

Photocopies of documents pertaining to Dr.
Ragbir Singh, Vice-Chairman (Retd.)

Number of pages of Notesheet: 40

Number of pages of Correspondence : 9

F.No.A-35017/14/2001-Admn.I(LA)
 Government of India
 Ministry of Law, Justice & Company Affairs
 Department of Legal Affairs

Shastri Bhawan, New Delhi,
 Dated the 3rd December, 2001.

Handwritten: L.S. (A) 5/12, 5/12, 5/12, 5/12, 5/12, 5/12
OFFICE MEMORANDUM

Handwritten: 9/12
 Subject: Nomination for appointment to the post of Vice-Chairman,
 Intellectual Property Appellate Board (IPAB).

Handwritten: p. 10/c
 The undersigned is directed to refer to the D.O. No. 8(19)/2000-PP&C dated 5.11.2001 from Secretary, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion addressed to the Law Secretary on the subject cited above and to forward herewith the bio-data in respect of the following officers, who are willing to be considered for appointment for the abovementioned vacancy of Vice-Chairman in Intellectual Property Appellate Board: -

Name (S/Shri)

Designation

Dr. Raghbir Singh

Secretary, National Commission To
 Review the Working of the
 Constitution.

R. N. Poddar

Joint Secretary and Legal Adviser

2. Both the officers are free from vigilance angle and no major or minor penalty has been imposed on them during the last 10 years/ period of his service in this Department. The certified copies of ACRs for the last 5 years in respect of Dr. Raghbir Singh and Shri R. N. Poddar are enclosed herewith, which may please be returned to Shri R. L. Meena, Law Secretary by name, when no longer required.

Handwritten: 578/28 (A) / 2001, 5/12

 (PARKASH CHANDRA)

DEPUTY SECRETARY TO THE GOVT. OF INDIA.

Encl: As above.

The Secretary, [Shri V. Govindarajan, Secy to Govt of India]
 Ministry of Commerce and Industry,
 Department of Industrial Policy and Promotion,
 Udyog Bhawan
 New Delhi-110 001

919-CD
 5-11-2001

A. E. AHMAD
Joint Secretary

Tel : (91) 11-301-1714
Fax : (91) 11-301-3656

भारत सरकार
वाणिज्य एवं उद्योग मंत्रालय
(औद्योगिक नीति और संवर्धन विभाग)
उद्योग भवन, नई दिल्ली - 110011
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF INDUSTRIAL POLICY & PROMOTION)
UDYOG BHAWAN, NEW DELHI-110011

CONFIDENTIAL

D.O. No. 8/19/2000-PP&C/IRS

November 25, 2002

Dear Ms. Chopra,

An Intellectual Property Appellate Board (IPAB) is to be set up under the Trade Marks Act, 1999 to hear appeals against the decisions of the Registrar of Trade Marks. The Board will also hear appeals in matters relating to the Geographical Indications of Goods (Registration and Protection) Act, 1999. The Patent (Amendment) Act, 2002 also provides for the appellate jurisdiction of IPAB. The concept of IPAB is essentially to reduce the element of delay in the finalisation of appeal cases and to associate expertise pertaining to the protection of Intellectual Property Rights in the appellate process.

2. The composition of the Board provides for a Chairman, a Vice-Chairman, and such number of other Members, as the Central Government may deem fit. The qualifications, term of office, etc. of the Chairman, Vice-Chairman and Members of the Board are prescribed in the Trade Marks Act, 1999.

3. The post of Chairman in the pay of Rs. 30,000/- (fixed) is to be filled up by appointment of a person who is or has been a judge of a High Court or has, for at least two years held the office of Vice-Chairman and is to be made after consultation with the Chief Justice of India. The Hon'ble Chief Justice has suggested Mr. Justice S. Jagadeesan, a sitting Judge of the Madras High Court for appointment as the Chairman of the Board. Mr. Justice S. Jagadeesan has also consented to the said appointment.

4. The post of Vice-Chairman in the pay of Rs. 26,000/- is to be filled by appointment of a person who has for at least two years held the office of a Judicial Member or a Technical Member or has been a Member of the Indian Legal Service and held a post in Grade I of that service or any higher post for at least five years. Due to the initial constitution of the IPAB there is no Judicial Member or Technical Member to be considered at present. Therefore, the Department of Legal Affairs was requested for a panel of names and has suggested three names for consideration. A Selection Committee consisting of Secretaries of Departments of Industrial Policy and Promotion, Personnel & Training and Legal Affairs was constituted for considering the names so received. After assessing the experience of the three candidates in the relevant field forwarded by the Department of Legal Affairs, the Committee recommended Dr. Raghbir Singh, former Secretary, Legislative Department and subsequently Secretary, National Commission to

Continuation Sheet
Department of Industrial Policy & Promotion

Review the Working of the Constitution, for appointment to the post of Vice-Chairman, IPAB.


5. As per the Trade Marks Act, 1999, the Chairman and Vice-Chairman shall hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

6. I shall be grateful, if you would kindly obtain the approval of the Appointments Committee of Cabinet to the proposals to appoint Mr. Justice S. Jagadeesan to the post of Chairman and Dr. Raghbir Singh to the post of Vice-Chairman for a period of five years or till they attain the age of sixty five years, whichever is earlier and communicate the same to this Department. The prescribed proforma for seeking approval of ACC, duly filled in, along with other required documents is enclosed.

7. The Commerce and Industry Minister has approved the proposals to appoint Mr. Justice S. Jagadeesan as Chairman and Dr. Raghbir Singh as Vice-Chairman of the Intellectual Property Appellate Board.

With regards,

Yours sincerely,



(A.E. Ahmad)

Ms. Chitra Chopra,
Establishment Officer and Additional Secretary,
Department of Personnel and Training,
North Block,
New Delhi.

- Encl: (i) Proposal for appointment of Chairman, IPAB
(ii) Proposal for appointment of Vice-Chairman, IPAB

9. No 50(R)

Immediate/Confidential

No. 13/1/2002-EO(SM.II)

Government of India

Secretariat of the Appointments Committee of the Cabinet

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

1/0 JSS (SEA)
S.S.P. on leave

New Delhi, dated the 20.2.2003

Reference Correspondence resting with Department of Industrial Policy & Promotion D.O. No. 8/19/2000-PP&C/IRS dated 26.12.2002.

AR
20/2
DS (CS)

2. The Appointments Committee of the Cabinet has approved the appointment of Mr. Justice S. Jagadeesan, a sitting Judge of Madras High Court to the post of Chairman, IPAB and Dr. Raghbir Singh, to the post of Vice-Chairman, IPAB, Chennai for a period of 5 years or until they attain the age of 65 years w.e.f. assumption of charge of the post, whichever is earlier.

21/02
IRS

Jay R.
(R. Jaya)

Under Secretary to the Govt. of India
Tel. : 2309 3913

Department of Industrial Policy & Promotion,
(Shri V. Govindarajan, Secretary),
Udyog Bhawan,
New Delhi.

3-DS (CS) 103
21/2

117-02
20.2.03

Sl No 52 (added)

No.8/19/2000-PP&C
Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion

**MINUTES OF THE MEETING OF THE SELECTION COMMITTEE
HELD ON 24.09.2002 IN ROOM NO.157, UDYOG BHAWAN, NEW
DELHI**

PRESENT

- | | | |
|-----|--|----------|
| (1) | Shri V. Govindarajan
Secretary
Department of Industrial Policy & Promotion | Chairman |
| (2) | Shri A.K. Agarwal
Secretary
Department of Personnel & Training | Member |
| (3) | Shri R.L. Meena
Secretary
Department of Legal Affairs | Member |

**ITEM 1: SELECTION FOR THE POST OF VICE-CHAIRMAN,
INTELLECTUAL PROPERTY APPELLATE BOARD (IPAB)
IN THE SCALE OF PAY OF RS.26,000/- (FIXED)**

The Committee considered the question of selection for the post of Vice-Chairman, Intellectual Property Appellate Board. The Board is being set-up under Section 83 of the Trade Marks Act, 1999 under the administrative control of the Department of Industrial Policy & Promotion

2. The Committee were informed that under the said Act, there is provision for appointment of one Vice-Chairman. The Committee were further informed that as per Section 85(2) of the Trade Marks Act, 1999, the qualifications for appointment to this post are as under:-

"A person shall not be qualified for appointment as the Vice-Chairman, unless he –

- (a) has, for at least two years, held the office of a Judicial Member or a Technical Member; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service or any higher post for at least five years

3. The Committee considered the particulars of the following three candidates suggested by the Department of Legal Affairs:-

- (1) Shri A.C.C. Unni
- (2) Dr. Raghbir Singh
- (3) Shri R.N. Poddar

The Committee found that Shri Unni will have less than one year tenure if he is selected as Vice-Chairman, as he is already 64 years of age. The Committee also noted that the post of Vice-Chairman is that of the level of Secretary to the Government of India and Shri Poddar is comparatively junior being an officer of the level of Joint Secretary. The Committee after assessing the experience of the candidates in the relevant field recommended Dr. Raghbir Singh for appointment to the post of Vice-Chairman, Intellectual Property Appellate Board.

