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Inventiveness: a new condition for patentability

Recent amendments to the Indian Patent Act 1970 have brought the Indian laws at par with the laws of other countries for the purpose of determining whether a proposed invention really satisfies all the conditions of patentability namely, novelty, inventiveness and utility. It may be remembered that the Indian laws had traditionally, until the amendments of 2003, not specified the condition of

inventiveness or non obviousness for determining patentability of an invention. It always relied primarily on the consideration of novelty and utility. Historically speaking, the condition of inventiveness or non obviousness became a part of the US patent laws in 1952 when the US government for the first time introduced the concept of inventiveness as the third condition for determining the patentability of an invention along with novelty and utility. However, courts had apparently been examining this aspect, perhaps, more in an indirect manner to meet the obligation under the US constitution which stipulates that the purpose of awarding a patent is to promote the progress of science and useful arts. Obviously, the basic question addressed by the courts and the US Patent Office until 1952 had been whether an invention promotes the progress of science or not.



(3rd US President, 1801-1809)

Every patent is the grant of a privilege of exacting toll from the public. It is believed that people who framed the laws on patent did not want monopolies freely granted. In this context the views of Thomas Jefferson, the famous administrator of the patent system in the US and the third president of the USA, bring out significant features of the US constitutional frame work in regard to the system of awarding patents. He rejected a natural rights

theory in patents and believed that the patent monopoly was not designated to secure to the inventor his natural rights in his invention. In one of his writings he goes on to say *"Stable ownership is the gift of social laws, and is given late in the progress of society. It would be curious then, if an idea, the fugitive fermentation of an individual brain, could, of natural right, be claimed in exclusive and stable property. If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one and the receiver cannot disposses himself of it..... That ideas should freely spread from one to another over the globe, for the moral and mutual institutions of man, and improvement of his conditions, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space..... Inventions then cannot in nature be subject of property. Society may give*

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Women Scientist Scholarship Scheme

PFC had launched the Women Scientist Scholarship Scheme in 2002 to provide training to women with scientific qualifications in the field of IPR. Fifteen (15) women scientists underwent the one year training and have all gained knowledge in IPR. They have also received placements in best law firms of the country and IP divisions of various institutions. Many of the scientists have also cleared the exam conducted by the Patent Office of India and are now qualified Patent Agents.

The 2005 scheme is being launched for selecting the second batch of Women Scientists and training them in the field of IPR. Applications are invited from interested candidates through advertisement in 'Employment News' of May 14-20, 2005 wherein the application format is provided. Candidates would be called for written test and interview to qualify for the scholarship of Rs 10,000-Rs 15,000 pm for the one year training period.

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exclusive rights to the profit arising from them, as an encouragement to men to pursue ideas which may produce utility, but this may not be done according to the will and convenience of the society without claim or complaint from any body."

Accordingly, only inventions which furthered human knowledge, and were new and useful justified the special inducement of a private monopoly for a limited period. The thought process in courts had revolved around this theme for a few centuries. The US Congress amended the US Patent Act many times from 1790 to 1950 but it always steered away from defining any criteria for patentability other than novelty and utility, perhaps for the fear that the inadequate basis for introducing new conditions may cause more problems than solve them. By doing so the congress, perhaps, wanted the courts to come out with right interpretations, explanations and decisions. Hence, we see that there is a long history of mental stirring, analysis and synthesis, case laws etc. before the clause of inventiveness was introduced in the Patent Act of the USA. Section 103 of the US Act states "A patent may not be obtained though the invention is not identically disclosed or described as set fourth in Section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole could have been obvious at the time the invention was made to person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made".

Section 102 of the US Patent Act deals with novelty of an invention. Therefore, inventiveness is considered different from novelty. Novelty assessment is quantitative in the sense that if there is only one prior art reference then the novelty is lost. Obviousness on the other hand requires a series of assessments culminating in an often qualitative judgment about the creative achievement of the invention. Further, the invention needs to be seen "as a whole" or in totality meaning thereby that the invention cannot be broken into parts for this assessment. Without this an assessment might break an invention into parts (A+B+C), then find a prior art reference containing A, another containing B and another containing C and on that basis alone declare the invention obvious. An analysis of this sort would discount the value of



combining the various elements in a new way to achieve a new result. An example would explain what is meant by the above argument. In the early 1980s, 3 M Corporation combined an old adhesive (which did not stick permanently) with note sized paper to create 'Post- It' notes. The invention replaced bulky clips and staples as the best way to attach a note to a page. The invention was an instant success

and deserved an exclusive right when viewed "as a whole". Similar provisions also existed in the Indian Patent Act 1970 and they exist even now which exclude mere admixtures from patentability but mixtures leading to synergistic effect are patentable.

If there are no difficulties to be overcome in adopting a prior art to come to a new purpose, there would not be much of ingenuity in overcoming them. There will not be any invention. The same rule would also apply if the mode of overcoming the difficulties is so obvious to every one acquainted with the basic subject matter of the patent. For example water, alcohol etc are commonly used as solvents for extraction of essential chemicals from say natural plants. If for such an extraction in respect of plant only water extraction is reported and then someone wants to claim a right on alcohol based extraction, it would be a case falling under the category mentioned above. If in these two classes of cases, patents could be supported, then they would seriously impede improvements in practical application of common knowledge. In summary, obviousness is the standard which prevents trivial advances in the useful arts or science from getting patent protection. Therefore, this condition of patentability creates a patent free zone around the state of the art.

Let us now take a look at the recent amendment to the Indian Patent Act. The inventive step has been defined to mean a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art. In order to provide some clarity on this concept it states in Section 3 that mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine, apparatus shall not be patentable unless such known process results into a new product or employs at least one new reactant. Further, for the purpose of this clause salts, esters, ethers, polymorphs, metabolite, pure form, particle size, isomers, mixture of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance unless they differ significantly in properties with regard to efficacy.

It is not clear if the Act proposes that the conditions of 'technical advance' or 'economic significance and 'non obviousness' have to be satisfied separately or if the condition of 'technical advance' or 'economic significance' is satisfied then the invention would automatically be non-obvious. The former interpretation would lead to a possibility that an invention may lead to 'technical advance' but may not be considered non obvious or it may be considered 'non obvious' but not considered to lead to any 'technical advance'. The latter, however, would imply that to be 'non obvious' or 'inventive' an invention must lead to a technical advance or economic significance. As far

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as laws of other countries are concerned in this regard, the latter interpretation is more commonly adopted while determining inventiveness.

In the area of chemicals, the Act now provides some clarifications as to what may not be considered an inventive step. Obviously salts, ester etc. of a known substance cannot be patented unless they show a marked improvement with regard to efficacy. In other words the Act considers that such salts, ester etc are being used for the same application for which the original substance was being used and that is why the emphasis is on improvement over the known efficacy. What happens if these salts or nanoparticles of the substance show a completely new effect? How will you compare efficacies of two substances? Will such new findings be denied exclusive rights? Nano technology is emerging as one of the major new technologies and nano particles have been found to show completely new effects. What would be the parallel of ester, salts, isomers etc. in other fields of technology and science, has not been covered in the Act. Similar logic will also be applicable to other subject matter like microelectronics, software etc. The true spirit of drawing a line between patentable subject matter and non patentable subject matter, would have to include other areas as well and perhaps, the logic of the present stipulations will need to be extended to such areas. The question would be-do we have enough experience with the Patent Office or the courts to extend the logic, which is already a little fuzzy, to other areas? The answer to this question is certainly no at this stage as we do not have case laws in the area of patents which would give adequate opportunity to courts to deliberate on such issues.

Coming back to the definition of inventive step, the law has limited the choice by putting a condition that for satisfying this requirement an invention must lead to technical advancement over the existing knowledge or an economic advantage or both and it should be non obvious. The first portion is certainly in line with contemporary laws of other countries. The part relating to economic significance has been used as a secondary criterion and not as a primary criterion in other countries. The criteria of economic advantage may be used as a test for arriving at a decision on inventiveness but it is not an exclusive criteria. Whether an invention would lead to economic advantage when converted into a product or a process could only be determined truly when the invention is actually put into industrial use; till that time one is playing only with conjectures, guesses and speculations because there are many more factors which would determine the cost or the economic advantage of the product/process. At the time of filing a patent application it may not be possible to clearly determine this aspect. However, in case of disputes at a later date this may prove to be a handy tool for arriving at a decision which would satisfy the rationale behind this stipulation.

Further, companies already in the business would be in a better situation to establish economic significance of an invention because they would possess the necessary data and past experience. Smaller companies and new entrants may find it difficult to make use of this condition and they will have to satisfy the condition of "technical advance."

It therefore appears that the aspect of scientific advancement associated with a patent has been diluted as the criterion of economic significance has become one of the two criteria for determining the inventive step. (*Thomas Jefferson's views on this topic are worth reading again*).

The USA took almost 160 years of active experience of granting patents from 1790 to 1952 to include 'inventive step' in the statute as one of the conditions for patentability. There was a vast experience of case laws, discussions and debates on the subject. The subject matter is still not settled, perhaps will never be settled as long as science and technology continue to progress. In the Indian context we have very little experience of judicial interventions in developing patent laws and enforcing patent rights. Similarly, the Patent Office too has no exposure in applying this yardstick while granting a patent. What do we do to successfully implement the Indian Patent Act in regard to inventiveness of an invention?

Firstly, we need to continuously study the social and economic implications of introducing this new element while examining a patent application and granting a patent in the Indian context. It may not be prudent to wait for case laws to take place and then start examining these issues.

