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Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 4

Total number of printed pages : 8

NOTE : Answer *ALL* Questions.

1. Comviva Technologies Limited, a company engaged in the field of mobile and digital solutions, filed Indian Patent Application on 4 January 2016, seeking protection for an invention titled “Methods and Devices for Authentication of an Electronic Payment Card using Electronic Token.” The invention related to a secure method of authenticating electronic payment cards through the use of electronic tokens, proximity-based data transfer, and multi-step verification mechanisms, intended to improve the safety and reliability of contactless payment transactions. The application underwent examination by the Patent Office, and on 17 June 2020, the Examiner issued the First Examination Report raising several objections, alleging lack of inventive step and more significantly contending that the claimed subject matter fell within the statutory exclusion from patentability as it was, in the Examiner’s view, a mere business method and a computer program *per se*. Comviva responded to the First Examination Report on 14 June 2021 with detailed submissions and claim amendments to demonstrate the technical nature and inventive step of the invention.

Despite the submissions, the Patent Office issued a hearing notice dated 5 April, 2022, granting the applicant an opportunity to address the pending objections. Comviva attended the hearing and filed further written submissions on 20 May, 2022, reiterating that the invention did not automate a mere commercial or financial process, but rather addressed a specific technical problem in the field of transaction authentication. It was argued that the solution relied on secure token generation and validation protocols, data transfer via near-field communication, and additional verification layers that enhanced the security of contactless payments features that could not be dismissed as mere business logic or abstract computer code. Nevertheless,

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on 25 August, 2022, the Assistant Controller of Patents refused the application, maintaining that the claims were primarily directed towards commercial transaction automation, thus constituting a business method and that they essentially comprised a computer program *per se* without a demonstrable technical contribution. The refusal order did not accept Comviva's contention that the claimed system operated at a technical level beyond mere software implementation, and the application was rejected in its entirety.

Aggrieved by the decision, Comviva Technologies Limited filed an appeal before the Delhi High Court, challenging the refusal on the ground that the Controller had erred in arriving at a decision by equating any invention involving financial transactions with a business method, irrespective of the underlying technical architecture. The appellant emphasized that the claimed invention was not a generic financial solution but a specific technical mechanism for secure electronic payment card authentication, which fell within the category of patentable subject matter when assessed as a whole. The High Court examined the invention in light of the statutory provisions and the 2017 Computer Related Inventions Guidelines, which require consideration of the technical effect or contribution rather than focusing solely on the nature of the transaction. The High Court set aside the Controller's decision and directed that the application proceed towards grant, subject to compliance with other patentability requirements.

Answer the following :

(a) “While assessing the patentability of computer software *per se*, the Controller has to see whether the invention results in a technical effect or a technical advancement”. Explain with the help of the decided cases.

(5 marks)

(b) “Adoption of similar trademark and trade name by the defendants is not only a violation of the plaintiff's rights, but may also deceive the general unwary consumers and appears dishonest”. Examine the observations of the Court based on a decided case law.

(5 marks)

(c) What are the features and uses of “ESPACENET” ?

(5 marks)

(d) Explain how the Bolar Provision under Section 107A of the Patents Act, 1970 promotes research and generic competition, while parallel safeguards consumer access to affordable patented products.

(5 marks)

(e) Define prior public use in the context of patent law and also discuss exceptions to prior public use under Patents Act, 1970.

(5 marks)

2. The business unit named as PRAYATNJALI manufactures Ayurvedic medicines and nutraceutical products at its production facility in Haridwar, Uttarakhand. According to the averments in the petition, the trust and its business establishment were formed to produce indigenous healthcare products. The Uttarakhand Biodiversity Board (UBB) passed an order levying a demand under the category of “Fair and Equitable Benefit Sharing” (FEBS) as per the Biological Diversity Act, 2002.

Aggrieved by the order passed by the UBB, PRAYATNJALI filed a Writ petition. The core contention of the petitioner was that the Uttarakhand Biodiversity Board (UBB) has no authority or jurisdiction to levy a demand under the category of “Fair and Equitable Benefit Sharing” (FEBS). It is argued that the petitioner is not liable to pay any amount or contribute in any form. Since the petitioner does not fall within the categories specified under Section 3(2) of the Biological Diversity Act, the question of seeking prior approval from the National Biodiversity Authority (NBA) does not arise. The petitioner further argued that the State Biodiversity Board (SBB) lacks the power to impose FEBS obligations on Indian entities as per the Biological Diversity Act, 2002. Even the NBA does not possess the authority to delegate such powers to the SBB, as the NBA itself is not empowered to levy FEBS on Indian entities. According to the petitioner, there is no statutory provision that mandates monetary or non-monetary contributions from Indian entities; FEBS obligations are restricted solely to foreign entities. It was further submitted that the principle of statutory interpretation requires words in a statute to be given their plain meaning, supported by precedent from the Supreme Court.

