

**DIRECTOR'S MESSAGE**

There is a very close nexus between Intellectual Property Rights and International Trade and that is one of the reasons that WTO has incorporated Trade Related Aspects of Intellectual Property Rights (TRIPS) as one of the WTO agreement dealing with International Trade Laws. International Trade Center, a catalyst of UNCTAD and WIPO, has jointly published a paper titled "Secrets of Intellectual Property-A Guide for Small and Medium Size Exporters". The said guideline deals with Intellectual Property mistakes commonly made by exporters which sometimes result into tremendous harm to their export market and collapse of their business. Some of such common mistakes are: i) Believing that IP protection is universal and worldwide although these are territorial rights, ii) Not checking whether a Trademark is already registered or is being used by competitors in the export market, iii) Disclosing information too early or without a Confidentiality or Non Discloser Agreement, iv) Infringing the IP rights of others, v) Seeking to license a product in a market where the patent or design is not protected or the IP laws are not strictly enforceable. It is therefore advisable for an exporter to consult an IP consultant before entering into export business.



The words of caution for Technology based companies are, "Patent Sharks". Patent sharks are entities which intentionally attack the companies who inadvertently infringe on the sharks' IP rights and derive undue profit from them. These sharks have hidden intellectual property rights which is divulged only when a company unknowingly infringes on the sharks' right. Just like parasites these sharks suck money out of the company by suing them for infringement of their hidden intellectual property rights. Notwithstanding these morally unfair practices, the activities of patent sharks' are perfectly legal. Manufacturers must understand that these patent sharks are extremely dangerous which can do major harm to a company. Some of the safeguards for such Technology Companies are prior art search, flexibility in technology, IP- mapping and IP-land scapping.

ITAG undertakes several awareness programmes and provide consultancy to prevent such mishaps in the business by way of protection of IP rights. Industry should take full advantage of their ideas, creativities, and innovations by registering their IP rights in order to withstand the global competition and avoid the risk of violating other's IP rights.

**Dr. D R Agarwal**

**IPR NEWS - INDIA**

**PATENT**

**RANBAXY OVER CHOLESTEROL LOWERING DRUG**

An Australian court passed a favourable order for Ranbaxy Laboratories in its patent proceedings against Pfizer with regard to 'Atorvastatin', a cholesterol-lowering drug. The Federal court had ruled that one of Pfizer's patents was invalid for inutility, false suggestion and misrepresentation in obtaining the grant of Australian patent. However, the court at the same instant delivered the verdict that a proposed Ranbaxy generic product under a different patent infringed Pfizer's basic 'Lipitor' patent. Mr. Jay Deshmukh, Ranbaxy's Senior Vice President - Global Intellectual Property, stated "We are pleased with this decision as it stands, as it advances the entry of Ranbaxy's generic drug 'Atorvastatin' in Australia to May 18, 2012."

**GENERIC DRUG COMPANIES MOVE FOR PATENT FILING IN INDIA**

Global and Indian generic companies are in a hurry to seek patents for drug in India. Majority of these applications are for process and composition patents. Teva, an Israel based company, Ranbaxy, India's largest drug maker and Eli-Lily, a US based research company are in the top list, filing 380, 225 and 86 drugs respectively. A total of 10,000 applications are received by the Indian patent office recently in this regard.

**TRADEMARK**

**INDIAN PREMIER LEAGUE V INDIAN FANTASY LEAGUE-NOTICE TO THE DEFENDANT**

BCCI filed a petition against Rediff.com to restrain it from hosting an online cricket game "Indian Fantasy League" due to the similarity in the name and style with "Indian Premier League" and also for using a logo similar to that of IPL. Damages amounting to Rs 10 Lakhs and seizure of all articles, labels, literature and advertising materials bearing the mark "Indian Fantasy League" and its

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## IPR NEWS - INDIA Contd...

logo have been sought for. BCCI stated that the continued access to the website would lead to confusion in the mind of the people that the said web site is owned by or in some way connected to BCCI. Court admitted the petition and issued notice to the defendants and the matter will be heard shortly.

### **TRIUMPH OF WIPRO OVER TRADEMARK INFRINGEMENT CASE**

The Delhi High Court has passed an interim order restraining K.K. Lamps, a Delhi based company from manufacturing GLS lamps under the brand name 'Safelite' or any similar brand name. Wipro Consumer Care & Lighting filed an infringement case against K.K. Lamps for selling its product under the brand name 'Safelite' which is similar to Plaintiff's 'Safelite' brand. Mr. Anil Chugh, Senior Vice-President, Wipro Consumer Care & Lighting contended that the defendant's action caused considerable damage to the company's brand image, especially in Andhra Pradesh where the product has a bigger market.

