



## Round-up of Developments in Intellectual Property – January 2022 to March 2022

### Delhi High Court grants extension of time for filing Opposition to Trade Marks and CGPDTM issues Public Notice

The Delhi High Court (“the Court”) has issued orders to allow for more time to file Opposition proceedings against trade mark applications advertised during the covid19 pandemic, in lieu of Writ Petitions filed by four separate entities (“the Petitioners”) against the Controller General of Patents, Designs and Trade Marks (“CGPDTM”). The extraordinary jurisdiction of the Court was invoked on account of the CGPDTM disallowing the Petitioners from filing Opposition proceedings beyond the deadline of four months from the date of publication of the trade mark applications.

As per the Trade Marks Act, 1999, an Opposition against a trade mark application can be filed by any third party within a non-extendible deadline of four months from the date of advertisement of the mark in the Trade Marks Journal. Post registration of the mark, no opposition proceeding can be filed. Once registered, the trade mark registration can be challenged by way of a cancellation action.

The Supreme Court of India had suspended all statutory periods of limitation between March 15, 2020 to February 28, 2022, and any deadline expiring in the aforesaid period resumed on March 1, 2022 and will expire in 90 days i.e., on May 29, 2022.

However, the Trade Marks Registry did not consider the Supreme Court’s Order in Opposition proceedings filed between March 15, 2020 to February 28, 2022 and consequently, in cases where Oppositions were not filed within the four month statutory deadline, registration certificates were issued.

This act of the Registry was challenged and the Court directed the Trade Marks Registry to consider requests of third parties and take on record Notices of Oppositions against registrations wherever such third parties wished to oppose registration of a trade mark registered between March 15, 2020 to February 28, 2022.

It was held that the CGPDTM has a duty to extend the limitation in all proceedings and the Court directed that the limitation period for filing Opposition proceedings be extended till May 30, 2022<sup>1</sup>.

In compliance of the Court’s orders, the offices of the CGPDTM issued a public notice<sup>2</sup> stating that any person who wishes to file an Opposition against the trade mark applications published between November 18, 2019 and January 24, 2022 may file the same with the Trade Marks Registry by May 30, 2022. Accordingly, in case a third party writes to the Trade Marks Registry informing

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<sup>1</sup> Order dated March 21, 2022 in W.P(C)-IPD 4/2022 & CM 27/2022 with W.P©-IPD 88/2021 & CM 31/2021 with W.P(C)-IPD 103/2021 with W.P(C) 1907/2022 & CM 5485/2022, 11118/2022 & 12729/2022

<sup>2</sup> Public Notice dated March 28, 2022

the Registry of its intention to oppose a mark (registered between March 15, 2020 to February 28, 2022) and files a notice of opposition, the registration certificate granted by the Registry will be suspended and the opposition proceeding will commence. The registration will be granted in case the opposition proceeding is decided in favour of the applicant of the trade mark.

### Global Car Group Ltd. and Another v. Mohit Goyal and Another: Court restrains misuse of Cars24, Bikes24

The Delhi High Court (“the Court”) passed an *ex parte* order<sup>3</sup> granting interim injunction restraining the use of the trade mark/name ‘Drivers24’ and the logo  based on Global Car Group Limited’s rights in the trade marks ‘Cars24’ and . The Plaintiffs, i.e. Global Car Group Ltd. and Another, sought protection of their statutory and proprietary rights in the family of trade marks ‘Cars24’, ‘Auction24’, ‘Funding24’, ‘Unnati24’ and ‘Bikes24’. It was submitted that Global Car Group Ltd. was incorporated in 2015 as an e-commerce company, which functions through subsidiaries across the globe. Global Car Group Ltd. submitted that it was the registered proprietor of, *inter alia*, the trade marks ‘Cars24’ and ‘Bikes24’. The Plaintiffs submitted that the exclusive rights to the said trade mark vested in Global Car Group Limited. It was argued by the Plaintiffs that the combination of the words ‘Cars’ and ‘24’ is distinctive and that the Defendant’s use is bound to be cause confusion amongst members of the public.

The Court held that Global Car Group Ltd. had established a *prima facie* case in its favour. The Court issued an order restraining the Defendants and/or anybody acting on their behalf from misusing the Plaintiffs’ trade marks. The Defendants were also directed to suspend all social media accounts and listings which are identical or deceptively similar to the Plaintiffs’ trade marks. It was also ordered

that if the above steps were not taken by the Defendant, then e-commerce platforms such as JustDial, Twitter, LinkedIn, Instagram and Facebook would have to comply with the Court’s directions within ten days from the date of the order.

As of the last date of hearing<sup>4</sup>, the Defendants entered appearance and filed their Written Statement in response to the Plaint. A joint statement from the parties was recorded to the effect that they would like to explore a settlement, and the dispute has been placed before the Delhi High Court Mediation and Conciliation Centre. The matter is pending.

### USPTO settles Patent Dispute over CRISPR-Cas9 gene editing technologies

A ruling by the US Patents and Trade mark Office (“USPTO”) Appeals Boards on February 28, 2022, concluded a long-running dispute between parties who claimed to have invented the revolutionary CRISPR-Cas9 gene editing tool in eukaryotic cells, granting licensing rights worth millions of dollars.

The patent dispute began in 2016, between two research teams, one led by molecular biologist Feng Zhang (Broad Institute of MIT and Harvard in Cambridge) against the team consisting of biochemist Jennifer Doudna (University of California, Berkeley) with microbiologist Emmanuelle Charpentier (University of Vienna).

