THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT PROFESSIONAL PROGRAMME

Intellectual Property Rights – Law & Practice

for

December, 2025 Examination

GROUP 1

ELECTIVE PAPER 4.3

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LESSON 4
INDIAN PATENT LAW AND ITS DEVELOPMENTS

February 21, 2025	*The Regents of the University of California Versus The Controller of Patents*	*Delhi High Court C.A.(COMM.IPDPAT) 481/2022*

Section 10(4) and 10(5) of the Patents Act uses the word 'shall', which makes it clear that every requirement under Sections 10(4) and 10(5) is mandatory for the complete specification of a patent application to be valid in India.

Section 10(4) and 10(5) of the Patents Act read as under:

(4) Every complete specification shall—

(a) fully and particularly describe the invention and its operation or use and the method …………….
.

(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.

Brief Facts

Patent Office passed an impugned order, refusing the patent application filed by Appellant on the ground that the claims of the subject patent application do not fulfil the mandatory requirements under Section 10(4) and 10(5) of the Patents Act and that the subject matter claimed is not eligible for patent protection on account of Section 3(c) of the Patents Act. The impugned order also holds that the complete specification of the subject patent application has not sufficiently disclosed the recombinant Salmonella microorganism-based live vaccine as required under Section 10(4) and 10(5) of the Patents Act. Moreover, it also holds that, in light of insufficiency in the disclosure, the claims of the subject patent application are too broad and could also cover naturally mutated Salmonella microorganisms. Hence, the subject patent application falls into the excluded subject matter under Section 3(c) of the Patents Act.

Judgement

Hon'ble Delhi High Court inter alia observed that Section 10(4) and 10(5) of the Act specifically defines the manner in which the disclosure and the claims are to be made in the complete specification. Section 10(4) and 10(5) of the Act uses the word 'shall', which makes it clear that every requirement under Sections 10(4) and 10(5) is mandatory for the complete specification of a patent application to be valid in India. According to Section 10(4)(a) of the Act, every complete specification should describe the invention in full and provide full particulars thereof. Section 10(4)(b) of the Act requires the applicant to disclose the best method for working the same, which is known to the applicant and for which he claims protection.

Hon'ble Court assessed the detailed description and said that such partial disclosure as made in the subject patent application will also not be sufficient to enable a person skilled in the field of microbiology to perform the invention as mandated under Section 10(4)(b) of the Act, without additional guidance. Given that the disclosure itself is incomplete, it cannot be said to be compliant with the requirement to disclose the best method for performing the said invention terms of Section 10(4)(b) of the Act. Hence, Court concluded that the subject patent application fails to sufficiently disclose the invention as mandatorily required under Section 10(4)(a) and 10(4)(b) of the Act.

For details:

https://delhihighcourt.nic.in/app/showFileJudgment/ABL21022025CAP4812022_125201.pdf

November 12, 2024	***Comviva Technologies Limited Versus Assistant Controller of Patents & Design***	***Delhi High Court C.A.(COMM.IPD-PAT) 492/2022***

Brief Facts

An appeal filed by 'Appellant' against an order passed by the Assistant Controller of Patents and Design refusing an application for grant of patent for an invention titled 'Methods and Devices for Authentication of an Electronic Payment Card using Electronic Token' on the ground that the same relates to 'computer program per se' and 'business method' and hence not patentable under Section 3(k) of the Patents Act.

Judgement

A perusal of the aforesaid clause from the Guidelines for Examination of Computer Related Inventions, 2017(CRI Guidelines, 2017) clearly shows that the term , business method would apply where the activity is in relation to the transaction of goods or services. However, where the subject matter of the application specifies an apparatus and/or a technical process for carrying out the invention, even partly, the Claims have to be examined as a whole. In other words, the Claims shall be treated as "business method" only if they are essentially about carrying out business/ trade/ financial activity/ transaction. The use of words such as business, sales, transaction , payment by themselves are not relevant to conclude that the invention is the business method.

While analysing the patentability of "business methods‟ under Section 3(k) of the Patents Act, a Coordinate Bench in *Opentv INC v. The Controller of Patents and Designs2023 SCC OnLine Del 2771*, has made the following observations:

"73. Thus, the only question that the Court or the Patent Office while dealing with patent applications involving a business method, needs consider is whether the patent application addresses a business or administrative problem and provides a solution for the same.

