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Arbitrating Innovation: Navigating Arbitrability of Patent Disputes in the Indian Legal Landscape

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In 2018, the lengthy and high-profile patent infringement battle between smartphone titans Samsung and Apple concluded after seven years of extensive litigation, culminating in damages reaching millions of dollars. The considerable time taken to reach a decision could have been significantly reduced had arbitration been the chosen method for resolving the case. There is a growing interest in patent arbitration in many countries like U.S where patent disputes are expressly arbitrable. Despite this, the parties are confronted with major legal and practical obstacles to the use of arbitration, internationally and nationally. And then comes countries like India where, due to lack of legislation and public policy reasons, it is difficult to ascertain whether the dispute regarding patents are arbitrable or not. In this regard, this research paper discusses current framework on the arbitrability of patents disputes in India and also compares it with the legal framework of different countries in order to find some possible solutions to the existing uncertainty present in Indian laws with respect to arbitrability of patent disputes.

Keywords: International Arbitration, Public policy, Innovation, Arbitrability, Patent Disputes, Patent Validity, Patent Infringement, Patent Revocation, Erga Omnes Effect, Inter Partes Effect

The much publicized and long running patent infringement suit between tech giants Samsung and Apple came to an end in the year 2018 after seven long years of legal battle costing the companies millions of dollars in damages.[1] This makes it necessary to seek other options than the traditional patent litigation. In the present world, intellectual property rights have come to play a vital role in the promotion of the international trade and it is well known that stability and vitality of economy of a nation depend on it. It is normally conceived as a system which not only subsidizes creative work and innovations in the field of technology but also protects the transfer and dissemination of technology, shared benefits and economic, social and cultural development.[2] Thus, the matters related to intellectual property go beyond the substantive legal rights and rules and include other aspects of the dispute.

The complexity of the patent issues does not end at the national level and thus raises the issue of cross border disputes.[3] This process of domestic patent litigation is already quite cumbersome.[4] Furthermore, the current systems of legal protection and enforcement of patent rights are considered inadequate in several countries including India.[5] There is a visible growth in the demand for patent arbitration as evident from the fact that in the US, all patent disputes are arbitrable and Tokyo has established Asia's first International Arbitration Centre for standard essential patents.[6] However, the use of arbitration remains constrained by legal and practical limitations both at the international and domestic level. In contrast, in countries like India, the position is complicated by the absence of clear legal provisions and public policy issues, which make it difficult to state with certainty whether a patent dispute is arbitrable.

This paper aims at analyzing the arbitrability of patents in India and comparing it with the current position in other countries to arrive at the possible recommendations. It begins with the background of the arbitrability of patent disputes in India, and then analyzes the relevant legal framework and judicial practice in the country. The paper then makes a comparative analysis of legal trends regarding the arbitrability of such matters in the UK, USA, Japan, Australia, France, Canada, the Netherlands, Germany, China and other countries. Thereafter, it discusses the solutions and recommendations for enhancing the future of arbitrability of patent disputes in India. The paper further discusses the practical barriers to patent arbitration in India, examines understanding the

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Patent–Commercial dispute divide in Indian arbitration, and proposes a pragmatic framework for arbitrability of patent disputes in India. Finally, the paper concludes with the identification of the findings and their implications. The methodology used in this research is the doctrinal legal research or black letter law research. The paper has extensively reviewed and analyzed both primary and secondary sources to meet its research objectives.

Arbitrability of Patent in India

The issue of whether patent disputes are arbitrable or not remains unsolved in India due to the absence of legal provisions and inconsistent judicial decisions. Although great efforts have been made to encourage the use of arbitration as a method of dispute resolution, these efforts have not addressed the issue of arbitrability of intellectual property rights, including patents. The legal framework of patents, which includes the Patents Act, 1970 does not contain provisions that can either affirm or deny the possibility of resolving such disputes through arbitration.[7] Similarly, the Arbitration and Conciliation Act, 1996, which is the main law on arbitration in India is quiet on this matter leaving it to the courts to interpret and devise principles to guide the way.[8]

The Supreme Court of India has provided the general principles for the purpose of determining whether a dispute is arbitrable in *Booz Allen and Hamilton Inc.* v *SBI Home Finance Ltd.* The Court established a distinction between matters involving rights in rem, which are inarbitrable, and those involving rights in personam, which are generally arbitrable. Also, it held that disputes provided for by special statutes and lying within the exclusive jurisdiction of certain courts or tribunals are also inarbitrable.[9] These principles were, however, modified in *Vidya Drolia* v *Durga Trading Corporation* where the Court formulated a four-fold test to determine whether a dispute is arbitrable or not. Based on this test, a dispute is inarbitrable if it (i) relates to rights in rem other than subordinate rights in personam; (ii) has erga omnes effect or affects third party rights; (iii) bears on inalienable or substantial sovereign functions or vital public interest; or (iv) is excluded from arbitration by statute.[10] The Supreme Court of India has not, however, considered the question of whether a particular dispute is a patent dispute and, if so, whether it is arbitrable. The Court has, however, made some obiter dicta that have bearing on this issue. For instance, the Court has held that some disputes that require detailed judicial intervention or those with substantial public policy implications cannot be resolved by arbitration.[9]

