

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

Private Circulation Only

MARCH 2017 HAD ITS OWN SHARE OF IP EVENTS AND DEVELOPMENTS, A FEW OF WHICH ARE NARRATED HEREIN.

TRADE MARK RULES 2017

Close on the heels of Patent Rules, 2016, the Trade Mark Rules 2017 has brought in remarkable improvements both in procedures, pendency and ease of filing trade mark applications. A detailed note on the remarkable improvements and amendments are incorporated herein.

SALIENT FEATURES OF TRADE MARK RULES 2017 (PUBLISHED ON 6TH MARCH, 2017)¹

(Note prepared by Sajeevkumar S. Nair, Trade Mark Attorney)

- Number of forms have been brought down from 74 to 8 as notified under *Schedule 2* of the 2017 Rules. 2002 Rules had tailor made formats for each type of application, whereas now in 2017 Rules, the number of forms have been brought down to 8 and has opted for formats that could be used for multiple types of applications.
- Official Fees for Trade Mark Registration (comparison of *Schedule 1* of 2002 and 2017 Rules) has increased significantly, approximately by 250%.
- Introduced reduction of 10% on fees for E-Filing from the fee indicated under the “*Physical filing*” head, can be seen by perusing *Schedule 1 of the 2017 Rules*.
- Entities falling under Start Ups, Individuals and Small Enterprises have been provided concessions, which was not available in the Old Rules 2002, which can be seen now by perusing *Schedule 1 of the 2017 Rules*, note the definitions for “*Start Ups*” and “*Small Enterprises*” under *Rule 2(x) and (v)* respectively.
- Expedited Examination provision under Rules 2002 has been expanded to Expedited Processing of Application till Registration in Rule 2017.
- Provision of video Conferencing for Hearings was not referred in the 2002 set, while the provision for same has been mentioned under *Rule 115 (2017)* which reads as follows:
“Provide that the hearing may also be held through video-conferencing or through any other audio-visual communication devices and in such cases the hearing shall be deemed to have taken place at the appropriate office.”
- Provision for Determination of “*Well Known Mark*” established with a fee of Rs.1,00,000/- (*the criteria of determination of ‘Well-known Mark’ Is not specified in the Rules*)
- Introduced provision for statement of user mandatory in application – if an application for trademark claimed a prior user date, the applicant shall file an affidavit testifying to such use along with supporting documents.
- Provision for Extension of Time for Filing Evidence in Opposition Proceedings abolished.
- Added provision for Recognition of Email as a Mode of Service under *Rule 14 of the 2017* reads as follows:

“(1)All applications, may be delivered by hand or sent through the post by a prepaid letter or may be delivered by hand or sent through the post by a prepaid letter or may be submitted electronically in the manner as laid down by the Registrar. ...

(5) The Registrar after informing the public in the Journal may accept applications..., or other documents online through the gateway provided for this purpose, or in case of documents not requiring the payment of a fee, through e-mail to a designated email address for the purpose.”

Rule 18 (2017) also talks about E-mails. (Service of Documents by the Registrar)

- Adjourment of Hearing in Opposition proceedings – Rule 56 (2002) has been added with proviso in Rule 50 (2017: “Provided that no party shall be given more than two adjournments and each adjournment shall not be for more than thirty days.”
- Addition of clauses under provision of ‘Scale of costs’ under Rule 118 as follows :
 - i. For not contesting the Opposition proceeding by the applicant if opposition is filed after reasonable notice – Rs.10,000/-
 - ii. For not contesting the Opposition proceeding by the opponent after filing the counter statement in the opposition proceedings – Rs.10,000/-

While these improvements and reduction of Forms for ease of Trade Mark filings is widely appreciated, there are practical difficulties and uncertainties being experienced by the Trade Mark practitioners. These will hopefully get alleviated once brought to the notice of the CG’s office, which is in progress.

SEC 107(A)(a) EXCEPTION JUSTIFIED BY DELHI HIGH COURT

After years of waiting, Delhi High Court has passed orders on Sec 107 (A)(a), allowing exports of medicines patented in India, for purposes of R&D development by overseas clients for development of products for clinical trials & tests related to preparation of dossier for regulatory approval.

The Delhi High court set to right the long pending issue. Indian Pharma companies were being sued and ex parte injunctions were being granted liberally and simply for seeking regulatory approval from the licensing authorities, totally ignoring the research exemptions under sec107 (A)(a). From 2010 to 2015 it was rumoured that India had broken all world records in grant of ex parte injunctions in pharma patent litigation.

Justice Rajiv Sahai End law’s decision on validity of Sec 107(A)(a) for export of patented products for R&D evaluations to overseas clients was delivered on an infringement suit filed by Bayer Corporation Ltd against Natco Pharma and Alembic on Sorafenib and Rivaroxaban respectively. The judgement clarified that export for development can be done on profit generation basis provided the end use is for non-commercial purposes and restricted for R&D development.¹

TRADITIONAL KNOWLEDGE-REVISITED

The move by Indian Government to claim ownership on Traditional Knowledge was long overdue. Wasteful opposition by TKDL through CSIR was preventing protection of innovations beyond TKDL/Traditional Knowledge or Sec.3(p) of the Patents Act, 1970, including by CSIR themselves.

TKDL

Having done the job expected out of them, TKDL is now in review mode.

For a Report on TKDL, please visit the Hindu Link

<http://www.thehindu.com/todays-paper/ancient-knowledge-hub-faces-grey-future/article17625761.ece>

Girish Sahni, Director-General, CSIR denied reports that TKDL was dying. It would be “fully supported in an expanded, advanced way.” While he termed the matter of the employees sub judice, TKDL, he said, would align with India’s National Intellectual Property Rights Policy cleared by the Centre last May. This would allow public research institutions and private players to use TKDL for research and development purposes.

