

## INDEX

02 CHAIR'S MESSAGE

04 ACTIVITIES

09 ARTICLES

15 FICCI IP FORUM

16 FICCI-IPEC

17 NEWS AND UPDATES

19 KEY JUDGEMENTS





## Narendra Sabharwal

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

In a globalized world where countries are focused on becoming increasingly competitive, it is imperative that they use all their potential in advancing their economy. It is in this context that intellectual property and the associated rights, which provide exclusive ownership and control over intangible assets like inventions, trademarks, literary & artistic works, designs, GIs etc., are becoming vital for India, one of the world's fastest-growing economies that is aiming to become a leading knowledge-based economy. It is particularly so in an age of digital and deep-science innovations involving AI and other emerging tech-tools. Essentially, however, the true potential of IP is actualised when these assets progress from being protected to being commercialised, i.e., after the innovative creations are monetised and utilised for economic development and progress. Additionally, while IPRs provide the framework that encourages innovation by allowing creators to protect their ideas, IP commercialization incentivizes them to invest their time, resources and efforts in developing new technologies, products and services. Eventually, it is this continuous innovation that will drive economic progress and foster technological advancements of a nation.

The economic impact of IP Commercialization is best demonstrated through the World Bank Balance of Payments estimates which showed the worldwide receipts for the use of IP rising from USD 394.78 billion in 2018 to USD 425.52 billion in 2022, presenting an increase by 7.78%. For India, this data reflects the inflow of money for use of Indian IP which is indicative of its growing commercial potential. Historically, this earning potential remained stagnant through the 1980s before peaking significantly in 2000 to USD 82.5 million, in the backdrop of the 1991 Policy Reforms. Since then, the receipts have been almost constantly rising, for instance from USD 784.9 million in 2018 to USD 1.17 billion in 2022, showing a substantial increase by around 49%. Notably, receipts to India reached an all-time high in 2020 during Covid 19, with USD 1.25 Billion.

For any innovative enterprise, commercialization is a key step that turns a new concept into income with IP playing a critical role in preventing unlawful exploitation of innovative ideas, transforming them into marketable products and services. IP Commercialization, which involves varied strategies to leverage

and monetize intellectual assets, is not an easy task as the success of the process depends on several internal and external factors. Moreover, the approach to commercialization depends on many factors including nature of the IP, market demand, available resources and business strategic goals.

It is assuring that India's IPR regime, despite the economic pressures brought on by internal and external challenges, continues to be resilient. A few noteworthy developments include India's rising trajectory in the GII ranking to be placed 40th among 132 nations, the rapid rise in IP filings including by startups and MSMEs with domestic patent filings outpacing foreign filings, among others. As per the WIPO World IP Indicators 2022 report, while patents granted worldwide grew by 10% in 2021 compared to 2020, India saw a higher growth of 16.5% in 2021 in this area. Likewise, in the same period, worldwide patents in force grew by 4.2% in 2021, while in India they rose by 19.4%, which is indicative of the increased potential of commercialization. The rising IP filing activities in India can be considered a testament to a positive trend favouring commercialisation.

The initiatives undertaken by the Government have certainly strengthened India's IPR regime, including encouraging commercialisation of IP assets. Important among these are the SIPP Scheme which facilitates start-ups in accessing high quality IP services and resources; the Technology & Innovation Support Centres (TISC) set up jointly by DPIIT and WIPO that support technology searches and innovation process from conception to commercialization of IPRs; IP Facilitation Centers (IPFCs) that support innovative entrepreneurs; the MSME Innovative Scheme that helps protect and commercialize tech-innovations of smaller firms; the Technology Business Incubators that help tech-based startups and facilitate commercialization of innovations. Government flagship programs like Make in India, Startup India, Atmanirbhar Bharat Abhiyaan also contain measures that help businesses to protect and promote their IPRs.

Despite the rising trends, however, the growth of IP monetization in India has been relatively slow, with estimates indicating that only 3% of the patents get monetized. It may be pointed out that globally, no more than 8-10% of patents reach the commercial stage. It is not only the business sector, but universities too are minimally commercializing their inventions and their research appears to be far from the industry demands. There are several barriers that India must overcome as it moves towards a modern and enabling IP ecosystem that facilitates monetization of intangible assets. The prevailing lack of IP awareness among many Indian businesses, particularly MSMEs, hampers their ability to effectively protect and monetize IP assets. Inadequate access to affordable finance and venture capital which is crucial for R&D, IP protection and commercialization efforts is another significant hurdle. Also, as engaging in IP litigation is costly, especially for smaller firms due to legal expenses, court and attorney fees etc., it becomes financially burdensome for companies to manage their IP assets. The low level of industry-academia collaboration, the complex licensing processes and administrative hurdles that hinder the transfer of IP-protected technologies to the commercial sector are the other key challenges.

Going ahead, as India consolidates its IP ecosystem, it is important that all stakeholders including industry and Government agencies increasingly recognize IP as the value creator for the economy to leverage the country's ability to innovate, right from the IP creation stage to commercialisation. Objective 5 of the National IPR Policy 2016 duly highlights the importance of commercialisation, underlining that economic reward for IPR owners will come only from their monetization and that entrepreneurship is encouraged in a manner that the financial value of IPRs is captured. To meet this objective, the policy emphasizes on strategies such as encouraging entrepreneurship, strengthening incubators and accelerators, sensitization of licensing agreements, establishing an IPR platform to connect innovators to buyers, accessing availability of Standard Essential Patents (SEPs) on fair, reasonable and non-discriminatory (FRAND) terms, etc. It also indicates assessing IP funding by various departments and bodies such as BIRAC, NRDC and TIFAC. Notably, the Program for Inspiring Inventors and Innovators (PIII) set up by NRDC was allocated Rs. 8.5 crore in the year 2023-24. Moreover, to support the financial aspects of IP commercialisation, the policy recommends steps like enabling valuation of IP, facilitating investment in IP-driven industries, providing financial support through links with financial institutions like venture capital funds, angel funds etc. The policy also suggests the promotion of going-to-market activities through initiative like providing seed funding, support to MSMEs and guidance to IPR owners on the commercial potential of e-commerce platforms.

Likewise, the Parliamentary Standing Committee Report 2021 emphasized the need for serious efforts to encourage IP commercialization, suggesting that these should be in tandem with reforms in banking regulations in a manner that support financial institutions and the business community adapting to non-traditional IP-backed financing methods. Additional areas that warrant attention include effective utilization of research and outcomes emanating from public-funded research laboratories and academic institutions, addressing the shortages in tech-transfer and commercialisation professionals, the absence of national guidelines for technology or IP valuation, among others. The fact that non-commercialisation of IP is not only a loss to the creator and the government but also to the economy, should be kept in view.

It is important that Indian industry learns from best practices adopted by other countries and implements suitable strategies in IP asset management to better manage their intangible assets. Globally, many countries have been proactive in pursuing IP commercialization, with Nordic countries like Denmark being at the forefront in this field. The Danish success is attributed to initiatives such as establishment of technology transfer offices across universities and institutions that work to identify innovation with commercial viability, the high rate of spinout companies created from university research, easy access to funding and incubation through funding programs like the Public Innovation Fund Denmark and the Danish Growth Fund. Similarly, Japan has increasingly pursued SEPs through the efforts of both the Ministry of Economy, Trade, and Industry and the Japanese Patent Office. The US Patent and Trademark Office, in its Strategic Plan 2022-26, also articulates the importance of public funding in IP innovation and crucial role of IP Industries in the US Economy.

In Thailand, the new Thailand Research & Innovation Utilization Promotion Act 2022 seeks to introduce a national technology transfer framework in which the right of commercialization of IP generated with public funding are generally vested with the creating entities. Moreover, the findings of some recent studies merit attention. A survey conducted by the Asia Pacific Economic Council (APEC) in 2020 on best practices on IP Commercialisation by SMEs identified barriers, like lack of financial recourses, difficulties in attracting investments, high costs and duration of IP registration procedures, SME representatives being unaware on IP issues. To address these issues, it recommended practices such as embodiment of IP in marketable products, training programs on IP commercialization for SMEs, development of professional competencies of SME managers, regular experience exchange between APEC countries as well as thematic seminars and roundtables. A WIPO magazine article on 'Practical IP Considerations for SMEs on their journey to the market' states that companies must build a portfolio of IP assets, including Branding, and ensure timely valuation and facilitate exchange of technologies through cross licensing agreements. It is important to note here the key role that IP Offices can play in facilitating and enabling utilization of IP assets.