In the meantime, the Indian High Courts of Delhi[11], Bombay[12] and Madras[13] have given different answers to the question of whether intellectual property disputes are arbitrable, thus creating further legal complexity. The Delhi High Court has, however, rejected the idea that all intellectual property disputes are inarbitrable.[11] It has also clarified that while certain matters, such as revocation of a patent, are matters in rem and are therefore inarbitrable, others, such as licensing agreements, which are matters in personam, may be arbitrable.[11] However, divergent opinions within the same court have added to the uncertainty. Similarly, the Bombay High Court has approached patent disputes with caution, emphasizing non-arbitrability in cases involving broader statutory or public interest concerns.[12] The Madras High Court, while contributing to the discussion, has not maintained a consistent stance, further complicating the jurisprudence on this matter.[13]

While the judicial precedents have provided limited direct insights into the arbitrability of patent disputes, they offer critical principles that guide the broader framework within which such disputes are analyzed. Certain rulings have also indirectly addressed the arbitrability of distinct typologies within patent disputes. Upon thorough examination of judicial pronouncements and legal provisions, patent disputes can be broadly categorized into four types: patent validity disputes, patent infringement disputes, patent revocation disputes, and patent licensing disputes. However, the issue of arbitrability surrounding these categories exhibits notable inconsistencies, which will be explored further in the subsequent discussion.

Analysis of Patent Arbitrability in India and Global Approaches

Patent Infringement

In India, the term "infringement" is not explicitly defined in the Patents Act, 1970. However, Section 104 of the Act stipulates that no suit for the declaration of patent infringement shall be filed in a court inferior to a district court. In practice, this provision designates district courts or high courts as the appropriate forums for such suits.[7] Furthermore, in most infringement cases, the defendant raises a

counterclaim for patent revocation. Consequently, these matters are often transferred to the high courts, as they are equipped to address both infringement and revocation claims comprehensively.[14] To reinforce this jurisdictional structure, the Act empowers courts, rather than arbitral tribunals, to grant remedies for infringement, thereby underscoring the non-arbitrability of such disputes.[13] Additionally, Section 105 grants courts the authority to issue declarations of non-infringement. This statutory framework imposes significant limitations on the objective arbitrability of patent infringement disputes in India.

Judicial interpretations further illustrate the complexities of this issue. In *Eros International Media Ltd.* v *Telemax Links India Pvt. Ltd. and Others*, the court clarified that the provisions regarding jurisdiction in patent infringement disputes merely outline the hierarchy of judicial forums and do not grant exclusive jurisdiction to any particular court for intellectual property disputes.[13] Similarly, the Lifestyle Equities (2017) case rejected the blanket exclusion of intellectual property disputes from arbitration, as suggested in the Ayyaswamy case.[14] The court emphasized that the categorization of non-arbitrable disputes in the Ayyaswamy case did not constitute a binding ratio but was merely an extract from a book. It further distinguished patent disputes involving rights in rem, such as patent validity, from those involving rights in personam, such as patent infringement, asserting that the latter are arbitrable in nature.[15]

In contrast, jurisdictions like the United States adopt a more arbitration-friendly approach. While all patent infringement disputes are arbitrable, Section 294 of the U.S. Patent Act stipulates that such matters must be arbitrated within the United States unless otherwise agreed upon. For instance, in *Warner & Swasey Co.* v *Salvagnini Transferica*, the District Court rejected the plaintiff's contention to litigate in Italy, holding that arbitration should occur in the U.S. pursuant to Section 294.[16] The Court of Appeals for the Federal Circuit has consistently upheld the arbitrability of patent infringement disputes, reinforcing the enforceability of arbitration agreements even when cases are concurrently filed in national courts.[17]

The global perspective on patent infringement arbitration varies significantly. Countries like Japan, Italy, Switzerland, and China permit arbitration for patent infringement disputes, often granting arbitral awards broader recognition.[6] Japan's approach to the arbitrability of patent disputes is progressive, supported by clear statutory provisions and robust institutional mechanisms. The Code of Civil Procedure permits arbitration for disputes related to patent infringement, enforceability, and certain aspects of validity. However, arbitral awards invalidating patents are not automatically enforceable unless validated by the Japanese Patent Office (JPO), ensuring consistency with public records and safeguarding public interest. Japan, has arbitration bodies, including the Japan Intellectual Property Arbitration Center (JIPAC) which has the power to award remedies such as injunctions, damages and destruction of infringing goods.[6] This framework is a balanced approach of party autonomy and public oversight.

Switzerland has used arbitration for intellectual property disputes for a long time although there is no law that specifically addresses arbitration. Since 1975, the Federal Office of Intellectual Property has established that arbitral tribunals have the power to decide on all IP issues, including ownership, licensing and infringement.[18] Swiss practice awards erga omnes effect to arbitral awards, meaning that even disputes over rights in rem are arbitrable.[19] The World Intellectual Property Organization (WIPO), which is based in Switzerland, has also played a significant role in arbitrating patent disputes, especially those relating to licensing and infringement.[20]

China has codified arbitration for disputes relating to patent infringement in the Arbitration Law of the People's Republic of China (PRC). Arbitration in China is supported by strong regulatory framework, which is a testimony to the country's commitment to develop arbitration for intellectual property disputes.[6] Approaches of Argentina, Belgium and Israel also describe the international practices diversity. In Argentina, criminal patent infringement disputes are completely non-arbitrable. On the other hand, in Belgium and Israel, patent infringement disputes are arbitrable but the awards are only binding on the parties to the dispute similar to that of U.S.[21]

There is a great variation in the treatment of patent infringement arbitrability across jurisdictions, with the position falling squashed between strict inacceptance and liberal acceptance of arbitration. The United States, Japan and Switzerland strongly support arbitration, relying on clear statutory and institutional arrangements to facilitate convenient and effective dispute resolution while protecting the

public interest. Switzerland is particularly instructive in how arbitral awards can effectively resolve disputes over rights in rem, such that intellectual property disputes are generally arbitrable.

