

FORUM SHOPPING IN INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT CASES IN INDIA

INTRODUCTION

Forum shopping refers to the strategy of a plaintiff to “have his action tried in a particular court or jurisdiction where he feels that he will receive the most favorable judgment or verdict.”¹ The term is typically used when a plaintiff seeks to bypass the “natural forum” for a dispute,² and is motivated by factors ranging from favorable laws to juror biases.³ Forum shopping occurs both at international and domestic levels. While international forum shopping has been criticized on grounds that it is self-serving⁴ and undermines international comity,⁵ some experts hold a different view. For instance, according to Friedrich Juenger, such practices are “[f]ar from...legally or morally reprehensible” and, in some cases, have “promoted the cause of international justice.”⁶ In an English case concerning two Dutch ships which had collided in Belgian waters, Lord Simon had observed, “[I]f you offer a plaintiff a choice of jurisdictions, he

¹ BLACK’S LAW DICTIONARY 590 (5th ed. 1979).

² *Chaplin v. Boys* (1971) A.C. 356, 401 (H.L.).

³ See Note, *Forum Shopping Reconsidered*, 103 HARV. L. REV. 1677, 1678 (1990).

⁴ (1973) A.C. 436, 454 (H.L.) (Lord Reid).

⁵ See *Q&M Enterprises v. Poh Kiat*, (2005) 4 S.L.R. 494, ¶¶ 14-19, 44, 64, 66 (Sing. H.C.) (summarizing case law and the views of scholars).

⁶ Friedrich Juenger, *Forum Shopping, Domestic and International*, 63 TUL. L. REV. 553, 560 (1989). Juenger cites the example of a case where a Turkish Airlines flight, travelling from London to Paris, crashed due to negligence. The victims’ families received a large damages award and a favorable settlement after suing in the US.

will naturally choose the one in which he thinks his case can be most favorably presented: this should be a matter neither for surprise nor for indignation.”⁷ Lord Denning went a step further and openly encouraged international forum shopping, describing England as “a good place to shop in, both for the quality of the goods and the speed of service.”⁸

In the context of intellectual property (“IP”) litigation, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) has left considerable “wobble room” to national lawmakers and also witnessed uneven levels of compliance.⁹ Thus, a plaintiff may attempt to sue in a country that is not the natural forum for an intellectual property rights (“IPR”) infringement dispute, but offers more advantageous laws or procedures. In the European Union (EU), where the extent of IP law harmonization is relatively strong, the European Court of Justice has disapproved of forum shopping in IPR infringement cases, as it tends to “undermine the principle of legal certainty.”¹⁰ Yet, IP lawyers unabashedly encourage forum shopping in situations where disparities within EU member-states exist.¹¹ Advocate General Léger has opined that it is “difficult to criticize the plaintiff in an infringement action for indulging in ‘forum shopping’ in order best to defend his interests.”¹²

⁷ *Atlantic Star v Bona Spes*, (1973) A.C. 436, 471 (H.L.).

⁸ *Atlantic Star v Bona Spes*, (1973) Q.B. 364, 382 (C.A.).

⁹ J.H. Reichman, *The TRIPS Agreement Comes of Age: Conflict or Cooperation with the Developing Countries?*, 32 CASE W. RES. J. INT’L L. 441, 459 (2000).

¹⁰ *Roche v. Primus* (2007) F.S.R. 5 (E.C.J.), ¶ 37.

¹¹ See, e.g., Richard Dissman, *Shop Talk*, 388 ITMA REV. 20 (2013).

¹² *Roche v. Primus* (2006) E.C.R. I-6535, para 99.

At least one defense of international forum shopping— Juenger’s moralistic argument that it can “promote international justice” — appears slightly weak when transposed in the context of IP litigation. While some international instruments ostensibly elevate IPR to the status of universal human rights,¹³ experts have cautioned against such an interpretation, and pointed out IPR may even occasionally undermine human rights.¹⁴ Thus, unlike compensation claims for deaths due to negligence (the example that Juenger uses), or even for damage to tangible property, IPR infringement cases involve protecting rights whose social and moral significance is arguably less.¹⁵ As Peter Drahos says, “Having one’s artwork copied is not the same as being stripped of one’s bedding, food, medicines or other personal possessions that form the essentials of a daily existence.”¹⁶ This rationale also holds true in the context of *domestic* forum shopping in IPR infringement cases.

In contrast to international forum shopping, domestic forum shopping occurs within a country’s borders. For example, in the UK, forum shopping between England and Scotland has occurred in matrimonial disputes.¹⁷ In

¹³ Universal Declaration of Human Rights, art. 27(2) (1948); International Covenant on Economic, Social and Cultural Rights, art. 15(c) (1966).

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 17, paras 2-3, U.N. Doc. E/C.12/GC/17 (2006).

¹⁵ See Robert Ostergard, *Intellectual Property: A Universal Human Right*, 21 HUM. RTS. Q. 156, 158-167 (1999) (criticizing Lockean and utilitarian justifications for IP protection, from a public welfare perspective).

¹⁶ Peter Drahos, *Intellectual Property and Human Rights*, 3 INTELL. PROP. Q. 349, 366-7 (1999).

¹⁷ See David Hodson, *Quo Vadis? The Family Lawyer Goes Forum Shopping*, 4 PRIV. CLIENT BUS. 158, 159-160 (2012); *Come to Scotland – A Land Full of History, Stunning Scenery...and Cheap Divorces*, SCOTSMAN, Jan. 27, 2009, <http://www.scotsman.com/news/come-to-scotland-a-land-full-of-history-stunning-scenery->

the US, domestic forum shopping has been described as a “national legal pastime.”¹⁸ In the case of IP litigation, domestic forum shopping is fairly common. In the US, plaintiffs have sued in courts based on factors such as “home-field advantage,” the “convenience of trial counsel,” and the speed with which courts disposes of cases.¹⁹ In China, foreign IP owners have sued in large cities like Beijing and Shanghai, as they are often headquartered there and these cities purportedly have judges familiar with sophisticated patent law concepts.²⁰ Italy has seen a case where a plaintiff domiciled, near Milan, sued an alleged trademark infringer, domiciled in Venice, in Milan.²¹ In Spain, a plaintiff domiciled in Barcelona sued defendants, domiciled in Madrid and Navarra, for patent infringement in Barcelona.²² A global study has advised that domestic forum shopping should be used as a tactic by IP owners wherever possible. The study claims, for instance, that patentees “fare better in Tokyo than Osaka.”²³

and-cheap-divorces-1-755952.

