

# NEWSLETTER

## ITAG BUSINESS SOLUTIONS LTD.

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International trade of Goods and services including technology transfer is broadly regulated under the legal frame work of World Trade Organization (WTO), World Custom Organization (WCO) and World Intellectual Property Organization (WIPO). Trade

and investments constitute the core of economic globalization where knowledge and technology play very crucial role. Intellectual Property Rights is broadly covered under the TRIPS agreement of WTO for minimizing the risk of infringement through a harmonised and unified code of IP laws around the world. However the counterfeiting and piracy still remains a menace and a challenge with increasing volume of international trade in today's era of globalization.

The Agreement on Trade-Related Aspects on Intellectual Property Rights (the TRIPs Agreement) defines the term counterfeiting and piracy. Article 69 of the TRIPs agreement provide for a minimum level of obligation on the member countries of WTO to provide for custom enforcement and check the international trade of counterfeited and pirated goods for the protection of Trademarks and copyrights.

The Indian government has issued Custom Enforcement Rules in July 2007 which covers not only Trademark and copyright but also patent and designs. Any person who is the right holder of the aforesaid IPRs has to register the product by filing the supporting information as annexure with the custom authorities which will in turn ensure seizure of the counterfeited goods or technology at the port as per the prescribed rules. It is therefore advisable to the victims of infringements from counterfeited goods to register their names and related IPRs with Customs Authorities.

In some cases there is an overlapping of IPR infringements. For example, in case of music piracy there is infringement of copyright as well as trademark. In case of fake toys, there is infringement of Trademark and design.

The overview of industries affected by counterfeiting is highlighted in the table showing the share of counterfeit products in total sales of the different sectors.

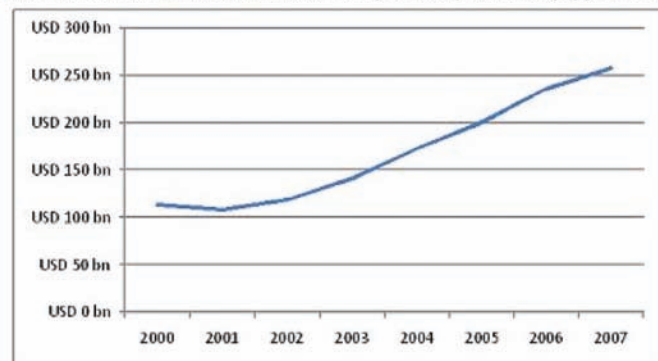
The Organization for Economic Co-operation and Development (OECD) has reported in it's recent study on the economic impact of counterfeiting and piracy, 2008, that the share of the counterfeited and pirated goods in the world trade has been gradually increasing. The report says

SECTOR	SHARE OF COUNTERFEIT GOODS AS A % OF TURN OVER
Watches	5
Medicine	6
Perfumes	5
Aircraft Spare Parts (SUP)	10
Toys	12
Music	33
Viideo	50
Software	43

Source: OECD

that the International trade for counterfeited and pirated goods accounted for USD 200 Billion in 2005 and has gone upto USD 250 Billion in 2007 with a increase in percentage of total volume of world trade from 1.85% in 2000 to 1.95% in 2007 as shown in the below graph.

Evolution of trade in counterfeit and pirated products (upper limit)



Source: OECD

The study has taken into consideration the infringements with relation to Trademark, copyright, patent and design rights only to the extent of physical cross border movement of goods and do not include domestically produced and consumed products or intangible pirated digital products. In other words if some counterfeited goods have been produced and consumed within the national boundary of a country and the cross border movement of knowledge resources such as music and software they do not form part of the OECD study.

**Therefore, if a comprehensive account is taken for all types of tangible and intangible goods within and out side the countries, the volume of the counterfeited goods and services could be as high as USD 1 trillion.**

ITAG believes that there is a growing need for IPR awareness amongst the people so that the adverse economic impact on consumers and IPR holders can reduce and a healthy atmosphere is created for International trade and investments.

- Dr. D. R. Agarwal

## IPR NEWS - INDIA

### 2 NEW US PATENTS FOR SUVEN LIFE SCIENCES

Suven Life Sciences has been awarded U.S. patents US 7,781,476 and US 7,718,690 for its two new chemical entities (NCEs) used in the treatment of disorders related to neuro-degenerative disease. These patents would be valid till 2022.

The claims of the granted patents contain the class of selective 5-HT compounds discovered by Suven Life Sciences, which are being developed as therapeutic agents to be used in the treatment of cognitive impairment associated with neurodegenerative disorders like Alzheimer's disease, Attention deficient hyperactivity disorder (ADHD), Huntington's disease, Parkinson and Schizophrenia.

The global market potential of this class of these two NCEs is estimated at \$30 billion.

