National Law School of India Review

Volume 20 | Issue 2 Article 1

2008

Judicial Activism & Patent Law

P.P. Naolekar

JUDICIAL ACTIVISM & PATENT LAW

Justice P.P. Naolekar*

This article is a study of the role of the judiciary in patent protection in India. It begins with a theoretical exploration of the role of the judicial organ in any democratic society. It explains how the judiciary is not merely the arbiter of disputes but is also instrumental in delivering justice through determining and clarifying the status of law. The article then demonstrates the active nature of the Indian judiciary in patent protection through an examination of case law on the nature of patents and the legal consequences of infringement. The article moves to a brief survey of the landscape of patent law in India in the post-WTO era and concludes with the observation that the judiciary today faces new challenges in the wake of new international obligations, which only enhance its responsibility towards the law and justice.

I. THE ROLE AND RESPONSIBILITY OF THE JUDICIARY IN A DEMOCRACY

India is blessed with the presence of a highly developed judicial system, one whose aim is to ensure that justice is accessible and delivered to all its citizens. This focus on justice and equality is evident in the powers that are available to the judiciary and its actions in the past years. For example, the Supreme Court, at the apex of the judicial system, has been endowed with plenary powers to deliver any pronouncement for ensuring complete justice in any cause or matter.[1] To help the Supreme Court in discharging its obligations, the Constitution prescribes that all authorities, civil or judicial within the territory of India, must

* Judge, Supreme Court of India.

1. Indian Constitution, art. 142; Vineet Narain v. Union of India, A.I.R. 1998 S.C. 889 [Supreme Court]; Supreme Court Advocates-on-Record Association v. Union of India, A.I.R. 1994 S.C. 268 [Supreme Court].

act in aid of the Supreme Court.[2] The High Courts have also been conferred with an extensive writ jurisdiction under the Constitution that is more expansive than is presently perceived, for the same purpose.[3] Moreover, the safeguards under the Constitution, which are built on the foundation of the separation of powers, ensure the independence of the judiciary and its impartiality in the administration of justice.[4]

Similarly, as in any vibrant democracy, the judiciary in India has a central role in restraining the element of arbitrariness in the various actions of the executive. The constitutional courts (i.e. the Supreme Court and the High Courts) are, for this reason, empowered to pronounce upon the legislative competence of law-making bodies and the vires of any legal enactment.[5] Moreover, the scope of judicial review that has been accorded to the constitutional courts in India is amongst the most extensive in the world.

This judicial responsibility towards justice dispensation is not exhausted by placing a check on the powers of other branches of government. In any democratic framework, judges may go a step further and act as the determinants of the law itself. This holds true in the Indian context as well, where the judiciary has been active in not only performing the primary judicial function of interpreting statutes, but in many cases has also filled lacunae in the law. Both these functions are indispensible in determining and clarifying the status of law.

The Indian judiciary has consistently performed the essential task of interpreting statutory laws. Much like the interest in rules during the 1960s and the interest in legal principles during the 1970s, most legal theories in the 1980s had been built around the concept of interpretation. Interpretation has now become one of the main intellectual paradigms of legal scholarship. The need for judicial interpretation has been described beautifully by Gray in his lecture, "Nature and Sources of The Law"–

---

2. Indian Constitution, art. 144.
3. Indian Constitution, art. 226; People's Union for Democratic Rights v. Union of India, (1982) 3 S.C.C 235; Bandhua Mukti Morcha v. Union of India, A.I.R. 1984 S.C. 802 [Supreme Court].
4. M. Katju, *Administrative Law and Judicial Review of Administrative Action*, 8(6) S.C.C. JOUR. 25-34 (2005); A.S. Anand, *Judicial Review - Content & Reach*, A.I.R. (2000) JOUR. 161.
5. Chandra Kumar v. Union of India, A.I.R. 1997 S.C. 1125 [Supreme Court]; J.B. Chopra v. Union of India, A.I.R. 1987 S.C. 357 [Supreme Court]. Even Administrative Tribunals have the competence to strike down ultra vires legislations except their parent legislation i.e. Administrative Tribunals Act, 1985.