74. In order to judge as to whether a particular patent application seeks to patent business methods or not, at the outset, the following aspects, ought to be considered -

(i) whether the invention is primarily for enabling conduct or administration of a particular business i.e., sale or purchase of goods or services;

(ii) whether the purpose of the invention is for claiming exclusivity or monopoly over a manner of doing business;

(iii) whether the invention relates to a method of sale or purchase of goods or services or is in fact a computer program producing a technical effect or exhibiting technical advancement. If it is the latter, it would be patentable but not if it is the former."

While assessing the patentability of „computer software per se‟ under Section 3(k) of the Patents Act, the Controller has to see whether the invention results in a technical effect or a technical advancement. A Coordinate Bench of this court *in Ferid Allani v. Union of India 2019 SCC OnLine Del 11867,* has observed that in today's digital era where the majority of the inventions are based on computer programmes, it would be a step backward to claim that all such inventions are not patentable. The relevant portion is set out below:

"10…….The bar on patenting is in respect of „computer programs per se….‟ and not all inventions based on computer programs. In today's digital world, when most inventions are based on computer programs, it would be retrograde to argue that all such inventions would not be patentable. Innovation in the field of artificial intelligence, blockchain technologies and other digital products would be based on computer programs, however the same would not become non-patentable inventions - simply for that reason. It is rare to see a product which is not based on a computer program. Whether they are cars and other automobiles, microwave ovens, washing machines, refrigerators, they all have some sort of computer programs in-built in them. Thus, the effect that such programs produce including in digital and electronic products is crucial in determining the test of patentability.

Patent applications in these fields would have to be examined to see if they result in a „technical contribution‟. The addition of the terms "per se" in Section 3(k) was a conscious step and the Report of the Joint Committee on the Patents (Second Amendment) Bill, 19991 specifically records the reasons for the addition of this term in the final statute as under: "In the new proposed clause (k) the words "per se" have been inserted. This change has been proposed because sometime the computer programme may include certain other things, ancillary thereto or developed thereon. The intention here is not to reject them for grant of patent if they are inventions. However, the computer programmes as such are not intended to be granted patent. The amendment has been proposed to clarify the purpose.*" 2019 SCC OnLine Del 11867*

For details:

https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/ABL/judge ment/21-11-2024/&name=ABL12112024CAP4922022_170655.pdf

July 18, 2023	RxPrism Health Systems Private Limited Versus Canva Pty. Ltd.	CS (COMM) 573/2021 and I.A. 14842/2021, High Court of Delhi

Brief Facts-

The present suit for injunction restraining patent infringement, rendition of accounts etc., has been filed by the Plaintiff RxPrism Health Systems Private Limited against the Defendant Canva Pty. Ltd. , seeking a permanent injunction restraining infringement of Indian Patent No. 'IN 360726'. The Plaintiff is based in India, whereas the Defendant is based out of Australia.

The Plaintiff seeks an interim injunction restraining the Defendant from engaging in activities such as using, making, selling, distributing, advertising, offering for sale, etc., or dealing in any product that infringes the subject matter of Indian Patent No. 'IN360726' (hereinafter, 'IN726' or 'suit patent').

The case of the Plaintiff is that it developed a novel and innovative product which is a system and a method for 'creating and sharing interactive content'. This system of sharing content is distinct from video advertisements. It filed an Indian patent application bearing number '201841048222' on 19th December, 2018, which was published on 3rd January, 2020. The Plaintiff claims to have launched their product based on this patent, called 'My Show & Tell' ('Plaintiff's product') in May 2020.

On 10th March, 2021, the Plaintiff's patent was granted in India. Additionally, it is stated that the Plaintiff has been granted two patents in the US, and has patent applications pending for grant in other jurisdictions.

Defendant, Canva is a graphic designing platform launched in 2013, and offers comprehensive design solutions on the website, www.canva.com and provides services such as blog graphics, presentations, flyers, posters, and invitations creation, catering to a global audience. One notable feature they provide is the 'Present and Record' feature enabling users to rapidly create interactive presentations, with personalised visual content.

