



NEWSLETTER

ITAG BUSINESS SOLUTIONS LTD.

(A subsidiary of TCI Finance Ltd.)

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Director's Message



The Supreme Court of the United States has affirmed the judgment of the Court of Appeals for the

Federal Circuit (CAFC) in the case of *Bilski vs Kappos* in its recent judgment announced on June 28th, 2010. The CAFC had earlier affirmed the decision of the USPTO's Board of Patent Appeals (BPAI) which rejected the Patent Claim for an invention in relation to a method of hedging risks in commodities trading on the ground that the patentable subject matter does not satisfy the requirement of 35 U.S.C. 101.

However the Supreme Court has given its opinion by holding that the Court of Appeals for the Federal Circuit (CAFC) was not correct in deciding that the **machine or transformation test** as the sole test of process patent or a business patent.

The above judgment of the Supreme Court has created a furore in the legal circle about patentability of business method by leaving the question open for further interpretation of § 101 of US Patent Act. The CAFC, while upholding the decision of Board of Patent Appeals (BPAI), vehemently said that an abstract ideas is not patentable and the Supreme Court has also upheld the decision of Board of Appeals of Federal Circuit to this extent.

The real problem may now come for the Indian software

companies who were hitherto applying for a patent in US for their computer programs. Section 3(k) of Indian Patent Act, 1970 clearly excludes the patentability of '*a mathematical or business method or a computer program per se or algorithms.*' In other words, business method or computer software per se is not patentable in India at all unless embedded with a machine or computer hardware, but a copyright protection is available in India for such IPR's.

It is therefore advisable that Indian software companies shall obtain a copyright for their software which in any case is a much broader way of

“ The US Supreme Court has upheld that the Machine or Transformation test cannot be the sole test of a process or Business patent. ”

protecting their IPR's at global level. It may be pertinent to mention here that while a patent grants protection only for a territorial jurisdiction in the countries where the patent has been granted and no global protection are allowed for a patent, whereas the copyright protection is available at global level under Berne Convention. It is also worthwhile to mention that the earlier United States Supreme Court decision in the *Diamond v. Chakrabarty* in 1980 defined patentability in a more flexible and inclusive way

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which allowed and fostered millions of patents in the field of biotechnology. In this context the Supreme Court's remarks in *Bilski* judgement are considered praiseworthy, which says that the patent system was designed to be broad and inclusive in order to promote innovation. The Supreme Court's ruling specifically states that the '**machine or transformations test** is not the sole test for patent eligibility'. Thus the decision removes the fear in the minds of Biotech companies which could possibly face challenges in the absence of these remarks of the Hon'ble Supreme Court of United States.

ITAG is organizing a conference on Biosimilars at Hyderabad and Bangalore on 22nd, 24th July, 2010 respectively and is hopeful of a live and meaningful deliberation on a very new subject on Biosimilars which has a tremendous market of about 16.4 billion dollars in Europe and the USA alone and with huge market potentiality in the rest of the world.

- Dr. D. R. Agarwal

IPR NEWS - INDIA

CHINESE BIO-PIRACY ATTEMPT STALLED

India's Traditional Knowledge Digital Library (TKDL) helped India's efforts to stall a bio-piracy attempt by a Chinese pharmaceutical company, Livzon. In 2007, Livzon had filed for a patent at the EPO (European Patent Office) claiming usefulness of pudina (mint) and kalamegha (*Andrographis paniculata*) for the treatment of H5N1 avian influenza or bird flu and the patent was granted on February 25, 2010.

Pudina and kalamegha have been commonly used in Indian traditional medicine since ages for influenza and epidemic fevers. This was proved by TKDL, which scrutinized formulations from ancient Ayurveda and Unani texts dating back to the 9th century.

The EPO cancelled the decision to grant patent to the Chinese company on June 10 after receiving substantial proof from CSIR that confirmed India's stand on the medicinal properties of pudina and kalamegha for treating bird flu.

LAKHNAVI ZARDOZI IN LINE FOR GI TAG?

Researchers from the Textile Committee of India (TCI) are making an effort to get a Geographical Indication (GI) tag for the 'Lakhnavi zardozi'. The word "zardozi" comes from Persian words 'zar' meaning gold and 'dozi'

meaning embroidery and this exquisite artwork from Lucknow has its unique style of 'gold-and-silver' embroidery.

The TCI team has submitted a report on the origin of this art, its geographical coverage, the artisans community involved, product identification, process, uniqueness compared with the embroideries across India and the world. The report will be made public after the validation process is completed.

"Ari"- a hooked needle is used for the embroidery on the fabric which is stretched out on a wooden frame. The artisans use gold and silver threads, beads, stones, and creative designs to beautify the fabric and give it a regal look.

FORCE INDIA SUES LOTUS F1 FOR IP VIOLATION

The formula one team - Force India has launched legal proceedings against the Lotus team, Mike Gascoyne and Italian windtunnel operators Aerolab claiming intellectual property violation.

