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# Article

## **Method of supplementing animal feed is not a method of treatment, High Court clarifies**

*By Eeshita Das and Dr. Malathi Lakshmikumaran*

The article in this issue of IPR Amicus discusses a recent judgement of the Madras High Court which has held that a method of supplementing animal feed does not qualify as a method of treatment to render the animal free of disease or to increase their economic value or that of their products, as enshrined in Section 3(i) of the Patents Act, 1970. Elaborately discussing the facts of the case, arguments of the parties, and the decision of the Court, the authors highlight that for patent applicants, the judgement provides some direction as to the kind of language that can be used to reduce the chances of receiving an objection under Section 3(i). They also advise that if the applicant intends to pursue a method claim, it is advisable to avoid the use of language such as ‘improving performance in an animal’.

# Method of supplementing animal feed is not a method of treatment, High Court clarifies

In a recent judgement, the Hon'ble High Court of Madras has clarified that a method of supplementing animal feed does not qualify as a method of treatment to render the animal free of disease or to increase their economic value or that of their products as enshrined in Section 3(i) of the Patents Act, 1970 ('Act').

## Introduction

Section 3(i) of the Act, which bars the patenting of '*any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products*' has been the subject of frequent debate during hearings with the Controllers at the Indian Patent Office (IPO) as well as at the High Court level, with several recent judgements clarifying the scope of Section 3(i) of the Act as well as its application in various

By Eeshita Das and Dr. Malathi Lakshmikumaran

contexts. For instance, in *Bayer Pharm Aktiengesellschaft v. Controller General of Patents & Designs, 2024*<sup>1</sup>, the Court clarified that Section 3(i) of the Act is applicable to methods of treatment and not products, in *The Chinese University of Hong Kong and Sequenom, Inc. v. The Assistant Controller of Patents and Designs (2023)*<sup>2</sup>, the Court held that '*the word 'diagnostic' should be limited to diagnostic processes that disclose pathology for the treatment of human beings.*', while there have been more than one judgement stating, in no uncertain terms, that the expression 'treatment of human beings' as recited in Section 3(i) of the Act encompasses any treatment irrespective of its outcome, that is, whether it cures a human of a disease or condition or not.

This article examines a recent judgement issued by the Hon'ble High Court of Madras adding to the list of judgements exploring the interpretation of Section 3(i) of the Act. The High Court, after considering the facts of the case, decided that the refusal of the claimed invention by the Controller (Respondent)

<sup>1</sup> *Bayer Pharm Aktiengesellschaft v. Controller General of Patents & Designs, 2024*, C.A.(COMM.IPD-PAT) 255/2022

<sup>2</sup> *The Chinese University of Hong Kong and Sequenom, Inc. v. The Assistant Controller of Patents and Designs, CMA (PT) No.14 of 2023*



on lack of inventive step under Section 2(1)(ja) of the Act<sup>3</sup> and non-patentability under Section 3(d)<sup>4</sup> and 3(i) of the Act was incorrect and directed that the application be proceeded to grant. This article primarily examines the High Court's interpretation of Section 3(i) of the Act as it pertains to the claimed invention, that is, a method of reducing by 20% to 80% of the main chain degrading enzymes necessary to extract a given amount of the apparent metabolizable energy from a diet comprising feed formulated for a monogastric animal.

## Facts of the case

Kemin Industries, Inc. ('**Appellant/Applicant**') filed a patent application titled 'USE OF FERULIC ACID ESTERASE TO IMPROVE PERFORMANCE IN MONOGASTRIC ANIMALS' bearing an application number 201617013577 ('**Application**'), on 19 April 2016, which is a National Phase application arising out of PCT application number PCT/US2014/062154. The as-filed claim 1 is reproduced below:

*'A method of improving the apparent metabolizable energy from a diet and performance in an animal, comprising the step of adding an efficacious amount of a ferulic acid esterase to the diet supplemented with or without main chain degrading enzymes.'*

A First Examination Report ('**FER**') with a statement of objections was issued against this Application on 27 September 2019. However, no objection under Section 3(i) of the Act was raised by the Controller (Respondent). Amended claims were filed along with a response to the FER on 27 March 2020, wherein claim 1 was amended to recite:

*'A method of improving the apparent metabolizable energy from a diet and performance in an animal, comprising adding 20 U/kg to 200 U/kg of a ferulic acid esterase produced from bacteria to the diet of a monogastric animal supplemented with main chain degrading enzymes, wherein the main chain degrading enzymes are cellulose, xylanase, glucanase and amylase, and further providing that the main chain degrading enzymes are reduced between 20 and 80 percent.'*

The Controller issued a Hearing Notice on 6 May 2021, scheduling the hearing on 7 June 2021. The Applicant filed the written submission on 21 June 2021 along with amended claims. The Applicant decided to proceed with a single claim, reproduced hereinbelow:

*'A method of reducing by 20% to 80% of the main chain degrading enzymes necessary to extract a given amount of the apparent metabolizable energy from a diet comprising feed formulated*

<sup>3</sup> [Section 2\(1\)\(j\) in The Patents Act, 1970](#)

<sup>4</sup> [Section 3\(d\) in The Patents Act, 1970](#)

*for a monogastric animal, comprising the step of adding 20 U/kg to 200 U/kg of a ferulic acid esterase produced from bacteria to the animal feed, wherein the ferulic acid esterase is supplemented with the main chain degrading enzymes, and wherein said main chain degrading enzymes are cellulase, xylanase, glucanase and amylase.'*

On 19 July 2022, the Controller issued a refusal for the Application on the grounds of non-patentability under Section 3(i) of the Act, in addition to lack of inventive step under Section 2(1)(ja) of the Act and non-patentability under Section 3(d) of the Act. The Applicant, aggrieved by the Controller's decision, proceeded to appeal.

