is quite remarkable that a record number of 277,500 international patents were filed during the year, marking a 0.9% increase over 2020, indicating the strength of human ingenuity, tenacity, and entrepreneurial spirit in the face of disruptions and challenges. While India have been doing well in the PCT and Madrid Systems, it is yet to be a part of the Hague Agreement for the industrial designs. It is hoped that the Indian Government will consider joining the Hague System, among other beneficial international treaties.

Back home, India's IP filing activities have also been showing a strong rising trend. As per the Economic Survey 2021-22, the number of patents filed in India has been rising steadily from 39,400 in 2010-11 to 58,502 in 2020-21, while patents granted rose from 7,509 to 28,391 in the same period. What has been more encouraging is that the share of Indian residents in patent filing vis-à-vis multinational companies, has gone up to 40% after hovering around 20% in 2010-11 and 30% in 2016-17. This rising trend in patent filing has boosted India's ranking in the Global Innovation Index from 81 in 2015-16 to 46 in 2021. A development that should bring further cheer to India's IP push is the notable increase in patents granted in green technology, especially given India's global commitments on climate change, and the considerable technology generation and transfer that it would entail. Notably, WIPO data for the period 2016-19 also indicates that 50 to 60% of all patents granted were in green technology, underlining the global emphasis on innovation in this field.

Despite India's significant improvements, however, it is still far behind leading countries like China, USA, Japan and South Korea where, according to WIPO, the number of patents granted stood at 5.30 lakh, 3.52 lakh, 1.79 lakh and 1.35 lakh respectively for 2020, vis-à-vis India's 28,391 patents granted during 2020-21. The recent Economic Survey does point out why India has not done better in this area. A key reason for this being the country's

very low R&D level (0.7% of GDP), which needs to be increased. There also are the procedural delays in filing processes which indicates the vast scope for increasing the ease-of-doing-business essentials, and the need to raise the number of examiners which, despite the recent increases, is nowhere comparable to the advanced countries. These indeed are critical components in India's IP and innovation space that needs serious attention.

Overall, the focus on strengthening India's IP space is showing positive results due to the progressive steps taken by the Government of India to streamline the legal and legislative setup, administrative system, besides strengthening enforcement and promoting IP awareness. It is imperative, at this juncture, that the IP policy announced over 6 years ago is re-assessed and, if possible, bring out an IPR Policy 2.0 in the wake of the new and emerging trends in the innovation and research spheres, which calls for concrete mechanisms to protect them as IPRs. A review will help detect gaps in the policy implementation, identify the new challenges and developments like AI, Blockchain, IoT, digital economy, creative industries, the areas that need speeding up and introducing changes, building IP-related skills, making efforts to raise R&D activities, as well as to strategize on the way forward. In any case, IP laws should be kept under regular review in the national interest, and the state governments should also be involved and supported in framing, strengthening, and implementing IP policy for their respective states in line with the national policy.

It is commendable that despite the Covid-19 challenges in the past two years, FICCI was able to put together a large number of important IP-related activities not only in terms of meetings, webinars on varied issues, and other programs on the virtual space, but also in actively engaging with the Government in taking forward the development of India's IP system by providing industry's views and suggestions on the various intricate rules and other proposals, in addition to regularly engaging with the country's trading partners. In this exercise, the timely support and guidance provided by members of FICCI as well the other experts and stakeholders of the IP community have been invaluable, and must be duly appreciated and acknowledged.

Your feedback and comments on this edition of IP Update will be highly appreciated.

Stay safe and with best regards,

Narendra Sabharwal IAS Retd.
Chair, FICCI IPR Committee
Former DDG WIPO

IPR Workshop for Delhi Police Officials

28 March, 2022

FICCI joined hands with the Office of Director, Delhi Police Academy, Rajinder Nagar in conducting a workshop on 'Intellectual Property Rights' for the officers of the rank Inspectors and Senior Inspectors of Delhi Police, on 28 March 2022. The subject of discussion was around types of IPR, and regarding their protection and enforcement. The activity was in keeping with the National IPR Policy recommendation on strengthening India's IP enforcement mechanism: a role where the police have a crucial responsibility of enforcing the rights of IP owners.

Over 30 police officers were part of the training which was an interactive session followed by Q&A. On behalf of FICCI, Ms Navneet Momi, Member, FICCI IP Forum & Partner, Intellect Juris and Mr. Karan Bhutani, Senior Associate, Anand and Anand made their presentations.



Ms Navneet Momi, initiating the discussion, introduced the officers to the various categories of IPR, with special focus on trademarks. She highlighted the essentials of a valid trademark, its types, the significance of registered vis-a-vis unregistered marks, and the symbols used by brands to represent their status with respect to trademarks. Further, she elaborated on IP infringement, particularly covering trademarks, and informed the participants about the use of a registered IP by an unauthorized person, concepts of deceptive similarity, identical marks, and the remedies available for infringement etc. She highlighted the powers of police officer while handling IP cases under Section 115 of the Trademark Act. She also explained the concept of designs, its essentials and validity; and spoke about piracy of registered designs under the Designs Act, 2000 and the related issues.

Mr. Karan Bhutani, while elaborating on the ways and means of handling of IP crimes, spoke about the civil and criminal remedies available, while explaining to the police officers how different IP rights were infringed. He presented in detail the kind of punishments that were enforceable for such offences, the powers available to police for search and seizure operations, and the relevant policy provisions. Further, he spoke about the cases which were classified as infringement, and related penalties and punishments. He described the guidelines and post-search procedures that the police were

required to follow, emphasizing the importance of detecting the primary source of infringement. He concluded by stressing on the need for India's police personnel to become increasingly proactive towards IP protection, and thus safeguard and promote people's work that are based on creativity and innovation in the backdrop of today's modern economy, which paves the way for economic growth, prosperity and numerous opportunities.

Webinar on "Ambush Marketing: Is it Time to Legislate?"

11 March, 2022

Ambush marketing has emerged as an effective, even if controversial and unethical, business practice, making it a growing menace in the world of intellectual property, sports, entertainment and advertising. Essentially, it is noticeable when companies seek to associate themselves with sporting events without the official endorsement of event organizers. Ambush marketing thus entails undue exploitation of the organizers, the actual sponsors as well as the unsuspecting consumers. Several cases have come before courts to hold corporations liable for infringing acts, like selling unlicensed merchandise, passing off a brand as the official sponsor for an event, organizing contests in the name of a big event, or even misusing of an event logo. However, as ambush marketing does not evidently fit into any of these categories, the defendants have been successful in evading liability. India has seen several such cases, especially during the Indian Premier Leagues and the Delhi Commonwealth Games 2010. In such a scenario, the need for a legislation for ambush marketing cannot be overemphasized.



