

JULY  
2022

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# IP

# Update

A Quarterly Publication

EDITION 8

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## Narendra Sabharwal

Chairman, FICCI IPR Committee & Former Deputy  
Director General, WIPO

Dear Readers,

It is widely recognized that 21st century is the era of knowledge economy, and the future clearly belongs to innovative societies. A nation's ability to translate knowledge into innovation and commercialize it for socio-economic benefits will define its destiny. As innovation becomes increasingly critical to economic success, with intellectual property rights providing the required safeguards and indeed fostering more and more creative undertakings, the issues of generation, protection and exploitation of IP have become critically important. In addition to being a legal right, IP is also a powerful catalyst for job creation providing a boost to trade, investment, technology transfer and business growth, accelerating economic and social development of countries. It is not surprising that policymakers across nations are laying great emphasis on creating robust IPR regimes that encourage innovation - an environment that enriches individuals and business enterprises, preserves health, safeguards environment, ensures food safety and improves quality of life. A strong IPR system is also considered crucial to meet the challenges posed by Industry 4.0, the next era of emerging and disruptive technologies and industrial practices.

Against this backdrop, it is reassuring to see the innovation culture fast gaining strength in our country. The soaring number of trademarks and patents in the past few years highlight this development. Remarkably, IP applications saw growth even during the pandemic, driven by innovation in the health and pharmaceuticals sector. Although there is a long road ahead before we can compete on the global scale with the world's foremost innovators, with India now figuring among the top 50 nations in WIPO's Global Innovation Index (46th in 2021), she is increasingly being recognised as a global innovator. Encouragingly, our policy makers today recognise that IP forms a crucial component for elevating the stature of India's innovation ecosystem globally. Also, the Government deserves appreciation for the string of constructive steps taken in the past few years, by way of policies, schemes, and incentives, that have bolstered India's innovation foundation as well as the IP system. These initiatives have also considerably improved awareness and understanding about IPR across various

industry segments and stakeholders. The launch of the National IPR Policy in 2016, and the innovation-based focus on initiatives like 'Make in India', 'Start-up India' and 'Atmanirbhar Bharat' have further helped reinforce the country's IPR system.

FICCI has continued to actively pursue its focus in the area of intellectual property rights, engaging closely with industry members and associates, Govt. departments and other stakeholders on issues pertaining to protection, strategic utilization and enforcement of IP rights, with emphasis on policy and support services for the business community. In recent months, FICCI had put together several important activities in terms of capacity building, skills and awareness generation, besides various interactions with policy makers and Govt. departments on critical issues in consultation with industry members, and interfacing with our trading partners.

FICCI World IP Day 2022 Conference on 26th April was a major event organised on the theme 'Innovativeness of our Youth', a subject that is very important and pertinent to India in view of the demographic advantages that our young population brings to the country. The event, where Mr. Anurag Jain, Secretary, DPIIT, Ministry of Commerce & Industry was the Chief Guest, provided an excellent forum to deliberate on India's industrial landscape in the backdrop of recent IP developments globally. Senior Govt. official, including Ms. Shruti Singh, Joint Secretary, DPIIT, Dr. Unnat Pandit, the newly appointed CGPDTM, and a host of national and international IP experts from industry, academia, and central and state gov. agencies participated in the discussions to look at how young creative minds, utilizing IP, could bring positive changes in India's economic landscape and the support initiatives that are required for transforming innovative ideas of the youth into new solutions, products & services.

Earlier on 19th April, FICCI organised the IPTSE Awards, an initiative playing a crucial role in creating the much-needed IPR awareness among India's youth, where Hon'ble Justice Pratibha Singh, Judge, Delhi High Court, the Chief Guest on the occasion, spoke on the role and working of the newly established IP Division of the Delhi High Court, among the other things. She also felicitated the IPTSE Award winners and presented recognition certificates to several institutions and individuals for their contribution to the field of IP. Another important workshop that FICCI jointly organised with the Danish Patent & Trademark Office (DKPTO) was on IP commercialisation. It is noteworthy that DKPTO has been a leading office in innovating and bringing new techniques and knowledge on the subject of IP valuation and commercialisation. With IP being an integral part of business strategy and the valuation of these assets becoming increasingly critical, India's IP community can benefit immensely from the vast knowledge and the new tools that DKPTO possesses in this field.

Additionally, FICCI has been making extensive efforts at generating IP awareness and been a major part of the Government's efforts in this area, reaching out to and covering practically every field where IP is important - from businesses to start-ups and students, and covering all the areas of IP - from patents, copyrights to traditional knowledge and GIs. FICCI has also been interacting with enforcement agencies, including police officers, customs and the Judiciary so that awareness in the enforcement area is also heightened. Indeed, FICCI can take

considerable satisfaction from the marked improvement in IP activities in recent times and the fact that the domestic filings in India for the first time in history outstripped foreign filings. With IP filings and grants rising rapidly and backlogs coming down, the Indian IP sector is certainly moving in the right direction.

On the global front, a recent key development was the patent waiver agreement reached at WTO's 12th Ministerial Conference in Geneva, as part of the so-called Geneva Accord, for the manufacture of Covid vaccines, following a nearly two-year effort involving scores of high-level meetings and considerable political interaction. Despite India's key role in these negotiations and the success in convincing a large number of countries to agree to the proposal for IP waiver, the decision that eventually emerged was somewhat diluted and a truncated version of what was proposed, as the limited patent waiver agreed to on vaccines alone, does not deal with crucial areas such as lack of manufacturing capabilities, technology transfer, procurement of raw materials, therapeutics and medicines etc. The agreement is unlikely to have a meaningful impact on the future production of Covid-19 vaccines as there is reportedly no longer a significant supply-side constraint on their availability. It is to be seen how developing countries as a group or individually will be able to take advantage of this agreement.

Although this decision has come rather late and is modest in scope, it is significant in itself to have reached an even limited agreement on the patent waiver, which is not always easy in WTO negotiations as it works by consensus. This signifies a global recognition of the continuing danger from future pandemic spread. There is also the hope that, moving ahead, this agreement will spur the developing countries to work more closely with their developed country partners, and open up avenues for further strengthening of multilateral cooperation and collaboration among countries of the world, including in the area of intellectual property.

The Covid virus seems to be showing up again in several countries and in certain parts of the country. We cannot afford to let our guard down and need to maintain COVID appropriate behaviour.

I wish you all a safe and productive period ahead.

Narendra Sabharwal IAS Retd.  
Chair, FICCI IPR Committee  
Former DDG WIPO

## FICCI IP Conclave and IPTSE Awards

19 April, 2022 - New Delhi

Intellectual property forms the foundation of innovation for any economy, and early education of the youth on the importance of IP is imperative to encourage creative thinking in a country. FICCI organized an IP Conclave and the 4th edition of the IPTSE Awards on 19 April 2022, in association with IPE Educational Academy, Creative First and Ericsson. The IPTSE initiative, an IP Olympiad that has had extensive participation of school children since its inception in 2018, has been playing a valuable role in generating IP awareness among India's youth.



