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COMPARATIVE ANALYSIS OF INTELLECTUAL PROPERTY RIGHTS (IPR) IN INDIA AND THE USA: CURRENT CHALLENGES AND OPPORTUNITIES FOR GROWTH

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Introduction

Intellectual Property Rights (IPR) serve as essential tools for encouraging innovation, protecting creators, and promoting economic growth. IPR encompasses patents, trademarks, copyrights, trade secrets, and geographical indications, which help innovators and businesses secure recognition for their efforts. While the United States (USA) has effectively leveraged its robust IPR regime to excel in sectors such as pharmaceuticals, biotechnology, and entertainment, India, despite its knowledge base, continues to lag in global innovation and IPR enforcement. This article provides a comparative analysis of IPR regimes in India and the USA, highlights the gaps in India's IPR landscape, and proposes measures to enhance its global position.

1. Current Position of IPR in India and the USA in the Global Industry

The United States boasts a well-established IPR framework, ensuring strong protection for patents, trademarks, copyrights, and trade secrets. As per the 2020 World Intellectual Property Indicators (WIPO), the USA contributed 352,013 patent filings, accounting for approximately 19% of global filings. This success is driven by the USA's extensive research and development (R&D) activities, particularly in high-tech sectors such as pharmaceuticals, biotechnology, and information technology (IT).¹

India ranks 42 out of 55 in International Intellectual Property Index.

Conversely, India filed only 45,444 patents in the same period, representing less than 2% of global filings. Most of India's patents come from the pharmaceutical sector, especially in generic drugs, where India has become a world leader. However, the country struggles to foster

¹ World Intellectual Property Organization, World Intellectual Property Indicators Report (2020).

innovation and IPR filings in sectors such as software and electronics.² India's reliance on reverse engineering and affordable versions of patented products has raised concerns regarding its alignment with international norms.³

Country Patents Filed (2020) Major Contributing Sectors	
USA 352,013	Pharmaceuticals, IT, Biotechnology
India 45,444	Pharmaceuticals, Traditional Knowledge

2. Lacunas in India's IPR Regime: Why India Lags in the Global Industry

Despite recent progress, India's IPR regime still suffers from key weaknesses that prevent it from fully realizing its potential in the global market.

2.1 Weak Enforcement Mechanisms

India's enforcement of intellectual property is hampered by judicial delays, inadequate police training, and a lack of specialized IP courts. Cases of IP infringement often go unpunished or are significantly delayed, discouraging both domestic and foreign investors.⁴ While the establishment of Intellectual Property Appellate Boards (IPAB) has been a positive step, resolving IP disputes remains slow.

2.2 Low Public Awareness

Many small and medium-sized enterprises (SMEs) in India are unaware of the value of IPR, viewing the patent process as costly and burdensome. This lack of awareness stifles innovation, particularly among smaller businesses and individual inventors who are crucial for economic growth.⁵

2.3 Research and Development Deficiency

India's R&D investment is significantly lower than that of the USA. While India allocates less than 0.65% of its GDP to R&D, the USA invests nearly 2.7%.⁶ This disparity limits India's

² Ibid.

³ Narasimhulu Eppe et al., 'Need of Intellectual Property Rights in India and Other Developing Countries: A Novel Approach for Global Recognition and Economic Development' (2019) National Journal of Advanced Research.

⁴ JudicateMe, 'Comparing and Contrasting the Intellectual Property Regimes in India and US', available at <<https://judicateme.com>> (accessed in September 18, 2024).

⁵ Ibid

⁶ World Intellectual Property Organization, World Intellectual Property Indicators Report (2020).

ability to innovate and compete globally in sectors such as software, electronics, and renewable energy.⁷

2.4 Patent Filing Costs and Complex Procedures

The patent filing process in India, though streamlined in recent years, remains cumbersome for many innovators, especially SMEs. High costs associated with filing and maintaining patents, combined with lengthy approval times, deter innovators from seeking legal protection.⁸

Measures for Improvement

- **Strengthen Enforcement:** Expanding the number of IP courts and enhancing training for law enforcement agencies will lead to faster dispute resolution.⁹
- **Incentivize SMEs:** Tax incentives and subsidies for IP filings will encourage more filings, especially among small businesses.¹⁰
- **Raise Awareness:** Comprehensive educational campaigns at industry and institutional levels will promote a better understanding of the economic benefits of IPR.¹¹
- **Increase R&D Investment:** Increasing public and private investment in R&D is essential to foster innovation in high-value sectors.¹²

3. Differences in IPR Regimes: USA vs. India and Measures to Bridge the Gap

While both India and the USA are signatories to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, their IPR regimes differ significantly in structure and enforcement.

