Solved
Scanner Appendix

CS Professional Programme Module - III

(**Solutions of June-2014 and Questions of December-2014)**

Paper - 9.4: Intellectual Property Rights Law & Practice

Solution of June - 2014

Chapter - 1 : Introduction

2014 - June [5]

The **Patent Co-operation Treaty (PCT)** is a multilateral treaty that became effective in 1978. The PCT is administered by **International Bureau of the World Intellectual Property Organization (WIPO)** whose headquarters is in **Geneva, Switzerland**. The member countries of the PCT are called PCT Contracting States. As of August 1, 2006, there were 133 PCT Contracting States.

The PCT enables a patent application to file one “international” patent application to seek protection in any or all of the PCT Contracting States.

Patents are granted or rejected by each PCT Contracting State or regional officer individually under their respective patent laws. Thus, an applicant must still prosecute a patent application in each country or regional officer in which he seeks protection and pay the national or regional fees.

The main advantage of filing a PCT application is the additional time gained before having to prosecute applications in other countries after the initial filing. Without the PCT the applicant generally has 12 months to file patent applications in other Paris Convention countries after filing the initial application in contrast, by using the PCT the application has at least 30 months (and more in many countries) form the date of initial filing to begin prosecuting his application in other countries-effectively gaining 18 months. This delay provides time to obtain knowledge as to the patentability and commercial prospects of an invention. It also postpones the major costs of internationalizing a patent application such as paying national / regional fees, translating the patent application and paying fees to local patent agents in the various countries.

The PCT procedure consists of two main phases; the “international phase” and the “national phase”.

The international phase consists of:

(1) Filing of the international application ether with a national / regional "Recovering Officer" or the International bureau of **WIPO**

(2) Novelty search on the patentability of the invention (including an international search report and a written opinion on potential patentability)

(3) Publication of both the PCT application and the international search report by **WIPO,** and

(4) **(Optional step)** request for an international preliminary examination of the international application.

National Phase

After the international phase, the application enters the "national" phase, which consists of processing the international application before each Contracting State that has been designated in the international application and in which the applicant wishes to pursue patent protection. Certain requirements must be fulfilled in order to enter the national phase. These requirements include paying national fees and, if necessary, furnishing a translation of the application (as filed and / or amended). Note that the filing of the PCT request together with the application constitutes the designation of all Contracting States that are bound by the Treaty on the international filing date. In the national phase, the applicant selects the particular States in which he wishes to obtain protection for his invention.

A PCT application must contain the following elements: request, description, one or more claims, one or more drawings (where drawings are necessary for the understanding of the invention) and an abstract. The request is simply a form that is filed with the international application.

Any national or resident of one of the PCT Contracting States may file an international patent application.

Chapter - 2 : Patents

2014 - June [1]

ISSUES IN THE PRESENT CASE

1. Can the Applicant Impose upon controller to have and accept the division Application.
2. Does the applicant have right to amend the patent specification and how.
3. Can the applicant amend of the specification by replacing product claims into process claims in compliance within the provisions of the Patent Act, 1970.

The Opponents would respectfully like to draw the kind attention of the Learned Controller towards following findings and facts in the matter of the finally amended claims.

Section16 of Patent Act, 1970 dealt with power to Controller of make orders respecting division of application.

A person who has made an application for a patent under this Act may, at any time before the grant of the patent, if he so desires, or with a view to remedy the objection raised by the controller on the ground that the claims of the complete specification related to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

Since claims of the claimed invention and claims of the parent application are verbatim. There is no such direction or any other guiding principle laid down in the Act, as to how controller should proceed with divisional status of an application. Further application shall define distinct subject matter when compared with claims of parent application, which is first and foremost requirement to qualify as divisional application u/s 16 of the Act.

Applicant cannot claim same set of claims claimed in the parent application in different multiple further applications. It is observed that the reason for filling such a divisional application is to prosecute once again same set of claims.

If the subject matter of claims of the further application is not distinct with the claims of the parent application, divisional status shall not be granted.

The case of *LG Electronics Inc. Vs Controller of Patents,* Hon'ble Intellectual Property Appellate Board (IPAB) held that the applicant cannot take undue advantage of Section16 for extending to prosecute the same subject matter.

Section 57 deals with Amendment of application and specification or any document relating thereto before Controller.

