

KPA CONTRACT DRAFTING COMPETITION 2019

BACKGROUND

- **L. Nikole Inc.** (Hereinafter “**L. Nikole**”) is an international pharmaceuticals company incorporated & headquartered in New York, USA with its offices in Germany (Europe), Singapore (Asia), London and Brazil. L. Nikole is yet to enter India.
- L. Nikole is a market leader in medicines and vaccines in the United States and is known for collaborating with different companies.
- **Singh & Fonz R&D Pvt Ltd** (Delhi) an Indian company incorporated under Companies Act, 2013 is a Research & Development (R&D) driven industry expert (Hereinafter “**S&F**”)
- Since the Indian Pharmaceutical market is monopolized by the big market players, small and mid-size manufacturers run out of funds for their R&D and ended up infringing patents of existing drugs.
- S&F comes to the rescue of such small & medium drug manufacturers by licencing them their patents at a negotiated price and on a non-exclusive basis.
- S&F has been working on a life-saving drug since 2016 which is now in its final stage. Provisional Application for the said drug was filed six (6) months ago. As per the market research done by S&F they were of the opinion that:
 1. This drug could be a subject to “Compulsory Licensing”;
 2. Small & mid-size would not be able to meet the demand;
 3. S&F would not be able to capitalize unless a market leader takes hold of this drug.
- **L. Nikole** were approached by S&F with the proposal to licence this drug on an exclusive basis in the Indian market. Licensing of drug would cost L. Nikole US \$1 million (one time) and a 7% royalty on drugs sold.

CURRENT SCENARIO

- You are a New Delhi based corporate lawyer with expertise in patent licensing deals.
- **L. Nikole** has approached you, referring to this proposal by S&F asking for advise on following doubts: -
 1. Patent was filed six months ago, if the Patent Licensing deal goes through would it stand legal without having an actual patent yet?
 2. What would happen if the Patent is denied?

3. For the purposes of exclusivity, is it necessary for the parties to sign separate Agreements?
 4. How does Compulsory Licensing work in India? How would this deal be affected if this drug becomes a subject matter of Compulsory Licensing?
- With this deal, L. Nikole would like to officially enter the Indian Market. L. Nikole would like general information on incorporation in India, best suitable entity type, incorporation requirements & checklist and other necessary details a foreign corporation (Pharmaceuticals) must know before incorporating in India.
 - L. Nikole will require a first draft of the Patent Licensing Agreement. As per S&F's proposal, patent licensing on exclusive basis in the Indian Market and non-exclusive basis for sale outside India.
 - Conditions put forth by S&F are:
 1. One-time license fee of US \$1 million and 7% royalty on drugs.
 2. Duration of license would be seven (7) years starting November 1, 2019.
 3. Offer to license is open until September 31, 2019.

CLIENT REQUIREMENTS

- You are required to make one (1) Patent Licensing Agreement and one memo clarifying the doubts and providing the information asked above.
- Payment of royalties would be transferred to S&F on annual basis. Payment of one-time license fee (\$1 million) would be transferred in two (2) tranche, fifty percent (50%) at the time of execution and remaining fifty percent (50%) on grant of patent to S&F.
- Indemnification to minimize the loss in case Compulsory Licensing is granted.
- Client would like a strict confidentiality clause in regards with this agreement and the know-how of the drug, including but not limited to the cost of manufacturing of the drug.
- Dispute resolution mechanism would be foreign (US) seated arbitration.
- Other necessary clauses.

In case of any clarifications regarding please feel free to contact: -

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