

# IP & BUSINESS

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India's First Intellectual Property Business Magazine

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Indian Patent Office has released the report of year 2008-09, which lucidly proves India as an emerging power in research and development in various industrial sectors.



Innovation in mobile industry



## Abbott

A Promise for Life

What Abbott gain out of 17 crore?



Branding Geographical Indications

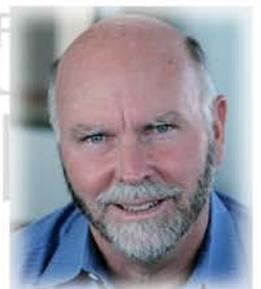
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 I N F O S Y S  
 D R U G S  
 C S I R

From recession to recovery:

The world's most **powerful** SPIRIT and WINE brands



# 2010



Dr. Craig Venter

Patenting Synthetic Life?

# I LEFT THE OLD WELL SO CAN YOU



GETTING CONNECTED TO YOUR CUSTOMERS  
WITH NOT JUST A WEBSITE

**BUT A SOCIAL NETWORKING ENABLED WEBSITE**

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one to get a sticky anf unforgettable  
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is  
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Mabbit Communications Private Limited  
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Delhi-110092

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## From The Editor's Desk



# Indian Patent office is on the roll!

**W**e are glad to present second issue of IP and Business! New issue presents unified and comprehensive overview of the world of intellectual property rights. It aims at describing and analyzing current news from the world of IP and Business.

Indian Patent office is on the roll! Indian Patent Office has released the report of year 2008-09, which lucidly proves India as an emerging power in research and development in various industrial sectors.

Dr Venter, the US genetics pioneer, and his team announced last week that they had made a completely new "synthetic" life form from a mix of chemicals. For the first time, the controversial geneticist credited with creating life in a laboratory has been accused of attempting to get a "monopoly" on new DNA techniques.

From recession to recovery: The world's most powerful spirits and wine brands, 2010 is the industrial focus of the month.

Branding strategies centering on the geographical origins of a product can provide a basis for differentiating commodity products. The use of such "geographical indications" (or GIs) as branding strategy is the new feature!!

Introduction to new category "knowledge series" will provide small and medium industry guide to protect intellectual property. Simple and engaging in style and presentation, the new issue will be of immense interest to entrepreneurs, executives and students.

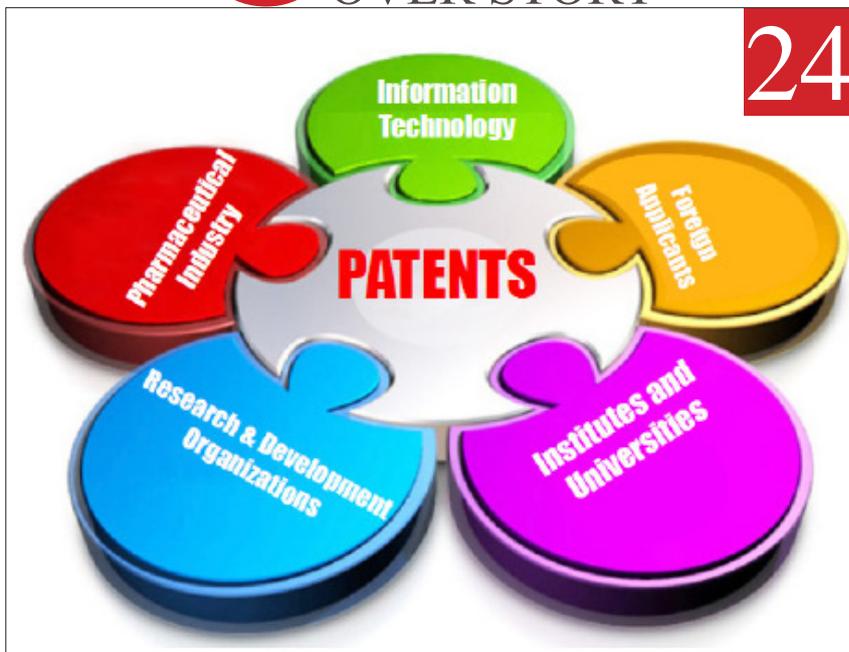
Happy Reading!!

Cheshta Sharma  
EDITOR IN CHIEF

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### INDIAN IP REVIEW

*Indian Patent office is on the roll! The value of knowledge is increasingly being recognized in today global economy and society. The Intellectual Property rights are now not only being used as a tool to protect the creativity and generates revenue but also to built strategic alliance for the socio – economic and technological growth.*

## F EATURE

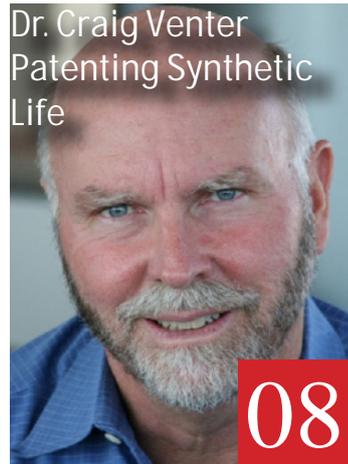
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### INTERNATIONAL IP

*A top UK scientist who helped sequence the human genome has said efforts to patent the first synthetic life form would give its creator a monopoly on a range of genetic engineering.*

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**IT'S TIME TO BOOST YOUR SELF**

AVI SHARMA  
PATENT ANALYST

## IP & Business

India's first intellectual property & business magazine

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### HARSH VARDHANA SINGH , DDG, WTO ADDRESSES AT FICCI



FICCI and Centre for WTO Studies jointly organized a special address by Dr. Harsha Vardhan Singh , Deputy Director General , WTO on 3rd June 2010 on "WTO Doha Round Negotiations : The way forward and where does the balance lies?"

The main agenda of meeting was to discuss the significance and current state of play of the Doha Round Negotiations in WTO after the stock taking meeting that was held in March 2010. According to Dr. Singh , the way forward for the Doha Round Negotiations can be seen " in three ways , Doha Round Package , Engagement of WTO members in the negotiations and effect on the multi trade system "

To read the complete blog entry, visit <http://www.ipandbusiness.com>

**BLOG ENTRY**

### SEMINAR ON PROPOSED ACTA AND TRIPS: ISSUES AND IMPLICATIONS AT FICCI CONCLUDED



Seminar on Proposed ACTA and TRIPS: Issues and Implications at FICCI concluded on 28th May 2010 at heated house of discussion. Distinguished panel of speakers included:

Ms Leena Menghaney: Campaign co-coordinator (India), Medecins Sans Frontieres Campaign for access to essential medicines

Dr. Mira Shiva: Director, Initiative for Healthy Equity and Society

Mr. Raghu Cidambi: Advisor –IPR & Regulatory Matters, Indian Pharmaceutical Alliance

The Presentation was given by Mr. T C James Consultant at FICCI.

The seminar was organized in the wake of the European Union's (EU) recently released consolidated draft text of the proposed Anti-Counterfeiting Trade Agreement. It is planned trade agreement for setting up international standards on intellectual property rights enforcement all through the participating nations. The ACTA has a wide scope, including counterfeit goods, generic medicines, as well as 'piracy over the Internet.

To read the complete blog entry, visit <http://www.ipandbusiness.com>

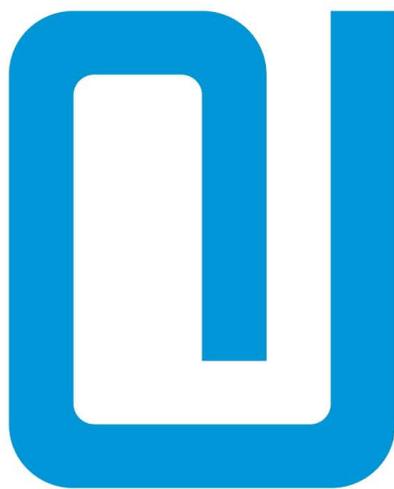
# IP Valuation

## What Abbott gain out of 17 crore?



Piramal's portfolio of branded generics—the greatest intangible asset acquired is expected to log sales of over \$500 million, with brands spanning multiple therapeutic drugs and formulations, including antibiotics, respiratory, cardiovascular, pain and neuroscience.

## Piramal Healthcare



# Abbott

## A Promise for Life

US drug maker Abbott Laboratories has agreed to pay—\$3.7 billion or Rs 17,000 crore—to buy the domestic formulations business of Piramal Healthcare in a scramble among global pharmaceutical companies to get a foothold in a promising market.

Abbott, which is celebrating its 100th year in India and owns such brands as Creamffin, Brufen and Digene, will make an upfront payment of \$2.12 billion to the Ajay G. Piramal-led firm, apart from \$400 million annually for four years, the two companies said.

Abbott estimates the growth of its pharmaceutical business in India after the Piramal acquisition to touch 20 percent annually and log \$2.5 billion by 2020. The Piramal group's turnover across several business had exceeded \$1 billion in 2009-10.

India is one of the fastest-growing markets in pharma, largely because of generics, with revenue projected at \$8 billion this year for the industry overall. 'This strategic action will advance Abbott into the leading market position India -- one of the world's most attractive and rapidly growing markets,' said Miles D. White, chairman and chief executive officer of Abbott.

India became a generics powerhouse because of a 1972 decision by then Prime Minister Indira Gandhi not to recognize patents on drug products. That allowed Indian companies to legally copy expensive branded drugs as soon as they came to market, provided they manufactured the drugs in a novel way. India ended its copycat generics edge in all but exceptional cases in 2005, when it implemented a World Trade Organization guarantee of 20-year patents on new drugs. But the nation's drug makers still produce roughly one-

*Piramal's portfolio of branded generics—the greatest intangible asset acquired is expected to log sales of over \$500 million, with brands spanning multiple therapeutic drugs and formulations, including antibiotics, respiratory, cardiovascular, pain and neuroscience.*

fifth of the world's generics, according to PricewaterhouseCoopers.

drug makers still produce roughly one-fifth of the world's generics, according to PricewaterhouseCoopers.

The deal with Abbott, which is still subject to shareholder approval, leaves Piramal Healthcare to reimagining its future.

Piramal will give up the most valuable parts of its healthcare business, leaving an assortment of services including custom manufacturing, over-the-counter consumer products and an affiliated drug discovery company called Piramal Life Sciences Ltd.

Analysts say the Indian firm will take time to incubate new businesses and even longer for returns to accrue. Piramal, however, expressed confidence that existing businesses such as patented products will make gains in the domestic market in two-three years.



# Dr. Craig Venter Patenting Synthetic Life

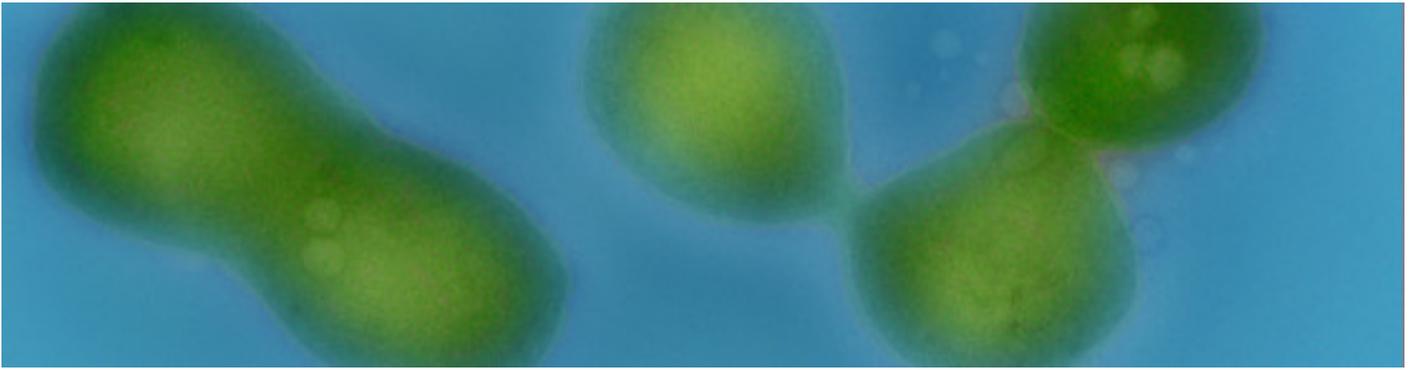


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*Dr. J. Craig Venter*

*A top UK scientist who helped sequence the human genome has said efforts to patent the first synthetic life form would give its creator a monopoly on a range of genetic engineering.*

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Colonies of the transformed *Mycoplasma mycoides* bacterium. Image Credit: J. Craig Venter Institute.

**F**or the first time, the controversial geneticist credited with creating life in a laboratory has been accused of attempting to get a “monopoly” on new DNA techniques. Dr Venter, the US genetics pioneer, and his team announced last week that they had made a completely new “synthetic” life form from a mix of chemicals. The man-made single celled organism, nicknamed Synthia, is able to multiply, one of the definitions of being alive.

Venter said last week his discovery could create a “new industrial revolution”. He hopes to engineer bacteria which could create medicines, fuels – or even absorb greenhouse gas emissions. Critics said these claims were overstated.

Professor Sir John Sulston says that a successful attempt by Craig Venter to patent his techniques could give him a monopoly which would inhibit the progress of science.

Now Sulston has launched a media war, speaking to the BBC about Venter’s patent applications.

This is not the first time the two men have clashed: 10 years ago they headed rival teams racing to map the entire human genome for the first time. Sulston’s was government and charity-funded and made all its data public; Venter’s was private enterprise, and sought to patent particularly useful sequences of the genome. Sulston was publicly critical then of Venter’s privatizing approach and defiantly kept his own data public to undermine the commercial value of the US team’s work. After public outcry on both sides of the Atlantic, Venter’s organization withdrew its patent applications.

Speaking at the Royal Society in London, Sulston said that his objection to patents on genes from existing living organisms is that they are “discoveries” not inventions. He believes that patenting such breakthroughs stifles further scientific discovery.

However, a spokesman for JCVI said there was no possibility of Venter’s applications leading to a monopoly: He added that

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*“I’ve read through some of these patents and the claims are very, very broad indeed,” he said. “I hope very much these patents won’t be accepted because they would bring genetic engineering under the control of the J Craig Venter Institute (JCVI). They would have a monopoly on a whole range of techniques.”*

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*“ There are a number of companies [which may have] filed some degree of patent protection on a variety of aspects of their work, so it would seem unlikely that any one group, academic centre or company would be able to hold a ‘monopoly’ on anything.”*

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the Venter Institute was committed to “open dialogue and discussion on all issues surrounding synthetic genomics.

The study details an increased use of patents by researchers.

“My objections to patenting human genes or genes from existing living organisms is that they are inventions or discoveries,” said Professor Sulston.

“The problem has become much worse since I raised the issue 10 years ago.”

He believes that the over-use of patents is inhibiting research that could otherwise greatly benefit society, such as better healthcare for the poor.

Professor Sulston commented: “It’s fashionable to think] that it’s important to have strong intellectual property and that it’s essential for promoting innovation. But there’s no evidence

that it does promote innovation. There’s an unwillingness to consider any problems.”

But he also believes that these arguments are now beginning to be accepted.

Last November, a US company, Myriad Genetics, lost parts of its patent rights on two breast cancer genes following a legal challenge by civil rights groups. Negatively stained transmission electron micrographs of dividing *M. mycoides* JCVI-syn1. Freshly fixed cells were stained using 1% uranyl acetate on pure carbon substrate visualized using JEOL 1200EX transmission electron microscope at 80 keV. Electron micrographs were provided by Tom Deerinck and Mark Ellisman of the National Center for Microscopy and Imaging Research at the University of California at San Diego. 



**D**riven by its modern, cool image Smirnoff has retained its position as the world's leading alcoholic drinks brand according to The Power 100, 2010, the annual survey of the world's leading drinks brands published this week by brand valuation and strategy consultancy Intangible Business.

Intangible Business, which works extensively in the drinks industry, researched nearly 10,000 spirit and wine brands across the globe to produce The Power 100, now in its fifth year.

The league table, which assesses both the financial contribution of each brand alongside its strength in the eyes of the consumer, has been compiled by combining scores from a panel of some of the world's leading drinks industry experts with hard data. The brands are rated according to share of market, future growth, premium price position, awareness, relevance, heritage and brand perception.

