

IP Laws Declared by the Supreme Court

Patent Law Declared by the Supreme Court of India

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Received: 22nd September 2022

The Supreme Court of India (*hereinafter*, the Supreme Court) does not merely decide a *lis* in personam but also declares the law on a question that it decides to answer. The law so declared by the Supreme Court becomes binding *in rem* by virtue of Article 141 of the Constitution of India. Since the establishment of the Supreme Court, only three cases were decided in the 20th century on The Patents Act, 1970 including one under The Patents and Designs Act, 1911, and in 21st century only eleven cases have been decided under The Patents Act. Number of decisions per year is not even one. On an average, the Court has decided, 19 cases in a year; or one patent case in 1893.57 days, or in 5.18 years. Hence, only few questions of patent law have been answered. Many patent law questions still remain unanswered. This raises a two-fold problem. One, answers are not only too little but some of them are too ambiguous, too opaque and too vague. Two, absence of answer on certain basic points of patent law further heightens the problem of legal uncertainty and opacity. A review of decisions on the patent law reveals that: (i) the Court has declared patent law only in ten decisions; (ii) in no decision the validity of The Patents Act, 1970, was challenged; (iii) the Court has unanimously answered the questions of patent law; and (iv) only some of the questions of patent law have been answered by the Supreme Court unambiguously and unequivocally but some of the questions of patent law have been left open by the Court. This Paper identifies the intended and interpreted-constructed meaning of 'Law Declared' and seeks to cull out the principles of patent law as declared by the Supreme Court in the last 72 years.

Keywords: Patent, Supreme Court of India, Law Declared, The Indian Patents and Designs Act, 1911, The Patents Act, 1970, Bench, Article 141, Constitution of India, Intended Meaning, Constructed Meaning, Constituent Assembly Debate, Infringement, Revocation, License, Pre-grant Opposition, Exclusive Marketing Rights, Interpretation-Construction, Counter-claims, Controller of Patents

The Supreme Court of India (*hereinafter*, the Supreme Court) besides deciding disputes between parties also decides substantial questions of law. By virtue of Article 141¹ of the Constitution of India, decision on substantial question of law is binding not only on the parties before it but is also binding on all pending and future cases involving the same or substantially similar question of law and/or same or substantially similar question of fact. The pronouncement of the Supreme Court under Article 141 of the Constitution of India is the law declared and hence, the law of the land. A patent *lis* reaches the Supreme Court by virtue of Article 136² of the Constitution of India.³

Establishment of Intellectual Property Appellate Board (IPAB) under Section 83 of the Trade Marks Act, 1999 provided for hearing of appeals against the decisions of the Registrar under the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act, 1999.⁴ The Patents

(Amendment) Act, 2002⁵ and the Patents (Amendment) Act, 2005⁶ also provided for moving of the pending appeals in the High Courts to the IPAB.⁷ The recently promulgated The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021⁸ amended the provisions of 10 legislations⁹ including 5 Intellectual Property (IP) legislations — dissolving the Tribunals, Appellate Boards and Appellate Authorities as established under the statutes. Consequently, IPAB was also dissolved with effect from 4 April 2021 by a notification dated 22 April 2021.¹⁰ As a consequence of the dissolution, the appeals shall now directly lie to the High Courts.

All the IP legislations, unlike other legislations, in force in India are post-independent legislations. The first IP legislation in the independent India is the Copyright Act, 1957.¹¹ The Patents Act, 1970¹² (*hereinafter*, the Patents Act) is the second IP legislation enacted in Independent India. Some provisions of the Patents Act came into force after 7 years, 6 months and 11 days (from the date of

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enactment) on 1 April 1978¹³ while the remaining provisions of the Act came into force after 7 years and 7 months on 20 April 1978.¹⁴ Earlier, before coming into effect of the Patents Act, 1970, a patent was granted under the provisions of The Patents and Designs Act, 1911.¹⁵

A characteristic feature of common law is that law develops from molar to molecular through the judicial decisions. Higher the number of judicial decisions, clearer the picture of law. Courts while deciding cases do not merely interpret the statutory provisions but also iron out the creases and construct the law. On a comparative scale, Supreme Court of India has decided lesser number of patent cases in comparison to the number of decisions rendered by the highest courts of major jurisdictions. Lesser the number of patent decisions of the Supreme Court means higher the degree of opacity in patent law. The decisions do throw some light on some dimensions of patent law, yet the clarity in some cases is either ambiguous or vague. Further, some dimensions of patent law are still cloudy and are waiting for light from the Supreme Court.

Primary function of court is to decide legal disputes brought before it. Deciding a legal dispute is not merely a mechanical exercise, it involves making crucial policy choices. Legal disputes involve primarily three types of questions: question of fact, question of law and mixed question of law and fact. In patent cases, facts are constituted by claimed (or patented) invention and conduct of the parties. Appreciation of facts in patent matters necessarily entails appreciation of invented technology. Deciding a patent law question indispensably requires appreciation of patent law both substantive and procedural. Handling of mixed question of law and fact inescapably demands appreciation of both law and invented technology. Most of the questions in patent matters, however, are mixed question of law and fact. It is rare to find, identification of the nature of question in patent matters, in the decisions of the Supreme Court. A reading of the decisions of United Kingdom or Supreme Court of United States of America reveals that it is crucial for courts to identify the nature of question brought before it. The questions generally agitated before the courts are whether or not the claimed invention is:

- (a) eligible for grant of patent— [Sections 3 and 4];¹⁶
- (b) anticipated by a single prior reference to satisfy the test of novelty— [Section 2 (1) (l)];

- (c) involving an inventive step and is not obvious to a person skilled in the art in the light of all or multiple prior art references taken together – [Section 2 (1) (ja)];
- (d) capable of being made or used in an industry on a commercial scale so as to meet the reasonable requirements of public – [Section 2 (1) (ac) read with Sections 84 and 89];
- (e) useful – [Section 64 (1) (g)];
- (f) fully and particularly described in the complete (g)specification – [Section 10 (4) (a)];
- (g) sufficiently and fairly described in the complete specification in such a manner to enable person possessing average skill in, and average knowledge of, the art to which the invention relates, to work the invention – [Section 10 (4) (a) read with Section 64 (1) (h)];
- (h) discloses the best method of performing the invention known to the applicant – [Section 10 (4) (b) read with Section 64 (1) (h)];
- (i) sufficiently, clearly and succinctly defined in the claims and are fairly based on the matter disclosed in the complete specification – [Sections 10 (4) (c) and 10 (5) read with Section 64 (1) (i)]; and
- (j) other questions of substantive and procedural patent law.

In the light of the aforementioned questions, it may be said that patent law stands on four legs. *First*, claimed invention must be an invention in the patent law sense. *Second*, claimed invention must be fully and particularly disclosed in the complete specification in a manner that the disclosure results in the transfer of knowledge and skill relating to the invention to public, and sufficiently enables the person skilled in the art to make and work the invention without any undue experiment with the help of best method disclosed by the applicant. *Third*, claims must define the scope of invention sufficiently, clearly and succinctly and must be fairly based on the complete specification. *Fourth*, all the other requirements of patent law must be satisfied. In short only if two things, *i.e.*, invention in the patent law sense and full and particular disclosure of skill and knowledge relating to invention, have moved from the side of the inventor to the society through the patent office then only patent will move from the side of the society to the inventor as *a quid pro quo*.

In India very few cases relating to intellectual property including patent go to courts. Courts instead

of deciding cases on merit resort to grant of interim injunction which for all practical purposes become the final relief.¹⁷ The Court of First Instance or the Court of Lowest Grade for patent proceeding is a court not inferior to a District Court and where a counter-claim for revocation of patent has been filed the suit along with the counter-claim are required to be transferred to the High Court.¹⁸ No statutory appeal lies from the judgment or order of the District Court to the High Court. The only remedy available to the aggrieved party against the judgment or order of the District Court is to file a writ to the High Court under Articles 226 and 227 of the Constitution of India or to file a special leave to appeal to the Supreme Court of India under Article 136 of the Constitution of India. Against the judgment or order of the High Court in the writ petition, no statutory appeal lies to the Supreme Court but the aggrieved party may file a special leave to appeal to the Supreme Court of India under Article 136 of the Constitution of India. The Supreme Court of India, therefore, decides patent cases by invoking its jurisdiction under Article 136 of the Constitution of India and declares patent law by answering the unanswered questions relating to patent law.

Following seeks to find the “intended” and “interpreted-constructed” meanings of the expression “law declared” before discussing the patent law declared by the Supreme Court of India.

‘Intended’ and ‘Interpreted-Constructed’ Meanings of “Law Declared”

The expression “law declared” has not been defined in the Definition Clause (Article 366) of the Constitution of India. The text of clause (1) of Article 367 (Interpretation) of the Constitution of India, reads that ‘Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.’ Furtherance to this provision of the Constitution, an attempt was made to find whether the expression has been defined in The General Clauses Act, 1897.¹⁹ A review of the provision of The General Clauses Act reveals that the expression “law declared” has neither been defined in Section 3 (Definitions) of the Act (which has defined 66 expressions) nor it has used this expression in the text of the Act. So, the question that what is “law declared”, the expression as used in the text of Article

141 of the Constitution of India still needs to be answered. In this regard, attempt has been made to find the “intended meaning” in the light of the Constituent Assembly Debates (CAD) and the “interpreted-constructed”²⁰ meanings in the light of the decisions of the Supreme Court of India.

