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Arbitrability of Commercial and Investment Intellectual Property Disputes

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ABSTRACT

This Article on the arbitrability of commercial and investment intellectual property disputes welcomes everyone who wants to gain further insights on the matter. Conflicts between parties from various origins, cultures, and legal systems are rising in frequency as the globe becomes more linked. This paper examines how the two crucial elements of global commerce and investment intellectual property and arbitration intersect. This articles objective is to give readers a thorough understanding of the main problems and difficulties surrounding the arbitrability of commercial and investment intellectual property disputes. One may read an examination of the many intellectual property conflicts that can be arbitrated in these pages. One may also learn about the legal systems that regulate these disputes and the practical implications of arbitrating them. The article investigates the special difficulties associated with arbitrating investment disputes that are purportedly the result of infringements of intellectual property rights. It also digs into the interaction between intellectual property and investment law.

This work will supposedly help academics, solicitors, and students who want to learn more about the intricate and changing legal environment around intellectual property and arbitration. It is also a useful tool for decision-makers in industry, government, and finance who want to understand the complexities of international trade and investment legislation.

I sincerely hope that the readers will find this research work to be a useful tool to investigate whether commercial and investment intellectual property conflicts may be arbitrated.

Keywords: *Arbitrability, Commercial intellectual property disputes, Investment Intellectual property disputes. ADR.*

I. INTRODUCTION

"When will mankind be convinced and agree to settle their difficulties by arbitration? Benjamin Franklin"

The world is opening and blooming with technology transfer, trade practices and sharing of knowledge. The process of sharing between not only states but also individuals and association of individuals or companies or enterprise and association of companies or enterprise with each

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other is the most predominant characteristic in national development. Just like not all fingers are the same, similarly not all nations' development are the same. Each one has its path, pace and focus. Development is not only physical but also intellectual is nature. In the modern world, the term intellectual assets or property is now most crucial as ever not only for the development but also protection and sustainability. The laws relating to intellectual property are still relatively new compared to the traditional common laws so the resolution mechanism is also relatively new compared to the conventional concepts of fine and punishment. There are several courses of action to resolve the disputes arising from the IP issues. IP rights are, in a sense, monopolies granted by states.[2] There are only a few states that allow other interventions when dealing with IP disputes also because of exploitation, but it also subjects the owner of such a right to a lot of headache and drawn-out procedures. The individuals opt for other methods to avoid such a bane of disputes by opting for ADRs and one such ADR method is arbitration.Intellectual property issues including business and investment activities are arbitrable. Arbitration handles conflicts in a very sophisticated and effective manner. Fundamentally, all arbitrations are creatures of contract, existing either before a dispute arises or after.[3] Arbitration is a private, out-of-the-court technique of settling disputes between parties. A contractual obligation is one of the most superlative requirements, having the contract in place before the problem arises is the preferred method of arbitration-based dispute resolution, though constructing the arbitration agreement after the problem has manifested itself is also an option.[4]. Arbitration is a popular kind of alternative dispute resolution (ADR) in both domestic and international settings. Arbitration thus gives the parties substantial autonomy and control over the process that will be used to resolve their disputes[5]. Arbitration is not only interesting but also a very classified process that does not gather excessive attention. The companies and individuals that are in the public eye mostly tend to avoid such attention. The process of arbitration proves to be most favored in that system. For instance, domestic regulations have aided in refining the arbitration procedure. The secrecy provisions, which are not expressly addressed in the UNCITRAL model legislation, have been discussed and prioritized by countries like India under sec. 42-A.[6] and New Zealand making it an inherent duty under Sections 14 to 14I of the Act.[7] The Arbitral procedure entails the selection of one or more

