

Qn no 1

Techniques to Detect (or Deter) Intellectual Property Infringement

Include :

Fictitious entry, such as : Fictitious dictionary entry. An example is equivalence included in the New Oxford American Dictionary (NOAD).

Trap street, a fictitious street included on a map for the purpose of "trapping" potential copyright violators of the map.

Watermarking : Designing around a patent may in some cases constitute a way to avoid infringing it.

What are the major challenges faced in India for implementation of IPR ? (10 marks)

Ans. : From process to product patents : One of the binding point in TRIPS agreement is that all member countries are required to shift their patent regime from "Process Patent" to "Product Patent." The fundamental difference between a Process Patent regime and a Product Patent regime lies in the fact that the former protects for processes only while the latter products. It becomes a contentious issue when it comes to getting IP rights on pharmaceuticals and food products. Unlike developed countries where Capitalist Economic Model is working India has adopted a mixed development model striking a balance between Capitalism and Socialism. This approach was taken to safeguard the interest of ordinary people those are struggling for their basic needs including food and medicines. Developed countries are accusing countries like India and Brazil being protectionist when it comes to granting patents in pharmaceuticals and food sectors.

Section 3(d) of the Indian patent act : Another challenge that it is facing is the condemnation of section 3(d) of the Indian Patent Act. This section prevents multinational

companies ever greening their patents simply by making minor changes. Implementation of 3(d) was exercised in challenging the patent of Novartis Glevac drug. The Court rules that multinational companies can't evergreen their patents simply by making minor changes in earlier patents and they need to show considerable "Therapeutic Efficiency" to get patent protection in already existing patents.

Compulsory licensing : With the provision of compulsory licensing, the Govt of

India can compel the owner company or other companies to mass produce some drugs in emergency irrespective of who got the patent. Multinationals are accusing India of being opportunistic in their stand and are asking to abrogate this provision. However, Indian Govt is not willing to cancel this provision to safeguard the interests of mass.

Provision of drug price control order : With this provision companies can't charge an unfair price for drugs that they are producing. The price has to be justified regarding investments, and if someone plays foul, then the Govt has the right to intervene.

Food security and IPR : India is a land of farmers wherein most of the people are engaged in doing farming for their livelihood. In such a country Govt offers many subsidies to farmers. India's domestic support schemes are generally in the form of "minimum support price" for major agricultural commodities and "input" subsidies provided to farmers in the types of electricity, fertilizers, seeds, etc. However, for complete implementation of TRIPS agreements, these subsidies will have to be reduced or eliminated. Thus, the Indian Government is struggling to create a balance between food security and providing IP rights in India.

IPRs, community property rights and indigenous knowledge : Traditional knowledge gives ready-made leads for pharmaceutical companies and then simply come up with the new formulation to show the efficacy of the general traditional understanding. The Indian Governmentt is bound to protect the rich source of traditional knowledge by not allowing multinationals to get patents on traditional culture. As a defensive mechanism, the Government has created TKDL (Traditional Knowledge Digital Library) to challenge patenting traditional Indian understanding. Multinationals and developed countries are also opposing this move.