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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ARBITRABILITY OF INTELLECTUAL PROPERTY DISPUTES – A PARADIGM SHIFTING MOVE

Authored By-Derin Joy

1. General Introduction

In this era of modernity & revolution, Trade law has widened its spectrum both domestically and internationally. Intellectual property is considered a vital aspect of most business transactions. Even though, the term “Intellectual Property Rights” has not been defined under any Indian statute, According to the World Intellectual Property Organization (WIPO), Intellectual Property refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.¹ IP is of great relevance in today’s global market. The aspects of IP standardization is done through TRIPS agreement under WTO & WIPO. Legal provisions have always provided a backbone for commercial aspects such as IP rights itself, despite that, disputes have occurred from time to time in cross border transfer of IP rights. Goods & services being transacted globally can be considered a huge achievement but it carries the added risk of Intellectual property right infringement. Such disparities can be resolved in trade law via regimes such as TRIPS. Therefore, the rise in international trade has made contractual cross border agreements and other claims in IP infringement very profound. Arbitration and its various forms have paced itself largely internationally, however even after its immense reach arbitration has never been the chosen way to settle disputes here in India. Is Arbitration a means to resolve intellectual property disputes? Yes, Arbitration can be seen as an avenue to resolve transactional disputes or any intellectual property disputes. In today’s world, IP infringements and other disputes have become apparent and do not adhere to the norms of traditional litigation. However, if Alternate Dispute Resolution can be seen as a way to resolve disputes, an interesting question is what will be the subject matter of arbitration? What kind of IP disputes is arbitral and what are not? Different jurisdictions have dealt with this matter in different ways. By the virtue of nature of trade, whether international or domestic, rules concerning it are contained under the

¹ World Intellectual Property Organisation *available at* <https://www.wipo.int/portal/en/index.html>

UNCITRAL Model Laws. Since, Intellectual property rights are characterized as rights in rem, claims arising out of contractual agreements have been made subject matter of arbitration. Internationally, Commercial arbitration has been given stage to work efficiently by the means of WIPO and Arbitration centres around the globe. It is quite common that commercial business are moving at the speed of light and do not have the time & effort to combat the traditional court adjudication. Another problem with traditional court litigation is that, unlike arbitration which has a provision to set up a tribunal consisting of judges and an expert on the said matter of arbitration can be extremely helpful, while litigation in courts do not have such a practice. Most judges are unfamiliar with technological matters in patent law, copyright, trademark etc. It is pertinent to note that intellectual property rights is a state granted right. Therefore, whether an arbitration tribunal has the power to adjudicate said matter also remains a question. In India, arbitration of IP disputes have garnered attention but has not been put to use in several years.

Arbitration in commercial disputes can be tricky but needs emphasis and clarity. Issues such as nature of the damages, place of arbitration, and venue of arbitration, jurisdiction and awards shall be discussed in length with regard to IP disputes.

In this Article, the author attempts to summarize all the adjudications both municipal and international to understand how the courts and various law adjudicating forums have given the judicial pronouncements and other decisions in this regard. It is essential to note that only precedents can make one aware about the future of arbitrability of IPR Disputes in India. The research will have essence and meaning when the objective aligns with the reality.

2. Jurisprudence Of Intellectual Property Rights

Intellectual property rights were recognized as a requisite to tool to conserve ideas which resulted in big scientific accomplishments, artistic or otherwise. A need to bring out legislation to regulate the affairs such as mentioned was becoming necessary. The author during her research came across various interesting developments which had happened in IP Law a century before. In 1856, for the first time the Patent Legislation was introduced in India, and Intellectual Property was given the legal recognition, the act was subsequently repealed in 1857 and then in 1859. In 1911, the Indian Patents and Designs act, 1911 was brought in replacing all the previous Legislations on patents and designs. With Minor Amendments in 1920 and 1930, a major Amendment in 1945 took place. And after independent Committee

constituted to ensure conducive Patent system for the National interest which finally made the patent act 1970 and Patent rules 1972.² Further, three pillars of IP law namely Copyright laws, Trademark Law and Patent Laws were evolved subsequently. The copyright act 1957 was enacted by Independent India by which we are governed till date. The Trademark Act 1940 was the first statute in India on Trademark Law, the said Enactment was Amended in 1943 then in 1946. Then this enactment was replaced by the new legislation the Trade and Merchandise Act 1958. Then in 1999 a new trade mark act came into force. The Trademark Act 1999 is governed by Trademark Rules 2002 Geographical indications in India are governed by Geographical indications of goods (registration and protection) act, 1999. Intellectual property development in India can be seen in a very low spectrum. In a developing country like India, it can be understandable that arbitration in itself hasn't seen much light of cases. The trend to lower litigation expenses and related factors still lack awareness even among lawyers. However, Internationally, Arbitration, commercial litigation and IP disputes go hand in hand and there have been various conventions/treaties/organizations which have come up to provide nothing but assistance to the world and its creative thinkers.

