UNIT-1

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

Answer:

\*Intellectual Property Drives Economic Growth and Competitiveness

\*Intellectual Property Creates and Supports High-Paying Jobs

\*The purpose of intellectual property rights is to encourage new creations, including technology, artwork, and inventions, that might increase economic growth.

\*Strong IP rights help consumers make an educated choice about the safety, reliability, and effectiveness of their purchases.

\*Enforced IP rights ensure products are authentic, and of the high-quality that consumers recognize and expect.

1. Analyse how technology has challenged the traditional notions about IPR.

Answer:

1. Should India remain or move out of WIPO? Debate.

Answer:

World Intellectual Property Organisation is a global forum for intellectual property, services, policy, information and cooperation. India has been a part of several WIPO conventions and treaties. India intends to create a strong regime for protection of IP’s. India benefits from WIPO

* as it cooperates with other countries and partners to make IP work for development.
* Delivering global services.
* Providing information and shared information.
* Shaping international rules.
* Helps India’s economy grow by supporting it to develop further.
* Friendly relationships with other countries.

WIPO is under UN and hence a major benefit for India in various aspects. Therefore, India should remain a part for WIPO to develop further as a company.

1. Briefly explain the legislations covering IPR's in India. [No 26 to 30]

Answer:Trade Marks Act, 1999.

The Patents Act, 1970 (as amended in 2005)

The Copyright Act, 1957.

The Designs Act, 2000.

The Geographical Indications of Goods (Registration and Protection) Act, 1999.

1. What are the IPR laws applicable for protecting computer related inventions in India? [No 36 to 40]

Answer: In India, computer related inventions can be protected under the copyright act and the patent act , while computer software is protectable as a literary work under the copyright act, the scope of protection is narrow. Inventors therefore prefer patent protection for this type of invention since it provides broader and stronger protection and affords protection to the basics behind these creations. Patentability for this type of invention in India is laid out in section 3(k) of the Indian patents act and the guidelines for examination of computer related inventions published by the Indian Patent office.

Patent law: A mathematical or business method, a computer program per se or algorithms are not considered to be inventions, however it can be patented if it satisfies the basic requirement of novelty, inventive step and industrial applicability in order to be protectable.

Case law: Laid out guidelines to patent a software.

1. Explore the relationship between technology and law in the context of IPR.

Answer:

* Intellectual property and international Trade: IPR protected technology can be imported or exported easily and cant be duplicated. Hence are costlier, giving the owner a greater profit margin
* IPR and FDI: R&Ds are tend to set up in strin strong IPR protected countries, hence it increases FDI
* IPR laws are legal instrument used by government to encourage development in technology

1. Justify why engineers should have a knowledge of IPR laws with specific examples.

Answer:Engineers should have knowledge of IPR because:

1. It adds monetary value to individual or a company

Ex: Microsoft corp posses the copyright of windows operating system.

2. Increases the quality of output:

Duplicate works of ICs or products will not be available because of the copyright. So only original works are available to market.

3. career path:

The result of research gives an idea of the product or process which can be patented and can be used by that individual for betterment of the career

4. Design engineers should have knowledge of the trademarks, so that they can know the limits of using the colors etc for their work.

5. Patented inventions help in Development of the society.

1. Can biodiversity be preserved under IPR laws? Give reasons for your answer

Answer: No.

• Current IPR regimes have allowed industrial and commercial interests to appropriate the

resources and knowledge of resource-rich but economically poor countries and

communities, further impoverishing them and denying them the benefits of technological

innovation;

• IPRs are likely to greatly intensify the trend of homogenization of agricultural production

and medicinal plant use systems. In agriculture, for instance, any corporation that has

spent enormous amounts of money obtaining an IPR would want to market its varieties in

as large an area as possible. The result could be serious displacement of local diversity of

crops (though of course IPRs would not be the only factor);

• Increasingly, species-wide IPRs (such as those for transgenic cotton and soybeans) could

stifle even public sector and small-scale private sector crop variety development;

• Having to pay substantial royalties to industrial countries and corporations could greatly

increase the debt burdens of many countries. This could further intensify the

environmental and social disruption that is often caused when debt repayment measures

are taken up, such as the export of natural products;

• Farmers who innovate on seeds through re-use, exchange with other farmers, and other

means, would be increasingly discouraged from doing so if the tighter regimes that

UPOV 1991 sanctions are imposed on their countries; these regimes would also increase

the economic burden on farmers, further discouraging innovation;

• The ethical aspects of IPRs are serious, and to many communities and people the most

important reasons for opposing current IPR regimes. The patenting of life forms is

abhorrent to many traditional societies and modern conservationists because of the

underlying assumption that nature exists apart from, and solely for the use of, humans.

