



## Newsletter Dec 2008

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### **Re-examine patent says High Court**

Setting a precedent the Hon'ble Madras High Court, on the 2 nd of December ordered the Patent office to re-examine the patent granted to Swiss drug maker F Hoffman-La Roche's Indian Unit for the drug valgancyclovir, marketed under the brand name Valcyte in India. The review petition was filed by the Indian Network of Positive People and the Tamil Nadu Network of People with HIV/AIDS against the Chennai Patent Office's decision to grant patent for Valgancyclovir without hearing their pre-grant opposition.

In India there is a very rigorous process for grant of patent involving substantive examination. During the examination process before the grant of the patent any person can file a pre grant opposition by way of representation at the Patent Office. There is no automatic right of hearing. It is at the absolute discretion of the Patent Office to hear the opposer. Once a patent is granted the rules also allow an opponent to file a formal opposition within one year of the grant of the patent (post grant opposition). After one year an interested person can apply for revocation of the patent on several grounds. This revocation application has to be filed at the Intellectual Property Appellate Board. However, recently in the case between Roche and the abovementioned groups the Hon'ble High Court of Madras has "invented" another mechanism for posing a hurdle to patents. It appears that this will now compel the Patent Office to hear every pre-grant opposition. Since pre-grant oppositions are free, virtually every patent application can be blocked indefinitely by multiple pre-grant oppositions filed sequentially.

The Patent Office granted a patent to Roche for the drug in June 2007. The abovementioned groups allege that the drug lacks novelty and hence is not patentable. According to the groups, since the drug was first patented in the US in 1994 and as product patent regime is applicable in Indian Patent law for patent applications filed after 1 January 1995, the drug cannot be considered patentable.

The Madras High Court's decision may affect another case being heard by the Bombay High Court between Roche and Indian drug maker Cipla on the same drug.

Roche had filed two petitions against Cipla-the first petition claiming that Cipla infringed Roche's patent by launching a generic version of Valcyte and the second petition alleging that Cipla infringed the Swiss drug maker's trademark by launching the product with a similar sounding name, "Valcept".

## **Thailand's Treaty Update**

On the 2nd of August 2008 Thailand became a party to the Paris Convention. It is also expected to become a member to the Patent Cooperation Treaty (PCT) by 2009 and is carrying out the legal proceedings for the accession process to obtain PCT membership. As regards the Madrid Protocol the Director General of Intellectual property stated that Thailand is expected to join the Protocol by 2010 or latest by 2015.

*To make an enemy do some one a favour.*

## **'Organic Silk' Label awarded to Jharkhand Tussar**

An 'organic silk' registration has been awarded for the Tussar silk produced in Jharkhand's Kharswan-Kuchai region. The state is the leading producer of the tussar silk. The state initiated a pilot project that involved labeling the produce as 'organic tussar' in order to increase the value of the silk and in turn fetch a better price for the weavers and producers.

In the month of October the tussar silk of the region received certification from US-based Onecert Asia (accredited to Agricultural & Processed Food Export Products Export Development Authority).

*If Providence did beards devise, to prove the wearers of them wise, a fulsome goat would then, by nature, Excel every other human creature.*

~ Thomas D'Urfey

## **Kashmir Pashmina and Kanni shawls finally get Geographical Indications of Goods registration**

After a long and arduous road the delicate, soft and expensive wool known as the Kashmir Pashmina was awarded Geographical Indications of Goods registration on 12th September 2008. Pashmina is a type of fine wool and the term also refers to the textiles made from it. The name comes from Pashmineh, derived from Persian pashm (= "wool"). This wool comes from changthangi or pashmina goat, which is a breed indigenous to high altitudes of the Himalayas. The wool has been used for thousands of years to make high-quality shawls that also bear the same name.