3. Claims Arising Out Of Intellectual Property Rights – How Do They Transpire?

The WIPO defines Intellectual Property as the —creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce."³They are intangible, and its value lies in its exclusive use and licensing by the owner. They have emerged to be one of the most valuable commodities today due to their worth in the economy. Intellectual property is generally classified into two main categories of copyright and related rights and industrial property which consists of either distinctive signs such as trademarks and GI, and those properties such as patents, industrial designs and trade secrets that are intended at stimulating innovation, design and creation of technology.⁴ Intellectual Property such as patents and copyrights are generally construed to be of highly technical in nature, thereby

² Pooja Parashar, Jurisprudence of Intellectual Property Rights International Journal of Academic Multidisciplinary Research (IJAMR) ISSN: 2000-006X

³ Supra@1

⁴ Article 2(viii) the Convention Establishing the World Intellectual Property Organization of 14 July 1967, intellectual property was defined to include rights related to a comprehensive set of creations and inventions, being literary, artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields

demanding increased protection in the global economy. However, other branches of intellectual property, such as trademarks and trade secrets are also accorded with utmost importance in today's world, since they might be the most valuable assets of a corporate entity. Intellectual property is an area of law where irreparable harm can occur if disputes are bogged down in lengthy litigation. One issue that pertains with respect to disputes of Intellectual Property at an international level is the conceptual differences in the way the different countries view such rights. Domestic laws provide with their own protection regimes based on their perspectives.⁵ Until the TRIPS Agreement came into force it was highly difficult to gain uniformity at a national level. Some nations view intellectual property as a tool used by industrialized nations to control less developed nations. The less industrialized nations, such as India, used to initially give very little legal protection to intellectual property within their borders. Until the TRIPS Agreement came into force, the field was approached contrastingly by states at the international level. The domestic laws which gave protection to Intellectual Property was also quite often not in tangency with international standards. Example, In the US, the domestic law required that patent applications should be maintained in utmost secrecy and no disclosures are made with regard to the patent until it is duly granted to the applicant.⁶ However, these filing procedures differed both at a municipal and an international level. Therefore, it gave rise to increased litigations. These discrepancies are bound to occur in place of municipal international governance of the matter.

Issues that arise out of intellectual property may be of different types, such as, issues of infringement, questions of validity and disputes arising out of licensing of intellectual property between persons. Each of these issues in intellectual property leads to the parties involved to seek for varied remedies. Most commonly sought for remedies under civil law systems involve injunctive reliefs, declarations as to ownership status of intellectual properties or even specific performance. Additionally, damages as compensation are also sought for. These remedies may be sought against private persons or even the state, if the dispute under question relates to questions of registration or grant of monopolies.

⁵ Loukas Mistelis, *Keeping the Unruly Horse in Control' or Public Policy as a Bar to enforcement of (Foreign) Arbitral Awards*, 2 Int'l Law Forum Du Droit Int'l 248, (2000);

⁶ Matthew R Reed, Ava R Miller, Hiroyuki Tezuka and Anne-Marie Doernenburg, Wilson Sonsini Goodric & Rosati and Nishimura & Asahi, *Arbitrability of IP Disputes*, GAR, 09 February 2021.

