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VEPACHEDU EDUCATIONAL FOUNDATION

The Andhra Journal of Industrial News IP and Industry News

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Issue 116

IMPORTANCE OF INTELLECTUAL PROPERTY

A primary driver of US economic growth and national competitiveness is innovation through which new inventions are generated and successfully introduced in the marketplace. Intellectual property rights support innovation and creativity in virtually every industry. A recent Department of Commerce report titled “Intellectual Property and the U.S. Economy: Industries in Focus¹” found that IP-intensive industries support at least 40 million jobs and contribute more than \$5 trillion dollars to, or 35 percent of, U.S. gross domestic product (GDP). As stated by the Commerce Department’s Acting Secretary Blank, “Strong intellectual property protections encourage our businesses to pursue the next great idea, which is vital to maintaining America’s competitive edge and driving our overall prosperity.”

Without IP protection, the inventor who had invested time and money (sunk costs) in developing the new product or service would always be at a disadvantage to the new firm that could just copy and market the product without having to recoup any sunk costs or pay the salaries required by those with the creative

¹ “Intellectual Property and the U.S. Economy: Industries in Focus”

<http://www.esa.doc.gov/Reports/intellectual-property-and-us-economy-industries-focus>, accessed on 22 December 2013.

Issue 116	5114 Kali Era, Vijaya Year, MARGASIRA Month 2070 Vikramarka Era, Vijaya Year, MARGASIRA Month 1934 Salivahana Era, Vijaya Year, MARGASIRA Month 2013 AD, DECEMBER
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talents and skills. As a result, the benefits associated with ingenuity would be lost to copycats. One may only obtain patent protection for a machine, manufacture, composition of matter or a process. The subject matter sought to be patented should be a novel, non-obvious and useful invention. There are two criteria for determining subject matter eligibility. The claimed invention (1) must be directed to one of the four statutory categories, and (2) must not be wholly directed to subject matter encompassing a judicially recognized exception (Patentable Subject Matter Under Section 101²). The patent protection is limited to the country in which it is granted. It is expensive to obtain patent protection and maintain it, even if it is limited to the US. It would be a lot more expensive to cover many countries. To ameliorate the costs and give an opportunity to applicants to pursue only worthwhile inventions, many countries came together and signed a treaty called the Patent Cooperation Treaty (PCT). By filing one international patent application under the PCT, applicants can simultaneously seek protection for an invention in 148 countries throughout the world³.

After patenting and successfully commercializing an innovation, firms are still unlikely to capture all the benefits of their inventions in the form of profits. If incentives are given to innovators, economists believe that much of the benefits spill over to other firms and finally to consumers. As a result, a number of countries recently have adopted new R&D tax incentives, such as the Patent Box, named after a box to check on the corporate tax form to allow corporate income from the sale of patented products to be taxed at a lower rate than other income. A patent box reduces the financial risk involved in innovation by lowering the effective corporate tax rate for knowledge-based establishments, making it easier for them to compete against establishments in nations providing robust innovation incentives to conduct R&D and produce the patented product⁴.

² Patentable Subject Matter Under Section 101, <http://www.cardinal-ip.com/ip-news-strategy/patentable-subject-matter-under-section-101/>, accessed on 22 December 2013.

³ PCT – The International Patent System, <http://www.wipo.int/pct/en/>, accessed on 22 December 2013.

⁴ The Patent Box, <http://www.cardinal-ip.com/ip-news-strategy/the-patent-box/>, accessed on 22 December 2013.