The registration was awarded to Tahafuz, a society of diverse Kashmiri handicraft artisans after an agreement was signed between the litigating parties namely Kashmir Handmade Pashmina Promotion Trust (KHPPT) and the Wildlife Trust of India (WTI) on the one hand, and the Crafts Development Institute (CDI)

and the Tahafuz, on the other. The agreement setting aside the differences between the parties marked an end to the two year litigation. Both KHPPT and pashmina workers within Tahafuz are empowered by the agreement to form a body that will administer the Kashmir pashmina appellation. Any objections raised by any party to the litigation have been conclusively been set aside by the award and henceforth, only those pashmina products coming out of the Kashmir valley that adhere to the product specifications registered with the GI registry can qualify to call themselves Kashmir Pashmina.

The Central Government also on July 29, 2008 recognized the Kashmiri origin of the exquisite and popular traditional handloom known as the Kanni shawl.

Under the Geographical Indications (GI) of goods registration, Kashmiri Pashmina and Kanni shawls will now have their own distinctive logos, officials said. The Kashmiri Pashmina and Kanni GI would be registered in Clauses 23 (yarns and thread for textile use) and 24 (textiles and textiles goods, not included in the category of bed, table covers and clothing).

*Of the things that can never go wrong, some will.*

## **Pioneer wins infringement suit against Samsung**

The Pioneer Corporation on 29th October 2008 announced that a jury in the United States District Court in Eastern District of Texas awarded damages totaling US\$59.3 million in favour of Pioneer against Samsung SDI and two other affiliates for infringing two of Pioneer's Patents by using them in plasma televisions that Samsung manufactures.

## **LG Wins Patent Fight in Appeal Court**

The South Korean Company, LG electronics won a significant victory against appliances giant Whirl Pool Corp on Whirlpool's own home turf in a dispute involving two clothes washer patents. Whirlpool had filed an action seeking damages and injunction against LG at the time when LG Michigan had introduced in the U.S market an impeller type washing machine that LG had designed and produced. According to LG, the U.S. Court of Appeals for the Federal Circuit ruled in favour of LG and confirmed the right of LG to market the LG machine in the U.S. and ended five years of litigation.

*No matter what goes wrong there is always someone who will say that she knew it would.*

## **Ferragamo Wins Battle Over Trademark**

The Korean Supreme Court in October pronounced a 200 million KRW ruling in favour of the Italian fashion giant Salvatore Ferragamo against Daeho Corp , a Korean company, the producers of Pierre Cardin shoes. The court opined that that the perception of a brand may be influenced by an emblem on a shoe and this is tantamount to a trademark.

*Great things are done by a series of small things brought together.*

*~ Vincent Van Gogh*

## **Nanotech used to develop gel**

Dr. Paknikar of the Agharkar Research Institute Pune and his team of scientists, have developed an anti microbial gel formulation for treating burns, wounds, diabetic ulcers and bed sores using nano technology. According to Dr. Paknikar “the gel stands out for its ability to destroy bacteria. The drugs used currently lack such quality and the bacteria become drug resistant, preventing complete cure of the wound. With the gel we have developed, drug resistance is very difficult. Moreover, it does not have any side effects. It’s ability to cure close to 30 per cent burns also helps in quick recovery”. The gel will soon be out in the Indian markets. According to Dr. Paknikar, the gel is a nano technology based drug already approved by the Drug Comptroller of India.

Patent Applications for the formulation have been filed in 15 countries.

*Nothing is as simple as it looks.*

## **Dr Sancheti’s ‘Indus Knee’ gets patent**

A staggering 65,000 Indians require knee replacement surgery every year but only a small number can afford the high cost of the prosthesis which until recently had to be imported from abroad. Dr. K H Sancheti has proved himself to be a godsend for the less fortunate multitude by creating a low cost indigenous knee christened the ‘Indus’ knee which has been granted a Patent in India in November.

Dr. Sancheti is the first orthopaedic surgeon in India who has been awarded a patent. The prosthesis is one third the cost of an imported knee and costs around Rs 32,000 - Rs 35,000. In addition the knee implant is better suited to the Indian environment and allows for more than 130-135 degrees of knee bending

This Patent Application was filed and prosecuted by R. K. Dewan & Co.