Secondly, the scope of 'technical advance' needs to be documented and the rationale of saying that an invention leads to a technical advance or not must be put in place. While looking at this issue it is essential to give due importance, if not equal, to all fields of technology because new technologies may emerge without much fan fare and that too in short time but the laws may not change so fast. Therefore, the basis of applying the law should embrace future developments as well. The understanding of 'technical advance' in respect of new Ayurvedic or Unani or Sidha formulations would need to be explained.

Should the rigor of applying this criterion be the same for all fields of technology including new ones? If the rigor is assumed to be the same, will it lead to same results? While dealing with new science or technology one is handicapped that the available prior art is limited and the knowledge is also limited. It is difficult for most people to look into the future and ascertain the aspect of technical advance. Therefore, in spite of applying the same rigor, the results may not be commensurate.

Learning from others' experiences is the best way to put the things on track. The courts in other countries adopt many yard sticks to determine the inventiveness and these yardsticks may be applied

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in isolation or in combination; the choice of a yardstick may vary from case to case. The choice of criteria for ascertaining non obviousness would vary according to the stage of scrutiny. Two prominent stages are the time of examination of the patent application by the patent office and the time of dispute resolution around patentability of the invention. Sometimes a patent examiner may not have many choices because at the point of examination the experience of using the invention is non-existent. Non-obviousness of an invention may be challenged in courts in case of dispute. Inventions related to new technologies will have a tough time in passing this test. At the same time we must remember that the Indian Act also demands proof of technical advance. Let us have a look at how issues of inventiveness are sorted out.

1. Prior failures by other inventors is a good ground for establishing the non-obviousness. However, it would be essential to determine the causes of failures before applying this criterion. If the causes of failures have nothing to do with the invention, it may not be possible to adopt this criteria. This could be used by the Patent Office and the court in case of disputes such as infringement, revocation etc.
2. Long felt need: Whether the invention finds a solution to a long standing problem, is an important way of reasoning to determine inventiveness. If the answer is yes, the invention is considered non-obvious. This can also be used by the Patent Office or courts.
3. Unexpected results: Does the invention lead to unexpected results not known earlier?
4. Licenses: Evidence of extensive licensing may be a strong evidence of non-obviousness. On the other hand, a long period of no infringement may show

that licenses are in fact motivated by a desire to avoid litigation.

5. Commercial Success
6. EPO follows the 'problem-solution' approach which recommends to disclose the invention as claimed, in such a manner that the technical problem and its solutions can be understood. What it really means is that the European practice shifts the difficulty from defining the standard of invention to framing the appropriate technical problem that the invention is supposed to solve. This appears to simplify the determination of inventive step and dilutes the broader scope of non-obviousness as stipulated in the basic concept.
7. The Japanese practice is to identify a person having ordinary skill in the art. This person should have common general knowledge in the art to which the invention pertains at the time of filing of an application, and has ability to use ordinary technical means for research and development. The person should have the ability to exercise ordinary creative ability in selecting materials and changing designs and ability to comprehend as his own knowledge all technical matters in the state of the art in the filed to which an invention pertains.
8. For a chemical compound a prima facie case of obviousness requires structural similarity between claimed and prior art subject matter where the prior art gives reason or motivation to make the claimed compound.

The Indian Patent System has to go a long way in coming to a situation of some common understanding of the term non-obviousness and technical advance. There is no doubt that case laws on this issue in the Indian Courts would be good tools to lay down the basis for common understanding; but at the same time the courts cannot be expected to provide all the wisdom and rationale as they have their own limitations in respect of scientific and technical perceptions. The Indian Patent Office will have to take the burden of

providing the lead by careful application of subject specific knowledge and their over all knowledge in regard to contribution in terms of technical advances made by inventions in the past and how that accumulated knowledge with a patent examiner could be used in the assessment of a new invention from the point of view of inventiveness. Therefore, efforts in different fora need to be initiated and continued where some brain storming should take place in the context of social and economic relevance of technical advance.

Issues of obviousness are not easily decided and very rarely in the first go. There are many cases in which courts and patent office have gone in opposite directions. Therefore, seeking definiteness in the determination of non-obviousness may not be the only right approach; consideration for determining non-obviousness should be allowed to develop over time through experience. However, experiences in other countries should be adequately utilized.

It is also observed that successful application of this criterion would call for understanding / developing necessary objective tests which would lead to unique conclusions more frequently. It may be a good idea to develop some kind of guidelines for the Patents Office to initially start the examination of patent applications from this angle. A decision to reject an application on the basis of 'obviousness' or lack of 'technical advance' should be based on extensive analysis and perhaps on a process of in-house consultation in the early stages of implementing this amendment. As mentioned above, small companies, new comers, individual inventors and universities may not be able to use the criterion of economic significance effectively, therefore they will have to rely mostly on the interior of 'technical advance'. It may not be out of place to mention they would need hand holding through awareness, education and consideration.

Case Study

Removing space orbital debris

Over the past several decades, many systems have been launched into orbit about the earth. Some of these systems, including large spacecraft, have long passed useful operating lives and have effectively become space debris. The present invention relates to the spacecraft design and space debris removal system. More particularly, the present invention relates to a dragsphere for removing orbital space debris. This patent was granted by the USPTO on December 2, 2003 to the Aerospace Corporation, USA.

Background and Prior Art

Currently, designs for microsattellites and picosatellites promise the deployment of many small orbiting satellites that would further congest space orbits. Other types of waste debris, such as jettison hardware waste, have also been collecting in orbit about the earth. These objects may travel at extremely high speeds representing serious threats to operating spacecraft in orbit. Over time, gravity can affect the orbits of space debris causing ever shifting orbits presenting a compounding threat and need for elaborate collision avoidance methods.

Presently, there are no realistic means available to remove debris by deorbiting or transorbiting a piece of orbiting debris. Confronted with an ever increasing risk of collision, some system planners have proposed attaching a sacrificial propulsion system that then thrusts the debris out of an existing orbit to either deorbit the debris into the atmosphere where the debris deorbits from a low earth orbit into the atmosphere and burns up, or transorbit the debris from high earth orbit to an outer waste orbit by thrusting the debris to the outer waste orbit. Such proposed space debris attaching systems have autonomous navigation, ranging, thrusting, and close in navigation capabilities. However, such proposed systems do not have suitable means for attaching and deorbiting the space debris.

The present invention has a deorbiting spacecraft that includes a grabber for grabbing an orbiting debris object in space and a deorbitor

for deorbiting the debris object. The grabber includes inflatable fingers with loop eyes for bending inflated fingers around and to grab the space debris object using controlled motors and tension lines. The deorbitor is a dragsphere for deorbiting low earth orbit debris objects into the atmosphere for burn up, or is a surface for collecting solar wind for pushing the debris into an outer disposal orbit, or is a thruster for transorbiting a high earth orbit debris object to an outer waste orbit.

Description of the Invention

Fig. 1 depicts an approaching deorbiting spacecraft. A deorbiting spacecraft, that may be a

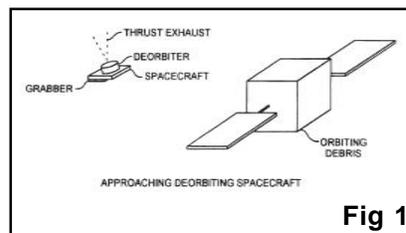


Fig 1

microsatellite or a carrier vehicle, uses conventional controls, microthrusting, ranging and navigation to approach a piece of orbiting debris, that may be for example, an inoperative satellite. The deorbiting spacecraft is placed in the vicinity of the selected debris and acquires the debris using ranging methods, for example a machine vision system, or optical ranging or radar. When the deorbiting spacecraft is in close range, the fingers are extended by inflation. Fig. 2 shows a diagram of a contacting deorbiting spacecraft. The inflation can be achieved using

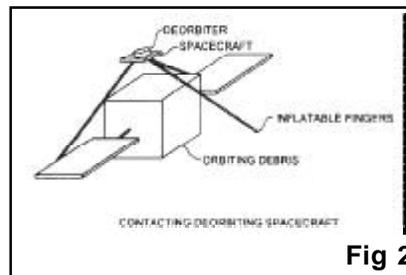


Fig 2

several means, such as gas canisters, sublimation powders, and microelectromechanical gas generators. Fig. 3 depicts an inflated deorbiting spacecraft. The gas supply can be a nitrogen gas supply. In the case of gas canisters, a controller

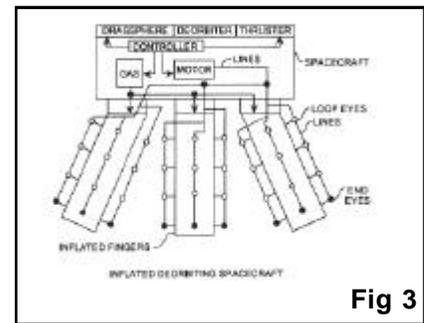


Fig 3

commands the release of gas to inflate the fingers that then extend outwardly to surround and embrace the debris object.

The deorbiting spacecraft preferably includes three deployable inflatable fingers, like fishing poles, that have several sets of tendon tension lines, similar to fishing pole lines that are released, unwind and wind to bend the fingers around the debris object by reaching out over a large enough volume to surround and embrace the debris. The tension lines are fed from the motor through loop eyes disposed along the length of the fingers to end eyes at distal ends of the fingers. By controlled tensioning of the lines, the fingers bend and function to grasp and hold on to the debris object.

When within a close range, for example from one to ten meters, the grasping fingers are inflatable deployed. The fingers are sized and arranged to surround the selected debris object, for example the fingers can be thirty meters long and oriented at about 120 degree angles. When the debris is within reach, the motor mechanism will pull on and tighten the tendon lines causing the fingers to wrap around the debris object and secure the object. Fig. 4 is a diagram of a grabbing deorbiting spacecraft.

