

Newsletter May 2009

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Top Ten Most Innovative Companies

Rank	Company	Country
1	Apple	USA
2	Google	USA
3	Toyota	Japan
4	G.E.	USA
5	Microsoft	USA
6	Tata Group	India
7	Nintendo	Japan
8	P&G	USA
9	Sony	Japan
10	Nokia	Finland

We congratulate Tata Group on being ranked 6th world wide in the top ten Most Innovative Companies. We are proud to say that we have been instrumental in filing a substantial number of Patent applications for Tata Group.

EPO refuses patent over use of Human Embryonic cells

The European Patent Office in January refused the grant of a patent covering human embryonic cells. The patent application was filed by Wisconsin Alumni Research Foundation and dealt with a way to culture primate (including human) embryonic stem cells in labs for an extended period of time without losing the potential of the stem cells to differentiate and develop into other cells of the body. The application was denied on the ground of it being contrary to public order and morality and also on the ground of it contravening the European Patent Convention's ban on the use of human embryonic cells for industrial or commercial purposes. This refusal by the European Patent Office to grant a patent highlights the stark difference between the US and the European Union patent framework regarding human embryonic stem cells. In previous years, companies like Geron Corp, Novocell and also organizations such as Wisconsin Alumni Research Foundation have been granted patents in the USA on certain types of human embryonic stem cell technology.

All computers wait at the same speed

eBay need not hunt for infringers

The United States District Court Southern District of New York ruled in December 2008 in favour of eBay in a case filed by Tiffany & Co. Tiffany, in the case, sought to hold eBay responsible for the many counterfeit Tiffany items put up for sale on eBay's website. The Court however was of the opinion that when eBay had the requisite information of any infringement it did not allow for that product to be offered for sale and that it fell to Tiffany to protect its own Trade mark. The US District Judge noted in the ruling "The Court concluded that Tiffany has failed to meet its burden in proving its claims. Given Tiffany's choice to sue eBay, rather than individual sellers, and this Court's conclusion that eBay does not supply its services to those whom it knows or has reason to know are infringing Tiffany's trade marks, Tiffany's claims against eBay must fail'.

Thus, it can be concluded that it is the Trade Mark owner's burden to police its mark and companies like eBay cannot be held liable for Trade Mark infringement based solely on their generalized knowledge that Trade Mark infringement might be occurring on their web site.

Apple brings out future tech

Apple has filed for grant of patent in respect of two sets of applications with the USPTO. One of them describes an innovative system, pairing various apple hardware systems such as iPhone, iPod or even MacBook with the electronic systems in cars. The applications primarily deal with an in-vehicle navigation system. The application may be used to prevent thieves from stealing an electronic device/ system from a car as the in- car device/ system paired with the Apple device will be activated only when the in car device and the apple device communicate with each other and confirm ownership. It is also said that the Pairing

could be used to define the user limits for using the in-vehicle navigation device which could be used to activate/ deactivate wirelessly single or multiple functions like calling/ stereo etc.

The Second systems deal with expansion of the existing ipod and Nike kit. In the future it may be possible to link GPS receivers, as well as directional sensors which may then be integrated with headphones or helmets which could track a persons gaze and even commands could be given by way of gestures. For instance you may be able to change your song just by shaking your head.

Teamwork is essential -- it allows you to blame someone else

Chinese Scotch

Mr. Hewitt the head of the SWA delegation after meeting the Chinese Government minister Wang Yong said: "We were encouraged by Mr Wang's positive response. I believe we can now look forward to achieving Geographical Indication of Origin for Scotch Whisky in China soon."

Mr. Salmond of the SWA delegation said: "This is a vital issue for the Scotch whisky industry. We had an excellent meeting with the minister and I am confident we can now look forward to rapid progress

Growing old is mandatory; growing up is optional

Bigger the Brand the more it Scares

Here is an incident which clearly goes to show that if your brand is well established your competitors will think twice before crossing you. EFIX USA, a niche electronics reseller first announced that it was coming out with a high end Mac clone [A Macintosh clone is a personal computer made by a manufacturer other than Apple, using (or compatible with) Macintosh ROMs and system software.] but then a few hours later decided against it the reason being? That it wished to avoid a legal dispute. The dispute would have arisen as Apple does not allow its Macintosh operating system to be used on any other computer other than an Apple

Logical consequences are the scarecrows of fools and the beacons of wise men. ~ Thomas H Huxley

The Case of the 'ix' Suffix

The publishing house which publishes the famous 'Asterix and Obelix' in recent times filed a suit against a telecom company (Orange) for using the word 'Mobelix'. The Publishers claimed that France's mobile giant

Orange was infringing their rights by using the term 'Mobilix' the publishers claimed a right over the suffix 'ix'. However the European Court of Justice dismissed the suit and ruled that the Publishers could not claim exclusive rights over the suffix 'ix'.

