M S Ramaiah Institute of Technology

Department of Information Science & Engineering

IPR Assignment 1

Unit-1

1. State the need and importance of various forms of IPR.

Intellectual property (IP) contributes enormously to our national and state economies. Dozens of industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. Thus the importance of various forms of IPR is:

Patents:

Patents are needed for maintaining continuous stream of new ideas and experimentation, thereby pointing out at the growth of our nation.

They are also needed to reduce the burden of duplication of invention thereby it helps in saving further spending of time and money.

Geographical Indications:

Geographical indications allows producers to obtain market recognition and often at a premium price.

They have become a key source of niche marketing(subset of the market on which a specific product is focused).

Copyrights:

Copyrights are needed by authors, artists to stop other people from using their creations thereby providing protection for their creations.

Copyrights are also needed to help authors and artists of various fields to get credit for their work and also receive payment for the same thereby helping them stay in business and create broader economic benefits.

Trademarks:

Trademarks play an important role for the commercialization and growth of industries in our country.

These are required to link between the goods and the manufacturer i.e. a customer may not even know the name or the address of the manufacturer but it is the mark that sometimes weighs his decision to buy or not buy a branded product.

Trade Secrets:

Trade secrets are needed by the inventors or companies to make improvements in order to compete with other competitors.
Trade secrets are important in encouraging and protecting inventions and innovations as the existing laws are surpassed due to rapid change in technology in various fields.

2. Briefly explain with an example any five different forms of IPR.

Intellectual property rights include patent, copyright, design, trademark, geographical indication, etc. The following are the five main different forms of IPR:

Patent:

A patent is a form of right granted to an inventor, giving the owner the right to exclude others from making, selling, offering to sell an invention, which is a new product or a process for a limited period of time. An invention generally has to fulfil three main requirements: Novelty, non-obviousness and industrial use. The typical duration of a patent is 20 years from the time of filing an application.

Some of the examples are rubber shoes for horses, system for shorter flight times wherein it is possible to plan flights more effectively, as it is easier to find gaps in traffic, etc.

Copyright:

Copyright is a legal right given by the law that grants the creator of an original work exclusive rights for its use and distribution. This is usually only for a limited time.

Copyrights are considered territorial rights, which mean that they do not extend beyond the territory of a specific jurisdiction. Typically, the duration of a copyright in India spans the lifetime of the author plus 70 years from the time of his/her death.

Examples for copyrights include artistic works like novels, poems, photographs, etc, computing like software code for a website, computer software application, etc, in the field of business like a database, architectural plans, etc.

Trademark:

A trademark is a name, word, phrase, symbol, colour, shape, design used to identify and distinguish goods or services. The trademark owner can be an individual, business individual, or any legal entity. A trademark may be located on a package, a label, a voucher, or on the product itself.

A trademark may be designated by the following symbols: ™ (the trademark, which is the letters "TM" in superscript, for an unregistered trademark, a mark used to promote or brand goods), ℠ (which is the letters "SM" in superscript, for an unregistered service mark, a mark used to promote or brand services), ® (the letter "R" surrounded by a circle, for a registered trademark).

Example for trademarks is the Nike "swoosh" design identifies shoes that are made by Nike.

Trade Secret:

A trade secret is a formula, process, device, or other business information that companies keep secret to give them an advantage over their competitors.

Some of the other advantages of trade secrets are that a trade secret is not publicly disclosed and hence the inventor can make improvements without competition from the other competitors. Inventions involve no registration costs unlike patents. The precise language by which a trade secret is defined varies by jurisdiction. Trade secrets are an important, but invisible component of a company's intellectual property (IP). Their contribution to a company's value is generally major. Being invisible, that contribution is hard to measure.

Examples of trade secrets are: soda formulas, customer lists, survey results, and computer algorithms.

Geographical Indication:

A geographical indication is defined as a sign or an indication which identifies certain goods that originate or are manufactured from a particular territory or locality.

