LEGAL EAGLE

INTELLECTUAL PROPERTY LAW

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MESSAGES

Namit Bajoria
President, MCCI

In the ever-evolving landscape of technology and innovation, artificial intelligence (AI) has not only transformed industries with its profound impact but also posed significant challenges to existing legal frameworks. Amongst these, intellectual property (IP) law stands at the forefront of adaptation and reform. The intersection between AI and IP necessitates new strategies to protect and regulate creations in the age of machine intelligence.

This issue of the Council on Legal and Corporate Governance of the Chamber is on the Impact of Artificial Intelligence on Intellectual Property Law and how Intellectual Property protection can be strengthened through Blockchain.

I am happy to present this value-added Issue to all.

Mamta Binani
Chairperson,
Council on Legal and Corporate Governance,
MCCI

The intersection between AI and IP law involves a multitude of complex issues, ranging from copyright and patent disputes to questions about authorship and ownership. AI technologies also offer powerful tools for identifying and preventing IP infringement. Understanding how AI transforms intellectual property law is essential for lawmakers, legal professionals, innovators, and anyone interested in the evolving relationship between technology and legal rights.

Blockchain technology is emerging as a powerful tool to address longstanding challenges in the realm of intellectual property (IP) protection and has the potential to bring transparency, security, and efficiency to the field of intellectual property protection.

We are proud to publish the Newsletter of our Council for this month on The Impact of Artificial Intelligence on Intellectual Property Law and how Blockchain Technology can strengthen Intellectual Property protection.

Hope this Issue will add value to our beloved readers.

ARTICLE I

THE IMPACT OF ARTIFICIAL INTELLIGENCE ON THE INTELLECTUAL PROPERTY LAW

Introduction

Intellectual Property **("IP")** law has traditionally regarded the preparation of patent applications as a difficult and time-consuming task. These papers have always needed to be carefully crafted using a combination of technical know-how, legal acumen, and creative thinking. However, the development of Artificial Intelligence **("AI")**, in particular generative AI, a sort of machine learning that can create text, video, graphics, and other types of material, is heralding a shift in this area. Key consequences of generative AI on the patent drafting process are underlined, including automation of bespoke writing material and the resulting alteration of patent attorneys' responsibilities.

Three main parts make up the patent drafting process: custom writing content, mechanical writing content, and prewritten material. Bespoke writing, the term for the unique text produced for each individual patent application, frequently requires a profound comprehension and interpretation of the innovation. Translation of one kind of content into another is referred to as mechanical writing. For example, prose is used to support literal patent claims in the specification. While the standard language that has been used in numerous applications is included in canned material.

AI is the ability of a computer to understand signals through input from preprogrammed information and respond in the desired manner as output. In other words, it exhibits human-like qualities including thinking, learning, planning, and creativity. It is the capacity of a computer to mimic human logic. As a result, this machine will act and think like people, and it will be able to decide depending on the information supplied into its systems. As a result, AI is:

- an object created by humans that possesses intelligence;

- capable of doing tasks intelligently without the need for human intervention.
- capable of rational, humane thought and action.

In a broad sense, machine learning is a subset of AI in which both components work together to produce the desired results. The foundation of AI is machine learning, which receives massive amounts of data and later performs a specific task when instructed. Machine learning applications include translating between languages, captioning photos, and document scanning.

If one really wishes to understand the mechanics of AI, exploration of the elements of AI and how those elements could be applied to the various business sectors becomes imperative. In light of the same, let's first understand the essential components of AI, which are as under:

1. **Machine Learning:** Through machine learning, a machine may learn to evaluate data and make predictions based on the past. It consequently identifies historical data and statistical methodologies to let computers learn and make decisions without being explicitly programmed or with the least amount of human input. As a consequence, computers no longer require much human input to make judgments, recognize patterns in data, and gain insight from them.
2. **Deep Learning:** Deep learning is an approach to machine learning. In turn, a computer model may quickly be trained to carry out classification tasks utilizing pictures, text, or speech. In order to emulate biological neural networks seen in the human brain, artificial neural networks were created. To create a single output from several inputs, artificial neural networks with multiple layers collaborate. The activities that the machines perform are reinforced both positively and negatively as they learn, and in order to advance, this process must be continually processed and reinforced.
3. **Neural Networks:** Neural networks function similarly to the network of neurons that receives and processes information in the human body. A neural network is a group of algorithms that seeks to find underlying links in a set of data by employing a method that is similar to how the human brain functions. Data classification and categorization using neural networks is their primary function.
4. **Natural Language Processing (NLP):** The field of NLP focuses on the reading, understanding, and interpretation of languages by machines. When a computer fully understands what a user is attempting to communicate, it responds properly. In order to get an intelligent device, such a robot, to obey your directions, NLP is required.
5. **Computer Vision:** Machines are trained and equipped to understand the visual environment using computer vision. The goal of computer vision is to develop automated systems that can comprehend visual data (such as images or movies) in a manner that is comparable to how people do. Computer vision aims to teach machines how to comprehend and interpret pictures pixel-by-pixel or to try to understand an image by dissecting it and looking at different angles of the objects in it. As a consequence, the computer is better able to categorize and learn from a set of photographs, producing results that are more accurate based on

existing knowledge.

6. **Cognitive Computing:** AI also requires cognitive computing, which is a crucial element. Its goal is to emulate and enhance human-machine interaction. Through the use of human language and visual cues, cognitive computing aims to simulate human mental processes in a machine. In order to give robots human-like behaviours and information-processing skills, cognitive computing and artificial intelligence work together. Cognitive computing uses human behaviour and reasoning as a model to tackle complicated problems. Applications for cognitive computing include speech recognition, sentiment analysis, face detection, risk assessment, and fraud detection, to name a few.

Types of AI based on capabilities:

To grasp the intricate relationship between AI and highly intelligent beings, artificial intelligence can be broadly divided into three capability types:

- **Artificial Narrow Intelligence (ANI) or Narrow AI:** This phrase broadly refers to the execution of just one or a few specific tasks with the intention of satisfying and attaining a finite set of objectives. It is more practical in that it works to complete one task at a time rather than a series of tasks. Narrow AI is a type of machine learning that individuals use more frequently and that modern culture has embraced. As it solely addresses one area of intelligence, it is typically referred to as weak AI like utilizing Apple Siri, Google Maps to find destinations, or Spotify's suggested music playlist.
- **Artificial General Intelligence (AGI) or General AI:** General AI has human-like abilities to learn, think, and carry out a wide range of tasks. Designing artificial general intelligence aims to produce computers that can carry out several functions and serve as realistic, intelligent companions for people in daily life. The foundation for General AI might be constructed using technologies like supercomputers, quantum hardware, and generative AI models like ChatGPT, albeit this is still a work in progress. It provides cutting-edge problems and solutions, but shielding someone from it might be expensive. As a consequence of its ability to learn and acquire a wide range of human-like talents, general artificial intelligence will eventually become competitive on par with humans.
- **Artificial Super Intelligence (ASI) or Super AI:** Science fiction only gets close to super AI. Strong AI should be capable of thinking, reasoning, puzzle solving, making judgments, planning, learning, and communicating on its own, among other crucial traits. It is predicted that once AI reaches the general intelligence level, it will quickly learn at a rate so quickly that it will surpass mankind in both knowledge and power. Numerous scientists and academicians have issued warnings that when AI reaches a certain level, it may someday replace people with computers, enslaving people or rendering them unemployed. The predicted performance of these robots spans a wide range of fields, including arithmetic, science, medicine, hobbies, and a variety of other activities. A fully self-aware AI system and other autonomous robots would be built on ASI.

Role of AI in the judicial system:

Let's examine the advancements in technology that has been made possible with AI:

- **Due Diligence:** AI can assist in automating the evaluation of massive amounts of documentation, spotting significant legal risks and issues, and producing due diligence reports.
- **Legal research and analysis** - AI-powered technologies can help with legal research by examining a variety of legal material, such as statutes, court decisions, and legal opinions. This will help lawyers and judges make decisions more quickly and save time and effort by eliminating the need for manual investigation. AI can speed up time-consuming tasks like contract evaluation, background research, and e-discovery.
- **Automated papers** - Businesses can utilize AI to build repositories of available papers with a single click, as well as standard templates. It might free up solicitors to work on other complicated and significant matters.
- **Decision-making** - AI may enhance human decision-making processes by offering data-driven insights and analysis. AI systems can support human decision-making by analyzing massive amounts of data quickly and seeing patterns, which improves outcomes.
- **Intellectual property** - AI may assist with patent analysis, trademark searches, and infringement identification, making it simpler for lawyers to handle the intellectual property portfolios of their clients.
- **Contract evaluation and analysis** - Legal professionals have a responsibility to comprehend the conditions, risks, and possibilities of various agreements. You may compare the key provisions, obligations, risks, and opportunities in your contracts using AI to industry standards, best practices, and benchmarks.
- **Litigation prediction** - AI systems can analyze historical data and patterns to estimate case outcomes and provide opinions on the likelihood that legal conflicts will be successful. This can assist lawyers in developing efficient strategies, controlling client expectations, and even lessening the workload on the courts by promoting settlement discussions.
- **Virtual assistants and legal chatbots:** Intelligent solutions that can be developed to assist potential litigants in making better judgments about their legal rights and in quickly and economically acquiring basic legal services include legal chat bots and virtual assistants. A bot may provide interactive toolkits that outline the appropriate next actions, such as compiling information for the issuance of legal notifications, filing FIRs, and even forecasting success based on the evidence at hand and the pertinent body of law.
- **E-Courts:** The "National Policy and Action Plan for Implementation of Information and Communication Technology **"ICT"** in the Indian Judiciary - 2005" served as the foundation for the 2013 introduction of the "E-Courts Project". The goal of this portal was to modernize the Indian judiciary by empowering the courts

with ICT. Citizens from any district or taluka court in the nation can access case information through E-Court, a centralized platform for subordinate courts. The portal offers case status, cause lists, orders, and judgments.

- **Supreme Court Vidhik Anuvaad Software "SUVAS":** The SUVAS portal, an AI-trained machine translation tool, was introduced in the year 2019. This tool, which was created specifically for the judicial sector, can translate English court orders, judgments, and other legal documents into nine regional scripts, including Marathi, Hindi, Kannada, Tamil, Telugu, Punjabi, Gujarati, Malayalam, Bengali, as well as the other way around. This application uses natural language processing (NLP), which facilitates and speeds up the translation of court orders and decisions.
- **SCI-Interact:** The Supreme Court created a programme named "SCI-Interact" in 2020 to make each of its 17 benches paperless. With the aid of this software, judges can retrieve documents, annexes to petitions, and take notes electronically.
- **Supreme Court Portal for Assistance in Court's Efficiency (SUPACE):** The debut of SUPACE, an AI-driven research platform created to simplify research for judges and reduce their burden, took place in the year 2021. The Supreme Court plans to use this gateway to use machine learning to handle the massive amounts of data it receives when cases are filed. The several procedures that this portal focuses on include data mining, legal research, predicting case progress, etc.

To give an idea, the Punjab & Haryana High Court recently employed ChatGPT, an AI technology, to make a bail decision in March 2023. A bail plea for an accused who was detained in June 2020 and charged with rioting, criminal intimidation, murder, and criminal conspiracy was being heard by a bench chaired by Justice Anoop Chitkara. The bench requested ChatGPT's opinion regarding global legal precedent governing the granting of bail in cases where the accused has been accused of a crime involving cruelty. The bench denied the accused's request for bail after hearing from ChatGPT. Death is cruel in and of itself, but if cruelty results in death, then the situation changes, the bench ruled in its order. The conditions of bail also vary when a bodily assault is carried out brutally. This is the first time in India that a bail application has been decided upon through ChatGPT.

Global usage of AI in the judicial system:

- The Correctional Offender Management Profiling for Alternative Sanctions **("COMPAS")**, a case management and decision-support tool, is used by U.S. courts to assess the likelihood of recidivism and, as a result, to assist them in deciding whether or not to grant parole. COMPAS generates a risk score based on data from 137 interview questions and publicly available criminal profile information. Relationships, way of life, personality, family background, level of education, and prior criminal activity are all included in the questionnaire. Defendants are assigned scores ranging from 1-4 (Low Risk), 5-7 (Medium Risk), or 8-10 (High Risk), depending on the risk level.
- The Harm Assessment Risk Tool, or "HART," is used in the UK to determine which offenders are most likely

to commit new crimes and to suggest the appropriate amount of prison supervision for each of them. This AI-based approach examines 104,000 records of people who were detained and processed in Durham custody suites during a five-year period, with a two-year follow-up for each custody decision. The HART tool is intended to categorize offenders as either high risk (highly likely to commit a new serious offence like murder, severe violence, sexual crimes, or robbery), moderate risk (likely to commit a non-serious offence), or low risk (unlikely to commit any offence) over the course of the next two years.

- Brazil is deploying the AI system VICTOR to do initial case analysis in order to reduce the workload on the court. The programme offers document analysis and methods for natural language processing to examine the cases submitted to the Brazilian Supreme Court.
- The Abu Dhabi Judicial Department (AJDJ) has been utilizing technology in the Middle East in collaboration with the business sector as part of their "Justice Intelligence" Project to predict the possibility that cases would be settled. The technologies in use can predict whether a settlement would take place up to 94% of the time.
- In Malaysia, AI is being utilized to help in sentence decisions. The AI Sentencing System (AISS) was developed in collaboration with the Malaysian e-court systems SAINS, Sabah, and Sarawak. The Malaysian court used the Dangerous Drugs Act of 1952 to find two defendants guilty in February 2020. The Sessions Court and Magistrates Court in Peninsular Malaysia will adopt AI-based sentencing standards, according to a press statement from the Office of the Chief Registrar of the Federal Court of Malaysia on July 22, 2021.
- In December 2021, China became the first country in the world to establish an AI-equipped judge, who is said to provide 97% correct rulings following oral arguments. These judges may take into account incidents involving theft, credit card fraud, and hazardous driving.
- In February 2019, a "Robot Mediator" in Canada successfully resolved a court case. The parties were helped in reaching a settlement using the British Columbia-developed online dispute resolution (ODR) tool Smartsettle ONE, which employs algorithms to comprehend the bidding methods and goals of the conflicting parties.

Challenges of AI in the judicial system:

Despite being so useful, there are some inherent challenges in AI that limits its usefulness in the judicial system.

- Costly: AI is a machine tool that demands significant financial investment, which is only something that very large companies can manage.
- Data Security: As AI uses a lot of data, it is even more important that the legal system ensures that the information is not misused and that confidentiality is upheld to prevent privacy breaches.
- Job Loss: When a computer takes over a human task, jobs will be lost and the economy will be displaced. In order to succeed in this AI-driven

world and meet the technological challenge, upskilling will be essential.

