



# ITAG BUSINESS SOLUTIONS LTD.

(A subsidiary of TCI Finance Ltd.)  
 AN ISO 9001:2000 & 27001:2005 ORGANISATION  
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# NEWSLETTER

## Director's Message



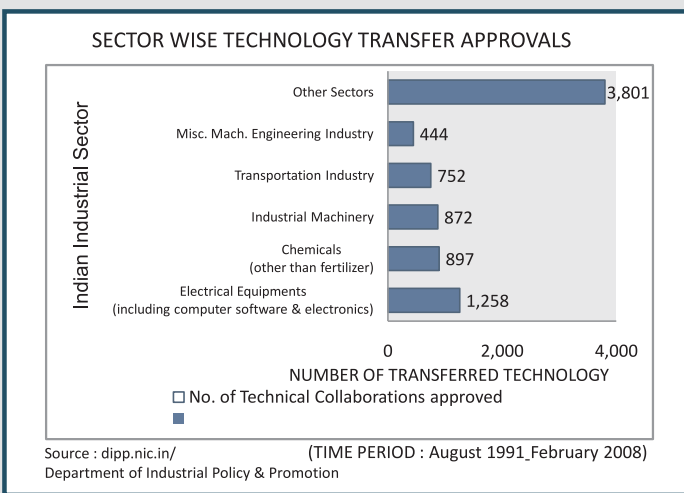
Technology Transfer is an important issue in the field of Intellectual Property Rights. There is often a Technology Transfer Office (TTO) attached to the research institutions or the Universities which deal with the Technology Transfer and act as a bridge between the research Institutions which are engaged in the inventions and the industries which are ready for making investments in such inventions and Technologies. Technology Transfer broadly means purchase of Technology either from the foreign market or from the domestic market in exchange of payment in the form of royalty or one-time upfront payment for the license to use such technology on exclusive or non-exclusive

basis. In India, the Reserve Bank of India has prescribed certain restrictions on the payment of royalty in its policy for foreign technology agreements which allows such payments under automatic route and also through approval granted by the Project Approval Board on the applications made to the Secretary for Industrial Approval, Ministry of Commerce, Government of India.

The guideline for automatic approval for Foreign Technology Collaboration Agreements prescribe for a lump sum payment not exceeding US\$ 2 Million and the payment of royalty limited to 5% for domestic sales and 8% for export sales over 10 year period. Payment for royalty up to 2% for export sales and 1% for domestic sales is also allowed under automatic route for use of Trademark or Brand name without Technology Transfer.

The Government of India is concerned about huge foreign exchange outgo on account of foreign Technology Transfer and also for unutilized Inventions pending commercialization with the publicly funded research institutions. In 1980, the United States Government had passed the "Bayh Dole Act, 1980" for effective commercial use of the Technology in the research institutions which are funded by the Federal Government.

A similar step is now being undertaken by Government of India by placing a bill "The Protection and Utilisation of Public Funded Intellectual Property Bill" in the Rajya Sabha on 3rd Dec, 2008 and is seeking public opinion on the same for effective commercial use of Intellectual Property being developed by the Research Institutions like CSIR, IIT's and others. The bill provides for sharing of royalty being 30% to the creator of the Intellectual Property. At present the Ministry of Science & Technology regulates the technology transfer through a guideline in the form of "Instructions for Technology Transfer and Intellectual Properties" which prescribe for the share of the inventor up to one-third of the actual earnings generated through IPR's by the Research Institutions. It also provides for creation of a patent facilitation fund by setting apart not less than 25% of the revenue generated from IPRs under the supervision of



Technology Transfer, Forecasting and Assessment Council (TIFAC). This bill is likely to generate good amount of revenue to publicly funded institutions and also help technology transfer to industries.

ITAG is the premiere organization in the country to deal with the issues on Technology Transfer as a link between the Research Institutions and the industry to bridge the invention-investor gap. It implements it through its various arms engaged in IP Broking, IP Auction, IP Licensing and IP Commercialisation through its expert team engaged in IP valuation and IP Due Diligence for an effective and smooth transfer of technology within and outside the country.