Law Declared: Constituent Assembly Debates

Article 117 of the Draft Constitution corresponds to Article 141 of the Constitution of India which was debated in the Constituent Assembly (the Assembly) on 27 May 1949.²¹ Only two Members were part of the debate on the draft Article 117, namely: H V Kamath and Dr B R Ambedkar. H V Kamath moved a motion for amendment in the draft Article:

‘That in article 117, for the words “all courts” the words ‘all other courts’ be substituted.’ Kamath, in the Assembly, while proposing the amendment clearly stated that he has no doubt that the article intends to bind the other courts subordinate to the Supreme Court and does not seek to bind the Supreme Court by its own judgments. He further said *‘It will be unwise to bind the Supreme Court itself, because in order to ensure elasticity, in order to enable mistakes and errors to be rectified, and to leave room for growth, the Supreme Court will have to be excluded from the purview of this article. The Supreme Court may amend its own judgments, or its own interpretation of the law which it might have made on a previous occasion and rectify the errors it has committed earlier.’*

He gave the reason for substituting the words ‘all courts’ with the words ‘all other courts’ in order to correctly and precisely convey the intention of Article 117. To this, Dr. Ambedkar argued that *‘It is not certainly the intention of the proposed article that the Supreme Court should be bound by its own decision like the House of Lords. The Supreme Court would be free to change its decision and take a different view from the one which it had taken before.’* The closing part (rather last sentence) of Ambedkar’s argument as to the language, was against Kamath’s motion for amendment. Ambedkar was of the opinion which he stated in the Assembly that *‘So far as the language is concerned I am quite satisfied that the intention is carried out.’* To Ambedkar’s arguments, Kamath posed a question ‘Then why not say “all other courts”?’ to which Ambedkar responded *“‘All courts’ means “all other courts”.*’ And finally: (i) the amendment moved

by Kamath ‘That in article 117, for the words ‘all courts’ the words ‘all other courts’ be substituted.’ was negated; and (ii) the motion that ‘article 117 stand part of the Constitution’ was adopted by the Assembly and the same became Article 141 of the present Constitution, which reads as:

‘Law declared by Supreme Court to be binding on all courts.—The law declared by the Supreme Court shall be binding on all courts within the territory of India.’

It seems from the CAD that no thought was given to explain the expression “law declared”. Hence, no intended meaning from the CAD except a clarity that the Assembly didn’t intend to bind the Supreme Court by its own decision. Perhaps, it was left open for the Supreme Court to define “law declared” while declaring law. Whether it was the reason or not, as there was no discussion on the meaning of “law declared” in the Assembly, the Supreme Court through its interpretation–construction power has declared law on “law declared” in its several decisions.

“Law Declared”: Decisions of the Supreme Court of India

In a total of 21 decisions, the Supreme Court has expressed or has made certain observations in relation to the expression “law declared”. Of these 21 decisions, 5 decisions are from twentieth-century whereas the remaining 16 decisions are of the twenty-first century. The twentieth-century decisions include 4 Constitution Bench and 1 Division Bench. No Full Bench or Single Bench decision is reported. Whereas, the twenty-first century decisions include 4 Constitution Bench, 2 Full Bench, and 10 Division Bench and Single Bench. One reference case has been reported from each century.²² There are several other decisions, in which the Court has “only referred” to the text of Article 141. From the review of reported decisions of the Supreme Court on Article 141, an attempt will be made to find the answers to two questions. First, what is ‘Law Declared’? And, what is not ‘Law Declared’?

After a time of 2 years, 10 months, and 10 days from the date the Supreme Court of India came into being, the Supreme Court for the first time in *Bengal Immunity Company Limited v State of Bihar*,²³ a Constitution Bench decision, expressed on the expression “law declared”. The Court observed that:

‘[I]t is important in public interest that the law declared “*should be certain and final*” rather than that it should be declared in one sense or the other...The object of article 141 is that the “*decisions of this Court on these questions should settle the controversy*”, and that they should be followed as law by all the Courts...’²⁴

In *I C Golaknath v State of Punjab*,²⁵ the Constitution Bench of the Supreme Court explained the word ‘declared’ as under:

*‘The expression “declared” is wider than the words “found or made”. To declare is to announce opinion. Indeed, the latter involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The law declared by the Supreme Court is the law of the land...’*²⁶

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‘[S]cope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.’²⁷

In *Re, The Special Courts Bill, 1978*,²⁸ as to the question whether advisory opinion of the Supreme is a “law declared”, the Court citing H. M. Seervai’s book,²⁹ observed that ‘[W]e are not unmindful of the view expressed by an eminent writer that although the *advisory opinion given by the Supreme Court* has high persuasive authority, “*it is not law declared by it within the meaning of Article 141*”.’³⁰

In *Union of India v All India Services Pensioners’ Association*,³¹ the Court observed that: ‘When...reasons (for dismissing the Special Leave Petition) are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It, therefore, follows that when no reason is given, but a special leave petition is dismissed *simpliciter*, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution.’³²

In *I Manilal Singh v H Borobabu Singh*,³³ the Court observed that: ‘Article 141 declares the binding effect of the law declared by the Supreme Court which is a clear provision to indicate that the meaning of “*law*” is to be understood as declared by the Supreme Court.’³⁴

In *Director of Settlements, Andhra Pradesh v M R Apparao*,³⁵ the Court observed that:

‘Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India...[E]mpowers the Supreme Court to declare the law...The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. “But what is binding is the ratio of the decision and not any finding of facts”. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has ‘declared law’ it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An ‘obiter dictum’ as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. *The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case...When Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court.* A judgment of the High Court which refuses to follow the decisions and directions of the Supreme Court or seeks to revive a decision of the High Court which has been set aside by the Supreme Court is a nullity.’³⁶

In *Rupa Ashok Hurra v Ashok Hurra*,³⁷ the Court observed that ‘The law declared by this Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India. In a judgment there will be declaration of law and its application to the facts of the case to render a decision on the dispute between the parties to the *lis*.’³⁸

In *S Shanmugavel Nadar v State of Tamil Nadu*,³⁹ the Court observed that:

‘A decision which is not express and is not founded on reasons, nor which proceeds on consideration of the issues, cannot be deemed to be a law declared, to have a binding effect as is contemplated by Article 141.’⁴⁰ ...‘When reasons are given, the decisions of the Supreme Court becomes one which attracts Article 141 of the Constitution...When no reasons are given, a dismissal *simpliciter* is not a declaration of law by the Supreme Court under Article 141 of the Constitution.’⁴⁰

In *Suganthi Suresh Kumar v Jagdeeshan*,⁴¹ the Court observed that: ‘It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India.’⁴²

In *Sarwan Kumar v Madan Lal Aggarwal*,⁴³ the Court held that: ‘Under the doctrine of “prospective overruling” the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship to those who had trusted to its existence. Invocation of doctrine of “prospective overruling” is left to the discretion of the court to mould with the justice of the cause or the matter before the court.’⁴⁴

In *M A Murthy v State of Karnataka*,⁴⁵ the Court held that: ‘Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law...’⁴⁶

In *M Nagaraj v Union of India*,⁴⁷ the Supreme Court held that ‘Under Article 141 of the Constitution the pronouncement of this Court is the law of the land.’⁴⁸

In *P V George v State of Kerala*,⁴⁹ the Court held that: ‘The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically.’⁵⁰

In *Sahara India Real Estate Corporation Ltd v Securities and Exchange Board of India*,⁵¹ the Court held that:

‘Article 141 uses the phrase “law declared by the Supreme Court”. It means *law made while interpreting the statutes or the Constitution*. Such judicial law-making is part of the judicial process. Further under Article 141, law-making through interpretation and expansion of the meanings of open-textured expressions such as “law in relation to contempt of court” in Article 19(2), “equal protection of law”, “freedom of speech and expression” and “administration of justice” is a legitimate judicial function. According to Ronald Dworkin,⁵² “Arguments of principle are arguments intended to establish an individual right. Principles are propositions that describe rights.”⁵³

In *Natural Resources Allocation, In Re Special Reference No. 1 of 2012*,⁵⁴ the Court held that:

‘The “law declared” has to be construed as a principle of law that emanates from a judgment or an interpretation of a law or judgment by the Supreme Court, upon which, the case is decided...[T]he “law declared” is the principle culled out on the reading of a judgment as a whole in light of the questions raised, upon which the case is decided...[T]he “law declared” in a judgment, which is binding upon courts, is the ratio decidendi of the judgment. It is the essence of a decision and the principle upon which the case is decided which has to be ascertained in relation to the subject-matter of the decision.’⁵⁵

In *Subrata Roy Sahara v Union of India*,⁵⁶ the Court expressed as to the scope of law declared by the Supreme Court as:

‘The Supreme Court has been vested with the power to decide substantial questions of law, as also, to interpret the provisions of the Constitution of India. The Supreme Court exercises jurisdiction to determine, whether or not, laws made by Parliament or by a State Legislature, are consistent with the provisions of the Constitution of India. And in case any legislation is found to be enacted, in violation of the provisions of the Constitution of India, this Court is constrained to strike it down. The resultant effect is, that a law enacted by the Parliament or by a State Legislature, is declared illegal or void. After a Court’s verdict has

attained finality, not once, never and never, has any legislative body ever disobeyed or disrespected an order passed by a court, declaring a legislation, illegal or void.’⁵⁷

In *State (through Central Bureau of Investigation) v Kalyan Singh*,⁵⁸ the Court held that: ‘It is important to notice that Article 142 follows upon Article 141 of the Constitution, in which it is stated that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Thus, *every judgment delivered by the Supreme Court has two components — the law declared which binds Courts in future litigation between persons, and the doing of complete justice in any cause or matter which is pending before it*. It is, in fact, an Article that turns one of the maxims of equity on its head, namely, that equity follows the law.’⁵⁹

In *State of Gujarat v Utility Users’ Welfare Association*,⁶⁰ the Court held that: ‘No doubt, the law declared by the Supreme Court is binding on all Courts within the territory of India, which would also include principles of law emanating from a judgment or interpretation of the law, but then the ratio decidendi of the judgments of the Supreme Court, makes the principle of mandatory requirement of a Judge applicable only to cases where the judicial function is sought to be shifted through the process of “tribunalisation”.’⁶¹

In *All India Institute of Medical Sciences v Sanjiv Chaturvedi*,⁶² the Court held that: ‘It is true that the interim order passed by a Court does not operate as a precedent and the law declared by the Supreme Court with regard to the precedential value of judgments of Benches of larger strength may not operate as a binding precedent in the facts and circumstances of this case.’⁶³

In *Union of India v M V Mohanan Nair*,⁶⁴ the Court held that:

‘Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India, *i.e.*, the pronouncement of the law on the point shall operate as a binding precedent on all courts within India. *Law declared by the Supreme Court has to be essentially understood as a principle laid down by the court and it is this principle which has the effect of a precedent*. A principle as understood from the word itself is a proposition which can only be delivered after examination of the matter

on merits. It can never be in a summary manner, much less be rendered in a decision delivered on technical grounds, without entering into the merits at all. *A decision, unaccompanied by reasons can never be said to be a law declared by the Supreme Court though it will bind the parties inter se in drawing the curtain on the litigation.*⁶⁵

