

Update

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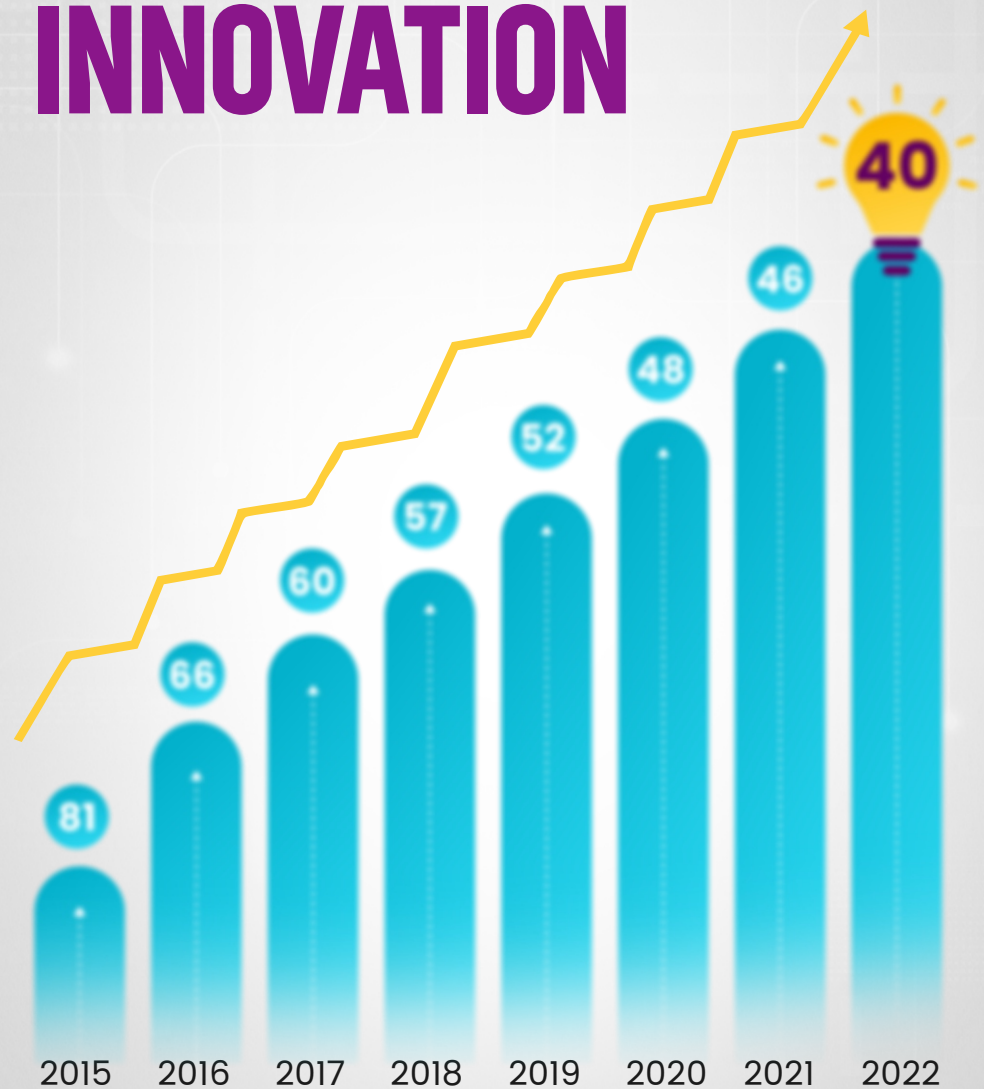
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INDIA RISING ON INNOVATION



.... in just 7 years

Global Innovation Index 2022



Narendra Sabharwal

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

Innovation is an indispensable driver of economic advancement and social development. Nations that have the world's most advanced technology systems are largely innovation driven. It is reassuring in this context that India, in the recent years, has performed well by consolidating its innovation policy as a pillar of economic growth. With the country now climbing six notches to be ranked 40th among 132 nations in WIPO's recently announced Global Innovation Index (GII) 2022, India attains another significant milestone in its move towards becoming an innovation-based economy. From its 81st rank in 2015, it has indeed been a huge leap for India in just 7 years to find a place in the world's top 40 innovative countries, besides being the innovation leader in the lower middle-income group. India's performance has also been found to be above average for the upper middle-income group in almost every innovation pillar, except for infrastructure where it scores below average. The continuous rise in its GI rating testifies India's inherent potentials to become the global innovation hub and bodes well for the future of the nation's innovation-driven growth.

For India to become a global research and innovation centre, a key requirement is a strong IP ecosystem that supports research and innovation in the country. The recent Bloomberg report, estimating that India has surpassed UK as the world's 5th largest economy for the second time, is certainly an accolade for the nation which adequately held together even during the COVID days. However, in this market era where IP has become an indispensable and integral part of development process, India needs to work more efficiently towards developing its IPR domain, with a special focus on the patent ecosystem.

Though Indian laws are in consonance with the TRIPS Agreement since 2005, the patents granted in the country still stand considerably lower when compared to several countries like China, USA and Japan. Government advisory bodies/departments like EAC-PM (Economic Affairs Committee-Prime Minister), DPIIT (Department for Promotion of Industry and Internal Trade), NITI Aayog have been emphasizing the significance of a robust patent ecosystem. The EAC-PM's recent report, "Why India needs to urgently invest in its Patent Ecosystem?" shows that the number of patents filed in India was

56,771, merely 4% of China where 14.97 lakh applications were filed; and 9.5% of the US where 5.97 lakh applications were filed, during 2019-20. This data elucidates India's unexploited patent resources and the urgent need to harness the existing potential.

Indeed, efforts by the Government of India and other augmenting institutions have helped increase the number of patents filed in the country to 66,440 in 2021-22 as against 42,763 in 2014-15, posting an increase of over 50% during this span. Encouragingly, the share of residents in patent applications also saw an increase from 20% in 2010-11 to 44% in 2021-22, with domestic patent filing surpassing the foreign filings in the last quarter of 2021-2022 for the first time in eleven years. These rising numbers would surely have influenced India's placement in the latest GI computation, reinforcing the scope and possibility for further improvement of the country's patent environment, besides portraying the efficient working module in the patent niche.

With the number of patent applications increasingly coming from Indian residents rather than MNCs, the need now is to develop an environment where individuals are provided a milieu where they can file their patents with ease and efficacy, including in respect to the time for registration and their actualization. The stage is similar to that of trademarks where India is one of the fastest in giving the first-examination report for trademark application and even the time for registration/final disposal is on an average 12-18 months in cases where no opposition is filed, which is comparable to China and the US. However, the application processing time rises to around 5-10 years when there are objections/oppositions which is mainly due to lack of manpower. With India increasingly supporting industry and particularly start-ups to drive innovation, it is crucial that patenting in the country becomes faster and easier.