Force India alleges that the design of their original 2009-spec VJM02 car and Lotus' T127 chassis windtunnel model were similar and has initiated civil proceedings in the UK and Italy against Lotus, claiming the team has taken undue advantage from the use of its intellectual property when designing and building its inaugural F1 chassis.

Force India allege that Lotus

Racing, via Aerolab and Fondtech facilities and data, has benefited from the use of Force India F1 Team's IP, including components and tyres licensed exclusively by Bridgestone to the Force India F1 Team, on its wind tunnel model design for the current Lotus T127 chassis without permission from the Force India F1 Team. Force India had paid around one million Euros in 2009 to secure the payment claimed by Aerolab.

REDIFF.COM INDIA WINS CYBER SQUATTING CASE

Rediff.com India Ltd, the online service provider has won a cyber squatting dispute against a Pakistani national, Daniyal Waseem, who was using an identical domain name 'rediffpk.com' and unlawfully using the rediff.com trademark. Cyber squatting is illegal registering or using a domain name with intentions to profit from the reputation of an established trademark.

According to the Mumbai-based Internet portal service provider 'rediffpk.com' was identical and confusingly similar to its 'Rediff' trademark. The firm had approached the World Intellectual Property Organization (WIPO) to stop the Pakistani national from using the trademark. The WIPO Arbitration and Mediation Centre has found that this person did not have the rights to the domain name and has ordered that the domain be transferred to Rediff.

IPR NEWS-AROUND THE WORLD

ASTRAZENECA WINS CRESTOR PATENT DISPUTE

Efforts by Israeli-owned Teva Pharmaceuticals of North Wales, USA and some generic drug developers to break AstraZeneca Plc's patent on its best-seller anticholesterol drug Crestor were turned down by a federal judge in Delaware. Crestor had sales amounting to \$4.5 billion in 2009.

An important patent on AstraZeneca's third best-selling drug was ruled to be valid by the U.S. District Court in Delaware and mentioned that its challenger - Apotex could be held liable for patent infringement.

The patent is set to expire in 2016 and this court ruling would stop the U.S. Food and Drug Administration from approving

generic versions of Crestor. The other companies involved in the united lawsuit include Mylan Inc., Par Pharmaceutical, and Teva Pharmaceutical Industries Ltd.

GE AND RAMBUS SIGN LICENSE AGREEMENT FOR LED TECHNOLOGY

General Electric Co.'s GE Lighting group and Rambus Inc., a technology licensing

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

company have signed a deal for licensing light emitting diode (LED) technology from Rambus Inc. GE would be using Rambus' patented lighting innovations, including its product reference designs and manufacturing procedure expertise.

GE intends to manufacture and sell flat-panel energy-efficient LED lighting systems worldwide. Both the companies together would generate sophisticated LED-based lighting products with distinct features like low-cost and excellent light quality.

Rambus's lighting and display technology business initiated in 2009 and the company acquired patents and technology including LED

edge-lit optical designs, MicroLens light distribution features, and high-volume, low-cost light guide panel and multi-function film manufacturing technologies from Global Lighting Technologies (GLT).

NANOTECHNOLOGY MANUFACTURING PROCESS PATENT FOR ALTAIR NANOTECHNOLOGIES

The USPTO has granted Altair Nanotechnologies, Inc. a patent for the method of producing mixed metal oxides and metal oxide compounds. The unique nanotechnology manufacturing process for battery anodes and cathodes in lithium-ion batteries is protected by this patent.

This patent will ensure that competitors can no longer exploit the proprietary manufacturing process covered under the patent to accomplish the exclusive performance characteristics of Altair's battery materials, which function by rapid charging and discharging at wider operating temperature range.

Headquartered in Reno, Nevada in the United States, Altair Nanotechnologies Inc. is a provider of energy storage systems for clean, efficient power and energy management. The company is now engaged in the development of cathode materials to enhance battery performance at lower costs.

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GLIMPSES OF JUDGMENT ON IPR

Bilski v. Kappos, US Supreme Court Ruling Against Patenting of a Mere Business Method

FACTS: The appellant Bernard L. Bilski and Rand A. Warsaw had filed a patent application for a 'method of hedging risk in the commodities trading' in 1997. Petitioners' seeks protection for a number of claims which are capable of explaining how commodities buyers and sellers in the energy market can protect, or hedge, against the risk of price changes. The Examiner of USPTO repudiated it as an invention because it is not implemented on a specific apparatus and merely manipulates an abstract idea and solves a purely mathematical problem without any limitation to a practical application, therefore, the invention is not directed to the technological arts. In appeal before Board of Patent Appeals and Interface (BPAI), USPTO affirmed the rejection and held that 'if there is a transformation of physical subject matter from one state to another' is a patent-eligible subject matter and non-physical financial risks and

legal liabilities of the commodity provider, the consumer, and the market participants is not patent-eligible subject matter. Further, in an appeal before the US Court of Appeals for the Federal Circuit (CAFC), the Court held two test that a claimed process is surely patent-eligible under 35 USC 101, if (a) It is tied to a Particular machine or apparatus, or (b) It transforms particular article into a different state or thing ('Machine-Transformation Test (the test)'-quoted from *State Street Bank & Trust Co. v. Signature Financial Group Inc.*). Thereafter, this case came before the US Supreme Court.