### Arguments on behalf of the Appellant and the Respondent

With regard to the refusal under Section 3(i) of the Act, the Appellant's counsel argued that Section 3(i) of the Act is applicable to a process for the treatment of human beings or animals. On the other hand, the refused claim was directed to a method of supplementing ferulic acid esterase (FAE) with the main chain degrading enzymes, cellulase, xylanase, glucanase and amylase in the diet of monogastric animals, that is, a method of supplementing an animal feed and not a method of

treatment. Thus, the claimed invention could not be excluded from patentability under Section 3(i) of the Act.

The Respondent's counsel rebutted these arguments by asserting that the claimed invention was directed to a process for the treatment of animals so as to increase their economic value, thus falling squarely within the scope of Section 3(i) of the Act. According to the Respondent's counsel, a thorough reading of the specification would make it abundantly clear that the use of the claimed invention, i.e., administering the supplemented animal feed to poultry would result in the fattening of the poultry. The counsel additionally relied on *Kymab Limited v. Assistant Controller of Patents & Designs, 2024*<sup>5</sup> ('*Kymab*') to support their contention with respect to the interpretation of Section 3(i) of the Act.

The Appellant's counsel, by way of rejoinder, reiterated that the exclusions under Section 3(i) of the Act are restricted to methods of treatment of animals, while the claimed invention is not a method of treatment of an animal, adding that the facts of *Kymab* were different from those of the claimed invention.

With respect to the objection under Sections 2(1)(ja) of the Act, the Appellant's counsel argued that the claimed invention

<sup>5</sup> *Kymab Limited v. Assistant Controller of Patents & Designs, 2024:MHC:3498*

involved the usage of a combination of cellulase, xylanase, glucanase and amylase, along with FAE, which was not taught or disclosed in any of the cited documents, providing experimental data to show the synergistic effect of the combination of these four enzymes with FAE. Further, in order to rebut the objection raised under Section 3(d) of the Act, the Appellant's counsel argued that the claimed invention involved more than one new reactant, and hence did not attract any objection under Section 3(d) of the Act. The Respondent's counsel, in reply, argued that the prior arts taught the combination of FAE and xylanase, which read on the claimed invention and rendered it non-inventive under Section 2(1)(ja) of the Act. Further, the Respondent's counsel stated that the claimed invention related to a mere use of a known process, and hence fell within the ambit of Section 3(d) of the Act. The Appellant's counsel, in the rejoinder, referred to data in the specification to show that the unexpected effects were clearly demonstrated therein and the Appellant exercised ingenuity in picking four enzymes and combining them with FAE.

## Discussion and decision

The High Court began by revisiting the interpretation of Section 3(i) of the Act provided in *Kymab* with respect to

animals. In *Kymab*, the High Court had reiterated that Section 3(i) of the Act contained the following two limbs:

- (a) any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings; or
- (b) any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.

Thereafter, the High Court held that the use of the adjective 'similar' qualify the noun 'treatment' in the second part of Section 3(i) of the Act indicates that the form of treatment of animals could be medicinal, surgical, curative, prophylactic, diagnostic or therapeutic, as detailed for human beings in the first part of Section 3(i) of the Act. Against this background, the High Court held that the claimed invention is directed towards a method of extracting metabolizable energy more efficiently from animal feed by deploying FAE supplemented with the four main chain degrading enzymes. In other words, the claimed invention was directed towards a method of improving the availability of metabolizable energy in the animal feed. The High Court held that this is clearly not a method of treating animals, as exemplified by the illustrations in *Kymab*, or even otherwise. The High Court emphasized that

Section 3(i) of the Act cannot be extended to a method of supplementing an animal feed merely because the use of such animal feed may ultimately result in improving the economic value of the animal/poultry to which such feed is administered or that of animal/poultry products such as meat or chicken. Had the claimed invention been directed to a method of administering a drug or feed to an animal or bird, so as to fatten the same and thereby increase either its economic value or that of the meat, it would fall within the scope of Section 3(i) of the Act.

With regards to the refusal of the application under Sections 2(1)(ja) of the Act, the High Court held that the prior arts did not disclose or teach the combination of enzymes which formed the base of the claimed invention and the deployment of a particular combination of enzymes by the Appellant constituted an inventive step. Further, the High Court opined that the claimed invention is in respect of a new process and deploys more than one new reactant. Thus, the claimed invention was eligible for protection under Section 3(d) of the Act.

