



# FIRST PIP COMPETITION, 2012

Organized by SpicyIP in association with MHRD IP Chair at the National University of Juridical Sciences (NUJS) & the Intellectual Property and Technology Law Society (a student run academic society)

## TOPIC

**Should the process of creating an invention or work determine its protectability as an intellectual property?**

*Entries closed on  
October 01, 2012*

*For more details, write  
to us at [iptls@nujs.edu](mailto:iptls@nujs.edu)*

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## AWARDS

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### FIRST

**Pervin Rusi Taleyarkhan**

*III Year(JD), Indiana University Robert H. McKinney School of Law*

### SECOND

**Priya Giyarpuram Prasad** *III Year(JD), University of Houston Law Center*

**Polly Beth Sims** *III Year, SMU Dedman School of Law*

### THIRD

**Karan Talwar** *V Year, WB NUJS, Kolkata*

**Karthik Khanna** *V Year, WB NUJS, Kolkata*

### HONORARY MENTION

**Ido Tzang** *LLB, IDC Hertzelya Isreal (2012)*

**Sanchay Joshi** *II Year, University of Petroleum & Energy Studies, Dehradun*

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## ENTRIES ADJUDGED BY

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**Professor David Vaver** *Professor of IP Law, Osgoode Hall Law School*

**Professor Lionel Bently** *Director of the Centre for IP Law, University of Cambridge*

**Judge Randall R. Rader** *Chief Judge of the United States Court of Appeals for the Federal Circuit*

**Professor Graeme Dinwoodie** *Director of the Oxford Intellectual Property Research Center, University of Oxford*

**Professor Shamnad Basheer** *MHRD Chair Professor in IP law at the National University of Juridical Sciences, India*

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# SUMMARY ASSESSMENT OF ESSAYS BY JUDGES

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Please note that the judge names have been anonymised below and does not correspond to the listing above.

## *Judge 1*

I have finished my grading of the entries. I skimmed each article quickly then went back and read them more thoroughly in the reverse order of my first read. I am confident of my results, but a little worried because I awarded the 5 places in the exact order that you sent them to me. So here are my judgments:

1. **TALEYARKHAN** *An excellent paper that used a little economic reasoning to show that the public profits from an invention or creation regardless of the inventive or creative process itself therefore the law should disregard that irrelevant process.*
2. **PRASAD & SIMS** *Fine job that tended to use more legal reasoning based on the language of the Constitution and the law that allows any method to “promote progress” and notes that the invention is “not negatived” by the manner of its creation.*
3. **TALWAR & KHANNA** *A paper with a strong start based on the need for international uniformity and a reliance on TRIPS, but it got a little side-tracked with “moral questions” near the end of the writing.*
4. **JOSHI** *A fine examination of the legal standards for obviousness and originality but it never confronted the question squarely about the role of various ways of advancing technology as a legal or economic question.*
5. **TZANG** *A work that got distracted trying to philosophize about invention as a product of effort, skill, and genius (whatever that means), but added little to the scholarship except repeating ideas from Calabresi or Coase or Merges.*

## *Judge 2*

I thought that Prasad engaged better with black letter law (if less ambitious theoretically and some careless typos such as moving Baker v. Selden forward a century). In contrast, I thought that although Taleyarkhan was very nicely written, some of the arguments seemed doubtful on their own terms (eg whether the forms of alternative non-legal recognition mentioned focused on process rather than end product; my sense is that that might vary for any number of reasons). The other three all had a balance of different strengths and weaknesses; but I thought the gaps among them smaller than the gap between the first two and those three.

So, I would rank as follows.

1. **PRASAD & SIMS**
2. **TALEYARKHAN**
3. **TZANG**
4. **TALWAR & KHANNA**
5. **JOSHI** (*probably equal fourth*)

Congrats on stimulating these folks to think through in short order what is quite a complex (if simply stated) issue.

### **Judge 3**

The topic challenged the entrants' capacity for original thought.

I have finished my grading of these papers:

1. **TALEYARKHAN** [A]
2. **PRASAD & SIMS** [B+(+?)]
3. **TZANG** [B+]
4. **TALWAR & KHANNA** [B]
5. **JOSHI** [C+]

I have since looked at [●]'s grading and am comforted that we agree on the first 2, but I would rank Tzang ahead of the other two, unlike [●] who ranks him behind both.

I thought Tzang was rather better than [●] thought. The writing was somewhat stilted (English obviously not his first language) but he sought to engage with the topic rather more philosophically than the others did and did display some original thought. That said, some of the paper didn't hang together - the user rights material at the end didn't have a clear connection with the rest of the paper, and it is news to me that the Alfred Bell v Catalda case is a Canadian case.

I thought the joint Talwar/Khanna paper also tried to engage with the question but I was unimpressed with the international dimensions apart from the occasional EU references. I thought they were on to something when they looked at the immorality and illegality issues - a better question might have been: should spies make money off their copyrights when they breach confidence or espionage laws - but this fizzled a bit and the interesting international case law here was left unexplored: see, eg, the US law on spies & copyright, & immorality & utility (regressing from Story J days to Orange Whip).

Joshi simply recited current standards of protection without really engaging the question or considering any overlap issues.

### **Judge 4**

I would rank

1. **PRASAD & SIMS** *A strong and solid piece, less attractively presented than 2, but sounder as a matter of law.*
2. **TALEYARKHAN** *Better written than Prasad, but with sweeping and inaccurate claims, and lacking nuance in its legal analysis; heavily dependent on WIPO IP handbook.*
3. **TALWAR & KHANNA** *The most original take on the question, and with sufficient ability to see the problems in the proposition. But many of the examples didn't stand up as cases of immorality in the process of invention rather than exploitation.*
4. **TZANG** *Solid but uninspiring.*

5. **JOSHI** *Rather disappointing. I would rank 5th.*

## **Judge 5**

My evaluations are as under:

1. **TALEYARKHAN** *Given that there was nothing in the essay to suggest that participants were meant to work within the four corners of existing law (doctrine), this was one of the few pieces that flew forth and engaged with the issue from a broader policy perspective. While I have my own doubts on the price vs value distinction, it was a coherent framework to engage with. Like [●], I wasn't very convinced on the nexus between non IP incentives and process attribution.*
2. **PRASAD & SIMS** *While excellent on doctrine, the flow (of the essay) left much to be desired...seemed a bit staccato at places. It failed to use the opportunity to explore broader horizons and more interesting issues beyond current doctrine.*
3. **TALWAR & KHANNA** *While I relished their original take on the issue, merely examining the problem from the limited lens of morality was rather "limiting", to say the least. But within their carefully circumscribed space, it was decent, though the essay might have benefited from a broader international sweep.*
4. **TZANG** *Some good ideas, but seemed to be all over the place. I provided as much leeway as I could on the language deficit, but still found that the piece lacked cohesion.*
5. **JOSHI** *Not impressive at all.*