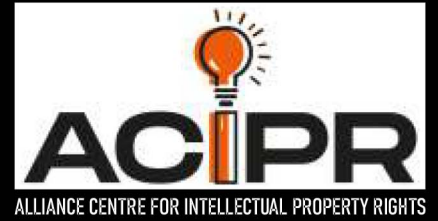




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**Alliance School of Law**



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# ACIPR Bulletin

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Alliance Centre for Intellectual Property Rights (ACIPR) is established with an aim to evolve as a Centre of excellence in IPR Research and innovation. It intends to engage academicians, jurists and practitioners in research and training on the promotion and protection of IP rights. The Centre is an initiative of Alliance School of Law, Alliance University for making active research contribution in the niche areas of all forms of IP rights. It aims to give special emphasis in fostering research & development in the unexplored areas of IP. ACIPR strives to evolve into a breeding ground for innovators & creators, thereby making a positive change in the development of these rights at national & regional levels.

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# MESSAGE FROM THE EDITOR-IN-CHIEF

There is no limit to the power of the human intellect and the innovation is his own. This is the principle foundation of Intellectual Property Rights (IPR). IPR are the rights given to persons over creations of their mind, to protect and preserve their interests and prevent exploitation. In this era of rapid innovation, the field of IPR has experienced significant growth and shows no signs of slowing down. Creators are more aware of the value of their creations and are taking measures to protect it.

We are proud to present the inaugural ACIPR Bulletin Newsletter. It is our aim to enlighten you with the latest happenings in the field of IPR. This Newsletter covers

areas of Copyright, Trademark, Patents, Designs and Geographical Indication. It provides an overview of global developments and also addresses several contemporary issues with respect to IPR.

We would like to express our gratitude to all the contributors and editors, who have dedicated their time and effort towards the successful completion of this newsletter.

**Dr. Kiran Gardner**  
Professor & Dean  
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## FROM THE EXPERT

Through this brief write up, I will share my experience as an IP Litigation attorney. Transition from being a law student interested in IP to an IP Litigation attorney can be a little challenging. If you wish to make your career in IP Litigation (being a niche), it is advised to pursue the same in jurisdictions having High Courts with original jurisdiction (Delhi, Bombay, Kolkata and Madras). Interestingly these jurisdictions have one of the highest IP litigation filings in India. Thus opting for IP Litigation comes with certain costs i.e. a pseudo limitation of territorial expanse.

As a law student pursuing Intellectual Property laws, several aspects of IP are not covered in the set curriculum. For example, interplay of Customs law and Intellectual

Property is quite intriguing and something which I first learnt after graduating and getting in the field. For an IP Litigation attorney, in addition to deep understanding of IP laws, importance of Civil Procedure Code and Code of Criminal Procedure cannot be overemphasized. Of course, merely limiting ones career to IP litigation without prior understanding of the functioning of IP office is not advisable. An IP attorney is expected to have a strong working knowledge and experience of IP prosecution as well. In this regard, appropriate IP internships, writing research papers, attending conferences and workshops can prove to be of assistance for an IP enthusiast law student.

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# S T I N E T I N G C O N T E N T S

## Meme Culture and Copyright

A meme is a picture or animation from a movie or show etc. with text superimposed with a humorous undertone. Meme culture has taken over the internet and is an essential part of the social media users' day. It is also a major source for the dissemination of information. Even serious political events are not safe from becoming a meme. Memes are consumed and shared on platforms within an instant and in mass volume.

Now the question arises as to who owns the right over the meme, whether the person who created the meme or the person who has the right over the image.

A meme may find its place as 'artistic work' defined in the Copyright Act of 1957 as including paintings, sculptures, engraving, paintings, works of architecture, and works by craftsmanship. In order to use an image as a meme, the users must establish that the image is being used for 'fair use'. For a meme to be considered fair use, it has to fulfil two conditions: users must not be competing with the copyright holder i.e.; the meme creator should not be monetizing from the meme. And secondly, it does not adversely affect the original copyright holder.

Getty Images, the popular USA-based agency that provides images and illustrations sent letters to individuals demanding license fees for using image of the "Awkward Penguin", a photograph by National Geographic photographer George Moberly. While sharing of memes on personal social media accounts for hilarity reason may not lead to legal action, use for these images for commercial purposes will be considered a copyright infringement. The "Grumpy Cat" blew up over the internet to such proportions that it led to the rise of a whole brand around it selling t-shirts, posters, mugs, etc., with the image of the said grumpy cat.