Smirnoff achieved an overall score of 93.6%, giving it a

significant margin over the other brands that make up the top ten.

Johnnie Walker remains the world's leading whiskey brand at number 2 in The Power 100, despite seeing its score fall by 20%, keeping it ahead in the whiskey sector from Jack Daniel's (6 overall), Chivas Regal (8 overall), Ballantine's (10 overall) and Jim Beam (15 overall).

Bacardi, the number one rum brand and number 3 in the overall The Power 100, came narrowly behind Johnnie Walker, but comfortably ahead of Martini Vermouth in 4th place and Hennessy in 5th place.

The biggest climber in the Top 20 is Chilean wine brand Concha y Toro, which climbs five places to number 17. Other big climbers in The Power 100 include Cuban rum brand Havana Club (up seven places to 25); Cognac brand Rémy Martin (up six places to 27) and American wine brand Robert Mondavi, which climbs six places to number 31 on this year's table and Australian wine brand LINDEMANS, which climbs eight places to number 55.

# From Recession To Recovery The World's Most Powerful Spirits And Wine Brand 2010

There are nine new brands in this year's The Power 100, the highest of which – Swedish vodka brand Svedka – comes straight in at number 46. Others include Russian Standard (54), Wyborowa at 59, Aperol (70), Clan Campbell (73), William Lawson's (78), Clan MacGregor (89), Three Olives (94) and Wild Turkey (100).

They replace established brands in The Power 100 including Banrock Station, Dom Perignon, Kumala, Lanson and Taittinger.

The USA is the country with the most brands in The Power 100 with 18 brands, led by Jack Daniel's, Gallo and Jim Beam; Scotland has 16 brands in The Power 100, led by Johnnie Walker, Chivas Regal and Ballantine's, and France with 14 brands, led by Hennessy, Moet et Chandon and Ricard, although France has four fewer brands in this year's table compared to last.

Stuart Whitwell, Joint Managing Director of Intangible Business, comments: 'The biggest brands have taken quite a battering, marking the end to a 15 year drive to premiumisation.'

- 
- *Smirnoff loses value but retains top spot. Johnnie Walker falls 20%*
  - *Biggest brands take a battering as economy takes hold*
  - *Champagne brands lose their fizz as Dom Perignon, Lanson, Nicolas Feuillatte and Taittinger fall out of The Power 100*
-

This has been replaced with a drive to value which new entrants are taking advantage of. Vodka is still a high growth area with fewer barriers to entry and greater consumer choice emerging from both established companies and new value entrants.

Whitwell adds: “It will be interesting to see if consumers return to the big brands once their economic situation improves.

Or perhaps greater choice and innovation has changed the landscape for good.”

[www.drinkspowerbrands.com](http://www.drinkspowerbrands.com)

As the world comes out of recession and affluence returns, the challenge for these biggest brands will be to attract consumers back.

### 1. Smirnoff



Smirnoff the ‘untouchable’ has become ‘Smirnoff the vulnerable’. Despite launching a wide range of flavored variants and a number of quality variants, Smirnoff was unable to stop the inevitable decline in volume. Its brand score increased by 8% but it faces fresh challenges at the top end from Absolut, now in its second year under Pernod Ricard’s management, and others such as Russian Standard, Skyy and Grey Goose. It is also being undermined from below, from the likes of Svedka – the highest new entrant in 2010 – and Eristoff. Diageo’s plans for its own value vodkas may protect its decline but whatever happens, Smirnoff will have to fight hard.

### 2. Johnnie Walker



Johnnie Walker has had a pretty tough year with volumes down 11% and its brand rating falling 4%. However, Johnnie Walker still remains the most powerful whisky brand in the world outstripping its nearest rivals by some margin – three times bigger than its nearest Scotch rival, J&B, and 50% bigger than its nearest US whiskey rival, Jack Daniel’s. With a heritage dating back 200 years, an inventory that can date back a generation, and a five-strong product range that successfully segments taste and quality profiles, Johnnie Walker will take some catching.

### 3. Bacardi



Bacardi is a consistent strong performer in this year’s The Power 100, virtually being the rum market. However, even this power brand was not immune to the forces of economic malaise. Its volumes fell as did its brand rating although it managed to keep its bronze position in The Power 100, 2010.

### 4. Martini Vermouth



The sustained appeal of cocktails and Martini’s consistent association and sponsorship of glamorous events such as motor sport helped prevent a significant fall in sales this year. Its brand rating was 2% lower than last year which resulted in an overall decline of 6%. Positioning Martini as a versatile summer long drink and pitcher option when mixed with fruit juice will extend the brand’s relevance and opportunities for

consumption. Martini's domestic market continues to provide a firm base from which further international penetration is managed.

### 5. Hennessy



The sustained appeal of cocktails and Martini's consistent association and sponsorship of glamorous events such as motor sport helped prevent a significant fall in sales this year. Its brand rating was 2% lower than last year which resulted in an overall decline of 6%. Positioning Martini as a versatile summer long drink and pitcher option when mixed with fruit juice will extend the brand's relevance and opportunities for consumption. Martini's domestic market continues to provide a firm base from which further international penetration is managed.

### 6. Jack Daniel's



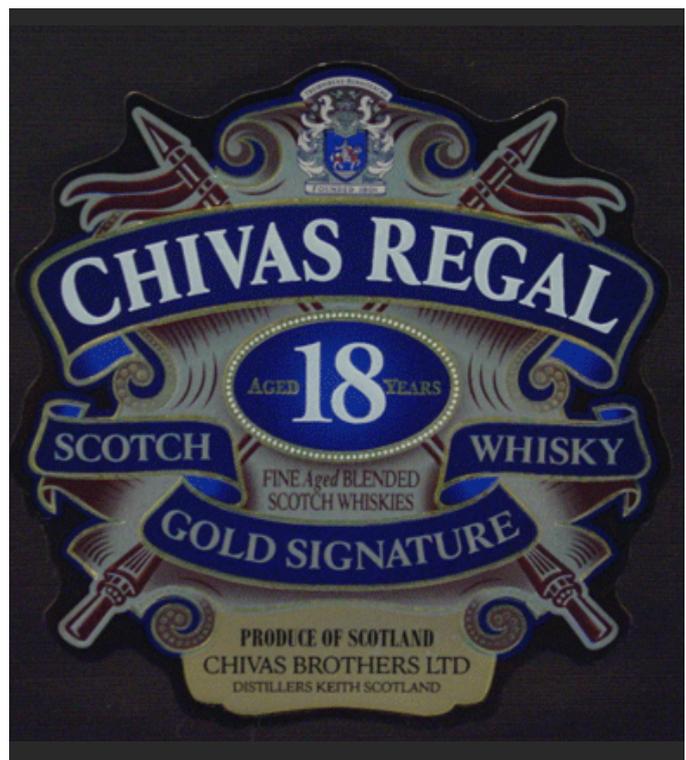
Its iconic square bottle and black and white label help differentiate Jack Daniel's from the rest of the whiskey market. Jack Daniel's volumes increased slightly in one of the most difficult years for a generation, testament to the brand's strength and loyal following. It is rewarded by moving up one place in The Power 100, 2010.

### 7. Absolut



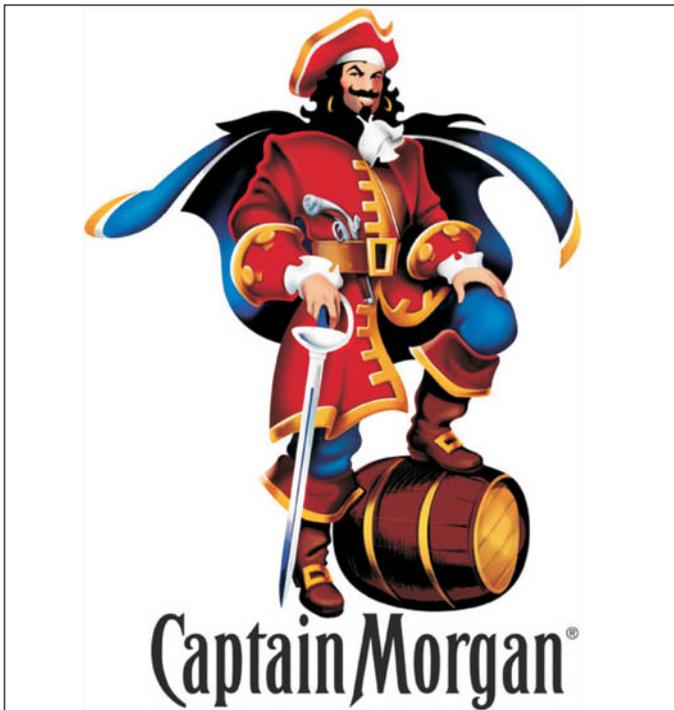
Absolut's transition to the Pernod Ricard stable has inevitably resulted in a, most likely temporary, decline in volume. The brand has also lost its status as the world's strongest vodka brand to Smirnoff. However, Absolut's history of innovative marketing activities, that have given it its unique position in the market, gives the brand a solid platform from which to regain its crown.

### 8. Chivas Regal



Like most brands, Chivas Regal was affected by the recession, losing volume for the first time in years. The brand's premium range of aged whisky continues to be appreciated as one of the finest in the world. Pernod Ricard enhances the brand's premium status with sponsorship of premium creative events such as Chivas and Cannes Film Festival.

## 9. Captain Morgan



Captain Morgan enters the top 10 in for the first time in The Power 100, 2010, moving up two places, displacing Baileys whose volumes fell 11%. Captain Morgan, reached the top 10 on its own merits, carefully steered by Diageo and entering into the spirit of social media trend, accumulating over 200,000 Facebook fans.

## 10. Ballantine's



Ballantine's held its position in the top 10 in The Power 100, 2010. Its six-strong range caters for different tastes, giving consumers choice without having to leave the brand. The brand is beginning to make inroads into the lucrative cocktail market which will not only increase its volumes but will introduce the Ballantine's brand to a new generation of loyal followers

## About The Power 100

### Methodology

Nearly 10,000 brands in the spirits and wine sectors were researched to derive a list of the 100 most powerful spirits and wine brands in the world. Power is defined by a brand's ability to generate value for its owner. Value is classified by a series of measures as identified below. The population for the research is all current and potential users of alcoholic drinks.

### Scoring Hard Measures

Share of market: volume-based measure of market share

Brand growth: projected growth based on 10 years' historical data and future trends

Price Positioning: a measure of a brand's ability to command a premium

Market Scope: number of markets in which the brand has a significant presence

### Soft Measures

- Brand Awareness: a combination of prompted and spontaneous awareness.
- Brand Relevancy: capacity to relate to the brand and a propensity to purchase.
- Brand Heritage: a brand's longevity and a measure of how it is embedded in local culture.
- Brand Perception: loyalty and how close a strong brand image is to a desire for ownership.

A panel of leading experts in the drinks industry independently ranked each selected brand out of 10 on the above measures (10 = high, 0 = low). The scores given by the individual panel members were aggregated and averaged to reach a total score for each brand. A total score was achieved by multiplying a brand's weighted volume by its brand score, within a defined range. The weighting is designed to adjust the volumes to a comparable level. Brand score is a derivative of the 8 measures of brand strength. This results in a ranking of the world's most powerful alcoholic drinks brands.

### About Intangible Business

Intangible Business was established in 2001 to provide an independent approach to brand valuation, brand strategy and brand development. As well as experts in brand valuation, Intangible Business is now an internationally recognised leader in all IP valuation, including copyright valuation, trademark valuation, valuing websites, valuing databases and software.

# GI BRANDS



“The important issue about these products is the link between their quality characteristics and the geographical attributes of the region”.

# COMMERCIALIZING IP

# Branding Geographical Indications



**KIRTIMAN SHARMA**  
*Managing Director & CEO*  
 Mabbit Communications  
 Private Limited

The last two decades saw geographical indications (GIs) often being put into the center-stage in many multilateral and bilateral trade talks. There have been demands by the European Union (EU) and many developing countries to grant higher protection for products other than wines and spirits at the Council of Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO).

Protection of GIs refers to protection of products originating from a certain geographical area<sup>1</sup>. Thus, protection is provided against the use of GIs for products not originating from the geographical area to which the indication refers. Such protection has far reaching implications for both producers and consumers alike. It helps consumers distinguishing goods produced in a particular geographical region from goods produced elsewhere thereby preventing the former from being misled. So the idea is to provide

protection for GIs, a kind of intellectual property right, which entitles the enterprises that are located in the designated area to exclude others from using the indication.

The important issue about these products is the link between their quality characteristics and the geographical attributes of the region where these products are being produced. Such products are mostly agricultural commodities like wine, cheese, rice, fruits, and coffee but also refer to handcraft items such as silk clothes with traditional paintings on them; or it could be even herbal medicines such as Neem and Turmeric

Branding strategies centering on the geographical origins of a product can provide a basis for differentiating commodity products. The use of such “geographical indications” (or GIs) can involve unique quality characteristics associated with a particular location or quality images that are based on the history, tradition, and folklore in a region.



# UP E S

## Creating an imagery of exoticness:

A 2004 article in Business Week describes different salt products with these characteristics: shimmering Indian Black Salt, Portuguese Algarve Salt, Australian Murray River Pink Flake Salt, Il Buco Handcrafter Italian Wooden Sea Salt, French Fleur De Sel, and Clay-tinged red Alaea Hawaiian sea salt. “Unlike common table salt, which is mined from the land and then refined, the best specialty salts are harvested from seawater that’s allowed to evaporate in the sun. The process preserves the minerals that lend each salt its distinctive appearance and flavor” .According to the article, as a consequence of the success

of GI strategies for these salt products, Basmati rice are the front runners gourmet cooks pay as much as \$80 a the existing Indian GIs, Darjeeling tea and and Basmati rice are the front runners in terms of international market and exportability.

Strategies based on GIs could also represent a viable approach for producers to gain competitive advantages in the marketplace. GIs allow producers to create an image of “exoticness” or scarcity that enables them to obtain premium prices for products that would otherwise be ascribed commodity status. The main source of this exoticness comes from unique quality differences

S1. No	Geographical Indication	Product Type	S1. No.	Geographical Indication	Product Type
1	Darjeeling Tea(word andLogo	Tea	32	Thanjavur painting	Painting
2	Pochampally Ikat	Textiles	33	Silver Fillgree Kareem Nagar	Metal work
3	Chanderi sarees	Textiles	34	Allepey Coir	Textiles
4	Kotpad Handloom F	Textiles	35	Mysoor Jasmine	Flower
5	Mysoor Agarbatti	Incense Sticks	36	Udupi Jasmine	Flower
6	Kancheepuram Silk	Textiles	37	Handagali Jasmine	Flower
7	Bhavani Jamakkalam	Textiles	38	Temple Jewellery Nagercoil	Handicraft
8	Kota Doria	Textiles	39	Muga Silk	Textiles
9	Arnamula Kanadi		40	Navara Rice	Agri. Products
10	Salem Fabric	Textiles	41	Malakkadam Mata Rice	Agri. Products
11	Solapur chaddar	Textiles	42	Thanjavur Art plate	Handicraft
12	Solapue Terry Towel	Textiles	43	Ilkal Sarees	Textiles
13	Mysoor Silk	Textiles	44	Khatwa Patch Work	Handicraft
14	Kullu Shawl	Textiles	45	Sujini Embroidari	Handicraft
15	Madhurai Sangudi	Textiles	46	Sikki Grass Work	Handicraft
16	Kangra Tea	Tea	47	Malabar Pepper	Agri. Products
17	Coorg Orange	Fruits	48	Allahabad Surkha	Handicraft
18	Mysoor Betel Leaf	Horticulture Product	49	Nakshi Kantha	Textiles
19	Nanjanagud Banana	Horticulture Product	50	Ganjifa Cards	Handicraft
20	Mysoor Sandal Wood Oil	Essential oil	51	NavalLgund Durries	Textiles
21	Mysoor Sandal Wood Soap	Soap	52	Karnatka Bronze Ware	Handicraft
22	Bindriware	Handicraft	53	Molkalmuru Sarees	Textiles
23	Channapatna Toys and Dolls	Handicraft	54	Momsooned Malabar Arabica Coffee	Coffee
24	Coimbatoor Wet Grinder	Wet Grinder	55	Momsooned Malabar Robusta Coffee	Coffee
25	Mysoor Rosewood Inlay	Handicraft	56	Spices Allepey Green Cardamom	Agri. Products
26	Kasuti Embroidry	Textiles	57	Coorg Green Orange	Agri. Products
27	Mysoor Traiditional Painting	Paintings	58	E.I. Leather	Leather
28	Orissa Ikat	Textiles	59	Salem Silk	Textiles
29	SriKalahasthi Kalamkari	Textiles	60	Kovai Kora Cotton	Textiles
30	Kondapalli Bommallu	Toys	61	Arani Silk	Textiles
31	Madhubani Paintings	Paintings	-	-	-



### Telling a legendary brand story with high recall value

Products with long tradition and history often blend the benefits of the location and authenticity of production expertise (or process secrets) with legends to create an additional dimension of folklore to create mystique. According to Kraft Foods, the legend associated with Parma cheese is that near the town of Parma, Italy, there was a mountain made entirely of grated parmesan cheese. Atop the mountain, a community of macaroni makers prepared hot pasta, bathed it in butter, and rolled it down the mountain to the hungry people waiting

below (Kraft Foods, Inc. n.d.). Although this delicious story is just a legend, it does create a mystical aura that helps consumers remember the brand.

