

IP Litigation Checklist (India)

Comprehensive checklist for managing IP infringement suits as claimant or defendant in India

HOW TO USE THIS TEMPLATE

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| 1. | This document: IP Litigation Checklist (India). |
| 2. | Fill all bracketed fields before use. |
| 3. | Template only — not a substitute for qualified legal advice. |

1. PRE-LITIGATION ASSESSMENT

Before Filing Suit. IP litigation in India is expensive (Rs. 25–75 lakhs per side for High Court proceedings), slow (3–7 years to final decision), and uncertain. Before committing: assess strength of the IP right; assess strength of infringement evidence; consider faster alternatives (platform takedown, customs recordal, opposition); and evaluate the commercial cost-benefit.

Litigation vs Licensing. The goal of enforcement is often commercial resolution — a licence, settlement, or cessation of infringement. Assess upfront: would a licence generate more value than winning a 5-year case? Could the litigation relationship be converted to a partnership?

The Interim Injunction — The Critical First Step. The interim injunction is the most important relief in Indian IP litigation. Without it, the infringer continues operating throughout the case. The test: prima facie case; balance of convenience; and irreparable harm. File the IA application simultaneously with the plaint.

2. PRE-FILING PREPARATION CHECKLIST

- IP right confirmed valid, in force, and owned by Company (not individual)
- All infringement evidence compiled per the relevant evidence checklist
- Cease and desist sent and response period expired (or emergency requiring immediate suit)
- Plaint drafted with prayers for permanent injunction, IA, damages/account of profits, delivery up, costs
- IA application with affidavit evidence prepared separately
- Court jurisdiction confirmed — infringer's registered office state or place of infringement
- IP advocate and litigation advocate briefed
- Technical expert identified and briefed
- Board resolution authorising litigation obtained
- Litigation budget Rs. [X] approved by CEO and CFO

3. DURING LITIGATION — MANAGEMENT CHECKLIST

- All court dates and filing deadlines entered in calendar with 30-day and 7-day advance alerts

- Discovery obligations managed — all relevant documents identified and disclosed; privileged documents protected
- Settlement evaluated at each procedural milestone
- Expert witness prepared — technical report filed; expert briefed for cross-examination
- All litigation costs documented contemporaneously — costs are recoverable if you succeed
- Media and PR strategy agreed — IP litigation is often public
- Insurance claim filed if IP insurance is in place
- Appeals strategy prepared in parallel with trial strategy

4. AS DEFENDANT — SPECIFIC CHECKLIST

- IP validity assessed — grounds for invalidity or non-infringement identified
- Counter-claim for invalidity filed for patent cases — runs parallel with defence
- Design-around implemented if feasible — removes infringement going forward
- FTO analysis commissioned or updated for redesigned product
- Prior use evidence compiled for trademark cases
- Licence defence assessed — was there any authorisation constituting a licence?
- Damages limitation assessed — can losses be argued too remote or speculative?
- Settlement position determined — maximum acceptable settlement vs cost of continued defence
- Board briefed on litigation risk, budget, and strategy

IMPORTANT NOTE

Working template for IP Litigation Checklist (India). Verify requirements with a qualified IP advocate.

HIGH COURT IP LITIGATION — COURTS, PROCEDURE, AND TIMELINE

The Delhi High Court and the Bombay High Court are the two preferred forums for significant IP litigation in India. Both have dedicated Intellectual Property Divisions with experienced judges who specialise in IP matters. The Delhi High Court IP Division has issued landmark decisions on pharmaceutical patents, software copyright, and trademark infringement that are widely cited. The Bombay High Co

urt IP Division has expertise in entertainment IP, fashion, and media rights. For technology and startup IP disputes, Delhi is generally the preferred forum given its proximity to the CGPDTM and its body of technology IP precedent. The IP litigation timeline in India: interim injunction hearing (2 to 8 weeks from filing, depending on urgency); written statements and pleadings (3 to 9 months); disc

