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AVIP

Newsletter

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## THE SALIENT FEATURES OF COPYRIGHT LAW IN SRI LANKA – PART II



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Continuing from where we left in our previous article, this article will take you through Works not protected, Protected rights, Economic rights and Moral rights vested in Copyrights.

### WORKS NOT PROTECTED

According to section 8 of the Act, the following although can be considered as works are not protected under copyright laws:

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work;
- (b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof.
- (c) news of the day published, broadcast, or publicly communicated by any other means.  
Apart from the above, as found in the case *Exxon Corporation V Exxon Insurance Consultants International* (1981) 3 AllER 241, (1982) RPC 69, simple works such as titles of books or short slogans are also not protected under copyright laws.

### WHAT ARE PROTECTED RIGHTS?

There are two aspects which form Protected rights: Economic rights and Moral rights. Economic rights paves way for an owner of a copyright to reap the financial benefits of the work and Moral rights ensures that the reputation of the author is safeguarded. These rights cover the entire works as well as a substantial part thereof.

## ECONOMIC RIGHTS

Economic rights set out a series of acts that the owner either exclusively by himself or through an authorized person can carry out in relation to the work or a substantial part of the work. Either by carrying out the same by himself or authorizing someone else to carry out, the owner can derive financial benefit or economic benefit out of the same.



The aforementioned acts are listed down below with a brief explanation of what each act encapsulates:

- a) **Reproduction** – Reproduction refers to not only making copies of a work in the standard traditional forms but also includes making copies and storing them in electronic form. A person shall infringe the right of reproduction even if the copy is not sold or intends to sell the copies which are so reproduced.
- b) **Translation** – Expressing a work in another language.
- c) **Adaptation, arrangement or transformation** – This refers to the alternation or conversion of work from one form to another, e.g. Conversion of a literary work into a dramatic work.
- d) **Public distribution** – What is covered under this is the sale, rental or any other form of public distribution of the original work and each copy of work. If a person sells or rents a work or a copy without due authorization, such person violates the right of distribution. A factor that should be discussed under the topic of “Public Distribution” is “first sale”. In the simplest terms, this means that if someone buys a lawful copy of a work, such person is entitled to use and resell it without any adverse effect from the owner of such copyright work. The significance of the Sri Lankan law is that, if a lawful copy is purchased with the copyright owner's



authorization who resides abroad, such purchaser is prevented from having such copies imported into Sri Lanka.

- e) Rental – This refers to the rental of the original or a copy of a audio visual work, a work which is in the form of a sound recording, a computer program, a database or a musical work which is displayed as notations and does not consider the ownership of the original or the copy concerned.
- f) Importation – As explained under d) above in Public Distribution, the explanation here is that it is the owner of a copyright work who has the exclusive right to import or to authorize the importation of a work or a copy of the same.
- g) Public Display – This covers the aspect of displaying directly the original or a copy of it, by means of film, slide, television or otherwise on screen by any other device or process. If such display is made other than by means of film, slide or television image etc. by way of the original or copy being sold, or transferred to another person by the author or his successor to title. This also does not restrict the display of work without lawful authorization of the owner of the copyright for educational purposes by the government or non-profit educational institutions, in classrooms or similar places which are focused on education.
- h) Public performance – This aspect is somewhat broad and cannot be explained in a concise manner. However, for the purpose of understanding, this includes performing a copyrighted work in a public place or transmitting it to the public. The performance can even take the form of an audio work being played through a radio, speakers, recorders etc.
- I) Broadcasting – This refers to communication of a work, a performance or a sound recording to the public by wireless transmission including transmission by satellite.
- j) Other communication to the Public – The owner that has the economic rights of a work has the exclusive authority to carry out or authorize the communication to the public their work, by any other means than which are set above.

The aforementioned factors are considered crucial in copyright law because it sets the stage on how and when the rights of a copyright holder can be exercised and to what extent permission can be granted under varying contexts.

## MORAL RIGHTS

Moral rights exist independent of Economic rights. An owner can enjoy the moral rights vested in copyright work, even where the Economic right is no longer held by him.