Justice Pratibha M Singh, Judge, Delhi High Court, Chief Guest on the occasion, said that India was on the cusp of a big IP revolution both in adjudication and in administration, while speaking about the functioning of the newly established IP Division at Delhi High Court. She informed that scientific researchers were being recruited to help the judges in Delhi High Court, both at the IP original jurisdiction level and the appellate level; and that the independent inputs received from these researchers would be of great assistance for the judges in the IP Division. Justice Singh added that with the growing innovation culture in the country, India's IP litigation landscape was changing and alluded to the recent Parliamentary Committee report, which recommended that IP Divisions in all High Courts in the country should follow the model of the Delhi High Court.

Mr. Narendra Sabharwal, Chair, FICCI IPR Committee & Former Deputy Director General, WIPO, Geneva, underlined the need for India's youth to become increasingly aware about the relevance of IP for national growth & development and the benefits that it provided in safeguarding their creations. In this context, he welcomed the role that the IPTSE initiative was playing in sensitizing youngsters on this key need at their formative stage, while also appreciating the Government's many initiatives to create IP awareness among the youth. He added that measures were also required to create an enabling environment that would increase the share of academics and Industry in the innovation space, which would aid India's progress towards becoming a world class innovative and creative nation.

Prof (Dr) Unnat Pandit, Controller General of Patents, Designs & Trademarks, Intellectual Property Office, said that awareness of

intellectual property rights was necessary for the making of any successful economy, especially one that thrived on technology and innovation. Further, it was imperative to build a robust IP ecosystem where inventions and inventors were rewarded for their efforts. In this context, increased collaboration among the government, industry and academia was very important to drive IP awareness and towards advocating a national agenda for fueling the country's innovation potentials.

The conclave brought together senior decision-makers of the government, industry stalwarts and academia to deliberate on the approaches towards creating a conducive IP regime in India to not only protect innovators' rights, but also create an ecosystem of fair and equitable royalties to enable continuous research and innovation. The event also saw the launch of the FICCI IPTSE Copyright Handbook, and announcement of the IP Talent Search Examination (IPTSE) awards.

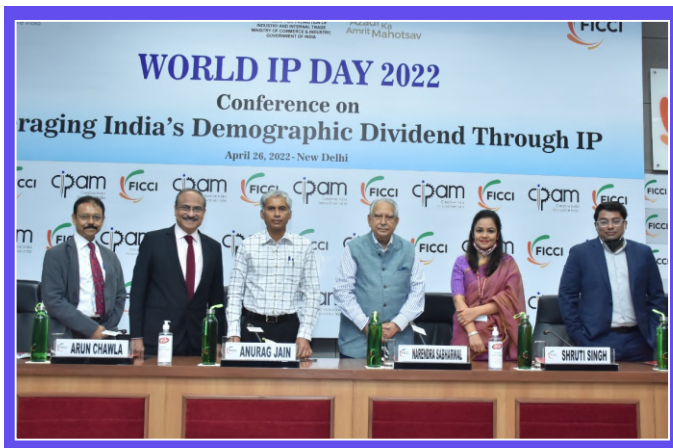
## World IP Day 2022 Conference "Leveraging India's Demographic Dividend Through IP"

26 April, 2022 - New Delhi

India's youth are the country's greatest asset and changemaker. In a tech-driven world that rewards innovation, it is important for India's youth, the innovators & entrepreneurs of tomorrow, to understand the benefits of IPR in safeguarding their creations, the competitive edge that IP provides, and its key role in nation building. While Government's initiatives are showing positive results, sustained efforts are needed to establish a strong, IP-savvy ecosystem that helps young innovators and entrepreneurs to succeed, while also generating income, creating jobs, and tackling local and global challenges.



On 26 April 2022, FICCI commemorated the 'World IP Day' with a conference on "Leveraging India's Demographic Dividend through IP" in collaboration with DPIIT, Govt. of India. The focus of discussions was in keeping with WIPO's theme for World IP Day 2022-IP and Youth: Innovating for a Better Future, which is particularly relevant for India as the majority of its population is under the age group of 35 years. The event provided the opportunity for a comprehensive discussion on how young creative minds could bring positive changes and the support required for transforming India's youthful energy into new ideas and sustainable enterprises that contribute to national growth.



Left to Right: Mr. Dipankar Barkakati, Director, FICCI; Mr. Arun Chawla, Director General, FICCI; Mr. Anurag Jain, Secretary, DPIIT; Mr. Narendra Sabharwal, Chair, FICCI IP Committee; Ms. Shruti Singh, Joint Secretary, DPIIT; Mr. Mihir Rale, Co-Chair, FICCI IPR Committee & Chief Regional Counsel, Star & Disney India

Mr. Anurag Jain, Secretary, DPIIT, Chief Guest on the occasion, said that Govt's efforts to accelerate India's economic growth were paying off, with its ranking in the World Bank 'Ease of Doing Business' index improving from 142 in 2014 to 63 in just six years. The Business Action Reform Plan is also aiding state govts. to improve their business indicators, where IPR is a key component. As Vision India @2047 rolls out, the key driving force will be knowledge and innovation where IP will be a key tool, and various measures are underway to further strengthen India's IP system. Results were already visible with number of patents granted growing five times, while trademark registrations showed a four-fold rise. Underlining the importance of IP awareness among the youth, he referred to DPIIT's over 400 awareness programs where 4,300 institutions participated, in addition to other measures. He also highlighted the successes of the Startup India initiative, with India becoming the world's 3rd largest start-up ecosystem, overtaking China to have the 2nd largest number of Unicorns. As the country celebrates its 'Amrit Kal', India is well positioned to be a global leader by 2047, he added.

Mr. Arun Chawla, Director General, FICCI, in his welcome address, said that Indian industry was encouraged by the Govt's initiatives which had greatly enhanced IP awareness and helped spread the innovation culture countrywide, with outcomes becoming visible by way of the improved innovation and IP numbers. Underlining the significance of IPR in the evolving business milieu, he said that among FICCI's extensive activities, a key area of focus was to generate IPR awareness among the youth. With flagship initiatives like 'Make in India' facilitating the development process, the young generation would have a crucial role to play in ushering India into the technology-led knowledge era.

Mr. Narendra Sabharwal, Chair, FICCI IPR Committee & Former Deputy Director General, WIPO, while welcoming the Govt's sustained IP promotion efforts and various support initiatives, observed that a significant reservoir of innovation and creativity among the country's youth remained mostly untapped. With India's education institutes contributing the largest chunk of engineers to the global workforce, policymakers need to respond to the needs of young entrepreneurs to nurture and support their future endeavors.

Innovation and research, catalyzed by IP, form the core of a knowledge-based economy, and the youth should be aided to garner the benefits of IPR by safeguarding and commercializing their innovations and providing them the competitive edge to contribute to the nation building.

Mr. Daren Tang, Director General, WIPO, through a special video message, emphasized that the young population today was not just seeing the world they wanted to see but was taking steps to achieve it, adding that WIPO was focused on bringing out the potential of the youth.

