

**(2011) 07 IPAB CK 0003**

**In the Intellectual Property Appellate Board**

**Case No :** M.P. No. 200/2008 In ORA/147/2008/TM/DEL, M.P. No. 192/2008 In ORA/153/2008/TM/DEL And M.P. No. 108/2010 In ORA/277/2009/TM/DEL

Jeet Biri Manufacturing Company Private Limited

APPELLANT

Vs

Pravin Kumar Singhal And The Registrar Of Trade Marks,  
Government Of India, Trade Marks Registry, Trade Marks  
Division

RESPONDENT

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**Date of Decision :** 26-07-2011

**Acts Referred:**

Trade Marks Act, 1999 — Section 30(2), 30(2)(e), 31, 46, 50, 56, 57, 57(1), 57(2), 107, 124, 124(a), 124(b), 124(1), 124 (1)(b)(ii), 124(b), 124(1)(ii), 124(2), 124(3), 124(4), 124(5), 125, 125(1)  
Trade And Merchandise Marks Act, 1958 — Section 107, 111, 111(1)(B)(ii)

**Citation :** (2011) 47 PTC 231 (IPAB)

**Hon'ble Judges :** Prabha Sridevan, J;S. Usha, J

**Bench :** Division Bench

**Advocate :** Saurabh Banerjee, Shailen Bhatia

**Final Decision :** Dismissed

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**Judgement**

Prabha Sridevan, J

M.P. No. 192/08 in ORA/153/08/TM/DEL and M.P. No. 201/08 in ORA/147/08/TM/DEL

1. These miscellaneous petitions have been filed by the Petitioner (Respondent No. 1 in the rectification application) for dismissal of the rectification

proceedings under the provisions of Section 124 of the Trade Marks Act, 1999 (hereinafter the 'Act'). For the sake of easy understanding, the

Petitioner shall be hereafter referred to as the Respondent.

2 . The Respondent and its subsidiary companies are the principal and bonafide proprietor of the unique and distinctive trade mark 'JEET' in respect of

various goods and services covered under all the 42 classes of goods. The Respondent has the exclusive right to use the aforesaid trade mark in respect of the goods by virtue of the registration and by virtue of the provisions of Section 31 of the Act.

3 . The Respondent herein filed a Civil Suit for permanent and mandatory injunction against the applicant's predecessor for infringement of the trade mark, copyright and passing off in respect of the trade mark 'JEET' before the District Judge, Agra being Civil Suit OS No. 6 of 2008. This rectification application has been filed by the applicant herein as a counter blast to the aforesaid suit filed by the Respondent.

4. Section 124(1)(ii) of the Act lays down that in case where a civil suit is pending in Court based on a particular trade mark and a party seeks to file a rectification proceeding against the same mark the petition cannot be filed without leave of the Court before which the Suit is pending. In view of the above, the applicant herein could not have filed the application for rectification without obtaining prima facie satisfaction of the Court about their plea as to the validity of the registration of the trade mark. In the present case, the applicant herein has not taken the permission from the Court before which the Civil Suit is pending and, therefore, the main rectification application has to be dismissed. It is also well settled fact that a rectification petition could not be filed prior to the institution of the suit and will not entitle the party to circumvent the prima facie satisfaction of the Court.

5 . If the Court, before which the Civil Suit is pending, is satisfied after considering the plea regarding the invalidity of the registration, it may raise the issue regarding the same. The Court may then adjourn the matter for three months to enable the party to apply for rectification. The applicant herein (Respondent in the miscellaneous petition and hereinafter referred to as the applicant) has not taken leave of the Court and therefore, the rectification should be dismissed.

6 . The applicant filed their counter-statement stating that the instant petition for dismissal under Section 124 of the Act is not maintainable and ought to be dismissed in limini. They also denied that the provisions of Section 124(1) (ii) are in any manner relevant to this rectification application.

7 . The registration of the trade mark 'JEET' in the name of the Respondent are matters of record which does not call for any comment. The

Respondent has not used the trade mark in respect of beedi or smokers articles or in respect of any goods in class 34 other than ghutka and zarda and pan masala for a period of five years before three months before the filing of this rectification application and has thus wrongly blocked the Register by registering the same.