Section 10 (1) of the Act specifies the following as being moral rights available to an owner of a work:

- a) to have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;
- b) the right to use a pseudonym and not have his name indicated on the copies and in connection with any public use of his work;
- c) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honour or reputation.

The uniqueness of copyright is that, unlike other forms of Intellectual Property, it is a multiple right consisting of a bundle of different rights in the same work. We will explore further in our next issue.

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## AUDIRI VOX PARTICIPATED IN AIPLA SPRING MEETING 2024

Audiri Vox was proud to participate in the American Intellectual Property Law Association's (AIPLA) Spring Meeting held in Austin, Texas, from May 16th to 18th, 2024. This year's program, held in the heart of the "Live Music Capital of the World" and a burgeoning tech hub, reflected Austin's dynamic spirit.



The focus was on the ever-evolving intersection between technology, the local music scene, and hot topics in intellectual property (IP) law. Divyendu Verma, Audiri Vox's Global Head of Patents, represented the firm and actively engaged in the discussions.



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### ARTIFICIAL INTELLIGENCE TAKES CENTER STAGE

Artificial intelligence (AI) was a major theme, with no less than six dedicated sessions exploring the interplay of AI and IP law. These sessions addressed critical issues, including:

- **Emerging Issues at the Intersection of Patents and Artificial Intelligence:** Attendees delved into the latest developments and challenges in this rapidly evolving field.
- **AI and Ethics:** Discussion was focused on the ethical considerations surrounding the use of AI in IP, a topic of increasing importance.



### BEYOND AI: A WELL-ROUNDED PROGRAM

The program offered a comprehensive overview of current IP issues, featuring sessions on:

- **Intellectual Property of Music:** This session explored the complex interplay of music, creativity, and IP rights.
- **Unified Patent Court Update:** Attendees received the latest information on the UPC, a significant development in international patent law.
- **Trademark Hot Topics:** The session addressed current trends and challenges shaping trademark law.



By participating in the AIPLA Spring Meeting, Audiri Vox stays at the forefront of critical discussions shaping the future of intellectual property law. We look forward to leveraging these insights to provide our clients with the best possible service in this ever-changing landscape.



## AUDIRI VOX ATTENDED THE INTA ANNUAL MEETING 2024 IN ATLANTA

Audiri Vox is thrilled to report our participation in the International Trademark Association's (INTA) 146th Annual Meeting in Atlanta, Georgia, USA, from May 18-22, 2024. Held at the Georgia World Congress Center, the event brought together nearly 10,000 attendees from a staggering 136 countries.



### BUILDING RELATIONSHIPS AND EXPANDING KNOWLEDGE

The INTA meeting provided a valuable platform to reconnect with existing clients, legal counsels, and industry friends. We also had the pleasure of meeting many new faces from across the globe, fostering new relationships and expanding our international network.



Our colleague and Global Head of Patents, Divyendu Verma moderated a Table Topic discussion on "Implications of Emerging Technology on Trademark Laws" on Day 2 of INTA Annual meeting. This session, along with numerous client and counsel meetings, networking receptions, and educational sessions, kept the Audiri Vox team engaged and learning.



### KEY TAKEAWAYS AND INDUSTRY INSIGHTS:

The event offered a wealth of insights into the ever-evolving world of intellectual property. Here are a few thought-provoking takeaways:

- **Strong Brands Attract Attention:** A quote by A. Robinson from Ford Motor Company resonated strongly: "If no one is knocking off your brand, your brand is dead." This highlights the importance of a strong brand identity that attracts competitors, a sign of market success.
- **Holistic Approach to IP Protection:** While trademarks and copyrights are crucial, discussions emphasized the importance of safeguarding trade secrets and data protection, especially for sensitive business information.
- **NFTs and Web3: Here to Stay:** While some may have doubted their longevity, the sessions confirmed that NFTs and Web3 continue to be a thriving market. Understanding the associated intellectual property and licensing principles is essential.
- **Authenticity is Key:** Beyond the elevator pitch, personal branding requires authenticity and a genuine representation of oneself.