India's cautious approach based on statutory form and judicial decisions is pro public interest, but may also be seen as restricting arbitration as an alternative mechanism, which may unduly affect innovation and investment. The distinction in Indian jurisprudence between rights in rem and rights in personam offers a useful framework, but needs greater clarity and consistency to align with global best practices and to promote the efficient resolution of patent disputes.

To align with global trends and to foster innovation India has to consider evolution of its legal framework to allow for arbitration in patent disputes relating to rights in personam, such as licensing and narrowly defined infringement disputes. This evolution should consider both the efficiency of dispute resolution and the protection of the public interest so that patent revocation and validity disputes, which are of significant public interest, should continue to be with the statutory authorities or the courts. This means that India can best align its arbitration regime with international best practices and promote a better environment for the resolution of intellectual property disputes.

Patent Invalidity

In India, a defendant in a patent infringement proceeding has two primary defenses: challenging the validity of the patent or seeking its revocation. The Patents Act, 1970 is the primary legislation addressing jurisdiction over patent validity matters.[7] It empowers the Appellate Board or the High Court to issue a certificate of patent validity when the patent holder successfully defends against a revocation claim.[7] Additionally, the Act allows the central government to refer disputes concerning the use of patents for governmental purposes to the High Court.[7] In such cases, the High Court may delegate specific issues or proceedings to a commissioner, referee, or arbitrator. However, the Arbitration and Conciliation Act, 1996 remains silent on the arbitrability of patent validity disputes, leaving the issue to judicial interpretation.[7]

Judicial opinions on the arbitrability of patent validity disputes in India have been inconsistent. In the *Booz Allen and Hamilton Inc.* v *SBI Home Finance Ltd.* (2011) case, the Supreme Court held that while rights granted under a patent license are arbitrable, the validity of the patent itself is not, as decisions on patent validity involve rights in rem and thus fall outside the scope of arbitration. The Court reasoned that such disputes, which impact third parties and the public domain, are inherently unsuitable for private resolution.[9] Subsequently, in *A. Ayyaswamy* v *A. Paramasivam* (2016), the Supreme Court expressly declared that disputes involving patents, trademarks, and copyrights, including validity disputes, are non-arbitrable. This decision reinforced the non-arbitrability of patent validity disputes but introduced further uncertainty by not addressing the nuances of inter partes versus public interest considerations.[11]

The need for clarity was addressed by the Madras High Court, where a Double Bench reaffirmed that patent license disputes may be arbitrable, but challenges to the validity of the underlying patent remain non-arbitrable.[14] This position underscores the distinction between disputes involving rights in personam, which are suitable for arbitration, and those involving rights in rem, which are reserved for judicial adjudication.

Globally, jurisdictions exhibit varied approaches to the arbitrability of patent validity disputes. In the United States, arbitration of patent disputes is well-established, but validity disputes remain contentious. Courts often argue that validity issues are deeply tied to public interest and cannot be removed from the federal judicial system.[22] Conversely, in the United Kingdom, patent validity disputes are arbitrable, but arbitral awards only have an inter partes effect, limiting their binding nature to the disputing parties.[6] Jurisdictions such as Belgium, Canada, and Australia also permit the arbitration of patent validity disputes, often with similar limitations.[6]

Countries like Germany have traditionally restricted the arbitrability of patent validity disputes, assigning exclusive jurisdiction to specialized courts such as the Federal Patent Court (Bundespatentgericht) under Section 65(1) of the German Patent Law (Patentgesetz).[6] Similarly, Finland and France historically categorized patent validity as involving non-disposable rights, rendering such disputes inarbitrable. However, France has amended its legal framework through Article L 615–17 of the Code de la Propriété Intellectuelle (2011), making patent-related civil claims, including validity disputes, arbitrable with an inter partes effect, as affirmed by the Cour d'appel de Paris.[23]

In the Netherlands, the Patents Act of 1995 grants exclusive jurisdiction over patent disputes to the Court of First Instance (CFI) in The Hague, which limits arbitration attempts. However, emerging interpretations suggest that patent ownership and validity disputes may be arbitrable if the resulting award binds only the parties involved.[24]

The global treatment of patent validity disputes reveals a cautious but evolving trend towards limited arbitrability. In many jurisdictions including India such matters are considered as non-arbitrable as they are concerned with public interest, third party rights and public domain. Rights in rem are considered as matters that are inherently unfit for private adjudication as they need centralized and consistent decisions. But there are emerging exceptions, particularly in jurisdictions like France and United Kingdom where arbitration is allowed with the restriction that awards are inter partes.