Issue 116

5114 Kali Era, Vijaya Year, MARGASIRA Month
2070 Vikramarka Era, Vijaya Year, MARGASIRA Month
1934 Salivahana Era, Vijaya Year, MARGASIRA Month
2013 AD, DECEMBER



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VEPACHEDU EDUCATIONAL FOUNDATION

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Many recent patent infringement lawsuits in the US are related to the prevalence of low-quality patents; that is, patents with unclear property rights, overly broad claims, or both. According to the Wall Street Journal⁵, today's patent mess in the US can be traced to the Federal Circuit Court of Appeals, which Congress created in 1982, and a miscalculation by Jimmy Carter, who thought granting more patents would help overcome economic stagnation. The country got more patents at a huge cost. The number of patents has quadrupled, to more than 275,000 a year. But the Federal Circuit approved patents for software, which now account for most of the patents granted in the U.S, and for most of the litigation. Patent trolls buy up vague software patents and demand legal settlements from technology companies. Instead of encouraging innovation, patent law has become a burden on entrepreneurs, especially startups without teams of patent lawyers⁶. Firms that buy and license technologies can improve the market for technology and thus improve the innovation incentives for independent inventors. But the role of the current non-practicing entities (NPEs) who assert and litigate patents is something altogether different⁷.

⁵ 441: When Patents Attack! <http://www.thisamericanlife.org/radio-archives/episode/441/when-patents-attack>, accessed on 22 December 2013.; Big cases make headlines, while patent cases proliferate, 2013 Patent Litigation Study, PWC, http://www.pwc.com/en_US/us/forensic-services/publications/assets/2013-patent-litigation-study.pdf, accessed on 22 December 2013.

⁶ Jimmy Carter's Costly Patent Mistake, <http://online.wsj.com/news/articles/SB10001424052702303293604579252662325112076>, accessed on 22 December 2013.

⁷ 441: When Patents Attack! <http://www.thisamericanlife.org/radio-archives/episode/441/when-patents-attack>, accessed on 22 December 2013.; Big cases make headlines, while patent cases proliferate, 2013 Patent Litigation Study, PWC, http://www.pwc.com/en_US/us/forensic-services/publications/assets/2013-patent-litigation-study.pdf, accessed on 22 December 2013.

Issue 116

5114 Kali Era, Vijaya Year, MARGASIRA Month
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The Andhra Journal of Industrial News

IP and Industry News

To address some of the problems associated with the American patent system, president Obama signed the America Invents Act in 2011 that came into force incrementally, resulting in the partial integration of the US patent law with the rest of the world on March 16, 2013. For the first time in the history of U.S. patent law, to improve the patent quality, the AIA now allows third parties to submit pre-grant submissions⁸ and post-grant review⁹.

To take advantage of the patent regimes available and obtain valid patent protection that provides incentives for innovation and prevent copycats from stealing from the inventors, without stifling the innovation; one should perform proper patent searches¹⁰ and write broadest possible claims that do not read on the prior art, with the help of patent professionals.

Patent Litigation Study, PWC, http://www.pwc.com/en_US/us/forensic-services/publications/assets/2013-patent-litigation-study.pdf, accessed on 22 December 2013.

⁸ Preissuance Submissions, <http://www.cardinal-ip.com/ip-news-strategy/preissuance-submissions/>, accessed on 22 December 2013.

⁹ First-Inventor-to-File Regime, <http://www.cardinal-ip.com/ip-news-strategy/first-inventor-to-file-regime/>, accessed on 22 December 2013.

¹⁰ Patent Searches, <http://www.cardinal-ip.com/products-and-services/patent-searches/>, accessed on 22 December 2013.

Issue 116

5114 Kali Era, Vijaya Year, MARGASIRA Month
2070 Vikramarka Era, Vijaya Year, MARGASIRA Month
1934 Salivahana Era, Vijaya Year, MARGASIRA Month
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Om! Asatoma Sadgamaya, Tamasoma Jyotirgamaya, Mrityorma Amritamgamaya, Om Shantih, Shantih,
Shantih!

(Aum! Lead the world from wrong path to the right path, from ignorance to knowledge, from mortality to
immortality, and peace!)

Issue 116

5114 Kali Era, Vijaya Year, MARGASIRA Month
2070 Vikramarka Era, Vijaya Year, MARGASIRA Month
1934 Salivahana Era, Vijaya Year, MARGASIRA Month
2013 AD, DECEMBER