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STATEMENT OF JURISDICTION

The Plaintiff has approached this Hon'ble Court under Section 104 of the Patents Act, 1970 read with Section 20 of the Civil Procedure Code, 1908. The plaintiff humbly requests this Hon'ble Court for joinder of causes of action under Order II rule 3 of the Code of Civil Procedure, 1908.

Section 104 of the Patents Act, 1970 read under as:

Section 104: Jurisdiction

No suit for a declaration under Section 105 or for any other relief under section 106 or for Infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:

Provided that where a counter-claim for revocation if the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

STATEMENT OF FACTS

I

Philthkleen Systems Ltd. (hereinafter referred as the plaintiff) is a company based in Nanopore. The company developed a dust cleaning system, based on nanotechnology that used nanobots for cleaning dust.

II

Patent for the dust cleaning system was granted in Nanopore, US, EU Japan and other countries. The product was named DUSTNIBBLER and a Trademark for the same was granted in Nanopore.

III

Dubot Inc.(hereinafter referred as the defendant), a company started by former employees of the plaintiff started manufacturing dust and dust mite cleaning system using nanobots.

IV

This product was named DUSTMUNCHER for which a patent and trademark application is pending in Nanopore.

V

The defendant launched an online game where it was advertised that if a player accumulated 100,000 points using an icon NIBLERR, he/she would get a discount on DUSTMUNCHER.

STATEMENT OF ISSUES

1. WHETHER THE GRANT OF PATENT TO THE DEFENDANT WOULD BE IN INFRINGE PLAINTIFF'S PATENT RIGHTS?
2. WHETHER THE ONLINE GAME OF THE PLAINTIFF AMOUNTS TO A LIBELOUS UNILATERAL ANIMATED REPRESENTATION DESIGNED TO DEFAME THE PLAINTIFF'S PRODUCT?
3. WHETHER THE DEFENDANT HAS INFRINGED THE LAWS RELATED TO TRADE SECRET?
4. WHETHER THE DEFENDANT IS LIABLE FOR TRADEMARK INFRINGEMENT?

SUMMARY OF PLEADINGS

1. WHETHER THE GRANT OF PATENT TO THE DEFENDANT WOULD INFRINGE PLAINTIFF'S PATENT RIGHTS?

- 1.1 That the claims of the plaintiff have been incorporated, *in toto*, in the defendant's claims.
- 1.2 That the claims of the defendant are in want of novelty.
- 1.3 That the claims of the defendant as to dust mite detection and destruction capability lack inventive step.

2. WHETHER THE ONLINE GAME OF THE PLAINTIFF AMOUNTS TO A LIBELOUS UNILATERAL ANIMATED REPRESENTATION DESIGNED TO DEFAME THE PLAINTIFF'S PRODUCT?

- 2.1 That the online game of the defendant is a mere unilateral animated representation.
- 2.2 That the use of the deceptively similar name NIBLERR upon the icon is misleading.
- 2.3 That the shape of the icon employed in the game resembles with plaintiff's product.

3. WHETHER THE DEFENDANT HAS INFRINGED THE LAWS RELATED TO TRADE SECRET?

- 3.1 That the TRIPS provisions mandate protection of "Undisclosed Information".
- 3.2 That the technical know-how underlying the product is a trade secret.
- 3.3 That mere publication does not amount to disclosure of confidential information.

4. WHETHER THE DEFENDANT IS LIABLE FOR TRADEMARK INFRINGEMENT?

- 4.1 That the use of trademark in advertising amounts to direct infringement
- 4.2 That the use of synonymous suffix in word mark does not save the defendant's mark from infringing the plaintiff's trademark.
- 4.3 That the use of device and common elements amounts to copying of trade dress.