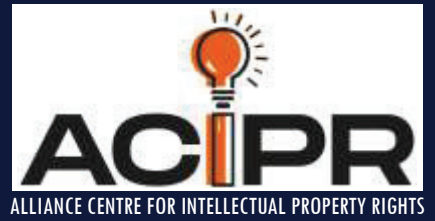




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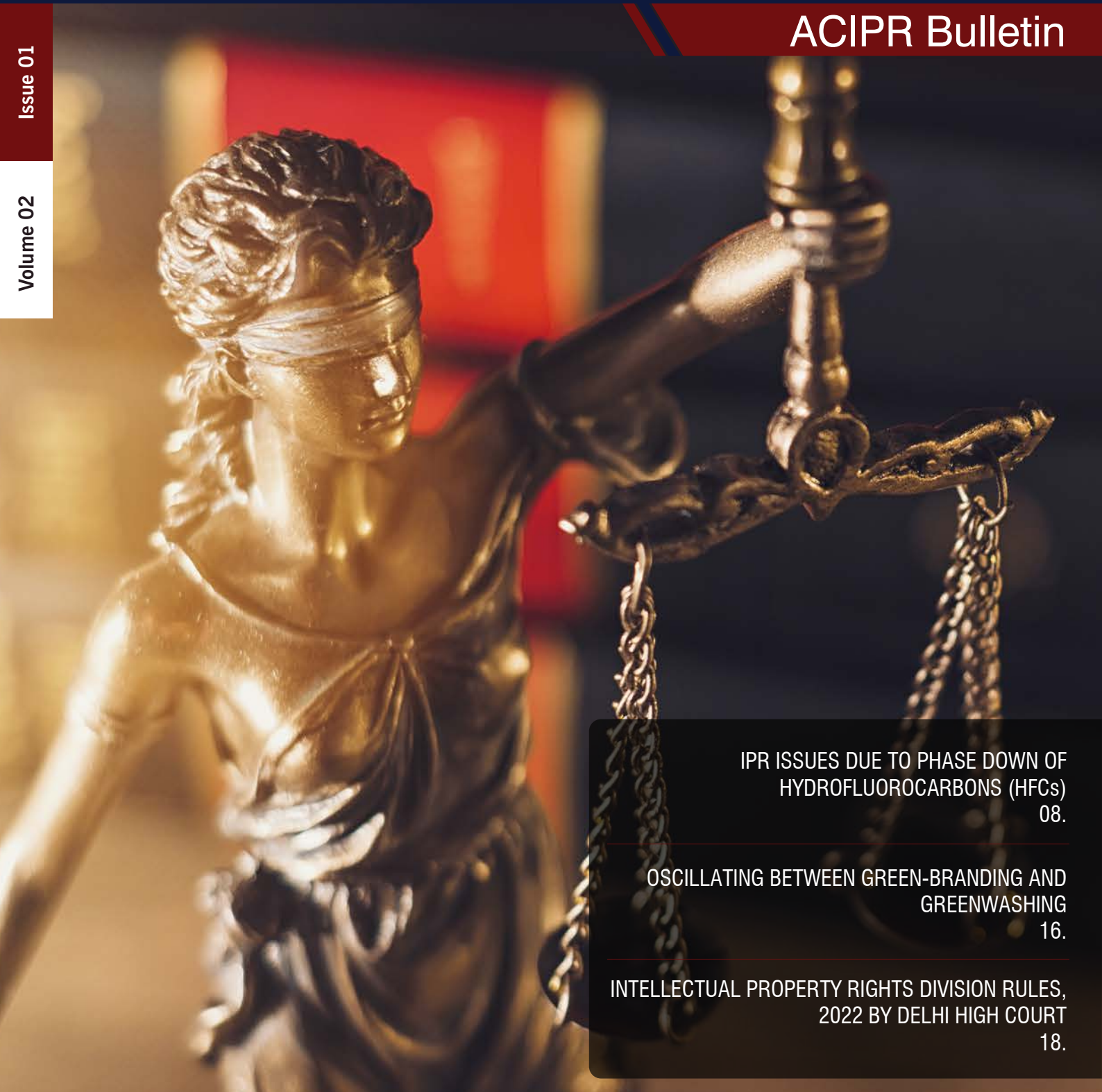
Alliance School of Law



Issue 01

Volume 02

ACIPR Bulletin



IPR ISSUES DUE TO PHASE DOWN OF
HYDROFLUOROCARBONS (HFCs)
08.

OSCILLATING BETWEEN GREEN-BRANDING AND
GREENWASHING
16.

INTELLECTUAL PROPERTY RIGHTS DIVISION RULES,
2022 BY DELHI HIGH COURT
18.

Cover Story

OPEN INNOVATION: THE MODEL FOR SUSTAINABLE INNOVATION

Alliance Centre for Intellectual Property Rights (ACIPR) is established with an aim to evolve as a Centre of excellence in IPR Research and innovation. It intends to engage academicians, jurists and practitioners in research and training on the promotion and protection of IP rights. The Centre is an initiative of Alliance School of Law, Alliance University for making active research contribution in the niche areas of all forms of IP rights. It aims to give special emphasis in fostering research & development in the unexplored areas of IP. ACIPR strives to evolve into a breeding ground for innovators & creators, thereby making a positive change in the development of these rights at national & regional levels.

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MESSAGE FROM THE EDITOR-IN-CHIEF

Now, more so than ever, the inevitability of global warming and its effects have started to show. Climate change is no longer something that can be ignored; it no longer remains a dystopian future. Immediate action is required. It is essential to engage in dialogue and discussion in order to understand the mitigating steps to be taken, and the technologies that must be developed in order to reduce the irreparable repercussions of climate change.

