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INTELLECTUAL PROPERTY RIGHTS (IPR)

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Inventiveness reinvented by US Supreme Court

The US Supreme Court has been known to come up with radical decisions in matters related to patents and such decisions have, in fact, brought out new interpretation to patent laws in the USA. These decisions and interpretations have influenced the patent laws in many countries. For example, the famous decisions in respect of patentability of microorganisms and software are the landmark decisions which not only changed the perception about patentability but also brought out major changes in the concerned industries through new innovations and technologies. We had yet another decision, which upheld the patentability of plants, whether sexually or asexually produced, is likely to bring some changes in laws related to protection of plants. The most recent decision of the US Supreme Court in the case KSR International vs Teleflex Inc. has clarified confusions prevailing in regard to non-obviousness of an invention and also put forward some new ways to look at this issue.

The US Supreme Court gave this landmark decision on April 30, 2007. The infringement suit was filed by Teleflex against KSR International for infringing a patent of which Teleflex was the sole licensee (assignee). The said patent relates to computerized adjustable pedal system for controlling fuel supply (throttle) to the engine of an automobile.

The case is about a very commonly used device. In a conventional automobile a driver depresses or releases the gas pedal, to control the quantity of fuel to be delivered to the engine. The throttle

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Detection of peptic ulcer is no longer a difficult task

A US patent (6,479,278) was granted on November 12, 2002 which claims a novel device for detecting *Helicobacter pylori* considered responsible for peptic ulcers and gastritis. The patent was granted to Barry Marshall and Robin Warren from Australia who were awarded Nobel Prize in Physiology and Medicine in 2005 for their discovery of the bacteria *Helicobacter pylori* and its role in gastritis and peptic ulcers.

It has been discovered that many such gastrointestinal disorders are mediated by infection of gastric mucosa by *Helicobacter pylori*. *H. pylori* is a Gram-negative spiral organism which produces the enzyme urease. The organism is predominantly found beneath the mucus layer of the luminal aspect of the gastric epithelium and in the gastric pits. Earlier, peptic ulcers were supposed to have been caused by gastric hypersecretion, decreased resistance of gastric lining to digestive acids and pepsin.

Prior Art

Testing for gastrointestinal disorders has largely been through *in vitro* methods.

Marshall, 4,748,113 discloses compositions and methods for the diagnosis of gastrointestinal disorders involving urease. Methods include obtaining a gastric sample material and contacting the material with a composition including urease and an indicator. Marshall 4,830,010 discloses methods for the diagnosis of gastrointestinal disorders.

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Inventiveness

control is via a cable or other mechanical link. Because the pedal position in the footwell cannot be adjusted, a driver wishing to be closer or farther from it must either reposition himself in the seat or move the seat, both of which could be imperfect solutions for smaller drivers in cars with deep footwells. A regular adjustable pedal installed in the car would eliminate repositioning of the seat and such systems have been known to exist. In newer cars computer controlled throttles do not operate through force transferred from the pedal by a mechanical link, but open and close valves in response to electronic signals. For the computer to know what is happening with the pedal, an electronic sensor must translate the mechanical operation into digital data. Computer controlled throttles were known before the patent held by Teleflex was granted. One of the key issues during the debate was the location of the sensor to sense the movement of the pedal.

KSR International, a Canadian company, manufacturing and supplying auto-parts developed an adjustable pedal system for cars with cable actuated throttles and obtained a US design patent 6151976 in 1998. General Motors Corporation chose KSR to supply adjustable pedal systems for its trucks using computer controlled throttles. KSR utilized the '976 patent and added a modular sensor to its design for computer controlled throttle.

Teleflex is a competitor of KSR in this business of manufacturing and supplying adjustable pedal systems. Teleflex is the exclusive licensee of a patent granted to Engelgau entitled "Adjustable pedal assembly with electronic throttle control". (US Patent No 6237565). Claim 4 of the patent was the main point under consideration of the court. Claim 4 reads as follows:-

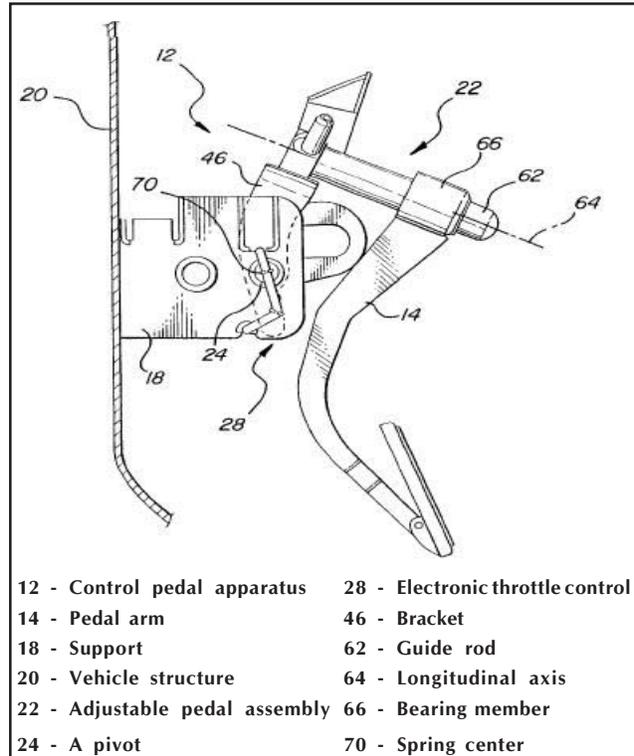
"A vehicle control pedal apparatus comprising a support adapted to be mounted to a vehicle structure;

