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Innovation in Balance: The Role of Arbitration in Intellectual Property Protection

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Abstract

Intellectual property rights are ubiquitous in economic dealings in the modern world. The 20th century's technological innovations are producing outcomes beyond the wildest expectations of many specialists. The Intellectual Property Law is relatively new compared to other laws, yet it has also gained international recognition and expansion. The economy and international trade diplomacy both heavily rely on intellectual property law. The existence of an effective dispute resolution body is a topic of constant discussion as the significance of India's intellectual property laws grows. International treaties about intellectual property laws are the ones that are easily ratified and do not come up against political opposition or contentious issues. Intellectual property laws are becoming increasingly important due to their rapid development, which grants monopolistic rights to the property's owner or holder. This article will examine the various channels for resolving intellectual property disputes in India, which are typically settled by legal action.

Keywords: arbitration, intellectual property

Introduction

The evolving role of arbitration in intellectual property (IP) protection in India is shaped by the interplay of statutory provisions, judicial interpretations, and public policy considerations.

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Intellectual property rights have become central to economic activity and international trade, especially as technological innovation accelerates. While IP law is relatively young, its global significance has expanded, influencing economic policies and diplomatic relations. Traditionally, IP disputes in India have been resolved through litigation, but arbitration is increasingly seen as a promising alternative due to its advantages, such as reduced costs, faster resolution, confidentiality, and the ability to appoint expert arbitrators.[1]

The key legal distinction influencing arbitrability is between "rights in rem" (rights enforceable against the world at large) and "rights in personam" (rights enforceable between specific parties). Courts have generally held that disputes involving rights in personam are arbitrable, whereas those involving rights in rem are not, as the latter affect public interests and third-party rights and thus require adjudication by courts or tribunals.[2] This principle was notably affirmed by the Supreme Court in Booz Allen Hamilton v. SBI Home Finance Ltd., which remains a foundational precedent.[3]

However, recent developments have nuanced this approach. The Supreme Court's three-judge bench decision in Vidya Drolia introduced a four-fold test for arbitrability, clarifying that disputes barred by statutes, those involving rights in rem, affecting third-party rights, or relating to sovereign functions are non-arbitrable. The court recognized that IP rights confer monopolistic privileges and that disputes concerning the grant or registration of IP rights (rights in rem) are generally non-arbitrable. Yet, contractual disputes related to IP, such as licensing, infringement claims between parties, or assignment of rights (rights in personam), are increasingly recognized as suitable for arbitration.[4]

[1] Arbitrability of IP Disputes in India, DNLU Student Law Journal, available at https://dnluslj.in/arbitrability-of-ip-disputes-india/ (last visited May 30, 2025).
[2] Are Intellectual Property Disputes Arbitrable in India?, Indian Review of Corporate and Commercial Laws (IRCCL), available at https://www.irccl.in/post/are-intellectual-property-disputes-arbitrable-in-india (last visited May 30, 2025).
[3] Arbitrability of Intellectual Property Right (Trademarks & Copyrights) Disputes in India, ALBA Law Offices, available at https://www.albalawoffices.com/arbitrability-of-intellectual-property-right-trademarks-copyrights-disputes-in-india/ (last visited May 30, 2025).
[4] Abhishek Dutta, Arbitrability of IP Disputes in India: A Blanket Bar?, Kluwer Arbitration Blog (Mar. 9, 2019), available at https://arbitrationblog.kluwerarbitration.com/2019/03/09/arbitrability-of-ip-disputes-in-india-a-blanket-bar/ (last visited May 30, 2025).

This evolving jurisprudence was further clarified by the Delhi High Court in Hero Electric Vehicles Pvt. Ltd., where the court held that disputes over trademark use arising from contractual arrangements were arbitrable because they concerned rights in personam rather than the validity of the IP right itself.[5] Similarly, the Bombay High Court in Eros International Media Ltd. recognized that infringement actions binding only the parties to the dispute could be arbitrated, distinguishing them from actions affecting public rights.[6]

Despite these positive developments, challenges remain in India regarding jurisdictional clarity, enforceability of arbitral awards in IP matters, and balancing public policy concerns with party autonomy. The legal landscape is still evolving, with courts playing a critical role in delineating the boundaries of arbitrability in IP disputes. The growing acceptance of arbitration for IP disputes aligns India with global trends, where arbitration is increasingly preferred for resolving complex, technical, and commercial IP conflicts efficiently and confidentially.[7]

In summary, while arbitration is not a blanket solution for all IP disputes in India, recent legal developments reflect a significant shift towards recognizing arbitration as a viable and often preferable mechanism for resolving many IP-related conflicts, especially those involving contractual rights between parties rather than fundamental questions of IP validity or registration.[8]

Developing Relation

Commercial conflicts are typically arbitrable, and as intellectual property is inherently commercial, it may be arbitrable as well. However, they are excluded from arbitration in India.