- Bias: Artificial intelligence (AI) systems are only as good as the data they are trained on. As a result, biased AI outputs may develop. In AI systems, historical information may also strengthen discrimination.
- Learning and training mechanisms: It is essential to provide ongoing training to attorneys, judges, and court personnel. The transition process, whereby technical procedures and updates must be learned on a regular basis in order to have hands-on experience with the AI process, can be difficult and time-consuming. Additionally, software malfunction and improper AI training can result in the loss of crucial data.
- Lack of appropriate systems and data: The algorithms and data that are supplied into computer systems are what drive AI mechanisms, which then take action. The machine will not function effectively if, however, old technology and equipment are being employed, and the data is usually uncomplete.
- Legal framework: In order to deal with AI in the future, it will be crucial to pass new legislation or alter existing laws. This will mostly consist of:

  - Comprehensive data privacy regulation that applies to both the public and private sectors to control how data is used.A system of intellectual property that promotes innovation.
  - In light of artificial intelligence (AI) driven technologies like facial recognition, surveillance legislation may need to be reviewed.
  - Anti-discrimination legislation that forbids discrimination based on caste, religion, ethnicity, or gender.
  - As more data-driven mergers and acquisitions occur and data monopolies are reduced, competition law may play a more significant role in the regulation of data gathering and processing practices.
  - With the rise in consumer complaints about claimed unfair business practices and the necessity to protect consumer's personal information, consumer protection laws will become more important.

Challenges Faced By AI In The IP Sector

A number of potential solutions emerged to address the issue at hand when AI-related ideas presented a threat to the IP sector in terms of patents, copyrights, and trademarks. Due to AI's inability to handle massive volumes of data and lack of verifiability at the hands of the appropriate parties, it did not show to be effective. Many questions about ownership and contract difficulties are raised by technical issues in AI. In the article, we'll go into further detail on this:

1] Issues in Contracts: IP-related problems also surfaced when contracts do not include language addressing ownership and licensing concerns for the most recent software in development, commercial agreements encounter difficulties. Agreements must include all necessary provisions relating to third-party authorization, indemnity, and new IP development software.

2] Customer Data: Customers who need the assistance of these training databases to operate in concert with the seller's software and adapt to customers' business services can obtain suitable training data authorization from the seller. When the cybersecurity system of the customer's current software given by the seller is breached, issues arise, which frequently raise the issue of ownership or copyrights. If the clients desire to resell the software

to another service provider, there will once more be a legal issue. It won't be difficult to protect software if IP rights have been gained for it, but if not, it will be challenging for vendors to protect their AI ideas. Although it gets harder to safeguard software ideas over time, there aren't many shops that have managed to secure their ownership of their software inventions.

3] Ownership: People have questioned the veracity of the work created by AI as it is now capable of producing 3D inventions, graphic printing, poetry, and artwork. They have also focused on the need for AI to be protected under IP. It became crucial to safeguard and protect AI inventions because human inventions are already covered by the system of IP laws. It was very difficult to be verified under IP due to technical concerns like the software inventions and concepts used to construct training software.

4] Liability Issues: It is first necessary to identify the original source from which the copyrighted technology was copied. Secondly, it is also necessary to determine whether the AI's guardians and in-charge authority can also be held accountable for patent infringement. It is crucial to prove the authorities' responsibility so that infringement cases can be handled. Because it is necessary to establish the aforementioned invention in the legal sphere, the owner of the invention who did not secure a patent may also run into difficulty.

5] Legislation: In order for patented AI inventions to be recognized on a legal basis, it is crucial that IP laws be updated periodically. The IP sector has undergone significant change, and new inventions and their owners face challenges that require new reforms in order for real owners to be able to patent or copyright their inventions. There would be no balance between AI inventions and IP rules if the gap between AI and IP persisted. The need to create forums that handle AI and IP conflicts on their own is ongoing.

Can AI Infringe IP Laws?

Copyright infringement is one of the main issues with AI-generated photos. According to copyright law, the sole rights to a work's use and dissemination belong to the creator. As a result, it could be regarded a copyright violation if an AI creates an image that is comparable to an already-existing work that is protected by copyright. It can be difficult to assess if AI-generated graphics violate copyright because they differ significantly from traditional works in a few important ways.

A few instances of how AI-generated artwork might violate copyrights include:

- Replicating an existing work of art: AI can be taught to generate something similar to or identical to an existing work of art, which can violate the copyright of the original creator.
- Using protected photos as training data: AI needs a lot of data to learn, and if protected images are used as training data, the resulting artwork can violate the protected image's original copyright.
- The use of copyrighted components in generated artwork: AI-generated art may contain material protected by copyright, such as characters or logos, which may violate the original copyright.
- Using AI to recreate images: AI may be taught to create lifelike images, thus if it is used to recreate an image, it might violate the

photographer's copyright. By learning from them and creating something new, the AI creates new images rather than always using current ones as a reference. Additionally, some contend that because AI lacks consciousness, it is unable to produce something unique and cannot, thus, violate intellectual property.

- Creating derivative works without permission: Without the original copyright holder's consent, derivative works developed by AI may violate the original copyright. This is especially true if the work was done without the original copyright holder's consent.

Is AI Beneficial?

For many industries, artificial intelligence is a blessing. It is pervasive and available everywhere, whether it is in the form of Amazon's Alexa or touch sensitivity technology. In the field of intellectual property, AI is a benefit for patents, copyrights, and trademarks, and we shall address this:

- **PATENTS:** With the help of Google algorithms, AI has made significant strides in the treatment of diseases like skin cancer, and in 2016 Google created its own Neural Machine Transmission to decipher many languages. This necessitates the use of patents in order to prevent unauthorized recognition of the invention and competing claims to ownership. This is where intellectual property (IP) enters the picture, where a patent would be issued to the human inventor of this technology rather than the AI system. To determine whether the term "mind" refers to a human or an AI, the WIPO's definition of "inventing mind" has been a contentious issue. AI must be patentable in order to be protected from subsequent infringements and is advantageous for professionals. As a result, AI in patents is relatively beneficial to the sector.
- **COPYRIGHTS:** In the area of copyright and AI, where there are numerous disputes about ownership and infringement, AI would be more of a hindrance than a help. Because an inventor must always be a human, AI has been able to create art but not establish its ownership. A machine cannot get a copyright on its literary work. If an AI artist's work is significantly similar to another AI artist's work that is sold and displayed, the AI artist won't be able to depend on the principle of fair use. In the Graham v. Prince case[1], this was well explained. Donald Graham filed a lawsuit in federal district court against Richard Prince, Gagosian Gallery, Inc., and Lawrence Gagosian for copyright infringement after Prince neglected to ask Graham for permission to use one of his photographs to create the "appropriation art" that Prince was so well-known for. Rastafarian Smoking a Joint, an image by Graham, served as the inspiration for Prince's Untitled (Portrait) ("Untitled"). According to the complaint, Gallery served as Prince's principal gallery and agency.

  Both the alternative move for summary judgment and the motion to dismiss were refused by the court. The court stated that as Untitled simply copied a photograph of a person without making any major aesthetic changes, fair

[1] 265 F. Supp.3d 366

use under 17 U.S.C.S. 107(3) was not proven. A commercial art gallery displayed and sold it using the whole image from Graham's photo. The key lesson from this case is that AI-artists should not only record the creative process when choosing and incorporating the underlying art, but also take into account whether the resulting AI-work is sufficiently transformative before making it available to the general public to reduce the risk of infringement claims.

- **TRADE SECRETS:** Trade secrets are kept a secret by investors and are guarded against disclosure. It contained confidential business data about a brand, design, or logos that gave the owner a competitive edge because it was unknown to others. A trade secret is frequently protected by law and closely monitored to maintain secrecy, but AI developers only prosper when this information is shared because AI cannot shape its fundamental algorithmic process from the one aspect that is available to them; they need to be given this information where they can make significant discoveries and develop software that can aid in R&D technologies. Trade secrets can benefit from AI, but only if developers are given access to pertinent information and secrets.

Conclusion

It can be concluded that AI has already shown and can provide sophisticated solutions to problems that arise in regular operations. This technology has been widely used for many years. It can swiftly and efficiently manipulate enormous amounts of data while analyzing the best possible solution. Thanks to sophisticated AI technologies, strategists no longer need to worry about finding a competitive analysis for patents for day-to-day IP management jobs where analysts used to spend hours and days conducting a relevant search for patents.

But as AI develops at a faster rate, it eventually becomes more difficult for IP portfolios to handle such large databases and more difficult for people to bridge the gap between technology and protection. The IP industry has acknowledged the issues throughout time and has adjusted its regulations in response to AI inventions so that it can fit within this system. IP experts have a great chance to use AI and gain insights from it because it is now widely accessible and contains a vast amount of data.

Future decisions about research and development investments may be influenced by this, and it may also assist businesses in identifying their relative competitive advantages and disadvantages, as well as new market opportunities. With the aid of IP experts, it is possible to provide business intelligence that can expand markets, appropriately appraise an IP portfolio, and provide a clearer picture of what and where the next generation of IP investment should come from.

By improving research and analysis, automating activities, and giving legal practitioners useful insights and support, artificial intelligence is revolutionizing legal education and the legal profession. The day of " Robot Lawyering " is still quite far away. Law-related AI works to support the legal profession rather than supplant it with machines. However, AI won't lessen the risks associated with it until there is a legal framework governing its operation, at which point we will be able to fully enjoy its advantages.

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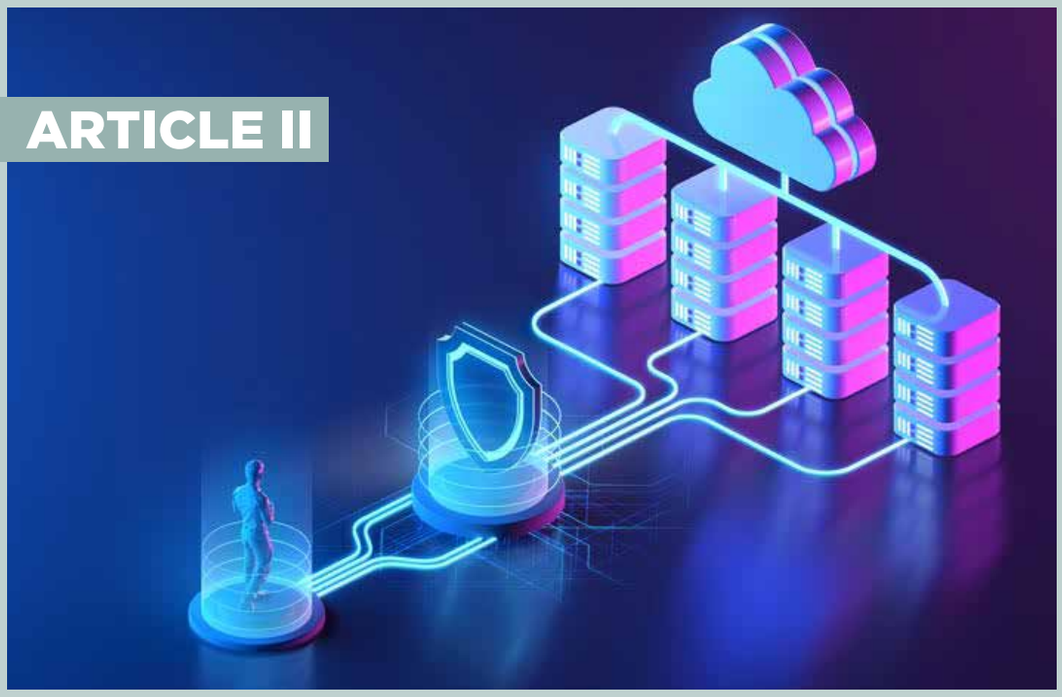
ARTICLE II



STRENGTHENING INTELLECTUAL PROPERTY PROTECTION THROUGH BLOCKCHAIN

Introduction

Intellectual property **("IP")** protection is more important than ever in a time when innovation and technological development are driving society forward. Strong security measures are needed to protect patents from unauthorized use and infringement since they are valuable assets. The revolutionary potential of blockchain technology offers an exceptional solution in this digital era. The complexity of patent protection can be combined with the transparency and immutability of blockchain to create a powerful defense against intellectual property theft for firms and innovators.

Simply put, a blockchain is a decentralized online ledger that maintains a growing collection of records, known as blocks, that are linked together via cryptography and contain transaction data, a timestamp, and a cryptographic hash of the preceding block. Back in 2008, a person going by the alias Satoshi Nakamoto created it as a peer-to-peer electronic cash system. This is a phenomenon akin to the revolution brought about by the Internet since it is an idea that is basic yet so complicated and diversified in its use-cases. Finance is one of the key industries that blockchain technology is establishing its roots in when discussing its industrial applications.

Blockchain technologies' capabilities go far beyond cryptocurrencies. It is undeniable that technology has changed and developed to be used in a variety of fields, including the safe storage and sharing of medical data, NFT marketplaces, international payments, tracking of music royalties, real-time IoT operating systems, voting processes, the production of original content, personal identity security, supply chain & logistics monitoring, advertising insights, real estate processing platforms, etc. IP is a significant area where blockchain can be used.

The main objective of this article is to explain how blockchain is being used to track the development of IP protection.

What is Blockchain?

In essence, blockchain is any kind of decentralized database. A blockchain system shares true copies of the database with every computer connected to the blockchain network, in contrast to traditional databases where there is only one true version that is kept centrally. The other computers that are a part of the blockchain must verify and approve every modification that is made to the database, such as when a new copyright work is added. Accordingly, the blockchain is typically significantly more secure and less susceptible to a cyber-attack. A sufficient use of computers will have to accept the new data as authentic before a new entry can be added to the database. An entry cannot be removed in the future once it has been added to the database and confirmed as authentic. A change to data can be made if it is approved by all the computers involved in the blockchain, but both the original data and the change will be recorded permanently in the blockchain.

There are various ways for computers connected to a blockchain network to concur that an entry can be added (i.e., attain consensus), and it is also feasible to use a hybrid private/public approach in which some authorities, such as an IP office, are given greater power than others in the network. Although the security of the computers at the IP office is crucial and some of the security advantages of a totally decentralized system are lost, this may increase the accuracy of the data.

Because of digital encryption, not every member of a given blockchain must have access to every piece of information shared in the database. For instance, with bitcoin (still the most well-known version of blockchain), the identities of the people who own the bitcoin accounts are kept private, but the amounts that are exchanged between accounts are known and shared amongst computers on the blockchain network. This means that in the area of IP, it is possible to keep a blockchain containing information about rights ownership, the process of creative production, and royalty payments without such data being public.

History of Blockchain Management

The bitcoin blockchain, whose technology was first introduced by its mysterious creator Satoshi Nakamoto in his seminal 2008 white paper **"Bitcoin: A Peer-to-Peer Electronic Cash System,"** was the first blockchain to be used successfully. This blockchain's goal was to launch a peer-to-peer electronic cash transfer system that would let the sending of electronic cash tokens that represented nano payments.

With bitcoin as the money or cryptocurrency and as the underlying blockchain structure, these payments would facilitate asset exchanges, such as purchases. Bitcoin was developed by a result of numerous advancements in the fields of cryptography and digital signatures, earlier blockchain iterations, and unsuccessful attempts to create electronic money. Bitcoin's continued success confirms its effectiveness as a result. By making decisions that would safeguard the blockchain's

integrity and enable scaling, Nakamoto got the design correct. Following this achievement, numerous imitation cryptocurrencies were introduced by making significant or little changes to the original bitcoin concept. In addition to those, some only existed as empty shells while pretending to have identical or comparable constructions. But since these hesitant and cautious beginnings, a robust and expanding multibillion-dollar business has developed around these practices. In spite of the well-known volatility of bitcoin values, it is obvious that blockchain technology will continue to exist. And these facts support the following two conclusions:

- The exchange markets do not fully comprehend or accurately value the effective industrial or commercial application of blockchain technology, and
- Prices at these exchanges are the outcome of many parties' speculation rather than reflecting the potential for value generation of the various blockchain technologies.