### RANBAXY ISSUED NOTICE IN CAPSOLA TRADEMARK CASE

Ranbaxy, Parth Parental and two other pharma companies have been issued notice by the Supreme Court of India on a petition filed by RFCL (Ranbaxy Fine Chemicals Limited) in a dispute over the trademark for animal feed

supplement Capsola.

RFCL had challenged an order of the Delhi High Court, which had allowed the Gujarat-based firm Parth Parental, to manufacture and sell animal feed supplement under the Capsola mark. RFCL had bought the entire animal health division from Ranbaxy in September, 2005 and thus, claims to be the owner of Capsola. Capsola was originally adopted as trademark by Ranbaxy in 1986 for animal feed and branded animal feed supplement and it was transferred to RFCL in 2005.

Prior to the sale of Capsola, Ranbaxy and Parth Parental had an agreement to manufacture the animal feed and supply it to the former. Ranbaxy had given a license to Parth Parental to use Capsola.

The High Court had stayed Parth Parental from selling Capsola trademark, which was finally vacated in May 2010 and it was allowed to sell under the same trademark. The court had found that there was no assignment of this trademark from Ranbaxy to RFCL. Parth Parental had purchased the same from RFCL and thus is the assignee and registered owner of trademark Capsola.

The next hearing is due on November 16 this year.

### INDIAN FIRM AND MONTBLANC IN PEN ROW

The Supreme Court of India has directed the Delhi High Court to settle the trademark infringement dispute between German luxury brand Montblanc Simplo GMBH and ADD Corporation, a Mumbai-based firm which sells its pens under the brand "ADD", within 3 months.

The High Court had earlier restrained ADD from selling its pen after the Montblanc alleged that ADD had infringed its registered trademarks on - "Starwalker", "Miesterstruck" and "three-ring device". ADD had launched Add Gel Spacewalker and Add Gel Goldtop, which was objected by Montblanc as it had used "three-ring device" in it. ADD challenged this order before the apex court claiming that Montblanc cannot claim its "three-ring device" as a trademark.

ADD Corporation's range of pens are priced at Rs 200 and Rs 340, whereas the Montblanc's Starwalker range sold under trademark Meisterstick costs about Rs 14,000. ADD claims that besides the price, the packaging and design including the customers for the two pens were different and hence there was no infringement of trademark.

## IPR NEWS-AROUND THE WORLD

### PFIZER PROSECUTES NOVO NORDISK

Pfizer Inc., the world's biggest drug maker, took legal action against Danish competitor Novo Nordisk in a London court to nullify its patent for an injection mechanism which prevents overdoses.

Pfizer claimed that Novo Nordisk's European patent for the dose-setting device is based on claims that were not new when the patent application was filed. The

Bagsvaerd, Denmark-based Novo Nordisk however has opposed the allegations made by Pfizer.

Novo Nordisk is the world's biggest maker of the diabetes treatment insulin. The device in question allows the doctors to set maximum dose limits that will prevent the visually impaired and other groups from using too much during self injections.

Novo Nordisk was also sued by Pfizer in Switzerland over

the same patent, which is set to expire in 2026.

### WIPO LAUNCHES WIPO LEX

WIPO has launched WIPO Lex, an online global intellectual property (IP) reference resource, which would provide information on all the national IP laws and treaties of WIPO, WTO and UN member states. This "one stop search facility" contains the complete IP legal texts from over 60 jurisdictions and substantial coverage of the IP landscape

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

in a further 100 jurisdictions. "WIPO Lex offers easy and direct access to a rich source of general and member state-specific legal information and is a valuable research tool for policymakers, researchers, users of the IP system and the general public," said Francis Gurry, WIPO's director general. "WIPO Lex has enabled us, for the first time, to consolidate the IP laws of member states and IP treaties and to make them available in a detailed and fully searchable format."

This new system will be integrated into WIPO GOLD, an online portal into public IP data which was launched earlier this year.

### SCUFFLE OVER THE WORD 'POD'

Apple has presented a filing to the United States Patent and Trademark Office against

Sector Labs to prevent it from using the word 'pod'. Apple contended that Sector Labs' video projector, Video Pod, could confuse its customers.

Apple its initial motion claimed that this start-up company has intentionally chosen a mark confusingly similar to its iPod mark in order to capitalize on the fame and goodwill of its established mark.

A decision in this case is expected in January next year.



### WIPO AND OMAN SIGN TECHNICAL DEAL

A technical cooperation deal has been signed between the World Intellectual Property Organisation (WIPO) and the Public Authority for Craft Industries (PACI), Oman. This deal would considerably benefit students of craft training centres in the sultanate.

The agreement was signed in Geneva by Shaikha Aysha bint Khalfan bin Jumayel Al Siyabiyah, Chairperson of PACI and Francis Gurry, the WIPO Director-General. This programme would support the sultanate's efforts to draft a national strategy for intellectual property. WIPO would assist the sultanate by providing technical support to protect its traditional knowledge and organise technical training courses and programmes in IP.