To deliberate on the complex aspects of Ambush Marketing and the possible remedies against such predatory business practices, FICCI organised a webinar on the theme 'Ambush Marketing: Is It Time to Legislate?' on 11 March 2021. The participants were addressed by several experts on the subject.

Mr. Wilfred Bradford, Partner-Forensic, Financial Advisory, Deloitte India, who moderated the discussion, said that ambushing in the marketing lexicon was when a company hijacked the marketing campaign of an official sponsoring company to surreptitiously capitalize on its publicity drive, goodwill and other benefits, usually seen in event

sponsorships. The term Ambush Marketing, coined by marketing strategist Jerry Welsh in the 1980s, typically targets major sports events like the Olympic games, the FIFA world cups etc., and involves the unauthorised use of logos and designs, intended to mislead or confuse the audiences about who the authorized sponsors are.

Ms. Vijayalakshmi Malkani, Senior IP Brand Protection & Foods Counsel, Hindustan Unilever Ltd., said that 'ambushing', which translated to hijacking or taking by surprise, was essentially a marketing strategy whereby an advertiser ambushed an important event, like a sporting tournament, a prominent business campaign, to gain a competitive advantage. While ambush marketing was generally associated with such events, most of these actions tended to be advertisement-related banter between rival brands who took digs at each other, and because the competing businesses could get away with their activities with no real damage in the absence of any specific legislation around it.

Ms. Manisha Kapoor, Secretary General, Advertising Standards Council of India, said that ASCI's responsibility was centered around advertising, and the council was committed to the cause of self-regulation in advertising, and in protection of consumers' interests. Its main objective was to maintain/enhance public confidence in advertising. Further, ASCI has a comprehensive section on fairness in competition with provisions that consumers are not misled due to comparisons. She said that ambush marketing was not indulged in by only those who could not afford sponsorships but was a prominent practice across the ad world since it contained an element of fun and creativity. There is thus a thin line between what is celebrated in advertising versus what is fair to the right of the sponsors. Advertising, however, formed a marginal part in the overall issue of ambush marketing.

Mr. Harjass Singh, Media Counsel, International Olympic Committee (IOC), emphasized that ambush marketing was a major problem for the sports industry. With 90% of the total revenue generated by the Olympic Committee being funnelled back into sports to help athletes, the act of ambush marketing of an official sponsor for a sports event entailed not just getting a one up on its competitor, but majorly undermined sports at large. He informed that there already were a few measures in place to help tackle the ambush marketing issue, such as event-specific contracts or through preferential sponsor broadcast opportunities. He emphasized that brands should respect official sponsorships, draw a line with respect to the extent of such behaviour and thus help restrict the associated violation of rights.

Mr. Prashanth Gupta, Partner, K&S Partners, highlighting the issue, said that in the absence of a specific ambush marketing legislation in India and the activity not being prohibited by law, stake holders had to depend on laws relating to contracts, or on IPR. A possible solution in this regard was to have contracts with sponsors of stadium locations or to buy billboards in the vicinity of the stadium, along with contractual obligations with the billboard agencies and broadcasters that they would not broadcast anything that may affect the official sponsors. This, however, was only a preventive measure. What is needed is the corporate world taking a unified stand that this type of

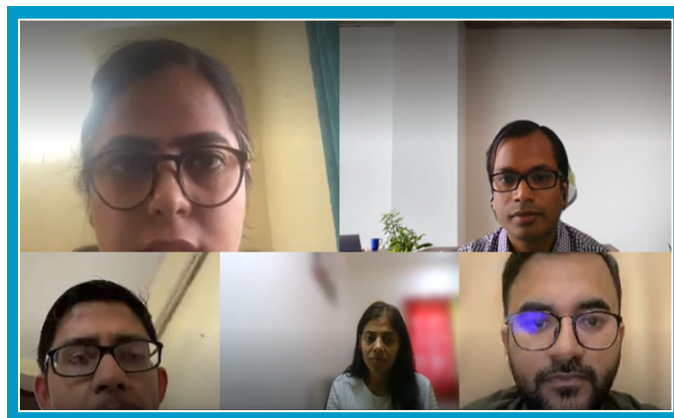
marketing was not in their interest, and accordingly taking a collective decision, based on which the Government may pass a much-needed legislation.

FICCI Workshop for IIT Kanpur on Intellectual Property Rights

5 March, 2022

At the invitation of IIT Kanpur, FICCI conducted a virtual workshop on 'Intellectual Property Rights' for its students and researchers on 28 March 2022. The subject of discussion was Intellectual Property and its types, with special emphasis on patents. The core areas discussed were centred around patent-related terminologies and knowledge regarding patent filing and drafting.

The workshop was carried out by way of two sessions. The first section dealt with the importance of IPR, specifically regarding patents, for businesses and their growth; followed by another discussion which dealt with the basic principles of patent filing and procedures. On behalf of FICCI, Ms. Namrata Chadha, Partner, K&S Partners and Mr. Amit Kohli, Senior Associate, K&S Partners, shared their knowledge and experience with the partner.



Ms. Namrata Chadha, while speaking about IPR and its importance, explained in detail how IP was used as a business asset, and why like any tangible/physical asset, it needs to be defined, valued and assigned. She also touched upon the concept of IP, observing that it was a contract between the inventor and the Government wherein the authorities ensure that the invention would be protected from being copied by others for a specific period, and in exchange the inventor agrees to make his invention available commercially to the society.

Mr. Amit Kohli extensively elaborated on the patent filing and registration procedures in India, to the participants. While explaining the processes related to patent filing, he touched upon specifics such as when to file a patent, what to file, where to file, the filing requirements, as well as the activities post filing for a patent. Further, he underlined the importance of a prior art search before filing a patent as it helped in arriving at a decision whether to file a patent, assisting in the drafting of claims, and becoming aware about the activities of patent owners/innovators in the same domain where a patent was being proposed to be filed.

Over 40 researchers and students of IIT Kanpur were part of the workshop, who interacted enthusiastically with the two IP expert presenters, both through their presentations and during the interaction-sessions towards the end of the workshop.

Webinar on “Countering IP Infringement in the Fashion Industry”

3 December, 2021

Fashion 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 and designs, 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 have been growing at a fast pace, drawing serious concerns of rights owners and law makers globally.

