

IPR NEWS

IPR News — General

US Patent Office gains access to Traditional Knowledge Digital Library (TKDL)

India and United States have signed two inter-governmental agreements on Intellectual Property Rights (IPR) to help prevent misappropriation of traditional knowledge through mistaken issuance of patents, what some call biopiracy.

‘Biopiracy’ describes a process in which living resources or traditional knowledge and practices are patented, thus applying intellectual property restrictions to their use. The resources in question are predominantly from developing countries, and are the subject of patent applications by companies in developed countries.

The first agreement is the Traditional Knowledge Digital Library (TKDL) access agreement signed between the Council of Scientific & Industrial Research (CSIR), India and US Patent and Trademark Office (USPTO). The agreement will enable the USPTO to search database of India’s traditional knowledge compiled under TKDL. CSIR will provide training to the USPTO examiners and staff to help them use TKDL tools for search and examination.

This database will be an important addition to the growing array of search tools on traditional knowledge from around the world that is already available to USPTO examiners. These tools include dictionaries, formularies, handbooks, and historical or classical works, as well as databases such as the TKDL. USPTO examiners use these tools to help prevent patenting, and thereby misappropriation, of existing traditional knowledge.

The new database, developed jointly by the Council of Scientific & Industrial Research (CSIR) and the Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (AYUSH), includes over 200,000 traditional medicine formulations on Ayurveda, Unani and Siddha comprising 30 million pages. The TKDL contains text-searchable English-language translations of these sources, permitting USPTO examiners to search thousands of years of India’s accumulated traditional knowledge. The TKDL also contains translations into

French, German, Japanese and Spanish, from these sources, originally written in Hindi, Sanskrit, Arabic, Persian and Urdu.

Another Memorandum of Understanding (MoU) was signed between the office of the Controller General of Patents, Designs and Trade Marks, Department of Industrial Policy and India’s Commerce Ministry. The MoU between patent offices of the two countries would facilitate comprehensive bilateral cooperation on a range of Intellectual Property Right (IPR) issues focusing on capacity building, human resource development and raising public awareness of the importance of IPR (<http://www.patentbaristas.com/archives/2009/12/02>).

Intellectual property rights for Arogyasri soon

Arogyasri, the unique Health Insurance Scheme for poor and needy, will soon get the Intellectual Property Rights (IPR) for the Online Workflow developed by the Arogyasri Healthcare Trust. On obtaining the IPR, the Trust can hire or transfer online copyright of the scheme to any healthcare insurance organization, states or nation on cost basis.

The Trust has formally applied for IPR and is likely to get it at any time. During its recently concluded Board meeting, the Trust has decided to charge consultation fee for various services provided by the Trust to other agencies and states who want to implement similar scheme. It was also decided to facilitate collection of donations from philanthropists including individuals and organizations online through web portal and collect application fee from hospitals requesting for empanelment.

In a teleconference with the officials of Arogyasri Healthcare Trust, Chief Minister, Shri K Rosaiah asked the officials to further strengthen the scheme by plugging all loopholes to ensure effective implementation. He emphasized the need for improving the performance of Government hospitals under the scheme.

According to Arogyasri chief executive officer, Shri A Babu, the Arogyasri developed a fool-proof, responsive and most transparent online system for smooth functioning of the scheme after thorough research and development.

Among the organizations, states and nations which evinced interest in the implementation of the scheme and approached the Trust for support include delegations from USAID, World Bank and the National Health Scheme from London. Teams from 20 States have shown interest in the scheme by studying its working and up to date online implementation, while States like Karnataka and Delhi have sought official consultancy and website rights on the scheme.

The IPR will enable the Trust to earn good income for providing its services to such organizations and states. The Arogyasri scheme for the poor started with 163 procedures in six specialties through 36 network hospitals. Currently, 942 procedures are covered in 31 specialties through 345 networked hospitals in the State.

So far, the Trust saved 4.5 lakh lives by conducting surgeries at a cost of Rs 1,361.52 crore. Of this, 44.03 per cent are women and 55.97 per cent are men. East Godavari district tops the list with 32,292 surgeries, followed by Krishna (32,476 surgeries), Guntur (31,412), West Godavari (30,015) and Ranga Reddy (25,181) districts.

The Government is arranging for renewal of Rajiv Aarogyasri Community Health Insurance scheme Phase -II for the third year in the districts of West Godavari, East Godavari, Chittoor, Nalgonda and Rangareddy from 5 December as the present policy expires on 4 December. This will benefit 52 lakh families of these districts encompassing 1.83 crore population. Now all trauma cases are also covered with followup treatment for one year (<http://www.expressbuzz.com>).

Patent News

WIPO launches enhanced patent information service

WIPO has launched an enhanced online patent information service that will improve public access to information on patents filed and granted around the world. WIPO's PATENTSCOPE®, which currently hosts data on more than 1.6 million international patent applications filed under the Patent Cooperation Treaty (PCT), has been extended to include several collections of national and regional patent information.

In this first phase, WIPO's PATENTSCOPE® includes the patent data collections of eight patent offices: African Regional Intellectual Property Organization (ARIPO), Cuba, Israel, Republic of Korea, Mexico, Singapore, South Africa and Vietnam. WIPO has been working closely with these patent offices to ensure the data collections are fully searchable.