[5] Aakanksha Kumar & Akshita Singh, Arbitrability of IP Disputes: A Step Forward, Cyril Amarchand Mangaldas Blog (Aug. 2023), available at https://disputeresolution.cyrilamarchandblogs.com/2023/08/arbitrability-of-ip-disputes-a-step-forward/ (last visited May 30, 2025).
[6] Arbitrability of Intellectual Property Rights Disputes: An Affirmative Step, SCC Online Blog (Dec. 26, 2022), available at https://www.scconline.com/blog/post/2022/12/26/arbitrability-of-intellectual-property-rights-disputes-an-affirmative-step/ (last visited May 30, 2025).
[7] Ayushi Bajaj, Legal Nuances Surrounding Arbitration of Intellectual Property Disputes, iPleaders Blog, available at https://blog.ipleaders.in/legal-nuances-surrounding-arbitration-of-intellectual-property-disputes/ (last visited May 30, 2025).
[8] The Arbitrability of Intellectual Property Rights (IPR) Disputes in India, Via Mediation Centre, available at https://viamediationcentre.org/readnews/MTUzMA==/The-Arbitrability-of-Intellectual-Property-Rights-IPR-Disputes-in-India (last visited May 30, 2025).

Since the government in India has authority over a certain subject, it grants rights to intellectual property like patents and trademarks. The Geneva Convention stipulates that all matters of a commercial nature are subject to arbitration in an international setting.[9] Likewise, the New York Convention states that disputes about public policy cannot be settled by arbitration.[10] The government's and the judiciary's interests must align for the disputes to be arbitrable. Despite the fact that intellectual property issues have not been arbitrable since 1958, their incidental nature does not exclude arbitration. Intellectual property conflicts were not included in the UNCITRAL model until 1985, when the commercial term was interpreted. With the introduction of the option to refer intellectual property issues for arbitration in Singapore (2019) and Hong Kong (2017), the World Intellectual Property Organization (WIPO) steadily assumed the lead in intellectual property arbitration. A subject matter's arbitrability is also governed by national laws or lex arbitri; if a matter is permitted by those laws, it may be arbitrated. When an intellectual property dispute is arbitrable and does not contravene public policy, the arbitration ruling will be implemented. Intellectual property rights conflicts have unique features better resolved by a specialist arbitrator rather than a judge in a courtroom.

Subject Matter Arbitrability

If intellectual property problems are included in arbitration disputes, the number of cases that are ongoing in Indian courts could be significantly decreased. The Intellectual Property Rights dispute resolution system stipulates that the issues shall be resolved following the court's jurisdiction. Arbitration has gained popularity in recent years to resolve disputes involving intellectual property rights. This can be achieved by including an arbitration clause in contracts for intellectual property. Trade-Related Aspects of Intellectual Property Rights (TRIPS)[11] and Section 89 of the Code of Civil Procedure, 1908 have made several changes to the IPR regime.[12] These provisions give the court the authority to allow for arbitration, mediation, and conciliation of disputes outside of the court if it sees it suitable. IPR disputes may be submitted

[9] Geneva Convention, 1927.
[10] The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Award, 1958.
[11] Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)
[12] The Code of Civil Procedure, Act No. 5, 1908, Acts of Parliament, 1992 (India), S.89