To deliberate on the significance of IPR in the fashion industry and to understand how the same can be 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 several prominent fashion and IP experts who spoke on the key IPR components for fashion businesses, the type of protection available to creators, the impact of counterfeiting and ways to tackle it as well as emerging concepts like sustainable fashion.



Ms. Sakala A. Debrass, Career Fashion Personality, moderating the panel-discussion, observed that it was important to address the issue of IP infringement in the 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 invited the panellist to share their views on the importance and relevance of fashion law, and the changes in the Copyright and Design acts that could be thought of to ease the application and enforcement of the existing laws and regulations in India.

Mr. Prashanth Shivadas, Partner, Shivadas & Shivadas, emphasized on the need for a top-down approach in the Indian fashion industry, rather than a bottom-up approach due, and to tackle the lack of awareness about IP rights in this sector. The

issue of infringement and counterfeiting, he felt, could be addressed if such offences were streamlined with the Indian Penal Code IPC, and consider these as a crime, which were enforceable under law. There was also a need for congruence in IPR, with the elements of trademark, copyright, patent being covered under one law. Meantime, provision of the GI tag to products like Mysore Silk Sarees, Kanchipuram Sarees and Banaras Silk has been encouraging, helping local industries move up the value chain. Efforts were also ongoing in sustainable fashion through initiatives like promotion of vegan leather usage, etc.

Ms. Irene Calboli, Professor of Law, Texas A&M University School of Law, emphasized 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, such as Italy and France. In effect, the ill effects of IP violation extend to a nation's creativeness, its industry and economy, besides contributing to 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 law pertaining to fashion in India were consistent with the European laws and India was a signatory to the various international conventions on IP, the implementation of these laws required focus starting from the registration process to identifying infringements. On the issue of sustainability in fashion, she said that 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. He also elaborated on the efforts made by the United Kingdom to strengthen its enforcement units within the IP framework, noting that a similar arrangement had the potential of being 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 about transnational counterfeiting of fashion and the supply chain issues arising thereof. He felt that 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. Moreover, after a centralised data structure is put in place, it would be crucial that the efforts in enforcement and policy making were carried forward in tandem so that both complemented each other. On addressing the issue of sustainability in fashion, he said that there was a need for correlated efforts at the municipal, national and international levels.

India's IPR Regime

India has a TRIPS-compliant, robust, equitable and dynamic IPR regime. It is supported by a well-established legislative, administrative, and judicial framework to safeguard IP rights that meet the country's global obligations while utilizing the flexibilities provided under the international regulations to address its developmental concerns. Besides, the Indian IP system maintains a fine balance between private IPRs on one hand, and rights of the society on the other hand.

It is encouraging that India's IP ecosystem has been strengthening considerably in the recent years. This has been because of the various progressive steps taken by the Government, including streamlining of the legal & legislative setup, reinforcing of the administrative system, in addition to the efforts at strengthening enforcement and promoting IP awareness.

Trends in IP Filings

In recent times, India's IP filing activities have also been showing a strong rising trend. What has been especially encouraging is the sizeable increase witnessed in the share of Indian applicants. The 'Annual Report 2021-22' of the Department for Promotion of Industry & Internal Trade (DPIIT), Govt. of India, reveals several encouraging findings which reflect the rising IP sensitization among the public, the increasing local participation in IP-related activities and the overall advancement of the country's IP system. These trends are also indicative that the country's innovation and creativity remained robust despite the Covid-19 challenges.

Some of the key highlights are reviewed below:

- An increasing number of Indian residents are now applying for patents vis-a-vis multi-national companies. The share of Indian residents in total applications has increased from 20% in 2010-11 to around 30% in 2016-17; and to 40% in 2020-21.
- The number of patents filed in India went up from 39,400 in 2010-11 to 45,444 in 2016-17, and then to 46,625 in 2021-22. Likewise, the patents granted in India has gone up from 7,509 to 9,847 and then to 21,860 during the same time period.
- Despite this remarkable improvement, however, the number of patents granted in India is still a fraction compared to patents granted in China, the USA, Japan, and Korea. According to WIPO, in 2020, the number of patents granted in China, USA, Japan, Korea stood at 5.30 lakh, 3.52 lakh, 1.79 lakh, 1.35 lakh, respectively. In contrast, the number of patents granted in India was 21,860 during 2021-22.
- The number of trademarks filed in India during 2020-21 has gone up 60% when compared to 2016-17 - from 2,78,170 to 4,44,126. Similarly, design filing numbers have also gone up 39% from 10,213 to 14,225 during this period.
- A promising rise has also been seen in new copyright applications, rising from 16,617 to 23,043 during the same period, leading to an increase of 39%. Copyright

registrations have also shown a remarkable jump of 356% - from 3,596 to 16,402.

Startups: Incentives & Performance

- The Scheme for Startups IPR Protection (SIPP) for facilitating fast-track filing of Patents, Trademarks and Designs by Startups provides for expedited examination of patents filed by Startups. The objective is to reduce the time taken to provide patents to these enterprises. Further, the startups are eligible for an 80% rebate in patent filing fees and a 50% rebate in trademark filing fees.
- As of December 2021, 6,771 such patent applications have been granted 80% rebate on filing fee and 1716 applications were granted expedited examination out of which 784 Patents have been granted. Also, 20,698 trademark applications have been filed for 50% rebate on the filing fee.
- Patents (Amendment) Rules 2016, enacted on 16 May 2016, provides fee concession to startups in respect of their patent applications. Startups must pay all patent fees including filing fees at par with a natural person only; thereby providing 80% fee concession in patent fees as compared to other legal entities. Further, the expedited examination is also allowed for startup patent applications.
- Similarly, Trade Marks Rules, amended with effect from 6 March 2017, provides 50% fee concession for startup applications.

Year	Patents		Trademarks	
	Filed	Granted	Filed	Registered
2016-17	215	42	4	2
2017-18	718	167	1430	1165
2018-19	974	220	2596	1945
2019-20	1851	238	4130	2775
2020-21	1786	132	6468	3281
2021-22 (Till December 2021)	1227	10	6070	1104
Total	6771	809	20698	10272

- Till 31 December 2021, 6771 new startup patent applications have availed the benefit of 80% fee reduction in patent filing, while 20,698 trademark applications filed by startups have been given 50% fee concession.

WIPO Indicators Analysis

WIPO's World Intellectual Property Indicators (WIPI) is an authoritative report that analyzes IP activity around the globe. Drawing on data of filing, registration and renewals statistics from national and regional IP offices as well as WIPO over the past years, it covers patents, utility models, trademarks, industrial designs, microorganisms, plant variety protection and geographical indications. The report also draws on survey data and industry sources to give a picture of activity in the publishing industry.