an adjustable pedal assembly having a pedal arm moveable in fore and aft directions with respect to said support;

a pivot for pivotally supporting said adjustable pedal assembly with respect to said support and defining a pivot axis; and

an electronic control attached to said support for controlling a vehicle system;

said apparatus characterized by said electronic control being responsive to said pivot for providing a signal that corresponds to pedal arm position as said pedal arm pivots about said pivot axis between rest and applied positions wherein the position of said pivot remains constant while said pedal arm moves in fore and aft directions with respect to said pivot.



KSR countered that claim 4 of Engelgau patent was invalid as it did not satisfy the criterion of non-obviousness as stipulated in Section 103 in the US Patent Act which forbids issuance of a patent when "the difference between the subject matter sought to be patented and the prior art are such that the subject matter as a whole have been obvious at the time of the invention was made to a person having ordinary skill in the art." It is one of the rarest occasions that the highest Court in USA has decided a case predominantly around the basic issue of obviousness.

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Inventiveness

Teleflex had first approached the District Court which granted a judgment in favour of KSR. The Court heavily depended on the *Graham v. John Deere Co. of Kansas City* which set out an objective analysis for applying Section 103: The scope and content of the prior art should be determined, difference between the prior art and the claims at issue should be ascertained, and the level of ordinary skill in the pertinent art be resolved. Secondary considerations as commercial success, long felt but unresolved needs, failure of others etc. might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. The Court employed a “teaching, suggestion, or motivation” (TSM) test under which a patent claim is only proved obvious if the prior art, the problem’s nature or the knowledge of a person having ordinary skill in the art reveals some motivation or suggestion to combine prior art teachings. District Court in the present situation applied the TSM test and found little difference between prior art and Engलगau’s patent.

The Court of Appeals reversed the decision of the District Court on the grounds that it did not apply the TSM test properly.

The Supreme Court examined the judgments of two courts and also carried out a detailed analysis on how inventiveness or non-obviousness of a patent should be determined. The courts in USA have held for many years that a patent for a combination which only unites old elements with no change in their respective functions does not satisfy the requirement of inventiveness. (For example, if you put torch bulbs around an umbrella and operate them with the help of a battery so that people could see you walking in the rain in the night when it is dark, then this will not be treated as a patentable invention because old elements are so combined that they do not show any change in their respective functions). Similarly, the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield **predictable** results. The Supreme Court opined “When there is a *design need or market pressure to solve a problem*

and there are a *finite number of identified, predictable solutions*, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. *If this leads to the anticipated success*, it is likely the product not of innovation but of ordinary skill and common sense. *In that instance the fact that a combination was obvious to try might show that it was obvious under §103.*” The courts must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. *Granting patent protection to advances that would occur in ordinary course without real innovation retards progress and may, in the case of patents combining previously known elements deprive prior inventions of their value or utility.* The Supreme Court unanimously rejected the verdict of the Court of Appeals on following grounds:

1. The first error of the Court of Appeals was that it held that courts should look only to the problem the patentee was trying to solve rather than taking a larger view. It failed to recognize that the problem motivating the patentee may be only one of many addressed by subject matter of earlier patents. The Court of Appeals also applied the TSM criterion in a rigid manner and failed to take a broad view. The Supreme Court took a much larger view and opined that the obviousness inquiry could not be confined by a formalistic conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents and there was *no necessary inconsistency* between the idea underlying the TSM test and the *Graham* analysis. But when a court transforms the general principle into a *rigid rule that limits the obviousness inquiry*, as the Court of Appeals did in this case.
2. The Court of Appeals assumed that a person of ordinary skill attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem. Common sense however teaches, that familiar items may have obvious uses beyond their primary purposes.

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Inventiveness

3. The Court of Appeals concluded wrongly that a patent claim cannot be proved obvious merely by showing that the combination of elements was obvious to try.
4. The Court heavily relied on hindsight thinking and bias.

