



INTELLECTUAL PROPERTY AND TECHNOLOGY LAW UPDATES

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Everything has a Price Tag: An Insight into the World of Brand Valuation

By- Samridh Ahuja

I. INTRODUCTION

Brand Finance¹, a leading brand valuation company, has helped in setting ISO 10668, an internationally recognized standard for brand valuation. It lays down the definition of ‘Brand’ as *“a marketing related intangible asset including but not limited to names, symbols, logos and designs or a combination of these, intended to identify goods, services or entities, or a combination of these, creating distinctive images and associations in the minds of stakeholders, thereby generating economic benefits/value.”*²

In layman’s language, brand valuation is the process of calculating the value of a brand or the amount of money another

party is willing to pay for the brand or the financial value of the brand. Before evaluating any brand, two questions must be considered, first, what is being valued - the trademarks, the brand or the branded business and second, what is the purpose of this valuation.

Trademark plays an important role in brand valuation

A trademark in its essence acts as one of the identifiers of the brand but does not reflect the entirety of the brand itself. A layperson may find it hard to distinguish between the two terms i.e. a trademark and a brand, particularly when the trademark represents the entire business like in the case of Google; but the amalgamation of the two terms is generally not advisable. For example- a business with a good reputation in the marketplace may enjoy an advantage over its competitor(s), even if it employs no trademark.³

¹ Brand Finance, See <http://brandfinance.com/> (last assessed on May 24th 2018).

² Brand Finance, “The annual report on the world’s most valuable media brands”, February 2017.

³ John E. Elmore, “The Valuation of Trademark- Related Intangible Property”, See www.willamette.com.

Registered trademark has value

A registered trademark is an intangible asset for any business. A registered trademark can be pledged, sold, franchised or can earn royalty income. Hence, in the case of a business spending money and effort on brand development, it is important to apply for trademark registration at the earliest and obtain a trademark registration certificate.

Purpose of a strong brand

One may ask, what is the purpose for having a strong brand? The answer is simple, at least in the case of commercial brands - to earn money/profits. A strong brand attracts more customers, builds loyalty and also motivates the staff, and ultimately all of it helps in generating more revenues and profits, which is the ultimate goal for any business.

There are various methods for calculating the value of the brand, but this paper shall focus on the one – “Royalty-Relief Approach.”

Royalty-Relief Approach

Leading brand valuation companies calculate the value of a brand by finding the present value of the estimated future cash flows attributable to a brand based on what the company without a trademark would have to pay to license it through a third-party broker.

Brand Strength

“Brand strength is the efficacy of a brand’s performance on intangible measures, relative to its competitors.”⁴ Each brand is allotted a Brand Strength Index (BSI), which is a score out of 100 to help in the calculation of brand value. On the basis of this score, each brand is allotted a rating up to AAA+. The format for calculating brand strength rating is similar to the credit rating format. Three brand strength measures are indicative of brand’s future successes, namely, a) marketing investment, b) stakeholder equity and c) business performance.

⁴ Brand Finance, “*The annual report on the world’s most valuable media brands*”, February 2018.

II. GOOGLE IT

It is important for a business not to underestimate its brand's value. The example of Google sums up this analogy. There was a lot of apprehension during the initial public offering that the term "Google" might become synonymous with "search", which would have in turn resulted in loss of trademark protection.⁵ According to a recent study done in the year 2018, Google as a Brand is worth \$120.9 billion, which is a marked increase of 10% since last year⁶.

III. FAIRYTALES, THEY DO COME TRUE! - THE CASE OF DISNEY

The entertainment giant, Disney takes the lead spot as one of the largest media

brands in the world.⁷ Disney currently has a brand value of \$32.6 billion, which is a 5% decrease since 2017. Disney maintains its brand's appeal with an AAA+ brand rating by focusing on brand loyalty, investments in new technologies and expansion of its valued partnerships and divisions. The company operates in five segments: Media Networks, Parks and Resorts, Studio Entertainment, Consumer Products and Interactive Media. With a brand strength index (BSI) score of 92.3, up from 91.3 last year; Disney is the one of the strongest brands and one of the most interesting to watch in the coming years.

