

- IP Infrastructure
- IP Valuation
- M & A
- IP Policy
- Technology Transfer
- Innovation Research
- Patent Law
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- Balance for Rights & Obligations

Editorial

Transition in Indian IP-Legal Scenario

The last major Intellectual Property regime change took place in 1995 when India joined WTO and acceded to the TRIPs regime. The earlier major regime change was for the Indian Patent Law in 1970. As per the 25-year cycle, a major IP regime change is due past 2020, the next 25-year cycle. Everywhere, there are indications that sweeping changes in IP portfolios are on the anvil. There is a Data Protection Bill pending in Parliament. The IPAB has been abolished and dedicated IP Benches are in the making in Delhi High Court. The Parliamentary Select Committee has, however, recommended re-instatement of IPAB (which may not happen). In the meantime, the Tribunal abolition Bill (including the IPAB) has been passed in the Rajya Sabha. The commercial Benches formed in the High Courts have been hearing IP cases in recent times. The Delhi High Court has announced a proposal to create Intellectual Property Division to deal with Intellectual Property Rights matters including those arising from erstwhile IPAB. The Hon'ble CJ of Delhi High Court, Justice D.N. Patel constituted a committee comprising Justice Prathiba Singh and Justice Narula to draft the Rules for the IP Division. The dedicated IP division is a major step also towards resolution of the deadlock resulting from dissolution of IPAB. Setting up of dedicated IP courts have been on the anvil ever since India acceded to the TRIPs regime.

While the High Courts may be kept busy with shifting of IPAB matters in coming months and years, for reasons of evolving alignments, new IP litigations may come down. The International MNCs are granting VLs (Voluntary Licences) liberally to leading Indian companies, including Patent challengers of yesteryears. This may lead to reduction of patent litigations, especially in the pharma field. This new alignment between National and International pharma companies, may impact the Indian pharma manufacturing scenario. It is worth watching to see how the Indian Pharma industry is going to emerge in coming months.

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Dapagliflozin order passed by Division Bench of Delhi High Court

On 20th July, 2021, the Division Bench (DB) of Hon'ble Mr. Justice Rajiv Sahai Endlaw And Hon'ble Mr. Justice Amit Bansal dismissed the appeal filed by the Plaintiff AstraZeneca against 9 Defendants

The DB upheld the two decisions of Single Bench Hon'ble Mr. Justice Rajiv Shakhder and Hon'ble Ms. Justice Mukta Gupta, respectively, wherein the Plaintiff was not entitled to interim relief/injunction against the manufacture and sale of 'Dapagliflozin'. This appeal was dismissed with costs assessed at Rs.5,00,000/- to the respondent(s)/defendant(s) in each of the suits. The DB opined that a single formulation as Dapagliflozin, is incapable of protection under two separate patents having separate validity period - IN205147 (Genus Patent) and IN235625 (Species Patent)

The DB was of the *prima facie* view, that once the appellants/plaintiffs before the USPTO applied for and agreed to the validity period of US patent equivalent of IN235625 (Species Patent) ending on the same day as the validity period of the US patent equivalent to IN205147 (Genus Patent), the appellants/plaintiffs in this country are not entitled to claim different periods of validity of the two patents.

The DB also commented that the appellants/plaintiffs have wasted the time of two Hon'ble Judges of this Court (Single Bench Hon'ble Mr. Justice Rajiv Shakhder and Hon'ble Ms. Justice Mukta Gupta, respectively) by pursuing the same subject matter separately. It appeared to the DB that the appellants/plaintiffs were taking a chance, of arguing on the same subject and controversy, before two Courts. However, the DB noted that the appellants/plaintiffs failed before both.

The DB held that

To hold, that an inventor, merely on the basis of his work, research, discovery and prior art, but which has not yielded any product capable of commercial exploitation, is entitled, by obtaining patent thereof, to restrain others from researching in the same field, would in our view, not be conducive to research and development and would also be violative of the fundamental duties of the citizens of this country, enshrined in Article 51A of the Constitution of India, to develop the scientific temper and a spirit of inquiry. The same will enable busy bodies to, by walking only part of the mile, prevent others also from completing the mile.

Source: [Delhi High Court](#)

Joint Panel On Data Protection Bill Gets 5th Extension In Parliament

The Joint Committee of Parliament or JCP examining the Personal Data Protection Bill was today given an extension till the Winter Session to submit its report. The Personal Data Protection Bill seeks to regulate the use of individual's data by the government and private companies.

The Joint Committee of Parliament was constituted in the Lok Sabha in December 2019 and was expected to submit its report in the Budget Session.