The WIPO report encompasses the creative space and highlights the details of new products and services in the market. It gives an understanding of the global landscape and brings forward global places where innovation is happening.

The performance of India as seen in the latest edition of WIPO indicators is highlighted below:

- India's global ranking in IP filing activity by origin, inclusive of both residents and abroad has been as follows over the last three years:

India's Ranking in total (resident and abroad) IP filing activity by origin

Year	Patents	Trademarks	Design
2018	12	9	13
2019	10	8	13
2020	9	6	13

- India has climbed up the ranks with respect to the number of both patents and trademarks filed. However, in the cases of designs, India has been stagnant at the 13th rank since 2018.

India's Ranking in resident IP activity by origin

Year	Patents	Trademarks	Design
2018	9	6	12
2019	8	5	12
2020	8	4	12

- There has been a similar pattern with respect to IP activity by Indian residents i.e, India has ranked higher with every passing year in the case of patents and trademarks, but India's rank in the Design category is stagnant at the 12th position.
- Asian economies lead a worldwide bounce back to a 1.6% growth in patent applications in 2020, which is 3.3 million patent applications. There was a substantial rise in filings by India with 3144 more applications in 2020 compared to those in 2019 besides hefty contributions by other nations.
- However, India was among the top 3 countries in terms of the proportion of withdrawn or abandoned applications at 37.7%, which is around 19,000 applications.
- Among selected middle-income countries, India (117,336) had a substantial number of applications still pending in 2020. However, this number had sharply reduced compared to a year earlier by (-)23.4%.

Number of Patent Examiners

Year	Number of Patent Examiners
2018	521
2019	616
2020	615

- India is clearly lagging with the number of patents examiners which is also one of the reasons for the lesser number of patents being granted in the country. Despite the increase in the number of patent examiners at India's IP offices, it is nowhere comparable to the developed economies. Also, the average years of experience of examiners in India were 4.5 years in 2020.
- India's IP office surpassed that of Japan to become the 5th largest in terms of trademark filing with 424,583 filings done in 2020.

- Having remained below 100,000 until 2006, India's annual trademark filings exceeded 400,000 in 2020 and applicants from the U.S. were the most active foreign filers.
- In India, the three origins to record the largest shares of total non-resident filing were the U.S. (20.9%), China (13%) and Germany (10.4%), together accounting for 44.3% of total non-resident filing in that country.
- Filing for trademarks relating to the health sector attracted the largest proportion of applications filed in India with 23.7%.
- In 2020, there were an estimated 64.4 million active trademark registrations at 149 IP offices worldwide, representing an increase of 11.2% on 2019 figures, with India recording 2.4 million.
- However, India had 449,219 pending trademark applications by the end of 2020.

Protection of Trade Secrets



Dr. Vivek Kashyap

Lead-Patents
Group Patents and Trademarks
Roche Products (India) Pvt. Ltd.

Trade Secrets is an Intellectual Property (IP) that has existed for centuries in every business environment, whether it's been creation of centuries old food delicacies to present day modern technology transfers. Traditionally to safeguard against unfair competition and to prevent their stealing, Trade Secrets were shared within families or among only most trusted members within business organizations for generations till specialized legal provisions were introduced for their protection. One of the earliest plausible existences of Trade Secrets Law was premised to be in Roman law as suggested by A. Arthur Schiller¹. The present-day Trade Secrets law appeared in England in early 18th century (1817)² and has evolved worldwide since then across the globe.

Technically³ Trade Secrets is defined as a confidential business information that is of (a) commercial value and/or technical value; (b) known to selective few people; and (c) the selective few people or the organization to which selective few people work for take necessary, adequate, reasonable steps/efforts to keep the confidential information secret or maintain secrecy by means of confidential agreements or any other means as deemed necessary by selective few within themselves or within the organization.

The technical valuable information maybe in the form of manufacturing/preparing processes, experimental research, method of procurement, packaging process, software algorithms, formulas, recipes, source codes etc. Whereas the commercial valuable information may relate to handling process, distribution methods, business methods, supply chain information, marketing and sales strategies, manufacturing units/partners, client repository, advertising strategies, business partners, financial data, patient data, etc.

From India's perspective, whether India needs a trade secret law or not is not a pertinent question but rather the question is that whether by having a trade secret law will India serve the present-day global business environment needs or not. Looking at the business perspective where India stands now and what it wants to achieve through global investment, the time is right and imminent that it should deliberate on a Trade Secret Law and maybe introduce such a law very soon.

Trade secrets law has significant economic value as it provides incentive for investment and development of critical business information thereby enabling protection and security of such critical business information. Another critical element of Trade Secrets is that it encourages business engagements with third party business partners. It also helps organizations to secure competitive advantage over their competitors. This is because from legal perspective trade secret law is amalgamation of many legal precepts i.e., contract, employment status, or

fiduciary duty; property rights; fairness and equity; or unfair competition or law tort.

Trade Secrets are different from patents though there could be some overlapping aspects between the two. So, in order to differentiate which IP falls within the scope of Trade Secrets or patents it very much depends upon the nature of asset developed and its appropriate protection. While patents would be protecting technologies, which will be more specific having huge commercial implications (as in Trade Secrets) but will need to be disclosed, will have limited protection but will provide exclusivity and will be quite expensive to protect. Whereas Trade Secrets are something which will not be widely known, could be a broad range of technology, but will need appropriate safeguards within the organizations to keep it safe. In other words, for Trade Secrets the novelty and obviousness may not be criterion for protection unlike the patents.

At present India does not have a Trade Secrets Law. However, Trade Secrets protection in India seems to be governed through Contracts law, Principles of equity, law of torts and common law act. These legal provisions tend to protect breach of confidential information. Though there have been several judicial precedents addressing the issues of Trade Secrets contentions, nevertheless the "confidential information" per se or in general is different than protected "confidential information" under Trade Secrets. Apparently, the Indian precedents to a larger extent tend to use the term "confidential information" bit loosely and interchangeably for Trade Secrets which many times may not be the case. In fact, the need for protection of Trade Secrets becomes even more important in view of cyber theft and economic espionage. Article 39 of the TRIPS provides for protection of undisclosed information, primarily covering the scope of Trade Secrets to prevent unfair competition and for safeguard of information, which is of both technical and commercial value.

There have been several Indian judicial precedents that tried to bring clarity with respect to theft of Trade Secrets through contracts law and common law interpretations including adjudicating on the issues of Trade secret ownership, criterion of confidentiality, the scope of commercial value within the Trade Secrets. The Indian judicial precedents also take cognizance in differentiating "confidential information" falling within and outside the scope of Trade Secrets while rejecting blanket application of 'inevitable disclosure' doctrine in favour of ex-employees.