### Creating Brand Loyalty

This strategy of building an image of quality for a class of products made in a certain area helps products from a country or region achieve consumer acceptance quickly and to also command premium pricing. The same idea has helped many food/beverage and other commoditized products such as cheeses, Swiss chocolates, Russian German beers, French and Italian wines and cheeses, Swiss chocolates, Russian vodka, Chinese tea and silk, and Holland bulbs. Consumers buy various brands of these products as long as those brands originate in a country/region known for producing those products. Such geographical identifiers have not been treated as a brand but as an additional cue for consumers to judge products.

# D O M I N

## IP asset is shared by group of companies

First, geographical identifiers are not owned by a single producer but rather by a collective of companies operating in a particular geographical area. Hence, individual producers have to identify their corporate/ brand name as well as the geographical identifier.

While GIs help differentiate products originating in one geographical area from those produced elsewhere, they simultaneously reduce the distinction between companies producing competing products in the same geographical area.

## Competitors may take advantage of established brand equity

Second, the original developers of a GI identity cannot reserve all of the benefits associated with a GI (which they helped create) for them. Once a GI “brand” is successful, new entrants will enter the geographical area to take advantage of the brand equity residing in the GI.

It has been highlighted on many occasions that the legitimate right holders of Darjeeling tea have long been adversely affected by the free-riding of many commercial entities, who have been misusing the reputation associated with this premium quality Indian tea. For instance, authentic Darjeeling tea produced in India is about 10 million kg; however, according to a rough estimation, around 40 million kg of tea is being sold worldwide as Darjeeling tea every year (Tea Board of India 2006). Other varieties of tea from countries like Kenya, Sri Lanka or even Nepal have often been passed off around the world as Darjeeling tea.

## Dilution of brand equity

Dilution can also arise through trademark tarnishment, which involves a reduction in the favorability of a brand’s associations and image. In essence, the actions of one mark serve to mar or tarnish the positive associations or equity created with respect to the senior mark.

A case in point is “Basmati” rice from India, which has been copied as “Texmati” rice from Texas and “Calmati” rice from California (the latter products are also referred to as “American Basmati”). Many popular food varieties can be produced at different locations than their traditional home locations.

## Weak IP System

The main reason for the delay in getting Basmati rice registered as a GI is related to the selection of right varieties. Over the years, scientists have developed several varieties naming them as Basmati. This has led to the problem that many of these aromatic rice varieties do not contain any parental line of the traditional Basmati. This has created enormous confusion regarding the authenticity of different varieties of Basmati (see Sharma 2005). For example, scientists in India have developed varieties of Basmati rice having parental lines of traditional varieties like Pusa Basmati-1, Haryana Basmati, Kasturi and Mahi Sugandha. Other aromatic rice varieties were developed which do not contain immediate parental lines of traditional varieties like Pusa Basmati 2 and 3, Pusa RH-10, Pusa-1121, Vasumati, Pusa Dhan-15, Haryana Mahak, and CSR-30.

## Conclusion

As the use of GI-based marketing strategies and trademarks increases, brand names involving GIs will become the most important asset for producers and their greatest source of competitive advantage in the marketplace. Accordingly, it is incumbent for agricultural firms electing to employ such strategies to have an appreciation of factors that pertain to the establishment and protection of GI-based marks in commerce. Such an understanding will provide these firms with the ability to leverage these marks as a source of sustainable competitive advantage into the future. 

# MENTA MABBIT MEDIA

PRESENTS

## *IP & BUSINESS*

India's First Intellectual Property Business  
Magazine.

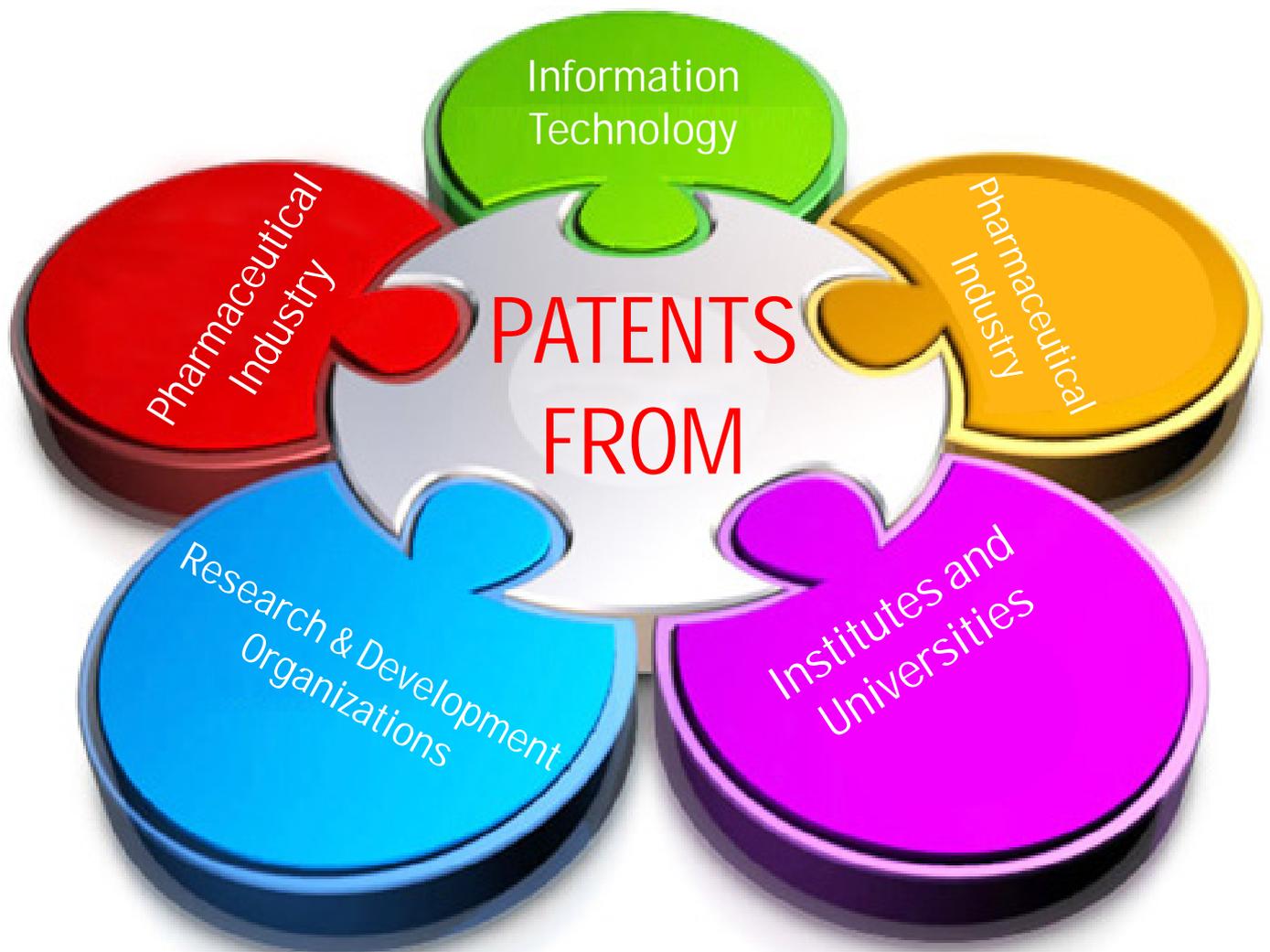
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# COVER STORY



*Indian Patent office is on the roll! The value of knowledge is increasingly being recognized in today global economy and society. The Intellectual Property rights are now not only being used as a tool to protect the creativity and generates revenue but also to built strategic alliance for the socio – economic and technological growth.*

# I INDIAN IP REVIEW

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*Indian Patent Office has released the report of year 2008-09, which lucidly proves India as an emerging power in research and development in various industrial sectors.*

*Despite economic crisis around the world, the application filing in India has shown upward trend.*

## Top 10 foreign applicants

S.no	Name of Organization	Number of Applications
1.	Qualcomm Incorporation	252
2.	Thomson Licensing	221
3.	Novartis AG	226
4.	Astrazeneca AB	190
5.	Telefonaktiebolaget Lm ericsson(PUBL)	176
6.	General Electric company	174
7.	Nokia Corporation	173
8.	The Procter & Gamble Company	157
9.	Sony Ericsson Mobile Communications AB	104
10.	Sony Corporation	102



Source: - ipindia.nic.in

According to report total number of Patents Granted this year was 16,061 out of which 2,541 was granted to Indian applicants. 30,822 patent was in force on 31 march 2009 in which 6,158 Patents belongs to Indians. Total Granted patent related to different fields:-

Mechanicals -----	3,242
Chemicals -----	2,376
Drug and Medicines -----	1,207
Electricals -----	1,140
Foods -----	97

### Revenue and Expenditure:-

The Patent Office generated revenue of Rs. 156.14 crores by way of fee on various proceedings under the Act and Rule. During the year corresponding Expenditure was Rs 18.53 crores.

## B. PCT International Application filed by Indian Patent Office

According to 2008 – 09 report Indian Patent Office filed PCT International Application by Indian applicants was 887 as compare with 707 in the previous year, which has shown an increment of approximately 25.5 %

Year	Year	Individual	Legal Entity	Total
2004 – 05	2004 – 05	105	351	456
2005 – 06	2005 – 06	130	352	482
2006 – 07	2006 – 07	144	390	534
2007 – 08	2007 – 08	169	538	707
2008 – 09	2008 – 09	232	655	887

Source: - ipindia.nic.in

## A. Patents

Patent office has introduced some modernization methods in grant system in India. There is around 5% increase in no. of applications filed.

### Trend in Patent applications

Year	2004 – 05	2005 – 06	2006 – 07	2007 – 08	2008 – 09
Filed	17466	24505	28940	35218	36812
Examined	14813	11,569	14119	11751	10296
Granted	1911	4320	7539	15316	16061

Source: - ipindia.nic.in

Out of the applications filed by Indian applicants, Maharashtra accounted for maximum no. of applications followed by arnataka, Delhi and Andhra Pradesh.

With the introduction of product patent in Indian, Pharmaceutical Industry has tremendously increased. Dr. Reddy's Laboratories filed highest no. of applications- 147 in the year 2008-09.

### Major Indian Applicant for Patent from Pharmaceutical industry

S.no	Name of pharmaceutical Industry	Applications filed
1.	Dr. Reddy's Laboratories	147
2.	Ranbaxy Laboratories	101
3.	Avesthagen Limited	66
4.	Cadila Healthcare Ltd	57
5.	Matrix Laboratories Ltd	54
6.	Orchid Chemicals & Pharmaceuticals Limited	22
7.	Aurobindo Pharma Limited	22
8.	Jubilant Organosys Ltd	21
9.	Ind – Swift Laboratories Ltd	19
10.	Panacea Biotech Limited	15

Source: - ipindia.nic.in



In the area of information technology, Samsung India Software Operations has filed maximum applications followed by Infosys.

### Major Indian applicants for patents in field of Information Technology

S.no	Name of pharmaceutical Industry	Applications filed
1.	Dr. Reddy's Laboratories	147
2.	Ranbaxy Laboratories	101
3.	Avesthagen Limited	66
4.	Cadila Healthcare Ltd	57
5.	Matrix Laboratories Ltd	54

Source: - ipindia.nic.in

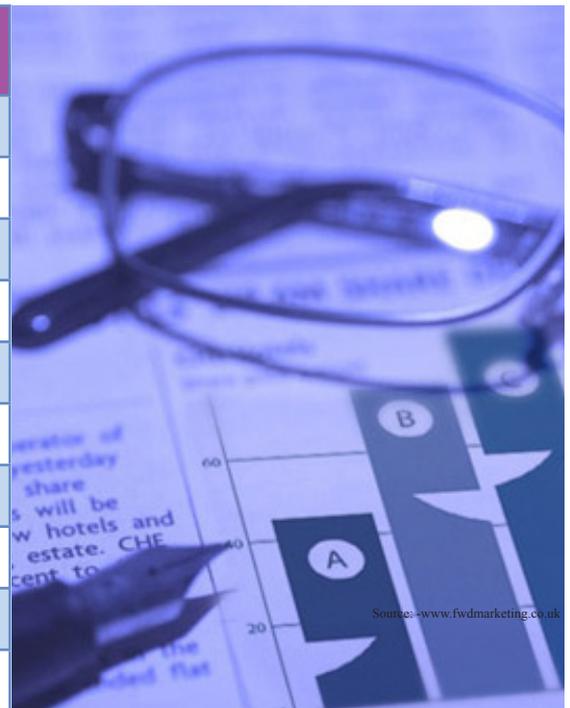


Source: - isdsclass.bus.lsu.edu

In the area of council of scientific and industrial research has filed maximum number of applications followed by Bharat Heavy Electricals Ltd. and TATA Steel.

## Major Indian Applicants for Patents from scientific and Research & Development Organizations

S.no	Name of scientific and Research & development Organization	Applications filed
1.	Council of Scientific and Industrial research	165
2.	Bharat Heavy electrical Ltd.	119
3.	Tata steel	65
4.	Indian council of agricultural Research	35
5.	Steel Authority of India Limited	31
6.	Lupin Limited	30
7.	Imylan Development Centre	17
8.	Apex Labs Pvt. Ltd	17
9.	Rubicon Research Pvt. Ltd.	12
10.	Indian space Research Organization	11



Source: - ipindia.nic.in

According to 2008-2009 report, Indian Institute of Technology was top among all universities and Institutes in filling applications followed by Amity University and Indian Institute of Science.

## Top 10 Indian Applicants for Patents from Institutes and Universities

S.no	Name of Institute/Universities	Applications filed
1.	Indian Institute of Technology	91
2.	Amity University	33
3.	Indian Institute of Science	21
4.	Central Institute for Research on cotton	12
5.	National Institute of pharmaceuticals Education & research	08
6.	National Institute of Immunology	07
7.	University of Delhi	07
8.	S.N. Bose National Centre for B.S.	07
9.	Thaigarajar college of Engineering	06
10.	Punjab Agricultural University	04



Source: - ipindia.nic.in

In the area of top most foreign resident applicants, Qualcomm Incorporation have filed among the most number of applications followed by Thomson Licensing, novartis AG.

## C. Design

According to report of Patent Office design application shows marginal increase about 2.5% as compared to previous year

Year	2004 – 05	2005 – 06	2006 – 07	2007 – 08	2008 – 09
Filed	4017	4949	5521	6402	6557
Examined	4017	4719	4976	6183	6446
Registered	3728	4175	4250	4928	4772

Source: - ipindia.nic.in

Siemens is the most leading foreign company in design application filling followed by Nokia Corporation and Alfanar Co.Ltd.

### Top 10 Foreign Companies

S.no	Foreign Companies
1.	Siemens
2.	Nokia corporation
3.	Alfanar Co. Ltd.
4.	Kholer Co.
5.	Honda Motors Co. Ltd.
6.	Apple Inc.
7.	SAP Ag
8.	Dr. INC H.C.F. Porsche AG
9.	Koninklijke Philips Electronics n.v.
10.	Samsung Electronic Co.Ltd.

