

TRIPS

Workshop on WTO Agreements: A Capacity Building Initiative
State-wise Outreach Programme
Ahmedabad, 27-10-2009

Peculiarity about IP

Mattewina Janda

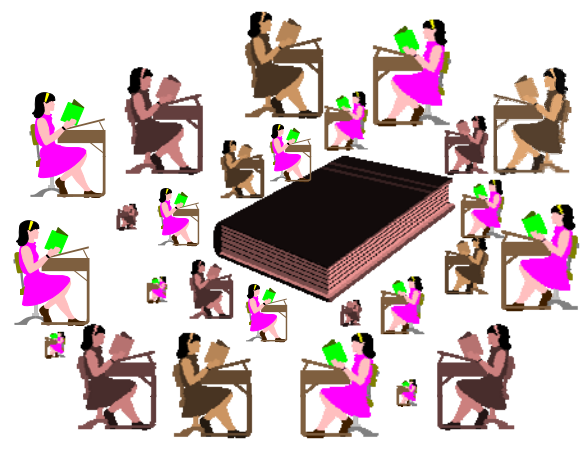


Wednesday, 28 October 2009

2

Peculiarity about IP

Mattewka Linka



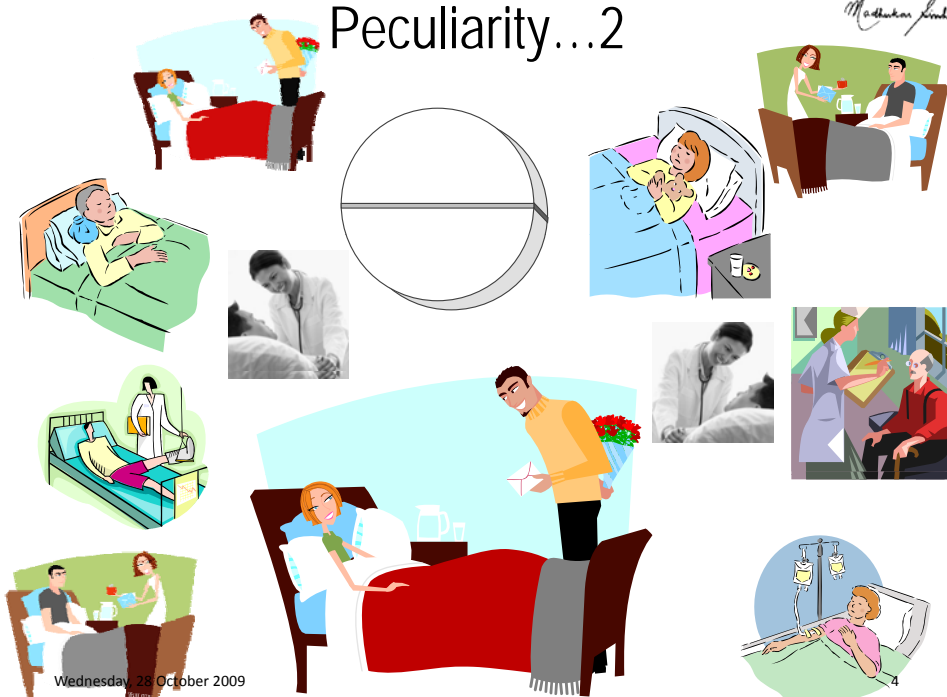
Wednesday, 28 October 2009

3

This illustration depicts a classroom setting. In the center of the room is a large, thick stack of books. Surrounding this stack are several students, each seated at a desk. The students are shown in various poses, some reading, some writing, and some looking towards the center. The desks are arranged in a circular pattern around the book stack. The overall scene suggests a focus on learning and the importance of intellectual property (IP) in an educational context.

