Newsletter

February - March 2014 Edition

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News from the Controller General of Patents, Designs and Trade Marks (CGPDTM)

Comprehensive e-filing services extended to include all Trade Mark Forms

CGPDTM extended comprehensive e-filing services to include all Trade Mark Forms. The e-filing services were extended in phases *vide* three separate Public Notices issued in February-March. *Vide* Public Notice dated February 05, 2014, CGPDTM extended e-filing services to include subsequent filings. In all, 33 Trade Mark Forms relating to Renewals, Oppositions, Correction, Duplicate Registration Certificates and NOC for Copyright etc. were included in e-filings *vide* said notice. CGPDTM, on February 25, 2014, in its endeavor of providing comprehensive online filing services added more forms relating to *inter alia* Request for Post Registration changes, Extension of time and Review to the online filing facility. Finally, on March 13, 2014, *vide* Public Notice dated March 11, 2014, online filing services were extended to include all Trade Mark Forms.

Update on the Quick Response (QR) Code system: Indian Patent Office (IPO) extends system to Examination Reports and Show Cause hearing notices

To further enhance transparency in public-delivery system and authenticate the documents delivered by the Trade Marks Registry, the QR Code(s) system introduced by the IPO in December, 2013 (featured in the *December 2013-January 2014 Newsletter*), was extended *vide* Public Notice dated February 24, 2014, to include Examination Reports and Show Cause hearing notices. The system will enable applicants/stakeholders to verify contents of the above mentioned correspondence issued by the respective offices.

Online tracking of requests for issuance of legal certificates and search introduced

On February 05, 2014, the Trade Marks Registry launched the facility of online tracking of requests for issuance of legal certificates and made available on the official website Trade Marks Indexes of registered marks, pending marks and names of the proprietors of registered trade marks as per Section 147 of the Trade Marks Act. This online tracking facility will enable users to check the status of the request/s for legal certificates by filling in the requisite details of the fee receipts issued by the respective offices. Further, with the availability of Indexes on the official website, users can search through ‘Registered Trade Marks’, ‘Non Subsisting Marks’, ‘Pending Marks’ and ‘Proprietor Index’.

The Patent (Amendment) Rules, 2014 notified by the Government of India

The Patent (Amendment) Rules, 2014 ("the Rules") have been published by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India *vide* Notification dated February 28, 2014 and are effective from the said date. Highlights of the Rules are:

- Introduction of a new category of applicants namely "Small Entity".

  A new category viz, "small entity" has been introduced and defined. Any applicant seeking to file a patent as a "small entity" is required to file Form 28 (newly introduced by the Rules) which is actually a declaration that the applicant/patentee is a small entity, along with evidence.

- There has been a substantial increase in the Official fee.

  The fees payable by natural person/s (Individual/s) has been increased by approx. 60%. The fees payable by small entity/ies (new category) are 2.5 times (approx.) higher than the fees payable by natural person/s and the fees payable by others (other than small entity/ies or natural person/s) are 5 times (approx.) higher than the fees payable by natural person/s.

- In case an application processed by a small entity is fully or partly transferred to a person other than a natural person (except a small entity), the difference, if any, in the scale of fee(s) between the fee(s) charged from a small entity and the fee(s) chargeable from the person other than a natural person (except a small entity) shall be paid by the new applicant with the request for transfer.

- Surcharge on physical (paper) filing.

  An additional fee of ten per cent (10%) shall be payable when the application for patent and other documents are filed through physical mode, namely, in hard copy format.

- A pre-grant opposition is now required to be filed in a new form *viz*. Form 7A. No fee is payable.

The Rules are available on the official websites of the Department of Industrial Policy and Promotion (www.dipp.nic.in) and the Office of Controller General of Patents, Designs and Trade Marks (www.ipindia.nic.in).

CGPDTM issues Guidelines for examination of patent applications in the field of pharmaceuticals

On February 28, 2014, CGPDTM published draft Guidelines for examination of patent applications in the field of pharmaceuticals to help Examiners and Controllers of the Patent Office in achieving uniform standards of patent examination and grant. In case of any conflict between these Guidelines and the Patents Act, 1970 and the Rules made thereunder, the provisions of the Act and the Rules will prevail.

