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A
fter another year of extensive research into the world’s leading IP firms, we are proud to bring you our latest extensive compilation with the 2021 Global IP Directory.
This up-to-date and exclusive directory lists a host of intellectual property firms from across the globe and does so in alphabetical country order to make the process of searching as streamlined as possible.

CTC Legal Media continues to create this publication to support and encourage intellectual property companies who want to actively promote their expertise with international clients and gain new business around the world. The publication is solely made up of listings, advertisements, and editorials from those firms actively seeking new business, in order to make your process of choosing a suitable law firm as efficient as possible.

Don't forget - all the information in this hard-copy publication is also listed on our websites. To view the full comprehensive list or conduct a concise interactive search by country or company, visit www.patentlawyermagazine.com and www.trademarklawyermagazine.com. All listings on our website will have direct links to the required company’s email address, phone number, and website.

Be sure to also visit http://www.tslawmag.com/ to view the latest issues of The Life Sciences Lawyer.

From all of us here at CTC Legal Media, we would like to thank the entrants for the information they submitted to us, our readers for their continued support, and all our clients for helping to compile this extensive intellectual property directory. We hope you find it to be an invaluable guide to the world's IP firms, and we look forward to working closely with you all in the future.

Best wishes for 2021 and beyond.

Mission statement

The Patent Lawyer and The Trademark Lawyer educate and inform professionals working in the industry by disseminating and expanding knowledge globally. They feature articles written by people at the top of their fields of expertise, which contain not just the facts but analysis and opinion. Important judgments are examined in case studies and topical issues are reviewed in longer feature articles. All of this and the top news stories are brought to your desk via the printed magazine or the website www.patentlawyermagazine.com and www.trademarklawyermagazine.com.
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Known as a country with adverse environment for the protection and enforcement of intellectual property rights, with patent prosecution lasting over 12 years, and obtaining a trademark registration roughly over 6 years, Brazil has been adopting positive and consistent behaviors towards strengthening property rights of intangibles and leaving weak practices behind.

The goal is to become an attractive place for foreign companies and promotion of native-born technology through partnership arrangements under the Innovation Law.

Evident Results in the Reduction of Patent Backlog

In October 2018, the Brazilian Patent and Trademark Office (BPTO) started a pilot project to solve the backlog program and, in July 2019, the BPTO tailored a daring policy so called "Backlog Combat Plan" to reduce in great extent the number of applications for patents of inventions with examination duly requested and pending decision. Resolutions numbers 240 and 241 were therefore published on July 3rd, 2019, later modified respectively by Resolutions 412 of December 23rd, 2020 and 01 of January 7th.

José Carlos and Bruna Valois of Vaz e Dias Advogados provide an in depth overview of the changes to Brazilian IP law.
is to conclude 80% until July of 2021. making a considerable difference.
streamline, and set common understanding on uniform legal decisions on patent matters and Attorneys has been positively acting to set companies to obtain trademark protection and published by our firm in different technologies. “USPTO Brazil PPH Program”, the “Technology for programs such as PPH Programs, including by complementing other relevant fast track Combat Plan” initially published in 2019, was speeding up the prosecution for possible patent procedure already concluded overseas, thereby grant or rejection.
It is important to further state that the “Backlog Combat Plan” initially published in 2019, was a step forward from the fast track initiative, by complementing other relevant fast track programs such as PPH Programs, including “USPTO Brazil PPH Program” the “Technology for Health Treatment Priority Program”, and the “Green Pilot Programs”, among others covering different technologies.
Yet, as it has been informed in an article published by our firm in The Patent Lawyer of January/February 2020, the BPTO’s State Attorneys has been positively acting to set uniform legal decisions on patent matters and streamline, and set common understanding on diverse decisions issued by different examiners, making a considerable difference.
The result reached so far has been positive with the publication of preliminary office action for 65% of the 149,912 pending. The BPTO’s goal is to conclude 80% until July of 2021.
Trademark Prosecution in 12 Months and the Madrid Protocol
The prosecution timeframe for trademarks has been reduced to 12 months, which has permitted the BPTO’s procedure to match the Madrid Protocol demands. The efforts to reduce the backlog and maintain the quality of the services have permitted Brazil to join the Madrid Protocol, which became effective as of October 2, 2019. The Madrid Protocol eases the way for foreign companies to obtain trademark protection and reduce expenditures, since single filing via the Madrid system permits protection in the 120 signatory countries. This flexible filing extends to local companies and complies with the policy of internationalization of local trademarks.
Alongside the Madrid Protocol, the BPTO has adopted procedures commonly accepted in other jurisdictions, such as the multiclass system and the co-ownership of trademarks. The co-ownership agreements have been extensively used, but they were not accepted for recodification at the BPTO, which in a sense, raised doubts about their enforceability before the courts.
The multiclass system and the co-ownership agreements led to modifications of procedures and, therefore, assisting Clients, as statements at the BPTO require the authorization of all co-owners; Notwithstanding, oppositions and other procedures for supporting the registration may be led by only one owner.
Local Courts Ready to Support IP Protection
Brazil is one of the pioneers in South America in establishing specialized courts on IP matters, on both state and federal levels, as well as in the first and second instances. The advantage is that specialized courts can monitor and adapt to developments in the IP sphere and deliver decisions with more expertise. They also allow judges to access greater knowledge in a legal field not extensively taught at the faculties of law and therefore expedite court proceedings.
The Industrial Property Law (Law 9,279/96) initially envisioned in its Article 241 the creation of specialized courts to settle conflicts related to IP rights – a trend that became reality in 2001 when the federal courts created a specialized structure that specifically addressed IP rights by establishing four federal trial courts. This novelty was carried on by the setting up of two specialized appellate panels at the Second Federal Regional Court.
Those courts – the first and second instance – deal with challenges to the BPTO’s decisions that either rejected applications or granted IP rights, including patents, trademarks, utility models and industrial designs. A leap forward in this direction was also taken at the State Court of Rio de Janeiro with the creation of seven chambers on business law matters, including IP rights. State courts are empowered to address IP infringement (including copyright and software-related matters) disputes concerning private parties. As a result, the state court is the appropriate venue for patent and trademark owners, for example, to request injunctive reliefs both in the civil and criminal arena and obtain losses and damages from acts of IP violation and unfair competition.
Notably, specialized IP courts have also been able to substantially reduce the timeframe for proceedings regarding IP matters. Final decisions at first instance level of the business law chambers of the State Court of Rio de Janeiro are reasonably rendered within 24 months as from the suit filings in trademark matters and within 36 months for patent violations, depending on the complexity of the case. Additionally, ex parte preliminary injunctions may be obtained within one or two days. In order to safeguard rights and cease violations, these injunctions can be grounded on urgency or evidence of rights both in the case where there is a risk of losing a right (urgency) and in the event that strong claims and rights of one of the parties (evidence) are presented, regardless of the presence of “effective risk of imminent and irreparable damage”.
The success of the specialized courts of Rio de Janeiro hit the courts in the state of São Paulo, which created two specialized IP first instance courts for its Capital District, two appellate chambers, composed by ten specialized judges and, furthermore, two other specialized IP first instance courts to serve as its 1st Judicial Administrative Region. Other Brazilian states have followed suit, such as the courts of the state of Minas Gerais that also inaugurated two specialized IP first instance courts.
Having specialized courts is a tendency that has clearly established itself in Brazil and other modern jurisdictions.
Business Transaction and Technology Transfer Agreements
Regulations applicable to technology transfer and license agreements have also been modified with more flexibility to secure royalty remittances overseas, although recordation at the BPTO is still required. Resolution number 199 was issued by the BTO on July 7, 2017 which restricted the BTO’s examination strictly to the formalities of the agreements, not on its content or merit. This means that the BPTO no longer applies the foreign exchange control laws. Instead, it verifies if the licensed patent, trademark and other IP rights is valid and effective in Brazil. Some formalities that are observed are such as the notarization and the apostille under the Hague Convention of the agreement.
One should bear in mind that remittances overseas can only take place when the licensed trademark and/or invention mature into registration or the patent is granted by the BPTO. Therefore, enlisting patents and trademarks duly filed and protected in Brazil is a requirement.
The law on franchising has been recently modified and updated by Federal Law 13.966 of December 26, 2019. This law reinforced the requirement of delivery of a Franchise Disclosure Document to a franchisee candidate at least ten (10) days before the execution of the franchise agreement or pre-agreement and/or receipt of any amounts related to franchise business. Among the developments of the Law, we point out the business recognition of the franchisor-franchisee relationship and the consequent removal of the applicability of Consumer and Labor laws in the relationship. With this determination,
the case law understanding is confirmed and affirms the inexistence of labor relationship between franchisor-franchisee and between franchisor and franchisee’s employees.

