

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

**2016-17
Supplementary Exams (November, 2017)**

Paper IV - Abuse of Patents (Practical)

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. Answers in illegible handwriting will not be taken into consideration.**

You are running a Patent consulting firm 'Patently Yours' and advise clients on Patent filing, Infringement analysis and Patent licensing.

A client who runs a kitchen accessories distribution called 'Swachh Kitchen' approaches you for consultation.

According to your client, he sells a Kitchen Rack used for draining washed vessels under the brand name of 'Clean India'. He imports these from a manufacturer from China for the last two years and has seen increasing sale due to its price and durability and sells it primarily through his distributors in Telangana. He received a notice from a Singapore company called 'Singa Kitchens' who allege that his products are infringing their patent no '737 patent taken in Singapore, India and several South Asian countries. Though Singa Kitchens were selling their product called 'Dry Kitchen' in Singapore, Malaysia and Indonesia they are yet to sell their product in India and are preparing for launching the product.

Singa Kitchen wants your client to stop the sales immediately and also pay them 15% of the profits made by your client on the sale for the last two years. If your client stops selling their product and pays up the desired money they will not pursue further case on infringement. Your client feels that he is not infringing the '737 patent. Further your client also gives a document resembling a prior art of a similar product which has been in the market prior to the '737 patent sold in the name of 'Dry Easy' which has not been patented and submits the drawings of the same.

The following documents are given to you:

1. Document 1 (D1) Claims of '737 Patent and drawings (Dry Kitchen)
2. Document 2 (D2) Details of Clean India product and drawings
3. Document 3 (D3) Details of Dry Easy product and drawings.

You are required to brief your client and advise him on the following:

1. Whether your client's 'Clean India' product infringes '737 patent either by direct infringement or by Doctrine of equivalence? State the reasons for your opinion based on claim by claim comparison of '737 patent with your clients product. **50 marks**
2. Will the 'Dry Easy' product existing before '737 patent be considered as Prior Art? If so, what could be the strategy for your client? **40 marks**
3. Give your client the option and consequences for dealing with the notice. **10 marks**

Document 1 – ‘737 Patent (Dry Kitchen)

CLAIMS

1. A dish drainer assembly comprising:
a basket having a bottom and four side walls extending upwardly from the bottom, upper edges of the side walls defining a peripheral edge of the basket;
a plurality of feet for supporting the bottom of the basket above a drainage area; and
an adjustable loft accessory mounted on the basket and moveable between a first position in which the adjustable loft accessory projects inwardly from the peripheral edge and a second position in which the adjustable loft accessory projects outwardly away from the peripheral edge, the adjustable loft accessory increasing the surface area available for resting articles to be dried on the basket while in either the first position or the second position.
2. A dish drainer assembly as defined in claim 1, wherein the adjustable loft accessory is removable from the basket.
3. A dish drainer assembly as defined in claim 1, wherein the adjustable loft accessory is further movable to a third position in which the adjustable loft accessory extends generally vertically in the same plane as one of the side walls.
4. A dish drainer assembly as defined in claim 1, wherein the adjustable loft accessory comprises fingers, and wherein a footprint of the dish drainer assembly when the adjustable loft accessory is in the first position is less than a footprint of the dish drainer assembly when the adjustable loft accessory is in the second position.
5. A dish drainer assembly comprising:
a dish drainer basket adapted for drying plates above a drainage area; and
a supplemental drying element for increasing the number of articles that can be dried using the dish drainer basket, the supplemental drying element being mounted on the basket and movable between a first position in which the supplemental drying element projects towards a centre of the basket and a second position in which the supplemental drying element extends away from the centre of the dish drainer basket.
6. A dish drainer assembly as defined in claim 5, wherein the supplemental drying element comprises fingers.
7. A dish drainer assembly as defined in claim 6, wherein upper surfaces of the fingers define a platform for resting additional articles to be dried when the supplemental drying element is in the second position.
8. A dish drainer assembly as defined in either one of claims 6 or 7, wherein each pair of adjacent fingers defines a groove there between for slidably receiving stemware.
9. A dish drainer assembly as defined in claim 5, wherein the dish drainer basket comprises a plurality of transverse wires, each one of the transverse wires having an upstanding curved portion, the upstanding curved portions being longitudinally aligned to provide a plurality of dish plate slots.
10. A dish drainer assembly as defined in claim 8, wherein the fingers extend from a support, and distal ends of the fingers are curved.

