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Industrial Training Institutes to offer IP courses

Maharashtra state govt appoints DuxLegis Attorneys as knowledge and training partner



In a move to motivate students towards research and invention for larger societal interests, Maharashtra state's Directorate of Vocational Education and Training (DVET) has started training principals and students of all Industrial Training Institutes (ITI) in 'Intellectual Property' courses in coordination with internationally reputed 'DuxLegis Attorneys'. Maharashtra is leading and one of the most Industrially developed state of India and its capital Mumbai is also a financial capital of India.

The course "Innovative thinking and intellectual property" designed by 'DuxLegis Attorneys' on par with those offered by reputed professional institutes worldwide will be offered at 419 government run ITIs. Along with ITI's principals, several hundred students are undergoing training for this course.

As part of the initiative, an online workshop was organised for all the ITI principals of the state on January 24, followed by a workshop for its students in Mulund on 4th February. DVET Director Digambar Dalvi, whose decision is being seen as a major step towards empowering students to enhance creativity, said, "initially, ITI teachers were trained with IP knowledge, which will be followed by students."

Divyendu Verma, who is the Managing Partner of Duxlegis Attorneys, and a patent attorney, has developed the content and will be conducting these IP workshops and sessions. Verma has law firms in the US and India has aided several researchers in gaining over a thousand of patents."We intend to encourage youth to develop new products, which offer solutions to social problems. These workshops will boost their creativity and motivate them to conduct research for developing solutions. And while these students will be developing innovative products,

they will also be taught about Intellectual Property Rights and how to obtain it,"said Digambar Dalvi, Director, DVET. Several ITI principals, who attended the workshop, informed that their students have been involved in developing innovative solutions in form of devices and processes, however they were not aware about IP in the past and how to go ahead with it. They expressed confidence that this course will definitely boost the morale of the students to be more productive.

Numerous studies have confirmed that every individual is creative, and can solve problems in innovative ways. We have examples of persons with primary education or school students who have made inventions and discoveries. "We are confident that even these ITI students can make innovative designs, and methods and the training could help them make significant contributions in the patent, design and copyright," said Divyendu Verma of DuxLegis Attorneys.

What is ITI

Industrial Training Institute (ITI) is a post-secondary school in India constituted under the Directorate General of Training (DGT), Ministry of Skill Development and Entrepreneurship, Union Government, to provide training in various vocations. The scheme of training youths in different trades are being implemented by various states. Maharashtra state government implemented this scheme through Directorate of Vocational Education and Training (DVET). There over 400 ITIs in Maharashtra providing training in various vocations including, Electrician, Lift and Escalator Mechanic, Mechanic Motor Vehicle, Mechanic (Refrigeration and Air-Conditioner), etc.

'Identify known substance', Delhi High Court directs Patent office

Mere statement that "...the claims are not patentable u/s/ 3 (d) of Patents Acts" is not enough, says DHC



Priti More

DS Biopharma Limited vs The Controller of Patents & Designs & ANR

C.A. (COMM.IPD-PAT) 6/2021 & I.A.12828/2021
Decided on: 30th August, 2022

The Delhi high court in the DS Biopharma Limited (appellant) vs The Controller of Patents & Designs & ANR (Respondents) matter passed the order stating that while implying the non-patentability objection under section 3 (d), the basic pre-condition would be the identification of the 'a known substance' by the Patent office and same cannot be left to the Applicant to deduce as to what is the known substance and thereafter give efficacy data qua that known substance, based on the said deduction.

Background:

DS Biopharma Limited had filed the Patent application No.201717040270 titled 'Compositions comprising 15-oxo-epaor15-oxodgla and methods of making and using the same' was filed on November 10, 2017 with initial claims 1-26. The claims were voluntarily amended by the applicant thereafter as new claims 1-26. The Patent office has issued the First examination report on 5th March, 2020 with following objections,

- (i) lack of inventive step qua all claims 1-26,
- (ii) non-patentability under Section 3(i); and
- (iii) lack of clarity and conciseness under Section 10(5) and Section 10(4)(c) of the Act.