### **COPYRIGHT**

**IPRS VS. KOLKATA KNIGHT RIDERS** A suit on copyright violation against Kolkata Knight Riders (KKR) was filed on May 14th, 2008 by The Indian Performing Rights Society (IPRS). The allegation was about playing 14 popular Hindi film songs like "Om Shanti Om" during IPL matches at Eden Gardens without permission. The Kolkata High Court refused the application for injunction on the use of the songs and directed the parties to file affidavits. This matter will be heard in the month of June.

### **INTELLECTUAL PROPERTY**

**AGREEMENT ON DRUG DISCOVERY** An agreement for undertaking drug discovery research and generating Intellectual Property (IP) came into force in the last week of May between GVK Bio, a Hyderabad-based company and Wyeth Pharmaceuticals. Under the pact, applications for INDs (Investigative New Drug) would be filed with

the US Food & Drug Administration by GVK Bio which will be responsible for identifying drug candidates and the clinical studies would be performed by Wyeth. The agreement stipulates on payment to GVK Bio at the initial stage as well as success-based milestone payments (based on the progress of research)

### **eBAY CONVICTED FOR TRADING ON COUNTERFEIT GOODS**

A French court convicted eBay, an online auction and shopping website for selling on its website three Hermes bags that includes two fakes, for a total of 3,000 euros. The court held that the user and eBay "committed acts of counterfeiting and imitation of French brand names ... to the detriment of Hermes international and awarded damages amounting to 20,000 euros to the French luxury group Hermes. The court also demanded eBay to publish the ruling on its French homepage for a continuous period of three months. The ruling was welcomed by UNIFAB, the French union of manufacturers, stating that this is an important step in the fight against piracy and counterfeiting.

### **GEOGRAPHICAL INDICATIONS (GI)**

**TIRUPATI LADDU TO GET GI STATUS** The Tirumala Tirupati Devasthanam (TTD), that manages the very old hill temple, has made application to the Registry of Geographical Indications (GI), Chennai for its famous and tasty laddu and is now waiting for patent rights. Laddus were introduced by the temple eight decades ago and some 1.5 lakh laddus are made every day at the temple. The Laddus weigh 100 gms. and are prepared by the archakas (hereditary temple priests) in the potu (kitchen) of the temple in keeping with a tradition which is supposed to be 200 to 300 years old. A super-sized variety called Kalyana laddu weighs 500 gms. A national-level experts committee cleared the application for geographical indication. V. Natarajan, assistant registrar at the GI Registry, said 'the Devasthanam application would be taken up soon and the process would be completed by August'.

## IPR NEWS - AROUND THE WORLD

### **PATENT**

#### **DEMAND FOR COMPULSORY LICENSING IN CHINA**

According to China Intellectual Property Office's website, the patients in the country are demanding for compulsory licensing for allowing the domestic companies to manufacture the medicine "Lamivudine" and market it at a lower price. The drug is used to treat Hepatitis B and HIV. The reason behind such demand is due to

less supply of Lamivudine during the second half of 2007. At present Pharma major GlaxoSmithKline (GSK) owns the Patent and marketing rights for Lamivudine in China.

### **TRADEMARK**

**USPTO UPDATES TRADEMARK ELECTRONIC SEARCH SYSTEM BY INTRODUCING "IMAGE LIST" AND "MULTIPLE SEARCHING ABILITY"**

## IPR NEWS - AROUND THE WORLD Contd...

The Trademark Electronic Search System (TESS) of USPTO has been updated by addition of two new features, the "Image List" and the "Multiple Searching Ability". The former new feature will allow a user to view the images of Trademarks, appearing in three columns in the search results, while the latter would help in multiple searches at once.

### INTELLECTUAL PROPERTY

**WIPO NOMINATES NEW DIRECTOR GENERAL** The Coordination Committee of the World Intellectual Property Organization (WIPO) nominated Mr. Francis Gurry as a candidate for the fourth Director General of WIPO. The tentative schedule for the appointment of the next Director General by the WIPO General Assembly will be held from 22nd to 30th September, 2008.

## GLIMPSES OF JUDGMENTS ON IPRS

### **QUANTA COMPUTER, INC. V. LG ELECTRONICS, INC. (LG)**

*Doctrine of patent exhaustion and rights and obligations of patentees as against contributory infringers (35 U.S.C. § 271(c)).*

**Facts of the Case** LG Electronics, a South Korean company, filed a suit in 2000 and 2001 against Intel customers which includes Quanta (Taiwanese computer manufacturer) and other computer makers, alleging that they have infringed several of its patents for microprocessor chips in personal computers. LG had licensed the patents to Intel, which then sold the chips to the computer companies who had combined Intel's microprocessors and chipsets with non-Intel products. Since, the license agreement did not expressly authorize Intel's customers to combine the chips with non-Intel products, LG Electronics sued Quanta and other Intel post-license customers on the basis that they violated the 'condition' of Intel's license and sale by not paying patent royalties to LG Electronics. In December 2004, a trial court ruled in favour of Quanta and other manufacturers, citing the doctrine of patent exhaustion.

