

### IP NEWS- SEPTEMBER 2014

#### **1. India ready to revamp intellectual property policy.**

India is hiring 1,000 officials for its patent offices and has vowed to clear the backlog of all pending applications over the next 18 months as it seeks to defend itself against western allegations that it tramples on companies' intellectual property rights.

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#### **2. Novartis files lawsuit against Zydus.**

Ahmedabad-based Cadila Healthcare Ltd (Zydus Cadila) is facing lawsuits in various US courts, including one filed by global pharma major Novartis Pharmaceuticals, for infringement of patents. Novartis has filed two suits against Cadila Healthcare's US subsidiaries Zydus Noveltch and Zydus Pharmaceuticals (USA), accusing them of infringing patents relating to a drug that treats Alzheimer's and Parkinson's disease.

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#### **3. US drug patent expiries to benefit Indian pharma industry.**

Expiry of drug patents in the US is great news for not only consumers but also the domestic pharmaceutical industry, where generics account for about 75 percent of total sales, CARE Ratings said in its report released on 11<sup>th</sup> September. Indian pharmaceutical companies have an opportunity to capitalise on the patent cliff

and gain a greater share of the growing generics market.

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#### **4. Gilead enters into licenses with 7 Indian generics for manufacture and sale of Sovaldi.**

Gilead Sciences has now entered into licensing agreements with seven Indian generic manufacturers – Cipla, Cadila Healthcare, Hetero, Strides Arcolab, Ranbaxy, Sequent Scientific and Mylan. This license allows the companies to manufacture and sell the drug in any of the 91 voluntary licence (VL) countries at their own price but at a 7% royalty rate on any sales.

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#### **5. Vringo v. ZTE- 'Expert' Need Not Have Specialised Degree.**

The ongoing dispute between Vringo and ZTE has yet another update by the Delhi High Court- this time, on the scope of who is an expert under S.45 of the Indian Evidence Act. It was held, "it is accepted and recognised that a person could be an expert in an area of specialised knowledge by experience and he or she need not hold a degree in the field of specialised knowledge. A person can also become an expert by virtue of one's avocation or occupation."

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**6. Infrastructure and Transparency get a boost at the IP Office.**

Mr Amitabh Kant, Secretary, Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, recently inaugurated a new building that is to be used by the Intellectual Property Office. A new payment gateway integrated into the e-filing system was also inaugurated that provides for payment by internet banking debit cards etc., of over 70 banks as opposed to the earlier permissible 2 banks. This would cover the entire series of forms and payments.

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**7. Patent Owner Cannot Assert A Claim That Is Missing A Material Limitation.**

Addressing an attempt by a patent owner to assert a patent claim that was missing a material limitation, the U.S. Court of Appeals for the Federal Circuit affirmed a summary judgment of invalidity, finding that the patentee cannot assert the claim unless the omission is evident on the face of the patent. *H-W Tech., L.C. v. Overstock.com, Inc.*, Case Nos. 14-1054, -105.

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**8. Effect of foreign patent proceedings on U.S. patent litigation.**

Prosecution and litigation of patents in foreign jurisdictions may have an impact

on the enforcement of their corresponding U.S. patent rights.

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**9. What the new patent law means for North Carolina businesses.**

The state of North Carolina recently enacted a new law created to protect businesses from abusive patent trolls – also known as nonpracticing entities -- that don't make products or provide services, but own patents only to pursue patent infringement claims.

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**10. Federal Circuit Falls in Line: Supporting Strong Limits on Patent Eligibility.**

In *buySAFE v. Google* (Fed. Cir. 2014), the Federal Circuit has found the patentee's computer-based-transaction patent to be invalid as an abstract idea lacking subject matter eligibility. The decision by Judge Taranto and Joined by Judge Hughes is somewhat unremarkable and the holding falls easily within the framework created by *Alice Corp* and *Mayo*. At the same time, the Federal Circuit offers several nuggets that may provide broader fodder for future eligibility challenges.

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#### **11. U.S. court revives Microsoft co-founder's patent suit vs tech companies.**

U.S. appeals court on 10<sup>th</sup> September revived part of a patent lawsuit brought by Microsoft co-founder Paul Allen against AOL, Apple, Google and Yahoo, saying a lower court incorrectly found that the tech companies didn't infringe one of its patents.

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#### **12. Govt withdraws NPPA powers to cap prices of non-essential medicines in public interest.**

The Indian Government withdrew guidelines that enabled the National Pharmaceutical Pricing Authority (NPPA) exercise its powers to fix the prices of drugs that are not on the essential medicines list. It is pertinent to note that this withdrawal is prospective not retrospective; that is to say that this move will not reverse the price caps already placed.

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#### **13. B Braun v PolyMed: Indian PolyMedicare wins medical device patent battle at EPO.**

Poly Medicare (an Indian company that manufactures medical devices) has won a five year long patent battle against B Braun (German medical devices and pharma giant). The patent litigation revolved around B Braun's patents that cover certain features of intravenous (IV) safety catheters. The EPO revoked two of

Braun's patents after which Braun appealed to the Board of Appeals. However, the appeal was dismissed and the patents of B Braun stand revoked.

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#### **14. Cipla grants patent rights in Rifaximin Complexes family to Salix Pharma.**

Cipla, a Rs.9,800 crore plus fifth largest Mumbai based pharma major, has signed an agreement with Salix Pharmaceuticals, Inc., a US-based speciality pharmaceutical company. Under the agreement, Cipla has granted Salix exclusive rights under certain patent applications in the 'Rifaximin Complexes' patent family controlled by Cipla.

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#### **15. Software patent guidelines in the offing, says official.**

The regulatory guidelines related to patenting software, a draft of which has been issued by the Indian Patent Office, is in the stage of finalisation, even as the multinational and Indian firms are debating whether the regulation is required or not, said R Devan, deputy controller of Patents & Designs, Intellectual Property Office, Chennai.

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