Newsletter

July 2017

Contents

Welcome to the July Edition of the Clasis Law Newsletter.

This edition brings to our readers a featured article titled "Protection against groundless threats of proceedings under The Indian Intellectual Property Laws".

While IP jurisprudence is constantly evolving to protect right owners from unauthorised encroachment of their exclusive rights in the IP, it has also led to a trend of overzealous IP enforcement, often resulting in undue liability on innocent third parties engaged in lawful activities. Section 142 of the Trade Marks Act, 1999 empowers such innocent third parties, faced with groundless threat of infringement proceedings, to initiate legal proceedings against brand owners seeking declaration that such threats are unjustified, injunction against continuance of threat and damages, *inter alia*.

We continue to highlight certain key judgements passed by the Hon'ble Court as well as changes in Corporate and Commercial laws and updates on Projects, Intellectual Property and Banking.

Your inputs and feedback are always welcome and we look forward to our interactions with you.

Protection Against Groundless Threats of Proceedings Under the Indian Intellectual Property Laws

The rapidly growing awareness of intellectual property rights *(hereinafter referred to as 'IP rights')* and a well-structured statutory regime protecting IP rights has allowed the right owners to effectively assert and enjoy the limited monopolies conferred on them and prevent or restrain unauthorized third parties from infringing, passing off, misappropriating the owner's exclusive rights and properties. While the IP jurisprudence in India is constantly evolving to protect right owners from unauthorised encroachment and infringement of their exclusive rights in the intellectual property *(hereinafter referred to as 'IP')*, it has also lead to a trend of overzealous IP enforcement, often resulting in undue liability on innocent third parties, engaged in lawful activities. Furthermore, such overzealous enforcement of IP rights becomes a hindrance when groundless threats by right owners adversely affect the businesses of innocent third parties involved in lawful and permitted use of another's IP.

In one such instance, a well-known manufacturer of automotive spare parts was being threatened with groundless legal proceedings of infringement of trade mark by a leading automobile manufacturer and its exclusive licensee in India. Based on the premise that the packaging of the genuine spare-parts read '*Suitable for <<the make and model of the particular automobile>>*' and that such use of the mark and model of the automobile being registered trade mark of the automobile manufacturer qualified as infringement of the automobile manufacturer's registered trade mark, cheating, sale of spurious goods, inter alia, the exclusive licensee of the said automobile manufacturer had filed several criminal complaints and lodged FIRs, spread across various cities in India against the spare parts manufacturer's distributors, stockists, dealers etc. which led to seizure of genuine spare-parts manufactured by the spare parts manufacturer. Interestingly, while the distributors and stockists of the said spare-parts manufacturer were subjected to criminal proceedings, resulting in huge losses to the said spare parts manufacturer, no civil or criminal proceedings were initiated by the automobile manufacturer against the said spare parts manufacturer itself.

The use of the words 'Suitable for' before the make and model of the automobile for which a particular spare-part was suited for and the prominently displayed well-known house marks of the spare parts manufacturer unambiguously indicated that the said spare-parts were manufactured by the spare-parts manufacturer and the reference to the make and model of the automobile is purely to identify the compatibility of the said spare-part. Such nominative use is permitted under Section 30(d) of the Trade Marks Act 1999 *(hereinafter referred to as the 'Act, 1999')* as it is reasonably necessary to indicate the compatibility of the said spare-part with the corresponding automobile. Consequently, although protected by the fair and permitted use provision under the Trade Marks Act, 1999, the said spare-parts manufacturer was constantly subjected to groundless threat of infringement proceedings and incurring huge losses due to seizure of its products lying with the distributors and stockists.

While representing the said spare-parts manufacturer, we took recourse to one of the lesser explored remedies available under Section 142 of the Act, 1999 enabling innocent third parties to initiate legal proceeding suit against persons/entities issuing such groundless threats.

Section 142 of the Act, 1999 provides that a person, threatened by the proprietor of a registered trade mark with an action or proceeding for infringement of the trade mark by means of issuing circulars, advertisements or otherwise, can bring a suit against such person making the threat and seek any or all of the following from the Court:

a. A declaration to the effect that such threats are unjustifiable;

b. An injunction against continuance of the threats

c. Recover damages, if any, sustained.