Trade Secrets also comes with its challenges especially the challenges of confidential information going out of the organization when employees leave and join another organization. The challenges of corporate espionage or state sponsored corporate espionage are equally challenging. It is estimated that cost of Trade Secrets theft could be range of 1-3% of the GDP of the advanced countries or about several billion dollars annually⁴, while there is no statistical data available from India to ascertain the business losses due to misappropriation of trade secret thefts.

It might be a right time for India to consider introducing a law of Trade Secrets as it may ease out a lot of issues relating to patent protection and exclusivity considering technology transfer hindrances especially relating to manufacturing processes etc. This will have a lot of impact across the industry and generally help the MSME industries for global collaborations.

The present policy of the Indian Government wants huge Foreign Direct Investment and also increase in investment in Indian SMEs, MSMEs and startups. So, India cannot overlook the need to enact its own Trade Secrets law. While the Indian Government desperately wants FDI, it cannot overlook the need to ensure that guardrails exist to protect interest of foreign investors against their trade secret thefts, especially when much of business interest is protected through trade secrets whether it is FMCG industry, clean energy technologies, AI based technologies, Pharmaceutical and healthcare technologies, to name a few. Purely from academic perspective if India would have had a Trade Secrets law, it would have been a lot easier for pharmaceutical and healthcare sectors to exchange technologies faster and easily during the ongoing health pandemic. Also, maybe it could also address the issue of patent waivers to some extent.

The need and importance to have a provision for trade secrets was first proposed in the National IPR Policy 2016 and which

since then has only remained a policy initiative without a Trade Secret Law being introduced in India. But the subject seems to have gained momentum once again recently in "Review of Intellectual Property Rights Regime in India", a report by the Standing Committee on Commerce of the Parliament which has recommended the institution of a Trade Secrets law in India. Therefore, given the fact that India is aspiring to become 'investment destination for trade in the world'⁵, it is imperative that relevant stakeholders of the Industry, Industrial bodies work along with relevant government stakeholders to enact a Trade Secret law in India.

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

¹Arthur Schiller in an article titled "Trade Secrets and the Roman Law: The Actio Servi Corrupti", in Columbia Law Review explored the possibility of first law in TS. But later this stood corrected by Professor Alan Watson who clarified that this law was not used to protect trade secrets.

²Newbery v. James, (1817) 2 Mer. 446, 35 Eng. Rep. 1011, 1013 (Ct. Ch. 1817)

³This is a very general and broad way of defining TS and this may vary as per individual country/organization.

⁴Discussion Paper: Quantifying Trade Secret Theft: Policy Implications by Dan Ciuriak and Maria Ptashkina (2021)

Experts' and Controllers' Opinion, Evidence and Participation in Patent Infringement Proceedings



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India is marching towards being the Factory of the World, replacing China, with its successful Make in India campaign. With this there has been a boom in new technologies, know how, manufacturing methodologies being brought into India apart from explosion of research and development in all forms of science.

With the advent of newer technologies, deeper research in every science, the need for experts, their special knowledge, experience and opinions are much needed for the Indian Courts to better understand the subject matters in patent infringement proceedings in relation to advanced scientific subject matters.

Traditionally, the patent holders would institute the suit for infringement of the patent, based on opinion from her/his/its own experts and the Defendant would in response rely on opinion from her/his/its own experts. Recently, in order to shorten the Court's time spent on appreciating such rival opinions, examining such experts, both of them are called in at the same time for the Court to seek clarifications or to examine

the rival experts simultaneously. Such a practice is also known as "Hot Tubbing".

This apart, the Court under Section 115, may on its own accord, suo moto appoint "Scientific Advisers" to assist the court, inquire and report upon any question of fact or of opinion, which the Court would formulate. However, such assistance cannot be sought for a question of interpretation of law.

This being so, the Madras High Court, recently determined whether or not the Controller of Patents could be called in to submit her/his opinion or report on any fact or opinion, under Section 117E, in a suit for infringement, especially after the third-party Scientific Expert appointed by the Court under Section 115 had submitted his opinion on record. In *Arumugam Rajendra Babu v. Ashok Leyland & Ors.* [C.S. (Comm. Div.) No. 400 of 2019] the Court took a computational approach by analysing the Legislative Background of the Statute, Powers of the Controller under the scheme of the Act and Appearance of the Controller in legal proceedings to arrive at its decision.

Legislative Background

The Court examined the legislative history behind the Patents Act 1970. It observed that the Patents (Amendment) Act 2002 enabled IPAB to assume the Appellate powers of the High Court and Chapter XIX (formerly titled as Appeals, now Appeals to the Appellate Board) substituted the erstwhile Sections 116 and 117 to the present Sections 116, 117A-117H.

However, after of the promulgation of the Ordinance, the powers and functions of the IPAB were transferred back to the High Court. This analysis proved fruitful, since the Court thereafter rightly identified that the present proceedings were an original proceeding and that the present suit was one filed for infringement of a Patent. As noted by the Court, it was *“resisted with a counter-claim to revoke the said patent by the defendant. In view of Section 64, both the issues namely infringement and revocation are before the High Court for adjudication”* (Para 18).

Powers of the Controller

On perusal through Chapters XV and XIX of the Patents Act, the Court noted that the Controller was empowered:

- To *“grant or refuse patent and alter or rectify already granted patent”*
- To *“Receive, acknowledge, accept, publish and examine a patent application, claim, description and specification, to make search and investigate for anticipation by previous publication and by prior claim to consider the report of the examiners”*
- With *“the powers of a Civil Court while trying a suit under the Code of Civil Procedure, in respect of matter enlisted under Section 77(1) of the Act”*.

Appearance of Controller in Legal Proceedings

The Court compared and contrasted the role of the Controller in Legal Proceedings to that of an *“Advisor”* appointed under Section 115. While acknowledging that both these parties are to assist/inform the Court upon the technical aspects of a patent, the Court distinguished the role of both these parties. The position of an Advisor is to merely *“assist the Court or to inquire and report upon any such question of fact or of opinion (not involving a question of interpretation of law)”*. In other words, the treatment of the Advisor under the act is that of a witness.

On the other hand, while noting that the assistance of the Controller may be required in cases *“where certain particulars or procedure [are within] the exclusive knowledge of the Controller or matter to which the controller will have privy”* or where *“the public interest is involved”*, the Court held that his role *“while appearing under Section 117E is more or less like an “amicus” and not a “witness”*.