Appellant responded to FER on 8th July, 2020, wherein it cancelled claims 7-26. The Controller then issued a hearing notice on November 25, 2020, wherein the Controller raised a new objection as –
"Non-Patentability u/s 3: 1. Subject matter claimed in

claim 1,4 is not Patentable u/s/ 3 (d) of Patents Act;"

The Appellant submitted the written submissions with the amended claims 1-4. Thereafter, the Ld. Controller has rejected the patent application, vide the impugned order dated 13th January, 2021, on the ground of lack of inventive step under section 2(1) (ja) in addition to Section 3(d) and lack of clarity under Section 10(4)(c) of the Act, despite that the objections related to section 2(1)(ja) and lack of clarity under Section 10(4)(c) of the Act were satisfied in the FER reply and hearing notice had only objection of Section 3 (d). Based on the above facts, the Appellant had filed the present appeal proceedings.

DS Biopharma Limited filed an appeal under Section 117A of the Patents Act, 1970, challenging the order passed by the Id. Assistant Controller of Patents & Designs on the ground that the decision given by the Patent office was not with a proper reasoning on the rejection under section 3 (d). The Appellant has cited the IPAB decision in ORA/22/2011/PT/KOL titled Fresenius Kabi Oncology Limited v. Glaxo Group Limited & Anr., 2013 SCC OnLine IPAB 121. As per the Appellant's understanding of the Fresenius Kabi judgement, for an objection under non-patentability to be raised, the patent office needs to specifically allege and identify at least the following: (i) What is the specific 'known' substance in question? (ii) How and why the claimed molecule(s) or substance(s) is a derivative or is otherwise a new form of a known substance? (iii) Basis to assert that the alleged 'known' substance and the claimed molecule or substance have the same 'known' efficacy? However, in this case, the compound which constitutes the 'known substance' was not identified in the hearing notice.

It was also submitted by the Appellant that in the absence of identification of the 'known' compound it is unable to

respond clearly to the objection and which ultimately hampers its right to be given a reasonable opportunity to defend its patent application.

In reply to this, the patent office has argued that the objection under Section 3(d) of the Act was specified in the hearing notice and all the prior arts being D1 to D6 were in the possession of the Appellant. The Appellant failed to provide efficacy data and accordingly the patent has been rightly rejected.

will be given an opportunity of the hearing before the Controller.

The present decision of the High Court would be very useful to the Patent practitioner, as the objection regarding section 3 (d) would be clearly mentioned by the Patent office along with the specific compound(s) in the prior art against which a claimed compound has been considered a 'new form of a known substance'. This would certainly be beneficial for providing proper arguments to overcome such objections in a better manner.

Findings of the Court

The court has referred the impugned order of Fresenius Kabi (supra) and provided the observation that Section 3(d) bars patentability of a 'new form' of 'a known substance', without establishing enhanced therapeutic efficacy. The basic pre-condition for raising the objection related to section 3 (d) would be the identification of the 'a known substance'. The said 'known substance' could be one substance or a compound/s derived from a Markush formula. However, it has to be identified. It cannot be left to the Applicant to deduce as to what is the known substance and thereafter give efficacy data qua that known substance, based on the said deduction.

The Court has also clarified that the Patent office has not identified the compound which constitutes the 'known substance', in the hearing notice. For the purposes of a Section 3(d) objection, the one specific known substance is to be identified and the manner in which the claimed compounds are 'new forms' ought to be mentioned by the Patent Office, even if not in detail but at least in a brief manner.

The Court has accepted that the Appellant has not had adequate opportunity to deal with the objection under Section 3(d) in as much as apart from merely specifying the said objection for the first time in the hearing notice, the manner in which the said objection was attracted was completely absent.

The Court has allowed the appeal and the impugned order is set aside, the Court has further directed the Appellant to submit its response on the basis of the identified known substances and produce efficacy data and support its submissions as to how Section 3(d) is not applicable. Based on the submissions the Appellant

RECENT UPDATE

INDIA

Budget 2023: \$401 million allocated for IPR ecosystem

Allocation in the Budget for the intellectual property ecosystem, including the copyright office and Controller General of Patents, Designs and Trade Marks, has been increased by about 15 per cent to Rs 328.981 crore. (\$401 Million)

In the revised estimate (2022-23), the allocations stood at Rs 285.41 crore. The budgetary allocation for the copyright office and Controller General of Patents, Designs and Trade Marks has been hiked to Rs 281.60 crore as against Rs 232.65 crore in the revised estimate, according to the Budget documents.



