



NEWSLETTER

Director's Message



IPR policy and IPR strategy are very important aspects of IP asset management. A business entity must decide its IPR policy about proper training, protection, infringement, confidentiality of trade secrets and should follow proper accounting standards for accounting and valuation of its IP's with periodic review of its policy by IP Audit and other managerial tools. Commercialization of IP is also part of IP policy and different methods of commercialization through licensing or assignment

are part of IP strategy. It is very important to select the countries in which patent has to be obtained and proper policy has to be laid down to file international application under PCT Route to claim priority. It has been observed that due to non-patenting of technology in important countries for a particular product or a process, there has been copying and counterfeiting of the technology but the patentee is unable to take action for infringement. The concerned entity gets a lower valuation of its patented technology if patent has not been obtained in the concerned countries where there is good market potentiality.

Therefore there exists a close nexus between the IP Commercialization and the IP Strategy for obtaining patent in several countries. Once the business entities fail to obtain patent within the due time of 30-31 months of the first priority, it can never get the patent in the national phase throughout the lifetime of the patent. Similarly one has to be careful while buying technology from others. If a particular technology is purchased or obtained by license, a proper due diligence should be conducted about the validity of the patent and in cases where a technology, for example, is patented in USA but not in India, there is no need to pay for license fee or royalty as the technology is available in the public domain and the use of the technology will not amount to infringement. However due care needs to be taken before export of the goods produced by using such technology in the countries where the original patentee has obtained the patent. One has to be careful about subsequent grant of patent for similar technology by the inventor, otherwise the same may lead to infringement and litigation.

However, the subject of IP Commercialization and use of technology and payment of royalty fees or consideration would also depend upon the valid claim of the patent which need to be established with proper IP due diligence. Periodic IP Audit will help the organization to have effective IP portfolio management. It is estimated that US companies alone loses more than US\$ one trillion due to under utilization or poor commercialization of the patent itself leaving aside the value loss on trademark and copyrights. On the other hand, IBM has been able to generate enormous wealth by recognizing the myriad ideas lying dormant in its labs and thereby increasing its income from royalty by 3300% over a period of 10 years in the 1990's through IP commercialization. Therefore it is very important in today's competitive world driven by knowledge economy where IP is the key to create value in the organization, and therefore the need to manage the IP portfolio effectively. ITAG provides all such services under one umbrella for developing an effective IPR Policy, IP Valuation, IP Commercialization, IP audit and so on with its expert team dealing with IP management.

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Dr. D. R. Agarwal

IPR NEWS - INDIA

BANGALORE LEADS ON E-FILING OF TRADEMARK

Among the cities, Bangalore is the highest in filing of trademarks online as maintained by the office of the Registrar of Trademarks, Government of India, Patent & Trademark office.

"There are many ordinary people who have novel inventions, but do not have the means to bring it out in public. In India, the Chennai branch of the Patent & Trademark Office has the highest number of trademarks filed and Bangalore stands first in the e-filing of trademarks online," N D Kasthuri, Deputy Registrar of Trademarks, Government of India said.

IIT-B ENTERS INTO CONTRACT WITH INTELLECTUAL VENTURES

IIT-B signed a Memorandum of Understanding with Intellectual Ventures(IV), a Washington-based company that specializes in buying patents and leveraging them for optimum gain. The India division of IV is headed by former IIT-B director Ashok Misra.

In the past 50 years, the IIT-Bombay has managed to file less than 150 patents. IIT-B hopes that IV will be able to monetize its intellectual property (IP) in a more systematic way and help it to reap the rewards of global commercialization.

Under the scheme, IV will pay IIT-B a licensing fee for the patents and will also bear the patenting costs. The partnership is not exclusive and IIT-B is free to engage with others for IP-related matters.