Some of the problems faced in India for giving geographical indications are: diversity which makes thousands of products eligible for the tagging and difficulty in organizing small housed units into association.

Examples for geographical indications include Darjeeling Tea, Malabar Pepper, Udupi Jasmine, Madhubani Paintings, etc.

3. List the main activities of WIPO and how did it originate?

The World Intellectual Property Organization (WIPO) was established at the WIPO Convention as a specialized agency of the United Nations. It aims in developing a balanced and accessible international intellectual property system, which contributes to economic development.
Some of the key milestones of the WIPO history are:
-**Paris Convention**: It is for the Protection of Industrial Property and is the first major international treaty designed to help the people of one country obtain protection in other countries for their intellectual creations in the form of industrial property rights known as inventions(patents), trademarks, designs, etc.
-**Berne Convention**:It is for the Protection of Literary and Artistic Works. It is designed to give creators their right to control and receive payment for the use of their creative works such as poems, songs, novels, paintings, etc.
-**BIRPI**: United International Bureau(BIRPI) is an international organization formed from the above two conventions for the Protection of Intellectual Property. BIRPI became WIPO, which is a specialized agency of the United Nations system of organizations, with a mandate to administer intellectual property matters recognized by the member states of the UN. WIPO also actively encourages states to sign its treaties and to enforce them.

The main features of the WIPO are as follows:

- Developing international IP laws and standards.
- Promoting a balanced evolution of IP legislation.
- Promoting development of international IP laws.
- Providing global IP services to make it easier and more cost effective to obtain protection internationally for new inventions, brands and designs.
- Filing international applications for patents.
- Filing international registrations for trademarks and designs.
- Providing arbitration, mediation and other dispute resolution services.

4. Explain the main features of TRIPS Agreement.

WIPO entered into a cooperation agreement with the WTO, called the Trade-Related Aspects of Intellectual Property Rights(TRIPS) Agreement. The TRIPS Agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on IP to date. The main objective of TRIPS Agreement is to promote effective and adequate protection of the intellectual property rights on a global scale.
The three main features of the TRIPS Agreement are as follows:

- Standards: It ensures that each member country provides some minimum standards of protection to the IPRs of its fellow members.
- Enforcement: It ensures that government of every member country takes important steps at domestic level for the enforcement of IPRs.
- Dispute:It settles disputes between WTO members.

5. List the objectives of the World Trade Organization.

General Agreement on Tariffs and Trade (GATT) was replaced by the World Trade Organization due to the following reasons:

- Existence of legal problems particularly in the areas of agriculture and textiles and also failed to cover trade services and intellectual property rights.
- Absence of an international mechanism to resolve disputes in international trade.
- It favoured industrial countries more than developing countries and thus the developing countries lost confidence in the GATT.

Since the GATT had suffered from many problems, it eventually got converted to the WTO. Therefore, WTO can be called the new version of the GATT and has the following six objectives:

- Setting and enforcing rules for international trade
- Providing a forum for negotiating and monitoring further trade liberalization
- Resolving trade disputes
- Increasing the transparency of decision-making processes

- Cooperating with other major international economic institutions involved in global economic management
- Helping developing countries benefit fully from the global trading system.
- Although the goals of wto are shared by the GATT, in practice these goals have been pursued more extensively by the WTO.

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6. What are the legislations covering IPRs in India?

1. Patents: The Patents Act, 1970 -the patent granted under this act are operative in whole India.
2. Design: The Designs Act, 2000-this act protects external shape, configurtion and surface pattern of industrially produced article
3. Trademark: The Trade Marks Act, 1999 , it provides for registration of trademarks for services.
4. Copyright: The Copyright Act, 1957- An Act to amend and consolidate the law relating to copyright.
5. Plant Varieties: The Protection of Plant Variety and Farmers' Rights Act, 2001

