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Author Name: Nagarjun

CROSS-BORDER ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Introduction:-

India has its form of statutory, administrative, and judicial ways of addressing IPR matters. India provides a framework to safeguard Property Rights (IPRs). However, there are still problems rising in IPR related matters which prevent the legal authority to protect Intellectual Property Rights. It's always been a priority about slow judiciary involving lengthy and time-consuming procedure of trial in India, however, in recent years, Indian courts have shown dynamism and zeal for effective protection of property rights. It's been observed that by adopting the right policies and methods, IPR is often effectively protected with the assistance of enforcement authorities.

For any IPR related litigation, it's necessary to know the Indian judiciary and its psychology. It's been observed that the Indian Courts are very active in granting equitable reliefs like injunctions, etc, but are still reluctant in awarding punitive pecuniary damages.

Authorities involved within the Execution of Orders of Courts:-

The Government Authorities including the police are sure to execute and enforce the orders of the court, and intrinsically the courts are empowered to direct any government authority to try to or to not do or prevent/compel a person to suits the orders of the court. There are effective methods for the enforcement of the orders of the court, including Contempt of Court proceedings, which provides for a fine also as imprisonment, just in case of non-compliance with the order of the court. The Local Commissioner/Receivers by the court has another major important duty of executing the compliance of the orders of the court. In India, certain State Governments have formed special property Cells, which affect offenses concerning infringement of IPR.

In any legal action for enforcement of property rights, the subsequent reliefs could also be claimed in such suit and the reliefs are Permanent Injunction; Interim Injunction; Damages; Accounts and delivering of profits; etc.

It is interesting to notice that in India, wherever provisions are made for prosecution for violation of any property Rights, a criminal case is often filed against referred to as well as unknown persons. It's also important to notice that both civil and criminal remedies, wherever applicable, are often availed simultaneously and both the remedies are coexistent.

Competent Court:-

In India, a suit could also be instituted in any court of original jurisdiction, subject to their pecuniary and territorial jurisdiction. About IPR litigation, the designation of rock bottom court is "District and Sessions Judge". These cases also can be filed within the Supreme Court, directly, if such Supreme Court has original jurisdiction. The jurisdictions of the Supreme Court are often invoked, subject to the payment of court fees.

Basic principles:-

Concerns about adequate enforcement of IP rights within the multilateral trading system predate the entry into force of the TRIPS Agreement upon the establishment of the WTO. The Paris and Berne Conventions provide for a few enforcement measures, including infringing imports. A proposal on trade counterfeit goods was developed within the General Agreement on Tariffs and Trade (GATT) in 1978 as a part of the Tokyo Round of trade negotiations but no agreement was reached at that point. Subsequent work led to the inclusion of the Uruguay Round negotiating mandate on IP rights, including the event of disciplines handling international trade counterfeit goods: this mandate led to the conclusion of the TRIPS Agreement.

The TRIPS Agreement is that the only international agreement that has a comprehensive section regarding the enforcement of IP rights. Provisions within the Agreement make it mandatory for WTO members to determine rules for obtaining evidence, for provisional court orders, for injunctions, damages, and other remedies, and measures at the border and criminal sanctions.

The TRIPS agreements apply equally to all forms of enforcement of legal rights. WTO members must grant non-discriminatory treatment to the nationals of all WTO members, and

can't favor their nationals. Individual members can prefer to transcend the precise standards required by TRIPS, provided they continue to be according to the Agreement (for instance, by remaining non-discriminatory); they're also liberal to determine the acceptable method of implementing the Agreement's enforcement obligations within their system and practice. The Agreement's provisions on IP enforcement are subject to the WTO dispute settlement system.

General obligations:-

The general obligations are a group of principles for fairness, transparency, due process of law, and balance that apply to all or any civil and administrative enforcement procedures for IP rights covered by the TRIPS Agreement. The target is for members' laws to allow the proper holder to require effective action against any infringement of IP rights. In doing so, the essential principles of due process of law are to be observed, namely the appliance of fair and equitable procedures, the making available of the choices on the merits of a case to the parties to make sure transparency, and therefore the opportunity for review by a judicial authority of ultimate decisions.

