



ITAG BUSINESS SOLUTIONS LTD.

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NEWSLETTER

Director's Message



The intellectual property laws have been codified under different statutes by the Indian Parliament to deal with the individual issues relating to Copyright, Trademarks, Designs and Patents including few other aspects such as Geographical Indications, Plant varieties and Bio-Diversities. However, there are certain intertwined provisions for Copyright, Trademark and the Design laws, e.g. a trademark can be registered along with the logo with the trademark authorities and the logo can also be registered as an artistic work under the Copyright Act. Similarly any work of art which resembles a trade name can be registered under the copyright law only after getting a no objection from the trademark authorities. There are also provisions under the Designs Act which prohibits

registration of a registered Trade Mark or any artistic work as defined under the respective laws. However, a registered design gives a Copy Right during the validity period of ten years to the registered proprietor of the design.

The subject matter relating to appeals are under one authority being the Intellectual Property Appellate Board (IPAB) which has the jurisdiction concerning Trademark, Geographical Indication and the Patent related matters. The subject matter concerning copyright and designs are still outside the purview of IPAB. However, the subject matter for relief in the form of damages or injunction against infringement for trademark or patent is still within the jurisdiction of the Courts. The appeal before IPAB relates to matter concerning any order or decision of the Controller of Patents or of Trademark Authorities. Section 104 of the Indian Patents Act, 1970 lays down the scope of jurisdiction of the Court and specifies that any suit for any relief for a declaration or for infringement shall be instituted only to a district court or to a High Court. However, where a counter claim for revocation for the patent is made, the suit along with the counter claim shall be transferred to the High Court for decision. In other words, one has to be very careful about jurisdiction for any subject matter concerning appeal or relief before either IPAB or the Courts.

The Indian Patents Act provides for pre-grant opposition as well as post-grant opposition of a patent applied for or granted. The European and the US Patent Laws do not have similar provisions for a pre-grant opposition. However, there is a scope for a Third Party Observations to be filed before the Examiner in the European Patent Office (EPO) as per Article 115 of the European Patent Convention. Such Third Party Observations can be filed by any individual or entity from any part of the world either by way of reference to the prior art or with substantive arguments along with prior art references to enable the authorities at the EPO to make a judgment about the novelty or the patentability of the invention. In other words, although there is a general perception that there is no window for pre-grant opposition in Europe and other advanced countries but the provision for third party observations is a good substitute to a large extent in EPO.

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Intellectual Property Laws and management of intangible assets are emerging areas for the professionals. There is a need for Academic Institutions and Universities to incorporate intellectual property as one

of the optional subject in their curriculum in order to enable and empower the students to meet the needs of the society. ITAG has undertaken the task of providing training and consultancy in the field of IP Laws and IP Management as a total solution provider under one roof with a team of experts in technology, law and commerce. ITAG believes that the technology and research can become meaningful and effective only with the IP Commercialisation and by converting IP into IPR.

Dr. D. R. Agarwal

IPR NEWS - INDIA

TOSHIBA SUES MOSER BAER ALLEGING VIOLATION OF DVD PATENT

Toshiba Corporation, a Japanese electronics major alleged Moser Baer India, an optical storage device maker to infringe its DVD patents and filed a lawsuit against the latter for the alleged infringement. Besides Moser Baer, Toshiba filed the lawsuit against seven other companies manufacturing and distributing recordable DVD media, seeking an injunction to prohibit infringement of the Japanese entity's DVD patents.

According to a Moser Baer spokesperson, the firm is awaiting details of the lawsuit. The lawsuit was filed on May 14 with the US District Court for the Western District of Wisconsin. Apart from seeking "damages for past infringement", the lawsuit has requested the court to enjoin the sale, manufacture, and importation into the US of recordable DVD media by these companies.

BAJAJ AUTO FACES ANOTHER PATENT BATTLE

A situation of a possible patent war has emerged as Bajaj Auto Ltd, India's second largest two-wheeler maker, alleged that some Chinese bike makers had copied its design. Bajaj Auto has a patent for its multi-spring shock absorber system in Nigeria and 16 other markets that are part of the African Intellectual Property Organization but is yet to receive the patent certificate.

