

## Intellectual Property (IP) Glimpse of 2022-23:

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## INTERNATIONAL RANKINGS

- **Global Innovation Index of WIPO:** India has ranked at the 40<sup>th</sup> position in the Global Innovation Index of WIPO, 2022. India ranked at the 81st spot in the year 2015 and has shown a spectacular progress over the years. India also maintained the 1st spot in ICT Services Export in the year 2022.

## LEGISLATIVE / EXECUTIVE UPDATES

- **Release of Draft Digital Personal Data Protection Bill, 2022:** The Ministry of Electronics & Information Technology withdrew the Personal Data Protection Bill, 2019 in August, 2022. Further, the Ministry, in November 2022 released the Draft Digital Personal Data Protection Bill, 2022. The Bill is yet to be implemented. The proposed Bill details the rights and duties of Digital *Nagrik* (citizen) along with the obligations that come with collection and use of data lawfully. It also envisages the creation of a Data Protection Board to oversee that the provisions of the Draft Bill are complied with.
- **Regulation of Online gaming:** Ministry of Electronics and Information Technology (MeitY), Government of India, issued the Draft of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules for Regulation of Online Gaming in India on January 2<sup>nd</sup>, 2023. The Draft Rules define the term "online games" and proposes to include online game providers under the term "intermediary" of the Information Act, 2000. It also provides for registration of Online Games under a self-regulating body. The said Rules came into force on 6th April, 2023 with notification in the Gazette.

## JUDICIAL UPDATES

- **Delhi High Court notifies Intellectual Property Rights Division Rules, 2022:** Upon the promulgation of the Tribunals Reform (Rationalization and Conditions of Service) Ordinance, 2021, the Hon'ble Chief Justice of the Delhi High Court, on February 24<sup>th</sup>, 2022, approved the creation of Intellectual Property Division (IPD) in the Delhi High Court to deal with the matters relating to Intellectual Property Rights (IPR).
- **Delhi High Court notifies High Court of Delhi Rules Governing Patent Suits, 2022:** In pursuance to the Tribunals Reform (Rationalization and Conditions of Service) Ordinance, 2021 and the provisions of the Patents Act, 1970, on February 24<sup>th</sup>, 2022, the Delhi High Court notified the High Court of Delhi Rules Governing Patent Suits, 2022. The notification also clarified that all patent suits and actions shall be listed before IPD, Delhi High Court.
- **Notification of Nomenclature of Intellectual Property matters by Calcutta High Court:** On 22<sup>nd</sup> November, 2022, the Calcutta High Court notified the nomenclatures of IP matters with regard to Appeals and Original Applications/ Petitions in light of the Computerized listing of Cause List of the Original Side. These nomenclatures are in pursuance to the Rules of the High Court of Calcutta.
- **Madras High Court notifies Intellectual Property Division Rules:** Pursuant to the Tribunal Reforms Act, 2021, the Madras High Court had constituted the IP Committee to formulate the procedures required for the implementation of the Tribunal Reforms Act. On the recommendation of the IP Committee, Madras High Court created the Intellectual Property Division (IPD). In consonance with the creation of the Madras High Court IPD, Madras High Court Intellectual Property Rights Division Rules, 2022 (hereinafter referred to as the 'IPR Division

Rules') were notified on April 5, 2023. Rules shall apply to all IPR cases or proceedings before the IPD Division of the Madras High Court.

## **Delhi High Court: Listing of Intellectual Property Suits before designated Commercial Courts**

In the case of *Vishal Pipes Ltd. vs. Bhavya Pipe Industry*<sup>1</sup>, the Delhi High Court decided whether IPR Suits filed before District Courts, valued below Rs. 3 Lakhs, ought to be listed before District Judges (Commercial) under the Commercial Courts Act or by the District Judges (non-commercial) as normal civil suits. The Court, accordingly, issued directions in the matter vide order dated 03.06.2022, specifying that under usual circumstances, any IPR suit wherein

- (a) the valuation is Rs. 3 lakhs or above, the suit would be instituted before the District Judge (Commercial) and shall be subject to the provisions of the Commercial Courts Act.
- (b) In case of IPR suit of valuation of less than Rs. 3 Lakhs, the suit shall continue to be listed before the District Judge (Commercial) but may not be subjected to the provisions of the Commercial Courts Act.