Source: - ipindia.nic.in



The number of design s registered during this year was 4772, out of total registered designs, 2985 application originated in India. The number of registered designs in force at end of the year was 38827 of which 29906 design were registered in names of Indian.

### Top 10 Foreign Companies

The total revenues generated for the patent office( Kolkata, Delhi, Mumbai and Chennai) during the year from various fees in respect of design applications and other proceedings under the design Act 2000, and Design Rules 2001, announced to Rs. 1,23,66,048.

## D. Trademark

The table shows the number of Trademarks registered during the year 2008 – 2009. Trademark registry number is increased compare to previous year, in comparative terms there was an increase of 6,658 number of application over the previous year.

S.no	Activities	2007 – 08	2008 – 09
1.	Application filed for registration	1,23,514	1,30,172
2.	Number of Applications advertized in the Trade Marks Journal	1,02,777	1,20,234
3.	Number of trademarks registered	1,00,857	1,20,257
4.	No. of marks in respect of which registration was renewed	20,174	29,749
5.	Request for search	1,12,119	1,70,490
6.	Request for preliminary advice regarding	68	40
7.	Certificates issued under section 45(1) of the copyright Act of 1993	1,893	3,187

Source: - ipindia.nic.in



### Class wise Statement of the number of Trademarks Registered:-

It is observed in 2008 – 09 report that 11313 trademark were registered under class 5 (Medical, Pharmaceuticals, Veterinary and sanitary substance etc), which is 11.06 % of total registration, followed by class 9 (scientific, Nautical, Suerving and electrical apparatus etc) which is 6.03 %. However 18005 trademarks were registered in the multiple classes is the highest and its about 17.61 % of total registration applications.

### Different type of trademark applications trends

Type of Marks	2007 – 08	2008 – 09
Word Marks	71,202	51,082
Device Marks	52,256	79,059
Number Marks	20	-
Letter Marks	36	31
Letter and Numeral	-	-
Total	1,23,514	1,30,172

Source: - ipindia.nic.in



In 2008 – 2009, the number of Trademarks registered was 1, 20,257 as against 1,00,857 during the previous year. The total number of registered trademarks 7, 55,335 as of 31 March 2009.

## E. Geographical Indication

The registry has also taken up initiative to organize awareness programmes throughout India to promote to registration of Indian GI's. The sector being focused on are tea, coffee, rice, spice, tobacco, , horticulture products, handloom products, handicrafts, textiles, processed food items, spiritd and wines. Till March 31, 2010 total number of 45 registration certificate is granted and total of one hundred and six geographical indications has been granted till 31 of March.

## Top 10 Geographical Indication as according to Report April 2008 to 31 March 2010

S.no	Geographical No.	Status	State
1.	Brass Broidered Coconut shell craft of Kerala	Registered	Kerala
2.	Screw pine crafts of Kerala	Registered	Kerala
3.	Maddalam of Palakkad(Kerala)	Registered	Kerala
4.	Swamimalai Bronze Icons	Registered	Tamil Nadu
5.	Blue Pottery of Jaipur	Registered	Rajasthan
6.	Molela Clay Idols	Registered	Rajasthan
7.	Kathputlis of Rajasthan	Registered	Rajasthan
8.	Bastar Iron Craft	Registered	Chhattisgarh
9.	Bastar Dhokra	Registered	Chhattisgarh
10.	Bastar Wooden Craft	Registered	Chhattisgarh

Source: - ipindia.nic.in



Since 15th September 2003 a total number of 165 application has been received till 31st March 2009 and total number of GI has been registered .

### Last five years details of GI

Year	2004 – 05	2005 – 06	2006 – 07	2007 – 08	2008 – 09
Filed	29	16	33	37	44
Registered	3	24	3	31	45

Source: - ipindia.nic.in

### Revenue statement of GI

Year	GI Applications (Rs)	GI Journals (Rs)	Other Fees (Rs)	Other Fees (Rs)	Total Revenue (Rs)
2008 - 09	3,10,000	1,20,000	33,360	33,360	4,63,360

Source: - ipindia.nic.in

## F. Electronic filing of IP applications

The registry has also taken up initiative to organize awareness programmes throughout India to promote to registration of Indian GI's. The sector being focused on are tea, coffee, rice, spice, tobacco, , horticulture products, handloom products, handicrafts, textiles, processed food items, spiritd and wines. Till March 31, 2010 total number of 45 registration certificate is granted and total of one hundred and six geographical indications has been granted till 31 of March.

## G. Trend in IPRs Granted / Registered

According to report the trend of Registration application of Patent, Trademark, Geographical Indication is increased. However registration of Design is decrease marginally.

Year	2004 – 05	2005 – 06	2006 – 07	2007 – 08	2008 – 09
Patents	1911	4320	7539	15316	16061
Designs	3728	4175	4250	4928	4772
Trademarks	45015	184325	109361	100857	102257
G.I.R.	3	24	3	31	45

Source: - ipindia.nic.in



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# INTELLECTUAL PROPERTY IN INDIAN SOFTWARE INDUSTRY



In clusters of modern low- and high-rise office buildings set amid acres of lush greenery here, thousands of engineers are hard at work, writing software for the latest telephones, designing next generation microprocessors, and developing wireless broadband technology.

Innovation in software products can be protected as intellectual property, usually either through the use of copyrights or patents. Both patents and copyrights are devices that are intended to protect a firm's or individual's innovation from misuse by others, although they are quite different devices for doing so. Copyrights, generally, protect the expression of an idea. That is, copyright protection extends to a specific work, but cannot be applied to the ideas contained in such work. The application of copyright protection for software products was firmly established internationally via the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

Under Article 10 of the TRIPs agreement, WTO members are required to treat computer programs, whether in object or in source code, as literary works as defined in the Berne Convention.

Copyright protection thus extends automatically to software code once the code has been written and recorded in a medium (i.e., hard drive of a computer). A copyright holder may use his or her right to prevent others from using, making, selling or distributing unauthorized copies of the work.

The protection of intellectual property was of little interest to Indian software companies in the past. In part this lack of interest is explained by the small

“new knowledge” content of Indian software services – there was not much intellectual property to protect. Indian companies did not own the customized intellectual property they might have created since their work product fell under work for hire standards or ownership was explicitly transferred to the hiring company. But even if India companies created software services that had new knowledge value, they did not seriously take steps to protect it.

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*The work of these engineers is generating significant amounts of intellectual property for American companies like Cisco Systems, General Electric, IBM, Intel, Motorola, and Texas Instruments – whose various Indian units have filed more than 1,000 patent applications with the United States Patent and Trademark Office.*

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## Patents

Intellectual property outputs were small. Among the Indian firms in the top 100 software firms in India, only three percent had any patents awarded in the US in the 1996-2003 periods while one-third of the foreign-owned software firms had US patents awarded in this period.

## Copyrights

Copyrights are a more frequent though less effective method than patents for protecting intellectual property in

software. In the 1996-2003 time periods, 18% of the top Indian software firms had registered software copyrights in the US. More foreign-owned software firms in India registered copyrights in the US than Indian firms.

## Why Intellectual Property Outputs Were Small

The small amount of new and valuable intellectual property creation credited to the Indian software industry is due in part to the fact that most of the software services work that Indian firms did was at the entry level of the software services value-addition hierarchy. This work required technically educated labor, but not advanced skills.

## Intellectual Property Protection in the Past

India has had a bad reputation for the protection of intellectual property because of reasons unrelated to software (e.g., lack of product patents in pharmaceuticals, and a slow judicial system), but also because of high piracy rates of software packaged products. But this did not discourage the growth and development of the Indian software services industry – instead it may have hastened it. It was not important to protect intellectual property in software in India because there was not much to protect. However, this will not be true in the future.

## Patent Protection

India does not award patents for software because under Indian law, software tends to fall into established unpatentable subject matter (i.e., business method, algorithm or pure mental act). However, software that has a technical effect and is part of a physical system is patentable. Discussions at high levels in India about

pure software patenting are taking place. The issues include the extent to which social benefit would be impeded by software patents, the usefulness of 20-year patents in an industry with rapid rates of technological obsolescence, and the extent to which software patent applications can meet the non-obvious criterion. A change in Indian software patent policy may occur in the future, but not immediately.

### Copyright Protection

Indian protection of software copyrights meets international standards in some respects but not others. In particular, Indian law does not prevent a properly registered software package from being copied for use on multiple computers, and does allow multiple copies of software to be made for non-commercial uses. High level discussions now taking place may reverse these two differences from international standards and bring India into full TRIPs and WIPO compliance. A more serious weakness in software copyright protection is its enforcement. Deterrence for copyright infringement is weak because proof is difficult and penalties are small. Conviction rates are low because the judiciary is understaffed and under qualified, and delays are too frequent and too long. Here also improvement might occur in the future in the form of proposals for the creation of special intellectual property courts.

Indian Software and Intellectual Property in the Future

### Indian Software and Intellectual Property in the Future

The business model for the Indian software industry in the past will change in the future. To be the low-cost vendor of entry level customized software services will not be the main basis for competing by Indian software companies. The historical Indian advantage of labor that is abundant, low-wage, low-cost, technically educated, and English-speaking is being eroded. Indian wages are rising as demand catches up with supply, and other countries, especially Ireland and Israel in Europe, and China and the Philippines in Asia, are developing their own competitive labor pools. income tax relief on export earnings from the government and marketing assistance from non-resident Indians in the US, will be less important in the future.

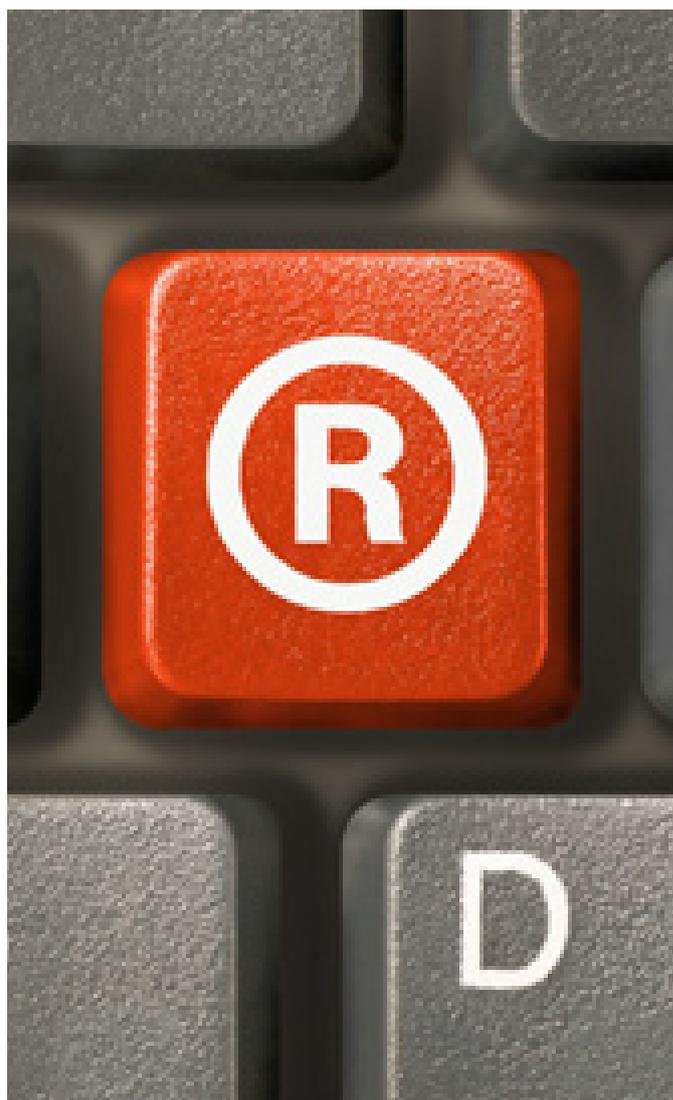
### Shifts in Company Strategies

The Indian software industry is seeking to move downstream along the value chain toward more complex tasks of design, systems integration, and consulting that require more customer

contact, more domain knowledge, more innovation, and more project management. There is also an attempt on the part of some companies to develop mass-marketed packaged software products, although so far these efforts have met with only modest success. The basis for competing in these segments is advanced technology, highly skilled labor technical labor, and managerial and marketing skill.

These new competitive requirements mean, among other things, that the Indian software industry must create new and valuable intellectual property in the future. Intellectual property is more valuable if it is more innovative, which yields bigger margins, and if it is reusable or has a wide range of uses, which yields more licensing revenue without increasing cost proportionately.

The implications for intellectual property are clear: Indian software firms must create new, advanced intellectual property, and they must protect it.



# Best Practices to minimize the risk of offshore Intellectual Property loss

The following Best Practices will help minimize the risk of losing Intellectual Property in conducting business offshore.

## 1. Understand the Intellectual Property rights

The first and foremost step is to get an overview of the different Initiatives and laws undertaken by the offshore country to protect the Intellectual Property.

## 2. Set up an Internal Intellectual Property protection team

Intellectual property protection is an ongoing business responsibility and not a one-time act. This makes it very critical to have a team in the company that is responsible for monitoring their Intellectual properties, violations etc.

## 3. Examine the work entities that can be copyrighted/patented

An ongoing evaluation of the company's work entities to identify copyright protection/patents is very critical. While copyrighting, it is important to make sure that such a protection will be valid in the country of offshore activity/development.

## 4. Offshore vendor history

If the company is planning to enter into a vendor relationship with an offshore entity, extreme caution has to be exercised in understanding the vendor's history with respect to any Intellectual property violations.

## 5. Define IP violation clause

In executing a contract with the offshore vendor, define a separate Intellectual Property Violation clause and define the consequences of Intellectual property violation (Some companies sign the contract with the onsite entity of the offshore vendor as it gives them more leverage to take any legal action if they have to).

## 6. Seek a reference check for all the team members

It is not only important to look at the resumes of the offshore team but also very important to seek the appropriate references to make sure there is no IP violation case history behind the individual.

## 7. Pay Attention to use of unauthorized software/third party products

As the saying goes, 'Practice what you Preach'. Heavily discourage the use of unlicensed software or products both by the onsite and the offshore team.

## 8. Enforce Central Repository

Enforcing a central repository for all the code and documents can not only improve the overall efficiency, and will also avoid numerous placeholders for critical documents and code.

## 9. Perform Periodic IP Audit

Perform a periodic IP audit and examine any new work that can be copy righted, remove all the unauthorized software/product, reiterate the importance of IP, look into all the place holders of the code/documents, assign appropriate ownership to the critical documents and update any change of ownership to patents.

## 10. Enforce the use of References

In all the company meetings/presentations make sure the appropriate references and credits are given to the owner of the work (be it internal or external). Making this practice a habit will raise the standards of the employees to acknowledge and respect and protect other people's work.

## 11. Develop Awareness

Protecting the Intellectual property can be greatly enhanced if all the employees of the company and the offshore team are on the same page as to how much attention the company pays to protect Intellectual Properties. In some companies IP protection is made as a part of the performance plan for each employee and reviewed periodically. 