In lieu of the same, I am proud to present the third edition of the ACIPR Bulletin Newsletter. Based around the theme of IP Innovation and Climate Change, it is

our aim to shed light on the contemporary trends, developments and use of IP towards the mitigation of the effects of climate change. The Newsletter covers a range of topics, including but not limited to green technology, technology transfer and green financing. I would like to express my greatest gratitude to all the contributors, editors and reviewers who have worked tirelessly to uphold the quality of content, and towards the successful completion of the third edition of the ACIPR Bulletin.

Dr. Kiran Dennis Gardner
Professor & Dean,
Alliance School of Law



CONTENTS

FROM THE EXPERTS - INTERVIEW BY MS. SMRITI YADAV	01
OPEN INNOVATION: THE MODEL FOR SUSTAINABLE INNOVATION	04
GREEN TECHNOLOGY: THE ROAD TO REMOVING LEGISLATIVE PARALYSIS IN THE IPR – TECHNOLOGY REGIME	06
IPR ISSUES DUE TO PHASE DOWN OF HYDROFLUOROCARBONS (HFCs)	08
THE ROLE OF IP IN THE DEVELOPMENT OF ESG PRACTICES	10
AI AND LEGAL PERSONALITY: THE ACCOUNTABILITY GAP?	12
GREEN TECHNOLOGY AND INTELLECTUAL PROPERTY	14
OSCILLATING BETWEEN GREEN-BRANDING AND GREENWASHING	16
INTELLECTUAL PROPERTY RIGHTS DIVISION RULES, 2022 BY DELHI HIGH COURT	18
GREEN TECHIPOLOGY	19
TIMEX GROUP V MAHALAKSHMI ENTERPRISES	22
CROSSWORD	25

FROM THE EXPERTS



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How can the field of Intellectual Property Law assist with sustainable development?

Sustainable development entails promotion of technology and innovation, without risking natural resources or compromising the ability of future generations to meet their needs. It can be said that the Intellectual Property (IP) law is the means to achieve some of the aims of sustainable development, such as, eradication of poverty, improvement in public health condition, access to holistic education, advancement of technology, etc. There is ample evidence that manifests how IP has helped in fostering innovation and creativity. By granting temporary monopoly to inventors for their inventions (in the form of ‘patents’), or by protecting the identity of brands (in the form of ‘trade marks’) to facilitate trade, or by providing royalties to authors / creators for their original literary, artistic, dramatic or musical works (in the form of ‘copyright’), IP law has contributed enormously in all facets of life including the domain of medicine, technology, biodiversity, education, entertainment, media, literature, art, etc. Thus, by contributing in economic, social and cultural progress of the world, IP continues to assist in the achievement of sustainable development.

How can Intellectual Property Law be used to promote a green economy?

Green economy is defined by The United Nations Environment Programme as “*one that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities. It is low carbon, resource efficient, and socially inclusive*”. Thus, green economy can be seen as an economic model that aims at sustainable development, without degrading the environment. In today’s time, given the exhaustion of non-renewable resources, global climate crisis, etc it is imperative to switch to green technologies / environment friendly technologies, and this is where the role of IP comes into play. Provision

of robust IP laws and policies in a nation can help enable development and distribution of technologies / products / services, which further helps in advancement towards a green economy. For instance, inventions relating to control of carbon emissions can be protected as patents; clean technologies, technical know-how or commercially valuable information relating to establishment of green economy can be protected as trade secrets; products designed to reduce energy usage can be protected as designs; businesses who wish to associate themselves as conservationist of environment or manufacturers of eco-friendly products can do so by using a brand/tagline protected as trade mark; documentaries produced/ books published highlighting the issues regarding climate changes can be protected as copyrights; management of natural resources can be protected as traditional knowledge, etc. Thus, by virtue of providing appropriate protection to innovations, coupled with the incentives in the form of monopoly or monetary reward/royalties, IP can help in promoting green economy.

Will the setting up of the IPD by the Delhi High Court reduce the burden faced by Courts in resolving IPR matters?

Post dissolution of the Intellectual Property Appellate Board (**‘IPAB’**), the Delhi High Court passed a notification regarding setting up of an Intellectual Property Division (**‘IPD’**) to adjudicate disputes concerning IPR and related statutes. The IPD can decide on original side matters, appeals, writ petition and miscellaneous applications related to IPs such as patents, trademarks, copyrights, designs, geographical indications, plant varieties, etc. Establishment of specialized IP courts, headed by judges having knowledge / expertise on the IP subjects, was a long-awaited and much required move. As IPD is a special forum/court equipped to deal specifically with IP related subject matters, it will help in faster resolution of IP disputes, avoiding conflicting decisions and achieving consistency by having uniformity in jurisprudence.

The Delhi High Court Intellectual Property Rights Division Rules, 2022 (**‘IPD Rules’**) provide that the proceedings will be governed as per the provisions of The Commercial Courts Act, 2015, Code of Civil Procedure, 1908 as applicable to commercial suits, the Delhi High Court (Original Side) Rules, 2018 and Patent Suit Rules, 2022. Apart from having provisions in relation to hearing of matters via videoconferencing, passing of summary judgments, requirement of advance service etc, one of the remarkable features to reduce the burden of courts and expediting the process of disposal of suits is stated under Rule 26 of IPD Rules – *“Consolidation of IPR subject matters or cases or proceedings or disputes”*. This rule allows multiple proceedings relating to the same or related IPR subject matter, whether or not between

the same parties, to be consolidated for the purposes of hearings, recording of evidence, common trial and adjudication. Considering these changes, IPD will streamline the disposal of IP disputes and avoid multiplicity of proceedings. Thus, the creation of IPD benches in the Delhi High Court is a promising move. It remains to be seen if similar steps are taken by other jurisdictions cross the country.

