

NEWSLETTER

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Director's Message



Competition law puts a break in the monopolistic trend of the market economy while intellectual property laws allows monopoly in the technological and innovation field for a limited period as a token of reward to the creative skill of the human

being. However, a trade off is necessary between the two laws and for that reason section 140 of the Indian Patent Act 1970 prohibits certain conditions in the technology transfer agreement which are of monopolistic in nature. On the other hand section 3(5) of the Indian Competition Act 2002 allows reasonable conditions to the monopolistic and restrictive trade practices on the basis of the protections allowed under all different IP Laws for copyrights, trademark, design and patent laws. However, the competition law does not define as to what are the reasonable conditions and therefore its meaning has to be derived from the decided case laws and the interpretations available from various statutes.

The Indian Competition Act which was enacted in 2002 and amended in 2007, is being brought into force in a phased manner, primarily to regulate the following:

- Anti-competitive Agreements (Section 3); (effective from 20th May, 2009)
- Abuse of Dominant Position; (Section 4); (effective from 20th May, 2009) and
- Combinations (Section 4 & 5); (effective from 1st June 2011)

There are provisions in the international conventions and in the WTO framework to deal with monopolistic practices. For example: Article 3 (k) of Trade Related Intellectual Property Rights (TRIPS) allows member countries to deal with anti-competitive practices while granting compulsory licensing to the local manufacturers on such terms and conditions as it deems fit. There are similar provisions in Article 40 of the TRIPS Agreement which allows member countries to regulate the licensing practices or conditions pertaining to IPR which restrain competition and which impede the transfer and dissemination of technology.

However, in the present world, where the technology and innovation is moving at a fast

speed, it becomes difficult for the laws and the jurisprudence to keep pace with the changes in the technology. The recent controversy arising out of the Google Book Settlement case of setting up of a Universal Digital Library as decided by the US Circuit Judge on March 22, 2011 by disapproving the amended settlement agreement (ASA) between Google Inc. and the Author's Guild consisting of copyright owners of several books from around the world is an eye opener.

The issue of counterfeiting and piracy of IP rights in the music industry has become very challenging and threatens the very existence of the IP owners' legal rights especially due to advancement of digital technology.

There are 18 subcategories under the broad category of Digital Technology namely: Digital Audio, Broadband, Digital Broadcasting, Computing, Digital Media, Digital Press, Digital Display Connectors, Electronic Publishing, Digital Electronics, Digital movie cameras, Digital Photography, Digital Radio, Software-defined, Radio, Digital subscriber line, Digital Systems, Digital Television, Digital typography, Digital Video Recorders. Digitized information is recorded in binary code of combinations of the digits 0 and 1, also called bits, which represent words and images. America's antitrust laws were born out of the industrial revolution. Opponents of the antitrust laws argue that whatever merits the antitrust laws may have had in the past they have no place in a digital economy. Rapid innovation makes the accumulation of market power practically impossible.

Information Technology Act, 2000 do provide for certain relief against cyber crimes but it remains ineffective in practical scene to deal with the problem. There is a need for awareness and severe punishment with the cooperation of each nation to deal with the menace of counterfeiting and piracy.

Therefore there is a need for convergence of technologies especially in the digital market, the antitrust regulations, IP Laws, the innovators on the one hand and the law enforcing agencies on the other hand.

- Dr. D. R. Agarwal

IPR NEWS - INDIA

KOHINOOR FOODS SIGNS JV WITH MCCORMICK

Rice exporter Kohinoor Foods has signed a joint venture with McCormick, a US-based spice maker for marketing of 'Kohinoor' branded basmati rice and other food products in India.

McCormick would invest about Rs 516 crore (USD 115 million) for 85 per cent stake in the JV, named, Kohinoor Speciality Foods India Pvt. Ltd. Kohinoor Foods would have 15 per cent stake in the venture. A modern factory for packaged food products with 275 employees will function to source, process and package basmati rice and other food products.

This is McCormick's third investment in India aiming to accelerate growth of the US spice maker in the Asia/Pacific region. The completion of the agreement is expected later in 2011 subject to regulatory approvals in India.