A way out to improve the situation is to enhance the manpower availability in the patent domain, to keep up with the rising filing trend. Till recently, only 860 people were employed in India's IP office including examiners & controllers (EAC-PM report says it should increase to 2800 in next 2 years), while China and US had 13,704 and 8,132, respectively. Moreover, there are 1.64 lakh applications outstanding at the controller level for which screening has already been completed. The situation also needs to be improved by mechanizing the transaction of notices, applications and counter-applications. The time factor is vital for development of the system, and for registration it ought to happen quickly either after advertisement with no opposition or on completion of successful opposition hearings. Notably, the number of patent agents also is markedly less compared to India's huge population.

Despite the considerable improvement in India's patent environment and the registration/grant numbers, in order to catch up with the advanced economies, efforts must be made to consistently boost all the IPR domains while encouraging and supporting innovative activities specially among the MSMEs, Startups and individual innovators. It is now well recognized that IP plays a vital role in achieving national and regional socioeconomic development goals.

Another key determinant of how innovative a particular country is the percentage of GDP that it spends on research &

development. In this regard, India's continuing low spending level on R&D activities remains a big concern that calls for urgent attention. While the world's top 5 nations have an average R&D expenditure of 2.6% of their GDP, for India it is only 0.65%. India's share is even below countries like Australia, Belgium and Brazil, among others. Moreover, R&D investments in India is dominated by the public sector, with private sector contributing less than 40% to GERD (Gross domestic expenditure on R&D), against over 70% private stakes in other advanced countries. The call given by Hon'ble Prime Minister during his 76th Independence Day address for a fresh push into research and innovation in the country is indeed timely and welcome. It is hoped that the PM's appeal will lead to a boost in new investments both by the public and private sectors, leading the way to a robust science, technology and innovation ecosystem in the country.

As the voice of Indian Industry, FICCI continues to work closely with Government departments and business stakeholders on the various IP-related issues of national interest through extensive engagements on policy, legal and regulatory framework, implementation, awareness generation, enforcement and capacity creation. Among some of the important activities undertaken by FICCI in the recent months are: several consultation with Government agencies on IP issues

being discussed under trade negotiations, IPR awareness programs for several educational institutions and industry stakeholders, interactions with Indian and international experts in areas such as IP and innovation, trade secrets, emerging IP challenges in the digital age; assessing IP collaboration potentials with trading partners like the US, Denmark, UK.

There are enough indications of a gradual strengthening of the innovation and IP eco-system in India. The areas where attention needs to be concentrated for further improvement are also better understood. The need is to continue to modernize and strengthen the IP policy, regulatory, operating and enforcement related framework and incentivize innovation in all spheres of work in a mission mode.

I wish all those engaged in this laudable endeavor much success ahead.

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

Experts Meeting on Trade Secrets

18 August, 2022

India currently does not have any legislation dedicated to trade secrets. Hence, these rights, in some limited ways, are enforced through contract law, principles of equity or by way of a common law action for breach of confidential information. This lack of statutory provisions, however, leads to uncertainty and adversely affects the image of the Indian ecosystem for safeguarding trade secret rights. This, in fact, appears to be one of the biggest challenges that Indian Industry faces when it comes to technology transfers, particularly through FDI.

The importance of securing data is well recognized to maintain confidentiality in business, especially companies that possess secret formulas, business strategies, and algorithms. Hence, the lack of a concrete statute concerning trade secret protection discourages FDI as foreign companies are generally skeptical in working their trade secrets in India. The National IPR Policy 2016 identified protection of trade secrets as an important focus area. The Joint Parliamentary Committee Report of 2021 recommendations also suggest a separate legislation to bring clarity in securing trade secrets in the country and to protect its business environment, particularly if India is to become an attractive global investment destination for trade.



In order to examine the relevant best practices being followed in statutes of various countries and to suggest the possible way forward for India in this regard, FICCI set up an Expert Group on Trade Secrets to deliberate with diverse set of stakeholders, develop the broad contours of the kind of law India should have, and subsequently make recommendations to the Government. The group comprises of senior IP leadership from diverse organizations across industry segments.

The group has met twice so far, with the second interaction being organized on 18 August 2022, and discussed issues ranging from the international legal framework, scope of protection of trade secret, the regulation and enforcement framework as well eliciting suggestions on creation of a strong trade secret regime in India. The objective of forming the Expert Group is to deliberate on the need for a specific legislation for the protection of trade secrets in India, develop a 'White Paper on Trade Secrets' on the broad contours of the kind of law that India should have, along with concrete recommendations, and then formally present the report to the Government for its consideration.

Interaction with Stephanie M. Boyce, President, Law Society of England & Wales

7 September, 2022

India and England in recent years have stepped up efforts to strengthen bilateral economic cooperation. With IP forming a key element in this evolving relationship, it is imperative that Indian stakeholders become aware of its role in this partnership and explore joint opportunities.



On 7 September 2022, FICCI organised a meeting with Ms. Stephanie Boyce, President of Law Society of England & Wales (LSEW) and the delegates accompanying her. LSEW is the professional association that represents solicitors for the jurisdiction of England and Wales. The meeting provided the opportunity to discuss key legal issues including in the field of IPR, explore opportunities to increase bilateral trade in legal services and look at collaboration potentials between the legal fraternities of the two countries, especially so in the backdrop of the ongoing UK-India FTA negotiations.

Ms. Stephanie Boyce, President, Law Society of England & Wales, elaborated on the areas of common interests for laws in the two countries and how a more inclusive approach would strengthen the existing legislative ties, which in turn would help India-UK economic relations. She also emphasized the need for expansion of foreign jurisdiction among countries and its impact on international lawyers. Mr. Mickael Laurens, Head of International, LSEW, expanded on the benefits of open markets, the flexibilities it provided, the need for larger collaboration among lawyers of the two Countries, and how these would benefit bilateral relations through improved business exchanges and investments, and the FTA.

Mr. Jyoti Sagar, Chairman & Founder of J. Sagar Associates and Co-chair, FICCI IPR Committee, referring to the robust India-UK economic ties, outlined some of FICCI's key initiatives in strengthening this growing relationship including working with the British Govt. and business bodies, besides its activities in areas like policy advocacy, stakeholder consultations, engaging with Govt. of India on various discussions relating to UK-related issues. He also underlined the need for a study on the potentials for collaboration between India and UK, and explore how law fraternities of the two countries could best serve the

respective business communities. Mr. Mohit Saraf, Co-founder, Saraf and Partners & Co-chair, FICCI Committee on Private Equity & Venture Capital, said that while legal reforms were an ongoing need for any country, a closed market for lawyers would hamper the profession in the long run, and consequently the economy. Stressing the importance of open market and its impact on foreign Investment inflows and employment

generation, he said that improved enforceability of contracts would be a key requirement.

The meeting was attended by several senior members of FICCI comprising law firms, senior advocates, corporate lawyers, industry representatives as well as members of the diplomatic fraternity.