Bajaj Auto had earlier said some China-made bikes sold under the brands Nexus and Nebula in Nigeria, Kenya and Uganda had copied its design. A patent for the said shock absorbing system was granted by the Indian Patent Office to Bajaj Auto on May 1, 2009. It is important for Bajaj to seek protection for its patent in Nigeria as this African country is Bajaj Auto's largest export market for bikes. As of now, the offenders in Kenya and Uganda may get away as Bajaj Auto has not received patents for these markets.

Few years back, there existed a copy of the Bajaj Pulsar branded as Gulsar in Sri Lanka. However, Bajaj Auto could manage stopping sales in Sri Lanka after filing a court petition.

TROIKAA GETS PATENT FOR DICLOFENAC INJECTION- DYNAPAR AQ

A patent for a novel, high concentration diclofenac injection- Dynapar AQ was recently granted by the Indian Patent Office to Troikaa Pharmaceuticals, a Gujarat based pharmaceutical company. The application was filed by the company in February 2005 but the grant was delayed due to a series of oppositions filed by Indian pharma companies.

The patent for the said injection has till now been granted in 29 countries and the process of obtaining in the rest of the countries of interest are nearing completion.

IPR NEWS-AROUND THE WORLD

GENERIC FLU DRUG CHALLENGE TO TAMIFLU

Cipla to sell a cheap version of the patented antiviral flu drug Tamiflu in a move that will pitch intellectual property rights against affordable access to medicines. Cipla had agreed to sell considerable quantities of its Antiflu preparation to Mexico, the country facing the current flu outbreak. The WHO has said the drug is as effective as Tamiflu.

Mexico had already agreed to purchase stocks of Antiflu. The launch risks provoking a clash with Gilead and Roche, the large pharmaceutical companies that developed and distribute Tamiflu, the drug known generically as Oseltamivir, which Antiflu replicates. Cipla in recent times won a case within India against Gilead, which holds the patents on Tamiflu. If Mexico now issues a compulsory licence to waive the patent on the drug, existing international trade rules would allow purchases of Antiflu.

STEMCELLS' PATENTS UPHELD BY USPTO

The USPTO has upheld the validity of the remaining two neural stem cell patents of StemCells Inc. which were subjected to reexamination proceedings commenced by Neuralstem Inc.

As the USPTO's decision is final and cannot be appealed, StemCells is asking the federal district

court in Maryland to resume the infringement lawsuits against Neuralstem. The upheld patents are, respectively, methods for using neural stem and progenitor cells for the screening of drugs and biological agents.

PFIZER TO MARKET OFF PATENT INJECTABLES WITH CLARIS

Pfizer Inc has entered into a partnership with Ahmedabad-based Claris Lifesciences Ltd to commercialise sterile injectable drugs that are off-patent and have lost exclusivity in the US, Canada, Australia, New Zealand and Europe. These drugs cover a range of therapeutic areas, including anti-infectives, antibiotics and other critical care products.

This agreement is a strategy to transform Pfizer's off-patent drugs and established products portfolio from becoming a declining business to a growing business and it will provide patients with a wide range of high quality affordable medicines. Off-patent medicines, including branded generics, represent one of the fastest growth segments in the global pharmaceutical market.

Pfizer, which has global annual sales of \$10 billion for established products, recently expanded an agreement with Aurobindo Pharma to supply finished dosage products. Under the terms, Pfizer

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

has acquired rights to 55 solid oral dose products and five sterile injectable products in the US, Europe and France. Pfizer will supply 60 products in more than 70 countries through Asia, Latin America, Africa and West Asia.

