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INTELLECTUAL PROPERTY RIGHTS (IPR)

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The Changing Positions in Law - the Ayahuasca Patent

Banisteriopsis cappi is a plant known to indigenous tribes in and around the Amazon Basin for centuries and the plant is used to produce a ceremonial drink known as 'ayahuasca'. This plant is known and cultivated by the tribes throughout the South American rain forest for religious and medicinal purposes. Indigenous people have characterised the ayahuasca vine as a religious symbol. The Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA), an umbrella group representing about 400 indigenous tribes of the region came to know in 1994 that a US plant patent was granted to one Loren S. Miller in 1986 for a new and distinct Banisteriopsis cappi plant which he named Da Vine. "Learning that Miller intended to install a pharmaceutical laboratory in Ecuador to process ayahuasca and other plants, they further feared that a bilateral intellectual property reciprocity agreement on the verge of approval between the United States and Ecuador would force indigenous people of the Amazon to recognize Miller's proprietary rights over their sacred plant." (Source : USPTO Rejection of the Ayahuasca Patent Claim- Background and Analysis by Glenn M Wiser, Centre for International Environmental Law; www.ciel.org). This led to some very interesting developments.

A request for reexamination of the above patent was filed by the COICA, the Amazon Alliance for Indigenous and Traditional Peoples and the Centre for International Environmental Law (CIEL) on March 30, 1999. The request was based on the following arguments :-

a) Da Vine was neither new nor distinct.

b) The medicinal and morphological property characteristics were well within the normal variation of plants of the species. The characteristics described in the patent were widely known.

c) Da Vine could not be patented as it is found in nature in uncultivated state.

The patent specification lists out many characteristics which make Da Vine different from the typical B. cappi plant. The plant was discovered by and caused to be asexually reproduced from cuttings by Mr Miller. It was claimed that the plant was found growing in a domestic garden in a rain forest of South America. The parentage of the plant could not be determined and it was assumed that it was apparently a chance seedling. *(An event for which no one could possibly take the credit.)* One of the major differences relate to flower petals of this plant which are rose coloured fading to white with age; the petals in a typical B. cappi plant are pale pink fading to pale yellow. The other important differences relate to leaves sizes, shapes and texture, size of pedicels and pubescency. The only claim of the patent reads "The new and unique Banisteriopsis cappi plant substantially as described and illustrated."

It has been reported that the USPTO rejected the claim on the basis of accessioned specimen sheets from the Field Museum in Chicago showing specimen of B. cappi whose major defining feature was colour indistinguishable from that of Da Vine. These sheets were known and available in USA more than one

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year prior to the filing of the patent application. Apparently, USPTO focussed on the distinguishing feature of the flower and therefore, it came to the conclusion that Da Vine did not have any novelty and hence rejected the claims. This happened on November 3, 1999. (Source: US Cancels Patent on Sacred Ayahuasca Plant, Environmental News Service, Washington DC, Nov 5, 1999) It is reported that Ecuador did not go ahead with the bilateral agreement on IPR with USA after these facts came to light.

However, this was not the end of the story. Mr Miller must have filed a counter affidavit, within the stipulated time, opposing the decision of the USPTO. This time the USPTO came up with a different decision stating " As a result of reexamination, it has been determined that the patentability of claim 1 is confirmed." The reexamination certificate to this effect was issued by the USPTO on April 17, 2001. This decision is diametrically opposite to the earlier decision. Strange as it may appear, the USPTO changed its decision within two years of the earlier decision. Will it be the final decision acceptable to all the parties? No one can say at this point of time. The COICA, the Amazon Alliance for Indigenous and Traditional Peoples and the CIEL have the freedom to go to higher courts including the Supreme Court of USA against the decision of USPTO. Does it mean that one has to always go to the ultimate authority i.e., the Supreme Court to get a final and an unassailable decision? Historically speaking, some decisions of USPTO had been overruled by the US Supreme Court at least on two earlier occasions. These decisions created a completely new trend in patenting. These two well known cases relate to patenting of microorganisms and patenting of software. In both these rulings the opinion of the bench was not unanimous; it was divided in the ratio of 5:4 in a bench of nine judges. It is also a matter of interest and concern that courts' rulings do not find complete support within its own setup but the rulings, nonetheless, become the law of the land. One further wonders if the system of examination and reexamination which is expected to be technically very sound, suffers from some inherent problems as observed from time to time.

The COICA and other agencies would certainly be studying if they had really produced extensive and reliable documentation and evidence, to establish that Da Vine did not have any novelty. It is quite likely that the 400 odd tribes, if exposed to the issue and the problem explained to them, could produce new evidence and perhaps succeed in locating many Ayahuasca plants, in the rain forest, identical to the patented plant.