The expansion of WIPO's PATENTSCOPE® data collection makes it possible to conduct high-quality, detailed and free-of-charge searches of the patent information of the participating offices. Many of these collections had previously not been digitized and were not easily searchable. This initiative is taking place within the context of WIPO's commitment to supporting the development of a fully integrated global IP infrastructure and to increasing participation by developing and least developed countries in the benefits of the knowledge economy.

The availability of good quality patent information which contains detailed technical specifications of new technologies is an important step towards narrowing the knowledge gap in technological information. WIPO's PATENTSCOPE®, which facilitates the search and retrieval of patent information, is designed to enhance access to the wealth of technical information contained in patent documents and thereby to promote broad dissemination of this knowledge. Patent information is of significant practical value to businesses when planning product development, marketing strategies or when seeking partnership opportunities for joint ventures.

In addition to technical information, patent documents offer an indication of who is active in a given field of technology and the legal status of the patents granted to those actors. This information can also be of value to researchers and others seeking information on state-of-the-art technologies, particularly in developing countries, as it can help optimize R&D investment by reducing the chances of unnecessarily duplicating R&D efforts.

WIPO's expanded PATENTSCOPE® platform offers tools that enable a high-level analysis of technology trends, as well as country and company-level patenting trends. The new service is the result of cooperation agreements between WIPO and the participating national and regional patent offices. WIPO provides technical assistance to offices to assist them in the digitization and dissemination of their patent data. Similar agreements are underway with several additional offices, and others will be added over time (http://www.wipo.int/pressroom/en/articles/2009/article_0051.html).

IP protections are codified under new patent law

In many countries, patent laws provide a research exemption or 'safe harbor' exemption as an omission to the exclusive rights conferred by patents, which is

especially pertinent to drugs. According to this exemption, in spite of the patent rights, performing research and tests for regulatory approval, for instance, does not constitute violation before the end of the patent term. In the United States, this exemption, known as the Hatch-Waxman exemption, is codified in 35 USC 271(e)(1). China's patent law does not expressly let off activities related to regulatory assessment from patent contravention.

Such an exemption currently exists as a judicial explanation of the broad experimental use exception provided in the patent law. A new modification to China's patent law codifies judicial analysis and practice by stating that it is not an act of infringement if a patented drug or medical apparatus is manufactured, used or imported solely for the purposes of obtaining and providing information for administrative support.

The amendment, which was approved this year, authorizes exemption for activities related to regulatory review. In addition, China does not allow patent term lean-to to recompense for regulatory delays in obtaining State Food and Drug Administration (FDA) approval of drugs.

Patent exhaustion

The existing patent law in Article 63 provides for domestic patent exhaustion, applicable to a product sold by the patentee in China. The adjustment clearly provides for both domestic and international exhaustion of patent rights.

According to the amendment, it is not patent violation when 'anyone uses offers to sell, sells or imports a patented product or a product directly obtained from a patented process, which has been sold by the patentee or by an entity or individual authorized by the patentee'.

The addition of 'imports' clarifies that the corresponding importation of patented products is not considered patent infringement in China. The language of the improved statute does not make a distinction between restricted sales and unrestricted sales.

Moreover, international exhaustion, contractual restrictions and antitrust issues act together in complex ways, and companies need to carefully structure their relationships in different jurisdictions in order to achieve their business and commercial goals.

Preliminary injunctions

Article 61 of the current patent law authorizes courts to issue commands before filing an infringement suit, which might be understood as China's efforts to put

into practice its obligations to provide preliminary injunctive relief in patent infringement cases. In China, this is referred to as 'pre-suit injunction'.

Judicial explanations on 'Application of Laws in Trials of Patent Related Lawsuits' issued in 2001 by the Chinese Supreme People's Court provides some technical guiding principle. A court must set rule, once it receives a request for a preliminary injunction, within 48 hours if it finds that all procedural requirements have been properly met. The time limit can be stretched in special circumstances. The patentee must then initiate an infringement action in the courts within 15 days of issuance of the injunction, or the injunction will be ended automatically. However, the injunction will remain enforceable during reconsideration and any subsequent proceedings until final judgment. The new amendment incorporates above procedures and further clarifies the requirement of posting of a bond for a preliminary injunction motion. In addition, the petitioner is responsible for any loss confirmed by the respondent if the petitioner makes a mistake in the motion for preliminary injunction.

Obtaining a preliminary injunction in most patent infringement cases in China has always been a problem, and it is increasing more and more. The Supreme People's Court tempered any early eagerness for the issue of such injunctions by issuing an instruction to the lower courts recommending caution in issuing preliminary injunctions. The court noted that preliminary injunctions should not be issued in cases relating to non-literal infringement or complicated technologies. The success rate is high (greater than 50 %) for those who requested a preliminary injunction (<http://iitrade.ac.in/news-detail.asp?news=1425>).