Also, arbitration was explicitly stipulated as an adequate arena of contractual resolution thereby dissipating any court inquiries on acceptance of arbitration.

Although the New Franchise Law does not establish mandatory clauses or template agreements that franchisor/franchisee should follow, it establishes the obligation of the franchise agreement to be officially translated into Portuguese.

**Innovation Law and Great Leap Forward to Protection and Investment**

The Innovation Law (Federal Law 10,973/2004 modified by Law 13,243/2016) has adopted several mechanisms for the partnership between local and foreign companies and Brazilian universities for R&D Projects. Among the mechanisms has been the taxation relief for the local companies that invest directly in R&D, including exemption to income taxes for the payment of royalty remittances to a foreign partner that holds relevant technology for the R&D.

Therefore, there is an increasing number of business transactions by means of Development Project Agreements, involving American and European companies that want to participate in the local development of technology.

Concurrently, there is a clear incentive for local companies and universities to file their invention in several markets, thereby enhancing the internationalization of local companies.

The business result from transactions under the Innovation Law has created the belief that strong intellectual property protection is beneficial to the local market, as it fosters native technology.

**Final Comments**

It is clear that the changes to the Brazilian IP system in the last five years have strengthened the protection of technology and intangibles, creating a favorable environment for business and local technological developments.

An efficient system for IP protection and enforcement is beneficial to those involved in the development and exploitation of intangibles, mainly of technological nature.
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British Virgin Islands
How to register a trademark in the British Virgin Islands

Thornton Smith / British Virgin Islands

How to register a trademark in the British Virgin Islands

Jamal S. Smith, Founder and Principal of Thornton Smith, provides a step-by-step guide on trademark registration.

The registration process in the British Overseas Territory of the Virgin Islands, commonly referred to as the British Virgin Islands, can be divided into four stages: (1) pre-application stage; (2) application stage; (3) publication stage; and (4) certificate stage.

1. Pre-application stage
   (a) Inspection of the register
   Before filing the application for registration, it is possible to search the register of trademarks during normal business hours for any identical or similar trademarks.

   (b) Registrar’s opinion
   In addition to a search of the register before filing an application for registration it is possible to request the Registrar’s Opinion on the registrability of the trademark prior to filing the application. The Registrar’s Opinion can be used to support the application for registration.

2. The application stage
   (a) Trademark owner
   The trademark owner must authorize the filing of the application. It is possible to change the name and/or address of the trademark owner during the application process and after registration. The trademark owner may also change by assignment, transfer or other operation of law before the completion of the application process since the registration will take effect from the date of filing.

   (b) Trademark agent
   The application must be filed by a registered trademark agent and it is possible to change a trademark agent at any time. There is no statutory requirement for an instrument of appointment such as a power of attorney or authorization of agent and the relationship is one of agreement between the trademark owner and the registered trademark agent. However, unlike a registered trademark agent in the United Kingdom, a BVI registered trademark agent is not exempt from the statutory prohibition against drawing up or preparing any legal instrument, including relating to any trademark. Any registered trademark agent that is not also qualified to practice law in the British Virgin Islands can only file the statutory forms and serve as liaison between the Registrar and the trademark owner but cannot prepare any trademark document or give legal advice on the statutory forms or other trademark document.