The Court observed that, in the light of the qualifications for appearance laid down in Sub-Section(2) of Section 117E, *“the right of appearance is one that is subjective. It is subject to the specific direction to that effect by the Appellate Board”*. These qualifications form part of the limitations and restrictions that make up the Controller's right of appearance. To further substantiate this premise, Sections 144 and 147 of the Act were examined. On a joint reading of these sections, the Court inferred the following:

- That the Act *“clearly prohibits compelling the Controller or any Officer to appear as witness to prove matters recorded in the Register or any other document which are in the controller custody”* (Section 144)

- That such compulsion is warranted only by an *“order of the Court made for special causes”* (Section 147)

On the facts of the said case, the Court found no necessity to invoke Section 117-E having already received a report from the Advisor.

Conclusion

To summarise the Hon'ble laid down the following four prepositions:

- That the role of the Controller under Section 117 E is 'more or less like an *“Amicus”* and not a *“Witness”*
- That the right of appearance by the Controller under Section 117E is qualified and is allowed *“only if the Controller considers his appearance necessary in the public interest”*. The said right of appearance becomes subjective.
- That in the appellate proceedings before the Appellate Board, *“if the Appellate Board is of the opinion that the Controller must be heard on any of the matter before it, the Appellate Board may direct the Controller to appear. If his personal appearance is not required in lieu of his personal appearance, he may be asked to submit a statement in writing containing the request particulars duly signed.”*
- That, *“the Act clearly prohibits compelling the Controller or any Officer to appear as witness to prove the matter recorded in the register or any other document which are in the controller custody (Section 144) Unless by order of the Court made for special causes (Section 147)”*

The said decision should also be considered in the backdrop of dissolution of the Intellectual Property Appellate Board (hereinafter referred to as 'IPAB') with the promulgation of the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance [4 April 2021] (hereinafter referred to as *“the Ordinance”*).

Consequent to the Ordinance, the powers and functions of the Appellate Board are now vested with the High Court. While the High Court already had the jurisdiction to entertain patent infringement suits, the afore discussed decision would be a guiding factor towards balancing the Courts powers under its original jurisdiction and its newly assumed Appellate Powers.

More particularly, the issue raised by the High Court in the aforesaid case was *whether Section 117E of the Patents Act, entitles parties to the litigation before the Court to seek direction to the Controller of Patents to appear, submit statement and give evidence.”*

The Court has drawn clear boundaries for itself holding that it will not entertain applications to direct the Controller to make submissions, except in circumstances which involve public interest.

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

Drawing a Parallel between Aesthetics & Functionality for Design Protection



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Like many countries in the world, India also has a strong law for protecting aesthetic creations by way of design registration. The design law protects aesthetic creations and not the functionality. There is often a misconception regarding the eligibility of articles or products for design registration that have utility and functionality. However, there is no barrier for registering designs for articles that are aesthetically appealing and at the same time performing a function. It is, therefore, essential to understand the difference in aesthetic and functional aspects of an article or product and their interplay while exploring the possibilities of design protection.

Legislative Position in India

According to Section 2(a) of the Indian Designs Act, 2000 ("the Designs Act"), 'Article' means *any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.*

According to Section 2(d) of the Designs Act, 'Design' means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device.

The phrase, 'judged solely by the eye' is a characteristic feature of design registrations. The phrase essentially means that the design should be aesthetically appealing - a test for registration in every application for registration.

Legislative Position in Other Jurisdictions

The United States (US) design law provides that an article dictated primarily by functionality with no ornamental value is not a proper statutory subject matter for design registration. Also, a design with no unique or distinctive shape or appearance and dictated solely by the functionality is not proper subject matter for design registration.

In Europe, community design cannot subsist in features of appearance of a product which are solely dictated by its technical function.

In Australia, a design can be registrable if the article includes shape and/or configuration features yet serve a functional purpose.

In Russia, 'industrial design patent' is the term used to denote protection of the visual appearance of industrial or handicraft articles. Further, Russian law rules out eligibility for design protection specially in a case if all features visual, are defined exclusively by the technical function of the article.

It is evident from the above that in most major jurisdictions, it is the product's overall appearance that is registerable as a design and not the functionality behind it. Nonetheless, the article including shape and/or configuration features yet serving a functional purpose is registerable. However, in view of the legal jargon, applicants are often confused about this.

Interpretation

It is evident from the definitions above that any article or product with features:

- such as Shape, Configuration, Ornamentation, and Pattern [SCOP];
- in two-dimensional/three-dimensional form;
- that enhance the overall appearance of the article,

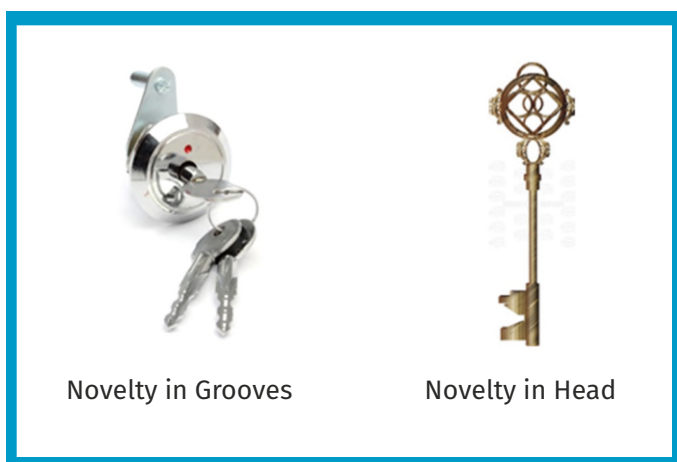
is an eligible subject matter for design protection. The definitions do not stipulate any eligibility test of technical functions of such features (SCOP). The test for evaluation of eligibility for design registration is judgement solely by eye, or the "EYE-TEST". In other words, whether or not the features embedded in the article or product are distinguishable from existing or competing products, is a matter of external appearance.

Purpose of Design Registration

The purpose of design registration is to protect the aesthetic appearance of an article or product and not its function. Therefore, to assess whether a design can be registered, one must look at the aesthetics of the article and not the functionality of the article.

For example, if the article's shape, surface pattern, and configuration is dictated solely by the function it must perform, then the article cannot be registered as a design. However, if the article is designed to perform a particular function but also includes aesthetic appeal, it would still be a subject matter for the design registration. In other words, if the design of the article is not essential to perform the intended function, then such design can be protected under the Designs Act.

For example, a key with novelty only in the shape and configuration of the grooves at the portion intended to engage with levers inside the lock associated with it, cannot be registered as a design.



