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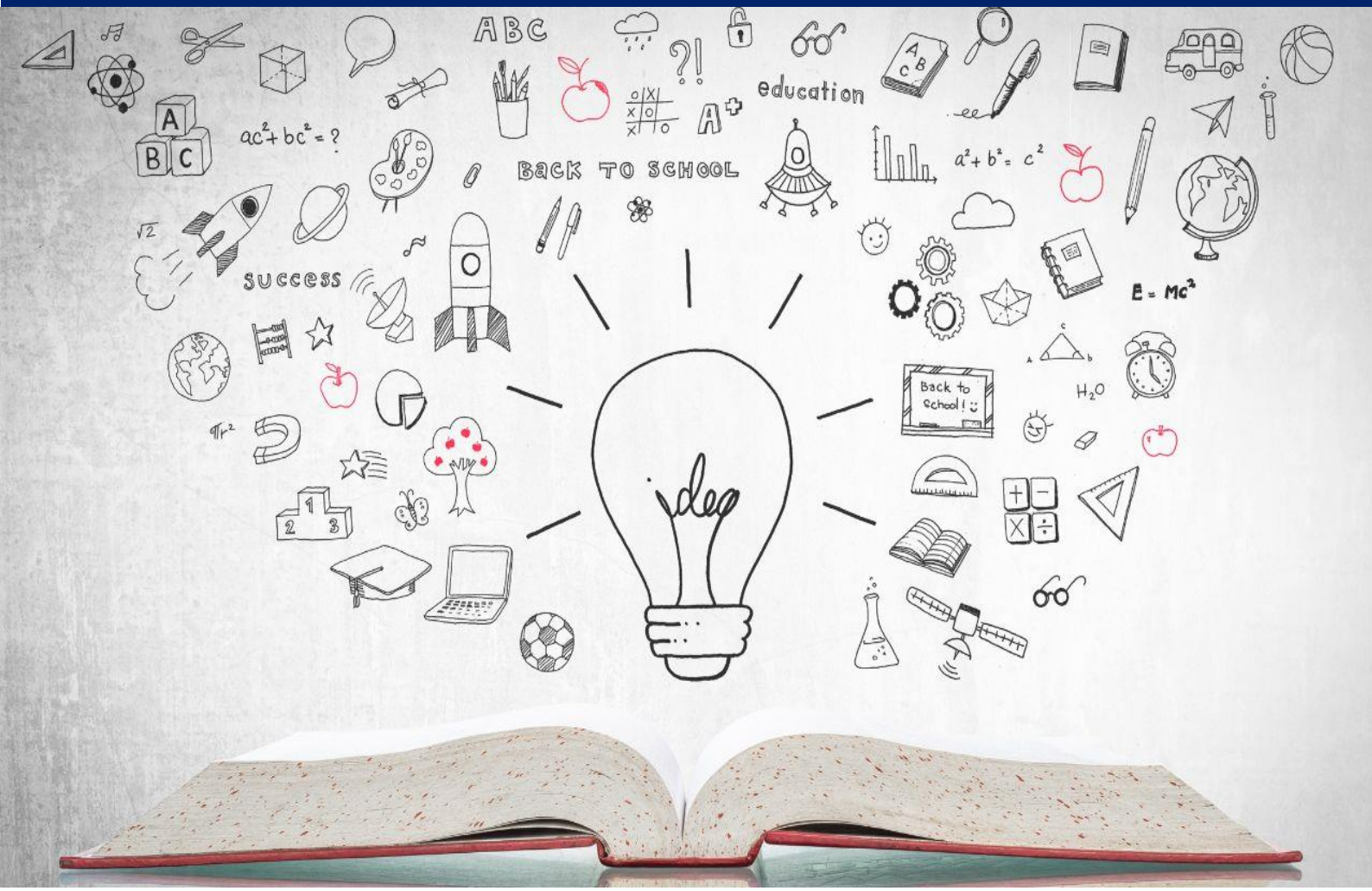
2022

The Year in Intellectual Property Law (Volume 1)

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Contents

3 General IP Initiatives

8 Notable Developments in Trademark

10 Notable Developments in Patents

14 Legislative Developments in IP

Introduction

This Report consolidates the crucial developments in the field of Intellectual Property (IP) law in India for 2022. It covers legislative and administrative initiatives along with other significant developments during 2022.

General IP Initiatives

A fundamental part of the ICT (Information and Communications Technology) ecosystem has always been R&D and innovation promotion, according to the *Ministry of Electronics and Information Technology (MeitY*). To do this, *MeitY* has been assisting the country's complete value chain of R&D operations, from the development of basic ICT components to complex product development.

