1 INTRODUCTION

THIS CHAPTER INCLUDES

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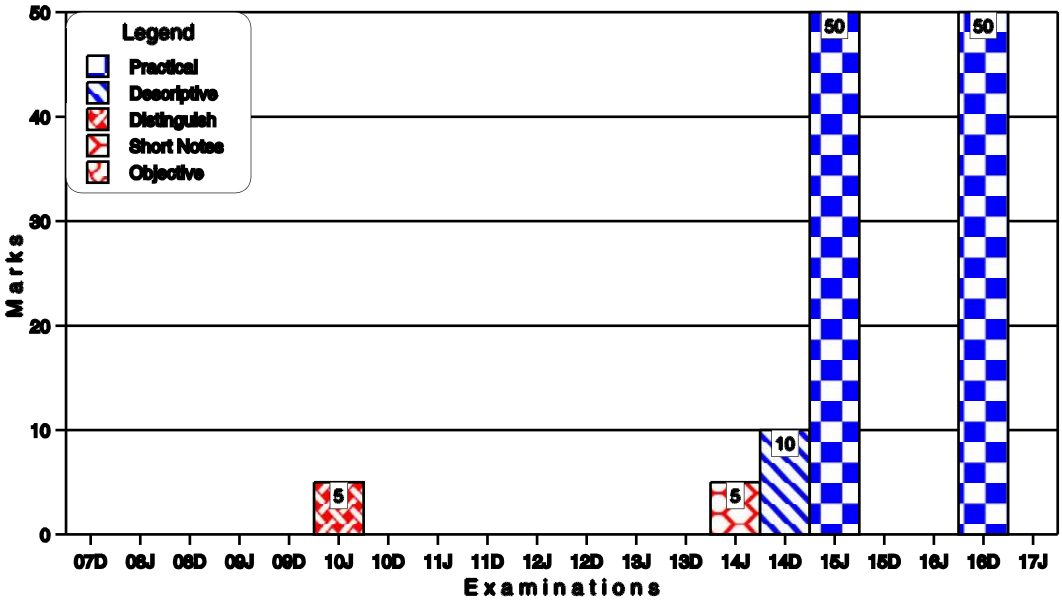
Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



SHORT NOTES

2014 - June [5] Write a note on 'patent co-operation treaty'. **(5 marks)**

Answer :

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) from 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 "Receiving Office" 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.

DISTINGUISH BETWEEN

2010 - June [3] (a) Distinguish between the following:

(i) 'Intellectual property' and 'industrial property'. **(5 marks)**

Answer :

There are three types of property :

- Movable property
- Immovable property
- See carefully
  - ⇒ The term 'intellectual property' is coined to indicate that kind of property which covers in it, creations of human mind and human intellect.
  - ⇒ It consists of valuable information which can be converted into tangible objects
  - ⇒ The two types/branches of intellectual property are –
- Copyright
- Industrial property
  - ⇒ Owners of intellectual property to enjoy certain rights like right to use and licence and certain limitations are also placed upon them.
  - ⇒ Intellectual property includes right relating to :-
- Trademarks and Service marks
- Patents
- Industrial designs etc.

While

— Industrial property
  - It is a kind of intellectual property.
  - It is a collective name given for rights related to industrial or commercial activities of a person and this reflect industrial or commercial rights.
  - Industrial property includes –
    Patents
    Trademark, service mark
    Utility models
    Industrial design
    Geographic origin
    Protection against unfair competition
  - It covers –
    Inventions

Creations
New products
New Processes
New design / model
Distinct marks

DESCRIPTIVE QUESTIONS

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

Answer:

(1) The TRIPS Agreement says WTO member countries must comply with the substantive obligations of the main conventions of WIPO the Paris Convention on industrial property, and the Berne Convention on copyright (in their most recent versions).

(2) With the exception of the provisions of the Berne Convention on moral rights, all the substantive provisions of these conventions are incorporated by reference. They therefore become obligations for WTO member countries under the TRIPS Agreement - they have to apply these main provisions and apply them to the individuals and companies of all other WTO members.

(3) The TRIPS Agreement also introduces additional obligations in areas which were not addressed in these conventions or were thought not to be sufficiently addressed in them.

(4) The TRIPS Agreement is therefore sometimes described as a "Berne and Paris- plus" Agreement.
The text of the TRIPS Agreement also makes use of the provisions of some other international agreements on intellectual property rights:
   (a) WTO members are required to protect integrated circuit layout designs in accordance with the provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty) together with certain additional obligations.
   (b) The TRIPS Agreement refers to a number of provisions of the International Convention for the Protection fo Performers, Producers

of Phonograms and Broadcast in Organizations (Rome Convention), without entailing a general requirement to comply with the substantive provisions of that Convention.

