Newsletter

August - September 2013 Edition

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Roche misses procedural deadline: Herceptin patent rights lapse in India

Swiss Pharmaceutical giant Roche has lost patent protection in India for its breast cancer drug Trastuzumab (marketed as 'Herceptin') as it missed the deadline to renew it. Although Roche's patent for Herceptin was valid till 2019 in India, patents are required to be renewed every year within the stipulated time period subsequent to the grant of patent. If such renewal is not done as prescribed, the patent ceases to have effect.

Subsequent to the procedural botch, Roche has decided not to pursue restoration of its lapsed patent noting that though the patent for Trastuzumab may no longer be in force, there are currently no approved biosimilars of Trastuzumab in India.

Indian Pharmaceutical Alliance repudiates allegations, highlights compliance with TRIPS

Following Pfizer's allegation of discrimination against the US Companies by the Indian Patent law, the Indian Pharmaceutical Alliance (IPA) has emphasised that India's Patent Act has remained unchanged since it was amended in 2005 to comply with the requirements of the WTO's agreement on intellectual property rights (i.e. TRIPS Agreement). Further, IPA has underlined that the country's patent policy is consistent with India's obligations under the TRIPS Agreement.

Foreign Pharmaceutical Companies awarded 77% of all patents in the last 3 years in India

According to data released by the Indian Patent Office (IPO), 77% of the pharmaceutical patents awarded in the last three years were granted to foreign pharmaceutical companies such as Pfizer (32 patents), F Hoffmann-La Roche (22 patents) and Novartis (14 patents).

Of the 1001 pharmaceutical patents granted by the IPO between April 2010 and March 2013, 771 were given to foreign pharmaceutical companies.

US based Eli Lilly and Co. was awarded the most number of patents in that period, securing 36 of them, mainly for biological products and compounds to treat diabetes and related diseases.

'Dasatinib' compulsory licence issue

Dasatinib is an anti-cancer drug and the patent holder for the drug is Bristol-Myers Squibb. It is marketed under the brand name 'Sprycel'. In March 2013, Mumbai-based BDR Pharmaceuticals had applied for a compulsory licence of Dasatinib under Section 84 of the (Indian) Patents Act, 1970.

In another development, the Government is planning to issue a compulsory licence, under Section 92 of the (Indian) Patents Act, for the manufacture of Dasatinib to two companies namely, Natco and BDR Pharmaceuticals. Dasatinib is one of the three drugs selected by the Government for compulsory licence under Section 92.

In all likelihood, Dasatinib seems to be heading towards the compulsory licencing way.

Draft Guidelines for examination of Computer Related Inventions

In early August, the Indian Patent Office (IPO) issued draft guidelines on patents for Computer Related Inventions (CRIs). The proposed guidelines aim to foster consistency and uniformity in the patent office practice for examination of CRIs.

The said guidelines discuss various provisions of the patentability of the CRIs, procedure to be adopted by examiners for examination of such patent applications and jurisprudence involved in granting or rejecting patents in the field of technology.

Pursuant to the issue of the draft guidelines, the IPO called for feedback from industry stakeholders by 8 August, 2013. Most of the feedback received by IPO revolves around the interpretation of the term 'per se' in Section 3(k) of the (Indian) Patents Act, 1970.

Delhi High Court rejects the "Hot News" Doctrine

In 2012, the Board of Control for Cricket in India (BCCI) granted exclusive broadcasting rights to Star TV to disseminate the information/content emanating from the cricket matches and the other copyrights emanating from recording of the live match were also assigned to it which included the right to record, reproduce, broadcast etc. Cricbuzz, Idea Cellular and Onmobile started SMS services providing contemporaneous ball-by ball coverage of live cricket matches. Star TV alleged that the defendants had violated the "mobile distribution" rights and consequently filed a suit for permanent injunction and damages.

Evaluating the applicability of the Hot News doctrine to the instant case, the Delhi High Court rejected the said doctrine given the facts of the case. It was held that the critical aspect of 'Hot News' was absent in the present case, as neither Star, nor BCCI engaged themselves primarily in match news dissemination through SMS. Consequently, the court concluded that Star TV could not claim any exclusive property or other such rights to restrain the publication of match information, or hot news, as claimed by it, irrespective of whether the object of such third party was to publish such information for commercial gain or without any such motive.

GI Registry clears Kaipad Rice, Dharmavaram Sarees etc.

Recently, a number of GI applications have been cleared by the Geographical Indications Registry under the Geographical Identification of Goods (Registration and Protection) Act, 1999. Some of these are listed below:

- Kaipad rice: Kaipad rice is cultivated in an organic farming system. This system of cultivation is prevalent in the Kannur, Kozhikode and Kasargod districts of Kerala.
- Warli tribal art: representing the folklore of the Warli tribe, has become popular among the art connoisseurs in recent times.
- Dharmavaram sarees: sarees with broad solid colour borders and contrasting pallus woven with brocade gold patterns by a weaving cluster in Ananthpur, Andhra Pradesh.
- Nagpur Oranges: oranges grown in the Nagpur region of Maharashtra.
- Machilipatnam Kalamkari: a type of hand-painted or block-printed cotton textile. It is geographically only limited to Pedana town and its neighbouring villages of Machilipatnam, Polavaram and Kappaladoddi in Andhra Pradesh.