In *Madras Bar Association v Union of India*,⁶⁶ the Court held that:

‘The law declared by the Supreme Court is binding on all Courts in India in terms of Article 141 of the Constitution. *The directions issued under Article 142 of the Constitution, are binding on every Court in terms of Article 141 of the Constitution. The legislature cannot be said to be Court within the meaning of Article 141 of the Constitution by any stretch of imagination.*’⁶⁷

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‘The law declared by this Court is binding on all Courts within the territory of India under Article 141 of the Constitution whereas Article 142 of the Constitution empowers this Court to issue directions to do complete justice. The interpretation of law is binding under Article 141 of the Constitution even if there is a direction under Article 142 but such direction is not all pervasive and binding on the legislature.’⁶⁸

From the above decisions of the Supreme Court, the following meanings of “law declared” may be culled out: (i) “Law declared” should be certain and final rather than that it should be declared in one sense or the other; (ii) Expression “*declared*” is wider than the words “*found or made*” —to declare is to announce opinion. The latter involves the process, while the former expresses result; (iii) Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law; (iv) Advisory opinion of the Supreme is not a “law declared” within the meaning of Article 141; (v) When the Court gives “reasons” for dismissing the Special Leave Petition, it is “law declared”; (vi) Article 141 indicates that the meaning of “law” is to be understood as declared by the Supreme Court; (vii) What is binding under Article 141 is the ratio of the decision and not any finding of facts; (viii) The law which will be binding under Article 141 would extend to all observations of points raised and decided by the Court in a given case; (ix)

The law declared by the Court is the law of the land and it is precedent for itself and for all the courts, tribunals and authorities in India; (x) “Law declared by the Supreme Court” means law made while interpreting the statutes or the Constitution; (xi) “Law declared” has to be construed as a principle of law that emanates from a judgment or an interpretation of a law or judgment by the Supreme Court, upon which, the case is decided; (xii) “Law declared” is the principle culled out on the reading of a judgment as a whole in light of the questions raised, upon which the case is decided; (xiii) “Law declared” in a judgment, which is binding upon courts, is the *ratio decidendi* of the judgment; (xiv) Every judgment delivered by the Supreme Court has two components: the “law declared” which binds Courts in future litigation between persons, and the doing of complete justice in any cause or matter which is pending before it; (xv) “Law declared” means that the pronouncement of the law on the point shall operate as a binding precedent on all courts within India; (xvi) “Law declared” has to be essentially understood as a principle laid down by the court and it is this principle which has the effect of a precedent; (xvii) The directions issued under Article 142 of the Constitution, are binding on every Court in terms of Article 141 of the Constitution; (xviii) The interpretation of law is binding under Article 141 of the Constitution; and (xix) When reasons are given, the decisions of the Supreme Court become one which attracts Article 141 of the Constitution.

The Supreme Court has also answered what is not or may not be called as “law declared”: (i) A decision unaccompanied by reasons or dismissal simpliciter can never be said to be a law declared by the Supreme Court though it will bind the parties *inter se* in drawing the curtain on the litigation; (ii) when a point is disposed of on concession; and (iii) a decision which is not express and is not founded on reasons, nor which proceeds on consideration of the issues.

Patent Law Declared by the Supreme Court

An attempt has been made to analyze the reported judgments⁶⁹ of the Supreme Court of India (*hereinafter*, the Court) from the date of establishment *i.e.*, 28 January 1950 to 28 August 2022. The Court has delivered fourteen patent related judgments in last 72 years (till 28 August 2022). Number of decisions per year is not even one. On an average .19 (point one nine) case has been decided in a year, or in 1893.57 (point five seven) days or in 5.18 (point one eight)

years, one patent case has been decided. In addition to fourteen judgments on patent law, the expression “Patents Act” has been referred to in nine⁷⁰ other judgments. Reference has been made either for making a comparison of relevant provisions of “Patents Act” with other statute — without going into the question of interpretation or construction — or the expression “Patents Act” was explicitly used in the other statute.

Fourteen judgments of the Court on the Patents Act include three Full Bench judgments and eleven Division Bench judgments. No matter dealing with the interpretation of determination of question on the Patent Act was placed before the Constitution Bench or the Single Bench. Hence, no decisions of these two benches of the Court. All the fourteen judgments of the Court are unanimous decisions and without any concurring opinion. Hence, no separate and dissenting opinion of the judges. These fourteen judgments delivered by the Court on the Patents Act includes five orders. For brevity, the analysis as to the number of judgments authored by the judges does not include the Orders as they were authored and delivered by the Bench on behalf of the Court.

In total, twenty-nine judges were part of the bench in fourteen decisions. Justices S H Kapadia, B Sudershan Reddy, Markandey Katju and A K Ganguly were part of the bench in two cases (all Division Bench) and Justices S H Kapadia and Markandey Katju authored one judgment each. Justices R S Sarkaria (Full Bench), O Chinnappa Reddy (Division Bench), Dr Arijit Pasayat (Division Bench), Aftab Alam (Division Bench), Jagdish Singh Khehar (Division Bench), and Navin Sinha (Division Bench) were part of the bench only in one case each and authored one judgment each. Out of three Full Bench cases, Chief Justices Dr A S Anand and Dr T S Thakur were part of the bench in one case each but didn't author any judgment. Justices V D Tulzapurkar (Full Bench), A P Sen (Full Bench), E S Venkataramiah (Division Bench), V N Khare (Full Bench) and M Srinivasan (Full Bench), L S Panta (Division Bench), K S P Radhakrishnan (Division Bench), Dipak Misra (Division Bench), Ranjan P Desai (Division Bench), A K Patnaik (Division Bench), Ranjan Gogoi (Division Bench), N V Ramana (Division Bench), R Bhanumathi (Full Bench) and Uday U Lalit (Full Bench) and Rohinton F Nariman (Division Bench) were part of the bench in one case each.

In nine decisions, the Supreme Court has declared patent law of which two are 20th century decisions and seven are 21st century decisions.

Twentieth-Century: Patent Law Declared by the Supreme Court

The Supreme Court has delivered three judgments on the patent law in the twentieth-century of which two are Full Bench decisions including one unanimous Order, and one is Division Bench decision. The Court declared patent law in only two cases of which one is Full Bench and one is Division Bench. The first reported judgment from the twentieth-century is *Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries*⁷¹ and the last is *Research Foundation for Science, Technology & Ecology v Ministry of Agriculture*.⁷²

*Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries*⁷³ is a Full Bench decision of the Supreme Court and the judgment of the Court was penned down by Justice R S Sarkaria. The case was related to the grant of patent under the provisions of the Patents and Designs Act, 1911¹⁵ (*hereinafter*, the Act of 1911). Deciding the question ‘whether the alleged invention is patentable’, the Court declared the patent law by making certain observations on certain expressions used under the Act. The Court first observed that the object of patent law is to ‘[E]ncourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial utility. The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the monopoly, passes into the public domain.’⁷⁴ Further, Court explained the fundamental principle of patent law in the following words:

*‘[F]undamental principle of Patent Law is that a patent is granted only for an invention which must be new and useful. That is to say, it must have novelty and utility. It is essential for the validity of a patent that it must be the inventor's own discovery as opposed to mere verification of what was, already known before the date of the patent.’*⁷⁵

The Court explained the meanings of the expressions ‘Invention’ and ‘Manufacture’ under the Act of 1911 as follows:

‘Invention means any manner of new manufacture and includes an improvement and an allied invention... It is to be noted that unlike the Patents Act 1970, the Act of 1911 does not

specify the requirement of being useful in the definition of “invention”. *But Courts have always taken the view that a patentable invention, apart from being a new manufacture, must also be useful.* The foundation for this judicial interpretation is to be found in the fact that Section 26(1)(f) of the 1911 Act recognises lack of utility as one of the grounds on which a patent can be revoked.⁷⁶

...

‘*Manufacture according to the definition of the term in Section 2(11) of the Act, includes not only “any art, process or manner of providing, preparing or making an article” but also “any article prepared or produced by the manufacture”.*⁷⁶

As to the question relating to the independent requirement of “*inventive step*” in relation to *improvement*, the Court by declared:

‘[I]n order to be patentable an improvement on something known before or a combination of different matters already known, should be *something more than a mere workshop improvement; and must independently satisfy the test of invention or an “inventive step”.* To be patentable the improvement or the combination *must produce a new result, or a new article or a better or cheaper article than before.* The combination of old known integers may be so combined that by their working inter relation they produce a new process or improved result. *Mere collocation of more than one integers or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent.*⁷⁶

On this point, the Court also relied on the observation of Lord Davey in *Rickmann v Thierry*⁷⁷ where he observed that ‘*It is not enough’... ‘that the purpose is new or that there is novelty in the application, so that the article produced is in that sense new, but “there must be novelty in the mode of application”.* By that, I understand that in adopting the old contrivance to the new purpose, there must be difficulties to be overcome, requiring what is called invention, or there must be some ingenuity in the mode of making the adoption.⁷⁸ Court further relied on the portion of judgment of Lord Justice Cotton’s in *Blackey v Latham*,⁷⁹ where he observed that ‘*to be new in the patent sense, the novelty must show*

*invention. In other words, in order to be patentable, the new subject matter must involve “invention” over what is old.*⁷⁶

On the question when a patent can be granted, the Court declared that:

- (i) ‘A patent can be granted only for “manner of new manufacture” and although an invention may be “new” and relate to a “manner of manufacture” it is not necessarily a “manner of new manufacture” — it may be only a normal development of an existing manufacture. *It is a necessary qualification of a craftsman that he should have the knowledge and ability to vary his methods to meet the task before him — a tailor must cut his cloth to suit the fashion of the day-and any monopoly that would interfere with the craftsman’s use of his skill and knowledge would be intolerable.*⁸⁰
- (ii) ‘A patentable invention, therefore, must involve something which is outside the probable capacity of a craftsman-which is expressed by saying it must have “subject matter” or involve an “inventive step”. Novelty and subject matter are obviously closely allied...[I]n fact “subject matter” is the crucial test, for which they may well be novelty not involving an “inventive step”, it is hard to conceive how there can be an “inventive step” without novelty.’⁸¹

As to the question whether an alleged invention involves novelty and an “inventive step”, the Court observed that ‘it is a mixed question of law and fact, depending largely on the circumstances of the case.’⁸¹ The Court indicated certain broad criteria highlighting that no absolute uniformly applicable test can be devised in all circumstances:

‘Whether the “manner of manufacture” patented, was publicly known, used and practised in the country before or at the date of the patent? If the answer to this question is “yes”, it will negative novelty or “subject matter”. *Prior public knowledge of the alleged invention which would disqualify the grant of a patent can be by word of mouth or by publication through books or other media.*⁸¹

Court also relied on Lord Justice Fry’s judgment in *Humpherson v Syer*⁸² where he observed that ‘If the public once becomes possessed of an invention...by any means whatsoever, no subsequent patent for it can

be granted either to the true or first inventor himself or any other person; for the public cannot be deprived of the right to use the invention. . .the public already possessing everything that he could give.’⁸¹

As to the expressions “does not involve any inventive step” and “obvious”, the Court observed:

‘The expression “does not involve any inventive step”...and its equivalent word “obvious”, have acquired special significance in the terminology of Patent Law. *The “obviousness” has to be strictly and objectively judged.*’⁸¹

In this regard, the Court reiterated that for determining this, several forms of the question have been suggested and the one as suggested by Lord Justice Salmond *Rado v John Tye & Son Ltd.*⁸³ is apposite: ‘Whether the alleged discovery lies so much out of the Track of what was known before as not naturally to suggest itself to a person thinking on the subject, it must not be the obvious or natural suggestion of what was previously known.’⁸⁴

The Court also observed as to the ‘presumption of validity of patent’ and settled the procedural aspects of patent law:

‘[G]rant and sealing of the patent, or the decision rendered by the Controller in the case of opposition, *does not guarantee the validity of the patent*, which can be challenged before the High Court on various grounds in revocation or infringement proceedings...*[V]alidity of a patent is not guaranteed by the grant*, is now expressly provided in Section 13(4) of the Patents Act, 1970. In the light of this principle...argument that there is a presumption in favour of the validity of the patent, cannot be accepted.’⁸⁵

‘As pointed out in *Arnold v Bradbury*,⁸⁶ the proper way to construe a specification is not to read the claims first and then see what the full description of the invention is, but first to read the description of the invention, in order that the mind may be prepared for what it is, that the invention is to be claimed, for the patentee cannot claim more than he desires to patent. In *Parkinson v Simon*,⁸⁷ Lord Esher MR enunciated that as far as possible the claims must be so construed as to give an effective meaning to each of them, but the specification and the claims must be looked at and construed together.’⁸⁸

The Court on the point when a claimed invention cannot sustain patent, observed referring to the judgment of Lord Justice Blackburn:

‘In order to bring the subject-matter of a patent within this exception, there *must be invention* so applied as to produce a practical result. And we quite agree with the Court of Exchequer Chamber that *a mere application of an old contrivance in the old way to an analogous subject, without any novelty or invention* in the mode of applying such old contrivance to the new purpose, is not a valid subject-matter of a patent.’⁸⁹

*Monsanto Company v Coramandal Indag (P) Ltd*⁹⁰ is a Division Bench decision of the Supreme Court. Justice O Chinappa Reddy authored the judgment on behalf of the Court. As to the revocation of patent under the patent law, the Court observed as under:

‘Under Section 61(1)(d), a patent may be revoked on the ground that the subject of any claim of the complete specification is not an invention within the meaning of the Act. Under Section 64(e), a patent may be revoked if the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the date of the claim, etc. Under Section 64(1)(f), a patent may be revoked if the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step having regard to what was publicly known or publicly used in India or what was published in India before the priority date of the claim...’⁹¹

....

‘To satisfy the requirement of being publicly known as used in Clauses (e) and (f) of Section 64(1), it is not necessary that it should be widely used to the knowledge of the consumer public. It is sufficient if it is known to the persons who are engaged in the pursuit of knowledge of the patented product or process either as men of science or men of commerce or consumers.’⁹²

*Research Foundation for Science, Technology & Ecology v Ministry of Agriculture*⁹³ is a Full Bench decision of the Supreme Court of India. The Court was unanimous and did not declare patent law in this case. The case was related to the enactment of the two legislations, namely the Biodiversity Act and the

Geographical Indications Act, and amendments in the Patents Act.

Twenty-first Century: Patent Law Declared by the Supreme Court

The Supreme Court has delivered eleven decisions on patent law as on June 2022 which include one Full Bench decision – a unanimous Order and ten Division Bench decisions including five unanimous Orders. Of these eleven decisions, Supreme Court declared patent law in eight decisions — all Division Bench. The first reported decision on patent law from twenty-first century is *Garware-Wall Ropes Limited v A I Chopra Engineers and Contractors*⁹⁴ and the latest is *Monsanto Technology LLC v Nuziveedu Seeds Limited*.⁹⁵

*Garware-Wall Ropes Limited v A I Chopra Engineers and Contractors*⁹⁶ is a unanimous Division Bench Order of the Supreme Court. The Court did not declare patent law in this case as the case was related to the grant of injunction. The Supreme Court requested the Court to consider the scope and effect of Section 100 of the Patents Act 1970 afresh.⁹⁷

*J Mitra & Company Private Ltd v Assistant Controller of Patents and Designs*⁹⁸ is a Division Bench decision of the Supreme Court. The unanimous judgment of the Court was delivered by Justice S H Kapadia. The case is an illustration of the confusion which had emerged on account of the postponement of in-part commencement of Patents (Amendment) Act, 2005 which introduced a dichotomy in the patent law between “opposition to the pre-grant” and “opposition to the post-grant of patent”. The Court made certain observations providing a judicial clarity:

‘An Act cannot be said to commence or to be in force unless it is brought into operation by legislative enactment or by the exercise of authority by a delegate empowered to bring it into operation.’⁹⁹

....

[B]y the Amendment Act of 2005 for the first time a dichotomy was inserted in the Patent Law by providing vide Section 25(1) for “opposition to pre-grant” and vide Section 25(2) for “opposition to post-grant” of patent. By reason of Patents (Amendment) Act 2005, the kind of opposition available under the Patents Act is different from what existed earlier. Previously, there was no “post-grant opposition”. Previously, the only provision of challenge by an interested

party was a “pre-grant” challenge under Section 25(1) as it then stood. Therefore, the Courts had evolved the “*rule of caution*” as the patent had not faced any challenge at the hands of interested parties. There is, however, a radical shift due to incorporation of Section 25(2) where an interested party is granted the right to challenge the patent after its grant. The ground of challenge under Section 25(1) is identical to Section 25(2) of the said 1970 Act. However, Section 25(1) is wider than Section 25(2) as the latter is available only to a “person aggrieved”. The main difference between Section 25(1) and Section 25(2), as brought about by Amendment Act of 2005, is that even after a patent is granted, “post-grant opposition” can be filed under Section 25(2) for a period of one year. The reason is obvious. In relation to patents that are of recent origin, a higher scrutiny is necessary. This is the main rationale underlying Section 25(2) of the Patents Act. Therefore, the Legislature intended an appeal under Section 117A(2) to the Appellate Board from any decision, order or direction of the Controller, *inter alia*, under Section 25(4) (which refers to the power of the Controller to maintain, amend or revoke the patent).⁹⁹

....

Legislature intended to provide for two types of scrutiny followed by one statutory appeal to the Appellate Board against “post-grant proceedings”. The Legislature intended to have a dichotomy between “pre-grant opposition” and “post-grant opposition”. However, the Legislature intended that there shall be only one statutory appeal against grant of patent. The Legislature intended to obliterate appeal from “pre-grant proceedings”, which existed earlier. However, it was left to the Executive to bring the enacted law into force vide notification. For some unknown reasons, the amended Sections 116 and 117A(2) were not brought into force till 2 April 2007 whereas the concept of “pre-grant” and “post-grant” oppositions were brought into force with effect from 1 January 2005. This is where the legislative intent got defeated during the interregnum...Under the Amendment Act of 2005, appeal is provided to the Appellate Board against the order of the Controller under Section 25(4).¹⁰⁰

The Court on account of a hiatus created by reason of the law not being brought into force in

time, held that the first appeals, filed by the Respondent in the High Court would remain in the High Court and the appeals would be heard and disposed of by the High Court in accordance with law under Section 116 of the Patents Act as it stood on 19 October 2006.¹⁰⁰ Respondent No. 3 cannot be let without remedy. In the special circumstances of this case, particularly when after 2 April 2007 appeals against orders rejecting “pre-grant opposition” are not maintainable and particularly when appeals were filed by Respondent No. 3 prior to 2 April 2007 under the old law, these two appeals shall be heard and decided by the High Court in accordance with law. The Appellate Board after 2 April 2007 is entitled to hear appeals only arising from orders passed by the Controller under Section 25(4), *i.e.*, in cases of orders passed in “post-grant opposition”. Section 117G, which refers to transfer of pending proceedings to the Appellate Board, is also brought into force vide Notification dated 3 April 2007.¹⁰¹ Keeping in mind the peculiar nature of the problem in hand, the Court held that ends of justice would be subserved if the High Court is directed to hear and decide the appeals bearing FAO No. 292/06 and FAO No. 293/06 in accordance with law as it then stood, *i.e.*, under Section 116 under Patents (Amendment) Act, 1999 against Orders passed by the Controller in “pre-grant opposition” proceedings.¹⁰²

*Glaxo Smith Kline PLC v Controller of Patents and Designs*¹⁰³ is a Division Bench decision of the Supreme Court. Justice Dr Arijit Pasayat delivered the unanimous judgement of the Court. The correctness of the Order passed by a learned Single Judge of the Calcutta High Court was for consideration before the Court. The Court observed that since the Chapter IVA (in question) was merely repealed Patents (Amendment) Act 2005, the situation has to be dealt with in line with Section 6 of the General Clauses Act. ‘The provisions of Section 78 are conditional provisions and are not intended to cover cases where the application for exclusive marketing right had been rejected with reference to Section 21 of the Patents (Amendment) Act 2005...The effect of the repeal has to be ascertained in the background of Section 6 of the General Clauses Act.’¹⁰⁴

*Shree Vardhman Rice and General Mills v Amar Singh Chawalwala*¹⁰⁵ is a unanimous Division Bench

decision of the Supreme Court. The Court declared that ‘[I]n matters relating to trademarks, copyright and patents the proviso to Order XVII Rule 1 (2) (of the) Code of Civil Procedure *should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on day-to-day basis and the final judgment should be given normally within four months from the date of the filing of the suit.*’¹⁰⁶

*Bajaj Auto Ltd v TVS Motor Company Limited*¹⁰⁷ is a Division Bench decision of the Supreme Court. The unanimous decision of the Court was delivered by Justice Markandey Katju. The Court reiterated which was declared in the *Shree Vardhman Rice and General Mills*¹⁰⁸ and further directed that the directions issued in *Shree Vardhman Rice and General Mills* be carried out by all courts and tribunals in this country punctually and faithfully.¹⁰⁹

*Cipla Limited v Union of India*¹¹⁰ is a unanimous Division Bench order of the Court. The Court declared that the:

‘Opposition Board has to conduct an examination of notice of opposition along with the documents filed under the Rules 57 to 60 of the Patents Rules 2003, and then to submit a report with reasons on each ground taken in the notice of opposition. The Opposition Board has, therefore, to make recommendation with reasons after examining documents produced by the parties as per Rules.’¹¹¹

....