Spreading IP Awareness

Protection, Enforcement and Commercialization of IPR

25 August 2022, Kolkata

All progressive nations today rely upon intellectual property to drive their economic growth. However, with instances of IP crimes rapidly rising especially in the digital space, many a time even leading to failure of successful businesses, it is important that Indian enterprises become increasingly aware of the need to safeguard their innovative products and services, and other intellectual assets. To generate awareness on the ways available towards this objective, FICCI organized an awareness event for industry stakeholders on 'Protection, Enforcement and Commercialization of IPR' on 25 August 2022 at the Bengal Club, Kolkata.

Mr. Abhijit Paul, Head- Legal & Compliance, Vedant Fashion Ltd., discussed the significance of IP portfolios of companies and how its efficient management helped improve efficiency and competitive edge in the marketplace, including adding value to the concerned businesses and profits in the case of mergers or acquisitions. Ms. Mani Narayan Sau, Head - Product Strategy & Innovation, CDE Asia Ltd., emphasizing that IP formed an integral part of his company's business strategy and that they put significant value to its IP portfolio, shared his experiences of managing IP assets of CDE Asia over the years. He also spoke about the importance of IP commercialisation, underling that the real rewards from IP were generated only after it was commercialised.

Ms. Suhrita Majumdar, IP Lawyer & Partner, S Majumdar & Co. and Member, FICCI IPR Committee, who moderated the session, emphasized that raising IPR awareness among various stakeholders was a key need for the country, and that Indian industry must fully comprehend and exploit the commercial benefits of IPR. She also thanked FICCI for collaborating with S Majumdar & Co. to organise the important and timely event in Kolkata.



Dr. Pinaki Ghosh, DPIIT IPR Chair Professor, West Bengal National University of Juridical Sciences (NUJS), while outlining the basic concepts of IPR, spoke about the economic significance of IPR for India, regarding IP creation and identification, and the career options available in IP. He also talked about the benefits of IPR for businesses, the means available for companies, particularly the small and medium sized firms, to protect their exclusive goods and services from potential rivals, among other aspects. Mr. Debjyoti Sarkar, IP Lawyer & Managing Associate, S Majumdar & Co., elaborated on the Designs Act 2000 and the issues related to design registration. He explained the immense value of designs as an IP and how customers associated a product with a specific company or a particular quality standard, based on product aesthetics. He also spoke on the rising problem of piracy in India and its impact on the Indian economy.



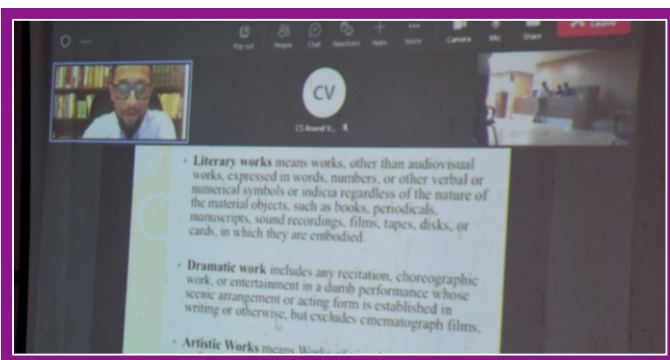
IPR Awareness Program at Chanakya National Law, University Patna (Bihar)

16 September, 2022

Continuing with its intellectual property sensitization efforts among the educational institutions, FICCI collaborated with IPTSE to organize an IPR awareness program for the students and faculty members of Chanakya National Law University (CNLU), Patna, Bihar on 16 September 2022. The discussions included sessions on the Creation, Protection and Commercialisation of IP.



Justice Ms. Mridula Mishra (Retd.), Vice-Chancellor, Chanakya National Law University, in her special address, on the 'Importance of IP in the legal field and day-to-day activities' highlighted the importance of the IP culture to a country's economic development, GDP and employment generation. Mr. Manoranjan Prasad Srivastava, District Judge (Retd.) and Registrar, CNLU, welcoming FICCI's initiative to organise the seminar said such programs on IP helped students and the country's research community to appreciate the significance of innovation for a country and the need for their protection, besides helping students to become skilled lawyers and entrepreneurs.



Mr. Aalok Jain, Member, FICCI IP Forum & Founder, Law office of Aalok Jain, elaborated on the basic concepts of IPR and India's IP ecosystem. He also expanded on the ways to create and identify of IP assets, the economic significance of IPR and the various career possibilities in the field, while discussing case studies of successful entrepreneurs as well as lawyers in IP domain.



Mr. Anand Verma, Member, FICCI IP Forum & Managing Partner, Team Legal, highlighted the importance of IPR for businesses and startups, how these legal rights helped firms to gain an edge over competitors, while also explaining how a strong IP portfolio helped prevent Infringement and illegal use of the company's intellectual assets. He also spoke on the immense possibilities in IPR in the backdrop of emerging technologies like Metaverse, Non-Fungible Tokens, Blockchain Technology and how these technologies, duly protected by IP rights, could significantly contribute to a country's GDP.



Mr. Saurabh Sachdeva, Director, IPTSE, describing the different forms of IP rights and their significance for a country's industrial and economic growth, expanded on the various tools available to innovators and businesses for exploiting IP rights to gain maximum return from these privileges. He also spoke about the upcoming IPTSE Olympiad and IPTSE Award to be launched in collaboration with FICCI and encouraged the students and faculty members to participate in the Olympiad as well as nominate themselves for the awards.

Copyright in the Digital Age

28 September, 2022, Hotel Westin, Mumbai

Copyright protection is the foundation for a creative economy that incentivizes the creation of new and innovative works. With technology now making it easier to disseminate creative works, it is also presenting challenges of easy infringement and unauthorized reproductions. With a view to generate ideas on how policymakers could work towards ensuring an enabling ecosystem for copyright holders while also balancing and safeguarding consumer interests, FICCI organized a stakeholder-consultation on “Copyright in the Digital Age” coinciding with FICCI-FRAMES Fast Track 2022 on 28 September at Hotel Westin, Mumbai.

The event provided the occasion to discuss challenges and opportunities for the copyright industry due to the growing use of the digital space along with the emergent needs to strengthen India's copyright regime, the rising piracy issues in India that are impacting the economy, and the possible learnings from global landscape.

Justice Prathiba M Singh, Judge, Delhi High Court, while delivering the key-note address, observed that copyright was one of the most important IP rights as it transcended all industries, covering almost every aspect of our life, including music and films, books and newspapers, art, paintings and sculpture as well as folk art and traditional knowledge. The growing use of the internet and other online platforms, however, were providing the biggest challenge to deal with copyright, and to enforce and implement these rights. The need of the hour was that a single central government body should be set up to keep all the records of piracy and copyright issues and take action against them.

