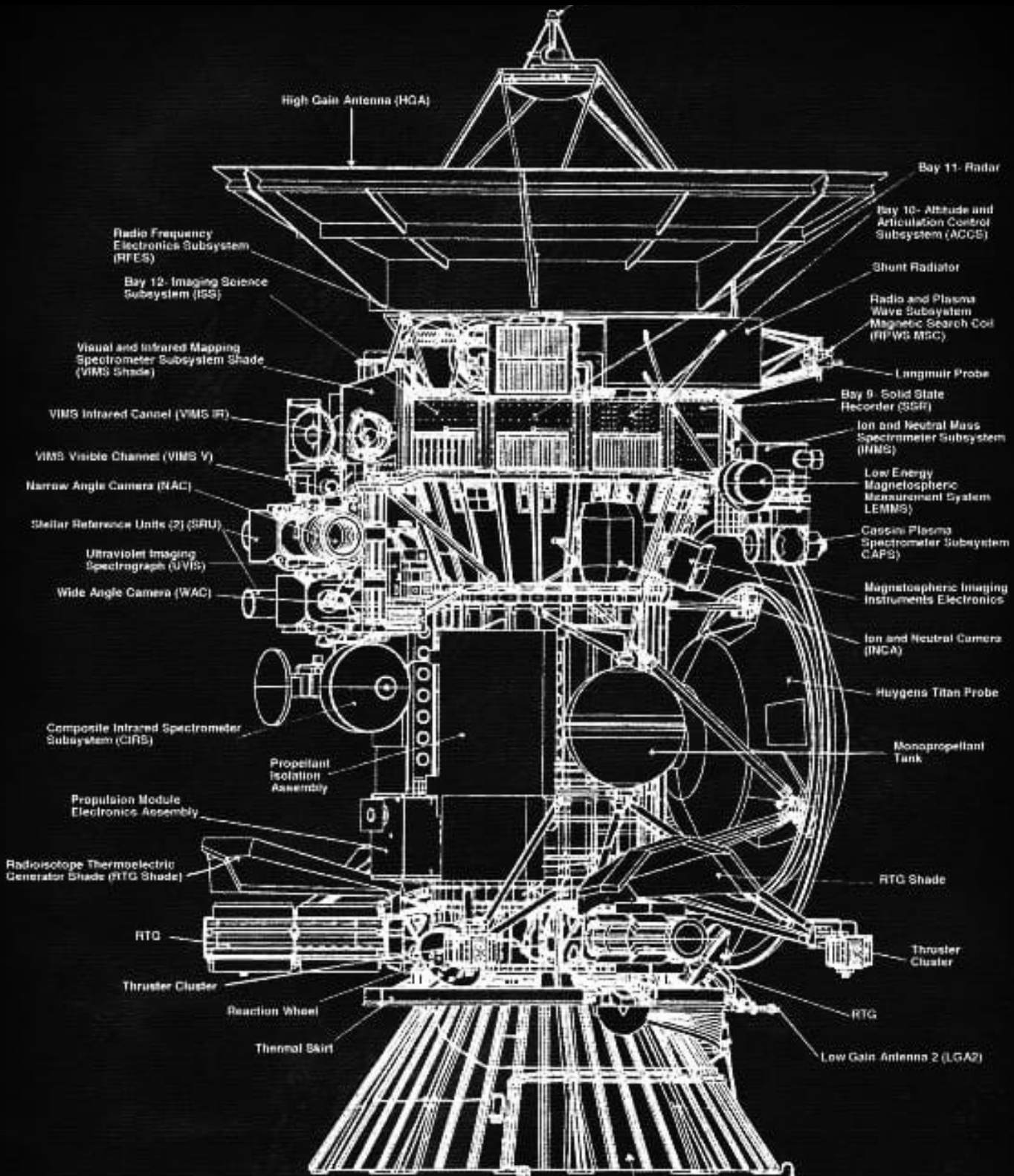


THE IPR UPDATE

JANUARY 2024



PRENATAL GENETIC TESTING TECHNOLOGY BIRTHS HEFTY PATENT INFRINGEMENT SUIT: NATERA LOSES \$57M LAWSUIT AGAINST RAVGEN

SHUBHAM MORE

Intellectual property rights play a pivotal role in the translation of scientific discoveries into practicality, particularly in the context of personalized medicine. Two distinct innovations in this field, Single gene testing (SGT) and Non-invasive prenatal testing (NIPT), exemplify different approaches to how the law is applied. In the case of NIPT, developers are aware of and carefully navigate the field of patents, weighing the costs and benefits associated with adherence to patent law. Factors such as freedom to operate, potential litigation, and licensing agreements are weighed in favor of compliance to the law.

On January 16th, 2024, a jury in Austin, Texas, delivered a verdict in favor of Ravgen, a genetic testing company. The ruling mandated that Natera, another company in the genetic-testing sector, pay \$57 million in damages following a patent-infringement lawsuit filed by Ravgen. Ravgen, known for its history of litigating against various diagnostic companies for patent infringement, holds patents related to diagnostic tests analyzing free-floating DNA in a subject's bloodstream, an innovation it claims to have been the first one to have developed. In 2022, in a similar verdict, Ravgen was awarded \$272 million in damages in its lawsuit against Labcorp LH. N. which was further increased by \$100 million in 2023. This sheds light on the importance as well as lucrative nature of prenatal genetic testing especially in regards to patents law.

In the case dealt by the Texan jury, Ravgen raised allegations of patent infringement concerning Natera's Panorama prenatal screening tests, utilizing Ravgen's cell-free DNA testing technology. Ravgen sued Natera all the way back in 2020 for patent infringement. Natera in its defense had denied Ravgen's patent claims citing patent eligibility as a ground under 35 U.S.C. §101. Natera claimed that no new non-routine steps were used by Ravgen and the patent was directed to natural phenomena which the court denied. The court applied the legal test as laid down in Mayo Collaborative Servs. v. Prometheus Labs, Inc and analyzed the same in the context of genetic testing explaining how the patent claims introduced non-routine steps in lieu of genuine material facts.



