

Intellectual Property advocacy in the fields of:

- IP Infrastructure
- IP Valuation
- M & A
- IP Policy
- Technology Transfer
- Innovation Research
- Patent Law
- Licensing
- Data Management
- Copyright
- Collaborations
- Balance for Rights & Obligations

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## Copyright Relief

### **“BREAKING NEWS: SUPREME COURT REFUSES IRRO APPEAL IN DU PHOTOCOPY CASE”**

A news article by Shamnad Basheer, 9th May, 2017.

Source : SpicyIP

A Supreme Court bench consisting of Justices Ranjan Gogoi and Navin Sinha refused to admit the IRRO appeal. Asking their counsel (Mr SC aggarwal) as to how their special leave petition (SLP) to appeal is even maintainable. Given that the original suit filed before the Delhi high court had been withdrawn by the publisher plaintiffs (OUP etc) and the IRRO was merely an intervenor in the lower court proceedings.

Justice Gogoi appeared upset with the petitioners, berating them for “wasting the time of this court... and taking it for granted”.

Thankfully, this means that we’ve finally reached closure in this case. And students and access to education have prevailed over the private copyright of publishers. At least for the moment.

For those keen on tracking this entire saga as it unfolded from 2012 onwards, see our previous posts here.

[I https://spicyip.com/2017/05/breaking-news-supreme-court-refuses-to-admit-irro-appeal.html](https://spicyip.com/2017/05/breaking-news-supreme-court-refuses-to-admit-irro-appeal.html)

## **ANOTHER “(NO) BREAKING NEWS”**

Validity of Sec.107A(a) of the Patents Act, 1970 has been upheld by the Single Judge Bench of Delhi High Court on 8th March 2017. This order has been passed in favour of Natco and Alembic against Bayer. Bayer, however, appealed against this order to the Division Bench of Delhi High Court. Initial reports suggested that the Single Judge’s order has been stayed by the Division Bench. This has now been resolved. The stay is only applicable to NATCO and only on Sorafenib. The Indian Pharma Industry can continue to enjoy the exception under Sec.107A(a), for manufacture and export patented molecules from India on valid drug manufacturing licence for R&D purposes in support of regulatory dossier submission awaiting expiry of the innovators patent.

## **IS IP DILUTION THREAT FOR REAL ?**

Importance of Intellectual Property (IP) has come to the forefront more for negative reasons in recent times, especially 2017. Basic tenets of WTO & TRIPs are being sought to be reviewed by none other than USA. However, this scenario merits urgent and serious attention. We will focus on the latest developments and need for introspection.

IBEF (India Brand Equity Foundation) was founded by Ministry of Commerce and Industry with considerable enthusiasm (IBEF.org/Band-India).

**Make in India** :- One of the earliest initiatives of our vibrant hard-working Hon’ble Prime Minister Shri Narendra Modi, received global recognition as a very laudable initiative. However, most developed countries as well as emerging developing countries have started similar initiatives to the detriment of India’s exports of goods and services. Latest

among them are Mr. TRUMP, President of USA, though whose slogan “America First”, he is extorting all to “Make in USA” and “Make by US Citizens”. Mr. Putin of Russia is also not far behind, hitting Indian Pharma exports hard by imposing local (Russian) manufacturing conditions and giving priority to goods and services of Russian origin. Similar initiatives are already propounded by China, Korea, Japan and now UK and Australia as well as New Zealand. With reference to the “Make in India” program, while we cannot label the actions of overseas governments as Intellectual Property theft or passing off action, it cannot be denied that the idea of the Indian PM has received overwhelming response, more by adopting this for local implementation than for coming India to make. This is a form of India’s IP dilution by others.

**The only practical option is to keep the generic  
(through Jan Aushadhi) and  
Branded (generic to some extent) through pharmacies and  
existing Medical shops with medical prescriptions mentioning both  
Generic & Brand options**

## Brands Vs. Generics

Pharmaceutical Industry globally, as well as in India, are valued for its IP portfolio and valuation of intangible assets, more than any other segment of the industry. Patents and Trademarks form the bulk of IP in Pharma. The Big Pharma in USA (PhARMA) has more muscle power than most global governments, so much so, in the field of Patents, Indian Pharma industry is on the receiving end of the Patent sticks. Patent litigations in India post-2005 has broken all the records. *Ex parte* injunctions granted by Delhi High Court in the period 2010 to 2016 has massively surpassed all *ex parte* injunctions in pharma patents in USA or even globally.