8 . The applicant also denied that the Respondent had initiated any proceedings against the applicant or that order of injunction was subsisting against the applicant as alleged. The applicant had also denied the statement that this rectification application has been filed as a counter blast to the suit filed by the Respondent.

9 . The applicant also stated that they are not a party to any suit instituted by the Respondent and therefore leave to be obtained from the Civil Court before which a suit is pending is not required. In view of the above, the provisions of Section 124 are not applicable in the instant case as alleged.

10 . The Respondent in the main rectification application filed M.P. No. 108/2010 seeking direction from this Board for dismissal of the rectification

under Section 124 of the Act. The Respondent stated that the application is itself not maintainable as the same has been filed contrary to the

provisions of Section 124 of the Act. The applicant and the Respondent filed cross suits bearing Civil Suit OS No. 1649 of 2007 and 189 of 2005 for

permanent injunction before Hon'ble High Court of Delhi. In Civil Suit OS No. 1694 of 2007, the Hon'ble High was pleased to grant an ad interim

injunction restraining the applicant herein from using the trade mark ""FEETA""/""A1 FEETA"" or any other mark deceptively similar to Respondent's

trade mark ""FITA"". The present rectification application has been filed for removal of the Respondent's trade mark ""FITA"" on 25.11.2009 before this

Appellate Board.

11. It has been held in one of the judgements of the Hon'ble Delhi High Court that the registered trade mark is entitled to be rectified after seeking

permission of the Civil Court in relation to the same mark pending between the same parties. The Petitioner has not adopted a correct procedure by

not following the procedures laid down under the provisions of Section 124 of the Act. In the interest of justice the said application must be dismissed

in view of the statutory mandate under Section 124 and the judgement of the Hon'ble High Court of Delhi.

12 . The applicant (Respondent in the miscellaneous petition) has not filed their counter to the miscellaneous petition in spite of the directions given by

this Board on 28.10.2010 and 11.11.2010.

13. The matters came for hearing at the Circuit Bench sitting at Delhi on 06.07.2011 and 07.07.2011. Learned Counsel Shri Saurab Banerjee

appeared for the applicant and learned Counsel Shri Shailen Bhatia appeared for the Respondent No. 1 in ORA/147 and 158/2008/TM/DEL. Learned

Counsel Shri Gitanju Suraj appeared for the applicant and learned Counsel Shri Sushant Singh appeared for the Respondent in ORA

277/2009/TM/DEL. Learned Counsel Shri M.K.Miglani assisted the Board during the hearing. Since the facts are similar in all these three

miscellaneous petitions, they are being disposed by this common order.

14. This question whether leave to file a rectification application should be obtained from the Court before which a suit for infringement is pending, has

been raised in many matters. The submissions were advanced by all the counsel. The submissions were as follows:

a) There are two views of the High Courts. The Hon'ble Delhi High Court in *Astrazeneca* (2007 (34) PTC 469 (DB) (Del.) *Astrazeneca UK Ltd. and*

*Anr. v. Orchid Chemicals and Pharmaceuticals Ltd.*) has held that leave is necessary. The Hon'ble Madras High Court in *B. Mohamed Yusuff v.*

*Prabha Singh Jaswant Singh* (2007) 7 MLJ 120 (Mad)] has held that the statute does not indicate that leave should be obtained. So the IPAB must

follow the jurisdictional High Court depending on where it has heard the matter. The counsel relied on judgements in this regard.

b) The earlier decisions of the IPAB have followed the Delhi High Court while sitting in Delhi, so this being a co-ordinate Bench cannot take a

contrary view.

c) When the language of the section is clear, the law of interpretation of statutes clearly require the adjudicating authorities not to read in words which

are not in the section.

d) Under Section 57 the right of the person aggrieved to file a rectification application is not made subject to Section 124, it is unfettered and absolute.

If the law makers had intended that leave should be obtained, the law would be clear.

e) As a corollary, Section 124 does not start with a non-obstante clause e.g.

