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Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

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

1. Read the following case on Patent Law and answer the questions given at the end :

The appellant Dr. Robotic Robben is a scientist-engineer. The appellant has to his credit several inventions in the field of wind turbine generators, and wind energy converters. The appellant claims to be the owner and holder of various intellectual property rights, including approximately 2,700 patents (in more than 60 countries). Out of the aforesaid patents, the appellant has about 100 patents in India. The appellant is also engaged in the manufacture of wind-turbines. In the field of wind turbines, he claims a position amongst the three largest manufacturers in the world. The aforesaid manufacturing process is carried out by the appellant under the name of Environ Robben Group, Appellant No. 2, through an assignment agreement on 5<sup>th</sup> January 2012, having acquired the right, title and interest in all the Indian registered designs and patents (including the pending registrations), belonging to Dr. Robotic Robben. The appellant's manufacturing process, is allegedly, carried out in about 27 countries. The Environ Robben Group claims to employ more than 8,000 people, worldwide. As far as India is concerned, Dr. Robotic Robben has been carrying on the aforesaid manufacturing process, through a joint venture partnership with Ajit Mitra and Abhai Mitra, (respondent nos. 1 and 2 herein). The Indian enterprise is carried on in the trade name of Environ India Limited (respondent no. 3 herein). Ajit Mitra and Abhai Mitra are the directors of Environ India Limited.

Environ India Limited was formed in 1994 as a joint venture, between Environ Robben Group and Respondent Nos. 1 and 2. Environ India Limited was originally carrying on its manufacturing process, in furtherance of licences granted by the appellant Dr. Robotic Robben. According to the appellant, the licences to use technical know-how, were vested by the appellant with Environ India Limited, through written agreements. These intellectual property license agreements were executed between the parties from time to time, and the last agreement was executed on 29.9.2006. The last agreement entered on 29.9.2006, superseded all the previous agreements (including the technical know-how agreement of 1994, and the technical know-how agreement of 2000). Due to non-fulfilment of the obligations contained in the intellectual property licence agreement dated 29.9.2006, the appellant terminated the last intellectual property licence agreement with Environ India Limited on 8.12.2008.

Despite the termination the respondent nos. 1 to 3, continued the use of the appellant's patents without due authority. This action by respondent nos. 1 to 3 has been of extreme detriment to the appellant, as his technical knowhow was being exploited by the respondents, without consideration or authorisation.

Dissatisfied with the action of the appellant, the respondent approached the Intellectual Property Appellate Board (hereinafter referred to as IPAB) for revocation of patents held by the appellant. In the meantime the appellant Dr. Robotic Robben filed 10 patent infringement suits before the High Court. All 10 patent infringement suits, were filed after Environ India Limited had already instituted 19 revocation petitions, before the Appellate Board under Section 64 (1) of the Patent Act, 1970 (hereinafter referred to as the Patents Act), in January 2009.

The contesting respondents raised a counter-claim, a prayer for the revocation of the patent, which constituted the basis of the patent infringement suit. The same issues are reagitated by the respondents, before the High Court, through the counter-claims.

**Decision of the High Court :**

As per the provisions (Section 64 (1) and 104 ) of the Patents Act , the locus standi for revocation of a patent, is available to three different entities, namely, any person interested, the Central Government, and to a defendant in an infringement suit by way of a counter-claim. Depending on the specific part of the provision relied on, such challenge is permissible before two different fora, i.e., the Appellate Board, or the jurisdictional High Court.

Further a perusal of Section 25(2) reveals that only a person interested and not any person (as in the case of 25(1) of the Patents Act) may challenge the grant of a patent, within one year of the publication of such grant, by issuing a notice of opposition to the Controller. Such notice of opposition to the Controller can be made on the grounds depicted in sub-sections (1)(a), (b), (c), (d), (e), (f), (h), (m), and (o) of Section 64 of the Patents Act. The remaining grounds for raising a challenge under Section 25(2) coincide with those contained in 25(1) of the Patents Act.

Where an issue is already pending adjudication between the same parties, in a Court having jurisdiction to adjudicate upon the same, a subsequently instituted suit on the same issue between the same parties, cannot be allowed to proceed. A similar question arises for consideration before this Court, in the present controversy. If the respondents in their capacity as any person interested had filed a revocation petition before the institution of an infringement suit, they cannot be permitted to file a counter-claim on the same cause of action. The natural conclusion in the above situation would be, that the validity of the grant of the patent would have to be determined in the revocation petition. Therefore, in the above situation, while the revocation petition will have to be permitted

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to be pursued, the counter-claim cannot be permitted to be continued. Therefore, in the above eventuality, it is apparent that the situation would be resolved, in the same manner, as it would have been resolved in cross-suits filed by the rival parties, before different jurisdictional courts. In our considered view, the above conclusion is imperative for a harmonious interpretation of the relevant provisions of the Patents Act.