1. Subject to the provisions of Section 59, the Controller may, upon application made under this section in the prescribed manner by an applicant for a patent or by a patentee, allow the application for the patent or the complete specification or any document relating thereto to be amended subject to such condition, if any as the Controller thinks fit:

   Provided that the Controller shall not pass any order allowing or refusing an application to amend an application for a patent or a specification or any document relating thereto under this section while any suit before a Court for the infringement of the patent or any proceeding before the High Court for the revocation of the patent is pending, whether the suit or proceeding commenced before or after the filing of the application to amend.
2. Every application for leave to amend an application for a patent or a complete specification or any document relating thereto under this section shall state the nature of the proposed amendment, and shall give full particulars of the reasons for which the application is made.

3. Any application for leave to amend an application for a patent or a complete specification or a document related thereto under this section made after the grant of patent and the nature of the proposed amendment may be published.
4. Where an application is published under sub-section (3), any person interested may, within the prescribed period after the publication thereof, give notice to the Controller of opposition thereto, and where such a notice is given within the period aforesaid, the Controller shall notify the person by whom the application under this section is made and shall give to the person and to the opponent, an opportunity to be heard before he decides the case.
5. An amendment under this section of a complete specification may be, or include, an amendment of the priority date of a claim.
6. The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification or any other document related thereto to comply with the directions of the Controller issued before the grant of a patent.
   In general amendments to patents and application are governed by Section 57 of the Indian Patents Act, which stipulate that the applicant should state the nature of the proposed amendment, and shall give full particulars of the reasons for which the amendment is made without addition of new subject matter. Applicant of subject application has never stated in their reply why they wish to amend the claims and applicant addition of the claims which are not filed initially or originally can not be allowed.

Therefore, new final set of claims filed.

Section 59 provides Supplementary provisions as to amendment of application or specification.

1. No amendment of an application for a patent or a complete specification or any document relating thereto shall be made except by way of disclaimer correction or explanation and no amendment thereof shall be allowed except for the purpose of incorporation of actual fact, and no amendment of a complete specification shall be allowed, the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed or shown in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.
2. Where after the date of grant of patent any amendment of the specification or any other documents related thereto is allowed by the Controller or by the Appellate Board or the High Court, as the case may be.
   (a) The amendment shall for all purposes be deemed to form part of the specification along with other documents related thereto;
   (b) The fact that the specification or any other documents related thereto has been amended shall be published as expeditiously as possible; and

(c) The right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.

3. In construing the specification as amended, reference may be made to the specification as originally accepted.

Section 59 is quite clear that first whatever amendments made by the applicant shall fall within the scope of a claim of the specification before the amendment.

Further, no amendment shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of incorporation of actual fact. Now question is that the whether the further addition of the claims which have not been filed initially or originally can be allowed.

Further, according to Intellectual Property Appellate Board (IPAB) decision (Order No. 189/201, *M/s Diamcad N V Vs. The Assistant Controller of Patents and Design,* Chennai) dated 3rd August 2012, amendment of claims which is not within the scope of the claimed filed initially are not allowed.

Therefore, the present set of claims which are different and additions over the claims as originally filed cannot be allowed in accordance with the provisions of Section 57 and 59 of the Indian Patent Act 1970.

Hence it is respectfully submitted that the subject application should be straight away rejected on the basis of the non-compliance of the mandatory provisions of Section 57 the Indian Patents Act for not providing reasons for amendment.

Also Section 59 provides that the no effect of amendment can be given of any part of specification including claims if the amended matter would not fall wholly within the scope of the original claims filed.

Chapter - 3 : Patent Databases & Patent Information System

2014 - June [4]

The object of Patent search is to evaluate the subject matter invention in comparison to the prior Art.

Prior art refers to scientific and technical information that exists before the effective date of a given patent application. Prior art may be found in any public documents such as patents, technical publications, conference papers, marketing brochures, products, devices, equipment, processes and materials.

A prior art search refers to an organized review of prior art contained in public documents, prior art searches can be of various kinds: patentability searches conducted by an inventor before filing a patent application.

Searches are conducted using different kinds of databases, from public databases of issued patents on the internet to exhaustive database including technical literature. Searches can be done by legal professional, by scientists or by researchers. Sometimes, defendants in patent litigation even offer bounties for invalidating prior art.

Patentability search may be conducted before the filing of a patent application to gauge the prospects of obtaining broad claim coverage. The purpose of conducting such a search is to find references related to the claimed invention in order to make an assessment of its patentability.