- Dr. D. R. Agarwal

## IPR NEWS - INDIA

### BANARAS SAREES AND BROCADES GET GI

Banaras sarees and brocades have acquired the geographical indication (GI) status on 4 September 2009. Sarees or brocades made outside the six identified districts of Uttar Pradesh cannot be legally sold under the name of Banaras sari and brocade.

GI identifies a product as originating in a certain region where a given quality or characteristic of the product is essentially attributable to its geographical origin.

Chennai-based Geographical Indication Registry has issued the GI certificate for Banaras sarees which are famous for intricate designs of silk and gold threads. This GI status would disallow the duplication of the product and will help producers to increase their market share. Unctad India supported the weavers and artisans in seeking GI certificate.

### SPANISH COMPANY'S BIO-PIRACY BID FOILED BY INDIA

The recently created Traditional Knowledge Digital Library (TKDL), which has documented over two lakh medical formulations of Ayurveda, Siddha and Unani to save them from piracy, has helped India to foil a bio-piracy bid

in a record three weeks time. The European Patent Office's (EPO) prior "intent to grant patent" order to a Spanish company Perdix group SL, on the use of melon extract to cure vitiligo (leucoderma) has been cancelled now.

Almost 65 million people globally are affected by vitiligo, a disease that causes skin depigmentation. Michael Jackson was perhaps the world's most famous vitiligo patient. Indian hakims have been using melon extract to cure this disease for hundreds of years under India's ancient Unani system of medicine.

The patent in this case was for a cream that uses vegetal ingredients such as melon, bay rum and lemon, which on application on the white patches resulted in regeneration of melanocytes. EPO decided to grant the patent for the cream on June 4, 2009 and India provided evidence to EPO on July 8, 2009 from books like Quarabadeen Najmul Ghani, Khazain-al-Adviyah and Muheet-e-Azam by Indian hakims Mohammad Najmul Ghani Khan and Mohammad Azam Khan, which mention about melon's anti-vitiligo properties and that it has been used in India for over 1,200 years. EPO cancelled its intention to grant patent to the Spanish company on July 27, 2009.

## IPR NEWS-AROUND THE WORLD

### GOOGLE GETS A DESIGN PATENT FOR ITS GUI

The USPTO has issued a design patent to Google that covers the ornamental design for a graphical user interface [GUI]. Design patents only cover ornamental designs rather than technological developments and thus have limited scope. The USPTO has been granting design patent protection for screen shots and icons for many years.

Google indicates that it is also claiming trademark protection for portions of the layout in addition to the design patent.

Google functions by implementing the fair use doctrines of copyright and trademark laws and has been supporting open access of copyrighted works. Design patents remain in force for 14-years from the date of issue, so in consequence, Google's design patent is set to expire on Sept 1, 2023.

### NESTLE SUED BY WEIGHT WATCHERS OVER ICE CREAM TRADEMARK CLAIMS

The world's largest food producer Nestle was sued by Weight Watchers International Inc. claiming that Nestle's frozen-food packaging infringes the weight control company's

trademarks.

Nestle and its Dreyer's ice cream unit's Skinny Cow brands are accused of inappropriately displaying the Weight Watchers trademark on Web sites and packaging of diet frozen foods and desserts. The products also infringe Weight Watchers' "points" weight-loss system trademark, according to the complaint.

Nestle's Lean Cuisine and Skinny Cow brands are aimed at weight and health-conscious consumers. Nestle is unlawfully benefiting from the trademark infringement by improper association with Weight Watchers. Weight Watchers seeks damages and a court order blocking the infringement.

### BIOGEN GETS PATENT EXTENSION ON MULTIPLE SCLEROSIS DRUG

Biogen Idec Inc. has received a 13-year patent extension on its biggest profit making drug for multiple sclerosis drug - Avonex.

