

**Director's Message**

The World Trade Organisation (WTO) is going to hold its Seventh Ministerial Conference in Geneva on 30th November-2nd December, 2009 to discuss and deliberate on several trade related issues on reduction of subsidies on agriculture and tariff cuts on agricultural and non-agricultural goods including opening up of services sector as set out in Doha Development Agenda (DDA). Some of the issues also relate to Trade Related Aspects of Intellectual Property Rights (TRIPS), viz.

i) Flexibility in implementation of TRIPS Agreement in order to protect Public Health and providing easy access of medicine to poor countries to mitigate the national emergency arising out of certain chronic diseases relating to HIV/AIDS, tuberculosis, malaria and other epidemics (Para 5c of Doha Declaration).

ii) To allow generic drug manufacturing companies to export medicines to the countries which are members of WTO, but do not have adequate manufacturing capacities in the pharmaceutical sector (Para 6 of Doha Declaration).

iii) To discuss issues relating to extension of Geographical Indications beyond wines and spirits, to allow other products, especially of interest to developing countries, say, Darjeeling Tea for India.

iv) Review of Article 27.3 (b) of TRIPS Agreement which deals with patentability or non-patentability of plant and animal inventions and the protection of plant varieties; and a review of the entire TRIPS Agreement (required by Article 71.1).

v) The issues relating to Biodiversity, protection of traditional knowledge and folklore.

It may be noted that certain provisions of patent laws on pharmaceuticals and drugs are causing tremendous harm to the members of the developing countries who are unable to afford the sky-rocketing prices of the patented drugs and the monopolistic approach of the multinational drug companies. It has been observed that certain drugs which are manufactured in India by reputed generic drug manufacturing companies to certain poor countries in Africa and Latin America, who do not have the manufacturing capacities as contemplated in Doha Declaration one being inspected and seized in transit. There are cases of illegal confiscation and seizure of such drugs at the transit ports or air ports by European Countries.

India is recognized as one of the lowest cost manufacturers of drugs and pharmaceuticals holding 4th position in terms of value of exports of nearly Rs. 40,000 crores which is likely to grow to Rs. 100000 crores in near future. Africa and Latin America are major markets for India's low cost drugs used for treatments of disease like HIV/AIDS, tuberculosis and malaria and account for approximately 15% of India's total exports India Government has taken up the matter with the European Union (EU) Trade Commissions as the confiscation of drugs at different EU airports / ports is in violation of TRIPS Agreement on public health.

There have also been several cases of non-tariff barriers by USFDA on the Indian Pharmaceutical companies on frivolous health grounds and other technical standards. ITAG believes in full compliance of TRIPS Agreement, in law and spirits by all WTO member countries to establish the culture of fair trade along with free trade and accessibility of technology transfer across the globe.

- Dr. D. R. Agarwal

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IPR NEWS - INDIA

DELHI HIGH COURT RESTRAINS CIRCULATION OF REVON MAGAZINE DUE TO INFRINGEMENT OF REVLOX TRADE MARK

The Delhi High Court has encumbered the printing and circulation of 'Revon', a beauty magazine published by Media Magic World (MMW) as it infringed the trademark of the US-based cosmetic manufacturing company, Revlon.

Revlon Manufacturing Ltd. had approached the court seeking a stay against the use of the trade mark Revon in any manner by the defendants.

Magic Media World (MMW), on their website, had shown that they were manufacturing cosmetic products under the name of Nature's Essence.

The trade name Revon resembled Revlon, a worldwide well-known brand of cosmetic products, and gave the impression that both were products of the same company.

Revlon had contested that the printers and publishers of the magazine Magic Media World had infringed their Trade Mark by using the name to launch the magazine.

The publishers of the magazine had used the tagline 'The Beautiful Revolution', which was causing deception and confusion in the minds of general public that the magazine was related to Revlon.

Revlon alleged that the defendants had chosen the brand name Revon to take unfair advantage of the reputation and goodwill of Revlon's well-known trade mark.

Revlon is registered under the laws of Bermuda and is a subsidiary of the US-based company, Revlon Consumer Products Corporation and has its trademark registered all over the world including India.

KOTAK MAHINDRA BANK WINS DOMAIN NAME CASE AT THE WIPO

Kotak Mahindra bank has won a case over domain name dispute at the WIPO against an individual who had used KOTAK as his domain name. A complaint was filed by the bank against the individual of South Korean descent on July 16, 2009.

The bank did hold a trademark registration for the mark KOTAK in South Korea October 28, 2003.

LUXOTTICA SUCCEEDS IN ACQUIRING JOHN DOE ORDERS

Luxottica, an Italian group who are the owners of Ray-ban sunglasses have succeeded in obtaining John Doe orders from the Delhi High Court against sellers of fake Ray-ban sunglasses. The court has directed action by seizure of fake products in such shops.