## A HEARTFELT THANK YOU

We extend a sincere thank you to the International Trademark Association and the entire organizing team for organizing such a fantastic event. The INTA Annual Meeting provided a valuable platform for learning, collaboration, and strengthening our position in the global IP community.

We are looking forward to seeing everyone in San Diego for INTA2025.





## IP UPDATES

### **QATAR:**

#### **QATAR - CHANGE IN PRACTICE: INTRODUCTION OF ACCUMULATED RENEWALS FOR PATENTS**



The Intellectual Property Department at the Ministry of Commerce and Industry has issued a new directive concerning the payment of annuity fees. The government has decided not to accept annual renewal fees starting from the fourth year for applications that have been pending for three years without being granted. Going forward, once a patent is granted, all outstanding renewal fees must be settled concurrently with the payment of the grant fees.

#### **QATAR'S ACCESSION TO MADRID SYSTEM BOLSTERS GLOBAL TRADEMARK PROTECTION**



Qatar has taken a significant step in global trademark protection by joining the Madrid System. By depositing its instrument of accession to the Madrid Protocol with WIPO on May 3, 2024, Qatar becomes the 115th Member of the Madrid System. This move emphasizes Qatar's commitment to enhancing intellectual property rights and facilitating international trademark protection.

The Madrid Protocol will come into effect in Qatar on August 3, 2024, providing national trademark holders with a practical and efficient solution for protecting their brands worldwide. With Qatar's accession, national trademark holders in Bahrain, Oman, Qatar, and the United Arab Emirates - four out of the six countries in the Gulf Cooperation Council - can now utilize the Madrid System to secure cross-border protection for their brands. This development underscores the growing importance of harmonized trademark systems in facilitating global commerce and protecting intellectual property rights across borders.

### **SAUDI ARABIA:**

#### **CHANGE IN PRACTICE: PROCEDURES FOR TRADEMARK APPLICATION REFUSALS**



In a groundbreaking development, the Saudi Authority for Intellectual Property (SAIP) has revised its procedures for handling trademark application refusals and now streamlined the process for TM applicants.

Under the previous system, Applicants who received a refusal decision from an Examiner had two options: (1) Applicants could either amend the mark within ten (10) days to address the issues raised by the Examiner; or (2) Appeal the refusal decision within sixty (60) days. This dual-option approach allowed for a quick response via amendment or a more thorough review through the appeal process.

However, with the new practice implemented by SAIP, the amendment option has been removed. Applicants now only have the option to appeal the refusal decision within the sixty (60) day period. This change aims to simplify and standardize the response process for trademark application refusals, and ensuring that all cases go through a more comprehensive review process if challenged.

This update reflects SAIP's commitment to enhancing the efficiency and consistency of its intellectual property processes, which aligning with international best practices. Applicants are advised to prepare for the appeal process thoroughly, as the option to make quick amendments is no longer available.

#### **SAUDI ARABIA AND MOROCCAN IPO ANNOUNCE LAUNCH OF PATENT PROSECUTION HIGHWAY (PPH)**



The Saudi Authority for Intellectual Property (SAIP) and the Moroccan Industrial and Commercial Property Office (OMPIC) have jointly announced a significant collaboration with the inauguration of a pilot program establishing a Patent Prosecution Highway (PPH) between the two organizations. This groundbreaking initiative, formalized through a signed agreement, aims to expedite the patent application approval process while enhancing the quality of granted patents.

The PPH program fosters cooperation between patent offices, allowing for the strategic exchange of examination results. This collaboration seeks to achieve a dual benefit: reducing processing times for patent applications and improving the overall quality of patents granted.

Following the signing of this landmark agreement, SAIP and OMPIC engaged in productive discussions, exploring a wide range of collaborative projects. These discussions included a vibrant exchange of knowledge on the latest advancements in industrial property within each nation. Additionally, the two offices shared valuable experiences and best practices related to the management and examination of applications for industrial property protection.

Both SAIP and OMPIC emphasized the importance of raising awareness among enterprises about the significance of safeguarding and respecting intellectual property rights. They committed to fostering activities that promote such understanding. Looking ahead, SAIP and OMPIC have pledged to expand their collaborative efforts into new areas, including artificial intelligence and information and communication technology. This expansion signifies a strong commitment to fostering innovation and driving progress within both nations.