However, key actors are aware that there is a world of intellectual property rights underneath the technical trading jargon and personal alignment with logos and crypto space personalities. This is true even though the specialized press discusses volatility at cryptocurrency exchanges using standard financial markets lingo and even though the average investor cannot tell apart the relevance of the workings of critical components within the blockchains. Therefore, it is instructive to go through certain important components of the technology's operation, particularly its less well-known and most valuable unappreciated qualities. Consequently, we give a brief explanation using bitcoin as the main example in the next section.

How Does Blockchain Works?

Hashing algorithms, rather than third parties, provide trust in a blockchain. simply, to recognize a hash and match it with a distinct document to establish an unambiguous proof of existence as by default, hashes are unique, cannot be misread, nor can two identical hashes be produced. This improves the protection of a particular IP right at a registry or in court by establishing a permanent ledger of data that can be used to demonstrate the existence and lifetime of the right. It can help with everything from providing proof of authorship and provenance authentication to registering and clearing IP rights, managing digital rights, creating and enforcing IP agreements, licenses, or exclusive distribution networks through smart contracts, and sending payments to IP owners in real-time. Blockchain, particularly may offer substantial proof of an inventor's entitlement to intellectual property and safeguards authorship rights in the event of legal disputes. As a result, blockchain provides some form of automatic protection for creators of writing, literary, and creative works while they must apply for it for other types of protection.

The fundamental advantage of adopting blockchain for patents is the tamper-proof, immutable ledger of records that serves as a reliable source of information on the life cycle of an invention. But unlike copyrights, every new invention would still require appropriate patenting before it may be used, copied, or claimed by anybody else without facing any legal repercussions.

Contrarily, trademarks are the form of IP protection that stands to gain the most from blockchain since it makes it simple, rapid, and inexpensive to demonstrate how similar two marks are to one another and who may claim to have used it first by providing immutable and timestamped evidence of dates and usage. Many of the potential problems concerning the precise when, where, and how a trademark

was used can be immediately resolved by using blockchain.

Blockchain & IP: A Hand-In-Hand Relationship

IPR and blockchain go hand in hand; on the one hand, IPR protects blockchain, while on the other, blockchain can help to bolster the current IP regime. As more people become aware of Blockchain's huge potential, IPR will become increasingly important in fostering a safe environment for the advancement of the technologies.

On the other hand, the security and dependability provided by blockchain technology can be used to strengthen every stage of the life cycle of intellectual property rights, including settling ownership disputes, establishing licensing agreements through blockchain smart contracts, identifying fake goods, or even just creating an IP register to register and keep track of all types of IP rights.

Blockchain technology can be used in IP management systems to guarantee the accuracy and security of rights data. This covers trademarks, designs, and patents in addition to copyright and allied rights like moral rights. In cases where rights are registered, a hybrid public/private blockchain, similar, to the one previously described that leverages information from the relevant IP office as the single source might be used.

The blockchain can be incorporated into a larger open licensing model that might allow third parties to quickly identify license opportunities and possibly negotiate simple licenses as smart contracts, where the contractual obligations are digitally predetermined and automatically carried out when a specific event or threshold is met. The blockchain can be especially useful for businesses to track the production of new copyright works or unregistered designs for unregistered rights like copyright and unregistered designs. The self-addressed envelope approach (or slightly more advanced official variants like the soleau envelope in France is not yet tested in court, but it is likely to be far better evidence to use in court proceedings.

While rights databases were present in the pre-blockchain era, they lacked the openness, immutability, and capacity for smart contract execution that characterize blockchain. The simplicity with which information may be shared and tracked is the main advantage of blockchain technology. This can boost confidence in the system and guarantee that every artist has a transparent and up-to-date record of how their royalty contributions have been determined.

Blockchain could either sound the long-promised final death knell for collecting societies or far more probably make it much simpler for them to police and trace use of their artists who works at least online if it truly takes off for IP. This ought to result in a significant decrease in expenditure and erroneous data. Future predictions regarding the expected use of copyright works should be far more accurate, which will increase transparency and be beneficial for smaller artists.

Here are other instances of other autonomous blockchains that are centralized on various facets of IP management. For instance, Vaultitude's IPCHAIN database focuses on authorship evidence and is intended for individual inventors and artists. This encapsulates the current perspective on IP and blockchain. Both established players and start-ups are working to make improvements to the present models. In many areas of conventional IP management, better record keeping is the most likely immediate result.

Implementing Blockchain

With the use of blockchain technology, a guarded and secure chain of evidence for IP ownership is now possible. The hash value of a block would

alter if the data contained in that block were altered. The original hash value connecting to the first block would still be present in the next block.

Please take note that altering the linking hash will also alter the hash value for that specific block. A person cannot alter or amend the contents recorded on a block unless he can edit every block in the chain with the necessary new hash values. Since it is unlikely that a single person would have the computational ability to change the hash of every block, the same poses no risk. Creators and owners of IP assets can safely keep their assets since blockchain technology offers a tamper-proof method of storing data.

Protection of IP Through Blockchain

Following are the ways in which IP can be protected through blockchain technology:

- **Digital identification:** Blockchain technology can effectively protect intellectual property by utilizing digital identification. In direction to establish and verify their identities in a secure and decentralized manner, creators and owners of IP can do so using blockchain-based digital identification solutions. This prevents identity fraud and ensures that only authorized users can access and use protected information.

  Let us take the scenario where Amit wrote a research paper and needs to demonstrate ownership. He may validate his identification and add a digital signature to the study paper using a blockchain-based digital identity system. A secure and irreversible record of ownership will be produced as result of the signature being registered on the blockchain. Amit can demonstrate his ownership of the research article and defend his intellectual property rights using the blockchain record and his digital identity if anyone tries to assert their ownership.

- **Immutable Records:** Immutable records are one of the key elements that blockchain technology can safeguard IP. Once a transaction is recorded, it cannot be updated, amended, or deleted without being noticed due to the tamper-proof and transparent nature of blockchain transactions. This offers a solid foundation for confirming the legitimacy and ownership of intellectual property rights, avoiding fictitious claims of ownership or unauthorized use of protected information. A filmmaker or content producer for an OTT platform, for instance, may utilize blockchain technology to register their web series, films, or other video assets and establish a safe and unchangeable record of ownership. The original author can use their blockchain record to verify ownership and, if required, take legal action if someone tries to use or distribute the films without their consent.

- **Smart Contracts:** A ground-breaking use of blockchain technology allows for the formation of self-executing, tamper-proof contracts between parties without the use of middlemen. Smart contracts offer a high degree of transparency, efficiency, and trust by automating the execution of contract conditions using lines of code. They have the potential to revolutionize a variety of industries, including finance, real estate, and supply chain management. Smart contracts are a genuinely novel and paradigm-shifting piece of technology because they have the capacity to

encode sophisticated business logic and automate contract execution, which can expedite operations, lower costs, and boost security. These contracts can be used to secure and automatically establish and enforce ownership and licensing agreements for intellectual property. A smart contract, for instance, can be used to form a licensing agreement for software by a software development company. The contract's terms and conditions can be included in the smart contract code, and when specific requirements are met, the contract can be automatically executed. This can assist in ensuring that the developer gets fairly compensated for the usage of their software and assist in preventing use or distribution that is not authorized.

- **Decentralized storage:** Another significant method that blockchain technology might safeguard IP is by using decentralized storage. Instead, storing data on a centralized server, which may be vulnerable to hacking, data breaches, and other security issues, decentralized storage solutions store data on a network of nodes. Creators and owners of intellectual property can store their work in a safe and tamper-proof way by utilizing blockchain-based decentralized storage solutions. By preventing unauthorized use and infringement of the work, this can safeguard the creator's intellectual property rights. A writer may, for instance, save their writings in a decentralized storage system built on the blockchain.

Blockchain as IP

Blockchain technology is revolutionizing the intellectual property sector when paired with AI. By compiling all accessible patents in any area of interest, this technology is being used by both public and private sector organizations to affordably discover lucrative prospects and potential business dangers. Although intellectual property rights are not instantly registered at the time of production, in the current system it may be challenging to establish clear ownership rights for abstract works like dance or music. However, by using smart contracts to secure licensing and trademark rights, blockchain technology can lower the number of patent infringement litigation. Blockchain and AI can be used to speed up intellectual property transactions, making it possible to authenticate and verify copyrights, patents, and trademarks more quickly. The amounts of patent infringement lawsuits brought against technology businesses could be significantly reduced thanks to this strategy.

Jharkhand has been the first state in India to track the distribution of seeds. Through seed exchange programs and other initiatives, the transparency and authenticity of the seed quality and quantity farmers receive is to be improved. Middlemen can be removed thanks to blockchain, which also enables real-time monitoring and effective scheme management. This is crucial for increasing the scheme's operational transparency.

Blockchain in IP Around the World

- Several governmental organizations and IP registries, including the European Union Intellectual Property Office (EUIPO), are actively engaged in exploring and promoting blockchain capabilities within the sector in Europe. They emphasize in one of their forums for advanced research that:
  - IP and Blockchain are interrelated to each other.
  - Blockchain is transformative in nature.

- IP protection will drive innovation in the ecosystem.
- Blockchain technology will transform IP protection and enforcement.
- Blockchain technology provides opportunities for both pirates and law enforcement.

- For streamlined patent processes, the Indian Patent Office (IPO) is experimenting with blockchain and other cutting-edge technologies like AI and IOT. The management of IP protection in India is being considered as a Blockchain-AI-based ecosystem, with the goal of creating a far more effective, simple, and quick process. One of the primary and initial steps the IPO is taking for the Indian IP business is to create a legislative framework for a Blockchain-based IP registry to protect and commercialize innovative ideas.
- By evaluating imports, one can see how blockchain can be utilized to safeguard American enterprises from IPR infringement. The U.S. Customs and Border Protection (CBP), with funding from the Department of Homeland Security's Science & Technology Directorate, recently finished a proof-of-concept of a blockchain platform with that specific goal. Blockchain has shown to be advantageous to streamline communication between multiple parties securely. The blockchain would serve as an immutable ledger to record trade transactions, keeping personal information and business secrets secure.
- Thailand is pioneering the development of blockchain technology for IP protection in Southeast Asia. Numerous businesses and government agencies have invested in initiatives to use technology to speed up and improve IPR procedures. The British Embassy and the Thai Trade Policy and Strategy Office (TPSO) were assigned to analyze the study and turn it into action plans for upcoming developments. The Ministry of Commerce recently launched a feasibility study to investigate the use of blockchain for IP registration in the nation.

Conclusion

It can be concluded that the Blockchain technology is a potent weapon to protect patents and fight infringement in a world where intellectual property is always at danger. Inventors and companies can build an impregnable fortress around their intellectual assets by embracing the transparency, immutability, and decentralized characteristics of blockchain. The landscape of intellectual property protection is about to undergo a radical change thanks to blockchain technology, which has the power to simplify patent registration, prove the existence of inventions, and prevent infringement. Utilize the disruptive power of blockchain technology to embrace the future and protect your patents right away.

Setbacks can be both technological and systemic, as they can be with any new technology, especially the most disruptive ones. A system that might connect registries all over the world through a single distributed ledger is fundamental difficulty, not only for IP-related companies, although enormous processing power and scalability are still the main technological challenges.

Healthcare, law, and many other businesses share a desire for a global standardized system and platform that may enable effective administration of IP rights via blockchain and improve global communication. On the other side, the enforcement of IP rights using blockchain technology is already a major success, particularly for independent artists who could not afford to hire legal teams to represent them in legal battles to establish their authorship.

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Nick Harkaway
The Blind Giant

"Intellectual property, more than ever, is a line drawn around information, which asserts that despite having been set loose in the world - and having, inevitably, been created out of an individual's relationship with the world - that information retains some connection with its author that allows that person some control over how it is replicated and used.

In other words, the claim that lies beneath the notion of intellectual property is similar or identical to the one that underpins notions of privacy. It seems to me that the two are inseparable, because they are fundamentally aspects of the same issue, the need we have to be able to do something by convention that is impossible by force: the need to ringfence certain information. I believe that the most important unexamined notion - for policymakers and agitators both - in these debates is that they are one: you can't persuade people on the one hand to abandon intellectual property (a decision which, incidentally, would mean an even more massive upheaval in the way the world runs than we've seen so far since 1990) and hope to keep them interested in privacy. You can't trash privacy and hope to retain a sense of respect for IP."

Snippets

1. Naked Licensing:

The phrase "licensing" refers to a license or sanction issued by a property owner to a third party for the use of their property, provided that any use restrictions are properly observed. Trademark Licensing enables the licensor (owner of the mark) to provide permission for the licensee (proposed user of the mark) to use their trademark, with the licensee being obligated to abide by the terms and restrictions imposed over the sale of goods or services licensed under the said brand. In line with this, "Naked Licensing" refers to the licensor granting the licensee usage of the trademark without including and/or enforcing any quality control clause in the license agreement. Other terms with similar meanings include "licensing in gross" and "bare licensing."

When a trademark owner doesn't exercise sufficient control over how its trademark is used by licensees, it results in naked licensing. This may result in both a loss of a trademark's distinctiveness and customer misconceptions regarding the origin of products or services. The problem of naked licensing arises when the owner of a trademark offers a third-party authorization or a license to use the mark, but the third party misuses the mark, uses it inappropriately, or fails to use it as they have been instructed to do so. In essence, it refers to instances where trademark owners fall short of properly policing licensee usage of their trademarks. The public is left uncertain regarding the provenance of the mark due to the bare license. Consequently, the mark becomes worthless.

The Indian Trade Marks Act does not specifically address naked licencing, however section 49(1)(i) specifies that the registered proprietor must exercise quality control while granting a registered user a licence to use his brand. Section 50(1)(d) of the Act permits the registrar to revoke a registration either independently or in response to a complaint alleging infringement of trademark terms and conditions, public misrepresentation, or providing customers with subpar goods. Additionally, section 50(3) mandates that the registered proprietor of a trademark must have a fair opportunity to be heard prior to registration cancellation.

In the case of Double Coin Holdings Ltd. v. Trans Tyres (India) Pvt. Ltd.[2], the Delhi High Court determined that the level of control that the licensor exercises over its licensee is a crucial component in assessing whether the licencing agreement is genuine. The court determined that control can be exerted or imputed in numerous ways, including the power to examine the licensee's processes and products, the right to establish requirements and standards, and the ability to revoke the

[2] [2011(46)PTC194(Del)]

licence. The court also discovered that the degree of control may be implicit in the nature of the already-existing relationship between the licensee and the licensor. As opposed to a smaller, less well-known brand, the licensor is likely to have greater control over the licensee if it is a well-known company with an excellent standing.