""Notwithstanding anything contained in Section 57"" or words to that effect, which will carve out an exception to the absolute right under Section 57. In such circumstances courts cannot read such a construction.

f) The word ""enable"" in Section 124 should be read to mean to give time to the party to file an application and not giving the right to a party. The right is given under Section 57, not by a grant of leave of court.

g) If the filing of the application is dependent on grant of leave, then it would mean the court arrives at a decision regarding the validity of the registration and then grants or refuses leave. But the section only speaks of prima facie satisfaction regarding the tenability of the plea. This means

that the court examines if the plea is merely illusory or if it is a tenable plea. It then frames an issue, which means there is No. decision on the validity

of the registration. When the court does not decide the issue at that stage, the question of deciding whether to grant leave cannot arise. If the court,

before which the suit is pending is the High Court, were to decide the issue at that stage then neither the Registrar nor the IPAB have any decision to

make, because they will be bound by the superior court's finding.

h) Any decision is an authority only for the proposition it is called upon to decide. It is only the Hon'ble Madras High Court before which this issue

whether leave is required came up for consideration, and the decision has referred to the Hon'ble Delhi High court and Hon'ble Gujarat High Court

has been dealt with.

15. In this context the following decisions were referred to:

i) In 1999 PTC (19) 718 Patel Field Marshal Agencies v. P.M.Diesels Ltd., the Hon'ble Gujarat High Court considered the scope of Section 107 and

111 of the Trade and Merchandise Marks Act, 1958 (old Act). But at that time the suit and the rectification application in Section 107 had to be filed

before the High Court and that is why the judgement observes that ""the scheme that is entwined between Sections 107 and 111 becomes operative.

In that case the issue regarding validity was not framed. So the Hon'ble Gujarat High Court held that ""once a person has abandoned the plea as to

invalidity of the mark, he cannot raise a fresh plea de hors the suit by filing a rectification application and resume such plea."" So the issue was strictly

not on whether the leave of court was a sine qua non.

ii) In 2007 (34) PTC 469 (Del.) Astrazeneca UK Limited and Anr. v. Orchid Chemicals and Pharmaceuticals Ltd., the issue was regarding grant of

interim injunction relating to registered trade mark ""Meromer"". The learned Single Judge was of the opinion that a party seeking rectification cannot

circumvent the provision relating to prima facie satisfaction of the court.

iii) In 2011 (46) PTC 93 this Kamadhenu Realtors Pvt. Ltd. v. Kamadhenu Ispat Limited and another Board followed Astrazeneca, since the Board

was sitting in Delhi. Several orders of the Board have been produced. In 1998 232 ITR the Delhi High Court held that the decisions of the High Court

are binding on the subordinate courts, authorities and tribunals situated within the jurisdictional territory.

iv) In AIR 1962 SC 1893 M/s East India Commercial Company Ltd. Calcutta and Anr. v. Collector of Customs Calcutta the Hon'ble Supreme Court

held that a Tribunal over which the High Court has superintendence cannot ignore the law declared by that court and start proceedings in direct

violation of it.

v) In 234 ITR 776 Commissioner of Income tax v. Ram Lal Babu Lal the Punjab and Haryana High Court held that Appellate Tribunal coming under

the jurisdiction cannot ignore the jurisdictional High Court namely the Punjab and Haryana High Court and follow the High Courts which have taken a

contrary view.

vi) The Hon'ble Madras High Court had occasion to deal with the question whether Section 124 mandates the leave of the Court to be obtained in

2006 LawSuit (Mad) 2267 B. Mohamed Yousuff v. Prabha Singh Jaswant Singh rep. by its Power of Attorney Mr. C. Raghu. We extract the

following passages:

(I) Before venturing to deal with the aforesaid two questions, we will have to deal with a preliminary objection raised by the Delhi Party as to the very

maintainability of the rectification application of the Tindivanam Party. According to Mr. S.J.Jagadev, learned Counsel appearing for the Delhi Party,

Section 124 of the Trade Marks Act, 1999 mandates the leave of the Court to be obtained before filing the rectification application, in cases where a

civil suit for infringement is pending.

(J) Section 50 of the Trade Marks Act, 1999 confers powers upon the Registrar for variation or cancellation of registration of a registered user.