However, in July 2006, the US Court of Appeals for the Federal Circuit reversed the order by holding that respondent's patent rights were not exhausted by its license agreement with Intel Corporation.

**Arguments of the Parties** Quanta and others demurred that the doctrine of patent exhaustion protects their secondary purchases whereby royalties cannot be perpetually collected for each buyer in the supply chain. Nonetheless, LG in order to distinguish this case argued that they just created a "manufacturers' license", instead of spot "selling" their patent, and can still control their product as it travelled through the downstream supply chain.

**Decision of the Supreme Court** The Supreme Court decided that the doctrine of exhaustion applies in the instant case and restrained the patent holders from collecting multiple royalties on their patents.

## EVENTS AT ITAG

ITAG in collaboration with its knowledge partner, Institute of International Trade, organised a Two day Workshop on Intellectual Property Rights and Management for its all India team, on 30th and 31st May, 2008. Delegates from the Indian Patent Office, Kolkata also participated in the workshop.



ITAG Team in an IPR workshop held on 30th and 31st May, 2008, in Kolkata.

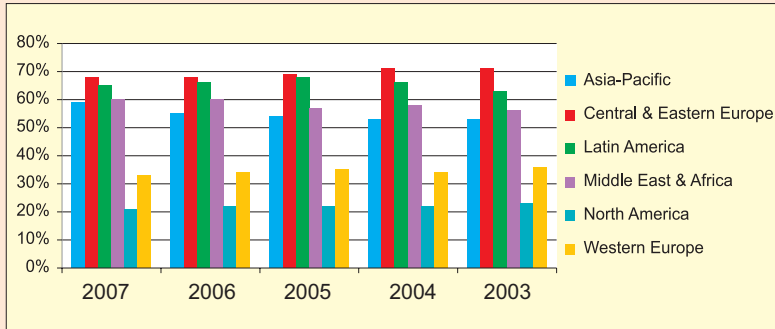


ITAG Team in an IPR workshop held on 8th and 9th May, 2008, Bangalore, along with Dr.N.L.Mitra, former Vice Chancellor of National Law University, Jodhpur.

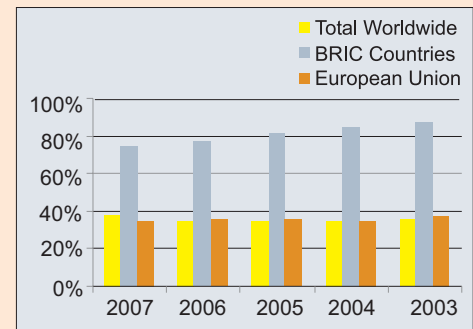
## SNAPSHOT

The Fifth Annual BSA and IDC Global Software Piracy Study shows a remarkable progression in the battle against PC software piracy in 2007. Out of 108 countries studied, in 67 countries the piracy rate dropped from 2006 to 2007 while increased in only eight countries.

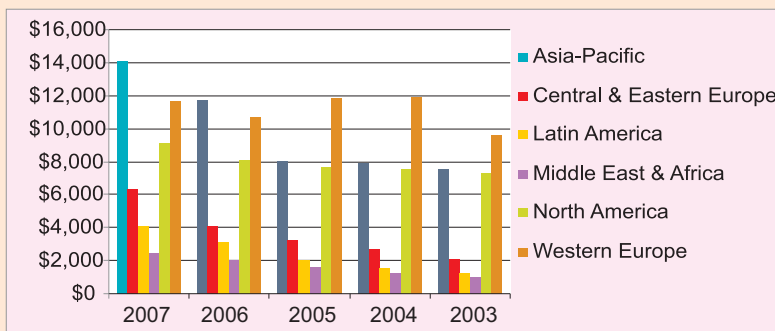
However, the burdened impact of high market growth in emerging markets was again felt worldwide. Because the global PC market grew much faster in higher-piracy countries and regions, the global PC software piracy rate increased by 3% to 38% from 2006 to 2007.



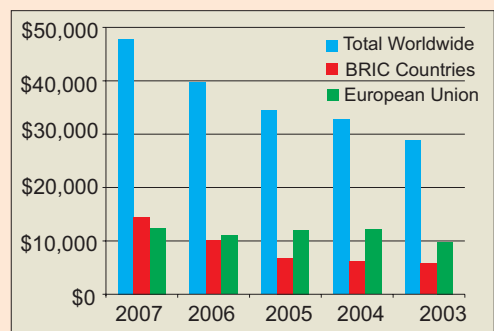
**Fig:1** Region Wise PC Software Piracy Rate



**Fig:3** Global PC Software Piracy Rate, including BRIC and EU



**Fig: 2** Region Wise PC Software Piracy Loss (in \$M)



**Fig:4** Global PC Software Piracy Loss (\$M), including BRIC and EU

**Source:** The BSA and IDC Global Software Piracy Study, 2007

**Note:** BRIC Countries include: Brazil, Russia, India, China

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