This patent raises a number of fundamental issues regarding patentability of something, which is already known in the public domain or found in nature. The process of exhaustion adopted in this case appears to be full of conceptual inconsistencies and perhaps based on the logic of convenience rather than on data and rationale. One obvious question that comes to mind is how one could be sure that, in such a huge and expansive rain forest only one plant was the result of a chance seedling. In fact, locating such a plant is also a matter of chance and in this particular case the element of human intervention would need to be established carefully. Will the argument of novelty be valid if identical plants are found elsewhere in these forests? Although the naturally occurring plant has been declared to be the result of some chance seedling, yet it remains a product of nature. Most developing countries have been contesting the patenting of products of nature. It is very firmly believed by these communities that the human race has used the process of differentiation and selection in identifying and cultivating those plant varieties, which are useful to the human race. There is an inherent faith and understanding that such plants are provided by the nature and therefore should be available for the benefit of the humanity. It is the same logic of universal benefit, which has kept the scientific theories and principles outside the realm of patentability. The final question remains - should an exclusive right be given to an individual just for locating something in the nature for the first time? Can't such products of nature be treated with the same logic as applied to scientific principles, for the purpose of patentability?

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Case Study

Nuclear Reactor Piping Inspection

The present case study deals with a patent granted in the United States of America in November 1999 and assigned to General Electric Company. The patent is granted for assemblies and methods for inspecting piping of a nuclear reactor.

Nuclear reactors have many piping systems, and such piping systems are utilized, for example, to deliver feedwater to the reactor pressure vessel (RPV) and to deliver steam from the RPV to a power generator. Numerous pipes are typically located within the RPV and sometimes are located in crowded spaces with many other pipes and other reactor equipment.

Over the life of the reactor, the piping systems are inspected to verify their integrity. Based on such inspections, the piping systems may be modified, upgraded, repaired or replaced.

To inspect pipes within the RPV, ropes and poles typically are utilized for manual manipulation of simple tools or manual delivery of dedicated automated tools. More specifically, and during reactor shut down, an operator typically stands on a bridge positioned over the open RPV and using ropes and poles, which may extend more than thirty feet below the bridge into the RPV, the operator positions cameras used to visually inspect the RPV piping. After visually inspecting the RPV piping, the operator conducts a supplemental ultrasonic examination (UT) to more thoroughly examine the piping and to verify the extent of any cracks identified visually.

Due to the amount of piping to be inspected during reactor shut down, performing visual inspection and UT can be time consuming. Reducing the amount of time required to perform such inspections and repairs also would facilitate reducing the operator radiation exposure per task.

Summary of the Invention

The present invention deals with an automated inspection assembly, which includes a remotely operated vehicle (ROV) coupled to a mounting subassembly and a scanning subassembly controllable by a computerized motion control system. In one embodiment, the mounting subassembly includes a clamp configured to be mounted to selected pipes within the RPV, and the scanning subassembly is movably coupled to the mounting subassembly. The scanning subassembly includes a scanning head configured to perform an ultrasound inspection of the piping. The scanning head is configured to scan at least a portion of the circumference of the pipe to be inspected, and the scanning head includes a substantially "U" shaped transducer support assembly, and transducers are coupled to the ends of the transducer support assembly legs.

In operation, the remotely operated vehicle is controlled to transport the mounting and scanning subassemblies to the pipe to be inspected, and the mounting subassembly is mounted to the pipe. The scanning head is positioned proximate the portion of the pipe to be inspected so that the pipe extends through the legs of the transducer support assembly. The transducer support assembly is then rotated about the pipe to inspect the integrity of the pipe.

The above described automated inspection assembly is particularly suitable for use in nuclear reactor applications and is easy to install and controllable for forming high quality piping inspections. The assembly also may be operated from a remote location other than the bridge.

Fig. 1 explains the basic features of the inspection assembly coupled to a pipe 12 and positioned to inspect a first area 14 of pipe 12. The assembly has a mounting sub assembly 16, scanning sub assembly 18. Mounting subassembly 16 includes a support element 20, or x-axis tube, and a coupling element 26. X-axis tube 20 is coupled to a clamp 28, which is removably coupled to a segment 30 of pipe 12. X-axis tube 20 also is configured to rotatably couple to a remotely operated vehicle (not shown in Fig. 1). Coupling element 26 is movably coupled to scanning subassembly 18 and x-axis tube 20.

Scanning subassembly 18 includes a scanning arm 32, or y-axis tube, and a scanning head 34. Scanning arm 32 is slidably coupled to coupling element 26 of mounting sub-assembly 16. More particularly, scanning arm 32 extends through an opening (not shown in

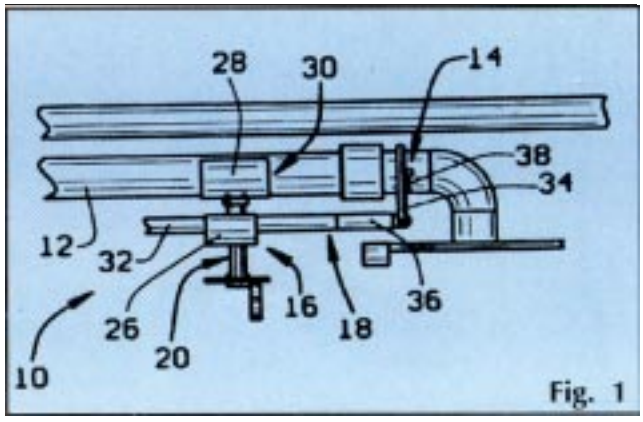

Fig. 1

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Case Study

Fig. 1) in coupling element 26.

