



AUDIRI VOX

*a client-centric ip practice*

MIDDLE EAST – ASIA – AFRICA

AVIP

Newsletter

Issue 7

September 2023

## In This Issue

- DELHI HIGH COURT'S LANDMARK DECISION ON THE ROLE OF AI IN LEGAL PROCEEDINGS
- INDIA: GOVERNMENT INVITES STAKEHOLDER INPUT ON DRAFT PATENT (AMENDMENT) RULES, 2023
- WAY SEED PVP ONLINE TRAINING RECAP
- IP UPDATES



Adv. Divyendu Verma

## DELHI HIGH COURT'S LANDMARK DECISION ON THE ROLE OF AI IN LEGAL PROCEEDINGS

In the present case (Christian Louboutin SAS & Anr Vs Shoe Boutique; Appeal Number : CS(COMM) 583/2023; Decided on 22-AUG-2023), the Hon'ble Delhi High Court has unequivocally asserted that ChatGPT cannot serve as the foundation for the adjudication of legal or factual matters within the confines of a court of law. Artificial intelligence (AI) is incapable of replacing either the cognitive abilities of human intelligence or the essential humane dimension inherent in the adjudicatory process. At most, AI tools can be deployed for initial comprehension and preliminary research, but their role remains limited.

### Facts:

The Plaintiffs, Christian Louboutin headquartered in France, initiated this legal action. Their initial boutique opened its doors in Paris in 1991, marking the beginning of their journey. They are renowned for their iconic 'RED SOLE' shoes, which they manufacture and distribute.



Image courtesy: Christian Louboutin official website

The Plaintiffs contend that their shoes have amassed an extensive reputation and goodwill, both globally and within India. Numerous Indian and international publications have featured the Plaintiffs' footwear and advertisements. The Plaintiffs have been marketing their unique designs in India since February 2012. In light of their substantial reputation, the Plaintiffs launched a "Stopfake" program, enabling consumers and concerned individuals to report counterfeit or imitation products, which the Plaintiffs would then investigate.

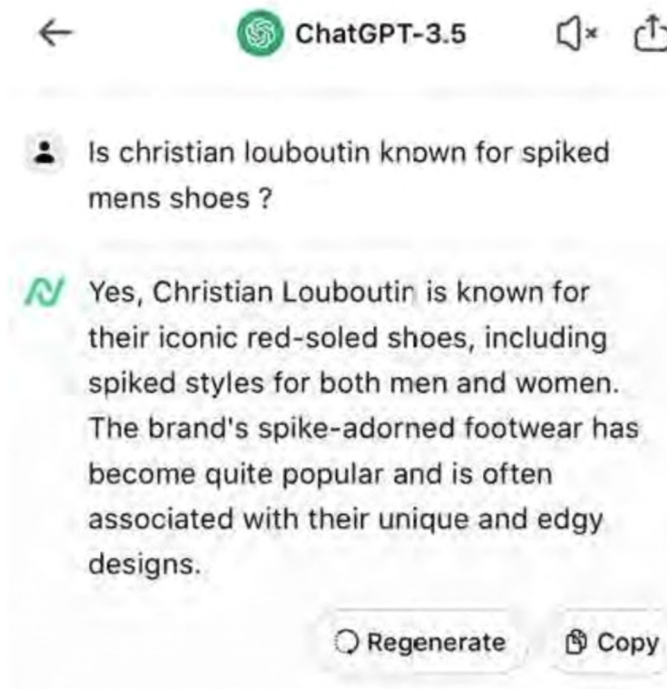
The present suit was filed by the Plaintiffs, aggrieved by the Defendant's production and sale of nearly identical spike-designed footwear. The Defendants operated in various malls, including Select Citywalk Mall in Saket New Delhi, where the Plaintiffs' investigators procured the spike footwear. The Plaintiffs assert that the Defendant, a partnership firm, is manufacturing shoes with identical designs and appearance. Purchases were made by the Plaintiffs in Delhi, Hyderabad, and other cities where the Defendant conducts business. The Plaintiff's claim is that the Defendant has unmistakably replicated their shoe designs, substantiated by pictorial representations presented in court.