India's stand of rejecting non-arbitrability is consistent with the countries having public interest oriented approach but may sometimes come at the cost of convenience and adequacy of arbitration in resolving patent issues. While this approach ensures the protection of public domain integrity, it limits the potential for parties to resolve disputes expeditiously through arbitration. A balanced framework could involve allowing arbitration for specific disputes involving rights in personam, such as licensing, while reserving patent validity challenges, which affect rights in rem, for judicial forums. This hybrid approach, reflecting global trends, could enable India to harmonize its legal framework with international practices, fostering innovation while safeguarding public interest.

Patent Revocation

In India, patent revocation is one of two primary methods for invalidating a patent and is aimed at ending the monopoly granted by the patent.[7] Revocation involves cancelling the rights associated with a patent and transferring ownership.[6] Under the Patents Act, 1970, revocation as a relief can only be sought through a counterclaim in an infringement suit.[7] Furthermore, jurisdiction over such counterclaims is restricted to the High Court, as no inferior court or alternative authority is empowered to adjudicate revocation matters. The Act explicitly bars other courts or authorities from exercising jurisdiction over revocation disputes, thereby reinforcing its non-arbitrable nature.[7]

The non-arbitrability of patent revocation disputes is largely attributable to the destruction of statutory rights associated with patent registration. Jurisprudence on similar statutory rights demonstrates a consistent approach: matters requiring adjudication of statutory rights are typically entrusted to specific courts. For instance, the Supreme Court of India has held that only designated courts can adjudicate "winding up" proceedings, categorizing such matters as non-arbitrable.[25] By analogy, revocation disputes, which involve statutory rights and public interest, fall outside the scope of arbitration.

In the United Kingdom, the law is silent on specific criteria for determining the jurisdiction of High Courts to entertain revocation petitions.[26] However, Section 66 of the UK Patents Act grants the central government authority to revoke patents in the public interest, further indicating that revocation matters are non-arbitrable.[27] In contrast, other jurisdictions exhibit a range of approaches to the arbitrability of patent disputes. While Netherlands, Belgium, and the United States allow arbitration for patent disputes, these awards are binding only inter partes, ensuring that third-party rights or public interest are not impacted.[6] For example, 35 U.S.C. § 294 in the U.S. explicitly permits arbitration of patent disputes, while limiting the scope of enforceability to the disputing parties. Similarly, the Federal Office of Intellectual Property in Switzerland has ruled that arbitral tribunals may adjudicate intellectual property disputes, including revocation, demonstrating a liberal approach to arbitrability.[28]

In Canada, the Supreme Court has ruled that arbitration agreements grant parties significant autonomy in determining arbitrable matters, including copyright disputes. This ruling implies that patent revocation disputes could potentially be arbitrable, though this has not been explicitly addressed in Canadian jurisprudence.[29] However, some jurisdictions, such as Germany, have explicitly restricted the arbitrability of patent revocation disputes. Under Section 65(1) of the German Patent Law, the Federal Patent Court holds exclusive jurisdiction over patent nullification, making arbitration in such matters impermissible. Historically, France and Finland also followed similar restrictions, considering patent revocation as involving non-disposable rights and therefore inarbitrable. However, France amended its legal framework in 2011 to permit arbitration of patent

disputes, including revocation, provided the awards have only inter partes effect.

The availability of patent revocation disputes for arbitration reflects a significant divide in global practices on this issue, showing that this area of law is complex and not uniform across the world. Most jurisdictions, including India, restrict the arbitrability of such disputes on the grounds of statutory rights, third party interests and public interest, since revocation directly affects the validity of patents, which are to be considered as rights in rem and which need centralized adjudication for the purpose of uniformity and public accountability. This is in line with India's statutory and judicial framework which has specifically excluded revocation disputes from the domain of High Courts.

India's position that patent revocation disputes are non-arbitrable aligns with the treatment of patent validity challenges as rights in rem, affecting the public domain. Unlike licensing disputes, these matters directly implicate public interest and, consistent with *Ayyasamy* v *A. Paramasivam* (2016), should remain with courts or statutory authorities rather than private arbitration, even if some jurisdictions permit inter partes arbitration.

Patent Licensing

Under the Patents Act, 1970, it is provided that at any time before the expiry of the patent, the patent holder may assign his rights to another person through assignment or licensing.[7] After such transfer, the new owner is needed to put their title or interest in the record at the patent office by filing an application in writing with the Controller.[7] Licensing is specifically excluded from the jurisdiction of other courts or authorities, thus keeping all control within the patent office.[7]

According to the reasoning in *Booz Allen and Hamilton Inc.* v *SBI Home Finance Ltd*., contractual rights arising from licensing agreements are classified as rights in personam and are therefore arbitrable.[9] Since decisions in these disputes are binding only on the parties involved and do not affect third-party rights, arbitrators have the jurisdiction to adjudicate on such contractual matters. This principle supports the arbitrability of patent licensing disputes, as these agreements generally concern private contractual rights rather than broader public interest issues.[30]

