



Director's Message



Budget Proposals on Taxation of IPR

The Finance Minister Mr. Pranab Mukherjee has presented his Budget Proposals for Financial Year 2010-2011 and has recognized the current decade as the "Decade of Innovation" as first mentioned by Smt. Pratibha Devisingh Patil in her Presidential address to the joint session of the Parliament in June 2009. He has made certain positive proposals to promote research and development activities. Some of the proposals dealing with IPR, are as below:-

(i) Paragraph 35 of the Budget speech deals with the initiative for the complete liberalization of pricing and payment of technology transfer fee, trade name, brand name and royalty payments, now to be made under the automatic route. This will facilitate smooth transfer of technology and also improve the climate for foreign direct investments which has already recorded US\$ 20.9 billion during April-December 2009 compared to US\$ 21.1 billion during the same period last year.

(ii) Paragraph 130 provides for increase in weighted deduction for expenditure incurred on in-house research and development (R & D) to all manufacturing businesses from the present 150 percent to 200 percent.

He has also proposed for enhancing the weighted deduction on payments made to National Laboratories, research associations, colleges, Universities and other institutions for scientific research from 125 percent to 175 percent.

(iii) Paragraph 131 deals with extending the benefit of weighted deductions of 125 percent for payments made to approved associations, engaged in research in social sciences or statistical research. The income of such institutions shall also be exempt similar to scientific research associations.

(iv) Paragraph 159 provides for a concessional excise duty of 4 percent to cycle rickshaws developed by CSIR, an innovation product called 'SOLECKSHAW' to replace manually-operated rickshaws which will run on batteries charged by solar power.

(v) Paragraph 166 deals with rationalization of custom duty on import of digital master of films for duplication or distribution loaded on electronic medium vis-à-vis those imported on cinematographic film owing to different customs duty structure. Now customs duty will be applicable only on the value of the carrier medium. The same principle will apply to music and gambling software imported for duplication. However in all such cases, the value representing the transfer of intellectual property rights would be subject to service-tax.

(vi) The Finance Minister has also proposed for change in explanation to Section 9(1) for taxability of interest, royalty and for technical fees paid to a non-resident. There were few controversies on interpretation of the clauses (v) (vi) and (vii) regarding the deemed income under the above three heads of income to a non-resident. The amendment clarifies that the situs of the rendering of the services is not relevant. It is the situs of the payer and the situs of the utilization of services which will determine the taxability of such services in India.

(vii) The existing taxable services 'Intellectual Property Right (IPR)' excludes copyright from its scope. Copyrights on (a) Cinematographic films and (b) Sound recording are being brought under the ambit of service tax. However, copyright on original literary, dramatic, musical and artistic work would continue to remain outside the scope of service tax.

It may be noted that taxation of intellectual property rights is a very important area and ITAG shall endeavor to enrich the knowledge of its readers in this area through this news letter in future.

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- Dr D. R. Agarwal

IPR NEWS - INDIA

GI TAG FOR KOLHAPURI CHAPPALS

Karnataka and Maharashtra have jointly applied for GI (geographical indication) for Kolhapuri chappals.

Geographical Indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities attributed to the place of origin. A GI tag increases the brand value of the product in national and international markets.

A GI for Kolhapuri chappals would ensure that copies or duplicates of this native product cannot be marketed with the same name. And it cannot be misused by others trying to take advantage of the recognition value this chappal has. GI is governed by the Geographical Indication of Goods (registration and protection act) 1999.

WEAVERS' GROUP FILES PATENT FOR NEW WEAVING TECHNOLOGY

Sambalpuri Bastralaya Handloom Cooperative Society Ltd, a weavers' organisation from Orissa, India has applied for a patent for a wall hanging designed with a new textile weaving technology invented by one of its members.

The patent filed at the Kolkata Patent Office relates to a process for making a wall hanging using a tie-and-dye method without using a wrap. Four designs of wall hangings made by using the technology developed by Bhikari Meher, one of the weavers of the cooperative society have already been

registered under Designs Act 2000.

Sambalpuri Bastralaya, one of India's biggest weavers' cooperative with more than 16,000 members is engaged in the making of Sambalpuri cloth - traditionally hand woven cloth in which the warp is tie-dyed before weaving.

