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The Andhra Journal of Industrial News

IP and Industry News

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Issue 104 Contents:

Importance of IP

India Refuses Patent to Pharma

DOE and Estoppel

Importance of IP

Innovation—the process, through which new inventions are generated and successfully introduced in the marketplace—is a primary driver of U.S. economic growth and national competitiveness. Intellectual property is used everywhere in the economy, and IP rights support innovation and creativity in virtually every U.S. industry. A recent Department of Commerce report titled “Intellectual Property and the U.S. Economy: Industries in Focus” (<http://www.esa.doc.gov/Reports/intellectual-property-and-us-economy-industries-focus>) 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 in developing the new product or service (sunk costs) 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 higher salaries required by those with the

Issue 104	5114 <u>Kali Era</u> , <u>Nandana</u> Year, Karthika Month 2070 <u>Vikramarka Era</u> , <u>Nandana</u> Year, KarthikaMonth 1934 <u>Salivahana Era</u> , <u>Nandana</u> Year, Karthika Month 2012 AD, November
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creative talents and skills. As a result, the benefits associated with American ingenuity would tend to more easily flow outside of the United States.

Cardinal is the leading intellectual property services provider in the United States providing strategic IP support and protecting the interests of the American entrepreneur. Over the past decade, Cardinal has provided IP services to literally thousands of clients across the country. For many, we have become an indispensable partner, providing IP services of unmatched quality.

India Refuses Patent to Pharma

India is growing rapidly as a market for pharmaceutical products. A report earlier this year by CII and PricewaterhouseCoopers estimated the Indian market for pharmaceutical products would grow by 20 per cent every year to \$74 billion in 2020.

However, the Indian patent regime is innovator unfriendly, still rooted in populist and Robin Hood policies of stealing from the rich, who invest heavily in the drug discovery in anticipation of profits to continue innovation.

India's patents appeal board has dismissed British drugmaker AstraZeneca's petition challenging an earlier ruling that refused patent protection for a cancer-fighting drug, in the latest blow for Big Pharma in the country. The Indian patents office in 2007 refused patent protection to AstraZeneca's quinazoline molecule, citing lack of invention. The Intellectual Property Appellate Board (IPAB) upheld the refusal. The decision is also a setback for struggling AstraZeneca, which is battling to turn itself around as key drugs lose patent protection.

Global drug companies suffered a high-profile reversal in March when India granted the first ever compulsory license to domestic drugmaker Natco Pharma to sell cheap copies of Bayer's cancer drug Nexavar. Bayer has appealed the order.

Issue 104

5114 Kali Era, NandanaYear, Karthika Month
2070 Vikramarka Era, NandanaYear, KarthikaMonth
1934 Salivahana Era, Nandana Year, Karthika Month
2012 AD, November



శ్రీ వేపచేదు విద్యా పీఠము

VEPACHEDU EDUCATIONAL FOUNDATION

The Andhra Journal of Industrial News

IP and Industry News

Early this month IPAB revoked a six-year-old Indian patent granted to Roche's hepatitis C drug Pegasys, citing lack of evidence that the drug was any better than existing treatments and its high price as reasons for the decision. If it's price is high and it is not better than the cheaper better version, who would buy it and what was purpose of copying it to sell as generic?

Multinational drug manufacturers regard India's \$13 billion drug market as a huge opportunity, but are wary of what they see as lax protection for intellectual property in a country where generic medicines account for more than 90 percent of sales.

DOE and Estoppel

In *Energy Transportation Group, Inc. v. William Demant Holding A/S*, Nos. 11-1487-1489 (Fed. Cir. Oct. 12, 2012), the Federal Circuit, upon review of the prosecution history of U.S. Patent No. 4,879,749 (the '749 patent), observed that ETG narrowed the claimed method of cancelling feedback from one requiring only modifying frequency gain and unspecified "feedback characteristics" to one specifically requiring measurement of phase and amplitude. ETG failed to overcome the presumption that the narrowing amendment was made to secure the '749 patent, as the prosecution history showed that the claim limitation at issue was added in response to a rejection of closely related claims, and provided no other explanation for the limitation. Moreover, the Court noted that the difference between the phrase "determining the effect of phase and amplitude" and "measuring phase and amplitude" was "clearly foreseeable," as ETG used the "determining" language in the '850 patent. Slip op. at 28. Thus, the Court affirmed the district court's application of prosecution history estoppel to bar the assertion of infringement under the DOE by the accused devices.

Issue 104

5114 Kali Era, NandanaYear, Karthika Month
2070 Vikramarka Era, NandanaYear, KarthikaMonth
1934 Salivahana Era, Nandana Year, Karthika Month
2012 AD, November



శ్రీ వేపచేదు విద్యా పీఠము

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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 104

5114 Kali Era, NandanaYear, Karthika Month
2070 Vikramarka Era, NandanaYear, KarthikaMonth
1934 Salivahana Era, Nandana Year, Karthika Month
2012 AD, November

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