Document 1 – '737 Patent (Dry Kitchen) - Figures

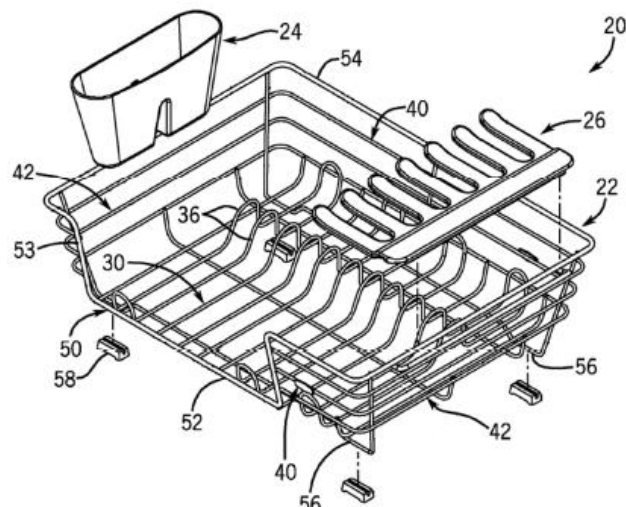


FIG. 1

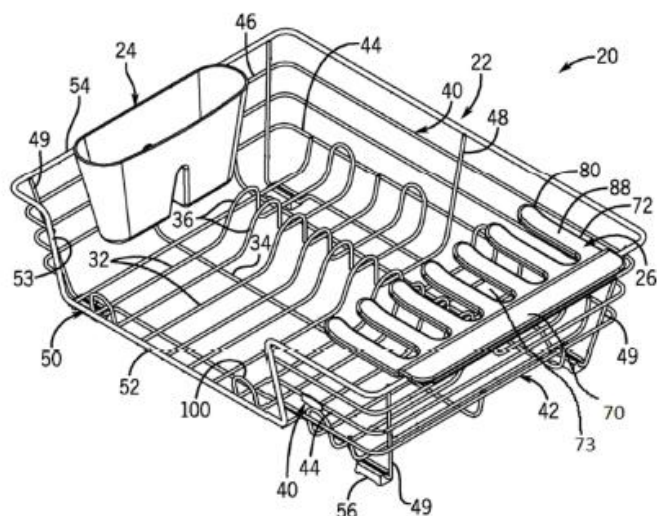


FIG. 2

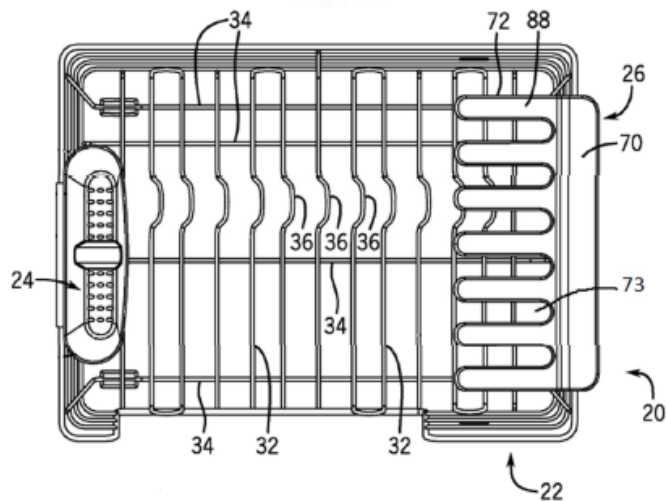


FIG. 3

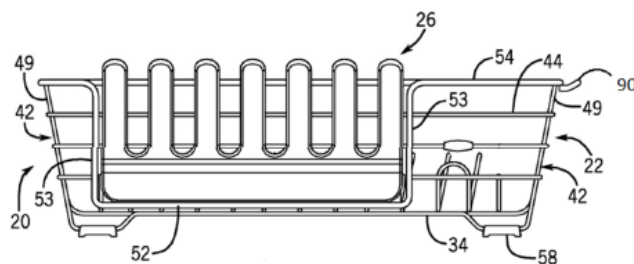


FIG. 4

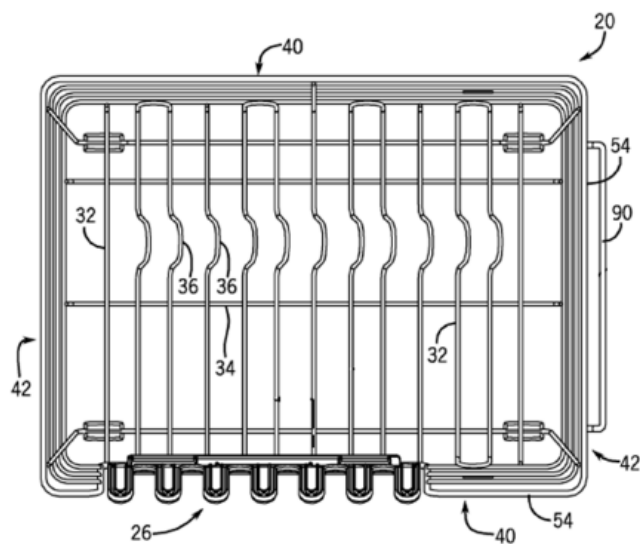


FIG. 5

Document 2 – Product Description of ‘Clean India’

1. Clean India dish drainer is illustrated generally as (A) in FIGS. 1, 2 and 3 of D2. The Clean India has a bottom rack portion (a) having a bottom (b) and four sides (c) extending upwardly from outer edges of the bottom (b). Four feet (d) are provided, one at each corner of bottom (b), to support the drainer (A) above a drying area.
2. A pivoting rack portion (e) is pivotably mounted on one side of a top wire (f) that extends around the outer periphery of bottom rack portion (a) using two selectively lockable pivoting mechanisms (g). Pivoting rack portion (e) has an enclosed space that is defined by a plurality of base wires (h) and four sides (i). The pivoting mechanisms (g) are configured to allow dish drainer (A) to be selectively deployed and locked in any one of three positions: a compact position (shown in FIG. 1 of D2), a support position (shown in FIG. 2 of D2), and an expanded position (shown in FIG. 3 of D2).
3. In the compact position, the pivoting rack portion (e) is seated above part of the surface area of bottom rack portion (a). Four legs (j) space pivoting rack portion (e) above top wire (f) in this configuration. This configuration is intended for use in kitchens where counter surface area is scarce, by providing an additional shelf for holding cups, plates, or the like, while smaller items such as cups and bowls can be placed on bottom rack portion (a) below pivoting rack portion (e). This allows a larger number of items to be placed on dish drainer (A) than would be the case if pivoting rack portion (e) were not present.