On 26th May 2020, the Defendant filed a provisional application in Australia bearing Australian patent application number '2020901701' titled 'Presentation Systems and Methods' that thereafter lapsed on 7th February 2022. In the meantime, the Defendant launched its Canva product with the 'Present and Record' ('Defendant's product') feature, on 27th August, 2020. The Defendant also filed another PCT application bearing 'PCT/AU2021050502' on 26th May, 2021 in respect of their invention, which claims priority form their Australian patent application.

Issues-

Whether the Canva product incorporating the 'Present and Record' feature, constituted an infringement upon the plaintiff's patent (IN360726)?

Judgement-

Court stated that -

"It is important to note that, during the course of submissions, apart from the Microsoft PowerPoint 2016, no other documents were even pressed by the Defendant to make out a case for invalidity. However, the Court has perused the three closest prior arts cited, and has found that the said three prior arts do not render the Plaintiff's patent vulnerable to invalidity.

Insofar as non-infringement is concerned, the Defendant's Expert states that all the elements of the Plaintiff's patent do not exist in the Defendant's product. The chart extracted in paragraph 70 clearly demonstrates that the so-called differences, which the Defendant seeks to rely upon are, in fact, non-existent. The functionality of the Defendant's product, which has been demonstrated to the Court, clearly falls within the claims of the suit patent and all the essential elements of the suit patent exist in the Defendant's product. In any event, the settled law on the test for infringement, as set out *in Raj Parkash v. Mangat Ram Chowdhury [AIR 1978 Delhi 1]* and *Sotefin SA v. Indraprastha Cancer Society and Research Centre (2022:DHC:595)* is that the trivial or minor differences between the patented invention and the Defendant's product would not permit the Defendant to escape the infringement.

The conduct of the Defendant- initially claiming that the impugned technology is their own technology and for which they had also purportedly filed a PCT application as claimed in the reply, and then subsequently abandoning the PCT application during the pendency of the suit- is at least prima facie evidence of the Defendant's attempt to camouflage its stand. The filing of a PCT patent application is an attempt to claim a right on similar technology, and the abandoning of the same after the Plaintiff attempted to demonstrate through the PCT application actual infringement is a complete somersault.

According to the affidavit, Defendant's Canva product is available in three forms: 'Canva Free', 'Canva Pro' and 'Canva for Enterprise'. The latter two are subscription-based models, whereas the first one provides unpaid/free access to certain features on the Canva platform. Data has been filed in respect of all three forms indicating the number of users and net revenue from sales….Considering the fact that the Plaintiff has made out a case of infringement, especially by a mapping of claim charts, and that the Defendant has been unable to make a credible challenge to the Plaintiff's patent, the balance of convenience also lies in favour of the Plaintiff whose market opportunities for licensing and revenue generation can be completely eroded, if in case an interim injunction is not granted at this stage. Further, if the injunction is not granted in favour of the Plaintiff, irreparable loss and injury would be caused to the Plaintiff.

The Defendant shall stand restrained from making available their Canva product with the 'Present and Record' feature, which infringes the Plaintiff's suit patent being IN360726 or use any other feature that would result in infringement of the Plaintiff's patent IN3607.

For details:

https://delhihighcourt.nic.in/app/showFileJudgment/PMS18072023SC5732021_220824.pdf

Patents (Amendment) Rules, 2024

Some salient features of the Patents (Amendment) Rules, 2024 are as follows:

- Unique provision for New 'Certificate of Inventorship' has been introduced to acknowledge the contribution of inventors in the patented invention.
- Provision for claiming benefits of Grace period under section 31 has been streamlined by incorporating new form, i.e., Form 31.
- Time limit to furnish foreign application filing details in Form 8 has been changed from six months from the date of filing of application to three months from the date of issuance of first examination report.
- Considering the fast pace of technology, time limit for filing request for examination has been reduced from 48 months to 31 months from the date of priority of application or from the date of filing of application, whichever is earlier.
- Provision to extend time limit and condone delay in filing has been further simplified and made more explicit to ease in practice. Now, the time for doing any act/proceeding may be extended any number of times up to six months by a request in prescribed manner.
- Renewal fee has been reduced by 10% if paid in advance through electronic mode for a period of at least 4 years.
- Frequency to file the statements of working of patents in Form 27 has been reduced from once in a financial year to once in every three financial years. Further, the provision to condone delay in filing of such statement for a period up to three months upon a request in prescribed manner has been incorporated.
- The procedure to file and dispose the Pre-grant representation by way of opposition under section 25(1) has been further streamlined and made more explicit by providing ways to dispose of the representation and fixing fees to file such representation in order to curb benami and fraudulent pre-grant oppositions and simultaneously encouraging the genuine oppositions.

