



# NEWSLETTER

## Director's Message



The intellectual property consists of a bundle of rights and each one of them has distinctive features as defined under different IP laws. The common binding force for a harmonious construction and for uniformity in application is brought about by TRIPs agreement which is part of WTO laws. Trade mark and GI mark bring distinctiveness to the trade name or the product name either by a logo or colour or sound or sign, the GI mark represent the geographical distinctive quality

of a product. A product can bear both the trade mark as well as a GI mark. While a trade mark belongs to an individual or a corporate the GI mark belong to a community or an association and is allowed to be used by all the members of that association or belonging to that geographical location and having some trade relationship with that product. A company or a business enterprise can have the trade mark registration for its different products and services for one or for different class of goods and for domain names. However a brand is something different than a trade mark. While a trade mark is an IPR, the brand is an intellectual property with commercial value which is much wider in its scope including goodwill built up on the basis of standards and quality of the product as well of the organisation developed over a period of years. A trademark can have global application under Madrid protocol. However there is no global recognition of a trade mark and it has to be registered in each individual countries except in cases of some regional co operation.

The patent and design rights are a little different than the trade mark and geographical indications as they relate to invention or technology and the shape or design of a product. The distinctive requirement for registration for both of them is that the first disclosure has to be to the Patent and Design offices of the respective national offices. USPTO allows different kinds of patents being design patent or utility patent but in India a patent is only with respect to an invention which has an industrial application. In India one can have a copy right for a computer program unless it forms part of the hardware whereas in USPTO, one can have patent for software as well as for a business method. A patent can be granted for a new product as well as for a new process. An invention can be for a technical innovation or something of economic significance and can be patented if it satisfies the other two conditions of novelty and commercial or industrial applications. There is patent co-operation treaty (PCT) convention for international filing of a patent and Hague convention for international filing of a design application. Similar to trade mark, there is no global patenting or a global registration for a design. The conventions are for facilitations for priority claims and not for granting global registrations except for the regional co-operations.

A copy right on the other hand consists of various rights of an individual with respect to art, music, songs, play or dramatic performance or a literary work. The copy rights are generally valid all over the world and no registration is necessary though it can be registered. The copy rights are governed by Berne convention while other industrial nature of IPs being patent, design and trademarks are governed by Paris convention. A single product can have all or some of the IPs such as patent for the invention, design for the outer shape, and trade mark for the logo or the trade name and copy rights for the art or the literature relating to the product. In case of an electronic device it can also have the integrated circuit and the lay out design.

It is very important to obtain protection of all different kinds of IPRs from being copied or counterfeited by others. The strength of business competitiveness depends on the level of protection for the intellectual property of an organisation. The IPRs can be traded and transferred just like any other kind of tangible property and one can gain by selling or licensing the IPRs. The implications of stamp duty, VAT, service tax, customs, excise and income tax are equally applicable for the transfer of an intellectual property rights and hence proper accounting and valuation of IPR is also essential. Similar to the maintenance requirement of a tangible property an IPR has to be properly maintained by timely renewals as required under law and has to be managed to realise full commercial value. Thus the distinction between a tangible property and an intangible property is limited and proper attention has to be adhered to in all transactions involving mergers, acquisitions, transfer pricing, due diligence while dealing with an intellectual property. Thus IPR which is in the form of bundle of rights involve bundles of obligations and ITAG provides solution for both the rights and obligations in relation to all different kinds of IPRs.

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**Dr. D R Agarwal**

## IPR NEWS - INDIA

### Deadline to clear pending cases

The Indian Patent Office has decided to dispose all pending patent and trademark cases by 31st March, 2009 on which final hearing has been held.

At present, a number of opposition cases both under pre-grant and post-grant are pending for disposal after final hearing with Joint, Deputy and Assistant controllers leading to complaints by aggrieved persons.

Though the all-India numbers of the pending cases were not disclosed, but an official said that in Delhi alone there are roughly 154 cases.

### Training for cops in matters of piracy

A training programme for police officers of Maharashtra was organized by Indian Music Industry (IMI) Anti Piracy Wing to raise awareness about intellectual property Rights and the importance of its protection. IMI discussed the importance of creating awareness about Copyright laws amongst police officials that would be helpful in their day to day activities. Indian Music Industry (IMI) represents 75 per cent of the legitimate recording industry in India. The IMI intends to liaise with government authorities on matters relating to Copyright. It also plans to organize and conduct anti-piracy operations.

