

Original Paper

Administrative Procedure of Trademark Enforcement in Pakistan: A Comparative Analysis with Malaysia and USA

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Received: May 7, 2019

Accepted: May 14, 2019

Online Published: May 30, 2019

doi:10.22158/elp.v2n1p113

URL: <http://dx.doi.org/10.22158/elp.v2n1p113>

Abstract

Trademark is one of the component of Intellectual Property (IP). It is a mark, name, sign, smell or a sound which distinguishes goods and services of one undertaking from goods and services of other undertakings. It is required to be distinctive and non-descriptive. It loses its distinctiveness when registered owner of trademark does not take prompt action against its infringement. Trademark enforcement procedures including administrative procedure must be expedient, adequate, fair, equitable, and must not be complicated, costly and time consuming. Administrative procedure starts when application for trademark registration is opposed by the registered trademark owner before the concerned administrative authority. Trademark registration authorities are: (i) Trademark Registry under Intellectual Property Organization of Pakistan (IPO-Pakistan) in Pakistan, (ii) Intellectual Property Corporation of Malaysia (MyIPO) in Malaysia, and (iii) United States Patent and Trademark Office (USPTO) in United States of America (USA). The registered owner of trademark may apply before the concerned administrative authority against the registration of identical trademark by adopting administrative procedure of trademark enforcement. This study is qualitative method of research a comparative analysis of administrative procedure of trademark enforcement in Pakistan, Malaysia and USA. After a comparative analysis of administrative procedure of trademark enforcement in Pakistan, Malaysia and USA, it is found that there are only three IP Tribunals in Pakistan and there is a need of more IP Tribunals which is required to give its decision within 90 days resultantly saves time and money of the people. It is also found that there is Trademark Trial and Appeal Board at USPTO, where appeal against decision of the Registrar may be filed by the aggrieved party thus a similar kind of body is required to be established at Trademark Registry in Pakistan.

Furthermore, IP experts should be hired at IP Tribunal and at Trademark Registry for smooth implementation of administrative procedure of trademark enforcement in Pakistan.

Keywords

intellectual property, trademark, intellectual property organization of Pakistan, intellectual property corporation of Malaysia, united states patent and trademark office

1. Introduction

Administrative procedure of trademark enforcement is very important procedure for effective enforcement of trademark, therefore it is required to be expedient, adequate, equitable, and must not be complicated, costly and time consuming. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) of World Trade Organization (WTO) is the first International Treaty which contains exhaustive enforcement provisions of IP in member countries of WTO from articles 41 to 61. Preamble of TRIPS Agreement states that member states have recognized assurance of measures and procedures for effective enforcement of IP rights, which should not become hurdle in legitimate trade. Member states have also recognized that there is a need of new rules and disciplines for effective and appropriate enforcement of trade related IP rights and there is also a need for effective and appropriate procedure for settlement of disputes between contracting states and there is a need of a model to prevent disputes between contracting states. There is also a need to reduce tensions between contracting states by adopting expeditious procedures and therefore member states are required to give effect to provisions of TRIPS Agreement into their domestic laws of state and member states may adopt any suitable method for doing so.

Article 41 of TRIPS Agreement states that enforcement procedure of IP in member countries of WTO should not be complicated, costly and time consuming, at least a judicial review must be available to aggrieved party on final administrative decision. TRIPS Agreement does not affect the capacity of enforcement of member states in their general domestic laws as such it is not obligatory upon member states to deal separately with enforcement of general domestic law and enforcement of TRIPS Agreement by redistributing resources for enforcement.

The registered owner of trademark may apply before the concerned administrative authority against the registration of identical trademark by adopting administrative procedure of trademark enforcement. There is an expert Examiner in Charge of registration at USPTO in USA, which is required to examine application of registration and decision of Examiner in Charge of registration may be challenged before Trademark Trial and Appeal Board. There are not many experts Examiner in Charge of registration neither there is Trademark Trial and Appeal Board in Pakistan thus it is highly recommended that experts Examiner in Charge of registration should be appointed and Trademark Trial and Appeal Board should be established at Trademark Registry in Pakistan.

After a comparative analysis of administrative procedure of trademark enforcement in Pakistan, Malaysia and USA, it is found that there are only three IP Tribunals in Pakistan and there is a need of

more IP Tribunals in Pakistan which is required to give its decision within 90 days resultantly saves time and money of the people. It is therefore recommended that more IP tribunals should be established for smooth implementation of administrative procedure of trademark enforcement in Pakistan.

