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- [BUDGET RELIEF FOR R & D](#)
- [DISPARAGING ADVERTISEMENT](#)
- [JUSTDIAL VS. ASKME.IN](#)
- [REJECTION AFTER GRANTS](#)
- [ITC VS. MARLBORO](#)
- [PROTECTION AND UTILISATION OF PUBLIC FUNDED INTELLECTUAL PROPERTY BILL, 2008](#)
- [TRADE MARK AMENDMENT BILL](#)
- [HUL SIGNS WITH UNILEVER](#)
- [MICROSOFT INFRINGES FONT DESIGN IN CHINA](#)
- [GOOGLE ORDERED TO PAY IN FRANCE](#)
- [GOOGLE ISSUES APOLOGY TO CHINESE AUTHORS](#)
- [ITALIAN COURT ORDERS IMPRISONMENT OF GOOGLE OFFICIALS](#)
- [NOKIA VS. APPLE](#)
- [KODAK VS. APPLE AND RIM](#)
- [KODAK VS. SAMSUNG SETTLED](#)
- [MOTOROLA VS. RIM](#)
- [INTERNATIONAL TRADE COMMISSION](#)
- [WORDY WOES](#)

Budget Relief for R & D

The Budget unveiled for the Financial year 2010 hopes to bring an increase in its incentive to Research and Development conducted by private organizations, by increasing the weighted deduction from 150% to 200 % on in-house research and development (R&D) expenses including the cost of patenting inventions.

The Budget also aims to increase weighted deduction on payments made to National Laboratories and research associations, colleges, universities and the like for scientific research from 125% to 175%.

The Finance Minister, Mr. Pranab Mukhjee, in his speech before the Parliament stated "Last year, I extended the scope of weighted deduction on expenditure incurred on in-house research and development (R&D) to all manufacturing businesses except for a small negative list. To further encourage R&D across all sectors of the economy, I now propose to enhance the weighted deduction on expenditure incurred on in-house R&D from 150 per cent to 200 per cent. I also propose to enhance the weighted deduction on payments made to National Laboratories, research associations, colleges, universities and other institutions, for scientific research from 125 per cent to 175 per cent."

The proposed changes would help Research & Development in private and public sectors which usually works on a constrained budget and would also improve patent filing in India.

Disparaging advertisement

The legal battle which ensued as a result of a controversial advertisement featured by FMCG major HUL which directly disparaged the product of its competitor Proctor & Gamble has just seen a major development with the Calcutta High Court on the 5th of March 2010 passing an order restraining Hindustan Unilever Ltd (HUL) from broadcasting the impugned advertisement.

The Advertisement features two ladies waiting at a bus stand for their children. One of the ladies has a packet of Tide (P& G's product) in her bag and the other has Rin (HUL's). The lady with the Tide packet boasts of the whiteness and the fragrance caused by Tide. The other lady merely beams at this boasting. After this exchange a school bus stops and off come the children of the two ladies. The child of the lady with the Tide has a distinctively dull white shirt on while the child of the lady with the Rin packet has a spotless white shirt on. The child of the lady with the Rin packet asks her "'Aunty chaunk kyun gayi?" (which means - why does aunty look surprised?) which appears to be a direct reference to the recent Tide campaign "chaunk gaye" (which means - surprised).

Section 29(8) of the Trademarks Act 1999 clearly mandates that any person using another's trademark in his advertisement which either takes unfair advantage or disparages the character or reputation of the trademark will be infringing the trademark. This includes the spoken word as well as visual representation.

Clearly Hindustan Lever has violated this section when it uses the Tide trademark in its advertisement for Rin product and rightly Kolkata High Court has granted an ad-interim injunction order for this disparaging advertisement.

JustDial Vs. Askme.in

The Delhi High Court in January granted an ex parte injunction against Infomedia 18 Limited (one of the group company of media group TV18), restraining it from running the website askme.in till the next date of the hearing. The Case was filed by JustDail, one of India's leading Local Search Engines. Just Dial alleged that the Defendants had infringed the copyright of JustDial with respect to JustDial's extensive database, which according to the Plaintiff is a literary work.

