

# NEWSLETTER

ITAG BUSINESS SOLUTIONS LTD.



The prime objective of granting patent is to make the new inventions and technology available to the society for its commercial use and for improvement. The inventor makes disclosure or reveals knowledge to the world and in consideration a right is granted

by government for exclusive use or for licensing the technology to others. In order to achieve the above objective, the Patent Law in India and elsewhere generally provide for certain powers to the regulating authorities to obtain necessary details about the actual commercial exploitation or the working of the granted patents. In India, section 146 of the Patent Act, 1970, empowers the controller to obtain the details of actual working of the patents from the Patentee or Licensee at periodic intervals in form 27. The aforesaid objectives are also stated in section 83 of the Patent Act which *inter-alia* include the followings:

- (a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;
- (b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;
- (c) that the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;
- (d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;
- (e) that patents granted do not in any way prohibit Central Government in taking measures to protect public health;
- (f) that the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and
- (g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.

There are provisions in the Patent Act whereby the controller can either revoke or alternatively grant compulsory license for non-working of the Patent for three years or wherever it is found that the

objective of granting the patent are impeded by the patentee.

One of the recent malpractice of the patent right is by virtue of purchasing the patents from the patentees in financial distress and enforcing the same against purported infringers. This device is popularly known as "Patent Troll" and is used by Non Practicing Entity (NPE) or Non Manufacturing Patentee (NMP).

A similar version of the above kind of malpractice is also adapted by 'Patent Sharks'. The firms in technology sector face great difficulties from the Patent sharks. These are the firms, who acquire various patents by means of acquisitions, licensing agreements or through R&D and these acquired patents are kept on hold and hidden from the public domain.

These patent sharks then wait for an unintentional infringement of those acquired patents from other inventors/applicants and then sue them for which they receive very lucrative compensations.

In order to remain free of the hassles imposed by these patent sharks, tech firms should maintain standardized technologies so that they can add or remove technological features in order to make them patentable and reform their R&D processes instead of relying on legal remedies, through Freedom to Operate (FTO) Analysis.

It is observed from the market that some business entities are engaged in the business of buying and selling of technologies, without any intention to practice the patent.

Intellectual Ventures Management LLC, one of the business entity engaged in patent licensing claims to hold over 30,000 patents, has earned almost USD 3 billion through licensing. It has said to have recently sued nine tech firms for their Patent Rights. It has been publicized by certain people that the lawsuits filed by Intellectual Ventures resembles patent troll like ambitions, which may not be true. NTP Inc. is another example of a Patent Troll which has won a USD 612 Million damage award against Research In Motion (RIM) which collects data on behalf of Blackberry.

It is therefore important lesson for those intending entrepreneurs who desire to enter into the business of acquiring technology from Research Institutions either by sponsoring a research project or otherwise solely for the purpose of holding the same either to bring royalty revenue or to sell the same out on opportune time without commercial exploitation at any stage by manufacturing or use of the concerned technology.

However, the restriction for grant of a patent for a software, as per the provision of section 3(k) of Indian Patent Act, 1970 provide relief from the attack of Patent Trolling to some extent.

**We wish you Happy New Year 2011.**

**- Dr. D. R. Agarwal**

## IPR NEWS - INDIA

### GI TAG FOR SURAT'S ZARI CRAFT

The centuries-old 'Zari' making craft of Surat district in Gujarat has been granted Geographical Indication (GI) status by the Geographical Indication Registry in Chennai. A GI tag guarantees that no person or entity other than those registered as authorized users would be allowed to use that particular product name for their product.

The grant of GI to one of the oldest industry dating back to the 16th century in Surat - Zari craft would prevent others from duplicating this craft linked to the fluctuating prices of gold and silver from which it is made.

'Zari' mostly used in traditional Indian garments, is a thread made of fine gold or silver wire which is woven into fabrics, mostly made of silk to create elaborate designs.

The Textile Committee of FICCI and the Surat 'Zari' industry in their effort to protect this craft from infringement had filed an application to obtain GI status in 2009. The 'Zari' produced in Surat goes to Varanasi and other places in Uttar Pradesh, Tamil Nadu, Karnataka and Andhra Pradesh and is used to manufacture the world

famous 'Banarasi sarees' and 'Kanjivaram' sarees.