4. Right In Rem & Right In Personam

In most jurisdictions, it is an established notion that violation of an intellectual property right constitutes a tortious act. This has been understood through various precedents that such tortious acts which may arise in any contractual arrangement is suitable to be adjudicated by a private forum and these tribunals may be empowered to grant awards as well.⁷ Moreover, intellectual property is mostly considered as a specialised expansion of the law on property in the general body of laws.⁸ It is merely a specialised set of laws incorporated in specific statutes in order to govern incorporeal property. Furthermore, it is imperative to note that any property dispute or claims must also be applicable to intellectual property, even to the extent of making them arbitral for the purpose of private adjudication. However, in reality and under the laws of various jurisdictions, especially in India, arbitrability of intellectual property disputes is not so easily established. The peculiarity of disputes in intellectual property that makes its categorisation as arbitrable difficult is the multiplicity of its nature that depends upon the type of claim that arises out of it. Claims in IPR can either be actions in rem or actions in personam. For instance, registration and validity of an IPR relates to the concept of ownership, and hence any claim that arises out of issues in them stands against the whole world, being action in rem. On the other hand, in a contractual transaction between owner of an IPR and another party in furtherance of licensing or transferring the right to use the IP, any action pertaining to the scope of contractual rights or a breach in the term of contract, is exercised only against the party, constituting an action in personam. This principle of superficial division of actions into rem and in personam proves successful in most cases where subject matter in question is corporeal property, from a general standpoint. Unfortunately, in intellectual property cases, a third set of action may also arise- when a party to a contract alleges infringement of intellectual property against the other. Although infringement of intellectual property generally considered as an action in rem, the transformed nature of such an action into an act in personam, often makes things complicated. To attain clarity on the complications of arbitrating IP is however not that simple. The complexities can be attached to the dual nature of rights arising out of IP well as the dual nature of remedies that can be sought for. Another way of looking at this can be assessing if the action or remedy involved in the dispute is likely to affect third parties or the world at large, or is protected under privity of contract. Another example could be, a car

⁷ Francis Hilliard, *The Law of Torts or Private Wrongs* vol II (Little, Brown & Co 1861) 18; AM Wilshire,

⁸ *The Principles of the Law of Contracts and Torts* (Sweet & Maxwell 1922)

owner's right over his property is a right in rem but there is no reason why a dispute regarding the liability to compensate that arises owing to an incident (damage to the car) cannot be arbitrated.⁹This is because the claim involved belongs to the category of private claim against the concerned party, and no third party has any role to do with it. Suppose there exists a non-exclusive technology licensing agreement where a patented technology is licensed for a limited period. The agreement provides that the licensor shall be entitled to damages if the licensee violated the terms of the agreement. It is true that like real property, the right of the owner of intellectual property is a right in rem. At the same time, the right of the owner as licensor against the licensee is also a right in personam. This dual nature of the right to remedies seems to create confusion in order to determine arbitrability. The ultimate reason why the classification of in rem and in personam was recognised to determine arbitrability was to ensure that the rights of third parties who might have an interest over the subject in issue do not get trampled upon.¹⁰However, in the case of intellectual property, since concepts like validity and registration are matters in the nature of rem, any awards passed on such matters shall have an *erga omnes* effect. It is well established that arbitral tribunals have ruled out this possibility way in advance that the awards will have *erga omnes* effect.¹¹The *erga omnes* effect of IPRs renders them to be rights in rem, thereby enabling the owner of the IPR to exclude the other persons from using or exploiting it. Hence, it is needless to emphasise that an intellectual property right can be exercised against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions that determine the rights and interests of the parties in the case's subject matter, whereas actions in rem refer to actions that determine the Patent Controversies, rights of the parties not only among themselves, but also against all other persons who may claim an interest in the property at any time.¹²A clear distinction is drawn in instances of intellectual property whose grant requires State action such as registration for instance patents and trademarks, and other types of intellectual property which are not required to be registered. A clear distinction is also made between purely contractual issues, in which the validity or ownership of the contract is not in question, and other conflicts. Further delineation is made based on whether the issue involves adjudication on the legality or ownership of the intellectual property in question. Intellectual Property Rights are essentially rights created

⁹ Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24

¹⁰ Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532.

