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IPR NEWS

IPR News – General

Low cost IP protection procedures for UK small and medium businesses

Intellectual property will be easier to protect for small firms, as the UK Government introduces a small claims track to the Patents County Court (PCC). Small and medium sized businesses will be able to put a case before a judge without legal representation for basic intellectual property infringement cases. Copyright, trademark and unregistered design holders will be able to write to a judge directly to have a case heard at an informal hearing. Cost restrictions of £5000 will ensure that claims put through the new track are appropriate.

Business Minister, Michael Fallon commented that a smarter and cheaper process is good for business and helping businesses make the most of their intellectual property is good for the economy. He added that lower legal costs will make it easier for entrepreneurs to protect their creative ideas where they had previously struggled to access justice in what could often be an expensive progress.

The reform has come as part of a series of Government measures to make the courts' process more streamlined. A cap on damages and legal costs has already been implemented to reduce expense and complexity of the legal system for businesses. Further to these changes, the Intellectual Property Office (IPO) will now offer court alternatives to resolve more minor cases. Business will be able to have a hearing in front of an intellectual property tribunal, or go through the IPO mediation services to settle disputes, while legal action will only be recommended as a 'last resort' (http://bdaily.co.uk).

Chinese firms put intellectual property lawsuits to work

US companies have long accused the Chinese of stealing their intellectual property. But now some in China are pointing the finger back. In recent months, Apple has been slapped with lawsuits in China alleging that the most valuable company in US history is infringing on patents and trademarks with a range of its products, from the iPhone voice assistant Siri to the Snow Leopard operating system.

The lawsuits being filed in Chinese courts are evidence of a growing awareness in this country that intellectual property can be a valuable tool — for protecting ideas and for squeezing money out of other companies, too. Analysts say foreign firms can expect to see many more lawsuits coming from China, turning the country into a new front in the global patent wars.

China's central patent office has quickly become the busiest in the world. In 2011, for the first time, there were more domestic patent applications filed in China than in any other country, including Japan and the United States. But experts warn that the quality of the patents is often low, giving Chinese firms easy legal ammunition to go after domestic rivals and, increasingly, foreign firms. A recent report by the European Union Chamber of Commerce called China's level of innovation 'overhyped,' concluding that many of the patents being approved did not represent true innovations.

Small companies that take on bigger firms in questionable patent cases have become known here as 'patent cockroaches,' a play off the US term 'patent trolls', used to describe companies that make money primarily by hoarding flimsy patents and suing others. So far in China, most patent infringement disputes have been between Chinese companies. But a few firms have been bold enough to take on foreign multinationals far greater in size.

According to Yuan Hui, Founder and chief executive of Zhizhen Network Technology, which recently sued Apple for infringing on a patent his company uses in its Xiao-i-Bot voice assistant program; their case is the first real patent infringement case against Apple. Yuan says that Apple's voice assistant program, Siri, violates a patent he received in 2004.

The disputes have extended to trademarks, too. In October 2012, Apple paid Chinese company, Proview US$ 60 million in a dispute over who owned

the trademark for the iPad name. Also in July 2012, a chemical company whose Chinese name translates to 'snow leopard' said Apple's Snow Leopard operating system violated its company trademark.

But Ma Yide, an intellectual property attorney in Beijing, said the lawsuits against Apple seemed frivolous. He said that a good patent will reflect its value in its commercialization, not from lawsuits, and that the low quality patents are really harmful. He felt that their increasing quantity will stop businesses from innovating (http://www.washingtonpost.com).

Patent News

Indian Govt scraps patent for jamun-based diabetes drug

After combating bio-piracy of neem and haldi in the US and Europe, India has now woken up to the problem in its own backyard. In a first such move since 1994, the government has revoked a patent granted by the Indian Patents Office for a medicine made from the extract of jamun, lavangpatti and chandan meant to treat diabetes.

