



Delhi High Court
Intellectual Property Division
Annual Report 2022-23





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पीयूष गोयल
PIYUSH GOYAL



वाणिज्य एवं उद्योग,
उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण तथा
वस्त्र मंत्री, भारत सरकार
MINISTER OF COMMERCE & INDUSTRY,
CONSUMER AFFAIRS, FOOD & PUBLIC DISTRIBUTION AND
TEXTILES, GOVERNMENT OF INDIA

MESSAGE

I am delighted to share my thoughts on the occasion of this year's 'World Intellectual Property Day' which has the theme of '*Women in IP, Accelerating Innovation and Creativity*'. This theme is particularly significant for India as it has moved from women development to women-led development. Women today are at the forefront of innovation and are contributing significantly to job creation, economic growth, and technological advancement.

Under the dynamic leadership of Hon'ble Prime Minister Shri Narendra Modi, The Government of India recognises the importance of protecting and promoting intellectual property (IP) rights and has undertaken a series of steps to strengthen India's IP regime. This includes the launch of the National Intellectual Property Rights Policy in 2016 and the recently introduced Jan Vishwas Bill to enhance the Ease of Living and Ease of Doing Business in India amongst others.

India has made considerable progress in building a robust IP ecosystem that includes establishment of specialized IP courts, implementation of online filing systems, and the expansion of IP education and awareness programs. India's massive gains in the Global Innovation Index (GII) point to its improved IP ecosystem and we further aim at being in a leading position in the GII. Collective efforts of government, academia, industry, legal fraternity and technology ecosystem are all aiding India to move closer to achieving this goal.

The Ministry of Commerce and Industry remains committed to increase transparency, integrity, efficiency and speed in India's IP ecosystem and streamlining of patent offices and processes. I urge all stakeholders to create a world where intellectual property is respected, protected, and rewarded.

Piyush Goyal



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Hima Kohli

Judge
SUPREME COURT OF INDIA

MESSAGE

1. On World IP Day, I extend my warmest greetings to all those who cherish, protect and promote the power of innovation, ideas, and creativity. Intellectual property is the cornerstone of our modern society. This is not just about recognizing and rewarding creativity, ingenuity and innovation. It is essential for the growth and development of India, as it plays a crucial role in fostering economic growth and development while safeguarding the interests of the inventors, authors, and creators.
2. The importance of protecting intellectual property has been acknowledged world wide. We must recognise the significant role played by intellectual property rights in the development of our nation. India, one of the world's fastest-growing economies, is at the forefront of technological advancements. The Indian judiciary has also been proactive in safeguarding the rights of creators and innovators, thereby promoting innovation and creativity in the country. I must commended the initiative taken by the Delhi High Court in establishing the first IP Division amongst the High Courts pan-India, which is dedicated to exclusively adjudicate IPR cases. I am confident that this novel initiative would propel India as the go-to jurisdiction for adjudication of disputes across multiple jurisdictions.
3. As stakeholders in the growth of India, we as a society, and more particularly, as a part of the legal fraternity are committed to fostering an environment that encourages innovation and creativity at every step. This includes ensuring that intellectual property rights are respected and enforced with vigour. At the same time, one must remember to strike a balance between the interests of innovators and creators and the overarching interest of the society and the community as a whole. In other words, the benefits of innovation must be accessible to all, in particular, the developing nations, and intellectual property rights should not become a barrier to progress.
4. On this World Intellectual Property Day, where the theme for this year is '*Women and IP. Accelerating innovation and creativity*', let us celebrate the leadership qualities of Indian women in driving the thrust of innovation and power of ideas in shaping a modern India. Empowering women in intellectual property is not only a facet of social justice but a means to boost innovation and creativity. By removing the hurdles faced by them and providing them adequate support, the potential of women can be tapped effectively as creators and innovators, thereby accelerating advancement giving a fillip to the fiscal development and contributing to the economic growth of the nation.
5. On this World IP Day, let us renew our commitment to fostering an ecosystem that stimulates innovation, supports creativity and encourages progress while ensuring that the entire society can reap the benefits of intellectual property.

[HIMA KOHLI]
JUDGE
SUPREME COURT OF INDIA

NEW DELHI
APRIL 19, 2023



Justice Satish Chandra Sharma
Chief Justice



HIGH COURT OF DELHI
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MESSAGE

Intellectual Property (IP) stands for creativity, innovativeness, and ingenuity. The Intellectual Property Division of the Delhi High Court symbolises these values within the Indian judiciary. It is a first of its kind framework evolved to exclusively adjudicate Intellectual Property Disputes brought before the High Court. As I write to commemorate the completion of first year of the IP Division on the occasion of 'World IP Day, 2023', I would like to commend everyone who visualised and worked towards making the IP Division a 'trademark' of the Delhi High Court.

A little over a year back, with the increasing number of trademark, and patent litigations being filed, along with the abolition of the IPAB, the Delhi High Court led the way by establishing the first Intellectual Property Division in India. In its one year of existence, the Division has been instrumental in upholding and protecting IP Rights, and promoting a vibrant IP adjudication ecosystem in India.

My experience as Chief Justice of this Court has shown me that a significant feature of the Division is its ability to deal with varying kinds of matter such as Writ Petitions, Appeals, Civil Revision Petitions, Civil Suits, Civil Original Petitions relating to Intellectual Property Disputes, under one umbrella. The Division has brought jurisprudential coherence, clarity, and consistency in IP jurisprudence.

It is envisioned that the IP Division will shape the legal landscape for Intellectual Property in India in years to come.

(Satish Chandra Sharma)





SIDDHARTH MRIDUL
JUDGE
HIGH COURT OF DELHI

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TEL. : COURT : 23382189, FAX : 23383375 RES. : 21410817

MESSAGE

It is my pleasure to extend warm greetings to all of you on this year's World Intellectual Property Day.

The theme for this year's event, "Women in Intellectual Property, Accelerating innovation and creativity" is particularly significant for India, as women play a crucial role in our economy.

Women's representation in the field of Intellectual Property in the legal field has been gradually increasing over the years. There has been a significant increase in the number of women working in IP offices across India, in IP management roles in corporations, research institutions, and other organizations, where they are responsible for IP strategy, portfolio management, licensing and technology transfer.

One of the finest examples of a women-led innovation in India is undoubtedly the Mangalyaan Mission on part of the Indian Space Research Organisation, where several women scientists played significant roles in India's maiden mission to Mars. The photo of these saree-clad super-woman crying tears of joy, hugging each other after success of Mars Orbiter Mission (MOM) certainly inspired many Indians.

However, there still remains a gender gap in the field of intellectual property, with fewer women compared to men being recognized as inventors, creators, and owners of IP assets. It is imperative to address and abridge this gap and promote gender diversity in IP, including encouraging women to pursue careers in STEM fields and entrepreneurship.

There is a need for diligent and continued efforts to promote gender diversity and inclusivity in the IP sector in India through policy interventions, awareness campaigns, and capacity-building programs. Encouraging women's participation in IP related events, promoting women's leadership roles, and providing support for career development and advancement can further enhance women's participation and contribution in IP in India.

On this World Intellectual Property Day, let us renew our commitment to, promoting gender-responsive policies, providing support and opportunities, and creating an inclusive IP ecosystem that values and protects women's contributions to innovation and creativity.

(Siddharth Mridul)



JUSTICE YASHWANT VARMA



HIGH COURT OF DELHI
Sher Shah Road
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011-23383188

19 April 2023

MESSAGE

It is with great pride that I pen this message in recognition of the IP Division of the Delhi High Court having achieved yet another milestone. As we commemorate the World IP Day this year, I recall how our High Court established the first IP Division of the country on 07 July 2021 and the distance it has travelled since then. I am confident that it shall continue to make significant contributions in the development of IPR jurisprudence in our country and meet the myriad challenges of the future.

Best wishes,

A handwritten signature in black ink, appearing to read "Yashwant Varma".

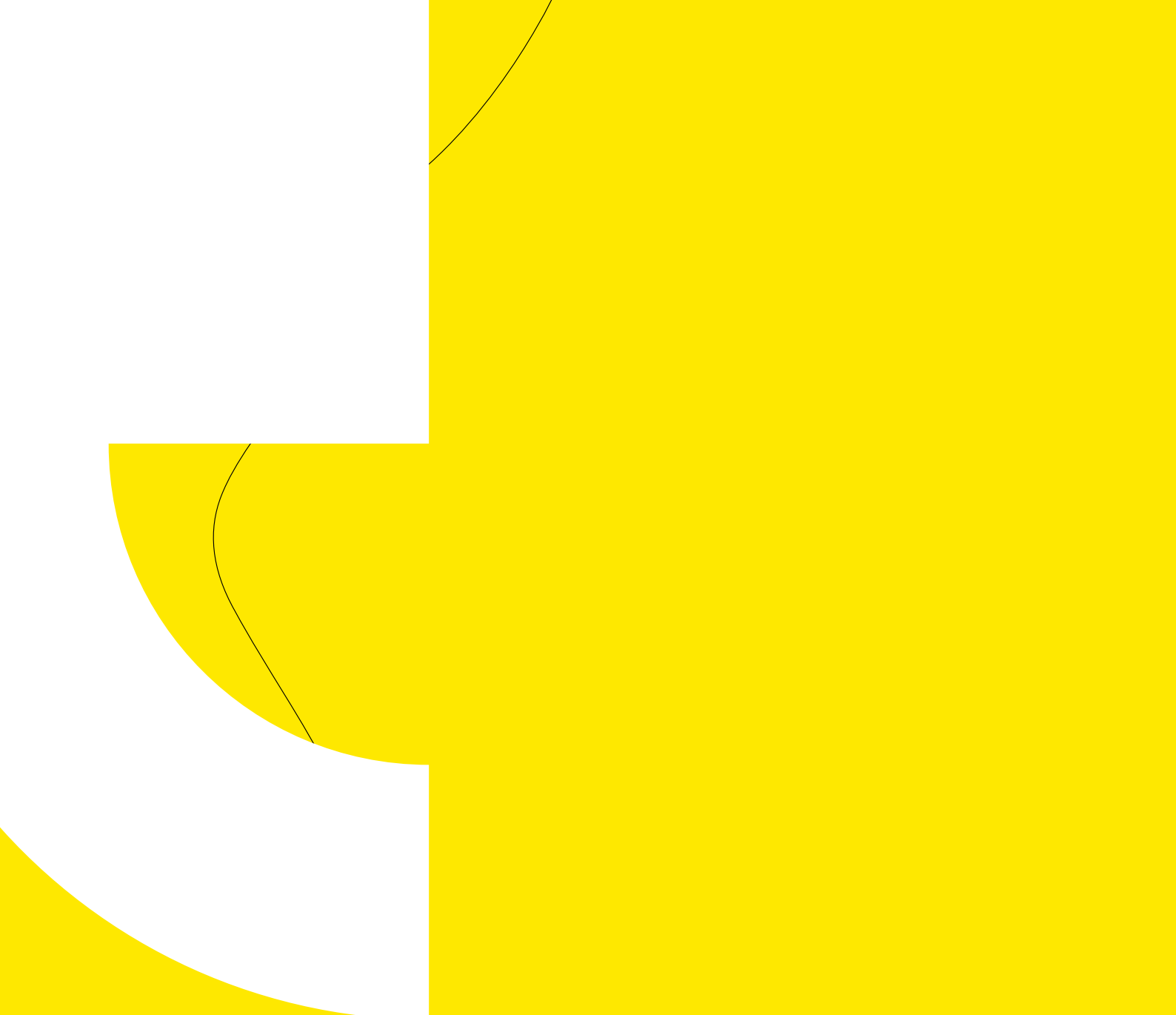
Yashwant Varma

Judge In Charge (Original Side) Delhi High Court

and

Chairperson, Tribunal Reforms &

IP Division Committee



EXPERIENCES
OF THE JUDGES
STEERING THE
IP DIVISION



Justice Prathiba M. Singh

Justice Prathiba M. Singh completed her 5-year law course from University Law College, Bangalore. She graduated as the 1st Rank holder from Bangalore University and represented India at the Philip C. Jessup Moot Court competition in Chicago, USA. After her graduation, she was offered the ODASSS scholarship by the Cambridge Commonwealth Trust to study LL.M. at the University of Cambridge (U.K.). She enrolled with the Bar in 1991.

Before being elevated to the Bench, she was a leading Intellectual Property lawyer in India. She had the distinction of handling landmark matters in all areas of IPR laws including patents, trademarks, designs, copyright, plant varieties, internet laws, etc. As the Managing Partner of Singh & Singh, she advised clients and handled cases relating to commercial disputes, arbitration, telecom, broadcasting laws, media laws, writs, regulatory issues, education, etc. During her years of practice, she regularly appeared before the Hon'ble Supreme Court of India, High Court of Delhi, TDSAT, IPAB, Trademark and Patent Offices.

She was appointed as Amicus Curiae by the High Court of Delhi to streamline the working of the Copyright Office. She was also appointed on a High-Level Committee for streamlining of Patent examinations. She was invited as an expert to present views to Parliamentary Committees considering amendments to the Patents Act in 2002, Copyright Amendment Act, 2012, Geographical Indications Act, etc. She was also a member of the CII National Steering Committee on IPRs.

Justice Singh was designated as a Senior Advocate by the Delhi High Court in December 2013.

The Prathiba M. Singh Scholarship for LL.M. students was instituted at the University of Cambridge in 2013 for students who have secured admission at Cambridge, for pursuing their LLM course.

She was a member of the IPR Think Tank which was entrusted with the momentous task of drafting India's first 'National IPR Policy' which was released in May, 2015.

She was a member of various professional bodies including SCBA, DHCBA, INTA, APAA, AIPPI, IPAA, IPLPA, and Telecom Lawyers Association. During her tenure as the President of APAA (Indian Group), several important initiatives were taken including filing of a writ petition seeking constitution of the IPAB as also the creation of the Delhi court-room complex for the IPAB.

Various awards conferred to her include, 'IP Litigator of the Year, 2012', the 'Asia Women in Business Law Award' given by Managing IP for excellence in Litigation, 'IP Lawyer of the Year, 2013' by Legal Era, 'Best IP Senior Counsel of the Year - 2014' by Legal Era, 'Woman Lawyer of the Year, 2015' by the Indian National Bar Association, and 'Most Powerful Women in Business, 2018' by Business Today.

She was elevated as a Permanent Judge of the High Court of Delhi on 15th May 2017.

Justice Singh was the Chairperson of the Committee that recommended the constitution of the 'Intellectual Property Division' in the Delhi High Court, post the abolition of the IPAB. The Committee also drafted the "Delhi High Court Intellectual Property Rights Division Rules, 2022" which were notified on 24th February, 2022.

Justice Singh was also the Chairperson of the 'Patent Committee' of the Delhi High Court which drafted the "High Court of Delhi Rules Governing Patent Suits, 2022."

Recognising her contribution to the development of IP law, Managing IP, a leading global publication, has rated Justice Singh amongst the '50 Most Influential People in IP' for two consecutive years, i.e., 2021, and 2022.

Justice Singh is a Member of the Advisory Board of the Centre for Research in Intellectual Property, MNLU, Mumbai.

In the year 2022, Justice Singh became the first Indian judge to be elected as an Honorary Fellow of Hughes Hall, University of Cambridge.

Vision for IP Divisions in High Courts in India

By Justice Prathiba M. Singh

The age-old proverb ‘*Necessity is the mother of invention*’ summarizes the journey of the creation of the Intellectual Property Division (IPD) in the Delhi High Court. The abolition of IPAB by the Tribunals Reforms Act, 2021, created a sort of crisis in the intellectual property ecosystem in India. The Delhi High Court took the initiative of converting this crisis into an opportunity by creating the IPD. The journey from the creation of the IPAB to the IPD has been summarized by me, in the article titled ‘*The ‘Home Coming’ - From the IPAB to the IPD*’¹.

The purpose of this piece is to lay out the future vision for IPDs in India. One of the most important features of the IPD is that it is a ‘*Specialised Division without Specialised Judges*’. It is a division which has a unique framework for its functioning and dispensation. The IPD, as experience has shown, is not manned necessarily by IP expert Judges but Judges from varying practice areas during their lawyer days. The IPD creates a uniform, consistent and exclusive framework for dealing with IPR matters, though the judges may be assigned to the IPD on a circulating basis.

The jurisprudence developed by the IPD over the last one year would show that it is not necessary for judges to have IP expertise to be able to render path breaking judgments. The framework of the IPD, coupled with the assistance from the Bar has been sufficient to adjudicate even complex IPR disputes requiring technical inputs. The IPD has created a backbone for the structure of IP adjudication in India. The Delhi High Court Intellectual Property Rights Division Rules, 2022 (‘IPD Rules’) have been framed by adopting the best practices from several countries, and they have been synergistically blended with the Code of Civil Procedure, 1908 and the Commercial Courts Act, 2015 (‘2015 Act’).

The Rules of the IPD have been recently referred to and commended in a judgement of the Division Bench of the Delhi High Court in *Intex v. Ericsson*². It is indeed a matter of pride that the creation of the IPD compelled the Parliamentary Standing Committee, which had earlier recommended bringing back the IPAB, changing its recommendation and suggesting setting up of such dedicated IP Benches across the country as an “*alternative solution to resolve IPR cases*”³. Thus, the vision of the IPD has been succinctly sown as the seed for the future growth of IP adjudication in India.

1 Justice Prathiba M. Singh, ‘The Home-Coming- from the IPAB to the IPD’, in Delhi High Court, *National Seminar on Adjudication of IPR Disputes in India* (Registrar General of Delhi High Court 2022) 19

2 2023:DHC:2243-DB

3 Department Related Parliamentary Standing Committee on Commerce (Rajya Sabha, Parliament of India), Action Taken by Government on the Recommendations/ Observations of the Committee contained in its One Hundred and Sixty First Report on “Review of the Intellectual Property Rights Regime in India,” Report No. 169, April, 2022/ Chaitra 1944 (Saka), April 6, 2022, para. 3.12.

The Patents Act, 1970 along Patents Rules, 2003 and the High Court of Delhi Rules Governing Patent Suits, 2022 contemplate the creation of a panel of advisors/experts to assist the Court in patent cases. One of the salient features of the IPD is that the Rules recognize the need for technical expertise at various levels-

- Researchers – attached full time to the IPD
- Panel of Scientific experts
- Scientific Advisors

The process for engagement of such researchers is currently underway in the Delhi High Court.

In the field of patents, simplicity has to be the hallmark. One of the first steps going forward for the IPD would therefore be the creation of National Panel of Scientific Advisors ('National Panel') whose expertise can be utilized across the country in any IP dispute irrespective of the Court where such matter is being adjudicated. The said National Panel of IP experts/scientific advisors could be from various disciplines including Engineering, Physical Sciences, Biological Sciences, Economics, Accountancy etc. It is hoped that such National Panel could also include national and international experts. Thus, for example, in a case relating to a patented chemical process filed before either a Commercial Court or the High Court, if the Court requires expert assistance, any expert from the National Panel could be engaged for that specific case. The creation of such a National Panel may be undertaken with the assistance of the National Judicial Academy.

Recent trends in India have shown that more and more Indian startups, MSMEs, etc. are filing patent applications. The initiatives undertaken by the Government have been a major boost to such entities. The said initiatives include modernization of the IP office, reduction of legal compliances, facilitation of IP filings for startups, women entrepreneurs, SMEs and educational institutions. These initiatives have shown a trend which has resulted in a 46% growth in domestic filings of patents in India when compared from filings in 2016 to 2021⁴.

India has historically been a knowledge-based economy – where knowledge was derived both from scriptures as also from modern scientific advancements. The recent trends in IP filings would show that this hallmark of India having been a knowledge-based economy historically, is further cemented in the modern world. This is clear from the increase in the number of startups which were a meagre 452 in 2016 which has burgeoned to almost 85,000 in 2022⁵.

This growing ecosystem is going to prove to be the biggest challenge for IP administration and adjudication frameworks. To meet this wave of patent filings, there needs to be a complete overhauling and increase in manpower at the Indian Patent Office. Apart from the strengthening of IP administration, Courts will also have to work an extra mile to be able to cater to large-scale patenting that is going to happen over the next ten years. The 2015 Commercial Courts Act has proved to be a huge success with expeditious disposal being its signature feature, without focusing on procedural technicalities. The features of the 2015 Act

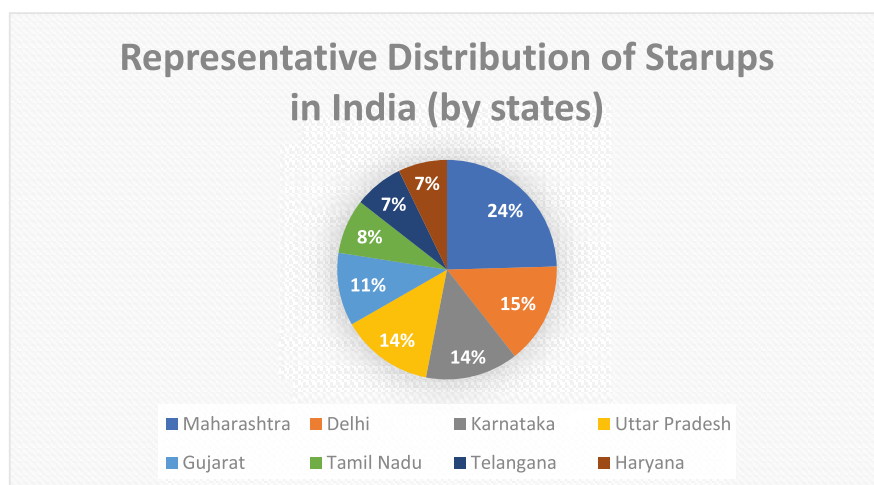
4 Press Information Bureau, 'India climbs to the 40th rank in the Global Innovation Index of WIPO' <https://www.pib.gov.in/PressReleaseDetailm.aspx?PRID=1863536>

5 Press Information Bureau, 'India is emerging as the land of Job Creators', <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1894302>

such as strict timelines for filing of defence, summary judgments, case management hearings are now got deeply entrenched within the Commercial Courts system. This coupled with the setting up of IPDs would become a necessity going forward.

The Delhi High Court has three Single Judges who exclusively deal with IPR matters, and the Roster of the High Court specifically assigns Appeals to one IP Appellate Division. Recently, the Madras High Court has announced and launched the setting up of its IPD exclusively dealing with IPR matters⁶. The pattern of establishing dedicated IPDs would have to be taken up and continued with the same vigor as has been seen in the last one year.

A recent judgment of the Supreme Court in *S.D Containers Indore v. M/s. Mold Tek Packaging Ltd*⁷, has also shown that similar IPDs would be required in the future in almost in all the High Courts where commercial suits relating to Patents and Designs are being filed. A unique feature of Patents Act, 1970 and the Designs Act, 2000 is, that whenever issues of invalidity of the patent or design are raised, the matter would have to be transferred to the High Court. In *SD Containers* the Supreme Court held that even in those High Courts which are not conferred with Original Jurisdiction, Patent and Design matters can be dealt with at the High Court level. In addition, revocation petitions are likely to be filed wherever the effect of the patent is felt as has been held in *Dr. Reddy Laboratories & Ors. v. The Controller of Patents, 2022/DHC/004746*. Thus, there is likelihood of a larger number of patent and design suits being filed outside the four jurisdictions of Delhi, Bombay, Madras and Calcutta. Wherever R & D is taking place and the IP ecosystem is strong, such High Courts are likely to start receiving IPR cases for adjudication. The geographical distribution of startups in India would show that startups are proliferating not just in the Metropolitan cities but are distributed all across the country. A representative chart of the distribution of Startups in India State-wise is set out below:



Thus, in the immediate future, IPDs may be required in the High Courts of Karnataka, Gujarat, Telangana and Allahabad. Instead of waiting for such cases to be filed and thereafter creating the required framework, High Courts ought to start considering whether the same should be created in advance. Patents filed by these startups, MSMEs and other entrepreneurs in the last five years, would be reaching the stage of Grants. The burgeoning number of granted patents also means that there would be a sharp increase in the patent related disputes.

6 Madras High Court Intellectual Property Rights Division Rules, 2022, <https://www.hcmadras.tn.nic.in/IPR%20gazette.pdf>

7 [2020] 12 S.C.R. 1104

Disputes in respect of patents need not be only infringement disputes, but also contractual disputes relating to rights *qua* patents due to funding, international disputes as to rights in foreign countries, etc. Thus, at least in the area of patents, High Courts ought to be geared up to deal with these disputes.

Apart from the above discussed issues, some of the other features that IPDs ought to possess include:

- i) Trials being conducted by the Courts themselves;
- ii) Mattes proceeding to final arguments immediately on the closure of recording of oral evidence;
- iii) Alacrity in recording of evidence by using transcription facilities;
- iv) Allotment of time slots for arguments which ought to be adhered to by lawyers.