Note: *Article 2 of the TRIPS Agreement specifies that nothing in Parts I to IV of the agreement shall derogate from existing obligations that members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in respect of integrated circuits.*

PRACTICAL QUESTIONS

2015 - June [1] Read the Novartis case on patenting law of Gleevec and answer the questions that follow:

Novartis vs. Union of India & Others is a landmark decision by a two-judge bench of the Supreme Court of India on the issue of whether Novartis could Patent Gleevec in India, and was the culmination of a seven-year-long litigation fought by Novartis. The Supreme Court upheld the Indian Patent Office's rejection of the patent application.

The patent application claimed the final form of Gleevec (the beta crystalline form of imatinib mesylate). In 1993, during the time India did not allow patents on products, Novartis had patented imatinib, with salts vaguely specified, in many countries but could not patent it in India. The key differences between the two patent applications, were that the 1998 patent application specified the counterion (Gleevec is a specific salt imatinib mesylate) while the 1993 patent application did not claim any specific salts nor did it mention mesylate, and the 1998 patent application specified the solid form of Gleevec the way the individual molecules are packed together into a solid when the drug itself is manufactured (this is separate from processes by which the drug itself is formulated into pills or capsules) while the 1993 patent application did not. The solid form of imatinib mesylate in Gleevec is beta crystalline.

In 2000, the United States Food and Drug Administration (FDA) approved imatinib mesylate in its beta crystalline form, sold by Novartis as Gleevec

(U.S.) or Glivec (Europe/Australia/Latin America). TIME magazine hailed Gleevec in 2001 as the 'magic bullet' to cure cancer. Both Novartis patents on the freebase form of imatinib, and on the beta crystalline form of imatinib mesylate are listed by Novartis in the FDA's Orange Book entry for Gleevec. As provided under the TRIPS agreement, Novartis applied for exclusive marketing rights (EMR) for Gleevec from the Indian Patent Office and the EMR was granted in November, 2003. Novartis made use of the EMR to obtain orders against some generic manufacturers who had already launched Gleevec in India. Novartis set the price of Gleevec at USD 2,666 per patient per month; while the generic companies were selling their versions at USD 177 to 266 per patient per month. Novartis also initiated a programme to assist patients who could not afford its version of the drug, concurrent with its product launch.

The Intellectual Property Appellate Board (IPAB) was formed and in 2007 the case was transferred before the IPAB in line with section 117G of the Patents Act, 1970. The IPAB on 26th June, 2009 modified the decision of the Assistant Controller of Patents and Designs stating that ingredients for grant of patent novelty and non obviousness to person skilled in the art were present in the application but rejected the application on the ground that the drug is not a new substance but an amended version of a known compound and that Novartis was unable to show any significant increase in the efficacy of the drug and it, therefore, failed the test laid down by section 3(d) of the Patents Act, 1970.

When examination of Novartis' patent application began in 2005, it came under immediate attack from oppositions initiated by generic companies that were already selling Gleevec in India and by advocacy groups. The application was rejected by the Patent Office and by an Appeal Board. The key basis for the rejection was the part of Indian patent law that was created by amendment in 2005, describing the patentability of new uses for known drugs and modifications of known drugs. That section, Paragraph 3d, specified that such inventions are patentable only if "they differ significantly in properties with regard to efficacy." At one point, Novartis went to court to try to invalidate Paragraph 3d; it argued that the provision was unconstitutionally vague and that it violated TRIPS. Novartis lost that case

and did not appeal. However, Novartis did appeal the rejection by the Patent Office to India's Supreme Court, which took the case.

The Supreme Court case hinged on the interpretation of Paragraph 3d. The Supreme Court decided that the substance that Novartis sought to patent was indeed a modification of a known drug (the raw form of imatinib, which was publicly disclosed in the 1993 patent application and in scientific articles), that Novartis did not present evidence of a difference in therapeutic efficacy between the final form of Gleevec and the raw form of imatinib, and that therefore the patent application was properly rejected by the patent office and lower courts.

Although the court ruled narrowly, and took care to note that the subject application was filed during a time of transition in Indian patent law, the decision generated widespread global news coverage and reignited debates on balancing public good with monopolistic pricing and innovation with affordability. Had Novartis won and gotten its patent issued, it could not have prevented generics companies in India from continuing to sell generic Gleevec, but it could have obligated them to pay a reasonable royalty under a 'grandfather clause' included in India's patent law.

Questions —

(a) Why did Novartis file the case in Supreme Court only after India signed TRIPS? **(15 marks)**

(b) Gleevec patent is already granted in 45 other countries including China. What will Indian industry gain/loss in the rejection of the patent in India? **(15 marks)**

(c) What is your opinion on Novartis' claim that the beta crystalline packing in solid form is a 'novelty' and is thus patentable? **(10 marks)**

(d) What do you understand by 'grandfather clause' of the Novartis patent developed when India did not have product patents? **(10 marks)**

Answer:

(a) India accepted products patents as part of the World Trade Organisation (WTO) deal hence Gleevec patent could be registered and enforced by the Indian Courts.