The appellants did not desire two proceedings, on the subject of revocation of the same patent, to be continued simultaneously before different fora. In our discussion recorded while dealing with the appellants, the court has accepted the contention advanced for the appellants, that only one out of two remedies available under Sec. 64 of the Patents Act, can be availed, so as to assail the grant of a patent. Accordingly the said remedy may be availed of in the capacity of either any person interested, or in the capacity of a defendant in a counter-claim.

In response to infringement suit, Defendant had already sought revocation of patent through counter-claim, and they cannot thereafter assail concerned patent, by way of revocation petition. Having availed one of the above remedies, it is not open to the same person to assail the grant of a patent by choosing the second alternative. The High Court disposed the appeal basing on the above terms and provisions of patent legislation.

*Questions :*

- (a) Examine in detail the reasons raised for revocation/infringement proceedings raised by the parties as per the present problem and analyse the provisions of Patent Act, 1970 specifying the two fora for revocation and infringement proceedings.  
(10 marks)
- (b) “Patent is a techno legal document”. Enumerate the technical aspects of patent document, kinds of patent and distinctive characteristics of patent application.  
(10 marks)
- (c) ‘Controller of patent plays an important role in granting compulsory licenses’. In the light of this statement explain when he can grant compulsory licenses, its terms and conditions with appropriate provisions of patent legislation.  
(10 marks)
- (d) ‘Inventions alone are patentable’. Analyse the concept of invention and objectives of patent legislation. Examine the powers of Intellectual Property Appellate Board (IPAB) and exceptions thereto.  
(10 marks)

- (e) 'Micro-organisms are products of nature, however they are legally protected under patent law'. Explain the changes introduced after 1980 in relation to micro-organisms with the help of case law and international conventions in this regard.

(10 marks)

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

The plaintiff Mr. Shivanand Barucha is a film graduate from the prestigious Film and Television Institute of India (FTII), Pune and has been in the profession of film making for the past more than 29 years. The plaintiff specializes in documentary films and his films have been exhibited in various national and international film festivals and have won numerous awards.

The plaintiff being a documentary film maker of repute within the film and television industry, both in India and abroad, directed and produced his films through his production house Movie Plus.

The defendant No.1 is a Hecta Company incorporated under the Companies Act having its registered office at Bungalow No.101/101, Opposite Rama Krishna Public School, N V S. Nagar, Andheri (East), Mumbai and Mr. Sajan Rathod, the defendant No. 2 herein is the director and the principal shareholder of the said company and the defendant No. 3 herein, Mr. Prabhakaran Pillai is the Managing Director of the said company.

On 25<sup>th</sup> December 2015 the plaintiff contacted one Ms. Leela Madhuri, an author of repute, who has written a book titled "Pyaar Ki Deewani and Deewana" with a proposal to secure the rights to make a television serial/film based on the book to which the author agreed. Subsequently an agreement was entered into between the author and the plaintiff on 1st January, 2016. The author conferred on the plaintiff, the exclusive right to produce a television series based on the book with the exact title as that of the book. Thereafter the plaintiff entered into an agreement on 9<sup>th</sup> January 2016 with the Department of Adult Education (hereinafter referred to as DAE) of the Ministry of Human Resource Development, Government of India, for funding the proposed venture. In return of which the plaintiff assigned the rights in the proposed serial/film in favour of the DAE, which assignment was to come into effect upon delivery of the master tapes to the DAE upon completion of the said serial.

The plaintiff thereafter set upon the task of getting the cast and crew for the serial together and with the funds of the DAE along with his own funds filmed the serial day and night in Rampur Village, Karnataka from 14<sup>th</sup> February 2016 till 13<sup>th</sup> April 2016 and completed the serial. For the purposes of editing the plaintiff required a studio and Mr. Ahuja Javeri, the editor of the

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serial, identified a studio in Mumbai known as "Prime Film Studio", which is owned by defendant No. 2. The deal to execute the said film was executed through one Mr. Anil Advani, a video editor and a friend of defendant No. 2 and the plaintiff. The process of editing took place on the non-linear machines of the Prime Studio between the first week of May and 10<sup>th</sup> June, 2016. After editing the master prints and DVDs were handed over to the plaintiff on 4<sup>th</sup> July 2016. The plaintiff paid the agreed consideration amount via cheque dated 7<sup>th</sup> July 2016 to Mr. Anil Advani and another cheque dated 10<sup>th</sup> July 2016 in the name of Mr. Ahuja Javeri, at Mr. Advani's request. The plaintiff after making all the final payments for use of the studio to Mr. Anil Advani, requested him and the owner of the studio to delete all the software material and/or any other aspect of the serial work or parts thereof which was stored in the computers of the studio.

