

# CONFERENCE SUMMARY REPORT



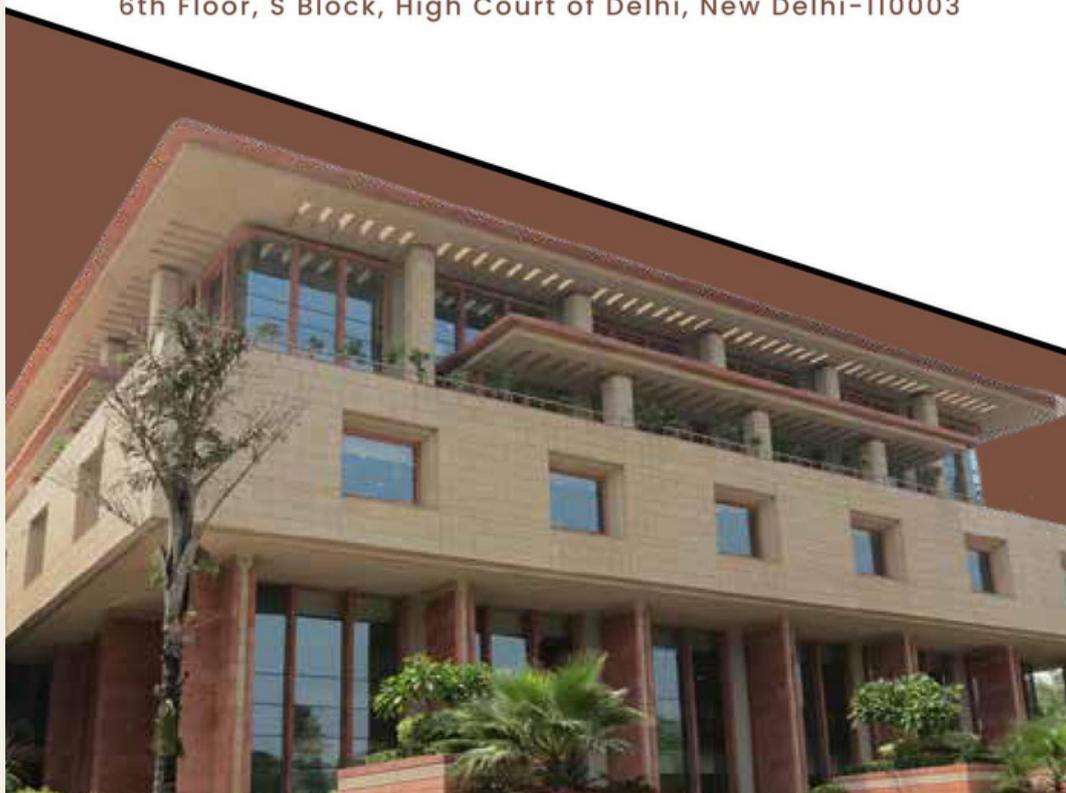
## **INTERNATIONAL JUDICIAL CONCLAVE ON INTELLECTUAL PROPERTY RIGHTS**

Hosted by  
High Court of Delhi

Cohosted by  
Delhi Judicial Academy,  
United States Patent and Trademark Office,  
& United States Department of Justice

**March 16-17, 2024**

Auditorium & Judges' Lounge  
6th Floor, S Block, High Court of Delhi, New Delhi-110003



Panelists

- Hon'ble Ms Justice Hima Kohli, Supreme Court of India.
- Hon'ble Mr. Justice Yashwant Varma, High Court of Delhi.
- Hon'ble Mr. Justice Muhamed Mustaque, Kerala High Court.
- Hon'ble Mr. K.M. Kamrul Kadar, Judge, High Court Division of Supreme Court of Bangladesh.
- Hon'ble Ms Amali Ishanthi Kumar Ranaweera, Judge, Civil Appeal, High Court, Sri Lanka.
- Ms Kiyo A Matsumoto, District Judge US District Court for the Eastern District of New York.