Section 57 confers concurrent jurisdiction upon the Registrar and the Intellectual Property Appellate Board for cancelling or varying the registration of

a trade mark on the ground of any contravention or failure to observe a condition entered on the Register in relation thereto. But Section 125

empowers the Appellate Board alone to entertain the application for rectification in two types of cases viz., (i) where a suit for infringement of a

registered trade mark is already pending and the validity of the registration of the Plaintiff's mark is questioned by the Defendant in such proceedings

and (ii) cases where a suit for infringement of a registered trade mark is pending and the Defendant claims protection of registration of his own mark

under the Act, but the Plaintiff questions the validity of such registration of the Defendant's mark. Thus, Section 125 conferring exclusive jurisdiction

upon the Appellate Board is an exception to Section 57 conferring concurrent jurisdiction on both the Registrar and the Appellate Board.

(K) Section 124 deals with the procedure to be adopted by the Court trying a suit for infringement, where the validity of registration of the mark of the

Plaintiff or the Defendant comes into question. Section 124 reads as follows:

124. Stay of proceedings where the validity of registration of the trade mark is questioned, etc.

(1) Where in any suit for infringement of a trade mark. ---

(a) the Defendant pleads that registration of the Plaintiff's trade mark is invalid; or

(b) the Defendant raises a defence under Clause (e) of Sub-section (2) of Section 30 and the Plaintiff pleads the invalidity of registration of the

Defendants trade mark, the court trying the suit (hereinafter referred to as the court), shall, --

(i) if any proceedings for rectification of the register in relation to the Plaintiff's or Defendant's trade mark are pending before the Registrar or the

Appellate Board, stay the suit pending the final disposal of such proceedings;

(ii) If No. such proceedings are pending and the court is satisfied that the plea regarding the invalidity of the registration of the Plaintiff's or

Defendant's trade mark is prima facie tenable, raise an issue regarding the same and adjourn the case for a period of three months from the date of

the framing of the issue in order to enable the party concerned to apply to the Appellate Board for rectification of the register.

(2) If the party concerned proves to the court that he has made any such application as is referred to in Clause (b)(ii) of Sub-section (1) within the time specified therein or within such extended time as the court may for sufficient cause allow, the trial of the suit shall stand stayed until the final disposal of the rectification proceedings.

(3) If No. such application as aforesaid has been made within the time so specified or within such extended time as the court may allow, the issue as to the validity of the registration of the trade mark concerned shall be deemed to have been abandoned and the court shall proceed with the suit in regard to the other issues in the case.

(4) The final order made in any rectification proceedings referred to in Sub-section (1) or Sub-section (2) shall be binding upon the parties and the court shall dispose of the suit conformably to such order in so far as it relates to the issue as to the validity of the registration of the trade mark.

(5) The stay of a suit for the infringement of a trade mark under this section shall not preclude the court from making any interlocutory order (including any order granting an injunction directing account to be kept, appointing a receiver or attaching any property), during the period of the stay of the suit.

(L) Mr. S.J.Jagadev, learned Counsel appearing for the Delhi Party invited our attention to a judgment of the Division Bench of Gujarat High Court in

Patel Field Marshal Agencies and Anr. v. P.M.Diesels Ltd and Ors. (IPLR 1999 APRIL 1425) as well as the decision of a single Judge of the Delhi

High Court in Astrazeneca UK Ltd and Anr. v. Orchid Chemicals and Pharmaceuticals Ltd (2006 (32) PTC 733 (Del.)). While the decision of the

Division Bench of the Hon'ble Gujarat High Court arose under Section 111 of the old Act (Act 43 of 1958), the case before the Delhi High Court

arose under Section 124 of the new Act (Act 47 of 1999) and both these provisions are actually in pari materia except that the words High Court

appearing under Section 111 of the old Act have been substituted by the words Appellate Board under Section 124 of the new Act. The judgment of

the Delhi High Court actually followed the judgment of the Division Bench of the Gujarat High Court. The Gujarat High Court held in para-10 of its

judgment that if proceedings for rectification are not already pending, and a plea regarding invalidity of registration of the concerned mark is raised, the

Court trying the suit has to be prima facie satisfied about the tenability of the issue and if it is so satisfied, it shall frame an issue to that effect and

adjourn the case for three months, in order to enable the party concerned to apply for rectification. Particularly, the Division Bench of the Gujarat

High Court held as follows:

In case, No. such proceedings for rectification are pending at the time of raising the plea of invalidity, the prosecution of such plea by the person

raising it depends on prima facie satisfaction of the Court, about the tenability of this plea. If the plea has been found to be prima facie tenable and an

issue is raised to that effect then the matter is to be adjourned for three months at least to enable the person raising such plea to approach the High

Court concerned, with a rectification application. In case, the rectification proceedings are not already pending, and the Court is not even prima facie

satisfied about the tenability of the plea raised before it, the matter rests there.

