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The Telangana Science Journal

Health and Nutrition

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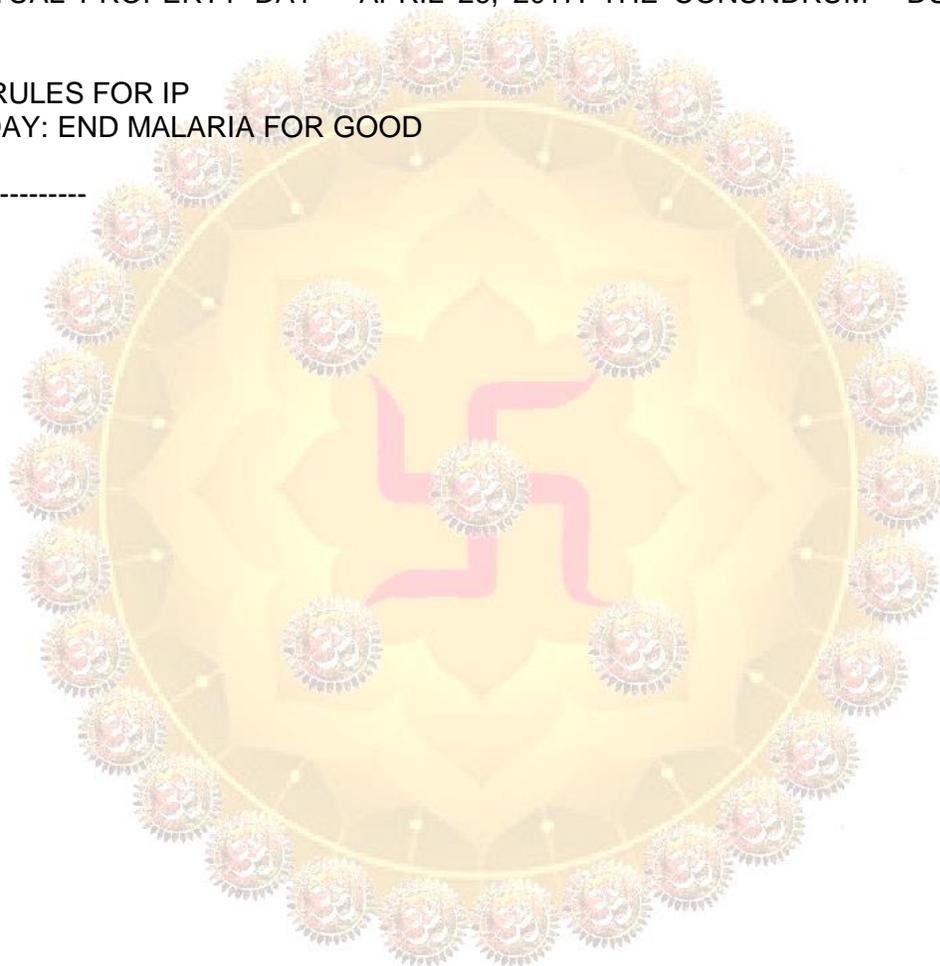
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Issue 232

Chief Editor: Dr. Sreenivasarao Vepachedu¹

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World Intellectual Property Day – April 26, 2017: THE CONUNDRUM - DUALITY OF PATENT LAW



Every April 26, we celebrate World Intellectual Property Day to learn about the role that intellectual property rights (patents, trademarks, industrial designs, copyright) play in encouraging innovation and creativity. It is a good time to wonder about the philosophy of the American patent law - **DUALITY OF PATENT LAW.**

FACE 1: THE TENET FOR THE EXAMINERS:

During the patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” The Federal Circuit’s en banc decision in *Phillips v. AWH Corp*² expressly recognized, “the USPTO employs the “broadest reasonable interpretation” standard.”



The United States Patent and Trademark Office (USPTO) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction “in light of the specification as it would be interpreted by one of ordinary skill in the art³.”

Indeed, the rules of the PTO require that application claims must “conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description⁴.” An examiner must construe claim terms in the broadest reasonable manner during prosecution as is reasonably allowed in an effort to establish a clear record of what applicant intends to claim. “During the patent examination, the pending claims must be interpreted as broadly as their terms reasonably allow.”⁵. Thus, the claim has to be interpreted broadly so that it can be rejected over the prior art.

THE TENET FOR THE COURT - FACE 2:



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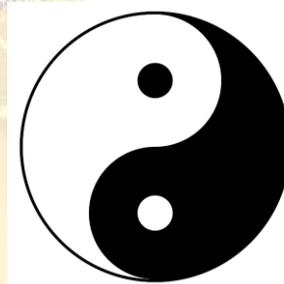
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Patented claims are not given the broadest reasonable interpretation during court proceedings involving infringement and validity, and can be interpreted based on a fully developed prosecution record. The USPTO does not interpret claims in the same manner as the courts⁶.



Thus, the claim has to be interpreted narrowly so that the claim is not infringed. Thus, the Constitutional mandate "to promote the progress of science and useful arts" is accomplished⁷.