US Gilead appeals against patent rejection of AIDS drug Viread

US drug company Gilead Sciences has filed an appeal in the Indian Intellectual Property Appellate Board (IPAB) to challenge a recent order by an Indian Patent Office that rejected two patent claims for its best seller drug, Viread (tenofovir disoproxil fumarate). In August 2009, the Indian Patent Office in Delhi shot down two patents sought by the US firm for Viread after patient groups and Indian company Cipla challenged its patentability.

After India ushered in the new patent regime in 2005, the government provides 20-year marketing exclusivity for patented products. A patent rejection allows generic companies to market their low-cost

version in the country. In August 2009, the Indian Patent Office issued unfavourable decisions in two opposition proceedings on two key patent applications that claim the invention of Viread, the first nucleotide to be developed and licensed as a treatment for HIV/AIDS. The same claims have been issued by other patent offices worldwide, including the US, which confirmed patentability of Viread after a rigorous re-examination process.

Viread is one of the world's most widely prescribed antiretroviral medications and raked in \$4 billion in 2008. Gilead has entered into licensing collaborations with 13 Indian companies allowing them to sell their generic drugs in India and 94 other countries by paying a 5% royalty, till Viread's patent expires in 2017. More than 80% of the world's 33 million people living with HIV live within these licensed territories. In return, the Indian companies did not challenge Gilead's patent claim for Viread. The rejection of its patent means, Gilead will not get the royalty fees. But Mumbai-based Cipla refused to enter into the alliance and instead launched its drug at the risk of patent infringement before the patent order came. This means, if the patent order had gone in Gilead's favour, Cipla would have to pay damages to Gilead.

Viread drug is a pre-95 molecule and, hence, cannot be patented under Indian laws. Its patent has also been rejected in Brazil. Access to the drug has been restricted due to licensing agreement and patient groups will challenge the appeal (<http://economictimes.indiatimes.com>, 8 December 2009).

Sweden claims breakthrough on EU patent impasse

EU industry ministers agreed a package of measures which could pave the way for a European Community patent. However, there are concerns that the thorny issue of translation costs has merely been set aside and will be dealt with separately. Sweden, which holds the EU's six-month rotating presidency, pulled off a major political coup by securing unanimous backing for its plan to establish a single EU patent and a European patent court.

Patent reform has been on the Brussels agenda for several years but attempts to streamline a complex system have failed repeatedly. The deal should help slash the cost of protecting new innovations in Europe, something small businesses have been particularly vexed by in recent years. The cost of filing and protecting patents in Europe is substantially higher than in the US and Japan, and business

organizations have consistently complained about the fragmented and inconsistent decisions handed down by European courts.

Companies often have to fight legal actions in several European countries at once, and national courts regularly come to conflicting conclusions on identical cases. The plans for a single patent court will make litigation cheaper and more predictable.

The court will include local and central chambers under a common European appeal court. In the initial stages, companies will be able to continue to use national courts, allowing confidence in the new system to build up gradually. A common understanding has also been reached on renewal fees and the cooperation between patent offices.

Jury still out on translation costs

Another perennial bugbear for innovative businesses has been the high cost of translating patents into all European languages. This has been a major factor in making it more expensive to protect new technologies in Europe.

The new agreement stopped short of resolving this issue, deciding instead that a proposed new patent regulation should be accompanied by a separate regulation on translation arrangements. Business lobbies have highlighted the burden of translation costs which is a major deterrent to small businesses considering filing for patent protection. Patents typically cost three times as much in Europe as in the US.

The new reforms should cut the costs of protecting intellectual property in the EU at a time when the incoming European Commission is preparing a new innovation act, which is likely to stress the importance of SMEs for the knowledge economy (<http://www.euractiv.com/en/innovation/sweden-claims-breakthrough-eu-patent-impasse/article-188034>).

Target brands obtains gift card patent

Target Brands Inc, a subsidiary of Target Corporation, has been recently issued a US patent for a gift card concept in which multiple gift cards can be sold in a package. The patent entitled 'Stored-value card assembly with a plurality of stored-value cards' has US Pat No 7,614,548.

Stored-value cards and other financial transactions cards come in many forms. A gift card, for example, is a type of stored-value card that includes pre-loaded or selectively loaded monetary value. In one example, a customer buys a gift card having a specified value for presentation as a gift for another person. In

another example, a customer is offered a gift card as an incentive to make a purchase. A gift card, like other stored-value cards, can be ‘recharged’ or ‘reloaded’ at the direction of the bearer. The balance associated with the card declines as the card is used, encouraging repeat visits to the retailer or other provider issuing the card. Additionally, the card generally remains in the user’s purse or wallet, serving as an advertisement or reminder to revisit the associated retailer. Gift cards provide a number of advantages to both consumer and the retailer (<http://www.getdebit.com>).

Leveraging the value of systems patents by Chipworks

Companies both within and outside the semiconductor industry are leveraging the value of system patents in order to generate licensing revenue and reduce royalty payments. In some cases, it may be a semiconductor company looking to monetize systems patents. In others, it may be a computing firm defending itself in a patent litigation.

Independent experts like Chipworks are providing integral support to Intellectual Property (IP) groups and their outside counsel in driving the development of systems patent licensing programs and helping them achieve favorable outcomes in licensing negotiations and litigations.

