



# ITAG BUSINESS SOLUTIONS LTD.

(A subsidiary of TCI Finance Ltd.)  
 AN ISO 9001:2000 & 27001:2005 ORGANISATION  
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# NEWSLETTER

## Director's Message



The scar of recession is visible now in the innovation and IP field as many organizations have cut their budget on research and development. The number of patents filed in 2009 in USPTO has declined for the first time in 13 years from 496886 in last year to 485500. The number of patent filing has gone down by as high as 25 per cent. It is further worrisome for US to note that the number of patents issued to inventors and businesses to foreign nations has jumped by 6.3 per cent this year. The number of patents granted to Indian and Chinese inventors have

been increasing consistently for the past few years. For example the share of Indian inventors in total US patented inventions has gone up from 1.9% during 1975-79 to 5.4% during 2000-04 with a higher percentage in computers being 6.9 per cent. Similarly, for the Chinese, their share of US inventions has gone up from 2.2% during 1975-79 to 8.5% during 2000-04 with share of computer patent being 8.2 per cent. It has also been noticed that ethnic patenting is more concentrated than general innovation. In San Francisco, for the period 2001-06, the share of Indian and Chinese inventors in patents was as high as 24%, whereas it was very low in Los Angeles, being 7% and for New York being 9%.

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The effect of recession has also been felt in the art market globally and in India as well, as evident from the declining value of the NAV of India's first Art Fund namely Osian's, which



has failed to return money to their investors and many of them have received almost 30 per cent less than their original invested amount. Art Funds are not regulated by Securities Exchange Board of India (SEBI) unlike the mutual funds and therefore the transparency in disclosure of NAV is generally less visible in such funds. According to a special survey conducted by the Economist, the world art market is at the declining phase. In 2007 it reached to the peak of worth \$65 billion, double as compared to the last five years but since then it has come down to \$50 billion. Christie's and Sotheby's are the two largest firms of the world in the art market with private sales of \$542m and \$730m respectively in 2007. The market for the paintings of the two famous artist Warhol and Picasso is also under down turn as depicted in the chart as above.

A rare piece of Chinese art work of 18th-century beast known as the Pelham Water Buffalo, carved from a single lump of spinach-green jade was inherited by Lady Diana Miller from her father, Sackville Pelham, who bought it in 1938 at a price of just £300 was auctioned recently at a whopping price of £3.4m at Hazlitt Gooden & Fox, a London gallery. The art market is inelastic as the supply is limited and even though the total sales value decline, the price of the specific art work does not go down. There is a concept that your money is hanged on wall.

ITAG keeps a watch on the IP market which involves technology, brands, art work and several other intangible assets. Time has come when people realise the true value of innovation and creativity of human mind.

## IPR NEWS - INDIA

### GI FOR MALIHABADI DUSSEHERI MANGO

Malihabadi Dusseheri mango, a variety of a pulpy summer fruit grown in the Lucknow region, is the latest to get Geographical Indication (GI) status. The exclusivity rights for this mango were conferred on September 11 2009.

These rights would help farmers growing this variety of mango to sell their product under the Malihabadi brand and achieve better returns. The National Horticulture Board (NHB) had applied to Chennai-based Geographical Indication Registry in October 2008 to obtain GI for the mango variety. The Malihabadi Dusseheri mango tree bears fruit once in every two years.

### INDIA AND US SIGN AGREEMENTS ON IPR AND TRADITIONAL KNOWLEDGE

Two important agreements on access to traditional knowledge and Intellectual Property Rights have been signed between India and the United States.

The first agreement that was signed was regarding access of The Traditional Knowledge Digital Library (TKDL) between the Council of Scientific and Industrial Research (CSIR) and the US Patent and Trademark Office (USPTO) which would enable the USPTO to search the extensive database of India's traditional knowledge compiled under TKDL, a collaborative project between CSIR and Department of AYUSH, Ministry of Health and Family Welfare.

CSIR has planned to train the USPTO examiners and staff for proper use of TKDL tools for search and examination which would help prevent misappropriation of traditional knowledge through mistaken issuance of patents as had earlier happened with Neem and Haldi.

The second document that was signed was a MoU between the office of the Controller General of Patents, Designs and Trade Marks,

Department of Industrial Policy and Promotion Ministry of Commerce and Industry and the United States Patent and Trademark Office, US Department of Commerce.