   (c) Non-English characters
   It is possible to register trademarks using non-English words, letters or characters such as Arabic, Chinese, Devanagari or Cyrillic characters. When foreign numerals and foreign script are used in a trademark, the application for registration must be accompanied by a certified translation into, or equivalent meaning or transliteration in, the English language of those foreign numerals or foreign script.

   (d) Representation
   A trademark would include a brand, color, device, figurative element, heading, label, letter, name, numeral, shape, signature, smell, sound, taste, ticket or word, or any combination of signs. Regardless of the form it takes, the trademark must be capable of being represented graphically. This would be straightforward for word marks, or a device or figurative mark which can be represented by a picture or drawing. However, with respect to olfactory marks it is expected that there will be guidelines issued by the Registrar to allow the representation of smells by some special mechanism since providing a graphic representation through chromatography, for example, has not been acceptable elsewhere, and the position would have to be the same for any gustatory mark that attempts to depict a taste. The same would not be true of sound marks, since it is quite possible to produce a musical notation or score to satisfy the requirement of graphical representation, and a sound spectrograph can depict pitch, progression and volume, and therefore, be capable of graphically representing the sound for purpose of registration. As a result, it is quite possible to register jingles. A shape mark may also cover packaging that has no intrinsic shape of its own, like liquids or pellets. Although a color can itself be registered as a trademark, the color of the trademark may also be used to determine the distinctive character of a trademark. Limiting a trademark to a particular color or specific colors may help to determine the distinctive character of the trademark. A trademark that is registered without limitation of color is registered for all colors.

   (e) Priority
   Although the British Virgin Islands is not a Paris Convention Country it is possible to claim priority based on an application filed in a Paris Convention Country or a WTO Member within six months of the first application. It is possible to claim a different priority date for different goods or services based on different applications.

   (f) Classification
   The application must include a statement of the goods and/or services in accordance with the Nice Agreement concerning the international classification of goods and services adopted on 15 June 1957 as subsequently amended or revised. The current version is the 11th edition of the Nice Classification which came into force on 1 January 2017. It is also possible to make a single application with respect to several classes.

   (g) Intention to use the trademark
   The applicant must give a declaration of use of the trademark in relation to the goods or services in respect of which it is sought to be registered or there is an honest intention to use the trademark, or allow it to be used, in relation to the goods or services concerned.

   (h) Examination
   After the Registrar receives an application, he or she must examine
the application in order to ensure that it meets all the requirements for registration, including any requirements that may be prescribed by rules. If the Registrar is satisfied that all the requirements for registration have been met, then the application will be accepted. Alternatively, if the Registrar is not satisfied that all the requirements for registration have been met then the Registrar must issue a defective notice to the applicant.

4. The certificate stage
If after publication there have been no successful written objections or oppositions, the trademark will be registered as of the filing date of the application. The Registrar will enter it on the register, issue a certificate of registration, which is prima facie evidence of the registration, and publish notice of the registration.

A BVI registered trademark agent is not exempt from the statutory prohibition against drawing or preparing any legal instrument, including relating to any trademark.

3. The publication stage
Once the application has been accepted by the Registrar there is no notice of acceptance given by the Registrar and it is merely published in the Gazette. After publication, the applicant can still withdraw or amend certain aspects of the application, but once the application has been published any amendment or withdrawal of the application must also be published.

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The direction of China's history: the highest compensation judgment in new trade secrets litigation with 159 million damages

Ray ZHAO of Unitalen Attorneys at Law provides an in-depth case analysis of the recent Chinese trade secret case that broke the high-water mark for damages.

The Intellectual Property Tribunal of the China Supreme People’s Court made a second-instance judgment on trade secrets case on February 19, 2021. (2020) No. 1667 of the Supreme People’s Court, and announced live on February 28, a week later, that the total amount of compensation was RMB 159,321,671.20 (hereinafter referred to as RMB 159 million). It has become the highest compensation in the history of China’s trade secret cases, exceeding the effective maximum judgment compensation in patent cases.

Some years ago, Chinese company CHNT Group once sued Schneider Electric for infringement of a utility model patent, and the compensation was 335 million RMB in the first instance, but the two parties reached a settlement of 157.5 million RMB in the second instance, which was slightly less than the 159 million RMB in this trade secret case.

For China’s recent trade secret cases, the judgments are basically at the level of from 100 thousand RMB to 1 million RMB, but there are many first-instance judgments which do not come into force yet at the level of 10 million RMB recently. For patent infringement cases, one of the most typical second-instance judgment is Gree VS AUX that AUX compensated for 40 million RMB.

Facts

Plaintiffs are Jiaxing Zhonghua Chemical Co., Ltd. (hereinafter referred to as "Zhonghua Chemical") and Shanghai Xinchen New Technology Co., Ltd. (hereinafter referred to as "Shanghai Xinchen"). Defendants are Wanglong Group co., LTD. (hereinafter referred to as "Wanglong Group"), Ningbo Wanglong technology co., LTD. (hereinafter referred to as the "Wanglong technology"), Xifu Lion Wanglong Spices (Ningbo) co., LTD. (hereinafter referred to as the "Xifu Lion"). Fu Xianggen (trade secret contact people) and Wang Guojun (legal representative of Wanglong Group).

Meanwhile, Zhonghua Chemical and Shanghai Xinchen filed an application for act preservation with the first-instance court on January 30, 2019. On the same day of the judgment of the first instance, the court of first instance made an order of act preservation:

1. Wang Long Technology and Xifu Lion immediately stop the production of vanillin using the involved technology secrets;
2. Wang Long Group, Wang Long Technology, Xifu Lion and Fu Xianggen shall not disclose or allow others to use the technical secrets involved in the case.

After the ruling is made, if none of the parties has applied for reconsideration, the ruling shall be deemed to be effective.

In the second instance of the Intellectual Property Tribunal of the Supreme Court, there were seven issues:

1. How should the law be applied in this case?  
The conclusion is that the punitive damages of 2019 cannot be applied. Therefore, the Anti-Unfair Competition Law of 2017 shall be applied.