Though in all likelihood the chances of legal actions are generally low, the liability still remains on the meme creator. As the work is derivative the creators of meme content should be given rights for their creative and artistic expression. This uncertainty in the adjudication of memes needs to be regulated by copyright law; else we may see instances where the content creators will have to seek remedy from the courts.

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### QUICK FACTS

The "Automatic pat on the back machine" is here to give you that well deserved pat on the back. It was invented by Ralph R. Piro and it was patented in 1986 (US4608967A).

## Australian 'Link Tax' Legislations Provoke Threats From Tech Giants

On 20th April, the Australian government announced that it had ordered the Australian Competition and Consumer Commission (ACCC) to form a mandatory code of conduct that would force tech giants to pay Australian news companies for publishing their stories. Originally the code of conduct was to be agreed upon between the parties. However, due to the lack of engagement in the negotiations by companies like Google and Facebook, the voluntary negotiations quickly fell apart. This code of conduct is similar to the framework for "link tax" that the EU passed in 2019, which has already been implemented in France.

In July 2020, the Australian Government unveiled a draft of the law. The law would allow tech firms to negotiate deals within themselves. However, if the negotiations fail the matter can be arbitrated by the ACCC. Non-compliance would incur millions of dollars in fines. On the 1st of October 2020, Google announced in a blog post, the introduction of "News Showcase" and the announcement of a Billion Dollar investment in partnerships with news publishers. Google had already signed partnerships for News Showcase with nearly 200 leading publications across Germany, Brazil, Argentina, Canada, the U.K. and Australia.

Fast forward to 2021, in early February, Google and Facebook threatened to withdraw their services from Australia if the bill becomes a law. Google states that they are willing to negotiate with the publishers but the proposed law "goes too far". It would oblige Google to not only pay for providing previews of news media, but also sharing links to the content. Google also cannot simply stop linking to Australian news sites as the new non-discrimination policies require Google to treat all websites the same whether or not it has to pay. As a result, google stated that it would have no real choice but to shut down its search engine in Australia. In an email response to "arsTECHNICA", a Google representative clarified that their issues with the Australian law is not about the money and they are willing to pay. The issue is where they are being asked to pay for sharing of links and snippets which the EUCD (and the French transposition) on the other hand, does not.

Similarly, Facebook also argued that the value exchange between Facebook and publishers runs in the favour of the publishers. William Easton, Facebook's Manager in Australia also stated that "Publishers willingly choose to post news on Facebook, as it allows them to sell more subscriptions, grow their audiences and increase advertising revenue,". This resulted in Facebook blocking all news content from Australian news sites. In response, the Australian Competition commission stated that for every \$100 spent on online advertising, Google captures \$53, Facebook takes \$28 and the rest is shared among others, taking revenue away from media outlets.

The news that shocked most consumers was Microsoft's support for the ACCC and Australia's link tax legislation. Microsoft's President, Brad Smith, explained in a blog post why he thinks that Australia's Link Tax legislation is fair and should also be brought to the USA. In his blog post he explains that "while Google and Facebook have generated billions in revenue from aggregating news, since 2000,

newsroom revenue in the United States has fallen by 70% and employment has been cut in half. More than 2,000 newspapers have closed entirely." He also added that news publications have been powerless to fight back against the tech giants like Facebook and Google due to their enormous market share.

After threatening to remove its own search engine from Australia, Google started to strike deals with several Australian media companies. On the 15th and 17th of February 2021, Google struck a deal with 'Seven west Media' and 'Rupert Murdoch's News Corp.' respectively. Moreover, Google has reached pay deals with 450 news publications globally for their new "Google News Showcase" platform. On the 25th of February, Facebook pledged to invest at least a Billion Dollars in the Australian news industry in the next three years.

The Parliament on 25th of February 2021 passed amendments to the so-called "News Media Bargaining Code" agreed between Treasurer Josh Frydenberg and Facebook chief executive Mark Zuckerberg on Tuesday. In return for the changes, Facebook agreed to lift the ban on Australians accessing and sharing news. The changes would give digital platforms one month's notice before they are formally designated under the code. That would give those involved more time to negotiate before they are forced to enter binding arbitration arrangements.

The enforcement of this law in Australia has raised awareness in other parts of the world. Countries like Canada have already expressed interests, with many other countries bound to follow.