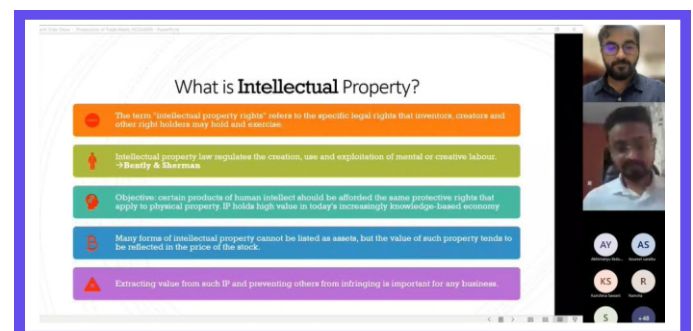
Mr. Mihir Rale, Chief Regional Counsel, Star & Disney India, while proposing the Vote of Thanks, referred to the enormous potential of IP as a catalyst for societal, technological, and cultural evolution, and the significant contribution to economic growth that was possible by harnessing India's IP potentials. India's young workforce will continue to enjoy the demographic advantage for a few decades, and efforts must be made to empower this manpower pool to create aggressively and innovatively while allowing them unfettered rewards for their labor.

The event saw the participation of several eminent speakers like Shruti Singh, Joint Secretary, DPIIT, Dr. Unnat Pandit, Controller General of Patents, Designs & Trademarks, Commdr. Amit Rastogi, CMD, NRDC, Jeet Vijay, CEO, MeITY Startup Hub, Mudit Narayanan, CTO, Atal Innovation Mission, Dr. Jatinder Kaur Arora, ED, Punjab State Council for Science & Technology, John Cabeca, IP Counsellor, USPTO, among others. The winners of the DPIIT Photography Contest, on the theme of "Bharat ki Atulya Dharohar", were also felicitated on the occasion. Over 180 delegates attended the conference.

## Webinar on "Trademark Prosecution in India"

27 May, 2022

The field of Trademark Prosecution is ever evolving, presenting immense opportunities to pursue it and make a career in the area of trademark prosecution. To become an expert in the subject, one needs to be familiar with trademark registration, handling objections, knowing all about TLA hearings, besides being familiar with the do's and don'ts of drafting the necessary documents, etc.



With an objective to make industry stakeholders aware of this ever-growing field, FICCI organized a virtual interactive session on "Trademark Prosecution in India" on 27 May 2022.

The speaker for the webinar was Mr. Shhaurya Sah, Partner, Sah and Mehrotra Associates, and the topics that were addressed

during the session, inter alia, included the following:

- What is a trademark?
- Registration of a Trademark?
- What is a Trademark Hearing?
- Discussion on Trademark Application & Trademark Opposition
- What is a TLA Hearing?

Over 150 participants attended the webinar comprising representatives from industry, including startups and MSMEs, law firms, academia, and a large number of students.

## Webinar on “Unleashing IP Potentials of India & US for Economic Growth”

9 June, 2022

Although India's economic growth in recent years has been impressive, the US industry and businesses have an important role to play in facilitating India's transition to a knowledge-based economy. Encouragingly, India-US bilateral ties have continued to become stronger and more vibrant, developing into a Global Strategic Partnership, with the recent bilateral agreements between the two countries further strengthening this relationship. Nevertheless, to reap the benefits of this growing alliance, it is crucial that Indian and US business enterprises have sufficient insights on the IP regimes prevailing in the two countries.

FICCI organized a webinar on “Unleashing IP Potentials of India & US for Economic Growth” on 9 June 2022. The event, convened under the FICCI India-US Expert Group on IPR initiative, provided a forum to understand the current IP environments in the two countries, the existing synergies in India-US collaborations, developing IP strategies in respective countries; enforcement aspects in case of disputes; learning from US best practices especially relevant for Indian start-ups, incubators, MSMEs and universities.



Hemant Singh, Managing Partner, Intl Advocare, spoke on the importance of IP for entrepreneurial success, its role in a nation's technical advancement and economic development, and how it ensures fair competition and the protection of consumer interests. He dwelt upon the Govt. of India's various initiatives, like the National IPR Policy of 2016, the strengthening of IP regulations and institutions, the establishment of the IPD at Delhi High Court, etc., all of which had significantly strengthened the IP regime. He also underlined the significance of IP for India's thriving start-up

sector which was now the third largest, after the US and China.

Sonia Baldia, Partner, Kilpatrick Townsend & Stockton LLP, spoke on business values derived from IP, especially in the context of Indian companies that were intending to set up businesses or were already functioning in the US. She elaborated on the risks and opportunities in dealing with IP matters while expanding businesses in the US as well as globally, providing insights on crucial business strategy aspects, like IP leakages, tax planning, cross-border migrations, etc. Underlining the importance of an effective IP strategy for companies entering the US market, she touched upon the common pitfalls that were normally encountered and the ways to avoid them.



Goutam Bhattacharyya, Patent Attorney, K & S Partners, stressed on the need for increasing partnerships between the two nations, explaining the strengths that the Indian market provided by way of its vast population and market size, buying ability of Indians, the progressive policy ecosystem, laws and jurisprudence, supportive Government initiatives, among others. He underlined importance of the India-US MOU of December 2020 for closer IP cooperation, stating that three key factors, namely knowledge sharing, policy collaboration and awareness generation on the unique IP law provisions in the two nations, could help create the required synergy between the two economies. Sorting out some of the existing bilateral policy gaps would also be helpful.

Nirupam Lodha, Partner, Khaitan & Co, in his presentation, focused primarily on the IP and technology-related transactions between India and US. He elaborated at length on the various methods that were available for exploiting IP through licensing and encumbrance, citing several successful examples, the challenges that were faced in such dealings, the enforcement aspects in case of disputes, and other related issues. He touched upon issues that were faced in such IP transactions within India as well, along with methods that were adopted to resolve the disputes.

Activities under the FICCI India-US Expert Group aims to bring together stakeholders from the two countries to explore scope for IP collaboration, help develop strategies by leveraging mutual strengths and existing opportunities, while generating awareness on respective IP laws and procedures, likely market challenges and potential risks, enforcement issues as well as the best practices available in the respective countries.

## India-Denmark Collaborations in IP and Innovation

In recent years, India and Denmark have been working on strengthening bilateral cooperation. The Green Strategic Partnership established during the September 2020 Summit between Prime Ministers of the two nations has become a catalyst for enhanced Indo-Danish collaboration. With IP forming a key element in this evolving relationship, it is imperative that Indian stakeholders are made aware of its role in this partnership and to explore potential joint opportunities. Indian industry can also benefit from the substantial Danish experience in protecting and enforcing IPR, and their expertise in IP valuation and commercialization.

In this backdrop, FICCI organized two important programs in collaboration with the Danish Embassy in India.

### Webinar on “How to Commercialize your Intellectual Property”

11 May, 2022

With Denmark consistently ranking among world's top 10 innovative economies, this interaction provided Indian stakeholders the opportunity to learn about the Danish experience in advancing innovation including initiatives that their Govt. provides to adopt innovative technologies, validate and commercialize inventions, etc., as also their skills in IP valuation and commercialisation; provisions for accessing finance; and the strategic use IP system by businesses.



Left to Right: Ms. Sannah Thorngreen, Special Advisor on IPR policy, DKPTO; Ms. Trine Bargsteen, Counsellor for IPR, Embassy of Denmark; Mr. Nikolaj Ilsted Bech, Inventor Advisor, Danish Technological Institute; Mr. John Jensen, Deputy Director General, DKPTO; Mr. Dipankar Barkakati, Director, FICCI; Mr. Divyaish Srivastava, Assistant Director, FICCI

The webinar was addressed by John Jensen, Deputy Director General, DKPTO; Sannah Thorngreen, Special Advisor on IPR policy, DKPTO; and Nikolaj Ilsted Bech, Inventor Advisor, Danish Technological Institute.