Moderator: Ms. Shwetasree Majumder



Key Points

- Patent law in most jurisdictions has so far not recognised AI as an 'inventor' of patents, because inventors are required to be natural human persons under most patent statutes. In some jurisdictions, while AI-assisted inventions are not inherently unpatentable, the focus remains on the human contribution to the invention. A patent request filed in Germany, where the inventor was a natural person who prompted an AI tool to create the invention, was granted on this basis.
- However, some jurisdictions such as Bangladesh do not recognise AI-assisted inventions as patentable at all, although this may change in the future.
- Across jurisdictions, there is consensus that patent law will have to evolve to account for developments in technology, in particular grapple with issues pertaining to the patentability of AI-assisted inventions and the concept of the 'inventor' in these cases.
- For an AI-generated image for which copyright protection was sought in India and the U.S., while the Indian Copyright Office first granted protection, it subsequently issued a withdrawal notice. For the same image, the U.S. Copyright Office did not grant protection. However, the same applicant was successful in securing copyright protection in Canada.
- The human contribution to copyright is essential, which is underscored by the fact that the term of copyright is tied to the "lifetime" of the author, which would not apply in cases where AI is the author.
- Whether the training of AI models on copyright material, without license of the copyright owners, constitutes "fair use" will depend on the transformative nature of the output of the AI models, as well as whether the output is substantially similar to the copyright material.
- The impact of data scraping for training AI models must also be examined in the context of privacy laws and personality rights. The collection and processing of personal data without consent, may violate privacy laws. There have also been cases, including in the Delhi High Court, where individuals' personality rights have been violated by unauthorized AI-generated content.
- Copyright and patent laws across jurisdictions will have to evolve to reflect development in technology, including the rise of AI-assisted inventions and AI-generated content.



**Panelists**

- Hon'ble Mr Justice K.V. Viswanathan, Judge, Supreme Court of India.
- Hon'ble Mr. Justice Anish Dayal, Judge, Delhi High Court.
- Hon'ble Ms. Naima Haider, Judge, High Court Division of the Supreme Court of Bangladesh.
- Ms Virginia Maria Covington, Senior District Judge, US District Court for the Middle District of Florida.
- Mr. Shanaka Harshan Kekunawela Pathiranga, Additional Magistrate, Chief Magistrate's Court, Sri Lanka.
- Mr. Amit Sibal, Senior Advocate
- Ms. Rajeshwari Hariharan, Advocate

Moderator: Mr. Pravin Anand



**Key Points**

- Non-traditional trademarks, like sound, touch, or smell marks, warrant protection through legal frameworks that acknowledge their distinctiveness beyond conventional marks. Some examples of non-traditional trademarks that are registered are (1) Shape marks: Toblerone, Ferrero Rocher, Zippo; (2) Touch marks: EPI leather, Louis Vuitton; (3) Structure marks: Ismail building; (4) Sound marks: Yahoo!; and (5) Colour marks: Red sole of Christian Louboutin shoes.
- The emergence of gesture trademarks, exemplified by instances such as Gene Simmons' iconic rock gesture and Jay Z's diamond sign, raises pertinent questions regarding their distinctiveness and scope.
- In India, while there is no statutory impediment to registering such trademarks if they can be graphically represented and distinguish goods or services of one from others, enforcement could present practical challenges.
- The question as to whether personality or publicity rights should be considered an independent proprietary right or fall under the purview of privacy law is a subject of ongoing debate.
- As the metaverse continues to evolve, questions arise regarding the enforceability of injunctions and the recovery of damages in the virtual realm. Challenges persist in identifying infringers and ensuring compliance.
- Moreover, the dynamics of enforcement, including the concept of dynamic injunctions are critical in navigating the complexities of protecting intellectual property rights in the digital age.
- The protection of Sri Lankan geographical indications has seen a notable enhancement with the incorporation of a dedicated Geographical Indication section into the Intellectual Property Code in 2022. This crucial amendment is a significant step towards bolstering the protection for geographical indications.
- The emergence of a pro-damages culture in Sri Lanka, has garnered attention, notably in cases involving punitive costs.