However, while the general rule permits arbitration of contractual disputes, certain intellectual property issues, particularly those involving statutory provisions or broader public interest, fall within the exclusive jurisdiction of specialized adjudicatory bodies under the Patents Act, 1970. For instance, disputes involving the validity of a license registration or its compliance with statutory requirements may raise questions about the arbitrator's jurisdiction. The Madras High Court, in alignment with Booz Allen, affirmed the arbitrability of patent licenses, noting that such disputes typically involve private rights rather than public considerations.[14]

Internationally, arbitration is widely accepted as a mechanism for resolving disputes related to the transmission and licensing of intellectual property rights. In fact, patent licensing disputes are among the most frequently referred matters for arbitration globally.[31] Jurisdictions such as the United States, Netherlands, and Belgium permit arbitration of patent licensing disputes, with awards binding inter partes as per 35 U.S.C. § 294.[32] Similarly, Australia allows arbitration of licensing disputes, as there are no statutory restrictions or case law prohibiting the practice. The People's Republic of China (PRC) has implemented the Arbitration Law of PRC, which governs disputes related to patent ownership and licensing agreements, further emphasizing the arbitrability of such matters.[33]

Patent licensing disputes, by their very nature, involve private contractual relationships and are generally suitable for arbitration. The judicial precedents supports the view that such disputes involve rights in personam and therefore fall within the purview of arbitral tribunals. Given the fact that most countries around the world have accepted the use of arbitration in licensing disputes, it means that arbitration is the right way of resolving such disputes. But, the Indian legal system is not without some level of ambiguity in as much as the patent office has exclusive jurisdiction and there is no judicial oversight, a position that may sometimes raise questions as to the arbitrability of licensing disputes under statutory provisions.

To prepare the Indian patent dispute system to better align with the global best practices, it is suggested that the legislative provisions relating to the arbitrability of the patent licensing disputes and other legal provisions that may affect the public interest be clearly stated. Such changes would make India's arbitration framework more consistent with the international standards and would make the parties approach arbitration with confidence, without the fear of jurisdictional issues. This intermediate approach would increase the confidence in the arbitration

process without compromising on the statutory rights and the public interest that are inherent in the intellectual property law. Therefore, the current situation shows that some changes are needed in all types of patent disputes.

Practical Barriers to Patent Arbitration in India

In spite of a rising worldwide pattern of resolving intellectual property disputes through arbitration, India continues to face significant practical challenges in adopting this approach for patent-related matters. Indian hesitation toward arbitration is not dictated by doctrinal rules since courts have confirmed through *Booz Allen & Hamilton Inc* v *SBI Home Finance Ltd* (2011) and *Vidya Drolia* v *Durga Trading Corporation* (2021) that disputes concerning personal rights can be arbitrated.[9,10] The hesitation of India in using arbitration for patent disputes results from different real-world obstacles which impede the effective application of this mechanism.

The principal issue preventing enforcement is the lack of certainty about enforcement procedures. Indian courts stretch their powers through Section 34 of the Arbitration and Conciliation Act, 1996 to dismiss arbitral awards which appear to violate public policy especially when dealing with entertainment and media sectors.[34] The Bombay High Court in *Indian Performing Right Society Ltd* v *Entertainment Network (India) Ltd* rejected an arbitral decision about copyright royalties because its effects on public content accessibility and third-party rights.[35] The inclination of courts to reject arbitration awards concerning patents likely discourages parties from choosing arbitration.

Institutional infrastructure acts as a major challenge that makes the process difficult. India does not have specialized arbitral institutions that employ technical experts to handle patent matters. In contrast, The Japan Patent Office's Intellectual Property Arbitration Center known as JIPAC manages nearly 80 IP dispute cases each year through expert panels consisting of both lawyers and technical professionals which ensures effective arbitration activities and specialized subject matter expertise.[36] The growing reputation of arbitral centers in Mumbai through MCIA and Delhi through DIAC has not yet incorporated specialized patent benches along with technical arbitrators to manage technologically complex disputes.

The process of procedure also significantly influences these interventions. The patent litigation practice in India revolves mainly around court procedures since legal practitioners receive training through adversarial methods rather than collaborative dispute resolution methods. Seventy-two percent of Indian IP attorneys choose litigation instead of arbitration in dispute resolution according to the 2023 CII survey due to their comfort with court-established procedures and precedents and predictable institutions.[37] The absence of standard operating procedures and multiple organization-specific regulatory approaches causes patentholders to view arbitration as unsuitable for patent protection.

The conflict between protecting confidential information and deterrence directly impacts how decision-makers choose their strategies. Apart from being confidential, arbitration possesses advantages in commercial cases yet Indian patent owners tend to opt for litigation because they desire public validation of their rights. Public judgments act as deterrent signals to potential infringers through their released information to the public domain. The confidential methods of arbitration prevent both theoretical precedent development and public deterrent effects which limit its usefulness in patent enforcement.[38]

The practical obstacles demonstrate an existing legal perspective that Indian courts prefer to exercise judicial control rather than allow parties full autonomy when dealing with matters of public importance. Switzerland differs from India through its regular use of arbitration for patent disputes while Swiss Federal Tribunal awards regarding patent validity also have erga omnes effects.[39] While India continues to make strides in strengthening its IP framework, as seen in the National IPR Policy, the institutional and normative shift toward embracing arbitration for patent matters remains a work in progress.[40]

Understanding the Patent–Commercial Dispute Divide in Indian Arbitration

Indian courts continue to struggle with the categorization of patent disputes as commercial or non-commercial for arbitration purposes even when no explicit statutory exclusions exist because they consider cases complicated or involving public interests.[9,10] Monetary disputes that lack doctrinal clarity are now evaluated using practical concerns which has resulted in an unclear threshold for determining non-arbitrable matters. The courts demonstrate reluctance at this stage to accept arbitrability when analyzing disputes involving patents due to their unique business characteristics. Industrial disagreements exist distinctively different

from the usual business conflicts that arise in commercial affairs.[9] The distinct legal and policy aspects determine the arbitrability status.

