

THE PATENT  
LITIGATION  
LAW REVIEW

Editor  
Trevor Cook

THE LAWREVIEWS

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LITIGATION  
LAW REVIEW

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# PREFACE

Although patent litigators should always be mindful that patent litigation has, with some justification, been called the ‘pathology of the patent system’, not so much as a criticism, but more in recognition of how remarkably little patent litigation there is in fact when seen in relation to the number of patents in force at any one time, patent litigation is also the anvil on which patent law is forged. This is because the ‘black letter’ law of patents tends to be terse by comparison to most other areas of law, and it is only with experience of how courts and tribunals interpret such law and apply it that one can start to appreciate its true scope and effect. This, in part, explains how such similarly expressed statutory provisions as one finds in different patent laws can sometimes result in such different outcomes in different jurisdictions – disparities that are all the more evident when they concern the same product or process, and patents that, though in different jurisdictions are all members of the same family, and are all intended to protect the same invention.

Such disparities can also be a consequence of the considerable procedural differences between jurisdictions, the nature of which is outlined in this *Review*. However, the *Review* does not only summarise patent litigation procedures. The respective contributors to it, as leading practitioners in each of their jurisdictions, also focus on recent developments in substantive patent law as demonstrated by the most important recent court decisions in their respective jurisdictions, meaning that this *Review* also provides insight into the current controversies that affect patent law generally.

For those of us in Europe, the main development in patent litigation had been expected to be the entry into force of the Unified Patent Court Agreement, which had been foreseen for early in 2018, even though the UK, a necessary party to the establishment of the new Court, has initiated the procedure under Article 50 TFEU by which it will leave the EU in 2019, and the basis on which it can remain part of the new Court once it leaves the EU is unclear. However, these plans have now been thrown into doubt by the pending challenge before the Federal German Constitutional Court to the consistency of the Agreement with the Federal German Constitution – a challenge that is not expected to be resolved soon. It is to be hoped that by the next edition of this *Review* this particular source of uncertainty will have been resolved and the chapter devoted to this new jurisdiction will by then have practical application.

**Trevor Cook**

Wilmer Cutler Pickering Hale and Dorr LLP

New York

October 2017

# INDIA

*Pravin Anand and Abhilasha Nautiyal<sup>1</sup>*

## I OVERVIEW

The Modi government has signalled that it recognises the importance of intellectual property<sup>2</sup> and expediting litigation<sup>3</sup> in India's growth map for the coming years.

With this in mind, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015 (Commercial Courts Act) has been introduced to speed up commercial litigation in the country. All patent disputes are covered by this statute.

The hierarchy of courts in India is as follows:

- a* one Supreme Court – India's Supreme Court is the highest court in the country;
- b* 24 high courts – the Supreme Court is followed by high courts in this hierarchy. India's 29 states have 24 high courts – some states have a common high court; and
- c* over 500 district courts – each high court exercises superintendence over district courts.

As far as patent litigation is concerned, practically speaking, there is a threefold court structure:

### **i Courts of first instance**

A district court is the lowest court before which a patent infringement suit can be filed.

If a patent infringement lawsuit is filed before a district court and the defendant counterclaims for invalidity, then the suit is transferred to the high court.

Only six high courts can entertain lawsuits in the first instance. This is commonly referred to as 'original jurisdiction'. Most patent litigation is filed before high courts.

After the Commercial Courts Act, not all district courts can entertain 'commercial' lawsuits under the Commercial Courts Act. Under this Act, commercial suits can be filed only before courts designated as 'commercial courts' or before a high court division designated as a 'commercial division'.

Where a high court has a commercial division, no district court will be designated as a commercial court. For instance, in the state of Delhi, all commercial litigation is filed before the commercial division of the Delhi High Court.

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1 Pravin Anand is a managing partner and Abhilasha Nautiyal is a senior associate at Anand and Anand.

2 For instance, see 'India committed to protect Intellectual Property Rights: PM Modi', 13 November 2015, <https://timesofindia.indiatimes.com/india/India-committed-to-protect-Intellectual-Property-Rights-PM-Modi/articleshow/49761700.cms>.