However, if the same key includes any other aesthetic features, for instance, the unique design of the holding portion or head, then such features of the key can still be protected under the Designs Act.

The Perspective of the Indian Designs Office

The Indian Designs Office generally examines whether the article falls within the definition of Section 2(d) or not. In addition, it also questions if the article meets the requirements of novelty or originality. Therefore, applicants are expected to pinpoint the novel feature(s) of the articles (in terms of shape, configuration, ornamental, and surface pattern, either individually or in combination) in the design representations, if there are close prior arts cited in the examination report. In addition, appropriate amendments are also required to be done in novelty statements and disclaimer statements. Of course, pinpointing a specific novel feature in the design representations limits the protection of a particular design to that feature of the article. Taking the same example of the key as illustrated above, if the applicant pinpoints the novel aesthetic features, i.e., the holding portion or the head of the key, only such features will be protected by the design registration. However, this would help protect the designer's creativity to improve the aesthetics of the key, even though the primary intended function is merely to open the lock.

The Perspective of Indian Courts

The Indian Courts have evaluated the interplay of aesthetics and functionality in a few cases. For example, in *Escorts Construction Equipment Ltd. v. Action Construction Equipment Pvt. Ltd.*, it was held that the shape of parts of a crane is dictated by a function. The particular shape was defined to interrelate with other parts mechanically. Therefore, they only had to pass the test of performing their function and not necessarily be appealing to the eye. Therefore, it did not satisfy an essential requirement for the registration of designs and was held incapable of being registered.

In *Smit N Parmar v. Paresh D Patel & Vardayani Power Pvt Ltd*, the Gujarat High Court dealt with the issue of alteration of ducted air conditioners. In the altered device under question, the design was such that only the air blower was visible, while the pipes and wires remained hidden. The court held that when there is an alteration to a mechanical device that appeals to the

eye, it does not automatically preclude the design from registration.

The Attorney's Paradox

Considering the criticality of non-functionality as an element, it is very difficult to always establish whether the design is a default cause for the product to function or is entirely aesthetic and function independent. The three major challenges are:

- to undoubtedly determine that the design and aesthetics are purely functional,
- tendency of a unique design to have an overlap between function and aesthetics, and
- functionality being a subjective abstract.

Closing Statement

Not all articles are designed with an aim to have aesthetic appeal. However, articles that are designed to perform an intended function may also have aesthetic appeal which deserves IP protection. Creative aesthetic features of such articles if not protected, are open for piracy or copying. Under the Design law, there is no barrier for registering a design for an article performing the intended function but also having aesthetic value. So, go ahead and protect your articles under the Design law even if they were intended only to perform a function.

In a Nutshell

Underlying Factors- Product	Scope of Design Registration
Entirely Function Oriented	NO
Entirely Aesthetics Oriented	YES
Both Function + Aesthetics	YES

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

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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

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Samir Kasal v. Prashant Mehta & Ors

In this case, the Plaintiff conceptualized a cricket league format called 'Legends Premier League' wherein retired cricketers would play a Test format of cricket. The Defendants having experience in sport events, came on board with the Plaintiff and they started working on this concept together. Details about the league were shared with the Defendants in confidentiality. However, the Defendants decided to organize 'Legends League Cricket' without the Plaintiff's consent. The Plaintiff contended that the Defendants' acts were a breach of confidentiality and the main issue before the Court was whether the Plaintiff could claim copyright arising out of his 'work'.

The Court referred to S 2(y) to assess whether Plaintiff's idea amounted to 'work' and S 2(z) to assess what amounted to work of joint authorship under the Copyright Act, 1957. The Court held that the Plaintiff's idea did not amount to 'work' under the Act because common elements of the same existed in the public domain for years thereby rendering the Plaintiff's idea unoriginal. The burden was on the Plaintiff to prove that his idea had some novelty and could be protected, but the Plaintiff failed to do so. As the Court noticed, most elements of the Plaintiff's ideas already existed, and were adapted from or adopted in one form or another before. Thus, the Court concluded that the balance of convenience was in favour of the Defendants.

Moonshine Technology Private Limited v. Tictok Skill Games Private Limited

The Plaintiff company was established in 2014 and has been offering quality gaming experiences to its customers ever since under the branding and registered trademarks like Baize, Baazi Games, PokerBaazi, Rummy Baazi, etc. The plaintiff claimed that it had honestly adopted 'Baazi' as its trademark, registering several variations between 2014 and 2020 which were still valid and had become the trading identity, corporate name and domain names of the 'Baazi Group'. The plaintiff claimed that the defendant dishonestly started using the mark WinzoBaazi for their gaming website and app in respect of the services that they were providing and thus, were passing off their product line.

The Bench was of the opinion that the plaintiff's business is thriving, and they have established their popularity as an online gaming platform and no other competitor was using 'Baazi' throughout this time. Thus, prima facie it appeared that 'Baazi' is a brand indicating the name of the provider of the services, i.e., the plaintiff. The Court held that the defendants failed to establish that the use of the word 'Baazi' was in accordance with honest practices and was not to take unfair advantage of the distinctive character or repute of the plaintiff. The Court decided that the Plaintiff made out a prima facie case for infringement and passing off, and that irreparable harm and balance of convenience was in its favour.

M/s. Novex Communications Pvt. Ltd. ... v. DXC Technology Pvt. Ltd.

The Plaintiff was in a business of protecting the copyright for sound recordings in the capacity of an assignee, or an agent of the copyright holders. To do so, the Plaintiff entered into

agreements with copyright holders and obtained several rights related to the recordings. On the basis of these agreements, the Plaintiff claimed having been assigned the right for the issuance of licenses in respect of on-ground performance of the concerned sound recordings. Novex filed a case for copyright infringement in relation to certain sound recordings since the Defendants were exploiting the Sound Recordings without its permission as it was the owner or duly authorized agent of the performance rights.

The Defendants contested that the Plaintiff was neither a copyright society nor a member of a copyright society and thereby cannot carry the business of issuing or granting licenses as per the specific bar under Section 33(1) of the Copyright Act 1957 while the Plaintiff contended that the right of a copyright owner is recognized under Section 30 of the Act thereby rendering registration under Section 33(3) unnecessary. The Madras High Court came to the conclusion that Section 33(1) and its 2nd proviso specifically provide that the business of licensing shall be carried only through a registered copyright society, which emphasized that "only" copyright societies may engage in such business. It was decided that Novex does not fall within the ambit of Section 30 of the Act, and since, it is in the business of copyright licensing, it was barred from issuing licenses for the exploitation of Rights in the Sound Recordings in view of Section 33(1) of the Act, especially 2nd proviso thereof.

