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IPR Litigation in India - Scope & Evolution

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ABSTRACT

Inventions are the essence of human behavior. Each era has its own forms of inventions. The things that human brain creates are in many aspects different and unique from each other. In order to preserve this uniqueness and to prevent it from use by others in their own name certain rights are granted to the creator these are the rights that the owner possesses over his intellectual property and are known as 'intellectual property rights.' When these rights get infringed disputes arises which are presented in courts in the form of IPR litigations which are adjudicated by the courts which may be either specialized courts r the courts having jurisdiction over matters related to intellectual property.

Keywords - Intellectual property, intellectual property rights, invention, litigating, courts

I. INTRODUCTION

In the fast running and dynamic world of the present what creates a difference between one and other is innovation, the ideas and new techniques. To preserve these new ideas, innovations and creations, the creator reserves certain rights over them these rights are known as intellectual property rights.

Intellectual property is a creation generally done by a human brain or equivalent and includes inventions, designs, Brands etc. The intellectual property rights are the legal rights endowed to a person or business. It can be categorized into two –

- 1) Industrial property – which further includes trademarks, patents, etc.
- 2) Copyrights – which include novels, poems, films, and there artistic works

Trademarks, copyrights, patents, and trade secrets are collectively known as Intellectual property.

Further there have been many categories of subject matter which have been brought in the shoes of Intellectual property by World Intellectual Property organization 1967. They are

- 1) Literary and scientific work
- 2) Performance of performing artist , phonogram , broadcast

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- 3) Invention in all field of human endeavor
- 4) Scientific discoveries
- 5) Industrial designs
- 6) Trademark, service mark, commercial name and design
- 7) Protection against unfair competition
- 8) All others relating from intellectual activity in Industrial, scientific, literary, and artistic field.

II. INTELLECTUAL PROPERTY LITIGATION

Every parson has a right to protect his work and creation from others. These rights are set out in the International Declaration of Human Rights, which provides for the right to benefit from the protection of the moral and physical interests resulting from the right holder's work; literal or artistic product. Litigation is the process of putting a case or a matter of dispute in front of court so as to attain a final decision or a judgment. Intellectual property litigations are the disputes that arise out of creations done by human mind. Intellectual property is generally covered and protected under specific laws which govern subject matters of patents, there can be many forms of Intellectual property litigation like those involving patents, like patent infringement litigations they also include designs and inventions. In India the IPR litigations which include patents and designs have no application of criminal law over them. While those disputes and litigations dealing with trademark and copyright counterfeit actions have application of criminal law on them. There can even be trademark or copyright infringement litigations like those involving symbol, word, and etc. Another form of litigation can be misappropriation of trade secrets. These trade secrets incorporate in themselves the secrecy of companies. Cyber squatting and knock off are also kinds of Intellectual Property litigations. The litigation strategies for different intellectual property rights are different and each facet has its unique procedure. In cases of trademarks owner can sue in a court having local jurisdiction only when his trademark is registered but not in case when his trademark is not registered. While in cases of patents and designs the court has to be chosen at a place where the defendant resides or where goods are sold.

III. HISTORY OF IPR AND IPR LITIGATION

Intellectual property rights are not a concept of new age it has been in existence since centuries in various parts of the world. The origin of intellectual property rights can be traced back to the days of Byzantine Empire where monopolies concept existed. In India the

Intellectual property law found its existence through the English copyrights act, 1872. This act was further revised in 1976. The TRIPS agreement by world trade organization granted Intellectual property rights the authority to enforce laws internationally. Moreover it has recognized various rights under it. Some of them are –

- 1) Right of traders in trade mark
- 2) Right of inventors for patent in invention
- 3) Right of Bio-diversity.

After the enactment of copyright act 1976, there has been an enormous increase in intellectual property protection due to greater awareness and upcoming new intellectual properties. The increase in IP protection has also resulted in rise of number of Intellectual Property litigations within 25 years.

IV. INTELLECTUAL PROPERTY COURTS

In order to deal with such a diverse topic like intellectual property many countries have set up special courts which are known as specialized IP courts. These courts have jurisdiction over the matters related to intellectual property. The IP disputes are generally complex and involve matters ranging from infringement of IP rights to counterfeiting activities. Thus a special body of individual or organization is needed to deal with the complexity of problems in IP litigations. These specialized courts may be in the form of both trial courts as well as appellate bodies.

V. ADVANTAGES OF IPR COURTS

- 1) Expertise in subject matter – due to the existing intricacies in IPR and the complexity in its subject matter there is a need for learned judges and individuals in the required field. Specialized IPR courts helps to filter out judges who have knowledge about IP and IPR and those who can deal with the disputes.
- 2) Effective and efficient decision- due to the appointment of qualified judges in respective subject matter the chances of effective and efficient subject matter increase. Thus it consumes less time and brings more accuracy.
- 3) Consistency – since the judges are limited conflict of opinion does not take place often in decision making. Thus the precedents have more uniformity in them and does not create much conflict
- 4) Investments by government- the creation of specialized courts draws attention of

government and encourages government to make investment in dynamic subjects like intellectual properties.

