Patents, Designs, Plant Varieties and Overlapping areas

Prathiba M. Singh
Judge, Delhi High Court

- PATENTS
- Exclusive right granted for an invention – product or process
- Such product/process provides a new way of doing something or provides a new technical solution to a problem
- Patent Application must contain all technical information regarding invention
- Territorial Rights – generally, exclusive right only applicable in the country/region where patent filed or granted
- Term of Patent: Generally, 20 years from the date of filing application

What is NEW?

- New is – Not known before
- If it is known or published in any form – it is not new
- Seminar or Conference
- Newspaper or trade journal
- Cartoon clip

IS THE INVENTION OBVIOUS?

- Adding of Sodium & Chloride
- Can someone imagine – Nacl – common salt
- $2Na + Cl_2 = 2\ Nacl$ – Was it predictable that common salt would be the result of combining Sodium and Chlorine?
- If it is not predictable, it is not obvious.

OBVIOUS – From whose eyes?

- Obvious to a person skilled in the art
- A postgraduate in the relevant field
- Need not be a PhD level person
- Need not be a scientist
- It has to be obvious to someone with little more than basic knowledge of the subject.

Industrial Applicability

- Cannot be theoretical
- Cannot be academic
- It has to have practical application
- Economic advantage
- Cost effective solution
- As compared to existing knowledge

Should the judge have technical knowledge?

- Not needed
- Globally, judges who handle civil and criminal cases, deal with Patent cases also
- Sometimes, there are specialised courts
- But handling one or two cases will give the necessary basic knowledge.

Patent cases

- Every patent case has a Patent Specification.
- The specification ends with CLAIMS.
- The Claims define the invention and the monopoly.
- If the defendant’s product is falling in the Claims it is infringement.
- Defendant can argue that patent is invalid.

Patent is invalid – How to prove?

- By showing that the invention is not NEW or it is OBVIOUS.
- Or by showing that there is no practical application of the invention.
- For showing it is not new – Defendant will show some old documents – so the Judge has to merely see the invention and the old document to see if the invention was known already.
- If not – prima facie the invention is good. If it was known – the invention is bad.

Practical tips

- Plaintiff will normally file an affidavit of an expert
- Defendant will either file documents or file an affidavit of an expert
- Judge has to look at the two affidavits – accept the view that appears more plausible – just like in other cases
- Judge can order a short trial – one expert each and then decide

Expedited Trial

- **Glenmark Pharmaceuticals Ltd. v. Merck Sharp and Dohme Corporation & Anr.**

1. Vide order of the Supreme Court dated 15th May 2015, Local Commissioner directed to record evidence on a day-to-day basis
2. Lack of cooperation by either side to be recorded by the Local Commissioner
3. Arguments to be heard on a day-to-day basis after recording of evidence
4. Evidence of the witnesses recorded in 22 days
5. The final arguments commenced on 6th July 2015, concluded on 27th August, 2015 and judgment was pronounced on 7th October, 2015.
6. The Supreme Court observed, "*Unusual and extraordinary course of action taken to ensure highly contested commercial cases that require immediate attention are disposed of quickly*"

Expedited Trial in Patent Cases

- **Bayer Corporation v Cipla Ltd. CS(OS) 523/2010**

  The Delhi High Court, vide Order dated 23th July 2010, directed that instead of deciding upon the interim injunction application, the suit should be expedited directly to trial, and to that effect also appointed two scientific advisers under section 115 of the Patents Act for expert opinion.

- **Xu Dejun v.Vringo Infrastructure Inc. FAO(OS) 573/2013**

  A Division Bench of the Delhi High Court vide Order dated 12th December 2013 directed that the trial should be expedited. It was further directed that the trial shall be completed within six months from the first day when the matter is listed before the Local Commissioner. The Vringo cases were however settled before the commencement of the trial.

PATENTS – RECENT DEVELOPMENTS

- Patent Amendment Rules, 2016
- 458 new Patent Examiners appointed
- E-filing portal
- Reduction in time for filing response from 12 months to 6 months
- Expedited patent examination – on request

Annual report for 2015-16 by The Office of the Controller General of Patents, Designs, Trademarks and Geographical Indications India

Year	2011-12	2012-13	2013-14	2014-15	2015-16
Filed	43,197	43,674	42,951	42,763	**46,904**
Examined	11,031	12,268	18,615	22,631	**16,851**
Granted	4,381	4,126	4,227	5,978	**6,326**
Disposal (granted + refused + withdrawn + abandoned)	8,488	9,027	11,411	14,316	**21,987**

PATENTS – RECENT DEVELOPMENTS

- According to the Rules, an applicant may claim refund of 90% of fees paid for request for examination/expedited examination, by filing a request for withdrawal of an application before the issuance of First Examination Report.
- Benefits for start-ups – conducive business environment & promoting patent initiative
- Hearings may now be held through video conferencing or audio-visual communication
- Reduction in time period for filing response to FER-6 months


ORIGINAL

GOVERNMENT OF INDIA

THE PATENT OFFICE

CERTIFICATE OF REGISTRATION OF DESIGN

Interpretation of Section 3(d) of the Indian Patents Act

- **Novartis v. Union of India** 2013(54)PTC1(SC)
  - Supreme Court interpreted the meaning of "efficacy"- It means 'the ability to produce a desired or intended result'. New form of a drug must demonstrate an improvement in its therapeutic effect or curative property as compared to the old form in order to secure a patent. Test of efficacy would depend upon the function, ability of the purpose of the product under consideration.
  - Therapeutic efficacy of a medicine must be judged strictly and narrowly
- **F. Hoffman la Roche Ltd and Anr. v. Cipla** 2016(65)PTC1(Del)
  - Section 3 of the Act lays down a threshold for patent eligibility and is not an exception to Section 2(1)(j)
  - Structurally similar derivatives of a known 'substance' will also be functionally similar and hence ought not to be patentable.
  - A new chemical entity (NCE) that is structurally dissimilar but functionally similar to an existing chemical entity is thus merely a substance under section 3(d).
  - If the substance has an added layer of enhanced efficacy, then it will be treated as a 'new product' and would be eligible for assessment under Section 2(1) (j) to ascertain whether its formation involved an inventive step. If the new product involved one or more inventive step, then it will qualify as a pharmaceutical substance.