¹⁸ J. Skelly Wright, *The Federal Courts and the Nature and Quality of State Law*, 13 WAYNE L. REV 317, 333 (1967).

¹⁹ See Kimberly Moore, *Forum Shopping in Patent Cases: Does Geographic Choice Affect Innovation?*, 83 J. PAT. & TRADEMARK OFF. SOC'Y 558, 574-6 (2001).

²⁰ See Diana Matthias, *IP in North China —Identifying and Protecting It*, in BUSINESS GUIDE TO BEIJING AND NORTH EAST CHINA 74, 76-77 (Chris Devonshire Ellis and Graham Thompson eds., 2007).

²¹ *Croci Trading v. Ferplast*, Case No. 43061/2004 (Tribunal of Milan, Specialist Intellectual Property Division Jul. 15, 2004).

²² Re Section 15 of Barcelona Provincial Court (Complaint filed by Laboratorios Almirall against Laboratorios Alter and Laboratorios Cinfa), Sentence No. 90/2011 (Barcelona Provincial Court, Mar. 2, 2011). The court refused to dismiss the suit as Spanish patent legislation allows a plaintiff to sue in a place where the effect of an alleged infringement occurs.

²³ Michael Elmer & Stacy Lewis, *Where to Win: Patent-Friendly Courts Revealed*, 202 MANAGING INTELL. PROP. 35, 36, 40 (2006).

Arguably, domestic forum shopping is generally viewed less favorably than international forum shopping. Judges in the US have described domestic forum shopping as a practice that is, among other things, “evil,”²⁴ “improper,”²⁵ and one that “is to be discouraged.”²⁶ In the UK, Lord Simon — in contrast to his sympathetic remarks on international forum shopping — described the possibility of domestic forum shopping between England and Scotland as a “great danger.”²⁷ In Australia, a judge of its highest court has observed:²⁸

Whatever the position be with respect to acts or events in foreign countries, it is worse than absurd that the law should allow that the consequences attaching to an act or event in this country — in this united Federal Commonwealth — can vary according to the State in which they are litigated.

Domestic forum shopping becomes especially problematic if a country’s laws on a subject are largely homogenous, yet plaintiffs choose to litigate in a particular region due to the perceived biases of judges and jurors. For example, a study has claimed that judges in Southern England are more “pro-wife” in divorce cases than judges in Northern England, leading to forum shopping.²⁹ In the US, a study on the uncanny growth of the Eastern

²⁴ Henry J. Friendly, *Averting the Flood by Lessening the Flow*, 59 CORNELL L. REV. 634, 641 (1974).

²⁵ *Weight Watchers v. Stouffer*, 1989 U.S. Dist. LEXIS 7235, *11 (S.D.N.Y. June 28, 1989).

²⁶ *Filiberto Ojeda Rios v. George Wigen*, 863 F.2d 196, 199 (2d Cir. 1988).

²⁷ 568 H.L. Debates 1410 (Jan. 30, 1996) (statement of Lord Simon), <http://www.publications.parliament.uk/pa/ld199596/ldhansrd/vo960130/text/60130-20.htm>.

²⁸ *Stevens v. Head* (1993) 112 A.L.R. 7, ¶ 10 (Aus. H.C.) (Justice Gaudron).

²⁹ Andrew Hough, *Northern Men “Get More Favorable Divorce Payout,” Research Shows*, DAILY TELEGRAPH, Sep. 2, 2009, <http://www.telegraph.co.uk/news/uknews/6124840/Northern-men-get-more-favourable-divorce-payouts-research-shows.html>.

District of Texas as a venue for patent litigation has claimed that its jurors tend to “interpret the presumption of patent validity very rigidly” and have a “general distrust” of foreign corporate defendants, encouraging forum shopping by certain plaintiffs.³⁰ Legal realists have long argued that “acquired slants” and “unconscious influence[s]” can affect judicial decision-making.³¹ For instance, in the context of trademark litigation, Felix Cohen claimed that the “income class” of judges and “their past legal experience as counsel for special interests” often play a definitive role.³² Equally relevant is Roscoe Pound’s “sporting theory of justice,” which sees litigation being reduced to a “mere game” between plaintiffs and defendants, with lawyers’ arguments compromised by the “yoke of commercialism” and courts expected to function in an “economically efficient” manner.³³ Thus, from a philosophical perspective, domestic forum shopping — particularly in a legally homogenous country — undermines formalist conceptions of the law.³⁴

From a more practical perspective, domestic forum shopping can overburden certain courts, lead to unnecessary expenses for defendants, and

³⁰ Yan Lechkis, *Of Fire Ants and Claim Construction: An Empirical Study of the Meteoric Rise of the Eastern District of Texas as a Preeminent Forum for Patent Litigation*, 9 YALE J. L. & TECH 193, 213-4 (2007).

³¹ JEROME FRANK, *LAW AND THE MODERN MIND* xxxiv (1930)

³² Felix Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 814, 816-817, 844 (1934).

³³ Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 ANNU. REP. A.B.A. 395, 404-6, 417 (1906).

³⁴ Note, *Forum Shopping*, *supra* note 3, at 1684-6.

create “a negative popular perception of the equity of the legal system.”³⁵ While calling for an end to the UK’s London-centric litigation trend, Lord Chief Justice Thomas has argued that “providing more justice out of London will...strengthen the profession out of London and benefit local economies.”³⁶ It can conversely be argued be that if certain cities in a country are consistently deprived of hearing cases due to forum shopping in other cities, there will be fewer opportunities for lawyers in the deprived cities, and less development for the economies of those cities.

Juenger has defended domestic forum shopping on the ground that lawyers are “duty-bound to enhance their clients’ prospects by adroitly selecting, from among all available fora, that which best accommodates their objectives.”³⁷ Moreover, the demand for predictability and uniformity in a legal system is “quixotic” and unattainable, and also overlooks the need “to further the ends of material justice.”³⁸ However, there are pressing counterarguments that can be made. To begin with, lawyers have a duty to reduce litigation costs for clients, and forum shopping does not always do so. For example, Lord Chief Justice Thomas has noted that even though “London has no monopoly on skill or experience,” a lot of “domestic litigation...is brought to London instead of being conducted through courts outside London,” resulting in greater costs for clients due to London’s high

³⁵ *Id.* at 1684.