Inventions' benefits may be lost if IP rights are not protected. As a vital component of innovation and scientific advancement, the protection of IP rights is quintessential. MeitY has recently made significant progress in the ICT-IPR ecosystem for creating, protecting, promoting, and commercialising IP and IP Rights.

Some of the major initiatives taken in the field of IP law are as follows:

1. A customised division for IPR-related support set up by MeitY:

This division has the following objectives:

- Creating awareness and facilitating support for IPR-related support services.
- Promotion of IPR in the ICT domain.
- Building a robust IP ecosystem through conducive infrastructures.

2. MeitY Initiatives:

The MeitY has undertaken several initiatives, which include:

- The inception of the Centre of Excellence in Intellectual Property.

- Contributing towards IP Facilitation Support to MeitY Societies and Grantee Institutions.
- Dispensing financial support to start-ups and SMEs for International Patent filing through SIP-EIT Scheme.
- Generating IPR Awareness via Financial and Monetary Support to Industry Bodies and Academia.
- Providing Help-Desk services for IPR.

3. Establishment of the Centre of Excellence in Intellectual Property (CoE-IP):

To protect the country's IP, MeitY has unveiled several initiatives over the years. As part of the TIDE 2.0 initiative, the Centre of Excellence in Intellectual Property (CoE-IP) run by CDAC Pune aims to provide value-added services, ensure adequate protection of IP and assist innovators, start-ups, and SMEs in understanding the value of IP. Over the next five years, CoE-IP will be implemented with a budgetary outlay of INR 323.77 lakhs. By creating a conducive environment for identifying, protecting, and monetising IP in ICT, this project hopes to encourage the growth of IP in the industry.

4. Support for International Patent Protection in E&IT (SIP-EIT) – II for Micro, Small, and Medium Enterprises and Technology Start-up Units:

MSMEs and start-ups seeking to secure IP Rights on a global scale may benefit from Support for International Patent Protection in E&IT-II (SIP-EIT-II). To promote innovation, recognise the value and capabilities of global IP, and establish competitive advantage, the SIP-EIT scheme provides financial support to MSMEs and tech start-ups for international patent filings. Over five years, it was mandated to support 200 international applications for ICT patents.

For eligibility, the applicant should be registered under the MSME Development Act, 2006, as amended from time to time as an MSME unit. Salient features of the scheme include:

- Financial assistance for the filing of foreign patents in the field of information and communication technologies.
- Reimbursement of up to Rs 15 lakhs per invention or 50% of the costs associated with filing a patent, whichever is less.
- The applicant may request assistance during the foreign patent filing process.

- The ability to apply online through the website.
- The scheme only accepts one application for international filing in all countries for a single invention.
- There is a limit of five applications per fiscal year from a single firm; this is a pure grant subject to MeitY approval, and the programme does not contemplate any share in the supported patent.

5. Patent Analysis and Management System (PAMS):

IP created in India must be urgently protected as IT and other technical sectors expand quickly. Both scientists and inventors need to safeguard IP. To maximise its benefits, it is essential to give the stakeholders comprehensive information on IP, from its creation to its monetisation.

The PAMS (Patent Analysis and Management System) portal offers a range of value-added IP -related services for innovators to leverage special skills and support the flourishing start-up ecosystem in the nation. Standing committed to extending all forms of collaboration—technological or otherwise—to help maximise the impact. These services raise awareness of IP, promote and safeguard innovations, and offer a wide range of value-added IP-related services. It's a one-of-a-kind chance to work directly with PAMS to develop a culture of IP identification, protection, and monetisation for your cutting-edge R&D inventions and results. The Centre of Excellence in Intellectual Property (CoE-IP) developed the Patent Analysis Management System (PAMS) platform to close this crucial gap.

6. IP Panorama:

CoE-IP has created an approachable multimedia e-learning toolbox that thoroughly understands the many categories of intellectual property rights. IP Panorama's main objective is to raise IP awareness among the targeted ICT players, such as start-ups, MSMEs, and academics. The 10 modules of IP Panorama focus on Indian IP laws and processes and explore different facets of IP rights.