Similarly, enhanced funds have been allocated to strengthen the Intellectual Property Appellate Board (IPAB), Intellectual Policy Rights (IPR) policy management, and infrastructure development in Controller General of Patents, Designs and Trade Marks. The office of the Controller General of Patents,

Designs and Trade Marks is responsible for the administration of laws relating to IPRs -- Patents Act, 1970; the Designs Act, 2000; the Trade Marks Act, 1999; Geographical Indications Act, 1999; Copyright Act, 1957; and Semiconductor Integrated Circuits Layout Design Act, 2000.

RECENT UPDATES



UK

**Tribunal Practice Notice 2/2023:
Effective service in proceedings against
trade marks and registered designs without
a valid UK address for service**

Change in practice by UK IPO
(Tribunal Practice Notice 2/2023 issued on January 25, 2023)

This notice is important for non-UK based Applicants who are filing international registrations for trademarks and designs applications and designating in UK. The notice indicates a change in practice regarding the Registrar's service of documents in inter partes trade mark invalidation, revocation, rectification and opposition proceedings, and registered design invalidation proceedings.

Following this change in practice in the UK, where an invalidation/revocation action is filed against a UK registered mark or design, any holder without a UK address for service will be sent a letter, by Royal Mail signed-for service, giving the holder one month to appoint a UK AFS (Address For Service), and to confirm its intention to oppose. If no UK AFS is appointed within one month, the UK IPO may treat the application as not opposed, declaring it invalid.

Following this announcement, our colleagues from the UK are highly recommending that the holders of International registrations designating the UK, or comparable UK rights, appoint a UK AFS as soon as possible. Holders should also ensure that all addresses are up to date in UK IPO registry.

Copy of Notice can be found here:

<https://www.gov.uk/government/publications/tribunal-practice-notice-22023-effective-service-in-proceedings-against-trade-marks-and-registered-designs-without-a-valid-uk-address-for-service/tribunal-practice-notice-22023-effective-service-in-proceedings-against-trade-marks-and-registered-designs-without-a-valid-uk-address-for-service>



CHINA

Alert: China trademark law update

The owner of the registered trademark should submit valid proof of use to maintain the trademark during the 5th to 6th year from registration date; if not, the registered trademark will be canceled and be invalid.



GCC

**GCC PATENT FILINGS UPDATE -
Effective from 01-JAN-2023**

GCC Patent Office started accepting patent applications on behalf of the Kingdom of Bahrain and The State of Kuwait on January 1, 2023. The Patent Application can be filed with or without claiming priority. Major Changes in Filing Procedure: 1. Now the applicant can submit the apostilled supporting documents at the time of filing of GCC patent application. Requirements of Legalization of documents from Saudi Arabia Consulate is removed completely. 2. At the time of filing of GCC Patent Application, the Applicant will have a choice to select either Bahrain / Kuwait or both of the countries. Examination and further prosecution till acceptance of the Patent Application will be handled by the GCC Patent Office.

Snippets

TRADEMARKS

ANUBHAV JAIN (Petitioner) versus SATISH KUMAR JAIN & ANR. (Respondents)

In Delhi High Court : C.O. (COMM.IPD-TM) 55/2021
Case decided on 09 January 2023

The present appeal concerning the refusal of trademark “SAFESHIELD” in respect of baths, bath installation products etc., falling under Class 11 by the Trade mark registry. The Trade mark office has objected to the subject mark under Sections 9 and 11 of the Trade Marks Act, 1999, however, noticeably in the Examination Report objection was raised only under Section 11 of the Act.