3 'Judicial reform PM Modi's priority in 2017, ideas sought to reduce case pendency', 25 January 2017, <http://www.newindianexpress.com/nation/2017/jan/24/judicial-reform-pm-modis-priority-in-2017-idea-sought-to-reduce-case-pendency-1563098--1.html>.

All pre-Commercial Courts Act patent suits have been or are being transferred to the commercial court or commercial division that has territorial jurisdiction in each case.

### **i Courts of first appeal**

The Commercial Courts Act has reduced the kind of interlocutory orders that can be appealed. This is expected to speed up patent litigation in India.

An appeal from a district court order goes to a single judge of the high court. An appeal from a high court single judge's order goes to a two-judge bench of the high court, called a division bench.

### **iii Appeals to the Supreme Court**

Broadly speaking, appeals to the Supreme Court of India in patent matters are filed under the Supreme Court's discretionary power.

The Supreme Court is most likely to hear appeals that involve substantive questions of law. Having said that, the Supreme Court routinely interferes in matters that do not solely or directly involve such questions.

The past few years have seen a surge in pharmaceutical patents and standard essential patents' litigation in India. The decisions in *Roche v. Cipla*<sup>4</sup> and *Merck v. Glenmark*<sup>5</sup> bolstered the position of pharma patent owners in India. Ericsson and Philip's trailblazing records in standard essential patents litigation in India have encouraged many right holders to litigate in India.

## **II TYPES OF PATENT**

Product and process patents are recognised under the Indian Patents Act 1970. For each patent, the claims should relate to a single invention or to a group of inventions linked so as to form a single inventive concept.<sup>6</sup>

There are four patent offices in India. These are located in the cities of New Delhi, Mumbai, Kolkata and Chennai.

A patent application is published after 18 months from the date of filing of the application or the priority date, where applicable. Usually, publication takes place one month after expiry of said 18 months or a month after an applicant files a request for publication.

Ordinarily, a request for examination of a patent application has to be made within 48 months from the priority date, where applicable, or from the date of filing of the patent application.

The Patent Rules 2003 were amended in 2016 to include Rule 24 C, which provides for expedited examination of applications in certain cases. These are:

- a* where India has been indicated as the competent International Searching Authority or elected as an International Preliminary Examination Authority in the corresponding international application; or
- b* the applicant is a startup.

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4 (2015) 225 DLT 391 (DB).

5 (2015) 223 DLT 454.

6 Section 10(5), Patent Act 1970.

Once a request for examination of a patent application is filed in the prescribed form and within the prescribed period, the application, specification and other related documents are referred by the Controller of Patents (Controller) to an examiner for making a report on several aspects including the following:

- a* whether the application and the specification and other documents are in accordance with the Patents Act;
- b* whether there is any lawful objection to the grant; and
- c* results of the investigation for anticipation by any previous publication and prior claim.

The examiner shall make the above report within three months from the date of reference and the Controller shall ordinarily dispose of the report within one month of receipt, and issue a first statement of objections within one month from disposal of the report. An application may be put in order within six months from the date of the statement of objections. This period may be extended by a period of three months.

The term of a patent is 20 years from the date of filing of the application. For international applications under the Patent Cooperation Treaty (PCT), the term is 20 years from the international filing date under the PCT.

### **III PROCEDURE IN PATENT ENFORCEMENT AND INVALIDITY ACTIONS**

Patent litigation is changing rapidly with the advent of the Commercial Courts Act. For instance, this Act provides a non-extendable deadline for filing a statement of defence (called a 'written statement'). This deadline is 120 days from the date of service. This deadline applies to the defendant in a patent infringement lawsuit as well as the defendant in a counterclaim, which is usually the plaintiff in the lawsuit. Therefore, it is extremely important to comply with procedural deadlines.

In the pre-Commercial Courts Act regime, a defendant's delay in filing a written statement was usually condoned in the interest of justice. It was therefore not even advisable to strongly oppose condonation of delay applications because such opposition would only lead to further delay in the lawsuit.