7.Guidelines for Accessibility and Reasonable Accommodations for Persons with Disabilities:

Guidelines for Accessibility and Reasonable Accommodation for Persons with Disabilities (Guidelines) were published by the Office of Controller General of Patents, Designs, and Trademarks (CGPDTM) by order dated March 4, 2022. To facilitate interactions and practice

by PwDs with the IP Offices, these guidelines aim to harmonise how IP Offices operating under the auspices of CGPDTM (IP Offices) interact with the Rights of Persons with Disabilities Act (RPwD Act).

As a result of the regulations, CGPDTM takes the initiative to improve the accessibility of ICT-related trademarks, documents, and other online resources and systems. The CGPDTM has appointed a nodal officer (disability) temporarily to cater to the needs of agents, attorneys, and other PwDs.

In compliance with the Guidelines, screen readers, audio speakers, and braille printers have been asked to be installed at the pertinent sites to aid accessibility. After receiving an email from a PwD asking for assistance, the nodal officer would be provided with the same information with a particular reference to the Controller/Registrar/Examiner, who must hear the argument. Access to comparable facilities is available to patent and trademark agents with disabilities. The Guidelines provide that CGPDTM must provide appropriate accommodations in response to a PwD's in-advance request to the nodal officer.

The nodal officer must also consult with the pertinent Controller, Registrar, or Examiner to determine if the requested accommodation is appropriate. Before choosing the appropriate lodging, the nodal person must also address specific needs with the requestee and the applicable Controller, Registrar, or Examiner.

The nodal person may also provide PwDs enough time to transform documents into accessible versions in accordance with the Guidelines. After discussing with the Controller, Registrar, and Examiner, appropriate adjournments and extensions of up to 14 days may also be granted. Any time a request for reasonable accommodations is denied, the nodal officer must provide grounds.

The nodal officer shall resolve any complaints regarding accessibility and reasonable accommodations following a grievance procedure outlined in the Guidelines. If the problem is not fixed within ten working days, the seeker has the right to lodge a complaint with the CGPDTM. The relevant contact details for the nodal officer (disability) and CGPDTM are provided in the Guidelines.

8. Establishment of the Delhi High Court's Intellectual Property Division:

To handle both new IP matters and those that have been transferred to the Delhi High Court in anticipation of many IP appeals and expunction actions from the previous IPAB, the Hon'ble Chief Justice of the Delhi High Court announced the creation of the IP Division (IPD) in July 2022. The IPD Rules 2022 were distributed by the Delhi High Court on October 8 to get input from the bar members. These Rules were developed to regulate the matters filed before the IPD, specify the tactics and process the IPD will employ in exercising its original and appellate jurisdiction, and address new ad hoc petitions emerging from particular IP statutes. The following are some crucial elements of these trademark rules:

- The IPD may grant summary judgments without the need to submit a specific application based on guidelines similar to those found in Order XIIIA, Code of Civil Procedure, 1908, as applied to commercial lawsuits brought under the Commercial Courts Act, 2015.
- The IPD may grant summary judgments without the need to submit a specific application seeking summary judgment.

The IPD is now listing the cases transferred from the previous IPAB. These cases are now being filed before the Joint Registrar of the High Court. The rules defining how each of the High Courts in Bombay, Madras, and Calcutta's several IP Divisions would function have not yet been set.

Parliamentary Standing Committee's Report on IP Regime

The Rajya Sabha received the 161st Report from the Department of Parliamentary Standing Committee on Commerce, titled "*Review of the Intellectual Property Rights Regime in India*". The paper claims that IP is essential for a country's overall growth and development. It significantly emphasised improving and expanding India's IP environment by considering diverse activities on numerous fronts.

The Committee has made the following suggestions:

- To provide a thorough and up-to-date classification of goods and services to meet the demands of commerce and business. It has also been noted that such a classification needs to be well-specified and comprehensive to avoid ambiguity in its interpretation.

- To shorten the objection window for trademark applications from four to two months, the application will still be published in the Trademarks Journal for opposition-related purposes. This guidance aims to hasten the registration procedure and align it with other countries' timelines, including those in the UK, Spain, Belgium, the Netherlands, Luxembourg, South Korea, Japan, Denmark, and Singapore.

- To modernise the trademark offices and workplaces, "undertake digitalisation of work processes and promote e-services for the speedy redressal of work" by streamlining and simplifying the procedures involved in search and seizure operations under Section 115 of the Trademarks Act to expedite investigations.

- It has been suggested that a well-trained police officer specialising in stopping IP crimes be substituted for a deputy superintendent of police or another officer of a higher rank. The newly appointed officials ought to be charged with the added duty of upholding IP regulations in their particular regions. Additionally, to prevent data leaks, the Registrar of Trademarks should be connected with the police department using a special piece of software, and the opinion the police must get from the Registrar should be supplied within 48 hours. It will hasten the process of getting permission for searches and seizures.