Disney's expansion plan

Disney purchased a majority stake in 21st Century Fox, thus expanding its reach to consumers worldwide. Acquiring companies like Star India – which reaches hundreds of millions of viewers on the subcontinent, and Sky – with presence across the UK, Ireland, Germany, Austria, and Italy, as well as a 60% stake in Hulu –one of Netflix's

⁵ P.T. Shravani, "Trademark valuation: The vital importance of knowing what your mark is worth", YourStory.com, See <https://yourstory.com/mystory/4320d8211f-trademark-valuation-the-vital-importance-of-knowing-what-your-mark-is-worth> (last assessed on May 19th 2018).

⁶ Jessica Tyler, "The 10 Most Valuable Brands in 2018", inc.com, See <https://www.inc.com/business-insider/amazon-google-most-valuable-brands-brand-finance-2018.html> (last assessed on May 19th 2018).

⁷ *Supra* Note 4.

biggest competitors; Disney can now leverage its greater international reach to establish its brand as much more than just a children's favorite.

Disney's recent trademarks⁸

Looking at the trademarks that Disney has recently got registered, we see just how vast the company's trademark holdings in the entertainment industry really are.

- **U.S. Trademark No. 862075578;**
Trademark - "Flavors of Africa"

This recently registered character mark reflects a decision to increase the food items made available through the Boma Flavors of Africa marketplace, situated in Walt Disney World's Animal Kingdom. This trademark was registered specifically in relation to coffee products.

- **U.S. Trademark No. 86337829**

This design mark consists of an illustration drawing, featuring a tilted Mickey Mouse head outline with a large checkmark sign running through it. The trademark was developed for use on a website featuring and providing information on health and nutrition.

- **U.S. Trademark No. 86121929;**
Trademark - "Radio Disney"

Disney's operations over the radio airwaves can be more effectively licensed to broadcasters, owing to the registration of this trademark.

- **U.S. Trademark No. 86261266;**
Trademark - "ScoreCenter"

This trademark is used in relation to electronic scoreboard service for athletic events which is distributed to computers and wireless devices by means of a global computer network. ESPN, the owner of this trademark, is a Disney subsidiary.

⁸ Steve Brachmann, "Disney leverages entertainment IP for business success", IPWatchdog, See <http://www.ipwatchdog.com/2015/05/22/disney-leverages-ip/id=57608/> (last assessed on 29th May2018).

IV. MOST VALUABLE INDIAN BRANDS

Even though US brands lead the lists of most valuable brands, Indian brands are making sure they are rising to the competition. With a billion-strong population, India caters to one of the largest consumer groups, and Disney's acquisition of Star India is a sign that Indian brands are a force to be reckoned with.

Fastest growing IT brand in the world⁹

Tata Consultancy Services (TCS) with a brand value of \$10.391 billion, a 14.4% growth since 2017, has become the world's fastest growing IT brand and is one of the top three most valuable brands in the global IT services sector along with IBM and Accenture.

⁹ Brand Finance, "TCS ranked as the fastest growing IT services brand in 2018", Tata Consultancy Services Ltd., See <https://www.tcs.com/tcs-fastest-growing-it-services-brand-finance-2018>.

V. CONCLUSION

In a world that is obsessed with innovation, technology and rights, brand valuation plays a major role in the growth of businesses. Trademarks form the very basis of brand-building, while contributing to the goodwill/reputation of the business/company; they also contribute immensely in terms of profits/revenues. Companies expand their businesses in uncharted territories by leveraging their reputation in other market sectors. Disney is a significant example of a company that has leveraged its reputation in numerous sectors and has become one of the largest media brands with a brand value of \$32.6 billion in the year 2018. With technological advancements in place, internet has also played a vital role in the growth of brands.

