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Roll No. ..... **OPEN BOOK EXAMINATION**

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 8***

NOTE : *Answer **ALL** Questions.*

1. For diabetic patients, daily injections are an uncomfortable and often painful part of life. With multiple injections required every day, anxiety and fear are typical emotions a patient may have when diagnosed with diabetes, especially for children and those with a fear of needles. Traditionally thought of as an unavoidable part of treatment, injection therapy and the pain and discomfort it causes has become one of the major concerns of diabetes patients.

To increase the quality of life of patients, alleviate discomfort and dispel fears surrounding diabetes injection therapy, in 2005 Tishla a mutinational corporation at the forefront of innovating new medical technologies proposed a challenge to make a needle so fine that it makes injections painless. Tishla felt a strong social obligation to help provide them with physical and psychological relief. The company called on Mr. Harsh, one of its best engineers who has a string of patents to his name for medical syringes, and Mr. Yash, the head of Prem Industrial Corporation, a company involved in metal pressing, to make this vision a reality.

Mr. Yash decided to take up Tishla's challenge because of his own dread for needles. He recalled how he had to receive regular nutrient injections for a condition when he was a teenager and how painful the thick needles were. He hated the injections so much that he developed a disdain for hospitals and stayed away from them as much as possible.

Mr. Yash could understand the pain of diabetes patients, especially of the children suffering from the disease. ‘‘I thought if no one else can do it, I will,’’ he resolved. While traditional production lines could be used to make a somewhat smaller needle, manufacturing costs would be expensive the resulting product would be approximately ₹ 80 per needle, which is too expensive for the average patient and thus makes commercialization unfeasible.

The usual method of manufacturing needles is to hollow out a tiny cylinder of metal. But it is extremely difficult to make ultra-thin needles this way, because the thinner the cylinder, the more difficult the procedure becomes. Tishla’s quest for an ultra-thin needle proved technically difficult, and after one year of research they were not making much progress. Tishla was turned down by a string of large metalwork firms, which thought that Tishla’s requirements were too impractical and essentially impossible. Tishla turned to Yash, a company whose skilled craftsmanship boasts a high level of technology despite its small size. Yash is credited with developing the small lithium batteries that made cellular telephones possible. The company is so skilled in its trade that it has attracted the attention of major international corporations and governmental agencies. Mr. Yash, the company’s founder, had earned himself a reputation as a metalwork magician. Working together with Yash, Tishla was able to innovate the world’s thinnest needle for insulin injections.

After five years of research and development (R & D), Yash discovered a new method which defied experts and conventional methods of needle manufacturing. Instead of hollowing out a metal cylinder, Yash’s method takes a super thin sheet of stainless steel and rolls it into a tiny tapered cylinder, which is then sealed by tightly welding the seam to ensure that it will not leak. Mr. Harsh then used his medical engineering expertise to refine this cylinder into the world’s first double tapered needle and added a special coating that acts

as a lubricant. This lowers insertion forces and lessens discomfort. The resulting syringe is only 0.2 millimeters in diameter, which is no wider than two strands of human hair and 33% thinner than a conventional needle. The discomfort associated with the syringe is no more than a mosquito bite, making it nearly painless to use. With insurance, the syringe only costs about 18 Japanese Yen (Yen) per needle (approximately US$ 0.20), which is around five percent more expensive than traditional needles, but still well within the reach of the majority of patients.

Tishla's innovative product has not only been a financial success for the company, but it has also helped patients around the world lead better lives, innovations such as the needle has given the company the freedom to continue to develop new medical products and create new manufacturing processes that reduce the end cost to the patient. Tishla has also capitalized on the success of the needle to educate the public on diabetes and dispel many of the myths surrounding the disease.

How smoothly insulin is injected is one of the major concerns when patients commence insulin injection therapy. Improving its usability may be important in initiation therapy and adherence, resulting in clinical benefits to the patient. The syringe has a significant effect on increasing the quality of life and well being of diabetes patients throughout the world. Patients suffering from diabetes have to inject themselves with insulin an average of four times a day, and these injections can be painful and scary, especially for children. Many times a needle will be difficult to inject and insulin may leak out, causing further discomfort and stress. Conventional needles can cause psychological problems as well as physical problems, such as bruising and excessive bleeding where injections are made.

Smaller, less painful needles can mitigate these problems and make patients less afraid of their treatment, giving them the ability to focus on their life and not on uncomfortable and stressful insulin injections. A study concluded that the needle has already had a significant social impact on patients using it. Compared to older needles, patients using the needle experience less pain, anxiety, bleeding, and insulin leakage and are enjoying a higher quality of life.

The case of Tishla and the needle is an example of a company using R&D, innovation and IPRs to grow and make a positive social impact. Tishla is a multinational corporation at the forefront of innovating new medical technologies, protecting its intellectual property (IP) is an important part of its business strategy.

With reference to the above case, answer the following :

(*a*) Securing IP rights (IPRs) deters copying and gives the company a competitive advantage, allowing it to continue to develop medical products that help people. Company wants to file patent in order to protect its invention. Advise the company accordingly to get the patent successfully.

(*b*) The company Tishla wants to protect its invention simultaneously in large number of countries as well. Explain.

(*c*) The patent agent should never become the inventor but should strive to have the clearest grasp of the invention needed to obtain a patent with the broadest claims allowed by law. Discuss.