The MoU between patent offices of the two countries will facilitate comprehensive bilateral cooperation on a range of IPR issues focusing on capacity building, human resource development and raising public awareness of the importance of IPR.

To promote two-way investments, another important Memorandum of Intent was signed between 'Invest in America' of the International Trade Administration, US Department of Commerce, and 'Invest India', a joint venture of the Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry and various State Governments.

### IMI GETS RS 12 LAKHS AS COMPENSATION

The Indian Music Industry (IMI) has been awarded a record compensation of Rs. 12 lakhs in a copyright infringement case under the concept of plea bargaining. It is the highest amount of money ever paid in the history of any plea bargaining case in India.

Plea bargain is an agreement in a criminal case where the prosecutor offers the defendant the opportunity to plead guilty, usually to a lesser charge or to the original criminal charge with a proposal of a lighter punishment.

Piracy in the physical format alone causes a loss of Rs 600 crores annually to Indian Music Industry. Now a days, the Industry is facing newer forms of piracy such a Mobile Chip Piracy resulting in a loss of another Rs 300 crores, i.e., total Rs 2000 cr are lost by the industry to piracy each year. IMI had sought a compensation of Rs 22.5 lakhs i.e. Rs 100 per CD as they had seized 22500 pirated CDs.

## IPR NEWS-AROUND THE WORLD

### US WEBSITE SUED FOR SELLING BEATLES MUSIC

EMI Group, a music company is suing Bluebeat.com, a US-based website claiming that it is selling downloads of Beatles songs which are not authorised for any online sales.

EMI has filed a copyright infringement suit against the music site in a US court.

Bluebeat.com's site lists Beatles songs, including the Fab Four's re-mastered albums, released in September, for sale on its website.

Apple Corps., Beatles holding company has not allowed the Fab Four's music on any internet music service. Talks between EMI and Apple Corps. over making the band's catalogue available online have been

## IPR NEWS-AROUND THE WORLD....(contd.)

delayed. BlueBeat is owned by Santa Cruz, California-based Media Rights Technologies.

### KIPO TO HAVE 'SUPER SPEED' EXAMINATION FOR GREEN PATENT APPLICATIONS

Green patent applications are now eligible for "super speed" examination at the Korean Intellectual Property Office (KIPO) that will provide examination results in just one month.

The special examination procedure is applicable to patent applications aimed to several categories of technologies relating to the environment or "low-carbon green growth." The green patent applicants must however, request for a prior art search, to be conducted by one of the three officially sanctioned search agencies by KIPO, to qualify for the super speedy examination procedure.

The super speed system which was supposed to start on October 1 2009 will supersede the quick Korean timeline "from

application to acquire a patent" from an average of 18 months to a striking short period of one month.

### HIV TEST PATENT LAWSUIT SETTLED

OraSure Technologies Inc., which makes diagnostic kits to detect HIV and drug use, has agreed to settle a patent dispute over HIV tests. The lawsuit was filed against OraSure by Inverness Medical and Church & Dwight CSays Leon Louw, executive director of the Free Market Foundation, at a conference on intellectual property rights in Johannesburg, South Africa today: "The internet wasn't invented by Al Gore. In fact, Al Gore was invented by the internet."

Inverness Medical will receive \$3 million in cash, under the deal. The two companies are also granting each other distribution rights to certain products, including HIV hepatitis C tests, and flu tests.

OraSure would face a fourth-quarter loss of 10 cents to 11 cents per share because of the legal settlement.

## GLIMPSES OF JUDGMENT ON IPR

### GLOCHEM INDUSTRIES LTD. V. CADILA HEALTHCARE LTD. AND ORS.

**FACTS:** The Petitioner filed this writ petition under Article-226 of the Indian Constitution before the High Court of Judicature at Bombay against an order passed by the Assistant Controller of Patents & Design (Respondent no.4) dated 7th January 2009 in favor of the Cadila Helathcare (Respondent no.1). Previously the petitioner filed pre-grant opposition by way of representation under section-25(1) of the Indian Patent Act, 1970 against the Patent Application No. 413/MUM/2003. The subject matter of this petition was 'Crystalline Clopidogrel Besylate' which is used to inhibit blood clots and for the treatment of heart ailments. Soon after filing the provisional specification the petitioner filed pre-grant opposition and provided many prior references where one of the Patentees was Sanofi S.A., which got patent from USPTO over the same subject matter in 1985. The petitioner averred that the claim no. 1 to 3 of the patent application fall under section-3(d) of the Indian Patent Act, 1970 as the disclosure of a new form of known substance in respect of which Patent are applied results in the enhancement of the known therapeutic efficacy and there is lack of legal or admissible evidence from the part

of the Respondent no.1 and the Respondent No. 4 decide the disputes upon misconstruction and misapplication of Section 3(d) of the Act.

