



Indian Trademark Office lost 44000 files since 2006

By Raja Selvam – Selvam & Selvam, India

Any IP practitioner in India would not be surprised if the Trademarks Office responds on a file inspection enquiry stating that the subject file is missing or misplaced. Misplacing of files has been the most common excuse given by the Trademark Office in many instances. A persistent follow up has at times yielded results in magically finding the file but many a time futile.

However in late 2009 Halidram Pvt. Ltd. filed a writ petition requesting inspection of some trademark registration and opposition files which were related to a pending litigation. When the Trademark Office was unable to explain the reasons why the files were not available for inspection (which as per law should have been) the High Court ordered an enquiry into the matter by the Secretary of the Department of Industrial Policy (DIPP) and Promotion, under which the Trademark office operates.

The Department of Industrial Policy and Promotion has now filed an affidavit, before the High Court stating that a detailed enquiry was conducted by a senior Director in DIPP and the initial findings show that the estimated missing files are approximately 60,052 and after obtaining a report from each trademark office have finally put the number files lost at 44,000 relating to trademark registrations and oppositions.

Further the DIPP has informed the Court that the files were misplaced during the decentralization drive in the year 2006 from Mumbai to the respective Trademark Offices and no systematic record of the movement of the files were in place. The DIPP have also informed the High Court that it would implement a scientific record keeping scheme to ensure all files were in order and has prepared a comprehensive action plan to prevent the recurrence of such events.

The DIPP and the Controller General of Patents, Trademarks and Designs have now undertaken before the High Court that:

1. quarterly and half yearly audits of all the files stored in the different trademark registries would be done and professional advise taken if necessary;
2. where a file is located with missing papers on suspected tampering, a quick enquiry shall be conducted and if the malafide is established prima facie, an FIR shall be lodged;
3. Where the file is not traceable and possibly misplaced but no malafide is suspected, departmental action should be taken to fix responsibility for negligence;
4. to implement a scientific record keeping practice to ensure all files were in order;
5. to reconstruct the missing/misplaced files with the available records online or on file.

Additionally the DIPP and the Controller General of Patents, Trademarks and Designs have proposed the corrective action as follows:

1. The 3.8 lakhs Trademark files which are awaiting verification post digitalization will be verified and be made available online within 6 months;
2. Approximately 2 lakh scanned copy of journal advertisements to be linked with the electronic files within 3 months;

3. The complete trademark record been made available, any discrepancies can be brought to the attention of the Trademark Office;
4. Post this exercise, to look into files that are still missing or have discrepancies;
5. Adopting an IT policy that the complete trademark office would be digitalized by March 2012.

The Court has expressed its concern on this alarming situation and has directed the DIPP that the above steps are strictly implemented.

As for the missing Halidram files, the Court was informed that a FIR had been filed with the police for further investigation. The Haldiram files would be reconstructed through existing records of the trademark office, either in the trade mark journals or the electronic database.

Hopefully we would very soon see a fully digitalized trademark office in India.

For more information, please contact:

Raja Pannir Selvam | Advocate
Selvam & Selvam
9/3 Valliammal Street | Kilpauk
Chennai - 600010 | Tamilnadu | India
Phone: +91 44 43532502 | Fax: +91 44 45558221
Web: <http://selvamandselvam.in>
Blog: <http://www.indianipblog.in>