For details:

https://ipindia.gov.in/writereaddata/Portal/IPORule/1_83_1_Patent_Amendment_Rule_2024_Gazette_Copy.pdf

LESSON 7
TRADEMARKS

August 30, 2024	*The Indian Hotels Company Limited Versus Manoj*	*High Court of Delhi CS(COMM) 683/2022 & I.A. 35307/2024*

Adoption of the similar trade mark and trade name by the defendants is not only a violation of the rights of the plaintiff, but may also deceive general unwary consumers and appears dishonest.

Brief Facts:

In the above case, the Defendant has unauthorizedly used the Plaintiff's Trade Marks, as well as various content and photographs available on the Plaintiff's website. The Plaintiff has no connection or association with the Defendant and has not authorized the Defendant to use the said marks, logos, photographs and content. The Defendant has also not filed its written statement and has not entered appearance to defend his actions before Court.

The Plaintiff has filed the present suit before the High Court seeking an order of permanent injunction restraining infringement of registered trademarks and copyrights, passing off, dilution and tarnishment of trademarks, damages, rendition of accounts, delivery up, etc.

Judgement

Hon'ble High Court observed that the defendant has chosen not to file its written statement and has not entered appearance to defend his actions. High Court opined that no purpose would be served by directing the plaintiff to lead ex parte evidence. The defendant has no real prospect of defending the plaintiff‟s claim. Thus, the plaintiff is entitled to a summary judgment under Order XIII-A of the CPC read with Rule 27 of the Delhi High Court Intellectual Property Rights Division Rules, 2022.

High Court held that the Court is empowered to grant a summary judgment, where the defendant has no real prospects of successfully defending the claim, and when there is no other compelling reason why the claim should not be disposed of before recording of oral evidence, this Court in the case of DS Confectionery Products Limited Versus Nirmala Gupta and Another2022 SCC OnLine Del 4013, has held as follows:

"xxx xxx xxx

Adoption of the similar trade mark and trade name by the defendants is not only a violation of the rights of the plaintiff, but may also deceive general unwary consumers and appears dishonest.

In the present case, the defendants have chosen not to file their written statements, nor have they entered appearance in the suit to defend the same. In my opinion, therefore, this is a fit case where a Summary Judgment in terms of Order XIII-A of the Civil Procedure Code, 1908, as applicable to commercial disputes of a specified value, read with Rule 27 of the IPD Rules deserves to be passed in favour of the plaintiff and against the defendants..On the aspect of damages being claimed by the plaintiff, High Court noted that in various cases, damages have been granted on account of the defendant not appearing deliberately, despite having knowledge of the proceedings. It is to be noted that not filing any defence by the defendant shows the malafides and guilt of the defendant, that he has no plausible explanation for his intentional, illegal and infringing acts. Hon'ble High Court gave directions inter alia for decree of permanent injunction in favour of the plaintiff and against the defendant and the plaintiff is held entitled to damages.

For details:

https://delhihighcourt.nic.in/app/showFileJudgment/59230082024SC6832022_193515.pdf

March 03, 2025	***Kiranakart Technologies Private Limited Versus Mohammad Arshad & Anr***	***Delhi High Court C.O. (COMM.IPD-TM) 62/2024 with I.A. 29531/2024 & I.A. 40361/2024***

Cancellation of Trademark Registration for Non-Use

Brief Facts

The Petitioner is recognized as a renowned company in India and has acquired immense goodwill and reputation under the ZEPTO marks. The petitioner has obtained trade mark registrations for the ZEPTO marks in classes 29, 30, 31, 32, 34, 39 and 43. The Petitioner has filed a rectification petition under Sections 47 and 57 of the Trade Marks Act, 1999 seeking cancellation/ removal of the trade mark 'ZEPTO' bearing no. 2773519 in class 35 in the name of the Respondent no.1 (hereinafter 'impugned mark') from the Register of Trade Marks. Petitioner submitted that owing to its continuous and extensive use and pan-India promotion and advertisement activities, the ZEPTO marks are exclusively associated with the petitioner.

