IP Markets National Moot Court Competition 2015

Moot Problem

M/S. WILLY BILLY INC

V.

M/S. PRUDENT INDUSTRIES AND ANOTHER

M/s. WILLY BILLY INC., (hereinafter referred to as WB Inc.) is a manufacturer of a machinery called as separator; mainly used in drug manufacturing industries and milk chilling plants. The machinery is used to separate contaminants from raw materials for drug manufacturing and raw milk products and such raw material may be in free flowing liquid form or even solid forms.

M/s. W.B. INC., has its factory located in New Zealand and has a fully owned subsidiary WILLY BILLY India Limited, (hereinafter referred to as WBIL) in Hyderabad, India. W.B. INC., has been granted a patent in the year 2007 being Patent No. 422231 in India for the Separator and in various countries being New Zealand, UK, USA, Russia, Japan and China . One of the relevant claims in the patent is as below:-

> *"A separator apparatus for the separation of contaminants from solid and liquid food and drug products comprising of:*
>
> *a plastic stand holding a glass funnel possessing a first and second ends; a mesh dish placed at the mouth of the said funnel along with a strainer dish placed at the top of the funnel near its said first end and a collection vessel situated further at the bottom of the funnel shank carrying the inbuilt fluid regulator near the said second end within the plastic stand.."*

W.B. Inc sells these separators under a brand "ZEEKO" which is registered trademark in India USA, EUROPE, CHINA, RUSSIA, JAPAN and New Zealand. W.B. INC., through WBIL has sold few such separators to some of the milk chilling plants and drug manufacturers in India and across the world. The product was found to be very effective and the users never had any complaints with regard to the functionality and results from the product.

M/s. Prudent Industries (hereinafter referred to as PI) established in the year 1920, located in Balanagar, Hyderabad, India is a manufacturer of various machineries for milk chilling plants and drug manufacturers and is one of the many industries which manufactures cheap separators in the country. Owing to the huge demand for the separators, which was nearly about 20 lakh units and the failure of W.B. INC to meet the growing demand due to the import restrictions since their manufacturing unit is in New Zealand; PI approached W.B. INC., for technical assistance and license manufacturing of their patented separator

Copyrights © IP Markets – 2014 – All Rights

"ZEEKO" in India on 20th January, 2008. However, WB Inc. declined to grant the licence of manufacture for reasons best known to them. As per the records available, WB Inc. had supplied only 2 lakh units against the huge demand in India at the rate of $ 40,000 a piece (approximately Rs.24 Lakhs per unit). PI was on other hand manufacturing the same piece at Rs. 10, 00,000/- each.

In the second week of May 2013, a technical team of WBIL visited TUNTUN Butter Products, (hereinafter referred to as TTBP) in Mumbai to erect a new separator. In the process of inspection of the place inside the factory, the WBIL team was shocked to see that two existing separators already working at TTBP were exact copies of their product **ZEEKO** and were further surprised to note that the infringing product was named as "**ZICO**" which was deceptively and phonetically similar to "**ZEEKO**". The technical team found out that the infringing separators were supplied to TTBP by PI.

Armed with the first hand information of infringement by PI, WBIL appointed an industrial investigator Mr.Chintamani to investigate and find out the following:

A. Whether the two infringing products erected in TTBL was manufactured by PI

B. The number of pieces supplied by PI across the country

C. List of the customers of PI who bought such infringing material. .

Mr. Chintamani in the process of investigation visited the premises of PI as a prospective customer and recorded all the conversations with the marketing and technical teams. During the investigation it was clearly established that PI was infringing the patent and trademark of WB Inc. A detailed report along with transcripts of conversation, secretly taken photographs as well as interviews with some of the employees of PI was submitted by the Investigator to WB Inc., and the same was supported with an Affidavit under oath.