Searches are typically fast and inexpensive since the patent agent's clients often do not want to pay for an expensive, thorough search. Also, it is often presumed that the inventor himself will have a good sense of novelty based on his reading of the literature in his field and by communication with his peers.

Searches are good way to get information on developments in the field of invention. Prior art searches may sometimes reveal what competitors consider worth protecting. Search results may be a critical factor in deciding whether to file a patent application. If a prior art search reveals references that anticipate the claimed invention, the inventor and the patent agent should consider how they can "avoid the prior art" by drafting the claims to overcome. In some cases, a prior art search may reveal patent references that are problematic. Just because you see a reference that seems similar to the invention does not mean the proposed application should be abandoned.

Chapter - 7 : Trade Marks

2014 - June [2] (i), (ii)

(i) What is Patent

A patent is an exclusive right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. The exclusive right is to manufacture the new article invented or manufacture an article according to the invented process for a limited period. During the term of the patent the owner of the patent, i.e. the patentee can prevent any other person from using the patented invention.

Invention must be New and Useful

It is a fundamental principle of Patent Law that a patent monopoly is granted only for inventions which are new and useful, and which have industrial application. This is embodied in the definition of "invention". The question whether a particular invention is new and useful is often extremely difficult to decide as it depends upon the state of the prior art in the particular field which includes prior publication on the subject and prior user.

Invention

As per Section 2(1)(j) of the Patents Act, 1970: 'Invention' means a new product or process involving and inventive step and capable of industrial application.

Under Section 2(1)(ja) of the Patents Act, 1970: 'Inventive step' means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

As per Section 2(1)(l) of the Patents Act, 1970: New invention' means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject-matter has not fallen in public domain or that it does not form part of the state of the art.

Subject—Matter of Invention

The question whether there is an invention is a question of fact in each case. A new and useful application of an old principle may be a good subject-matter. An improvement on something known may also afford subject -matter; so also a new combination of different matters already known. A patentable combination is one in which the component elements are so combined as to produce a new result or to arrive at an old result in a better or more expeditious or more economical manner.

Improvements

The definition of invention includes within its scope any new and useful improvement of any manner of manufacture, article or substance whether patented or otherwise. But the improvement in order to be patentable must independently satisfy the test of invention.

In the present case **M/s Mera Khilona** come up with the same Toy but with a material which solved the pre-existing practical problem, and hence with improvements qualifying the test of invention **Mera Khilona** can claim Patent in the present matters.

(ii) The law of trade mark, practically all over the world is based on three board concepts:

(1) Distinctiveness or distinctive character, or capable of distinguishing,
(2) Deceptive similarity or similarity or near resemblance of marks and
(3) Same descriptive or similarity of goods. The purpose of the Act, as stated in the preamble, is to provide for the registration and better protection of trade marks for goods and services and to prevent the use of fraudulent marks. In consonance with this object the following fundamental principles of trade mark law are embodied in the various provision of the Act:

Since registration confers on the proprietor a kind of monopoly right over the use of the mark, which may consist of a word or symbol legitimately required by other traders for bona fide trading or business purposes, certain restrictions are necessary on the class of words or symbols over which such monopoly right may be granted. This principle is recognized in the qualifications for registration laid down in Section 9.

Registration of trade mark should not interfere with the bona fide use by other persons of names or words in ordinary usage. This principle is embodied in Section 13 and Section 3.

Property rights in a trade mark acquired by use are superior to similar rights obtained by registration under the Act; this is clear from the preamble which refers to "better protection of trade marks", thereby necessarily implying the existence and availability of some protection under common law. It, therefore, follows that prior users of trade marks should be protected against any monopoly rights granted under the Statute. This principle is enacted in Section 34.

There are obviously two main interests to be protected when a mark is presented for registration. There is first, the interest of the public. A trade mark ought not to be registered if its use will be apt to mislead that public as to the origin of the goods they are purchasing. There is also the interests of other existing traders who are entitled to object if the use of the trade mark proposed for registration will be calculated to enable the applicant's goods to be passed off on the public as such other traders goods. These interests are protected by Sections 9 and 11.

In view of above **M/s Mera Khilona** will not able to claim trade mark protection for its products as it likely to create confusion among the general public and customer as the conflicting trade mark being in the same business.