Mr. Karan Thapar, Deputy Secretary, DPIIT, Government of India, said that a major hurdle in the fight against piracy was consumers' ignorance on the implications of consuming pirated infringed contents. Therefore, Govt. was focusing on addressing the gap in awareness among general public through a series of nationwide programs, and strengthening the enforcement machinery by sensitizing enforcement agencies, the judiciary and the content creators. Ms. Dipti Kotak, Chief Legal Officer, Media Business, Reliance Industries, said that to address the piracy issue, downloads need to be stopped through virtual private network (VPN) access, and it should only happen through proper subscription channels. There should be a suitable scheme for such a system along with notified procedures as there are many promoters/sponsors who advertised on these websites. Mr. Uday Singh, Managing Director, Motion Picture Association (MPA), felt that it was important for platforms, specially in the B2B space, to deal with known commercial entities and recommended the use of know-your-business-customer provision in all such operations/transactions. Ms. Gowree Gokhale, Partner, Nishith Desai Associates, stressed that for any copyright enforcement case, the plaintiff must be adequately equipped with all related details of his/her legal rights e.g., the right regarding a music content or the remake rights etc., which often became a problem especially with copyright owners who are not fully aware of their rights. Mr. Kaushik Moitra, Partner, Bharucha & Partners, who moderated the panel-discussion, provided an overview of India's creative industry, while highlighting the impact of piracy on copyright owners.



Webinar on Scaling your Business through Intellectual Property

29 September, 2022

Considering the importance of intellectual property for business growth and competitiveness, and its crucial role in encouraging innovative enterprises and rewarding them for their creative ideas, FICCI organized a webinar on the theme “Scaling your Business through Intellectual Property” on 29 September 2022.

The discussions focused on the key aspects of IP enforcement in case of disputes, and the many learning that were available from global best practices which were especially relevant for Indian start-ups, incubators, MSMEs and universities. The deliberations also stressed the need for generating awareness on respective IP laws and procedures among various stakeholders, IP enforcement issues, the potential risks and likely market challenges that innovative businesses generally encountered, among other matters.

Mr. Rahul Dhote, Member, FICCI IP Forum and Partner-IP (Head of Practice), ANM Global, the key speaker in the webinar, spoke at length about the opportunities and risks in dealing with intellectual property related matters while developing one's business. He also provided insights on crucial business strategy aspects like IP leakages, tax planning, cross-border migrations, etc. The discussions also extended to India's growing need to encourage and support innovation, including the Government's initiatives that were available for enterprises to adopt innovative technologies, to validate and commercialize inventions, accessing essential finances, attaining skills required for IP valuation and commercialisation, and the strategic use IP system by businesses and start-ups.

The webinar included a Q&A session with the speaker which saw enthusiastic participation by the audience, numbering over 100 participants from the various industry segments, the academia, researchers, and the student community.

Webinar on Brand Protection in the Digital World

7 October, 2022

Brand protection is the act of seeking to prevent counterfeiters and other bad actors from infringing a brand illegally. The digital space today is filled with fraudsters who profit by infringing brands/trademarks, while staying anonymous. It is despite such illicit activities being a cognisable offence in India, and infringers liable to face criminal and civil charges. For brand owners, there is also the concern on the negative impact that online brand impersonation imposes on customer experiences and their long-term loyalty. It is important that stakeholders are made aware of this rising menace, including about measures that e-com firms are taking to tackle online fraud through anti-counterfeiting/brand protection strategies that safeguard both businesses and consumers from illicit operators.

Online brand protection strategies allow companies to recapture revenue, enable direct cost savings and safeguard marketing campaign spends. Ensuring authentic brand experiences has the added benefit of solidifying brand reputation, while reducing online frauds & unauthorized channels. Leading e-com companies now adopt anti-counterfeiting strategies and apply brand protection tools to safeguard both brands and consumers from illicit operators taking advantage of their platforms.

FICCI collaborated with Amazon to organize a webinar on “Brand Protection in the Digital World” on October 7, 2022. The intent was to discuss the issues related to protection of brands in the ever-evolving digital space. Addressed by representatives of leading brands, e-com players and startups, the event saw participation of around 200 delegates from across industry sections and other stakeholders.

Mr. Prabakaran Ramalingam, Global Brand Relation Lead for Asia Pacific region, Amazon, elaborated on Amazon's sustained efforts at ensuring protection of the brands that were using their platform and the various technologies, mechanisms and initiatives that were being proactively applied against possible counterfeits and to eliminate bad actors. Mr. Anurag Kashyap, Partner, Forensic & Integrity Services, EY India, who moderated the panel-discussion on brand protection strategies adopted by e-com retailers to tackle brand infringements, provided an overview of the growth trends in the online trading space and the magnitude of the online counterfeit problem.

Ms. Vijayalakshmi Malkani, Senior IP, Brand Protection and Foods Counsel, HUL, spoke about the efforts being made by HUL to protect its brands online and the strategies thereof, the counterfeit detection tools used on online channels and the related challenges, among other things. Mr. Sumit Kapoor, Global Brand Relations Manager, Asia-Pacific, Amazon, spoke about the proactive cum reactive approach used by Amazon to address online counterfeiting activities as well as the various technological and machine-learning tools used in these endeavors.

The webinar also featured an interactive session with brand owners, Mr. Sakar Mohta, Founder & CEO, Medifiber and Mr. Zairus Master, Chief Business Officer, Mamaearth, sharing their experiences of working with Amazon's various tools and initiatives like the Transparency Program, IP Accelerator, etc.



Protection and Enforcement of Intellectual Property in Metaverse



Mr. Rahul Dhote

Member, FICCI IPR Committee &
Partner (IP), ANM Global



Ms. Bhavya Aggarwal

Member, FICCI IPR Committee &
Associate, ANM Global

Metaverse is undoubtedly the Buzzword of the Season. While citizens of the net place their best bets on whether it is the “Next Internet” or “Web 3.0”; it is fair to wonder what the hype around metaverse is really about. More so, if you happen to be someone who is looking at benefitting from this new technology facet.

The pandemic has acted as a catalyst for metaverse to finally have its moment. Forced isolation and some fantastic technology advancements have paved the way for a new era of accessibility - a way where working, attending court hearings and meetings, and carrying out possibly anything from the comfort of our homes has now become a reality. What seemed like a far-fetched idea only a couple of years back has now come to birth as the 'future of things'. However, the way we see it - metaverse is only at its gestation stage, with some ground-breaking advancements in its pipeline. While much of the technology developments mentioned in our analysis have already broken ground; in order to embrace metaverse to the best extent possible, it is fundamental to assess the legal complications surrounding it.

Understanding the Metaverse

The curious space termed as “metaverse” may be identified as a three-dimensional augmented reality which combines multiple virtual spaces into one decentralised universe. Envisaged to be the “new iteration” of the internet, the Metaverse aims to enable individuals to collaborate, socialise, meet, hold events, sell products and play games within this three-dimensional universe.

Working of a Metaverse revolves around ambient computing i.e., a world where computers constitute as an integral part of all human interactions. A parallel universe of sorts, the Metaverse seeks to overlap and integrate our physical lives with their digital counterpart. Owing to such a nature and vast scope, it is understandable that multiple metaverses co-exist and several companies work on versions of them, each operating on its own set of network protocols. Thus, in simple terms: the Metaverse operates on an interplay of: (i) *Virtual Presence*; (ii) *Augmented Reality* and (iii) *Blockchain Technology*.