Leading cases: Patents

Drugs – F. Hoffman La Roche vs Cipla

- Roche claimed that Cipla had infringed its patent in 'Erlotinib Hydrochloride'
- The Court laid down a five step test for an obviousness challenge to a patent:

- ❑ Step No.1 To identify an ordinary person skilled in the art,
- ❑ Step No.2 To identify the inventive concept embodied in the patent,
- ❑ Step No.3 To impute to a normal skilled but unimaginative ordinary person skilled in the art what was common general knowledge in the art at the priority date.
- ❑ Step No.4 To identify the differences, if any, between the matter cited and the alleged invention and ascertain whether the differences are ordinary application of law or involve various different steps requiring multiple, theoretical and practical applications,
- ❑ Step No.5 To decide whether those differences, viewed in the knowledge of alleged invention, constituted steps which would have been obvious to the ordinary person skilled in the art and rule out a hindsight approach

Leading cases: Patents

Drugs – F. Hoffman La Roche vs Cipla

- It the teaching of the prior art document should be considere whole and that similarity of structure alone was insufficient for prima facie unpatentability, but rather, to show obviousness besides structural similarity, there should be a reason or motivation shown in the prior art to make the particular structural change in order to achieve the properties that the applicant was seeking
- An infringement examination does NOT compare an allegedly infringing product with the product marketed pursuant to rights under a given patent, but compares it with the claims of the patent itself.
- Section 3(d) of the Act lays down a threshold for patent eligibility and is not an exception to Section 2(1)(j)
- The Court directed Cipla liable to render accounts concerning manufacture and sale of Erlocip and decreed costs in favour of Roche in sum of Rs 5,00,000, but refrained from granting a permanent injunction as the Roche patent was set to expire in March 2016.

Interpretation of Section 3(d) of the Indian Patents Act

- **Gilead granted patent for Sofosbuvir (vide order dated 9th May 2016) :**
  - Claimed compounds are not polymorphs, isomers, salts, etc. of a known compound.
  - Compounds argued to be known substance were hypothetical in nature.
  - Applicant referred to the comparative efficacy data and toxicity data to show that the claimed compound has a unique & novel substitution pattern, and they have both high potency and low toxicity as compared to compounds existing on the priority date
  - An Applicant for patent cannot be required to make a compound which was not in existence as on the priority for showing comparative activities.
  - The test of efficacy would depend upon the function, ability of the purpose of the product under consideration.
  - In the case of a medicine that claims to cure disease, test of efficacy can only be "therapeutic efficacy".
  - If the substance has an added layer of enhanced efficacy, it will be treated as a 'new product'.

Claimed compounds were held to be outside the prohibition of Section 3(d).

Intellectual Property and Competition Law

- The debate between IP and Competition law is a delicate balance
- Recently, the interplay between IP and Competition Law has been discussed in several cases –
  - SEP cases (FRAND licensing)
  - Copyright cases (JCB, T-Series)
  - Monsanto (Seeds)
  - Automobile parts (some copyright issues, confidential information)
  - SabMiller (Franchising)
  - Microsoft (Copyright licensing)
- Issue of jurisdiction arises when CCI is knocked at for overlapping issues

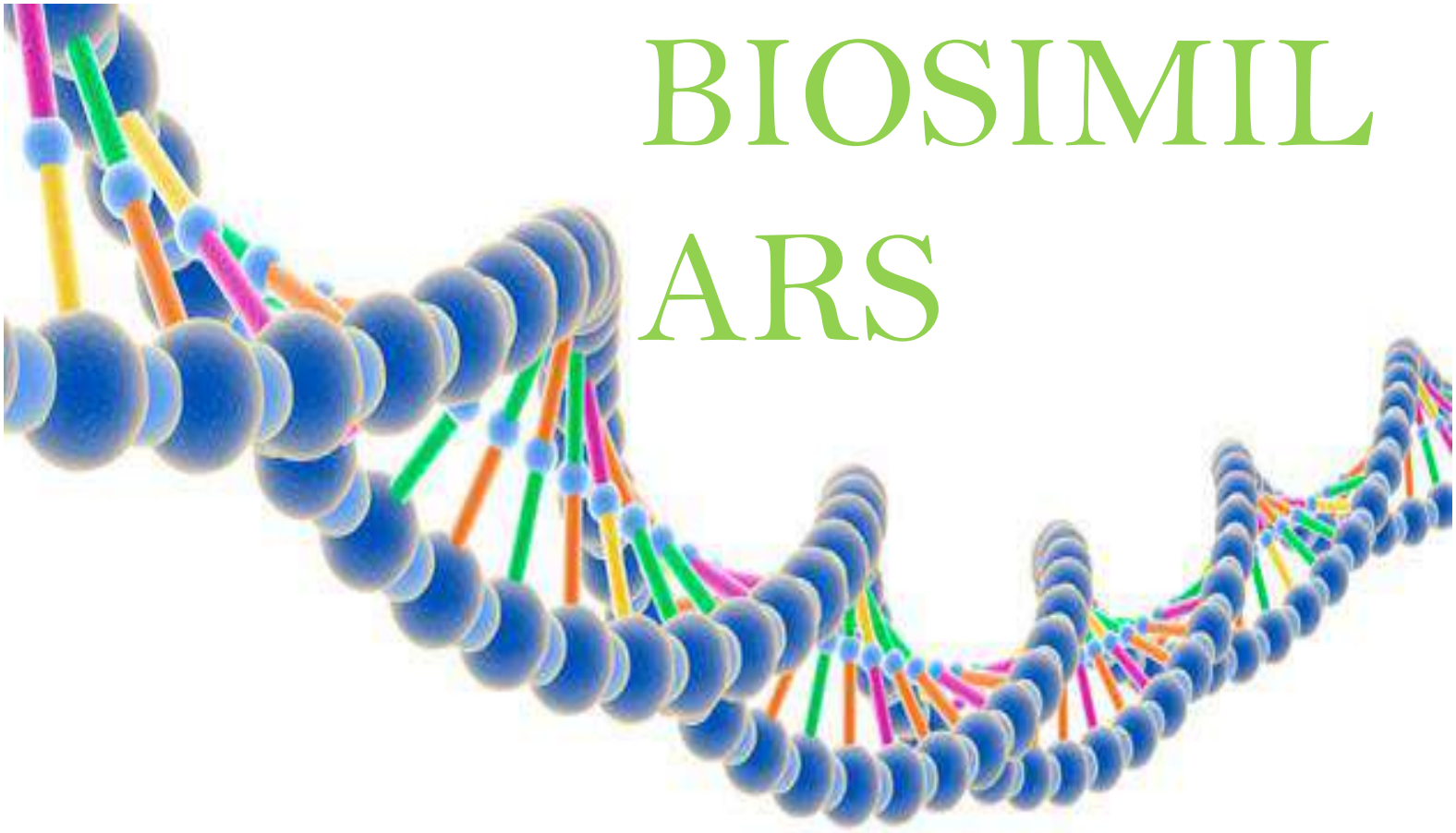
Intellectual Property and Competition Law

- **<u>Telefonaktiebolaget LM Ericsson v. Competition Commission of India & Anr.</u> 2016(66)PTC58(Del)**
- As per the recent Judgement of the Bakhru J., of the Delhi High Court:
- An order of investigation under Section 26(1) is amenable to judicial review;
- CCI cannot determine infringement of patents and invalidity of patents;
- The Patents Act is a special Act and prevails over the Competition Act;
- It is legitimate for a patentee to seek injunctive relief;
- Whilst an agreement which imposes reasonable condition for protecting Patent Rights is permissible, an anti competitive agreement which imposes unreasonable conditions would fall foul of Section 3 of the Competition Act.
- However, there is no repugnancy or conflict between the two Acts – CCI can go into issues of ABUSE OF DOMINANCE.
- **The judgment has started a debate on IP and Competition law & is currently under appeal**