## **PRACTICE UPDATES**

### **Foreign lawyers can practice in India on reciprocal basis**

The Bar Council of India, on March 10<sup>th</sup>, 2022, notified the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022. These Rules allow for foreign lawyers to practice on transactional work/ corporate work such as joint ventures, mergers and acquisitions, intellectual property matters, drafting of contracts and other related matters on reciprocal basis. However, these Rules do not permit foreign lawyers or foreign law firms to appear before any courts, tribunals or other statutory or regulatory authorities.

## **POLICY UPDATES**

### **Patent Waiver initiative and India**

India and South Africa jointly introduced a proposal for waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19 on October 2, 2020 to the World Trade Organization (WTO). At WTO's 12th Ministerial Conference (MC12) 2022, Members were given a greater scope to take direct action to diversify production of COVID-19 vaccines and to override the exclusive effect of patents through a targeted waiver over the next five years. This waiver did not extend to cover the production and supply of COVID-19 diagnostics and therapeutics. Almost three dozen nations oppose a waiver extension- including the European Union's 27 members, the UK, Singapore, Switzerland, Japan and South Korea. These governments say they have not seen any concrete evidence that IP rules are hindering the global rollout of Covid-19 treatments and tests.

Further, during the WTO's General Council meeting on December 19-20, 2022, the General Council agreed to extend the December 17 deadline established to decide on whether the MC12 decision should be extended to Covid-19 diagnostics and therapeutics.

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<sup>1</sup> FAO-IPD 1/2022

Mr. Piyush Goyal, Union Minister of Commerce and Industry, Consumer Affairs, Food and Public Distribution, and Textiles (Commerce Minister), in January 2023 pitched for increasing efforts at the WTO for getting patent waivers for diagnostics and therapeutics used to deal with the Covid-19 pandemic.

The next meeting of the General Council in this regard was also held on March 16-17, 2023 wherein the members further discussed on whether to extend the TRIPS Decision adopted at MC12.

## **ZEAL'S HIGHLIGHTS**

### **Is Removal of Data and Other Digital Assets IP Infringement?**

In the case of *Usha Varia vs Rupinder Kaur & Ors.*<sup>2</sup>, Usha Varia (Plaintiff) represented by ZEAL Attorneys filed a suit for perpetual and mandatory injunction against infringement of Trademark, Copyright, Passing off and Breach of Confidentiality and unfair competition against the Defendants for use of the mark 'Samoolam' in Class 11 before the District Court of Saket.

The Court granted an ex-parte injunction in favour of Usha Varia on 02.08.2022. The Defendants (Rupinder Kaur and Ors.) were restrained till next date of hearing from infringing the Plaintiff's registered trade mark No. 2534361, 'SAMOOLAM' and from doing anything that will amount to passing off of Plaintiff's trade mark and Copyright material.

### **Religious Symbols/Names of Deities Cannot Be Monopolized**

In the case of *Om Logistics Ltd. vs Sh Mahendra Pandey*<sup>3</sup>, the Defendant represented by ZEAL Attorneys filed an application in Delhi High Court under Order 39 Rule 4 for setting aside of the ex-parte ad interim injunction passed against the Defendant on 16.09.2021 (impugned order). A Single Bench of Justice Amit Bansal on 15th March 2022 set aside an injunction granted against the Defendant on the mark OM EXPRESS LOGISTICS.

The Delhi High Court set aside the impugned order of ex-parte ad interim injunction passed in favour the Plaintiff on the following grounds:

- 1) Misrepresentation and concealment of facts: Plaintiff has misrepresented facts to obtain ex parte ad interim injunction order and is guilty of suppression and concealment of material facts.
- 2) Religious symbols/ names of deities cannot be monopolized: "OM" is a religious symbol and cannot be monopolized by anyone. References were made to the judgment of the Division Bench in *Bhole Baba Milk Food Industries v. Parul Food Specialities Pvt. Ltd.*<sup>4</sup> and *Shree Ganesh Besan Mills v. Ganesh Grains Ltd.*<sup>5</sup>
- 3) Descriptive/Laudatory Use Of "Express" And "Logistics": It was held that the words "EXPRESS" as well as "LOGISTICS" are common words of the English dictionary and are used in a laudatory/descriptive manner in the present case.
- 4) Common to trade words cannot be monopolized: The marks "OM", and "LOGISTICS" are common to trade and cannot be monopolized.