HYDERABAD TO HOST UN CONVENTION ON BIODIVERSITY

Hyderabad, the Andhra Pradesh capital will host the 11th Conference of the Parties (CoP) to the UN Convention on

Biological Diversity (CBD) and the sixth meeting on the Cartagena Protocol on biosafety from 1-19 October 2012. Environment Ministers and Forests Ministers of about 194 countries International organizations like World Bank and ADB will be attending the Conference.

India will be hosting the largest international conference ever at the Hyderabad International Convention Centre (HICC). This Conference would benefit the State by boosting tourism, providing an opportunity for exhibition of handicrafts and forest based products and it will put Hyderabad on the international map as the declarations from the conference would be known after the city.

The CBD is an international treaty for the conservation of biodiversity, sustainable use of the components of biodiversity and impartial sharing of the benefits derived from the use of genetic resources.

The Cartagena Protocol on Biosafety is a subsidiary agreement to the Convention. It seeks to protect biological diversity from the impending risks posed by living modified organisms resulting from modern biotechnology. Till date, 159 countries plus the European Union have ratified

the Cartagena Protocol.

The slogan for the CoP-11 is 'Prakruthi Rakshathi Rakshita', which means 'Nature protects if she is protected'.

DELHI MAN HELD FOR COPYRIGHT VIOLATION

Vinod Kumar Sharma, a 51-year-old man was arrested in south Delhi's Green Park for copyright violation. He was earlier allotted a contract for photocopy work at the AIIMS in the year 1992 and his contract expired in 1998.

This experience as a photocopy machine attendant at a hospital helped him to set-up a thriving business of copyright infringement. A search on his residence in Green Park's X block yielded pirated medical books, both imported and Indian, and infringed material stored on CDs estimated to be worth more than Rs 10 lakh. He used to photocopy expensive original medical science books and sold them to medical students and doctors at relatively lower prices.

An attorney, specially-appointed by some Delhi-based publishing houses notified this matter to the police. Arrested under the copyright act, Sharma used to supply these books to several other adjacent states also.

IPR NEWS-AROUND THE WORLD

GOOGLE SUED FOR TRADEMARK INFRINGEMENT

Google the search engine giant has been sued by Isys Technologies, a patent management firm claiming trademark infringement.

Isys Technologies claims that the terms Chromebook and Chromebox, the brand names of devices that use Google Chrome OS are copied from its

Chromium PC brand.

The lawsuit filed in the US District Court for the District of Utah in Salt Lake City, sought a temporary restraining order that prevents Google from marketing devices based on Chrome OS as 'Chromebook' and 'Chromebox' that are to be launched on June 15.

ISYS said it holds patents for the Xi3 Chromium computer and filed a trademark

registration for ChromiumPC with the U.S. Patent and Trademark Office last June. Isys which claims to have been using, marketing, promoting and selling ChromiumPC Modular Computers for more than 18 months, has also named Google's partners Amazon, Acer, Samsung and BestBuy, in the lawsuit.

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

ASIA PACIFIC AND TUI CLASH OVER 'TUI' TRADEMARK IN NEW ZEALAND

Asia Pacific Breweries Ltd.'s DB Breweries unit has requested New Zealand's high court to permit the registration of its trademark for Tui beer in several categories.

Beer giant DB Breweries had approached to the High Court over a trademark dispute with Tui, a German tourism company with the same name as one of DB's beers. DB produces and sells the popular Tui beer since 1889. The German company holds several trademark registrations under that same name.

The Intellectual Property Office of New Zealand (IPONZ) recently rejected DB's application to register trademarks under the Tui name in several new categories and also rejected DB's application to have four

of Tui AG's trademarks registrations revoked.



SKYPE SUED FOR PATENT INFRINGEMENT IN US

Skype Technologies, the Internet video phone company was sued by Via Vadis, a Luxembourg company alleging infringement of two patents for accessing and managing data in computer systems.

Via Vadis in the complaint filed in the federal court in Wilmington, Delaware has sought unspecified damages from Skype. It is claimed that Skype peer-to-peer VOIP communications systems, methods, products and services infringe Via Vadis's

patent rights. Earlier Skype was advised of infringement of Via Vadis's patented technology.