OPPOSITION BY NATCO PHARMA AGAINST APPLICATION ON COPAXONE

The patent application of Yeda Research & Development Company for Copaxone, a branded drug to treat multiple sclerosis, was successfully opposed by Hyderabad-based Natco Pharma. The drug was marketed globally by Israel-based Teva Pharmaceuticals Industries. The patent office turned down the application on the basis of "obviousness and lack of inventiveness."

"We are extremely pleased by the patent office's decision to deny this application. We've long maintained that the composition claimed in this request was an obvious variation of compositions in the public domain, and the current decision removes a potential obstacle to providing high quality and more affordable version of MS (multiple sclerosis) drugs to patients in many countries of the world," said Natco Chairman and Managing Director V Nannapaneni.

CADILLA AGAINST DABUR INDIA AND SHREE BAIDYANATH AYURVED ON "SUGAR FREE"

Cadila Healthcare approached the Supreme Court to restrain Dabur India and Shree Baidyanath Ayurved from using its trademark 'Sugar free', used for artificial sweeteners. The company has challenged the Delhi High Court ruling which dismissed its prayer alleging infringement of its trademark 'Sugar free'.

The company stated that their adversaries were also targeting the same class of consumers and should be restrained from doing so. They have also contended that the recently introduced sugar-free Chyawanprash by Baidyanath Ayurved Bhawan and Dabur was advertised in such a way that it would create confusion among consumers as to the source of the product and would result in dilution and blurring of the Cadila brand.

BYDAGI CHILLI APPLIES FOR GI TAG

"Bydagi chilli", a special chilli which has grown in Karnataka including Haveri (where Bydagi town is located) is now seeking Geographical Indication (GI) registration to protect the rights of farmers in the region. This unique chilli has deep red colour and sweet flavor when it is ripe.

The chilli is used by the oleoresin industry as the oleoresin extracted from it can be used as a dye in the textile industry, to tone fresh wine, in cosmetics and in other products. Bydagi chilli has a good market in countries of Europe and North America, Indonesia and Bangladesh. Once it receives the GI tag, nobody from any other place may legally cultivate or market "Bydagi chilli."

IPR NEWS-AROUND THE WORLD

HIDDEN WEALTH

A business entity may die but its brand remains alive. A business entity may become sick but its brand remains healthy. A business entity may become bankrupt but its brand remains sound. Lot of companies have been filing for bankruptcy in U.S. courts due to recession but they should not ignore their brand value. "Linens 'N Things" which filed for bankruptcy has earned a boon of life with the purchase of its name and logos at a consideration of approximately US \$ 1 Million by two investment groups namely "Hilco Consumer Capital" and "Gordon brothers Brands" . Thus the retailer "Linens 'N Things" which filed for bankruptcy was blessed with the intangible gain which was hidden in its good will. This real time story suggests the importance of brand valuation and recognition of intangible assets.

BOSTON SCIENTIFIC SETTLES STENT SUIT WITH INVENTOR

Boston Scientific Corp. has agreed to settle all outstanding litigation with Dr. Bruce Saffran, a New Jersey doctor (an interventional radiologist), who had been awarded damages of almost \$432 million after suing the medical device maker for patent infringement. A federal jury, Texas found that Boston Scientific's Taxus stents infringe a patent held by Dr. Saffran and awarded him damages of \$431.8 million and \$69 million in interest. Stents are tiny wire-mesh scaffolds inserted into arteries to prop them open after they have been cleared of plaque. This settlement also closes the door on a second lawsuit filed by Saffran, last month, in which he sought damages for continued sale of Taxus stents.

IPR NEWS-AROUND THE WORLD (Continued...)

TOMTOM SUES MICROSOFT FOR PATENT INFRINGEMENT

GPS device maker TomTom alleges that Microsoft infringes on four patents in Microsoft Streets and Trips. The product is mapping software that runs on computers and can be used with a small GPS receiver that connects to a laptop. TomTom is asking for triple damages for willful infringement, since it says it had notified Microsoft about its alleged infringement. Microsoft said it was reviewing TomTom's filing and that it remains committed to a licensing solution.