The plaintiff has averred that somewhere in the second week of August, 2016 the plaintiff was informed by certain members of the crew of the serial that three episodes of a television serial titled "Aur Ek Prem Kahani" have been broadcast by the Doordarshan Kendra, Marathwada during the first week of August, 2016 and the said three episodes are identical to the episode no. 5, 6 and 7 of the plaintiff's yet to be telecast, the serial based on the book. The plaintiff, received confirmation of this fact from the DAE, who were upset that the serial for which they own the copyright had been broadcasted without their permission. Thereafter the plaintiff along with the DAE officials were shocked upon viewing the footage of the serial as telecast by the Doordarshan, Marathwada that was identical to the episode 5, 6, and 7 of the serial produced and directed by the plaintiff. The plaintiff has also stated that the credits appearing in the impugned serial were modified to replace plaintiffs name and other names as well, however the name of the author of the book as well as the cast was not changed.

The argument of the plaintiff was that the actions of the defendants amount to infringement/breach of the plaintiffs author's special rights enshrined in Section 57 of the Copyright Act, 1957 as the defendants have not attributed the work to the plaintiff and have also distorted, mutilated and modified the plaintiff's film work to create the impugned serial and such acts of the defendants are malafide and amount to the tort of breach of trust and confidence and misappropriation of the plaintiffs property in the serial and conversion of the said property entrusted to the defendant No. 2 and his studio.

Further, the plaintiff also mentioned that under Section 57 the author shall have a right to claim the authorship of the work. He has also a right to restrain the infringement or to claim damages for the infringement. These rights are independent of author's, copyright and the remedies open to the author under Section 55.

The Maharashtra High Court had granted an ex parte ad interim injunction in favour of the plaintiff and against the defendants restraining them from broadcasting/telecasting the impugned serial on 6<sup>th</sup> September 2016. Thereafter the defendants entered their appearance on 15<sup>th</sup> September 2016 and sought time on various dates to file written statement. But eventually the High Court issued the order on 15<sup>th</sup> October, 2016, closed the right of the defendants to file their written statement under Order 8, Rule 10 Civil Procedure Code.

Thereafter, the plaintiff adduced his evidence and produced himself as PW1 and despite granting number of opportunities the defendants failed to cross examine the plaintiff PW1 and accordingly on 15<sup>th</sup> December 2016, the right of the defendants to cross examine the plaintiff was closed. Thereafter the defendants filed an application under order 9 Rule 7 for recall of the order dated 15<sup>th</sup> October, 2016 which was allowed by this court on 22<sup>nd</sup> December 2016, subject to payment of costs of Rs.10,000. On 5<sup>th</sup> January, 2017, as the plaintiff was again present to be cross examined by the defendants, there was no one present for the defendants and in the interest of justice the date was again fixed on 21<sup>st</sup> January, 2017. Again on the said date none appeared and thus the right of the defendants to cross examine the plaintiff PW1 stood closed. Thereafter on 14<sup>th</sup> February, 2017 the plaintiff argued before this court that the defendant has been deliberately causing delay in the matter and prayed that a decree in terms of order 8 Rule 10 be passed in his favour.

The plaintiff in evidence appeared as PW1 and tendered his affidavit. He tendered the original agreement between him and Ms. Leela Madhuri and the agreement between him and the Department of Adult Education. The defendants, as is a matter of record, failed to cross examine the plaintiff PW1. The other two witnesses who appeared were Mrs. Anjan Sharma who tendered her affidavit in evidence as PW2 and Ms. Anushka Barma as PW3 who tendered her affidavit in evidence as PW3.

The two witnesses PW2 and PW3 stated that they both had acted in the serial "Pyaar Ki Deewani and Deewana" produced and directed by the plaintiff. They have stated that the defendants did not engage their services for any T.V. serial under any other title that is verbatim to the serial "Pyaar Ki Deewani and Deewana" produced and directed by the plaintiff. Their services were hired exclusively for the T.V. serial "Pyaar Ki Deewani and Deewana". They further stated that the defendants have never taken their services to act in the T.V. serial "Aur Ek Prem Kahani" that has been telecasted on Marathwada Doordarshan.