Using a 'rarest of rare' provision in the Patents Act, the government decided to quash the protection that drug maker, Avesthagen had got earlier this year on the grounds that the patent right was 'mischievous to the state and generally prejudicial to the public' as it was an 'integral part' of ayurveda, unani and siddha systems of medicine. The only other time that the provision was used was to cancel a patent given to a US firm for developing cotton cells by tissue culture.

But this time, the patent given to the mix of jamun, lavangpatti and chandan was proving to be a major embarrassment given that India has for long fought for protecting traditional knowledge and genetic resources and sought to check piracy of ayurvedic and other traditional forms of medicines. What is even more curious is how the Indian Patents Office gave the protection after the government had successfully got European authorities to turn down the application two years ago.

While the problem seems to have been dealt with at least for the moment, there could be more in store as the government has discovered that there are at least four or five similar instances of patents given to medicines over the last five years or so that have been 'developed' using commonly used plants and fruits ranging from amla, methi, karela and ashwagandha.

Cancelling the patent given to Avesthagen was not easy as the company argued that the extracts, which work individually in managing diabetes, had an aggressive effect when combined. In addition, it used an approach that is 'innovative, novel and scientific' in developing a formulation and screened it for efficacy and safety using modern technology. Defending the patent, the company said that it developed the formulation from three plants after it had originally identified some 100 plants, which were shortlisted to 10.

Arguing that the patent was not prejudicial to public interest, the company said the 'invention' was novel and provided scientific validation to Indian traditional knowledge and would support Indian farmers, from whom the plants would be sourced, and provide employment to people.

The government, however, countered it by saying that for centuries, it was known that the plants were used for management of diabetes and there were no inventions. An official said that when plants are known to act against a particular disease, extracts would certainly perform the same function (http://articles.timesofindia.indiatimes.com).

Patent drug prices to be set in negotiations with pharma companies

A panel set up to look into the pricing mechanism for patented drugs in India has said that prices have to be decided after deliberations with manufacturers if the government is to adopt a price negotiation model. The committee set up to look into the issue of price negotiation mechanism of patented drugs has 'mentioned in its report that in case of reference pricing, the prices of the product are fixed on the basis of the prices in other similarly placed countries and in case of price negotiation model the prices are fixed after negotiations with the manufacturer', as has been stated by the Minister of State for Chemicals and Fertilisers, in a reply to the Rajya Sabha.

According to industry estimates, there are around 18 patented drugs being marketed in India with a total market value of around Rs 4,000 crore to Rs 5,000 crore, about 12 per cent of the overall domestic market.

At present, there is no system of price negotiation for patented drugs in the country. Under the provisions of the Drugs Price Control Order, 1995, the prices of only 74 bulk drugs and formulations containing any of these scheduled drugs are controlled. The government can, however, dictate prices of patent drugs in rare circumstances by invoking compulsory licensing. This had been

recently done in the case of cancer-treatment drug Nexavar by granting Natco Pharma a compulsory licence to sell the drug at a much lower price than the patent holder Bayer Corporation (http://articles.economictimes.indiatimes.com).

Pfizer's patent on cancer drug revoked

In yet another blow to Big Pharma, the Delhi Patent Office revoked a patent granted in 2007 to US drugmaker Pfizer for sunitinib (brand name Sutent), a drug used to treat a type of kidney cancer, which had global sales of US$ 1.19 billion in 2011. The ground for the revocation was a lack of inventive step, the Patent Office said. The drug costs Rs 4,357 per 25 mg capsule. With a patent in place, no other brand could enter the market, thereby giving Pfizer a monopoly and the drug beyond the reach of most patients.

The revocation follows a post-grant opposition by Mumbai-based generic drug maker Cipla against Pfizer's patent on the drug. Pfizer India plans to appeal the decision before the Intellectual Property Appellate Board. Mr Tobaccowalla, MD, Pfizer India said that they believe the decision undermines intellectual property rights in India and will defend the basic Sutent patent.