1. The patent application at the center of the case was filed by Novartis in India in 1998, after India had agreed to enter the World Trade

Organization and to abide by worldwide intellectual property standards under the TRIPS agreement.

2. As part of this agreement, India made changes to its patent law; the biggest of which was that prior to these changes, patents on products were not allowed, while afterwards they were, albeit with restrictions.
3. These changes came into effect in 2005, so Novartis patent application waited in a "mailbox" with others until then, under procedures that India Instituted to manage the transition.
4. India also passed certain amendments to its Patent Law in 2005, just before the laws came into effect, which played a key role in the rejection of the patent application.

Answer:

(b) (A) Indian industry gains in the rejection of the patents:

(i) Savings in outward remittance of foreign exchange
(ii) Dumping shall be restricted
(iii) Generic Medicines shall be available at cheaper rates
(iv) Growth of Indian Pharma Companies
(v) Enhancement of innovation by Indian Pharma Companies

(B) Indian industry losses in the rejection of the patents:

(i) Multinational Companies will invest less money in research in India
(ii) Hinders Medical progress
(iii) Indian Industry will lose credibility
(iv) Multinational Companies will not do R&D in India
(v) Better Technology transfer from outside not possible

Answer:

(c) A novel invention is one, which has not been disclosed, in the prior art where prior art means everything that has been published, presented or otherwise disclosed to the public includes documents in foreign languages disclosed in any format in any country of the world on the date of patent. For an invention to be judged as novel, the disclosed information should not be available in the 'prior art'.

1. The “beta crystalline form” of the molecule is a specific polymorph of imatinib mesylate; a specific way that the individual molecules pack together to form a solid.
2. This is the actual form of the drug sold as Gleevec; a salt (imatinib mesylate) as opposed to a free base, and the beta crystalline form as opposed to the alpha or other form.
3. So, by going through the concept of novelty, the process of “beta crystalline packing in solid form” pass the test of novelty, since, this process is not disclosed anywhere in the prior art.
4. But, if anything to be patentable, then the sole test of novelty is not sufficient. By the virtue of **Section 3 (d)** (as amended), we also have to test that whether the same is differ significantly in properties with regard to efficacy.

Note:

Section 3 (d) of Indian Patent Act, 1970 (as amended) reads as follows: *“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.*

As the beta crystalline form of Imatinib Mesylate being a pharmaceutical substance and moreover a polymorph of Imatinib Mesylate, it directly runs into explanation to ***Section 3 (d)*** *of the Act.*

As Novartis was unable to show any significant increase in the efficacy of the drugs, hence it failed in the test laid down by explanation to ***Section 3 (d)*** *of the Act. So, the same is not patentable under* ***Indian Patent Act, 1970.***

Answer:

(d) **Section 11A (7) of The Patents Act, 1970** provides that on or from the date of publication of the application for patent and until the date of grant of a patent in respect of such application, the applicant shall have the like privileges and rights as if patent for invention had been granted on the date of publication of application.

However, the applicant shall have no right to institute any proceeding for infringement until the patent has been granted. Additionally, the rights of a patentee in respect of applications made under **section 5 (2) of the Patents Act before January 1,2005** shall accrue from the date of grant of patent.

Moreover, after the patent is granted in respect of applications made under section 5 (2), the patent holder shall only be entitled to receive reasonable royalty from such enterprises which have made significant investment and were producing and marketing concerned product prior to January 1, 2005 and which continue to manufacture the product covered by the patent on the date of grant of the patent and no infringement proceedings shall be instituted against such enterprises.

The above provision is termed as "grandfather clause" in common parlance.

The above grandfather clause created "a special regime for generic versions of medicines if the initial patent application was made between the 1st of January, 1995 and the 31st of December, 2004 and if these medicines were already on the Indian market before the 1st of January, 2005. Generics that enter into this category can stay on the Indian market even if their pharmaceutical substance is patented. However, the Indian Law requires that the producers of those generics then pay a "reasonable royalty" to the patent holder.

If Novartis won the case and got the patent, then also the Indian Companies could have continue to sell generic Gleevec, but they have to enter a grandfather clause with Novartis and shall be obligated to pay a reasonable royalty to the patent holder.

2016 - Dec [1] Read the following case on patent law and answer the questions that follow:

Trade Related aspects of Intellectual Property Rights (TRIPS) defines geographical indication as "goods originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin".

In the Indian legal system, Geographical Indication (GI) is governed by the Geographical Indications of Goods (Registration and Protection) Act, 1999. A case relating to GI is that of 'Basmati rice' being patented in the United States of America (USA).

Basmati rice is regarded as the 'queen of fragrance or the perfumed one' and is also acclaimed the 'crown jewel' of South Asian rice. It is treasured for its intense fragrance and taste, famous in national as well as international markets.