#### YEMEN: INCREASE IN OFFICIAL FEES FOR IP SERVICES IN YEMEN:



Effective April 28, 2024, Yemen has revised the official fees for key trademark services. This adjustment affects a wide range of intellectual property (IP) services related to

trademarks.

It is important to note that these revised fees are already in effect. There was no prior official notification or grace period provided by the Intellectual Property Office or the Ministry of Industry and Trade.

It is important to note that the revised fees are already in effect, without any prior official notification or grace period provided by the Intellectual Property Office or the Ministry of Industry and Trade.

#### TÜRKIYE: TÜRKIYE HAS INCREASED THE OFFICIAL FEES FOR IP SERVICES:



The Turkish Patent and Trademark Office (TÜRK PATENT) has implemented a revised schedule of official fees for patents, utility models, trademarks, and designs, effective April 24, 2024. This revision is detailed in the "Notification Regarding Schedule of Fees to be Applied in 2024 by the Turkish Patent and Trademark Office" (the "Notification"), published in the Official Gazette on the same date.

The Notification signifies a comprehensive adjustment to the official fee structure. It covers not only fees previously subject to the January 2024 increase but also services that remained unchanged until now.

Additionally, for the first time, the Notification establishes an official fee for administrative cancellation procedures of trademarks initiated by TÜRK PATENT, effective January 10, 2024.

#### INDIA: TRADE MARKS CASES

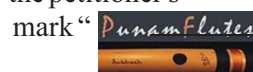


#### PUNAM FLUTES (Petitioner) vs MAHESH CHAND GUPTA AND ANR (Respondents)


**Case Number: C.O. (COMM.IPD-TM) 162/2021**  
**Decided On: April 23, 2024**

The present petition has been filed by the petitioner to seek cancellation of registration of the respondent's trademark "PUNAM" granted in class 15.

The petitioner in its submission has stated its adoption and prior extensive, long use along with existence on the Register of Trademarks in class 15, 42, 45. Relying on submissions of petitioners it can be observed that they are well-known manufacturers of musical instruments in the country and also export to other countries. The respondent has registered its mark "PUNAM" on proposed to be used basis which is deceptively similar to the petitioner's



mark "Punam Flutes". Both the marks are having similar goods being musical instruments included in class 15, thus increasing the possibility of consumer confusion. On the other hand respondent no. 1 has refrained from joining the proceedings.

| Petitioner's mark  | Respondent No. 1's mark |
|--|-------------------------|
|  | PUNAM                   |

The Hon'ble Delhi High Court analysed that inclusion of descriptive components that are typical in trade clearly suggests that the word "PUNAM" serves as the prominent feature of Petitioner's mark, intended to identify them as the source of the products. The comparison drawn above demonstrates that the impugned mark wholly entails the essential element of Petitioner's mark i.e., "PUNAM". The Hon'ble court has allowed the rectification/cancellation petition.



**PFIZER PRODUCTS INC. (Plaintiff) vs RENOVISION EXPORTS PVT. LTD. AND ANR. (Defendants)**

**Case Number: CS(COMM) 378/2018**

**Decided On: May 01, 2024**

The Plaintiff filed lawsuit seeks to protect their trademark in “VIAGRA,” a well-recognized drug, by seeking permanent injunction and other ancillary reliefs to prevent the defendants from marketing their homeopathic medicine under a confusingly similar trademark “VIGOURA,” used allegedly for curing sexual disorders. The plaintiff submitted that the defendants intentionally deceptively use the "VIGOURA" mark, which is similar to Pfizer's "VIAGRA" trademark, to capitalize on the goodwill and reputation. On the contrary, defendants contended that the impugned products were distinct medicines, as the difference in the composition and nature of the two medicines coupled with the fact that both were prescription drugs, reduced the likelihood of confusion for consumers.

The Hon'ble Delhi High Court opined that it is essential for any entity seeking to introduce a new trademark into the market to conduct thorough due diligence, which includes searching the national trademark database for any pending applications or registrations that could conflict with the proposed mark. It further submits that the trademarks “VIGOURA” and “VIAGRA” shows a high degree of phonetic similarity by underlining phonetic resemblance especially in the pharmaceutical industry, where the precise identification of products is crucial for consumer safety and confidence.