ITEM 2: SELECTION FOR THE POST OF TECHNICAL MEMBER IN INTELLECTUAL PROPERTY APPELATE BOARD (IPAB) IN THE SCALE OF PAY OF RS.22400-600-26000.

4. The Committee considered the question of selection for the post of Technical Member in the Intellectual Property Appellate Board.

5. The Committee were informed that under the Trade Marks Act, 1999, there is provision for appointment of Technical Members in the Board and that at present there are two posts of Technical Member to which appointments are to be made. The Committee were further informed that as per Section 85(4) of the Trade Marks Act, 1999, the qualifications for appointment to this post are as under:-

"A person shall not be qualified for appointment as a Technical member, unless he -

- (a) has, for at least ten years, exercised functions of a tribunal under this Act or under the Trade and Merchandise Marks Act, 1958, or both, and has held a post not lower than the post of a Joint Registrar for at least five years; or

(b) has, for at least ten years, been an advocate of a proven specialized experience in trade mark law".

6. The Committee were also informed that the Department of Industrial Policy and Promotion had invited applications through Registrars of various High Courts for considering appointment to the post of Technical Member.

7. After going through the particulars of four candidates who have submitted applications for appointment to the post of Technical Member in the Intellectual Property Appellate Board, the Committee found that no candidate fulfilled the eligibility conditions prescribed under the Trade Marks Act, 1999. The Committee recommended that the vacancy be re-advertised.


(R.L. Meena)


(A.K. Agarwal)


(V. Govindarajan)

SLN 059 (D)

163

No. 8/19/2000-PP&L/RS
Government of India
Ministry of Commerce and Industry
Department of Industrial Policy and Promotion
(Industrial Renewal Section)

New Delhi,

Dated the 9th September, 2003.

ORDER

The President is pleased to appoint Dr. Raghbir Singh, Former Secretary, National Commission to Review the Working of the Constitution, as Vice-Chairman in the Intellectual Property Appellate Board, Chennai with effect from 15th September, 2003.

2. The tenure of appointment of Dr. Raghbir Singh as Vice-Chairman in the Intellectual Property Appellate Board will be for a period of five years from the date of taking charge of the post or till Dr. Raghbir Singh attains the age of 65 years, whichever is earlier.

3. The salary and allowances payable to Dr. Raghbir Singh as Vice-Chairman in the Intellectual Property Appellate Board and the conditions of service by which he will be governed, shall be in accordance with the provisions of the "Intellectual Property Appellate Board (Salaries and allowances payable to, and other terms and conditions of service of Chairman, Vice-Chairman and Members) Rules, 2003.

(T C JAMES)

DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA
TELEPHONE No. 2301 1957.
FAX No. 2301 2626.

1. Dr Raghbir Singh, 45 Hargobind Enclave, Delhi: - 110 092.
2. Shri Justice S. Jagadeesan, 23 Ilird Main Road, Gandhi Nagar, Chennai: - 600 020
3. Shri T.R. Subramanian, Flat 4, Block B-27, Kendriya Vihar Sector XI, Kharghar, Navi Mumbai: - 410 210.
4. Cabinet Secretariat, Rashtrapati Bhavan, New Delhi.
5. Establishment Officer, Government of India, Department of Personnel and Training, North Block, New Delhi with reference to their letter No. 13/1/2002-EO(SM.II) dated 20-02-2003.

Issued
10/9

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF INDUSTRIAL POLICY & PROMOTION
INTELLECTUAL PROPERTY APPELLATE BOARD

Annexe-I, Guna Complex,
443, Anna Salai, Teynampet,
Chennai - 600 018.

ASSUMPTION OF CHARGE

In accordance with Order No.8/19/2000-PP&C/IRS, dated 9th September, 2003, of the Ministry of Commerce and Industry (Deptt. Of Industrial Policy & Promotion), Government of India, New Delhi, I, Dr. Raghbir Singh, do hereby assume the charge of the Office of the Vice-Chairman, Intellectual Property Appellate Board, Chennai, this the forenoon of 15th September, 2003.


(Dr. RAGHBIR SINGH)

Chennai,

Dated : 15th September, 2003.

No. 8(19)/2000-PP&C
Government of India
Ministry of Commerce & Industry
Department of Industrial Development
[PP&C Desk]

The proposal on this file relates to taking a decision on the location of the Appellate Board known as the Intellectual Property Appellate Board. The Trade Marks Act, 1999 which has been passed by the Parliament in the last Winter session contain provisions for setting up of an Appellate Board to hearing appeals against the decision of the Registrar. The Act also provides for setting up Benches in different locations. The Board will also hear appeals in matters relating to the Geographical Indications of Goods (Registration and Protection) Act, 1999. The main objectives of the establishment of the Appellate Board are:-

- to provide a mechanism for quick disposal of cases,
- to develop sound precedents and practices ,
- to ensure that appeal from the Registrar's decision is dealt with by judicial and technical experts promptly , and
- to avoid conflicting decisions which have been given by various High Courts in the past.

The broader objective of the constitution of the Intellectual property Appellate Board is not merely to hear appeals against the decisions of the Registrar of the Trade Marks but in due course to cover all rulings on various IP related subjects like Geographical Indications, Patents, Designs, etc.

The Trade Marks Act, 1999, provides that the Central Government shall, by notification in the Official Gazette, establish an Appellate Board to be known as the Intellectual Property Appellate Board to exercise the jurisdiction, powers and authority conferred on it by or under this Act. The Act also provides that Benches shall sit at such places as the Central Government may by notification in the Official Gazette, notify. The organizational structure envisaged will thus reduce expenses for litigants and also reduce delays.

Sections 83, 84 and 85 contain provisions relating to establishment and composition of the Appellate Board and qualifications for appointment as Chairman, Vice-Chairman, or other Members. Provisions relating to Appeals to Appellate Board, Procedures and Powers of Appellate Board and jurisdiction of Courts are contained in 91, 92 and 93 of the Act. (A copy of the Trade Marks Act, 1999 is placed at flag-X). The basic purpose behind setting up the Appellate Board is that Intellectual Property rights like Patents, Designs, Trade Marks, Copyright, etc. are specialized fields requiring specialized knowledge to decide disputes arising in these fields. At present the appeals from the Controller of Patents, Registrar of Trade Marks etc. lie with the High Courts. In view of the pressure of work before the High Courts, cases relating to Intellectual Property are not disposed off quickly. This affects the interest of industries and commerce. The Department Related Parliamentary Stranding Committee on Industry had also recommended the setting up of an Appellate Board. It is proposed to set up an Intellectual Property Appellate Board in the interest of consumers, industries and general public. It has also been the experience that different High Courts interpret the provisions of Intellectual Property laws differently resulting in conflicting decisions. This may be because of

that Intellectual property is a specialized field of law and the judiciary may not be well versed with the intricacies of the law involved. In view of this, the provision of Intellectual Property Appellate Board has been provided in the Act to enable association of experts and expeditious disposal of cases.