The Guidelines, among other things, lay out principles to be followed by Examiners and Controllers when conducting a prior art search, assessing/determining novelty or an inventive step and outline four categories of claims which are not to be considered as inventions. Additionally, clarity has been lent to 'industrial applicability', 'inventions not patentable' and 'unity of invention' for the purposes of examining patent applications.

Shifting of Trade Mark Office, Ahmedabad

Trade Marks Registry, Ahmedabad has been shifted to a new complex at IP Bhavan, beside Chanakyapuri Overbridge, adjacent to AMC City Civic Centre, Ghatlodia, Ahmedabad-380061. As of now, the cash counter, EDP (Electronic Data Publication) section and general administration have been shifted and started functioning from the new address. Complete shifting to the new address shall be notified to the public.

Draft Designs (Amendment) Rules 2013 notified by the Government of India

The Government of India has notified on March 4, 2014 the draft Designs (Amendment) Rules 2013 and invited comments thereon. The draft Rules are available on the official website of CGPDTM. The draft envisages amendments essentially with respect to official fees payable and has divided the applicant of designs into two categories i.e. natural person(s) and other than natural person(s). *Prima facie* the official fee payable by 'other than natural person(s)' is four times the fee payable by 'natural person(s)'. Further, a new entry has been inserted at the end of Fee index in the First Schedule whereby fee for 'Petition not otherwise provided for' has been introduced. Earlier, fee for Petitions for cancellation of design under Section 19, amendment of any document under Rule 46 and enlargement of time under Rule 47 were provided in the First Schedule.

Comprehensive e-filing services for Patents extended

Comprehensive e-filing services for Patents were upgraded by the Indian Patent Office on March 07, 2014. Online filing facility in respect of the following entries of Schedule 1 to the Patents (Amendment) Rules 2014 has now been made available:

- Form 16
- Request for Certified Copies
- Certifying office copies
- Request for Information under Section 153
- Preparation of certified copy of priority document and for transmission of the same to the International Bureau of WIPO

Release of Annual Report for the year 2012-2013

The Annual Report of the Office of the Controller General of Patents, Designs and Trade Marks and Geographical Indication for the year 2012-2013 has been made available on the website of CGPDTM on March 11, 2014. The Report gives details and examines the trend *vis*-à-*vis* the number of Patents, Designs, Trade Marks and Geographical Indication applications filed and registered in the past year. Details pertaining to the financial year 2012-2013 are as follows:

	Applications filed	Registration granted	Growth
Patents	43674	4126	1.10%
Designs	8337	7252	Decreased
Trade Marks	194216	44361	5.79%
Geographical Indications	24	21	Decreased

The Annual Report also gives an overview of the initiatives undertaken by the respective Offices to enhance the efficiency and transparency of their working, including steps taken to upgrade the online filing system. Further, details of the revenue generated by the Patent Office in respect of Patents (2011-2012) and Designs (2012-2013), the Trade Marks Registry (2012-2013) and the Geographical Indication Registry have also been given.

Launch of e-filing facility for registration of copyrights

On February 17, 2014, the Copyright Office launched an interactive web portal with e-filing facility for registration of copyrights. Applicants/Users are required to register on the website of Copyright Office by creating login IDs and passwords for the purpose of e-filing. Instructions for e-filing are available on the website and Official Fee can be paid through internet payment gateway. Further, the status of the copyright application/s filed with the Copyright Office can now be checked online with the help of the 'diary number' provided by the Copyright Office at the time of filing the application.

Updates - Ministry of Corporate Affairs

Use of 'National', 'Bank', 'Stock Exchange' and 'Exchange' in the names of Companies/Limited Liability Partnerships (LLPs)

The Ministry of Corporate Affairs *vide* its Circular No. 2/2014 dated February 12, 2014, intimated the Regional Directors, Registrars of Companies and Stakeholders that no Company/LLP should be allowed to be registered with the name 'National' as a part of its title unless it is a government company and the Central/State Government(s) has a stake in it. Further, the circular states that the word 'Bank' may be allowed in the name of an entity only when the entity provides a 'No Objection Certificate' from the Reserve Bank of India in this regard and similar 'No Objection Certificate' is required from SEBI in case a company wishes to register 'Stock Exchange' or 'Exchange' as a part of its name.