Some manufacturers are copying the patterns and marketing their products worldwide with the tag-Sambalpuri textiles. The registration would guard against the illegal copying and marketing of this traditional product of Orissa.

US PATENT FOR TROIKAA PHARMA

A Gujarat based healthcare company, Troikaa Pharmaceuticals, is in the process of getting a US patent for its novel drug delivery form of Diclofenac injections-Dyanapar AQ. The proceedings at USFDA are over and the drug has been approved.

Diclofenac injections are used for treating painful inflammatory conditions, and-Dyanapar AQ-is the world's first painkiller injection which can be administered on a patient's shoulder.

A similar patent has been applied in Israel for this injection and a Eurasian patent for this injection has already been granted. The company also sought global protection for its novel product by filing a PCT (Patent Cooperation Treaty) application with the World Intellectual Property Organisation (WIPO).

IPR NEWS-AROUND THE WORLD

PATENTING SORGHUM GENES-A FATAL ISSUE

Tanzania is seeking justice from the court to prevent the US and Brazilian governments and two multinational firms, from patenting a gene isolated from a sorghum variety of Tanzanian origin.

The patent application was filed on May 17, 2007 at the USPTO. The gene was obtained from the variety of sorghum which has been proved to be acid-aluminium tolerant. Patenting this crop is not only fatal to human race but also violates international treaties as it would also increase local food prices in the long run.

The crop is covered by Annex 1 of the International Treaty on Plant Genetic Resources for Food and Agriculture, and the Tanzanian farmers' variety, is held in trust under the treaty by the International Crops Research Institute for the Semi-Arid Tropics

in India. The treaty prohibits patent claims on the varieties and genes of plants held in trust, putting legality of the patent claims at question. The aluminium-tolerant plant was obtained through the genetic transformation of the wild type.

The gene IS7173, locally known as Msumbiji causes sorghum plants to exude levels of citrates -- a form of citric acid -- in their root tips that neutralize the toxic effect of aluminium. This gene is not only useful in sorghum, but also in other crops, including genetically engineered maize, wheat and rice as well genetically engineered tree plantations.

NINTENDO WINS VIDEO GAME PIRACY DISPUTE

Nintendo has settled a Federal Court action against an Australia citizen for illegally copying and uploading to the Internet a not yet released Nintendo title.

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

On 6 November 2009, a week before the game's Australian release, New Super Mario Bros Wii for the Wii console was made available for illegal download worldwide

The Federal Court ordered the concerned person to pay Nintendo a settlement of \$1.5 million in damages as compensation for Nintendo's loss of sales revenue.

Nintendo has been effectively combating piracy for around 20 years as piracy is a major threat to Nintendo's business, including the 1400 game development companies which create games for the Nintendo platforms.

AGILENT TECHNOLOGIES WINS HPLC COLUMNS TRADE SECRETS CASE

Agilent Technologies Inc. has won its trade secrets and breach of contract case against Advanced Materials Technology, Inc. (AMT) and three of its employees in the Delaware Court of Chancery. The lawsuit filed in January 2008 by Agilent to protect confidential and proprietary information relating to its high-performance liquid chromatography (HPLC) technology.

The court found that the individual defendants, members of AMT's senior management team, breached their

employment contracts with Agilent by removing the company's property without permission and used its confidential information to benefit AMT. In particular, the court ruled that AMT illegally used Agilent trade secrets and confidential information in developing its Halo HPLC columns.

The court has ordered monetary damages to be paid to Agilent as a result of the individual defendants' willful conduct.

EU TRADEMARK FOR NAPLES PIZZA

Neapolitan pizza - the Italian city's most famous culinary is now officially part of Europe's food heritage

This European Union trademark would protect Neapolitan pizzas from imitations. The Traditional Speciality Guaranteed (TSG) label on the Naples pizza came into effect this month.

The TSG label means that all pizza making units would be scrutinised by a special commission that will check the standards, which include using only San Marzano tomatoes and fresh buffalo mozzarella cheese in the pizza. The Italian farmers' association says that half of Italy's 25,000 pizzerias use the wrong ingredients, such as East European cheese or Ukrainian flour.