2. Literature Review

TRIPS Agreement contains exhaustive provisions on enforcement of trademark law including civil procedure, criminal procedure, administrative procedure, provisional and border measures in member states of WTO. TRIPS Agreement states about administrative procedure of trademark enforcement that trademark may be invalidated by administrative authority of member state if it is consisted of wine spirit wrongly indicated to the place which is not its origin by ensuring equitable treatment to producers and not misleading the consumer. Member states are required to apply administrative provisions as per their legislative requirements (Articles 22, 23 & 49, TRIPS Agreement).

Duncan Matthews stated that though TRIPS Agreement implemented in member countries of WTO but has not been effectively enforced in member states and there is a sharp difference between adoption of TRIPS Agreement and its enforcement. Effective enforcement of TRIPS Agreement may take years to achieve. Member countries should improve their civil and administrative procedures, provisional and border measures and criminal procedure of IP enforcement including trademark. TRIPS Agreement challenges capacity of developing countries in IP enforcement. Member states are required to follow Part III of TRIPS Agreement to improve enforcement procedures of IP rights in member countries (Matthews, 2003).

Former Chief Justice of Pakistan Dr. Nasim Hassan Shah emphasized on effective enforcement system of IP rights including trademark rights in Pakistan and added that counterfeiting of trademark and copyright piracy are very important factors to reduce trade and investment in the country, it damages economy, hurts consumer and spoils image of country. IP laws including trademark laws of Pakistan must be amended under the light of relevant International Treaties and IP special courts should be established in Pakistan to deal with IP issues effectively (Jaan, 2010).

Justice *Bernice Bouie Donald* stated that enforcement of IP right in Pakistan is an issue thus Pakistan should learn from other countries, e.g., USA, South Korea, Taiwan and Singapore in the field of IP enforcement to settle issues of IP enforcement in Pakistan. She quoted an example of Singapore and stated that piracy was spread in Singapore and it was a common practice and no infringement proceedings was deterrent in the way of infringers and counterfeiters. Thereafter, the Government of Singapore took an initiative in IP field and managed to become leader in technological advancement by restructuring IP laws of Singapore.

She further stated that traders and investors do not come to a country where IP legislation is weak as it does not give them confidence for full protection of their investment and there is a severe chance of loss of capital rather than earning profits. Strengthening IP laws may bring investment in Pakistan and it enhances confidence of traders and investors to invest in Pakistan because there are minimum

chances of violations of their IP rights and it helps structuring and economic building of Pakistan.

She further stated that a country whose IP laws and procedures including trademark and its enforcement procedures are adequate to protect rights of trademark owner and other IP rights. Trade and investment come to that country from across the globe without any fair of injustice because of the perfect system of IP enforcement including trademark as per relevant International Conventions and other relevant bilateral treaties between sovereign states (Donald, 2013).

Hamid Maker stated in an article in the Nation that IPO-Pakistan is public organization under administration of the Government of Pakistan. The vision of IPO-Pakistan is to put Pakistan forward in IP enforcement and to portray good image of Pakistan as responsible country in the world with respect to enforcement of IP rights by promoting and protecting IP rights in Pakistan. The performance and activities of IPO-Pakistan are not up to the mark for smooth enforcement of IP rights in Pakistan.

IPO-Pakistan is required to arrange talks and seminars and there are no such activities arranged by IPO-Pakistan on regular basis to promote awareness among public at large. Every human being has a mind and it creates ideas which are required protection and for that purpose IP law enforcement must be adequate to protect IP rights. Previous governments of Pakistan did not give importance to IP laws and their enforcement procedures that is why international investors are reluctant to invest in Pakistan. It is the dire need of the people generally and traders and investors specially to improve enforcement procedures of IP including trademark in Pakistan (Maker, 2014).

Lahore High Court held in the case of *Messrs Asli Mand Barfi Shop v Messrs Mand Barfi Shop*, that Trademark Registry of Pakistan facing low disposal of cases under administrative authority, substantial backlog, inadequacy of staff, shortage of examiners in charge of registration, lack of IP experts and transparency. The Court held that pendency of cases at Trademark Registry are increasing due to acute shortage of staff. It is therefore expected that Trademark Registry is required to take initiative for fresh recruitments, promotions and creation of new posts as early as possible and make all efforts to clear and decrease backlog of cases within minimum possible time by making full use of existing working potential till appointments of new incumbents (*Messrs Asli Mand Barfi Shop v Messrs Mand Barfi Shop*, 2016).