Scanning head 34 is substantially "C" shaped and is movably coupled to an end 36 of scanning arm 32. Particularly, scanning head 34 is pivotally and rotatably coupled to end 36 of scanning arm 32. Scanning head 34 includes a transducer support assembly 38 for performing inspections. When inspecting pipe first portion 14, for example, scanning head 34 extends substantially transversely with respect to scanning arm 32.

Fig 2 is a perspective view of a remotely operated vehicle (ROV) 100 utilized in accordance with one embodiment of the present invention. ROV 100 includes four propellers 102 which are coupled to a cage element 104 and are positioned to facilitate steering ROV 100 through water, e.g., the water in a reactor pressure vessel of a boiling water reactor. ROV 100 also includes a buoy element 106, which provides ROV 100 with positive buoyancy, and a video camera (not shown in FIG. 2). ROV 100 is electrically coupled to a remote workstation (not shown), and is configured to transmit video signals from the video camera to the workstation. ROVs are well known.

Claims

The invention has 16 claims in all. Claim 1 is reproduced below :

1. An automated inspection assembly for inspecting a pipe of a nuclear reactor, the pipe having a circumference, said assembly comprising :

a mounting subassembly comprising a support element, a coupling element movably coupled to said support element, and a clamp configured to mount said assembly to the pipe, said clamp coupled to an end of said support element, said coupling element movable along said support element and

a scanning subassembly coupled to said mounting subassembly, said scanning subassembly comprising a scanning arm and a scanning head configured to scan at least a portion of the pipe circumference, said scanning arm movably coupled to said coupling element, said scanning head movably coupled to an end of said scanning arm.

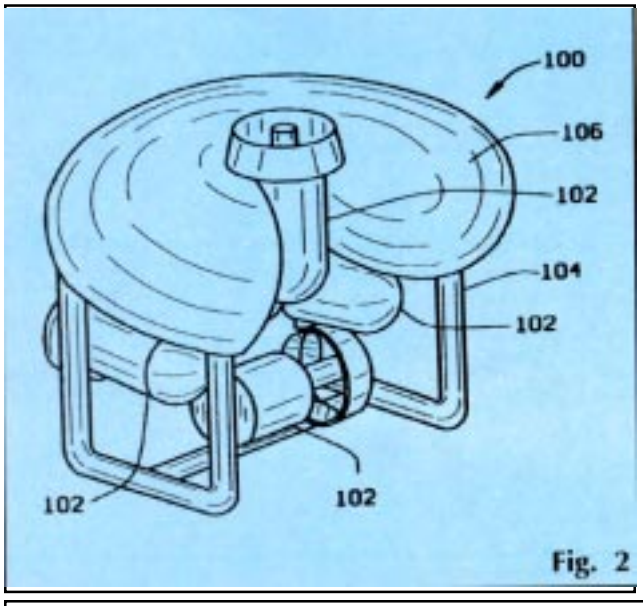

Fig. 2

Case Law

A Domain Name Dispute

The present domain name dispute was fought between Tata Sons Ltd and the Advanced Information Technology Association, Mumbai and decided by the WIPO Arbitration and Mediation Center under the Uniform Domain Name Dispute Resolution Policy in favour of Tata Sons Ltd. The Advanced Information Technology Association, Mumbai had registered a domain name tata.org about three years back although it had not been activated as yet. In response to this the complainant i.e. Tata Sons Ltd filed this complaint with WIPO Arbitration and Meditation Center on February 19, 2000. The respondent i.e. The Advanced Information Technology Association did not choose to contest the complaint and so the respondent was proceeded ex-parte. The suit was thus decided in favour of Tata Sons Ltd, as under the Uniform Domain Name Dispute Resolution Policy if the respondent does not submit a response, in the absence of exceptional circumstances, the panel shall decide the dispute based upon the complaint.

In this case, the WIPO Centre held that the trade name TATA is a well known trade name associated with a number of quality products and known to almost every section of the society. Moreover, the respondent belonged to the same city as that of the complainant which implies the respondent was well aware about the reputation of the TATA Group. The act of the respondent to have the domain name as tata.org was intentional and not based on ignorance. The WIPO Centre further concluded that the registration of the domain name tata.org is a "bad faith registration" as potential customers would be induced to believe that the website has been licensed to authorised agency by the complainant.