Other important changes introduced by this Act are the introduction of 'case management hearings', 'summary judgments' and a real 'costs' regime.

For anyone litigating or proposing to litigate an intellectual property lawsuit in India, it may be worthwhile to go through the 22 pages of the Commercial Courts Act.

Other practical considerations in patent infringement and invalidity proceedings are as follows:

- a* obtaining certified copies of patent documents from the Indian patent office because documents available on the patent office website may not be updated;
- b* identifying an authorised signatory;
- c* identifying an independent expert and other witnesses; and
- d* certification for internet printouts.

As explained above, a patent infringement lawsuit can be brought before a commercial court or a commercial division of a high court. If a patent infringement suit is filed before a district court, then it will be transferred to a high court if the defendant counterclaims for invalidity of the suit patent.

The usual practice for most defendants in patent infringement lawsuits is to counterclaim for invalidity. An interim injunction may be refused if the defendant raises a credible challenge to the validity of the patent in suit. Having said that, a counterclaim may sometimes be filed only to emphasise, sometimes wrongly, the seriousness of the challenge to the validity of the patent.

Before the *Enercon* decision<sup>7</sup> of the Supreme Court clarified the law, a defendant could not only counterclaim for invalidity in a patent infringement suit filed against it, but could also initiate revocation proceedings against the same patent before the Intellectual Property Appellate Board. The Intellectual Property Appellate Board is a specialised board that hears appeals against orders of the intellectual property offices, including the patent office. This Board should have at least one technical member, among others, for hearing patent appeals. However, since 2016, the Board has been defunct after its last chairman retired. The board is likely to resume functions in 2017, once the government appoints its officials.

In 2014, the Supreme Court in *Enercon* clarified that only the first filed action between a counterclaim and a revocation will survive. Further, once a lawsuit is filed against a defendant, it can challenge validity of the patent only by way of a counterclaim.

While a high court judge may not always have a technical background, as things stand today, proceedings before the high court will be faster than proceedings before the Intellectual Property Appellate Board (IPAB).

A patentee or its exclusive licensee can file a lawsuit for patent infringement. The limitation period is three years from the date of cause of action. If the cause of action is a patent infringement lawsuit, the limitation period begins when the patentee or its agent first gains knowledge of the infringement. A fresh cause of action arises each time a patent is infringed.

A defendant in a patent lawsuit can file a counterclaim in the suit to challenge the validity of the patent in suit. Revocation proceedings before the Intellectual Property Appellate Board can be initiated by any interested person. The term 'any interested' person has been interpreted by courts to include:

*[A] person who has a direct, present and tangible interest with a patent, and the grant of the patent adversely affects his above rights. A person interested would include any individual who desires to make independent use of either the invention itself (which has been patented), or desires to exploit the process (which has been patented) in his individual production activity. Therefore, the term 'any person interested is not static.'*<sup>8</sup>

A revocation proceeding may be filed against a patent any time after the grant of the patent.

A patent may also be challenged by an interested person by way of a post-grant opposition under Section 25(2) of the Patents Act 1970, before the Patent Office. However, a post-grant opposition can be only filed after grant of a patent but before the expiry of one year from the date of publication of grant of a patent.

Key differences between post-grant opposition and revocation proceedings include the narrower scope of inquiry in a post-grant opposition, and the limited period in which a post-grant opposition can be filed.

The usual procedure in a patent infringement lawsuit and a counterclaim for nullity is as follows:

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7 (2014) 15 SCC 360.

8 Id at Paragraph 21.

- a* Step 1 – Filing of the lawsuit and admission of the lawsuit. Once the lawsuit is admitted, summons to the defendant are issued by the court.
- b* Step 2 – Defendant enters appearance before the court and written pleadings are filed in court. The defendant may also file a counterclaim, in which case the plaintiff files its defence in the counterclaim.
- c* Step 3 – This is a procedural step called ‘admission and denial’ of documents. Parties may also seek discovery of documents.
- d* Step 4 – Issues in controversy are framed by the judge to narrow the controversy and the parties are sent to trial. In most patent cases, at least before the Delhi High Court, local commissioners (officers specially appointed by the court) record evidence.
- e* Step 5 – Trial includes examination in chief, cross examination and re-examination, if any, of witnesses. A patent infringement trial is governed by the Indian Evidence Act 1872.
- f* Step 6 – Final arguments before the judge.