- To create a special category for goods produced by Export Oriented Units (EoU) to give them priority and speed up the processing of their trademark registration applications, allowing them to export their products on time and contributing to the growth of the national economy.

Delhi High Court Clarifies the Criteria for Grant of Rights over the Shape of Products

Knitpro International appealed the Senior Examiner of Trade Marks' order which rejected the trademark application filed for the shape mark of a knitting needle because it lacked any distinctive character in the matter of *Knitpro International v. Examiner of Trade Marks*.

According to Knitpro, the knitting needle's shape is recognisable and has gained secondary significance. Knitpro's lawsuit was dismissed after failing to pinpoint the unique qualities of the needle that made it eligible for trademark protection. This led to the appeal being dismissed as withdrawn and the trademark application being refused.

Even though the action was withdrawn, the Delhi High Court examined the issue to establish the correct legal position with regard to form trademarks. The Court observed that the scope of trademarks under the Trade Marks Act, 1999 has been broadened to include the shape of goods, packaging, sound, smell, and mix of colours to the extent that these qualities serve as source identifiers.

The Court further stated that granting exclusivity over a product's design is complex. After reviewing several decisions rendered by courts in various nations about the applicability of shape trademarks, the High Court has come up with the following criteria for a product's shape to be given exclusive trademark rights over it:-

- Should not have the usual shape of the product;
- Should be immediately recognisable as originating from the source; and
- Should have acquired secondary importance.

This decision favors petitioners who sought exclusivity over the shape mark of their products, which have grown significantly in consumer familiarity and distinctiveness due to substantial and continued use in India.

Delhi High Court Notifies the High Court of Delhi Rules Governing Patent Suites, 2022

The Delhi High Court notified the High Court of Delhi Rules Governing Patent Suits 2022 with effect from February 24, 2022, providing the procedure for adjudication of patent-related actions. The High Court issued these Rules under Section 7 of the Delhi High Court Act, 1966, in conjunction with the provisions of the Tribunal Reforms Act, 2021, and the Patents Act, 1970.

A variety of topics are covered under these rules, including definitions, the content of pleadings, the first hearing of the case, the filing of affidavits of admission and denial and other briefs, the second and third case management hearings, mediation, the panel of Scientific Advisors, the final hearing, summary adjudication, and general clause.

Notably, the Delhi High Court has explained the various types of suits and their required documents, namely, Patent Suits, Claim Construction Briefs, Invalidity Briefs, Infringement Briefs, Non-Infringement Briefs, and Damages Briefs/Account of Profits Briefs, in its rules. Before these rules came into effect, the various suits pertaining to patent prosecution were provided in a short excerpt. To ensure that all relevant information is available when decisions regarding patents are made, several steps of the patent prosecution have also been described in-depth, along with the documents that must be submitted at each step. These have all clearly stated the standards in plaints, written assertions, counterclaims, replication claims, memos of parties, and affidavits.

The calendar of patent prosecution has also been established, with all of the necessary information provided for the initial hearing of a lawsuit, the first, second, and third case management hearings, the final hearing, mediation, and summary adjudication. The Panel of Scientific Advisors and the General Clause of the rules would be other pertinent provisions.

This law aims to make adjudication of patent lawsuits filed under the Delhi High Court's original jurisdiction simpler, more effective, and more efficient.

E-certificates Being Issued by the Design Wing of the Patent Office

On December 16, 2022, the Office of Controller General for Patents, Designs, and Trade Marks published a notice in the public domain regarding a design application and issuing an electronic certificate. Through their announcement, the public and stakeholders were aware that the Design Wing of the Patent Office has begun issuing e-certificates since November 1, 2022. The applicants may fill out forms and submit documents through a designated online portal.

By taking this action, the Patent Office has advanced toward creating a "Digital India," guaranteeing that the services are accessible to the general public online, speeding up the registration of designs while decreasing backlogs and increasing the number of design filings each year.

Economic Advisory Council's Report on Intellectual Property

The environment for submitting patent and trademark applications in India was described in a report released by the Economic Advisory Council (EAC) in August 2022. Significant reform suggestions are also included in the Report to improve the ecosystem's usability and efficiency.

It adds that there has been a discernible increase in the number of trademark registrations, trademark applications, and patents filed by and given to Indian residents, as well as the number of patent applications submitted, patents issued, and patent registrations.