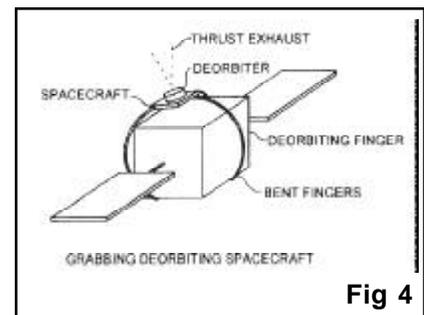


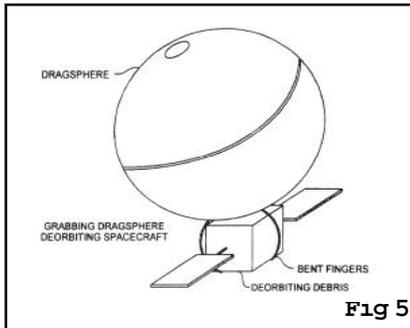
Fig 4

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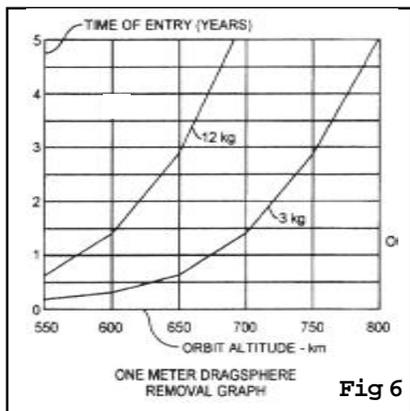
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Case Study

The deorbitor can be a thruster or a dragsphere. A thruster deorbiting spacecraft is preferably used to deorbit a high earth altitude debris object into an outer waste orbit. Fig. 5 is a diagram of a grabbing dragsphere deorbiting spacecraft.



A dragsphere deorbitor is preferably used to deorbit a low earth orbit debris object using atmospheric drag forces. The dragsphere deploys from a stowed flat configuration to a spherical configuration like a balloon. The balloon can be made of rubber or nylon. The dragsphere is preferably an inflatable balloon from one to several meters in diameter. The added drag causes the debris object to reenter the atmosphere and burn up. Fig. 6 is a chart showing the time to deorbit



debris of three kilograms and twelve kilograms with a one-meter dragsphere. The time to deorbit can be greatly reduced with larger diameter dragspheres. Preferably, the deorbiting spacecraft is a single dragsphere or thrusting deorbitor in a single disposable package.

The present invention covers approach maneuvering, grabbing and deorbiting functions in a preferred

configuration. In other configurations, a carrier vehicle, not shown, may contain several microsattelites deorbiting spacecraft, each of which is attached, in turn, to the selected debris object. The carrier vehicle may include propulsion necessary for the approach of the debris object so as to enable inflatable fingers to grab the debris object and then enable inflation of a dragsphere to deorbit the object. The carrier spacecraft separates from the dragsphere and moves away, leaving the dragsphere attached to the debris object. Hence, the carrier vehicle is used to approach and deliver the grabber and deorbitor to the object and as such needs only one propulsion system for the approach, but has several detachable grabbers and deorbitors for removing several objects in one carrier mission.

Claims

The invention has 12 claims in all. A few of them are produced below :

1. A system for removing an object from an orbit, the system comprising,

a thruster for moving the system towards the object,

a grabber for grabbing the object as a grabbed object, the grabber comprising:

a plurality of inflatable fingers; a gas supply for inflating the inflatable fingers;

mechanical motors for controlling the grabber to grab the object; and tension lines connecting the motors to the inflatable fingers for bending the inflatable fingers for grabbing the object, and

a deorbitor for removing the grabbed object from the orbit.

2. A system for grabbing an object in space, the system comprising,

a thruster for moving the system towards the object,

a grabber for grabbing the object as a grabbed object, the grabber comprising:

a plurality of inflatable fingers; a gas supply for inflating the inflatable fingers; mechanical motors for controlling the grabber to grab the object; and

tension lines connecting the motors to the inflatable fingers for bending the inflatable fingers for grabbing the object.

Case Law

How about copyrighting a scent?

The Dutch court has recently given a revolutionary and internationally groundbreaking ruling stating that certain aspects of the makeup of a perfume are a subject matter of copyright protection. The ruling could soon mean that if you can bottle it, you will own it. A scent, every bit as much as a photograph, a painting or a poem is now subject to copyright. The ruling from an appeal court in Den Bosch, has sent the rarefield world of perfume making into a tailspin.

The case fought between Lancôme, owned by France's L' Oreal and Kecofa was decided on June 8, 2004 at the Court of Appeals at Den Bosch. Lancôme is the owner of the registered trademark *Tresor* in the Benelux since 1985. The mark *Tresor* covers a variety of cosmetic including a perfume and eau de toilette with the so-called *Tresor* scent. The appellee is the owner of *Female Treasure* in the Benelux since 1993 and licenced use of the mark to Kecofa. Kecofa brought the perfume *Female Treasure* on the market in 1993. *Female Treasure* is sold in the Netherlands for \$ 5 to \$ 7 for a 100ml bottle, a tenth the cost of *Tresor*. Lancôme alleged that Kecofa had infringed Lancôme's copyright by producing an imitation scent that attempted to duplicate the make up of Lancôme's *Tresor*.

The Court ordered Lancôme to prove that:

- Its perfume had an original character carrying a personal stamp of the maker
- Lancome was the maker of the perfume; and
- Kecofa's perfume was an infringing copy of Lancome's perfume.

Court's Opinion

To determine whether a perfume could claim copyright protection, the court ordered a two part test that (a) Was it a copyrightable work; and (b) Did the work have an original character which carried a personal stamp by the maker of

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Case Law

the work?

The Court distinguished between the material that gave off the scent, and the scent itself. Kecofa argued that considering that the scent itself was too fleeting and variable and dependent on the environment, it could not be protected by copyright laws.

However, the Court held that the material that gave off the scent could be perceived through the senses and was sufficiently concrete and stable to be considered a 'work' under the Copyright Act of 1912. Kecofa argued that the perception of the perfume was too subjective to be a 'work'. But the Court said that perception was always somewhat subjective. The material that gave off the scent, however, was a designed composition of ingredients that could most certainly be objectively ascertained.

Lancome claimed that its perfume was original and held a personal stamp of the maker because the perfume came forth out a carefully designed process. Lancôme chose 26 olfactory components out of several hundreds of components that led to that specific and unique combination, which was very popular upon its introduction to the public. The perfume was the result of the fact that Lancôme was trying to create a striking and unique scent. Since these facts were not sufficiently denied by Kecofa, the Court agreed that the perfume was original and carried a personal stamp.

Kecofa countered that *Tresor* fitted within a long tradition of perfumes with a feminine, fruity and flowery character. Moreover, *Tresor* was comparable to "Eternity" by Calvin Klein and it was derived from "Exclamation" by Grosjman according to Kecofa.

The Court however noted that, to receive copyright protection, the work did not need to be new in the objective sense. It needed to be subjectively original as viewed by the maker. Kecofa carried the burden of proof to show that Lancome

derived its perfume from someone else. Furthermore, Kecofa submitted insufficient evidence that *Tresor* was based on Exclamation. Also, Kecofa did not contradict the evidence Lancome showed regarding its originality through its creative developing process.

The Court concluded that *Tresor* was original and carried a personal stamp from the maker and could therefore be considered a copyright work under the copyright Act.

The next issue before the Court was whether Lancôme was the exclusive (copyright) owner of the perfume. Kecofa argued that according to Dutch International Civil Law, French Law would be applied, because Lancôme was a French company. Under French law the company that published the work is assumed to be the rightful owner. The assumption can only be rebutted by the real maker of the work. Since Lancôme published *Tresor*, it is assumed to be the copyright owner of the perfume. Kecofa's argument was therefore not relevant.

Under Dutch law, a company is considered the maker of the work if it published the work without mentioning an individual as the maker. Lancôme published *Tresor* without naming an individual as the maker and could therefore be considered the maker of the work.

The third issue before the Court was whether Lancôme's copyright had been infringed. Kecofa infringed on Lancome's copyright if its product incorporated the copyrighted aspects of *Tresor* to such an extent that the overall impressions of the two products differed so little that defendant's perfume could no longer be considered an independent creation. To prove the similarity between the two perfumes Lancome's offered the Court an expert report of a physical-chemical analysis of the two perfumes. The report concluded that, given the fact that there are hundreds of different components that could have been used, it is unlikely that it is a coincidence that Kecofa used 24 of the exact components

out of the 26 in total used by Lancome's. The 25th ingredient was a cheaper substitute of the remaining *Tresor* component. Since the expertise of the report was not denied by Kecofa nor the accusation of copying, the Court concluded that Kecofa must have copied Lancome's product and therefore violated Lancôme's copyrights.

Court's Judgment

The court ordered Kecofa to stop producing, selling, stocking, importing and exporting any perfume that copied *Tresor*. Every time that Kecofa violated the court's order it would have to pay 2500 Euros per product or per day. The court also ordered Kecofa to pay 16,398 Euros to Lancome plus all its profits from the sale of *Female Treasure* including the costs of the litigation and the attorneys' fees (in total roughly 4,400 Euros).

Litigation Watch

In a major judgment relating to a brand name, *Time*, of the widely acclaimed international magazine, the Delhi High Court has asked an Indian publisher to pay Rs. 16 lakh as damages for illegally using the brand name. In an ex-parte decree, the court has restrained the publisher and printer of Hindi magazine Time Asia Sanskaran from publishing the magazine under the title. The domestic publisher was also restrained from using the component Time in conjunction with any prefix or suffix or from using the trade name Time or Time Asia and also from imitating the red border distinctive design on the magazine published by them.