¹¹ Christopher John Aeschlimann, The Arbitrability of Patent Controversies, 44 J.PAT.OFF. SOC'Y 655, 662 (1962)

¹² O Rajat Jain, Arbitrability of IPR Disputes - A Harmonious Approach, 118 taxmann.com 326

under Statutes and are considered to be territorial in nature.¹³ Provisions containing recognition, registration and enforcement of these rights are incorporated in domestic laws, in accordance with the international legal instruments which have gained prominence due to the presence of multinational trade and transfer involving IPRs. Intellectual property rights have been characterised by certain features. One such feature is that territoriality.¹⁴ This means that IPRs must be enforced on a country-by-country basis. Another implication of the territoriality principle is that the recognition given to intellectual property is attributed to national governments and domestic statutes. Hence, most concepts such as registration of Intellectual Property rights and their validity are governed by the statutes under which such provisions are governed. International intellectual property law is founded on the notion of territoriality. The legislation of the jurisdiction where the right is registered will determine whether or not an infringement has occurred. There is a very real possibility of having to launch various lawsuits in multiple jurisdictions to preserve and enforce rights where commodities are sold or services are delivered globally. For those looking to make sure that they do not infringe IPRs, this means potentially having to determine what rights exist on a country-by-country basis. This isn't always an easy task, as some IPRs are easily identifiable due to its registration, while some such as copyrights need not always be registered. And even where there is registration, searching can be time-consuming and expensive and, in some jurisdictions, the facility is limited or non-existent. Another characteristic feature of intellectual property rights is their exclusivity. Granting of IPR vests with the holder the ability to exclude others from exploitation of that intellectual property. This means that Intellectual Property Rights are conferred by the state with an *erga omnes* effect. This is so done in pursuance of public interest. Granting of monopolies in the form of Intellectual Property Rights promote public interest by achieving socio economic goals such as domestic research, transfer of technology, enhancement of skill sets, research and development and so on.¹⁵ It is a well understood principle that the intellectual property being intangible property, its value is attributed to the exclusive rights that its rightful owner shall exercise, and also to the extent of commercially exploiting such rights. There may also be disposal of intellectual property rights by its owner, amounting to contractual waiver of rights. Dispute resolution concerning Intellectual property is complex and needs to be looked at from two perspectives; - rights and claims arising out of rights. The determination of validity of an intellectual property is one question, for instance in

¹³ Buch N, Issues of Jurisdiction in Intellectual Property Violations, 2 INTEL PROP RIGHTS, (2014)

¹⁴ supra

¹⁵ Thomas G Field Jr., Intellectual Property: Some Practical and Legal Fundamentals, 35 IDEA 79 (1994-95), pages 86, 97

the case of whether a person is the rightful holder of a trademark, or a patent. However, claims arising out of a right, for instance, rights vested on a licensee of copyrights in an artistic work and the claims that shall rise out of the right are contractual in nature and hence in personam. The adjudication of disputes belonging to both of these natures is approached in different ways by the various nations, both at municipal level and internationally. At the international level, while the WTO offers for dispute settlement mechanism while the WIPO has established the WIPO Arbitration and Mediation Centre. While Intellectual Property Rights cannot per se be arbitrated since they are rights in rem, claims of contractual nature arising out of them have been made subject matter of arbitration in several instances. Moreover, given the skew monopoly rights introduce, states endeavour to craft intellectual property policies to draw a balance between levels of protection granted and benefits that members of the State can derive from exploitation of such intellectual property. Given the overall policy and the *erga omnes* character of IP protections, disputes concerning IP are ordinarily reserved within the sole domain of state courts, and are quite often discouraged to be brought into an arbitration forum. Arbitrating upon intellectual property rights is often discouraged also owing to reasons of public policy. One such concern is the less intensive fact finding process and less rigorous evidential proceedings that are part of arbitration process¹⁶. Limited review of arbitral awards may also be a reason. Despite these complications, there is no reference to an explicit blanket ban on arbitration of intellectual property rights. Arbitration as a mode of dispute resolution has in fact experienced rapid growth and increased significance in recent years. This is so due to the rendering of traditional litigation as an unattractive option owing to exorbitant costs and long delays. Furthermore, as business conflicts have become more global, more opposing parties have expressed a desire for a neutral forum. This is because intellectual property rights are worldwide in nature, and in most situations, the dispute involves both the parties' national affiliations and the countries that granted the property rights. International exploitation is particularly prominent in the sphere of intellectual property because, unlike physical property, users can exploit intellectual property in various locations as long as the prerequisites for its physical embodiment exist.¹⁷ Moreover, licensing agreements allow a large number of people to use the intellectual property at the same time. Arbitration is also considered to be attractive in disputes involving intellectual property rights due to the highly technical nature of the dispute and specialised subject matter, since parties can select a knowledgeable arbitrator and

¹⁶ Steven P. Finizio & Duncan Speller, *A Practical Guide to International Commercial Arbitration: Assessment, Planning and Strategy*, 1st ed. (London: Sweet & Maxwell, Thomas Reuters, 2010)