Despite Natera emphasizing that the damages awarded were significantly less than the \$410 million sought by Ravgen, the jury's decision was considered celebratory by Ravgen. The latter's attorney expressed satisfaction, stating that the jury had recognized the foundational nature of Ravgen's technology in the realm of non-invasive prenatal testing. Natera, in response, clarified that the verdict would not impede its commitment to providing services to its customers

Reference:

<https://news.bloomberglaw.com/ip-law/ravgen-wins-57m-verdict-over-natera-in-testing-patent-suit>

Case: Ravgen Inc v. Natera Inc, U.S. District Court for the Western District of Texas, No. 1:20-cv-00692.)

CASE SUMMARY: DEXCOM INC. V ABBOTT DIABETES CARE INC

VINAY SACHDEV



After an extended period of legal battles over patent issues, DexCom and Abbott, leading manufacturers of continuous glucose monitoring systems, ultimately reached a resolution through a settlement and license agreement. Central to this agreement were mutual commitments preventing either party from challenging the patents of the other during a specified “Covenant Period”. Notably, an exception was carved out, allowing either company to contest a patent asserted against it by the other during this period. Additionally, the agreement featured a forum selection clause, outlining the mechanism for dispute resolution.

Upon the expiration of the Covenant Period, DexCom took legal action against Abbott, initiating a patent infringement lawsuit. In response, Abbott invoked the forum selection clause, aiming to transfer the case, and simultaneously filed a breach-of-contract suit against DexCom, alleging a violation of the forum selection clause. These distinct cases were eventually consolidated. Meanwhile, with the consolidated case in progress, Abbott initiated Inter Partes Reviews (IPRs), challenging DexCom's patents. In response, DexCom alleged a breach of contract, contending that Abbott's pursuit of IPRs violated the forum selection clause.

