

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

2018-19

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.

(I) Interpretation

Issues:

- | | |
|----------|--|
| Claim 1: | "areas"
"at an opening portion"
"having been"
"roughened" |
| Claim 2: | "dimples" – including corrugations?
possible antecedent issue |
| Claim 3: | "perforations" |
| Claim 4: | "handle portions" |
| Claim 5: | "shopping bag"
"plastic"
"very thin" |
| Claim 6: | Order of the steps |

(II) Infringement

Issues:

Claim 1

- is corrugation "roughness"?
- is the roughness at the opening portions?
- the order of the roughening and bag formation.

Claim 2

- infringed by the corrugations?

Claim 3 + 4

- not infringed?

Claim 5

- infringed?

Claim 6

- the order issue again.

(III) Validity

Claim 1 priority claim valid? If so, valid over "Badguy bags the business"; still lacking novelty over "breather bag".

Claim 2 priority claim invalid; lacking novelty if Badguy's corrugations or the "breather bag" pits can be described as creating "dimples"; or conversely not infringed.

Claim 3+4 valid? Both benefit from priority claim and features are inventive over "breather bag".

Claim 5 priority claim invalid, and therefore lacks novelty over "Badguy bags the business".

Claim 6 priority claim invalid, so either lacks novelty over "Badguy bags the business" or not infringed.

(IV) Amendments

Amend claim 1 to require the bags to be made from two sheets or have handles, but not so limited as claim 4. Arguably possible to limit to roughened areas only being at the top area.

Is it possible to amend claim 6 to make its priority claim valid? This requires adding a reference to the roughness being near the opening portions, and also removing the reference to the ultra-thin sheet and the "shopping bag". Would this unallowably broaden the scope of the patent?

(V) Miscellaneous Issues

Should post-grant amendment over “Breather bag” be allowed, given that the client knew about it pre-grant?

Infringer carries out the method in US. Is method claim still infringed?

If the “dimples” feature reads onto corrugations, should Badguy have been named as an inventor?