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# The Legal Challenge of Protecting Intellectual Property. Online and Allied Ramifications

Online infringement takes several forms, from selling counterfeit or infringing products over the internet to copying another company's domain name and contents of an entire website. One thing that has boomed during this pandemic is online shopping. While e-commerce platforms were already a booming industry before the pandemic, the use of online platforms has grown steadily since then due to the convenience of placing orders that the e-commerce platforms offer. In reality, the words "Add to Cart" are now very common to us in our daily lives. However, apart from the e-commerce platform, online violation of intellectual property takes many forms, like copying domain names and website content. New challenges like offering distributorship to gullible persons and, thereby, fleecing them of their money, luring customers by operating via fake website, etc.

The growth of these online platforms is also accompanied by the proliferation of allegedly counterfeit products sold on them. The moot now is regarding the liabilities of parties involved in the sale or authorizing the sale of counterfeit products or those who infringe the intellectual property rights of the right holders, on these platforms.

Under the Indian Trademarks Act, trademark infringement is defined as when an unauthorized person uses a trademark that is 'identical' or 'deceptively similar' to a registered trademark in relation to goods or services. Therefore, any deceptive imitation or reproduction of a registered mark in connection with the sale, offering for sale, solicitation, distribution, advertising of any goods or services in respect of which the trademark is registered, is infringement. Thus, not only will the use of the identical mark be actionable by law, but also the use or adoption of a similar/deceptively similar/identical imitation of a mark in commerce. It is pertinent here that such continued use of the impugned marks and websites are causing and will cause irreparable damage not only to the right holders but also to the public at large.

It is clear from the law that sellers who sell products bearing a registered trademark or similar confusing mark can be held liable for trademark infringement as long as there is evidence to prove that the products are, in fact, counterfeit or, at least in the case of an almost identical mark, adopted to mislead the public as to the provenance of the said products.

However, an unregistered trademark owner is also entitled to protection under the passing off where the trademarks are similar and/or deceptively similar amounting to passing off its goods as those of the IP owner and the alleged mark is bound to be confusion in the minds of consumers. The test to be applied is whether a person of average/ordinary intelligence and of imperfect memory would be confused.

However, setting aside the internet's openness, versatility and global reach, its unregulated nature has created a fertile ground for infringement of copyrighted content, trademarks/ labels/logos/trade names, filed and registered designs. In the broadest sense, online IP infringement covers the sale of counterfeit products and services through the Internet and a variety of other activities, including cybersquatting, SEO (search engine optimization) abuse, phishing, and content piracy.

To nip such online ramifications, the judiciaries are playing very proactive roles, whereby the Judiciary of various High Courts is restraining various impugned online activities by giving injunction orders. On the other hand, it is also imperative for companies and various stakeholders to build a proactive and multi-faceted strategy for copyright and trademark protection, which must offer effective means of acclimatizing to the challenges of the online platforms.

However, it becomes difficult to implement these principles online because it is quite easy to maintain an anonymous identity using offshore internet servers. Therefore, violators with this type of virtual presence can generate huge profits. The difficulties associated with the conventional legal approach leading to successful IP infringement online further include the aspect of inconsistency in the legal landscape. The diversity of IP laws and regulations in different jurisdictions makes it strenuous to navigate the legal landscape.

Another important consideration is to identify the person or entity responsible for the infringement and to take action accordingly.

The available remedies for IP Owner/ right holders against such infringers/violators include Injunction, claiming damages, the profits gained by the violators, cost of the action. Due to the rampant online illegal activities, the judiciary is granting JOHN DOE (Ashok Kumar in Indian concept) restrain order against even unknown persons.

Further, the right holders can go for a take-down request for asking an Internet Service Provider (ISP) or search engine to remove or disable access to illegal, infringing goods/contents information. The laws on intermediaries are so mandated that the intermediaries ought to follow due diligence and provide clear procedures for IP owners to flag content. The intermediaries are also to respond to such take-down requests or take action against such infringing content being reported by the IP owner. Further, the intermediaries are also to publish terms of use and a user agreement, stating what type of content is illegal and subject to take-down action on their respective platforms.

As such it is eminent to bear in mind that things are different online than in the real world. Crucially, the internet allows anonymity and one, if really want, can hide his complete identity. Sometimes, it is also difficult to catch the violators. However, laws are still developing day by day. More stringent laws, rules and regulations and judicial involvement are required to face the challenges.