ACIPR EVENT NEWS

1. Orientation Programme for Business School held on September 9, 2021. The speeches were delivered by Dr. Upankar Chutia, Dr. Vedashree A., Prof. Abhishek Sarma, Prof. Shubhi Trivedi, Pro. Mamatha R. and Prof. Yamini Chandra Prabha.
2. National Workshop on Intellectual Property Management held on December 11, 2021. The resource persons of the event were Ms Smriti Yadav (Partner at Khaitan & Co., Mumbai), Mr. Shwetank Tripathi (Sr. Associate at Khaitan & Co., Mumbai), Mr. Bhavik Shukla (Associate at Khaitan & Co., Mumbai), Mr. Sanjay H. Sethiya (Founder and Managing Partner, Law Square), Mr. Shubham S. Rathore (Legal Consultant at GST Council).
3. National Workshop on Role of Innovation and Intellectual Property in Modern Era held on 26 April 2022 as a mark of World IP Day Celebration. The resource persons for the event were Dr. Sharana Gouda (Asst. Controller, Patent & Designs, Chennai), Mr. Bharadwaj Jaishankar (Partner, Indus Law, Bangalore), Mr. Nishant Kewalramanai (Sr. Partner, Ediplis Counsels, Bangalore), Mr. Aron Chandran (Advocate, Madras High Court). The event was also covered by WIPO Intellectual Property Day Event Calendar.

NATIONAL WORKSHOP ON INTELLECTUAL PROPERTY MANAGEMENT

NATIONAL WORKSHOP ON ROLE OF INNOVATION AND INTELLECTUAL PROPERTY IN THE MODERN ERA

OPEN INNOVATION: THE MODEL FOR SUSTAINABLE INNOVATION?

In 2014, through a blog post ‘All our patents are belong to you’ Elon Musk announced Tesla’s open source philosophy, allowing access to Tesla’s patent portfolio in the electric vehicle segment for everyone.

The blog post explains that Tesla will not initiate legal action against parties that use its innovation in good faith and has pledged not to sell its patents to third parties who do not agree to abide by the terms of this pledge. On its blog, it explains that parties act in good faith as long as they have NOT:

- Asserted of (i) any patent or other intellectual property claim against Tesla or (ii) any patent right against a third party for its use of innovations linked to electric cars or associated equipment, aided others assert it, or had a financial stake in it;
- Contested any Tesla patent, assisted in challenging it, or had a financial stake in doing so;
- Promoted or sold any product that was a knockoff of a Tesla product (such as one made by mimicking or replicating its look or appearance or suggesting a partnership with or endorsement by Tesla) or gave any significant support to any party doing so. This was a landmark event in the electric vehicle industry, an industry stalled because innovation was expensive and fossil fuel vehicles were much more affordable.

Tesla cited the patent litigation costs as the main reason behind its decision to adopt open source philosophy. Musk likens getting a patent to acquiring a ‘lottery ticket to a lawsuit’, and remarks that “history has repeatedly shown [patents] to be small protection indeed against a determined competitor”. He is not wrong in his assessment. In her research on the effect of patent litigation on entrepreneurial activity, Catherine Tucker found that venture capital investment in technology start-ups decreases significantly with an increase in patent litigation costs. She also found that technology firms that have become frequent defenders of their patents face a decline in their technological and innovation productivity as much needed financial capital is diverted in litigation.

Another reason that Musk cited for the switch in Tesla’s intellectual property philosophy is the need to drive faster innovation in the electric vehicle industry. He found that instead big

automobile manufacturers had actually very small electric vehicle programs, and the impetus to switch to electric vehicle manufacturing was low, and in some cases, negligible.

The carbon crisis, as Musk terms the climate change, needs the world to adopt no emission vehicles as soon as possible, and without the participation of large automobile manufacturers in the innovation and manufacturing process, Tesla does not deem it plausible that fuel based vehicles would be phased out of production.

Given the current pace of innovations in the electric vehicle industry, where models have come into the affordable range for at least the upper middle class, it seems the open innovation model adopted by Tesla is already bearing fruits.

Elon Musk, All Our Patents Belong to You, Tesla, (12 Jun. 2014),
<https://www.tesla.com/blog/all-our-patent-are-belong-you> [last accessed 12 May 2022].

Catherine Tucker, The Effect of Patent Litigation and Patent Assertion Entities on Entrepreneurial Activity, Electronic Frontier Foundation, (15 May 2014),
<https://www.eff.org/files/2014/06/12/tuckerreport-5.16.14.pdf>. [last accessed on 12 May 2022].

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GREEN TECHNOLOGY: THE ROAD TO REMOVING LEGISLATIVE PARALYSIS IN THE IPR - TECHNOLOGY REGIME

The significance of green technology is increasing with the advent of global urge to move towards sustainability and environmental balance. Green technology is environmentally friendly in its essence since it encompasses energy efficiency, health and safety concerns, recycling, renewable resources, and business operations that are to be considered viable in the course of application of green technology.

IP system was created not only to stimulate the creation of new technologies, but also to provide an efficient means of widely disseminating this new technological information, and to build structures to transfer the technology and to put it to work. IP system can play a major role in private investment in green technologies and is essential for long-term climate change solutions with the consensus of IP holders or owners in the view of adaptation of cleaner technologies and mitigation of the obstacles in the way.

Greater challenge with respect to green technology and climate change lies where the assimilation of the technologies is to be expedited amidst epidemic of the component derivatives of innovation. Green innovation allows stakeholders to make more with less by making judicious use of the patterns possible.

The climate change patterns are erratic and the susceptibility to natural hazards are on track to turn into regular phenomena. In order to mitigate global climate change related concerns, one must recognise and stipulate relevant and adequate policies in the light of technological revolution. A foresight of the future society with efficient and effective technological brain child in order to refine the sustainable development arena by feeding humans without compromising on the future prospects of the current usages.