2. Whether Shanghai Xinchen has the right to file a lawsuit in this case?  
The conclusion is: YES, it is the common right holder.

3. Whether the limitation of action has expired?  
The conclusion: not expired.

4. Whether the case constitutes repeated prosecution?  
The conclusion is that there is no double prosecution.

5. Whether the involved technical information constitutes a technical secret?  
The conclusion: YES, it meets the four statutory constitutive elements of technical secrets.

6. Whether Wang Long Group, Wang Long Technology, Xifu Lion, Fu Xianggen and Wang Guojun have infringed the technical secrets involved in the case?  
The conclusion is that the sued infringer’s use of 185 equipment drawings and 15 process flow charts illegally obtained from the right holder constitutes a joint infringement, and Wang Guojun, as the legal representative, also constitutes a joint infringement. In fact, Xifu Lion constitutes the professional infringer.

Whether it is appropriate for the court of first instance to determine the liability for damages, the expenses for safeguarding rights and the sharing of legal costs?  
Conclusion: There is change of damages.

7.1 The amount of compensation is based on three different ways calculated by the plaintiff: operating profit calculation (178 million), sales profit calculation (156 million) and price erosion calculation (791 million).

7.2 The court took many factors into consideration for damages including the bad infringement means, the big volume of involved technical secret, bad faith of infringement, high commercial value of secret technology, the two producers are engaged in infringement all the time, severely impact on the right holder’s the global market, refused to submit sales data, such as not enforce the act preservation ruling.

7.3 Difficulty in applying punitive damages. The ruling, while clarifying the case and pointing out the way to protect trade secret, will also prompt more thought. For example, the procedure of first instance and second instance, finding facts, injunction, etc., the meaning of the infringer of the infringement as the industry, the judgment of the amount of compensation, price erosion, punitive compensation, the joint infringement of the legal representative of the infringing company, the combination of civil and criminal, etc.
This case can be said to be the first case of “favorable time, geographical location and harmonious relationship” in China’s intellectual property cases.

There are many favorable factors in the time of day. Perhaps the only thing that is not “friendly” is that punitive damages cannot be applied on the statute of limitations. At the same time, the Intellectual Property Division of the Supreme Court conducted the second instance.

“*It has become the highest compensation in the history of China’s trade secret cases.*"

3. Zhonghua Chemical Company and Shanghai Xinchen Company applied for less than 20 patents, and they chose trade secret protection as the main choice, which was a good strategy for the compound products with difficult technology such as vanillin. Of course, Zhonghua Chemical also sued Wang Long Technology for patent infringement in 2013 and got 800,000RMB compensation.

The alleged infringement has already been suspected of trade secrets criminal charge, and the court will transfer relevant clues to the public security organs in accordance with the law.

In the intellectual property rights, the patent and trademark sings the main tune for certain period of history. Now we are in the digital information age, the trade secret begins to sing!

There are three more points that should not be ignored, even admirable:

1. The R&D achievements of Shanghai Xinchen have broken the monopoly and green technology. Zhonghua Chemical has transformed its R&D into global commodities and occupied more than 50% of the global market, but it has not been widely reported.

2. The Zhonghua chemical company and France rhodia company once occupied 90% of the world’s market of vanillin, intellectual property rights war between two parties, the Chinese chemical industry as the plaintiff and the defendant were all successful, one was that in 2014 rhodia sued the Zhonghua chemical for patent infringement in the Hague, Zhonghua Chemical finally invalidated rhodia involved the patent. Another one, in Shanghai, China Chemical sued Rhodia for infringing trade secrets, and the two sides finally reached a settlement.

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The new agreement between Google and French publishers, bad or good news?


As you may know, in January of 2021 it was announced that Google and the French publishers achieved a new agreement with the objective to remunerate the editors for the extracts of their news that google shows on its platform.

This agreement is the result of the implementation in France of the European Union Directive of 2019, according to which the service provider of the internet has to remunerate the editors of press articles for the reproducing of its works or a portion of those.

With the aim to avoid the payment, Google decided to just not publish the content from the French source, but there was an injunction measure in a process of antitrust behavior against google that made the platform sit with the publishers and negotiate the price.

The entire story left some questions in the air, what is going to happen in the countries where, for whatever reason, they can’t reach the same result? Is Google just going to decide not to reproduce the content in order to avoid making payment? This rebounds directly in the free speech and information rights of the users.

But on the other side, is this the best way to assure the balance between owners of copyright and users? What is going to happen to fair use?

We agree that Google, in the measure, has the dominant position in the market and has some burdens that it would not have if there was no mentioned position, but what is going to happen if, in the close future, the editors are just not comfortable with the price, or what is going to happen to the exceptions like current news or short extracts? This implies, at first sight, the annulment of the fair use, that in the case of France is translate as “exceptions of droit d’auteur, and the excessive empowerment of the editors to manage the information and in this form, the free speech right of the users.”

This makes us conclude that the balance between copyright is in the hands of copyright owners and the giants of the technology, and no longer in the hands of the lawmakers and courts, which is the worst scene that we could imagine in the field of the protection of intellectual property in the specific field of the internet.

Resumé

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- India Business Law Journal, 2020: Manisha Singh recognized as one of India’s Top 100 Lawyers, The A-List
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- India Business Law Journal, 2019: Manisha Singh recognized as one of India’s Top 100 Lawyers, The A-List
LexOrbis provide an overview on non-bailable and cognizable IP offenses with reference to recent cases.

In a recent decision in the case of Piyush Subhashbhai Ranipa v State of Maharashtra [Appl No. 336 of 2021], Bombay High Court clarified questions surrounding the nature of offences under intellectual property statutes. While deciding on the maintainability of an anticipatory bail application filed in connection with a case registered for selling substandard goods bearing fake trademarks, the court went on to decide a larger issue as to whether offences punishable up to three years, under laws other than Indian Penal Code, are non bailable.