For example, an electronics company suspected a large competitor of infringing on its patents in various consumer electronics products. Supported by its law firm, the company approached the competitor seeking a license deal but was quickly dismissed. Knowing its client needed a stronger case, the law firm contacted Chipworks to obtain credible evidence of infringement that would stand up in negotiations and in litigation, if necessary. Chipworks provided a combination of circuit and systems functional testing and developed several claim charts documenting evidence of use. The electronics company reached a licensing deal worth more than 150x its spend on Chipworks.

Chipworks combines multiple techniques like circuit and systems analysis to not only increase likelihood of identifying and documenting evidence of use but also to do so as cost effectively as possible. Its dedicated team of in-house engineers possess decades of forward design experience in multiple industries as well as deep expertise in reverse engineering. This skill level, combined with state of the art tools and equipment, helps IP groups and law firms creatively tackle the most complex technical and systems patent analysis requirements.

Chipworks is the recognized leader in reverse engineering and patent infringement analysis of semiconductors and electronic systems. The company’s ability to analyse circuitry and physical composition of these systems makes it a key partner in the success of the world’s largest semiconductor and microelectronics companies. IP groups and their legal counsel trust Chipworks for success in patent licensing and litigation — earning hundreds of millions of dollars in patent licenses and saving as much in royalty payments. Research & Development and Product Management rely on Chipworks for success in new product design and launch, saving hundreds of millions of dollars in design, and earning even more through superior product design and faster launches (<http://www.earthtimes.org/articles/show/leveraging-the-value-of-systems-patents-by-chipworks,1076994.shtm>).

HTC joins handset top three in defensive patent pool

Patent royalty burdens, and their impact on competitive pricing, are a key concern in the handset community and the dream that LTE might deliver the virtually royalty free phone seems unachievable. The goal, set by Nokia and others, of getting royalties in 4G devices below 5% of handset price, seems unrealistic given the fees involved in the bilateral licensing deals already agreed between some major IPR holders. Some vendors are supporting various patent pools to set up an LTE system, but important players like Qualcomm remain unconvinced. And there is the ever present danger, as in any new technology where the IPR situation remains fluid, of patent trolls. One initiative to help reduce their impact is start-up patent pool RPX, which has just signed HTC as its twentieth member in the year since it was set up in San Francisco.

The pool is a defensive one, designed to provide a protection for electronics firms, especially in wireless, against infringement suits by trolls. It says that the threat of patent infringement litigation remains significant even though headline hitting cases like those between RIM and various rivals have subsided somewhat recently. RPX was set up by a former executive from Intellectual Ventures (IV), itself a patent aggregator founded in 2000 by top IPR executives from Intel and Microsoft. It offers a lower cost approach than IV’s, though both firms acquire large numbers of patents and then license them on. So far, the new organization has spent \$115m in buying over 1,000 US and international patents and patent rights in mobile, internet search, telecoms, networking, consumer electronics and RFID markets.

RPX then provides rights to these technologies, to members which pay annual fees ranging from \$35,000 to \$4.9m depending on company size. Members include many of the handset giants - Nokia, Samsung, LG, Sony (though not Ericsson), Panasonic and now HTC. Other members include Cisco, Hewlett-Packard and Seiko-Epson.

Izhar Armony, a partner in Charles River Ventures, one of the investors in RPX, commented that RPX has generated higher revenues in its first year of operations than any other early stage start-up in CRV's history. The fact that RPX was able to achieve such growth in spite of the economic downturn is evidence of the compelling value proposition of the RPX service. The downturn may actually have helped - companies often get more aggressive about claiming their patent rights when other revenues are tight.

The interest in the service does indicate how many wireless firms are now exploring alternatives to the traditional bilateral deals, many focused around various types of pools. While the three main patent pools are all trying to gain the lead position in LTE - and sufficient support to make a pool meaningful - WiMAX has made more progress, via the Open Patent Alliance, which includes a majority of the major IPR holders (<http://www.rethink-wireless.com>).

Patent pool approved to step up international HIV med access

Pharmaceutical companies are likely to face increased pressure from the international community to allow other manufacturers to develop generic versions of antiretroviral (ARV) drugs, now that the board of UNITAID has voted to launch a patent pool. UNITAID is an international group devoted to increasing access to quality treatment of AIDS, malaria and tuberculosis.

According to a UNITAID, the patent pool should help deliver affordable versions of HIV drugs and facilitate the development of essential new fixed-dose combination and child-friendly drugs.

A patent pool consists of at least two companies, usually in competition with each other, agreeing to share or cross-license patents related to a particular technology. Patent pools allow companies to work together toward a common goal—scale-up of access to safe and effective ARVs in resource-poor nations, for example—while at the same time securing payment for the manufacturing and distribution of their products.

Pharmaceutical company participation in UNITAID's patent pool, to be implemented in early 2010, is voluntary. In exchange for giving up their monopoly

rights to their name-brand ARVs, pharmaceutical companies will be given a fair royalty payment by generic manufacturers participating in the UNITAID program. In addition, pharmaceutical companies would keep their 20-year patent rights in wealthy countries.