### New Standard for MNC Drug Prices

Government of India is going to finalize norms for monitoring prices of costly imported patented medicines for diseases such as diabetes, arthritis, obesity, cancer and heart diseases. Since there are no means of verifying production cost, keeping a check on prices of imported medicines are difficult though they come under price control. Prices of imported for identified diseases will be negotiated on the basis of the same medicine in other markets and the cost of production estimated by it under the new norms. "The move will ensure that essential medicines remain affordable in the country," a government official said.

This move would be beneficial to the consumers as big pharma companies introduce their patented medicines in the country at high prices and with a 20-year patent protection resulting in monopoly pricing. The proposed norms for patented drugs would ensure that essential medicines not available here due to patent protection are affordable.

### Novel licensing model by Gilead

American bio-pharmaceutical company Gilead concluded unique generic licensing deals with 10 Indian pharma firms to distribute its HIV drug Viread. This licensing model would facilitate anti-AIDS drugs at affordable prices in India and 94 other resource-limited countries.

According to these non-exclusive licences manufacturers can sell generic versions of the key anti-AIDS drugs Viread and Truvada, charging a five per cent royalty on sales of finished products. The agreements include a full technology transfer, to enable faster ramp-up of production of high quality product, and allow the generic companies to manufacture commercial quantities of both Active Pharmaceutical Ingredient (API) and finished products

Furthermore, Gilead has also appointed Piramal Healthcare as its distribution partner for selling branded Viread (Tenofovir Disoproxil Fumarate) in India.

"Availability of the branded and generic version of Viread at an affordable price is likely to greatly benefit India's AIDS-afflicted. The drug is awaiting marketing approval with the Drugs Controller General of India," said Gregg Alton, Senior Vice President and General Counsel of Gilead.

### Dutch Government asks for clarity on EU rules

The Dutch government requested the European Commission (EU) for a review of the EU Customs regulations after the seizure of high blood pressure drugs from India on the charges of patent infringement while transiting through the Dutch ports.

Dutch Foreign Trade Minister Frank Heemskerk who visited India recently, said that protection should not be used as an excuse for hampering the distribution of generic drugs among the poor people across the globe. "We have asked the EU to look into the interaction between the TRIPS agreement, which the Netherlands fully supports, on one hand, and the European Customs regulations on the other hand" Mr. Heemskerk said.

The issue of seizure of Drugs was strongly criticized by India and Brazil at the World Trade Organization stating that the incident showed the developed countries were evading global trade rules and trying to force their own tough intellectual property rules on developing countries. It is mandatory on the member countries of WTO to follow TRIPS regulations which allow developing countries to source generic drugs from third countries (non-patent holding countries) on the ground of public health.

### Reliance Communications seeks Trademark similar to iPhone

Reliance Communications Ltd has filed a Trademark application in India on 'I PHONE'—a brand name that sounds similar to Apple Inc.'s popular mobile phone. The application was made public in September by RCom and got published in the journal in the month of October. The company sought the application to be registered under numerous classes which are classes 41, 16, 38 and 9. Trademark 'Reliance i phone' is made in class 38 that deals in "telecommunication services" as well as under class 9 that concerns "manufacturing and trading in apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers including but not limited" to fixed & wireless phones and terminals.

Interestingly this comes hardly weeks after the launch of the Apple iPhone models in India in association with Bharti Airtel Ltd and Vodafone Essar Ltd though it is vague whether Apple has applied or registered the iPhone trademark in India.

### Legal action over pilot brand

FMCG and tobacco giant ITC has started a legal scuffle with Godfrey Phillips India (GPI) for its brand Pilot that they had launched three decades ago. This & trademark suit was filed in the Calcutta High Court against GPI alleging that GPI had infringed the trade name 'Pilot'. ITC had obtained an interim stay restraining GPI from using the trade name.

GPI has argued that their brand is Pilot No 1 and not Pilot and the colour combination of the product is also different from that of ITC.