Clarification on applicability of Section 185 of the Companies Act, 2013

The Ministry of Corporate Affairs *vide* its Circular No. 3/2014 dated February 14, 2014, issued a clarification with regard to Section 185 of the Companies Act, 2013. Section 185 of the Companies Act, 2013, notified in September 2013, prohibits a company from giving loans to its directors *or any other person in whom the director is interested* and providing guarantees or securities on their behalf. The expression '*any other person in whom the director is interested*' has led to the belief that a company cannot fund its subsidiary if the two companies share a director. At the same time Section 372A of the Companies Act, 1956, which has not yet been repealed, under an exemption provided in clause (d) of sub-section 8, allows holding companies to provide loans, give guarantee or security to its wholly owned subsidiary.

Therefore, both Section 185 of the Companies Act, 2013 and Section 372A of the Companies Act, 1956, seemed to be contradictory. To address this concern, the Ministry clarified *vide* the aforesaid Circular that the exemption as provided in clause (d) of sub-section (8) Section 372A of the (old) Companies Act will continue to apply with respect to any guarantee given or security provided by a holding company in respect of loans made by a bank or financial institution to its subsidiary company till such time Section 186 of Companies Act, 2013 (which corresponds to Section 372 A of the Companies Act, 1956) is notified and will apply where loans so obtained are exclusively utilized by the subsidiary for its principal business activities.

Notification of 183 Sections, six Schedules and Rules for 11 chapters of the (new) Companies Act, 2013

The Government on March 26, 2014 notified 183 Sections of the (new) Companies Act, 2013, pertaining to *inter alia* incorporation of company, memorandum and articles of association, management, consolidated financial statements, rotation of auditors, board function, independent directors and most provisions relating to inspection, inquiry and investigation, including establishment of Serious Fraud Investigation Office, along with Schedule I to Schedule VI. The Government had previously notified 98 Sections of the Act in September, 2013. Further, v*ide* its Notification dated February 27, 2014, the Government had notified Section 135 of the Companies Act, 2013 along with Schedule VII of the Companies Act and Rules related to Corporate Social Responsibility (CSR). With the recent notification 282 Sections and all Schedules of the Act stand notified. Soon after, on March 28, 2014 the Government also notified Rules for 11 chapters of the Act. The notified Sections come into force on April 01, 2014.

Sections related to Investor and Education Protection Fund; National Financial Reporting Authority; Compromise, Arrangements and Amalgamations; Prevention of Oppression and Mismanagement; Revival and Rehabilitation of Sick Companies; Winding Up; National Company Law Tribunal and Special Courts are yet to be notified.

India adopts a tough stance on US International Trade Commission's investigations

The Indian Government has decided not to meet officials of US International Trade Commission (USITC a quasi-judicial independent federal body that advises the US President) visiting India and seeking meetings with officials of different ministries, including commerce and industry, finance and external affairs. USITC has alleged that New Delhi's trade and investments rules, particularly intellectual property laws, discriminate against US companies.

The US Chamber of Commerce, had requested that India be enlisted as "priority foreign country" under the 2014 Special 301 Report (due on 30 April 2014) of the United States Trade Representative (USTR), on grounds of its allegedly weak IP rights (IPR) rules. In response, commerce minister Anand Sharma has accused US of excessive trade protectionism and repeatedly stated that India's patent law is fully compliant in "letter and spirit" with the World Trade Organization's (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

Update on FDI Guidelines

Commerce Ministry seeks opinion on State Governments' decision of policy reversal

The Department of Industrial Policy and Promotion (DIPP), in mid-February, sought an opinion of the law ministry on whether State Governments can opt out of the FDI policy after first deciding to implement it. Rajasthan and Delhi, after a change in Governments pursuant to assembly elections, had opted out of the policy allowing FDI in multi-brand retailing (in January 2014) and communicated their decisions to the Centre.

