

# NEWSLETTER

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## Director's Message



There is an increasing trend for providing fiscal and tax incentives for scientific research and development. It has also been observed that Government of India has been increasing the fiscal incentives for the Capital and revenue expenditure incurred either directly for in-house research or by way of contribution to recognized scientific and research institutions. It is further evident from the Union Budget Proposals of the Hon'ble Finance Minister in the Finance Bill 2011 where the Contribution to National Laboratories, IITs Universities and other Approved Scientific Research Institutions have been increased from the existing weighted deduction of 175% to 200% u/s. 35(2AA) of the Income Tax Act, 1961. In other words if an assessee pays Rs.5 lakhs to any of IITs in India in a financial year, he will get a deduction of Rs.10 lakh while computing his taxable income and thus if he is under the tax bracket of 30%, he gets the tax benefit of Rs.3,00,000/- on Rs. 5,00,000/- spent by him. This is a substantial benefit.

In the last year's budget presented on 26th February 2010 a similar tax concession was allowed for in-house research by the companies engaged in manufacturing drugs, pharmaceuticals, electronics equipments, computers, telecommunication equipments, chemicals etc., by increasing the weighted deduction from the existing limit of 150% to 200% under section 35(2AB) of the Income Tax Act, 1961.

India spends less than 1 percent of its GDP on research and development as against the average of 3 percent by most of the developed countries. However there is a growing need for encouraging more research activities in the country if we really desire to be an important economic power in the present era of knowledge and innovation. The National Innovation Commission should take some immediate measures including persuading Government of India to pass the National Innovation Bill pending for long in the Indian Parliament. Innovation is the engine of knowledge economy in today's world and R&D is the key ingredient of the innovation process. There is also a need for providing direct financial support in the form of subsidies apart from the fiscal (or tax) incentives without

discrimination between the private and the public sector.

Ministry of Science and Technology (S & T) has various departments including Department of Bio Technology (DBT) Department of Science and Technology (DST) and Department of Scientific and Industrial Research (DSIR) apart from several autonomous bodies, Councils, PSU, Joint Ventures and other approved Institutions for conducting scientific research. Thus while the basic scientific research activities are undertaken by the Ministry of Science and Technology (S & T), the protection of the research which is in the form of Patents are under the Ministry of Commerce under the Department of Industrial Policy and Planning.

There is thus a gap between the basic research or the intellectual Property (IP) activities and the protection or safety of the research in the form of intellectual property rights (IPR). This is resembled in the poor level of human infrastructure at the Indian Patent Offices. The number of pending patents were 83686 as on March 8, 2011 as per the statement made by Commerce Minister for State in the Lok Sabha and considering the scarcity of the examiners in the Indian Patent Office, with an awefully low level of filing of the number of applications in India as compared to advanced countries including China and the dormant position of India as International Search Authority witness some fundamental weakness in our Patent System.

On the one hand, we are striving for innovation to make our Country globally competitive, but on the other hand, we are quite indifferent in making our country strong in the Patent protection and enforcement. It would be worth mentioning that counterfeiting and piracy of the innovations and creativity of human genius is a burning problem in India and around the World.

The estimated value of counterfeiting at global level is likely to reach US\$ 1.7 trillion by 2015 as brought to notice before the Sixth Global Congress on combating counterfeiting and piracy in Paris, France on February 2-3, 2011 under the aegis of WIPO, World Customs Organisation (WCO), Interpol, International Chamber of Commerce (ICC) and the International Trade Mark Association (INTA), that should act as an eye opener for the World Community.

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

## IPR NEWS - INDIA

### JOY CREATORS RESTRAINED FROM USING P&G'S 'TOTAL EFFECTS' TRADEMARK

The Delhi High Court has held back Joy Creators from using the term 'Total Effects' on its products. The Court found that the words were similar to Procter & Gamble's (P&G) registered trade mark- Olay Total Effects.

The multinational company had filed a petition seeking directions to Joy Creators to not use its trade mark 'Olay Total Effects' or any other deceptively similar mark and questioned their unfair intentions to benefit from an established brand. Restraining Joy Creators from manufacturing, selling or marketing age defying foundation or any other product with the term 'Total Effects', the court mentioned that these words were the essential component of Procter & Gamble's trade mark and that Joy Creators had picked up two of the three words for its trade mark.