Panelists

- Hon'ble Mr. Justice C. Hari Shankar, Judge, Delhi High Court.
- Hon'ble Mr. Jagath Ariyakaruna Kahadagamage, Judge, Commercial High Court, Sri Lanka.
- Ms Virginia Maria Covington, Senior District Judge, US District Court for the Middle District of Florida
- Ms Kiyo A Matsumoto, District Judge, US District Court for the Eastern District of New York.
- Mr. Ashok Kumar Chhetri, Joint Secretary, Judicial Council Secretariat, Government of Nepal

Moderator: Mr. Adarsh Ramanujan



Key Points

- Interim measures in Standard Essential Patent (SEP) litigation may involve assessment of the traditional tests for interim orders, but also involve other unique and distinct aspects.
- Unlike in India, SEP litigation in the US do not have concepts of pro-tem deposits by the Defendant and instead deposits are paid by the Plaintiff in lieu of preliminary injunctions.
- As opposed to assessing non-SEP infringement- comparing the suit patent claims to the allegedly infringing product; in SEP litigation, there are several other factors. Whether the patent maps on to the standard, whether the patent is essential and whether there is infringement.
- There was consensus amongst the panellists that courts in a single jurisdiction should avoid setting a global FRAND rate for a given SEP. The litigations concerning anti-suit and anti-enforcement actions arose in this context.
- Another distinct feature is that unlike non-SEP patents, SEP patents cannot be monopolized. SEPs must be licensed on Fair, Reasonable and Non-Discriminatory (FRAND) basis.
- Recent SEP litigations in India have introduced concepts such pro-tem deposits by the Defendant and the requirements for such deposits to be granted.

Panelists

- Hon'ble Mr. Justice Chandra Dhari Singh, Judge, Delhi High Court
- Honble Mr. Kumar Regmi, Justice , Supreme Court of Nepal
- Mr Michael Frank, Magistrate Judge US District Court for the Northern District of Florida
- Mr. Sandum Shyam Kumar Withana, District Judge, District Court, Sri Lanka
- Mr. Dayan Krishnan, Senior Advocate
- James S. Yoon, International Computer Hacking and IP (ICHIP) Attorney Advisor for Asia, U.S. Department of Justice, U.S. Consulate General for Hong Kong & Macau

Moderator: Mr. Saif Khan



Key Points

- There are pressing issues relating to IP crimes and the role of law enforcement agencies in controlling these crimes. The role of other regulatory bodies in curbing frauds being perpetrated through misappropriation of IP, was examined by the panelists. The Counterfeiting of pharmaceutical drugs, automobile components and piracy of copyrighted content are some of the most common operations undertaken by organised crime syndicates.
- Panellist from United States, Nepal, Sri Lanka, Bangladesh, and India discussed the legal frameworks to deal with IP Crimes and mechanisms available in their countries for the prosecution of IPR, including civil and criminal enforcement mechanisms. The panellist from Nepal and Sri Lanka also discussed the law on parallel imports,
- The representatives from US department of Justice and FBI also discussed the processes to deal with cross-border IP enforcement. The panellists discussed the need for enhanced cross-border IP enforcement, there is a need to formulate joint commissions/operations with neighbouring countries.
- Criminal Remedies for IP enforcement present challenges such as cross-examination of witnesses outside the concerned jurisdiction where the prosecution is ongoing. Panellists also discussed legal issues related to MLAT and extradition of accused persons and the lack of awareness & specific expertise concerning IP offences amongst the investigating agencies across jurisdictions.



Panelists

- Hon'ble Mr Justice Manmohan, Acting Chief Justice, High Court of Delhi
- Hon'ble Mr. Justice Rajiv Shakhder, Judge, High Court of Delhi
- Hon'ble Mr. Justice S. Ravindra Bhat, Judge (Retd.) Supreme Court of India
- Honble Mr. Brajesh Pyakurel, Judge, High Court of Patan, Nepal
- Hon'ble Mr. Jeyaramam Trotsky, Judge, Colombo High Court, Sri Lanka.
- Ms Kiyo A Matsumoto, District Judge US District Court for the Eastern District of New York.