In India, the survey claims that decisions about patent applications are made on average in 58 months as opposed to 20 months in China and 23 months in the US. The Report points out that while the average time it takes to grant a trademark (18 months) is comparable to that of other countries, this can rise to 5–10 years if a trademark opposition is brought against a particular application.

According to the Report, the delays are brought on by:

- Lack of staff in top positions at the Trademark Registry and the Patent Offices.
- Onerous compliance requirements at each stage of the patenting process, such as regularly submitting information on the status of foreign patents.
- Lack of a set schedule for filing patent applications, delays in filing trademark applications during the examination, and opposition stages.

The Report suggests modifications like these:

- Increasing the workforce by contractually recruiting workers.
- Setting clear dates for the different phases of patent prosecution and adhering to them for hearings at the Patent Offices.
- Automating notice delivery to parties.
- Ensuring strict adherence to the deadlines set forth by the Trade Marks Rules, 2017.
- Eliminating compliance requirements for periodic information submission by patent applicants.
- Letting applications lapse when there is no action by the trademark applicant.

Pre-grant oppositions have their issues, although there is no time limit. The now-defunct IPAB and the Bombay High Court adopted a stringent approach to counteract the delays in the examination process brought on by pre-grant oppositions by reading extraneous credentials within the scope of "any person" under Section 25 (1) (pre-grant opposition provision). Such an interpretation would also be damaging to the law since a flawed evaluation system may be more than just one cause of these delays.

In *Natco Pharma Ltd. v. UoI (July 2022)*, the Delhi High Court addressed delayed exams and said that blame could not be placed on a single cause or source. The applicant made repeated adjustments in response to each objection, which further lengthened the process, the Court found when determining the pre-grant oppositions' contributions to the delay. The Court took this into account and mandated that any modifications made to the application to keep it current must be communicated to the pre-grant opposition.

MSF identifies two instances where the "no time cap on objection" technique has assisted in addressing more significant public health issues by highlighting the patentees' attempts at "evergreening". The article begins by describing how Johnson and Johnson's evergreening patent application for the brand-new DR-TB drug bedaquiline encountered pre-grant opposition years after the application was filed, which was crucial in demonstrating that the subject matter was not novel.

Second, MSF submitted its pre-grant opposition to Pfizer's PCV-13 vaccination years after filing a patent application. The commentary emphasises the critical point that applicants may purposefully conceal the pharmaceuticals' international nonproprietary names (INNs) behind ambiguous and obscure phrases, making it time-consuming to look into them, assess their innovation, and take into account any potential antitrust implications. Therefore, completing this examination within the allocated six months and submitting a strong objection becomes somewhat of a colossal task.

Therefore, setting a deadline without taking into account the obstacles and filing requirements for pre-grant opposition may not be the wisest course of action (likely in line with foreign standards). This "one size fits all" approach also fails when the patent-rich nations that served as its models start to lament the poor quality of their patents due to increased applications. Given India's history of issuing an alarmingly high number of erroneous patents, proposals to restrict aiding mechanisms and make them more difficult to use are in no way a cure.

One of the most significant and maybe most frequently used TRIPS flexibilities in IP regimes worldwide has historically been pre-grant opposition. The Delhi High Court particularly mentioned them as a tool for the examination process in M/S Ucb Farchim Sa vs M/S Cipla Ltd. & Ors. Any attempt to undermine it under the premise of streamlining the procedure must be justified by a compelling argument and reliable empirical evidence; otherwise, it will only exacerbate the already pressing problems in the Indian patent ecosystem.

Jan Vishwas (Amendment of Provisions) Bill, 2022 Introduced by the Ministry of Commerce and Industry

This Bill modifies 42 Acts to enhance the ease of doing business and lessen the burden of compliance on people and businesses. Certain Acts have decriminalised offences by substituting a penalty for a fine.

Any person falsely representing an article as being patented in India may be fined up to one lakh rupees under Section 120 of the Patents Act. A penalty of up to 10 lakh rupees may be imposed in place of this punishment under the Jan Vishwas (Amendment of Provisions) Bill, 2022. A daily fine of one thousand rupees will be added in case of a continuing claim.

Conclusion

The government has launched several initiatives and schemes to create awareness about intellectual property to streamline the protection of IP rights and to promote creations and inventions. If implemented, the recommendations by the Parliamentary Standing Committee and the Economic Advisory Council can effectively tackle the shortcomings of the current mechanism, and the digitisation of IP processes will minimise human intervention.

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