Immediately thereafter, a Cease and Desist notice was issued by WB Inc. to PI for infringing the Patent of WB Inc and also to TTBL as a co-infringer since it was using the infringed product. On receipt of the said Cease and Desist notice, PI along with TTBL moved a Groundless Threat Proceeding under Section 106 of the Patent Act., before the High Court of Mumbai. After hearing the parties the High Court directed WB Inc. ., not to issue any further groundless threats and also directed them to issue one week notice prior to filing of any proposed infringement suit of patent of WB Inc.,

PI also approached the Intellectual Property Appellate Board (IPAB) at Chennai and filed a Revocation proceeding seeking revocation of the Patent No.422231 granted to WB Inc., under Section 64 of Indian Patent Act, 1970 on all the grounds available under that provision. PI also approached Controller of Patent under Section 84 of the Patent Act, 1970 seeking grant of compulsory license of the Patent No.422231 on the following grounds:

a) That the reasonable requirements of the public with respect to the patented product have not been satisfied being for 20 Lakh requirement only 2 lakhs are supplied.

b) That the patented product is not available to the public at a reasonable affordable price thereby limiting the access to the quality drugs and milk product to general public effecting their health.

Copyrights © IP Markets – 2014 – All Rights

c) That the patented invention is not worked in the territory of India since the product is exclusively imported from New Zealand.

Even before the receipt of the Revocation and Compulsory license documents by WB Inc., WB Inc. in respectful compliance of the orders of High Court of Mumbai gave a notice dated 25th September 2014 notifying PI and TTBP of the filing of Infringement suit along with WBIL. On 3rd Oct, 2014 a Suit bearing no. 007/2014 under 108 and 109 of the Indian Patent Act, 1970, Section 134 of Trademark Act, 1999 read with order XXXIX Rule 1 and 2 and Section 151 of Code of Civil Procedure, 1908 was filed against PI before the Jurisdictional Court of the Ranga Reddy District Court. In response to the suit, PI through their Counsel filed a Counter Claim seeking invalidation of the patent and also filed an application seeking transfer of the suit to High Court at Hyderabad under Section 104 of Patent Act, 1970.

The suit OS 0007/2014 was accordingly transferred to Honourable the Hyderabad High Court and posted for hearing on 22nd Feb 2015.

The tentative issues identified for the purpose of arguments before the High Court:

1) Whether the suit filed by WB Inc. against PI under the Patents Act and the Trademarks Act is maintainable

2) Whether the act of PI in manufacturing and selling separators similar to the patented separators of WB Inc. amounts to infringement of the patent rights of WB Inc.

3) Whether the use of the mark ZICO by PI on its separators is deceptively similar to the registered mark of WB Inc. i.e., ZEEKO used in respect of its separators.

4) Whether the order passed by the Bombay High Court had in restraining WB Inc. from issuing groundless threats is justified.

5) Whether the counter claim filed before the High Court Revocation of patent proceedings before the IPAB are maintainable; and

6) Whether the claim of PI for compulsory licensing from WB Inc. is justified; and whether the Controller of Patents is justified in hearing and deciding such a claim when the High Court is seized of the infringement and counter claim issues and IPAB is seized with revocation issues.

Argue on both sides before the High Court of Hyderabad

Copyrights © IP Markets – 2014 – All Rights

IP Markets National Moot Court Competition 2015

RULES AND REGULATIONS

The Participants of the IP Markets National Moot Court Competition, 2015 are expected to read, understand and apply the rules using reason and judgement. This is intended to simulate the roles and responsibilities of student lawyers appearing before the Court.

1. Subject matter

IP Markets Hyderabad in association with University College of Law, Osmania University will be holding the first IP Markets National IPR Moot Court Competition - 2015 focusing on Intellectual Property Law. The dates of the Competition are February 20 -22, 2015. The objective of the competition is to introduce law students to important issues arising in Intellectual Property Rights Litigation. Law students who participate in the competition have opportunity to develop their brief writing and oral advocacy skills in a moot courtroom experience.

2. Eligibility

2.1 The First IP Markets National IPR Moot Court Competition, 2015 is open to all students currently pursuing law undergraduate courses, LLB (three years or five years) in any law college/ Department of Law in India. Each law college may be represented by **only one team**.

2.2 The maximum number of participants per team is restricted to **three members** constituting two Speakers (2) and one Researcher (1).