Judgement

Hon'ble High Court in favour of Appellant and inter-alia observed that a perusal of Section 47(1)(b) of the Trade Marks Act would reveal that a registered trade mark is liable to be taken off the Register of Trade Marks if up to a date three months prior to the date of filing of the rectification petition, the same is not used in relation to those goods/ services in respect of which it is registered for a continuous period of at least five years from the date on which the mark is entered in the Register of Trade Marks.

Reference in this regard may be made to the case of *DORCO Co. Ltd. v. Durga Enterprises and Another, 2023 SCC OnLine Del 1484*, wherein Court had ordered for removal of the impugned mark therein on the ground of non-use.

Reference was also made *to Russell Corp Australia Pty Ltd. v. Shri. Ashok Mahajan, 2023 SCC OnLine Del 4796*, where in Court had observed as follows:

25. In the context of non-use, it is the settled legal position that use has to be genuine use in the relevant class of goods and services. Unless the non-use is explained by way of special circumstances, the mark would be liable to be removed for non-use. In the present case, no special circumstances have been cited and, in these facts, the mark would be liable to be removed on the ground of non-use itself."

The Petitioner has continuously and extensively been using the ZEPTO marks since July 2021 in India and, by virtue of their widespread advertisement and promotion, has acquired immense goodwill and reputation thereunder. On the other hand, the Respondent no.1 has not made any use the impugned mark in relation to the aforesaid services in class 35. Despite the aforesaid, the Respondent no.1 opposed the petitioner's application for the mark ZEPTO in class 35. Considering the aforesaid, Hon'ble Court viewed that the Petitioner is aggrieved by the continued subsistence of the impugned mark on the Register of Trade Marks.

In view of the above, High Court held that the impugned mark is liable to be removed from the Register of Trade Marks under the provisions of Section 47(1)(b) of the Act.

For details:

https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/ABL/judgement/07-03-2025/&name=ABL03032025COT622024_130344.pdf

February 25, 2025	***Lifestyle Equities CV & Anr. Versus Amazon Technologies, Inc. & Ors***	***Delhi High Court CS(COMM) 443/2020***

'E-Infringement' of Trademarks by E-Commerce Entity

Judgement

In the above case Hon'ble Delhi High Court has granted a permanent injunction, restraining Amazon from using the infringing mark of Plaintiff and ordered to pay ₹336 crore ($38.78 million) in damages, along with ₹3.23 crore in litigation costs in favour of the Plaintiff.

High Court inter alia observed that traditionally, violation of rights in a trademark would take place in brick-and-mortar stores where the identity of the infringing party is easily determinable. The growth of the internet and the rise of digital commerce have significantly transformed the promotion and sale of branded products, creating both opportunities and challenges for IP owners. As with all technological advancements, the internet has facilitated both legitimate trade and unauthorized exploitation of IP rights. The emergence of e-commerce intermediaries, who claim to be distinct from traditional retailers on e-commerce platforms, has introduced legal complexities for IP owners in their efforts to enforce their rights and seek redress for trademark infringement. This distinction has complicated IP enforcement, as such entities often claim intermediary status to mitigate liability for the sale of infringing goods. Unlike conventional retail models, where accountability for infringement was clearly attributable, e-commerce platforms operate within a multi-tiered ecosystem, often making it difficult to identify and hold liable those responsible for violations.