For more information please refer to this .

*About 1/5th of the people are against everything all the time.*

## **Cyber squatting - reserved or registered does not matter**

is a legitimate practice when conducted in good faith. However, it is abused by entities who wish to profit from infringing domain names. Such entities seek to generate income from their registered domain names during the five-day “grace period,” and upon the expiry of this period, they retract the registrations and receive a full refund of registration fees.

The Federal District Court, Central California District, may put an end to the common practice of "domain tasting" in a decision issued June 30, 2008

In a suit filed by a subsidiary of Verizon Communication against Navigation Catalyst, Inc. and Basic Fusion, Inc seeking injunctive relief against the defendants from registering/ owning domain names deceptively similar to Verizon's registered trade marks and trade names. Verizon contended that the defendants registered 1,392 domain names with ICANN that were confusingly similar to their trademark and trade names. The Defendants contended that the domain names that are merely "reserved" for a few days and then dropped during the grace period should not be considered "registered" under the U.S. Anti-cybersquatting Consumer Protection Act ('ACPA'). Notwithstanding, the defendants admitted that they used the names during the short time they had them "reserved" to host bare bones Websites that provided advertising links to other sites, whose owners paid defendants for the publicity.

The court ruled there was no difference under ACPA between reserving a domain before and during the five-day grace period and registering it after the period expires. The court determined that the domainers acted in bad faith because they sought to profit from Verizon's customers' mistyping. The court concluded that defendant's efforts to "trademark scrub" during the five-day grace period violated the ACPA because such efforts to avoid trademark infringement must take place before rather than after domain names are reserved.

*I'm not fat! I'm horizontally challenged!*

## **Patent granted for Novel Obesity Therapy to Compellis Pharma**

There's good news for those on the heavier side of the weighing scales. A broad patent protecting the key aspect of Compellis Pharmaceuticals Inc.'s novel obesity therapeutic strategy has been granted by the USPTO in October. The invention entitled "Inhibition of olfactory neurosensory function to treat obesity and related disorders." Chris Adams, president and CEO of Compellis Pharmaceuticals said "This patent expands the scope of the company's invention by protecting a broad class of calcium channel antagonists to treat obesity. This includes all new and existing molecules, covering both methods and composition of matter. This second patent greatly enhances the commercial potential of Compellis' obesity therapeutic strategy."

Compellis was granted its first patent in 2006 which was also entitled " Inhibition of olfactory neurosensory function to treat eating disorders and obesity "

The Abstract of the Invention states "According to the invention physiological disorders associated with eating habits can be treated or prevented by modulating the sense of smell or taste. For example, compositions comprising calcium channel agonists or antagonists can be used to treat eating disorders, obesity & associated physiological disorders. Without being bound to any specific theory, by contradictory nasal mucosa or olfactory receptor neurons with such compositions signal transduction pathways specific for the functions of smell or taste are triggered, resulting in modulation of food intake"

For more information please refer to this patent or

*When a person has a choice of two evils he often selects both.*

## **Pokali Rice Gets Geographical Indication Registration**

Cultivated in the coastal regions of Ernakulam, Alappuzha and Thrissur districts, the traditional salt resistant variety of the Pokkali rice has received Geographical Indication registration. The Geographical Indication registration would imply that the pokkali farmers will get exclusive right to cultivate and market it in the brand name of 'Pokkali' In other words the registration will prevent others from using the brand name and enhance the market value of 'Pokkali' brand rice.

The Kerala Agricultural University said that the registration was the result of concerted efforts for two years by Kerala Agricultural University, Department of Agriculture, Kerala State Council for Science, Technology and Environment and pokkali paddy farmers.

Traditional symbiotic methods are used by the Pokkali farmers for growing the rice. Since it is cultivated organically, the rice has high market value.

Many medicinal properties are also attributed to Pokkali rice. It is globally renowned for its salt-resistant genes. Even a DNA library has been developed by the University of Arizona, USA, for the rice.