In view of these facts, the High Court concluded that the claimed invention did not fall within the ambit of Section 3(i)

of the Act, as well as Sections 2(1)(ja) and 3(d) of the Act, setting aside the refusal order and directing the grant of the application.

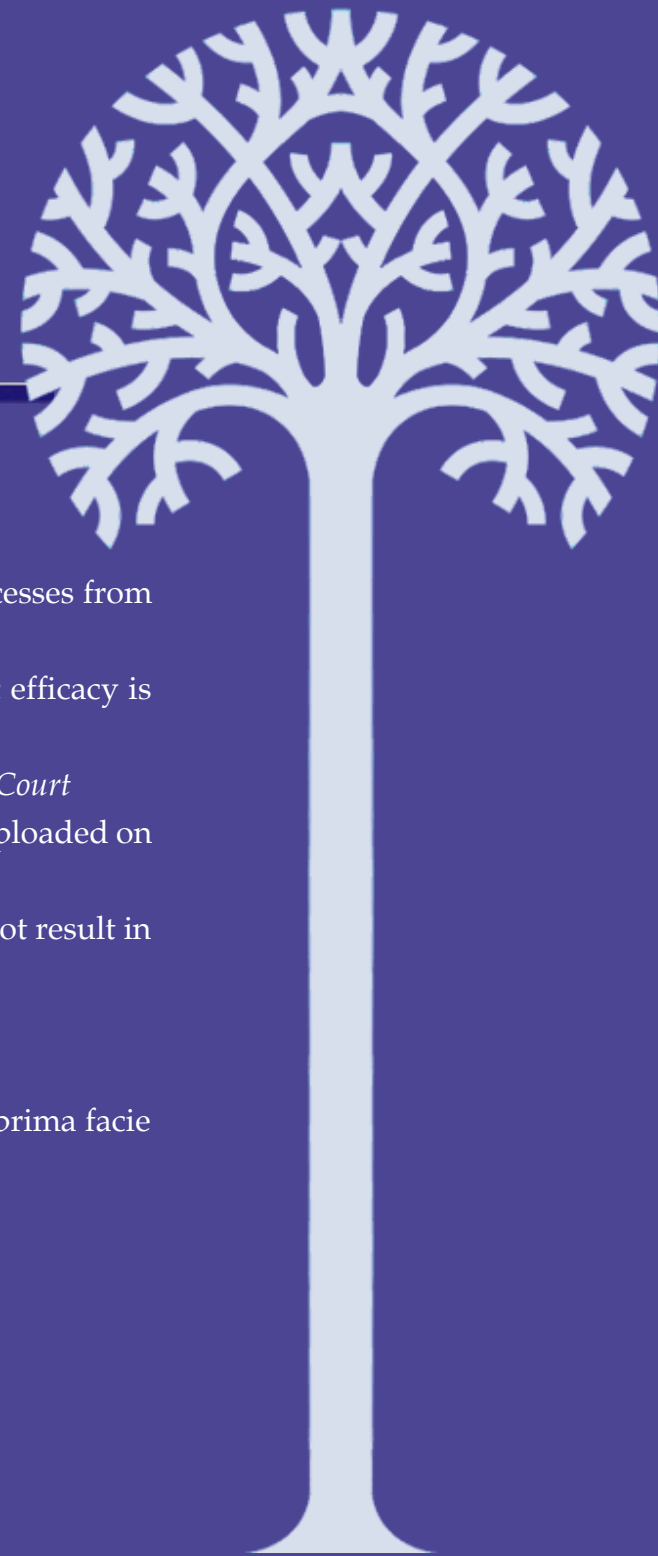
## Conclusion

This case is a comprehensible demonstration of the application of Section 3(i) of the Act in view of the order in *Kymab* for inventions directed to methods of treatment of animals. For Applicants, the judgement provides some direction as to the kind of language that can be used to reduce the chances of receiving an objection under Section 3(i) of the Act. In the instant case, if the PCT claims were directed to an animal feed supplemented by a panel of enzymes, the invention would undoubtedly fall outside the ambit of Section 3(i) of the Act. Even if Applicants intend to pursue a method claim, it is advisable to avoid the use of language such as 'improving performance in an animal'. This order gives clear guidance to the Controllers and Applicants in formulating patentable subject matter involving supplementation of animal or bird feed.

**[The authors are Associate and Executive Director, respectively, in IPR practice at Lakshmikumaran & Sridharan Attorneys]**



# Ratio Decidendi



- Registration as copyright society or being a member of such society whether mandatory to be able to issue license for exploiting assigned copyrighted work – Supreme Court stays Delhi High Court decisions
- Patents – Exclusion under Section 3(d) only applies to a single know process – Combining processes from multiple prior arts not leads to exclusion under Section 3(d) – *Madras High Court*
- Patents – Finding of ‘mere admixture’, without considering experimental data and therapeutic efficacy is fatal – *Calcutta High Court*
- Patents – Section 3(b) is the intent principle and not the effect or harm principle – *Calcutta High Court*
- Patents – Pre-grant opposition is not maintainable after grant of patent, even if the same is not uploaded on official website – *Delhi High Court*
- Patent not rejectable under Section 3(m) merely because it is a pure method claim, which does not result in a product – *Madras High Court*
- Trademarks – Registration of mark ‘Parliament’ is not prohibited – *Delhi High Court*
- Mark ‘BharatStamp’ is inherently distinctive and can be registered – *Delhi High Court*
- Order passed on an application for temporary injunction is an exercise of discretion and is not prima facie adjudication – *Bombay High Court Larger Bench*

## Registration as copyright society or being a member of such society whether mandatory to be able to issue license for exploiting assigned copyrighted work – SC stays Delhi HC decisions

The Supreme Court of India has stayed the order passed by the Division Bench of the Delhi High Court which had held that issuance or grant of licenses for exploiting of works in respect of which a person claims copyright can *prima facie* only be done if such person is a registered copyright society or a member of a registered copyright society.