**ISSUE:** Whether the Assistant Controller was erroneous while ruled in favor of granting the patent?

**JUDGMENT:** While deciding the dispute the Court opined that the 'Respondent no.4 ought to have considered the dictum of the Madras High Court in the case of Novartis AG v. Union of India & Ors. The Court said that it has the discretion to decide the case under Article-226 of the Indian Constitution and also opined that the act of the respondent no.4 was in violation of the Article-14 (equality before law) of the Constitution. The Court held that '...however, confined the argument only in the context of Section 25(1)(f) read with Section 3(d) of the Act to the effect that the alleged invention of the Respondent No. 1 was not an invention as it does not result in the enhancement of the known therapeutic efficacy of the stated substance'. Accordingly the Court allowed this Writ petition and directed the Assistant Controller to consider the arguments of the petitioner afresh.

## EVENTS AT ITAG



Dr. D. R. Agarwal, Director with Anjali AERI, Yolande Coeckelbergs and Quan SIM, senior officers of the legal department PCT Division of WIPO, Geneva on 30th November, 2009.



Dr. D. R. Agarwal is with Judith Zahra and Andre NTAMACK, senior officer of the Trademark Division of WIPO, Geneva on 2nd December, 2009



2nd INTERNATIONAL  
**INTELLECTUAL  
PROPERTY RIGHTS  
CONFERENCE**

(INDO-US Knowledge Enterprise)

**IP LEVERAGING IN SOFTWARE,  
ELECTRONICS AND GREEN  
TECHNOLOGY**

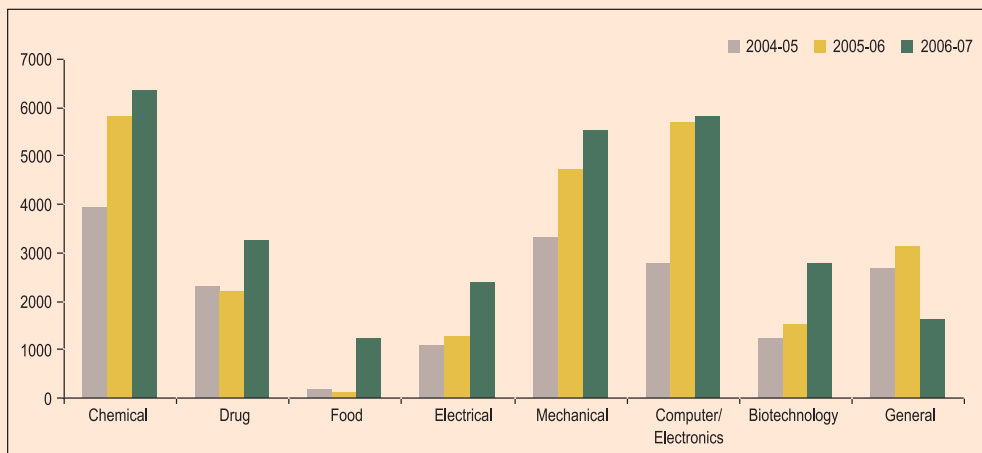
CONFERENCE: 29-30 JANUARY 2010

VENUE: HOTEL LaIT ASHOK, BANGALORE

ITAG is organizing 2nd International IPR Conference at Bangalore on 29th and 30th January, 2010 in collaboration with Sughrue Mion PLLC of USA and Bangalore Chamber of Industry and Commerce (BCIC) supported by The Federation of Indian Export Organizations (FIEO).

## SNAPSHOT

### Number of patent applications filed under various fields of inventions



Source: Annual Report of the Office of the Controller General of Patents, Designs, Trademarks, Geographical Indications, Intellectual Property Training Institute, and Patent Information System, 2006-07



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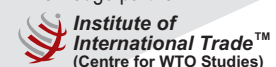
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