Controller General of Patents, Designs & Trade Marks suggested that since maximum number of litigations regarding intellectual property matters are under Trade Marks Law and the fact that, to begin with, a Geographical Indications Registry will be located at Mumbai, it would be appropriate if the location of the Appellate Board should be at Mumbai. As and when other laws regarding intellectual property having provision regarding Appellate Board i.e. Patent Law are passed by the Parliament and the workload increases, Bench of the Appellate Board can be established in other cities keeping Appellate Board at Mumbai as Principal Bench.

Considering the fact that the Trade Marks Registry is located at Mumbai and the number of filing of applications for registration of trade marks is very high compared to the number of filing of applications of other laws and also the fact that at present there is a maximum number of appeals pending before the High Court at Mumbai involving trade mark matters, CG has proposed that the principal bench of the Appellate Board may be considered to be located at Mumbai. Depending upon the workload in the coming year a bench of the Appellate Board could be considered to be located in other metropolitan cities.

B.K. Malhotra
(B.K. Malhotra
Under Secretary
27 March, 1999

~~DS (SC)~~

Disc^d with JS.

hdd
3/4

This relates to the establishment and location of the Intellectual Property Appellate Board (IPAB) as approved under the Trade Marks Act, 1999. The Trade Marks Rules, 2000 are presently under finalization in consultation with the Ministry of Law which is vetting the same. The file regarding advance action regarding the appointment of a Chairman, Vice-Chairman and Members of the IPAB has already been submitted. A view is now required to be taken regarding the location of the Principal Bench of the IPAB.

The concept of the IPAB is essentially to reduce the element of delay in the finalization of appeal cases and to associate expertise in the appellate process pertaining to the protection of IPRs. This is based upon the recommendation of the Select Committee of Parliament which had examined the legislation as well as the suggestions received during the Interactive Sessions organized by the Department last year.

Presently the IPAB extends to Trade Marks and Geographical Indications. However, it is intended to extend the IPAB to other fields of IP such as Patents and Designs as and when those legislations are enacted. There is, therefore, provision for Technical Members from different fields. On the advice of the Ministry of Law, the IPAB has been structured on the lines of the Central Administrative Tribunal.

The Controller General, Patents, TM & Designs has proposed that the IPAB be located in Mumbai since the majority of appeal cases relate to Trade Marks and the Trade Marks Registry which is situated there also being Mumbai. Currently it is intended to set up only one Bench and to provide for other Benches depending upon the workload at other places. Initially the Principal Bench can hold sittings in other metropolitan cities on a roving basis if it is felt necessary.

X' / The location of the first Bench of the IPAB at Mumbai may therefore be considered. Orders of C & IM may also kindly be solicited.

Submitted.

Chandra
(Subhash Chandra)
Deputy Secretary
10 April 2000

Anwar Khan
10.4.2000

'X': place

JS (AEA)

~~Secy (IPP) on return from tour~~

please discuss.

Ajit Kumar
18/4

JS (AEA) Discussed. We may analyse the proposed operationalisation of the IPAB also in the context of the proposed modernisation of the IP administration - all components i.e. PD TM & GI.

Anwar Khan
19.4.00

803-F

17/4/2000

398/05 (92)
10.4.2000

JS (AEA) / 2h
10/4

Reference note on pre-page.
It is proposed to write to TMA
as in the letter placed below (DFA).

P. M. Meshi
20/4/2000.

DS(SC)

PL Riscum

da
= 20/4

US(BUM)

As desired on pre page, a Note on
the Intellectual Property Appellate Board (IPAB)
to be set up under the Trade Marks Act, 1999
is for consideration.

da
4.5.2000

JS(BEA)
7/5/2000

JS(BEA)

we spoke.
we need
a clear
legal position
AL

D.F.A pl.

P. M. Meshi
5/5/2000

US(BUM)
4/5
da
4/5

DS(SC) da
5/5

US(BUM)

Pa
5/5

Reference note on pre-page.

TMR, Mumbai vide our letter placed at page 5/c was requested to examine with reference to the TM Act whether different dates can be prescribed for bringing into force different provisions of the TM Act at the time of publication of Trade Marks Rules, 2000 and operationalization of the IPAB. The clarification furnished by TMR, Mumbai may kindly be seen at Flag-FR. It has been stated that the matter has been examined in the light of Sections 1(3), 83, 100, 159(1) and observed that with the coming into force of the TM Act, 1999, the TMM Act, 1958 stands repeal and if the provisions of the establishment of IPAB are not brought into force simultaneously, there will be no forum before which appeal could be filed resulting in vacuum. The relevant sections are reproduced below :

Section 1(3) of the Trade Marks Act, 1994 provides as follows:

“The Act shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint :

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision”.

Section 83 provides for the establishment of Appellate Board. Further, Section 100 provides for the transfer of pending proceedings before any High Court to the proposed Appellate Board. Section 159(1) provides that the Trade and Merchandise Marks Act, 1958 will be repealed with the coming into force of the Trade Marks Act, 1999.

On perusal of the Trade Marks Act, 1999, it has further been observed that the expression “Appellate Board” is not restricted to Chapter XI but occurs at different places such as in Chapter VII and in particular Section 57 regarding rectification of the Register. In view of this, even if a proposal is mooted to bring into force different provisions of the Trade Marks Act on different dates, the practical question of filing of appeal from the orders and decision of the Registrar or a rectification petition under Chapter VII from the date on which the new Act come into force will make it imperative that the proposed Intellectual Property Appellate Board is operationalized simultaneously on the date of notification of coming into force of the Trade Marks Act, 1999. If this is not done there will be a vacuum and appeal from orders and decisions from the Registrar of Trade Marks cannot be filed before any forum.

Further the Trade Marks Act, 1999 provides saving clause under Section 159. The saving clause in Section 159(4) is also subject to the provision of Section 100 which provides for transfer of pending proceedings before any High Court to the proposed Appellate Board. Under Section 91(1) a maximum time limit of three months have been prescribed for preferring an appeal to the Appellate Board. Hence when the Trade Marks Act, 1999 come into force, the Appellate Board is to be in place so that appeal which have become due to be filed within the three months time period could be filed before the Appellate Board. However, it may be possible to defer bringing into force Section 100 of the Act which provides for the transfer of pending proceedings before any High

Court to the proposed Appellate Board by delaying the notification in respect of transferring of cases to the Appellate Board from the High Court. But, if this is done the purpose of setting up of the Appellate Board would be partly lost and there would be delay in disposing of these cases.

In view of the above, it has been opined that the Chapter XI relating to setting up of Appellate Board in the Trade Marks Act, 1999, has to be notified simultaneously. The Appellate Board provision is also provided in the Geographical Indications of Goods (Registration and Protection) Act, 1999. TMR, Mumbai have stated that the opinion of the Law Ministry may also be obtained in the matter.

Submitted please.

B.K. Malhotra
22/5
(B.K. Malhotra)
Under Secretary
22 May, 2000

DS (SC) - on return

This concerns the operationalization of the IPAB. TMR was asked to examine the feasibility of providing for different dates of coming into force of the TMA Act, 1999 and the IPAB. It is their view that although Section 159 provides for a savings clause, subject to section 100 (which provides for the transfer of cases from High Courts to the IPAB), only Section 100 can be deferred (i.e. transfer of pending proceedings). It is their view that operationalization should be simultaneous but views of the Law Ministry could be sought.

Since the IPAB is linked also to the Act relating to Geographical Indications of Goods also (and is proposed to be linked to the Patents & Designs Acts), a view in the matter needs to be taken early.

For orders whether Law Ministry be consulted.

Handa
25.5.2000

we may consult M/o Law urgently, pl.

Handa
26.5.2000

JS(AEA)

DS(SC)

Handa
26.5.2000

US(BKM)

584/DS(SC)/2000
26.5.

1738/55(AEA)
26/5/2000

Reference note on pre-page.

While considering the issue of Establishment of Intellectual Property Appellate Board provided in Section 83 of the Trade Marks Act, 1999, to hear appeals against the decisions of the Registrar and the operationalization of the Intellectual Property Appellate Board, it was considered appropriate to examine the issue legally whether different dates can be prescribed for bringing into force the different provisions of the TMM Act at the time of publication of Trade Marks Rules, 2000 and operationalization of the Intellectual Property Appellate Board.

TMR was asked to examine the feasibility of providing for different dates of coming into force of the TMM Act, 1999 and Intellectual Property Appellate Board.