It is widely acknowledged now that intangible assets are a crucial segment of any progressive economy where IPR is a key strategic option in the knowledge industry. Evaluating the potential of IP and capitalizing on its true value is the most critical aspect for reinforcing the long-term economic base of a nation. Though protection of IPRs can be a costly and complex process, these are the steps that lay the foundation for the commercialization of IPRs. With India embarking on a journey towards creating an enabling environment that breeds innovation and taking significant strides in strengthening the IP ecosystem, it is important that industry and other stakeholders realize the benefits of these rights, while inventors are enlightened on how they can utilize their IP assets to generate revenue for the country. At the same time, notwithstanding the substantial progress seen in India's IP sector, the Government must keep up the efforts to address the existing challenges such as delays in trademark and patent registrations, the backlogs, inadequate IP awareness and enforcement issues that continue to exist.

I would sincerely urge government and industry leaders to take all necessary steps to accelerate the pace of utilization and commercialisation of IP assets.

I wish all those engaged in this laudable endeavor much success ahead.

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



## World IP Day 2023 Conference: Empowering Women Inventors, Creators & Entrepreneurs Through Intellectual Property

3 May, 2023

FICCI commemorated the World Intellectual Property Day 2023 with a conference on “Empowering Women Inventors, Creators & Entrepreneurs through Intellectual Property” on 3 May 2023 in New Delhi. The focus of the event was in keeping with WIPO's theme for this year's World IP Day - *Women and IP: Accelerating Innovation and Creativity* - and as a tribute to the ingenuity, curiosity and courage of the women who are making a difference with their groundbreaking work and to deliberate how women's participation in innovative entrepreneurship can be intensified through the strategic use of IP rights.



Ms. Himani Pande, Joint Secretary, DPIIT, Ministry of Commerce & Industry, in her Inaugural Address, underlined the rising trend in women-led patent filings informing that 7,698 patent applications were filed by women in 2022-23, and attributed this improvement to the Government's support incentives to women innovators, like expediting patent applications filed by women through amendments in rules, recognizing their innovative works through the National IP Awards etc. Emphasizing the need for a far greater level playing field for women, she observed that the Government was committed to creating a sustainable environment that aided women to participate and lead in IP and creativity, and to ensure that their vital contributions were recognised and celebrated.

Dr Unnat Pandit, Controller General of Patents, Designs & Trademarks, Government of India, while underlining the crucial role of women in the country's innovation ecosystem and in building the world's third-largest startup ecosystem said that 8% of India's startups were led by women or had a woman as one of the directors. Citing several examples of women using IP tools to protect and sustain traditional knowledge and livelihoods, he stated that the role of women in fostering innovation, enterprise creation, and creativity would be of utmost importance as India moved towards a technology and knowledge-driven economy. Dr Pandit also shared some impressive statistics to illustrate the growth of IP in India, including a more than 400% jump in the number of patents granted since 2016.

Mr Narendra Sabharwal, Chair, FICCI IPR Committee & former Deputy Director General, WIPO, while highlighting several landmark achievements by women inventors globally as well in India, stressed on the need for Govt. and industry to work together in addressing the challenges faced by women in the IP field e.g., gender bias discrimination, lack of representation in leadership positions, paucity of resources etc. He said that women leaders in IP were uniquely positioned to drive innovation in areas where they were under represented like in the STEM field, MSMEs, GIs and grassroot innovations. With the growth of digital economy and technology opening up new opportunities, innovative women are increasingly using technology platforms and social media to promote their IP rights and to reach new audiences and markets, he added.



Mr Daren Tang, Director General -WIPO, through a video message, emphasised the importance of celebrating achievements by women innovators and entrepreneurs on the World IP Day. He said that despite making up more than half of humanity, women accounted for only 16% of international patent applications and held just 3 in 10 STEM-related jobs and urged decisive and impact-driven policies and projects to address the challenges, adding that by working together, the global community could unleash the potential of women and girls everywhere to accelerate innovation and creativity globally.



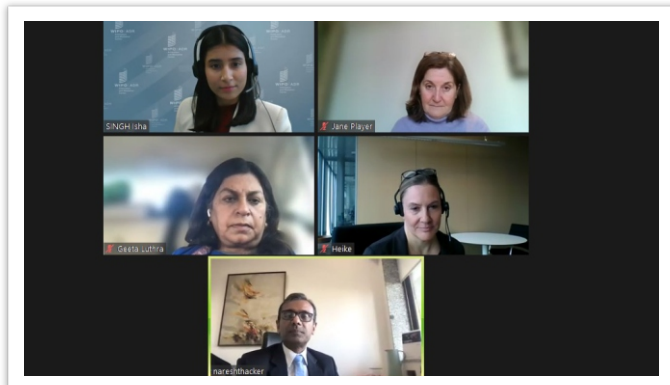
The conference also comprised two panel-discussion which were addressed by leading IP and innovation stakeholders including policy makers, industry professionals, startups, MSMEs, creative industry, legal fraternity and academia institutes. The event also saw the release of the publication 'Copyright 101-Creators Edition', a handbook for production houses to collaborate with OCC platforms, jointly developed by FICCI, MPA, Creative First and International Legal Alliance. The event had the participation of over 180 delegates from industry, Govt. departments, start-ups, MSMEs, law firms, academic and research institutions.

## Webinar on Resolving IP and Commercial Disputes through Mediation & Arbitration

8 February, 2023

**A**lternative dispute resolution (ADR) refers to the ways disputes are resolved without a court trial. ADR, particularly arbitration and mediation, are now being increasingly favoured over litigation for resolution of IP infringement and other commercial disputes as it is less costly and time consuming, of higher quality, more private and flexible. In India too, due to the lengthy pendency of civil lawsuits in courts, arbitration is a well-recognized alternative to resolving business disputes where parties can exercise substantial autonomy and control over the process.

To discuss the various ADR options available for domestic or international commercial disputes and features like arbitration proceedings and agreements; practical issues about claims, defence statements and counterclaims etc., FICCI, WIPO and ICA jointly organized a webinar on “Resolving IP & Commercial Disputes through Arbitration & Mediation” on 8 February 2022. Several dispute-resolution experts from India & overseas addressed the webinar which was attended by over 150 representatives of Indian industry, legal fraternity and other stakeholders.



Ms. Heike Wollgast, Head of WIPO Center, observed that arbitration was a consensual and neutral process between parties, and a confidential procedure where the arbitral tribunal's decision was final and easy to enforce. She also explained WIPO Center's role in resolution of IP disputes and how it helped parties to submit disputes to the WIPO procedures, in selecting mediators/arbitrators and in liaising among the stakeholders to ensure optimal communication and procedural efficiency. Further, she informed about WIPO-eADR, an online case management tool that facilitated conduct of cases under WIPO Rules and enabled parties in the proceedings to share & access case-related information through a single and secure portal.

Mr. Naresh Thacker, Partner, Economic Laws Practice, speaking on the arbitrability of IP said that though such disputes were amenable to arbitration, not every dispute on the IP validity or ownership were arbitrable. Also, while patents were arbitrable, the underlying pattern of novelty, non-obviousness etc. may not be. Arbitration had several advantages e.g., being simple,

informal, efficient, flexible, confidential, expeditious and the ability to opt for tribunals that were adept at specialized subjects like IP, although there were concerns like arbitrator neutrality, ground for challenge and subsequent relief. He suggested that Indian courts should adopt a wider and pro-arbitration approach to help facilitate foreign investments and globalisation.

Ms. Geeta Luthra, Senior Advocate, Supreme Court of India & Vice President, ICA, elaborated on the advantages of mediation and arbitration in the resolution of commercial disputes, including how other countries were looking at ADR as a medium to resolve IP and commercial cases. She also provided her views on the arbitrability of IP cases, adding that resolution through ADR was possible if the dispute in question did not affect the rights of a third party, referring to the case of Vidya Drolia vs Durga Trading Corporation where it was felt that adjudication through the ADR route would not be appropriate and enforceable.