¹⁷ Rory J. Radding, *Intellectual Property Concerns in a Changing Europe: The U.S. Perspective*, 7 INT'L L. PRACTICE 41, 41 (1994)

design and control the procedures by which their dispute shall be settled. However the varied approach of municipal courts and international organisations towards this subject is what makes it interesting to study, insofar as to attain answers. Arbitrability under arbitration law is a concept that interpreted variedly by different forums, but is also gaining widespread attention. There is a gradual movement towards, what is termed as, universal arbitrability, which suggests that all matters with an economic facet are prima facie arbitrable in most jurisdictions.¹⁸ That being said it is suggestive that intellectual property and disputes thereto are being welcomed into the realm of arbitration. Most transfers in intellectual property take place vide commercial agreements and hence, it is generally considered as arbitrable subject matter as the transfer is contractual in nature IPR form a crucial constituent of commercial transactions and are comprised in the bundle of rights therein. To ipso facto declare them non-arbitrable would upset the purpose of the Arbitration Act, impair the efficacy of commercial arbitration and disregard party autonomy. Despite the varied approaches taken by the different jurisdictions as to the arbitrability of intellectual property disputes, the most commonly referred to ground of reasoning is the public policy doctrine. Now that we know the nature of IPRs and the claims that arise out of them, this chapter now intends to look at what notions under the public policy doctrine is invoked to determine arbitrability of IP disputes.

5. Unsettling Jurisprudence Of Public Policy

Arbitration and Intellectual Property dispute have one thing in common which is the privity of a dispute. It is not out in the open as it is in a court proceeding rather it is in a privacy of space between two parties. Arbitration is a form of dispute resolution which majorly occurs when the parties are ready to discuss the matter out of court and IPR is already a right in rem and therefore a negative right. A negative right that it is goes against the very nature of public policy and governance. Therefore it is important to determine that where does this party autonomy end and public policy concern begin in an intellectual property arbitration. If intellectual property where a dispute raises the validity and/or ownership of intellectual property, it is necessary to identify those issues that may arise whose scope extends beyond the essentially private domain of traditional arbitration. A patent or a trademark, for instance, generally a statutorily-created state grant of a limited monopoly or exclusive right of exploitation. Within the judicial system to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a

¹⁸ Nanda S, Arbitration as a means to resolve Intellectual Property disputes, Nuals Kochi

country to whose jurisdiction none of the parties is subject. It is to be noted that there is no universally accepted or approved definition of what can be understood as “jurisdiction with regard to intellectual property” Another way to look at it would be like this, there is a public expectation that contracts should be responded in a way that private parties be given a right to enforce such an expectation or are entitled to receive the damages for any kind of failure. In that way, the state has the power to impose certain duties as such that can be done by exercising one’s duty of care in one’s actions towards third party limitations. However, the parties may often bargain legally to waive the exercise of such publicly-imposed duties. In doing so, the general duty does not disappear. Rather, its applicability in a particular situation is defined by the agreement of the parties exercising a private choice. Thus, an early French commentator made patents “part of a vaster subject the theory of monopoly.” In civil law systems generally, as in Anglo-American law, industrial property rights were originally based in royal prerogatives to grant monopolies.¹⁹ The essence of the rights inherent in intellectual property is that they are the exclusive personal property of the owner. New York Convention allows for signatory, via a reservation to apply the convention “ *only differences arising out of legal relationships, whether contractual or not, are considered commercial under the national law of the state.*” The U.S. law provides for courts to determine the invalidity of a patent as a defense to an infringement claim. In France, too, a court has the power to declare a patent invalid. The court may also revoke a trademark on grounds of improper registration or abandonment. As a public policy question, the issue of the arbitrability of intellectual property is usually expressed somewhat differently. Generally, Intellectual property licensing disputes are considered arbitrable because they raise issues concerning private contractual arrangements between parties. Even in a licensing case, a defense may be raised concerning not the facts or the contractual terms, but the validity or ownership of the intellectual property right that forms the basis of the plaintiffs claim.²⁰ The validity of an intellectual property right is determined by reference to national statutory principles, which may include public registration of the right and the fact that these rights exist in the sphere of public grants has led courts to suggest that their jurisdiction may not be circumvented by private determinations; i.e., arbitration of the validity of these rights. What is it that makes these particular state grants part of an immovable state domain? Other state-imposed responsibilities, such as contract and tort, may in certain circumstances be freely waived. Further, the fact that intellectual