Examples: While there is no single linked metaverse yet, there are plenty of platforms and projects that operate in a manner akin to that of a Metaverse. For instance, there is Decentraland, which combines crypto currencies and Non-Fungible Tokens (NFTs) with virtual real estate. Additionally, the digital world allows players to involve and take active roles in the governance of the platform. Many such platforms like Second Live, Axie Infinity, etc. exist. Basically, how we perceive most of the things physically, is being replicated virtually and will be

influencing/changing business dynamics and business strategies to a great extent.

Protection and Enforcement of Intellectual Property in Metaverse

Brand-owners are increasingly being encouraged to secure their IP in virtual medium. With the virtual reality becoming a business reality, physical businesses are now inclined to commercialize their brand value in Metaverse and the first step towards it is to apply, secure and protect the said IP for virtual exploitation. We are looking at the world where companies and individuals are earning profits by selling their goods without the need of having manufacturing facility and bearing the cost of production and raw materials e.g., Nike branded shows are being sold as NFTs and/or virtual goods for the online avatar to use it while playing games and/or otherwise.

American Express, for instance, has applied before the US Patents and Trademark Office (USPTO) to secure its IP and the application serves to cover, “*Assistance with electronic transfers of money in the metaverse and other virtual worlds; Banking services in the metaverse and other virtual worlds; Issuing and processing payments of virtual prepaid cards, virtual prepaid gift cards, virtual stored value cards, and virtual payment cards in the metaverse and other virtual worlds; Virtual currency exchange; Electronic transfer of virtual currencies etc.*”

Various proactive brands such as Nike, Converse, etc. have filed number of applications to secure trademark and patent rights before the USPTO to protect the use of their marks in the virtual space. The applications specify “Downloadable Virtual Goods” directed towards the creation and trade of NFTs. In order to cover the usage and trade in Metaverse, the blanket phrase “*for use in online and online virtual world*” and “*virtual environment*” is being commonly seen as part of such applications.

Recently, the entertainment company, Disney's patent for virtual-world simulator was approved by the USPTO. The technology purports to project three-dimensional images and the visual effects onto the physical world. Utilising this technology, visitors of Disney Park would soon be able to enjoy the pleasure of the Augmented Reality sans headset. The device instead focuses on the personalization of projections and experiences of the augmented reality.

Protection of Trade Marks as Virtual Assets in India

As there is no specific mention of the words 'Metaverse' and/or 'NFTs' in Nice Classification, currently, brands seeking protection in the online and virtual world are utilising relevant

description available under law to be able to protect sale of their goods and/or services in Metaverse. While such applications are being examined globally, outcome of the same would be applied in various other jurisdictions including India and such protection availed under existing law would be further explored and strengthened in times to come. A few relevant classification/description which can be used and/or availed under the Indian Trade Mark law is as under:

S.No	Classification	Particulars
1	Class 9	Downloadable virtual goods, namely, computer programs featuring footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys, movie stills, shape, label, device, accessories, merchandise, etc. for use online and in online virtual worlds.
2	Class 35	Retail store services featuring virtual goods, namely, footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys, movie stills, shape, label, device, accessories, etc; on-line retail store services featuring virtual merchandise, etc.
3	Class 41	Entertainment services, namely, providing on-line, non-downloadable virtual footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories for use in virtual environments.

Note: These descriptions are also used before USPTO, and marks have been registered.

The above table is not exhaustive but is mentioned only as a reference point to be able to understand the form of classification/description which can be used for such virtual goods and services.)

While the Metaverse is still developing, the challenges posed to Intellectual property in physical world is also presented in the virtual counterpart. Creation of NFTs and other digital assets, such as skins or apparels to the avatars makes protection of brand identity extremely critical in the virtual space. The increased accessibility of Metaverse also allows brands to extend their customer base and to appeal to a larger audience.

The fear and threat of infringement is quite real. It was only recently that two applications were filed by third-parties before

the USPTO to use Gucci and Prada logos in a range of metaverse-related arenas, which includes without limitation downloadable virtual clothing, and virtual clothing used in the virtual world. In such scenarios, to protect the brand identity and usage, companies would not only need a Metaverse presence but registered IP rights in Metaverse. Registration of such IP would also enable such brands to take necessary effective measures to combat piracy and infringement in Metaverse.

Metaverse – Precaution and Recommendations

Whilst the Metaverse has considerably a lot to offer in terms of creation of virtual goods and their trade across the world, the territory of Metaverse also suffers from unexplored legal issues. IP protections and threats to brand identity formulates just tip of the iceberg, as there comes increased challenges with concerns of data privacy, and lack of legal protections. Though the space of Metaverse is as exciting as is new, the brands and individuals alike must take the much-needed protections to prevent altercations.

Registration of Trademarks and other relevant IP is thus a must for any start-up, company or a brand aiming to build a strong presence in Metaverse, or even otherwise; Secondly, infringement of IP in Metaverse is as serious as infringement in the physical world and should be addressed with appropriate civil and/or criminal action to prevent dilution and/or erosion of mark and to prevent loss to one's business; and the number of trademark classes must be expanded so as to provide the highest possible protection to avail presumption of validity and ownership of the said IP in Metaverse.

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

What is Not Claimed is Disclaimed: Limitations on Filing Divisional Patent Applications in India



Ms. Sneha Gandhi

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Indian patent law follows the principle that every application for a patent shall be for one invention only, under Section 7(1) of the Patents Act, 1970 (the Act). Similarly, Section 10(5) requires that the claims of a complete specification must relate to a single invention, or to a group of inventions linked so as to form a single inventive concept. For determining whether a group of inventions relate to a single inventive concept, it does not matter if the inventions are claimed in separate claims or as alternatives within a single claim. Independent claims of different categories may relate to a single concept and may be allowed in one application, when they are linked and supported by the description.

Division of a Patent Application

A divisional application is divided out of the parent application. Under Section 16, an applicant may file a divisional application suo moto or to remedy the Controller's objections that the claims relate to more than one invention.

A divisional application may be filed if:

- the parent application contains a plurality of invention
- it is in respect of a pending parent application (an application ceases to be pending if it is granted or refused).
- it does not include any matter which is not disclosed in the parent.
- the scope of its claims does not overlap with that of the parent.

Once filed, a divisional application and its claims have the same filing date as its parent. Further, it is required that the complete specification of the divisional application specifically references the parent. For all purposes, a divisional application is treated as a substantive application, and hence, all statutory fees must be paid, including annuities.

Plurality of invention

A key requirement for dividing a patent application is that it must contain a plurality of invention.

A divisional application is not a means for continuing the prosecution of rejected claims, as held in *ExxonMobil Chemical Patents Inc. vs. The Controller of Patents, Mumbai (04.12.2020)*. Here, the Intellectual Property Appellate Board (IPAB) held that Section 16 does not mandate the revival of any deleted claim considered not patentable otherwise; but does mandate

dividing an application for "plurality of the inventions" under Section 10(5).