Ms. Jane Player, Commercial Mediator, Independent Mediators of London, said that though few IP disputes were going into arbitration globally, it was important to understand that ADR was not a substitute but rather an expeditious and economical process that complimented the redressals of IP disputes. She added that many large corporations with vast IP rights were now looking at mediations as a way to generate more creative outcomes and values out of their IP portfolios, and were engaging in ADR and mediation to turn a business threat to a commercial opportunity. Lawyers advising clients, therefore, need to adapt their counselling accordingly and find innovative and interest-based solutions to effectively manage IP cases and prevent other expensive disputes.

## Webinar-series by Ms. Sangeeta Pal, Advocate & Trademark Attorney



**M**s. Sangeeta Pal, Advocate, Trademark Attorney & Mumbai-based IPR Practitioner conducted a series of informative webinars on 3 significant topics in the realm of IP. The webinars delved into the intricate dimensions of IP law and its practical applications providing valuable insights for professionals, practitioners, and enthusiasts alike. In the first webinar on 'IP Commercialization & Licensing' organised on 19 February 2023, Ms. Pal expanded on the commercial potential of each IP category, explaining the strategic and financial aspects of monetizing IP assets that transformed innovative ideas into tangible products and revenue streams. Further, the methods for monetizing through licensing



agreements, technology transfers and joint ventures were discussed, as also the negotiation processes, drafting of licensing agreements, royalty structures, exclusivity terms and IP enforcement provisions. Emphasising the need for capitalizing on IP assets to generate revenue, she also touched on the challenges likely to be faced during commercialization processes and provided practical tips to overcome these and to forge successful partnerships.

In the following webinar on "Trademark Examination & Opposition", organized on 15 April 2023, Ms. Pal explained the complexities of trademark examination and opposition proceedings, while also speaking on the basics of trademarks, the significance of branding and their legal recourse. She described the TM registration process, the ways to successfully navigate the examination stage and the objections from third parties in registration processes, while also presenting case studies to help participants comprehend successful strategies and the challenges faced in TM examination and opposition proceedings. In her third webinar on "IP-Assets, Value and Commerce" held on 23 July 2023 which focused on the significance of IP assets in a competitive business environment, Ms. Pal illustrated the ways available to recognize, assess and leverage the value of IP assets for commercial success. Together with an overview of the IP legislations in India, she explained the need for IP valuation, the role of IP audits in the valuation process and their ensuing relevance on the commercialisation of IP assets, while stressing the need for an organized approach to protecting IP assets that ensured their exclusivity and market advantage, and safeguarded them against infringement and unauthorized use.

## Webinar on 'How Patent Applications are Filed in Various Jurisdictions including PCT Filing?'

4 March, 2023



The webinar on "How Patent Applications are Filed in Various Jurisdictions Including PCT Filing" was held on 4 March 2023, which was conducted by Mr. Kalyan Potukuchi, Director, BKSAY Works Pvt. Ltd. Initiating his presentation with the basics of intellectual property and the laws protecting the different IP right, Mr. Potukuchi took the participants through the various intricacies of the patent application process across different jurisdictions, with a specific focus on the Patent Cooperation Treaty (PCT) filing. PCT is a WIPO-administered

international patent law treaty concluded in 1970 that provides a unified procedure for filing patent applications to protect inventions in each of its contracting states. Explaining the various components of patent applications, their significance in protecting innovations and inventions, and the legal rights they conferred to inventors and applicants, he spoke about the differences in patent application procedures and the conformity requirements in various countries and regions. He also described the PCT filing system in detail, outlining its many benefits as well as the challenges that may arise in the process, helping the participants gain both an international and national perspective into this international patent system, and to comprehend the nuances of facilitating the protection and recognition of innovative ideas on a global scale.

## Webinar on IPR & Geographical Indications: Legal Frameworks, Protection & Enforcement

24 June, 2023



A webinar on 'IPR & Geographical Indications: Legal Frameworks, Protection & Enforcement', organized on 24 June 2023, was addressed by Dr. Richa Yadav, Assistant Professor, Amity University. Besides providing an overview of the role of GIs as an IP right, the legal framework that it operated in and the way these rights were enforced and protected, Dr. Yadav, discussed the critical aspects surrounding this vital IP form, underlining the need for a robust legal framework, proactive protection measures and effective enforcement mechanisms to ensure the preservation and promotion of GIs. As consumers increasingly value authenticity and cultural heritage, safeguarding GIs becomes paramount not only for the producers but also for the preservation of the diverse cultural traditions and the sustainable development of local economies. She also highlighted the need for international collaboration in the protection and enforcement of GIs by learning from and adopting best practices, harmonizing legal frameworks and facilitating information exchange to facilitate global recognition and protection of GIs. Collaborative initiatives like the WIPO Lisbon Agreement and Geneva Act were also examined as examples of international efforts in this regard. Over 65 representatives from industry, academia, legal fraternity and students participated in the webinar.

## Webinar on 'Protection & Commercialization of Copyright in Content Curation Industry'

22 July, 2023



Ms. Persis Hodiwalla, Managing Partner, JP Legal Corp., speaking at a webinar on "Protection and Commercialization of Copyright in Content Curation Industry" on 22 July 2023 shared invaluable insights into the opportunities and challenges that content curators faced in safeguarding their IP rights in the digital era. Content curation is the practice of collating relevant and useful material from the best sources of an industry and publishing it for an audience. Ms. Hodiwalla provided an analysis of the contemporary copyright issues in content curation, especially in the Hindi film industry, and the approaches for copyright protection including through licensing agreements and monitoring tools to detect unauthorized use. The session explored the ethical methods of commercializing curated content while respecting the Copyright Law provisions, and examined the various revenue streams that can be generated. She also elaborated on the nuances of fair use in content curation, explaining when and how copyrighted material could be legally used without infringing, while stressing the need for content curators to be adequately aware of the relevant laws and regulations as well as the various tools available to navigate copyright protection and its commercialization.

## Webinar on Primacy of Copyright in Digital Age

29 July, 2023



The webinar on "Primacy of Copyright in the Digital Age" was a highly anticipated online event that took place on 29 July 2023. It was led by Ms. Lohita Sujith, Senior Director, Copyright & Digital Economy, Motion Picture Association (MPA). The session was aimed at exploring the critical importance of copyright protection in the ever-evolving landscape of the digital era. Ms. Sujith began with the way films were traditionally released through movie theatres as the first window, and how with technological developments cinematic contents were now flowing through streaming platforms like OTT. Elaborating on the significant revenue and employment generation potentials in the Media and Entertainment (M&E) sector, she explained how copyright, which was the IP rights of creators, artists etc., helped sustain and promote this important industry and the various laws applicable in India as well as globally to protect and gain from these rights, including in the digital space which was one of the fastest-growing M&E segments in India. Further, she delved at length into the many challenges posed by the digital realm, including issues like piracy, unauthorized distribution and the impact of user-generated content on copyright ownership. She concluded her presentation underlining the potentials and expectations of the creative industry, and the legal provisions that are required to better protect the rights of creators while also promoting creativity, innovation and the development of India's M&E sector.

## Workshop on 'Investigation of Economic Offences' for Delhi Police Officers

23 May, 2023



ICCI, at the invitation of Joint Commissioner, Delhi Police Academy, conducted a workshop on 'Investigation of Economic Offences' for the officers of Delhi Police 25 May 2023. In view of the Indian government's initiative through Atmanirbhar Bharat, the necessity of strengthening the IP regime has gained further significance. In this backdrop, criminal action becomes more helpful when police authorities become increasingly acquainted with the powers available to clamp down on the rising number of economic offences and white-collar crimes, including IP-related offences.

Mr. Manish Mishra, Associate Partner, Intl Advocare & Member of IPR Committee, in his interaction with the participating officials, discussed the different types of economic offences that were generally seen in India, the reasons for such crimes, the challenges that investigating police officers faced in their investigation and the legal provisions available to effectively investigate such offences and to increase the conviction rate. By way of a detailed presentation, Mr. Mishra guided the

participants on the relevant provisions of the Indian Penal Code, 1860 relating to economic offences, the key differences between economic offences and white collar crimes, the measures available for police officers to prevent such crimes and to ensure efficient investigations, while also underlining the gravity of the situation arising on account such wrongdoings in India and how such crimes weakened the country's economy and damaged its global reputation.

Over 70 Inspectors and Sub-inspectors of Delhi Police participated in the workshop organized at the Specialized Training Center, Rajendra Nagar Police Station, New Delhi.