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Patent Litigation Watch

1. Tyco International Ltd and Johnson & Johnson have agreed to settle all pending patent litigation between their respective U S Surgical Corporation and Ethicon Endo-Surgery Inc companies. No money has changed hands between the parties in this settlement and each company has agreed not to assert these and other patents against any of the other company's products currently on the market. This settlement brings to close three separate patent lawsuits between the parties involving a variety of surgical mechanical instruments.

2. SGI and NVIDIA have settled patent litigation by creating a broad strategic alliance and licensing each others' patent portfolios. SGI has dismissed its patent infringement suit against NVIDIA and in return NVIDIA has licensed SGI's enabling 3D graphics patent portfolio. Also SGI has licensed NVIDIA's patent portfolio. SGI is a recognized leader in 3D graphics and has been awarded more than 400 patents related to these technologies. NVIDIA Corp is the world's leading supplier of performance 3D graphics processors.

3. Fonar Corporation has announced the resolution of the patent infringement suit between Fonar and Shimadzu. The suit is related to a US Patent No. 4,871,966 issued to Fonar in 1986. Under the agreement, Shimadzu has agreed to pay royalties to FONAR in exchange for Shimadzu being granted a license under patent 4,871,966.

4. ST Microelectronics and Atmel Corporation have settled their pending patent litigation law suits by entering into broad patent cross-license agreement.

5. Bayer Corporation and Chronimed Inc, jointly announced the settlement of their patent litigation in the Federal District Court concerning urine test strips. Chronimed filed suit against Bayer seeking a declaration that certain Bayer patents were invalid and not infringed by Chronimed's DIASCREEN (R) urine test strips. Bayer, on behalf of its Diagnostics Division, countersued, charging Chronimed with infringement of the Bayer patents. Under the settlement, Bayer's leukocyte patents remain in force and each party will continue to market its own product.

6. The Delhi High Court has given a ruling in favour of William Grant & Sons Ltd against McDowell & Co Ltd. William Grant had filed an action to restrain McDowell from copying the trade dress of GLENFIDDICH Single Malt Whiskey which it had been exporting to India since 1978 in a green bottle and black cylindrical cartons bearing label with a distinctive trade dress and unique features. McDowell was also using a label with similar trade dress. The Delhi High Court granted an interim injunction restraining McDowell from imitating the style & colour scheme of grant on whiskey bottles.

7. Biocon India Ltd has filed a legal suit against TransCorp and seven of Biocon's former employees working for the company. Since a year ago several employees of Biocon left the company giving flimsy reasons and joined TransCorp. These employees started disclosing Biocon's proprietary information to TransCorp. When somehow Biocon came to know about this, it filed the suit and obtained a temporary court injunction against TransCorp Technologies from disclosing Biocon's proprietary information to any person or public.

8. Ranbaxy Laboratories has obtained an interim injunction against Wilmark Pharmaceuticals from manufacturing and marketing its analgesic drug, Fortwil, which resembles Ranbaxy's analgesic drug, Fortwin. The Delhi High Court has restrained Wilmark Pharmaceuticals from manufacturing marketing, advertising and dealing in pharmaceutical preparations under the impunged trade mark Fortwil or any other mark identical with or deceptively similar to Ranbaxy's trade mark Fortwin.

9. A domain name grabber who had registered 22 internet domains with the intention to sell them to the respective trademark owners or other interested parties was found guilty of trademark infringement under the German Trademark Act. The German District Court of Munich has convicted him of blackmail under the criminal code and has sentenced him to one year and ten months imprisonment.

10 The publisher of the New York Times has been awarded the right to the internet domain name www.newyorktimes.com by a United States arbitrator. The domain name had earlier been taken by a company called New York Internet Services registered in 1996.

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Patent Litigation Watch

11. The decisions of the suits relating to patents, trademarks and designs of New Zealand can now be accessed through the Intellectual Property Office of New Zealand site: www.iponz.govt..nz.

12. The Tokyo District Court has ordered a preparatory school for law students to pay 85 million yen as damages to Adobe Systems Inc, Microsoft Corp and Apple Computer Inc for using illegally copied software.

PFC on the move...

• The 100th workshop on IPR was organized on June 29, 30, 2001, at New Delhi. The two day workshop covered the emerging issues of IPR and its implications on the R&D work carried out in India. A total of 250 scientists, technology managers, policy makers, patent experts and professionals and other officials from academia, industry, government departments and consultancy organizations attended the programme. This is for the first time that any single agency in India has succeeded in conducting 100 workshops in the country on IPR and that too within a short span of time. The expert faculty who delivered lectures during the workshop included Dr. P. Ganguly, Advisor Vision-IPR Consulting, Mumbai, Shri S. Majumdar, Patent Attorney, S. Majumdar & Company, Kolkata, Shri A.R.Lall, Patent Attorney, Lall Lahiri & Salhotra, New Delhi, Shri M. K. Rao, Kamath & Kamath, Chennai, Shri H.Subramaniam, Patent Attorney, Subramaniam Natraj & Associates, New Delhi, Shri D. C. Gabriel, Patent Attorney, Kumaran & Sagar, New Delhi, Shri Shanti Kumar, Patent Attorney, Anand & Anand, New Delhi, Ms. Pratibha Singh, IP Attorney, Singh & Singh, New Delhi, Dr. Suman Sahai, Gene Campaign, New Delhi and Shri R. Saha, Adviser DST and Director PFC.