One of the biggest grievances of Judges in the IPD is the fact that lawyers in IPR matters tend to expand their arguments and consume disproportionate time even in cases involving small issues. This practice ought to be avoided and Judges in the IPD should be able to fix time slots for oral submissions, which would be adhered to by lawyers. Moreover, lawyers in the IPD ought to make efforts not to re-open settled propositions of law, only with a view to confuse the issues.

Pleadings in IPR cases over the years have become extremely verbose and voluminous. It is usual to see Plaints and other pleadings that are 60 to 70 pages long even in simple trademark cases. The hallmark of pleadings is preciseness and brevity. Thus, in IP cases, barring patent cases where the pleadings could be longer than usual, an attempt ought to be made by counsel to keep the pleadings crisp and short. In the High Court, I specifically recall trademark infringement and passing off complaints being just four to five pages long but, gone are those days.

One positive feature of IPR suits is that a large number suits don't go to trial except patent disputes. There could be several reasons for this. Some share of the credit goes to the Alternate Dispute Resolution (ADR) mechanisms. It is noticed that use of ADR mechanisms in IPR matters is extremely successful and the statistics show that in the Delhi High Court Mediation and Conciliation Centre around 80% to 85% of referred cases are settled.

One other reason for quick disposal of IPR matters is the legislative recognition for refund of court fee when settlement takes place. In a number of IPR cases involving single or small entrepreneurs and sometimes even in cases involving well-known marks, when the Plaintiff feels that the possibility of recovering damages due to the financial standing of the Defendant is not very high, parties reach a settlement. Court fee is then returned to the Plaintiff⁸.

One area where there is still some level of uncertainty is in the case of arbitrations in IPR disputes. Owing to the fact that IP rights are rights *In Rem*, whenever challenges are raised for validity of IP rights, such challenges are not arbitrable. Moreover, the field of arbitration is sufficiently crowded with construction related contracts, international commercial arbitration,

8 See *Nutan Batra v. M/s. Buniyaad Associates*, 2018 (255) DLT 696.

commercial disputes, bank disputes, statutory arbitrations, government arbitrations, etc. Thus, in the field of IPR, except where there are contractual disputes which are involved, such as licensing, franchising etc., arbitration may not be a feasible or alternate dispute resolution mechanism.

Considering the efficiency and consistency of decisions emanating from the IPD as also from the High Courts and Commercial Courts, IP owners may find that commercial suits are a more viable and a cost-effective mechanism rather than arbitration.

The vision for IPDs over the next decade, would include the following:

- i) Establishment of IPDs at least in 10 to 15 High Courts in the country;
- ii) Creation of a national coordination panel for adoption of best practices in Commercial Court and IPDs across the country;
- iii) Creation of a robust scientific panel of advisors for use by Court across the country;
- v) Speedy adjudication of IPR disputes including patent cases which involve technical issues;
- vi) Speedier trials and the culture of granting damages in IPR cases;
- vii) Using of modern methods of recording evidence such as hot tubbing, transcription of cross-examination, transcription of arguments, video conferencing, etc.
- iv) More and more domestic inventors, single inventors, small entrepreneurs, small and medium entities, women innovators filing patents, creating wealth, surrounding patented innovation and seeking enforcement of their IP rights. India can then truly unleash the potential of the bottom of the pyramid;

The future of IP adjudication would be strengthened if there is adequate and high-quality human resource. The said human resource would have to be created in the form of lawyers who have the required specialisation, and are able to draft and argue complex technical matters. There is also insufficiency in high quality experts to assist in Patent cases and IPR cases involving technical issues. Most patents are still drafted internationally and are modified for filing in India. Thus, there is a need to focus on creating a pool of quality patent agents and legal practitioners as well.

India should become the hub for drafting of high-quality patent specifications, which can only happen if sufficient human resource and man power is created towards this direction. Thus, there is a need to recalibrate legal education in India to cater to the increasing need for technically qualified lawyers. Thus, in sync with the New Education Policy, the IITs, other engineering colleges as also law colleges across the country need to introduce more inter-disciplinary courses offering a combination of technical disciplines and law combined together.

Today, more than 80% of trademarks which are registered in our country belong to domestic businesses and 44.41% of the total patent applications which are applied for belong to

domestic inventors⁹. Strengthening of the judiciary can also be done by elevating IP specialized lawyers as Judges as is done in the case of other branches of law such as Taxation, Arbitration, Service law, Criminal law etc.

Finally, let us remember that the purpose of intellectual property is the betterment of society. IPR ought not to be treated as merely a method or manner for generating financial gains. The key word for India in IPR has been 'BALANCE' i.e. balance between protection of innovation with the interest of the public and the larger society. The IP community ought not to forget that IP rights would become completely redundant if society as a whole does not benefit from the same. By benefit, it is not mere monetary gain but also easier access to technologies, easier access to healthcare, easier access to medicines, implementation of more environment friendly technologies to create a healthier country. All these can be achieved only if on the one hand research and development as also technology transfer is promoted, implemented fairly without greed. The above vision being turned into a reality would dispel the notion that IP is an elitist field of law.

Altruism coupled with Progress, should be the highest moto of intellectual property and the vision of the IPD has to be in sync with this moto.

⁹ The Office of Controller General of Patents, Designs, Trademarks and Geographical Indications, Annual Report 2021-22
https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_Annual_Report_Eng_for_Net.pdf

Thanks to some visionary judges of the Delhi High Court, we are privileged to have a special IP division. It has been my honour to have made a miniscule contribution to it. The IP division has already made a global impact. Hopefully, other High Courts will follow suit soon.

- Mr. Hari Subramaniam, Advocate

I have absolutely no doubt, that in the years to come, the IP Division of the Delhi High Court will be the beacon that courts around the world will look towards for guidance and emulation. One major concern that critics of dedicated IP courts have, is the danger of a jurisdiction assuming a plaintiff or defendant centric position on IP issues. In just a short period of time, our IP Division has allayed such fears and the quality and quantity of precedent on a wide range of new and complex IP issues, is a testament to this fact. The success of our IP Division was critical, so that more jurisdictions in our country could emulate it. The IP Bar has grown too! So many new faces have arrived on this wonderful stage. This augurs well for the entire IP ecosystem.

- Mr. Saikrishna Rajagopal, Advocate



Justice Navin Chawla

Born in New Delhi on 07th August 1969. Did his schooling from Delhi Public School, Mathura Road and graduated from Delhi University in B.Com (Hons.) in 1990. Thereafter obtained degree of laws (LL.B) from Campus Law Centre, Delhi University and was enrolled with the Bar Council of Delhi in 1993. Qualified as an Advocate-On-Record of the Supreme Court in 1999.

Practiced before the Delhi High Court, Supreme Court, and before various other judicial/quasi-judicial fora in various fields like Constitutional Laws, Civil Suits, Criminal Laws, specializing in Telecom and Broadcasting Laws, Arbitrations etc. Appointed as the Standing Counsel for the Union of India in the Delhi High Court in 2001.

Appointed as Permanent Judge of Delhi High Court on 15th May, 2017.

Experience in IP Division at Delhi High Court

by Justice Navin Chawla

I am indeed fortunate to have been a part of the creation of the Intellectual Property Division ('IPD') at the Delhi High Court. Having been appointed as a Member of the Committee for Framing of Rules Governing Patent Cases on 18.12.2018, I had taken active part in the framing of the Delhi High Court Intellectual Property Rights Division Rules, 2022 and the High Court of Delhi Rules Governing Patent Suits, 2022. With the promulgation of the Tribunal Reforms Act, 2021, it was decided that an IPD shall be created at the Delhi High Court to deal with matters relating to Intellectual Property Rights to adjudicate on various categories of cases like Appeals, Rectification Petitions, Original Civil Suits, Writ Petitions, etc. concerning Intellectual Property disputes.

I joined the IPD. on 18.05.2022. During my short stint at the IPD, approximately 190 main cases were instituted and listed before my Bench, and I disposed of approximately 348 main cases. The benefit of the creation of a separate IPD is evident from the above figures. The expedited disposal was possible due to the creation of a special Bench dealing exclusively with IP matters.

India acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ('Madrid Protocol') in 2013. Chapter IVA was introduced to the Trade Marks Act, 1999 to give effect to the Madrid Protocol and to apply to international applications and international registrations under the Madrid Protocol. I had the occasion to deal with a batch of two Writ Petitions raising issues on the interpretation of Section 36E of the Trade Marks Act, 1999.

Sub-Section 5 of Section 36E of the Trade Marks Act provides for a deemed extension of protection of an international registration to India in case the Registrar fails to notify the International Bureau of its acceptance of extension of protection of the trade mark within a period of 18 months of receipt of an advice from the International Bureau about any international registration where India has been designated. Considering the difference in the language of the Madrid Protocol and Section 36E(5) of the Act, it was held that the international applications are supposed to be adjudicated in accordance with the provisions of the Trade Marks Act and not based on the Madrid Protocol alone. It was further held that while in the Madrid Protocol, it is the failure to communicate the 'refusal within the time prescribed which results in deemed extension of protection to the trade marks, under Section 36E (5) of the Act, it is the failure to convey 'acceptance that leads to such deemed extension of protection.

In my view, the creation of a separate IPD at the Delhi High Court has led to a sustained increase in the number of disposals of the IP cases. It was a bold initiative taken by the Delhi High Court and such an effort will be an example for others to follow.



Justice C Hari Shankar

Born in New Delhi on 4th May 1968, Justice C. Hari Shankar completed his schooling from St. Columba's School and, thereafter, acquired B. Sc. (Hons) in Chemistry from Kirori Mal College and LL.B. from the Campus Law Centre, Delhi University in 1993. He has appeared, as arguing/senior counsel, before several judicial fora, including, but not limited to, the Supreme Court of India, High Courts of Delhi, Calcutta, Gujarat, Bombay, Allahabad, Punjab & Haryana, Madhya Pradesh, Rajasthan, Uttaranchal, Andhra Pradesh, Madras and Himachal Pradesh, the Central Administrative Tribunal, the Customs, Excise and Service Tax Appellate Tribunal, the Appellate Tribunal for Foreign Exchange, the Company Law Board, the AAIFR, the NCDRC, and the National Green Tribunal. His core areas of specialization were indirect taxes, along with allied subjects such as foreign exchange and COFEPOSA, and service law. He was on the Panel of Special Counsel representing the Central Government in the Supreme Court of India, and was also empaneled Counsel for the Directorate General of Anti-Dumping. He was regularly appearing on behalf of the Central Council for Research in Unani Medicine before the CAT and before this Court. On 20th August 2014, he was designated Senior Advocate by the Delhi High Court.

Justice Hari Shankar was appointed permanent Judge of this Court on 15th May 2017.

My Experiences in The IP Division

By Justice C. Hari Shankar

I owe my relationship with IP purely to chance.

First, some frank confessions. When I joined as a judge in May 2017, I knew next to nothing about IP. My only experience with IP, as a practicing Counsel, was when the maid who worked at our house came running to me one day bemoaning the issuance, to her brother, of a notice from the Delhi High Court. She couldn't figure out what the poor boy, who stayed with her in a slum, had done. As it happened, the boy used to make cheap footwear which he sold to the poorest of the poor, such as fellow slum dwellers, rickshaw pullers, sweepers, and the like, for paltry amounts of ten or twenty rupees. By fixing a sticker on the footwear – Sony, Panasonic, Nivea, Raymond, anything that came his way – he could sell it for five or ten rupees more. As luck would have it, he affixed, once, the sticker of Ayur. Ayur saw red. They sued him alleging infringement, passing off, brand dilution, what have you. And thus came the notice to be issued to him by this Court.

Needless to say, the case was settled in one sitting, with my client undertaking never again to affix Ayur on any footwear!!! What he used to affix thereafter is, of course, altogether another story.

It was with this enviable experience of IP that, in March 2020, I was assigned a roster on the Original Side of this Court which, at that time, heard all types of Original Side matters, including IP. And then Corona struck. In those unfortunate times, which were difficult days for us all, and we were driven to function in a virtual set-up, work came to a full stop for some time, and then, for nearly 2 years, we functioned almost completely online. Work assignments, of necessity, continued almost *in status quo* during that entire period. Ergo, I continued on that roster for nearly two years, during which time I made it a point to come to terms with IP, till IP and I arrived at a kind of symbiotic relationship in which we agreed mutually not to harass each other.

But like all good friendships, our friendship became a relationship, and has now become a veritable romance, so that I dread the day when I may again have to part company with her. IP tends to grow on you and, today, I can say, quite honestly, that there is no roster assignment – and I have literally travelled the entire roster bailiwick – that I have loved (“enjoyed” does not really capture the feeling) quite so much as IP.

The most fascinating feature of IP is, perhaps, the fact that it provides endless food for thought. We, as judges, often bemoan the fact that we are ploughing land which has been furrowed countless times before, so that little, to use a favourite phrase, remains *res integra*. Not so, however, with IP. Much of IP soil is still fertile, and harvesting it has been a source

of endless joy. Among the many issues which still pose challenging questions often on a daily basis are the intricacies of design law; achieving a synergy between domestic and international legal obligations, striking a balance between the demands of intellectual property, with its trans-border ramifications, and the rigours of our domestic procedural statutes; and even an understanding of the substantive rights, both statutory and common law, that the law confers. In all except trade marks, moreover, there is little law, declared by the Supreme Court, to guide us. The only authoritative decision on pharmaceutical patent law, which comes up for examination almost on a daily basis, is the judgement in *Novartis AG v. U.O.I.*, (2013) 6 SCC 1. Similarly, the only pronouncement of the Supreme Court, which aids in understanding the principles of design law, remains *Bharat Glass Tube Ltd v. Gopal Glass Works*, (2008) 10 SCC 657. On several issues, such as Standard Essential Patents and many intricate nuances of copyright, the Supreme Court is yet to speak.

I have, fortunately, had the opportunity to cogitate on nearly all these issues, and pen my thoughts thereon. At the end of it, I emerge, nearly always, spiritually and intellectually refreshed.

No little credit, for this, goes to the quality of the IP bar in our Court who, even while showing due deference to the Bench, is willing, nonetheless, to allow her, or him, to keep pace while negotiating the often confusing pathways in the IP labyrinth. They have been valuable companions in the IP journey, and I may say, without fear of being presumptuous, that the incremental gains that the IP experience have provided, along the journey, are mutual. I have, more than once, regretted the fact at not having had more than a nodding acquaintance with IP, during the two decades and a half of my practice at the Bar. The last 3 years have, however, more than amply compensated, and I stand immeasurably enriched thereby.

It is fortunate for me that I happen to be part of the IPD at this time, and am, therefore, able to be a participant in these IP day celebrations. I know, of course, that I will, one day, have to part with this assignment, but the gains that I have made, along the way, to my knowledge of the law, humble as it is, are immeasurable, and, I am sure, will always stay with me.

Here's wishing IP jurisprudence in our country, and the world over, a fulfilling journey ahead.

In an order passed by the Supreme Court on the 16th of August, 2017 in AZ Tech (India) vs Intex Technologies Limited, the court stated “...an effort on the part of the Judiciary as an institution to work out ways and means to dispose of long pending contested civil suits throughout the country for which purpose the Delhi High Court and, particularly, the IPR matters has been taken as the yardstick. The Hon’ble Judges of the Delhi High Court have to work out ways and means for effective disposal of the IPR matters before it so that a model for disposal of civil suits can be culled out from the ways and means adopted by the Delhi High Court which can form the basis of an uniform action plan for the rest of the country.”

In five years’ time there has been such a major transformation that not only has the Intellectual Property Division been formed, but it has passed outstanding orders in diverse areas of intellectual property to the point that IAM Magazine on 6th April, 2023 commenting on the Delhi High Court orders in Intex vs Ericsson stated “India has become a key litigation venue for global SEP licensing disputes in recent years”.

Be it at seminars, articles or social media, right owners are bending backwards to come before the Delhi High Court. The dizzying pace with which the matters are being heard and decided is posing a major challenge to the Bar. The unique approach of looking globally for the best practices and trends and absorbing anything that can strengthen intellectual property; the absolute diversity of practitioners, young and experienced, providing great opportunities and learning; global exposure through the hybrid system for clients, practitioners and the public generally..... not just a current trend but the zeitgeist of the present time is protection and enforcement of intellectual property.

The future is here.

- Mr. Pravin Anand, Advocate



Justice Jyoti Singh

Born on 1.10.1966, graduated in Botany (Hons.) from Kirori Mal College, Delhi University. Acquired L.L.B. degree from Campus Law Centre, Delhi University.

Enrolled with the Bar Council of Delhi.

Practiced before the Hon'ble Supreme Court, High Court of Delhi and Tribunals.

Held the following appointments:

- Senior Counsel for the Government of India in the High Court of Delhi
- Standing Counsel for UPSC
- Standing Counsel for DTC
- Standing Counsel for Delhi Government in Central Administrative Tribunal
- Additional Standing Counsel for NDMC
- Panel Counsel for Provident Fund, DDA and Canara Bank

Was a member of Delhi High Court Legal Services Committee and participated in Lok Adalats and workshops organised by the Committee.

Specialised in service matters, particularly Armed Forces and Para-Military Forces.

Was appointed as Amicus Curiae in a number of cases by the High Court of Delhi and the Armed Forces Tribunal.

Designated as Senior Advocate in 2011 by the High Court of Delhi.

Elevated as Judge of High Court of Delhi on 22.10.2018.

Good Practices for IP Offices

By Justice Jyoti Singh

World Intellectual Property Day marks a special occasion every year where nations across the world celebrate their innovations and developments in the field of intellectual property ('IP'). The idea of protecting IP rights has a long tradition in history, dating back to the 13th century. What we celebrate on 26th April, however, is the coming into force of the WIPO Convention in 1970, by which WIPO was established. We celebrate the birth of an institution that has gone a long way in fostering the harmonisation of intellectual property rights globally.

India has come a long way in the protection of IP rights in terms of the development of substantive law. On the side of procedural law, a recent development has proved to be a watershed moment for the development of IP rights in India. In 2022, Delhi High Court established a new IP Division to exclusively hear matters related to intellectual property rights. The procedure was governed by an entirely new set of Rules, namely the 'The Delhi High Court Intellectual Property Rights Division Rules, 2022', which were tailor-made to address the specific issues plaguing the procedure concerning litigation of IP rights. These Rules were integrated with the ethos governing the Commercial Courts Act, 2015, which gave rise to various Commercial Divisions within High Courts, envisioning timely disposal of suits. The first dedicated IP Division comprised Justice Prathiba M. Singh, Justice Navin Chawla, and I also had the fortune to be a part of it. With the able assistance of the dedicated IP Bar, I got a first-hand insight into some of the crucial areas of trademark, patent, and copyright law.

By virtue of the IPD Rules, various original and appellate proceedings before the Intellectual Property Appellate Board ('IPAB') stood transferred to the Delhi High Court. This change was necessitated since IPAB was abolished in 2021 by 'The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021'. In the immediate aftermath of this Ordinance, there was a massive influx of cases and the initiative of the Delhi High Court to establish the IP Division has proved to be a boon in the area of IP litigation, especially in expeditious disposal of the old cases which consequently travelled to this Court from the erstwhile IPAB. Adjudicating these matters brought to fore some concerning issues on the functioning of Trade Marks Registries and Patent Office in India, which require introspection and corrective/reformative measures.

In the patent regime, several matters have been remanded in the recent past on the judicial side as the orders lacked sufficient reasoning, thereby violating principles of natural justice. It was observed that in a few cases, all the grounds raised by opponents opposing patents were not considered, rejections were given on the basis of prior arts not cited in the FER & hearing notice, and also on the grounds of non-patentability, which were never raised during prosecution. There is definitely scope for improvement in the functioning of

patent offices, so that these instances can be eliminated. In such cases, Courts had no option but to remand matters back to the Controller where there were blatant violations of principles of natural justice as these principles are not mere artefacts and are deeply engrained and entrenched our legal system and have sanction in legal lore.

In many cases where patent applications were rejected, appeals were allowed against the order of the Patent Controller and the matters were remanded back as for instance where the ground of rejection was lack of 'inventive step' under Section 2(1)(ja) of the Patents Act, 1970. It was noticed in some cases that there was insufficient analysis of the existing knowledge and how the person skilled in the art would move from existing knowledge to the subject invention which was the most fundamental issue that was required to be considered. In many other cases, very little time was granted for hearing pre-grant oppositions and in some, orders were reserved rejecting the request of the opponent in a pre-grant petition to file submissions within a short span of two hours. This is despite several rulings of this Court that when pre-grant opposition is filed, the opposer and the applicant are stakeholders and adversaries and none can be given priority over the other. Cases are not unknown where patents are granted for inventions which already stand claimed or disclosed in prior arts resulting in evergreening and the ultimate sufferer is the public. It is for this reason that Section 3(d) of the Patents Act, 1970 was amended to require the applicant seeking grant of patent, particularly, in pharmaceutical patents to demonstrate additional efficacy of the new form over and above the existing prior art. In order to avoid such eventualities, a system of checks and balance is required to be put in place at the grassroot level in the Patent Office.

It needs no reiteration that grant of patent is a lengthy and patents have a limited lifespan. Thus, delays on account of remands and a de novo process further delays the grant or rejection, a consequence which is avoidable, if applications are processed at the initial stage according to the statutory provisions and are compliant with principles of natural justice.

On the side of the Trade Marks Registry, the issues that come to light on a critical analysis are excessive pendency of applications for registration of trademarks and inclusion of well-known trademarks in the list maintained with the Registry, delay in dispatching examination reports, faulty and illegible advertisements, renewal applications though filed being overlooked, marks being cited in opposition to registration of a trademark without ascertaining if they are 'refused' or 'abandoned', opportunity of hearing not granted though record shows otherwise, leading to prolonged and unnecessary litigation. Perhaps the course correction lies in deploying more staff, digitizing the data base and records, more rigorous hands-on legal training to the officers with a set module of training through short-term refresher courses or workshops.

I may pen down that the Delhi High Court has been passing orders directing filling up of vacancies in the Trade Marks Registry and the Office of Controller General of Patents and there has been substantive progress in that direction. Looking at the humongous number of applications the Trade Marks Registry is required to deal with every single year, this Court in ***Pawandeep Singh v. Registrar of Trademarks and Another, 2022:DHC:874*** suggested various measures to devise a proper mechanism which includes publication of cause list notice on a daily basis, using a platform with an open link permitting more individuals to join a hearing at a time. As a fall out, the current trend shows that the Registry has started holding proceedings more regularly through video conferencing, the orders of abandonment are being filed quickly bringing to an end matters which are undisputed and uncontested and several applications

have advanced to registration in less than one year from the filing date. Statistics show that opposition procedures have seen positive development such as service of notices of opposition are through electronic mode as opposed to the postal procedures, followed earlier. With the advent of Trademark Rules in 2017, there is no doubt an improvement in the functioning of the Trade Marks Registry perhaps on account of simplified procedure and digitisation. However, much remains to be done towards applications which are pending for cancellation/rectification of the trademarks.

On 23.07.2021, the Department Related Parliamentary Standing Committee on Commerce, in its 161st Report on 'Review of the Intellectual Property Rights Regime in India' emphasised on the importance of IP in the holistic growth of the country and suggested various measures for improving the functioning of the Trade Marks Registry and for expeditious disposal of trademark applications. 169th Report reflects the action taken by the Government on 82 recommendations which include review on filling up vacancies in the Patent Office including promotions of the officers concerned, entering into a Pilot PPH Programme with Japan Patent Office for expediting filing of patents in some specified fields like electronics, computer science etc., holding consultations on the issue of curtailing the time period for filing oppositions against a trademark application from four to two months, upgradation of better e-system, proposal to include a platform in e-TMR system wherein Police Officers may file online request under Section 115 and the concerned Officer will provide opinion within 24 hours, taking initiatives to expedite the process of examining/granting patents through amendment in Rules, modernisation of Patent Office, manpower augmentation and use of IT enabled processes. Additionally, the action taken report shows that GI Registry has already worked on Advisories in the form of GI Manual, Guidelines regarding filing of GI applications, registration process and FAQs for information of the public which are hosted on the official website.

Expediency in the working of the Trade Marks Registries and the Patent office is really the heart of the IP regime since commercial intercourse depends heavily on protected trademarks and brand building. The delays at the level of trademark registrations conflicts directly with the ease of doing business and is not conducive to the intellectual property regime.

I may end with a note that the establishment of IPD at the Madras High Court this year is a very promising development and I am confident that under the steady stewardship of IP Divisions at the High Court level across the country, the IP regime in India will only grow from strength to strength.



Justice Sanjeev Narula

Born on 24th August, 1970. Studied at St. Mary's Presentation Convent School, Jammu. Graduated in B.Sc.(Computer Science) from Kirorimal College, University of Delhi. He acquired Degree in Law in 1994 from Law Faculty, University of Jammu and got enrolled with Bar Council of Delhi in 1995.

