Centre for CIPROM intellectual property management

NEWSLETTER

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Intellectual Property advocacy in the fields of:

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

EDITORIAL

Nearly 50 years after the landmark 1970 amendment to Indian Patent Law and about 25 years after the TRIPs-led series of three amendments (1995/99, 2002/2003 and 2025) to Patents Act, 1970, the current trend of FTA trade negotiations are seeking changes in India's RDP (Regulatory Data Protection) and related patent and exclusivity terms and norms. This move if acceded, will impact Indian Pharma generic industry very adversely.

India had built the now "Pharmacy of the World" status, on the TRIPs compliant flexibilities in its IP/Patent regime which was carefully crafted and choreographed around a very succinct balance between rights (of inventors and IP holders) and obligations (to users, patients and community at large).

India need to weigh the option carefully, not to upset this balance to extend benefits of innovation to the public at large, especially in the light of past history very low positive impact on trade from the FTAs (Free Trade Agreements) signed with countries like Australia, Korea and others. The adverse amendments in Patent related regulations will impact permanently; while the benefits actually are being accrued in the bilateral trade from FTAS is unpredictable.

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COPYRIGHT INFRINGEMENT AND HINDUSTANI CLASSICAL MUSIC. LEARNINGS FROM THE RECENT CASE INVOLVING AR RAHMAN

The Delhi High Court recently (Sep 2025) upheld the appeal and overturned the earlier infringement order against AR Rahman and Madras Talkies (and a few more!) for the copyright infringement of the song 'Veera Raja Veera' from Ponniyin Selvan 2.

The original Copyright infringement suit: In April 2025, the nephew of the late Dagar Brothers filed a suit seeking permanent and mandatory injunction of the musical composition 'Veera Raja Veera' from Ponniyin Selvan 2 against A.R. Rahman, producers of Ponniyin Selvan, the music label company, and vocalists Shivam Bharadwaj and Arman Ali Dehlvi. A single-judge order held the composition to be substantially similar to the plaintiff's 'Shiva Stuti' belonging to the Dagarvani Drupad tradition. The division bench came to the conclusion of infringement based on the following:

- The Court ruled infringement based primarily relying on 'lay listener test' to establish that there were similarities that went beyond mere melodic inspiration. Furthermore, the fact that two singers of 'Veera Raja Veera' (who were also defendants in the case) being plaintiff's disciples further proved access to the original song in question.
- Apart from ruling infringement, compensation of INR 2 Crore to be deposited with the Court as security and awarding INR 2 lakh to the plaintiff, the Court also directed that the impugned song will have to be updated in all platforms to adequately credit the original composer that is the Dagar brothers.

The Appeal: An Appeal was filed to set aside the judgment of infringement with regard to the composition and all other directives. The judgment on this was pronounced in September 2025.

To come to a legal conclusion, the Court **deliberated two questions**, the first one on whether the composition is indeed a creation of the plaintiff and secondly, whether the said composition is original as claimed by the plaintiff.

For **question one** regarding creation and authorship, the Court recognized that the plaintiffs were the first performers of the song at a 1978 concert in Amsterdam. But, first performance can only establish performer rights (Section 38, Copyright Act 1994) and not necessarily render authorship. The Court also noted that the first performance alone cannot authenticate creation and in the absence of material to support creation, it would be inaccurate to equate performance to authorship. And it will be contrary to public interest and question creativity if first performance alone can prove authorship. First performance does establish fixation which is a requirement for copyright claim especially in a performing art. However, the appeal Court held that the infringement order erroneously has based fixation alone for establishing the said copyright claim.

Question two was to infer whether the composition is indeed original. In this regard it is pertinent to note that classical music is a permutation and combination of notes bound by a particular raga. Thus, the expectation of novelty may not be as stringent as defined in patent law but it will seek certain degree of individual creativity as to musical arrangement, sequence and notes without undermining that there will be overlapping tunes within the raga. In this regard, the Court also made a note that common elements, its usage within the confines of the raga cannot be attributed to 'similarity' and that it would adversely extend copyright protection and stifle creativity in classical music. The Court concluded that the plaintiff could not establish authorship and thus the question of originality does not come into play.

