

NATIONAL JUDICIAL ACADEMY



Workshop for High Court Justices on Intellectual Property Rights (IPRs)

at NJA, Bhopal

02nd & 03rd November, 2019

Programme Report

PREPARED BY

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The National Judicial Academy organized two day “Workshop for High Court Justices on Intellectual Property” on 02nd & 03rd November, 2019. The programme was divided into six sessions over the duration of two days. The participants were High Court Justices from various states dealing with IPR cases. The workshop sensitized the judges about intellectual property rights and its importance in the 21st century world. The workshop facilitated the discussion among the participants on important topics like, effective adjudication and enforcement of IPRs, Government of India’s IPR policy and treaty related obligations, challenges of IPR in digital world etc. Participant justices discussed the issues faced by them in adjudication of IPR disputes with the panel of experts and panel tried to provide their insights on the same.

Session 1: Intellectual Property Rights: Genesis, Benefits &Importance

Speakers: Justice Prathiba M. Singh, Mr. Pushpendra Rai, Chair: Justice Indira Banerjee

The first session of the workshop was Intellectual Property Rights: Genesis, Benefits &Importance. The speaker commenced the session with assertion that importance of Intellectual Property Rights today hardly needs to be emphasized. IP has become very important nationally, regionally and internationally. She summarized the history of Intellectual Property Rights saying that, the history of IPR can be traced way back to the 15th century to the city of Venice. Later, it shifted to England when the printing press was developed in the mid-15th century. Modern Intellectual Property Rights law perhaps begins with the Berne convention, moving to Paris Convention, TRIPS and WIPO. She emphasized that the word “Intellectual” in IPR denotes that these rights are relating to the artistic expression. The IPRs are nothing but the monopoly rights for particular period. Various forms of IPRs viz. Patent, Copyrights, Trade-Marks, GI and Designs were discussed in detail. It was impressed on the participants that there is basic difference between patent and trade secret. The difference between the acceptability of and approaches to IPRs in developed and developing countries with the reasons therefor were explained. The link between Weak IPR policy and strong IPR policy and its impact on economic growth was discussed. It was stated that India is the country at present which is representing the developing countries against the developed countries in terms of IPR policy at international level.

Session 2: Intellectual Property Rights in India: Government Policies & India's IP related Treaty Obligations

Speakers: Justice Prathiba M. Singh, Dr. Chandni Raina, Chair: Justice Indira Banerjee

The speaker started the session with explaining the evolution of IPR at international level. It was stated that, in Uruguay Round of discussions first time in the world IPR got linked to trade. Then there came Paris and Berne Conventions followed by Special 301 Action by US. Then there came the era of TRIPS, which considered as a primer & only multilateral treaty on protection and enforcement of IPRs at international level. It is a binding agreement and a part of the WTO Agreement & sets minimum standards of protection. It provides for administration and enforcement of IPRs and the application of the dispute settlement mechanism at International Level. TRIPS with special reference to Patents was discussed in the light of landmark judgement of Supreme Court of India in case of Novartis AG vs. Union of India. The concept of compulsory licencing and its optimal utilization/exploitation by Union of India was explained. It was highlighted that India is the leader in exploiting the flexibilities in TRIPS Agreement to the fullest extent and most of the developing countries are following the footsteps of India. Other important cases viz. Bayer vs NATCO Pharma etc. were discussed. The concepts like data exclusivity, patent linkage etc. were explained with the examples.

Session 3: Jurisdictional Issues in Trademark, Copyright & Patent Disputes

Speakers: Justice Prathiba M. Singh, Justice Prabha Sridevan & Mr. Pushendra Rai

Chair: Justice Indira Banerjee

The session commenced with introduction to the Central Legislations conferring jurisdiction on courts to adjudicate IPR disputes. The provisions like sec. 20 of CPC, Commercial Courts Act, 2015, Sec. 134 of Trademarks Act, sec. 104 of Patents Act and sec. 62 of Copyrights Act were discussed in detail. The challenges in exercise of jurisdiction in IPR cases viz. existence of different statutes for determining jurisdiction, online IPR violations, user anonymity, changing URLs, territorial limitations etc. were discussed with examples. The concept of dynamic injunction and related case law jurisprudence was also explained. Important precedents on the topic like

Dhodha House v. S. K. Maingi, Patel Field Marshal Industries and Ors. v. P. M. Diesel Ltd., IPRS v. Sanjay Dalia & Anr., Ultra Home Construction Pvt. Ltd. v. Purushottam Kumar Chaubey and Ors., 227 (2016) DLT 320 were discussed in great detail. Cases related to internet disputes in IPR like *Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy & Anr., World Wrestling Entertainment, Inc. v. M/s Reshma Collection & Ors.* were also discussed. Justice Prabha Sridevan also expressed her views on exercise of jurisdiction in IPR cases. She expressed her opinions about PIL filed in Supreme Court based on the book 'Bottle of Lies' where it was alleged that pharmaceutical companies are not following same standards for local medicines and export medicines. She cautioned the participants that in such cases don't look at the case apparently and do exercise your jurisdiction as it can be the question of life and death of a common man of our country. Then she shared her experiences about trial of Novartis AG case with the participants. Session was concluded saying that exercise of jurisdiction in IPR cases is a very delicate issue and judges should have pragmatic approach while exercising the jurisdiction in IPR cases.

