

PROGRAMME REPORT (P- 1150)

NATIONAL JUDICIAL ACADEMY



CONFERENCE FOR HIGH COURT JUSTICES ON INTELLECTUAL PROPERTY RIGHTS (IPRS)

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PREPARED BY

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The National Judicial Academy organized a “Conference for High Court Justices on Intellectual Property Rights” during **February 8th – 10th, 2019**. The objective of the conference is designed to sensitize judges on intellectual property rights, to facilitate effective adjudication of IPR disputes, strengthening enforcement and combating economic crimes. To get acquainted with legal challenges emerging due to the shift of societal interaction from physical to virtual space, the conference would cover everyday litigation challenges faced by parties and judges in such a technical field. The conference further intends to provide a platform for justices to share experiences, insights, and suggestions with a panel of distinguished resource persons. The entire Program was divided into Eight Sessions over the duration of three days. The Conference included interactive sessions and round table discussions on designated themes among participant justices.

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

Speakers: Mr. O.P. Gupta, Mr. Pravin Anand

Chair: Justice Prabha Sridevan

The session initiated with an introduction to the theme of the conference. It was stated that Intellectual Property Right is a matter of public interest and is not just a dispute between the two individuals.

The speaker commenced by stating that Intellectual property is divided into major three heads, viz, the first head includes Patents, Designs, and Trade Marks; second the Copyright and third includes Geographical Indication (herein after GI), Semiconductor layout of Integrated circuits; Plant Variety and Farmers rights. He pointed out the example of a wristwatch that has registered Patent, Designs, Trade Mark and Copyright. He mentioned that for a new product or process the invention must possess Novelty, Inventive step and must be capable of industrial application. For Designs, he stressed that it is something which can be distinguished with an eye. Protection for design is granted initially for ten years which is extendable by five more years. Under Copyright, he mentioned about the exclusive right and bundle of rights. The community right under Geographical Indications was also emphasized.

Early stages of evolution of Intellectual property rights covering the Statute of ANNE 1710, Venetian Patent Act 1474, National and International dimension of Intellectual Property Rights

(hereinafter IPR) IPR, TRIPS, Paris Convention and importance and benefits of different IPR heads were discussed. It was opined that the 21st century is a knowledge-based economy and in that light disadvantage of weak IPR system and steps to strengthen it was deliberated upon.

The other speaker for the day started off with an important issue on copyright law about Berne Convention which he opined it as the fundamental International Treaty as it requires fewer formalities while evaluating works and registering it automatically to all the member countries of the convention. He determined for Copyright law the work has to fit in the pigeon hole by accommodating his work under 6 fundamental heads and lately 2 new heads of performing and broadcasting rights were introduced. He postulated the thin line of demarcation between Invention and innovation by giving the various example. Priority date was his key feature on which his deliberations were made. He touched upon Efficacy test under Novartis decision. Data exclusivity, patent linkage, compulsory licensing, Quia timet suit, John Doe order were also discussed.

Session 2: Intellectual property Rights Regime in India: Government Policies.

Speakers: Mr. O.P. Gupta, Mr. Pravin Anand

Chair: Justice Prabha Sridevan

This session begins with a question raised by participant judges i.e. Can a GI be used against the services? The answer delivered by the speaker in negative. The speaker initiated the discussion with a Latin phrase "*Nemo dat quod non habet*" which means "What I don't have I can't give" asserting that a balance should be maintained between the private right and a societal right. Salient features of Patents Act with the amendments introduced in 2005, Pre Trips and post Trips evolution of IPR in India, section 3(d) about evergreening and section 92 about the special provision of the compulsory license were discussed during the session. The resource person deliberated upon the civil and criminal remedies under IP legislation. He briefly discussed all the WIPO administered treatise in India like Paris convention, Berne Convention, Patent Cooperation Treaty and Madrid protocol. The speaker explained different schemes of government like incentives for startups and modernization scheme for Intellectual Property Offices. Video conferencing, SMS service, mobile App and e-filing were some of the modern and innovative technology that government is following was discussed. It was stated that different schemes for IP awareness and promotions were also

been discussed at the school level, university and at Industry level. It was suggested that National workshops, training sessions, and IPR enforcement toolkit should be provided in order to strengthen enforcement mechanism so that the schemes and initiative by the government can be reached to everyone.