Section 29 in The Trade Marks Act, 1999  
Taj Television Ltd. & Anr. vs. Rajan Mandal & Ors., (2003) F.S.R. 22 (India)  
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# Invasive Alien Species Through Ballast Water and Patent Regime in India: A Critical Legal Analysis

Today, Invasive Alien Species (IAS) are considered as the second most threat to biodiversity at large, next only to habitat destruction. IAS creates destruction resulting in the elimination of the indigenous habitat, which in turn destructs the whole ecological biodiversity in that particular area. It has been a part of discussions to curb the issue of IAS which gets transported from one geographical location to another during the ships' ballasting process. Ballast water and its management are a very recent phenomenon, although the issue has been present since ships began using water for ballasting. The countries having stringent regulation mechanisms are mostly only the developed nations. One of such reasons is the exorbitant cost involvement in incorporating or adhering to such regulations which also foresights the Intellectual Property Rights or Patent Rights involved. Although preservation and protection of biodiversity has been adopted as one of the most important objectives in India whereby the National Biodiversity Protection Act, 2002 has been enacted based on the Convention on Biological Diversity 1992, yet, the aspect of biological degradation through IAS invasion and its causes and impacts through ballast water has been overlooked.

India has the Merchant Shipping (Amendment) Bill, 2015, and accord to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (Ballast Water Management Convention) of International Maritime Organization (IMO), but Indian legal framework doesn't deal with this issue comprehensively.

Now, initiatives such as, compulsory licensing and technology transfer of those patented technologies to the developing and underdeveloped nations will aid and enable them to produce the patented ballasting technologies at reasonable cost domestically, which will in-turn help to curb the issue of IAS through ballasting.

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### QUICK FACTS

We have caps and hats to guard our hair but what about the moustache? The “moustache guard” saves your well groomed moustache from any harm. It was invented by V.A.GATES and patented in 1876 (US435748A).



## Sctimst and Biorad Medisys Enter into a Technology Transfer Agreement

The new era of globalization opened up access to global technologies and licensing, which made India realize the significance of technology transfer. Transfer of technology can be done through assignment or licensing of the IP rights pertaining to such technology from one individual or institution to another.

Technology transfer, particularly in the health sector becomes significant as even small developments can mean the difference between life and death. Recently, a technology transfer agreement was signed between Sree Chitra Tirunal Institute for Medical Sciences and Technology (SCTIMST) and Pune based Biorad Medisys for two biomedical implant devices i.e., an Atrial Septal Defect Occluder and an Intracranial Flow Diverter Stents. The ASD occlude enables better healing of the hole in the heart and the flow diverter aids in diverting blood flow away from intracranial aneurysm thus reducing chances of its rupture and the consequent stroke. Both these devices are invented by SCTIMST and protected through design registration, one international patent application and two Indian patents.

Therefore technology transfer agreements enable selling or licensing of IP rights in order to enable public availability of such novel technologies. A strong university-industry relationship plays a significant role in enabling such transfers.

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### QUICK FACTS

Did you know that you can calculate your life expectancy? A patent from 1991 allowed users to measure their life expectancy using actuarial tables and personal health information. This information was then entered into a watch that counts down the number of years, months, and minutes the consumer is expected to live so that you may be able to watch as life passes by.

## IPR Infringement by the Fashion Industry

The fashion industry has been accused of copying designs from other fashion labels and fashion designers, regardless of their market share, in the name of inspiration and artistic expression. The ability of a generic tailor to recreate a high valued Sabyasachi lehenga is only the tip of the iceberg of plagiarism. There is a wide market for such copies as people who want to dress in branded clothes cannot afford to spend a fortune on them or do not wish to shell out money on the original clothing.

The rise in social media has led to the rise of fashion police by an internet sensation on Instagram under the name 'DietSabya'. The account is the Indian rendition of the New York-based 'Diet Prada' account which calls out rip-offs of high fashion brands. The anonymous account has managed to garner a lot of attention in a short span and is followed by Bollywood actresses. Those running the account have not shied away from calling out established giants of the fashion industry such as Manish Malhotra for copying a Zuhair Murad-designed cape style. The account has been a godsend for budding designers whose ideas have been poached by established and known brands of the fashion industry.

Different IPs provide different layers of protection. The sketches by designers can be protected by copyright under Section 2 of the Copyright Act. The designs can also be registered under the Designs Act and protected for a period of 10 years. However, a design protected under the Designs Act shall have no protection under the Copyright Act, but a design that is unregistered will have instantaneous protection as per section 15(2) of the Copyright Act. While copyright protection does seem like a strong avenue for fashion designers, such protection lasts only for 50 copies of the work and any subsequent productions would make the design a part of the public domain.