UNITAID, established by Brazil, France, Chile, Norway and the United Kingdom, has asked all companies with patents relevant to the pool to contribute them to the new entity as soon as possible (<http://www.aidsmeds.com>).

US patent for enhanced assisted GPS location of handsets

TeleCommunication Systems Inc, a leading provider of mission-critical wireless communications has been issued a US Pat No 7,629,926, entitled 'cullled satellite ephemeris information for quick, accurate assisted locating satellite location determination for cell site antennas'. The patent describes a means for prioritized selection of Global Positioning System (GPS) satellites for use in computing location, where GPS satellites are defined as higher-priority and lower-priority based on the dwell time that each satellite remains in a defined geometric shape.

In a conventional GPS system, data is provided to each GPS-enabled device that allows the device to keep track of where each of the relevant satellites should be located at the time a fix is to be computed. When a location is requested, the device determines which of the 24 or more GPS satellites are to be used for determining location. In the case of mobile devices equipped with GPS receivers, the time required to determine position is longer than is typically acceptable to a mobile user. This TCS invention allows a mobile subscriber's location to be determined more quickly and accurately than conventional GPS or assisted GPS (A-GPS) methods. By selecting two smaller groups of satellites ('culling'), the mobile device using this patented technology needs much less time to compute the device's latitude and longitude.

A-GPS technology has become the preferred method to perform quick, precise location in mobile networks (<http://money.cnn.com>).

Nokia sues Apple for patent infringement

Nokia has sued Apple for over 10 patents related to wireless handsets. The largest handset maker, Nokia, in the world is suing the maker of one of the most popular, iPhone, as Apple has refused to license any of the patents in question. All iPhone models dating back to the original

introduced in 2007 are infringing. Nokia is asking the US District Court in Delaware for an injunction on sales of iPhones and for unspecified damages.

Mr Ilkka Rahnasto, vice president, legal and intellectual property, Nokia said that the basic principle in the mobile industry is that those companies who contribute in technology development to establish standards create intellectual property, which others then need to compensate for. Apple is also expected to follow this principle. By refusing to agree to appropriate terms for Nokia's intellectual property, Apple is attempting to get a free ride on the back of Nokia's innovation.

According to Nokia spokesman, Mr Mark Durrant, Nokia has already reached licensing agreement on the patents in question with 40 other companies, including most of the major device makers. Apple has thus far refused to cooperate.

Nokia has spent more than \$60 billion (40 billion euros) on R&D related to wireless technology. The 10 patents it accuses Apple of violating are related to making phones able to run on GSM, 3G, and Wi-Fi networks. They include patents on wireless data, speech coding, security, and encryption.

For every kind of technology you can think of (USB, wall plugs, video game controllers) there's an agreed upon standard. It's arrived at by companies making products that use the technology in question in the context of a standards-setting organization. They will gather, debate over whose patented technology is best, and also agree in advance that every other company in the standard group will be able to license their patent at a reasonable rate.

Apple is one of a few companies—Nokia would not expand on who the others might be—that is not licensing Nokia's 10 patents. For any phone to run on a GSM, 3G, or Wi-Fi network, it would have to license one of Nokia's patents.

Though it is asking the court to halt sales of the iPhone, the general consensus by legal observers and those who follow Nokia, is that it's not actually trying to pull the iPhone off the market permanently—injunctions are always used as leverage in these cases—but rather that it wants Apple to pay its fair share.

There are companies that are patent trolls, that do not participate in the creation of technology, or they secretly acquire them. Nokia is not one of these companies.

Apple analyst Gene Munster thinks Nokia is looking to extract a royalty payment of 1 to 2 percent of every iPhone sold from Apple, which would be about \$6 to

\$12 per phone. With 34 million iPhones sold to date that would be \$204 million to \$408 million in back payments Apple would have to pay if Nokia were successful in court. There's also the added risk of something called 'willful infringement.' Basically, if Apple were to be found in violation it would have to pay three times the amount of whatever the judgment won by Nokia.

Apple could settle out of court, or it could try to show that Nokia either does not own the patents or that they are not valid in this case, both of which would be difficult (<http://www.businessweek.com>).

Speeding up green tech patent processing

The Commerce Department's Patent and Trademark Office (USPTO) is launching a pilot program to speed up processing for certain green technology patent applications. The goal is to accelerate development and deployment of new technologies, create green jobs and promote American competitiveness in the sector.

Patents for green technologies, such as Smart Grid innovations, typically take about 40 months for a final decision. The new program is expected to reduce the decision process by an average of one year — shortening the waiting time from a little over three years to a little over two years.

'American competitiveness depends on innovation and innovation depends on creative Americans developing new technology. By ensuring that many new products will receive patent protection more quickly, The Commerce Secretary Gary Locke said that the brightest innovators can be encouraged to invest needed resources in developing new technologies and help bring those technologies to market more quickly.

Patent applications are usually taken for examination in the order they were filed. But under the pilot program, the first 3,000 green technologies-related applications that have proper petitions filed will be chosen for accelerated evaluation.