‘The Opposition Board in a given case may make a recommendation that the patent suffers from serious defects like lack of novelty, lack of inventive steps etc., so also it can recommend that the patent shall be granted since the invention has novelty, inventive steps etc. Such recommendations are made after examining the evidence adduced by the parties before it. Unless the parties are informed of the reasons, for making such recommendations they would not be able to effectively advance their respective contentions before the Controller. Section 25(3)(b) read with Rule 56(4) cast no obligation on the Opposition Board to give a copy of the Report to either of the parties. So also, no obligation is cast under Section 25(4) or under Rule 62 on the Controller to make available the report of the recommendation of the Opposition Board. But considering the fact that the Report

of the Opposition Board can be crucial in the decision-making process, while passing order by the Controller under Section 25(4), *principles of natural justice must be read into those provisions*. Copy of the Report/recommendation of Opposition Board, therefore, should be made available to the parties before the Controller passes orders under Section 25(4) of the Act.¹¹²

Novartis A G v Union of India,¹¹³ is a Division Bench decision of the Supreme Court. The unanimous judgment of the Court was penned down by Justice Aftab Alam. The Court declared that ‘Section 2(1)(j) of the Patents Act defines “invention” to mean, “a new product or...”, but the new product in chemicals and especially pharmaceuticals may not necessarily mean something altogether new or completely unfamiliar or strange or not existing before. It may mean something “different from a recent previous” or “one regarded as better than what went before” or “in addition to another or others of the same kind”. However, in case of chemicals and especially pharmaceuticals if the product for which patent protection is claimed is a new form of a known substance with known efficacy, then the *subject product must pass, in addition to Clauses (j) and (ja) of Section 2(1), the test of enhanced efficacy as provided in Section 3(d) read with its explanation*.’¹¹⁴

Aloys Wobben v Yogesh Mehra,¹¹⁵ is a Division Bench decision of the Supreme Court. The unanimous judgment of the Court was penned down by Justice Jagdish Singh Khehar. The Court in detail, explained the conditions in which revocation of a patent right can be sought:

‘[I]f the patent was granted, despite there being a valid and genuine claim, of earlier priority; or if the patent was granted to a person not entitled to the same; or if the patent was granted, wrongfully overlooking the rights of another; or if the patent was granted in respect of a matter, which is not an invention; or if the patent was granted in respect of a matter, which was not new; or if the patent was granted in respect of a matter, which is obvious, or does not involve any inventive step; or if the patent was granted in respect of a matter, which is not useful; or if the patent is granted in respect of a matter, which does not fully explain the description, or the working of the invention, to a person having a nexus to the subject to which the invention relates; or if the patent was granted in respect of a matter, which is not distinctly and

definitely ascertainable; or if the patent was granted, on the basis of an inaccurate depiction/portrayal of the matter; or if the patent was granted in respect of a matter, which could not have been granted if the matter had been fully and completely disclosed; or if the patent was granted in respect of a matter, which was already secretly being used in India; or if the patent was granted, despite the failure to disclose the information of prosecuting an application for the grant of a patent, in a foreign country, or if such information had been wrongly furnished; or if the directions of secrecy, issued under the Patents Act, have been violated, or if an application has been made by a person resident in India for the grant of a patent outside India; or if the amendment to the specification of the patent was obtained by fraud; or if the details of the invention, do not disclose (or wrongly disclose), the source or the origin of the biological material used therein; or if the details of the invention, were available within any local or indigenous community in India or elsewhere as under sub-section (1)(q) of Section 64.’¹¹⁶

Court also explained by who and in what situations, an application filed for the grant of patent can be challenged:

‘Section 25 of the Patents Act reveals, that “any person”, and not just a “person interested” (as in the case of Section 64 of the Patents Act), can “represent by way of opposition” against an application filed for the grant of a patent. This opportunity, has been made available, even before a patent has been granted. This opposition to the grant of a patent materializes, after an application for the grant of a patent has been published...[T]he grant of a patent can be opposed, if the applicant for the patent, had wrongfully obtained the invention, from the representationist, who opposes the grant of the patent; or if the application for the patent is published, before the priority date of the claim; or if the application for a patent in respect of an invention is published, after an application for the same invention, has already been published; or if an invention, in respect whereof a patent is sought, was publicly known or used before the priority date; or if an application is in respect of a matter, which is obvious and does not involve any inventive step; or if an application for a

patent has been made in respect of a matter, which is not an invention; or if an application for a patent, has been made in a manner which does not clearly describe the invention, or the method by which it is to be performed; or if the applicant for a patent, has failed to disclose information, about his prosecuting an application for the grant of a patent, in a foreign country; or if the application for a patent, is in the nature of a convention application, and the application was made after more than one year, after the first application was made in a convention country; or if the application for a patent does not disclose (or wrongly discloses), the source or the origin of the biological material used therein; or if the application for an invention, is in respect of a matter which can be anticipated, having regard to the knowledge available within any local or indigenous community, in India or elsewhere as under sub-section (1)(k) of Section 25.¹¹⁷

....

‘A perusal of Section 25(2) reveals that only a “person interested” and not “any person” (as in the case of Section 25(1) of the Patents Act) may challenge the grant of a patent, within one year of the publication of such grant, by issuing a “notice of opposition” to the “Controller”. The above provision also reveals, more or less, generally speaking, such “notice of opposition” to the “Controller” can be made on the grounds depicted in sub-sections (1)(a), (b), (c), (d), (e), (f), (h), (m), and (o) of Section 64 of the Patents Act. The remaining grounds for raising a challenge under Section 25(2), coincide with those contained in Section 25(1) of the Patents Act.’¹¹⁸

....

‘A challenge to the grant of a patent, through a “notice of opposition” is available, on all the grounds of challenge permitted to oppose, an application for the grant of a patent under sub-section (1) of Section 25. There is however a substantial difference in the locus, for raising such a challenge, after the patent has been granted. Whereas, “any person” can “represent by way of opposition”, to an application for the grant of a patent (under Section 25(1) of the Patents Act), only a “person interested” can challenge the grant of a patent by issuing a “notice of opposition” (under Section 25(2) of the Patents Act). On the

subject of locus, therefore, Section 25(2) and Section 64(1), are alike, inasmuch as, the locus to raise a challenge to a patent granted, lies with “any person interested” in both of these provisions. A challenge to the grant of a patent can also be raised by a Defendant in a “patent infringement suit”. This can be done by the Defendant by filing a “counter-claim” in a “patent infringement suit”.¹¹⁹

....

‘When a challenge is raised at the pre-grant stage, under Section 25(1) of the Patents Act, the same is liable to be determined at the hands of the “Controller”. An order passed by the “Controller” can be assailed by way of an appeal before the “Appellate Board”. When a challenge is raised under Section 25(2), it must be raised within one year of the publication of the grant (of patent). The same has to be examined, in the first instance, by an “Opposition Board” contemplated under Section 25(3). The recommendations made by the “Opposition Board” are then to be placed before the “Controller” for consideration. After issuing notice to the patent-holder, and after affording an opportunity of hearing to the patent-holder, the “Controller” is required to pass the final order, on a notice of opposition filed under Section 25(2). Such order passed by the “Controller” is assailable by way of an appeal, before the “Appellate Board”. A challenge raised by “any person interested”, under Section 64(1), is liable to be adjudicated, at the very first instance, by the “Appellate Board”. If in response to an “infringement suit”, the Defendant files a “counter-claim” seeking the revocation of the concerned patent, the said process of adjudication would lie before the jurisdictional High Court.’¹¹⁹

....

‘Section 64...is prefaced by the words “Subject to the provisions contained in this Act...” and not by the words, “Without prejudice to the provisions contained in this Act...” or “Notwithstanding the provisions contained in this Act...” The words with which the legislature has prefaced Section 64, necessarily lead to the inference, that the provisions contained in Section 64 are subservient to all the other provisions contained in the Patents Act. This exordium to Section 64 of the Patents Act mandates, that the directive contained in Section 64, would be

subservient and deferential, to the other provisions of the Patents Act. Stated simply, if there is any provision under the Patents Act, which is in conflict with the mandate contained in Section 64, Section 64 of the Patents Act would stand eclipsed, and the other provision(s), would govern the field under reference. Therefore, no interpretation can be placed on Section 64 of the Patents Act, which will be in conflict with, any other provision(s) of the Patents Act.¹²⁰

....

‘If any proceedings have been initiated by “any person interested”, under Section 25(2) of the Patents Act, the same will eclipse the right of the same person to file a “revocation petition” under Section 64(1) of the Patents Act. And also, to invoke the right granted Under Section 64(1) of the Patents Act, to file a “counter-claim” (in response to an “infringement suit”, to seek the revocation of a patent). This, in our view, would be the natural effect of the words, “Subject to the provisions contained in this Act...”, appearing at the beginning of Section 64(1) of the Patents Act. And if, the above meaning is not to be assigned to the words “Subject to the provisions of this Act...”, they would be redundant and superfluous.’¹²¹

....

‘The Defendant party to a suit for infringement, who seeks to repudiate the charge of infringement, is allowed to raise a “counter-claim”, so as to enable him to raise a challenge, to the validity of the patent assigned to the author of the suit (under Section 64 of the Patents Act). This is so, because a “counter-claim” can be filed only by such person, against whom a suit for infringement has been filed (by the patent-holder).’¹²²

....

