

DIRECTOR'S MESSAGE

The globalised system of international trade, investment, technology transfer and cross border supply of capital is embedded under a legal framework which is under the process of harmonisation through several international agencies like WTO, WIPO and WCO (World Customs Organisation). Intellectual property rights are broadly guided by the principles and regulations contained in Trade Related aspects of Intellectual Property Rights (TRIPs) under WTO legal framework. However, there are several other conventions and treaties under WIPO in the form of Patent Cooperation Treaty (PCT), Madrid System for the International Registration of Marks and Hague convention for industrial designs.



International filing of patent and trademark, design and copyrights are becoming easier through various conventions enumerated above. India is a member of most of these conventions under WTO and WIPO with respect to different kinds of IPRs. The PCT route helps an inventor to claim priority of his invention in almost 138 countries, with an option to register patent in select countries under national phase. One can opt for PCT application after filing a patent application with Indian Patent Office or the respective country of origin if the inventor happens to be resident outside India. Similarly one can file patent application with European Patent Office (EPO) and then choose for any select countries within the European Union (EU) simply by paying Annual Maintenance Charges without undergoing the rigours of registration procedure in individual member countries of the EU. ITAG has a specialized team with expert knowledge and a network of foreign associates for filing PCT application for international patent registrations as also for international trademark registration.

ITAG believes that Intellectual Property needs to be managed as we need to manage our physical assets and financial assets. There are several myths about Intellectual Property such as: (i) I hold patent for my invention and my patent is valid throughout the world as I have duly registered it with Indian Patent Office. (ii) My patent is valid for 20 years and I don't require any annual maintenance for the full 20 years life of that patent. (iii) I have registered my trade name and logo with Indian Trademark Office and I hold it for life. None of these self assumed claims are right. There is nothing called global patent and one needs to register patent in each individual country and needs to pay annual renewal fees for 20 years life of the patent. Similarly one has to renew trademark every 10 years and has to register it in each individual country for its protection. ITAG team manages your Intellectual Property just like mutual fund manages your financial wealth and helps in getting proper return from technology and brand by Intellectual Property Commercialisation and several other tools of Intellectual Property Management.

Dr. D R Agarwal

IPR NEWS - INDIA

Patent battle between Bajaj and Enfield Bajaj and Enfield are embroiled in a controversy surrounding twin-spark technology, with the former saying that they intend to investigate whether the Thunderbird Twinspark 350 cc bike of the Enfield has violated its Patent and would take appropriate legal action on infringement.

spark ignition being used in its new Thunderbird's unit construction engine (UCE) was its innovation, and it did not infringe Bajaj's patent for twin spark technology.

It claimed that Bajaj's Technology is for an engine displacement between 75 cc to 250 cc whereas Enfield technology is for 350 cc and above.

MyScreen files patents in India Recently MyScreen Mobile, Inc. ("Myscreen") disclosed that a patent application for its technology has been filed with the Patent Office in India. The company is seeking to maintain its position as global market innovator and leader in the mobile advertising

On its part Royal Enfield asseverated that the twin-

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IPR NEWS - INDIA Contd...

space. In India, their subscriber base is supports to touch approximately 500 million in 2010.

The filing of patents in specific countries, such as India, is part of MyScreen's strategy to protect its technology globally.

India, Singapore soon to be partners in IPR cooperation Union Minister of Commerce and Industry Shri Kamal Nath recently stated that a bilateral agreement on cooperation between the Intellectual Property Offices of India and Singapore will be signed shortly.

During his bilateral meeting with Lim Hng Kiang, Minister for Trade and Industry of Singapore, Shri Kamal Nath asserted that the agreement will help in protecting the traditional knowledge of both the countries.

Trademark for Mallika Sherawat Until now people have heard of Hollywood stars trade marking their names in order to avoid misuse of the same. Now Mallika Sherawat has joined their ranks too. She is now the first Bollywood actress to get a trademark for her name.

Any Producer, Director, Advertising Agency using her name needs to take her permission first.

It is a smart move on her part as even posting her wallpaper on the internet would now need Mallika's permission.

Patent E-filing in India hits 1000 mark The Indian Patent Office has received its 1000th patent application electronically in less than one year of receipt of the first application filed electronically. Online filing of Patents and Trademarks application facility was inaugurated by Hon'ble Minister of Commerce and Industry, Shri Kamal Nath on 20th July, 2007. The e-filing of patent applications in India had commenced since then.

The 1st Patent application was electronically filed in India on 13th August, 2007 and the 1000th application was filed on 24th June, 2008 which equals to about 3% of the total filing of the applications. Within the next few years, the Patent Office expects 97% e-filing of Patent applications. The revenue received through online payment gateway for applications filed online is approximately Rs.2.54 crore. E-filing provision is also available for filing new TMR applications and TMR search.