The Coin Holdings ruling by the court is important because it instructs the licensor and licensees on the degree of control required to secure the legality of a licensing agreement. The ruling emphasizes the need for quality assurance in trademark licensing. However, in the Indian TradeMarks Act, 1999, the "degree of control" is not specifically defined. Fixing a responsibility or reaching a judgement about the particular characteristics of the licensor and licensee is challenging. In this case, Rob Mathys India Pvt. Ltd. v. Synthes Ag Chur[3], the Delhi High Court has taken recourse, and laid the following:

"Degree of control may be exercised in different ways. For instance, in some cases, the commercial relationship between the licensor and licensee, which the licensor stipulates certain standard is to be followed by the licensee as to the manufacturing of goods under a trademark is concerned, or the licensor is entitled to inspect the goods and methods of manufacturing, chemicals, raw material, and other components. Failure to control or omission to control the quality results in the death of the trademark."

As a result, the trademark will be protected against naked licensing provided the licensor specifies in the license agreement the level of quality control over the goods.

2. IP Financing:

Intellectual property rights can be used to secure financing, either by pledging them or transferring rights to cash flows derived from these assets. Alternatively, a company's intellectual property can provide an indicator of a firm's value and support financing decisions. For some businesses, intangible assets only represent a small portion of what a company is worth. For others, the bulk of their value may flow from their intellectual property. These companies must communicate the value of their intellectual property and other intangible assets to lenders and investors. In order to generate more capital without diluting their stock share, rapidly expanding firms might do so by insuring intangible assets.

Collateral is frequently used in conjunction with a company's tangible assets, such as its equipment and buildings. It is becoming more common to utilize some intellectual property assets, such as copyrights, designs, and patents, or the revenue streams connected to these assets, to fund loans. Ownership of IP remains typically with the borrower when it is pledged as security. The future use of the IP may, however, be subject to further restrictions imposed by the lender. The IP's capacity to be licensed or transferred to others may be impacted by this.

When a borrower defaults on a loan, lenders frequently file notice of their rights—known as a security interest—in the IP. A security interest may be registered with a local IP office or a moveable collateral registration, depending on the rules of the nation. This procedure might have to be repeated if the lender is using intellectual property held in various nations as collateral.

As per the latest news reports, the government is planning to draft a strategic blueprint and action plan for promoting and institutionalizing IP financing in India.

3. Non-patentable subject matter:

An inventor obtains the patent as a very first step to prevent his or her innovation from

[3] 12 1997-(SUP)-ARBLR-0218-DEL

being misused or misappropriated. And here, a patent is simply a right to prohibit every other person from using, making or selling an innovation for a fixed time and innovation is considered as a device, method, composition, or procedure that is original. In India, to get patented an innovation must be a new process or product which included an inventive step and capability of being used in an industry. So, to be patented an innovation or invention must meet the criteria of novelty, inventive step and industrial application. Section 3 of the Indian Patent Act has mentioned subject matters that are not patentable. Such non-patentable subject matters are:

- Frivolous invention or invention that claims anything contrary to the established natural laws
- Invention with primary or intended use or with commercial exploitation which is in contrary to public order, morality or is injurious to humans, animals or plants or the environment.
- Mere discovery of any scientific principle or formulation of an abstract theory.
- Mere discovery of any living or non-living thing substances that are already present or exist in nature.
- Mere discovery of a new form of an already known substance with no enhancement of the known efficacy of such substance or any new property or use for a known process, machine or apparatus unless such process results in a very new product or employs any new reactant.
- Any substance obtained by mere admixture results only in the aggregation of the properties of the components or process for producing such substance.
- A mere arrangement, re-arrangement or duplication of known devices, each functioning independently of one another in their known way.
- A method of horticulture or agriculture.
- A process for medicinal, surgical, curative, diagnostic, prophylactic, therapeutic or any kind of treatment of humans or any other process for similar treatment of animals to render them free of any disease or to increase their or their product's economic value.
- Any part or whole of the plants or animals other than the micro-organisms, however also including seeds, varieties and species and the essential biological processes for production or propagation of plants and animals.
- Any mathematical or business method, a computer program or algorithms.
- Any literary, musical, dramatic or artistic work or any other aesthetic creation including cinematographic works and television productions.
- Any mere scheme, rule or method of performing a mental act or any method of playing a game.
- Any presentation modes or presentation of information
- Topography of integrated circuits
- Any invention which results in traditional knowledge, or which is an aggregation or duplication of any known property of traditionally known component or components.

The Act deals with inventions or innovations relating to atomic energy that are also not patentable. So, only the inventions that are new, useful for industrial purposes and not falling under these categories are patentable.

4. Cinematograph (Amendment) Act approved:

The Cinematograph (Amendment) Bill, 2023 was

approved by the Lok Sabha on July 31 after first being approved by the Rajya Sabha on July 27. After nearly 40 years, it updates the Cinematograph Act of 1952, with the most major changes occurring in 1984. It is important to note that the "Statement of Objects and Reasons" for the 2023 Act indicates that piracy causes damage to the government exchequer, and that 2019 Standing Committee Report also made note of this (without identifying the precise monetary value of loss to government). However, it avoids using the definition of piracy, which often refers to copyright infringement, and instead uses it in a way that appears to set it apart from that offence. This strategy is used throughout the Amendment Act, which provides sanctions and remedies for these two notions.

Following are the distinctive features of the Amendment Act:

1. Additional Certificate Categories: Based on age, the Act introduces a few new certificate categories. A film may be approved for screening in accordance with the Act in one of the following ways: (i) without restrictions (designated with a "U"); (ii) without restrictions, but with parental or guardian supervision for children under the age of 12 (designated with a "UA"); (iii) solely to adults (designated with a "A"); or (iv) only to members of any profession or class of individuals (designated with a "S"). The following three categories are used in place of the UA category in the Act to further reflect age-appropriacy: 1. UA 7+, 2. UA 13+, or 3. UA 16+. The age endorsement made by the Board for the UA category will be used by parents or guardians to guide their guidance, and it will not be enforceable by anyone else.

2. Separate certificate for television/other media: For television or any other form of centrally regulated media, films with a "A" or "S" rating will need a supplementary certificate. The applicant may be instructed by the Board to carry the necessary omissions or revisions for the separate certificate.

3. Unauthorised recording and exhibition to be punishable: The Act forbids engaging in (i) unlicensed filmmaking and (ii) unauthorised film screening. It will also be illegal to attempt to make an unlicensed recording. Making or sending an unauthorised copy of a movie at a venue having a permit to show films without the owner's consent is known as an unauthorised recording. The public showing of an illegal copy of a movie for profit either (i) in a venue that isn't permitted to show movies or (ii) in a way that violates copyright laws is referred to as an unauthorised exhibition.

4. Exemptions: The aforementioned violations will also be subject to several exclusions under the Copyright Act of 1957. In some circumstances, such as (i) private or personal use, (ii) reporting of current affairs, or (iii) review or critique of that work, the 1957 Act permits restricted use of copyrighted information without the owner's consent.

5. Penalties: The following penalties apply to the aforesaid offences: (i) imprisonment for a period of three months to three years; and (ii) a fine ranging from three lakh rupees to 5% of the audited gross production cost.

6. Perpetual validity of certificates: In accordance with the Act, the Board's certificate has validity for 10 years. The Act stipulates that the certificates shall remain valid indefinitely.

7. Revisional Powers of Central Government: The Act gives the central government the authority to review films that have received certification or are in the process of receiving certification and to issue orders. The Board must resolve issues in accordance with the order. The Act strips the central government of this authority.

Maxim Dose

generalia specialibus non derogant

The legal maxim “generalia specialibus non derogant” means that when there is a conflict between a special law and general law, the general law must yield to the special law. This maxim is regarded as a cardinal principle of interpretation. It simply states that a special law controls or cuts down the general law. This applies only where there is a conflict between the two laws or two statutes or their two provisions. With the application of this maxim, the court clears that a special law, rule or provision overcomes the general law, rule or provisions relating to the subject matter of the case in concern.

To apply this maxim the emphasis is always given to the principal subject matter. This maxim ensures that the purpose of the special law is not defeated and makes the same effective and operative. It removes the anomaly between the two laws by effective interpretation and ensures that the intention of the legislature behind implementing any special law is fulfilled.

Recently in July 2023, the Delhi High Court in four appeals and a writ petition filed obtained clarification on a question that: if a patent is issued in India and the patentee asserts rights then can the CCI, Competition Commission of India inquire into the actions of such patentee under the power given by the Competition Act, 2002? The Court, by applying the same legal maxim, has held that the Patents Act which is a special law must prevail over the Competition Act which is a general law in case of any subject matter related to the rights of the patentee and hence, the CCI has no such power to inquire into the actions of such patentee.

Quick Guide

TRADEMARK REGISTRATION PROCESS

Introduction

"Trademarks are no longer merely indicators of origin but an anonymous and impersonal guarantee of satisfaction." Frank Schechter rightly portrayed the thoughts of likeminded business communities around the globe today.

A trademark is a graphic depiction of a name, word, label, device, or numeric characters that a company uses to distinguish its products and/or services from those of other companies that produce comparable products and/or services. A trademark distinguishes the products and/or services that a person is selling from similar products and services offered by others.

A trademark is intended to protect a company's investment in its brand or ideogram and, once registered, becomes an untouchable asset or piece of intellectual property. Once a trademark is distinctive for the products and services being offered, it is registered. Trademarks that are offered for registration yet are identical or nearly so to a trademark that is already registered. In addition, it is prohibited to register trademarks that are misleading, generic, offensive, similar, contain solely protected insignia, etc.

Trademarks are registered in India by the Ministry of Commerce and Industry's Controller General of Patents, Designs, and Trademarks. The Trademark Act, 2016, which grants the ability to sue for damages when trademarks are violated, governs the registration of trademarks in India.

Therefore, the major goal of this article is to thoroughly comprehend trademarks, to be familiar with every step of the trademark registration process, the requirements that must be met, and the significance of trademarks in today's society[4].

Eligibility For Trademark Registration

Anyone can register a trademark in India, including individuals, businesses, and nonprofit organizations. The conditions for submitting a trademark application vary depending on the category of person or company, though. You can register a trademark for any of the following in India:

- An Individual (Person): A person who does not operate a business may also submit a trademark application and acquire registration for a symbol or word that the applicant intends to use in the future.
- Joint Owners: Joint owners of a business may jointly apply for a trademark, and the application must include both owners' names.
- Proprietorship Firm: A proprietorship firm may submit a trademark application in the name of its owner but not in the names of the

[4] https://www.helpline.com/business-law/TRADERP/complete-procedure-for-trademark-registration-in-india,html

business or proprietorship. Both the proprietorship name and the business name that you give in your application will be taken into consideration independently.

- Partnership Firm: A partnership business with a maximum of 10 members must list all of the names of the partners in the application when filing for a trademark. If a minor partner is present, the guardian who is speaking on his behalf must be identified.
- Limited Liability Partnership (LLP): The application should be made in the name of the LLP in this situation. The partners in this corporation each have their own unique identity. Since the trademark belongs to the LLP, the partners cannot be the applicant.
- Indian Company: Any Indian business, whether private limited, limited, or in another form, is required to submit a trademark application in the business's name. Since every incorporated business has its own identity, it should be noted that a company's director cannot also be a trademark applicant.
- Foreign Company: If a foreign-incorporated company files for a trademark in India, it must be done so under the name under which it is registered abroad. Here, it's important to indicate the registration's kind, the nation it came from, and the law.
- Trust or Society: The controlling trustee, chairman, or secretary of a trust or society must be identified when a trademark application is submitted on their behalf.

Types of Trademark Registration in India

Trademarks that can be registered include product marks, service marks, collective marks, certification marks, shape marks, sound marks, and pattern marks. Despite the fact that trademarks come in a variety of forms, all of them serve the same purpose, they enable consumers to recognize products and services made by certain companies or service providers. Let's examine the many trademark registration categories that are offered in India:

- **Product Mark:** A product mark is put on a good or a product, as opposed to a service. A product mark helps to identify the source of the goods and to protect the reputation of the business. Trademark applications submitted under the trademark classes 1-34 may be considered product marks because they represent commodities.
- **Service Mark:** Similar to a product mark, a service mark is used to distinguish services as opposed to products. The major objective of the service mark is to assist set apart the owners from those of other businesses that provide services that are similar. Due to the fact that the trademark applications fall under trademark classes 35 through 45, they may be viewed as service marks.
- **Collective Mark:** The collective mark alerts customers to the distinctive qualities of the goods and services being utilized to represent a group. A group of people may use this mark to collectively protect goods and services. An association, a governmental institution, or a Section 8 business can be the owner of a trademark.
- **Certification Mark:** It is

a label that the business owner issues to describe the product's provenanc, composition or other specifics. The fundamental goal of certification is to establish a product's standard and to provide customers peace of mind that the product has successfully passed quality-assurance examinations. Certification symbols are typically found on packaged goods, toys, and electronics.

- **Shape Mark:** The sole purpose of the shape mark is to protect a product's shape so that consumers will choose to purchase it because they will associate it with a particular manufacturer. The product's distinctive shape can be registered once it has been established that it exists.
- **Pattern Mark:** The pattern markings are only used on goods that have a distinctive designed pattern as part of their design. Rejection is given to patterns that do not stand out as notable. For registration, a pattern mark needs to be visibly distinctive.
- **Sound Mark:** A sound mark is a sound that can be connected to a good or service that is provided by a certain supplier. At the beginning and end of ads, there are sound logos, commonly referred to as audio mnemonics. The melody for the IPL is the most well-known sound mark in India.

Steps to be Followed for Registration of Trademark

For the registration of trademark, the owner needs to go through the following steps:

- **Step-1:** Trademark Search: This phase is extremely important to complete before applying for trademark registration since it will enable the trademark owner to determine whether or not their mark is distinctive and one of a kind, as well as whether or not any similar or identical marks are already in use. A search will reveal whether they are competing with others in their industry, will the owner will face any risks when utilizing that trademark or if it is secure.
- **Step-2:** Filling an application: The procedure of submitting the registration application happens after doing a search. Depending on one's jurisdiction, the Form TM-A application must be submitted either electronically through the IP India website or physically at the Trademark Registry Office.

  The application must be submitted for registration of a single trademark solely in a single class of products and/or services, or in several classes. The fees will be determined for each class that is included in the application. Along with the necessary documentation, the application must include all of the trademark's specifics.

  Additionally, if the trademark was already in use prior to the application's submission (i.e., the owner wants to assert prior use), they must include a user affidavit demonstrating the mark's use as well as proof of its prior use in commerce.
- **Step-3:** Examination Process: The Registrar will carefully review the application after it is submitted, and they will write up their findings

and send a copy of it to the applicant within 30 days to let them know whether the Registry wants to reject or conditionally accept the application. They will also include the evidence they used to reach that conclusion.

Within 30 days of obtaining the examination report, a reaction must be submitted, asserting the arguments and supporting documentation against any objections in order to waive them off.

- **Step-4:** Post Examination Procedure: After the applicant submits a response to the examination report, the examiner may, if desired, schedule a hearing if, for any reason, he or she is not pleased with the applicant's response or if the applicant's response fails to address the objections raised in the report.

  If the examiner is completely satisfied with the hearing procedure, he or she will either accept the mark and submit it for publication in the Trademark Journal or deny the application if any objections remain

- **Step-5:** Publication of the Trademark Application: As soon as the application has been approved by the examiner, it is published and is available for 4 months in the Trademark Journal. In order for any third party to view such an application and, if they choose, submit an opposition to the applicant, it must be advertised within the time frame outlined above. Every Monday, new accepted trademark applications are added to the Journal.