## INDIAN INSTITUTE OF PATENT AND TRADEMARK ATTORNEY

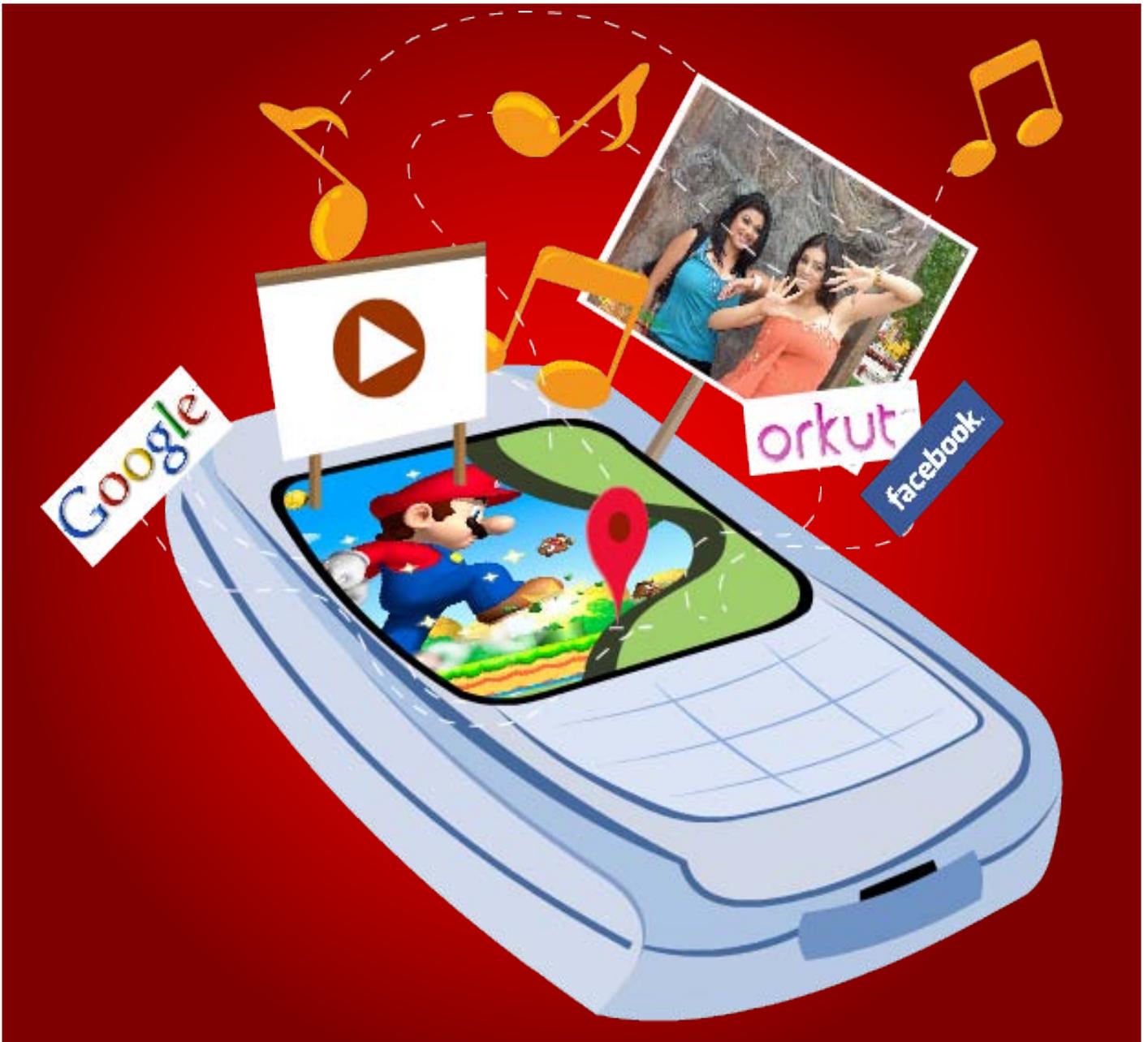
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- 6 MONTH INDUSTRIAL PROJECT IN BIOTECHNOLOGY
- PATENT AGENT TRAINING PROGRAM.
- 3 MONTH INDUSTRIAL TRAINING IN PATENTS.
- 2 MONTH SUMMER / WINTER TRAINING.
- COURSE ON THE BASICS OF PATENT DRAFTING
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- PROFESSIONAL PROGRAMS FOR WORKING EXECUTIVES .
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“ Always remember that someone somewhere is making a product that will make your product obsolete” - Georges Doriot.  
 Innovation increasingly inclusive and reaching are broader base.  
 The mobile innovation wander is perhaps at its fastest today then ever before in the mobile history.”

# MOBILE DESIGN Boom in the innovation world

**T**ill a few decades back, owning a cell phone was something limited to members of the affluent class only.

However, innovations and cost-cutting technologies, developed with the passing time, have made it emerge as a gadget that almost anyone and everyone can easily afford. Affordability has also led to mobile phones becoming an inevitable part of everyone's life. Talking,

about the origin of the device, we find information that is quite interesting

## From Origin to Advanced Mobile Phones

An important turning point in history of cell phones came with the development of mobile phone base stations. In 1947, Bell Labs Engineers developed mobile phone base stations. In the same year, hexagonal cells for mobile phones were introduced by Douglas H. Ring

and W. Rae Young. Philip T. Porter, an engineer of Bell Labs, proposed that the cell towers should be positioned at corners of the hexagons, instead of center. He argued for directional antennas, in order to transmit or receive signals in three directions, into three adjacent hexagon cells. It was Ericsson Company that released world's first fully automatic mobile phone system, called MTA (Mobile Telephone System A), in Sweden, in the year 1956.

Although the gadget was operated automatically, it didn't impress the users, because it was very bulky. It weighed around 40 kg. An upgraded version of the MTA was introduced later on, in 1965 to be precise, which was comparatively lighter. The gadget, known as MTB, used DTMF signaling. Today mobile phones are not just a means of communication. In the mid 1980s Text messages came as a value added feature. Moreover, now people use mobile phones in paying their bills while elsewhere in the world, people use mobile phones to browse the internet to check on emails and even send instant messages and can take photographs and capture video clips are the norms. In fact, mobile phones that can communicate with other electronic devices via Bluetooth technology are no longer news. Thus, mobile phones today are indeed all-in-one communication devices that can store contact numbers, has entertainment gadgets with built in digital cameras, internet access devices and personal computer as well. During the last decade we have seen an increased flow of innovation around the mobile phone, which is becoming an indispensable gadget in nearly everyone's life. Mobile devices outnumber desktop and laptop computers three to one worldwide and they are already the most popular access platform to the Internet. The convergence of mobile phone and web services is just the beginning of what may be regarded as true "ubiquitous computing". The paradigm of anytime, anywhere anyhow has become a reality in everyday life in a very short time. Under Industrial design rights can protect the new design of the mobile phone. Industrial design can be defined as the part of the intellectual property rights which confers the rights

of exclusivity to the visual designs of objects which are generally not popular utilitarian. It safeguards the appearance, style, design of the industrial object such as spare parts, textiles, furniture. According to the Industrial Design Society of America (IDSA), "Industrial Design (ID) is the professional service of creating and developing concepts and specifications that optimize the function, value and appearance of products and systems for the mutual benefit of both user and manufacturer."

### Advantages of Industrial Design Rights in new upcoming mobile phone design

1. Industrial designs help in making mobile phones or item more beautiful and appealing; henceforth they help in increasing commercial viability of product and increase its market potentiality.

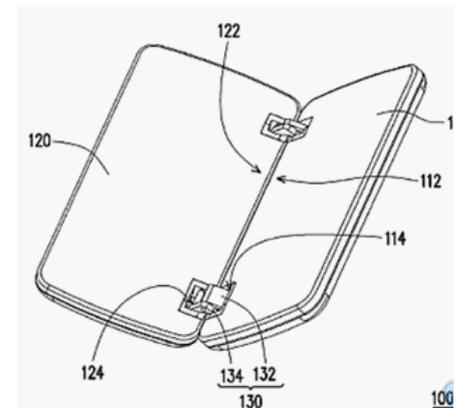
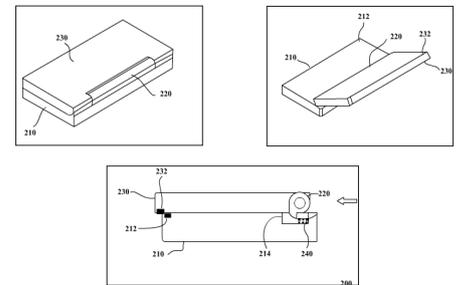
2. An effectual system also helps in benefiting public by encouraging fair and effective competition and trading practices which at large bolster the creativity and the final result comes in the form of attractive and beautiful products.



3. The industrial design registration helps in safeguarding the ornamental or aesthetic elements of the mobile phone. Whenever an industrial design is being registered it gives an exclusionary right to owner against unauthorized use like copying or imitation by third party without his consent. This in turns facilitate fair flow of investment.

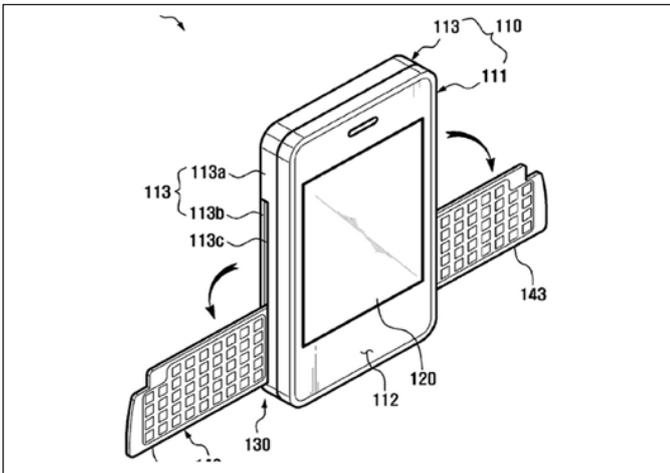
### Some design Patent of mobile phones which are currently in the market

- HTC Patent shows a new, spring loaded clamshell design



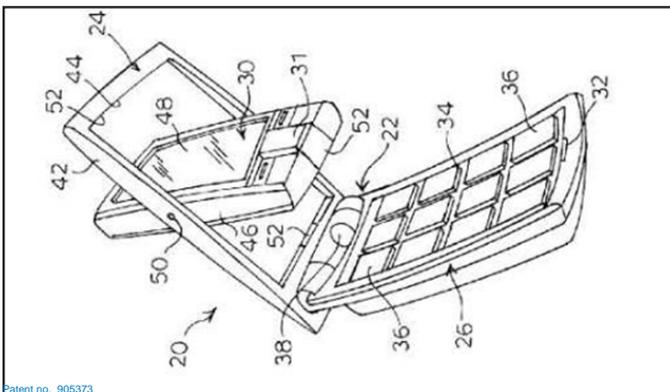
## Samsung lodges patent for phone with folding keyboards

Over the years there has been some interesting and strange designs for mobile phone keyboards



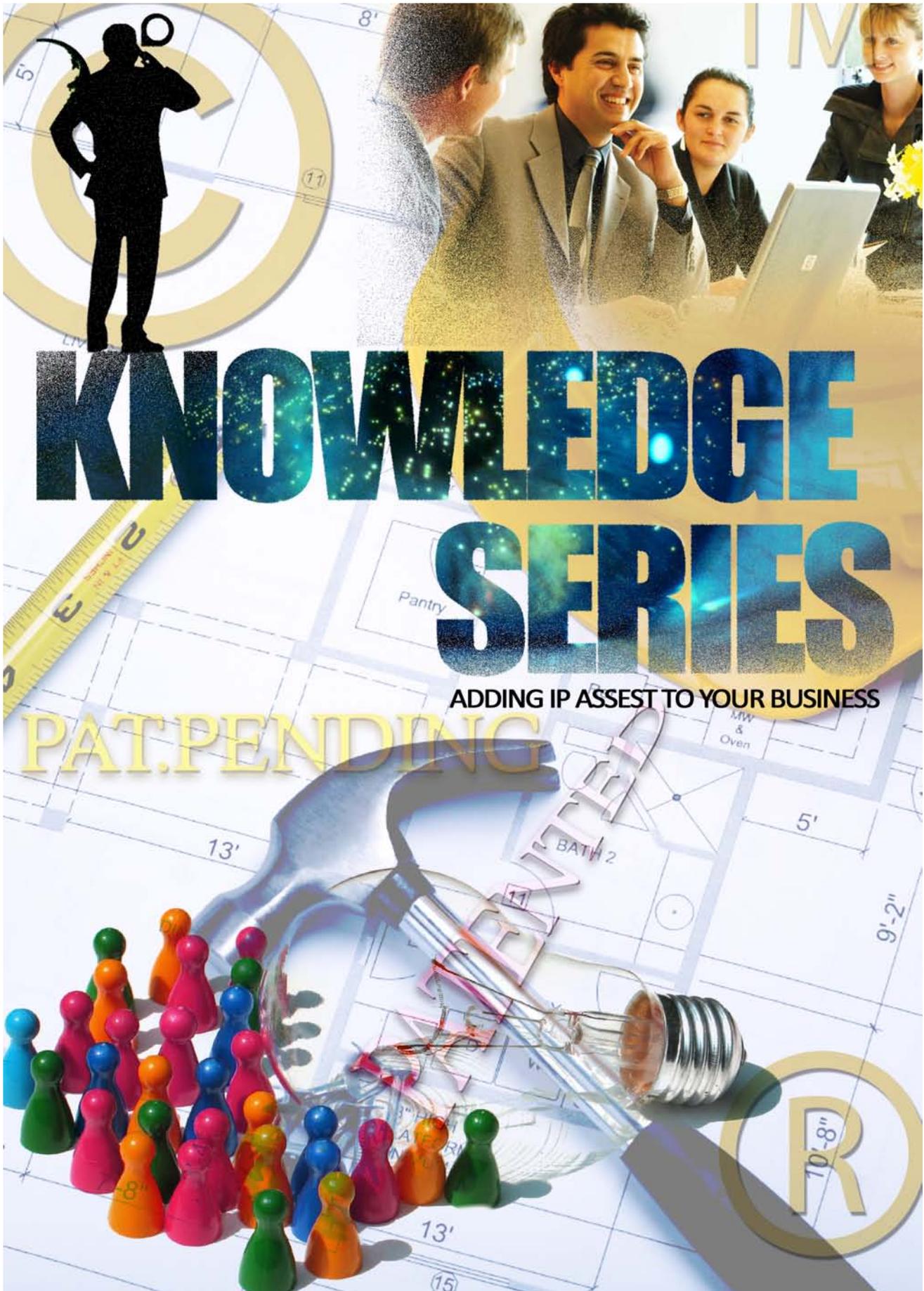
A patent application has turned up from Samsung at the USPTO (United States patent and trademark office) showing an image that Samsung is trying to patent a weird folding keyboard. the keyboard pops out of the sides of the phone like wings for typing. Well now Samsung has patented a new fold-out keyboard design for phones. The phone in the patent appears to be a touch screen phone with which the keyboard is most suitable. The keyboard then drops down from both the sides of the phone and reveals the QWERTY keyboard. The keyboard looks like wings and must look even better in real life. this design helps to save size as the keyboard comes out only when required and also does not spoil the looks of the device.

## Patent shows new mobile phone design



Sony Ericsson have filed a patent that shows a new form design for mobile phone handsets. The new design shows a clamshell model with the screen part free to swivel within its outer frame. Whereas existing clamshells cover up the main screen when closed, Sony Ericsson's new design would enable the screen to be on display when closed, then flipped over in more traditional clamshell style when open. This has the benefit of protecting the camera lens when the device is closed as well as avoiding the need to add a smaller screen on the outside of the phone, as is currently the case with most clamshell designs. Removing the second screen obviously reduces the number of components in the phone, keeps costs down, and also leaves extra room for additional features. industrial design is begins to inspiring new design and technique by creating an aesthetic impact that sets products apart from the competition in the world of mobile phones.

But making things look good is just the beginning and later on mobile companies' make products work better – improving performance and enhancing the user experience that's all fall in Industrial design concept. Design Concepts' designers use a wide range of techniques and tools to visualize ideas that resonate to encourage to mobile phone companies. [I&B](#)



# KNOWLEDGE SERIES

ADDING IP ASSEST TO YOUR BUSINESS

PAT. PENDING

# K NOWEDGE SERIES

## ADDING IP ASSEST TO YOUR BUSINESS



**E**very product or service which we see around us is the result of innovation and creativity of human mind. Thus in this way we are surrounded by intellectual property. Regardless of what product your enterprise makes or what service it provides, it is likely that it is regularly using and creating a great deal of intellectual property. Almost every SME has a trade name or one or more trademarks and should consider protecting them. Trademarks are in many ways the face of your business. They allow your customers to distinguish your products or services from those of your competitors, giving your SME the possibility to better market its goods or But trademarks are not just used as identifiers. They are also seen as a guarantee of consistent quality. A customer who is pleased with

quality. A customer who is pleased with the quality of your product or service continue to purchase it based on the quality expectations based upon the known trademark.

Most SMEs will have valuable confidential business information, from customers' lists to sales tactics that they may wish to protect. A large number would have developed creative original designs. Many produce, or assist in the publication, dissemination or retailing of a copyrighted work. Some may have spent many years in research and development to invent or improve a product or service.

In all such cases, your SME should consider how best to use the IP system to its own benefit.