[2] Da ́rio Moura Vicente, "Arbitrability of intellectual property disputes: a comparative survey", Volume 31 ,issue 1, 2015, p.152.
[3] Kenneth R Adamo, Overview of International Arbitration in the Intellectual Property Context (2011) 2, The Global Business Law Review. Cross ref D.M. Vicente.
[4] Kenneth R. Adamo, Supra. See 2.
[5] Margaret L. Moses,The Principles and Practice of International Commercial Arbitration,p.1, 2008.
[6] THE ARBITRATION AND CONCILIATION ACT, 1996
[7] The New Zealand Arbitration Act 1996

neutral third-party arbitrators, who are chosen by the parties and have the ability to provide a binding ruling on the dispute. It is a form of alternative dispute settlement which is willfully opted by the parties to create agreeable or settling grounds. Arbitration as a method of conflict resolution has a long history, extending back to ancient times. Thus, the notion of arbitration may be traced throughout history in various cultures and legal systems. Arbitration has become a popular alternative to traditional litigation in the contemporary period since it provides several benefits to parties involved in a dispute. The basic concept of resolution has been ingrained in the mind of all, through the resemblance of it with either 'karta' or 'head of the family'. If any disputes or quarrel arises in the household, the 'karta' being considered as the most intellectual and wise are delegated with the responsibility to quash the issue by creating a mutual understanding between parties. On a community level of community, the 'panchayat' had the power to resolve disputes between parties relating to matters that cannot be easily mediated through the process of arbitration. Arguably, arbitration has been in use since the time of king solomon. King Solomon ruled between two women both claiming to be the mother of a baby[8] before the true mother's identity was revealed. In a manner, King Solomon resolved the conflict by establishing a new path of action that allowed both moms to achieve their goals.

The doors to the arbitral tribunal are easier to access in modern times therefore use of commercial arbitration to resolve disputes has grown significantly in recent years among companies, individuals and states. The power of the arbitration clause is omnipotent in nature. The agreement between investors and states that particular issues should be resolved by arbitration is based on an arbitration clause. This consent is what gives rise to the jurisdiction of the arbitral tribunal.[9] Arbitration is a type of alternative conflict resolution that gives parties more adaptability, discretion, and financial efficiency in settling disagreements outside of the conventional court system. A neutral third party, an arbitrator or a panel of arbitrators, who are chosen by the parties, is used in a commercial arbitration to hear the testimony and arguments from both the sides and to reach a binding conclusion. The arbitrator's ruling is upheld in court, and little judicial control over the procedure exists. There are a number of reasons why the usage of business arbitration has increased. One reason is the complexity of corporate conflicts, which frequently necessitates specialized knowledge and a more sophisticated approach. The national courts seem to lack the specific upgraded terminology relating to issues such as intellectual property rights as the field is still developing and new forms of technology and ideas are being circulated. The knowledge regarding the factor not only validates the aggrieved party but also

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[8] Dr Karin Lachmi, "The Judgment Of King Solomon: A Parable For An Entrepreneur Dilemma" para 1, 2018.
[9] Mrs. Wood Myfanwy,"Arbitration clause", jus mandi, 2023

helps in a justifiable settlement. The second reason is that, the parties' desire to settle disagreements quickly and affordably, without the delays and costs of traditional litigation. The third reason is that parties frequently favor commercial arbitration's confidentiality over the openness of court proceedings. The ongoing surge in the amount of patent proposals filed globally is explained by an explosion of new technologies, stretching from innovations in the medical sciences to 'nanotechnology' in the electronic industry, as well as the tendency towards international patenting behavior. Trademark, brand, and domain name registrations are also on the rise.

