

**DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD
P.G.DIPLOMA IN PATENTS LAW**

2018-19 (Supplementary Exams)

Paper IV – Practical (Abuse of Patents) – Answer Guidelines

Time: 2 ½ hours.

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

- 1. The question paper to be interpreted as given and no clarification can be sought from the invigilator.**
 - 2. You should accept the facts given in the papers and not use any special knowledge you may have.**
 - 3. Assume also that the prior art given is exhaustive.**
 - 4. Marks are awarded more for the points selected for discussion and reasoning displayed than for conclusions reached.**
 - 5. Answers in illegible handwriting will not be taken into consideration.**
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Note:

The answer guidelines contain some points (non-exhaustive) that could be covered in the answer to the Paper.

Claim Construction

Claim	Feature	Meaning
1	Foldable stand for a portable handheld electronic device	Purpose of the “stand”, recited in the preamble, not a limitation to claim 1
	Frame	The frame provides structural stability to the stand in the open position
	Groove	Includes the meaning of a "space" into which the pillar is receivable
	Cover	Not restricted to the literal meaning of "covering" the frame, but also includes a meanings of a part which forms a support structure when at raised position
	Pillar pivotally connected to the cover	"pivot" includes meaning of "pillar" displacing relative to "cover" in an angular manner, not necessary limited to the existence of a pivot per se
	Engageable to frame	Plain meaning
	Pillar between the frame and cover	“between” includes a meaning where the pillar is “physically” positioned, i.e. physically in place to block the frame and the cover from moving towards each other, and
		and “functionally” holds the frame and the cover to each other as an integral structure
	Pillar ... to support the cover	Pillar and cover are interrelated to support each other, meaning cover will fall without pillar, and vice versa,
	Cover at a raised position	A position that the cover displaced from co-plane with the frame
	Groove to contain pillar	"contain": pillar received in the groove
2	Pillar pivotally connected to the cover	"pivot" includes meaning of "pillar" displacing relative to "cover" in an angular manner, not necessary limited to the existence of a pivot per se
	Engageable to frame	Plain meaning
3	Outward projection	Plain meaning
	Concave portion	Formed inwardly into frame
4	Cut out on frame	Includes meanings of "notch",
5	Protrusion	Something extends from a base portion, not limited to shape, and at both the "opened" and "closed" states
6	Boss	Plain meaning
	Hole	Plain meaning
	Hole to engage the boss	Plain meaning

Infringement Analysis

Claim	Feature	Meaning	Present in the product?
1	Foldable stand for a portable handheld electronic device	Purpose of the “stand”, recited in the preamble, not a limitation to claim 1	Yes (but this is not a limitation)
	Frame	The frame provides structural stability to the stand in the open position	"ground section 2" - present
	Groove	Includes the meaning of a "space" into which the pillar is receivable	The portion held between the left and right sides of the said grounding section 2 - present
	Cover	Not restricted to the literal meaning of "covering" the frame, but also includes a meanings of a part which forms a support structure when at raised position	"back rest 7" - present
	Cover pivotally connected to the frame	"pivot" includes meaning of "cover" displacing relative to "frame" in an angular manner, not necessary limited to the existence of a pivot per se	"rest body 8" bent at joint 11 relative to ground section 2 is within the meaning - present
	Pillar	Functionally supporting the cover and frame, regardless of its shape	"supporting leg 9" - present
	Pillar between the frame and cover	“between” includes a meaning where the pillar is “physically” positioned, i.e. physically in place to block the frame and the cover from moving towards each other, and “functionally” holds the frame and the cover to each other as an integral structure	“Supporting leg 9” functionally acts between “ground section 2” and "rest body 8”

Claim	Feature	Meaning	Present in the product?
1 (contd.)	Pillar ... to support the cover	Pillar and cover are interrelated to support each other, meaning cover will fall without pillar, and vice versa,	“Supporting leg 9” and “rest body 8” support each other
	Cover at a raised position	A position that the cover displaced from co-plane with the frame	"rest body 8" at raised position relative to ground section 2 - - present
	Groove to contain pillar	"contain": pillar received in the groove	"Supporting leg 9" placed between "ground sections 2" - present
2	Pillar pivotally connected to the cover	"pivot" includes meaning of "pillar" displacing relative to "cover" in an angular manner, not necessary limited to the existence of a pivot per se	"Supporting leg 9" bent at joint 12 relative to "rest body 8" - present
	Engageable to frame	Plain meaning	Present
3	Outward projection	Plain meaning	Present
	Concave portion	Formed inwardly into frame	Absent
	Concave portion around groove	Formed inwardly into frame at the edge of the groove	Absent
4	Cut out on frame	Includes meanings of "notch"	Present
5	Protrusion	Something extends from a base portion, not limited to shape, and at both the "opened" and "closed" states	Fastening sections 3 (when bent upward) - not present when at folded state, but present at working state
6	Boss	Plain meaning	Absent
	Hole	Plain meaning	Absent
	Hole to engage the boss	Plain meaning	Absent

