

CURRENT TRENDS IN INTELLECTUAL PROPERTY RIGHTS

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ABSTRACT

Recently, intellectual property rights (IPRs) has turned out to be one of the most sultry, most huge issues of exchange arrangements. In spite of the proceeded with guarantee that IPRs encourage inquire about exercises and support innovation exchange, the effect of IPRs on financial improvement procedure of creating nations has clearly reflected in numerous zones, including wellbeing, horticulture and training. IPRs will no uncertainty keep on having a huge effect on creating nations for a long time to come.

Intellectual property rights (IPR) have been characterized as thoughts, developments, and imaginative articulations in view of which there is an open readiness to offer the status of property. IPR give certain select rights to the designers or makers of that property, with a specific end goal to empower them to receive business rewards from their imaginative endeavors or notoriety. There are a few sorts of licensed innovation insurance like patent, copyright, trademark, and so on. Patent is an acknowledgment for an innovation, which fulfills the criteria of worldwide curiosity, non-conspicuousness, and mechanical application. IPR is essential for better recognizable proof, arranging, commercialization, rendering, and in this manner assurance of innovation or imagination. Every industry ought to advance its own IPR arrangements, administration style, procedures, et cetera relying upon its territory of claim to fame. Pharmaceutical industry at present has a developing IPR system requiring a superior concentration and approach in the coming time.

The aim of this paper is insight on the recent developments in intellectual property law in India. For achieving the aim we have undertaken a concise study of law related to patents, copyright, trademarks etc. and it also deals with the recent cases and amendments that were made in them according to the need and situation of the society.

INTRODUCTION:

Intellectual title is the keystone to India's extending cognition frugality. Having ripe in hop and boundary, the Indian IP trade is retentive extension recent heights. With the onset of the fresh enlightenment economization, the ancient and some of the existent guidance make and a near would have to alter. From impressive a counteract between IP correct defense and common course to elevate IP correct training, *Alfred Marshall* think that with advancements in technology, commodities alone would no longer be primary factor in determining the real value of money: "But if inventions have increased Polari's command over kind very much, then the regal utility of specie is emend graduated for some example in labour than in commodities". Today, the real labour utility live in the configuration of erudition.

After the unspent Narendra Modi led Government took over the control, there has been noteworthy argue and average, nationally as well as internationally, with consideration to a more purified and improved mental attribute just "IP" litigation system in India.¹

Recently, the IP system in India has experience diverse important developments with deference to Pentateuch and policies. Two of the most minute-suitable developments are the formation of the united India - US practical block on IPR and a general IPR Think Tank bunch determine-up to drink a general IPR course. Based on the findings and suggestions of these knot, IP law regime in India will shortly witness some major changes

At present, problems with piracy of films and software are being wide being debated within the government circle for increased IP protection. The on top of mentioned draft National IPR policy, also, significantly, mentions the importance of protective trade secrets in India. Currently, trade secrets, though a recognized variety of IP, don't seem to be protected by general assembly in India and that they still be enforced contractually or below common law. The new government is functioning with a read to attain an ideal balance between protective the IPRs of the inventor/industry and therefore the public interests at massive.

Besides to the foremost recent developments, so as to bring progressive changes towards a free market society, fast liberalization of international trade practices and demonstrating its commitments to the world organization below the Trade connected property Rights Agreement (TRIPS), the govt. of India undertook a series of steps, to evolve India IP

¹<https://economictimes.indiatimes.com/small-biz/legal/recent-developments-in-intellectual-property-laws-in-india-part-1/articleshow/47780038.cms>

legislation to acceptable international standards. The laws about all types of IP are amended or reissued in recent years, principally in response to India's accession to the world organization. Here are a number of these developments in IP legislation in India.²

TOP 10 LEGISLATIVE AND POLICY RELATED DEVELOPMENTS :

1. Trademark Rules, 2017 Notified

The Trademark Rules, 2002 were supplanted by the Trademark Rules, 2017. The new guidelines, enter alia, accommodate less structures for applications, boost e-recording as against physical documenting, stretch out concessions to new businesses and people and set out a procedure for assurance of surely understood imprints.