The Division Bench had held that the requirement, as envisaged by Section 33(1), which prohibits the carrying on of business of issuing or granting licences except under or in accordance with the registration under Section 33(3) to a copyright society, is absolute and non-negotiable. *The detailed summary of the Delhi HC decision impugned before the Apex Court was covered in April 2025 issue of LKS IPR Amicus, as available [here](#).*

It may be noted that while staying the DB decision, the Supreme Court in its decision 21 April 2025 has also clarified that notwithstanding the order of stay, the order dated 3 March 2025 passed by the Single Judge will not operate. The Single Judge Bench had then held that the second proviso to Section 33(1) of

the Copyright Act, 1957 does not bar owners to issue licences for sound recordings. *The summary of the Single Judge decision was covered in March 2025 issue of LKS IPR Amicus, as available [here](#).*

*[Phonographic Performance Limited v. Azure Hospitality Private Limited – Order dated 21 April 2025 in SLP No. 10977/2025, Supreme Court]*

## Patents – Exclusion under Section 3(d) only applies to a single known process – Combining processes from multiple prior arts not leads to exclusion under Section 3(d)

The Madras High Court has observed that exclusion under Section 3(d) of the Patents Act, 1970 only applies to a single known process that also does not result in a new product or employs a new reactant. The Patent Office, while rejecting the grant of patent, had combined processes from multiple cited prior arts to sustain an objection under Section 3(d).

Holding such conclusion of the Department/Patent office as unsustainable, the Court was of the view that by combining or fusing processes described in multiple prior arts, it cannot be concluded that a claimed invention merely uses a known process. It was observed that unless two or more known

processes had been combined earlier, such process cannot be considered as a known process.

[*Annikki GMBH v. Assistant Controller of Patents and Designs* – Judgement dated 24 April 2025 in (T)CMA(PT) No.70 of 2023, Madras High Court]

### **Patents – Finding of ‘mere admixture’, without considering experimental data and therapeutic efficacy is fatal**

The Calcutta High Court has remanded the matter for reconsideration in a case where the finding of the Patent Office, that the entire invention was a mere admixture of known substances (for exclusion under Section 3(e) of the Patents Act, 1970), was based only on numbers without considering the experimental data as a whole and the therapeutic efficacy of the invention. The invention was an agrochemical relating to a combination of fungicides comprising of succinate dehydrogenase inhibitor fungicides, along with at least another fungicide selected from ergosterol biosynthesis inhibitor fungicide, a quinone outside inhibitor fungicide, plus multi-site fungicide.

Setting aside the decision of the Patent office, the Court also noted that the Patent office had also failed to acknowledge the successive increase in the effectiveness of the invention over

crops and the reversal of percentage of gradual decay of the same over the years which appeared from the data provided in a Table of the application, thus overlooking the synergistic effect provided by the invention. The Court also observed that the impugned order failed to appreciate that even a minimum of 4-5% increase in therapeutic efficacy of an invention could have a significant long-term impact when considered on a larger scale, and that it also demonstrated a significant increase in disease control.

[*UPL Ltd. v. Controller of Patents Designs and Trademark* – Judgement dated 30 April 2025 in IPDPTA/2/2025, Calcutta High Court]

### **Patents – Section 3(b) is the intent principle and not the effect or harm principle**

The Calcutta High Court has set aside the rejection of grant of patent for an invention titled ‘A device and method for generating and delivery of a Nicotine Aerosol to a user’, where the invention provided a parallel design device that delivers nicotine to the users without burning or heating of tobacco and/or nicotine.

The Patent office had by taking into consideration the ICMR White Paper publication, the Drugs and Cosmetics Act, 1940 and

Rules, 1945 framed therein and other Acts, including the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019, concluded that the device was an e-cigarette and thus was not patentable as excluded under Section 3(b) of the Patents Act, 1970.

The High Court in this regard noted that the 'Patents Manual' does not include tobacco/smoking/ nicotine related inventions at the time of giving examples of inventions that fall within the ambit of Section 3(b) of the Patents Act. Further, the Court also observed that as per Article 27.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Article 4quarter of the Paris Convention, the grant of patent is not to be refused on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions and limitations resulting from the domestic law. It was also noted that Section 3(b) is the intent principle and not the effect or harm principle.

Further, taking note of Section 83 of the Patents Act, the Court also observed that the patents granted do not in any way prohibit Central Government in taking measures to protect public health.