³⁶ Lord Chief Justice Thomas, Birkenhead Lecture Delivered at Gray’s Inn, London: Justice in One Fixed Place or Several?, ¶ 33 (Oct. 21, 2013), <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Speeches/lcj-birkenhead-lecture-21102013.pdf>.

³⁷ Friedrich K. Juenger, *What’s Wrong with Forum Shopping? A Difference of Opinion*, 16 SYDNEY L. REV. 5, 11 (1994).

³⁸ *Id.*

lawyer billing rates.³⁹ Thus, if a city X would be the cheapest and most convenient place for a plaintiff to sue in, a lawyer who advises a client to sue in a city Y and incur greater costs, merely by speculating about the biases of judges or jurors in Y, might be doing the client a disservice. This is particularly true if the client has a strong case on merits anyway, such as in a case of blatant and willful IPR infringement.

Moreover, forum shopping often occurs on the basis of anecdotal accounts rather than rational scientific analysis, leading to a “herd mentality” amongst lawyers.⁴⁰ For instance, a study has claimed that “it is not the jury that is the primary driver for the perceived advantage for patent plaintiffs in East Texas.”⁴¹ The study has demonstrated that the win rate for plaintiff-patentees in jury trials in East Texas is almost the same as many other US districts.⁴² The study has argued that East Texas actually attracts litigants as suits are disposed of faster, and is critical of stereotypes that portray jurors from the region as “unsophisticated” and biased towards plaintiff-inventors.⁴³ Similarly, Justice Kimberly Moore has cited various studies and concluded that jurors across the US (not just East Texas) “love

³⁹ Lord Chief Justice Thomas, Birkenhead Lecture Delivered at Gray’s Inn, London: Justice in One Fixed Place or Several?, ¶¶ 22, 44-51 (Oct. 21, 2013), <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Speeches/lcj-birkenhead-lecture-21102013.pdf>.

⁴⁰ Mark Lemley, *Where to File Your Patent Case*, 38 AIPLA Q.J. 1, 4-5 (2010).

⁴¹ Andrei Iancu & Jay Chung, *Real Reasons the Eastern District of Texas Draws Patent Cases — Beyond Lore and Anecdote*, 14 SMU Sci. & Tech. L. Rev. 299, 319 (2011).

⁴² *Id.* at 305

⁴³ *Id.* at 300, 310-314.

inventors” and are “more likely to find for individuals in patent cases.”⁴⁴

Juenger’s point about the futility of seeking legal uniformity and predictability is certainly valid. But while it may be unrealistic to expect such qualities in legal systems across international borders, this is certainly easier to achieve in a domestic jurisdiction. At the very least, this is a desirable goal that lawmakers and judges should try and reach close to. Furthermore, as mentioned above, there are important policy concerns that arise from indiscriminate domestic forum shopping, such as the possibility of particular courts being overburdened and defendants incurring unnecessary costs. Indeed, Juenger himself has conceded that forum shopping should be restricted in “egregious cases” where defendants are “seriously inconvenienced by reprehensible machinations” of plaintiffs.⁴⁵ Here, it is pertinent to recall Galanter’s seminal hypothesis about the “great bulk of litigation” comprising disputes between “repeat players” (“RPs”) and “one shotters” (“OSs”), the former typically being large organizations with better resources at their disposal.⁴⁶ While this imbalance can perhaps never be eliminated, curbing domestic forum shopping can at least reduce instances of OS defendants with limited resources being placed at a disadvantage — merely by virtue of being sued outside the natural forum — by wealthier, RP plaintiffs. The need to provide OSs with a more level playing field in such situations can be justified on the basis that RPs try “to ‘settle’ cases where they expected unfavorable rule outcomes” and “adjudicate (or appeal) those cases which they regard as most likely to

⁴⁴ Kimberely Moore, *Populism and Patents*, 82 N.Y.U. L. REV. 69, 105-111 (2007).

⁴⁵ Juenger, *supra* note 37, at 13.

⁴⁶ See generally, Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95 (1995).

produce favorable rules.”⁴⁷ This creates a “body of ‘precedent’ cases...relatively skewed toward those favorable to” RPs and “limits the possibilities... of redistributive (that is, systemically equalizing) change” in the legal system.⁴⁸

From a crude economic perspective, it could perhaps be argued that a body of case law tilted in favor of RPs through forum shopping is sometimes tolerable for lawmakers. For example, the French luxury goods company Louis Vuitton (LV) would be an archetypal RP, and has been described as “probably the biggest of the trademark bullies out there.”⁴⁹ In the Netherlands, the company went to the extent of suing a little-known young artist for design infringement, for drawing an LV bag in a painting on the Darfur genocide. LV succeeded in obtaining a preliminary injunction against the artist from Justice Hensen of the District Court of the Hague, who found it “sufficiently plausible” that LV could suffer “irreparable damage.”⁵⁰ On appeal, another judge reversed the decision and awarded the artist costs, observing that her “right to freedom of (artistic) expression should outweigh” LV’s rights.⁵¹ Now, suppose LV files a spate of cases in

⁴⁷ *Id.* at 101.

⁴⁸ *Id.* at 95, 102.

⁴⁹ Mike Masnick, *Louis Vuitton Loses Bogus Trademark Lawsuit: Using Fake and Bag in Hangover II Isn't Infringement*, TECH DIRT, June 18, 2012, <https://www.techdirt.com/articles/20120617/23233319364/louis-vuitton-loses-bogus-trademark-lawsuit-using-fake-handbag-hangover-ii-isnt-infringement.shtml>.

⁵⁰ *Louis Vuitton v. Nadia Plesner*, Application No. K.G. R.K. 10-214 (Court of the Hague Jan. 27, 2011), ¶¶ 2.4, 3.1, http://www.rechtundgerechtigkeit.de/2-4-gesellschaft-sanktionen/berichte/vuitton-darfurnica/belege/Court_Order_Louis_Vuitton_vs_Plesner.pdf.