USPTO's David Kappos stressed the urgent need to bring new technologies into the marketplace faster. Applications in this pilot program will see a significant change in pendency, which will help bring green innovations to market more quickly. If the pilot is successful, the USPTO will look at ways to expand and continue the accelerated patenting process for green technologies (<http://www.smartgridnews.com>).

Google patents smart cooling for datacentres

Google has submitted a patent for a new method of cooling datacentre servers that could dramatically

lower the cost of running large-scale computing systems. The company, which has some of the largest server farms in the world, has filed for a patent on the system, which uses ‘wands’ that are mounted across each server rack. The wands have temperature sensors and activate highly localized cooling on the rack where needed. Pipes of cold air would run up the server racks feeding the system.

‘The method includes circulating ambient air across a plurality of rack-mounted electronic devices, monitoring the temperature of air in or around a group of devices in the plurality of rack-mounted electronic devices, and providing substantially cooler-than-ambient air to the group of devices when a high cooling load is sensed for one or more of the rack-mounted electronic devices.’

‘The cooler-than-ambient air can be provided by a bank of air distribution wands arrayed upstream from the plurality of rack-mounted electronic devices. Also, the distribution wands can be positioned to provide clearance for wired connections upstream from the rack-mounted electronic devices’. ‘The method may also include pivoting one or more of the distribution arms to provide access for removal of one or more rack-mounted electronic devices’ (<http://www.v3.co.uk/v3/news>).

Copyright and Trademark News

Proposed law to give copyright to film directors

The HRD ministry has come up with a bill which confers copyright of a film not just upon the producer, but also on the director. For films made after the proposed law comes into force, the producer and director will be ‘treated jointly as the first owner of copyright’. Thus, the director is finally getting his due as the creator.

The joint ownership redresses an anomaly in the Copyright Act 1957, which in the case of books, confers copyright on the author leaving out the publisher but in the case of films, on the producer leaving out the director. The existing law treats a director as an employee of the producer and consequently denies him any intellectual right over the film he creates. Since the proposed clause equating the director with the producer will apply prospectively (from the day the law is enacted), the directors of films already produced will not get the full benefit of this reform. The bill seeks to compensate them by extending the copyright term for such films from 60 years to 70 years after the death of their first copyright owners.

The additional copyright term of 10 years is however ‘subject to the principal director entering into a written agreement with the owner of the copyright in the film during the subsistence of copyright’. The accompanying note explains that this is meant ‘to extend the copyright term for the producer for another 10 years if he enters into an agreement with the director’. The implication is that for the additional term of 10 years, the producer and director will jointly enjoy copyright on films already made. The intention, clearly, is to confer some benefit on the director even in the case of films made before the commencement of the proposed law.

The proposed Copyright Act Amendment Bill 2009 is being vetted by law ministry. Later, after Cabinet clearance, it will be introduced in Parliament. Law ministry is now examining the bill to see if it is valid to increase the copyright term by 10 years only for films, discriminating against other artistic and literary works.

The note prepared by the HRD ministry justifies the preferential treatment arguing that ‘old Indian classical films, especially Bollywood films, are falling into public domain and these are being exploited by TV channels’. This is part of a slew of amendments being made to the 1957 act affecting the business of films, music, radio and TV.

While much as its attempt to give the director his due is laudable, the bill is not clear on how the term of the copyright for the new films will be computed when both the director and producer are the ‘first owners’. It is not clear whether it will be 60 years after the death of the director or the producer, or whoever dies last (<http://timesofindia.indiatimes.com>)

Open Source licenses are enforceable under copyright law

Jacobson created a software called DecoderPro, which allows model railroad enthusiasts to use their computers to program the decoder chips that control model trains and made the software available under the Artistic License Version 1.0. KAM Industries launched competing software called Decoder Commander, which is also used to program decoder chips. Jacobson alleged that some definition files of DecoderPro were copied by KAM Industries into Decoder Commander and asked for an injunction based on copyright infringement. The Court held that an injunction may be granted to Jacobson based on allegations of copyright violation and stated that open sources licenses create obligation, which are enforceable under the copyright law (<http://brainleague.com>).

WIPO goes green for domain name dispute resolution

Amid the ongoing global debate on climate change, the World Intellectual Property Organisation (WIPO) has launched paperless procedures in matters relating to domain name dispute from 14 December 2009. The development is expected to substantially improve the efficiency of the mechanism by reducing the time and cost involved in submitting such applications and to save up to 1 million pages of paper filed per year making it a greener and largely paperless procedure.

The WIPO Arbitration and Mediation Centre has launched essentially paperless UDRP procedures. This removes the requirement for mandatory filing and notification of paper pleadings in WIPO cases filed under the Uniform Domain Name Dispute Resolution Policy (UDRP). The WIPO adopted the UDRP, a quick and cost effective dispute resolution procedure targeting cybersquatters, about a decade ago. The UDRP provides trademark owners with an administrative mechanism for efficient resolution of disputes arising out of the bad-faith registration and use by third parties of internet domain names corresponding to those trademark rights (<http://economictimes.indiatimes.com>).