Practiced primarily before the Delhi High Court and also before the Supreme Court of India, District Courts of Delhi and various judicial forums in Delhi. Advised and represented clients in litigation relating to Civil, Commercial, Corporate, Criminal, Customs, Indirect taxes, Service, Banking & Finance, Land & Property, Arbitration, Indirect Taxes, GST, Intellectual Property, Constitutional, Cyber, E-Commerce, Consumer and Family Laws.

He was appointed as Central Government Standing Counsel; Senior Standing Counsel (Customs and Indirect Taxes) and Standing Counsel for Central Information Commission (CIC) for the Delhi High Court, positions he retained until he was appointed as a Judge.

Appointed as Permanent Judge of Delhi High Court on 22nd October 2018.

A Non-Specialist's Journey in Intellectual Property Law: Broadening Perspectives and Advancing The Law

By Justice Sanjeev Narula

In today's increasingly specialized world, intellectual property rights (IPR) law has emerged as a critical and complex domain, with experts constantly pushing the boundaries of legal understanding. This article reflects on my experience of handling judicial work on the IPD of Delhi High Court as a non-specialist, and how a broader outlook has enriched my understanding of the law and enabled me to make contributions to its advancement.

THE CHALLENGES OF NAVIGATING A SPECIALIZED FIELD:

The field of intellectual property rights law can be overwhelming for even the most experienced legal professionals due to intricate nuances and constantly evolving landscape. While adjudicating cases, I was frequently confronted with complex technical and legal concepts that require careful deliberation . To navigate this specialized field, I have maintained open-minded and receptive attitude towards acquiring new knowledge. Despite the challenges, my experience has provided me with a unique and valuable perspective that has enriched my work. While my legal perspective is firmly grounded in the fundamental principles of law, my outlook remains open and adaptable, allowing me to approach legal issues with flexibility and creativity. This broad perspective enables me to consider alternative viewpoints, which in turn promotes innovative legal thinking and fosters a more comprehensive understanding of the issues at hand.

ADVANCING THE LAW:

Historically speaking, non-specialists often contribute significantly to the advancement of the law, as their diverse background and experiences provide them with the ability to question conventional wisdom and explore novel solutions. Judge Richard A. Posner of the American Federal Appellate Court, a legal polymath and a non-specialist of IPR law, helped usher in a revolution in the global intellectual property jurisprudence by introducing economic doctrines and theories through his pioneering judgments and scholarly works, which have since become a staple of the field. Similarly, in India too, Justice Prabha Sridevan, who calls herself an 'accidental' lawyer, had not argued any IPR matters at the Bar. However, after her elevation as a Judge of the High Court of Madras (and later as the Chairperson of the IPAB), she has delivered several path-breaking judgments, which have changed the face of Indian jurisprudence on patent law.

THE ROLE OF THE LEGAL COMMUNITY:

The support and cooperation of the legal community, particularly the IPR bar, have been immensely valuable in my journey thus far. Through the use of open and frank dialogue during hearings, I have been able to leverage the expertise of specialists while simultaneously contributing my own insights and viewpoints. This mutual exchange of knowledge has not only enriched my own understanding of IPR but has also fostered a more dynamic and inclusive legal environment.

THE IMPORTANCE OF LIFELONG LEARNING:

For a non-specialist, the importance of continuous learning cannot be overstated. In fact, this commitment to lifelong learning is essential for any legal professional, regardless of their area of expertise, as it ensures that the law remains relevant and responsive to the ever-changing needs of society. By remaining committed to expanding my knowledge and understanding of this specialized field, I have been able to comprehend the new developments in the field and contribute meaningfully to the ongoing evolution of intellectual property law. To keep pace with the rapidly evolving IPR landscape, I have engaged myself in regular reading and research in an attempt to develop a solid foundation in the subject matter. This commitment to continuous learning has been crucial in maintaining my ability to handle complex IPR cases effectively.

STRIKING A BALANCE: THE NON-SPECIALIST'S ADVANTAGE:

I have found that my broader legal background has been instrumental in helping me strike a balance between the competing interests that often arise in intellectual property disputes. With comprehensive understanding of the legal landscape, I am better equipped to anticipate the implications of my decisions, which enables me to balance the rights of all stakeholders with promotion of the public interest. This ability to strike a balance is particularly important in the field of IPR, where legal decisions can have significant consequences for innovation, competition, and consumer welfare. I am able to approach these issues with a fresh outlook, unencumbered by the potential biases that may arise from a more specialized focus. My firm conviction is that adopting a broad outlook equips a Judge to effectively weigh all the factors at play and reach decisions that are fair, equitable, and in the best interests of society as a whole.

CONCLUSION:

In conclusion, my journey as a non-specialist in the field of intellectual property rights law has been challenging, yet ultimately rewarding. The broader outlook that I bring to the table has enriched my understanding of the law. I am confident that the valuable insights that I have acquired will be instrumental in furthering legal principles and creating a more inclusive and dynamic legal environment that benefits all. As the world continues to evolve and the importance of intellectual property rights becomes increasingly significant, it is essential for legal professionals from all backgrounds to remain committed to continuous learning, collaboration, and adaptation. By doing so, we can ensure that the law remains responsive to the ever-changing needs of society and continues to serve as a force for innovation, progress, and justice.

Earlier an Infringer only had to worry about the IPC. Now he has to additionally deal with the IPD

- Mr. Rajshekhar Rao, Senior Advocate

The IPD Division Bench was hearing an appeal against an injunction against “Fabio” for being too close to “Oreo”.

“So tell us Mr. Sibal, isn’t one likely to get confused between a Banerjee, Chatterjee and a Mukherjee?”, quipped Justice Saurabh Banerjee, with His Lordship’s trademark directness.

“Well, speaking for myself, My Lord, Banerjees have always been distinctive and unique”, I quickly responded. There’s never a dull day.

- Mr. Amit Sibal, Senior Advocate



Justice Amit Bansal

Born on 8th February 1969 at Delhi. Did his schooling from Modern School, Vasant Vihar, New Delhi. He received his B.Com (Hons.) from Shri Ram College of Commerce, Delhi University. Attended Campus Law Centre, University of Delhi and received his LL.B. in the year 1993 and enrolled as an Advocate with Bar Council of Delhi in the same year. He obtained his LL.M. degree from Northwestern University, USA in 1994.

Is a third generation lawyer after his grandfather, Late Sh.Harnam Dass, Advocate and father, Late Justice Arun Kumar, who retired as a Judge of the Supreme Court of India.

Appointed as an Additional Standing Counsel, University of Delhi in the year 2003. Appointed as Standing Counsel, CBSE in the year 2004. Appointed as Senior Standing Counsel for Central Board of Indirect Taxes and Customs in the year 2016. Also appointed as a counsel for the High Court of Delhi in 2017. Was empanelled as an Arbitrator on the panel of Delhi International Arbitration Centre in 2018. Primary areas of practice include Arbitration Laws, Education Laws, Indirect Taxation and Commercial Laws.

Appointed as Judge of Delhi High Court on 24th February, 2021.

Importance of Technically Qualified law researchers and Panel of Experts for IPD Judges

By Justice Amit Bansal

The immediate hurdle I faced after being assigned the roster of the Delhi High Court IP Division was dealing with cases involving significant scientific and technical issues. For instance, in my very first week, I encountered a case involving an appeal from an order of the Controller of Patents rejecting an application for the grant of a patent. It immediately occurred to me that for the effective adjudication of such cases, a judge would require the assistance of a technically qualified expert or law researcher. Technical law researchers can function as experts, lending a hand to the court in comprehension of complex issues not solely focused on the law but based on the scientific aspects of an invention for which a patent registration is sought.

All such cases that require expertise and experience in scientific subjects, particularly, patent appeals and patent infringement suits, can be quite challenging for judges to decide on their own as, more often than not, judges would not have the requisite scientific and technical background. Therefore, it is imperative that the judges who are allocated the IP Division roster have the necessary support of technically qualified law researchers as well as a panel of experts to effectively adjudicate disputes involving technical and complex issues. The Delhi High Court Intellectual Property Rights Division Rules, 2022 (IPD Rules) duly take note of this requirement. Rule 31 of the IPD Rules provides that the court may, as and when necessary, seek the assistance of an expert, including individuals and institutions, in relation to the complex and technical subject matter of an IPR dispute. Further, the Rule requires the IP Division to maintain a panel of experts to assist the court in complex areas of an IPR dispute. These experts may include academicians, researchers, and developers, all of whom possess the technical knowledge of their respective fields. Once these experts have expressed their opinion on a particular issue that the court is dealing with, the court can consider and assess their opinions while arriving at a conclusion. This could ensure that high-stakes IPR disputes, which involve complex issues, do not remain pending for long periods of time, and instead, can be adjudicated in a timely manner, which is essential for a dynamic discipline such as IPR.

Rule 32 of the IPD Rules specifically provides that the judges of the IP Division shall have the assistance of additional law researchers with specialized qualifications. Such law researchers should ideally have specialized qualifications and experience in the fields of engineering, biotechnology, quantum computing, artificial intelligence, and/or any other IPR-specific fields that would enable them to assist the court constructively. As per Rule 32, technical law researchers belong to a common pool of law researchers in the IP Division and are not specifically attached to a particular Bench of the High Court. This engagement

model ensures that all Benches of the IP Division can draw upon this resource of technical law researchers, depending on the nature of the dispute being adjudicated by them. Therefore, it is crucial that these technical law researchers have specialized qualifications relating to different scientific disciplines so as to provide for a holistic knowledge pool for the assistance of the court.

In my experience as a Judge of the IP Division, I have had meaningful interactions with technical law researchers, which has resultantly helped me decide complex cases involving technical and scientific issues. I have discussed below some of the cases that I was able to adjudicate on account of significant contributions from technically qualified law researchers.

- i. A patent appeal against an order of the Controller refusing an application for grant of a patent for a medicinal composition. The analysis of the chemical formulae and other data related to the patent, which the technical law researcher carried out, enabled me to adjudicate the case in an effective and time bound manner. Further, the said analysis also helped me to decide the validity of the objection taken by the Controller under Section 2(1)(ja) of the Patents Act, 1970, on whether the inventive concept of the subject patent application was a technical advancement over the cited prior arts and if the same was obvious to a person skilled in the art.
- ii. Yet another case was a patent appeal where the Controller refused the grant of a process patent for a process for separation of potassium sulphate. The inputs from the technical law researcher enabled me to analyse the prior art documents related to known processes, to determine whether the subject invention was novel or mere use of a combination of known processes.
- iii. In a suit for patent infringement by a major multi-national pharmaceutical company against Indian generic drug manufacturing companies, the main defence of the defendant was that the claims made in the subject specie patent were covered in the earlier genus patent of the plaintiffs. The claims involved complex chemical structures in respect of organic compounds, presenting the Court with an arduous task of drawing out a comparison between the chemical structures provided in the claims of the specie patent and the genus patent. The technical expertise of the law researcher and the study carried out by him helped the Court to compare the claims made by the plaintiff.
- vi. In a case that I am currently hearing and which involves the assessment of technical drawings, the technical law researcher assisted me in determining the technical issues and, ultimately, formulate questions to be answered by the counsels so that a clear understanding of the patent can be achieved, which is indispensable for proper adjudication of the case.

All the cases discussed above highlight how assistance from technically qualified law researchers on a variety of scientific and technical issues can enable a court to adjudicate complex IPR-related cases in a timely manner. To conclude, in my opinion, it is essential for all judges assigned to the IP Division to have access to a pool of law researchers as well as experts with a wide range of specialized qualifications outside of the legal discipline. With India pitching itself as a destination for scientific and technical innovation and an increasing number of patent applications being filed, the courts would be called upon to decide complex IPR cases involving scientific and technical elements. In such disputes, the inputs received from the law researchers/ experts would go a long way in enabling the judges to decide cases involving complex scientific and technical issues in an efficacious manner.

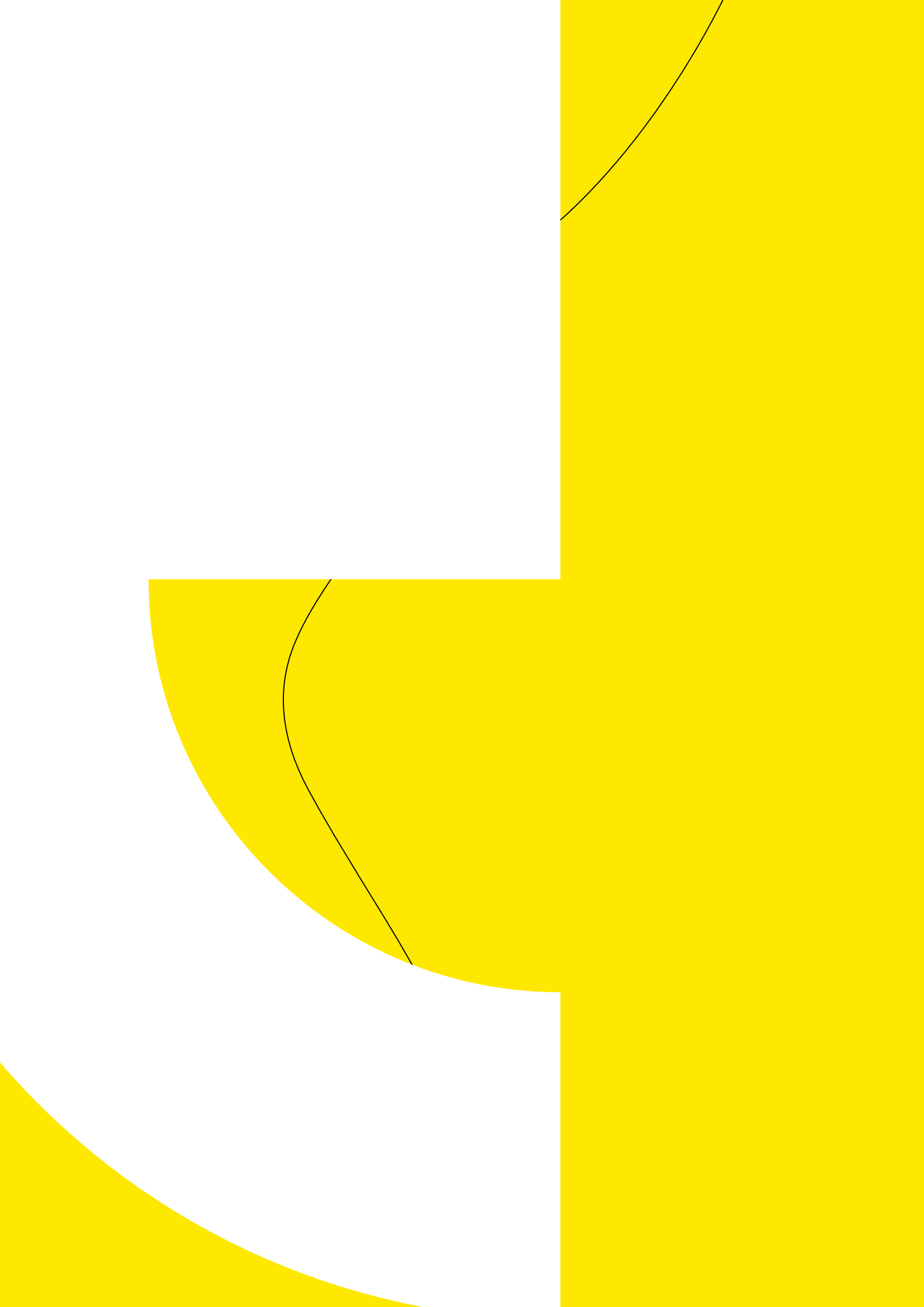
Judge to his court staff: It is very hot. Check the AC please.

Counsel: My lord I believe the AC controls are on the wall from where we enter. I will ask my colleague to turn down the temperature.

Judge: Surely the temperature control cannot be on that side, Mr. Lall.

Counsel: My Lord the temperature of Courts have been controlled by the Bar since long now.

- Mr. Chander Lall, Senior Advocate



SNAPSHOTS OF
THE REPORT
OF THE
IP DIVISION

Over the last decade or so, the Delhi High Court has assumed a position of leadership in the adjudication of Intellectual Property disputes. There has been an incredible growth in the quality and volume of cases relating to IPR subject matter. Landmark decisions have been rendered by the Judges of the Delhi High Court, which have also received international recognition and acclaim.

The enactment of the Commercial Courts Act in 2015 provided impetus to IPR adjudication owing to the strict deadlines and relatively speedy disposals. While IPR litigation was having a smooth sailing, with the only occasion of lack of sufficient Judges for hearing final matters, the COVID-19 pandemic struck. The immediate focus of the Court was to embrace technology to ensure that the doors of the Courts are accessible through the small windows of the computer and mobile screens. The Delhi High Court fared extremely well in providing accessibility to the citizens and litigants of Delhi.

During the pandemic, in most IPR cases, the focus of the Bench and the Bar was on mediation and amicable resolution of disputes, so that businesses could focus on regaining from the shocks of the pandemic. The circumstances were such that going to trial in IPR suits or even recovering damages, was not a priority.

In early 2021, the abolition of the IPAB was, in effect a double whammy. The IPAB had its shares of problems. However, with the diligent leadership and sheer perseverance of the then Chairperson, the IPAB had started seeing growth of disposals and even the process for appointing Technical Members was initiated. However, the enactment of Tribunal Reforms Ordinance and thereafter, Tribunal Reforms Act abolished the IPAB and there was a long hiatus where neither the IPAB was accessible nor was there any clarity as to the manner in which pending IPAB matters and fresh matters would be dealt with by the High Courts.

The Delhi High Court, at this stage, converted this into an opportunity and took measures to streamline the large volumes of cases that were being received from the IPAB. A committee was constituted by the then Chief Justice D. N. Patel to make recommendations on the measures that can be taken to overcome the impending situation which involved an influx of IPR cases. Even while the process of making recommendations was underway, officials were identified for receiving the pending cases. These cases were being scanned and converted into files as per the Delhi High Court Rules. Nomenclature was assigned to the different categories of cases. Streamlined processes were put in place to ensure that all the cases can be effectively adjudicated. A bigger challenge for the Registry of the Court was lack of complete records of the IPAB. It required the supervision and persistence of a number of Delhi High Court staff to review true copies of the files received from the IPAB to complete the case files. Man power was allocated for scanning as also thereafter for destruction of the duplicate records. The IPAB website was also pulled down simultaneously. Thus, even the orders passed by the IPAB were not easily accessible. Cases were listed before the Joint Registrars for completion of records. The IP Bar cooperated with the Registry of this Court in this process.

Parallely, the Committee reviewed rules and procedures from various jurisdictions across the world. The Committee related to the Tribunal Reforms Act worked in close coordination with the Committee, which was already constituted in 2018 for drafting of the Patent Rules. The draft of following two sets of Rules were then put up for stakeholder consultation.

1. Delhi High Court Intellectual Property Rights Division Rules, 2022
2. High Court Of Delhi Rules Governing Patent Suits, 2022

An interaction was held with the members of the Bar. Rules were discussed and deliberated upon in the meeting of the Full Court of the Delhi High Court. Valuable inputs were received and thereafter, incorporated into the draft rules. Finally, the two sets of rules were notified on 28th February, 2022 in the Gazette.

Simultaneously, the Full Court of the Delhi High Court accepted the recommendation of the Committee to set up a separate IP Division for adjudicating IP litigation in the Delhi High Court. The salient features of this Division are as –

- i. The judges of the Division exclusively dealing with the IP matters - initially two judges were assigned, which were thereafter expanded to three judges. A total of six judges have already manned the IP Division.
- ii. The IP Division is vested with jurisdiction, which is not merely related to IPR suits but also to deal with all the matters, which were hitherto dealt with by the IPAB, appeals in IPR cases from the Commercial Courts, the writ petitions relating to IPR etc. Thus, the IP Division is a unique division with multi-pronged jurisdiction.

WORKING OF THE IP DIVISION

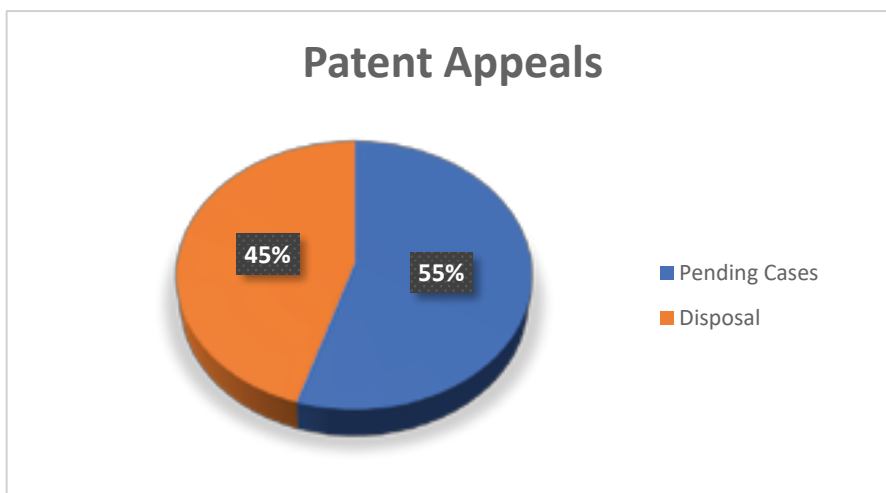
The exclusive IP Division took birth on 28th February, 2022 and has since then completed one year. The IP Division has, despite all the challenges set out above, been able to take stock of all the pending matters and entertain fresh cases in almost all categories. Several procedural, jurisdictional and other issues have been raised before the IP Division, which are being dealt with by the Judges, who exclusively deal with cases involving IPR subject matter. The data of the IP Division for the last one year would show that the disposal rate of the Division has been more than satisfactory. The initial creases have all been ironed out and the system is now functioning smoothly.

A total of more than 2000 cases were received from the IPAB in the Delhi High Court. Till date, approximately 600 cases have been disposed of from amongst the cases received from the IPAB. In addition, the filing before the IP Division would show that a total of 628 fresh commercial suits with IP subject matter have been filed and more than 500 IPR matters relating to other categories have been instituted. The IP Division is having overall supervision of the functioning of the Commercial Court in respect of IPR matters. It is also supervising the functioning of the IP office and laying down various guidelines, rules, principles to be followed by the IP office while dealing with the patent and trademark matters. In the last one year itself, more than 600 commercial suits with IPR subject matter have been disposed of by the IP Division. On the basis of the data compiled, the following position emerges:

Highlights of One Year of the functioning of the IP Division

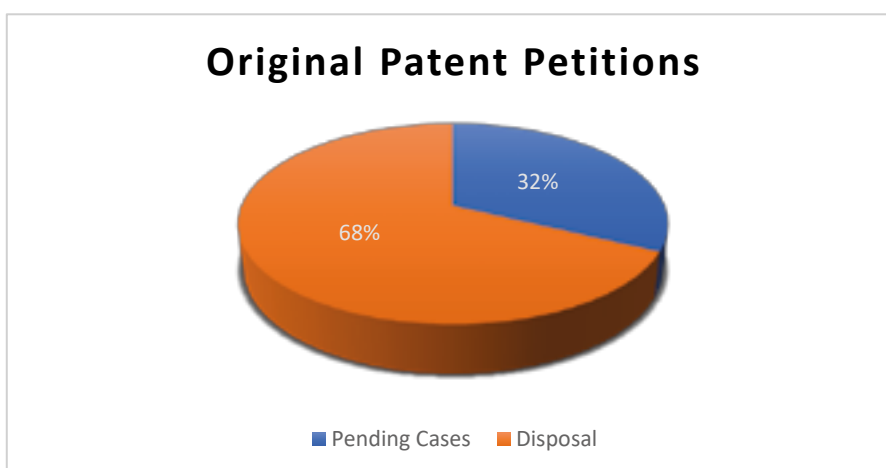
MATTERS RECEIVED FROM IPAB

- **More than 45%** of all Patent appeals were disposed of;



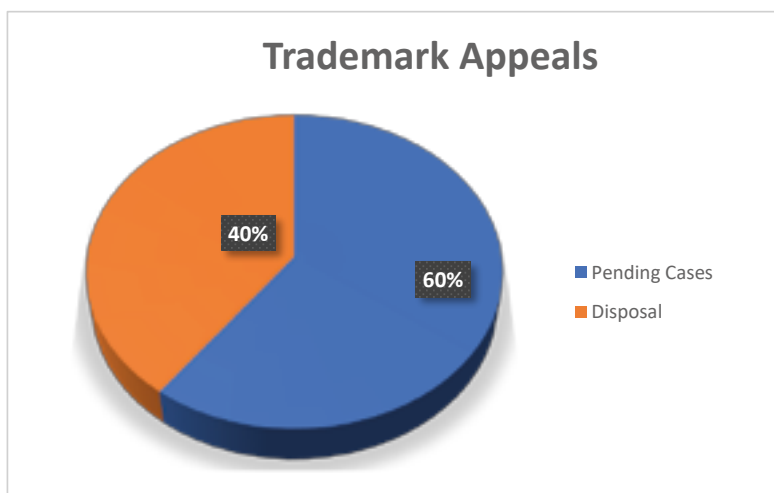
Total Cases	414
Disposed of Cases	187
Pending Cases	227

More than two-thirds of all the original petitions concerning patents transferred from the IPAB to the DHC-IPD disposed of



Total Cases	59
Disposed of Cases	40
Pending Cases	19

- **Almost 40%** of all Trademark appeals transferred from the IPAB disposed of



Total Cases	274
Disposed of Cases	109
Pending Cases	165

- **More than 200** original Trademark application cases were disposed of.