According to the court, neither deletion of a part of a registered trademark nor the prefix or suffix to it would authenticate the use of the registered mark by an unlicensed user.

P&G is a global company supplying products in the

areas of pharmaceuticals, cleaning materials, personal care and pet supplies in more than 80 countries round the world.

### LT FOODS AND AMIRA FOODS IN LEGAL BATTLE OVER COPYRIGHT

LT Foods, engaged in the manufacture and sale of basmati rice under the brand DAAWAT is caught in a legal dispute with Amira Foods, the largest privately held rice exporter from India.

Amira Foods which has a copyright for its distinctive logo on their product and sells rice through various brands including Indigo and Good Health has alleged that LT Foods has illegally copied the symbol and has been using it for the past few years. The rice exporter had approached the Patiala House Court alleging that their business was at risk. Amira Foods has also filed for claims against LT Foods for copyright infringement

Accepting the plea, the court said that Amira Foods is entitled to ex-parte ad interim protection for infringement of the copyright and in an interim order, has directed LT Foods to halt selling, advertising, soliciting, displaying their products using a logo similar to that of Amira Foods till further orders. Despite the stay orders by the court LT Foods is still using

the logo of a Lady Imagery. Products belonging to LT Foods, worth about Rs 100 crore, bearing the controversial logo have been seized. LT Foods has challenged the stay order in the High Court.

### GOVERNMENT PROPOSES COMPULSORY E-FILING OF PATENTS

The Indian government in its effort to bring transparency and efficiency in the filing of patents, has proposed to amend the Patent Rules and make e-filing of applications compulsory. The e-filing of patent & trademark applications was launched on July 21, 2007.

The commerce ministry's Department of Industrial Policy & Promotion (DIPP) has prepared a draft proposal and asked sought suggestions from stakeholders to amend the Patents Act 2003.

The attempt is to uphold the accuracy of the patent data along with the related certificates provided by the Patent Office.

The government also proposes to provide proper assistance to patent applicants who may face problems owing to mandatory e-filing, at all its patent offices.

Stakeholders have been given 45 days to make their suggestions to the department.

## IPR NEWS-AROUND THE WORLD

### FORMULA ONE GROUP LOOSES F1 TRADEMARK

A European court has rejected Formula One Group's (FOG) attempt to get exclusive rights to the 'F1' acronym as a trademark. The FOG had opposed to Racing-Live's registering 'F1-Live' trademark. The Formula One Licensing (FOL) - the commercial rights arm of the Formula One Group was seeking exclusive rights to

'F1', 'F1 Formula 1', 'F1 Racing Simulation', 'F1 Pole Position' and 'F1 Pit Stop Cafe'.

The General Court in Luxembourg, the 27-nation EU's second-highest court, said that "Formula One Licensing" cannot prevent the registration of a European Community trademark containing the words 'F1 LIVE' and there is no possibility of confusion between the mark applied for and Formula One

Licensing's marks.

The dispute dates back to 2004 when the Racing-Live, a motor sports website based in Montpellier, France had sought to register 'F1 Live'. The FOG counteracted on this move and issued legal proceedings against the registrations and obtained a favorable decision from the trademark agency OHIM. Racing-Live appealed the decision and the same OHIM changed its decision in

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

favor of the company which was later bought by Walt Disney Co.'s ESPN. Racing-Live, won its bid to register an image with the words F1-Live in it as a trademark.

### CORNISH PASTY NAME GIVEN EUROPEAN PROTECTED STATUS

The term "Cornish pasty" has been given protected status by the European Commission. Pasties made only in Cornwall from an established traditional recipe can now be called "Cornish pasties", according to the Cornish Pasty Association (CPA).

Authentic Cornish pasties will now be marked with a special logo because of the Protected Geographical Indication (PGI) tag. Though Cornish pasties could still be baked elsewhere in Britain but they should be prepared in Cornwall to be called Cornish pasties. By protecting this British food

legacy, the local employment is safe-guarded as many people in Cornwall are involved in the pasty industry, from farmers to producers. Cornish clotted cream and the Cornish sardine are the other items from Cornwall which have already been protected.

In its PGI application, the CPA had to come up with the "genuine" Cornish pasty recipe mentioning that an authentic pasty should have a distinctive 'D' shape and be crimped on one side, not on top and the filling should have chunks made up of uncooked mince or chunks of beef with Swede, potato and onion and a light seasoning and that the pasty should be slow-baked.