2. Copyright Board Merged with Intellectual Property Appellate Board

In a dubious move, the Finance Act, 2017 was passed by the Parliament, by method for which, inter alia, the Copyright Board was converged with the Intellectual Property Appellate Board. The appropriateness of exchanging the elements of Copyright Board to the IPAB through the indirect access instrument of a cash charge raised numerous eyebrows and was viewed as an approach to dodge restriction from the Rajya Sabha. The Finance Act likewise accommodated the proclamation of Rules, which set down conditions identified with the arrangement and administration terms of the individuals from different councils including the IPAB and the same thus were informed on June 1, 2017. Quickly from there on, the dependability of the Finance Act and the Rules were tested in the Madras High Court, which decided that all arrangements to the 19 odd councils (under the domain of the upbraided Finance Act and Rules) would be liable to the last request in the said challenge.

3. Revised Guidelines for Computer Related Inventions Published

The Indian Patent Office, in their umpteenth flip-slung, amended the rules identifying with Computer Related Inventions. The most outstanding amendment was the oversight of the necessity that licenses for programming must be guaranteed in conjunction with novel equipment.

²<https://economictimes.indiatimes.com/small-biz/legal/recent-developments-in-intellectual-property-laws-in-india-part-2/articleshow/47780087.cms>

4. NOC Requirement for Registering or Releasing New Plant Varieties Removed

The PPVFR Authority got rid of the long-standing necessity of raisers producing a 'No-Objection-Certificate' from the patentee of a specific GM attribute, which is utilized by reproducers while building up another plant assortment and which assortment they try to enlist under the PVPFRA.

5. Inter-Ministerial Group to Review Royalty Payment Outflows Formed by the Government

The Government, with a specific end goal to check if its expulsion of limitations on sovereignty installments by Indian organizations to outside teammates is being abused by the remote parent organizations, shaped a between ecclesiastical gathering to inspect the issue.

6. Officers under the Patent Offices, Trade Marks Registries and Offices for GI and RGNIPM Directed by Controller General's Office to Desist from Filing RTIs

The Office of the Controller General of Patents, Designs and Trade Marks issued an Office Memorandum guiding its officers to halt from taking their own grievances on different stages like Ministry, grievance cell or utilizing some other instrument like RTI and so on., without profiting appropriate managerial cure.

7. Decision to not Grant Benefits of Flexible Complementing Scheme to Patent Office Employees Reiterated by Ministry of Finance

In an RTI reply, the Ministry of Finance re-iterated that the Modified Flexible Complementing Scheme is not applicable to patent office employees.

8. DIPP Signed a Deal with WIPO to Establish Technology and Innovation Support Centers in India

Department of Industrial Policy and Promotion (DIPP) signed a deal with the World Intellectual Property Organization to establish Technology and Innovation Support Centres (TISC) in India.

9. Initiatives Taken by the Office of the Controller General of Patents, Designs & Trademarks:

- Weekly Release of FER Data, Co-operation Agreement with WIPO on Data Sharing;

and

- Issuance of Bilingual FERs and Automation of Process of Issuing Certificates

10. Initiatives Taken by the Copyright Office:

- Monthly Publication of List of Copyright Registration Applications Received and List of All Register Entries Made; and
- Publication of List of Applications in Respect of Which Submission of the Work/Documents Is Awaited

TOP 10 OTHER IP DEVELOPMENTS³

1. Indian Performing Rights Society Re-registered as Copyright Society:

In an appreciated advancement, the IPRS was re-enrolled as Copyright Society by the Registrar of Copyrights on November 28, 2017. The re-enrollment took after the unending turf wars amongst creators and music marks over the control of copyright social orders and also the prerequisite presented by the Copyright (Amendment) Act, 2012 to re-enlist all copyright social orders with the Registrar of Copyrights. Prior this year, in another noteworthy advancement, the IPRS administration was redone with Mr. Javed Akhtar, noted artist and lyricist, being named as the Chairman and Mr. Achille Forler, a copyright executive, being acquired as a Permanent Advisor to the Board.