Setting aside the impugned order, the Court remanded the matter for reconsideration, as the Court found that the documents on the basis of which the Patent office had refused to grant patent to the appellant were not shared with the applicant and the applicant-appellant was denied an opportunity of hearing to deal with the said documents and the Acts relied upon by the Patent office.

*[ITC Ltd. v. Controller of Patents, Designs & Trademark – Judgement dated 30 April 2025 in IPDPTA No. 121 of 2023, Calcutta High Court]*

### **Patents – Pre-grant opposition is not maintainable after grant of patent, even if the same is not uploaded on official website**

The Delhi High Court has held that pre-grant opposition under Section 25(1) of the Patents Act, 1970 is not maintainable after the Patent Application is allowed and the Patent has been granted by the Controller, particularly, since it has been duly signed and acknowledged so, even if the same is not yet uploaded on the official website of the Indian Patent Office.

In the opinion of the Court, the mere act of ministerial formality for uploading it on the IPO website is immaterial, as the 'date of order' can only be the actual date of passing of the said order and

not the date of uploading. The Court in this regard observed that the 'date of order' remains unchanged and unaffected by the subsequent date/ act of uploading.

It was also of the view that the order passed and also signed by the Controller prior in point of time to the filing of the pre-grant opposition, was final and hence the non-uploading of the patent on the website cannot take away the statutory right of the applicant by a subsequent filing of a pre-grant opposition.

Further, non-generation of the Patent Certificate in favour of the applicant-petitioner was also held as inconsequential by the Court while it also noted that the applicant cannot be made to suffer for the delay in uploading the order due to systemic restrictions, etc., at the end of the Patent office.

The High Court in this regard also observed that the Controller had become a Functus Officio after passing the order for grant of patent and thus could not have accepted the application for pre-grant opposition.

*[Vertex Pharmaceuticals Inc. v. Controller General of Patents, Design, Trademark and Geographical Indications – Judgement dated 30 April 2025 in W.P.(C)-IPD 10 & 12/2024, Delhi High Court]*

## **Patent not rejectable under Section 3(m) merely because it is a pure method claim, which does not result in a product**

The Madras High Court has rejected the contention of the Patent Office that patent cannot be granted in a pure method claim which does not result in a product. The Patent Office had relied upon Section 3(m) of the Patents Act, 1970 to deny the patent. The invention here was titled 'Method of Preheating and Controlling the Temperature of Fuel injected into a Combustion Engine'.

The Court observed that Section 3(m) is intended to exclude the following: mere scheme of performing a mental act; mere rule of performing a mental act; mere method of performing a mental act; or method of playing a game. It thus was of the view that if the construction placed on Section 3(m) by the Patent Office was accepted, all method claims will stand excluded under Section 3(m). The High Court in this regard also observed that the Patents Act extends patent protection not only to product claims but also to process claims.

Examining the patent claim which pertained to pertains to a method of pre-heating and controlling the temperature of fuel injected into a combustion engine, the Court was of the view that



the method claim was in respect of a claimed inventive process comprising a series or sequence of steps and cannot be characterized as a mere method of performing a mental act.

The dispute was, however, remanded to re-examine whether the claimed invention involves an inventive step.

[*Robert Bosch Limited v. Deputy Controller of Patents and Designs – Judgement dated 25 March 2025 in CMA(PT)/1/2024, Madras High Court*]

### Trademarks – Registration of mark ‘Parliament’ is not prohibited

The Delhi High Court has held that the use and registration of the mark ‘PARLIAMENT’ / PARLIAMENT-formative marks are not prohibited under the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 and, consequently, do not fall foul of Section 9(2)(d) of the Trade Marks Act, 1991.

The Court perused Entry 17 of the Schedule of the Emblems and Names (Prevention of Improper Use) Act according to which the prohibition is in respect of ‘name of the Parliament or the Legislature of any State’. It was hence noted that the prohibition is not in respect of the words ‘PARLIAMENT’ or ‘LEGISLATURE’ in itself. The Court in this regard also observed that the word ‘PARLIAMENT’ was used as a noun and not as a

name in the abovementioned Act as the Hindi text used the word ‘SANSAD’.

The Court also noted that the word ‘PARLIAMENT’ is not unique to India as various other countries across the world use the word ‘PARLIAMENT’ to refer to their legislative organs and that the word is a common noun having a dictionary meaning. Further, referring to Article 79 of the Constitution of India, the Court held that it cannot be said that the word ‘PARLIAMENT’ in itself, is used to refer to the Parliament of India.

Also, allowing the appeals of the trademark applicant-appellant, the Court also noted that the appellant was not seeking to use and register the mark ‘INDIAN PARLIAMENT’ or ‘PARLIAMENT OF INDIA’ or even a pictorial representation of the Indian Parliament as a part of the subject marks.

[*Capital Ventures Pvt. Ltd. v. Registrar of Trademarks – Decision dated 29 April 2025 in C.A.(COMM.IPD-TM) 5/2022, Delhi High Court*]

### Mark ‘BharatStamp’ is inherently distinctive and can be registered

Finding the mark ‘BharatStamp’ as inherently distinctive, the Delhi High Court has held that the same is eligible to proceed for registration. The Trademark Registry’s objection under Section

9(1)(a) of the Trade Marks Act, 1999, stating that ‘the mark is non-distinctive and as such not capable of distinguishing the goods of one person from the others’, was thus set aside.