Moderator: Ms. Swathi Sukumar



Key Points

- The development of law pertaining to dynamic injunctions in India, is an example of the law catching up with the technological developments and evolving novel mechanisms to tackle various forms of online piracy.
- Panelists discussed the *UTV* judgment of the Delhi high Court which dealt with hydra-headed/rogue websites and developed parameters to assess and ensure that dynamic injunctions are issued only against infringing websites or content therein.
- The Government of Nepal is in the process of implementing a new law which aims to enhance protection of IP rights and it is expected that the new law will also attempt to address digital piracy concerns.
- Although 'digital piracy' is not defined in the Sri Lankan IP statutes, existing statutory provisions provides safeguards and addresses digital piracy. The Sri Lankan enforcement mechanism includes civil and criminal remedies to combat IP infringement.
- Restrictions and limitations on Intermediary liability is an important facet while dealing with digital piracy. Indian Courts have passed seminal decisions exploring the scope of intermediary liability, including in *MySpace* and *Google v. DRS*.
- The IP Law in Sri Lanka does not provide for intermediary liability, therefore traditional principles of infringement – direct, contributory, and vicarious are applied even in this context. Recently, Sri Lanka enacted the Online Safety Act with provisions expressly dealing with intermediary liability.



Panelists

- Hon'ble Ms Justice Mousumi Bhattacharya, Judge, Calcutta High Court.
- Hon'ble Mr Koruwage Priyantha Fernando, Judge, Commercial High Court, Sri Lanka.
- Mr. Michael Frank, Magistrate Judge, US District Court for the Northern District of Florida.
- Prof. (Dr.) Pushpa Kumar Lakshmanan, Law Centre-1, Faculty of Law, University of Delhi.
- Prof. Yogesh Pai, National Law University (Delhi)
- Dr. G. R. Raghavender, Sr. Consultant (IPR), DPIIT, Ministry of Commerce & Industry, Govt. of India

Moderator: Mr. J. Sai Deepak



Key Points

- There was consensus amongst panellists that there is a need for a statutory framework for the protection of trade secrets that can build upon the existing common law regime.
- Sri Lanka protects trade secrets within the unfair competition regime. The law provides for civil and criminal remedies.
- The panellists discussed the Indian Law Commission Report pertaining to trade secrets. The lacuna of the current regime was considered in the light of the Report, and it was acknowledged that the same have been addressed by the Report to some degree. The Report does not categorise trade secrets as IPR and the same garnered mixed views among the panel.
- US relies on both common law as well as statutory laws (criminal and civil) to protect trade secrets. US has dedicated laws concerning trade secrets, which deal with economic espionage and breach of trade secrets.



Panelists

- Hon'ble Mr. Justice Vipin Sanghi, Chief Justice (Retd.), Nainital High Court.
- Hon'ble Mr. Justice Manmohan Singh Judge (Retd.), Delhi High Court
- Hon'ble Ms. Naima Haider, Judge, High Court Division of the Supreme Court of Bangladesh,
- Ms Virginia Maria Covington, Senior District Judge, US District Court for the Middle District of Florida
- Mr. Habakala Kankanamage Naleen Prasanna Alwis, Chief Magistrate, Chief Magistrate's Court, Sri Lanka.
- Mr. Abhimanyu Bhandari, Advocate

Moderator: Mr. Hemant Singh



Key Points

- The specialised IP Statutes prescribe a scheme of overlapping in case of design, copyright, and trade marks. For example, under the Trade Marks Act, 'shape of goods' and 'colour combination' are included. The idea behind adding 'shape of goods' in the trade mark act was to protect such unique features in the design of a product which with use attain goodwill and reputation.
- There is some controversy surrounding Section 15, Copyright Act, 1957. It excludes granting copyright protection to any registered design. It further states that if a design which is capable of being registered but is not registered, then the copyright on such designs ceases once the article has been reproduced more than 50 times. It does not take away the creator's right to exploit. It only means that the creator has to seek remedies available under the Design Act and not in copyright.
- This position has been clarified by the Delhi High Court in *Microfibres v. Girdhar*. The Panelists also discussed the Mohan Lal case and the Carlsberg case,
- In the US overlaps are quite common but unlike in India, in the US, design law does not take away someone's right to also claim IP rights other than that under the design act. A person in the US can maintain alternative causes of action. For example, in the famous case between Apple and Samsung, Apple could not make out its case on trade dress. But the US court allowed Apple to proceed with alternative remedies.
- In Bangladesh, the position is unclear. Though both trade mark and design law confer different kind of IP protection to an individual by way of separate laws. However, they may intersect that several occasions where the shape of a product can seem to be included both in the trade mark as well as the design.
- In Sri Lanka according to Section 28 of the IP Act, the protection of industrial designs provided in this section is in addition to any other protection provided under other written laws. Hence, there is an overlap which in itself finds mention in the Act.



