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CRITICAL REVISIONS EFFECTUATED BY THE JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023 IN INTELLECTUAL PROPERTY LAWS

The Notifications dated July 26, 2024, and July 30, 2024 issued by the Ministry of Commerce and Industry brought the Jan Vishwas (Amendment of Provisions) Act, 2023 (“**the Act**”) into effect on August 1, 2024. The Act effectively amended and decriminalized various penal provisions of the intellectual property laws governing the Indian legal system, except the Designs Act, 2002 which remains unaffected by the Act. The key changes brought forth by the Act have been elaborated below.

A. The Patents Act, 1970

1. Section 120 of the Patents Act which spoke of false claims of holding patent in India is now punishable with a penalty extendible to ten lakh rupees if such a false claim is made for the first time. Where it is a continuing false claim, a penalty of one thousand rupees will be levied for each day of such continuous claim. Earlier, the penalty was a fine up to one lakh rupees with no fine for continuous or subsequent false claims.
2. Section 121 that laid down the punishment for misleading the belief that one’s place of business is officially connected with the Patent Office has been removed.
3. Section 122(1) now punishes one for refusing or failing to supply information mandated by the Section 100 (5) and Section 146 of the Patents Act, with a fine of one lakh rupees for the first instance. In case of continuous refusal or failure, a penalty of one thousand rupees will be levied for each day of such continuous refusal or failure.
4. The punishment for either furnishing false information or having reason to believe that the information he is furnishing as asked under Section 122(1) is false, has been modified under Section 122(2). Now, the penalty for the same has been amended to be a sum equal to one half



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percent of the total sales or turnover in business or of the gross receipts in profession, as computed upon audit of such person, or a sum equal to five crore rupees, whichever is less. Earlier, the punishment was imprisonment for up to six months and/or a fine.

5. Section 123, which penalizes practice by unregistered patent agents, punishes the first-time offence with a fine up to five lakh rupees. However, in case the default continues, a penalty of one thousand rupees will be levied for each day of such continuous default.
6. On March 15, 2024, the Ministry of Commerce and Industry introduced the Patent (Amendment) Rules, 2024 which incorporate two new provisions in the Patents Act, namely, Sections 124A and 124B, both of which adjudicate upon imposition of penalty under the Patents Act. Section 159 has accordingly made room for the two new additions as well.

B. The Trade Marks Act, 1999

1. The Act has removed Section 106 which contained the penalty for contravening Section 81 of the Trade Marks Act. This modification has no effect on the usual trademarks law practice since Section 81 had already been omitted by the Trade Marks (Amendment) Act, 2010.
2. Section 107(2) which previously penalized a person for falsely representing a trade mark as registered, with imprisonment up to three years and/or fine, will now be read as to penalize a person for the offence with a penalty of a sum equal to one half percent of the total sales or turnover in business or of the gross receipts in profession, as computed upon audit of such person, or a sum equal to five lakh rupees, whichever is less.
3. Section 108 that laid down the punishment for misleading the belief that one's place of business is officially connected with the Trade Marks Office has been removed.
4. Section 109 that spoke of penalizing willful and intentional falsification of entries in the Trade Marks Register has also been omitted.



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5. Sections 112A and 112B that were proposed in the Draft Trade Marks (Holding Inquiry and Appeal) Rules, 2024 have finally been included in the Trade Marks Act. Both the provisions aim to adjudicate upon the punishment for offence under Section 107.
6. Section 140(3) which previously limited the scope of fine to a maximum of rupees five thousand has now been amended to be a fixed fine of rupees ten thousand.
7. In accordance with the finalization of the proposed introductions by the Draft Trade Marks (Holding Inquiry and Appeal) Rules, 2024, Section 157 has accordingly made room for Sections 112A and 112B.

C. The Geographical Indications of Goods (Registration and Protection) Act, 1999

The changes in the Geographical Indications Act are parallel to the changes proposed in the Trade Marks Act, as enumerated hereunder:

1. Similar to the incorporation of the Draft Trade Marks Rules, 2024 in the Trade Marks Act, even the Geographical Indications Act now features Sections 37A and 37B which were previously proposed by the Draft Geographical Indications of Goods (Holding Inquiry and Appeal) Rules, 2024. Both the provisions adjudicate upon the offences under specific provisions of the Geographical Indications Act relating to falsification or false application of Geographical Indications.
2. Section 42(2) which previously penalized a person for falsely representing a geographical indication as registered, with imprisonment up to three years and/or fine, will now be read as to penalize a person for the offence with a penalty of a sum equal to one-half percent of the total sales or turnover in business or of the gross receipts in profession, as computed upon audit of such person, or a sum equal to five lakh rupees, whichever is less.



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3. Section 43 that laid down the punishment for misleading the belief that one's place of business is officially connected with the Geographical Indications Registry has been removed.
4. Section 44 that spoke of penalizing willful and intentional falsification of entries in the Register of Geographical Indications has also been omitted.
5. In accordance with the finalization of the proposed introductions by the Draft Geographical Indications of Goods (Holding Inquiry and Appeal) Rules, 2024, Section 87 has accordingly made room for Sections 37A and 37B.

D. The Copyright Act, 1957

The Act has removed Section 68 of the Copyright Act which otherwise penalized a person for willfully and intentionally making false statements to -

- a. deceive or influence any authority who is exercising his duty under the Copyright Act, or
- b. influence the commission or omission of any act, right, mandate, etc. under the Copyright Act, with imprisonment of a term extendible to one year or with fine or with both.