## Patent Examiner Technical Training Programs

18 to 25 August, 2023



For any nation, while an evolved IPR regime forms the basis for a knowledge-based economy, it is a robust patenting system that facilitates technological innovation and scientific research. To ensure that the patent examiners at India's IP Offices, who verify that patent applications conform to relevant requirements, grant quality patents, it is important that they stay fully aware of the industry practices in various sectors and technological forecasts etc. This not only upgrades their knowledge, but also increases their confidence in effective examination of patent applications, leading to quality grants and disposals.

FICCI, at the invitation of the Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM), Govt. of India, organized a series of training programs for the patent examiners from 18th to 25th August 2023 in all the four IP Offices.

The objective was to equip the examiners with the expertise to deal with the new & emerging complex technologies, the patents arising thereof, and to apprise them about the industry practices, technology upgradations, and global best practices.



The focus of discussion in the training sessions, starting with the Delhi IP Office on 18 August, followed by the Offices in Kolkata & Chennai, and concluding with the Mumbai Office on 25 August, related to the new/emerging technologies in the Information & communications technology (ICT) sector as well as the Pharmaceutical and Biotechnology industries. While the sessions on ICT concentrated on the new and enabling features of Artificial Intelligence (AI), Machine Learning and 6G/5G, the Pharma/Biotech discussions were on the new drug discovery processes and drug delivery technologies; upcoming technology areas like stem cell, siRNA/RNAi-based therapeutics, among other areas. The sessions were conducted by industry experts and R&D scientists from leading and pioneer companies in the pharma/biotech and networking and telecommunications industries.

The patent examiners training program series by FICCI ended on a successful note. Besides the informative presentations on technological advances & forecasts, industry practices etc., the sessions in all the four locations generated productive discussions and interactions between the participating officials and the presenters. The Heads of each Patent Office, who initiated the sessions in all the four venues, thanked the industry experts for volunteering their time & expertise to help patent examiners keep pace with state-of-the-art developments. A total of 356 officials of the various the four IP Offices attended FICCI's training sessions, of which 189 were patents examiners, and 167 were controllers.



# Harnessing the Power of Gender Diversity for Innovation



## Ms. Nandini Prabhu

Senior Lead IP Analyst,  
Mercedes-Benz

In an increasingly interconnected digital world, the rise of transformative and pioneering technologies is revolutionizing our work methods, thought processes, and way of life. To enhance productivity, efficiency, and agility, a majority of industries are embracing digital acceleration.

However, the flipside is that these newer technologies present a fresh set of challenges, many of them very complex.

As the saying goes, “**what has got you here, may not take you there**”. A traditional approach may not be able to effectively offer robust or relevant solutions to address new-age problem statements. It requires a diverse set of people with their unique perspectives and problem-solving capabilities to collaborate for next-level ideation and solutioning.

So, what is the best way to collaborate?

### Relationship between Diversity and Innovation

Empirical studies indicate a tremendous positive relationship between diversity and innovation. To illustrate, researchers at the University of Michigan and Loyola found that [diverse groups solve problems better](#) than a homogenous team of high ability. Another [research](#) proves that most productive teams require a mix of people who think differently from each other.

While most kinds of diversity increase innovation performance, **gender diversity**, in particular has a significant impact. In fact, in one [interesting study](#), researchers at MIT and Carnegie Mellon sought to identify a general intelligence score for teams. They not only found that [teams that included women got better results](#), but that the higher the proportion of women was, the better the teams did.

The science is right there to back this up.

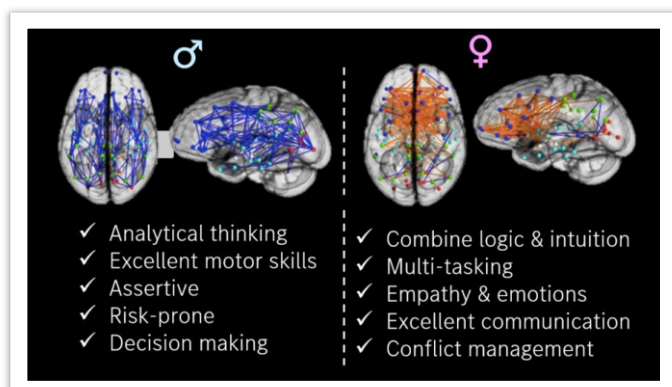


FIG. 1 depicting the male and female brain structures

Biologically, as shown in FIG. 1, the male and female brains are [structured differently](#). Because of this basic difference, they

tend to approach and resolve problems quite contradictorily. For instance, men may tend to see issues and resolve them directly, due to the strong connections between the ‘perception’ and ‘action’ areas of their brains, while women might be more inclined to combine logic and intuition when solving a problem.

To summarise, the preponderance of evidence proves that women bring in different perspectives crucial to solve new-age problems, enhancing the creativity of the team, thus resulting in more integrated and disruptive innovations.

### Status Quo of Female Participation in the Field of Intellectual Property (IP)

According to [WIPO data released in March 2023](#), the share of women listed as inventors in overall international applications grew to 17.1% in 2022. About 96% of all PCT applications listed at least one man as inventor, whereas only around 35% listed at least one woman as inventor.

If we consider Indian applications alone, in 2022, the share of women listed as inventors in international applications is 11.6% and around 23.8% of PCT applications are with at least one woman as inventor.

The data is clear - **there is scope for improvement**. We need to take strategic measures to increase women’s participation in the Intellectual Property (IP) ecosystem and reap the benefits that diversity-in-innovation offers.

The big question now is this - How do we create a conducive environment to increase women’s proactive participation in mainstream innovation activities?

### Some Measures Taken by the Indian Government to Boost Women's Participation in Innovation

- [Knowledge Involvement in Research Advancement through Nurturing \(KIRAN\) program](#):
  - Encouraging girls to pursue STEM education
  - Facilitating international research collaborations
  - Offering training opportunities and fellowships in science and technology
- [Women Scientists Scheme \(WOS\)](#):
  - Aims to bridge the gender gap by offering grants and fellowships, including internships in IP rights for self-employment, with on-the-job training
- [80 percent fee reduction](#):
  - Women entrepreneurs in India are eligible for 80% filing fee reduction provided by the Office of the Controller General of Patents, Designs, and Trademarks (CGPDTM)
- [Woman Entrepreneurship Platform](#):
  - Aims at promoting women entrepreneurship

- (5) Expedited examination of patent applications by women applicants or any application having at least one female inventor.
- (6) Raising awareness on IP through programs, lectures, and collaborations involving law practitioners, various departments and associations e.g., the Federation of Indian Chambers of Commerce & Industry as well as other industry associations, the Cell for IPR Promotion and Management, law schools, law firms and corporates.

## **Illustrative Framework to Improve Gender Parity in Innovation and IP**

To achieve maximum female participation in the IP ecosystem, organisations and communities should derive a framework that encompasses various aspects and strategies. Here is an illustrative framework to improve gender parity in innovation contribution

**STEP 1: Acknowledging the problem:** Acknowledging and raising awareness of the need for gender diversity in innovation

**STEP 2: Root cause assessment:** Discover what holds women back from being proactive in inventing

**STEP 3: Deriving short and long-term programs:** Strong mentor-mentee network, awareness programs, leadership connects, recognition and celebration of women inventors, regular engagements with industry experts and prolific female inventors, targeted ideation and brainstorming sessions for women, targeted IP knowledge resources, etc.

**STEP 4: Launch and monitor the programs:** Actively monitor the programs and activities to produce superior results.

## **Conclusion**

In conclusion, women bring in unique perspectives, creativity, and resilience that are driving forces for successful innovations across diverse fields. It is vital that we continue to foster an inclusive, collaborative and supportive environment with diverse avenues to empower women to unleash their potential and contribute to the future of innovation. By recognising and amplifying the achievements of women, we not only celebrate their individual accomplishments but also inspire other competent women to join the inventor bandwagon.

**Disclaimer:** *The views and opinions expressed in this article are those of the speaker and do not necessarily reflect the views or positions of the entity they represent.*



## Who Owns the Rights in a Song?



**Mr. Rajendra Kumar**

Counsel & Senior Advisor,  
K&S Partners | IP Attorneys

### **B**ombay High Court recognizes the additional rights of authors in *IPRS v. Rajasthan Patrika/Music Broadcast Limited* delivered on April 28, 2023

It is trite to say that copyright is a bundle of rights. This truism is best demonstrated when a song is played on the radio. Under the Copyright Act in India, copyright attaches to original literary, musical and dramatic works; sound recordings and cinematograph films. The creation of a song at the most basic involves the intermeshing of lyrics and musical composition (literary and musical copyrights) to supplement a singer's performance, and all of these elements reduced to permanent form by way of a mechanical sound recording right. When played on the radio, the song brings into play a blend of these underlying rights into one final ensemble.