Humanitarian organizations have hailed the development. This is the second major patent revocation in India. In May 2010, the Chennai Patent Office had revoked Swiss firm Roche's patent on HIV drug valganciclovir (brand name Valcyte) following post-grant applications by patient groups. Valcyte was then priced at Rs 1,023 per tablet, while the generic competitors were priced at Rs 245 per tablet (http://www.dnaindia.com).

USPTO tries 'Stack Overflow for patents' to find prior art

The United States Patent and Trademark Office (USPTO) hopes to improve patent quality by soliciting greater feedback from the general public about pending patents. America Invents Act included a provision requiring the Patent Office to accept submissions from the general public about patent validity, especially concerning prior art.

In addition to allowing third parties to submit information directly to patent examiners, the USPTO has also worked with Stack Exchange, the company behind the popular programming Q&A website Stack Overflow, to create a new site called Ask Patents. Examiners or others looking for prior art can post questions about a specific application, and members of the general public can respond with evidence that an applicant was not the first to invent the subject matter of the application.

The new site is inspired by peer to patent, a pilot project launched by New York Law School in 2009 to help the USPTO solicit prior art from the public. The project was deemed a success, and policymakers evidently decided that Stack Exchange was the right vehicle for making the concept permanent. The site is designed to handle two types of questions: general questions about patent law and requests for information specific to particular patents or patent applications. The hope is that in addition to its patent-busting function, it will develop into a site where practising patent lawyers and inventors can answer each others' questions about patent law.

However, sceptics point out while it is a worthwhile experiment, the site alone cannot cure what ails the patent system. Stack Overflow works because there are thousands of programmers who use any particular software platform as part of their regular jobs. As a result, someone in the Stack Overflow community generally has a ready answer to any given question. The pool of people scrutinizing patents is much shallower, however. In many industries, including software, the people with the most technical expertise generally do not spend a lot of time looking at patents, so it could be a challenge to attract the critical mass of technical experts that make the site truly useful to patent practitioners.

Still, given the dismal state of patent quality, a site like Ask Patents can only improve the situation. And it is possible that there are enough interested public-spirited individuals and private companies-Apple might want to have a look at Google's new patent applications, for instance - to make the idea work (http://arstechnica.com).

Patent trolling nearly doubled in five years finds study

Suing others over patents is big business, and a new analysis done by Hastings College of the Law shows that it nearly doubled among patent holders without products in five years. It is no secret that patent lawsuits are on the rise and it turns out the same can be said for the ones filed by what have been called 'patent trolls'.

According to a new study published today by University of California Hastings College of the Law,

lawsuits filed by patent trolls - or 'patent monetizers' as they have been re-categorized - saw a dramatic increase between 2007 to 2011.

As part of a research project put on by the Government Accounting Office, the law school teamed up with legal tracking and analytics tool, Lex Machina to break out a cross-section of 500 lawsuits filed during that five-year period, pulling out 100 lawsuits a year that were picked by random.

The study said that lawsuits filed by patent monetizers have increased from 22 per cent of the cases filed to almost 40 per cent of the cases filed and the increase has occurred in only five years. The overwhelming majority of those cases settled and never went to trial, it added.

Other major findings include the fact that four of the five most lawsuit-happy patent holders from the data were considered patent monetizers as opposed to companies with existing products and services.

The study notes that the America Invents Act, which passed in 2011 and led to the creation of the look at the 500 suits, added rules that make it harder for these patent monetizers to file complaints against several defendants at once. As a result, the study suggests, companies in the business of making money off patents could have 'rushed' to file cases before the law went into effect, potentially throwing off 2011's data (http://news.cnet.com).

Copyright and Trademark News

Chinese writers sue Apple for copyright violation

Apple Inc stood trial in Beijing for allegedly selling unlicensed electronic versions of books by eight Chinese writers via its App Store. The writers demanded a total compensation of 10 million yuan (US$ 1.6 million) from the US electronics giant for violating the copyrights of their 34 works, the Beijing Municipal No 2 Intermediate People's Court said.

