

Intellectual Property advocacy in the fields of:

- IP Infrastructure
- IP Valuation
- IP Policy
- Technology Transfer
- Patent Law
- Licensing
- Copyright
- Collaborations

NOV 2022

- M & A
- Innovation Research
- Data Management
- Balance for Rights & Obligations

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Editorial

(contributed by Ms. Andrea Fernandes)

The Hon'ble Intellectual Property Appellate Board (IPAB) was abolished pursuant to the Tribunal Reforms Act, 2021 and all matters pending before the Hon'ble IPAB were transferred to the respective High Courts. This created ripples in the IP circle. Of particular concern was, whether the High Courts were technically qualified to adjudicate on matters involving science and technology. This conundrum was resolved by setting up dedicated Intellectual Property Division ("IPD"), for example in the Delhi High Court, and the subsequent notification of Delhi High Court Intellectual Property Rights Division Rules, 2022.

The IPR Division Rules, 2022 under Rule 19 provides for the constitution of confidentiality club consisting of lawyers (external & in-house) and experts for the preservation and exchange of confidential information and Rule 31 empowers the Court to seek assistance of experts in IPR matters relating to the subject matter of the dispute. Similarly, Section 115 of the Patents Act, 1970 empowers the Court to appoint independent scientific advisers to assist the court upon any question of fact or provide opinion in infringement suits and revocation proceedings.

Recently, in one such matter¹, Dr. Gopakumar G. Nair and Prof. Bhalchandra Bhanage (appointed in place of Dr. Raghavan Soman, who expressed his inability to accept the assignment on account of other prior commitments) were appointed as Independent Scientific Advisers in the matters of CS(COMM)348/2022, CS(COMM)349/2022, and CS(COMM)295/2022 between FMC Agro Singapore PTE LTD vs. Natco Pharma Ltd before the Delhi High Court. The primary question arose as to whether Natco's process for the manufacture of product Chlorantraniliprole (CTPR) was different from that of FMC's process protected in Indian Patent IN298645. Amongst others, what became the deciding factor was the presence or absence of the impurity methane sulfonic acid in Natco's CTPR process. It was opined by both the Scientific Advisers that the impurity methane sulfonic acid was not present in Natco's CTPR process, since Natco used thionyl chloride instead of sulfonyl chloride as the reagent.

Based on Dr. Nair's and Prof. Bhanage's reports, the injunction against Natco was vacated and Natco was permitted to launch CTPR manufactured through Natco's own process.

¹ http://164.100.69.66/jupload/dhc/IIS/judgement/20-09-2022/IIS19092022SC3492022_205751.pdf

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Free Trade Agreement UK – India

FTA seeks on IPR under CHAPTER [X]

- Deletion of Sec 3(d)
- To be held patentable ‘new medical use for a known substance or composition’,
- Eliminate the requirement of ‘enhancement of known efficacy’,
- Failure to file foreign filing information (Form 3) will not be a ground for opposition, revocation, or refusal to grant a patent,
- Eliminate provision of pre-grant opposition (Sec 25(1)),
- Eliminate the requirement of Statement of Working of Patents (Form 27), except for Compulsory Licence,
- Extension of the Patent Term / Market Exclusivity / period of additional sui generis protection,
- Protection of Undisclosed Test For Agricultural (at least 10 years) & Pharmaceutical Products (at least six years)

Source: https://www.bilaterals.org/IMG/pdf/uk-india_fta_ip_chapter_dated_april_2022_68_.pdf

Ensure deserving applicants aren't denied patent protection: Goyal to IP Professionals

Union Minister of Commerce and Industry Piyush Goyal while addressing the Valedictory Session of National Intellectual Property Conference 2022 on ‘Strengthening IP Ecosystem for catalysing the growth of Knowledge Economy’ in New Delhi has said that the government was already in the process of modifying the law and asked stakeholders to send suggestions, which he said, would carefully be considered and objectively assessed. The Minister said that the government was seeking to expand number of Comptrollers and appealed to former Comptrollers and retired experts to volunteer to work for a few years to help clear backlogs and historical pendency.