In paragraphs 30 and 31 of its judgment, the Hon'ble Delhi High Court held as follows:

30 . Under Section 124 (b) if the application for rectification is already pending the suit can be stayed pending final disposal of such proceedings. In

case the application for rectification or any such proceedings is not pending, then a party seeking rectification can apply for rectification subject to

prima facie satisfaction of the Court regarding invalidity of the registration of the mark of the opposite party. In the present case, the Plaintiffs,

however, have sought rectification of the trade mark of the Defendant by filing an application first to the Registrar and thereafter to the Appellate

Board without seeking prima facie satisfaction of this Court.

31 . On plain reading of this provision, it is apparent that the Plaintiffs could not file the application for rectification without showing and obtaining a

prima facie satisfaction of the Court about their plea of the invalidity of the registration of the mark of the Defendant.

(M) However, Mr. P.S.Raman, learned Additional Advocate General relied upon a decision of another single Judge of the Delhi High Court in M/S.

Elofix Industries (India) v. Steel Bird Industries and Ors. (: AIR 1985 Delhi 258) to the effect that ""Where after the service of summons in a suit

seeking decree of perpetual injunction restraining the Defendants from issuing a particular trade mark as it was infringement of Plaintiff's trade mark,

the Defendants filed their written statement and simultaneously filed a petition under Sections 107, 46 and 56 of the Act for rectification of Plaintiff's

trade mark instead of requiring the Court to raise an issue regarding invalidity of Plaintiff's trade mark, it is a substantial compliance with the provisions

of Section 111(1)(B)(ii).

(N) In our considered view, Section 124 (1)(b)(ii) of the Act is only an enabling provision. Sub clause (i) and sub Clause (ii) of Clause (b) of Sub-

section (1) of Section 124 operates at two different levels for two different situations. While sub Clause (i) deals with a situation where any

proceeding for rectification is already pending, sub Clause (ii) deals with a situation where any proceeding for rectification is not pending. Both the sub

clauses focus their field of operation only in relation to the stay of the civil suit. The conditions laid down in sub Clause (ii) are intended to enable a

party to obtain stay of the suit and not intended to provide for a discretion for the Court to permit or not to permit any application for rectification. Such

a position is made clear by Sub-sections (2) to (5) of Section 124, which deals with the consequences of filing and not filing an application for

rectification and of the ultimate outcome of such application for rectification. In other words, the requirements of ""raising an issue"", ""adjourning the

case"" and a ""prima facie satisfaction"" spelt out in Section 124 (1)(b)(ii) should be read as the requirements for the grant of a stay of the suit and not as

a requirement or pre-condition for filing an application for rectification. The plain reading of Section 124(1)(b)(ii) shows that it does not mandate a

party to obtain the ""leave of the Court"" or ""an order of the Court"", for filing an application for rectification. The right to file an application for

rectification is a statutory right conferred upon a party who is aggrieved by an entry made in the Register. The said statutory right cannot be curtailed

except by the very provisions of the statute. The said right is circumscribed by certain requirements such as the contravention of the provisions of the

Act or failure to observe a condition entered on the Register etc., as spelt out under Sub-sections (1) and (2) of Section 57 of the Act. In respect of

the ""Forum"" in which such an application for rectification could be filed, there is a restriction under Section 125, in that such an application could be

filed only before the Appellate Board if a suit for infringement was already pending. Apart from these restrictions, we do not see any other restriction

with regard to the filing of an application for rectification. To interpret Section 124 (1)(b)(ii) to mean that an order should be obtained from the civil

Court for filing an application for rectification, regarding prima facie satisfaction, would amount to imposing one more restriction upon the right of a

person to seek rectification of the Register. We do not find any such restriction or requirement of the leave/permission of the court, under Section 124

(1) (b) (ii). Therefore, with great respect to the learned Judges who were parties to the decisions of the Gujarat and Delhi High Courts, relied upon by

the Delhi Party, we are of the considered view that the Tindivanam Party was right in filing an application for rectification, without obtaining the leave

of this Court or without getting an issue framed and prima facie satisfaction recorded, in C.S. No. 726 of 2004.

