

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

**Course: Intellectual Property Rights  
Semester- VIII (Batch: 2017-22)**

**End Semester Online Examination: September 2021**

**Date: 11<sup>th</sup> September, 2021**

**Duration: 8 hours**

**Max. Marks: 50**

**Instructions:**

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word Limit: 12 Marks: 1100-1200 Words, 10 Marks: 900-1000 Words, 6 Marks: 550-600 Words.

	<b>Marks</b>
<p>Q.1 As explained by the Supreme Court, 'The object of patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period stimulates new inventions of commercial utility. The price of the grant of monopoly is the disclosure of the invention at the Patent Office, which after expiry of the fixed period of monopoly, passes into the public domain.' Section 2(1)(j) of the Patents Act, 1970 defines Invention to mean a new product or process involving an inventive step and capable of industrial application. Thus, novelty, non-obviousness, industrial applicability and utility form the essential requirements of patentability. These conditions have been universally accepted as the essential prerequisites of patentability. According to the requirements of Indian Patent Act, a patent application involves an inventive step if the proposed invention is not obvious to a person skilled in the art i.e., skilled in the subject matter of the patent application. It is important to bear in mind that in order to be patentable an improvement on something known before or a combination of different matters already known, should be something more than a mere workshop improvement; and must independently satisfy the test of invention or an 'inventive step'. To be patentable the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before. The combination of old known integers may be so combined that by their working inter relation they produce a new process or improved result. Mere collocation of more than one integers or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent. A patent can be granted only for 'manner of new manufacture' and although an invention may be 'new' and relate to a 'manner of manufacture' it is not necessarily a 'manner of new manufacture'-it may be only a normal development of an existing manufacture. It is a necessary qualification of a craftsman that he should have the knowledge and ability to vary his methods to meet the task before him-a tailor must cut his cloth to suit the fashion of the day-and any monopoly that would interfere with the craftsman's use of his skill and knowledge would</p>	(10)

be intolerable. A patentable invention, therefore, must involve something which is outside the probable capacity of a craftsman-which is expressed by saying it must have 'subject matter' or involve an 'inventive step'. Novelty and subject matter are obviously closely allied. Although these issues must be pleaded separately, both are invariably raised by a defendant, and in fact 'subject matter' is the crucial test, for which they may well be novelty not involving an 'inventive step', it is hard to conceive how there can be an 'inventive step' without novelty. Whether an invention involves novelty and an 'inventive step', is a mixed question of law and fact, depending largely on the circumstances of the case.

In light of the above, discuss the definition of invention as provided under the Patents Act, 1970 and distinguish between the standard of novelty and inventive step by substantiating your opinion with the case laws.

- Q.2 As opined by the Apex Court in one of the milestone decisions, there can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work. Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal limitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negate the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence. (12)

Critically analyze two case laws on the Copyright Act, 1957 where the Court, in the abovementioned context has laid down tests/criteria for determining the substantial copying of expression under the Copyright Act, 1957. Also mention the reason for selecting these two case laws.

- Q.3 The sole purpose of the Designs Act, 2000 is protection of the intellectual property right of the original design for a period of ten years or whatever further period extendable. The object behind this enactment is to benefit the person for his research and labour put (10)

in by him to evolve the new and original design. It has also laid down that if the design is not new or original or published previously then such design should not be registered. It further lays down that if it has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration then such design will not be registered or if it is found that it is not significantly distinguishable from known designs or combination of known designs, then such designs shall not be registered. It also provides that registration can be cancelled under Section 19 of the Act if proper application is filed before the competent authority i.e. the Controller that the design has been previously registered in India or published in India or in any other country prior to the date of registration, or that the design is not a new or original design or that the design is not registrable under this Act or that it is not a design as defined in Clause (d) of Section 2. The Controller after hearing both the parties if satisfied that the design is not new or original or that it has already been registered or if it is not registrable, cancel such registration and aggrieved against that order, appeal shall lie to the High Court. These prohibitions have been engraved so as to protect the original person who has designed a new one by virtue of his own efforts by researching for a long time. The new and original design when registered is for a period of ten years. Such original design which is new and which has not been available in the country or has not been previously registered or has not been published in India or in any other country prior to the date of registration shall be protected for a period of ten years.

In light of the above, discuss two case laws through which the court interpreted the concept of 'prior publication' highlighting the interplay between section 4(b), 19(1)(a) and 44 the Designs Act 2000.

- Q.4 In the year 1927, observing the evolution of German jurisprudence on the concept of dilution, Frank Schecter, in a seminal piece in the Harvard Law Review, propounded the idea that the only rational basis for trademark protection was the preservation of the uniqueness of a trademark, since a mark would, lose its uniqueness and consequently, its selling power, if it could be used on pianos, shaving creams, and fountain pens" all at the same time. This statement is commonly regarded as the foundation of the modern law of dilution which protects distinctive trademarks from losing their hold on the public mind, by their unauthorized use on non-similar or non-competing goods. Dilution of a well-known mark occurs when a well-known trademark loses its ability to be uniquely and distinctly identified. "Doctrine of Dilution" which has recently gained momentous, particularly in respect of well-known trademarks emphasizes that use of a well-known mark even in respect of goods or services, which are not similar to those provided by the trademark owner, though it may not cause confusion amongst the consumer as to the source of goods or services, may cause damage to the reputation which the well-known trademark enjoys by reducing or diluting the trademark's power to indicate the source of goods or services. The promotion and building of a well-known mark requires considerable efforts, skill and expenses. The brands are not built in a day, it takes years to
- (12)

establish a brand in the market and such reputation cannot be injured/ diluted by unscrupulous persons using trademarks of others for their own commercial benefit.

In the backdrop of the above, explain the concept of dilution by referring to Sections: 2(1) (zg) 11(2), 11(6) to 11 (9) and 29 (4) of the Trademarks Act, 1999 with the help of judicial approach pre and post 1999 Act.

Q.5 Examine the correctness of the following statements and substantiate your answer by referring to relevant case studies and case laws. (3x2=6)

- a) Traditional knowledge in present Intellectual Property Rights (IPR) regime can be protected through two ways: Positive Protection & Defensive Protection
- b) The Springboard doctrine has been explained by the courts as, “A person who has obtained information in confidence is not allowed to use it as a springboard for activities detrimental to the person who made the confidential communication, and springboard it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public.”

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