> ... (T)he difficulties of so called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.[6]

Judicial pronouncements today are the final word on the question of the intention of the legislature and consequently determine the true content of the law. The Indian judiciary has also used the tool of interpretation to fill gaps in the legal system. Justice Cardozo once acknowledged in his classic "The Nature of the Judicial Process" – "I take judge-made law as one of the existing realities of life", and that: "(N)o system of *jus scriptum* has been able to escape the need of it," and he elaborates: "(I)t is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided."[7]

Over a period of time, these principles of law evolved by judges have received recognition from the Parliament in subsequent statutory provisions.[8] Even at a time at which there was no written constitutional mandate, the courts recognized the existence of specific human rights and took measures to protect them.[9] It is, therefore, widely accepted today that, through the process of judicial pronouncement, the judiciary makes as well as interprets the law.

II. Judicial Involvement in Patent Protection in India

Here, I trace the landscape of intellectual property rights in India and demonstrate the active judicial involvement in the protection of intellectual property rights, using patent law as an illustrative example. The legal regime in India, like in most advanced jurisdictions around the world, provides adequate protection for intellectual property. Intellectual property rights in India date back

---

6. See 5(1) Nyayadeep (2004).
7. B.N. Cardozo, Nature of Judicial Process 15 (1921).
8. Unni Krishnan v. State of Andhra Pradesh, A.I.R. 1993 S.C. 217 [Supreme Court]; National Provincial Bank v. Ainsworth, [1965] 2 All E.R. 472.
9. Justice H.R. Khanna's opinion in ADM Jabalpur v. Shivkant Shukla, A.I.R. 1976 S.C. 1207 [Supreme Court]; Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 [Supreme Court].

to the pre-independence era. An example of legislation protecting intellectual property in India in the early 1900s is the Indian Patent and Designs Act, 1911, which has subsequently been amended various times,[10] and finally repealed by the Patents Act, 1970.[11] Protection of intellectual property in India today finds place in both the Constitution and many statutory instruments.

The Indian Constitution, under Article 300A, guarantees that no person shall be deprived of property, save by authority of law.[12] This provision may be extended to cover intellectual property, and is the basis for ensuring that the inventor/author has the right over his invention/work.[13] The Indian legal system also protects different forms of intellectual property, such as patents, designs, trademarks and service marks, copyrights, plant varieties and Plant Breeders' rights (under consideration of Parliament), trade secrets (along with data protection) and geographical indications, through various legislative enactments.[14] The abovementioned enactments recognize the rights of the owners of intellectual property and the violation of these rights results in the two usual courses of action – civil suits and criminal prosecutions. Therefore, the owner of intellectual property has the option of bringing an action before a civil court or else initiating criminal proceedings against the accused, in the event of infringement.[15] The constitutional provisions guaranteeing equality before the law may be used by aliens and foreign corporations so as to claim such protection as well.[16] This article examines the judicial attitudes towards the protection of intellectual property by concentrating on the law with respect to patent protection in India. The consistent involvement of the judiciary in patent protection is evident both at the level of defining the contours of patent protection and in determining the legal consequences of patent infringement. Both these situations will be elucidated in the following passages.

The judiciary in India has been actively involved in understanding the extent of protection that a patent offers. The concept of a patent is defined under the

10. P. NARAYAN, PATENT LAW 6 (2006).

11. *Id.*

12. A.K. Ganguli, *Right to Property: Its Evolution and Constitutional Development in India* 48(4) J. INDIAN L. INST. 489 (2006).

13. A.K. Lala, *Intellectual Property Protection and the Constitution*, 6 COMPANY L. CASES 363 (2003).

14. See generally L. BENTLY ET AL., INTELLECTUAL PROPERTY LAW (2003).

15. R. SINGH, LAW RELATING TO INTELLECTUAL PROPERTY 1003-1011 (2004).

16. State Trading Corporation of India Ltd. v. Commerical Tax Officer, Vishakapatnam, (1964) 4 S.C.R. 99 [Supreme Court]; Tata Engineering Locomotive Co. Ltd. v. State of Bihar, A.I.R. 1965 S.C. 40 [Supreme Court].

Patents Act, 1970 as "the grant of some privilege, property or authority made by the government of a country to one or more individuals or corporations".[17] It is a fundamental principle of patent law that a patent monopoly can be granted only for inventions that are new, non-obvious and useful, and that have an industrial application. The concept of an invention pertains to the question of whether a particular device or process is new, non-obvious and useful. The requirement of an invention is an important criterion for the grant of a patent and has been defined under Section 2(1)(j) of the Patents Act, 1970 as "a new product or process involving an inventive step and capable of industrial application". These questions are often difficult to decide as it depends upon the state of "prior art" in the particular field, including prior publication on the subject and prior use.