The Court took into consideration many patents as prior art documents while arriving at the above decisions. The prominent patents were US Patent Nos. 5,010,782; 5,460,061; 5,241,936 and 5,063,811. The Supreme Court was of the view that the Court of Appeals did not understand the fundamentals. It also declared that the District Court was correct to conclude that claim 4 was obvious to a person of ordinary skill to combine earlier patents on adjustable pedals. There existed a market, which created a strong incentive to convert mechanical pedals to electronic pedals. It has been stated that we build and create, by bringing to the tangible and palpable reality around us, new works based on instinct, simple logic, ordinary inferences, extraordinary ideas and sometimes even genius. These advances once part of our shared knowledge, define a new threshold from which innovations start once more.

TSM criterion has been followed by the Court of Appeals for the last 20 years in deciding issues related to obviousness (inventiveness). This is perhaps the first time, after the requirement of inventiveness was enacted in USA in 1952, that the Supreme Court looked into this matter in depth. Although it may appear that this case happened in USA and perhaps, the applicability of the decision would be limited to USA but, it may be reckoned that inventiveness generally has the same connotation, if not explicitly but certainly implicitly, in the scientific logic and manner of thinking. The following writing of President Jefferson would help one to understand the spirit behind the US patent law:-

“[I]f a new application of an old machine be a ground for monopoly, the patent law will take from us much more good than it will give. Perhaps, it may mean another thing, that while every one has a right to the distinct and separate use of the buckets, screw, the hopper boy, in their old

forms, the patent gives you exclusive right to combine their uses on the same object. But if we have right to use three things separately, I see nothing in reason or in the law, which forbids our using them all together. A man has a right to use a saw, an axe, a plane separately; may he not combine their uses on the same piece of wood? He has right to use his knife to cut his meat, a fork to hold it; may a patentee take from him the right to combine their use on the same subject? Such a law, in stead of enlarging our conveniences, as was intended, would most fearfully abridge them, and crowd us by monopolies out of the use of the things we have.” (Thomas Jefferson letter to Oliver Evans (January 16, 1814) in 14 Writings of Thomas Jefferson). (Ref. <http://patentlaw.typepad.com>).

The fall out of the above decision will be far reaching and may even bring about a paradigm shift in the patenting concepts in USA, if not in other countries of the world in the coming days. Among many possible effects would be a reduction in number of patents granted especially poor quality patents. An effect may also be felt in the jurisprudence of other countries and practices of many other patent offices. The width of interpretation of obviousness in different jurisdictions of other countries will depend on the new jurisprudence which those countries are likely to witness and the new jurisprudence would be a function of the social, cultural, economic, scientific, technological and political dimensions of the countries. The present case deals with physical object which can be seen and felt; therefore relatively easy to handle. In cases of chemicals, drugs, nano-particles and software, it would be difficult to arrive at such decisions quickly. A great degree of abstraction may be involved. The message is clear that routine variations in the prior art are not the subject matter of patent. If the test of patentability becomes lenient and allows routine variations on prior art to be patented anew, the public's free use of information in public domain is clouded by a new monopoly. Moreover, the public receives no value in the disclosure of minor variations of inventions already known and described.

The Indian Patent Act 1970 in its original form and in the amended form addressed similar issues upfront by prescribing exclusions from patentability of certain types of inventions. These exclusions would be in line with the above thought process.

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When employees become inventors!

A case law on inventions by employees

Legal confrontations take place between the employers and the employees about the ownership of the inventions that brew out of the work undertaken by the employees under the normal course of their duty. But sometimes there arise confusions around the fact that what does the normal course of duty comprise of. Recently a case has been decided in favour of an employer by the UK Court of Appeal. The case was fought between a company called Euronext-Liffe and an ex employee of this company, Dr Pavel Pinkava.

Case Facts

Dr Pinkava had developed a system and related inventions permitting the electronic trading of various financial instrumentation in July 2004. In April 2005 he filed four applications for US patents. With this started the suit between the employer Euronext-Liffe and the employee Dr Pinkava. Liffe being the employer claimed his rights over the confidential information relating to the systems and the patent applications based on it. On the other hand, Dr Pinkava submitted an application in the USPTO claiming to be the owner of the inventions.

Court Proceedings

The proceedings were heard in the High Court which first applied the three-limbed test derived from Section 39(1)(a) of the UK Patents Act 1977. According to this Act, “an invention made by an employee shall be taken to belong to his employer if:

- * It was made in the course of the normal duties of the employee; or
- * In the course of duties falling outside his normal duties, but specifically assigned to him; and
- * The circumstances in either case were such that an invention might reasonably be expected to result from the carrying out of his duties.

The given invention does not fall within the patentability criteria of UK and Europe but is

patentable in US, so it was treated as invention for the purpose of this Act. The Court opined that the inventions made by Dr. Pinkava were not made in the course of his “normal duties” but were instead made in the course of “specifically assigned duties” after he was asked to develop an exchange tradable credit derivative. Perhaps the invention had a wider application to the original task assigned to Dr Pinkava, it was related to and flowed from it.