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In response, the respondents argued that “Fair and Equitable Benefit Sharing” (FEBS) is a central objective of the Biological Diversity Act, 2002, and must be understood in the context of international conventions and treaties that informed the legislation, including the Rio de Janeiro Convention, Johannesburg Declaration, and the Nagoya Protocol. Counsel for the State Biodiversity Board (SBB) submitted that there exists no distinction between foreign and Indian entities with respect to FEBS obligations. Creating such a distinction would undermine the purpose of the Act and contradict India’s international commitments. It was argued that while foreign entities under Section 3 require prior approval from the NBA, Indian entities under Section 7 are obligated to provide prior intimation to the SBB. Thus, regulatory authority over Indian entities lies with the SBB, and the imposition of FEBS forms part of its statutory regulatory functions.

The petitioner, being an Indian entity without foreign participation in either its shareholding or management, challenged the imposition of FEBS on the ground that such obligations cannot be extended to domestic entities. Therefore, when the SBB, acting as a regulator, demands a fee in the form of FEBS from an entity utilizing biological resources for commercial purposes, such an action cannot be regarded as beyond its powers.

The Court emphasized that FEBS must not be interpreted solely within the narrow confines of the definition clause but rather in the broader context of the Act’s objectives and India’s international commitments towards biodiversity conservation. It concluded that the SBB is legally authorized to demand FEBS as part of its statutory role, and the NBA is empowered to issue necessary regulations in this regard. Accordingly, the challenge to the validity of the 2014 Regulations on Access to Biological Resources and Associated Knowledge and Benefit Sharing was dismissed.

Answer the following :

(a) Analyze and evaluate the concept of Fair and Equitable Benefit Sharing (FEBS) under the Biological Diversity Act, 2002 with reference to the above stated facts.

(5 marks)

(b) Define “Homonymous Geographical Indications” and explain how they are treated under Section 10 of the Geographical Indications Act, 1999.

(5 marks)

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(c) Explain the importance of technology transfer with reference to society and industry. (5 marks)

(d) What is meant by “dominant position” in the context of Competition Law ? Explain how an enterprise can abuse its dominant position in the market. (5 marks)

(e) Analyze the role of National Biodiversity Authority (NBA) and the State Biodiversity Authority in regulating access to biological resources. (5 marks)

3. A dispute arose involving the design of a seemingly simple but widely used everyday product : the toothbrush. What appeared to be a small matter of shape and style soon evolved into a significant case that tested the very principles of novelty, originality, and the protection of industrial designs under Indian law. The plaintiffs named as XYZ was a large multinational healthcare corporation, originally incorporated in Europe, which had undergone several name changes and mergers over the years. Their business extended across continents, and among the many products they manufactured and marketed, toothbrushes formed an important segment. The company XYZ gets registered a design for toothbrush under Indian law as Design No. 170554 with specific features of S-shaped” zigzag neck and a curved handle. One day plaintiff discovered that a domestic manufacturer in India had introduced a toothbrush under its own brand name which, in their view, closely resembled their registered design. The plaintiff filed a suit of infringement alleging that the similarities were not coincidental but amounted to a fraudulent imitation. They argued that such unauthorized copying would mislead consumers and allow the defendant to unfairly benefit from the reputation and market goodwill built around their product. To protect their interests, the plaintiffs approached the court seeking an interim injunction to prevent the defendant from manufacturing, distributing, or selling the allegedly infringing toothbrush. They also sought an account of profits earned by the defendant through such sales. An ex parte ad-interim injunction was initially issued by the court, restraining the defendant from further selling the contested toothbrush.