(Today, 6 Jan 2005)

Delhi High Court has given a ruling in favour of GlaxoSmithKline Pharmaceuticals Ltd and has restrained three companies from manufacturing and selling their products under the trade name Veporal/Ostocalcee and trademark

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Litigation Watch.....

Agrivet Farmcare which are deceptively similar to that of Glaxo.

(The Financial Express, 8 Jan 2005)

European Patent Office has revoked a patent on waste treatment using Hessian on an appeal by the Jute Manufacturers Development Council, India.

(The Statesman, 21 Jan 2005)

Ciena, a maker of optical equipment for telephone companies has filed a lawsuit accusing Nortel Networks of infringing on six of its patents. Three of its patents in question are related to Ciena's Asynchronous Transfer Mode switching technology, two relate to Ciena's wave division multiplexing technology and one is connected to Ciena's sonnet technology.

(The Financial Express, 24 Jan 2005)

A US Federal Court of Appeals has invalidated Merck's patent claims for the drug Fosamax. The ruling cuts 10 years of US patent life from the most prescribed form of Fosamax, which had \$3.5 bn in global sales last year. The once-weekly type of Fosamax accounts for 90 percent of the product's sales of \$2bn in the US. Fosamax now faces patent expiry in February 2008, instead of 2018 handing a victory to generic drugmaker Teva Pharmaceuticals. The European Union Court is also considering invalidating the same patent.

(Business Standard, 31 Jan 2005)

A US farmer is petitioning the Supreme Court to hear his case in a dispute with Monsanto, relating to the company's Roundup-Ready soybeans. These soybeans have been genetically modified to resist the broad-leaf herbicide. When a farmer purchases the soybeans they must agree not to retain seeds for replanting. Monsanto claims that Homan McFarling has broken this agreement.

(Patent World, Dec 04/Jan 05)

An adult entertainment website has filed suit in the Los Angeles district court alleging that internet search engine Google is destroying its business by distributing links and passwords that provide free glimpse of the nude models. California-based company Perfect 10 is seeking unspecified damages from Google for copyright infringement. The company charges a monthly membership fee for users to view this nude photography, but the complaint alleges that the graphic imagery on Google's search engine enables Google users to see some content without paying.

(Copyright World, January 2005)

Matrix Laboratories Ltd (MLL), the Hyderabad based pharmaceutical major, has informed that it would be receiving an estimated lump sum consideration of Rs 95 crore towards the settlement of a potential patent infringement suit. This is being considered the highest amount received ever by an Indian pharmaceutical company. Under the terms of the agreement entered into with the multinational pharmaceutical company, which has filed the patent infringement suit against Matrix Labs, the officials declined to throw further light on the development. This is the latest big success for the company after the Citalopram suit, where the Danish pharmaceutical giant Lundbeck, the innovator of the anti-depressant blockbuster drug Citalopram, had withdrawn patent infringement cases against Matrix Labs and its customers in the European Courts. With a strong synthetic research and process development capabilities, the company has so far filed 38 patents. It filed eight DMFs with the US FDA during the last quarter. Four process innovation patents were also filed during the quarter.

(Business Line, 12 Feb 2005)

The Economic Offences wing of the Delhi Police claimed to have recovered pirated VCDs/MP3/pornographic CDs and other print material, including inlay cards along

with CD writers worth Rs 26 lakh. Raids were conducted at two shops in Palika Bazaar and Connaught Place and 1008 pirated VCDs/MP3/pornographic DVDs were seized and three arrests were also made.

(The Tribune, 15 Feb 2005)

The makers of Bollywood film *Page 3* have been accused of copyright infringement by an author, Nirmala Bhuradiya, who has filed a petition in a city court claiming the story of the film has been lifted from her novel. Bhuradiya alleged the film is a lift of her novel *Objection My Lord* and all the incidents and characters in the film are identical to those in her book.

(The Times of India, 15 Feb 2005)

PFIZER has filed a case against Ranbaxy and Teva alleging infringement on its product Accupril (generic Quinapril). Teva and Ranbaxy together launched this product in the US market last December. Teva is already learnt to have captured close to 45% market share in this product. The total Quinapril sales is estimated to be about \$ 550 million. Pfizer reportedly filed the case in the District Court of New Jersey in the last week of January claiming infringement on its patent. Pfizer has claimed that Ranbaxy's formulation contains an ingredient which leads to infringements.

(Business Standard, 22 Feb 2005)

The Delhi High court has recently ruled that an artist has absolute "intellectual property right" over his or her creation. The court passed this judgement on a 12-year old petition filed by eminent sculptor Amar Nath Sehgal. Mr Sehgal had moved the court in 1992 against the government for distorting, mutilating and damaging his 140-foot long and 40 feet high bronze mural, installed at the lobby of Vigyan Bhawan in 1962. The mural was removed in 1979 and consigned to a store. The artist had taken more than 5 years to complete the work. While giving Rs 5 lakh compensation to Mr Sehgal and ordering the government to return the mural to its creator,

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Litigation Watch.....

the court held that all the rights of the mural would henceforth, vest with Sehgal and the Union of India would have no rights.

(The Financial Express, 23 Feb 2005)

The IPR war between Dabur India and Emami Ltd is close to being resolved after Emami decided to withdraw its hair oil advertisement which according to Dabur India Ltd was disparaging and defamatory to its reputation and goodwill. Dabur had moved the Delhi High Court seeking restraint on Emami for telecasting its TV commercial on Emami hair oil on the ground that the impugned advertisement exhibited its Dabur Hair oil in a poor light. According to the petitioners counsel, the ad is causing irreparable loss and damage to Dabur.

(The Financial Express, 26 Feb 2005)

Even before the official release of writer Sobha De's new book, *Spouse: The Truth About Marriage*, its pirated version is being sold at large scale on the roadside book stalls at Mumbai. The social service wing in its anti piracy raid has arrested two persons in connection with selling of pirated versions of De's work and recovered 28 pirated versions of the book worth Rs 7000. The duo has been charged under various sections of the Copyright Act.

(Asian Age, 3 Mar 2005)

A Federal Appeals Court overturned a \$521- million patent infringement ruling against Microsoft Corp and ordered a lower court to retry the case against the world's largest software maker. In 2003, an Illinois jury delivered a \$521 million verdict against Microsoft, saying it infringed on technology developed by Eolas and the University of California. That ruling was later upheld in early 2004 by the US District Court for the Northern district of Illinois.

The case had sparked concerns that Microsoft would have to alter its Internet browser, making it unable to run on applets, or mini-applications, that run on web-pages. Microsoft's browser is used by 9 of every 10 web surfers. But a year ago, Microsoft won a ruling by the US Patent and Trademark Office, which invalidated a claim by the plaintiffs to the browser technology that allows other mini-applications to work with Microsoft's Internet Explorer. Internet standards groups, including the WWW Consortium, had argued that pre-existing inventions may invalidate Eolas' patent claims.

(The Economic Times, 4 Mar 2005)

India has won a 10-year long battle at the European Patent Office against the grant of patent on use of neem as a fungicide, citing it as a traditional knowledge available with farmers and the scientific community. The European Patent Office had originally granted the patent to the United States Department of agriculture and multinational W R Grace in 1995, which was later revoked in 2000 after India appealed against the patent.

(The Tribune, 10 Mar 2005)

Public broadcaster Prasar Bharati has sent legal notices to 16 news channels for allegedly violating copyright laws and showing large amounts of footage from the ongoing India Pakistan cricket series without permission, against which Doordarshan claimed to have over Rs. 1.16 crore as dues for just the first test match.

(Deccan Herald, 19 Mar 2005)

The Harbans Mohal police recovered around 5,000 pirated CDs of old, new and blue films and arrested two persons from their shops at Lucknow Phatak. A team of officials of T-series Company from Gautambudh Nagar had come to the city to arrest the culprits involved in selling pirated CDs of the company in the city.

(Rajasthan Patrika, 19 Mar 2005)

Domestic News

Less than one-fourth of the applicants who had put their product patent applications in the mailbox have actually sought the examination of their applications. The patent offices have received requests for processing 2488 applications against the 8926 mailbox applications which were opened on January after the product patent regime came into effect. Of the total mailbox applications, nearly 7000 dealt with patents relating to the pharma sector, while the remaining were for agrochemicals.

(Business Standard, 6 Jan 2005)

Pfizer Inc has outlined a multipronged strategy for the Indian market. The strategy involves the launch of patented products through selective routes, consolidation of manufacturing facilities and restructuring its field force. Pfizer is likely to launch various off-patent and patented products in the Indian market.

(Financial Express, 10 Jan 2005)

Delhi University has sold a patented medical engineering technique at a whopping 3.5 lakh US dollars. The technique devised by a team led by Prof. Amarnath Maitra of the Chemistry Department, is expected to control and cure several dreaded diseases including cancer and HIV/AIDS. The patented process has been bought by a US pharmaceutical company, American Biosciences, based in California, which will also be paying four percent regular royalty to the university.

(The Economic Times, 10 Jan 2005)

Kerala has furnished a defensive patenting database on 966 ayurveda herbs to Centre's WTO desk. The data was dovetailed in tune with the norms of the Geographical Indications Act. Documentation may serve only defensive purpose, the database was transferred to Centre after the State Patent Cell (set up by the Patent Facilitating Centre) classified and chronicled Ayurvedic modes of treatment, equipment used and the herbal formulations used.

(Financial Express, 1 Feb 2005)

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Design Registration

The following design applications have been accepted by the Design Wing of Patent Office, Kolkata and published in the Gazette of India. These are now available for public inspection in the Patent Office Kolkata. The class of design, date of registration, applicant name and address and design title have been published here. Photograph (B/W) of the designs are also published in the Gazette. A design can be inspected in the Kolkata Patent Office with application in Form 5 along with a fee of Rs. 500/- (Rupees five hundred only).