### THOMSON REUTERS ACQUIRES Pangea3

Thomson Reuters has acquired Pangea3, a legal process outsourcing (LPO) provider. Pangea3 headquartered in New York and Mumbai offers legal services for corporate and law firms worldwide, including some of the world's largest financial services, pharmaceutical, healthcare, food and beverage, technology and consumer goods companies.

This possession would support and add to the Thomson Reuters portfolio of specific information and workflow solutions, and in the process assist law firms and corporate legal departments by selling information, software and workflow solutions to legal professionals.

This is the second acquisition by Thomson Reuters in India in the legal arena. In 2009, a Delhi-based legal database firm IndLaw Communications was bought by Thomson. The global news and business information company already has a legal division called Reuters Westlaw.

### CENTRAL PARK AND INDIABULLS FIGHT OVER TRADEMARK

Central Park, a Delhi-based real estate developer has filed

a case against Indiabulls Real Estate in the Delhi High Court over trademark infringement for using the Centrum Park brand to promote its properties.

The developer claims that Indiabulls is using the 'Centrum Park' trademark in its projects under the 'Indiabulls Real Estate Central Park' brand name at Hyderabad, Indore, Madurai, Ahmedabad and Gurgaon, which is misleading and very similar to 'Central Park'.

The High Court had asked Indiabulls to file a reply by November 15, which Indiabulls failed. The court has set December 20 as the next date of hearing. Central Park has approached the Delhi High Court to restrain Indiabulls from developing, marketing and selling any housing and real estate project as Centrum Park or Central Park.

Gurgaon-based Sweta Estates, which owns and operates both commercial and residential projects under the 'Central Park' brand name, had registered the mark in 2005.



## IPR NEWS-AROUND THE WORLD

### GOOGLE SIGNS DEAL TO TRANSLATE EUROPEAN PATENTS

Google Inc., the search engine giant has signed an agreement with the European Patent Office (EPO), to use its technology to translate about 1.5 million patent documents into 29 European languages. This deal would make way for a simplified European patent system making it easier and more accessible to inventors

and researchers from across the continent. The EPO has 38 member countries. This agreement would cut the huge translation fees incurred by the Commission as it is 10 times more expensive to apply for a patent in Europe than in the United States.

Google would now have access to a large number of patents which have already been translated into different languages and help the

company in improving its machine translation technology, which learns languages by comparing translations that have already been carried out by experts. The Google translation service will be featured on the EPO website.

### GI STATUS FOR SCOTCH WHISKY IN PANAMA

Scotch whisky has been granted geographical

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

indication (GI) protection status by the government in Panama, to safeguard against illegal labeling of other alcoholic beverages as Scotch whisky. The GI status would provide legal protection to Scotch whisky distillers against any imitation.

A British trade association, the Scotch Whisky Association (SWA) had applied for 'Scotch Whisky' to be registered and protected as a 'geographical indication of origin' (GI) in May 2010.

This registration guarantees protection by the local enforcement authorities, supporting the integrity of Scotch whisky as a product made in Scotland according to traditional practice.

Panama is Scotch whisky's

20th largest export market, with consignments amounting to nearly £42 million in customs value in 2009. Recently the Chinese government had granted the same protection status to Scotch whisky.

### CANADIAN MUSICIANS REQUEST FOR PRIVATE COPYING LEVY ON MP3 PLAYERS

More than 350 Canadian musicians, including Marie Denise Pelletier, Divine Brown, Amy Sky, Jason McCoy, Farber Drive, and Carole Pope, are urging the Canadian government to impose a levy or tax on MP3 players.

The Toronto-based Canadian Private Copying Collective (CPCC) seeks to extend the private copying levy applicable

on blank CDs at present to music players. Canadians shell out 21 cents as a levy for each blank CD, 24 cents per audio cassette and 29 cents per recordable CD.

According to the CPCC nearly 1.3 billion songs are copied onto MP3 players in Canada each year and none of the Canadian artists get any returns for the infinite number of copies made of their music.

Canada's private copying levy charges the manufacturer of recording media an amount that is distributed 66% to authors and publishers, 18.9% to performers and 15.1% to record companies. A levy on MP3 players as sought by the artists amounts to \$5 to \$75 per unit.