Filing in the Delhi High Court

- More than 1000 cases filed in the IPD of the Delhi in its first year of inception
- 750+ cases involving IPR disputes were disposed of
- More than 500 Commercial suits disposed of in one year
- More than 100 patent appeals filed
- More than 50% of Trademark Appeals disposed of
- Overall pendency of 4000+ IPR cases in the IPD
- 2000+ Commercial IPR suits pending before the Delhi High Court

The snapshots of the data, both in numbers and in charts/graphs would show that the initial year of the IPD has been, both challenging and efficient. Owing to the dedicated Division, all the judges from diverse backgrounds, have been able to adjudicate complex patent, trademark, design and copyright litigations. The continuous assistance from the Bar has also resulted in consistency of the principles applied. The power to consolidate IPR cases relating to the same subject matter for eg., same patent or trade mark, has also resulted in efficiency and elimination of multiplication of proceedings.

The Delhi High Court also has the unique feature of having a dedicated IP Appellate Division, which has also resulted in disposal of appeals arising from the IP Division in the last one year itself. More than 35 appeals have been disposed of by the IP Appellate Division of the Delhi High Court in the last one year.

The establishment of the IP Division has not merely seen high rate of disposal but the filing in the IP Division has also been increased. This shows that the establishment of the Division has also made IP litigation more robust.

The IP Division of the Delhi High Court has been commended, both at the national level and international level. The Parliamentary Committee, which had initially recommended re-establishment of the IPAB in its report, has, after establishment of the IP Division of the Delhi High Court, recommended establishment of IP Divisions in all the High Courts in the country. The said two contrasting recommendations are set out below:

ONE HUNDRED AND SIXTY FIRST REPORT	ONE HUNDRED AND SIXTY NINTH REPORT
Review of the Intellectual Property Rights Regime in India	Action Taken by Government on the Recommendations/Observations of the Committee contained in its One Hundred and Sixty First Report on 'Review of the Intellectual Property Rights Regime in India'
(Presented to the Rajya Sabha on 23rd July, 2021) (Laid on the Table of Lok Sabha on 23rd July, 2021)	(Presented to the Rajya Sabha on 6th April, 2022) (Laid on the Table of Lok Sabha on 6th April, 2022)
<p>18. <u>The Committee desires that the abolition of a prominent appellate body of IPAB under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 should be reconsidered in wake of its pivotal role in adjudication of IPR appeals and cases.</u> The overall scrapping of IPAB, which efficiently had been dealing with proceedings involving complex IPR issues, may create a void in appellate resolution of cases leading to their shift to Commercial or High Courts thereby increasing pendency of cases. The Committee also opines that inordinate delay in appointment of officials at higher level and the resultant pause in functioning of IPAB affected the optimal performance of IPAB. The Committee, therefore, recommends the Government that IPAB should be re-established, rather than being abolished and should be empowered and strengthened with more structural autonomy, infrastructural and administrative reforms, as well as ensuring timely appointment of officials and experienced manpower.</p>	<p>3.12 The Committee notes that the dissolution of IPAB would lead to transferring of all IP-related appeals including the pending cases to High Courts and Commercial Courts (in copyright matters). This may create additional burden on such courts which are already reeling under huge backlog of cases with inadequate expertise in hand to deal with IPR matters. <u>It, therefore, opines that establishing an Intellectual Property Division (IPD) with dedicated IP benches as done by Delhi High Court in the wake of abolition of IPAB would ensure effective resolution of IPR cases on a timely basis.</u> The Committee, therefore, recommends that the Government should take appropriate measures to encourage setting up of IPD in High Courts for providing alternative solution to resolve IPR cases.</p>

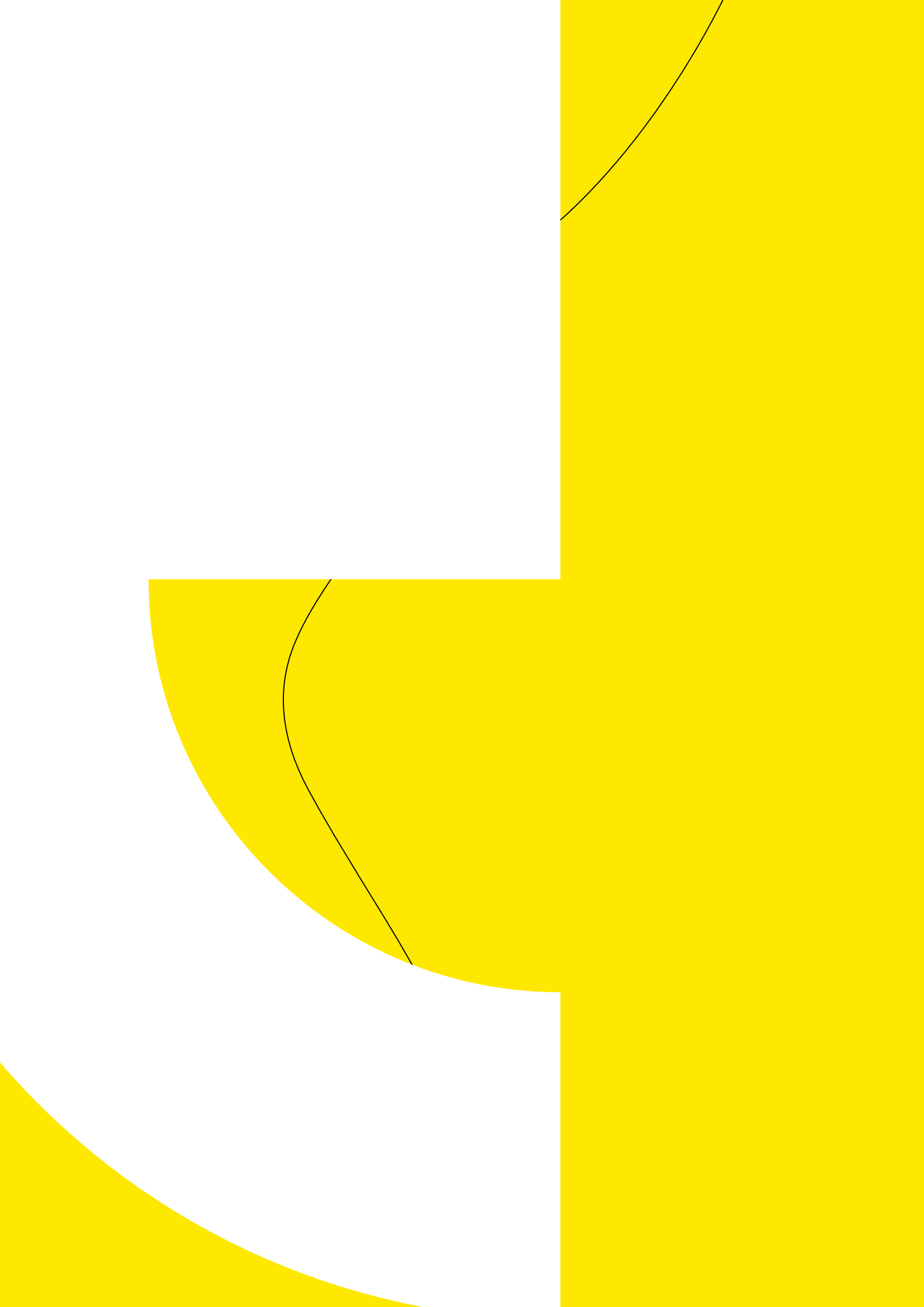
The establishment of the IP Division has also received recognition internationally as one of India's most positive developments in the field of IP.

Post the establishment of the IP Division in the Delhi High Court, the Madras High Court has, on 5th April, 2023, notified the Madras High Court Intellectual Property Rights Division Rules, 2022 and the IPD in the Madras High Court has been inaugurated on 12th April, 2023 and thereafter, commenced its sittings in specialized IP Benches.

The Bombay High Court, Calcutta High Court and Gujarat High Court have also allotted nomenclature to all the IPR cases and the same also finds mention in the Roster in these Courts. Matters are stated to be assigned for on non-exclusive basis to specific Benches.

In conclusion, as India has leapfrogged from being ranked 81st in the 2015 Global Innovation Index issued by WIPO to 40th in 2022, it can be safely said that the establishment of the IP Division has enhanced India's image in the international IP community. IP Divisions provide an impetus to innovation in India as the same is accessible domestic innovators equally as much to foreign innovators. The substantial jurisprudence development has taken place over the last one year and India is now viewed as one of the go-to destination for IP litigations.

*- Compiled & authored by Justice Prathiba M. Singh
with inputs from the registry of the Delhi High Court*



SIGNIFICANT
DEVELOPMENTS IN
THE IP DIVISION

TTK Prestige Ltd. v. KCM Appliances Pvt. Ltd., 2023:DHC:2494

The plaintiff TTK Prestige, in this case, held a design registration for a “Pressure Cooker with Lid (Set)”, for its Svachh Deluxe Alpha range of pressure cookers. The main feature of the design, which lent it novelty, it was contended, was the “spillage control” feature of the lid of the pressure cooker, which had a central depression in which froth could collect and evaporate, thereby preventing overflow and spillage of froth and dirtying of the surroundings. The design of the defendant’s Impex Dripless pressure cooker, it was alleged, imitated the suit design, with an identical central depression in the lid, and was, in fact, advertising its product as providing “super spillage control”. This, alleged the plaintiff, constituted design piracy.

Apart from the aspect of piracy, the Court had, in this case, to contend with a somewhat unprecedented objection of the defendant, based on a peculiar feature of the design registration. The certificate of registration, while it purported to have been issued for a “Pressure Cooker with Lid (Set)”, contained front, back, top, bottom and perspective views of not one, but six pressure cookers, one capped with a lid and the remaining five open. The defendant sought to contend that this amounted to six designs being registered under one certificate, which was impermissible. Both sides relied on the definition of “set” in Rule 2(e) of the Designs Rules.

The Court held, however, that the definition of “set” was really irrelevant. On a juxtaposed reading of Section 6(1), 2(d) and (i) and 47 of the Designs Act read with Rule 10(1) and the classes of goods as defined in the Locarno Classification, the Court held that, as the features of the shape and configuration of all the six pressure cookers were the same, the only difference being attributable to the capacity of the pressure cookers, they would constitute one design, entitled to a single certificate of registration.

On merits, the defendant denied all the allegations of infringement/piracy on the ground that the design of the Svachh and Impex pressure cookers were totally different and distinct and therefore, there existed no scope of confusion and deception. The defendant further contested the validity of the suit design on the ground of prior publication as well as want of novelty and originality. For this purpose, reliance was placed on a video clip posted on the plaintiff’s YouTube channel on 11th November 2019. The suit design, submitted by the defendant, was merely a trade variant of the design of the pressure cooker in the YouTube video, which was not entitled to an independent registration. Additionally, it was contended that the suit design was merely functional, and functional designs could not be registered.

After an in depth study of all the authoritative decisions on the subject, this Court culled out 25 principles governing design registration, piracy and validity *vis-à-vis* prior art. The Court while granting *ad interim relief* to the plaintiff held that the YouTube design is not similar to the suit design as the designs of the two lids were completely different, the same, thus, cannot be considered as a trade variant. Apropos, functionality of suit design, reliance was placed on the *Castrol*¹ judgment, which held that the mere fact that a design involves a functional aspect, would not render the design purely functional or discredit the aesthetic attribute of the design which contributes to its saleability. On the aspect of piracy, it was held that there was no substantial difference between the lids, forming the subject matter of the suit design and the impugned design. The differentiating features were merely minor trade variants. The novel features of the suit design had, therefore, been replicated in the design of the defendant’s Impex Dripless pressure cooker. The defendant’s Impex Dripless pressure cooker, *prima facie*, was held infringing to the plaintiff’s Svachh Deluxe Alpha pressure cooker.

1 *Castrol India Ltd. v. Tide Water Oil Co. (I) Ltd.*, (1996) 16 PTC 202

Ace Technologies Corp. v. Communication Components Antenna Inc., 2023:DHC:2479-DB

In this decision delivered by a Division Bench (IP Appellate Division), the order of the Single Judge directing Ace Technologies (Appellant) to furnish security of Rs. 54.5 crores was upheld. This interim arrangement was one of the first instances where, in a non-Standard Essential Patent case, a large security deposit was directed. The Division Bench also approved the usage of comparable licensing agreements as a methodology for calculating the royalty rate, even in cases that do not involve Standard Essential Patents (SEPs).

The Respondent had alleged that the Appellant was infringing on the Indian Patent numbered IN240893 as the Appellant was manufacturing and selling split-sector antennas. The said patent of the Respondent was acquired by them from TenXc Wireless Inc. in 2012. The Respondent claimed that the said suit patent solves limitations of conventional sectorisation in wireless communication through an antenna with an asymmetric beam pattern. The Respondent contended that they the infringement by the Appellant in 2017 when they compared the beam patterns of the Appellants' antennas with those of the Respondent's and another manufacturer. The Appellant, however, challenged the validity of the suit patent and denied infringement. However, after hearing all the parties, the Single Judge did not find that the Appellant raised a credible challenge to the suit patent and also drew an adverse inference against the Appellant for not disclosing the beam patterns of their antenna.

In this appeal, the grounds raised by the Appellant included the challenge to the validity of the suit patent, non-infringement, and insufficiency of disclosure. While deciding the appeal, the Division Bench ruled that the test applied by the single judge for determining infringement was appropriate and that the beam patterns of the Appellant's antennas were similar to those disclosed in the Suit Patent. Therefore, the findings of the single judge were reaffirmed by the Division Bench.

The Court opined that the Claims of a patent must be read in conjunction with the description. It was also ruled that the question of disclosure or the patent and whether the alleged infringer infringes the same should be determined through expert evidence. The question of jurisdiction, raised by the Appellant, was also settled, and it was held that considering the Appellants were actively engaged in selling their products in India, Indian Courts were an appropriate jurisdiction for filing a suit for patent infringement.

The relief granted by the Single Judge was also upheld, and it was ruled that the discretion exercised in granting interim relief was justified. Therefore, the Division Bench did not find any reason to modify the same and considered it apposite to modify the impugned judgment.

Diamond Star Global SDN BHD v Joint Controller of Patents, 2023:DHC:2316

The appellant sought to patent a product known as “Hygiene Wash”, which comprised skin care preparations to which wood vinegar of the *Rhizophora Apiculata* tree, at a concentration of 18 to 22%, was added. The appellant sought to contend that, by adding wood vinegar of the *Rhizophora Apiculata* tree at the said concentration, the emollient would target only harmful bacteria, leaving beneficial lactic acid bacteria intact, unlike existing additives. Besides, it was submitted that, unlike other wood vinegars, wood vinegar from the *Rhizophora Apiculata* tree was not pungent, as it did not contain guaiacol.

Despite noting these facts, the Controller of Patents disallowed the appellant’s application, holding that “the applicant has just found /discovered that in wood vinegar obtained from the plant species (*Rhizophora apiculata*) , guaiacol compound (which is responsible for pungent smell in a product) is missing and he used the vinegar obtained from the plant species (*Rhizophora apiculata*) (instead of from other source) in making the personal care product”. Thus, according to the Controller, the appellant was merely using the inherent germicidal property of the wood vinegar obtained from *Rhizophora Apiculata*, instead of other sources, in making the personal care product.

This Court held that the Controller of Patents was required, while considering an application seeking a patent, to balance the considerations of encouraging inventiveness and disallowing patenting of products which lacked any inventive step over existing knowledge. Relying on *Novartis AG v. U.O.I.*¹, it was held that a “new product in chemicals and especially pharmaceuticals may not necessarily mean something altogether new or completely unfamiliar or strange or not existing before, (and) may mean something “different from a recent previous” or “one regarded as better than what went before” or “in addition to another or others of the same kind”.

The Controller pressed, before the Court, Section 3(c) of the Patents Act, which forbids patenting of a “mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature”.

Section 3(c), it was held, was required to be understood keeping in mind the concept of a “new product” as explained in *Novartis*. The decision to choose the *Rhizophora Apiculata* tree, as the source of the wood vinegar to be used, and the titration of the exact concentration (18 to 22%) in which it was to be added to skin care preparations in order for the preparation to be able to selectively target harmful bacteria, leaving beneficial bacteria intact, and also be free from any pungent smell, was found to be sufficient novel to justify grant of a patent.

The decision of the Controller was, therefore, set aside.

1 (2013) 6 SCC 1

Boehringer Ingelheim Pharma Gmbh v. Vee Excel Drugs and Pharmaceuticals Private Ltd. (along with other connected suits), 2023:DHC:2269

In this case, the High Court dealt with various issues of commercial importance in respect of pharmaceutical patents, such as the issue pertaining to presumption of validity in cases of old patents; presumption of validity on account of non-filing of post-grant or pre-grant opposition against a patent and; whether the defendants have laid a credible challenge to the validity of the suit patent, which is a species patent, on account of prior claiming under Section 64(1)(a) of the Patents Act, 1970.

Various interim applications were filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 on behalf of Boehringer Ingelheim Pharma Gmbh & Co. against various pharmaceutical companies the defendants herein. Interim stay was in operation in this case in favour of the plaintiffs and against various pharmaceutical companies.

It was clarified by the High Court in this judgment that Section 13(4) of the Act makes it clear that no distinction has been made between the old and the new patents. It specifically states that grant of patent would not, in any manner, warrant its validity. It would not matter if the defendants had filed a pre-grant or a post-grant opposition to the suit patent. A challenge can be laid either at the stage when an application is moved for grant of a patent, after its publication or after its grant, or even by seeking revocation or by way of a counterclaim in an infringement suit.

The High Court in this case compared the claims in the species and the genus patents and found that substantial part of the chemical structure is similar in the specie patent and the genus patent and also based its decision on the admission of the plaintiffs, who claimed that a therapeutic drug namely Linagliptin, which is used for treatment of type-II diabetes, is the subject matter of both species and the genus patent. The Court held that the action of attempting to patent both the genus and species patent would amount to evergreening or layering of patent protection, which is impermissible under the Indian Patent Law. Section 3(d) of the Act has been incorporated in the statute to ensure that such action of evergreening and layering is prevented. A patentee cannot restrain a third party from dealing with the new product invented by the patentee pursuant to further research, after the expiry of 20 years-term of the patent. The court also noted that when the product is specifically “covered” in the claims of a patent, whether specific disclosure with regard to the same has been made or not is immaterial.

As regards the public interest, the Court observed that the public interest also demands that large segments of population should have easy and affordable access to an anti-diabetes drug. Undeniably, the products of the defendants are significantly cheaper than that of the plaintiffs and taking into account that Linagliptin is a daily-use drug, affordability plays a major role in its access to wide sections of the public. Accordingly, the Court dismissed the aforesaid interim applications while concluding that a credible challenge has been raised by the defendants and the suit patent was vulnerable to revocation.

Intex Technologies (India) Ltd. v. Telefonaktiebolaget L M Ericsson, 2023:DHC:2243-DB

In the present case, the Division Bench was dealing with the cross appeals filed by the Plaintiff- Ericsson, and Defendant- Intex, against the order of the Id. single judge dated 13th March, 2015. In the impugned order it was- firstly, held that eight suit patents of the Plaintiff were *prima facie* valid, essential and that the Defendant had *prima facie* infringed Ericsson's patents. Secondly, that the Plaintiff had demonstrated *prima facie* compliance with its Fair, Reasonable, and Non-Discriminatory (FRAND) obligations. Thirdly, that the Defendant had shown its unwillingness to execute a FRAND license by initiating proceedings before the CCI and the IPAB during licensing negotiations. The Id. Single Judge had directed the Defendant to pay 50% in the form of royalty to the Plaintiff and the balance 50% in the form of a bank guarantee.

The challenge by the Defendant to the impugned order was based on the ground that it enforced a patent based on questionable essentiality, without analysing the merits of the validity challenge. It was contended that the eight suit patents were vulnerable to revocation under section 64(1)(j) & (m) and violated Section 8(1) and 8(2) of the Patents Act, 1970. It was further argued before the Court that in case of SEPs, no injunction can be granted even if the implementor is an unwilling licensee.

In its judgment, the Court propounded the test of infringement in SEP matters at the interim stage while delving into the concept of global doctrinal interdependence. The Court was of the view that reference to foreign court decisions is feasible for harmonization of fundamental legal principles if such principles are not in conflict with domestic laws. The Court clarified that in SEP cases, there is no bar against granting injunctions if the infringer is found to be an unwilling licensee. Holding otherwise, in the Court's opinion, would have a '*counterproductive domino effect*' that will shift bargaining leverage to implementors in the license negotiations.

Insofar as test of infringement in SEP matters is concerned, the Court was of the view that the indirect test of infringement, which is analogous to the law of transitivity, is the preferable method of proving both infringement and essentiality in SEP matters. Importantly, the Court held that in SEP suits, where patent holders assert only a handful of representative patents, even if infringement *qua* one patent is made out, it is like a '*silver bullet*'. Thus, an injunction can be secured if the infringement of one patent is established either *prima facie* or at the final stage. Moreover, since technology forms part of the standard, and the asserted patent is merely representative of the technology, the patentee is not required to offer individual patent or country specific licenses. Global portfolio licenses are capable of being FRAND. While arriving at the said conclusion, the Court placed reliance upon the decision in *Unwired Planet v. Huawei Tech. 2020 UK SC 37*.

The Id. Division Bench further examined the four-fold test propounded in *Nokia v. Oppo 2022 SCC OnLine Del 4014*, as per which payment of royalty cannot be directed unless the court is satisfied at the first instance as to essentiality, infringement, FRAND nature of the offer, and unwillingness of the Defendant. The Court concluded that the four-factor test cannot

be applied either at Order 39 Rule 10 CPC stage, or at the Order 39 Rules 1 and 2 stage. The said test was found to be based upon misreading of the decision of the judgment in *Unwired Planter v. Huawei (supra)*. The test was found to be imposing an onerous burden on SEP holders which would essentially eliminate any interim relief such as temporary injunctions or conditional order in SEP cases.

Insofar as essentiality of the suit patents and infringement by Defendant at the *prima facie* stage was concerned, the Court held that they were facts admitted by the Defendant in the complaint filed before the Competition Commission of India (CCI). Department of Technology (DoT) had also recognised the essential nature of Ericsson's technology. The long period of negotiation for licensing, non-filing of counter claim, or a declaration of non-infringement by the Defendant were also taken to be factors against the Defendant. *Qua* validity, it was held that no credible challenge had been raised by the Defendant showing the asserted patents to be vulnerable to revocation. The court further opined that Intex's decision to invoke the jurisdiction of the CCI which is based on the presumption of essentiality, implementation, and dominance of Ericsson's patents, indicates that Intex was fully aware that it was infringing upon the patents in question.

The Id. Division Bench in agreement with the findings of the Id. Single Judge held that Intex has failed to show how Ericsson has deliberately suppressed any information relevant under Section 8 of the Act from the Patent Controller.

In conclusion, the Id. Division Bench found merit in Ericsson's appeal, as the telecom industry has widely accepted Ericsson's SEPs cannot be disregarded. Thus, to ensure parity with other implementers, the Court directed the Defendant to pay the entire royalty amount to the Plaintiff within 4 weeks.

Societe Des Produits Nestle Sa v. The Controller of Patents, 2023:DHC:000774

In this patent appeal, the Court discussed the scope of Section 3(i) and Section 3(e) of the Patents Act, 1970 (*hereinafter* 'Act'). The Court further dealt with the issue relating to the amendment of claims by a patentee at the appellate stage and the applicability of Section 2(1)(ja) of the Act in relation to a patent application.

The Assistant Controller of Patents & Designs refused the application for grant of patent filed on behalf of Societe Des Produits Nestle Sa, under Section 15 of the Act, on the ground that the Claims of the patent application of the appellant defined a method for '*treatment of human body*' and were therefore, not patentable as the scope of the Claims fell under Section 3(i) of the Act. It was also noted by the Controller that the patent application did not meet the requirements of Section 2(1)(ja) of the Act and that the amended claims filed by the appellant sought to confer greater scope of protection, in comparison to the originally filed Claims, which Section 59 of the Act prohibits.