2014 - June [6]

Deceptive similarity of Trade Mark is that a given two trade marks are such as to their nature that it is likely to deceive the public or case confusion. The following examples will clarify the position of deceptive similarity:

(a) Lakshmandhara and Amrit dhara deceptively similar
(b) "Simatul" likely to cause confusion and deceptive similar to "Cibatul"
(c) "Trevicol" was held to have Phonetically deceptive similarity to "FEVICOL"

In Candila Healthcare Ltd. Vs. Candila Pharmaceutical Ltd., the Supreme Court held that in an action for passing off on the basis of an unregistered trade mark generally for deciding the question of deceptive similarity the following factors are to be considered:

(a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks, i.e. both words and label works.
(b) The degree of resembleness between the marks, phonetically similar and hence similar in idea.
(c) The nature of the goods in respect of which they are used a trade marks;
(d) The similarity in the nature, character and performance of the goods of the rival traders;
(e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods;

(f) The mode of purchasing the goods or placing orders for the goods; and
(g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks.

Weightage to be given to each of the aforesaid factors depends upon facts of each case and the same weightage cannot be given to each factor in every case.

Note: "In answers to the questions based on case study, the students may write any other alternative answer with valid reasoning."

Chapter - 9 : Industrial Designs

2014 - June [3]

Salient Features of Design Act, 2000

Objectives and Justification for Design Protection:

The process of acquiring design rights is of importance from the perspective of the creator of design. Basically, the evolution of design rights was based on the keen interest to encourage and protect those who produce new and original designs, thereby facilitating competitive development and industrial progress.

Being a creation of intellectual mind, the designs also need to be protected. Designs protection through registration has been source of tremendous progress in the field of science and technology which has revolutionized the manufacturing during process.

Subject matter of Design Law:

The subject matter which is protected by the design system is the application of the design to an article. The two fundamental characteristics of the design law are-firstly, it is concerned with the visual aspects of the articles and secondly, it concerns designs applied to article, which means concepts like garden designing, the architectural drawings and designs, book jackets, labels, tokens, medals, buildings and structures have been excluded from design protection.

***The term Design as per the Design Act, 2000*:**

A design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article, in two or three dimensional (or both) forms. This may be applied by any industrial process or means (manual, mechanical or chemical) separately or by a combined process, which in the finished article appeals to and judged solely by the eye.

Who can apply for Registration:

Any person or the legal representative or the assignee can apply separately or jointly for the registration of a design. The term "person" includes firm, partnership and a body corporate. An application may also be filed through an agent in which case a power of attorney shall be filed.

What are excluded from Design Protection:

Designs that are primarily literally or artistic in character are not protected under the Design Act. These will include:

— Book jackets, calendars, certificates, forms and other documents, dressmaking patterns, greeting cards, leaflet, maps and plan cards, post cards, stamps, transfers, medals.
— Labels, tokens, cards, cartoons.
— Any principle or mode of construction of an article.
— Mere mechanical contrivance.
— Buildings and structures.
— Parts of article not manufactured and sold separately.
— Variations commonly used in the trade.
— Mere workshop alterations of components of an assembly.
— Mere change in size of article.
— Flags, emblems or signs of any country.
— Layout designs of integrated circuits.

What do you mean by new/original design:

A design must have something new before the law will allow it to be registered. The design should be new or original; this is evident from Section 5(1) of the Act, which provides that the application for registration should be for "any new or original design". The words new or original, involve the idea of novelty, either in the pattern, shape or ornament itself or in the way an old pattern, shape or ornaments to be applied to an article. Novelty may consist not in the idea itself but the way in which the idea is to be rendered applicable to an article.

Question Paper of December - 2014

Chapter - 1 : Introduction

2014 - Dec [2] (b) State the relationship between the 'TRIPS agreement' and the 'pre-existing international conventions' covered under it. (10 marks)

Chapter - 2 : Patents

2014 - Dec [1] Sorafenib Tosylate is a compound patented by Bayer Corporation (Bayer), a renowned USA based developer and manufacturer of innovative drugs. It is marketed as NEXAVAR (the Drug) and is used in the treatment of advanced stages of kidney and liver cancer. The Drug is a life-extending drug and not a life–saving drug. It can increase the life of a kidney cancer patient by 4-5 years and that of a liver cancer patient by 6-8 months.