Important patents dealing with the production of Avonex are listed to expire in 2013. However in the regulatory filing, Biogen has received a patent for the use of this drug in treating a viral condition, disease, cancer or tumor until September 2026. The use of Avonex as a multiple

## IPR NEWS-AROUND THE WORLD Contd.....

sclerosis drug is also included in the method of use patent.

Sales of Avonex reached \$591.2 million during the most recent quarter.

### **RZN NUTRACEUTICALS RECEIVES USPTO'S NOTICE OF ALLOWANCE FOR PROPRIETARY HERBAZORB? ABSORPTION AND DELIVERY SYSTEM TECHNOLOGY**

RZN Nutraceuticals, Inc., a leading developer of proven effective herbal products for severe arthritis and migraines has received a Notice of Allowance from the USPTO for the firm's absorption and delivery system process methodology patent application.

The technology named HerbaZorb? is used in the manufacture of two of the firm's most popular herbal products, Arthri-Zen Relief® and Migra-Zen Relief® PLUS capsules. The use of this preparation method ensures that the herbal supplements are absorbed with full potency intact.

Usually only 10 to 20 percent of vitamins and minerals taken orally in tablet form are actually

absorbed into the bloodstream. HerbaZorb protects valuable phytochemicals of herbs and herbal extracts from being digested before entering the bloodstream, which is a significant advantage to producers and consumers of herbal products.

### **MEDTRONIC SETTLES PATENT DISPUTE**

Medtronic, Inc. has settled a patent lawsuit which it had initiated against W.L. Gore & Associates in 2006 for patent infringement of selected patents in Medtronic's Jervis and Wiktor patent families. Medtronic expects monetary gains in the company's second fiscal quarter ending Oct. 30, 2009, in relation with the settlement. Detailed terms of the settlement agreement were not disclosed.

The last of patents in the Jervis patent family, which is scheduled to expire in 2018, cover the use of certain self-expanding medical devices made of nitinol, which is a shape-memory metal alloy commonly used in medical device applications, including Medtronic's own transcatheter coronary heart valve program.

## GLIMPSES OF JUDGMENT ON IPR

### **COURT OF APPEAL REJECTED \$358 MILLION PATENT VERDICT AGAINST MICROSOFT (ALCATEL-LUCENT TECHNOLOGIES INC. V. MICROSOFT CORPORATION)**

**Facts:** This patent infringement suit was filed by Lucent Technologies Inc. (which was acquired by Alcatel in 2006) in 2003 against PC makers Gateway Inc. and Dell Inc. and subsequently Microsoft became a party of this case. The present dispute is related to use of a patented software function called '*date-picker*', which is used in Microsoft's Outlook program. The case largely centered on Lucent's claim that the Microsoft Outlook's calendar function infringed its patent. The disputed patent covered a method of entering information into fields on a computer without using a keyboard.

In February, 2007, San Diego jury held that Microsoft must pay \$1.52 Billion dollars damages to Alcatel-Lucent (p.k.a. Lucent Technologies Inc.) for violating its two patents related to digital music. However, in August, 2007, the US federal District Judge thrown out the jury verdict. While deciding the second part of the suit the Court held that Microsoft had not violated Alcatel-Lucent's patent related to speech recognition.

The third part of this case was focused on disputes over four patents, where the jury awarded Alcatel-Lucent \$358 Millions dollar after its finding that Microsoft was liable for two patents infringement in April, 2008 and in June, 2008. The trial Court also upheld the verdict. Now Microsoft moved for the Court of Appeal.

**Issue:** Whether Microsoft can be held liable for patent infringement and \$3.58 Millions damages?

**Judgment:** On 11th September, 2009, the Federal Court of Appeal affirmed the jury's verdict that the Microsoft Corporation's Outlook software and two other products infringed a patent owned by Alcatel-Lucent.