Gazette Date	Design No	Applicant Name	Design	Class	Address	Registration Date
3/12/2005	195843	SAJJAN RAO	TOILET WASTE COLLECTION & DISPOSAL UNIT FOR RAILWA	23-02	INDIA	6/3/2004
3/12/2005	196402	ALPINE POLYRUB PVT LTD	SLIPPER	02-04	INDIA	7/26/2004
3/12/2005	196403	ARVIND RASTOGI	HANDLE LOCK FOR MOTOR CAR	12-16	LUCKNOW	7/26/2004
3/12/2005	195197	SU-KAM COMMUNICATION SYSTEMS LTD	INVERTER TROLLEY	12-04	INDIA	4/15/2004
3/12/2005	195055	PRINCE PLASTICS INTERNATIONAL PVT LTD	CONTAINER	09-03	MUMBAI	3/29/2004
3/12/2005	195054	PRINCE PLASTICS INTERNATIONAL PVT LTD	CONTAINER	09-03	MUMBAI	3/29/2004
3/12/2005	195234	EASTMAN CAST & FORGE LTD	HAND TOOL	08-05	NEW DELHI	4/21/2004
3/19/2005	195415	ALERT INDIA	SOLE FOR FOOTWEAR	02-04	DELHI	5/6/2004
3/19/2005	195419	ALERT INDIA	SOLE FOR FOOTWEAR	02-04	DELHI	5/6/2004
3/19/2005	195418	ALERT INDIA	SOLE FOR FOOTWEAR	02-04	DELHI	5/6/2004
3/19/2005	195416	ALERT INDIA	SOLE FOR FOOTWEAR	02-04	DELHI	5/6/2004
3/19/2005	195417	ALERT INDIA	SOLE FOR FOOTWEAR	02-04	DELHI	5/6/2004
3/19/2005	195420	ALERT INDIA	SOLE FOR FOOTWEAR	02-04	DELHI	5/6/2004
3/19/2005	195056	PRINCE PLASTICS INTERNATIONAL PVT LTD	CONTAINER	09-03	INDIA	3/29/2004
3/19/2005	195057	PRINCE PLASTICS INTERNATIONAL PVT LTD	CONTAINER	09-03	INDIA	3/29/2004
3/19/2005	195221	EASTMAN CAST & FORGE LTD	OVAL HANDLE	08-06	INDIA	4/20/2004
3/19/2005	196401	ALPINE POLYRUB PVT LTD	SLIPPER	02-04	INDIA	7/26/2004
3/19/2005	195015	KIRLOSKAR OIL ENGINES LTD	OIL ENGINE	15-01	INDIA	3/26/2004
3/19/2005	196462	SHRI KRISHNA FOOT CARE	SLIPPER	02-04	DELHI	7/29/2004
3/19/2005	196706	M/S ROFFE CONSTRUCTION CHEMICAL	CAN	09-02	DELHI	3/1/2004
3/19/2005	192733	MULDER INDIA PVT LTD	TILES	25-01	INDIA	8/4/2004
3/19/2005	194187	THERMO PLAST INDUSTRIES PVT LTD	FLASK	09-01	MUMBAI	12/30/2003
3/19/2005	194538	VARDHMAN VALLEY INDIA PVT LTD	DOOR HANDLE	08-06	MUMBAI	2/9/2004
3/19/2005	194667	GIVI S R L VIA S QUASIMODO	MOTORCYCLE TOP CASE	12-11	ITALY	2/25/2004
3/19/2005	194775	NILKAMAL CRATES AND BIS	CRATE	09-04	MUMBAI	3/9/2004
3/19/2005	194665	GIVI S R L VIA S QUASIMODO	MOTORCYCLE TOP CASE	12-11	ITALY	2/25/2004
3/19/2005	196034	M/S BABA POLYMERS	SOLE OF FOOTWEAR	02-04	AGRA	6/21/2004
3/19/2005	196036	M/S BABA POLYMERS	SOLE OF FOOTWEAR	02-04	AGRA	6/21/2004
3/19/2005	196415	M/S BUNNY POLYPLAST	SOLE OF FOOTWEAR	02-04	AGRA	7/27/2004
3/19/2005	196035	M/S SHAKTI ENTERPRISES	SOLE OF FOOTWEAR	02-04	DELHI	6/21/2004
3/19/2005	195811	PUSHP ENTERPRISES	SPRAY PUMP	23-99	INDIA	6/1/2004
3/19/2005	194541	VARDHMAN VALLEY INDIA PVT LTD	DOOR HANDLE			08-06
MUMBAI	2/9/2004					
3/19/2005	195942	M/S FUTURE INDIA	ASSEMBLY OF DAMPENING UNIT	18-02	INDIA	6/14/2004
3/19/2005	196418	M/S VERSTALE OPERATIONS	SOLE OF FOOTWEAR	02-04	MATHURA	7/27/2004
3/19/2005	194186	THERMO PLAST INDUSTRIES PVT LTD	FLASK	09-01	MUMBAI	12/30/2003
3/19/2005	196219	GALANTIC PRINT MACHINES PVT LTD	AUTOMATIC DAMPENING SYSTEM FOR USE IN PRINT	18-02	RAJKOT	
3/19/2005	195999	ROTMAG MOTORS & CONTROLS PVT LTD	SEGMENT COMMUTATOR	13-99	GUJARAT	6/21/2004
3/19/2005	194666	GIVI S R L VIA S QUASIMODO	MOTORCYCLE TOP CASE	12-11	ITALY	2/25/2004
3/19/2005	194670	GIVI S R L VIA S QUASIMODO	MOTORCYCLE TOP CASE	12-11	ITALY	2/25/2004
3/26/2005	196059	MITRA INDUSTRIES LIMITED	CAP FOR TITANIUM ADAPTER	24-99	DELHI	6/22/2004
3/26/2005	195053	MITRA INDUSTRIES LIMITED	TRANSFER SET FOR CAPD BAG	24-99	DELHI	6/22/2004

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Domestic News.....

The music industry in the country wants intellectual property rights (IPR) industry status to be at par with books, periodicals and journals, in terms of taxability. At present the music industry is in the 12.5% tax category, whereas other forms of IPR industry-books, periodicals and journals-are not taxed at all.

(Financial Express, 1 Feb 2005)

The Chemical Ministry is firming up plans to ensure that drugs, which may get patent protection in India, are available to consumers at their lowest international price. The move is aimed at blocking a patent holder from charging a huge premium. The Ministry has identified the criteria for negotiating the price of a patented drug before it is allowed to sell in India. The government will ask a patent holding Drug company to furnish the prices at which it sells in different countries before the price is finalized here. Besides, it will also compare the price of alternatives available in India before an allowable premium could be arrived at. The government will also assess what therapeutic advantage the new drug has over its alternatives to justify the premium the company wants to charge.

(The Economic Times, 3 Feb 2005)

Morepen Laboratories Ltd has filed a patent for a 10 billion dollar cholesterol lowering drug-Atorvastatin Calcium- in 33 countries including US and Canada. Morepen is in the process of finalizing tie-ups with US generic companies for launch of the product and aims to capture 15-20 per cent market share. The market share of Atorvastatin Calcium worldwide is estimated to be about Rs. 45,000 crore.

(National Herald, 3 Feb 2005)

Piracy is undercutting huge revenue of the Government besides pushing the audio industry on the brink of extinction. A number of audio cassette recording companies, choking under piracy menace, have been trying to extricate themselves from the mess by offering their shops for sale. According to audio industry sources, piracy or grey market