Bayer was granted a patent as well as regulatory approval for importing and marketing the Drug in India in the year 2008. Bayer does not hold a manufacturing approval in India, but has only a marketing and import licence.

Natco Pharma (Natco) filed an application in July, 2011 under section 84(1) of the patents Act, 1970 for grant of Compulsory Licence (CL) in respect of Sorafenib Tosylate covered under Bayer's patent. In its application, Natco proposed to sell the Drug at a price of INR 8,800 (about USD 175) for one month therapy as against Bayer's INR 2,80,428 (about USD 5,600).

The Controller of Patents (Controller), upon noting that 3 years had elapsed since the grant of patent and being satisfied that a prima facie case existed, issued an order for publishing the CL application in the official journal. Upon this, Bayer filed its opposition to the CL application. Each party filed its respective evidence. The parties were given a hearing by the Controller.

Natco urged that as per GLOBOCAN 2008, there were 20,000 patients of liver cancer and 8,900 cases of kidney cancer in India. Assuming 80% of patients needed the Drug treatment, approximately 23,000 patients required the Drug. According to the Form - 27(statement of working of Patents) filed by Bayer, they imported no units in 2008 and approximately 200 bottles in 2009 and no further units in 2010. Hence, the reasonable demand or requirement of the public was not being met. Natco argued that Bayer did not manufacture the Drug in India but imported it and that it was exorbitantly priced and usually out of stock and available only in pharmacies attached to a few hospitals in metro cities. Bayer launched the product worldwide in 2006 and made thumping sales to the tune of USD 2,454 million. Thus, the insignificant number of bottles imported in India showed Bayer's neglectful conduct.

Bayer responded by demonstrating that the actual number of patients of kidney and liver cancer requiring treatment was 8,842 and not 23,000. The Drug was being made available by Bayer to all cancer treatment centres in India.

This objection was dismissed by the Controller on the basis that as per Form-27 filed by Bayer at the Patent Office, Bayer had imported grossly inadequate quantities of NEXAVAR in the previous 3 years, which was ample material that a prima facie case had been made out. Furthermore, the Controller observed that the number of patients needing the Drug would be much higher than 8,842 and that as per Bayer's own numbers they had been able to supply the Drug to not more than 200 patients which is a mere 2% of the 8,842 patients who, according to Bayer's own estimate needed the Drug. He ruled that Bayer's conduct was not justifiable as it was already marketing the drug worldwide since 2006.

The next argument advanced by Natco was that the price of the patented product was too high and therefore, the patented invention was not available to the public at reasonably affordable prices. The exorbitant pricing was an abuse of its monopolistic

rights and amounted to unfair and anti-competitive practice. Bayer countered this by contending that innovative drugs cost significantly more than generics since the innovator's costs included R & D expenses which generics did not incur as they merely copied the drugs. The higher price included the costs of failed projects also, which accounted for nearly 75% of total R&D cost. According to Bayer, it took an investment of more than €2 billion to bring a new medical entity (NME) to the market. Also, the price being charged by Bayer was comparable to other oncology drugs of innovation-based companies. Replacing innovative drugs with generics would in the long – run damage patients as originators also provided for the education of doctors and pharmaco vigilance which generics did not. Only the patentee, being the innovator and having invested in the R&D would be able to determine what would constitute a 'reasonably affordable price' for the Drug. The term 'reasonable' should be construed as to mean reasonable for both the patients and the patentee and a 'reasonable price is needed to factor in R&D costs and reasonable commercial gain.

Bayer argued that 'public' denoted different sections of public – rich class, middle class and poor class. A blanket CL which gave the patented product at the same price to all sections of the public was not reasonable, amounted to treating 'unequal as equal' and was discriminatory. A CL would lower the price of a patented product even for people who could pay – which could not be the intention of the Legislature. One of the ways by which people afford medical treatment is medical insurance. 'Affordability' should be determined by asking whether the patient could afford insurance cover or not.

The Controller in his decision agreed with Bayer that public included different sections of the public, but also observed, that Bayer was free to have offered differential pricing to different classes, but chose not to. The Controller partially disagreed with Bayer that in determining reasonableness, both the patentee and the public needed to be factored in, but observed that "reasonably affordable price has to be construed predominantly with reference to public". The Controller added that the sales by Bayer during previous 4 years constituted only a fraction of the requirement of the public and came to the conclusion that lower sales had been due to high price of the patented product. Therefore, the Controller held that the Drug was not available to the public at a 'reasonably affordable price'.