- **Step-6:** Notice of Opposition: Any individual who feels wronged after the trademark is promoted and published in a journal may submit a notification opposing the registration of the trademark. Within four months of the trademark's publication in the Trademark Journal, this opposition notification must be submitted using Form TM-O. If the trademark application is contested or objected to, then the proper legal procedure must be followed, which includes submitting a counter-statement application, providing proof, and holding a hearing in order to register the trademark.

- **Step-7:** Registration of the trademark: Registration is the last phase in the process, where the application advances to registration after overcoming the objection and/or the resistance to the aforementioned trademark registration. Additionally, the trademark receives an automatically created registration certificate within a week if there have been no oppositions to the registration of the trademark throughout the advertisement/publication period of 4 months. Following completion, the registration is valid for ten years, following which it must be renewed within a set window of time.

Forms for Trademark Registration in India.

Following are the types of trademark application forms and their potential applications:

- **Trademark Form TM-1:** Application for registration of trademark for goods or services included in any one class.
- **Trademark Form TM-2:**

Application for registration of trademark for goods or services included in any one class and with priority claim under Section 154.

- **Trademark Form TM-3:** Application for registration of Collective mark for goods or services included in any one class.
- **Trademark Form TM-4:** Application for registration of Certification mark for goods or services included in any one class.
- **Trademark Form TM-8:** An application to register a series of trademarks under for a specification of goods or services included in a class or classes.
- **Trademark Form TM-37:** An application to register a series trademark for a specification of goods or services included in a class or classes, with priority claim under Section 154.
- **Trademark Form TM-51:** A single application for registration of trademark for different classes of goods or services.
- **Trademark Form TM-52:** A single application for registration of trademark for different classes of goods or services and with priority claim under Section 154.
- **Trademark Form TM-64:** Application for registration of collective mark for goods or services included in any one class with priority claim under Section 154.
- **Trademark Form TM-65:** Application for registration of Certification mark for goods or services included in any one class with priority claim under Section 154.
- **Trademark Form TM-66:** A single application for registration of Collective mark for different classes of goods or services.
- **Trademark Form TM-67:** A single application for registration of Collective mark for different classes of goods or services with priority claim under Section 154.
- **Trademark Form TM-68:** A single application for registration of Certification mark for different classes of goods or services.
- **Trademark Form TM-69:** A single application for registration of Certification mark for different classes of goods or services with priority claim under Section 154.

Conditions that must be met for Trademark Registration Form

- ✓ The name of the trading style, the name of the firm, or the name of the company.
- ✓ The proprietor's name or the names of the partners.
- ✓ The Business Location's Address
- ✓ 20 trade mark logo labels in visiting card size, font style, or device.
- ✓ A list of the items to which the mark can be applied.
- ✓ In the event that the applicant wishes to retain the services of a Trademark Attorney, an Authorization Form on Form TM-48 must be completed and signed by the authorized signatory on stamp paper.
- ✓ Please provide the Memorandum and Articles of Association (MOA) if it is a Private Limited Company or a Public Limited Company.

Documents Required for Trademark Registration in India:

1] Documents required in individual & sole proprietorship:

Anyone can easily register a trademark in India, whether they are an Indian citizen or a foreign national. A commercial company or legal entity is not required to register a trademark.

In addition, the paperwork required to register a trademark in a proprietorship's name is the same as for a person, as seen below:

- Ideally, the proposed logo should be in black and white (however this is optional). However, if the logo is absent, the term may still be the subject of a trademark application.
- Form 48, properly signed. With the completion of this form, the applicant grants permission to a trademark attorney to submit the trademark registration application on his or her behalf.
- a copy of the applicant's or owner's identity documentation, such as a passport, an aadhaar card, a PAN card, etc.
- a copy of the applicant's or the business most recent utility bill, phone bill, or other acceptable form of address verification.

2] Documents required in Small Enterprises or Start-ups:

- The cost to register a trademark in India is between Rs. 4500 and Rs. 9500.
- The lower trademark registration charge of Rs. 4500 is applied to start-ups, small businesses, individuals, and proprietorships; the higher trademark registration fee imposed by the government is Rs. 9500 for all other business entities.
- The individual applicant must now present the Udyog Aadhaar registration certificate in order to qualify as a small enterprise. Additionally, the aforementioned information must be provided in addition to the Udyog Aadhaar registration.

3] Documents required in Partnership/ Company/ LLP:

In the case of a partnership firm or an LLP, the applicant/entrepreneur must submit the following paperwork:

- Scanned copy of the logo (Optional)
- Form 48 Udyog Aadhaar Registration Certificate,
- a partnership deed, or an incorporation certificate that has been properly signed.
- a copy of the applicant's or signatory's identity proof.
- a copy of the applicant's or signatory's address proof.

4] Documents required for other applicants:

The following documents must be submitted by all other applicants, including businesses without Udyog Aadhaar registration, in order to register a trademark in India:

- Scanned copy of the logo (optional).
- Duly signed Form- 48.
- Partnership Deed or the Incorporation Certificate.
- Copy of identity proof of signatory/ applicant.
- Copy of address proof of signatory/ applicant.

Benefits of getting Trademark Registration

- **Intellectual Property Protection:** The firm name or registered logo are protected legally by trademark registration against misuse or copying. The trademark is given to its owner as legal ownership, which may be upheld in any

court. The owner of a trademark acquires exclusive use of the mark in all 50 states when it is registered. An official notice that a trademark has already been registered is provided by a trademark registration.

- **Powerful Deterrent:** In order to notify others and remove the defense of innocent infringement, a trademark owner gains the right to publicly display his or her brand as a registered trademark. Once a trademark has been registered, it will be visible in search results, prohibiting other applicants from trying to register a mark that is identical to or similar to it.
- **Legal Remedies:** If a trademark is registered in India, the owner may sue the violator for quadruple the amounts of damages. The owner is assumed to be the trademark's legitimate owner. Once a trademark is registered, the owner is granted the right to file a lawsuit against anyone who is abusing the mark in any court. However, legal action can be taken against unregistered trademarks.

Conclusion

It can be concluded that a registered trademark is a piece of intellectual property that guards against infringement of business's goods and/or services by outside parties. Products and services should have more brand value as a result of using a trademark, which should help improve brand recognition. One can boost their company's overall worth, goodwill, reputation, and net worth in the market by registering a trademark in India.

To sum up, safeguarding your trademark application is essential for every company that wishes to build a strong brand identity and stop third parties from using its intellectual property without authorization. Conducting a thorough search, registering your trademark, using your trademark appropriately, monitoring your trademark, responding to office actions, renewing your trademark, enforcing your rights, and being aware of international trademark laws are the ten steps this blog outlines for businesses to follow in order to protect their trademarks. Businesses can generate a competitive advantage in the market, brand awareness, and legal protection for their intellectual property by performing these actions.

In the end, making an investment in trademark protection is necessary for long-term success, and companies who ignore this important facet of their brand strategy risk incurring expensive legal fees and losing precious brand reputation.

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Legal Stalker

Taxation Law:

1. Free replacement of parts under warranty not liable to GST: CBIC

The Central Board of Indirect Taxes and Customs (CBIC) stated in an order giving effect to the decisions made at the GST Council meeting earlier this month that while free replacement of parts of items covered by warranty would not incur goods and Services Tax, tax would be due if consumers are charged for new components. Free replacement of components is exempt from tax because the cost of the repair was covered by the item's initial sale, according to CBIC. According to the CBIC ruling, no additional tax is required to be paid in these circumstances, while stating the following:

"The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and (or) repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods."

However, if the manufacturer charges the client an extra sum for service or to repair a part, GST is due on such sale, according to the order. The CBIC also clarified the question of how credits for taxes paid by a company's head office for services purchased by branch offices across state lines might be utilized. GST regulations recognize branch offices in several states as distinct entities. The headquarters may choose to split the tax credit for common services it has purchased among the branch offices, according to CBIC. However, the distribution of such input tax credits by the head office is not required. Businesses having locations in various states are anticipated to benefit from this clarification.

2. CBDT amends the definition of Investment Fund under Income Tax Act, 1961:

With regard to the definition of an investment fund under the Income Tax Act of 1961, the Ministry of Finance, Department of Revenue, and Central Board of Direct Taxes recently published a significant revision to Notification No. 55/2019, dated 26-07-2019.

The announcement clarifies the requirements for funds that were created or incorporated in India and are subject to the International Financial Services Centres Authority (IFSCA) or Securities and Exchange Board of India (SEBI) rules. The amendment complies with the authority granted to the Central Government under Section 139, subsection (1C), of the Income-tax Act of 1961 (43 of 1961).

The new definition of an Investment Fund is as follows:

"investment fund" means any fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, made under the Securities and Exchange

Board of India Act, 1992 (15 of 1992) or regulated under the International Financial Services Centres Authority (Fund Management) Regulations, 2022 made under the International Financial Services Centres Authority Act, 2019 (50 of 2019)."

Following its publication in the Official Gazette, this notification will become operative.

3. Completed/Unabated assessments cannot be reopened by AO if no incriminating material is found during the search:

The Supreme Court has reaffirmed in the case of Principal Commissioner of Income Tax vs King Buildcon Pvt. Ltd. that, in light of the ruling in Principal Commissioner of Income Tax vs. Abhisar Buildwell Pvt. Ltd., an Assessing Officer (AO) is not allowed to increase an assessee's income in connection with completed or unabated assessments if no evidence of guilt is discovered during the search or requisition conducted in accordance with Sections 132 or 132A of the Income Tax Act of 1961, respectively. The completed/unabated assessments, according to the said judgment, can be reopened by the AO in the exercise of powers under Sections 147/148 of the Act, provided that the requirements outlined in said provisions are satisfied, according to the bench made up of Justices C.T. Ravikumar and Manoj Misra.

In light of the Supreme Court's decision in Abhisar Buildwell (2023), the court declared that the AO's authority under Sections 147 and 148 of the Income Tax Act was preserved.

Insolvency and Bankruptcy Code, 2016:

1. IBC overrides Electricity Act; dues to secured creditors at a higher footing than electricity dues:

The Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam Limited v. Raman Ispat Private Limited and Others, ruled that the Insolvency and Bankruptcy Code of 2016 (IBC) overrides the provision of the Electricity Act, 2003, in view of Section 238 of the IBC. The Hon'ble Apex Court determined that the IBC gives secured creditors' debts a greater standing than debts owed to the federal or state governments. According to Section 53 of the IBC, which sets the priority of claims during liquidation proceedings over government obligations, the "waterfall mechanism" was underlined by the Hon'ble Court.

The Hon'ble Court also ruled that the State Tax Officer v. Rainbow Papers Ltd. verdict was restricted to its factual context regarding settlement methods and neglected to take into consideration the "waterfall mechanism" under Section 53. As a result, the Hon'ble Court maintained the IBC provisions' overriding impact on government debt obligations, stating that they have a lesser priority than unsecured financial creditors.

Arbitration & Mediation:

1. Party's right to choose arbitrator cannot be revived once it is surrendered to court u/s 11(6) Arbitration Act:

According to a recent decision in the case of Srei Equipment Finance Limited v. Seirra Infraventure Private Limited, by the Calcutta High Court, once a party waives its right to name an arbitrator under Section 11 of the Arbitration & Conciliation Act, 1996 ("Arbitration Act"), that party cannot later "trace back its steps" to reinstate that right in order to replace the current panel of arbitrators with a new one when that arbitrator becomes de jure or de facto unable to perform their duties.

A single bench of Justice Moushumi Bhattacharya held that the arbitration process could not be allowed to resume at the point where the parties conferred to appoint arbitrators mutually under Article 11 of the Act and that the Court would substitute a new panel in accordance with Sections 14 and 15 of the Arbitration Act:

"After all, the intent of the 1996 Act, with all the amendments up to 2019, is to speed up the process of arbitration. The intent cannot be to retrace the steps from sections 15 to section 11 whenever an arbitrator is required to be substituted…The right to

choose an arbitrator was relinquished in favour of the Court appointing an arbitrator which the Court did on 22.2.2022. The respondent cannot revive that right once the arbitrator became de jure / de facto unable to act under section 14. The above discussion must and invariably tilt towards the Court appointing new arbitrators in the same manner as was done on the previous occasion on 22.2.2022 when the parties approached the Court under Section 14 of the Act. There is no statutory basis to send the parties back to the section 11(5) position."

When analyzing the nature of the dispute, the Court concentrated on Sections 14 and 15 of the Arbitration Act to determine whether it was possible to reconvene the process of choosing arbitrators under Section 11 for the purpose of replacing arbitrators after the previous panel of arbitrators had been chosen by the Court on the basis of consent from both parties. It was noted that:

"In the present case, the initial appointments of the arbitrators under the arbitration agreement was contested by the respondent on the ground of unilateral appointment and the respondent filed an application for termination of the arbitrators' mandate under section 14 of the Act. However, the controversy on the appointment was laid to rest when the respondent consented to the appointments made by the Co-ordinate Bench on 22nd February 2022. The respondent hence cannot say that the appointments which are now proposed to be made of the substitute arbitrators must be consigned to the drill of section 11(5) where the parties have to agree on the appointment within 30 days and thereafter approach the Court if they are unable to do so.

The reason for the above view is the continuity envisaged in Sections 15(2) and (3) in the performance of the arbitrator's duties. While Section 15(2) provides for an appointment of a substitute arbitrator in accordance with the rules that were applicable to the appointment of the arbitrator being re-replaced, section 15(3) ensures that the arbitration remains uninterrupted by giving the option to the substitute arbitrator to either repeat the hearings already held by the arbitrator or commence the proceedings anew. The flow of proceedings continues till section 15(4) where the validity of the orders passed by the arbitral tribunal, pre-replacement, are deemed to remain undisturbed regardless of a change in the composition of the arbitral tribunal. The interpretation of the statutory position agrees with the facts. The records show that the arbitrator/s held a few sittings before becoming unable to perform her functions. This fact also leans towards the continuity of the arbitration already initiated rather than relegating the parties to a stage that is prior even to the first appointment. The second appointment, as stated above, was done by the Court with the consent of parties."

Once the Court approves the appointment, party autonomy is put on hold, it added.

In disposing of the petition and establishing a new panel of two arbitrators, the Court made the following determination:

"There is little doubt that party autonomy is one of the fundamental underpinnings of the Act…The right to choose an arbitrator in accordance with an agreed procedure for appointment however stops at the doorway of 11(6) when the parties surrender that right to the High Court or the Supreme Court, as the case may be. The Court then steps in to make that choice in the matter of the appointment of an arbitrator. Once the Court intervenes in the matter of appointment and the arbitration is set in motion, the parties must revert to the Court in all subsequent interruptions in that process. There is no provision in the 1996 Act to support the contention that the parties be relegated to the 11(5) stage every time the mandate of the arbitrator comes to an end and a substitute arbitrator is required to be appointed."

Furthermore, it said,

The scheme of the Act also

does not support rewinding the clock every time the arbitration comes to a halt - or is stalled - for any of the reasons contemplated under sections 13,14 and 15 (termination and substitution) or even 29-A which provides for a time limit for making of the award in domestic arbitrations… Once the arbitral proceedings have commenced under section 21 and the appointment/dispute between the parties with regard to the appointment of the arbitrator is put to rest by the Court under section 11(6), the parties cannot be permitted to re-set the clock to a fresh date of commencement of arbitral proceedings on the pretext of substitution."