Session 3: Emerging Issues of IP Regime: India and Global Perspective

Speaker: Mr. Pravin Anand

Chair: Justice Prabha Sridevan

This session opens up by discussing the Yahoo case wherein the larger interest is involved. It was devoted mainly on 6 heads i.e. speed, overlapping right, interest, trademark, patents and copyright, and design. *TVS v/. Bajaj and Az tech v/. Intex* were the two cases which were discussed upon speed. It was clarified that there is an overlapping right between designs and copyright and under which section 15(2) of the Copyright Act was discussed.

Philips v Remington. Novartis, Roche v/.s Cipla, Merck vs Glenmark, were some of the cases discussed under the Patent law. The orders that were discussed showcasing the positive effect of damages includes donating black shades to blind persons, donation of spittoons by Baba Zerda and awarding community services . The concept of day to day trials, adjudication of the trails, jurisdiction issues were also discussed during the discourse.

Session 4: India's IP-related Treaty Obligation

Speakers: Dr. G.R. Raghavender, Ms. Stuti Dhyani

Co-Chair: Justice Indira Banerjee, Justice Prabha Sridevan

With regard to India's IP-related Treaty Obligation, the speaker threw light on the evolution or the history of IPR. The resource person stated that every treaty has a preamble which talks about the scope and object. He focused upon TRIPS and articulated about a minimum standard of civil and criminal remedies, anti-competitive practices, restrictive trade practices, abuse of dominance and

stressed that product patent is introduced because of TRIPS obligations. The speaker talked about patent policy and Doha declaration. While addressing the issue on Industrial Design, the speaker stressed on the Hague agreements of which India is not a party. He touched upon reverse engineering the newly introduced concept under the Semiconductor Integrated Circuits Layout Design.

The process for filing the patent application were deliberated upon. It was stated that Congress of Vienna came up with Paris convention where certain standard rules were drafted for the filing of the patent application. Paris convention, Patent Cooperation Treaty and simultaneous protection under the treaty were discussed. It was stated that Patent Cooperation Treaty is considered as a guiding document and is not mandatory for contracting States.

Session 5: Challenges of Intellectual Property Rights in the Digital Age

Speakers: Dr Mohan Dewan, Dr. G.R. Raghavender

Co-Chair: Justice Indira Banerjee, Justice Prabha Sridevan

The session commenced with the discussion on the challenges of Intellectual Property rights in the Digital Age. The speaker discussed the brief history of digital revolution.

It was stated that from healthcare to education, technology has transformed the lives of the people. It was stated that with the advancement of global economy the digital technology plays a very vital role in regulating the world's trade and commerce. The upcoming challenges with regard to the digital technology was discussed.

The speaker gave a classic example of Klip-n-Store for explaining the problems in E-marketing which is coined as Hash Tagging. . The concept of the digital rights, digital age, widespread use of the Internet and access and control of digital information were discussed.

It was stated that digital technology has accelerated the distribution of information with speed and accuracy to disseminate literary, artistic and scientific work to a very large community of users having access to the internet or digital media. The protection of content, piracy and protection of computer software were some of the major concerns highlighted by the speaker.

Session 6: Jurisdictional Issues in Trademark, Copyright & Patent Disputes.

Speakers: Justice Manmohan Singh, Dr. G.R. Raghavender

Co-Chair: Justice Indira Banerjee, Justice Prabha Sridevan

It was highlighted that the Intellectual Property Rights are precious assets, and in the present time the recognition and value of the IPR are growing day by day. It was stated that the first and foremost thing for a business is to identify its IPR and to register those rights so that the protection can be granted. It was emphasized that IPR rights are more of a registration right.

