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## MICROSOFT TECHNOLOGY LICENSING LLC V. ASSISTANT CONTROLLER OF PATENTS



Divyendu Verma  
Global Head of Patents Practice

### CASE OVERVIEW:

**Case Number:** CMA (PT) No. 49 of 2023  
[OA/36/2020/PT/CHN]

**Decision Date:** July 3, 2024

**Court:** High Court of Madras

### Background:

Microsoft filed an Indian Patent Application (No. 5584/CHENP/2010) on September 7, 2010, for an invention titled "Associating Command Services with Multiple Active Components." The application was published on April 8, 2011, and a request for examination was filed on March 5, 2012. The First Examination Report (FER), dated March 23, 2018, raised objections on the grounds of lack of inventive step, exclusion from patent protection under sections 3(k) and 3(m) of the Patents Act, 1970, and lack of sufficient disclosure under section 10(5). Microsoft responded to these objections by deleting certain claims and amending others.

### ISSUES RAISED

1. **Lack of Inventive Step:** The claimed invention was deemed obvious over prior art (D1, D2, D3, and D4).
2. **Non-Patentable Subject Matter:** The invention was excluded under sections 3(k) and 3(m) of the Patents Act.
3. **Insufficient Disclosure:** The application did not meet the requirements of section 10(5) of the Patents Act.



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### Arguments

#### (A) Appellant:

- **Inventive Step:** The appellant argued that the invention provided a technical advance over prior art by associating unrelated components of different applications to a common command surface, enhancing system efficiency.
- **Arguments by the Appellant on Patentability under Section 3(k)**

#### 1. Misapplication of the CRI Guidelines:

- The appellant argued that the respondent had erroneously applied the Computer-Related Inventions (CRI) Guidelines 2016, which had been superseded by the CRI Guidelines 2017. The 2017 guidelines emphasize the evaluation of the technical effect and technical contribution of an invention rather than focusing merely on the fact that it involves a computer program.
- The appellant contended that the 2016 guidelines focused too narrowly on the "computer program per se" exclusion, without adequately considering whether the invention produced a technical effect or contribution.

#### 2. Technical Effect and Technical Contribution:

- The appellant stressed that the claimed invention provided a significant technical advance over the prior art by enabling the association of unrelated components of different applications to a common

command surface, which improved system efficiency.

- They argued that this association was not merely a computer program per se but involved a novel and inventive method that resulted in a technical effect improving the interaction between various software applications and hardware components.

### 3. Previous Precedents:

- The appellant cited the *Ferid Allani v. Union of India* case, where the court recognized that computer-related inventions could be patentable if they demonstrated a technical effect or technical contribution.
- They also referred to *Microsoft Technology Licensing LLC v. The Assistant Controller of Patents and Designs*, which underscored the need to focus on the technical advancement offered by the invention.

### 4. Distinguishing from Non-Patentable Subject Matter:

- The appellant highlighted that the claims should be evaluated based on their entirety, including the technical aspects, rather than being disqualified solely because they involve a computer program.
- They argued that the invention provided a practical solution to a technical problem, which is the core criterion for patentability, as opposed to being an abstract idea or algorithm.
- **Sufficiency of Disclosure:** The appellant claimed that the respondent incorrectly brought up sufficiency requirements as grounds for rejection under section 3(k).

### (B) Respondent:

- **Obviousness:** The respondent maintained that the invention lacked an inventive step, arguing that the combination of prior art documents disclosed all technical features of the claimed invention.
- **Section 3(k) Exclusion:** The respondent argued that the claims involved a computer program per se without any inventive hardware, making them non-patentable under section 3(k).

## COURT'S ANALYSIS AND DECISION:

### 1. Evaluation of the CRI Guidelines:

- The court acknowledged the appellant's argument regarding the misapplication of the CRI Guidelines. It noted that the 2017 guidelines provided a more nuanced approach by emphasizing the technical effect and contribution rather than a blanket exclusion of computer-related inventions.
- The court examined whether the Assistant Controller of Patents had adhered to the correct guidelines and appropriately assessed the technical aspects of the invention.

### 2. Technical Effect and Contribution:

- The court conducted a thorough analysis to determine whether the claimed invention produced a technical effect or contribution. It scrutinized the specific technical problem addressed by the invention and the solution provided.
- The court noted that the invention facilitated the interaction between multiple software applications and hardware components through a common command surface, which was a tangible improvement in the functioning of the system.

### 3. Examination of Prior Art:

- The court reviewed the cited prior arts (D1, D2, D3, and D4) to ascertain whether they disclosed the technical features of the claimed invention.
- It was essential to determine if the prior arts were analogous and whether they rendered the invention obvious or devoid of any inventive step. The court emphasized the need to evaluate the prior art in the context of the technical problem solved by the invention.

### 4. Precedents and Legal Framework:

- The court referred to relevant precedents, including *Ferid Allani* and the earlier *Microsoft* case, to underscore the importance of technical effect and contribution in determining patentability.
- It reaffirmed that the mere involvement of a computer program does not automatically render an invention non-patentable under Section 3(k). The focus should be on the inventive concept and the technical problem-solving approach of the claimed invention.