#	SHOE STYLES COPIED BY SHUTIQ	PLAINTIFFS' ORIGINAL SHOE STYLES	DATE OF FIRST USE	DATE OF BAILIFF REPORT
1.	 SHUTIQ - ARROWHEAD CROCO SNEAKERS	 CHRISTIAN LOUBOUTIN - PIK BOAT VELOURS BLACK (Spring-Summer 2013 Collection)	27 <sup>th</sup> May 2012	18 <sup>th</sup> June, 2012
4.	 SHUTIQ - PARDUS ARROWHEAD	 CHRISTIAN LOUBOUTIN - PIK BOAT PYTHON ROCCIA (Spring-Summer 2020 Collection)	27 <sup>th</sup> May 2012	19 <sup>th</sup> July, 2019
9.	 SHUTIQ - POISEE STERLING	 CHRISTIAN LOUBOUTIN - DANDELION STRASS (Fall-Winter 2017 Collection)	21 <sup>st</sup> November 2016	1 <sup>st</sup> December, 2016

The 'RED SOLE' mark of the Plaintiffs has already been declared to be a well-known mark under Section 11(6) of the Trade Marks Act, 1999 by the Delhi High Court in *Christian Louboutin SAS v. Mr. Pawan Kumar* [CS(COMM) 714/2016, order dated 12th December, 2017].



Additionally, the Plaintiffs submitted evidence based on ChatGPT query responses and emphasized that their trademark was registered in India.



The Hon'ble High Court emphasized that ChatGPT cannot serve as the basis for adjudicating legal or factual matters in a court of law. Furthermore, the Court pointed out the potential for incorrect responses, fictional case laws, and imaginative data generated by AI. The accuracy and reliability of AI-generated data remain an unresolved issue. The Court left no room for doubt that, given the current state of technological development, AI cannot replace the cognitive abilities of human intelligence or the humane aspects integral to the adjudicatory process. At most, such tools can provide preliminary insights and assist with initial research, but they cannot assume a more substantial role.

Furthermore, the Court went on to emphasize that the reliability of responses from a Large Language Model (LLM)-based chatbot like ChatGPT is contingent on various factors, including the formulation and structure of the user's query and the quality of the training data used. Additionally, the Court noted the potential for inaccuracies, and fictitious legal precedents, and imaginative content generated by AI chatbots. Consequently, the Court affirmed that the accuracy and reliability of AI-generated data remain a topic of uncertainty.

On the merits of the case, after closely examining the parties' footwear and a comprehensive comparison of various product designs, it became evident that the Defendant had deliberately sought to imitate the Plaintiffs' designs with the intention of capitalizing on their reputation and goodwill. The Defendant had copied all the essential features of the Plaintiff's footwear such as 'RED SOLE', 'SPIKED SHOE STYLE', as also the prints. The Defendant's products were clear knock-offs or look-alikes of the distinctive shoes and footwear offered by the Plaintiffs. This imitation extended beyond just one or two designs, as clearly illustrated in the comparison chart. The actions of the Defendant were essentially an attempt to pass off their own products as those of the Plaintiffs.

The Court's ruling mandated that, since the Defendant had willingly undertaken not to copy or imitate any of the Plaintiffs' shoe designs, any breach of this commitment would render the Defendant liable to pay a lump-sum amount of INR 25 lakhs (Apprx. USD 30,000) as damages to the Plaintiffs immediately upon such evidence coming to notice of the Plaintiffs.

Additionally, considering that the Defendant had used images of well-known celebrities on social media and had displayed and sold the shoes in upscale malls, the Court directed the Defendant to remit a sum of Rs. 2 lakhs (Apprx. USD 2500) to the Plaintiffs within four weeks as costs.



## INDIA: GOVERNMENT INVITES STAKEHOLDER INPUT ON DRAFT PATENT (AMENDMENT) RULES, 2023

The Department of Promotion of Industry and Internal Trade (DPIIT) of Government of India has issued the Draft Patent (Amendment) Rules, 2023 on August 23, 2023. The public is invited to provide their comments within a span of 30 days. This move reflects the DPIIT and Indian Patent Office's commendable commitment to transparency and inclusivity by involving stakeholders in discussions. This concerted effort aims to continuously enhance the intellectual property (IP) ecosystem in India. While there remains a considerable journey ahead, these incremental actions leave a profound impact.

A closer examination of the proposed changes in the Draft Patents (Amendment) Rules, 2023 reveals the following major amendments:

### Shortening the Period for filing Request for Examination:

A significant amendment revolves around the timeline for Request for Examination. This amendment involves streamlining the deadline, shortening the period from 48 months to 31 months.