‘Unless the context otherwise requires, in terms of Section 2(1)(t)...a “person interested” would be one who is “engaged in, or in promoting, research in the same field as that to which the invention relates”. Simply stated, a “person interested” would include a person who has a direct, present and tangible interest with a patent, and the grant of the patent, adversely affects his above rights. A “person interested” would include any individual who desires to

make independent use of either the invention itself (which has been patented), or desires to exploit the process (which has been patented) in his individual production activity. Therefore, the term “any person interested” is not static. The same person, may not be a “person interested” when the grant of the concerned patent was published, and yet on account of his activities at a later point in time, he may assume such a character or disposition. It is, therefore, that Section 64 of the Patents Act additionally vests in “any person interested”, the liberty to assail the grant of a patent, by seeking its revocation.’¹²³

As to the question that having chosen both the remedies, which one of the two, should the Respondents, be permitted to pursue, the Court observed as under:

‘A “counter-claim” for all intents and purposes, must be understood as a suit, filed by one who is impleaded as a Defendant. A “counter-claim” is essentially filed to obstruct the claim raised in a suit. A “counter-claim” is tried jointly, with the suit filed by the Plaintiff, and has the same effect as a cross-suit. Therefore, for all intents and purposes a “counter-claim” is treated as a plaint, and is governed by the rules applicable to plaints. The court trying a suit, as well as, the “counter-claim”, has to pronounce its judgment on the prayer(s) made in the suit, and also, those made in the “counter-claim”. Since a “counter-claim” is of the nature of an independent suit, a “counter-claim” cannot be allowed to proceed, where the Defendant has already instituted a suit against the Plaintiff, on the same cause of action. The above conclusion is drawn on the basis of the accepted principle of law crystallized in Section 10 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure.’¹²⁴

....

‘Therefore, where an issue is already pending adjudication between the same parties, in a Court having jurisdiction to adjudicate upon the same, a subsequently instituted suit on the same issue between the same parties, cannot be allowed to proceed. A similar question arises for consideration before this Court, in the present controversy. If the Respondents in their capacity

as “any person interested”, had filed a “revocation petition” before the institution of an “infringement suit”, they cannot be permitted to file a “counter-claim” on the same cause of action. The natural conclusion in the above situation would be, the validity of the grant of the patent would have to be determined in the “revocation petition”. Therefore, in the above situation, while the “revocation petition” will have to be permitted to be pursued, the “counter-claim” cannot be permitted to be continued. Therefore, in the above eventuality, it is apparent that the situation would be resolved, in the same manner, as it would have been resolved in cross-suits filed by the rival parties, before different jurisdictional courts. In our considered view, the above conclusion is imperative for a harmonious interpretation of the relevant provisions of the Patents Act.’¹²⁵

....

‘In cases where the “infringement suit(s)” was/were filed by the Appellant herein (as Plaintiff in the “infringement suit”), before the “revocation petition(s)” was/were filed by the Respondents (as Defendants in the “infringement suit”), the Respondents had the right to file “counter-claim(s)” to seek revocation of the patent, under the strength and authority emerging from Section 64(1) of the Patents Act. Having once filed a “counter-claim”, in response to the “infringement suit(s)”, on the same analogy as has been recorded above, it would not be open to the Respondents herein (the Defendants in the “infringement suits”) to file “revocation petition(s)”, as they would likewise be barred by the rule of res judicata. As such, “revocation petitions” filed later in point of time, than the institution of the “infringement suit”, would be unsustainable in law. In such cases, the prayer for revocation of the patent shall be adjudicated, while disposing of the “counter-claim” filed by the Respondents. Therefore, in the above situation, while the “counter-claim” will have to be permitted to be pursued, the “revocation petition” cannot be permitted to be continued.’¹²⁵

....

‘Firstly, if “any person interested” has filed proceedings under Section 25(2) of the Patents Act, the same would eclipse all similar rights

available to the very same person under Section 64(1) of the Patents Act. This would include the right to file a “revocation petition” in the capacity of “any person interested” (under Section 64(1) of the Patents Act), as also, the right to seek the revocation of a patent in the capacity of a Defendant through a “counter-claim” (also under Section 64(1) of the Patents Act).’¹²⁶ ...

‘Secondly, if a “revocation petition” is filed by “any person interested” in exercise of the liberty vested in him under Section 64(1) of the Patents Act, prior to the institution of an “infringement suit” against him, he would be disentitled in law from seeking the revocation of the patent (on the basis whereof an “infringement suit” has been filed against him) through a “counter-claim”. This denial of the remedy granted to him by way of a “counter-claim” under Section 64(1) of the Patents Act...’¹²⁶ ...

Thirdly, where in response to an “infringement suit”, the Defendant has already sought the revocation of a patent (on the basis whereof the “infringement suit” has been filed) through a “counter-claim”, the Defendant cannot thereafter, in his capacity as “any person interested” assail the concerned patent, by way of a “revocation petition”. This denial of remedy granted to him by way of a “revocation petition” under Section 64(1) of the Patents Act.¹²⁶

The Court set aside the impugned order in the terms recorded above and disposed of the appeal in the above terms.

*Glenmark Pharmaceuticals Limited v Merck Sharp and Dohme Corporation*¹²⁷ is a Division Bench decision and *Research Foundation, Science, Technology and Ecology v Union of India*¹²⁸ is a Full Bench decision. In both the decisions, the Court did not declare patent law.

*Monsanto Technology LLC v Nuziveedu Seeds Limited*¹²⁹ is the latest decision of the Supreme Court and the unanimous judgment of the Court was delivered by Justice Navin Sinha. The Court declared that:

‘Section 64 of the Act provides for revocation of patent based on a counter claim in a suit. It necessarily presupposes a valid consideration of the claims in the suit and the counter claim in accordance with law and not summary

adjudication sans evidence by abstract consideration based on text books only. The Code of Civil Procedure provides a detailed procedure with regard to the manner in which a suit instituted under Section 9, including a counter claim has to be considered and adjudicated. The Code mandates a procedure by settlement of issues, examination and cross examination of witnesses by the parties, including discovery/inspection of documents, culminating in the hearing of the suit and decree. A suit can be disposed of at the initial stage only on an admission *inter alia* under Order 12 Rule 6 or when the parties are not in issue under Order 16 Rule 1 and the other grounds mentioned therein.¹³⁰

The Court did not go into the question whether the Nucleotide Acid Sequence (NAS) becomes “a part of the plant or seed” after insertion. Perhaps by not providing certainty, the Court has given a scope of different interpretations. The Court set aside the order of the Division Bench¹³¹ of the Delhi High Court and restored the order of the Single Bench¹³² of the Delhi High Court and remanded the matter to the learned Single judge for disposal in accordance with law. By leaving open this question of patent law, it is very likely that it will receive conflicting answers from the different High Courts, if this question ever reaches to High Courts for adjudication.¹³³

Conclusion

The above analysis reveals that the Supreme Court through its law declaring power under Article 141 of the Constitution of India has answered some of the questions of patent law settling some of the conundrum in the patent law, but has also left some of the questions of patent law open by not answering them. The questions of patent law unanswered by the Supreme Court, if will reach to the High Courts, the possibility of different interpretations by High Courts cannot be ignored. The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021⁸ promulgated last year has abolished the Intellectual Property Appellate Board and provided for direct appeals to the High Court. When the cases are dealt by persons specialized in the subject, a sound outcome can be expected which will also help the judges of appellate courts in deciding such questions in appeal. It is indeed true that Courts while deciding cases do not merely interpret the

statutory provisions but also iron out the creases and construct the law. The above analysis also reveals that the Court has not only interpreted the text of The Patents Act but has also constructed them. Through interpretation-construction, the Court has brought (where it has answered the questions of patent law) certainty to the meaning of the expression used in the statute.

The recently presented 153-pages ‘*One Hundred and Sixty First Report on Review of the Intellectual Property Rights Regime in India*’¹³⁴ in both the Houses of Parliament by the Department-Related Parliamentary Standing Committee on Commerce on 23 July 2021, has recommended that the abolition of IPAB should be reconsidered in wake of its pivotal role in adjudication of IPR appeals and cases.¹³⁴

An analysis of the decisions on the patent law also reveals that the Supreme Court has not only interpreted the text of The Patents Act but has also constructed the meaning of the ambiguous and vague provisions of The Patents Act.

Following principles of patent law may be culled out from the twentieth-century decisions of the Supreme Court:

Object of patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial utility (*Bishwanath Prasad*).

The price of the grant of the monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the monopoly, passes into the public domain (*Bishwanath Prasad*).

Fundamental principle of Patent Law is that a patent is granted only for an invention which must be new and useful (*Bishwanath Prasad*).

A patentable invention, apart from being a new manufacture, must also be useful.

A patent is granted only for an invention which must be new and useful (*Bishwanath Prasad*).

Invention means any manner of new manufacture and includes an improvement and an allied invention (*Bishwanath Prasad*).

Manufacture according to the definition of the term in Section 2 (11) of the Act, includes not only any art, process or manner of providing, preparing or making an article but also any

article prepared or produced by the manufacture (*Bishwanath Prasad*).

In order to be patentable an improvement on something known before or a combination of different matters already known, should be something more than a mere workshop improvement and must independently satisfy the test of invention or an “inventive step” (*Bishwanath Prasad*);

In order to be patentable an improvement must independently satisfy the test of invention or an inventive step. To be patentable the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before (*Bishwanath Prasad*).

A patentable invention must involve something which is outside the probable capacity of a craftsman (*Bishwanath Prasad*).

Novelty and subject matter are obviously closely allied. “Subject matter” is the crucial test, for which they may well be novelty not involving an “inventive step”, it is hard to conceive how there can be an “inventive step” without novelty.’

Mere collocation of more than one integer or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent (*Bishwanath Prasad*).

A patent can be granted only for manner of new manufacture and although an invention may be new and relate to a manner of manufacture it is not necessarily a manner of new manufacture — it may be only a normal development of an existing manufacture (*Bishwanath Prasad*).

It is a necessary qualification of a craftsman that he should have the knowledge and ability to vary his methods to meet the task before him any monopoly that would interfere with the craftsman’s use of his skill and knowledge would be intolerable (*Bishwanath Prasad*).