<sup>2</sup> CS(COMM) 446/22

<sup>3</sup> CS(COMM) 447/2021

<sup>4</sup> (2012) 186 DLT 234 (DB)

<sup>5</sup> 2021 SCC OnLine Cal 3068

## **CASE LAW UPDATES**

### **A. Copyright**

#### **Omnibus order: Personality Rights**

In a first, the Delhi High Court granted an ad interim ex-parte injunction in favour of the veteran actor Amitabh Bachchan in the matter concerning violation of his personality and publicity rights (such as running fake Kaun Banega Crorepati lottery scam, online frauds using his photo, misuse of voice, use of his name in domain names, merchandise with his photos, etc.) by various Defendants (*Amitabh Bachchan vs. Rajat Negi and Ors.*<sup>6</sup>). In the present case, the Defendants were using the Plaintiff's celebrity status for promoting their own activities, without his authorization or permission. The Court observed that in view of such unauthorized activities, the Plaintiff is likely to suffer irreparable harm and injury of his reputation. Necessary statutory authorities such as the Telecom Service Providers were also instructed by the Court to cooperate for the execution of the Interim order.

#### **Supreme Court: Copyright infringement is a Cognizable and Non-bailable offence**

In the case of *M/s Knit Pro International vs. The State of NCT*<sup>7</sup>, the Supreme Court of India held that offence under Section 63 of the Copyright Act, 1957 is a cognizable and non-bailable offence. Section 63 of the Copyright Act, 1957 lists the offences of infringement of copyright or other rights conferred by the Act along with its punishment. The Act defines that an offence of copyright infringement shall be punishable with a term of imprisonment of at least 6 months extendible up to 3 years along with a fine of a minimum of Rs. 50,000 extendible up to Rs. 2 lakhs.

#### **Illegal streaming websites: As you show, so shall you reap**

The Indian Courts have been vigilant against copyright infringement matters occurring via rogue websites in the field of Entertainment, Sports and others. The Courts have restrained various illegal streaming websites from streaming movies such as "Bhuj: The Pride of India", "Vikram", "Ram Setu" and "Brahmastra". The Courts also blocked various rogue websites from illegally streaming Sports events such as ICC T20 World Cup, India - England series and the FIFA World Cup 2022. The Courts also restrained websites and mobile applications such as PikaShow for illegal streaming of copyrighted content. These instances are a clear example of the Indian Courts taking a strict stand against the infringement of Copyright by unidentified rogue websites, illegal streamers and content providers.

### **B. Design**

#### **Registered design is not diluted merely because there are multiple infringers**

In the case of *Relaxo Footwears Ltd. vs. Aqualite India Ltd.*<sup>8</sup>, the Delhi High Court held that proprietor of a registered design is not required to pursue its remedies against each dealer/ manufacturer selling infringing products. It is open for the design holder to select the infringers that it wants to proceed against. The rights of a proprietor of a registered design shall not be diluted merely because the design holder has not taken remedial action against all the infringers.

<sup>6</sup> CS(COMM) 819/2022

<sup>7</sup> Supreme Court of India; Criminal appeal No. 8-7 of 2022; Judgment dated May 20, 2022

<sup>8</sup> FAO(OS) (COMM) 145/2019; Judgment dated 27.10.2022; Delhi High Court

The Court accordingly restrained the Defendant from manufacturing, selling, offering for sale, advertising, importing, exporting or in any manner dealing with the Plaintiff's registered design.

## Registration of design applied to internal feature of a product

In the case of *UST Global (Singapore) Pte Ltd v. Controller of Patents and Designs*<sup>9</sup>, the Calcutta High Court ordered the Controller to consider the Appellant's design application for "Touch Screen", a novel surface ornamentation which is a 2-D Graphical User Interface. The appeal was filed by the Applicant of the Design Application against the Assistant Controller of Patents' order dated 04.09.2019, refusing the said Design Application.

The Calcutta High Court held that designs registered may be applied to any internal or external feature and are capable of registration if they appeal to the eye and enhance the aesthetic value of the product. It was emphasized that there is no requirement to touch the device in respect of the design. The Court held that the process of application of the subject design, i.e., GUI on the finished article is a mechanical and manual process with falls within the definition of "industrial process" mentioned in Section 2(d) of the Designs Act, 2000.