4. From the compact position, pivoting rack portion (e) can be pivoted upwardly and outwardly to the support position shown in FIG. 2 of D2, where pivoting rack portion (e) is seated on top wire (f) in an orientation that is approximately perpendicular to bottom rack portion (a). As can be seen from FIG. 2 of D2, in the support position, the base wires (h) of pivoting rack portion (e) extend generally vertically, and are positioned outwardly of the side (c) on which pivoting rack portion (e) is mounted. Base wires (h) are spaced apart from the side (c) on which pivoting rack portion (e) is mounted by legs (j). Pivoting mechanisms (g) allow pivoting rack portion (e) to be secured in this support position on top wire (f). The support position is useful for supporting certain types of larger items, for example a cutting board or the handle of a pot, to facilitate drying these larger items. In use, for example one end of the cutting board or the body of a pot can be placed inside bottom rack portion (a), and the opposite end of the cutting board or the handle of a pot can be leaned against vertically extending pivoting rack portion (e).
5. From the support position, pivoting rack portion (e) can be pivoted downwardly and further outwardly to an expanded position. In this orientation, pivoting rack portion (e) is positioned side-by-side with bottom rack portion (a) (although still vertically above bottom rack portion (a)), adjacent the wall (c) on which pivoting rack portion (e) is mounted. In this configuration, items to be dried (for example, cups or glasses) can be placed on the underside of base wires (h) (which are oriented on the top of

