SCHOOL OF LAW
CHRIST UNIVERSITY

NATIONAL MOOT COURT COMPETITION 2013

MOOT PROBLEM

The Republic of Germ-many, is, as the name indicates, afflicted with a number of diseases, and deadly ones at that. It considers itself to be a developing country with a significant gap between the haves and have-nots.

Of late, there has been pressure to reduce healthcare costs, particularly in relation to cancer drugs. In its latest policy, the Germ-many government promised affordable medicine to all citizens.

Ameryana is a developed country and has established itself in the area of manufacturing life saving drugs. While Ameryana evangelizes the “patent” bible at every opportune moment, Germ-many decries what it believes to be a highly lopsided instrument that does nothing more than reify existing power hegemonies and is premised on a fallacious innovation inducing argument. Germ-many’s tryst with TRIPS has not been a particularly happy one. While initially it tripped itself up over this instrument and was taken to the WTO dispute panel, which promptly ordered it to comply, of late, it has become fairly proficient at “gripping” it. In particular, it has acquired some notoriety for living upto its yogic heritage and stretching the legal instrument to extents never imagined before.

Its philosophy in this regard is best expressed in the dying declaration of its erstwhile commerce minister, who even whilst breathing his last ruminated on the legal instrument thus:

"We are all aware that the text of the TRIPS is a masterpiece of ambiguity, couched in the language of diplomatic compromise, resulting in a verbal tight-rope walk, with a prose remarkably elastic and capable of being stretched all the way to Geneva."

Pursuant to its policy to reduce healthcare costs and blunt the “patent” blade, the following measures were implemented by Germ-many by way of an amendment to the Patents Act in November 2012.

The highlights of the PATENTS (AMENDMENT) ACT 2012

i. Any party may apply for a compulsory license of a patented invention on the following grounds:

   a. The patentee does not meet the "reasonable requirements of the public".

      Explanation: The term "reasonable requirements of the public" *interalia* includes situations where the price of the patented invention is unaffordable to a majority of the population.

   b. The patented invention is not manufactured in the territory of Germ-many.

ii. In all law suits where pharmaceutical patent infringement is alleged, the interim injunction phase shall be dispensed with and the matter should proceed directly to trial.

iii. The Government can issue a notification at any time calling for a compulsory license over a patented invention on the grounds of national emergency or extreme urgency or public non-commercial use.

It may be noted that the law also comprises all procedural pre-requisites mandated by TRIPS such as the need for voluntary negotiations etc.

In 2001, Medimax Inc. (Medimax), a pharmaceutical conglomerate headquartered in Ameryana began research on a potential cure for lung cancer. In April 2007, they hit upon a viable lead and immediately applied for a patent covering the new chemical entity (NCE) 'dichloro endoclan'. Within two years, they were granted regulatory approval to market a drug containing this NCE and in August 2009, their patent was granted in Germ-many. Thereafter Medimax started selling the drug named "Candid" in Germ-many. The crude form of the NCE was made in Ameryana and was

thereafter refined and combined with other additives etc in Germ-many to secure the end product.

In December 2012, Medimax discovered that Medirip Inc (hereafter Medirip), a company with its Registered Office in Germ-many was selling a generic version of their drug called “Placid”. Aggrieved by the same, Medimax filed an infringement suit against Medirip in the District Court of Virulin in Germ-many. In their plea they sought for a permanent injunction against the manufacture and sale of Placid. They also filed an interim application for interim injunction. Owing to the newly amended law, the judge does not entertain the interim application but moves the matter directly to trial. Medirip counterclaims arguing that the patent itself is invalid.

Whilst the suit is pending, Medirip files a compulsory licensing application before the Controller of Patents arguing that Candid was not locally manufactured in Germ-many.

During the course of arguments pertaining to the compulsory licensing application, the State of Germ-many issues a notification stating that all patented cancer drugs would automatically be subject to a compulsory license, and any such patent can be worked by private parties (who apply to the government for permission to use the patent) or the government itself or for public non-commercial use.

Meanwhile, Medimax files a writ petition in the Supreme Court of Germ-many claiming that the Amendment to the Patent Act is unconstitutional being interalia arbitrary and discriminatory.

The Counsel for the Petitioner has to argue for Medimax Inc. The Counsel for the Respondent represents The Union of Germ-many and Medirip Inc.

The laws of Germ-many are *in pari materia* with the laws of India.

This year's moot problem has been created by Prof. Shamnad Basheer. Professor Basheer joined NUJS in November 2008 as the first Ministry of Human Resource Development Chaired Professor in Intellectual Property Law. Prior to this, he was the Frank H Marks Visiting Associate Professor of Intellectual Property Law at the George Washington University law school and a research associate at the Oxford Intellectual Property Research Center (OIPRC). He started several initiatives such as SpicyIP, IDIA, P-PIL and Lex Biosis. He is regularly consulted by the Government and Parliamentary Committees on IP policy issues and legislations.