7. What are the IPR laws applicable for protecting computer related inventions in India?

The Indian Patent Office has come out with a new guideline for its officials to follow when deciding on applications related to software and hardware related inventions. The new guideline says that if the contribution of the invention lies only in computer program, the examiner should deny the patent claim.
As per the new guidelines for examination of Computer Related Inventions (CRIs), the examiners has to rely on three stage test in examining the CRI applications, starting with properly construing the claim and identifying the actual contribution.
It says that if the contribution lies only in mathematical method, business method or algorithm, deny the claim.
"If the contribution lies in the field of computer program, check whether it is claimed in conjunction with a novel hardware and proceed to other steps to determine patentability with respect to the invention," it says.
"The computer program in itself is never patentable. If the contribution lies solely in the computer program, deny the claim. If the contribution lies in both the computer program as well as hardware, proceed to other steps of patentability," it added.

This is expected to ensure that the applications for patents in the field of software will be rejected and only applications claiming a novel hardware component along with software will be eligible for patent protection, says the advocacy groups opposing software patent in India.
The aim of the guideline is to bring in uniformity and consistency in examination of patent applications in the field of CRIs by the Indian Patent Office. The objective is to bring out clarity in terms of exclusions so that eligible applications of patents relating to CRIs can be examined speedily, it says.
A mathematical or business method or a computer program per se or algorithms are not inventions within the meaning of the Act. The guideline analyses what the terms mathematical business method computer program per se and algorithms mean when a patent application is examined.
The previous guideline suggested that some of the advancement in the software compared to the prior art could also get a patent. These guidelines were against the statutory provisions and could have resulted in a flood of patents being granted in the field of software, which would affect the Indian IT industry, especially the startups.

8. How has India implemented TRIPS rules? Has it compromised the country's sovereignty?

(Note: Answer for such questions are only indicative. Students are encouraged to draw their own conclusions from the study of relevant materials)

* In accordance with the TRIPs Agreement, countries are free to determine the 'appropriate method' for implementing the Agreement within 'their own legal system and practice'

* The Agreement reaffirms the well-established principle of 'national treatment', which means that the national of any country member of the Agreement are to be treated in the same way as national of the country

* These principles are meant to end discrimination , both between foreigners and nationals and between nationals of different countries.

* TRIPs Agreement allows member countries to admit parallel imports if they so wish. This principle can be crucial for the protection of consumer's interests and for ensuring access to industrial or agricultural inputs at competitive prices.

* TRIPs Agreement embodies an important principle by which the member countries are empowered to formulate or amend their laws and regulation and thus to adopt measures to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development.

* It also empowers the member countries to take appropriate measures that may be needed to prevent the abuse of IPRs by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology

* TRIPs agreement focuses on specific areas of IPRs like copyrights, trademarks, geographical indications, industrial designs, patents, layout designs or topographies of integrated circuits, trade secrets

* TRIPs agreement makes provision for the protection of software and compilation of data as a literacy creation. It provides rental rights for phonograms, films and computer programs for the first time in an international agreement. (criminal proceedings and to prescribe penalties against copyright piracy)

* Under the TRIPs agreement, the protection of geographical indications, which was granted in a small number of countries, is now required of all members of WTO. Reinforced protection is accorded in respect of wines & spirits.

* The separate section on industrial designs makes it mandatory that new or original industrial designs need to be protected for at least 10 years

* Patents are to be granted without discrimination as to the place of invention, the field of technology or whether products are locally produced or imported provided they are new, involve an inventive step and are capable of industrial applications.(Earlier freedom was there for the countries to frame their patent laws)

* The Agreement sets out the rights to be conferred under a patent, including the protection of a product directly made with a patented process, and an exclusive rights to produce , sell and import the protected product.

* Under TRIPs Agreement, trade secrets such as confidential know-how or commercial information are deemed protectable. In addition, obligation are recognized in relation to test results and other data submitted to governments in order to obtain approval of pharmaceutical and agrochemical products.