JustDail alleged that askme.in copied the database of JustDail and that there were identical spelling mistakes in both the databases. The Court in addition to granting the injunction also appointed two officials, in Delhi and Mumbai, to take into custody the computer hardware and any other storage media which has been used by askme.in to store any data developed by JustDial.

Rejection after Grants

The Patent Office granteth and the patent office taketh away. In a strange case the Indian Patent Office (IPO) granted a patent to Abbott Laboratories relating to its drug Humira and shortly thereafter revoked the granted patent suo moto. Abbott Laboratories proceeded to file a petition against the IPO contesting the baffling order. Justice Muralidhar, of the Delhi High Court was pleased to order that "Till the next date of hearing there shall be no cancellation of the patent granted to the Petitioner." The reason for such an order it turns out was that a controller at the Patent Office had not taken a pre-grant opposition filed by Glenmark into account while granting the patent to Abbott Laboratories.

ITC Vs. Marlboro

In the dispute between ITC and Philip Morris & others for the alleged trade mark dilution of ITC owned Welcome Group 'Namaste' logo by Philip Morris' stylized logo of the Marlboro trademark, the Delhi High Court has ordered that ITC is not entitled to a temporary injunction against Philip Morris.

To the contention of the Plaintiff that Marlboro's new festive "M" mark is "deceptively similar to the Welcome Group's Namaste logo which is in the shape of a "W" the Hon'ble court held that "...a "global" look, rather than a focus only on the common elements of the mark, is to be taken, while considering if the impugned or junior mark infringes, by dilution, an existing registered mark".

The Court further held "In the case of logos and other marks, the application of the "identity" or "similarity" test has to result in a conclusion that the rival marks bear a very close resemblance, seen from an overall perspective. It is, therefore, concluded, that prima facie the two trademarks are neither identical, nor similar to each other."

To read the full judgement please [click here](#)

Protection and Utilisation of Public Funded Intellectual Property Bill, 2008

The Protection and Utilisation of Public Funded Intellectual Property Bill, 2008 aims to provide for the protection and utilisation of all intellectual Property originating from public funded research. The bill however has caused a lot of strife in the scientific community in government- funded research institutes and laboratories.

After being introduced in the Rajya Sabha, the bill is currently before a standing committee of Parliament which has been hearing various stakeholders. The committee has to submit a report to Parliament by March, 2010.

The Bill attempts to force public funded research organizations to patent any and all inventions, regardless

of the actual worth of the invention or the cost of patenting. If the Institution fails to do so it attracts sanction of the Govt.

According to public health activists, the bill does not have certain safeguards built-in to keep in check the Govt's oversight with regard to the ultimate pricing of the products which are produced from or are a result of public funded research. The Activists argue that if public research is sold to private parties the prices of the products may be set very high and the public will in effect be paying for the same product twice; once by funding the research by paying taxes and the second time by paying for the product sold by the private parties this may lead to a total absence of affordable drugs and health technology. Since India is still partly a welfare state commercializing every invention developed through research funded from the coffers of the Govt. would not be the best course of action as it may lead to the benefits of the public funded inventions to be beyond the reach of the general public.

The Bill aims to make publicly funded institutes self sufficient by allowing them to own the IP produced by them (Something that the present Patent Act already allows). The bill also provides that individual inventors be paid a minimum of 30% of any royalties that result from the licensing of patents by publicly funded institutes.

The Bill suffers from many shortcomings but it is hoped that the concerns expressed by various quarters are addressed before the bill becomes a law.
To view the bill please click [here](#)

Trade Mark Amendment Bill

The lower house of Parliament the Lok Sabha in December 2009 passed the Trademark (Amendment) Bill 2009. The bill will now be sent to the upper house of Parliament- the Rajya Sabha for its approval.