The writers saw applications involving unlicensed electronic versions of their books available for download at the Apple App store in 2011, their lawyer said. The books were heavily downloaded, causing huge economic losses to their authors while bringing profits to Apple as well as the application developers. Apple representations, however, said it was not the proper defendant and appealed for the application developers to instead stand trial. In addition, it claimed, there have been no violations after it pulled the applications in question off the shelves of the App store, and therefore should no longer need to pay compensation. The hearing lasted a whole day and the verdict is to be announced at a later date. Earlier in the first-instance trial on 27 September 2012, the court ordered Apple to pay 520,000 yuan in compensation for economic losses incurred by the Encyclopedia of China Publishing House for copyright infringements (http://www.hispanicbusiness.com).

'Worst copyright law in history': Panama set to crack down on piracy

Panama's legislature has approved a draconian file sharing law that gives law enforcers a free hand to pursue and punish file sharers directly, and grants officials bonuses based on fines levied. Proyecto 510-2012 'On Copyright and Related Rights', or the 510 Bill, which legal watchdog InfoJustice calls 'incredibly unbalanced', was passed in the Panamanian Congress recently. It is now awaiting the approval of President Ricardo Martinelli, which could happen in the immediate future.

The bill was written by Panamanian officials in order to bring the country's Internet regulations into accordance with the US-Panama Trade Promotion Agreement – but overshoots many of the requirements it is meant to fulfill. For example, it ascribes copyrighted status to temporary electronic files, like those held in a computer's random access memory (commonly known as RAM). According to InfoJustice, the 510 Bill is unique among national Internet laws in that it does not contain provisions for the so-called 'transient' and 'incidental' files. This means that users who stream paid-for content through services like Netflix or Pandora could be prosecuted and fined as much as US$ 100,000, or US$ 200,000 for repeat offenders, for having copyrighted material on their computers.

It also gives law enforcement officers incentives to punish file sharers – over and over, if they see fit – as the money collected from the fines goes directly to the Panamanian copyright office's bonus pool, with the copyright holder not seeing a dime. The law reads, 'The funds accrued by the General Copyright Directorate from the fees for the services it provides and the fines imposed in the exercise of its powers, will be aimed at improving its operational infrastructure and to boost the performance of its officers'.

So the law gives unprecedented powers to impose harsh administrative fines on infringers on top of possible future civil litigation. The file sharer could thus, still be liable to civil action should the copyright holder

wish to file for it. And if convicted in either case, file sharers could also be forced to pay for the publication of a press release noting that they have been fined for piracy (http://rt.com, http://infojustice.org).

French copyright crackdown claims first victim

The first fine has been issued under the French Hadopi (three strike) law, which aims to punish people for illegally downloading content online. The € 150 (£ 121) fine was levied on a 40-year-old man who had not even downloaded the offending material himself but got the fine since it was his connection. The man was the first to get past the third-warning point, although the court did not cut off his Internet connection - the ultimate Hadopi sanction.

It took a very long time to get to this point, considering that the Hadopi law passed three years earlier, allowing then PM Nicolas Sarkozy's government to establish the letter-writing bureau of the same name.

Rights-holders claimed that at the start of 2012, the Hadopi three-strikes policy was working, on the basis that iTunes usage had gone up since the first warning letters were sent in October 2010. At the time, around 736,000 people had received their first warning, 62,000 their second and 165 their third. The International Federation of the Phonographic Industry (IFPI) claimed that the result was an extra € 13.8m for the French economy.

However, the law is under review since it was costing the country € 12 million a year to run the letter-writing scheme, and the cutting-off of Internet access was disproportionate.

In the UK, the Digital Economy Act 2010 would establish a similar scheme to Hadopi. However, the letter-writing phase has not started yet, and no sanctions will be levied on anyone until 2015 (http://www.zdnet.com).