Prior public knowledge of the alleged invention which would disqualify the grant of a patent can be by word of mouth or by publication through books or other media (*Bishwanath Prasad*).

The “obviousness” has to be strictly and objectively judged (*Bishwanath Prasad*).

Validity of a patent is not guaranteed by the grant (*Bishwanath Prasad*).

Under Section 64 (e), a patent may be revoked if the invention so far as claimed in any

claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the date of the claim, etc. (*Monsanto Company*).

Under Section 64 (1) (f), a patent may be revoked if the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step having regard to what was publicly known or publicly used in India or what was published in India before the priority date of the claim (*Monsanto Company*).

To satisfy the requirement of being publicly known as used in Clauses (e) and (f) of Section 64 (1), it is not necessary that it should be widely used to the knowledge of the consumer public. It is sufficient if it is known to the persons who are engaged in the pursuit of knowledge of the patented product or process either as men of science or men of commerce or consumers (*Monsanto Company*).

Following principles of patent law may be culled out from the twenty-first century decisions of the Supreme Court:

An Act cannot be said to commence or to be in force unless it is brought into operation by legislative enactment or by the exercise of authority by a delegate empowered to bring it into operation (*J Mitra & Company Private Ltd*).

The main difference between Section 25 (1) and Section 25 (2), as brought about by Amendment Act of 2005, is that even after a patent is granted, “post-grant opposition” can be filed under Section 25 (2) for a period of one year. In relation to patents that are of recent origin, a higher scrutiny is necessary (*J Mitra & Company Private Ltd*).

The provisions of Section 78 are conditional provisions and are not intended to cover cases where the application for exclusive marketing right had been rejected with reference to Section 21 of the Patents (Amendment) Act 2005...The effect of the repeal has to be ascertained in the background of Section 6 of the General Clauses Act (*Glaxo Smith Kline PLC*).

In matters relating to patents the proviso to Order XVII Rule 1 (2) of The Code of Civil Procedure, 1908 should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on day-to-day basis and the final judgment should be given normally

within four months from the date of the filing of the suit (*Shree Vardhman Rice and General Mills; and Bajaj Auto Ltd*).

The Opposition Board has to make recommendation with reasons after examining documents produced by the parties as per Rules (*Cipla Limited*).

Copy of the Report/recommendation of Opposition Board should be made available to the parties before the Controller passes orders under Section 25 (4) of the Act (*Cipla Limited*).

While passing order by the Controller under Section 25 (4), *principles of natural justice* must be read into those provisions (*Cipla Limited*).

New product in chemicals and especially pharmaceuticals may not necessarily mean something altogether new or completely unfamiliar or strange or not existing before. In case of chemicals and especially pharmaceuticals if the product for which patent protection is claimed is a new form of a known substance with known efficacy, then the subject product must pass, in addition to Clauses (j) and (ja) of Section 2 (1), the test of enhanced efficacy as provided in Section 3(d) read with its explanation.’ (*Novartis AG*).

Under Section 25 of the Patents Act, “any person”, and not just a “person interested” (as in the case of Section 64 of the Patents Act), can represent by way of opposition against an application filed for the grant of a patent (*Aloys Wobben*).

If there is any provision under the Patents Act, which is in conflict with the mandate contained in Section 64, Section 64 of the Patents Act would stand eclipsed, and the other provision(s), would govern the field under reference (*Aloys Wobben*).

If any proceedings have been initiated by “any person interested”, under Section 25 (2) of the Patents Act, the same will eclipse the right of the same person to file a “revocation petition” under Section 64(1) of the Patents Act. And also, to invoke the right granted Under Section 64(1) of the Patents Act, to file a counter-claim (in response to an infringement suit, to seek the revocation of a patent) (*Aloys Wobben*).

Unless the context otherwise requires, in terms of Section 2 (1) (t), a “person interested” would be one who is engaged in, or in promoting, research in the same field as that to which the

invention relates. A person interested would include a person who has a direct, present and tangible interest with a patent, and the grant of the patent, adversely affects his above rights. It would also include any individual who desires to make independent use of either the invention itself (which has been patented), or desires to exploit the process (which has been patented) in his individual production activity. The term “any person interested” is not static (*Aloys Wobben*).

A counter-claim for all intents and purposes, must be understood as a suit, filed by one who is impleaded as a Defendant. A counter-claim is essentially filed to obstruct the claim raised in a suit (*Aloys Wobben*).

Where an issue is already pending adjudication between the same parties, in a Court having jurisdiction to adjudicate upon the same, a subsequently instituted suit on the same issue between the same parties, cannot be allowed to proceed (*Aloys Wobben*).

Section 64 of the Act provides for revocation of patent based on a counter claim in a suit. It necessarily presupposes a valid consideration of the claims in the suit and the counter claim in accordance with law and not summary adjudication sans evidence by abstract consideration based on text books only (*Monsanto Technology LLC*).

A suit can be disposed of at the initial stage only on an admission *inter alia* under Order 12 Rule 6 or when the parties are not in issue under Order 16 Rule 1 and the other grounds mentioned therein. (*Monsanto Technology LLC*).

References

- 1 Article 141 of the Constitution of India reads as:
'Law declared by Supreme Court to be binding on all courts — The law declared by the Supreme Court shall be binding on all courts within the territory of India.'
- 2 Article 136 of the Constitution of India reads as:
'Special leave to appeal by the Supreme Court.— (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.'
- 3 Decisions of the Supreme Court analyzed in this Article show that writ jurisdiction of the Supreme Court under Article 32 of the Constitution of India has not been invoked

- in patent matters. There is no provision of statutory appeal to the Supreme Court in patent matters.
- 4 Gazette Notification S.O.1049 (E) dated 15 September 2003.
 - 5 Act 38 of 2002.
 - 6 Act 15 of 2005.
 - 7 Ministry of Commerce & Industry's Notification No.12/15/2006-IPR-III dated 2 April 2007.
 - 8 Ordinance 2 of 2021; The Gazette of India, Extraordinary, Part II, Section 1, CG-DL-E-04042021-226364, No. 20, dated 4 April 2021.
 - 9 The Cinematograph Act, 1952 (Act 37 of 1952); The Copyright Act, 1957 (Act 14 of 1957); The Customs Act, 1962 (Act 52 of 1962); The Patents Act, 1970 (Act 39 of 1970); The Airports Authority of India Act, 1994 (Act 55 of 1994); The Trade Marks Act, 1999 (Act 47 of 1999); The Geographical Indications of Goods (Registration and Protection) Act, 1999 (Act 48 of 1999); The Protection of Plant Varieties and Farmers' Rights Act, 2001 (Act 53 of 2001); The Control of National Highways (Land and Traffic) Act, 2002 (Act 13 of 2003); and the Finance Act, 2017 (Act 7 of 2017).
 - 10 The Gazette of India, Extraordinary, Part II, Section 3(ii), CG-DL-E-22042021-226717, Ministry of Commerce and Industry (Department for Promotion of Industry and Internal Trade) (IPR-Estt. Section), No. 1550, S.O. 1668(E) dated 22 April 2021.
 - 11 The Copyright Act 1957 (Act 14 of 1957). The Act came into force on 21 January 1958 *vide* Gazette of India, *Extraordinary*, Part II, Section 3, S.R.O No. 269 dated 21 January 1958.
 - 12 The Patents Act 1970 (Act 39 of 1970).
 - 13 Provisions of sub-section (2) of Section 12 and Sub-section (2) of Section 13, Section 28, Section 68, and Sections 125 to 132 came into force on 1 April 1978; Gazette of India, *Extraordinary*, Part II, Section 3 (ii) *vide* Notification No. S.O. 799 dated 10 March 1978.
 - 14 In respect of provisions (except of sub-section (2) of Section 12 and Sub-section (2) of Section 13, Section 28, Section 68, and Sections 125 to 132) came into force on 20 April 1978; Gazette of India, *Extraordinary*, Part II, Section 3 (ii) *vide* Notification No. S.O. 300 dated 20 April 1978.
 - 15 Act II of 1911.
 - 16 All references to Sections are references to the Sections of the Patents Act, 1970 (39 of 1970), unless otherwise mentioned.
 - 17 *See, Bajaj Auto Ltd v TVS Motor Co Ltd* (2009) 9 SCC 797 [Markandey Katju and A K Ganguly, *JJ.*]; *Shree Vardhman Rice & General Mills v Amar Singh Chawalwala* (2009) 10 SCC 257 [Markandey Katju and A K Ganguly, *JJ.*]. *The name of the judge in bold in the citation of the case refers to the judge who delivered the judgment of the Court.*
 - 18 Section 104 of the Patents Act, 1970.
 - 19 Act 10 of 1897.
 - 20 The expression 'interpretation-construction' has been used in the same sense as explicated by Lawrence B Solum. See, Solum L B, *The Interpretation-Construction Distinction, Constitutional Commentary*, 27 (2010) 95–218.
 - 21 Constituent Assembly Debates (Proceedings), Vol. VIII, 27 May 1949, <http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C27051949.html> (accessed on 15 July 2022).
 - 22 *In Re, The Special Courts Bill, 1978*, (1979) 1 SCC 380. Y V Chandrachud, *CJI*, P N Bhagwati, V R Krishna Iyer, R S Sarkaria, N L Untwalia, S Murtaza Fazal Ali and P N Shinghal, *JJ.*; and *Natural Resources Allocation, In Re Special Reference No. 1 of 2012*, (2012) 10 SCC 1. S. H. Kapadia, *CJI*, D K Jain, J S Khehar, Dipak Misra and Ranjan Gogoi, *JJ.*
 - 23 AIR 1955 SC 661. Sudhi Ranjan Das, *Acting CJI*, Vivian Bose, N H Bhagwati, B Jagannadhadas, T L Venkatarama Aiyar, B P Sinha and Syed Jaffer Imam, *JJ.*
 - 24 AIR 1955 SC 661, 744.
 - 25 Judgment Information System (JUDIS), Writ Petition No. 153 of 1966; Judgment dated 27 February 1967, <https://main.sci.gov.in/judgment/judis/2449.pdf> (accessed on 5 July 2022). K Subbarao, *CJI*, K N Wanchoo, M Hidayatullah, J C Shah, S M Sikri, R S Bachawat, V Ramaswami, J M Shelat, V Bhargava, G K Mitter and C A Vaidialingam.
 - 26 Judgment Information System (JUDIS), Writ Petition No. 153 of 1966; Judgment dated 27 February 1967, p. 46, <https://main.sci.gov.in/judgment/judis/2449.pdf> (accessed on 5 July 2022).
 - 27 Judgment Information System (JUDIS), Writ Petition No. 153 of 1966; Judgment dated 27 February 1967, p. 46, <https://main.sci.gov.in/judgment/judis/2449.pdf> (accessed on 5 July 2022).
 - 28 (1979) 1 SCC 380, Y V Chandrachud, *CJI*, P N Bhagwati, V R Krishna Iyer, R S Sarkaria, N L Untwalia, S Murtaza Fazal Ali and P N Shinghal, *JJ.*
 - 29 H M Seervai, *Constitutional Law of India* vol 2 (2nd edn, Universal Law Publishing Co Pvt Ltd) 1415, para 25.68.
 - 30 *In Re, The Special Courts Bill* (1979) 1 SCC 380, 438.
 - 31 (1988) 2 SCC 580, B.C. Ray and E S Venkataramiah, *JJ.*
 - 32 (1988) 2 SCC 580, 585.
 - 33 1994 Supp (1) SCC 718. L M Sharma, *CJI*, M N Venkatachaliah, J S Verma, K Jayachandra Reddy and S C Agrawal, *JJ.* Unanimous order of the Court.
 - 34 1994 Supp (1) SCC 718, 726.
 - 35 AIR 2002 SC 1598. G B Pattanaik, S N Phukan and S N Variava, *JJ.*
 - 36 AIR 2002 SC 1598, 1606.
 - 37 (2002) 4 SCC 388. S P Bharucha, *CJI*, S S M Quadri, U C Banerjee, S N Variava and Shivaraj V Patil, *JJ.*
 - 38 (2002) 4 SCC 388, 406.
 - 39 (2002) 8 SCC 361. R C Lahoti and Brijesh Kumar, *JJ.* Unanimous order of the Court.
 - 40 (2002) 8 SCC 361, 369.
 - 41 (2002) 2 SCC 420. K T Thomas and S N Phukan, *JJ.*
 - 42 (2002) 2 SCC 420, 425.
 - 43 (2003) 4 SCC 147. Syed Shah Mohammed Quadri and Ashok Bhan, *JJ.*
 - 44 (2003) 4 SCC 147, 157.
 - 45 (2003) 7 SCC 517. Doraiswamy Raju and Arijit Pasayat, *JJ.*
 - 46 (2003) 7 SCC 517, 520.
 - 47 (2006) 8 SCC 212. Y K Sabharwal, *CJI*, K G Balakrishnan, S H Kapadia, C K Thakker and P K Balasubramanyan, *JJ.*
 - 48 (2006) 8 SCC 212, 268.
 - 49 (2007) 3 SCC 557. S B Sinha and MarkandeyKatju, *JJ.*
 - 50 (2007) 3 SCC 557, 569.
 - 51 (2012) 10 SCC 603. S H Kapadia, *CJI*, D K Jain, S S Nijjar, Ranjana P Desai and J S Khehar, *JJ.*
 - 52 Court cited Ronald Dworkin, *Taking Rights Seriously* (5th reprint, 2010) 90.