In response, the defendant argued that the design claimed by the plaintiffs was neither new nor original. According to them, toothbrushes with the same essential shape and configuration, particularly those with an “S-shaped” zigzag neck and a curved handle, had already been manufactured and marketed for years in India and abroad. These features, they argued, were well known in the industry and formed part of the public domain. In fact, similar designs had been sold by multiple companies, which meant that the plaintiffs’ registration could not legitimately claim exclusivity. As per the defendant the plaintiffs themselves had conceded that their designs had been previously published and, therefore, lacked novelty. It was further argued by the defendant that the zigzag bend was not a matter of aesthetic innovation but rather a functional feature meant to improve flexibility in brushing. This admission, according to the defendant, disqualified the plaintiffs from later attempting to re-register the same or substantially similar designs and monopolize them through another round of litigation.

The court undertook a careful examination of the toothbrush designs. A comparison was drawn between the plaintiffs' previously registered toothbrushes and the one protected under Design No. 170554. The judges noted that while the plaintiffs tried to emphasize three minor changes as evidence of novelty, these differences were superficial and merely amounted to trade variations. The court emphasized that, although even a small change can result in a new design, the key test is whether the design appears distinct and original at first sight to the average consumer.

The court observed that the plaintiffs had failed to disclose material facts, including the existence of earlier litigations where they had admitted that similar designs were already in the public domain. This non-disclosure was seen as an attempt to mislead the court and obtain an interim order unfairly. Ultimately, the court held that the plaintiffs registered design lacked novelty and dismissed the suit.

Answer the following :

(a) What do you mean by Trade Variation ? Discuss the Court’s reasoning for holding that the plaintiffs’ alleged novelty in design was merely a trade variation and not a truly novel design.

(5 marks)
Contd.

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(b) What are the exclusive rights of a performer under the Copyright Act, 1999. (5 marks)

(c) What are the essential prerequisites for a design to qualify for protection under the Designs Act, 2000 ? (5 marks)

(d) What is Design Piracy ? How does Section 19 of the Designs Act provide a ground of defense in proceedings relating to piracy of a design ? (5 marks)

(e) What do you mean by integrated circuit layout, and what is the need for enacting the Semiconductor Integrated Circuits Layout-Design Act, 2000, in India ? (5 marks)

4. AB Ltd., the plaintiff, filed a suit seeking a perpetual injunction to prevent the defendants from using the trademark “Sun Plus” in connection with soaps or detergents. The plaintiff also seeks to restrain the defendants from using the word “Sun” in any form, whether as a prefix, suffix, as well as from employing any labels incorporating the term “Sun Plus” or any other similar variations. The plaintiff contends that such usage infringes upon its registered trademarks and is likely to mislead consumers into believing that the defendants’ goods originate from or are associated with the plaintiff. The plaintiff alleged that such use amounted to infringement of its well-established and registered trademark, as it sought to unfairly capitalize on its longstanding reputation and brand value.

The plaintiff is the registered owner of the word marks “Sun,” “Sunlight,” and “Sunsilk” under Class 3 of the trademark registry. The marks “Sunlight” and “Sunsilk” are closely associated with “Sun,” reinforcing its brand identity. Additionally, the plaintiff holds registered label marks prominently featuring the word “Sunlight.” However, it is undisputed that the plaintiff has never used the standalone mark “Sun” in India, although its other registered trademarks incorporate the word.

On the other hand, the defendant, AC Ltd., has been using the mark “Sun Plus” since 1997 and has independently built a reputation for its products in the State of Kerala. There is no concrete evidence to indicate that the mark “Sunlight” has acquired such a level of

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distinctiveness in Kerala that the plaintiff would automatically benefit from consumer recognition merely by virtue of its existing trademarks. Moreover, the plaintiff's mark "Sun" has remained unused in India for over six decades, raising questions about its enforceability in the present case.

Answer the following :

- (a) Discuss the "**Doctrine of Likelihood of Confusion**" in trademark law. What are the **factors considered by courts** while determining the likelihood of confusion between two trademarks ?
- (b) What is **honest concurrent use**, and how does it serve as an exception to relative grounds for refusal of registration" under Section 11 of the Trade Marks Act, 1999 ?
- (c) Explain the main principle of the Utilitarian Theory of Intellectual Property and what danger does this theory highlights regarding creator's ability to recoup their costs of expression.
- (d) What are the key focus areas and goals outlined under the National IPR Policy, 2016 ?
- (e) How is essentially derived variety defined under Protection of Plant Varieties and Farmers Rights Act, 2001 ? Enumerate the procedure for registration of essentially derived variety.

(5 marks each)

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