

## From the Desk of Chairman

Intellectual Property : **Part 2 -57**

The FAO Corporate Document Repository had instituted a comprehensive overview of the international intellectual property system governing plant varieties and the rights of plant breeders. The review included the policies supporting the grant of intellectual property rights, and the basic components contained in the relevant international treaties. It also covered the various forms of legal protection available under international IPR agreements, such as system of plant breeders rights in UPOV Acts, the *sui generis* protection created by article 27.3 (b) of the TRIPS agreement, and the impact of bilateral and regional treaties, and analysed the alternatives available to a country on the basis of IPR treaties it has ratified.

The 'Special Feature' in this issue of the **WISTA : Intellectual Property** deals with the protection of plant varieties and plant breeders rights, implications of different national and international systems and institutions, and the constraints in balancing IPRs against societal objectives.

The feature on 'Institution' profiles the Academy of Intellectual Property Studies, Mumbai, set up by a team of dynamic professionals committed to excellence. The academy addresses the need to formulate strategies to compete in the increasingly knowledge-based world that is witnessing convergence of business, law, and corporate intellectual assets. To achieve these objectives, it offers a number of premium programmes to impart skills and knowledge in the field of intellectual property.

Brand protection online is crucial for businesses in the present day internet age that transcends all borders and worldwide markets, since a poorly managed cyber reputation could cost a company very dearly. However, a careful observation and vigilant enforcement can ensure effective protection of trademarks and brands in cyberspace.

The 'Perspective' relates to some of the most common concerns for protection of brands in cyberspace and the major online threats to a business.

Other features covered are: **Scan Around the Globe**; Watch - Out IPR; In Focus; Legal Scene; Knowledge Spreads; and Experts Converge.

We welcome comments and suggestions.

*Dr K V Swaminathan*

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## SCAN AROUND THE GLOBE

### World IP Day 2007

Australia recognises the importance of intellectual property rights in the post industrial stage as perhaps few countries do. It celebrates World IP Day on 26th April each year with gusto, ever since its inception by WIPO in 2001.

On the occasion of World IP Day: 2007, the Government of Australia, through a press release highlighted the importance of IP and human innovation, and the role that IP plays in our daily lives. It pointed out that by demonstrating the importance of IP in daily life, World IP Day can improve public awareness, and an understanding of the linkages between creativity, innovation and the IP system.

Indeed, encouraging creativity, according to the press release, forms the essence of innovation, because without such encouragement many great inventions may never have got off. Protecting the fruits of creativity which is the product of the human mind or intellect, by ensuring that its creators are not deprived of the results of their efforts, form the roots of the IP system.

Events planned for 2008 are expected to be announced shortly.

(Australia -Government Press Release, Jan 28, 2008)

### Rediscovering Value of IP

In a recent article in the International Journal of Economic Development, Dr Stein, an expert in clinical psychology and international affairs, has emphasised that Brazil can stimulate innovation and accelerate economic growth to a much greater degree if it puts in place a more efficacious system for the recognition and protection of foreign IPRs.

He has described Brazil's conduct of IP in this regard as one of opportunism under the pretence of communal policies of 'universal access to healthcare'. In his estimation, Brazil often acts like an adolescent which is suffering from an acute sense of inadequacy

that prompts it to 'act out' on the world stage in search of its true identity.

The article goes on to say that while the country has become, because of its size and newfound economic potential a major actor both in the western hemisphere and the world, it often finds it convenient to regress back and assume a posture of a weak enfeebled adolescent so that other nations, such as those in the OECD will excuse its intransigent behaviour.

(Brazil -ITSSD Journal, Jan 20, 2008)

### IP Strategy

A key committee in China's parliament has approved changes in a draft law that deals with innovation in the country, a move that signals final preparations before the publication of the long awaited national IP strategy.

The standing committee of the National People's Congress amended the Scientific and Technological Progress Law on December 29, 2007 to boost innovation and move the publication of the national IP strategy forward.

The strategy is designed to raise IP awareness throughout the country, encourage so-called joined-up government by connecting existing IP policies in different departments and take a 'macroeconomic look at IP protection,' according to Thomas Pattoch, IP officer at the EU delegation in Beijing.

A National Working Group for IPR protection was set up in 2005 to coordinate IP policies and develop a more comprehensive IP strategy. It comprises 13 officials from 12 IP-related agencies and ministries, including the Ministry of Commerce, the State IPO Office, Customs, the Supreme Peoples's Court, and the State Administration for Industry and Culture.

The Chinese government had initially planned to unveil its national IP strategy in 2007, but now the publication has to wait until after the first plenary session of the 11th National People's Congress on 5th March this year, during which members will elect new state and government leaders. They may need to approve the strategy before it is

published although some believe that the strategy will be published in the first half of 2008.

The amended Scientific and Technological Progress Law will apply from July 1, 2008.

*(China-Weekly IP News, Jan 21, 2008)*

### **Regulators Raid Pharma Cos**

EU antitrust regulators have begun raiding pharmaceutical companies as a part of a probe into why so few new medicines and drug makers are emerging.

EU antitrust chief Neelie Kroes said she wanted to know why generic drugs were so slow to hit the market in Europe. Generic medicines are made by other companies after the original developer loses its exclusive patent rights.

The European Commission did not name the companies involved but said that it was conducting raids on the premises of a number of pharmaceutical makers -both research based, and generic based outside Europe.

There has been a considerable fall in the number of new molecular entities launched during the period 2000-2004 as compared to the corresponding period 1995-1999 and EU executives want to find out what the reasons are for this fall, particularly whether any agreements restricting competition and/or unilateral abuse of the dominant position could be responsible for it. Regulators said that they would also look into deals between drug companies, such as settlements in patent disputes that might violate EU cartel rules.

Europe spends nearly \$300 billion on medicines every year which works out to be approximately \$600 per head annually.

*(EU-Law.com, Jan 17, 2008)*

### **Patent Law Under Scrutiny**

A new pharmaceutical patent controversy has erupted in India, this time over the patent for the Swiss drug company Roche's anti-cancer drug Tarceva.

The Delhi High Court was to hear final arguments in a high profile injunction application by Roche against

Indian generic company Cipla which launched a generic version of Tarceva despite the fact that Roche had obtained a patent for erlotinib, the active ingredient in the drug last year.

Roche obtained a patent for erlotinib in September and sells the drug for Rs 4800 (122 dollars) a tablet. Cipla has been quoted as saying that they intend to launch their own version of the drug and sell it at Rs 1600 (41 dollars) a tablet.

Roche sued Cipla for patent infringement in the Delhi High Court and applied for a temporary injunction during hearing. It was asserted on behalf of Cipla that the patent was invalid and should be revoked.

Indian patent law allows companies to oppose patents both before and after grant but the lawyer appearing on behalf of Cipla stated that the company was unlikely to file a post-grant opposition, now that it has asked for a revocation in court. NATCO, another Indian drug maker, had filed an unsuccessful pre-grant opposition against Roche's application for erlotinib

Section 3(d) of the Indian Patent Act which was the subject matter of challenge in the courts by Novartis could feature in the case. Section 3(d) restricts what can be patented, in particular the section states that salts and other derivatives of known substances "shall be considered to be the same substance, unless they differ significantly in properties, with regard to efficacy."