2. West Bengal Granted GI Tag for 'BanglarRasogolla':

West Bengal was allowed the GI tag for the 'BanglarRasogolla' on November 14, 2017, two years after the West Bengal State Food Processing and Horticulture Development Corporation Limited (WSFPHDCL) connected for the same, referring to interests of "business people and artesian in sweet making industry of the state". The allow of the GI label promptly set off warmed verbal confrontations, including on the locus standi of the WSFPHDCL to make the GI application.

3. Taj Mahal Palace Hotel Became the First Building to Receive Trademark in India:

The Indian Hotels Company Limited (IHCL) obtained a trademark or an image mark for the Taj Mahal Palace Hotel on June 19, 2017, making it the first building in India to be accorded such status. The trademark was registered for the image of the sea-facing facade of the Taj

³<https://spicyip.com/tentative-list-of-indias-top-10-other-ip-developments-of-2017>

Mahal Palace and Tower Wing Exterior – for “services providing food and drink; temporary accommodation” giving it trade dress protection and identification of source. However, the grant of rights raised issues of domestic heritage rights and interplay of the same with copyright law.

4. Screenwriters Rights Association of India Applied for Registration as a Copyright Society :

The Screenwriters Rights Association of India connected to the Registrar of Copyrights for enrollment as a copyright society under Section 33 of the Copyright Act, 1957. Following the application, open remarks and complaints to the application were welcomed by the Copyright Office.

5. Justice (Retd.) Manmohan Singh Proposed to Be Appointment as IPAB Chairman:

Justice (Retd.) Manmohan Singh, earlier of the Delhi High Court, was proposed to be delegated as the IPAB Chairman following the retirement of Justice (Retd.) K.N. Basha from the post on May 13, 2016. The proposition came in the result of the post staying empty for over multi year. In spite of the proposed arrangement of the Chairman, alternate opening in the IPAB are yet to be filled.

6. Asst. Registrar Filed Criminal Complaint(s) against False Representation of Marks as ‘Registered’:

In October 2017, the Assistant Registrar of Trademarks, Chennai recorded criminal dissensions under s. 115(1) of Trademarks Act, 1999, for bogus portrayal of enrollment and non-enlistment of the spoke to detriments for four distinct proprietors more than two basic trademarks — Kids fun and Tofo — before the JMFC, Telangana. This denoted an uncommon occasion of plan of action being taken to criminal cures gave under trademark law.

7. OUP and Other Publishers Withdrew Copyright Infringement Suit against Delhi University and Photocopier (DU photocopy case) :

In a shocking advancement, OUP, CUP and Taylor and Francis pulled back the copyright encroachment suit documented against the Delhi University and Rameshwari photocopy shop in 2012 for creation and appropriation obviously packs containing extracts from their copyrighted books. The withdrawal denoted the finish of the most fervently IP fights

consistently, setting as it did multinational distributors against scholastics and understudies. Post withdrawal, the Indian Reprographic Rights Organization (IRRO) had documented a Special Leave Petition under the steady gaze of the Supreme Court testing the judgment goes by the Division Bench of the Delhi High Court on December 9, 2016. The court, in any case, declined to concede the interest given that the first suit documented under the watchful eye of the Delhi high court had been pulled back by the distributors and IRRO was only an intervener in the lower court procedures.

8. Enforcement Directorate Raided Top Music Companies In Relation to Misappropriation of Artists' Royalties :

Enforcement Directorate conducted searches in the premises of five music companies, including YRF Music, Saregama, T-Series, Sony and Universal Music in connection with allegations of misappropriation of artists' royalties.

9. Kerala Police Embarked on a Massive Anti-Piracy Drive:

The Anti-Piracy Cell of the Kerala police carried out a series of anti-piracy drives across the state, with one of the crackdowns resulting in the arrest of two mobile phone traders and seizure of pirated copies of certain Malayalam movies.