(A) The arbitrable ability of intellectual property disputes

Intellectual property law bestows a negative right which means that the beholder of the IP right may exclude others from using the property generated by the registered owner.[10] The growth in computer and information technology, including development of hardware and software applications, has been stupendous in the last fifteen to twenty years, and the expansion of telecommunications networks has been astounding. Increased licensing and franchising agreements as a result have worldwide impacts. Art. 2(viii) of the Convention establishing WIPO, defines IP as follows: "Intellectual property shall include the rights relating to: literary, artistic and scientific works, scientific discoveries, industrial designs, trademarks, service marks, and commercial names protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. while dealing with issues depending on the particular facts and circumstances of the disputes".[11] The dominance of domestic courts over intellectual property disputes are apparent. The reasoning behind such is that IT frauds and technology theft and others are considered as wrong for the society at large. There are only a specific number of issues that are delegated to the other settlement methods. Due to the relative youth of these rules, court action in intellectual property issues is unrestricted and generally vague. The resolution system in IPR issues is still not very well structured. "Intellectual property (IP) conflicts may often be resolved through arbitration, IP litigation and arbitration arise from disputes over infringement, validity, ownership or breach of contract relating to IP rights."[12] They include business transactions or binding contracts. While technology advances and new types of titles are created for the system, the vocabulary of intellectual property is still fairly fresh in the developing countries. Examples include licensing, copyrights, and trade secrets. A wide range of topics are included under intellectual

[10] Vijay Pal Dalmia & Rajat Jain,Intellectual Property And Its Attributes, Jan 2021.
[11] Sophie Lamb & Alejandro Garcia, "Arbitration of Intellectual Property Disputes" in Asian Dispute review. p.49
[12] Thomas Legler, *Arbitration of Intellectual Property Disputes,* ASA Bull. 2/2019 at 291 .

property. Some states allow domestic courts to decide whether categories of IPR disputes are subject to arbitration. In "AT&T Technologies, Inc. v. Communication Workers of America,"[13] the Court held that the question of whether parties contractually agreed to arbitrate (formed an enforceable agreement) is to be decided by the court, not the arbitrator, unless the parties clearly and unmistakably provided otherwise.[14] A court may by the process of decision making decide whether the issue is arbitrable in accordance to the consent of the parties. The probing matter in this aspect is arbitrability of intellectual property disputes as the recognised structure of an intellectual property lies in the realm of right *in rem*. It is a real right which is limited but absolute in nature. The restrictions upon such rights are valid and monitored by the courts. When referring in Indian context, in the judgment of Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Ors.[15]While issues resulting from rights in personam can generally be arbitrated, problems emerging from rights in rem are expected to be resolved by the courts. Although the judgment is not rigid and inflexible in any sense. The contractual nature of intellectual property disputes floats right in the category of contractual obligations. In this particular case, the arbitration clause mentioned in the agreement was also put to test under clause-16. Even after the presence of such a clause, the dispute continued and the question on its arbitrability arose in the Supreme Court for intervention. This strenuous arrangement creates a burden not only upon the courts but also provides nourishment to the question of the process of arbitration as need of the hour. Intellectual property issues that are commercial in nature have a wide range of implications for their resoln. The governance of the arbitration depends upon the factors of the cases such as contractual disputes referring that a lot of business contracts include clauses relating to the ownership and use of intellectual property, such as licensing agreements and joint development contracts. There may be disagreements over the extent of the rights provided or if one party violates certain clauses. Patent infringement covering patent litigation can be challenging because it frequently involves intricate technological difficulties. Commercial arbitration is an alternative to traditional litigation that parties may choose to employ to settle their differences since it can be both quicker and less expensive. Trademark disputes can occur when one party claims that another is using a mark that is confusingly similar to theirs or is violating their trademark rights. These conflicts, which might encompass concerns such as trademark validity, trademark infringement, and probability of confusion, can be settled by commercial arbitration. Copyright infringement occurs when one party claims that another has utilized their copyrighted work without authorization, a copyright dispute may result. These

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[13] AT&T Technologies, Inc. v. CWA, 475 U.S. 643 (1986).
[14] Kenneth R Adamo. supra see 2 p.9, AT&T Techs. v. Communs. Workers of Am.,475 U.S. 643, 656 (1986).
[15] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Ors AIR 2011 SC 2507.

conflicts, which might involve topics like ownership, fair use, and damages, can be settled by commercial arbitration. Misappropriation of trade secrets happens when one party claims that another has taken their trade secrets—such as private client information or customer lists—a dispute over such secrets may result. These disputes, which may entail topics including the definition of a trade secret, whether the knowledge was gained unlawfully, and damages, may be settled by commercial arbitration. There are some adverse effects to this dominance of domestic laws because in international issues the jurisdictions differ and for a better and speedy result individuals and organizations opt for arbitration over litigation. The understanding of intellectual properties and its functions and its importance for the right holder is very pivotal.