The protection given to the designers is already insufficient and the fickle nature of the fashion industry makes it worse for designers. Fashion revolves around trends. Whatever is in the market will be phased in the next season and the fast pace of the industry could essentially make any IP protection of the design redundant as the design would be out of trend before the IP protection is received.

Designer Sabyasachi Mukherjee became the first Indian fashion house to be awarded the prestigious National Intellectual Property Award 2018 for having registered more than 700 of his designs. With these recent developments in IPR, such fashion designers can protect their original works and showcase their uniqueness in the market.

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### QUICK FACTS

Jonas Salk, inventor of Polio vaccine didn't patent the formula because he feared the application would be denied due to "prior art" clause.

# Brexit forces change in Design Protection in the United Kingdom

The United Kingdom faced many repercussions in commerce, immigration and law when it decided to secede from the European Union. In the case of Intellectual Property, the members of the European Union file their works under the European Union Intellectual Property Office (EUIPO) to enjoy IP protection across all the member nations of the EU. Since Brexit was initiated without any forewarning to the businesses who had pan Europe trade and subsequent IPR protection, such businesses are seen in a state of limbo since they have their designs registered under the EUIPO.

The UKIPO made certain policy changes to allow design protection and to maintain unhindered commerce within the UK. The policy states that, at the end of the transition period (1st January 2021), Registered Community Designs (RCDs), and Unregistered Community Designs (UCDs) shall be invalid in the UK and these rights will be replaced with comparable UK rights.

For RCDs already protected under the EUIPO, comparable UK designs shall be allotted and treated as if the designs were registered in the UKIPO since the beginning and no additional cost shall be levied against the design register. As fully independent UK rights, they may be challenged, assigned, licensed or renewed separately from the original RCD.

For RCDs which were pending in the EUIPO at the end of the transition period, such proprietors shall have nine months, i.e. until 30 September 2021, after the end of the transition period to apply for retaining the earlier filing of the pending RCD.

HGF, Brexit and Designs <<http://www.hgf.com/brexit/brexit-and-designs/>>  
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### QUICK FACTS

The inventor of windshield wipers, Mary Anderson failed to sell her patent as the car manufacturers were not convinced of its commercial value.

# Going “Vocal for Local”, Etikoppaka Toys in the News

A small village in Andhra Pradesh, 'Etikoppaka', is known for its beautiful wooden toys which are made from wood and lacquer. These toys got their Geographical Indication (GI) tag in 2017.

These toys have been in existence for 400 years and are being passed on through generations. The wood of the 'Ankudi Karra' (Wrightia Tinctoria) tree and natural dyes are used in the making of these toys, without any toxic materials.

About three decades ago, the making of wooden toys was revived by CM Raju as it was a dying art practice of the community. The artisan community used local and traditional knowledge to make vegetable dyes. The Chief Minister promoted national-level workshops and also roped in the Crafts Council of India. He furthered a cooperative association for the artisans called the 'Padmavati Associates' which improved the lives of people from that region.

In 2007, the export of Etikoppaka toys came to a halt because heavy metal certification could not be procured by the artisans and the domestic market was dominated by Chinese toys.

The artisan community suffered a lot amid the pandemic and was under the threat of going extinct as no courier services were available during the lockdown. CM Raju emphasized the need for an inventory and delivery system to transport the toys to domestic markets, from Vishakapatnam, and the creation of an interpretation and design development centre for preserving the ancient craft.

The Prime Minister of India, Narendra Modi, during his 'mann ki baat' addressed the 'vocal for local' slogan for making India a toy manufacturing hub in the world. The artisans from Etikoppaka village are hopeful of getting a certification that will enable them to export the toys around the globe. In Delhi, Bengaluru, China and Hyderabad, the Etikoppaka toys have good patronage and the artisans have started selling the toys online. The border dispute of China and India has resulted in the ban of imports from China, thus resulting in a boost for local products.

The slogan, “vocal for local”, has also given a boost to the artisan community who now hope that they will get a mandated certification declaring that the toys are not made from toxic materials and are safe. Safety is a prerequisite for exporting the toys to the European and US markets.

There should be certain incentives provided by the government to rural and semi-urban artisans so that all of them get access to the global market. Subsidy related to purchasing of raw materials, apart from the export subsidy, should also be provided as the production cost will reduce. The main aim should be to strengthen these institutional structures and there must be a national regulatory framework for the protection of Geographical Indications.