This uplifted and fine tuned perspective of green technology by way of critical innovation that are natural processes friendly, ought to bring about changes in the hindrance caused by intellectual property barriers in terms of holders and their unconditional claims. Patenting and compulsory licensing through streamlined procedures in the eradication of abused patent seeking behaviour best applies to the international technological harmony. This automatically paves way, as a whole to customise and bring out reforms in the intellectual property regime

in both developed and developing countries to incentivise green innovation activities and transfer the respective technologies would be commendable, and more broadly in the way of financing, organising and incentivising such innovations, that would increase the sustainable creation, use and transfer of innovation.

‘THE IMPORTANCE OF GREEN TECHNOLOGY’, [25TH APRIL 2022, 2 PM],

[[HTTPS://GREENMACHINES.COM/THE-IMPORTANCE-OF-GREEN-TECHNOLOGY/](https://greenmachines.com/the-importance-of-green-technology/)]

SANAZ JAVADI FARAHZADI, ‘GREEN TECHNOLOGIES, INTELLECTUAL PROPERTY REGIME AND CLIMATE CHANGE’, CUTS INTERNATIONAL GENEVA, 37-39, P 10

SUPRA 2, P. 19

G. Charuprita

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IPR ISSUES DUE TO PHASE DOWN OF HYDROFLUOROCARBONS (HFCs)

In August 2021, India ratified the Kigali amendment for phase down of HFCs under the Montreal Protocol on substances that deplete ozone layer. This phase down aims to reduce the greenhouse gas emissions and is expected to prevent up to 0.5-degree Celsius global temperature rise by 2100. Until 1990, CFCs were used, however, it was phased out because it started creating ozone holes.

Thereafter, the countries decided that a replacement for CFCs would be HCFCs. The fact that HCFCs caused global warming led the countries to phase down HCFCs as well. The replacement for HCFCs could be HFCs, therefore, the countries agreed to it. HFCs do not cause much harm to the ozone layer, however it has high Global Warming Potential. Therefore, the countries to the Montreal Protocol ratified the amendment to phase down HFCs. However, the intellectual property issues that may arise from the phase down of HFCs have not been addressed.

A substitute to use of HFCs include use of HFOs. There exists a huge competition among firms to attain patents in relation to use and production of HFOs in all sectors. Centre for Science and Environment (CSE) and Council of Scientific and Industrial Research - Unit for Research and Development Information Product (CSIR-URDIP) published a report concerning the statistics of patents filed in relation of HFOs.

Honeywell, DuPont, and Arkema are among the multinational corporations that have filed 107 patents in India for the manufacturing and use of HFOs in the refrigeration and air-conditioning industry (RAC). Among these, 67 patents were filed for use of blends of HFOs. Some of these patents have already been granted. Majority of these patents have been filed for use of blends of HFO in the MAC (Mobile Air Conditioning) sector.

This is clearly an attempt to create monopoly over the use of a chemical which is ought to be used in several sectors. The nature of these patents is such that none of the companies in developing countries like India can sell these chemicals without obtaining licenses from companies like Honeywell, DuPont, and Arkema. Even, research on use or production of HFOs cannot be done without the permission of these multinational companies.

The Developing Countries would have to bear higher costs because of the patent grant to these companies. Most of these patents are highly focused on use of HFOs in the MAC Sector. The automobile industry is extremely consolidated. 70% of all vehicles where MAC is likely to be

utilized are produced by the top ten firms in the globe. The majority of the manufacturers are headquartered in Japan, the EU, the United States, and South Korea.

Companies in nations like India and China have taken a different approach. They have opted to utilize MAC with HFOs for automobiles sold to the United States and the European Union. HFC-134a systems are used in automobiles marketed in the United States. However, the ratification of the amendment will indicate to these firms that they should switch to HFOs for the domestic market, since they want to utilize a single platform for all automobiles.

Therefore, addressing issues related to IPR for the purpose of framing of this amendment is important. Moreover, in some sectors like the MAC sector, there are no substitutes to the use of HFO. Consequently, developing countries like India would become completely dependent on these companies which is highly unfair. Also, the main aim of patents is to promote innovation and research, which is blocked by the strategy of these companies to create monopoly. Hence, it is important that strict scrutiny must be done, and all the aspects must be considered.

PTI, Cabinet Approves Ratification of global agreement on phase down of hydrofluorocarbons, *The Economic Times* (Apr. 19, 2022)

Chandra Bhushan, Resolving the IPR Issue during HFC Phase-down: A Case Study of HFO1234yf in the Mobile Air-conditioning Sector, *Centre for Science and Environment*, 1 (2016),

Sonam Pradhan

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IP Trivia: The United States Trade Representative has placed India on 'Priority Watch List' for lack of adequate intellectual property protection and enforcement in light of increased counterfeiting

THE ROLE OF IP IN THE DEVELOPMENT OF ESG PRACTICES

The World Bank Group report of 2004 titled 'Who Cares Wins – Connecting Financial Markets to a Changing World' pioneered guidelines on Environmental, Social and Governance issues (ESG), emphasizing on the need for a greater regulatory framework. Increasing levels of emissions having detrimental impacts on the environment, the ever-looming threat of negative climate change, loss of biodiversity and scarcity of natural resources are all proof of one thing; the need for corporations and countries to move towards a system of sustainable innovation is paramount.

ESG is the framework for assessing the impact of the sustainability and ethical practices of a corporation. In order to move towards a green economy wherein environmental risks are reduced, ESG acts as a regulatory framework which guides the ethical behaviour of corporations. Green investments prompt a corporation to ensure strong ESG policies are put in place, lack of which would lead to loss of investor confidence.