pivoting rack portion (e) in this expanded position), while a user can have unencumbered access to bottom rack portion (a). Thus, in the expanded position, dish drainer (A) also provides additional surface area for holding more items to be dried than could be contained within bottom rack portion (a) alone. Users may prefer to use the expanded configuration over the compact position if there are many items to be dried, or in larger kitchens where scarcity of counter space is not a problem. Although the expanded position and the compact position both provide approximately the same storage surface area for placing items on for drying, the compact position is somewhat more restricted because only low-profile items can be placed on that portion of bottom rack portion (a) that is below pivoting rack portion (e).

6. The Clean India has a wire frame construction, and the wire frame is coated with plastic in a conventional manner.

Document 2 – Product Description of ‘Clean India’ - Figures

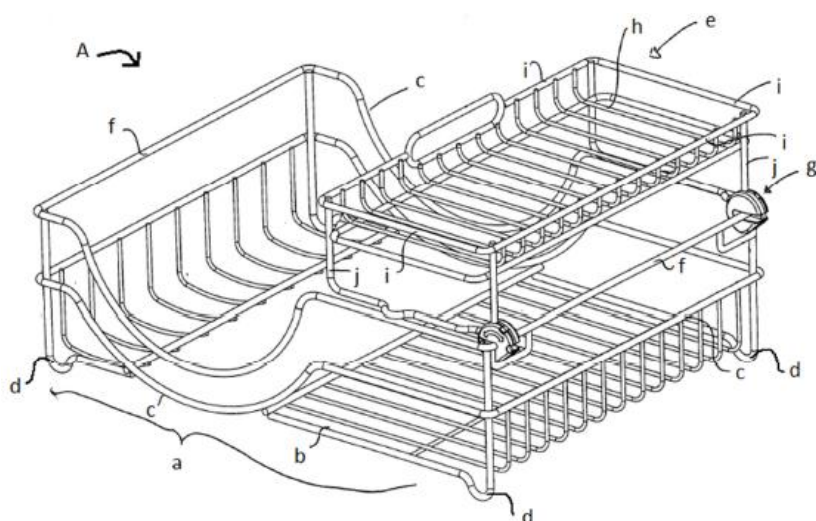


FIG. 1 (D2)

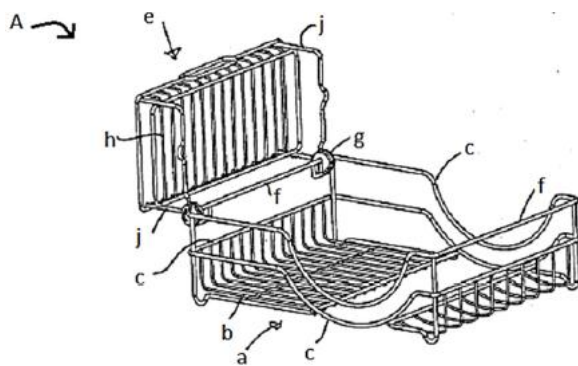


FIG. 2 (D2)