2.3 Proof of current Registration in Law College for each team member or Bonafide Certificate should be included with each team's entry form.

Copyrights © IP Markets – 2014 – All Rights

3. Registration:

3.1 The participants have to first provisionally register their institution via email by the authorised person or committee of the respective institution/college/university at mc@ipmarkets.in

3.2 The provisional registration must be completed on or before Wednesday, November 26th, 2014. Subsequent to the acknowledgement by the organising committee to the email sent by the participant, the participants are directed to send in the hard copy of the registration form along with the Demand Draft and the Letter of Authorization.

3.3 Each participating team shall duly fill the requisite form and send it to the organisers at the below mentioned address latest by Friday, December 26th, 2014.

3.4 The teams are informed that the registration fee is non-refundable once paid.

3.5 The final selection of teams will be restricted to the first twenty teams who confirm their participation on invitation and first–cum first-serve basis. The selection of any team to participate is at the discretion of the organisers.

IPMOU
IP Markets National IPR Moot Court Competetion

3.6 The envelope containing the registration form along with the Bonafides of the team members, DD and the Letter of Authorization must mention "Registration for 1st IP Markets National IPR Moot Court Competition, 2015".

3.7 The registration fee is Rs.1500 (Rupees Fifteen Hundred only) per team payable by means of Demand Draft drawn in favour of "IP Markets" payable at Hyderabad.

3.8 Any substitution of team member must be made before sending the hard copy of requisite form latest by Friday, December 26th, 2014.Such substitution shall be accompanied by the Bonafide of the respective member.

3.9 No change in the names of participants shall be entertained after the receipt of the registration form along with the Demand Draft and the Letter of authorization.

Copyrights © IP Markets – 2014 – All Rights

4. Language

The Moot Court Competition will be conducted only in **English language**.

5. Team Composition:

The teams should consist of two Speakers and one Researcher and this number cannot be modified under any circumstances. In any round, only two speakers are permitted to address arguments.

6. The Moot Problem:

The Moot Problem is available on IP MARKETS website at http://ipmarkets.in/ipmoot/Moot-Problem-IPMarkets-2015.pdf

The Moot Problem is the copyright work of IP Markets and may not be used for any purpose other than the competition without prior written permission from IP Markets.

IPMOU
IP Markets National IPR Moot Court Competetion

7. Memorial Rules:

7.1 **Submission Deadline:** All participating teams shall submit a soft copy of their Memorials for both the sides (Plaintiff and Defendant) in .doc format compatible with Microsoft Word 2003 (or higher) only, on or before Saturday, January 24th, 2015. The soft copies of the memorials must be emailed to mc@ipmarkets.in with the subject "Memorial Submission by (Team Code) for the 1st IP Markets National IPR Moot Court Competition, 2015". The hard copy of the memorial must be addressed to:

IP Markets
No.6-2-47, Flat No.1D, 1st Floor, Yeturu Towers,
A.C. Guards, Hyderabad-500004
Telangana, India

Copyrights © IP Markets – 2014 – All Rights

7.2 The Organising Committee must also be in receipt of seven (7) hard copies of the memorial (in total fourteen (14) copies) on or before Thursday, January 29th, 2015. Failure to send the Memorials in time may result in automatic disqualification from the competition. The team will be notified of such disqualification by e-mail and shall have the opportunity to appeal such disqualification by Thursday, 5th February 2015 before 5 p.m. Memorials cannot be revised or amended after they are filed. No additional or supplement memorials will be accepted.

