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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 :

On 7th July, 2005, Viraj Ltd. (Viraj) was granted a patent under the Indian Patent No. 195904, with a priority date of 16th July, 2002. The title of the patent application was "an improved internal combustion engine working on four stroke principle." The invention was called DTS-i Technology and it related to the use of twin spark plugs located diametrically opposite to each other in a small displacement engine with the cylinder bore diameter ranging between 45 mm to 70 mm. According to Viraj, this placement of the spark plugs enabled a better control over the ignition timing and lesser time was taken for the flame to travel during the process of combustion. The novelty also lay in the use of a sleeve to protect the spark plug which prevented exposure of the plug to the lubricating oil.

In 2003, Viraj launched 'Inventa', a motorcycle which employed the DTS-i Technology in respect of which the patent was then pending. In the first eight months of that financial year itself, Viraj manufactured and marketed 8,14,393 two wheelers with the DTS-i Technology out of a total of 15,01,241 two wheelers which were sold by it amounting to 54.25% of its total sales.

In 2007, CVS Ltd. (CVS) announced the launch of a 125-cc motorcycle under the trademark 'Sport' which was to be powered by lean burn internal combustion engine of bore size 54.5 mm with a twin spark plug configuration just like that of Viraj. CVS also stated that on 1st and 3rd of September, 2007, Viraj had issued certain groundless threats to dissuade CVS from launching 'Sport'.

Hence, in October, 2007, CVS filed a suit under sections 105 and 106 of the Patents Act, 1970 in the High Court, alleging that the statements made by Viraj on 1st and 3rd of September, 2007 constituted groundless threats, and sought the intervention of the Court to restrain Viraj from interfering with the launch of 'Sport'. Further, CVS also filed an application for the revocation of Viraj's patent before the Indian Patents Appellate Board under section 64 of the Patents Act, 1970.

Upon the announcement by CVS, Viraj filed a suit for permanent injunction under section 108 of the Patents Act, 1970 in the High Court to restrain CVS from using the internal combustion technology patented by Viraj and from employing the same in marketing 2-3 wheelers, including CVS's proposed 125-cc 'Sport' motorcycle.

Vide its order dated 16th February, 2008, the Single Judge of the High Court restrained CVS from launching the proposed 125-cc 'Sport' motorcycle with the twin spark plug engine technology, as Viraj *prima facie* enjoyed the right of exclusive usage of the patent, granted to it by the Patent Office. The High Court held that Viraj had succeeded in establishing a *prima facie* case for the grant of an injunction, and while granting the injunction was pleased to observe :

"... Suffice it to say now at this stage, *prima facie* there is novelty which means an invention and the same has been registered under the Patents Act... novelty has been on the face of it proved by the applicant by marketing the product to such a large extent and also without objection fairly for long"

Aggrieved by the order of the Single Judge, CVS preferred an appeal before the Division Bench of the High Court. The Appellate Bench of the High Court held that Viraj had not succeeded in establishing a '*prima facie*' case of infringement in respect of its patented twin spark technology.

The Division Bench observed that having regard to the nature of operation of the DTS-i Technology engine by virtue of twin spark plugs and that of CVS by virtue of receipt of air fuel mixture through two different intake valves, their points of emphasis differed

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considerably, notwithstanding the use of twin spark plug in both the technologies. The Division Bench further observed that the operation of the invention as claimed by Viraj appears to be plug centric and that of CVS was valve centric, and on scrutiny of the claim as set out in the final complete specification, it held that it found it difficult to countenance Viraj's claim that the CVS's product specification infringed Viraj's patented right. Accordingly, the Division Bench set aside the order of the Single Judge.

Aggrieved by the order of the Division Bench, Viraj preferred an appeal before the Supreme Court. The Supreme Court, while *prima facie* agreeing with the order of the Division Bench, ordered that although CVS shall be entitled to sell its motorcycle 'Sport', but it shall maintain an accurate record of its entire domestic and international sale and directed the High Court to appoint a receiver in this connection.

In its interim order, the Supreme Court reiterated that in matters relating to trade marks, copyright and patents, the provisions of the Code of Civil Procedure, 1908 which mandate that civil disputes should be heard on a day-to-day basis without any adjournments, except in circumstances beyond the control of the parties. It also directed that the final judgment should be given normally within four months from the date of the filing of the suit. The Supreme Court directed that the timeline stipulated above be adhered to 'punctually and faithfully' by all courts and tribunals in the country.

Questions —

- (a) What were the grounds under which the Division Bench of the High Court reversed the decision of the Single Judge of the High Court ? Cite relevant case law.

(15 marks)

- (b) Elaborate the order and the directions passed by the Supreme Court and how it may impact the IPR pending litigation.

(15 marks)

- (c) Explain the factors which constituted a *prima facie* case for the grant of an injunction.

(10 marks)

(d) Write a note on the significance of laboratory note books/log books/record books in patent litigation.