⁵¹ *Nadia Plesner v. Louis Vuitton*, Application No. K.G. Z.A. 11-294 Court of the Hague May 4, 2011), ¶ 4.4, http://www.ivir.nl/publications/guibault/JIPITEC_2011_3.pdf.

its home country of France against street artists ridiculing LV's logos in paintings, strategically targeting forums with judges who share Justice Hensen's apparent pro-IP bias. If LV's strategy results in the creation of a body of case law favorable to it, the trademark rights of other luxury goods companies in France will be simultaneously strengthened. Here, it could be argued that the economic gain in strengthening the trademark rights of LV and other French luxury goods makers, when compared to the social and economic harm in restricting the freedom of expression of the street art industry, makes LV's strategy tolerable.⁵² If LV attempts this strategy in foreign jurisdictions like Italy and Germany, which also have large luxury goods industries, a similar outcome might also be tolerable.

However, the above might not hold true in many other countries. Some countries enjoy "economic niches" that can be harmed in cases where the "strict enforcement" of IP law "imposes domestic costs and only benefits foreign producers."⁵³ For example, suppose LV litigates in a developing country X which does not have a luxury goods industry and where the industry does not create any jobs. If X is a member of the TRIPS Agreement, it would technically be bound only to prevent the use of registered trademarks if such use "would result in a likelihood of confusion" (in case of similar goods and services), or "would indicate a connection" with the trademark owner and be likely to damage the trademark owner's

⁵² *But see* AMARTYA SEN, DEVELOPMENT AS FREEDOM 148-159 (1999) (arguing that "in judging economic development it is not adequate to look only at...indicators of overall economic expansion," and that civil liberties are also important); Estelle Derclaye, *Do Patents, Trademarks and Designs Foster Happiness in Developed Countries? An Empirical Analysis*, INT'L J. HAPPINESS & DEV. (2014) (forthcoming) (arguing that a utilitarian justification for IP protection should take into account "[h]appiness evaluated in non monetary terms").

⁵³ Tom Ginsburg, *Does Law Matter for Economic Development? Evidence From East Asia*, 34 L. & SOC. REV. 829, 840 (2000).

interests (in case of dissimilar goods and services).⁵⁴ Nevertheless, suppose some judges in X — strategically targeted by LV and similar companies — follow foreign case law holding that certain trademarks perform secondary functions of conveying an “aura of luxury,” which can be infringed via dilution notwithstanding the absence of consumer confusion.⁵⁵ Arguably, such a body of case law would be of no help to X’s domestic industry. If X has a low-cost consumer goods industry which thrives by manufacturing mild, non-confusing knockoffs, such a result might even hurt X’s economy. More serious harm to a developing country’s economic interests can occur in other kinds of cases. For example, if Western pharmaceutical companies litigate aggressively against local generic pharmaceutical companies in a country reliant on the latter. Or, if Western publishing houses seek to restrict students and researchers from photocopying prohibitively expensive scientific and medical textbooks.⁵⁶ In both these situations, national economic interests would demand that forum shopping be curbed, especially if plaintiffs seek to enforce TRIPS-plus rights. Additionally, there are obvious social interests and human rights that need to be safeguarded.

This is not to diminish the importance of providing a speedy, efficient

⁵⁴ TRIPS Agreement, art. 16. *See, also* Graeme Dinwoodie, *The Integration of International and Domestic Intellectual Property Lawmaking*, 23 COLUM.-VLA J. L. & ARTS 307, 314 (2000) (stating: “I don’t accept the premise that TRIPS mandates dilution protection.”).

⁵⁵ *Copad v. Dior* (2009) F.S.R. 22, ¶¶ 24, 37 (E.C.J.).

⁵⁶ An example is a pending lawsuit filed by global publishing houses against a small photocopying shop in New Delhi and the University of Delhi. *See* Lawrence Liang, *Oxford and Cambridge University Publishers v. Students of India*, KAFILA, Aug. 27, 2012, <http://kafila.org/2012/08/27/oxford-and-cambridge-university-publishers-v-students-of-india>).

litigation environment to plaintiffs in IPR infringement cases. Economists have demonstrated that legal protection for private property rights promotes investment and contributes to a country's economic growth.⁵⁷ Developing countries that effectively protect IPR can encourage the growth of domestic industries as well as attract foreign direct investment from developed nations.⁵⁸ Thus, while Pound's criticism of litigation and adjudication being impacted by commercial interests may be valid, a legal system that fails to provide speedy, effective relief to businesses, whether domestic or foreign, is most undesirable. Indeed, Pound himself had approvingly cited an English copyright case to argue that courts should "vindicate the substantive law" instead of denying relief to litigants "on a mere point of practice" or permitting delays, as the "life of the law is in its enforcement."⁵⁹ Hence, a country should ideally curb domestic forum shopping in IPR infringement cases — for the various policy reasons mentioned above — but still offer plaintiffs a judicial system that is efficient and not riddled with procedural difficulties. It is in this backdrop that this paper will discuss the problem of forum shopping in IPR infringement cases in India — focusing on trademark and copyright infringement. The reason for focusing on trademark and copyright infringement is that there has historically "been very little patent litigation in India,"⁶⁰ and Indian patent legislation also

⁵⁷ See, e.g. Gerald Scully, *The Institutional Framework and Economic Development*, 96 JOURNAL OF POLITICAL ECONOMY 652, 661 (1988) (arguing that "societies, which bind themselves to the rule of law, to private property... grow at three times...the rate and are two and one-half times as efficient as societies in which these freedoms are circumscribed or proscribed.").

⁵⁸ See, generally Keith Maskus, *The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer*, 9 DUKE J. COMP. & INT'L L. 109 (1998).

⁵⁹ Roscoe Pound, *Mechanical Jurisprudence*, 8 COLUM. L. REV. 605, 618, 619 (1908) (discussing *Macmillan v. Dent* (1907) 1 Ch. 107).

⁶⁰ Elmer & Lewis, *supra* note 23, 38 (2006).

does not offer the same opportunities for forum shopping as Indian copyright and trademark legislation does.

II. FORUM SHOPPING: ITS CAUSES

A. *The “Horizontal” Choice Problem*

India is “a unitary state with subsidiary federal principles,”⁶¹ with an integrated judiciary and unified bar — qualities that do not inherently provoke forum shopping. However, as a result of a maze of various procedural laws, forum shopping in IPR infringement cases in India is common. This practice usually involves two choices. “Choice One” consists of a “horizontal” choice where a plaintiff elects which state or city to sue in, in a court of the same rank. For example, a plaintiff in the state of Rajasthan might find it more convenient to sue before a District Judge in the city of Jodhpur rather than a District Judge in the city of Jaipur. Or, a plaintiff might even find it more convenient to sue before a District Judge in a city outside Rajasthan — say, in the city of Panaji, in the state of Goa.