10. India ranked 43rd among 45 countries on the GIPC International IP Index 2017 and 60th among 127 countries on the Global Innovation Index 2017:

Keeping in accordance with the experience of earlier years, India was positioned 43rd out of 45 nations highlighting on the worldwide IP index discharged by the Global Intellectual Property Center (GIPC). India fared moderately better in the Global Innovation Index, a report produced by WIPO, Cornell University and INSEAD that endeavors to quantify and rank the advancement limit and capability of member nations, where India was positioned 60th out of 127 nations. The redeeming quality was that India was distinguished as the pioneer in the Central and Southern Asia Region.

CURRENT UPDATES IN INTELLECTUAL PROPERTY RIGHTS⁴ :

1. Copyright Office Issued Practice And Procedural Manual, 2018 : July 10, 2018

In an endeavor to improve transparency and speedy disposal of application, the copyright office has published on its websites the practice and procedure manual for examination of

⁴<http://ssrana.in/Intellectual%20Property/Newsletters/IP-News-in-India.aspx>

applications in respect of literary, artistic, musical, cinematography film and sound recording works.

2. New System Of Scheduling A Hearing At The Patent Office : June 12, 2018

In order to reduce the inconvenience caused to the Attorneys due to frequent visits to an appropriate branch of the Indian Patent Office of Controller General of Patents, Designs and Trademarks issued a notice modifying the current system of scheduling of hearings.

3. Singers And The Royalty Debates : May 29, 2018

Whenever any Bollywood song becomes popular, it is known popularly in the name of singer or singers. But whenever it comes about paying royalty the song suddenly becomes the intellectual property of its composer. The question arises that is this fair? However, as they say a change is the law of nature, things are changing for singers as well. Recently, around 700 singers have got their rightfully earned royalty.

CASE LAWS

1. Bayer Corporation v. Union of India :

In a very significant development, the Delhi High Court held that 'export' of a patented invention for experimental purposes is also covered under Section 107A of the Patents Act, 1970 (India's Bolar exemption) and thus does not amount to patent infringement. It accordingly allowed Natco to export Bayer's patented drug 'Sorafenib Tosylate' (for which it was granted a compulsory license in 2012) to China for the purpose of conducting development/ clinical studies and trials. However, two months later, the order was stayed by a Division Bench, which asked Natco to file a separate application seeking permission for exporting the drug for experimental purposes and observed that it would be permitted to export only a limited quantity of the drug.

2. Kent RO Systems Ltd. &Anr. v. Amit Kotak &Ors :

In a welcome development, the Delhi Court ruled that there is no obligation on the intermediaries to screen content alleged to be violative of intellectual property laws before publishing the same (i.e. on an ex-ante basis). It, therefore, refused to direct E-bay to remove listings of water purifiers that allegedly infringed Kent RO's registered design from its website or to issue a prohibitory injunction preventing E-bay from publishing the same in the

future.

3. **Anil Kapoor Film Co. Pvt. Ltd. v. Make My Day Entertainment &Anr.**

In a very well-reasoned interim order, the Bombay High Court refused to grant an ad-interim injunction in a claim of passing off by the makers of the film ‘Veere Ki Wedding’ (under production) against the makers of the film ‘Veere Di Wedding’. The court noted that not only was the title (“Veere Di Wedding” translating into “My best friend’s wedding”) extremely common, the plaintiff needed to prove reputation through consumer recognition – i.e. the title should be associated with the public mind as referring only to the plaintiff’s work, which according to it was next to impossible in this case because the movie was not even in existence. It also rejected the argument on misrepresentation, clarifying that just by virtue of having made a film with a similar title, the defendant cannot be said to have attempted to deceive the public.

CONCLUSION:

Despite the fact that the Indian IP laws are still in the phases of improvement yet the same are especially in similarity with the global IP laws as India is a signatory to universal traditions and bargains including Paris Convention for the Protection of Industrial Property, Berne Convention on Copyright and TRIPS Agreement. As a rule, other than time of assurance accessible and the time and cost taken to enroll an IP, there are nevertheless a couple of real contrasts amongst Indian and European IP laws and even those essentially identify with less noteworthy procedural viewpoints. Nonetheless, there have been noteworthy worries over IP implementation, with an accumulation of cases at both the common and criminal courts and IP Offices, and this is where Indian needs to work.