Just as I write this short piece, I checked the song on Spotify (app-based music platform) and it still reads as 'Composition based on a Dagarvani Tradition Dhrupad' Afterall, the Courts go as far as the legal leanings do while respect and morals in classical tradition go much beyond?

The detailed order can be accessed here

(A.R. Rahman v. Ustad Faiyaz Wasifuddin Dagar, 2025 SCC OnLine Del 6159, decided on 24-9-2025).

- **Kausalya Santhanam, PhD, LLB**

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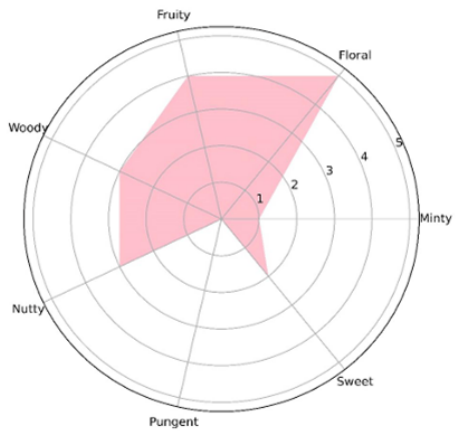
INDIA'S FIRST SCENT TRADEMARK: ROSE-SCENTED TYRES ENTER THE REGISTRY

India has entered new territory in trademark protection by approving its first olfactory trademark. Sumitomo Rubber Industries Ltd. has secured registration for a rose-like fragrance applied to tyres, a move that shifts Indian trademark practice beyond traditional visual identifiers. Interestingly, this same fragrance was also the first scent trademark to be registered in the United Kingdom nearly three decades ago.

Scent marks fall under the category of *non-conventional* trademarks, designed to protect distinctive sensory features that signal the commercial origin of goods. For consumers, the idea is simple: if a passing car smells like roses, they should be able to link that scent to a particular manufacturer.

Graphical Representation of Rose-like Smell



Why the Registry Approved It

The CGPDTM concluded that:

The definition of a trademark in the Trade Marks Act is broad and flexible enough to include smell marks.

Innovation in branding should be supported, especially for industries where scent plays a central role.

Sumitomo's "seven-dimensional" graphical depiction of the rose aroma breaking the scent

into floral, fruity, woody, nutty, pungent, sweet, and minty components was sufficiently distinctive.

The scent, once noticed by consumers, could function as a badge of origin.

The Issues No One Should Ignore

The excitement around this milestone is understandable but not without concerns:

Monopolizing a Common Smell

A floral scent isn't exclusive or unusual. Allowing one company to corner such a universally accessible aroma could stretch trademark protection beyond its intended limits.

A Complicated Representation

While scientifically impressive, a 7-dimensional chart is far from intuitive. If ordinary consumers and businesses can't understand the representation, accessibility and transparency suffer.

Missing Scientific Justification

Given that this is India's first scent mark approval, the basis of the model deserved a detailed explanation. Instead, the order leaves important questions unanswered.

Functionality & Market Impact

Improving the smell of a product like rubber tyres may provide a real competitive edge. Under the functionality doctrine, such advantages aren't supposed to be locked behind a trademark. International rulings have refused scent marks when the aroma improves product acceptance.

Add to this the likelihood of increased barriers for competitors and the risk of consumer confusion, and the picture becomes more complicated.

The Bigger Picture

India has previously recognized other unconventional marks sounds, shapes, even jingles. But scent marks come with unique practical challenges: how to define them clearly, how to make them searchable in a public registry, and how to avoid granting overly broad monopolies.