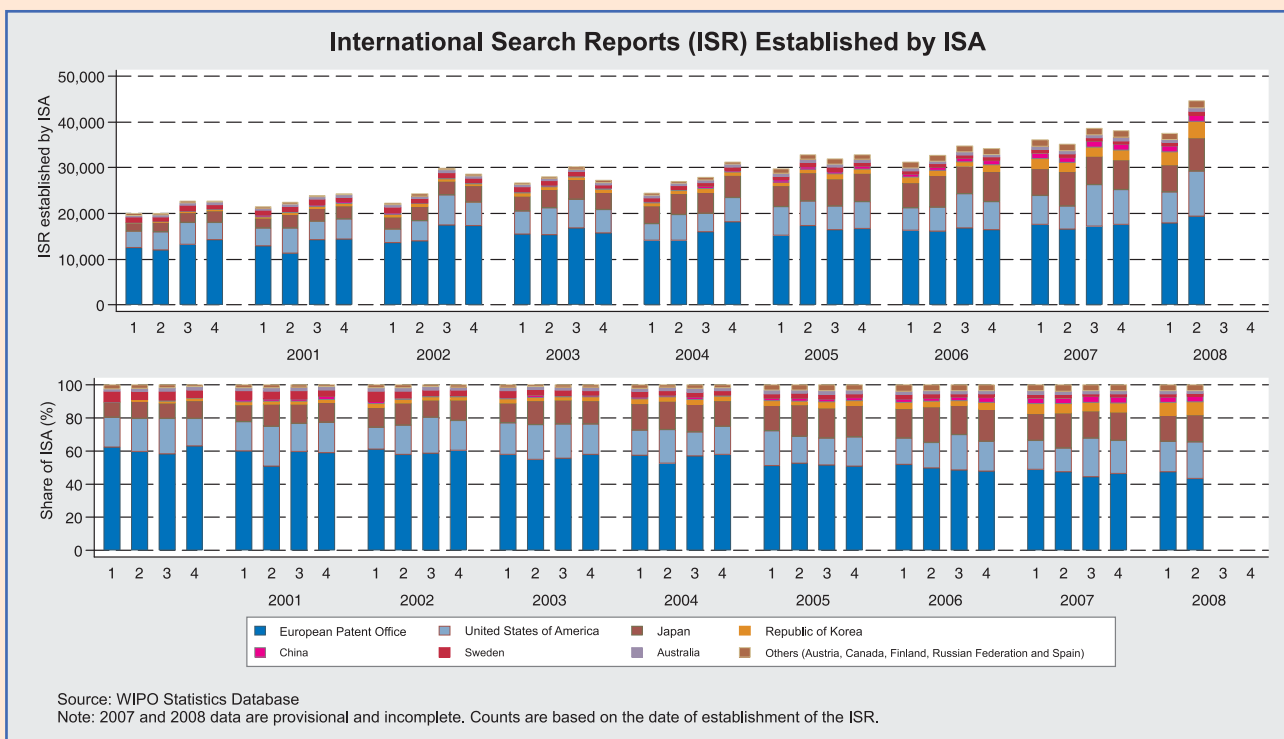
However, the Court of Appeal opined that "*Because the damages were awarded with respect to infringement by Microsoft's Outlook is not supported by the evidence but is against the clear weight of the evidence, a new trial on damages is necessary*". Thereafter, the Court of Appeal remanded back the case to the trial Court to reconsider the damages it awarded against Microsoft.

## EVENT AT ITAG



Team ITAG attended a one-day IPR Conference on “**The Protection and Utilisation of Public Funded Intellectual Property Bill**” (Similar to “Bayh Dole Act” of USA) organized by **National University of Juridical Sciences (NUJS)** on 12th September, 2009. The Conference was aimed at generating awareness about the Bill and what it stands for. In the picture, Dr. D. R. Agarwal, Director, ITAG is presenting a memento to Mr. Joshua D. Sarnoff (Professor and Associate Director, Washington College of Law) and Hon’ble Mr. Justice Aniruddha Bose (High Court, Kolkata).

## SNAPSHOT



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