

OPEN BOOK EXAMINATION

344

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 7

NOTE : Answer **ALL** Questions.

1. Read the following case on patent law and answer the questions that follow :

Trade Related aspects of Intellectual Property Rights (TRIPS) defines geographical indication as "goods originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin".

In the Indian legal system, Geographical Indication (GI) is governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999. A case relating to GI is that of 'Basmati rice' being patented in the United States of America (USA).

Basmati rice is regarded as the 'queen of fragrance or the perfumed one' and is also acclaimed the 'crown jewel' of South Asian rice. It is treasured for its intense fragrance and taste, famous in national as well as international markets.

This kind of rice is grown in the Himalayan hills, Punjab, Haryana and Uttar Pradesh since times immemorial. Basmati is the finest quality of rice, long grained and the costliest in the world.

Agricultural and Processed Food Products Export Development Authority (APEDA) states India to be the second largest exporter of rice after China. USA is a major importer of Basmati rice totalling 45,000 tonnes. An important case in the history of GI and bio-piracy arose in 1997.

Royal Rice Tec Inc. (RRT), a tiny American rice company with an annual income of around US \$10 million and working staff totalling 120, produces a small fraction of the world's (Basmati like) rice with names 'Kasmati' and 'Texmati'. RRT had been trying to enter the

world rice market since long, but in vain. On 2nd September, 1997, RRT was issued a patent for its Basmati rice lines and grains by United States Patent and Trademark Office (USPTO) bearing patent number 5663484, which gave it the ultimate rights to call the odoriferous rice 'Basmati' within US, and label it the same for export internationally. According to RRT, its invention of Basmati rice relates to novel rice lines, which affords novel means for determining cooking and which has unique starch properties, *etc.*

Since times immemorial, majority of farmers from India have been sustaining cultivation of Basmati rice and have been among the leading rice producers of the world. Cultivation of rice is not merely a life sustainer but also a part of socio-culture in India. Basmati rice produced in India has been exported to countries like Saudi Arabia and UK. Basmati is a 'brand name' of the rice grown in India.

Two Indian NGOs, namely, Centre for Food Safety, an international NGO that campaigns against bio-piracy, and the Research Foundation for Science, Technology and Ecology, an Indian environmental NGO, objected to the patent granted by USPTO and filed petitions in the USA. Council for Scientific and Industrial Research (CSIR), a Government of India organisation also objected to the patent granted to RRT. They demanded an amendment of US Rice Standards on the ground that the term 'Basmati' can be used only for the rice produced/grown in the territories of India.

According to RRT, the invention relates to novel rice lines and to plants and grains of these lines. The invention also relates to a novel means for determining the cooking and starch properties of rice grains and identifying desirable rice lines. Specifically, one aspect of the invention relates to novel rice lines whose plants are semi-dwarf in stature and give high yielding rice grains having characteristics similar or superior to those of good quality Basmati rice. Another aspect of the invention relates to novel rice lines produced from novel rice lines. The invention provides a method for breeding these novel lines. A third aspect relates to the starch index (SI) of the rice grain, which can predict the grain's cooking and starch properties and for selecting desirable segregates in rice breeding programmes.

The Government of India reacted immediately after learning of the Basmati patent issued to RRT, stating that it would approach the USPTO and urge them to re-examine the patent to a US firm to grow and sell rice under the Basmati brand name, in order to protect India's

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interests, particularly those of growers and exporters. Furthermore, a high level Inter-Ministerial Group comprising representatives of the Ministries and Departments of Commerce, Industry, External Affairs, Agriculture and Bio-Technology, CSIR, All India Rice Exporters Association (AIREA), APEDA and Indian Council of Agricultural Research (ICAR) was mobilised to begin an in-depth examination of the case.

In the presence of widespread uprising among farmers and exporters, India as a whole feels confident of being able to successfully challenge the Basmati patent by RRT, which got a patent for three things : growing rice plants with certain characteristics identical to Basmati, the grain produced by such plants and the method of selecting the rice plant based on a starch index (SI) test devised by RRT. The lawyers plan to challenge this patent on the basis that the abovementioned plant varieties and grains already exist and thus cannot be patented. In addition, they accessed some information from the US National Agricultural Statistics Service in its Rice Year book 1997, released in January 1998 to the effect that almost 75 per cent of US rice imports are the Jasmine rice from Thailand and most of the remainder are from India, 'varieties that cannot be grown in the US'. This piece of information is sought to be used as a weapon against RRT's Basmati patent.