7.3 **Formatting Requirements:** The memorial shall be formatted according to the following requirements:

- Typed on standard A4 sheet
- Font type: Arial
- Font size for body text: 12
- Font size for footnotes: 10
- The text for written submission: 1.5 spacing
- Margin of 1inch on each side
- Header should mention the full name of the competition and the footer should mention on whose side (plaintiff / defendant) the memorial is presented.
- The Team Code shall be mentioned on the top right corner of the Cover Page.
- The footnotes must follow the 19th Bluebook format of citation.
- The memorial must be spiral bound and the Cover Page must contain the following colour scheme.
- Blue for the Plaintiff Cover Page
- Red for the Defendant Cover Page

IPMOU
IP Markets National IPR Moot Court Competetion

Copyrights © IP Markets – 2014 – All Rights

7.4 The Memorial will carry a maximum of 100 marks and must contain the following subjects:

S No.	Specifications of Memorials
1	Cover page
2	Table of Contents
3	Index of Authorities
4	Statement of Jurisdiction
5	Statement of Facts
6	Issues involved
7	Summary of Arguments
8	Body of Arguments / Arguments Advanced
9	Prayer

IPMOU
IP Markets National IPR Moot Court Competetion

7.5 Each memorial should not exceed forty pages including the Arguments advanced and the Prayer.

7.6 The Memorial should not contain the name of the participating college/institution/university, logo or any mark of identification, their Geographical region or identity of the team (except the Team Code) or the names of the participants in any part of the memorial. Doing so attracts immediate disqualification. Memorials shall not be signed, and no information (real or fictional) serving to identify a team or team member shall appear on or within the Memorial itself, including as part of the name of the word file of the Memorial filed with IP Markets.

7.7 By submitting the memorials for the competition, the participant teams agree that all rights in the memorials, including copyrights and other intellectual property rights, are assigned to IP Markets.

Copyrights © IP Markets – 2014 – All Rights

7.8 **Weightage of Marks for Memorials:**

S No.	Criteria	Marks Allotted
1.	Knowledge of Facts and Law	10
2.	Integration of Fact and Law	10
3.	Formatting Style	10
4.	Original thought process	10
5.	Alternative Arguments	10
6.	Understanding of the strengths and weakness of the case	10
7.	Extent of Research	10
8.	Articulate analysis and unambiguous ,clear and concise writing style	10
9.	Grammar and Style	10
10.	Citation and Reference	10
TOTAL		100

IPMOU
IP Markets National IPR Moot Court Competetion

7.9 For the duration of the elimination round and the quarter finals, the memorial score will be added to the oral rounds. The total score will carry 30% weightage of the memorial marks and 70% weightage of the oral submission. The team with a higher memorial marks will be considered in case of a tie in any of the rounds. The memorial scores will not be added to the overall scores in any of the knock-out rounds of semi-finals and finals.

7.10 **Exchange of Memorials:** All the participating teams shall report at Osmania University, Hyderabad on Friday, February 20th 2015 latest by 4 pm. There will be an Orientation Programme followed by draw of lots and exchange of memorials.

8. Oral Arguments:

8.1 During the commencement of each argument in all the oral rounds, the team members arguing the case shall introduce themselves by their team code to the

Copyrights © IP Markets – 2014 – All Rights

court. The name of the team member , team's law college/ University shall not be mentioned or otherwise disclosed at any time before, during or after the argument; even if the judges specifically ask for the same. Failure to comply with this Rule may result in automatic disqualification of the team from the competition.

8.2 Speakers should be prepared to address all issues. Speakers are not required to argue all issues, but the failure to argue important issues may be considered by the judges.

8.3 No discussion with the judges is permitted until their critique, which shall be conducted by the judges after the oral arguments.

8.4 Team members, coaches, faculty advisors or any other person affiliated with the team are permitted to attend only those arguments in which that team is participating. Other spectators are allowed to observe the argument only if no team raises an objection before the argument.

8.5 The recording or taping of any argument by a competing team or persons affiliated with the competing team is expressly forbidden. Failure to comply with this rule will result in automatic disqualification from the competition.

8.6 The organising committee will ensure the impartiality of all judges. Any team that recognizes an affiliation between any other team and any sitting judge, shall raise an objection prior to the argument. Failure to take such an objection after the commencement of such arguments would amount to a complete waiver of this objection.

9. Structure of the Competition:

9.1 **The Oral Rounds** will commence on Saturday, February 21st, 2015. There will be two (2) elimination rounds i.e., Elimination 1 and Elimination 2 followed by Quarter Final, Semi –final and the Final rounds.