Monsanto Technology LLC and Ors. Vs. Nuziveedu Seeds Limited & Ors. in CS(COMM) 132/2016

Monsanto vs. Nuziveedu is a landmark judgement pronounced on 28th March on GT Cotton seed controversy with regard to continued use of the suit patent technology and the related registered trademarks by Nuziveedu.

Hon’ble Mr. Justice R. K. Gauba denied ad interim injunction to Monsanto Technology LLC and Ors. against Nuziveedu Seeds Limited & Ors. While denying ad interim injunction, Hon’ble Mr. Justice R. K. Gauba issued ad interim directions to be complied with during the pendency of the suit.

Monsanto filed the patent infringement suit alleging violation of Indian Patent 214436 and trademarks BOLLGARD and BOLLGARD II, since the Defendants continued to “market and sell”. Genetically Modified Hybrid Cotton Planting Seeds despite termination of the patent sub-license agreements including trademark sub-license agreements.

The said agreements were terminated due to non-payment of trait fee by the Defendants. The Defendants discontinued payment of trait fee and requested Monsanto to lower the trait fee in light of “Licensing and Formats for GM Technology Agreement Guidelines, 2016” notified by the Government of India. The Delhi High Court order can be accessed here :

<http://lobis.nic.in/ddir/dhc/RKG/judgement/28-03-2017/RKG28032017IA24062016.pdf>

A related report in the Economic Times dated 29th March 2017 has the following link:

<http://economictimes.indiatimes.com/news/economy/agriculture/monsanto-meets-its-match-in-rising-nationalist-power-centres-stares-at-uncertain-india-future/articleshow/57874338.cms>

NATIONAL PHARMACEUTICAL POLICY?

Close on the heels of National Intellectual Property Policy and National Health Policy, the chairman NPPA (Department of Pharmaceuticals) has come up with a National Pharmaceutical Policy proposal in March, 2017. While the Policy proposals from the Chairman, NPPA has a mixed bag of welcome proposals with a few ones with note of caution, what is urgently needed is to set up a Ministry of Pharmaceuticals, which through independent of Health Ministry, Commerce Ministry, Industries Ministry, Environment Ministry, Ministry of Chemicals & Department of Pharmaceuticals, DIPP as well as DST, DBT and Ayush, will work in tandem with all these Ministries and Departments as well as all stakeholders in pharmaceutical industry, research, IP protection and Pharma education.

NATIONAL SOFTWARE POLICY

The Government of India has issued for the first time, a draft of National Software Policy in November 2016 with an objective of increasing India’s share in Global software market ten-fold, which will create employment opportunities for 3.5 million by 2025, including through start-ups. It is proposed to create a talent pool of 1,00,000 software professionals. While the objectives are lofty and laudable the global scenario appears challenging as on date.

A link to National Software Policy is provided herein below :

http://meity.gov.in/sites/upload_files/dit/files/National%20Policy%20on%20Software%20Products.pdf

VITAMIN D - Vitamin D is emerging as a wonder-supplement, as the list of prophylactic and therapeutic indications for Vitamin D are increasing by leaps and bounds. A recent report claims that extra dose of Vitamin D can protect against common colds, influenza and respiratory tract infections as well as attacks of Asthma.

Is it a joke – India is ranked “Second Last” by GIPC(Global Intellectual Property Center) below countries like Nigeria, Vietnam, etc. Those who are watching the progress of IPIndia and the litigations in Delhi & other High courts as well as Supreme Courts will vouch for world class IP practices and protection in India. This ranking by GIPC is either a joke or totally politically motivated.

Plastic being recycled in Netherlands to pave roads. Road paving into plastic in an innovation (we call it “Jugad” in India), Paving roads into plastic lasts longer too. This is being experimented in Netherlands. Why not in India, where plastic pollution has become a nuisance? Yes, Kerala Government is implementing use of recycled plastic and rubber from discarded tyres and tubes.

In Bayer vs Ajanta Pharma, Justice Gauba of the Delhi High court has interpreted exports as non-infringing and in larger public interest. Consequently, injunctive relief was denied to Bayer on export of Vardenafil by Ajanta Pharma.³

In the Enzalutamide (Xtandi®) matter, the Regents Of The University Of California has appealed the decision dated 08/11/2016 of the Asst. Cont. Patents & Designs before the Delhi High Court by way of a Writ Petition. Cipla challenge to INDACATEROL ends in Division Bench Court of Delhi High Court upholding validity of Patent and rejecting Cipla’s ‘Public Interest’ argument for launch of generic products.

DU Photocopy case (Copyright) Oxford University Press and other publishers withdraw their suit in Delhi High Court against Delhi University and photocopier Rameshwari. A victory for Academic and students.

<http://lobis.nic.in/ddir/dhc/RSE/judgement/09-03-2017/RSE08032017CW19712014.pdf>

http://www.ipindia.nic.in/writereaddata/Portal/News/312_1_TRADE_MARKS_RULES_2017_English.pdf

[http://delhihighcourt.nic.in/dhcqrydisp_o.asp?ctype=CS\(COMM\)&cno=1648&cyear=2016&orderdt=04-JAN-2017](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?ctype=CS(COMM)&cno=1648&cyear=2016&orderdt=04-JAN-2017)

A WARNING – NOTE OF CAUTION

Unscrupulous entities in Eastern Europe (Czech Republic, Romania, Hungary etc.) are issuing Orders for remittance to PCT Applicants, who are being misled in to believing that these are statutory payments.

WIPO has already issued warnings on their website, which is available on following link - http://www.wipo.int/pct/en/warning/pct_warning.html

A recent invoice from “IP DIRECT” seeking payment of USD 2356 is attached herewith for cautioning PCT Applicants against getting defrauded.