(*d*) All rights granted to patentee are subject to certain limitations. Elaborate the statement.

(*10 marks each*)

2. Modern Cookers Ltd. is the registered proprietor of the trademark MODERN pertaining to pressure cookers and parts including gaskets. Prasad Enterprises, the respondent was manufacturing and selling gaskets under the trademark NAVIN, but on the packaging material indicating ''Suitable for : Modern Pressure Cookers''. In the packaging material the word Modern was printed in red colour and the words suitable for and Pressure Cookers were printed in black colour. It was very apparent that the intention is that the word Modern catches the eye of any customer.

The plaintiff filed a suit against Prasad Enterprises, alleging trademark infringement. The defendant used the phrase ''Suitable for Modern Cookers'' on the packaging of their gaskets, which Modern argued misleading consumers and violated their registered trademark rights. Prasad Enterprises countered this by invoking Section 30(2)(d) of the Trade Marks Act, 1999, which allows reference to a trademark if it is reasonably necessary to indicate compatibility with a product.

(*a*) How does the interpretation of "reasonably necessary" under Section 30(2)(d) influence trademark infringement cases ?

(*b*) Discuss the applicability of trademark law to domain name by referring to a case law.

(*6 marks each*)

3. The Channel Corporation herein after referred as Plaintiff entered into an Audio Rights Agreement with ICC Business Corporation FZ LLC, which was the organizer of ICC Men's World Cup, 2019, an event organized every four years and whose edition began on May 30th, 2019 and concluded on July 14th, 2019. Under the mentioned agreement, the Plaintiff has the *exclusive* right to exploit the Audio Rights in relation to the matches and warm up matches being held under the stated ICC tournament and the right to negotiate and conclude the license agreements with sub-licensees.

The Plaintiff has the following Rights :

I. Transmit audio coverage of Matches and warm-up matches (or any adapted, altered or edited version thereof, and including comment, commentary, interviews and/or associated data) whether live, delayed, highlights or report in all languages via any delivery system now known or hereafter developed which is capable of transmitting or making available audio material for reception anywhere in the world, including via analogue and/or digital radio broadcasts, audio streaming/broadcasts to mobile phones, audio transmission on a digital TV channel (provided such transmission is accompanied only by basic scoring graphics and does not contain and ICC Marks).

II. Stream such audio coverage via the internet and/or simulcast radio broadcasts via an audio internet stream, and/or make such audio content available on demand, including the provision of downloadable audio content commonly called podcast.

III. Transmit or broadcast resulting from the exercise of the Audio Rights, by Private FM Radio Stations within and throughout India, after obtaining the necessary rights, clearances licenses and permission in relation to such broadcast subject to the Indian law which permit such live broadcast of cricket events on Private FM Radio Stations.

IV. Exclusive right to exploit the Audio Rights and the right to negotiate and conclude the license agreements with sub-licensees.

The plaintiff came to know that the defendant who are (URLs/websites, private radio platform operators ISP (Internet Service Providers)/TSPs (Telecom Service Providers) are also broadcasting deferred update pertaining to ICC Event. An Injunction suit is filed by the plaintiff.

Answer the following :

(*a*) Whether defendant's act amounts to infringement ? Explain with the help of decided case(s).

(*b*) The Copyright Act safeguards both the work's essence and the creator's reputation. Explain.

(*6 marks each*)

4. There are millions of species across the world and India has tremendous varieties of species including plants, animals and biological genetic resources that could be potentially useful to Humans. Significant potential benefits can be obtained by accessing these genetic resources by making use of them. Genetic resources historically formed part of common heritage of mankind (hereinafter referred to as CHM) and were treated as belonging to global commons. The countries that were rich in biological resources were not able to fully utilize and benefit from their biological resources consisting of species, crops and plant varieties like rubber, cocoa, quinine etc. as they were being rampantly smuggled abroad. Due to technological innovation and development, a large number of industries started evolving the use of genetic resources and have become active in bioprospecting i.e. ‘‘the collection and exploration of biological resources for commercial purposes. Most well-known industries actively indulging in bioprospecting are pharmaceutical and agricultural industries which are involved in the fields of cosmetics, biotechnology, personal care, botanical medicine, horticulture, crop protection etc.

In the above context, biopiracy emerged as a defining context for the corporations and the industrialized countries who were claiming ownership, taking advantage of the genetic resources and Traditional Knowledge that existed in the developing countries. The term biopiracy is referred to as ‘‘illegal use ‘‘or ‘‘illegal access’’ by experts and has been adopted under the Bonn Guidelines .

(*a*) What mechanism is provided under the act for equitable sharing of benefits arising out of the use of traditional biological resources and knowledge ?

(*b*) Discuss the means through which CBD and TRIPs could be harmonized.

(*6 marks each*)

5. (*a*) How is IPR recognized in the Competition Law ? Also state the relationship of Competition Law and Intellectual Property Law.

(*b*) ''A trade secret does not have to pass the test of novelty and might be a patentable idea but not always''. Discuss.

(*6 marks each*)

6. (*a*) ''Parent lines of known hybrid varieties can be considered as new plant varieties for registration purpose''. Explain the meaning of parent lines and the eligibility for registration.

(*b*) What is Berne Convention ? Explain the basic principles that determine the minimum protection under Berne Convention.

(*6 marks each*)

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