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**GLIMPSES OF INTELLECTUAL PROPERTY DIVISION (IPD) OF HIGH COURT
OF DELHI; PROPOSED RULES IN THE MATTERS CONCERNING IPR**

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The High Court of Delhi vide Public Notice dated October 10, 2021, has proposed Draft of the "*Delhi High Court Intellectual Property Rights Division Rules, 2021*" and has invited suggestions / comments from the members of the bar practising in the domain of IPR. The deadline to send such comments/ suggestions is 24th of October, 2021, which can be sent to irrules.dhc@gov.in. By proposing these rules, the High Court of Delhi has taken a lead in writing a new chapter in the IPR practice in India. Needless to state that the other High Courts too shall follow the suit in the days to come.

Genesis

The Government of India, pursuant to the *Tribunal Reforms (Rationalisation and Conditions of Service) Act, 2021*, which came into effect on April 4th, 2021, had dissolved the IPAB (Intellectual Property Appellate Board) w.e.f April 4, 2021, vide notification dated April 22, 2021, in the official Gazette of India. As a result, all suits/appeals/applications pending before the IPAB are to be transferred to the respective High Courts (of Delhi, Bombay, Madras, Calcutta or Ahmedabad as the case may be) or Commercial Courts in copyright matters. Given the present-day scenario all IP-related appeals/suits/applications are being filed with the appropriate High Courts or Commercial Courts, according to the territorial jurisdiction.

On July 7, 2021, the Delhi High Court, on the suggestions and recommendations of a committee, which was constituted to simplify and evaluate how a large number of IPR

matters be handled and which was chaired by Hon'ble Mr. Chief Justice D N Patel and comprised of Hon'ble Justice Pratibha M Singh and Hon'ble Justice Sanjeev Narula, established an Intellectual Property Division (IPD) with dedicated IP benches to handle all IPR issues. Delhi High Court had also notified the **Nomenclatures and Court Fees** for the newly created Intellectual Property Division.

Delhi High Court Intellectual Property Rights Division Rules, 2021

The High Court of Delhi, in exercise of the powers conferred upon it by virtue of Section 7 of the Delhi High Court Act, 1966, Section 129 of the Code of Civil Procedure, 1908 and other Intellectual Property statutes as amended by the *Tribunal Reforms (Rationalisation and Conditions of Service) Act, 2021*, has made these rules with respect to practice and procedure for the exercise of its original and appellate jurisdiction, and for other miscellaneous petitions arising out of specific statutes namely The Trade 'Marks Act, 1999; The Copyright Act, 1957; The Patents Act, 1970; The Designs Act, 2000; The Geographical Indications of Goods (Registration and Protection) Act 1999; The Protection of Plant Varieties and Farmers' Rights Act, 2001; The Semiconductor Integrated Circuits Layout-Design Act, 2000, as also in common law.

IPR, IPR matters or cases or proceedings or disputes

As defined under Rule 2(i), IPR includes the following:

- I. *Rights pertaining to Patents, Copyrights, Trademarks, Geographical Indications, Plant Varieties, Designs, Semiconductor integrated circuit layout-designs, Traditional Knowledge and all rights under common law, if any, associated therewith;*
- II. *Actions seeking to enforce rights under common law including passing off, acts of unfair competition, disparagement, comparative advertising etc.;*
- III. *Rights seeking protection of trade secrets, breach of confidential information and related subject matters;*
- IV. *Tortious actions involving intellectual property, privacy and publicity rights;*
- V. *Rights pertaining to data protection, data exclusivity and related matters.*

However, the above categorisation is not exhaustive as the explanation(i) embedded to the above Rule brings into the purview of the IPR.

“any matter pertaining to the Information Technology Act, 2000 dealing with the rights and liabilities of intermediaries, online market places, e-commerce platforms involving 'issues relating to any of the aforementioned rights, shall be deemed to be within the purview of intellectual property rights.”

Rule 2(l) enumerates three broad categories of IPR matters or cases or proceedings or disputes and include all original proceedings, appellate and other proceedings related to IPRs and also include firstly,

- IPR suits;
- Revocation applications;
- Cancellation applications;
- Other original proceedings;
- Appeals and petitions from the various IPOs and;
- all other proceedings which were hitherto maintainable before the Intellectual Property Appellate Board ("IPAB") under provisions of the Act(s).

