



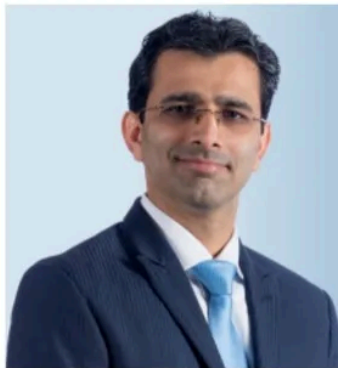
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World Intellectual Property Rights Day # Adheesh Nargolkar

With IP law becoming more robust over time, both on a global and Indian scale, stakeholders have felt more comfortable investing more resources into research, development, and innovation, with an intention to effectively commercialise the same, says Adheesh Nargolkar



Adheesh Nargolkar
Partner

On the occasion of World Intellectual Property Day, celebrated on April 26, 2024, BW Legal World interacted with Adheesh Nargolkar, Partner, Khaitan & Co.

Here is the complete conversation: -

What is the importance of intellectual property for businesses? In your experience, what are common issues faced by businesses in the effective enforcement of their intellectual property?

Intellectual property (IP), very simply put, refers to creations of the human intellect. IP is broadly categorised into five to seven forms, with the most common being trademarks, copyrights, patents, and designs. Each form of IP brings unique value to business. It serves as a versatile asset, allowing business to commercialise through licensing, assignment, and franchising, fostering global operations while mitigating confusion. A critical challenge for businesses is often the failure to identify and appreciate their IP value, leading to missed opportunities for monetisation and revenue generation. In today's fiercely competitive global market, neglecting IP identification and registration puts businesses at a disadvantage, hindering differentiation and unique selling propositions (USPs). Timely filing of patent and design applications, alongside regular valuation of IP assets, is essential, given statutory timelines and market dynamics.

Moreover, businesses must not solely rely on IP registration but actively enforce and commercialise their rights. Proactivity is key in preventing unauthorised use, as neglect can lead to depreciation of IP assets. Additionally, awareness of third-party IP rights is crucial to avoid unintentional infringements, ensuring legal compliance and safeguarding business interests.

How do you balance the need to protect intellectual property rights with the principles of fair use and innovation?

IP rights are exclusive and grant the right holder a limited monopoly, upon disclosure of the IP to the Government. There have been various theories that justify the grant of such negative rights, each with their own shortcomings. Cumulatively, these theories converge on a simple fact – if works of intellectual labour are not rewarded, the creators and innovators in society will not be incentivised and innovation may halt altogether. At the same time, the grant of an unrestricted monopoly could also hinder innovation by depriving innovators access to advancements.

Provisions across IP legislation aim to strike this balance. The debate between the grant of an IP right or free access to resources is and will continue to persist, while courts will be tasked with the challenge of balancing the rights of IP holders with public interest. By fostering a culture of respect for IP law and arriving at a mutually driven understanding between stakeholders, both, innovation and the protection of IP rights can prevail simultaneously.

Why has there been an increase in filings for intellectual property, both globally and in India, in recent years?

With IP law becoming more robust over time, both on a global and Indian scale, stakeholders have felt more comfortable investing more resources into research, development, and innovation, with an intention to effectively commercialise the same, resulting in a significant increase in the quantum of IPs created over the years. As a natural by-product, IP offices across the globe have seen a steady increase in the number of IP filings. The Indian Patent Office saw a 31.6 per cent growth in 2022, granting over 1,00,000 patents by 2023-2024, with a notable rise in AI-related filings. Courts have also recognised the importance of IP rights and regularly interpreted and thoroughly analysed various provisions under IP legislation, often to the benefit and relief of stakeholders, which only further increases investor confidence in relevant industries. Government policies have also become IP friendly, with MSMEs and small businesses enjoying subsidised rates for IP filing in India. This along with growing stakeholder awareness has led to a significant increase in IP filings, particularly in India.

Indian intellectual property law has gone through a significant overhaul over the last decade. Have there been any significant legislative or regulatory changes in India that have had a notable impact on intellectual property law?

With various landmark judgments in the field of IP and substantive amendments made to IP legislation, the last decade has been momentous for IP law in India. The 2012 amendments made to the Copyright Act, 1957 paved the way for correcting the imbalance of the rights of artists, including composers and lyricists and provided much needed relief to the ever-growing media and entertainment industry. The 2017 amendment to the Trade Mark Rules, 2002, promoted digitisation and e-filing mechanisms, easing accessibility concerns for stakeholders in the industry. A differential payment structure was introduced for smaller entities such as 'start-ups', and 'small enterprises', in consonance with the goal to promote MSMEs and start-ups doing business in the country. Recently a notable shift has been seen towards complete digitisation of trademark proceedings, with more hearings being scheduled virtually, allowing applicants and attorneys to appear from anywhere across the country. The Tribunal Reforms Act, 2021 abolished various tribunals set up across the country, including the Intellectual Property Appellate Board (IPAB), which was a specialised tribunal handling IP matters. The functions of the IPAB were transferred to the commercial divisions of relevant High Courts.

