

**IILS INTRA MOOT COURT COMPETITION, 2021**

**(IILS MCC, 2021)**

**Organised by:-**

***IILS Moot Court Society***

**Conducted on: 13th November- 11th December, 2021**

**IILS MCC BROCHURE**

### MOOT PROPOSITION-1

**MOOT PROBLEM FOR IILS INTRA MOOT COURT COMPETITION, 2021**

**[(Semester- VII & IX of 5 yrs Course) & (Semester- V of 3 yrs Course)]**

**Date of Competition - 13/11/2021**

**Collier** an OSTRIA based fortune 500 company engaged in developing genetically modified seeds. They were the first to develop & commercialize **Bacterium Triensis (Bt.)** technology for which they have also acquired the patent **Mossgard-I.**

1. Haley Collier Biotech (Esnea) Pvt. Ltd. [**HCBL**] a company incorporated in the State of Sahajpur, Esnea & is a part of the **Collier** Group. It also has a joint venture between Collier Holdings Pvt. Ltd. [**CHPL**] & Mangalpur Hybrid Seeds Company [**Manyco**].
2. **CHPL** holds 26% equity in **Manyco.**
3. Collier’s Mossgard-I technology is aimed at genetically modified hybrid seeds to instill a particular trait-resistance to Mossbugs. Initially they developed a single gene technology. Subsequently Collier developed the second generation **Mossgard-II** which consists of two genes that makes it resistant to Pink Mossbugs as it is said that the Mossbug had become resistant to Mossgard-I technology seeds. The company got patented the second generation and has licensed the said technology to HCBL.
4. HCBL sub-licensed the technology to various seed manufacturers in Esnea including the following companies [Wusan Seeds Ltd. (**WSL**), Patera Farm Biotech Ltd. (**PFBL**) & Ronaha Seeds Pvt. Ltd. (**RSPL**)].
5. The consideration for sub-licensing the said technology is in two parts. The first is a non-refundable fee which is required to be paid upfront. The second part is a recurring fee which is referred to as ‘trait value’ and is determined on the basis of the MRP fixed for Bt. Cotton Seeds.
6. HCBL had licensed Mossgard-I & II technologies to WSL in terms of an agreement dated 21.02.2004. this agreement was extended from time to time till **31.03.2013**. on **10.03.2015**, HCBL entered into a fresh sub-license agreement with WSL, whereby it sub-licensed Mossgard-II to it. As per the terms of **2004** Agreement, WSL was required to pay **Rs. 50lacs** only and in addition a recurring fee which was determined on the basis on the annual sales volume of WSL. Under the **2015** Agreement recurring fees is payable based on the MRP of Bt. Cotton Hybrid Seeds sold by WSL.
7. On **30.08.2005**, the All-Esnea Tiller Committee filed a complaint before the MRTPC (Monopolies & Restrictive Trade Practices Commission) seeking investigation into the alleged unfair trade practice of charging excessive royalty by HCBL. The Dept. of Agriculture & Cooperation of the State of Sahajpur and the National Seed Association has also filed a reference before MRTPC making similar allegations. The DG of Regulation & Investigation had also submitted a preliminary report recommending institution of an inquiry by MRTPC.
8. On**11.05.2006**,MRTPCpassedaninteriminjunctionrestrainingHCBLfromcharging a trait value of ‘900 per 450gms packet of Bt. Cotton Hybrid Seeds and to fix a reasonable trait value within amonth.
9. On **27.11.2008**, HCBL issued communication to WSL seeking on account payment towardstraitvalue.WSLinresponserequestedHCBLtochargeareasonabletraitvalue considering the increase in the cost of production and fixation of lower MRP of cotton seeds by the StateGovt.
10. On **03.07.2009**, HCBL issued a termination notice to WSL on account ofnon-payment of trait value for the **Kharif 2008** season. HCBL had also instituted proceedings under the **Arbitration & Conciliation Act, 1996** which were settled by the said parties by entering into a Settlement Agreement & a Settlement Amendment Agreement dated **20.01.2011**.
11. On **19.07.2015**, WSL, PFBL and seven other seed manufacturers issued a letter to HCBLrequestingthatitconsiderchargingatraitvalueataratedeterminedbytheState Govt.
12. Immediately thereafter on **01.08.2015**, HCBL filed petitions under **section 9** of the Arbitration&ConciliationAct,1996beforethe**MangalpurHighCourt**againstWSL and PFBL seeking to secure amount of **1,72,83,81,567/-** and **26,21,36,431/-** respectively. In the month November similar petition against RSPL for securing an amount of**20,34,48,646/-.**
13. On **22.08.2015**, HCBL issued a notice calling upon WSL to pay the amount within a period of **21 days** failing which HCBL would take legal action. Similar notifications were also issued to othersub-licensees.
14. On **18.10.2015**, HCBL filed another petition under **section 9** of the **Arbitration & Conciliation Act, 1996** before a coordinate bench of this court seeking certain interim relief in relation to the trait value claimed byit.

On **19.10.2015**, the court passed an ad interim order directing WSL to secure HCBL for a sum of **Rs. 21,37,76,123/-** by depositing the amount in a no lien account with its bank.