This kind of rice is grown in the Himalayan hills, Punjab, Haryana and Uttar Pradesh since times immemorial. Basmati is the finest quality of rice, long grained and the costliest in the world.

Agricultural and Processed Food Products Export Development Authority (APEDA) states India to be the second largest exporter of rice after China. USA is a major importer of Basmati rice totalling 45,000 tonnes. An important case in the history of GI and bio-piracy arose in 1997.

Royal Rice Tec Inc. (RRT), a tiny American rice company with an annual income of around US $10 million and working staff totalling 120, produces a small fraction of the world's (Basmati like) rice with names 'Kasmati' and 'Texmati'. RRT had been trying to enter the world rice market since long, but in vain. On 2nd September, 1997, RRT was issued a patent for its Basmati rice lines and grains by United States Patent and Trademark Office (USPTO) bearing patent number 5663484, which gave it the ultimate rights to call the odoriferous rice 'Basmati' within US, and label it the same for export internationally. According to RRT, its invention of Basmati rice relates to novel rice lines, which affords novel means for determining cooking and which has unique starch properties, etc.

Since times immemorial, majority of farmers from India have been sustaining cultivation of Basmati rice and have been among the leading rice producers of the world. Cultivation of rice is not merely a life sustainer but also a part

of socio-culture in India. Basmati rice produced in India has been exported to countries like Saudi Arabia and UK. Basmati is a 'brand name' of the rice grown in India.

Two Indian NGOs, namely, Centre for Food Safety, an international NGO that campaigns against bio-piracy, and the Research Foundation for Science, Technology and Ecology, an Indian environmental NGO, objected to the patent granted by USPTO and filed petitions in the USA. Council for Scientific and Industrial Research (CSIR), a Government of India organisation also objected to the patent granted to RRT. They demanded an amendment of US Rice Standards on the ground that the term 'Basmati' can be used only for the rice produced/grown in the territories of India.

According to RRT, the invention relates to novel rice lines and to plants and grains of these lines. The invention also relates to a novel means for determining the cooking and starch properties of rice grains and identifying desirable rice lines. Specifically, one aspect of the invention relates to novel rice lines whose plants are semi-dwarf in stature and give high yielding rice grains having characteristics similar or superior to those of good quality Basmati rice. Another aspect of the invention relates to novel rice lines produced from novel rice lines. The invention provides a method for breeding these novel lines. A third aspect relates to the starch index (SI) of the rice grain, which can predict the grain's cooking and starch properties and for selecting desirable segregates in rice breeding programmes.

The Government of India reacted immediately after learning of the Basmati patent issued to RRT, stating that it would approach the USPTO and urge them to re-examine the patent to a US firm to grow and sell rice under the Basmati brand name, in order to protect India's interests, particularly those of growers and exporters. Furthermore, a high level Inter-Ministerial Group comprising representatives of the Ministries and Departments of Commerce, Industry, External Affairs, Agriculture and Bio-Technology, CSIR, All India Rice Exporters Association (AIREA), APEDA and Indian Council of Agricultural Research (ICAR) was mobilised to begin an in-depth examination of the case.

In the presence of widespread uprising among farmers and exporters, India as a whole feels confident of being able to successfully challenge the Basmati patent by RRT, which got a patent for three things : growing rice

plants with certain characteristics identical to Basmati, the grain produced by such plants and the method of selecting the rice plant based on a starch index (SI) test devised by RRT. The lawyers plan to challenge this patent on the basis that the abovementioned plant varieties and grains already exist and thus cannot be patented. In addition, they accessed some information from the US National Agricultural Statistics Service in its Rice Year book 1997, released in January 1998 to the effect that almost 75 per cent of US rice imports are the Jasmine rice from Thailand and most of the remainder are from India, 'varieties that cannot be grown in the US'. This piece of information is sought to be used as a weapon against RRT's Basmati patent. Indians feel that the USPTO's decision to grant a patent for the prized Basmati rice violates the International Treaty on TRIPS. The President of the Associated Chambers of Commerce (ASSOCHAM) said that Basmati rice is traditionally grown in India and granting patent to it violates the Geographical Indications Act under the TRIPS. The TRIPS clause defines Geographical indication as "a good originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin." As a result, it is safe to say that Basmati rice is as exclusively associated with India as Champagne is with France and Scotch Whiskey with Scotland. Indians argue that just as the USA cannot label their wine as Champagne, they should not be able to label their rice as Basmati. If the patent is not revoked in the USA, because unlike the Turmeric case, rice growers lack documentation of their traditional skills and knowledge, India may be forced to take the case to the WTO for an authoritative ruling based on violation of the TRIPS. In the wake of the problems with patents that India has experienced in recent years, it has realised the importance of enacting laws for conserving biodiversity and controlling piracy as well as intellectual property protection legislation that conform to international laws. There is a widespread belief that RRT took out a patent on Basmati only because of weak, non-existent Indian laws and the Government's philosophical attitude that natural products should not be patented. According to some Indian experts in the field of genetic wealth, India needs to formulate a long-term strategy to protect its bio-resources from future bio-piracy and/or theft. British

traders are also supporting India. According to Howard Jones, marketing controller of the UK's privately owned distributor Tilda Ltd., "true Basmati can only be grown in India. We will support them in any way if it's necessary". The Middle East is also according support by labelling only the Indian rice as Basmati. Government and government agencies have gathered the necessary data and information to support their case and to prevent their cultural heritage being taken away from them.