Source: <https://www.ndtv.com/india-news/parliament-monsoon-session-joint-panel-on-data-protection-bill-gets-5th-extension-in-parliament-2493130>

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Parliamentary Standing Committee Report on 'Review of IPR regime in India'

The panel has recommended “compulsory licencing” to manufacturers to meet the scarcity of vaccines and medicines during the Covid-19 pandemic, besides suggesting amendments to Indian Patent Act, the Trade Marks Act and the Copyright Act to meet contemporary necessities. Recommending a holistic review, it said revisiting of policy should help in evolving a robust IPR regime.

The report said the Section 3(b) of Indian Patent Act, 1970 should be amended so that a provision of a safeguard mechanism is included against the arbitrary exercise of power by the Controller in declining patents. It recommended further categories of classification in the Trademarks Act corroborating to the requirements of industry and trade. Citing the conflict arising between copyright holders and educational institutions due to exceptions contained in Section 52(1) of the Copyright Act, it asked the Centre to facilitate a fair and equitable ecosystem of literary culture in the country by bringing in necessary changes in Section 51(1) of the Act.

The panel suggested a specific legislation to curb counterfeiting and piracy to restrain the growing menace of such IP crimes in India. It criticised the Centre for the abolition of Intellectual Properties Appellate Body under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance. It asked the Centre to reconsider such a move in wake of its pivotal role in adjudication of IPR appeals and cases.

Source: <https://www.thehindubusinessline.com/news/national/compulsory-licensing-mooted-to-meet-scarcity-of-covid-vaccines-medicines/article35496939.ece>

Establishment Of Permanent Regional Benches Of Supreme Court

Rajya Sabha Member and senior lawyer P Wilson has introduced a Private Member Bill termed as the Constitution (Amendment) Bill, 2020 that seeks to establish 4 Permanent Regional Benches of the Supreme Court in a bid to decentralise the Supreme Court.

In a similar development, recently a delegation of top officials from the Bar Councils of five southern States i.e. Karnataka, Tamil Nadu, Telangana, Andhra Pradesh and Kerala met with Chief Justice of India NV Ramana and Vice President M Venkaiah Naidu on Monday to give a representation for the creation of a Supreme Court Bench in South India.

Source: <https://www.livelaw.in/news-updates/supreme-court-permanent-regional-benche-rajya-sabha-mp-bill-p-wilson-178290> and https://images.assettype.com/barandbench/2021-07/b3763318-d304-472a-9840-9ebec8e361ec/Constitution_Amendment_Bill_2020.pdf

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Amul wins its first trademark violation case outside India

Canada has recognised 'The Taste of India'. The Intellectual Property Appellate Board of Canada recently accorded trademark status to India's homegrown dairy giant Amul. The country's largest co-operative will also be awarded damages to the tune of Canadian dollar (CAD) 32,733 after it won a trademark violation case filed in the Federal Court of Canada. It is the first such case that Amul had filed against any company on foreign soil.

Source: <https://timesofindia.indiatimes.com/city/vadodara/amul-wins-its-first-trademark-violation-case-outside-india/articleshow/84304212.cms>

Bombay HC grants interim relief to owner of Naturals ice cream in trademark case

In a relief for the popular ice cream brand 'Naturals', the Bombay High Court has restrained a Gujarat-based firm with a similar name from using the word "natural" for its ice cream or any other related product until further orders.

A single-judge bench of Justice Gautam S Patel on July 26 was hearing an interim application in a commercial intellectual property (IP) suit filed by Raghunandan Kamath promoted firms Siddhant Icecreams LLP and Kamaths Ourtimes Icecreams Pvt Ltd against Manjalpur (Vadodara) based 'Natural Ice Cream'.

Source: <https://indianexpress.com/article/cities/mumbai/bombay-hc-grants-interim-relief-to-owner-of-naturals-ice-cream-in-trademark-case-7426030/>

Goa State starts process to get GI tag for 3 Goan mango types

The Goa state council for science and technology has filed an application for the registration of Geographical Indication (GI) for the Goa Mankur (Mankurad) mango variant and is presently working on obtaining similar status for the Mangelar and Mussarat mango varieties.

A GI tag protects the produce from being illegally used and ensures benefits to the community of local growers.

Source: <https://webcache.googleusercontent.com/search?q=cache:Tla9fEaeCMkI:https://timesofindia.indiatimes.com/city/goa/state-starts-process-to-get-gi-tag-for-3-goan-mango-types/articleshow/84808510.cms+&cd=1&hl=en&ct=clnk&gl=in&client=firefox-b-d>

WTO Members Endorse Extended TRIPS Transition Period for LDCs

As per the extension agreed in late June, the transition period, which would otherwise have expired at the beginning of July, is now set to last until 1 July 2034. The WTO's intellectual property rules, including the transition periods for LDCs to implement them, are set out in Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

Source: <https://sdg.iisd.org/news/wto-members-endorse-extended-trips-transition-period-for-ldcs/>