The original patent was filed by Jennifer Doudna and Emmanuelle Charpentier (“CVC”) in 2012 based on their first published evidence that the bacteria derived CRISPR system could cut targeted DNA. The patent application was only a few months prior to Feng Zhang’s (“Broad team”) publication of evidence that it could be a genome editor. At the time, the USPTO awarded patent registrations under the ‘America Invents Act’ which operated on a ‘first to invent’ system, rather than ‘first to file’. In 2013, the USPTO amended its procedures,

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<sup>3</sup> Order dated January 19, 2022 in CS(Comm) 709/2021 & I.A. 17520/2021

<sup>4</sup> Order dated March 7, 2022 in CS (Comm) 709/2021



# IP Round Up

and currently grants patents according to who files the application first.

The Broad team was granted the first set of patents in 2015, prompting an interference proceeding initiated by CVC. By 2017, the USPTO determined that there was no conflict between the two patent claims in a ‘cellular setting’, as the Broad team’s claims were limited to CRISPR-Cas9 systems used in eukaryotic cells, and the two patent claims were separately patentable. In 2019, a second interference claim was taken before the Appeals Board, USPTO in response to applications made by CVC that required the determination of the original inventor of the technology.

CRISPR typically comprises a DNA-cutting enzyme known as Cas9 and a molecule that guides it to a specific DNA sequence. The patent dispute focuses on the component which guides the molecule. Broad team’s first description of CRISPR working in eukaryotic cells uses a guide that combined two RNA molecules, while CVC’s team relied on a single RNA to produce the same effect, which has become a standard tool in the field.

The CRISPR-Cas9 patent has been commercialised by companies such as CRISPR Therapeutics and Intellia Therapeutics, who obtained the license from CVC. Intellia Therapeutics announced that its experimental CRISPR-Cas9 treatment for a rare condition called transthyretin amyloidosis reduced production of an errant protein with 93% effects lingering for a year. CRISPR Therapeutics, along with Vertex Pharmaceuticals, plans to file for approval from the US Food and Drug Administration for its experimental sickle-cell disease treatment based on CRISPR-Cas9. Basis the ruling of the Appeals Board, such companies may have to approach the Broad team for an agreement to license the CRISPR-Cas9 patent.

## Innovative Scheme launched by MSME

On March 10, 2022, the Ministry of Micro, Small & Medium Enterprises (“MSME”) launched the

MSME Innovative Scheme (Incubation, Design and IPR) combining existing sub-schemes around incubation, design and intellectual property rights (“the Scheme”). The Scheme is aimed to facilitate and guide development of ideas into viable business propositions and act as a hub for innovation activities.

Launched by Union Minister for MSME, Mr. Narayan Rane, the third component under IPR caters to measures related to the protection of MSME ideas and commercialisation through advisory and support. The objective is to enhance the awareness of IPR and encourage creative intellectual endeavour in the Indian economy.

Under the scheme, MSME’s would be eligible to get costs incurred by them on registration of patent, trademark, geographical indications, and design reimbursed. The maximum assistance provided under the Scheme has been announced to be INR 5 lakh for a foreign patent, INR 1 Lakh for a domestic patent, INR 2 Lakh for Geographical Indication registration, INR 15,000 for design registration and INR 10,000 for trade mark registration.

An equity support of INR 1 crore has also been announced by the MSME Ministry for commercialisation of ideas, designs and patents across the three sub-schemes, with a separate corpus created and managed by Small Industries Development Bank of India (“SIDBI”) as the fund manager.

## Anheuser-Busch LLC v. Mr. Surjeet Lal and Others: Use of recycled bottles of beer amounts to infringement and passing off

The Delhi High Court (‘the Court’) recently upheld the intellectual property rights in the embossed bottle design of ‘Budweiser’<sup>5</sup>, a product of Anheuser-Busch LLC (‘the Plaintiff’).

The Plaintiff had filed a suit seeking permanent injunction restraining Mr. Surjeet Lal and others (‘the Defendants’) from using

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any glass bottles with the word 'Budweiser' embossed on them. The Defendants were manufacturers and sellers of alcoholic beverages under the brands 'Black Fort' and 'Power Cool'.

It was alleged that the Defendants products were sold using bottles embossed with the word 'Budweiser', and the bottles were simply relabelled as 'Black Fort' and 'Power Cool'. The Plaintiff's argued that such actions were bound to create an impression in the mind of the consumers that the Defendants' product belong or originate from the Plaintiff.

The Defendants submitted that the bottles embossed with the word 'Budweiser' entered the manufacturing line through scrap dealers, and on account of the large volumes collected, cleaned, refilled and bottled by the

Defendants, a limited number of 'Budweiser' embossed bottles had been accidentally used. In view of the same, the Defendants undertook to maintain a greater degree of supervision at the manufacturing plant to ensure that the 'Budweiser' embossed bottle would not be used.

The Court accepted the statements and undertakings of the Defendant, and held that use of recycled 'Budweiser' beer bottles for products being sold under the mark 'Black Fort' and 'Power Cool' amount to 'use in the course of trade', and sale of any product using the recycled bottles of another manufacture would amount to infringement and passing off. The Defendants were restrained from using, manufacturing or selling products even in recycled bottles bearing the mark 'Budweiser', in any manner.

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