Secondly,

- All suits filed in which the subject matter is an IPR, either under the respective statutes or under common law including suits relating to breach of privacy, rights of publicity.

and thirdly,

- Writ Petitions (Civil) [WP(C)]
Means a petition /application under Article 226 of The Constitution of India *inter alia* for issuance of a writ in the nature of mandamus, certiorari, prohibition, and quo warranto.
- Civil Misc. (Mains) [CM(Main)]
means a petition under Article 227 of The Constitution of India
- Regular First Appeal [RFA]

- First Appeal from Order [FAO]
- Civil Revision Petition [CRP] arising out of IPR matters and disputes dealt with by the Commercial Courts in Delhi, except matters that are to be dealt with by a Division Bench.

Civil Revision Petition means a Petition under Section 115 of the Code of Civil Procedure, 1908.

Applicability and Jurisdiction (Rule 3 & 4)

These Rules shall be applied to all IPR matters or cases or proceedings or disputes before the High Court of Delhi and every such IPR matters or cases or proceedings or disputes so filed shall be heard and adjudicated by a single judge of the IPD.

Nomenclature to be adopted for filing (Rule 5)

(i) Appeals

Following categories of nomenclature shall be used for the purpose of filing of appeals before the IPD:

- C.A. (Comm. IPO-TM)
For every appeal arising under Section 91 of the Trade Marks Act, 1999 and Under Rule 156 of the Trade Marks Rules, 2017.
- C.A. (Comm. IPD -CR)
For every appeal arising under Section 72 of The Copyright Act, 1957.
- C.A. (Comm. IPD-PAT)
For an appeal preferred under Section 117A of The Patents Act, 1970.
- C.A. (Comm. IPD-GI)
Under Section 31 of The Geographical Indications of Goods (Registration and Protection) Act, 1999 and Rule 116 of the Geographical Indications of Goods (Registration and Protection) Rules, 2002.
- C.A. (Comm. IPD-PV)
Under Section 56 of The Protection of Plant Varieties and Farmers' Rights Act, 2001

- C.A. (Comm. IPD-SCD)
Under Section 42 of the Semiconductor Integrated Circuits Layout-Design Act, 2000
- C.A. (Comm. IPD-DE)
Under Sections 36 of the Designs Act, 2000

(ii) Civil Original Petitions

A Civil Original Petition means a petition/application/complaint:

- Under Sections 47, 57 and 125 of the Trade Marks Act, 1999; with the nomenclature C.O (COMM. IPD-TM)
- Under Sections 19A,31,31A,31B,31C, 31C (5),31D,32,32A,33A and Section 50 of The Copyright Act, 1957; with the nomenclature C.O. (Comm. IPO-CR)
- Under Sections 64 and 71 of the Patents Act,1970; with the nomenclature C.O. (Comm. IPO-PAT),
- Under Section 56 of the Protection of Plants Varieties and Farmers Right Act 2001; C.O. (Comm. IPO-GI)
- Under Sections 27/58 of the Geographical Indications of Goods (Registration and Protection) Act, 1999; nomenclature as C.O. (Comm. IPO-PV)
- Under Sections 40 and 41of the Semiconductor Integrated Circuits Layout-Design Act, 2000; nomenclature as C.O. (Comm. IPO-SCO);

and includes Writ Petitions (Civil) nomenclature as Writ Petition (C)-IPD; Civil Miscellaneous Main nomenclature: Civil Misc. (Main)-IPD; Regular First Appeal (RFA) nomenclature: RFA-IPD; Execution First Appeal (EFA) nomenclature: EFA-IPD; Civil Revision Petition (CRP) nomenclature: CRP-IPD.

Procedure for the filing of Appeals and Original Petitions (Rule 6 and 7)

(i) Appeals

The procedure as laid down by these rules for the filing of appeals is elaborate, explicit and without any ambiguity. A few points of the said procedure are as follows:

- Every appeal before the IPD shall be filed in the formats/forms prescribed in the Schedule-I of these rules, within the period of limitation as prescribed by the respective Act(s) along with the requisite court fees as prescribed in Schedule-II.
- Forms, correspondences and all other relevant documents forming part of the record of the Intellectual Property Office (IPO) shall accompany the appeal; and any such documents that are not forming part of record of the IPO shall not be accepted by the IPD except without the leave of the Court.
- Memorandum of appeal shall clearly specify whether the documents filed are part of the record of IPO and if any additional documents are being filed, which are not the part of record of IPO, the details thereof shall be specified.
- Filing of reply is not a matter of right but only on the directions of the Court if the need arises and the same may be permitted by the Court in exceptional circumstances; and if such a reply is directed the same shall be filed within a period prescribed by the Court or within 60 days from the service of the appeal or from the date of first appearance in appeal, whichever is earlier.
- Rejoinder, if any, if so directed, shall be filed within the period prescribed by the Court or within 30 days from the date of service of reply upon the Appellant.
- Filing of any further affidavits or pleadings shall be strictly with the leave of the Court.