Further, the Appellant has argued that the examiner has misconstrued the provisions of the Act. The subject mark is inherently distinctive and capable of being granted registration. This is evident from Appellant's prior registration of the mark “SAFESHIELD+”, which also incorporates the word “SAFESHIELD”. Based on this, the Court has allowed the appeal with a condition that the rights in subject mark shall be restricted to “SAFESHIELD”, and no exclusive rights in the words, “Safe” or “Shield”, separately or individually shall vest in the Appellant. The Court also instructed the Trade mark registry to put the disclaimer in the trade marks journal at the time of advertisement.

KRBL LIMITED vs. VIKRAM ROLLER FLOUR MILLS LIMITED
In Delhi High Court : CS(COMM) 550/2022

Case decided on 19 January 2023



The Delhi High Court has refused to grant an interim injunction in favour of KRBL Limited, a market leader in the business of processing, marketing and exporting rice, in a case accusing Vikram Mills of infringing its right over the “India Gate” trade mark by its use in respect of “dalia”. The DHC noted that the registration granted in favour of the KRBL Limited was only in respect of “rice”.

The earliest invoice filed on behalf of the KRBL showing user of the trademark “INDIA GATE” is of 18th February, 1995. On the other hand, Vikram Mills was granted registration in respect of the device mark “INDIA GATE” with effect from November, 1993.



DHC stated that when two persons are registered proprietors of identical or similar trademarks both have the exclusive right to use the said trademarks, in terms of Section 28(3) of the Trade Marks Act, 1999.

COPYRIGHT

SURYA FOOD AND AGRO LIMITED (Appellant) vs. OM TRADERS AND ANR. (Respondents)
In Delhi High Court :

RFA(OS)(COMM) 28/2019
Case decided on 20 January 2023

The respondent (OM Traders) argued that there was no infringement of copyright as the get-up and packaging of their product “BUTTER KRUNCH” was not identical to that of the appellant's (Surya Food) product “BUTTER DELITE”. They also argued that they had been using the trade dress and packaging of “BUTTER KRUNCH” for a significant period of time and had acquired a secondary meaning in the market.

The Delhi High Court (DHC) examined the evidence presented by both parties and found that there were some similarities in the packaging and get-up of the two products, but they were not identical. The DHC also found that the respondent had been using the trade dress and packaging of “BUTTER KRUNCH” for a significant period of time and had acquired a secondary meaning in the market.



Based on these findings, the DHC held that there was no infringement of copyright and denied the petitioner's request for a permanent injunction against the respondent from selling, offering for sale any goods, advertising or promoting any product under the packaging, get-up and/or trade dress of the defendant's product “BUTTER KRUNCH” or any other packaging, get-up and/or trade dress that is deceptively similar to the appellant's product “BUTTER DELITE”.

INDUSTRIAL DESIGNS

NOVATEUR ELECTRICAL & DIGITAL SYSTEMS PVT LTD. (Plaintiff)

In Delhi High Court : 2023/DHC/000106
Case decided on 11 January 2023

This is an interesting case of design infringement. The plaintiff is a manufacturer of switch plates and has design registrations for design numbers 296178, 296179 and 296180. The plaintiff alleges that the switch plates sold by the defendant infringes their design registrations and seeks injunction against manufacture and use, by the defendant, of the said infringing design.

The defendant submitted that the conceptual design was already disclosed publicly through electronic medium, i.e., computer image, before plaintiff's design registration. However, the Delhi High Court clearly stated that communication of conceptual design to the public will not mean prior publication of the design. The Hon'ble court further stated that mere communicated design concepts does not constitute prior publication. The Hon'ble court passes an order in favor of the plaintiff.

**KENT RO SYSTEMS LIMITED & ANR. (Plaintiff)
Vs.
BAJRANG IMPEX PRIVATE LIMITED (Defendant)**

Citation Number: 2023/DHC/000472



The plaintiff alleges that logo and Design No. 312406 related to water purifiers has been infringed by the defendant. There was a prima facie case of infringement and passing off, on the part of the defendant, made out by the plaintiff. The Delhi High Court issued summons and also granted ex-parte ad interim injunction against the defendant from using the impugned design or the impugned logo.