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### QUICK FACTS

The US5,081,154 patent titled "Metroprolol Succinate" is just half a page long. The inventors convinced their work would speak for itself.

## GI tag sought for India's costliest mushroom

In modern human society where people mainly thrive on specific special talent cultivation, a geographical indication tag becomes an important sign that capitalizes on such specialty. A geographical indication tag not only helps boost economic growth and exports but also helps in increasing tourism and cultural promotion. It is not unusual for people to expect finesse from experience and passage of ancient traditions to form expertise in a particular art form. A geographical indication is fundamentally based on such a premise of value addition by nurturing skill and proficiency in a particular region which has successfully, over the years, mastered a certain art form. The acquaintance of knowledge in cultivating a certain plant or crop variety, detailing involved in handloom and handicrafts and the pure talent required for harvesting a specific skill with specific intel becomes the base that highlights the importance and need for a geographical indication.

Recently, An NGO called Borderless world Foundation was facilitated and backed by the Director of Agriculture of Jammu and Kashmir, sought a claim for GI for the cultivation of the most expensive and exotic Gucchi mushroom variety in India, priced somewhere between Rs. 10,000 to Rs. 30,000, by approaching the GI registry. This claim was made from the district of Doda in Jammu and Kashmir. This mushroom variety is obtained mainly from the forests and pastures of the Doda district and is also found in other areas located at a high altitude. The main line of approach by the NGO is that the Gucchi mushroom variety is exclusively grown in Doda and is a result of its rare characteristic feature of the region which has an altitude of 2,000 meters and its consistent cold environment enables tremendous growth. The loamy soil of the area, which is rich in humus, makes it easier for the fungus to naturally grow in the coniferous forest. These mushrooms are not commercially cultivated due to their nature of germination since their growth is only observed in low-temperature soil. There have been speculations that these mushrooms appear in large amounts after fires and have been

observed to multiply after thunder and lightning. The requirement for alkaline conditions which is enabled by wood ash and water helps in the fruiting of these mushrooms and thus making its agronomy a highly specialized cultivation criterion..

These mushrooms are not only well known for a food connoisseur who has heard about the famous Kashmiri Gucchi Biryani, but their use is also pertinent in the medical field for all the medical benefits that come out of their usage. The Gucchi mushrooms are known for their spongy texture and honeycombed head which leaves a savory aftertaste. The rich antimicrobial and antioxidant properties help in preventing health conditions like diabetes and cardiovascular diseases by removing reactive oxygen species that may harm the body. Additionally, these mushrooms are also considered to be rich in protein, potassium, copper, carbohydrates, and Vitamin B.

With the GI tag, this mushroom variety is likely to pave a special patch for exclusive food cultivation and find a place in the market by helping the local farmers who have dedicated time and effort to the enhancement of this cultivation form.

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### QUICK FACTS

Amazon has been granted a patent for super drones that will work in swarms to make deliveries. Swarms will be able to carry heavier weights.

# Protection of Self-employed Tribal Artisans Through GI

In a world pacing towards urbanization and industrialization, the aesthetic aspect of life is often ignored. Geographical Indication is defined under Article 22 of the TRIPs agreement as a symbol or sign which is used to identify a good as originating from a specific region, territory or locality and having specific characteristics which are essentially because of that geographical origin. In India, GI is governed by the Geographical Indications of Goods (Registration and Protection) Act of 1999. Section 21 of the Act provides the rights which are conferred upon registration which ensures the economic wellbeing of the producers of such GI products.

Only a few Indian GIs are known and wanted globally, such as the Darjeeling tea. Most of the indigenous products are produced and manufactured by small producers and manufacturers who cannot compete in a global marketplace on their own. Therefore, under the visions of “Atmanirbhar Bharat” (self-reliant India) and “Vocal for local”, the Tribal Cooperative Marketing Federation of India (TRIFED) in collaboration with Lal Bahadur Shastri National Institute of Academy, Department of Promotion of Industry and Internal Trade, Ministry of Culture, Ministry of Commerce, Ministry of Tourism, India Posts, and Office of the Prime Minister has taken up the cause of promotion of GI and tribal products. They have identified 370 GI products, among which 50 originate from the tribal communities for promotion. TRIFED has also identified 8 heritage locations across India, where they plan on setting up “Tribes India” stores specifically for tribal products.

TRIFED's new initiative brings forth the need for proper branding of GI products and can form a major source of income for the disadvantaged tribal sections as well as promote the rich indigenous products of our country worldwide.