## 5. Distinguishing Patentable Inventions from Abstract Ideas:

- The court highlighted the necessity of distinguishing between patentable inventions that solve technical problems and abstract ideas or algorithms that lack practical application.
- It underscored that the invention should be evaluated as a whole, including the technical aspects, to determine whether it qualifies as a patentable invention under Section 3(k).

### CONCLUSION:

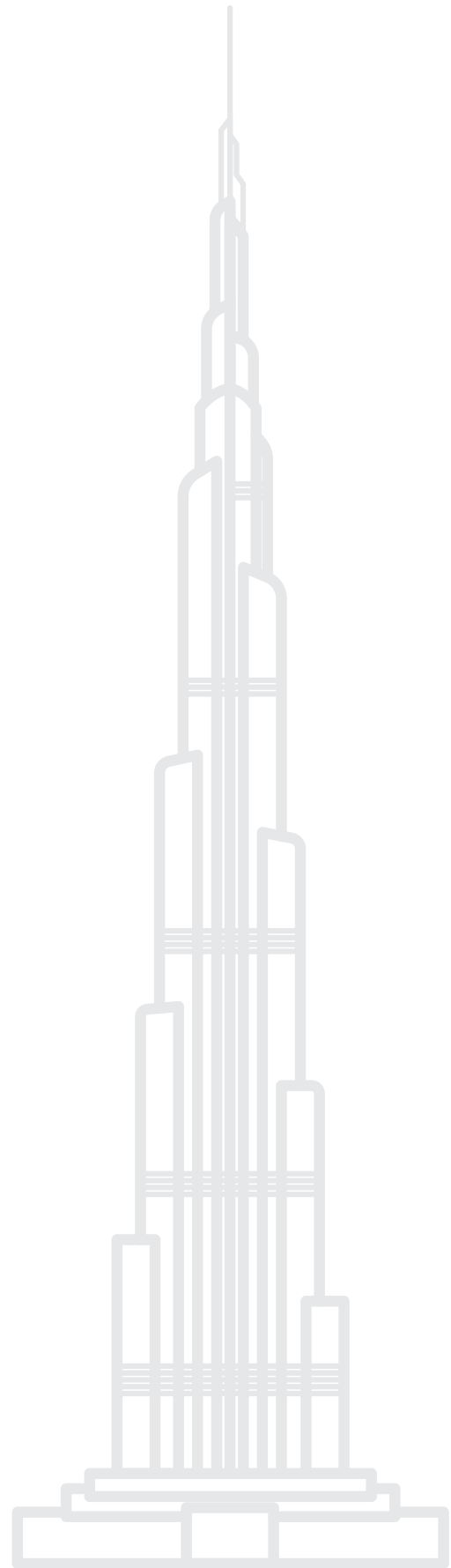
In conclusion, the court's detailed analysis focused on whether the claimed invention by Microsoft Technology Licensing LLC demonstrated a technical effect and contribution, thereby making it patentable under Section 3(k) of the Patents Act, 1970. The court's examination of the CRI Guidelines, prior art, relevant precedents, and the inventive step criteria provided a comprehensive framework for assessing the patentability of computer-related inventions. The court's decision underscored the importance of evaluating the technical merits of an invention rather than disqualifying it solely based on its involvement of a computer program

### Key References cited by the Court:

- Ferid Allani v. Union of India, 2019 SCC Online Del 11867
- Microsoft Technology Licensing LLC v. The Assistant Controller of Patents and Designs, C.A.(COMM.IPD-PAT)29/2022
- Agriboard International LLC v. Deputy Controller of Patents & Designs (2022 : DHC : 1206)
- F. Hoffman-La Roche Ltd v. Cipla Ltd. (2015 : DHC : 9674-DB)

### OUR TAKE:

This case highlights the complexities involved in patent litigation, especially concerning computer-related inventions. The court's analysis of inventive step and patentability under section 3(k) of the Patents Act, 1970, provides valuable insights for future patent applications and disputes.



## THE MULTIFACETED NATURE OF A TRUST



### Abdullah Hasan Manto

Attorney at Law  
Audiri Vox

In Legal context a trust is a foundational concept that has played an incremental role in property ownership and the protection of equitable interests for centuries. Trusts are versatile legal arrangements that allow individuals to transfer property, assets, or wealth to a separate entity, who holds and manages the assets for the benefit of another. This article will provide a comprehensive understanding of the various applications of a trust by examining its significant elements and diverse classifications.

There are three distinct parties in a trust, namely, the settlor, trustee, and beneficiary. The settlor, also known as the trustor, is the absolute owner of the property. A trust is created by the settlor when *'property is vested in a person or persons called the trustees, who are obliged to hold the property for the benefit of other persons called the beneficiaries.'* <sup>1</sup> *There are four significant elements to the trust: that it is equitable, that it provides the beneficiary with rights in property, that it also imposes obligations on the trustee, and that those obligations are fiduciary in nature.* <sup>2</sup>



Image Courtesy: Freepik

Equity serves as a vital element of a trust relationship due to its careful consideration, recognition and administration of the equitable interests involved. It provides beneficiaries with proprietary rights over the trust property as displayed in *Quistclose Investments Ltd 1970*<sup>3</sup> where the beneficiaries claim to the trust property during insolvency outweighed the creditors who had claimed debt collection. Furthermore, a trust relationship imposes fiduciary duties upon trustees which was defined as an obligation of loyalty in *Mothew 1996*<sup>4</sup>. These obligations ensure that trustees safeguard trust property in a bona fide manner with the best interests of the beneficiaries. Equity is an inherent part of all trusts underlying the legally enforceable equitable rights of beneficiaries and the fiduciary duties of the trustees to act with integrity in accordance with the settlor's intentions. Simply put, a trust relationship divides the legal and equitable ownership of property, amongst distinct parties, each with their own clear rights and obligations.