A technical session comprising talks by inventors who had taken technical and financial support for filing of patent applications in India and other countries was one of the highlights of the 100th workshop. The presentations by the inventors covered how they went about patenting their inventions through PFC and served as examples for other scientists to emulate. Dr G. D. Yadav of University College of Chemical Technology, Mumbai, Dr I. Ibnu Saud of Mahatma Gandhi University, Kottayam, Dr S. P. Ambesh of Sanjay Gandhi P. G. Institute of Medical Sciences, Lucknow and Prof. S. K. Panda of All India Institute of Medical Sciences, New Delhi shared their experiences with the audience.

The 100th workshop also was an occasion for PFC to release new IPR products namely a special study entitled "Electric Vehicle Battery - A Patent Perspective" and the CD-ROM version on "Patents Made Easy". The translated versions of the IPR documents in Bengali, Hindi and Punjabi brought out by the by the Patent Information Centres (PICs) in West Bengal, Jaipur and Punjab, respectively, were also released on the occasion.

(Prof. V.S. Ramamurthy, Secretary, Department of Science and Technology, Govt. of India, releasing the Hindi version of the IPR documents during the 100th workshop of PFC)

An exhibition showcasing the products / process based patents filed with technical and financial support from PFC was conduced along with the 100th workshop.

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PFC on the move...

- A patent entitled "Method of organogenesis and tissue regeneration/repair using surgical techniques" was granted in USA to Maulana Azad Medical College, Delhi in May, 2001. The technique allows to form organs from own body cells and hence would not have the problems associated with organ transplantation. The technique is also expected to be very cost effective and hence useful for all sections of society-rich and poor. A press conference in this regard was called by Dr. Murli Manohar Joshi on June 7, 2001. The application for patent was published by PFC in 1997. It may be noted that such surgical techniques are not patentable in India and many other countries.

- Three more patent awareness workshops were organized in June-July, the first one at the Indian Space Research Organization (ISRO) on June 6, the second one at the Sophisticated Test & Instrument Centre, Cochin University, Cochin on July 17 and the third one at Banasthali Vidhyapith, Banasthali on July 27. The workshops were attended by more than 300 scientists and technologists.

- Nine patent applications were filed during the period, including two filings abroad.

Patent Filing in China through PCT

The general requirements for entry into national phase of China Intellectual Property Office (CIPO) for a PCT application in which China has been designated are presented. One copy of the PCT application written or translated into Chinese must reach the CIPO within 20 months from the priority date if the applicant has decided to enter into the national phase after search report or within 30 months from the priority date if the applicant has decided to enter into the national phase after the examination report. The patent application covering the description, claims, abstract, any text matter of drawings, amendments, if any must be translated into Chinese. A copy of the international application should be sent by the applicant only in case if he/she has not received form PCT/IB/308 and the Chinese Patent Office has not received a copy of the international application from the International Bureau.

International application can be filed in Chinese or English language. Chinese Patent Office serves as the Competent International Searching Authority and Competent International Preliminary Examining Authority. Any agent from the patent agencies designated by the Office can act as a patent agent.

In certain cases there are exemptions and reduction of the national fee. These cases are as follows:

1 No application fee is payable if the international application has been field with the Chinese Patent Office as receiving Office

2 The examination fee is reduced to CNY 960 where an international search has been carried out by the Japanese Patent Office, the Swedish Patent Office or the European Patent Office.

3 The examination fee is reduced by 50% where an international search has been carried out by the Chinese Patent Office.

4 No examination fee is payable if the international preliminary examination has been carried out by the Chinese Patent Office.

Under the special requirements of the Office, the major ones include two copies of translation, evidence concerning exceptions to lack of novelty if applicant has claimed such exceptions in respect of an international application, name of the inventor if it has not been furnished in the 'Request' part of the international application, instrument of assignment of the priority right where the applicants are not identical and the instrument of assignment of the international application if the applicant has changed after the international filing date.

Chinese Patent Office also provides for short term patent based on an international application designating China and seeking protection for a utility model. The level of inventiveness required for a short-term patent

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Patent Filing in China...

is the same as that for a standard patent. The term of a short-term patent is shorter than for a standard patent. It shall remain in force for a period of eight years from the international filing date, subject to payment of the renewal fee.