The role of intellectual property in the development of a green economy is significant. In the last 5 years, The World Intellectual Property Organization (WIPO) observed a growing trend of filing patents in the field of renewable energy, hinting towards growing awareness of the need for sustainable innovation. In order to expedite the transition to a *green economy*, intellectual property law can be the greatest facilitator.

Corporations indulging in the development of sustainable inventions pertaining to green technologies or social technologies can be provided with benefits under the IP regime. The grant of IP rights can be expedited to foster an atmosphere of growth under the umbrella of sustainable innovation. A reduction or exemption in filing fees can also play a significant role in ensuring that corporations make visible efforts to develop socially inclusive or environment-friendly innovations.

Raising awareness about the ESG indexes of a corporation can also create a system of funding, wherein potential investors ensure that companies or start-ups that develop sustainable technologies are provided with adequate funding.

The process of technology transfer combined with the sharing of 'know-how' between the Developed Nations and Developing / Under-Developed Nations through instruments such as licensing, franchising or FDIs, and the development of a strong data sharing regime can ensure that resources are saved. The Developing / Under-Developed Nations will save up on a

significant number of resources that would have been invested in the innovation process, simply through the sharing of technology and know-how.

The development of robust IP mechanisms in these countries will ensure the growing confidence of the Developed Nations, prompting them to invest in the development of technology and resources, reducing environmental risks.

The growing need for an ESG regulatory mechanism can be effectively dealt with by the development of effective IP systems. Sustainable innovation, which remains an unachieved global goal, can be attained with the provision of robust IP mechanisms. IP Practices provide corporations with incentives to encourage the protection of sustainable technology, which in turn, encourages the growth of a green economy.

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IP Trivia: If a trademark is descriptive in nature but a secondary meaning is established, it may be granted registration.

AI AND LEGAL PERSONALITY: THE ACCOUNTABILITY GAP?

Compulsory licensing refers to use of a patented invention without the prior authorization of the patent holder. As climate change is becoming an unavoidable issue, the focus has turned on utilization of green technologies to overcome this issue. One of the debates in this regard is whether compulsory licencing would promote green technology further or not which is discussed below.

Compulsory licenses are granted without acquiring prior consent of patent holder in cases of national emergency, extreme urgency or due to public non-commercial use. The increasing risk posed by the climate change like extreme temperatures and air pollution can be considered as a national emergency as it affects public health. Article 31 of the TRIPS Agreement (which provides for use of invention without authorization of right holder) does not explicitly prohibit or limit the use of such licensing for green technologies. Article 27(2) allows member states to prohibit patent to any invention which is prejudicial to the environment, which shows that environmental impact is a factor to be taken into account.

Developing nations like India have an upper hand as they can manufacture technologies at lower costs than in developed nations. This could also help increase the diffusion of green technology. It would also help the developing nations to reduce their high start-up costs, allowing them to effectively implement their emission cut targets. Compulsory licensing can also keep a check on the issue of IP divide, where the patents are favourable to the global north countries, giving them more power over the important growth enhancing patents.

Article 31(b) talks about “public non-commercial use”. So, a green technology could also be considered to be used in a “non-commercial” way if it was for non-profit. There may be few green technologies that are only for public use, non-profit and required to be used for betterment of the lives of people. However, the expression “public non-commercial use” is not clearly defined, so its up to the member states to decide on that regard.

Compulsory licensing has a detrimental effect on the innovation and future R&D. This is because, firstly, it denies the patent holders of his basic right i.e., to prevent others from using his invention without his consent. Secondly, the incentives that the patent holder would have otherwise received by commercializing his invention would be reduced. And lastly, such licensing would lead to new technologies being undisclosed in the name of trade secrets or proprietary technology. The licensing would curb the innovations in the wide and broad field

of green technology, which is yet to be fully explored, by disregarding the rights over such technologies. The other major issue is that it could give rise to imitation. Furthermore, even though there is no legal mandate in accepting compulsory licensing for green technologies, there are many other disadvantages related to this matter.

The country could also end up facing economic backlash. They could suffer from “unilateral trade sanctions” or being put on the “priority watch list”, like in the case of Thailand which faced private action by the US when it granted compulsory licensing for the “Kaletra” drug. Abbott Laboratories which owned the patent refused to sell new AIDS medicines in Thailand. Thus, the economic consequences overshadow the advantages of compulsory licensing.

Compulsory licensing could be detrimental to the green technology diffusion as it would discourage firms from investing, especially into developing nations, which mostly contribute to the increasing global degradation. The case with green technologies is different from pharmaceuticals as those patented green technologies may most likely not be the only solution to climate change. There may be other technological alternatives available.

Therefore, it can be seen that compulsory licensing of green technology has more detrimental effects rather than helping promote green technologies.

Muhammed Zaheer Abbas, *Pros and Cons of Compulsory Licensing: An Analysis of Arguments*, 3 Int. j. soc. Sci. humanit., 254-258 (2013).

Robert Fair, *Does Climate Change Justify Compulsory Licensing of Green Technology?*, 6 BYU Int'l L. & Mgmt. R. 21-41 (2010).

Indra Priyadarshini

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GREEN TECHNOLOGY AND INTELLECTUAL PROPERTY

With the challenge of climate change at the rise, the sustainable pathway needs to be forged for a better future taking assistance from green technology. As envisioned by COP26, the cleaner technology is to employ a cushion towards increasing greenhouse emissions. Since intellectual property rights protect the interest of the owners, it plays a crucial role in the dynamics created through green technology innovation. As an effort to aid the green technology innovators, WIPO Green was launched that brings at a single place all these technologies which can further be transferred, licensed, networked, etc. for better and efficient efforts.