- 53 (2012) 10 SCC 603, 729.
- 54 (2012) 10 SCC 1. S. H. Kapadia, *CJI*, D K Jain, J S Khehar, Dipak Misra and Ranjan Gogoi, *JJ*.
- 55 (2012) 10 SCC 1, 66–67.
- 56 (2014) 8 SCC 470. K S Panicker Radhakrishnan and J S Khehar, *JJ*.
- 57 (2014) 8 SCC 470, 517–518.
- 58 (2017) 7 SCC 444. Pinaki Chandra Ghose and Rohinton Fali Nariman, *JJ*.
- 59 (2017) 7 SCC 444, 463.
- 60 (2018) 6 SCC 21. JastiChelameswar and Sanjay Kishan Kaul, *JJ*.
- 61 (2018) 6 SCC 21, 55.
- 62 (2020) 17 SCC 602. R Banumathi and Indira Banerjee, *JJ*.
- 63 (2020) 17 SCC 602, 616.
- 64 (2020) 5 SCC 421. R Banumathi, A S Bopanna and Hrishikesh Roy, *JJ*.
- 65 (2020) 5 SCC 421, 445.
- 66 2021 SCC OnLine SC 463. L Nageswara Rao, Hemant Gupta and S Ravindra Bhat, *JJ*.
- 67 2021 SCC OnLine SC 463, para 74.
- 68 2021 SCC OnLine SC 463, para 114.
- 69 The decisions on patent law have been taken from the Judgment Information System of the Supreme Court (JUDIS), <https://main.sci.gov.in/judgments>. For the purposes of citations: Supreme Court Reports (SCR), TruePrint copies from Supreme Court Cases (SCC), SCC OnLine, Patent and Trade Marks Cases (PTC), Supreme Court Almanac (SCALE) and All India Reporter (AIR) have been referred and relied upon. Where, the judgment is not available on the above-mentioned judgment reporters, reliance has been placed on the judgment copy as available on JUDIS.
- 70 *S M Dyechem Ltd v Cadbury (India) Limited* (2000) 5 SCC 573 [M Jagannadha Rao and Y K Sabharwal, *JJ*.]; *A C Muthiahv Board of Control for Cricket in India* (2011) 6 SCC 617 [J M Panchal and Gyan Sudha Misra (Dissenting), *JJ*.]; *Super Cassettes Industries Ltd v Music Broadcast Pvt Ltd* (2012) 5 SCC 488 [Altamas Kabir, S SNijjar and JastiChelameswar (Concurring)]; *Sharat Babu Digumartiv Govt of NCT of Delhi*, (2017) 2 SCC 18 [Dipak Misra and Prafulla C Pant, *JJ*.]; *Abhiram Singh v C D Commachen*(2017) 2 SCC 269 [T S Thakur, *CJI* (Concurring), Madan B Lokur, L Nageswara Rao, S A Bobde (Concurring), Adarsh Kumar Goel (Dissenting), U U Lalit (Dissenting) and *Dr D Y Chandrachud* (Dissenting), *JJ*.]; *Competition Commission of India v Co-ordination Committee of Artists* [A K Sikri and Abhay Manohar Sapre, *JJ*.] JUDIS judgment dated 7 March 2017 <https://main.sci.gov.in/jonew/judis/44649.pdf> (accessed on 8 July 2022); *Excel Crop Care Limited v Competition Commission of India* (2017) 8 SCC 47 [A K Sikri and N V Ramana (Supplementing), *JJ*.]; *Kandla Export Corporation v OCI Corporation* (2018) 14 SCC 715 [Rohinton Fali Nariman and Navin Sinha, *JJ*.]; *Ambalal Sarabhai Enterprises v K S Infraspace LLP* (2020) 15 SCC 585 [A S Bopanna and R Banumathi (Concurring), *JJ*.]. The name of the judge in non-bold and *italics* refers to the judge who wrote a separate or concurring or dissenting or supplementing opinion on his/her behalf or/and on behalf of his/her learned brother/sister judge(s).
- 71 (1979) 2 SCC 511.
- 72 (1999) 1 SCC 655.
- 73 (1979) 2 SCC 511.
- 74 (1979) 2 SCC 511, 517.
- 75 (1979) 2 SCC 511, 517–518.
- 76 (1979) 2 SCC 511, 518.
- 77 (1896) 14 Pat. Ca. 105.
- 78 (1979) 2 SCC 511, 518.
- 79 (1888) 6 Pat. Ca. 184.
- 80 (1979) 2 SCC 511, 518–519.
- 81 (1979) 2 SCC 511, 519.
- 82 4 RPC 407.
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- 84 (1979) 2 SCC 511, 519.
- 85 (1979) 2 SCC 511, 521.
- 86 (1871) 6 Ch. A. 706.
- 87 (1894) 11 R.P.C. 483.
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- 91 (1986) 1 SCC 649.
- 92 (1986) 1 SCC 650.
- 93 (1999) 1 SCC 655.
- 94 (2008) 17 SCC 422.
- 95 (2019) 3 SCC 381.
- 96 (2008) 17 SCC 422.
- 97 (2008) 17 SCC 422–423.
- 98 (2008) 10 SCC 368.
- 99 (2008) 10 SCC 368, 380.
- 100 (2008) 10 SCC 368, 381.
- 101 (2008) 10 SCC 368, 381–382.
- 102 (2008) 10 SCC 368, 382.
- 103 (2008) 17 SCC 416.
- 104 (2008) 17 SCC 416, 421.
- 105 (2009) 10 SCC 257.
- 106 (2009) 10 SCC 257, 258.
- 107 (2009) 9 SCC 797.
- 108 *Shree Vardhman Rice and General Mills v Amar Singh Chawalwala* (2009) 10 SCC 257, 258.
- 109 (2009) 9 SCC 797, 798.
- 110 (2012) 13 SCC 429.
- 111 (2012) 13 SCC 429, 431.
- 112 (2012) 13 SCC 429, 432.
- 113 (2013) 6 SCC 1.
- 114 (2013) 6 SCC 1, 186.
- 115 (2014) 15 SCC 360.
- 116 (2014) 15 SCC 360, 373–374.
- 117 (2014) 15 SCC 360, 377.
- 118 (2014) 15 SCC 360, 377–378.
- 119 (2014) 15 SCC 360, 378.
- 120 (2014) 15 SCC 360, 378–379.
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- 124 (2014) 15 SCC 360, 381.
- 125 (2014) 15 SCC 360, 382.
- 126 (2014) 15 SCC 383.
- 127 (2015) 6 SCC 807.
- 128 (2016) 14 SCC 294.
- 129 (2019) 3 SCC 381.
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- 132 *Nuziveedu Seeds Limited v Monsanto Technology LLC* 2018 SCC OnLine Del 8326.
- 133 Alam G, Monsanto's BT Cotton Patent, Indian Courts and Public Policy, *WIPO-WTO Colloquium Papers*, 10 (2019) 71–89, 87.
- 134 Department Related Parliamentary Standing Committee on Commerce, One Hundred and Sixty First Report on Review of the Intellectual Property Rights Regime in India, Rajya Sabha 23 July 2021, https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/13/141/161_2021_7_15.pdf (accessed on 6 July 2022).