MICROSOFT INC. FINED \$388 MILLION AND LOSES PATENT CASE

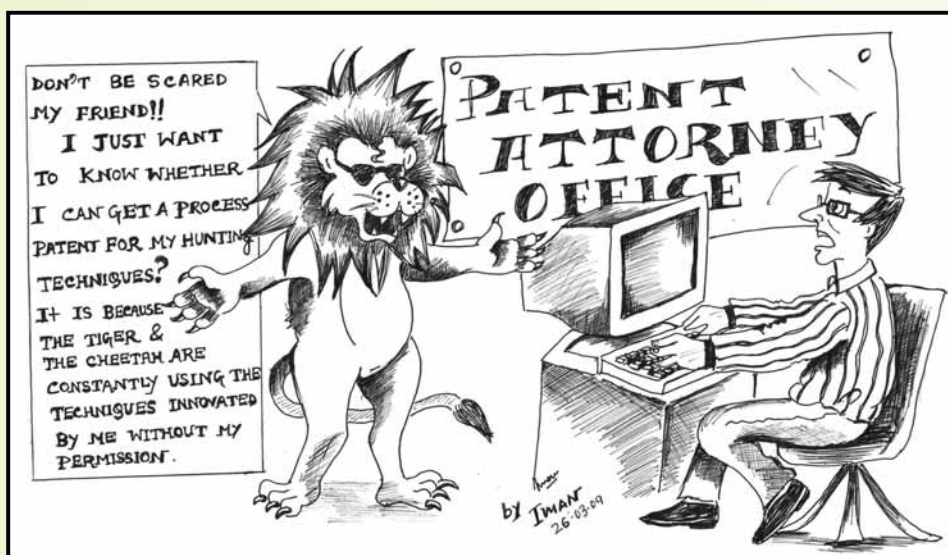
Microsoft was hit with a \$388 million patent infringement fine following a lengthy legal battle dating back to 2003 with security software vendor Uniloc. The patent was for an anti-piracy solution that prevents the creation, distribution and use of unauthorized copies of software- which Microsoft allegedly infringed with its software activation methods.

The decision is a reversal of an earlier judgment in which the courts originally favored Microsoft, with Uniloc appealing their losing verdict. The appeal was granted and Uniloc won this second trial in court. The damages awarded are one of the largest on record in legal disputes involving patents. It might take a while before Uniloc actually gets that money, as Microsoft has announced its intention to appeal.

GLOBAL TRADEMARK REGISTRATION TOUCHES 1-MN MARK

The international trademark registration touched the 1-million mark this month, more than a century after the first trademark was registered by Russ-Suchard & Company, a Swiss chocolate maker in 1893. Austria-based Grune Erde, which specialises in natural wood, textile and cosmetic products, became the millionth international trademark owner this month. The trademarks are registered at the WIPO under its Madrid System for the International Registration of Marks.

"The increasingly rapid growth of the Madrid system over the last two decades reflects increased internationalization of trade and broader recognition of the commercial importance of trademarks," WIPO said.



Glimpses of Judgment on IPR's

Cipla wins Patent battle over F. HOFFMANN-LA ROCHE LTD

Facts: - F.HOFFMANN-LA ROCHE LTD (Plaintiff) jointly owns a patent with Pfizer Products Inc. in respect of a drug medically termed as a "Human Epidermal Growth Factor Type- 1/Epidermal Growth Factor Receptor" (HER/EGFR) inhibitor, popularly known as Erlotinib and sold as Tarceva for the treatment of cancer. The defendant Cipla Limited had announced its plan to launch a generic version of Tarceva in India. The plaintiffs state that such an announcement of Cipla would infringe and violate the plaintiffs' rights and that the defendant had no right to opt to manufacture, sell or offer to sell any version of the drug Tarceva and that such action, as announced by it, would deliberately violate the legal rights of the plaintiff. The plaintiff filed an appeal against the judgment passed by the Delhi Court declining the order for grant of an interim injunction to restrain the Defendant/Respondent Cipla Limited from manufacturing, offering for sale, selling and exporting the drug Erlotinib.