TRIPS allow protection for signs that *genuinely distinguish* goods or services. The question now is whether Indian law is prepared to handle the consequences of giving exclusivity to something as subjective and familiar as a rose-like smell.

Final Word

A first step can be historic and still be premature. As businesses push branding into new sensory dimensions, the trademark system must balance creativity with clarity, competition, and consumer welfare. How this decision unfolds in practice will decide whether it becomes a celebrated innovation or a lesson in moving too fast.

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CASE SUMMARY: SWAPAN DEY V. COMPETITION COMMISSION OF INDIA & VIFOR INTERNATIONAL AG

Background

Appellant: Mr. Swapan Dey, CEO of a hospital providing dialysis services under a PPP model through PMNDP.

Issue: Patients frequently suffer from Iron Deficiency Anaemia (IDA), treated using Ferric Carboxymaltose (FCM) injections.

Allegation: Vifor International AG (Swiss pharma company and patent holder of FCM) was accused of restricting supply, excessive pricing, and abusing its dominant position, violating Sections 3 and 4 of the Competition Act.

Earlier Decision:

CCI (25.10.2022) found no prima facie contravention and closed the case under Section 26(2).

CCI's Key Findings

- Licensing agreements with Lupin and Emcure appeared reasonable, not exclusionary.
- No evidence of market foreclosure or restriction on other manufacturers entering the market.
- Patent expiry for FCM in 2023 meant the drug would soon enter the public domain.
- Price differences based on buyer category (e.g., government bulk procurement) did not amount to discriminatory conduct.

Appeal Before NCLAT

The appellant argued that the CCI should have:

- Defined the relevant market,
- Assessed dominance,
- Conducted an ex-post rather than ex-ante review.
- Vifor countered that:
- Patent rights justify reasonable licensing restrictions (Section 3(5) of Competition Act),
- Issues raised overlap with Patent Act jurisdiction,
- The patent has now expired and FCM is open to market exploitation.

NCLAT's Decision

Appeal dismissed.

Key reasoning:

1. Recent Delhi High Court ruling (Ericsson Case) held that Patent Act prevails over Competition Act for allegations concerning patentee's exercise of rights.
2. Supreme Court declined interference in that ruling, keeping questions of law open but sustaining the outcome.
3. Thus, CCI lacked jurisdiction to examine alleged abuse tied to patent rights.
4. Section 3(5) protects patent holders imposing reasonable conditions to safeguard IP.

Takeaway

This decision reinforces that competition scrutiny over patented drugs is limited while patents remain valid. Challenges concerning pricing, supply, or licensing of a patented pharmaceutical must primarily be resolved under the Patent Act, not through CCI intervention.

WHEN DEADLINES SLIP: DELHI HIGH COURT RESTORES PATENT LOST TO AGENT ERROR

The Delhi High Court has stepped in to shield patent applicants from the harsh fallout of

procedural mistakes. In a recent matter involving Synertec Pty Ltd, the Court ordered the revival of a patent application that had been treated as withdrawn purely due to an incorrect deadline communicated by the applicant's patent agent.

Synertec, an Australian technology company, had entered the Indian patent system through the PCT route with an innovative system for vaporizing liquefied natural gas to improve measurement accuracy. The application progressed routinely through publication in 2022. But a single miscalculation changed everything: the patent agent erroneously advised that Synertec had until late 2024 to request examination of the application, while the correct statutory deadline based on the earliest priority was in 2023.

By the time the error came to light, the application was already listed as abandoned on the Patent Office record. Synertec, which had been actively corresponding with its agent and was successfully obtaining protection abroad, suddenly found itself facing a complete loss of exclusivity in India through no fault of its own.

Recognizing the imbalance, the Court emphasized that the applicant had consistently demonstrated intent to pursue its rights and had relied reasonably on its appointed professional. Penalizing a diligent innovator for the oversight of its agent would be excessively punitive and contrary to the interests of justice.