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3/26/2005	194540	VARDHMAN VALLEY (INDIA) PVT LTD	DOORHANDLE	08-06	MAHARASHTRA	2/9/2004
3/26/2005	194539	VARDHMAN VALLEY (INDIA) PVT LTD	DOORHANDLE	08-06	MAHARASHTRA	2/9/2004
3/26/2005	196417	M/S BUNTY POLY PLAST (INDIA)	SOLE OF FOOTWEAR	02-04	UTTAR PRADESH	7/27/2004
3/26/2005	196416	M/S BUNTY POLY PLAST (INDIA)	SOLE OF FOOTWEAR	02-04	UTTAR PRADESH	7/27/2004
3/26/2005	196225	EASTMAN CAST AND FORGE LTD	PLIER	08-05	DELHI	7/8/2004
3/26/2005	196052	VEEKESY POLYMERS PVT LTD	FOOTWEAR SOLE	02-04	KERALA	6/18/2004
3/26/2005	196051	VEEKESY POLYMERS PVT LTD	FOOTWEAR SOLE	02-04	KERALA	6/18/2004
3/26/2005	194704	M/S PLASTECH INTERNATIONAL PVT LTD	TOY	21-01	MAHARASHTRA	3/1/2004
3/26/2005	195182	M/S LARSEN AND TOUBRO LIMITED	MOULDED CASE CIRCUIT BREAKER	13-03	MAHARASHTRA	4/13/2004
3/26/2005	196834	VEEKESY POLYMERS PVT LTD	FOOTWEAR SOLE	02-04	KERALA	8/30/2004
3/26/2005	195598	NOVARTIS CONSUMER HEALTH S A	CONTAINER	09-03	SWITZERLAND	5/19/2004
3/26/2005	195732	AV EXPORTS	HEATING MANTLE	24-02	TAMIL NADU	5/24/2004
3/26/2005	194860	SOEX INDIA PVT LTD	CIGARETTE PACKET	27-06	MAHARASHTRA	3/16/2004
3/26/2005	194881	FIAT AUTO SPA	LUMINOUS DEVICES FOR MOTOR CARS	26-06	ITALY	9/19/2003
3/26/2005	196460	SHRI KRISHNA FOOT CARE	STRAP	02-04	DELHI	7/29/2004
3/26/2005	196461	SHRI KRISHNA FOOT CARE	SOLE FOR SLIPPER	02-04	DELHI	7/29/2004
3/26/2005	194705	ALUMILITE PVT LTD	SLIDING WINDOW LOCK	08-07	MAHARASHTRA	3/1/2004
3/26/2005	196002	ROTOMAG MOTORS AND CONTROLS PVT LTD	SEGMENT COMMUTATOR	13-99	GUJARAT	6/21/2004
3/26/2005	196004	ROTOMAG MOTORS AND CONTROLS PVT LTD	FERRITE MAGNET V SERIES	13-99	GUJARAT	6/21/2004
3/26/2005	195178	HONDA MOTOR CO LTD	MOTOR SCOOTER	12-11	JAPAN	4/13/2004
3/26/2005	196000	ROTOMAG MOTORS AND CONTROLS PVT LTD	FERRITE MAGNET M SERIES	13-99	GUJARAT	6/21/2004
3/26/2005	194929	M/S SARASWATI EXPORTS	CARPET	06-11	RAJASTHAN	3/25/2004
3/26/2005	194790	AXIS IMPEX	CASSEROLE	07-02	MAHARASHTRA	3/9/2004
3/26/2005	196478	TRELA FOOTWEAR EXPORTS PVT LTD	SOLE FOR FOOTWEAR	02-04	UTTAR PRADESH	7/29/2004
3/26/2005	196477	TRELA FOOTWEAR EXPORTS PVT LTD	SOLE FOR FOOTWEAR	02-04	UTTAR PRADESH	7/29/2004
3/26/2005	196476	TRELA FOOTWEAR EXPORTS PVT LTD	SOLE FOR FOOTWEAR	02-04	UTTAR PRADESH	7/29/2004
3/26/2005	195821	TRELA FOOTWEAR EXPORTS PVT LTD	SOLE FOR FOOTWEAR	02-04	UTTAR PRADESH	7/29/2004
3/26/2005	196475	TRELA FOOTWEAR EXPORTS PVT LTD	SOLE FOR FOOTWEAR	02-04	UTTAR PRADESH	7/29/2004
3/26/2005	196896	SEBCO INDUSTRIES	FREE WHEEL FOR BI CYCLE AND RICKSHAWS	12-11	PUNJAB	9/8/2004
3/26/2005	195570	R KUMARAVELU	JACQUARD CARD PUNCHING SYSTEM	15-06	TAMIL NADU	5/7/2004
3/26/2005	195169	SUPREME PAJER CUPS	ARTIFICIAL LEAF OF PACKING AND EATING	07-01	TAMIL NADU	4/12/2004
3/26/2005	194566	VIDEOCON INTERNATIONAL LTD	TELEVISION	14-03	MAHARASHTRA	2/9/2004
3/26/2005	194564	VIDEOCON INTERNATIONAL LTD	TELEVISION	14-03	MAHARASHTRA	2/9/2004
3/26/2005	194567	VIDEOCON INTERNATIONAL LTD	TELEVISION	14-03	MAHARASHTRA	2/9/2004
3/26/2005	194565	VIDEOCON INTERNATIONAL LTD	TELEVISION	14-03	MAHARASHTRA	2/9/2004
3/26/2005	196400	AUTO SHINES INDIA	WHEEL COVER FOR CARS	12-16	DELHI	7/26/2004
3/26/2005	194574	REMSON INDUSTRIES	PEDAL COVER	12-11	PUNJAB	2/12/2004
3/26/2005	194573	CUTE CYCLES PVT LTD	OVAL TYPE CHAIN WHEEL	12-11	PUNJAB	2/12/2004
3/26/2005	196841	NILKAMAL CRATES AND BINS	CRATE	09-04	MAHARASHTRA	9/2/2004
3/26/2005	196842	NILKAMAL CRATES AND BINS	CRATE	09-04	MAHARASHTRA	9/2/2004
3/26/2005	196057	MITRA INDUSTRIES LIMITED	TRANSFER SET FOR CAPD BAG	24-99	DELHI	6/22/2004
3/26/2005	194822	BEE KAY ENTERPRISES	POLLUTION CONTROL DEVICE	99-00	WEST BENGAL	3/16/2004
3/26/2005	196214	CHOPRA ENGINNERS	BI CYCLE SADDLE	12-11	PUNJAB	7/5/2004
3/26/2005	196186	CHOPRA ENGINNERS	BI CYCLE SADDLE	12-11	PUNJAB	7/1/2004
3/26/2005	195282	EASTMAN CAST AND FORGE LTD	SLIDING BAR	08-05	DELHI	4/26/2004
3/26/2005	195281	EASTMAN CAST AND FORGE LTD	HEX SOCKET	08-05	DELHI	4/26/2004
3/26/2005	195284	JOGINDER SING TEJVINDER SINGH	SEAT BASE	12-11	PUNJAB	4/27/2004
3/26/2005	195283	EASTMAN CAST AND FORGE LTD	UNIVERSAL JOINT	08-05	DELHI	4/26/2004
3/26/2005	195381	DHANOA INDUSTRIES	PEDAL FOR BICYCLES RICKSHAWS	12-11	PUNJAB	5/6/2004
3/26/2005	196185	GREEN CYCLE INDUSTRIES	SADDLE FOR BI CYCLE	12-11	PUNJAB	7/1/2004

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Domestic News.....

swallows more than Rs 130 crore worth of revenue in Karnataka alone. Many feel that the state governments including Karnataka should emulate the Tamil Nadu model to deal with the piracy menace where the Goonda Act has been extended to people who indulge in piracy.

(Indian Express, 11 Feb 2005)

Indian agrochemicals market being dominated by generic pesticides has possibly come as a positive signal for the industry in the patents regime. Generic pesticides are more popular probably due to the ease of availability of these products. Much of the export market is also into generic products. At least 70% of the pesticides used in the US are off patents and, the US is a large export market for Indian pesticide companies. Indian manufacturers, however, might not be in a position to export products that are on the patented list, though they could be able to market them in India. Multinational agrochem companies may insist on the use of patented products. Currently there are six patented products marketed in India: Indixacarb, Thiomethoxam, Spinosad, Imidacloprid, Sulpho Sulphonyl Urea, and Clodinafop Propargyl. Indian Companies also manufacture some of these products. However, as they have been manufacturing and marketing these products prior to January 2005 they are allowed to continue. The domestic industry could find itself in a quandary if patented molecules are brought into India and marketed.

(Business Line, 12 Feb 2005)

According to study conducted by the International Intellectual Property Alliance (IIPA), India ranks 9th in the international piracy list with losses worth \$ 464.8 million in 2004 due to copyright piracy. Top of the list are China, Russia, Brazil, Mexico, Italy, South Korea, Spain and Canada, in that order. China's total losses due to piracy were at \$2.5 billion and Russia's at \$1.7 billion. Russia, Pakistan and Ukraine have been named

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Domestic News

as "priority foreign countries", in terms of seriousness of piracy. India, along with 14 others, would be on the "priority watch list" in 2005. Others are Argentina, Bulgaria, Chile, Colombia, the Dominican Republic, Egypt, Indonesia, Kuwait, Lebanon, China, Philippines, South Korea and Thailand. As for India, losses were maximum in the business software segment at \$220 million, with the piracy level of 74%.

(Financial Express, 12 Feb 2005)

The Planning Commission has informed its approval to allow the Department of Ayush (ayurveda, yoga and naturopathy, unani, sidha and homeopathy) to spend Rs 150 crore more during the next fiscal. Ayush has made a substantial upward revision of its incentive schemes for the industry beginning April 1. The department approved 20 proposals from the industry under the existing scheme, five of which are overseas promotional efforts. It is also creating a Rs 60-crore fund for herbal drug research which would be jointly set up with the ICMR, CSIR and Ayush department. The fund would help big companies to validate existing drugs as well as develop new ones to fill the vacuum the product patents era may create. Indian herbal drugs have not been able to realize its full potential in overseas markets as they are allowed to be sold only as food supplements and not as drugs. The US FDA recently formulated guidelines to approve drugs of botanical origin.

(The Economic Times, 16 Feb 2005)

Biotech firms can now hope to possess genes if they undertake inventive research and make it useful for the industry. This would prevent others from using the same biological material for commercial purposes for 20 years from the date of filing the patent. The government is currently preparing guidelines to delay with the complex issue of patenting gene sequences. Sources said the guidelines would take lessons from case laws in order

countries to the extent that they fit into our patent law.

(Economic Times, 17 Feb 2005)

The pharmaceutical industry can look to exciting times as huge global opportunities are set to come its way, especially with the new Patents Act in place, according to Dr. William A. Hasterline, one of the leading experts in genomics. He said the new Patents Act had changed the global perception of India, which is now the preferred destination for pharmaceutical business. While the industry is set to undergo a major transformation with focus on discovery research, it could expect to gain revenue of at least \$10 billion in the years to come. Contract research, contract manufacturing and clinical trials are the areas in which the country can emerge as a major player in the global market.

(Business Line, 18 Feb 2005)

The application of the general law to the electronic media has given rise to results which may lead to patent injustice, says a review of the Information Technology Act 2000 titled 'Memorandum on Online Liability in respect of Laws on Obscenity and Sedition'. The provisions of the IT Act that deal with regulation of obscene material suffers from a few definitional problems. This was the very same issue that came up in discussions following the arrest of the CEO, Baze.com, a few months ago. The directives of the European Union on Electronic commerce could be a guiding point for the gathering international practices, notes the report. The directive recognizes that the Internet has active and passive players, and provides immunity to passive players from Liability.

(Business Line, 25 Feb 2005)

Natco Pharma has obtained an European patent (Pat No. 1,221,947) for its soft gel capsules, with an innovative drug delivery system. The patent has been registered in France, Germany and the UK. The company is also registering the patent in Canada, the US and Japan.

