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## **INDIA INTELLECTUAL PROPERTY LAW NEWS – MAY 2007**

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### **LOCAL TRADERS RESTRAINED FROM USING SONY TRADEMARK**

Delhi HC has restrained the local traders from using the Sony trademark vide its interim order on a Petition filed by Sony Corporation. Petition was filed by Sony to stop the infringement of its trademark and claimed damages thereof. The High Court was of the opinion that the plaintiff has made out a prime facie case and irreparable prejudice would be caused to the plaintiff in the absence of interim order at this stage.

### **NEW IPR RULES SOON TO BE NOTIFIED**

The new IPR (Imported Goods) Enforcement Rules 2007, soon to be notified by the Finance Ministry. The rules are based on the model legislation drafted by the Geneva-based World Customs Organisation. The new rules aimed to strengthen border enforcement to prevent entry of pirated and counterfeit merchandise into the country. As per the new rules, the customs official would detain suspect merchandise at the border and the matter would be proceeded against only if the right-holder joins issue.

### **RESTRICTION ON PHARMA COMPANIES OVER IPR DISPUTE**

A Tamil Nadu district court has stopped five pharma companies from manufacturing and sale of a fixed dose combination anti-infection drug. The petitioner Khandelwal Laboratories filed different petitions against the five drug cos. and contended that the government has given patent and trademark rights for their invention. The Drug Controller General of India (DCGI) also approved the new drug and under the laws of this land, they will fight to protect their rights against the companies, which infringe their rights.

### **HC RESTRAINS INDIAN CO. FROM USING FOREIGN TRADEMARK**

The High Court has restrained an Indian seed company from using the trademark of US based pioneer Hi-Bred International Inc, supplier of top quality seeds. The US based co.

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contended that it is using the trademark 'Pioneer' in more than 100 countries for selling top quality seeds and advanced plant genetics and any other co. cannot use the same trademark as it creates confusion among the buyers.

### **NEW COMMITTEE FOR INNOVATOR APPEALS**

A new committee has been set up by the Indian Patent Office for innovators applying for patents in India. The Committee will have three members, and headed by S Chandrasekaran. With the coming of new committee, High Court as well as the Patent Office lost their rights to consider the patent appeals.

### **DELHI HC REJECTS BILCARE'S PATENT CLAIM OVER PVC FILM**

Rejecting Bilcare's patent claim over metallised PVC film used for packaging in pharmaceutical and food industry, the Delhi High Court has held that the use of such PVC films has already been in existence for both pharmaceutical and food industry, prior to the patent application of Bilcare itself and therefore it could not be termed as invention. The court refused to accept the contention of the plaintiff that the use of the PVC films was unknown to the industry and also imposed a fine of Rs. 50,000 on Bilcare for concealing the fact that it was importing the product from Taiwan and was not the original inventor of the product.

### **A STEP TO PROTECT FOLK CULTURE**

The Ministry of culture and the council of Scientific and Industrial Research (CSIR) is mulling to create a digital database of intangible cultural heritage such as songs, instrumental music, architectural concepts, martial arts, legends, paintings and pottery as the first step towards protecting them from misappropriation. As per the experts popular western fashion designers in their creations have generously adopted intangible cultural heritage. Since the commercial value of these cultural heritages (majority found in developing nations) is quite high, the rich countries are not quite eager to disallow the commercial exploitation of such wealth in their countries.

### **COPYRIGHT INFRINGEMENT CASE AGAINST GOOGLE**

A copyright infringement suit has been filed by T-Series in the Delhi High Court. The suit is against Google for making available the Audio and video clips of the T-Series latest movies through its subsidiary website YouTube.com. Movies like Don and Janeman were available for downloads on their sites that enabled others for making legal copies of the clippings and sell them off in the domestic market.

### **HC FINES ISCKON OF 50,000**

Delhi High Court imposed a fine of Rs. 50,000 on the ISKCON following the suit filed by the Sri Ram Kala Kendra for a permanent injunction against ISCKON form copying,

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imitating, reproducing or performing Ram Lila play. Society directed to deposit the money with the organizers of mid-day meal programmes for “feeding school children”.

### **URGENT NEED TO HAVE PATENT GUIDELINES**

The Madras High Court in a writ petition of Swiss pharma co. Novartis filed against the rejection of its patent application for certain drug, asked the co.’s counsel as whether or not would there be absolute bar for grant of patents for chemical derivatives if section 3(d) of the amended Patents act, 1970 were to go. In answer of such question the counsel said that section 3(d) provide unfettered powers to the authority that results in questionable decisions, so the need is to have guidelines which would help in the authority not acting arbitrarily.

### **RICE GENE PATENT FOR AVESTHAGEN**

Avesthagen has been granted a patent by the Indian Patent Office on ‘cloning and sequencing of AGTSAL 11 rice gene from IR-64 variety implicated in salinity stress tolerance.’

The invention is expected to provide opportunities in developing salt tolerant lines in rice in India. The Salt Tolerance Programme is a breakthrough for the agricultural sector, since the present agricultural practices and the increasing use of chemical fertilisers make a large part of the arable land unfavourable for cultivation due to high salinity. Also, it could be transferred to any other crop within a short time span, as the technology is not crop specific.