The views expressed by the TMR as summarized in the notes on pages 5-6/ante may kindly be perused in this regard. It is their view that although Section 159 provides for a savings clause, subject to Section 100 (which provides for the transfer of cases from High Courts to the IPAB), only Section 100 can be deferred (i.e. transfer of pending proceedings). It is their view that Chapter XI relating to setting up of Appellate Board in the Trade Marks Act, 1999 has to be notified simultaneously. If this is not done there will be a vacuum and appeal from orders and decisions from the Registrar of Trade Marks cannot be filed before any Forum.

Since the IPAB is linked also to the Act relating to Geographical Indications of Goods also (and is proposed to be linked to the Patents and Designs Acts), a view in the matter needs to be taken early. TMR has also suggested to consult Law Ministry also in this regard.

We may seek the views of the Legislative Department on the above.

B.K. Malhotra
31/5/2000
(B.K. Malhotra)
Under Secretary
May 31, 2000

DS (SC)

Handa
31 5 2000

S.A. Ministry of Law & Justice (Legislative Deptt.)
(Dr. S.D. Singh, Dy Legal Counsel)

116/03

Smt. Anil .
9.6.2000

विधि और न्याय विभाग
Ministry of Law & Justice
भारत सरकार
Legislative Department

विधि और न्याय विभाग
Ministry of Law & Justice
भारत सरकार
Registrar General
विशेष न्यायाधीश
Constitutional Bench

Dy.32/2000-Addl
19/6/2000

- 8 -

Legislative Department

Department of Industrial Development proposes to bring the Trade Marks Act, 1999 into force. In this connection they have sought our opinion as to whether different dates can be appointed for different provisions of the Act, especially in the context of segregating the provisions relating to the Intellectual Property Appellate Board.

2. In this connection it is noteworthy to mention here that sub-section (3) of section 1 of the Trade Marks Act, 1999 reads as under:-

"(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision."

From the above it is amply clear that it would be permissible to appoint different dates of commencement for different provisions of the Act. However, the administrative Ministry is required to examine as to which of the provisions can be segregated and brought into force on different dates. There should also be some reason for such action. It is seen that the administrative Ministry in consultation with the Trade Marks Registry examined this aspect and felt that it would not be possible to appoint a different date of commencement to the provisions relating to the establishment of the Intellectual Property Appellate Board alone.

3. The Trade Marks Act, 1999 repeals and re-enacts the Trade and Merchandise Marks Act, 1958. Hence by virtue of section 24 of the General Clauses Act, 1897 and sub-section (2) of section 159 of the Trade Marks Act, 1999, the various rules, notifications, appointments made, etc., under the repealed Act shall continue to be effective as if issued or made under the corresponding provisions of the new Act. However, it is found that the Appellate Board relating to the Intellectual Property Board are new ones. Further, the Board as may be established under section 83 of the Trade Marks Act, 1999 shall be the Board for the purposes of the Geographical Indications of Goods (Registration and Protection) Act, 1999. This Board shall be the Board for the Patents Act, 1970 after the Patents (Second Amendment) Bill, 1999 pending in Parliament is enacted.

(contd. from pre-page)

Also, there is a proposal of the administrative Ministry as approved by the Cabinet for making necessary provisions in the Designs legislation for appeals under that legislation to be heard by the Intellectual Property Appellate Board. In view of the above, it would be necessary to put the Appellate Board in place before the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act, 1999. *are brought into force as otherwise there would be a vacuum as regards P.I. appeals*

4. Section 22 of the General Clauses Act, 1897 provides for making of rules or bye-laws and issuing of orders between passing and commencement of enactments. The said section reads as under:-

"22. Where, by any Central Act or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation."

5. In view of the above-mentioned provision of law, the administrative Ministry may take necessary action to frame the rules and take such other preparatory steps so as to enable them to bring the different provisions of the Act including those relating to the establishment of the Intellectual Property Appellate Board and the appointment of members, etc. of the Board into force.

6. As desired by the administrative Ministry during discussions, it is pointed out here that the provisions of the Intellectual Property Appellate Board are based on the Central Administrative Tribunal and certain other appellate bodies and in this connection the following provisions may be referred to for help:

(1) The Administrative Tribunals Act, 1985, the rules issued thereunder and the procedure followed by the Department of Personnel and Training in the matter;

(2) Section 129 of the Customs Act, 1962 and the Customs, Excise and Gold Control Appellate Tribunal (Recruitment and Conditions of Service) Service Rules, 1987;

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(contd. from pre-page)

(4) Chapter II of the Railway Claims Tribunal Act, 1987 and the rules made thereunder.

[Signature]

(N.K.Nampoothiry)

Additional Legislative Counsel
3-8-2000

Ay. 338/NKN/2000
3.8.2000.

JS& LC (Smt. Sushma Jain)

[Signature]
7.8.2000

Department of Industrial Development

431/SS(S5)
3/8

विधि विभाग न्यायालय

Ministry of Law & Justice

(Government of India)

(Department)

U.O. No. 1311/2000 dated 7/8/2000

[Signature]

May kindly
see in doc.

Ple Mallik
8/8/2000

DIR/SC

Disc'd with JS on 8/8.

Further discussed with
Shri Nampoothiry on 9/8.

[Signature]
9/8

As desired by Secretary a reference was made to the Law Ministry seeking an opinion whether the Intellectual Property Appellate Board (IPAB) could be brought into effect at a date different to the date of operationalization of the Trade Marks Act, 1999. Subsequently, as desired by C&IM during discussions, Law Ministry was also asked to advise on the different options of filling up of the post of Chairman, Vice-Chairman and the Technical Members under the IPAB. The opinion of the Law Ministry on pages 8-10/n., is for perusal.

It has been advised that while it would be legally permissible for different provisions of the Act to come into force from different dates, it would be necessary to put the IPAB for place before the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration & Protection) Act, 1999 as otherwise a vacuum would be created with regard to the forum for appeal. They have, therefore, advised that the administrative Ministry take necessary action to bring the Act and the IPAB into force.

Regarding the procedures/options relating to the appointment of Chairman, Vice Chairman & Members, they have drawn attention to the procedures available for reference under the Customs, Excise and Gold Control Appellate Tribunal (Recruitment & Conditions of Service) Service Rules, 1987, the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963 and the Railway Claims Tribunal Act, 1987 in addition to the Administrative Tribunals Act, 1985.

This issue has been further discussed with the Law Ministry who have advised that the Administrative Tribunals Act, 1985 and the Railway Claims Tribunal Act, 1987 are historically more recent enactment. In the case of the Tribunal for the Income Tax and the Customs, Excise and Gold Control Appellate Tribunal, the parent legislation do not contain substantive provisions regarding the Appellate Board and depend for the detailed manner of the appointment of members etc on the provisions in the subordinate legislation. The provisions in the Trade Marks Act relating to the Appellate Board in Chapter 11 (Section 83-100) are patterned on the Administrative Tribunals Act, 1985. It has, therefore, been suggested that the provisions be followed.

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In view of the above we may:

- (i) take action to operationalize the IPAB simultaneously with the Trade Marks Act, 1999. C&IM has already approved the draft Rules under the Trade Marks Act, 1999 and action is underway to publish the same calling for objections before notification. Draft Rules for the IPAB are currently with Ministry of Law for vetting. It is proposed to publish both Rules together before notification.
- (ii) adopt the pattern of the CAT as the pattern for the IPAB
- (iii) write to the Chief Justice of India to nominate a Chairman of the IPAB
- (iv) write to the Secretary, Department of Legal Affairs to propose a panel for appointment of a Judicial Member as Vice-Chairman
- (v) call for applications from officials who have held the post of a Joint Registrar of Trademarks for at least 5 years as well as write to Registrars of High Courts to nominate an advocate experienced in Trademarks Law for appointment as a Technical Member.
- (vi) decide upon the location of the IPAB since related activities of identifying accommodation, etc will commence only thereafter. (CGPDTM has proposed Mumbai as the location. However, since it is proposed to create a roving Bench, location in Delhi could also be considered).

Submitted for orders.

Subhash Chandra

(Subhash Chandra)
Director
10th August, 2000

'X': May like to take a view and obtain orders of CIM before further action, pl.

