

Delhi HC turns 50: Five landmark intellectual property rights rulings

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The Delhi high court since its inception 50 years ago has emerged as a hub for intellectual property right (IPR) cases. The institution has helped shape intellectual property law by interpreting various facets of the trademark, copyright, patent law and coming up with innovative solutions. Many of its rulings have become path breaking in their own ways and have become a precedent for other courts both at home and abroad.

The court has taken cognizance of all kinds of commercial and company intellectual property (IP) matters through the years and set out important principles under IP law such as that of "trans-border reputation", "well-known trademarks".

As it celebrated its golden jubilee celebration on 31 October, Chief Justice of India (CJI), T.S Thakur, spoke of its many achievements over the last five decades and added that the Delhi high court had managed to be at the forefront for its judgments in IPR cases and claimed a place for itself above other high courts.

"IPR judgments, which have been passed by the Delhi high court, are getting noticed alongside at international forums, including the likes of Yale, Cambridge, which is a big achievement." CJI Thakur added.

Chief justice of Delhi high court, G. Rohini, emphasized on the institution's role in meaningfully interpreting provisions of the IP law over the years.

Applauding the institution on its feat, Shamnad Basheer, founder of IP website, SpicyIp, said, "Delhi high court has had a traditional advantage in terms of a wider variety of IP cases and judges with a firmer grasp of IP jurisprudence. Some of the cases have gone to become landmark not only in India but around the world...

On the flip side, however, the court has been awfully liberal with grant of ex-parte injunctions in patent cases, unheard of anywhere else in the world! Hopefully, this will see some correction in the days to come."

The function, celebrating 50 years of the Delhi high court, brought together on stage, Prime Minister Narendra Modi, CJI Thakur, chief justice of Delhi high court, G. Rohini, Delhi chief minister ArvindKejriwal, Union law Minister, Ravi Shankar Prasad, Delhi's Lt-Governor Najeeb Jung and other dignitaries from the legal fraternity.

Acknowledging the institution's contribution in interpreting IP law, senior advocate Prathiba Singh said that judgments passed by the Delhi high court are well acknowledged-both in India and internationally. A large number of jurisprudence from the Delhi high court has led to amendment in statutes subsequently, she added.

Mint takes a look at five landmark IP rulings passed by the Delhi high court:

Roche v Cipla patent infringement battle

In a case involving two pharmaceutical giants, the Delhi high court found Cipla to be infringing Swiss drug major Hoffman-La Roche's patent on lung cancer drug erlotinib hydrochloride sold under Tarceva. Roche, which was granted a patent for Tarceva in 2007, sued Cipla in 2008 after it began manufacturing a cheaper version of its cancer drug.

The verdict, which could be seen to have put Indian generic pharma companies at a disadvantage, brought with itself a strong enforcement of Indian IP regime, which has often alleged to be favouring only home companies.

DU photocopy case

The Delhi high court was the first to make inroads at interpreting copyright law for education purposes by allowing a photocopy shop in Delhi University to sell photocopies of course materials to students. The verdict, which has set a milestone for the applicability of copyright law in educational cases in India, held that "copyright in a literary work is not an inevitable, divine or natural right" conferred on an author. It added that the copyright law is intended to increase and not impede knowledge.

Ericsson-CCI case regarding standard essential patents (SEP)

In March, 2016, the court allowed Competition Commission of India (CCI) to continue its investigation into anti-competitive practices by Ericsson regarding use of its SEP's by other companies such as Micromax and Intex. This could be seen as the first time that a court looked at how IP law interfaced with competition law. It also offered a security blanket for home grown mobile companies as against international companies.

Ericsson had challenged two orders by the anti-trust body where it was held to be abusing its dominant position for use of its SEPs relating to technology used in mobile handsets by Micromax Informatics Ltd and Intex Technologies (India) Ltd.

Cases by Apple and Whirlpool concerning trans-border reputation

In a case by Apple Computer Inc. in 1991, justice Mahinder Narain, passed a judgement which strengthened the concept of trans-border reputation in securing IP rights. Under the order, it restrained the opposite party from using the words—"Apple", "Apple Computers" or any other word that could be deceptively similar in

relation to the business of computer education. This made it clear that a company could exercise its IP rights from across borders in another country where its reputation had been acquired through advertisements and publicity.

Similarly, in 1994, upholding the reputation that Whirlpool had acquired in India over the years, the court restrained the use of trademark Whirlpool or other similar mark by others.

Merck Sharp v Glenmark patent infringement battle

The Delhi high court on 7 October 2015, barred Mumbai-based Glenmark Pharmaceuticals Ltd from selling, distributing, marketing or exporting its anti-diabetes drugs Zita and Zita-Met, on the ground that they infringed the patent of US-based pharmaceuticals company Merck Sharp and Dohme Corp.

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The ruling was passed in less than two years time and based the infringement by Glenmark on a comparison of its package inserts and held that the two package inserts were similar and mentioned the same compound.