### INTEGRATED PATENT EXAMINATION BETWEEN AUSTRALIA AND NEW ZEALAND

IP Australia and IP Office of New Zealand (IPONZ) have

announced a new initiative to combine their patent examination services. Through this program both countries would have a single patent examination process.

This initiative, which is part of the Single Economic Market Outcomes framework, intends to make things easier for Australian and New Zealand businesses. It is expected that the integration would result in savings in professional fees and patent protection costs. This would also help the innovators in getting their invention to market more speedily with a faster examination process. Reliable and high quality patent examination is also anticipated through this scheme.

IP Australia and IPONZ are working on precise particulars for each of the IP outcomes to capitalize on the benefits for business.

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## GLIMPSES OF JUDGMENT ON IPR

### Federal Circuit Reversed Invalidation Judgment of A Radiation Patent (Hologic, Inc. v. SenoRx, Inc., (Fed. Cir. Feb. 24, 2011))

#### FACTS:

Hologic, Inc. (Plaintiffs-Appellants) holds U.S. Patent 6482142 ('142 patent') relating to balloon brachy-therapy, a type of radiation therapy for cancer treatment in which a balloon is inserted into the body at or near a tumor or other proliferative tissue disease site. Hologic, Inc. in a suit before the US District Court for the Northern District of California has alleged that SenoRx, Inc. (Defendant-Appellee) is infringing its patented technology. The company claims that SenoRx's balloon brachy-therapy device, the Contura Multi-Lumen Balloon infringes its 142 patent and its parent patent. SenoRx conceded infringement of claims 1 and 8 of the 142

patent, but argued that the asserted claims were invalid.

The District Court held a hearing and issued its claim construction order, citing that invalidity exists in the claim 1 of '142 patent' and did not allow Hologic's proposed claim construction further. Thereafter, an appeal rises from the decision of the District Court, granting summary judgment of invalidity of claim 1 of the '142 patent'.

#### ISSUE:

Whether the District Court's invalidity finding was based on an erroneous claim construction?

#### JUDGMENT:

The Court of Appeal for the Federal Circuit finds that while

the location of the asymmetry of the radiation sources was not explicitly recited in the claim, asymmetry is a relative concept that must be read in view of the specification. In particular, the court pointed to the "summary of the invention" and other parts of the specification, and determined that the patentee clearly contemplated that the asymmetry referred to displacement from the longitudinal axis of the balloon.

The Court further held "because the District Court's invalidity finding was based on an erroneous claim construction", we reverse and remand the judgment.

## UPCOMING EVENT AT ITAG



# GLOBAL IP CONVENTION, 2011

28-30th April, 2011, Hotel LaLiT Ashok, Bangalore

## -- : HIGHLIGHTS OF THE CONFERENCE : -

- ◆ IP BUSINESS MODELS, INNOVATION AND STANDARDIZATION
- ◆ OPEN INNOVATION
- ◆ TECHNOLOGY TRANSFER, LICENSING & COMMERCIALIZATION
- ◆ PATENT STRATEGY & INFRINGEMENT ANALYSIS
- ◆ OPTIMISING PHARMACEUTICAL PATENTS LIFECYCLE
- ◆ PATENT LITIGATION AND ENFORCEMENT
- ◆ IP VALUATION
- ◆ PATENTABILITY OF BUSINESS METHODS
- ◆ GREEN TECHNOLOGY
- ◆ PATENT LITIGATION ISSUES .....AND MANY OTHER TOPICS

## TOP 5 REASONS TO JOIN GLOBAL IP CONVENTION, 2011

1. Learn About Methods And Trends
2. Meet The Top Industry Experts
3. Great Networking Opportunities
4. Amazing Speaker Lineup
5. Versatile And Latest Issues To Be Discussed

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## EVENT AT ITAG



Dr. Vinit Bapat of Sangam IP, our Business Partner of Tokyo, Japan and Mr Eiji KAMINO of Sony Corporation, Japan visited ITAG Kolkata office on 21st February, 2011 in a Business Meeting.

"ITAG TEAM EXPRESSES ITS HEARTFELT SYMPATHY AND CONDOLENCES TO THE VICTIMS OF EARTHQUAKE AND TSUNAMI AT NORTH EAST JAPAN ON 11TH MARCH, 2011."



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