### Webinar on “India-Denmark Collaboration in Intellectual Property”

25 May, 2022

The focus of discussion in this webinar was on the India-Denmark Green Strategic Partnership established in 2020, the role of IPR under this initiative, and the possibilities and advantages that Denmark's skills and India's scale, combined with scope, speed and sustainability, could bring to the two countries, as well as for the world.

Ms. Trine Bargsteen, Counsellor for IPR, Embassy of Denmark, the key speaker, made a comprehensive presentation on the Green Partnership while explaining how Denmark came to be a leader in green technology as well as in green IP, their key areas of focus and the initiatives being undertaken in the bilateral collaboration in areas such as IP administration, enforcement, awareness, and commercialization of innovation. This growing level of cooperation in IPR is expected to help facilitate bilateral trade, joint innovation and production efforts, and tech transfers as part of the India-Denmark Green Strategic Partnership, she said.

# Spreading IP Awareness in Universities

-A FICCI-CIPAM Collaboration-

## IPR Awareness Program at Apex University, Jaipur (Rajasthan)

1 July, 2022

FICCI has been intensively working on generating awareness on intellectual property rights among all stakeholders, and the student-community has been a key area of focus. With the Indian economy seeing significant growth, it is vital that IP rights are increasingly generated in the country and protected from mala fide infringements. On 1 July 2022, FICCI and CIPAM jointly organized an IPR awareness program at Apex University in Jaipur, Rajasthan. The audience comprised over 150 of the university's students, along with its faculty members and research scholars.



Mr. Subhash Bhutoria, Member, FICCI IP Forum & Partner, DSK Legal speaking at the workshop in Apex University, Jaipur

Capt. Devendra, Dean, Academics, Apex University, concluded the program by thanking the dignitaries, attendees and organizers, while stressing the need for increasing IP generation by universities and their commercialisation to contribute to the country's innovation revolution and economic growth.

## IPR Awareness Program at Shoolini University, Solan and University Institute of Legal Studies, Himachal Pradesh University, Shimla

8 July, 2022



FICCI, continuing its IPR awareness endeavor, collaborated with CIPAM to organize a Faculty Development Program for professors, researcher scholars, and students of Shoolini University, Solan and University Institute of Legal Studies, Himachal Pradesh University, Shimla on 8 July 2022. The discussions included sessions on IP commercialisation, role of IP in new technologies and startups, and careers in IP.



Left to Right - Prof. Om Prakash Changgani, Vice Chancellor, Apex University, Jaipur; Mr. Divyaish Srivastava, Assistant Director, FICCI; Dr. Sanjay Sindhu, Registrar and Capt. Devender, Dean, Academics, Apex University

The key speakers in the event were Mr. Subhash Bhutoria, Member, FICCI IP Forum and Partner, DSK Legal, and Mr. Pankaj Kumar, Associate Professor, IIS University. Mr. Bhutoria, in his presentation, explained the basic concepts and the different forms of IP rights, their significance for a country's industrial and economic growth, and the various tools available for exploiting IP rights to gain maximum return from these privileges by innovators and businesses. Mr. Pankaj Kumar, among other things, elaborated on how IP right dealt with the exclusive monopoly right extended to IP holders, the statutory exceptions that these privileges were subject to, and the conflict that sometime arose, due to the non-excludable character of IP rights, between the IPR and the competition laws. Mr. Divyaish Srivastava, Assistant Director, made a presentation on the IP courses that FICCI regularly conducts and the benefits that these provided to career development, while thanking the speakers, participating students as well as CIPAM and the Apex University authorities for the successful completion of the awareness program.





Mr. CS Anand Verma, Member, FICCI IP Forum & Managing Partner, Team Legal, spoke about the fundamental concepts of IP, their significance for different industry stakeholders, and the various Govt. initiatives especially those aimed at supporting startups and new ventures.



Dr. Sheetal Chopra, Member FICCI IP Forum & Director IPR Policy, Ericsson, provided insights on the IP commercializing tools, related methods and its importance for businesses. She also responded to queries relating to IP's importance as a business asset, how companies & universities commercialize their inventions, advantages of filing patents in India vis a vis overseas, the basic factors one should be aware of while filing patent, etc.

Hon'ble Justice Rajeev Sharma (Retd.) of Punjab and Haryana High Court, Chief Guest on the occasion, urged universities to increasingly motivate and help students to exploit their R&D potentials for the creation of innovative technologies and products, and to work for their effective commercialization. He also underlined the need for greater partnerships between industry and academia, citing several successful cases of such collaborations that had significantly contributed to economic growth and development.



Dr. Prem Kumar Khosla, Founder & Chancellor, Shoolini University, while expressing appreciation to FICCI and CIPAM for organizing the event, stated how IP laws ensured dissemination of knowledge, the importance of IP in the field of science, the need for their timely registration and commercialization. He said that Shoolini University's effort was on strengthening its IP portfolio and to create an IP-friendly environment.



# NFTs and their relevance to Intellectual Property Rights



## Ms. Suhrita Majumdar

Member, FICCI IPR Committee &  
Partner, S. Majumdar & Co.

**C**ollins Dictionary made "NFT" or "non-fungible token" their word of the year for 2021, beating out "crypto," "hybrid working" and "double-vaxxed."

### Introduction

NFTs, the acronym for Non-Fungible Tokens, are digital assets created by artists or content creators usually in the form of art, songs, videos, or writings. NFTs are similar to cryptocurrencies in that they exist on a decentralized blockchain, but unlike cryptocurrencies, they are unique to their owners and are not interchangeable. A real-life equivalent of this would be physical money that can exchange hands easily, but paintings and real estate properties that can have only one owner at any given time, and any transfer must be legally documented. Much like paintings, an NFT can be created by an artist for the purpose of auction and sale to a singular purchaser, and the rarity of the NFT makes it valuable. NFTs can be anything, art, GIFs, videos, songs, collectibles, writings, virtual avatars, tweets, designer sneakers, or even video game skins.

Similar to crypto currencies that are minted from the blockchain, NFTs exist as part of a blockchain as well, the blockchain itself being a system of record maintenance across several computers that are linked in a peer-to-peer network. The entire data is not stored in a single location but spread out over several computers in pieces so that no single computer has the whole of it. Each NFT contains owner identification, metadata, and other identifying information usually in the form of a smart contract. Each NFT is unique and the blockchain keeps a decentralized, secure, and permanent record of who owns the NFT, and the rights granted by the NFT.

NFTs provide an opportunity for artists and content creators to directly auction or sell their creations without needing to rely on galleries or traditional auction houses. Direct auction or sale also allows artists to retain more of the profit. In addition, artists can program royalties into the NFTs so that every time the NFTs are sold to a new owner, the creator will receive a percentage of the sale proceeds.

Some famous NFTs are as follows:

- NFT of a collage created by the digital artist Beeple, sold at \$69 million, the most expensive NFT till date.
- Jack Dorsey, the founder of Twitter, sold an NFT of his first tweet for \$2.9 million.
- Gucci created an NFT comprising a four-minute film inspired by its Aria collection, which sold for \$25,000.