The case in *Boehringer Ingelheim International GMBH v. The Controller of Patents (C.A. [(COMM.IPD-PAT) 295/2022 & I.As.10369-70/2022]* pertained to a divisional application filed with a claim set that included claims based on voluntary amendments filed in the parent, and some new claims. The question was: could divisional applications be filed for claims that were not part of claims in its parent? The Delhi High Court concluded that "plurality of inventions" must clearly exist in the claims of the parent and within the scope of the parent specification. If applicants could file divisional applications based on disclosures in the complete specification, without these being claimed in parent applications, the fundamental patent rule of '**what is not claimed is disclaimed**' would be defeated. The application was thus rejected.

Cascading Divisional Applications

When filing a divisional to another divisional application, the same principles applicable to a divisional to a parent application apply here too. For example, divisional-to-divisional applications may be filed so long as the claims of the first divisional application contain a plurality of invention.

Similarly, a divisional-to-divisional must be filed before the grant or refusal of the first divisional application. The grant or refusal date of the parent application has no bearing on the validity of the divisional-to-divisional application.

Examination of Divisional Applications

To avoid double patenting, a divisional application is examined with respect to its parent. If two or more divisional applications are filed, the second application is examined with respect to its parent and the other divisional, examined earlier.

Where a divisional application is filed suo moto by the applicant, its claims must demonstrably relate to an invention distinct from that claimed in the parent.

Occasionally, the Controllers have rejected divisional applications for unity of invention in the parent even though the divisional was filed in consequence of an objection of unity of invention in the parent application. For example, in *National Institute of Immunology (OA/21/2011/PT/DEL)*, the applicant filed a divisional following objections regarding unity of invention in the parent. On examination, the Controller found that there was no plurality of invention in the parent, and rejected the divisional application. But, on appeal, the IPAB

noted that the filing was in response to the Controller's objection, and without remedial measures, the applicant should not be left in lurch; the divisional was thus allowed.

In *Procter and Gamble Company vs. Controller of Patents and Designs (OA/47/2020/PT/DEL)*, IPAB held that an objection to the claims of a divisional application would be permissible only if it was found that substantial amendments were made to the divisional that enlarged the scope of invention claimed in the parent.

Key Takeaways

Plurality of invention is a sine qua non for filing a divisional application and must exist in the claims of the parent

application in order for a divisional to be permitted. A divisional may be filed only after meeting certain conditions, and critically, it cannot be an excuse to have rejected claims in the parent reexamined. Once granted, the resultant invention is treated as an independent invention, and must meet all statutory fees and procedural requirements thereafter.

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



Prosecution of PCT National Phase Application in India in Light of the Treaty!



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The Patent Cooperation Treaty (PCT) facilitates patent protection for an invention in a large number of countries together by means of an international patent application. This international application can be filed by any applicant (a natural person or a legal entity) being a resident or national of a member state. This is a common platform which has the same effect of filing the same application in all the member state together, hence protecting the filing date. Under the PCT, an application undergoes substantive examination at the option of the applicant (either under Chapter I or Chapter II). As a result of this examination a preliminary examination report on Patentability (known as IPRP i.e., International Preliminary Report on Patentability) is issued by the authorities (ISA or IPEA depending on whether the applicant is selecting prosecution under Chapter I or Chapter II) under the PCT. This report accelerates the process of grant at the member states. Although the authority of granting the patent application still lies with a national patent office i.e., patent office of a member states.

At present there are about 156 contracting states¹ which are part of the PCT.

A few of the benefits of filing an international patent application under the PCT are as follows:

- One can secure the filing date for all the member states without filing separate applications in the member states individually on the same day.
- Once an application filed under the PCT; the applicant gets about 30/31 months to decide which countries (member states) to enter nationally. This provides time to the applicant to decide which are the countries to enter.
- A substantial part of the formal procedure/documentations are taken care of at the international phase under the PCT. Therefore, it is less burdensome for the applicant to submit all the similar documentation at the different national offices of the member states. It makes the procedure easy and simple for applicants.

India decided to join the PCT in 1998 together with the Paris Convention. India joined these two treaties together on 7 December 1998 with the intention to develop a world class IP ecosystem in the country by assisting business with Patent facilities in line with the other major jurisdictions. It is important to mention that India also joined TRIPS (Trade-Related Aspects of Intellectual Property Rights) in 1995. Since then, there have been major reforms in the Indian Patents Act of 1970. There have been three major amendments in the Indian Patents Act after 1995 viz. in 1999, in 2002 and in 2005. These amendments were made to comply Indian Patents Act with the

TRIPS guidelines and also with the PCT. In 2013 India was acknowledged as an ISA (International Search Authority) under the PCT. This was a good acknowledgement for India's developing IP ecosystem. In line with this, in 2013 substantive amendments were introduced in Chapter III (International Applications Under Patent Cooperation treaty) of the Patents Rules 2003. Particularly, Rules 19A to 19N has been added in the Patents Rules.

The Indian Patent office (IPO) has taken various positive steps in last 20+ years after joining the PCT. Delhi Patent office is designated as the ISA & IPEA to deal with the International Applications under the PCT. The infrastructures (including manpower) have also been developed to handle various requests and applications under the PCT. Over these years the number of patent applications filed in India under the PCT has substantially increased. This have definitely influenced the economic growth and business development in India.

Although India has taken several steps to implement the PCT procedures as laid under the treaty, there are a few areas on the grounds which have further scope for improvement. Some of those points are mentioned herein. For the sake of brevity only few selected points are discussed below.

Proof of right submission for National Phase application electing/designating India:

In case of PCT national phase application, applicants face difficulties in dealing with a few formalities which are already dealt with at the international phase. One such formality is the requirement to submit 'Proof of right'. In this respect applicants experiences varied practices by the different controllers from different branches of the patent office in India.

PCT Request (PCT/RO/101) provides an option to the Applicant for filing a Declaration under Rule 4.17 (ii) PCT as to the applicant's entitlement, as at the international filing date, to apply for and be granted a Patent for the purposes of the national law applicable in one or more designated States. Furthermore, Rule 51bis.2 (ii) PCT² also provides for when a Declaration under Rule 4.17 (ii) PCT³ is submitted at the International Phase by the Applicant, the designated office shall not ask or require any documents or evidence, unless it may reasonably doubt the veracity of the indications or declaration concerned.

Recently, in an appeal (OA/63/2020/PT/DEL⁴, Dow Agrosiences LLC Vs. The Controller of Patents, order dated 27th October 2020), on the same matter of "Proof of Right", the IPAB observed that - "proof of right" is met by filing of the declaration under Rule 4.17 (ii) of the PCT regulations...".

However, a few Controllers at different branch offices continue to ask for either proof of right OR notarization of the copies of the assignments even though a Rule 4.17 (ii) PCT declarations has been already provided at the international phase. This seems to be superfluous as the IPAB sets the precedents and applicants expect that the directives are to be followed by all the Controllers at the different branch offices.

