

BRICS IP FORUM

NEWSLETTER



GORODISSKY

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CCPIT PATENT & TRADEMARK LAW OFFICE
中国国际贸易促进委员会专利商标事务所

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www.bricsip.org

CULTURALLY, HISTORICALLY AND POLITICALLY PERHAPS AN UNUSUAL SET, THE ECONOMIC MIGHT OF THE BRICS NATIONS ASSURES THAT THEIRS WILL BE A DECISIVE ROLE IN SHAPING THE 21ST CENTURY.

Impressive growth has engendered its own challenges. Recognising the need for fresh legal perspectives, four law firms – Daniel Advogados from Brazil, Gorodissky & Partners from Russia, Remfry & Sagar from India and CCPIT from China – came together in 2008 to articulate the intellectual property issues of the day in their jurisdiction and brainstorm collectively for suitable responses. Thus was formed the BRIC IP Forum (BIPF). Adams & Adams from South Africa joined the Forum in 2012 whence it became the BRICS IP Forum. Set up with the objective of channeling thoughts and formulating recommendations on IP related problems common and peculiar to the BRICS group, the Forum is intended as a think tank. Relevant issues are to be put forth before global IP organisations and national governments. Also, its body of analyses will no doubt assist other similarly placed economies. The BIPF first met in Gurgaon, India in November 2008. It has grown with each passing year and subsequent annual meetings have been held in Beijing (China), Rio de Janeiro (Brazil), Moscow (Russia), Chicago (USA) and Munich (Germany).

DANIEL ADVOGADOS, Brazil



The search for improvement is never ending, and all of the above, together with the successful record in administrative and judicial litigation, reflect the firm's commitment and effort to provide clients with a quality service. The recent move to an open plan on the same floor, has favored faster internal communications and document flow. Substantial investment in computer hardware and software has further enhanced the ability to respond to clients quickly and efficiently. As a result, the firm is proud of its ability to provide clients with fast and clear communication in English.



NEWS FROM BRAZIL: www.daniel.adv.br/eng/home.php

THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO PATENTS 2016. A PRACTICAL CROSS-BORDER INSIGHT INTO PATENTS LAW

This article deals extensively with various aspects of Brazil patent law and practice. One aspect is patent infringement. Patent infringement lawsuits in Brazil are brought before the court of the state in which infringement occurred. Invalidity can be raised as a defence, but for a patent to be revoked a declaratory lawsuit must be filed in the Federal Court. An infringement action may be instituted by the patentee or by the exclusive licensee if empowered by the patentee. It is noteworthy that Brazil does not adopt the principles of discovery that exist in the US. Another aspect is patent amendments. Importantly, no amendments to a patent specification are allowed after grant. It is possible, although unusual, however, that a court may allow amendments in court proceedings. Further aspects relate to licensing, prosecution, opposition, term extension and latest developments.

THE FULL TEXT OF THE ARTICLE MAY BE FOUND AT: <http://www.iclg.co.uk/practice-areas/patents/patents-2016/brazil#chaptercontent1>

GORODISSKY & PARTNERS, Russia **GORODISSKY**

Russian IP Law has gone a long way in less than 25 years. It started in 1991, when several laws were adopted in the USSR. That was not an easy task, because the legislation prior to that time was based on state property while the country went overnight to a system of free market.

Notwithstanding, those laws on intellectual property, adopted by the USSR, were workable, if not ideal, during that landmark epoch. Just one year later, the Soviet Union collapsed and the newly born Russian State urgently adopted its own laws.



NEWS FROM RUSSIA: www.gorodissky.com

TRADEMARKS AND APPELLATIONS OF ORIGIN OF GOODS (GEOGRAPHICAL INDICATIONS) IN EURASIAN ECONOMIC UNION: CURRENT SITUATION AND PERSPECTIVES

The Eurasian Economic Union includes Belarus, Kazakhstan, Russia, Kyrgyzstan and Armenia. All EAEU member countries participate in major international treaties regarding trademark protection and this dictates many common features of trademark protection. National and international procedures are available to the applicants. There are various procedures that might be used to obtain a trademark protection on EAEU territory. The article describes the laws and procedures for trademark registration available in each member country. The article also describes differences in trademark protection systems, opportunities for invalidation of trademarks due to non-use, the costs of registration in each country and prospects of introduction of common trademark of the Eurasian Economic Union.

Law provisions for obtaining registration of appellation of origin in the member countries are also explained.

THE FULL TEXT OF THE ARTICLE MAY BE FOUND AT: [http://www.gorodissky.com/upload/articles/files/THE TRADEMARK LAWYER 2015N4 Trademarks in the Eurasian Economic Union The facts.pdf](http://www.gorodissky.com/upload/articles/files/THE%20TRADEMARK%20LAWYER%202015N4%20Trademarks%20in%20the%20Eurasian%20Economic%20Union%20The%20facts.pdf)

REMFRY & SAGAR, India

Remfry & Sagar

Established in 1827, Remfry & Sagar has pioneered IP law in India. A dynamic team of lawyers and professional staff offer services across the spectrum of intellectual property law. Trade mark, patent, design, copyright, geographical indications, domain name, unfair competition and custom's issues lie at the core of the Firm's practice with equal competence in serving prosecution and litigation needs. A group of corporate law experts also advise on wide ranging commercial matters.

The firm assures unrivalled experience, quality and insight – underpinned by an uncompromising insistence on the highest standards of professional ethics.