Till 1994, the Indian Copyright Act did not recognize the rights of performers such as singers and actors who had rendered services as contributors to the final ensemble of a song or a film as a whole. In *Fortune Films International vs. Dev Anand and Another* (AIR 1979 Bom 17), the High Court of Bombay held that the Copyright Act in force at the relevant time did not recognize the performance of an actor as 'work' which is protected under the Copyright Act.

The legislature intervened in 1994 when the Copyright Act was amended to provide for a special right known as the performer's right. The term 'performer' was defined to include actor, dancer, musician, singer, acrobat, conjurer, snake charmer, juggler, a person delivering a lecture or any other person who makes a performance.

In 2006, the High Court of Delhi had the occasion to apply this special right to the rights of a singer in *Neha Bhasin vs. Anand Raj Anand and Another* (132(2006) DLT 196). Upholding the rights of the singer, the High Court held that 'it is essentially the reproduction of the performance through sound or visual recordings without the permission of the performer that is prohibited'. It went on to further hold that 'every performance has to be live in the first place by one or more performers ... whether it is before an audience or in a studio... If this performance is recorded and thereafter exploited without the permission of the performer, then the performer's right is infringed.'

Despite the amendments of 1994 which recognized the rights of performers, one question that escaped legislative intervention and continued to bedevil the Indian jurisprudence over the years has been: who owns rights in the final song:

- whether it is the sound recording company/film producer who has commissioned the artists (song writers & music composers) to compose their works for incorporation in a sound recording or cinematograph film.

- OR whether the authors of the underlying literary & musical works in a song continue to enjoy their independent rights even after these have been so incorporated.
- Prior to the amendments to the Copyright Act in 2012, the Indian jurisprudential landscape in this branch of law had been dominated by the following binding judgments:

- (1) **Indian Performing Rights Society Limited vs. Eastern India Motion Pictures Association** (AIR 1977 SC 1443): Applying the existing provisions of the copyright law at the relevant time, the Supreme Court of India held that the author/composer of lyric or musical work who had authorized a cinematograph film producer to incorporate his work in a cinematograph film ceases to own any independent rights, and the film producer as copyright owner of the film owns all the rights including these underlying rights.

However, while agreeing with the leading opinion in the said judgment, Krishna Iyer, J authored a footnote, lauding the creative contributions of the authors of the underlying works and calling for a Parliamentary intervention to address the infirmities in the law as it then existed in relation to such authors.

- (2) The 1977 judgment of the Supreme Court was followed by numerous subsequent judgments including a Division Bench judgment of Calcutta High Court in **Eastern India Motion Pictures vs. Performing Rights Society Ltd.** (AIR 1978 Cal 477) and a single judge bench of Bombay High Court in **Music Broadcast Pvt. Ltd. V. IPRS (Suit No. 2401 of 2006)**, all to the effect that the authors of the original underlying literary and musical works embodied in sound recordings/cinematograph films had no right to interfere with the rights of owners of such sound recordings/cinematograph films to communicate the same to the public, including by broadcast through radio stations.
- (3) **International Confederation of Societies of Authors and Composers (ICSAC) vs. Aditya Pandey** (2017) 11 SCC 437: it was a judgment passed by the Supreme Court under the pre-2012 Copyright Act in the context of rights held by the authors and composers of lyrics and music composers against the claims of sound recording companies. Applying the ratio of the 1977 Supreme Court judgment, the Supreme Court again reiterated that the author/composer of a lyric or musical work who has authorized a sound recording producer to incorporate his work in a sound recording, ceases to own his independent rights, and these rights come to vest in the sound recording producer as owner of copyright.

As the facts involved in this judgment predated the 2012 amendments, the Supreme Court specifically limited its interpretation to the legal regime prior to 2012 and did not express any opinion on their scope and effect.

Thirty five years after the Supreme Court's 1977 IPRS judgment, the Indian Parliament finally took notice of the infirmities in the law and brought in a batch of amendments to the Copyright Act in 2012 with the object to confer independent rights in the



hands of composers of lyrics and music even after their works were incorporated in cinematograph films and sound recordings (the only exception being when a cinematograph film was played in a cinema hall, the producer enjoyed all the rights in the film including these underlying rights). The amendments came about as a result of a concerted and sustained lobbying on the part of these authors against the mighty juggernaut of the producers of films and sound recordings. As a result of these amendments, the authors were conferred inalienable and non-waivable rights to an equal share in the royalties accruing from all forms of exploitation of their works as part of the cinematograph films and sound recordings (with the exception in respect of theatrical exploitation of a cinematograph work).

The Parliament sought to nullify the effect of the 1977 IPRS judgment by specifically providing that the rights of the authors of the underlying works (lyrics and music) would not be affected by the exclusive rights vested in producers of cinematograph films (new Proviso to Section 17, Third & Fourth Provisos to Section 18 (Assignment), new sub-sections 9 and 10 to Section 19 (Mode of Assignment)).

On **April 28, 2023**, in a first authoritative landmark judgment on the effect of the 2012 amendments, a single judge of Bombay

High Court, taking note of the Report of the Parliamentary Standing Committee, the Statement of Objects and Reasons and the specific nature of the amendments introduced, held that *“all of them point towards additional protection of rights envisaged for authors of such literary and musical works, who had hitherto lost their rights once they were assigned to the producers of cinematograph films incorporating sound recordings or sound recording as such.”* In reaching its conclusion, the single judge differed with the contrary short opinion expressed by a single judge of Delhi High Court in **IPRS v. Entertainment Network (India) Limited** dated January 4, 2021, in a dispute predating the 2012 amendments, to the effect that the 2012 amendments do not alter the provisions of the Copyright Act.

The judgment comes as a welcome judicial recognition of the special rights conferred on the authors of the underlying works and is bound to act as a galvanizing precedent to bring about some legal certainty in the balance of rights under the law.

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



# Expedite Remedy to the Commercial Dispute



## Ms. Sangeeta Pal

Advocate, Bombay High Court  
& IPR Attorney

**V**asudhaiva Kutumbakam – the World is one family – is not just Indian Philosophy that originates from Indian Upanishad, the Sanskrit text of Hinduism, but also a reality of today's global world. It reflects and articulates the Indian relationship and entrepreneurship to the world at large. Due to globalization, national economies are now more connected to each other than ever before. Infirmity in one region affects the whole economy of the world e.g., the war between Ukraine and Russia affects the world on crude oil supplies and pricing. Similarly, there are increased cross-border investments which includes flow of goods, services, capital, people and ideas across international boundaries. Though globalization is advantageous for economic growth, it also puts challenges before nations in managing increased competition and in creating healthy ecosystem wherein foreign investments are safe and global investors feel confident. There are many parameters established by world forums for nations to be categorised as safe places for growth and investment. Ease of Doing (EoDB) is one of such indices established by the World Bank Group.

### Need for Commercial Courts Act, 2015

Due to globalization, liberalization and privatization, it is necessary for India to undertake economic reforms and implement policies that improve its EoDB ranking. Though currently India's EoDB Index is 23, it was not the same before. In 2014, India's ranking on EoDB Index was 184th and that was the time for the country to take necessary step to attract foreign investment for growth. The necessity to build confidence in investors and develop a healthy ecosystem warranted a mechanism for enforcement of contracts. The need for dispute resolution arising out of such contracts is one of the vital requirements. The investors in India whether domestic or international must be provided clear assurances that the dispute arising out of commerce would be settled speedily and thus facilitate ease of doing business. Therefore, the need for a strong and responsive legal system for speedy trial of commercial disputes, resolved by the Commercial court Act, 2015 which came into force on the 23rd day of October 2015 and later amended by 23 of Act of 2018.

### Object of Commercial Courts Act, 2015

The Commercial Court Act, 2015 is enacted with the core objective of speedy resolution of commercial disputes and to establish commercial courts at the district level, Commercial Division and Commercial Appellate division in High Courts. It enables setting up of commercial court within the existing civil court system. It also empowers commercial court with procedural powers by amending provision in CPC to enable efficient and speedy disposal of commercial disputes of specified values.