Cipla claims that erlotinib is a derivative of an earlier substance called getatinib, and therefore should not have been granted a patent unless increased efficacy is proved.

*(India-Managing IP, Jan 1, 2008)*

### **New IP Regulations**

New IP regulations are expected to be introduced in Italy shortly in respect of filing of national patent applications which would allow applications filed in that country to acquire increased importance.

On July 1, 2008, the agreement between the European Patent Office and the Italian Patent and Trademark Office will come into force under which, as is the practice in other European countries, a search

report will be issued even for national patent applications in Italy. The agreement between the European Patent Office and the Italian Patent and Trademark Office states that:

-The Italian Office shall provide the European Office with the patent application text, as well as the translation of claims in English.

-The European Office shall produce and transmit the search report to the Italian Office with relevant opinion about patentability.

(Italy-UIBM, Jan 18, 2008)

### **Fund to Protect IP Rights**

Japan has announced that it is setting up a fund to help African countries enhance protection of IP rights, describing it the key to boosting the continent's economic potential.

Japan will put in an initial one million dollars in the coming fiscal year into the fund which will be a part of the WIPO. The fund will be used to train African government officials, business leaders, and legal experts under the supervision of the Geneva based UN body. According to officials in the trade ministry of Japan, the country's unique experience and knowledge of intellectual property as a tool for wealth creation should help Africa fully utilise its knowledge for sustainable development.

Japan is Asia's largest economy and will be hosting its fourth summit for African leaders in May this year, followed by the Group of Eight summit in July, a gathering of leaders of the eight most industrialised nations in the world. This Group of Eight has put African development high on its agenda, alongside climate change.

(Japan - AFP News Agency, Jan 29, 2008)

### **Agreement on IPR**

South Korea and the European Union have almost reached an agreement on IPR in free trade negotiations.

According to this agreement, the EU has withdrawn its earlier demand on paying royalties for music played in public, while South Korea has promised to strengthen the government action against companies violating IPR.

Both the sides have also agreed to expand IPR to design environment-related goods, and the patent rights for these goods will take effect two years after the Korea-EU Free Trade Agreement is formally signed, while for others it will take effect immediately.

The EU has requested the adoption of public performance claims, where reimbursement is made to musicians, singers or others holding copyrights when their music is used in public establishments. South Korea has so far refused to accept this, claiming potential damage to small scale vendors as well as customers. The EU also wants all exports labelled as EU-made rather than naming the specific country where the product is made, in the expectation that prices would thereby be higher, but this proposal has also been resisted by South Korea.

(South Korea-*The Korea Times*, Jan, 31, 2008)

### **Problems in Patent Protection**

Until recently, InRotis, a small company spun out of Newcastle University, was part of a High Court action aimed at forcing the UK Intellectual Property Office to ensure that patent protection offered to UK patent holders matched that available in Europe.

However, the firm was granted a European patent for its work and as a result has dropped out of the action. Lawyers acting for the remaining four firms involved in the case say InRotis' departure proves the very point they are trying to make, namely that there is a difference between the protection granted in Europe and the protection granted in the UK. If the protection granted was the same, they argue, why would a firm feel the need to apply for an European as well as a UK patent.

According to them, the UK IPO position is that only when the patented item and its software are combined, and the entire package is being dealt with that protection is offered. This means that material that would be considered to infringe an identical patent in Europe could be manufactured and exported from the UK as long as it was never destined for use in that country. Protection consistent with that available in the EU would mean that merely manufacturing the offending material would be considered to breach the patent holder's rights.

(UK-*The Register*, Nov, 16, 2007)

## WATCH - OUT IPR

### **Airtrax Awarded US Patent**

US based Airtrax Inc., a developer of patented Omni-Directional Technology with military and commercial applications, has been awarded its fifth US patent (No. 7,341,103) for a "relocatable operator station device" which is designed to enable constant operator control for walk behind omni-directional vehicles or stationary machinery.

This unique device allows an operator to walk around part of the perimeter of an omni-directional vehicle while in motion, without ever losing orientation of the controls. By increasing operator visibility, lowering ergonomic impact, and retaining the highly intuitive nature of the control system, the movable interface of the device represents a real breakthrough towards modernizing the global materials handling industry, according to senior functionaries of the company.

The re-locator operator was first used on an MP2 prototype vehicle for the US navy and more recently it has been used on a prototype vehicle for the Israeli Air Force. The relocatable station is suitable for use on pallet trucks, long load transporters, aircraft engine handling devices, scissors lifts, and other industrial equipment, especially omni- or multi-directional machinery or vehicles. The technology is also useful for fixed machinery, particularly when the operator cannot or does not remain in a single location or is better served by working from an alternate location.

Airtrax Inc. is a designer and manufacturer of Omni-Directional Vehicles. Its patented wheel was designed and developed after receiving a technology transfer from the US Navy in the form of a Cooperative R&D Agreement.

*(PR Newswire, Jan 24, 2008)*

### **Inhibiting Biofilm Formation**

Kane Biotech Inc, a biotechnology company engaged in the development of products that prevent and disperse microbial microfilms, has announced that it has received a US patent (No. 7,341,857) entitled "Synergistic Antimicrobial Compositions and Methods of Inhibiting Biofilm

Formation". This patent protects certain methods of reducing biofilm formation in a variety of applications, including medical devices.

The technology was patented in Canada, in May 2007, and is the third new patent awarded to Kane within the last twelve months. This brings the company's estate of issued and pending patents to over forty.

An estimated 80 percent of all human bacterial infections involve biofilms, which pose enormous health problems as they develop on surfaces such as catheters, prosthetic implants, inner ears, teeth, gums, and the urogenital tract. Biofilms also pose major problems in industry as they grow on surfaces of water tanks, pipes and food processing containers and are difficult and costly to remove.

Kane Biotech is a biotechnology company engaged in the development of products to prevent and disperse bacteria biofilms, which develop when bacteria and other microorganisms form a protective matrix that acts as a shield against attack.

*(COMTEX News, Jan 23, 2008)*

### **New Optical Apparatus**

A patent (No. 7,321,472) has been awarded by the US Patent and Trademark Office for an optical apparatus having its first member and second member rotating about an optical axis with respect to the first member. One of the members has a cam portion; the other has a cam follower portion engaged with the cam portion which drives the first and second members relatively in an optical axis direction.

The first member has first and second portions protruding towards the second member side separated from each other in optical axis direction; the second member has third and fourth portions protruding towards the first member side separated from each other in the optical axis direction and abuts on the first and second portions respectively; and the fourth portions are provided in a circumferential direction of the second member and include protruding portions for transmitting power.

The inventor is Akihiko Masuki of Japan, and the assignee is Kabushiki Kaisha Canon, also of Japan. The application number is 11/353695 and it was filed on February 14, 2006.