The Court in this appeal had set aside the order of the Controller and granted a patent in favour of the appellant while observing that the mere use of expression '*treatment*' in the claim does not render a claim falling under Section 3(i) of the Act. The expression '*composition comprising DGLA directed towards treatment*' was used only for defining the composition and not directed towards a method for treatment of a disease. Further, it was observed by the court that there is no specific bar for the amendment even at the appellate stage. If the Controller has been given the power to direct an amendment to the patent application, the High Court, which is sitting in appeal over the decision of the Controller, should also have similar powers to direct the patent applicant to amend Claims to its satisfaction. Only requirement under the Act is that the amendment has to fulfil the requirements under Section 59 of the Act and the consideration that has to be kept in mind is that the amended Claims are not inconsistent with the earlier Claims in the original specification. As regards the non-disclosure of sufficient data, it was held that when the best method known to the patentee is disclosed, it satisfies the requirement of sufficiency under 10(4) of the Act. It is not necessary that the disclosure of a patent shall be adequate to enable the skilled person to carry out all probable ways of operating the invention. On the aspect of inventive step, the court observed that when the subject matter of the patent application is showing technical advancement over the cited prior arts, and when the cited prior arts are considerably old, it is a clear indicator of non-obviousness.


Global Music Junction Pvt. Ltd. v. Annapurna Films Pvt. Ltd., 2023:DHC:000064


In this case, the High Court was seized of an issue whether a restrictive covenant in a contract that extends beyond the term of the contract can be enforced. The Court also delved on the issue of validity of the termination of a contract by an Artist, who is excluded from terminating the contract as per the clauses contained therein.

The High Court in this judgment considered an interim application, filed on behalf of Global Music Junction Pvt. Ltd. under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908, seeking to restrain various production houses and an artist, from infringing the Copyrights of the plaintiff company in the songs that were subject matter of the contract. An application under order XXXIX Rules 1 and 2 of the CPC was also filed on behalf of the artist, seeking vacation of interim stay granted by this Court.


It was observed by the High Court that the mandate of Section 27 of the Indian Contract Act, 1872 is clear that a restrictive covenant that extends beyond the term of the contract cannot be enforced and the aforesaid doctrine is applicable not only to contracts of employment but to all other kinds of contracts. An artist cannot be compelled to deal with another party against his own wish in perpetuity. It was further held that the contract being a commercial contract between the two private parties for mutual gain and benefit, it cannot be stated that the artist could not terminate the aforesaid contract. Once the parties have lost mutual trust and confidence in each other, the court cannot grant an injunction compelling the artist to continue with its contractual obligations with the plaintiff company. Therefore, the contract being determinable in nature, is not enforceable in view of Section 14(d) of the Specific Relief Act, 1963. Further, it was also observed that the said contract being in the nature of a 'contract for personal service', falls within the category of contracts that are not specifically enforceable in terms of Section 14(c) of the Specific Relief Act, 1963. Accordingly, this Court dismissed the application for grant of interim injunction and vacated the interim stay granted by this Court in this matter.

Armasuisse v. Trade Mark Registry, 2023:DHC:000019

Armasuisse, as a federal agency of the Swiss Government, and representing the military wing thereof, sought rectification of the Register of Trade Marks by removal, therefrom, of the registrations granted to Promoshirt S.A. (Respondent 2 in the appeal) for the word mark ‘SWISS MILITARY’ and the device mark. As the mark had been allowed registration without limitation of colour, Armasuisse contended that Promoshirt was free to use it in any colour and was, in fact, using it in a red and black format, as . While Armasuisse had no objection to the use of the white cross on a black background *per se*, the use of the white cross on a red background was seriously opposed, as it was the official insignia of the Swiss government, and could not, therefore, be registered as a trade mark by anyone else, except someone who was authorised by the Swiss government to use the mark.

The dispute was, therefore, whether the  mark, and the SWISS MILITARY mark, individually or in conjunction with each other, could be registered.

Various grounds of challenge were raised by Armasuisse.

Inasmuch as the impugned marks  (with the red and white cross) and SWISS MILITARY, would have the potential to deceive a consumer of average intelligence and imperfect recollection into believe the mark to have an association with the Swiss military establishment, or at least the Swiss government, which it did not, the Court held the mark to be a “false trade description” within the meaning of Section 2(1)(i)(I) of the Trade Marks Act and, consequently, ineligible to registration under Section 9(2)(a). The finding, in the impugned order, that all persons held the military in high esteem and would never believe that the Swiss military establishment would be making consumer items, was rejected as purely hypothetical. The presumption of the possibility of the goods being of Swiss original was, it was held, sufficient, even if the consumer would not, *arguendo*, link the goods with the Swiss army.

All other grounds, urged by Armasuisse, were rejected. However, in view of the finding on Section 2(1)(i)(I) read with Section 9(2)(a) of the Trade Marks Act, the impugned mark was held ineligible for registration, and the order of the Registrar, granting such registration, was accordingly set aside.

Communication Components Antenna INC v. Mobi Antenna Technologies (Shenzhen) Co. Ltd., 2022:DHC:855

In this case, the Defendant claimed that the Plaintiff's patent was liable to be revoked in terms of Section 64(1)(h) or Section 64(1)(k) of the Patents Act, 1970 in the context of Section 10 of the said Act. However, there were no foundational pleadings or evidence led to that effect in the counter claim filed. Defendant submitted that the issue of revocation under Section 64(1)(h) or Section 64(1)(k) is purely legal and thus, no pleadings or evidence are required to demonstrate said grounds of revocation of patent.

The Court observed that the criteria for determining sufficiency of disclosure is established by the patentee during the processing of the patent application and thus, the courts would generally be slow to construe the specifications against the patentee unless it is shown that the claims do not meet the requirement of law. It was held that to dislodge the patent's validity, Defendant would have to demonstrate through the pleadings how the claim construction is liable to be revoked pertinently, when the sufficiency of disclosure is in question. Where Section 64(1)(h) is invoked, it would have to be shown that the complete specification is not by itself sufficient to enable a person possessing average skill or knowledge of the art to which the invention relates. Thereafter, patentee should also be afforded an opportunity to lead evidence to rebut the grounds of revocation. In absence of this exercise, it is not possible to determine the grounds of revocation as a pure question of law and by plainly reading the patent specifications.

Since the Defendant had failed to make a specific pleading *qua* insufficiency of disclosure in patent claims and lead evidence thereon, the Court could not conclusively hold that Plaintiff's patent is liable to be revoked.

Sotefin SA v. Indraprastha Cancer Society and Research Center, 2022:DHC:595

Sotefin SA filed a suit for infringement of its patent titled “Carriage for the horizontal transfer of motor vehicles in automatic mechanical car parks”, which was used for horizontal transfer of motor vehicles in automated mechanical car parks [also known as Silomat Dolly]. Plaintiff executed certain agreements with Defendant No. 3, whereunder drawings of the automatic parking system were transferred to Defendant No. 3, and Defendant No. 3 was obliged to keep all information pertaining to the know-how and technology of the Silomat Dollies, confidential. Later, Plaintiff discovered that on a tender floated by Defendant No. 2 for construction of an automatic car parking system, Defendant No. 4 (a company operated and managed by Defendant No. 3) was utilising ‘Smart Dollies’ for the said project. These Smart Dollies were being imported by Defendant No. 1 from a company in China. Plaintiff claimed that Smart Dollies infringed their patent and that all Defendants were acting in connivance in as much as Defendant No. 3 transferred the drawings, know-how and technology of their Silomat Dollies to Defendant No. 4 and Defendant No. 1, who operated Defendant No. 2, imported the Smart Dollies from China. After hearing the parties, opinion of Scientific Advisors was also sought, who inspected the rival products in question and concluded that 17 out of the 19 elements of claim No. 1 of Plaintiff’s patent were found in the Smart Dollies.

The Court held that if the pith and marrow of the Plaintiff’s invention are found in the infringing product, it would be sufficient to determine patent infringement. For determining the question of infringement, the non-essential or trifling variations or additions in the product would not be germane, so long as the substance of the invention is found to be copied. For such analysis, pure literal construction is not to be adopted, rather, doctrine of purposive construction should be applied. Therefore, the key question was to assess whether the two elements absent in the Smart Dollies were ‘essential elements’ of Plaintiff’s Silomat Dollies. The Court applied the doctrine of equivalence to examine if the substituted elements in the infringing product perform the same function, in substantially the same way, to accomplish substantially the same result and concluded that the substance of the suit patent had been copied.

Defendants No. 1 and 2 also submitted that the Chinese company from whom the Smart Dollies were imported from, had obtained a patent for said technology. Thus, they argued that they are entitled to the protection under Section 107A(b) of the Patents Act, 1970. On this aspect, it was observed that the wordings of Section 107A(b) cannot be interpreted to mean that as long as the imported product is patented in any jurisdiction, it would not invite liability for infringement. Intellectual property rights are inherently territorial and thus, the said provision protects the products patented under the Indian patents regime only. Any interpretation otherwise would render the Indian patent nugatory.

Consequently, although the Plaintiff’s patent was about to expire, noting that the protection available to a patentee is no less than what is available during the term of the patent, an injunction was granted in Plaintiff’s favour restraining Defendants from using the Smart Dollies.

Phonographic Performance Limited v. Lookpart Exhibitions, 2022:DHC:4162

In the present case the Court was called upon to decide whether event organisers needed to take license from Copyright Societies for commercially exploiting copyrighted works in events including weddings and its related festivities such as *tilak*, cocktail parties, dinners, *sangeet* which have become an integral part of wedding festivities.

In the present case, the Defendant- Lookpart Exhibitions and Events Pvt. Ltd., an event management company, was providing various event management services, including providing DJ services for social events including weddings. The Plaintiff- Phonographic Performance Limited (PPL), filed the suit against the Defendant seeking injunction in respect of use of sound recordings at various social events organised by the Defendant in respect of which PPL had rights. In order to answer the said question, the Court had to interpret and clarify the scope of Section 52(1)(za) of the Copyright Act, 1957. This provision enconces an exception to infringement of copyright for use of literary, dramatic, musical or any other work(s) in course of any *bona fide* religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Considering the significance of the legal issue raised and its large-scale implications for artists, societies and other stakeholders, the Court for the first-time appointed an academician- Dr. Arul Scaria, as an expert in India, in terms of the provisions of Rule 31 of the Delhi High Court Intellectual Property Division Rules, 2022. The remuneration of the expert was fixed by the Court and the Plaintiff agreed to bear the same. The expert filed a written note of submissions clarifying the scope of the exception provided under Section 52(1)(za) of the Act.

Before the Court matter could be heard, the disputes were amicably settled between the parties. In view of the settlement between the parties, the Court did not consider the merits of the matter. The submissions filed by the Expert- Dr. Scaria, were taken on record by the Court. Accordingly, the suit was ultimately dismissed as withdrawn.

Neetu Singh & Anr. v. Telegram FZ LLC & Ors, 2022:DHC:3333

In this case, the issue before the Court that was to be decided was whether the Defendant- Telegram, could be directed to disclose the identity of the creators of channels which unauthorisedly and illegally were disseminating the Plaintiff's copyrighted works. Moreover, in this case, the Court considered, whether the jurisdiction of Indian courts can be ousted merely because the infringers were using Telegram platform for disseminating the infringing works retains its data on physical servers in Singapore.

The background of the matter is that a suit was filed by the Plaintiffs seeking permanent injunction against various channels on Telegram platform on which study material for competitive exams authored by the Plaintiffs was being circulated unauthorisedly. Some of the infringing channels were also statedly charging money for sharing the said material. The Plaintiffs further sought discovery of the details of the persons operating the channels to pursue other legal actions against such individuals in order to put a definite end to the unauthorised circulation of her work.

The Court held that Plaintiffs' work being circulated on Telegram platform constituted 'electronic infringing copies' under the Copyright Act, 1957 and that the 'plates' used to produce such infringing copies can be seized or ordered for delivery up under Section 58 of the Copyright Act. Accordingly, the Defendant -Telegram was directed to take down the channels which were being used for disseminating the infringing material.

Insofar as the disclosure of details of persons operating the channels was concerned, the Court was of the view that Telegram's argument that disclosure violates right to privacy is invalid as according to the judgement of the Hon'ble Supreme Court in ***Justice K.S. Puttaswamy v. Union of India & Ors., (2017) 10 SCC 1***, privacy rights cannot justify non-disclosure of information if the same is proportionate, for a legitimate purpose and there is an existing law justifying the disclosure. The Court also rejected Telegram's defence based on the Information Technology Act, 2000 and the Rules framed thereunder, and clarified that Section 81 of the IT Act shows that the provisions of the IT Act are supplemental to the provisions of the Copyright Act. The fact that Telegram is an 'intermediary' mandates disclosure of originator information in case of specific offences as per the Information Technology (Intermediary Guidelines and Digital Media Ethics), 2021.

It was observed that since the Plaintiffs conduct their business in India, the copyrighted material related to Indian examination, the infringing material was circulated in India and the fact that Telegram uses cloud computing i.e., its servers are accessible anywhere, including from India, Courts in India would be perfectly justified in directing the Defendant to adhere to Indian law and disclose the relevant information relating to infringers.

Telegram complied with the order of the Court and disclosed the relevant information, including names of the administrators, the phone numbers, and IP addresses of channels which were available with Telegram.

Bolt Technology OU v. Ujoy Technology Pvt. Ltd., 2022:DHC:3316

An important issue in the context of commercial disputes came up before the Court as to whether any commercial suit could be entertained by the Court where pre-institution mediation was not resorted to. Section 12A of the Commercial Courts Act, 2015 makes it mandatory for the parties filing a commercial suit to exhaust the remedy of pre-institution mediation.

In the case at hand, the Plaintiff- Bolt OU filed a suit seeking permanent injunction against Ujoy Technology for allegedly using deceptively similar marks, in relation to identical business. Along with the plaint, the Plaintiff filed an application seeking exemption from pre-institution mediation. The Defendant opposed the plea seeking exemption while urging that under the said provision of the CCA, pre-litigation mediation was mandatory, and no suit can be entertained without having resorted to pre-litigation mediation.

The Court allowed the application filed by the while holding that a suit which contemplates urgent relief is exempt from the clutches of Section 12A of the Act. The judgment of the Supreme Court in *Patil Automation Pvt. Ltd. v. Rakheja Engineers Private Limited (2022) 10 SCC 1* and *Laxmikant Patel v. Chetanbhai Shah (2002) 3 SCC 65*. The Court was of the view that urgent relief in intellectual property rights case is extremely important, as such reliefs are usually granted by Courts not merely for protection of statutory and common law rights, but also in order to avoid confusion, deception, unfair and fraudulent practices. The Court took note of the fact that intellectual property disputes do not merely involve the interest of the contesting parties, but also the large interest of the consumer of the product/service in question. Insofar as the question as to what would qualify as urgent relief is concerned, the Court was of the view a court may or may not accede to the request of urgent relief of the Plaintiff, however the question whether the suit involves any urgent relief cannot be made contingent to the satisfaction of the Court. The same has to be decided by the Plaintiff solely.

It was also observed by the Court that a legal notice was served upon the Defendant, whereby the Plaintiff had clearly informed their willingness to amicably resolve the dispute. However, no such sentiment was reflected by the Defendant in is reply to the legal notice. The hand of mediation which was extended by the Plaintiff was met with a tight slap. Therefore, accordingly, there was no need to resort to pre-litigation mediation in terms of Section 12A of the CCA. However, on the basis of the submissions made by the Defendant during the hearing, the matter was referred to Delhi High Court Mediation and Conciliation Center.

Diageo Brands B.V. v. Great Galleon Ventures Limited, 2022:DHC:2937

This case pertains to infringement of Plaintiffs' registered design for a 180 ml alcohol bottle known as "Hipster" bottles, as well as imitation of its trade dress and get-up. Plaintiffs contended that Defendant's "GOA Gold" Whisky (180 ml) and "GOA Gold" Rum (180 ml) infringed their registered design. The Hipster was stated to be modelled and inspired from the shape and proportion of a smartphone, and no other party had ever adopted such a bottle/packaging, with such novel features as that of Plaintiffs' products. The Defendant on the other hand, had challenged the validity of said design under Sections 19(1)(b), 19(1)(c), 19(1)(d) read with Sections 2(d), 2(j), 4(c) and 22(3) of the Designs Act, 2000.

It was held that in determining design infringement, the yardstick is the 'visual effect', 'appeal to the eye of the customer' and 'ocular impression' rendered by a design as a whole. Subtle dissimilarities would not be sufficient to defend infringement if there is substantial and overall similarity in the conflicting designs. Applying this test, the Court found that all the unique, essential and novel features of the Hipster bottle were found in the impugned bottles as well. While there were some points of variations, the same were found to be immaterial when examined from three to five yards, which is a reasonable distance between a potential customer and the shelf of a liquor store where bottles may be displayed together.

On the aspect of invalidity of Plaintiffs' design registration, it was noted that protection under the designs law extends to not the article itself, but to the physical manifestation of such idea. In the given case, the Court observed that although a bottle or hip flask was not new, but the innovation and novelty of design lied in the shape and configuration applied to the bottle, as conceptualised in the author's mind. The Plaintiffs' product was found to be the first in the market to take the visually-appealing features of a smartphone and apply it to pre-packaged alcohol. The aesthetic appeal of the design was the novelty which had to be protected. As regards the allegation of 'mosaicing' of pre-existing designs, it was held that same is not a defence to seek cancellation of registration and Defendant will have to show one single prior art with all the features, to claim prior publication. Since the Defendant failed to depict the same, the design was found to be valid.

However, as regards the imitation of trade dress, the Court sided with the Defendant in as much as the essential features of the trade dress of Hipster bottle were not found to be distinctive enough to become a source identifier.

Sona BLW Precision Forgings Ltd. v. Sonae EV Pvt. Ltd. (2022:DHC:2927)

In this case alleging infringement and passing off of the trade mark, the Court primarily dealt with two pivotal questions, that is, whether the goods offered by the plaintiff and the defendant are similar, and secondly, whether the two trademarks are different.

For deciding the question of whether the goods were similar, the Court considered the concept of *allied/cognate goods or services*. Applying the tests of the respective uses and users of the goods/services, the intended purpose of the goods/services, the sector both the parties are in, and the trade connection between the goods/services, the Court held that since the products of the parties belonged to the automobile sector, the common purchasers/consumers who are aware of the plaintiff's mark can be easily misguided into believing that the plaintiff has now expanded its business to the goods of the defendant, which may also be considered as a trade progression for the plaintiff.

In considering whether the two marks are different, the Court restated that for determining the question of similarity between the two marks, the marks have to be considered as a whole. The dissection of the mark is generally not permitted and can be applied only in exceptional cases. The test to apply is of '*overall impression*' created by the mark and not a meticulous comparison of the two marks examined by the microscope to find differences. An important factor to be considered is also as to whether the complained mark contains the whole of the other or its essential features. Further, it is to be considered whether the individuality of the common part is lost or whether the common part stands out prominently.

Best Agrolife Limited v. Deputy Controller of Patents & Anr., 2022:DHC:2506

The Court, in the instant matter, remanded an Order of Patent grant by the Patent Office for a fresh consideration since the Order was legally infirm and unreasoned, resulting in violation of the principles of natural justice.

As per the contentions raised by the parties, it is noted that Respondent No. 2 filed Patent Application No. 284/MUM/2014 for “a synergistic suspoemulsion formulation of Pyriproxyfen and Diafenthiuron” on 27th January 2014. Patent application was published under Section 11A of the Patents Act, 1970 and the first examination report was issued on 31st May 2018 objecting the claims inter alia on grounds of lack of novelty, inventive step, etc. The Reply was filed by Respondent No. 2 on 19th July 2018 to the said examination report. Subsequently, on 4th March 2021, Petitioner filed a pre-grant opposition under Section 25(1) of Act opposing the grant of patent on several grounds including lack of novelty under Section 25(1)(b) and non-patentability under Section 25(1)(f) read with Section 3(d) and 3(e) of the Act as well as objecting to the scope of the amended claims. Not just Petitioner, but six other persons also filed the pre-grant opposition. Subsequent to such oppositions, the Respondent No. 2 filed a reply to the same and made certain modifications in the claim. The Petitioner contended that while such amendments to the claims were made, he was not given any notice or opportunity to respond to proposed amendments and patent was granted in absolute denial of his right to response or hearing.

The Court, in this regard, held that the Petitioner has unequivocally and categorically taken a stand that it has raised the ground of non-patentability of the Impugned Patent under Section 25(1)(f) read with Section 3(d) of the Act in the pre-grant opposition, replication, written submissions and extensive arguments addressed on the issue before the Respondent No. 1. It is stated that plain reading of the scheme of the Patent Act, 1970 shows that Section 25(1) provides a remedy for pre-grant opposition when a patent application is made and published. Further, it needs no emphasis that if the Act provides a remedy, the authority competent to take a decision must consider the representation in consonance with and by scrupulously applying the principles of natural justice, albeit at the stage of pre-grant opposition only a summary enquiry is envisaged.

The Court also pointed out the significance of the decision laid down in *Novartis AG v. Union of India, (2013) 6 SCC 1*, wherein the Supreme Court held that amendment to Section 3(d) of the Act cannot be underscored. The amended portion of Section 3(d) was clearly laid down to qualify standards to keep a check on any repetitive patenting or ever-greening of patents on spurious grounds. The Court further held that the Impugned Order suffers from legal infirmities being a non-speaking and unreasonable order, besides being in violation with the principles of natural justice.

It was held and concluded that the Petitioner has been able to make out a case for remanding the matter to Respondent No. 1 for reconsideration of the pre-grant opposition, confined of course to the issues raised before this Court in the context of Section 25(1)(f) read with Section 3(d) of the Act and made it clear that no opinion has been expressed on merits of the matter.

Nippon A&L Inc. v. The Controller of Patents, 2022:DHC:2434

In this appeal under section 117A of the Patents Act, 1970, the Court was called upon to examine whether amendment of ‘*product by process*’ claims to ‘*process*’ claims was permissible under the scheme of the Indian patent law. The Court considered the impugned order of the Patent Office disallowing amendment of claims by the Appellant in its application pending grant of patent.

The brief factual background of the matter is that the Appellant- Nippon A&L Inc. filed an application seeking grant of patent in respect of “*copolymer latex being obtained by emulsion polymerization*”. The application was objected on the ground that the scope for which protection was sought was not clear. In order to overcome this objection, the Appellant amended the claims and directed them towards “*a method of emulsion polymerization for obtaining a copolymer latex*”. However, vide the impugned order, the Patent Office rejected the said amendment, *inter alia*, on the ground that the new set of claims were beyond the scope of original claims as the process was not claimed earlier, and that the amendment from ‘*product claims*’ to ‘*process claims*’ was not supported by the description.

Firstly, the Court examined the nature of claims as originally filed and concluded that original claims were in the nature of ‘*product by process*’ claims. As far as the extent of monopoly conferred by ‘*product by process*’ claims is concerned, the Court held that it would depend upon reading of the claims in each case. Thereafter, the Court proceeded to examine whether the Appellant could have amended the ‘*product by process*’ claims to ‘*process*’ claims under the scheme of amendment provided in Section 59 of the Act which deals with amendment of patent applications, specification, claims and documents related thereto. The Court analyzed the legislative history and the conditions provide under the said section and was of the view that vide the Patent (Amendment) Act, 2002, the power of amendment given under the said section has been expanded. The Court clarified the scope of Section 59(1) by observing that, amendments to claims prior to grant should be construed more liberally rather than narrowly. Further, as long as the invention is disclosed in the specification and the claims are limited to the disclosures already made, the amendment should not be rejected, especially at the stage of examination prior to grant.

In view of the above legal position, the Court held that the Appellant was merely narrowing the scope of the claims and the process sought to be claimed by Nippon’s patent application had been disclosed in the patent specification. In arriving at the said conclusion, the Court relied upon the judgment in *Konica/Sensitizing [1994] EPOR 142* wherein the European Board of Appeals held that change in category of claims from ‘*product by process*’ to ‘*process*’ is admissible under Article 123 (2) of the European Patent Convention, 1973. Accordingly, the Court found the impugned order of the Patent Office disallowing the amendment to unsustainable, and remanded the matter to the Patent Office.

The European Union v. Union of India, 2022:DHC:2301

In this case, the Court was called upon to answer whether in case of non-adherence of timeline in filing response to FER within the statutory time limit due to mistake of the patent agent, can the Controller of patents and/or High Court exercising writ jurisdiction under Article 226 and 226 condone the delay?

The Petitioner- European Union Represented by the European Commission, had filed two patent applications before the Indian Patent Office (IPO). The FERs were issued in the patent applications on April 10, 2018, and June 29, 2018. However, due to the non-filing of the responses to FERs within the statutory time frame, the applications were '*deemed to have been abandoned*' under Section 21(1) of the Patent Act, 1970. It was submitted on behalf of the Petitioner that the delay in filing the reply to the FERs was inadvertent and due to the negligence of the patent agent.