The fee structure after entry into National Phase in China in Yuan Reminbi is as follows:-

Patents	
Application fee	490
Fee for priority claims, per claim	80
Special fee (see paragraph CN.08)	300
Maintenance fee	300
Examination fee	1,200
Annual Fee	
- for the 1st to the 3rd year, per year	600
- for the 4th to the 6th year, per year	900
- for the 7th to the 9th year, per year	1,200
- for the 10th to the 12th year, per year	2,000
- for the 13th to the 15th year, per year	4,000
-for the 16th to the 20th year, per year	8,000
Fee for restoration of application	300
Patent registration fee (must be paid within 2 months from the receipt of the notice of the grant of the patent)	205
Utility models	
Application fee	300
Fee for priority claims, per claim	80
Patent registration fee	155
Annual fee for the 1st to the 3rd year, per year	300

World Intellectual Property Organization Arbitration and Mediation Center

The WIPO Arbitration and Mediation Center, founded in 1994, administers various dispute resolution services for the settlement of commercial disputes between private parties involving intellectual property. The Center is international, independent and neutral and is assisted in its operation by advisory bodies composed of external experts in international dispute resolution and intellectual property. It is assisted in its work by a Consultative Commission and the WIPO Arbitration Council, both comprised of leading experts in cross-border dispute resolution. The Center is administratively part of the International Bureau of the World Intellectual Property Organization.

The Center makes use of arbitration, conciliation and or mediation for settlement of disputes between the parties involved. The Center regularly organises conferences, seminars and training programmes on the subject of arbitration and mediation of intellectual property disputes.

The Center's role extends to six main functions:

- Upon the commencement of an arbitration, it is for the Center to ensure that the arbitral proceedings get under way smoothly and that the Tribunal is established as required. In particular, at this stage, the Center
  - processes the written statements and other communications by the

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Domestic News

National Chemical Laboratory (NCL), Pune has been awarded a US patent (No. 5, 994, 533) for developing a process for the recovery of value added products from tamarind. NCL has also filed four patents based on tamarind.

(Business Standard, 1 June 2001)

During the first meeting of the state nodal officers on enforcement of copyright law, organized by the Ministry of HRD, the Centre has advised the state government to set up copyright enforcement advisory councils for better enforcement of the copyright laws. The Centre has set up the advisory councils to review periodically the progress on the enforcement of the Copyright Act.

(Business Standard, 19 June 2001)

JB Chemicals & Pharmaceuticals Ltd has filed patent application in US and South Africa for new chemical entities (NCE) with anti-inflammatory action and therapeutic properties. The patent claims new compounds as well as the process for their manufacture. Pre-clinical tests of these compounds on animals have shown promising results for their use in inflammatory joint disorders.

(Business Standard, 19 June 2001)

The Joint Select Committee set up in December 1999 to study the Patents (Second Amendment) Bill, 1999 is likely to suggest that Indian companies be allowed to copy and export

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World Intellectual Property...

parties up until the establishment of the Tribunal,

- appoints, in accordance with the provisions of the Rules, where the parties themselves do not do so or where an arbitrator is not appointed within the applicable time limit, the arbitrator,
- determines the fees of the arbitrator.

- The Center monitors compliance with certain prescribed time limits. In particular, it has the power, under the Rules, to extend certain time limits. In addition, the Rules require the Tribunal to give a status report to the Center where the arbitration proceedings are not declared closed or the award not rendered within certain designated time periods.
- After the establishment of the Tribunal, the Center may be called upon to take certain decisions which it is either impossible or inappropriate for the Tribunal itself to take, notably decisions on the challenge, release or replacement of an arbitrator. Such decisions will be referred by the Center to an ad hoc committee of the WIPO Arbitration Consultative Commission for an opinion. The parties are notified of the composition of the committee of the WIPO Arbitration Consultative Commission to which the decision is referred for opinion.
- The Center will, where the parties so desire, arrange for administrative support services for the arbitration, in the form of hearing rooms, retiring rooms for the parties, recording equipment, interpretation and secretarial assistance. Where the arbitration is held at WIPO, the hearing and party rooms are provided free of charge. A charge is made for the provision of other services, such as interpretation, translation or secretarial assistance, which is separate from the Center's fees for administering the arbitration (see below).
- The Center requires the payment of an advance deposit from each party in respect of the costs of the arbitration, administers payments under those deposits and accounts to the parties on the deposits at the conclusion of the arbitration. Interest accruing on deposits administered by the Center is credited to the parties.
- The Center processes the award rendered by the Tribunal.

Two kinds of fees are payable to the Center in respect of an arbitration administered by it. The first is a registration fee, and the second is the administration fee.

Industries and organisations who need the services of the Centre may approach at the following address: WIPO Arbitraion and Mediation Center, 34, chemin des Colombettes, Geneve 20, Switzerland, CH-1211.

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Domestic News

patented drugs to the countries which do not recognise product patents. Other alterations include more stringent conditions for compulsory licensing and an extension of the period during which companies can conduct research on patented drugs. This shall help developing countries by providing them access to low-cost drugs.

