

**PATENT AGENT EXAMINATION, 2010**  
**(Under Section 126 of the Patents Act, 1970, as amended)**

**January 23, 2010**

**PAPER 1**

**TOTAL MARKS: 100**

**Time: 11 AM to 2PM (3 hours)**

**Total number of pages: 8**

**Instructions:**

*This paper consists of 2 parts.*

*The first part (Part A) of 40 marks requires you to pick the right answer(s) from amongst given choices. This part consists of multiple choice questions (Part A1) and true/false type questions (Part A2). You must answer all questions in this Part.*

*The second part (Part B) of 60 marks requires written answers. This part consists of 10 questions of 4 marks each (Part B1) and 5 questions of 10 marks each (Part B2). You may choose any five questions from Part B1 (20 marks) and any four questions from Part B2 (40 marks).*

*Please read the questions very carefully before answering them. Please also divide your time appropriately so that you are able to complete all answers in time.*

**PART A (40 MARKS)**

**PART A1 (30 MARKS)**

***Each Question Below Carries Two (2) Marks. Please answer all the questions***

**Instructions:**

*Chose the right answer by indicating your choice in the answer sheet given to you against the relevant question number.*

*If there are two good answers for a question, you must chose both.*

*Illustratively, if the right answer to Question (1) is "c", you must write:*

*Question (1) = c.*

*Similarly if question 1 has two right answers ("b" and "c"), then you must indicate:*

*Question (1) = b and c.*

*In the above example, if you pick only "b" and not "c", you will lose half the mark for that question. However, if you chose a wrong option, you will not get any marks. Illustratively, if you chose "a", "b" and "c" in the above example, you will not get any marks.*

1. A granted patent gives the patentee the right to claim damages:
  - a. From the priority date of the patent
  - b. From the date of grant of the patent
  - c. From the date of filing of the complete specification
  - d. From the date the patent applicant has survived an opposition proceeding
  - e. From the date of publication of the patent application in the official journal
  
2. A patent can be revoked
  - a. Anytime after its grant
  - b. Only after 1 year from the date of grant
  - c. Only after 3 years from the date of grant
  - d. Only after obtaining permission from the Controller of Patents
  - e. All of the above
  
3. India is a member of the
  - a. Paris Convention
  - b. Patent Cooperation Treaty (PCT)
  - c. Strasbourg Agreement
  - d. Substantive Patent Law Treaty
  - e. All of the above
  
4. As per the Indian Patent Act, a complete specification must be filed within
  - a. 12 months of filing a provisional application
  - b. 18 months of filing a provisional application
  - c. 15 months of filing a provisional application
  - d. 10 months of filing a provisional application
  - e. None of the above
  
5. A product may be sold in the market without destroying its novelty
  - a. Only after applying for a patent
  - b. Only after the grant of a patent
  - c. Only after publication of the patent application in the official journal.
  - d. Only if the process for its preparation is kept secret
  - e. None of the above.
  
6. Prior Art does not include:
  - a. Knowledge disclosed in publications
  - b. Knowledge disclosed only orally
  - c. Knowledge disclosed only to members of one's family
  - d. Knowledge disclosed only in patents
  - e. Knowledge available in the public domain
  
7. A complete patent specification shall disclose
  - a. All the methods of performing the invention
  - b. All anticipated uses of the invention

- c. The best method of performing the invention
  - d. All of the above
  - e. None of the above
8. As per the Indian Patent Act, a resident in India:
- a. Is free to file a patent in a foreign country without first filing the said patent in India.
  - b. Can file a patent in a foreign country without first filing the said patent in India, only under certain special circumstances
  - c. Can file a patent in a foreign country only after filing a PCT application on the same subject matter.
  - d. Can file a patent in a foreign country only after grant of the said patent in India
  - e. None of the above
9. Can the government of India use any patented invention merely for its own use?
- a. Yes
  - b. Yes, it can do so, only when the President of India sanctions such use
  - c. Yes, it can do so, only if the government notifies its intention of using the said patent before two months of such use
  - d. Yes, only after 3 years of the date of grant of the patent
  - e. All of the above
10. An Indian generic company can export a drug which is patented in India to Nepal, where there is no such patent, if:
- a. It obtains a compulsory license in India under section 84.
  - b. It obtains a compulsory license in Nepal
  - c. It obtains a compulsory license in both India (under section 84) and Nepal
  - d. The government of Nepal issues a notification on public health grounds
  - e. None of the above
11. Assume that A is the first person to discover the method of making lemon juice by combining lemon with water and sugar. A patents the method of making the juice as also the product (juice) that is made. B is a professor and teaches his students in his hotel management class how to make lemon juice. B then asks his students to taste the juice so made. Does B infringe A's patent?
- a. Yes
  - b. No, since B's method of teaching does not fall within the scope of the A's claim.
  - c. No, since the Indian Patents Act provides a specific exemption in favour of B's activity.
  - d. No, since the Indian Patents Act grants B a compulsory license to use the patent and teach the students
  - e. None of the above