As regards the circumstances leading up to the criminal complaint against the Applicant; it was filed by the zonal officer of Jain Irrigation System, a pipe manufacturing company, after he caught the consignment of pipes bearing a fake trademark of the company. The Applicant was charged with the offences under Section 63 of Copyright Act (intentional infringement or abetment to infringement of copyright), 103 of Trademarks Act (counterfeiting) and relevant provisions of Indian Penal Code. It was alleged that the Applicant was the manufacturer of the fake goods which were being marketed / sold at his instance.

To decide the maintainability of anticipatory bail application, the question for the court to address was whether offences under Section 63 of Copyright Act and Section 103 of Trademarks Act are non-bailable and cognizable. Court answered this question in affirmative. To understand this finding and full context of the issues; we will start by taking a close look at the applicable law, starting with the definition of ‘bailable offence’ under Criminal Procedure Code (CrPC), which says:

“Bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force and “non bailable offence” means any other offence.

Part II of First Schedule of CrPC classifies offences against laws other than Indian Penal Code, into three categories, Item II and III whereof are relevant here. Item II provides that all offences which are punishable with imprisonment for three years and upwards but not more than seven years, are cognizable and non-bailable. Item III, on the other hand, makes the offences punishable with imprisonment for less than three years or with fine only, non-cognizable and bailable.

Both Section 63 of Copyright Act and Section 103 of Trademarks Act prescribe a minimum imprisonment of six months which may extend to three years. Conjoint reading of these provisions and First Schedule of CrPC, leads to varying interpretations. Core ambiguity lies in the question whether an offence for which the maximum permissible imprisonment is three years would fall under Item II or III. This confusion is not limited to intellectual property statutes. There are many more which contain provisions embodying similar language i.e., “imprisonment extending to three years”. The last two decades have seen conflicting judgements originating from various courts in India, thereby failing to lay down a single guiding principle to remove the ambiguity.

Around 25 years back, the decision in the case of State of Maharashtra v Shri. Suresh Ganpatrao Kenjale 1995CriLJ2478 offered some guidance on the issue. While addressing a question if offences under Prevention of Corruption Act are bailable or not, court held, “while construing whether an offence is bailable or non bailable it is not the minimum sentence which can be awarded under the law, is required to be seen but the maximum sentence which can be awarded under the law has to be seen”.

Kerala High Court followed the similar interpretation, in the case Abdul Sathar v Nodal Officer, Anti Piracy Cell [AIR2007Ker212], to hold that the offence under section 63 falls within
It is yet to be seen if other High Courts follow the same interpretation.

Item II as the maximum term of punishment prescribed therein is three years. Guwahati High Court took the same view in the case of Jitendra Pratap Singh vs State of Assam, (2004)2GLR271.

Delhi High Court, however, held otherwise in Govt of NCT Delhi v Naresh Garg, 2011(46)PTC121(Del). Throwing some light on the legislative intent, the court observed “it would be fruitful to refer to the provision of Section 63 of the Act which empowers a police officer not below the rank of Sub-Inspector to seize the infringing copies of any work. If the offence had been cognizable and non-bailable, there was no necessity to specifically authorize the police officer with the power of seizure”.

Last year, with a view to put an end to all confusion; Rajasthan High Court placed the following question for resolution by a larger bench, in the case of Nathu Ram v State Ref.No.1/2020.

“What would be the nature of an offence for which imprisonment “may extend to three years” occurring in classification II under Part II of First Schedule has to be construed to include the offences punishable with imprisonment for a term to the extend of three years. Thus, for determination of nature of offence, the maximum punishment that may be awarded for particular offence, is relevant and not the minimum sentence’.

Bombay High Court has principally relied upon the above interpretation of Rajasthan High Court to hold that offences under section 63 of Copyright Act and 103 of the Trademarks Act are non-bailable and cognizable.

Though Bombay High Court attempted to resolve the issue by appointing an amicus curie and penning down a detailed judgement, however, it is yet to be seen if other High Courts follow the same interpretation, or if the divergent views continue to flow in, keeping the statutory ambiguity alive. It is important to decide the question, though, because nature of the offence decides the rights of the parties and the entire procedure followed in its adjudication including the process of investigation. It is often debated that CrPC should be amended to supply an explanation, however, statutory amendment is a long drawn and complicated process. It makes more sense for the apex court to confirm the position. Clarification could be issued with respect to the meaning of “imprisonment extending to 3 years” in light of the First Schedule of CrPC, for all courts to follow the uniform interpretation. In the alternative, contextual reading of each statute in question could help. For example, the fact that a court inferior to a metropolitan magistrate or a judicial magistrate of first class has no power to try an offence under Copyright Act, is enough indication of legislative intent to make the offences under Copyright Act cognizable.
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Many things changed worldwide last year, and Mexico’s Intellectual Property Law is not the exception. The rules concerning intellectual property enforcement have changed significantly as a result of the recent signing of the USMCA (the Free Trade Agreement between Mexico, the United States of America and Canada).

The most important change within the IP realm in Mexico has been the implementation of the new Industrial Property law, now entitled Federal Law for the Protection of Industrial Property, effective as of November 5, 2020. This new law brings important changes in different areas including a more precise protection for industrial secrets, an apparent support of the generic pharma industry, an increase in the fines for infringement and the inclusion of new provisional measures that can be actioned against e-commerce sites. However, it is the new damage claim procedure that attracts the most attention.

During implementation of the previous law, the claim for damages in Mexico was a slow and expensive procedure, consisting of a two-phased process:

1) A declaration for infringement had to be filed before the Mexican Institute of Industrial Property (IMPI or MPTO) to obtain an administrative ruling, which could be appealed before the administrative courts.

2) Only after the infringement ruling became final, was it possible to file the claim for damages before a civil court, that would consider the infringement as res judicata, but would still have to resolve if a damage was in fact inflicted, and if such a damage held a causation connection with the infringement.

With the new law, the plaintiff may choose from two different proceedings to claim for damages based upon a violation of an IP right: an administrative or civil proceeding.