The Court observed that according to Rules 24B (5) and (6) of the Patent Rules, 2003 the entire process of objections and replies thereto, has to be mandatorily concluded within the maximum time limit of six months plus three months maximum. However, relying on the decision of *Ferid Allani v. Union of India, [W.P (C) 6836 of 2006, decided on 25th February, 2018]*, the Court observed that abandonment of the patent application will deny an applicant his substantive rights to claim exclusive rights for his invention. The question of abandonment is fundamentally a question of intent. Though expressed or implied by action or conduct, abandonment is never presumed. Thus, an extension of statutory timelines concerning patent applications may be granted after examining the factual matrix to see whether the Applicant intended to abandon the patent or not. Any extraordinary circumstances such as negligence by the patent agent or docketing error could be considered by the Court. It was also observed that the patent applicants ought not suffer due to the mistake by the patent agent.

Insofar as the power to condone the delay is concerned, the Court held that the Controller does not have the power under Rule 138 to condone delay in filing response to FER. However, while exercising writ jurisdiction under Article 226 and 227 the High Court can, in exceptional circumstances restore the application and permit the Applicant to rectify the defects in the application.

Considering the chronology of events in the case, the Court observed that Petitioners had filed the request for examination within the prescribed time, the change in the law firm was also notified to the Indian patent agent and, there were repeated attempts through email to contact the patent agent. Thus, the Petitioner had no intention to abandon the applications at all. Thus, the Petitioner was not negligent and had taken all steps to pursue its patent applications. Accordingly, while considering the circumstances in this case to be exceptional, the Court directed the Controller General of Patents to take the responses to FERs on record and to restore the patent applications to its original position. The Court ordered the Patent Office to proceed with the examination and to conclude the same within six months.

Vishal Pipes Ltd. v. Bhavya Pipe Industry, 2022:DHC:2252

In this case, the issue before the Court was whether IPR suits filed before District Courts which are valued below Rs. 3 lakhs, ought to be listed before and adjudicated upon by the District Judges (Commercial) under the provisions of the CCA or by District Judges (non-Commercial) as normal civil suits. To answer the said question, the Court interpreted Section 12(1)(d) of the Commercial Courts Act, 2015 (CCA) in the context of IPR disputes.

The Court observed that in IPR disputes, if the relief of injunction or damages valued by the plaintiff, is at an amount lower than Rs.3 lakhs and court fee is paid on that basis, it would defeat the purpose of special provisions for IPR statutes and the CCA. The statutes must be harmoniously construed in a manner to further the purpose of the legislation and not to defeat it. Thus, it would be mandatory for IPR suits to be ascribed a 'specified value', in the absence of which the valuation of the suit below Rs.3 lakhs would be arbitrary, whimsical, and wholly unreasonable. The Court would have to take into consideration the 'specified value' based not merely upon the value of the relief sought but also the market value of the intangible right involved in the said dispute.

The Court held if the subject-matter IP in the plaint is valued below 3 lakhs rupees, the Court shall examine whether the valuation is correct or not. Upon such examination, the concerned Court would pass appropriate orders in accordance with law either directing the Plaintiff to amend the plaint and pay the requisite court fee, or to proceed with the suit as a non-commercial suit. If the valuation is found to be above or equal to 3 lakhs rupees, the suit will be treated as a commercial suit as per the CCA.

To maintain consistency, it was directed that even IPR suits which are valued below Rs. 3 lakhs, which are adjudged to be non-commercial suits, shall continue to be listed before the District Judge (Commercial), but shall not be subjected to the provisions of the CCA.

V. Guard Industries Ltd. v. Crompton Greaves Consumer Electricals Ltd., 2022:DHC:1915

In this case the Court granted an order of injunction in favor of the Plaintiff and against the Defendant restraining the Defendant from using 'PEBBLE' as the Court found the impugned mark 'PEBBLE' phonetically, visually and structurally identical to the dominant part of the Plaintiff's registered trademark, i.e. 'PEBBLE'.

The case concerned an application under Order XXXIX Rule 1 and 2 filed by the Plaintiff against the Defendant alleging infringement as well as passing off by the Defendant by using the impugned mark 'PEBBLE' which according to the Plaintiff was the dominant part of the Plaintiff's registered trademark. While relying on various judicial dicta of the apex court as well as this Court, the court reached the conclusion that the Plaintiff had extensively used the the mark in question and also was first in the market for it and carried considerable goodwill which cannot be denied.

The Court also interpreted Section 29 (4) of the Trademarks Act, 1999 and held how Section 29(4) is distinct and different from Section 29(1) to (3) of the Act, inasmuch as the element or the requirement to establish the 'likelihood of confusion' is absent in the provision. The Court noted the judgment of this Court in *Dharampal Satyapal Limited v. Suneel Kumar Rajput, (2013) 56 PTC 116 [Del]* and held that in order to balance the said element, Legislature has mandated the necessity of showing that the mark, which is sought to be infringed, has a reputation in India and a distinctive character such that its use by the infringer is without due cause. The legislative intent is to afford stronger protection to a mark with reputation without the registered proprietor of such a mark having to demonstrate the likelihood of confusion.

Based on the rights that a propreitor enjoys in a registered trademark under Section 28 of the Act and principles of infringement under Section 29 of the Act, the Court in its prima facie opinion held that a case for infringement as well as passing off was made by the Plaintiff and an injunction therefore was granted by the Court against the Defendant.

ITC Limited v. Central Park Estates Pvt. Ltd., 2022:DHC:005190

The suit in question was filed by the Plaintiff- ITC Ltd. against the Defendants seeking protection of the mark 'BUKHARA' which was used by Plaintiffs in respect of restaurant and other hospitality services. The Plaintiff was aggrieved by the adoption and use of the mark 'BALKH BUKHARA' by the Defendants for their restaurant in Central Park Resorts, Gurgaon, which was allegedly deceptively similar to the Plaintiff's mark. The Plaintiff sought permanent injunction against the Defendant in respect of use of the mark 'BALKH BUKHARA' as well as declaration of the mark 'BUKHARA' as a well-known mark under Section 2(z) of the Trade Marks Act, 1999.

The Plaintiff, one of India's foremost private sector companies, adopted the mark 'BUKHARA' in late 1970s for its restaurant at ITC Maurya Hotel in Chanakyapuri, New Delhi. The said restaurant provides various cuisines inspired from the North-West Frontier region. The restaurant became known for its unique interiors, decor, layout, cutlery, wooden menu cards and the rustic look, which it maintained over the years. The mark 'BUKHARA' was also registered in India since 1985 in both word and logo form. The restaurant has acquired various awards which were on record.

The Plaintiff alleged that the Defendants had obtained trademark registrations in respect of the mark 'BALKH BUKHARA'. The images of the Defendants' restaurant was also placed on record to show that the look and feel of the Defendants' restaurant was identical to the Plaintiffs. Insofar as the permanent injunction against the Defendants is concerned, an amicable settlement was arrived between the parties and the Defendants agreed to give up the mark 'BALKH BUKHARA'.

Insofar as declaration of the mark 'BUKHARA' as well-known is concerned, the Court examined the evolution and legislative scheme of well-known marks in India. The Court examined the judgment of the J. Mahinder Narain in *Daimler Benz Aktiengesellschaft v. Hybo Hindustan, AIR 1994 Delhi 239* wherein the mark 'BENZ' was recognized as well known on account of its transborder reputation and goodwill. The said judgment was also affirmed by the Supreme Court. The Court also took note of the litigation involving the mark 'WHIRLPOOL' in which the mark in question was declared as well known despite the registration of the said mark having lapsed.

During the hearing, it was brought to the attention of the Court that the mark 'BUKHARA' was denied protection by the courts in the US. The Court examined the decision of the New York Court of Appeal and the US Court of Appeals of the Second Circuit and was of the view that the said judgments would not apply in India as the mark originated in India as also India recognizes the concept of 'cross border reputation'.

Relying upon the overwhelming evidence as to the reputation of the Plaintiff's mark and principles laid down in the judgment of the Id. Single judge of the Delhi High Court in *Tata Sons Ltd. v. Manoj Dodia, 2011 (46) PTC 244 (Del)*, and *Toyota Jidosha Kabushiki Kaisha v. M/s. Prius Auto Industries Limited (2018) 2 SCC 1*, the Court held 'BUKHARA' to be a well-known mark under Section 2(zg) read with Section 11(2) of the Act.

Vintage Distillers Limited v. Ramesh Chand Parekh, 2022:DHC:004894

This case concerned an application under Order XXXIX Rule 1 & 2 filed by the Plaintiff against the Defendant alleging trademark and copyright infringement and seeking to restrain the Defendant and those acting on behalf of the Defendant *inter alia* from infringing the registered label mark 'DHOLA MAARU' of the Plaintiff as well as an application under Order VII Rule 11 filed by the Defendant seeking return of plaint on the ground that this Court lacked jurisdiction to entertain the suit.

The court in the instant case dismissed the preliminary objection of jurisdiction by the Defendant and the application of the Defendant under Order VII Rule 11 by noting that pleading apprehension of sale/marketing in Delhi was enough to confer jurisdiction to the Court. The Court also noted that in the instant case, in any event, an additional remedy was available which makes the dispute amenable to the jurisdiction of this Court in terms of Section 134(2) of the Trademarks Act, 1999 and Section 62(2) of the Copyright Act, 1957.

While considering the case of trademark infringement, the Court placed reliance on Section 28 and 29 of the Act as well as various judicial dicta to hold that 'DHOLA MAARU' was an essential feature of the Plaintiff's registered label mark and use of phonetically similar mark 'DHOLA THAARU' by the Defendant for the same kind of products with a deceptively similar packaging amounts to trademark infringement and also satisfies all the tests for a passing off action.

In this case, the Court while dismissing the Defendant's argument of non-use of the registered label mark by the Plaintiff, the Court held that incorporation of additional content on a label mark on account of the requirements of the excise law does not amount to non-use of the mark by placing reliance on Section 47 of the Act. Sub-clause (2) of the Section states that the Section does not apply where the non-use of a trademark is due to special circumstances in the trade, which includes restrictions on the use of the trademark in India imposed by any law or Regulations and not due to any intention to abandon or not to use the trademark in relation to the goods or services to which the application relates. The Court also placed reliance on the judgments in *SabMiller India Ltd. v. Jagpin Breweries Ltd., 2014 SCC OnLine Bom 4842*, *SKOL Breweries Ltd. v. Fortune Alcobrew Pvt. Ltd., 2012 (50) PTC 413 (Bom.)* and *SKOL Breweries Ltd. v. Som Distilleries and Breweries Ltd., 2012 (49) PTC 231 (Bom.)* of the Bombay High Court to reiterate the same.

On the aforesaid reasoning, the Court allowed the Plaintiff's application under Order XXXIX Rule 1 and 2 and granted an interim injunction for trademark and copyright infringement as well as passing off against the Defendant.

FMC Corporation v. Best Crop. Science LLP, 2021:DHC:1987

The plaintiff FMC Corporation (“FMC”) alleged infringement by the defendants, of a product patent and a process patent held by them in respect of the product Chlorantraniliprole (CTPR) and the process thereof.

The defendants did not dispute the fact that they were also manufacturing and selling CTPR without obtaining any licence from the plaintiff. However, the defendants, taking advantage of Section 107(1) of the Patents Act, disputed the validity of the suit patents, particularly the product IN’ 307.

It was contended that CTPR was already covered in IN 204978 (IN’978) which claimed a Markush structure, i.e., a generalised chemical formula in which, by substituting radicals from suggested embodiments, various products could be synthesised.

FMC did not dispute the fact that CTPR was covered by IN’978. The contention of FMC was that, though covered, CTPR was not disclosed in IN’978. More specifically, FMC contended that there was no enabling disclosure, in IN’978, from which a person skilled in the art could, proceeding on the basis of ordinary general knowledge and the teachings in IN’978, arrive at, or synthesise, CTPR. The manner in which the defendants had arrived at CTPR from the Markush structure in IN’978, it was submitted, was only by cherry picking substituents from the suggested embodiments in IN’978, by having with it the benefit of hindsight, as CTPR already stood discovered and claimed. The defendant contended that the validity of the suit patent could not be disputed by so cherry picking substituents from the Markush structure in IN’ 978 and, on that basis, allege that the CTPR was either bad on account of prior claiming or on account of prior publication.

The fundamental issue which arose for consideration was, therefore, whether there was any distinction between “coverage” and “disclosure”. Both sides relied on the only judgment of the Supreme Court on the point, i.e. *Novartis AG v. U.O.I.*¹, which contained the observation that there could not be any “wide gap or dichotomy” between coverage and disclosure in a patent. The implication of this observation was, according to the defendant, that coverage and disclosure were the same and what was covered was, *ipso facto*, disclosed as well. FMC contended, on the other hand, that the very observation that there could not be a wide gap between coverage and disclosure itself indicated that there was, indeed, a gap and that coverage and disclosure were not the same. It was pointed out that different benches of this Court were interpreting the decision in *Novartis* differently.

This Court, after undertaking a para-by-para analysis of *Novartis*, came to the conclusion that the judgment itself recognised that coverage and disclosure were not the same. It was further recognised, in the said decision, that hindsight analysis, by cherry picking substituents, could not be a basis to question the validity of a pharmaceutical patent. It was necessary for the defendant, seeking to dispute the validity of the suit patent, to positively

1 (2013) 6 SCC 1

prove that a person skilled in the art could, on the basis of existing knowledge and the teachings in the suit patent, arrive at CTPR. For this purpose, the defendant would, while suggesting radicals to be substituted onto the Markush structure in the genus patent, also have to provide the reasons for selecting such radicals.

On the facts of the case, this Court found that there was no explanation for the defendants having chosen the radicals, from the suggested embodiments in the Markush structure in IN'978, for substitution on the Markush structure. The exercise, therefore, was found to be nothing less than cherry picking of select substituents, by the defendants, which had, with it, the benefit of hindsight knowledge, as CTPR had already been synthesised, disclosed and claimed.

The submission of the defendant that the suit patent, which claimed CTPR, was vulnerable to invalidity, was, therefore, rejected.

As this was the only defence raised by the defendant, interlocutory injunction was granted.

Dr. Reddy's Laboratories v. Controller of Patents, 2022:DHC:004746

The enactment of Tribunal Reforms Act, 2021 and the resultant abolition of IPAB has brought its own set of challenges before the judicial system. Jurisdiction to hear appeals from the decision of Controller and revocations has now been transferred to High Courts. In the present batch of three cases, the question before the Court was whether High Courts across the country had jurisdiction to entertain revocation petitions and appeals under the Patents Act, 1970 in the post IPAB era?

Insofar as jurisdiction to deal with petitions seeking revocation of patents is concerned, the Court was of the view that the effect of grant of patent is felt across the country. Thus, person interested in seeking revocation could be located in any part of the country where the factum of grant and its effect would determine its conduct. Applying the doctrine of 'cause of action', the Court held that wherever the effect of the patent is felt and commercial interest of the person interested are affected would be a place which has nexus with the *lis*, and revocation petition under Section 64 of the Patent Act, 1970 can be filed at that place. In arriving at the aforesaid conclusion the Court relied upon the judgments of the Full Court of the Delhi High Court in *Girdhari Lal Gupta v. K. Gian Chand Jain & Co. AIR 1978 Del. 146* and Division Bench in *Ajay Industrial Corporation v. Shiro Kanao of AIR Del. 496* wherein it was held that grant of IP right has both static and dynamic effect and the jurisdiction to entertain revocation petitions cannot be limited to where the patent has been granted registration.

Insofar as appeals against the order of the Controller rejecting the patent application is concerned, the Court held that as soon as patent application is filed, the 'appropriate office' in respect of the said application is frozen. Then the Court went to examine the Patent Rules, 2003 and was of the view that the term 'appropriate office' is of immense significance in the process of examination and grant of a patent. All the proceedings in respect of the patent application, including the hearing, are deemed to have taken at the appropriate office. In view of the said position, the Court opined that the appropriate office is the 'situs' of a patent application. Thus, the High Court exercising jurisdiction over the 'appropriate office' would have jurisdiction to hear appeal against the decision of the Patent Office. The Court did not accept the submission of ld. Counsels that the concept of cause of action ought to be merged into Section 117A. The Court relied upon the judgments of a ld. Single judge of the Delhi High Court in *Scooters India v. Jaya Hind Industries Ltd. AIR 1988 Del. 82* and Supreme Court in *Godrej Sara Lee Limited v. Reckitt Benckiser AIR 2010 SC 1331* wherein it was held that there is marked difference between the nature of original proceedings and appellate proceedings. The Court further held that an arrangement made merely for administrative convenience by the CGPDTM would not give rise to facts that would vest jurisdiction.

M/s Aman Engineering Works v. Registrar Trademark, Trade Marks Registry, 2022/DHC/004701

The issue in this petition was the power of the Registrar of Trade Marks to condone the delay in filing of an application seeking review of orders treating the applications filed by the respondent seeking registration of their marks as abandoned. The case required the interpretation of Section 127(c) of the Trade Marks Act, 1999 read with Rule 119 of the Trade Marks Rules 2017.

The Court held that Section 127(c), which gives power to the Registrar to ‘*review his own decision*’, has to be read together with Rule 119. An application seeking review should be filed in the “prescribed manner”, which is stipulated in Rule 119 of the Rules. If the application is not filed in the “prescribed manner”, that is, including within the period prescribed for filing of such an application, the same cannot be entertained by the Registrar, as the said condition and prescription is mandatory because of the language used in Rule 119 of the Rules.

The Court rejected the submission that Section 131 of the Act would vest the Registrar with an unbridled power to condone the delay even beyond the period prescribed in Rule 119 of the Rules. It was held that as Rule 119 of the Rules has been framed by the Central Government in exercise of its powers under Section 157(xxxiv) of the Act, the said Rule is to be treated as part of the Statute and is equally effective. The time for filing of an application seeking review of an order stipulated in Rule 119 of the Rules, is to be considered as one prescribed by the Act itself, and, therefore, Section 131 of the Act shall not any application.

It was further held that Rule 109(2), even otherwise, curtails the power of the Registrar in condoning the delay to a period of not more than one month.

It was held that the Registrar of Trade Marks has no power to condone the delay in filing of an application seeking review beyond one month from the date of the decision of which the review is sought.

Avery Dennison Corporation v. Controller of Patents, 2022:DHC:004697

This was the first case where a bench of the IPD re-assessed the decision of the Controller of Patents and ordered the grant of a Patent. The patent application being considered in this appeal was directed towards a novel fastener that enabled consistent severing of the fasteners from the stock.

While adjudicating the appeal, the Court ascertained the specific features of the fastener stock which were to be tested for satisfying the requirement of Inventive Step. The Court discussed the various approaches and tests adopted by Courts, Judicial Authorities, and Patent Offices to determine Inventive Step. Several landmark judicial pronouncements, including the decision of the House of Lords in the *Windsurfing case*, the Division Bench of Delhi High Court in *Roche v. Cipla*, and the UK Supreme Court in *Actavis v. ICOS*, were discussed in detail by the Court. These tests/approaches arising from these cases as also guidelines for examination include the 'Obvious to Try' approach, 'Problem/Solution' approach and the 'Teaching Suggestion Motivation (TSM)' test.

The Court came to a finding that there was indeed some technical advancement that was achieved by the subject patent application. Therefore, the only question that remained was if the manner in which the technical advancement was derived was obvious to a person skilled in the art or not. To answer this question, the Court elucidated the fundamental principles that need to be considered while deciding the question of obviousness. The first principle is that 'simplicity alone cannot defeat an invention.' The second critical principle elucidated was that a hindsight or *ex-post facto* analysis of prior art was not permissible while considering the question of obviousness.

In the ultimate analysis, the Court ruled that the age of the prior art is one of the indicators that the development of the subject patent from the prior art would not be obvious. Therefore, it was observed that when a long time passes since the prior art was published and a simple change resulted in unpredictable advantages, which no one had thought of for a long time, the Court would tilt in favour of holding that the invention is not obvious.

Finally, while holding that the subject matter claimed in the subject patent application satisfied all the criteria of being an invention, it was ordered that the patent would proceed to grant after completing all necessary formalities in the Patent Office.

Frankfinn Aviation Services Pvt. Ltd. v. Tata Sia Airlines Ltd., 2022:DHC:004489

In the present case, the Court vacated its *ex parte ad interim* injunction against Tata Sia Airlines owned Vitarā's promotional campaign 'FLY HIGHER' and held it descriptive of its services. The airline introduced the advertising campaign in 2018 as an extension of its tagline 'FLY THE NEW FEELING'.

On 21st January, 2022, the Court granted an *ex-parte ad interim* injunction in favour of the Plaintiff in favour of the Plaintiff and mandatory injunction against the Defendants in the present case. Plaintiff approached this Court and filed the present suit accusing the airline of infringing its registered trademark 'FLY HIGH' which it uses as a tagline for its institute and since the services of the parties to the *lis* pertain to the same sector, i.e. aviation, confusion amongst the public and members of the trade is inevitable.

It is also pertinent to note that the Defendant was using the phrase 'FLY HIGHER' in conjunction with its well-known trademark 'VISTARA' and the VISTARA (logo). The Court further laid down a distinction between terminologies 'mark' and 'trademark' and the intent of the Legislature to keep the two distinct as they have different connotations. The Delhi High Court defined the term 'trademark' which states that in order to qualify as a trademark, it must be capable of distinguishing the goods and services of one person from the others and it must be read or proposed to be used in relation to goods or services for indicating a connection. Therefore, the trademarks are intangible assets which serve as 'source identifiers' instantly connecting the goods/services with the proprietor thereof.

The Court ruled the case in favour of the Defendant stating that if the Defendant is able to demonstrate that its use of the allegedly infringing trademark is not as a trademark but merely descriptive of its goods, it can escape the rigors of Section 29 of the Trade Marks Act, 1999. The Court further observed that the defense under Section 30(2)(a) of the Act, which provides that a registered trademark is not infringed where the use in relation to goods or services indicates the kind, quality, quantity, intended purpose, etc. or characteristics of goods or services.

The Court further ruled that the channel of trade, class of consumers and target audience are separate. It was held by the Court that the manner in which phrase 'FLY HIGHER' is being used by the Defendant shall deceive, misrepresent or confuse members of the public and vacated the *ex-parte ad interim* injunction Order.

G.M. Modular Pvt. Ltd. v. Syska LED Lights Pvt. Ltd., 2022: DHC: 3190

In this case, the Court considered Section 2(d) of the Designs Act, 2000 (*in short, 'the Designs Act'*) which excludes a 'trade mark' falling under Section 2(1)(v) of the Trade and Merchandise Marks Act, 1958 (now 2(1)(z)(b) of the Trade Marks Act, 1999) from the definition of 'design'.

The Court opined that if the registered design *per se* is used as a trade mark, it cannot be registered as a 'design' under the Act and such registration, if granted, is liable to be cancelled under Section 19 of the Designs Act. The Court held that the filing of an application seeking registration in the shape of the product as a trade mark simultaneously with the application for registration of the same as a design under the Act, would render the registration of the design suspect and disentitle the plaintiff to an *ad interim* relief.

It held that in judging the prayer for *interim* relief sought by the plaintiff, a defence that the design registration is liable to be cancelled, shall also be considered *prima facie* and given due weightage and would have an important bearing in considering the relative merit of the claim to an *interim* injunction.

The Court held that for seeking registration of the design, the applicant must show that it is the author of the design or is the person for whom the author of the design, for good consideration, executes the work, or is a person who acquired the design or the right to apply the design to any article, or the person to whom the design has devolved from the original proprietor. An importer of the product from China with the Impugned design cannot claim to be the proprietor of the said design.

FMC Corporation & Ors. v. Insecticides India Limited, 2022:DHC:004770

In this case the Court held that no case was made out by the Plaintiffs to prove that the Defendant was infringing the Plaintiffs' patent rights under the Indian Patent No. 298645 (IN'645).

This case concerned an application under Order XXXIX Rule 1 & 2 filed by the Plaintiffs against the Defendant alleging infringement and seeking to restrain the Defendant and those acting on behalf of the Defendant *inter alia* from infringing the patent rights of the Plaintiffs under the Indian Patent No. 298645 (IN'645), by using directly or indirectly any process(s) covered by the said patent granted by the Controller of Patents, in favour of the Plaintiffs.

It was noted by the Court in the judgment that the patent being a process patent, it was imperative to compare the rival processes in order to ascertain whether there was any infringement by the Defendant. Thus, the Court discussed the two processes in detail and noted that in a process patent rights of a patentee flow from Section 48 of the Patents Act 1970, which provides that subject to the other provisions of the Act and conditions specified in Section 47, a patent granted under the Act shall confer upon the patentee, where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process and from the act of using, selling, offering for sale a product, obtained directly by that process.