Although numerous types of trusts are available thereby catering to various distinct purposes, generally all trusts can be classified as either expressed or implied. Expressed trusts are formed by the settlor inter vivos or testamentary<sup>5</sup>. These trusts may be private, meaning that the beneficiaries could be a private individual or group of people; They may also be public in which case the beneficiaries could be public entity such as a charitable organization. According to the settlor's specifications the equitable rights of the beneficiaries can be fixed, however, the settlor may also leave some rights to the discretion of the trustee. One may argue that an expressed trust is merely *'a gift projected on the plane of time and meanwhile, in need of management.'*<sup>6</sup> Although an absolute gift shares similarities with an expressed trust such as the conveyance of property being irrevocable, it is notably distinguishable when considering that an expressed trust can be formed for beneficiaries who may not be sui juris. In Bare Trusts a trustee has a duty to hold the property for a sole beneficiary who may not be of legal age or mental capacity. This kind of trust leaves no discretion or contingencies upon the trustee. Following *Saunders 1841*<sup>7</sup>, bare trusts can be terminated by the beneficiary once they are an adult of mental capacity. Another form of expressed trusts are protective trusts which aim to protect beneficiaries by preventing misuse of the property by an immature or reckless beneficiary. In protective trusts the trustee is given some discretion to reduce the risks of property being wasted by the beneficiary. *S.33 of the Trustees Act 1925*<sup>8</sup> gives the beneficiary life interest of the property, however this can be void in certain circumstances such as bankruptcy or a sale of the property. The elements of expressed trusts can

be distinguished from an absolute gift by catering to a wide range of beneficiaries including those who are not sui juris, thereby contributing to the multifaceted nature of a trust.

One may claim that a trust '*is functionally indistinguishable from the modern third-party beneficiary contract*'<sup>9</sup>. Unlike contracts where both parties may enforce contractual rights, in a trust the rights belong to the beneficiary, therefore, the settlor cannot enforce any rights upon the trustee. Although the beneficiary's rights are like contractual rights, a key difference is that beneficiaries also possess proprietary rights in the trust property itself<sup>10</sup>. While '*every trust originates from some arrangement of consent or assent*',<sup>11</sup> it is difficult to apply this belief regarding implied trusts where the court appoints a trustee without the settlor's expressed intentions. The two main types of implied trusts are resulting and constructive trusts.

Resulting trusts arise in situations where a valid trust has not been properly established. These trusts can contradict the explicit intentions of the settlor as seen in *Vandervell 1967*<sup>12</sup>, where a resulting trust materialized despite the settlor's clear intention to give away property. This type of resulting trust is often referred to as an automatic resulting trust. In other cases, property may be voluntarily transferred to or purchased by someone, as exemplified in *Milligan 1994*<sup>13</sup>, where the resulting trust's formation was based on the presumed intentions of the resulting beneficiary. As highlighted by Lord Browne-Wilkinson in *Landesbank 1996*<sup>14</sup>, resulting trusts rely on the parties' intentions, demonstrating the court's commitment to upholding equitable principles and rectifying trust arrangements in cases of ambiguity or failure to establish a valid trust.

Constructive trusts are administered by the court's evaluation of an individual's equitable interest in a property whilst presuming the settlor's intentions. In certain circumstances, constructive trusts prove invaluable in rectifying equitable disputes. For instance, when breaches of fiduciary duty occur, as evidenced in *Sandford 1726*<sup>15</sup>, the establishment of a constructive trust is prompted. This ensures that any advantages derived from the property are held in favor of the claimant. In cases involving immoral receipt, demonstrated in *Re Sigsworth 1935*<sup>16</sup>, wherein property is acquired through wrongful means such as killing, the application of a constructive trust is instrumental. Unauthorized profit situations, exemplified by *Ried 1994*<sup>17</sup>, reveal that when individuals obtain profits due to unethical conduct in positions of responsibility, like bribery, the court deems them held on constructive trust for the state. Additionally, in scenarios such as *El Ajou 1994*<sup>18</sup>, when property exchanges hands

without appropriate consideration, it is determined that the recipient holds the property on constructive trust for the rightful owner. Constructive trusts also play a crucial role in matters concerning family homes, illustrated by *Edwards 1986*<sup>19</sup>, where one party holds the title to the home while the other contributes, under an implied understanding to their interest in the property. Constructive trusts contribute to the multifaceted concept of a trust by safeguarding equitable interests in various complex situations that may not have been explicitly addressed in express trusts.