The founder of "Amazon", Jeff Bezos, had once said that the brands are more important online than they are in the physical world; and the success story of Amazon speaks for itself. The e-commerce giant, Amazon, has become

the world's largest internet business and is currently the world's most valuable brand ahead of Apple and Google with a brand value of a whopping US\$150.8 billion, with a year on year increase of 42%.¹⁰ Also, Amazon has moved beyond digital space, by leveraging its brand reputation to other sectors, which is evident through its takeover of Whole Foods for US\$13.7 billion¹¹. Brand, hence, plays a major role in business expansion and revenue generation.

¹⁰ Brand Finance, "*The annual report on the world's most valuable brands*", February 2018.

¹¹ *Id.*

The Menace of Trademark Trolls

By- Shrabani Rout

While the term “patent troll” has entered common parlance in recent years, the term “trademark troll” is less commonly used. However, trademark trolls do exist and can present brand owners with real challenges. In the trademark world, a troll is generally understood as one who attempts to register a mark and then demands payment and threatens litigation against unsuspecting companies that have adopted the same or similar marks. In the field of domain names, such trolls are generally known as cyber squatters.

There are generally two different classes of people or entities that have been accused of being trademark trolls.

1. Opportunistic trademark registrants

Such persons or entities do not actually use or intend to use the

mark but opportunistically attempt to register well-known or recently introduced trademarks registered by a different company in other countries, in anticipation of that company eventually wanting to use it in the troll’s country at some point in the future. By doing so, the troll waits until the original owner decides to use the mark in the country, and then blocks this use on the basis of its "spurious" registration, generally demanding the original trademark owner to pay money in order to obtain a license to use the mark. This is more common in “first to file” countries where usage of a mark is not required to register a trademark and has produced some well-publicized cases in recent years, particularly in China.

For instance, as widely reported by IP and mainstream media, French winemaker Castel Frères SAS experienced trademark trolling when a Chinese court ordered it to

stop all sales of its CASTEL brand wines in China and pay over USD 5 million to Li Dao Zhi (Li), a Shanghai company that had registered the name Ka Si Te, the known transliteration of “Castel.” (2012) No. 166 Zhe Zhi Zhong (2012). While Castel reportedly entered the Chinese market in 1998, and began selling wine under the name Zhang Yu Ka Si Te in 2001, it did not apply to register its CASTEL mark until 2002. In 2005, it became aware that Li had registered the KA SI TE mark in 2000. Castel filed a request to cancel Li’s registration based on non-usage, but during the pendency of the cancellation action, Li began use of the KA SE TI trademark, and Li sued Castel for infringement. The court ultimately ruled in Li’s favor, and Castel found itself in the unenviable position of being labeled an infringer of a mark it had developed more than several

decades earlier.¹² Subsequently, however, Castel appealed the case all the way to the Chinese Supreme Court, and earlier this year it was reported that the Supreme Court had suspended the fine and would retry the case.¹³

Another famous case involved the Tesla Motors family of TESLA marks and logos. In 2009, Zhan Baosheng, a businessman based in Guangzhou and founder of a cosmetics website, registered the TESLA trademark across a range of classes, including cars. Tesla Motors made various offers to purchase the marks, but Mr. Zhan rejected the offers and ultimately demanded a price of USD 32 million, which Tesla rejected. The carmaker sued Mr. Zhan for damages and cancellation of the marks and was initially successful, but Mr. Zhan appealed and sued

¹² 2013) No. 1405 Min Shen Zi (2013)

¹³ Peter Mendelson, Purdue Pharma L.P., Trademark

Trolls: Here to Stay? available on <

https://www.inta.org/INTABulletin/Pages/Trademark_Trolls_7021.aspx>

Tesla for trademark infringement, demanding USD 3.9 million in damages and seeking an order that the company stop all marketing and shut down all showrooms displaying cars with the TESLA marks. In August 2014, the parties entered into a settlement whereby it was decided that Zhan would give up his trademark rights while Tesla would drop its compensation demands in return. Tesla also agreed to buy domain names including tesla.cn and teslamotors.cn from Mr. Zhan for an undisclosed purchase price.¹⁴

2. Suspect Trademark Users

These persons or entities are the ones who claim, without solid reasons, to have used a specific mark, and threaten or bring infringement actions or opposition against any company or individual using and/or registering that mark.