Indian Pharma is in trouble over Trademarks also. Indian Pharma Industry is concerned over the threat of massive “DILUTION” of Trademarks which are likely to be impacting Indian Pharma in the near future if the government initiative for generic push is taken seriously. In the USA, non-patented drugs are known as generics. However, there is no bar on labelling generics with Brand names globally. Generics (by INN-pharmacopoeial names) and branded generics (formulations or compositions with Brand names along with pharmacopoeial names) were co-existing in India from the seventies. Along with removals of protection to product patents in pharma, the branding of pharma formulations and compositions helped Indian pharma industry to grow by leaps and bounds. National minded proud Indian Medical Profession sincerely supported Indian companies and prescribed Indian brands, which helped Indian pharma to grow. While fully appreciating that tendencies to abuse the healthcare mechanisms have evolved over the years through industry-doctor-chemist nexus and over promotion/over prescription practices, it is like “burning the house to kill the rat”, if the ‘branding of generic drugs’ is done away with. It is a misconception that generic drugs are cheaper than branded drugs. If at all any difference has been there in pricing over the years, it was either due to difference in excise duty or due to illegally abusive high prices by tiny local manufacturers on small lots for local sales violating the pricing norms set under DPCO by NPPA. Patients get relief not only based on psychological trust and confidence but also on brand loyalty also. While the

concept of “Jan Aushadhi” stores and sales of generic medicines through such stores is very much welcome, the parallel systems of branded medicines through regular pharmacies and online pharmacies must continue to flourish. Killing the Pharma Brands whose goodwill and brand value has been built up over the years is surely bound to adversely affect India’s pharma exports, especially to ROW (Rest of the World) countries. This move could affect the brand valuations of Indian Pharma companies adversely.

The Pharma Industry must lose no time in briefing and educating the Medical Profession, that there is no “bar” or “ban” on mentioning the brand name in the medical prescriptions. The Indian Medical Council (IMC)’s 2016 amendment to Professional Conduct Etiquette and Ethics Regulations states as follows.

### Clause 1.5

“Every physician should prescribe drugs with generic names legibly and preferably in capital letters and he/she shall ensure that there is a rational prescription and use of drugs”.

This guidelines by MCI does not bar mentioning brand name after the generic name. IMA (Indian Medical Association) has interpreted that a prescription while stating the generic name of the drug in bold & capital, can also mention the brand name.

While the ‘Jan Aushadhi’ stores are principally expected to cater to the patients, medicines by generic name, the government (Ministry of Health, DCGI, MCI/IMA) should parallelly permit continued use of brand names along with generic names on prescription for dispensing through regular & traditional pharmacies and Chemists/Druggist medical stores. These two prescribing & dispensing lines working parallelly and independently will be beneficial for patients trade as well as manufacturers. This will ensure that the feared dilution/erosion of Trade Marks & Brands in Pharma and its impact is minimised.

## TIMES OF INDIA ARTICLE:

"Indian-origin girl in UK gets 162 IQ points, more than Einstein" on 6<sup>th</sup> May, 2017



"A 12-year-old Indian-origin girl in England, who secured two points higher than geniuses Albert Einstein and Stephen Hawking in the British Mensa IQ test, has been invited to join the coveted society as a member.

Rajgauri Pawar appeared in the British Mensa IQ Test in Manchester last month, and scored 162 - the highest possible IQ for someone under the age of 18.

She has been invited to join the coveted Mensa IQ test with the highest possible score.

Pawar of Cheshire county is among the one per cent of those who sit in the Mensa test and achieve the maximum mark, with the 'genius' benchmark set at 140. She secured 162, two

points higher than Einstein and Hawking.

She is one of only 20,000 people to achieve the score worldwide, Mensa said.

"I was a little nervous before the test but it was fine and I'm really pleased to have done so well," Pawar said.

Pawar joins the elite British Mensa IQ Society as a member after her great performance.

Her father Dr Surajkumar Pawar said, "This wouldn't have been possible without the efforts of her teachers and the support which my daughter enjoys every day at school".