The appellant had sought registration under Class 9 and contended that the word does not directly veer attention of a person to the concept of digital stamping which is the core nature of appellant’s product.

The Court in this regard noted that the mark is a composite singular mark which has to be taken/ read as a whole; is neither a colloquial term nor can be found in the dictionary; does not convey any connection with the goods and/ or services for which it is sought to be granted registration to anyone, much less, the average consumer; and has no meaning when read/ taken as a whole. It was thus held that the mark is purely a self-created, arbitrary and fanciful word coined by the appellant-applicant.

Rejecting objections under Section 9, the Court also noted that even though the mark ‘BharatStamp’ was filed on a ‘proposed to be used’ basis, the same can acquire distinctiveness on or before it is granted registration subsequently.

[*Grey Swift Private Limited through Mr. Shivam Singla v. Registrar of Trade Marks – Judgement dated 16 April 2025 in C.A.(COMM.IPD-TM) 18/2024, Delhi High Court*]

It may be noted that a similar relief was provided by the High Court in another decision dealing with the mark ‘Crossrelief’ used in relation to medicinal, pharmaceuticals, and veterinary preparations. [*Mankind Prime Labs Pvt. Ltd. v. Registrar of Trade Marks – Judgement dated 16 April 2025 in C.A.(COMM.IPD-TM) 7/2024, Delhi High Court*]

### **Order passed on an application for temporary injunction is an exercise of discretion and is not *prima facie* adjudication**

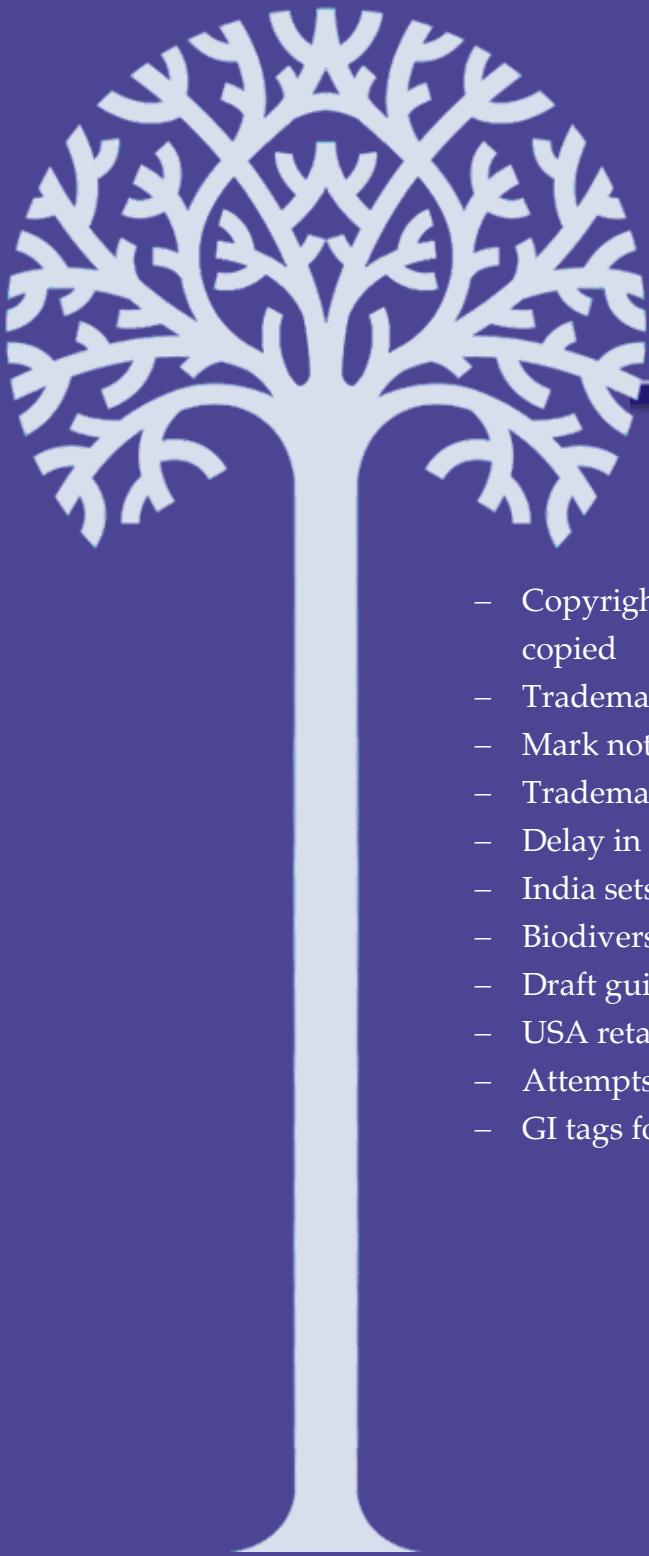
The Larger Bench of the Bombay High Court has held that an order of temporary injunction does not cease to be a discretionary order merely because the learned motion Judge did not find any *prima facie* case and refused to grant interim restraint order. The 3-Judge Bench was thus of the view that the Division Bench (‘DB’) decision in *Colgate Palmolive Company v. Anchor Health and Beauty Care Pvt. Ltd.* [2005(1) Mh.L.J. 613] correctly holds that in the matter of temporary injunction, the Court does not adjudicate on the subject matter or any part of it on merits and considers the application for temporary injunction

in the light of well-known principles and exercises its discretion weighing all relevant consideration without any expression of opinion on merits of the matter.