A Company's assets are generally divided into two categories

Physical or tangible assets include buildings, machinery, financial assets



IP may generate an income for your SME through the licensing, sale, or commercialization of the IP-protected products or services that may significantly improve an enterprise's market share or raise its profit margins.

tiveness of an enterprise in the market place. But in the present innovative era patents and other intangible assets are playing eminent role in evaluation of company's worth in the market.

Protection of IP becomes much more important if we are exporting our products or technologies .IP protection is only territorial in nature. Trademark protection in target markets can help achieve product differentiation and recognition, thus developing an international brand.

Companies that export unbranded products will face disadvantages such as:

- Lower revenues as consumers demand lower prices for unbranded goods.
- Lack of customer loyalty largely due to their inability to recognize the product and distinguish it from the products of competitors.
- Difficulties in marketing and advertising products or services abroad in the absence of a suitable symbol or easy identifier that links your products or services with your SME, as marketing an unbranded product are inherently much more difficult.

While developing your export strategy, you should verify, preferably by consulting a qualified professional, whether a buyer could legally resell in other market IP-protected goods bought from, or with the consent of SME without having to seek your consent. This issue will only arise if you have already protected or would be protecting your IP rights in the domestic as well as in export market(s).

Before your SME can take advantage of intellectual property (IP) assets it has to acquire IP rights. A number of IP rights .

Trademark	Creating brand recognition and loyalty with high recall value
Geographical Indications	Marketing a product with geographical niche. eg: Darjeeling tea
Industrial Designs	Creative designs attract and appeal to customers
Patents	Patented technology can help win the confidence of people in the use and application of technology.

need to be granted or registered. At the national level, IP offices of the respective countries are the only institutions entrusted with granting or registering IP rights. The procedure for their acquisition and maintenance may differ from country to country, but the basic principles and features of these procedures are common to most countries.

**Acquiring Different IP Rights**

**PATENTS-** A patent is an exclusive right granted for a product or a process which prevents third party to use it without prior permission from original innovator. Patents in India are granted by patent office in India and it is recommendable to hire the patent agents or lawyers for professional guidance. For international level, WIPO is the authority to help grant international protection.

**TRADEMARK-** A trade or service mark is a distinctive sign which identifies certain products or services as those produced or provided by a specific person, enterprise or a group of persons/enterprises allowing the consumer to distinguish them from goods or services of others.

If you wish to acquire trademark protection for your SME by registration then you must file an application in a national or, a regional trademark office. The Office will then, once the required fees have been paid, examine the application and grant you trademark certificate. In practice, applications are most frequently rejected on the grounds that:

- Likelihood that consumers will confuse your mark with a mark already on the register or applied for or an unregistered well-known mark;
- Your mark consists of a geographical term which is misleading or should not be monopolized by a single enterprise;
- Your mark violates public order or morality; or
- Your mark consists of or contains without authorization an element which is identical with or an imitation of a protected official sign, armorial bearing, flag or other emblem, or hallmark of a state or intergovernmental organization.

**COPYRIGHT-** Copyright protection covers original creations in the literary (including software), musical and artistic domain, whatever the mode or form of expression. Acquisition of copyright protection is usually automatic once your work is fixed in some material form. However, in some cases there may be a possibility or, exceptionally, a need to register copyright.

One way your SME may acquire a better position to capitalize on the potential benefits of its IP assets and extract their full value is by conducting an IP audit. By doing

increased market value of your SME.

so, your SME would be able to make informed decisions when it comes to:

**Acquiring IP assets** - Knowledge of your company's intellectual property and of its value will assist you in deciding which type of IP rights to acquire and maintain, and how best to manage the IP assets of your SME

**Mergers and acquisitions** - Good knowledge of what IP assets your SME owns can lead to a significant increase in the value of your SME. This is because investors would value a company on the basis of their expectations of future profits, which may, to a considerable extent, be based on the exploitation of IP rights.

**Licensing** - Your SME can increase its cash flow (revenue) by licensing out its IP rights to a third party

**Collateral** - A well-structured IP portfolio can also be used as collateral. In such cases lenders will use your IP assets to determine the credit worthiness of your SME

**Enforcement** - Knowing the value of your IP assets will assist your SME in taking decisions on whether it is worthwhile taking action against infringement and in what way this may be done on a case by case basis

By establishing a culture of identifying and cultivating IP assets and strategically using them, an enterprise can increase its revenue, have an edge over its competitors and position itself well in the market; these are strategies that may lead to an



## From IP LAWYER

Technology Licence Agreement

If your SME is interested in:

- Improving the quality of your product or manufacturing a new product by using the right owned by others in the form of a patent, utility or know-how protect by a trade secret, then acquiring such rights through a technology agreement may be the right solution
- Entering a market or extending your existing market for a product for which your SME owns the right to a patent, utility model or know-how protect by a trade secret, then authorizing another to use your process or product through a technology licensing agreement may be the right solution

By a technology licencing agreement the licensor authorizes the licence to use the technology under certain agreement terms and condition so agreed.



## Trademark Licensing and Franchising Agreement

If your SME is interested in:

- Marketing a product or service and the brand (trademark) of that product is owned by others, or
- Entering or expanding the existing market for your product or service for which your

SME owns the rights conferred by a trademark, you may consider a trademark license agreement or a franchise agreement. The principle function of a trademark or service mark is to distinguish the goods and services of one enterprise from that of another, thereby often identifying the source and making an implied reference to quality and reputation. This function is to some extent prejudiced if the trademark owner licenses another enterprise to use the trademark through a trademark license agreement. Therefore, the trademark owner is well advised, and often by law or contract required, to maintain a close connection with the licensee to ensure that the quality standards are maintained so that the consumer is not deceived.

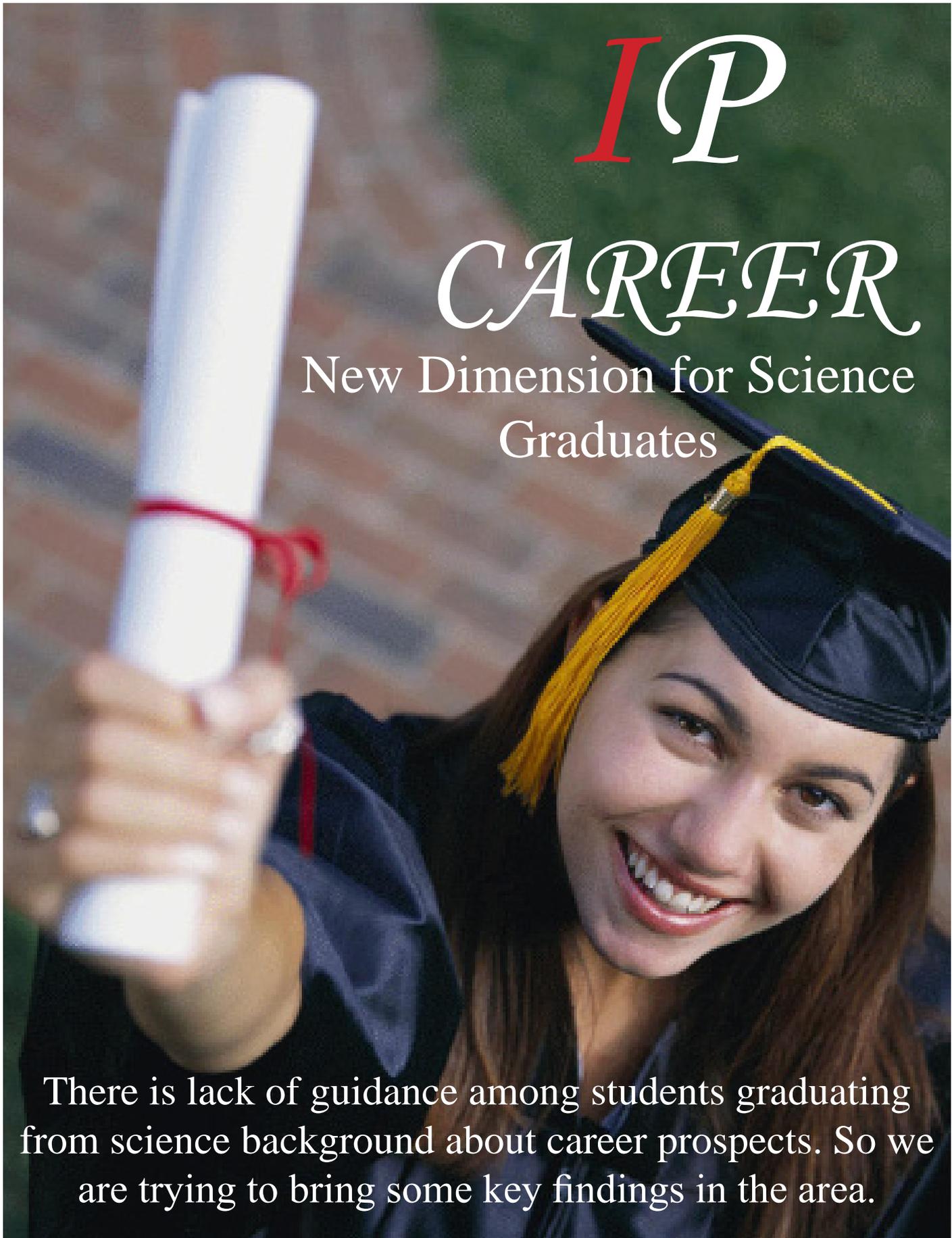


## Copyright License Agreement

If your SME is interested in:

- Manufacturing, distributing or marketing the results of the literary and artistic efforts of creators, or
- entering a market or expanding or extending your existing market for the literary and artistic efforts of your enterprise

you may consider a copyright license agreement. Many owners find it difficult to manage their rights on their own and they have formed collective management organizations that represent



*IP*

# CAREER

New Dimension for Science  
Graduates

There is lack of guidance among students graduating from science background about career prospects. So we are trying to bring some key findings in the area.

**W**IPO, World Intellectual Property Organization, defines IP or Intellectual Property as “Creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.” Given the fact that Indian economy is rapidly increasing patent filing and intellectual property rights issues are on increase too. Hence the market is demanding for IP professionals. There is lack of guidance among students graduating from science background about career prospects. So we are trying to bring some key findings in the area.

### Career Prospects after Graduating in Science (B.Sc, B.Tech, M.tech or B.Pharma)

Type of Job	Salary Packages	Government Certification	Government Jobs	Scholarship Exams
IPR Expert	3-3.5 Lac Per annum (fresher)	yes	yes	yes
Clinical Researcher	2 Lac Per Annum	no	no	no
Scientist (R & D)	1.4 Lac Per annum	no	no	yes
Lecturer	1.2 Lac per annum	no	no	no
Marketing	2.5 Lac per annum	no	no	no

Approximately 1700 patent agents registered with government of India, government is taking all steps to promote IP education.

Empowering Women - Women Scholarship Scientist Exam

Women Scholarship Scientist Exam is one of such kind initiated by TIFAC. Objective of such program is to train talented and skilled women who have studied science, engineering and medicine in patent searches and other aspects of intellectual property rights enabling them to take up specialized employment or be self - employed.

The selection of candidates is done by an All-India Level written test followed by a rigorous interview. Selected candidates will be given stipend for one year. Training will include one month of intensive orientation programme on IPR followed by specialized workshops and hands-on-training in agencies engaged in practice of IPR.

The scholarship will be admissible for

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*There is lack of guidance among students graduating from science background about career prospects. So we are trying to bring some key findings in the area.*

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*Career Prospects after Graduating in Science (B.Sc, B.Tech, M.tech or B.Pharma)*

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The scholarship will be admissible for a period of one year and the amount of the scholarship will be 12,500 p.m. for candidates having MSc/BTech/MBBS/BPharma or equivalent qualification and 17,500 p.m. for PhD./MTech/MVSc./NS/MD or equivalent.

Indian Patent Agent Examination conducted by Patent Office, Government of India

To practice Patents in India one has to qualify Patent Agent Examination conducted by government of India in the month of January every year. Qualifications for registration as patent agents:-

1. Person should be citizen of India
2. Person should have completed 21 years of age
3. Person should have obtained a degree in science , engineering or technology from any university established under law

## Patent Agent Examination consist of three papers -

Paper 1 is based on India patent act 1970 and is objective base in form of fill in the blanks, match the following, short answers etc.

Paper 2 is based on case studies and application of Indian Patent act 1970 in various areas. It consist of drafting section which involves patent drafting of invention related to pharmaceuticals, biotechnology, mechanical, electronics etc. Drafting section involves application of technical knowledge.

Paper 3 consist of interview by panel of

IPR experts. Interview is held at Patent Offices in Delhi, Kolkata, Chennai and Mumbai.

Each paper consist of 100 marks and to qualify as Patent Agent person need to get minimum 50% marks in each paper and aggregate 60% marks.

**Myth:** IPR is for lawyer

**Fact:** IPR requires science graduates. Only Science graduates are eligible to become patent agents and lawyers.

**Myth :** India is lacking in R&D, so patent activity is low.

**Fact :** According to Indian Patent office Report, the total no. of patents files in year 2008 are 16,061. There is 5% increase as compare to 2007.

**Myth:** IPR Jobs are present in law firms.

**Fact:** Every Company doing research and development has IPR cells. Example: Healthcare companies, IITs, CSIR, Software and IT companies

## Nature of Work

Level	Job Position	Job Responsibilities
Entry Level	Patent /IPR Trainee	Searching Patents using various soft wares and generating analysis report
Middle Level	Patent Analyst	Preparing Technology Landscaping Reports, Invalidity Report, FTO etc.
Middle Level	Patent Agent	Understanding the innovations and Drafting patent applications
High Level	Senior Patent Agent	Drafting Claims for the invention
High Level	Patent Portfolio Manager	Protect Company's interest in form of IPR Protection and licensing in/out technologies
High Level	IP Lawyer	Looking court cases of infringement
High Level	Licensing Officer	Finding the partners in industry for licensing the acquired patents

## Personality

To become successful in IPR career person should have good knowledge of IPR and scientific technology. The internals and workings of technology, products and processes would come handy while handling IPR cases. Knowledge of technology is more important than the law itself as patent agent needs to understand the invention

before filing and drafting the claims. Good technical knowledge will only help patent agent to make more valid claims of the invention.

## Career Prospects

With the spread of IPR awareness in the corporate world and with growing innovations in scientific world IPR as

career has taken a boom.

IPR professionals are also being of organizations like Law Firms, Government and self supported Think Tanks, Law Enforcing bodies and universities.

### • Corporate houses

All corporate houses engaging into innovative business has IPR cell .Big MNCs like Google, Microsoft whose

products are continuously innovating and emerging as biggest patent filers on international level.

**• Law firms**

Most of the law firms, especially in developed and emerging economies like the US, EU, India and China has specialized divisions that cater to litigations concerning offers better learning opportunities as compared to an in house corporate legal team. In general, a law firm offers better compensation as well as growth opportunities. In the same lines, the work pressure is quite higher in a law firm as compared to a corporate legal team.

**• Government agencies and think tanks**

Government agencies and policy making bodies are one of the most prolific employers of IPR attorneys. One of the most obvious agencies is the Patent and Copyright office of any country. Apart from this, in general, other departments like Justice, Commerce, Defense, and Information Technology also employ IPR Professionals.

**• Universities and Independent Research Organizations**

Most of the universities undertake large industry and government sponsored research projects. These projects invariably involve innovation in cutting edge technologies, and hence most universities have an in house cell of IPR Professionals that help them protect their interests. With the increasing frequency of technology start ups originating from university campuses, the legal department of universities has its hands full trying to protect the intellectual capital of these start ups.

**• Faculty at Law schools**

With the rapid growth in demand for IPR Professionals, there is an increasing

for faculties in old as well as newly established law schools

**• IPR Education for Professionals**

Indian Institute Of Patent and Trademark Attorney is one of the pioneer institutes providing various programs for IPR education. Applicants should have a Bachelor’s Degree or equivalent in any discipline from a recognized Indian or Foreign University. Candidates in the final year or pursuing Bachelor’s Degree Course may also apply .

Entry Level	Industrial Training in IPR	3 months Classroom Training
	Diploma in Patents and IPR	6 months Classroom training
Middle Level	Patent Agent Exam Preparation	3 months Classroom Training Or 3 months E-learning Training
High Level	Diploma in Patent Management	6 months Classroom Training
	Patent Drafting Training	3 months Classroom Training

Rajiv Gandhi School of Intellectual Property Law at IIT, KGP offers three-year (six-semester) residential LLB with honors in technology and intellectual property law.