Subsequently, DexCom sought a preliminary injunction to halt Abbott's progress with the IPRs. The district court, however, denied the motion, asserting that although DexCom demonstrated a likelihood of success on the merits and a public interest in completing the IPRs, it failed to establish irreparable harm, and the balance of hardships favored denying the injunction. DexCom appealed this decision. The Federal Circuit upheld the denial of the preliminary injunction, emphasizing the pivotal role of the likelihood of success on the merits. Disagreeing with the district court's evaluation, the Federal Circuit clarified that the agreement allowed Abbott to file IPRs during the Covenant Period due to DexCom's initial assertion of the patents against Abbott.

The court reasoned that the forum selection clause governed both during and after the Covenant Period. Therefore, if the clause permitted IPRs during the Covenant Period, it could not prohibit them after the Covenant Period expired. The Federal Circuit concluded that the agreement allowed the filing of IPR petitions under specific circumstances, even in the presence of the forum selection clause.

Acknowledging the district court's error in assessing the likelihood of success on DexCom's part, the Federal Circuit deemed it “harmless” since the ultimate denial of the preliminary injunction aligned with the court's conclusion. Consequently, the Federal Circuit did not delve into the remaining factors, emphasizing the indispensable nature of establishing a likelihood of success for a preliminary injunction, in accordance with Federal Circuit and Third Circuit precedent.

The DexCom v. Abbott case illuminates the complexities surrounding settlement and license agreements, particularly regarding forum selection clauses and patent challenges. The Federal Circuit's affirmation of the denial of the preliminary injunction provides insights into the intricate landscape of contractual disputes in intellectual property law, underscoring the importance of interpreting agreement provisions to delineate the rights and obligations of the parties involved.

Reference :

<https://www.jdsupra.com/legalnews/patent-case-summaries-week-ending-171956/> https://cafc.uscourts.gov/opinions-orders/23-1795.OPINION.1-3-2024_2247662.pdf

IIT KANPUR SETS NEW RECORDS IN INTELLECTUAL PROPERTY RIGHTS AND TECHNOLOGY TRANSFER

HARSHUL MITTAL

The Indian Institute of Technology Kanpur (IITK) has once again demonstrated its prowess in research and innovation, achieving a groundbreaking milestone by filing 122 Intellectual Property Rights (IPRs) in 2023. This achievement not only underscores the institute's commitment to cutting-edge research but also marks its third consecutive year of securing the highest number of IPRs in its history.

The 2023 IPR filings comprise a diverse portfolio, including 108 patents, four design registrations, three copyrights, and one trademark application. Notably, four patents were filed in the United States, and two in China, showcasing the global recognition of IIT Kanpur's innovative contributions. This accomplishment brings the institute's overall tally to an impressive 1,039 IPRs to date. A standout feature of the 2023 IPRs is their practical applications across various domains. In the realms of MedTech and Nano Technology, IIT Kanpur has introduced groundbreaking inventions such as a portable medical suction device and a continuous lung health monitoring system. These solutions hold transformative potential for healthcare delivery, especially in resource-constrained settings.

Beyond the sheer number of filings, the institute achieved the grant of 167 IPRs in 2023. Among these, noteworthy inventions include a gas sensor for detecting ammonia at room temperature, a method and apparatus for treating industrial wastewater, a tactile watch for the visually impaired, and a lateral flow immunoassay strip for detecting mastitis in bovines. These innovations highlight IIT Kanpur's multidisciplinary approach and its impact across diverse sectors. The SIDBI Incubation and Innovation Centre (SIIC) at IIT Kanpur plays a crucial role in preserving the institute's research and innovation in the form of intellectual property. SIIC functions as the Technology Transfer Office of the Institute, bridging the gap between academia and the commercial sector by facilitating the dissemination of technologies developed through research. SIIC is known for filing a significant number of Intellectual Property Rights (IPRs), which has been instrumental in increasing technology transfer transactions.