NEWS FROM INDIA: <http://remfry.com>



NEW GUIDELINES RELEASED BY THE INDIAN PATENT OFFICE FOR EXAMINING COMPUTER RELATED INVENTIONS

Draft Guidelines For Examination Of Computer Related Inventions (CRIs) were released by the Patent Office on August 21, 2015 (the "August Guidelines") and subsequently held in abeyance in December 2015 for reconsideration. On February 19, 2016, revised Guidelines for examining CRIs were made operative with immediate effect.

The stated objective of the new Guidelines is to "bring out clarity in terms of exclusions expected under Section 3(k) so that eligible applications of patents relating to CRIs can be examined speedily." It is worth noting that as a precursor to the new Guidelines, the Controller General had met with stakeholders for, objections to the August Guidelines alleged they were overly broad and contrary to the intent of the Indian Patents Act –Section 3(k) being a case in point. Yet the updated Guidelines are different from what was finalised after stakeholder discussions - for example, the three-stage test in the new Guidelines requires novel hardware as a pre-requisite for allowance of any application pertaining to CRIs. Particularly, the test suggests that for CRI applications, the novelty and inventive step should lie in both hardware and software, failing which the claims may be denied. Additionally, the new Guidelines do not take into consideration the presence of "technical advancement/effect" while evaluating patentability, as has been the practice so far and as has been recognised in judicial precedents.

THE FULL TEXT OF THE ARTICLE MAY BE FOUND AT: <http://www.remfry.com/rsnews/new-guidelines-for-examination-of-computer-related-inventions/>

CCPIT PATENT AND TRADEMARK LAW OFFICE, China



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CCPIT is highly recommended in prosecution by Intellectual Asset Management (IAM) magazine's IAM Patent 1000: The World's Leading Patent Practitioners 2014. The magazine says that: CCPIT remains an undisputed leader in the patent field. It is among the country's biggest filers, thanks to a loyal following of global companies which rely on its precision drafting. It is also highly active in administrative and invalidation proceedings. President Hao Ma is an "amazing litigator" who is much sought after for his expertise in electronic and electrical engineering.



NEWS FROM CHINA: www.ccpit-patent.com.cn

SIPO PROPOSES TO AMEND THE PATENT LAW

Almost four months after the submission of the draft Patent Law Amendment Bill of China proposed by SIPO, which passed through the Bureau Affairs Meeting of SIPO in late August 2015, the Legislative Affairs Office (LAO) of the State Council released a new draft on 2 December 2015, for further public consultation. In the meantime, the Bill has been developed as a Preparatory Project in the Legislative Programme 2015 of the State Council from the Research Project in the last year. The above signs indicate that the Amendment Bill can be expected to be finally passed by the National People's Congress (NPC) in two or three years. The Chinese government has paid increasing attention to the importance of intellectual property in recent years. In June 2014, the Standing Committee of the NPC heard the Report on the Implementation of the Patent Law and emphasized that the Patent Law Amendment Bill should focus on enhancing the protection of patent right and on coordination and convergence amongst laws. To that end, the latest draft Bill includes, amongst other things, provisions aiming at strengthening patent enforcement, enhancing protection of design patent, perfecting service invention system, promoting exploitation and utilization of patent, and giving more power to the Patent Reexamination Board.

THE FULL TEXT OF THE ARTICLE MAY BE FOUND AT: <http://www.ccpit-patent.com.cn/node/2945>

ADAMS & ADAMS, South Africa

Adams & Adams

Adams & Adams is a leading South African law firm specialising in intellectual property law, in addition to providing general commercial legal services. The firm has grown into a South African law icon, with the largest intellectual property law practice supported by a strong commercial, property and litigation practice. Adams & Adams has been rooted in over 100 years of legal excellence since its founding in 1908. The firm is characterised by a strong commitment to professionalism, and client care and partner accessibility are two of the cornerstones of the practice.

NEWS FROM SOUTH AFRICA: www.adamsadams.com



COPYRIGHT AMENDMENT BILL PUBLISHED FOR COMMENT

The Department of Trade and Industry ("DTI") published the Copyright Amendment Bill for comment on 27 July 2015. The deadline for submissions on the Bill has come and gone and various professionals from within the IP field, including from Adams & Adams, as well as stakeholders from several industries, have submitted comments which will range from laudatory to severely critical, given the far reaching issues addressed in the Bill and the conflicting interests touched by them. **WERINA GRIFFITHS | Partner & STEPHEN HOLLIS | Partner**

THE FULL TEXT OF THE ARTICLE MAY BE FOUND AT: <http://www.adamsadams.com/index.php/media-centre/news/copyright-amendment-bill-published-for-comment/>

OF LEAVES & FORESTS – ENABLEMENT UNDER SOUTH AFRICAN PATENT LAW

The Supreme Court of Appeal handed down Judgement in The judgment is particularly noteworthy given that it is the first Supreme Court of Appeal judgment in the matter of Merck Sharpe and Dohme Group & Merial LLC v Cipla Agrimed (Pty) Ltd on 27 November 2015. The judgement deals with the assessment of the novelty of a patent by a prior disclosure and in particular whether the disclosure must be an enabling one or not. The court, in analysing whether the court a quo correctly held that South African Patent 1998/10975 was invalid for lack of novelty, stated that in assessing the disclosure in a particular document it is "important to appreciate that a finding of anticipation requires more than a throw away reference to the same subject matter in a prior art document". **ALEXIS APOSTOLIDIS | Partner: Patent Litigation**

THE FULL TEXT OF THE ARTICLE MAY BE FOUND AT: <http://www.adamsadams.com/index.php/media-centre/news/of-leaves-and-forests-enablement-under-south-african-patent-law/>



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