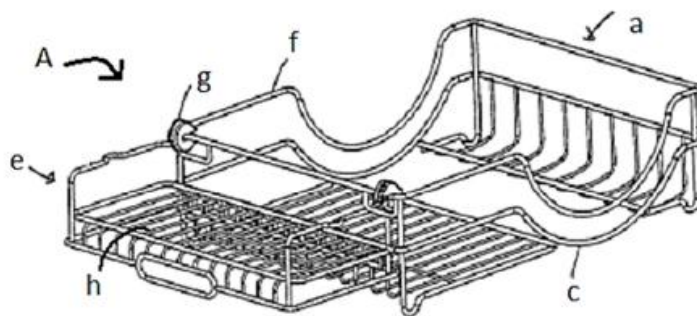


FIG. 3 (D2)

Document 3 (D3) Product description of 'Dry Easy'

The Dry Easy Rack is a different model of a dish drying rack having an adjustable portion. The provided views are as follows:

1. FIG. 1 of D3 shows a perspective view of the device with the swinging arm described below in the locked and lowered position.
2. FIG. 2 of D3 shows an enlarged partial perspective view of the device with the swinging arm in the raised and unlocked position.
3. FIG. 3 of D3 shows an enlarged partial perspective view of the device with the swinging arm in the lowered and unlocked position.
4. FIG. 4 of D3 shows a front plan view of the device with the swinging arm in the raised and unlocked position.
5. FIG. 5 of D3 shows a front plan view of the swinging arm in the raised and locked position.
6. With reference to FIG. 1 of D3, the Tilting Rack provides a dish drying basket (M) which has a bottom (n), four walls extending generally upwardly from the outside edges of the bottom (n), the upper edges of the four walls being defined by upper horizontal end wires (o) and upper sidewires (p) provided along a top peripheral edge of the basket. Four legs (q), one at each corner of bottom (n), support the dish drying basket (M) above a drying area. An additional pair of sidewires (r) is provided at a lower height on legs (q) than upper sidewires (p) to further define two opposed sides of the basket. The remaining two opposed sides of the basket are defined by generally vertical extensions of the wires that form bottom (n), the wires being curved upwardly to form the remaining two opposed sides of the basket.
7. A plurality of divider walls (s) formed from the wires that provide bottom (n) are provided for supporting flat or slightly curved items to be dried, such as dishes and plates, as is conventional in the art. Longitudinally aligned divider walls (s) are formed by upwardly bent portions of the wires that form bottom (n) of dish drying basket (M), and define slots there between into which flat or slightly curved items can be inserted for drying.

Document 3 (D3) Product description of 'Dry Easy' - Figures

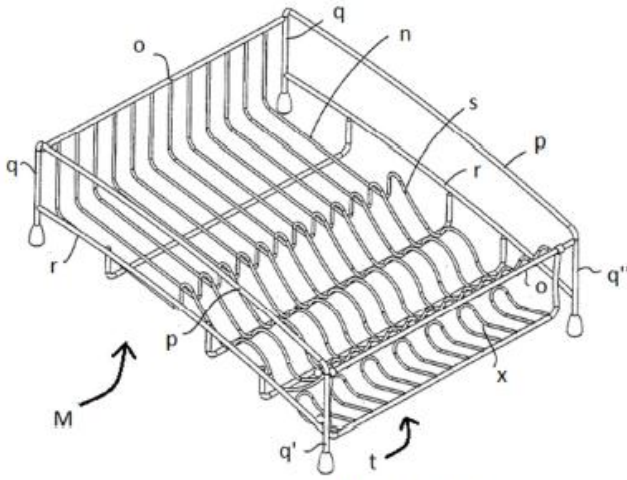


FIG. 1 (D3)