(5 marks)

(e) Discuss the typical parts of a patent application.

(5 marks)

2. Kalyan is a non-profit statutory trust in Andhra Pradesh situated in salubrious surroundings in a rural area. Employing about 14,000 persons, Kalyan produces a special kind of *puri* using resources peculiar to the area and adopting cooking skills particular to the area. The cooks preparing the *puri* had developed culinary skills, whose descent could be traced to their ancestors over more than 500 years. Villagers and even outsiders visiting the area savour the special taste of the *puri* and even get addicted to it. Kalyan is also under the obligation to administer and maintain the trust property and to cater to the needs of the cooks and workmen. *Puri* is offered at subsidised rates to the customers and has gained great reputation and distinctiveness over a long period.

Kalyan applied for the registration of geographical indication (GI) for its *puri* under the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the Act). After following the procedure laid down, the Registrar of Geographical Indications granted registration sought by Kalyan in its favour. In doing so, the procedural formalities contemplated under the said Act and Rules made thereunder were strictly adhered to and the genuineness of the product (*puri*) was verified by duly appointed experts. The product was classified as 'food stuff' under the Act. Kalyan, thus, became the registered proprietor.

At the time of grant of GI to *puri*, there were no objections from anyone when the matter was published in the GI Journal. Thus, there was no pre-grant opposition to the grant of GI to *puri*. But yet, after the grant of GI, one large foodstuff dealer filed a rectification

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application alleging that granting of GI tag for *puri* contravened section 11(1) of the Act and Rules made thereunder and that the said geographical indication was prohibited for registration under section 9(a) of the Act.

Further, the rectification applicant alleged that there was no industrial purpose served by the grant and that granting monopoly to a single producer would defeat the very purpose for which the Act was brought into force. Section 11 of the Act refers to 'any association of persons or producers or any organisation or authority established by or under any law for the time being in force representing the interest of producers of the concerned goods' and therefore a single producer was not entitled to the grant of GI. Moreover, the applicant claimed that *puri* was like any other similar *puri* made throughout the country and hence the use (consumption) of *puri* by customers would likely deceive or cause confusion attracting section 9(a) of the Act. It was prayed by the applicant that the grant of GI to *puri* be removed from the Register of Geographical Indications.

Furthermore, the rectification applicant opposed the grant of GI to *puri* on the ground that it did not fall under the definition of goods in section 2(1)(f) of the Act.

Kalyan (respondent) objected to the *locus standi* of the applicant stating that the rectification applicant was in no way offended by the registration and that he never objected when the matter was published in the GI journal before the Registrar of GI granted the registration to *puri*.

Kalyan contended that the term 'producers' mentioned in section 11 of the Act represents both singular and plural. Interpretation to the term should be done in the light of section 13(2) of the General Clauses Act, 1897. Producers would include a single producer. Further, the respondent argued that it had the inherent statutory and equitable rights to fence its intellectual property. The geographical indication registration was acquired to make the public aware of the GI tag granted to *puri* produced by the trust (Kalyan) and to protect them from unauthorised sales. The product was rightly classified as foodstuff under section 2(1)(f) of the Act.

Kalyan further opposed the rectification application on the ground that section 9(a) of the Act prohibited the registration of GI which would be likely to deceive or cause confusion and that in the case of *puri*, there was no such confusion and misleading the public. On the other hand, the rectification applicant failed to explain how the registered product would cause confusion. Kalyan argued that the essence of GI was not only to protect the interest of manufacturers but also that of consumers who were willing to pay more for a genuine product. The legislative intent was to protect the interest of the producers and general public from imitation and consequently with *puri* having a well known reputation, the producer (Kalyan) was having every right to fence the product by getting eligible intellectual property protection.

The Registry of Geographical Indications sent notice to both the parties. The rectification applicant led no evidence nor did he produce any document in his favour.

Based on the above, answer the following questions —

- (a) Whether the rectification applicant has the *locus standi* to institute the rectification proceedings against the registered geographical indication *puri* ? Whether the rectification applicant is an aggrieved person ?

(10 marks)

- (b) Whether there was any violation of section 11 of the Act, in particular with reference to *puri* being produced by a single producer, Kalyan and whether *puri* falls under the definition of 'goods' as per section 2(1)(f) of the Act ?

(10 marks)

- (c) Whether the rectification applicant had established its case for rectification, particularly in the light of section 9(a) of the Act ?

(10 marks)

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3. List the kinds of restrictive practices used in the intellectual property licensing agreements.
(5 marks)

4. "There is no legislation which explicitly refers to dispute resolution in connection with domain names. This, however, does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing-off." Discuss.
(5 marks)

5. Copyright is a 'bundle of rights'. Elucidate.
(5 marks)

6. "Laws relating to intellectual property and competition both are necessary for the efficient operation of the market place." In the light of this statement, explain the interface between intellectual property rights and competition.
(5 marks)

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