Kari mullah Adeni stated in his article in the Dawn that there are not many IP tribunals in Pakistan. The authority is designated to District & Sessions Judge in Islamabad, which was also in Lahore but recently retired Justice of Lahore High Court is designated as Presiding Officer of IP Tribunal in Lahore and former Registrar was designated as Presiding Officer of IP Tribunal in Karachi. IPO-Pakistan is required to make more efforts for establishment of more IP tribunals throughout Pakistan as currently number of IP Tribunals are not sufficient for a country of more than 200 million people and a territory of around 8 lac kilometers. Therefore it is a dire need of time that more IP Tribunals should be established throughout Pakistan (Adeni, 2015).

3. Trademark Registration Authority

Trademark Registration Authority is an autonomous body designated to register trademarks under trademark law of the land. Trademark Registry works under IPO-Pakistan in Pakistan under Intellectual Property Organization of Pakistan Act 2012. Intellectual Property Corporation of Malaysia (MyIPO) works under Intellectual Property Corporation of Malaysia Act 2002 in Malaysia and United States Patent and Trademark Office (USPTO) works under Lanham Trademark Act 1946 and Title 35, United States Code 1926 in USA.

In Pakistan, Trademark Registry registers and protects registered trademarks in Pakistan under Intellectual Property Organization of Pakistan (IPO-Pakistan). Section 9 of Trade Marks Ordinance 2001 states that Trademark Registry and its branches are established to facilitate registration of trademarks in Pakistan (Section 9 Trade Marks Ordinance, 2001; Rule 128 Trade Marks Rules, 2004).

In the case of *Independent Media Corporation Private Limited v Shoaib Ahmed Sheikh*, the Court held that IPO-Pakistan is statutory body established under Intellectual Property Organization of Pakistan Act 2012 and the Registrar of Trademark is head of Trademark Registry appointed to register and protect trademarks under Trade Marks Ordinance 2001 and Trade Marks Rules 2004 (*Independent Media Corporation Private Limited v Shoaib Ahmed Sheikh*, 2015).

There are only two branches of Trademark Registry in Lahore and Islamabad apart from its Head Office in Karachi, Pakistan. More branches of Trademark Registry are required to be established in Pakistan as it is a country of more than 200 million people thus only two branches are inexpedient. Trademark Registry works under IPO-Pakistan thus it cannot work properly and independently for promotion and protection of trademarks in Pakistan hence it is required to be separated from IPO-Pakistan and should be made an autonomous body for smooth implementation of administrative procedure of trademark enforcement in Pakistan. Trademark Registry lacks men power and IP expert examiners hence IP experts should be hired and expert Examiner in charge of Registration should be appointed at Trademark Registry.

In the case of *Messrs Asli Mand Barfi Shop v Messrs Mand Barfi Shop*, the Court held that low disposal, substantial backlog, inadequacy of staff in Trademark Registry particularly and there is shortage of examiners performing key role in processing application. Trademark Registry deals with rights of trademark owners in view of current surge in consumerism, there is dire requirement for protection of such rights which is not possible without ensuring transparency in manner and system maintained by Trademark Registry. The Court issues orders that the Registrar of trademark shall ensure strict adherence to policy on first come first serve basis. All applications filed prior in time shall be dealt with and processed per chronological order and transparency in system shall be maintained. The Registrar will be personally held responsible for any lapse or dereliction in this respect.

The Court further held that there is acute shortage of staff in Trademark Registry hence pendency of cases over there is tremendously increasing. It is expected that IPO-Pakistan and Trademark Registry required to take initiative for fresh recruitments, promotions and creation of new posts as early as

possible. Trademark Registry is required to make all efforts to clear and decrease backlog of cases within minimum possible time by making full use of existing work potential till appointments of new incumbents (*Messrs Asli Mand Barfi Shop v Messrs Mand Barfi Shop*, 2016).

According to section 107 of Trade Marks Ordinance 2001, any person uses his place of business as Trademark Registry or issues document, uses word which would reasonably lead to believe that his place of business relates to Trademark Registry is guilty of an offence and punishable with imprisonment up to 2 years with fine or both (Khan, 2010).

