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THE BIOLOGICAL DIVERSITY (AMENDMENT) BILL PASSED BY PARLIAMENT



Ms. Priti More

On August 1, 2023, the Parliament passed the Biological Diversity (Amendment) Bill which amends the existing Biological Diversity Act of 2002. Initially, the primary objective of this act was to ensure the conservation of biological diversity, the sustainable use of its components, and the equitable use of its resources in order to prevent overuse or eventual destruction of biodiversity and to establish a mechanism for the fair and equitable sharing of benefits arising from the use of biological resources. The current bill encourages ease of compliance requirements for domestic companies, expedites the process of conducting research, filing any intellectual property rights, and transferring research results from India. It also encourages the cultivation of wild medicinal plants, the use of indigenous medicine, and the ease of conducting business by decriminalizing offences under the act and replacing them with monetary penalties.

What has been amended?

This bill has significantly altered the previous legal

foundation of this act. The major amendments are covered below:

1. Approval for IPR:

Previously, prior consent from the National Biodiversity Authority (NBA) was required for accessing biological resources or related information for study, commercial use, or bio-survey and bio-utilization under the existing Act of 2002. The researchers needed NBA clearance before filing any Intellectual Property Rights (IPR) applications for using biological materials from India.

The bill has changed the approval requirement, now the NBA approval is required before the grant of IPR rather than before the filing of the patent application. The Indian citizen or a body corporate, association or organization will merely need to register with the NBA before grant of the IPR and need to take approval at the time of commercialization of IPR, however the foreign companies or foreign person will still need NBA approval before grant of the IPR.



**Image is for representation purpose only*

2. Prior intimation requirement to State Biodiversity Board:

Before accessing any biological resource and its associated knowledge for commercial utilization, the applicant must give the prior intimation to the concerned State Biodiversity Board. The amended bill exempted the codified traditional knowledge, cultivated medicinal plants and its products, local people, and communities of the area, including growers and cultivators of biodiversity and to *vaidys*, *hakims* and registered AYUSH practitioners only who have been practicing indigenous medicines, including Indian systems of medicine as profession for sustenance and livelihood from this provision.

The cultivated medicinal plants are exempted subject to obtaining a certificate of origin from the Biodiversity Management Committee.

3. Amendments in NBA members and Biodiversity Management Committee:

The amended bill has included sixteen *ex officio* members that is to be appointed by the Central Government, representing the Ministries of various departments along with four representatives from State Biodiversity Boards on rotational basis, as a member of NBA. Furthermore, the bill has been amended to form the Biodiversity Management Committee in the rural and urban areas.

4. Benefit sharing determination:

The benefit sharing arrangements were to be determined by mutual agreement between the applicant, the relevant local authority, and the beneficiaries, according to the Act. As a result, the monetary benefit received by investigating, bio-surveying, and bio-utilizing the accessible biological resource was shared with the local community. In the amended bill the duty to share benefits with the local community for bio-survey and bio-utilization has been removed. Now the “fair and equitable” sharing of benefits will be mutually decided by the person applying for such approval, and the Biodiversity Management Committee represented by the National Biodiversity Authority.

5. Amendments in Penalties:

The key component of the current bill is the total decriminalization of all offences under the Biological Diversity Act of 2002. The bill imposes fines ranging from Rs. 1 lakh to Rs. 50 lakhs for violations that would previously have resulted in criminal charges with imprisonment. Repeat offenders may face penalties of

up to one crore rupees. Further no penalty shall be imposed without giving the person concerned an opportunity of being heard in the matter. To conduct the investigation and determine the appropriate penalty, an adjudicating officer will be appointed.

Conclusion:

The amended bill will be useful to promote sustainable use of biological resources, practice of traditional forms of medicine, and research. The Patent or intellectual property right filing will be more convenient and straightforward by reducing the approval procedures at the time of filing patent applications. This would allow researchers and inventors to delve deeper into conventional medicine and biological resources. In contrast due to exclusions of share of benefit to local community, they may face loss of revenue and thus financial loss.