IIT Kanpur is dedicated to enhancing the nation's research and development landscape, focusing on delivering impactful inventions at the grassroots level, contributing to the overall rise in IPR filings for the institute.

IIT Kanpur has designed its curriculum in a way that encourages research and innovation. As part of the B.Tech program, students are required to undertake a summer training, which helps them to visit and learn from leading Indian and foreign industries/academia. In the last two semesters of the program, students take up an advanced design project that requires the application of modern analysis and design techniques. These projects are often geared towards the development of new products and technology, resulting in patents or other types of publications.

In conclusion, IIT Kanpur's record-setting performance in IPR filings and technology transfer in 2023 underscores its leadership in research and innovation. The diverse range of patents, spanning healthcare solutions, energy storage, and inclusive education, reflects the institute's dedication to addressing real-world challenges. As IIT Kanpur continues to push the boundaries of knowledge, its impact on shaping the future of technology and contributing to societal well-being is truly noteworthy.

Reference :

<https://www.reuters.com/business/media-telecom/global-news-publisher-axel-springer-partners-with-openai-landmark-deal-2023-12-13/>

SAMCHEOK'S BTS LANDMARK IN JEOPARDY: INTELLECTUAL PROPERTY DISPUTE SPARKS DEMOLITION PLANS

KARUNA DEWADA



In a groundbreaking move that signifies a notable transformation in the realm of public art inspired by pop culture in South Korea, the coastal city of Samcheok is poised to dismantle a well-loved BTS-themed sculpture along with associated installations at Maengbang Beach. This decision arises amidst a dispute over intellectual property rights instigated by HYBE, the entertainment powerhouse behind the globally acclaimed K-Pop sensation, BTS.

At the core of the matter are HYBE's recent actions, involving official requests to various local governments for the removal of structures linked to BTS. These requests raise concerns about potential infringement on intellectual property rights, casting a legal shadow over these beloved landmarks celebrated by fans. Consequently, Samcheok City, recognized for its BTS photo zone sculpture and signage, made a significant decision on January 5 to deconstruct these cherished installations.

The significance of these structures transcends their physical presence. Numerous locations throughout South Korea, including beaches, bus stops, and breakwaters, have gained renown and hold a special place in the hearts of BTS enthusiasts. Often referred to as 'holy sites,' these places have become pilgrimage destinations for the global fan community, drawn to locations featured in BTS music videos or album jacket photos.

Despite the cultural impact, HYBE's stance is rooted in the imperative to safeguard intellectual property. The company contends that the sculptures and murals encroach upon BTS's trademark and portrait rights, potentially leading to legal complications, as reported by Ten Asia. The decision to dismantle these structures has faced resistance, with several local governments expressing concerns about HYBE's approach, deeming it excessive.

They argue that these installations were created for public interest, designed to attract BTS fans to locations featured in the group's music videos and album jackets

Meanwhile, a representative from HYBE clarified their position, underscoring the crucial need to protect the artists' intellectual property rights. They also highlighted the challenges associated with ongoing management and the potential adverse impact on the artists' image. The impending removal of the BTS sculpture in Samcheok marks a turning point, prompting questions about the future of similar installations across the country.

Reference :

[Samcheok plans to demolish BTS sculpture amidst Intellectual Property Rights row: Report | K-pop Movie News - Times of India \(indiatimes.com\)](https://www.indiatimes.com/entertainment/k-pop/samcheok-plans-to-demolish-bts-sculpture-amidst-intellectual-property-rights-row-report-k-pop-movie-news-times-of-india/indiatimes.com)

DECODING CHINA'S PATENT SURGE: NAVIGATING INNOVATION DYNAMICS AND INTELLECTUAL PROPERTY CHALLENGES

ANAGH DIXIT

In recent years, China has showcased substantial progress in strengthening its intellectual property rights (IPR) protection, a development underscored by the China National Intellectual Property Administration (CNIPA). The approval of numerous IPR protection centres is positioned as a significant stride towards fostering an innovation-centric environment. Nevertheless, a closer examination is warranted to understand the driving forces behind China's surge in patent numbers and the potential implications for global innovation dynamics.