In Malaysia, Intellectual Property Corporation of Malaysia (MyIPO) is established under Intellectual Property Corporation of Malaysia Act 2002 for implementation of IP rights in Malaysia. The Head office of MyIPO is in Kuala Lumpur and there are several regional offices in Sabah, Sarawak, Johor Bahru, Kuantan, Penang and Melaka. All regional offices receive applications for entry into the register of trademark and submitting application at regional office would be deemed as submission at Headquarter. The register of trademark is kept at the Headquarter.

All entries includes proprietor's and registered user's name, addresses and descriptions as well as assignments and transmissions' record of all entries with disclaimers, conditions and limitations. If two trademarks are identical which cause confusion, trademark registered first would prevail except if it is not abandoned, refused or successfully opposed (Sections 4, 4A, 5 Trade Marks Act, 1976; Kandiah, 2004).

The Registrar of trademark is the Director General of MyIPO. The Assistant Registrars, the Deputy Registrars and other officers are appointed from time to time. They can do all acts as are prescribed for the Registrar under Trade Marks Act 1976. The official seal of MyIPO is with the Registrar and any document contains the official seal is admissible evidence before the Court. Immunity is granted to the Registrar, the Deputy Registrar, the Assistant Registrar and other appointed officers of MyIPO for all actions they do in good faith under Trade Marks Act 1976 (Section 3, Trade Marks Act, 1976; Chong, 1998).

MyIPO (i) imposes fees and charges for its services, (ii) appoints an agent, (iii) consults an expert to assist it, (iv) grants loans to its employees, (v) co-operates with any other corporation or government, (vi) appoints and regulates examiner, (vii) appoints committee to assist it, and (viii) does all other acts under Intellectual Property Corporation of Malaysia Act 2002 (Sections 18, 19 Intellectual Property Corporation of Malaysia Act, 2002; Ahmad, Mahmud, & Kamal, 2006).

In USA, USPTO is specialized agency of patent and trademark registration and protection, works under the Department of Commerce in USA. The Secretary of Commerce gives directions for its policies, but financial matters would be conducted independently. Registration of patents and registration of trademarks are dealt separately at USPTO. The Head office of USPTO is at Alexandria, Virginia and there are other satellite offices in Dallas, Denver, Detroit and in Silicon Valley.

USPTO issues certificates of trademark registration and provides information of registration to public. USPTO makes regulations for smooth running of its affairs. USPTO deals with applications submitted

online or by hand as well as to recognize representative of applicant, e.g., agent, attorney or other person and requires him to show whether he possesses required qualification, has good character and reputation in the society. USPTO safeguards public interest by reviewing registration fee time to time, conducts its functions impartially, provides fruitful benefits to national economy and does other works for smooth implementation of patent and trademark rights (Sections 1, 2 Title 35 United States Code, 1926; Brown, 1995).

USPTO advises the President of USA on IP issues through the Secretary of Commerce as well as to advise the Federal Departments, foreign governments, domestic and international agencies, conducts and organizes programs and studies domestically and internationally and advises the Secretary of Commerce on such programs and studies. The Director of USPTO is citizen of USA and appointed by the President of USA. He performs duties of management, registration and gives policy directions in fair, impartial and equitable manner. He consults with Trademark Public Advisory Committee before submitting budget (Section 2 Title 35 United States Code, 1926).

The Deputy Secretary and the Deputy Director are nominated by the Director and appointed by the Secretary of Commerce. The Commissioner is appointed by the Secretary of Commerce for 5 years and his term may be renewed for next 5 years if his performance is satisfactory and he may be removed if his performance is not satisfactory. The Director may appoint other officers as he deems necessary for carrying out functions of USPTO and other experienced persons may be hired for giving training to examiners of trademark (Section 3 Title 35 United States Code, 1926; Quillen & Webster, 2001).

USPTO have Trademark Public Advisory Committee consisted of 9 voting members appointed by the Secretary of Commerce for 3 years. They must be citizens of USA and have competency in finance, management, labor relations, science, technology and office automation. Trademark Public Advisory Committee is chaired by the Secretary of Commerce and he may call its meeting anytime as he deems necessary. Trademark Public Advisory Committee advises the Director in fiscal matters, prepares, submits and publishes annual report (Allison & Lemley, 2002). Trademark Public Advisory Committee is filled up with IP experts, gives recommendations for betterment of the system hence it is required to be made at Trademark Registry in Pakistan for smooth implementation of trademark law in Pakistan.

