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Madrid System for International Registration of Marks

The Madrid System of International Registration of Trademarks came into existence in the year 1891. It has been a slow process however, more and more countries are becoming part of the Madrid System in order to protect the trademark rights of their individuals, corporate houses and big and small business establishments, in foreign countries.

Presently, there are 82 members of the Madrid System, 75 designated countries from the Madrid Protocol and 7 designated countries from the Madrid Agreement. The Madrid System allows protection of a trademark in any number of countries, designated by the Madrid System, by filing a single trademark application, prescribed by the WIPO, with the Regional Trademarks Office in the country of origin of the applicant.

New Series: 6 Suggestions

We have started a new feature on our website called "New Series: 6 Suggestions". The aim of these features is to give you 6 practical and 'to the point' suggestions to help you manage your intellectual properties better.

Don't forget to check the website often, to read the latest '6 Suggestions'.

Proposed amendments in the Copyright and Trade Mark Act

The Secretary in the Prime Minister's Office, Mr. N. K. Singh, provided information during an interaction with FICCI members that the Government is considering amendments to the Copyright and Trade Marks Act to check instances of infringement. Counterfeiting and infringement, particularly in the field of Pharmaceuticals have risen to dangerous levels.

Responding to complaints of infringement, Mr. Singh said there were proposals under consideration to amend the Acts to make infringement and counterfeiting a non-bailable offence and to increase punishment so that a jail sentence would be compulsory in addition to the payment of fine.

Mr. Singh also said that Government was considering that the Central Board of Excise and Customs (CBEC) could also be granted the authority to enforce the Act, in addition to police agencies, because counterfeiting and infringement also resulted in a substantial revenue loss to the Government.

SECURITIZATION

The section 20(4) of the Securitization and Enforcement 2002:

The provision of this Act reads as follows:

The provisions of this Act pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908 (16 of 1908), the Patents Act, 1970 (39 of 1970), the Motor Vehicles Act, 1988 (59 of 1988) and the Designs Act, 2000 (16 of 2000) or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

This means that a patent can be mortgaged or given as a security and the charge must be registered at the patent office itself. Banks and Financial Institutions should make a note of this provision.

India is considering overriding drug patents in test case

The Controller of Patents is seized with the matter of granting permission to permit export of pharmaceuticals which have been patented in India to countries outside India where patients are in dire need of these drugs. The Delhi Patent Office is hearing proceedings filed by Hyderabad based Natco Pharma for the grant of a license to export certain drugs used in the treatment of cancer to Nepal.

The WTO's Trade-Related Aspects of Intellectual Property Rights agreement (TRIPS) permits governments to grant licenses for drug patents and allow the production of patented drugs deemed critical to public health in poor countries. Since the agreement, several countries have used TRIPS to produce generic AIDS therapy drugs for their domestic markets.

In October, last year Canada became the first to allow one of its companies to make and export a generic version of a patented drug, sending AIDS therapy drugs to Rwanda.

Thereafter Thailand was the first to override patents for drugs to treat diseases other than AIDS, issuing licences for patented cancer drugs despite intense industry resistance and criticism from the United States for disrespecting patents.

Natco has a licence from Nepal to import Erlotinib, patented in India by Swiss firm Roche under the brand name Tarceva, and Sunitinib, patented by U.S. firm Pfizer Inc under the name Sutent. It says it can make generic versions of these drugs and sell them at about a fifth of the price through a private distributor in Nepal.

Drug research companies and public health activists argue over how much patents hinder poor countries from getting hold of new and improved drugs for AIDS and other public health issues.

Drugmakers say tight patent laws stimulate vital research; activists say the ensuing price monopolies prevent the drugs from reaching people in developing countries.

Natco has offered 5 percent royalties on sales it makes to Roche and Pfizer, in keeping with TRIPS guidelines.

Last year it must be recalled that the firm Novartis lost its challenge in a Chennai court in August to a law disallowing patents for minor improvements to existing drugs.

Last month the Delhi High Court refused to grant an interim injunction in favour of Roche and against Cipla inter alia on the grounds, that such an injunction would prevent the patented drug from being available to Indian patients at a reasonable cost.

Teaching programs in Intellectual property law

As of right now, India has less than 1,000 practicing patent professionals. The market demand for intellectual property (IP) professionals is expected to rise to 15,000 within the next three years.

The University of Washington and other Universities are also doing their bit in helping to create programs for advanced certificates in intellectual property law to fill the demand for professionals in India. With India emerging as a major economic player, there is a need to deal with obstacles that often confront developing nations, in this field.

To meet this demand, the UW's Center for Advanced Study and Research on Intellectual Property (CASRIP), along with the UW's Intellectual Property Law and Policy Masters of Law (LL.M.) program has joined forces with the Global Institute of Intellectual Property (GIIP) to provide qualified Indian graduate students with an advance level certificate program on patent and intellectual property.