The Court also acknowledged a broader principle that while statutory timelines in patent law must be respected; there are exceptional circumstances where strict enforcement undermines fairness. In such instances, the constitutional power of judicial review allows flexibility to prevent irreversible harm. A lost patent is not a minor procedural inconvenience. Exclusivity is extinguished permanently.

Ordering immediate restoration of the application and allowing Synertec to proceed with the examination request, the Court reaffirmed a growing judicial approach that substance should prevail over technical missteps when the applicant has acted in good faith.

This decision sends a reassuring message to innovators in India and abroad. The legal system recognizes that patent prosecution is increasingly complex and dependent on intermediaries. Mistakes can happen, but innovation should not be the casualty. Courts remain ready to ensure that genuine inventors are not stripped of opportunity because of an email with the wrong date.

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IS THERE LIFE AFTER EXPIRY? PATENT REVOCATION DEBATE REACHES DELHI HC

A curious legal puzzle has surfaced before the Delhi High Court. Should a revocation petition continue once the patent at the center of the dispute has already expired The Court is currently examining this issue in an ongoing matter involving Boehringer Ingelheim Pharma GmbH and the Controller of Patents.

The litigation is not confined to a single forum. While the respondents have filed a revocation action challenging the validity of Boehringer's

patent rights Boehringer has also sued them for infringement. In the infringement suit the respondents have raised invalidity as a defense under Section 107 of the Patents Act. A Single Judge earlier held that asserting invalidity in an infringement case does not prevent the respondents from pursuing a separate revocation proceeding. More significantly the judge also concluded that a revocation action can remain maintainable even after expiry of the patent. It is this particular conclusion that is now under scrutiny before the Division Bench.

During the appeal hearing the Court questioned the very purpose of revocation once a patent has already lapsed. Revocation generally serves to strip a living patent of its exclusive rights. When those rights have already ended with time the Court wondered what real consequence revocation could still achieve. The Bench put it plainly, can one kill what is already dead.

The respondents relied on a Calcutta High Court decision and an old UK judgment to support the idea that revocation may continue despite expiry. The Bench however did not find these authorities persuasive noting that neither decision offered substantial reasoning on the core question.

From a policy perspective the contradiction is evident. Revocation removes exclusivity but expiry removes it too. If exclusivity is gone what is left to revoke the respondents suggested that revocation has retrospective impact yet the Court pointed out that such retrospective nullification assumes a live patent at the time of the decision. Acknowledging that the answer could impact future patent litigation strategy the Court has appointed an amicus and asked for concise written submissions. The earlier Single Judge ruling has been put on hold while the issue is fully considered.

The dispute now raises an important and unresolved question in Indian patent law. Does a patent have a legal afterlife in which revocation can still matter Or does expiry mark the end of both rights and challenges The Court's eventual ruling may reshape the way parties approach both revocation and the defense of invalidity in infringement suits going forward.

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DELHI HIGH COURT EXAMINES ALLEGATIONS IN SEMAGLUTIDE PATENT DISPUTE

The Delhi High Court recently considered a request for interim relief in a patent infringement matter concerning the pharmaceutical product Semaglutide. The proceedings were initiated by Novo Nordisk A S, the patentee of Patent No 262697, who sought to restrain the defendants from manufacturing and marketing products allegedly protected under the suit patent.

The respondents argued that Semaglutide had already been disclosed and claimed in an earlier genus patent identified as IN964. According to their submissions, the plaintiff had enjoyed the full term of exclusivity under the genus patent and the present enforcement attempt amounted to an extension of monopoly beyond the permissible duration under Indian patent law. The defendants referred to principles established in similar pharmaceutical litigation where courts have consistently disallowed dual patent terms for

the same compound and rejected attempts to obtain prolonged exclusivity through incremental filings.