The Hon'ble Court permanently restrained the defendants or anyone acting on their behalf from manufacturing, selling, or offering for sale, marketing, advertising, or using the mark 'VIGOURA' in any manner or any mark deceptively similar to the plaintiff's trade mark 'VIAGRA' in relation to any of their goods as would amount to infringement or passing off of the plaintiff's registered mark.

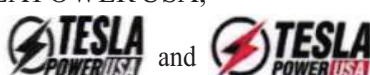
**TESLA INC. (Plaintiff) vs TESLA POWER INDIA PRIVATE LIMITED & ORS. (Defendants)**

**Case Number: CS(COMM) 353/2024**

**Decided On: May 02, 2024**

The present suit has been filed by the plaintiff seeking permanent injunction and damages for infringement of trademark, passing off, and unfair trade competition. Grievance is against defendants who are using the impugned trademark/ trade name

TESLA POWER / TESLA POWER USA,



The plaintiff has asserted that it came across defendant no.1 and its counterpart, defendant no.2 (a company registered in USA) using the impugned marks which included plaintiff's trademark 'TESLA' in its entirety, in addition to the descriptive phrase 'POWER USA'. On the other hand, defendant has contended that it deals with lead acid batteries for electric vehicle and further clarified that it has no plans to enter in the electric vehicle sector.

**THE INDIAN HOTELS COMPANY LIMITED (Plaintiff) vs SHIVGYAN DEVELOPERS PRIVATE LIMITED (Defendant)**

**Case Number: CS(COMM) 361/2024**

**Decided On: May 03, 2024**

The present suit was filed by the plaintiff against the defendant to protect its trademark from infringing and passing off activities of the defendant.

The plaintiff is engaged in the hospitality industry and owns a chain of reputed hotels across many countries. The Plaintiff has registered the trademarks/logos “VIVANTA”, “VIVANTABYTAJ”

**VIVANTA** and **VIVANTA**

and has gained substantial amount of goodwill and reputation among the industry. Plaintiff asserted that defendant's use of an identical mark “VIVANTA” in relation to their goods and services is clear infringement of plaintiff's marks. The defendant has not appeared before this court to present their case despite receiving advance notice of the present lawsuit.

The Hon'ble Delhi High Court observed that the plaintiff has made out a prima facie case of infringement and passing off in their favour; and in case an ex-parte ad-interim injunction is not granted by this court, the Plaintiff will suffer irreparable loss of reputation and goodwill.

The Hon'ble Court directed that, till the next date of hearing defendant and/or anyone acting on their behalf, are restrained from unauthorizedly using the plaintiff's registered trademark “VIVANTA” or any other identical or deceptively similar mark, in any manner or form (both online and offline), thereby amounting to infringement and/or passing off.

## PATENTS CASES

### PFIZER INC & ANR. (Plaintiffs) vs. EVEREST PHARMACEUTICALS LIMITED & ORS (Defendants)

Case Number: I.A. 9668/2024  
Decided on: May 01, 2024

In the present case, the plaintiffs have filed an application to restrict the defendants from infringing plaintiffs patent bearing no. IN 298989 titled 'Macrocyclic Derivatives for the Treatment of Proliferative Diseases' and commercially dealing with plaintiffs 'LORLATINIB'. The plaintiffs argued that their patent has been granted and has been approved for manufacturing and the following compound is marketed and sold commercially under the tradename 'LORBRIQUA®', of which 'LORLATINIB' is the active pharmaceutical ingredient. The plaintiffs argued that the defendants were found to be selling the 'LORBREXEN' containing the same compound as 'LORLATINIB' without any granted registration, certificates and import licence for that drug.

The Hon'ble Delhi High Court decision lies in favour of plaintiff. The Hon'ble Court have made out a prima facie case for grant of an ex-parte ad interim injunction restraining the defendants and all those acting for and on their behalf from manufacturing, selling, distributing, promoting, dealing with in any manner of the pharmaceutical product 'LORLATINIB' either as an API or the same under any brand name that infringes IN 298989.