Dr Pinkava took the matter to the UK Court of Appeal appealing against the decision that the inventions were made in course of his duties specifically assigned to him.

The Court of Appeal held that the Patents Court had not paid sufficient regard to the fact that a contract evolves over the course of time, nor to the fact it is unsafe to have regard only to the terms contained in an initial written contract of employment. Some duties not set out in Dr Pinkava’s employment contract had evolved over time to become “normal” and the Court of Appeal therefore concluded that the normal duties of Dr Pinkava did indeed extend to the design of such a system. Finally, the Court of Appeal agreed with the Patents Court’s finding that it was reasonable to expect that an invention might result from the carrying out of those duties by Dr Pinkava. The Court also held that if any invention was reasonably to be expected to result from the carrying out of an employees’ duties (whether normal or specifically assigned), then it belongs to the employer even if the particular invention in question had not been expected.

The most important point to be noted through this case, however, is that the Court adopted a much broader view of what constituted an employee’s ‘normal duties’ and said that evolved over time and were not limited to the strict scope of a written employment contract.

The above case has been decided at a time when IP policies are being finalized in many R&D institutes and universities and where a lot of stress is being given to employee’s right to compensation for contribution to patented inventions. For this reason employer should ensure that they have in place effective employee-inventor compensation/incentive schemes.

PFC on the move

PFC has opened an Intellectual Property Facilitation Centre (IPFC) at Indian Association for Cultivation of Science (IACS), Kolkata. The center will liaison with scientists from the three institutions, namely, IACS, Bose Institute and S. N. Bose Centre for Basic Sciences for understanding the IP potential/feasibility for their research programmes from the conceptualization stage. The center shall also aim to provide patent searching facility, advise and assist scientists in IP management, provide patent clinic facility, organise occasional training activities in the relevant field and encourage more and more scientists from the above institutions to enter into IP generation.

A patent awareness workshop was organised by PFC in association with PIC, Chandigarh at National Institute of Technical Teachers Training and Research (NITTTR), Chandigarh on May 17, 2007.



(Workshop in progress at NITTTR, Chandigarh)

Final update of Ekaswa-A and Ekaswa-B was brought out upto December 2004 on CD as well as on the website (www.indianpatents.org.in). As from January 1, 2005, Patent Office started publishing the data in the Official Journal in place of the Gazette of India, so to retrieve the new form of data, PFC has brought out a new searchable database called 'Ekaswa C' for the same. This database can also be accessed through PFC website.

Four interns were sent to the National Institutes of Health (NIH), USA for training under a joint project entitled Indo-US Technology Management training and exchange programme by Indo-US Science & Technology Forum, PFC and National Institutes of Health (NIH), US Department of Human & Health Services (HHS).

The Geographical Indication (GI) for Muga silk from Assam has been registered by the Patent Information Centre (PIC), Assam with PFC's technical and financial support and continued encouragement. GIs were registered with PFC's support for Kullu Shawls and Kangra Tea from Himachal Pradesh. It will be interesting to note that PICs for the states of Assam, Himachal Pradesh and West Bengal



(Third batch of women scientists)

have been authorized by their respective states to file GI applications in respect of goods of the states. Incidentally, PFC provides them technical and financial support.

The second batch of women scientists recruited for training in IPR successfully completed their one year training. Most of the candidates of this batch have found placements in patent attorney firms, govt agencies and IP departments of other organizations. The third batch of the 37 women scientists has been selected after an all India written test followed by a rigorous interview. After a one month orientation programme held during May 2007, the candidates have been placed with different govt agencies, patent attorney firms and MNCs for on the job training.

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Detection

The method steps include administration of urea-containing compositions prior to assay. Stewart *et al.*, 5,139,934 disclose substrate compositions and method of urease immunoassay. The method is an *in vitro* immunoassay that includes the use of pH indicators. Nagatsu *et al.*, 4,147,692 disclose methods and compositions for measuring enzymatic activities and correlating such activities with hepatic diseases and gastric cancers.

Vasquez *et al.*, 4,851,209 discloses *in vivo* diagnostic procedures for the clinical evaluation of gastrointestinal ulcer disease using radioactive isotopes. Procedures involve prior administration of a diagnostic pharmaceutical followed by scintigraphic imaging of the gastrointestinal area of interest with scintigraphic imaging equipment.

Although the use of urease or other indicators has been used in combination with pH indicators, all except a few are conducted *in vitro*.