Questions–

(a) Whether Royal Rice Tec Inc. is guilty of bio-piracy? Explain. **(10 marks)**

(b) Discuss whether the decision of the USPTO of granting patent for the valued Basmati rice violates TRIPS. **(10 marks)**

(c) How does the patent granted to RRT by USPTO impact the farmers in India? **(10 marks)**

(d) Whether adequate legislations exist in India with respect to geographical indications? Discuss the salient features. **(10 marks)**

(e) Explain the provisions for registration of geographical indications in India. **(10 marks)**

Answer:

(a) Bio-piracy in general can be defined as the practice of commercially exploiting naturally occurring biochemical or generic material, especially by obtaining patents that restrict its future use, while failing to pay reasonable compensation to the community from which it originates.

It is a manipulation of the Intellectual Property Rights by the corporations, entities and persons to gain an exclusive control over the national genetic resources, without giving adequate recognition and remuneration to the original possessors of those resources.

Indigenous people possess significant old knowledge that have allowed them to sustainably live and make use of biological and genetic diversity within their natural environment for generations. Traditional knowledge naturally includes a deep understanding of ecological processes and the ability to sustainably extract useful products from the local habitat.

Example of bio-piracy includes the recent patents granted by the US Patent and Trademark Office to different American companies on 'Turmeric', 'Neem' and most notably, 'Basmati Rice.

All three products are indigenous to the Indian subcontinent since time immemorial.

RRT's actions constitute bio-piracy because it infringement the provisions of the Convention on Biological Diversity ('CBD' in short), which provides for State's sovereignty over its genetic resources.

The CBD aims to bring about a system for the conservation and sustainable use of biological diversity and the fair and equitable sharing of benefits arising from the use of their genetic resources.

The manner in which RRT established its patent demonstrates that it has ignored the contributions of the local communities in the production of Basmati and that it does not intend to share the benefits accruing from the use of the genetic resources.

This includes both the informal contributions of the farmers who have been growing Basmati for hundreds of year in India and the neighbouring sub-continents, as well as the more formal, scientific breeding work that has been done by rich research institutes to evolve better varieties of Basmati.

RRT has capitalized on this work of the indigenous community by taking out a Patent on Basmati and intends to monopolize the commercial use of a past research, without giving any recognition or remuneration to those who played a key role in the evolution and breeding of Basmati rice in its natural habitat.

Theft involved in the Basmati patent is therefore classified threefold namely a theft of collective intellectual and biodiversity heritage on Indian farmers, a theft from Indian traders and exporters whose markets are being stolen by RRT, and finally a deception of consumers because RRT is using a stolen name Basmati for rice which are derived from Indian rice but not grown in India, and therefore are not the same quality.

RRT has unfairly appropriated and exploited the genetic resources in this case by attempting to gain an exclusive control on its development and propagation through a legal process that threatens the traditional rights of the original possessors of the resource.

The key concern relates to RRT's use of the term 'Basmati' to describe its rice lines and grains. 'Basmati' is associated with the specific aromatic rice variety grown in India and by taking out a Patent on the use of the term to describe its invention.

RRT has potentially reversed the culpability, and made India the violator of RRT's legally protected rights despite the fact that the latter are the original possessors and breeders of the 'Basmati' rice. RRT in guilty of bio-piracy.

(b) The grant of a Patent to RRT on Basmati does violate certain provisions of TRIPS.

The TRIPS Agreement provides for certain standards to be fulfilled before grant of a protection in the form of Intellectual Property Rights which are particularly relevant for the purposes of determining whether there was any act of bio-piracy involved in the above case.

RRT's patent on Basmati violates Article 22 of the TRIPS, which deals with Geographical Indications.

As defined under **Article 22(1)** of TRIPS, Geographical Indications are indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other features of the goods is essentially attributable to its geographical origin.

For example, wines and liquors are most commonly associated with Geographical Indications of their place of origin.

The term "Champagne" can only be used to describe a wine that has been produced in the Champagne region of France, the area from which the wine derives its name.

Wine with similar features but produced in another part of the world, cannot be described a "Champagne".

"Champagne" remains an exclusive product and the name as the exclusive property of the French company producers.

A similar case of Geographical Indication is that of a "Scotch", a whisky, which is produced in the Scottish highlands.