The term "arbitrability" relates to the issue of whether a certain dispute may be settled by arbitration. Arbitrability is important in the context of international intellectual property disputes because it affects whether parties can utilize arbitration to settle disagreements over intellectual property rights Although arbitration is a private proceeding, the recognition and enforcement of a particular award may have an impact on any states involved.[16] Most conflicts involving intellectual property may be settled by arbitration, there are rare situations when litigation is necessary. "The ability to choose the governing L. and the seat of arbitration is an important advantage of IP arbitration. The parties can select the L. that will govern the substantive issues in the dispute, and the jurisdiction whose courts will have supervisory jurisdiction over the arbitration."[17] International conflicts involving intellectual property may be significantly impacted by arbitrability. Compared to litigation, arbitration can be a quicker and more affordable option to settle disputes. Also, it may offer more discretion, adaptability, and conflict resolution experience. Yet, there are worries that arbitration may not offer the same amount of openness, predictability, and enforcement as litigation, particularly in circumstances when there are several parties involved. There are worries that arbitration may not offer the same level of openness, certainty, and enforcement as litigation, particularly in situations when public interest issues are involved. The effect of arbitrability on disputes involving foreign intellectual property varies depending on the nature of the issue, the applicable legislation, the arbitration procedures, and the parties involved. Arbitration may be a helpful tool for settling intellectual property issues, but before choosing to utilize arbitration to settle a specific dispute, it is crucial to carefully weigh its benefits and drawbacks. The proper utilization of the arbitration system depends upon the type of dispute. When dealing with "Intellectual Property"

[16] Muchlinski, P., Ortino, F. and Schreuer, C. (eds.), *The Oxford Handbook of International Investment Law*, Oxford University Press, 2014, p. 928.
[17] John V H Pierce and Pierre Yves Gunter's "Guide to IP Arbitration," Global Arb. Review 2021, p 21.

and its several classifications. Intellectual property is described in "Art. 2(viii) of the Convention establishing the World Intellectual Property Organisation of 14 July 1967 " as rights relating to a wide range of creations and inventions, includes works of literature, art, and science; performances by performing artists; recordings; transmissions; innovations in all branches of human knowledge; scientific discoveries; industrial designs; trademarks, service marks, and trade names. Given the widespread perception that intellectual property, including patents and copyrights, is highly technical in nature, more protection is required in the global economy. However, other types of intellectual property, such as trademarks and trade secrets, are also highly valued in today's society, as they may be the most valuable assets of a business entity.[18]For example, a car owner's right to his property is a right in rem, but there is no reason why a disagreement over compensation that arises as a result of an occurrence (damage to the car) cannot be arbitrated.[19] have an erga omnes effect that transforms them into real property rights that the owner can use to prohibit unauthorized use or exploitation. It follows that an intellectual property right can be used against everyone, as opposed to a right in personam, which is an interest protected exclusively against certain people. Actions in personam determine the rights and interests of the parties in the subject matter of the case, whereas actions in rem determine the title to property and the rights of the parties not only among themselves, but also against all other persons who may claim an interest in the property at any time.[20]