- Nyan Cat, a 2011-era GIF of a cat with a pop-tart body, sold for nearly \$600,000.
- Musician Grimes sold 10 pieces of digital art as NFTs, set to clips of her original, never heard before songs, at a net amount of \$6 million.

Recently, Johnny Depp has jumped on the NFT bandwagon and come out with a series of NFTs for his art project Never Fear Truth, with digital paintings focusing on his friends and heroes that have inspired him.

NFTs are sold through dedicated marketplaces such as CENT, Opensea, Rarible and Nifty Gateway.

### NFTs in India

In India, celebrities such as Amitabh Bachchan and Salman Khan have come up with NFTs of their own. In fact, Salman Khan has invested in the platform Bollycoin which is aimed at bringing a large portion of all existing iconic Bollywood media onto the blockchain and allowing community interests in such media to develop through NFTs. Bollycoin has its own NFT marketplace as well as cryptocurrency.

In a recent occurrence, the New Town Kolkata Development Authority (NKDA) has been discussing plans for using NFTs for maintaining and authenticating land records in the city and has indicated that it is going to call for applications to develop Municipal Property Registration Certificates using NFTs. Experts believe that tokenization of real-world assets such as real estate in the form of NFTs will ensure tamper-proof land titles.

### Can NFTs be duplicated?

While users can make copies of NFTs, the original work continues to remain with the owner, along with its authentication parameters like owner identification, metadata, and other identifying information. Without these parameters, a user cannot make a legitimate resale of an NFT, as these parameters act like a certificate of authentication when thought of in real-life terms. People may take photos of Mona Lisa or make prints of Mona Lisa, but the original Mona Lisa continues to be the only one at the Louvre in Paris.

### Where do Intellectual Property Rights come in?

*Clear rights on the creation of NFT:*

First and foremost, when someone is creating an NFT, they need to make sure that they have clear, inalienable rights on it, whether by the creation or by assignment of such rights. Alternately, the creator of the NFT should ensure that the object on which the NFT is being created is in the public domain, for instance, an anime-style drawing of Cthulhu, inspired by the works of H.P. Lovecraft, works do not have any pre-existing intellectual property rights encumbrances attached to it, as the works of H.P. Lovecraft are already in the public domain. Such an anime-style drawing of Cthulhu is free to be turned into an NFT.

*Copyright on the NFT:*

With the creation of an NFT, copyright comes to vest in the creator of such work. However, once the NFT is sold to a buyer, the copyright does not automatically transfer to the buyer, and it continues to persist in the creator. Only if the copyright is specifically assigned by the creator to the buyer, or the terms of sale specify that the copyright in the work will be transferred to the buyer, does the copyright cease to exist with the creator. Any royalties from the NFT will come to its creator unless otherwise specified. Further, the buyer will not be able to use the NFT in any form without the express consent of the NFT creator.

*Trademark on NFT:*

While an NFT itself cannot be trademarked, the person or entity that is creating and selling the NFT can obtain the necessary registration in its name. An average trademark application in relation to NFTs may consist an application made in Class 9 [Downloadable digital media, namely, digital assets, digital collectibles, digital tokens, and non-fungible tokens (NFTs)], Class 35 [Provision of an online marketplace and registry for buyers and sellers of digital assets, digital collectibles, digital tokens and non-fungible tokens (NFTs)], Class 41 [Entertainment and amusement, namely, provision of online non-downloadable virtual goods for use in virtual environments] and Class 42 [Providing temporary use of non-downloadable digital media, namely, digital assets, digital collectibles, digital tokens and non-fungible tokens (NFTs)] of the NICE Classification of Goods and Services.

**Recent famous cases on NFT**

Hermes is a reputed leather bag manufacturer. An NFT with an image featuring the popular Birkin bag of Hermes was created by artist Mason Rothschild and dubbed MetaBirkin. The artist sold the NFT without Hermes Birkin's authorization, nor was the creation of such NFT commissioned by Hermes Birkin. The company sued artist Mason Rothschild alleging that the use and sale of the MetaBirkin NFT would cause customer confusion. The artist argued that while Hermes Birkin has trademark registration in respect of leather goods, the NFTs are not classified as leather goods. They are digital assets in respect of which Hermes does not have a trademark. Hence there would be no confusion. Mason Rothschild also argued that the MetaBirkin NFTs depicted fur as opposed to leather and that his artwork was a social commentary. He argued that such NFTs were his artistic expression and thus protected under the First Amendment to the US Constitution. The matter is presently pending adjudication.

Maverick filmmaker Quentin Tarantino was sued by movie studio Miramax, when the former announced that he would be auctioning exclusive NFTs based off his extremely popular 1994 movie Pulp Fiction. Miramax sued Tarantino for breach of contract and copyright infringement stating that the copyright in Pulp Fiction exists with the studio and Quentin Tarantino has no rights on it. Miramax stated that it has exclusive rights needed to develop, market, and sell NFTs relating to its deep

film library. Tarantino argued that the NFTs being auctioned were portions of his original handwritten screenplay for Pulp Fiction, a personal creative treasure that he has kept private for decades. The matter is presently pending adjudication.

**IP Challenges and Possibilities when it comes to NFTs**

NFTs are a burgeoning field and as the product begins to enter mainstream consciousness, IP rights lawyers need to familiarise themselves with it, in order to foresee and meet challenges that might be brought forth with the rise in creation, sale, and auction of NFTs. Certain important immediate considerations for IP rights lawyers are as follows:

- Advising owners of IP on the monetization of their existing IP, by turning them into NFTs, thereby opening up an additional revenue stream.
- Educating trademark owners about the importance of obtaining a trademark registration for their goods and services in respect of NFT usage as well.
- Encouraging trademark, design, and copyright owners to monitor their IP online, especially in NFT marketplaces, to prevent any misappropriation by the creation of unauthorized NFTs.
- Conducting due diligence to ensure that an NFT creator has incontrovertible and inalienable rights on the subject matter on which the NFT is being created.
- Using NFTs as a means of authentication of products and fighting counterfeiting. For instance, with Nike, when a buyer purchases a pair of shoes, the buyer will receive an NFT linked to such shoes. The buyer can then use the NFT to confirm the authenticity of such products

**Conclusion**

NFTs in their present form as digital artworks, despite being all the rage right now, are likely to have limited shelf lives, if they are unable to evolve and meet other requirements of users and owners. In order to remain relevant, creators of NFTs need to have the foresight to find multiple applications for these digital assets. For instance, NFTs can be a strong security measure against counterfeiters and can be used by creators as a mark of authenticity for their products, akin to a digital hologram, as is being presently used by Nike for its shoes. Other applications may include maintaining confidential medical records, authenticating academic credentials of students, online payments, and authenticating ownership of inventions. NFTs can also be applicable in voting and be helpful in eliminating voter fraud by maintaining an official record of those who have voted and their votes. NFTs are a new frontier and the possibilities for their untapped usage are endless. The only limitation is our imagination.

