

Roll No. ....

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 7

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

1. The Mayor Inc. is a company incorporated under the laws of United States of America (U.S.A.) consequent to its Research and Development (R&D) activities the company invented and developed its patented drugs to enable its administration to human beings. On successful invention of the patented drug in 1999, the company applied for a patent in U.S.A. Thereafter, on 12 July, 2000 the company applied for an international patent under the Patent Co-operation Treaty (PCT) and on 5th July, 2001 applied in India for grant of the patent to the patented drug in India. On March, 2008 the office of the Controller granted the company's application dated 5th July, 2001. This patent granted in India on 3rd March, 2007 corresponded to the patent granted to this patented drug in over 45 countries of the world.

The patented drug is used in the treatment of patients suffering from Kidney cancer i.e. Renal Cell Carcinoma (RCC). The aforesaid patented drugs acts more as palliative i.e. relieves patients from the pain and to an extent also slows down the spread of cancer by restricting the speed with which the cancer cells grow.

As a consequence of being granted a patent, the company had exclusive right to make, manufacture, use and sell the patented drug either by itself or through its licensee to the exclusion of others for a period of 20 years from the date of its application. Thus, the company had exclusive right to prevent third parties from making/manufacturing, using, selling or importing the patented drug in India without the company's permission/license.

The company Mayor Inc. sells this drug under a brand KCWIN which is registered Trademark in India USA, Europe, China, Russia, Japan and New Zealand. Mayor Inc. through its subsidiary Mayor India Ltd. sells the drug in India. The drug was found to be very effective and the doctors worldwide appreciated the result of the drug.

M/s. Kipla Pharmaceuticals established in the year 1930, located in Mumbai, Maharashtra, India is a manufacturer of various generic drugs.

Owing to the huge demand for the drug, which was nearly about 20 lakh units and the failure of Mayor Inc. to meet the growing demand due to the import restrictions since their manufacturing units is in Washington, Kipla Pharmaceuticals approached Mayor Inc., for technical assistance and license manufacturing of their patented drug KCWIN in India on 20th January, 2012. However, Mayor Inc. declined to grant the license of manufacture for reasons best known to them. As per the records available, Mayor Inc. had supplied only 2 lakh units against the huge demand in India at the rate of ₹ 2.4 lakhs per month. Kipla on other hand manufacturing the same drug at ₹ 10,000 per month.

In the 2012, the Mayor India came to know that exact copies of their product KCWIN is being manufactured by M/s Kipla Pharmaceuticals. Immediately, thereafter, a Cease and Desist notice was issued by Mayor Inc. to Kipla Pharmaceuticals for infringing the Patent of Mayor Inc. Taking the plea that pharmaceutical companies spend billions of dollars on research. It is estimated that, of every thousand potential drugs screened, only 4-5 reach clinical trials and only one is actually approved for marketing. Pharmaceutical companies patent the drugs that they develop and thereby obtain exclusive marketing rights.

Further at the time of expiry of its Patent on KCWIN the The Mayor Inc. came with a minor change in the effectiveness and quality of KCWIN and *de-novo* applied for Patent before the controller of Patents, who rejected to grant the patent on the ground that it does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus.

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Based on the above facts, answer the following :

- (a) The rights of the Mayor Inc. are not absolute. Discuss.
- (b) Discuss about the matter of dispute between Mayor Inc. Vs. Kipla Pharmaceuticals in the light of provisions of Indian Patent Act, 1970.
- (c) Discuss in detail the rationale for Intellectual Property Protection to the companies like Mayor Inc. as a Patentee.
- (d) Critically examine the act of Mayor Inc. to evergreen its pre-existing patent for its pre-patented product and validity of the rejection-order of the controller of patents in the light of provisions of the Patent Act, 1970 and relevant case law.

*(10 marks each)*

2. (a) Mr. Lall, was a sculptor of international repute and fame. In 1957, he was approached by the Government of India, to design murals to be installed on the walls of Vigyan Bhavan. Plaintiff accepted the offer and completed the production of his piece of art. The mural was a symbol of India's cultural heritage and was themed on 'science of rural and modern India'. It was installed in the entrance lobby of Vigyan Bhavan in 1962 and stayed installed till 1979 when it was pulled down and kept in a Government store room. He asserted that the pulling down and improper handling of the mural caused immense damage to the mural, which resulted in disappearance of the parts of the mural including the name of its creator. He wants to initiate legal proceedings against Government of India.

