Arbitrability of Intellectual Property Disputes in India

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With the increasing commercialization of intellectual property in India, disputes concerning trademarks, copyrights, patents and related rights frequently arise from complex contractual arrangements such as licences, franchises, coexistence agreements, joint ventures and technology transfers. Traditionally, IP disputes were perceived as unsuitable for arbitration because intellectual property rights are statutory monopolies, often characterized as rights in rem. However, over the past decade, Indian courts have adopted a more nuanced and arbitration-friendly approach, recognizing that not all IP disputes are alike, and that many are in fact arbitrable when they concern private, inter-party obligations.

The modern Indian position draws a clear distinction between rights *in rem*, which affect the public at large and remain non-arbitrable, and rights *in personam*, which arise out of contractual or private arrangements and may validly be resolved through arbitration.

Conceptual Framework:
Rights in Rem Versus Rights in Personam

The Supreme Court in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.* (2011) laid the foundation for determining arbitrability by holding that disputes concerning rights *in rem* are generally non-arbitrable, while disputes relating to rights *in personam* are arbitrable. This distinction has since been consistently applied in the intellectual property context.

Intellectual property statutes confer exclusive rights enforceable against the world at large. Consequently, disputes involving *validity, subsistence, rectification or cancellation of IP registrations* are considered to affect public rights and are reserved for statutory authorities or courts. In contrast, disputes that regulate *how parties may exercise or restrict IP rights between themselves* are treated as private and arbitrable.

When are Intellectual Property Disputes Arbitrable?

Indian courts have recognized that several categories of IP disputes are arbitrable, particularly when they arise from contracts and concern rights **in personam**.

Contractual IP disputes

Disputes arising out of trademark or copyright licences, franchise agreements, coexistence agreements, distribution arrangements and technology transfer contracts are routinely held to be arbitrable. These include disputes relating to:

- Payment and calculation of royalties
- Scope, territory and exclusivity of licensed rights
- Quality control and brand standards
- Termination, renewal and post-termination obligations
- Breach of coexistence or settlement agreements
- Assignment and contractual ownership issues

Such disputes do not seek to bind the world at large but merely enforce reciprocal contractual obligations between the parties.

Infringement rooted in contracts

Even where allegations are framed as infringement or passing off, courts have held disputes to be arbitrable if the *real dispute is contractual.* Merely labelling a claim as infringement does not oust arbitration if the controversy concerns whether a party's use is permitted under an agreement.

In *Eros International Media Ltd. v. Telemax Links India Pvt. Ltd.* (Bombay High Court, 2016), the court held that disputes concerning the manner in which licensed IP was used under a contract are arbitrable, notwithstanding the presence of infringement allegations. The court emphasized that the tribunal would not decide questions of validity or grant relief with *erga omnes* effect, which remained with statutory authorities.

Similarly, in *Hero Electric Vehicles Pvt. Ltd. v. Lectro E-Mobility Pvt. Ltd.* (Delhi High Court, 2021), the court held that passing off claims were arbitrable because they were inseparable from the contractual allocation of brand usage and goodwill between the parties.

Interim relief in aid of arbitration

Courts and arbitral tribunals in India can grant robust interim protection in IP-related arbitrations. Under Section 9 of the Arbitration and Conciliation Act, 1996, courts may grant interim measures before or during arbitration, including injunctions, preservation of goods and appointment of receivers. Under Section 17, arbitral tribunals may grant similar reliefs, and such orders are enforceable as court orders.

In *Golden Tobie Pvt. Ltd. v. Golden Tobacco Ltd.* (Delhi High Court, 2021), the court granted interim protection under Section 9 in a trademark licence dispute, reaffirming that contractual trademark disputes are arbitrable even though trademark validity issues are not

When are intellectual property disputes not arb itrable?

Despite the pro-arbitration trend, certain IP disputes remain clearly outside the scope of arbitration.

Validity and rectification of IP rights

Questions relating to the *validity, subsistence or rectification of registered IP rights* are non-arbitrable. Such disputes affect public rights and the integrity of statutory registers, and can only be decided by designated statutory authorities or courts.

Indian courts have consistently held that arbitral tribunals lack jurisdiction to order cancellation or rectification of IP registers or issue declarations with in rem effect

Pure infringement and passing off actions

Standalone infringement or passing off actions, unconnected to any contractual relationship, are generally non-arbitrable. These actions are directed against the world at large and seek remedies that go beyond private adjudication.

Criminal IP offences

Criminal proceedings under IP statutes, involving penal consequences such as fines or imprisonment, are inherently non-arbitrable and must be tried by criminal courts.

The Supreme Court's pro-arbitration jurisprudence

The Supreme Court has played a crucial role in reinforcing arbitration as a viable dispute resolution mechanism in complex commercial disputes, including those involving IP elements.

In *A. Ayyasamy v. A. Paramasivam* (2016), the court held that mere allegations of fraud do not render disputes non-arbitrable unless they are serious, complex and permeate the entire agreement. This principle is relevant in IP disputes, where allegations of dishonest adoption or misuse are often raised to resist arbitration.

In *Deccan Paper Mills Co. Ltd. v. Regency Mahavir Properties* (2020), the court reaffirmed the doctrines of separability and competence-competence, holding that arbitration clauses survive termination or rescission of the main contract and that contractual remedies, including specific performance, are arbitrable.

Further, in *Amazon.com NV Investment Holdings LLC v. Future Retail Ltd.* (2021), the Supreme Court upheld the enforceability of emergency arbitrator orders under Section 17, significantly strengthening the efficacy of interim relief in high-value commercial and IP-linked disputes.

Advantages and Limitations of Arbitration in IP Disputes

Advantages

- Confidentiality of sensitive commercial and brand information
- Ability to appoint arbitrators with IP expertise
- Faster and flexible procedures compared to traditional litigation
- Effective interim relief through Sections 9 and 17
- Enforceability of monetary awards, especially in cross-border disputes

Limitations

- Inability to bind third parties or statutory authorities
- No power to decide validity or rectification of IP rights
- Limited precedential value
- Costs may be high in complex disputes

Conclusion

The arbitrability of intellectual property disputes in India is no longer viewed through a rigid or exclusionary lens. Indian jurisprudence has evolved to recognize that while *public law elements of IP remain non-arbitrable*, a significant category of *contract-centric IP disputes is well-suited to arbitration.* Courts have consistently upheld party autonomy, enforced arbitration agreements, and provided strong interim support in IP-related arbitrations.

As commercial exploitation of IP continues to grow, arbitration is likely to remain a preferred mechanism for resolving disputes arising out of licences, franchises, coexistence arrangements and cross-border collaborations, while courts and statutory authorities will continue to safeguard the public law dimensions of intellectual property.

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