The first option is to file an infringement action before the IMPI, who currently has the authority to quantify the damages that may be caused to the rights owner. Under these circumstances, once the infringement is declared and the plaintiff can prove damages and their causation, it is possible to request the IMPI to quantify and determine the damages.

This proceeding provides two main advantages for a plaintiff: (i) the time to claim damages is much shorter and the matter can be resolved by a specialized authority; and (ii) it is also possible to settle the conflict through a conciliation proceeding, where the settlement agreement between the parties will be sanctioned by the IMPI and considered res judicata.

We consider that the possibilities of a beneficial settlement for plaintiffs will increase...
considerably because, in addition to damages, for each cause of infringement the defendant is exposed to a contingency of up to USD$1,000,000, making it more likely to settle the case before its ruling, to avoid a fine of that nature.

For clarity, we share a diagram of the first procedure below:

The second option is to initiate the damage procedure before the civil courts, for which, unlike with the previous law, an infringement ruling by the IMPI is no longer required. This reduces time significantly since there is no need to obtain a firm declaration of infringement by the IMPI and confirmed by the administrative courts, to claim for damages.

However, it is important to take into consideration that, if the defendant argues that the right being infringed upon is invalid and has brought an annulment proceeding before the IMPI, then the civil claim for damages will be suspended until a final ruling is issued on the annulment procedure.

For clarity, find a diagram below, useful to understand the variables of this option:

These new proceedings may raise questions as to which of them make more sense for each case, but they open the possibility to obtain rulings on damages in a shorter period of time, which has always been a problem for rights holders in Mexico.

In that sense, and as complicated as these new procedures for claiming damages may seem, the truth is that this reform is great news for rights holders in Mexico who now have the opportunity to decide the path they wish to pursue, whether a civil or administrative proceeding.

From our point of view and based on our experience, the method to claim damages depends on the needs of each case and the purpose pursued by the plaintiff. However, as a general rule, the path to claim damages via an administrative procedure could be more efficient, taking into consideration that when the procedure is conducted by the IMPI, an authority specialized in the subject matter would be the party performing the detailed study of the consequences and therefore the determination of damages.

In addition, if the nullity of the IP right, on which the action is based, were to be filed, this same authority would resolve it, an aspect that would reduce the time to obtain a ruling.

Another important aspect of the administrative damages claim is that it requires an infringement procedure, which will help strengthen the arguments within the damages claim procedure, and in addition, when it is resolved, will impose a fine on the defendant, (that was increased considerably) causing an incentive to pressure the defendant to reach an agreement that benefits the rights owner.

It is for this reason that we consider that administrative litigation will provide more options to the plaintiff to reach a more efficient ruling either through a conciliation or a ruling on infringement and determination of damages by the IMPI. Nonetheless, civil litigation can be an adequate option for certain cases when it is clear that the IP right upon which the claim is based will not be challenged, and the added pressure of the administrative fines is not needed to reach an agreement.
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Peru
The entrepreneur during pandemic times

Luis Gayoso Frayssinet, Managing Partner of Estudio Colmenares & Asociados, discusses the increased use of e-commerce in Peru as a result of the pandemic.

There is no doubt the COVID-19 has affected all businesses and their economies around the globe. The government-imposed quarantine in Peru presented many challenges to businesses forcing them to turn to their savings to sustain themselves. Unfortunately, depending on their developing field, many companies have disappeared or are struggling to survive. However, with a dose of resilience and perseverance many entrepreneurs have managed to reinvent themselves and adapt to this new normality. Many have innovated through e-commerce and have created a new business model that has become successful during these challenging times.

Statistics
Peruvian entrepreneurs maintain their desire to move forward and have established new business ideas. Just in the second half of the year 2020, the number of trademark applications for registration in Peru have increased considerably in relation to the two years previous:

<table>
<thead>
<tr>
<th>Year</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Applications from June to December</td>
<td>14,749</td>
<td>22,199</td>
<td>23,276</td>
</tr>
</tbody>
</table>

The increase in applications is mostly attributed to locals seeking opportunities in these difficult times. A significant portion of the applications are in the food, clothing, and hygiene sectors since these products and services have been in the highest demand due to the closing or transformation of countless establishments.

According to a survey made by a Peruvian firm Ipsos, from 28 countries, Peru is in third place in regard to the economy invested by entrepreneurs and their entrepreneurial spirit. They evaluated things like work ethic and the ability to make calculated risks for their businesses (Hansen, 2021). The report revealed that a high percentage of people have started an e-commerce business during the pandemic. This is relevant because entrepreneurialism is a good indicator of economic recovery as this pandemic continues. Since many small businesses have disappeared or are struggling, a renewed economy will depend on the citizen’s resilience and their adaptation capabilities.

Evolution and adaptation to changes should be present in every businessman and entrepreneur. This is the message that resonates in these challenging times that we are all facing.

Additional Facts
- Peruvian cuisine is highly recognized around the world. For eight consecutive years Peru has won the award for best culinary destination of the world. This means that we have become very demanding about our gastronomy and its quality. Several high-end cuisine restaurants have survived the harsh pandemic restrictions due to a very professional service in terms of security measures, delivery speed, and the extraordinary quality.
- The Peruvian “Pima” cotton is considered one of the finest in the world, it has exceptional durability, softness, and a brilliant luster as its main characteristics. This is all due to the ideal growing conditions in Peru’s coastal areas and the hand harvesting work of many artisans. There are thousands of clothing manufacturers in Lima at different levels of the processing chain. The entrepreneur can issue a smaller investment to start a high-quality clothing business that sells online without the costs of having to rent a physical store, hire employees, etc.
- With the e-commerce business model in full throttle and the majority of people working remotely from home, many companies, shops, offices, etc., have been forced to cut their physical spaces. This situation has created an oversupply of establishments and business premises for rent and purchase.