John Doe orders are passed to enable seizure of infringing goods and operate against any potential defendant, who is identified subsequently.

'ALL THE BEST' RELEASED IN SPITE OF COPYRIGHT INFRINGEMENT

The release of actor-director Ajay Devgan starrer movie 'All the Best' has been allowed by the Bombay High Court after rejection of a case of copyright infringement filed by film producer Karan Ramsay claiming a copyright over the script and seeking stay on the film's release.

The petitioner, Mr Ramsay, had claimed that the script of 'All the Best' was very similar to that of 'Uncle Samjha Karo' which is being produced by his company Om Film and that the copyright of the same was purchased from scriptwriter Paritosh Painter in the year 2006, who eventually sold the same script to Devgan Films which led to violation of his copyright.

IPR NEWS-AROUND THE WORLD

PATENT GRANTED FOR ISOLATION OF STEM CELLS FROM LIVE MEDIA

Stem Cell Therapy International, Inc. has announced that Histostem Ltd. of South Korea has been awarded European patent entitled "Method of Isolating and Culturing Mesenchymal Stem Cell Derived from Umbilical Cord Blood." This patented method is used to isolate stem cells directly from a freshly donated cord blood sample. This is the first patent awarded for this unique method in the world, and complements Histostem's recently awarded U.S. Patent for isolating stem cells from cryopreserved cord blood.

The patentee Dr. Hoon Han, who is also the President and Founder of Histostem Ltd., has said that this method would increase the volume

of their repository which is the world's largest with over 85,000 units of cord blood.

The patent will be valid in all 27 EU countries for 20 years. The Korean FDA has approved Dr. Han to treat patients in his country, using his patented stem cell methods. Stem cells have been used in Korea to treat over 300 patients with intractable diseases.

APPLE'S IPHONE IN PATENT-INFRINGEMENT LAWSUIT

Nokia has filed a patent-infringement lawsuit against Apple in the Federal District Court of Delaware, alleging that Apple has violated as many as ten of its patents, including those relating to its GSM, UMTS, and Wi-Fi standards.

Nokia claims that its patented speech coding,

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

security, wireless data transmission, and other technologies are used in every Apple iPhone; these technologies are licensed to 40 other tech companies.

Nokia's Legal VP, Ilkka Rahnasto, said that by refusing to agree to the terms for Nokia's intellectual property, Apple is attempting to get a free ride of Nokia's innovation. The patent-infringement by Apple dates back to mid-2007 when iPhone was launched, equipped with the technologies on the R&D of which Nokia has spent almost \$90 billion over the past two decades.

HANSEN SETTLES TRADEMARK DISPUTE WITH VERMONT BREWER

Corona-based Hansen Natural Corp. has settled a trademark dispute with a small Vermont brewing company after a number of stores in New England pulled Hansen's products off its shelves.

Hansen, which makes the Monster line of energy drinks, had sent a cease-and-desist letter last month to Rock Art Brewery, a small brewer in Vermont, which was in search of a federal trademark for a beer they call "The Vermonster."

Hansen wished to block Rock Art's use of Vermonster as Hansen had registered trademark for two beer products earlier, which were later abandoned. Hansen also asked the Vermont Company to pay its legal fees.

An amicable agreement was made between Rock

Art Brewery owner Matt Nadeau and Rodney Sacks, Hansen's chairman and chief executive which allows Rock Art to sell Vermonster, a barley wine.

UK'S IPO WINS BPI AWARD

The United Kingdom's Intellectual Property Office Intelligence Hub has bagged the BPI Award for their continued efforts to combat music piracy

BPI is the British Recorded Music Industry.

This award acknowledges the Hub's professionalism and commitment in the investigation of organised criminal groups who are involved in the manufacture, sale and distribution of counterfeit music.

The Hub has assisted in over 130 investigations this year alone, often identifying the main offender, which permitted the BPI and Enforcement agencies to achieve successful investigations.

CHINESE GOVERNMENT TO FUND FOREIGN PATENT FILINGS FOR SMES

The Chinese Ministry of Finance has made available approximately 100 million Yuan (\$14.65 million) to small- and medium-sized enterprises (SMEs) applying for patents abroad. Chinese SMEs, 95 percent of which are privately-owned, have been instrumental in stabilising China's economy. According to official statistics, SMEs contribute to 60 percent of China's GDP, 50 percent of tax revenues, 68 percent of exports and 75 percent of new jobs every year.