Drawbacks of Prior Art

Helicobacter can be diagnosed by blood test for antibodies, breath test, or biopsy of the stomach lining. Antibodies, however, can remain positive for many months after the bacteria have been eradicated. The presence of antibodies presents a falsely positive result in approximately 10 to 15% of patients. Biopsies are relatively quick; however, they add time, expense and risk. Although relatively minor, there is a 1 in 20,000 risk of bleeding from a biopsy site. Biopsies cannot be performed on patients who have a tendency to bleed, such as patients with hemophilia and liver disease. Additionally, it has recently been found that helicobacter is patchy, thereby requiring multiple biopsies to obtain 100% accuracy. The cost for a biopsy is approximately \$100. Biopsies also increase the risk of the person handling the tissue being exposed to HIV. If a urease test is used, the biopsy sample must be placed in the test by the nurse, thereby requiring an additional person during the test. However, the diagnostic methods typically employed in the art are often slow, cumbersome, costly and may yield equivocal

or inaccurate results. Such patients may simply be treated with conventional therapies, such as with antacids or drugs which inhibit stomach acid secretion. While such therapies might provide temporal symptomatic relief, a cure is often not effected.

Description of the Present Invention

The patent discloses a method of detecting the alkaline pH change *in vivo*. The disclosure teaches the use of colour indicators to detect alkaline pH changes in the stomach. A change in colours of the indicators is viewed during endoscopy. Presence of *H. pylori* is detected through change in pH.

A dense pharmaceutically acceptable carrier is used which is divided into two separate groups, the first combined with a first reagent indicator and the second combined with a second reagent indicator and urea. The carriers are preferably food soluble products, such as sugar beads having a diameter of approximately 0.2 to 3.0 mm. The carrier and reagents can be combined through coating the carrier or mixing the carrier and reagent. The treated carriers and urea are encapsulated in a pharmaceutically acceptable soluble capsule that is then administered to a patient. If desired, a buffer can be added to obtain more specific results. The density of the carriers cause the capsule to migrate to the gastric mucosa where the gastric juices dissolve the reagents and urea containing capsule, thereby placing the two reagents and urea combination in direct contact with the gastric mucosa. The urea reacts with any urease present on the mucosa thereby creating ammonia which causes the pH within the stomach to increase. The two reagents react differently, through color change or other indices, to the increase in pH, which is viewed through use of an endoscope. A preferred first reagent is bromothymol blue (dibromothymolsulfonphthalein), which changes to yellow in the presence of urease, and a preferred second reagent is phenol red (phenolsulfonphthalein), which turns red in the presence of urease. In the following example Reagent 2 is yellow at acid pH, changing to red at alkaline pH and Reagent 1 is yellow at acid pH, changing to blue at

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Detection

alkaline pH. The instant invention relies on a differential color change to identify a true positive from a false positive reaction. It is the differential which is of importance, not the colors themselves and any colors and/or reagents specifically used herein are examples and in no way limit the scope of the invention.

Claims

The patent has in 7 claims. Claim 1 which is the most significant is being reproduced here.

1. A diagnostic device for detection of urease producing *Helicobacter pylori* within a subject's stomach comprising: a soluble container, said container containing a combination of:

- (1) a pharmaceutically acceptable first pH indicator with a pH range from about 5.5 to about 9.0, said first pH indicator having a first indicium to indicate an alkaline pH and a second indicium to indicate an acidic pH,
- (2) a pharmaceutically acceptable second pH indicator with a pH range of from about 5.5 to about 9.0 and having a first indicium to indicate an acidic pH and a third indicium to indicate an alkaline pH range, and a reagent, said reagent reacting with urease to generate ammonia,

said first pH indicator first indicium and said second pH indicator combination first indicium having the same indicium, and said first pH indicator second indicium and said second pH indicator combination third indicium having different indicium from one another and from said first pH indicator first indicium and said second pH indicator first indicium,

said first pH indicator and said second pH indicator combination reacting to a presence or absence of urease producing *Helicobacter* by change, or lack of change, of indicium, wherein:

both said first pH indicator and said second pH indicator combination indicating an acidic pH indicates an absence of said *Helicobacter* and said stomach is acidic and there is an absence of urease producing *Helicobacter*;

said first pH indicator second indicium and said second pH indicator combination third indicium indicating an alkaline pH range indicates said stomach is alkaline and no determination regarding a gastrointestinal disorder can be made; and said first pH indicator first indicium indicating an acidic pH and

said second pH indicator combination third indicium indicating an alkaline pH indicates the presence of ammonia and the presence of urease producing *Helicobacter*.

Novelty and Inventiveness

The novelty of the invention lies in the device for *in vivo* detection of *H. pylori* in the stomach and the inventiveness is in the fact that the device is able to achieve the goal *in vivo* without really disturbing the body. No previous indications of this type of device were available in the prior art. The test dramatically cuts down the number of biopsies required and is safe for patients having any bleeding tendencies while being rapid and low cost. Additionally, through the color change, it can be determined if the change is a true positive or a false positive reaction.