Patent disputes differ from common business conflicts because they manifest in both remand and personal rights systems at once. A patent validity challenge extends its effects beyond the participants to encompass broader public interest whereas contractual disputes remain confined between parties only. Data from the Delhi High Court demonstrates that about 68% of patent disputes include counterclaims about patent validity thus requiring rulings with effects for all stakeholders.[41] The contest between Eros International Media Ltd and Telemax Links India Pvt Ltd centered on private commercial contract terms and exclusively affected the participant parties. The courts of India have declared such rights to be non-arbitrable by considering them as matters pertaining to sovereign adjudicatory functions.[13]

The majority of patent disputes differentiate from traditional disputes because they exhibit elevated technical complications. The pharmaceuticals sector along with telecommunications and software industries require adjudicators who excel at scientific and technical matters.[42] The courts have highlighted the importance of appointing arbitrators with specialized technical expertise in disputes involving complex and technical subjects.[43] Most commercial arbitrations work with basic legal and factual points that generalist arbitrators can handle while this setting does not apply to patent disputes. Concerns about the effectiveness of arbitration as a patent dispute resolution solution continue to emerge due to these factors.

Additional factors relating to public welfare compound the divide between patent ownership disputes and other commercial arbitrations.[44] The validity assessment process within patent law determines what products people can access as innovative medicines and vital technologies join this spectrum. The Supreme Court of India through *A Ayyaswamy* v *A Paramasivam* declared that patent validity disputes cannot be solved by private arbitration because such matters require judicial supervision.[11] The Indian government continues to fulfill its policy goal of developing accessible technology through the National IPR Policy.[40]

The Patentgesetz in Germany through Section 65 follows similar policy to India by reserving public courts to handle validity disputes.[45] According to 35 U.S.C. § 294 of the United States patent law there exists an option for patent dispute arbitration but arbitral decisions do not prevent third-party involvement.[46] India adopts a conservative approach because private adjudication should not address issues with public implications according to its perspective which potentially warrants specific treatment of patent disputes.[9,11]

Therefore, while on the surface, patent disputes may appear to be a subset of business disputes, they differ greatly because of their profound technical and public nature.[47] The Indian experience highlights that the bar to arbitrability is not merely legal but also policy-driven because disputes that affect entire communities require a distinct approach.[48] Thus, patent disputes stands apart from typical commercial disputes since they maintain different form and function.[49]

Toward a Pragmatic Framework for Arbitrability of Patent Disputes in India

The resolution of patent disputes in India needs an eclectic approach that would effectively combine the best practices of the international arbitration with the specificities of the Indian legal system and economy. Disputes that can be raised under the head of patent, licensing disputes, infringement disputes, revocation disputes and validity challenges require different strategies for resolution with respect to public interest.

The licensing of patents, which are rights in personam, such as disputes over royalty or breach of contract, are essentially private and are also suitable for arbitration. Such disputes do not generally affect third parties or the public and are, therefore, the correct type of dispute to be resolved through Alternative Dispute Resolution. Jurisdictions like Switzerland routinely arbitrate patent licensing matters, reflecting a progressive and liberal approach to contractual disputes involving intellectual property. India should likewise permit arbitration in these cases, enabling parties to resolve their disagreements efficiently while fully exercising their autonomy.

On the other hand, patent infringement disputes are rather more complicated. At first, such disputes may seem to involve rights in personam; however, they often involve defenses based on the validity of the patent, which is a right in rem and impacts third parties and the public. In this respect, the principle established in *Vidya Drolia* v *Durga Trading Corporation* (2020), which holds that some disputes of a kind relating to a matter involving public policy cannot be arbitrated, is applicable. Narrowly defined

infringement disputes that do not raise the issue of validity may be arbitrable; however, where validity is in issue, such disputes must remain within the jurisdiction of the statutory bodies or the courts for the sake of uniformity and fairness.

Revocation of a patent, which is a matter of right in rem, has a direct bearing on the public domain and third parties in that it determines whether a patent should or should not exist. These disputes are, therefore, primarily of a public interest nature, for example, the issue of accessible medicine and must, therefore, be reserved for statutory authorities or courts. This is because the Supreme Court has ruled in *Ayyasamy* v *A. Paramasivam* (2016) that certain matters of public policy cannot be submitted to arbitration.