China's ascent to becoming a global leader in patent filings is well-documented, surpassing other major economies. This surge, while indicative of a thriving innovation culture, prompts inquiries into the quality and legitimacy of the patents granted. Questions arise about whether the sheer volume of patents aligns with genuine technological advancements or if it may be influenced by strategic patent filing to bolster international standing. However, there is a growing awareness, reflected in various sources, about the need to scrutinize the authenticity of the patents granted. The concern is that an emphasis on quantity may inadvertently dilute the focus on genuine breakthroughs, leading to potential challenges in distinguishing true innovation. China's commitment to Intellectual Property Rights (IPR) protection is evident in its extensive network of 112 IPR protection institutions. However, the high number of patents raises questions. China follows a "first-to-file" rule for IP registration, potentially incentivizing entities to file as many patents as possible, leading to a high number of patents.

International scrutiny on China's dedication to reforming its IPR protection system is evident, with discussions focusing on challenges such as patent thickets and unclear patent boundaries. These issues, reported across various channels, underscore the complexities associated with China's evolving intellectual property landscape. As the nation positions itself as a global innovation hub, the balance between fostering innovation and upholding the credibility of its intellectual property system is crucial.



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While China's efforts in strengthening its IPR protection system are commendable, it's crucial to consider the factors contributing to the high number of patents and the potential for exaggeration of patent claims. As China looks ahead, further reforms in the IPR protection system are expected to contribute to the nation's ongoing efforts to emerge as a global leader in innovation and technology.

In conclusion, China's strides in fortifying its IPR protection system are noteworthy, but a more nuanced understanding is essential. The surge in patent filings, though indicative of a thriving innovation culture, warrants a careful examination of the quality and legitimacy of patents granted. As China endeavors to be a pivotal player in global technology, the assessment of its intellectual property landscape without losing sight of authenticity becomes integral to shaping its role on the international stage.

Reference :

<https://news.cgtn.com/news/2024-01-17/China-s-coordinated-IPR-protection-system-sees-continuous-improvement-1qgURwYRtlu/p.html>

NOKIA- OPPO SEP LITIGATION: THE DISPUTE FINALLY SETTLES

YASH PATIDAR



This development marks a significant resolution to the long-standing patent disputes between Oppo and Nokia, with the parties entering into a cross-licensing agreement. The settlement covers disputes, including the 5G SEP (Standard Essential Patent- patents that cover technologies essential to comply with industry standards. In the context of 5G, SEPs are crucial for ensuring interoperability and compliance with the 5G standard) dispute, in multiple jurisdictions, including Germany, France, the Netherlands, India, China, the UK, and others.

While the terms of the agreement have not been disclosed publicly, it is noted that Oppo will reportedly pay royalties and "catch-up" payments to cover periods of non-payment, as mentioned in Nokia's press release. However, Oppo's press release remains silent on this specific detail, stating that the terms of the agreement are confidential by mutual agreement.

with the Delhi High Court setting a four-factor test for SEP disputes, later modified by a division bench. The court also allowed the issuance of "Pro-term security" orders, directing an implementer (Oppo) to pay a security amount to protect the interests of the SEP holder (Nokia). The global nature of the dispute is evident from more than 100 lawsuits involving the two companies. The controversy surrounding whether a court can determine a global FRAND rate (Companies that own SEPs often commit to licensing these patents on Fair, Reasonable, and Non-Discriminatory (FRAND) terms

This commitment aims to prevent anti-competitive behaviour and ensure that essential technologies are accessible to all parties on reasonable terms), irrespective of ongoing trials in other jurisdictions, was raised during the SEP litigation.

