

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination Oct -Nov., 2023

Semester: PG LL.M.- I Sem (I.P.R.)

Subject: Patent Law

Time: Three Hours

Marks: 100

Instructions:

1. Attempt any four out of six questions.
2. All questions carry equal marks.
3. Use of any reference material such as Bare Acts is not permitted.

Q.1) Discuss the patentability criteria and non-patentable subject matters as per the Indian Patent Act, 1970. Lay special emphasis on the relevance of "PHOSITA" standards. Also, examine how India has made use of TRIPs flexibilities in carving out the list of excluded invention.

(Marks: 25)

Q. 2) Mr. X enjoys patent protection over a drug in USA, China and India. Mr. Y, a resident of India, imports the said drug into India from China through a licensee of Mr. X, where China follows International Exhaustion policy for patents. He makes the same drug available in India through such imports in significant quantities. Does this act amount to infringement of patent rights of Mr. X in India?
Decide in light of the judicial precedents and the provisions of the Patent Act, 1970. Also, highlight the concept of exhaustion, its types and how TRIPs Agreement addresses this concern.

(Marks: 25)

Q.3) Discuss the relevance of patent specification and claims in patent filing. Also list the types of specifications and their contents while citing relevant provisions of the Patent Act, 1970.

(Marks: 25)

Q.4) Discuss the relevant provisions of the Patent Act, 1970 that are directed at restricting ever-greening of patents in the pharmaceutical industry. Highlight the utility and limitations of the provisions and the judicial view in respect of the same. Also explain whether the Supreme Court has enhanced/increased the patentability requirements in respect of pharmaceutical products by interpreting the anti-ever greening provision in a landmark case.

(Marks: 25)

Q.5) The world witnessed a coronavirus pandemic COVID-19 in the recent past. During the same, several medicinal drugs and devices were in exorbitantly high demand, such as

Remdesivir, Baricitinib, vaccines, testing techniques and kits, Personal protection equipments and other aiding equipment and devices like masks and ventilators. The same were fiercely developed and protected under patents across the globe, even in India. Due to continuous outbreak of the disease through several variants of the virus and multiple waves of the pandemic, the same lasted for over 2 years and with record breaking deaths per day. In order to manage the health crisis situation in the country, the government decided to import the said medicines and equipment from countries like China and USA.

However, the limited imports could still not meet the high demand in the country. To manage the scarcity, the government intends to explore the various flexibilities under the Patent Act, 1970 that may enable the government to make medicines and equipment available to the people in India and also export the same to the least developing countries which have no manufacturing capacity and were significantly hit by the pandemic.

Examine whether the import of the medicines and equipment by the government from USA and China amount to infringement of patent rights as per the Indian law.

Also, discuss the various provisions of the Patent Act, 1970 that deal with the possible exceptions to the rights of a patentee that may enable the government to ensure access to medicine for all.

Also explain whether the provisions of TRIPs Agreement and Patent Act, 1970 are enabling in respect of export of such inventions to other countries .

(Marks: 25)

Q.6) Write short notes on *any two* of the following:

- a) Doctrine of Equivalents and Prosecution History Estoppel
- b) Pepsico v. Gujarat Farmers Case
- c) Public use v. experimental use doctrine
- d) Publication and examination of patent application

(Marks: 12.5+12.5=25)