IPR NEWS - AROUND THE WORLD

Launching of public consultation on the Patent Research Exception by UKIPO The United Kingdom Intellectual Property Office (UK-IPO) introduced a consultation on the "patent research exception" that authorizes use of a patented invention for experimental purposes without infringing the rights of the holder. After receiving the opinions from the public, a report will be made on the findings and proposed next steps will be published in early 2009. The deadline for receiving the opinions by UKIPO is 7th November, 2008.

New industrial property rights strategy for Europe The European Commission embraced a communication that outlines the main points of a new industrial property rights strategy for Europe. It is hoped that the new strategy would fortify the quality and efficiency of the industrial property rights system in Europe. It would also raise inventors' and businesses' awareness and use of the system. Strategy includes the enforcement of industrial property rights and the fight against counterfeiting and piracy. Commission considers the creation of a Community patent and an EU-wide jurisdiction for patents as its main priority.

First feedback on applicants' behaviour under the EPC2000 European Patent Office recently published information about the use that the applicants have made of the European Patent Convention's (EPC2000) new features. The information brought out by the Commission deals with late filing of claims, reference filing, priority claims made after the date of filing, limitation or revocation procedure and petition for review.

The number of European Patent applications filed since the convention's entry is 27,923

New Acceptance Process for Patent Applications Patent applications accepted by the Intellectual Property Office of New Zealand (IPONZ) on or after 1 June 2008 will undergo a new process in which IPONZ will directly issue an official Notice of Acceptance once the Examiner concludes that an application is in order for acceptance. Earlier, an Examiner's report indicating the acceptance is required before issue of official Notice of Acceptance. The new process is in line with the practice that followed in patent offices of other jurisdictions such as Australia

IPR NEWS - AROUND THE WORLD Contd...

House of Lords Clarifies the 'Inventive Step' Of a Patent House of Lords in *Conor v Angiotech* clarified the concept of 'inventive step'. In this case the High Court and Court of Appeal had held Angiotech's patented invention was obvious and, therefore, the UK patent was invalid, whereas the Dutch court had held that it did involve an inventive step. Lord Hoffmann said that national courts across Europe and the European Patent Office (EPO) should interpret the EPC in a uniform way as far as possible. While dealing the question of whether the specification disclosed sufficient information to determine whether the invention was "obvious to try without an expectation of success" the Court of Appeal had made "an illegitimate amalgam of the requirements of inventiveness and either sufficiency or support or both". Their Lordships also indicated that the

'obvious to try' test is not always appropriate to high value technological developments. The validity of the patent was therefore restored.

Youngest Patent holder in UK Five year old Sam Houghton is now the UK's youngest patent holder. He conceived an idea of an "Improved Broom", to help his dad with work in the garden. The young inventor was only three years old at the time when he had the idea of tying two brooms together with a large rubber band while watching his father raking up leaves with one broom then switching to another for smaller debris. Sam's father, a patent attorney in the UK, figured that Sam's double-broom idea was sufficiently new, useful and inventive to be patentable. He filed a patent application with the UK Intellectual Property Office (IPO) which is now granted.

GLIMPSES OF JUDGMENTS ON IPRS

UK ILLEGAL FILE SHARERS SLAPPED WITH LANDMARK DAMAGES AWARD

Facts of the case: Video games producer Company Topware Interactive brought a Copyright infringement Suit against four BitTorrent users accusing them of Peer to Peer File sharing of their Video Game "Dream Pinball 3D" through London Law firm Davenport Lyons.

Decision of the Court: None of the four file sharers were represented in court last week to contest the accusation that they had illegally shared the game Dream Pinball 3D. The Central London County Court ordered four BitTorrent users to pay £750 as interim damages. The final damages could amount to £2,000, plus costs of up to £1,500.

Analysis of the Decision: This landmark judgment which will herald a new era for the entertainment industry which is suffering from the menace of Illegal file sharing. The level of damages indicate that court is sympathetic to the view that copyright infringement via peer to peer networks can cause greater damage to rights holders than the retail cost of their product.

GOOGLE CHALLENGES RULING ON "ADWORDS"

Facts of the case: Google has gone in appeal before Europe's highest court ECJ[European Court of Justice] against a ruling which has gone in favour of famous luxury retailer Louis Vuitton over Google's AdWords after the search giant allowed retailers selling fake LB items to buy keywords like "Louis Vuitton replicas" and "Louis Vuitton fakes." It was alleged by the design house that Google didn't have the right to sell the keywords using their brand name as it impinges upon their trademark rights.