Earlier, the matter was referred to the Larger Bench by the DB on the question whether order passed on an application for temporary injunction is *prima facie* adjudication and not an exercise of discretion. The DB had noted that irreconcilable conflict of views expressed by Division Benches of the Court in *Colgate Palmolive Company v. Anchor Health and Beauty Care Pvt. Ltd.* and *Parksons Cartamundi Pvt. Ltd. v. Suresh Kumar Jasraj Burad* [2012 SCC OnLine Bom 438] as well as *Goldmines Telefilms Pvt. Ltd. v. Reliance Big Entertainment Pvt. Ltd.*

Further, on the question of scope and ambit of an appeal from an order passed by the trial Judge on an interlocutory application pending the disposal of the suit, the Larger Bench held that the Appellate Court has to examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law and the appellate Court may, in a given case, has to adjudicate on facts even in such discretionary orders.

[*UTO Nederland B. V. v. Tilaknagar Industries Ltd.* – Judgement dated 28 April 2025 in Appeal No. 66 of 2012, Bombay High Court]



# News Nuggets

- Copyright infringement in music – Determinative test is whether the soul of the composition has been copied
- Trademark Registry directed to encourage e-filing of documents, affidavits, etc.
- Mark not to be refused registration merely because it consists of combination of numbers
- Trademarks 'Modern' and 'Mardem' are phonetically and deceptively similar, thus causing confusion
- Delay in disposal of patent application violates natural justice
- India sets up panel to review whether copyright law is sufficient to tackle AI
- Biodiversity – New Regulations notified to guide sharing of benefits for use of biological resources
- Draft guidelines on similar biologics released
- USA retains India in 'Priority Watch List' in 2025
- Attempts to secure pharma patents through minor innovations criticized
- GI tags for Meghalaya's Ryndia and Khasi handloom products, and Gajendragad sarees

## Copyright infringement in music – Determinative test is whether the soul of the composition has been copied

The Delhi High Court has held that the song ‘*Veera Raja Veera*’ of the defendant is *prima facie* not just inspired but is identical in Swaras (notes), Bhava (Emotion) and Aural impact (impact on the ear) of the suit composition ‘*Shiva Stuti*’ of the plaintiff, from the point of view of a lay listener. Holding that the defendant’s composition thus *prima facie* infringed the Plaintiff’s rights in *Shiva Stuti*, the Court observed that the adding of other elements may have rendered the impugned song more like a modern composition, but the basic underlying musical work is identical. The Court in *Ustad Faiyaz Wasifuddin Dagar v. A.R. Rahman* [Decision dated 25 April 2025] was in full agreement with the tests of infringement laid down in *Ram Sampath v. Rajesh Roshan* [2008 SCC OnLine Bom 370], according to which, whether the soul of the composition has been copied is the determinative test. Further, according to the Court, test laid down in foreign jurisdictions, cannot be automatically imported into India in the context of musical works as there is a difference between the manner in which Western music is composed, and the Indian music is composed. It was also noted that the selection of the suit composition by the defendant, after obtaining the same from the

singers, who were disciples of the Plaintiff, was deliberate and not accidental.

## Trademark Registry directed to encourage e-filing of documents, affidavits, etc.

The Delhi High Court has directed the Trademark Registry to take necessary steps to encourage, facilitate and incentivize all stakeholders to e-file documents, affidavits, etc. with the Trademarks Registry. The Court observed that considering the space constraints faced by the Registry, the applicants, opponents, their attorneys and agents and all other parties filing documents with the Trademarks Registry should be encouraged to do e-filing. According to the Court, this will also enable a faster processing of the proceedings before the Registry. It may be noted that the High Court in *Raj Vardhan Patodia (HUF) v. Registrar of Trade Marks* [Decision dated 21 April 2025] however observed that the Registry shall have the power to summon originals of the documents filed with the Registry at any later stage.

## Mark not to be refused registration merely because it consists of combination of numbers

The Delhi High Court has observed that a mark cannot be refused registration merely on the grounds that it consists of a



combination of numbers. According to the Court, rather it has to be seen, whether or not, such numeral mark is devoid of any distinctive character. It was noted that Section 2 (1)(m) of the Trade Marks Act, 1999 defines the term 'Mark', as including 'numerals' and any combinations thereof and hence the same are capable of being registered as a trademark, if they fulfil the requirements of registration as provided under the Trade Marks Act. On the facts of the case, the Court in *Vineet Kapur v. Registrar of Trade Marks* [Judgement dated 25 April 2025] observed that the mark '2929' was a coined and arbitrary mark, having no meaning whatsoever with respect to the goods for which it was applied, i.e., cosmetics and skincare.

