

---

## Commercial courts could signal bright new dawn for trademark disputes

---

*The government has finally given the green light to special courts for adjudicating commercial disputes, including IP disputes. While the new courts will charge higher fees, they should make it possible for cases to be heard much more swiftly*

In an attempt to cut red tape and clear inefficiencies in the legal system, the government has finally given the nod to the creation of special courts for adjudicating commercial disputes up to a specified value. On October 23 2015 the president signed the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015, which provides for the creation of commercial courts, a commercial division and a commercial appellate division in the high courts.

Hitherto, lawsuits involving commercial disputes have been tried by the regular civil courts. The change comes in response to concerns over the pendency of lawsuits and the slow disposal of commercial matters, including disputes over IP rights such as unregistered and registered trademarks, patents, copyrights, designs, geographical indications, domain names and semiconductor integrated circuits (Section 2(c) (xvii) of the ordinance). Commercial courts will have jurisdiction to try all suits and applications pertaining to commercial disputes where the subject matter is worth at least Rs10 million (approximately \$160,000). While litigants to an IP case will have to pay significantly higher court fees under the new system, this will come with many advantages.

### Structure of commercial courts

The ordinance provides for the establishment of:

- commercial courts in each district by the state government (in a total of 29 states), which will come into effect immediately;
- a commercial division – the five high courts which act as the courts of first instance (ie, Delhi, Chennai, Mumbai, Kolkata and Jammu and Kashmir Commercial Divisions) will be established as high courts; and
- a commercial appellate division, which will hear appeals from the commercial courts or the commercial division.

The ordinance has not only created special commercial courts to speedily and effectively resolve commercial disputes, but also amended the Civil Procedure Code of India to speed up the trial process for such disputes. In particular, the following amendments are designed to control undue delays and simplify procedures, curbing the practice of seeking adjournments on no tangible basis.

## Timelines

Strict timelines have been provided for the following activities:

- Arguments must be concluded within six months of the first case management hearing;
- Written arguments must be submitted within four weeks of the oral hearing following revised written arguments – if there is no post-oral hearing, then this should be within one week;
- Judgment must be pronounced within 90 days of the conclusion of arguments;
- Evidence must be recorded on a day-to-day basis;
- Appeals must be filed within 60 days of the decision being issued;
- There will be a six-month period during which an appeal can be decided;
- No adjournments are permitted if the appearing advocate is not present;
- Any application to file additional documents must be made within 30 days of filing suit; and
- All applications seeking leave to deliver interrogatories must be decided within seven days of the date on which they are filed.

## Global best practices

The ordinance adopts the following global best practices.

### *Case management hearing*

The court will hold a mandatory meeting between the parties where it will decide on a timeline for the most important stages in the proceeding (eg, recording of evidence, filing of written arguments, commencement and conclusion of oral arguments). The court is further authorised to pass a wide variety of orders at this hearing to ensure the smooth and effective disposal of the suit.

### *Disclosure, discovery and inspection of documents*

The ordinance sets out detailed procedures regarding disclosure, discovery, inspection, admission and denial of documents. It also has provisions governing verification, with a view to promoting greater clarity, objectivity and efficiency in the proceedings. Such procedures are likely to curtail the current practice of baldly denying even basic pleadings and documents, or having pleadings amended at any stage and for no proper reason.

### *Summary judgment*

Elaborate procedures have been laid down for the summary disposal of cases. Any party can request summary judgment at any stage before the issues are framed. The grounds on which a court can grant summary judgment have also been set out. The ordinance follows the principles of natural justice by requiring both parties to provide their individual explanations, including documentary evidence, as to why summary judgment should or should not be issued.

### ***Costs as deterrent***

The ordinance provides for the imposition of costs against the defaulting party in case of procedural delays in the suit, with clear parameters as to how these should be determined. The ordinance specifically provides that 'legal fees' and 'fees and expenses of witnesses' must be considered when awarding costs to the successful party, thus introducing a culture of actual cost to be imposed on the party.

### **Way forward**

Implementation of the new ordinance will require the four high courts which hear the bulk of IP cases, exercise original jurisdiction or act as the court of first instance (ie, Delhi, Mumbai, Kolkata, Chennai), to designate benches to hear commercial matters and to be constituted as a commercial division and a commercial appellate division. Pending cases where the subject matter is worth less than Rs10 million will be transferred to a district court, unless of course the plaintiff amends the issue and pays additional court fees.

In the short to medium term, no new judges are being appointed to adjudicate matters in the commercial courts or commercial appellate division. Current judges with experience in commercial disputes will be designated to hear matters pertaining to the newly established special courts. Further, more than 16,000 disputes of a commercial nature which do not reach the specified value threshold are pending at the high courts of Mumbai, Delhi, Kolkata and Madras. These will be transferred to the district courts. With the enhanced valuation, it is anticipated that fewer civil suits will be filed at the high courts. The combined impact of this will be that judges should have relatively more time to hear and decide commercial cases in an expedited manner.

### **Summary**

As the various states in India compete with each other to attract investment and showcase their commitment to make it easier to do business, it is expected that the new commercial courts will be open for business soon. Overall, they should be a positive step towards encouraging economic activity and improving the current investment climate.

Vatika Towers  
10th Floor Block-B  
Sector-54  
Golf Course Road  
Gurgaon-122002  
National Capital Region (Haryana)  
India

Tel. +91 124 4655999  
Fax. +91 124 4045047  
Email [info@rnaip.com](mailto:info@rnaip.com)

Copyright © RNA, IP Attorneys