

## IPOTENTIAL

is published &  
printed by

### PINTAS IP GROUP

Suite 6.03, 6<sup>th</sup> Floor  
Wisma Mirama  
Jalan Wisma Putra  
50460 Kuala Lumpur  
Malaysia

T: 603- 2148 5050

F: 603 2143 3386

E: [pintas.my@pintas-ip.com](mailto:pintas.my@pintas-ip.com)

### EDITORS

LIM HUEI SYIN  
CHIA SEW YENG

### ADVISORS

#### LOK CHOON HONG

LLB (Hons)Malaya  
LLM (Hons) Cambridge  
MBA (Insead)  
EMBA (Tshinghua)

#### NOR' AMIMI @

#### NORLAILA BT SEPIK

LLB (Hons) Malaya  
LLM (Hons) Malaya

#### PATRICK CHOW

LLB (Hons) Singapore

### HIGHLIGHTS



PG1  
Angels' Tax Exemption



PG2  
North Face V.S. South Butt



PG3  
Monsanto's 1 Billion Win



PG4  
Lessons From Apple's Victory

# BUDGET 2013 HIGHLIGHTS



## FROM INNOVATION TO COMMERCIALISATION

### *Intellectual Property Rights Can Be Collateralized To Obtain Financing in Malaysia*

Efforts will also be undertaken to enable SMEs to further expand their businesses by using intellectual property rights (IPR) as a collateral to obtain financing. For this, a valuation model will be created to enable IPR to be valued and commercialized in the market as well as utilized as collateral to obtain financing from financial institutions. For this purpose, the following initiatives will be implemented:

First: Establish an Intellectual Property Financing Fund scheme amounting to RM200 million. The scheme will be offered through Malaysian Debt Ventures Berhad. The Government will provide a 2% interest rate subsidiary and guarantee of 50% through Credit Guarantee Corporation Malaysia Berhad; and

Second: Allocate RM19 million for training programmes for local intellectual property evaluators conducted by Intellectual Property Corporation of Malaysia (MyIPO) as well as create an intellectual property right market platform.

### *Government To Intensify Research And Development Activities*

Research and Development (R&D) activities will continue to be emphasised. Various R&D findings and output of public research institutions have the potential to be commercialised. To support this effort, the Government will allocate RM600 million to five research universities to conduct high-impact research in strategic fields such as nanotechnology, automotive, biotechnology and aerospace.

To boost the commercialisation of R&D findings of public institutions, the Government proposes that the current tax incentives for the commercialisation of resource-based R&D findings be extended to commercialisation of non-resource based findings which are products promoted under the Promotion of Investment Act 1986. The tax incentives are as follows:

First: The company which invests in its subsidiary company that undertakes the commercialisation of R&D findings be given a deduction equivalent to the total investment made in that subsidiary; and

Second: The subsidiary company that undertakes the commercialisation of R&D findings be given income tax exemption of 100% on the statutory income for a period of 10 years.



## BUDGET 2013 HIGHLIGHTS

► FROM PREVIOUS PAGE

### Angel / Venture Capital Investment By Individual Investors To Enjoy Income Tax Break

Young entrepreneurs have innovative ideas and products that can be promoted at the international level. However, they are constrained by limited financial resources. Therefore, as an alternative source of funding, it is crucial to have direct participation of an angel investor in the early stage of a business to ensure the success of the investment and the competitiveness of the venture company. In this respect, the Government proposes that a deduction equal to the amount of investment made by an angel investor in a venture company be allowed to be set off against all his income.

To ensure inclusive development, the Government will continuously plan and implement programmes and activities centred on knowledge, creativity and innovation. Towards becoming a high-income and developed nation by 2020, innovation will be further strengthened and made pervasive in all sectors and segments of society. Through the 2013 Budget, initiatives will be undertaken by the Ministry of Science, Technology and Innovation with the collaboration of Agensi Inovasi Malaysia and non-governmental organisations (NGOs).

For more information on the Budget 2013, please visit [thestar.com.my](http://thestar.com.my)

## THE NORTH FACE MOVES FOR CONTEMPT AGAINST THE SOUTH BUTT DEFENDANTS OVER NEW TRADEMARK



“ THE BUTT FACE ”



Remember the 2010 trademark dispute between The North Face Apparel Corp. and The South Butt, LLC? The defendants in that case adopted the trademark THE SOUTH BUTT for clothing that resembled the style of clothing sold under the well-known mark THE NORTH FACE.

According to the Complaint, South Butt repeatedly attempted to register THE SOUTH BUTT as a trademark and offered to sell its business to The North Face for \$1 million. For its part, South Butt claimed that its use of THE SOUTH BUTT and the tagline NEVER STOP RELAXING (a play on The North Face's tagline NEVER STOP EXPLORING) was protected parody.

The parties entered into a Consent Injunction in April of 2010, which prohibited South Butt and its principals from “using, without the express written permission of The North Face, any of the THE NORTH FACE Trademarks, or any other designation that is confusingly similar to any of the THE NORTH FACE Trademarks, including, but not limited to the THE SOUTH BUTT Trademarks, in any manner as to be likely to dilute, cause confusion, deception or mistake,” from “diluting and infringing the THE NORTH FACE Trademarks, and damaging The North Face's goodwill,” and from “otherwise competing unfairly with The North Face in any manner.”

The North Face recently filed a motion for contempt against the defendants, alleging that the principals of South Butt are now selling T-shirts, caps and sweatshirts under the trademark THE BUTT FACE, and are using the tagline NEVER STOP SMILING.