### RICH PRODUCTS CORPORATION (Appellant) vs. THE CONTROLLER OF PATENTS & ANR. (Respondents)

Case Number: LPA 257/2024 & CM No.19528/2024  
Decided on: May 01, 2024

The appellant has filed an intra-court appeal at Hon'ble Delhi High Court challenging the rejection of the pre-grant opposition filed by the appellant and granting the patent titled "An artificial liquid cream for utilization in unsweetened cooking and whipping applications" to respondent 2, Tropilite Foods Pvt. Ltd. The appellant filed the pre-grant opposition under clauses (b) to (g) of Section 25(1) of the Act.

The appellant submitted that the respondent 2's invention was already covered by the earlier patent (D1) granted in favour of appellant, yet the Controller of patent office has rejected the appellant's contentions and also failed to consider the writ petition filed by the appellant against an order of rejecting the pre-grant opposition, on the ground

of availability of alternative remedies. Respondent 2 argued that the cited prior art (D1) does not disclose the specific composition of the stabilizer system and the method for preparing the same as disclosed in respondent 2's invention. The respondent 2 also submitted that the if pre-grant opposition is rejected then the opponent can file a post-grant opposition under Section 25(2) of the Act and if unsuccessful, they can file an appeal against an order rejecting its post-grant opposition under Section 25(4) of the Act.

The Hon'ble Delhi High Court stated that the pre-grant opposition is a part of the examination process and also an aid for the controller for considering the grant of patent application. The Hon'ble Court observed that the controller had rejected the pre-grant opposition and granted the application only after performing detailed examination and considering the objection raised by the appellant. The Hon'ble Court concluded the matter rejecting the opposition and stating that the Patent office did not suffer from any jurisdictional error, which would warrant any interference under Article 226 of the Constitution of India.

### SONALKUMAR SURESHRAO SALUNKHE AND KUNAL SURESHRAO SALUNKHE (Petitioners) vs. THE ASSISTANT CONTROLLER OF PATENTS (Respondent)

Case Number: 14 COMMP8-22.DOC  
Decided on: May 06, 2024

The current petition has been filed by the petitioners under the provisions of Section 117A of the Patents Act, 1917 ("The Patents Act") against the respondent for abandoning the petitioners patent application. The respondent state that the petitioner failed to submit reply to all the objections raised during the First Examination Report (FER), the petitioners did not even apply for extension of time to complying with the requirements of the FER, therefore no further technical examination was required as the petitioner failed to comply with the requirement of section 21 (1) of the Patents Act, 1970. The respondent further objected the present petition as not maintainable because the impugned order was passed under Section 21(1) of the Patents Act. The petitioner argued that they had responded to all the requirements under the FER and further stated that even if the application was to be rejected as the response of the petitioner was not satisfactory the order is still an order passed under Section 15 of the Patents Act, which is appealable under Section 117A, purposing the petition to be maintainable.





The Hon'ble Bombay High Court observed the following issue and stated that since the petitioner failed to comply with the requirements raised in the FER within the prescribed time period the order has been correctly passed under the provisions of Section 21(1) and not under Section 15 of the Patents Act. The Hon'ble Court further concluded upholding the objections raised by the respondents and dismissing the present petition as section 117A does not provide for an Appeal against an Order passed under Section 21(1).

**SYNGENTA PARTICIPATIONS AG & ANR. (Appellant)  
vs. CONTROLLER OF PATENTS AND DESIGNS &  
ANR. (Respondent)**

Case Number: C.A.(COMM.IPD-PAT) 7/2023  
Decided on: May 14, 2024

The present appeal has been filed by the appellant against an order for rejecting the patent application no. 872/DELNP/2011 titled "Crop Safeners" on the ground that the claims filed by the appellant lack the reference to the amounts/ratio of pesticide and the safener being used as well as the application lack the inventive step. The appellant had amended the claims, providing composition to meet the objections raised during the opposition to which the respondent states that the proposed amendments may have to be considered de novo by the Patent office due to the introduction of the specific composition. The appellant further claimed that the invention was based on a unique formulation of an insecticidal composition comprising diafenthiuron and a crop safener which was already a part of the specification and claims.