3.1 Patent Systems

- **USA:** The USA operates under a "first-to-invent" system, where the inventor who first documents the invention is awarded the patent. This encourages early filings and fosters an

⁷ Ibid.

⁸ JudicateMe, 'Comparing and Contrasting the Intellectual Property Regimes in India and US', available at <<https://judicateme.com>> (September 18, 2024).

⁹ Stanley M. Besen & Leo J. Raskind, 'An Introduction to the Law and Economics of Intellectual Property' (1991) *Journal of Economic Perspectives*.

¹⁰ World Intellectual Property Organization, *World Intellectual Property Indicators Report* (2020).

¹¹ Ibid.

¹² Narasimhulu Eppe et al., 'Need of Intellectual Property Rights in India and Other Developing Countries: A Novel Approach for Global Recognition and Economic Development' (2019) *National Journal of Advanced Research*.

environment conducive to rapid innovation.¹³

- **India:** India follows a "first-to-file" system, which awards the patent to the first entity that files for protection, often slowing down the process as inventors wait for a product to be fully developed before seeking patent protection.¹⁴

3.2 Enforcement

- **USA:** The USA has a strong enforcement mechanism, with specialized IP courts and significant penalties for infringement, creating a high-risk environment for violators.¹⁵

- **India:** India's judicial delays and lack of deterrents for IP infringement result in weak enforcement, making it difficult to resolve IP disputes efficiently.¹⁶

3.3 Compulsory Licensing

- **India:** India's approach to compulsory licensing, especially in the pharmaceutical industry, prioritizes access to essential medicines over patent protection. This differs from the USA's strict patent enforcement.¹⁷

- **USA:** The USA rarely grants compulsory licenses and maintains strong patent protections for pharmaceutical products.¹⁸

Measures for India

- **Legal Reforms:** India needs to reform its patent laws to facilitate faster approvals and provide stronger protections, particularly in high-tech sectors.¹⁹

- **Improving Enforcement:** India can model its enforcement mechanisms after the USA by creating dedicated IP courts and empowering regulators to resolve disputes efficiently.²⁰

- **Public-Private Collaboration:** The government should encourage collaboration between public institutions and private industries to promote innovation and increase patent filings.²¹

¹³ JudicateMe, 'Comparing and Contrasting the Intellectual Property Regimes in India and US', available at <<https://judicateme.com>> (accessed in September 18, 2024).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Stanley M. Besen & Leo J. Raskind, 'An Introduction to the Law and Economics of Intellectual Property' (1991) *Journal of Economic Perspectives*.

¹⁷ Ibid

¹⁸ World Intellectual Property Organization, *World Intellectual Property Indicators Report* (2020).

¹⁹ Narasimhulu Eppe et al., 'Need of Intellectual Property Rights in India and Other Developing Countries: A Novel Approach for Global Recognition and Economic Development' (2019) *National Journal of Advanced Research*.

²⁰ Ibid.

²¹ Stanley M. Besen & Leo J. Raskind, 'An Introduction to the Law and Economics of Intellectual Property' (1991) *Journal of Economic Perspectives*.

4. Comparative Filing Position of IPRs: India vs. USA

The 2020 WIPO report highlights significant differences between India and the USA in terms of patent filings:

- **USA:** The USA ranked second globally, with 352,013 patent filings in 2020. This leadership is bolstered by the country's extensive R&D infrastructure and strong legal support.²²
- **India:** India's filings, though improved, remain comparatively low. With 45,444 patents filed in 2020, India lags in sectors beyond pharmaceuticals, such as IT and renewable energy.²³

Recommendations to Boost India's Patent Filings

- **Simplify Patent Filing Processes:** Streamlining the filing process and reducing associated costs will encourage more innovators to seek IP protection.²⁴
- **Offer Financial Incentives:** Providing grants, subsidies, and tax breaks will lower the financial burden of filing patents, especially for SMEs.²⁵
- **Support High-Tech Industries:** Promoting innovation in high-tech sectors like artificial intelligence (AI), biotechnology, and renewable energy can push India towards more valuable patent filings.²⁶