Aside from meeting the demands of the WTO, the patent certificate program would serve to fulfill the goals presented on the CASRIP Web site — to facilitate a dialogue between various countries about their different approaches to IP law and to analyze the effects of these differences on technological invention and international tr

R. K. Dewan & Co. is in the process of setting up a training Institute DIIPR for advanced training in Intellectual Property Rights at Pune.

Record patents filed in India

The Indian Patent Office granted a record 15,262 patents during 2007-08. This figure was more than double the 7,539 granted the previous year (2006-07) and nearly eight times more than the 1,911 patents granted three years ago, in 2004-05. Historically, the total number of patent filings by residents of India is just three per million population, against a world average of 250.

According to the World Intellectual Property Organization Patent Report: Statistics on Worldwide Patent Activity.

"The number of patents in force in India in 2004 was 6,406, while it was 182,385 in China, and the world average of patents in force in 2004 was 84,671, worked out on the basis of the world population (6,378 million), with the number of patents in force worldwide during 2004 being 5.4 million," according to the Indian federal ministry for commerce and industry.

According to a spokesperson of the Ministry of Industry and Commerce, the number of patents granted in 2007-08, the first year of India's 11th five-year plan, compares well with the total number awarded during the entire period of the 10th five-year plan, which was just 17,618. The number of patent filings also crossed the 35,000 mark during 2007-08.

The rise is linked with the modernization of the patent and other intellectual-property offices. The Indian government spent more than \$35 million in the first phase of the modernization effort, which included setting up integrated intellectual-property offices in four major cities and launching electronic filing of applications.

Another \$75 million is to be spent to establish an Intellectual Property Archives and for allied activities. The government has also begun work on a National Institute of Intellectual Property Management at Nagpur to handle training, education, and research and think tank functions in intellectual-property rights. The National Institute of Intellectual Property Management has reached agreements with France, the United States, the U.K., the European Patent Office, Japan, Switzerland and Germany for cooperation in the field of intellectual property rights.

Last October, the World Intellectual Property Organization recognized the Indian Patent Office as an International Searching Authority and an International Preliminary Examining Authority under the Patent Cooperation Treaty. However, it will take several months for the Indian Patent Office to provide a searchable database and to set up examiners who will be able to search and examine patent application under the Patent Cooperation Treaty.

However, unless the financial and banking institutions accept patents as a property and inventors worthy of being given soft loans, the filing rates are not likely to significantly rise.

Software group lobbied on copyrights

The Business Software Alliance,[US] the principal global copyright-enforcement watchdog for the commercial software industry, spent \$1.7 million in 2007 to lobby for greater copyright enforcement and other issues.

The trade group spent \$960,000 in the second half of 2007 to lobby the US federal government, according to a disclosure form posted online Feb. 14 by the Senate's public records office. It also lobbied on patent reform legislation, cybersecurity, technology research and development funding and issues related to selling U.S. software to the Chinese government.

It lobbied Congress, the White House, the U.S. Patent and Trademark Office, Justice Department and other agencies. An analysis by The Associated Press last November revealed that the trade group gained \$13 million in software violation settlements with North American companies in 2006. Of that total, nearly 90 percent came from small businesses.

Microsoft Corp., Adobe Systems Inc. and Symantec Corp. are among the 29 members in the alliance, which spent \$740,000 in the first six months of 2007 to lobby on the same issues.

SOUTH KOREA

South Korea is increasingly becoming a patent savvy country. The number of requests for examination of PCT international applications is rapidly increasing at the Korean Intellectual Property Office (KIPO). For several US corporations KIPO is the preferred international searching authority and examining authority. There are two reasons for this. KIPO has reduced the examination processing period and has strengthened its excellence in examination quality. At the same time, international searching fee is lower than the EPO (1/9th of the EPO). Also Korea has set up a patent examination highway between itself and Japan. Currently the Republic of Korea ranks third in the filing of patents. India would do then to emulate the example set by Republic of Korea.

European Union: EPO grants fewer patents despite rise in applications

The number of European patent applications continues to increase, but the EPO is granting fewer patents. Last year, the EPO received a record total of 218 200 patent filings, compared to 210 600 the previous year. At the same time, the 54 700 European patents granted in 2007 represented a decrease of 12.9% over the previous year (62 800 granted patents).

Top filers at the EPO

The proportion of applications originating from the 32 member states of the European Patent Organization remained almost stable at 48.5%, following a decrease of 1% to 48.6% in 2006. Germany once again

topped the table with 17.9% of the total (25 176 applications), followed by France with 5.9% (8 328) and the Netherlands with 5% (6 999).

Among the non-European countries, the USA and Japan maintained their dominant share of the total number of European patent applications in 2007, amounting to 25.3% (2006: 25.8%) and 16.3% (16.4%) respectively, whilst South Korea accounted for 3.5% (3.4%).

US companies filed 35 590 European patent applications (2006: 34 790, +2%), Japanese companies 22 890 (22 140, +3.4%) and South Korean companies 4 930 (4 590, +7.3%). With a total of 1 145 European filings, China sharply increased its number of applications by 59% and now ranks among the five most active non-European applicant countries.