A party to a lawsuit can also request for the appointment of a local commissioner to preserve proof of infringement.

The procedure in revocation and post-grant opposition proceedings is more relaxed. Usually, the parties file pleadings and documents, and file evidence in the form of affidavits after which the matter is put up for final arguments. These proceedings do not involve several steps explained above, including steps 3 and 4. In appropriate cases, cross-examination of witnesses may be permitted by the IPAB.

The Patent Office and the IPAB usually accept internet printouts without further proof. However, for other documents such as brochures and receipts, they may require parties to produce originals.

In a suit for patent infringement, every ground on which a patent may be revoked is available as a ground for defence. However, for a declaration of nullity of the patent in suit, a defendant will have to file a counterclaim.

After the enactment of the Commercial Courts Act, the lifespan of a patent infringement lawsuit is expected to reduce to about 18 months. The timeline of proceedings before the Patent Office and the IPAB is harder to predict, but a ballpark assessment would be in the range of two to four years.

Interim reliefs in patent infringement proceedings range from interim injunctions to maintaining accounts by the defendant. Broadly, the following interim reliefs are usually granted in patent infringement proceedings:

- a* Interim injunctions – Courts are more likely to grant interim injunctions in cases where the defendant is yet to commercially launch. It is rare for courts to direct the plaintiff to make a security deposit while granting an interim injunction in the plaintiff's favour.
- b* Interim royalty arrangements – In standard essential patents litigation, this has become the go-to remedy. Interim royalty arrangements of several kinds, including where the plaintiff receives royalty subject to its furnishing a bank guarantee for the royalty it receives, have been passed by courts in India. Another version of this remedy is where the defendant does not actually make any royalty payments to the plaintiff but furnishes a bank guarantee for the royalty due.
- c* Maintaining accounts – Courts also direct defendants to maintain accounts of their profit from the alleged infringing activities.

- d* Appointment of local commissioners – Courts may appoint a local commissioner to visit the defendant’s premises to preserve evidence of infringement. Such orders are usually passed in cases where the plaintiff can demonstrate to the judge that the defendant is likely to destroy evidence relevant to the proceedings.

The Patents Act empowers the recipient of groundless threats of patent infringement to move the court for a declaration that the threats are in fact groundless, and an injunction against continuance of such threats, and damages. However, this provision has not witnessed much litigation.

To the best of our knowledge, the Competition Commission of India has entertained complaints against one patentee in three cases involving standard essential patents. The director general’s investigation report is awaited in these cases.

## IV SUBSTANTIVE LAW

### i Infringement

Under Section 48 of the Patents Act, the following acts constitute patent infringement:

- a* for a product patent, an unauthorised act of making, using, selling, offering for sale or importing for those purposes may constitute infringement of the patent; and
- b* for a process patent, an unauthorised act of using that process, or using, offering for sale, selling or importing for those purposes, a product directly obtained from the patented process may constitute infringement of the patent.

Indian courts recognise *quia timet* actions, namely, where there is a real and imminent apprehension of infringement. Courts have found preparatory acts such as listing of a patented molecule on the defendant’s website, applications filed by defendant for obtaining a manufacturing approval for the patented product as real and imminent apprehension of infringement.