### Key Elements of Commercial Courts Act, 2015

The core key element of the Act is its definition, reduction in specified value after amendment of 23 of the Act 2018 and compulsory pre-mediation before instituting any suit. The Act defines what is commercial dispute and what is not commercial dispute.

- **Definition:** Section 2(1) (c) defines the commercial disputes which is inclusive of all type of disputes that are involved in commercial transactions. Disputes relating to transaction between merchants, bankers, financial transactions, financiers, traders, shareholder agreements, joint venture and partnership agreements insurances and intellectual property rights etc. Further it is more open and inclusive as it allows the Central Government to add to commercial dispute which has not been included for now by issuing notification.
- **Establishment of Commercial Courts & its Jurisdiction:** Prior to the Amendment of 2018, the Act empowered state govts to consult high courts and by notification establish commercial courts at district level where the respective high courts had no OOCJ (Ordinary Original Civil Jurisdiction) and the specified value of the commercial suit was Rs. 1 crore or more. After the amendment of 2018, the specified value of the commercial dispute was reduced to Rs. 3 lakhs. Now the state may establish commercial court at the district level in the areas where high courts have OOCJ and pecuniary jurisdiction of such court cannot be less than the specified value of Rs. 3 lakh and more than pecuniary jurisdiction of District court determined by the state Govt by issuing notification thereto.
- **Compulsory Pre-institution of Mediation Mechanism:** Pre-mediation is compulsory for any suit which does not contemplate any urgent interim relief. Mediation authority shall complete the process of mediation within a period of three months from the date of application made by the plaintiff. In case of suit with urgent relief, plaintiff shall make specific application for exemption with statement of truth under Order 6 Rule 15 A of the Code of Civil Procedure.

### Implications of Commercial Court Act under Current Judicial Scenario

The objective of the Act is to build an effective and expeditious dispute redressal system and thereby create confidence and reliability amongst investors. The attempt is to build a positive ecosystem for business and growth. A practical point of view and approach was considered while enacting the Act and the amendments therein. The effort was made to widen the spectrum of commercial disputes and to cover all kinds of transactions possible related to businesses enumerated in definition under Section 2 (1). Clauses from (i) to (xxi) were added to make it more inclusive under clause (xxii) where the Central Govt may by notification add any other dispute as commercial dispute. Further, the pecuniary jurisdiction of Commercial Court under Amendment of 2018 is reduced from Rs. 1 crore to Rs. 3 lakhs only by amending the specified value in clause (i) to Explanation 1 to the Definition. The minimum value

of Rs. 3 lakh is mandatory for all commercial court at district level and does not require specific notification of State Govt where the high courts do not have ordinary original jurisdiction. Clause (1A) to Section 3 is added only for the High Courts having ordinary original jurisdiction whereby State Govts after consultation with respective high courts may stipulate a specified value which shall not be less than Rs. 3 lakh or any higher value that is not more than the pecuniary jurisdiction of District Court. The State Govt may setup Commercial Appellate Court at District level in areas where High Courts do not have ordinary original jurisdiction to hear appeals against the order of Commercial Courts below the level of district judge. Further under Section 12, a pre-mediation is made compulsory where Plaintiff does not contemplate any urgent relief and the same need to be completed with in three months with an extended two months. Though attempts were made, these provisions are also not free from lacunas. The claim of urgent relief is mostly manipulated, and it is difficult to implement especially when Interlocutory Application (IA) of urgent relief, counter reply and further hearing proceedings extended are not time bound. There are many district courts in areas where High court do not have ordinary original jurisdiction and still looks for the State Govt notification with regard to specified value, and in absence of the same treat the commercial disputes as an ordinary suit. Though such issues were considered by the Supreme Court of India in *M/s Patil Automation Pvt Ltd & Others v/s Rakheja Engineers Pvt*

*Limited in civil appeal arising out of SLP NO. 5737of 2022, where in Section 12 A is declared mandatory and any suit instituted under the commercial court act violates the mandate of 12A must be visited with rejection of plaint under Order VII Rule 11. Such power can be exercised suo-moto by the court itself. The Commercial Court Act with amendment of 2018 can be a milestone and very effective in nature where its mandatory for disputing parties to attempt to resolve disputes amicably by perusing for mediation. It provides a second chance to the disputing parties to be mature enough to consider each other's points of concern, and to come to a benefiting conclusion thus ensuring a wining situation for both parties.*

There is a shift in the approach from the traditional to a modern dispute resolution mechanism. In the traditional approach, disputes are resolved by determining the rights of the parties with supportive documents and evidence, and judgments are pronounced accordingly for specific performance, profit and damages. In the modern approach, mediation is very much focused and promoted requiring entities or individuals to resolve disputes through mediation before resorting to any court or tribunal.

**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
- Networking through various FICCI national & international seminars/conferences
- Speaking/ participating opportunities in various FICCI Webinars
- Enhanced Visibility for forum members
- FICCI IP Talks
- Several other Benefits

### CONTACT

For Membership and More Information, please Contact

**Srishti Jethra**  
*Assistant Director*

Email: [srishti.jethra@ficci.com](mailto:srishti.jethra@ficci.com)

Follow us: [f](#) [@](#) [t](#) [in](#)



- Intellectual Property Education Centre -

- ◆ Providing Intellectual Property Education certificate courses since 2012
- ◆ Courses conducted on online mode with 'recorded + live lectures'
- ◆ Study material developed and maintained by industry experts
- ◆ Internship opportunity with the FICCI IP Cell upon enrolling in our courses (subject to selection and availability of seats)
- ◆ More than 7000+ candidates have obtained FICCI IPEC certificates till date
- ◆ Currently offering 5 courses:
  - IPPRO (Basics of Intellectual Property)
  - IPCOMP (IP and Competition Law)
  - IPPROCOMM (IP Protection and Commercialization)
  - CCIPR (IPR and Pharmaceutical R&D)
  - Trademark Prosecution in India
- ◆ Courses pursued by students and working professionals from reputed law firms, corporates, and business enterprises.

FOR DETAILS



Visit our website [www.ficciipcourse.in](http://www.ficciipcourse.in) or write to us at [ipcourse@ficci.com](mailto:ipcourse@ficci.com)

**Srishti Jethra**  
*Assistant Director*

Email: [srishti.jethra@ficci.com](mailto:srishti.jethra@ficci.com)

## Madras High Court inaugurates Dedicated Bench to deal with Intellectual Property Rights Cases

Following the footsteps of the Delhi High Court, the Madras High Court has become the second court in India to establish a dedicated Intellectual Property (IP) division. The Madras High Court recently inaugurated its Intellectual Property Rights Division in accordance with the Madras High Court Intellectual Property Division Rules. This significant development comes in the wake of the dissolution of the Intellectual Property Appellate Board (IPAB) in Chennai. With the establishment of this specialized division, the court is now equipped to handle and expedite pending appeals and cases pertaining to intellectual property rights (IPR).

Source: <https://www.legal500.com/developments/press-releases/madras-high-court-intellectual-property-division-ipr-division-rules/>

## Delhi High Court restrains Tamil Nadu manufacturer from Using 'Monsoon Harvest' Mark in Trademark Infringement Battle

The Delhi High Court has issued an interim order in a trademark infringement suit, preventing a Tamil Nadu manufacturer from utilizing the 'Monsoon Harvest' mark while the case is pending. Justice Navin Chawla, leading the bench, noted that the plaintiff, Preetendra Singh Aulakh, holds the registered rights and prior usage of the 'Monsoon Harvest Farms' mark, which bears a striking resemblance to the defendant's product. The court found the marks visually and phonetically similar, concluding that attempts to differentiate them based on minor elements were insufficient. This ruling showcases the court's commitment to safeguarding trademarks and preventing consumer confusion within the food industry.

Source: <https://indiankanoon.org/doc/162516138/>

## Delhi High Court Rules in favor of Jaquar in ARTIZE Trademark Case

The Delhi High Court has decided in favour of Jaquar Company Pvt Ltd in a trademark infringement case against Villeroy & Boch AG. The court found that Villeroy & Boch's use of the word "ARTIS" for its sanitaryware products was deceptively similar to Jaquar's "ARTIZE" mark, and that there was a likelihood of confusion among consumers. The court also found that Jaquar had established a strong reputation for its "ARTIZE" mark, and that Villeroy & Boch's use of the mark would dilute that reputation. The court's decision is a significant victory for Jaquar, and it is likely to deter other companies from using deceptively similar marks.