### Trademarks 'Modern' and 'Mardem' are phonetically and deceptively similar, thus causing confusion

The Delhi High Court has held that the trademarks 'Modern' and 'Mardem' are phonetically and deceptively similar to each other. Observing that the word 'MODERN' ends with an alphabet 'N' whereas 'MARDEM' has an 'M' which created a similar rhythm, the Court in *Modern Snacks Private Limited v. Kamran Ghani* [Judgement dated 25 April 2025] held that the

marks will confuse the general public and consumers, especially as the marks are not in any vernacular language and both the petitioner and respondent were located in the same area in Hindi speaking belt. According to the Court, although a critical comparison of the two marks might disclose some differences, a purchaser of average intelligence would definitely be deceived by the overall similarity of the two names.

### Delay in disposal of patent application violates natural justice

The Calcutta High Court has observed that delay in disposal of application for grant of patent not only violates the principles of natural justice but also make mockery of the entire procedure for grant of patent. The case involved rejection of patent application after more than 18 years.

The Court also observed that despite the changes in 2005 in the provisions to simplify and rationalize the procedure for grant of patents so that the same could be made more user friendly, delay in such matters cripples the objects of the Patents Act, 1970.

While remanding the matter for reconsideration, the Court in *BASF SE v. Joint Controller* [Judgement dated 7 March 2025] also set aside the findings of the Patent office in respect of inventive

step, Section 3(d) and the insufficiency of disclosure. The Court in this regard noted that lack of inventive step and insufficiency of disclosure are antithesis to one another.

## India sets up panel to review whether copyright law is sufficient to tackle AI

India has set up a panel to review if existing copyright law is sufficient to tackle AI-related disputes. According to *Reuters* new report, as available [here](#), the memo, which is not public, said the commerce ministry has set up a panel of eight experts to examine issues related to AI and their implications for India's copyright law. The experts have been tasked to 'identify and analyze the legal and policy issues arising from the use of artificial intelligence in the context of copyright', the memo added.

## Biodiversity – New Regulations notified to guide sharing of benefits for use of biological resources

The National Biodiversity Authority has on 29 April 2025 issued Biological Diversity (Access to Biological Resources and Knowledge Associated thereto and Fair and Equitable Sharing of Benefits) Regulations, 2025. These Regulations are in supersession of its earlier Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing

Regulations, 2014. As per news reports on *Down To Earth*, as available [here](#), the regulations will guide the sharing of benefits for the use of biological resources, including digital sequence information or knowledge associated with it. The notification is available [here](#).

## Draft guidelines on similar biologics released

The Biological Division in the Central Drugs Standard Control Organisation under the Directorate General of Health Services has on 6 May 2025 released draft Guidelines on Similar Biologics: Regulatory Requirements for Marketing Authorization in India, 2025. According to the draft Guidelines, as available [here](#), the current revision principally focuses on strengthened orthogonal analytical tools and in vitro studies to establish similarity between the similar biologic product and Reference Biological Product. The salient features for the new guidelines would include introduction of scientific considerations and key principles for licensing of similar biologics; revised pathway for approval of similar biologics in India; new analytical methodologies for establishing analytical similarity; and elaborative list of in vitro studies, etc. Comments have been invited from the stakeholders within 30 days.

## USA retains India in 'Priority Watch List' in 2025

The USA has retained India in its 'Priority Watch List' even in 2025. The Special 301 Report by the Office of the United States Trade Representative, as available [here](#), notes that India has remained inconsistent in its progress on intellectual property (IP) protection and enforcement. According to the Report, among other concerns, the potential threat of patent revocations and the procedural and discretionary invocation of patentability criteria under the Indian Patents Act impact companies across different sectors. The Report also states that patent applicants generally continue to confront long waiting periods to receive patent grants and excessive reporting requirements.

On the positive side, the Report commends the steps taken by India to improve IP Office operations and procedures. It also notes that India made meaningful progress to promote IP protection and enforcement in some areas and took steps to partially address long-standing issues with patent pre-grant opposition proceedings and cumbersome reporting requirements by notifying the Patents (Amendment) Rules, 2024. The United States also welcomed the establishment of additional Intellectual Property Divisions at the different High Courts.

## Attempts to secure pharma patents through minor innovations criticized

The Indian Minister of Commerce and Industry has criticized the attempts by some companies to secure a pharma patent through minor innovations. According to a *Good Returns* news report, as available [here](#), the Minister stated that such practices could limit access to affordable medicines for millions. This practice, known as evergreening, involves making minor modifications to existing drugs to secure new patents.

## GI tags for Meghalaya's Ryndia and Khasi handloom products, and Gajendragad sarees

Meghalaya's indigenous textile, 'Ryndia,' has secured the prestigious Geographical Indication (GI) tag for its handwoven hand-spun, naturally dyed, organically produced, and ethically sourced fabric, along with Meghalaya handloom products. See *Times of India* news report [here](#). Further, according to another news item by *the New Indian Express*, as available [here](#), North Karnataka's famed 'patteda anchu' sarees, much sought after for their distinctive border lines, have received the Geographical Indication tag recently.

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