Peculiarity...2

Mattewka Linka



Wednesday, 28 October 2009

This collage features several illustrations related to healthcare and medicine. At the top center is a large, white, oval-shaped pill with a horizontal score line. Surrounding the pill are various scenes: a doctor in a white coat examining a patient, a nurse in a blue uniform attending to a patient in a hospital bed, a person sitting at a desk with a computer, and a person lying in bed with a red blanket. The illustrations are arranged in a circular pattern around the central pill, suggesting a focus on pharmaceuticals and medical care.

Mattewin Linka

Peculiarity about IP

The object is not the IP

IP

a characteristic of the item or device or work or object

And its laws?

provide the owner an exclusive right

for a limited period to stop others from making, using or
selling that product without his permission

Ensure due stream of returns

Wednesday, 28 October 2009

5

Mattewin Linka

Forms of IPRs

Copyrights

Utility Models

Patents

Trademarks

Industrial Designs

Geographical Indications

Integrated Circuits

Trade Secrets

Industrial Property

Wednesday, 28 October 2009

6

Mattewina Jones

Other Forms


- Plant varieties
- Micro organisms
- Personality rights
- Domain Names
- Database Rights

Yet other forms

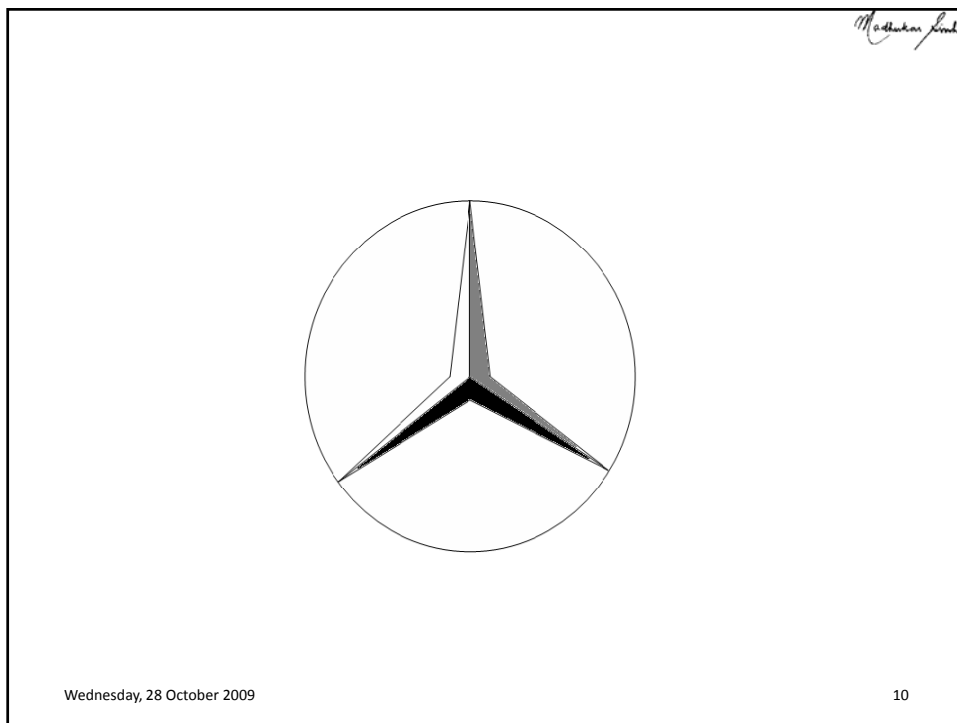
- Traditional knowledge
- Traditional Cultural Expressions