Confederation of Indian Industries (CII) asks Delhi, Rajasthan to reconsider decision on retail FDI

Governments of Delhi and Rajasthan were asked by the CII to reconsider their decisions to scrap the FDI policy for multi-brand retail as such investments would help create millions of jobs and benefit consumers. CII President S. Gopalakrishnan wrote to the then Delhi Chief Minister Arvind Kejriwal and Rajasthan Chief Minister Vasundhara Raje, stating that about 10 million jobs are estimated to be created in the retail sector many of which would be accrued to the respective states and urged them to review their stance.

Commerce Ministry seeks approval of Election Commission to relax the existing FDI guidelines in the business-to-consumer (B2C) e-commerce segment

The Government had earlier approved a 51% FDI in multi-brand retail in September 2012, however it had later clarified that the policy does not extend to e-commerce. Thereafter, in January, Department of Industrial Policy and Promotion (DIPP) had released a discussion paper on e-commerce in India, which stated that several MNCs, industry bodies and an international council have made a case for allowing FDI in business-to-consumer (B2C) e-commerce. Now the Commerce and Industry Minister, Anand Sharma, has stated that, subject to approval of the Election Commission, the FDI guidelines in the e-commerce sector may be relaxed. The approval is necessary as the Election Commission has already announced the election schedule, following which, the existing Government cannot make any policy decisions that may affect the polls.

Onus to prove 'non-use' rests upon the applicant who has filed the application for rectification - Supreme Court

We had covered the Supreme Court judgment in *Satnam Overseas v. Sant Ram and Co.* in our *December 2013 - January 2014 Newsletter*. One relevant finding of the Hon'ble Court which could not be covered in the previous edition was on the burden of proof of non-use in a rectification application. The Apex Court has held that the applicant who has filed the application seeking rectification of the Register and alleging non-use of a registered mark must give *prima facie* evidence of non-use of the mark. Once the *prima facie* evidence is adduced, the onus shifts to the registered proprietor to prove the use of the trade mark during the relevant period.

Injunction granted against Reed Elsevier Corporation and Thomson Reuters Corporation restraining them from infringing EBC's copyright in SCC

The District Court of Lucknow recently confirmed the *ex-parte* interim injunction granted in favour of Eastern Book Company (EBC) against Reed Elsevier Corporation, restraining it from infringing EBC's copyright in the literary work being a law reporter *viz*. Supreme Court Cases (SCC) through its website www.lexisnexis.com.

EBC had also initiated action before the District Court, Lucknow against Thomson Reuters Corporation seeking to restrain it from infringing its copyright in literary works in the law reporter Supreme Court Cases (SCC) and making the infringing copies of law reports and databases available to the public in any manner, to remove such copies from its websites westlawindia.com, indlaw.com and to stop reproducing and making adaptations of the copyrighted work in a material form including storing it in electronic means. On the basis of the finding that EBC has established a *prima facie* case and would suffer irreparable injury if the injunction was not granted, the District Judge granted a temporary injunction against Thomson Reuters Corporation.

Delhi High Court grants injunction in favour of Brahmos Aerospace Pvt. Ltd. against FIITJEE Ltd., recognizing 'Brahmos' as a well-known mark

The Delhi High Court granted an interim injunction in favour of Brahmos Aerospace Pvt Ltd (BAPL), against FIITJEE Ltd., a Delhi based coaching institute which tutors aspirants for various competitive exams, restraining it from using the trade mark 'BRAHMOS'.

BAPL is a joint venture of India's Defense Research and Development Organisation (DRDO) and Russia's NPO Mashinotroyevia and responsible for designing, developing, producing and marketing the supersonic cruise missiles. Besides manufacturing missiles, BAPL is engaged in designing, developing and installing interface for various weapon platforms including ship-based, land-based, air launch and submarine weapon systems for launching the missile BRAHMOS. BAPL also conducts various educational programmes pertaining to the aerospace industry for its employees as well as aspiring engineers and professionals. BAPL is the registered user of the trade mark 'BRAHMOS' and claimed to be using the mark since 1995.

FIITJEE Ltd. had advertised for a course, which would include aptitude tests, titled 'Brahmos'. BAPL claimed that BRAHMOS is a well-known mark and that FIITJEE Ltd. had dishonestly adopted the same to give the false impression that its online tests are affiliated to BAPL. FIITJEE contended *inter alia,* that BRAHMOS is used by BAPL only in respect of missiles and not for educational activities.

