

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination May – 2025

Semester: UG VIII Semester (IPR Hons.)

Subject: International IP Law and Policy

Time: Three Hours

Marks: 100

Instructions:

- 1) Answer any 5 out of 6 questions.
- 2) Marks have been indicated against each question.
- 3) Write your answers to the point, brevity will be appreciated.

Q.1). 'The stance of TRIPS Agreement on not mandating a policy of exhaustion on the WTO member states appears more deliberate than inadvertent.' – Do you agree? Justify with specific domestic instances and supporting reasons. (Marks 20)

Q.2). Netherlands passes a statute requiring trademark applicants for cannabis weed products (legalized in Netherlands) to use drab and plain colours (e.g. beige, grey, green) on their packaging during retail sale post registration of trade dress. Countries Y and Z, which are major exporters of cannabis to Netherlands, file a complaint before the WTO, alleging that the law violates their right to obtain a registration for their distinctive marks and maintain their subsequent distinctiveness. The step also constitutes a violation of the WTO member's obligation not to discriminate in the grant of the registration of a trademark based on the nature of the underlying product. Examine the merits of this contention with the help of one relevant case law.

(Marks 10+ 10 = 20)

Q.3). On March 5, 2025, Keith Henry Stockman Campbell and Ian Wilmut successfully produced the first mammal ever cloned from an adult somatic cell: Dolly the Sheep. A clone is an identical genetic copy of a cell, cell part, or organism. The cloning method Campbell and Wilmut used to create Dolly constituted a breakthrough in scientific discovery. Known as somatic cell nuclear transfer, this process involves removing the nucleus of a somatic cell and implanting that nucleus into an enucleated (i.e., without a nucleus) oocyte. A somatic cell is any body cell other than gametes (egg or sperm). An oocyte is a female gametocyte (an egg cell prior to maturation), and a nucleus is the organelle that holds a cell's genetic material (its DNA). Often referred to as "adult" cells, somatic cells are differentiated, i.e., they are specialized to perform specific functions. For example, liver, heart, and muscle cells are all differentiated, somatic cells. To create Dolly, Campbell and Wilmut fused the nucleus of an adult, somatic mammary cell with an enucleated oocyte. Specifically, Campbell and Wilmut found that if the donor, somatic cell is arrested in the stage of the cell cycle where it is dormant and non-replicating (the quiescent phase) prior to nuclear transfer, the resulting fused cell will develop into a reconstituted embryo. Once the nucleus of a somatic, donor cell is removed, that nucleus is fused with an oocyte, which develops into an embryo. The embryo can then be implanted into a surrogate mammal, where it develops into a baby animal. The resulting cloned animal is an exact genetic replica of the adult mammal from which the somatic cell nucleus was taken. While Roslin does not dispute that the donor sheep whose genetic material was used to create Dolly could not be patented, Roslin contends that copies (clones) are eligible for protection because they are the product of human ingenuity and not nature's handiwork, but their own. Roslin files a patent application before the US Patent and Trademark Office and argues that its claimed clones are patent eligible because they are distinguishable from the donor mammals used to create them. First, Roslin contends that "environmental factors" lead to phenotypic differences that distinguish its clones from their donor mammals. A phenotype refers to all the observable characteristics of an organism, such as shape, size, color, and behavior, that result from the interaction of the organism's genotype with its environment. A mammal's phenotype can change

constantly throughout the life of that organism not only due to environmental changes, but also the physiological and morphological changes associated with aging. Roslin acknowledges that any phenotypic differences came about or were produced "quite independently of any effort of the patentee. However, it urged that its clones are distinguishable from their original donor mammals because of differences in mitochondrial DNA, which originates from the donor oocyte rather than the donor nucleus. Mitochondria are the organelles (cellular bodies) that produce the energy eukaryotic cells need to function. Mitochondria possess their own DNA, which is distinct from the DNA housed in the cell's nucleus. In the cloning process, the clone inherits its mitochondrial DNA from its donor oocyte, instead of its donor somatic cell. Therefore, Dolly's mitochondrial DNA came from the oocyte used to create her, not her donor mammary cell. Roslin argues that this difference in mitochondrial DNA, though not claimed specifically in the patent application, renders its product claims patent eligible. Decide. (Marks 20)

Q.4). 'Well known trademark protection under TRIPS Agreement follows a mix of quantitative as well as qualitative approach to protection of marks.' – Do you agree? Substantiate with detailed reasons. (Marks 20)

Q.5) "National Treatment under the TRIPS Agreement covers only formal discrimination and not discrimination as a matter of practice allowing member states to assure foreign applicants of non-discrimination as a matter of standard administrative practice." Do you agree with this statement? Explain your answer with reasons supported by ONE relevant case law. (Marks 20)

Q.6)

a). 'Palmodio Fontino' is a special form of Italian cheese exhibiting the following features: "the structure of the body of the cheese, fine grained and flaky, the fragrant aroma and delicate taste, which is flavoursome without being pungent, and its high level of solubility and digestibility." An infringement suit was filed by the Palmodio Cheese Consortium before the European Court of Justice against Kraft Foods, a German company, for use of the name 'Palmodan' (German translation of 'Palmodio') as a generic name, on cheeses that neither exhibited the peculiarities of Palmodio Fontino PDO, nor came from the area of origin. These usurpations of the name violated the rights of the producers and created confusion among consumers, resulting in damage to the image and the quality of one of the most famous cheeses in the world. Kraft contended that only some ingredients are the same and the change in language reduces the likelihood of confusion as to the source of origin. Additionally, Kraft had discovered a way to reduce the processing time from ten months to six. The consortium contended that such a fundamental change would compromise the very nature on which its GI is based and would negatively impact the impression on the Palmodio customers, diluting the brand value in the process. Decide.

