

### Enforcement of Intellectual Property Laws in India

India has a well-established statutory, administrative and judicial framework to safeguard Intellectual Property Rights (IPRs), however, it is still facing problems with the enforcement of IPR. It has always been a concern about slow judicial system involving lengthy and time-consuming procedure of trial in India, however, in recent years; Indian Courts have shown dynamism and zeal for effective protection of intellectual property rights. It has been observed that by adopting right policies and strategies, IPR can be effectively protected with the help of law enforcement authorities.

#### Enforcement Measures

IP Enforcement-Remedies – Civil • Infringement • Passing off – Criminal – Administrative
Civil action : Reliefs • Injunctions against future violations • Civil raids and Seizures • Damages OR Accounts of Profits • Delivery up/ Discovery of infringing material /documents • Preservation of assets
Criminal Remedies- TM • Falsification of trademarks / Infringement of copyright is a cognizable offence • A complaint may be filed before a Magistrate; OR • Police can register an FIR and prosecute directly; (statutory requirement to obtain the Registrar's approval. • Registration is not a requirement. • Imprisonment- 6 months to 3 years • Fine- ` 50,000 to 2 lakhs • Enhanced penalty on subsequent convictions. • Seizure, forfeiture and destruction of infringing goods/ material for placing before the Magistrate
Administrative remedies • Indian Customs Act, 1962 – Deals with import/ export of goods including protection of patents, trademarks and copyrights. • Confiscation of infringing material by Custom Authorities • Restrictions against parallel importation of goods Oppositions, Cancellation and Rectifications of IPR In case the registration has been obtained by – Fraud – Misrepresentation – Wrongly – Against the rights of some other party / opponent – Registered by the Registrar erroneously – Registration prohibited under some law – Registration is against public policy or morals

For any IPR related litigation, it is necessary to understand the Indian Judicial system and its psychology. It has been observed that the Indian Courts are very active in granting equitable reliefs like injunctions, etc., but are still reluctant in awarding punitive pecuniary damages.

**Authorities involved in the execution of orders of courts :** The Government Authorities including police are bound to execute and enforce the orders of court, and as such the courts are empowered to direct any government authority to do or not to do or prevent / compel any person to comply with the orders of the court. There are effective methods for the enforcement of the orders of the Court, including Contempt of Court proceedings, which provides for a fine as well as imprisonment, in case of

non-compliance of the order of the Court. Execution/ compliance of the orders of the court are also done by way of appointment of the Local Commissioner/Receivers by the Court. In India, certain State Governments have formed Special Intellectual Property Cells, which deal with offences relating to infringement of IPR.

In any civil action for enforcement of intellectual property rights, the following reliefs may be claimed in such suit :

- Permanent injunction;
- Interim injunction;
- Damages;
- Accounts and handing over of profits;
- Anton pillar order (Appointment of Local Commissioner by the Court for custody/ sealing of infringing material/accounts);
- Delivery up of goods/packing material/dies/plates for destruction.

Additionally, in case of infringement of trademark, infringement of copyright, geographical indication, plant variety and semiconductor integrated circuits layout design following **Criminal** action can also be initiated :

- Registration of First Information Report (FIR); or
- Filing of a criminal complaint before a competent Magisterial Court with application for issue of search and seizure warrants directing the police to raid of the premises of the accused for seizure of the infringing material and arrest of the infringers.

It is interesting to note that in India, wherever provisions have been made for criminal prosecution for violation of any intellectual property rights, a criminal case can be filed against known as well as unknown persons. It is also important to note that both civil and criminal remedies, wherever applicable, can be availed simultaneously and both the remedies are coexistent.

**Competent Court :** In India, a suit may be instituted in any Court of original jurisdiction, subject to their pecuniary and territorial jurisdiction. In relation to IPR litigation, the designation of the lowest court is "District and Sessions Judge". These cases can also be filed in the High Court, directly, if such High Court is having original jurisdiction. The jurisdiction of the High Court can be invoked, subject to the payment of court fees. The structure of court fees payable varies from State to State.

**Border control measures for enforcement of IPR :** The Government of India under Section 11 of the (Indian) Customs Act, 1962, is empowered to prohibit importation and exportation of goods of specified description, if it deems necessary to

and copyrights. The goods imported in contravention of the provisions of the Customs Act or any other laws for the time being in force are liable to be confiscated. In this regard, a customs officer is empowered to inspect any premises, conveyance, x-ray any person and effect search and seize in case where they have reasons to believe that the goods are of contraband nature. They can also investigate or interrogate any person and arrest him.

**Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 :** India has notified the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The rules comply with border measures as required by the TRIPS Agreement empowering the Customs Officers to enforce IPR over the imported products. Actions under Customs Act are independent to the remedies provided under various statutes on intellectual property. As per Rule 2(b) of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, intellectual property includes patents, designs, and geographical indications together with trademarks and copyrights.

Upon receipt of the application, in the prescribed format, the Custom Authorities may register the complaint and enforce border control measure for the protection of the intellectual property Rights. It is important to note that this right is not unfettered. Certain provisions have been also made and an elaborate procedure has been laid down for the release of the seized goods upon an application of the importer of the goods.