Source: <https://indiankanoon.org/doc/162516138/>

## New Zealand loses Trademark Battle over Mānuka Honey to Australia

In a significant setback for New Zealand honey producers, the Intellectual Property Office of New Zealand, in the case of **Manuka Honey Appellation Society Incorporated v Australian Manuka Honey Association Limited [2023] NZIPOTM 19**, has ruled that their attempt to trademark Mānuka honey did not meet the necessary requirements. The ruling allows Australian beekeepers to continue using the lucrative name, as the term "Mānuka" was deemed descriptive. The longstanding dispute between the two countries over the use of the Mānuka name has caused contention for over a decade. Australian industry players celebrated the decision as a "common sense outcome" and expressed plans to expand international sales.

Source: <http://www.nzlii.org/nz/cases/NZIPOTM/2023/19.html>

## Right to novelize screenplay to vest with Satyajit Ray as the First Owner of Copyright: Delhi HC

The court ruled that the copyright for the 1966 film 'Nayak' belongs to the late filmmaker Satyajit Ray, as he was the author of the screenplay. The court also found that the novelization of the screenplay of the film by Bhaskar Chattopadhyay, and its publication by HarperCollins Publishers India Private Limited, does not constitute infringement of the plaintiff's copyright. The court's decision clarifies that the copyright for a film belongs to the author of the screenplay, and not to the producer. This is important because it ensures that the author's work is protected and that their legacy can be preserved.

The court's decision is also a setback for RDB and Co HUF, which had claimed that the copyright for the film vested with the producer at all times. The court rejected this claim, finding that the copyright for the film vested with Ray, as the author of the screenplay.

Source: <https://www.barandbench.com/news/litigation/satyajit-ray-first-owner-copyright-film-nayak-delhi-high-court>

## DC Comics secures Trademark Victory for Batman Logo in European Court

DC Comics emerged victorious in a trademark dispute against Italian clothing retailer Commerciale Italiana Srl over the iconic Batman logo. The retailer had argued that the Batman logo lacked distinctiveness, but European Court of Justice ruled in favor of DC Comics, affirming that the logo is indeed distinctive enough to warrant its European Union trademark. This ruling solidifies DC Comics' exclusive rights to the Batman logo within the European Union.

Source: <https://www.reuters.com/business/batman-wins-eu-trademark-dispute-with-italian-designer-2023-06-07/>

## Google updates Trademark Policy to address Over-flagging and Industry-wide Blocks

Google is updating its trademark policy to only consider complaints against specific advertisers and ads. This change is being made to address over-flagging and industry-wide blocks, which have caused problems for advertisers.

Under the current policy, all ads in an entire industry can be restricted from using trademarked material when a complaint is filed. This has led to some legitimate complaints being ignored, as well as advertisers being blocked from using trademarked material that they are legally entitled to use. The new policy (which came into effect from 24 July 2023) will allow Google to more quickly and easily resolve trademark complaints, while also providing advertisers more clarity and transparency. The updated policy will also help to protect legitimate trademark owners from infringement.

Source: <https://www.mondaq.com/unitedstates/trademark/1330696/the-new-google-ads-trademark-policy-goes-live-july-24>

## Mere Idea not Covered by Designs Act, Visual Test essential for Shape or Pattern Recognition

In a recent judgment on 3 July 2023, the Hon'ble High Court of Delhi dismissed an application and vacated the injunction in the case of **Jayson Industries vs Crown Craft India**. The plaintiff had filed a suit seeking a permanent injunction for infringement of design, claiming novelty in the shape, configuration, and surface pattern of a bucket, mug, and tub.



However, the court ruled that the plaintiff's design was not unique enough to warrant protection. The defendant successfully argued that the design features had been previously published and were not originated by the plaintiff. The court clarified that for a design to be eligible for protection, it must not be purely functional and must appeal solely to the eye.

Source: [https://www.livelaw.in/pdf\\_upload/judgment-dated-03072023-jaysonphp-480623.pdf](https://www.livelaw.in/pdf_upload/judgment-dated-03072023-jaysonphp-480623.pdf)

## Patents Act to prevail over the Competition Act on the issue of Exercise of Rights by the Patentee: Delhi HC

On July 13, 2023, in the case of **Telefonktiebolaget Ericson vs CCI**, a division bench consisting of Najmi Waziri and Vikas Mahajan delivered a ruling stating that the Patents Act, as a specialized legislation, holds primacy over the Competition Act, which is a general law pertaining to the exercise of patentees' rights. The court stated that the Competition Commission of India (CCI) cannot have jurisdiction over actions taken by an enterprise in exercising their patent rights. The High Court quashed the proceedings initiated by the CCI, clarifying that the ruling does not express an opinion on the merits of the claims made by the parties. The court emphasized that the Patents Act is a comprehensive code governing unreasonable conditions in patent licensing agreements and abuse of patentee status, and it prevails over the Competition Act in this regard.

Source: <https://www.sconline.com/blog/post/2023/07/15/delhi-high-court-patent-act-prevail-competition-act-legal-updates-patent-act-special-statute/#:~:text=Delhi%20High%20Court%20observed%20that,patentee%20under%20the%20Patents%20Act>

## Wipro restrained from using 'EVECARE' for its female hygiene products

The High Court of Delhi has impeded Wipro Enterprises from manufacturing, selling, or advertising its female intimate wash or any other product under the mark 'EVECARE'. This order comes after Himalaya Wellness Company filed a suit alleging trademark infringement on the grounds of passing off.

The trademark 'EVECARE' has been used by Himalaya with respect to its uterine tonic for nearly 24 years, while Wipro launched its product with the same name recently in 2021. The court observed that Wipro's use of an identical trademark could harm Himalaya's goodwill and reputation, as well as cause confusion and deception among customers. This is because both their products are similar and pertain to menstrual and reproductive health for women.

Source: <https://www.sconline.com/blog/post/2023/07/14/delhi-hc-restrains-wipro-enterprises-from-using-mark-vecare-female-menstrual-health-products/>

## Tata Sons Private Limited v Anjani Bagari & Anr.

20 October, 2022

Tata Sons Private Limited, the plaintiff, who owns and holds trademarks and copyrights for the well-known 'TATA' brand filed a suit for trademark infringement, dilution and passing off against the defendants; M/s Jay Maa Shakti Enterprises (defendant 1) who was selling sprayer pumps and knapsack sprayers under the brand 'TATA'S STAR SHAKTI' and the online portal [www.mazing.store](http://www.mazing.store) (defendant 2).

An ex parte ad-interim injunction was granted to the plaintiff, restraining the defendants from unauthorized use of the plaintiff's trademarks. Defendant 1 discontinued the usage of the impugned marks and stated no intention to use them in the future. The parties reached an amicable resolution, and the suit was decreed in favour of the plaintiff. The defendants agreed to the permanent injunctions requested by the plaintiff, including the removal of infringing references from Defendant 2's website. Defendant 1 was also directed to remove the 'TATA' label from their products and pay costs to the plaintiff. If the defendants violate the injunction in the future, the plaintiff can seek further remedies and damages.

Source: <https://indiankanoon.org/doc/71575089/>

## Mr. Raman Kwatra & Anr. vs Kei Industries Limited, 2023/DHC/000083

6 January, 2023

The Respondent has earlier filed the civil suit to refrain the appellant (Mr. Raman Kwatra & Anr.) from using any mark and KEI device similar to the respondent's registered KEI mark in relation to electrical goods, instrument or allied goods. The respondent alleged that the appellant's trademark infringed the already registered trademark includes word mark and device mark. The injunction was granted by the Ld. Single bench. The Division bench observed that the Ld. Single judge has erred in its application the 'principle of ejusdem generis', and the division bench dismissed the order of the single bench on the ground of dissimilar goods and held after a correct implementation of the above principle would mean to include only goods related to conduction and manipulation of electricity not the electricity appliances per se. With respect to the Respondent's claim of infringement of its trademarks on the above ground, the bench remanded the matter to the Learned Single Judge for a prima facie examination.