Indian civil procedure rules normally require a civil suit to be filed either in the place where the defendant is domiciled or where the cause of action takes place (wholly or partly).⁶² Thus, to exercise Choice One, a forum-shopping plaintiff needs to creatively argue that some part of the cause of action, or the defendant’s residence or place of business, falls within the jurisdiction of the plaintiff’s preferred forum. But the Indian

⁶¹ K.C. WHEARE, FEDERAL GOVERNMENT 28 (1951).

⁶² INDIA CODE OF CIV. PROC § 20 (1908).

legislature has enacted “long arm” jurisdiction⁶³ clauses in copyright and trademark legislation, which enable a plaintiff to sue for copyright or trademark infringement in the place where the plaintiff is domiciled, even if the cause of action does not occur there.⁶⁴ The impact of these clauses can be understood by studying two contrasting cases — a colonial-era case heard at a time when these provisions did not exist, and a more recent case where a plaintiff used these provisions to the hilt.

In the first case, a publisher in Allahabad dared to sell unlicensed copies of works authored by Rabindranath Tagore, the first non-European to win the Nobel Prize for literature and an Indian national hero. Tagore, a resident of Calcutta — whose distance from Allahabad is more than the distance between London and Frankfurt — filed a suit for copyright infringement against the defendant at a court in Allahabad. The court ruled in Tagore’s favor, concluding that the “very shifty” defendant had been fully aware of Tagore’s copyright, and had acted in bad faith.⁶⁵ The defendant, however, audaciously appealed against the decision. After four years, the Allahabad High Court eventually passed an order upholding the decision, lamenting that Tagore’s agent had to be summoned as a witness all the way from Calcutta and asked to produce evidence “owing to the unnecessary denial of various matters” by the defendant.⁶⁶ Tagore finally received a damages

⁶³ Long arm jurisdiction refers to “the personal jurisdiction that a court may exert over a nonresident defendant” (Comment, *Long-Arm and Quasi in Rem Jurisdiction and the Fundamental Test of Fairness*, 69 MICH. L. REV. 300 (1970)).

⁶⁴ Copyright Act of 1957, Act No. 14 § 62 (Jun. 4, 1957) (“Copyright Act”); Trade Marks Act 1999, Act No. 47 § 134 (Dec. 30, 1999) (“Trade Marks Act”). Such a provision does not exist in Indian patent legislation, and thus restricts forum-shopping options for plaintiffs in cases of localized infringement.

⁶⁵ *Educational Book Depot v. Tagore* (1933) A.I.R. (All. H.C.) 112, ¶¶ 1, 4.

⁶⁶ *Id.* ¶ 6.

award amount to half of the defendant's earnings from the sale, the court rejecting his contention that it was "inadequate."⁶⁷ The suit was only one of several filed by the hapless author against book pirates.⁶⁸

In the second case, Microsoft sued a defendant situated in Bangalore in faraway Delhi for copyright infringement, by arguing that it had a place of business in Delhi. This despite the fact that Microsoft had a large commercial presence in Bangalore. The court strongly criticized "wealthy plaintiffs" like Microsoft for forum shopping in this manner, but grudgingly acknowledged that Microsoft was entitled to do so under copyright legislation, and that "judicial discipline" required the court to hear the suit and grant Microsoft relief.⁶⁹

The two cases illustrate the pros and cons of a long-arm jurisdiction provision based solely on the plaintiff's domicile. The dilemma of whether such a provision should at all exist is exemplified by the Delhi High Court's contradictory opinions on the subject. The Delhi High Court had, in 2001, noted this provision to be "an obvious and significant departure" from civil procedure rules, but one that was enacted with "considerable wisdom," as it would spare plaintiffs the inconvenience of having "to chase after" pirates across the length and breadth of India.⁷⁰ However, almost a decade later, in *Microsoft*, the court changed its mind and urged the legislature to repeal the "anomalous" provisions in the Copyright Act and Trade Marks Act, stating

⁶⁷ *Id.* ¶ 5.

⁶⁸ *Id.* ¶ 3 (noting this fact).

⁶⁹ *Microsoft v. Gopal*, (2010) 42 P.T.C. 1 (Del. H.C.), ¶¶ 17-18 ("*Microsoft*").

⁷⁰ *See Smithkline Beecham v. Singhi* (2001) P.T.C. 321 (Del. HC.) ¶ 6.

that it mainly benefited those with “money power.”⁷¹

The court’s observation in *Microsoft* echoed those expressed by a communist legislator, Rupchand Pal, who had opposed such a provision in parliament when it was introduced in the Trade Marks Act. Pal, in a fiery speech, had this to say:⁷²

[T]he defendant will have to come from distant places to attend the cases. [T]he poor...will be at a disadvantage and will not be able to contest the cases...These measures are being brought forward because of the pressures of the multinational companies...[T]hese days, the multinational companies do have their influence in very many quarters. ... [W]hat are the stipulations of WTO that compel us to bring such a legislation? To my mind, there is no such compulsion...When we are asked to bend, we crawl.

A government minister had countered Pal’s aspersions by pointing out that 70 percent of registered trademarks in India were owned by domestic businesses, and suggested that Pal’s opposition actually stemmed from an ideological hatred of multinational corporations.⁷³ It is also worth noting that the corresponding provision in the Copyright Act had been introduced decades before the TRIPS era. In those days, India was closed to foreign traders, and the legislators had probably thought of ameliorating the woes of local copyright owners like Tagore, for whom hopscotching across India to sue infringers must have been a financial burden. But while it is true that most plaintiffs in copyright and trademark infringement cases in India have

⁷¹ *Microsoft*, (2010) 42 P.T.C. 1 (Del. H.C.) ¶¶ 20.

⁷² Discussion on the Trade Marks Bill 1999, 13th Lok Sabha, Dec. 22, 1999 (Statement of Rupchand Pal).

