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VEPACHEDU EDUCATIONAL FOUNDATION

The Andhra Journal of Industrial News

IP and Industry News

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AIA Implementation Update

On September 16, 2011, President Obama signed the AIA into law to bring the patent system into the 21st century. Several key provisions of the AIA went into effect at the one-year anniversary, September 16, 2012:

Inventors/Applicants: Effective from September 16, 2012, applications may be filed in the name of assignee (or a person/business to which an inventor has an obligation to assign). This provision eliminates the need to deal with inventors who are unable or unwilling to sign an oath or declaration required for prosecuting a patent application. Each inventor is still required to submit an oath or declaration. The Act details the statement that each inventor must make. An inventor's statement can now be made in an assignment document. Also, a new declaration is not required in a continuation application, although a copy of the original may be required.

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Accordingly, under AIA, from September 16, 2012, a practitioner needs to do the following with regard to oath in a non-provisional application:

1) File a proper ADS, with the non-provisional application, use fillable new form PTO/AIA/14 (available at (www.uspto.gov/forms)
2) File an oath/declaration with the non-provisional application, using the latest form PTO/AIA/01(available at (www.uspto.gov/forms)
    a. You may file oath/declaration later with a surcharge
    b. The office will not send notice of missing parts if surcharge for not submitting oath/ declaration is paid
    c. You have 3-month non-extendable time period from the date of Notice of Allowability
    d. Failure to file timely oath/ declaration may result in abandonment and office will not issue Notice of Allowance
    e. You may use a compliant assignment instead of an oath/ declaration

For more information visit**: http://www.uspto.gov/aia_implementation/faq.jsp#heading-10**

Pre-grant Review: Effective from September 16, 2012, a third party may submit any publication of potential relevance to a patent application before the earlier of a notice of allowance or the later of (1) six months after the date of first publication of the application or (2) the date of the first rejection of any claim. This new provision allows anyone to challenge another's filings, by bringing forward prior art during prosecution, which is a more cost effective approach to limit a competitor's patent rights compared to litigation or reexamination proceedings. Provision will apply to all applications filed before, on, or after effective date. For more information visit**:** http://www.uspto.gov/aia_implementation/faq.jsp#heading-13

Business Method Patents and Post-grant Review: Effective from September 16, 2012, an eight year transitional post-grant review proceeding became available for reviewing the validity of covered business method patents. A Petitioner for review of a business method patent must have been sued for, or charged with, infringement of the patent before filing a petition for a transitional proceeding. The petition is limited to prior art that is described in new § 102(a). If a party chooses to invoke its rights under this provision, it would be precluded from asserting an invalidity defense based on the same prior art during a civil trial. A business method is defined as "a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product

or service, except that the term does not include patents for technological inventions." The transitional post-grant review proceeding applies to business method patents issued before, on, or after September 16, 2012. http://www.uspto.gov/aia_implementation/faq.jsp#heading-12

Within nine months after grant or reissue of a patent based on patent application filed on or after March 16, 2013 under the first-inventor-to-file system, a petitioner may request to cancel one or more claims of the patent on any ground except the best mode requirement. The standard of review is "more likely than not that at least one of the claims challenged is unpatentable." After a written decision, petitioners may not assert issues that they "raised or reasonably could have raised." For more information visit: http://www.uspto.gov/aia_implementation/faq.jsp#heading-8

***Inter Partes* Review**: IPR became effective from September 16, 2012. Now third parties can challenge a patent, after 9 months from grant of a patent or after a PGR, through an *inter partes* review to be conducted by Patent Trial and Appeal Board and completed within one year, after the nine month window closes for post grant review. Basis for requesting an *inter partes* review is limited to prior art patents and printed publications and only novelty and obviousness maybe raised. Changes the standard for initiating *inter partes* reexamination (and *inter partes* review) from "a new substantial question of patentability (SNQ)" to "a reasonable likelihood that the petitioner will prevail" with respect to at least one challenged claim. On September 16, 2012, the USPTO will stop accepting *inter partes* reexamination requests and instead move to the new *inter partes* review procedure to be conducted before the new Patent Trial and Appeal Board rather than before an examiner. For more information visit: http://www.uspto.gov/aia_implementation/faq.jsp#heading-7

Patent Trial and Appeal Board (PTAB): The new Patent Trial and Appeal Board (PTAB) through their new IT system called Patent Review Processing System (PRPS) started accepting submission from September 16, 2012. So far, a new, ambitious IT system up and running, and a team of PTAB judges of about 150 recruited that will increase to about 180 in the next few months, are in place to accept requests, says the Chief Judge James Smith at America Invents Act microsite: Webinar with Senior USPTO

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Officials (September 7, 2012; http://www.uspto.gov/aia_implementation/informational_videos.jsp; http://www.uspto.gov/blog/director/entry/announcing_the_patent_trial_and).