Similarly, the validity of patents is, to a certain extent, a matter of public interest and affects third parties, competitors and society. The judicial precedents cited suggest that intellectual property disputes that raise significant public rights and require centralized adjudication cannot be arbitrated. This is because arbitration is a private forum that cannot give the community a universal and binding decision, which makes such disputes unsuitable for arbitration. To address these differences, India may adopt a partial arbitrability approach, which would allow arbitration in regards to rights in personam (licence disputes and narrow forms of infringement) but not rights in rem (revocation and validity issues). The establishment of specialized arbitration tribunals that are knowledgeable in patent law and technology would help in ensuring that the decisions are consistent and technically correct. Changes to the Arbitration and Conciliation Act, 1996, and the Patents Act, 1970, would be necessary to define the limits of arbitrability and protect public policy while allowing party autonomy.

Conclusion

Using arbitration as the suitable forum for settling certain patent disputes in India could be very beneficial. In the first place, it will be able to attract the foreign investment by providing the parties a more efficient and predictable method of resolving their disputes and enabling the parties to select the arbitral forum of their choice. Secondly, it will assist in reducing the load on India's clogged judicial system which has a pendency of over 45 million cases in district and taluka courts and more than 6 million cases in high courts.[50] In addition, this would make India as a more arbitration-friendly jurisdiction, thus enhancing its position within the international intellectual property community.

Although there is confusion among the existing judicial decisions as to which type of disputes are arbitrable, a hybrid approach may be useful to address these problems. Using arbitration for matters of patent licensing and narrowly defined infringement and having courts or statutory authorities examine validity and revocation issues offers a reasonable approach. The decisions would also be more reliable and consistent with the establishment of specialized tribunals, which would have expertise in intellectual property law. This view would foster innovation by respecting the party autonomy and, at the same time, ensuring the public interest, and would place India as a forward thinking jurisdiction in the area of patent dispute resolution. Such measures would ensure that India becomes a global leader in the sphere of intellectual property in regards to private rights and public welfare.

References

1 Hayley T, Apple and Samsung settle after seven years of court battles, (June 27, 2018) The Washington Post [online] <https://www.washingtonpost.com/technology/2018/06/27/apple-samsung-settle-after-seven-years-court-battles/?noredirect=on> (accessed on 13 June 2022).

2 Taubman A, Wager H & Watal J, A handbook on the WTO TRIPS Agreement (Cambridge University Press), 2012, 2-3.

3 Bryan N, Arbitrating the creative, *Dispute Resolution Law Journal*, 50 (64) (1995) 66.

4 Lee Murray E, The institutional role in arbitrating patent disputes, *Pepperdine Dispute Resolution Law Journal*, 9 (2009) 283.

5 Shaiwal S, Disposing IPR dispute in developing countries particularly India: A way forward, (2017) [online] <https://www.uncitral.org/pdf/english/congress/Papers_for_Congress/49-SATYARTHI-IPR_Dispute_in_Developing_Countries_Particularly_India.pdf> (accessed on 7 May 2022).

6 Smith M A, *et al*., Arbitration of patent infringement and validity issues worldwide, *Harvard Journal of Law & Technology*, 19 (2006) 347.

7 The Patents Act, 1970

8 Arbitration and Conciliation Act, 1996

9 *Booz Allen And Hamilton Inc.* v *Sbi Home Finance Limited & Ors*., (2011) 5 SCC 532.

10 *Vidya Drolia* v *Durga Trading Corporation*, (2021) 2 SCC 1.

11 *Mundipharma Ag* v *Wockhardt Limited ILR* (1991) 1 Del 606; *Vijay Kumar Munjal* v *Pawan Kumar Munjal* (2022) 290 DLT 719; *Golden Tobacco Limited* v *Golden Tobie Private Limited* (2021) SCC OnLine Del 4506.

12 *Steel Authority of India Limited* v *SksIspat And Power Limited And Others* (2014) SCC OnLine Bom 4875.; *Eros International Media Limited* v *Telemax Links India Pvt Ltd and Others* (2016) Scc Online Bom 2179.; *The Indian*