⁷³ *Id* (Statement of Murasoli Maran).

been domestic parties,⁷⁴ suits filed by multinational corporations, although in the minority, often tend to be high-value, high-stakes disputes, as India generates far fewer high-value intellectual property assets compared to developed economies.⁷⁵ A report on India's leading IP law firms illustrates this. In the report, nine major law firms disclosed the names of their "top clients." Of a total of 54 clients that the firms chose to name, as many as 45 (roughly 84 percent) were from developed nations (such as the US, Japan, and European countries) while the remaining 9 (roughly 16 percent) were Indian companies.⁷⁶ Such multinational corporations often file lawsuits against weaker defendants. Moreover, with the greater liberalization of the Indian economy and flow on foreign investment, the divisions between Indian and foreign businesses have become increasingly blurred. Therefore, the better way to express Pal's concern would be that most large businesses, whether domestic or international, have gamed the system through forum shopping.

B. *The "Vertical" Choice Problem*

"Choice Two" consists of a "vertical" choice where a plaintiff elects to bypass a court of first instance in the preferred forum state (i.e. a Court of District Judge or a City Civil Court) and sue directly in the High Courts of

⁷⁴ See Pratibha Singh, *Breaking the Anti-IP Myth*, MANAGING INTELL. PROP., Sep. 1, 2014, <http://www.managingip.com/Article/3382455/Breaking-the-anti-IP-myth.html> (calculating that nearly 80 percent of plaintiffs in trademark and copyright infringement cases are domestic businesses).

⁷⁵ For example, India presently ranks a lowly 76 in the WIPO Global Innovation Index (WIPO, GLOBAL INNOVATION INDEX 197 (2014)). While India has a large number of domestic trademarks in force, only six Indian brands find a place in the list of the world's 500 most valued brands (WIPO, WORLD INTELLECTUAL PROPERTY REPORT 43 (2013)).

⁷⁶ Sunny Sen et al., *The Charge of the IPR Brigade*, BUSINESSWORLD 34, 35-42, Aug. 2, 2010, www.singhandsingh.com/pdf/Businessworld.pdf.

Delhi, Bombay (Mumbai), Madras (Chennai) and Calcutta (Kolkata), India's four largest cities. Such a choice exists because these four High Courts are empowered to exercise first-instance jurisdiction — or, to use the proper term, “ordinary original civil jurisdiction” — in civil suits of a certain high value, which is effectively determined by the plaintiff.⁷⁷ Apart from these four High Courts, there are 20 other High Courts in India. These High Courts exercise jurisdiction over 26 states and union territories. Put together, these 26 states and territories are home to the majority of India's population. Yet, barring two of these High Courts (Jammu & Kashmir and Himachal Pradesh) these High Courts can only exercise appellate jurisdiction in civil suits. Thus, a plaintiff suing in Delhi, Bombay, Madras, or Calcutta is placed at an advantage, as bypassing district-level courts can hasten the eventual outcome of a case, and can also result in more experienced judges hearing a case. Thus, for example, in *Microsoft*, the suit was filed directly before the Delhi High Court, whereas filing the suit in Bangalore would have required Microsoft to file the suit before the Bangalore City Civil Court, which is a rung below the relevant High Court (the Karnataka High Court).

Judges and lawyers estimate that the Delhi High Court hears roughly 70 percent of all IPR infringement cases in India.⁷⁸ To gain a better idea, I searched the online database of the Patents & Trade Marks Cases (P.T.C.),

⁷⁷ See Law Commission of India, *Delays and Arrears in High Courts and Other Appellate Courts*, 1979, ¶¶ 2.1 to 2.5, 15.1, 15.2, <http://lawcommissionofindia.nic.in/51-100/Report79.pdf> (partly explaining the concept of ordinary original civil jurisdiction).

⁷⁸ See *CJI Seeks Media Help to Project Image of Judiciary*, INDLAW, Dec. 15, 2005, <http://www.indlaw.com/guest/DisplayNews.aspx?E478936B-BBCF-469D-98A3-3A3666DF7193> (quoting Justice Markandey Katju); Pravin Anand, *The Vicissitudes of Indian Patent Law*, PATENT LAWYER, 2013, <http://www.patentlawyermagazine.com/the-vicissitudes-of-indian-patent-law>.

India's foremost IP case law reporter, for the period between the years 2000 and 2013.⁷⁹ According to my search, the P.T.C. reported 1,053 decisions passed by the Delhi High Court, 180 by the Bombay High Court, 175 by the Madras High Court, and 47 by the Calcutta High Court during this period. 12 other High Courts found a total of 125 decisions being reported in the P.T.C. Thus, of a total of 1,580 High Court decisions that the P.T.C. has reported this century, the Delhi High Court alone has amounted for an astonishing 66.6 percent. The Bombay, Madras and Calcutta High Courts combined have amounted for only 25.4 percent.

To refine my search further, I filed freedom of information requests with the Delhi, Bombay, Madras and Calcutta High Courts.⁸⁰ I sought to know details of IPR infringement cases filed before these High Courts between 2000 and 2013. The office of the Delhi High Court informed me that, during this period, the court heard a total of 5,549 IPR infringement cases at first instance, with a low of 223 cases in 2000 and a high of 601 cases in 2012. In comparison, the court heard a total of only 280 IPR infringement cases on appeal from lower courts during the same period, with a high of 32 in 2000 and a low of 2 in 2004. Thus, around 95 percent of the IPR infringement cases heard by the Delhi High Court this century have been at first instance. The office of the Madras High Court informed me that, from 2000 to 2013, the court had heard a total of 626 trademark infringement cases, with a high of 120 in 2009 and a low of just 3 in 2000. Of these cases, only 31 were infringement cases on appeal from lower

⁷⁹ The search was conducted on Westlaw India, which hosts the database of the P.T.C. The parameters used were "Citation" (I entered "PTC"), "Date" (I selected "after 1/1/2000" and "before 1/1/2014") and "Court" (I entered each court name individually, e.g. "Delhi High Court").

⁸⁰ All documents on file with the author.

courts. Thus, around 95 percent of trademark infringement cases heard by the Madras High Court this century have been at first instance. The court heard only 6 patent infringement cases between 2000 and 2013, while the corresponding figure for copyright infringement cases was not provided. The offices of the Bombay and Calcutta High Courts could provide me with any information.