12. A sues B for the violation of his patent (granted on 1.1.2009 and covering a fungicide) in a district court in India. B wishes to invalidate the patent on 1.2.2010. B can
- File a revocation petition at the IPAB
  - File a revocation petition at the High Court
  - File a counterclaim in the District Court asking that the patent be revoked.
  - File a post grant opposition to the patent
  - All of the above
13. A has a process patent covering a method of making a drug to cure baldness. B sells the same drug in the market. If A sues B for infringement, on whom lies the burden of proof?
- On A
  - On B
  - On the court
  - On the Indian patent office
  - None of the above
14. A is granted a patent on 1.1.2006 for a drug. It proceeds to sell the drug at a very expensive price that is not affordable by the average Indian consumer. B infringes the patent and is restrained by a court of law on 1.10.2008. B then files a compulsory licensing application after 2 months, stating that A's drug is too expensive. Will B succeed?
- Yes
  - No
  - Yes, provided B complies with all the formalities for applying for such license
  - Yes, provided B gets a good lawyer.
  - Yes, provided B gets permission from the Controller General of Patents
15. What grounds of opposition are not included within Section 25(1):
- the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim.
  - the complete specification does not sufficiently and clearly describe the invention.
  - the request for examination pursuant to the filing of the complete specification has not been made by the applicant
  - the applicant has failed to disclose to the Controller the information required under section 8 of the Act.
  - None of the above

**PART A2 (10 MARKS)**

**Each Question Below Carries One (1) Mark. Please answer all questions.**

**Instructions:**

Please select whether the below propositions are "true" or "false". You can only select either "true" or "false". You must indicate your choice in the answer sheet given to you against the relevant question number.

Illustratively, if the right answer to Question (1) is "true", you must write:

Question (1) = true.

1. A pre grant opposition decision in favour of the patent applicant can be appealed to the IPAB.
2. A genetically modified plant is patentable.
3. A "true and first inventor" includes a person who qualifies as the first importer of an invention into India.
4. In a successful post grant opposition, the Controller may ask the patentee to amend the patent specification.
5. The Controller himself can revoke a patent for its non-working, after the expiration of two years from the date of the order granting the first compulsory license in relation to such patent.
6. The Request for examination can be made only by an applicant
7. A patent can be surrendered even after 48 months from the date of grant.
8. Sildenafil citrate was known to cure heart ailments. It is subsequently discovered to possess properties that can cure erectile dysfunction. This new property is not patentable in India.
9. A patent is applied for an invention relating to an improved public drainage system. Ten months prior to the application, the system was tested by the municipal authorities in Mumbai. The patent cannot be granted, since it was anticipated.
10. The Controller under section 26(1) has the power to substitute the name of the opponent, if he finds that the invention has been obtained by fraud



## PART B (60 MARKS)

### PART B1 (20 MARKS): Each Question Below Carries Four (4) Marks Each

#### Instructions:

*This Part contains ten (10) questions. Please answer any five (5) questions from amongst them. Your answer must be brief and to the point. While answering the questions, you are expected to support your answer by giving reasons and citing the relevant sections and rules in the Indian Patents Act.*

1. Your client has filed a provisional patent application on January 1<sup>st</sup> 2006. She is unable to file her complete patent application by December 31<sup>st</sup> 2006. As a patent agent representing her, what options would you suggest?
2. Laila and Majnu, a happily married couple co-invent a tracking device. Using the very same tracking device, Majnu discovers that Laila was having an affair with their driver, Romeo. Thereafter Majnu divorces Laila and files a patent in his own name to cover the said tracking device. Upon learning of this, Laila approaches you to represent her. How would you advise her?
3. A patent has been granted to Lily on January 1<sup>st</sup> 2002. However she has failed to pay the renewal fees in 2006, which she realised in January 2007. She approaches you. What would your advice be?
4. Manoj attended a fair in New Delhi on 25<sup>th</sup> Jan, 2009 and displayed his newly invented device. Thereafter, he received several enquiries for the commercialisation of his device. He now wishes to file a patent in India and other countries abroad.

As a patent agent representing him, what would your advise be?

5. Your client Sivaram has filed a patent application in Germany on January 1<sup>st</sup> 2006. He has filed a PCT application on December 31<sup>st</sup> 2007. By which date should you file his national phase application in India? Assuming you have filed his national phase application in India on January 1<sup>st</sup> 2008, what is the last date by which the request for examination is to be filed in India to keep his application live?
6. A patent application was granted in India on January 1<sup>st</sup> 2008. On January 1<sup>st</sup> 2010 the applicant wishes to amend some of the granted claims. Please advise the applicant on whether he can do this, and if so, how he should proceed.
7. Your client has applied for a provisional patent application in India. Draw a time line of all the important events till the date of grant of her patent application as per the Indian Patents Act and Rules.
8. You have filed a provisional patent application in India and now wish to file an application under the Patent Cooperation Treaty (PCT). Draw a timeline with the important dates for actions under the PCT system.