Analysis of the case: Google is again at the centre of controversy for the actions of third parties because it makes money from their use of AdWords. It is difficult to say which way the European Court of Justice will lean, but its ruling will have far-reaching ramifications across Europe for Google's AdWords

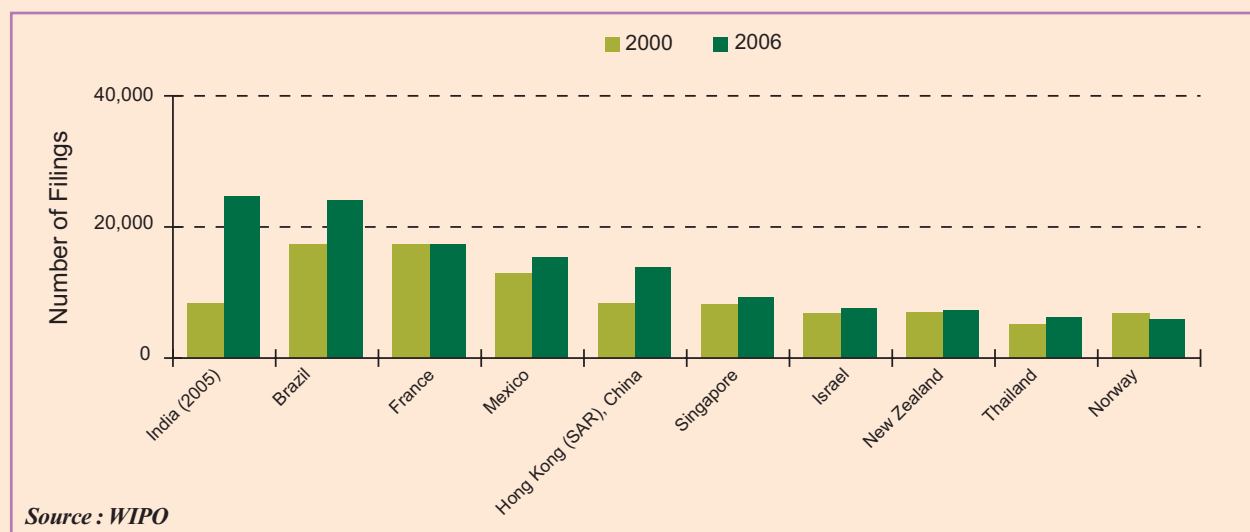
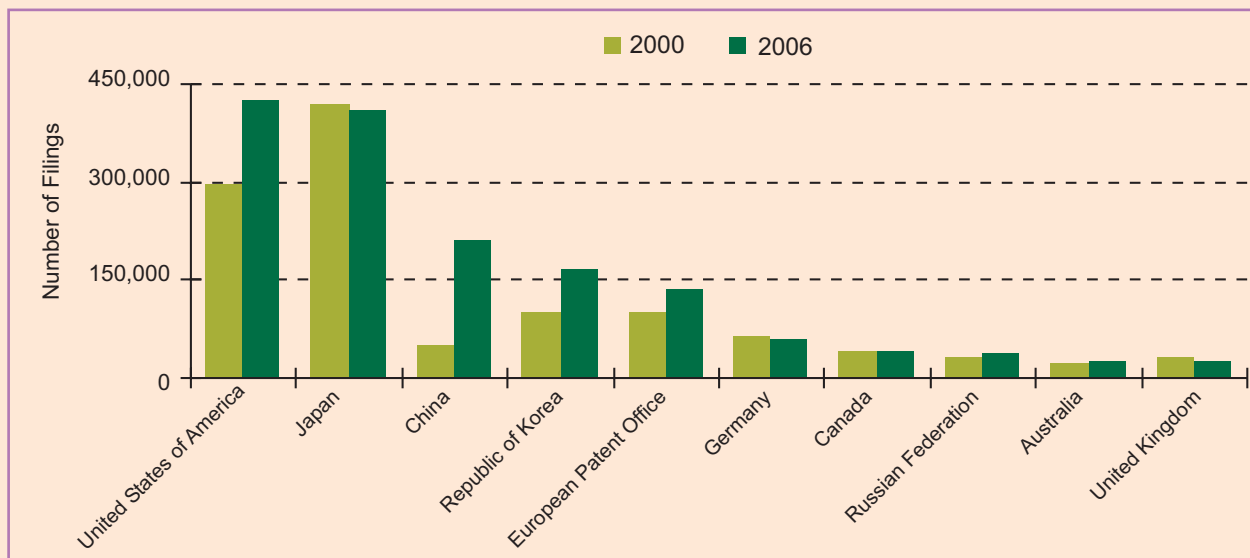
EVENTS AT ITAG

Dr. Partha Sarathi Pal, Head, Technical Department, gave a presentation on "Competitive IP Intelligence and Technology Landscaping" on 5th August, 2008.

Mr. K. K. Modak, Formal Deputy Registrar, Indian Trademark Office delivered a talk on various important aspects of Trademark registration.

SNAPSHOT

Chart showing Patent Filings by Top Twenty Patent Offices



Source : WIPO

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“Every piece of software written today is likely going to infringe on someone else's patent.” – **Miguel de Icaza**