JS(AEA)

Sey (IPP) May kindly see the above suggestions for approval. Draft letter to CJI will be put up thereafter. Mumbai could be considered as the location for IPAB.

Aswathan
10.8.2000

Ajit Kumar
11.8.2000

Pl. discuss.

C&IM

1951-F

10.8.2000

2981/JS(AEA)/2000
10/8

914/Dir(SC)
10.8.2000

1758/C&IM
11/8/2000

[Handwritten notes]

'A'

From

- 13

Discussed with C+IM today morning.
C+IM has desired that the actual procedure of writing to the CTI may be ascertained i.e., whether the communication has to go directly or through the Law Ministry. The procedure followed in CAT may be indicated. Similar clarification be given in the case of selection of Vice Chairman. Regarding the members, is the process of obtaining applications through open advertisement? If large number of applications are received, how will selection be made?

A. J. Kumar
19.9.2000

US(AEA)

Dir(SC)

Quwaker
19.9.2000

Please speak-
urgently

US(BKM)

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No. 8(19)/2000-PP&C
Government of India
Ministry of Commerce & Industry
Department of Industrial Development
[PP&C Desk]

The proposal on this file relates to taking a decision on the location of the Appellate Board known as the Intellectual Property Appellate Board. The Trade Marks Act, 1999 which has been passed by the Parliament in the last Winter session contain provisions for setting up of an Appellate Board to hearing appeals against the decision of the Registrar. The Act also provides for setting up Benches in different locations. The Board will also hear appeals in matters relating to the Geographical Indications of Goods (Registration and Protection) Act, 1999. The main objectives of the establishment of the Appellate Board are:-

- to provide a mechanism for quick disposal of cases,
- to develop sound precedents and practices,
- to ensure that appeal from the Registrar's decision is dealt with by judicial and technical experts promptly, and
- to avoid conflicting decisions which have been given by various High Courts in the past.

The broader objective of the constitution of the Intellectual property Appellate Board is not merely to hear appeals against the decisions of the Registrar of the Trade Marks but in due course to cover all rulings on various IP related subjects like Geographical Indications, Patents, Designs, etc.

The Trade Marks Act, 1999, provides that the Central Government shall, by notification in the Official Gazette, establish an Appellate Board to be known as the Intellectual Property Appellate Board to exercise the jurisdiction, powers and authority conferred on it by or under this Act. The Act also provides that Benches shall sit at such places as the Central Government may by notification in the Official Gazette, notify. The organizational structure envisaged will thus reduce expenses for litigants and also reduce delays.

Sections 83, 84 and 85 contain provisions relating to establishment and composition of the Appellate Board and qualifications for appointment as Chairman, Vice-Chairman, or other Members. Provisions relating to Appeals to Appellate Board, Procedures and Powers of Appellate Board and jurisdiction of Courts are contained in 91, 92 and 93 of the Act. (A copy of the Trade Marks Act, 1999 is placed at flag-X). The basic purpose behind setting up the Appellate Board is that Intellectual Property rights like Patents, Designs, Trade Marks, Copyright, etc. are specialized fields requiring specialized knowledge to decide disputes arising in these fields. At present the appeals from the Controller of Patents, Registrar of Trade Marks etc. lie with the High Courts. In view of the pressure of work before the High Courts, cases relating to Intellectual Property are not disposed off quickly. This affects the interest of industries and commerce. The Department Related Parliamentary Stranding Committee on Industry had also recommended the setting up of an Appellate Board. It is proposed to set up an Intellectual Property Appellate Board in the interest of consumers, industries and general public. It has also been the experience that different High Courts interpret the provisions of Intellectual Property laws differently resulting in conflicting decisions. This may be because of

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that Intellectual property is a specialized field of law and judiciary may not be well versed with the intricacies of the involved. In view of this, the provision of Intellectual Property Appellate Board has been provided in the Act to enable association of experts and expeditious disposal of cases.

Controller General of Patents, Designs & Trade Marks suggested that since maximum number of litigations regarding intellectual property matters are under Trade Marks Law and the fact that, to begin with, a Geographical Indications Registry is located at Mumbai, it would be appropriate if the location of the Appellate Board should be at Mumbai. As and when other provisions regarding intellectual property having provision regarding Appellate Board i.e. Patent Law are passed by the Parliament and the workload increases, Bench of the Appellate Board can be established in other cities keeping Appellate Board at Mumbai as Principal Bench.

Considering the fact that the Trade Marks Registry is located at Mumbai and the number of filing of applications for registration of trade marks is very high compared to the number of applications of other laws and also the fact that at present there is a maximum number of appeals pending before the High Court at Mumbai involving trade mark matters, CG has proposed to set up a principal bench of the Appellate Board may be considered at Mumbai. Depending upon the workload in the coming years, a bench of the Appellate Board could be considered to be established in other metropolitan cities.

BK
(B.K.)
Under
27 M

803-F
12

~~DS (SC)~~

DS (SC)
4.2.2012

Disc with JS.

[Signature]
3/4

JS(AEA)/22
10/4

This relates to the establishment and location of the Intellectual Property Appellate Board (IPAB) as approved under the Trade Marks Act, 1999. The Trade Marks Rules, 2000 are presently under finalization in consultation with the Ministry of Law which is vetting the same. The file regarding advance action regarding the appointment of a Chairman, Vice-Chairman and Members of the IPAB has already been submitted. A view is now required to be taken regarding the location of the Principal Bench of the IPAB.

The concept of the IPAB is essentially to reduce the element of delay in the finalization of appeal cases and to associate expertise in the appellate process pertaining to the protection of IPRs. This is based upon the recommendation of the Select Committee of Parliament which had examined the legislation as well as the suggestions received during the Interactive Sessions organized by the Department last year.

Presently the IPAB extends to Trade Marks and Geographical Indications. However, it is intended to extend the IPAB to other fields of IP such as Patents and Designs as and when those legislations are enacted. There is, therefore, provision for Technical Members from different fields. On the advice of the Ministry of Law, the IPAB has been structured on the lines of the Central Administrative Tribunal.

The Controller General, Patents, TM & Designs has proposed that the IPAB be located in Mumbai since the majority of appeal cases relate to Trade Marks and the Trade Marks Registry which is situated there apart from the likely location of the Geographical Indications Registry also being Mumbai. Currently it is intended to set up only one Bench and to provide for other Benches depending upon the workload at other places. Initially the Principal Bench can hold sittings in other metropolitan cities on a roving basis if it is felt necessary.

'X' / The location of the first Bench of the IPAB at Mumbai may therefore be considered. Orders of C & IM may also kindly be solicited.

Submitted.

Shanda
(Subhash Chandra)
Deputy Secretary
10 April 2000

Arun Kumar
10.4.2000

'X': please

JS (AEA)

~~Secy (IPP) on return from town~~

Please discuss.

Ajit Kumar

JS (AEA)

Discussed. We may analyse the proposed operationalisation of the IPAB also in the context of the proposed modernisation of the IP administration - all components i.e. PD TM & GI.

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17/4/2000
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Reference note on pre-page.

TMR, Mumbai vide our letter placed at page 5/c was requested to examine with reference to the TM Act whether different dates can be prescribed for bringing into force different provisions of the TM Act at the time of publication of Trade Marks Rules, 2000 and operationalization of the IPAB. The clarification furnished by TMR, Mumbai may kindly be seen at Flag-FR. It has been stated that the matter has been examined in the light of Sections 1(3), 83, 100, 159(1) and observed that with the coming into force of the TM Act, 1999, the TMM Act, 1958 stands repeal and if the provisions of the establishment of IPAB are not brought into force simultaneously, there will be no forum before which appeal could be filed resulting in vacuum. The relevant sections are reproduced below :

Section 1(3) of the Trade Marks Act, 1994 provides as follows:

“The Act shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint :

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision”.

Section 83 provides for the establishment of Appellate Board. Further, Section 100 provides for the transfer of pending proceedings before any High Court to the proposed Appellate Board. Section 159(1) provides that the Trade and Merchandise Marks Act, 1958 will be repealed with the coming into force of the Trade Marks Act, 1999.