At the very outset, the patent protection ensures exclusive rights to the owners to introduce supplementary innovation in green technology. Patents for green technology are significant as it provides for more innovation, creativity and investment in them. Moreover, it protects small scale businesses and companies to keep intact their novel and environment-friendly technology and securing it from any infringement by giving exclusive rights to the owners. With India progressing briskly towards green IP, it is no doubt that India is prioritizing towards green technological advancements with its simultaneous IP protection through the Patents Act, 1970.

Trade secrets are the know-how that is not known to the public. It protects the research and development (R&D) done without involving the complexities of procedures and high costs and thereby, can prove beneficial in cases of green technology in developing and least developed countries, mitigating the high cost.

Next, is the licensing of green technologies which grants for access in different markets with higher climate change effect and 'IPC Green Inventory' by WIPO has helped in that with bringing consolidated and updated information related to patented environmentally sound technologies (ESTs) making it easier to search for patented green technologies. It includes technologies related to wind energy, solar energy, geothermal energy, etc. with its international patent classification creating a uniformed network.

The initiative for green technology and the protection of its IP is necessary because of two reasons, *firstly*, to allow more innovation in green technologies, and *secondly*, to allow for technology transfers, licensing, etc. of such green technologies. It is pertinent to note that the economies of scale and the cost of production for green technology like solar panels are at a higher rate which might not be a feasible option for developing or least-developed countries

which is why technology transfer is an important alternative; and that is possible only through stronger IP regime. Therefore, what is crucial is to have a stronger IP system at place which gives maximum benefit and protection to the owner of the green technology as well as permitting technology transfers with the aim of sustainable environment.

Roger Harrabin, “COP26: Leaders agree global plan to boost green technology”, BBC News, Nov. 2, 2021, <<https://www.bbc.com/news/science-environment-59138622>>

“The Role of IP Rights in Green Technologies Innovation”, Metis Partners, <<https://metispartners.com/thought-leadership/the-role-of-ip-rights-in-green-technologies-innovation/#:~:text=IP%20works%20as%20a%20source,and%20collaborators%20to%20enhance%20innovation.>>

Jasmine, Rahul Kumar Jha, Akash Kumar Meher, and Shriya Bajaj, “Is the development of green intellectual property paving the way to environmental sustainability in India?” DownToEarth, May 25th, 2021, <<https://www.downtoearth.org.in/blog/energy/is-the-development-of-green-intellectual-property-paving-the-way-to-environmental-sustainability-in-india--77084>>

Damian Carrington, “World leaders announce plan to make the green tech cheaper than alternatives”, The Guardian, Nov. 2nd, 2021, <<https://www.theguardian.com/environment/2021/nov/02/world-leaders-announce-plan-to-make-green-tech-cheaper-than-alternatives>>

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OSCILLATING BETWEEN GREEN-BRANDING AND GREENWASHING

A single gust of wind in the market can drastically revolutionise the branding industry in a capitalist period when markets are driven by the forces of demand and supply. The wind is currently created by environmentalists and, in some cases, pseudo-environmentalists. This is why many companies' current marketing tactics include using the terms 'Eco' or 'Green' to promote their products purely to attract these clients.

Taking a step back, it is critical to consider the enormous pressure that companies are under from customers, developers, investors, and other stakeholders to develop more advanced immediate plans to address environmental and social externalities associated with their businesses, including climate change. However, there is an increasing risk of being accused of greenwashing when conveying these externalities to investors. In this way, green trademarks serve as excellent marketing tools for environmentally conscious enterprises, giving them an advantage over organisations that are just concerned with profit.

The issue arises when false branding is used, as it falls within the category of misleading practices, which are prohibited under the law. However, not all businesses abuse it. Many times, the items are environmentally beneficial, and conveying this to the consumers through phrases like 'Green,' 'Eco,' 'Zero-impact,' or 'Sustainable,' or symbols like the green leaf or clean water droplet, becomes an essential tool for spreading awareness. This is called Green-Branding or Environmental Marketing. However, the moment mislabelling occurs, with the package claiming the product to be ecologically safe and responsible while not being so, Greenwashing enters the picture.

Another aspect of it is that these phrases don't have a scientific meaning, so there is a risk of litigation for portraying something exaggeratedly or deceptively. Here, the role of trademarks in developing green brands cannot be overlooked. Trademarks, by their inherent character as source identifiers, may give the finest in sustainable products by clearly showing that the products bearing the marks, or services offered under the marks, are "green." India, although not having any technology to look into the matter, often covers it under the purview of Corporate Social Responsibility which became mandatory under Section 135 of the Companies Act, 2013. In India there are also global certifications like ECOCERT, COSMOS, PETA that brands can earn to solidify their status. These independent organisations routinely inspect

production facilities and test formulas, compelling brands to be honest and transparent about all their processes, while upholding a certain standard in the industry.

Activists, Regulators and Climate concerning law firms are on high alert, looking to expose what they presume is a wide gap between what companies are saying they're doing and what they are presenting to the world. One such recent case of H&M that became popular for greenwashing where they tricked the customers globally into thinking that they were purchasing sustainable clothing made from recycled and clean materials, and they went as far as changing the storefronts.

Between Green-Branding and Greenwashing the thin line difference that exists is that the former is a statement while the latter is just exaggeration. These can be minuscule investments from the company in contributing to climate change than what they are portraying, claiming to generate energy from recycling instead of using fossil fuels or releasing statements to contribute to the climate change but taking no real steps to achieve them.

Hena Desai, *Are you a victim of Greenwashing?* GRAZIA (May 23, 2021, 8:09 PM), <https://www.grazia.co.in/beauty/beauty-news/are-you-a-victim-of-greenwashing-6757-1.html>.