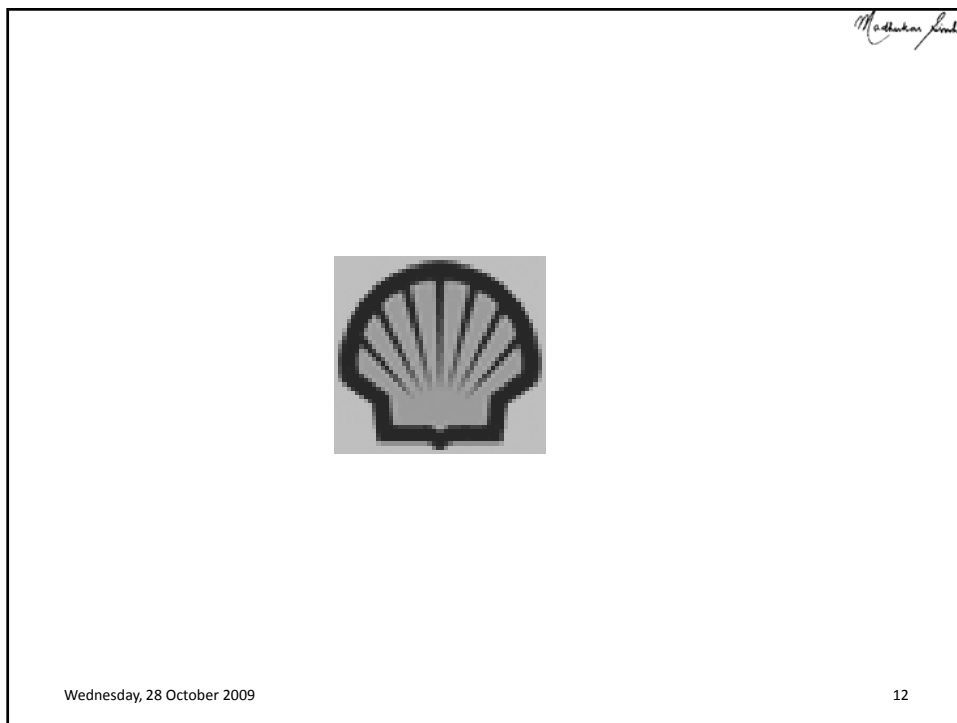
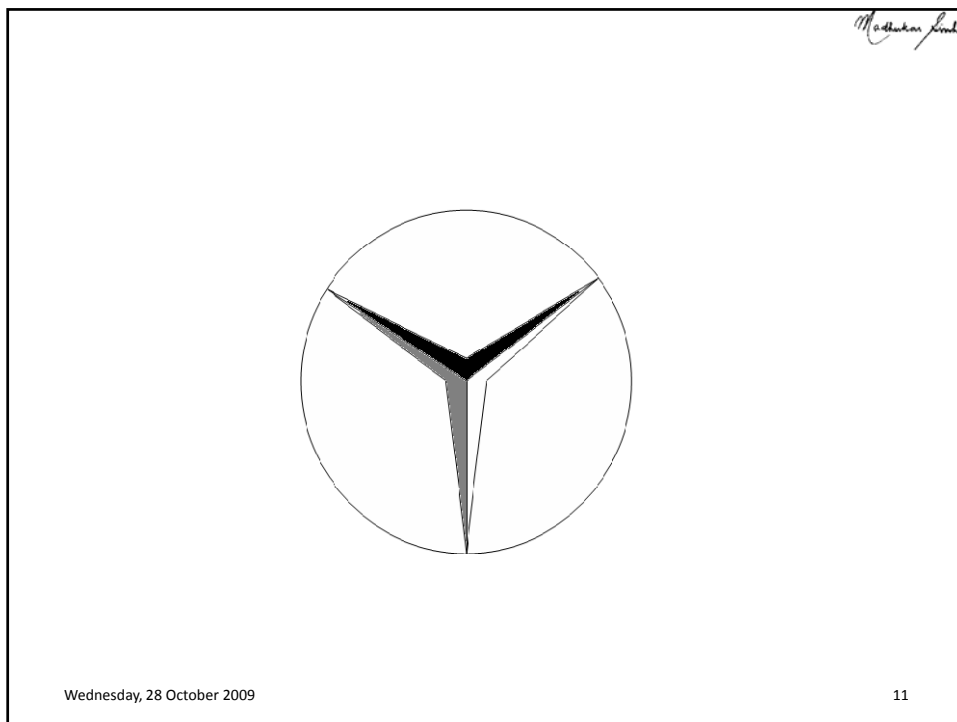
Wednesday, 28 October 2009 7