US Copyright Office approves jailbreaking phones, but not tablets

The latest set of exemptions to the Digital Millennium Copyright Act (DMCA), which went into effect in October 2012, makes it legal to jailbreak smartphones, but not tablet computers, the US Copyright Office has declared.

The Copyright Office agreed to permit the unlocking of phones so that they would work on any wireless carrier, but declined to extend the same protection to devices such as the iPad and the Galaxy Tab. The reason for that decision, is because it is difficult to categorize tablets and that issuing 'a blanket exemption' would mean that it could 'theoretically apply to e-readers and portable game consoles.'

Current smartphones, however, can still be unlocked, but only those that are purchased before January 2013. After that, individuals will need to obtain permission from their carriers in order to legally jailbreak any phone, because the Federal Register ruled that software is not owned by a user who purchases it, only licensed to them.

The new list of exemptions 'removes the previously instituted permission to unlock a phone for use with a new carrier. This change makes it so that only phones originally 'acquired from the operator of a wireless telecommunications network or retailer no later than ninety days after the effective date of this exemption' can be unlocked.' These DCMA exemptions will remain in effect until the next copyright review, in three years' time.

The Copyright Office however, denied requests to legalize the creation of backup DVD copies for personal use, and also refused to permit the modification of home video game consoles. They ruled that copying store-bought DVDs for use on other devices was a violation of fair use laws, although 'short portions' of the copyrighted work could be copied and used for educational and non-commercial purposes, as well as in documentaries (http://www.redorbit.com).

Cadbury retains hold over its trademark shade of purple

After fighting for almost eight years, Cadbury has finally won a high court battle over its trademark of a certain shade of the colour purple. The chocolate company applied for the trademark back in October 2004, registering the colour purple (Pantone 2685C) applied to the whole visible surface or being the predominant colour applied to the whole visible surface, of the packaging of chocolates and certain other food stuffs containing chocolate as specified in its application.

Cadbury has got a lot of stick over the intervening eight years for, effectively, trademarking a certain wavelength of the electromagnetic spectrum, but the protected aspect is actually much narrower than has previously been reported. Anyone can use the purple for anything non-chocolate-related, and even other

chocolate manufacturers can use it provided it is not 'the predominant colour applied to the whole visual surface' of the packaging.

Nonetheless, Nestlé, Cadbury's biggest rival, opposed the trademark. Their legal argument was that that shade of purple had no distinctive character, had been granted for too broad a range of goods, and had been applied for in bad faith, claiming that Cadbury never intended to use the mark for 'the whole visible surface'. In addition, Nestlé used a similar colour for one of its own subsidiaries' product. Nestlé won in part, with the Intellectual Property Office ruling that Cadbury's trademark would only apply to chocolate bars and drinking chocolate and ruled that the colour has been distinctive of Cadbury for milk chocolate since 1914 (http://www.newstatesman.com).

Indian trademark law follows international exhaustion

In a landmark judgment, a Division Bench of the Delhi High Court has held that Indian trademark law follows an 'international exhaustion' regime. The Bench comprising of Justices Pradeep Nandrajog and Siddharth Mridul partially allowed the appeal filed by Kapil Wadhwa and others (appellants) against the judgment of Single Judge Justice Manmohan Singh in *Samsung Electronics Co Ltd & Anr* v *Kapil Wadhwa & Ors*.

By way of background, Samsung Electronics Co and its Indian subsidiary Samsung India had initially filed a suit claiming that the appellants were selling genuine and unaltered Samsung printers imported directly from foreign markets into India without due authorization. The Single Judge had held that the appellants were guilty of trademark violation and had ruled that trademark law prohibits the sale of imported genuine products without the authorization of the registered proprietor in India. It was against this judgment, the appellants had filed an appeal.

Partially allowing the appeal, the Division Bench set aside the earlier judgment insofar as the appellants had been restrained from importing printers, ink cartridges/toners bearing the trade mark Samsung/SAMSUNG and selling the same in India. However, the appellants would continue to remain injuncted from meta-tagging their website to that of Samsung.