More recently, in an attempt to enhance trust-based governance and promote ease of doing business, the Jan Vishwas (Amendment of Provisions) Act, 2023 amended 183 provisions across 42 Central Acts, including various IP legislation such as Copyright Act, 1957, Trade Marks Act, 1999, Patents Act,

1970, The Geographical Indications of Goods (Registration and Protection) Act, 1999. Minor offences were omitted, decriminalised, or had penalties revised to ensure that businesses weren't adversely affected, but were still deterred from engaging in such activities. The Advertising Standards Council of India has also released several advisories over the past few years regulating advertising activities in India, including surrogate advertising and dark-patterns. In 2024, the Department for Promotion of Industry and Internal Trade, under the Ministry of Commerce and Industry notified the Patents (Amendment) Rules, 2024 changing various procedural timelines to expedite the patent registration process. On a judicial front, there are various cases that are currently being heard by High Courts and the Supreme Court of India, each discussing pertinent questions of law on IP rights. Various High Courts, particularly the Delhi High Court have been proactive, regularly hearing issues on emerging areas of law such as personality rights and NFTs, plant varieties, dynamic cause of action etc.

Overall, India is growing as an IP jurisdiction and the proactive behaviour of both, the legislature, and the judiciary, has played a pivotal role towards the development of this field. In this dynamic landscape, India stands poised to further consolidate its position as a forward-looking hub for innovation and IP protection, ensuring a thriving ecosystem for creators, entrepreneurs, and businesses alike.

With various Indian High Courts setting up specialised intellectual property divisions, do you foresee India becoming a more IP friendly jurisdiction?

The IPAB was established by the Central Government as an appellate body purposed for hearing and adjudicating appeals arising out of various IP matters in India. As mentioned above, through the Tribunal Reforms Act, 2021, the IPAB was dissolved, and all pending matters were transferred to Commercial Courts / High Courts across the country. Upon recommendation of the Committee constituted under the Tribunal Reforms Act, 2021, the Delhi High Court set up a special bench dealing with all matters pertaining to IP, namely, the "Intellectual Property Division". To facilitate expeditious hearing and disposal of IP matters, the Delhi High Court also notified and adopted The Delhi High Court Intellectual Property Rights Division Rules, 2022. The Madras High Court set up the court's IPD and notified the Madras High Court Intellectual Property Rights Division Rules, 2022 vide Gazette Notification dated 5 April 2023, with Justice Abdul Quddhose, Justice M Sundar and Justice Senthilkumar Ramamoorthy appointed as members of the Court's IPR committee. Following suit, the Calcutta High Court also notified its proposed draft Rules vide notification dated 19 December 2023. With such Intellectual Property Division benches, the Courts across the country recognised the complexity of the subject matter forming part of IP suits, and designated

judges who were familiar with such matters to effectively adjudicate disputes arising in the industry. Over the years, we have seen a significant rise in IP litigations as stakeholders are confident, they will obtain speedy reliefs. Further, the strict timelines in IP matters allow matters to be heard and disposed of quicker, providing quick interim reliefs to involved parties. This becomes especially important in high stake matters where delay in relief could adversely affect involved parties. In view of the above and to answer the question, yes, India has already become an IP friendly jurisdiction, especially with Courts becoming more sensitised to IP matters. Having said that, stakeholders should keep in mind that trials in India do take time and thus the final hearings to eventually conclude the matters for Courts to grant costs and damages to parties take a long time.

How do you see emerging technologies, such as Artificial Intelligence, impacting the future of intellectual property law?

The introduction of emerging technologies always brings along a myriad of regulatory hurdles. Naturally, technologies such as AI and blockchain, which have become increasingly relevant, have brought about various legal issues. From an IP perspective, the most prominent issue that arises is ownership of works. AI generated works have become a subject matter of debate, especially from a patent law angle. Jurisdictions across the globe have taken contradictory stances; South Africa and Australia granted a patent with an AI system, namely DABUS, as an inventor. However, the US refused the grant, claiming that patent laws only provide for humans to be deemed inventors. While India's stance on the matter remains rather untested, the online records of the Indian Copyright Office represent RAGHAV, an AI Bot, as an author for an artistic work. Additionally, with the ongoing discussions surrounding Generative AI tools such as ChatGPT, there are various copyright ownership related issues. The biggest question is whether any work generated by such tools are capable of copyright protection. Before such an idea is tested before a court of law, the creators of Gen-AI tools are faced with a more formidable adversary – the owners of various copyrighted works basis which such tools have been trained. In various lawsuits across the globe, including in United States of America, such authors have claimed that the unauthorised usage of their works in training such Gen-AI systems amounts to infringement. These matters are still pending for final adjudication before various courts.

At the same time, AI as a tool has become indispensable for a lawyer. Several law firms, including ours, have introduced various tools developed on AI models, which have eased and automated routine tasks. As an IP lawyer, it has become increasingly easier to identify infringing goods or trademarks available in the market due to AI based software.

With India gearing up for the potential introduction of a law regulating AI and hopefully, related technologies, it will be interesting to see what stances are taken by the lawmakers.

What advice would you give aspiring professionals interested in intellectual property law?

IP law is emerging consistently in India. The Indian Government has been supporting protection and promotion of IP and various incentives are provided by the Government for startups and small entities. With the unprecedented growth of innovation and technology globally, including in India, the importance of IP law and allied fields will only further burgeon. In fact, we have also seen a significant increase in the number of IP-driven commercial transactions.

For law students and young professionals, there is immense opportunity to work on various facets of IP. In addition to having subject matter knowledge, having an interdisciplinary approach to the field is a cornerstone of being a successful IP lawyer. Further, with IP law being a rapidly growing field in India, it is extremely important to keep in touch with global and jurisdiction specific developments, whether it is legislative, judicial, or administrative.

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