Trade Secrets in India

- No specific legislation in India governing trade secrets
- The only means through which a trade secret can be protected is by way of a contract. Non disclosure agreements and restrictive covenants are the usually adopted means
- The only source of relief is a civil suit wherein damages can be sought. However, despite the quantum of damages awarded to the Plaintiff Company or individual, the economic loss caused to the plaintiff by the disclosure of the trade secret is usually massive and results in irreparable damage.
- The Delhi High Court in ***Sanofi Winthrop Industries v. Kirti B Maheshwari*** , after examining various articles incorporated in the Development Services Agreement, particularly Article 6 which dealt with intellectual property and trade secrets adjudged that the dispute between the parties falls within the definition of a "Commercial Dispute" as elaborated in Section 2(1)(c)(ix) and (xvi) to (xviii) of the Ordinance (vide order dated 14th December 2015)

BIOSIMILARS

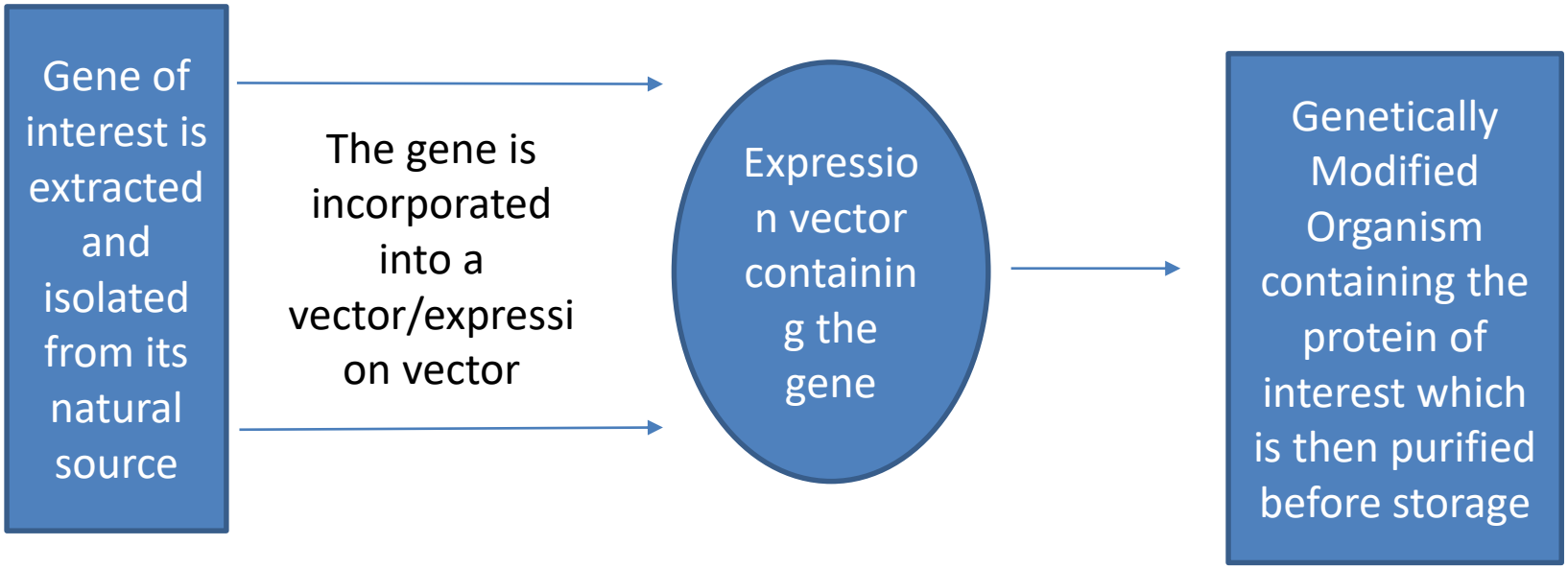


What Are Biosimilars?

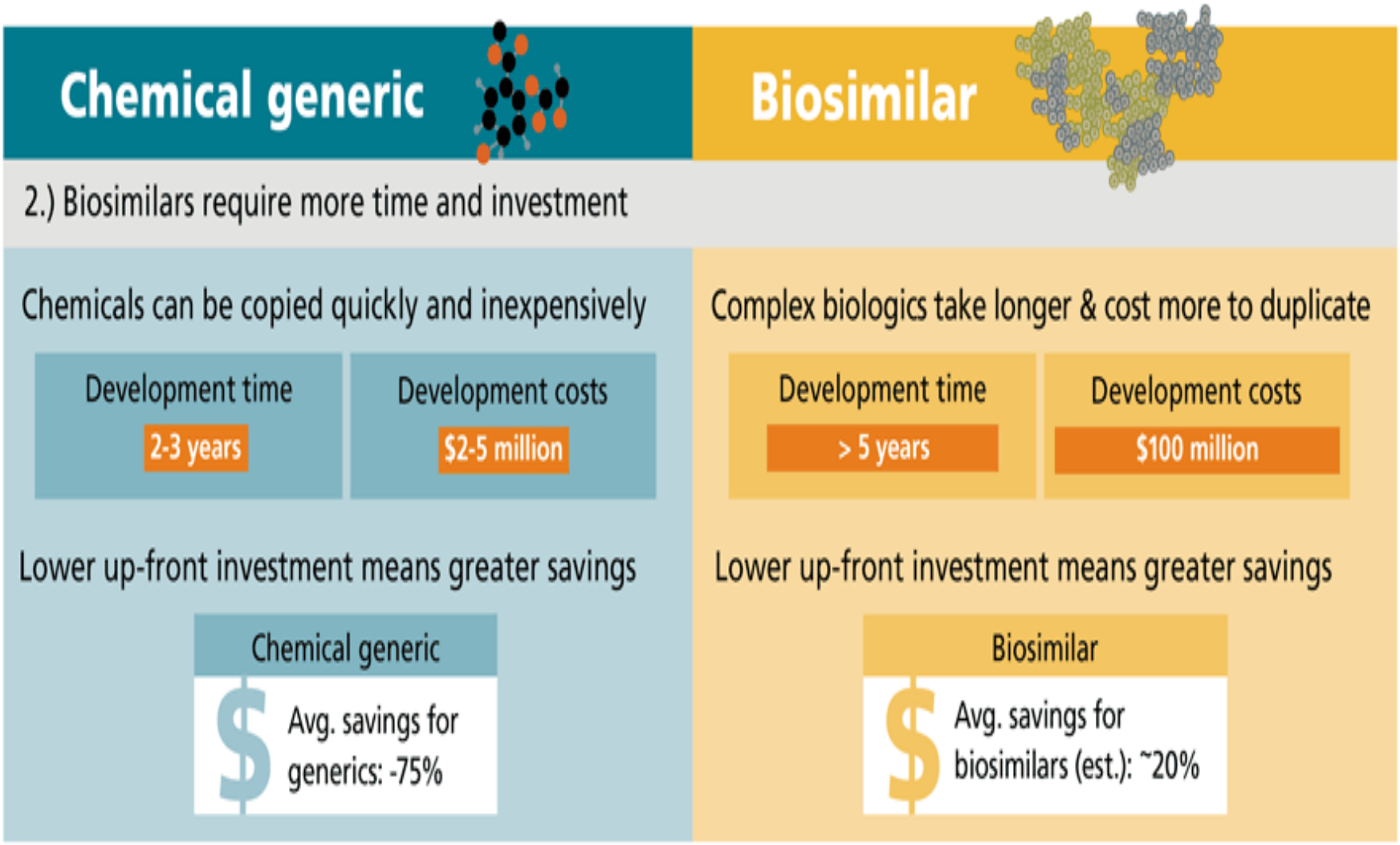
- *Subsequent versions* of innovator biopharmaceutical products;
- Biological products are similar and not exactly the same;
- Have *structural* and *molecular* complexities;
- Synthesized by genetically engineering a cell line;
- Recombinant DNA technologies are involved.