This protection for Geographical Indications for wines and liquors is outlined in Article 23 of the TRIPS.

Basmati falls in this category because it enjoys the same closely linked and exclusive relationship with its place of origin in India.

In India, Basmati is grown mainly in some scattered districts of Punjab, Haryana and Uttar Pradesh. India grows tons of rice annually.

Hence, it is clear that Basmati rice, as it is traditionally recognized, is geographically unique in its origin.

The Basmati Patent resulted in a brief diplomatic crisis between India and United States with India threatening to take the matter to WTO as a infringement of TRIPs, since a GI product cannot be patented under the provision of TRIPs.

However, ultimately, due to review decisions by the United States Patent Office, RRT has lost most of their claims of the patent, including, most significantly, the right to call their rice "basmati."

There is a precedent also for the recognition of Basmati as a Geographical Indication by the International Buyers.

The European Commission recognizes India's and other neighbouring sub-continent's rights over products bearing their distinctive geographical indications, allowing only Basmati rice that has been grown in India and neighbouring sub-continent to be labelled as such.

Similarly, the code of practice for rice in the UK, the largest market for Basmati rice in Europe, describes long grain, aromatic rice grown only in India and neighbouring sub-continent as Basmati.

(c) RRT's patent could impact Indian farmers in the following two possible ways:

(i) By displacement of Basmati exports from India; and

(ii) By monopolizing the Basmati seed supplies.

Regarding the first possible inroads which may be made by the USA into the South Asian export markets, it is a matter of concern to the Indian farmers.

In 1995, USA produced 7.89 million metric tons of rice and in the same year India produced 122.37 million metric tons of rice.

American rice exports are significantly greater than India, implying that USA has a greater production surplus.

In 1994 itself, USA exported more volumes of rice as compared to India and its neighbouring sub-continent.
Hence, owing to the RRT's patent, it seems that potential exists for USA to displace Indian Basmati exports.
Criticism from Indian rice farmers logically ensued, as many were forced to pay royalties to the conglomerate.
The production and cultivation of Basmati has with it a history dating back to centuries ago.
For farmers, the grain is an entity that is constantly evolving.
In the context of India, Basmati rice has always been considered a common resource dependent upon word of mouth knowledge and transfer.
Using this logic, Rice Tec alleged that the 'Basmati name was in public domain, and that by patenting if; they were in actuality protecting its name and origins.
RRT soon came out with hybrid versions Kasmati, Texmati, Jasmati, which for rural farmers clearly illustrated the profit based interest of the conglomerate.
Through its acquisition, RRT patented some 22 varieties of the rice. One of which being Basmati 867, a rice grain which was very similar to original Basmati but was advertised to have a less chalky more refined taste.
The severity of RRT's bio piracy cannot be underestimated, as the conglomerate was claiming to have invented the physical characteristics of Basmati such as the plant height and grain length.
By claiming ownership of the rice plant itself, RRT was directly threatening rural farming communities.
A second and more serious threat is that, through its patent, RRT could acquire a monopoly over Basmati seed supply to the sub-continent.
It is a premier developer of commercial hybrid rice varieties in the USA.
A precedent exists that foreign agri-business companies have bought hybrid seeds to Third World Countries. For instance, Monsanto has recently undertaken a joint venture with Grameen Bank in Bangladesh to distribute its hybrid seeds through loan packages to small farmers.

Hybridization is likely to harm small farmers more as they are less able to absorb the higher seed costs.

In its extreme form, such hybridization could harm genetic diversity and deplete farmlands of their intrinsic resources.

(d) In India, the legal system for Geographical Indication ('GI' in short) protection has been developed very recently. The provisions in that regard are contained in the Geographical Indications of Goods (Registration and Protection) Act ('GI Act' in short) which was enacted in the year 1999 and came into force only in September 2003.

Salient Features of Legal Protection to Geographical Indications in India:

1. Comprehensive Definition of GI	From the perspective of a developing country, one of the best features of the GI Act is the comprehensive definition of GI laid down therein, whereby agricultural, natural and manufactured goods all come under the ambit of the term GI.
2. Detailed Registration Mechanism	The Act provides a mechanism for registration of GIs, establishes a GI Registry, and elaborates the concept of 'authorized user' and 'registered proprietor'. **Section 11** of the Act provides that any association of persons, producers, organization or authority established by or under the law can apply for registration of a GI.
3. Extended Protection	Another important aspect of the Act is the possibility of protecting a GI indefinitely by renewing the registration when it expires after a period of ten years.
4. Higher level of Protection to Notified Goods	The Act provides a higher level of protection for notified goods and the corresponding remedies for their infringement. In the Indian context, the GI Act has tried to extend the additional protection reserved for wines and spirits mandated by TRIPS to include goods of national interest on a case to case basis. **Section 22(2)** of the Act endows the

