

# NEWSLETTER

**ITAG BUSINESS SOLUTIONS LTD.**

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## Director's Message



E-commerce has been defined as 'the production, distribution, marketing, sale or delivery of goods and services by electronic means.' The World Trade Organization (WTO) has adopted a declaration on global electronic commerce

on 20th May 1998 at Second Ministerial Conference in Geneva, Switzerland, and a work program has adopted by World Trade Organization General Council on 25 September 1998 and the same is under further negotiation as per paragraph 34 of the Doha Declaration adopted on 14 November 2001.

The first official recognition to e-commerce originated from Information Technology Agreement (ITA), which was adopted in the First Ministerial Conference of WTO Members in Singapore on 13 September 1996. The real revolution in e-commerce is with the advent of internet but its crude and early version started with telephone and today it is based upon six different instruments namely Telephone (call centers), Fax, Television, Electronic Payment and Money Transfer System, Electronic Data interchange and the Internet.

The core of cross border supply and services (outsourcing) as BPO or KPO is through the General Agreement on Trade Related Services (GATS), which was adopted by World Trade Organization members on 14 April 1994 and the commitments made by the members for free market access under Mode-I which provides the basic platform for e-commerce and is facilitated through Information Communication Technology (ICT).

Today, practically we are living in a borderless world where a larger part of the commercial transactions are taking place in the form of digital goods just by a click which enables downloading of software, music, database and other relevant information, reports and the payment is also enabled by digital means in fraction of seconds. Therefore, the question of protection of Intellectual Property Rights (IPR) becomes all the more relevant. The Trade Related aspects of Intellectual Property Rights (TRIPS) of WTO and the various Conventions under the aegis of WIPO provide the legal framework to regulate and mandate compliance of various laws by the member countries in order to facilitate the commercial transactions including transfer of technology across the globe through e-commerce. The Internet Corporation for Assigned Names and Number

(ICANN), a non-profit organisation formed in 1998 deals with several issues on internet protocols (IP) and internet domain names on the guidelines of the Uniform Domain Name Dispute Resolution Policy which took effect on January, 1, 2000. There are other organizations such as World Wide Web Consortium (W3C) and Internet Engineering Task Force (IETF), which look after setting of various standards for operation of E-commerce. The complexities sometimes arise on determination of the nature of transaction as to whether it amounts to sales of goods or services and also in relation to the nature of intellectual property transferred in case of sale of a software or music as to whether it is transfer of goods or transfer of intellectual property rights besides the problem of counterfeiting and cyber crimes.

E-commerce or e-business is a strategy for growth by automating the old business models with the aid of technology to maximize customer value. It is the process of buying and selling over digital and improving e-business relationship with existing and potential customers. E-commerce enables creating a business portal where the different buyers and sellers can meet and register their proposal for buying and selling. It is an easy way for a buyer to place orders to the vendors and to make payment by cheque or credit cards and thereby reduce the processing time for business transactions. The daily sale of Dell Computer is around US\$ 20 million through web which is more than 25% of its total sales. E-bay and Amazon.com are the other successful stories of e-commerce. In India, MSTC, a government company handles a turnover of more than US\$ 1 billion through its ecommerce portal including e-auction. E commerce is also eco-friendly as the cost of printing brochure and catalogues are zero.

E-commerce has different types. It may be Business-to-Customer (B2C), Business-to-Business (B2B), Consumer-to-Consumer (C2C) but almost 80% of the e-commerce takes place through B2B model. Almost 2% of all retail sales in Canada and 6% in US take place through e-commerce valuing approximately US\$ 35 billion in Canada and US\$ 150 billion in US annually. E-commerce transactions are secured by various software and network devices, viz. Firewall, Encryption, Digital Certifications and Digital Signatures. ITAG is in the process of providing whole range of IPR services through its e-commerce portal.

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

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A book is allowed to criticize a holder of a trademark and mock a trademark as well - **Floyd Abrams quotes**

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## IPR NEWS - INDIA

### GI TAG FOR PHULKARI

Phulkari, a traditional embroidery art practiced by women in the state of Punjab, India has been granted the geographical indication (GI) certificate. This GI is the first for Punjab and will be relevant for Phulkari work being done in Haryana and Rajasthan. Traders and manufacturers dealing with this established art will have to get themselves registered to be able to transact in this art work.

This GI for Phulkari acquired after five years of legal battle was filed by the patent information centre (PIC) of Punjab State Council for Science and Technology in March 2005.