The recent decision of a two-judge bench of the Delhi High Court in the *Roche v. Cipla*<sup>9</sup> dispute has laid down rules for claim interpretation in patent infringement lawsuits. A few key rules are reproduced below:

- a* the broad structure of a set of claims is an inverted pyramid, with the broadest at the top and the narrowest at the bottom;
- b* claims are a single sentence defining an invention or an inventive concept;
- c* different claims define different embodiments of the same inventive concept;
- d* where claims are ‘dependent’, it incorporates by reference ‘everything in the parent claim, and adds some further statement, limitations or restrictions’;
- e* at the beginning of an infringement action, courts in the United States conduct a ‘Markman hearing’ to define the scope of the claim or to throw light on certain ambiguous terms used in the claim. This is not technically done in India, but functionally most judges will resort to a similar exercise in trying to understand the scope and meaning of the claim, including its terms; and
- f* a claim includes its preamble, transition phrase and body. The transition term may be open-ended or closed.

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<sup>9</sup> *Supra* at 4.

Another important principle of claim construction was set the Supreme Court in the *Novartis* case,<sup>10</sup> where it held that coverage equals disclosure in the following terms:

*The dichotomy that is sought to be drawn between coverage or claim on the one hand and disclosure or enablement or teaching on the other hand, seems to strike at the very root of the rationale of the law of patent... To say that the coverage in a patent might go much beyond the disclosure thus seem to negate the fundamental rule underlying the grant of patents.*

In *Farbwerke Hoechst v. Unichem Labs*,<sup>11</sup> a judge of the Bombay High Court held that:

*[I]n an infringement action, the main function of the court is to construe the claims which are alleged to have been infringed, without reference to the body of the specification, and to refer to the body of the specification only if there is any ambiguity or difficulty in the construction of the claims in question.*

## **ii Invalidation and other defences**

### ***Bases for challenging patent validity***

A patent may be revoked on the grounds under Section 64 of the Patents Act. These include the following:

- a* the invention was claimed in the complete specification of a earlier granted patent in India;
- b* the patent was granted to a person not entitled under the Patents Act;
- c* the patent was wrongfully obtained in contravention of the applicant of revocation;
- d* the subject of any claim is not an invention. Section 3 of the Patents Act defines what are not inventions under the Patents Act and includes subject matter such as computer programs *per se*, invention contrary to natural laws, invention contrary to public order and morality, mere discovery of a new form of a known substance without enhanced efficacy, method of agriculture or horticulture, plants and animals, traditional knowledge, etc;
- e* the invention is anticipated;
- f* the invention is obvious;
- g* the invention is not useful;
- h* there is insufficient disclosure;
- i* claims are not clearly defined or are not supported by the specification;
- j* the patent was obtained on false suggestion or representation;
- k* the subject matter is not patentable under the Patents Act;
- l* the invention was secretly used in India prior to priority date; and
- m* failure to comply with Section 8, in other words, failure to disclose or disclosure of false information for corresponding foreign applications.

Every ground under which a patent may be revoked under Section 64 is available as a ground for defence in a patent infringement lawsuit.

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10 (2013) 6 SCC 1.

11 AIR 1969 Bom 255.



### ***Other defences to patent infringement***

The Patents Act recognises, *inter alia*, the following additional defences to patent infringement:

- a* use for the purpose merely of experiment or research including the imparting of instructions to pupils;
- b* making, constructing, using, selling or importing a patented invention solely for uses reasonably related to the development and submission of information required under any law in India, or a foreign country, that regulates the manufacture, construction, use, sale or import of any product;
- c* importation of patented products by any person from a person who is duly authorised under the law to produce and sell or distribute the product.

Further, Section 140 of the Patents Act prescribes conditions that are unlawful in a patent licence. These include conditions such as an exclusive grant back, prevention of challenges to the validity of a patent, and coercive package licensing.

## **V FINAL REMEDIES FOR INFRINGEMENT**

A court trying a patent infringement suit may grant the following remedies:

- a* a permanent injunction restraining future infringement, subject to such terms as the court may deem fit;
- b* at the option of the plaintiff, damages or an account of the defendant's profits; and
- c* litigation costs.

The damages granted by the court may include compensatory as well as punitive damages.

The court may also order delivery up, seizure, forfeiture or destruction of the infringing goods as well as materials and implements, the predominant use of which is the creation of the infringing goods.