**Disclaimer:** This article contains the views of the author alone.

# Indian Startups and the IP Ecosystem



## Dr. Hemang Shah

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Indian startups have been on a breathtaking growth trajectory over the past few years. India has 72,000+ startups as recognized by the Department for Promotion of Industry and Internal Trade (DPIIT) [1]. In terms of valuation, India has 100+ startups considered as unicorns (valuation greater than \$1B) [2]. Due to startups' innovative nature, it is natural that Intellectual Property Rights (IPR) form a critical role in their business strategy. While all forms of IPRs are important (namely, copyrights, trademarks, and patents), in this article we will focus on the patents filed especially by deep-tech startups in India and how we can support them as ecosystem members to ensure their domestic and global competitiveness as well as valuations.

### Innovation potential in startups

A startup usually enters the market with a view to disrupt the incumbent players with novel products and services or it identifies a gap and brings forward a solution to address that gap. At their very onset, their solution has innovation at a fundamental level. As a matter of fact, Qualcomm India Private Limited has been running a hardware startup incubation program called Qualcomm Design in India Challenge (QDIC) [3] which was launched in June 2016. So far, the program has incubated 77 startups across the verticals of 5G, space tech, agritech, robotics and drones, smart cities, wearables, automotive, and medical technologies. These startups have collectively raised \$160Mn+, launched 22+ products, and filed 300+ patents. While representing a small but important segment of the overall Indian startup landscape, it indicates the immense innovation potential in the country.

### Importance of IP Strategy

An IP strategy is important for every company and even more so for startups. During the initial years, the level of innovation tends to be high as the company is focused on R&D for its future products. For tech companies, this period is potent for identifying patents that can be filed. As the company grows and competing products enter the market, the IP filed can be advantageous in numerous ways. We have also seen venture capital (VC) investors raise their level of IP awareness. Their evaluation criteria to fund tech startups may include IP as a key metric.

The investment in the spirit of invention has been impactful for Qualcomm's growth from its days as a startup founded in 1985. Over the years, Qualcomm has enabled technologies behind and inside the innovations including 5G-enabled smartphones that double as pro-level cameras and gaming devices, smarter vehicles and cities, and the technology behind the smart, connected factories. We deliver significant value across



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multiple industries and to billions of people every day. Our belief is that every startup will be better served by following this systems mindset enabled by an IP strategy to grow as a successful and resilient business.

### Government Incentives

Realizing the importance of IP protection for start-ups, the Indian Government has launched a scheme to promote IP filing by start-ups, called Start-ups Intellectual Property Protection (SIPP)[1,]. The legal support & IPR facilitation benefits provided under SIPP scheme are as follows [4,5]:

- Expedited examination of startup patent applications
- 80% rebate in filing of patents provided to startups
- Panel of facilitators to assist in filing of IP applications. The central government bears the entire fees of the facilitators for any number of patents, trademarks or designs that a startup may file, and the startups bear only the cost of the payable statutory fees.

Under these schemes, the encouraging statistics from the startups data until Nov 2020 [5] are:

- Startup patent filing: 5,020 patent applications have been filed
- Expedited patent examination: 1,170 patent applications filed for expedited examination by startups; of these 884 applications have been examined and 459 patents have been granted.

In addition to these schemes, there are various other patent filing incentives and support that is now being offered by different states as well as union territories of India.[6]

### Ecosystem Involvement

Observing the need for IP awareness for startups, the ecosystem has also played a strong role in it. Government bodies including Startup India, DPIIT, Ministry of Electronics and Information Technology (MeitY), and other ministries have a strong focus and support for IP filed by startups. Industry bodies including FICCI, ASSOCHAM, NASSCOM, Licensing Executives Society India among others have deep connections with startups and incubators for facilitating IPR generation. There have been focused conferences for startups including IP workshops with experts from industry, government, and academia. DPIIT, NLU Delhi, and Qualcomm India Private Limited collaborated to launch L2Pro India [7,8], an IP e-

learning program for startups and SMEs. This program is completely free and has garnered 4000+ learners (who are inventors and creators) across web and app platforms in one year.

### What's Ahead

While the IP filing trend from startups is on a healthy track, a lot more work remains to be done in the area of building IP awareness. As ecosystem members, we need to educate innovators, particularly before they become startup founders, starting with universities and colleges. Most institutions have entrepreneurship cells, which encourage students to form businesses. The value of IP education injected at this early stage will be immense to the startups.

Another area to educate the startups is on the support they are eligible for. Apart from IP incentives under SIPP, there are patent filing incentives and awards from both central and state governments. There are IP facilitation centers across the country, which startups can approach. As ecosystem members who may be more IP aware, it is our duty to provide mentorship and guidance to these budding entrepreneurs.

There is strong collaboration from all members including government, academia, and industry on this. This is certainly an exciting time to be involved with startups and help them explore their full potential and reach greater heights.

**Disclaimer:** This article contains the views of the authors alone.

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# Intellectual Property in Metaverse and NFT



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**M**eta, which means "Beyond the universe." The Metaverse is a space where you can interact with a virtual object in real life with real-time information. In simple terms, it is a virtual space where users can connect and interact in different ways, such as collaborating, gaming, shopping, and virtual meeting. The virtual space experience is further enhanced with the advent of virtual reality and augmented reality gadgets.

The experience of virtual space provided by Metaverse has brought a new paradigm shift wherein the activities of the real physical world can be experienced virtually. For example, a restaurant can be explored virtually, and shoppers can buy and explore products virtually, etc. Metaverse is still developing, and therefore, the impact the expansion of Metaverse is going to make on business and commerce is not yet completely clear.

With the opportunities being brought in by Metaverse, challenges are also arising. Legislations have been framed for the real physical world. For example, it is not yet clear how intellectual property rights in the real world would translate in the virtual world and if the owner of such intellectual property rights in the real world would enjoy the rights in the virtual world.

## Copyright

Original work of authorship is protected under copyright law. Software code used to create virtual environments, virtually displayed visuals, sound recordings, graphical works, etc., can be subjected to copyright protection.

Metaverse provides an excellent opportunity for developers to take advantage of being the first mover over the subsequent players in the Metaverse space.

Copyright owners face significant risk since copyright enforcement may be difficult in the Metaverse. Tracing copyright infringement and providing evidence of infringement would be difficult in Metaverse.

Copyright owners globally may face additional risks and problems in enforcing copyright due to using de minimis content and the doctrine of fair use.

## Trademark

Trademark law protects against unauthorized third-party use of a trademark in a manner that would cause a consumer to be confused as to the source or origin of the goods/services.



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Currently, there is no clarity as to what the rights of the trademark owner in the Metaverse will be. Given this, there is a risk for Trademark owners regarding enforcement of Trademark in the Metaverse.

For example, the U.S. Court held in *E.S.S., Entertainment v/s Rock Star Videos* that depiction of the Trademark in a video game does not infringe the Trademark of the owner, as the video game is an artistic expression protected by the US First Amendment Right. Secondly, it also held that it was unlikely that consumers would be confused in believing that the trademark owner produced the sophisticated video game. The U.S. District Court arrived at a similar conclusion in *AM General v/s Activism Blizzard*.

## Rights of IP Owner in NFT

Non-fungible tokens, or NFTs, are unique digital assets stored on the blockchain, a digital and non-centralized ledger that publicly discloses who owns a particular NFT. NFTs act as a digital representation of ownership of tangible and nontangible items in the real world, such as artwork, real estate, and video game skins. NFT can exist in any digital form, including music, song, etc. Each NFT has a unique address associated with its owner, enabling proof of ownership.