CLASH RESOLVED: PATENTS ACT PREVAILS OVER COMPETITION ACT - DELHI HIGH COURT



Adv. Sphurti Dalodria



Adv. Krutarth Sontakke

Introduction:

The Competition Act, 2002, was enacted to govern commercial competition in India. In 2009, the Government of India established the Competition Commission of India, 2009, under section 7 of the Competition Act, 2002, for the enforcement, administration, and implementation of the Competition Commission Act, 2002.

The CCI encourages and preserves competition, protects consumer interests, and ensures trade freedom in India's markets. It takes actions against unfair business practices and the abuse of dominant positions that may negatively impact overall competition. On the other hand, The Patents Act, 1970, is a special statute that offers an exclusive right to an innovation.

The present ruling by the division bench of the Honorable Delhi High Court, comprised of Justices Najmi Waziri and Vikas Mahajan, on July 13, 2023, quashed the antitrust actions brought by CCI against Ericsson and Monsanto. The court also ruled that the Patents Act, which contains specialized regulation over issues relating to patents and their rights, should be enforced exclusively and not the Competition Act of 2002.

Background:

The court heard a series of appeals and writ petitions, all of which centered on the same issue: whether the Competition Commission of India had the authority to investigate the actions of patent holders who does not provide license of their registered patent. Initially, Ericsson and Monsanto filed writ petitions in the years 2016 and 2020, respectively, challenging the CCI's antitrust investigations into allegations of anti-competitive practices and inappropriate patent licensing. Furthermore, CCI challenged a judgement passed by a single judge of the Delhi High Court through a writ petition filed by Ericsson, as the judgement had quashed the CCI proceedings against Ericsson.

Court Findings:

Ericsson and Monsanto asserted that Chapter XVI of the Patents Act, which contains provisions on anti-competitive agreements and abuse of dominant position, is limited to patent licensing.

They further argued that the Competition Act, which aims to eliminate anti-competitive agreements and abuse of dominant position, lacks jurisdiction to take over the specific provisions of the Patents Act, simply because Chapter XVI of the Patent Act deals with these matters completely.

The Competition Commission of India submitted that Section 3 (5) (i) (b) and Section 4 of the Competition Act exclusively provide the Competition Commission of India with the authority to investigate the fairness of conditions imposed in patent licencing and their potential impact on local competition, as well as whether they create an abuse of a dominant position.

The court ruled that Chapter XVI of the Patents Act includes a complete measure to deal with anti-competitive behavior conducted by patentees, restricting the applicability of the Competition Act. The Patent Act is a unique statute, not a competition commission. The Patent Act must therefore take first place over the Competition Act when it comes to the question of a patentee exercising their rights under the Patent Act.

Implications:

In the light of this decision, the issue of monopolisation of patents will solely be dealt with in Chapter XVI of the Patents Act, and Section 3(5)(i)(b) and Section 4 of the Competition Act would not have any further effect or jurisdiction on matters related to patent licensing. This has wiped out the jurisdiction of the Competition Act over patents and may cause harm to the competition as a whole in the near future.

As underlined in the judgement, the Hon'ble Delhi High Court believed that Chapter XVI of the Patents Act would handle antitrust concerns independently, and because of this, compulsory licencing appears to be the only alternative left before the aggrieved party.

The decision has created a gap that may also have an impact on other anti-competitive issues that fall under the scope of patents or other intellectual property law, which may make various anti-competitive remedies ineffective. It is extremely possible that the CCI will challenge the decision in the Supreme Court of India to standardize the applicability of laws.

EMPOWERING INDIA'S PATENT FUTURE: GOVERNMENT INVITES STAKEHOLDER INPUT ON DRAFT PATENT (AMENDMENT) RULES, 2023



Adv. Divyendu Verma

The Department of Promotion of Industry and Internal Trade (DPIIT) of Government of India has issued the Draft Patent (Amendment) Rules, 2023 on August 23, 2023. The public is invited to provide their comments within a span of 30 days. This move reflects the DPIIT and Indian Patent Office's commendable commitment to transparency and inclusivity by involving stakeholders in discussions. This concerted effort aims to continuously enhance the intellectual property (IP) ecosystem in India. While there remains a considerable journey ahead, these incremental actions leave a profound impact.