## GLIMPSES OF JUDGMENT ON IPR

### €5.7 Million Award to Louis Vuitton Moët Hennessy for Selling Counterfeited Product by eBay:

**Facts:** In 2008 Louis Vuitton Moët Hennessy (LVMH) and other LVMH companies obtained a victory over trade mark suit before the Paris Commercial Court. The case was originated in 2006 when L V M H c o m m e n c e d proceedings against eBay for using misspelled trade mark LVMH mark through Yahoo and Google search engines. Generally, eBay should have purchase related keywords which includes misspelled terms, to direct web traffic towards their website. The Commercial Court held that while purchasing misspelled terms such as "Louis Viton" and "Wuiton", eBay enabled counterfeiters to flog their wares towards eBay. The Court ruled that US company eBay Inc. and Swiss company eBay International AG was negligent while allowing the

sale of counterfeit goods on their auction sites between the year of 2001-06, and ordered eBay to pay almost €40 million damages to various companies of the LVMH group, including Dior and Louis Vuitton. Thereafter, eBay appealed before the Hon'ble Paris Court of Appeal to reduce down the damage.

**Issues:** Whether eBay was liable for trade mark infringement?

**Judgment:** The Paris Court of Appeal confirmed that eBay did not fulfill the requirements to benefit from the liability exemptions for hosting services providers. The Court expressly had referred to and quoted the decision of the European Court of Justice (ECJ) in LVMH v Google Inc, in which the judges considered that in the

Preamble to the European Union E-commerce Directive (2000/31/EC) where the exemptions from liability established in that directive cover only cases in which the activity of the information society service provider is "of a mere technical, automatic and passive nature", which implies that the service provider "has neither knowledge of nor control over the information which is transmitted or stored". This Appeal Court applied this definition to eBay's activities to rule that eBay could not be considered a mere hosting provider, but was also a broker, thereby confirming the Commercial Court's decisions to prevent eBay from any further direct or indirect trade mark infringement and allowed €5.7 Million damages in favor of LVMH.

## FORTHCOMING EVENT AT ITAG

### 3rd International Conference on IP Valuation—"Brand Valuation and Securitisation of IP Assets"

ITAG Business Solutions in collaboration with "Intangible Business", London is organising the 3rd International Conference on IP Valuation scheduled on **3rd-4th December, 2010** at the **Hotel Marriott\*, Mumbai**.

\* to be confirmed

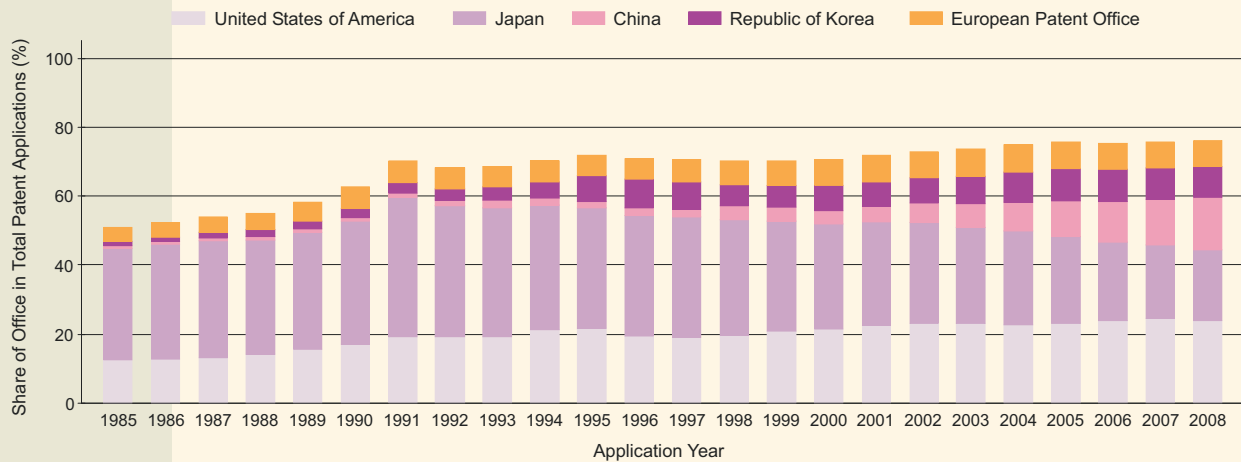
### 4th International IPR Conference, IP-East 2011, Singapore

It is a great pleasure to welcome you to the IP-East 2011, two-day International IPR Conference on "**Economic Value of IPR for Business in Competitive Global Markets**" in **Hotel Raffles, Singapore** on 28th and 29th January, 2011. This event will be a platform for emerging opportunities for IPR in the Global Market.

Please visit <http://www.iprconference.com> for more details

## SNAPSHOT

Share of top 5 offices in total patent applications  
Patent applications



Source: WIPO Statistics Database, June 2010



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