## In Tamarind Art LLC v/s Husain

Tamarind Art L.L.C. purchased an artwork of Maqbool Fida Hussain (M.F.H.) in 2002 under the terms of M.F.H. granting Tamarind Art L.L.C. "an exclusive, royalty-free, worldwide license to display, reproduce and resell all or any part of the artwork, including all intellectual rights thereof. Further the license stated that, "the buyer may reproduce images of the artwork on all digital and offline media including but not limited to apparel, gift accessories, billboards, print media, and physical structures. The license stated that it "shall extend to the affiliates of the buyer and therefore has the absolute and royalty-free right to sub-license the artwork. In 2022, Tamarind Art L.L.C. received a cease-and-desist letter from the Administrator of Estate of M.F.H. to cease and desist from creating "NFT tokens" of the artwork under the NFT Project. After receiving the cease-and-desist letter, Tamarind Art L.L.C. filed a complaint before the Southern District Court of New York seeking a declaration of non-infringement.

## Nike Inc v/s StockX L.L.C.

Nike filed a suit against StockX before the Southern District Court of New York, alleging that StockX, without authorization from Nike, is "minting" NFTs that predominately use Nike's trademarks and marketing those NFTs using Nike's goodwill and

selling those NFTs at heavily inflated prices to unsuspecting consumers who believe or are likely to believe that Nike authorizes those NFTs. Nike requested the Court for an order of injunction against the use of Nike asserted marks by the defendants and permanently enjoin the defendants from manufacturing, minting, transportation, promoting, advertising, publicizing, distributing, offering for sale, or selling any NFT product under the Nike Asserted Marks.

The above two lawsuits are pending and are expected to answer various questions related to intellectual property in NFT in the United States.

In another lawsuit, the Hangzhou Internet Court in East China, in a decision over copyright infringement of an NFT digital collection listed on the Chinese NFT Market place, held the following:

- Sale of NFT does not mean a transfer or license of the Intellectual Property of the underlying artwork (unless the sales agreement provides otherwise)
- Sale of an unauthorized NFT does not infringe upon the copyright owner's "right of distribution" in the underlying work. Instead, it infringes upon the "right of communication by information networks."
- The Court also fastened the liability on NFT platforms to establish a vetting mechanism and use reasonable efforts to verify the copyright ownership of each underlying work before a user can mint an NFT based on the work through the platform.
- The Court mentioned that the NFT platform should have an effective take-down mechanism to stop the dissemination of infringing NFTs. The Court accepted that NFTs cannot be deleted due to their special technical features but stipulated that platforms can send infringing NFTs to an "eater address." This will ensure that the infringing NFT is burned and removed from circulation. The Court has considered the mechanism as effective deletion of the infringing NFTs.

### Business Strategy on Metaverse

- Business Owners should consider the proactive in Metaverse to protect their business and brands from Brand Dilutions.
- Conduct a Comprehensive Audit of all Intellectual property assets of the business to understand if the business is adequately protected from infringement and fill any gaps by registering intellectual property to cover the Metaverse.
- Businesses can consider filing applications for registration for virtual goods (class 9, class 35, class 42 (NICE Classification). This will reinforce their presence in Metaverse.
- Review agreements to ensure unintended distribution of I.P. Rights.
- Adopt and implement technological measures for I.P. Protection and I.P. Enforcement.
- Establish a presence in Metaverse not limited to I.P. filing.
- If applicable, join and participate in Open-Source Projects and Metaverse Open Standard Group.

Despite various IP issues still unanswered and the uncertainties, it would be prudent to have a proactive approach to establishing a Metaverse presence essential to success. Like business analysis undertaken before launching a product or service in the real world, the business should evaluate virtual environments carefully. The Metaverse will attract infringers looking to misappropriate the Intellectual property of others for commercial gain. Therefore, businesses should implement proactive measures to protect Intellectual Property.

Businesses should actively consider realigning and revisiting existing business models, product launches, and Intellectual Property protection strategies to include registration applications for important marks under the class of virtual goods and services.

**Disclaimer:** This article contains the views of the authors alone.

## Become a Member !



### BACKGROUND

- FICCI Launched its unique initiative - FICCI IP FORUM - in May 2020 to provide an interface for businesses to resolve their issues pertaining to intellectual property rights and also develop a pool of IP professionals whose knowledge and expertise will benefit the industry at large.

### OBJECTIVE

- To create a consortium of legal professionals who are keen to support IP and encourage innovation, brand protection and creativity among various stakeholders.
- To strengthen the IP ecosystem in India and play an important and more comprehensive role in addressing existing and evolving issues in the area of IP in India.

### BENEFITS

- Engagement in IP Policy Advocacy
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- Speaking/ participating opportunities in various FICCI Webinars
- Enhanced Visibility for forum members
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- Several other Benefits

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## Disney Copyright targeted by the new Florida Copyright Law

The Copyright Clause Restoration Act of 2022 limits copyright protection to 56 years and provides for retroactive applicability to existing copyrights. This law can lead to stripping Disney of its copyright over "Mickey Mouse". This move comes after the suspension of political donations by Disney. Several Republican lawmakers clarified that they won't support an extension of copyright protections for Disney if a bill is introduced.

## Copyright Infringement under Section 63 of Copy is a Cognizable & Non Bailable Offence: Apex Court

Recently, the Supreme Court in *Knit Pro International vs State of NCT of Delhi*, the bench comprising Justices MR Shah and BV Nagarathna held that the offense of copyright infringement under Section 63 of the Copyright Act is a cognizable and nonbailable offense. Further, referring to Section 63 of the Copyright Act and Part II of the First Schedule of the Cr. P.C, the Court noted:

*"In that view of the matter considering Part II of the First Schedule of the CrPC. If the offense is punishable with imprisonment for three years and onwards but not more than seven years the offense is a cognizable offense. Only in a case where the offense is punishable by imprisonment for less than three years or with a fine only the offense can be said to be non-cognizable. The language of the provision in Part II of First Schedule is very clear and there is no ambiguity whatsoever."*

## Meta Files 'Meta Pay' Trademark Applications Covering Crypto Services

Meta Platforms Inc., formerly Facebook, recently filed five trademark applications for "Meta Pay" with the United States Patent and Trademark Office (USPTO) which appear to be associated with a new digital payments platform that will integrate various cryptocurrency and blockchain-related products.

## Delhi HC Seeks Expert Dr. Arul George Scaria (NLUD) help on Whether Event Firms Need a License to Play Music at Weddings

The Delhi high court recently in a suit filed by Phonographic Performance Limited against Lookpart Exhibitions and Events Private Ltd., an event management company, appointed an expert Dr. Arul George Scaria (associate professor of law and co-director, Centre for Innovation, IP and Competition at National law University, Delhi) to assist in the interpretation of section 52(1)(za) of the Copyright Act, 1957 to the extent of fair use of sound recordings in marriage ceremonies and weddings. As reported: The bench of Justice Pratibha M. Singh said the issue raised would have large-scale implications for artists such as lyricists, music composers, singers, sound recording producers, and owners and added that it would also have a significant impact on entities involved in the organization and management of weddings and other social events.

## Punjab and Haryana High Court quash notice allowing the playing of songs without a license from copyright owner during weddings [Novex Communications Private Limited v. Union of India & Anr.]

