Pfizer Products Inc. vs Union of India

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Pfizer Products Inc. vs Union of India addressed a long-standing challenge faced by innovators in India relating to the misuse of the pre-grant opposition mechanism under patent law. Under Indian law, a pre-grant opposition can be filed by "any person", unlike a post-grant opposition, which can only be initiated by a "person interested". This broad wording led to systemic abuse of the provision, particularly by generic companies, which began filing multiple pre-grant oppositions in the names of different individuals. Such serial and benami oppositions resulted in prolonged delays in the grant of patents and, in some cases, patents not being granted at all before the expiry of their statutory term. The filing of repeated oppositions against patent applications covering commercially significant products had become routine, undermining innovation and certainty in the patent system—making judicial intervention imperative to curb this practice. In OA/2/2016/PT/MUM (Pfizer Products Inc. Vs UOI) vide a landmark and seminal decision dated 21st day of August 2020, the Intellectual Property Appellant Board condemned the filing of Benami Oppositions. The team was led by our Senior Partner, Ms Archana Shanker, along with the able assistance of our Director, Ms Gitika Suri. The team comprising Ms Archana Shanker and Ms Gitika Suri took this case to its logical conclusion and strongly opposed the pre-grant opposition filed by a Diamond merchant, Dhaval Diyora in a Pharmaceutical case. The order of the Intellectual Property Appellant Board was challenged by the opponent before the Divisional Bench of Bombay High Court. The Divisional Bench of Bombay High Court endorsed the order of the Intellectual Property Appellant Board and further opined that "any person" in a pre-grant opposition cannot be anybody since the objective of the pre-grant opposition is to help or assist in the examination process. "Any person" under Section 25(1) of the Indian Patents Act is to have at least the technical domain knowledge to which the invention relates. This decision of the Intellectual Property Appellant Board and Divisional Bench of Bombay High Court will have a huge impact on all innovators. Pursuant to these orders of the Intellectual Property Appellant Board and the Bombay High Court, the Intellectual Property Appellant Board has issued several orders to streamline the pre-grant opposition process, to ensure that the pre-grant opposition system is not abused, the pre-grant opposition not be filed by any strawman and person filing the opposition has to establish their locus/identity. The impact of this judgement on the commercial value of the innovation ecosystem is monumental since it impacts all industries. The matter was subsequently featured in the FT Innovative Lawyers Asia-Pacific 2021 report. Read here.

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