

## Changing face of IP litigation

This note discusses two recent developments that has ramification for IP owners and practitioners and in turn deep impact on IP litigation in India. These changes or developments are to be viewed in the context of Delhi High Court being the center of IP litigation in India for more than a decade. The developments tend to disrupt this arrangement:

- 1) as they narrow the scope of 'forum shopping'.
- 2) making it expensive to file cases at the Delhi High Court by raising of 'pecuniary jurisdiction' from current INR 2 million (20 lacs) to 20 million (2 crore). Thus increasing the court fees by approx 10 times.

## Forum Choice

As per the Civil Procedure Code (CPC), which usually governs civil litigation, the plaintiff can file a lawsuit only in the court within whose jurisdiction the defendant resides (has its place of business) or the court within whose jurisdiction the cause of action arises (the infringing or pirated goods are sold). Section 62(2) of the copyright and Section 134(2) of the Trademarks Act are exception to this Rule. In order to promote creativity and make it convenient for the IP owners, the specific sections in Trade mark Act and Copyright Act permit the Plaintiff to sue alleged infringers before a Court within whose jurisdiction the Plaintiff himself resides (has its office) or carries on business.

In its recent judgment dated July 01, 2015 in *Indian Performing Rights Society Ltd. v. Sanjay Dalia*, the Supreme Court of India was considering territorial jurisdiction of Delhi High Court to try a copyright infringement suit when both parties had their office in Mumbai but the suit was filed at the Delhi High Court on the basis of a branch office of the Plaintiff. The plaintiff had relied upon Section 62(2) of the Copyright Act to invoke territorial jurisdiction of the High Court.

The Supreme Court (apex court of the country) while clarifying and affirming that Section 134 (2) of the Trade Marks Act, 1999 (TMA) and Section 62 of the Copyright Act, 1957 (CA) contain special provisions with non-obstante clause in respect of the provisions of (Section 20 of the CPC), thereby making the limitations under (Section 20 of) CPC inapplicable held the interpretation of statute had to be such that it prevents the mischief of causing inconvenience to either party involved in the suit. In effect, this judgment seems to have brought about more parity between the Plaintiff and the Defendant over the issue of available forum. Thus making it clear if a corporation has a principal office at a place (for e.g. in Mumbai) and cause of action has also arisen at that place (in Mumbai) then suit would be instituted in Mumbai only and not at a distant place where it has a subordinate office and at such place no cause of action has arisen.

The result of this judgment is that the 'forum shopping' that was an effective strategy deployed by many IP owners against obvious infringement, by filing civil actions (for Trademark and/or copyright infringement) at the Delhi High Court although both parties had their office in a state outside Delhi (and at a common location/city) will be curtailed. The strategic reason for IP owners to prefer Delhi High Court over other courts being its pro IP image with many IP savvy judges that would grant ex-parte interim injunctions (on the basis of a *prima facie* case) and appoint local (court) commissioners to search and/or seize the infringing material. This practice, at least initially, will take time to percolate at the courts outside Delhi (and in particular District courts) where it is a common practice to hear a case after the other side is served. Thus *ex parte* orders are an exception. Many practitioners are also wary about going to local courts where Defendant has its place of business or selling goods given the local influence that these parties may yield. Further at local courts practitioners with knowledge of IP are difficult to find making it expensive to litigate requiring time consuming and close co-ordination at every stage.

### **Pecuniary jurisdiction of Delhi High Court**

The Indian Parliament has recently passed the Delhi High Court Amendment Bill, 2015 (Bill) to amend the Delhi High Court Act, 1966. The Bill specifically deals with the issue of 'pecuniary jurisdiction' (the jurisdiction of a court over a suit based on the amount or value of its subject matter) from INR 2 million to 20 million. In other words to bring a lawsuit for IP infringement, it would now have to be valued above INR 20 million and court fees to be paid would come to approx. US\$ 3500. The key objective behind amendment was to reduce backlog of cases at the High Court by transferring them to the District Courts in the National Capital Territory of Delhi. Currently Delhi has six District Courts, any or all of which may be tasked with the additional responsibility to clear the backlog of currently pending cases at the High Court.

With a significant increase in court fees there will be obvious shift in litigation from High Court to the District Court. Further the current cases pending at the High Court with valuation lower than 20 million being transferred to District court (which would mean nearly 90% of the pending cases that are stated to be over 12,000). The Bill also empowers the Chief Justice of the Delhi High Court to transfer pending suits and proceedings before the High Court, to subordinate courts (having pecuniary jurisdiction) within Delhi.

While the clarity has yet to emerge over transfer of cases and which district court (out of six) will receive the cases and how they will be divided, the worry over short to medium term is about readiness of District Court to appreciate nuances of IP law and decide cases in timely and efficient manner.

It is too early to say whether this amendment will prove to be a panacea for all the backlog and delay in pending suits or it portends further cause of worry for litigants. One thing is certain that the comfort of having Delhi High Court hear your case will now come with a hefty price tag.

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