This practice, based on alleged

prior use, is more typical of those legal systems based on common law, and/or where trademark rights are primarily based on usage and not registration (e.g. the USA).

For instance, the most infamous trademark troll is probably US based self-acclaimed entrepreneur, Leo Stoller. He controversially claimed rights to a large inventory of "famous" trademarks and engaged in the assertive enforcement of those alleged trademark rights, threatening infringement action against people and companies who attempt to use similar marks.

One of the primary marks with respect to which Mr. Stoller attempted to enforce his alleged rights was the mark STEALTH. In the Northern District of Illinois alone, Mr. Stoller was involved in at least 47 cases involving trademark infringement. In case after case, Mr. Stoller was unable

¹⁴ (2014) No. 09258 San Zhong Min (Zhi) Chu Zi (2014).

to demonstrate legitimate trademark use or infringement, and the Northern District of Illinois not only ordered him / his corporate entities to pay costs and the defendants' legal fees in several cases, but enjoined him from filing any new civil actions in that court without first obtaining the court's permission. Moreover, in *Central Manufacturing, Inc. v. Brett*, 492 F.3d 876 (7th Cir. 2007), the Seventh Circuit affirmed the decision of the Northern District of Illinois that ordered both payment of the defendant's legal fees as well as the cancellation of 34 of Mr. Stoller's trademark registrations.

Steps to be taken by companies in order to avoid trademark trolls

1. First and foremost, one should file trademark applications as early as possible, not only in

the countries in which one currently does business or manufactures or sources products, but in all countries in which expansion is likely in the future.

2. Filing transliterations of one's marks in the local language including logos.
3. Establish watch services or conduct trademark searches to identify potential trolls at an early stage. Updating the search periodically and scanning local media for references to the mark will help trademark owners keep abreast of local developments.
4. Keeping track of the use of its own trademark in "troll friendly countries" (e.g. file and save invoices, commercial documents, correspondence with distributors, etc.) and always display in a proper way

the mark as registered on products and commercial papers. This would constitute good background evidence on prior legitimate use in case of unexpected/undesired litigation.

Notarization of Foreign Documents in India: A Trademark Law Perspective

By- Samridh Ahuja

The author, through this paper, has reviewed the laws relating to notarization of foreign documents on Indian soil. This paper is restricted to laws relating to notarization, when the foreign party is based in U.K.

I. STATUTES / TREATISE

THE NOTARIES ACT, 1952

Section 14 - deals with the reciprocal recognition of the acts done by foreign notaries. **Under the notification dated August 18, 1960, this section recognizes the existing reciprocity of notarial acts between India and the United Kingdom.**

Section 14 states, *"If the Central Government is satisfied that by the law or practice of any country or place*

*outside India, the notarial acts done by Notaries within India are recognized for all or any limited purposes of that country or place, the Central Government may, by notification in the official gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognized within India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification."*¹⁵

CODE OF CIVIL PROCEDURE, 1908

As stated under Section 139 of the Civil Procedure Code, it can be inferred that the Notary Public is not a person competent to administer oath to a deponent under that section.

Section 139:

"In the case of any affidavit under this Code--

¹⁵ SECTION 14, THE NOTARIES ACT, 1952.

(a) Any Court or Magistrate, or
 (b) Any officer or other person whom a High Court may appoint in this behalf, or
 (c) Any officer appointed by any other Court which the State Government has generally or specially empowered in this behalf, may administer the oath to the deponent."¹⁶

APOSTILLE AND / OR LEGALIZE

Brief history/introduction-

In 1961, many countries joined together to create a simplified method of “legalizing” documents for universal recognition. Apostille is accepted in 105 member-countries of the Convention. Apostille is done for personal documents like *birth/death/marriage certificates, Affidavits, Power of Attorney, etc. and educational documents like degree,*

diploma, matriculation and secondary level certificates etc. Any document Apostilled in one member country is acceptable in all the other 104 member countries, signatory to the referred convention of 1961 thus, greatly simplifying the process of attestation by obliterating the need to get the documents attested in each country or for each of the countries separately.¹⁷

Legalization: The documents need to be legalized in some countries that are not a part of the Convention. The verification process is quite similar to apostillization; however, there is a requirement of an additional Embassy Legalization by the Consular Office of the country in which the document is to be used.