"A similar biological medicinal product, also known as a biosimilar, is a product that is similar to a biological medicine that has already been authorized, the so-called 'reference medicinal product'."- European Medicines Agency

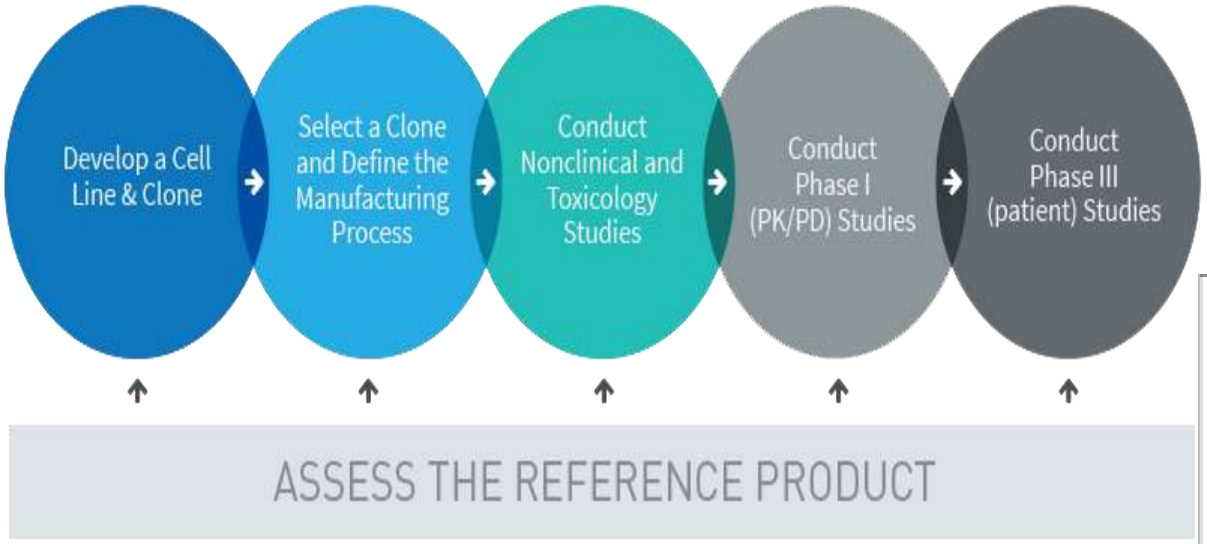
NEAR IDENTICAL V/S IDENTICAL
Biosimilars v/s Generic


Gene of interest is extracted and isolated from its natural source
The gene is incorporated into a vector/expression vector
Expression vector containing the gene
Genetically Modified Organism containing the protein of interest which is then purified before storage

DIFFERENCE BETWEEN GENERICS AND



THE CONTROVERSY IN BIOSIMILARS:



The Drugs and Cosmetics Act and Rules, 1945 and the Biosimilar Guidelines, 2012 permit an abbreviated pathway.
Reliance to be placed on the data of the Reference drug which has been approved in India with a complete data package.

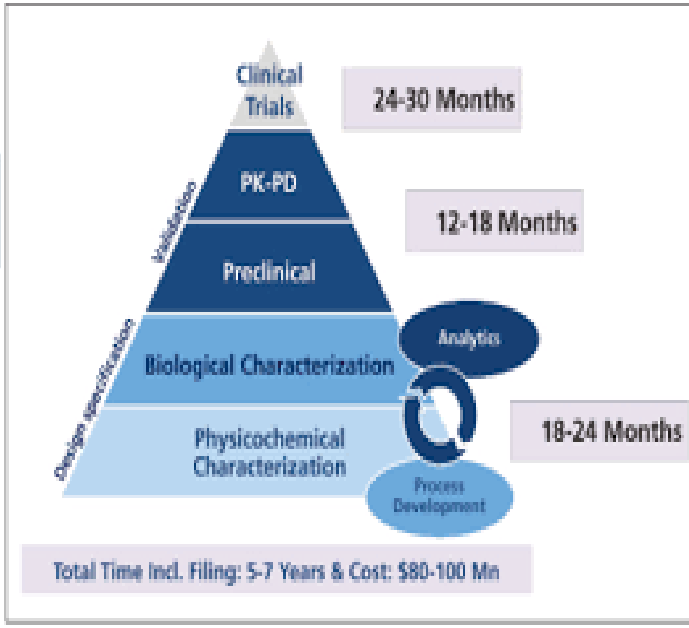


Figure 2: Biosimilars: An Abbreviated Pathway (Reality or Mirage)

M/s Genentech Inc & Ors v The Drugs Controller General of India CS(OS) 3284 of 2015

- The suit was filed by Roche against Reliance Life Sciences Private Limited , in Delhi High Court on October 29,2015.
- The regulatory approvals obtained by Reliance for their drug (TrastuRel i.e. biosimilar of Roche's drug Trastuzumab were challenged.

Main Contentions by Roche:

- That TrastuRel was not adequately tested and compared to Roche's drug Trastuzumab.
- It was alleged that, TrastuRel had failed to show biosimilarity to Roche's drug.
- It was alleged that, the regulatory approvals granted by the Drugs Controller General of India to Reliance's drug TrastuRel were not in compliance with The Drugs & Cosmetics Act , 1940 , The Drugs & Cosmetics Rules , 1945 and Biosimilar Guidelines , 2012.
- That all phases of the clinical trials must be done by the manufacturer

Order /Judgement of DHC 25th April , 2016

Few Critical findings of Ld Single Judge:

- The Drugs Controller General and Department of Biotechnology were deleted as parties from the suit.
- TrastuRel can be marketed , manufactured but *without ascribing any biosimilarity to Trastuzumab.*
- INN name cannot be used standalone for the drug TrastuRel.
- The packaging material has to be marked with Trastuzumab written below on carton, in a smaller font.
- Roche's data can no longer be used in TrastuRel's package insert.