### **‘UNWISE TO CHALLENGE PATENT ACT’**

The Government has advised Swiss pharma company, Novartis to rethink its legal challenge of the Indian Patent Act. "When a company comes into the country, they should consider the Indian climate and condition. It is unwise for them to get into litigation and challenge the laws of another country," said Dr Anbumani Ramadoss, Union Health Minister. The case, which was being heard by the Madras High Court, was recently referred to the Intellectual Property Rights Appellate Board (IPAB) in Chennai. Organisations, including Medicines Sans Frontieres, Oxfam, Network of Positive People, have argued that millions of patients across the world will be deprived of cheaper generic drugs if Novartis' legal challenge is successful. Left parties and domestic pharma companies have also opposed Novartis' decision to challenge Section 3 (d) of the Indian Patent Act, after it was denied a patent for a ‘modified’ version of its anti-cancer drug, Glivec.

### **INFRARED DEVICE FOR NIGHT DRIVES WINS PATENT**

Poor traffic sense and deplorable driving habits combined with abysmal condition of roads go to make India a motorist's nightmare. An enterprising inventor from Malappuram in Kerala is offering a helping hand thanks to a patented technology for

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automatic lighting and signalling system in vehicles. He claims that this will help bleary-eyed drivers negotiating treacherous road stretches find a safe way home.

### **L&T FILES 80 PATENTS**

The electrical and electronics division of Larsen & Toubro has filed 80 patent applications in 2006-07. While the company's Powai campus in Mumbai accounted for 52 of the patents, the rest came from its Mysore campus. With this, the tally of patents in L&T's electrical and electronics division has touched 247. The patent applications have been filed on innovations made on a variety of low voltage indigenously developed switchgear products like air circuit breakers, moulded case circuit breakers, tooling solutions and switchboards.

### **SC RESTRAINS DABUR'S USE OF GLUCOSE D TRADEMARK**

The Supreme Court has restrained Dabur India Limited from using the trademark Dabur Glucose D on their glucose packets. A bench comprising Justices B P Singh and Harjit Singh Bedi made the interim order on the petition filed by M/S Heinz Italia, who challenged the Punjab and Haryana High Court judgment dated October 27, 2005, dismissing their appeal against the trial court order and their application for a restraint order against the Dabur India Limited. The apex court, in its judgment dated May 18, noted, "We are of the opinion that packaging of Glucose D and Glucon D is so similar that it can easily confuse a purchaser. We also feel that the mere fact that the respondents have time and again made small changes in their packaging is an attempt to continue to mislead the purchaser and to make it more difficult for the appellants to protect their mark, which the record shows has acquired an enviable reputation in the market, which is sought to be exploited by the respondents." "We, accordingly set aside the order of the trial court dated December 11, 2003 and the order of the high court dated October 27, 2005. However, as this order is confined only to the limited question of an ad interim injunction, any observation made in this order would not bind the trial judge in the proceedings in the suit. The application for ad interim injunction is accordingly allowed," the court added.

### **INDIA AND EUROPEAN PATENT OFFICES SIGN MOU ON BILATERAL COOPERATION IN IPRS**

A one-year Work Plan in pursuance of the Memorandum of Understanding (MOU) on Bilateral Cooperation between the Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM) and the European Patent Office (EPO) was signed by Dr. Ajay Dua, Secretary, Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce & Industry and Professor Alain Pompidou, President of the European Patent Office, in the presence of Shri Kamal Nath, Minister of Commerce & Industry. The Work Plan includes programmes for Human Resource development, Automation and Data Exchange between the two offices. An important component of the cooperation programme which will run from mid-2007 to mid-2008 is the provision for training at the

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European Patent Office for 10 senior patent examiners from India; and training by 3 EPO experts of 20 to 30 patent examiners in India

### **FILM PRODUCER GETS TWO YEARS FOR COPYRIGHT VIOLATION**

A local court has sentenced a leading film producer of Bihar to two years rigorous imprisonment, after convicting him on charges of copyright violation. The court also slapped a fine of Rs 5,000 on the producer. Patna Judicial Magistrate S K Mishra found Girish Shanker guilty under section 68 and 68 (A) of the copyright act. According to the charges, Shanker, in 1999 had produced six episodes of a telefilm, 'Lohe Ke Pankh', based on a novel of late Himansu Shrivastav. However, Padm Sambhav Shrivastav, son of the writer, had filed a complaint that the film producer had received Rs 10 lakhs illegally from Patna Doordarshan Kendra for its telecast, and had taken permission to use the work.

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*This is not legal advice. All person or entities reading this article might take legal advice before taking any business/ commercial decision. In case, you require any assistance in India, please write to us at [info@ksandk.com](mailto:info@ksandk.com). This communication is the bi-monthly newsletter of King, Stubb & Kasiva, Advocates & Attorneys, E-66, 2nd Floor, Kalkaji, New Delhi, India 110019. Tel: +91 11 41032969, 41318190, 41318191 Fax: +91 11 41329569*

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