	Central Government with the authority to give additional protection to certain goods or classes of goods.
5. Restrictions on Appropriation, Assignment and Transmission	**Section 25** of the Act, by prohibiting the registration of a GI as a trademark, tries to prevent appropriation of a public property in the nature of a GI by an individual as a trademark, leading to confusion in the market. Also according to **Section 24** of the Act, a GI cannot be assigned or transmitted. The Act recognizes that a GI is a public property belonging to the producers of the goods concerned; as such, it cannot be the subject matter of assignment, transmission, licensing, pledge, mortgage or any contract for transferring the ownership or possession.
6. Infringement of Geographical Indications	The remedies relating to the infringement of Geographical Indications are similar to the remedies relating to the infringement to Trademark. Similarly, under the (Indian) Geographical Indications of Goods (Registration and Protection) Act, 1999, falsification of a Geographical Indication will carry a penalty with imprisonment for a term which may not be less than six months but may extend to three years and with fine which may not be less than INR 50,000 but may extend to INR 2,00,000. Action for infringement of a Geographical Indication may be instituted at a District Court or High Court having jurisdiction.

Available relief include:

- Injunction,
- Discovery of documents.
- Damages or accounts of profits
- Delivery-up of the infringing labels and indications for destruction or erasure.

(e) Provisions for the registration on Geographical Indication are as follows:

Section 8 of the Geographical Indications of Goods (Registration & Protection) Act, 1999 provides that a geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar and in respect of a definite territory of a country, or a region or locality in that territory, as the case may be.

The Registrar may also classify the goods under in accordance with the International classification of goods for the purposes of registration of geographical indications and publish in the prescribed manner in an alphabetical index of classification of goods.

Any question arising as to the class within which any goods fall or the definite area in respect of which the geographical indication is to be registered or where any goods are not specified in the alphabetical index of goods published shall be determined by the Registrar whose decision in the matter shall be final.

Application	According to **Section 11 of the Act,** an application for registration must be made before the Registrar of Geographical Indications by an association of persons or producers or an organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods.
Particulars of Application	The application must be made in an appropriate form giving details with respect to the nature, quality, reputation or other characteristics which are due exclusively or essentially to the geographical environment, manufacturing process, natural and human factors, map of territory of production, appearance of geographical indication (figurative or words), list of producers, along with prescribed fees.

Examination of Application	The examiner will make a preliminary scrutiny for deficiencies and in case of deficiencies the applicant shall have to remedy it within a period of one month from the date of communication of such deficiencies.
Acceptance or Refusal of Application	The Registrar may accept, partially accept or refuse the application. In case of refusal, the Registrar will give written grounds for non-acceptance. The applicant must within two months file its reply. In case of re-refusal, the applicant can make an appeal within one month of such decision.
Advertisement of the Application	**Section 13** of the Act states that the Registrar shall, within three months of acceptance of the application for registration of a GI, but before its registration, may advertise the application in the GI Journal.
Registration	As per **Section 16 of the Act,** if there is no opposition to the grant of GI, the Registrar will grant a certificate of registration to the applicant and its authorized users.

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATION

SHORT NOTES

Question - 1 : Write short notes on the following:

(i) Utility Models
(ii) The Berne Convention
(iii) Advantages of PCT Filing
(iv) Issues covered under TRIPS Agreement.

Answer:

(i) Utility Models

A utility models is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using the

protected invention, without his authorization for a limited period of time. Utility models are also known as " petty patents" or " innovation patents".

India does not have legislation on utility models at present .Utility models are much cheaper to obtain and to maintain. In some countries, utility model protection can only be obtained for certain fields of technology, and only for products but not for processes. Utility models are primarily used for mechanical innovations.

(ii) The Berne Convention

The first and the most important step in the direction of copyright protection was taken when a few countries of the world signed an agreement in Berne in the year 1866 . It is known as the Berne Convention and has got the privilege being the first document of an international character in the field of protection of Intellectual Property Right in general and copyright in particular.

The Berne Union has an Assembly and an Executive Committee. Every country member of the Union which has adhered to atleast the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union , except for Switzerland, which is a member ex-officio.

The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, was again revised at Rome, Brussels, Stockholm and Paris in different years and was amended in 1979.

The convention was based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries.

(iii) Advantages of PCT Filing

The advantages of Patent Co-operation Treaty (PCT) for the applicant, the patent offices and the general public are as follows:

(a) The applicant has up to 18 months more than in a procedure outside the PCT to reflect on the desirability of seeking protection in foreign countries,
(b) In each foreign country a local patent agents is to be appointed,
(c) To pay the national fees and to prepare the necessary translations.
The PCT filing assures the applicant that if his international application is in the form prescribed by the PCT, it cannot be rejected on formal grounds by any designated office during the national phase of the processing of the application.
On the basis of the international search report, the applicant can evaluate with reasonable probability the chances of his invention being patented. On the basis of the international preliminary examination report, that probability is even stronger; the applicant has the possibility to amend the international application to put it in order before processing by the designated offices.