Notably, a UK court disregarded Oppo's commitment to be bound by a Chinese court's which ordered Oppo to pay Nokia a FRAND rate. However, the rates per unit were well below what Nokia had demanded and insisted on global FRAND rates set by it. It gave Oppo a choice between committing to a UK-determined global FRAND rate, or an injunction which would halt the sale of their devices in the UK.

In the past 13 months, Nokia has secured five license agreements, including deals with Huawei, Samsung and Apple, and most recently, with Honor and Oppo. Oppo had previously signed agreements with Sisvel, Sharp, and NTT Docomo, followed by a cross-license agreement with Via Licensing, and a separate agreement with Philips earlier this month.

These developments highlight the complex and interconnected nature of patent disputes, particularly in the context of SEP litigation involving major players in the technology industry.

Reference :

<https://www.news18.com/tech/oppos-ban-in-europe-could-finally-end-after-this-new-deal-with-nokia-what-we-know-8752904.html>

GOOGLE SETTLES AI-RELATED CHIP PATENT LAWSUIT THAT SOUGHT \$1.67 BILLION

ARSHDEEP SINGH

In a recent development disclosed in a Massachusetts federal court filing, Google has reached a settlement in an ongoing patent infringement dispute related to AI-based chips crucial for the operation of the company's artificial intelligence (AI) technology.

This resolution coincides with the anticipated start of closing arguments in a trial initiated by Singular Computing. Singular's lawsuit sought a substantial \$1.67 billion in damages, claiming that Google exploited its computer-processing technologies.

Although the settlement terms remain confidential, both Google and Singular representatives have confirmed the agreement without disclosing further details. Google's spokesperson, Jose Castaneda, asserted that the company did not violate Singular's patent rights and expressed satisfaction with the resolution.

The legal dispute originated from Singular Computing, founded by computer scientist Joseph Bates. Bates alleged that Google used his technology to develop processing units supporting AI functionalities in various Google services, including Search, Gmail, and Translate.

Singular's 2019 complaint accused Google of duplicating Bates' work with its Tensor Processing Units, introduced in 2016 to power AI applications like speech recognition and content development. Versions 2 and 3 of these units, released in 2017 and 2018, were claimed by Singular to continue violating its patent rights. During the trial, internal emails from January 9 were referenced, indicating that Google's chief scientist, Jeff Dean, saw alignment between Bates' ideas and Google's ongoing developments.

Throughout the legal proceedings, Google consistently argued that the employees responsible for designing its AI-related chips had never met Bates and worked independently. The company maintained that its approach was fundamentally distinct from what was described in Singular's patents.



The swift settlement brings an end to the legal battle, though the specific terms remain undisclosed. This resolution may have broader implications for the tech industry, highlighting the challenges and disputes surrounding intellectual property rights in the rapidly evolving field of artificial intelligence.

Reference :

[-https://www.reuters.com/technology/google-settles-ai-related-chip-patent-lawsuit-that-sought-167-bln-2024-01-24/](https://www.reuters.com/technology/google-settles-ai-related-chip-patent-lawsuit-that-sought-167-bln-2024-01-24/)

DELHI HIGH COURT SETS ASIDE RULING ON PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT: A CRITICAL ANALYSIS

RADHIKA BADERIA



Recently, In the *Pepsico India Holdings Pvt. Ltd. v. Kavitha Kuruganti* case, the Delhi High Court reversed a prior ruling that had maintained an order made in accordance with the Protection of Plant Varieties and Farmers' Rights Act. The PPVFR Act was created in order to ensure that farmers receive just recompense for their efforts while also encouraging the creation and cultivation of novel plant types.

The Protection of Plant Varieties and Farmers' Rights Act (PPVFR Act) is a crucial piece of legislation in India, enacted to promote the development and cultivation of new plant varieties while ensuring fair compensation to farmers for their contributions.

A panel led by Justice Yashwant Varma granted the appeal of the food and beverages corporation, overturning the decision made by a single judge of the high court and reinstating its renewal application with the registrar for further consideration.

The court ordered that the application should be reviewed in compliance with the law and the current ruling, and rejected the counter appeal made by farm rights activist.