Trademark protection to colour themes for t-shirts

Louisiana State University, Ohio State University, Southern California University, and the University of Oklahoma sued Smack Apparel company alleging that the t-shirts sold by the company with the universities' colour schemes violated the trademarks of the universities. The Federal Court held that copying of the colour schemes of the t-shirts by the company amounts to passing off under the trademark law because such t-shirts are aimed at gaining profits by establishing a link with the universities' products. The court pointed out that the company would be liable even if it had not used the names, logos or captions of the universities. The universities were granted damages of about forty six (46) thousand US dollars (<http://brainleague.com>).

Russia targets AK-47 trademark

Russia's state arms manufacturer, Rosoboronexport, has announced plans to protect the design and trademarks for the iconic machine gun, the AK-47. The companies head, Anatoly Isaikin, has said that he is working to draft agreements with foreign countries that would protect the AK-47 and other Russian weapons from unlicensed copying. There are about 30 foreign

manufacturers who are currently making Kalashnikovs and their quality bears no comparison to a Kalashnikov produced in Russia (*Trademark World*, November 2009).

Green light for Google AdWords

The legality of using keywords containing third parties' trademarks in Internet search engines, such as Google and Yahoo!, has been an issue that has perplexed courts for several years. In Europe alone, seven cases have so far been referred to the European Court of Justice (ECJ) for guidance on keyword issues by different national courts. On 22 September 2009 the first indication of the approach the ECJ might adopt in relation to this issue was provided when Advocate General Poirares Maduro delivered his Opinion on three cases 1 referred to the ECJ by the French Supreme Court (Cour de Cassation). The outcome of these cases could impact on the search engine operators and how trademark proprietors police their rights on the Internet (<http://www.ipworld.com>).

Jackson estate sues charity over trademarks

A US charity is facing a trademark infringement suit after receiving a complaint from Michael Jackson's estate that it used his trademarks to sell merchandise. In documents filed with a US court in California, lawyers for the estate say that the 'Heal the World Foundation' used phrases such as 'King of Pop' and 'Heal the World,' which are associated with the late singer, to convince the public that it was officially endorsed by Michael Jackson. Lawyers also allege that the charity has registered six Jackson-related trademarks, applied for 41 additional ones and have sold merchandise using those trademarks (<http://www.ipworld.com>).

ICANN grants UPU .POST

The Universal Postal Union (UPU) and the Internet Corporation for Assigned Names and Numbers (ICANN) signed on 11 December 2009 the contract that grants the UPU managing authority over the Top-Level Domain Name, .post (dot.post). The UPU is the first United Nations agency to obtain a piece of real-estate space on the Internet for the global industry it represents.

ICANN President, Rod Beckstrom and UPU Director General, Edouard Dayan signed the contract at the United Nations Office in Geneva, Switzerland. The .post project is an important

initiative for developing and providing secure and trusted postal services over the Internet. Postal services will explore new frontiers and basically go where no postal services have gone before.

Many posts already successfully offer a range of electronic products and services that meet customers' new communication needs, .post will enable the UPU to reach the full potential of its original mission, to build a worldwide space without borders where personal and business communication is facilitated in a secure environment. Postal services have facilitated the exchange of information for centuries; they were at the forefront of globalization and today continue to extend their reach across physical and digital boundaries.

As a platform for extended postal services, .post will have many possible applications that expand the postal brand and business to the Internet, ensuring that mail received with the .post extension comes from a recognized postal-service provider. .post will be used for developing e-commerce and facilitating international trade, enabling small entrepreneurs to offer their services more easily. It will also facilitate e-identification, linking electronic addresses to physical postal ones to serve as legal proof of a person's identity. Furthermore, the domain name could eventually act as a bridge between national governments for the transmission and recognition of official documents.

The UPU will now identify an operator to set up the .post registry, as well as a number of ICANN-accredited registrars to sell the .post domains. The UN agency will also apply to the Internet Assigned Numbers Authority (IANA) to have the .post domain registered in the Internet Root, enabling it to be operational and recognized by the Internet. The .post domain name is expected to be operational by mid-2010.

In Geneva, the Italian postal operator, Poste Italiane, also agreed to work closely with the UPU on securing electronic postal services, including the .post project. Poste Italiane has developed a vast technology-enabled integrated service platform and a unique capability in protecting its own data, services and infrastructure from digital threats and cybercrime. At the UPU, Italy currently chairs the Telematics Cooperative and the Standards and Technology Committee.

Promoting electronic postal services is part of the UPU's world postal strategy for 2009-2012, adopted at its last Congress in Geneva in 2008. Many posts have been offering a variety of electronic postal services for more than 10 years, from online post offices and electronic certification postal marks to e-

registered mail, hybrid mail, e-shopping platforms and e-government services, all electronic equivalents of a number of existing physical services (<http://www.ag-ip-news.com>).

Key Patents

CyDex Pharmaceuticals receives US patent for new Captisol

CyDex Pharmaceuticals Inc, a specialty pharmaceutical company, has been recently issued a patent by USPTO for sulfoalkyl ether cyclodextrin compositions and methods of preparation thereof. This patent, along with other previously issued technology patents, will provide broader protection for CyDex's Captisol® technology until 2028.