The aforementioned classifications of trusts consistently illustrate a trust as a property being held by the trustees for benefit of the beneficiaries. Furthermore, they contribute to the vast concept of a trust through the unique circumstances wherein certain types may arise. These classifications evidently distinguish a trust from an absolute gift and third-party contract whilst establishing significant common elements such as the fiduciary duties of trustees and proprietary rights of beneficiaries. In conclusion a trust can be defined as a separation of legal and equitable interests vested in a property which ensures that beneficiaries rights are safe guarded, trustees act with integrity, and the trust property is administered in accordance with the settlor's intentions.

## References:

- <sup>1</sup>Jill E. Martin, Hanbury and Martin: Modern Equity, 19th edition (Sweet & Maxwell 2012) at 49
- <sup>2</sup>Geraint Thomas and Alistair Hudson, The Law of Trusts, 2nd edition (Oxford University Press, 2010)
- <sup>3</sup>Barclays Bank Ltd v Quistclose Investments Ltd [1968] UKHL 4
- <sup>4</sup>Bristol and West Building Society v Mothew [1996] EWCA Civ 533
- <sup>5</sup>Re Duke of Norfolk's settlement Trust [1981] EWCA Civ 5
- <sup>6</sup>F. H. Lawson and B. Rudden, The Law of Property, 2nd edition (Oxford University Press, 1982) at 55
- <sup>7</sup>Saunders v Vautier [1841] 4 Beav. 115
- <sup>8</sup>Trustee Act 1925, s 33.
- <sup>9</sup>J. H. Langbein, Contraction basis of the Law of Trusts' (1995) 105 Yale LJ 625 at 627
- <sup>10</sup>Gary Wyatt, Trusts & Equity, 7th edition (Oxford University Press, 2016) at 20
- <sup>11</sup>Professor Kevin Gray 'Property in thin air' [1991] 50(2) CLJ 252 at 302
- <sup>12</sup>Vandervell v IRC [1967] 2 AC 291
- <sup>13</sup>Tinsley v Milligan [1994] 1 A.C. 340
- <sup>14</sup>Westdeutsche Landesbank Girozentrale v Islington LBC [1996] UKHL 12
- <sup>15</sup>Keech v Sandford [1726] 25 E.R. 223
- <sup>16</sup>Re Sigsworth [1935] 1 Ch 98.
- <sup>17</sup>Attorney General of Hong Kong v Reid [1994] UKPC 36
- <sup>18</sup>El Ajou v Dollar Land Holdings plc [1993] EWCA Civ 4
- <sup>19</sup>Grant v Edwards [1986] 3 WLR 114

## EXCITING HIGHLIGHTS FROM THE 16TH ANNUAL INTELLECTUAL PROPERTY CONFERENCE IN HONG KONG & MACAU:



We are thrilled to share that Mr. Divyendu Verma, the Global Head of Patents Practice at Audiri Vox, was invited by the Chinese University of Hong Kong to speak at the prestigious 16th Annual Intellectual Property Conference. Mr. Verma delivered an insightful presentation on the recently issued AI Guidelines by the USPTO, which garnered significant attention and interest from attendees.

The two-day conference, held in Hong Kong, brought together a distinguished group of researchers and professionals from universities in Hong Kong, the USA, China, Germany, and India, along with representatives from numerous corporations based in Hong Kong and China. The event served as a dynamic



platform for sharing knowledge, discussing innovations, and exploring the latest trends in intellectual property.

The second leg of the conference took place in Macau and centered on the investment aspects of IP. This segment highlighted how companies based in Hong Kong and Macau are strategically leveraging the market to drive growth and innovation. Mr. Verma was once again a key speaker at this event, held at the International Business Center in Macau. He delivered a compelling talk on the abundant investment opportunities in the Middle East, emphasizing the significant efforts by the UAE and Saudi governments to foster a robust startup ecosystem in the region. His detailed analysis and forward-looking perspectives were well-received and appreciated by the audience.

Mr. Verma's participation in both segments of the conference underscored Audiri Vox's commitment to thought leadership and global collaboration. By sharing expertise from various regions, Audiri Vox contributed to the diversity and richness of the discussions, enhancing the overall success of the event.



We are proud to support such influential gatherings and remain dedicated to advancing the field of intellectual property through continuous engagement and knowledge sharing.



## IP UPDATES

### INDIA: Draft Trademarks (1st Amendment) Rules, 2024: A Quick Review



On August 11, 2023, the parliament of India approved “THE JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023” that came into force from 1st August 2024. It brought amendments to the Trade Marks Act, 1999 to decriminalize and rationalize offences. On 1st July 2024, Department for Promotion of Industry and Internal Trade under Ministry of Commerce and Industry (DPIIT) has presented the Draft Trademarks (1st Amendment) Rules, 2024 to denote significant amendments in Trade Marks Rules, 2017.

The Draft Rules provide for the appointment of an 'Adjudicating Officer' who shall hold inquiry and impose penalty for contravention. This allows any person to file complaint in Form I to Adjudicating officer regarding any violation or breach under Section 107 of the Act.