Relying on judgments in *Bloomberg Finance v. Prafull Saklecha and Ors* and *Rolex SA v. Alex Jewellery Pvt Ltd and Ors*, the court rejected FIITJEE's contention and held that 'BRAHMOS' is a well-known mark and hence, it can be protected even against use for dissimilar goods and services.

‘Youngistaan’ producers settle trade mark infringement suit with Pepsi Co.

Pepsi Co. had brought an infringement suit against MSM Motion Pictures claiming that the title of the motion picture ‘Youngistaan’ is an imitation of its registered trade mark. The matter was settled and Pepsi Co. agreed to let MSM Motion Pictures retain the title on the condition that they carry a disclaimer in the beginning title credits of the film stating that the film is not related to or associated with, sponsored or promoted in any manner by Pepsi or Pepsi’s Youngistaan campaign. MSM Motion Pictures shall also have to give a disclaimer, ‘No connection with Pepsi’ in the end slate of the film, the non-theatrical trailers, the official website of the film and their official pages on Facebook, Twitter and Youtube.

Mahindra announces an innovation prize of USD 1 million

With the aim of building a culture of innovation in India, the Mahindra Group announced the launch of a 1 million USD innovation prize titled the ‘Rise Prize’ on National Science Day (February 27, 2014). The ‘Rise Prize’ challenge which began on February 28, 2014 poses two challenges to innovators, the Mobility Challenge, a USD 700,000 challenge calling innovators to building a driverless car and the Solar Challenge, a USD 300,000 challenge to develop a DIY rooftop solar kit for households.

Delhi High Court ruling - STEELBIRD design not new or original

The Delhi High Court vacated the *ex-parte* interim injunction granted to Steelbird Hi-Tech India Ltd. against *inter alia* helmet manufacturer S.P.S. Gambhir. The interim injunction had been granted to Plaintiff on the basis of its registered design under No. 241153 in respect of the shape, configuration and surface pattern of a particular type of helmets made and marketed under the trade mark 'STEELBIRD'.

Plaintiff had claimed that defendant had fraudulently imitated and copied the unique 'beak design' of STEELBIRD helmets in the helmets made and sold by defendants under the mark FORMAT. Defendants contended, *inter alia,* that the 'beak design' was not new or original as envisaged under Section 4 of the Designs Act, 2000 and helmets in the said design were freely available in the market prior to plaintiff's design registration. Defendants produced several brochures and product catalogues of other manufacturers in India along with a list of internet search results showing prior availability of helmets in 'beak design' in India and abroad. Relying on the evidence and documents produced by defendants, the court held that, *prima facie*, similar designs with the claimed 'beak shape' had been available in the market prior to registration in India as well as abroad. Therefore, on the basis of the finding that the design sought to be protected by plaintiff was not new or original and not meant for protection, the court vacated the interim injunction against defendants.

Gati Ltd. denied interim injunction against Gati Dance Forum

Gati Ltd., a cargo management company, sought an interim injunction against Gati Dance Forum, a registered non-profit charitable trust that works to support, facilitate and promote emerging artists in the field of dance, seeking to restrain it from using GATI to promote and carry out its business. The Delhi High Court observed that the parties are engaged in different fields of activities and therefore, the chance of confusion and deception in the mind of customers is nil. Noting that 'GATI' is a common Hindi or Sanskrit word meaning ‘movement’ and has a direct reference to the services provided by the defendant i.e., dance the court denied to grant interim injunction in favour of plaintiff as no prejudice or harm would be caused to plaintiff if defendant continued to use GATI. The defendant has however, been directed to file its statement of accounts in court till the final disposal of the matter.

Delhi High Court in Marlboro trade mark case - International exhaustion principle applied in parallel import cases

Philip Morris Products SA had filed an infringement suit before the Delhi High Court against certain retailers, wholesalers and distributors, seeking to restrain them from selling counterfeit and grey market versions of Marlboro cigarettes. The court had granted *ex-parte* interim injunction and also appointed local commissioners to seize the goods referred to by plaintiff. Since defendants did not enter appearance even after service, the matter proceeded *ex-parte*.