Registered Design of Plaintiff	Plaintiff's Product as per Registered Design	Defendant's Product
Design No-312406, Dated: 26.11.2018	[KENT GRAND+ (NEW)]	[NEW AQUA GRAND SMART]
		
Plaintiff's logo	Defendant's logo	
		

**NOVAMAX INDUSTRIES LLP (Plaintiff)
Vs. PREM APPLIANCES & ANR. (Defendant)**

Citation Number: 2023/DHC/000333
Case decided on 16 January 2023

The plaintiff is a manufacturer and seller of air coolers and has design registrations for design numbers 322384-001, 322384-002, 323421-001, 330044-004, 330044-002 and 331964-001. The plaintiff alleges that the NOVA range of coolers manufactured and sold by the defendant infringes the suit design of the plaintiff. The defendant submitted that the suit design was published prior to the date of registration under a different trade name. The Delhi High Court stated that the brand name of the cooler is, in fact, really irrelevant. What has to be seen is whether the coolers bearing the suit design were available online prior to the date of application, by the plaintiff, for registration of the design. Whether the design was being sold under the brand -ZEPHYR or the brand -MIST, or, for that matter, any other brand, makes no difference to the controversy.

Manner of use/presentation by the plaintiff	Manner of use/presentation by the defendant
	



PATENTS

NATCO PHARMA LIMITED vs. ASSISTANT CONTROLLER OF PATENTS & DESIGNS

In Delhi High Court : W.P.(C)-IPD 2/2023
& CM 2/2023, CM 3/2023
Case decided on 12 January 2023



Natco Pharma Limited

The present writ petition before the Delhi High Court is with regards to the sanctity of the principles of natural justice i.e., audi alteram partem with regards to pre-grant opposition hearing under the Patents Act, 1970. The DHC reiterated that the principle of audi alteram partem is a necessary part of dispensing justice in India. The DHC stated that there is no provision in the Patents Act and Rules, which categorically allows exclusion of one party, and that too of the pre-grant opposition party. After a pre-grant opposition is filed, the dynamic of the Patent Application changes and from their onwards there are two parties involved; both having equal interest in the grant or refusal of the Patent. The DHC quashed the Order of the Assistant Controller dated 14 December 2022 and remind back the patent application to the Patent Office for reconsideration and directed that the proceedings shall commence from the Hearing Notice deemed to be issued on 25 November 2022 to both the parties (Natco and Novartis).

ALLERGAN INC vs. THE CONTROLLER OF PATENTS

In Delhi High Court : C.A.(COMM.IPD-PAT) 22/2021
Case decided on 20 January 2023



In the present case, the Controller of Patent refused the patent application by Allergan for its intracameral sustained release therapeutic agent implants through an order on March 30, 2020, observing that the amended claims does not have support in the originally filed claims and the intracameral implants has not been claimed either in the WIPO (International) claims or while entering in the national phase. The application is thus not allowable under Section 59(1) of the Patents Act. The Delhi High Court has quashed an order by the Controller of Patents against Allergan denying patent for an intracameral sustained release implant for ocular ailment and remanded the patent application back to the Patent Office for fresh consideration.

PFIZER INC & ORS vs. TRIVENI INTERCHEM PRIVATE LIMITED & ORS.

Delhi High Court - CS(COMM) 442/2021



The Delhi High Court has ordered the director of Triveni Chemicals to pay ₹2 crores in damages to Pfizer for contempt of court and infringement of Pfizer's patent (IN 218291) for the compound Palbociclib.

Palbociclib, which is used in treatment of metastatic breast cancer, had its patent exclusivity in the country had expired on January 10, 2023 and several Indian pharma majors have entered the market with generic products. However, the litigation on which the High Court has now issued order is related to a petition filed by the company earlier and a related ad interim injunction issued by the Court on October 12, 2021.

Pfizer has alleged that Triveni Interchem is guilty of willful and contumacious disobedience of the Court's order dated October 21, 2021, which granted ad interim relief to the US-based company by restraining the latter from making, selling, distributing, advertising, exporting or importing or in any manner directly or indirectly dealing with any product, which has, as an ingredient, palbociclib or any pharmaceutically acceptable salt, that would infringe Pfizers' patent. The Court has also directed to remove any indication that they are marketing or offering for sale palbociclib or any pharmaceutically acceptable salt, and permanently remove all advertisements and names relating to the active pharmaceutical ingredient palbociclib in power form.