Performing Right Society Ltd v *Entertainment Network (India) Ltd* (2016) Scc Online Bom 5893 [140].
13 *Lifestyle Equities CV* v *QD Seatoman Designs Pvt. Ltd*. 2018 (1) CTC 450.
14 *Rakesh Malhotra* v *Rajinder Malhotra* (2014) MANU/MH/1309 (Bom).
15 Rao M B & Manjula G, Patent Law in India, (Wolter Kluwer 2010) 223; The Patents Act 1970, S 104 Proviso.
16 Narayanan P, Patent Law (4th Edn. Eastern Law House 2006) 18-02.
17 Rao M B & Manjula G, Patent Law in India, (Wolter Kluwer 2010) 224.
18 *Warner & Swasey Co.* v *Salvagnini Transferica* 633 F. Supp. 1209 (W.D.N.Y. 1986), Affirmed 806 F.2d 1045 (Fed.Cir. 1986).
19 *Rhone-Poulenc Specialties Chimiques* v *SCM Corp*. 769 F.2d 1569 (Fed.Cir. 1985); Re. Medical Engineering Corporation 976 F.2d 746 (Fed.Cir. 1992) (reported in full at 1992 WL 217763).
20 Baker W H, Arbitrating patent infringement disputes, *Convergence*, 5 (2009) 90.
21 The Swiss International Private Law Statute, 1989, Article 177.
22 WIPO Arbitration Case Examples, <https://www.wipo.int/amc/en/arbitration/case-example.html> (accessed on 9 January 2025).
23 Kenneth A R, Overview of international arbitration in the intellectual property context, The Global Business Law Review, 2011 [Online] <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1008&context=gblr> (accessed on 2 March 2022).
24 Thomas L. Creel, Guide To Patent Arbitration (The Bureau Of National Affairs, Inc. 1987); Zip Mfg. Co. V Pep Mfg. Co. 44 F. 2d 184, 7 Uspq 62 (D. Del. 1930); Beckman Instruments, Inc V. Technical Dev. Corp. 433 F. 2d 55, 167 Uspq 10 (7th Cir. 1970), Cert. Denied, 401 U.S. 976 (1971).
25 J. F. Poudret - S. Besson, Droit Comparé De L'arbitrage International, Bruxelles, 2002, 304.
26 *Socie´te´ Liv Hidravlika D.O.O* v *S.A. Diebolt*, *Rev. arb. No*. 4 (2008) 712 et seq.
27 Rijksoctrooiwet 1995 [Patent Act 1995], arts. 80–81, Stb. 1995, 51.
28 The Patents Act, 1970, ss 64 and 104; *Lambda Eastern Telecommunication and Others* v *ACME Tele-Power Private Ltd and others* (2008) SCC OnLineUtt 5 [9].
29 *Haryana Telecom Ltd.* v *Sterlite Indus. (India) Ltd.* A.I.R. 1999 S.C. 2354, 2355.
30 Middlemiss S & Balfour L, Slaughter and May, 'Patent litigation in the UK (England and Wales): overview' Thomson Reuters (2018) [online] <https://uk.practicallaw.thomsonreuters.com/3-623-0277?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1> (accessed on 8 March 2019).
31 Loi Sur Les Brevets D'invention [Patent Act] Of March 28, 2004, MoniteurBelge [M.B.] [Official Gazette of Belgium], Mar. 9, 1985, At, Art. 73 § 6; Rijksoctrooiwet 1995 [Patent Act 1995], Arts. 80–81, Stb. 1995, 51.
32 Decision of Dec. 15, 1975, Published in *The Swiss Review Of Industrial Property & Copyright*, (1976) 36.
33 *Desputeaux* v *Editions Chouette* (1987) Inc 2003 SCC 17, 1 SCR 178 (Can).
34 Utkarsh S, Putting the jig saw pieces together: An analysis of the arbitrability of intellectual property right disputes in India, *Arbitration International*, 33 (4) (2017) 631, [Online] <https://Doi.Org/10.1093/Arbint/Aix024> (accessed on 6 April 2022).
35 O Francois D, Arbitration of intellectual property rights and licensing contracts in *Golan Work Of Art Ltd.* v *Bercho Gold Jewellery Ltd*., Tel Aviv District Court Civil Case 1524/93.
36 Zhong Cai Fa [Arbitration Law] (promulgated by the Standing Comm., Nat'l People's Cong., Aug. 31, 1994, effective Sep. 1, 1995), art. 2, P.R.C. LAWS 91, [online] <http://www.cietac.org/index.cms.> (accessed on 21 April 2019).
37 Arbitration and Conciliation Act 1996, S 34.
38 Japan Intellectual Property Arbitration Center, Case Statistics (2023).
39 Confederation of Indian Industry, Survey on Dispute Resolution Preferences (2023).
40 Srinivasan B, Arbitrability of intellectual property disputes in India: A critique, NLSBLR, 6 (1) (2020) 30.
47 Swiss Federal Tribunal, Decision (1975) 101 II 45.
40 National IPR Policy, Government of India (2016) para 6.2.
41 Delhi High Court, Annual Report on Commercial Disputes, 2022.
42 Feldman R, Patent trolling: Why bio & pharmaceuticals are at risk, *Hastings Science & Technology Law Journal*, 17 (2) (2013) 295, https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=2048&context=faculty_scholarship (accessed on 3 May 2025).
43 *M/S. Mohinder Singh & Co.* v *Union of India*, AIR 1971 J&K 1
44 Tran B, Patent disputes in commercial arbitration: Key legal considerations, (2025) https://patentpc.com/blog/patent-disputes-in-commercial-arbitration-key-legal-considerations (accessed on 3 May 2025).
45 Patentgesetz, S 65.
46 35 USC § 294 (Title 35, United States Code, Patents).
47 Min E J, An international guide to patent case management for judges (1 March 2012) WIPO https://www.wipo.int/patent-judicial-guide/en/custom-guide/start accessed 6 May 2025; Rassenfosse Gaétan de & Jaffe A, Are patent litigation systems evolving toward a common structure? An empirical analysis' (WIPO Economic Research Working Paper No. 48, 2020) 4–6, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_econstat_wp_48.pdf (accessed on 6 May 2025).
48 B Srinivasan, Arbitrability of IP disputes in India, *NLS Business Law Review*, 6 (1) (2020) 33.
49 Rassenfosse Gaétan de & Jaffe A, Are patent litigation systems evolving toward a common structure? An empirical analysis' (WIPO Economic Research Working Paper No. 48, 2020) 4–6, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_econstat_wp_48.pdf (accessed on 6 May 2025).
50 Government of India, 'The National Judicial Data Grid (NJDG)' (Department of Justice, Ministry of Law and Justice) https://doj.gov.in/the-national-judicial-data-grid-njdg/ (accessed on 5 January 2025).