The Court examined disclosures in statutory filings, including working statements furnished by the patentee under Form 27. These disclosures revealed that commercial exploitation of Semaglutide based products in India had previously been declared under the earlier genus patent. The defendants contended that the present assertion of rights under a separate patent could not override prior admissions made before the Patent Office regarding the manner in which the invention was worked in India.

In addition to questions of patent validity and scope, the respondents also raised concerns related to regulatory compliance. It was submitted that the plaintiff did not possess the necessary manufacturing authorisation at the relevant time and had only held approval for import. The Court considered these concerns while assessing the overall credibility of the plaintiff's claim for urgent injunctive relief.

The matter is viewed as commercially significant, as Semaglutide plays a major role in the treatment of diabetes and metabolic disorders especially in chronic weight management in adults with obesity. The market demand for Semiglutide formulations are growing sharply in India for management of Chronic Obesity. The decision on interim measures is likely to have a material effect on market dynamics while the validity and enforceability of the suit patent remain under judicial review.

The Court has not yet issued a final ruling on the injunction request. The case continues to be heard with a focus on whether the patent in suit represents a distinct innovation or whether its enforcement would result in an unfair extension of exclusivity already enjoyed under the earlier patent.

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PATENTS (AMENDMENT) RULES, 2025 INTRODUCE NEW FRAMEWORK FOR PENALTIES AND APPEALS

The Ministry of Commerce and Industry has notified the Patents (Amendment) Rules, 2025, which took effect on November 25, 2025. A significant feature of this update is a brand-new chapter setting out the process for imposing penalties under the Patents Act, 1970 and for challenging such decisions before an appellate authority.

What's New in the Rules

Anyone alleging violations under specific provisions of the Patents Act such as unauthorized claims of patent rights, failure to furnish required information, or practice by unregistered patent agents must now file complaints digitally in Form 32 before an adjudicating officer.

Inquiry Procedure

When an adjudicating officer believes that a contravention may have occurred under Section 124A, a notice will be issued electronically calling upon the concerned party to explain why an inquiry should not proceed. A minimum of seven days will be provided to respond.

If the officer decides to move forward with the

inquiry, the individual will be summoned to appear personally or through legal representation. The officer must clearly explain the alleged misconduct, permit the person to present evidence, and may seek witness testimony or documentation if needed. Hearings may be adjourned where necessary.

If the person fails to appear despite notice, the inquiry may still continue, with reasons recorded in writing. Upon finding a violation, the adjudicating officer must deliver a written, reasoned order detailing the specific statutory breach and the penalty imposed. Decisions must be issued within three months of the initial notice and provided to the concerned party without charge.

The process is not bound by the strict rules of evidence under the Bharatiya Sakshya Adhiniyam, 2023.

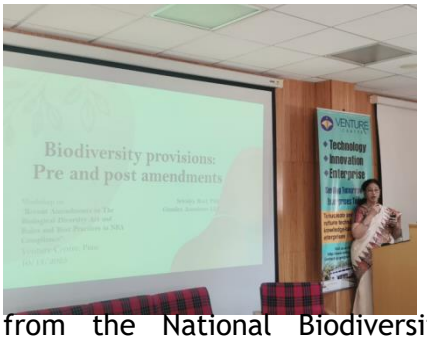
Appeal Mechanism

Any party dissatisfied with the outcome may appeal electronically using Form 33 within 60 days of receiving the order. Delayed appeals may be accepted for justified reasons. The appellate authority will invite a reply from the respondent and hear both sides before concluding the matter, ideally within six months of receiving the appeal.

All communications, orders, and updates will be issued only through electronic means. Every final order must be digitally signed and made available on the official website. Penalties collected will be credited to the Consolidated Fund of India.