9.2 **Elimination Round:** The elimination round will comprise of two phases and the teams will be given the opportunity to argue for both the sides and shall plead

Copyrights © IP Markets – 2014 – All Rights

compulsorily on both the sides. In each phase of the elimination round, the teams will be either as a petitioner or a respondent on the basis of lots. Each team will face a different set of opponent team.

9.3 **Quarter Finals:** At the end of the elimination round, the first ten teams will qualify for the Quarter finals. The teams will be selected on the basis of scores. In case of a '**Tie'**, the team with the highest memorial marks will qualify for the Quarter finals. The results of the Quarter finals will be released on Sunday, February 22nd, 2015.

9.4 **Semi-finals**: The Semi-final round would be a knock-out round and will be held on Sunday, February 22nd, 2015.

9.5 **Final Round:** The teams which qualify through semi-finals will be eligible for the Final round to be held on Sunday, February 22nd, 2015.

9.6 **Time Allotment**: The time allotted to each team during the elimination round will be twenty-eight minutes (28) to present their oral arguments. Each speaker must plead for a minimum of ten minutes (10). The Plaintiff / Petitioner will be allotted additional five minutes to make the rebuttal statement. The Defendant / Respondent will be allotted further three minutes to make sur- rebuttals only at the discretion of the judge. The rebuttal or the sur-rebuttal can be made by only one speaker.

9.6.1 In the quarter final, semi-final and final rounds, each team will be allotted forty – five minutes (45) to present their oral arguments inclusive of rebuttal for 3 minutes and the sur-rebuttal on the discretion of the judge and each speaker must plead for a minimum of fifteen minutes (15).

IPMOU
IP Markets National IPR Moot Court Competetion

Copyrights © IP Markets – 2014 – All Rights

9.7 Weightage of Marks for Oral Pleadings: The judges will independently score each brief. A panel of judges will independently score each team's oral arguments.

S No.	Criteria	Marks Allotted
1.	Clarity of Thought	10
2.	Court Language	10
3.	Knowledge of Facts and Law	15
4.	Integration of Facts and Law	15
5.	Presentation Style	10
6.	Spontaneity	10
7.	Body Language	5
8.	Dress Code	5
9.	Team Work	10
10.	Conclusion/Completion of the Argument and Prayer	10
	TOTAL	100

IPMOU
IP Markets National IPR Moot Court Competetion

10. Penalties:

10.1 Late Submission of Memorial after the stipulated time will attract a penalty of two marks per day from the Memorial marks. The organising committee reserves its rights to cancel the participation and forfeit the registration fee, in the event of failure to submit the memorial on or before Thursday, February 5th 2015, the last date for the submission of the hard copy.

10.2 The hard copies must be the same as that of the soft copy submitted. Failure to do so would lead to immediate disqualification.

Copyrights © IP Markets – 2014 – All Rights

11. Awards

- **The Best Team:** The Best Team would be awarded the ***IPM Rolling Shield*** along with a cash prize of Rs. 25,000/-

- **The Second Best Team:** The Second Best Team of the IP Markets National IPR Moot Court Competition would be awarded a cash prize of Rs. 12,500/-.

- **The Best Memorial:** The Best Memorial of the IP Markets National IPR Moot Court Competition would be awarded a cash prize of Rs. 10,000/-.

- **Best Male Speaker:** The Best Male Speaker of the IP Markets National IPR Moot Court Competition would be awarded a cash prize of Rs. 7,500/-.

- **Best Female Speaker**: The Best Female Speaker of the IP Markets National IPR Moot Court Competition would be awarded a cash prize of Rs.7, 500/-.

- **Best Researcher:** The Best Researcher of the IP Markets National IPR Moot Court Competition would be awarded a cash prize of Rs. 5,000/-.

IPMOU
IP Markets National IPR Moot Court Competetion

12. Clarifications:

For any clarifications regarding the moot problem, kindly mail to mc@ipmarkets.in with the subject as Clarifications – IP Markets National Moot court Competition, 2015.