The Court observed that an 'erroneous approach' had led the Single judge to conclude that unless goods are imported into India with the consent of the registered proprietor of a trademark 'the act of importation is not permitted' as per sub Section 3 of Section 30 (of the Trademarks Act), which provision provides for 'acquisition by consent for the purposes of import'.

The Court also recognized the principle of international exhaustion under the Trademarks Act, 1999 and observed that the same was clear from the fact that the term 'in any geographical area', in the Statement of Objects and Reason. This judgment is sure to have far reaching consequences on the pricing of goods available in the market (http://www.barandbench.com).

Key Patents

Roamware patent for predictive intelligence technology

Roamware, a provider of mobile operator service solutions has received a patent on Predictive Intelligence (PI), a technology that will help operators vastly improve their customer experience management capabilities and give local and roaming subscribers a much better service usage experience.

Predictive Intelligence helps mobile operators simulate subscriber experience in home and visited networks so that voice and data services can be tested thoroughly before a service is launched into the market, and can be monitored with real-time analytics once the service is live. With Predictive Intelligence, operators are helped to simulate subscriber experience through virtual profiles. Combined with its SIM-based robots, Roamware's Predictive Intelligence can test end to end service and network parameters thoroughly. With 100s of SIM-based robots located around the world, its solution can help operators in India test any VLR (Visitor Location Register) in the world, according to Roamware's VP, Engineering (http://www.business-standard.com).

Positron receives US patent for solid state sensors

Positron Corporation received a US patent for its original semiconductor detector used in high precision measuring of coordinates and detection of ionization particles. The detector structure has two collinear layers of avalanche microcells with high internal amplification and is capable of detecting low energy ionization particles by overcoming a fundamental limitation of the precision coordinate measuring of ionization particles–multiple scattering in material. The detector is not sensitive to photons and completely eliminates the dark rate as background.

Due to a high signal to noise ratio, the detection and coordinate measuring can be achieved on a chip without special on-chip readout electronics and/or additional external electronics, which can significantly reduce the cost of the detection or imaging equipment. The detector is small, robust, and operates at an extremely low voltage. The detector has a number of potential applications in medical imaging, radiotherapy (photon therapy, electron therapy, hadron therapy), homeland security, experimental physics, and Auger electrons dosimeters.

Positron's patented technology makes it possible to provide radiotherapy systems at a lower cost with an increased precision of treatment, thus limiting the damage to normal tissue. This technology will also provide a less expensive, much smaller detector, with an increased capability to localize the source (s) of ionizing radiation according to Patrick Rooney, Positron's CEO (http://www.sacbee.com).

Patent for scalable virtual worlds

Utherverse has received a patent to build a 'scalable' virtual world, or one that can support an unlimited number of players in a single region of an online place. That could allow virtual worlds to achieve a critical mass for events like a convention or a concert.

In the past, one could not do something like hold a concert in a 3D simulated world. A band like U2 could put on a 'live' concert inside the world with a maximum of 50 to 100 users. That is not enough to support a real business model. With the new technology, the band could play a concert for 10 million fans, all inhabiting the same virtual world venue. They might sell tickets for 25 cents and pull in revenue of US$ 2.5 million for a single event. Utherverse says this kind of scale allows virtual worlds to become economically viable.

The company hopes to use the patent and the worlds it can build to get rid of what it calls 'the flat web' and take everyone into a 3D universe for cruising the web. It wants to enable everybody to do that in parallel.

Current state-of-the-art technology limits the number of avatars, or virtual characters that can occupy the same virtual space. Exceeding the number of avatars that can be rendered and displayed by the end user's computer may cause significant lag (or a slowdown in animation frame rates) or a crash. Utherverse claims it can allow total flexibility in numbers of users.

The technology allows a server to determine the maximum number of avatars permitted in a region. If the number exceeds that limit, then the server spawns a new dimension of the region. Those dimensions, in contrast to other virtual worlds, are fully interactive with each other (http://venturebeat.com).