



## SMARTPHONE WARS: LITIGATING TO LICENSE

### KIPO

An interview  
with Soowon Lee

### Solutions to dilution

How Intel  
protects its brand

### Crime and punishment

IP enforcement  
and deterrence

### Prior art

The importance of  
conference papers

INCLUDING MOBILE AND COMPUTER TECHNOLOGY FOCUS

## PATENT GRANTED: HERE AND NOW!

Ranjna Mehta-Dutt  
Remfry & Sagar



When can it be said that a patent has been granted? To date, a patent has been held as granted on the grant date indicated on the letters patent document. This is despite the application being in order and pre-grant oppositions, if any, being disposed of in favour of the applicant much earlier—in some cases, months and years before. Amendments to the law in 2005 allowed pre-grant oppositions to be filed at any time between the publication of an application and grant of patent. Consequently, until now, applications continually faced the threat of fresh oppositions in the transitional phase between the date of being placed in order for grant and the actual date of grant reflected on the letters patent document.

Recently, in *Dr Snehlata C. Gupte v Union of India & Others*, this interpretation was challenged successfully before the High Court of Delhi. It was argued that under the statute, a patent dates back to the day on which the patent application is filed. Its examination procedure is rigorous and, by nature, time-consuming. In addition, it may be challenged, or its grant stayed. On all counts, the patent holder loses precious time for working the patent. Given that a patent monopoly is limited in time, the period for filing a pre-grant opposition cannot be construed liberally to extend beyond the date on which the controller passes the order granting the patent.

The court agreed. It based its decision on the language of Rule 55 of the Patent Rules 2003: "After considering the representation...the Controller shall proceed further simultaneously either rejecting the representation and granting the patent or accepting the representation and refusing the grant of patent..." The court felt this unequivocally implies that consideration of the pre-grant opposition and final decision for grant of patent must take place concurrently. Further, the language of the Patents Act, 1970—"patent shall be granted...with the seal of the patent office and the date on which the patent is granted shall be entered in the Register"—indicates that sealing and entering of the patent in the register are merely formalities demonstrating that a patent has been granted. Moreover, the act talks of the controller publishing "the fact that the patent has been granted", indicating that the act of publication follows the grant of patent.

So it was held that the date of grant is the date on which the controller passes an order to that effect on the file. Given that pre-grant oppositions may be filed by 'any person', to hold otherwise would permit the endless possibility of opposition (sometimes by the same person under different aliases) as long as grant of patent was not entered in the register.

Further, the Controller's Office was directed to publish a 'cause list' a day in advance and disclose award of patents on the official website on the same day as grant. All in all, this judgment provides much-needed impetus to improve administrative efficiency and introduce greater transparency to the system.

"MOREOVER, THE ACT TALKS OF THE CONTROLLER PUBLISHING 'THE FACT THAT THE PATENT HAS BEEN GRANTED', INDICATING THAT THE ACT OF PUBLICATION FOLLOWS THE GRANT OF PATENT."

### A first: draft design manual

Another noteworthy development came in February 2011 with the publication of the first-ever Draft Manual of Designs Practice and Procedure. Comments were invited from interested parties and the finalised version followed on March 31, 2011. The manual is based on the provisions of the Designs Act, 2000 and the Designs Rules, 2001, as amended in 2008. While statements regarding registrability of a design may not be quoted as authority, procedural aspects set out in the manual will be binding on officers and users alike.

The manual highlights an interesting statistic—nine out of 10 applications are only objected to on procedural grounds. Since it looks to provide clarity on procedure, it declares that starting from April 2011, applications complying with the substantive criteria for registrability could proceed to registration within three months of filing. It also says that complete automation of the designs wing is in progress. The process of registration will soon be e-enabled, allowing for online filing of applications as well as subsequent documents. Keeping up with promises, the status of design applications has subsequently been made accessible online. However, this facility lacks sophistication at the moment as search fields have much scope for improvement. ■

Ranjna Mehta-Dutt is a partner at Remfry & Sagar. She can be contacted at: [remfry-sagar@remfry.com](mailto:remfry-sagar@remfry.com)