

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

For Private Circulation Only

Editorial

At last IPAB gone..... and new dedicated Intellectual Property Division (IPD) in created in Delhi High Court

With the abolition of IPAB having become formally concluded on April 4, 2021, it is time for us to review the IP scenario in India.

Indian Patents Act, 1970 became fully TRIPs compliant in 2005. IPAB which was operational under Trade Marks Act, 1999 from 15th September 2003, was extended to Patents in 2007. The third amendment of 2005, introduced the Pre-grant Opposition [Sec. 25(1)] in addition to the Post-grant Opposition [Sec. 25(2)] for the first time not only in India but also first (and last) time globally. Option for third party observation being communicated to the Examiner/Controller exists in many jurisdictions including Europe and even USA (terms differ). India had the provision for opposition after publication of acceptance of the patent application for grant. It was “Post-acceptance Opposition”, neither pre-grant or post-grant. Accepted patent applications after amendments during prosecution used to be published in the official gazette giving the opportunity to file opposition before “sealing” (abolished since then) and grant. In the third amendment notified on 24th December 2004, this facility for “post-acceptance” modification was renamed as post-grant opposition. While the difference between the two were marginal, there was instant public outcry including from IDMA, National Working Group on Patents and others, including the author of this editorial, for “abolishing the Pre-grant Opposition” as we called the post-acceptance - pre-grant opposition. Having already tasted the whip of DSB (Dispute Settlement Body) of WTO for missing the deadline to adopt the first amendment, India did not want to miss the boat on the deadline of 2005 to put in place other amendments to comply with TRIPs, including “product patents” for all fields including Pharma. On the “last day, last chance” scenario, on the concluding day of the winter session of Parliament in January, the Commerce Minister offered to accept all amendments proposed in Parliament (provided they are TRIPs compliant). We grabbed it to add a Sec.25(1), by introducing the pre-grant representation by way of opposition and pushed out the Post-grant Opposition to 25(2) position, with the terms of opposition for both being the same. These two options were built-in in addition to the Sec.64, Revocation of Patents.

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While application for revocations (prior to any infringement litigation) were to be heard by IPAB (Intellectual Property Appellate Board), the Pre and Post-grant Oppositions were to be heard at Patent Office, with the appeals if any also going to IPAB. Only counter claims for invalidation or revocation (Sec.104) were to be heard at High Courts.

Now that the IPAB is abolished all appeals from Pre-grant Opposition (only by aggrieved patent applicant) and Post-grant Opposition parties as well as under Sec.64, patent revocation applications, need to be heard by High Courts (commercial courts). At least in the interim (which may prolong for years), the commercial courts in India will have their hands full, till dedicated IP Courts are set-up that too with multiple benches at multiple Metros (at least the major 4 to 5) High Courts.

The Pre-grant opposition facility, incorporated to prevent frivolous patent applications getting inadvertently granted, has now become a “Nemesis” for the Patent Applicant. The Pre-grant option is being extensively misused and abused by filing multiple serial oppositions even after examination is complete and hearing is over, but the patent grant is not recorded. There is valid justification for the Government of India to review the pre-grant facility. “Any person” and “no fees” makes it a free for all to block competitors genuine patent applications for infinite times.

The innovation culture is building up and hopefully the IP scenario is also poised to strengthen and evolve. It is worth watching how “emerging India” is planning to cope up with the changing global dynamics.

The Indian Innovative Research professionals and IP legal fraternity need to gear up to meet the emerging challenges.

P.S.: News has just come in that Hon'ble Delhi High Court has issued a Press Release wherein Chief Justice has directed creation of Intellectual Property Division (IPD) based on recommendations of the Committee of Justice Prathiba M. Singh and Justice Sanjeev Narula. A Committee has also been constituted for framing the “Delhi High Court Patent Rules”

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Joint Release by WHO, WTO and WIPO: Directors General of WHO, WIPO and the WTO Agree on Intensified Cooperation in Support of Access to Medical Technologies Worldwide to Tackle the Covid-19 Pandemic

The aim of the workshops is to strengthen the capacity of policymakers and experts in member governments to address the pandemic accordingly. The first workshop in the series will be a workshop on technology transfer and licensing, scheduled for September. The workshop will help members to update their knowledge and understanding of how Intellectual Property, know-how and technology transfer work in actuality. Secondly, they will implement a joint platform for tripartite technical assistance to countries relating to their needs for COVID-19 medical technologies, providing a one-stop shop that will make available the full range of expertise on access, IP and trade matters provided by their organizations, and other partners, in a coordinated and systematic manner.