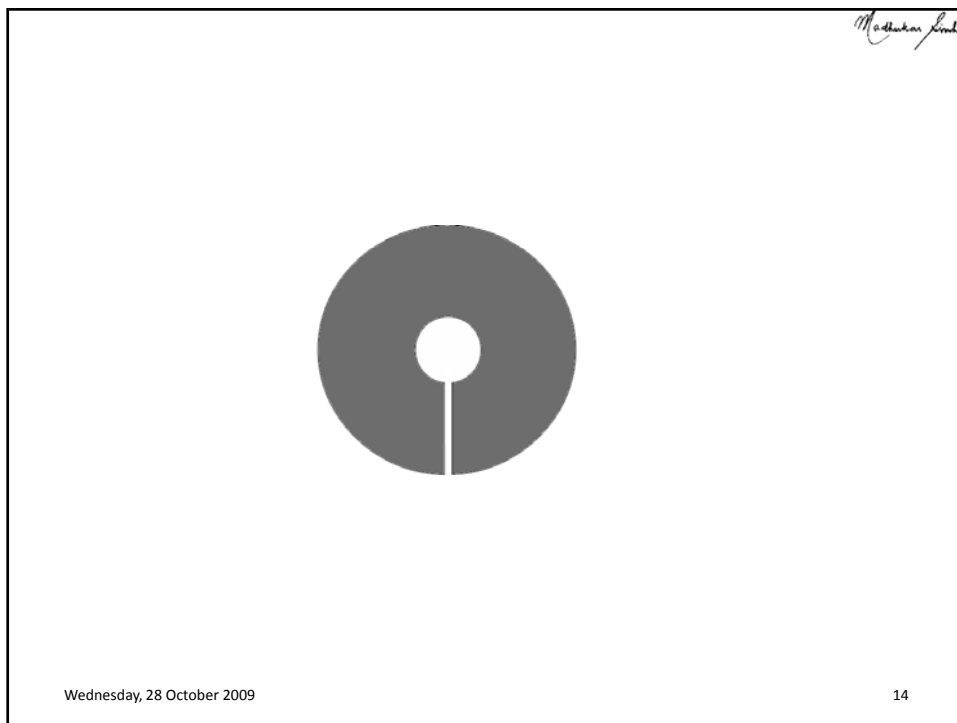
Mattewina Jones

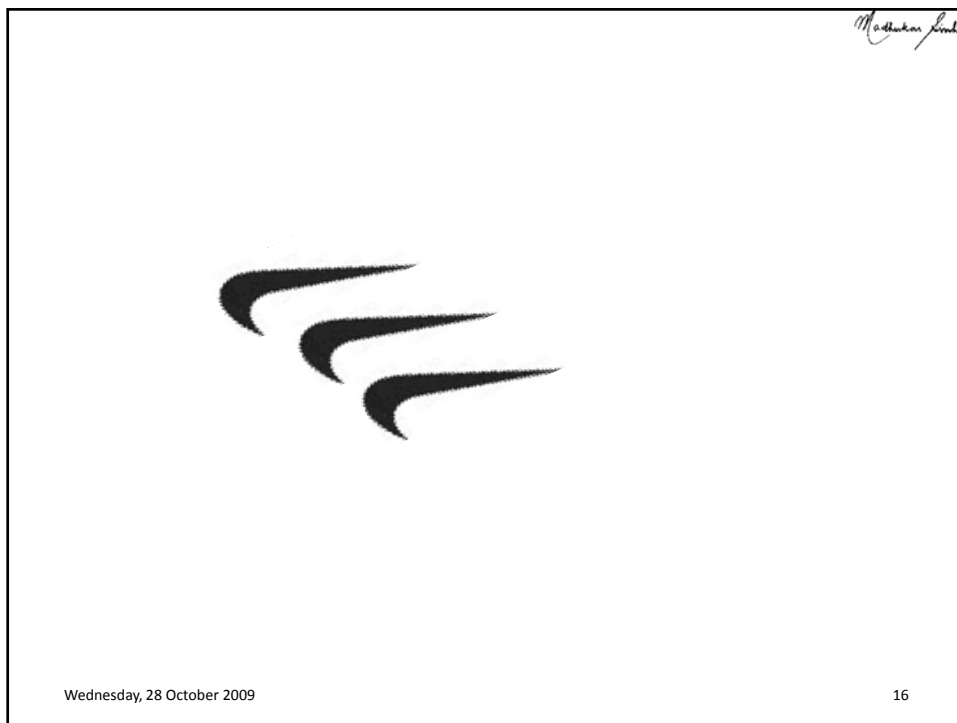


Wednesday, 28 October 2009 8









Mattewin Link

Wednesday, 28 October 2009

17

Mattewin Link

Trademarks

- Free riding on reputation
- Doctrine of passing off
- An act of unfair competition
- Well known marks need not be registered

Cases

Mallikarjun Srinivas

Surya with a half rising sun;
Bhaskar with a full rising sun for tube lights

Robin with a device of a bird sitting on a twig;
Bul Bul with two birds-one partially hiding the other for blue

Cases

Mallikarjun Srinivas

Mercedes Benz cars with the symbol of a Three Pointed Star
and VIP Benz vests with a star symbol

Rediff v/s Radiff
Yahoo v/s YahooIndia

Mattuckin Link

Patents

Process Patents vs. Product Patents

Reverse Engineering

Bolar exceptions

Mattuckin Link

Undisclosed Information

Commercial value owing to secrecy

Adequate care taken

Loss likely if secrecy is breached

Mallikarjun Swamy

Designs

Only aesthetics

Non-functional

Major reason for purchase

All things remaining the same, purchases made for design

Willingness to pay premium for better design

Mallikarjun Swamy

Earlier

Copying was easy

Imitation was (and is still) the fastest way of diffusion of knowledge

Cross-border enforcement was unheard of

Markets like India did not have sufficient purchasing power

Mallikarjun Srinivas

Now

Copying remains easy but fear of legal action very strong

Imitation is proceeded against by the right holder

Large number of cases against imitators and potential copiers by foreign firms

India is a lucrative market which everyone wants to secure

Mallikarjun Srinivas

Protection of the Rights

Two levels of legal instruments

Municipal Law

International Law

Two principles of non-discrimination

National treatment

Most Favoured Nation

Uruguay Round

Conclusion of Uruguay Round – 1994

Marrakech Agreement of 1994 creates the WTO