In the *Merck v. Glenmark* case,<sup>12</sup> the Delhi High Court granted a permanent injunction restraining the defendant from manufacturing the infringing drug and from otherwise infringing the plaintiff's patent. The trial in this case was conducted on an expedited basis within a period of three months under specific orders of the Supreme Court. In the *Roche v. Cipla* case, the appellate court found that the defendant had infringed the patent and that the patent was valid. Since three months were left in the life of the patent when the decision was rendered, the court chose not to grant an injunction and instead ordered the defendant to render an account of the profits.

## **VI OTHER TYPES OF PATENT PROCEEDING**

### **i Proceedings for declaration of non-infringement**

Under Indian law, a party may file a suit for declaration that its activities with respect to a product or process, do not infringe a patent. For invoking this provision, the plaintiff must first attempt to obtain a written acknowledgment from the patentee to the effect that the plaintiff's activities do not infringe the patentee's patent. Only if the patentee refuses or neglects

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12 *Supra* at 5.

to provide such an acknowledgement can the plaintiff approach the court seeking such a declaration. While seeking such an acknowledgment, the plaintiff must give full particulars of its product or process in question.

Notably, while seeking such a declaration, the plaintiff is not entitled to call the validity of the patent into question.

## **ii Proceedings for restraining issuance of groundless threats regarding institution of legal proceedings**

A recipient of a threat of legal proceedings for infringement of a patent can file a suit for seeking the following reliefs:

- a* a declaration to the effect that the threats are unjustifiable;
- b* an injunction against the continuance of the threats; and
- c* such damages, if any, that he or she has sustained thereby.

These threats may be in the form of circulars, advertisements, letters or publications, but a mere notification of the existence of a patent will not constitute a threat for institution of legal proceedings.

## **iii Proceedings for issuance of compulsory licence**

The Indian Patents Act provides for compulsory licences that are granted by the Controller. A party may seek a compulsory licence, after three years of the grant of a patent, on any of the following grounds:

- a* the reasonable requirements of the public with respect to the patented invention have not been met;
- b* the patented invention has not been worked in the country; and
- c* the patented invention is not available to the public at a reasonably affordable price.

Prior to applying for a compulsory licence, the applicant must first seek a licence from the patentee, and only if reasonable efforts to obtain a licence fail can the applicant approach the Controller for a compulsory licence.

In 2012, the Controller granted India's first post-Agreement on Trade-Related Aspects of Intellectual Property Rights compulsory licence to Natco Pharma Ltd, with respect to Bayer's patented drug Sorafenib.<sup>13</sup>

## **iv Customs**

The Intellectual Property Rights (Imported Goods) Enforcement Rules 2007 allow patentees to have their patents recorded with the Customs authorities so that authorities may suspend release of and eventually confiscate infringing goods. Recognising that the determination of patent infringement issues can be complex, the High Court of Delhi in *Ericsson v. Union of India*<sup>14</sup> directed that the customs authorities would not ordinarily seize or suspend release of goods in patent cases, and would exercise these powers with extreme caution, unless the rights

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13 Order dated 9 March 2012 in CLA No. 1 of 2012, available at [http://ipindiaservices.gov.in/decision/IN-PCT-2001-00799-MUM-39950/INPCT200100799MUM-215758-compulsory\\_License\\_12032012.pdf](http://ipindiaservices.gov.in/decision/IN-PCT-2001-00799-MUM-39950/INPCT200100799MUM-215758-compulsory_License_12032012.pdf).

14 Judgment dated 13 July 2012 in LPA 1104 of 2011.

of the parties have been previously determined by the order of a competent court. However, in straightforward cases, where no complex issues of patent infringement or invalidity are involved, the customs authorities may proceed to suspend the release of the goods even in the absence of a court order.

## VII APPEAL

If the first-instance patent infringement proceedings are instituted before the district court, an inter-court appeal by the unsuccessful party lies before the high court; whereas, if the first-instance patent infringement proceedings are instituted before the high court, an intra-court appeal lies before a larger bench of the high court. An appeal against the order of the high court lies to the Supreme Court.