E-commerce platforms, while making products and services more easily available and accessible have also posed significant challenges for IP owners seeking to protect their brands and marks being infringed through online platforms. The proliferation of e-commerce is now here to stay and is an irreversible reality, giving rise to a new species of infringement which can be termed as 'e-infringement'. In this species of infringement, unlike traditional forms of trademark violations, there are multiple parties who could be involved in the violation of right: a) The owner of the infringing brand which is being used on the product. b) The retailer or seller who is selling the infringing product. c) The e-commerce platform which is enabling the retailer to sell the product or the aggregator who may be collecting similar products and making them available for sale. d) The party/entity who is warehousing, raising invoices, packaging, delivering and receiving payments for the product. e) The party who supplies the product, i.e. the infringing goods. f) Finally, the brand being used on the infringing products.

Hon'ble High Court opined that in e-infringement, the biggest challenge would first be in fixing responsibility on each of the parties. There are complex questions which arise including issues relating to intermediary liability, entitlement to safe harbour protection, as also jurisdictional issues. Clearly, the multi-layered nature of ecommerce has made it increasingly difficult to identify, attribute liability, and effectively enforce IP rights, necessitating clear legal frameworks to address the evolving challenges posed by online trademark infringement.

For details:

https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/PMS/judgement/26-02-2025/&name=PMS25022025SC4432020_171716.pdf

LESSON 8
COPYRIGHTS

April 15, 2025	*Cryogas Equipment Private Limited Versus Inox India Limited and Others 2025 SC*	*Supreme Court of India Civil Appeal No.-005174/ 2025*

In this case the Hon'ble Supreme Court has interpreted Section 15(2) of Copyright Act to resolve Copyright- Design conflict

In this case, the parties to the appeal were, inter alia embroiled in a dispute concerning the purported infringement of intellectual property (IP) rights in relation to the designing and manufacturing of the internal parts of Cryogenic Storage Tanks and Distribution Systems.

The case had the following issues i.e. what are the parameters for determining whether a work or an article falls within the limitation set out in Section 15(2) of the Copyright Act, thereby classifying it as a 'design' under Section 2(d) of the Designs Act?

Section 15(2) of the Copyright Act specifically deals with designs capable of being registered under the Designs Act, 2000, and the limit of copyright protection in such cases. The copyright protection to such design ceases if the design remains unregistered and is industrially reproduced more than 50 times.

To answer this Hon'ble Supreme Court has formulated a two-pronged approach in order to crack open the conundrum caused by Section 15(2) of the Copyright Act so as to ascertain whether a work is qualified to be protected by the Designs Act. This test shall consider:

(i) whether the work in question is purely an 'artistic work' entitled to protection under the Copyright Act or whether it is a 'design' derived from such original artistic work and subjected to an industrial process based upon the language in Section 15(2) of the Copyright Act;

(ii) if such a work does not qualify for copyright protection, then the test of 'functional utility' will have to be applied so as to determine its dominant purpose, and then ascertain whether it would qualify for design protection under the Design Act.

The test of functional utility is applied to ascertain whether the work is entitled to protection under the Design Act or not. If the primary characteristic of the work is its functional utility rather than aesthetic appeal, it would not qualify to seek protection under the Designs Act. In a nutshell, aesthetic appeal is required in the work to seek protection under the Design Act.

The Court noted that since the drawings pertained to internal parts of Cryogenic trailers with no visual appeal or aesthetics, the commercial court's dismissal of the suit was unwarranted because it prematurely concluded the drawings were "designs" without evidence on the number of industrial reproductions i.e., whether the drawing was applied over 50 times or not, and without determining the aesthetic or functional nature of the drawings.

The Court further added "We are in complete agreement with the reasoning of the High Court that the question as to whether the original artistic work would fall within the meaning of 'design' under the Designs Act cannot be answered while deciding an application under Order VII Rule 11 of the CPC. This stage would involve only a prima facie inquiry as to the disclosure of cause of action in the plaint. The question pertaining to ascertaining the true nature of the 'Proprietary Engineering Drawings' involves a mixed question of law and fact and could not have been decided by the Commercial Court at a preliminary stage based upon such a casual appraisal of the plaint averments.", the court observed.

"We therefore concur with the High Court that this case warrants a trial given the triable issues involved. The plaintiff before the Commercial Court, i.e., Inox, was erroneously non-suited due to incorrect assumptions made by the Commercial Court which misread the plaint, misapplied legal principles and overlooked the distinction between 'artistic work' and 'design.", the court added.