In other instances, there are countries that require further authentication for international acceptance of notarized documents over and above the Apostille.

¹⁶ SECTION 139, CIVIL PROCEDURE CODE, 1908.

¹⁷ Apostille, MINISTRY OF EXTERNAL AFFAIRS, See <http://mea.gov.in/apostille.htm> (last assessed on, May 9th, 2018).

BROOKE'S TREATISE (U.K.)

An excerpt from the Brooke's Treatise, an authority used in English courts, must be quoted to bring clarity to the issue of apostille of affidavits.

"Where, therefore, an affidavit, affirmation, declaration, etc., is sworn or taken before any of the persons mentioned in this rule no verification of the seal or signature is necessary but where it is sworn or taken in a country not under the dominion of His Majesty, before a foreign notary, or before a person authorized by foreign law, the authority and the signature of the notary or other person must be verified. The verification required is a certificate annexed to the affidavit, or other document, certifying that the person before whom it was sworn or taken was duly authorized to administer oaths in the country in which it was sworn or taken and such certificate must be signed by a British Consul or Vice-Consul, or verified by the seal of the High Court or

of a local court of record of the said country."¹⁸

DIPLOMATIC AND CONSULAR OFFICERS (OATHS AND FEES) ACT, 1948

Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, states -

"(1) Every diplomatic or consular officer may, in any foreign country or place, where he is exercising his functions, administer any oath and take any affidavit and also do any notarial act which any notary public may do within a State; and every oath, affidavit and notarial act administered, sworn or done by or before any such person shall be as effectual as if duly administered, sworn or done by or before any lawful authority in a State.

¹⁸ BROOKE'S TREATISE, 8th Edition, Pg. 52-53.

(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto, the seal and signature of any person authorized by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.”¹⁹

II. CASE LAWS

In Re: K.K. Ray (Private) Ltd.²⁰ (15 March, 1967), Calcutta High Court

This case lays down the law on notarization of foreign documents. It basically deals with the question that whether the affidavits affirmed before a Notary Public of a foreign country can be accepted in the Indian Court. The court looks at the reciprocity provision under

¹⁹ SECTION 3, DIPLOMATIC AND CONSULAR OFFICERS (OATHS AND FEES) ACT, 1948.

²⁰ 1967 37 CompCas 737 Cal.

Section 14 of the Notaries Act. This case is important with respect to various statutes mentioned in the judgment and also because it reiterates the concept of apostille of foreign documents.

Key Takeaways:

- Section 14 of the Notaries Act deals with the Reciprocity provision.
- India and UK have an existing reciprocity provision.
- The affidavits must be apostilled in India (right path).

Crocodile Int. Pte Ltd. And Anr. v. Lacoste S.A. and Anr.²¹, Delhi High Court

The parties in this case were engaged in a legal fight over the Trademark and Copyright of, what the plaintiff has described as, Crocodile device. The court also dealt with another rather interesting issue. One of the objections before the

²¹ FAO (OS) 110/2007.

court was - “That the affidavit which had been executed on foreign soil had not been legalized nor apostilled hence, was no affidavit in the eyes of law”²². The court dealt with this issue stating that Diplomatic or Consular Officers were empowered to administer oath and to take any affidavit and also to do the notarial act which a Notary public may do in the State where the Diplomatic or Consular service is functioning. The documents notarized by these officers were therefore, deemed to be validly notarized in India.

But the court further stated that “once a witness had appeared in the witness box under oath, solemnly affirmed the contents of his affidavit which was tendered in evidence, the procedural irregularity in the notarization of the affidavit had disappeared”²³.