Current Status

There are a number of patents granted to Marshall after the above described invention (US 6,517,809, US 6,929,926, US 6,998,250, US 7,008,777, US 7,087,398, CA 1,277,232, EP 1,789,094, KR 940006322B and MXPA 04003083) which deal with *in vivo* as well as *in vitro* detection of *H. pylori* in stomach. Patents have also been granted to other scientists from Japan (US 7,201,891, US 6,828,298, US 6,797,268 and US 6,793,921), Switzerland (US 6,290,962) and Australia (US 6,649,360) in the same field. Now a number of companies (Biowhittaker, US; Cortex, UK; Dresse Monteriggioni, Italy; Orion, Finland) are manufacturing kits to diagnose *H. pylori* on a large scale. Thanks to the pioneering discovery of Marshall *i.e.*, *Helicobacter pylori* that these diseases are no longer chronic.

Although there are many well validated methods that can be used to detect *H. pylori*, there are nevertheless continued improvements to current tests and the development of new tests, driven by considerations of cost and a search for speed and technical simplicity.

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Litigation watch

Microsoft has been ordered to pay \$1.52 billion in damages after a US federal jury found it guilty of infringing audio patents owned by Alcatel-Lucent.

(Patent World, April 2007)

Tata Tea has sued Hindustan Unilever in Mumbai High Court over a process patent for the preparation of instant tea from cold water, which was granted, to HUL in 1997. According to Tata Tea the patent is invalid because the process for preparing instant tea from cold water is known for centuries in India but HUL has claimed that the invention is of its parent company Unilever, which is patented currently in USA and Europe. Mumbai High Court has referred the case to the appellate tribunal of the Indian Patent Office.

(Business Standard, 14 Jun, 2007)

World's second largest plasma display maker LG Electronics has sued Japan's top electronic company Hitachi in the District Court of Texas, USA for violation of its plasma display patents. LG Electronics has sought monetary compensation along with cease of the sale.

(The Economics Times, 19 Jun, 2007)

The Delhi High Court has enjoined Ajanta India Ltd from using a red and white packaging for its tooth powder cans on the ground that it infringes the trade mark and copyright of Colgate and Palmolive and directed Ajanta India Ltd to file an affidavit of compliance while issuing the injunction. The court further

clarified that Ajanta could exhaust stocks of the enjoined cans within a period of two months from May 25, 2007.

(The Economics Times, 5 Jun, 2007)

Abbot Laboratories, the US maker of drug and medical devices sued India based Wockhardt Ltd over infringement of one of its patents related to controlled release formulation which is valid up to Dec-2018, to block the regulatory approval to a generic form of the epilepsy drug-Depakote. It may be pointed out that Wockhardt is seeking a USFDA approval to sell a low cost version of the medicine whose active ingredient is Divalproex sodium.

(The Economics Times, 25 May, 2007)

Bristol-Myers and Sanofi-Aventis who share the profit of world's third largest selling drug-Plavix have succeeded in stopping the generic version of the drug as a US Court has given verdict in their favour. This verdict has come in response of a lawsuit filed by Apotex, a Canadian drug maker claiming that the use of compound- Clopidogrel bisulphate-an active ingredient of Plavix in developing its generic version would not infringe any patent corresponding to Bristol-Meyers and Sanofi-Aventis because the compound is already covered in a patent that had already expired.

(The Economics Times, 21 Jun, 2007)

Qualcomm which has filed 11 lawsuits against Nokia in the past 19 months saying that Nokia products infringe 6 of Nokia's

Domestic News

India and Japan have signed an MoU in the field of Intellectual Property Rights (IPRs). Three main areas covered in the MoU are capacity building, human resource development and public awareness programmes. It is hoped that the MoU will go a long way in fostering cooperation between India and Japan.

(The Economic Times, 26 May, 2007)

The Department of Industrial Policy and Promotion (DIPP) is working towards setting up online platform for filing and registration of patent, trademark, design and geographical indications. The project named "Total IP Solutions" aims to bring in transparency and efficiency in the way IP applications are filed, processed and granted. Under the proposed system, companies and individuals can electronically file their application in a PDF format. Following this, the applicant would be given a unique ID that would help him track the status of his application. The application for the patent would also be published online and opposition to the grant of patent received electronically.

(The Economic Times, 26 May, 2007)

Geometric Software Solutions has acquired intellectual property rights (IPRs) and all existing related contracts for PLM adapters from MeritSpring Technologies AG of Switzerland to strengthen its

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Domestic News

portfolio. The PLM adapters - Teamcenter and Windchill – are used extensively in aerospace and other engineering industries and are expected to broaden its offering in the PLM interoperability space. The addition of these adapters will help to accelerate the creation of innovative, interoperability solutions and significantly expand the markets.