The question of true and first invention was raised as early as 1930 in an old Privy Council case – Canadian General Electric v. Fada Radio in which the court concluded that the "true and first inventor is a person who first made the invention and applied for the patent".[18] The meaning of "patentable invention" has also been discussed by the Bombay High Court in the case of Lallubhai Chakubhai Jariwala, where the Court held –

> [A] patentable combination is one in which the component elements are so combined as to produce a new result or to arrive at an old result in a better or more expeditious or more economical manner. If the result produced by the combination is either a new article or a better or a cheaper article than before, the combination may afford subject matter for a patent. The mere collocation of two or more things, however, without some exercise of the inventive faculty in combining them is not subject matter for a patent.[19]

This definition was considered in Shining Industries v. Shri Krishna Industries[20] where the Allahabad High Court observed that

> An improvement of an old device or method is not patentable merely because it permits a product to be produced more cheaply, or because it produces something which is more merchantable, or more compact

17. Section 2(1)(j), Patents Act, 1970.
18. Canadian General Electric v. Fada Radio, A.I.R. 1930 P.C. 1 [Privy Council]. This case was followed in the case of Bombay Agarwal v. Ramachand, A.I.R. 1953 Nag 154 [Nagpur High Court].
19. Lallubhai Chakubhai Jariwala v. Chimanlal, A.I.R. 1936 Bom 99 [Bombay High Court].
20. Shining Industries v. Shri Krishna Industries, A.I.R. 1975 All 231 [Allahabad High Court].

> or more efficient, or more attractive in appearance. While a greater degree of control may be an improvement, such a change in the absence of performance of a new function, is generally not regarded as an invention.

The Delhi High Court then observed in a subsequent decision – "'invention" means, to find out or discover something not found or discovered by anyone before and it is not necessary that the invention must be complicated, the essential thing being that the inventor was the first one to adopt it."[21]

The meaning of patentable invention was later discussed in Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries where the Supreme Court took the view that an "invention must be inventor's own discovery as opposed to mere verification of what was already known before the date of the patent. A patentable invention apart from being a new manufacture must also be useful".[22] In 1989, the Delhi High Court in *Thomas Brandt* stated:

> the principle is that every simple invention that is claimed, so long as it is something novel and new, is an invention and the claims and the specifications must be read in that light and a new invention may consist of a new combination of all integers so as to produce a new or important result or may consist of altogether new integers. The invention for which a patent is claimed may be a product or an article or a process, and in the case of an article, the patent is in the end product or the article, and in the case of a process, the patent does not lie in the end product but only in the process by which it is arrived at.[23]

The scope of the term "invention" came up for consideration again in the case of Farbwerke Hoechst AG Meister Lucius & Bruning Corpn v. Unichem Laboratories, where the Bombay High Court came to the conclusion that:

There are three stages involved in an invention:

(1) the definition of the problem to be solved, or the difficulty to be overcome;

(2) the choice of the general principle to be applied in solving the problem overcoming the difficulty; and

(3) the choice of the particular means to be used.

---

21. Raj Prakash v. Mangat Ram Choudhury, A.I.R. 1978 Del 43 [Delhi High Court].
22. Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, A.I.R. 1982 S.C. 1444 [Supreme Court].
23. Thomas Brandt v. Controller of Patents, A.I.R. 1989 Del 249 [Delhi High Court].

> Merit in any one of these stages, or in the whole combined, may support the invention, and it is, therefore, more important to consider the advance in knowledge due to the inventor rather than to examine the variations from the former product in detail.[24]

Basing its decision on the criteria of novelty and inventive, the Supreme Court in the case of *Hindustan Metal Industries*,[25] held *"judged objectively, the patent in question lacked novelty and invention as there had been no substantial exercise of the inventive power or innovative faculty. Further, there was no evidence that the patented machine was the result of any research, independent thought, ingenuity and skill"*