M/s Cadila Healthcare Ltd. v *Roche Products (India) Private Limited & Ors*

- Cadila Healthcare had filed a Declaration suit against Roche before Bombay High Court in January 2016.
- The suit was filed for launch of Cadila's drug (Vivitra) as a biosimilar of Trastuzumab (Roche's drug).
- The approvals and licenses obtained by Cadila Healthcare were brought into the notice of court.
- The imminent threat of infringement suit by Roche was taken as cause of action.

The suit was however disposed of as the Cadila's drug was already in market and no relief was sought.

Biosimilars

- Division Bench of DHC held –
- Since Biocon and Reliance already had approvals, they are allowed to sell
- The approval has been given by the DCGI and hence Roche which has no patent cannot stop the drugs from being sold

SEPs in India

SEPs

- SEPs - Omnipresent
- Standard Essential Patent is a patent that claims an invention that must be used to comply with a standard
- SEPs are present in everyday life
- Various sectors which have SEPs – Smart phones, VCD/DVD/Bluray players, Household appliances, TVs, Data cards and dongles, electrical products, refrigerators, air conditioners etc.,
- Presence of SEPs is bound to increa

Indian context of SEPs

- Should India be IP compliant in SEPs?
- If, No, then the debate ends.

WHAT DO WE DO?

- We can have guidelines and laws not to grant patents or to limit them in some way or the other (eg.,CRI guidelines)
- We can bring out compulsory licensing provisions for all SEPs
- We can expect the IPR policy to have a clause saying that “All SEPs should be compulsorily licensed”
- The Government should fix a royalty rate which will ensure that all businesses exit from India.
- There will be no manufacturing in India.
- There will be no R&D in India.

Ponder Upon

STANDARD ESSENTIAL PATENTS

- If, SEPs are present,

then there are two paths -

Negotiate

Litigate

International Position

- Patent pools
- Patent owners
- Patent hold-up
- Thousands of patent global agreements exist
- Most are negotiated between parties
- Remedies available from national courts in the event of disagreement.
- Rarely, they do go into litigation

TAKE CARE OF

- Royalty stacking, Patent hold-ups

- Unwilling licensee, Patent hold-outs.

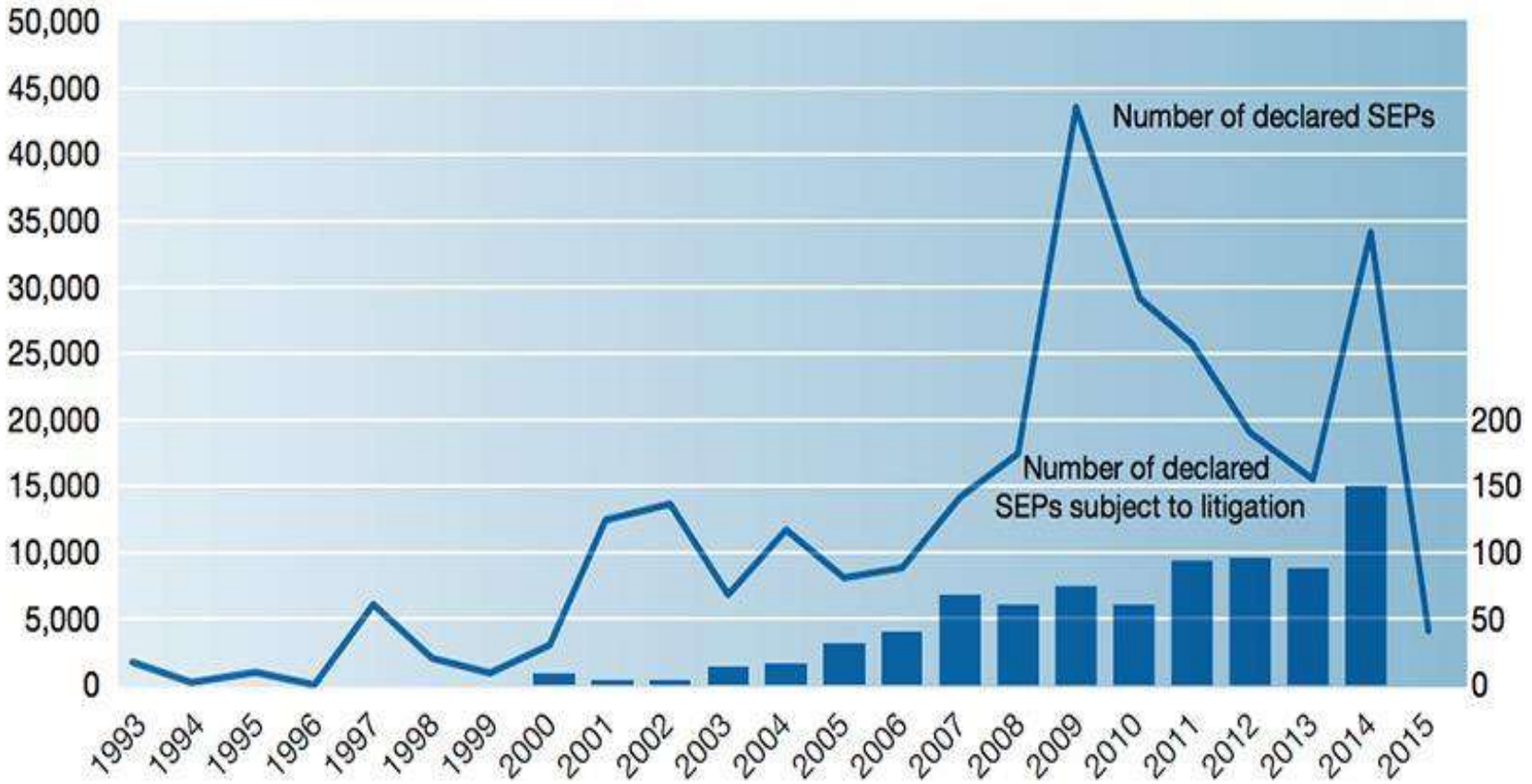
International Position

- These patent licences are
  - NOT negotiated patent by patent;
  - NOT negotiated jurisdiction by jurisdiction;
  - NOT negotiated product by product;
  - ARE negotiated for multiple patents;
  - ARE negotiated for multiple owners;
  - ARE negotiated for multiple portfolios;
  - ARE negotiated on a global basis.

INTERNATIONAL POSITION

- WHAT ARE ROYALTIES BASED ON?
  - Are they based on value of technology when it was adopted as a standard?
  - Is it based on comparable agreements?
  - Is there an assessment of the essentiality of the patents?
  - What about cases in which patents are Essential but not infringed?
  - What about net-balancing royalties?
  - **No broad consensus on the topic!**

INTERNATIONAL POSITION-TRENDS



Source- IAM magazine

INDIAN POSITION

- Few SEPs initially litigated. Some favourable orders passed including injunctions.
- But the Smart phone SEP negotiations failed
- Led to large scale litigation.
- 6 infringement actions filed led to a total of **36 cases** including **17 Appeals** and **5 petitions** to the Supreme Court.
- Countless applications have been filed in these 5 cases.
- This model is **NOT** sustainable –from any perspective - manpower, costs, time, capital, resources

INDIAN POSITION

- Competition authorities have been approached alleging ABUSE OF DOMINANT POSITION;
- Conflict between IP rights and Competition law;
- Natural conflict in the nature of rights;
- Initial judicial determination is that Patent statutes are Special Statutes however, there is no repugnancy or conflict between the two Acts
- CCI cannot determine infringement, invalidity, past damages & royalty rates of patents & has a limited jurisdiction in case of Abuse of Dominance;
- LAW IS YET TO BE SETTLED.