EDWARDS WINS PATENT CASE

Irvine-based heart valve maker Edwards Lifesciences Corp. said that it didn't infringe on a patent held by Cook Inc. Cook had alleged that Edwards' Sapien less-invasive heart valve directly infringed on a German patent Cook holds. Edwards is "very pleased" with the decision, said Larry Wood, its corporate vice president who oversees the device maker's transcatheter valve program, in a statement. Edwards said its countersuit claiming invalidity of Cook's German patent is expected to be heard in Munich in 2010.

AMAZON MAY FACE UPHILL BATTLE WITH DISCOVERY'S E-BOOK PATENT

Discovery Communications has filed a lawsuit against Amazon claiming infringement on an e-book patent filed 10 years ago. There is an extremely high number of claims (close to 200) compared to the usual 20 or 30, and there are very complete specifications around

the e-book distribution process. This shows that the company put a lot of time and effort into making sure they covered every aspect of the design, and it is not only Amazon that should be worried, but other e-book readers as well.

It doesn't appear as if Discovery's motive is getting into the e-book or electronics businesses either, as they are predominantly a media and content company. But Discovery founder John S. Hendricks actually did quite a bit of work in the '90s that would seem ahead of his time surrounding the digitization of media. Discovery still has several patents pending, but the e-book one in question was issued just as Amazon's Kindle began pushing e-books into the mainstream.

MICROSOFT AND LEXMARK INK PATENT DEAL

Microsoft unveiled yet another of its patent agreements, this time with printer manufacturer Lexmark, allowing "greater mutual access" to each other's patent portfolios. Microsoft is historically a stickler for ensuring people don't violate its patents, which number about 15,000 worldwide, and has more than 500 cross-licensing deals in place already. Microsoft officially launched its IP licensing program in 2003, after which it began striking patent deals in earnest.

Microsoft has also struck cross-licensing and patent deals with some Linux providers, including Novell and Xandros. Microsoft declined to reveal whether the Lexmark agreement covers open-source technologies, citing the deal's confidentiality.

GLIMPSES OF JUDGEMENT ON IPR's

PATENT INFRINGEMENT: ASTRAZENECA vs. DR. REDDY'S LAB

This is a Hatch-Waxman patent infringement case wherein AstraZeneca complained against Dr Reddy's (DRL) omeprazole magnesium alleging that the same infringed its U.S. Patent No. 5,900,424 and U.S. Patent No. 5,690,960 which cover Prilosec OTC, an over-the-counter version of the original Prilosec product which was earlier available only with a prescription.

The patents disclose a particular form of omeprazole magnesium, specifically one that is at least 70% crystalline, as well as a unique water-based process used to produce the drug. The patent states that to obtain the desired product, it is significant that the product have a crystalline form, with a degree of

crystallinity of not less than 70%, preferably higher than 75% as determined by x-ray powder diffraction.

Defendants denied that their product infringes the patents in suit, because the product that they hope to market does not contain omeprazole magnesium that is at least 70% crystalline in structure.

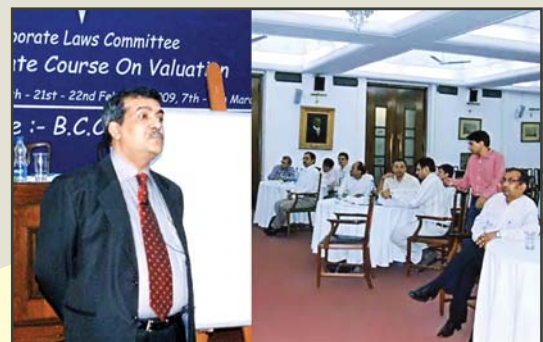
Defendants have moved for summary judgment on the ground of non-infringement.

Court held that Defendants are entitled to summary judgment. It dismissed the Plaintiffs' complaint stating that the defendants' product as shown by the results of the sample test is a different form of omeprazole magnesium having less than 1% crystallinity detectable, and used a different manufacturing process and therefore did not infringe AstraZeneca's patent.