GLIMPSES OF JUDGMENT ON IPR

INVALIDITY OF GENE PATENTING- RULED BY THE UK COURT (ELI LILLY & CO. V. HUMAN GENOME SCIENCES INC.)

FACTS:

The case relates to a protein called Neutrokin Alpha, its antibodies and the polynucleotide sequence which was first discovered by Human Genome Science (HGS) and filed for a patent (EP 0,939,804 (UK)) in 1996. HGS and GlaxoSmithKline started clinical trials to develop an antibody for Neutrokin Alpha for the treatment of Lupus. At the same time Eli Lilly also had initiated its R&D to develop another antibody for a different condition. Eli Lilly moved to the Chancery Division (Patent Court) and subsequently in 2008 the trial Court held the patent invalid. Later on in 2009 this case moved to the Technical Board of Appeal (TBA) of EPO that allowed HGS's appeal based on some more restricted claims. This appeal has accordingly been conducted on the basis of the TBA's allowance for some claims in favor of HGS. Eli Lilly moved to the High Court of Justice Court of Appeal (Civil Division) and argued that the patent is invalid, since it did not satisfy the criteria of industrial application under Article-57 of the European Patent Convention, 1973 as well as under EC Biotech Directive 99/44.

ISSUES:

Whether the Patent was obvious and not susceptible of industrial application?

JUDGMENT:

The Court held that if an invention does not comply with Article-57 of the EPC then it is not a patentable invention and it may be revoked under Section-72(1) of the UK's Patent Act 1977. The Court also opined that allowing patenting of chemicals whose use is unknown will subvert the patent system and would diminish research by others rather than encourage it. Therefore, the Court held that the patent is invalid as it has failed to show its commercial application.

EVENT AT ITAG

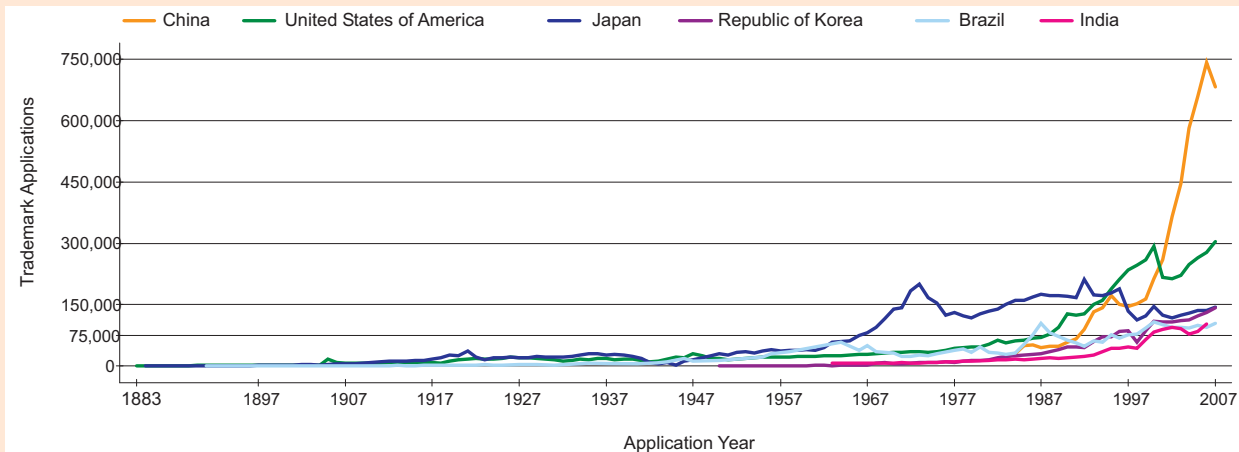


Dr. D. R. Agarwal, Director, ITAG, is delivering lecture on Intellectual Property Management to participants on 15th and 16th February, 2010, at National Institute of Intellectual Property Management (NIIPM), Ministry of Commerce, Govt. of India, Nagpur.

SNAPSHOT

TRENDS IN TRADEMARK APPLICATIONS BY OFFICE

Trends in trademark applications at selected offices



Source: WIPO Statistics Database



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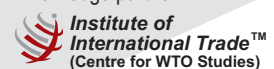
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