Airtel Electrovision Pvt. Ltd vs Sunil Kumar Saluja

The plaintiff is engaged in the business of manufacturing, promotion and distribution of E-led Television sets across India under the name and style "EIRTEC". He came across the defendant's brand "AIRNET" which also dealt in television sets. The plaintiff claimed that the two marks are deceptively similar in style and also phonetically. The plaintiff further claimed that its mark is registered, whereas the trademark of the defendant was not. The plaintiff alleged that the defendant has a similar name and also deals in similar products, thus dishonestly copying the mark of the plaintiff to encroach upon the goodwill as well as to take benefit of advertisement of plaintiff on which plaintiff spent heavily. The defendant argued that the word 'air' is common to trade especially trade in electronic goods and there are several marks commencing from the word 'air' which are already registered, and 'net' is mark with respect to networking.

The High Court observed that the word 'air' is descriptive in nature which is being used especially in the trade of electronic goods as a part of their trademark such as Airtel and Aircel, which is registered in their favor. The words have not acquired secondary meaning with respect to the product of the plaintiff and therefore plaintiff cannot claim monopoly over these words and dismissed the plaintiff's application under Rule 39 Rules 1 & 2 CPC and stated that there is no merit in the present appeal.

Renaissance Hotel Holdings Inc. Vs B. Vijay Sai And Ors

The proprietor and holder of the trademark 'RENAISSANCE' discovered two hotels being run by the Respondents in Bangalore and noted that it copied the style, signage, and the word 'RENAISSANCE'. He filed a suit against the Respondents for permanent injunction against the use of the trademark 'SAI

RENAISSANCE', as well as any other mark identical to the Respondents' mark. The Respondent scountered the claim stating that the term 'RENAISSANCE' was a generic term used widely, and that the Appellant had not gathered any reputation with respect to the name. The Respondents even asserted their obliviousness to the fact that the mark was under use by the Appellant.

The Trial Court held the Respondents' mark to be infringing and granted an injunction against its use by the Respondents but denied the Appellant's claim for damages.

The Respondents then filed an appeal before the High Court which observed that the Appellant provided no evidence of a trans-border reputation for its mark, or of any unfair advantage taken by the Respondents. The High Court did not see any infringement and allowed the appeal. Aggrieved by the same, the Appellant approached the Supreme Court. The Apex Court referred to S. 29 (1), (2) and (3) of the Trade Marks Act, 1999 to understand the infringement caused where a mark identical to a registered trademark was used. The Court also referred to S. 29(4)(c), to examine passing off, and to S. 30 for exploring the limits on the effect of a registered trademark. It also relied on judgements like *Ruston v. Hornsby Ltd.* where it had held that, in case where there was an alleged infringement, the question to be considered was whether the defendant's mark imitated or was an improper use of the plaintiff's mark.

In the end, the Supreme Court came to the conclusion that the High Court had erred in its interpretation of the test laid down under S.29(4) of the Act, as it had not taken into account the other applicable provisions of S.29(4), and other provisions which covered the circumstances of the case herein. The order of the High Court was overturned, and the order delivered by the Trial Court was upheld and considered as well-reasoned.



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Every second patent granted in India is related to Green Technology

Every second patent being granted in India since 2016 is related to green technology and a quarter of which pertain to alternative energy production which also corresponds to the Centre's initiatives and efforts on "enhanced use of green technology for boosting economy & encouraging consumers to use products produced through use of such technology". Analysis shows that except in 2022, almost half of all the patents granted were related to green technologies with 90% of them being for waste management and alternative energy. Of these, 63% relate to waste management and more than 26% for alternative energy production.

Source:

<https://timesofindia.indiatimes.com/india/every-2nd-patent-granted-since-2016-relates-to-green-tech-most-linked-to-waste-alternative-energy/articleshow/89420047.cms>

Telangana Government launches IPR Mascot

The Telangana Government launched its Intellectual property mascot named "IP Buddy-Rachit" which will help promote creativity, innovation and IP protection and will work towards creating an IP friendly culture in the state. The IP Buddy will be available 24x7 via Whatsapp to assist stakeholders with IP services. It will also help certify stakeholders as 'IP Ambassadors' and from their companies or institutions and aims from 10,000 IP Ambassadors by March 31, 2023.

Source:

<https://timesofindia.indiatimes.com/city/hyderabad/t-launches-ipr-mascot-ip-buddy/articleshow/88721732.cms>

The Economic Survey - India's fast-growing economy

As per Economic Survey 2021-22, patent applications increased from 45,444 in 2016-17 to 58,502 in 2020-21. Further, the number of patents granted increased from 9,847 to 28,391 during this period. It also shows that the share of startups in total patent applications in India has increased by over five times between 2016-17 and 2020-21. Further, the share of Indian applicants in total patent applications had increased from 30 per cent in 2016-17 to 40 per cent by 2020-2. The survey also pointed out a huge gap in patents-filing between India and other countries due to the low expenditure on research and development, procedural delays and the low number of patent examiners.

Source:

<https://indianexpress.com/article/explained/union-budget-what-the-economic-survey-2021-22-says-7750324/>

Waiver for available Covid-19 treatments

India and South Africa had proposed a comprehensive waiver in 2020 of certain provisions in the TRIPS agreement for available Covid-19 treatments, technology, and vaccines to help countries fight the pandemic. This move is now sponsored by 65 WTO members. WTO is now working on a 'compromise outcome' which includes a limited and conditional waiver from certain intellectual property rights for Covid-19 vaccines strictly for developing countries. This waiver can be availed only by developing countries that accounted for less than 10% of total global exports of Covid-19 vaccine doses in 2021. This 10% export criterion can be a good opportunity for India as it leaves out China and the European Union (EU).

Source:

<https://economictimes.indiatimes.com/news/economy/policy/wto-working-on-limited-ipr-waiver-for-covid-jabs/articleshow/90280418.cms>

IIT Kanpur filed 107 IPRs in 2021, highest in its history

IIT Kanpur filed a total of 107 IPRs in 2021 which is highest in year in the entire history of the institute and include inventions ranging from MedTech to nanotechnology. These include 62 patents, 15 design registrations, 2 copyrights and 24 trademark applications along with 4 US patent applications. The institute broke its earlier record of 76 IPRs filed in 2019.

Source:

<https://economictimes.indiatimes.com/industry/services/education/iit-kanpur-filed-107-patents-in-2021-highest-in-institutes-history/articleshow/88762545.cms>