Key Takeaways:

- Affidavit drawn on a foreign soil must be apostilled for it to be considered as validly notarized in India.
- The document cannot be thrown out of the court just because it was not apostilled. It is a procedural irregularity which can be cured.
- By appearing before the court as a witness and solemnly affirming the contents of his affidavit which was tendered in evidence, the procedural irregularity in the notarization of the affidavit disappeared.

²² *Id.*

²³ *Id.*

III. CONCLUSION

On the basis of the research stated above, the author concludes that the affidavit drawn by the Trademark Applicant, who was based in U.K, must have been apostilled in India for it to be considered as validly Notarized in India. But in accordance to the law laid down in the judgments stated above, this could be treated as a procedural irregularity which could later be cured.

**Nuziveedu Seeds Ltd. & Ors. v.
Monsanto Technology LLC & Ors.,
C.M. Appl. 13348-13352/2017**

By- Suchi Rai & Aayushi Khurana²⁴

In an appeal preferred over the decision of a single judge of the Delhi High Court, Nuziveedu counter claims in a suit of infringement that the patent granted to Monsanto is liable to be refused. The patent granted to Monsanto included a “nucleic acid sequence” and the process to insert this Bt. Trait gene into the cotton plant seed cell. This Bt. Gene protected the crop from Bollworm, a pest which attacks cotton. Monsanto had been supplying these Bt. Trait seeds to Indian companies such as Nuziveedu by entering into a licensing agreement. The dispute arose when Nuziveedu claimed to be obliged to pay the “trait fee” only, as fixed by the state government, and refused to pay the process fee to Monsanto as determined under the

licensing agreement. In the present suit, relating to infringement of patent, Nuziveedu counter claimed that the patent granted to Monsanto falls within the ambit of Section 3(j) of the Patents Act, 1970, and hence the “nucleic acid sequence” cannot be termed to be an invention for which a patent can be claimed:

“Section 3(j): plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals”

They claimed that the Bt. Trait by itself is not useful nor has an industrial application unless it is integrated with "a plant cell, a seed, a transgenic plant or a plant variety" which falls within Section 3. The trait present in the sequence by itself cannot be sold to farmers. Also, any claims of Monsanto that the gene is a micro-organism excepted within 3(j) of

²⁴ Legal Intern, 4th Year- Symbiosis Law School, Pune.

the Act cannot be sustained as the gene in the present case, cannot exist separately and is not capable of reproduction for it to be treated as an invention.

Monsanto had only provided Nuziveedu donor seeds within which Bt. Trait was contained. Nuziveedu, for the purpose of selling seeds containing this specific trait of repelling Bollworm, had practiced traditional methods and natural biological process to integrate the trait in its own seeds unlike Monsanto which had induced the sequence in the seeds in laboratory conditions. The Bt. Trait that had been induced by Nuziveedu in the seeds cannot be detached by any existing technologies. And for those seeds, so developed Nuziveedu had also taken IP protection under the PPVFR Act, 2001.

Nuziveedu also claimed existence of certain rights under the PPVFR Act. Under Section 30 of the PV Act, Nuziveedu is lawfully entitled to develop its own variety out of the seeds provided by Monsanto subject to the conditions mentioned therein. Moreover, Monsanto

could have entered into a benefit-sharing agreement as enlightened under Section 26 of the PV Act. Involuntary “use” of the gene by anyone cannot be termed as an infringement, as under Section 39 of the Act the farmers have a right to develop a new variety and are entitled to registration of the same.