Sydney Race, *Companies are lying to us by greenwashing their products*, THE CENTRAL TREND (Apr. 21, 2021, 10:20 AM), <https://thecentraltrend.com/109010/opinion/companies-are-lying-to-us-by-greenwashing-their-products/#:~:text=H%26M%20tricked%20consumers%20globally%20into,as%20%E2%80%9Ceco%2Dfriendly.%E2%80%9D>.

Ipsita Sarkar

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IP Trivia: The World Trade Organization has approved the patent waiver for production of COVID-19 vaccines

INTELLECTUAL PROPERTY RIGHTS DIVISION RULES, 2022 BY DELHI HIGH COURT

The Intellectual Property Rights Division Rules, 2022, were notified by the Delhi High Court as a relief to the industry, which had been waiting for an appellate court to resolve their concerns in Intellectual Property-related issues. According to the court, this new division will take the position of the Intellectual Rights Appellate Board (IPAB). On February 28, it was announced that it will take effect on the date that the Chief Justice of the Delhi High Court would announce in the Official Gazette.

To handle cases involving IPR subject matter, the Division will be presided over by single judges. Except for those cases that are to be determined by the Division Bench as per Section 13 of the Commercial Courts Act, 2015, all proceedings pertaining to IP subject matter will be moved to IPD and will be heard and adjudicated by a Single Judge of the Division. All original, appellate, and other IPR processes, including revocation, application, and so on, will be included in the cases. All outstanding IPAB proceedings under Delhi's jurisdiction would be moved to the Delhi High Court. The Court is given various powers for effective functioning, such as the ability to form a confidentiality club or adopt appropriate measures for the exchange and preservation of confidential information at any stage of a proceeding, which could include lawyers, experts, and nominated representatives of the parties.

The court may request the aid of expert(s) in any IPR subject area and may also maintain a panel of experts to assist the Court, which may be reviewed from time to time. Additional Law researchers with technical skills can help IPD judges; at least two researchers are required for each IPD bench. Moreover, if the Court desires the party to consider mediation at any time throughout the procedure, it may appoint a mediator or a panel of mediators. Once the Court determines that such a settlement is necessary, the parties' assent is not required. By selecting an impartial evaluator, the court can also order an Early Neutral Evaluation (ENE). Appeals from the IPD's orders must be submitted to the division Bench either as Letters Patent Appeals (LPA) or as Commercial Appellate Division appeals under relevant sections of the Commercial Courts Act, 2015.

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GREEN TECHIPOLOGY

A number of innovative "green" technologies are being introduced to the market. Just for new green technologies, the United States is shaving a year off the 40-month patent clearance process. "Every day, a significant green technology invention is held back from reaching the market. Is another day that we destroy our environment and another day that we fail to create green businesses and jobs?" David Kappos, Secretary of Commerce for Intellectual Property.

Accelerating the patent process allows more entrepreneurs to invest in and develop green technology, allowing them to reach the market much faster. There is a boom of new technology and great new green products thanks to the new innovators hard at work and the decreased time it takes for their items to reach the market. Not only are there many green entrepreneurs already on the scene, but there is also a group of students studying green technology at their business schools.

New courses, such as Solar Photovoltaic Education, have been created specifically for teaching students' green technologies. Green technology courses are now available through online business institutions. Teaching students how to apply their understanding of green technology in professional and business settings, as well as raising a new generation of sophisticated innovators.

Many new software packages are available to help people who print frequently reduce not only their environmental impact but also the amount of money they spend on various printing items. Preton Ltd. Green printing is one of the more well-known names in this field. This business has changed the printing software industry.

Their software uses mathematical techniques to optimize pixel printing by removing unnecessary pixels. This saves you money on printing supplies by drastically reducing the amount of ink and toner you use. If you own a business, implementing this new green printing software could save you money and reduce the amount of garbage you produce, so helping to save the environment.

IP rights are a type of proprietary rights that can be transferred, registered, licensed, and protected against infringement, are the key resource for advanced technology research and development. The function of IP rights is recognized in Article 7 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):

"The promotion of technological innovation and the transfer and dissemination of technology, to the mutual benefit of producers and users of technological knowledge, and in a manner conducive to social and economic welfare, and to a balance of rights and obligations, should contribute to the protection and enforcement of intellectual property rights."

The major goal is to develop and protect Green technology through Green IP in order to encourage and promote technical innovation and economic benefits. The term "green intellectual property" relates to the protection of green technology innovation. While considering new ideas for environmental protection, keep in mind that the environment must be legally protected.

The production, dissemination, and application of green technology all require robust IPR protection. With non-renewable resources rapidly depleting, it is not only desirable but also necessary to adapt to a sustainable lifestyle reinforced by green technologies.

This year, it is predicted that 150 million cell phones will be replaced. That's 65,000 tons of garbage. Metals, polymers, and ceramics are used in cell phones, which also contain dangerous compounds such as brominated flame retardants and lead. When cell phones are buried in landfills, these chemicals are discharged into the atmosphere and soil.

Cell phone recycling is simple, and much of the material in cell phones may be reused. Samsung has developed a cell phone that is built entirely of non-hazardous materials and recycled plastics. Even the cell phone's box is constructed out of recycled paper and printed with soy ink. We are saving the environment 65,000 tons of harmful garbage by purchasing green cell phones and recycling old ones.

Consider all of the buses utilized for public transportation and the emissions that they emit into the atmosphere. The GE research team developed a battery-powered bus using revolutionary green technology. The team used a lithium and sodium battery in a dual power system to provide the bus excellent acceleration and performance.

Before this mode of transportation may be employed across the country, improvements in battery size and cost are still required. This type of technology has the potential to drastically reduce the amount of pollution generated by transportation while also changing the way we travel in the future.

This material only scratches the surface of the new green technology being created to assist us lessen our environmental impact. The green market appears to have the potential to transform our way of life at the rate that these technologies are being developed and with the incoming "green" business students.