However, in addition to the statutes and rules, the actions taken by the examiner in the examination of applications for patents are to a great extent governed by decisions on prior cases. Applicants dissatisfied with an examiner's action may have it reviewed. In general, that portion of the examiner's action pertaining to objections on formal matters may be reviewed by petition to the Director of the USPTO⁸, and that portion of the examiner's action pertaining to the rejection of claims on the merits may be reviewed by appeal to the Patent Trial and Appeal Board⁹. The distinction is set forth in 37 CFR 1.181 and 1.191. In citing decisions as authority for his or her actions, the examiner should cite the decision in the manner set forth in MPEP § 707.06.



CYBER SECURITY¹⁰

- Never click on hyperlinks within emails, instead verify the URL independently.
- Never reply to emails that seek personal information.
- Never respond to offers of money from abroad.
- Never respond to/ make remittances/ participate in schemes or offers from unknown entities.
- Do not reply to emails or SMS claiming that the recipient has won a substantial sum of money in an online lottery or promotion.
- Avoid filling out forms in email messages that ask for personal financial information.
- Don't click or forward links in an email, instant message, or chat from unknown senders or if you suspect the authenticity of the message.
- Never share confidential details like Card number, Card expiry date, CVV, OTP, Internet Password with anyone when you receive any unsolicited calls, SMS, IVR or email seeking for card activation or upgrade income tax refund, reward point redemption.

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- Use updated anti-virus software and firewall software and ensure that your browser is up to date and security patches applied.
- Look for secure session indicators like https:// and padlock on websites that require personal information.



SWISS MORALITY RULES FOR IP¹¹

The Swiss Administrative Court agreed that the moral standard had changed in recent years and become more relaxed, and thus trademarks that had been refused in the past may now be allowed, while considering the question of morality, the court concluded that the minority must always be respected. According to the court, which scrutinized various lexical meanings, the primary understanding of 'f**k' was still the sexual act -"to have sexual intercourse with." While the court held that the mere fact that a sign may have a sexual meaning or understanding does not necessarily lead to a refusal due to morality, it was the case here, as the word 'f**k' is still sexually offensive and may upset people.

The court noted that the standard was different in Germany, for example, a sign is refused only if it is an unconscionable violation of morality. In Switzerland, on the other hand, it is sufficient for the sign to be contrary to morality. The court noted that the sign MINDF**K was not descriptive for services in Class 41.

Class 41 covers mainly services rendered by persons or institutions in the development of the mental faculties of persons or animals, as well as services intended to entertain or to engage the attention.

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This Class includes, in particular: services consisting of all forms of education of persons or training of animals; services having the basic aim of the entertainment, amusement or recreation of people; presentation of works of visual art or literature to the public for cultural or educational purposes.

The Swiss Court DISTINGUISHES the high morality standard in Switzerland for TRADEMARKS, compared to the jurisdictions surrounding Switzerland.

**For many people, the word is extremely vulgar, considered improper and taboo in all of its senses.

WORLD MALARIA DAY: END MALARIA FOR GOOD



Malaria is a serious disease caused by a parasite carried by certain types of mosquitoes. Humans are infected when bitten by the mosquitoes¹². Each year, there are 300 million to 500 million cases of malaria throughout the world and about 1 million child deaths. Reducing the mosquito population in households and communities by eliminating standing water (caused by poor drainage and uncovered water tanks) can be an important factor in reducing

malaria cases.

Between 2000 and 2015, the worldwide rate of new malaria cases and malaria deaths decreased by 41 percent and 60 percent, respectively, according to the World Health Organization (WHO). On World Malaria Day 2017, the National Institutes of Health recognizes these gains and reaffirms its longstanding commitment to conducting and supporting the research necessary to end this mosquito-borne disease.

According to the World Malaria Report 2016, the rate of new malaria cases fell by 21% globally between 2010 and 2015. Malaria death rates fell by 29% in the same 5-year period. In sub-Saharan Africa, case incidence and death rates fell by 21% and 31%, respectively.

Future progress in the fight to prevent malaria will likely be shaped by technological advances and innovations in new tools, including new vector control interventions, and possibly a vaccine.

America has been actively involved in solving the problem. When it was launched in 2005, the goal of the President's Malaria Initiative (PMI)¹³ was to reduce malaria-related mortality by 50 percent across 15 high-burden countries in sub-Saharan Africa through a rapid scale-up of four proven and highly effective malaria

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prevention and treatment measures: insecticide-treated mosquito nets (ITNs); indoor residual spraying (IRS)¹⁴; accurate diagnosis and prompt treatment with artemisinin-based combination therapies (ACTs)¹⁵; and intermittent preventive treatment of pregnant women (IPTp). See PMI Technical Guidance¹⁶ to learn more¹⁷.

The single most significant cause of morbidity and mortality in sub-Saharan Africa and other third world countries is the poor standard of environmental sanitation. This factor plays a major role in disease transmission especially for endemic diseases such as malaria. Sustainable control and elimination of malaria cannot occur in isolation from other sectors of the society most especially the environmental health and engineering services.