*(USPTO, Jan 22, 2008)*

## SPECIAL FEATURE

### PROTECTION OF PLANT VARIETIES & PLANT BREEDERS RIGHTS

#### Introduction

Intellectual Property Rights (IPR) are legal rights granted by government authorities to control certain products of human intellectual effort and ingenuity. Two broad approaches underlie the decision to grant IPRs. The first which may be termed the 'rights' approach believes that the products of the human mind are stamped with the personality of their creator, thus endowing that person with a moral as well as economic claim to exploit those products to the exclusion of third parties. The second which may be termed the 'instrumentalist' approach is predicated on the premise that products created by the human mind by enriching a society's culture and knowledge increase its welfare and its creators are therefore entitled to the benefits flowing from their efforts.

#### Policy Objectives

The policy goals of granting IPRs to plant varieties and plant breeders are governed principally by the 'instrumentalist' approach according to which new plant varieties are afforded legal protection to encourage commercial plant breeders to invest resources, labor and time to improve existing plant varieties and thus receive adequate remuneration. This is because the genetic material within the plants that specifies their distinctive and commercially valuable features is naturally self replicating, and thus makes them particularly susceptible to exploitation by parties other than the innovator.

#### International IPR System

The different policy objectives underlying IPR protection have shaped the structure and evolution of the international IPR system. Most early domestic IPR laws provided no legal protection to IP products created in other nations, thereby permitting those products to be exploited by free riders operating outside the state where those products were created. Seeing the impracticability of harmonizing diverse national laws to create a single international IPR law applicable to all signatory states, a system was sought to be fashioned

that creates a limited set of treaty based obligations that each member state of that system is required to implement in its national IPR laws. In the sphere of plant genetic resources, the international organisations and institutions that generate legal rules and standards in this regard include the World Intellectual Property Organisation (WIPO); the World Trade Organisation (WTO); the Convention on Biological Diversity (CBD); the Consultative Group on International Agricultural Research (CGIAR); the International Plant Genetic Resources Institute (IPGRI); the International Undertaking on Plant Genetic Resources; the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) etc.

#### Major Treaty Systems

There are two major international treaty systems that protect plant varieties and plant breeder's rights. These are (i) the agreements established under the auspices of the *Union Internationale pour la protection des obtentions végétales* (UPOV); and (ii) the TRIPS agreement included within the family of treaties administered by WTO. These two treaty systems each contain a comprehensive set of rules for their members regarding IPRs over plant varieties.

#### UPOV Acts

The UPOV Acts adopt a *sui generis* system of protection which is especially tailored to the needs of plant breeders. The first UPOV Act was drafted in 1961, principally by the industrialized governments seeking to provide protection for plant breeders in their own and overseas markets. The UPOV was later revised in Acts adopted in 1972, 1978, and 1991.

Unlike its predecessors, the 1991 Act requires states to protect at least 15 plant genera or species upon ratifying or acceding to the Act, and to extend protection to all plant varieties within 10 years. It also defines what a plant 'variety' is, something that was lacking in the earlier Acts. In response to demands from breeders in industrialized countries, the 1991 Act removed the earlier ban on dual protection and now permits member states to protect the same plant variety with both a breeder's right and a patent. It makes explicit the earlier implicit requirement that discovered varieties be protected, while retaining the four eligibility requirements

that must be demonstrated to merit protection of a specific variety, namely novelty, distinctness, uniformity and stability. Exclusive additions have been made to the earlier Acts with respect to the exclusive rights enjoyed by breeders in protected material of plant varieties, both in terms of propagated material as well as harvested material. Furthermore, whatever particular exclusive rights member states adopt in their plant variety protection laws are required to be provided to the nationals of the other 1991 Act member states. The 1991 Act extends the term of protection to 20 years and requires a 25 year term for tree and vine varieties. Private non commercial activities and acts done for experimental purposes have been kept outside the ambit of the Act and the right of breeders to use protected varieties to create new varieties have been recognized. Similarly, a certain limited privilege has been recognized in the case of farmers, permitting them to use for propagating purposes, on their own holdings, the product of the harvest they obtained by planting a protected variety on their own holdings. However, this privilege does not extend to selling or exchanging of seeds with other farmers and the state is also required to restrict the acreage, quantity of seed and species which is subject to this privilege.

There has been considerable resistance among developing countries, particularly those in Africa, to the ratification of the 1991 Act or to adopting it as a standard for their own plant variety protection laws.

### **The TRIPS Agreement**

Although the UPOV Acts have provided IPR protection for plant varieties for more than 40 years, their significance has recently been overshadowed by the Agreement on Trade Related Aspects of IPR (the TRIPS Agreement). Adopted in 1994 as a treaty administered by WTO, TRIPS is the first and only IPR treaty that seeks to establish universal, minimum standards of protection across major fields of intellectual property, including patents, copyrights, trademarks, industrial designs, integrated circuits, and trade secrets. Although the TRIPS agreement devotes only minimal attention to plant breeders' rights or plant variety protection and does not even mention the UPOV Acts, its adoption has done more to encourage legal protection of plant varieties than any other international

agreement. In fact TRIPS' influence on plant variety protection stems from (i) its link to other international trade agreements (ii) its widespread adherence by states in both the developing and the industrialised world, (iii) its novel enforcement, review and dispute settlement provisions, and (iv) the requirement in TRIPS' Article 27.3(b), which while excluding from patentability plants and animals other than microorganisms and essentially biological processes, requires signatories to provide protection to plant varieties either by patents or by an effective *sui generis* system or by any combination thereof; and (v) its requirement for Article 27.3 (b) to be formally reviewed.

### **Scope of Review of Art. 27.3(b)**

In the area of plant variety protection, the debate continues between the developed and the developing nations on the scope of review of Article 27.3(b). The developed countries led by USA and Japan generally seek to limit the review to measures WTO members had adopted to implement their obligations under that article, with the UPOV 1991 Act, serving as a preferred benchmark for determining whether a *sui generis* system protecting plant varieties was effective. On the other hand, the developing countries, such as India, Brazil and the African states, have sought a far more expansive approach to the review process, which should also look into the question whether plants and other life forms should be protected by an IPR at all, even where IPR protection was considered appropriate. Developing countries see the review process as a means to harmonize TRIPS with the CBD etc, in order to promote biodiversity, recognize farmers' rights and protect traditional knowledge and the rights of indigenous communities. European governments have generally adopted a mid-way stance between these two positions, arguing that harmonization could be achieved not by revisions of Article 27.3 (b) but rather through national laws seeking to implement international treaty obligations.

### **Cumulative & Conflicting Treaty Obligations**

A state may be bound by more than one IPR related treaty, a fact that may significantly limit its discretion. Indeed the discretion enjoyed by states to shape their plant variety protection laws to balance the protection

of IPRs against other societal concerns is dependent upon the international agreement or agreements to which they are parties.