Indians feel that the USPTO's decision to grant a patent for the prized Basmati rice violates the International Treaty on TRIPS. The President of the Associated Chambers of Commerce (ASSOCHAM) said that Basmati rice is traditionally grown in India and granting patent to it violates the Geographical Indications Act under the TRIPS. The TRIPS clause defines Geographical indication as "a good originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin." As a result, it is safe to say that Basmati rice is as exclusively associated with India as Champagne is with France and Scotch Whiskey with Scotland. Indians argue that just as the USA cannot label their wine as Champagne, they should not be able to label their rice as Basmati. If the patent is not revoked in the USA, because unlike the Turmeric case, rice growers lack documentation of their traditional skills and knowledge, India may be forced to take the case to the WTO for an authoritative

ruling based on violation of the TRIPS. In the wake of the problems with patents that India has experienced in recent years, it has realised the importance of enacting laws for conserving biodiversity and controlling piracy as well as intellectual property protection legislation that conform to international laws. There is a widespread belief that RRT took out a patent on Basmati only because of weak, non-existent Indian laws and the Government's philosophical attitude that natural products should not be patented. According to some Indian experts in the field of genetic wealth, India needs to formulate a long-term strategy to protect its bio-resources from future bio-piracy and/or theft. British traders are also supporting India. According to Howard Jones, marketing controller of the UK's privately owned distributor Tilda Ltd., "true Basmati can only be grown in India. We will support them in any way if it's necessary". The Middle East is also according support by labelling only the Indian rice as Basmati. Government and government agencies have gathered the necessary data and information to support their case and to prevent their cultural heritage being taken away from them.

Questions —

- (a) Whether Royal Rice Tec Inc. is guilty of bio-piracy ? Explain.
(10 marks)
- (b) Discuss whether the decision of the USPTO of granting patent for the valued Basmati rice violates TRIPS.
(10 marks)
- (c) How does the patent granted to RRT by USPTO impact the farmers in India ?
(10 marks)
- (d) Whether adequate legislations exist in India with respect to geographical indications ? Discuss the salient features.
(10 marks)
- (e) Explain the provisions for registration of geographical indications in India.
(10 marks)

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2. Read the following case and answer the questions given at the end :

The plaintiff, Polymer India Ltd., is a leading manufacturer and distributor of quality products made using plastic moulding technology. Its products include toys, school furniture and playground equipment. The plaintiff is also the registered proprietor of the trademark 'PLAY' since 25th August, 2005.

The plaintiff sued eight defendants namely Playwell Impex Pvt. Ltd., Mayank, Ms. Meenakshi, Pawan, Vishal, Darshan, R.P. Associates and Funko India who are involved in manufacture and distribution of similar products. The plaintiff claimed relief of permanent injunction to restrain the defendants from infringing its copyright, common law rights in designs and passing off of deceptively similar products.

An *ex parte ad interim* injunction was granted to the plaintiff by a Court *vide* its order dated 7th August, 2015 and the goods of the defendants were seized by the Court Commissioner appointed *vide* the same order.

The plaintiff's contentions are :

- That the products of plaintiff are unique and conceptualised individually, which involves study of the market, preparation of the drawings, drawing a feasibility report, preparation of a new colour scheme, finalisation of dimensions, *etc.*
- That the defendant Playwell Impex Private Ltd. is engaged in the business of manufacture, distribution and sale of toys in collusion with the other defendants including R.P. Associates who was earlier the distributor of plaintiff's products and Darshan, who is an *ex-employee* of the plaintiff. The defendant Playwell Impex Pvt. Ltd. has launched a range of toys which are identical and deceptively similar to the toys made by the plaintiff and is thereby passing off its goods as those of the plaintiff, infringing the bundle of intellectual property rights of the plaintiff in its products.
- That the toys manufactured and sold by the defendants under the brand FUNKO are a substantial re-production and colourable imitation of the products of the plaintiff.
- That there is a clear distinction between an original artistic work and a design derived from it for industrial application on a product. The original artistic work which may be used to industrially produce the designed article would fall within the meaning of

artistic work defined under section 2(c) of the Copyright Act, 1957 and would be entitled to copyright protection as defined under section 2(d) of the Designs Act, 2000.

- That the defendants in their written statement have admitted the e-mail of the defendant Darshan to the defendant Playwell Impex Pvt. Ltd. forwarding the brochure of the toys of the plaintiff and therefrom it is evident that the defendant Playwell Impex Pvt. Ltd. is replicating from the brochure of the plaintiff.

The defendants' contentions are :

- That the drawing in which the plaintiff claims a copyright does not constitute a design within the meaning of section 2(d) of the Designs Act, 2000 and is thus, not capable of being registered under the Act.
- That the plaintiff has no right to claim protection of design without any registration.
- That the plaintiff's toys which are being manufactured since the year 1992, are not novel and similar products are available in the market for ages.
- That the plaintiff's products to which the design has been applied have been reproduced by it, more than 50 times by an industrial process.
- That the interim injunction granted is not justified, when infringement is not proved.

Questions —

- (a) Discuss the relation between the Copyright Act, 1957 and the Designs Act, 2000.
(5 marks)
- (b) What will be your decision on the interim injunction ? Will you confirm or vacate the same ? Give reasons.
(5 marks)
- (c) Is the plaintiff entitled to copyright protection ? Can artistic works related to design be protected under the Copyright Act, 1957 ?
(10 marks)
- (d) Explain the copyright protection to foreign works in India. What are the conditions for such copyright protection in India ?
(10 marks)

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3. Explain the grounds for refusal of registration of a trademark.
(5 marks)
4. What is a trade secret ? How are trade secrets protected ?
(5 marks)
5. Explain the restrictive trade practice of tie-in arrangements in IPR licensing.
(5 marks)
6. Explain the usage of 'excess profits method' for valuation of intangibles.
(5 marks)

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