## IPR NEWS-AROUND THE WORLD

### EPO gains access to the Indian TKDL

The Government of India, through its Council of Scientific and Industrial Research (CSIR), and the European Patent Office (EPO) have signed an agreement which enables the EPO to access the Traditional Knowledge Digital Library (TKDL). The agreement gives EPO examiners online access to information related to Indian traditional knowledge in all phases of the European patent grant procedure. TKDL, is a database of Indian traditional medicine. The main purpose of TKDL is to make Indian traditional knowledge prior art accessible to patent offices, translating Indian traditional knowledge from existing prior art, traditional knowledge formulations or know-how, available in Hindi, Sanskrit, Arabic, Persian, Urdu and other languages, into five international languages (English, French, German, Spanish and Japanese). The aim is to prevent commercial exploitation of Indian traditional knowledge already available in the public domain. TKDL, a database of Indian traditional medicine, is the result of a project launched in 1999 by the National Institute of Science Communication and Information Resources (NISCAIR), CSIR, the Ministry of Science & Technology and Department of AYUSH, and the Ministry of Health and Family Welfare of India. This addition to the EPO search collection supplements an already impressive amount of data relating to traditional knowledge from various countries, which enables EPO examiners to properly assess the innovative value of inventions in this field.

### QuantRx® Announces FluoroPharma Issued US Patent for Imaging Cardiovascular Plaque

QuantRx® Biomedical Corporation, has announced that QuantRx's FluoroPharma, Inc. has been issued an U.S. Patent (US7438891), covering methods of imaging cardiovascular plaque formation using F18 labeled 2-fluorodeoxy-D-glucose (FDG), by the USPTO. This patent, exclusively licensed from the Massachusetts General Hospital (MGH), provides FluoroPharma with additional patent claims that cover imaging of atherosclerotic plaque inflammation and rupture. Molecular

imaging of the inflammatory status of vulnerable atherosclerotic lesions is useful for the identification of patients at risk for a future heart attack or stroke. In vivo noninvasive clinical studies to measure carotid plaque inflammation show that 18F -FDG PET imaging can identify a subset of patients with carotid atherosclerosis that may benefit from intensified medical therapy or carotid artery intervention to prevent stroke.

### Rambus's Injunction Request Denied

A U.S. court has rejected a request by a California company Rambus Inc. to bar South Korea's Hynix Semiconductor Inc., the world's second-largest computer memory-chip maker, from selling its DRAM (Dynamic Random Access Memory) products in America. Rambus Inc. sought an injunction with the U.S. District Court for the Northern District of California to bar Hynix from selling DRAM memory products, saying it infringed upon Rambus' patents.

The court, however, upheld a prior decision on Hynix's payment of damages to Rambus and ruled Hynix must pay the U.S. company royalties on sales of later-generation DRAMs sold in the U.S. Hynix said it will file an appeal over the court's damages ruling. Hynix believes that Rambus's patents are invalid, as recently confirmed by certain rulings of the U.S. Patent and Trademark Office.

### Microsoft Gets 10,000th Patent

The giant software maker has reached a milestone, having received its 10,000th U.S. patent this month. This has propelled Microsoft to the upper echelon among patent filers, though IBM still gets more patents issued than any other company. Microsoft, meanwhile, has risen to the top 5 among patent recipients and for the last two years has topped a key ranking of overall patent portfolio strength. As for the 10,000th patent, it covers a technology used in computers like Microsoft's Surface that link a real-world object with a set of data or images stored on a computer.

## GLIMPSES OF JUDGEMENT ON IPR's: KINGFISHER VS KINGFRESHER

**FACT:** The present suit is instituted by United Breweries Ltd against Indo Agro Industries for rendition of accounts, permanent injunction against infringement of the trademark, copyright and passing off of the mark 'KINGFISHER'. In the suit of infringement, plaintiff alleged that the use of the word 'KINGFRESHER' by defendant is an attempt to piggy back on the goodwill of the plaintiff.

**ANALYSIS:** The word 'KINGFISHER' has been registered not only under Trademark Act in class 33 but also under Copyright Act by the plaintiff. Further, the Plaintiff also alleged that both the word 'KINGFISHER' AND 'KINGFRESHER' are phonetically similar. The defendant has also copied the distinctive and

essential feature of the plaintiff's logo mark, which includes the use of a bird by the name of 'KINGFISHER' with a colour scheme and style on the said logo and from a distance, it looks almost identical. It is also stated that the use of the mark by the defendant with respect to various alcoholic/non-alcoholic beverages results gross infringement of registered trademark of the plaintiff against the similar goods which the defendant is passing off.