Where the treaty obligations are cumulative in nature the position is quite straight forward that the state must comply with the provisions of each of the treaties, but where the provisions of two or more treaties are in direct conflict the situation can become quite ambiguous. If two agreements relate to the same subject matter and the state parties to both agreements are the same, Article 30 of the Vienna Convention on the Laws of Treaties specifies that the agreement later in time is to be given effect. The obligations under the TRIPS agreement are thus likely to prevail over any conflicting obligations in the 1978 UOV Act, such as the ban on protecting varieties within the same genus or species with both a breeder's right and a patent. Because the 1991 UPOV Act entered into force in 1998, and TRIPS entered into force in 1995, it may be argued that the 1991 UPOV Act is the later-in-time agreement. However, it is unlikely that any conflicts will arise between the two treaties in as much as nothing in TRIPS requires conduct that the 1991 UPOV Act forbids. It can therefore be argued that the two treaty systems are fully compatible with TRIPS merely augmenting the plant variety protection requirements of the UPOV Acts.

There are 27 states, mainly those belonging to the industrialised world, that are members of both TRIPS and the UPOV Acts and therefore have the least discretion. These states must extend protection to all plant varieties, comply with TRIPS national MFN (Most Favoured Nation) treatment obligations, and adopt effective enforcement measures.

There are a few states outside the WTO that protect plant varieties solely by virtue of being UPOV members. While they must comply with all the numerous requirements of the UPOV Act, to which they are a party, they have no obligations to provide effective enforcement measures to breeders. Their national treatment obligations are limited to those states that are members of the same UPOV Act and in case of those states bound by the 1978 Act, they need not protect all plant varieties and may impose certain reciprocity requirements on those varieties they do protect.

States that are parties to the TRIPS agreement but are not members of either UPOV Act enjoy considerably greater discretion than those that are members of UPOV Act alone. By virtue of their adherence to TRIPS, these states are required only to comply with the core obligations of Article 27.3(b). This "WTO only" categorisation currently applies to approximately 95 of the 147 members of WTO who are not also members of UPOV. These states have the option to tailor IPRs to the particularities of their national systems and economies, taking into account the level of development of their agricultural and breeding industries, and their desire to balance IPR protection against other important societal objectives. Once the WTO members adopt the four mandatory obligations of Article 27.3(b), they are free to model their national laws protecting plant varieties and plant related innovations on the 1991 UPOV Act, the 1978 UPOV Act, the patent provisions of TRIPS or some combination of these approaches. Each of these approaches achieves in different ways, the principal policy goal of the IPR system--the creation of adequate incentives for plant breeders to develop and market new varieties.

There are a few countries that are neither members of WTO, or of UPOV or other IPR agreements. These countries have no obligations to protect plant varieties or breeder's rights in any form. Nevertheless, the mandatory requirements and discretionary choices facing other governments are likely to become matters of significant concern to these states as the world trading and IP protection systems expand.

### **Cusp of Change**

In today's knowledge society, the international intellectual property system is on the cusp of significant change. More than ever before, knowledge and its application will determine whether a nation is able to advance and stride forward confidently into the future, or is doomed to backwardness and stagnation. For countries such as India, which belong to the developing world, consistent with our international obligations, the need of the hour is to balance the protection of IPRs against other societal objectives which include encouraging biodiversity, facilitating access to plant genetic resources, recognizing farmers' rights, promoting the equitable sharing of benefits and protecting the traditional knowledge of indigenous communities.



<b>PERSPECTIVE</b>
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**BRAND PROTECTION IN CYBERSPACE****Background**

In today's increasingly borderless world, which is dominated by the internet, and the customers of any popular product can be in their billions, vast opportunities are opening out to marketers. But by the same token, officials in companies charged with the responsibility of corporate brand protection, are becoming a very worried lot. Brand protection online is now crucial for all businesses, and a poorly policed cyber reputation may cause a company dearly in lost profits, customer goodwill and corporate image. Indeed, in cyberspace, a company's reputation is its most valuable commodity, as it determines the company's visibility and can dramatically affect consumer confidence in that company. Fortunately, protecting a company's brand is not impossible. It begins with a basic understanding of the major online threats to that company.

**Cybersquatting**

Cybersquatting may be likened to a situation where a company's name is used by a host of other organisations. Every website on the internet has a domain name. A company's domain name would be www.the company.com. The .com is referred as a "generic" storefront or top-level domain name. Other variations may be .biz, .net.org or even a country code such as .usa or .de for Germany. A cybersquatter may chase a domain name that includes a company's trademark, or even a company's name with a different top level domain ending. Using the above example, the cybersquatting site might be called www.the company.biz. The cybersquatter is trying to profit from the strength of a company's trademark and the confusion that it might cause in their minds to siphon them off into places they would otherwise not choose to visit.

Cybersquatting has several creative variations where a clever business tries to ride on the strength of a company's trademark, to garner attention to its own website. Some of these brand brigands may be that

company's rivals while some may be completely unrelated. Some are scam artists that can vanish as quickly as they appeared.

In some cases, cybersquatters may seek to take advantage on the likelihood that people might misspell a word when typing in a domain name, or that people might not notice a minor difference in the spelling of a domain name. A company registers the domain name www.trademark.com and then the cybersquatter registers www.tradmark.com. Some cybersquatters simply place the letter "l" at the end of a famous domain mark, knowing that many people drag a lazy right ring finger over the "l" when typing the period.

**What to Do**

Active monitoring of the internet can lead to the discovery of potential cybersquatters domain names. Internet monitoring services can find substantially more infringing sites than basic commercial search engines. Common commercial search engines do not find sites that may attempt to conceal themselves from detection.

As in most trademark cases, sending a cease- and-desist letter to the offender is likely to be the first shot in the battle for favourable resolution but many internet offenders are hidden or non-compliant. A possible remedy is to file a complaint under the "Uniform Dispute Resolution Procedures of ICANN" (Internet Corporation for Assigned Names and Numbers, which is the international internet governance authority) to force recovery of the domain name. This is an entirely paper based process and can be a relatively quick and low cost solution. UDRP rules require only the complaining markholder to show that the respondent's domain name is confusingly similar, that the respondent has no legitimate rights in the mark being used, and that the domain name was registered in bad faith. The vast majority of UDRP complaints are decided in favour of the complaining party. The UDRP process allows a markholder to proceed against the name itself - a cyberspace "in rem" action where the offending site's operator is too slippery to be identified and served.

In the USA, an option that is available is to file a complaint in that country's court under the Anti-Cybersquatting Protection Act which can also be

brought against the domain holder or the domain itself. Proceeding either way, will allow the trademark owner, if successful to recover the domain name at issue. In addition, ACA actions brought directly against the registrant provide for the possibility of further relief, including the recovery of the registrant's profits, damages and attorney's fees.

### **Search Engine Manipulation**

Trademark pirates may write a company's mark multiple times in the hidden code of their website, create a web of "dummy" sites that associate their primary site with the company's mark or mirror the company's entire website on their servers to fool search engines into displaying their site first when a customer searches the company's mark. They can even pay some search engines to direct the customers of that company to their online storefronts.

In such cases, if blatant manipulation can be proved, the company can either work with a search engine's fraud department or sue the infringer on traditional trademark claims. However, some courts have allowed a company to purchase its competitor's trademark to secure a valuable search engine placement.

### **Gripe Sites**

Gripe sites are those which use a company's trademark to express and disseminate their complaint in respect of that company's product or process. They are not to be confused with a company's website, but they continue to use that company's trademark.