**(The Financial Express,
13 Jun, 2007)**

The Chandigarh-based Venus Remedies is in the process of patenting a combination antibiotic drug of latest generation cephalosporin, combined with beta lactamase, in 48 countries including US, Japan, EU, Australia and New Zealand. Venus had filed the Indian patent for the drug in 2004.

**(Business Standard,
17 Jun, 2007)**

Optical fibers provider Sterlite Optical Technologies Ltd has been granted a US patent for its single mode optical fiber. The patented product is capable of reducing the fiber non-linear effect like four-wave mixing for better dense wavelength division multiplexing performance in the wavelength region of 1530 nm to 1565 nm and 1565 nm to 1625 nm. Dispersion optimized fiber with higher spot area is specially designed for long haul, high data rate and multi wavelength transmission. That will help telecom service providers to push

more data by reducing fiber non-linear effect.

**(Hindustan Times, 8 Jun,
2007)**

Dr. Debabrata Das, a professor of biotechnology at the Indian Institute of Technology, Kharagpur has patented a technique to harvest hydrogen from a commonly found strain of bacteria, providing a possible alternative to current hydrogen extraction techniques which are expensive. The technique induces the bacteria, *enterobacter clocae*, to discharge free hydrogen, via a fermentation process.

(Mint, 20 Jun, 2007)

The Finance Ministry is introducing new norms to curb IPR violation by imported goods. The new rules will enable companies to complain and stop import of goods if they find violation of patents, trademarks, copyright or even geographical indications, according to Central Board of Excise and Customs sources. The new norms would arm companies with the power to hold up fakes or items which violate IPR in any format ports by complaining to the customs departments. Detailed instructions have been issued to customs officials posted at ports on the new norms related to IPR protection. Once customs officials are alerted about IPR violation, they would maintain a vigil for 12 months to ensure that the IPR owner does not suffer.

**(The Economic Times,
7 Jun, 2007)**

International News

Indonesia and many developing countries have found that the virus samples being given freely by them to the WHO were being used in activities such as patenting and commercial production of vaccines and that too without their knowledge. The developing countries are then being asked by the drug companies to buy vaccines made with the help of the viruses they supply, freely under the WHO scheme. The prices coated by the companies are too high for the countries. Indonesia gave its specimen of the H5N1 virus of avian flu to WHO's Global Influenza Surveillance Network, which comprises the WHO's collaborating research centres, which are national institutions located in developed countries. The GISN guarantees that the virus cannot be passed on to third parties without the knowledge of the country of origin.

**(Business Standard,
10 Jun, 2007)**

German drug maker Boehringer Ingelheim GmbH has decided not to enforce patents on its anti-HIV drug, Nevirapine, in 78 low-income African and Asian countries, including India. These agreements are free of license fees or other charges. Financially, it does not mean a lot to them, but the goodwill from governments and patients may make up for it. The list of 78 countries for Nevirapine includes India, Pakistan, Afghanistan, Bangladesh

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Litigation Watch

patents. It may be pointed out that a series of legal cases are spread over Europe and USA.

(Business Standard, 26 May, 2007)

Broadcomm-a chip maker has complained in United States International Trade Commission (USITC) that Qualcomm is infringing a battery saving patent in its product. USITC found it true and ordered Qualcomm to pay \$19.6m as damages to Broadcomm.

(Hindustan Times, 30 May, 2007)

Pfizer Inc. sued a unit of Israel's Teva Pharmaceutical Industries Ltd., accusing it of infringing a US patent for the cholesterol-lowering drug Lipitor in the Federal Court in Delaware.

(The Hindu, 8 Jun, 2007)

French pharma major Sanofi-Aventis has filed a lawsuit in the US District Court of New Jersey challenging Para IV filings by Dabur Pharma Ltd for marketing the generic versions of Eloxatin, an injectible used in the treatment of bowel cancer, in the US. Sanofi-Aventis has alleged that Dabur's applications infringe US patents numbered 5,338,874 and 5,716,988.

(The Economic Times, 23 Jun, 2007)

Domestic pharma company Lupin has reached an out of court settlement with the US pharma major Abbott and Japan's Astellas Pharma for the marketing of Abbott's block-buster antibiotic drug Omnicef in the US.

(The Economic Times, 21 Jun, 2007)

Vertical Computer System Inc. has launched a patent infringement lawsuit against Microsoft Corporation in the US District Court for Eastern Texas claiming that Microsoft's .Net software violates Vertical's US patent 6826744-a system and method for generating websites in an arbitrary object framework.

(Patent World, Jun 2007)

The US District Court for the western district court of Oklahoma has given an amended judgement in a case where Dr. Jan K Voda - a cardiologist had filed an infringement case against Cordis Corporation-a Florida based Johnson and Johnson company awarding Dr. Voda over \$12 million in compensatory damages and an additional \$2 million in attorney fees and court costs.