Source: <https://www.livemint.com/news/india/ensure-deserving-applicants-aren-t-denied-patent-protection-goyal-to-ip-professionals-11665842658132.html>

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A stringent patent rule is latest hurdle for India-UK free trade agreement

Negotiations for a trade deal between India and the UK have run into fresh controversy, after the proposals under a leaked chapter of the deal on intellectual property (IP) are believed to put access to affordable, lifesaving generic medicines from India at risk.

According to the draft IP chapter put out by an international trade portal bilaterals.org, the UK is seeking continuous extension of patent period and rights through small tweaks in the drug, known as evergreening.

Government officials told Business Standard that the draft that was being circulated is not the final one, and the FTA negotiations between the two nations were still on.

Source: https://www.business-standard.com/article/economy-policy/india-uk-trade-deal-leaked-draft-ip-chapter-suggests-stringent-patent-rule-122110201512_1.html

U.S. Supreme Court rejects Bristol Myers cancer-drug patent fight with Gilead

The U.S. Supreme Court on Monday rebuffed a bid by Bristol Myers Squibb Co's Juno Therapeutics Inc to reinstate a \$1.2 billion award it won in its patent fight with Gilead Sciences Inc subsidiary Kite Pharma Inc over a lymphoma drug, Yescarta.

Source: <https://www.reuters.com/legal/us-supreme-court-rejects-bristol-myers-cancer-drug-patent-fight-with-gilead-2022-11-07/>

PMPRB Update:

New PMPRB Guidelines Proposed for Assessing Prices of Patented Medicines Sold in Canada

On October 6, 2022, the Patented Medicine Prices Review Board (PMPRB) published Draft Guidelines on "Patented Medicines Regulations" incorporating the PMPRB11 schedule countries. The Draft Guidelines also contain substantive changes to the regulatory framework and price tests for

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determining whether a patented medicine is being sold at an “excessive” price in Canada. The Draft Guidelines propose a significant departure from the PMPRB’s current framework, which regulates the annual average price increase of patented medicines, to one that regulates annual list prices instead.

Source: <https://indianexpress.com/article/cities/delhi/tata-hakunamatata-high-court-appeal-conglomerate-cryptocurrency-8160636/>

Trademark infringement suit

Tata has a stellar reputation: HC allows ‘Fly Higher’ in Vistara ads

The Delhi High Court has allowed Tata Group’s Vistara airline to use the term “fly higher” in its marketing campaigns, lifting the interim restrictions it ordered earlier this year in a trademark infringement suit filed by an aviation institute.

“On a perusal of the documents, this Court finds prima facie merit in the submission of the Defendant (Tata) that the term FLY HIGH is demonstrably common to Aviation sector and this is fortified by the Master Data of over 20 registered companies, incorporating the phrase FLY HIGH/HIGH FLYER/HIGH FLYERS, which continue to be active and have not been struck off from the Register of Companies. Defendant has also placed on record copies of extracts of online records of the Trade Marks Registry showing registrations/pending applications for the mark FLY HIGH/HIGH FLYER,” the HC held.

Source: <https://indianexpress.com/article/business/aviation/trademark-infringement-suit-tata-has-a-stellar-reputation-hc-allows-fly-higher-in-vistara-ads-8255241/>

Delhi HC awards costs of Rs 20 lakh to Louis Vuitton in trademark violation case against banned Chinese e-shopping portal

In a trademark infringement suit moved by Louis Vuitton Malletier against a Chinese e-shopping platform, the Delhi High Court recently awarded costs of Rs. 20 lakh in favour of the French luxury fashion house.

Source: <https://indianexpress.com/article/cities/delhi/delhi-hc-awards-20-lakh-louis-vuitton-trademark-violation-banned-chinese-e-shopping-portal-8255681/>