The patent (US Pat No 7,629,331) grants protection for a new agglomerated beta cyclodextrin sulfobutyl ether sodium salt product known as Captisol. Captisol is CyDex's proven enabling drug delivery technology that aids in the solubilization, stabilization and taste masking of active pharmaceutical ingredients.

The Captisol that is protected by this patent flows better, dissolves faster, and packs more densely than previous morphologies (<http://www.businesswire.com>).

VeriTainer receives its 4th patent

Silicon Valley based VeriTainer Corporation, the world leader in crane-mounted maritime container radiation scanning, has received its fourth patent from USPTO on its crane-mounted scanning product, the VeriSpreader® System. The '338 patent utilizes the twist lock signal from the real-time container monitoring system of the crane to distinguish which container is being scanned at what time and associate radiation data to a particular container.

VeriTainer is the only company in the world that has run comprehensive tests in the field, with over 15 months of testing in two highly successful trials at the Port of Oakland. The '338 patent is the first in a series of patents that will come out of the 2005 and 2007 Oakland trials.

These patents give VeriTainer, the fundamental crane-mounted scanning methods and apparatuses in key international jurisdictions (<http://www.prnewswire.com>).

Solarflare® awarded four new patents

Solarflare Communications, the leader in 10 Gigabit Ethernet (10GbE), has been granted four patents by USPTO. These patents cement the

company's leadership in virtualization by enabling hardware-assisted, scalable virtualization techniques. This technology enables organizations to develop solutions that can achieve line-rate performance in Citrix® XenServer™ and VMware® vSphere™ cloud computing environments by supporting direct access of the virtual machines to the adapter hardware.

The four new patents include:

1 DMA descriptor queue read and cache write pointer arrangement (US Pat No 7496699). This invention enables implementation of a highly-scalable descriptor caching engine for virtualized Ethernet devices.

2 Transmit completion event batching (US Pat No 7562366), which enables a high-performance notification mechanism for virtualized Ethernet devices.

3 Queue depth management (US Patent 7610413). This design innovation creates an interface for high-performance synchronization of virtualized Ethernet devices.

4. Rate pacing (US Pat No 7596644), which enables hard QoS provisioning at Layer 2/3/4 for virtualized Ethernet devices.

Because of its strong accelerated virtualization performance and patented architecture, the Solarflare Solarstorm® SFN4112F 10GbE server adapter is the leading adapter for cloud networking. Cloud environments in particular benefit from high-performance virtualized networking because of the need for a flexible, scalable infrastructure. With a fully virtualized architecture, Solarflare's controller delivers the performance and scalability that cloud environments demand (<http://www.marketwire.com>).

ImageWare receives two new biometric patents

ImageWare Systems Inc, a leading developer of identity management solutions, has been recently awarded two additional patents, numbers 7,596,246 and 7,606,396, by the USPTO, for its scalable, multimodal, biometric fusion and analysis technologies. These patents describe a system and method for fusing matching results of multiple biometrics to improve the performance and accuracy over the use of a single biometric for identification and authentication.

The first patent (# 7,596,246) details ImageWare's intellectual property as it relates to scalable, multimodal biometric data management by using multiple, disparate biometric matching technologies and a 'router' by which this data can be created, managed and queried. This patented open architecture

is the foundation by which ImageWare's Biometric Engine(R) enables the creation of high volume biometric solutions that use a multitude of biometric matching technologies leveraging different software and hardware architectures and accessed by multiple hardware and software clients.

The second new patent (# 7,606,396) defines the process by which multiple biometric modalities can be combined to accurately identify one or more individuals. This patent, combined with ImageWare's patent on Biometric Fusion (# 7,362,884) complement the existing portfolio of biometric analytical technologies and workflow processes for combining multiple and disparate biometric matching algorithms to effectively verify and identify individuals based on multiple biometric modalities (<http://www.globe.newswire.com>).

US patent for propagation and/or derivation of embryonic stem cells

StemCells Inc has recently received two patents from USPTO for claiming technologies for establishment and maintenance of cell pluripotency (the ability to become any cell in the body, which is the defining attribute of embryonic stem cells), including the reprogramming of cells to create pluripotent stem cells. These patents strengthen the company's intellectual property position in both the induced pluripotent stem (iPS) cell and embryonic stem (ES) cell fields, and reflect the value that StemCells continues to derive from its April 2009 acquisition of the operating business of Stem Cell Sciences Plc.

The issued patent, US Pat No 7,595,193, entitled 'propagation and/or derivation of embryonic stem cells', claims a cell-free culture medium containing MEK inhibitors (small molecule compounds), which is applicable to the establishment and maintenance of cell pluripotency. This technology can be used to create and maintain ES cell lines, as well as to reprogram somatic cells (such as adult skin cells) to derive iPS cells.

The allowed patent, US patent application number 10/502,972, entitled 'pluripotency determining factor and uses thereof', covers the use of the *Nanog* gene in maintaining human and mouse ES cells in a pluripotent state. A related US application from this same patent family claims the use of the *Nanog* gene in cell reprogramming. The *Nanog* gene codes for a protein which plays a key role in the ability of ES cells to multiply while remaining pluripotent, and can also be used to reprogram somatic cells into a fully pluripotent state (<http://www.news-medical.net>).