Enforcement procedures must be applied in a manner so on avoids the creation of barriers to legitimate trade. Members also are required to supply comprehensive safeguards against the abuse of the procedures, like the indemnification of the defendant or holder of the products or the supply of security or equivalent assurance by the proper holder when provisional measures or border measures are applied. Members are, however, not obliged to determine specialist IP courts. Nor are they required to redistribute resources between the enforcement of IP rights and enforcement generally.

Civil and administrative procedures and remedies:-

The TRIPS Agreement provides that a right holder must be ready to initiate fair and equitable civil judicial procedures against an infringer of IP rights covered under the Agreement. It also contains disciplines on evidence, the proper of data, and indemnification of the defendant. Judicial authorities must be ready to award three sorts of remedies: injunctions to order a celebration to prevent its infringing action, damages to catch up on the injury caused by the infringement, also as other remedies, like the removal of infringing goods from channels of commerce or their destruction, subject to certain conditions. If so, the TRIPS Agreement requires an equivalent principle to apply to them to the extent that civil remedies are often ordered as a result of administrative procedures on the merits of a case.

Provisional measures:-

WTO members are required to supply prompt and effective provisional enforcement in two situations: to stop an infringement of IP rights from occurring, especially to stop goods. Provisional measures need to be available without prior hearing of the alleged infringer, where appropriate – as an example, where a delay would likely cause irreparable harm, or evidence could also be destroyed.

Border Control Measures for Enforcement of IPR:-

The supply, inter alia, empowers the govt to ban the import or export of products for "the protection of patents, trademarks, and copyrights". The products imported in contravention of the provisions of the Customs Act or the other laws for the nonce effective are susceptible to be confiscated. During this regard, a customs officer is empowered to examine any premises, conveyance, x-ray a person, and effective search and seize just in case where they need reasons to believe that the products are of contraband nature. They will also investigate or interrogate a person and arrest him. The requirements within the TRIPS Agreement on border measures enable holders of IP rights to get the cooperation of customs administrations to intercept infringing goods at the border and to stop the discharge of those goods into circulation. The wants are mandatory only where imports of counterfeit trademark or pirated copyright goods are concerned. Similarly, WTO members aren't required to use border measures to parallel imports (non-infringing products but on the market in another country with the IP owner's permission), to goods in transit, or the importing of small quantities of products of a non-commercial nature. As a general rule, the proper holder must request the customs authorities to require action; there's no obligation on customs authorities to act on their initiative (ex officio), although members may provide for this.

Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007:-

India has notified the Property Rights (Imported Goods) Enforcement Rules, 2007. The principles suit border measures as needed by the TRIPS Agreement empowering the Customs Officers to enforce IPR over the imported products. Actions under Customs Act are independent of the remedies provided under various statutes on property. As per rule 2(b) of the Property Rights (Imported Goods) Enforcement Rules, 2007, the property includes patents, designs, and geographical indications alongside trademarks and copyrights. Upon receipt of the appliance, within the prescribed format, the Customs Authorities may register the

Complaint and enforce Border Control measures for the protection of the Property Rights. It's important to notice that this right isn't unfettered. Certain provisions are also made and an elaborate procedure has been laid down for the discharge of the seized goods upon an application of the importer of the products.

Conclusion:-

If the property system is to form its intended beneficial contribution to the economy and welfare, the tools must be available to make sure that IP rights are respected in an efficient, timely, and accessible manner, alongside the legitimate interests of others concerned. The Agreement on Trade-related Aspects of property Rights (TRIPS) broke new ground in multilateral law by beginning general principles for the enforcement of IP rights. It requires WTO members to form available effective, balanced and fair procedures that provide for necessary remedies while guarding against their misuse and therefore the creation of obstacles to legitimate trade.