While the above data contains gaps, it does appear to confirm that most plaintiffs in IPR infringement cases are exercising Choice Two. Yet, even though Choice Two can be exercised equally in any one of four cities, the Delhi High Court has come to dominate the IP litigation scene in India. There is nothing to suggest that judges (or lawyers) in Delhi are more qualified and competent to handle IPR cases compared to their counterparts in Bombay (the commercial capital of India), Madras and Calcutta. Indeed, some Delhi High Court judges, who have heard important IPR cases, have confessed to having little or no experience in IPR litigation prior to their appointment.⁸¹ In any case, the argument for having specialist IPR judges in India (and in other countries) is usually made in the context of complex patent litigation involving advanced scientific concepts.⁸² The vast majority of IPR infringement cases in India are mundane trade mark and copyright infringement disputes, which can arguably be dealt with competently by any judge. Thus, the fact that plaintiffs disproportionately prefer the Delhi High

⁸¹ See, e.g., Peter Ollier, *India's Judicial Transformation*, 181 *MANAGING INTELL. PROP.* 86, 87 (2008) (interview with Justice Madan Lokur, now a judge of the Supreme Court of India).

⁸² See, e.g., Darren Smyth, *Patent Law Decisions from Supreme Courts: How Can Non-Specialist Judges Decide this Field Of Law?*, 9 *J. INTELL. PROP. L. & PRACTICE* 31 (2014); C.H. Unnikrishnan, *Special Courts Planned to Clear Backlog of IPR Cases*, *MINT*, Apr. 27, 2010, available at <http://www.livemint.com/Politics/3qG5SuMMoejCsxrGEj5HuK/Special-courts-planned-to-clear-backlog-of-IPR-cases.html>.

Court would appear to be curious. Incredibly, in at least two cases, plaintiffs attempted to sue defendants based in Bombay before the Delhi High Court, rather than the Bombay High Court.⁸³

It is widely believed that one of the reasons for this phenomenon is that the Delhi High Court has been liberal in granting *ex parte* ad interim injunctions.⁸⁴ IPR infringement cases in India rarely proceed beyond the interim stage. As the Supreme Court of India has observed, such cases drag on for “years and years,” and plaintiffs are thus mainly interested in securing a temporary injunction.⁸⁵ Although the Supreme Court has observed more than once that the final judgment in an IPR infringement case should normally be delivered within four months from the date of the filing the suit,⁸⁶ this has rarely been the case. Thus, what most plaintiffs in IPR infringement actions really look for is an ad interim injunction, and the Delhi High Court is perceived to be the best forum to execute this “first strike”⁸⁷ strategy. However, such perceptions are flawed for at least three reasons. First, India’s weak criminal IP enforcement regime,⁸⁸ coupled with

⁸³ Archie v. Purple Creations (2010) 172 D.L.T. 234 (Del. H.C.); WWE v. Reshma MANU/DE/3515/2013 (Del. H.C.).

⁸⁴ See generally T. Prashant Reddy, *A Critical Analysis of the Delhi High Court’s Approach to ex parte Orders in Copyright and Trade Mark Cases*, 3 MANUPATRA INTELL. PROP. REPORTS 171 (2011).

⁸⁵ Vardhman v. Chawalwala (2009) 41 P.T.C. 397, ¶ 3 (S.C.).

⁸⁶ *Id.* at ¶ 5; see also Bajaj v. TVS (2009) 41 P.T.C. 398, ¶ 5 (S.C.).

⁸⁷ In IP litigation, a “first-strike” strategy refers to the strategy of a plaintiff “to obtain a good first result” which, if required, can be leveraged to settle disputes See Elmer & Lewis, *supra* note 23, at 36, 42.

⁸⁸ See, e.g., COMMITTEE ON PIRACY, REPORT OF THE COMMITTEE ON PIRACY 14, 25 (2010) (observing that IPR enforcement is “very low in terms of priority in the radar of law enforcement agencies.”); Lawrence Liang & Ravi Sundaram, *India, in MEDIA PIRACY IN EMERGING ECONOMIES* 341, 347 (Joe Karganis ed., 2011) (describing the ineffectiveness of

relatively low litigation costs,⁸⁹ make civil remedies an attractive alternative to criminal remedies for IPR owners. Over the years, India has witnessed a trend where lawyers have effectively used civil IPR infringement proceedings and obtained search and seizure orders, much like in a criminal infringement case, and lawyers often advocate such a strategy.⁹⁰ Thus, the Delhi High Court has granted *ex parte* injunctions in many blatant cases of counterfeiting and piracy.⁹¹ In these cases, not only were such orders appropriate, but would arguably have been granted by any other court with jurisdiction to hear those cases. Second, the criticism of being “trigger happy” with such injunctions has also been levelled against other High Courts.⁹² Conversely, the International Intellectual Property Alliance (IIPA) — a mouthpiece for big IP owners — has stated that the Delhi, Bombay, Madras and Calcutta High Courts *all* have “credible IP judges”⁹³ and “do a creditable job in civil cases.”⁹⁴ Third, it can be equally

police raids against street vendors).

⁸⁹ See Elmer & Lewis, *supra* note 23, at 38 (noting that litigation costs in India are “relatively inexpensive” and cost about “about USD 50,000 for complicated cases over a period of two to three years.”).

⁹⁰ See, e.g. Darshan Ramamurthy and Ranjan Narula, *IP Environment in India*, THE IN-HOUSE LAWYER, Nov. 16, 2009, <http://www.inhouselawyer.co.uk/index.php/intellectual-property/7552-ip-environment-in-india>.

⁹¹ See, e.g., Jane Norman v. Jane Norman, MANU/DE/1384/2014 (Del. H.C. May 15, 2014).

⁹² See Shammad Basheer, *Ravi Kamal Bali v. Kala Tech: India’s First Doctrine of Equivalent Case?*, SPICY IP, Oct. 26, 2008, <http://spicyip.com/2008/10/ravi-kamal-bali-v-kala-tech-indias.html>.