**INDIAN INSTITUTE OF PATENT AND TRADEMARK ATTORNEY**

**→ COURSES**

- SIX MONTHS DIPLOMA IN PATENT MANAGEMENT
- 6 MONTH INDUSTRIAL PROJECT IN BIOTECHNOLOGY
- PATENT AGENT TRAINING PROGRAM
- 3 MONTH INDUSTRIAL TRAINING IN PATENTS
- 2 MONTH SUMMER / WINTER TRAINING
- COURSE ON THE BASICS OF PATENT DRAFTING
- INDUSTRIAL PROJECT IN BIOTECHNOLOGY AND IPR.
- PROFESSIONAL PROGRAMS FOR WORKING EXECUTIVES .
- PATENT AGENT EXAMINATION-TEST SERIES.
- ADVANCED COURSE ON COPYRIGHT
- CORPORATE SEMINAR SERIES.
- ENFORCEMENT AND JUDICIAL TRAINING.
- WORKSHOPS.

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# Protecting Innovation In Biotechnology Startups

**B**ecause most biotechnology startups lack products and derive their value from innovative technology instead, properly protecting their technology via patents and establishing their freedom to develop and commercialize that technology without infringing competitor patents is of paramount importance. Indeed, a strong patent position is a crucial ingredient for successfully raising venture capital and leveraging alliances with other companies. Here, we provide an overview of some of the intellectual property (IP) issues facing new companies, together with a few recommendations.

### Why strong IP is important

Committing the resources necessary to build a strong patent portfolio is important to the viability of virtually every biotechnology company. Very few biotechnology startups actually have products to sell; their primary assets are usually proprietary technologies. The value of the company then is often tied to the ability to safeguard proprietary technologies with strong patent protection. For example, before investing in a new company, venture capitalists often hire patent counsel to perform a due diligence analysis, which involves, among other things, studying the company's pending patent applications and issued patents to determine whether core technology has been properly protected. In our experience, significant investments often turn on a report from counsel that a company has a strong (or weak) patent position. A strong patent portfolio can also create business opportunities in other ways, through licensing and as a tool to leverage alliances with other companies.

For example, assume that a company is formed around the discovery that a DNA vector expressing 'Antigen A' raises neutralizing antibodies against 'Pathogen X' in an animal model. As a result, the company's primary research focus is on exploiting this discovery to develop a DNA vaccine against Pathogen X. At this stage, company management must decide whether to view the IP arising out of this technology as a mere commodity or as an integral component of business strategy. If viewed as a commodity, the company may, for example, decide to save money up front by negotiating with

quickly procuring a large number of very narrowly drafted patents that, in reality, have only a limited chance of ever dominating a competitor. When viewed as an integral component of the company's overall development strategy, patents can also create significant business opportunities. Using the hypothetical example above, assume that the company's scientists can reasonably envision, but have not yet confirmed experimentally, that the method would work equally well with other antigens and pathogens. The patent attorney then duly recommends that management invest the resources necessary to fully describe these other prophetic embodiments in the patent

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*A solid understanding of the myriad IP issues faced by biotech startups is essential to the long-term viability of these companies.*

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their patent attorney a cap on the cost of preparing patent applications. Unfortunately, this may result in a narrow or poorly drafted patent document that is relatively easy for competitors to design around. On the other hand, certain companies have successfully raised significant venture capital by

document. Assuming that an adequate written description has been included, it is indeed possible that patent protection could be obtained for a reasonable number of variations in the company's core technology.

Since the company's own commercialization interests are limited to Antigen A and Pathogen X, broad patent protection may make it possible to offer field-of-use licenses to others interested in developing DNA vaccines with other antigens and/or pathogens, while the company maintains exclusive rights in its primary field of interest. Alternatively, if the commercialization interests of the company and a competitor overlap, broader patent protection could more effectively force alliances to

share research and development costs. Finally, as others will invariably make improvements on the company's core technology, having broader IP protection increases the likelihood of cross-licensing opportunities with respect to improvements.

In many countries, a last issue to bear in mind is that an initial patent application often forms the basis for an entire series of continuing applications. Thus, even if the company first seeks only narrow protection to expedite issuance of a patent (narrow patents tend to be easier and more rapid to obtain than broad ones), broader protection can be pursued later in continuing applications, provided that the necessary resources are initially committed to fully describe the later claimed prophetic embodiments when the original patent document is drafted. Continuing applications may also be useful for claiming inventions not originally covered by the claims of the initial patent—an important benefit as disclosure of an invention in the text of an initial patent (omitted from the claims) dedicates the invention to the public.

### Commercial breathing room

Assume that your company is prudent and files well-drafted patent applications that will eventually issue as patents with claims that properly protect the technology. Now that the company has patents, it may assume that it can commercialize without worrying about infringing the patents of others. This assumption, which is sometimes made by new companies, is wrong. The patent grant is the right to exclude others from practicing a claimed invention. Importantly, a patent does not confer the right to commercialize. To use another hypothetical example, consider the scenario of multiple patent domination. In this scenario, 'Inventor A' engineers a specific fluorescent

detection label for use in enzyme-linked immunosorbent assay (ELISA) arrays and obtains a patent. Inventor A wants to sell his fluorescent-labeled monoclonal antibody targeted against human papilloma virus. But 'Inventor B' owns a patent that covers



fluorescent ELISA labels generally, 'Inventor C' owns a patent covering ELISAs and 'Inventor D' owns a patent to monoclonal antibodies against human papilloma virus. It is clear from this example that Inventor A may obtain his/her own patent (provided it meets the standards of patentability including being novel and nonobvious), but nonetheless cannot commercialize without infringing the patents of others unless he/she obtains permission (that is, licenses) from Inventors B, C and D. With rare exceptions (e.g., under certain circumstances, the federal government can force patentees to license patents arising out of inventions made with government funds), there is no compulsory licensing in the United States. Thus, a patentee may exercise his/her right to exclude and choose not to license a patented invention to competitors. Moreover, as the above example illustrates, even if patentees are willing to grant licenses, multiple licenses may be required, leading to potentially burdensome 'stacking royalties' (see Box 1). To some extent, creative licensing arrangements, which include a total royalty cap beyond which the licensee does not have to pay, can be used to alleviate this problem. But it

remains important for a company to have freedom-to-operate studies (also called collection searches) performed at an early stage to guide commercialization strategies and research plans. Otherwise, the company runs the risk of investing millions to develop technology along certain lines, only to learn later that it is blocked from commercializing by dominating patents owned by others. A freedom-to-operate study involves searching patent databases to identify issued patents and published patent applications that could potentially pose an obstacle to current and future commercialization efforts. For example, assume Inventor A finds that Inventors B and C are willing to license their patents



under reasonable terms. However, Inventor D refuses to license because he/she is already selling monoclonal antibodies against human papilloma virus and would lose market share. Had Inventor A known about these patents earlier, he/she may have been able to avoid wasting valuable resources by refocusing the company's efforts on developing a different monoclonal antibody that was not the subject of patent protection. Thus, freedom-to-operate studies provide a road map for companies attempting to determine which patents can be licensed and which must be invented around. Most patents screened during a freedom-to-operate study will be neither relevant

nor require further analysis. However, a few may be found that do require further study. The terms appearing in patent claims must be interpreted in light of the cution history (the documented negotiation that occurred between the patent applicant and the examiner that led to issuance of the patent). On the basis of this review, a determination may be made that the claims in a competitor's patent cannot be interpreted in a way that dominates your company's activities and thus there is no chance of infringement. Alternatively, the claims may encompass your company's activities, but may have been drafted so broadly that they capture subject matter that is already in the public domain and thus are invalid. In such circumstances, your company's patent attorney would probably recommend preparing a formal non-infringement and/or invalidity opinion, which, if deemed well reasoned by a court of law, would provide the company protection against a charge of willful infringement if sued by the patentee (indeed, established biotechnology companies often seek formal noninfringement/invalidity opinions from outside counsel as insurance policies against potential allegations of willful infringement by patentees). If willful infringement is found, the patentee can be awarded enhanced damages, up to three times the amount of actual damages found at trial.

### The clinical research exemption

In the United States, the clinical research exemption from patent infringement<sup>1</sup> permits experimentation with certain patented inventions by exempting from infringement activities that are reasonably related to seeking regulatory approval from a federal agency, such as



the US Food and Drug Administration (FDA; Rockville, MD). The intent of the exemption is to facilitate competitor development of patented products that can enter the market immediately upon expiration of a patent. However, the exemption only applies during the clinical trial process (that is, only until a product is approved). Thus, companies in clinical trials ignore the existence of third-party patents at their own peril. We recommend having freedom-to-operate studies performed early on in the research process and updated periodically to determine if additional patents have issued during the interim. Of course, patents set to expire before the expected FDA approval date of a new product are not a concern. However, it may make sense during the clinical trials process to start negotiations with owners of patents that do not expire until beyond the projected FDA approval date to avoid being 'held hostage' by onerous licensing terms

later. The extent to which the clinical research exemption reaches back into pre-clinical research activities is presently an unsettled legal issue, and is currently before the US Court of Appeals for the Federal Circuit in *Integra LifeSciences I, Ltd. vs. Merck KgAA2*

### Enforcement

In the absence of a well-funded, litigious industrial partner, new companies typically avoid patent litigation (a rule of thumb is that patent litigation costs at least \$1,000,000 per patent per year). Most potential defendants are also litigation-adverse and therefore entertain reasonable licensing inquiries from patentees rather than face the possibility of being held liable for willful infringement. However, there are situations where new companies find that others are infringing their patents with impunity. We recommend that new companies seeking to enforce their patents keep the following general considerations in mind. First, potential licensees should be identified and categorized. For example, competitors who already have a product (e.g., a service provider or reagent manufacturer) are attractive licensing targets as are competitors undergoing a round of financing (companies undergoing a round of financing may be motivated to take a license to avoid disclosing a threatened or pending litigation to potential investors). Less attractive are those in the initial stages of clinical trials as their activities likely qualify for the exemption from patent infringement. Even so, the possibility that commercialization rights might be blocked upon receiving FDA approval can motivate such competitors to negotiate licenses while still

in early clinical trial stages. Second, cease-and-desist letters should not be sent to potential licensees, unless the patent holder is prepared to litigate. This is because cease-and-desist letters are generally deemed sufficient by courts to confer to the recipient standing to sue for a declaratory judgment that the patent at issue is invalid and/or not infringed. Thus, rather than cease-and-desist letters, most patentees initially send patent-notice letters or invitations-to-license, which are carefully worded to avoid elevating the recipient to the status of plaintiff. Although not as strongly worded, such letters must nonetheless be taken very seriously by the recipient as they document the date the recipient has actual notice of the patent. If the recipient refuses to take a license and continues infringing, litigation may lead to a court ruling willful infringement. Finally, the company should be aware of the strength and scope of its own patents in the event that litigation is later necessary. It is, of course, preferable to assert strong patents with claims that literally cover a competitor's activities.

### Last thoughts

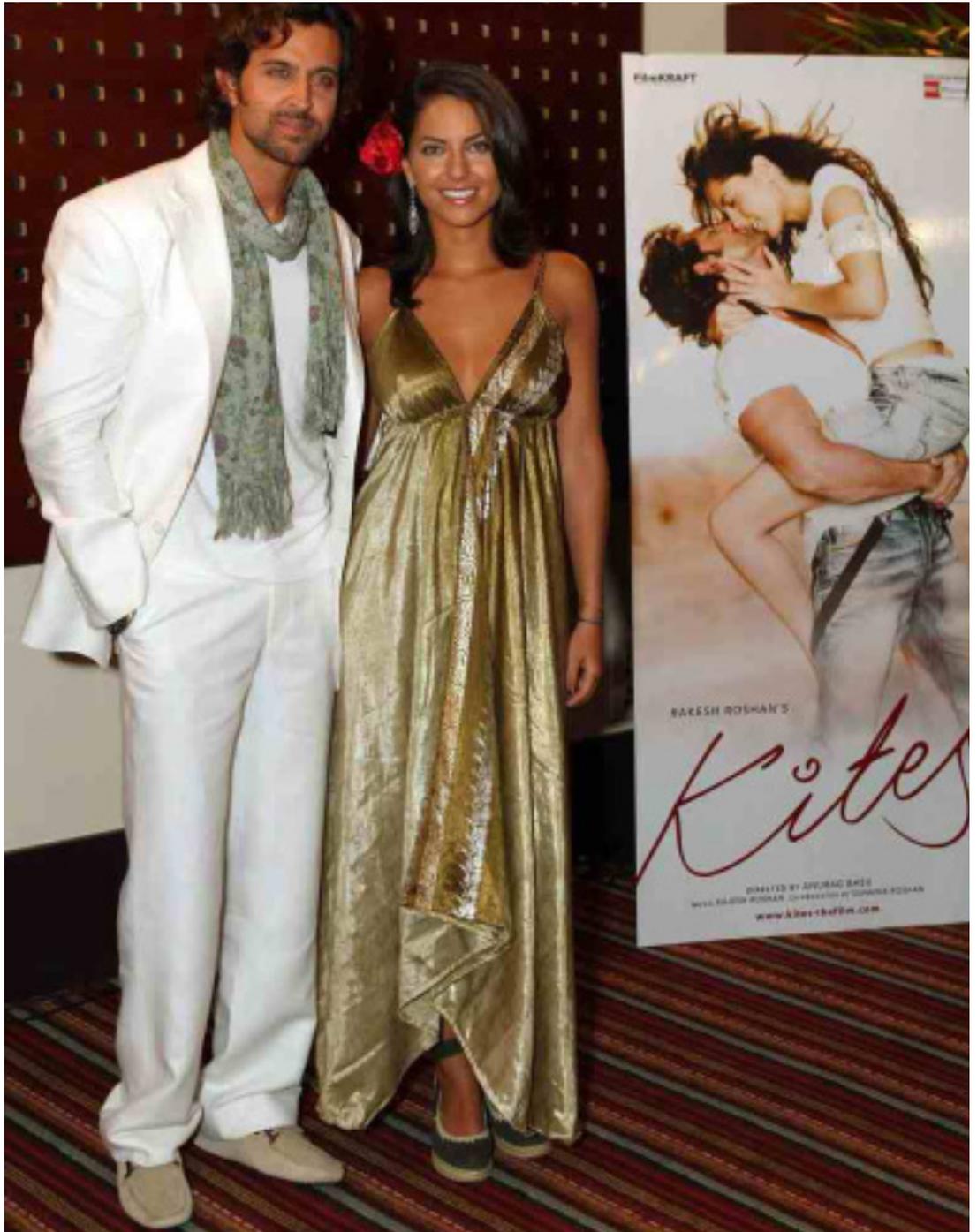
In sum, building a strong patent position to facilitate attracting venture capital and leveraging alliances with other companies can be a daunting task for startup biotech companies with limited resources. Given that proprietary technology is often their only asset, it is important that company executives gain a clear appreciation of the IP issues facing their company and implement a sound strategic plan. 





## Court orders stay on the release of Kites

## NATIONAL



The film which is scheduled to release next week has apparently run into troubled waters with the Bihar City Civil Court ordering a stay on the film till Roshan and Happy Hours Entertainment officials appear before the court on May 24. This order follows a case being filed by Laxmi Prasad of Sunbeam Holdings alleging non-receipt of amount due to them for selling the copy right of the action scenes

amounting to approximately Rs.10 cr, to which the Rakesh Roshan had apparently agreed to pay approximately half the sum.

However, sources close to the film's production have revealed that the film starring Hrithik Roshan and Barbara Mori will be going ahead with their release on May 21, but have refused to comment on the progress of the case under the premise that the matter is still pending in court and that their legal division is

## MSF welcomes India's decision to reject drug patent to Roche



**M**edicins Sans Frontieres', an international medical humanitarian group, welcomed India's decision to reject a patent granted to Swiss drug multinational Roche for its AIDS related drug Valganciclovir.

Roche was attempting to patent a new form of a drug that was really invented in the 1980s," said Leena Menghaney, project manager of the MSF Campaign for Access to Essential Medicines in India.

"This decision shows that Section 3(d) of India's Patents Act, which prevents companies from filing unjustified patents, is working. Equally importantly, the Patent Office also found separately that the patent claims were obvious and therefore not patentable," she said.

