Indian judiciary must adopt "time-bound" model to for IP litigation even post pandemic

Thought Leadership • May 14, 2020

The Article about time-bound hearings in IP litigation was first appeared in Asia IP. *Pravin Anand and Ashutosh Upadhyaya share the new ways developed by the Indian judiciary to administer justice in current pandemic situation while stressing that courts must adopt "time-bound" model for IP litigation even after the pandemic is over.* In the current pandemic situation, the Indian judiciary has developed new ways to administer justice. To ensure that justice is delivered, the lawyers can now argue matters through video conferencing system like Cisco or Zoom. However, the catch is that this system will work, if the arguments are taken up like 'online appointments' and have a timeslot allotted to it, i.e. all the arguments would be 'time-bound'. It is proposed that limiting the time through time slots can be the only possible way to dispense justice efficiently, and this model ought to be adopted by the courts for IP litigation even after the pandemic is over. Important to note that life span of a fully contested litigation has been reduced, thanks to the Commercial Courts Act, 2015 ('the Act). Apart from the fact that most of the matters are resolved through settlements or mediation, several time limits have also been strictly enforced under the Act, viz.:

a. Compliance under the proviso to Order 39 Rule 3 of the Code of Civil Procedure 1908 ('CPC') after an interim injunction is granted, of all the relevant Court papers to the opponent and to file an affidavit within 24 hours. If not complied with, it threatens to vacate the interim injunction;
b. The Written Statement must be filed within 30 days and in any case, not exceeding 120 days from the service of summons. This has been interpreted to be a strict deadline closing the right of the party to defend its case;
c. An affidavit of admission/denial must be filed along with the Written Statement or with the Replication or else the pleading may not be taken on record; and
d. A strict deadline for filing the replication within 30 days of receipt of Written Statement with a maximum of 15 days extension.
e. Similar deadlines exist for the filing of documents, preferring of Chamber Appeals and Appeals to the Division Bench.

Despite the aforesaid mechanisms in place, most of the contested matters remain stuck at the finals stage i.e. at a stage where the evidence is completed, and the matter is pending for arguments and judgement. Such matters are not taken up by the court because:

a. Judges are already burdened with fresh matters and applications, including frivolous applications by defendants for rejection/return of plaint under Order 7 Rule 10 or Order 7 Rule 11 of the CPC;
b. Absence of time slot system, matters are argued for long durations;

c. Effective working hours consumed by the fresh matters, which are argued for long hours.

At times, the final matters are taken up by the court upon filing an application, showing the grounds of urgency and an hour or two is dedicated. However, the matter seldom gets concluded in the allotted time frame and is eventually adjourned, because:

a. There's no time limit and one side argue matters for hours;
b. Adjournments due to paucity of time;
c. Sudden change of roster;
d. Matters being released by the judges;

Upon cogitation one realises that the pending final matters before the Indian Courts have a lot to offer, once decided:

a. There would be more judgments to guide litigants on esoteric and gray areas of the law;
b. Cases would be concluded quickly which would be a desired change;
c. There would be major cost savings. This is not only good for SME clients but even for large corporations who are burdened with the crushing cost of fighting cases, where numbers are directly proportional to the well-known-ness of their Trademarks or the popularity of their Patents, Designs or Copyrights.

Therefore, it is paramount to dispose the pending final matters to obtain potent judgments and the efficacious way to do that is by having time slots. For the convenience of the readers, the mechanics is explained below:

i. Slots of speaking time will be allocated to parties for advancing arguments;
ii. Each slot will be of 10 minutes;
iii. Number of time slots will depend upon the nature of hearing, viz.

- Normal applications- single slot
- Injunction application- 4 slots;
- Recording evidence- 18-24 slots;
- For final arguments- 30 slots each and 15 slots rebuttal.

If a party wants more time, they must move an application before a hearing officer (like a timekeeper) and convince him of the need for more time, accordingly, the hearing officer might permit additional time slots. This time slot system will ensure that the hearing is concluded in time bound manner. Time slots are thus, sine qua non of an effective hearing and ought to be implemented with three clear understandings:

a. That with passage of time the habit to keep time will solidify;
b. Parties that do not complete on time would be encouraged to provide written arguments;
c. In exceptional cases, Courts would have the discretion to enlarge time.

There is thus a key realization that timely disposal of litigation matters alone can serve the ends of justice. The Article first appeared in Asia IP.