### Divisional Patent Application:

The proposed amendment grant applicants the flexibility to file Divisional Patent applications based on inventions disclosed in provisional applications.

### Reduction in Fee for filing of Patent of Addition:

The proposed amendment introduced a significant reduction of 50% in official fees for Patent of Addition applications under section 54.

### Working of Patent Updates (FORM-27):

A forward-looking change is the adjustment of Form-27's submission requirement to every 3 financial years, departing from the previous annual requirement. Furthermore, Form-27 will no longer necessitate revenue/value details or reasons if the patent is not worked. This shift holds implications for section 85, which pertains to the revocation of patents due to non-working.



Image Courtesy: Indian Patent Office, New Delhi

## Shortening the period for filing (updated) Form-3:

The submission deadline for Form-3 is set at 2 months after the issuance of the First Examination Report (FER). An extension option via Form-4 is also under consideration. Additionally, it's important to note that the applicant's Form-3 must now include the date of disposal instead of the date of grant of corresponding foreign patent(s)/application(s).

## Procedural changes regarding Pre-Grant Opposition:

- (a) Controllers have been vested with the responsibility of evaluating the admissibility of representations for pre-grant opposition, effectively establishing measures to discourage frivolous pre-grant oppositions.
- (b) The period for submitting statements and evidence in response to opposition is being shortened to 2 months.
- (c) Under Rule 138, Controllers will now have the authority to extend the extension period for up to six months via Form-4. However, please note that fees will be applicable for these extensions. The fee structure for such extensions is revised. The revised fee will be 50,000 INR per month for others category which includes organization such as large entities and 10,000 INR per month for Natural person (s) or startup (s) or small entities or Educational institution(s).

## Procedural changes regarding Post-Grant Opposition:

- (a) Post-grant opposition cases are set to witness joint recommendations by the opposition board within 2 months, a modification from the previous 3 months.
- (b) The introduction or revision of fees for pre-grant and post-grant oppositions, calculated as an aggregate of the amount paid for form-2, form-9, and form-18/18A, is proposed. Notably, the physical filing of both pre and post-grant oppositions is no longer permitted.

## Discount in payment of advance Renewal Fee:

A captivating offer lies in the proposed 10% discount on patent renewal fees when paid in advance, encompassing a minimum duration of 4 years or beyond.

## No Fee for Surrender of Patents:

The surrender of patents is set to be fee-free in the present proposed amendments.

## New Provisions for Grace Period:

The draft Rules prescribe a format under Form 31 for submitting a formal request, along with the prescribed fee, to avail the Grace period as defined under Section 31. Section 31 outlines exceptions to anticipation through public display.

These amendments, as proposed, reflect a proactive approach towards enhancing the efficiency and effectiveness of the patent system in India, underscoring the commitment to create a more robust IP framework in the country.

Objections or suggestions should be directed to the Indian Government within 30 days from the publication date of August 23, 2023.





## WAY SEED PVP ONLINE TRAINING RECAP

On August 11, 2023, our representatives from Audiri Vox, had the privilege of attending an online training session hosted by WaySeed, focusing on PVP (Plant Variety Protection). WaySeed is a leading PVP Law firm based in Beijing, China. The session was conducted by two distinguished representatives from WaySeed, Ms. J J Teng and Ms. Gaoming Zhu.

The training session commenced with formal introductions of the speakers and an overview of WaySeed's mission and expertise. The main training segment was led by an engaging speaker who provided valuable insights into PVP and related topics.

During this session, the speaker covered several critical areas, including:

### 1. Understanding PVP:

Participants were provided with a concise yet comprehensive explanation of Plant Variety Protection, its significance, and the associated legal framework.

### 2. Application Process:

Detailed guidance was given on the application process for PVP, including insights into the required forms and documentation.

### 3. DUS Test:

The speaker explained the Distinctiveness, Uniformity, and Stability (DUS) test, a crucial aspect of PVP compliance.

### 4. Propagating Material Handling:

Participants learned about the procedures for handling and submitting propagating material, including seeds and plant parts.

### 5. International Perspectives:

The speaker expanded the horizons by introducing participants to international bodies such as the International Union for the Protection of New Varieties of Plants (UPOV) and the Community Plant Variety Office (CPVO), an agency of the European Union responsible for managing plant variety rights.