Accordingly, the Assistant Controller of Patents, Designs' order was set aside via Calcutta High Court's order dated 20.03.2023.

## C. Trademarks

### *All the World's a Stage: Does it hold true for ascertaining Trademark jurisdiction?*

In the case of *Tata Sons Private Limited vs. Hakunamatata Tata Founders & Ors.*<sup>10</sup>, the Division Bench of Delhi High Court restrained two companies based in USA and UK from using the registered Trademark TATA in their business of marketing and trading online of cryptocurrencies and other digital tokens. The Defendants, Hakunamatata, were using the trademark TATA through their domain names [www.tatabonus.com](http://www.tatabonus.com) and [www.hakunamatatata.finance](http://www.hakunamatatata.finance). In this case, the Court, while adjudicating the concern of jurisdiction, observed that "Even if a website is not directed at customers in a particular country, the fact that they are not restricted by the website to have access to it, is enough to characterise it as targeting. Targeting need not be a very aggressive act of marketing aiming at a particular set of customers. Mere looming presence of a website in a geography and ability of the customers therein to access the website is sufficient, in a given case. It may not be forgotten that in the matters of infringement of trademark, it is the possibility of confusion and deception in the mind of public due to infringing trademark that is good enough for the Court to grant injunction."

Accordingly, the Division Bench granted an ex-parte ad-interim injunction in favour of the Tata Sons, restricting Hakunamatata from using the well-known trademark TATA in any manner whatsoever or as a part of their corporate name. Further, the Court directed Hakunamatata to take down the websites wherein the domain name incorporated the well-known mark TATA, immediately.

On the other hand, in the case of *Vivek Purwar and Anr. vs. Hari Ram and Sons*<sup>11</sup>, the Delhi High Court held that merely due to advertisement of product, jurisdiction to entertain trademark infringement is not created. In the course of business, the Defendants in the suit advertised their products in the print and electronic media which may have spill over by circulation to Delhi, in spite of both the parties having business only in Uttar Pradesh. In such a case, the spill over does not create jurisdiction.

<sup>9</sup> AID No. 2 of 2019; Calcutta High Court

<sup>10</sup> FAO(OS) (COMM) 62/2022; Division Bench of Delhi High Court; judgment dated 19.09.2022

<sup>11</sup> RFA-IPD 4/2022; Delhi High Court, Judgment dated 2.11.2022

### Acquired Secondary Significance in Descriptive marks

In the case of *Capital Foods Pvt. Ltd. vs. Radiant Indus Chem Pvt. Ltd.*<sup>12</sup>, the Division bench of Delhi High Court on 25.01.2023 stayed the order passed by the Single bench of the same Court dated 11.01.2023.

The Single judge had ruled that the Plaintiff's mark "Schezwan Chutney" was descriptive in nature and hence the use of the same words by Radiant Chem did not amount to infringement and therefore no injunction was granted in favour of Capital Foods.

Capital Foods appealed against the aforesaid decision. Consequently, the Division bench of the Delhi High Court held that even though the mark under question is descriptive in nature, the mark has acquired secondary significance as shown by the advertisement and sales figures provided by the Appellant-Plaintiff (Capital Foods).

The Division bench also held that the Respondent (Radian Indus) had not only copied the descriptive elements of the Plaintiff's mark but also the stylization, colour combination, get up, trade dress and copyrights in its advertising material. The Division bench further observed that an injunction was normally to be granted in matters of such nature.

This judgment of the Division Bench clarified that even if a mark is descriptive in nature, acquiring distinctiveness by way of extensive advertisement and sales is ground of restricting any third party from infringing the said mark.

### Domain names and Trade Marks

In the matter of *H T Media Limited vs. www.hindustantimes.tech and Anr. (Defendants)*<sup>13</sup>, the Defendant had registered the domain name [www.hindustantimes.tech](http://www.hindustantimes.tech) in its name and were offering services such as online journalism and news publishing, identical to that of H.T. Media. Moreover, the Plaintiff alleged that the Defendants were also engaged in reproducing, publishing and making available the news, articles, stories and columns from the H.T. Media's website on this infringing website without authorization. Accordingly, the Delhi High Court granted an ex-parte ad interim injunction in favour of the Plaintiff. The Court restricted the Defendant from using any website or domain name which is deceptively similar to or consists of the Plaintiff's mark "HINDUSTAN TIMES" or "HT Media".