## GLIMPSES OF JUDGMENT ON IPR

### COURT AWARDS OF \$130 MILLION FOR BREACHING LICENSE AGREEMENT FOR A SUPERBUG ANTIBIOTIC

**FACTS:** The US based Johnson & Johnson Inc. had signed to an agreement with Swiss based Basilea Pharmaceutica Ltd. to conduct clinical trial of a superbug antibiotic named ceftobiprole. This antibiotic targets so called superbugs which are responsible for many hospital-acquired-infection deaths (called Complicated Skin and Skin Structure Infections (cSSSI)). Basilea had invented a novel anti Methicillin Resistant Strains of *S. aureus* (MSRA) broad-spectrum antibiotic and received regulatory approval from Swissmedic for the treatment of complicated skin and soft tissue infections including diabetic foot infections.

Basilea is accusing Johnson & Johnson of having made mistakes in testing the drug, which led to it being rejected by EU (European Committee

for Medicinal Products for Human Use (CHMP)) and US health regulators (FDA). Earlier this year Johnson ended a partnering deal with Basilea and had returned the rights of ceftobiprole to Basilea after European and U.S. authorities decided not to accept the drug because of doubts regarding the reliability of the results of the trial. Johnson was acting as Basilea's drug sponsor and was also in charge of the trials for ceftobiprole, but health authorities of EU and US said these had not been done in compliance with good clinical practice. Basilea argued that due to wrong clinical trial conducted by Johnson the EU and US authority has denied permitting the said drug in their regions.

**ISSUE:** Whether Johnson was liable for conducting wrong clinical trial for which EU and

US regulatory authorities had denied permitting ceftobiprole into their regions?

#### ARBITRATORS JUDGMENT:

The Tribunal formed at Netherlands Arbitration Institute reiterated that EU regulatory authority (CHMP) found that phase-III studies to support the Marketing Authorization Application (MAA) had not been conducted in compliance with Good Clinical Practice (GCP) by Johnson. The tribunal found Johnson of breaching the license agreement with Basilea and awarded an amount \$130 million, including lost milestones, other damages and interest in favor of Basilea. This award is immediately enforceable.

## EVENT AT ITAG

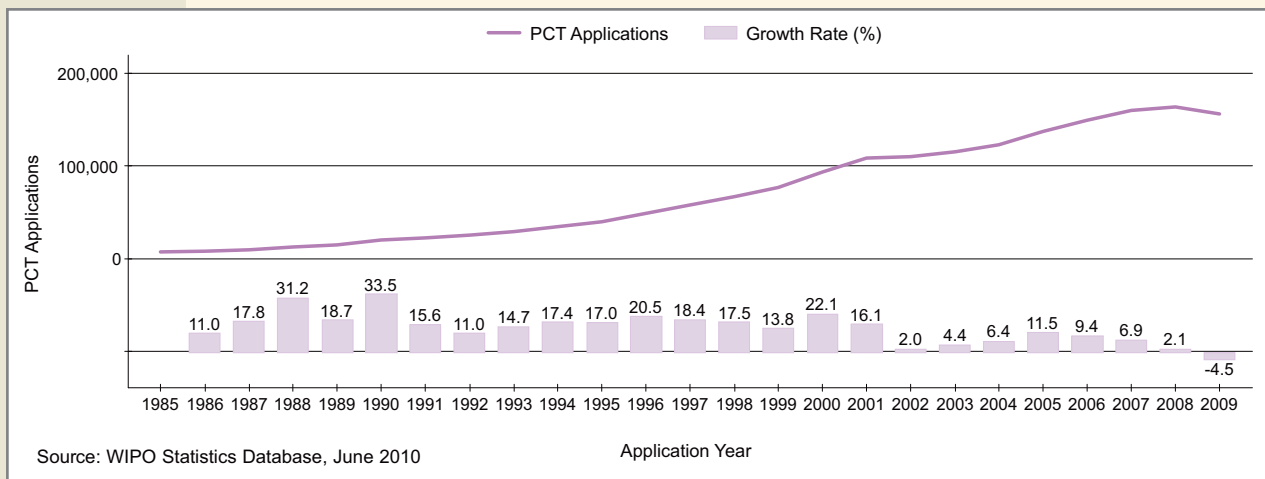
**-: ITAG wishes you Merry Christmas and Happy New Year 2011:-**



Professor N. L. Mitra with ITAG Team on 11th November, 2010. He delivered a very interesting talk during the interactive session on several important issues on Intellectual Property Rights. We are grateful to his genius personality.

## SNAPSHOT

### Trend in PCT applications



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