CASE LAWS

1. Dominos IP Holder LLC v. Ms Domino Pizza, 2024 SCC OnLine Del 2593:

In the case Domino's IP Holder LLC v. Ms. Domino Pizza, the Delhi High Court, presided by Justice Sanjeev Narula, granted an interim injunction against Defendants 1 to 8 for infringing on the plaintiffs' trademarks "Domino's Pizza" and passing off their products as those of the plaintiffs. Plaintiffs, Domino's IP Holder LLC and Jubilant FoodWorks Limited, alleged that Defendants were operating fake outlets using names similar to "Domino's" (e.g., "Domino", "Dominox", "Dominoz"), particularly on food delivery platforms such as Zomato and Swiggy. The court found that the impugned marks were phonetically and visually identical or deceptively similar to the plaintiffs' registered trademarks, causing consumer confusion and diluting the plaintiffs' goodwill. The court ordered Defendants 1 to 8 to stop advertising and

²² World Intellectual Property Organization, World Intellectual Property Indicators Report (2020).

²³ Ibid

²⁴ Narasimhulu Eppe et al., 'Need of Intellectual Property Rights in India and Other Developing Countries: A Novel Approach for Global Recognition and Economic Development' (2019) National Journal of Advanced Research.

²⁵ JudicateMe, 'Comparing and Contrasting the Intellectual Property Regimes in India and US', available at <<https://judicateme.com>> (accessed in September 18, 2024).

²⁶ Ibid

selling under the impugned marks and directed Zomato and Swiggy to delist these outlets. The case was listed for further hearing on 11th September 2024.²⁷

2. Kaira District Cooperative Milk Producers Union Ltd. v. D.N. Bahri Trading, 2024 SCC OnLine Del 2550:

In the case *Kaira District Cooperative Milk Producers Union Ltd. v. D.N. Bahri Trading*, the Delhi High Court allowed a rectification petition filed by the petitioners, seeking the removal of Respondent 1's trademark. The petitioners, who market their products under the well-known trademark "AMUL," argued that the respondent's mark should be removed due to non-use under Sections 47 and 57 of the Trade Marks Act, 1999. Justice Anish Dayal emphasized that "AMUL" had a nationwide reputation, transcending beyond milk products to a wide range of goods.

The Court found that Respondent 1 failed to provide any documentation proving the use of their mark since 1957, as claimed. The only evidence presented was a single label of an "AMUL Leechi fruit drink," which lacked sufficient details. Consequently, the Court ruled that the ground of non-use under Section 47 was established, and the respondent's mark should be removed from the Trade Marks Register. The Court ordered that these directions be executed within four weeks.

This decision reinforced the enduring significance of the "AMUL" trademark, recognizing its protection across all classes, as it had been declared a well-known mark by the Intellectual Property Appellate Board in 2011.²⁸

3. Haldiram India (P) Ltd. v. Berachah Sales Corpn., 2024 SCC OnLine Del 2265, decided on 2-4-2024:

In *Haldiram India (P) Ltd. v. Berachah Sales Corpn.*, the Delhi High Court granted a decree of permanent injunction in favor of Haldiram India (P) Ltd., restraining the defendants from using the trademarks 'HALDIRAM', 'HALDIRAM BHUJIWALA', or any deceptively similar marks. Justice Prathiba M. Singh also declared 'HALDIRAM' and its oval-shaped logo as well-known marks under Section 2(1)(zg) of the Trade Marks Act, 1999, in respect of food items and restaurants.

The plaintiff, Haldiram India (P) Ltd., had coined the marks 'HALDIRAM BHUJIWALA'

²⁷ *Dominos IP Holder LLC v. Ms Domino Pizza*, 2024 SCC OnLine Del 2593, Order dated 9-4-2024.

²⁸ *Kaira District Cooperative Milk Producers Union Ltd. v. D.N. Bahri Trading*, 2024 SCC OnLine Del 2550, decided on 08-04-2024.

and 'HALDIRAM'S' in 1941, which were used for various food products. The plaintiff discovered that the defendants had applied for similar trademarks and were using the marks in their restaurants and on various food products without authorization. In 2019, the court issued an ex parte injunction, which continued until April 2024. During this period, a court-appointed commissioner found extensive use of the marks by the defendants in promoting products like ghee, salt, and mustard oil.