Enquiry Procedure involves issuance of notice and the person against whom notice is issued shall be given an opportunity to be heard and produce evidence. After hearing the matter, the adjudicating officer shall give order accordingly and his order can be appealed before the appellate authority under Section 112 within 60 days. All the communications under these rules including notices, complaints, and appeals along with adjudication of certain penalties shall be deemed to be communicated electronically.

### UAE: NOTICE FROM MOEC INDUSTRIAL PROPERTY DEPARTMENT



The Ministry of Economy (MoEc) now collects annuities for patents, utility models, and industrial designs according to the new fee schedule approved by the Cabinet, published on January 13, 2024. As repeatedly announced through various channels, MoEc reaffirms that all zero-amount annuity payments made in advance (due to a system error) are not valid. Applicants will be required to pay the correct annuity amount for any zero-amount annuity previously paid in the old system once the due date approaches.

### QATAR:

#### QATAR - UPDATE: NEW POA REQUIREMENT



The Qatari Intellectual Property Protection Department has recently introduced new requirements for Powers of Attorney (POA) as outlined in Circular No. 5/2024 dated June 25, 2024. One of the key changes is that POAs legalized abroad by the Qatari embassy must now be further attested by the Ministry of Foreign Affairs of Qatar. Additionally, if the POA is not in Arabic, it must include a certified Arabic translation to meet the new standards.

Another significant update is regarding the notarization and validity period of POAs. Any POA that is older than three years now requires a stamp from either a notary public or the Ministry of Justice. These new requirements aim to enhance the authentication process and ensure the validity of legal documents used in Qatar.

### SAUDI ARABIA:

#### SAUDI ARABIA: STRENGTHENING IP COLLABORATION WITH JAPAN



Saudi Arabia and Japan have recently enhanced their cooperation in the field of intellectual property (IP) through a bilateral meeting between the Saudi Authority for Intellectual Property (SAIP) and the Japan Patent Office (JPO) on June 2, 2024. This meeting expands upon the 2019 Memorandum of Cooperation (MOC), which initially targeted collaborative efforts in patent examination, human resource development, and raising public awareness about IP rights.

The updated MOC now includes measures aimed at strengthening IP enforcement, with the objective of promoting innovation and economic growth in both nations. These measures will encompass joint training programs for IP enforcement officers, the creation of shared databases to monitor IP infringements, and public campaigns designed to educate businesses on protecting their intellectual property.

Saudi Arabia is committed to developing a robust IP system and recognizes the critical role of intellectual property in driving the country's economic development.

## BAHRAIN: BAHRAIN JOINS PATENT PROSECUTION HIGHWAY AGREEMENT WITH USA



The Ministry of Industry and Commerce (MOIC) of Bahrain has entered into the Patent Prosecution Highway (PPH) pilot program with the United States Patent and Trademark Office (USPTO), marking a notable advancement in fostering innovation and expediting the patent examination process. According to the MoU, this innovative program fosters collaboration by leveraging existing examination reports and minimizing the need for patent re-examination and evaluation.

This strategic initiative signifies a significant step forward in solidifying Bahrain's patent system. It creates a more alluring environment for foreign investment, fostering a dynamic ecosystem that nurtures creativity and entrepreneurial spirit across all business scales. By expediting the patent approval process, the PPH system empowers inventors and businesses to bring their ideas to existence more swiftly, ultimately positioning Bahrain as a hub for innovation and progress.

argued that the trademark "ADIDAS" was registered in a sincere and truthful manner. He says it's because of his love and affection for his sister, as was previously mentioned. In Sindhi, an older sister is called "ADI," and a devotee is called "DAS" when you have affection or admiration for them.

The Hon'ble Delhi High Court observed that it was incumbent upon the defendants to demonstrate that their adoption of the identical mark was honest and in good faith. However, they have failed to provide reliable justification or evidence to support this claim. Hence, the Hon'ble Court issued an injunction restraining the defendants and his entities from manufacturing, selling, or dealing in textile goods under the 'Adidas' marks or any similar names.

## Girnar Food & Beverages Pvt. Ltd. (Appellant) vs The Registrar of Trade Marks & Anr. (Respondent)

Case No.: IPDTMA No. 80 of 2023  
Decided On.: June 18, 2024



The present appeal was filed by the appellant against the order passed by the Registrar of Trade Marks, wherein the opposition filed by the plaintiff was rejected by the respondent and permitted the application by the respondent.

The issue arose when the use of the appellant's "JUMBO" mark and the respondent's "HATHI MARKA UTTAM CHAI" mark, both of which consist of distinctive elephant devices. With regard to their "JUMBO" trademark, which features a device mark consisting of the word "JUMBO" surrounded by five artistic "elephants," the appellant claimed prior use and strong goodwill. The appellant contended that the respondent's mark was deceptively similar and can cause confusion among consumers since the respondent had applied for the registration of the mark "HATHI MARKA UTTAM CHAI," which decodes to Elephant Mark Superior Tea and includes an artistic 'elephant'.

The Hon'ble Calcutta High Court observed that the respondents mark could mislead consumers and the market as they would presume its association with the appellant. The Hon'ble Court noted that respondent no.1 has not considered the documents produced by the appellant and has wrongly concluded and the finding of respondent no. 1 are contrary to the documents available on records. Hence, the Hon'ble High Court has quashed the order passed by the Asst. Manager of Trade Marks and the certificate to the registration is also recalled.