On perusal of the Trade Marks Act, 1999, it has further been observed that the expression “Appellate Board” is not restricted to Chapter XI but occurs at different places such as in Chapter VII and in particular Section 57 regarding rectification of the Register. In view of this, even if a proposal is mooted to bring into force different provisions of the Trade Marks Act on different dates, the practical question of filing of appeal from the orders and decision of the Registrar or a rectification petition under Chapter VII from the date on which the new Act come into force will make it imperative that the proposed Intellectual Property Appellate Board is operationalized simultaneously on the date of notification of coming into force of the Trade Marks Act, 1999. If this is not done there will be a vacuum and appeal from orders and decisions from the Registrar of Trade Marks cannot be filed before any forum.

Further the Trade Marks Act, 1999 provides saving clause under Section 159. The saving clause in Section 159(4) is also subject to the provision of Section 100 which provides for transfer of pending proceedings before any High Court to the proposed Appellate Board. Under Section 91(1) a maximum time limit of three months have been prescribed for preferring an appeal to the Appellate Board. Hence when the Trade Marks Act, 1999 come into force, the Appellate Board is to be in place so that appeal which have become due to be filed within the three months time period could be filed before the Appellate Board. However, it may be possible to defer bringing into force Section 100 of the Act which provides for the transfer of pending proceedings before any High

Court to the proposed Appellate Board by delaying the notification in respect of transferring of cases to the Appellate Board from the High Court. But, if this is done the purpose of setting up of the Appellate Board would be partly lost and there would be delay in disposing of these cases.

In view of the above, it has been opined that the Chapter XI relating to setting up of Appellate Board in the Trade Marks Act, 1999, has to be notified simultaneously. The Appellate Board provision is also provided in the Geographical Indications of Goods (Registration and Protection) Act, 1999. TMR, Mumbai have stated that the opinion of the Law Ministry may also be obtained in the matter.

Submitted please.

B.K. Malhotra
22
(B.K. Malhotra)
Under Secretary
22 May, 2000

DS (SC) - on return

This concerns the operationalization of the IPAB. TMR was asked to examine the feasibility of providing for different dates of coming into force of the TMA Act, 1999 and the IPAB. It is their view that although Section 159 provides for a savings clause, subject to section 100 (which provides for the transfer of cases from High Courts to the IPAB), only Section 100 can be deferred (i.e. transfer of pending proceedings). It is their view that operationalization should be simultaneous but views of the Law Ministry could be sought.

Since the IPAB is linked also to the Act relating to Geographical Indications of Goods also (and is proposed to be linked to the Patents & Design Acts), a view in the matter needs to be taken early.

For orders whether Law Ministry be consulted.

584/DS(SC)/2000
26.5.
1738/55(AEA)
26/5/2000

Handa
25.5.2000

JS(AEA)

we may consult M/o Law urgently, pl

DS(SC)

Handa
26.5.2000
- 26.5.2000

US(BKM)

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Reference note on pre-page.

While considering the issue of Establishment of Intellectual Property Appellate Board provided in Section 83 of the Trade Marks Act, 1999, to hear appeals against the decisions of the Registrar and the operationalization of the Intellectual Property Appellate Board, it was considered appropriate to examine the issue legally whether different dates can be prescribed for bringing into force the different provisions of the TMM Act at the time of publication of Trade Marks Rules, 2000 and operationalization of the Intellectual Property Appellate Board.

TMR was asked to examine the feasibility of providing for different dates of coming into force of the TMM Act, 1999 and Intellectual Property Appellate Board.

The views expressed by the TMR as summarized in the notes on pages 5-6/ante may kindly be perused in this regard. It is their view that although Section 159 provides for a savings clause, subject to Section 100 (which provides for the transfer of cases from High Courts to the IPAB), only Section 100 can be deferred (i.e. transfer of pending proceedings). It is their view that Chapter XI relating to setting up of Appellate Board in the Trade Marks Act, 1999 has to be notified simultaneously. If this is not done there will be a vacuum and appeal from orders and decisions from the Registrar of Trade Marks cannot be filed before any Forum.

Since the IPAB is linked also to the Act relating to Geographical Indications of Goods also (and is proposed to be linked to the Patents and Designs Acts), a view in the matter needs to be taken early. TMR has also suggested to consult Law Ministry also in this regard.

We may seek the views of the Legislative Department on the above.

B.K. Malhotra
31/5

(B.K. Malhotra)
Under Secretary
May 31, 2000

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31 5 2000

DS (SC)

S.A. Ministry of Law & Justice (Legislative Deptt.)
(Dr. S.D. Singh, Dy Legal Counsel)

116/2000
JSALE
Smt. Jain. Jain
9.6.2000

विधि और न्याय विभाग
Ministry of Law & Justice
Addl. LC

विधि और न्याय विभाग
Ministry of Law & Justice
Registrar
Legislative Department

12/2000-Addl. LC
14/2000

Department of Industrial Development proposes to bring the Trade Marks Act, 1999 into force. In this connection they have sought our opinion as to whether different dates can be appointed for different provisions of the Act, especially in the context of segregating the provisions relating to the Intellectual Property Appellate Board.

2. In this connection it is noteworthy to mention here that sub-section (3) of section 1 of the Trade Marks Act, 1999 reads as under:-

"(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision."

From the above it is amply clear that it would be permissible to appoint different dates of commencement for different provisions of the Act. However, the administrative Ministry is required to examine as to which of the provisions can be segregated and brought into force on different dates. There should also be some reason for such action. It is seen that the administrative Ministry in consultation with the Trade Marks Registry examined this aspect and felt that it would not be possible to appoint a different date of commencement to the provisions relating to the establishment of the Intellectual Property Appellate Board alone.

3. The Trade Marks Act, 1999 repeals and re-enacts the Trade and Merchandise Marks Act, 1958. Hence by virtue of section 24 of the General Clauses Act, 1897 and sub-section (2) of section 159 of the Trade Marks Act, 1999, the various rules, notifications, appointments made, etc., under the repealed Act shall continue to be effective as if issued or made under the corresponding provisions of the new Act. However, it is found that the provisions relating to the Intellectual Property Appellate Board are new ones. Further, the Board as may be established under section 83 of the Trade Marks Act, 1999 shall be the Board for the purposes of the Geographical Indications of Goods (Registration and Protection) Act, 1999. This Board shall be the Board for the Patents Act, 1970 after the Patents (Second Amendment) Bill, 1999 pending in Parliament is enacted.

(contd. from pre-page)

Also, there is a proposal of the administrative Ministry as approved by the Cabinet for making necessary provisions in the Designs legislation for appeals under that legislation to be heard by the Intellectual Property Appellate Board. In view of the above, it would be necessary to put the Appellate Board in place before the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act, 1999. *one brought into force as otherwise there would be a vacuum as regards Patents Act*

4. Section 22 of the General Clauses Act, 1897 provides for making of rules or bye-laws and issuing of orders between passing and commencement of enactments. The said section reads as under:-

"22. Where, by any Central Act or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation."

5. In view of the above-mentioned provision of law, the administrative Ministry may take necessary action to frame the rules and take such other preparatory steps so as to enable them to bring the different provisions of the Act including those relating to the establishment of the Intellectual Property Appellate Board and the appointment of members, etc. of the Board into force.

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(contd. from pre-page)


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(N.K. Nampoothiry)

Additional Legislative Counsel
3-8-2000

Ay. 338/NKN/2000
3.8.2000.

JS& LC (Smt. Sushma Jain)


7.8.2000

Department of Industrial Development

431/SS(SS)
3/8

विधि और न्याय बहाल
Ministry of Law & Justice
(Government of India)

U.O. No. 1311/2000 dt. 7/8/2000

CM
May kindly
see in doc.

P. Mallik
8/8/2000

DIR/SC
Disc'd with JS on 8/8.
Further discussed with
Shri Nampoothiry on 9/8.


9/8

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Submitted for orders.

Subhash Chandra

(Subhash Chandra)
Director
10th August, 2000

Aswath
10.8.2000

Ajit Kumar
11.8.2000

'X': May like to take a view and obtain orders of CIM before further action, pl.