The court held that the defendants' use of identical marks for identical services (eateries) satisfied the triple identity test for infringement. It also ruled that the defendants acted dishonestly by staying away from the proceedings to avoid producing accounts, thus awarding Rs 50 lakh in damages to the plaintiff and Rs 2 lakh in costs. The court recognized the 'HALDIRAM' mark as well-known throughout India, including West Bengal, based on its cultural and commercial significance. The suit was decided on 2nd April 2024.²⁹

4. Razorpay Software (P) Ltd. v. John Doe, 2024 SCC OnLine Del 2496:

In the case Razorpay Software (P) Ltd. v. John Doe, the Delhi High Court restrained Defendant 1 from using the plaintiffs' trademark "RAZORPAY" or any deceptive variants, which were similar to the plaintiffs' registered trademarks. Plaintiffs, Razorpay Software (P) Ltd. and its group company, alleged that Defendant 1 was committing fraud by falsely representing themselves as recruiters for "Razor Company Ltd." and using the plaintiffs' trademarks to deceive the public into paying money under the pretense of offering jobs. The scam involved fraudulent websites, WhatsApp accounts, and Telegram channels using the "Razorpay" name, causing public confusion. The Court found that Defendant 1 had unauthorizedly used the plaintiffs' trademarks to mislead individuals into believing they were associated with Razorpay, resulting in financial losses. The Court ordered domain registrars and internet service providers to block the fraudulent websites, and platforms such as WhatsApp and Telegram to delete the related accounts and channels. The matter is scheduled for further hearing on 3rd September 2024.³⁰

5. Gujarat Co-operative Milk Marketing Federation Ltd. v. Terre Primitive, CS(COMM) 768 of 2024:

In the case Gujarat Co-operative Milk Marketing Federation Ltd. v. Terre Primitive, the Delhi

²⁹ *Haldiram India (P) Ltd. v. Berachah Sales Corpn.*, 2024 SCC OnLine Del 2265, decided on 2-4-2024.

³⁰ *Razorpay Software (P) Ltd. v. John Doe*, 2024 SCC OnLine Del 2496.

High Court granted an interim injunction in favor of the plaintiffs, Gujarat Co-operative Milk Marketing Federation Ltd. (GCMMF) and their registered proprietor, restraining Defendant 1, Terre Primitive, from using the impugned mark "Amuleti" or any marks deceptively similar to the plaintiffs' well-known trademark "AMUL." The plaintiffs argued that the defendants were selling products under a similar mark that closely resembled "AMUL," causing confusion and misleading the public. The Court found that the plaintiffs had established a prima facie case for granting the injunction, noting the potential for irreparable loss if the defendant's use of the impugned mark continued. The balance of convenience was also in favor of the plaintiffs. Consequently, the Court restrained Defendant 1 from marketing, advertising, or selling products using the impugned mark on physical or online platforms, including social media. Furthermore, the defendant was directed to surrender all goods and materials bearing the impugned mark for destruction, and online listings related to the mark were to be taken down. The matter is scheduled for further hearing on 7th January 2025.³¹

6. RDB and Co. HUF v. HarperCollins Publishers India Pvt. Ltd.

The Delhi High Court ruled on May 23 that the copyright of the film 'Nayak's screenplay belonged to Satyajit Ray and, after his death, to his son Sandip Ray and the Society for Preservation of Satyajit Ray Archives (SPSRA). The Court clarified that Section 17(c) of the Copyright Act does not apply to contracts between equals, limiting its application to relationships akin to apprenticeships. The producer, R.D. Bansal & Co., retains the copyright over the film, while the script and screenplay remain separate as original literary works. The Court denied an injunction against HarperCollins, who sought to novelize the screenplay, impacting future copyright licensing practices for filmmakers.