Source: <https://indiankanoon.org/doc/86425479/>

## Novartis Ag v. Nacto Pharma Limited & Anr. 2023/ DHC /113

9 January, 2023

The rights of patent titled "Novel Pyrimidine Compounds and Compositions as Protein kinase Inhibitors" was assigned to Novartis by the M/s IRM LLC (original patent holder). Tablet named "Certinib" was being sold by Nacto Pharma Ltd in the market. Plaintiff filed a suit for the permanent injunction and claimed that Nacto Pharma has infringed the patent rights by manufacturing and selling the said tablets. The Court held that the disclosure must be enabling in nature, which means any prior act must be teach not merely cover the derivation of compound. A discussion on Sec 64(1)(e) of Patent Act was made and it was found that Nacto has only cherry picked select substituent out of the myriad substitutions provided in the Markush Formula. The Court accordingly allowed the petition and refrained Nacto from using the said tablets.

Source: <https://indiankanoon.org/doc/75488122/>

## Subway IP LLC v. Infinity Food, 2023/DHC/000269

12 January, 2023

Subway IP LLC the 'Plaintiff' has filed the suit for the infringement of the registered trademark by the 'Defendant' alleging the deceptive similarity as per Section 29 of the Trade Mark Act 1999 - the alleged similarity between the marks of Plaintiff and Defendant, "SUBWAY v. SUBERB", "VEGGIE DELIT v. VEGGIE DELICIOUS" and "SUBWAY CLUB v. SUBON CLUB". The plaintiff also alleged that the defendant has used the identical color combination of Green and Yellow, the same feel and look in the restaurant and the other merchandises. The single bench of the court has denied on the contention of the plaintiff on relying upon the "anti-dissection rule". Aggrieved by this the plaintiff filed appeal in the said matter, wherein the Division Bench of the court set aside the order of the single bench and defendant were directed to change the name of the restaurant and other products having deceptive similarity. Accordingly, the matter was disposed of and various order were made for change in the website and the social media pages of the defendant's restaurant.

Source: <https://indiankanoon.org/doc/70970003/>

## Bundl Technologies Private Limited v. Anit Awattam and Ors,

23 January, 2023

Plaintiff approached the court after getting information about the infringement of registered trademark, and in the name of SWIGGY many innocent persons were duped by the said defendant on the false promise of being brought on the board of SWIGGY INSTA MART platform of the plaintiff. While granting the ex-parte relief to the party, the court also directed the GoDaddy to not register any domain name containing the SWIGGY. After this aggrieved GoDaddy.com (Applicant) here in this case filed an application to revise the order of restraining them to not register any domain name containing SWIGGY. While considering the request of the GoDaddy, the court held the disallowing to register any domain containing the mark SWIGGY, amounts to Global temporary Injunction. In order to protect the rights of both parties, the court revised the order and directed GoDaddy to inform the plaintiff before registering any domain name containing the mark SWIGGY.

Source: <https://lawbeat.in/sites/default/files/2023-01/Bundl%20Technologies%20Private%20Limited%20vs%20Anit%20Awattam%20alias%20Anit%20Gupta%20%26%20Ors..pdf>

## Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer Co. Ltd. V. Riddhi Siddhi Retail Venture 2023/DHC/886

7 February, 2023

The Plaintiff is the well-known business entity engaged in manufacturing of musical instrument, watches, calculators etc. Having various designs registered in his name, this case is related to the infringement of copyright in one of the registered designs for an "Electronic Keyboard" till September 2024 with effect from September 2009. The Defendant has copied the design of the keyboard of Plaintiff and contended that the design lacks novelty and is similar to design of various other keyboards in the market. The court discussed the related provision and referred the Section 22(3) and Section 19(1) of the Design Act 2000 which is related to the Piracy of registered design and Cancellation of registration respectively. And finally held that the defendant has failed to produce any design similar to the design of Plaintiff's before the September 2009 or any valid proof related to the lack of novelty and upheld the order of ADJ, allowed the petition of the plaintiff.

Source: <https://indiankanoon.org/doc/27191234/>

## Glaxosmithkline Pharmaceuticals Ltd. v Horizon Bioceuticals Pvt. Ltd & Anr. 2023:DHC: 2390

10 April, 2023

*"Horizon Bioceuticals restrained from using Comodex as the brand name for preparation of pharmaceuticals".*

There are two parties dealing in the pharma sector and Plaintiff registered the Cobadex as a Trademark and defendant started using the mark the Comodex Plus which is deceptively similar as per the contention made by the plaintiff, and there is infringement of the registered Trademark on that ground the injunction is demanded against the use of said product by the defendant. It was held that there is possibility to create confusion in the mind of people having average intelligence while encountering with the product of Plaintiff's Cobadex and defendant's Comodex Plus. Adding a suffix after the product name would not make it easy for customer to differentiate. Even the composition is same, just having an extra component Zinc in the COBADEx. Therefore, the court came to the prima facie conclusion that the defendant's mark infringes the right of plaintiff. An injunction was granted and the defendant and others on behalf of them restrained from using the same brand name.

Source: <https://indiankanoon.org/doc/131484013/>

## Hindustan Unilever Limited v Reckitt Benckiser

13 April, 2023

The Appellant (Hindustan Unilever Limited) is a company engaged in the business of manufacturing and selling various consumer products, including, toiletries, toilet soaps, washing soaps and detergents. It also manufactures and markets a toilet cleaner sold under the trademark Domex. The respondent (Reckitt Benckiser) is a company that specializes in a wide range of consumer and healthcare products, including antiseptic liquid, toilet care items, and pharmaceuticals. Since 2001, it has been manufacturing a popular toilet cleaner known as Harpic under its trademark in India. The appellant approached the Delhi High Court after being restrained from publishing print advertisements and video commercials comparing their product 'Domex' to respondents' Harpic. The court determined that the print advertisements suggested that using Harpic would result in a foul smell, while using Domex would produce a pleasant odor. Additionally, the video commercials featured a bottle shape resembling Harpic's trademarked design.

The Delhi High Court reiterated that while puffery and exaggeration in advertising are acceptable, claiming that a competitor's product is bad or harmful to customers is not permissible. Ultimately, the court found appellant's ads disparaging towards Harpic (violative of section 29(8) of Trademarks Act 1999) and dismissed its appeal, upholding the original order of the single judge bench.

Source: <https://www.sconline.com/blog/post/2023/04/17/delhi-high-court-upholds-single-judge-order-restraining-domex-from-airing-commercial-advertisement-disparaging-harpic-legal-updates-news-research-awareness-law/>

## Under Armour, Inc. vs. Aditya Birla Fashion & Retail Ltd.

20 April, 2023

The plaintiff (Under Armour), an American sportswear company argued that the defendant's (Aditya Birla) use of "STREET ARMOUR" and "ARMOUR" in relation to athletic equipment infringed on their registered marks, causing confusion or association between the brands. Plaintiff claimed that their reputation was well established as their website appeared as one of the first results for the google search of the word 'ARMOUR'.

The court rejected the defendant's argument that "ARMOUR" was a descriptive term, stating that it was not common to the trade and that even if it had a protective aspect, it could be considered suggestive and thus registerable. Thus, the defendants were restrained from dealing with any marks/labels which are identical or deceptively similar to the plaintiff's UNDER ARMOUR mark, as it violates s. 29(2)(b) of Trade Marks Act 1999.

Source: <https://indiankanoon.org/doc/168105264/>

## Digital Collectibles Pte Ltd. v Galactus Funware Technology

26 April, 2023

The Plaintiff, known by its trade name 'Rario' carries its business in the form of an online marketplace where digital player cards of cricketers are bought and sold by third party users in the form of digital assets (NFTs). It approached the Delhi High Court to seek injunction against the defendants, MPL and Striker which are online fantasy sports platforms, on account of unlawful use of player marks and other attributes of players.

The court acknowledged that the right of publicity cannot override the constitutional right to freedom of speech and expression under Article 19(1)(a). Additionally, since the information used by the defendants is publicly available, they were not granted exclusive rights over NFT technology. Considering that the defendants had been operating this game for six months, granting an injunction would harm their business and result in financial loss. As a result, the plaintiff's request for an interim injunction was denied.

Source: <https://www.sconline.com/blog/post/2023/04/29/delhi-high-court-refuses-to-grant-injunction-against-mobile-premier-league-and-its-app-striker-online-fantasy-sports-legal-updates-research-news-awareness-law/>