In a similar case, *Amazon Seller Services Pvt. Ltd. vs. Amazonbuys.in*<sup>14</sup>, the Delhi High Court restrained the Defendant and other rogue websites from using the Plaintiff's trademark AMAZON in their domain names. The Plaintiff had Copyright not only over the website and domain name but also in the overall look and feel of the website. In this case, the Court allowed Amazon Seller to implead another infringer in the course of the proceeding in light of the Dynamic Injunction order in the UTV matter of 2019<sup>15</sup>. The Court ordered for notifications to be issued to call upon various internet and telecom service providers to block access to the Defendants' infringing websites and also disclose the details of the registrant.

Further, in the case of *Fashnear Technologies Private Limited vs. Meesho Online Shopping Pvt. Ltd.*<sup>16</sup> the Delhi High Court, ordered the Cyber Crime Unit, Special Cell, Delhi to investigate similar matters wherein fraudulent domain names were being registered under the marks of well-known and established business houses and their brands and to submit a status report re the same. The Court also ordered that a total of 14 matters concerning similar issue, along with 13 matters that are already under the concerning bench, be listed before the same bench to allow for consolidated and comprehensive directions to police authorities, cyber cells, various banks, National Payment Corporation of India, RBI, MHA, etc.

<sup>12</sup> FAO (OS) (COMM) 16/2023; Division Bench of Delhi High Court

<sup>13</sup> CS(COMM) 352/2022

<sup>14</sup> CS(COMM) 364/ 2022

<sup>15</sup> *UTV Software Communications Ltd. & Anr. v 1337x.to and Ors.* CS(COMM) 724/2017

<sup>16</sup> CS(COMM) 475/2022

## **Recycle and Reuse *but beware, terms and conditions apply***

In the case of *Anheuser-Busch LLC vs. Surjeet Lal and Anr.*<sup>17</sup> the Delhi High Court dealt with the matter wherein the Defendant recycled and reused glass bottles embossed with the Plaintiff's trademark BUDWEISER to sell their own manufactured beer under the brand names "BLACK FORT" and "POWER COOL".

The Defendants, Surjeet Lal and Anr, claimed to have acquired the bottles embossed with the Plaintiff's trademark though the recycle chains such as from the *kabadiwalas*. The Defendant was restrained from using, manufacturing or selling the mark BUDWEISER, even in recycled bottles, or in any manner whatsoever, in respect of beer manufactured and sold by the Defendants since even the use of recycled 'BUDWISER' beer bottles for the products being sold under different marks would clearly constitute as "*use in the course of trade*". The bottles being recycled, make no difference insofar as the question of infringement or passing off was considered.

## **Imposing Cost as a deterrent**

Indian Courts have passed several stringent actions against vendors and entities dealing in Counterfeit products and have begun to impose heavy costs. It is yet to be seen if these costs will pose as a deterrent to the counterfeiters.

The Delhi High Court, in the matter of *Imagine Marketing Pvt. Ltd. vs. M/S Green Accessories and Ors.*<sup>18</sup>, granted monetary damages of Rs. 15 lakhs in favour of the Plaintiff, owner of trademark 'BOAT'. The order was passed on account of having found various counterfeit products at the Defendants' premises during inspections made by the Court appointed Local Commissioners.

Delhi High Court permanently restrained a local trader in Delhi from manufacturing and selling counterfeit Woodland products in the case of *Aero Club vs. Bhawna Trading Co. and Anr*<sup>19</sup>. Considering the quantum of the infringing products seized by the Local Commissioner, the Court ordered the Defendants to pay to the Plaintiff a sum of Rs. 5 lakhs within three (3) months.

## **D. Trade Dress**

### **Not just the brand name, the look and feel too**

In highly competitive markets such as those with respect to fast moving consumer goods (FMCG), protecting ones Intellectual Property Rights becomes of utmost important. Indian Courts see a large number of cases wherein the subject matter pertains to infringement of trade dress.