* Non-compliance with the new rules, once adopted, would give rise to a dispute settlement procedure under the WTO rules and possibly, to retaliatory commercial measures in any field by the country whose nationals are affected by such non-compliance. Since within the WTO, adherence to the new IPRs universal standards will be monitored by the council for TRIPs

9. "IPR laws are skewed to serve the interests of large corporates and powerful nations".debate

(Note: Answer for such questions are only indicative. Students are encouraged to draw their own conclusions from the study of relevant materials)

The adoption of stronger IPRS in developing countries is often defended by claims that this reform will attract significant new inward flows of technology, a blossoming of local innovation and cultural industries, and a faster closing of the technology gap between themselves and developed countries. It must be recognized, however, that improved IPRS by themselves are highly unlikely to produce such benefits. The prior group attracts little FDI and receives few patents at home or abroad. The latter group attracts the bulk of FDI in the developing world and is experiencing rising use of intellectual property protection.. Expectations that stronger IPRS alone will bring technical change and growth are likely to be frustrated.

The evidence presented above suggested that IPRS could generate more international economic activity and greater indigenous innovation, but such effects would be conditional on circumstances. Circumstances vary widely across countries and the positive impacts of IPRS should be stronger in countries with appropriate complementary endowments and policies. Countries face the challenge of ensuring that their new policy regimes become pro-active mechanisms for promoting beneficial technical change, innovation, and consumer gains.

Economic theory demonstrates that IPRS could play either a positive or negative role in fostering growth and development. The limited evidence available suggests that the relationship is positive but dependent on other factors that help promote benefits from intellectual property protection. In brief, IPRS could be effective and market-based mechanisms for overcoming problems that exist in markets for information creation and dissemination. However, their existence could pose problems in terms of their potential for costs and anticompetitive abuse.

Accordingly, modern IPRS systems are not sufficient by themselves to encourage effective technology transition. Instead, they must form part of a coherent and broad set of complementary policies that maximize the potential for IPRS to raise dynamic competition. Such policies include strengthening human capital and skill acquisition, promoting flexibility in enterprise organization, ensuring a strong degree of competition on domestic markets, and developing a transparent, non-discriminatory, and effective competition regime.

10. Should IPR be positive or negative rights? Why?

(Note: Answer for such questions are only indicative. Students are encouraged to draw their own conclusions from the study of relevant materials)

IPR should be positive right because -

(1) Providing guarantees regarding the quality and safety of products Many counterfeit products place our children's and citizens' safety or health at risk, for instance where vehicle spare parts or drugs are concerned. Enforcing IP rights in respect of such products guarantees at least that the products' origin is known and that the products are genuine, whereas counterfeit products often do not comply with the applicable safety standards. This is especially true for trade marks, but patent licensing contracts, for instance, may also include quality insurance clauses.

(2) Enabling indirect exploitation Where a company has protected its products (or processes, etc.) by IP rights, it can derive revenues not only from their direct exploitation (by that company), but also from their indirect exploitation by third parties, under licensing contracts. These additional indirect revenues sometimes exceed the profits resulting from the direct exploitation, especially as they do not require additional internal manufacturing capacities. Such an approach may therefore be particularly relevant for SMEs. It is also important for universities and public research centres, which usually do not have any direct exploitation activities.

(3) Cost-free mechanisms While certain procedures required for the registration of IP rights are considered to be expensive, in particular by SMEs, it should be noted that certain IP rights can be enjoyed without any formal procedure and without paying any official fees. This is in particular the case for copyright and for unregistered designs.

(4) Facilitating technology transfer Patents often constitute a convenient means to not only protect but also describe in a very accurate way technologies which are the subject of technology transfer and similar agreements (licensing, assignment, etc.). This "technology packaging" / trade facilitation function justifies that patents have sometimes been considered as the "currency" of the knowledge-based economy. (To some extent, the same reasoning also applies to IP rights other than patents.)

(5) "Open source" relies on IPR Open source mechanisms are becoming popular in certain sectors such as software (cf. GPL licences, etc.). While the common perception is that such mechanisms are characterized by the absence of any IP protection, it is worth noting that a typical GPL (General Public) licence actually relies on IP rights as it is typically a copyright license which remains valid as long as certain conditions are complied with (e.g. freedoms received by the licensee must be passed on to subsequent users, even where the software is modified).

