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Patent Facilitation Services  
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**I-WIN IP SERVICES**

**AND**

**CELL FOR IPR PROMOTION AND MANAGEMENT (CIPAM)**

**DEPARTMENT FOR PROMOTION OF INDUSTRY AND INTERNAL TRADE  
MINISTRY OF COMMERCE & INDUSTRY- GOVT. OF INDIA**

**IN COLLABORATION WITH**

**CENTRE FOR IPRS AND PATENT FACILITATION SERVICES  
OF OSMANIA UNIVERSITY & UNIVERSITY COLLEGE OF LAW, OSMANIA  
UNIVERSITY.**



**NIROKILL**

**VS.**



**VIROKILL**

**WHO OVERCOMES THE MOUNTAINS OF INTELLECTUAL PROPERTY  
RIGHTS IN TACKLING #COVID-19**





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## VIRTUAL MOOT COURT PROBLEM



Verus



A company by name M/s. NAVEEN INDIA RESEARCH ORGANIZATION (NIRO) has developed a herbal combination which comprises of mace extract, orange peel extract and rose leaf extract and can be used for a wide range of applications like air purifier and sanitizer is effective in reducing a wide range of microbial population that is found in the indoor environment/outdoor environment. The herbal disinfectants, unlike chemical disinfectants, are safe for human beings and effective against infectious microbes and that kills viruses such as SARS, MERS and COVID-19 on external surfaces. The product of NIRO is a herbal disinfectant and sanitizer composition comprising DMSO, ethanol and ethyl acetate extracts of Citrus Sinensis, Methanol extract of Myristica Fragrant HOUTT and methanol extract of Rosa Indica. They have tested their product and applied all possible Intellectual Property Rights associated



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such as Patent, Trademark, Copyright and Design Rights to the said product all of which have been granted/Registered to them in India, as in India they choose an expedited examination of application that helped tackling Pandemic Covid-19 situation. However their corresponding foreign applications in Pakistan, China, Malaysia and Singapore are pending.

There is another company by name M/s.VIJAY INDIA RESEARCH ORGANIZATION (VIRO) has developed a product i.e., combination of extracts from rose, citrus peel, mace, nutmeg and datura and is effective against a variety of micro organisms that are found in indoor environment/outdoor environment. The composition has shown tremendous antimicrobial activity against Escheria coli, Staphylococcus aureus, Streptococcus, Bacillus cereus, Pseudomonas sp., Aspergillus sp., Candida sp., Penicillium and Alternaria sp. being natural these are both environment and human friendly. And that composition being antimicrobial also kills viruses such as SARS, MERS and COVID-19 on external surfaces., however they felt that filing Intellectual Property Applications is nothing but confining knowledge; They had this broad thought that Knowledge is to share and not to confine within one organization or one person.



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The product of VIRO is a herbal composition used as disinfectant sanitizer and effective in reducing a wide range of microbial populations comprising the DMSO, chloroform ,ethanol ,methanol ,and ethyl acetate extracts of Datura metel and Rosa indica (leaf and petal) Myristica fragrans (nutmeg), Myristica fragrans HOUTT (mace), Citrus sinensis and Citrus limetta plant. VIRO has been manufacturing the product in India, however were selling them in Pakistan, China, Malaysia and Singapore.

Knowing that VIRO is manufacturing and selling similar product as that of NIRO; the IP team in NIRO advised NIRO to enforce its Intellectual Property Rights and a Civil Suit is filed in the District Court i.e., City Civil Court Hyderabad on 01/05/2020 by NIRO against VIRO for the alleged Infringement of their Patent, Trademark, Copyright and Design Rights. Both NIROKILL and VIROKILL logos are depicted below:



The products are also sold under the following packaging and the labels backside the cans are depicted below:





**NIROKILL**

**THE EASY WAY TO CLEAN & DISINFECT**  
USE ON HARD, NONPOROUS, NON-FOOD-CONTACT SURFACES:

KITCHENS	BATHROOMS	OFFICES
CLASSROOMS***	PET AREAS	LAUNDRY ROOMS
DORMS	LOCKER ROOMS	CIMS

**Kills 99.9% of Viruses<sup>1</sup> & Bacteria**  
**Kills Staph<sup>2</sup>, E. coli<sup>3</sup>, MRSA,<sup>4</sup> Salmonella,<sup>5</sup> Strep,<sup>6</sup> Klebs<sup>7</sup>**  
**Kills Cold & Flu Viruses<sup>8</sup>**  
**Great for Wood,<sup>9</sup> Granite<sup>10</sup> & Stainless Steel**

**TO OPEN PACKAGE:**  
 All packages from Next sheet popps out automatically. Close lid to retain moisture.

<sup>1</sup> Herpes, Coronavirus, Influenza A2 Virus  
<sup>2</sup> Staphylococcus aureus, Klebsiella coli O157:H7  
<sup>3</sup> Methicillin-resistant Staphylococcus aureus  
<sup>4</sup> Salmonella enterica, Staphylococcus pyogenes  
<sup>5</sup> Klebsiella pneumoniae  
<sup>6</sup> Group A streptococcus  
<sup>7</sup> Group B streptococcus  
<sup>8</sup> Influenza A Virus  
<sup>9</sup> Hardwood  
<sup>10</sup> Granite

**PRECAUTIONARY STATEMENTS: HAZARDS TO HUMANS AND DOMESTIC ANIMALS.**  
**CAUTION:** Causes moderate eye irritation. Avoid contact with eyes or clothing. Wash thoroughly with soap and water after handling. **FIRST AID:** IF IRITATED, hold eye open and rinse slowly and gently with water for 15-20 minutes. Remove contact lenses, if present, after the first 5 minutes, then continue rinsing eye. Call a poison control center for treatment advice. Have the product container or label with you when calling a poison control center or doctor, or going for treatment. For other information, call (800) 222-1860. **PHYSICAL OR CHEMICAL HAZARDS:** Do not use or store near heat or open flame.