The second issue of judicial involvement in consequences of infringement also merits consideration. Under the present patent law regime in India, suits for relief in matters of infringement of a patent can be instituted in the relevant district court having jurisdiction over such matters.[26] However, if there is a counter-claim for the revocation of a patent, the suit and such counter-claim stand transferred to the High Court for further adjudication.[27] The relevant court, in case of vexatious threats of infringement proceedings, is empowered to give a declaration that such threats are unjustifiable and can issue an injunction for their discontinuance or even award appropriate damages.[28] Moreover, in any suit in respect of the infringement of a patent, a court can grant an injunction. The court also has the power to award damages or an account of profits at the option of the plaintiff.[29] Finally, Section 116(2) of the Patents Act, 1970 also provides for an appeal to the High Court against the decision, order or direction of the controller of patents.

The aforementioned statutory safeguards against the infringement of intellectual property rights in the form of injunctions and damages are universally recognized.[30] Apart from the specific provisions that empower courts to issue injunctions under the Patents Act, 1970 and other intellectual property laws, there are provisions under the Specific Relief Act, 1963 for the grant of preventive relief through injunctions – temporary or permanent – at

---

24. Farbwerke Hoechst AG Meister Lucius & Bruning Corp. v. Unichem Laboratories, A.I.R. 1969 Bom 255 [Bombay High Court]; Press Metal Corporation Ltd. v. Noshr Sorabji Pochkhanawalla, A.I.R. 1983 Bom 144 [Bombay High Court].
25. Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, A.I.R. 1982 S.C. 1444 [Supreme Court].
26. A. SHIVADE, INTELLECTUAL PROPERTY MANUAL 343 (LexisNexis Butterworths 2004).
27. N.R. SUBBRAMAN, PATENT LAW 344 (2nd edn., Wadhwa & Nagpur Co. 2007).
28. NARAYAN, *supra* note 10, at 640.
29. NARAYAN, *supra* note 10, at 623.
30. NARAYAN, *supra* note 10, at 593, 623.

the discretion of the court. The relief of a permanent injunction can be granted through the final decree of the court alone on the basis of the merits of the suit. Through such relief, the defendant is perpetually enjoined from the assertion of a right or from the commission of an act that is violative of the rights of the plaintiff. However, the relief of temporary injunction can be granted during the pendency of the suit itself and is regulated under Order XXXIX of the Code of Civil Procedure, 1908.

The concept of reasonable royalty and rates customary in the royalty or license agreements can be adopted as the basis for assessing damages, the loss caused to the plaintiff, and the profits accrued to the infringer. In cases of competitive infringement involving anticipated profits in the same market, the defendant's profits will be the plaintiff's loss. Furthermore, the loss of advantageous market position caused to the plaintiff through the defendants getting a foothold in the market shall also be a part of the overall loss to the plaintiff. There are judicial precedents that provide general guidelines for assessing the loss caused due to infringement and ensure that judges have the discretionary power to provide adequate and just compensation for the loss caused to the plaintiff.[31]

In the next portion of this article, I examine the challenges faced by the Indian judiciary in the field of patent protection after the formation of the WTO and the creation of international obligations.

III. CHALLENGES TO THE JUDICIARY IN THE POST-WTO ERA

The absence of adequate legal protection for intellectual property rights around the world precipitated an international collaboration for a protection regime that culminated in the Uruguay Round of Negotiations on the General Agreement on Tariffs and Trade (GATT) in 1983.[32] These international negotiations resulted in the subsequent creation of the World Trade Organisation (WTO) in 1994 and the introduction of the Trade Related Intellectual Property Rights Agreement (TRIPS).[33] The TRIPS Agreement was by far the most wide-ranging international instrument negotiated on the issue of intellectual property rights. The TRIPS Agreement vested

31. NARAYAN, *supra* note 10, at 593, 623.

32. S.K. Singh, *TRIPs Agreement and Indian Legal System: Some Suggestions* A.I.R. (2002) JOUR. 216.

33. S. Chaudhuri, *TRIPs Agreement and Amendment of Patents Act in India* 37(32) ECON. POL. WEEKLY 3354-3360 (2002).

specific powers in the WTO to enforce intellectual property rights and obliged the state parties to provide for due enforcement of intellectual property rights.[34]

In this manner, the TRIPS Agreement was the most significant endeavor aimed towards the harmonisation of intellectual property laws around the world.[35]