(6) Collateral to obtain financing As intangible assets, IP rights often play an instrumental role for SMEs (including start-ups and spin-offs) trying to convince third parties to provide financing to them (equity investment, loan granting, etc.)

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UNIT-2

1.What is patent right? Explain the purpose of granting patent right.

A patent is a proprietary right granted by the government pursuant to laws passed by the patent office. Patent, which convey to the owner exclusive rights to the claimed invention, are granted to inventors who file an application with the Indian Patent and Trademark Office .

Patents provides that where an application for a patent has been found to be in order for grant of the patent and either the application has not been refused by the Controller by virtue of any power vested in him by the Act; or the application has not been found to be in contravention of any of the provisions of the Act, the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register. The Controller has been put under obligation to publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.

Grant of patents subject to conditions

(1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;

(2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;

(3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and

(4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the official gazette.

2. What the advantages and disadvantages of obtaining patents?

Advantages of Patents

1.A patent gives the inventor the right to stop others from manufacturing, copying, selling or importing the patented goods without permission of the patent holder.

2.The patent holder has exclusive commercial rights to use the invention.

3.The patent holder can utilize the invention for his/her own purpose.

4.The patent holder can license the patent to others for us. Licensing provides revenue to business by collecting royalties from the users.
5.The patent holder can sell the patent any price they believe to be suitable.
6.The patent provides protection for a predetermined period which keeps your competitors at bay.
7.Patents are partially responsible for advancements in medical science, biotechnology, drug chemistry, computers etc.
8.Patents reward inventors with the above mentioned advantages and hence, creates bigger and better discoveries.
With these benefits come certain drawbacks. Patents provide plenty of merit but are provided alongside certain conditions.
These conditions can sometimes prove to be disadvantages.

Disadvantages of Patents

1.A patent is an exclusive right provided to a patent holder in exchange for the public disclosure of their invention.
A full description with claims is published and can generally be viewed by anyone with the internet including your competitors.
2.After the exclusive patent period (20 years) has passed, other individuals or companies can freely use the invention without any permission from, or paying royalties to the inventor.
3.Applying for patent can be a very lengthy, time consuming process.
4.Cost of patent filing may be surpass the actual financial gains. If a patent is to be filed further in different countries, then again the cost increases. After the patent grant, annual fees should be paid to the respective patent offices, otherwise the patent period may lapse.
5.You must be prepared to defend your patent if need be. Taking action against infringement is costly.

3. Explain the procedure for obtaining a patent.

Procedure to obtain Patent:
1.Filing of a Patent Application:A patent application shall be filed on Form-1 along with Provisional / Complete Specification, with the prescribed fee as given in First Schedule at an appropriate office.
2.E-filing:The Patent Office provides the facility to file a Patent Application online from the native place of the agent of the applicant or applicant through e-filing.
3.Processing of Application:On receipt of an application, the Office accords a date and serial number to it. PCT national phase Applications and non-PCT Applications are identified by separate serial numbers.
4.Publication of Application: procedure for publication of application provides that the period for which an application for patent shall not ordinarily be open to public under eighteen months

from the date of filing of application or the date of priority of the application, whichever is earlier. A request for publication is required to be made in Form 9.
5.Request for Examination:A request for examination has to be made within forty eight months from the date of priority of the application or from the date of filing of the application, whichever is earlier. If no such request for examination is filed within the prescribed time limit, the application shall be treated as withdrawn by the applicant.
6.Reference for Examination:The patent application is referred to an Examiner by the Controller for conducting the formal as well as substantive examination as per the subject matter of the invention vis-à-vis the area of specialization of the Examiner. At present, the Patent Office has four examination groups based on the broad area of specialization viz.:

(a) Chemistry and allied subjects.
(b) Biotechnology, Microbiology and allied subjects.
(c) Electrical, Electronics & related subject
(d) Mechanical and other subjects.