The Director of USPTO maintains library of domestic and international scientific works for aiding USPTO. He is required to submit report before the Congress containing information about earning, expenditure, purpose of expenditure, quality, quantity and nature of works, valuation of commissioner, other relevant information of USPTO within 180 days after expiration of one fiscal year. Any agent or attorney may be suspended or excluded by the Director of USPTO on grounds of incompetency, disreputableness, misconduct, fraud or deceiving, misleading and threatening applicants (Section 32 Title 35 United States Code, 1926; Ackerman, 2011).

The Director of USPTO is required to submit report of its activities in one fiscal year before the Congress which would lead for betterment of the system. The Registrar of trademark in Pakistan should be required to submit its report before the Parliament every year which would strengthen the system

and would put check and balance on Trademark Registry and a step forward for betterment of trademark enforcement in Pakistan.

4. Opposition of Trademark

Opposition of trademark is important part in enforcement of trademark law which takes place before the Registrar of trademark in Pakistan, before the Director of MyIPO in Malaysia and before Trademark Trial and Appeal Board in USA when the Director of USPTO transfers application of trademark registration opposition to Trademark Trial and Appeal Board for the final decision. Opposition of trademark registration proceedings carried out by administrative authority therefore it is purely an administrative matter whose appeal may be filed before the Court by aggrieved party.

In Pakistan, an aggrieved party of trademark infringement may apply before the Registrar of trademark at Trademark Registry during application procedure of trademark registration when application is published after acceptance (Section 28 Trade Marks Ordinance, 2001; Khan, 2010).

Applicant of trademark registration is required to defend his application before Trademark Registry. In the case of *Muhammad Saleem Warind v Maziiar*, Sindh High Court refer case of Messrs PT SELAMAT SEMPURA Tbk, Indonesia who applied for registration of trademark "SAKURA" on 20th October 1997. Application was accepted and advertised in Trademark Journal No. 588 dated 1st January 2000. Pursuant to advertisement application of trademark registration was opposed but not contested by applicant of trademark registration hence application was treated as abandoned by Trademark Registry (*Muhammad Saleem Warind v Maziiar*, 2015).

Interested party may oppose registration of trademark through opposition letter within 2 months from the date of advertisement. The Registrar serves its copy to applicant and requires him to reply within 2 months. Applicant submits counter statement to the Registrar and the Registrar serves its copy to opponent who is required to send rejoinder within 2 months. After collection of evidences, the Registrar either accepts application of trademark registration or rejects it. Appeal against decision of the Registrar lies before the High Court in Pakistan and there is no Trademark Trial and Appeal Board at Trademark Registry as at USPTO in USA where appeal against decision of the Registrar lies before going to the Court. Once validity of registered trademark is decided in favor of proprietor, if any person objects on validity again in any legal proceedings, proprietor has right to obtain full costs, charges and expenses of proceedings (Rules 30, 31 Trade Marks Rules, 2004; Rana, 2012).

Registration of trademark may be opposed if (i) application is made by non-proprietor of trademark, (ii) documents filed with application are contrary to provisions of Trade Marks Ordinance 2001, (iii) evidence or representation presented by applicant is false in material, (iv) advertisement made before acceptance of registration application is without sufficient cause, (v) trademark applied for is identical to already registered trademark, (vi) trademark applied for is consisted of false geographical indication, (vii) registered trademark is not used within 5 years from the date of its registration without sufficient cause, (viii) usage has been suspended for 5 years without valid reason, (ix) trademark has become

common name or an activity in trade of product for which it was registered, or (viii) misleads general public in respect of quality, nature or geographical origin because of usage in a sense to alter its distinctive character (Section 29 Trade Marks Ordinance, 2001; Adeni, 2014).

In the case of *Smithkline Beecham P.L.C. through Authorized Signatory v the Registrar of Trademark*, appellant is one of the leading global healthcare company which inter alia engaged in manufacturing business and sale of toothbrushes and toothpastes. Appellants made important innovations in 1973 of toothpaste being extruded from toothpaste tube mouth into toothbrush hereinafter referred to as “speckled toothpaste slug device” commonly known as “slugs”. Appellant filed application in number of countries around the world, but no application was filed in Pakistan. Respondent advertised similar trademark hence appellant opposed application of similar trademark which was rejected by the Registrar on a ground that it would be just and equitable to grant right to applicants in respect of trademark associated with toothpaste which is in no doubt not descriptive and distinctive (*Smithkline Beecham v the Registrar of Trademark*, 2016).