16. We have considered the submissions of the learned Counsel, the language of the Act, and the judgements of the three Hon'ble High Courts all of

which exercise judicial superintendence over the IPAB and we have attempted to answer the question. We record our deep appreciation of all the

counsel who assisted this Board by making their submissions.

17. Section 124 deals with the circumstances under which stay of suits for infringement of trade mark shall be ordered. A reading of the whole

section lists the fact-situations for invocation of each limb of the section. They are;

a) There should be a suit for infringement of a trade mark where the Defendant pleads that the registration of the Plaintiff's trade mark is invalid.

Or

b) There should be a suit where the Defendant raises a defence that his use of the trade mark is in exercise of registration granted under this Act, and

the Plaintiff must plead invalidity of registration of the Defendant's trade mark.

18. So the first condition is there should be a suit for infringement of trade mark where the Plaintiff or the Defendant must plead that the registration

of the opponent's trade mark is invalid.

19. Hereafter the word "Court" shall mean the District Court or High Court before which the suit is pending, IPAB means the Board, and Registrar

means the Registrar of Trade Marks.

20. Now the Court before whom such a suit is pending shall take the following steps as per the Act. They are,

a) If rectification proceedings are pending before the Registrar or the Board in respect of the allegedly invalid trade mark, the Court shall stay the suit

till the rectification proceedings are over.

So the trial of the suit will have to wait for decision of the procedure pending before the Registrar or IPAB.

If No. proceedings are pending, the Court must adopt the following procedures:

i) The Court, on a perusal of the pleadings must be prima facie satisfied that the plea of invalidity is not a 'moonshine' plea, but is a triable issue. If it is

so satisfied, it shall frame the issue regarding validity of the registration.

ii) The satisfaction of the Court at this juncture is only a prima facie one. There is No. decision. If the court arrives at a conclusion, then neither the

Registrar nor the IPAB will have any adjudication to do. So the court only frames the issue which will have to be decided in accordance with Section

124 (3).

a. After the issue is framed the court adjourns the case for three months from the date on which the issue is framed.

b. This period of three months is given to the party pleading invalidity to apply for rectification. The provisions that follow would show that the court

neither directs the party to file the rectification proceedings, nor does it insist upon it. It merely gives time, leaving it to the party to act as the party

deems fit.

b) Next step states what happens after rectification proceedings are filed upon the court framing the issue regarding validity of the registration and

adjourning the suit. The party who applies for rectification shall prove to the court that he has done so, within three months, or within further time as

the court may for sufficient cause allow. Upon such proof being furnished, the trial is stayed till the conclusion of the rectification proceedings. The

language of Section 124 (3) shows that in this situation an order of stay is not a discretionary order, but it automatically follows once it is proved that

the rectification proceedings are pending.

c) Next step deals with the situation if No. rectification proceedings are filed within three months or the extended time as per Section 124 (2). If No.

application for rectification is filed, then the court shall not decide that issue, it shall treat it as abandoned, and proceed with the suit with regard to the

other issues that arise in the case.

d) Next step is the consequence of the decision in the rectification proceedings. Once final orders are passed, it binds the parties. They cannot re-

agitate it in the suit that has been stayed awaiting this decision. The issue that had been framed by the Court under Section 124 (1) (b) (ii) will follow

the final order in the rectification proceedings and the court will dispose of the suit in conformity with the above final order.

21 . Now we read Section 125. This considers a situation that is identical to the situation described by Section 124 (a) and (b). This means there is a

suit for infringement of a trade mark. In that situation the validity of the registration of the trade marks is questioned or when the Defendant raises a

defence under Section 30

(2) (e), then the rectification proceedings will be filed only to the IPAB and not to the Registrar of Trade Marks. Subject to Section 125 (1) the

Registrar at any stage may refer the applications to the IPAB.

22. So the right of any person to move a rectification application under Section 57 is protected even if a suit has been filed prior to such application.