Analysis: - The case is in respect of Erlotinib Hydrchloride Polymorphs A+B which is an unstable form and cannot be administered as such. The x-ray diffraction pattern of the tablet Tarceva showed that it corresponded to Polymorph B for which the patent is yet to granted. Tarceva corresponded to polymorphs A and B and so there was no need for the plaintiffs to have applied for a separate patent in respect of polymorph B. Polymorph B could not be granted a patent since it was not patentable under Section 3 (d) and further the plaintiffs failed to demonstrate any enhanced efficacy over the known closest prior art polymorphs A and B.

Judgment: - The appeal was dismissed by the Delhi High Court (full Bench) with costs quantified at Rs.5 lakhs which will be paid by the appellants/plaintiffs to the defendant within a period of four weeks.

EVENT AT ITAG

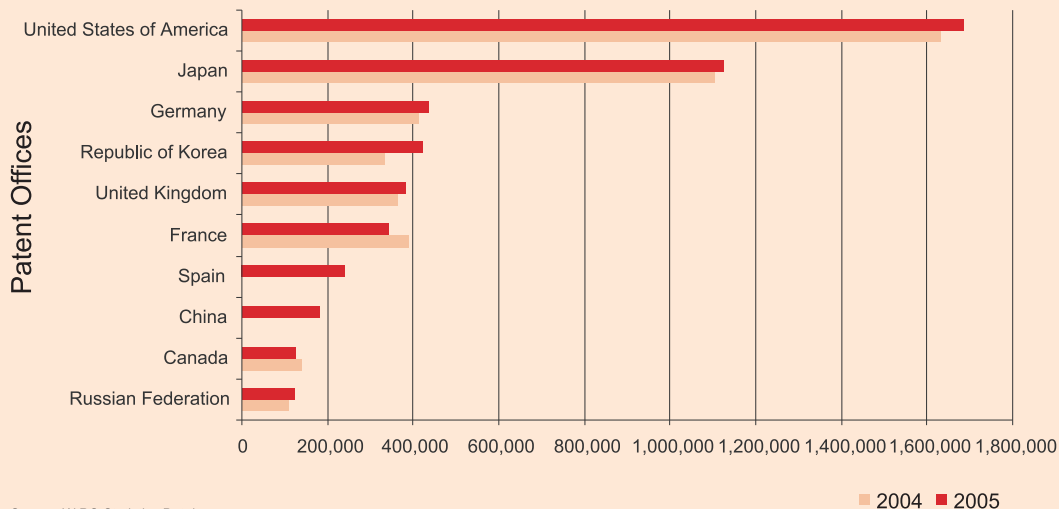


Dr. D. R. Agarwal delivered a talk on “IP Policies and its framework for foreign companies in India” to Australian Trade Commission (Austrade) at **Australian High Commission, New Delhi, India** on 11th May, 2009. The Program was a part of Utsav Australia which is an initiative of Australian Government to promote trade and investment between the two countries.

SNAPSHOT

Patents in force by Office

The chart shows the total number of patents in force by office in 2004 and 2005



Source: WIPO Statistics Database



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Corporate Office

Suite # 1C & 1D, 1st Floor, Subham Plaza, 83/1 Beliaghata Main Road
Near EM by Pass Crossing, Kolkata—700 010, West Bengal, India
P +91 33 2705 7198 | F +91 33 2363 3923

Regd. Office

1-7-293 Mahatma Gandhi Road, Secunderabad—500 003, Andhra Pradesh, India
P +91 40 2784 4284 | F +91 40 2789 4284.

W www.itagbs.com | E info@itagbs.com

Operational Offices

India - Ahmedabad, Bangalore, Chennai, Hyderabad, Indore, Kolkata, Mumbai, New Delhi

Abroad - Bangkok, Beijing, Colombo, Dubai, Hong Kong, London, Singapore, Shanghai, Virginia (U.S.A.)

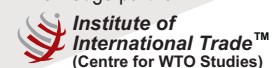
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"No political party has exclusive patent rights on prosperity." **Franklin D. Roosevelt**