

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Patents
Semester- VIII (Batch: 2018-23)

End Semester Online Examination: May 2022

Date: 15th May, 2022

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: 10 Marks: words,

Marks

- Q.1 Ms. Polin Das, a research scholar from an Indian Technical University invented a 'clock' with a unique alarm system. This clock acts as an alarm for senior citizen and patients to respective call centres of registered hospitals for emergency support. At the same time, Ms. Polin approached the Central Government to approve a financial grant for her invention and had a discussion with concerned official of the said department regarding her invention. Ms. Polin exhibited her invention in an industrial fair organized by the Government in Pragati Maidan, Delhi on 10 March 2015. (10)

Mr. Nellop, one of her colleagues from the same university published her invention in leading newspaper on 25 March 2015 without her consent. Meanwhile, Ms. Polin attended one awareness program on Patent in Delhi on 28 March 2015. Immediately on 2 April 2015 she filed a 'Provisional Specification' before the Patent office, Delhi and filed 'Complete Specification' on 20 December 2015.

Ms. Polin is unsure whether the exhibition and publication in newspaper and communication with the Government official would hamper her patent protection. Hence she has sought your advice.

In light of above facts, advise Ms Polin on the procedure for the grant of patent in India by citing relevant provisions of the Patent Act, 1970 and decided case laws.

- Q.2 Section 3(d) of the Patents Act, 1970 was substituted by the Patents (Amendment) Act, 2005 which provides as follows: (10)

"(d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

Explanation.—For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known

substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy;"

Analyse the term "efficacy" as provided in Section 3 (d) of the Act in light of the judgment of the Supreme Court and other relevant orders by different courts in the matter of *Novartis vs Union of India*

- Q.3 As per the Patents Act, 1970, 'patent' means a patent for any invention granted under this Act and 'invention' means a new product or process involving an inventive step and capable of industrial application". (10)

Explicate the conditions for 'patentability' in the Indian Patent Act 1970. Specify the inventions which may not qualify for patent under the Act. Cite legal provisions and relevant decided case laws wherever necessary.

- Q.4 The question of 'infringement' of a patent is a mixed question of law and fact. Direct Patent infringement may be found in either of the two ways; by literal infringement or under the equivalents doctrine. (10)

In light of the above statement, explain, in detail, different types of infringement of patent by citing applicable provisions and decided cases. Also discuss, which act(s) may not constitute infringement.

- Q.5 Define "Compulsory License"? What is the basic utility of compulsory licence? Discuss the procedure for granting Compulsory License along with powers of the Controller under the Patents Act, 1970 for its grant. (10)