Agreement on Trade-related aspects of Intellectual Property Rights, art.22, Apr.15, 1994

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### QUICK FACTS

One of the world's most prolific inventors, Shunpei Yamazaki holds over 9,700 patents worldwide as of 2020, 5614 of these are made up of US Patents alone.

## Blockchain and its relevance in the field of Intellectual Property

The rise of blockchain technologies has created prominent applications in the field of Intellectual Property. Blockchain can be defined as a dynamic public ledger of information wherein transactions (or blocks) are transmitted to the participants of a peer-to-peer network. It has widespread industrial relevance [1].

Blockchain is immutable, cannot be hacked and provides a very high degree of transparency [2]. High levels of security make it a very trustworthy system wherein no third party can alter transactions. The most glaring shortcomings of Intellectual Property Rights are the third-party authenticators. The inherent physical limitations of the currently employed system have already started to show [3]. Since IP rights are registered at different IP repositories, there is a high chance that the data is not in sync, and constant revision of the data is complex.

Blockchain technology could catalyze the registration process of IP by removing redundant procedures [4]. Since every transaction is recorded in an immutable chain, contracts can be traced at any stage, making it easier for the relevant authorities to detect fraudulent transactions and counterfeit goods.

Any type of IP Right could be subject to a blockchain, enabling all associated transactions to be registered directly by the parties filing for the rights, reducing legal costs and significantly shortening the time it takes to do so. By utilizing the industrial application of smart contracts, licenses could be tracked ensuring orderly payment of royalties in case of licensing relationships. A major concern of businesses could be eliminated wherein trade secrets could be stored on private blockchain platforms. Due to the high levels of encryption, the safety of this data could be ensured, giving rise to fewer cases of litigation.

It is clear that blockchain technology has widespread application to the field of IP. In the present world of globalization, the need to strengthen IP rights becomes vital. By using technology that creates a secure and transparent record management system, the industry could be propelled to new levels of efficiency and development. Concerns regarding the usage cost have been discussed and could serve as demotivating factors to the implementation of blockchain technology. However, these shortcomings can be rectified and must not serve as a hindrance to the applicability of the revolutionary technology. By ensuring faster search results and immutable record management, it becomes significantly easier to achieve proper prosecution and enforcement of IP rights. The challenges that are present must be looked at and dealt with by governments in order to unlock the inherent benefits of applying this technology to the IP industry.

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### QUICK FACTS

In 2016 NASA was granted patent for tech that may help predict catastrophic weather conditions and help in predicting tectonic activities. The device was invented by John Sutton and Qamar Shams. The device picks up electromagnetic activity that takes place prior to storms, earthquakes, etc.

# Abolition of Intellectual Property Appellate Board: The Tribunal Reform Bill, 2021

The central government proposed a draft bill called THE TRIBUNALS REFORMS BILL on 11th February 2021 which abolishes the Intellectual Property Appellate Board (IPAB) and 4 other tribunals. The IPAB was established in 2003 and was empowered to hear appeal cases against the decisions passed by the registrar under Trademarks Act of 1999, The Geographical Indications of Goods (Registration and Protection) Act 1999, Patents Act 1970, Copy Right Act 1957, and Plant Varieties and Farmers Act 2001. According to the proposed draft bill, the IPAB will be abolished and the appeal against the decision of the registrar will directly lie before the High Courts since these tribunals were resulting in delayed justice and acted as an extra layer of litigation. Though abolition of these tribunals will reduce the expenses related to infrastructure and filling of vacancies for the exchequer, the bill will result in litigants being muddled with the procedural laws and continuous trend of adjournments of High Courts. Additionally, the government has also failed to fill the vacancies of chairman and technical members in the APCB. The board was vacant for 2 and a half years before 2020 and only after the intervention of the Supreme Court, the tenure of the chairman was extended by the government. Since the establishment of the tribunal, it has disposed 3700 cases which is the highest number of cases disposed in a year by APCB. As of 1st February 2021, there are 4 crore cases pending in the Indian Judicial System. The abolition of this tribunal will see a sudden spike in the number of pending cases in the judicial system. The bench of

APCB consisted of a judge of the High Court and a technical IP law member who specializes in patent laws. Now, it would pose difficulty for the judges to adjudicate matters since it would contradict the sole purpose of the Tribunal Reform Bill of 2021. This move of the government to abolish the IPAB would be exemplary only if the government aims to establish special IP Courts within the High Courts along with technical members to adjudicate matters. This would also be in line with the National Intellectual Property Rights Policy of 2016.