The Bill aims to bring the existing Act in line with the Madrid Protocol. According to the statements and reasons of the Bill

"Accession to the Madrid Protocol will entail amendments to the Trade Marks Act. For this purpose, it is proposed to suitably amend the Trade Marks Act and to incorporate therein a new Chapter IVA containing special provisions relating to protection of international registration of trade marks under the Madrid Protocol."

The statement and reason further states:

"It is also proposed to reduce the time period of filing a notice of opposition of published applications from four months to three months for speedy disposal of proceedings. Further, with a view to simplify the law relating to transfer of ownership of trade marks by assignment or transmission and to bring the law generally

in tune with international practice and modern business needs, sections 40, 41 and 42 are being omitted and section 45 is proposed to be modified. It is also proposed to omit Chapter X of the Trade Marks Act dealing with special provisions for textile goods, as it has now become redundant.”

HUL signs with Unilever

One of India’s largest Fast Moving Consumer Goods Companies, Hindustan Unilever has in December 2009 signed a trademark licence agreement with its parent company Unilever. According to the terms of the License Agreement HUL will pay one per cent of net sales on specific brands as royalty to its UK-based parent. The board of directors of HUL in addition to approving the Licensing Agreement also approved amendments to the existing technical collaboration agreement (TCA) with Unilever Plc to include additional product categories, where technical inputs are provided by Unilever.

Microsoft Infringes Font Design in China

A Chinese court has ordered Microsoft to stop selling Chinese versions of its Windows 98, 2000, 2003 and Windows XP Operating Systems that include fonts designed by a Chinese Company , Zhongyi Electronic, which designs Chinese character fonts.

In its ruling, the court said Microsoft violated the scope of licensing agreements between the US software giant and a Chinese technology company.

This may mark a trend in local companies asserting their IP against huge international companies.

Google Ordered to Pay in France

The Internet giant Google Inc. has been found guilty of copyright infringement by a Paris court. The case relates to Google digitizing and publishing books under its ‘Google Books’ project. Google was ordered to pay Euro 300,000 (\$430,000) in damages with interest to French publisher La Martiniere-Le Seuil. Additionally, the Court ordered Google to pay Euro 10,000 per day until it removes extracts of the French books from its online database.

Google issues Apology to Chinese Authors

The controversial ‘Google Books’ project is making waves in China as well. In January, in a public apology addressed to Chinese writers Google admitted that it had scanned books under Chinese copyright for its Google Books digital library project.

Authors and Publishers in countries like the United States, France, Germany have objected to Google digitizing their work and putting it on the net without their consent.

Google has been negotiating with the China Written Works Copyright Society trying to resolve outstanding copyright issues and agree on terms for compensation, but the negotiations have so far proved fruitless with the Chinese writers refusing Google's offers.

Italian Court orders imprisonment of Google officials

In what could spell grave trouble for the Internet giant an Italian court has found 3 executives and a former CFO of Google Inc. guilty of privacy violations over a video that was uploaded on the search giant's video platform and sentenced them to 6 months imprisonment.

Google's senior vice president and chief legal officer David Drummond, chief privacy counsel Peter Fleischer, marketing executive Arvind Desikan and former chief financial officer George Reyes were found guilty with regard to criminal defamation and violation of the country's privacy code.

The executives of Google were on trial on charges related to a clip uploaded on Google Video in 2006. The clip in question showed students bullying an autistic classmate. According to prosecution filings, the video was in Google's "funniest videos" category for almost two months, reaching 5,500 views.

Nokia vs. Apple

In a fierce on going battle between the titans of the mobile industry, the US International Trade Commission has at the behest of Apple, opened a patent-infringement investigation against Nokia on the 19th of February.

The legal tussle between the two giants was initiated by Nokia, when in October 2009, it sued Apple in U.S. District Court in Delaware, alleging that Apple had infringed 10 of its patents. In retaliation, Apple countersued Nokia in the same court in December alleging that Nokia infringed 13 of its patents.