In general, companies have to learn to live with these complaint sites. Courts only very rarely have held that the gripe site is confusingly similar to a company's trademark. In the USA, courts are increasingly offering protection to gripe sites as they often serve as forum of speech of or about a company. In addition, attempts to bring these sites down frequently give the complainer attention and credibility that he craves.

### **Domain Tasting**

Domain tasting is a vicious bite out of a company's IP rights. Official domain name registration rules allow a "buyers remorse policy" where users could register domain names and return them at no cost within five

days. This was called the "add grace period" or AGP. Now that an entire domain name industry exists, a huge number of domain names are regularly registered and returned without the registrant ever intending to pay for or keep the domain name past the five-day AGP period. This is commonly referred to as "domain tasting." Domain tasters buy a company's trademark or buy up names of a company they may want to use and then keep them long enough to test the customer interest. This can cause confusion within a company's domain system and infringement of that company's trademarks. The domain taster may abuse a company's brand for five days and then leave like a thief at night without even paying a farthing.

### **Phishing**

Phishing for passwords, money, or customer data is becoming increasingly common these days. These criminals cast an electronic net using a company's marks or copies of pages from the company's website. Phishers may send e-mails appearing to emanate from a company and direct that the company's customers to a "harvesting" website. Phishing attacks can be more highly complex attacks coordinated by organized groups that roam the internet for prey. Examples may include hacking into a system and placing a phishing page within the legitimate website. Some recent attacks have involved e-mails requesting information updates to employment application information for mass employers. The phisher exploits the knowledge that a large percentage of the population in any community has worked for, or applied for a job with certain companies known for having a large number of employees.

Unlike most of the other offenders, phishing sites are not only a trademark violation but a crime with serious liability implications. Once detected, the in-house counsel or an internet monitoring service, will provide notice to the domain name registry and ISP that specific domain name is a phishing site and should be deactivated. The procedures for doing this are commonly posted on major registry websites.

### **General**

The internet is a perilous place for a company's trademarks, where careful observation and vigilant enforcement can be the best weapons for protection.

<b>INSTITUTION</b>
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**ACADEMY OF IP STUDIES****Introduction**

In today's world where many nations have reached the post-industrial stage, the most important determinants of growth are no longer the availability and command over land, labour and capital. These days it is the knowledge which is the main driver of economic advancement and wealth is measured less by the traditional factors of production than by the generation of new ideas that are marketable. Increasingly, therefore, Intellectual Property Rights (IPR) are being seen as a vital tool for development and as India advances on a broad front, awareness and exploitation of IPR through multidisciplinary studies has assumed great importance. As we are presently witnessing a rapid convergence of business, law and corporate intellectual assets, the need for structured academic and training courses in this area could never be greater.

**Leader in the Field**

The Academy of Intellectual Property Studies (AIPS), located on S.V.Road, Goregaon (West), Mumbai, has been set up in affiliation with the Indian Drug Manufacturers Association (IDMA). It aspires to be a leader in the field of IP studies and offers a mix of training/learning programmes that will enable to make the participants IP smart.

As work-area experience is at a premium, such that professionals are able to get down to the job at hand expeditiously. AIPS programmes and courses are devised to provide a sound theoretical base but also the opportunities to maximise practical knowledge. The teaching methodology is therefore not confined to textbook IP theory but includes liberal use of case studies, simulation exercises, research based assignments, together with active faculty-participant interaction to ensure in-depth learning.

In addition, interactive workshops and seminars with international and reputed Indian experts as speakers, are conducted by AIPS enabling participants to gain an international perspective and also keep abreast with the latest developments in the IP field.

**Faculty**

The faculty is a judicious mix of subject matter specialists, many of whom hold a doctorate in their particular field of specialisation, practising advocates, and experts in the field of IP law, some of whom are patent holders themselves. They thus bring rich practical experience to the inputs they provide.

**Premium Programmes**

AIPS runs its flagship Post-Graduate Diploma Course in Patent Management with the objective of imparting both skills and knowledge in this field. The programme is not limited to lawyers, but is tailored to the requirements of those with diverse professional skills. In the programme, patenting theory is combined with technical sessions in areas such as Prior-Art search, Patent Specification Drafting, Licensing, Opposition Procedures etc. The course begins with an analysis of the competing policies underlying IP laws. It provides exposure to the participants on the basics of trade secrets, patents, copyrights and trademark law as well as state law forms of protection. Having provided an overview of the various forms of IPR, the focus then shifts to patents during which students are furnished the tools and skills necessary to draft and analyse patents. After providing the legal foundation, high level legal practitioners offer the participants a real world experience of IP practice in fields such as patent search drafting, licensing, and patent management.

**Workshops**

The workshops are interactive training events specifically designed to provide hands-on expertise in specific IP related areas, and to provide add-on skills to professionals already in the field. The workshops cover issues such as International Drug Regulatory Affairs; Pharmaceutical Claim Drafting; Polymorphism and Crystallisation; CTD and eCTD Formats; Drafting Non-Infringing, Freedom to Operate and Validity Opinions; Trademark fundamentals and practice etc.

AIPS also organises special interest lectures by experts in topical areas of particular interest.

([www.aips.ac.in](http://www.aips.ac.in))

## IN FOCUS

### IPR LAW IN ARGENTINA

#### Background

Many countries in the world today are already in the post-industrial state and the trend is irreversible. In the post-industrial economy, it is knowledge and innovation rather than the availability of the traditional factors of production, such as land, labour and capital, which determine a country's pace of development. In this environment, the protection and enforcement of intellectual property becomes increasingly important as a basic tool of development. Such protection implies the existence of a set of comprehensive laws, which are uniformly enforced through supporting regulatory rules and judicial decisions.

Two Argentinian scholars, Carlos Octavio Mitelman and Daniel R. Zuccherino in a recent article available on the Internet have argued that certain amendments to their country's IP law has meant that the country has gone forward only to regress.

#### IP Progress

They point to Law 25,986 which was enacted on 29 December 2004 and which brought about several changes in the Customs Code. Argentina has introduced border measures provided in Article 51 of TRIPS and the new law not only protects against counterfeit trademarked products or copyrighted goods, but it has broadened the protection of IP rights at borders to all intellectual and industrial property rights that Argentinian legislation provides for. Article 46 of that law forbids the import or export of goods when the merchandise bears a counterfeit trademark, which shows that it is a pirate copy, or when it goes against other intellectual or industrial property rights granted by Argentinian legislation. When the infringement is not evident, the Customs Authority can delay the clearance of the goods for up to seven working days. This allows time to consult the right owner. It also enables the courts to pass injunction orders which prevents the products from entering the market.

The new legislation empowers customs agents to determine actual or potential infringements of IP rights. They may stop the entry of goods into the country while the authorities investigate into potential infringement.

Owners are also entitled to register their trademarks at customs. They receive notice of imports and exports that have those marks. Registration of trademarks within this system, known as 'Warning Registry' is voluntary, and free of charge. Registration will be up to two years and may be renewed indefinitely.