(iv) Issues Covered Under TRIPS Agreement

The TRIPS agreement focuses on the following issues:
(a) How basic principles of the trading system and other international intellectual property agreements should be applied .
(b) How to give adequate protection to intellectual property rights.
(c) How countries should enforce those rights adequately in their own territories.
(d) How to settle disputes on intellectual property between members of the WTO.
(e) Special transitional agreements during the period when the new system is being introduced.

DESCRIPTIVE QUESTIONS

Question - 1: What is “intellectual property rights”. List out the subject matter protected by IPR under the World Intellectual Property Organization.

Answer :

Intellect means perception. It is the barometer of one's understanding of persons or things of events and concepts, individually or collectively. Intellectual Property (IP) refers to the creations of the human mind like inventions, literary and artistic works and symbols, names, images and designs used in commerce.

Intellectual property is divided into two parts:

(a) Industrial property and

(b) Copyright.

Industrial property includes inventions (patents), trademarks, industrial designs and geographic indications of source and

Copyright includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, sculptures and architectural designs.

Intellectual property encompasses four separate and distinct types of intangible property namely:

(a) patents,

(b) trademarks,

(c) copyrights,

(d) trade secrets .

All the above types of intangible property collectively are referred to as "intellectual property".

Products that are used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value. For example, brand- named clothing.

Therefore, creators are given the right to prevent others from using their inventions, designs or other creations. These rights are known as "intellectual property rights".

The convention establishing the World Intellectual Property Organization (1967) listed the subject matter protected by intellectual property rights are as follows:

(1) literary, artistic and scientific works;

(2) performances of performing artists, phonograms and broadcasts;

(3) inventions in all fields of human endeavor;

(4) scientific discoveries;
(5) industrial designs;
(6) trademarks, service marks, commercial names and designations;
(7) “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields” and
(8) protection against unfair competition.

Question - 2: What is World Intellectual Property Organization?
Answer :
The World Intellectual Property Organization is a specialised agency of the United Nations for developing a balanced and accessible international intellectual property regime with an aim to reward creativity, stimulate innovation and contribute to economic development while at the same time safeguarding the public interest.

WIPO was established in the WIPO convention in 1967 with a mandate from the member countries to promote the protection of intellectual property through out the world through cooperation among the states and in collaboration with other international organizations. Its headquarters are in Geneva, Switzerland . The need for international protection of intellectual property became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries. In 1883 marked the origin of the Paris convention for the Protection of Industrial Property, the first major international treaty designed to help the people of one country obtain protection in other countries for their intellectual creations in the form of industrial property rights, known as inventions (patents); trademarks; industrial designs.

In 1886 , Copyright entered the international arena with the Berne Convention for the protection of Literary and Artistic works to help nationals of its member states obtain international protection of their : -
(1) right to control ; and
(2) receive payment for
    (a) the use of their creative works such as novels, short stories, poems, plays;
    (b) songs, operas, musicals, sonatas; and
    (c) drawings, paintings, sculptures, architectural works.

The Paris Convention and the Berne Convention set up an International Bureau to carry out administrative task. In 1893, these two small bureau united to form an international organization called the United International Bureau (BIRPI) for the protection of Intellectual property. The BIRPI indeed was the predecessor of the World Intellectual Property Organization.

Later, the convention establishing the World Intellectual Property Organization, BIRPI became WIPO and in the year 1974, WIPO became a specialized agency of the United Nations System of Organizations, with a mandate to administer intellectual property matters recognized by the member states of the UN.

Question - 3: What is TRIPS Agreement? Outline the three main features of TRIPS Agreement?

Answer :

With the establishment of the World Trade Organization (WTO), the importance and role of the intellectual property protection has been crystallized in the Trade-Related Intellectual Property System (TRIPS) Agreement.

The World Trade Organization's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members.

The objectives include:

(1) The reduction of distortion and impediments to international trade.

(2) Promotion of effective and adequate protection of intellectual property rights.

(3) Ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

The TRIPS Agreement encompasses in principle all forms of intellectual property and aims at harmonizing and strengthening standards of protection and providing for effective enforcement at both national and international levels. It addresses applicability of general GATT principles as well as the provisions in international agreements on IP. It establishes standards for:

(i) availability;
(ii) scope;
(iii) use;
(iv) enforcement;
(v) acquisition;
(vi) maintenance of Intellectual Property Rights.

Features of TRIPS Agreements are as follows:

(1) **Standards:** The TRIPS Agreement set out the minimum standards of protection to be provided by each member.
(2) **Enforcement:** It deals with domestic procedures and remedies for the enforcement of intellectual property rights.
(3) **Dispute settlement:** The agreement makes disputes between WTO members about the respect of the TRIPS obligations subject to the WTO's dispute settlement procedures.