**Decision of the High Court :**

Plaintiff is not only the producer of the cinematograph film embodying the serial but also the author of the said cinematograph film under the Copyright Act, 1957. Further he averred that even after assigning the copyright in the said work, he still retains the Author's special Rights

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enshrined under Section 57 of the Act. He also stated that he had hired the prime Film Studio to get the serial edited and the said serial was on the computers of the said studio on his trust and confidence and no one could use or exploit or convert to their own use the said film work without his permission which was never given by him. On the contrary he had categorically asked the studio to delete the said work. It is the contention of the plaintiff that the actions of the defendants amount to infringement of his special rights as per Sec. 57 of the said act as the defendants have not attributed the work to him and have also distorted, mutilated and modified his work to create the impugned serial which is prejudicial to the honour and reputation of the plaintiff.

The plaintiff has further stated that due to the action of the defendants the DAE was adamant on terminating the agreement dated 9<sup>th</sup> January, 2016 with him, thereby seriously prejudicing his honour and reputation and future business prospects to deal with any government or other departments.

In the present case the defendant have no defence to raise to rebut the arguments of the plaintiff. The defendants certainly have been callous and the complete inaction on their part cannot defeat the right of plaintiff and the court has to act to protect the interest of the plaintiff. Hence, this court proceeded to pass a judgment under Order 8 Rule 10 of Civil Procedure Code, against the defendants.

What was aired was the exact reproduction of the episodes filmed by the plaintiff with the changes that the credits appearing in the impugned serial were modified to replace the plaintiffs name as the producer and director, with that of the other persons, including defendant no. 2 herein. The names of the producer, director, camera man and editor were all changed. The executive producers of the impugned serial were credited to be defendant no. 2 and defendant no. 3 and the name of the serial was changed to "Aur Ek Prem Kahani" from "Pyaar Ki Deewani and Deewana". However, the name of the author of the book as well as the cast was not changed. In the light of legal principles enunciated above, this court is of the considered view that the modifications made in the work of the plaintiff are covered within the ambit of Section 57 of the act.

After perusal of the documents produced and the testimony of the witnesses, this court considered the view of the plaintiff, that he is the author of the impugned work and the defendants have modified the said work of the plaintiff without permission.

In the light of the aforesaid discussion, a decree of permanent injunction is passed in favour of the plaintiff and against the defendants restraining the defendants, their partners, affiliates, directors, officers, employees, representatives from exhibiting the impugned serial or any other film works

that are identical or substantially similar to the plaintiff's serial works or parts thereof. The defendants are also restrained from distorting, mutilating, modifying, or committing any other act in relation to the said serial work which would be prejudicial to the plaintiff's honour or reputation.

*Questions :*

- (a) 'Injunction is a preventive remedy'. Elaborate the grounds on which injunction can be granted by the Court and state the terms of copyright in literary work as per copyright legislation. (5 marks)
- (b) "The infringement is not defined but violation of any rights of the owner amounts to infringement". Explain this statement in the light of concept of infringement with judicial pronouncements, and authorities set up under the Copyright Act. (5 marks)
- (c) 'Even after assignment the author retains special rights in the assigned work'. Examine the Special rights (Moral rights) available to author under National and International regime with appropriate case/provisions as per copyright. (10 marks)
- (d) Analyse the grounds, evidence and provisions of law on which the High Court awarded the judgment in favour of the plaintiff in the present copyright problem. (10 marks)
3. Critically analyse the background and controversial cases for enacting the Geographical Indications of Goods (Registration & Protection) Act, 1999 in Indian scenario. (5 marks)
4. Company A introduced a new washing machine in the market and the design of the new washing machine is registered under Design Act. After few months Company A came to know that Company B is selling similar design washing machine in the market. Company A complained that Company B imitated their washing machine design and you have been asked to suggest the Company A what remedial measures available by quoting similar cases. (5 marks)
5. 'Trademark Mark legislation does not specify requisites for registration of trademark'. Elaborate this statement in the light of fundamentals for registration of trademark, and validity of trademark with appropriate case law. (5 marks)
6. If you are hired by a technology company for assessment and evaluation of company intellectual property rights (IPRs) then which appraisal technique you will use and why you will use that technique for valuation of IPR. (5 marks)