



Author:
Daksh Kumar, Partner

On World IP Day (26 April 2021), Kochhar & Co. IP Practice Group is pleased to share a snapshot of some of the recent landmark judgments and legislative updates in the Indian IP landscape.

JURISPRUDENCE

Amazon Seller Services Pvt. Ltd. & Ors. v. Amway India Enterprises Pvt. Ltd. & Ors. (Delhi High Court)¹

The Division Bench of the Delhi High Court reversed the prior order which had restrained various e-commerce platforms like Amazon, Flipkart and Snapdeal - from enabling sale of products of 'direct selling' companies without their consent. The Court held that the Direct Selling Guidelines of 2016 are not the law and are only advisory in nature. Further, applying Section 79 of the Information Technology Act, 2000 it was observed that the mere fact that the online platforms may have knowledge of the Code of Ethics of the Direct Selling Entities, is insufficient to establish a claim of tortious interference.

Monsanto Holdings Pvt. Ltd. & Ors. v. Competition Commission of India (CCI) (Delhi High Court)²

The core issue comprised the overlap of jurisdiction under the Patents Act and the Competition Act in case of patent licensing terms that may be anti-competitive.

The court rejected the argument that the specialized regulator, i.e., the contention that the Patent Controller would be the first to determine whether the agreements resulted in abuse of rights under the Patents Act before the CCI could look into it, was rejected.

Further clarification was provided that patents are not an industry in themselves and the grant of a patent merely recognizes an IP right. Thus, Section 3(5) of the Competition Act does not enable an IP right holder to include onerous conditions.

Astrazeneca v. Intas Pharma Ltd. & Alkem Labs Ltd. & Astrazeneca AB & Anr. v. Emcure Pharma Ltd. & MSN Labs Ltd. (Delhi High Court)³

An order had already been passed against generic manufacturers (of cardiovascular diseases drug Ticagrelor) stating that despite the drug being covered by a previous genus patent, since it is produced and marketed under a species patent, the patentee is entitled to enforce the later species patent. This decision was controversial and contradictory in nature. Later, towards the end of 2020, the Court denied an interim injunction for the manufacture of generic medicines whose subject matter was alleged to be disclosed by a species patent, whereas they had already been covered in an expired genus patent.

In this well-reasoned judgment, the court reiterated that there cannot be any dichotomy between disclosure and coverage. It also noted that owing to the COVID-19 pandemic, patients already suffering from diabetes are at a greater risk of contracting coronavirus and thus, affordable diabetes medication was in public interest.

Allani Ferid v. Assistant Controller of Patents & Designs (IPAB)⁴

In a noteworthy and rare instance, the IPAB granted a software patent on a 'method and device for accessing information sources and services on the web' to a Tunisian citizen Ferid Allani; that too after almost twenty years had lapsed since the original application was filed at the Patent Office. The core issue pertains to the phrase "per se" in section 3(k) of the Patents Act, 1970 which earlier barred computer programmes from being patented. The grant of this patent has opened the field for patent applications related to artificial intelligence, blockchain technologies and other digital products which may computer programme based.

LEGISLATIVE DEVELOPMENTS

Copyright

The erstwhile Copyright Rules, 2013 which formed part of the procedure prescribed under the Indian Copyright Act, 1957 now stand amended w.e.f. 30 March 2021 in the form of **Copyright (Amendment) Rules, 2021 ("CAR")**. The prime objectives of the said amendment:

- Parity of the copyright rules with the current statutory framework
- Harmonization with Finance Act, 2017
- The title 'Copyright Board' substituted with 'Appellate Board' (Chapter II)
- Compliance with advancements in technology especially in the digital and cyberspace
- Facilitating ease in trade and commerce through accommodation of software
- Improve intersection of commerce and legal framework
- Precursor to the amendment in the Copyright Act, 1957.

¹FAO(OS) 133/2019 (DHC)

²W.P.(C) 1776/2016 (DHC)

³CS (COMM) 410/2020 (DHC)

⁴OA/17/2020/PT/DEL

Patent

Govt published revised Form 27 (patent working statement) as part of the Patent (Amendment) Rules, 2020 which has done away with the requirement of submitting the following information:

- Quantum of the patented product manufactured in or imported into India;
- Country-wise details of the patented product imported into India;
- The licenses and sub-licenses granted during the year;
- Statement on whether public requirement has been complied at reasonable price.

Daksh Kumar is an IP Partner with Kochhar & Co. Delhi. He may be reached at delhi@kochhar.com