



NEWSLETTER

**Director's Message**



Intellectual property has gained an important role in the financial management of the companies by way of collateralization of its brand and technology. Earlier, IP financing was limited to IP securitization of the future cash flow of income from royalty and license fees. IP collateralization and IP securitization are two different modes of IP leveraging and IP financing. Collateralization of intangible assets help to increase the borrowing capacity of a company specially when the company has limited tangible asset to offer as security to the financial institutions.

Recently Kingfisher Airlines has managed to borrow Rs 2000 crores (US \$ 400 Million) from State Bank of India by way of collateralization of its brand. This unique tool of IP financing may open new vistas of opportunities for the corporate world on the one hand and the banking industry on the other hand. There is a need for credible agencies for IP valuation for brand and technology and also for adaptation of this unique technology of financing by the Indian Banking Industry.

Brand valuation is an upcoming field for the professionals and the experts. Intangible Business of UK is a pioneer and well established group for the European Market for the established brands of various business houses and non-governmental organizations.

The CONE Building Brand Trust has published its Report 2009 for brand valuation

The CONE Nonprofit Power Brand Top 10		
Power Brand Top 10	Organization	Brand value \$ million
1	YMCA of the USA	6,393.6
2	The Salvation Army	4,702.9
3	United Way of America	4,516.9
4	American Red Cross	3,146.2
5	Goodwill Industry International	2,534.8
6	Catholic Charities USA	2,361.1
7	Habitat for Humanity International	1,768.0
8	American Cancer Society	1,359.8
9	The Arc of the United States	1,223.6
10	Boys & Girls Clubs of America	1,168.3

of the global non-profit power brand 100 in collaboration with Intangible Business which shows that YMCA of the USA ranks the 1st position with the highest brand value of US \$ 6.3 billion. (See the table of the top 10). Earlier we had reported through this column that Google gained the first position in corporate world with its brand valuation of US \$ 101.4bn in the year 2009. Brand valuation is done for various purposes including raising money from capital market, dispute settlement, merger & acquisitions etc.

ITAG has planned for creating corporate awareness in the field of brand valuation and brand collateralization as a tool of financing by organizing seminars and workshop for business enterprises.

**Dr. D. R. Agarwal**

**IPR NEWS - INDIA**

**Copyright Plagiarism in Bollywood (Namastey London) v. Tollywood (Paran Jaye Jalia Re)**

Akshay Kumar and Vinod Shah, Co-Producers of the movie Namastey London filed a WRIT petition on 6th August, 2009 before the Calcutta High Court alleging that the Bengali film "Paran Jaye Jalia Re" has lifted the storyline of their movie. They had previously filed a copyright infringement suit before this High Court against Director Ravi Kinagi and scriptwriter Sahana Datta of Paran Jaye Jalia Re. The Counsel on behalf of the Respondent argued

that there is no bar of taking an idea under the Indian Copyright Act, 1957 and argued that the Hindi film resembled an old movie "Purab Aur Pachim". On the other hand the counsel on behalf of the Petitioners' agreed that there is no bar on taking an idea of others, but argued that the Bengali film is substantially copied by scenes, lifted frames and costumes from the Hindi film.

The issue is that whether the Bengali movie has substantially copied the Hindi one and whether the adaptation of expression subsists in Bengali movie?

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## IPR NEWS - INDIA (Contd.....)

Justice Nadira Patherya of the Calcutta High Court opined that the Court would like to watch both the films before giving its verdict over this copyright infringement dispute.

### MARUTI'S SPLASH RENAMED RITZ

Japan's Suzuki Motor Corporation had applied for trademark registration of the mark "Splash" for its fifth global car model through its subsidiary Maruti Suzuki India (MSI) on December 22, 2005. However Suzuki had to withdraw the application since the name 'Splash' was already registered by the US car maker Ford Motor Company with the Controller General of Patents Designs and Trademarks since August 16, 2002. Maruti Suzuki's global car's new model was renamed Ritz and then launched earlier this year in India.

### CADILA LOSES TRADEMARK CASE

Cadilla Healthcare Ltd. had filed a suit against Wallace Pharmaceuticals for using its brand name Mexate. The case was considered unnecessary as according to Section 28(3) and 30(2) of the Trade Marks Act, 1999, a suit for infringement cannot be filed by a registered owner of a trademark against another registered owner.

The judgment was based on the fact that Cadilla Healthcare sells the product in foil pack whereas

Wallace Pharmaceuticals sells it in cardboard box and hence the packing of both the products are different and the chances of confusion are remote.

Further Mexate is the abbreviation of the drug Methotraxate and Wallace uses Mext which also is an abbreviation of Methotraxate. Usually the name of the drug is adopted as the mark. Therefore monopoly cannot be granted over a mark which is an abbreviation of a drug.