The speakers focused upon the general rule of jurisdiction under section 20 of Civil Procedure Code, 1908 (herein after C.P.C). It was stressed that for deciding cases under Patent Act and designs Act the jurisdiction has to be determined under section 20 of the C.P.C. It was stated that many times when court reach the final stage of hearing the court realizes that it has no jurisdiction to entertain such case.

The case of *Biswanath Prasad Radhey Shyam vs Hindustan Metal Industries* wherein the concept of Novelty was enunciated were deliberated upon. The cases *Indian Performing Right Society v/. Eastern India Motion Pictures*, *M/S Rspl Limited vs Mukesh Sharma & Anr* were discussed. In the light of the law relating to passing off *Parswanath Developers Ltd. v. Parswanath Realty Pvt. Ltd.* was discussed.

Session 7: Resolving Intellectual Property Disputes Via. Commercial Courts and ADRs.

Speakers: Dr Mohan Dewan, Mr. Pushpendra Rai

Chair: Justice Sanjay Kishan Kaul

The concept and features of the ADRs were discussed. It was stated that the principle of trust on the mediator is fundamental to make the process successful. It was emphasized that quick resolution of the dispute is the need of the hour as civil dispute take years to decide.

The speaker enlightens the participants by discussing the global challenges which create a new type of disputes like digital environment, climate change and access to health care, the protection of traditional knowledge and preservation of biodiversity. The concept and understanding of litigation and ADR was discussed. It was highlighted that as per the statistics of current litigation costs for patent infringement cases is very high. It was stated that ADR is a neutral mechanism allowing the parties to solve their disputes outside of court in a private forum. Talking about its benefits speaker stated the time and cost effective measures of ADR. Cyber-squatting, abusive registration of domain names that violate trademark rights, resolving disputes of a domain name registered on other person name or enterprise, ICANN which was adopted in 1999, establishment of IPAB, types of intellectual property disputes like infringement, passing off were deliberated upon during the discourse.

The speaker raised the concern that the greatest problem we are facing today is that we are not able to resolve the commercial disputes as early as we can. The speaker summed up the session by giving suggestions that the resolution of IP disputes in India is a budding scheme which needs legislative support and a proper mechanism for better implementation. It was stated that though court rulings are quite unclear in the present scenario still it can be inferred that IP disputes can be solved through ADRs and by commercial courts, but still there is a long way ahead.

Session 8: Role of the Judiciary in effective Enforcement of Intellectual property.

Speakers: Dr Mohan Dewan, Mr. Pushpendra Rai

Chair: Justice Sanjay Kishan Kaul

The Conference further deliberated upon the major role played by the judiciary in effective enforcement of ADR and how can we improve this mechanism.

The speaker expresses his concern over the counterfeiting and piracy which has become a global epidemic, leading to a significant drain in business and effects global economy. The case of *Biswananth Prasad Radhey Shyam v/. Hindustan Metal industry* was discussed with reference to the presumption of validity of the patent. Role of the judiciary in IPR enforcement by protecting the interest of IPR holders was discussed. It was stated that sometimes general public interest is to be weighed over IPR holder's interest. The speaker articulated about the changing role of judiciary

and stressed that after the introduction of TRIPS Agreement patent regime in India since 2005, the patent litigation has raised considerably.

The speaker embarks on the three pillars of IP system i.e. Legislation, Administration and Enforcement. It was opined that enforcement is the most important element as an effective mechanism to protect the existence and exercise of IPR. The speaker coined his deliberations over the balancing interest between the interest of the beneficiaries, competitors and the public.

It was stated that the main role of the judiciary is to ensure the rights that can be enforced and punish the perpetrators. The speakers focused upon the issues arising from TRIPS and obligations on the member state after post-TRIPS Agreements. WIPO Development Agenda was discussed and it was opined that countries required to legislate in harmony with the international agreements replacing pre-existing IP legislation. It was also stressed that role of the judiciary is paramount in interpreting new laws and striking a judicious balance between the interest of the nation and international commitments.
