

**NLU-IMT COLLABORATIVE PROGRAMS
MS IN CYBER LAW AND CYBER SECURITY
III SEMESTER
INTELLECTUAL PROPERTY RIGHTS IN DIGITAL ENVIRONMENT-II (NLU-05)
ASSIGNMENT**

Max. Marks-30

Last Date of Submission- 31 December, 2013

Address for Submission:

The Director

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Instructions:

1. *The assignment should be hand written*

A) Article writeup (10 marks):

Critically examine the perspectives provided in the following article and give your views on whether the position taken in the article is correct in law.

Peter S. Menell, “[Forty Years of Wondering in the Wilderness and No Closer to the Promised Land: Bilski's Superficial Textualism and the Missed Opportunity to Return Patent Law to Its Technology Mooring](http://www.stanfordlawreview.org/content/article/forty-years-wondering)” 63 STAN. L. REV. 1289

AVAILABLE ON: <http://www.stanfordlawreview.org/content/article/forty-years-wondering>

B) Short essay type answers (answer any two: 5 X 2 = 10 marks)

- 1) Examine the scope of fair dealing exceptions to computer programmes under section 52 of the Indian copyright Act in relation to reverse engineering for the purpose of interoperability.
- 2) Briefly examine the case law trilogy of Benson- Flook and Diehr. How was the position changed in the case of re Alappat?
- 3) Examine the manual of the Indian patent office (2011) in the light of section 3(k) requirements of the Patents Act, 1970. Does the manual correctly elucidate the requirements of exclusions under section 3(k).
- 4) Examine the reasons for *sui generis* protection of integrated circuits and layout designs? What are the qualification requirements for protecting them under the Indian law?

C) Case Study (10 Marks)

Mr. Inventor's application seeks patent protection for a claimed invention that explains how buyers and sellers of commodities in the energy market can protect, or hedge, against the risk of price changes. The key claims are claims 1 and 4. Claim 1 describes a series of steps instructing how to hedge risk. Claim 4 puts the concept articulated in claim 1 into a simple mathematical formula.

Claim 1 consists of the following steps:

“(a) initiating a series of transactions between said commodity provider and consumers of said commodity wherein said consumers purchase said commodity at a fixed rate based upon historical averages, said fixed rate corresponding to a risk position of said consumers; “(b) identifying market participants for said commodity having a counter-risk position to said consumers; and “(c) initiating a

series of transactions between said commodity provider and said market participants at a second fixed rate such that said series of market participant transactions balances the risk position of said series of consumer transactions.”

The remaining claims explain how claims 1 and 4 can be applied to allow energy suppliers and consumers to minimize the risks resulting from fluctuations in market demand for energy. For example, claim 2 claims “[t]he method of claim 1 wherein said commodity is energy and said market participants are transmission distributors.” Some of these claims also suggest familiar statistical approaches to determine the inputs to use in claim 4’s equation. For example, claim 7 advises using well-known random analysis techniques to determine how much a seller will gain “from each transaction under each historical weather pattern.”

The patent examiner rejected petitioners’ application, explaining that it “‘is not implemented on a specific apparatus and merely manipulates [an] abstract idea and solves a purely mathematical problem without any limitation to a practical application, therefore, the invention is not directed to the technological arts.’” This ruling of the Indian Patent Office was affirmed by the Intellectual Property Appellate Board in Chennai.

The case has gone in appeal to the High Court. You are assisting a group of senior lawyers on both the sides. Draft petition on behalf of the Indian Patent Office defending the rejection of the patent application and also on behalf of Mr. Inventor (the applicant) who asserts that his invention is patentable under Indian Patents Act, 1970. The applicable law is the Indian patent law.