The language is clear, that the Civil Court in so far as this issue of validity of registration is concerned, awaits and follows the final order. With regard

to other interlocutory orders there is No. fetter on the court. See Section 124 (5). But the trial cannot proceed if a rectification application is pending or

has been filed. In the language of Section 124, the party assailing the validity of a trade mark, approaches the court only to seek extension of time to

file rectification application if necessary and to furnish proof of filing such an application.

23. So this is the scheme of Section 124 and it does not circumscribe the right of a person aggrieved to move an application under Section 57. In fact it

is clear that the Parliament intended that the court which must be the District Court or High Court shall await the orders of the Registrar or IPAB as

the case may be in respect of the validity of the registration of trade mark. Section 125 also does not refer to leave to be obtained before filing

application for rectification to the IPAB.

24. Above all there is one more question to be answered. If the law mandates the seeking of leave then there is the unstated power of the court to

refuse leave. The Act does not state when leave can be refused. To refuse leave,

the section must state under what circumstances the registration of that particular trade mark cannot be rectified. Therefore, the issue relating to the validity of the impugned registration must be decided by it before refusing leave. Section 124 clearly states that this issue must be answered in conformity with the decision in the rectification proceedings, so even if it is the High Court before whom the suit for infringement is pending in which this issue is raised, the jurisdictional High Court must answer this issue in accordance with the order of the Registrar or IAPB, as the case may be. When that is so, the law must spell out under what circumstances leave can be refused. If it does not do so, then seeking leave is a brutum fulmen.

25. The IPAB has its permanent sitting at Chennai and holds its sittings in Circuit at Delhi, Mumbai, Kolkata and Ahmedabad. The power vested in

the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals when their respective jurisdiction has been upheld.

The orders of the IPAB are subject to the High Court's power of judicial review. The High Court which exercises this judicial superintendence is that

High court within whose territorial jurisdiction the IPAB sits while issuing its order. Therefore, if an order is passed by the IPAB while sitting in Delhi,

the aggrieved party applies to the Hon'ble Delhi High Court to correct the order and so on. But as regards the question which High Court's decision

binds us, the answer must be that we are bound by the judgements of all the High Courts. Unlike Tribunals which have separate Benches for each

zone and therefore bound by the jurisdictional High Court, Intellectual Property Appellate Board exercises its jurisdiction all over India but only sits in

Circuit. Therefore, to follow the jurisdictional High Court rule would lead to an anomaly. For example, 'A' filing a suit against 'B' for infringement of its

trade mark will, in respect of the same trade mark, be forced to get leave, of the court before whom the suit for infringement is filed, to file

rectification proceedings if the suit is filed in the Hon'ble Delhi Court or any where within the jurisdiction of the Hon'ble Delhi Court and it need not

seek leave of the court if the suit is filed in the Hon'ble Madras High Court or anywhere within the jurisdiction of the Hon'ble Madras High Court. This

is an anomalous situation and will not be logical.

26. Then again the same persons who comprise the Bench will speak in ""different voices"" depending on whether they are sitting in Delhi or in

Chennai. This leads to confusion and uncertainty, and if anything law has to be certain.

27. We therefore hold, as held by the Hon'ble Madras High Court that Section 124 does not insist on seeking leave.

28. To conclude:

a) the section does not anywhere specify that leave should be obtained, in an ordinary reading of it;

b) when the language is clear, we cannot read a procedural requirement into it;

c) the word ""enable"" should be read as giving time to a party to exercise its unfettered right under Section 57, and not to be read as giving a new right

to a party that did not exist previously;

d) there are No. words to indicate that right under Section 57 are subject to the provisions of Section 124;

e) nor are there any non-obstante clauses in Section 124, which makes that provision override the right to seek rectification under Section 57;

f) the section only requires the court to arrive at a prima facie satisfaction regarding the tenability of the issue. If the power of granting leave is read

into it, then the power to refuse leave is implied, then that would mean that the court can decide the issue and refuse leave. There is No. room for

such construction;

g) the decision of IPAB, which is one Board sitting in different places must be uniform and speak in one voice.

29. In the result, the miscellaneous petitions are dismissed. No. order as to cost. This decision will be applicable in all matters henceforth where this

objection is raised.