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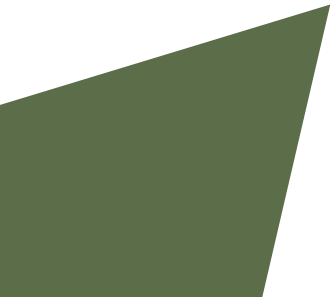
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COVID-19 and its impact on IPR in India and Abroad

Anamika

ABSTRACT

The lethal effect of the COVID-19 pandemic has been felt worldwide affecting all the business sectors in the world. The technical term COVID-19 is an abbreviation of the Corona Virus Disease 2019. The virus that has originated from the Wuban city of China, and spreading almost to the rest of the world, has been officially declared a pandemic by the World Health Organisation (WHO). The panic of the COVID-19 seems to be increasing, as the medical teams and researchers are working tirelessly day in and out but there's no sign of a vaccine yet. In recent weeks five technology related challenges were emerged related to needs in health care certain additional challenges like urgent logistical challenge, security of supply chains including food with supermarket, innovation of health system, online systems challenges to IT regarding proper connection to work from home. The Corona virus or COVID-19 has affected 5.31M people around the globe, out of which 342K have died. India alone has 1, 33,725 patients out of which 3,909 have died. The virus also has significant impact on the IPR world rendering the Courts and the National Intellectual Property offices non-functional. This paper further deals with the effect of COVID-19 on the countries economy which lead to the sever breakdown of the economic condition of the country. Furthermore this paper mentions about challenges faced by the IPR sector in India and abroad and the actions which were taken regarding this. Lastly I conclude this paper by suggesting few pointers regarding the how to overcome from the shortcomings by taking few steps regarding it such as Courts should review Patent Law and pass an interim order to have free access to Intellectual Property in pharmaceutical industries, Creating a pool – a collection of patents rights, vaccines and medicines with free licensing or access on affordable and reasonable terms for all countries, etc.

INTRODUCTION

The lethal effect of the COVID-19 pandemic has been felt worldwide affecting all the business sectors in the world. Be it, the rich, or the poor class in the society, everyone seems to be thundered by the COVID-19 blow. The virus that has originated from the Wuhan city of China, and spreading almost to the rest of the world, has been officially declared a pandemic by the World Health Organisation (WHO). The panic of the COVID-19 seems to be increasing, as the medical teams and researchers are working tirelessly day in and out but there's no sign of a vaccine yet. The Corona virus or COVID-19 has affected 5.31M people around the globe, out of which 342K have died. India alone has 1, 33,725 patients out of which 3,909 have died.¹ The technical term COVID-19 is an abbreviation of the Corona Virus Disease 2019. As a result of which travel bans have been enacted in various countries.

Most people infected with the COVID-19 virus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness. The COVID-19 virus spreads primarily through droplets of saliva or discharge from the nose when an infected person coughs or sneezes, so it's important that you also practice respiratory etiquette (for example, by coughing into a flexed elbow). In recent weeks five technology related challenges were emerged related to needs in health care certain additional challenges like urgent logistical challenge, security of supply chains including food with supermarket, innovation of health system, online systems challenges to IT regarding proper connection to work from home. Since every business sector is getting affected by this, the legal field is equally affected.² The virus also has significant impact on the IPR world rendering the Courts and the National Intellectual Property offices non-functional.

EFFECT OF COVID-19 AROUND THE COUNTRIES ECONOMY

The coronavirus, is suddenly has become a part of our conversation everywhere. Since everything is being affected by this, the legal field is also getting equally affected. The pandemic has also had a significant impact in the IP world. In order to avoid gatherings of large number of people at a

¹ Article by Parul Malik on Global IP scenario under COVID-19 <https://www.mondaq.com/india/operational-impacts-and-strategy/919584/global-ip-scenario-under-covid-19>

² Sana Singh, 'India on lockdown due the COVID-19 outbreak- How will IPO function?' (Singhania & Partners Pvt Ltd, (4April2020), <https://singhania.in/intellectual-property-offices-notification-scheduled-hearings-covid19lockdown-2>

place, many IP events have been cancelled or postponed in past weeks. Countries are also imposing travel bans, economies are being affected. Prime Minister Narendra Modi also addressed the country on 19th March, 2020 at 8 P.M. and requested people to maintain a "Janta Curfew" to stop the virus from spreading which is further being followed by a 21 day massive nation-wide lockdown and has also suspended all visas for foreigners until mid-April. In India, only 6 out of 15 Apex Court benches will hear to only urgent matters due to coronavirus scare.