By relying on the judgment of this Court in *Sotefin SA v. Indraprastha Cancer Society and Research Center and Others, 2022 SCC OnLine Del 516* and several other judgments on the issue, the Court noted that even though for determining infringement, it is imperative to reach a finding that 'all essential elements' of the suit patent are present in the infringing process, it needs to be borne in mind that the non-essential or trifling variations or additions in the product would not be germane, where the substance of the invention is found to have been copied. Thus, the Court noted that in order to examine if the substituted element in the infringed product does the same task, in substantially the same way, to accomplish substantially the same result, the Pith and Marrow Doctrine, also known as the Doctrine of Purposive Construction, needs to be applied by the Court.

After applying the aforesaid principles and determining the essential features of the patent and the processes in question, the Court reached the conclusion that the Plaintiffs had failed to discharge the burden of proving that the Defendant's process is equivalent to the process under the suit patent and held that no case of infringement was made out.

Interdigital Technology Corporation v. Xiaomi Corporation, 2021:DHC:1493

This is the only case in which an Indian court restrained a party before it from enforcing/ executing an order passed by a foreign court. The injunction granted was, therefore, in the nature of an anti-execution injunction, or an anti-anti-suit injunction.

The Wuhan Intermediate People's Court, (*“the Wuhan Court”*), by order dated 23rd September 2020, granted an anti-suit injunction, restraining the plaintiff Interdigital Technology Corporation (*“Interdigital”*) from proceeding from continuing to prosecute **CS (Comm) 295/2020**, pending before this Court. Interdigital moved the court for a stay of the said anti-suit injunction order passed by the Wuhan Court. By this judgment, the prayer was granted.

CS (Comm) 295/2020, instituted by Interdigital, alleged infringement, by the defendant Xiaomi Corporation (*“Xiaomi”*) of six Standard Essential Patents (SEPs) held by it. A holder of an SEP is required, by law, to agree to license the SEP to willing licensees at Fair, Reasonable And Non-Discriminatory (FRAND) rates. Interdigital alleged that, though it was willing to license, to Xiaomi, the right to use its SEPs at FRAND rates, Xiaomi was an unwilling licensee. As Xiaomi was allegedly using Interdigital's SEP without thus obtaining a license, from it, Interdigital sued Xiaomi, seeking an injunction against Xiaomi using its SEPs or, in the alternative, a direction to Xiaomi to take a license from Interdigital at the rates quoted by Interdigital which, according to it, were FRAND.

Prior to **CS (Comm) 295/2020** being filed by Interdigital before this Court, Xiaomi had already filed a complaint before the Wuhan Court, seeking fixation of a FRAND rate for the entire SEP portfolio of Interdigital. During the pendency of the said suit, and after summons had been issued thereon, Xiaomi moved an application before the Wuhan Court in the said complaint, seeking an anti-suit injunction, restraining Interdigital from pursuing the proceedings before this Court. By order dated 23rd September 2020, the Wuhan Court granted an anti-suit injunction as sought by Interdigital. Interdigital moved, thereupon, this Court seeking a restraint against the enforcement, by Xiaomi, of the said order 23rd September 2020 against it; in other words, seeking anti-anti-suit injunction.

The issue was *res integra*, there being no earlier decision on the point.

This Court noted the fact that, before the anti-suit injunction came to be granted to Xiaomi, the Wuhan Court did not serve notice of Xiaomi's application to Interdigital, though notice of the complaint filed by Xiaomi against the Interdigital, in which the said application had been filed, were served on Interdigital. This Court held that notice on the complaint could not be treated as notice on every application which would come to be filed therein.

On merits, too, this Court held that the Wuhan Court had proceeded, in granting an anti-suit injunction, on the premise that, by filing **CS (Comm) 295/2020** before this Court, Interdigital was seeking to interfere with, or exclude the jurisdiction of Wuhan Court. This court noted that there was a fundamental difference in the nature of the two proceedings,

as CS (Comm) 295/2020 was in the nature of infringement suit, whereas the complaint filed by Xiaomi before the Wuhan Court was for fixing of a FRAND rate at which Interdigital's entire SEP portfolio could be licensed to Xiaomi. It was observed that the issue of fixing of a FRAND rate come up for consideration before this Court in CS(Comm) 295/2020 only if, in the first instance, the court were to hold the suit patents asserted by Interdigital to be SEPs and, secondly, that Xiaomi was in fact infringing the suit patents. It was only thereafter that the question of Xiaomi obtaining a license from Interdigital, and the FRAND rate thereof would come up for consideration.

It was noted that the issue of infringement did not even arise before the Wuhan Court, directly or indirectly. That apart, this Court noted that, Interdigital was, in CS (Comm) 295/2020, asserting only six patents, whereas the proceedings in the complaint filed by Xiaomi before the Wuhan Court embraced the entirety portfolio of Interdigital's patents. As such, this court was not concerned with fixing of a global FRAND rate, unlike the proceedings before the Wuhan Court.

The observation, of the Wuhan Court, that CS(Comm) 295/2020 was seeking to exclude the jurisdiction of the Wuhan Court was also found to be erroneous, as the Wuhan Court had no jurisdiction to adjudicate on the plea of infringement of Interdigital's suit patent by Xiaomi. Rather, it was observed, the Wuhan Court had interdicted the continuance of the suit instituted by Interdigital before this Court, which could not have instituted before any other forum. This Court held that it was not possible for it to countenance a foreign Court interdicting legally sustainable proceedings, instituted by Interdigital before this Court, which could not have been instituted elsewhere, especially when the foreign court had had no jurisdiction to deal with the said proceeding.

For all these reasons, the court deemed it appropriate to restrain Xiaomi from enforcing the order dated 23rd September 2020 passed by the Wuhan Court.

We are proud to be part of Delhi High Court which has become role model for the rest of the country in setting up IPD! It has led to paradigm shift in speed and consistency of adjudication hitherto unknown!

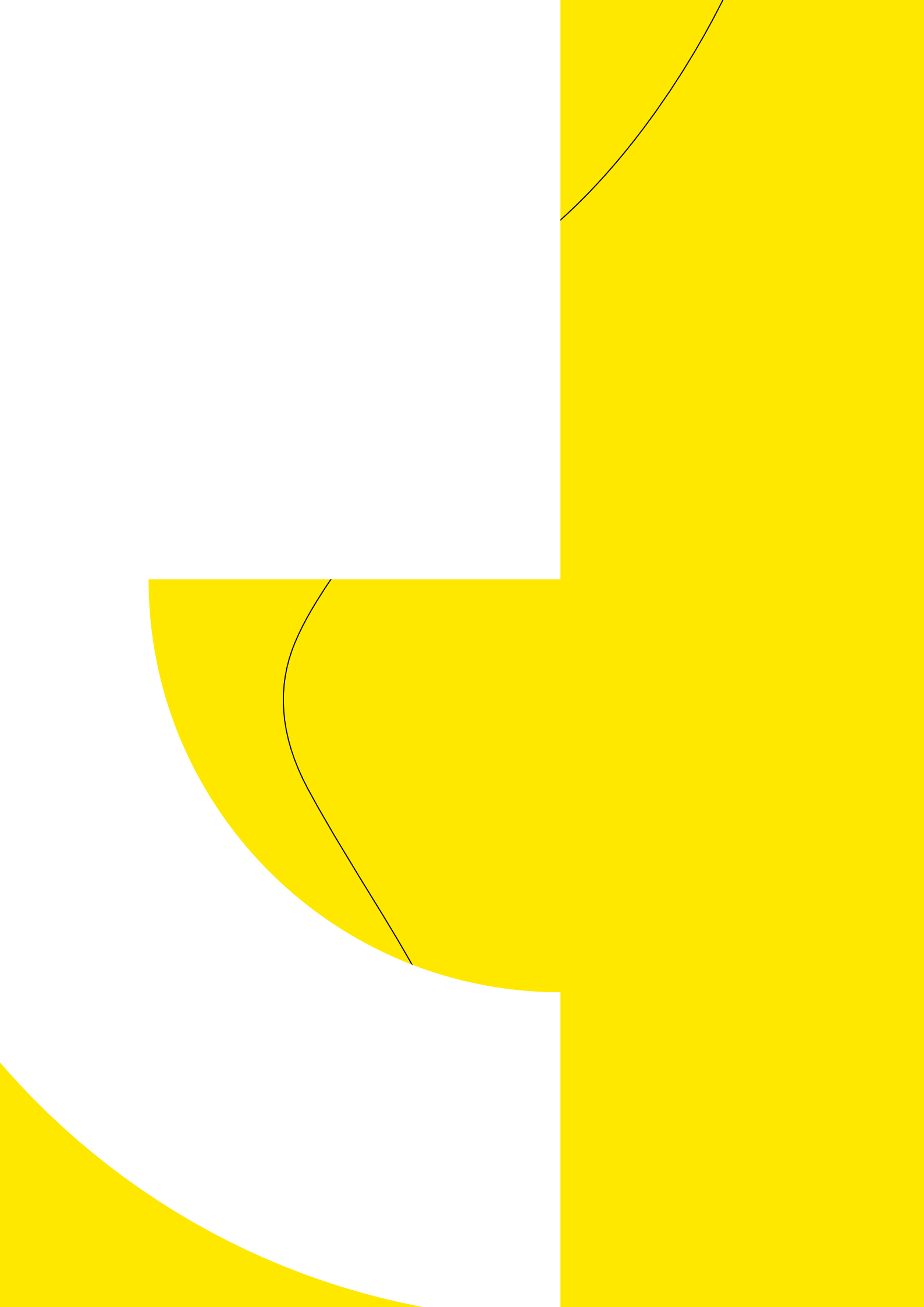
- Mr. Hemant Singh, Advocate

The setting up of the IPD has truly enabled expeditious movement of IP disputes. In the interest of advancing this intent further, it would help to have two IP Appellate Division Benches.

- Mr. J. Sai Deepak, Advocate

As lawyers, we owe a debt of gratitude to the IP Division of the Delhi High Court, which has in a very short time, created an ecosystem of scholarship, rigor, and excellence, in the practice of IP law. There has never been a better time to be an IP litigator.

- Ms. Swathi Sukumar, Advocate



IP DIVISION
IN THE NEWS

HC restrains use of 'Sholay' for running biz

New Delhi: Delhi High Court has said that "Sholay" is the title of an "iconic film," which, as a mark, cannot be held to be devoid of protection and restrained the use of the film title by persons alleged to be misappropriating the same. The high court, which said certain films, like "Sholay" cross the boundaries of just being ordinary words, also awarded damages of Rs 25 lakh to the makers of the movie—Sholay Media and Entertainment Pvt Ltd and Sippy Films Pvt Ltd—which had filed the lawsuit against persons using the popular film title to run their businesses.

Justice Prathiba M Singh, while dealing with a trademark lawsuit stated that titles and films are capable of being recognised under the trademark law. The judge noted that the case was contested for over 20 years and the adoption of the mark 'Sholay' by the defendants for selling the DVD of the film on their website etc was "clearly mala fide and dishonest" and granted three months to the defendants to pay the damages.

The defendants sought to justify their use of the plaintiffs' mark on grounds that film titles are not entitled to protection, there is no probability of confusion on the internet and that "Sholay" is a dictionary word. **PH**

INTA's Role as 'Friend of the Court'

The Association's amicus submissions to courts around the world play an important role in guiding international law, finds Tom Phillips.

The hard work and notable success of INTA's International Amicus Committee were shared during a packed session yesterday, Saturday, April 30. "If you've got an interesting case that raises a cutting-edge issue, the sooner you tell us about it, the sooner INTA will have an idea about whether it

will participate," urged David Bernstein, partner at Debevoise & Plimpton LLP (US).

Moderated by Adam Scoville, vice president, general counsel, and chief compliance officer at Ra/max Holdings, Inc. (US) and the 2022-2023 chair of the International Amicus Committee, INTA's Role as Friend of the Court—Review of Amicus Briefs Filed Since 2020 unpacked 17 amicus briefs INTA has filed in Europe, India, and the United States in the past two years.

Noemi Parotta, partner at Spheronica (Italy), outlined the seven European amicus briefs INTA had filed over 2020-2022, under the leadership of the Committee's vice chair, Marina Perrini, attorney at Tiliasonolis & Partners Law Firm (Greece).

These include *Sarawati Iberica, S.A. v. Zorka Gardžikova*, which was handed down by the

European Union Intellectual Property (EUIPO) Grand Board of Appeal on April 1

In this case, which involved arguing the approach of the courts toward similar goods (specifically alcoholic and non-alcoholic goods), INTA argued that a rigid approach "may no longer be consistent" with current market practice and the perceptions of relevant public.

The Grand Board of Appeal in its decision agreed with INTA's position and "made reference" to the Association's brief, explain Parotta, "so we were very proud," she added. Other briefs include a rejected EU application filed by the estate of the George Orwell involving book covers for *War and Peace* and *Anna Karenina*, a case dealing with Registered Community in which the Court of Justice of the substantially in line with INTA's position. Sharing the latest from INTA, Honorable Prathiba M. Singh, High Court of Delhi (India), explained how amicus briefs

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INTA's Role as 'Friend of the Court' (continued)

have grown in importance for India's courts over the past five or six years.

Justice Singh pointed to a Parliamentary Standing Committee Report, published in July 2021, which said India needed a panel of amicus curiae assisting the courts in dealing with intellectual property rights matters.

She believes INTA plays three roles as an amicus curiae organization: providing expertise, bringing an "unbiased position to the table," and offering an international perspective on the proper interpretation of the law.

"INTA's experience can be very helpful," said Justice Singh, who recounted two cases to which INTA had submitted briefs, in 2020, *ETA SA v. Union of India*, WP (C) 11642 of 2019, and, in 2021, *Sarawati Iberica SA Ltd v. Zorka Gardžikova*, WP (C) 11642 of 2019. Mr. Bernstein then outlined INTA's submissions in the United States, a country that has what he called a "long tradition" of amicus briefs.

"It's great to see that that position is now taking hold around the world," he said.

Mr. Bernstein emphasized the significance of amicus briefs, noting: "When we are playing the role of 'friend of the court,' we have an important role to play, and there's a lot that we can do to help the development of the law in the United States."

Traditionally, INTA always filed briefs with the Supreme Court of the United States. But a deluge



David Bernstein

"We've gotten to the point where Supreme Court cases have multiple advocates."

In submissions being made to the Supreme Court by different parties has seen a change of strategy, with INTA instead now focusing more on the Courts of Appeals.

"We've gotten to the point where Supreme Court cases have multiple advocates. And you begin to wonder whether any of the justices are actually reading them," said Mr. Bernstein.

"The prospect of really influencing the Supreme Court's decision is more narrow at the Supreme

Court level, because the parties are usually represented at that point."

At the appeals courts, there are often one or two advocates, and the Association can play a much bigger role," he said.

He then explained the background behind INTA's U.S. briefs, including some important cases, in 2021, at the U.S. Supreme Court in *International Salt v. Greyhound AG v. AOPN Thai* and the well-known "Pocky" chocolate case *Ezaki Glico Kabushiki Kaisha v. Little Jerry America Corp.*

In *Saltor*, by the time INTA was told about the case it was going up for certiorari. INTA submitted its brief, but, because the Supreme Court's request for a hearing, INTA "has no knowing" whether its submission was read.

"This shows how important it is for us to have the chance to intervene earlier in the case, possible," said Mr. Bernstein.

Mr. Scoville invited INTA members to request for the Association to submit a request following the procedure posted on INTA's website to request the Committee's involvement.

"We desperately need your help in help become aware of these cases at an early stage; not finding out too late, where our voice may of a cacophony or there will be too little time to participate effectively," concluded Mr. Scoville.

Delhi HC grants damages worth ₹16 lakh to Mondelez India

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NEW DELHI

The Delhi High Court has directed Neeraj Food Products to pay ₹16 lakh in damages to Mondelez India Foods Pvt Ltd for infringing its trademark.

In an order, Justice Prathiba Singh said, "In view of the flagrant violation of the plaintiff's (Mondelez) rights, damages to the tune of ₹16 lakh are awarded in favour of the plaintiff.

The court also restrained Neeraj Foods from infringing or using the products James/James Bond for its products."

Additionally, the court said the colour scheme for Neeraj Food's product is identical to Mondelez's chocolate brand Cadbury's label and packaging and the marks are also confusingly and "deceptively" similar.

The law suit by Mondelez had sought permanent injunction and damages for infringement of trademark and copyright and unfair competition,

among other reliefs.

Mondelez started its operations in 1947 and is a market leader in confectionery chocolate products globally.

Some of its brands include Cadbury Dairy Milk, Cadbury Gems, Cadbury 5 Star, Bournville, Cadbury Perk.

Mondelez filed the case against Neeraj Food in 2005. In its plea, the company

alleged that Neeraj Food launched a chocolate product under James Bond mark, with an identical arrangement, colour scheme, and layout as that of Cadbury's Gems.

Mondelez said Neeraj Food, its proprietors, partners, directors and distributors franchisees were restrained from using the trade mark James/James Bond or

other trademark that are remotely similar to the ones of Mondelez. It also prayed to recall the products, marketing, promotional and advertising materials bearing trademarks James Bond and other trade marks deceptively similar to the trade marks to the Mondelez representatives.

In an interim order in 2007, the HC had directed Neeraj Food from using the trademarks. In 2021, the parties tried to settle the matter, but the

talks had failed.

While deciding the trademark dispute, Justice Singh said, "In view of the flagrant violation of the plaintiff's (Mondelez) rights, damages to the tune of ₹16 lakh are awarded in favour of the plaintiff.

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Additionally, the court said the colour scheme for Neeraj Food's product is identical to Mondelez's chocolate brand Cadbury's label and packaging and the marks are also confusingly and "deceptively" similar.

'Cadbury Gems' vs 'James Bond': High Court rules in favour of former

NEW DELHI
SOPHIAAN
NEW DELHI, JULY 27

MONDELEZ India Foods Pvt Ltd, formerly known as Cadbury India Limited, had in 2005 filed a suit alleging that Neeraj Food Products had infringed its trademark by launching a chocolate product under the mark James Bond with an identical colour scheme, layout, and arrangement as that of its Cadbury Gems or 5 Star products.

While Mondelez India Foods had trademark registration for Cadbury's Gems and 5 Star, the court was divided on whether the marks were deceptively similar. The court also granted an injunction against Neeraj Food from using the marks James/James Bond for its products.

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HC blocks rogue websites, apps infringing rights of 'FanCode'

AGENCIES
NEW DELHI, 25 JULY

The Delhi High Court has ordered to block as many as 29 rogue websites and mobile applications broadcasting and streaming cricketing events by infringing the rights of FanCode, a super-streaming platform owned by Sports Technologies Pvt Ltd.

In the recent hearing, Justice Pratibha M Singh was dealing with the Plaintiff Sports Technologies' suit seeking a permanent injunction restraining infringement of broadcast reproduction rights, damages, rendition of accounts, and profits.

As per the plaintiff, the 'FanCode' platform also streams a large number of events for which exclusive broadcast rights have been acquired by them by entering into agreements with various third parties.

Plaintiff has been able to garner evidence during the

recent Bangladesh tour of West Indies, Netherlands tour of England, and England tour of West Indies to show how all of the defendants' web portals and mobile applications are illegally broadcasting and violating the broadcast reproduction rights, the suit stated. In a majority of these websites, the Plaintiff is unable to even obtain information as to who are the registrants of these websites as the said information is privacy protected, the plaintiff argued.

Moreover, these websites are able to remove the streaming of infringing content in a very short period to a mirror website even if the main website and URL is blocked. Thus, it is prayed that a dynamic injunction be granted restraining any further websites from coming up which are mirror websites of the rogue websites so that they can also be blocked, the plaintiff's counsel submitted.

The plaintiff also submitted

various screenshots to establish how various cricket tours, including the ongoing Bangladesh and West Indies series, the websites and mobile applications are indulging in the illegal broadcast.

"The said websites shall stand blocked with immediate effect, upon notice being issued by the Plaintiff to the DoT (The Department of Telecommunications) and ISP (Internet service provider) that such an affidavit has already been filed before this Court," said the order.

"Upon DoT receiving the notices and communications from the Plaintiff that the affidavits have been filed before the Court, the order for blocking such further rogue websites shall be passed, immediately and in any case, within 24 hours, so that the websites do not continue to stream infringing content in any manner whatsoever," the order read.

Trademark Infringement Suit By Meta: Delhi High Court Permanently Restrains Use Of 'Facebake', Other Facebook Formative Trademarks

Nupur Thapliyal
11 July 2022 5:43 PM



In a trademark infringement suit filed by Meta (formerly known as Facebook), the Delhi High Court has permanently restrained the use of marks namely 'facebake' and 'facecake', Facebook marks, Facebook Visual Presentation and any other Facebook* formative trademarks of the social media giant.

Justice Navin Chawla also awarded nominal damages of Rs. 50,000 in favour of Meta Platforms Inc and against the defendants. The Court also directed the defendants to pay cost of the suit to Meta.

The Statesman Wed, 27 July 2022
https://paper.thestatesman.com/c/69415947

'Copyright Owners Have Right To Dub Cinema': Delhi High Court Vacates Stay On Hindi Dub Of Telugu Movie 'Bheemla Nayak'

Pradukshi Sharma
12 July 2022 9:45 AM



The Delhi High Court recently vacated its earlier ex-parte injunction order against M/s Sitara Entertainment which barred it from releasing the Hindi-dubbed version of its Telugu remake of the Malayalam film 'Ayyappanum Koshiyum'. A single judge bench of Justice Jyoti Singh, while vacating the earlier order, held that the owners of copyright in a cinematographic work will have the right to both sub-title and dub their work.

FAKE WEBSITES OF POPULAR BRANDS Delhi HC orders probe, police lodge FIR

EXPRESS NEWS SERVICE
NEW DELHI, JULY 22

OBSERVING THAT there are a number of cases where fraudulent domain names are being registered under the marks of well-known and established business houses and their brands to dupe people, the Delhi High Court has directed the Special Cell's Cyber Crime Unit to continue with its investigation and submit a status report before the court on August 3.

Justice Pratibha M Singh in an order said that at least 27 such cases before the HC need to be placed before the same bench "as the investigation needs to be consolidated and comprehensive directions may be required to be issued" to the police, cyber cells, banks, the National Payment Corporation of India, Reserve Bank of India (RBI), Ministry of Home Affairs (MHA) and other authorities.

"The said domain names are being used for hosting fraudulent

websites with details of bank accounts under the garb of offering jobs, dealerships, franchises, lucky draws, and various other illegal activities," said the court in the order dated July 20.

Following a court order, the Special Cell registered an FIR in the matter on July 20. The cyber crime unit, Intelligence Fusion and Strategic Operations (IFSO), has constituted an SIT and started investigation into creation of fake accounts made in the name of well-known business houses.

Copyright breach: HC asks Telegram for info of users involved

SOFIA HASAN
NEW DELHI, AUGUST 31

REJECTING TELEGRAM'S argument that it could not disclose user information as that would violate its privacy policy and the laws of the jurisdiction where its physical servers are located, the Delhi High Court has directed the messaging app to disclose, in a sealed cover, details of the channels and devices used to disseminate content that allegedly infringed copyright, as well as the mobile numbers, IP addresses and email IDs of the users involved.

Justice Pratibha M Singh said in a ruling that the disclosure, on

the basis of a court order, of the details of channel operators who are disseminating material that infringe copyright, or of the devices and other gadgets used for the same, could not be shielded under the grounds of protection of privacy or protection of freedom of speech and expression.

"The origin and source of the infringing material has to be traced and such devices or persons involved in the infringement ought to face consequences in accordance with law, including being held liable for damages. That would not be possible if the source of such infringing copies, i.e., the details of the infringing channels are not disclosed," said

the court in a Tuesday ruling that was made public on Wednesday.

The order was passed in a case filed by KD-Careplus Private Limited and its teacher Neeta Singh alleging that the study material prepared by them for various competitive examinations was being disseminated without authorisation through various Telegram channels.

After getting the information sought from Telegram, the court said, it would consider passing further directions.

Telegram had argued that under its privacy policy, unless a person is declared a terror suspect, user information could not be disclosed. "Telegram has its

servers based in Singapore which has encrypted data. Accordingly, decryption of that data would not be permissible except as per the laws of Singapore," its counsel had further argued.

Justice Singh said the fact that Telegram chose to locate its server in Singapore should not mean that copyright owners in India would be left without a remedy for infringement. The courts in India would be perfectly justified in directing Telegram to adhere to Indian law and adhere to orders passed by Indian courts for disclosure of relevant information relating to those who infringe on copyright, the court said.

"Infringers cannot be permit-

ted to seek shelter under Telegram's policies merely on the ground that its physical server is in Singapore," said Justice Singh.