Countries signing the Marrakech Agreement automatically became signatories of all multilateral agreements including one at Annex 1 C

Agreement on

Trade-Related aspects of Intellectual Property Rights

Monitored by the Council for Trade in IP or the TRIPS Council at the WTO



Single undertaking

Wednesday, 28 October 2009

27

TRIPS ...2

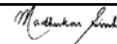
The most comprehensive omnibus document on
International IP Law

Many obligations envisaged: some met some not

Asymmetry of power relations internationally most
visible here and in Agriculture

Wednesday, 28 October 2009

28



General Principles of TRIPS

Article 1

Nature and Scope of Obligations

Article 2

Intellectual Property Conventions

Article 3

National Treatment

Article 4

Most-Favoured-Nation Treatment

Article 5

*Multilateral Agreements on
Acquisition or Maintenance of
Protection*

Article 6

Exhaustion

Article 7

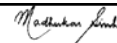
Objectives

Article 8

Principles

Wednesday, 28 October 2009

29



TRIPS ...3

Enforcement Provisions

Not enough to ask members to introduce provisions for protection of rights

Specific provisions needed introduction to enforce the rights

Shift in emphasis from legislative enabling to enforcement

The Dispute Settlement Procedures of WTO

Developing countries now subject to bilateral and multilateral pressures on enforcement regimes

Wednesday, 28 October 2009

30



Flexibilities

Operate on the principle of the sovereign right of nations to enact laws to suit their own needs

Article 1.1

Members shall give effect to the provisions of this Agreement. **Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement.** Members shall be free to determine the appropriate method of implementing the provisions of this Agreement **within their own legal system and practice.**

Wednesday, 28 October 2009

31



Flexibilities

How ***can*** they operate in practice?