~~JS(AEA)~~

~~Secy (IPP)~~

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Pl. discuss. *Neel*

C&IM

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10.8.2000

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10/8

914/Dir(Sc)
10.8.2000

1758/CI(M)
11/8/2000

From overleaf

-13-

Discussed with C+IM today morning.
C+IM has desired that the actual procedure of writing to the CTI may be ascertained i.e., whether the communication has to go directly or through the Law Ministry. The procedure followed in CAT may be indicated. Similar clarification be given in the case of selection of Vice Chairman. Regarding the members, is the process of obtaining applications through open advertisement? If large number of applications are received, how will selection be made?

J. H. Kumar
19.9.2000

JS(AEA)

Dir(SC)

Amal Kumar
19.9.2000

Please reply
urgently

US(BKM)

Reference note of Secretary(IPP) on pre-page.

The matter has been examined with reference to the CAT Act, 1987 and procedures being followed by the DoPT. It is understood that:

As regards Chairman

- The communication to the Chief Justice of India has to be addressed by the Administrative Ministry concerned and not routed through the Law Ministry. This communication needs to be addressed by the Secretary to the Registrar General of the Supreme Court of India.
- The procedure in the CAT is that the consultation with the Chief Justice of India is done for Chairman, Vice-chairman and Members as it is prescribed under the CAT Act, 1985.

In the case of the Vice-Chairman

- Under the CAT, the administrative Department consults the Chief Justice for which the Chief Justice associates a sitting judge as the Chairman of the Committee. In the event of the post being required to be filled up from the feeder level, the practice is to fill up the vacancy after approval of this committee.

In the case of the Members

- The practice in the CAT is to write to Administrative Ministries/ Departments and State Governments (for the administrative members) and the Registrars of High Courts (for judicial members); thereafter the Chief Justice of India is consulted with a panel of names for which purpose a committee headed by a sitting judge is constituted by the Chief Justice. CAT does not call for applications through open advertisement.
- The selection of members from the applications received is done by an Internal Selection Committee of the administrative Department which frames certain criteria for the screening of applications in line with the qualifications prescribed. This is then put up to the Committee constituted for the purpose by the Chief Justice and which includes a Supreme Court Judge.

Under the IPAB, the provision is for consultation only in the case of the Chairman under Section 85(6). For this purpose Secretary may consider addressing a letter to the Registrar General of the Supreme Court of India.

In the case of Vice-chairman, the qualifications prescribed under Section 85(2) are that the candidates should either have been a Judicial/ Technical Members of the IPAB for a minimum period of two years or have been a member of the Indian Legal Service and held a post in Grade I or any higher post for at least 5 years. Since the appointment is for the first time there would not be anyone available in the feeder cadre of the Judicial or Technical Member. Accordingly, the incumbent has to be identified from the Indian Legal Service. As the Cadre Controlling Authority of the Indian Legal Service is the Ministry of Law, Department of Legal Affairs, it is proposed that the Secretary (Legal Affairs) may be addressed in this matter.

Insofar as the Technical Member is concerned, the qualifications under Section 85(4) is that the candidate should have exercised the functions of a tribunal under the Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999 for a minimum

period of 10 years and have held the post not lower than that of a Joint Registrar at least 5 years or have been an advocate of proven experience in trademark law at least 10 years. While names under the first category can be obtained from CG's office, as regards the identification of an advocate, the option is either to write the Registrars of High Courts (addressing the association of Trademark Attorneys registered with the Registrar of Trademarks can also be considered) or to bring out advertisement calling for applications. An internal committee of the Department thereafter screen the applications received based upon which a suitable candidate can be identified. This criteria could include experience in trademark law (both domestic and international) as well as the standing and reputation in the profession.

Submitted.

(Subhash Chand
Director
21.09.20

JS(AEA)

Reference note above with regard to query of Secretary at page 13/N.
The following is submitted for consideration :-

- (i) Unlike the CAT, where consultation with the Chief Justice of India (CJI) is statutorily prescribed for posts of Chairman, Vice-Chairman and Members, we are required to consult the CJI only in case of Chairman of the IPAB. For this purpose, Secretary would need to address the Registrar General of the Supreme Court of India and the communication need not be routed through the Law ministry.
- (ii) Since the post of Vice-Chairman is to be filled for the first time, there will be no judicial or technical member eligible for elevation. Therefore, we may address the Ministry of Law (Legal Affairs) to send a name or a panel of names. It may be more appropriate to ask for a panel.
- (iii) In respect of the appointment of the Technical Member, it should be sufficient to address the Registrar of High Courts and the Association of the Trademark Attorneys, to recommend names for consideration. These could be considered on the criteria of experience and stature in the profession.
- (iv) It may be seen that in the case of CAT, selection committees and consultative mechanisms operate. In respect of (ii) and (iii), therefore, a Departmental Selection Committee may also be considered to ensure transparency. This could consist of Secretary (IPP) as Chairman and Secretary (Legal Affairs) and Secretary (DOPT) as Members. The selection will be subject to the approval of the CIM and the subsequent approval of the ACC.

2. Secretary may like to take a view and obtain orders of CIM in respect of :

(a) proposals at para (i) to (iv) above regarding the filling up the top-level posts in the IPAB.

(b) the location of the IPAB. It may be recalled that vide 'A' of p.12/N, Mumbai or Delhi have been suggested. The Notification relating to the IPAB is to be simultaneously issued with the Notification relating to the Trademark Rules (already approved by CIM), and it is essential to indicate a location in this Notification for general information.

Ahmad

(A.E. Ahmad)
22-9-2000

उपनिवेश (सीओ) (IPAB)
Secretary (IPAB)
फाइल नं. 2255-1
दिनांक 22-9-2000
Date

~~Secretary (IPP)~~

May kindly see notings from page 13 onwards.

Para 2 above is for the kind consideration and approval of CIM.

Ajit Kumar
22.9.

3470/JS(AEA)/28
22/9

C & M

Approved : (a) as above.

(b) location may be at Chennai.

E-2089/csm
22/9/2000

~~SAPP~~

[Signature]
28/9

~~JS(AEA)~~

Ahmad
29.9.2000

~~Dix (se)~~

[Signature]

1129/JS(AEA)
29.9.2000

[Signature]
28/9

Reference note on pre-page.

We may in the first instance inform the location of IPAB to Tmk, Mumbai as in the letter placed below.

- Please issue over fax
- Status of Hindi translation of Notification please.

for Mumbai
3/10/00

Indha
4 x 2000

US(BKM)

Reference note on page 16 ante.

Draft letters from Secretary (IPP) to the -

Registrar General of the Supreme Court of India requesting for suggesting the name of a suitable person for being appointed to the post of Chairman; and

Secretary, Deptt. of Legal Affairs, for suggesting a name or panel of names, for being considered for appointment to the post of Vice-Chairman

are submitted for consideration and approval please.

Draft letter from JS(AEA) to the Registrars of the High Courts and the Association of the Trade Marks Attorneys is also submitted for approval please

B.K. Malhotra
(B.K. Malhotra
Under Secretary
5.10.2000

Please rtype in draft as amended.

Director(SC)

India
- 6/10

US(BKM)

Drafts have been retyped and placed below.

Pde

12/10/2000

DIR(SC)

Drafts for consideration of approval, we may, however, issue these only on receipt of Notification (draft) which IFA has recently forwarded to Ministry of Finance for vetting as the terms of appointment are detailed therein.

*For Dir
J.C. Jaiswal
U.S.*

JS(AEA)

'X' : we may await clearance.

India

12/08

ha
13
Amwales
16.10.2
India
- 16/x

This is regarding the filling up of the posts of Chairman/Vice Chairman and Members of the IPAB.

The Ministry of Law was consulted about the procedure to be followed for filling up the posts and the issues were also discussed at various stages. The Law Ministry's opinion (notes on pp. 9-10/N) was that the provisions for the IPAB are based upon those for the CAT and certain other Appellate bodies (such as CEGAT and ITAT). Accordingly, copies of the relevant notifications and the CAT Rules were referred to while developing a transparent/objective selection process since there is no standard procedure to be taken as a point of reference and since Appellate bodies have, in fact, followed different approaches.

