Centre for CIPROM intellectual property management

NEWSLETTER

Volume No 4| Issue No. 12

DEC 2020

Intellectual Property advocacy in the fields of:

- IP Infrastructure
- IP Policy
- Patent Law
- Copyright
- IP Valuation
- Technology Transfer
- Licensing
- Collaborations
- M & A
- Innovation Research
- Data Management
- Balance for Rights & Obligations

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Dapagliflozin Patent Infringement

The month of November 2020 saw two orders of the Hon'ble Delhi High Court on the same subject matter, that of suit for the infringement of Dapagliflozin Genus Patent IN205147 and Species Patent IN235625 - albeit by two different Judges. Hon'ble Mr. Justice Rajiv Shakdher passed order on 02/11/2020 and Hon'ble Ms. Justice Mukta Gupta passed order on 18/11/2020. Both declined to pass an order of injunction in favour of Astrazeneca Ab & Anr, the Patentee.

Hon'ble Mr. Justice Rajiv Shakdher noted that the defendants have been able to set up a credible challenge and/or establish, at least at the preliminary injunction stage, the vulnerability of the suit patents. Importantly, Hon'ble Mr. Justice Ravindra Bhat took into consideration "public interest" due to the difference in prices of drugs ranges between 250% to 350%. Justice Rajiv Shakdher also noted that Plaintiffs assertion that written description/complete specification of IN205147 covered Dapagliflozin but did not disclose it is flawed as it would prevent third parties from carrying out research in future. Justice Rajiv Shakdher further noted that the arguments of the plaintiffs that Dapagliflozin was not claimed in IN205147 seemed to be untenable at the stage of the interim application. Justice Rajiv Shakdher further noted the plaintiffs have failed to demonstrate technical effect and that there is no demonstrable technical advance in the specifications as on the date of priority of IN235625 and also that Plaintiff failed to submit information under Section 8. However, regarding challenge laid to IN235625 on the ground that it was anticipated by what was published or publicly known from IN205147; Justice Rajiv Shakdher noted that the defendants' defence did not inject vulnerability, since a person skilled in the art could iterate the claims of IN205147 and arrive at 8 molecules based on prior publication and not hindsight.

Hon'ble Ms. Justice Mukta Gupta held that the defendants had prima facie laid a credible challenge to the validity of suit patent on the ground of obviousness and for failure to submit information under Section 8. However, Justice Mukta Gupta ruled in favour of the Plaintiff with respect to Construction of claim & Disclosure of Dapagliflozin in IN205147, Whether Admission of Coverage in IN205147 amounts to Disclosure and Anticipation by Prior Claiming and Admissions by the Plaintiff in Form 27 and Orange Book.

In both the orders, during the pendency of the suit, Defendants have been directed to place on record every quarter, the details, quantum, and value of drug manufactured, sold and supplied as also indirect and direct taxes paid in that behalf via affidavits. The Defendants have also to undertake to pay damages as and when called upon to do so by the Court and file the list of their assets, both encumbered and unencumbered alongwith their market value.

Source: http://delhihighcourt.nic.in

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Bilateral Patent Prosecution Highway (PPH) pilot program (2nd Year)

A Bilateral Patent Prosecution Highway (PPH) pilot program has commenced between the Indian Patent Office (IPO) and the Japan Patent Office (JPO).The guidelines in this regard have been published on the website of Controller General of Patents, Designs & Trade Marks. The IPO will start accepting Form 5-1 under Chapter 5 of the PPH Guidelines from 7th December 2020. The number of requests will be limited to 100.

Source: http://www.ipindia.nic.in/newsdetail.htm?716

Brexit impact on UK Intellectual Property Rights

EU trade marks (EUTMs)

From the 1 January 2021, EUTMs will no longer protect trade marks in the UK. Under the Withdrawal Agreement Act, on the 1 January 2021, the IPO will create a comparable UK trade mark for all right holders with an existing EU trade mark. Businesses, organizations or individuals that have applications for an EUTM which are ongoing at the end of the transition period will have a period of nine months from the end of the transition period (up to and including 30 September 2021) to apply in the UK for the same protections. There will be no changes to UK-registered trademarks as a result of the UK leaving the EU.

EU Patents

The European Patent Organization is an international organization established on the basis of the European Patent Convention (EPC). The UK's withdrawal from the EU will consequently have no impact on its status within the European Patent Organization. The procedure for obtaining a European patent before the EPO will not be affected by the UK's withdrawal from the EU. This applies equally to any opposition and appeal proceedings, as well as to any limitation and revocation proceedings.