A closer examination of the proposed changes in the Draft Patents (Amendment) Rules, 2023 reveals the following major amendments:

Shortening the Period for filing Request for Examination:

A significant amendment revolves around the timeline for Request for Examination. This amendment involves streamlining the deadline, shortening the period from 48 months to 31 months.

Divisional Patent Application:

The proposed amendment grant applicants the flexibility to file Divisional Patent applications based on inventions disclosed in provisional applications.

Reduction in Fee for filing of Patent of Addition:

The proposed amendment introduced a significant reduction of 50% in official fees for Patent of Addition applications under section 54.

Working of Patent Updates (FORM-27):

A forward-looking change is the adjustment of Form-27's submission requirement to every 3 financial years, departing from the previous annual requirement. Furthermore, Form-27 will no longer necessitate revenue/value details or reasons if the patent is not worked. This shift holds implications for section 85, which pertains to the revocation of patents due to non-working.

Shortening the period for filing (updated) Form-3:

The submission deadline for Form-3 is set at 2 months after the issuance of the First Examination Report (FER). An extension option via Form-4 is also under consideration. Additionally, it's important to note that the applicant's Form-3 must now include the date of disposal instead of the date of grant of corresponding foreign patent(s)/application(s).

Procedural changes regarding Pre-Grant Opposition:

- (a) Controllers have been vested with the responsibility of evaluating the admissibility of representations for pre-grant opposition, effectively establishing measures to discourage frivolous pre-grant oppositions.
- (b) The period for submitting statements and evidence in response to opposition is being shortened to 2 months.
- (c) Under Rule 138, Controllers will now have the authority to extend the extension period for up to six months via Form-4. However, please note that fees will be applicable for these extensions. The fee structure for such extensions is revised. The revised fee will be 50,000 INR per month for others category which includes organization such as large entities and 10,000 INR per month for Natural person(s) or startup(s) or small entities or Educational institution(s).



Procedural changes regarding Post-Grant Opposition:

- (a) Post-grant opposition cases are set to witness joint recommendations by the opposition board within 2 months, a modification from the previous 3 months.
- (b) The introduction or revision of fees for pre-grant and post-grant oppositions, calculated as an aggregate of the amount paid for form-2, form-9, and form-18/18A, is proposed. Notably, the physical filing of both pre and post-grant oppositions is no longer permitted.

Discount in payment of advance Renewal Fee:

A captivating offer lies in the proposed 10% discount on patent renewal fees when paid in advance, encompassing a minimum duration of 4 years or beyond.

No Fee for Surrender of Patents:

The surrender of patents is set to be fee-free in the present proposed amendments.

New Provisions for Grace Period:

The draft Rules prescribe a format under Form 31 for submitting a formal request, along with the prescribed fee, to avail the Grace period as defined under Section 31. Section 31 outlines exceptions to anticipation through public display.

These amendments, as proposed, reflect a proactive approach towards enhancing the efficiency and effectiveness of the patent system in India, underscoring the commitment to create a more robust IP framework in the country.

Objections or suggestions should be directed to bikram.87@nic.in and ipr-patents@gov.in within 30 days from the publication date of August 23, 2023.

“FINDING SOLUTIONS TO EVERYDAY'S CHALLENGES IS A PATH TO INNOVATION”-IP AWARENESS WORKSHOP ORGANIZED BY DUXLEGIS ATTORNEYS

Continuing the journey of IP awareness and considering the present agenda of Government to focus on providing an education on Innovation, Skill Development, and Intellectual Property, DuxLegis Attorneys has organised a smart innovation and IP workshop at the ITI (Industrial Training Institute) at Satpur, Nashik, on August 05, 2023. The main objective of the workshop was to raise an IP awareness among the students and faculty of ITI Satpur, Nashik.