2. Finding of the tribunal regarding the existence of the arbitration agreement should not be interfered with unless it is manifestly clear that there was no agreement:

According to the High Court of Calcutta, courts exercising their authority under Section 48 of the A&C Act are not permitted to reconsider the evidence or substitute their own judgment for the arbitral tribunal's. It reaffirmed that the court need only make a preliminary ruling and that the scope of judicial involvement at the stage of foreign award enforcement is confined to the circumstances listed in Section 48.

Unless it is blatantly obvious that there was no agreement, the bench of Justice Shekhar B. Saraf decided that the opinions of the arbitral tribunal regarding the existence of the arbitration agreement based on the evaluation of evidence cannot be replaced.

The Court noted that under Section 48(2)(a), execution of a foreign judgment might be denied if the Court determines that the discrepancy is not capable of resolution by arbitration in accordance with Indian law. It was decided that a disagreement cannot be resolved in the absence of a contract between the parties. It emphasized once more that the threshold of inquiry under Section 48 would only be preliminary and that the Court could not reexamine the evidence, replace its opinion with the tribunal's opinion, or reassess the situation.

The Court, thus, ruled that unless it is ex-facie obvious that there was no agreement, courts exercising their authority under Section 48 of the Act should not interfere with the tribunal's conclusions about the existence of the arbitration agreement.

Micro, Small, and Medium Enterprises Development Act, 2006 ("MSMED Act"):

1. Defaulting buyer not liable to pay interest at 3 times bank rate if the supplier is a medium enterprise:

Recently, the Calcutta High Court in the case of "New India Assurance Co. Ltd. V. Winsome International Ltd.(AP/418/2023)" through a single bench of Moushumi Bhattacharya, J. has ruled that if the supplier is a medium enterprise under Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, then the rate of interest levied on the arbitral award will be at bank rate as per the notification issued by RBI, and not three-times of such bank rate. In other words, the court observed that a defaulting buyer will not be liable to pay an interest at three times the bank rate under Section 16 of the said Act if the supplier is a medium enterprise.

In this matter, the sole Arbitrator passed an order that the petitioner has to pay an amount of Rs 24,11,07,449.15 to the respondent and the interest calculated at 24.6% was based on the fact that the respondent is a medium enterprise under 16 of MSMED Act. The petition filed an application before the Calcutta High Court seeking a stay on the said Arbitral Award and asked the court to make a distinction between small, medium and micro enterprises as defined under the said Act. However, the respondent replied that the grounds contended by the petitioner can be considered only at the time of setting aside any award under Section 34 of the Arbitration and Conciliation Act, 1996.

The Court here observed that

the "Supplier" defined under Section 2(g) of the MSMED Act excludes a "median enterprise". The Court further applied Section 2 (g), (h), (m), (n) of the Act and observed that the defaulting buyer should not be liable to pay an interest three times the charged by the bank if the supplier is a median or medium enterprise but this principle is not applicable in the case where the supplier is a micro or small enterprise.

The Court held that the liability to pay interest will be 8% instead of 24.6% on the principal amount and secure 50% of the total amount by way of cash deposit and then the rest by way of a bank guarantee with the Registrar.

Other Significant Developments:

1. SLP challenging report of advisory board/opinion of the board not maintainable:

A special leave petition contesting a COFEPOSA Act report by the advisory board or board opinion is not maintainable, the Supreme Court reaffirmed recently in the case of Union of India V. Dharanessh Raji Shetty, Special Leave to Appeal (Crl.) No(s). 8063-8064/2018. In response to a challenge to an order made by the Central Advisory Board of Karnataka under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act of 1974 (COFEPOSA Act), a division bench of Justices C T Ravikumar and Sanjay Kumar issued the ruling.

The Advisory Board's opinion is never meant to be subject to a merits challenge before any tribunal, according to the Apex Court's prior ruling in Union of India v. Nisar Pallathukadavil Aliyar, (2020) 20 SCC 252:

"….the nature of opinion given by the Advisory Board is neither judicial nor quasi-judicial; that it would be erroneous and unsafe to treat the opinion expressed by the Advisory Board as amounting to a judgment of a criminal court; that the Advisory Board does not try the question about the propriety or validity of the citizen's detention as a court of law would, but, its function is limited."

The Advisory Board was established in accordance with Section 8(a) of the COFEPOSA Act, and the Court in the aforementioned case was contemplating an SLP contesting that conclusion. The Apex Court in the aforementioned case came to the conclusion that the Advisory Board's opinion could not be subjected to judicial scrutiny after citing a number of decisions on the issue. The Apex Court has stated that the judicial courts or tribunals cannot evaluate or examine the Advisory Board's opinion.

2. Functional disability & not physical disability the determining factor to claim total disablement:

The Supreme Court reaffirmed in the case of Indra Bai v Oriental Insurance Company Ltd., that functional impairment, not physical disability, is the decisive element for increasing the compensation to an injured labourer under the Workmen Compensation Act of 1923. A pole fell on the victim's left arm, causing nerve damage that caused her to lose grasp on her arm. The victim was a labourer. The disability was given a 40% rating by the Madhya Pradesh High Court. The Supreme Court overturned the High Court's ruling and ruled that the claimant should be deemed to have a "total disability" since she is unable to perform the job she was previously performing.

The claimant has experienced total disablement as defined by section 2(1) of the Act, according to the Court's ruling that functional impairment, not merely physical disability, is the deciding element. According to a bench of Justice JB Pardiwala and Manoj Misra, "the disablement would be taken as total for the purposes of awarding compensation under section 4(1)(b) of the Act regardless of the injury sustained being not one as specified in Part I of Schedule I of the Act if the disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such

disablement."

3. In a cheque dishonour case, interim compensation can be ordered to be paid only after the accused pleads not guilty:

The Supreme Court in the case of Pawan Bhasin v State of UP, held that according to section 143A (1) of the Negotiable Instruments Act, 1881, the interim compensation for a dishonoured cheque can only be ordered to be paid after the accused has entered a not guilty plea. In the current instance, the court took notice of the magistrate's instruction to pay 10% of the cheque amount before entering the accused's plea. The court determined that it was illegal for such directives to be made before the plea was considered. The court, therefore, noted that "In the current case, the Magistrate issued the order before the accused's plea was entered, i.e., after he responded to the summons. At a crucial point in the proceedings, but before the plea of "not guilty," the party's representatives were present. In these circumstances, Section 143A (1) has obviously been broken.

Following an analysis of section 143A(1), the Court determined that only after the accused has entered a plea of not guilty may a directive be given for the payment of interim compensation. The trial court's order was thus invalid under the law and quashed. But it also ruled that while the trial was far along, the complainant might still apply for relief under section 143A because it could be made at any point.

4. Participation of accused in appraisal process of complainant makes mockery of entire process:

The Prevention of Sexual Harassment in the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the "POSH Act"), has been the subject of a recent ruling by the Calcutta High Court that the accused's participation in the complainant's appraisal report "vitiates and makes a mockery of the entire process." A single bench of Justice Moushumi Bhattacharya ordered the respondents/contemnors to demonstrate that they had not engaged in "contumacious violation" of the court's orders and that the impugned appraisal report was unrelated to the charges under the POSH Act, which the petitioner had invoked against the accused/contemnor no 5. This was done in response to a contempt application filed by the complainant/petitioner against the accused, his company, and its agents. It was observed:

"A person against who a complaint of sexual harassment has been made cannot, under any circumstances, be a party to the performance appraisal of the complainant…Rule 8(a) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013 specifically empowers the Complaints Committee to recommend restraining the respondent from reporting on the work performance of or writing the confidential report of the aggrieved woman. The work has to be assigned to another person. The 2013 Act strives to secure a safe environment to a woman in her workplace. The acts of the alleged contemnors have made a mockery of the object of the Act and the safeguards introduced therein……"

Justice Bhattacharya noted that even an improvement and review of the complainant's grades or scores would not give the entire process a look of impartiality or purity because the accused's very participation in the appraisal process would have vitiated it altogether. Justice Bhattacharya held that the accused's actions in participating in an appraisal process of the complainant were clearly against the provisions envisaged in the POSH Act, 2013.

The contemnors were thus ordered to maintain the complainant's assessment report in absolute confidence so that no one within the firm could distribute it or make it known to anyone else within the company, which may have an impact on the outcome of the contempt proceeding. The matter has been scheduled for a follow-up hearing on August 4, 2023.

IPR COMPENDIUM

Recent Developments in Intellectual Property Laws in India

In addition to the most recent developments, the Government of India took a number of steps to bring India's IP legislation into compliance with acceptable international standards in order to bring about gradual changes towards a free market society, rapid liberalization of international trade practices, and to demonstrate its commitments to the WTO under the Trade Related Intellectual Property Rights Agreement **("TRIPS")**. All IP legislations have recently undergone revisions or amendments, largely in response to India's WTO membership. Here are a few recent changes to India's intellectual property laws:

1] Trademark law brought at par with international practices: India revised the Trade and Merchandise Marks Act, 1958 with the Trademarks Act, 1999, to bring Indian trademark law into compliance with international standards and to ensure that India was adhering to its TRIPS Agreement commitments. The following are some modifications made by the 1999 Act:

- For the first time, service marks are now registrable and hence protected.
- To expand IPR protection, the term trademark now includes graphic representations, forms, packaging, and colour schemes.
- By getting rid of the previous approach of Part A and B registration, the process for trademark registration was eased. Additionally, only one application now has to be submitted in order to register a trademark across multiple classes. The 1999 Act also allows for the categorization of goods and services in accordance with the widely accepted International Classification of Goods and Services.
- The seven to ten-year registration and renewal periods have been extended.
- To provide protection beyond the use of identical or confusingly similar marks with respect to goods for which they are registered, the concept of trademark infringement has been expanded.
- As opposed to the previous law, which required the lawsuit to be filed in the defendant's location, a district court within whose jurisdiction the plaintiff (the owner of the trademark) resides or conducts business may now hear a case for trademark infringement or passing-off.
- Under the current legislation, trademarks, whether they are registered or unregistered, may be assigned with or without the business's goodwill.

The Trademarks Amendments Rules, 2014 have recently increased the trademark filing fee in several circumstances. Additionally, the cost of an expedited exam has gone up. In addition, the Trade Marks Registry has released an Office Order little on amendments that may be submitted to a trademark registration application. This order includes several substantial alterations that are prohibited, along with other changes that are essentially of a clerical character.

2] Protection to Geographical Indications provided: The Geographical Indications of Goods

Registration and Protection Act, 1999 also known as the GIG Act was passed by India. In order to help consumers identify the country of origin, quality, reputation, and other distinguishing qualities of goods, the GIG Act enables the registration and greater protection of geographical indicators linked to those items. Basmati rice, Darjeeling tea, Alphonso mangoes, Malabar pepper, cardamom, and Hyderabad grapes are only a few examples of distinctive Indian products tied to certain geographical regions of India that are currently protected by the GIG Act and are well-known on the global market. Since they have been regularly exported for many years, these goods attest to India's reputation for high quality and the need for such protection. Geographical indications are considered public property and cannot be assigned, according to the GIG Act. The GIG Act also establishes guidelines for infringement lawsuits. The GIG Act assists in preventing the genericization of geographical indications of commodities, which could otherwise result in a loss of individuality and, as a result, protection.

3] Copyright Law Modified: To help stop ongoing piracy, the government is thinking about making more changes to the Indian Copyright Act. Future changes would increase the deterrents against violation by creating stronger governmental and administrative systems. Additionally, these modifications would grant the police greater authority to carry out covert operations, seize and destroy counterfeit goods, expedite criminal procedures, and impose harsher penalties for piracy.

4] Patents Law more aligned with TRIPS: The list of inventions that are not patentable has been expanded, the patentee's rights have been strengthened, the burden of proof in an action for infringement of a process patent has been reversed, and a uniform 20-year patent term has been established for all categories of invention in accordance with TRIPS.

The Indian Patent Office published rules for the issuing of pharmaceutical patents in 2014. In order to help the Patent Office establish universal criteria for patent grant/examination, these rules essentially include elements of numerous court rulings. These guidelines are anticipated to bring about uniformity in the examination of patent applications across all Indian Patent Offices and by various responsible officers, as well as provide the much-desired certainty to inventors and corporations regarding how their application will be evaluated by the IPO. In the area of IP Law, a number of administrative and procedural systems have also recently been strengthened. In order to build facilities for proper management of the International Searching Authority/International Preliminary Examining Authority operation under the Patent Cooperation Treaty, the infrastructure of the Indian Patent Office has been considerably enhanced.

A third applicant category, known as a small entity was recently added by the Indian Patent Amendment Rules 2014, which also offered procedural guidelines for governing it. Due to the advent of the e-filing system for patents, where the rates for e-filing are lower than those engaged in physical filing, the fee for basic patent filing has also been reduced.

5] Protection for Plant Varieties and Rights of Farmers established: The Indian government adopted a sui generis approach when it passed The Protection of Plant Varieties and Farmer's Rights (PPV&FR) Act, 2001. In addition to being in compliance with the International Union for the Protection of New Varieties of Plants (UPOV) 1978, Indian law also contains sufficient protections for the interests of farmers and public sector breeding facilities. The legislation acknowledges the roles that farmers and commercial plant breeders play in plant breeding activities and calls for the implementation of TRIPs in a way that advances the unique socioeconomic interests of all parties involved, including the public, private, and research sectors as well as farmers with limited resources.

Following are the objectives of the PPV& FR Act, 2001:

- To create a framework that effectively protects plant varieties, farmer and plant breeder rights, and to promote the creation of new plant varieties.
- To acknowledge and defend farmers' rights with regard to their ongoing efforts to preserve, enhance, and make available plant genetic resources for the creation of new plant kinds.
- Protecting the rights of plant breeders will help the nation's agricultural development along with encouraging public and private sector investment in research and development to create new plant types.
- Encourage the development of the nation's seed business, which will guarantee that farmers have access to high-quality seeds and planting supplies.

6] New Designs Law: India passed a unique law to safeguard copyrights in industrial designs. The older Designs Act of 1911 was repealed by the Designs Act of 2000. The new legislation defends owners of unique or original designs and upholds their legal rights against violators. The concept of **"Original"** as included in the new regulation clarifies what constitutes a registrable design.

The phrase original in regard to a design encompasses designs that, while timeless in themselves, are cutting-edge in their application. According to the Act, you can register any design that is brand-new or original, hasn't been published anywhere in India or outside of India, and doesn't violate morals or public order. The new Act amplified the definitions of article and design to bring them in conformity with internationally accepted definitions for providing wider protection. Designs do not need to be registered in more than one class, which was not the case under the earlier law. In view of India's accession to the Paris Convention and India being a signatory to the WTO, the right of priority has been extended to countries under the Paris Convention. The initial period for copyright in registered designs has been extended from 5 to 10 years. The new Act removes the earlier provisions regarding period of secrecy of the design for two years and enables the public to inspect any registered design during initial period of existence of the registration.