The earlier ruling by the single judge upheld the cancellation of PepsiCo's patent on several grounds, including providing incorrect information regarding the date of initial commercial sale and allegedly failing to submit necessary documentation during the registration process. The court emphasized that the authority to revoke under the Act should only be exercised if a registration certificate is found to contradict the protection mandated by the law or if a plant variety ineligible for protection is granted registration.

While the PPVFR Act aims to protect the intellectual property rights of breeders, it also highlights the rights of farmers to save, and sell farm-saved seeds of protected varieties. However, disputes often arise over the boundaries of these rights and the extent to which they can be exercised without infringing upon the rights of breeders.

In conclusion, the Delhi High Court's recent judgement to overturn a decision on the PPVFR Act serves as a reminder of the difficulties in guaranteeing fair outcomes for all parties involved and the complexity of agricultural policy. Further efforts are required to fortify legislative frameworks, raise public awareness, and advance inclusive policies that advance agricultural growth in India and serve the interests of farmers and breeders alike.

Reference :

<https://www.deccanherald.com/india/delhi/delhi-hc-sets-aside-single-judge-order-revoking-pepsicos-potato-patent-2843314>
<https://www.latestlaws.com/intellectual-property-news/delhi-high-court-sets-aside-order-revoking-pepsico-s-potato-patent-210896/>

DRAFT PATENTS (2ND AMENDMENT) RULES, 2024

SURBHI JAIN

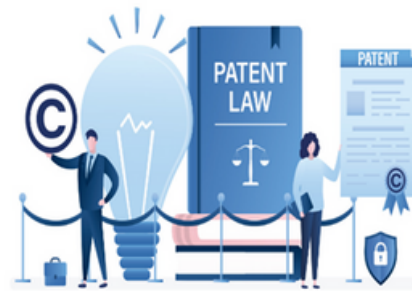
The Ministry of Commerce and Industry has unveiled the Draft Patents (2nd Amendment) Rules, 2024, with the objective of enhancing the current Patents Rules, 2003, inviting feedback from the public and/or stakeholders. Comments on the draft Rules are welcome until February 2, 2024.

The proposed Rules outline processes for submitting complaints regarding violations or breaches under specific sections of the Patents Act, 1970. They cover the appointment of an Adjudicating Officer, the adjudication of complaints, determination of penalties, and the process for appealing the Adjudicating Officer's decisions.

The Jan Vishwas Act, 2023 ("JV Act") was introduced by the Ministry of Commerce and Industry (MoCI) in August 2023 in an effort to improve the ease of doing business in India. The Act aimed to amend 42 laws, including the Patents Act, by decriminalizing specific offenses.

Some of the proposed amendments incorporated by the virtue of the Rules include:

- The draft clarifies terms like "Adjudicating Officer," "appellant," and "Appellate Authority" for a comprehensive understanding of the subsequent sections.
- The significant addition of Chapter XIVA has laid down establishes the framework for adjudication of penalties. It empowers individuals to file complaints about Patents Act contraventions.
- The rules detail the process of appointment and powers of the Adjudicating Officer.
- The draft introduces summary proceedings, i.e., efficient
- Procedures for cases with and without a prima facie basis.
- Provisions address situations where parties need extra time to respond to notices, specifying conditions and costs.
- The rules outline the systematic filing of appeals, covering form, grounds, and prescribed fees.
- New forms streamline documentation, and schedule updates reflect revised entry numbers and forms.