**DECISION:** The hon'ble justice of Delhi High Court passed the judgment in favour of plaintiff along with cost of proceedings which are quantified at Rs. 50,000/-.

## EVENTS AT ITAG

1) ITAG Team attended the National Roving Seminar on Geographical Indications on 6th February, 2009 at Taj Bengal, Kolkata. The Seminar was organized by Department of Industrial Policy and Promotion (DIPP) in cooperation with World Intellectual Property Organization (WIPO).

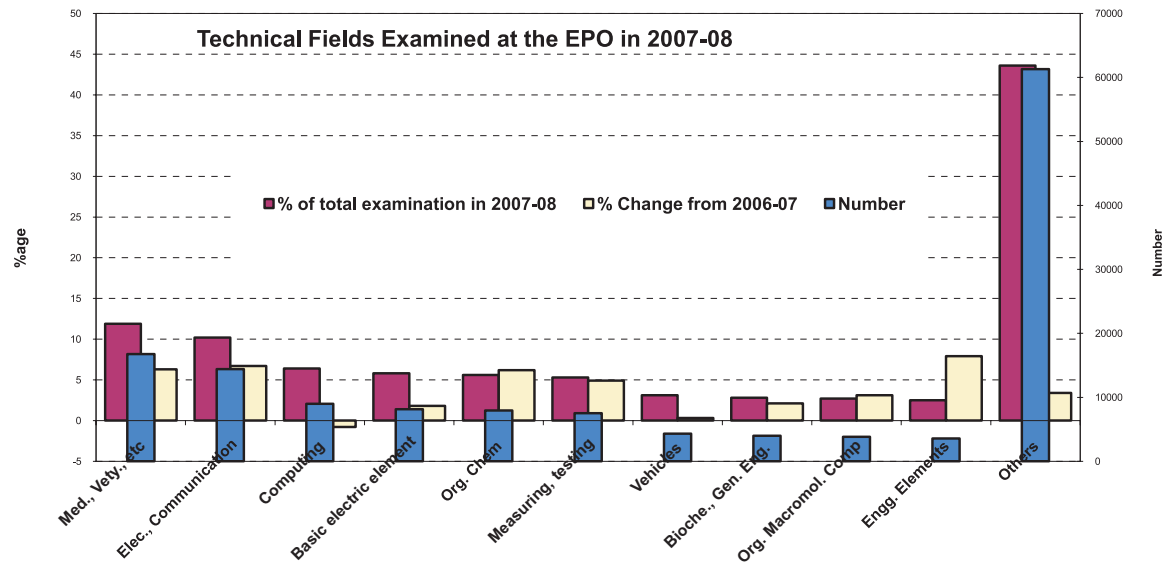
2) Dr. D R Agarwal delivered a talk on "Intellectual Property Rights (IPR) and Patents for Coir Products" in the workshop on 24th February, 2009 at Hotel Royal Park, Alappuzha, Kerala.

The eminent personalities attended the workshop were Mr. P. Mahadevan, CEO, Travancore Cocotuft (P) Ltd., Mr Mathew Joseph, CMD, Palm Fibre (India) Pvt. Ltd., Mr. N. Venugopal, Director, The Alleppey Company Ltd. The workshop was

organised by Cluster Plus ([www.alappuzhabds.com](http://www.alappuzhabds.com)) and sponsored by FICEA, SiDBI, DFID, CSC, TCMMA and ICA.



**SNAPSHOT**



Classes	Number	% of total examination in 2007-08	% Change from 2006-07
Med., Vety., etc	16742	11.9	6.3
Elec., Communication	14409	10.2	6.7
Computing	8981	6.4	-0.8
Basic electric element	8147	5.8	1.8
Org. Chem	7940	5.6	6.2
Measuring, testing	7524	5.3	4.9
Vehicles	4305	3.1	0.3
Bioche., Gen. Eng.	3970	2.8	2.1
Org. Macromol. Comp	3835	2.7	3.1
Engg. Elements	3563	2.5	7.9
Others	61309	43.6	3.4

Source : EPO Facts & Figures Database



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"To wisdom belongs the intellectual apprehension of things eternal; to knowledge, the rational apprehension of things temporal."- Saint Augustine