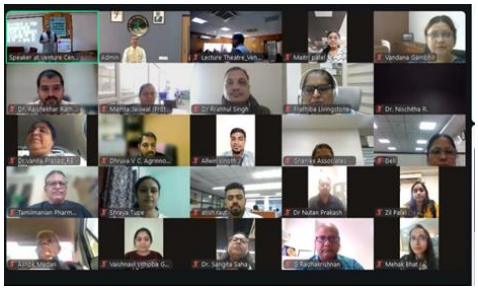
WORKSHOP HIGHLIGHTS KEY SHIFTS IN INDIA'S BIOLOGICAL DIVERSITY COMPLIANCE LANDSCAPE

A workshop focusing on the Biological Diversity Act, related rules and recent amendments was



successfully conducted on November 10, 2025. The program brought together experts from the National Biodiversity Authority and industry to clarify compliance expectations and share best practices with organizations operating in the biotechnology and life sciences sectors.

The event opened with a welcome and introductory remarks by Dr. Gopakumar Nair, who set the



context for the current regulatory environment and emphasized the importance of proactive adherence to biodiversity governance standards. His address highlighted how revised compliance mechanisms are shaping access and benefit sharing norms across the country.

The keynote was delivered by the Member Secretary of the National Biodiversity Authority, who addressed the evolving role of the Authority and the national objectives behind the latest legislative changes. This was followed by an insightful technical session by Dr. Srividya Ravi, who examined biological resource related

obligations before and after the recent amendments. She explained how the amendments aim to streamline approvals while ensuring fair benefit sharing and stronger accountability.

A panel discussion then facilitated interaction between regulatory bodies, legal experts and industry representatives. Stakeholders discussed operational challenges and shared practical approaches for implementing compliance frameworks within companies and research institutions.

The event was organised by GnanLex Associates and Serigen Mediproducts in collaboration with TechEx and supported by Venture Center and the National Biopharma Mission. It was held in hybrid mode at Venture Center Pune, enabling strong participation both online and in person.

Overall, the workshop proved valuable in strengthening awareness of India's biodiversity compliance system and in encouraging more informed engagement between innovators and regulators as policies continue to evolve.

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PUBLIC HEARING ANNOUNCED TO ADDRESS CONCERNS OVER ONLINE IP SERVICE PROVIDERS

The Office of the Controller General of Patents, Designs and Trade Marks has issued a public announcement raising concerns about certain online service providers offering assistance with IP registrations and legal procedures in India. According to the notice, some digital platforms have been actively advertising and soliciting professional legal services for intellectual property matters, an activity that appears contrary to the Advocates Act, 1961 and the Bar Council of India Rules governing professional conduct.

The communication notes that complaints have emerged about misleading claims and fraudulent practices by certain online entities. Such actions risk confusing applicants, damaging trust in statutory systems and weakening confidence in India's intellectual property administration. The notice also refers to a recent judgment of the Madras High Court in P N Vignesh v. Chairman and Members of the Bar Council, where the Court held that lawyers are forbidden from soliciting work, including through online platforms, and that such conduct may amount to professional misconduct. It further highlights that online legal service providers are not authorised to appear before the Trade Marks Registry under the Trade Marks Act, 1999.

To engage with stakeholders and gather feedback on these concerns, the CGPDTM has arranged a public hearing on December 4, 2025 from 3.30 PM to 5.00 PM. The session will be conducted online through WebEx and is open to all interested participants. The notice encourages attendees to log in a little before the scheduled time due to

potential capacity limits and to use the raise hand option if they wish to present their suggestions or concerns. Each speaker will be allotted up to two minutes to share their views, and participants are requested to avoid repetition of submissions. Stakeholders may also submit representations in advance through the official CGPDTM email.

The initiative aims to support a transparent, responsible and trustworthy IP environment by ensuring that services related to patents and trademarks are provided only by individuals legally permitted to practice in the field.

The meeting can also be joined by any interested stakeholder through the following link:

https://cgpdtm.webex.com/cgpdtm/j.php?MTID=mb5378a4ebf7835ce58778a2e53eb5695

Platform: WebEx Meeting number:2518 882 1150 Meeting password:ip@2025

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