### SOMANY'S TILE VARIANT GETS FIRST PATENT

Somany Ceramics Ltd. received a patent under the Indian Patents Act for its 'high abrasion resistant glaze composition' for tiles, known as VeilCraft (VC) Shield. Somany achieved government recognition for its R&D department in 1996 and was the first tile company to be awarded ISO 9002 certification in 1998.

This patent gives Somany Ceramics exclusive rights for production and commercialisation of VC tiles in India. The patented formulation gives an edge over other tiles due to the additional properties of high abrasion resistance, stain free and protection to design and colour which in turn gives flexibility in designing and usage. These properties make these tiles ideal for use in shopping malls, airports and offices etc.

## IPR NEWS-AROUND THE WORLD

### IBM TO PATENT DATA MASK

IBM has filed for patents on a new technology, Masking Gateway for Enterprises (MAGEN) that selectively hides data in files that hold sensitive information such as healthcare or financial records. IBM's MAGEN is the Hebrew word for "shield" and it was developed in the company's labs in Haifa, Israel. It differs from other data masking products as it does not make changes to the data file itself but it treats onscreen information as a picture and uses optical character recognition (OCR) technology to turn parts of the image that are deemed sensitive, unreadable.

MAGEN is now at the proof-of-concept stage, and the technology could be used to prevent workers at a claims processing center from viewing patient healthcare data while still being able to access the information needed to put through an insurance claim.

IBM has filed for patents on two aspects of MAGEN, one for the unique way of manipulating images and the other for a word scrambling system.

### USPTO E-OFFICE ACTION PROGRAM INITIATED

The USPTO has launched the e-Office Action program following a successful pilot version. This program allows participating patent applicants to receive e-mail notifications of office communications, rather than receiving the usual paper notifications by regular mail. When an office communication is available for viewing and downloading, an e-mail notice is sent to participants in the program.

According to John Doll, USPTO's Acting Director, this program has, "dramatically reduced paper processing and mailing costs and expedited notification allowing applicants to take full advantage of their time period for reply to an office action".

Participation in this program is not obligatory and is available to any registered attorney or agent, or pro se inventor, prosecuting a patent application associated with a customer number. Participants can also opt-out of the e-Office Action program at any time and return to receiving office communications through regular mail. This e-

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

Office Action program covers provisional and non-provisional applications including utility, plant, design, and reissue applications and national stage applications.

### WIPO LAUNCHES ON-LINE TOOL TO FACILITATE ACCESS TO TARGETED SCIENTIFIC INFORMATION

An on-line tool was launched at WIPO's headquarters on July 23, 2009. This public-private partnership aims to provide industrial property offices, universities and research institutes in least developed countries (LDCs) with free access and industrial property offices in certain developing countries with low cost access to selected online scientific and technical journals.

The Access to Research for Development and Innovation (aRDi) program was rolled out by WIPO in partnership with various prominent science and technology publishers. The World Health Organization (WHO), Food and Agriculture Organization (FAO), and UN Environment Programme (UNEP) provided advice and expertise gained from their similar programmes offering access to journals in their respective fields of activity.

### USPTO'S TRIBUTE TO MICHAEL JACKSON

The USPTO has announced that its museum will be running an exhibit featuring Michael Jackson's patent and trademark applications and registrations. The exhibit will display the late entertainer's registered and applied for patents and trademarks including

the 1993 application for registration of the brand name "Michael Jackson" by Triumph International, Inc. for use in connection with "sound recordings; namely, pre-recorded phonograph records, audio tapes, compact discs, videotapes, and motion picture films featuring music and entertainment." This brand name was granted registration on August 1, 1995. It will also feature the patent application for a system that allows the wearer of specially designed shoes to lean forward beyond his center of gravity, of which Michael Jackson is listed as a co-inventor.

### BEST BUY AND WAL-MART NAMED IN PATENT BATTLE

Best Buy Co, Wal-Mart Stores Inc and other companies were sued over dashboard mounts for navigation devices in an extraordinary case of a Chinese company seeking to enforce patent rights in a US court.

Changzhou Asian Endergonic Electronic Technology Co, based in Changzhou, claims that the retailers are infringing its patent on a design for the dashboard mounts by selling products made by a competitor and the Chinese company wants cash and a court order to put off further use of the design. The company also is suing the manufacturer in China, accusing it of infringing two Chinese patents.

The complaint, filed on July 2 in US District Court in Texarkana, Texas, reflects the rising use of the US patent system by Chinese companies. US patent applications by residents of China surged 12-fold between fiscal years 2000 and 2008, according to the US Patent and Trademark Office.

