From, January to June the IPO has disposed off 19 oppositions. Out of the 19 decisions, three are in relation to post grant oppositions. Out of the three decisions rendered in post-grant oppositions, in one case the applicant abandoned the case. The remaining two are discussed below:

Post grant Opposition decision in respect of 225737 (Lalit Mahajan, The Patentee Vs. ZEPHYR Biomedicals, The Opponent)

The granted claims of IN225737 are directed to a kit for analysing the presence of Mycobacterium tuberculosis bacilli in a sample comprising; a test device having a cellulosic membrane enclosed in an airtight rectangular container having a circular hole opening in the centre of the upper lid wherein the membrane device is placed in the circular cavity of the upper lid of the test device and pore size of membrane is 0.2 to 2.0µ; a container having TB antibody solution highly specific for Mycobacterium tuberculosis bacilli antigen; a container having Protein A conjugate solution adapted to react with antigen antibody complex to give a pink background on the said membrane; MTB extraction solution for the dilution of the sample; and a container having buffer solution.

The MTB extraction solution for the dilution of the sample is prepared by **A SPECIFIC PROCESS** : making a homogeneous solution of TRIS(C4HnNO3) in a double distilled water to obtain an alkaline pH above 8; adjusting the pH with HC1 concentrate to pH 6.5 to 7.5; mixing thoroughly with 25 millimolar EDTA(Ethylene Diamiene Tetra Acetic Acid) and a surfactant 0.05% to 0.25% w/v and allowing it till a clear solution is obtained; adding 4.5 to 9.5 molar urea; magnetically stirring the solution at an ambient temperature and allowing it to maturize for 2 to 3 days to obtain a clear MTB extraction solution.

A kit for analyzing the presence of Mycobacterium tuberculosis bacilli antigen is also claimed.

Novelty:

As per the controller the novelty of the impugned invention appears to lie in a kit for analyzing the presence of Mycobacterium tuberculosis bacilli antigen wherein a specific MTB extraction solution is used with a specific concentration of ingredients, along with a specific conjugate and a device, constituting the kit thereof.

The controller holds that in the light of the documents cited by the opponent it cannot be concluded that the subject invention as claimed is in prior use or publicly known in India. None of the documents provided by the opponent report the use of the specific claimed kit.

The controller also noted that during the hearing, the opponents have accepted that the kits as claimed are not even presently in use. Therefore the Controller held that the claims are not anticipated by prior publication or use.

Inventive Step:

As per the controller the inventive step of the invention appears to lie in the kit having specific elements and processing of samples to be detected by the claimed kit. This is reflected in the difference of the decontamination solution which has been optimized to be used for sample processing for this particular claimed kit. The controller held that the invention is inventive as the opponent has failed to provide sufficient evidence to prove that the invention is obvious over the prior art cited documents. None of the articles, reports, literatures or devices being referred or relied upon by the Opponent discloses or teaches the present invention of the granted claims. Even though the opponent has provided excerpts from the cited Annexures the opponent has not provided substantial evidence which shows a lack of inventive step in the invention by combination of various documents.

Not Patentability:

The controller also rejected the ground of not patentability under section 3(f) and 3(e), and held that the opponent has not provided sufficient evidence to prove· that the invention falls within the said clause/Act. It is observed that the granted claims have specific elements and processing of samples to be detected by the claimed kit. This is reflected in the difference of the decontamination solution which has been optimized to be used for sample processing for this particular claimed kit.

The controller also rejected the grounds of insufficiency and section 8.

The Patent has been maintained by the Controller.

Post grant opposition for granted Patent No.262357

An opposition was filed to the granted Patent No. IN 262357 for the invention "A NOVEL COMPOUND 3, 3-(1,2-ETHANEDIOXY)-5AHYDROXY-11-(4-N,N-DIMETHYLAMINO-PHENYL)-17 AACETOXY-19-NOPREGNA-9-ENE-20-0NE AND A PROCESS FOR PREPARING THE SAME".

Claim 1 is the above compound and claims 2-11 are process for the production of said compound. The compound is an intermediate. Using this intermediate, a known compound **17 a-acetoxy**-11/) -(4-N ,N-dimethylaminophenyl)-19-norpregna-4 ,9-diene-3 ,20-dione (VA-2914) is synthesised. The compound VA-2914 is already known in cited document, D2.

Novelty:

The controller held that the compound and reaction with the Grignard reagent 4-N,N-dimethylaminophenylmagnesium bromide in the process to make the same is not mentioned in the prior art. Hence invention is novel.

Inventive step:

With regard to inventive step, the controller also held that the core structure of the intermediate, and its substituents are well known from D1 and D2. The process having epoxidation, adduct formation, halogenated ketone, peroxide, base, solvent, reaction with epoxide with Grignard reagent is also known from D1 and D2.

The controller notes that Dl example 4 disclose that the 17a-acetoxy can be introduced in the process and D2 itself discloses a final product having 17a-acetoxy, VA-2914.

The controller holds that, it is clear that the prior art documents Dl and D2 motivate to a person skilled in the art to use the Grignard reagent in less amount in the process of preparing VA-2914 and its intermediates to get a high yield and purity to reduce the purification methods.

The present description as per the controller is silent and no significance is mentioned for the selection of 4-N,Ndimethylaminophenylmagnesium bromide as Grignard reagent.

The selection of Grignard reagent, using less amount, high purity, step of reaction are obvious and routine to a person skilled in the art by reading D1 and D2. The controller held that person skilled in the art is not required spoon feeding and no need to teach step by step. The ground of inventive step was therefore held to be valid.

Section 8:

The controller also revoked the patent on ground of section 8. The controller held that it is a responsibility of the applicant to file the information u/s 8(1) for patent filed in any country outside India. It was held that the Patentee did not provide information of DK and ES. The patentee's argument that since EP1602662 was disclosed to IPO that covers DK and ES was not satisfactory according to the Controller. The status of the application, whatever countries the applicant has filed, shall be informed to IPO as per section 8(1) of the Patents Act.