1. Subsequently, HCBL issued notices to WSL, PFBL & RSPL terminating the sub- licenses on the ground that they had failed to pay the trait value for the technologies sub-licensed tothem.
2. On receiving the notice, the companies namely WSL, RSPL and PFBL filed Information under **section 19(1)(a) of the Competition Act** before CCI alleging contravention of the CompetitionAct.
3. The following allegations were put forth by the informants (WSL, PFBL & RSPL) against HCBL & CollierGroup:
   1. There is no substitute for Bt. Technology and given the Mossbug resistant characteristicsoftheBt.CottonSeeds.Theyevenclaimthatmorethan99% of the total cotton cultivation in Esnea is done using Bt. Cotton Hybrid Seeds.49majorcottonseedmanufacturersuseBt.Technologysub-licensed by HCBL.
   2. HCBL & Collier Group have exploited their dominant position andthereby leveraging prices for the technology which are significantly higher than those that would result if there were effective competition in the relevant market.
   3. HCBL had imposed unfair conditions in the sub-license agreement(s) by making it mandatory for the sub-licensees to notify HCBL in case their affiliatesenterintonegotiationswithanycompetitorofHCBLwithin30days of commencement of such negotiations, even they are to notify HCBL if theyoranyaffiliatesunderthemintendtodealwithanycompetitorofHCBL failing which will terminate the license. **[Clause 2.05(c) of the sub-license Agreement]**
   4. Theinformantsarerequiredtodestroyallparentlinesorcottongermplasm, which has been modified to contain Collier technology after thesub-license is terminated. **[Article 9.4 of the sub-licenseAgreement].**

According to the informants destroying germplasm would effectively amounttodestroyingtheirIntellectualproperty,whichnormallytakesabout 5-10years todevelop.

* 1. HCBLhasvirtuallyeliminatedallpotentialcompetitionforitstechnology by incorporating restrictive and unfair conditions in the sub-license agreements.
  2. HCBL discriminates with seed manufacturing companies. Companies which belong to Collier Group are provided the said technology without any such agreement as is required to be entered into by other seed companies including theinformants.
  3. TheconductofHCBLandCollierGrouphasresultedindenialofmarket access to the seedcompanies.
  4. HCBL has been following a policy of selective licensing and has sub- licensed its Bt. Technology to major players in the cotton seedsmarket.

1. The CCI held that HCBL held a dominant position in the relevant market as well as the down stream market of manufacturing & selling of the seeds in Esnea. The CCI alsofoundtheallegationsmadebytheinformantstobeprimafaciemerited.TheCCI also stated that prima facie, the conditions imposed in the Sub-license agreements were harsh and unreasonable for protecting the IPR rights. Accordingly, the CCI passed the order under **section 26(1)** of the Competition Act directing the DG to conduct an investigation in thematter.
2. AggrievedbytheorderoftheCCItheCollierGroup&HCBLfiledapetitionbefore High Court of Dalipur on the following questions for itsconsideration:
3. Whether the petition is maintainable before the Hon’ble HighCourt?
4. Whether the CCI have jurisdiction to examine the issues raised by the informants?
5. Whetherthepetitionersactedwellwithintheirrightstoenterintoagreements to restrain any infringement under **section 3(5)** of the CompetitionAct?
6. Whether retaining **Section 140** of the **Patents Act** despite enactment of the **Competition Act, 2002** indicative of legislature’s intention to override the jurisdiction of the Patents Controller under the PatentsAct?

***Note:*** -

* *Thepoliticalstructure,legalsystemandlegislationsofEsneaareinparimateriatothelaws of the India.*
* *The Counsels will be having liberty to identify and raise additional issues apart from the issues suggestedabove.*

***Keywords: -***

* *Esnea*- Name of theCountry.
* *Mossgard-* Name of thetechnology.
* *Sahajpur*- Name of theState.
* *Ostria*- Name of anotherCountry.

***Disclaimer: -***

*The contents of this moot proposition are entirely fictional and do not in any way aim to harm the sentiments or degrade the values and ideologies of any group of people, religion or individual. Any resemblance to actual person living or dead is purely coincidental. This problem has been drafted for the purpose of Intra Moot Court Competition, 2021 to be organized by IILS Siliguri.*

*The counsels are expected to operate within the four corners of the facts & issues raised therein. They can argue on creative lines despite the decision of any court on similar facts.*

### IILS MCC RULES & PROCEDURE

### A.TEAM COMPOSITION

**1.** Each team shall consist of three members, comprising of two speakers and one researcher.

**2.** Students willing to participate can form team within their year or they can form teams consisting of members from different years as well (Only applicable for Moot Preposition 1 and 2).

***IILS MCS shall bear no responsibility for team formation.***

1. Any alteration in the names of the team members shall be informed to the respective team Coordinator before last date of registration.

However any such alteration shall be permitted **only once.**

### B.PARTICIPATION AND REGISTRATION PROCEDURE

1. Interested teams should register themselves by filling up the Google Registration Form

<http://forms.gle/WmYaXj71S5voPjrBA>

1. Memorial submission is mandatory in order to appear for the oral rounds.
2. No person to person query will be entertained; every query will be entertained through respective team Coordinator only.
3. For further information of dates please refer to the Timeline attached.