#### A Regressive Piece of Legislation

While the above amendments mark a step forward, the authors of the article point out that an amendment in Act 25, 859 is definitely regressive. This amendment was enacted in the background of several injunctions granted by Argentinian courts in cases involving pharmaceutical products in keeping with Article 50 of TRIPS to which Argentina is a signatory. By this amendment the obtaining of preliminary injunctions envisaged by TRIPS has been made more difficult. The burdens added by the amendment include:

The need or a reasonable likelihood that the patent is declared valid, should its validity be challenged. This provision contradicts the principle of Argentinian patent law that considers all patents issued by the country's Patent Office to be valid and enforceable in injunction proceedings.

The appointment of an expert by the courts before granting the measure. This introduces new risks to the complainant because a preliminary measure may not be granted if the expert is not skilled enough to analyse the subject matter of the complaint.

Only in exceptional cases will the court grant a preliminary injunction without hearing the alleged infringer's defence beforehand, for example, when there is a significant risk of the evidence being destroyed.

To grant the injunction, the court must weigh the harm caused to the patent holder with the potential harm that the alleged infringer might receive should the injunction be wrongly granted. This could easily result in generic allegations disguised in the form of defences. Such allegations would weaken what TRIPS wishes to achieve, namely the provision of effective tools which protect the minimum rights it has established.

<b>LEGAL SCENE</b>
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**PATENTS****Google in Legal Battle**

Reports suggest that the world's most popular web search engine Google is about to lock legal horns with Boston based Northeastern University and start up Jarg Corporation concerning a search and retrieval technology which Google has incorporated.

Web tool developer Jarg Corporation, which was founded by a professor from Northeastern University, claims to be the exclusive licensee of the search based technology, which it asserts, was patented one year before the appearance of Google's search engine in 1998. On behalf of Jarg Corporation, it is stated that the technology patent infringement first came to their attention a number of years ago, but lack of resources at the time prevented them from filing suit earlier.

With Northeastern University supporting Jarg Corporation's cause, the patent infringement suit accuses Google of failing to seek legal clarification regarding a possible infringement of US patent No.5,694,593 which is also known as "Distributed Computer Database System and Method". The plaintiffs are seeking damages, and royalties against Google, as well as an injunction to prevent further infringement of the search patent.

*(Monsters and critics, Nov12, 2007)*

**Ranbaxy Settles Prostate Drug Patent Case**

Ranbaxy Laboratories has reached a settlement with drug major Astellas Pharma and Boehringer Ingelheim on the patent infringement case relating to Flomax (Tadalafil capsules) used in treatment of enlargement of the prostate.

As per the agreement, Ranbaxy (which has already received tentative approval from the US Food and Drug Administration, will gain access to the US market eight weeks prior to expiration of the exclusivity of the patent, which is likely to be granted to the innovator company. During this time, Ranbaxy will be the generic manufacturer to commercialize the product in

the US market. As per the company statement, it has FTF status on approximately 17 paragraphs IV ANDA filings (patent challenging application to market a product) representing a market size of \$ 26 billion – valued at innovator prices.

Ranbaxy is believed to be the first to challenge the patent of Flomax which has estimated annual sales of \$ 1.2 billion.

*(Business Standard, Nov 8, 2007)*

**Wake Forest Files Patent Lawsuit**

Kinetic Concepts, Inc.(KCI), together with Wake Forest University Health Sciences, has filed a patent infringement lawsuit against Innovation Therapies, Inc. (ITI) before the US District Court, California. The federal complaint alleges that a negative pressure wound therapy device recently introduced by ITI infringes three Wake Forest patents which are exclusively licensed to KCI.

As per the company statement, KCI is a world leader in advanced wound care innovation. According to Catherine M. Burzik, President and CEO of KCI, the lawsuit is being filed because their IP, a core asset representing the work of designated engineers, scientists and doctors along with huge investments, is being knowingly and unlawfully exploited.

The claims statement filed before the state district court includes breach of confidentiality agreements, conversion of KCI technology, theft of trade secret and conspiracy against ITI and three of his principals, all of whom were former employees of KCI.

Its advanced wound-care systems incorporate proprietary Vacuum Assisted Closure (R), or V.A.C.(R) Therapy technology, which has been demonstrated clinically to promote wound healing through unique mechanisms of action and can help reduce the cost of treating patients with serious wounds. Its therapeutic surfaces, including specialty hospital beds, mattress replacement systems and overlays, are designed to address pulmonary complications associated with immobility, to reduce skin breakdown.

*(Businesswire, Nov 8, 2007)*

**COPYRIGHT****Chinese Dealers Lose Copyright Infringement Case**

The Philippines Supreme Court (SC) has turned down a petition filed by two Chinese businessmen questioning law enforcers' seizure of imported China-made motorcycles they sell for supposedly misrepresenting their brand. In a 15-page decision, the Court's Third Division through Justice Minita Chico-Nazario denied the suit filed by Hon Ne Chan and Yunji Zeng who ran dealerships of the Dragon Spirit Motorcycle (DSM) brand in Caloocan City.

The two were charged for violation of copyright infringement under RA 8293 which imposes a penalty of imprisonment from 2 years to 5 years and a fine ranging from 50,000 to 200,000 Pesos on any person found guilty of violating intellectual property rights. The businessmen filed a joint motion to quash the search warrants with the RTC and asked to order the return of the seized motorbikes claiming that the search warrants were defective because they were issued despite the absence of probable cause and that they were in the nature of general warrants.

Ruling otherwise, the SC pointed out that in order to be valid, a search warrant must describe the place to be searched and the things to be seized. The court held that "It is not required that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities".

*(The Daily Tribune, Jan 10, 2008)*

**MPAA Wins Case against TorrentSpy**

In a ruling that could have implications for the privacy of website user, Judge Florence-Marie Cooper of the US District Court for the Central District of California, ruled that TorrentSpy has infringed The Motion Picture Association of America (MPAA) copyrights in a default judgement against the operators of the site.

MPAA has won a lawsuit against the operators of TorrentSpy.com, with the judge ruling in favour of the MPAA because the website operators tampered with evidence.

The Court agreed with the MPAA that defendants Justin Bunnell, Forrest Parker, Wes Parker and Valence Media had destroyed evidence after another judge had ordered them to keep server logs, user IP (Internet Protocol) addresses and other information. TorrentSpy billed itself as a central location to find files distributed on BitTorrent P-to-P (peer-to-peer) networks.

The said ruling of the Court was impelled by the fact that in May 2007, US Judge Jacqueling Choolijian had ruled that TorrentSpy must preserve server data logs held in random access memory, or RAM. Torrent who has located its servers in the Netherlands, on the other hand argued that Dutch law protected them from having to turn over server logs and other information.

The decision was widely criticized as being an unreasonable standard because information held in RAM was temporary. Moreover, it raises concerns about protecting users privacy. The ruling, if it stands, could expose private information about website users in many civil lawsuits.

TorrentSpy in a statement has said, "It's not a ruling on the merits of the case. One person's wilful destruction of evidence is another person's wilful attempt to comply with customer privacy policies." According to them, an appeal will be filed against this decision.

On the other hand, MPAA has welcomed the ruling in their favour and as per the statement issued by it, "The Court's decision... sends a potent message to future defendants that this egregious behaviour will not be tolerated by the judicial system."