It is being said that all the cafes and the departmental canteen of the court are being suggested to remain shut until further notice and all the staff members are to make their own arrangements in this regard whereas India is not the only country taking precautionary measures. Like China has strictly restricted all its foreign visitors. Other countries in Asia like Japan has banned entry to certain categories of Chinese nationals and non-nationals who have been in Iran, South Korea or Italy in the past two weeks. Singapore has also stopped visitors from entering and have requested all its citizens, permanent and long-term residents to self-isolate at home for 14 days. Australia and New Zealand have restricted entries to all foreigners. Australia has suggested all its residents who have returned to the country recently that they observe a quarantine period of at least two weeks. Canada, the US and the European Union have also imposed boundary restrictions.

The EU has sealed its external borders to anyone coming from outside the bloc for at least 30 days from 18th March. The UK government has urged British citizens not to travel abroad at all unless it's needed. The COVID-19 Pandemic has sparked profound suffering and misery all facts of life and brought a major disruption to economy across the world reflects greater global integration, Travel bans, Fall in Growth of countries depending on mining and oil exports, Impact on real estate sectors where certain change in income tax measures would help this sector to survive certain research report expecting real estate price to reduce in the range of 10% to 20% on account of mismatch demand and supply, the government of all the countries is focusing on maintaining social distancing to control the spread of virus by enacting lockdown.

In recent week this virus has spread rapidly in 45 of the 48 countries in Sub-Saharan African also hits the largest economies of countries like South Africa, Angola and Nigeria, GDP reduced by up to 8 percentage point in downward and 6.9 percentage points in 2020 in the baseline scenario, and the global economy is falling into recession³. It left businesses all over the world counting costs. The death toll now become twice it was two weeks before. General measures were taken by all the

³ Sana Singh, 'India on lockdown due the COVID-19 outbreak- How will IPO function?' (Singhanian & Partners Pvt Ltd, 4 April 2020),

countries and Institutions like World Bank, EU, International Monetary Fund, OECD for immediate release of Funds to fight the Emergency. As of 07, April 2020 World Bank Accelerated funding expanded to \$14 billion to help corporate and national efforts have been made to detect and accordingly respond to the fast spread of Covid-19⁴. Covid-19 has brought it to halt the world of intellectual property may also constitute barrier to access in respond to that measures have been taken which include extensions of deadlines related to prosecution of Trademark, Copyright and Patents.

CHALLENGES FACED IN INDIA AND ABROAD

As the lockdown has been imposed in order to maintain social distancing which is, for now, is the only key to break the chain. This lockdown has also brought certain challenges in the IPR field. In India, Supreme Court of India has issued a circular on March 14, discouraging casual entry of all visitors in the court premises except for the lawyers, that too, after thermal screening them. The Indian Trademark Office has temporarily suspended all hearings from 17 March to 15 April and is rescheduled “in due course”. The Copyright Office has also adjourned all the hearing related to copyrights from 17 March to 31 March. Acting on the same The Patent Office issued notice, advising parties to use provisions of Rule 6 (6) of Patent Rules Act, 2003 to condone any delay or extend time in filing documents. In addition, the two medicines, **Fevipriavir** and **Remidisivir**, which are under clinical trials to see if they can be reassigned for COVID-19, are patent protected in India unless the patent holders insist upon its IP rights.⁵ Currently in India no new fillings are possible at Trademark or Patent offices until completion of lockdown therefore the deadlines can be extendable with Petitions.

The World Intellectual Property Organization (WIPO) has released an information notice explaining remedies it has taken in recent days. Some of the vital measures taken by it includes the automatic extension of time limits when a national IP office is not open to the public, and advising all brand owners to “use electronic communication to mitigate the undesirable impact of possible disruptions in mail or delivery services”.

⁴ Joe C Mathew, ‘Coronavirus: Will Intellectual Property be a hurdle in India’s fight against COVID-19

⁵ Joe C Mathew, ‘Coronavirus: Will Intellectual Property be a hurdle in India’s fight against COVID-19?, business today (New Delhi, 5 April 2020), <https://www.businesstoday.in/latest/trends/coronavirus-will-intellectual-property-be-a-hurdle-in-indias-fight-against-covid-19/story/400200.html>.

