

NATIONAL LAW UNIVERSITY, JODHPUR
End Term Examination July-November – 2023
Semester: UG IX Semester (Trade Law Honours)
Subject: Law of IPR in International Trade

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) (a) Explain the relation between economic growth and protection of IPR with reference to the relevant scholarly view-points.

(b) Critically examine the effect of TRIPS plus provisions in Free Trade Agreements on access to medicines in the international market.

(Marks 10+10=20)

Q. 2) (a) ABC, Inc. owns a patent on a genetically modified seed X in crop Y in country Z. ABC has recently made an improvement in seed X for which it has secured a patent in the EU. However, on failure to file for the patent in time in country Z, it misses out on the patent in Z. Keen on recouping its investments in R&D in Z, ABC decides to charge an additional 10 Euros for all consignments of animal feed exported from EU as these animal feed contain X. Lab tests have shown that even as a constituent of the feed, X has the potential to exhibit the same patentable characteristics as it would have done independently. EU files a claim before the ECJ challenging the fact that the feed does not fulfill the requirement of absolute novelty. Decide the merits of this claim with reference to a relevant case law.

(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) (a) The early 2000s were marked by intense international research on the genetic foundations of ovarian cancer. In 2015, a research group at the University of California at Berkeley announced that they had located a gene on chromosome 17 that provided the first evidence of the connection between certain genetic variations and ovarian cancer. That genetic variation would become known as ORCA1. The following year, a group of researchers from the University of Utah's Center for Genetic Epidemiology created a small biotechnology company Mystic Genetics. Mystic sequenced ORCA1 that is identified the nucleotide bases in DNA that together comprise the gene in 2019 and obtained patents covering the sequenced gene, more than 40 mutations or variations of ORCA1, and numerous diagnostic tests and methods for identifying mutations of the gene. Mystic was also successful in creating a synthetic form of ORCA1 called cDNA that contained only the 'working parts' of the gene, those involved in the

creation of mRNA, which is essential to protein synthesis. Over the next four years, Mystic sent a group of scientists in the United Kingdom to sequence another gene implicated in ovarian cancer, ORCA2, eventually filing for patents on that sequence, its mutations, and diagnostic tests based on the gene in 2022. The significance of the work undertaken by Mystic is pathbreaking. For the average American woman, there is a 12 to 13 percent risk for developing ovarian cancer, but for women who possess genetic mutations such as those on ORCA1 and ORCA2, the risk rises dramatically, to 50-80 percent. Having secured the patents on the genes, their mutations, and the tests to identify these genetic characteristics, Mystic aggressively sought to make use of its competitive advantage through the sales of its tests for these genes and their mutations. The company sent cease-and-desist letters to researchers whose work involved isolating the genes and filed patent infringement suits against parties engaging in ORCA testing. Following years of tumultuous relationships with the scientific community, health care organizations, physicians, patient advocacy groups, and individual patients, a lawsuit was filed against Mystic in 2023, challenging its patents on ORCA1 and ORCA2 and other patents stemming from these two genes. The lawsuit claimed that the DNA segments were not separate from nature as they contain the identical protein coding informational content as the DNA in the body, even though differences exist in its physical/structural form. Decide in light of relevant case laws.

(b) P and Q have been sent by a pharmaceutical company X to explore genetic resources in the tropical rainforests of Uganda. P and Q get in touch with a local guide R who, using his local knowledge passed down through generations, identifies some useful samples of herbs which are extracted from the habitat by P and Q. P and Q pay \$20 to R for his services. Eventually, P and Q are able to isolate a useful chemical compound from these herbs and use it to manufacture a drug which can be used for treating HIV AIDS. In 2022, X obtained a patent on this drug and made a profit of \$5 billion by sale of this drug. Coming to know about this revolutionary invention through a newspaper article, R files a suit against X claiming himself to be a co-inventor under this patent. Decide the validity of R's contention in light of relevant case laws.

(Marks 10+10=20)

Q. 4) (a) Country A amends its Tobacco Labelling Regulations to mandate that all holders of tobacco trademarks operating within its jurisdiction must use pale brown or grey labels on their cigarette packets. The package must also carry a sign depicting the image of a decayed human lung. The amendment draws heavy criticism from the tobacco companies worldwide who feel that it impacts their ability to carry on business in Country A. After intense lobbying in countries B, C and D by the tobacco companies in those jurisdictions, all the three countries decide to approach WTO for Consultation and question the legitimacy of this amendment. A, B, C and D fail to amicably resolve their differences and WTO constitutes a Panel for adjudicating upon this matter. B, C and D contend that the amendment violates the rights of the trademark holder under Article 16.1 of the TRIPS Agreement and determines the status of registration on moral grounds which is not permitted under Article 15.4. Country A has sought your assistance to represent it before the Panel. Argue.

(b) The Board of Cricket Control in India ('BCCI') has entered into a contract with Start Sports for exclusive broadcast of cricket world cup matches in India, Sri Lanka and Bangladesh. Mid way through the tournament, the Star Sports legal team discovers that matches are being streamed in Bangladesh without consent or authorization of Star Sports or BCCI in hotels, pubs, bars and shopping complexes. The online streaming reports generated by the internet service providers also point to a number of private parties viewing and retransmitting the matches in



their private residences. It is also found that the Bangladesh Copyright statute permits unauthorized broadcast and screening of sports matches in commercial establishments and within private residences with no guidelines as to the manner of usage. After a dialogue with the Bangladesh government, the Indian government sends a team of delegates to Bangladesh to advise regarding the requirement amendments to the Bangladesh Copyright statute. As the head of the delegation, you have been asked to submit a report to the Bangladesh Ministry of Trade and Commerce. Draft the report with suitable recommendations substantiated by relevant authorities.

(Marks 10+10=20)

Q. 5) Critically examine the mechanism of retaliation under the WTO regime in intellectual property disputes and its potential effect on developing countries.

(Marks 20)

Q. 6) Can the threshold limits of seizure of counterfeit/pirated goods under the domestic enforcement mechanism of a country be challenged under the TRIPS Agreement? Illustrate the difficulties of such a challenge in light of relevant provisions of the TRIPS Agreement with the help of a supporting case law.

(Marks 20)