Thereafter an opposition was filed by a Mumbai-resident claiming that a GI status for Phulkari would affect people earning a living through this art work outside Punjab. After five years Punjab won the legal battle and claimed its first GI status. The patent information centre intends to register a logo, hologram or package to distinguish the product from others.

### COPYRIGHT CLAIM OVER 'KRISHNA' REJECTED BY HC

The Delhi high court has vacated a stay on a private manufacturer from using the word "KRISHNA". The court mentioned that a copyright can not be claimed on the name of a Hindu God or deity.

The Judge disposed of a trademark infringement suit allowing a butter producer, 'Parul Food', to use the name of Krishna with changes in font and colour. The HC had imposed a stay on its use on a suit filed by Bhole Baba milk food industries, which alleged that Parul Food was using a deceptively similar name and thus causing commercial loss.

The Court reminded both parties that the name KRISHNA is "as common as the word 'John' used in Western countries" and "should not be used for commercial gains" in our country. Parul Food agreed to change the name of KRISHNA by changing the packaging and the colour scheme along with the depiction of the word.

### US FDA NOD TO GLENMARK'S MALARIAL DRUG

The USFDA has approved Glenmark Generics' (the subsidiary of Glenmark Pharmaceuticals) abbreviated new drug application (ANDA) for Atovaquone and Proguanil hydrochloride to be used for treatment and prevention of Malaria.

Atovaquone and proguanil hydrochloride tablets are the generic versions of GlaxoSmithKline's (GSK's) Malarone tablets. Glenmark had settled a lawsuit with GlaxoSmithKline over patent actions relating to Atovaquone and Proguanil in April 2010. According to the agreement Glenmark will be able to market and distribute the tablets under royalty-bearing license from GSK in the 3rd quarter of 2011.

The US health regulator's approval allows Glenmark Pharmaceuticals to market atovaquone and proguanil hydrochloride tablets in the American market.

Sixty seven generic products are being marketed by Glenmark in the US market and the company has filed 39 ANDAs with the US FDA for approval.

## IPR NEWS-AROUND THE WORLD

### COLLECTIS ACQUIRES EXCLUSIVE LICENSE TO TAL EFFECTOR PATENTS FROM UNIVERSITY OF MINNESOTA

Collectis, the French Genome engineering specialist, and the University of Minnesota have signed an exclusive license agreement. This would grant Collectis the worldwide right to use inventions related to TAL effector-mediated DNA recognition and cleavage. The University of Minnesota and Iowa State University had developed this innovative

approach for the targeted modification of genomes.

The exclusive license granted to Collectis covers all uses of the technology in any field. The technology which corresponds to Collectis' proprietary meganuclease technology, has shown promising results in Genome engineering relevant to a broad range of applications including agriculture, bioresearch and human therapeutics.

### ASTRAZENECA SUED OVER ANTI-DEPRESSANT PATENT

Teva Pharmaceutical Industries, the Israeli generic drug maker has initiated a lawsuit against AstraZeneca in London relating to its European patent for anti-depressant Seroquel.

Seroquel is a drug used for the treatment of various diseases, including schizophrenia, bipolar disorder, depression and general anxiety disorder. AstraZeneca would defend the Seroquel patent as valid and

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A patent is property carried to the highest degree of abstraction—a right in rem to exclude, without a physical object or content. — Oliver Wendell Holmes ”

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

enforceable.

Teva Pharmaceutical has sought revocation of the European patent for Seroquel, developed by AstraZeneca.

### TIME WARNER'S DC COMICS LOOSE SUPERMAN TRADEMARK DISPUTE

The producer of Superman, Batman and Wonder Woman books - Time Warner Inc.'s DC Comics unit has lost a Swiss trademark challenge involving its diamond-shaped Superman shield logo.

DC Comics, the proprietor of the "Superman" trade marks and the creator of many universally recognized heroes in human history had objected to a similar logo of a Zurich-based event organizer, FAF. The Swiss Federation of Intellectual Property has ruled that a diamond-shaped shield logo containing the letter "f"

filed by the event organizer didn't infringe the Superman trademark.

Although DC Comics had filed evidence for foreign registrations of the "S" and press clippings concerning the "Superman" brand in Switzerland, it was insufficient to establish that the "S" mark was well known. Swiss authorities ruled that the mark was not adequately well known in Switzerland to justify protection and it was not registered in Switzerland.

### GI STATUS FOR COSTA RICA BANANAS

The Costa Rican bananas have acquired the geographical indication status with their national government. The national banana corporation, Corbana had been working on this for three years with officials from the national registry and the Universidad

Nacional looking at all aspects of banana production in Costa Rica including its history and the production process.