National Phase Amendments at Indian Patent office as designated/elected office:⁵

An applicant can file various amendments during the international phase e.g., under Article 19, and Article 34 of the PCT. In addition to this, under Article 28/Rule 52 or Article 41/Rule 78 of the PCT, the Applicants can file amendments while entering into a National Phase before each designated/elected office. As per the Articles and Rules of the PCT as mentioned above, this amendment at the national patent offices can be done at the entry or within one month from national phase entry. The IPO seems to differ in this aspect. As it does not allow amendments under Article 28/Rule 52 or Article 41/Rule 78 of the PCT while entering national phase in India. Only deletion is allowed but not amendments with respect to modification of the claims, adding features of one claim into another etc. If the Applicant wishes to amend the claims (other than deletion) then they need to file Form 13 along with the requisite fees or it can be done while replying to the examination report at a later stage. This difference in approach which is a deviation from the PCT procedures and rule laid thereunder the treaty puts the Applicant in a disadvantageous position as compared to the equivalent application filed in other patent offices of other member states of the PCT.

Examination Report Issued by Indian Patent Office vs IPRP:

At the international phase under the PCT, at the option of the Applicant, the application undergoes a substantive search and examination procedure. This can be requested either under Chapter I or Chapter II of the PCT. At the result of this examination procedure, an examination report is issued which is known as IPRP as mentioned above. The IPRP is issued after a thorough search and examination. If the IPRP is positive i.e., claims are held to be novel and inventive then there are better chances of getting the patent application granted at the national patent offices. The decision of grant is left to the national patent office as patent rights are territorial in nature. However, in practice unless new prior art documents are cited by the national patent office, claims held as novel and inventive by the IPRP are generally held so also by the national patent offices as well, based on the IPRP. Of course, if there are new prior art documents which were not cited in the IPRP, the applicants are obliged to satisfy any objections raised by the national offices.

It has been observed that Indian national phase application with positive IPRP undergoing examination procedure at the Indian Patent office, in most of the cases face objections on novelty and inventive steps that are based on the same prior art documents cited in the international phase. Also, the

arguments presented by the Indian examiner are often substantially the same as the reasoning contained in the IPRP. However, the conclusion always seems to be different i.e., against the positive IPRP with respect to the same prior art documents and same arguments, the claims are often held as not inventive in the examination report issued by the Indian Patent office. Further, after an applicant respond to the examination report with the similar reply that has been provided at the international phase, the Controller accepts it. Therefore, it seems to be just a formality to raise the aforesaid inventive step objection and a duplication of work without adding any value. Of course, if there are new prior art cited, the applicant must take that into consideration while replying to the examination report. Also, if there are any India Specific objections on a given case e.g., under Section 3(d) or 3(e) that needs to be really taken seriously than spending time in duplicating the work that has already been concluded at the international phase.

In summary, the PCT intends to make the patent application and grants procedure less complicated and easy for the applicants who seek protection in a number of countries simultaneously without compromising on the quality. Therefore, there should be efforts from the national patent offices across the globe including India to facilitate this intention which is laid under the treaty. Some of the existing national procedural formalities could be amended to take advantage of the benefits of the PCT and so make them less burdensome for the applicants. It is expected that implementing the procedure adhering to the treaty would attract more applicants and hence will foster economic growth of the country.

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

1. https://www.wipo.int/pct/en/pct_contracting_states.html

2. <https://www.wipo.int/pct/en/texts/rules/r51bis.html>

3. https://www.wipo.int/pct/en/texts/rules/r4.html#_4_17

4. <https://patentsrewind.files.wordpress.com/2021/01/oa-63-2020-pt-del.pdf-proof-of-right.pdf>

5. *Amendments at Indian National Phase: In Harmony with PCT Standards?*; Akhila V P and Christy Bose; *Journal of Intellectual Property Rights* Vol 27, January 2022, pp 61-67.

Recent IP Law Developments Through IPD of the Delhi High Court



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After promulgation of the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021, present Tribunal Reforms Act, 2021, the Intellectual Property Appellate Board (IPAB) was dissolved which resulted in transfer of all matters pending before the IPAB to the respective High Courts or Commercial Courts as per jurisdiction. The Delhi High Court, in tandem with the international practice of having dedicated IP Courts, like those prominent in United Kingdom and Japan, became the first court to come up with dedicated Intellectual Property Division (IPD) to deal with the enormous number of Intellectual Property (IP) matters pending and being filed on a regular basis. IPD is established by the Delhi High Court (Hon'ble Court) after careful and detailed deliberation by the Committee comprising of Hon'ble Ms. Justice Prathiba M. Singh and Hon'ble Justice Sanjeev Narula chaired by Hon'ble Mr. Chief Justice DN Patel, vide an order dated 7th July 2021 to deal with all IP matters.

IPD matters in Delhi are now governed under Delhi High Court Intellectual Property Rights Division Rules 2021, Delhi High Court (Original Side) Rules, 2018, Civil Procedure Code, 1908 and The Commercial Courts Act, 2015 along with other substantive provisions governing IP matters.

There have been quiet a handful of legal developments in the field of IP since the inception of IPD. The most prominent decisions rendered by IPD that has changed the landscape of IP prosecution and litigation, as we know it, are summarised below:

Patents

Best Agrolife Limited V. Deputy Controller of Patents & Anr.

Date: July 7, 2022

The Hon'ble Court held that non-consideration of grounds agitated by the Opponent in a pre-grant opposition by the Controller of Patents (hereinafter 'Controller') and grant of a patent without notifying the amendments made by the Patent Applicant constitute violation of principles of natural justice. Similar decision was given in Natco Pharma Limited V. Union of India & Ors. Vide order dated July 12, 2022.

Nippon A&L Inc. Vs. The Controller of Patents

Date: July 5, 2022

Setting aside the Controller's decision refusing the patent application under Section 59(1) of the Patents Act, 1970 (hereinafter "The Patents Act"), the Hon'ble Court held that amendments to a patent specification or claims prior to grant ought to be construed more liberally than narrowly keeping in mind that the amended claims are not inconsistent with the earlier claims in the original specification. It further opined

that "an invention before and after amendment need not be identical in case of amendment before acceptance so long as the invention is comprehended within the matter disclosed."

Agriboard International LLC Vs Deputy Controller of Patents and Designs

Date: March 31, 2022

The Hon'ble Court held that the unreasoned and short refusal order of the Controller under Section 2 (1) (ja) of the Patents Act i.e., lack of inventive step is contrary to the principles of natural justice and laid down three essential elements which have to be discussed by the Controller before rejecting a patent application on the ground of lack of inventive step, which are

- the invention disclosed in the prior art;
- the invention disclosed in the application under consideration; and
- the manner in which subject invention would be obvious to a person skilled in the art.

European Union V. Union of India

Date: May 31, 2022

The Hon'ble Court held that if the patent applicant did not intend to abandon the patent application and was actively pursuing the patent application if the Court is convinced that a mistake on part of the patent agent occurred with no fault on part of the applicant, the Court may allow extension to file the response to First Examination Report and take a liberal approach.

Boehringer Ingelheim International GMBH versus The Controller of Patents & Anr.