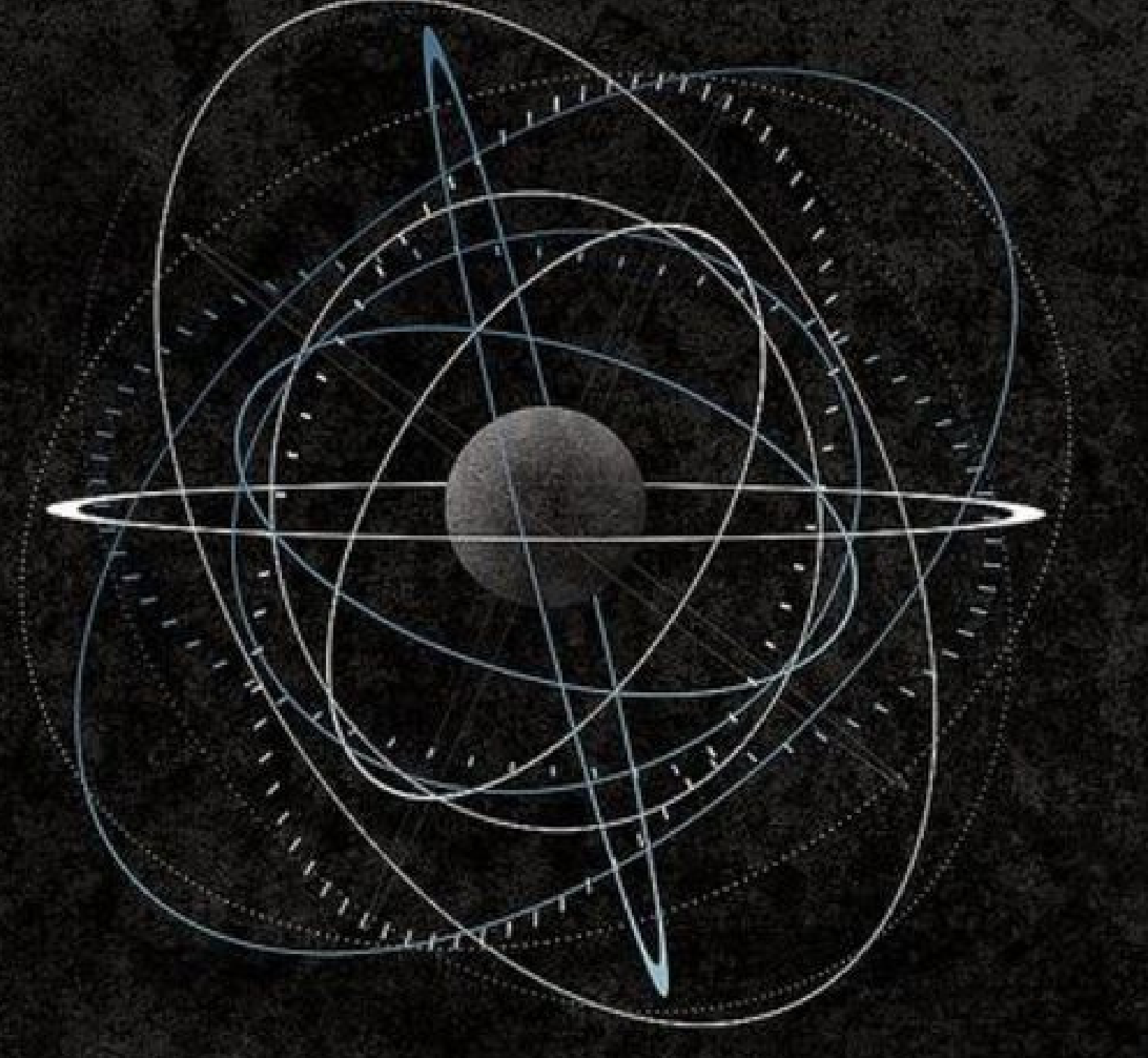


-The amendments to the Patents Rules, 2003, seek to improve the adjudication process, enhancing clarity and efficiency. These changes empower stakeholders, define procedures, and establish a structured framework for addressing patent-related contraventions or defaults.

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<https://www.livelaw.in/lawschool/articles/cabinet-releases-draft-patents-amendment-rules-ministry-of-commerce-and-industry-dpiit-247522?from-login=582902>

https://taxguru.in/corporate-law/draft-patents-2nd-amendment-rules-2024.html#google_vignette



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