

NATIONAL LAW UNIVERSITY, DELHI

LL.M., Semester-I (Batch of 2021)

End Semester Assessment, December-2021

Paper: Comparative Patent Law

Total Marks: 50

Instructions:

1. Mail your assignments only to **submissions.llm@nludelhi.ac.in**
2. All questions are compulsory.
3. This is an open book exam. Students are free to consult their class notes as well as assigned reading materials.
4. No clarification shall be sought on the question paper.
5. Mention ONLY Name, Roll No. and Subject Paper on the Cover/First page. Start writing your answers from the next/second page only. **Do not** mention your name and roll no on any other page.
6. Background facts of questions may be hypothetical. Please answer the questions only based on the facts provided and no clarification shall be sought on the question paper.
7. **Neither of the answers may exceed 1500 words.**

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1. The report of the Department Related Parliamentary Standing Committee on Commerce titled 'Review of the Intellectual Property Rights Regime in India', released on July 23, 2021 (accessible at <https://drive.google.com/file/d/1L-9ugGmHIwFZTskpeillFE2yzYeippYu/view>) has made many recommendations for overhauling the IP laws in India. A part of the report focus on Artificial Intelligence and IPR and makes the following observations:

"8.3 Presently, The Indian Patents Act, 1970 as well as the Copyright Act, 1957 are not well equipped to facilitate inventorship, authorship and ownership by Artificial Intelligence. As per Section 3(k) of the Indian Patent Act, 1970, a mathematical or a business method or a computer programme or algorithms run by Artificial Intelligence are not patentable. Further, the condition to have a human inventor for innovating computer related inventions (innovations by AI and machine learning) hinders the patenting of AI induced innovations in India. Therefore, there is a need to review the provisions of both the legislations on a priority basis.

8.4 During the deliberations with relevant stakeholders, the Committee was informed that the protection of both AI-generated works and AI solutions should be permitted under patent laws of India as it would incentivize innovation and R&D thereby significantly contributing to creativity and economic growth of the country. It was informed that rendering protection to works generated by AI either autonomously or with the assistance and inputs of a human being would incentivize and encourage the creator of the AI which in turn would further encourage creativity and development of more AI solutions."

Based on your knowledge of the working of patent systems in the US and India, to what extent do you agree or disagree with the suggestion of the committee that Sec. 3(k) of the Patents Act 1970 needs to be reviewed on a priority basis. What are the potential opportunities and challenges you foresee in a review of Sec. 3(k)? **(25 Marks)**

2. Messenger RNA (mRNA) vaccines are considered as one of the most advanced and effective vaccines against Covid19 virus. Currently Pfizer-BioNTech and Moderna are producing Covid19 vaccines using this technology. But till November 25th, 2021, both these vaccines haven't been made available in India by those firms. A major issue highlighted by scholars working in this area is the reluctance of these firms to transfer technologies to pharmaceutical companies in the global south. As an expert in the area of patent law, critically examine the options available before the Government of India to address the IP related issues in this matter and make the mRNA vaccines widely available in India. While answering this question, the note should particularly examine the feasibility of using the IP related suggestions provided in the interim order dated May 2, 2021 of the Supreme Court of India in the suo motu writ petition (In re: Distribution of Essential Supplies and Services During the Pandemic- <https://indiankanoon.org/doc/184013746/>).

(25 Marks)