## INDIA: TRADE MARKS CASES



## ADIDAS AG (Plaintiff) vs KESHAV H TULSIANI & ORS (Defendants)

Case No.: CS(COMM) 582/2018, I.A. 14215/2019,  
I.A. 334/2020  
Decided On: July 19, 2024.



The present suit has been filed by the plaintiff seeking to secure their rights of trademark "ADIDAS," against the use of an identical mark by the Defendants for various classes of goods, including textiles.

The plaintiff contended that the defendants were using an identical term "ADIDAS" for their textiles business in bad faith, with dishonest intent commenced. The defendant

**THE INDIAN HOTELS COMPANY LIMITED  
(Plaintiff) Vs SAGAR WADHWANI AND ORS.  
(Defendants)**

**Case No.: CS(COMM) 406/2024**

**Decided On: May 16, 2024**



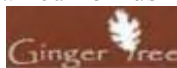
The present case has been filed by the plaintiff seeking permanent injunction against defendants for using the trademark which is identical and deceptively similar to the plaintiff's registered mark "GINGER".

The plaintiff has been engaged in the hospitality industry since very long under various brands, one of which is "GINGER" and registered trade mark owner of it under class 43. In April 2024 plaintiff came across the property under name "Ginger Tree" and



in Anjuna, Goa providing hospitality services which completely resembles with plaintiff's mark "GINGER". Upon further research and investigation, plaintiff found out that the defendant owns a website, social media presence (Facebook, Instagram), and also owns another property on same name in Candolim Goa.

The Hon'ble Delhi High Court observed that, the infringing marks are phonetically similar visually, structurally, and deceptively similar to the plaintiff's mark "GINGER" which amounts to trademark infringement. Considering the above, the Court finds that the Plaintiff has made out a prima facie case in his favour and in case no ex-parte ad-interim injunction is granted Plaintiff will suffer an irreparable loss; balance of convenience also lies in favour of the Plaintiff and against the Defendant. Defendants are restrained from using "Ginger Tree" and



trademarks or any

other deceptively similar trademark also directed to block access to the domain name of website and social media accounts.

**SHIVKUMAR SHANKARRAO THAKUR AND ORS.  
(Appellants) versus SHIV BIRI MANUFACTURING  
CO.P.LTD. AND ANR (Respondents)**

**Case No.: C.A.(COMM.IPD-TM) 157/2021**

**Decided On: April 25, 2024**

The present suit has been filed by the appellant challenging the Order dated October 11, 2017, passed by the Registrar of Trade Marks. The petitioner's opposition was based on a

previous opposition against the respondent's registration application, which was rejected by the Registrar of Trade Marks. The respondent was given a geographical restriction to sell only in certain states such as States of West Bengal, Assam, Bihar, Uttar Pradesh, Punjab, Haryana, Delhi, and Rajasthan.

Plaintiff contended that since there were geographical limitations prescribed by earlier registration, the same may be prescribed for the impugned registration as well. The earlier registration was filed as "proposed to be used" basis, while the later registration user is claiming prior use since 1987, which is dishonest and cannot be allowed especially no evidence has been produced. The Respondent argued that the geographical limitation argument against the registered impugned mark is deemed impractical as the respondent's adopted mark differs significantly from the earlier registered mark, including the absence of a Lord Shiva image.

The Hon'ble Delhi High Court has observed that there is no similarity between the marks and the petitioner's case is not made out as there is distinctive dissimilarity between both the marks. The Hon'ble Court further dismissed the argument of petitioner regarding the issue of geographical limitation.

**JAUAR AND COMPANY PRIVATE LIMITED  
(Plaintiff) VS ASHIRVAD PIPES PRIVATE  
LIMITED (Defendant)**

**Case No.: CS(COMM) 670/2023, I.A. 18638/2023**

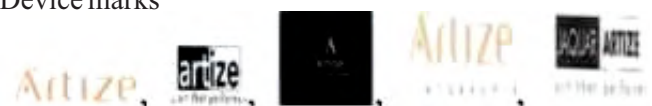
**Decided On.: April 01, 2024**



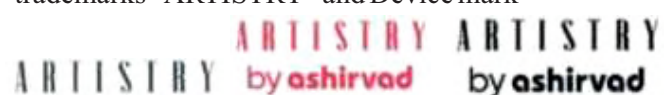
**Decided On.: April 01, 2024**

In the present suit the plaintiff seeks an injunction restraining defendant using impugned marks which are confusingly and deceptively similar to plaintiff's registered trademarks.

The plaintiff and defendant both are in the business of manufacturing and selling bathroom and sanitary fittings. Plaintiff asserted that its registered trademarks "ARTIZE" and "ARTIZE – BORN FROM A" and Device marks



by using the deceptively and confusingly similar trademarks "ARTISTRY" and Device mark





The plaintiff further stated that it's another registered trademark "TIAARA" and Device

T I A A R A

also infringed by the defendant's mark "TIARA".