Via Vadis had filed a similar lawsuit in Luxembourg in April after settlement talks with Skype failed. Via Vadis also sued Skype in Germany in January over a patent and filed a request with authorities in Luxembourg to inspect Skype's offices. Skype's request of the search order is still pending.

Microsoft has acquired Skype for \$8.5 billion, which has 170 million active users, to connect the Internet calling service to its Outlook e-mail, Xbox game console, Windows mobile phone and corporate-phone software.



GLIMPSES OF JUDGMENT ON IPR

Fractus Won \$23 Million In Antenna Patent Infringement Suit Against Samsung

Facts:

The Plaintiff 'Fractus' a Spain based company which sells antennas for mobile phones had accused the Defendants 'Samsung Electronics Co. Ltd., et. al' of infringing four of its patents covering mobile phone antenna technology. The four patents in issue are owned by Fractus. Samsung contested the allegation of infringement as well as the validity of the claims of those patents. The evidence produced by Fractus revealed that Samsung destroyed

documents during the trail and it was also proved that Samsung had not taken any prior patent license for antenna technology from Fractus. The Spanish Company pleaded for a royalty of 1 cent per phone before the Hon'ble Court.

Issues:

Whether patent owned by Fractus is valid and infringed by Samsung?

Whether patent infringement of Samsung is willful?

Judgment:

The Jury found that the four patents owned by Fractus are valid as Samsung failed to invalidate those patents. Based on clear and convincing evidence produced by Fractus, the Jury also found Samsung liable for infringement of the said four patents and pronounced \$23 Million in favor of Fractus. Further, the Jury pronounced that the patent infringement of Samsung was willful.

EVENT AT ITAG

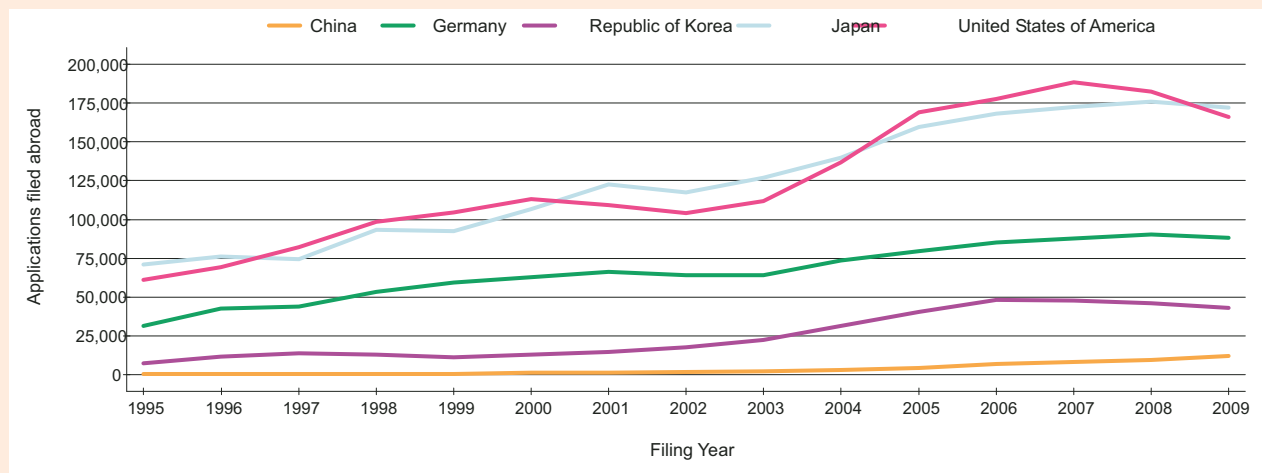
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LEXITAG™

LEXITAG, the LPO wing of ITAG consisting of 25 inhouse team of lawyers from all over the country, met at New Delhi and at Secunderabad for brainstorming session. We plan to extend our services for litigation support in domestic market and paralegal in the international market in near future as a full fledged law firm.

SNAPSHOT

Trends in patent applications filed abroad



Source: WIPO Statistics Database

Note: Data are missing for some origins. The year 2009 is based on estimates.



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