The COVID-19 pandemic widespread even reached the world of Intellectual property leading to IP challenges for which government has to take centre stage for rapid response to a pandemic faced by the stakeholders related to manufacturing of technologies and product for prevention and development to avoid delays in fighting a pandemic situation in order to not lose any important asset. Intellectual property is moving but at a slower pace, Currently it affected offices like European Patent Offices, U.S Patent and Trademark Offices, IPONZ, National Intellectual Property offices Situated in Sri Lanka, Canadian Intellectual Property Office also Directorate General of Intellectual Property in Indonesia, Federal Circuit and Supreme Court situated across the world. Certain Steps taken by various IP offices for relief including World Intellectual Property Organization has suspended the PCT forms or letter from transmittal, also the document can be transmitted online through e-mail.

Similarly, The European Intellectual Property Office (EUIPO) has suspended all deadlines that expire on 30 March to 1 May. The European Patent Office (EPO) extended all the deadlines and stating that it could be extended further if the disruption continues. Recently, Swiss multinational Roche, world's leading diagnostic kit maker was accused of withholding a chemical formula for a reagent, a buffer used in its polymerase chain reaction-based test for COVID-19.⁶ Roche was blamed for its inability to supply sufficient volumes of this reagent as one of the reason for delay in coronavirus tests in respective countries. Roche was well standing in its legal rights not to share its Intellectual Property Right (IPR) protected formula and the ventilator maker Intersurgical must have seen its IPR violated.

But many countries are not dependant on the nobility of IP holders. China, Germany and Israel have already issued orders to amend its Patent Act to facilitate compulsory license for any IP protected product for the use of COVID-19. World Intellectual Property Organization (WIPO), World Trade Centre (WTO) and World Health Organization (WHO) have addressed in an open letter by Carlos Correa, Executive Director of South Centre an international think tank. The letter urges these organizations to “support those WTO member countries which invoke the security exception contained in Article 73(b) of the TRIPS Agreement to suspend the enforcement of any intellectual property right (including patents, designs and trade secrets) that may pose an obstacle to the procurement or local manufacturing of the products and devices necessary to protect their populations.”⁷

⁶ Francis Gurry, ‘Some Consideration on Intellectual Property Innovation, Access and COVID-19’, (World Intellectual Property Organisation, 24 April 2020),

⁷ Trade Related Aspects of Intellectual Property Rights, art. 73(b), Jan. 1, 1995.

He goes on to add that, take actions it considers necessary for the protection of its essential security interests in the wake of the COVID-19 threat. The use of this exception will be fully justified to procure medical products and devices or to use the technologies to manufacture them as necessary to address the current health emergency. The United States Patent and Trademark Office (USPTO) has waived the petition fee when the patent applicant or patent owner files a reply with a petition under 37 CFR 1.137(a) In a situation when patent applicants and patent owners were unable to timely reply to an office communication due to the outbreak of the corona-virus, which led to abandoning of the application or termination of the re-examination prosecution. Implemented corona-virus aid, relief, and Economic Security Act (CARES Act), postponing certain deadlines occurring between March 27, 2020 and April 30, 2020 by 30 days from the initial date on which those patent-related documents or fees were due, “provided that the filing is accompanied by a statement that the delay in filing or payment was due to COVID-19 outbreak.”

Canadian Intellectual Property Office (CIPO) announced that it will remain open and operate during the crisis, and encourage applicants and representatives to use its online services for all transactions with CIPO. Hearings of the Patent Appeal Board and the Trademarks Opposition Board will take place by telephone and/or teleconference. IP Australian patent office will allow patentees and owners to request an extension of deadline if the COVID-19 pandemic has effected their ability to respond by a deadline.

SUGGESTIONS

1. Courts to review Patent Law and pass an interim order to have free access to Intellectual Property in pharmaceutical industries.
2. Creating a pool – a collection of patents rights, vaccines and medicines with free licensing or access on affordable and reasonable terms for all countries.
3. It is advisable that the companies not file any lawsuit in the time of such a crisis as it would not only create negative publicity for the company but it would also prompt the government authorities to invoke security exception clause and make the patented technology or products available to all, with the company not only losing on its IP rights but on its monetary income as well.
4. Government can announce giving royalty to potential IP Holders and getting access to their intellectual property in return.

CONCLUSION

To put it in a nutshell, Although COVID 19 has hindered the working of the legal field but the shortcomings are overcome by the measures taken by the Supreme Court and National IP Offices and also by several countries by amending its patent laws. They have found alternatives to continue the work flow by providing options such as video conferencing for hearing cases, extension of deadlines and waiving off the requirement of filing of physical evidence in the view of this pandemic. They have taken necessary measures to ensure the safety of everyone while clinching to the idea of innovation. I have made sure that the broad contours of the problems and suggestions are discussed relating to IP offices in India and abroad.