(B) History of intellectual property dispute resolution

During the early 1800s, the idea of global protection of Intellectual Property rights floated among legislative bodies.[21] The Paris Convention, which was adopted in 1883, increased international jurisdictions' clarity and collaboration. The same protection was extended to written statements by the 1886 Berne Convention three years later. Through the Madrid Protocol, trademarks received worldwide protection within five years as well. Due to its claimed benefits over traditional litigation, including increased efficiency, flexibility, and anonymity, Arb. has a relatively young history but has been used more frequently in recent years to resolve international intellectual property disputes. In 1900, the United States and the United Kingdom settled a disagreement over the use of a few patents relating to wireless telegraphy, which is the first recorded instance of arbitration being used in an intellectual property dispute. A three-person arbitration tribunal was appointed to hear the case, and it ultimately found in the United

[18] Matthew R Reed, Ava R Miller, et. al., "Arbitrability of IP Disputes", *Global Arb. Rev.* (2021).
[19] *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.,* (2011) 5 SCC 532.
[20] Rajat Jain, "Arbitrability of IPR Disputes - A Harmonious Approach" *Mondaq* 2020.
[21] Abou naza, History and Evolution of Intellectual Property, Nov 2021. https://www.abounaja.com/blogs/history-of-intellectual-property.

kingdoms favor. Particularly in the context of technology and software license agreements, arbitration was increasingly used in intellectual property disputes during 1980s and 1990s. Arbitration has started to be more frequently used in cases involving intellectual property, particularly when it comes to licenses for software and technology. At this time, both the "International Court of Arbitration (ICA)" and "the International Chamber of Commerce (ICC)" adopted particular rules for the arbitration of intellectual property issues. Beginning in the early 2000s, conflicts involving trademarks, copyrights, and other types of intellectual property were also included in the scope of intellectual property issues for which arbitration was used. The "World Intellectual Property Organization (WIPO)" and "the International Trademark Association (INTA)", among other international organizations, have created specialized rules and standards for the arbitration of intellectual property disputes. International intellectual property disputes are now frequently settled through arbitration, particularly when there are complicated technical difficulties or cross-border challenges. Parties' Arbitration provisions are commonly included in agreements between parties to intellectual property issues as a method of avoiding drawn-out and expensive judicial processes. Further supporting the use of arbitration as a way of resolving such conflicts is the fact that several nations have passed legislation acknowledging the enforcement of arbitration rulings in intellectual property disputes.

(C) Inception of Commercial and investment intellectual property disputes resolution by arbitration

a. Commercial intellectual property arbitration

One mode of intellectual dispute resolution that is implemented to resolve IP disputes between parties involved in commercial activities, such as businesses or private individuals, is Arb. International arbitration is an increasingly popular method for the resolution of intellectual property disputes. This does not come as a surprise, considering the importance of intellectual property to economic prosperity, international trade and commercial profits in today's globalized and digitalized world.[22] Intellectual property includes things like designs, names, symbols, and literary and artistic works. The disputing parties agree to have the evidence examined and a binding judgment issued by a neutral third party, known as an arbitrator, as part of the arbitration procedure. The arbitrator may be chosen by the parties and be an authority in intellectual property L. The parties agree that their disagreement will be resolved by an arbitrator rather than a court in commercial IP arbitration. This way of dispute resolution is less

[22] ACERIS LAW LLC, International Arbitration and Intellectual Property (IP) Disputes, Apr 2021.