After a short break, the speaker delved into the practical aspects of WaySeed's client services. This segment covered the diverse needs of their clients, the specialized services offered by WaySeed, and their strategies for connecting with clients. Notably, the speaker emphasized WaySeed's commitment to providing end-to-end support, assistance, and guidance throughout the PVP filing and litigation processes. Their tailored approach benefits universities, plant breeders, and small seed industries in China by understanding and addressing their unique requirements.

The training session concluded with an open discussion, allowing participants to seek clarifications and offer suggestions. It was an enriching experience that broadened our understanding of PVP and the dedicated services provided by WaySeed.

We extend our gratitude to WaySeed, Ms. J J Teng, Ms. Gaoming Zhu, and the speaker for their valuable insights and expertise shared during this enlightening session. We look forward to further collaboration and learning opportunities in the future.



Image courtesy: Justin Ferrante/JMF

## IP UPDATES

### Burundi: Deadline For Trademark Renewals



The Ministry of Commerce has circulated a notice requesting all trademarks registered prior to 28th July, 2019, be renewed with the Industrial Property Department before 1st January, 2025. According to the Ministry there will be only one extension of 6 months which will be granted upon the payment of late renewal fees.

### Cabo Verde: International Searching Authorities and Preliminary Examining Authorities



The Institute for Quality Management and Intellectual Property (IGQPI), Cabo Verde, has specified, the Austrian Patent Office, in addition to the European Patent Office, the Korean Intellectual Property Office, and the National Institute of Industrial Property (Brazil), as competent International Searching and Preliminary Authority for international patent applications filed by nationals and residents of Cabo Verde with the IGQPI (Cabo Verde) or with the International Bureau of WIPO as receiving office.

### Georgia: Amendment to Patent Law



Georgia amended its Patent Law with an aim to harmonize its patent law with the European Patent Convention, European legislation, and the Patent Law Treaty. A validation agreement between Georgia and the European Patent Organization (EPO) was signed on 31st October, 2019, and was later ratified by the Parliament of Georgia on 17th May, 2023. The date on which the agreement enters into force is yet to be determined. The agreement will make Georgia a validation state, even though it is not a contracting state to the European Patent Convention (EPC). Hence, resulting in the European patents having the same legal effect as Georgian patents. These amendments will also bring clarity to certain requirements and procedures stipulated in the Georgian patent law.

### Kazakhstan: IPO Brings Amendment To The Official Fees



The Intellectual Property Office (IPO) of Kazakhstan has increased the following official fees by 45%:

- Fee for filing trademarks, increased from \$143 to \$208.
  - Fee for trademark renewal, increased from \$230 to \$334. The charges for an additional class over three, in the categories mentioned above, have increased from \$40 to \$59.
  - Fee for filing a response to a provisional refusal and for filing an opposition against a pending trademark application has increased from \$43 to \$62. There has been a 40% increase in the fees for conducting trademark search. The fees are as follows;
  - Fee for availability search in a single class for a word mark or a simple device mark, increased from \$27 to \$37.
  - Fee for availability search in a single class for combined mark, increased from \$53 to \$75.
  - Fee for searching owner's name, increased from \$57 to \$79.
- There is also a 21% increase in the fees i.e., from \$106 to \$129 for registering an assignment agreement or license for all types of IP rights, including patents, utility models, industrial designs, and trademarks.

However, the annuity fees for plant variety right have been reduced by 5% to 15% per annual fee.

### Kenya: Setting Up Alliance For A War On Counterfeit Trade



Kenya Private Sector Alliance (KEPSA) partnered up with the Anti-Counterfeit Authority (ACA) for combating counterfeiting, and promoting consumer protection in the country. KEPSA and ACA have collaborated through working groups aiming to deliver intelligence sharing, training, and consumer awareness. They are collectively building strategies to foster a more secure marketplace.

## Kyrgyzstan: New Law On Intellectual Property



Kyrgyzstan has proposed a draft resolution on the implementation of the new law on trademarks, service marks, geographical indications (GI), and appellations of origin of goods. This draft brings a change and guides through the issues of drafting, filing, and examination of an application for trademark registration. The term for the main examination has also been reduced to 7 months from 12 months.

GI has been introduced by this draft resolution, which will enable the applicants will to register and use GIs. GI identifies a product as originating from a certain territory of a country, and possess qualities or a reputation that is associated with that territory.