According to Nokia, Apple has infringed its patents relating to GSM, UMTS (3G WCDMA), and wireless LAN standards. Apple, however, claims that Nokia has infringed its patents relating to real-time signal processing, teleconferencing, display graphics, power conservation, and other areas related to smartphones.

To read more on the ITC ruling please click

Kodak Vs. Apple and RIM

Alleging that Apple and RIM (the maker of Balckberry devices) infringed its patented Digital Imaging Technology, Eastman Kodak has filed a complaint with the International Trade Commission. Kodak stated that it had separately filed two suits against Apple in US District Court in New York.

In one suit against Apple, Kodak alleges infringement of two patents generally covering image preview and the processing of images of different resolutions. In the other suit, Kodak alleges infringement of patents relating to a method by which a computer program can “ask for help” from another application to carry out certain computer-oriented functions.

Kodak has sought to obtain an order from the ITC preventing the importation of infringing devices marketed by Apple and RIM.

Kodak Vs. Samsung Settled

Settling a lingering dispute between the two companies Eastman Kodak Co. and Samsung Electronics Co. Ltd. the have agreed to enter into a cross licensing agreement which will allow access to each other’s patent portfolio. Samsung has agreed to make a non-refundable payment to Kodak this year that will be credited toward its future royalty obligations to Kodak.

The announcement comes after an Administrative Law Judge of the U.S. International Trade Commission issued an Initial Determination on Dec. 17 2009 that found that the Kodak digital camera patents at issue in the case were valid and that Samsung had infringed those patents. Kodak had been seeking from the ITC, a limited exclusion order preventing Samsung’s importation of infringing devices, including certain mobile telephones and wireless communication devices featuring digital cameras.

Motorola Vs. RIM

Motorola, in January 2010 filed a complaint with the US International Trade Commission (ITC), seeking a probe into RIM's use of its patents and also seeking to bar RIM's importation of infringing products. Motorola alleged that the maker of BlackBerry mobile devices, has engaged in unfair trade practices by selling products that infringe five of it's patents.

Motorola stated that the patents were related to early-stage innovations that Motorola developed in key technology areas, such as Wi-Fi access, user interface, application management and power management.

International Trade Commission

In light of the above mentioned patent cases it appears that the US International Trade Commission is emerging as the preferred forum to settle patent related disputes. The United States International Trade Commission inter alia adjudicates cases involving imports that allegedly infringe intellectual property rights. Through such proceedings, the agency facilitates a rules-based international trading system.

The recent trend appears to be that litigants attempt stop the opposite parties' goods from being sold within the US, by resorting to Section 337(a)(1)(B) of the Tariff Act of 1930, which inter alia declares unlawful "importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that - (i) infringe a valid and enforceable United States patent . . . or (ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent."

The main point of distinction between an infringement action before the ITC and before federal district court in the US is that the ITC may not award damages, and the time frame for ITC proceedings is more expeditious than in many district courts. Furthermore, ITC complainants may in some situations secure temporary and permanent exclusion orders that can be different, and better, in scope than comparable district court preliminary or permanent injunctions. It appears that these distinctions are the reasons for the recent increase of patent infringement cases being filed before the ITC. To learn more on the US ITC click .

To learn more on Section 337 of the Tariff Act

Wordy Woes

In a sensational case decided by the Court of Appeals, Microsoft has been ordered to pay a small Toronto based firm called I4i (which sued Microsoft for patent infringement) \$ 290 Million in damages and also Microsoft has been ordered to stop the sale of its top selling programme 'Microsoft Word' by Jan 11, 2010. The injunction that was originally passed by the trial court against Microsoft has been upheld by the Court of Appeals. The patent in question relates to use of technology that can open documents using the XML computer programming language. I4i alleged in the suit that Microsoft stole this technology when it created Word 2003 and Word 2007 software.

If you wish to read the Judgement of the Court of Appeals click