Doha Declaration on TRIPS and Public Health

Members free to establish their own regimes for exhaustion, subject to most-favoured nation and national treatment.

Exhaustion of rights –refers to cases in which intellectual property rights are deemed exhausted after first sale of the protected product by the right holder or with his consent.

Can developing countries facilitate in their legislation their ability to import patented medicines if they can get them cheaper elsewhere in the world, such as through exhaustion of rights? [*Parallel Imports*]

Wednesday, 28 October 2009

32



Flexibilities

How do they operate in practice?

Disputes at the WTO

Dispute settlement procedures

Jurisprudence has not yet evolved to maturity

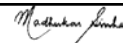
Costly for developing countries

Is there a built-in bias?

Flexibilities are not unambiguous and concrete

Wednesday, 28 October 2009

33



TRIPS and IPRs

Patents

Article 27: Patentable Subject Matter

Article 28: Rights conferred

Article 29: Conditions on Patent applicants

Article 30: Exceptions to rights conferred

Article 31: Other Use Without Authorization of the Right Holder

Article 32: Revocation/Forfeiture

Article 33: Term of Protection

Article 34: Process Patents: Burden of Proof

Trademarks

Article 15: *Protectable Subject Matter*

Article 16: Rights conferred

Article 17: Exceptions

Article 18: Term of Protection

Article 19: Requirement of use

Article 20: Other requirements

Article 21: Licensing and Assignment

Wednesday, 28 October 2009

34

Mattewin Linka

TRIPS and IPRs

Designs

Article 25

Requirements for Protection
Members obliged to protect designs
Special provision for textile designs

Article 26

Protection

Against unauthorised making, selling or
importing articles

limited exceptions on the basis of two out of the
3 step test

Geographical Indications

Article 22:

Protection of Geographical Indications
Allows for treating infringement as unfair trade
practice

Article 23:

Additional Protection for Geographical
Indications for Wines and Spirits

Article 24:

International Negotiations; Exceptions

Wednesday, 28 October 2009

35

Mattewin Linka

TRIPS and IPRs

Copyrights

Article 9: Relation to Berne Convention

Article 10: Computer Programs as literary works under Berne Compilations of Data to be
protected as original works

Article 11: Rental Rights

Article 12: Term of Protection

Article 13: Limitations and Exceptions – 3-step test

Article 14: Protection of Performers, Producers of Phonograms (Sound Recordings) and
Broadcasting Organizations

Wednesday, 28 October 2009

36

Matthew Link

TRIPS and IPRs

Integrated Circuits

Article 35: Relation to the IPIC Treaty

Article 36: Scope of the Protection

importing, selling, or otherwise distributing for commercial purposes

Article 37: Acts Not Requiring the Authorization of the Right Holder

Article 38: Term of Protection

A minimum period of 10 years

Wednesday, 28 October 2009

37

Matthew Link

TRIPS and IPRs

Trade Secrets: Protection of Undisclosed Information

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in **Article 10bis** of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices¹⁰ so long as such information:

- (a) is secret in the sense that it is **not**, as a body or in the precise configuration and assembly of its components, **generally known** among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has **commercial value** because it is secret; and
- (c) has been subject to **reasonable steps** under the circumstances, by the person lawfully in control of the information, to keep it secret.