Appeals can only be filed against orders that form part of a list of appealable orders. Not every order passed by the court of first instance is appealable. This list typically includes orders affecting the substantive rights of the parties, such as those granting or refusing injunctions.

First appeal against a final decision post-trial is available as a matter of right and permission to appeal is not required. While provisions for obtaining a certificate from the high court for appealing to the Supreme Court exist, in practice, most appeals to the Supreme Court require leave to appeal to be granted by the Supreme Court for admission of the appeal.

Fresh evidence may be introduced at the appellate stage only after obtaining specific permission of the court.

First appellate courts usually consider both legal and factual issues. However, where the lower court has exercised its discretion in deciding an application for grant of an injunction, the appellate court will ordinarily not interfere in the exercise of discretion unless such exercise is perverse, capricious or arbitrary.

Under the new commercial courts regime, an appeal is to be decided within a period of six months from the date of filing of the appeal.

## VIII THE YEAR IN REVIEW

The past year has seen a lot of activity in the standard essential patents space. Pre-suit mediation has emerged as a time- and cost-effective tool in patent disputes where there is scope of negotiation, such as in the case of fair, reasonable and non-discriminatory terms (FRAND)-encumbered patents. Post-trial judgment in India's first standard essential patents' case was reserved earlier this year and is much awaited.

An important decision in patent law handed down this past year was in the case of *Bayer v. Alembic*<sup>15</sup> and *Bayer v. Union of India*.<sup>16</sup> In these cases, Justice RS Endlaw of the Delhi High Court interpreted the meaning of 'selling' under Section 107A of the Patents Act. Section 107A exempts making, constructing, using, selling or importing a patented invention solely for uses reasonably related to the development and submission of information required under any law regulating manufacture, construction, use, sale or import of any product in India or outside India. The term 'selling' has been interpreted by the court to include export. This decision is under appeal.

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15 Judgment dated 7 March 2017 in CS(COMM) No. 1592/2016.

16 Judgment dated 7 March 2017 in WP(C) 1971/2014.

The Patent Office Guidelines for Examination of Computer Related Inventions were revised in 2017, and the controversial requirement of ‘novel hardware’ for such inventions was omitted in these Guidelines.

Another important development in patent litigation has been the strict implementation of the Commercial Courts Act, which will expedite such litigation significantly.

## IX OUTLOOK

In 2015, the Supreme Court directed that the trial in the *Merck v. Glenmark*<sup>17</sup> patent dispute should be concluded in five weeks. Recently, the Supreme Court has shown further interest in finding ways and means of expediting intellectual property litigation in India. The Court has asked the Delhi High Court for its recommendations in a writ petition titled ‘Re- Case Management of Original Suits’, and has observed as follows:

*The Hon'ble Judges of the Delhi High Court have to work out ways and means for effective disposal of the IPR matters before it so that a model for disposal of civil suits can be culled out from the ways and means adopted by the Delhi High Court which can form the basis of a uniform action plan for the rest of the country...*

India is gearing up for fast-paced patent litigation and a setup where erring parties will be expected to bear the burden of costs for unreasonable conduct and actual damages.

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17 *Supra* at 5.

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Pravin Anand, managing partner of Anand and Anand, completed his law studies in New Delhi in 1979 and has practised as an IP lawyer since then. He has been counsel in several landmark IP cases, including those involving the first *Anton Piller* order (*HMV*), first *Mareva* injunction order (*Philips*), first *Norwich Pharmacal* order (*Hollywood Cigarettes*), moral rights of artists (*Amarnath Sehgal*), first order under the Hague Convention (*Astra Zeneca*) and several significant cases for pharmaceutical clients such as Merck, Novartis, Pfizer and Roche. He received the National Innovation Foundation Award from the Indian government in recognition of pro bono work for rural innovators at the grass roots level.

Mr Anand is co-author of two volumes of *Halsbury's Laws of India on Intellectual Property* and author of the India-specific chapter in several renowned guides. He also serves on the editorial board of several international IP journals. He was the first Indian legal practitioner to receive the AIPPI award of merit, and has also received other prominent awards and accolades.

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