ISSUES: Whether the CAFC erred by creating the so-called "machine or transformation" test, which requires a process to be tied to a particular machine or apparatus, or transform an article into a different state or thing, in order to be patentable subject matter? and Whether the machine or transformation test

contradicts Congressional intent that Patent protect 'method of doing or conducting business' (35 USC 273)?

JUDGMENT: The Court held that-Firstly, "although the test of §101 is broad, it is not without limit," citing *Chakrabarty, Benson, and Diehr* case; Secondly, the "machine-or-transformation" test "has repeatedly helped the Court to determine what is a patentable process"; Thirdly, while the test "has always been a 'useful and important clue,' it has never been the 'sole test' for determining patentability." It is rather 'an important example of how a Court can determine patentability under §101'; the CAFC's mistake was in treating it as the 'exclusive test'; and Fourthly, "although the machine-or-transformation test is not the only test for patentability, this by no means indicates that anything which produces a 'useful, concrete and tangible result' . . . is patentable. In addition to these, the Court denied the petition.

FORTHCOMING EVENT AT ITAG

Workshop: BIOSIMILARS - An Opportunity to Explore

Organised by: ITAG Business Solutions Ltd.
Knowledge Partner: Sughrue Mion PLLC, USA

Hyderabad (22nd July, 2010)

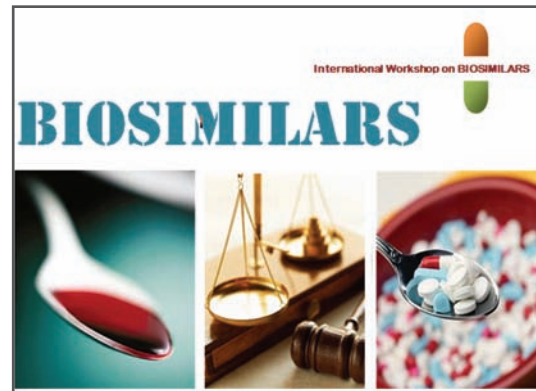
Venue: Hotel Taj Banjara, Hyderabad

Bangalore (24th July, 2010)

Venue: The LaLIT Ashok, Bangalore

For registration, please visit: www.iprconference.com

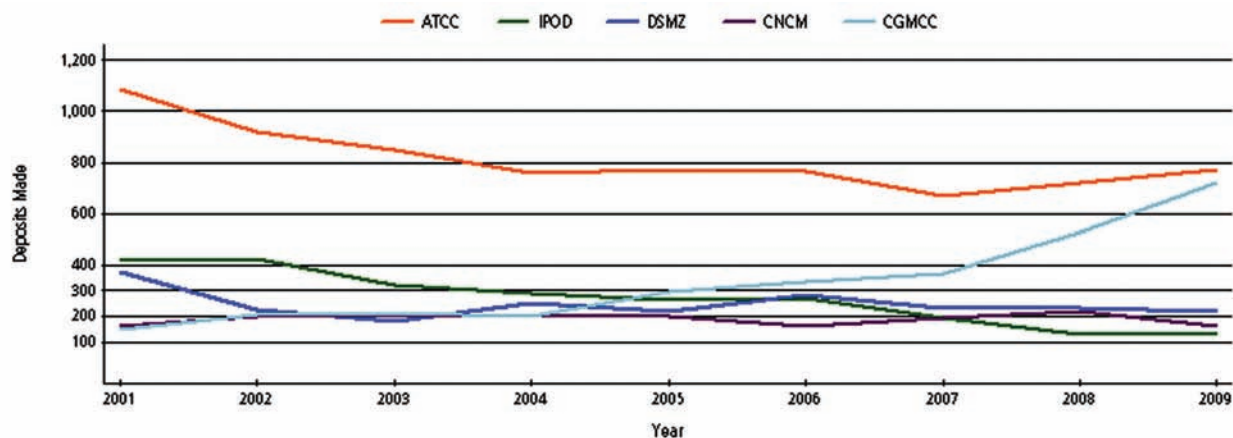
Email to: partha@itagbs.com, navin@itagbs.com



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SNAPSHOT

Top 5 International Depository Authorities with the highest number of Deposits (2001-2009)



ATCC - American Type Culture Collection, United States of America
 IPOD - International Patent Organism Depository, Japan
 DSMZ - Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH, Germany
 CNCM - Collection nationale de cultures de micro-organismes, France
 CGMCC - China General Microbiological Culture Collection Center

Source: WIPO



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