7] Integrated Circuits Provisions adopted: India passed the Semiconductor Integrated Circuits Layout-Design Act, 2000, in accordance with its TRIPS Agreement responsibilities. This Act allows for the registration of unique layout designs that are original, naturally distinctive, and have not yet been used. A legal action for infringement can be used to stop any unauthorized usage of a registered layout-design. The Act stipulates a 10-year period of protection.

Although the Indian IP laws are still in the stages of development but the same are very much in conformity with the international IP laws as India is a signatory to international conventions and treaties including Paris Convention for the Protection of Industrial Property, Berne Convention on Copyright and TRIPS Agreement.

In general, there are just a few substantial differences between Indian and European IP rules, and even those mostly concern less important procedural matters. These distinctions include the term of protection offered and the time and expense required to register an IP. However, with a backlog of cases in both the civil and criminal courts as well as IP Offices, there have been serious worries over IP enforcement, and this is the area in which India needs to focus.

CONTEMPORARY & UPCOMING ISSUES IN THE FIELD OF IPR

Regarding the Indian IP regime, which has witnessed a slow but significant change in

our laws that has now encouraged not only foreign corporations to seek IP protection in India but has also supported start-ups in seeking protection of their IP to the extent that these businesses have the freedom to seek the protection of their IP at significantly reduced fees barring copyright and geographical indications. By lowering associated expenses and enhancing its e-filing system/mechanism, IPO has also taken steps to promote e-filing. However, problems arise when start-ups and small businesses try to register their intellectual property but are not aware of these widespread but affordable procedures.

Furthermore, due to government interference in the enforcement of patent rights, our intellectual property policies, particularly patent policies, have come under fire on a global scale for a considerable amount of time. One of the main issues for international businesses and organizations has been how patented technologies are used in India and the problem of compulsory licensing.

Following are the contemporary and upcoming issues in the field of IPR:

1]Lack of Awareness of Intellectual Property Rights: The Make in India initiative, launched by the Indian government in 2014, aims to promote entrepreneurship by offering financial support and foreign investment up to 100%. Although the project strives to educate entrepreneurs about intellectual property rights, small enterprises have yet to reap its benefits.

Due to their lack of understanding of the value of their intellectual property, these enterprises and startups frequently violate others. This results in the filing of a lawsuit by large corporations alleging infringement or passing off against such businesses, and since defending such lawsuits is a costly and time-consuming process, it becomes difficult for the entrepreneurs to defend the lawsuits and operate their business successfully. Entrepreneurs frequently believe that their actions of adopting an identical or misleadingly similar trademark would go unnoticed or would not constitute infringement or passing off because professionals who do not have expertise in the area of IP law frequently misinform and miseducate them about the fundamentals of IP.

These business owners frequently hold the following beliefs as a result of their lack of expertise in the field of IP and lack of appropriate professional guidance:

- Adopting a similar mark deliberately in a different class does not amount to passing off or infringement.
- Adopting a mark that is similar in a class that is related to or kindred to the original mark does not amount to passing off or infringement.
- Even if the rival marks are identical or superficially similar, filing a trademark application with a user claim would give them a strong defense against the claim of the legitimate owner.

These are undoubtedly some of the typical myths that give rise to a claim of infringement or passing off from the real owners of the marks. Additionally, it cannot be ruled out that a court could order a defendant to pay damages and/or other fees. Due to their limited finance, these start-ups are frequently obliged to reevaluate their entire business plan in light of the impending lawsuit in such a situation.

However, this can be avoided if the business owners are either knowledgeable about IP rules or take the required precautions to ensure that they receive appropriate advice regarding the risks associated with the registration and use of their mark from a specialist in the field of IP laws. Nowadays, it is extremely common for startups to use the same or similar trademarks as large corporations or other startups. Some well-known examples are the lawsuits filed by Book my show against Book my offer, Shaadi.com against the usage of Secondshaadi.com,

and Naukri.com against Naukrie.com.

2]Raising awareness of IP Laws for entrepreneurs: To protect their rights and interests, entrepreneurs and small enterprises should take the following actions, as nearly 50% of IP litigations involve trademark infringement and passing off:

- Entrepreneurs and business owners should seek the advice and assistance of solicitors and law firms that specialize in intellectual property rights when applying for trademarks.
- Make an effort to understand and participate in discussions regarding each step of trademark application prosecution and registration.
- Contact IP lawyers or law firms to understand the significance of protecting your intellectual property and the freedom to use a trademark before registering it or for goods not covered by the trademark registration.

Additionally, IP attorneys and law firms should prioritize advancing IP protection for start-ups and small enterprises by organizing interactive meetings with potential new clients and domestic customers. They should also offer competitive fees for pursuing and enforcing these clients' IP rights.

3] The imposition of Price Caps on pharmaceutical drugs in India and its workaround: India's patent laws are one of the main reasons why the USA views its IP regime as a serious danger, especially in the pharmaceutical sector. Despite the US Trade Representative's statement last year that the USA is trying to limit patentability for new pharmaceutical drugs, which are essentially just discoveries of a new form of a known substance that does not result in enhancement of the known efficacy of that substance, it still views India as a threat to its IP regime.

It is important to note that, unlike developed nations, the Indian government maintains strict control over drug pricing through its patents act and policies. The intention is to make healthcare, specifically medication, accessible to all states and income groups. This helps us understand the challenges faced by the Indian pharmaceutical industry, including cancer and diabetic treatments. The government's rigorous price controls have a significant negative impact on the valuation of pharmaceutical drugs and dilute IP rights.

If the government regulates the prices of cancer medications to make them more affordable, it can negatively impact the profit margins of pharmaceutical companies and discourage innovation. While patients may benefit from lower costs, this could lead pharmaceutical companies to invest more in generic drug manufacturing rather than developing new drugs that could potentially be more effective in treating currently incurable or treatable conditions.

India's heavy reliance on generic medications to support less fortunate consumers has led to concerns from the USTR and major international pharmaceutical companies. This has resulted in restricted investment in the Indian pharmaceutical industry because their price margin would force the government to either impose price caps or implement compulsory licensing.

Price caps in the pharmaceutical industry impact India's patent laws and hinder innovation. Pharmaceutical companies focus on producing generic drugs to profit from patients' expenses, without discernible improvement in drug accessibility.

4] A Global Upcoming Issue: Impact of Use/Commercialization of Artificial Intelligence on Intellectual Property Rights: Currently, artificial intelligence can be classified into two distinct categories:

- Weak AI: Artificial intelligence (AI) has become a common tool for large companies such as Google, Apple, and

Microsoft. However, the type of AI typically used by these firms is known as weak AI. This type of AI is limited in its capabilities, as it can only perform tasks that it has been specifically programmed to do. It is not capable of independent thinking or behaving like a human mind, which is why it is considered to be a safer option for businesses. Additionally, because weak AI is not capable of independent thought, it is not a threat to intellectual property, making it a useful tool for companies that need to protect their proprietary information.

- Strong AI: When we talk about Strong AI, we refer to the type of AI that can perform highly complex cognitive tasks, similar to those performed by humans. This type of AI is capable of creating new intellectual property, including copyrightable sounds or videos, and original designs. On the other hand, Weak AI is limited to performing basic tasks faster than humans, with a much lower degree of complexity. The distinction between Strong and Weak AI is important, as it helps us understand the potential of AI and how it can be applied in various industries.

The potential of AI in the fields of healthcare and agriculture is quite promising, though some concerns have been raised about conflicting objectives.

Businesses invest heavily in AI development for revolutionary effects, including epidemic prediction, catastrophe warning systems, damage prevention, and productivity boosts. However, despite endless possibilities, the commercialization of AI is inevitable, raising concerns about regulations to address potential problems. Unfortunately, there are currently no adequate regulations in place.

LEGISLATIVE AND POLICY DEVELOPMENT FOR INTELLECTUAL PROPERTY:

- The Amendment to the IT Act, 2021: The proposed amendments to IT Rules 2021 require intermediaries to ensure that users comply with rules, regulations, and privacy policies. They also need to ensure that no content is posted or uploaded that violates their own terms and conditions. Intermediaries must screen each piece of content submitted by users to ensure that it complies with rules and terms.
- Economic Advisory Council's Suggestions on fast tracking patent application process: The initial recommendation was to increase the number of examiners, while the second was to reduce the six-month period for submitting pre-grant objections. The post stated that setting such stringent deadlines for filing pre-grant oppositions makes it nearly impossible for the opponent to create a sustainable opposition. Moreover, given the parties' additional delays in other procedures, this does not seem to be a feasible option.
- Indian Patent Office brings out public notices fixing the number of permissible adjournments to a hearing among other things: Indian Patent Office posted three public notices regarding hearings in the patent prosecution stage. Only the concerned patent agent or representative can represent a party before the controller. An advocate who is not a patent agent can appear before the controller if they have been given permission by the party to speak on its behalf and are accompanied by the party throughout the hearing. The second notice states that a party can only request two

postponements and the hearing must take place within ten days of the notice or intimation. Parties requesting an adjournment of the hearing must provide justification according to the third notice.

- Indian proposes Section 66A-like provision during the UN cybercrime treaty negotiations: India is proposing a law similar to "Shreya Singhal v. Union of India" after the Supreme Court's ruling and during discussions for a UN treaty against criminal use of technology.
- Leaked draft of India-UK FTA IP Chapter and TRIPS Plus provisions therein: A draft of the IP chapter in the India-UK FTA was leaked by Bilaterals.org. It is impossible to determine which provisions the UK has offered or challenged and which have been put forth by India since there are no markups. However, the leaked text contains overly zealous TRIPS-plus clauses.
- Guidelines for Accessibility and Reasonable Accommodations for Persons with Disabilities: The Office of Controller General of Patents, Designs, and Trademarks released guidelines for Accessibility and Reasonable Accommodations to help PWDs engage and practice with IP Offices more easily.
- The Jan Vishwas Amendment of Provisions Bill, 2022: The Lok Sabha has received the Jan Vishwas Amendment of Provisions Bill, 2022, which aims to decriminalize and rationalize minor offenses and enhance trust-based governance for ease of living and doing business. The proposed amendments cover 42 Acts and include decriminalizing the act of misrepresenting a trademark as registered without submitting a working statement.

THE CURRENT SCENARIO OF IPR

AI will inevitably impact current IP laws, as seen in the case of “Naruto v. Slater.” Only humans can be IP proprietors, meaning any IP created by AI cannot be registered. However, a recent Chinese court ruling may indicate a different perspective: it ruled in favor of Tencent, a software corporation, after accusing a regional financial news organization of violating copyright over content produced by its dreamwriter robot.

In the case of “Naruto v. Slater,” Chinese law allows for copyright protection for essays produced by AI. In contrast, the European Patent Office requires a human inventor to file patent applications submitted by AI technology, as was seen in the case involving DABUS, similar to the Naruto case. The University of Surrey's Professor Ryan Abbott and his team submitted the first-ever patent application without a human inventor using their AI dubbed DABUS, demonstrating that the transition to AI-based IP filing is underway. Unfortunately, the application was denied because the necessary legal framework is not yet in place.

The concept of "sweat of the brow" refers to the effort and hard work involved in creating an IP, and courts worldwide occasionally rely on it. However, when it comes to IP generated by AI, applying this premise becomes more challenging. The commercialization of AI may dilute IP rights since AI could potentially create IP faster and more efficiently than humans.

AI can create registrable IP faster and easier than humans, but commercializing it may lead to unanticipated problems that need to be addressed.

The World Intellectual Property Organization (WIPO) has launched a campaign to gather public input on the impact of AI on global IP regulations. The organization is holding press conferences to discuss upcoming challenges in adapting IP rules to the commercialization or

deployment of AI. While the last conference primarily focused on patent laws, the next round of sessions is expected to cover all IP laws and take a more holistic approach to progress.

AI will impact IP regime, from creation to commercialization. Laws need revision to value investment in AI and IP.

INDIA'S APPROACH TOWARDS AI

India's IT industry has contributed to the growth of other primary industries, such as agriculture and healthcare, through mechanisms like an integrated crop management system and an online trade system. Technology will continue to play a significant role in India's development, with the software sector being crucial in its transition to a trillion-dollar economy.

India is an ideal destination for investment in tech start-ups, with extensive support from the government and FDI resulting in significant growth. The impact of AI on other sectors, including agriculture, healthcare, and education, is unmistakable.

India's healthcare sector is in desperate need of investment and development due to insufficient funding and limited accessibility to medications. Employing AI technology would significantly decrease costs associated with labor, research, trials, etc. This would eventually reduce the price of pharmaceutical drugs and eliminate the need for state governments to make significant financial investments.

One would not need to invest a lot, even if the current investment is insufficient. More FDI in India's healthcare industry, supported by AI in research and marketing of pharmaceutical products, would lower overall costs and increase production and sales. Access to healthcare would improve in India's less developed areas in the long run, as healthcare is mostly available in a few states and cities but continues to struggle elsewhere. Healthcare access will be a priority after drug pricing is addressed and will flourish with AI support.

In Financial Year 2019, the agriculture industry contributed an estimated $265.51 billion to India's GDP, according to research published by the India Brand Equity Foundation. This suggests that many of India's cities and less developed states are entirely dependent on the production and export of their agricultural products. The industry is constantly seeking ways to boost crop yields in a cost-effective and efficient manner, with FDI inflows of up to 100% and an increasing reliance on technology.

Despite significant problems in agriculture (weather, worker health, farming methods, and irrigation), Microsoft India and Intello Labs have developed AI-based mechanisms to increase crop output and decrease wastage/infestation. For example, Microsoft India has released an AI-based sowing software that advises farmers on the optimal time to sow their crop based on analysis of climate data for the specific area and the quantity of rainfall and soil moisture the crops have received. These apps can help farmers without incurring additional fees for sensor installation.

India's low investment in powerful AI hinders its commercialization. Lack of knowledge in AI makes research difficult.

The Chinese government is preparing to lead AI by 2030 with a three-step strategy: appreciating AI-based applications by 2020, breaking ground in the field by 2025, and dominating it by 2030.

In a previous ruling that favoured Tencent, a Chinese court allowed for AI-generated copyright work to be recognized. India has taken steps to develop its own AI technology, with aid from its think tank National Institution for Transforming India Aayog through the National Programme on AI.

IPR PRECEDENTS

Let's take note of the following and impending significant IPR cases in order to better comprehend the Supreme Court's proposed IPR modification, new rules, and regulations:

- **"M/s Knit Pro International vs. The State of NCT of Delhi" (on 20 May 2022)**

In a chilling and significant development, the Supreme Court has ruled that offences under Section 63 of the Copyright Act 1957 Act, having a term of imprisonment for six months to three years, shall be cognizable and non-bailable. This means that any person who knowingly infringes or abets infringement of a copyright or any other right under the Act can be arrested by the police without a warrant. For instance, a person can be arrested for sampling copyrighted music for a show. While the First Schedule of CrPC categorizes offences with an imprisonment of less than three years separately from offences with an imprisonment of three years and more, the Supreme Court overlooked this distinction on the ground that such an interpretation will deter copyright infringers. The Court, however, has not given any proper reason for reaching this conclusion. One of the implications of criminalizing copyright infringement to this extent is that it might have another way for industries to weaponize copyright and threaten even legitimate users for permitted purposes.