The aforementioned GIs will be recorded in the GI Register as soon as the four months-period for inviting opposition expires.

Indian Patent office announces the results of Patent Agent Examination 2013

On 23 September 2013, the Indian Patent Office announced the results of the Patent Agent examination which was held in May 2013. The overall pass percentage for the exam is approximately 25%. This is an increase of roughly 6.5% as compared to last time (2011). Out of 1829 candidates who appeared for viva and written examination, only 457 have cleared the examination.

158,000 patent applications pending for examination

The Government has informed the Parliament that 158,000 patent applications for examination are pending before the Office of Controller General of Patents, Designs and Trade Marks as on 13 August 2013. Maximum number of applications are pending before the Delhi office (57,385) followed by Chennai (52,891), Kolkata (29,223) and Mumbai (18,950).

A substantive increase in filing of patent applications coupled with the relative shortage of patent examiners has been cited as one of the reasons for increase in pendency. However, in order to overcome the backlog, the Government has completed the process of selection of 248 patent examiners.

Colgate-Pepsodent Comparative Advertising Suit: Injunction denied

Recently in a case of comparative advertising, the Delhi High Court denied an interim injunction against Hindustan Unilever Ltd. (HUL). Colgate Palmolive (India) Ltd. had initiated litigation against HUL for its advertisements pertaining to its product 'Pepsodent GermiCheck Superior Power' as these advertisements allegedly disparaged Colgate's toothpaste 'Colgate Dental Cream Strong Teeth'.

The court examined the law concerning comparative advertising and applying the pertinent principles to the present case, held that the expressions and effects used in the impugned advertisements only demonstrated that Pepsodent was a better product but did not disparage Colgate's product. Hence, the court came to a prima facie conclusion that the impugned advertisements were not disparaging and therefore the interlocutory application was dismissed.

Indian Trade mark Office reports 12% annual increase in trade mark applications

The Office of the Controller General of Patents, Designs and Trademarks has received over 194,000 applications from industries for registering trademark in the last fiscal year. It was higher than the previous year and growing at 12% annually. As a result, INR 250 crore (approx. US$ 40 million) has been generated through the trade mark application fee alone.

Companies Bill 2012 enacted

The Companies Bill, 2012 was passed by the lower house (the Lok Sabha) on 18 December, 2012 and the upper house (the Rajya Sabha) of the Parliament on 8 August, 2013. It received the presidential assent on 29 August, 2013 and thus the Companies Act, 2013 has been enacted. With this, India now has a new company legislation which will replace the Companies Act 1956.

On September 12, 2013, the Government notified 98 Sections of the new legislation and the remaining provisions would be enforced in phases. The Corporate Affairs Ministry, which is in the process of preparing rules for implementing the new Companies legislation, is expected to send the final norms to the Law Ministry shortly for approval. The entire legislation is expected to come into force by the end of the current fiscal.

Salient features of the new Company legislation are: concept of One Person Company (OPC) introduced; the limit of the maximum number of companies in which a person may be appointed as auditor has been pegged at 20; appointment of auditors for 5 years shall be subject to ratification at every Annual General Meeting; Independent directors to be excluded for the purpose of computing one-third of retiring directors; whole-time director has been included in the definition of the term 'key managerial personnel'; the limit on maximum number of members in a private company increased to 200; maximum number of directors in a private company increased from 12 to 15 which can be further increased by a special resolution; the term 'private placement' has been defined to bring clarity. Further, the financial year of any company will end on March 31 and the only exception is for companies which are holding/subsidiary of a foreign entity required to follow a different financial year for the consolidation of accounts outside India. Another key feature of the new legislation is that Corporate Social Responsibility (CSR) has been made mandatory for a company having net worth of INR 500 crore (approx. US$ 80 million) or more, or turnover of INR 1000 crore (approx. US$ 160 million) or more or net profts of INR 5 crore (approx. US$ 0.8 million) or more during any fnancial y.ear

Relaxation in FDI norms for Multi-Brand Retail Trading

Last year, the Government of India opened the gates of multi-brand retail to foreign investors by allowing FDI in the sector to the extent of 51%. Despite this development, none of the foreign retailers proposed to set up their supermarkets in India.

In a recent bid to promote foreign investments in the multi-brand retail sector in India, the Government of India has recently liberalized its FDI policy in the sector by diluting the contentious riders.

Regarding mandatory sourcing from Small and Medium Enterprises (SMEs), the enhanced $2 million investment ceiling for identification of SMEs would be applicable only at the time of first engagement for sourcing by the foreign retailer. Further, procurement from farmers and other agricultural co-operatives would be included in the mandatory sourcing conditions. Secondly, the rider that foreign supermarket chains can open stores only in cities with a minimum population of one million has been removed. In addition, the State Governments would be allowed to choose the cities where no city was eligible as per the population requirement. Thirdly, the Government clarified that the 50 per cent investment norm in the back-end infrastructure for retailers would only be applicable for the first tranche of investment of $100 million.

With such relaxation in policies, the Government hopes to attract international retailers such as Walmart, Carrefour and Tesco to invest in India.

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