Source: https://www.wipo.int/pressroom/en/articles/2021/article_0006.html

BPCL's R&D centre bags 80 patents in 20 years; over 50 more pending

One of the most notable patented innovations of the centre is BPMarrk, which is an intelligent tool for advanced assaying of crude oil that characterises and evaluates the crude at a fraction of the time taken by traditional assaying methods that take a month at least.

Its latest patent filing is for an LPG stove (four patent applications and four design registrations at the Indian Patent Office), which offers six per cent more thermal efficiency than the existing stoves which offer 68 per cent, helping a family consume one cylinder less a year.

Source: https://www.business-standard.com/article/companies/bpcl-s-r-d-centre-bags-80-patents-in-20-years-over-50-more-pending-121070400501_1.html

Patent waiver talks falter on developed nations' hurdles

BONE OF CONTENTION

EU's proposal

- Limiting export restrictions
- Supporting the expansion of production
- Facilitating the use of current compulsory licensing provisions in the TRIPS Agreement
- Says the need to negotiate with vaccine patent holder does not apply in situations such as a pandemic



US's stand

Wants the waiver to be limited to vaccines

India-South Africa proposal

- Want the patent waiver to include everything from pulse oximeters and masks to medicines and vaccines
- They want their proposal to be the basis for discussions

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Source: http://timesofindia.indiatimes.com/articleshow/84017314.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

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Assignor Estoppel Doctrine

The US Supreme Court granted certiorari to narrow the scope of the assignor estoppel doctrine. Assignor Estoppel Doctrine precludes inventors and their privies from challenging the validity of patents. The doctrine restricts employee mobility in ways that harm innovation and economic growth, and it is particularly taxing on startups and the most innovative inventors.

Source: https://www.supremecourt.gov/DocketPDF/20/20-440/159809/20201105145625349_40235%20pdf%20Lemley%20br.pdf

Venus Remedies wins legal battle against French firm for paracetamol patent

The Indian drug firm had initiated the legal battle in order to remove any patent hurdle in manufacturing of intravenous paracetamol solution in the country.

Source: https://www.business-standard.com/article/health/venus-remedies-wins-legal-battle-against-french-firm-for-paracetamol-patent-121061701252_1.html

Amazon launches IP Accelerator programme in India to help businesses secure trademark

E-commerce major Amazon on Sunday announced the launch of its Intellectual Property Accelerator (IP Accelerator) programme in India to provide sellers, who are also brand owners, with access to services from IP experts and law firms. These sellers, including small and medium-sized sellers, can choose to engage with these IP law firms to help secure trademarks, protect their brands and tackle infringement, on Amazon.in and Amazon websites globally, according to a statement.

Source: <https://www.moneycontrol.com/news/business/amazon-launches-ip-accelerator-programme-in-india-to-help-businesses-secure-trademark-7124581.html>

Chinese court cannot stop suit in India, says Delhi High Court

Justice C. Hari Shankar halted the enforcement of an order passed by the Wuhan Intermediate People's Court in September last year directing InterDigital Technology Corporation, a U.S. technology firm, not to pursue its patent infringement case against Chinese tech giant Xiaomi Corporation in India.

Source: <https://www.thehindu.com/news/cities/Delhi/chinese-court-cannot-stop-suit-in-india-says-delhi-high-court/article34523231.ece>

Domestic drug firm Panacea sues MNC to protect turf

Panacea filed a suit against Sanofi in the Delhi High Court which seeks to restrain the launch of a paediatric hexavalent vaccine EasySix™ infringing its patent IN272351 in India. EasySix™ vaccine is a pre-filled syringe used to vaccinate against diphtheria, tetanus, whooping cough, hepatitis B, hemophilus influenza Type B and inactivated polio.

Source: <https://timesofindia.indiatimes.com/business/india-business/domestic-drug-firm-panacea-sues-sanofi-over-vaccine-for-kids/articleshow/82696257.cms>

Copyright on Kuchipudi style? Kerala court grants interim relief; orders Facebook to take down content infringing work of Vempati Ravi Shankar

A Kerala court on Friday granted interim relief in favour of widow of Kuchipadi maestro late Vempati Ravi Shankar in relation to use of Ravi Shankar's original sound recordings in relation to Vempati Ravi Shankar style of Kuchipudi.

Source: <https://www.barandbench.com/news/litigation/copyright-kuchipudi-style-vempati-ravi-shankar-kerala-court-orders-facebook-content-take-down>