NATIONAL LAW UNIVERSITY, DELHI

LL.M. (Professional), II -Semester (Batch of 2019)

Online Take Home Assessment- 2020

Paper: Patents, Plant Variety Protection and Trade Secrets

Time: 6:00 Hours **Total Marks: 50**

Instructions:

1. Mail your assignments only to **submissions.llmpro@nludelhi.ac.in**
2. All sections are compulsory.
3. No clarification shall be sought on the question paper.
4. **Mention only your Name, Roll No. and subject name on the First page. Start writing your answers from the second page only. Do not mention your name and roll no on any other page.**

5. Please keep your answers brief and to the point. Plagiarism will be strictly monitored and would lead to deduction of marks. Only the legal provisions and judgments can be copied and should be in quotes.

Section 1

1. Covid-19 has led to many companies racing towards a vaccine. In February 2019, Swiss-based pharmaceutical company Lovartis was granted a patent on the molecule (drug) called 'SARS-Cov-X' by the Indian Patent Office, which is a failed drug that was invented in the context of an earlier pandemic that hit limited regions of Africa. However, recent research shows that SARS-Cov-X, when administered in patients with severe symptoms can stop the spread of lung infection by up to 40%. Ergo, there are increased chances of a Covid-19 patient surviving the viral infection. Five generic companies who have been given a royalty free licence by Lovartis start manufacturing the drug after receiving appropriate regulatory permissions and price the drug initially at 5000 rupees per patient for a single dose. A patient suffering from severe symptoms may require up to 10 such doses in a period of two weeks. Intense competition among the five licensees bring down the price to 3300 for a single dose. However, the prices do not go down further unless the drug achieves further economies of scale. Since SARS-Cov X is administered to patients with severe symptoms, any further cheaper production will require intense scaling up of production by these companies. Such scale can only be achieved if the drug is exported globally. However, the current licensing condition does not allow these licensees to globally export the drug. Some economists are of the view that if more companies enter the market and scale up the production by at least three to five times of the current production levels, the cost of the drug will fall up to 550 rupees per dose in the Indian market due to economies of scale and efficiency achieved in its production. The Government is of the opinion that based on the advice of the Ministry of Health, the DPIIT, Ministry of Commerce and Industry can issue a notification under Section 92 of the Patents Act, 1970. The Ministry is convinced that a compulsory licence granted for exports will be helpful to

reduce the prices in India. It grants royalty free licence for manufacturing and exporting purposes under Section 92, which is to be sold at Rs. 1000 in India and at any price abroad. **Examine if the compulsory licence issued by the Government is in accordance with the letter and spirit of the Patents Act, 1970. (10 Marks)**

2. SpaceBook is a social networking company that allows its users to feed community data available in public domain (such as name of roads, restaurants, important landmarks etc.) into its new application called 'Ubiquitous'. A young startup wants to launch a different software application which feeds on such data. However, since the young startup does not have a big user base, it cannot readily get such data. It requests Spacebook for such licensing the data freely. Spacebook refuses citing that the data it has collected is its trade secret. The young startup alleges that Spacebook's data is from the public domain and hence not capable of being protected as a trade secret. **Applying the principles of trade secret protection, ascertain if Spacebook's data is capable of having trade secret protection and if young startups' concerns have any legal basis. (10 Marks)**

Section 2

1. **Critically examine the decision of the Indian Supreme Court in Novartis v. Union of India (2013) in light of the following: (10 Marks)**
   a. Criteria of therapeutic efficacy as a requirement under Section 3(d)
   b. Difference between Novelty criteria and known substance criteria under section 3(d)
   c. Difference between capable of Industrial application criteria and efficacy under section 3(d)
   d. Difference between inventive step criteria and "differ significantly in properties with regard to efficacy" in Section 3(d)

2. **Critically evaluate the following in from Division Bench decision in Nuziveedu v. Monsanto (2018) (10 Marks)**
   a. The Monsanto's invention is a plant variety capable of being protected under the Protection of Plant Varieties and Farmers Rights Act, 2001.
   b. That the invention is not a valid subject-matter under Section 3(j)

Section 3

1. Mericcson is a global giant in telecommunications technologies. It has widely contributed to successive generation of cellular standards. It has disclosed a huge portfolio of patents to the upcoming 5G standards being developed by 3GPP. The 3GPP consortium requires that patent holders offer a licence on FRAND (Fair, Reasonable and Non-Discriminatory) terms. Syntax is a highly reputed and established smartphone company which imports all parts from China and assembles and sells in India. Mericcson sends a demand notice to Syntax to take a licence. Syntax refuses and states that it has no obligation to take a licence since the licence

offered by Mericcson is not FRAND since it contains a portfolio of standard-essential and non-essential patents, and that the price offered by Mericcson may not be the same as it has offered to Syntax's competitors, putting Syntax is a uncompetitive position in the market.

a. Whether Mericcson is entitled for an Exparte Injunction
b. Whether Mericcson is entitled for an ad-interim injunction
c. What principles can be applied by the court in arriving at FRAND royalties?
d. Should the court consider the defence of the defendant under Section 140 of the Patents Act for tying and bundling of portfolios?
e. Should the court consider the defence of the defendant under Section 107(A) (b) on the question of exhaustion of rights (first sale) since Mericcsson allowed upstream manufacturers an implied licence by not suing them for infringement?

(10 Marks)