Leading cases

Standard Essential Patents - Ericsson, Dolby, Philips

- Courts have been consistent in their approach;
- In SEP infringement actions, the following kinds of orders have been passed –

❑ Orders of injunction if there was a history of long negotiations;
❑ Interim deposits of royalty in Court;
❑ Interim payments of royalty to the owner with a cross guarantee;
❑ Security by the Defendant pending trial.

- Courts have been Fr(ien)(AN)dly until now.
- Final determination by any Court yet to take place

INDIAN POSITION

Going forward –

- In no other country are FRAND rates determined by Governments; (except CHINA NDRC)
- Courts evolve the principles to determine FRAND;
- Governmental policy ought not to determine FRAND rates.
- National IPR Policy highlights the need for examining availability of SEPs on FRAND terms.
- The Delhi High Court's decisions on FRAND licensing comport with current judicial and regulatory trends across the world

PLANT VARIETIES and farmers rights

- Act - Authority set up to promote new varieties of plants and protecting the same – along with the rights of the farmers/breeders
- Term: For trees and vines - 18 years, For other crops - 15 years, For extant varieties - 15 years
- Infringement of any right under the PV Act attracts both Civil and Criminal action
- Infringement: producing, selling, importing, exporting any variety without the permission of the owner or using of a denomination which is similar to a registered denomination- likely to confuse
- National Gene Fund, Benefit Sharing

Patents & Plant Varieties

- Monsanto Vs. Nuziveedu
- 1st case in India;
- Bt cotton technology;
- Defendant was a licensee;
- Single Judge has decided that Plant Varieties Act and Patents Act do not conflict;
- Matter pending in Appeal

DESIGNS

- Features of shape, configuration, pattern, ornament, composition – lines or colours
- Applied to any article- two dimensional, three dimensional – by industrial process
- Judged solely by the eye
- Registered proprietor – exclusive right to apply the design to article in the class in which the design is registered – can sue for infringement
- Right to License or sell as legal property – for consideration/royalty
- Artistic works u/s 2(c) of Copyright Act, 1957 – cant be registered as Designs

Designs – Recent developments

YEAR	2011-12	2012-13	2013-14	2014-15	2015-16
FILED	8,373	8,337	8,533	9,327	11,108
EXAMINED	6,511	6,776	7,281	7,459	9,426
REGISTERED	6,560	7,252	7,178	7,147	7,904
DISPOSAL OF APPLICATIONS	6,705	7,300	7,226	7,218	8,023

Annual report for 2015-16 by The Office of the Controller General of Patents, Designs, Trademarks and Geographical Indications India

❖ ***Videocon Industries Ltd vs. Whirlpool of India Ltd.,*** **2014 (60) PTC 155 (Bom)**

A design that is to be registered is to be applied to any finished article that may be judged solely by the eye. Use of either registered design or a fraudulent or obvious imitation thereof by Defendant amounts to an act of piracy and/or infringement.

Designs – Recent developments

- ***Dart Industries Inc. & Ors. v. Technoplast & Ors.,*** **2016(67)PTC457(Del)**

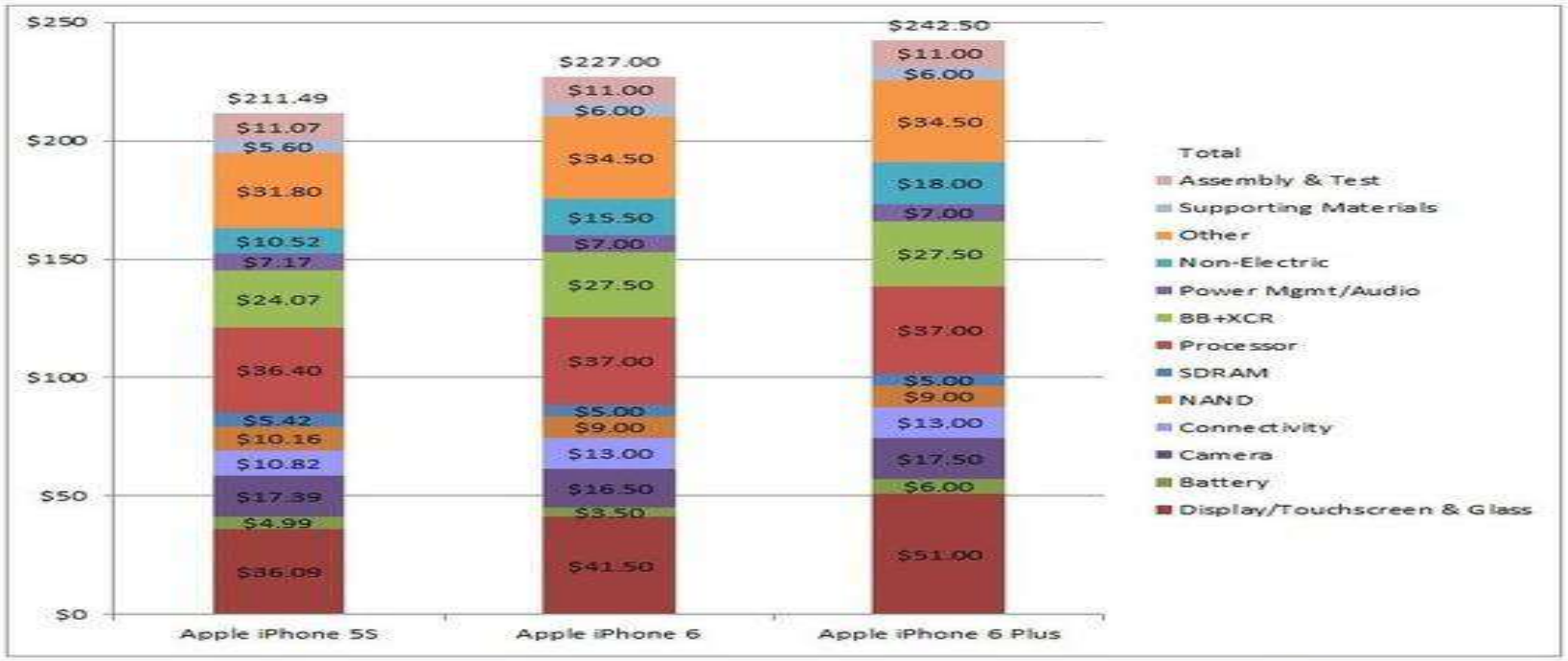
  The court held that action for passing off is a common law right, independent of the Designs Act. However, for a passing off action, it must be proved that the general public associates the shape, trade dress etc. with the plaintiff alone. Unless a work of art is capable of design protection and has been registered as a design, or should have been registered as a design, the copyright in the underlying artistic work subsists independently of design rights.