The Registrar of trademark while deciding issue between disputing parties during registration process has all powers as judge of the Civil Court to receive oral and written evidences through affidavit, administer oaths, enforce attendance of witnesses, issue summons to produce document, issue commission to examine witnesses and issue certificate (Section 111 Trade Marks Ordinance, 2001; Zafar, 2014).

In Malaysia, Opposing party may apply before the Registrar of trademark against registration application of trademark in Malaysia through written notice consisting grounds of opposition, following counter statement from applicant of trademark registration. The Registrar is empowered to summons witnesses, summons production of documents, takes evidences from witnesses on oath and award costs. Any person summons by the Registrar, does not comply with it, would be liable to imprisonment for 3 months or 1 thousand ringgits fine or both (Section 75 Trade Marks Act, 1976; Kandan, 1996).

After hearing both parties, the Registrar of trademark either accepts application of registration in full or with some conditions or rejects it. Decision of the Registrar is appealable before the Court within prescribed time and the Court decides matter after hearing both parties and the Registrar. If additional grounds are taken in the Court during appeal proceedings, appellant may withdraw appeal without costs. If applicant is not resident of Malaysia, The Registrar of trademark may require him to submit security for costs of proceedings while giving notices, providing counter statements and submitting appeal in the Court, failing which, notices, counter statements and appeal would be abandoned (Section 28 Trade Marks Act, 1976; Ahmad, Mahmud, & Kamal, 2006).

If costs are awarded by the Registrar of trademark in favor of aggrieved party, it can be recovered through court proceedings of default payment by opposing party. The Registrar of trademark may not give his verdict on any matter in issue ex-parte without hearing opposite party as right of hearing is fundamental right of every party in proceedings (Section 28 Trade Marks Act, 1976; Khadijah, Ismail,

& Aziz, 2016).

In USA, the Director of USPTO is head of administrative process runs at USPTO in USA. Any person believes to have been damaged due to registration of trademark in trademark register may apply in a written form to the Director of USPTO for opposition of registration within 30 days from the date of publication or within such time as may be extended by the Director as requested. The Director may notify applicant for statement of opposition as well as for extension of opposition time (Section 13 Lanham Trademark Act, 1946; Diggins, 1946).

Right of registered trademark owner is incontestable if (i) there is no decision on registration against the owner, (ii) there is no related matter pending before the Court, (iii) affidavit describing goods or services registered under trademark filed within 1 year after expiration of continues 5 years' use in commerce, or (iv) trademark is not generic name (Section 15 Lanham Trademark Act, 1946).

Any damage occurred to a person due to registration of trademark under Lanham Trademark Act 1946, aggrieved party may apply for its cancellation before the Director within 5 years from the date of its registration, on any of the following grounds: (i) trademark becomes generic name of goods or services, (ii) trademark has not being used or abandoned, (iii) registration of trademark is adopted by fraud, (iv) registration of trademark is contrary to provisions of Lanham Trademark Act 1946, (v) trademark is used to misrepresent source of goods or services, (vi) trademark is registered but not published, (vii) owner of trademark does not have control over trademark, (viii) owner of trademark engages in production or marketing of goods or services for which certification mark is applied, (ix) owner of trademark permits use of trademark other than for which it is certified, (x) owner of trademark discriminately refuses to certify person who has maintained standard and conditions throughout its use, or (xi) trademark is used in a way to deceive public (Section 14 Lanham Trademark Act, 1946; USPTO, 2015).

5. Intellectual Property Tribunal

Intellectual Property (IP) Tribunal is established to settle disputes between disputing parties dealing with IP including trademark. Three IP Tribunals established in Pakistan under sections 15-16 of Intellectual Property Organization of Pakistan Act 2012. Former Registrar of trademark at Trademark Registry in Karachi, District and Sessions Judge in Islamabad and retired Judge of Lahore High Court designated authority as Presiding Officer of IP Tribunal in Lahore, Pakistan. Every Malaysian state has IP Court and in USA, United States International Trade Commission established for administrative procedure of trademark enforcement as well as Trademark Trial and Appeal Board at USPTO is established to settle IP issues between disputing parties for smooth implementation of administrative procedure of trademark enforcement.