costly than going to court. This way of resolving disputes could be quicker and less expensive than going to court. The arbitrator's decision is often final and binding, therefore the parties usually agree to accept and abide by it. A range of intellectual property-related problems, such as trade secret theft, trademark infringement, copyright infringement, and patent and trademark infringement, can be resolved through commercial IP arbitration. The arbitration process may be changed to satisfy any confidentiality requirements as well as the specific needs of the parties, including the nature and duration of the dispute. For example- Let's say a small business called ABC Inc. believes that a larger competitor, XYZ Corp., has infringed on its patent for a new type of widget. ABC Inc. believes that XYZ Corp. is using a similar widget design without permission and is therefore infringing on ABC Inc.'s intellectual property rights. Instead of going to court to resolve the dispute, ABC Inc. and XYZ Corp. agree to engage in commercial IP arbitration. They choose a neutral arbitrator who is an expert in patent L. to review the evidence and make a decision. The arbitrator listens to both sides and reviews the evidence presented. After a thorough examination, the arbitrator decides that XYZ Corp. did, in fact, infringe on ABC Inc.'s patent. The arbitrator orders XYZ Corp. to pay ABC Inc. a certain amount of money in damages, and also orders XYZ Corp. to stop using the infringing widget design. The parties want to resolve this dispute as soon as possible and with arbitration because it gives them power or control over a fraction of the process. This is particularly important in international commercial arbitration because parties do not want to be subject to the jurisdiction of the other party's court system.[23] With arbitration, both parties may expect a fair hearing in a more impartial setting. Moreover, the flexibility of being able to tailor the dispute resolution process to the needs of the parties, and the opportunity to select arbitrators who are knowledgeable in the subject matter of the dispute, make arbitration particularly attractive.[24] For a number of reasons, arbitration in cases involving commercial intellectual property can be more effective than domestic judicial resolution:

1. Forum selection: In an international dispute, parties may be required to go through legal processes in many countries, which can be expensive and time-consuming. Arbitration offers a single venue for dispute resolution, which can speed up the process and save expenses.

2. Knowledge: Foreign intellectual property conflicts may entail various legal frameworks and cultural nuances, which might complicate their settlement. Parties have the option to select

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[23] Margaret L. Mosses, Supra 4.

[24] Ibid n.13.

an arbitrator through arbitration who is knowledgeable about the pertinent legal subject and has the requisite expertise in resolving disputes on a global scale.

3. Confidentiality: Because intellectual property conflicts sometimes contain private data and trade secrets, parties may want to maintain the secrecy of the dispute's specifics. Arbitration offers a private, confidential setting for dispute resolution, which can help to safeguard the parties' private information.

4. The legislation controlling the proceedings and, on occasion, the arbitration agreement is decided by the parties' choice of the arbitration's location, but it also typically decides whether the dispute is arbitrable, that is, if it may be decided by a court, whether the subject matter can be arbitrated, or whether the particular dispute must be resolved in court.

5. Flexibility: Arbitration may be customized to meet the unique demands of the parties, including the desired level of confidentiality, the language of the procedures, and the venue of the hearing. Its adaptability can aid parties in arriving at a solution that pleases all parties. The parties can modify the disagreement to suit their interests by deciding on procedural timeframes, steps, submission of documents, etc.

6. Enforcement: International arbitration rulings are often easier to enforce than court judgements in many jurisdictions since so many countries have adopted the NY. Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The simplified procedure for the recognition and enforcement of foreign arbitral awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the “New York Convention”, can readily be enforced in 168 States.[25]

Commercial intellectual property arbitration covers issues such as Patent disputes: Arb. may be used to settle cases in which one party asserts that the other has infringed upon a patent.

Arbitration may be used to settle trademark disputes, in which one party alleges that the other is using a mark that is confusingly similar to their own. Trademark disputes might involve the use of trade names or trademarks. Conflicts over copyright can be settled through arbitration when one party alleges that the other has exploited their copyrighted work without their consent. Arbitration can be used to settle disagreements involving the theft of trade secrets, in which one party alleges that the other has revealed or utilized its proprietary knowledge without authorization. Trade secret disputes: If one party alleges that the other has utilized or released their sensitive knowledge without permission, the issue involving the misuse of trade secrets

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[25] *See* Contracting States, New York Convention, at: **https://www.newyorkconvention.org/countries**

may be resolved by arbitration. Technology licensing disputes: If one party alleges that the other has broken the terms of a license agreement, the arbitration process may be employed to settle the disagreement. Franchise disputes: If one party alleges that the other has violated the provisions of a franchise agreement, the disagreement may be resolved through arbitration.