7.Examination of Application:
8.Search for Anticipation by Previous Publication and by Prior Claim
9.Grant of patents

4. Explain the criteria for an invention to be patentable.

An invention (product or process) is patentable if it satisfies the following conditions

- It should be novel, inventive and have industrial applications. Novelty presumes no prior published information in public domain. Inventive step is interpreted as non-obviousness for an expert in that field. And utility and practicality of the inventions is referred to as industrial application.
- It should not be under the list notified by government as non-patentable (Refer question 9 for complete list in this category)

5. 'Patent right is negative right'. Justify with suitable examples.
(Note: Answer for such questions are only indicative. Students are encouraged to draw their own conclusions from the study of relevant materials)

A negative right is a right not to be subjected to an action of another person or group; negative rights permit or oblige inaction.
A positive right is a right to be subjected to an action or another person or group; positive rights permit or oblige action.
"The terms usually refer to the right to be let alone by the government (negative rights) and the entitlement to benefits provided by the government (positive rights)", and thus, private property and freedom of contract, which are the consequence of negative rights, are themselves positive rights, because they have to be enforced by the government. This framework, I believe, is inaccurate. Rights theory developed as a part of ethics - the "oughts" of individual interaction. The negative right of an individual to be left alone results in obligations not just to the

government, but to all other individuals. We all recognize the right not to be robbed by the petty thief, not to be assaulted by the common criminal, and not to be defrauded by our business partners, all of whom are not necessarily part of the government. They recognized that rights existed before governments, and the purpose of governments is simply to secure those rights. Governments are political implementations enacted to defend already existing negative rights. Ethics comes before politics.
[Negative] rights are limited to those that can be exercised without requiring something of others (e.g., transfers of income and property).
The one necessary exception is the cost of providing a government to ensure the exercise of [negative] rights.

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6. List the contents of complete specification

1. Title sufficiently indicating the subject-matter to which the invention relates.
2. A full and particular description of the invention and its operation or use and the method by which it is to be performed.
3. A disclosure of the best method of performing invention which is known to the applicant and for which he seeks to claim protection.
4. The claim defining the scope of the invention. The claim must relate to one invention only. The claim must be clear and precise.
5. The specification must be accompanied by an abstract to provide technical information on the invention.
6. In case of an international application designating India, the title, description, drawings, abstract and claims to be filled with the application.
7. Declaration as the inventorship of the invention.
8. A complete specification field after a provisional specification may include claims in respect of developments of additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled, to make a separate application for patent.

7. What is patent search? Explain the following ways of patent search:
(i) Hand search (ii) Key word search (iii) Literature search

Patent Search:
A patent (prior art) search is a process of identifying granted patents and published patent applications (collectively referred to as patent documents) that bear similarity to the subject matter which is of interest to you.

Patent Searches can be conducted in 3 ways:
Hand Search:

This is basically a patent-by-patent search in a subclass.This type of search is most easily conducted in the Public Search Room at the Patent Office. Here, the patents are filed by classes and subclasses so one can find all of the patents in a small section of the files. The patent copies are filed in a set of shelves or trays. Other collections of patents may be stored in numerical order, and to search by hand would require one to list the patent numbers in the subclass and then go through the numerical list to find them.

Keyword Search:
This is basically a computer search for a specific word or phrase in various portions of a patent. The database being used may consist of the entire patent, or of only the claims, or of only the title page, or of just patent titles. The patent Office has built its own databases, one of which contains the entire contents of all patents from 1971 to the current issue, and this is updated weekly as new patents are issued. Commercial databases can provide sources of wider coverage, as well as narrower ranges. None contain, as of this date, the entire text of all U.S patents, but the PTO databases will have these in the future.

Literature Search:
This is a search of the published literature to locate patents. This can be done easily in a library that has the abstract volumes of the particular science concerned. In Chemistry, Chemical Abstracts, in other fields, a cross-reference which gives equivalent patent numbers in foreign countries . This is a valuable tool for locating the countries where patents equivalent to U.S. or foreign patents have been issued. Reference to foreign patents in the literature can also be cross-referenced to see if an equivalent patent exists in the U.S.