(ii) Procedure for Original Petitions (Civil Original Petition)

Procedural requirement for filing of Civil Original Petition before the IPD is more or less similar to the procedure laid down for the filing of appeals. However, a few aspects of the said procedure are worthy to be highlighted which are as under:

- Every Original Petition before the IPD shall be filed in the formats/forms prescribed in the Schedule-I of these rules, within the period of limitation as prescribed by the respective Act(s) along with the requisite court fees as prescribed in Schedule-II.

- Original Petition shall contain averments specifying as to which of the documents filed form part of the record of IPO.
- Admission / denial of the documents shall not be compulsory and every document shall be read as part of record, unless challenged by any party and any such challenge shall be raised in the very first instance i.e in reply or rejoinder.
- Framing of issues shall also not be compulsory in the original petitions. Upon completion of pleadings, the Court may proceed to hear the petition finally.
- Filing of any further affidavits or pleadings shall be strictly with the leave of the Court.

Evidence, Recording of Evidence and Cross Examination

Rule 2(f) of the rules defines evidence as under:

"Evidence" shall be evidence tendered before the IPD including affidavits in evidence filed by the parties and experts along with documents filed and oral evidence if recorded.

A few provisions relating to the evidence are as follows:

- In Original Petitions, the Court may direct the filing of evidence if it deems it necessary to do.
- The evidence shall usually be filed in the form of affidavits.
- Oral evidence may be given only with the permission of the Court and the Court shall record reasons for the same.
- Cross examination may be directed by the Court for reasons to be recorded
- In appeals, no evidence shall be recorded but IPD may direct the appearance of any witness, who has deposed before the IPO for the purpose of clarification.
- In case oral evidence is directed by the Court, the procedure laid down in the Delhi High Court (Original Side) Rules 2018 and other related procedure shall govern the same.

Serving of Advance Copy

- Rules prescribe for serving of advance copy upon the Respondents including the counsels/agents who may have represented the Respondent before the IPO, in all matters filed before the IPD, at the address for service and also through email at least 48 hours in advance.
- Upon being satisfied that a party has been given advance notice, the Court may proceed to hear the matter and dispose of on the first day of listing. (The term used in the rules is 'first day of listing' rather than 'first day of hearing')

Summary Adjudication

- Rule 21 prescribes for the Summary adjudication in cases not relating to patents before the IPD. The Court may pass summary judgement by its own without the requirement of filing a specific application for seeking summary judgement.
- Summary adjudication shall be governed by the Order XIII-A, Code of Civil Procedure, 1908 which is applicable to commercial suits under the Commercial Courts Act, 2015.
- Summary adjudication may be considered by the Court in patent cases with certain category of cases and subject to fulfilling of conditions as laid down under Rule 22 (a) to (d).

Panel of Experts, Expert Opinion

- The Court, in any IPR matter, has discretion to seek assistance of expert(s) relating to the subject matter of dispute.
- The IPD may maintain a panel of experts to assist the Court which panel may be reviewed from time to time.
- The opinion expressed by such expert shall only be persuasive in nature and not be binding upon the Court.

Patents/Trade Mark Agents

Registered Patent Agents or Trade Mark Agents as also any professional having knowledge of the said subject matter of the dispute shall have a right of audience, to assist the Court along with the counsels/legal practitioners representing the parties.

Conclusion

IP and matters concerning IP are growing at a very rapid pace in India owing to variety of reasons ranging from exposure to globalized world, advancement in scientific and technological education, trained human resource with a bent of innovative thinking and of course growth in mercantile and commercial activities over a period of time. These rules shall prove to be a boon in the expeditious disposal of IP related matters with minimum friction and wear and tear. These rules should also create a domino effect and we may witness framing of IPR matter related rules by other High Courts especially Bombay, Calcutta and Madras very soon. It is anticipated that these proposed rules shall become a guiding force in laying down a benchmark for IPR practice in India.