Some cases (i)Merial Limited v. Cipla Limited[26], in this case, Merial, a pharmaceutical company, filed a patent infringement lawsuit against Cipla, an Indian Comp. The dispute was referred to arbitration under the rules of the ICC. The arbitrator found that Cipla had infringed on Merial's patent and awarded Merial damages of $15 million. (ii)Intel Limited v. Advanced Micro Devices, Inc.[27] In this case, Fujitsu, a Japanese company, and AMD, a U.S. Company, had a dispute over a patent related to semiconductor technology. The parties agreed to resolve the dispute through arbitration under the rules of the ICC. The arbitrator found that AMD had breached its obligations under the parties' technology licensing agreement and awarded Fujitsu $33 million in damages. (iii) Eli Lilly and Company v. Novartis AG[28] In this case, Eli Lilly, a pharmaceutical company, filed a patent infringement lawsuit against Novartis, a Swiss company, in the United States. The parties subsequently agreed to resolve the dispute through arbitration under the rules of the ICC. The arbitrator found that Novartis had infringed on Eli Lilly's patent, and awarded Eli Lilly $19 million in damages.

b. Commercial IP issues differ from other types of IP disputes

Intellectual property conflicts involving businesses and individuals differ in a number of ways. The following are some significant variations:

Those engaged in commercial intellectual property conflicts, two or more commercial entities, such as companies or enterprises, are typically involved. On the other hand, general intellectual property conflicts may include people, nonprofits, or governmental bodies. Kind of disagreement: Commercial intellectual property conflicts frequently occur as a result of commercial deals or alliances like joint ventures, licensing agreements, or mergers and acquisitions. A wider variety of situations, such as copyright infringement, trademark conflicts, or patent infringement, might give rise to general intellectual property problems. Legal difficulties involved: Complex legal issues relating to contract law, licensing agreements, or business transactions are frequently present in commercial intellectual property conflicts. Similar legal difficulties may arise in general intellectual property disputes, but they may also apply to tort law, antitrust law, or unfair competition. Resolution strategies Conflicts may be

[26] Merial, Ltd. v. Cipla, Ltd., No. 11-1471 (Fed. Cir. 2012)
[27] Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241 (2004)
[28] Eli Lilly and Company v. Novartis Pharma AG, No. 22-1094 (4th Cir. 2022)

resolved by commercial intellectual property litigation, mediation, arbitration, or negotiation.. Nonetheless, because of the commercial setting, arbitration is frequently used as a means of resolving disputes involving commercial intellectual property. In addition to negotiation, mediation, arbitration, and litigation, general intellectual property issues may also be settled by one of these other means, depending on the particulars of the case.

c. Investment intellectual property disputes

"Intellectual property conflicts involving international investment treaties have been concluded by governments for centuries as a way of promoting peaceful relations among the countries and the current era of IIAs, primarily as BITs for the protection of investors is no exception".[29] Arbitration is the mechanism used to settle tiffs over intellectual property rights between investors and governments. Often, investment treaties, which are agreements between nations intended to promote foreign investment by offering investors specific safeguards and assurances, give birth to this kind of arbitration. The capacity to move money outside of the host state is one of these rights, as is the right to fair and equitable treatment. An investor may look to arbitration to settle the conflict when they feel that a state has breached their intellectual property rights. This may entail taking the matter before an arbitral tribunal, which will consider the facts and arguments presented by both parties and render a final judgment. ICSID [30], an organization founded by the World Bank to promote the resolution of investment disputes between nations and investors, is one regular venue for arbitration of international investment intellectual property issues. The ICSID has its own set of arbitration rules and processes, and many nations throughout the world typically accept and uphold its rulings. Arbitration of international investment intellectual property disputes may be a crucial tool for safeguarding investor rights, encouraging foreign investment, and making sure that nations are held responsible for any violations of intellectual property rights.