In Pakistan, IP Tribunal established under Intellectual Property Organization of Pakistan Act 2012. IP Tribunal is consisted of IP experts have years of experience in IP. Three IP Tribunals established under Intellectual Property Organization of Pakistan Act 2012 in Karachi, Lahore and Islamabad. The Federal

Government of Pakistan has made IP Tribunals for settlement of IP issues expediently in short time. Accused may be prosecuted in IP Tribunal on application of registered trademark owner and decision of IP Tribunal is required to be made within 90 days.

The Presiding officer of IP Tribunal is appointed by the Federal Government of Pakistan for 3 years which is renewable for another same term and age limit of presiding officer is 65 years. IP Tribunal may take help of IP experts and their remunerations may be paid by party in whose favor expert is called upon by IP Tribunal (Section 16 Intellectual Property Organization of Pakistan Act, 2012; Malik, 2010).

IP Tribunal is authorized to hear cases dealing with IP under IP laws of Pakistan. The High Court may transfer one tribunal's case to another. An appeal on final decision of IP Tribunal can be filed by aggrieved party within 30 days before the High Court (Sections 15 to 19, Intellectual Property Organization of Pakistan Act, 2012; Jaan, 2010; Jilani, 2013) 90 days are given for IP Tribunal to dispose of cases presented before it which would save time of the Court for other disputing matters and it is going to enhance confidence of traders and investors on Pakistan as well.

In Malaysia, every Malaysian state has IP Court. In 2006, the Technical Committee was formed by Malaysian Government to conduct research based on study tour to IP Courts in South Korea, Thailand, Japan and United Kingdom. The Technical Committee suggested that it is useful to establish IP Court in every state of Malaysia. Establishment of IP Court will ensure efficient and speedy trial by IP experts. IP Court staff would have exposure and expertise in IP. Judges would be appointed based on their experience and long standing involvement in IP. IP Court establishment would reduce possibility of appeal considerably and ultimately save time of the Court and public money. It would also enhance national coordination in interpretation of IP law, encourage commercial exploitation, enhance economic development in modern society, and encourage awareness and confidence of general public on IP legal protection. IT would also bring confidence to commercial and business community and provide strong indicator to international community on seriousness of Malaysian Government for effective IP protection (Meland, 2005; Zuallcoble, 2012).

Initially for assessing viability of IP Courts in Malaysia, the Sessions Court of Kuala Lumpur was designated powers of IP Court on 1st January 2006. Designated Court tried IP cases effectively and with faster rate. IP Court was not burdened to hear other criminal cases. The Presiding Officer and supporting staff were knowledgeable in IP matters hence in view of the outcome of research and practical experience of Kuala Lumpur IP Court, IP Court established in every state of Malaysia in July 2007.

IP Court powers are designated to the Sessions Court in every state and to the High Court in 6 states: Kuala Lumpur, Selangor, Johor, Perak, Sabah and Sarawak. Purpose of IP Court in Malaysia is to remove Malaysia from IP International Watch list, reduce backlog of IP cases, provide better remedies and eradicate infringement of trademark. Malaysia took a giant step in July 2007 to establish IP Courts making Malaysia one of the first countries in the region to have specialized courts to dispose of IP

cases. 15 Sessions Courts have criminal jurisdiction to deal primarily with counterfeiting and piracy cases and 6 High Courts have civil and appellate jurisdiction (Kadir, 2008; Koon, 2011).

IP Courts of Malaysia have criminal jurisdiction under Trade Descriptions Act 2011. According to section 60 of Trade Descriptions Act 2011, the Sessions Court have jurisdiction to try offences under Trade Descriptions Act 2011 and to impose full punishment for any such offence. Aggrieved person may lodge complaint before the Assistant Controller against accused and provide details of accused, details of premises where offence is committed or about to be committed and details of alleged offence. The Assistant Controller investigates infringement of false trade description and other related offences under Trade Descriptions Act 2011. If the Assistant Controller reasonably believes that offence is committed or about to be committed, he transfers case to the Sessions Court for trial (Sections 30, 31 Trade Descriptions Act, 2011; Sahlan, 2014).

In USA, United States International Trade Commission (USITC) established in 1916. USITC is an independent quasi-judicial agency undertakes investigations on unfair methods of competition and trademark infringement and to provide variety of powerful remedies under section 337 of Tariff Act 1930 (Section 337 Tariff Act 1930).