(The Hindu, 10 Mar 2005)

The number of patent applications filed from India has grown considerably since 2001. In the last three years the number of applications filed by Indian companies and organizations has risen to 784 in 2004 and 295 in 2001. In 2004 the largest users from India of the Patent Cooperation Treaty have been Ranbaxy and the CSIR. In 2003, Ranbaxy filed 66 applications, whereas in 2004 it filed 121. In 2003, CSIR filed 124 applications whereas the number reported until now for 2004 is 69 applications. In 2004, other Indian organizations which filed PCT applications were Cipla (32), Jubilant Organosys (16), Vaman Technologis (R&D) (12), Matrix Labs (12), Hetero (10), and Wockhardt Ltd (10).

(Financial Express, 12 Mar 2005)

The American based Chicago-Kent College of Law will start a diploma course in intellectual property laws for techies in Bangalore. The distance education course was targeted primarily at professionals working in BPOs, IT and BT companies and in the financial services sector. A course in IPR would deal with issues such as hacking violation of copyrights and breach of security. Graduates in any discipline will be eligible for the six-month diploma course. The college offers an option for those who enroll to continue in a Master's programme in the US. Those who take up the course can put in another five months in the US and come out with a Masters either in Law (LLM) or in public administration. Only LLB-holders who do the diploma can go in for LLM, while others must take up public administration. The diploma programme would include two on-site contact sessions with students conducted by the US professors, besides more sessions by Indian faculty. The rest of the course would be online-through discussions on e-mails and question and answer chatting. The course is likely to start by December. About 40-60 students may be enrolled in each batch.

(Deccan Herald, 18 Mar 2005)

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Domestic News

The Human Resources Development Ministry has set up 10 chairs for Intellectual Property Rights (IPR) in leading institutes. The ten IPR chairs are being established at the three leading IIMs of Ahmedabad, Bangalore and Kolkata and five major IITs - Kanpur, Kharagpur, Delhi, Mumbai and Chennai. The Delhi School of Economics and School for Economics Studies at JNU will get a chair each. The IIMs will focus specifically on intellectual property management while the IITs will specialize in areas of IPRs pertaining to patents, trade marks, industrial design and geographical indicators.

(Deccan Herald, 18 Mar 2005)

The Andhra Pradesh government is vigorously pushing Geographical Indication protection rights for local art and design, which in the long run would ensure that revenues earned by cheap imitations elsewhere is reduced and ultimately restricted. After Pochampali Ikkat, the government is planning for GI rights for the world famous Kondapali wooden toys to safeguard it from extinction.

(Indian Express, 18 Mar 2005)

Pfizer has emerged as the biggest pharma patent applicant in India as the Patents Office opened the mail box of patent pleas for pharma and agrochem inventions for 1995-2005. Johnson & Johnson with 262 submissions emerged as the second largest applicant. Of a total of 8,926 patent pleas in the mailbox, a majority of 7,520 belong to foreign entities, while the balance 1,406 are Indian applications. While US-based entities put 2,324 applications including 2,096 pharma related pleas, Indian submissions were 1,406 including 1,300 in pharma sector. Among foreign countries, Germany made 1,238 filings including 1,134 pharma filings to occupy the third slot behind US and India, followed by UK (631/573), Switzerland (596/538), Japan (503/434), Sweden (364/351), France (322/278), Denmark (306/278) and Belgium (177/170). Among domestic firms, Delhi-based company Panacea Biotech put 75 applications, followed

by bigger firms like Dabur India (56), Sun Pharma (46), Cipla (45). The table below shows the top six Indian and foreign companies filing number of mailbox filings:

Indian Cos	No. of mailbox filing	Foreign Cos	No. of mailbox filing
Dr Reddy's Labs	205	Pfizer	373
Panacea Biotech	75	Johnson & Johnson	262
Dabur India	56	Procter & Gamble	187
Sun Pharma	46	Merck	156
Cipla	45	GSK	115
Ranbaxy	38	El DuPont	95

(Financial Express, 21 Mar 2005)

The Andhra Pradesh Assembly has unanimously passed a Bill to curb piracy of film copyrights through cable television networks, video compact discs and digital video discs. The Bill, which seeks to amend the existing AP Exhibition of Films on Television Screen through Video Cassette Recorders (Regulation) Act, 1993, was introduced by Minister for Tourism and Sugar J Geetha Reddy. She said the Bill was necessitated in the wake of large scale complaints from film producers and artists that their films were being copied unauthorisedly by unscrupulous elements into VCDs and DVDs and were exhibited through cable operators and through video parlours. This resulted in film industry running into huge losses and affecting the livelihood of lakhs of people depending on film industry.

(Deccan Chronicle, 24 Mar 2005)

The Tamil Film Producers Council has thanked the Chief Minister and the city Police Commissioner for the prompt action taken for curbing video piracy in the state of Tamil Nadu. Reacting to a spate of search operations by the police that led to the arrest of three persons allegedly involved in the production and sale of pirated video CDs of latest Tamil movies such as 'Thiruppachi', 'Ji' and 'Devadaiyai Kandein', the Producers Council president Sathyajothi Thyagarajan, said they were thankful for the administration's untiring work to curb video piracy and thus saving the film industry.

(The Hindu, 27 Mar 2005)

International News

American businesses, losing a whopping \$250 billion a year to copyright piracy, are taking the fight against counterfeit goods in Asia. US Chamber of Commerce has unveiled an unprecedented global initiative to combat crime in 2005. Under the three pronged global strategy, the chamber will educate businesses, the media, and the lawmakers on the growing economic threat of counterfeiting; work with manufacturers, retailers and law enforcement agencies to disrupt the use of legitimate distribution channels to peddle fraudulent products and implement country-specific initiatives in priority areas.

(The Economic Times, 10 Jan 2005)

US patent leader IBM plans to donate 500 patents for free use by software developers, marking a major shift of intellectual property strategy for the world's top computer maker and a challenge to the high-tech industry. For the 12th consecutive year, IBM has topped the list of annual patent recipients with 3,248 patents followed by Matsushita of Japan.

(Indian Express, 12 Jan 2005)

Nearly one million patent applications have been filed under the PCT system all over the world ever since the system began in 1978. The United States dominates the scenario with 2,05,286 applications followed by Japan with 72,891 applications, Germany with 70,513, Britain 25,916 and France 24,278. The statistics for individual corporations show that the Dutch manufacturer, Philips Electronics NV leads the way with 9,778 applications filed between 1995 and 2003. Siemens AG of Germany is in second place with 8,981 followed by Robert Bosch GmbH with 6069 and Procter & Gamble 5,841 and Telefon AB LM Ericsson with 5,072. Sector wise the highest patents are filed in pharmaceuticals (6%) followed by information technology (5-6%) and biotechnology (3%).

(The Economic Times, 16 Jan 2005)

The like minded megadiverse countries, rich in biological diversity and associated traditional knowledge, have agreed to

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International News

work towards creating the Megadiverse Co-operation Fund for supporting projects in member countries that meet the objectives of the group. They have agreed to work together for effectively negotiating the development of an international regime on access and benefit sharing, including legally binding instruments in the forthcoming meetings of the ad-hoc, open-ended working group under the aegis of Convention on Biological Diversity. The proposed international regime on access and benefit sharing shall also include mandatory disclosure of the country of origin of biological material and associated traditional knowledge in the IPR application.

(Business Line, 24 Jan 2005)

A survey conducted of 300 European businesses—all of them rights owners and all major concerns turning over £125 million has revealed that intellectual property issues rate little attention in the boardrooms of European business. A broad section of rights owners were interviewed, with the interviewee being the senior decision-maker. The pharma industry revealed relatively sophisticated knowledge and use of IP, while many companies in the IT sector lag behind the norm—but a general characteristic was that IP was seen as a cost item, rather than revenue item, by a majority of companies. The survey also revealed that only 52% had a documented IP Strategy and 25% of those who described their business as largely based on IP did not have a strategy at all.

(Patent World, Dec 04/Jan 05)

The Director of the US patent and Trademark Office, Jon Dudas, will invite a number of nations to participate in a forum aimed at supporting the World Intellectual Property Organisation in moving forward negotiations on the Substantive Patent Law Treaty (SPLT). The Trilateral Offices (USPTO, European Patent Office and Japan Patent Office) had submitted a proposal suggesting that the standing committee on the SPLT focus on

a limited package of reforms that are achievable in the near-term.

(Patent World, January 2005)

A Regulation to allow generic pharmaceutical manufacturers to produce patented medicines for export to “countries in need” has been proposed by the European Commission. The Regulation would implement a World Trade Organisation decision which allows national authorities to grant compulsory licenses.

(Patent World, January 2005)

The president of the European Patent Office, Alain Pompidou used his speech at the office’s epoline conference to call on governments to ratify the London Agreement and push on with the European Patent Litigation Agreement. The London Agreement would reduce the burden of translation for patentees. The Agreement has already been ratified by five states, including Germany, while Sweden and Switzerland have presented ratification bills to their parliament and the UK has begun a consultation process on ratification.

(Patent World, January 2005)

The respective collecting societies representing authors and publishers in the United Kingdom have culminated 12 months of negotiation with an agreement that will guide their relationship for the next five years. The new agreement between the Authors’ Licensing and Collecting Society (ALCS) and the Publishers’ Licensing Society (PLS) enhances the capability of both parties to distribute royalties collected on their behalf by the Copyright Licensing Agency, which they jointly own.