On the basis of the above facts, advise Mr. Lall as the remedy available to him.

- (b) What is the purpose of design registration ? What is not a "design" as per the provision of the Designs Act, 2000 ?

*(6 marks each)*

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3. (a) Enumerate the criteria for registration of a plant variety and the prerequisites for filing an application form for registration under Plant Varieties Act, 2001.
- (b) Explain in brief the conditions and procedure for registration of Layout-Design of Integrated Circuits under the Semiconductor Integrated Circuits Layout Design Act, 2000 ?

(6 marks each)

4. (a) Central Book Company is a registered partnership firm carrying on the business of publishing law books. The said company is involved in the printing and publishing of various books relating to the field of law. One of the well-known publications is the law report known as Law in India. It publishes all reportable judgements along with non-reportable judgments of the Supreme Court of India. After the initial procurement of the judgements, orders and proceeding for publication the appellants make copy-editing wherein the judgements, orders and record of proceedings procured, which is the raw source, are copy-edited by a team of assistant staff and various inputs are put in the judgements and orders to make them user friendly. The appellants also prepare the head notes comprising of two portions, the short note consisting of catch/lead words written in bold; and the long note, which is comprised of a brief discussion of the facts and the relevant extracts from the judgements and orders of the Court.

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Another company named as Spectrum Business Support Ltd. came out with a software called Grand Jurix published on CD-ROMs. In CD all the modules of Central Book Company have been lifted verbatim. A suit of Copyright infringement was filed by Central Book Company against the Spectrum Business Support Ltd. The defence of the Spectrum Business Support Ltd. was that the Judgments published in the Law in India is nothing but merely a derivative work based upon the judgments of the court, which lacks originality and therefore no Copyright can be claimed by the Central Book Company.

On the basis of the above facts discuss the concept of originality under Copyright law as laid down by various judicial pronouncement.

(6 marks)

(b) How the right of persons with disability are protected under Copyright Act, 1957 ?

(6 marks)

5. (a) Jane a microbiologist, wanted to pursue his dream of having his own distilleries, with support of family and friends, he struck out on his own to establish a microbrewery, Smokey Mountain Brews, in a college town. Over the past decade, his business flourished not only with established customers, but also with regional restaurants.

Transporting beer, including his signature brew, Smokey Mountain Ale, to surrounding localities, including the city of Asheville, North Karnataka, has been time-consuming and expensive. So, two years ago, Jane began planning to open a second brewery in Asheville, a city nationally-known for its microbrews, and those plans are in the

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final stages. The facility is ready to go, equipment in place, and an assistant brew master hired. He wants to protect his Intellectual Property Rights before moving further in this regard. Advise him the best ways to protect his Intellectual Property Rights. Give justification for your advice.

(6 marks)

- (b) “Registering a Geographical Indication is a catalyst to getting scattered individuals together. GIs are meant to benefit a community of local producers and act as an appellation or indicator of the geographical origin of the product”. Comment.

(6 marks)

6. Abbott Laboratories, Chicago, USA based pharmaceutical company was founded in the year 1888. The Company marketed the medicinal preparation of the drug Camylofin Dihydrochloride with Paracetamol as EASYJET. The word EASYJET is stated to be an invented mark having no dictionary meaning. It is also not derived from any principal ingredient/formulation of the drug. Medicinal preparations with the mark EASYJET are extremely popular and widely distributed all over India. It is stated that the said mark was used by the laboratories predecessor for decades and now the plaintiff by way of extensive use has acquired a considerable reputation as a quality pharmaceutical product. The said trademark EASYJET has acquired valuable goodwill and reputation which extends throughout India. The company’s trademark is said to be recognised and associated extensively with the company.

Another company the sole proprietorship named as Birani Hosiery carrying its business from Chennai, Tamil Nadu. The said company also filed an application for registration of the mark EASYJET in class 25 which is meant for hosiery products. Abbott in July 2012 through market enquiries came to know about the unauthorised use of the mark EASYJET by the defendants.

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Abott Laboratories filed an opposition proceeding before Registrar of Trade Mark against the Birani Hosiery stating that mark used by the applicant is identical. The contention of the Birani is that the mark applied for registration, falls in another class and therefore is eligible for registration.

On the basis of the above facts :

- (a) Discuss the fate of the opposition proceedings. Give reasonable grounds for your decision.
- (b) What elements can be used as trademarks ? How is the scope of protection of trademark rights determined ?

*(6 marks each)*

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