If trademark infringement is proved beyond reasonable doubt, trademark owner may claim non-monetary relief through (i) exclusion orders to bar infringing imports, (ii) cease or desist orders prohibiting respondents from engaging in specified commercial activities with respect to infringing articles. Moreover, 16 months are prescribed to complete investigation of trademark infringement. After institution of investigation, USITC appoints an independent litigant to represent public interest as party to investigation. Thereafter, six judges of USITC would assigned investigation. Responses to written discovery are due within 10 days. Parties may proceed for summary trial and judgement within 60 days (Sections 1330 to 1341 Title 19 United States Code 1926).

Assigned judges will conduct evidentiary hearing for 8 to 9 months after an investigation. Thereafter within few months, Administrative Law Judge (ALJ) will issue initial determination whether section 337 of Tariff Act 1930 is violated and recommend determination, remedy and bond. Thenceforth, USITC will review the initial determination issued by ALJ, and issue final order as well as the remedy. The President has 60 days to veto the final decision in case if violation is found (Whitaker & Rauh, 2017).

Moreover, there is Trademark Trial and Appeal Board at USPTO which is consisted of the Director, the Deputy Director, the Commissioner of trademark, the Commissioner of patent and trademark and administrative judges as are appointed by the Director of USPTO. Trademark Trial and Appeal Board is directed by the Director to resolve issues of interference, opposition to registration, concurrent use of registration and cancellation of registration. The Director issues notices to all relevant parties before start of proceedings directing them to participate in proceedings before Trademark Trial and Appeal Board.

During proceedings, the Director may refuse to register trademark, cancel registration of trademark, modify application of trademark registration, restrict use, rectify registration and fix conditions and limitations on such use. No decision can be given in favor of applicant unless trademark is registered, and applicant becomes registered owner of trademark. Principles of estoppel, laches and acquiescence apply in proceedings of Trademark Trial and Appeal Board (Sections 15 to 20 Lanham Trademark Act, 1946; Ehrlich, Friedman, Mirman, & Quinn, 1997).

Trademark Trial and Appeal Board is administrative body at USPTO where applicants of trademark registration file appeals against decisions of Examiner in Charge of Registration. There is a need of such body at Trademark Registry in Pakistan for smooth administrative procedure of trademark enforcement.

6. Conclusion and Recommendations

Administrative procedure of trademark enforcement is required to be expedient, adequate, fair, equitable, and must not be complicated, costly and time consuming under the light of article 41 of TRIPS Agreement which is required to be complied by member states of WTO. Trademark Registry under IPO-Pakistan is trademark registration authority of Pakistan. MyIPO is trademark registration authority of Malaysia and USPTO is trademark registration authority of USA. Trademark Registry of Pakistan lacks men power and IP experts for smooth and timely disposing of cases. There are only two branches of Trademark Registry throughout Pakistan in Lahore and Islamabad apart from its Head Office in Karachi, which is not adequate for a country of more than 200 million people. Therefore more branches of Trademark Registry are required to be established throughout Pakistan, and more men power and IP experts should be hired at Trademark Registry in Pakistan.

Trademark Public Advisory Committee should be made at Trademark Registry in Pakistan which is consisted of IP experts to recommend changes to the Registrar of Trademark for betterment of trademark enforcement procedures. Trademark Trial and Appeal Board should be established at Trademark Registry to hear appeals against decisions of expert Examiner in Charge of Registration as well as conduct proceedings for opposition of trademark.

The Registrar of trademark should be asked to submit yearly report before the Parliament for smooth conduct of Trademark Registry activities as the Director of USPTO is required to submit report on activities of USPTO before the Congress after every fiscal year in USA. This type of requirement should be prescribed under trademark law of Pakistan and the Registrar of trademark should be required to present report on activities of Trademark Registry before the Parliament for check and balance on Trademark Registry in Pakistan for betterment of trademark enforcement procedures including administrative procedure of trademark enforcement in Pakistan.

There are only 3 IP Tribunals in Pakistan established under sections 15-16 of Intellectual Property Organization of Pakistan Act 2012 required to decide a matter within 90 days and appeal against its decision is required to be made before the High Court. Every Malaysian state has IP Court and there is

USITC as well as Trademark Trial and Appeal Board at USPTO in USA. Only three IP Tribunals are not expedient for a country of more than 200 million people thenceforth more IP Tribunals are required to be established in Pakistan for betterment of trademark enforcement administrative procedure.

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