II. Investment disparities and generic IP conflicts

Intellectual property issues involving investments and ordinary disputes differ in a number of ways. The following are some significant variations:

Although conventional intellectual property conflicts can include people, corporations, or governments, investment intellectual property issues involve overseas investors and nations.

Kind of disagreement: Foreign investment agreements or treaties, such as bilateral investment treaties or free trade agreements, can give rise to investment intellectual property issues.

[29] Angshuman Hazarika, State-to-state Arbitration based on International Investment Agreements,2021, p7
[30] ICSID CONVENTION, REGULATIONS AND RULES.

Expropriation, fair and equitable treatment, or violations of intellectual property rights by the state may be at the center of these controversies. A wider variety of situations, such as copyright infringement, trademark conflicts, or patent infringement, might give rise to general intellectual property problems. Complex legal concerns relating to international law, investment law, and intellectual property law are involved in investment intellectual property conflicts. Specialized knowledge and experience in these fields are frequently needed in these disagreements. Legal difficulties relating to intellectual property law may also come up in general intellectual property disputes; however, international law or investment law may not always be involved.

Resolution techniques such as negotiation, mediation, arbitration, or litigation are all options for resolving investment intellectual property conflicts. Yet, because of the international milieu, arbitration is generally the favored form of dispute resolution in investment intellectual property issues. In addition to negotiation, mediation, arbitration, and litigation, general intellectual property issues may also be settled by one of these other means, depending on the particulars of the case.

(A) Intellectual property conflicts involving investments and commerce: differences and resemblances

Commercial intellectual property conflicts and investment intellectual property disputes have certain things in common, but they also differ in a number of ways. These are a few of the most significant parallels and differences:

- Similarities:

Parties involved: Intellectual property disputes involving investments and commercial transactions typically include two or more parties disputing the ownership of certain intellectual property. Intellectual property law, contract law, and international law are among the legal concerns that may be present in any type of conflict. Both kinds of disagreements can be settled by negotiation, mediation, arbitration, or litigation. Investment treaties arbitration grafts public international law on international commercial arbitration.[31]

- Differences:

Parties: International investors and nations are typically parties to intellectual property disputes involving investments, whereas two or more commercial organizations are frequently parties to disputes involving commercial intellectual property. Commercial intellectual property disputes may arise in the context of business transactions or relationships, such as licensing agreements,

[31] Anthea Roberts, Divergence Between Investment and Commercial Arbitration,Vol. 106, Confronting Complexity (2012) p 297.

joint ventures, or mergers and acquisitions, whereas investment intellectual property disputes frequently arise in the context of foreign investment agreements or treaties, such as bilateral investment treaties or free trade agreements. Legal concerns at stake: Commercial intellectual property conflicts may entail legal concerns connected to contract law, licensing agreements, or business transactions, whereas investment intellectual property disputes involve sophisticated legal issues linked to international law and investment law. Arbitration is frequently the preferred means of resolving conflicts in investment intellectual property matters due to the international environment, but arbitration may or may not be the preferred method of resolving issues in commercial intellectual property matters.

III. Conclusion

This Article lays down the background and Introductory views that paved the way for the research, The concept of arbitrability of Intellectual Property of commercial nature as a subject matter is an unsettled notion, not only in India but at a larger scale even in different parts of the world. Even though arbitration is founded on the cornerstones of party autonomy and arbitrability of a subject matter, the domestic public policy regime adopted by a country often limits the principle of party autonomy in arbitration. National laws typically limit access to arbitration for particular sorts of conflicts because they either have a larger public interest or, more specifically, because the topic of intellectual property raises issues of public policy. It is obvious that the law on arbitrability is continually changing, and there has been a substantial change in how these ideas are interpreted in domestic courts across the world when arbitrating disputes. Fortunately, and in keeping with the New York Convention's goals, which support arbitration and enforcement, national courts are increasingly adopting a strict view of public policy and non-arbitrability, as in the case of India.

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