(Business Standard, 10 June 2001)

To ensure affordable access to essential medium and life - saving drugs, the government has sought greater flexibility and clarity in the interpretation of the TRIPS Agreement of the WTO. This issue was discussed at a special session of the TRIPS Council of the WTO in Geneva in June. A number of developing countries including India, the African group of countries, Brazil, Pakistan, Srilanka, Indonesia, Thailand, Venezuela and the Philippines jointly submitted a paper on public health to the council. The paper demanded that the WTO should ensure that the TRIPS Agreement does not undermine the right of the WTO members to formulate their own public health policies and adopt measures for providing affordable access to medicines. The paper also seeks the need for a clear distinction to be made between the exclusive rights of the patent holders for medicines for life threatening diseases on the one hand and beauty enhancing and cosmetic drugs on the other.

(Financial Express, 22 June, 2001)

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Fourth WTO Ministerial Conference

The Ministerial Conference is the topmost decision making body of the WTO. The Ministerial Conference can take decisions on all matters under any of the WTO Agreements. It is supposed to meet at least once every two years. Earlier Conferences were held at Singapore (1996), Geneva (1998) and Seattle (1999). The Fourth WTO Ministerial Conference will be held in Doha, Qatar on November 9-13, 2001.

Countries are busy preparing their positions for this round but very clear indications are not yet available in this regard. However, some countries have started giving pointers. The inclusion of trade related aspects of intellectual property rights in the Uruguay Round is considered a major breakthrough in multilateral trade rules by developed countries. EC is reported to be keen on a new round for the TRIPS Agreement as it considers TRIPS to be a dynamic instrument. It is against any lowering of standards or granting of further transitional periods to developing countries. It appears that there was some debate in the Uruguay Round regarding systems for filing patent applications viz., 'first to invent' and 'first to file'. There may be discussions on this issue although it is a minor matter now. Many new initiatives have been taken outside the WTO framework in some areas of intellectual property, for example, database treaty, related rights in copyrights etc. which are important in the context of information society. These may also come up for discussions.

The National Foreign Trade Council of USA is reported to have recommended that tariffs on industrial goods should be reduced to zero. It also wants that market access barriers to farm goods and other services should be minimized or completely eliminated. There is a move in USA to set up a Trade Promotion Authority (TPA) through a legislative frame work which would enable the president to negotiate trade treaties that could not be amended by Congress but only approved or rejected by a yes or no vote. It appears that the TPA bill may specify some guidelines for negotiations like violation of labour safeguard may lead to trade distortions.

Last year the WTO General Council established a special mechanism to address developing country concerns about their difficulties in implementing existing WTO agreements. Australia feels that these can be best addressed in a new round of trade negotiations. The argument being advanced is that by having trade barriers the world will gain US $ 400 billion annually; developing countries will stand to benefit maximum in proportion to GDP. *(The statement needs to be carefully evaluated).* It also would appear that WTO may take some initiatives on capacity building and technical assistance to enable developing countries to implement the WTO agreements.

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Domestic News

A US patent (No. 6, 200, 453) has been awarded to Dr Rajeev Agarwal, a scientist from Mumbai, for an anti-corrosion technology. The electroplating technology totally shields the base metal form contact with the corroding environment. This technology could save the ship building and defense industries million of dollars every year.

(The Indian Express, 12 June 2001)

Human Resource Development (HRD) Ministry has embarked on a serious campaign to educate Indians about intellectual property rights. Courses on IPRs are being introduced in universities and other institutions of higher learning. The government has formulated schemes to provide funds to educational institutions for study and research on IPRs. Five Chairs on IPRs studies have already been instituted in the universities of Delhi, Pune, Allahabad, Chennai and National Law School, Bangalore. More Chairs on the same shall be set up soon.

(The Hindustan Times, 13 July, 2001)

A patent has been obtained in India for a reusable space plane, Avatar. The space plane project has been undertaken by retired air CMDE Raghavan Gopalaswami, also the former chairman of the Bharat Dynamics Limited. Avatar can be relaunched 100 times and produces its own fuel in light.

(The Telegram, 12 July 2001)

Contd on...11

Do not publish your invention before filing a patent application

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Domestic News

The Cabinet has approved the Instrument of Accession of the Budapest Treaty. The treaty, will be signed and deposited with Director-General WIPO.

(Business Standard, 19 July 2001)

The Indian pharmaceutical industry has sought introduction of a provision stipulating compulsory licensing in the Patent Act for local manufacturing of patented drugs, as high-priced life-saving drugs will flood the domestic market after 2005. Indian Pharmaceutical Alliance has given a letter to the chairman of the Joint Select Committee of parliament seeking compulsory licensing of drugs in India and to bring the country's intellectual property laws in line with TRIPS.