India keen to play lead role in international protocol on biodiversity  
India will play a proactive role in ensuring that an international protocol on biodiversity to provide access and benefit sharing (ABS) is finalised at Nagoya, Japan in October this

year. New Delhi is also keen to take on a leadership role in bringing about convergence of biodiversity and climate change.

Environment minister Jairam Ramesh said that there was a need to converge it with biodiversity "as both can't be seen in two different perspectives".

At the tenth Conference of Parties (CoP) to the Convention on Biological Diversity (CBD) to be held in for developing nations like India which is seeking a single legally Nagoya, one of the major items for consideration is the adoption of an international protocol on access and benefit sharing (ABS). India and other developing countries are pushing for an international legal framework for use of biological resources. The agreement will deal with the issue of biopiracy. The rich countries oppose an international legal framework for use of biological resources. "The Nagoya meet, to be attended by 193 members, is crucial binding international pact to deal with access to and benefit sharing of bio-resources, a move vehemently opposed

## Rural artisans crafting international brand at SEWA

**E**xquisite embroidery by thousands of rural artisans associated with Ahmedabad-based Self Employed Women's Association (SEWA) is all set to take the international market by storm. And this time, to get better exposure on a global platform, the SEWA Trade Facilitation Centre (STFC) has also acquired a separate trademark - Ananta, for its second apparel brand to woo style conscious

clientele across the globe.

After the success of their first apparel brand Hansiba, formerly known as Banasgram, the STFC is all set to enter the international market to find a place in the wardrobe of the affluent. So, when STFC was busy organising fashion shows to launch 'Ananta — the Flamboyant Stitch', it was not only promoting its flagship brand Hansiba but also preparing to launch the second, Ananta.



## Punjab scientists tip innovators on protecting intellectual property

**M**anufacturers of farm equipment in Moga come up with unique technologies, but do not know how to protect and cash in on their intellectual property. A case in point is the paddy straw reaper that leaves very little residue in the soil so that the next crop can be planted with ease, and is customised according to the need of Punjab farmers.

“Due to lack of awareness, some unique technologies, when displayed at exhibitions and fairs, get exposed to big and foreign manufacturers. So, it is important to make manufacturers aware of their intellectual property rights (IPR),” says Dr Neelima Jerath, Executive Director of the Punjab State Council for Science and Technology (PSCST), which had set up Intellectual Property Facilitation Centre (IPFC) for micro, small and medium enterprises (MSME) last year.

# MAINTAIN A MATTER

## ZORRO FILES TRADEMARK INFRINGEMENT AGAINST BBDO



From time to time, the Mars candy company teams up with entertainment execs to market M&M's dressed as iconic Hollywood characters. Apparently, they didn't team up with Zorro Productions, Inc ("Zorro"). Zorro is suing Mars (and ad agency BBDO Worldwide) in the U.S. District Court of Northern California for trademark infringement, unfair business practices, and dilution under the Lanham Act.

Last fall, Mars used the famous masked character in its Halloween advertising, with a "Zorro M&M." But Zorro, Inc., alleges that the Zorro character is protected under trademark and trade dress law, and that Zorro is famous, whether for movies, costumes, or M&M's. It's another reminder that when involved in the creative process, if you're using someone else's intellectual property, you still need their permission. Even if you're using said property in a new and creative way.

## GM TRADEMARK INFRINGEMENT



**F**or years, private manufacturers that made replicas of classic sports cars have been tolerated by the auto industry. They create interest and foster goodwill towards automobile brands by idolizing certain models of cars. But according to an article in the Detroit News, GM is cracking down on one small time replica manufacturer, alleging trademark infringement. GM filed suit against Mongoose Motorsports LLC, an Ohio-based auto parts retailer and part-time manufacturer of the 1963 Corvette Grand Sport. The Grand Sport is one of the rarest and most valuable sports cars ever; only five were built. Mongoose Motorsports sells a replica Grand Sport for \$90,000, while the authentic car goes for several millions at auction. But Mongoose is in no way licensed to sell the cars, and apparently enough of them are being produced to dilute the market. “This is not an homage,” said GM spokesman Tom Wilkinson. The problem is that Mongoose is marketing exact replicas of the 1963 car, complete with trademarked Corvette logos.



## Google offered Viacom \$592 million for content

**B**efore Viacom filed its \$1 billion copyright infringement lawsuit against YouTube, Google offered Viacom 592 million in guaranteed revenues if the company licensed its movies and TV shows to the site, According to newly released documents from the ongoing lawsuit, CNET News.com reported. Back in 2006, Google called content owned by Viacom -- which includes MTV Networks, Comedy Central and Paramount Pictures -- the “most valuable content of any other premium content provider.”

## Expiring Patents: New Business opportunity for generics

**T**ime is running out on the U.S. patents for many of the most popular brand-name drugs. Over the next several years generic versions of many well-known best-selling drugs will become available then. Patents for many blockbuster brand-name drugs begin expiring at a rapid pace in 2010 and will continue for the next few years. Increased competition from generics, drug companies are busy developing new pipeline drugs and devising strategies to try to hold onto sales for their drugs facing patent expiration.

Here are all the details of some of the highest-profile drugs that have expiring patents as of the end of during 2010 and 2011 —

- **Aricept (donepezil):-** Pfizer makes the acetylcholinesterase inhibitor Aricept for the treatment of Alzheimer's disease. Aricept is scheduled to lose patent protection in the U.S. in 2010, but generic versions are already available

- **Cozaar (losartan):-** Merck's Cozaar is an angiotensin II receptor antagonist, used to treat hypertension. Cozaar's patent protection in the U.S. will expire in 2010. In the meantime, generic losartan is available here.

- **Levaquin (levofloxacin):-** Johnson & Johnson's antibiotic drug Levaquin will outlive its patent protection in 2010.

- **Lipitor (atorvastatin):-** Pfizer has the best-selling drug in the world in Lipitor, which treats high cholesterol. In the US, the basic patent for Lipitor expires in March 2010, while the second patent covering the calcium salt of atorvastatin expires in June 2011.

It is not yet clear exactly which date will see widespread availability of generic Lipitor in the U.S., but it is coming. In the meantime, generic atorvastatin is available here.

- **Xenical (orlistat):-**

Roche's Xenical is an obesity treatment that prevents the digestive system from absorbing fats. Its patent expires in December 2010. In some countries, including the U.S., orlistat is available over-the-counter as GlaxoSmithKline's Alli.

- **Aricept (donepezil) :-**

Pfizer/Eisai is to lose patent protection in 2010 on this treatment for symptoms of early Alzheimer's. Teva has gained tentative FDA approval to market its generic version; however, Eisai and Teva are locked in a patent challenge, keeping the generic off the market for now.

- **Flomax (tamsulosin):-**

Boehringer Ingelheim/Astell's popular prescription for the treatment of complications of an enlarged prostate was originally scheduled to go off patent in 2009, but delays will make a generic version unavailable until March 2010. Ranbaxy acquired exclusive rights to sell the generic, still under the brand name Flomax, for two months before the patent officially expires.

- **Advair (fluticasone/salmeterol):-**

GSK lost some patent protection on its best-selling asthma drug Advair (also known as Seretide), in 2009, but additional indications make it more likely for generic versions to be released in 2011.

- **Plavix(clopidogrel):-**

Bristol-Myers/Sanofi-Aventis' blockbuster

PHARMACEUTICALS

• **Symbicort (budesonide/formoterol):-**  
AstraZeneca’s also loses its patent on the asthma drug in 2012.

• **Singulair (montelukast):-**  
Merck loses its top-selling asthma drug in 2012.

• **Maxalt (rizatriptan):-**  
Merck migraine medication, in 2012. Merck is working at developing a new migraine medication, but is having difficulty bringing it to market.

• **Avandia (rosiglitazone):-**  
GSK’s patent on the diabetes drug expires in 2012;

• **Zometa (zoledronic acid) :-**  
Novartis bisphosphonate cancer drug expire in 2012.

Novartis antihypertensive expire in 2012; and

• **Cipralext (escitalopram) :-**  
Forest Laboratories loses its patent on the antidepressant, also known as Lexapro, in 2012.

• **Viagra:-**  
first patent protection disappears for Pfizer’s in 2012.



**Some other drugs also going to expire:-**

Drug	Use	Company	Expires
Symbicort	Asthma	Astra-Zenica	2012
Seroquel	Schizophrenia	Astra-Zenica	2012
Crestor	Colesterol	Astra-Zenica	2012
Zyprexa	Schizophrenia	Eli-Lilly	2011
Actos Type 2	Diabetes	Eli-Lilly	2011
Lexapro	Antibiotic	Forest Labs	2012
Avandia Type 2	Diabetes	Glaxosmithkine	2012
Advair	Asthma	Glaxosmithkine	2010
Levaquin	Antibiotic	Johnson & Johnson	2010
Singulair	Asthma	Merck & Co.	2012
Cozar	High Blood Pressure	Merck & Co.	2010
Zometa	Cancer Treatment	Novartis	2012
Diovan	High Blood Pressure	Novartis	2012
Aproval	High Blood Pressure	Bristol Myers Squibb	2011
Plavix	Anticagulant	Bristol Myers Squibb	2011
Aricept	Alzheimers	Pfizer	2010
Xalatan	Glacoma	Pfizer	2010



*I would like to thank **IIPATA** for giving new dimension to my career as patent agent. I would like to thank my guide, staff and center for continued support and guidance. I wish **IIPATA** all the best for future.*

**Shikha Mittal, Patent Agent**

**INDIAN INSTITUTE OF PATENT AND TRADEMARK ATTORNEY**



AVI SHARMA

PATENT ANALYST

IT'S TIME TO  
BOOST  
YOURSELF

MONTHLY  
PATENT  
HIGHLIGHT

# News

## TITLE OF THE INVENTION

A RUGGEDIZED TIME DISTRIBUTION UNIT AND METHOD THEREO

Name of Applicant

**THE DIRECTOR GENERAL DEFENCE RESEARCH DEVELOPMENT ORGANIZATION**

The invention relates to system and method for synchronizing time over Ethernet. This system includes GPS receiver which receives GPS signal from GPS satellites and provides accurate time and 1 PPS to time distribution system. The Oscillator generates 1 local PPS (LPPS) and compares with the generated LPPS with respect to GPS-PPS and thereafter adjusting the oscillator frequency through control pin, if required. Once comparison is done, disciplining process is carried out by locking the phase between GPS-PPS and LPPS. At the end, the PPS output is perfectly aligned with GPS-PPS by resetting Oscillator output after achieving the successful phase locking to obtain synchronized time.

## TITLE OF THE INVENTION

STEERING SYSTEM FOR MOTORCYCLE

Name of Applicant



**HONDA MOTOR CO , LTD**

To provide a steering system for a motorcycle for reducing weight of a top bridge and ensuring rigidity of the top bridge.

## TITLE OF THE INVENTION

METHOD AND APPARATUS FOR PRODUCING HYDROGEN AND MICROORGANISMIMMOBILIZATION PELLETS USED IN THE SAME

Name of Applicant



**HITACHI PLANT TECHNOLOGIES, LTD.**

The hydrogen-producing method of the an aspect of the present invention is a method for producing hydrogen in which hydrogen is produced from an organic matter using a microorganism, characterized by using pellets on which hydrogen-producing acid resistant bacteria are entrapped and immobilized, producing hydrogen by bringing the pellets into contact and react with the organic matter in an environment of a pH of 4 to 6.

## TITLE OF THE INVENTION

“POLYMERIC ENCAPSULATES HAVING A QUATERNARY AMMONIUM SALT AND METHODS FOR PRODUCING THE SAME”

Name of Applicant



**COLGATE - PALMOLIVE COMPANY**

A quaternary ammonium salt encapsulated by a polymeric microcapsule and methods for manufacturing such microcapsules are described. The quaternary ammonium salt can be cetylpyridinium chloride. The polymeric microcapsule encapsulating the quaternary ammonium salt can be used as an ingredient in a dentifrice.

# News

## TITLE OF THE INVENTION

EYELASH MAKEUP COMPOSITION AND PROCESS COMPRISING THE APPLICATION OF TWO COMPOSITIONS

Name of Applicant

L'OREAL

The present invention relates to a cosmetic composition comprising a continuous aqueous phase, at least one silicone surfactant and at least one crosslinked polyelectrolyte. The invention also relates to a non-therapeutic cosmetic polyelectrolyte. The invention also relates to a non-therapeutic cosmetic process, for making up or oaring for keratin fibres, comprising the application to the keratin fibers: - of a first composition as described above, and - of a second composition comprising: - either a continuous aqueous phase, and at least one film-forming polymer in the form of particles in dispersion, the said polymer being present in an amount at least equal to 5% of solids, - or at least one compound or a mixture of compounds which, when the composition is brought to a temperature of greater than or equal to 40°C, gives the said composition a spinnability  $d_{max}$  of greater than or equal to 5 mm, the said second composition being brought, prior to, simultaneously with or subsequent to its application, to a temperature of greater than or equal to

## TITLE OF THE INVENTION

METHOD OF PRODUCING OPTICAL DISC RECORDING MEDIUM

Name of Applicant

SONY CORPORATION

Provided is a method of producing an optical disc recording medium with which an inexpensive optical disc recording medium can be produced. For this purpose, the



method of producing an optical disc recording medium of the present invention includes the steps of preparing a transfer substrate; forming an ultraviolet-curable resin layer on a surface of the transfer substrate; forming a projection-and-recess pattern on the ultraviolet-curable resin layer by pressing a nickel stamper having a desired projection-and-recess pattern onto the ultraviolet-curable resin layer under pressure while performing ultraviolet irradiation from the reverse surface side of the transfer substrate, and forming a recording layer on the ultraviolet-curable resin layer on which the projection-and-recess pattern is formed, wherein recording layers are formed in

## TITLE OF THE INVENTION

SUBSTRATE IMPREGNATED WITH A COMPOSITION COMPRISING HYDROXYCHAVICOL

Name of Applicant

THE PROCTER & GAMBLE COMPANY

A substrate impregnated with a composition comprising hydroxychavicol is provided. The substrate may be used for manufacturing wipes or for manufacturing disposable absorbent articles such as diapers, feminine hygiene products. Compositions comprising hydroxychavicol in combination with either benzyl alcohol and/or with an essential oil selected from the group consisting of essential oils of *Chenopodium ambrosoides*, *Tagetes minuta* or *Rosmarinus officinalis* are also provided.

**TITLE OF THE INVENTION**

**METHOD AND SYSTEM FOR OPERATING A WIND TURBINE GENERATOR**

Name of Applicant

L'OREAL

The present invention relates to a cosmetic composition comprising a continuous aqueous phase, at least one silicone surfactant and at least one crosslinked polyelectrolyte. The invention also relates to a non-therapeutic cosmetic polyelectrolyte. The invention also relates to a non-therapeutic cosmetic process, for making up or oaring for keratin fibres, comprising the application to the keratin fibers: - of a first composition as described above, and - of a second composition comprising: - either a continuous aqueous phase, and at least one film-forming polymer in the form of particles in dispersion, the said polymer being present in an amount at least equal to 5% of solids, - or at least one compound or a mixture of compounds which, when the composition is brought to a temperature of greater than or equal to 40°C, gives the said composition a spinnability dmax of greater than or equal to 5 mm, the said second composition being brought, prior to, simultaneously with or subsequent to its application, to a temperature of greater than or equal to

**TITLE OF THE INVENTION**

**FEEDBACK ON INPUT ACTUATOR**

Name of Applicant



**NOKIA**  
Connecting Intel

NOKIA CORPORATION

A user input system for an electronic device including an input actuator adapted to be depressed by a user to input a signal into the electronic device; and an actuator location signaling system adapted to signal location of the input actuator to the user. The actuator location signaling system includes a textured surface proximate the input actuator for a finger of the user to contact, and a system for moving the textured surface to enhance sensory input to the user's finger while contacting the textured surface.



*I would like to thank **IIPATA** for giving new dimension to my career as patent agent. I would like to thank my guide, staff and center for continued support and guidance. I wish **IIPATA** all the best for future.*

**Neha, Patent Student**

**INDIAN INSTITUTE OF PATENT AND TRADEMARK ATTORNEY**



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