Now the banana corporation would make efforts to register the Costa Rican bananas as geographical indication in the EU registry. This would be facilitated by the association agreement signed between Costa Rica and the EU last year. Costa Rica is the second biggest banana exporter in the world.



## GLIMPSES OF JUDGMENT ON IPR

### UNIVERSITY RESEARCHER AWARDED \$700,000 AS A CO-INVENTOR

**FACTS:** The plaintiff was a researcher working in a collaborative research program between École Polytechnique de Montréal (EPM) and McGill University (MU). Both the universities have their own Intellectual Property (IP) policies. The plaintiff performed some of the work at EPM, using its facilities and equipment, under the supervision of another EPM researcher.

In 1996 a report on the invention was submitted by the researchers including the present plaintiff to MU and the University had identified them as the inventors and agreed to share revenues generated from the invention with EPM. In 1997 MU assigned its rights to Polyvalor which is a limited partnership established to

fund the commercial development of inventions made at EPM. EPM has a 50% stake in Polyvalor. In 2001 the plaintiff came to know that a company had been established to commercialize the invention, with MU and Polyvalor giving shares in the NASDAQ-listed company as payment for the grant of license rights in the invention. Thereafter, the plaintiff reached an agreement with MU for a share of the revenue made from the commercialization of his invention. When the plaintiff approached Polyvalor, it refused to settle. Issue was raised over the rights and obligations of a university over inventions made by its academic staff. The plaintiff claimed his share from the revenues generated by an

invention he had co-invented. Previously, the lower Court held that the plaintiff's share should be calculated based on the revenues received by Polyvalor, which should have granted the plaintiff \$1.4-million.

**ISSUE:** Whether the plaintiff has a right to a share of the revenue generated by the selling of shares of a company whose business is based on the plaintiff's invention?

**JUDGMENT:** The Quebec Appeal Court held that the plaintiff is entitled to \$715,000, plus interest, after it found that the IP policy formulated by EPM applied not only to inventors who are its employees but also to inventors who use the school's resources or services.

## EVENT AT ITAG

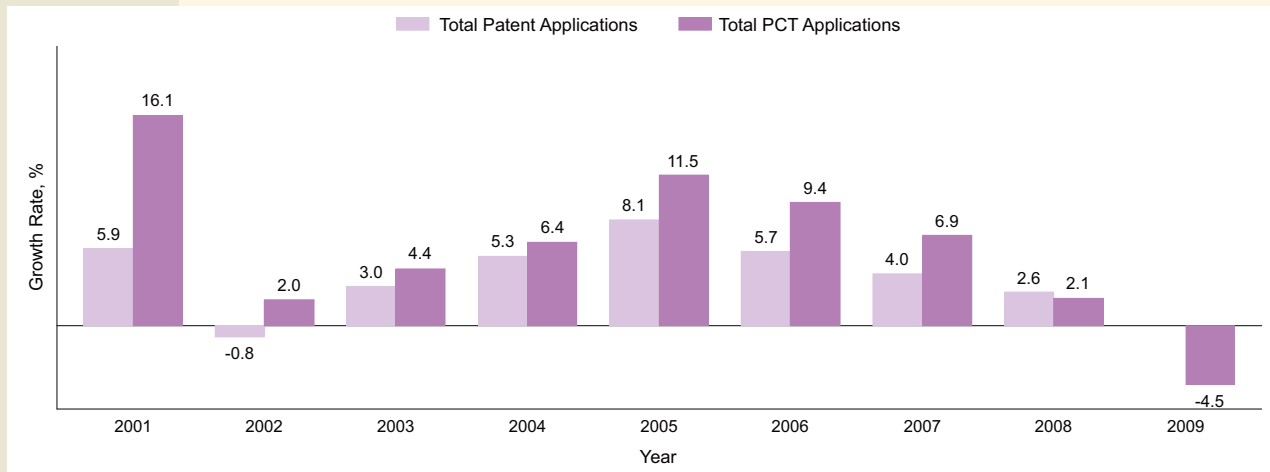


Mr. Dai Seki, Mr. Ryuichi Honda and Mr. Reiji Sameshima from NGB CORPORATION, one of the Global Leader of IP Solution services in Japan, visited ITAG on 13th January, 2011. NGB Corporation provides intellectual property prosecution, litigation, and post-issue support services for foreign patents, designs, and trademarks in Japan. ITAG Team demonstrated a presentation to them.

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## SNAPSHOT

## Patent application growth rate (%)



Source: WIPO Statistics Database, June 2010



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