The sale of counterfeit cigarettes bearing the trade mark MARLBORO was a clear case of infringement however, on the issue of sale of grey market version of cigarettes, plaintiff contended that sale of the said cigarettes, even though fit for sale in the country of origin, constitutes infringement under Section 29 (1) of the Trade Marks Act, 1999, as all unauthorized use of the registered trade mark amounts to infringement. While examining plaintiff’s contentions the court referred to the Division Bench Judgment in *Kapil Wadhwa & Ors. Vs. Samsung Electronics Co. Ltd & Anr*, and observed that India follows an international exhaustion regime. Therefore, sale in India, of goods which have been purchased in accordance with the laws of the country of purchase would not infringe the registered trademark in India.

The court, however, stated that the onus of proving that the purchase is lawful is on the importer of the goods. Since the matter had proceeded *ex-parte*, no claims of lawful purchase had been made by defendants. Further, the local commissioner reports referred to vague statements of defendants conceding that the impugned cigarettes were from unknown supplier or a gift from a friend or given by foreign tourists, in which case the cigarettes could have been only used personally. Hence, in the absence of proof that the purchase of impugned goods was lawful, the court held that sale of the same amounts to infringement.

INDIA TODAY continues to object to NATION TODAY

Living Media India Ltd., the owner and publisher of the weekly news magazine INDIA TODAY appealed against the Single Judge's order denying temporary injunction against the launch of NATION TODAY by Alpha Dealcom Pvt. Ltd. The Division Bench of the High Court of Delhi *vide* order dated February 24, 2014, restrained the respondent from launching the channel NATION TODAY without leave of the court, whilst giving it liberty to approach the Ministry of Information and Broadcasting.

Living Media had sought to restrain Alpha Dealcom Pvt. Ltd. from using the mark NATION TODAY in respect of broadcasting and telecommunication services however, the Single Judge had refused to accept the contention that 'TODAY' has acquired a secondary meaning and has come to be associated solely with Living Media India Ltd. as there are many other parties using 'TODAY' in relation to TV channels and no objection has been raised to these users. Noting that Living Media India Ltd. had itself made an admission before the Registrar of Trade Marks that there is no similarity between INDIA TODAY and PUNJAB TODAY (in separate proceedings), the Single Judge had held that *prima facie* it could not be established that NATION TODAY is deceptively similar to INDIA TODAY or that it will mislead the public.

Teva's plaint against Natco returned

Teva Pharmaceuticals of Israel had approached the Delhi High Court seeking injunction restraining Natco Pharmaceuticals from marketing a generic version of a multiple sclerosis drug, Copaxone, in America. The suit was a *quia timet* action filed on the basis of the apprehension that since Natco has tied up with US based Mylan Pharmaceuticals Inc. it is likely to manufacture and export the drug to the US.

Natco filed an application seeking return of the plaint on the grounds of lack of jurisdiction. The defendant stated that it had no manufacturing unit in Delhi and neither did it practice the process in Delhi nor did it export any products from Delhi. The defendant further contended that since the specific case of plaintiff is that the product is meant for export market, the apprehension of sale in Delhi is not enough to vest the court with jurisdiction.

In light of the fact that this was a *quia timet* action, the court examined the plaint to ascertain if there was any specific plea that there is a violation of the process patent within the jurisdiction of the court. The court noted that plaintiff had not denied that there is no manufacturing within Delhi or that defendant only had manufacturing units in Hyderabad. Examining the plaint, the court stated that the averment in the plaint is that Natco's act of manufacturing the product "for sale in the US and elsewhere" amounts to infringement of the process patent. The averment is not that such manufacturing of the product for export to the US and elsewhere is happening or is apprehended to happen within Delhi. Hence, plaintiff cannot invoke Section 48(b) of the Patents Act 1970 to urge that the product obtained as a result of infringement of process is sold or apprehended to be sold in Delhi and the court has jurisdiction to entertain the suit. Hence, the suit was returned by the court on the abovementioned grounds.

Update on Pfizer's patent on Detrol: IPAB stays the Indian Patent Office's order of revocation of patent

The Intellectual Property Appellate Board (IPAB) granted an interim stay on November 27, 2013 order of the Indian Patent Office (IPO) revoking Pfizer's patent on the drug Detrol. In a post-grant opposition filed by Ranbaxy Laboratories, the IPO had found that the invention claimed in the patent was 'prior claimed' and had revoked the patent (covered in the *December 2013 - January 2014 Newsletter*).