The workshop was initiated by Mr. Digambar Dalvi, Directorate of Vocational Education and Training (DVET). Mr. Dalvi encouraged the ITI students to carve out an opportunity to work in various fields in India as well as overseas. The guidance to recognise the intellectual potential and enhance the innovative skills was provided by Mr. Dalvi. Various ways of thinking, including divergent, critical, creative, and convergent was explained with examples. He concluded by wishing all the students an excellent future.

Priti More, Managing Associate and Head of the Life Science Department at DuxLegis, took the podium and discussed about Intellectual Property and its various forms with the audience. In her thorough presentation, she explained the presence of all forms of IP in a single bottle of hair oil. She elaborated on historical inventions and discussed on patents and the scope of inventions.

Adv. Divyendu Verma, Managing Partner at DuxLegis Attorneys, further had an engaging discussion on the roles of inventions, copyright, and patents using common examples like soft beverages, mobile phones, and wheels, etc. According to Adv. Verma, we should try to find out solutions for the obstacles that we encounter in our daily life and the same is a path to innovation. He explained that most of the inventions are the by-product of the solutions for hurdles that the inventors had encountered. He supported his statement by citing an example of a student in Haryana who was just in the seventh grade and had invented a mobile application to regulate the vehicle's speed. This example helped to encourage and excite the students. The students were surprised and motivated at the same time and participated in the open discussion.

The Innovation and IP workshop reached its conclusion effectively, and the objective was achieved. The workshop has not only cleared the basic fundamentals of the Intellectual Property, but also inspired both teachers and learners to think creatively. The power

point presentation played an important role to engage the students and understand every concept visually.

DuxLegis continues to show its dedication to educating and inspiring the next generation by delivering them knowledge of innovation and intellectual property.





IP SNIPPETS:

PATENT CASES:

VIFOR INTERNATIONAL LTD & ANR. (Plaintiff 1) vs MSN LABORATORIES PRIVATE LIMITED & ANR. (Defendant 1)

Case Number: CS(COMM) 261/2021

VIFOR INTERNATIONAL LTD & ANR (Plaintiff 1) vs DR REDDYS LABORATORIES LIMITED (Defendant 2)

Case Number: CS(COMM) 265/2021

VIFOR INTERNATIONAL LTD & ANR. (Plaintiff 1) vs CORONA REMEDIES PRIVATE LIMITED & ANR. (Defendant 3)

Case Number: CS(COMM) 448/2022

VIRCHOW BIOTECH PVT LTD & ANR. (Plaintiff 2) vs VIFOR INTERNATIONAL LTD & ANR. (Defendant 4)

Case Number: CS(COMM) 450/2022
Decided on: 24 July 2023

In the present case, plaintiff 1 has filed an infringement suit against defendants no. 1, 2, and 3, for launching a generic infringing version of plaintiff's product covered in the patent no. 221536 (IN'536) which pertains product by process claims for preparing FERRIC CARBOXYMALTOSE (FCM), and plaintiff 2 is seeking an interim injunction restraining defendant 4 from threatening and hampering the business of the plaintiff 2.

The Hon'ble Court has noted that the plaintiff 1 has obtained the patent by representing that the novel properties in the product are a result of the specific process used for the production, hence it does not cover all the processes through which the product can be obtained. The Hon'ble Court concluded that defendants 1, 2, and 3 claimed to have manufactured the product through different processes using a different starting material and oxidizing agent. The Hon'ble Court further permitted defendants 1, 2, and 3 to manufacture the FCM, but by using a different process that does not infringe on the patent of the plaintiff 1.

The Hon'ble Court has concluded that the plaintiff 1 cannot prevent any third party to use a process/set of processes different and distinct from the claimed process of the plaintiff 1 and claim infringement qua IN'536. The Hon'ble Court also stated that the defendants 1, 2, 3 and plaintiff 2 should take all the

approvals before proceeding to launch the product in the market. Hence, it was concluded that the impugned processes of the defendants are non-infringing, and the present application was disposed of.