Monsanto, on the other hand contended, that the legislative intent behind creating Section 3(j) of the Act is to exclude from patenting naturally occurring substances. “Nucleic Acid Sequence” which has Bt. Trait, has to be extracted from the genome of the bacteria, *Bacillus thuringiensis*. Therefore, while the patent granted does not cover a plant or an animal but includes microbiological processes that create transgenic varieties by extraction of gene thereof and hence, patentable under the Act. Moreover, nucleic acid sequence” containing the Bt. Trait, as extracted from DNA cannot be termed as forming a part of “a plant cell, a seed, a transgenic plant or a plant variety” and hence, it does not fall within Section 3(j) of the Act. It was contended

that the suit patent involved processes to be undertaken at a laboratory for extraction of gene and inducing the same, and not naturally occurring processes. Thus, patent granted could not be said to be wrong as there is nothing which in the present case can exist naturally, neither the gene nor the integration thereof.

It was claimed that Monsanto's Bt. seeds could have claimed protection under the PV Act and not the Patents Act. But, on the other hand, it was argued by Monsanto that the PV Act only protects plant "varieties" which includes a plant grouping and excludes traits.

Tracing the history of the Patents Act, Monsanto pointed out that under the 2005 amendment, only process patents could be granted for products developed by chemical processes (including micro-biological and bio-chemical processes). Patent would not be granted for the product per-se. But, this section was completely repealed and the legislative intent behind repealing this provision shows that even when a product is

developed by a micro-biological or a biochemical process as in the present case, patent can be granted for the product and not merely the process.

It was reasoned by the Court that the process of extracting and integrating genes into the plant cells are "essential biological practices" for production and propagation of plants and thus, it cannot be patented. An "essential biological practice" in the current scenario would mean that, without much human intervention, hybridization of cotton seeds with the Bt. Trait can be achieved by following the steps for sexually crossing the genomes of the plants with those having Bt trait and those not having the same. The resultant effect of this crossing produces seeds having Bt. Trait. This was the process that Nuziveedu was undertaking in order to produce seeds having the said trait for repelling Bollworm with the help of the donor seeds provided by Monsanto. Thus, Monsanto cannot exert rights over seeds produced by such hybridization as it is only by an "essential biological

practice” that Nuziveedu is producing such seeds possessing the Bt. Trait.

Moreover, it was concluded by the Court that there is no intrinsic value of the trait itself and they have to be considered as a “part” of the seed. It has to be integrated in order to be useful and not to remain inert. Thus, the patent granted had to be refused on the ground of falling within Section 3(j) of the Act. Monsanto was recommended to obtain protection under the PV Act, 2001.

NEWS BYTES

To popularize the National IPR Policy, approved by the Union Cabinet on May 12, 2016, that aims at “IPR Awareness: Outreach and Promotion”, an Intellectual Property (IP) Mascot- “IP Nani” was launched by the Minister of Commerce and Industry Shri Suresh Prabhu in May 2018. IP Nani denotes a tech-savvy grandmother who helps the government and enforcement agencies in combating IP crimes with the help of her grandson “Chhotu” aka Aditya. The whole idea behind having this mascot is to create awareness in a very interesting manner, about the importance of Intellectual Property Rights (IPR), among people and especially children.

Objective- To sensitize young children about the importance of Intellectual Property Rights, to nurture creativity, ability to innovate and the importance of safeguarding that creation at a very young age.

GLIMPSES OF SINGH & ASSOCIATES PARTICIPATION AT THE 140TH INTA ANNUAL MEETING IN SEATTLE, WASHINGTON

Singh & Associates, Founder Manoj K. Singh, Advocates & Solicitors attended the 140th INTA Annual Meeting held in Seattle, Washington from May 19, 2018 - May 23, 2018. The Annual Meeting was attended by almost 11,000 IP professionals from across the world. This event is of great importance to the Firm as it gives us a chance to meet our existing clients & acquaintances and at the same time make new professional connections. The Firm booked itself a booth within the Exhibition Area and was represented by Mr. Shrimant Singh, Sr. Principal Associate (Patents), Mr. Harsimran Singh, Principal Associate and Ms. Vijaya Singh, Principal Associate (Litigation). The Annual meeting was a success. Few pictures from the event are shared below for our readers.





**SINGH &
ASSOCIATES**

**FOUNDER MANOJ K SINGH
ADVOCATES & SOLICITORS**

NEW DELHI

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