VI. DISADVANTAGES

- 1) Cost incurred – since the specialized courts need well trained judges; the training involves high cost, also the infrastructure and resources needed to create these courts are costly.
- 2) Insufficient litigations- even after a lot of growth in IP sector the people are still not aware completely about their intellectual property rights and hence the number of cases falls too short in respect of creating a separate special court.
- 3) Narrow scope- granting special status to IPR by creating separate courts will minimize the scope of the subject matter related to intellectual property as the judges with special knowledge will not try to look IP litigations into the wider ambit of legal framework and will limit it to the existing IP laws which will lead to stagnation of laws and no evolution them.

VII. EVALUATION OF INTELLECTUAL PROPERTY LITIGATIONS AND COURTS

With the changing time there has been a rise in amount of patent grants. Since 2002 the number of patent grants has almost doubled as compared to the then existing amount. This increase in patent grant has a direct relation with the patents litigated. As, when more and more patents are granted more litigations come into existence. Also not only the patent grants but the protection of intellectual property has gained importance in last few decades. This has marked a drastic rise in intellectual property litigations within 25 years. However, the statistics show that the IP trials have fallen down from 3.5% to 1.5% from 1978-2000.

The Intellectual Property rights have an important place in a democratic country like India and so are its litigations and trials. The courts in India have favored and stated that these Intellectual Properties must enjoy a high degree of protection. The courts while taking decisions follow the directive principles of state policy embodied by the Indian constitution and hence they tend to create a balance between the rights of IPR owners and the public interest. They lay down proper guidelines regarding the extent to which creativity and innovation must be allowed. The courts have also often permitted the consultation of foreign judgments and precedents which have similar terms relating to the treaties in India to the extent of persuasive value in cases like that of copyright laws.

There are many specialized IPR courts created in different countries in order to specifically deal with the intellectual property disputes. Some of these courts are-

1. Specialized IPR Trial Court
2. Specialized IPR Appeals Court
3. Specialized IPR Trial Division
4. Specialized IPR Appeals Division1
5. Commercial Trial Court
6. Commercial Appeals Court
7. Trial Court that Exclusively Hears IPR Cases
8. Appeals Court that Exclusively Hears IPR Cases
9. Administrative Tribunal
10. Specialized Judges on Courts of General Jurisdiction
11. Considering Specialized IPR Court, Division, or Tribunal
12. Considering Commercial Court

Keeping in mind the continuously growing number of IP disputes, the government has set up commercial courts in India which aims to expedite the commercial suits including IP litigations in India. This act was passed in 2015 which came into effect in the year 2016. The act gives no room for slow process of litigation. It aims to provide speedy justice and also makes a provision for the demand of speedy trial if party feels that recording evidence would be superfluous. Also in order to stop the misuse of power given to litigants the courts have directed that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months, unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same would end on expiry of six months from the day, unless in an exceptional case by a speaking order such stay is extended. The courts in India have always favored about granting punitive damages to innovators and also curtailing willful infringements of the intellectual property rights.

The year 2018 witnessed a lot of promotion and encouragement towards the intellectual property and intellectual property rights by the courts. In the light of the same the government has created various awareness program's to spread information about IPR, their litigations and their benefits in collaboration with the cell for IPR promotion and Management (CIPAM). They have also come out with many technologies driven solutions like-

- 1) Video conferencing – this mode has enabled online hearing procedure and has made

the cumbersome process now easier as well. This not only makes proceedings faster but also reduces the costs and also ensures convenience to applicants of patent application.

2) Digitalization - The Indian patent office has laid stress on digitalization of patent process by continually welcoming suggestions and interests in using advanced technologies like- Artificial intelligence, block chain for the patent process.

3) Demand for several other changes and recommendations have also been kept open by the IPO. Under the Draft Patent amendment Rules many important issues like international applications and pre-grant propositions have been dealt with. The rules lay down the filing of original documents within 15 days only after the documents have been electronically submitted.

VIII. CONCLUSION

Human beings have been bestowed with the skills of creativity, innovations and thinking ability. All these combine to create something or the other which is unique in its own way. It was only in twentieth century that the innovators right was accepted over the creation and it was accepted that the owner had an exclusive right over the entire thing created. This right is known as an intellectual property right and the property is known as intellectual property. The present world in build up on the foundations of new creations which have immense importance and thus these intellectual property holders possess certain rights, when these rights are violated the disputes arise. The litigation which deals with these disputes are known as IPR litigations and the courts which deal with these disputes are known as IPR courts. They seek to address the IPR disputes and give efficient and effective judgments. Thus IPR, IPR litigations and IPR courts are of immense importance for a country.