8. List and explain the principles underlying the patent law in India.

•The twin purpose are encouraging the inventor and enabling the public to know about the invention.
• The first Indian patent Act granted certain exclusive privileges to the inventors of new inventions for a period of 14 years. This Act was modified and re enacted which conferred on the inventor the exclusive privileges to make, use and sell the invention for a period of 14 years.
• Govt. of India appointed a Patents Enquiry committee to review the working of Patent Law in India.
• The report noted that the Indian Patent System has failed to stimulate invention among Indians and to encourage the development and exploitation of new inventions for industrial purposes in India.
• Based on the report of the Committee, a Patents Bill was introduced in Lok Sabha. But the bill lapsed due to the dissolution of Lok Sabha.
•The Govt. of India then appointed a Committee to suggest necessary changes and revise the patent law in India taking into consideration the social needs of the people of India.
• At that period, the Indian Drug Industry was dominated by the foreign multinationals who imported drugs into the Indian market. Obviously, the prices of even life-saving drugs were the

highest in India. In this aspect, the Committee was guided by the Constitutional guarantee of economic and social justice.
• In the above background the Committee recommended for the process patenting of drugs as against the product patenting to ensure that the medical needs of the poorer sections of India is met.
• The Patents Bill with some additional changes in the field of food, medicine and drugs was introduced later. A joint committee of the Parliament was entrusted to study this Bill & which made amendments to the Bill after a thorough consideration & Bill was passed.
• India being a party to the TRIPs Agreement is under an obligation to keep its Patent Law in conformity with TRIPS provisions. The TRIPs Agreement mandates India to provide Product patents and to provide exclusive rights during the transition period.
• Incorporating these changes, the Patents Bill was introduced in Lok Sabha in 1995 & was then amended by the Patents Act, 1999 and then consequently in Patents Act, 2002.
• The Patent Act 2005 has been adopted thereby meeting the TRIPs deadline.

9. Which inventions are not patentable in India?

Inventions that are not patentable in India are
• A discovery, scientific theory or mathematical method.
• Literary, dramatic, musical or artistic work or any other aesthetic creation.
• A scheme, rule or method for performing a mental act, playing a game or doing business, or a program for a computer.
• The presentation of information.
• An invention, the publication or exploitation of which is offensive, immoral or antisocial.
• Any plant or animal variety or any biological process for the production of plants and animals.
• A method of agriculture or horticulture.
• Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment on human beings or any animals.
• The mere discovery of scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature.
• A substance obtained by mere admixture resulting only in aggregation of the properties of the components thereof or process for producing such substance.

10. How do you protect patent rights from infringement?

•After working hard to develop your intellectual property (IP), you will want to protect it from others benefiting from it without your permission. Although certain IP rights are automatic, it's still up to you to actively protect your work. Nobody is going to look for copyright violations or trademark infringement on your behalf.
•Register the Appropriate IP Protection.

•The strongest protection comes from registering your work. By doing so, you put your claim into the public view, discouraging many (but not all) people from using your work without permission.
•Trademark registration gives you the right to use the R symbol, giving legitimacy to your claim. A symbol on your unregistered trademark does notify the public of your claim, but has no real legal backing.
•A patent or provisional patent application gives you the right to use the patent pending designation. This can discourage many people from developing a product they won't be able to use for long.
•Registering your copyright preserves your right to sue infringers and, if your suit is successful, collect damages and attorney's fees.

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11. What are the rights assigned to a patent holder? Can he transfer these rights?