Aggrieved by the revocation, Pfizer filed a miscellaneous petition before the IPAB seeking stay of the revocation order which came up for hearing on March 26, 2014. Ranbaxy did not argue the matter and sought time on the ground that it had received the notice from the Registry only on March 19. The IPAB refused to grant Ranbaxy's request for adjournment in light of the fact that it had received notice of the hearing from Pfizer earlier, on March 13, 2014 and had no justification for seeking time. The IPAB, without going into the merits of the case, found that the balance of convenience was in favor of Pfizer and stayed the operation of the November 27, 2013 order revoking the patent.

Novartis secures injunction against Wockhardt in respect of the anti-diabetes drug Vildagliptin

Wockhardt and Novartis are locked in legal disputes over patent of the anti-diabetes drug Vildagliptin before two forums, the High Court of Delhi and the Intellectual Property Appellate Board (IPAB). Even as Wockhardt's application seeking revocation of Novartis' patent on the drug, filed in September 2013, is pending before the IPAB, the Delhi High Court, in an infringement suit filed by Novartis, restrained Wockhardt from manufacturing or launching any drug in violation of Novartis' patent in its anti-diabetes drug sold under the brands Vysov and Vysov-M. Novartis is the patent holder of the drug containing the active pharmaceutical ingredient (API) vildagliptin and vildagliptin in combination with Metformin Hydrochloride and has been selling the same under the brands Vysov and Vysov-M in India since 2008 and internationally since 2007.

In recent developments before the IPAB, the IPAB has allowed the request of Wockhardt for early hearing of the revocation petition. Though, Novartis had requested the IPAB to take up the revocation petition after conclusion of the infringement proceedings pending before the Delhi High Court to avoid conflicting views and decisions, the IPAB was of the view that no prejudice will be caused to Novartis by fixing an early date of hearing.

JCB's infringement proceedings against Bull Smart, an abuse of the judicial process? Competition Commission of India orders investigation

Claiming that Bull Machines Pvt. Ltd. (Bull Machines) had infringed the design registrations/copyright of JCB

India Pvt. Ltd. (JCB) in developing the backhoe loaders 'Bull Smart', JCB had obtained an *ex-parte* interim injunction against the launch of 'Bull Smart' from the High Court of Delhi. On the basis of the interim injunction, JCB caused removal of Bull Machines' backhoe loaders 'Bull Smart' from the Èxcon 2011 Exhibition in Bangalore and also, stoppage of production of the construction equipment. Further, documents, components and moulds available at Bull Machines' Coimbatore plant were also seized, resulting in closing of the plant. However, 10 months after filing of the suit, JCB withdrew the application seeking *ex-parte* interim injunction which led to vacation of the interim injunction against Bull Machines.

Bull Machines approached the Competition Commission of India (CCI) alleging that by initiating the aforesaid judicial proceedings, JCB has abused its dominant position in the market to stifle competition by preventing market access and foreclosing entry of 'Bull Smart'. The CCI found that *prima facie* JCB is a dominant entity in the relevant market and observing that *'predation through abuse of judicial process'* presents an increasing threat to competition, ordered the Director General to cause an investigation into the matter.

Delhi High Court injuncts pubs and eateries from showing ICC T20 World Cup without permission from Star India Pvt. Ltd.

Star India Pvt. Ltd. (Star) had approached the High Court of Delhi seeking an *ex-parte* interim injunction restraining cafes, restaurants, pubs, bars and other entities from "exhibiting" the 'ICC Twenty20 Bangladesh 2014' World Cup matches in public places. Star apprehended that these entities will show matches to boost their sales and claimed that the 'live' ICC Twenty20 World Cup matches being broadcast fall within the definition of a cinematograph film and their exhibition without obtaining a license from Star will cause infringement of its copyright.

Apart from the entities named by Star, the Delhi High Court has restrained all other persons who are found to be similarly infringing the copyright in the cinematograph film of the ongoing matches by showing them in public places.

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