¹⁹ Paul Roubert, 1 Le Droit De La Propriété Industrielle 63-65, 195

²⁰ Copyright registration in the US

property rights arise under a state grant is not sufficient to render such rights automatically in-arbitrable. Let Suppose, In common law countries such as India, UK, Canada, the property was derived from land owners, under which a monarch possessed all property and the rights was derived from different parts and transferred in various forms. However now instead of the monarch, the state has replaced all rights and liabilities and therefore all private property remains with the state and it can only grant nay sort of interpretation or rights desired. An appellat court of law in America held in the matter of *Beckman Instruments, Inc. V. Technical Development corp*²¹, said that that arbitration of a patent's validity was "inappropriate for arbitration proceedings and should be decided by a court of law, given the great public interest in challenging invalid patents." Therefore it can be said that an arbitral award is merely a private affair, binding only on the parties and having no wider impact, an arbitrator cannot make an award that has an effect *erga omnes*.²²The ownership that inevitably implicates non-parties, and therefore, exceeds the arbitrator's powers. This is seen as calling into question the basis of the state grant of intellectual property rights.

6. Conclusion

The international organizations dealing in the regulation and promotion of transnational trade activities, such as the WTO, UNCITRAL, and ICC, as well as organizations dealing in building a framework for IP such as the WIPO or the TRIPS Agreement under the WTO, should engage in harmonized activities with each other for promoting arbitration as a preferred avenue for dispute resolution in IP. This can be done to bridge the gap between IP and other types of subject matters that form the primary content of commercial transactions insofar as to consider IP disputes at par with such other disputes. International forums which exclusively deal with IP arbitration and other ADR services like the WIPO and the Dispute Settlement Body under the WTO can dedicate an exclusive department or establish a dispute settlement forum exclusively for conflicts concerning IP issues. Arbitration institutions and other organizations like the UNCITRAL can also facilitate such actions by providing draft arbitration clause models exclusively for contracts dealing with licensing or transferring of IP so that a level of uniformity can be achieved in such commercial transactions and their conflicts. At the global level, traditional norms of IP laws should change, and the latest prospects of IP should be recognized. International organizations must promote new forms of

²¹ 433 F.2d 55 (7th Cir. 1970)

²² William R. Vance, the Quest for tenure in the united states

IP and their potential in newly formed avenues of trade and technology so that such new facets are incorporated effectively in commercial transactions. Specialized rules for arbitration on disputes arising from such commercial transactions may also be formulated by organizations like the WIPO or separate arbitral institutions. The TRIPS Agreement can be modified to accommodate changing facets of IP in the field of technology, pharmaceuticals, block chains, and E-commerce. Accordingly, the WTO can also accommodate international commercial transactions dealing with such subject matter under the purview of its dispute resolution mechanism (DSU), in accordance with terms of the TRIPS Agreement. Therefore, the international community can make consolidated efforts to educate parties in commercial dealings regarding the benefits and challenges in arbitrating IP disputes. As already discussed in the article, arbitrating IP has both pros and cons, and ultimately, the parties must carefully employ a dispute resolution mechanism that is most suited for their interests and purpose. Thus, educatory reforms are necessary both at the international as well as domestic level, in such a way that parties to commercial dealings in IP are made fit to first analyze their issue at hand(or potential issues that may arise in the future) and then decide upon the type of dispute settlement mechanism best suited for them. Organizations and arbitral institutions can also help by formulating draft arbitration clauses or models for specific issues or arbitrable disputes in IP, which can be incorporated into commercial contracts by interested parties. The concerning the position in India, the courts needs to reach a consensus as to the question of arbitrability of IP disputes. Legislative lacunae are a primary reason behind the non-clarity. Indian legislature can amend the existing laws on intellectual property to incorporate provisions that suggest that particular kinds of disputes of IP may be subject to arbitration. Thus, statutory recognition can be conferred on arbitrating contractual IP disputes, as seen in the US and Singapore. However, since the intellectual property in India is regulated under various and multiple statutes, amendment of each might be difficult. Hence new legislation that exclusively lays down arbitrability qualifications for IP in commercial contracts may be helpful