One such as is the case of *M/S Blue Heaven Cosmetics Pvt. Ltd. vs. Shivani Cosmetics*<sup>20</sup>, the Delhi High Court ordered the Defendant to pay Rs. 10 lakhs as damages to the Plaintiff. An additional amount of Rs. 2 lakhs was also awarded to the Plaintiff as costs. In the said matter, the Defendant employed trade dress similar to that of the Plaintiff. The Plaintiff used the trade dress in conjunction to the brand name "BLUE HEAVEN" whereas the Defendant used it under the brand name "CANDY" as shown below:

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<sup>17</sup> CS(COMM) 1305/2018

<sup>18</sup> CS(COMM) 564/2020

<sup>19</sup> CS(COMM) 680/2021

<sup>20</sup> CS(COMM) 702/2021



# IP FERVOUR



Another such case is of *Mondelez India Foods Pvt. Ltd. vs. Neeraj Food Products*<sup>21</sup>, the Delhi High Court permanently injuncts the Defendants from using the trade dress that is deceptively similar to the Plaintiff's trade dress. The Delhi High Court awarded actual cost of Rs. 15,86,928 in favour of the Plaintiff along with Rs. 10 lakhs in damages. The Plaintiff used the trade dress with respect to its product under the brand name "GEMS" whereas the Defendant used a similar trade dress for its product "JAMES BOND" as shown below:



<sup>21</sup> CS(COMM) 393/2018

### **E. Counterfeit medicines and India: A Global issue**

India being one of the largest exporters of Medicines in the world, is also facing the problem of counterfeit drugs in its extensive supply chains. Over the last several months, India has faced severe backlash over the deaths in several parts of world, such as Gambia and Uzbekistan, due to the counterfeit medicines exported from India.

In light of the above and the growing concern from both National and International health authorities, the India Government announced that it shall undertake nation-wide raids against manufacturing companies who are not following the legal standards.

The Indian Government has also formed a four-member panel to examine the report shared by WHO on the death of Gambian children by the use of India-made medicines. This Committee has been tasked to further advise the Drug Controller General of India (DCGI) re the next steps to be taken to combat the issue.

The Indian Government, along with the local police, is cracking down on companies that have been linked with the production of counterfeit and spurious drugs which led to deaths in various parts of the world.

### **F. Patents**

#### **Patent infringement and Contempt of Court**

In the case of *Pfizer Inc & Ors v Triveni Interchem Private Limited & Ors*<sup>22</sup>, the Delhi High Court imposed a cost on the Defendant for willful and contumacious contempt of court via order dated 24.01.2023. The Defendant had failed to comply with the Court's interim injunction order dated October 21, 2021 whereby the Defendant was restrained from making, selling, distributing, advertising, exporting or importing or in any manner directly or indirectly dealing with any product, which has, as an ingredient, Palbociclib or any pharmaceutically acceptable salt, among other things.

The Defendant was found to be distributing Palbociclib in altered packaging and also advertising the same on their website and third-party website Indiamart in the form of active pharmaceutical ingredients. Moreover, the Defendant filed contradictory Affidavits re the manufacture and sale of Palbociclib. On account of the aforesaid, a cost of Rs. 2 Crore was imposed on the Defendant, due to be paid within 2 weeks of the order. In case of non-payment, the Defendant of custody and detention of 2 weeks in a civil prison.

It is to be noted that the patent on the cancer drug, Palbociclib, expired later in March, 2023 opening avenues for the drug to available in the market at affordable prices in its generic form.

#### **Infringement or Exempted?**

In the case of *Chugai Seiyaku Kabushiki & Anr vs. Fresenius Kabi Oncology Ltd.*<sup>23</sup>, the Plaintiff had filed the present suit for the grant of an injunction against the Defendants on the apprehension that the Defendants were in the process of launching generic Alectinib which infringed the Plaintiff's patent. The Defendants' also have a pending Patent Application no. 201711023632 in respect of "A process for preparing Alectinib or a pharmaceutically acceptable salt thereof".

<sup>22</sup> CS (COMM) 442/2021; Delhi High Court; Order dated 24.01.2023

<sup>23</sup> CS(COMM)481/2021

## IP FERVOUR



The Delhi High Court decreed that the Defendant was not indulged in any activity leading to commercial benefits/ launch of a generic version of the Plaintiff's patented Alectinib or its salt (IN Patent no. 294424). The Defendants' activities were found to be falling under the exemption granted under Section 107A of the Patents Act, 1970<sup>24</sup>.

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<sup>24</sup> Section 107A (Bolar Exemption clause): This Section details acts which are not to be considered as infringement of Patent.