SYNGENTA LIMITED (Appellant) vs THE CONTROLLER OF PATENTS AND DESIGNS ANR. (Respondent)

Case Number: C.A.(COMM.IPD-PAT) 471/2022
Decided on: 26 July 2023

The present appeal has been filed by the appellant against the respondent for rejecting the divisional application of the patent filed by the appellant on the ground that the claims relating to a plurality of distinct inventions was not present in the parent application and no objection relating to the plurality of distinct inventions was raised in First Examination Report (FER) in respect of the parent application.

The Hon'ble Delhi Court has observed and considered the arguments of both parties and ruled that the expression in the case of "Boehringer Ingelheim v. The Controller of Patents" to the effect that "the plurality of inventions must form part of the claims in the parent application", requires a revisitation. The Hon'ble Court has also referred the following questions to a Division Bench of the Court for consideration -

(i) *Does the requirement of a plurality of inventions contained in the parent application apply even where the Divisional Application is filed by the applicant suo moto, and not on the basis of any objection raised by the Controller?*

(ii) *Does the plurality of inventions have to be reflected in the claims in the parent application or is it sufficient if the plurality of inventions is reflected in the disclosures in the complete specifications accompanying the claims in the parent application?*

The Hon'ble Court has ordered to place this matter before Hon'ble the Chief Justice for constituting an appropriate Division Bench to examine the aforesaid issues and return its view thereon, as they affect a large number of cases.

OYSTER POINT PHARMA INC. (Appellant) vs THE CONTROLLER OF PATENTS AND DESIGNS ANR. (Respondent)

Case Number: AID NO. 10 OF 2022
Decided on: 26 July 2023

The current appeal has been filed by the appellant against the respondent for rejecting the application under sections 2(1)(ja) for lack of inventive step and 3(d) for non-patentability. The Hon'ble Calcutta Court observed the

impugned order and noted that the respondent failed to consider details of the experiments conducted, comparative studies made and their conclusive results without considering the efficacy data submitted for objection under section 3 (d). The Hon'ble Court has also specified that “no specific time bar has been provided in the Act which prevents an applicant from filing additional documents after the filing of the patent claim”. It was also observed that the respondent did not even issue a second examination report (SER) in compliance with Section 13(3) of the Act. Hence, the Hon'ble Court has remanded the matter back to the respondent to consider the patent application afresh, including the question of patentability, and to give an opportunity of hearing to the appellant.

DR. REDDYS LABORATORIES LIMITED & ANR. (Petitioners) vs THE CONTROLLER OF PATENTS & ORS (Respondents)

Case Number: C.O.(COMM.IPD-PAT) 3/2021
Decided on: 03 August 2023

The present judgment of Delhi High Court focused on the consideration of the revocation petition under Section 64 of the Patents Act, 1970 and a suit filed under Section 10 of the CPC. The petitioner filed a revocation petition electronically through e-filing portal. The petition seeks revocation of IN 268846 (IN'846) granted to Boehringer Ingelheim International GmbH (Respondent 2). As 16 October 2021 was a Court holiday, the petition was examined by the Registry of the Court and registered on 21 October 2021. It came up for hearing before the Court on 22 October 2021. The respondent 2 has filed a suit against the petitioner alleging infringement of their patent before the Himachal Pradesh High Court on 19th October 2021, which granted ex parte stay on 20 October 2021. The Hon'ble Court observed that the petitioner had filed the petition before the institution of the infringement suit by the respondent 2. The Hon'ble Court has also stated that “a revocation petition under Section 64 of the Patents Act is not a suit within the meaning of Section 10 of the CPC”. Additionally, the Hon'ble Court has pointed out the difference between the proceedings of revocation petition and the infringement suit in terms of reliefs sought in both proceedings. Hence, the Hon'ble Court concluded that the present application under Section 10 of the CPC fails and is dismissed.

