



INTELLECTUAL PROPERTY APPELLATE BOARD PRESENTLY FUNCTIONAL

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With the retirement of the last Chairman in May 2016, and shortly thereafter, the Technical Member, the Intellectual Property Appellate Board (IPAB), had been non-functional for a couple of years. The IPAB is the body responsible for dealing with appeals arising from orders of the Controller of Patents and revocation of patents filed u/s 64 of the Patents Act. The Board of the IPAB for hearing patent matters, is required to be composed of the Chairman and a Technical Member.

While a new Chairman of the IPAB, Hon'ble Justice Manmohan Singh, was appointed on 1st January 2018, the post of Technical Member was still lying vacant and in the absence of the requisite quorum for the Board to be functional, hearings, in appeals against orders under the Patents Act could not be conducted. While the post of Technical Member under the Patents Act was vacant, the Technical Member under the Plant Varieties Protection Act was available.

A series of writ petitions filed at the Delhi High Court urging the Court to intervene in appeals in matters of urgent nature, prompted the Court to issue directions to the Government for the immediate appointment of a Technical Member and to prolong the tenure of the existing Chairman. Following said directions, the Government of India issued a notice to prolong the tenure of the existing Chairman, Hon'ble Justice Manmohan Singh, till 21st September 2020.

The Court also found that the Chairman and Technical Member under the Plant Varieties Protection Act were competent to hear urgent matters relating to patents till the vacancies of the Technical Member under the Patents Act is filled up and that such orders will not be invalid for lack of coram.

As a result of the foregoing developments, the IPAB is currently functional with Justice Manmohan Singh as Chairman and the Technical Member of the Plant Varieties Protection Act acting as Technical Member in patent matters.

Thus the filing of appeals against orders of the Controller of Patents, is very much a viable option for applicants. In fact, even amidst the COVID-19 lockdown in India, the IPAB has taken steps to ensure its functioning and the following steps have been directed through office order dated 6th May 2020:

1. The proceedings of the IPAB will continue through video
2. E-filing of urgent matters is permitted but physical filing is currently on
3. The parties are permitted to request for listing or make urgent mentioning of their matters by sending an e-mail to the IPAB
4. All communication with the IPAB, including filing of hearing submissions, audio of oral



submissions, listing of cases, filing of documents , has to be done through e-mail.

The aforesaid protocol regarding communication, filing and hearing will continue till further orders of the IPAB.

Thus even at this point of time, cases requiring immediate attention can be mentioned as urgent matters before the IPAB and can be heard on priority basis.