7. Anil Kapoor vs Simply Life India & Ors and Krishna Kishore Singh v. Sarla A Saraogi and Ors.

On September 20, the Delhi High Court upheld Anil Kapoor's personality rights, restraining over 15 defendants from using his image, voice, or likeness for commercial gain. It clarified that while parody and satire may be protected, tarnishing someone's persona is illegal. The Court also ordered the suspension of domain names misusing Kapoor's identity. In a related case, the Court ruled on July 11 that the right to publicity does not survive after a person's

³¹ *Gujarat Co-operative Milk Marketing Federation Ltd. v. Terre Primitive*, CS(COMM) 768 of 2024, decided on 09-09-2024.

death, denying a claim from the father of late actor Sushant Singh Rajput.

8. Universal City Studios LLC and Ors v. DotMovies.Baby and Ors.

On August 9, the Delhi High Court introduced a "Dynamic+ Injunction" to prevent future copyright infringement, favoring Universal City Studios and others. This mechanism protects not only current works but also future ones from unauthorized online distribution. The ruling expands on traditional dynamic injunctions and is expected to influence future copyright cases, as it may be applied more frequently.

9. Natco Pharma Limited v. Assistant Controller Of Patents

On January 12, the Delhi High Court ruled that pre-grant opponents must be kept informed about the status of patent applications. Natco Pharma contested a patent granted to Novartis for Valsartan-Sacubitril, alleging procedural violations. The Court found the Controller erred by excluding Natco from hearings, emphasizing the principle of natural justice. The ruling, which could affect future patent opposition processes, is currently stayed by a higher court.

10. Syngenta Ltd. v. Controller of Patents

On October 13, the Delhi High Court clarified that a plurality of inventions is required for divisional patent applications, which can be disclosed in either the provisional or complete specification of the parent application. This ruling provides flexibility for patent applicants, impacting the use of divisional patents in strategic applications.

11. Intex Technologies (India) Ltd. v. Telefonaktiebolaget L M Ericsson

In a dispute over Standard Essential Patents (SEPs), the Delhi High Court upheld the validity of Ericsson's SEPs and emphasized that both the SEP holders and implementers have obligations under FRAND terms. The Court justified interim injunctions in SEP disputes when infringement is shown prima facie, considering delays in Indian patent trials.

12. Microsoft Technology Licensing v. Asst. Controller of Patents and Designs and Raytheon Company v. Controller General of Patents and Designs

The Delhi High Court issued rulings on the patentability of Computer Related Inventions (CRIs). In Microsoft's case, the Court recognized a "technical effect" in using two cookies for authentication, despite ambiguities in guidelines. In Raytheon's case, the Court clarified that novel hardware is no longer a requirement under the 2017 CRI guidelines, allowing CRI patent

applications without accompanying new hardware.

13. Turmeric Patent Case

The case highlights the global issue of bio-piracy, where traditional knowledge (TK) of indigenous communities, such as farmers, is exploited by entities seeking patents. Developing nations, rich in TK, are particularly vulnerable due to weak intellectual property laws. A key example is the 1996 turmeric patent controversy, where two U.S. researchers patented turmeric's medicinal use for wound healing. The Council for Scientific and Industrial Research (CSIR) challenged this, proving that turmeric's healing properties were long known in India. The U.S. Patent Office revoked the patent, citing "prior art." This case underscored the importance of novelty in patents and prompted reforms, including the creation of India's Traditional Knowledge Digital Library (TKDL) and the proposal of the Protection of Indian Traditional Knowledge Act, 2016, to safeguard TK from exploitation.³²

Conclusion

India's intellectual property regime has made significant strides, aligning with global standards such as TRIPS. However, persistent challenges remain in enforcement, public awareness, and innovation. To bridge the gap with global leaders like the USA, India must prioritize increased R&D investment, legal reforms, and enhanced enforcement mechanisms. Learning from the USA's success in IPR can provide India with a roadmap for future growth, particularly in high-growth sectors beyond pharmaceuticals, such as technology and renewable energy.

³²SpicyIP Fellowship 2017-18: The Turmeric Battle, available at [*https://spicyip.com/2017/03/spicyip-fellowship-2017-18-the-turmeric-battle.html#:~:text=The%20turmeric%20patent%20was%20revoked,and%20lacked%20an%20inventive%20step*](https://spicyip.com/2017/03/spicyip-fellowship-2017-18-the-turmeric-battle.html#:~:text=The%20turmeric%20patent%20was%20revoked,and%20lacked%20an%20inventive%20step*) (last visited Sep. 22, 2024).