Read more at [www.trademarkandcopyrightlawblog.com](http://www.trademarkandcopyrightlawblog.com)

## MONSANTO WINS BIG AWARD IN A BIOTECH PATENT CASE

**A federal jury awarded \$1 billion in damages to the crop biotechnology leader Monsanto on Wednesday, saying that its arch rival DuPont had willfully infringed a patent covering Roundup Ready soybeans.**

The eight-person jury, in United States District Court in St. Louis, deliberated for less than an hour after a trial that lasted more than three weeks. The verdict is a big victory for Monsanto because it maintains patent protection on Roundup Ready soybeans, the world's most widely grown genetically engineered crop and in some sense the foundation of Monsanto's business.

DuPont, which owns the giant seed company formerly known as Pioneer Hi-Bred International, said it would appeal. "There were several fundamental errors in the case which deprived the jury of important facts and arguments," DuPont said in a news release.



By planting Roundup Ready soybeans, a farmer can easily and efficiently control weeds by simply spraying Roundup, which kills the weeds, but due to the Roundup Ready trait in the beans, leaves the soybeans as healthy as ever, reducing overall costs and increasing profit potential.

More than 90 percent of the soybeans grown in the United States contains Monsanto's Roundup Ready gene, which makes the crop resistant to the herbicide Roundup or generic versions known as glyphosate. That allows farmers to spray their fields with the herbicide, killing weeds while leaving the soybeans intact.

While Monsanto sells seeds on its own, it also licenses the technology to many other seed companies, including DuPont. DuPont's license to sell Roundup Ready seeds is not affected by Wednesday's decision.

DuPont had attempted to develop an alternative glyphosate-resistant technology called Optimum GAT. But it decided to combine that gene with the Roundup Ready gene, saying the combination worked better.

Monsanto sued DuPont in 2009, saying DuPont's license to use the Roundup Ready trait precluded combining it with another trait for glyphosate tolerance. It said DuPont wanted to combine the two because its own technology did not work.

"DuPont's senior leaders were actively working to hide the fact their OGAT technology had failed and were using elaborate schemes to cover that up with the unlicensed use of our technology," David F. Snively, Monsanto's general counsel, said in a statement Wednesday.

E. Richard Webber, the judge presiding over the case, agreed with Monsanto in a pretrial ruling in 2010 that DuPont could not combine the two genes. So the trial was focused on DuPont's contention that the Roundup Ready patent was invalid because Monsanto had deceived the United States Patent and Trademark Office by withholding information that might have prevented issuance of the patent.

Aside from the \$1 billion in damages, which the judge has the option of increasing because the jury found the infringement to be willful, the verdict might not affect DuPont's plans that much. The company announced last year that it was essentially giving up Optimum GAT. One argument it will make in its appeal is that the \$1 billion in damages are unjustified because Optimum GAT seeds never came to market and never will.

The Roundup Ready patent at issue in the trial will expire in 2014.

Monsanto and DuPont's Pioneer unit have a history of bad blood and have been involved in various lawsuits over the years. In this case, DuPont is also accusing Monsanto of wielding its patents in a way that violates antitrust laws. That part of the case is scheduled for a separate trial next year.

The relationship dates back to the 1990s when Monsanto, originally a chemical company, was preparing to introduce genetically modified crops. Since it was a novice in the seed business itself, it persuaded Pioneer to try out the technology by offering a license for very small payments.

Monsanto regretted that move when genetically modified crops took off and managed to get the original contract voided.



# APPLE'S SAMSUNG VICTORY SHOWS PATENTS AREN'T JUST FOR INVENTIONS ANYMORE

Apple's resounding courtroom victory over Samsung doesn't just mean a tougher road ahead for companies that want to clone the popular iPhone.

**It's a powerful lesson that patents aren't just for technology any more. Three of the six patents that a jury found Samsung had violated were design patents covering the way an iPhone looks, not how it functions.**

Given the potential \$1 billion or more in damages that could flow from this case, the verdict signals the arrival of a once-obscure type of patent that a prominent intellectual property lawyer says until recently was the hallmark of scamsters on the fringes of the patent world.

"This case will surely increase the amount of interest in getting design patent protection," said Michael Meurer of Boston University School of Law. "And that's too bad. We were doing fine in our economy with rather weak design patent protection."



Most patents cover a method for doing something useful with machinery, software or some more abstract process. Design patents, on the other hand, cover completely non-functional features that make a product distinctive, like the rounded corners on the iPhone. A creation of Congress, they date back to the 1800s. But patent lawyers tended to neglect design patents until recently because it seemed to make more sense to protect unique designs with trademark or copyright law, both of which are cheaper and provide longer-lasting protection.

Trademarks and "trade dress," for example, cover the non-functional designs that signal to consumers that a product is genuine. The idea is to protect consumers from grabbing a copycat product, possibly of lower quality, because they can't tell it apart from the real thing.

Now companies are seeking out design patents to go with their so-called utility patents to create a more impervious wall of protection around their successful products. It's even conceivable that a company could lose a patent fight over some critical bit of technology that makes a product work, but win damages from a competitor that copied a completely non-functional aspect of the design.

Apple already has reaped huge rewards from its prowess with industrial design, he said, in terms of goodwill — Apple's \$630 billion market cap is more than six times any measure of its hard assets — and better access to the new technology that suppliers want to place with Apple first.

Jurors tend to look at the story of how one company appeared to profit from another one's innovations and tend to forget the main person they should be worrying about is the consumer. No one buys a Samsung phone because they're confused into thinking it is an iPhone, and Apple has plenty of protection on the technology that makes the iPhone unique.

Samsung has vowed to appeal and it has some good avenues to pursue, Meurer said. Unlike with most civil jury verdicts, which are given great deference by appeals courts, with patent appeals the reviewing court can take a new look at the fundamental question of what the patents actually covered. If the appeals court decides to narrow the scope of the patents, it can throw out the jury verdict and call for a new trial.