The disclosure of personal data for the purpose of any proceedings related to infringement of copyright would be a recognised exception to data privacy under the Singapore law, said the court. Rejecting Telegram's other argument that being an intermediary it is not required to disclose the details of the originator of the information, the court said merely disabling or taking down the channel is an insufficient remedy. FULL REPORT ON www.indiaqueries.com

Domino's vs Dominick: HC in favour of former

EXPRESS NEWS SERVICE
NEW DELHI, AUGUST 31

THE DELHI High Court has restrained a pizzeria from using the name 'Dominick Pizza' to sell its products after global restaurant chain Domino's Pizza accused the Ghaziabad-based eatery of deceptively using a similar logo, mark and trade name. Dominick Pizza was the name of the initial store which was purchased by the founder of Domino's in 1960.

Justice Pratibha M Singh also prohibited 'Dominick Pizza' — which has outlets in Ghaziabad and Jalandhar — from advertising and selling any products under marks 'Cheese Burst' and 'Pasta Italiano' or any other marks similar to Domino's registered trademarks till November 24. The court also ordered suspension of the domain names of 'Dominick Pizza'.

"A perusal of the record shows that Defendants have used the name 'Dominick Pizza', which is nothing but the identical historical name of the Plaintiff's store," said the court, adding that 'Dominick' is integrally and historically associated with Domino's and the use of an identical name in a similar logo form for pizzas would be confusing and deceptive in nature. The court said the dishonesty

in adopting a similar name is further strengthened by the fact that the defendants are copying various flavour variants of Dominos. "The manner of listings of Defendant No. 1 on various social media and online ordering platforms leaves no doubt in the mind of the Court that the name and business of Defendant No. 1 is being confused as that of the Plaintiffs' outlets. Reviews of consumers on Google Reviews also re-affirms this fact that apart from the confusion that is taking place, there is severe tarnishment and dilution of Plain-tiff's mark and business," said the court, while granting ex-parte ad interim injunction in favour of Domino's.

Dominos in its suit said Dominick Pizza, through its proprietor Sandeep Kumar Sharma, is using a deceptively similar logo, mark, and trade name and also unauthorisedly using its other registered trademarks. Advocate Pravin Anand, of 'Anand and Anand', who is representing Domino's, told the court there are several other Google reviews which reveal customers have placed Zomato orders with Dominick Pizza, thinking an order is being placed with Domino's.

Issuing summons to Dominick Pizza, the court asked it to file written statement in 30 days,

Delhi HC Seeks Google's Response to WinZo's Suit

Next hearing on Dec 6, Play Store pilot to run

Priyanka Sangani
@timesgroup.com

Pune: The Delhi High Court has ordered Google to file its response to a civil suit by social gaming platform WinZo Games seeking an Injunction against the tech company's policy that allows only daily fantasy sports (DFS) and rummy apps on its Play Store.

WinZo said in its plea on Monday that the app store's policy amounts to unfair trade practices and favoured certain gaming apps over others.

Earlier this month, Google said it would allow these two categories of real-money games on its appstore in a year-long pilot project starting from September 28.

WINZO'S SUIT SAYS...
Selectively allowing only DFS and Rummy apps, while leaving out other real-money games, made new pilot unfair



Real-money games are ones that charge an entry fee from players, unlike casual games that primarily depend on advertising revenue.

The next hearing in the case is on December 6, so Google can go ahead with the pilot programme on Sept 28, Abhishek Malhotra, managing partner, TMT Law Practice and the counsel on record for Win-

Zo told ET.
(For full report, go to www.economictimes.com)

HindustanTimes

Indo-Pak Rooh Afza battle: HC directs Amazon to take down listing of products not by Hamdard

EXPRESS NEWS SERVICE
NEW DELHI, SEPTEMBER 9

THE DELHI High Court has directed Amazon to remove the listings of Pakistan-manufactured Rooh Afza from its platform in India after the famed drink's Indian manufacturer, Hamdard National Foundation, filed a suit alleging that the products of its Pakistani counterpart are being sold in India through the e-commerce site.

The court said 'Rooh Afza' is a product which has been consumed by the Indian public for

more than a century now, and its quality standards have to comply with the applicable regulations prescribed by the Food Safety and Standards Act and Legal Metrology Act. It is surprising that an imported product is being sold on Amazon without complete details of the manufacturer being disclosed, it said. "The listings of infringing ROOH AFZA products on the website www.amazon.in not originating from the Plaintiffs (Hamdard National Foundation) shall be removed within 48 hours," said Justice Pratibha M Singh in an order released Wednesday.

Rooh Afza was first introduced by Hakim Hafiz Abdul Majeed in Delhi, but following Partition, his elder son moved to India and the younger one to Pakistan. While Hamdard National Foundation owns rights over the drink in India, Hamdard Laboratories (Waqf) manufactures it in Pakistan.

In the suit, Hamdard National Foundation and Hamdard Laboratories India submitted that it owns rights over 'Hamdard' and 'Rooh Afza' marks, but last year it noticed various entities were selling 'Rooh Afza' products on Amazon. While some of the list-

ings were removed after it sent notices to the sellers and Amazon India, the court was told, the company recently found a seller offering 'Rooh Afza' bottles which have been manufactured in Pakistan. The same does not comply with the legal requirements in India, the court was told.

The court in the order dated September 5 said when one clicks on the link 'Visit the Hamdard Store', which is provided next to the product listing of Golden Leaf — the seller of imported Rooh Afza on Amazon, the consumer is taken to the webpage of Hamdard Laboratories India.

"Thus, any consumer or user on the platform is likely to confuse the 'ROOH AFZA' product originating from Hamdard Laboratories (Waqf), Pakistan as being connected or originating from the Plaintiffs," said the court. The bench said since Amazon claims to be an intermediary, it has an obligation to disclose names of sellers and their contact details, with the product listings. It has also directed Amazon to file an affidavit clarifying whether such details are mentioned on the Rooh Afza product listings, invoices and product labels.

Delhi HC seeks Google's response on plea by WinZO

ET Correspondent
@timesgroup.com

NEW DELHI: The Delhi high court on Thursday sought tech giant Google's response on a lawsuit by WinZO, an online gaming application, against the policy to allow only daily fantasy sports (DFS) and Rummy games applications on its app store 'Google Play' while excluding all other games involving real money.

On September 7, Google announced an update in its longstanding policy, and decided to allow DFS and Rummy products on the Play store in a year-long pilot starting on September 28.

WinZO has sought directions to restrain Google from implementing the alleged 'arbitrary classification' that will impact the reputation of the gaming platform's business.

Justice Pratibha M. Singh observed that the issue of maintainability of the lawsuit before the intellectual property rights (IPR) division of the high court required further consideration and asked Google to file its response.

"The issue of net neutrality is also raised by the plaintiff. Accordingly, issue notice," the court said while dealing with the plea, which also sought interim relief.

Senior advocate Anil Sibal, who appeared for WinZO Games, said Google's new Play store policy, scheduled for roll-



On September 7, Google announced an update in its gaming policy.

suit on September 28, would give rise to unfair trade practices. WinZO was a leading name in the gaming world and offered various games of skill such as chess and 8-ball pool and its revenue in the last financial year was more than ₹500 crore, Sibal pointed out.

"The petitioner seeks out of making available select formats of only fantasy and Rummy, leaving behind games such as chess, carrom, 8-ball pool, and other games, though there is an obligation upon Google Play Store, an intermediary, not to control the transmission that is going on its platform, he said.

"The matter raises issues, including whether or not a private entity can discriminate against another private entity, whether or not an intermediary can act in a manner that seems to be in breach of principles of net neutrality, and the interpretation of Section 79(2), said Abhishek Malhotra, from TMT law firm, who filed the petition.

On music at weddings, expert to HC: 'Balance rights of owners, users'

MALAVIKA PRASAD
NEW DELHI, OCTOBER 16

THE DELHI High Court was recently informed by an independent expert that while interpreting the provisions of the Copyright Act with regard to the use of music in marriages, a delicate balance has to be drawn between the rights of the owners of the music and the rights of the users and the society.

A single judge bench of Justice Prathiba M. Singh was hearing a suit filed by an entity, which licenses thousands of recordings of its member record labels for com-

munications to the public by public performances and broadcast. The record labels are owners of the copyright in the "sound recordings". The entity sought an injunction against an event management company, which provided DJ services at social events, including weddings.

The plaintiff argued that the defendant, while organising its events, should have obtained the licenses for playing music, but it had refused to do so despite correspondence between the parties.

To assist the court on this issue, the HC had on May 11 appointed Dr. Anil George Scaria,

Associate Professor of Law and Co-Director, Centre for Innovation, IP and Competition at National Law University Delhi, as the court felt that the issue in the present case would have large-scale implications for all artists and entities involved in the organisation and management of weddings and other social events. Scaria filed his written submissions in July.

The case before the HC involved the interpretation of section 52(1)(c) of the Copyright Act which states that certain acts would not amount to copyright infringement, including "the performance of literary, dramatic or



Scaria submitted that while deciding the scope of the provision, the court must take into account that marriage is one of the most important social institutions in India.

musical work in the circumstances to the public by means of a sound recording" in the course of any bona fide religious ceremony or a social ceremony held by the Central Government or the State Government or any local authority. For the purpose of this clause, a religious ceremony includes a marriage procession and other social functions associated with marriage.

Scaria submitted that while deciding the scope of the provision, the court must take into account that marriage is one of the most important social institutions in India and marriage ceremonies

and related festivities are given the highest importance by most communities in India.

"Section 52(1)(c) must be interpreted in a manner that protects and promotes the right under Article 21 of the Constitution to marry and to procreate in accordance with one's tradition and culture," the order reads.

The expert submitted that since the Supreme Court has interpreted copyright infringement as a cognisable and non-bailable offence under the Act, therefore, a narrow reading of the provision

may lead to "potential harassment by police officers and copyright owners" during marriages associated with marriage. The expert said that a delicate balance needs to be drawn between the rights granted to copyright owners through "exclusive rights" and those given to society and users of copyrighted works through "limitations and exceptions".

While making her remarks on October 10, the court was informed that the parties had resolved their disputes amicably. In view of the settlement between the parties, the HC dismissed the suit as withdrawn.

Delhi HC changes roster for IP cases

SNS & AGENCIES
NEW DELHI, 29 NOVEMBER

The Delhi High Court has announced a change in its Intellectual Property (IP) Division's roster.

Starting from November 28, Justices C. Hari Shankar, Sanjeev Narula and Amit Bansal will look after the IP cases.

Matters to be heard by the IP Division will be assigned by Judge In-charge (Original Side) amongst the three IP Divisions.

Earlier, Justices Prathiba M. Singh, Navin Chawla and Jyoti Singh dealt with the IP cases.

Apart from the IP division, rosters of several other judges have also changed.

Live Law

Delhi High Court Declares 'Bukhara' A Well-Known Trademark, Says ITC Restaurant 'Intrinsically' Connected To Indian Cuisine

LIVELAW NEWS NETWORK 30 Nov 2022 3:47 AM GMT



The Delhi High Court has declared ITC Limited's 'Bukhara' as a well known trademark under Section 2(zg) read with Section 11(2) of the Trade Marks Act and directed the Registrar to add it to the list of well-known trademarks upon completion of requisite formalities.

Justice Prathiba M. Singh in the judgment said that certain trademarks or names attaining the status of well-known marks have been acknowledged and recognised by courts in India for the last two-three decades.

"Illustratively, marks such as 'APPLE', 'WHIRLPOOL', 'BENZ' etc., have been recognised as 'well-known' marks even before the said marks were actually used on a commercial scale in India.

GO TO INDEX 126 of 166

NOVEMBER 2022

Breaking- Fake KBC Lottery, Frauds: Delhi High Court Prohibits Unauthorised Use Of Amitabh Bachchan's Photos, Voice & Other Attributes

Major TheLegal
23 Nov 2022 11:26 AM



The Delhi High Court on Friday granted an interim ex parte injunction in favour of veteran actor Amitabh Bachchan in a suit filed by him for protection of his publicity rights against the fake Kisan Banega Crorepati (KBC) lottery scam and other online frauds where his photo and voice are being misused to deceive the public.

Justice Navin Chawla observed that a prima facie case was made out in favour of the actor and against the defendants, who are various individuals and entities, allegedly violating Bachchan's personality rights.

"... I am of the opinion that the plaintiff has been able to make out a prima facie case in his favour. The balance of convenience also lies in favour of plaintiff and against the defendants," the court said.

Delhi High Courts allows ₹ 2 crore damages to Adobe, restrains cyber squatter from infringing its Trademark

The court noted that the National Arbitration Forum and also the WIPO Arbitration and Mediation Center has passed several orders against the defendant for infringing Trade Marks of several international companies.



Justice C Hari Shankar

Narsi Bansal

Published on: 2 Dec, 2022, 12:12 PM - 2 min read

In a significant order, the Delhi High Court recently ordered an "invertebrate" cyber squatter to pay ₹ 2 crore damages to Adobe Inc for infringing its trademarks associated with its brands, Photoshop and Adobe Spark [Adobe Inc vs Namase Patel].

DECEMBER 2022

DECEMBER 2022

Bar Bench

News Columns Interviews Law Blogs Appellate Lawyer

Delhi High Court grants relief to Yves Saint Laurent in trademark infringement suit

Justice Navin Chawla held that the balance of convenience was in favour of the plaintiff and if the defendants were not restrained, the plaintiff would suffer irreparable loss.



Twitter

Nayendra Wadhvani

Published on: 22 Dec, 2022, 11:05 AM - 1 min read

The Delhi High Court recently temporarily restrained a Delhi-based company from using the "YSL" and "Yves Saint Laurent" marks belonging to fashion company Yves Saint Laurent (YSL). [Yves Saint Laurent vs Brampton Lifestyle Brands Pvt Ltd]

MARCH 2023

BW LEGAL WORLD

HOME NEWS OPINION INTERVIEWS EVENTS VIDEOS COMMUNITIES SUBSCRIBE TO PRINT

Delhi HC Says Plea Saying Registrations Granted To Burger King Trademarks Is Invalid Is Untenable

In a recent development before the Delhi High Court bench comprising Justice Amit Bansal a plea was made by the defendant in a suit instituted by Burger King which said that the registrations granted to Burger King with regards to their trademark 'BURGER KING' are invalid.

Delhi High Court grants permanent injunction to SanDisk LLC for its trade marks 'SanDisk' and 'Cruzer Blade'; awards Rs. 5 lakhs as damages

Delhi High Court: A Single Judge Bench of **Amit Bansal, J.*** granted permanent injunction in favour of SanDisk LLC for the infringement of its trade marks 'SanDisk and 'Cruzer Blade'. The Court also opined that this was not a case of innocent adoption and therefore, the plaintiffs were entitled to damages of Rs. 5,00,000 which were to be recovered from the defendant.

MARCH 2023

BCC BLOG



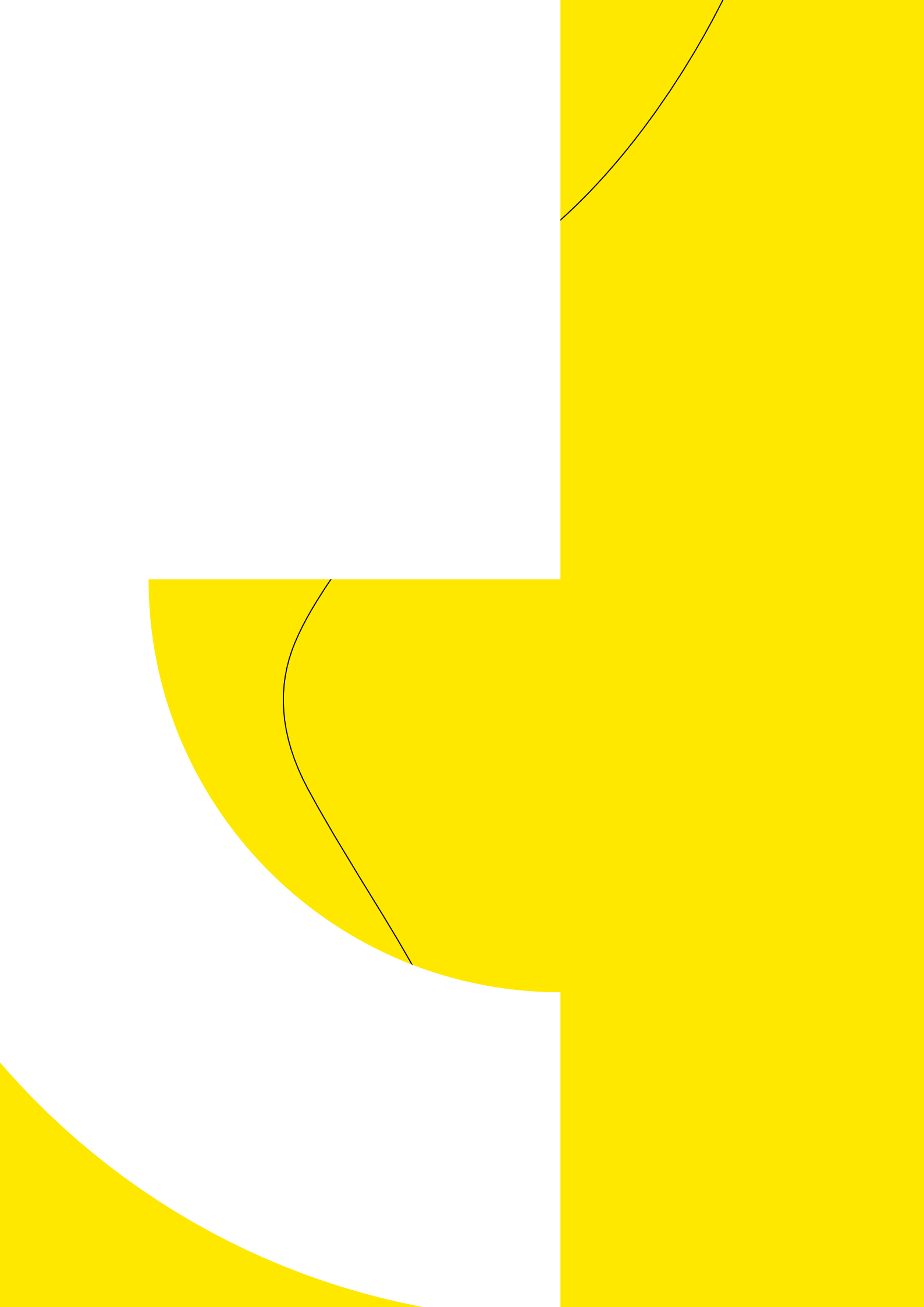
DELHI HIGH COURT

The IPD has created much-needed momentum to improve India's IP ecosystem. The higher adjudication rate of IP disputes has positively contributed to fine-tuning Indian IP jurisprudence. The appellate oversight is streamlining IP at a systemic level. The IPD balances the call for a specialised IP Court with the Indian reality.

- Mr. Adarsh Ramanujan, Advocate

My experience of appearing before the IPD has been immensely fulfilling and challenging, at the same time. The questions posed by the Ld. Judges have enabled me to analyze various nuances in interpretation of IP laws. The encouragement and motivation to young lawyers by the IPD is truly heartening.

- Ms. Vindhya S Mani, Advocate



PHOTOGRAPHS
FROM EVENTS OF
THE IP DIVISION

Welcome



High Court of Delhi

*National Seminar on
Adjudication of
IPR Disputes in India*

Saturday 26th February, 2022

DRDO, New Delhi

Entry for
Hon'ble Chief
Justices & Judges














National Seminar on Adjudication of IPR Disputes in India
Saturday, 30th February, 2020

Chief Guest
Hon'ble Mr. Justice N.V. Ramana
Chief Justice of India

Guest of Honour
Ms. Kamalika Subramanian
Minister of Finance and Corporate Affairs, Government of India

In the august presence of
Hon'ble the Chief Justice D.N. Patel
Dute High Court & Corporate Judge

Hon'ble Chief
Justices & Judges
of High Court







'IP Eloquence' 2022

Annual Event on World Intellectual Property

THEME - "IP & YOUTH: INNOVATING FOR A BETTER FUTURE"

In the August Presence of

Hon'ble Mr. Justice Vipin Sanghi

The Acting Chief Justice, Delhi High Court & Companion Judges

Tuesday, 26th April, 2022



Hon'ble Mr. Justice Jasti Singh



Hon'ble Mr. Justice Tejwant Verma



Hon'ble Mr. Justice Vipin Sanghi

2022



Property Day

UTURE"

udges



Dr. K. J. Singh, Justice P. K. Singh





'IP Eloquence' 2022


Annual Event on World Intellectual Property Day

THEME - "IP & YOUTH: INNOVATING FOR A BETTER FUTURE"

Tuesday, 26th April, 2022






National Seminar on Adjudication of IPR Disputes in India
November, 20th, February, 2022

Chief Guest
Shri/She. Mr. Justice N.S. Bose
Chief Justice of India

Guest of Honour
Ms. Nivedita Mishra
Minister of Public Relations, Government of India

In the special presence of
Shri/She. Hon'ble Chief Justice D.N. Pad
Chief Just. Court of Karnataka











Hon'ble Mr. Justice
Chief Justice of India

Guest of Honour

Mrs. Nirmala Sitharaman

Minister of Finance and Corporate Affairs, Government of India

the august presence of

Hon'ble Chief Justice D.N. Patil

Delhi High Court & Commission Judge

India has taken Intellectual property rights to a new high with establishment of a dedicated IP Division- a pipe dream of the Hoy-polloi. Let the world know that we have stepped into the “Amrit kaal” of IP – the day is not far when judgements of this Division become the fountainhead of jurisprudential guidance on major IP issues.

- Ms. Rajeshwari Hariharan, Advocate



Despite the fact that it is still in its nascent stage, the IPD is working as a well-oiled machine steadily humming onwards and upwards.

- Ms. Saya Choudhary, Advocate



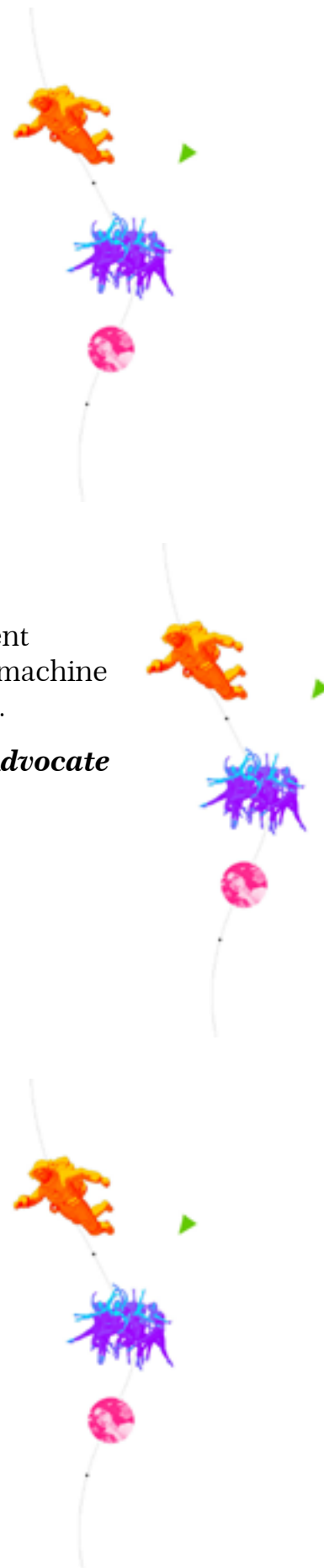
Counsel: please can you give an earlier date as I have to come from far

Judge: from where do you come?

Counsel: Bengali Market

Judge: then I come from out of station!

- Mr. Vaibhav Vutts, Advocate



In the words of Mark Getty, if “Intellectual Property is the oil of the 21st century”, I would say the Delhi High Court IP Division is its refinery. The Division has quickly become the benchmark for other courts in the country setting up similar special courts, consistently pushing boundaries and delivering exceptional quality judgments.

- Mr. Gaurav Miglani, Advocate



IP Division has been a blessing for the solo IP practitioners like me. So many impeccable Justices are adjudicating the ever-evolving complexities.

- Mr. Dushyant K. Mahant, Advocate



Evidence of the IPD’s success is that practitioners are now constantly playing ‘catch up’ with its judgments, the number usually in double digits per week. We are lucky to be witnessing this seismic shift in IP law and practice in India.

- Ms. Abhilasha Nautiyal, Advocate







Trademarks for breakfast, patents for lunch and copyright/designs for tea - it is remarkable how effortlessly the Hon'ble Judges of the IPD have adapted to the complete IP spectrum - every day at 2.30 pm one finds part-heard matters on a variety of issues being argued in each of the 3 courtrooms such that long pending disputes are finally seeing effective and meaningful conclusion.

- Ms. Shwetasree Majumder, Advocate