- **"Anil G. Karkhanis vs. Kirloskar Press" (on 17 June, 2022)**

In what may become the first instance of compulsory licensing of a literary work in India, the Bombay High Court passed an order directing the Registrar of Copyright to issue a notice in the copyright journal and two newspapers regarding an application under Section 32 of the Copyright Act to translate Mira Behn's autobiography **"The Spirit's Pilgrimage" from English to Marathi**. Technically it appears that either Section 31A or Section 32 could've been used for this matter, it may turn out to be a valuable precedent that Section 32 has been utilized here if it proceeds all the way. This is because, unlike Section 31A, Section 32 can also be utilized when the original author/publisher is found and denies permission to translate into another language, so long as 7 years have passed from the first publication. The notice period concludes 120 days from the public notice dated 26 October 2022 after which we will know whether this will pass on to a compulsory license or not.

- **"Knitpro International vs. Examiner of Trade Marks through Registrars of Trademark"[5](on 13 July 2022)**

In a problematic order dealing with shape marks, Delhi High Court noted that under the law of trademarks, the threshold for extending exclusive rights to the shape of a product is quite high and the Alongside, the court held that, it has to be shown that the concerned shape mark is not the generic shape of the product, but rather is a distinctive shape. The issue with this reasoning of the court is that it sets up an additional threshold to the ones mandated by the legislature while registering shape marks. The law allows for seeking registration on a 'proposed to be used basis', however, by this decision such applications, which haven't garnished any acquired distinctiveness, cannot fructify.

- **"Kanishk Sinha and Another vs. The Union of India and Another"[6](on 27 April, 2022)**

In an important case concerning the issue of patent linkage in a non-pharma sector, the division bench of Calcutta High Court refused to grant patent linkage to the Appellant holding that doing so in whatever form, would give a controlling handle to the writ petitioners beyond the legal remedies available to them under the Patent Act. The case concerned a writ petition filed against the order declining the Patentee's request for linkage of the VAHAN e-Module for registration of electric vehicles, by the Secretary, Ministry of Road Transport & Highways. The court held that a grant for patent linkages would be subject to an assessment by the courts and will only be granted where a patentee can demonstrate clearly that the remedies under Patents Act, 1970 can truly not address the legal issues arising out of their case.

[5] C.A. (COMM.IPD-TM) 110/2022

[6] W.P.A 17414 of 2021

- **"Nippon A & L Inc. vs. The Controller of Patents"[7](on 5 July, 2022)**

In a problematic decision concerning amendments to the patent claims, the Delhi High Court permitted amendment to the patent claims beyond its scope by deeming the amended claims to be a step down from a product-by-process claim to a process claim. The court relied on a decision of the European Technical Board of Appeal in one Konika/Sanitizing application in doing so. However, such a reliance on foreign authority can be deemed as erroneous since the decision in Konica is based on substantively different legislation. Furthermore, Section 59 (1) of the Indian legislation does not permit such an understanding as it expressly states that the amended claim must fall wholly within the scope of a claim of the specification before the amendment.

- **"M/s Patil Automation Private vs. Rakheja Engineers Private"[8](on 27 July, 2022)**

Here, the Supreme Court clarified that pre-institution mediation under Section 12A of the Commercial Courts Act is mandatory and can only be done away with when the suit contemplates an urgent interim relief. The decision expressly stated that if the plaintiff does not follow the mediation process, the plaint can be rejected. While the court does not define what urgent interim relief will entail, one view is that an urgent case for interim relief will either show that infringement/ loss has already occurred or that fear of infringement/ loss is clear and imminent. In patent infringement cases, quia timet injunctions are based on the threat of infringement and possible future injury, and thus in light of this decision, it can be argued that since applications seeking quia timet actions are largely based on apprehensions, it may not be possible for the applicant seeking quia timet actions to establish urgency. Therefore, in light of the above understanding, the implication of this decision could mean that the patentee will ideally have to undergo mediation instead of seeking a quia timet injunction.

- **"Kantara Varaha Roopam Controversy"[9] [Palakkad District Court, Kozhikode District Court, Kerala High Court]**

One of the most talked about IP disputes of the year concerns the movie "Kantara" and its song "Varaha Roopam". Two separate rounds of litigation were instituted against the same party over the same cause of action. It was alleged that the song "Varaha Roopam" infringes the copyright of another song "Navarasam". On the basis of these allegations, separate interim injunctions were granted by different courts restraining the movie's release on the OTT platform and directed takedown of the allegedly infringing song music apps. However, after the initial rounds of interim injunctions, the courts returned the respective plants for the lack of jurisdiction, putting the dispute to an end.

- **"Avery Dennison Corporation vs. Controller of Patents and Designs"[10](on 25 July, 2022)**

In a landmark decision, the Delhi High Court held that the mere simplicity of the invention will not deter it from patent protection. The court discussed different tests to determine the existence of the inventive step and lack of obviousness and held that these tests cannot be applied in a straitjacket manner. However, the court held that one of the sure tests in analyzing the existence of inventive step would also be the time gap between the prior art document and the invention under consideration. If a long time has passed since the prior art was published and a simple change resulted in unpredictable advantages which no one had thought of for a long time, the Court would tilt in favour of holding that the invention is not obvious.

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7 C.A. (COMM.IPD-PAT) 11/2022

8 Petition for Special Leave to Appeal (C.) No. 14657/2021

9 http://www.outlookindia.com

10 C.A (COMM. IPD-PAT) 29/2021

- **"Jumeirah Beach Resort Llc vs. Designarch Infrastructure Pvt Ltd"[11]. (on 28 November, 2022)**

In a problematic order, the Delhi High Court presumed the power to direct the Trademark Registry to transfer 5 rectification applications, despite acknowledging that there is no provision in the Trademarks Act to do so. The court justified this on two grounds-

1) If the Registrar of the Trademark can 'refer' the matter to the court under Section 125 (2) of the Trademarks Act, why can't the court 'direct' such a transfer when the connecting matters are already pending before the court;

2) The ultimate goal in all the commercial matters is an expeditious and meaningful disposal of the suits. However, in this end justifies means approach, the court missed out on discussing how the order is justified in light of the procedural laws and doctrine of separation of power.

- **"Neetu Singh & Anr vs. Telegram FZ LLC & Ors"[12]**

In an order clarifying the jurisdiction for intermediary liability under copyright infringement, the Delhi High Court held that its jurisdiction cannot be ousted merely on the ground that the data server containing information of copyright infringers is situated abroad. The court noted that the infringement was concentrated in Delhi since the copyrighted works were being circulated there and the materials contained preparatory content for Indian competitive examinations which is relevant to the Indian scenario since. Citing the Information Technology Intermediary Guidelines and Digital Media Ethics, 2021 (IT Guidelines) it stated that it is the duty of Telegram as a platform to take all effective steps required to protect IP rights, including rights of copyright owners.

GOVERNMENT INITIATIVES PERTAINING TO IPR

R&D and innovation promotion has been recognized by the Ministry of Electronics and Information Technology (MeitY) as essential components of the ICT ecosystem. In order to do this, it has been assisting the country's complete value chain of R&D operations, from the development of basic ICT components to complex product development.

MeitY has made significant progress in recent years in creating an ICT-IPR ecosystem that is favourable for the creation, protection, awareness, and commercialization of IP as well as IP Rights. MeitY recognizes the need for the protection of IP as a crucial component of innovation and scientific advancement and that many of the benefits of inventions will be lost if the resulting IP is not protected.

With the following goals in mind, MeitY is creating a special section for IPR-related support services:

- Increasing understanding and facilitating assistance.
- IPR promotion in the ICT sector.
- Establishing the right infrastructure to support a robust IPR ecosystem.

The government has adopted the following key initiatives.:

- **NIPAM:** National Intellectual Property Rights Policy is referred to as NIPAM. It is a framework for a policy that the Indian government has put in place to advance and defend IPRs in the nation. The goal of the policy is to raise awareness of IPRs among diverse stakeholders, strengthen the institutional and legal framework for IPR protection, and to make it easier to commercialize IPRs for economic development and growth. NIPAM also emphasizes capacity development, IPR law enforcement, and global intellectual property collaboration.

  On 8th December 2021,

[11] C.O (COMM.IPD-TM) 124/2022

[12] 2022 SCC Online Del 2637 http://indiancaselaw.in

Shri Anurag Jain, Secretary, DPIIT, launched the NIPAM as part of the government's **"Azadi ka Amrit Mahotsav"** campaign. The ambitious pan-Indian mission's goal is to educate 1 million kids about intellectual property and their rights. It aims to ignite and motivate college/university students to develop and preserve their creations, as well as to instil the spirit of creativity and innovation in students in higher education.

❖ **Centre of Excellence in Intellectual Property (COE-1P):** Profit from the growth-enhancing advantages of innovation in relation to ICT with the aid of a strong ICT-IPR ecosystem. MeitY has launched a host of efforts over the years to safeguard intellectual property originating from our nation because it understands the significance of developing an environment that is favorable for IPR protection. One such effort, called COE-IP, was created under the TIDE 2.0 programme and managed by CDAC Pune. Its goal is to assist startups, SMEs, and inventors in understanding the value of IP, providing value-added services, and ensuring proper IPR protection. With a financial cost of Rs. 323.77 lakhs spread over 5 years, COE-IP is being implemented. By developing a supportive framework for IPR identification, protection, and monetization, the project aims to promote the expansion of IP in ICT.

The following are the objectives of COE-IP:

- To encourage the growth of IP in ICT by way of providing various IP-related services.
- Creating awareness and facilitating IPR support to Startups/SMEs/academia/inventors
- Sensitizing about intellectual property protection and avoidance of infringement.
- Facilitation of know-how on various facets of IPR filing (patents, copyrights, trademarks, etc.)
- Providing IPR assistance to MeitY-supported R&D projects.

❖ **IPR Facilitation for MeitY R&D Societies & Grantee Institutions:** The Innovation and IPR Division has been assisting its R&D organizations and grantee institutions in submitting IPRs, which include patents, copyrights, designs, and trademarks, in order to realize the Ministry's objective for developing a cutting-edge R&D paradigm in the nation.

Following are the salient features of this scheme:

- MeitY offers facilitation help for its incoming IPRs as well as for the patent filing of MeitY R&D societies/Autonomous bodies that have carried out R&D projects using MeitY Grants.
- MeitY offers facilitation help for its incoming IPRs as well as for the patent filing of MeitY R&D societies/Autonomous bodies that have carried out R&D projects using MeitY Grants.
- Complete assistance, including the preservation of IPRs and previous art searches.

❖ **Support for International Patent Protection in E&IT (SIP-EIT) – II For Micro, Small and Medium Enterprises and Technology Startup Units:** A programme by MeitY called Support for International Patent Protection in E&IT-II (SIP-EIT-II) aims to help MSMEs and startups who are attempting to protect their intellectual property rights on a worldwide scale. To promote innovation, acknowledge the value and potential of global IP, and create competitive advantage, the SIP-EIT initiative offers financial support to

MSMEs and tech startups for international patent filing. The programme had a five-year lifespan and had the goal of assisting 200 worldwide ICT patent applications.

The following are the salient features of this scheme:

- Financing the worldwide filing of patents in the field of information and communication technologies.
- Reimbursement of 50% of the costs associated with filing a patent, or a limit of Rs 15 lakhs per invention, whichever is less.
- At any point during the foreign patent filing process, the applicant may request assistance.
- Possibility of applying online via the website http://ict-ipr.in/
- The plan takes into account a single international filing application for an innovation across all nations.
- Five applications from a single organization may be submitted per fiscal year.
- There is no stake in the supported patent planned under the scheme; this is a pure grant that is subject to MeitY's approval.

❖ **IPR Awareness:** Utilizing IP is essential for increasing innovation, competitiveness, and economic growth in India. More particularly, it is critical to promote innovation and legally safeguard and capitalize on IPRs created in India given the remarkable expansion of the Indian IT/ITES sector and its need to advance up the value chain. However, the awareness of IPR processes and procedures, particularly for a complex subject like ICT, continues to be a barrier to increased IPR filings. MeitY created a plan to support academic institutions, business organizations, and MeitY autonomous societies financially so they could hold IPR awareness training sessions.

The following are the salient features of this scheme:

- The scheme offers support to educational institutions that offer technical education in the field of electronics and information technology and, ideally, have a technological incubation park or entrepreneurship cell.
- Companies like MAIT, ELCINA, CII, NASSCOM, FICCI, IESA, ASSOCHAM, and others in the industry are eligible for funding to help them carry out awareness campaigns for working professionals and innovators.
- International expert workshops and seminars may be supported by MeitY Societies or MeitY Autonomous entities.
- Eligible institutions will be given financial support in the form of Grant-in-Aid to organize IPR awareness workshops/seminars. The following criteria will be used to limit the funding:

  1] Support for awareness campaigns in schools would be capped at Rs. 2 lakhs per campaign.

  2] 3.0 lakhs rupees will be used to fund awareness campaigns by business organizations.

  3] 5.0 lakh rupees will be used to fund workshops that will be held by MeitY Societies and MeitY Autonomous entities and include top international experts.

❖ **Patent Analysis & Management System (PAMS):** There is a pressing need to safeguard the IPR produced in India given the expansion of the IT sector and other technical industries. Both inventors and scientists need to be able to safeguard their intellectual property and protect their ideas. through maximising the benefits of intellectual property, however,

specific information about the type of IPR and its management from creation through licensing must be made available to the stakeholders. COE-IP launched the PAMS site to cover this critical gap by offering a variety of value-added intellectual property-related services.

PAMS is a Single Window Interface for providing:

- Prior Art Search services
- Invention Analysis
- IPR Queries
- Landscape Reports
- Latest updates on IPR Awareness programs/ success stories/blogs.

CONCLUSION

It can be concluded that the IPR have gained significance in India over the past 20 years to the point where they now make up a sizeable portion of the GDP of the nation. The laws and norms governing intellectual property rights in India have been in place since the nation's independence, although they were updated and modernized in the middle of the 1990s. Without sufficient protection for intellectual property rights, modern economic and business interactions are impossible.

Protecting IPR encourages ethical business practices and novel ideas in a nation like the United States where there is a lot of competition. India has ratified a number of agreements and conventions aimed at preserving intellectual property as a result of this situation.

It is evident that India is evolving towards an economy that offers robust intellectual property protection in light of recent judicial decisions and other actions. Even though it's true that India has made considerable progress in protecting its IP rights, much more has to be done. Intellectual Property is a field that will go on to become one of the most complex, varied, and sought-after topics in the world of law, given the recognition and attention it has received from the Delhi High Court, the Hon'ble Supreme Court, and all the other High Courts and forums globally.

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INTERACTIVE SESSIONS

Fill in the Blanks

i. Copyright is valid for the lifetime of the owner and even after _____ years of his/her death.

ii. What is the tenure of secrecy for patent applications?

iii. Intellectual Property protected without registration.

iv. _____ is a trademark that focuses on the feel or look of the good or service.

v. Luxury jewelry company, Tiffany has a trademark in its name as _____ color.

vi. Another trademark-protected color is Louboutin _____ soles for high-heeled shoes.

vii. Which legislation allows the filing of international patents?

viii. Employers own the copyright for all the work created by the employees. What is the term used for this copyright?

Answers:

i. 60 ii. 18 months iii. Trade secret iv. Trade dress v. Tiffany blue vi. Red vii. Patent Cooperation Treaty viii.Work for Hire