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Topical Updates: To IP & Beyond

Snapshots

DELHI HIGH COURT

RDB AND CO. HUF V. HARPERCOLLINS PUBLISHERS INDIA PRIVATE LIMITED

Satyajit Ray owns the copyright in the screenplay of the 1966 film 'Nayak'. Since RDB had commissioned Ray to write the screenplay under a 'contract for service' 'between equals', RDB has no separate copyright or right of use over the said underlying works. RDB thus may not injunct HarperCollins from publishing a novelization of the screenplay under a license from the copyright owner.

CITY CIVIL COURT, BENGALURU

INDUSVIVA HEALTH SCIENCES V. AMAZON SELLER SERVICES PRIVATE LIMITED

An issue - a material proposition of fact or law which is affirmed by one party and denied by the other - can be framed at any stage and the Court's failure to do so can be remedied by the parties. The suit is based on the Direct Selling Guidelines 2016. Hence, an additional issue of maintainability of the suit can be framed, as the Guidelines were subsequently withdrawn.

DELHI HIGH COURT

OPEN TV INC. V. CONTROLLER OF PATENTS AND DESIGNS

Upholding the rejection of a patent application over a network architecture, method and steps to enable gifting media items, it was held that the bar u/s.3(k) on business method patents is absolute and need not involve assessment of technical effect, technical advancement, or technical contribution, as it is not restricted by the word 'per se' (per contra, computer programs). Court laid down an illustrative criteria to assess whether an invention qualifies as a business method patent.

DELHI HIGH COURT

A.ES. ENGINEERING PVT. LTD. V. URGO CAPITAL LTD.

A non-signatory can be subjected to arbitration without its prior consent, only in exceptional cases where there is, inter alia, direct commonality of the subject matter, and the agreement between the parties is a composite transaction for achieving the common object. In this case the two impugned agreements are thus not adequately inter-connected enough to warrant a composite reference to arbitration.

DELHI HIGH COURT

ASTRAZENECA AB V. WESTCOAST PHARMACEUTICAL WORKS LTD.

The Court rejected the argument that para 19 of Alloys Wobben prohibits a patentee from suing for patent infringement till 1 year after grant of patent or till favorable culmination of post-grant opposition(s). Noting Para 19 to be obiter dicta, it was held that the proviso to s.11A of the Patents Act, only forbears institution of an infringement suit till a patent is granted.

Significant Judgments

DELHI HIGH COURT

RESILIENT INNOVATIONS PVT. LTD. V. PHONEPE PVT. LTD.

Division Bench held that a Letter Patents Appeal / an intra-court appeal would lie against a Single-Judge decision rejecting a rectification application u/s.57 of the Trade Marks Act, 1999 because the 1999 Act does not exclude it expressly or by implication.

An appeal under the Letters Patent (in this case, Clause 10), however, is an appeal under a special law, and not an appeal under the Act.

Additionally, in this case, the Ld. Single Judge ought to not have dismissed the rectification applications but instead kept them in abeyance; to be revived if the Hon'ble Court in the suit for infringement is satisfied and frames an issue regarding the validity of the Respondent's trademark.

KARNATAKA HIGH COURT

BLINK COMMERCE PVT. LTD. VS. BLINKHIT PVT. LTD. & ANR.

In allowing an appeal by the popular delivery App Blinkit, the appellate court noted that non-use by the Respondent- plaintiff / registered proprietor of a mark since registration in 2016 bars its claims of an injunction against the user of the Appellant - defendant's mark.

The material on record also indicates that the non-use of the registered trademarks ... from 2016 onwards coupled with the undisputed fact that the nature of ...business... by the respondent - plaintiff is completely different from ... the appellant -defendant was sufficient to come to the conclusion that the balance of convenience was in favour of the appellant...

DELHI HIGH COURT
UNIVERSAL CITY
STUDIOS LLC & ORS.
V. MIXDROP.CO & ORS.

Injunction was granted against Cyberlocker websites (mixdrop), their servers and their affiliated streaming websites, found to be rogue in nature, in light of, inter alia, the

non-requirement of a sign-up to upload files on the service, the fact that Cyberlockers generate their revenue through third-party advertisement, and through their affiliate program uploaders can earn a share of revenue each time their uploaded content was accessed. It was however also observed that a Cyberlocker per se is not rogue, rather, it depends on functionalities of the same. The following table illustrates the parties involved in the infringement racket involving cyberlockers, their servers, websites and their users:

PARTY	ROLE
OPERATORS OF CYBERLOCKER WEBSITE	Create, maintain and promote the Cyberlocker website and generate revenue from advertising
SERVER	Facilitate hosting and storing of uploaded content on Cyberlocker website, for downloading/ streaming
REFERRAL WEBSITES	Provide access to content stored on Cyberlocker websites, use it as a backend storage and receive financial benefit from traffic to the Cyberlocker website, and/ or upload content on Cyberlocker websites
USERS	Uploaders of content, who receive financial benefits; Downloaders of the unauthorised copies of the Original Content, through the Cyberlocker Website or Referral Websites

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