(Financial Express, 31 July 2001)

The newly modernized Delhi Patent Office was inaugurated by Commerce and Industry Minister, Shri Murasoli Maran on July 25, 2001. A new identity has been created for intellectual property offices with a new logo. The office is in the process of recruiting 132 examiners of patents for the purpose. The patent granting procedure is being re-engineered to make it compatible with computerized environment and more user friendly.

(Financial Express, 26 July 2001)

The Commerce and Industry Ministry has turned down the Chemicals and Fertilizers Ministry's proposal to indicate the date of expiry of the patent on product packaging which would provide additional protection to the original patent holder.

(Financial Express, 20 July 2001)

Patents have been obtained in India, Bangladesh, China and US for a reversible male contraceptive developed jointly by the Indian Institute of Technology, Delhi and the All India Institute of Medical Sciences. The contraceptive - RISUG, an acronym for Reversible Inhibition of Sperms under Guidance offers several advantages over conventional vasectomy. RISUG, a combination of styrene maleic anhydride and dimethyl sulphoxide is injected into vas deferans because of which the sperm is rendered incapable of fertilization.

International News

The WIPO World Wide Academy (WWA) has launched an online distance learning course on intellectual property rights for students worldwide. The training is conducted on-line, in a specially equipped training laboratory at the WWA. The course content is presented via prescribed texts, case studies, audio files, self assessment questions, module summaries, end of module tests and a final exam, and students have access to tutorial support through their studies. Major areas of intellectual property including copyright, related rights, trade marks, geographical indications, patents, the PCT and the International registration system. Details about this course can be accessed from www.wipo.org.

Bristol-Myers Squibb Company has decided to buy DuPont Company's pharmaceuticals unit for $ 7.8 billion. Following patent expirations on three of its key medicines, Bristol-Myers has taken this step to boost the earnings after patent expirations. Bristol-Myers would obtain DuPont's pipeline of experimental drugs that are almost in the early-stages of human trials, including treatments for the HIV viruses, blood clots, rheumatoid arthritis, solid cancers and obesity.

(Business Standard, 9 June/ 10 June, 2001)

More than 110 patents for genes cloned from the main hormone secreting organ, hypothalamus - pituitary adrenal axis have been obtained by Chinese scientists. For the first time, Chinese scientists have identified the role genes play in producing hormone through large scale sequencing of the ESTs. They have cloned more than 300 new genes discovered through sequencing.

(WISTA IPR Biotechnology, Vol 2 Iss 12, June 2001)

A US patent (No. 6,228,922) has been issued to the University of Dayton Research Institute (UDRI) for a technology that helps manufacturers fabricate light and sturdy conducting polymers. The fabrication method involves immersing a polymer in a solution that contains an organic or inorganic salt such as copper,

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International News

silver, aluminum, gold, iron or nickel. The polymers have high electrical conductivity, show good thermal and thermo-oxidative stability, mechanical flexibility, durability and strength.

(High-Tech Materials Alert, Vol 18 No 7, July 2001)

A new second tier innovation patent system has been implemented in Australia. This system replaces the existing second tier petty patent system. It is designed to be particularly suitable for SMES. This system would be comparatively cheaper and quicker and the patent is also not examined substantively. Although novelty requirements will be similar as for standard patents, however, the usual inventive step requirement shall be replaced by innovative step.

Patents for Opposition

Readers may refer to the Patents Notified for Opposition for the months of April, May and June, 2001 in the Supplement annexed to this Bulletin.

(World Patent Information, Vol 23 No 2, June 2001)

According to a study conducted by Current Drugs Ltd for the period between 1995 and 2000, Glaxo SmithKline PLC has filed the highest number of biotechnology related pharmaceutical patents. The table below gives the list of the top 10 pharma companies along with the number of patents filed.

Company	Number of Patents
Glaxo SmithKline Plc	747
Incyte Genomics Inc	453
Avnetis SA	351
US Government	334
Roche Holding AG	306
Human Genome Sciences Inc	286
University of California	262
American Home Products	235
Merck & Co Inc	223
Chiron Corporation	184

(World Patent Information, Vol 23 No 2, June 2001)

US internet start-up BountyQuest is offering cash rewards to individuals who can invalidate a patent claim through this service. Companies looking for information to invalidate a patent claim can post their request anonymously on BountyQuest after registering and paying a registration fee.

Ecuador has become the 110th contracting state to accede to the Patent Cooperation Treaty. The treaty will enter into force on 7th May 2001.

The Japanese Patent Office shall now issue as many certificates as the number of right holders for the application registered in and after June 2001 in the fields of patents, utility models, designs and trademarks.

(Patent World, June/ July 2001, Issue 133)

United States has removed Singapore from the watch-list of intellectual property right (IPR) violators after acknowledging Singapore's progress in tightening enforcement on IPR violations.

(Copyright World, June / July 2001, Issue 111)

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

NEXT ISSUE

- **Case Study**
- **Case Law**
- **Patents for Opposition**

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