:) The Emoticon ;-)

According to Oleg Teterin, a Russian entrepreneur, he has been granted a trade mark for the emoticon ":-)" from the Russian federal agency. The business man also states that the trademark covers most variations so anyone using :) or :(will have to have a license it from him. Speaking to a Russian TV channel NTV, Mr Teterin "I want to highlight that this is only directed at corporations, companies that are trying to make a profit without the permission of the trademark holder,". Russian media however said that it was not Teterin who first tried to trademark the symbol in Russia. The Russian daily, Kommersant said that in 2005 a Court in St. Petersburg granted an appeal to the German corporation Siemens, which had been sued by a Russian man claiming he was the trademark owner. A professor from Carnegie Mellon University in the United States named Scott Fahlman is credited with coming up with the smiley emoticon in 1982.

Exceptions always outnumber rules

Prisoner Sues the State for Copyright Infringement

The US Government was sued by a former inmate (Mr. James Walton) for the infringement of the copyright over the Calendars that he created while he was in prison. While in prison, Mr. James Walton made a substantial amount of calendars as part of his prison assignments which the Govt. inter alia sold to the private purchasers. The suit was filed in the United States Court of Federal Claims and was dismissed, Mr. Walton, later filed an appeal with the United States Court of Appeals for the Federal Circuit. The Appellate Court held that "the suit could not be maintained because the statutory provisions governing copyright infringement suits against the United States (28 U.S.C. § 1498(b), do not permit such suits by prisoners in Walton's situation".

If Ignorance is Bliss, why aren't more people happy?

Fat Pig Gene Patent in dispute

A patent granted to a US firm which relates to a test/method which identifies whether a pig has a certain gene which is responsible for producing more meat more quickly than others, has caused a big protest to arise in Germany. Farmers, Ecologists and Politicians have filed objections to this patent. Environmentalists and pork farmers argue that there should be "no patents on life". Mr. Christof Then of Greenpeace claimed that the passing of this patent amounted to abuse of the patent system since it may lead to control over the breeding of animals and the growing of crops and, to some extent, to control food production as a whole. The Bavarian farmers believe that the patent could be used to claim rights on all those pigs who have the

particular gene, whether they have any connection to the patented test or not. The farmers fear that as a result of this they may be forced to pay royalties.

‘Octomom’ wants trade mark

Nadya Suleman a mother who gave birth to octuplets wants to register her media given nick name ‘Octomom’ as a trademark. According to Suleman she wanted to use the Octomom name on disposable diapers, cloth diapers, dresses, pants, shirts and also a television show. However, a Texas-based Company called Super Happy Fun Fun Inc. had already filed an application on March 12 seeking to use the Octomom name in connection with computer game software; downloadable mobile entertainment software such as ring tones, screen savers and wallpaper graphics; toy action figures and accessories; puppets; balloons; chess sets; golf balls; snowboards; and even Christmas tree ornaments, this might spark a dispute in the future.

Never assume malice for what stupidity can explain

Best Enforcement of IP Laws is in India

A London based consumer advocacy body called Consumer International conducted a survey (called the IP watch List) that examines the intellectual property laws and enforcement practices of a range of countries. The following are the best and the worst rated countries according to the survey:

Best rated countries

India
South Korea
China (PRC)
United States
Indonesia

Worst rated countries

United Kingdom
Thailand
Argentina
Brazil
Chile

India tops the survey as the best rated country with regard to IP enforcement leaving even countries such as UK and the US behind.

If at first you don't succeed, redefine success

Local David Vs. International Goliath of Electronics (Samsung)

In an interesting case a Madurai based software engineer filed a patent infringement suit in the Madras High Court against international electronic giant Samsung Electronics and other companies. Mr. Somasundaram

Ramkumar has taken on electronics and telecommunication big wigs claiming that they have infringed his right over a patent that he filed for in the year 2002 in the Chennai patent office. Mr. Ramkumar was granted a patent in the year 2008 for an invention that is titled as MOBILE TELEPHONE HAVING A PLURALITY OF SIM CARDS ALLOCATED TO DIFFERENT COMMUNICATION NETWORKS. Justice Jaypaul of the Madras High Court has issued an ad interim injunction whereby Samsung Electronics, Mirc Electronics and Spice Mobile were restrained from manufacturing multiple SIM holding mobile as that would amount to intellectual property right infringement of Mr. Ramkumar. A revocation petition has been filed at the Intellectual Property Appellate Board (IPAB) to reexamine the patent granted by the Chennai patent office in 2008. Spice Mobiles Ltd has also filed a similar petition with the IPAB

Mr. Ramkumar had filed a PCT application but never entered into national phase. Interestingly , the International search report relating to the invention says that "The search has revealed that the concept of a mobile phone having provisions for utilizing at least two SIM cards allocated to different communication networks in order to simultaneously operate said mobile phone in said different communication networks according to the subject of independent claim 1 is NOT NOVEL since a mobile phone providing the same features as claims 1 to 6 of the present application are directed to is at least disclosed in German Offenlegungsschrift DE 199 19 389 A1 (SIEMENS AG) 2 November 2000."