The Hon'ble Delhi High Court recognized the defendant's usage of the marks "ARTISTRY" and "TIARA" in the course of business, indicating potential infringement. Moreover, the court noted the deceptive similarity between the defendant's mark "ARTISTRY" and the plaintiff's mark "ARTIZE", as well as the near-identical nature of "TIARA" to "TIAARA". These observations align with the criteria outlined in Section 29(1) of the Trade Marks Act, strengthening the plaintiff's case for infringement. The Hon'ble Court granted the plaintiff's request for an interim injunction, and directed the defendant to ensure that the impugned marks are wiped out from all websites, e-commerce sites, and social media pages, as well as from any real and virtual environments under the defendant's control.

## PATENTS CASES

### Kyorin Pharmaceutical Co (Appellant) Vs Assistant Controller of Patents and Designs (Respondent)

Case Number: (T) CMA (PT) No. 09 of 2023  
Decided on: July 05, 2024

**Kyorin**  KYORIN Pharmaceutical Co., Ltd.

The present appeal has been filed by the appellant against the respondent for rejecting the appellant's patent application on the grounds of lack of inventive step under Section 2(1) (ja) and non-patentability under Section 3(e) of the Patents Act, 1970. The appellant had filed a patent application bearing application no. 5360/CHENP/2010 which pertains to a claim of an orally, rapidly disintegrating tablet having excellent photostability, thereby having the advantage of being easily administered to elderly people and children. The appellant argues the prior art cited by the respondent cannot be cited against the claim of appellant's application and the respondent has not even analyzed the response of the appellant in respect of cited prior arts and the objections raised under Section 3. The respondent argued the claims of the appellant's application did not reflect any inventive step while comparing with the prior arts and that the appellant has also failed to show or prove the claimed photostability.

The Hon'ble High Court of Madras observed the following matter and states that product patent and process patent are

different and the application for patent for the product cannot be refused merely because the appellant had successfully obtained a patent for the process involved in manufacturing the product. The Hon'ble Court further states that the respondent did not even discuss the explanation by the appellant with respect to the objection regarding Section 3(e), non-patentability. The Hon'ble Court concluded by remitting the matter for fresh consideration and giving an opportunity, by way of a hearing, to the appellant.

### Cornell Research Foundation (Appellant) vs. Assistant Controller of Patents and Designs (Respondent)

Case Number: (T) CMA (PT) No.187 of 2023  
Decided on: July 05, 2024

The current appeal has been filed by the appellant w.r.t the rejection of the patent application no.

4167/CHENP/2010 by the respondent. Initially the objections were raised in the first examination report (FER), to which the appellant had reduced the claims, further at the hearing the appellant again reduced the claims. The respondent however rejected the patent application on the ground of Section 59 of the Indian Patents Act, 1970, i.e., the application is being beyond scope. The appellant argued that the appellant had filed five expert affidavits along with written submissions and the same was not considered and the respondent rejected the application on the basis of FER. The appellant also argued that the responses given by the appellant to the hearing notice were not even discussed. The appellant further stated that the corresponding US and European patent has been granted by the appellant by considering the same prior art that has been cited by the respondent. The respondent stated that there is no necessity for remission of the matter, and that the application has been dealt with in detail and satisfactory under sufficient grounds for rejecting the present application.

The Hon'ble High Court of Madras observed the following issue and stated that the respondent should have taken into account the above mentioned factors by the appellant. . The Court concluded by directing the respondent to consider the matter afresh by giving a fair opportunity to the appellant by considering all the matters and also assigning different Patent Controller to avoid embarrassment to the parties.



## **Frito-Lay Trading Company-Gmbh (Appellant) vs. The Assistant Controller of Patents and Designs (Respondent)**

Case Number: (T) CMA (PT) No.202 of 2023  
Decided on: July 04, 2024



The current appeal has been filed by the appellant w.r.t. the rejection of the patent application bearing application no. 4689/CHENP/2010 relating to food products containing table salt formulations, on the grounds of lacks inventive steps (Section 2(1) (ja)) and that the claim is only a mixture of two types of inorganic salts (Section 3(e)). The appellant argued that the respondent has misunderstood the claims and thereby failed to appreciate the inventive steps shown by the appellant, the appellant submits that the respondent did not even consider the amended claims and also ignored the material portions specification wrongfully concluding that the claims were mere admixture of two types of inorganic salts. The respondent argued that the claim of the appellant's invention to achieve a smaller size particle cannot be an invention and the combination of two inorganic salt in appellant's application is already available in prior arts, therefore the respondent refused the appellant patent application.

The Hon'ble Delhi High Court observed that the present objections were taken at the time of hearing notice and the appellant in their written argument has explained the inventive step involved in the formulation as well as the synergism of the components. The Hon'ble Court stated that they do not find any obviousness from the prior art and that the prior arts completely teach away from the claimed invention exhibiting not only novelty but also non-obviousness. The Court accepted the appeal and set aside the impugned order, granting the patent to the appellant.

## **Microsoft Technology Licensing LLC (Appellant) vs. Assistant Controller of Patents (Respondent)**

Case Number: (T) CMA (PT) No.49 of 2023  
Decided on: July 03, 2024



The current appeal has been filed by the appellant for rejecting the patent application, bearing application no. 5584/CHENP/2010, titled "Associating Command Services with Multiple Active Components". on the grounds of lack of inventive step under section 2(1) (ja), exclusion from patent-protection under sections 3(k) and 3(m) and lack of sufficient disclosure under section

10(5).