The varied forms of intellectual property, such as copyrights, geographical indications and patents, have been afforded legal protection under the WTO regime. The state-parties to the TRIPS Agreement have also established formal judicial channels in order to better enforce intellectual property rights, and have prescribed stricter penalties to deter possible future infringement of intellectual property rights. India has also made substantial changes in its intellectual property law regime on account of its obligations under the TRIPS Agreement that have, in turn, cast an obligation on the judiciary to interpret existing intellectual property laws in a manner that is consistent with such obligations under international law.[36] The content of international agreements and conventions has become an invaluable aid in the construction of municipal legislations in case of ambiguities. The guiding principle is to interpret such ambiguous municipal laws in light of international law obligations in a manner that harmonises both sources of legal norms.[37] Moreover, in the particular case that an international agreement is incorporated into the text of a statute, such statute should be interpreted in a manner that ensures that the international agreement incorporated has the same meaning and application as has been given across other jurisdictions around the world.[38] This approach is also in consonance with the larger constitutional directive to foster respect for international law and treaty obligations.[39]

The legislative changes brought in the realm of patent law are not only aimed at harmonizing our laws with international treaties such as the TRIPS Agreement but also give effect to various authoritative pronouncements of the constitutional courts. The interpretation of patent laws in consonance with the

34. K.D. Raju, *WTO-TRIPs Obligations and Patent Amendments in India: A Critical Stocktaking* 9(3) J.I.P.R.F.G. 226-241 (2004).

35. M. Pillai, *The Patents (Amendment) Act, 2005 and TRIPs Compliance - A Critique* 10(3) J.I.P.R.F.G. 235-238 (2005).

36. S.K. Verma, *Enforcement of Intellectual Property Rights: TRIPs Procedure & India* 46(2) J. INDIAN L. INST. 183 (2004).

37. Kubic Dariusz v. Union of India, A.I.R. 1990 S.C. 605 [Supreme Court].

38. G.P. SINGH, PRINCIPLES OF STATUTORY INTERPRETATION 572 (10th edn., Wadhwa & Co. 2006).

39. INDIAN CONSTITUTION, art. 51.

objective of these provisions is an added responsibility on the judiciary. The duty reposed is onerous as the judiciary has to give proper direction to these laws so that they are not in conflict with the underlying intention of the legislature. It is just the question of ensuring that the objects of provisions already enacted are made available to one and all.

Article 41 of the TRIPS Agreement stipulates that state parties shall ensure that enforcement procedures permit effective action against any act of infringement of intellectual property rights. These remedies should include expeditious relief to prevent infringement and other appropriate measures which would constitute a deterrent to potential infringement. This provision of the TRIPS Agreement goes on to say that the procedure should be fair and equitable and not be unnecessarily complicated or costly, nor entail unreasonable time limits or unwarranted delays. The provisions of Article 41 of the TRIPS Agreement merit further consideration.

In the wake of India's obligations at the WTO, the Indian judiciary is faced with new challenges while deciding cases on patent protection. The courts are approached by new categories of parties, such as corporations, and have to make decisions keeping mind novel considerations like jurisdiction, international registrations of intellectual property, market reports, etc. The following cases are illustrative of these new challenges.

First, in 1995, two Non-Resident Indians, associated with the University of Mississippi Medical Centre, USA obtained a patent for the use of turmeric in wound healing. However, turmeric has been used as a traditional wound healer in India since time immemorial and the Council of Scientific and Industrial Research (CSIR) challenged the patent on the ground that it lacked novelty. CSIR could locate 32 references (some of them being more than one hundred years old, in Sanskrit, Urdu and Hindi) that showed that this finding was well known in India prior to filing of this patent. The inventors based their argument on the difference of physical attributes in the powder and paste form of turmeric and that someone ordinarily skilled in the use of turmeric would not expect with any reasonable degree of certainty that the powdered form would be useful for the same purposes as the paste form. The inventors further mentioned that oral administration was available only with honey and honey itself was considered to have wound healing properties. However, the examiner rejected all the claims put forth by the inventors and upheld the contentions raised by CSIR. The turmeric patent case is among the first successful cases in the area of intellectual property rights violation.[40]