**STORAGE AND DISPOSAL:** Dispose of wipe in trash after use. Do not flush. Tightly close lid between uses to retain moisture. Reusable container. Do not reuse or refill this empty container. Offer empty container for recycling. If recycling is not available, treat container as trash.  
CONTAINS NO PHOSPHORUS.

Empty & Reusable Cap  
 PLASTIC BOTTLE

0 44600 01656 6



**VIROKILL**

**THE EASY WAY TO CLEAN & DISINFECT**  
USE ON HARD, NONPOROUS, NON-FOOD-CONTACT SURFACES:

KITCHENS	BATHROOMS	OFFICES
CLASSROOMS***	PET AREAS	LAUNDRY ROOMS
DORMS	LOCKER ROOMS	CIMS

**Kills 99.9% of Viruses<sup>1</sup> & Bacteria**  
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Empty & Reusable Cap  
 PLASTIC BOTTLE

0 44600 01628 3





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Along with the civil suit NIRO also filed an application under Order XXXIX rule 1 and 2 seeking temporary injunction against VIRO from manufacturing the product, using the Trademark labels and design of the can. The Civil suit is numbered as Original Suit (OS) No. 143 of 2020 and their interim application has been number as I.A. No.258 of 2020. After hearing the counsels for NIRO, the District Judge at Hyderabad City Civil Court ordered urgent notices to VIRO for their reply and posted the Interim Application I.A. No. 258 of 2020 to be heard on 06/07/2020 and the main suit is posted on 06/12/2020. Now, you are requested to prepare arguments from both sides to be presented on 06/07/2020 for Interim Application. Assuming that you are counsel for NIRO since you have all intellectual property rights protected how will you place your arguments? Assuming that you are counsel for VIRO how do you defend them in this Infringement suit.

#### **HINTS FOR ARGUMENTS:**

#### **FOR COUNSELS OF NIRO:**

- 1) Patent is Granted - Section 48 provides to prevent make, use, sell, offer for sale or import the product into India by the Patentee and hence Manufacturing (making) being done in India by VIRO, it is an infringement of rights provided to them. Further NIRO has also filed applications in Pakistan, China, Malaysia and Singapore



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which will eventually granted and the acts of selling, offering for sale of product in those territories is also an infringement.

- 2) Trademark VIROKILL is similar to NIROKILL expect that N is replaced with V for similar products is nothing but Infringement in India, since the mark is Registered to them. However since it is yet to be Registered in Pakistan, China, Malaysia and Singapore and hence it is Passing Off in those countries. Further the product being manufactured and labeled in INDIA it is an infringement of Rights though it is not actually sold in India.
- 3) The marketing Literature and packaging of VIROKILL is looking similar to that of NIROKILL and thus it is an infringement of copyrights in content developed and designed by NIRO. As per Section 14 of the Copyright Act, 1957 which provided the meaning of Copyright i.e., even substantially if the works are similar it is infringement.
- 4) NIRO has adopted a unique shape of Design for its package- VIRO has also a unique shape of design, however not exactly matching but both are not regular packaging - VIRO's package is bit similar to NIRO packaging and hence it is infringement of Design rights of NIRO.



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#### FOR COUNSELS OF VIRO:

- 1) a) The products of NIRO and VIRO are completely different though achieving the similar objectives of killing viruses. b) Even assuming but not admitting that the products are similar, VIRO is first to develop such a product, the lab note books of VIRO and testing done by VIRO are much prior to NIRO. c) Respecting IPR of NIRO in India, VIRO is not selling its products in INDIA. d) The Patent of NIRO is not valid Patent. e) In this Pandemic Situation where people are dying, the Patent law should take back seat and companies like VIRO should be allowed to manufacture and distribute which helps Pandemic situation to be controlled by governments. There are provisions similar to in India Section 100, 101, 102 and 103 of Patent Act, 1970 which provide exemption for products procured by Government/Government agencies it is exempted in all countries i.e., Pakistan, China, Malaysia and Singapore also. VIRO has sold the product only to Government Department and not others in the commercial market. f) It is an essential product in this Pandemic Situation and hence no interim injunction can be granted to NIRO instead FRAND principles can be adopted as is done for SEP's in case NIRO succeed in its case.
- 2) The Trademark VIROKILL is adopted honestly based on their company name and the objective of killing viruses by the product. It is also incidental that the intended purpose i.e., VIRUS KILLING (VIROKILL) is present in the mark. It is **bonafide use**





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of abbreviation of their company name and cannot be termed as Infringement. Further the mark is in descriptive nature, where courts held **descriptive marks** are not protected. Both NIROKILL and VIROKILL are different and pronounced differently. **No Product is sold by VIRO in India** and thus no actual infringement of Trademark Rights of NIRO. Passing Off suit is not maintainable as no actual passing off happening in INDIA.

- 3) The packaging is done by VIRO in accordance with the labeling laws prevailing in the Country and the products are similar obviously the content looks similar and there is no copyright exists on the facts. Ideas are not protected under copyrights laws only expression of Ideas are protected and hence the expression of VIRO is completely different than NIRO. Further if there exists any copyright than it vests with VIRO as they developed and published the content first.
- 4) The Design of packaging of both products are different and hence there cannot be any Design Infringement.