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NATIONAL LAW UNIVERSITY, JODHPUR  
End Term Examination- November 2024

Semester-UG IX  
Subject: IPRs in International Trade  
Trade and Investment Law Hon's

Time: Three Hours

Marks- 100

Instructions:

1. Answer any **FIVE** questions.
2. All questions carry equal marks.
3. Bare text of the treaty is not allowed.
4. Try to answer the questions citing the relevant provisions and case laws.

**Q.1**

a. What is meaning of intellectual property rights under the TRIPS Agreement of the WTO? What is the link between international trade and the protection of the IP rights? Is the TRIPS Agreement the first international agreement addressing the protection of the IP rights? What are the objectives of the TRIPS Agreement? What is the role of Articles 7 and 8 of the TRIPS Agreement? Compare Article 8 and Article XX of the GATT, 1994.

b. TRIPS Agreement is the friendly take over the Paris and Berne Conventions? Analyse in the context of the provisions of the Agreement.

**Marks 10+ 10**

**Q.2**

Explain the concept of exhaustion of IP rights. Why is the exhaustion important to international trade? Does the TRIPS Agreement regulate the issue of exhaustion? Do Members of the WTO have any obligation under the TRIPS Agreement with regard to national rules on the exhaustion of IP rights? Is the idea of exhaustion same for all IPRs? What are the different types of exhaustion? What form of exhaustion does EU follow for trademarks rights? Is it the same in US? Explain.

**Marks 20**

**Q3**

Discuss the impact of the free trade agreements on intellectual property standard in the post TRIPS Agreement world. How far these agreements deal with complexities of TRIPS Plus measures?

**Marks 20**



Q. 4

WTO Member "Alpha" has a large number of individuals who are HIV-positive. Without effective medical treatment, these individuals will die of AIDS and its complications within the next ten years. The government of Alpha has aggressively addressed its HIV-AIDS crisis by providing free access to antiretroviral drugs to all citizens who need them. Alpha has adopted a new Industrial Property Law to implement its TRIPS Agreement obligations. It includes a section on compulsory licensing that provides, *inter alia*:

"Article 7. The titleholder shall be subject to having the patent licensed on a compulsory basis if he exercises his rights derived there from in an abusive manner, or by means thereof engages in abuse of economic power, proven pursuant to law in an administrative or judicial decision.

Paragraph 1. The following also occasion a compulsory licence:

I – non-exploitation of the object of the patent within the Alpha territory for failure to manufacture or incomplete manufacture of the product, or also failure to make full use of the patented process, except cases where this is not economically feasible, when importation shall be permitted; or

II – commercialization that does not satisfy the needs of the market.

Paragraph 5. The compulsory licence that is the subject of Paragraph 1 shall only be required when 3 (three) years have elapsed since the patent was granted.

Article 8. A compulsory licence shall not be granted if, on the date of the application, the titleholder:

I – justifies the non-use based on legitimate reasons;

II – proves that serious and effective preparations for exploitation have been made;

III – justifies the failure to manufacture or to market on grounds of an obstacle of legal nature;

Article 9. In cases of national emergency or of public interest, as declared in an act of the Federal Executive Power, and provided the patent holder or his licensee does not fulfill such need, a temporary and non-exclusive compulsory licence for exploiting the patent may be granted, *ex officio*, without prejudice to the rights of the respective titleholder. Sole Paragraph. The act of granting the licence shall establish its term and the possibility of extension.

Article 10. Compulsory licenses shall always be granted on a non-exclusive basis, and sublicensing shall not be permitted.

Article 11. Article 11. The application for a compulsory licence shall be formulated upon indication of the conditions offered to the patent holder.”

The Alpha government has made perfectly clear that it intends to address the HIV-AIDS crisis in that country by whatever means are necessary, while abiding by its international legal obligations. If a patented drug is more expensive than the government considers warranted, it will not hesitate to grant a compulsory licence for local production of the drug. WTO Member Beta has initiated a dispute settlement action in the WTO charging that Alpha's compulsory licensing legislation “establish[es] a ‘local working’ requirement for the enjoyment of exclusive patent rights that can only be satisfied by the local production – and not the importation – of the patented subject matter.”

According to Beta, Alpha's compulsory licensing legislation is inconsistent with Alpha's obligations under the TRIPS Agreement. Alpha asks you to assist in defending against the WTO action initiated by Beta. Alpha observes that in the initial phase of WTO dispute settlement, the complaining party need only state its cause of action in a brief summary manner. Beta has provided very limited information concerning the basis for its action.

- a. What legal arguments do you expect Beta to advance against Alpha's compulsory licensing legislation?
- b. How should Alpha respond to Beta's legal arguments?
- c. Given the relative strength of the two side's arguments, would you recommend that Alpha settle this dispute by agreeing to amend its legislation and, if so, with what changes

**Marks 20**

**Q5**

Border measures are provided in order to take care of the need to trans-border infringement of the IPRs. But these border measures should not adversely affect the right of the legitimate importer. Critically examine the border measures provisions provided under the TRIPS Agreement for importation of counterfeited trademarks and pirated copyright goods.

**Marks 20**

**Q.6**

Write short comments on two of the following:

- a. TRIPS “Built in Agenda” and negotiations for heightened protection for all Geographical indications;
- b. TRIPS Agreement Article 29 and the relationship between TRIPS Agreement and Convention on Biological Diversity;
- c. Preamble of TRIPS

**Marks 10+10**