to arbitration under neither Section 62 of the Copyright Act of 1957[13] nor Section 134 of the Trademarks Act of 1999.[14] The Booz Allen Case test, which was later extended by many cases, is used in India to determine if a subject matter is arbitrable. The Supreme Court ruled in Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.[15] that all disputes about "rights in personam" are generally deemed suitable for arbitration. The responsibility of resolving other "right in rem" conflicts has been delegated to public tribunals and courts; arbitration is not appropriate in these situations.[16] The "right in personam" issues that result from the "right in rem"[17] may be submitted to arbitration; therefore, the principle should not be applied strictly. In Eros International Media Limited v. Telemax Links India Pvt. Ltd.,[18] the Bombay High Court rendered a decision. It was decided that no disagreements that 3arose from intellectual property rights should be regarded as "right in rem" or unarbitrable. According to Justice Patel, any action or remedy in a dispute involving the infringement or pass-off of intellectual property rights must always be regarded as a "right in personam" rather than a "right in rem". Subsequently, the Bombay High Court distinguished between "right in rem" and "right in personam" in Indian Performing Rights Society (IPRS) Limited v. Entertainment Network.[19] It did this by citing the Delhi Court's ruling in Mundipharama AG v. Wockhardt Limited,[20] which held that the legal remedies granted in cases of right infringement are not deemed to be arbitrable. The criteria for whether intellectual property conflicts are arbitrable are quite unclear, and there is currently no one theory that can definitively define whether situations fall under this category. The Supreme Court ruled in several decisions that the IPC issues fall into two categories: "right in rem" and "right in personam,"[21] with the former not subject to arbitration.

Prominent Benefits

[13] The Copyright Act, ACT NO. 14 OF 1957, Acts of Parliament, 1992 (India), S.62
[14] The Trade Marks Act, Act No. 47 of Year 1999, Acts of Parliament, 1992 (India), S.134
[15] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd, AIR 2011 SUPREME COURT 2507, 2011 (5) SCC 532, 2011
[16] MANU/SC/0533/2011.
[17] MANU/MH/0536/2016.
[18] Eros International Media Limited v. Telemax Links India Pvt. Ltd, suit no. 331 of 2013
[19] Indian Performing Rights Society (IPRS) Limited v. Entertainment Network, AIRONLINE 2021 DEL 16
[20] Mundipharama AG v. Wockhardt Limited, (1991) ILR 1 Delhi 606
[21] MANU/MH/2580/2015

Many benefits include reduced time due to fewer procedures, the employment of an expert to decide cases, and a consistent approach for parties from different countries. The client may profit from intellectual property arbitration and mediation since they will improve the process and result of the dispute resolution. When problems are settled through arbitration as opposed to intellectual property lawsuits, the client initially benefits from lower costs and more efficiency. It allows the parties greater latitude in deciding how to proceed and to accept arbitration clauses that don't go against the law or public policy. [22]

The number of arbitrators, the procedure for choosing them, the kind of award, the time and scope of discovery, when the award is to be made, and the procedural norms are all at the discretion of the parties in arbitration.

In intellectual property litigation, the matter is managed by the lawyers; however, in arbitration, the parties are in charge and the litigation costs, which were previously frequently quite costly, can be avoided. By reaching a mutual agreement, the working parties can avoid the additional costs and time spent on litigation. Patent matters can benefit since the arbitrator's decision is final and binding, with limited room for judicial review. Because intellectual property issues are so complex, only a specialist can fully comprehend them.

By allowing the parties to select the particular technical experts they want to use to resolve their disagreement, arbitration can help prevent attempts to educate judges through litigation, which may not always be successful. Technically skilled arbitrators aid in comprehending the intricacy of the situation and removing doubt from the case. In cases of urgency, one seeks to eliminate drawn-out court procedures to a finality, so arbitration is a better option to go for a resolution that also involves less risk and reputational damage to the parties. Intellectual property disputes require quick resolution to prevent financial damage.[23]

Coliseum Difficulties

[22] Naim, Nadia. "Intellectual Property Regimes in the GCC: Recommendations to Develop an Integrated Approach to Intellectual Property Rights." Intellectual Property Rights: Development and Enforcement in the Arab States of the Gulf, edited by David Price and AlhanoofAlDebasi, Gerlach Press, Berlin, Germany, 2017, pp. 30-53. JSTOR, www.jstor.org/stable/j.ctt1m3p2h1.5. Accessed 29 Mar. 2024.
[23] WIPO, https://www.wipo.int/amc/en/arbitration/why-is-arb.html

The limited use of arbitration presents a substantial problem in traversing the complicated landscape of intellectual property (IP) disputes. This is partly because arbitration proceedings typically involve judgment in personam rather than judgment in rem. A ruling in personam focuses only on the disagreement between the parties and has no bearing on other parties, but a judgment in rem tackles a specific subject matter and is binding on all parties. Arbitration may be used to settle conflicts that civil courts can arbitrate; however, it does not apply to certain reserved topics. This idea was reaffirmed by the Booz Allen case result, which said that while rights in rem must be decided by a court, rights in personam are arbitrable.