9. A patent application was filed in the Delhi Patent Office on a new pair of jeans. The inventive concept is that the stitches are so designed that the pockets do not bulge out when the user sits on a chair. The patent was examined by the Patent Office and the examiner objected on the ground of "insufficient description" of the invention in the specification. Thereupon, the applicant argues that some of the drawings in the specification describe the kind of stitches claimed. The Controller is however not satisfied with the explanation. If you were representing the patent applicant, how would you proceed?
10. Rahman, a renowned artist creates a beautiful song called "Soja" that becomes an instant hit. In particular, people suffering from insomnia find that it instantly puts them to sleep. If Rahman wishes to patent his invention and approaches you, how would you advise him?

**PART B2 (40 MARKS): Each Question Below Carries Ten (10) Marks Each**

**Instructions:**

*This Part contains Five (5) Questions. Please answer any Four (4) questions from amongst them. Your answer must be brief and to the point. While answering the questions, you are expected to support your answer by giving reasons and citing the relevant sections and rules in the Indian Patents Act.*

1. Your client, Mr Karimeen has developed a complex electro-mechanical device for fishing in lakes. His device is able to sense the movement of fishes and then adjust the angle of the bait to effectively attract the fishes. After filing the complete specification, Karimeen realises that the mechanism and the programmed chip in the device can be used for various other applications. How would you protect all features of Karimeen's inventions?

After a few years, Mr Nettoli, a renowned fisherman from Mangalore makes an improvement on the device. Since you are the best patent attorney in India, Nettoli also approaches you to protect his invention. You find that Nettoli's invention is novel but lacks an inventive step. What will be your approach in helping protect Nettoli's interests?

2. The "Wangdu" tribe, settled in the lush green forests of southern India, are reputed for their ability to solve complex puzzles. Several research groups visited this area to study this interesting tribe. One such group from the Imperial Institute of Technology (IIT), led by Professor Bhagat, suspected that the mental skills of these indigenous tribals was due to their consumption of the leaves of a plant called "Piya".

Sensing the potential of these leaves for a blockbuster brain power enhancing drug, they took samples to the US to do further research. After forming a company, Rancho Inc to exploit this new discovery, Prof. Bhagat's team identifies the active ingredient ("Fenon") and makes a drug based on it called "Brain-Gain". Rancho Inc files patents for the drug and its process of manufacture in the US, EU, Japan, India

and other leading markets. After a lengthy examination process, Rancho Inc obtains a patent in India in May 2008.

Brain-Gain is a huge hit in the market and makes over a million dollars in the very first month of its sale. As expected, the patentee deliberately ignores the Wangdu tribals, who get nothing from the commercial exploitation of their traditional knowledge.

Virus Ltd, an Indian Company desires to introduce a similar product in the India. It therefore plans to challenge the Indian Patent. Virus Ltd approaches you for advice in March 2009. What would your advice be? (6 marks)

3. In the question above, assume that Virus Ltd fails in invalidating Rancho's patent. Consider the following circumstances and answer accordingly:
  - i) Virus Ltd tries to make a generic version of Brain-Gain. Upon discovering that Virus was testing the drug in its lab, Rancho sues Virus. What defence can be claimed by Virus?
  - ii) Virus creates "Zenon", an ester derivative of "Fenon" that has better bioavailability in the body than Fenon. Can Virus patent Zenon?
4. Funsuk, a young inquisitive student with a passion for travel and adventure wanders in the beautiful hills of Meghalaya and discovers "lemon" for the first time in the history of the world. He finds that it has an excellent "tangy" taste. Answer the following:
  - i) Can he obtain a patent for the lemon?
  - ii) The student finds that mixing the lemon with water and sugar makes a very refreshing drink. Is this patentable? Assume that somebody has already patented orange juice earlier, the invention essentially consisting of a combination of orange, water and sugar.
  - iii) Assume that Funsuk obtains a patent for lemon mixed with water and sugar. Farhan, a good friend of Funsuk's now finds that this patented combination of lemon and water is very good for curing headaches. Can Farhan patent his finding?
5. A company, Larva Ltd has a patent in India for a process to manufacture a wonder drug that cures malaria. There is a severe epidemic of malaria in some regions in India. Larva is however unable to supply the required volume of the wonder drug in India during this crisis. A company, Proboscis Ltd approaches Larva Ltd for a licence to manufacture the wonder drug to supply during the crisis period. However the negotiations for a license fail. What options does Proboscis now have, if it still wishes to make the drug and supply it in India?

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