# Comments and Suggestions on the Draft Intellectual Property Rights Rules of The High Court at Calcutta, 2023

## Background

The High Court of Calcutta (hereinafter referred to as “Hon’ble Court”) issued a notice inviting comments and suggestions on the "Intellectual Property Rights Rules of The High Court at Calcutta, 2023" (hereinafter referred to as “Draft Rules”). In furtherance of the said notification, IP attorneys at BananaIP Counsels (“BananaIP”) are hereby submitting their views and suggestions with respect to the Draft Rules for the consideration of the Honourable High Court of Calcutta.

## Comments and Suggestions

### Accessibility and Reasonable Accommodations

COMMENT: The rules are silent with respect to Accessibility and Reasonable Accommodations for IP Attorneys with disabilities who maybe representing before the Hon’ble Court. It will be helpful if a specific provision relating to accessibility and reasonable accommodations can be incorporated in the Draft Rules. A similar rule has been incorporated in the Delhi High Court Intellectual Property Rights Division Rules, 2021 (Rule 36)

*“****36. Accessibility and Reasonable Accommodations***

1. *All filings before the IPD shall be in a Portable Document Format with Optical Character Recognition (OCR) enabled with image resolution of at least 300 dots per inch (dpi);*
2. *The Court, suo motu or upon a request made by way of application, may issue such direction(s) that it deems necessary for providing reasonable accommodation to such person(s) with a specified disability as recognized under the Rights of Persons with Disabilities Act, 2016 for the sole purpose of participating in the proceedings before the IPD.”*

In addition to this, the Hon’ble Court may consider providing reasonable accommodations based on the nature of the Disability of the IP Attorney.

SUGGESTION: - The Rule relating to Accessibility and Reasonable Accommodations may specifically cover the following:

1. Documents to be made available in OCR readable accessible formats;
2. Online hearings to be conducted on accessible platforms; and
3. Reasonable time extensions to be provided if substantial time is required for converting documents to accessible formats, or to review documents.

### Service of Documents

Rule 16 of the Draft Rules states as follows:

*“****16. Service of Pleadings, Documents and Notices****:*

1. *Unless otherwise directed by the IPRD or the IPRAD, an advance copy of the pleadings shall be served upon the parties directly or on the address for service by post and email at least two working days in advance of the date fixed for listing of the proceeding.*
2. *…*
3. *…*
4. *…*
5. *…*
6. *The matter may be heard and disposed of after the first day of listing where the opposing party is not represented only on satisfactory proof of service being furnished.”*

COMMENT: In our experience, just two days may not be sufficient to effectively serve the notice and give the other party the opportunity to appear and make submissions. This may result in a flurry of unjustified ex-parte orders. Also, as the IP Offices' website is not functioning appropriately, two days may not be enough to review the facts and merits, and respond appropriately.

SUGGESTION: - The term for notice maybe changed to 7 days. Also, in the context of service of notice the case may not be disposed in less than 3 hearings.

### Translated Documents

Rule 26 of the Draft Rules states as follows,

*“****26. Translations and transliterations:***

*No document in a language other than English, intended to be used in any proceeding before IPRD or the IPRAD, as the case may be, shall be received by the Department, unless accompanied by:*

*(a) A duly certified English translation thereof or*

*(b) A translation generated using standard online translation software such as Google Translate or Bing Translate provided however that such online translation may be rejected if the other party is able to establish the inaccuracy thereof.”*

COMMENT: Most translation tools are not very accurate at this point of time especially with respect to Indian languages and delinear languages. Moreover, translation tools are even less accurate with respect to technical documents such as patents. They often wrongfully translate important parts of the patent specifications such as claims. Additionally, legal orders and documents are currently fraught with significant translation issues.

SUGGESTION: - Translations of documents maybe accepted by the court only if they are duly certified. If any, machine translated documents are submitted the burden of proving their accuracy maybe placed on the person submitting the same.

### Timeline for filing applications

Rule 12 of the Draft Rules states as follows,

“***12. Procedure in Applications arising out of the Acts mentioned in Rule 2(a)***

*…*

1. *Upon service of the application, the respondents shall file a reply with all evidence/documents intended to be relied on within 45 days from the date of service of the application unless the IPRD otherwise directs. However, in the case of applications under the Patents Act, 1970, the period for filing such Reply shall be 90 days. …*”

COMMENT: Like Patents certain matters relating to Plant Varieties, Designs and Semiconductor Integrated Circuits are also technical in nature and may require additional time for filing.

SUGGESTION: - The extra time provided for Patents may also be provided for matters pertaining to Plant Varieties, Designs and Semiconductor Integrated Circuits.

## Disclaimer

The comments, suggestions, and opinions provided in this document are based on the experience and understanding of the attorneys at BananaIP Counsels. They may not be considered as generalization of any particular aspect or matter addressed in this document. It is understood that attorneys and experts within and outside BananaIP may have differing opinions, and that the suggestions provided are not the only ways of resolving issues expounded in the document.

The views expressed in this document do not reflect the views of BananaIP's clients.

These comments, suggestions, and opinions with respect to the Draft Rules have been submitted with the bona fide and honest intent of aiding the Hon’ble Court.