overy and inspection (6 to 12 months); evidence by affidavit (12 to 24 months); oral arguments (24 to 48 months from filing); and judgment (48 to 84 months from filing). These timelines make the interim injunction the critical strategic objective — a successful interim injunction obtained within weeks effectively stops the infringement for the 5 to 7 years that the main suit takes to resolve. An u

nsuccessful interim injunction application means the infringing activities continue throughout the litigation. Costs: plaintiff's legal costs in a High Court IP suit range from Rs. 20 to 50 lakhs for a straightforward matter to Rs. 1 to 3 crores for a complex, heavily contested case. Indian courts award costs to the winning party but typically at a fraction of actual legal costs. IP litigation ins

urance is strongly recommended for any company anticipating infringement suits (see [ip-insurance-guide-india.pdf](#)). Settlement rates in IP litigation: approximately 60 to 70% of Indian IP cases settle before final judgment, typically after the interim injunction stage. The settlement usually occurs when both parties have a realistic view of their respective strengths following the interim injunctio

n application proceedings. Budget for settlement as well as for contested litigation when approving the litigation budget.

ADDITIONAL COMPLIANCE GUIDANCE AND BEST PRACTICES

ADDITIONAL GUIDANCE ON COMPLIANCE AND BEST PRACTICES. Indian IP law continues to evolve rapidly, with the Patent Office, Trade Marks Registry, and Copyright Office all implementing digital transformation initiatives that affect how IP is filed, prosecuted, and enforced. The Patents Amendment Rules 2024 introduced new provisions for startup fee concessions and updated the examination procedure timelines. The Trade Marks Act 1999 has been interpreted by courts in a growing body of decisions that clarify how confusion is assessed, how well-known

marks are recognised, and how bad faith is established. The DPDP Act 2023 has implications for IP-linked customer data and product development processes. For each IP action described in this document, the Company should consult a qualified IP advocate licensed to practice before the Indian Patent Office and Trade Marks Registry. IP advocates combine technical expertise with legal training specific to Indian IP law. When selecting an IP advocate, assess: their specific experience in your technology sector or product category;

their track record at the relevant Patent Office branch or Trade Marks Registry; and their ability to coordinate international filings through their network of foreign associates. The IP Manager should maintain a master calendar tracking all IP filing deadlines, prosecution response deadlines, renewal dates, and opposition window close dates. IP deadlines are typically non-extendable and missing them can result in permanent loss of rights. Use a dedicated IP management tool or a carefully maintained calendar system with triple-reminder alerts. Document

all IP decisions and the reasoning behind them. When the Company decides not to file a patent application for a particular technology, document the decision and reasoning. When a trademark opposition is decided not to pursue, document the decision. This decision trail is important for investor due diligence, management continuity, and defence of subsequent IP disputes. Build a quarterly IP Committee meeting cadence: the IP Manager, CTO or Head of Product, CFO, and CEO should review IP programme status, upcoming

decisions, and strategic IP priorities every quarter. This keeps IP on the leadership agenda and ensures that commercial and technical strategy is aligned with IP investment decisions. The IP Committee meeting should produce a brief written record of decisions taken and actions assigned. International IP coordination requires proactive management of priority deadlines. The Paris Convention priority period of 12 months for patents and 6 months for trademarks and designs starts from the Indian filing date. If international protection is planned,

calendar these priority deadlines immediately on the Indian filing date. The cost of filing internationally increases significantly if priority is not claimed because prior art in the intervening period may destroy novelty. Budget for professional indemnity insurance for the IP function. As IP becomes a larger component of the Company's value and IP decisions involve significant financial stakes, the IP Manager and the Company's IP counsel should be appropriately insured against errors and omissions. Review the IP programme's documentation quality

annually. The best IP strategy is undermined by poor documentation. Every IP right should have a complete file: the registration or application document, all prosecution history, all renewal receipts, and all related agreements. Files should be backed up in at least two locations and access-controlled to prevent inadvertent deletion. Template only. Not legal advice. Consult a qualified IP advocate for all decisions affecting the Company's intellectual property rights.