The Hon'ble Delhi High Court is of the opinion that after considering the primary objection by the respondents, new suggested amendments to the claims by the appellant can be considered. The Hon'ble Court further ruled that the patent application is to be remanded back for a de novo consideration by the respondent. The Hon'ble Court further ordered them to issue a fresh notice of hearing and give an opportunity to the appellant to place their amended claims before the Patent Office.

**ALIMENTARY HEALTH LIMITED (Appellant) vs.  
CONTROLLER OF PATENTS AND DESIGN (Respondent)**

Case Number: C.A.(COMM.IPD-PAT) 458/2022  
Decided on: May 14, 2024

The present appeal has been filed by the appellant before the Hon'ble Delhi High Court against the order of refusal issued by the respondent on the ground of inventive step under section 2(1) (ja) and non-patentability under Section 3(c), 3(d) and 3(i) of the Act. The present application bearing the application No. 3989/DELNP/2012 involving formulation of a probiotic bacterium i.e., specifically the strain of Bifidobacterium longum designated as NCIMB 41676 (AH1714). Objections were raised in the First Examination Report (FER) to which the appellant submitted the detailed response by amending and limiting the claims. Following to which hearing was fixed objecting the application under Section 2(1) (ja) for lack of inventive step and under section 3 (c), (d) and (e) of the Act for non-patentability, subsequently a written submission was filed by the appellant along with amended claims to strengthen the patentability of the invention further to which the respondent rejected the invention.

The appellant argued that the respondents had quoted paragraphs without analysing the different strains of Bifidobacterium from cited prior arts. The Appellant also states that the respondent had disregarded the experimental data in the specification of the invention consisting technical advancement of Bifidobacterium longum NCIMB 41676 (AH 1714) over other strains and also failed to acknowledge the formulation. The respondent defends and argues that invention is already known in the prior art, lacking inventive step and also the patent application are obvious to a person skilled in the art.

The Hon'ble Delhi High Court observes the following issue and states that the order lacks a substantive examination of how the specific Bifidobacterium longum NCIMB 41676 strain is obvious or lacks an inventive step w.r.t. the prior art documents. The Hon'ble Court further states that the order was non-speaking and hence reminded back for a fresh examination and evaluating the raised issues to decide on the grant or refusal of the subject patent application.

## AV COPYRIGHT CASE

M/S REFLECT SCULPT PRIVATE LTD. & ANR (Plaintiffs) vs ABDUS SALAM KHAN (Defendant)

Case Number: CS(COMM) 278/2024  
Decided On: April 03, 2024

The present suit has been filed by the plaintiffs against defendant for infringing its copyright and creating, manufacturing, advertising, and selling counterfeit garments which are replicas/ substantial imitations of the Plaintiffs' unique and artistic garments, at low/ cheap prices.

The plaintiffs alleged that defendants are operating a business on YouTube under the name 'Designer Salam', with uploaded videos featuring 'Gaurav Gupta', causing people searching for 'Gaurav Gupta' to be directed to the defendants' channel. Additionally, the defendant is infringing on the plaintiff's copyrights and registered designs by sharing videos and interacting with the public on social media, like Instagram and Facebook, and

providing its contact number to place orders for impugned products, thus affecting the goodwill and reputation of the plaintiffs.

The Hon'ble Delhi High Court has found that the plaintiffs have made out a prima facie case in their favour for grant of an ex-parte ad-interim injunction, as in absence of such an injunction, irreparable harm would be caused to the plaintiffs; balance of convenience also lies in favour of the plaintiffs and against the defendant. The court has ordered the defendant to refrain from manufacturing, reproducing, selling, advertising, or promoting counterfeit garments that are colourable imitations or substantial reproduction of the plaintiffs' drawings, garments, and styles. The defendant is also prohibited from using the plaintiffs' trademark and plaintiff No. 2's name 'GAURAV GUPTA' in designs or promoting impugned products to unfairly exploit the plaintiffs' reputation and goodwill. The defendant is also directed to remove content on social media platforms.







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