b). X holds the patent for a motorbike engine. The design of the engine, in particular the frequency of the rotation of the double X-Twin cylinders, is responsible for the production of a unique sound when the bike starts which would easily distinguish X's bike from other company's bikes. The patent is supposed to expire on November 30, 2020. Sensing an opportunity, X files an application before the USPTO for registering the engine sound as a trademark. Knowing that X's patent is set to expire soon, Y had started stockpiling its own product line of bikes with the identical engine design with identical sound. However, if X's trademark application for the engine sound gets accepted, the whole technology will become protected for as long as X is prepared to renew the mark. Y decides to oppose this application and seeks your assistance to argue the case before the USPTO. State your arguments with supporting relevant case laws.

(Marks 10 + 10 = 20)



30 AUG 2025

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Q.1). Discuss and critically analyze the judicial approach in the US dealing with copyright protection for software and the ambit of fair use doctrine applied in these cases.

(Marks 20)

Q.2)

a). VanWorld Pharmaceutical files an application on April 15, 2025, before the European Patent Office for a pharmaceutical preparation comprising an extract of nucleic acids and amino acids from rabbit skin, and pharmaceutically acceptable excipients, obtained by a process comprising the steps of: (i) providing a rabbit skin which no longer produces kallikrein; (ii) extraction from the skin of the rabbit with an organic solvent; (iii) treatment with an acid and an alkali; and (iv) adsorption, elution and concentration of the extract. The rabbit skin is obtained after a process of vaccinating the skin tissues of a rabbit against vaccinia virus by subcutaneous injection of 0.1-0.4ml of solution containing 106-109 virus/ml on each site, at a rate of 100 to 250 sites per 1.5 to 3 kg rabbit, followed by feeding of the vaccinated rabbit, which is killed when the skin tissue is sufficiently inflamed, and then skinned. The skin is frozen at -18°C for storage. From the examples, it appears that the process for preparing the extract requires six to 11 rabbits to prepare the equivalent of a single analgesic tablet. The Examination Division raises a preliminary objection that the claimed invention violates Article 53(A) of the European Patent Convention due to cruelty caused to animals. VanWorld has approached you for legal assistance. Advise.

b). Nestle launched its new product 'Biscrackers' through an advertisement where actor Benedict Cumberbatch is seen to be chewing the crackers making a prolonged crispy sound echoing for 5 seconds. The ad becomes immensely popular and Nestles decide to apply to the European Intellectual Property Office for registering the prolonged crispy sound as a distinctive trade mark for the product. Nestle argues that the greater than normal crispy sound departs from the norms and customs of the industry and thus deserves protection under the European trade mark law. Decide.

(Marks 10+ 10 = 20)

Q.3). Discuss the public health challenges posed by aggressive data exclusivity implementation in the field of clinical trials. Propose a solution which according to you would comply with the international IP framework and also take care of the interests of all stakeholders. (Marks 20)

Q.4). "While the TRIPS Agreement mandates the conditions under which a valid trademark can be recognized and registered, it defers to the autonomy of the WTO member states in deciding the conditions of ownership of such a registered mark." Do you agree? Substantiate your response with detailed reasons. (Marks 20)

Q.5) Critically assess the contributions of India and Brazil in contributing to the objectives and principles of the TRIPS Agreement. (Marks 20)



Q.6)

a). United Kingdom recently enacted Cross Border Detention of Patent Infringing Articles (CBDPIA) Act, 2019. Section 4 of this Act states that "The Office of Fair Trading (OFT) may detect and confiscate articles at the territorial borders of the UK if the Concerned Officer makes an assessment that the seized article infringes a patent registered in the UK." Proviso to Section 4 states that "The aforementioned assessment would be treated as a final and conclusive determination of the rights and liabilities of the concerned party and shall not require any reasons to be recorded in writing. For the avoidance of any doubt, the right to make a reference to the European Court of Justice to decide a question of interpretation of law is reserved." On July 20, 2019, OFT seized 5,00,000 pirated DSLR cameras from secret consignments arriving at Portsmouth, Boumemouth and Southampton ports, being carries by 15 Chinese vessels. As the issue became internationalized, China filed a complaint before the WTO Panel stating that the CBDPIA Act has resulted in a discriminatory treatment afforded to foreign nationals as opposed to UK nationals who are allowed to contest their patent infringement claims before the Comptroller General by filing appeals before the Patent Court (High Court) and the Court of Appeals in addition to the option of claiming a reference to the ECJ for deciding questions of law. UK countered stating that the hardships experienced by foreign nationals in such cases are simply practical in nature as the law *per se* does not make any formal distinctions. You have been contacted by the Chinese government for legal assistance. Argue.

b). Country X has recently passed a law under Decree N/145-29 allowing screening of English Premier League Football matches in its registered shopping malls, so long as a central area is designated for public access and the screens installed in this area measure not more than 12 ft. x 10 ft. Each mall complex should also not have more than two such areas and the total number of screens will not exceed 3. At the end of 2024, all the malls in X witnessed huge audience turnouts due to the broadcast of matches and also significantly boosted the gate receipts at the malls, sales figures and taxes in X. Concerned by these developments, the Football Association and Star Sports who hold the broadcasting rights to the Premier League approach the government of X to repeal decree as the exception, in their opinion, did not satisfy the requirement under the TRIPS Agreement. X has asked you to draft an advisory containing a solution which complies with the TRIPS Agreement and satisfies all stakeholders.

(Marks 10+10 = 20)