*(IDC News Service, Dec 19, 2007)*

**UB Secures Temporary Injunction**

Bangalore based United Breweries (Holdings) Limited has announced that it has secured an ex-parte order of temporary injunction in a suit that was filed by it seeking relief against www.Indianracing.in for running a website with a domain name that is deceptively similar to the www.indiarace.com website, owned by United Breweries (Holdings) Limited.

An injunction suit jointly filed by United Breweries (Holdings) Ltd along with IQ Bridge Ltd and Idea Streamz Consultants Pvt. Ltd in the City Civil Court, Bangalore sought to restrain Mr B R Sharan Kumar, Mr Usman Rangeela, and Mr Sanjay Reddy, by a decree of perpetual injunction either by themselves or through their agents, representatives, servants or successors in interest from in any manner.

The Hon'ble City Civil Court was pleased to pass an ex-parte order of temporary injunction on 27th October 2007 restraining the defendants from operating the website www.indianracing.in as prayed for above and has ordered notice to the defendants.

This relief granted by the Hon'ble Court is a clear warning to those who seek to dishonestly take advantage of the equity of established players and brands by misleading the public and who thereby indulge in unfair competition.

*(Media Newslines, Nov 5, 2007)*

## TRADE SECRETS

### Infringement Case against Analogix

Silicon Image, Inc, SIMG, a leader in semiconductors for the secure storage, distribution and presentation of high-definition content, today announced that the trial in its trade secret and copyright infringement case against Analogix Semiconductor, Inc. has been scheduled for April 2008 in the United States District Court for the Northern District of California.

In his ruling on Silicon Image's motion for a preliminary injunction, Judge Joseph C. Spero concluded that "Silicon Image has demonstrated a strong probability of success on the question of misappropriation" and thus ordered an expedited trial. The trial was originally set for September 2008. However, court declined to issue an injunction order on Analogix prohibiting it from selling the semiconductors in question pending the trial.

The said case was filed by Silicon Image in early 2007 charging Analogix with copyright infringement, misappropriation of trade secrets, and unlawful, unfair and fraudulent business practices. The complaint alleges that Analogix gained unlawful access to Silicon Image's confidential and proprietary register maps, access that Silicon Image never provided to Analogix.

It is pertinent to note that semiconductor layout designs involve strategic placement of various electronic components, include small memory cells called registers, on interconnected layers of a chip. Silicon Image's layout designs, including its register maps that identify locations of registers within its chip designs, are its guarded trade secrets.

According to the statement issued by Silicon Image's Chief Legal Officer, the company believe that the evidence clearly demonstrates that Analogix has misappropriated its trade secrets, and it is confident that it will succeed in the trial.

*(PR Newswire, Jan 8, 2008)*

### New Twist in Rohm & Haas Case

In the midst of a seven-year legal battle over trade secrets that pits scientist Mandy Lin against her former employer, the chemical giant Rohm & Haas

Co., a US Department of Energy chemist has concluded that Lin's independent research is her own, not, as the company contends, stolen.

The chemist and engineer, Charles Russomanno, wrote in a two-page, previously undisclosed Energy Department memo, which has now come to light that Lin's research made no use of company trade secrets and was worthy of a huge research grant. Of the lengths to which Rohm & Haas has gone to get access to Lin's research, Russomanno added in a recent interview, "I've never seen anything like this."

Russomanno's findings are welcome support for Lin and her little company, EverNu Technology L.L.C., which are facing fines of \$200 a day for refusing a judge's order to release her research to Rohm & Haas. The fines, in place since June 2005, have accrued to more than \$200,000.

Lin is seeking a trial to vindicate her reputation and clear her company's legal status as she woos investors.

*(The Philadelphia Inquirer, Nov 13, 2007)*

### Nike's Trade Secret Stolen

A US man has been accused of espionage, but not for stealing government secrets. Instead, the FBI says he tried to sell trade secrets from Nike.

As per the investigators, Reynold Sare Chapin age 53, is alleged to have obtained a copy of Nike's unreleased Autumn catalog. He was willing to leak the information contained in it, including designs and prices, to the highest bidder and wrote an anonymous letter to the CEO of the Saucony Corporation, a rival shoemaker of Nike. and similar letters were sent to four other CEO's. After a tip-off received from the CEO of the Saucony Corporation the FBI swung into action and caught hold of Chapin in an undercover sting operation while posing as decoy customer.

The man is thus charged with theft of trade secrets. Companies like Nike generally go to great lengths to protect their trade secrets.

*(thestar online, Nov 11, 2007)*

## TRADEMARKS

### Amul Wins Trademark Case

In a trademark infringement suit jointly filed by the Kaira District Co-operative Milk Producers' Union, popularly Amul Dairy, and the Gujarat Co-operative Milk Marketing Feberation (GCMMF) against two local shop owners, Amul Chasmaghar and Amul Cut Piece Stores, the Hon'ble Gujarat High Court while upholding the ruling of District Court held that "the Amul's name cannot be used by any other proprietor even if the company is selling goods other than that sold by the proprietor, who has registered the trademark".

In this significant judgement, the Gujarat High Court ruled that a registered trademark user has the right to restrict others using its trademark even for different class or goods. Justice Patel, while upholding the District Court's ruling, stated that he saw no reason to entertain Amul Chasmaghar's appeal as the order passed by the trial court was true, correct, legal and in consonance with the facts of the case as well as in accordance with the provisions of the Trademarks Act 1999.

*(Times of India Sep 26, 2007)*

### Lacoste Loses in London

The international fashion house Lacoste has won a trademark suit in China. The Superior Court of Beijing found the Chinese company Crocodile International to be improperly using Locoste's trademark Crocodile logo. This is actually a third win for Locoste in China wherein last June, a court in Beijing ordered Chinese manufacturer Tai E and two distributors to pay fine in damages.

Though the quantum of fine was low, it signifies a marked shift from China's historical reputation of not respecting the trademark and the copyright laws of other countries and also of increasing awareness of IP rights in that country.

Lacoste, however, hasn't tasted success in London where a court has held that dentists who are using a crocodile to demonstrate strong teeth are not infringing the company's copyright as the dental services are different from clothing. This ruling is reminiscent

of the litigation between the designer Ralph Lauren and the US Polo Association where a US court had dismissed Larun's petition alleging infringement of his Polo horseman logo after reaching similar conclusions.

*(www.fashionwindows.com, Jan 5, 2008)*

### 'Original Choice' Cleared

The Trademarks Registry has cleared an application moved by Original Choice Whisky, dealing a blow to liquor baron Kishore Chhabria's efforts to stall one of the fastest growing spirits brands on its tracks.

Mr Chhabria's BDA Ltd with Officers' Choice as its flagship whisky has been battling Bangalore-based John Distillers' Original Choice over trademark infringement.

*(Economic Times, Jan 12, 2008)*

### Suit on Search Links

In yet another lawsuit similar to the one filed by the auto insurance company Geico, the 1-800 contacts has filed a lawsuit in a US federal court against LensWorld for buying search links that were triggered by the keyword "1-800contacts". The company said that it was filing this case to avoid confusion.