GLIMPSES OF JUDGMENT ON IPR

SUN PHARMA BACK OFF FROM PRODUCTION OF GENERIC 'NAMENDA' AFTER LOSING COURT BATTLE (FOREST LABORATORIES INC. ET. AL V. SUN PHARMACEUTICAL INDUSTRIES LTD. OCTOBER 2009)

Facts: The patent in this suit is solely licensed to Forest Lab (the plaintiff no.1) and assigned to the Germany based Merz Pharma GmbH & Co. (the plaintiff no.2) since its issuance by USPTO. Forest Lab's 'Namenda' (Memantine Hydrochloride-US Patent No. 5,061,703-titled 'Adamantane Derivatives in the Prevention & Treatment of Cerebral Ischemia') is a pivotal drug for the treatment of Alzheimer disease. Its sale recorded in the financial Year 2009 is around \$949.3 Million. The formulation called adamantane derivatives were manufactured and marketed as 'Namenda' by Forest Lab. The patent is going to expire on April, 2010, but Forest Lab already has applied for the extension of time period up to 2012.

The plaintiffs' filed the patent infringement suit before the Federal District Court in January 2009 while Sun Pharmaceutical (the Defendant) were trying to manufacture and market the generic version of the drug 'Namenda' by an Abbreviated New Drug Application (ANDA). The plaintiffs' filed this suit after receiving notification from several pharmaceutical companies (herein the

defendants) that they had filed ANDA with Paragraph-IV certifications (under section-505 of FDA) to obtain approval to manufacture and market generic versions of 'Namenda'. Previously the defendant in its written statement denied infringement of the patent and challenged the validity of the claim by filing a counter claim in this regard.

Issue: Whether the defendants' assertion on counter claim is maintainable or not?

Judgment: The District Court order has dismissed all claims and counter claims filed by the defendant, though the validity of all claims is not decided by the Court till now.

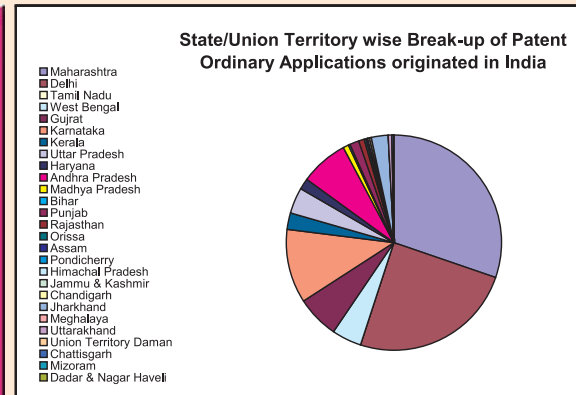
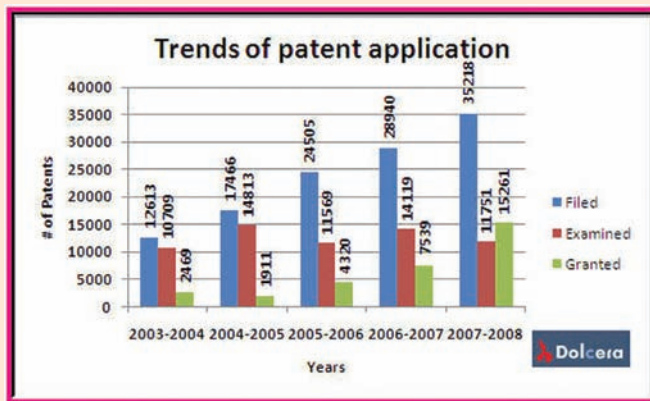
Settlement between the Parties: The Parties resolved the dispute wherein Sun Pharmaceutical has agreed not to manufacture either 5mg or 10mg generic tablet of 'Namenda' during the life of '703' Patent, unless the asserted claims of the patent have been found to be invalid. Sun Pharmaceutical also asserted that its filing of an ANDA with the FDA might be amounted to 'technical act of infringement'.

EVENTS AT ITAG



We believe in growth with partnership and strategic alliances. In our pursuit to achieve this goal, ITAG has entered into a strategic alliance with Dolcera, a global Knowledge Process Outsourcing Company founded in 2004 and based in Hyderabad, who provide service to clients in North America, Europe and Asia in different industries like software, semiconductor, networking, mechanical Engg, Chemical Engg etc. Dolcera is a pioneer organization in Patent research, analytics, business, market research and knowledge management. We hope our clients will benefit from our joint efforts in providing effective IP-Management services.

SNAPSHOT



The number of applications for patents filed in 2007-2008 was 35,218 compared to 28,940 applications in 2006-2007 representing an increase of about 22 % in the filing

Note: Maharashtra is the major contributor followed by Delhi, Tamilnadu and other states.

Source: Dolcera

Source: Indian IPO annual report 2007-08



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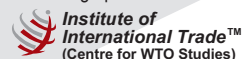
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