Session 4: Emerging Trends in IP regime: Indian and Global Perspective

Speakers: Justice Prathiba M. Singh, Mr. Pushendra Rai, Chair: Justice Indira Banerjee

Session four was Emerging Trends in IP regime: Indian and Global Perspective. The session was commenced with explaining the status of India at international level in IPR regime. It was emphasized that India is on the Priority Watch List for lack of sufficient measurable improvements to its IP framework on long-standing and new challenges that have negatively affected U.S. right holders over the past year. It was stated that most of the problems are faced due to pharmaceutical patents and Govt. of India's responses to it at an International level. India is the pioneer of exercising the flexibilities in TRIPS and other developing countries are following it. Long pendency of Patent Applications, litigations etc. are creating challenges in India's patents and other IP regime. New technologies like 3D printing, robotics, synthetic printing, trade secrets, design issues are the emerging challenges in the IPR regime and its impact has to be looked into in near future. It was stated that in coming years, Artificial Intelligence is also going to create lots of issues in IPR regime throughout world.

Session 5: Role of the Judiciary in effective Enforcement of Intellectual Property Rights

Speakers: Justice Prathiba M. Singh & Justice Manmohan Singh

At the beginning of the session, the mock trial of Pony Corporation vs. Donlay Corporation with respect to car navigation system was given to the participants and the issues with respect to the mock trial were discussed in discussions. After the mock trial discussions, it was stated that all three organs of state viz. Legislature, Executive and Judiciary are having their own role in effective enforcement of IPRs. In Indian context, it is the judiciary in India which has played a significant role in developing IPR jurisprudence. It was stated that, since the mid-80s, the Judiciary has had the lion-share in IPR protection. It has been ahead of the Statutes in most cases & has prompted Amendments therein. Innovative remedies like Anton Pillar Orders, John Doe orders, Mareva injunctions – attachment of bank accounts, Dynamic injunction, Global injunction for the internet, Confidentiality Club & Hot-tubbing are the gifts of judicial orders in India. Relevant cases viz. *S. Syed Mohideen v. P. Sulochana Bai*, *Sunil Mittal & Anr vs. Darzi on Call*, *Prius Auto Industries Ltd & Ors. v. Toyota Jidosha Kabushiki*, *Amway India Enterprises Pvt. Ltd. and Ors Vs. IMG Technologies Pvt. Ltd. and Ors (2019 Del)* etc. were discussed and explained. It was emphasized on the participants that, courts have very important role to play in terms of IPR cases as they look also for the greater public good and social justice. The session was concluded with a caution that India is country where 60% of population lives in villages and they have no awareness about the drugs side-effects, so it is the responsibility of courts to be very careful in pharmaceutical patents cases.

Session 5: Challenges of Intellectual Property Rights in Digital Age

Speakers: Justice Prathiba M. Singh & Justice Manmohan Singh

The last session was Challenges of Intellectual Property Rights in Digital Age. At the beginning of the session, it was stated that this is an information age. The invention and evolution of internet has created a huge problem in IPR regime. Due to the evolution of internet, there has been a paradigm shift from industry based economy to the information based economy. The growing use of ecommerce has given rise to new kind of IPR litigation. The information age has affected the

copyrights and trademark the most. The evolution of 3D printing and Artificial Intelligence have created huge problems in the way of IPR regime. The internet and information age has changes the way we use the IPR. The major problem created by internet in IPR is safety of IPR and the issue of jurisdiction. Important cases like *MySpace Inc. v. Super Cassettes Industries Ltd.* 236 (2017) DLT 478, *Kent Systems Ltd. v. Amit Kotak* 2017 (69) PTC 551 (Del), *Swami Ramdev and Anr. v Facebook & Ors.* CS (OS) 27/2019 (Decided on 23rd October, 2019), *YouTube v. Geeta Shroff* [FAO 93/2018 (Decided on 17th May, 2018)] were discussed in detail. At the end of the seminar Director, NJA expressed vote of thanks and concluded the seminar.