⁹³ INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT 64 (2013), *available at* <http://www.iipa.com/rbc/2013/2013spec301india.pdf>

⁹⁴ INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT 42 (2014), *available at* <http://www.iipa.com/rbc/2014/2014spec301india.pdf>.

argued that some judges in the Delhi High Court are conservative while granting plaintiffs relief.⁹⁵

In my opinion — drawn from my experience as a practitioner — the flawed perception exists because of Delhi’s lawyers. IP litigation in India is mostly handled by small and mid-sized boutique law firms, who operate in a highly competitive environment. With scores of boutique IP firms in Delhi jostling for limited opportunities, they arguably become desperate for a chance to bring cases before the Delhi High Court. An economic approach to law assumes that “people involved with the legal system act as rational maximizers of their satisfactions.”⁹⁶ Thus, plaintiffs will prefer a forum that offers the most favorable outcome and greatest chance of maximizing the plaintiff’s economic position.⁹⁷ As litigation is a zero-sum game, plaintiffs are often averse to taking risks and prefer to eventually settle.⁹⁸ But while the plaintiff effectively makes the decision to settle a dispute, the plaintiff’s lawyer effectively makes the decision regarding the choice of forum, which can eventually determine the plaintiff’s bargaining power in settlement negotiations.⁹⁹ If a lawyer views the same favorable outcome in more than one forum, the lawyer’s choice will be motivated by factors such as the

⁹⁵ For example, in two blatant passing off cases, Justice Ravindra Bhat denied owners of well-known marks relief on the technicality that the evidence of goodwill submitted was inadequate. *See Roca v. Gupta* (2010) Indlaw DEL 898 (Del. H.C.); *Chorion v. Ishan* (2010) 43 PTC 616 (Del. H.C.).

⁹⁶ Richard Posner, *The Economic Approach to Law*, 53 TEX. L. REV. 757, 761 (1973).

⁹⁷ Debra Lynn Bassett, *The Forum Game*, 84 N.C.L. REV. 333, 375 (2006).

⁹⁸ *Id.* at 377-382.

⁹⁹ *Id.*

convenience to the plaintiff and the lawyer's own convenience in litigating in a certain place.¹⁰⁰ In India, a plaintiff in an IPR infringement action would normally fall into one of three categories: 1) an overseas entity with no presence in India, 2) an entity with offices across major Indian cities, and 3) an entity with a localized presence in one or two cities. For a plaintiff in the first category, the interest in filing a suit before the Delhi High Court is arguably of lesser importance, if other forums offer the same favorable outcome and opportunity for economic maximization (i.e. a speedy ad interim injunction which may influence the terms of a settlement). The same applies to plaintiffs in the second category, unless the plaintiff wishes to entrust the responsibility of coordinating matters to a specific employee in Delhi, such as a particular in-house lawyer. It is only a segment of plaintiffs in the third category — local entities based exclusively in Delhi — for whom choosing Delhi as a forum would be of critical importance, from the point of view of saving costs.

Yet, many plaintiffs in the first two categories have sued before the Delhi High Court, a decision no doubt effected by the plaintiffs' lawyers. Thus, in determining the first-strike strategy in an IPR infringement action, it would appear that boutique IP firms in Delhi would place a great deal of consideration on the firm's convenience in litigating in Delhi. Such a motive would not normally conflict with the client's interest in a favorable outcome and economic maximization. However, clients need to ponder over some hard questions. For instance, if they are being advised that the Delhi High Court is friendlier towards IP owners than courts in other cities, is this actually true? If they are being advised that judges in Delhi are more knowledgeable on matters concerning IP than their counterparts in other

¹⁰⁰ *Id* at 382-3.

cities, is this also true? In my opinion, the answer to these questions is no, and clients can obtain the same advantages by litigating before the Bombay, Madras and Calcutta High Courts, the last two also being cost-effective forums due to comparatively lower billing rates by lawyers. Hence, an argument for limiting forum shopping can be made not just from a policy perspective, but also from the perspective of IPR owners looking for an optimal first-strike strategy. This assumes significance because India has a poor reputation on IPR enforcement in the developed world,¹⁰¹ which could see a further battering if influential sections of opinion misleadingly claim that a reduced possibility of bringing infringement suits before the Delhi High Court will harm overseas IPR owners.

III. CONCLUSION

This paper has tried to argue why forum shopping in IPR infringement disputes in India should be prevented. The answer, to some extent, can be summed up by quoting from a novel by Tagore. The novel's protagonist, refusing to engage a lawyer to plead his case, remarks, "The poor man is ruined both ways, be it loss or win in the case."¹⁰² His friend resignedly says, "[T]he court of a civilized state is bound to become a market for sale and purchase — one who lacks money runs every possibility

¹⁰¹ See, US TRADE REPRESENTATIVE, SPECIAL 301 REPORT 37 (2014), <http://www.ustr.gov/sites/default/files/USTR%202014%20Special%20301%20Report%20to%20Congress%20FINAL.pdf>; TAYLORWESSING, GLOBAL INTELLECTUAL PROPERTY INDEX 7 (4th ed. 2014), <http://sites.taylor-wessing.vutovetx.com/12/590/landing-pages/gipi3-report-request-form.aspx>; GLOBAL INTELLECTUAL PROPERTY CENTRE, CHARTING THE COURSE: G.I.P.C. INTERNATIONAL IP INDEX 28 (2nd ed. 2014), http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/Index_Map_Index_2ndEdition.pdf.

¹⁰² MOHIT RAY & RAMA KUNDU (trs.), RABINDRANATH TAGORE'S GORA 185 (2008)

of being doomed.”¹⁰³ However, the difficult question would be *how* to prevent forum shopping. In terms of legislative intervention, both Choice One and Choice Two are unlikely to be taken away from plaintiffs through legal amendments. Moreover, even if the legislature were to defer to the Delhi High Court’s suggestions in *Microsoft* and repeal the provisions that allow suits for copyright and trademark infringement to be filed on the basis of the plaintiff’s domicile, that still allows plaintiffs to forum-shop on the basis of cause of action. One solution might be to amend the Copyright Act and Trade Marks Act to allow defendants and their lawyers to make representations via video conference and file online pleadings. Another, more predictable solution might be to institute specialized, fast-track IP courts at district level in major cities, so that plaintiffs do not robotically sue before a High Court with ordinary original civil jurisdiction. But to implement such measures is easier said than done, as setting up such courts will require significant public investment and trained staff. Furthermore, risk-averse plaintiffs could still defer to the views of lawyers who advise them to litigate before the Delhi High Court at first instance. What could perhaps make a slightly greater impact is more awareness amongst plaintiffs — especially in-house lawyers of corporations that initiate high-value litigation — that would enable them to make a more informed choice. This could happen through platforms ranging from conferences to media reports. Alternatively, a moral sanction from the Delhi High Court, as had happened in *Microsoft*, might discourage forum shopping to some extent. In the end, however, forum shopping can ultimately be curbed only by forum shoppers themselves.

¹⁰³ *Id.* at 185-6.