Natco advanced another argument that patented invention was not worked by Bayer in the territory of India. Natco pointed out to the Controller that since the Drug was being imported, it was not being commercially worked in India. Bayer responded by contending that the 'working' requirement of section 84(1)(c)of the patents Act, 1970 did not mean that the patented product had to be locally manufactured. According to Bayer 'Working' of a patent would mean that there should be a supply of the patented product in the territory of India. Bayer also argued that it had centralised its manufacturing in Germany for reasons of economies of scale and for maintaining high quality.

The Controller relied on the Paris Convention, TRIPS Agreement, the unamended Patents Act of 1970 and in particular sections 84(7), 83(b) and 90(2) thereof to come to the conclusion that importation would not amount to working of a patented product. He observed that the term 'work the invention' did not include imports, as a CL holder had to necessarily work the patent by manufacturing the patented invention in India.

The Controller granted a non-exclusive and non-assignable CL to Natco, solely for the purpose of making, using, offering to sell and selling the Drug for the purpose of treating kidney and liver cancer patients within the territory of India, adding that the Drug would have to be manufactured by Natco in its own manufacturing facility only and not outsourced.

Thereafter, Bayer filed an appeal challenging the order of the Controller before the Intellectual Property Appellate Board (IPAB). The IPAB, in March 2013, dismissed the appeal and upheld the decision of the Controller. However, in the order, IPAB raised the rate of royalty to be paid by Natco to Bayer from 6% to 7%.

Bayer challenged IPAB's order before the High Court of Bombay by way of a writ petition. The High Court examined the relevant provisions of the Act and upheld IPAB's order and ruled that in respect of medicine the adequate extent for meeting the demand of the drug should be 100%. It further held that dual pricing could be applied to meet the requirement of the public and not for making available the drug under reasonably affordable price.

In the light of the aforesaid case and the relevant provisions of the Indian Patents Act (as amended), answer the following:

(i) Under what circumstances can CL be granted ? (5 marks)

(ii) What factors are required to be taken into account by the Controller while considering the application for CL? (10 marks)

(iii) While settling the terms and conditions of a CL, what factors does the Controller secure? (15 marks)

(iv) Is manufacture in India the sole method of working a patent in the territory of India? Do you agree with the Controller's decision on this question? (10 marks)

(v) Under what exceptional circumstances can CL be granted for export of patented pharmaceutical products? (10 marks)

2014 - Dec [5] Client XYZ has approached you for getting a patent on a drug for curing insomnia. What are the steps involved in registering the patent ? Describe with example. (5 marks)

Chapter - 7 : Trade Marks

2014 - Dec [4] What rights are conferred by registration of a Trade Mark? (5 marks)

Chapter - 8 : Copyright

2014 - Dec [2] (a) TV stations in Chennai and Mumbai published weekly TV guides covering their programmes exclusively and claimed the copyright protection. Arch TV Guide wanted to publish a comprehensive guide of TV programmes of both the stations but was prevented by TV stations, Chennai and Mumbai on the ground of copyright infringement. By preventing this, the TV stations sought to ensure that third parties did not reproduce their programme listing. Arch TV Guide complained to the Competition Commission of India (CCI) citing the Competition Act, 2002 and arguing that the TV stations, Chennai and Mumbai were indulging in an anti-competitive practice of refusal to deal. The TV stations drew the attention of the CCI to section 3(5) of the Competition Act, 2002 and argued that the said section did not restrict the right of any person to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting any of the rights conferred upon them under IPR statutes. TV stations, Chennai and Mumbai contended that section 3(5) of the Competition Act, 2002 provided protection of their IPR, namely , copyright and prayed that the CCI should restrain Arch TV Guide from publishing the comprehensive guide. Arch TV Guide urged that the said anti-competitive practice should not be condoned while providing protection to IPRs, in this case, copyright. It prayed that it may be allowed to publish the comprehensive guide in customers' interest and public interest.

In the light of the facts provided, if you were the CCI, what would be your decision?

(20 marks)

2014 - Dec [3] How is computer software protected in India?

(5 marks)

Chapter - 9 : Industrial Designs

2014 - Dec [6] What do you understand by 'design'? How is it different from 'copyright'? What is the Act covering design? (5 marks)

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FOR NOTES

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