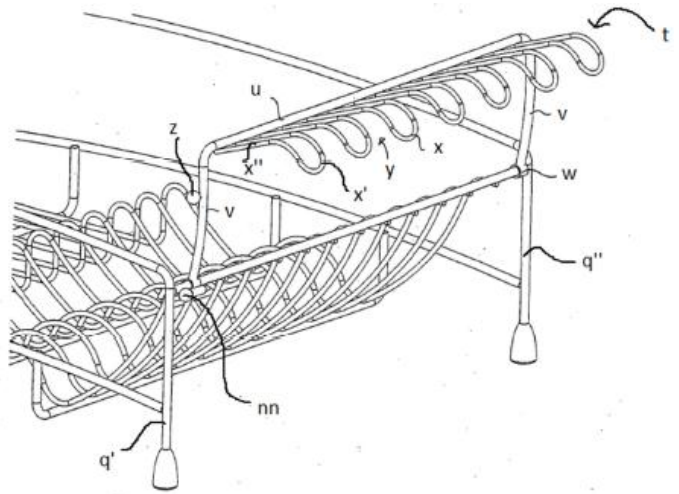


FIG. 2 (D3)

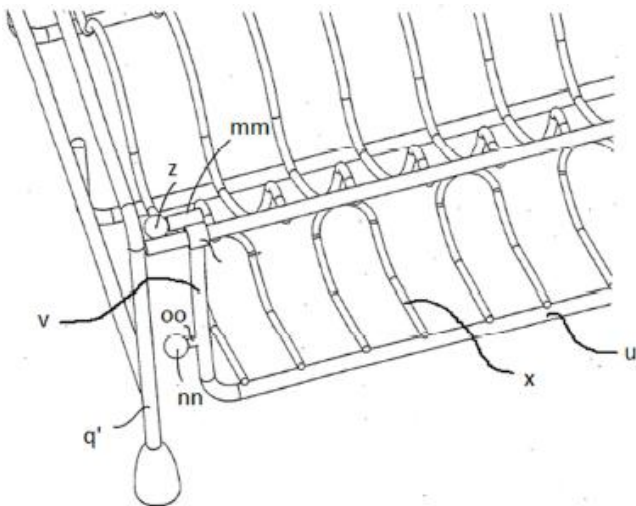


FIG. 3 (D3)

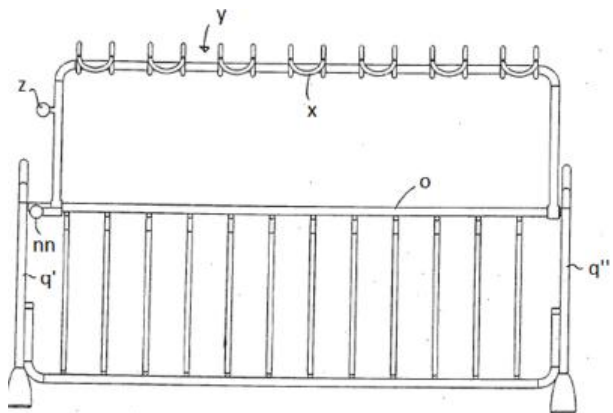


FIG. 4 (D3)

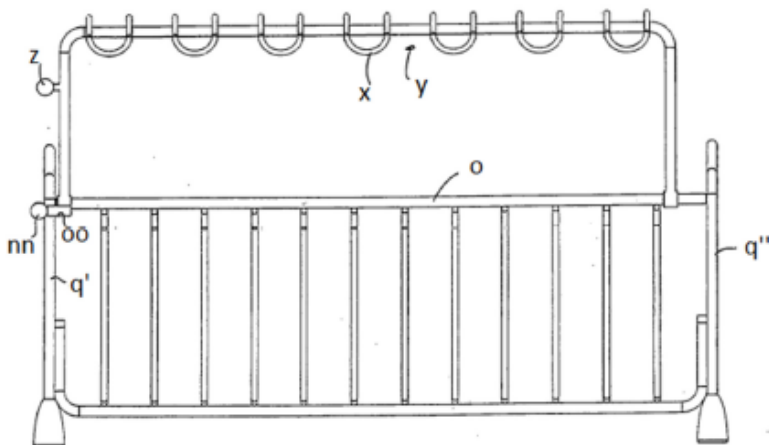


FIG. 5 (D3)

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