### C.MEMORIAL SUBMISSION GUIDELINES / RULES

The following guidelines for the memorials must be strictly followed. Non-compliance will entail penalties as provided below:

1. Teams have to prepare memorials for both sides.
2. Teams shall e-mail Soft Copies of the Memorandums in PDF formats for both the sides (i.e. two attachments in total) in a single mail on or before the deadline. For example, if the assigned team code is 52, the team shall title the Petitioner and Respondent Memorandums as **“52P**” and “**52R**” respectively
3. Teams shall submit soft copy at [**iilsmootsociety@gmail.com**](mailto:iilsmootsociety@gmail.com)
4. The memorials have to be submitted on A4 size paper, and must contain the following sections**.**

**COVER PAGE;**

**TABLE OF CONTENTS;**

**INDEX OF AUTHORITIES;**

**STATEMENT OF JURISDICTION;**

**STATEMENT OF FACTS;**

**STATEMENT OF ISSUES;**

**STATEMENT OF ARGUMENTS;**

**ARGUMENTS ADVANCED;**

**PRAYER**

1. The memorials must be printed in **Times New Roman 12 font size** with **1.5 line spacing**. The **footnotes** must be in **Times New Roman 10 font size with 1.0 spacing**. And should contain the ‘**Team Code’** on cover page. (**Top-Right Corner)**
2. The memorials should have a margin measuring one inch on all sides of each page.
3. The page numbering should be on the bottom of each page.
4. **The Petitioner/Complainant/ Appellant’s memorial cover page shall be Blue Colour A4 size, and Opponent/Respondent’s memorial cover page on Red Colour A4 size.**
5. The teams have to use the latest edition of Blue Book for citation format throughout the memorial.
6. **The maximum scores for the memorial shall be 100 marks. The memorials shall be evaluated on the following criteria** and any non-compliance with above criteria shall result in penalty of 2 marks per missing section.

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| --- | --- |
| **PARTICULARS OF MARKS** | **Marks** |
| **Knowledge of Facts & Law** | **25** |
| **Extent & Use of Research** | **25** |
| **Analysis** | **20** |
| **Clarity & Organization** | **10** |
| **Format & Citation** | **10** |
| **Grammar & Style** | **10** |
| **Total** | **100** |

### D. ORAL ROUNDS

**1. Preliminary round**

1. Each team will get a total of 15 minutes to present their case. This time will include rebuttal and sur-rebuttal. Any time exceeding the allotted time shall be penalized. The penalty shall be of 1 marks for every two minutes exceeded. However extension of time is permissible at the discretion of the judges.
2. There shall be two oral rounds per team, presenting both appellant/petitioner and respondent.
3. The division of time per speaker is left for the discretion of the team subject to a minimum of 6 minutes per speaker.
4. The oral argument should be confined to the issues presented in memorial.
5. The researcher shall present the compendium in Google meet screen with the speaker during the oral rounds.
6. The participants shall be mandatorily abide by the dress code as per prescribed by the Bar Council of India. Strict Adherence to Court Manners shall be observed by all the participants.

**2. Final round**

1. Each team will get a total of 30 minutes to present their case. This time will include rebuttal and sur-rebuttal. Any time exceeding the allotted time shall be penalized. The penalty shall be of 1 marks for every two minutes exceeded. However extension of time is permissible at the discretion of the judges.
2. There shall be two oral rounds per team, presenting both appellant/petitioner and respondent.
3. The division of time per speaker is left for the discretion of the team subject to a minimum of 12 minutes per speaker.
4. The oral argument should be confined to the issues presented in memorial.
5. The researcher shall present the compendium in Google meet screen with the speaker during the oral rounds.
6. The participants shall be mandatorily abide by the dress code as per prescribed by the Bar Council of India. Strict Adherence to Court Manners shall be observed by all the participants.
7. Maximum scores for the oral rounds shall be 50 points per speaker. ***The oral rounds shall be judges on the following criteria:***

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| --- | --- |
| **PARTICULARS OF MARKS** | **Marks** |
| Knowledge and Application of Laws & Facts | 10 |
| Ingenuity & Ability to Answer Questions | 10 |
| Style, Poise, Courtesy, & Demeanour | 10 |
| Organisation & Flow of Arguments | 10 |
| Time Management | 10 |
| **TOTAL** | **50** |

### E.FINALITY OF DECISION

The decision of the judges with regard to the outcome of the rounds shall be final.

**IMPORTANT DATES**

**[(Sem- VII & IX of 5 yrs Course) & (Sem- V of 3 yrs Course)]**

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| **EVENT** | **DATE** |
| **Release of the Moot Proposition** | 09 October, 2021 |
| **Last date of registration** | 25 October,2021 |
| **Last date of team confirmation** | 27 October, 2021 |
| **Last date of memorial submission** | 11 November,2021 |
| **Preliminary Round(I)** | 13 November,2021 |

### ORGANIZING COMMITTEE

|  |  |  |
| --- | --- | --- |
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