The appellant argued that the respondent has wrongfully rejected the application as non-patentable subject matter under section 3(k), and not followed the revised Guidelines for Examination of Computer Related Inventions, 2017 (CRI Guidelines 2017). The appellant further submitted that as per the revised guidelines only computer programs "per se" were excluded from patentability and the invention which includes and has been tested for 'technical effect' and 'technical contribution' that improves the system's functionality and effectiveness can be patentable. The respondent submitted that the claimed invention does not produce any technical effect or contribution as per the CRI Guidelines 2017, therefore not patentable under Section 3(k) and also the combination of teachings of the cited prior art documents makes the claimed invention obvious to a PSITA, lacking inventive step.

The Hon'ble Court of Madras observed the following matter and states that "Thus, even when the claimed invention relates to a CRI, if it results in a technical effect that improves the system's functioning and efficacy (effect on hardware), or provides a technical solution to a technical problem and is, therefore, not limited in its impact to a particular application or data set, it would surmount the exclusion under section 3(k) of the Patents Act." The Court further states that the technical advancement in the appellant's application would not be obvious to PISTA, passing the inventive step test under section 2(1) (ja) of the Patents Act, 1970. The Court concluded allowing the appellant's application to proceed for grant on the basis of the amended set of claims.



## **DESIGN CASE**

## **RISHABH PLAST INDIA PRIVATE LIMITED (Plaintiff) vs. SWASTIK INDUSTRIES & ANR. (Defendants)**

Case Number: CS(COMM) 481/2024,  
I.A. 31018/2024, I.A. 31019/2024, I.A.  
Decided on: May 30, 2024

In the present case, the plaintiffs sought an injunction against the defendants who were infringing the registered design No.361251-001 for storage containers 'NIKOLA' and from marketing, manufacturing, promoting, selling storage containers under the model's name 'Jony Vintage'. The plaintiff had issued a cease-

and-desist notice to the defendants.. The defendants acknowledge and assured to discontinue the infringing product and also destroy manufacturing moulds, dies, and related apparatus that infringe the product. However, the plaintiff found out that the defendants were still selling and marketing the infringing product.

The Hon'ble Delhi High Court observed the following matter and granted ex-parte ad interim injunction in favor of the plaintiff. The Hon'ble Court concluded by restraining the defendants from copying/pirating and selling copies of the plaintiff's registered design for storage containers 'NIKOLA', and the defendants are also restrained from marketing, manufacturing, promoting, selling storage containers or any other container bearing the same design or an imitation thereof under the model's name 'JONY VINTAGE'.

| Plaintiff's Design (NIKOLA)   | Defendant's Design (JONY VINTAGE)   |
|---|---|
|  |  |

Initially the plaintiff and defendants were in business engagement involving adaptation of "Yakshini" audio series, but the discussion did not lead to any fruitful conclusion. In the process the plaintiff had disclosed the proprietary information regarding the audio series without signing the Non- Disclosure Agreement with defendant, the defendants instead shared a "Release-Form" with the plaintiff, which the plaintiff had signed in good faith. The plaintiff alleges that the defendants are trying to freeride on plaintiff's immense goodwill and reputation by imitating plaintiff's work. The defendants opposed by stating that they had first published about the release of series on twitter and later the video series was released, yet the plaintiff choose to sit tight it the eleventh hour so therefore it cannot be said that the plaintiff has a prima facie case to seek the pre-publication prohibitory injunction. The defendants argue that they have not picked even a single idea from the plaintiff's audio series and that Yakshini is an old mythological character, whose description is available on Wikipedia as well.

The Hon'ble Delhi High Court has found that the plaintiff has filed a suit just a day before the release of the video series, whereas the defendants has initially published the release of series on twitter and also the plaintiffs have no concrete facts to establish that the plaintiff's rights have been infringed so therefore no case for granting an ad-interim injunction ca`n be made out for plaintiff at this stage. The Hon'ble Court further stated that the character finds it root in mythological stories which has been existing since ages by finding its mention in scriptures as well and its details are also available on Wikipedia. The Court concluded by rejecting the application for an ad-interim injunction as there is no prima facie evidence to show that there is any apparent copyright violation of the "expression of idea" of the plaintiff.

## AV COPYRIGHT CASE

**POCKET FM PRIVATE LIMITED (Plaintiff) vs. NOVI DIGITAL ENTERTAINMENT PRIVATE LIMTIED & ANR. (Defendants)**

Case Number: CS(COMM) 524/2024,  
I.A. 31732/2024, I.A. 31734/2024  
Decided On: June 13, 2024



The present suit has been filed by the plaintiff restraining the defendants from publishing, making available, advertising, selling, offering for

sale, marketing, promoting, etc. of the video adaptation to the plaintiff's work i.e., a television series "Yakshini" on any other third-party Media websites. The plaintiff provides an online platform "Pocket FM" via website "www.pocketfm.com" and a mobile application "Pocket FM: Audio Series" by which it offers audio works such as audio series and audiobooks to the users.





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