The e-commerce is positioned to stay
This pandemic has definitely changed our way of life. Zoom meetings, remote schooling, online shopping and social media are more present than ever. This new form of living will definitively stay with us regardless of the pandemic outcome. Before COVID-19, in Peru, the e-commerce business model was used by few people and now such use has grown exponentially.

There has been a spark in the entrepreneur spirits of many Peruvians that have come up with new creative business ideas. Due to this, e-regulations have appeared at the consumer rights institution when there is a problem with the provider (delays, non-compliance, etc.).
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Spring Clean your Intellectual Property records to maximise returns

One Stop IP explains why it is vital to keep track of your IP assets and how they can help.

When I left school I won an apprenticeship at an International Engineering firm. One of my first placements was as the assistant to the business Commercial Director - a man with a fearsome reputation of not suffering fools and as sharp as a needle. I was lucky enough to be taken under his wing and mentored through the early part of my career. He had an encyclopedic knowledge of the innovation and brands that made up the business portfolio of Intellectual Property (IP) Assets. He would, in any negotiation, be able to quote the license agreements or contract clauses from memory. His advice was simple. If you want to understand a business, you need to know what IP a business owns and how it uses it. When he retired most of that corporate knowledge was lost and the business suffered as a result.

Fast forward to the present day. Alongside the more traditional forms of IP, businesses now have a broader spectrum of intellectual property assets including domain names, business social media accounts, digital license agreements etc. This means that there are even more assets for an IP Manager to keep track of and manage.

However, the issues that were clear 25 years ago are even more relevant today: how many businesses have a clear view of all the IP assets and agreements that they have in place? Managers of a business IP will always start out with good intentions and have IP management and filing systems that contain maybe their trademark or patent portfolio certificates or a list of all their agreements, but as the business introduces a new service or acquires a new operation or sells another, a single list of assets and agreements quickly multiplies. Add in factors such as staff turnover or a change of business name or address along the way and things can get complicated very quickly resulting in missed, lapsed, lost, or forgotten IP assets. I am sure most IP professionals have experienced an instance where IP rights have inadvertently lapsed and they’ve had to deal with the consequences.

There are so many fantastic IP attorney firms and IP management tools out on the market these days, but they are only as good and complete as the data that is collated and updated to support them. Having a complete list of all the assets and agreements that exist is essential for any service provider to deliver to a customer the best service provision.

When I started One Stop IP eight years ago, I wanted to create a business that helped clients to better understand and then maximise the value of their IP. A fundamental part of achieving this was to design and implement suitable policies and procedures to identify new IP for their business and ensure existing IP was well protected.

What I actually found was that businesses needed to, first of all, take a step back and start by undertaking an audit of their existing IP portfolio. This step routinely identifies the known “problems”, and most of the time the unknown issues, such as: lapsed IP rights; out of date addresses; out of date address for service information; multiple providers for the same service; paying for services or assets that have been forgotten or are no longer required. This “tidying up” is often seen as expensive and time consuming. However, from our experience the savings generated from consolidating the services and removing the costs of services set up years before and never reviewed, can actually save businesses, on average, 24% of the total IP spend annually.

We are yet to find a client who doesn’t find the process beneficial. In fact, one Attorney said to me that the type of audits we regularly undertake should be carried out by all of their clients on a regular basis to keep their IP Portfolio current as possible. Unfortunately, it is something that they either struggle to do well or worse, fail to prioritize high enough on their to do lists and it ends up being forgotten about until it comes to the forefront when something goes wrong.

The audit process can help to locate key legal documents relating to use or ownership of a client’s IP that have been forgotten about and which, if their existence had been known about earlier, could have saved a great deal of time and money. For example, we helped a multinational firm avoid costly and lengthy litigation which would have restricted them from filing key brand related trademarks. This was done by helping to locate a number of important historic agreements that offered rights of use and registration for certain trademarks that had been long forgotten about.

How many businesses have a clear view of all the IP assets and agreements that they have in place?

The data management process cannot be a one off and we schedule regular audits at agreed intervals to ensure the data is kept at pace with the assets as they change and evolve. So what can businesses do to keep the knowledge of their assets up to date?

1) Where possible have a consolidated list of all the business’ IP assets and have an annual review to ensure that all information is up to date and searchable.

2) Include all assets, not just the traditional patents, trademarks and designs but consider including social media, domains, and trade secrets as these can often be ignored and represent a key asset in the digital world.

3) Agreements and licenses that pertain to multiple IP assets need to be cross referenced to those assets from the start. Adding a cross reference summary that identifies which assets are affected by an established agreement is a great start.

4) Where possible keep a list of all the service agreements the business has around their IP assets and the purpose of that service as too often a fee for retained service is paid.

One Stop IP explains why it is vital to keep track of your IP assets and how they can help.
We helped a multinational firm avoid costly and lengthy litigation which would have restricted them from filing key brand related trademarks.

The key to any process is keeping it relevant to the business. IP, during this time of rapid change, will be more essential to the success of modern businesses than ever. The more a business can ensure that the hard work put in to gaining their IP assets and agreements over the years is understood and built upon, the better chance it will have of being able to weather the likely turbulent times ahead.

For all the talented IP professionals and services that are available today, the adage that my old mentor said is still true: You can’t hope to develop and protect new innovation without understanding the foundations upon which it has been built.

One Stop IP provides a wide variety of consultancy solutions to businesses to help them better manage their IP in a commercial way whilst minimizing the cost of the day-to-day management and maximizing the return on their IP investment.

5) Have a clear IP transition process on the acquisition of any business as often small but vital elements (e.g., domains) get overlooked and can be difficult and expensive to consolidate further into the process.

6) Try and link the review to the internal business compliance process as this helps ensure it is undertaken regularly.

7) The protection gained by a business can so easily be lost if it is not widely visible to more than one single member of staff. It is therefore important that key knowledge and access to information does not reside with one individual.

“We helped a multinational firm avoid costly and lengthy litigation which would have restricted them from filing key brand related trademarks.”

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IPR enforcement in Vietnam

Nguyen Thi Hong Anh, Partner and Head of IP&T Practice Group at Indochine Counsel, summarizes the treatment of IPR infringements under administrative, civil and criminal statutes.