DOW AGROSCIENCES LLC (Appellant) vs THE CONTROLLER OF PATENTS (Respondent)

Case Number: C.A.(COMM.IPD-PAT) 170/2022
Decided on: 07 August 2023

The present appeal has been filed by the appellant against the respondent for refusing the appellant's patent application. Following the reply filed for FER, the hearing notice was issued, citing 19 more prior art documents in addition to the three previously cited documents for lack of inventive step and insufficiency of disclosure, which further led to the refusal of the patent application by the respondent. The Hon'ble Court observed that the impugned order had some major errors, and the prior art were not accurately made, and it was clearly appeared to have been some confusion in the manner in which the prior art documents have been cited and referred to in the impugned order. Based on these observations, the Hon'ble Court remanded the matter back to the respondent and stated that such errors should not occur as they deprive the applicant of valuable economic rights. The Hon'ble Court concluded by considering the matter afresh and ordered that the decision should be made within two months of filing the written submissions by the appellant.

AKEBIA THERAPEUTICS INC. (Petitioner) vs CONTROLLER GENERAL OF PATENTS, DESIGN, TRADEMARK AND GEOGRAPHICAL INDICATIONS, & ORS. (Respondent)

Case Number: IPD 32/2023, CM 92/2023 & CM 93/2023
Decided on: 09 August 2023

The present petition has been filed by the petitioner against the respondent challenging the handling of the post grant opposition by the respondent. The petitioner's patent, IN 287720 (IN'720), was granted by the Indian Patent Office. The petitioner has argued that the respondent as well as the Opposition Board has not followed the proper procedures and rules with regards to filing of the evidence accompanying the affidavits during the opposition proceedings. The Hon'ble Court has provided the observations regarding a legal framework of the pre and post grant opposition as per the Patent Act, 1970 and Patent Rule, 2003. The Hon'ble Court has requested the respondent to strictly adhere to the provisions and procedural rules set out for pre and post grant opposition. The Hon'ble Court has pointed out the necessity of following the evidence submission process. The recommendations of the Opposition Board have been quashed and set aside. The Hon'ble Court has finally directed the case to the Opposition Board, to take a fresh decision, de novo, after considering all the documents.



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TRADEMARK CASES:

GOOGLE LLC (Appellant) vs DRS LOGISTICS (P) LTD. & ORS (Respondent)

Case Number: FAO(OS)(COMM) 2/2022 and FAO (OS) (COMM) 22/2022 & CM Nos. 5879/2022 & 5882/2022
Decided On: 10 August 2023

The present appeal was filed by the appellant impugning the order passed by the single judge in which it was held that the use of trademarks as keywords in the Google Ads Programme amounts to 'Use' under the provisions of the Trademarks Act, 1999 and thus, may constitute infringement. The appellant claimed the safe harbour under Section 79 of the Information Technology Act, 2000, as it does not control the search results. The respondents claimed that the appellant encourages the use of its registered trademarks as keywords for third parties to display their sponsored links pertaining to websites that infringe its trademarks. The use of its trademark as keyword results in diversion of internet traffic from its website to that of its competitor and thus use of its trademarks as a keyword infringes its trademarks. The main issue in this case was the Ads programme run by the appellant. Respondents further asserted that the use of a trademark as a keyword diverts internet traffic from its website. The Division Bench of the Delhi High Court held that the appellant cannot seek the safe harbour exemption u/s 79 of the IT Act and using trademark as a key word would amount to "use" of that trademark under the Trademarks Act. The Hon'ble Court clarifies that the use of a trademark as a key word per se would not amount to an infringement as it does not identify the source of the goods or services, and for it to be seen as an infringement of the mark, confusion, dilution or compromise of the mark has to be established by the complainants.



"KIND" as a part of a mark that belongs to the same class as of the plaintiff's mark. The defendant stated that the plaintiff has no registration over "KIND" as a suffix. Hence, "KIND" is not a registered trademark of the plaintiff. The Hon'ble High Court observed that customers with average intelligence and imperfect recollection could associate a "NOVAKIND" product with the KIND family of marks owned by the plaintiff. The Hon'ble Court observed that the registered trademark and the identity or similarity of the goods or services covered by such registered trademark is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trademark. The Hon'ble Court further observed that even the slightest possibility of confusion is unacceptable when it comes to medicines, especially prescription drugs. The Hon'ble Delhi High Court allowed the permanent injunction and underlined the need to preserve distinctive naming practices for pharmaceutical products in view of possible implications for patient safety and the integrity of pharmaceutical markets.