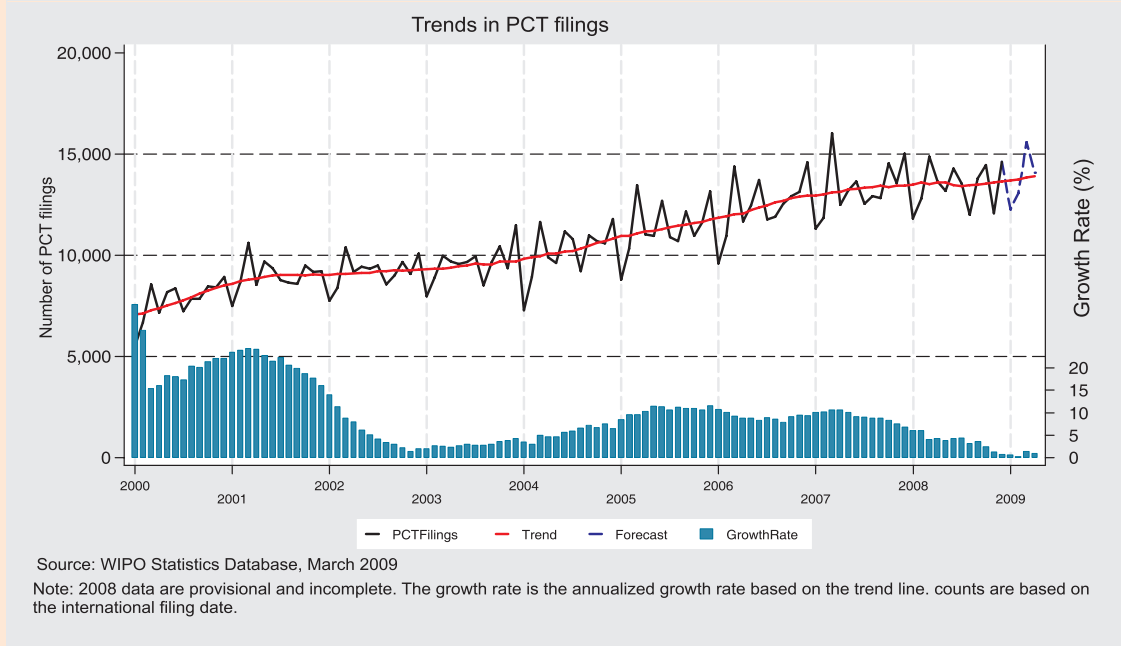
EVENT AT ITAG

Dr. D. R. Agarwal delivering a talk on IP Valuation at a workshop on 'Certificate Course for Valuation' organized by Institute of Chartered Accountants of India (ICAI) at Bengal Chamber of Commerce, Kolkata on 22nd February, 2009 consisting of about twenty five Chartered Accountants.

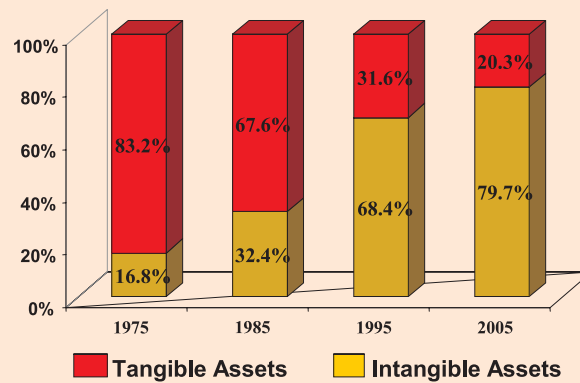
"IP Valuation is very important tool as Intangible Wealth contributes to eighty percent of the Global Wealth which includes the brand value, the value for copyrights and technology."



SNAPSHOTS



Components of the S&P 500® Market Value



Source: Ocean Tomo

VALUE OF MOST COMPANIES IS INTANGIBLE



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"An intellectual is a person whose mind watches itself"-Albert Camus