40. Turmeric Patent Overturned in Legal Victory, 41 HERBALGRAM 11 (1997).

Second, in 2005, India won a 10-year-long battle at the European Patent Office (EPO) against a patent granted to an anti-fungal product derived from *neem*. The EPO had granted the patent to the US Department of Agriculture and the multinational W.R. Grace in 1995, though *neem* derivatives had also been traditionally used to make insect repellents, soaps, cosmetics, tooth cleaners and contraceptives. Under usual circumstances, an application for a patent should always be rejected if there is prior existing knowledge about the product sought to be patented. However, in the United States, "prior existing knowledge" is only recognised if it is published in a journal – not if it has been passed down through generations of oral and folk traditions. The Indian Government still argued that the medicinal *neem* tree is part of traditional knowledge in India and that the fungicide qualities of the *neem* tree and its use as such fungicide had been known in India for over 2,000 years.[41]

Finally, in another case in 2006, the Swiss pharmaceutical major Novartis took the Government of India to court over the 2005 Amendment to the Patents Act, 1970 as it pressed for a more extensive patent protection for its products than was guaranteed under existing law. The dispute arose in January 2006 after a Novartis patent application was rejected on the grounds that the drug sought to be patented was just a new form of an old drug and, therefore, not patentable under existing provisions of the Patents Act, 1970. This provision made it more difficult for pharmaceutical companies to obtain patents on changes to the combinations of drugs or even slightly improved formulations of existing drugs. However, Novartis claimed that this provision was not in compliance with the rules prescribed by the WTO and was also unconstitutional. The relevant rules of the WTO TRIPS Agreement obliged India to begin reviewing pharmaceutical patents in 2005 and India began giving patents in respect of medicines in order to comply with these WTO rules. However, India designed its laws with safeguards to ensure that patents are granted for real innovations alone and that companies seeking a patent for modifications to a molecule already invented in order to extend their monopolies on existing drugs are unable to do the same.[42]

Moreover, as a producer of cheap generic versions of drugs that were still patent-protected in other countries, India had now become a key source of

41. A. Panaganiya, Myths & Realities of Neem-Based Patent, available at http://www.bsos.umd.edu/econ/panagariya/apecon/ET/TOI3-Neem%20and%20 Patents-Jan16-96.htm.

42. J.M. Mueller, *Taking TRIPS to India — Novartis, Patent Law, and Access to Medicines*, 356(6) NEW ENG. J. MED. 541 (2007).

affordable essential medicines for developing countries. In its crucial decision, the Madras High Court upheld the constitutionality of the Patents Act, 1970 along with its recent amendments and rejected all of the claims made on behalf of Novartis. This decision re-affirmed the validity of the patent law regime in India and represents a major victory in the struggle to ensure access to affordable medicines for persons in developing countries.[43]

IV. CONCLUSION

There is pressure on the judiciary today, not merely due to the lack of judicial precedents, but also because of the demonstrable urgency with which parties are seeking relief. The intervention of the court is sought by corporations and individuals desiring immediate remedies. However, the court has to undertake an expansive evaluation of the validity of the patent claim after taking into account several considerations, such as jurisdiction, international registrations of intellectual property, market reports etc. Therefore, even if an intellectual property rights infringement is a "high profile matter" due to the high stakes and commercial sensitivity associated with it, the need for careful adjudication and expeditious decision-making rank highest in the order of priority for the courts.

Procedural reforms are the *sine qua non* not just for expeditious disposal of intellectual property rights disputes, but also for the effective dispensation of justice. Moreover, international co-operation and collaboration amongst the judiciary can also serve as an excellent medium for the development of law and quality of justice. However, the most important role of the judiciary in the realm of intellectual property law is still the efficient enforcement of intellectual property rights. The judiciary is required to play an active role in preventing unauthorized utilization and exploitation of protected intellectual property.

Still, the courts cannot have water-tight compartments with regard to their role towards the protection of intellectual property rights. Herein lies the challenge to the judiciary and the need for a prudent response to the emerging scenario of international protection of intellectual property rights. The present times see the involvement of a more pro-active judiciary that is ready to reform and adapt. The responsibilities of a judge to deliver justice are no longer confined to presiding over a trial and acting as an arbiter between the conflicting positions of the claimant and the defendant. The role of the judiciary, individually and collectively, is now required to be pro-active in the delivery of justice.

43. Novartis AG v. Union of India, (2007) 4 M.L.J. 1153 [Madras High Court].