However, the same provision also carves a way out for the registered proprietor of the trade mark protecting him / her against the risk of opening up to frivolous litigation each time such proprietor issues a notice or caution with a view to protect and enforce its own rights. Therefore, in the suit proceedings under Section 142 of the Act, 1999, if

the registered proprietor can establish that the trade mark in question is registered and the acts in respect of which the proceedings were threatened, constitute or, if done, would constitute infringement of the trade mark, then the threat of proceedings made will not be deemed unjustified. Furthermore, the said provision in the Trade Marks Act 1999 also lays down that in case the registered proprietor or registered user conducts due diligence and initiates infringement proceedings against the third party against whom threats have been made then such threat would be deemed to have materialised and no recourse would be available with such person threatened except for to defend himself / herself in the proceedings for infringement initiated by the rights holder.

The Copyright Act 1957, the Patents Act 1970, the Designs Act 2000 and the Geographical Indications of Goods (Registration and Protection) Act, 1999 also have *pari materia* provisions extending legal remedy and reliefs to a person threatened with groundless proceedings of infringement of the intellectual property right in question. There are, however, certain differences in the defence mechanism or way out carved for the registered proprietors against the civil proceedings initiated by the person threatened with allegedly groundless threat of proceedings.

The Trade Marks Act 1999, in fact, also carves out a shield for a legal practitioner or a registered trade marks agent who may be otherwise be liable to an action on account of issuing groundless threats of legal proceedings on behalf of a client who is the registered proprietor of the trade mark. However, the other intellectual property legislations are silent on the said exception for legal practitioners.

Oddly, while there are specific provisions affording protection against groundless threats of proceedings in the IP regime, such provisions are very rarely resorted to resulting in dearth of jurisprudence on several aspects of the framework brought in place by the legislations, such as the definition of threat, the definition of a person who can resort to the such legal remedy, *inter alia*.

Nonetheless, in order to protect the rights of the above mentioned spare-parts manufacturer, we filed a civil suit under Section 142 of the Act, 1999 against the automobile manufacturer and its exclusive licensee basis that the criminal complaints filed by/on behalf of the automobile manufacturer amounts to groundless threat of trademark infringement; seeking a declaration that the use by the said spare part manufacturer of the make and model of the automobile manufactured by the automobile manufacturer on its spare-parts does not amount to trademark infringement and such use falls within the exemption granted under the Trade Marks Act 1999 and also praying for injunction against continuance of the such threats. While the matter is *sub-judice* as on date, the automobile manufacturer has undertaken before the Hon'ble Court in which the proceedings are pending that it shall, along with its exclusive licensee, refrain from issuing any further threats until further orders are passed by the Hon'ble Court in the said matter.

Dealing in a similar remedy, the United Kingdom has recently passed the Intellectual Property (Unjustified Threats) Act 2017 *(hereinafter referred to as the '2017 Act')*. The 2017 Act provides for analogous protection as to third party traders who sell goods bearing the infringing mark but not to the owner of the infringing mark per se, against threats from the right holders of the intellectual property in question. The rationale behind enacting such a legislation was to have one comprehensive legislation which affords uniform protection to a third party against unjustified threats issued by registered proprietor of any intellectual property right instead of each legislation concerning each kind of intellectual property providing for a an independent framework of protection. The said legislation in the United Kingdom has also brought about several amendments in the previous laws governing the issue, clarified definition of threats and streamlined the entire framework of protection. Given the differences in protection afforded in the various intellectual property legislations in India and the want of jurisprudence, India may also benefit from a unified legislation covering all kinds of intellectual property rights.

For any clarification or further information, please contact

Rahul Beruar
Partner
E: rahul.beruar@clasislaw.com

Jyotsana Sinha
Associate
E: jyotsana.sinha@clasislaw.com

Legal Alerts

West Haryana Highways Projects Pvt. Ltd. v. National Highways Authority of India

decided on 15.05.2017, O.M.P. (T) (Comm.) 28/2017 and IA No. 4598/2017.

Recently, the Hon'ble Delhi High Court in ***West Haryana Highways Projects Pvt. Ltd. v. National Highways Authority of India*** pronounced on 15 May 2017, adjudicated upon the issue of whether a party to an arbitration proceeding can approach the Court under Section 14 of the Arbitration and Conciliation Act, 1996 ('**Act**') to seek termination of the mandate of an Arbitrator on the ground that he is ineligible to be appointed as an arbitrator under Section 12 (5) read with the Seventh Schedule of the Act which provides the categories of the Arbitrator's relationship with the parties or counsel.

Brief Facts

- West Haryana Highways Projects Pvt. Ltd. ('**Petitioner**') entered into a Concession Agreement dated 6 November 2007 ('**Agreement**') with National Highways Authority of India ('**Respondent**') for inter-alia designing, engineering, financing etc. a particular stretch of the Delhi Haryana Border to Rohtak Section of NH-10. The said contract also involved construction of by-passes in the State of Haryana on build, operate and transfer basis.
- During the execution of the Project, various disputes and differences arose between the parties and consequently, the Petitioner sought to initiate arbitration proceedings in terms of Clause 44.3 of the Agreement. The said Clause provided that in case of disputes, the matter would be decided by reference to a Board of three arbitrators, each party to select one arbitrator and the two arbitrators so appointed to select the third arbitrator. In the event of disagreement on the appointment of the third arbitrator, the appointment was to be made in accordance with the rules of International Centre for Alternate Dispute Resolution ('**ICADR**'). The arbitration was to be held in accordance with the rules of the ICADR.
- Pursuant to the constitution of the Arbitral Tribunal, the Petitioner requested the arbitrator nominated by the Respondent to provide a disclosure as per Section 12 of the Act.

Arguments advanced

i. It was argued on behalf of the Petitioner that as per disclosure made by the arbitrator nominated by the Respondent, he is an advisor of the Respondent and thus ineligible for appointment as an arbitrator in terms of Section 12(5) read Seventh Schedule of the Act

ii. In such circumstances, the remedy under Section 13 of the Act which provides for the procedure of challenging an arbitrator is not the appropriate remedy to challenge the invalidity of appointment.

iii. Per contra it was argued on behalf of the Respondent that the appointment of an arbitrator could be challenged under Section 13(3) of the Act which inter-alia provides for an arbitral tribunal to determine the challenge. In case the challenge is rejected by the tribunal, the remedy lies after an award has been passed, under Section 34 of the Act, which provides for an application for setting aside an arbitral award.

Observations and Conclusion

- Analyzing Section 12(5) of the Act along with the categories under the Seventh Schedule, the Hon'ble Court observed that the arbitrator on account of being an advisor/consultant to the Respondent was ineligible for being appointed as an arbitrator.
- If a person's relationship with the parties or counsel or subject matter of dispute falls in any of the categories specified in the Seventh Schedule, the said person is ineligible to be appointed as an arbitrator. If a party persists in nominating any such person as an arbitrator, it would be a completely futile and waste of efforts to permit the Tribunal to continue to adjudicate the matter and permit a challenge after completion of the arbitration, under Section 34 of the Act.
- The Hon'ble Court observed that, if an arbitrator is appointed contrary to Section 12(5) read with the Seventh Schedule, he is de jure ineligible to perform his functions and the mandate of such an arbitrator can be terminated by the court under Section 14(2) of the Act. Section 14(2) of the Act enables a party to apply to the Court to decide on the termination of the mandate of an arbitrator, where there is a controversy inter-alia regarding the de jure inability of an arbitrator to perform his functions. The Court further observed that Section 13(3) and 13(5) would have no application in such circumstances.

Finally, the Hon'ble Delhi High Court while allowing the petition terminated the mandate of the arbitrator nominated by the Respondent.

Bombay High Court freezes Amul ice-cream advertisements for disparaging HUL's frozen dessert

Hindustan Unilever Limited ("**HUL**") has received relief in a disparagement case filed by them against Gujarat Co-operative Milk Marketing Federation Limited ("**GCMMFL**") and others in the Bombay High Court. In a suit filed against GCMMFL, HUL prayed before the Court to restrain GCMMFL from broadcasting two television commercials in relation to their ice-creams sold under the brand name "AMUL" ("**Amul TVCs**") for disparaging the HUL's frozen desserts sold under the brand name Kwality Wall's. HUL is the market leader in the frozen desserts category with about 51.3% market share. HUL's main grievance was that GCMMFL had initiated a negative campaign via Amul TVCs against the frozen desserts particularly that of HUL (without referring HUL in the Amul TVCs). HUL submitted that GCMMFL had broadcasted the Amul TVCs with the intention of misleading the consumers of frozen desserts by stating that Amul ice-cream contains pure milk whereas frozen desserts contain Vanaspati which is hydrogenated vegetable oil. According to HUL, their frozen dessert products do not contain Vanaspati which is perceived to be bad for health by the consumers.

The Bombay High Court vide its order dated 16th June, 2017, restrained GCMMFL from broadcasting Amul TVCs and from disparaging or denigrating HUL's Kwality Wall's products including frozen desserts in any manner whatsoever. The Court held that GCMMFL has indulged in negative campaigning and is guilty of generic disparagement and slander of the entire category of frozen desserts thereby also disparaging the HUL's frozen dessert products. The Court states that the storyline and the manner of the Amul TVCs clearly gives the message that all frozen desserts contain Vanaspati/ hydrogenated vegetable oil and that all frozen desserts are necessarily unhealthy, harmful and should not be purchased and consumed. The Court is of the view that the Amul TVCs has caused irreversible damage to HUL considering the fact that the advertisement campaign or visual media has an immediate impact on the viewers and purchaser's mind.

Calcutta High Court: Police Officer Cannot Issue Notice To Accused For Enquiry Under Section 202 Of Code Of Criminal Procedure, 1973

The Hon'ble High Court of Calcutta ("High Court") in its judgment in its recent judgment of *Ramesh Sobti @ Ramesh Sobyi versus State of West Bengal and Another C.R.A. N. 2056 of 2017* dated June 23, 2017 has decided on the issue whether a notice to a proposed accused in the course of investigation/enquiry by a police officer under section 202 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") is valid or not.

The brief facts of the case are that a complaint alleging commission of offences under sections 386, 406, 409, 420, 120B of the Indian Penal Code was filed against the Petitioner (Accused), Ramesh Sobti @ Ramesh Sobyi. The concerned Magistrate took cognizance of the alleged offences and subsequently ordered investigation under section 202 Cr.P.C. by the Officer-in-charge of the concerned police station. During the course of investigation, the concerned police officer issued notice to the Petitioner (Accused) to appear before him for the purpose of investigation. Consequently, the said notice was challenged by the Accused before the High Court.

The counsel for the Petitioner (Accused) argued that the police officer acted beyond his jurisdiction in issuing notice under section 41A Cr.P.C. inasmuch as he did not have the power to arrest the accused under section 41 Cr.P.C. in the course of investigation under section 202 Cr.P.C. It was argued that enquiry under section 202 Cr.P.C. is conducted by the Magistrate is in absentia of the accused. Therefore, the police officer as a delegatee of the Magistrate cannot insist on the attendance of the proposed accused in the course of such enquiry/investigation.

The counsel for Complainant argued that incorrect reference of a provision of law does not necessarily denude the police officer to request a proposed accused from cooperating with the enquiry/investigation under section 202 Cr.P.C. The word "investigation" as defined under section 2(h) of Cr.P.C. is an inclusive one and would include within its ambit all incidental or ancillary powers which would aid the collection of evidence in the course of such activity.

After considering various judgments of the Hon'ble Supreme Court, the High Court held that issuance of notice upon an accused under section 41A Cr.P.C. in the course of investigation under section 202 Cr.P.C. by a police officer is illegal. In the course of investigation under section 202 Cr.P.C, the police officer is not required to verify the defence version of the accused. The scope of enquiry under section 202 Cr.P.C. is limited to only verifying the prima facie truthfulness in the allegations in the petition of the complaint on the basis of the complaint and the witnesses produced by the complainant in support of his allegations.

The High Court observed that a Magistrate holding enquiry under section 202 Cr.P.C. cannot call upon an accused to participate in such enquiry or pose any question to him or his witness. He cannot permit the accused to participate and canvass his defence in the course of the pre-summoning enquiry and convert it to a 'mini-trial' even before the commencement of the trial. Further, it held that the police officer conducting investigation under section 202 Cr.P.C. is a delegatee of the Magistrate and his power of investigation are, therefore, circumscribed by the limitations imposed upon the principal, i.e., the Magistrate. Since the Magistrate in the course of enquiry under section 202 Cr.P.C. is not entitled to issue notice upon the accused to appear and participate in the proceedings, the police officer as his delegatee cannot claim higher powers and issue notice upon the accused.

Accordingly, the appeal was allowed and the notice summoning the Petitioner (Accused) by the police officer was set aside by the High Court.

Corporate and Commercial

DIPP issues Standard Operating Procedure for processing FDI proposals

In furtherance to the Government's decision of abolition of the Foreign Investment Promotion Board (FIPB), the processing of foreign direct investment (FDI) proposals and approval of the Government thereon under the extant Foreign Direct Investment policy ("**FDI policy**") and Foreign Exchange Management Act, 1999 would be handled by the concerned Ministries/Departments in consultation with the Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce.

To this end, on June 29, 2017, the DIPP has issued the Standard Operating Procedure (SOP) for processing of applications under the extant FDI policy

In terms of the SOP, the proposals requiring government approval would be filed online on the revamped Foreign Investment Promotion Board portal i.e. the Foreign Investment Facilitation Board ("**Portal**").

The applicant shall submit the proposal for foreign investment in the format available on the Portal and upload the requisite documents. Once the proposal is filed online, DIPP will identify the concerned Administrative Ministry/Department and e-transfer the proposal to the concerned Administrative Ministry/Department ("**Competent Authority**") within 2 (two) days. In case of digitally signed applications, the applicant is not required to submit any physical copy with the Competent Authority. For applications which are not digitally signed, DIPP would inform the applicant through online communication to submit one (1) physical copy of the proposal to the Competent Authority.

Once the proposal is received by DIPP, it shall be circulated online within 2 (two) days by DIPP to the Reserve Bank of India for comments from the Foreign Exchange Management Act, 1999 (FEMA) perspective. All proposals will also be forwarded to the Ministry of External Affairs (MEA) and the Department of Revenue (DoR) for information and the MEA and DoR may give their comments within the stipulated time period.

Consultation with DIPP on specific issues regarding the FDI policy and/or consultation with any other Ministry/ Department (other than the Competent Authority) shall be on need basis and full justification along with the approval of the Secretary concerned shall be required for such consultation. The Ministry/Department consulted shall give its comments within 4 (four) weeks from the online receipt of proposal. In case comments of consulted Ministry/Department are not received in the stipulated time period, it shall be presumed that the consulted Ministry/Department has no comments to offer.

Further, the Competent Authority shall within 1 (one) week, scrutinize the proposal and documents attached therewith and request for additional documents, if required.

Once the proposal is complete in all respects, which should not be later than 6 (six) weeks from the receipt of the proposal, the Competent Authority shall, within the next 2 (two) weeks, process the proposal for decision and convey the same to the applicant. Approval/rejection letters will be sent online by the Competent Authority to the applicant, consulted Ministries/ Departments and DIPP.

The Competent Authority depends on the nature of activity or the sector in which the applicant is proposing to invest.

For instance, for applications relating to – (i) single brand, multi brand and food product retail trade; (ii) FDI proposals by Non-Resident Indians Policy & Promotion (NRIs)/ Export Oriented Units (EOUs) requiring Government approval; and (iii) issue of equity shares under the FDI policy under the Government route for import of capital goods/machinery/equipment, the Competent Authority is DIPP.

Further for financial services which are not regulated by any financial sector regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight the Competent Authority is the Department of Economic Affairs.

The SOP clarifies the process of seeking approval under the FDI policy and the features of e-communication. Quicker processing of proposals in a time bound manner, reduced paperwork and a single window clearance makes the process simple and transparent. It is a step in the right direction and would help encourage positive investor sentiment.

Government relaxes Combinations norms under Competition Law

The Press Information Bureau has, vide a circular dated, June 30, 2017, issued a notification exempting every person or enterprise who is a party to a combination from giving notice within 30 days for a period of 5 years from the date of publication of the notification.

Following the relaxation, an individual or enterprise that is party to a combination is not required to seek Competition Commission of India's approval within 30 days of finalising a particular deal / transaction. As the nature and volume of information required to be given to make a filing is onerous, it is believed that elimination of a filing deadline is a recommended practice by the international competition network and brings India in line with the global standards.

The Companies (Appointment and Qualification of Directors) Amendment Rules, 2017

The Ministry of Corporate Affairs ("**MCA**") on July 5, 2017 has notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2017 thereby granting exemptions to certain unlisted public limited companies from appointing Independent Directors on their Board. The exempted classes of unlisted public limited companies include a joint venture company, a wholly owned subsidiary and a dormant company.

The Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017

The MCA on June 29, 2017 has notified the Companies (Transfer of Pending Proceedings) Second Amendment Rules, 2017 thereby providing that all the proceedings related to voluntary winding up of a company where notice of the resolution by advertisement has been given, but the company has not been dissolved before April 1, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956. Further, the notification also provides that all the petitions relating to winding up of a company under clause (e) of section 433 of the Companies Act, 1956 on the ground of inability to pay its debts pending before a High Court, and, where the petition has not been served on the respondent shall be transferred to the respective benches of the National Company Law Tribunal having jurisdiction on the matter.

The Companies (Audit and Auditors) Second Amendment Rules, 2017

The MCA on June 22, 2017 has notified the Companies (Audit and Auditors) Second Amendment Rules, 2017, thereby providing relaxation on statutory auditor's term in case of private limited companies having paid up share capital of INR 50 crore or more.

MCA Notification: Further relaxation from compliance of certain provisions of the Companies Act, 2013

In furtherance to exemptions granted to private companies, Section 8 (*not for profit*) companies and Government companies from the applicability of certain provisions of the Companies Act, 2013 by the MCA vide its notification dated June 05, 2015, the MCA has now come out with a fresh notification dated June 13, 2017 thereby granting further exemptions to aforementioned entities from complying with certain additional provisions of the Companies Act, 2013. The exemptions are applicable only to such companies which have not committed default in filing of financial statements and annual returns under the provisions of the Companies Act, 2013.

Projects, Energy and Natural Resources

Greenfield Airport in Jewar near Greater Noida Granted In-principle Approval

The Noida International Airport will be located 72Kms from IGI Airport and 65 Kms from Hindon Air Force station Ghaziabad. Yamuna Expressway Industrial Development Authority (YEIDA) is the implementing authority of the project. An area of 3000 hectares has been notified for the airport which will be developed in phases. An area of 1000 hectares will be developed in the first phase at an estimated cost of Rs 10,000 crores. There will be one runway in the first phase. Three more runways will be developed in subsequent phases. The total cost of development of all phases is expected to be around Rs 15-20,000 crores. The airport is expected to cater to 30-50 million passengers per year over the next 10 to 15 years. Government of UP along with YEIDA will bear the cost of land procurement. The project will be implemented in the PPP mode for which concessionaire is to be identified based on open market competitive bidding process.

Kochi Metro Flagged Off

Kerala took a big leap in modern urban transport infrastructure development on Saturday, with Prime Minister Narendra Modi commissioning the first phase of the Kochi Metro rail service along a 13.2-km stretch between Aluva and Palarivattom.

The Rs 5,180-crore rail project will cover a distance of 25 km from Aluva to Pettah once complete. The rousing response to the Metro is expected to speed up work on the remaining sections of the Phase I project. A 5-km stretch between Palarivattom and Maharaja College is expected to be ready by August, 2017 as the land acquisition is underway for the Maharaja College to Pettah section (6 km). Significantly, the Phase II extension project, comprising an 11.17-km link to Kakanad, the IT hub of the state, was recently granted approval by the state government and the project would now be placed before the Public Investment Board for approval. The elevated line to Kakanad is estimated to cost Rs 2,577 crore.

30 Cities Selected For Development As Smart Cities

Thirty cities were added to the Centre's Smart Cities Mission and a total investment of Rs. 57,393 crore was announced by the government, taking the total number of smart cities to 90.

The announcement marks the second anniversary of the launch of the Smart Cities Mission.

Among the selected cities, Thiruvananthapuram topped the challenge. The other cities are, Naya Raipur in Chhattisgarh, Rajkot, Amravati in Andhra Pradesh, Patna, Karimnagar in Telangana, Muzaffarpur in Bihar, Puducherry, Gandhinagar, Srinagar, Sagar (Madhya Pradesh), Karnal in Haryana, Satna in Madhya Pradesh, Bengaluru, Shimla, Dehradun, Tirupur, Pimpri Chinchwad (Maharashtra), Bilaspur, Pasighat (Arunachal Pradesh), Jammu, Dahod in Gujarat, Tirunelveli, Thootukkudi, Tiruchirapalli, Jhansi, Aizawl, Allahabad, Aligarh and Gangtok. This was the third round of city challenge under the Smart City Mission. The Urban Development Department will pump in Rs 57,393 crore in developing the newly chosen 30 cities.

Out of this amount, Rs 46,879 crore will be dedicated to developing core infrastructure in the areas demarcated by the denizens of the selected cities and Rs 10,514 crore for developing technology-based solutions for better governance, smooth service delivery and optimum utilisation of infrastructure.

The total budget of the Smart City project has now rose to almost Rs two lakh crore for 90 cities.

Twenty cities will compete in the fourth round of city challenge to secure the last 10 spots under the project.

AIIB approves USD 150million Investment in India

The Asian Infrastructure Investment Bank (AIIB) on Thursday approved its first-ever equity investment, worth USD 150 million, to catalyze private capital for infrastructure projects in India.

The investment will go to the India Infrastructure Fund, which aims to invest in mid-cap infrastructure companies in India.

The deal will benefit local infrastructure development by enhancing private capital inflows from global long-term investors, said the AIIB.

IP update

Revised Guidelines for Examination of CRIs, 2017

The Office of Controller General of Patents, Designs and Trademarks has, on 30th June 2017, issued revised Guidelines for Examination of Computer Related Inventions (CRIs). The revised guidelines aim to further clarify the patent eligibility of CRIs in light of exclusions under Section 3(k) of the Indian Patent Act, 1970 and foster uniformity and consistency in the examination thereof. Section 3(k) of the Indian Patent Act, 1970 provides for exclusion of "*a mathematical or business method or a computer programme per se or algorithms*" from patentability.

One of the most significant amendments is the removal of the three-stage test for assessing patentability prescribed under the 2016 Guidelines, which had effectively raised the patent eligibility standards for CRIs, particularly for inventions in the field of computer programs. The three-stage test of the 2016 Guidelines in effect mandated the presence of a novel hardware whenever the invention pertains to the field of computer programs rendering it almost impossible to patent inventions pertaining to computer programs.

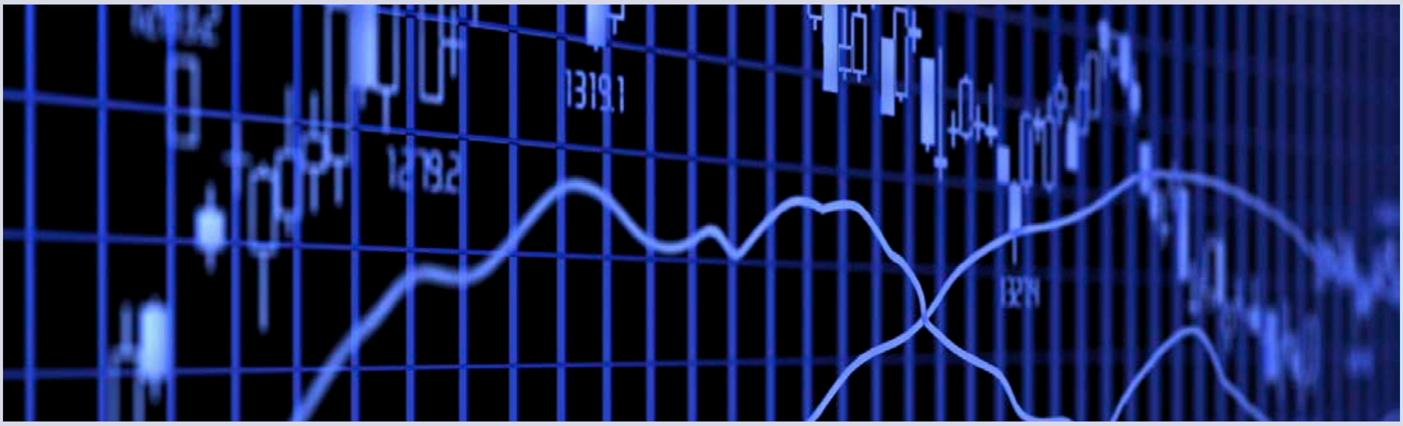
The 2017 Guidelines, however, do not prescribe any test or determinants of patentability of CRIs and have removed the express requirement of claiming inventions related to computer programs only in conjunction with a novel hardware. Furthermore, a number of examples illustrating patentable and non-patentable claims have been carefully amended/ deleted to avoid inclusion of a novel hardware requirement. Such amendment may perhaps lead to favorable outcomes for patentability examination of CRIs, particularly those in the field of computer programs.

Additionally, alleviating the complete ban on patentability of mathematical methods, as evinced from the previous Guidelines, the 2017 Guidelines have added certain examples wherein, inventions including mathematical formulae and resulting in systems that perform certain functions may still be patentable.

Phonographic Digital Limited created in the lines of a copyright society

Phonographic Digital Limited (PDL), a company limited by guarantee incorporated under the Companies Act 2013 on 17th March 2017, has been formed to carry out permission and licensing activities, in respect of copyrighted sound recordings and audio-visuals (cinematograph films), in digital, mobile, internet and other new media and modes, both present and future, in India and overseas, amongst other related functions.

Interestingly, the objects clause of the e-Memorandum of Association of PDL also specifies that PDL shall not function as a registered copyright society under Copyright Act and shall not engage in licensing of public performance and broadcasting. PDL will therefore be replacing Phonographic Performances Ltd. (PPL) to the extent of granting and monitoring licenses to telecos and other streaming services, while PPL will continue as the relevant collection organization for public performance of sound recordings from establishments, events and radio.



Banking and Project Finance

Small Finance Banks – Compendium of Guidelines

The Reserve Bank of India ("**RBI**"), vide its notification dated July 06, 2017, has issued the compendium of guidelines on financial inclusion and development applicable to the small finance banks in India.

RBI identifies Accounts for Reference by Banks under the Insolvency and Bankruptcy Code, 2016 ("IBC")

An Internal Advisory Committee ("**IAC**") constituted by RBI has identified 12 accounts totalling about 25 per cent of the current gross NPAs for reference under IBC. The RBI, based on the recommendations of the IAC, will accordingly be issuing directions to banks to file for insolvency proceedings under the IBC in relation to the said 12 identified accounts.

As regards the other non-performing accounts which do not qualify the criteria (i.e. having fund and non-fund based outstanding amount greater than INR 5000 crore, with 60% or more classified as non-performing by banks as of March 31, 2016) the IAC has recommended that banks should finalise a resolution plan within 6 months. In cases where a viable resolution plan is not agreed upon within 6 months, the banks shall be required to file for insolvency proceedings under the IBC.

New Development Bank ("NDB") has 23 projects in pipeline, including 6 in India

The BRICS' NDB has 23 new projects amounting to USD 6 billion in the pipeline for financing, including 6 ventures in India valued at USD 1.8 billion. The projects in the pipeline also include 5 projects in China, 7 in Brazil, 2 in Russia, and 3 in South Africa.

GMR secures Rs. 1,330 crores funding for Goa Airport

GMR Goa International Airport Limited ("**GGIAL**"), a subsidiary of GMR Airports Ltd, won the contract to build and operate the greenfield airport at Mopa (North Goa) last year and a 40-year concession agreement was signed on November 8, 2016. Accordingly, GGIAL has now secured funding worth Rs 1,330 crore from Axis Bank for developing the said greenfield airport at Mopa (North Goa).

Recent events

India - On the Cusp of a Logistics Revolution “Key to Transformation of the Indian Economy

13 July 2017, New Delhi

Gaurav Wahie, Associate Partner attended a conference organized by ASSOCHAM, on July 13, 2017 held at The Le Meridian Hotel, New Delhi. The conference focused on the opportunities and challenges of the logistic sector, how transformation of this sector is vital to the growth of the economy, and the impact of the recently enacted Goods and Services Tax on the sector.

Mumbai Fintech Summit 2017

6 July, 2017, Mumbai

Barasha Baruah Pathak, Associate Partner, attended IFCCI - Fintech Summit held on July 6, 2017at Hotel Sofitel, BKC, Mumbai. The objective of this seminar was to understand evolution of payments in India. The seminar focussed on various topics, such as investments in Fintech organizations, Fintech and cyber-security interlocked etc. The conference was attended by various Fintech companies including startups, consultants, entrepreneurs etc. The startup companies also shared their interesting success stories with the participants. The seminar was helpful as it discussed various important aspects of cyber security.

ICC-FIDIC Conference

June 29-30, 2017, New Delhi

Shwetabh Sinha, Associate Partner attended the ICC-FIDIC Conference on International Construction Contracts and Dispute Resolution held on June 29-30, 2017 at Hyatt Regency, New Delhi. The conference was attended by internationally renowned law firms, construction arbitration specialists and in-house lawyers of leading companies in the field. The experts in the construction sector and arbitration shared their practical experience and knowledge on FIDIC contracts and the related procedures for claims and disputes, Dispute Boards and ICC Arbitration in construction cases. The sessions on both the days also had a panel discussion which focused on the ‘Dispute Boards’ and the recent amendments in the ICC Rules of Arbitration.

Offbeat

Know Your Brand

In our daily lives, we follow brands with complete awareness of which brand to choose, and which one to avoid. Most of the famous brand names are being recognized by their small names and initials.

Do we know, what do these brand names actually stand for?

Adidas is actually the short form of its founder's name Adolf Dassler

Anand Milk Union Limited

BMW stands for Bayerische Motoren Werke,that means 'Bavarian Motor Works'

In Swedish, Hennes means 'hers' and was the name of the original store. Mauritz was the name of a shop acquired by H&M founder Erling Persson, who later joined the 2 words together

Integrated Electronics

This audio company was founded by James Bullough Lansing in 1946, and it is the initials of his name that he used as the name of the brand

LEGO is an abbreviation of the words Leg Godt, which means 'play well' in Danish

Madras Rubber Company

High Tech Computer Corporation

Fabbrica Italiana Automobili Torino

New Delhi
14th Floor
Dr. Gopal Das Bhawan
28, Barakhamba Road
New Delhi 110 001

T: +91 11 4213 0000
F: +91 11 4213 0099

Mumbai
1st Floor, Bajaj Bhawan
226, Nariman Point
Mumbai - 400 021

T: +91 22 4910 0000
F: +91 22 4910 0099

London
The St Botolph Building
138 Houndsditch
London EC3A 7AR

T: +44 (0)20 7876 4847
F: +44 (0)20 7875 5132

info@clasislaw.com
www.clasislaw.com

J390344- July 2017