It is pertinent to point out that a law suit filed by Geico against Google was dismissed as Geico failed to prove that consumers were confused when shown links to Geico's rivals after having typed "Geico" into the search box.

Search marketing is a major source of revenue for companies setting ads such as Google and Yahoo. Search marketing is basically triggered by keyword, where the search for a company offering certain goods and/or services will trigger the advertisement of rival companies offering similar goods/services in a bid to woo prospective/potential customers.

It would be interesting to see the outcome of the lawsuit in view of earlier rulings in the Geico and Rescuecom cases, in the light of a law passed in Utah State, USA, that makes it illegal to use other companies' trademarks, to trigger advertisements.

*(search Engine Journal, Jan5, 2008)*



## KNOWLEDGE SPREADS

### BNA Report

The Bureau of National Affairs, Inc. (BNA) Daily Labour Report has published an interesting article recently concerning the risks the mobile workforce places on corporate trade secrets.

The article points out that the need for corporate policies to safeguard IP and trade secrets is becoming increasingly necessary as the mobility of labour markets grows and as the tools available for compromising critical corporate data expand. It emphasises that corporations need to develop and execute vigorous trade and secret protection policies with the help of their legal human resources and information technology departments. Such policies should be embedded in the corporation's culture so that employees understand that they have a vital role to play in the protection of organisational assets. By having such specific policies in place, an employer puts his employees on notice as to their obligations and responsibilities with respect to the protection of a company's technologies and data.

In this connection, experts point out that three important trends are converging to make trade secret protection a critical mission within every organisation. Firstly, a corporation's essential value is largely composed of its intangible assets, including intellectual property, and trade secrets which is obvious in technology and financial companies but is now no less true in manufacturing, service, and other traditional industries. Secondly the increase in employee mobility and the emergence of non-traditional work settings create significant opportunities for the loss of intangible property, because the days of long-term employment with a single employer are now over. Thirdly, the tools capable of hijacking the organisation's most valuable assets are becoming increasingly sophisticated.

*(wombletradesecrets.blogspot.com, Jan 19, 2008)*

### IPR in China & Hong Kong

In a guide prepared recently by Beiten Burkhardt, titled 'IPR in China and Hong Kong', the author laments that counterfeiting is rampant in the PRC. According

to figures published by the OECD in mid-2007, the annual worldwide turn over in pirated goods is estimated to be 176 billion dollars which accounts for approximately two percent of world trade, and a significant proportion of that turn over occurs in China. What is more disquietening is that the global trend in counterfeiting is rising.

On a legislative level, the PRC has in recent years, and especially since joining WTO, made considerable efforts to protect proprietors of IP better, but the problem is essentially one of enforcement given the sheer volume of counterfeiters, the huge size of the country, the drive of the Chinese people to get ahead economically whatever the cost, and the insufficient expertise of the PRC administration and courts to implement the laws effectively and in a timely fashion.

The guide provides readers with an overview of the IPR situation prevailing in the country which will hopefully assist in the creation and putting into effect an IPR strategy so that the negative effects of product piracy can be minimised.

Hong Kong, though geographically and politically a part of the PRC, has a separate legal system. As a large number of counterfeit goods are being shipped from or transhipped through it, and a number of counterfeiters from the PRC are organised under Hong Kong holding companies, it is also a hotspot of IPR infringements.

*(www.bblawseries.com, Jan 31, 2008)*

### IPR and Technological Issues

A paper published in 'Recent patents on biotechnology', Vol 2, No. 1, by P Bansal; H. Chandrashekar; and UC Banerjee, based on the patents and the available literature, gives an insight into the IPR and technological issues involved in the commercial production of hemoglobin, the protein which gives blood its red colour, and transports oxygen to different parts of the human body.

The idea of using purified hemoglobin as a substitute for red blood cells has been thought of since long. The challenge posed by the essential fragility of the molecule has now been overcome by modern science, which has made it possible to ensure a recombinant production of hemoglobin with the necessary stability.

*(ingenta connect, Jan 4, 2008)*

## EXPERTS CONVERGE

### Conference on Copyright

The University Libraries in Ball State University, Muncie, USA, is organising a one-day Conference on Copyright on April 23, 2008 at its Alumni Center to enable participants to understand all the nuances of this relatively complex subject.

The guest speakers include officials from the US Copyright Office, attorneys, and an associate dean of the faculty of copyright management. The conference will be chaired by Fritz Dolak, copyright and intellectual property manager and special assistant to the dean of the faculty of copyright management at the university.

The topics include: practical approaches to 10 common copyright problems; report from the US Copyright Office; and framing of issues.

The Digital Policy Institute and the Department of Journalism of Ball State University are among the sponsors of the conference.

*(www.bsu.edu, Jan 22, 2008)*

### Patent Strategy Conference

The International Quality and Productivity Center in San Francisco, USA, is holding the 5<sup>th</sup> Patent Strategy Conference on March 26-28, 2008.

Driven by popular demand, this conference seeks to bring together the country's brightest IT experts to Silicon Valley to discuss cutting edge ideas and innovations.

The conference is especially focused to meet the requirements of those dealing in intellectual property; patent strategy management; global IP licensing; patent litigation; technology R&D; and business development.

The IP industry is constantly evolving and to succeed in building a comprehensive, protective, and rewarding IP portfolio, one needs to adapt to the constant reforms and rulings. The 5<sup>th</sup> Patent Strategy Conference aims to bring together leading members of the IP sector, to discuss best business practices, and debate the future of this evolving industry. The topics to be addressed in the conference, include: pending and potential PTO rule changes

and adaptations; updating on litigation pitfalls for patent practitioners; perspectives from the bench; International IP issues; dissecting the extent of patent exhaustion; examining due diligence in Free and Open Source Software (FOSS); evaluating the various viewpoints of the compulsory licensing debate; expanding IP value with licensing; exploring the current status of patent trolls; investigating the protection of attorney-client privilege during due diligence and the study of recent developments in declaratory judgements.

*(IQPC, Jan 28, 2008)*

### Search Marketing Expo

Search Marketing Expo-SMX West is being organised at the Santa Clara Convention Center, California, USA, on February 26-28, 2008.

The Expo is billed as the "must attend" interactive and search engine marketing event of the year on the West Coast of USA, with sessions designed for those who are just commencing search marketing to those who are seasoned experts. Participation in the initial SMX Boot Camp which covers all the bases of search marketing success; copyrighting; link building; paid search fundamentals and search engine friendly web design; will enable the participants to derive the maximum benefit from the Expo during which cutting edge topics, such as search 3.0, search 4.0, personalised search revolution; the social graph and searcher behaviour, will be discussed.

Participants are also promised some hints about new search technologies in the works of Cuill, a stealth search start up with former Googlers Danny Sullivan and Louis Monier. The third day keynote will be a panel discussion on "Generation Next: Search in the Coming Decade" with luminaries from the major search engines predicting where they see search headed.

Those who should attend include chief marketing officers; in-house search marketers; brand managers; paid search advertising planners and buyers; organic search optimization specialists and web technology professionals.

SMX is backed by the team that created the world's first search marketing conference in 1999 and has produced over 50 major events since then.

*(Searchmarketingexpo.com, Jan 22, 2008)*