(Patent World, June 2007)

A Federal Court in Delaware has ordered food ingredient supplier Danisco to pay out \$4 million in damages for willfully infringing a patent numbered-6867031 owned by Novoenzymes who had filed a suit in March 2005 against Genencor International Inc. which was acquired by Danisco.

(Patent World, April 2007)

Texas MP-3 Technologies Ltd has filed a suit against MP-3 trios-Apple, Samsung and Sandisk in a US district court alleging that they are infringing its US Patent 7065417 which describes a method "for an MPEG portable sound reproducing system and a method for reproducing sound data compressed using the MPEG method

(Patent World, April 2007)

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International News

and almost every African country, but doesn't include the bigger markets such as Brazil and China. (more details can be seen at www.livemint.com/Boehringer.htm)

(Mint, 31 May, 2007)

A new dosage of a known medicine is now eligible for patent protection in New Zealand Earlier, the Intellectual Property Office of New Zealand (IPONZ) considered a new dosage regime to be a method of medical treatment and therefore not patentable. This will resolve the uncertainties regarding the patentability of new dosage regimes that was caused by IPONZ.

(Patent World, May 2007)

The UK Government has changed the name of the UK Patent Office to the UK Intellectual Property Office (UKIPO) with effect from April 2, 2007.

(Patent World, May 2007)

On 28th May 2007 the Dominican Republic became the 137th contracting state of the Patent Cooperation Treaty (PCT). The accession to the treaty means that in any international application filed on or after that date, the Dominican Republic will automatically be designated and automatically elected in any demand for international preliminary examination filed in respect of an international application. Also, as of that date, nationals and residents of the

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International News

Dominican Republic will be able to file PCT applications.

(Patent World, May 2007)

Japanese electronics giant Hitachi Ltd. & US Software firm Oracle Corp will jointly market wireless tags in China that can be used to identify counterfeit goods. This is a step taken by the Chinese govt. to crack down on counterfeiting & protect intellectual property rights.

(The Economics Times, 4 Jun 2007)

Thailand, which has overridden international patents on three drugs in the last one year, plans to issue two more local licenses this year for copycat versions of medicines. The new licences would be for the country's top killing diseases, especially cancer.

(DNA, 29 May, 2007)

Bayer Crop Science AG and Monsanto, two of the leading agro-companies worldwide have entered into a series of long term business and licensing agreements related to key enabling agricultural technologies. The agreements provide Monsanto with an option to market corn and soybean seeds (the two largest field crops in the United States), which would provide farmers with **additional**

weed management. In the areas of **insect resistance**, the two companies have entered into a royalty bearing agreement giving Bayer Crop Science rights under certain Monsanto intellectual property. Other agreements enable Monsanto to commercialize products containing multiple insect resistance genes with different modes of action. The two companies have also cross licensed each other under their respective patent estates for RNAi technology.

Korea's LG Electronics Inc has signed a cross-licensing agreement with Microsoft Corporation covering a variety of hardware & software products. Through the agreement, LG will obtain access to Microsoft's patents that may be used in the products such as computers and other home appliances. Microsoft will gain access to LG's patents relating to computer related devices for its products.

(Business Standard, 11 Jun, 2007)

Electronics rivals LG and Samsung along with their affiliates LG Philips LCD & Samsung SDL are planning to work together in research and development and developing patents, besides cross purchasing. Samsung Electronics also has a tie up with Sony Corp to tap each other's last patent

portfolios. Some other tie ups which have recently taken place are: **LG and Samsung** are planning cross purchasing, joint R&D and collaborating in developing patents; **Sony & Samsung** are tapping each other's vast portfolios; **Microsoft & Samsung** are sharing patent sharing pact for developing electronics; **Mirc Electronics & Dolby Digital** have tied up for sound patents; Videocon has bought 40 LCD patents from IBM.

(New Economic Times, 31 May 2007)

A move to streamline and make the US patent system more efficient is on the anvil. A bill known as the Patent Reform Act of 2007, seeks to amend Title 35 of the United States Code relating to procurement, enforcement and validity of patents. The three main propositions of the Reform Act are :

1. To change from first-to-invent system to first-to-file system;
2. To introduce a European-style opposition system, complete with protection from misuse. It is hoped this will reduce the time and expense of litigation
3. To align damages awards to harm caused by infringements.

(Patent World, June 2007)

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Department of Science and Technology (DST)

'A' Wing Vishwakarma Bhawan, Shaheed Jeet Singh Marg, New Delhi - 110 016.

Tel. : +91-011-26967458, 26592802, 26592803, 26592806 Fax : 26863866

e-mail:tifac@nda.vsnl.net.in website:www.indianpatents.org.in and www.tifac.org.in

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