## Mauritius: PCT Member State



Mauritius has become 157th member state of the Patent Co-operation treaty (PCT). This treaty provides applicants and inventors in the country with intellectual property (IP) protection in all the PCT contracting states. Through the PCT route a single patent application can be filed for protection in all acceding nations.

## Uzbekistan: Amends the Competition Law



Uzbekistan has recently amended its competition law which will enter into force on 10th October, 2023. The Anti-Monopoly Committee (AMC) has played a significant role in trademark invalidation cases, and in taking legal action against the infringers before the Uzbek Intellectual Property Office. AMC will transition into Competition Promotion and Consumer Protection Committee (CPCC) which will instead have no authority to decide on IP-related cases. It seems that the statutory mechanism that was relied upon for infringements based on unfair competition will no longer exist. Apparently, the amendments to the law are not in line with the Paris Convention for the Protection of Industrial Property, to which the country is a party. These amendments contradict Article 10bis (1) of the Paris Convention that binds every member of the Union to ensure effective protection against unfair competition.

## INDIA: TRADEMARK CASES

### DELHI HIGH COURT RULES EX-PARTE IN FAVOUR OF CALVIN KLEIN



In *Coty Germany GmbH v. Xeryus Retail Private Limited*, the Delhi High Court ruled an ex-parte order against the defendant, restraining them from selling impugned goods carrying the CK and CALVIN KLEIN trademarks. The defendants repeatedly failed to

appear before the Hon'ble Court.

Coty (registered owner of the Calvin Klein marks) claimed that the defendant was using its trademarks and selling, for commercial value, tester versions of Calvin Klein products, which were not meant to be commercially dispensed, and were only intended for the customers to sample fragrances before purchasing them. The defendants were using Coty's trademarks to sell products through the websites "www.perfumery.co.in" and "www.unboxed.in." Coty alleged that the defendants indulged in unfair trade practices by selling the testers for commercial value, and lured the customers into buying them by masquerading the tester products as Coty's perfumes.

The court held that the assertions and allegations filed by Coty made out a clear case of infringement of registered trademarks, as well as the defendant was unlawfully passing off their own goods, and Coty's products (testers), for commercial sales by defrauding the customers. The assertions had remained un rebutted indicating that the defendants had no substantial defense. Coty was awarded with INR 1,00,000 (Approx USD 1210) as costs.

### GOOGLE LLC (Appellant) vs DRS LOGISTICS (P) LTD. & ORS (Respondent)

Case Number: FAO(OS)(COMM) 2/2022 and FAO (OS) (COMM) 22/2022 & CM Nos. 5879/2022 & 5882/2022  
Decided On: 10 August 2023



The present appeal was filed by the appellant impugning the order passed by the single judge in which it was held that the use of trademarks as keywords in the Google Ads Programme amounts to 'Use' under the provisions of the Trademarks Act, 1999 and thus, may constitute infringement. The appellant claimed the safe harbour under Section 79 of the Information Technology Act, 2000, as it does not control the search results.



The respondents claimed that the appellant encourages the use of its registered trademarks as keywords for third parties to display their sponsored links pertaining to websites that infringe its trademarks. The use of its trademark as keyword results in diversion of internet traffic from its website to that of its competitor and thus use of its trademarks as a keyword infringes its trademarks. The main issue in this case was the Ads programme run by the appellant. Respondents further asserted that the use of a trademark as a keyword diverts internet traffic from its website. The Division Bench of the Delhi High Court held that the appellant cannot seek the safe harbour exemption u/s 79 of the IT Act and using trademark as a key word would amount to “use” of that trademark under the Trademarks Act. The Hon'ble Court clarifies that the use of a trademark as a key word per se would not amount to an infringement as it does not identify the source of the goods or services, and for it to be seen as an infringement of the mark, confusion, dilution or compromise of the mark has to be established by the complainants.

#### **MANKIND PHARMA LIMITED (Plaintiff) vs NOVAKIND BIOSCIENCE PRIVATE LIMITED (Defendant)**

Case Number: CS(COMM) 188/2021, I.A. 5700/2021 & I.A. 3248/2023

Decided On: 07 August 2023



The present suit was filed by the plaintiff, seeking a permanent injunction restraining the defendant from using the word "KIND" as a part of a mark that belongs to the same class as of the plaintiff's mark. The defendant stated that the plaintiff has no registration over "KIND" as a suffix. Hence, "KIND" is not a registered trademark of the plaintiff. The Hon'ble High Court observed that customers with average intelligence and imperfect recollection could associate a "NOVAKIND" product with the KIND family of marks owned by the plaintiff. The Hon'ble Court observed that the registered trademark and the identity or similarity of the goods or services covered by such registered trademark is likely to cause confusion on the part of the public, or which is likely to have an association with the registered trademark. The Hon'ble Court further observed that even the slightest possibility of confusion is unacceptable when it comes to medicines, especially prescription drugs. The Hon'ble Delhi High Court allowed the permanent injunction and underlined the need to

preserve distinctive naming practices for pharmaceutical products in view of possible implications for patient safety and the integrity of pharmaceutical markets.