## GLIMPSES OF JUDGMENT ON IPR

### MICROSOFT INC. WON 461,409 YUAN (\$67,546) FOR SOFTWARE INFRINGEMENT SUIT AGAINST STRONGWELL TECHNOLOGY-CHINA.

**Facts:** This law suit has been brought by Microsoft Inc. (plaintiff) against Strongwell Technology & Development Co., a major custom dealer of the PC 'Do-It Yourself' in China. This infringement law suit was brought by the plaintiff for pre-installation of the pirated 'Microsoft Windows-XP' and 'Office' Software in the defendants' PC called 'Do-It Yourself' and sell this PC in the Chinese market. The defendant was involved in installing the pirated Microsoft's software in the PC called 'Do-It Yourself' before selling the product in the market. Strongwell is established in 1994 having eight (8) 'Do-It Yourself' PC stores in Beijing city. Microsoft filed this suit after purchasing 12 such PC installed with pirated software from Strongwell those were pre-loaded with Microsoft software. Microsoft has been claimed 500000 Yuan from Strongwell by filing a software infringement lawsuit before the Chinese Court of Law.

The defendant argued that it had installed pirated software on request of the Microsoft's hired people while they were willing to buy 12 PC called 'Do-It Yourself' from Strongwell.

**Issues:** Whether Strongwell is liable for the infringement of the Microsoft's Software and whether strongwell is liable for sub-sequent compensation for infringement?

**Judgment:** On 2nd July, 2009 Beijing number one People's Court of law in a preliminary ruling favored Microsoft and allowed 461,409 Yuan (\$67,546) compensation in favor of the Microsoft on the basis of the prima facie evidence against the defendant. Regarding the appeal against this Court ruling no information is available till now from Strongwell's side.

## EVENTS AT ITAG

- ◆ Dr. Jayanta Lahiri, an eminent author on IP Laws and former IAS officer, delivered a talk on importance of legal case studies in the field of intellectual property rights before ITAG team to explore the legal context of IPR.
- ◆ Dr. R. K. P. Singh, former Director General of INSDAG, delivered an insight on patenting of Steel and Metallurgical Technology.

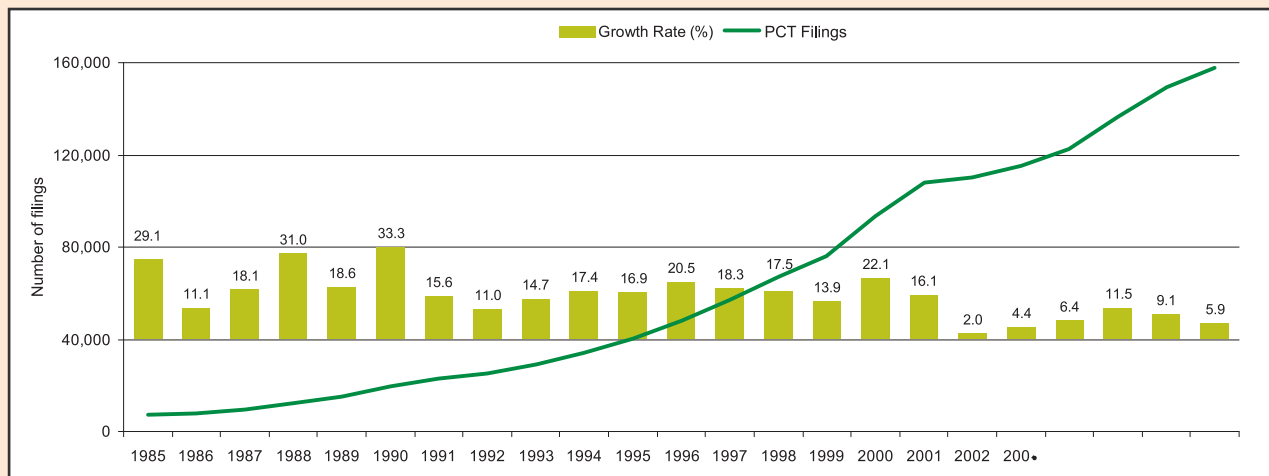
## A SHORT TERM COURSE FOR INDIAN PATENT AGENT EXAMINATION- 2009

ITAG Business Solutions Ltd. initiates an exclusive training program subjected to offer a short term preparatory course for the applicants appearing the Indian Patent Agent Examination 2009. Course Commences From 1st August, 2009 and the duration of the course is 90 Days (3 Months). Interested applicants please visit our website.

## SNAPSHOT

### INTERNATIONAL FILINGS THROUGH THE PATENT COOPERATION TREATY (PCT)

Trends in PCT filings, 1985-2007



Source: WIPO Statistics Database



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