Wednesday, 28 October 2009

38

Matthew Link

TRIPS and IPRs

Trade Secrets: Protection of Undisclosed Information

Article 39

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

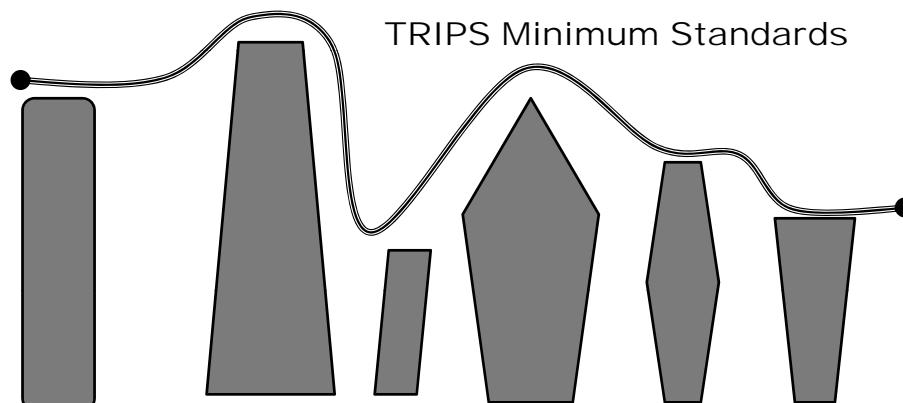
Wednesday, 28 October 2009

39

Matthew Link

What does TRIPS do to standards

There already exist many international instruments



Wednesday, 28 October 2009

40

Mallikarjun Reddy

RIO DE JANEIRO, Jan 23, 2009 (Reuters)

Brazil Protests

Brazil said it would file a complaint at the World Trade Organization over the seizure by Dutch authorities of a shipment of a generic high blood pressure drug made in India.

Local foreign and health ministries said a company claiming to have intellectual property rights to the arterial hypertension drug losartan in the Netherlands requested customs authorities seize a shipment of a generic version of the drug in transit from India to Brazil, two countries where the patent is not protected.

Wednesday, 28 October 2009

41

Mallikarjun Reddy

Feb 10 2009, 0530 hrs

Netherlands assures India on drug issue

Netherlands on Tuesday assured immediate solution into the recent generic drug consignment seizure issue by the Dutch authorities, which was on its transit to Brazil and Colombia from India. It contained generic drug Losartan manufactured by Indian pharma giant Dr Reddy's.

Wednesday, 28 October 2009

42

Mattewin Linka

Monday, 9 Mar 2009

Netherlands impounds Nigeria-bound HIV/AIDS drugs

The Netherlands has seized a large consignment of anti-retroviral drugs meant for Nigeria.

According to a report by The Financial Times of London on Thursday, the Dutch authorities seized **the India-made drugs on the grounds that they were counterfeit and violated patent rules.**

The drugs which were paid for by donor governments, including France and the United Kingdom, were imported through Schipol Airport in Amsterdam by a Geneva-based agency, Unitaid.

Wednesday, 28 October 2009

43

Mattewin Linka

Impact of TRIPS on Trade

Domestic Market

Free riding on existing rights of others not easy – Imitation made difficult
Harmonising of IP Laws means easy for foreigners to obtain protection in India

Foreign right holders can enforce their rights

International Market

Exporters need to be aware of IP content of their products

Exporters need to be aware of competitors' IP

IP can be used as a barrier to trade

Reverse Engineered products susceptible to legal action

Wednesday, 28 October 2009

44

Madhukar Limka

IPR Legislations in India

The Copyright Act (1957), as amended from time to time

Patent Act (1970)

Trade Marks Act (1999)

Patents (First Amendment) Act (1999)

Geographical Indications of Goods (Registration & Protection) Act, 1999

Designs Act (2000)

Biological Diversity Act (2000)

Protection of Plants and animals-Farmers Right Act (2001) and Seeds Act (2002)

Wednesday, 28 October 2009

45

Thank you

Madhukar Limka