

IPR Bytes

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Application for revoking the Patent for Gilead's Potential Anti-COVID19 Drug Remdesivir

-Brinda Kannan, Associate

The Cancer Patients Aid Association (**CPAA**) recently wrote to the Health Ministry and the Pharma Ministry asking them to evoked the Indian Patent granted to Gilead's Remdesivir¹, an anti-viral drug that is being tested as a potential cure for COVID -19. The Remdesivir has been patented recently in February 2020, whereas the CPAA has sought revocation immediately under section 66 of the Patents Act, 1970 on the ground of public interest and also under the Section 64 on the ground of non-patentability of the drug.

Remdesivir is a drug produced by Gilead Sciences Inc., for treating filoviridae virus infections and can also be used to treat Ebola Virus and other few viruses. It was initially produced to treat Ebola Virus. However, it was seen that the drug was not very effective for treating Ebola. Later after making few changes, a patent application was made in India in 2015 for the drug and the patent was granted in February 2020. At present, it is in the clinical trial stage and has not yet received marketing approval.

Since the coronavirus pandemic began, the Remdesivir came back into the limelight and it was named as one of the promising elements of WHO for global drug trials along

with chloroquine and hydroxychloroquine, and a combination of Lopinavir and Ritonavir (two HIV drugs). The importance of Remdesivir's drug has grown rapidly in the current situation and it is being promoted as essential for patients with cancer or diabetes. Hence CPAA an organization that works to create healthcare access for underprivileged cancer patients sought revocation of Remdesivir's recently granted patent. This was done to ensure that the drug is available to the person who is in need of it and at affordable prices. Hence CPAA has currently made only a representation to the Health Ministry and no legal recourse has been sought out yet.

Whether Changes In Description/Address Of Proprietor Change Trade Mark Ownership Rights?

- Nithin Sarathy, Associate

The single judge of the Hon'ble Delhi High court has confronted on this issue while disposing of a writ petition² filed by M/s S. K. Cosmetics (**Petitioner**) seeking to revoke the order passed by the Trademark Industry (**Respondent**) rectifying registered trademark with trademark registry records in the name of Naresh Kumar Nagpal instead of M/s S. K. Cosmetics or Shyam Sunder Nagpal.

The writ petition filed by M/s S. K. Cosmetics is to challenge the various online status changes made by the trademark registry in respect of registered trademarks of M/s. S K Cosmetics. The case of the Petitioner is that Forms TM-33 and 34 under the Trade Marks Act were filed for changing the description and the address of the proprietor whereas the Trade Mark Industry affected a change in the name of the proprietor itself, thereby resulting in the ownership of the trademark changing to Mr. Naresh Kumar Nagpal instead of the original proprietor - M/s S. K. Cosmetics or Shyam Sunder Nagpal. This dispute has arisen between the parties in respect of the ownership of the marks which has been confounded by the changes reflected in the online status on the website of the Trade Mark Industry. The M/s S. K. Petitioner contended that under the guise of form TM-33

¹ <https://cancer.org.in/images/CPAA-Rev-of-Patent-2020.pdf>

² <https://indiankanoon.org/doc/7018831/>

and 34 the owner of the marks cannot be changed in this method and a proper procedure has to be followed in accordance with law as per the rules enunciated by the Trade Marks act.

After hearing the contentions placed before the single judge, the Hon'ble Delhi High Court observed that Forms TM 33 and 34 are not meant to change the ownership or the proprietary nature of the mark, but only to carry out any change in the description or the address, etc. If there is any assignment or change in ownership that is pleaded by either party, the same would have to be made in the form of a request on an appropriate Form i.e., Form TM-P. Further, the court disposed of the case by observing that if any party makes a request under Form TM-P, the same shall be processed in accordance with law after objections, if any, being heard and appropriate orders are passed by the trademark registry.

BMW vs. DMW E-Rickshaw

-Brinda Kannan, Associate

In the Case of BMW AG vs. Om Balajee Automobile (India) Pvt Ltd,³ the Delhi High Court had passed an order granting an ad-interim injunction. The Plaintiff "BMW" is a leading automobile company and their mark is registered in India whereas the defendant "DMW" is an Indian e-rickshaw manufacturer. The defendant is involved in the manufacturing, marketing and selling of E-Rickshaw, Electric Cargo, etc under the trademark DMW.