Patent will help in having exclusive rights to use invention to manufacture the product and market it. Inventor can prevent others to use invention and he can have full benefits of it under the limitation of patent law. Rights assigned to a patent holder are :

- Right to exploit the patent : owner of the patent can use the patent to his own benefit or advantage until the term of patent is over. In india term of patent is 20 years from the date of filling application for patent.
- To license the patent to others : The patent holder can give permission to others to use patented invention for the purpose of marketing or producing it by granting a license.
- To assign the patent to others : Patentee can assign his patent partially or fully to others if he wanted. Such assigning should include legal agreements.
- The right to surrender the patent : Patentee has right to surrender his patent at anytime of the term. Patentee should give notice to the controller. Controller before accepting the offer of surrender, he publishes the offer for the people who interested and eligible to claim that patent.
- Right to sue for infringement : patent holder can take legal actions for the protection of his patent rights. They have the right to institute a civil suit in a court not lower than the district court in case of infringement.

Yes patent holder can transfer his patent rights to others by granting license to them or by assigning patent to others or surrendering patent to others in case they are unfit to make use of patent or their invention.

12. What is compulsory licensing ? how is it implemented in india?

The Patent act provides measures by way of compulsory licensing to ensure that the patents do not impede the protection of public health and nutrition and the patent Rights are not abused by the patentee.

While implementing controller take the following aspects into the consideration;

1. The royalty to be paid is reasonable. The expenditure in making or developing the invention and in obtaining a patent , a nature of inventions are considered while approximating the royalty
2. Capacity of the licensee in making reasonable profit
3. Whether patented article is made available to the public at a reasonable price
4. Whether the license granted is a non-exclusive license
5. Controller should confirm that the right of the licensee is non-assignable
6. If the license is granted with a predominant purpose of supply in the indian market and that the licensee may also export the patented product , if need be in accordance with section 84
7. Whether , In case license is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product , if need be
8. Whether , in case of semiconductor technology the license granted is to work the invention for non-commercial use.

13. Explain the procedure for opposing the patent.

Opposition proceedings may be pre grant /post grant and may be initiated within given specified limits.

Pre grant opposition:-

A representation for pre-grant opposition can be filed by any person Patents Act within six months from the date of publication of the application, as amended or before the grant of patent. There is no fee for filing representation for pre grant opposition. Representation for pre-grant opposition can be filed even though no request for examination has been filed. However, the representation will be considered only when a request for examination is received within the prescribed period.

Post-grant opposition :-

Any interested person can file post-grant opposition within twelve months from the date of publication of the grant of patent in the official journal of the patent office. At any time after the grant of patent but before the expiry of period of one year from the period of one year from the date of publication of grant of patent,any "person interested" may give notice of post grant opposition to the Controller. If the patentee desires to contest the opposition, he shall leave a

reply statement at the appropriate office fully setting out the grounds upon which the opposition is contested and evidence if any in support of his case.

14.'Patents are intended to motivate disclosure rather than secrecy of innovative ideas' - Explain.

(Note: Answer for such questions are only indicative. Students are encouraged to draw their own conclusions from the study of relevant materials)

Yes the patents are intended to motivate disclosures, The Act provides for the definition of the invention, which is now compliant with the provisions of TRIPS. The criteria for patentability of an invention are novelty, inventive step and industrial applicability.

"invention" as a new product or as process involving an inventive step and capable of industrial application..

Under the patents act new invention means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art. Thus, according to this definition of new invention, Act talks of absolute novelty, i.e. the invention should have neither been used anywhere in the world nor published in any part of the world. However, the later sections of the act for the purpose of anticipation and opposition proceedings deal with the relative novelty i.e. not used in India and not published in any part of the world. Further, entire Act refers to the word invention and not new invention. Therefore, for all purposes relative novelty is the criterion. Therefore Patents are intended to motivate disclosure rather than secrecy of innovative ideas.

15. Justify whether the following can be patented in india ?

1. A torch having an alarm clock : No, inventions combination of known feature to make a new device cannot be patented
2. A new specie of butterfly found in western ghats : No, living things cannot be patented
3. A new way of illuminating room for better photography : No, any illuminations that are not product or process cannot be patentable.
4. A software which can recommend the hotels to users based on their online behavioural patterns : NO software product alone cannot be patentable.
5. An ayurvedic massage technique to quickly relieve back pain : No, cannot be patented. methods of human treatment cannot be patented

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