Source: https://www.gov.uk/government/news/intellectual-property-and-the-transition-period

Address For Service

UK address for service required for new patent, trade mark and registered design matters from 1 January 2021. Following the end of the Brexit transition period, applicants and opponents based outside the UK must supply a UK address for service on new cases. It is vitally important that a UK address for service is recorded to avoid missing important correspondence.

Sources: Thanks to Mathys & Squire LLP, UK

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Defeating COVID-19 with Alternative Therapies

1. SSV Formulation Tablets of Shreepad Shree Vallabh, SSV Phytopharmaceuticals comprising standardized Curcumin, Vitamin K2-7 (PureK2™), Vitamin C, and L-selenomethionine (RightSel™) showed improved immunity in quarantine patients of COVID-19 and reduce symptoms such as cough, fever with or without chills and difficulty in breathing for the period they are in quarantine. (CTRI Number CTRI/2020/04/024659 Trials Completed).

2. MyVir, an Ayurvedic tablet, approved by by AYUSH department showed early RT PCR negative as compared to standard care. Preliminary results showed that MyVir tablets reduced CRP, and has reduced the duration of hospitalization and also achieved early viral clearance (early RT PCR negative) when given along with standard of care (CTRI Number CTRI/2020/05/024967 Trials Completed).

3. Aayudh Advance an herbal liquid formulation containing mixtures of extracts and essential oils in water medium with sweetener (All the ingredients of formulation are mentioned in the scriptures of the Ayurveda) was found to be 100% safe without any side effects. Further, there were no occurrences of drug to drug interaction when given concomitantly with Standard Care of Treatment in mild symptomatic covid-19 patients. (CTRI Number CTRI/2020/05/025161 Trials Completed)

4. Pankajakasthuri Herbals India Private Limited (PKHIL) claims ZingiVir-H Tab comprising blend of 7 herbs such as Fresh Ginger, Hedyotis Corymbosa, Ajamoda, Cloves, Nut Grass as an adjunct therapy in hospitalised adults diagnosed with COVID-19. (CTRI Number CTRI/2020/04/024883 Trials Completed).

Source: http://ctri.nic.in/Clinicaltrials/advsearch.php

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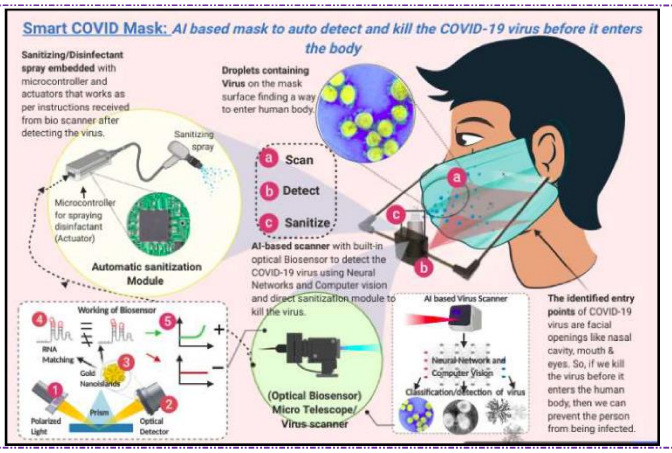
Defeating COVID-19 with AI

Smart COVID Mask:

AI-based mask with attachment to auto-detect and kill the COVID-19 virus

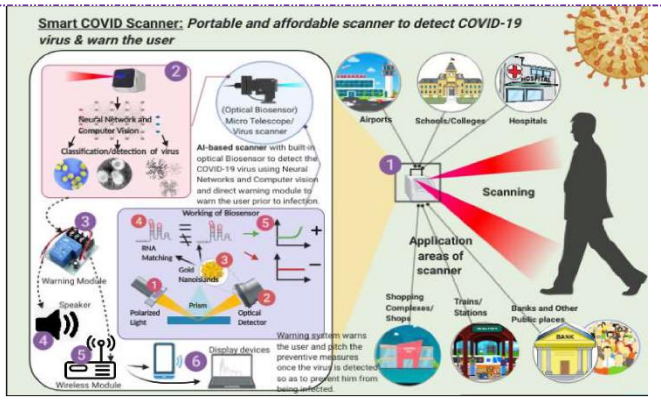
Australian Patent Application AU2020102080



Smart COVID Scanner:

Portable and Affordable Scanner to Detect COVID-19 Virus

Australian Patent Application AU2020101728



Dr. Gopakumar G. Nair Addressing the Students of Department of Textile & Fashion Technology, Mumbai in February, 2020