Code or any artistic work as defined in clause



# Glimpses from the Conference



At the Inaugural Event, 15th March 2024, The Leela Hotel



# Glimpses from the Conference



# Glimpses from the Conference



# Glimpses from the Conference



# Glimpses from the Conference



**Members of the Organizing Committee, including Hon'ble Judges of the Delhi High Court, Core Group Bar members, Team, and Volunteers.**



---

# Acknowledgments

The documentation of this event, floor management, and other critical aspects, including this Report itself, were made possible by the enthusiastic work of many volunteer lawyers, who are gratefully acknowledged here.

## **Editor**

Vindhya Srinivasamani, LKS Attorneys

## **Masters of Ceremony**

Abhilasha Nautiyal, Ira Law  
Archana Sahadeva  
Gaurav Miglani, Worldwide Intellec  
Sneha Jain, Saikrishna & Associates

## **Registration Desk**

Akhil Verma  
Arjun Bohare  
Bhumika Sinha  
Nikhil Sikka  
Saurabh Nandrekar  
Shruti Rana  
All from Fidus Law Chambers

## **Rapporteurs**

Aishwarya Kane, Ira Law  
Aviral Shrivastava, United & United  
Ayesha Guhathakurta, Obhan & Associates  
Harsshita Pothiraj, Singh & Singh  
Sanya Kapoor, Sagar Chandra & Associates  
Shuvam Bhattacharya, Ira Law  
Yashi Agrawal, Advocate

## **Volunteers**

Akansha Singh, Inttl Advocare  
Deepali Dobhal, Inttl Advocare  
Misha M. Kumar  
Naina Gupta, LKS Attorneys  
Rohan Krishna Seth  
Surbhi Nautiyal, LKS Attorneys  
Sutapa Jana  
Ujwal Bhargav  
Vidhi Udayshankar

**Thanks to TERES** for providing their AI-based transcription service pro bono, and significantly enhancing the accessibility of the Sessions.

---

# Acknowledgments

## **Organising Committee:**

Hon'ble Mr. Justice Yashwant Varma, Chairperson  
Hon'ble Mr. Justice C. Hari Shankar  
Hon'ble Mr. Justice Chandra Dhari Singh  
Hon'ble Mr. Justice Anish Dayal  
Delhi High Court

### **Core Group of Invitee Bar Members:**

Mr. Adarsh Ramanujan  
Mr. Hemant Singh  
Mr. Neel Mason  
Mr. Pravin Anand  
Ms. Rajeshwari Hariharan  
Mr. J Sai Deepak  
Mr. Saif Khan  
Mr. Saikrishna Rajagopal  
Ms. Shwetasree Majumder  
Ms. Swathi Sukumar  
Advocates

### **Delhi Judicial Academy**

Dr Aditi Choudhary, DHJS  
Director (Academics), Delhi  
Judicial Academy  
  
Mr. Manmohan Sharma, DHJS  
Director (Administration), Delhi  
Judicial Academy

### **Program Team**

Mr. Kanwal Jeet Arora, Registrar  
General (Program Head)

Mr. Satish Kumar Arora,  
OSD/Registrar/CFM (Program  
Incharge)

Mr. Ravinder Singh, DHJS, Joint  
Registrar, Delhi High Court

Ms. Nisha Sharma, Deputy Registrar  
(Program Coordinator)

---