In the scheme of disease prevention, sanitation is an essential factor; and in no disease has this been more decisively established than in malaria. Malaria flourishes chiefly in tropical or semitropical climates where drainage is defective, and consequently where conditions are propitious for the breeding of mosquitoes¹⁸. Sulabh International Social Service Organisation, a non-profit voluntary social organization founded in 1970 by Dr. Bindeshwar Pathak¹⁹. Sulabh is noted for achieving success in the field of cost-effective sanitation, transformation of society, prevention of environmental pollution and development of non-conventional sources of energy.

In 2014, when Clean India began, just 42 percent of Indians had access to proper sanitation. Today 63 percent do. And the government has a detailed plan to finish the job by October 2, 2019, the 150th anniversary of Mahatma Gandhi's birth²⁰.

¹Dr. Rao Vepachedu is the founder and president of [Vepachedu Educational Foundation Inc., a 501\(c\) \(3\) educational foundation](#), and [the Law Offices of Dr. Vepachedu](#) and co-founder of [Exciva](#). For more information visit: www.linkedin.com/in/vepachedu; <http://www.avvo.com/attorneys/60201-il-sreenivasarao-vepachedu-764535.html>, and <http://www.crm-ip.com/vepachedu.html>. Contact: svepachedu@yahoo.com.



² Phillips v. AWH Corp., 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005)

³ In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364[, 70 USPQ2d 1827, 1830] (Fed. Cir. 2004).

⁴ 37 CFR 1.75(d)(1)

⁵ In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

⁶ In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1028 (Fed. Cir. 1997); In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1321-22 (Fed. Cir. 1989).

⁷Article 1, Section 8: "... To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries...." <https://www.law.cornell.edu/constitution/article1>



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⁸ MPEP § 1002

⁹ MPEP § 1201; CAFC's Recent Claim Construction: Claims Read in Light of the Specification or Impermissibly Reading Limitations into the Claims? <https://www.linkedin.com/pulse/cafcs-recent-claim-construction-claims-read-light-reading-gary-speier>

¹⁰ Protecting Personal Information: A Guide for Business: https://www.ftc.gov/system/files/documents/plain-language/pdf-0136_proteting-personal-information.pdf

Start with Security: A Guide for Business: <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>

Computer Security Resource Center (CSRC) ; <http://csrc.nist.gov/>

PUBLICATIONS: <http://csrc.nist.gov/publications/index.html>

Profiles for the Lightweight Cryptography Standardization Process: http://csrc.nist.gov/news_events/#apr26

Privacy and Security: <https://www.ftc.gov/tips-advice/business-center/privacy-and-security>

WELCOME TO THE PRIVACY SHIELD: <https://www.privacyshield.gov/welcome>

¹¹SWISS MORALITY RULES and TMs: <https://www.linkedin.com/pulse/swiss-morality-rules-rao-vepachedu-jd-phd-llm?trk=mp-reader-card>

¹² Common water and sanitation-related diseases: https://www.unicef.org/wash/index_wes_related.html

¹³ President's Malaria Initiative Strategy https://www.pmi.gov/docs/default-source/default-document-library/pmi-reports/pmi_strategy_2015-2020.pdf

¹⁴ Indoor Residual Spraying (IRS) <https://www.pmi.gov/how-we-work/technical-areas/indoor-residual-spraying>

¹⁵ Diagnosis and Treatment: <https://www.pmi.gov/how-we-work/technical-areas/diagnosis-and-treatment>

¹⁶ PRESIDENT'S MALARIA INITIATIVE TECHNICAL GUIDANCE: [https://www.pmi.gov/docs/default-source/default-document-library/tools-curricula/pmi-technical-guidance-\(march-2016\).pdf?sfvrsn=8](https://www.pmi.gov/docs/default-source/default-document-library/tools-curricula/pmi-technical-guidance-(march-2016).pdf?sfvrsn=8)

¹⁷ Insecticide-Treated Mosquito Nets (ITNs) [https://www.pmi.gov/how-we-work/technical-areas/insecticide-treated-mosquito-nets-\(itns\)-pmi](https://www.pmi.gov/how-we-work/technical-areas/insecticide-treated-mosquito-nets-(itns)-pmi)

<https://www.pmi.gov/>

¹⁸ THE RELATION OF SANITATION AND DRAINAGE TO MALARIA: <http://jamanetwork.com/journals/jama/article-abstract/219882>

THE RELATION OF SANITATION AND DRAINAGE TO MALARIA: <http://jamanetwork.com/journals/jama/article-abstract/219882>

Cholera, Dengue Fever, and Malaria: The Unquestionable Link to Water: <https://thewaterproject.org/water-scarcity/cholera-dengue-fever-malaria-water>

¹⁹ Sulabh Story in Brief: <http://www.sulabhinternational.org/sulabh-story-in-brief/>

²⁰ How India Is Winning Its War on Human Waste: <https://www.linkedin.com/pulse/how-india-winning-its-war-human-waste-bill-gates>

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