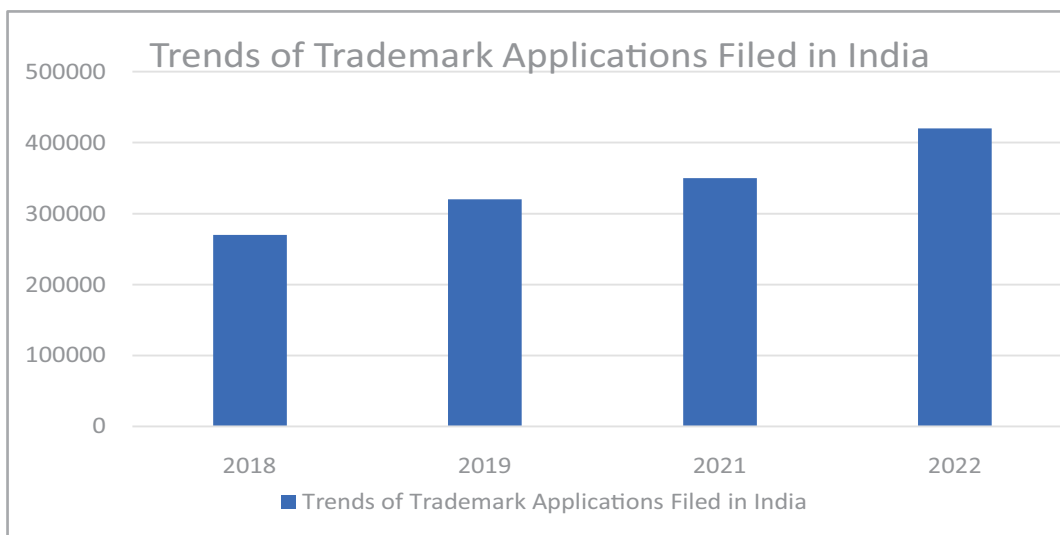


Indian Trademark Registry announced quick disposal mechanism for long pending TM Applications



Adv. Rohit R Singh

On February 06, 2023, two public notices were issued stating the abandoning of more than 1,78,000 Trademark cases all over India within one month time from the issue of these notices. A thing to note is that Trademark can only be abandoned by the Trademark Office on failure to perform steps as specified under provisions of the Trademark Act and Trademark Rules.



It can be seen that Trademark Filings in India are increasing every year significantly. According to a report India ranks among top 5 Trademark Filer worldwide.

Provision 1:

One provision for abandonment of filed Trademark is failure to file a reply to the objection report raised by the Trademark Registry within one month of receiving objections.

Provision 2:

Another provision for abandonment of filed Trademark is failure to file a counter-statement within 2 months of receiving opposition from the aggrieved party.

Interesting thing is that these public notices issued, mentioned above 2 provisions the reasons for abandoning these huge filed Trademarks. Every year more than 2 lacs Trademarks are filed in India. This trend is increasing year by year because of increased awareness, necessity, advantages, and legal benefits of filing Trademarks. But the time period of getting a Trademark granted is also increasing drastically because of huge backlogs.

To solve this problem of backlogs, the Trademark office had to resort to this bold move to speed up the process of disposing of the trademark cases which are not adhering to the provisions of the Trademark Acts.

As per our observation, this move is to be respected and appreciated because steps are undertaken by the Trademark office for prompt action for the administration of in-process Trademark Cases. Questions are also raised on such Trademark agents, advocates, and IP Law Firms who have failed to comply with the above two provisions and lapse of time-period because of which the Trademark clients have to suffer and face the loss of their Trademark filed.

It is a challenge for the Trademark Registry to take action on more than 4 lacs pending trademark applications at various stages of registration and more than 1.5 lacs pending opposition cases. These 2 notices are one of the measures undertaken by the Trademark Registry to cope with the challenge and should be taken in a positive way.



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