DIT Grants funding for Patent filing abroad

The Department of Information Technology has come out with a scheme to Support International Patent Protection in Electronics and IT (SIP- EIT) by SME's and Technology Start Up Units. Under the scheme the government shall provide financial support to SME's and Technology Start Up Units for filing patents in foreign countries so as to "encourage indigenous innovation and to recognize the value and capabilities of Global IP capture growth opportunities in the area of information technology and electronics". Under the Scheme the govt. will bear upto 50% of the total patent processing cost (including Attorneys' Fees, Patent Office Filing Fees, Patent Search cost, Additional Cost for entering National Phase upto grant/issue) or alternatively upto Rupees 15 Lakhs which ever is less. In order to be eligible for the scheme a person applying under the scheme inter alia must have already filed a patent application for the invention in India and the Invention must relate to Electronics/ICT technology domain. In addition to the earlier condition the Scheme further lays down the following conditions for acceptance of application for such grant:

- The Application must be accompanied by a prior art search report from a International Search authority/ registered Attorney firm.
- The patent applications are to be processed through a registered patent attorney in a patent attorney firm having experience of at least 5 years in handling international patent applications.
- The applicant can apply for the support at any stage of international filing. However, reimbursement will only be applicable to expenditures incurred subsequent to the date on which application has been cleared for support.

MetLife Scores Victory over Mankind Pharma

In a Trademark case before the Delhi High Court, insurance company MetLife scored a victory over Mankind Pharma in December. The Hon'ble High Court granted an interim injunction against Mankind Pharma restraining it from using the word 'Metlife' or any similar word to sell its drugs within India. MetLife had argued that using the brand 'Metlife' to sell the drugs amounted to misuse of the company's goodwill and is harmful to its brand. According to a senior member of Mankind Pharma the drugs have been withdrawn from the domestic retail market

Health is merely the slowest possible rate at which one can die

Remove Mountain Picture from Label- says Delhi HC to Pepsico

Responding in November, to a petition filed by the Bureau of Indian Standard (BIS) against the order of a lower court which allowed Pepsi the right to show a mountain in its label for drinking water, a division bench of the Delhi High Court observed that "The pictorial device suggests that the packaged mineral water being manufactured and marketed by the company has its origin in the mountain which creates a misleading impression in the minds of the purchasing public".

ROCHE Vs CIPLA: COURT SAYS CIPLA NOT TO USE BRAND VALCEPT

In the ongoing saga of the fight between Roche and Cipla, Roche seems to have come out the winner as the Bombay High Court in December 2008 ordered Cipla to discontinue the use of the Trademark 'Valcept' for its anti infection drugs Valganciclovir as the Court was of the opinion that Cipla's Trademark 'Valcept' is deceptively similar to Roche's Trademark 'Cellcept' used for its drug mycophenolate mofetil.

In response to the Chennai High Court's order dated 2nd of December directing the Patent office to re-examine the patent granted to Roche for the drug Valganciclovir, marketed under the brand name Valcyte in India, Roche has filed SLP (special leave petition) before the Supreme Court of India. The Supreme Court in April directed the Patent Controller to hear and dispose off all post-grant oppositions against a patent application for Valganciclovir by Roche within 12 weeks and also asked Roche to hold off the pursuit of the patent violation case against Cipla's for its drug Valcept until the Chennai patent office re-examines the patent granted to Roche. Roche responded by giving an undertaking not to press for an order restraining others from selling generic versions of the drug.

If our bodies are made up of 70% of water, then wouldn't drinking water make us cannibals?

INTA : Annual Meeting

Dr. Mohan Dewan, Dr. Niti Dewan & Adv. N. K. Bhardwaj will be attending the INTA (International Trademark Association) Annual Meeting at Seattle, WA from 16th May 2009 to 20th May 2009.

Pharmaceutical Biotech Patent Litigation Strategies

Pharma IQ is organizing a two day conference: Pharmaceutical Biotech Patent Litigation Strategies at London, UK on 27 th & 28 th May 2009.

27 th May, 17:45 – 20:45 : Dr. Mohan Dewan will be conducting an evening workshop on Drafting Robust Patents to Successfully Withstand Scrutiny and Litigation.

28 th May, 12:00 : Dr. Mohan Dewan will speak on "Patent Litigation in Emerging Markets

For more details, please visit

Bilcare wins CII award

On April 26, 2009, the Confederation of Indian Industry (CII) in partnership with the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry, Government of India, hosted the World Intellectual Property Day celebrations in New Delhi. The Confederation of Indian Industry felicitated outstanding individual and organizational contributions to Indian Intellectual Property, in the fields of Patents, Trademarks and Design.

The Indian Patent Office facilitated the process of selecting organizations who have made outstanding contributions in the field of Patent, Trademark & Design and we are proud to say that our Client, Bilcare Ltd. has won the CII award for outstanding contribution made in the field of Design. We have the pleasure of being the advocates for Bilcare and filing and obtaining registration for them.

The other awardees were Hindustan Unilever Ltd. for the Patents and Reliance Industries Limited for trademarks.