Regulations on IPR enforcement in Vietnam include the Law on Intellectual Property (the “IP Law”), Civil Code and Civil Proceedings Code, Criminal Code and Criminal Proceedings Code, Customs Law, Law on Handling Administrative Violations, and regulations guiding the implementation of those Laws. Accordingly, IPR infringements can be handled under administrative, civil and criminal statutes. This article summarizes the procedures under all three.

Administrative procedure
Handling of IPR infringements under administrative procedures occurs upon a written request by the IPR holder, or at a decision of a competent authority upon its own detection of infringement. Any request for handling IPR infringements must be accompanied by evidences of the legitimate rights of the IPR holder, and for identifying the infringer and alleged infringement. Administrative sanctions applied to an IPR infringer comprise main sanctions, additional sanctions and orders for applying measures remedying the consequences of infringement. Main sanctions include fines of a maximum of VND250 million (about US$10,650) for individual infringers or VND500 million (about US$21,600) for organizational infringers.

Authorities handling IPR infringements comprise Specialized Inspectorates, Market Surveillance Agencies, Customs Offices, Specialized Police Officers, and Provincial People’s Committees. In practice, most IPR infringements are handled by the Market Surveillance Agencies and Specialized Inspectorates.

Civil procedure
IPR infringements under civil procedure are handled upon petitions to the jurisdictional court by IPR holders. Civil remedies include: order to terminate the infringement; order of public rectification and apology; order for performance of civil obligations; order of compensation for damages; and order on destruction, distribution or use for non-commercial purposes.

The principle of compensation for actual material damages and spiritual injury is applied in calculating damages. Compensation for actual material damage may be determined on the following bases, and may include reasonable costs for legal services:

(i) The total physical damage determined as the income including profits gained by the infringer as a result of infringement if reduced profits of the IPR holder have not yet been included;
(ii) The value of the grant of license to use the trademark with the presumption that the infringer has been granted the license to use that trademark to the extent equivalent to the act of infringement;
(iii) Where it is impossible to determine the compensation in accordance with items (i) or (ii), compensation shall be fixed by the court depending on the loss level but not exceeding VND500 million (about US$21,600).

Compensation for spiritual injury ranges from VND6 million to VND50 million (about US$256-2,160), depending on the seriousness of the spiritual injury.

At the request of the IPR holder, the court may apply prescribed injunctive relief including injunctions on seizure, attachment, sealing, prohibition from changing status or removal, and on prohibition from transferring ownership.

The IPR holder must deposit an amount equal to 20% of the value of the suspected infringing goods, if possible of evaluation, or at least VND20 million (about US$850) as a guarantee for damages.

The Peoples’ Court at the district level or, for cases relating to foreign elements, at the provincial level handles civil lawsuits for IPR infringement.

Criminal procedure
Both corporations and individuals may be subject to criminal liability if they commit one of the following acts without consent from the IPR holder on a commercial scale: earn prescribed illegal profits, cause loss at prescribed amounts or if the infringing goods are valued at more than VND100 million (about US$4,300).

Penalties sentenced to individual offender range from a fine with the maximum level of VND1 billion (about US$43,000) or three-years imprisonment with an additional fine of up to VND200 million (about US$8,600) or prohibition from holding certain positions or doing certain

Under prevailing laws of Vietnam, border control measures of IP-related imports and exports can be applied in respect of copyrights and related rights, patent rights, design rights and trademark rights.
works for up to five years. Corporate violators may be fined at a maximum level of VND3 billion (about US$129,000) or with suspension of associated business activities for two years and a fine up to VND300 million (about US$12,900) in respect of acts listed in (i) and (ii) above, or up to VND$200 million (about US$85,000) for acts listed in (iii) above, or be banned from operating in certain sectors or raising capital for up to three years.

The Peoples’ Court at the district level or, for cases relating to foreign elements or complex cases, at the provincial level handles criminal cases of IPR infringement.

Border Control Measures of IP-related imports and exports

Border control measures are performed at the IPR holder’s request and for the purpose of detection and collection of evidence of infringement. Subject to the IPR holder’s request, searching and monitoring may be applied for two years, extendable for a period of two years but not exceeding the valid duration of the IPRs.

Upon notification of the Customs Office, the IPR holder may submit a request for suspension of customs clearance procedures for suspected goods for the time period of 10 working days, extendable for a maximum of 10 working days, provided the IPR holder makes a guarantee, which may be a deposit equal to 20% of the value of the suspected goods, if capable of evaluation, or of at least VND20 million (about US$850), or alternatively, to submit a deed of guarantee issued by a bank or other credit institution. Upon expiration of the time limit for suspension of customs clearance, if the applicant fails to initiate civil proceedings and no decision is made under administrative procedures by the relevant customs office, the suspected goods will be released and the IPR holder must compensate for damages caused to the owner of the suspected goods as well as pay related expenses such as fees for storage and preservation of goods.

Under prevailing laws of Vietnam, border control measures of IP-related imports and exports can be applied in respect of copyrights and related rights, patent rights, design rights and trademark rights. This scope of application is broader to requirements in TRIPS and the Progressive Agreement for Trans-Pacific Partnership (the “CPTPP”), both of which Vietnam is a member. This is scheduled to be amended in a currently circulating draft law for further amendment and supplementation to the IP Law (the “Draft Law”). Under the Draft Law, border control measures would be limited to goods suspected of infringing the rights of trademarks, geographical indications and pirated copyrights and related rights. The Customs Office would have the right to suspend customs procedures for suspected counterfeit goods at their own discretion.

In general, although facing challenges, especially in the context of increased deployment of e-commerce, IPR enforcement in Vietnam has improved. And with the Government’s stated intellectual property strategy through 2030, it is hopeful that IPR enforcement in Vietnam will further improve in access and effectiveness.

Indochine Counsel is a leading business law firm in Vietnam, with strong IP & technology practice in Indochina, including the following:

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