FOODLINK F AND B HOLDINGS INDIA PRIVATE LIMITED (Plaintiff) vs WOW MOMO FOODS PRIVATE LIMITED (Defendant)

Case Number: CS(COMM) 848/2022
Decided On: 03 August 2023

The plaintiff has filed the suit against the defendant alleging trademark infringement of its registered trademark



China Bistro. The plaintiff claimed that, until 2019, the defendant was using its mark as WOW! CHINA. In 2019, the defendant added the word "BISTRO" below the word China and the mark. The plaintiff further claimed that there is a strong possibility of confusion or deception between the two marks from the point of view of the customer's average intelligence and imperfect recollection. The Hon'ble Delhi High Court observed that when compared as a whole, the Hon'ble Court is prima facie convinced that the individual marks are deceptively similar and cause confusion amongst the customers. The Hon'ble Court held that "the only consequence of such disclaimer, in my opinion, is that the plaintiff would not be able to urge infringement of a mark of another person solely because the said mark uses the word "CHINA", or the said mark uses the word "BISTRO". However, that would not inhibit the plaintiff from alleging infringement of the mark of another person on the ground that it is deceptively similar to the composite mark CHINA BISTRO when seen as a whole. Simply put, disclaiming exclusivity in respect of the individual parts of a mark would

MANKIND PHARMA LIMITED (Plaintiff) vs NOVAKIND BIOSCIENCE PRIVATE LIMITED (Defendant)

Case Number: CS(COMM) 188/2021, I.A. 5700/2021 & I.A. 3248/2023
Decided On: 07 August 2023

The present suit was filed by the plaintiff, seeking a permanent injunction restraining the defendant from using the word



not ipso facto result in disclaiming exclusivity over the composite mark as a whole.” The Hon'ble Court prohibited the defendant and all related parties from using the name or mark “WOW CHINA BISTRO” in any capacity that could be confused with the plaintiff's mark. However, the Hon'ble Court directed that the defendant could continue using “WOW! CHINA” without any restrictions.

**SUN PARMA LABORATORIES LTD(Plaintiff)
vs MYLAN LABORATORIES LIMITED &
ANR (Defendants)**

Case Number: CS(COMM) 1098/2016 & I.A.1395/2023
Decided On: 02 August 2023

The present suit has been filed by the plaintiff seeking protection of its trademark 'OXIPLAT' against the defendant's mark "SOXPLAT". These competing marks were registered in favour of the plaintiff and the defendant. However, the registration of the defendant's mark was cancelled as per the IPAB order issued in 2020. The Hon'ble Delhi High Court observed that the suit has remained pending and there was no interim injunction during the entire period against the defendants. Also, the Single Judge and the Division Bench have held against the plaintiff and not granted an interim injunction. The IPAB has rendered its decision only as in 2020. Thereafter, the defendants have given up the mark 'SOXPLAT' and the mark also stands removed from the Register. However, to serve the interest of the plaintiff, the Hon'ble High Court awarded costs of INR 5 lakhs.



The respondent added a comma between "Sago" and "Preparations". Now, it introduces a class of anything with the plain word "Preparation," and no one can figure out where this comes under the scope of the Trademarks Act schedule, what it includes, or which class it represents. The petitioner asserted that two effects arise from this use of the respondent, first, to create a situation of complete incomprehensibility and second, to artificially create a class of nothingness. The respondent claimed that it was a typographical error. The Court observed “At this rate, we are in risk of lapsing into a comma” and restrained the 3rd Respondent from using the “Sago, Preparation” mark till the next date of hearing.

**MS. SABU TRADE PRIVATE LIMITED (Petitioner)
vs THE REGISTRAR OF TRADEMARKS
(Respondent)**

Case No: Writ Petition (L) No. 4814 of 2023
Decided On: 02 August 2023

In this case, the petition raises a narrow issue of whether the Registrar of Trademarks has the authority in law can insert what are called "typographical corrections" and "syntactical betterments" or "grammatical improvements" in a trademark that is registered as a device mark.



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