Accordingly, the Court dismissed the appeal and ordered:

"In light of our discussion on relevant precedents and legal positions, and the clear test we have outlined, we direct the Commercial Court to consider the issue afresh and conduct trial by adopting an Occam's Razor approach to ascertain the true nature of the 'Proprietary Engineering Drawings'. Additionally, the Commercial Court would also need to independently assess the claims related to infringement of the Literary Works, confidential information, know-how etc. so as to resolve the matter comprehensively."

For details:
https://api.sci.gov.in/supremecourt/2024/52663/52663_2024_3_1501_60892_Judgement_15-Apr-2025.pdf

April 25, 2025	***Ustad Faiyaz Wasifuddin Dagar*** ***Versus*** ***MR. A.R. Rahman & Ors***	***HIGH COURT OF DELHI*** ***CS(COMM) 773/2023 and I.A.21148/2023***

Hindustani Classical Music is an Original Work of The Composer, the same would be entitled to Protection under the Copyright Act.

Brief Facts

Plaintiff's ancestors have been Dhrupad vocalists for nearly 20 generations and have developed the Dagarvani Gharana within the traditional structure of Dhrupad genre of Hindustani classical music. The Plaintiff himself is an accomplished Dhrupad vocalist of the Dagarvani Gharana, and he was awarded the Padma Shri in the year 2010 in recognition of his contributions to Hindustani classical music. The Defendant No. 1 – Mr. A.R. Rahman is a renowned music director and composer whose works have been celebrated across the world. The Defendant No. 1 is the music director of the film "Ponniyin Selvan – 2" in which the impugned song – Veera Raja Veera is featured. The Defendant No. 2 – Madras Talkies and Defendant No. 3 – Lyca Productions Private Limited are the co-producers of the film. Mr. Mani Ratnam who is the co-owner of Defendant No. 2 is also the director of the film. Defendant No. 4 – Tips Industries Limited is the holder of the rights over the audio and audio-visual songs utilised in the film. Defendant No. 5 – Shivam Bharadwaj and Defendant No. 6 – Arman Ali Dehlvi have been credited as the singers of the impugned song. It is not disputed that the Defendant No. 5 and Defendant No. 6 were long standing disciples of the Plaintiff. The Plaintiff has filed this suit seeking, inter alia, permanent and mandatory injunction for recognition of the copyright in the above extracted musical composition "Shiva Stuti". The Plaintiff also seeks to restrain Defendant Nos. 1 to 4 from utilizing the suit composition as part of sound recording of the song "Veera Raja Veera" without obtaining authorisation from Plaintiff and without attribution of moral rights of the original authors / composers of the suit composition.

Judgement

Hon'ble High Court inter alia observed that a combined reading of the provisions of "author" "cinematograph film" "communication to the public" "composer" "musical work" "performance" "performer" Meaning of publication. First owner of copyright would show that in the context of a musical work, the composer is the author as per Section 2(d) of the Act and also the first owner of the copyright as per Section 17 of the Act. The definition of composer under Section 2(ffa) of the Act is an exhaustive definition and not an inclusive definition. The composer under the law, therefore, means only the person, who composes the music in a musical work. It is not necessary for the composer to record the composition in a graphical notation. In contrast, the definition of musical work is a means and includes definition. It means a work consisting of music and could also include a graphical notation. Thus, for a work to qualify as a musical work, it is a basic pre-condition that it has to be a work consisting of music. In the context of Indian Classical Music, even if the music does not consist a graphical notation, it is protectable. Even fixation is not mandatory. Any person, who performs a work, which could include a singer or musician, would become a performer and such performer's presentation would be deemed to be a performance. Thus, the pain expressed by Justice Krishna Iyer in *Indian Performing Right Society Ltd. v. Eastern Indian Motion Pictures Assn., (1977) 2 SCC 820*, was assuaged with the amendments in the law, which were three-fold: (i) Recognition of rights of composers in Indian Classical Music irrespective of whether the work was reduced into writing or not; (ii) Recognition of rights of singers, who provide enormous value addition to music compositions, and (iii) Recognition of rights in performances by other performers which could include musicians, orchestra, etc.