The privatisation of knowledge is also repugnant to many societies that hold knowledge

to be largely, though by no means solely, in the public domain.

* Bio-Diversity Act
* Protection of Plant Varieties and Seeds

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

Answer:IPR should be positive because

1. It provides exclusive rights to creators and inventors

2. It provides guarantee regarding the quality and safety of products, and enforcing IP rights wrt these products makes sure that they are genuine

3. IP rights often play an important role for companies or startups trying to convince third parties to provide financing and equity investments

4. It enhance the market value for business and turn ideas into profit making assets.

5. When a company has protected its product by IP rights it can derive revenue both by direct exploitation and indirect exploitation by third party under licensing contract

1. Analyse how large corporations are creating hurdles to technical advancement by using their patents. Also, state whether it can be overcome.[No 11 to 15]

Answer: Patents are important part of commercial value of tech startup.

Taking advantage of law's impartiality,some entities launch legal attacks to smaller companies.

In case a defective/ non efficient product is made by a company then through patent, that product is reserved for that company, so scope of development/improvement by other company is reduced.

Eg : Pharma companies have locked up formulas of life saving drugs and created a profit churning monopoly.

Eg : Apple vs prepear. Apple lodged an opposition to a trademark registration filed by startup with only 5 employees

This way patents reduces venture capital investment in startup and is reducing R&D spending, especially in smaller firms thereby creating hurdles in technical advancement.

We can overcome with this issue by implementing such policies:

* reduce the term of patentability of a product
* Cancel the patent if it is not in use in the industrial world
* Share the patent with other companies who is able to provide the same product or service in a much effective, cost friendly and more feasible manner.

1. “Patent laws are territorial in nature”. In the light of the above statement, bring out the necessary procedures in various IPR laws for filing of patents by an individual in contracting and non-contracting States.[No 16 to 20]

Answer: Yes, IP rights are territorial. It means that an Indian registration is valid only in India. For protection of Intellectual Property in any other country, one has to seek protection separately under the relevant law.

1.patent filing process diagram

<https://en.m.wikipedia.org/wiki/Patent_Cooperation_Treaty#/media/File%3AA_timeline_diagram_provides_an_overview_of_the_Patent_Cooperation_Treaty_System.jpg>

2.<https://www.google.com/search?q=the+necessary+procedures+in+various+ipr+laws+for+filing+patents&client=ms-android-oppo-rev1&prmd=nisxv&sxsrf=AOaemvKjw2Q3T3E8C40clXk77fJgEw2xbA:1635480532569&source=lnms&tbm=isch&sa=X&ved=2ahUKEwinl7jh3-7zAhUVeisKHfoYAQcQ_AUoAnoECAIQAg&biw=360&bih=652&dpr=3#imgrc=yosXh_64I-EBVM>

2.process of filing a patent

<https://vakilsearch.com/blog/what-is-the-process-for-filing-a-patent-in-india/>

1. Are IPR laws effectively utilized by SMEs in India? Explain with examples. [No 21 to 25]

Answer: Small and medium size enterprises are the pillars of the Indian manufacturing sector. They contribute approximately 40% to industrial production and 6% to the country's GDP.

No, IPR laws are not effectively utilized by SME'S. Many SME'S export raw materials to large companies and manufacturing units and they do not realize the importance of IPR to protect their ideas and innovation of their product as they are more concerned on production and operation of raw material. If they hold their knowledge on IPR, they would definitely create an asset and a huge profit on their ideas and innovation. Many SME'S manufacture it without being concerned of IPR issues and profits.

Lack of business intelligence drowns this sector from global counterparts.

1. Compare and contrast patents and utility models [No 26 to 30]

Answer:

* In utility models, the requirements of non-obviousness and industrial application may be lower or absent
* Duration of utility model and patents is for 7-10 years and 20 years respectively
* Registration process for utility model is simpler and takes only 6 months
* Utility models are cheaper to obtain and maintain
* Utility models cannot be obtained for processes in some countries.
* Utility models are applied for SMEs
* Subject matter for utility model varies from country to country

1. Does India employ software patents and utility models for its inventions? Discuss in detail. [No 31 to 35]

Answer: India doesn't offer protection under utility patents.