Supplemental Examination: Effective from September 16, 2012, supplemental examination proceedings will also be implemented. Supplemental examination is intended to allow patent owners to clean the record of situations that could give rise to a claim of "inequitable conduct." If the PTO determines that the new or corrected information raises a substantial new question of patentability, it may order an *ex parte* reexamination. Under new Subsection (c) of §257, a patent cannot be held unenforceable on the basis of conduct relating to information considered, reconsidered or corrected during the supplemental examination. For more information visit: http://www.uspto.gov/aia_implementation/faq.jsp#heading-15

Willful Infringement: Effective from September 16, 2012, no inference of willful infringement when an alleged infringer does not obtain an opinion of counsel. Codifying the Federal Circuit's *en banc* decision in Seagate, the Act provides that failure of a party to obtain an opinion of counsel when charged with infringement may not be used to prove willful infringement. However, the Act goes beyond the Federal Circuit jurisprudence by also providing that failure to obtain an opinion of counsel cannot be used to prove active inducement to infringe.

Citation of Patent Owner Statements in a Patent File: Effective from September 16, 2012, either a third party or the patent owner may cite patent owner statements in a patent file. A third party can request in writing to maintain its identity in confidence, and it will be excluded from the patent file. For more information visit: http://www.uspto.gov/aia_implementation/faq.jsp#heading-14

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Patent Backlog Data from the USPTO

http://www.uspto.gov/dashboards/patents/kpis/kpiBacklogDrilldown.kpixml

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Patent Litigation in Pharma Biz

Over the last decade, the overall success rate for the generic drug industry is 48% for cases that have gone to trial. However, the success rate increases to 76% when settlements are included. Over half of all cases are settled or dropped. Settlements occur on average 47% of the time with Teva accounting for nearly one-third of all settlements. On the innovator side, Glaxo and Novartis have settled the most.
http://amlawdaily.typepad.com/pharmareport.pdf

Technology and Culture

Female oral pill revolutionized family planning 50 years ago and developed a new culture, liberating women from shackles. It also liberated women from their clothes making girls and women sexual objects in the modern Western culture that has been propagated across the world through the media. The dress that was fitting for Playboy models is now common dress code on school and college capuses and work places in the West.

Availability of contraception made sex an entertainment without the worry of pregnancy for women. Yet, half of all U.S. pregnancies are so-called unintended, and those pregnancies cost state and federal programs about $11 billion annually.

Male pill may be the answer. The relentless sperm production, called spermatogenesis, in males happens inside coiled hoses in the testes. Complex hormonal circuitry keeps this specialized assembly line moving. More male contraceptive options could help prevent the large number of unintended pregnancies in the US, keeping the liberated culture of revealing Playboy clothes for women.

Scientists have been predicting the debut of a male pill within 5 years for the last 30 years. A story in the current edition of Chemical & Engineering News describes the need for a male version of the oral contraceptive pill. Experts in the field think pharmaceutical companies have shut down male

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contraceptive programs because the companies would rather spend resources on drugs that have a better chance of approval. New male and female contraceptives, experts say, face much tougher scrutiny in terms of safety and efficacy when compared with drugs that treat diseases such as cancer or heart disease. http://cen.acs.org/articles/90/i39/Hunt-Male-Contraceptive-Pill-Continues.html

Another fallout from the revealing clothes for women is psycholigcal and physical diseases, which contraception cannot prevent. The media and moms who sexualize women predispose girls toward objectifying themselves; then reinforce the messages, amplifying the effect.
http://www.huffingtonpost.com/2012/07/17/6-year-old-girls-sexy_n_1679088.html

Eating disorders, low self-esteem, and depression are the most common mental health problems in girls and women. The Report of the APA Task Force on **The Sexualization of Girls**, issued in 2007, points out the connection between these problems and the sexualization of girls. The Task Force Report states that sexualization has negative effects in a variety of domains:

- Cognitive and emotional health: Sexualization and objectification undermine a person's confidence in and comfort with her own body, leading to emotional and self-image problems, such as shame and anxiety.
- Mental and physical health: Research links sexualization with three of the most common mental health problems diagnosed in girls and women—eating disorders, low self-esteem, and depression or depressed mood.
- Sexual development: Research suggests that the sexualization of girls has negative consequences on girls' ability to develop a healthy sexual self-image.

http://www.apa.org/pi/women/programs/girls/report-full.pdf
http://www.apa.org/pi/women/programs/girls/report.aspx
http://www.mcmdnow.org/WhyItMatters.pdf
http://feministing.com/2010/10/05/fighting-back-against-the-early-sexualization-of-girls/
http://www.dailymail.co.uk/news/article-2159380/Secondary-school-bans-girls-wearing-skirts-prevent-early-sexualisation-pupils.html

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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!)

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