The two primary grounds under this case are (i) deceptive similarity (ii) dilution of the mark.

The plaintiff claimed that the mark DMW was deceptively similar to their BMW mark. The only difference was that the first letter is different but still the letter "B" and "D" are phonetically similar. Further, it was argued that the e-rickshaws which are manufactured by the defendants are a type of automobile and similar to the goods of the plaintiff.

The court agreed that the mark is deceptively similar and the defendant had adopted the essential features of the plaintiff's mark i.e the visual and phonetic resemblance.

The next issue was the principle of dilution of mark. This issue had attracted Section 29(4) of the Trade Marks Act, 1999.

On considering the two primary grounds of the case, the court held that an ad interim injunction is passed restraining the defendants, its officers, agents, etc. from manufacturing, exporting, importing or offering for sale, advertising or in any manner dealing with goods not limited to e-rickshaws bearing the mark DMW or any other mark which are identical or deceptively similar to the plaintiff's BMW marks.

Extension of Limitation Period for Filing Intellectual Property Applications

- Nithin Sarathy, Associate

The single judge of the Delhi high court in its recent judgement⁴ has ordered to suspend the operation of the public notice issued by the intellectual property office relating to the expiry of the limitation period for fresh application filing.

The Extract of the public notice is as follows:

"Whereas this office has issued Public Notices regarding the timelines/periods as prescribed under the IP Acts AND Rules administered by the O/o CGPDTM towards completion of various acts/proceedings, filing of reply/document, payment of fees, etc. in the matters of any IP applications, falling due between the lockdown period, i.e. 25th March, 2020 to 3 rd May, 2020, in accordance with section 10 of the General Clauses Act, 1897. Whereas, the lockdown period has been extended to further period of two weeks, i.e. till 17th May, 2020 by Gol, MHA ORDER No.40-3/2020-DM-I(A) dated 1st May, 2020. Even though as per guidelines annexed with the order of MHA, the IP Offices are functional (with reduced

³ <https://images.assettype.com/barandbench/2020-03/a1533924-28eb-4d12-9021-cf5fbcaf3e9f/BMW vs Om Balajee Automobile.pdf>

⁴ W.P.(C) No.3059/2020

strength), substantive limitations/restrictions on the movement of public and functioning of private offices in the Red Zones (Hotspots), are still in place. Therefore, considering the fact that all the IP offices in India are located in Red Zones (Hotspots), the due dates, with respect to timelines/periods prescribed under the IP Acts and Rules administered by the O/o CGPDTM towards completion of various acts/proceedings, filing of any reply/document, payment of fees, etc. in the matters of any IP applications filed with the offices under the administrative control of O/o CGPDTM, falling due between the above said lockdown period shall be 18th May, 2020.”

The Petitioner in the present writ petition contended that the protection against triggering of the period of limitation both under general and special laws, whether condonable or not, is to kick in from 15.03.2020 and not from 25.03.2020 and further stated that it would be difficult for the litigants and the advocates to access their files and ensure that the filings as per prescribed procedure are made on 18.05.2020, when the lockdown itself, as it stands today, will get lifted only on 17.05.2020. Whereas the respondent, on the other hand, contended that the clarification, if any required, qua the order of the Supreme Court can be obtained by the writ petitioners by moving before the Supreme Court.

The Hon'ble single judge of the Delhi High Court heard the contentions of both the parties and observed in two folds, firstly no court, tribunal or any authority can act contrary to the order of the Supreme Court dated March 23, 2020, referred above. This order has been passed by the Supreme Court in the exercise of its powers under Article 141 and Article 142 of the Constitution. Secondly, under Article 144 of the Constitution, all authorities whether civil or judicial, located in the territory of India are required to act in aid of the orders passed by the Supreme Court. After considering both the observations, the hon'ble judge in accordance with the Hon'ble Supreme Court, passed the judgement by suspending the public notice dated May 04, 2020, issued by the Intellectual Property office prescribing limitation period for filing fresh applications amidst lockdown period.

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