Copyrights © IP Markets – 2014 – All Rights

13. Schedule of Events

Day	Date	Time	Event	Venue
Day 1	20-02-2015 Friday	3.00 pm onwards	Registration and Exchange of memorial	University College of Law, Osmania University Campus, Hyderabad
	20-02-2015 Friday	5.00 pm – 6.00 pm	Inaugural Ceremony	Seminar Hall, University College of Law, Osmania University Campus, Hyderabad
Day 2	21-02-2015 Saturday	9.00 am – 5.30 pm	Preliminary Rounds I & II Quarter finals	University College of Law, Osmania University Campus, Hyderabad
Day 3	22-02-2015 Sunday	9.00 am-4.30 pm	Semi-final & Final rounds	University College of Law, Osmania University Campus, Hyderabad
	22-02-2015 Sunday	4.30pm – 5.30 pm	Valedictory Ceremony	Seminar Hall, University College of Law, Osmania University Campus, Hyderabad

14. Accommodation:

14.1 The accommodation will only be provided to the participants from Friday, February 20th, 2015, 9.00 am till Sunday February 22nd, 2015 9.00 pm. The organisers will provide only one room to each team and the last date for sending their travel plan is Thursday, January 29th, 2015. The Travel Plan form is appended to this document.

14.2 The accommodation will be provided to the participants only but not to the coaches, advisors, observers or any other person accompanying the participants. The team will also be provided local travel assistance required for participants for reaching and returning from the venue only.

Copyrights © IP Markets – 2014 – All Rights

15. Dress Code:

The dress code shall be similar to an advocate's attire i.e., a black trouser, white shirt, black blazer and formal shoes during all the sessions at the venue.

16. Scouting:

No team member will be allowed to hear the arguments of other teams being advanced in other court halls. The Organising Committee will take strict disciplinary action against any team indulging in scouting either directly or indirectly.

17. IP Rights:

IP Markets, Hyderabad will have overall rights in the memorials submitted by each team, rights on the processes, procedures, moot problem, broadcasting and reproduction rights on the event and reserves all its rights to publish either online or offline. The teams should sign the consent form and other necessary documents and cooperate for assignment of rights to IP Markets. The teams agree that participating in the competition would lead to automatic assignment of the rights.

18. Complaints:

Any person aggrieved by the administration shall report to the Organisers at mc@ipmarkets.in and contact the coordinator Mrs. Sheela Ram Kumar on +91-9000293545. We will ensure fair redressal of all your grievances.

19. Powers of the Committee:

19.1 Other than as provided by these specific rules, the committee shall have sole discretion to assess penalties or to disqualify teams for failure to abide by any of the rules.

19.2 The committee shall have sole discretion to make all necessary interpretation of these rules. All requests for rule interpretations must be submitted by email to mc@ipmarkets.in if you do not receive a response within three business days, please call the Moot Coordinator at +91-9000293545 / 040-23305525.

Copyrights © IP Markets – 2014 – All Rights

19.3 At the committee's discretion, the response to any enquiry may be sent to all participating teams. All decisions of the Committee regarding the interpretation of the rules are final.

20. Important Dates

Event	Submission Deadlines
Release of Moot Problem	Sunday, September 28, 2014
Last Date of Provisional Registration	Wednesday, November 26, 2014
Last Date of Final Registration and Receipt of Demand Draft	Friday, December 26, 2014
Last Date of Submission of Soft Copy of the Memorials	Saturday, January 24, 2015
Last Date of Submission of Hard Copy of the Memorials	Thursday, January 29, 2015
Last Date for Clarifications Pertaining to the Moot Problem	Thursday, January 15, 2015
Last Date for Submission of Travel Form	Thursday, January 29, 2015
Last Date for Submission of Hard Copy of	Thursday, February 5, 2015

IPMOU
IP Markets National IPR Moot Court Competetion

Copyrights © IP Markets – 2014 – All Rights

Memorials with Penalty	
Oral Rounds of the Competition	**February 20th – 22nd , 2015**

IPMOU
IP Markets National IPR Moot Court Competetion

Copyrights © IP Markets – 2014 – All Rights