In addition, regardless of contractual commitments, parties may bring any disagreement pertaining to a legal connection to arbitration under Section 7 of the Act.[24] But arbitral awards have no legal force behind them—they are only binding on the parties to the arbitration. Beyond simple contract disagreements, intellectual property problems frequently involve legal issues.[25] Arbitration tribunals are capable of upholding contractual provisions, but they are not equipped to handle complex legal issues that belong in court, including patentability or the revocation of copyright title. Section 42A of the Act requires confidentiality in arbitration processes, which protects private but may be against public policy. Furthermore, Section 34(b)(ii) gives judicial courts the authority to annul arbitral rulings that contravene public policy, obstructing transparency in situations involving the public interest or the state.[26]

Confidentiality frequently takes primacy in the context of business relationships, especially in the IP field, in order to safeguard the interests of stakeholders. However, as demonstrated by Hassneh Insurance Co. of Israel v. Steuart J. Mew, disclosure might be justified under English law, lessening the burden of confidentiality in arbitration.[27] Another problem with state sovereignty is that some cases are only allowed to be heard in state courts and cannot be arbitrated. The asymmetry in jurisdiction highlights the necessity of an equitable method for settling intellectual property conflicts. On the other hand, certain countries, such as the USA and Japan, have their methods for arbitrating disputes. The Patent Office must approve

[24] Section 7, The Arbitration and Conciliation Act, 1996.
[25] Section 35, The Arbitration and Conciliation Act, 1996.
[26] The Arbitration and Conciliation Act, 1996.
[27]WIPO, Worldwide Forum on the Arbitration of Intellectual Property Disputes, https://www.wipo.int/amc/en/events/conferences/1994/briner.html..

arbitration rulings that nullify patents in Japan, which restricts their enforceability. In contrast, the USA requires that arbitration awards be reported to the director of the US Patent Office to be enforced.[28] Subject to consent from pertinent agencies such as the Trademark or Patent Office, the Indian government may consider expanding arbitration in IP disputes as a means of addressing these difficulties and maintaining a balance between the powers of arbitrators and state sovereignty.

In summary, even though arbitration provides a flexible option for settling intellectual property disputes, issues including jurisdictional restrictions, secrecy issues, and complex legal issues still exist. Ensuring a fair and efficient IP dispute resolution mechanism necessitates a complex strategy that balances the interests of parties, confidentiality, and public policy issues.[29]

Conclusion

Arbitration is a new and developing form of dispute resolution. It is possible to initiate arbitration when a problem arises on an international scale, and most private parties enter into a contractual obligation to arbitrate disputes. Arbitration not only resolves disputes amicably but also upholds professional ethics. The potential rewards of arbitration made it possible to refer cases to arbitration; they can range widely, from intellectual property and business contracts to personal matters and family conflicts. The arbitrator will also follow the parties' underlying meaning by rigorously sticking to the language of the agreement since the parties carefully drafted their arbitration clause to ensure stronger protection of individual interests and to sheer away complications. The process of resolving intellectual property disputes is still developing and faces several obstacles, including state sovereignty, the lack of a judgment in rem, and the confidentiality of arbitral proceedings. It is past time for the legislature to recognize the value of arbitration in resolving intellectual property disputes because it offers parties involved in these disputes the opportunity to choose a uniform arbitration procedure that will govern them both in terms of speedy redress and freedom to choose an expert

[28] "The Arbitrability of Intellectual Property Disputes." LawTeacher.net. 11 2013. https://www.lawteacher.net/free-law-essays/commercial-law/the-arbitrability-of-intellectual-property-disputes-commercial-law-essay.php?vref=1.
[29] William W. Park, The Arbitrability Dicta in First Options v. Kaplan: What Sort of Kompetenz-Kompetenz Has Crossed the Atlantic?, 12 Arb. Int'l 137 (1996).

arbitrator. The government would work hard to remove barriers that would make it easier to arbitrate intellectual property issues without the need for drawn-out, traditional litigation.