A software or computer program is not patentable in India. Software is not directly patented but it can be granted patent if it is attached with novel hardware which should be unique and capable of industrial use. As a consequence the new budding start-ups and SME's with huge skillset are unable to showcase their talent in India and hence go abroad where utility patents are available.

At present the Indian Patents Act and the CRI guidelines prohibit patents on software, however software patents have in fact been granted recently by Indian Patent Offices to companies like Google, Apple and Facebook. Many petty inventions that enter the market are soon run over by ridiculous cheaper versions of the product mainly imported from China and since many people are getting accustomed to what patents and utility models are, it's high time India deploys one.

References:

<https://www.theippress.com/2020/08/25/why-a-utility-model-law-is-needed-in-india-now-more-than-ever/>

<https://www.firstpost.com/tech/news-analysis/software-patents-prohibited-under-indian-law-but-granted-in-spirit-3702725.html>

17. Discuss India’s international standing in Intellectual Property. [No 36 to 40]

Answer: IPR index is released annually by US Chamber of Global Innovation Policy Chamber (GIPC) and it gives the international standings by evaluating the IPR in 53 Global economies. It takes multiple things into consideration based around patents, copyright policies to commercialization of IP assets and ratification of International treaties. India's overall score increased from 36.04 percent (16.22 out of 45) in 7th edition to 38.46 percent(19.23 out of 50) in 8th edition. India's current rank is 40 out of the 53 Global economies. Among BRICS, India registered the second highest growth over 9 editions with China being in the first position. Right holders continue to face substantive challenges, particularly regarding the patenting environment, in which India's policy framework continues to deny patent eligibility to a broad range of Innovations. The IP framework however has majorly helped various sectors such as advanced manufacturing, bipharmaceutical and creative content. The ecosystem for innovators and creators can be strengthened further via adding a few reforms to trade secret protection, removal of bureaucratic barriers and passage of clean cinematography law amendments.

Is there any type of Intellectual Property that can be protected without registration? Explain in detail. [No 41 to 45]

Answer: A Copyright Protection can be obtained without any official procedure. An Original work is automatically protected as soon as it exists without any special registration,deposit, payment of fee or any formal requirement. Ex- A Novel.

Trade secrets are also accorded protection without any registration unlike patents where all claims and processes enter the public domain as soon as the application is filed, here it is not possible to follow the same procedures so Trade secrets are given protection without registration.Ex- Coca- Cola recipe is a trade secret.

1. Discuss the role of IPR laws in cyberspace.[No 46 to 48, 17IS045, 20IS401]

Answer:The IPR laws still do not provide good cover when it comes to cybersecurities .

Nowdays Cyber crimes do not solely limit themselves to fraud , cyberbullying, identify thefts but also an infringement of copyrights and trademarks of various business and other organisations

So online content needs to be protected and hence IPR

Cyberspace is becoming a hub for IPR infringement. Several practices by cyber site operator resulted in the violation of IPR and various other rights of other operators . It has become crucial that people are aware of the illegal usage of their websites and employees

International conventions and treaties have provided various laws to protect infringement of IPR online which are helping e commerce and e business to grow .

There are many issues for which we need IPR like

Linking of websites which may damage the rights or intention of the owner of the linked employee

For Software Piracy i.e stealing of software that is lawfully shielded etc...

However the Information technology act does not provide any provision in respect of cyber crimes related to cyberbullying, cyber stalking , cyber defamation etc

Also the Indian Trademark Act 1999 and Copyright act 1957 are silent on issues on online trademark and copyright infringes . Though computer programs are protected under copyright act 1957 , it does not provide remedies for cyberpiracy.

https://www.google.com/amp/s/www.geeksforgeeks.org/intellectual-property-in-cyberspace/amp/

1. Can IPR laws be transferred from the right holder to a third person? Explain with examples. [20IS402, 403, 406, 407]

Answer:

All forms of intellectual property -- copyrights, trademarks, trade secrets and patents – can be transferred in two ways: the property can be temporarily transferred under a license; or the property can be permanently transferred by way of an assignment

1. IPR laws are essential in all domains including medicine, pharmacy and engineering. Justify the above statement.

Answer: