

KAN AND KRISHME'S MONTHLY NEWSLETTER

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1. DELHI HIGH COURT ON MISLEADING ADVERTISEMENTS (*BRIGHT LIFECARE PCT LTD V. VINI COSMETICS PVT LTD*)

In the recent judgment in the matter of '*Bright Lifecare Private Ltd v Vini Cosmetics Private Limited and Anr*', the Court pronounced the verdict on the aspect of protection of distinctive elements under intellectual property law. This case is a great move after the issuance of the guidelines for the prevention of misleading advertisements.

[The Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022](#) have an objective to curb misleading advertisements and protect the consumers, who may be exploited or affected by such advertisements. It has been specifically indicated that the advertisement shall not contain statements or visual presentations which directly, by implication, by omission, by ambiguity, or by exaggeration are likely to mislead consumers about the product advertised, the advertiser, or any other product or advertiser. (Reference is made to Part 12(d) of the Guidelines)

Bright Lifecare Pvt. Ltd. (Plaintiff), is a company engaged in manufacturing and trading health supplements, nutraceuticals, and food products. One of its most popular products is a protein supplement sold under the 'MuscleBlaze' trademark. 'MuscleBlaze' started an ad campaign in 2018 titled 'Ziddi Hoon Main'. Its creative's use of words like 'Zidd' and 'Ziddi' to portray an image of a person who doesn't give up easily.

Vini Cosmetics Pvt Ltd (defendant) sells deodorant and perfume brands like Fogg, Ossum, and Whitestone. Plaintiff alleged that the two advertisements of the deodorant named 'Realman' of *Vini* adopted the tagline 'Ziddi Perfume'. Plaintiff alleged that the advertisement was conceptually and visually similar to that of 'MuscleBlaze'.

After considering screenshots and viewing both the advertisements, the Court held that the two commercials are likely to give an ordinary viewer the impression that they are connected or emanating from the same source. Regarding the similarity between both the campaigns, the Judge held:

"There can be no monopoly or exclusivity on the use of the word 'ZIDD' and 'ZIDDI' as an idea to show perseverance. However, the portrayal has to be different. There can also be no monopoly or exclusivity on showing a muscular person working out in a gym but the expression of the idea has to be different. Again, the portrayal of a person using a punching bag can also not be monopolized but the expression has to be different. In the impugned commercials, in the opinion of the Court, the expression is a colorable imitation of the Plaintiff's advertising commercial."

Court held that the two impugned commercials which are evocative of and very similar to Plaintiff's campaign are liable to be restrained in their present form and the defendants are asked to pull down the two impugned commercials from www.youtube.com and other platforms where they are available for viewing by the public. It, however, clarified that there

is no restraint on Defendant from using the words or expression 'Zidd' or 'Ziddi' and they are free to modify their ads to remove the objectionable frames and then re-launch them.

From the foregoing paragraphs, it can be inferred that the terms 'Zidd' or 'Ziddi' cannot be monopolized by anyone; as such terms are considered descriptive, which describes the products or services to which they are applied. As per the Indian Trade Marks Law, a descriptive trademark identifies characteristics quality, purpose, or some other aspect of a product or service. For example, the word 'orange' for fruits would be considered descriptive in nature.

Similar to the present case of *Bright Lifecare Private Ltd v Vini Cosmetics Private Limited and Anr*, in *Marico Limited vs. Agro Tech Food Limited* too, the court had observed that the registration of the trademarks 'Losorb' and 'Lo-sorb' was invalid as they are only a minor variation of the descriptive expression 'Low absorb'. Such decisions by the court are consistent with the well-established principles of descriptive and generic expressions being non-distinctive and therefore, not protected under Section 9(1)(a) of the Indian Patents Act. In other words, such words per se cannot be monopolized by anyone.

2. DELHI HIGH COURT: REJECTION OF A PRE-GRANT OPPOSITION WITHOUT CONSIDERATION OF ALL GROUNDS VIOLATIVE OF THE PRINCIPLES OF NATURAL JUSTICE

In a recent judgment by a single bench of the Delhi High Court, it has been held that non-consideration of grounds of pre-grant opposition by the Deputy Controller of Patents and Designs constitutes a violation of the principles of natural justice.

In this particular case, Respondent No. 2: '*GSP Crop Science Pvt. Ltd.*', had filed a patent application titled "*A Synergistic Suspo-Emulsion Formulation of Pyriproxyfen and Diafenthiuron*" in the Indian Patent Office on January 27, 2014, which was published on September 11, 2015. A First Examination Report was issued on May 31, 2018, by the Respondent No. 1- the Deputy Controller of Patents, comprising objections such as lack of novelty, inventive step, etc. A reply to the First Examination Report along with amended claims was filed by Respondent No. 2 on July 19, 2018.

Thereafter, on March 04, 2021, the Petitioner: '*Best Agrolife Limited*' filed a pre-grant opposition under Section 25(1) of the Indian Patents Act on grounds such as lack of novelty under Section 25(1)(b), non-patentability under Section 25(1)(f) read with Section 3(d) and 3(e) of the Act among others. The respective parties filed their pleadings along with the requisite documents and also filed the post-hearing written submissions.

It is pertinent to mention that Respondent No. 2 made claim revisions on April 06, 2022, notice of which was not given to the Petitioner. Subsequently, the impugned patent application was granted by Respondent No. 1 on April 08, 2022. Aggrieved by the decision, the Petitioner filed a writ petition before the Delhi High Court.

Pursuant to hearing the submissions and arguments of both parties, the Court was of the opinion that the objection raised by the Respondents that the Petitioner had an alternative remedy in the form of post-grant opposition under Section 25(2) or revocation petition under Section 64 as well as an appeal thereafter under Section 117A of the Indian Patents Act was not maintainable. The Court held that if the Petitioner was able to substantiate the pleas that the Respondent No. 1 had committed a grave error leading to violation of principles of natural justice or had failed to exercise a jurisdiction vested in it or there was non-consideration of vital grounds or documents, the Petitioner could not be non-suited in the present application.

In the pre-grant opposition representation, the Petitioner had raised the ground of non-patentability of the impugned patent application under Section 25(1)(f) read with Section 3(d) of the Indian Patents Act. The Petitioner had submitted that from the prior art documents cited therein, the formulation/ composition of the patent application in question was already known. Further, Respondent No. 2 had not furnished any technical data/ experimental proof of any enhancement in the therapeutic efficacy.

The Court was of the clear opinion that Respondent No. 1 had not dealt with the submissions made in respect of Section 3(d) while pronouncing the grant order, which in the view of the Court constituted a violation of the principles of natural justice. The Court also noted that the crucial and relevant documents placed on record by the Petitioner were not considered and appraised by Respondent No. 1.

Another issue that the Court dealt with was Respondent No. 2 amending the claims two days before the issuance of the grant order of the impugned application with no notification to the Petitioner, thus depriving the Petitioner of the opportunity to respond to the amendments. The Court held that even if it was assumed that the amendments made were minor and insignificant in nature as per the perception of the Respondents, it might not have been the case for the Petitioner, and had an opportunity been given to respond, the Petitioner may have been able to successfully justify the opposition.

In view of the above, the Court was of the opinion that the Petitioner was able to make out a case for remanding the matter to Respondent No. 1 for reconsideration of the pre-grant opposition, in the context of Section 25(1)(f) read with Section 3(d) of the Indian Patents Act and the amendment to claims made two days prior to issuance of the grant order by the Respondent No. 2 without intimation to the Petitioner.

Thus, the Court directed Respondent No. 1 to re-examine the issues as discussed and accordingly pass a reasoned and speaking order within 8 weeks from the pronouncement of the instant judgment.

3. DIVISION ON DIVISIONAL APPLICATION (DIS)CONTINUES (?) – BOEHRINGER INGELHEIM INTERNATIONAL GMBH V. THE CONTROLLER OF PATENTS & ANR

Introduction

The filing of the divisional application at the behest of the Applicant on its own is a very important and tricky issue that has often been dealt with by the erstwhile Intellectual Property Appellate Board (IPAB) as well as by the various Court in India under The Patents Act, 1970. Several judgments make it clear to an Applicant as to when a divisional application can be filed on its own by the said Applicant.

Affirming the well-established principle, in a very recent judgment by a single bench of the Delhi High Court, it was held that a divisional application cannot be filed when there is no “plurality of inventions” in the claims of the parent application.

A “plurality of inventions” has to be seen from the claims of the parent application. Obviously, the claims, in turn, have to be based on the disclosure in the specification. However, if the invention is not contained in the claims of the parent application, the divisional application cannot be permitted to be filed solely based on the disclosure in the specification. Further, a divisional application cannot be considered as a remedy for the refused amendment in claims of parent application that does not fall under the scope of claims as filed with the first mentioned application.

Facts of the Case - Boehringer Ingelheim International GmbH v. The Controller of Patents & Anr. (C.A. (COMM.IPD-PAT) 295/2022 & I.As.10369-70/2022)

In the present case, the Appellant (Boehringer Ingelheim International GMBH), had filed a patent application titled ‘Use of DPP IV Inhibitors’ in the Indian Patent Office on November 14, 2008, with a total of 18 claims. A First Examination Report was issued on 24th March 2014 by the Deputy Controller of Patents, comprising objections such as lack of novelty, inventive step, etc. A reply to the First Examination Report was filed by the Applicant on March 24, 2014, along with an amended set of claims wherein the Applicant sought to delete all claims except claims 14, 15 & 15A.

Thereafter, on March 20, 2015, and February 18, 2016, two Form-13 were filed by the Applicant seeking two further (voluntary) amendments. In the year 2015, the Applicant sought to expand from three claims to claims 1 – 11, and in the year 2016, the Applicant sought to amend the claims to 1 to 15, i.e. added four new claims. On 5th July 2017, a hearing notice was issued based on the claims filed on March 24, 2014 (along with FER Response), rejecting the amendments of 2015 and 2016, as amendments carried out in claims were beyond the scope of claims as on record before the amendments. Pursuant to this hearing notice, the objections raised were contested by the Applicant. The

hearing was held in August 2017 and prior to the rendering of the decision on January 4, 2018, the Applicant sought to file a divisional application on September 4, 2017, by creating an amalgam of claims 1 to 11 (amended claims of 2015) and Claims 1 to 15 (amended claims of 2016).

The Controller passed the decision that the amendments filed in 2015 and 2016 cannot be taken on record and refused the Application under Section 15 of the Patents Act, 1970, citing the reason that the amended claims 1-11 as filed on 23/03/2015 relates to a medicament combination of a DIPP IV inhibitor with metformin and the amended claims as filed on 19/02/2016 further contains 4 new claims (claims 12-15), in addition to claims as filed on 23/03/2015, which relate to a medicament combination of a DIPP IV inhibitor with telmisartan.

The scope of protection of originally filed claims, i.e. use of DPP IV inhibitor of formula I or formula II alone or in combination with other active substances, cannot be extended to the protection of a medicament combination of a DIPP IV inhibitor with metformin/telmisartan as such a change in contents of amended claims **does not wholly fall within the scope of originally filed claims.** Further said amendments cannot be considered to be done by way of disclaimer, correction, clarification, or explanation as there is a clear change in the category of claims wherein “use claims” were amended to “product claims”.

After this decision was rendered, in so far as the pending divisional application was concerned, the FER was issued, a response was filed to the said FER and thereafter a pre-grant opposition also followed *qua* this divisional application. The reply statements, etc. were completed in the pre-grant opposition and after hearing the pre-grant opponent and the Applicant, by the impugned order dated March 25, 2022, the divisional application was refused for the reason that the division itself could not have been permitted as the amendments were rejected in the parent application. Since the current claims had been already examined and refused, the same claims cannot be allowed in another application.

Issues before the Court:

1. *Whether the use claims as originally filed could have been amended into product claims by the Appellant?*
2. *Whether divisional applications can be filed for claims when such claims were not part of the claims in the parent application?*
3. *Whether the divisional Application can be filed voluntarily on the ground “if he so desires” mentioned in Section 16(1) of Patent Act, 1970?*
4. *Whether failure to get a patent on a parent Application is an eligible criterion for divisional Application?*

Relevant Rules and/or Law:

The first issue before the court is pertaining to Section 59(1) of the Act, which provides that an amendment of an application, specification or any document related thereto would be permissible only if the following conditions are satisfied:

- (i) *The amendment has to be by way of disclaimer, correction, or explanation;*
- (ii) *The amendment has to be for the purpose of incorporation of actual facts; and*
- (iii)(a) *The effect of the amendment ought not to be to amend the specification to claim or describe any matter which was not disclosed in substance or shown in the originally filed specification; and*
- (iii)(b) *The amended claims have to fall within the scope of claims as originally filed.*

Thus, for an amendment to be allowed all conditions have to be satisfied. Any amendment falling foul of (i), (ii), (iii)(a), or (iii)(b) above cannot be allowed.

Further, for your reference, we quote hereinbelow the relevant sections relating to divisional applications:

Section 10. Contents of specifications.

- (1) *Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject matter to which the invention relates. ...*
- (4) *Every complete specification shall -*
 - (a) *fully and particularly describe the invention and its operation or use and the method by which it is to be performed;*
 - (b) *disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and*
 - (c) *end with a claim or claims defining the scope of the invention for which protection is claimed.*
- (5) *The claim or claims of a complete specification shall relate to a single invention, or to a group of inventions linked so as to form a single inventive concept, shall be clear and succinct, and shall be fairly based on the matter disclosed in the specification*
- (7) *Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect of developments of, or additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.*

Section 15. Power of Controller to refuse or require amended applications, etc., in certain cases.- *Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuses the application on failure to do so.*

Section 16. Power of Controller to make orders respecting the division of application.-

(1) A person who has made an application for a patent under this Act may, at any time before the grant of the patent, if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

(2) The further application under sub-section (1) shall be accompanied by a complete specification, but such complete specification shall not include any matter, not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.

Grounds for Filing a Divisional Application

“A divisional application can be filed either by the applicant (suo-moto), if he so desires, or to remedy the objection raised by the Controller on the ground of plurality of invention. In either case, the existence of a plurality of inventions in the parent application is the *sine qua non* for a divisional application. The very ground to accept divisional application is “that the claims of the complete specification relate to more than one invention”.”

Section 16(1) of the Act illustrates that an applicant can file for a further application if the complete specification is related to more than one invention. Before the grant of a patent that has been already been filled for which is referred to as the first mentioned application.

"If he so desires" is not unconditional and it does not give the applicant unjustified liberty to file a divisional application even when there are no multiple inventions in the parent application. A divisional has to satisfy the test of Section 16 of the Act which means that more than one invention did not contain any plurality of invention under Section 10(5) of the patent act 1970. Further, the divisional application should not include any claim already claimed in the parent application. Moreover, the matter disclosed in the divisional application should not include any matter not disclosed in substance in the complete specification of the parent application." (L.G. Electronics v. Controller of Patents (2011) - OA/6/2010/PT/KOL)

The claims of divisional application shall have their route in the first mentioned (parent) application. This is true even for divisional to the divisional application as well. If any claim is held to be non-patentable due to any other provisions of the law such as the requirements of Section 3 or otherwise, it should not be proper for filing a divisional application for such claims.

Contentions of the Appellant

The Appellant contended that all the three conditions of Section 59 are fulfilled by the amended claims submitted by the Applicant as the amendments were carried out by way of correction and explanation. Further, as the medicament combinations are clearly disclosed in the specification, the amendments pertained to the incorporation of actual facts and do not fall outside the scope of the unamended specification.

Observation and Decision of the Court

With regard to the issue of whether the amendments are allowed, the court observed that the scope of protection of originally filed claims, i.e. use of DPP IV inhibitor of formula I or formula II alone or in combination with other active substances, cannot be extended to the protection of a medicament combination of a DPP IV inhibitor with metformin/telmisartan as such change in contents of amended claims does not wholly fall within the scope of originally filed claims. Further, the entire specification is directed for use of the compound, but nowhere in the specification relates to the medicaments.

This is also true that the claims, in turn, have to be based on the disclosure in the specification. However, if the invention is not contained in the claims of the parent application, the divisional application cannot be permitted to be filed solely on the basis of disclosure made in the specification, in respect of alleged inventions. If applicants are permitted to file such divisional applications based on the disclosure in the complete specification, without such inventions being claimed in parent applications, it would defeat the fundamental rule of patent law i.e. 'what is not claimed is disclaimed'. Thus, the divisional application would be maintainable only when the claims of the parent application disclose a "plurality of inventions".

Further, the Court held that non-allowance of the amended claims followed by refusal under Section 15, i.e. failure to get patent on the parent application is not eligible criteria for divisional application. It is very important to note that in case the amended claims are allowable in the present application then the same claims could have been allowed in the parent application itself if meeting all criteria.

The order also clearly indicates original and amended claims lack novelty and obviousness. *“The Parent refusal order has already been considered and examined during prosecution of the parent application. Thus, the claims of the divisional application absolutely do not have any merits for the purpose of divisional application and divisional application of a refused parent application has been refused.”*

Analysis and Conclusion

The provision under Section 16 enables the Applicant to divide the Patent Application and file a divisional application either by the applicant (suo-moto), if he so desires, or to remedy the objection raised by the Controller on the ground of plurality of invention. However, applicants often interpret this statement as a ‘divisional application can be filed voluntarily.’ The fact should be taken into consideration that a divisional Application could be maintainable only when the claims of the parent application disclose “a plurality of inventions”. Further, the claims of the divisional application should not disclose any matter already disclosed in the claims of the parent Application, rather it should be within the scope of the originally filed claims of the parent Application. Claims falling out of the scope of originally filed claims but within the scope of the complete specification of the parent, applications are not allowed.

The important takeaways from this particular case can be ascertained as follows:

1. An amendment to alter the scope of the claims is not allowed.
2. The option of filing a divisional application is available only when there is a multiplicity of inventions in the claims and a disclosure of the same in the description. Disclosure alone would not suffice for filing of a divisional application and the claimed subject matter in a divisional application must be present in the claims of the parent application.
3. Amendment must be carried out carefully to avoid any loss of claimed subject matter which the applicant would like to retain at a later stage during prosecution.
4. Filing of divisional application without a multiplicity of inventions and devoid of any merits may incur further cost to Applicant.

To conclude, this case law somewhat clears the guidelines for filing divisional applications such that, divisional applications cannot be used as a tool to deceive the authorities, and refused amendment in claims cannot be filed and claimed as a separate divisional application.

4. “GEMS V. JAMES BOND”: TEST OF DECEPTIVE SIMILARITY UNDER TRADEMARK LAW [CS (COMM) 393/2018]

Introduction

Recently, the Delhi High Court in the case of **MONDELEZ INDIA FOODS PVT. LTD. AND ANR. v. NEERAJ FOOD PRODUCTS**, revisited the test of deceptive similarity under the Trademark Law, wherein the court directed Neeraj Food Products to not use the mark “JAMES BOND” or “JAMEY BOND” for their products. Let us see in the foregoing section of this article how the court applied the test of deceptive similarity for the marks in question.

Brief Facts

The case was first brought before the court in the year 2005 by “Mondelez India Foods Pvt. Ltd. (former Cadbury India Limited)”, hereinafter “plaintiff” against “Neeraj Food Products”, hereinafter “defendant”, who then had launched a chocolate product under the mark “**JAMES BOND**” with an identical color scheme, layout, and arrangement as that of the plaintiffs’ “**CADBURY GEMS**” or “**GEMS**” products. The plaintiff sought a permanent injunction restraining the defendant from using the said mark in question. The plaintiff further stated that he holds copyright registrations for the artistic works in respect of character known as “**GEMS BOND**”, which has been used by the Plaintiffs for promotion of its ‘**GEMS**’ branded products. In the final hearing, in the year 2022, the court initiated an ex-parte proceeding, as the defendant was not present and their councils represented the case.

Issues before the Court

Apart from other issues, the Court dealt with the issue of deceptive similarity, specifically, “whether the trademark/label of the defendant is different and not deceptively similar to the plaintiff’s trademark/label?” while considering the existing precedents on issues of trade dress, trademark, and copyright infringement and deceptive similarity.



Rules and/or Law under Indian Trademarks Act, 1999

Section 11(1) of the Indian Trademarks Act, 1999 (hereinafter “the Act”) states relative grounds of refusal, that state that if the word/mark applied for the trademark is anyhow identical or similar to any existing trademark for the same/similar good or services and for the different goods or services, then it will not be accepted as a trademark by the registry.

However, in **Narayanan on Trade Marks**, the rules of comparison state, “The visual, aural and conceptual similarities of the marks must be assessed with reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components.”

Thus, the court applied the rule and/or law in the present matter in light of the legislative intent as well as the precedent set by the Supreme Court and High Courts of India.

Observation of the Court

In the present matter, the court revisited the test of deceptive similarity for similar and confusing marks. The court relied on the following seminal cases decided by the Supreme Court of India:

Corn Products Refining Co. v. Shangrila Food Products Ltd (AIR 1960 1 SCR 968):

The court held that *“the said question has to be approached from the point of view of a man of average intelligence and of imperfect recollection. It was observed that, to such a man, the overall structural and phonetic similarity and the similarity of the idea in the two marks is reasonably likely to cause confusion between them.”*

Parle Products (P) Ltd. v. J.P. & Co., Mysore (AIR 1972 SC 1359):

The court held that *“It is therefore clear that in order to conclude whether one mark is deceptively similar to another, the broad and essential features of the two are to be considered. They should not be placed side by side to find out if there are any differences in the design and if so, whether they are of such character as to prevent one design from being mistaken for the other. It would be enough if the impugned mark bears such an overall similarity to the registered mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him.”*

In light of the legal position captured above, the court observed in the present case that, *“the products in question are chocolates which may be consumed by young and old alike. The ‘GEMS’ product is also usually consumed by small children, both in urban and rural areas. The test in such a matter is not that of absolute confusion. Even the likelihood of confusion is sufficient. A comparison of the Defendant’s infringing product and the packaging thereof leaves no manner of doubt that the same is a complete knock-off, of the Plaintiffs’ ‘CADBURY GEMS’. The significant fact is that these products are sold not only in bigger packs but also in smaller pillow packs, due to which the mark may not even be fully visible. Hence, the product’s get-up, layout, as also, the color combination of the packaging plays a significant role at the point of purchase. Moreover, chocolates are sold not merely in big retail stores or outlets, but also, in roadside shacks, paan shops, patri vendors, Kirana stores and stalls outside schools, etc. Thus, there is an immense likelihood of confusion, particularly considering the class of consumers that the product is targeted at, that is, children.”*

Decision of the Court

The Court thus found that chocolates are the category of product, which is being consumed by both children and adults, in both urban and rural locations. Keeping this in mind, the Court ruled, *“The test in such a matter is not that of absolute confusion. Even likelihood of confusion is sufficient.”*

Further, the Court has also clarified that upon examination of both Plaintiff's and Defendant's products, there is no dispute that Defendant's products are, **"a complete knock-off of Plaintiff's 'CADBURY GEMS'"**. Furthermore, the Court found that these gems are sold in little pillow packs rather than larger packets, and therefore the mark may not be completely visible, increasing the likelihood of confusion. Finally, the Court stated that, given the large number of consumers targeted by the product, including young children, there was an **"immense likelihood of confusion"**.

Therefore, in view of the phonetic similarity between Plaintiff's and Defendant's mark, the Court granted a permanent and mandatory injunction in favor of Plaintiff. The Court also examined the issue of costs and ordered Defendant to pay a fine of Rupees 15,86,928 lakhs (approximately \$18,800).

Conclusion

In this instance, the Court made it clear that the class of customers and the sort of items/products in question should be taken into consideration when applying the test of likelihood of confusion. Given that the price range of the product in question was just 1 to 5 rupees, there was an "immense likelihood of confusion" among the customers because the mark in question refers to "chocolates," for which the consumers are of all ages. The Court made a solid finding in favor of the plaintiff as the color scheme, packaging, and trademarks that were employed were identical or misleadingly similar.

5. AMENDMENT IN SEQUENCE SUBMISSION TOOLS IN INDIA AS PER WIPO STANDARD ST.26

A sequence listing contains nucleotide and/or amino acid sequences disclosed in a patent application (generally life sciences applications) and forms part of the description. Sequence listing must be provided in the form of a standardized representation of the sequence information, to enable Patent offices to conduct a search on these sequences. Further, it should be searchable in public databases once the application is published.

In India, as per Rule 9(3) of the Patents Rules, 2003, if the application for a patent discloses a sequence listing of nucleotides or amino acid sequences, the sequence listing of nucleotides or amino acid sequences must be filed in computer-readable text format along with the application, and no print form of the sequence listing of nucleotides or amino acid sequences is required to be submitted.

ST.25 and the Associated Problems:

Earlier, sequence listings were filed in Patent Offices compliant with WIPO ST.25 database. However, ST.25 format was not compliant with International Nucleotide Sequence Database Collaboration (INSDC)

requirements, so data is lost when entered into public databases such as Genbank. Sequence types such as nucleotide analogs, D-amino acids, and branched sequences that are common today are not covered by ST.25 rules and therefore are not present in searchable databases. Further, ST.25 format is difficult to use for automated validation and data exchange because of unstructured data.



The Purpose and Benefits of ST.26:

The ST.25 and ST.26 apparently differ from each other in the file format. ST.25 used TXT or PDF format whereas ST.26 enhances submission quality due to the structure of a sequence listing in XML format. ST.26 allows applicants to draw up a single sequence listing in a patent application acceptable for the purposes of both international and national or regional procedures.

Further, ST.26 covers/include additional sequence types which are not covered by ST.25 specifically, D-amino acids, linear portions of branched sequences, and nucleotide analogs. Therefore, increases the automation of data validation and streamlines processing by IP offices.

WIPO Sequence software can be used to import XML sequence listings and view sequences and related information in a more user-friendly way and facilitate searching of the sequence data. The WIPO sequence software also provides a conversion feature, which converts an ST.25 TXT file into an ST.26 XML file. However, there may be some incompatibilities between the two formats, therefore, manual checking is recommended. Further, WIPO provides webinars/training on the new standard and the use of their WIPO sequence tool which is available for download and trial [here](#).

However, the applicant can furnish ST.26 compliant sequence listing within 15 months from the date of filing. For international applications, they can be submitted to the receiving office within 2 months of the international filing date. In such circumstances, the date of submission of the sequence listing will be the international filing date, not the application filing date.

INDIAN PATENT OFFICE VIDE ITS PUBLIC NOTICE JUNE 17, 2022 has stated that all Sequence Listings that are part of an international application filed on and after 1st July 2022 under the Patent Cooperation

Treaty must be compliant with WIPO Standard ST.26. It is further clarified that sequence listings compliant with WIPO ST.26 will be accepted by the Indian Patent Office in respect of national applications as well from 1st July 2022.

Clarification on Official Filing Fees by Indian Patent Office

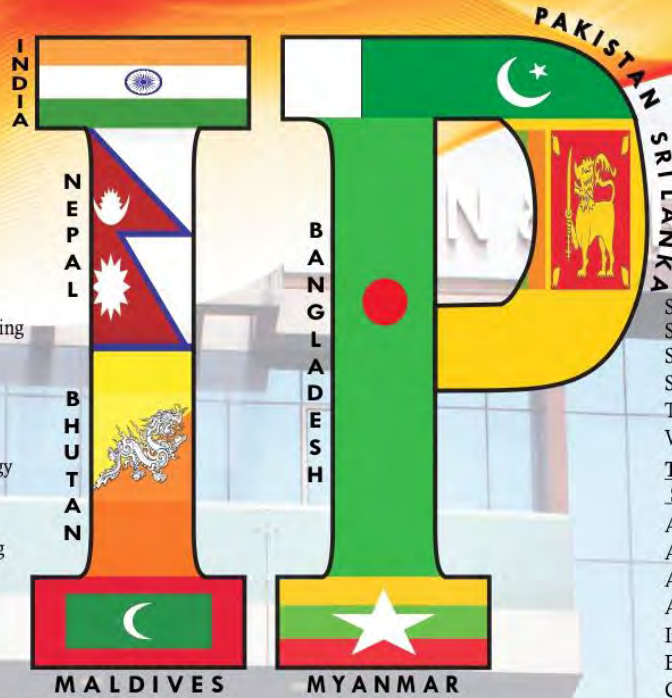
Currently, the filing fee in the Indian Patent Office is calculated per page of the application over 30 pages, including pages of sequence listings on a docx or .pdf file. As per clarification regarding fee calculation published on August 8, 2022, it would remain the same as per the requirement of Rule 9 of the Patents Rules 2003.

WE PROTECT YOUR

Patent Specializations:

Aircraft Construction
Apparatus & Installations
Automation Tech.
Automotive Electronics
Automotive Eng.
Avionics
Biotechnology
Computer Related
Inventions
Data Processing Tech.
Diagnostics
Display Technology
Embedded System
Electrical Engineering
Energy Generation
Environmental Tech.
Fluorine Chemistry
Genetic Engineering
Heat Pumps
Hydraulics
Hybrid Technology
Immunology
Inorganic Chemistry
Laser Technology
Liposomal Technology
Material Sciences

Mechanical Engineering
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Nanotechnology
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