- ***Ritika Pvt. Ltd. v. Biba Apparels Pvt. Ltd. ,*** **230(2016)DLT109**

  If Designs are not registered under Designs Act, 2000, it would lose copyright after produced over 50 times. In other words, once a drawing, a sketch or a design was used for creation of dresses, then, once dresses cross 50 numbers, no copyright could subsist in drawing and sketch under Copyright Act because of language of Section 15(2) of Copyright Act.

IP's ROLE IN APPLE'S SUCCESS STORY

- **Average cost of manufacturing (iPhone 6 plus, 16GB) = Rs. 17,000 – does not include other costs like R&D, marketing**
- **Market Price = Rs. 62,000 (approx.)**



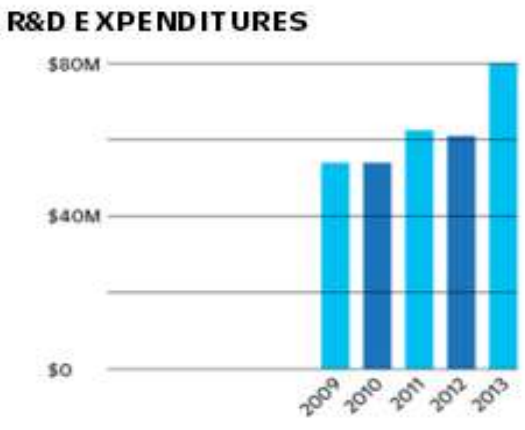
teardown.com

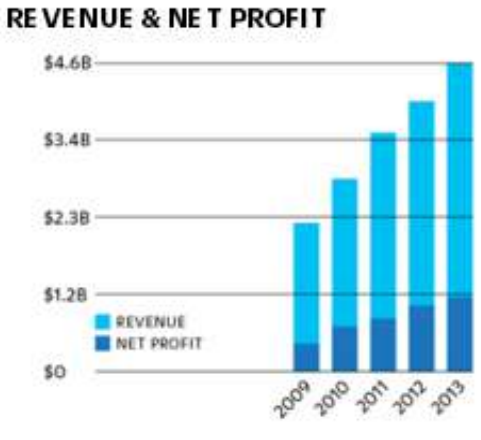
IP's ROLE IN APPLE'S SUCCESS STORY

- **Owning an iPhone – status symbol – people take loans, buy on EMIs**
- **Apart from the features, it is Apple's brand value that one pays for**
- **Apple makes a 300% profit (approx.) on each iPhone 6 plus**
- **All phones are manufactured in China by Foxconn**
- **Apple's innovation is embodied in its Intellectual Property, including Patents, Trademarks, and Copyrights**

IP's role in Lego's success story!

- In the last 10 years, Lego has grown into nothing less than the Apple of toys!
- In 2015, Lego surged ahead of rival Mattel to become the biggest toy manufacturer in the world, reporting first-half profits of $273 million on revenue of $2.03 billion
- LEGO has sought to protect its valuable bricks using a variety of intellectual property.





Situation in INDIA

- India's IPR Regime – in compliance with TRIPS
- India is a party to almost all major conventions
- On traditional matters involving TMs, Copyrights, Designs etc., jurisprudence has evolved.
- On Patents the jurisprudence new areas are emerging like Standard Essential Patents, overlapping areas like Competition, Plant Varieties etc.,
- Trade Secrets – India needs to debate if we need a statutory law;
- Traditional knowledge – India is looking at sui generis protection

Situation in INDIA

- Some areas like criminal remedies –implementation needs improvement – infringement, piracy not uncommon
- Low investment in R&D
- Due to lack of knowledge – India lags behind in leveraging IPR – lead to growth of illicit trade
- IP is the most important and valuable asset for software and knowledge-intensive companies
- Large companies like Infosys, WIPRO and TCS – service based- little investment in creating & protecting their IP
- In the next decade India needs to focus on innovation in order to become more competitive in protectionist regimes.

IN THE NEWS!

THE ECONOMIC TIMES

New legislation to tighten H1B visa rule for foreign techies will hurt Indian IT companies