There are numerous things we can do as individuals to lessen our influence, and new technology will soon make it possible for us to do so as a nation. Non-renewable resources are being depleted at an alarming rate. As a result, a shift to green technologies, away from new global environmental legislation, and tighter protection of IP rights in this field is required.

TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 7, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement].

Aditya Sharma

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TIMEX GROUP V MAHALAKSHMI ENTERPRISES

On January 27, 2022 the Delhi High Court granted a permanent injunction against Mahalakshmi Enterprises and an award of Rs 4 lakhs was granted in favor of the Timex Group. The case was filed by the Timex Group for infringement of its trademark/tradename “TIMEX” and its copyright held in the artwork present in the mark.

It was contended that the mark “Timex” was used by the plaintiff since the year 1854 for its goods. Furthermore, it was contended that the plaintiff spent a huge amount of funds to advertise and market the mark “Timex” along with the associate goods, i.e., watches, time daters, etc in both digital and print media. It also has registered domain names i.e., www.Timex.com, www.Timexindia.com, etc.

The issue in this present case was that the defendants were engaged in wholesale and retail of counterfeit watches with the name “Timex” and were selling these to retailers, distributors, and sellers in the market of Delhi without any license whatsoever from the plaintiffs. This, the plaintiffs contended, created confusion among the consumers, and as a result of these counterfeit goods, the plaintiffs have suffered an irreparable loss in monetary terms as well as their goodwill. The plaintiff contended that the act of the defendants amounted to passing off of the goods of the plaintiff and violated the proprietary rights of the plaintiff.

The plaintiff had applied for *an ex-parte* ad-interim injunction in the year 2018. After hearing the plaintiffs an *ex-parte* injunction was granted against the defendants by the court restraining them to use the mark “Timex” and any other similar mark that would cause confusion in the minds of the consumer.

Summons were issued to the defendants; however, they did not appear or file a written statement within the stipulated time. After hearing the plaintiff, the court took cognizance that the plaintiff has its mark registered under class 14 since 1965, and the registration was renewed till 28.06.2028. Apart from that, the word mark “Timex” is also registered under classes 9 and 10. On comparing the photos produced, the court opined that the goods sold by the defendants were identical to that of the plaintiff and it was likely to cause confusion in the minds of the consumers.

The court also, as part of the record, took into consideration the report of the commissioner which stated that approximately 384 watches were seized from the defendants.

After considering all the relevant facts, the court held that the defendants were infringing the trademark and copyright of the plaintiff. Therefore, the court granted a permanent injunction in favor of the plaintiff and 4 lakh rupees as damages.

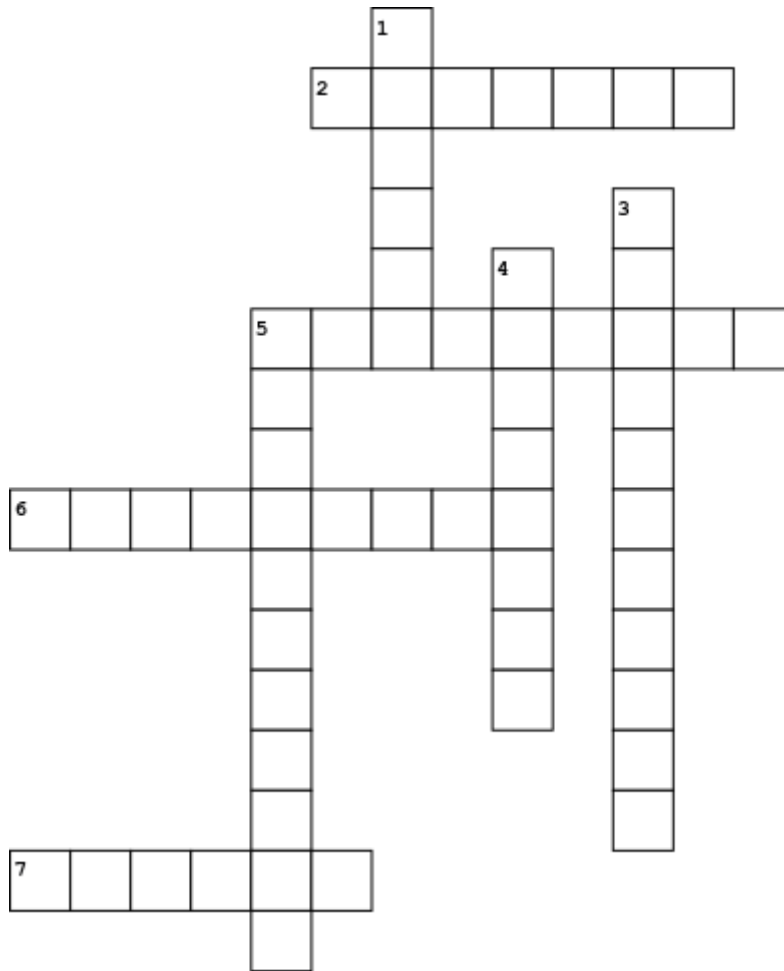
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Crossword



Across

- 2. Famous GI for rice in India
- 5. Source Identifier
- 6. Protection to artistic work
- 7. Head Office of the Indian TradeMark Registry

Down

- 1. International protocol governing access benefit sharing of genetic resource
- 3. Confidential information having commercial value
- 4. Copyright is a _____ right
- 5. Patent rights are _____ in nature

Crossword answers:
 1. NAGOYA, 2. BASMATI, 3. TRADE SECRET, 4. NEGATIVE, 5. TERRITORIAL, TRADEMARK,
 6. COPYRIGHT, 7. MUMBAI.



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Private University established in Karnataka State by Act No.34 of year 2010
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