Recently, a single judge bench of the Punjab and Haryana High Court quashed a public notice allowing sound recordings to be played without obtaining a license from the copyright owner during any religious ceremonies or wedding processions. The said notice was issued by the Registrar of Copyrights. While quashing the notice, Justice Raj Mohan Singh stated that a

notice granting a general exemption violates the protection granted by the Copyright Act, 1957 to the owners of Copyright.

## Delhi High Court rules that Title of films are capable of being protected under the Trademark Law

The Delhi High Court in *Sholay Media Entertainment and Anr. v. Yogesh Patel and Ors.* faced the issue that whether a title of a film can be protected under Trademark Law. While deciding this issue, the Hon'ble Delhi High Court rejected the contention that the titles of films cannot be registered under Trademark Law. It further held that the word 'SHOLAY' being the 'title of an iconic film cannot be held to be a mark devoid of protection.'

The Court added that "titles and films are capable of being recognized under trademark law and in India 'SHOLAY' would be a classic example of such a case."

## Delhi High Court restrains two journalists from using 'CNN' mark on social media, TV

Recently, the Delhi High Court granted a permanent injunction in favour Cable News Network (CNN) restraining two journalists from using the mark CNN for their news service on social media platforms & TV. The Court further said that the use of the said mark was done because the journalists were aware of the reputation and goodwill of the said mark.

## **Astrazeneca v. Intas Pharma Ltd. & Alkem Labs Ltd. & Astrazeneca AB & Anr. v. Emcure Pharma Ltd. & MSN Labs Ltd.**

On dismissing the nine appeals against two interim injunctions, the Division Bench of Delhi High Court held that an invention can be protection through a single patent only. The Court further cleared that the Patent evergreening is not allowed in India. The court also distinguished between the test for granting the genus patent and species patent, when applied by the same applicant.

## **Interdigital Tech Corp & Ors. v. Xiaomi Corp & Ors.**

In an important move, the Delhi High Court turned down InterDigital's request to set up a two-tier confidentially club for exchanging private information to determine if the licencing terms proposed by InterDigital were on a FRAND basis. This plan attempted to prevent any representatives of the parties from having access to documents such "secret, comparable patent licence agreements on FRAND terms, as inked by the parties in the dispute," "other than "non-in-house" advocates and the experts they chose." The court determined that such a proposition was unfair to the defendants and incompatible with the attorney-client privilege.

## **Prof. Dr. Claudio De Simone & Anr. v. Actial Farmaceutica SRL. & Ors.**

Another noteworthy breakthrough was the Delhi High Court's clarification of the interaction between two distinct IP protections by stating that a single innovation cannot be protected by both a trade secret and a patent. The plaintiffs' argument that the elements of the innovation that they sought to protect as trade secrets were distinct from those that were the subject of their patent was rejected by the court. It was decided that once a patent application had been submitted and had already expired, the "invention" was no longer protected by a trade secret.

## **Monsanto Holdings Pvt. Ltd. & Ors. v. Competition Commission of India**

The Delhi High Court decided regarding the question of whether the Patents Act and the Competition Act had any overlap in cases where patent licensing terms would be considered anti-competitive. It rejected the claim that the Patent Controller, a specialist regulator, should first decide whether the agreements violated the Patents Act before the CCI could investigate the matter. The exercise of patent rights and agreements made by patentees with third parties about these rights were not subject to the Controller's authority to take any action. Furthermore, the granting of a patent just acknowledges an IP right; patents are not an industry in and of themselves. Thus, Section 3(5) of the Competition Act does not enable an IP right holder to include onerous conditions.

## **Arudra Engineers Pvt. Ltd. v. Pathanjali Ayurved Ltd. & Anr.**

The Madras High Court decided in a significant decision that Patanjali's usage of the word "Coronil" in its immune booster tablets produced uncertainty over the likelihood of curing coronavirus and profited by preying on public worry and dread. Notably, it determined that this use violated the Plaintiff's registered trademark rights on the word "CORONIL" under Section 29(4) of the Trademarks Act and applied a literal interpretation to the term "reputation in India" in this section. According to that ruling, the plaintiff just required to demonstrate that the trademark has a positive reputation in the nation and does not meet the criteria for fame set by a well-

known mark. According to this interpretation of Section 29(4), trademarks with substantial goodwill in the domestic market are permitted to request injunctions in all classes without having to meet the onerous standards for being recognized as a well-known mark under Section 2. (zg). They must only be well-known to the appropriate class of consumers, not to the public.

## **Interdigital Tech Corp & Ors. v. Xiaomi Corp & Ors.**

In the patent infringement case involving Xiaomi and InterDigital, the Delhi High Court (DHC) issued an anti-suit injunction. The Wuhan Court's procedures on the establishment of FRAND rates were not affected by the lis, according to the court. The court noted that Xiaomi's argument was based on the comity of courts and ruled that public policy considerations superseded the comity principle, viewing the Wuhan verdict as a clear obstacle to its capacity to decide on the issue at hand. The ruling drew criticism for failing to consider the fact that InterDigital held more patents in China than India, inquiries into its business practices there in 2013 and strategic legal actions taken against SEP defendants. It was argued that the DHC ignored the public interest aspect that lies at core of a patent infringement suit.

## **Shamoil Ahmad Khan v. Falguni Shah & Ors.**

The Bombay High Court ruled that the topic, storyline, and story arc that make up a literary work's core are subject to copyright protection. The plaintiff claimed that the defendants' web series with the same name, "Singardaan," which debuted on the app "Ullu" and is accessible on YouTube, plagiarised the plot, narrative, characters, and title of his story, which he had written in Urdu. The court determined that all the crucial elements of the plot were present in the online series. It arrived at this conclusion even though anyone who had read the story would have known that the web series was merely an adaptation of it. The interim order received criticism for its justification that the plaintiff's story line was the "heart and blood" of the web series and that the distinctions made by the defendant between their web series and the plaintiff's story were just embellishments. This is so that a judgement of substantial similarity and copyright infringement can be made without regard to the "life and blood" of the web series. If the court has determined that the story used was a substantial part of the plaintiff's copyrightable expression (as it had in this case), it would still lead to a finding of infringement even if the web series had used the story as an incidental trivial part of a larger plot whose "life and blood" was something else. The Court's open admission of the difficulties in the "delicate task" of implementing the idea-expression distinction, which was ultimately predicated on a value judgement of the appropriate level of abstraction, was a positive aspect of this order.

## **Amazon Seller Services Pvt. Ltd. & Ors. v. Amway India Enterprises Pvt. Ltd. & Ors.**

The Delhi High Court's Division Bench overturned a single judge's ruling that prohibited several e-commerce sites, including Amazon, Flipkart, and Snapdeal, from allowing the sale of goods from "direct selling" businesses without their permission. The case involved claims of inducement of breach of contract and tortious interference, as well as the applicability of the 2016 Direct Selling Guidelines (DSGs), Section 79 of the Information Technology Act, and other issues. The DSGs are solely advisory in nature, according to the Court, and do not constitute law. Additionally, it was stated that the mere awareness of the Direct Selling Entities' Code of Ethics and contractual requirements by the online platforms is inadequate to establish a claim of tortious interference with contractual relations.