#### **FOODLINK F AND B HOLDINGS INDIA PRIVATE LIMITED (Plaintiff) vs WOW MOMO FOODS PRIVATE LIMITED (Defendant)**

Case Number: CS(COMM) 848/2022

Decided On: 03 August 2023



The plaintiff has filed the suit against the defendant alleging trademark infringement of its registered trademark China Bistro. The plaintiff claimed that, until 2019, the defendant was using its mark as WOW! CHINA. In 2019, the defendant added the word "BISTRO" below the word China and the mark. The plaintiff further claimed that there is a strong possibility of confusion or deception between the two marks from the point of view of the customer's average intelligence and imperfect recollection. The Hon'ble Delhi High Court observed that when compared as a whole, the Hon'ble Court is prima facie convinced that the individual marks are deceptively similar and cause confusion amongst the customers. The Hon'ble Court held that *“the only consequence of such disclaimer, in my opinion, is that the plaintiff would not be able to urge infringement of a mark of another person solely because the said mark uses the word “CHINA”, or the said mark uses the word “BISTRO”. However, that would not inhibit the plaintiff from alleging infringement of the mark of another person on the ground that it is deceptively similar to the composite mark CHINA BISTRO when seen as a whole. Simply put, disclaiming exclusivity in respect of the individual parts of a mark would not ipso facto result in disclaiming exclusivity over the composite mark as a whole.”* The Hon'ble Court prohibited the defendant and all related parties from using the name or mark “WOW CHINA BISTRO” in any capacity that could be confused with the plaintiff's mark. However, the Hon'ble Court directed that the defendant could continue using “WOW! CHINA” without any restrictions.

**SUN PARMA LABORATORIES LTD (Plaintiff)  
vs MYLAN LABORATORIES LIMITED & ANR  
(Defendants)**

Case Number: CS(COMM) 1098/2016 & I.A.1395/2023  
Decided On: 02 August 2023



The present suit has been filed by the plaintiff seeking protection of its trademark 'OXIPLAT' against the defendant's mark "SOXPLAT". These competing marks were registered in favour of the plaintiff and the defendant. However, the registration of the defendant's mark was cancelled as per the IPAB (Intellectual Property Appellate Board) now abolished by the Government of India. order issued in 2020. The Hon'ble Delhi High Court observed that the suit has remained pending and there was no interim injunction during the entire period against the defendants. Also, the Single Judge and the Division Bench have held against the plaintiff and not granted an interim injunction. The IPAB has rendered its decision only as in 2020. Thereafter, the defendants have given up the mark 'SOXPLAT' and the mark also stands removed from the Register. However, to serve the interest of the plaintiff, the Hon'ble High Court awarded costs of INR 5 Lakhs (Approx USD 6030).





309 Churchill Tower Business Bay, P.O. Box 415116 Dubai-United Arab Emirates  
+971 4 582 6655  
global@audirivox.com



[www.audirivox.com](http://www.audirivox.com)

---

## Editorial Board

**Sarmad Hasan Manto**  
Attorney at Law  
Managing Partner

**Divyendu Verma**  
Attorney at Law  
Head of Patents Dept.

**Pramod Chunchuwar**  
Editor-in-Chief

**Nilesh B.**  
Designer

---

Disclaimer: This publication is intended to provide information to clients on recent developments in IPR industry. The material contained in this publication has been gathered by the lawyers at Audiri Vox for informational purposes only and is not intended to be legal advice. Specifically, the articles or quotes in this newsletter are not legal opinions and readers should not act on the basis of these articles or quotes without consulting a lawyer who could provide analysis and advice on a specific matter.

© 2023 Audiri Vox

This Newsletter is published by Audiri Vox at 309 Churchill Tower Business Bay, P.O. Box 415116 Dubai-United Arab Emirates on 6th September, 2023.