By PTI | Updated: Jan 20, 2017, 04.35 PM IST

Business Standard

India lags emerging world in research, imperils innovation

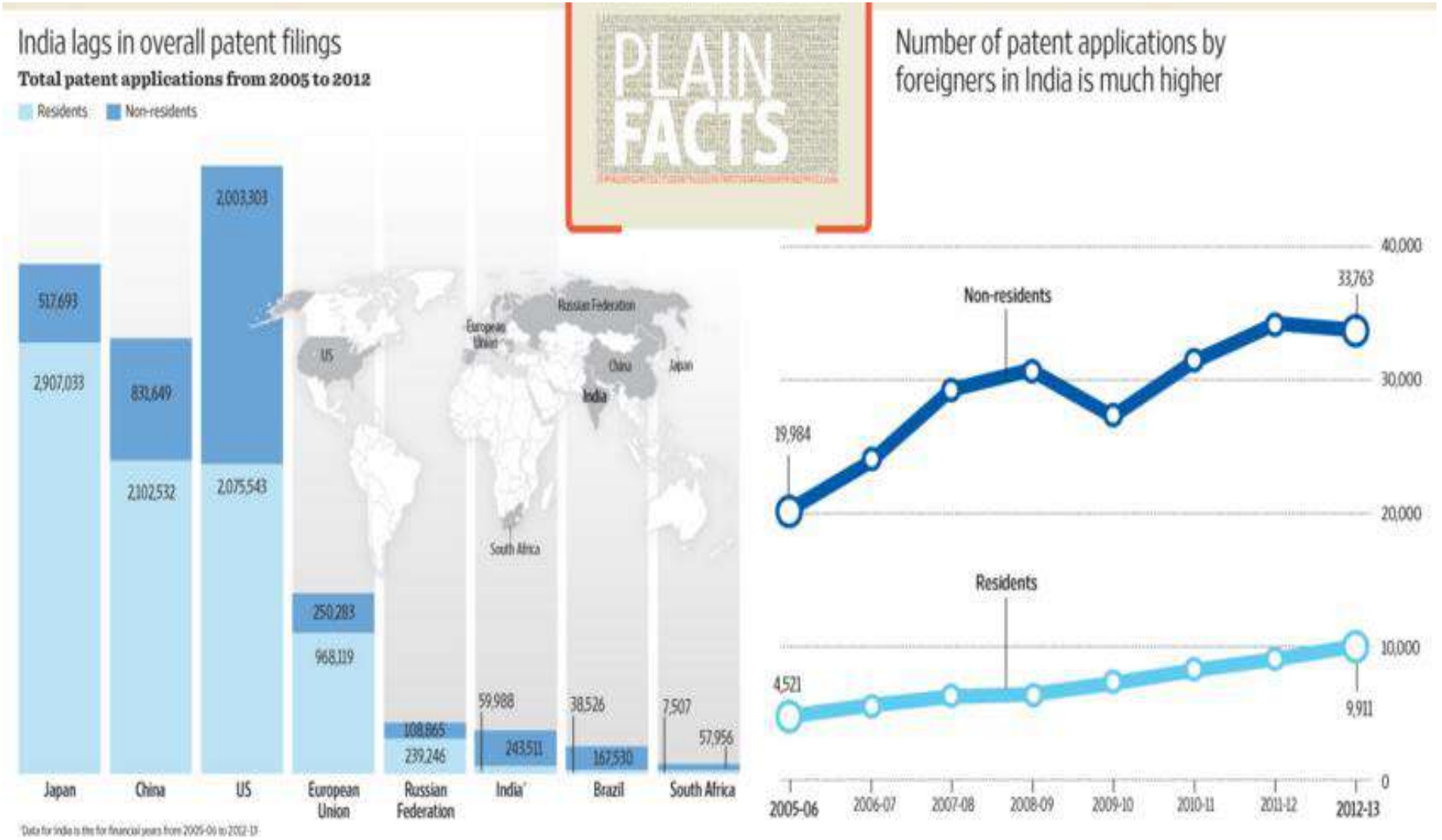
April 30, 2015

TECH 2

Indian mobile game developers get worldwide acclaim but face domestic limitations

24 Jan 2017

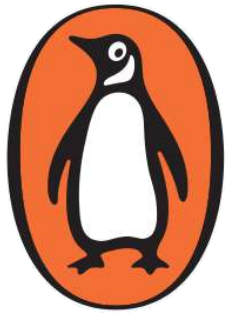
IN THE NEWS!



Source: Live Mint, Nov 24 2014

Status of IP in India

- IP statutes have existed in India for many decades;
- First TM was granted in India in 1942 for the mark ‘BLACK AND WHITE’.
- 1950 -1990 – Jurisprudence developed on fundamentals of Trademarks, Copyrights, Patents and also the procedural issues in IP
- Many new concepts emerged: well-known marks, Trans-border reputation, Parallel importation of books, International Conventions, Non-use & special circumstances, Trafficking etc.
- Most cases – filed, injunction granted and settled.



Status of IP in India

- 1990-98 – TRIPS was on the anvil and came into force from 1.1.95.
- Enormous CHURNING in IP laws
- Exclusive marketing rights introduced in the Patents Act;
- Digital era had dawned for Copyright laws;
- Debates on GI laws ensued; [enacted in 1999]

Status of IP in India

Newer concepts – Registered proprietor can be injuncted;[Whirlpool Case]

- IP litigation increased to huge numbers;
- Innovative remedies were granted;

- Complex issues began being adjudicated [domain names, comparative advertising etc.,]

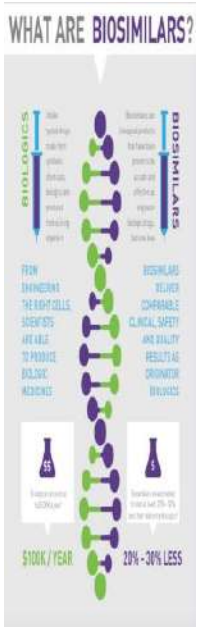
- Broadcasting [radio & TV] began to create complications;
- Fair Use defenses

Status of IP in India

- Turn of the millennium – 2000 onwards
- Era of Intellectual Property
- Product patents introduced;[2002 & 2005]
- Filings increased in courts. From about 300-350 IP suits in the 90s, the numbers doubled to almost 600-650 suits in DHC
- Many, many complex issues came up before courts.

Status of IP in India

- Pharmaceutical patents;
- Standard Essential Patents;
- Plant Varieties;
- Trade secrets;
- IP and competition law;
- Complex fair use defenses;
- Biosimilars;
- Data exclusivity;
- Data protection



Status of IP in India

- Madrid Protocol: One stop solution for registering and managing marks worldwide. File one application, in one language, and pay one set of fees to protect your mark in the territories of up to 98 members
- TRIPS Plus provisions in FTAs;
- Protectionist and expansive demands;
- IP rankings and US 301;
- Commercial Courts Act;

Status of IP in India – Fair Use

- *The Chancellor, Masters & Scholars of The University of Oxford & Ors. Vs. Rameshwari Photocopy Services & Anr.RFA(OS) 81/2016*

- **Fairness determined on the touchstone of 'extent justified by the purpose' without considering the extent of material used – qualitative or quantitative**
- **So much of the copyrighted work can be fairly used which is necessary to effectuate the purpose of the use i.e. make the learner understand what is intended to be understood.**
- **Argument that there will be adverse impact on the market of the Copyrighted work – rejected on the grounds that the student will not be a potential customer of 30-40 reference books**

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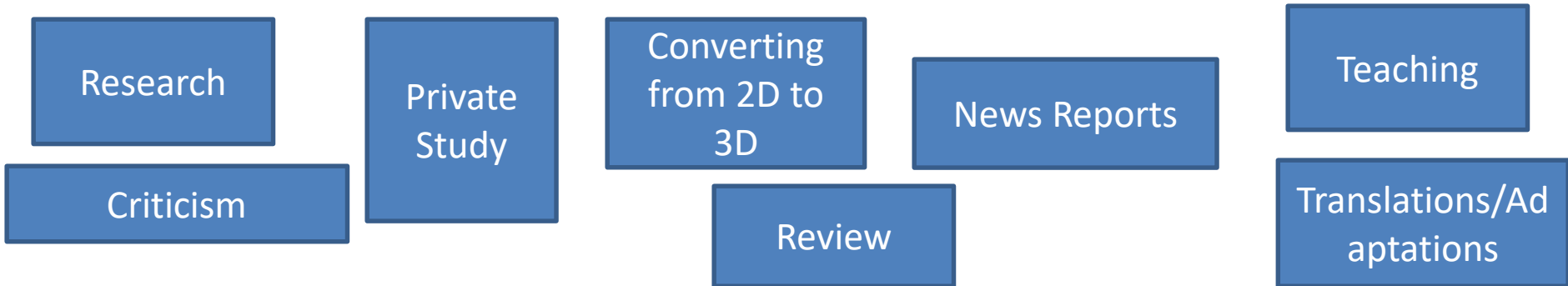

Future – of IP

- India – a hub of innovation;
- Registration of TMs – less than a year;
- Grant of Patents – less than 3 years;
- Domestic filings – will increase;
- Start ups, Digital India;
- IP licensing will be prevalent;
- IP litigation – high stake matters will increase;
- Damages – will be granted like in international jurisdictions;
- Costs – will be in actuals – hence deterrent effect;
- Modern facilities – Video conferencing, transcription;

Isro creates history, launches 104 satellites in one go

Feb 15, 2017, 06.15 PM IST

Digital India
Power To Empower

Conclusion

- IP is the most important and valuable asset for software and knowledge-intensive companies
- Due to lack of knowledge – India lags behind in leveraging IPR – lead to growth of illicit trade
- Need of the hour – Human resource
- Role of Universities and academic institutions is one of great responsibility
- R & D expenditure needs to increase
- In the next decade India needs to focus on innovation in order to become more competitive in protectionist regimes.