Validity Analysis - Novelty

Claim	Feature	Novelty - Prior art #1	Novelty - Prior art #2
1	Foldable stand for a portable handheld electronic device	Discuss effect of “for” in preamble:	Discuss effect of “for” in preamble:
		features in preamble:	features in preamble:
		not a distinguishable feature	not a distinguishable feature
	Frame	"horizontal portion 60"	"section 2 Not limited to “direct contact” "
	Groove	Space 74	The hollow portion of section 2
	Cover	Link portion 64	Section 1
	Cover pivotally connected to the frame	"horizontal portion 60" connected to "link portion 64" at "fold line 62"	"section 1" and "section 2" connected by pin hinges 4
	Pillar	Vertical portion 66	Section 3
	Pillar between the frame and cover	Vertical portion 66 is physically positioned and functionally acts between "horizontal portion 60" and "link portion 64"	"section 3" physically positioned and functionally act between "section 1" and "section 2"
	Pillar ... to support the cover	Vertical portion 66 and "link portion 64" act against and support each other	Section 3 and section 2 act against and support each other
	Cover at raised position	Link portion 64 in a generally upright position with respect to horizontal portion 60	At working position
2	Groove to contain pillar	"space 74" can contain "vertical portion 66" when folded	Section 3 received in section 2 when folded
	Pillar pivotally connected to the cover	"vertical portion 66" connected to "link portion 64" at fold line 68	Section 3 connected to section 2 b pin hinge 5
	Engageable to frame	Vertical portion 66 can then be fixedly attached to the horizontal portion 60	By pins 8 and holes 9

Claim	Feature	Novelty - Prior art #1	Novelty - Prior art #2
3	Outward projection	Absent	Pins 8?
	Concave portion	Absent	Absent
	Concave portion around groove	Absent	Absent
4	Cut out on frame	Absent	Holes 9?
5	Protrusion	Ridges 80 and 82.	Transverse scoring or grooves 12
6	Boss	Absent	Locking means 10, 11? And their engagement effect?
	Hole	Absent	
	Hole to engage the boss		

Validity Analysis – Inventive Steps

Claim	Feature	I.S. - Prior Art #1	I.S. - Prior Art #2
1	Foldable stand for a portable handheld electronic device	Not novel over PA1, so not inventive	Not novel over PA2, so not inventive
	Frame		
	Groove		
	Cover		
	Cover pivotally connected to the frame		
	Pillar		
	Pillar between the frame and cover		
	Pillar ... to support the cover		
	Cover at raised position		
	Groove to contain pillar		
2	Pillar pivotally connected to the cover	Not novel over PA1, so not inventive	Not novel over PA2, so not inventive
	Engageable to frame		

Claim	Feature	I.S. - Prior Art #1	I.S. - Prior Art #2
3	Outward projection	(Argument on non-obviousness)	(Argument on non-obviousness)
	Concave portion	(Argument on non-obviousness)	(Argument on non-obviousness)
	Concave portion around groove	(Argument on non-obviousness)	(Argument on non-obviousness)
4	Cut out on frame	(Argument on non-obviousness)	(Argument on non-obviousness)
5	Protrusion	Not novel over PA1, so not inventive	Not novel over PA2, so not inventive
6	Boss	Not novel over PA1, so not inventive	(Argument on non-obviousness)
	Hole		
	Hole to engage the boss		

Miscellaneous

(Sections 104 to 114 of the **Indian Patents Act 1970** provide guidelines relating to **patent infringement**.)

#	Miscellaneous	
A	Client question (1)	Infringement: which claim infringed, which claim not validity: which claim valid, which claim not? Is patent in force?
B	Discuss whether infringement conditions met:	Act in India? (the manufacturer is not the distributor maybe, need to find evidence)
C		Without consent?
		"exclusive right" - quote section 48, then link the substantial analysis of "construction" and "infringement" to the meaning of "invention be specified in the claims and interpreted by the description and drawings ie where other conditions are satisfied, "infringement" will be established if the Product fall into the Claims.
D	Client question (2)	Can send a mere notification of the existence of a patent, otherwise client may be countersued.
		Discussion on "importation".
E	Client question (3)	Brief the infringement proceedings (Sec. 108) Reliefs available for Client - Section 108(1).

#	Miscellaneous	
F	Client question (4)	Spot out the possibility of license, License consent, mediation, arbitration, assignment.
		Defendant may design-around: explain the principal of "design around".
		And if "design around", infringement analysis may have to conduct again, explain why?
G	Client question (5)	Recent case law / relevant legal basis
		Discuss the possibility post grant amendment (if any).
		Additional patenting / Appeal to IPAB (?).
		Licensing Options.

We acknowledge IPOS - Extracted from IPOS Patent Examination Paper – strictly for educational/examination purpose under Fair dealing of the Indian Copyright Act, 1957.