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Government of India, INTELLECTUAL PROPERTY APPELLATE BOARD <https://www.ipab.gov.in/about.php>

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### QUICK FACTS

Human genes cannot be patented. The US Supreme Court, in the Myriad case (Association for Molecular Pathology v. Myriad Genetic) denied patentability of isolated genetic sequences.



## COVID Stemmed Biopiracy

The traditional knowledge holders receive little to no benefits from the commercial exploitation of their resources. Such appropriation without proper acknowledgement, or benefit-sharing can be regarded as biopiracy.

The United Nations Convention on Biological Diversity and its Nagoya Protocol established the principle that states have sovereignty over their own biological resources. It obliges governments and the private sector to secure prior consent of the traditional knowledge holders, establish transparent, mutually agreed-upon terms for how benefits from the use of such resources will be shared. But this framework is riddled with drawbacks.

The sudden swell in the demand for a vaccine for COVID-19 has rushed the biotechnology industry towards innovation and testing. Amidst this expeditious development, traditional knowledge plays a significant role. Traditional remedies are already being explored for cures in places like Madagascar for the development of COVID-Organics; and China, where traditional Chinese medicine is used for COVID-19 treatment and diagnosis. However, it is unclear as to whether these two cases have resulted in biopiracy.

A practical approach must be adopted to manage biodiversity in the wake of this pandemic. Access and Benefit Sharing frameworks should not be compromised and a balance has to be struck between them. Corporations and researchers should continue to be held socially and ethically responsible for research and development and product development involving Indigenous People and their knowledge.

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### QUICK FACTS

In order to do his gravity defying move from the music video 'Smooth Criminal' during live performances, Michael Jackson had co-invented a system with two other inventors and got it patented. The patent is titled "Method and means for creating anti-gravity illusion", number US5255452A.

## India's Proposal to Waive off IP Rights for COVID-19 Products

The COVID-19 situation has proved to be very difficult to manage. Governments across the world have called it a 'challenging pandemic' and have been working tirelessly to mitigate its effects. Global leaders can be seen putting in combined efforts in order to develop a vaccine. This attempt to return normalcy to the world has seen many obstacles. Limitations and restrictions on IP rights for developing vaccines and other remedies have proved to be a significant hurdle.

To catalyze the creation of the vaccine, a joint proposal by India and South Africa has been filed asking for "equitable access to medicines and other products". The Commerce and Industry Minister of India, Piyush Goyal, brought up the proposal at the International Conference on Pharmaceutical & Medical Device Sector organized by the FICCI. The proposal was backed by 57 members of the WTO (World Trade Organisation). The minister further called for all global leaders to support India's proposal to battle the virus.

The proposal has called the WTO to waive off IP rights that can create restrictions for access and making treatments with a view from a global good. The countries alleged that by invoking the TRIPS for the use of coronavirus products may not be a feasible option. The enforcement of IP rights can be a barrier as it requires the processing to be done on time by making it available at affordable prices too. It also said that the idea of waiving off the rights and promoting international collaboration can be helpful in catalyzing the production and supply of the vaccine.

The balance between IPR and healthcare products mitigating the effects of the COVID-19 virus could not be ascertained as the pandemic requires access to different commodities involving many IP rights (a fundamental example being that of patents). Many other countries like South Africa, Kenya have supported the proposal of waiving off as the biggest global health concern due to the urgent need for great good. The support given by WHO to the idea of the proposal by making the application of IP rights at ease by highlighting the importance of concerns relating to public health.

The aim of providing vaccines to the public by end of the year 2021 can only be achieved if such initiatives and efforts are supported at a minimum level of restrictions.

The forum further stated that the initiated waiver shall not be taken as an advantage by private or pharma companies by avoiding basic standards of formulations or approval. Further, by approving the proposal, WHO pointed out need to curb the spread and manufacturing of medicines as soon as possible in order to achieve a global solution. If IP rights and laws are not waived off then the approach to global good cannot be achieved. For an effective result or response to the virus, decisions like these are necessary as an encouraging point for all the struggles.

Council for Trade-Related Aspects of Intellectual Property Rights, Waiver From Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19, WTO Doc. IP/C/W/669 (Oct. 2, 2020).

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### QUICK FACTS

The first recorded patent for industrial invention was granted to Filippo Brunelleschi in the year 1421. He was granted patent for a barge with hoisting gear which was used to transport marble.



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