She studies at Altrincham Grammar School for Girls, which also expressed pride at her achievement.

"Everybody is delighted. She is a very well-liked student and we all expect great things from her," said Andrew Barry, her maths teacher."

<http://timesofindia.indiatimes.com/nri/other-news/indian-origin-girl-in-uk-gets-162-iq-points-more-than-einstein/articleshow/58549043.cms>

## COMPETITION COMMISSION INTERVENES IN ABUSE OF MONOPOLY

While there have been couple of isolated cases decided by Competition Commission of India (CCI), Pharma Industry has not been approaching the Competition Commission more often, in spite of extensive abuse of monopoly on patented drugs in India, to the detriment of the patients. The typical case of Trastuzumab, Roche can open the road for others to challenge the abuse of dominant position in other lifesaving drugs also.

In case of Trastuzumab, Roche has been granted a patent in India. Roche has, however, been not manufacturing the product in India, nor importing in quantities sufficient to meet the domestic needs of patients. Consequently, Indian NGOs approached the Indian government for grant of a Compulsory Licence (CL) under the CL provisions of the Patent Act (1970)

and more particularly under Sec.92. While the CL application was under consideration, Roche unilaterally decided to surrender the patent.

This automatically made the CL infructuous and redundant. Roche appears to have acted by way of challenge both to the Health Ministry, the NGO's as well as the pharma industry, because Trastuzumab is a Biological drug and a generic equivalent, in the form of a Biosimilar was a distant possibility as per Roche. Roche's gauntlet, however, was picked up by Biocon and Mylan, who came up with a Biosimilar which was approved by the office of the DCG(I) (Drugs Controller General of India) under CDSCO (Central Drugs Standard Control Organisation). Roche sued the DCG(I) and Union of India for allegedly adopting shortcuts in the

biosimilar approval process. This suit has eventually been decided against Roche – Roche also wrote against the Biocon/Mylan biosimilar warning of side effects etc., to the medical profession and also to various departments and Ministries of Government. The negative propaganda and attempts to stifle competition by Roche abusing the dominant position was contested before the Competition Commission by Biocon and Mylan. The CCI order stated that the actions of Roche appear to be a part of the bigger plan/strategy of Roche Group to eliminate competition posed by Biosimilar to Roche's products in (Indian) market. CCI also commented adversely against Roche's attempt to influence doctors by raising concerns about competition.



## WOMEN'S EMPOWERMENT THROUGH NEW DEVICE PATENT..

US20130239311 Patent Application describes female urination device. "Urinella" is now becoming optimally available to women<sup>1</sup>.

A news article related to "Austria's Green Party to teach women how to urinate standing up" by Ben Hooper, 5<sup>th</sup> May, 2017. Source: UPI<sup>2</sup>



"A local wing of Austria's Green Party announced it is holding a special meeting to teach women how to urinate standing up in unclean public bathrooms.

The Green Party in Perchtoldsdorf, Lower Austria, which periodically holds "women's breakfasts" to discuss social and political issues, announced that the theme of the coming Saturday's meeting will be "everything that concerns the pelvic base."

The party said the

discussion will include instructions on how to urinate from a standing position at music festivals, sporting events, and other locations where unclean restrooms are likely to be found.

The participants at the meeting will be instructed on how to build simple devices to assist with standing urination, organizers said.

Martha Gunzl, a local councillor and Green Party member, said she and other organizers were shocked at how much attention the planned meeting has been gathering online".

1 <https://www.google.si/patents/US20130239311>

2 [http://www.upi.com/Odd\\_News/2017/05/05/Austrias-Green-Party-to-teach-women-how-to-urinate-standing-up/5701494016577/](http://www.upi.com/Odd_News/2017/05/05/Austrias-Green-Party-to-teach-women-how-to-urinate-standing-up/5701494016577/)

[WWW.PATENTBAZAAR.IN](http://WWW.PATENTBAZAAR.IN)

A one-stop e-shop for trading or Licensing in patents and technologies have been launched.

From 2007 till recently, Patent Bazar was part of the activities on the [www.gnaijpr.com](http://www.gnaijpr.com). This activity has now been shifted to independent e-site. Patent Bazar™ and Patent Bazaar® Trademarks of Dr.Gopakumar G. Nair of M/s. Gopakumar Nair Associates.