Date: July 12, 2022

The Hon'ble Court held that a divisional application cannot be filed when there is no "plurality of inventions" in the claims of the parent application which must be seen from the claims of the parent application. It was also held that a divisional application cannot be considered as a remedy for the refused amendment in claims under Section 59 of the Patents Act, if they do not fall within the scope of claims as filed with the parent application.

DS Biopharma Limited vs The Controller of Patents and Designs & Anr.

Date: August 30, 2022

The High Court clarified that an objection raised under Section 3 (d) of the Patent Act, 1970 cannot be maintained until the

alleged 'known substance' is first identified by the Controller in his objections. It observed that Section 3(d) bars patentability of a 'new form' of 'a known substance', without establishing enhanced therapeutic efficacy and that for the said objection to be raised, the basic precondition would be the identification of the 'a known substance'. This burden is on the Controller. Once the known substance is identified, the Patent Applicant only then needs to establish therapeutic efficacy.

Dr. Reddys Laboratories Limited & Anr. Vs. The Controller of Patents and Designs and Anr.
Date: April 12, 2022

The Hon'ble Court held that filing of a revocation petition could be done at any point in time when such a person's interest either arises or continues during the life or term of a patent.

Trademarks

Pawandeep Singh vs The Registrar of Trademarks & Anr.
Date: March 23, 2022

The Hon'ble Court observed that refusal of a trademark without even affording an opportunity of hearing to the applicant would be contrary to the natural principles of justice and gave additional directions to the Controller General of Patents, Designs & Trademarks (CGPDTM) to devise a proper mechanism for holding hearings.

Excitel Private Limited V. Registrar of Trademarks
Date: July 18, 2022

The Hon'ble Court held that that rejecting extracts from websites on the ground that they are not "primary evidence" is an incorrect approach since the genuineness of these extracts can be assessed by the Registrar by accessing the websites at the time of hearing. If, despite this verification, however, the Registrar has doubts regarding the evidence, he/she can, at best, ask the applicant to support such evidence with an

affidavit under the Information Technology Act, which allows reliance on website printouts.

Vishal Pipes Ltd V. Bhavya Pipe Industry
Date: June 3, 2022

The Hon'ble Court while clarifying that in all IPR cases where the valuation ought to be Rs 3 lakh and above instituted before District Courts, would first be instituted before the District Judge (Commercial). The Hon'ble Court also held that in case of any IPR suits valued below Rs 3 lakhs, the Commercial Court shall examine the specified value and suit valuation to ensure it is not arbitrary or unreasonable and the suit is not undervalued. It further held that the suits which may be valued below Rs.3 lakh and continue as non-commercial suits, shall also continue to be listed before the District Judge (Commercial), but may not be subjected to the provisions of the Commercial Courts Act.

The latest decision of the **Division Bench of this Hon'ble Court in Satyanarain Khandelwal vs. Prem Arora dated July 18, 2022**, is clarificatory and overriding in nature to this judgement wherein it was held that the Commercial Courts Act, 2018 shall not apply retrospectively. This caused turbulence in courts and delay in matters with retransfer of matters from commercial to non-commercial and vice versa within a period of 2 months.

Although the IPD is in its nascent stage, however, within a short span of time, the Hon'ble Court has effectively navigated length and breadth of the IP matters and through judicial activism has embarked on a journey to set the course of IP Prosecution and Litigation right. Thus, it has sparked a ray of hope amongst IP owners that the pendency issues in the IP offices in India can be overcome with this robust mechanism deployed by the Hon'ble Court to ensure that justice is administered effectively.

Disclaimer: This article contains the views of the authors 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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- Several other Benefits

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M/s Knit Pro International v. The State of NCT of Delhi & Anr - Supreme Court, August 2022

The Supreme Court of India clarified the nature of offences under Section 63 of the Copyright Act, whether they are cognisable or non-cognisable. Section 63 of the Copyright Act provides punishment of imprisonment for a term which shall not be less than six months but may extend to three years and with a fine. The Court held that considering the Part II of the First Schedule of the CrPC, if an offence is punishable with an imprisonment of three years but less than seven years, it shall be classified as a cognisable offence. Therefore, the Supreme Court directed the criminal proceedings to proceed with offences under Section 63 of the Copyright Act treated as cognisable and non-bailable.

Bright Lifecare v. Vini Cosmetics - Delhi High Court, August 2022

In this case, the Delhi High Court deliberated on whether intellectual property rights can be granted over elements of an advertising campaign. The plaintiff Bright Lifecare registered multiple slogans as trademarks which used the word "Zid/Ziddi." These slogans were used for advertising and promoting their product under the name MuslceBlaze. The defendant Vini Cosmetics promoted their deodorant using the slogan "Ziddi Perfume." Further, both advertisements had a similar black and yellow dominant colour scheme. The plaintiff claimed that the similarity created a deceptive association between the products. Relying on the existing case laws, the Court observed that such similarities gave an impression that both the advertisements "emanated from the same source." The laudatory epithets around the word "Zid" were distinctive and signified its source. Additionally, a substantial similarity made it apparent that the defendant's advertisement was an impression of the plaintiffs. The Court ordered the removal of the impugned advertisements from YouTube.

Gogoro Inc vs The Controller of Patents And Designs & Anr - Delhi High Court, August 2022

The Delhi High Court reiterated that the Controller of patents must provide detailed reasoning while rejecting patent applications on the grounds of lack of inventive step. The reasoning should include a discussion on prior art, the subject invention and the manner in which the subject invention would be obvious to a person skilled in the art. The appellant asserted that the Controller could not satisfactorily explain how a skilled person would find the invention obvious. The Court opined that this was contrary to Section 2(1)(ja) of the Patents Act, 1970, rendering the decision unreasoned and ordering the Controller to re-examine an amended patent claim of the appellant.

Neetu Singh v. Telegram FZ LLC & Ors - Delhi High Court, August 2022

The Delhi High Court directed Telegram to disclose details of channels violating copyright laws in a sealed cover. The Court ruled that the right to free speech and privacy cannot be used as a defence to escape liability for illegal actions. The Court also opined that disabling the infringing channels was an insufficient remedy as identical channels surfaced with ease. Further, it was observed that copyright owners could not be left without a remedy merely because Telegram's servers are located in Singapore. A need to harmoniously construct the provisions of the IT Act and the Rules and rights of copyright owners was underscored.

Gems Bond v. James Bond - Delhi High Court, August 2022

The Delhi High Court finally passed a permanent and mandatory injunction in favour of the plaintiff Cadbury in a case going back to 2005. Cadbury owns the trademark registration "Gem" and holds copyright registration of a character called "Gems Bond." The defendant Neeraj Food Products, released a product called "James Bond," which is alleged to be deceptively similar to Cadbury.

The Court observed that both products were similar as they were chocolates. Further, the class of customers and the price range were also identical. The Court stated that these factors should be considered to analyse if there is a likelihood of confusion. Hence, the ruling went against the defendants due to deceptive similarity.