In the above background and after examining the relevant provisions pursuant to reference to the Ministry of Law, the following approach was proposed :

- Flags A. Bdc
- (i) Unlike the CAT, where consultation with the Chief Justice of India (CJI) is statutorily prescribed for posts of Chairman, Vice-Chairman and members, we are required to consult the CJI only in case of Chairman of the IPAB. For this purpose, Secretary would need to address the Registrar General of the Supreme Court of India and the communication need not be routed through the Law Ministry.
 - (ii) Since the post of Vice-Chairman is to be filled for the first time, there will be no judicial or technical member eligible for elevation. Therefore, we may address the Ministry of Law (Department of Legal Affairs) to send a name or a panel of names. It may be more appropriate to ask for a panel.
 - (iii) In respect of the appointment of the Technical Member, it should be sufficient to address the Registrars of High Courts and the Association of the Trade Marks attorneys, to recommend names for consideration. These could be considered on the criteria of experience and stature in the profession.
 - (iv) It may be seen that in the case of CAT, selection committees and consultative mechanisms operate. In respect of (ii) and (iii), therefore, a Departmental Selection Committee may also be considered to ensure transparency. This could consist of Secretary (IPP) as Chairman and Secretary (Legal Affairs) and Secretary (DOPT) as Members. The selection will be subject to the approval of the CIM and the subsequent approval of the ACC.

The above proposals have been approved by CIM vide page 16/N.

Contd.....

7663 JS (AEA) 01
19/9/01

(from pre-page)

-: 20 :-

x on separate
letterhead of
the law ministry

Dir (sc) II & III

CIM has now also accorded approval of the notification regarding the salaries and other terms of appointment of Chairman, Vice Chairman and Members and this has been referred for final vetting by the Ministry of Law. At this stage, it is proposed to initiate the selection process by writing to the Registrar General of the Supreme Court, Secretary, Department of Legal Affairs, Government of India and the Registrars of the High Courts and the Association of Trade Mark Attorneys as per drafts placed below.

Submitted.

(Signature)
17.9.01
(A.E.Ahmad)
Joint Secretary

Secretary (IPP)

Discussed. We may issue the
letters.

(Signature)
9/10/01

JS (AEA)

(Signature)
9.10.01

Dir (sc)

As disc'd - final letters from JS may
be put up for his signature please.

(Signature)
9.10.01

DS (TS)

Final letters are placed below
for JS (AEA)'s signature.

(Signature)
11/10/01

339-DS(TCJ)/2001
22/10

JS (AEA) on return from leave

To issue TODAY by Speed

DS (TCJ)

(Signature)
22.10

22/10

11/10/01

-: 21 :-

Notes on pre-page may please be seen.

The letters to the Registrars of High Courts inviting names for consideration for appointment as Technical Members in the IPAB have been issued.

The file may now kindly be submitted to Secretary for consideration of the draft letters to Registrar General, Supreme Court and Secretary, Department of Legal Affairs regarding nomination for the posts of Chairman and Vice-Chairman of IPAB (DFA I and II).

[Signature]
(T.C. James)
Deputy Secretary
October 22, 2001

[Signature]
22.x.01

Discussed DFA II may go. Govt
I would like to discuss

[Signature]
5/11

As desired a draft letter from CIM to Law Minister is placed below, pl. for consid

[Signature]
19.11

[Signature]
19/11/01

C a I M has signed the final copy of the revised draft. Placed below P)

[Signature]
20/11/01

[Signature]
20/11

[Signature]

Pl. resubmit with letter to RG/SC.

[Signature]
20.11.01

[Signature]

P. No. 2001 - PD. 17 - 01.01

80/0 JS(AEA)
22/x/01
19/11/01

[Signature]

[Signature]

368 - DSC(TCJ)/2001
22/10

[Signature]

1702 - F.
5-11-2001

DEPARTMENT OF INDUSTRIAL POLICY & PROMOTION

Commerce & Industry Minister had desired a write up on the IPAB. A note on the Intellectual Property Appellate Board (IPAB) including the present position of asking for nominations for the posts of Chairman, Vice-chairman and Members, is placed below, as desired.

Submitted.

Chandra
(Subhash Chandra)
Director
22nd October, 2001

JS(AEA)

Singh (IPP)

Arun Kumar
22.10.01

C.I.M desired to speak to Law Minister regarding chairman IPAB

Sharma
22/10/01

C & IM

This file is returned as CIM has already sent a letter to Law Minister, separately.

Dir (Sec)

in/mi-2
26/10/2001

3/12
PPAC

hda
3/12

2456.
22-X-2001

F-2195(4/10)
23/10/2001

1451/BS(12)
3.12.2001

2.

S.No.14(Receipt)p.43/cor.

S.No.15(Receipt)p44-46/cor/

S.No.16(Receipt)p47-52/cor.

S.No.17(Receipt)53-59/cor.

S.No.18(Receipt)p.60/cor.

S.No.19(Receipt)p.61/cor.

This is regarding filling up of the posts of Chairman, Vice-Chairman and Members of the Intellectual Property Appellate Board (IPAB). Note at page 26-29/N will recall the case in this regard and may kindly be perused.

2. As regards action approved in respect of 'X', draft letter to the Member of the Selection Committee for the meeting is placed below. The date and time convenient to Secretary (IPP) for the meeting may please be ascertained from Secretary's Office.

3. It may be mentioned that this Department had requested Registrar General, Supreme Court of India to obtain the recommendation of Hon'ble Chief Justice of India suggesting the names of a suitable person for being appointed to the post of Chairman. Reply received from Chief Justice of India in this regard may kindly be perused at page 43/cor. for such action as considered necessary.

4. In the meantime, this Department has received bio-data of Shri A.C.C. Unni, Advocate, Madras High Court forwarded by PMO received and also by PS to MOS(Railways), for selection to the post of Vice Chairman of the IPAB. We may also consider this application alongwith other applications for the post of Vice Chairman, IPAB.

5. Registrar General, The Gauhati High Court and Registrar General, High Court, Appellate Side, Calcutta have requested for a copy of this Department's D.O. letter No.8(19)2000-PP&C dated 22.10.2001 whereby bio-data of eligible persons for the post of Technical Member in IPAB were invited. We may send a copy of the aforesaid D.O. letter to the above addressess. DFA please.

Submitted please.

Mund

13.2.02

Sulayy 13/02/02

DSC(TC)

Please issue the replies to the Registrars General of Calcutta and Gauhati High Courts.

We have since received an O.M. from Dept. of Legal Affairs forwarding the bio-data of Shri Unni in the post of V.C. Please do not forget that receipt

F/H
p. 22-23d
p. 24/c.

F/R-1
F/R-2
F/R-3

F/R-4
F/R-5

4/10-DSC(TC)/02
13/2

- 29 -
- 3 -

S.No.20(Issue)p.62/cor.

S.No.21(Issue)p.63/cor.

S.No.22(Receipt)p.64-68/cor.

Reference Section's Note dated 13.2.2002 at pre-page and remarks of DS(TCJ) thereon. Letters to Registrar General of Calcutta and Gauhati High Court has been issued. Bio-data of Shri Unni received from Department of Legal Affairs for the post of V.C has been added in the file (p.64-68/cor.)

2. Resubmitted for consideration of action under para 2,3, and 4 of the note at pre-page.

Munak
15.2.02

Solup
15/2/02

~~DS(TCJ)~~

~~15/2/02~~

~~JS(A&A)~~

We may await directions.

15.2.02

443-DS(TCJ)2002
15/2

586 JS(A&A)/02
18/2

~~DS(TCJ)~~

18/2
21/2/02
PP&C

S.No.23 (R) p.69-74/c

S.No.211 (RI) p.75-77/c

p.75-74/c

p.75-75/c

D/o Law, Justice & Company Affairs has also forwarded bio-data of Sh. H.C.C. Unni for the post of Vice Chairman in IPAS. We have also received bio-data from Sh. K. Parthasarthy M.L., Chennai for appointment as Judicial Member of IPAS.

Submitted please.

Solup
25/2/02

~~DS(TCJ)~~

The particulars of both Shri Unni and Sh. Parthasarthy may be compiled on the proforma used for Dr. Raghbir Singh and Sh. Poddar.

Munak
25.2.02

F/B

M...

15.2.02