It is evident from the above discussion that copyright law in India has evolved and adapted to extend protection to traditional creative works including works based on Hindustani classical music. Therefore, there is no doubt that so long as the composition in Hindustani classical music is an original work of the composer, the same would be entitled to protection under the Act. The composer would also be entitled to exercise and claim all rights under the Act, including moral rights, qua the said composition.

For Details:

https://dhccaseinfo.nic.in/jsearch/judgement.php?path=dhc/PMS/judgement/25-04-2025/&name=PMS25042025SC7732023_193812.pdf

LESSON 9
INDUSTRIAL DESIGNS

India has signed the Final Act of the Riyadh Design Law Treaty

After nearly two decades of negotiations, the member states of the World Intellectual Property Organization (WIPO) adopted the landmark Design Law Treaty (DLT) and India has finally signed it marking a milestone in Industrial Design Protection.

The treaty seeks to harmonize the procedural frameworks for industrial design protection, improving the efficiency and accessibility of registration processes across multiple jurisdictions. By standardizing procedural requirements, the DLT reduces administrative burdens, thereby promoting global creativity in design. Its goal is to ensure that the benefits of streamlined design protection are accessible to all stakeholders, with particular emphasis on small and medium-sized enterprises (SMEs), start-ups, and independent designers.

Key Provisions:

- **Article 7 -Grace Period for Filing in Case of Disclosure**

A 12 months grace period is allowed for public disclosure of the industrial preceding the date of filing of the application or, if priority is claimed, the date of priority, without affecting the novelty and/or originality, and as the case may be, individual character or non-obviousness, of the industrial design, where the disclosure was made:

by the creator or his/her successor in title; or

by a person who obtained the disclosed information directly or indirectly, including as a result of an abuse, from the creator or his/her successor in title.

- **Article 9- Amendment or Division of Application Including More Than One Industrial Design:**

(1) If an application that includes more than one industrial design does not comply with the conditions prescribed by the Contracting Party concerned in accordance with Article 4(4), the Office may require the applicant, at the option of the applicant, to either:

(i) amend the initial application to comply with those conditions; or

(ii) divide the initial application into two or more divisional applications that comply with those conditions by distributing among the latter the industrial designs for which protection was claimed in the initial application.

(2) Where permitted under the applicable law, the applicant may also, on their own initiative, divide an application into two or more divisional applications.

- **Article 10 - Publication of the Industrial Design**

Applicants may request to keep the design unpublished for a legally defined period. They may opt for early publication during this time.

- **Article 14 - Reinstatement of lost rights and extension of missed deadlines**

A Contracting Party (where "Contracting Party" means any State or intergovernmental organization party to this Treaty), shall provide extensions for deadlines set by the Office if a request is submitted according to regulations, either before or shortly after the deadline. If the deadline is not met and no extension of time is accepted, further processing and reinstatement of rights shall be permitted, subject to receipt of a compliant request within the applicable period. There is an exception to these provisions which is provided for in the regulations. Contracting Party is permitted to recover a fee for such a request but cannot demand additional requirements other than those provided for herein, except as stated in the Treaty or in the regulations. In addition, applications cannot be refused without providing the applicant or holder with an opportunity to comment on the proposal for refusal within a reasonable period.

- **Article 23 - Correction of a Mistake:**

-Where an application, a registration or any request communicated to the Office in respect of an application or a registration contains a mistake, not related to search or substantive examination, which is correctable by the Office under the applicable law, the Office shall accept that a request for correction of that mistake in the records and publications of the Office be made in a communication to the Office signed by the applicant or holder.

-A Contracting Party may require that the request be accompanied by a replacement part or part incorporating the correction.

- **Traditional Knowledge:**

This treaty aims to protect the Traditional Knowledge through the provision of providing Indication of Information under Article 4 which provides that a Contracting Party may require, where permitted under the applicable law, that an application contain an indication of any prior application or registration, or of other information, including information on traditional cultural expressions and traditional knowledge, of which the applicant is aware, that is relevant to the eligibility for registration of the industrial design.

For details:

1. *https://www.pib.gov.in/PressReleaseIframePage.aspx?PRID=2077272*
2. *https://www.wipo.int/wipolex/en/text/593353*