(Copyright World, January 2005)

A survey of Internet users in Korea has shown that six in ten are happy to violate copyright laws via illegal downloading. More than 90% of Korean internet users were familiar with the laws of copyright, but the majority of those chose to ignore its requirements. The survey, by Korea’s Copyright Commission for Deliberation and Conciliation, revealed that 60% of users surveyed had downloaded illegally reproduced files and programmes online, even though they were aware it was illegal to do so. A much smaller percentage

(13.7%) admitted to having illegally uploaded material.

(Copyright World, January 2005)

British teenagers have been signed up for a series of lessons designed to teach them to respect copyright, and reject music piracy. A teaching kit organized by British Music Rights is designed to educate users about the role of copyright in protecting artists from songwriters—as well as aiming to reduce illegal fileswapping, the knowledge would also act to protect young people planning a career in the music industry from unscrupulous practices that could endanger their own intellectual property. The education pack has been requested by more than 1600 secondary schools across the U.K. It outlines the basics of copyright law, stresses the importance of royalties as a stream of income for artists, and profiles the different careers available in the modern music industry.

(Copyright World, January 2005)

The Japanese Patent Office plans to cut the waiting time between a request for examination to when the examination is started to zero within the next ten years. The objective is to improve Japan’s international competitiveness. It will aim to accomplish this through a combination of more examiners and outsourcing searches. Currently, the average time between the request for and the completion of the examination is 29 months. Of this time, 24 months is in waiting for examination to begin; the examination itself takes 5 months. To accomplish this plan, the JPO has begun a phased hiring of 500 new examiners to add to their current 1100 examiners. The JPO also plans to outsource part of the search process to retired examiners and independent search professionals.

(World Patent Information, Vol 26, No 3)

The rising threat from the US patent expiry is expected to boost the mergers and acquisitions (M&As) in Japanese drug industry. Top Japanese drug makers need to make more M&As to be able to compete globally. Fear of becoming a takeover target of huge multinationals looking to replenish their drug cabinet may also pressure firms with less than \$10 billion market value to move forward.

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International News

Japan's top drug makers spend about 15% of revenues on R&D, but the \$7.7 billion used by global leader Pfizer last year is about three times the total at Takeda Pharmaceutical, Sankyo and Yamanouchi Pharmaceutical. Their market values follow a similar pattern. The merger deals in Japan reflect the need for more R&D fund. Patent expiries set off the global consolidation wave and created "megapharmas" with sales over \$30 billion such as Pfizer and Glaxo SmithKline.

(The Financial Express, 5 Mar 2005)

European Union ministers have endorsed the proposal for the patenting of computer related inventions. The decision is seen as a boost for advocates of patenting some computer software, notable big firms such as Microsoft and Nokia, but it's a blow for smaller software firms that fear they could be pushed out of the market.

(Business Line, 8 Mar 2005)

Pharmaceutical firms in Bangladesh are hoping that a new Indian patent law banning Indian companies from manufacturing cheap generic drugs could prove a tonic for their exports. The amended patent law replaces a legislation which allowed Indian drug makers to copy patented products using a different manufacturing process. Although Bangladesh is a member of the World Trade Organisation, it does not have to pass a similar legislation until 2016 because it is designated as one of the 49 least-developed countries. India's law is a big advantage for Bangladesh because their companies will continue to copy patented drugs whereas the Indians cannot.

(The Economic Times, 28 Mar 2005)

Italy has adopted a New Industrial Property Code. It greatly simplifies the procedures for obtaining or transferring industrial property rights, but above all introduces important changes in rules for court proceedings, which as a result should become much quicker. There have been significant changes and additions concerning several points, such as inventions by employees and researchers, the legal value of claims in determining the scope of patent protection, and the limits within which preparing patented

drugs in pharmacy is legitimate. The system for appeal against decisions of the Indian Patent and trademark Office has been amended substantially and will work like a jurisdiction appeal. The procedure will be similar to the one used in appeals before administrative courts, and is therefore likely to be more complicated than the current one. One fundamental change introduced concerns court actions, where rules of procedure, which so far only applied to company and financial law, will also apply to all court proceedings concerning industrial property rights.

(Patent World, March 2005)

The Romanian Parliament ratified the Geneva Patent Law Treaty (PLT) on 28 January 2004. Ten countries have now ratified the PLT. The main changes to Romanian Law relate to patent application and the determination of the application date, patent granting and revoking, notifications, representation, deadline exceptions and priority rights, all aligned with the PLTs provisions.

(Patent World, March 2005)

San Marino became the 124th Contracting State of the Patent Cooperation Treaty (PCT) when it deposited its instrumentation of accession at WIPO on September 14, 2004.

(World Patent Information, March 2005)

The European Patent Office (EPO) in 2003 granted nearly 60,000 European patents, 27% more than in 2002. Incoming filings totaled 1,62,200, slightly up (1.1%) on the figure for 2002 (1,60,430). Again, about 50% of applications came from member states of the European Patent Organisation, 27% from the USA (2002:28%) and 16% from Japan (2002:15%). The main technical fields involved were medical technology, electronic communications and data processing.

(World Patent Information, March 2005)

With a view to fostering the development and harmonization of patent-related intellectual property law and practice within its member states, the European Patent Organisation has adopted regulations setting up a European Patent Academy. The new institution

will be managed by the European Patent Office (EPO) and will have its seat in Munich. In close cooperation with national, European and international institutions and organizations its main task will be to develop a Europe-wide training and education scheme for the benefit of the European patent system. The Academy is expected to commence functioning in the course of 2005. Specialised IP training centers have been established in a number of regions and countries, such as ASEAN, Japan, Korea, China and the United States. The European Patent Academy will address training and education needs by offering its activities to specific target audiences grouped in five areas. It will promote and support the preparation of candidates for the European Qualification Examination to become a European patent attorney, as well as offer vocational training for professional representatives. For further information: contact Rainer Osterwalder at rosterwalder@epo.org

(World Patent Information, March 2005)

New laws on Patents, Layout Designs of Integrated Circuits, Plant Varieties and Industrial Designs came into force on September 6, 2004 in Saudi Arabia. According to Article (19), protection period for patents shall be 20 years from the date of filing the application, while the protection period shall be 10 years for industrial designs and models. The term of protection for plant varieties patent shall be 20 years, however trees and vines shall be protected for 25 years. Claiming priority is possible according to the new Act. Patents and plant varieties priority period is 6 months.

(World Patent Information, March 2005)

Gene-IT has introduced Integrated Discovery and IP Sequence Searching Service, with GenomeQuestLive! online services. With both functional and intellectual property sequence searching possible, these services are expected to help pharmaceutical and biotechnology companies understand and communicate IP positions on targets earlier and faster. Multiple sources of patent and non-patent sequence databases, as well as in-house and purchased databases can be searched. For more information: www.gene-it.com.

(World Patent Information, March 2005)

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PFC on the move....

I Workshops

The following workshops were organized during the months of January to March, 2005 :

1. State Forest Reserch Insitute (SFRI), Jabalpur on January 4, 2005. This was attended by 90 scientists from SFRI and other Institutes in Jabalpur.
2. Singhad Institute of Pharma-ceutical Sciences Longawal, Maharashtra. This was attended by 200 participants from various pharmaceutical colleges and pharmaceutical Industries.
3. JJ College of Art and Science Pudukottai, Tamil Nadu on January 19, 2005. This workshop was attended by more than 110 teachers and students from 13 different colleges in an around Pudukottai
4. Fourth workshop organized in Association with Ministry of SSI at Surat on January 20, 2005. It was attended about 100 participants from SSI sector.
5. Patna in association with Ministry of SSI on January 28, 2005
6. Mumbai University, Mumbai on January 31, 2005 in association with S&T Cell of Maharashtra Govt.
7. Manonmanium Sundernar University, Tirunelveli on February 18, 2005 in association with State Council for Science & Technology, Chennai.
8. Raipur in association with SSI on February 24, 2005.
9. Guru Ghasidas University, Bilaspur on March 1, 2005.
10. Kanpur in association with SSI on March 9, 2005.
11. Post Graduate Institute of Medical Science, Kolkata in association with PIC Kolkata on March 16, 2005.



(Workshop in Gwalior)

12. Defence Research Development Establishment (DRDE), Gwalior on March 18, 2005 in association with Patent Information Centre, Bhopal.



(The PIC Family)

13. Goa on March 20th in association with Patent Information Centre, Goa.
14. Rudrapur in association with Ministry of SSI, on March 22, 2005. It was attended by about 90 participants from SSI sector.

I PIC Meeting

Seventh Interaction Meeting of Patent Information Centre was organized at Thiruvanantha-puram from March 9-11, 2005. It was coordinated by Patent Information Centre (PIC), Kerala. The special session on IPR was organized and Hon. Chief Minister of Kerala Shri Ooman Chandy inaugurated.

I Patents/GI filed/granted

- (a) One PCT application filed by PFC has entered in National Phase in USA.
- (b) One patent has been granted in China
- (c) One application for geogra-phical indication (GI) on Phulkari was filed through PFC in the name of Punjab Small Industries and Export Corporation with the help of PFC and PIC.
- (d) Three patent applications have been filed in India
- (e) 10 new patent applications were filed by PFC in the name of DRDO.

Please send us questions and topics you would like to see in the coming issues

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- Case Law
- Design Registration

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Technology Information, Forecasting and Assessment Council (TIFAC)
Department of Science and Technology (DST)
'A' Wing Vishwakarma Bhavan, Shaheed Jeet Singh Marg, New Delhi - 110 016
Tel.: 26967458, 55692986, 26592802 Fax: 26863866
e-mail: tifac@nda.vsnl.net.in website: www.indianpatents.org.in and www.tifac.org.in

Editor: R. Saha, Director, PFC

Bulletin Team : Sangeeta Nagar & Yashawant Dev Panwar

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Telefax: 2638 4567, 2638 9593 e-mail : reliantpress@yahoo.com

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