

## IP Hotline

March 02, 2015

### THE WAY FORWARD: LEARNINGS FROM IMPORTANT INTELLECTUAL PROPERTY CASE LAWS & DEVELOPMENTS FROM 2014

The Intellectual Property (“IP”) regime in India has undergone various developments in the year 2014 with respect to laws and policies. At the very outset, two note-worthy mentions are the constitution of the joint India - US working group on intellectual property rights (“IPR”) and a national IPR Think Tank group set-up to draft a national IPR policy. One of the objectives, *inter alia*, of setting up the IPR Think Tank group was to identify areas in IPRs where a further study needs to be conducted and to furnish recommendations to the Ministry of Commerce and Industry.<sup>1</sup> This initiative taken by the Indian Government is seen as a proactive step and one in the direction of public interest.

With the new Narendra Modi-led Government taking over the realms in 2014, there has been much debate and expectations over an improved and refined intellectual property law regime in India, aimed at achieving equilibrium between protecting the IPRs of the inventor and catering to public interest at large.

One important topic on the agenda during the recent US President Barack Obama’s visit to India in January was on Intellectual Property issues including piracy of films and software. The joint statement issued by both countries stated that there will be enhanced engagement on Intellectual Property Rights (IPR) in 2015 under the High Level Working Group on Intellectual Property, to the mutual benefit of both the countries. This statement has received mixed reactions from various facets of the industry and society. Health activists in the country have become suspicious that India might agree to TRIPS-Plus requirements whereas there have been positive overtones received by this initiative from the pharma industry in India.<sup>2</sup> It might be a bit pre-mature to raise concerns based solely on this statement. However, it is good to see that both governments have recognized IPR as an important policy issue that needs to be looked at holistically to stimulate foreign investment into India.

The need for robust IP policy has been long felt. The first draft of the IPR Policy was released on December 19, 2014 and highlighted the various objectives of the government to maximize Intellectual Property rights and enhance innovation in the various fields that may be able to generate Intellectual property rights. The national IPR Draft Policy has already seen 2 rounds of consultation. Currently, it is still at the stage of formulation as various stakeholders have been invited to provide feedback towards such a policy and further steps shall be taken by the Government after taking into consideration the comments of the various stakeholders. It is interesting to see that the draft National IPR policy advocates the importance of protecting trade secrets in India. Currently, trade secrets, a recognized form of IP, are not protected by statute in India and have and continue to be enforced contractually. Various courts have interpreted and given meaning to the term ‘trade secret’ and have applied common law principles in determining matters pertaining to breach of trade secrets.

During the course of 2014, the Indian Patent Office has released the guidelines pertaining to issuance of pharmaceutical patents. These guidelines were issued with the intention of incorporating various decisions of the court so as to assist the Patent Office in establishing uniform standards of patent grant and examination. These guidelines are likely to bring in uniformity to examinations of the patent applications across the patent offices in India and as a result will also give the patent applicants more certainty on how their application will be examined by the Indian Patent Office.

On the registration front, patent filings have increased by 10.56% from 2008-2009 to 2013-2014. Approximately 8,000 industrial design applications are filed annually. Two hundred registrations have recently been granted with respect to geographical indications and 8,000 applications have been filed for plant varieties since 2007. Furthermore, the first registration under the Semi-Conductor Integrated Circuits Layout Design Act, 2000 was granted in October, 2014.<sup>3</sup>

Furthermore, various administrative and procedural mechanisms have also been improved in the field of intellectual property law. The infrastructure of the Indian Patent Office has been improved greatly wherein the government has invested significant amounts for ‘Modernization and Strengthening of Intellectual Property Offices’ scheme, so as to develop facilities for proper management of International Searching Authority / International Preliminary Examining Authority operation under the Patent Cooperation Treaty.<sup>4</sup> Furthermore, a new payment gateway has been set up integrated to the e-filing system of the IP Office which enables payment using internet banking of more than 70 banks as opposed to 2 banks initially. Along with development of these mechanisms, a facility of “stock and flow” which existed for trademarks has also been extended to patents.

The Indian IPR laws are TRIPS compliant. However, the issues faced by business from India or outside India are perceived lack of robust and fast mechanism for enforcement. There are no specialized courts or fast track forums for enforcing IPR’s in India. The issue really is in relation to piracy and counterfeiting arising out of fly by night operators.

The position on the protection and enforcement of trademarks and copyrights through court system in India has been

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commendable. Courts have been adeptly equipped to examine and analyze the nature and extent of a trademark or copyright with that of its proprietor or author respectively, and grant relief, whether interim or permanent to protect such rights. This has given a sense of comfort to various players in the Indian market, whether it be a stalwart retail brand in protecting its brand logo, or a film production company in protecting its copyright and broadcasting rights in an upcoming film. The Delhi High Court has been in the forefront of granting quick interim relief to protect the interests of IPR holders. In many cases the courts have granted ex-parte injunctions also, which is absolutely essentially in enforcing IPR especially in piracy cases. The Delhi High court over the past ten years has been instrumental in developing a vast jurisprudence IPR due to the reasoned decisions passed by the High court. This is also very much evident from the fact that a significant number of important IPR decisions have been passed by the Delhi High Court.

Please [click here](#) for our analysis and insights on select developments, decisions of various High Courts in India and the Supreme Court of India pronounced in the year 2014.

– Aaron Kamath, Ajay Chandru, Aarushi Jain, Rakhi Jindal & Gowree Gokhale

You can direct your queries or comments to the authors

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<sup>1</sup> Press Release dated October 22, 2014 Available

at: [http://dipp.nic.in/English/acts\\_rules/Press\\_Release/ipr\\_PressRelease\\_24October2014.pdf](http://dipp.nic.in/English/acts_rules/Press_Release/ipr_PressRelease_24October2014.pdf). Last accessed: February 16, 2015.

<sup>2</sup> <http://www.ip-watch.org/2015/01/31/special-report-will-india-bend-to-us-pressure-on-ip-rights/> Last accessed: February 17, 2015.

<sup>3</sup> National IPR Policy submitted by the IPR Think Tank, dated December 19, 2014. Available at: [http://dipp.nic.in/English/Schemes/Intellectual\\_Property\\_Rights/IPR\\_Policy\\_24December2014.pdf](http://dipp.nic.in/English/Schemes/Intellectual_Property_Rights/IPR_Policy_24December2014.pdf). Last accessed: February 15, 2015.

<sup>4</sup> *New Payment Gateway Integrated to e-Filing System Launched*, dated September 10, 2014. Available at: [http://www.business-standard.com/article/news-cm/new-payment-gateway-integrated-to-e-filing-system-launched-114091000937\\_1.html](http://www.business-standard.com/article/news-cm/new-payment-gateway-integrated-to-e-filing-system-launched-114091000937_1.html). Last accessed: February 15, 2015.

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