

Intellectual Property Rights PYQ 2022

Q1. (a) Expand the following:

(i) WTO (ii) TRIPS (iii) TKDL (iv) WIPO (v) NGB (vi) GATT

Ans. (i) WTO: World Trade Organization

The World Trade Organization is an international organization that deals with the global rules of trade between nations. Its main objective is to ensure that trade flows as smoothly, predictably, and freely as possible.

(ii) TRIPS: Trade-Related Aspects of Intellectual Property Rights

TRIPS is an agreement administered by the World Trade Organization that sets down minimum standards for many forms of intellectual property (IP) regulations as applied to nationals of other WTO Members.

(iii) TKDL: Traditional Knowledge Digital Library

The Traditional Knowledge Digital Library is a collaborative project between the Council of Scientific and Industrial Research (CSIR) and the Department of Ayurveda, Yoga & Naturopathy, Unani, Siddha, and Homoeopathy (AYUSH) under the Ministry of Health and Family Welfare, Government of India. TKDL is a resource that aims to prevent the misappropriation of traditional knowledge by creating a digital database of traditional knowledge.

(iv) WIPO: World Intellectual Property Organization

The World Intellectual Property Organization is a specialized agency of the United Nations dedicated to promoting and protecting intellectual property (IP) globally. It provides a global forum for policy, services, information, and cooperation in the field of IP.

(v) NGB: National Green Tribunal

The National Green Tribunal is a specialized body in India that handles cases related to environmental issues, including the enforcement of environmental laws and regulations, the conservation of natural resources, and the protection of the environment.

(vi) GATT: General Agreement on Tariffs and Trade

The General Agreement on Tariffs and Trade was a legal agreement between many countries, whose overall purpose was to promote international trade by reducing or eliminating trade barriers such as tariffs or quotas. GATT was established in 1947 and eventually evolved into the World Trade Organization (WTO) in 1995.

(b) State whether the following statements are True or False

(i) A Patent application can be updated after it has been filed to incorporate new features.

(ii) Customs authorities have no role in enforcement of Intellectual Property Rights.

(iii) BMW is an example of brand Trademark.

(iv) Coorg orange is an example of GI.

(v) The Industrial Design Headquarter patent office is at Kolkata.

(vi) The use of bio resources by the, Multinational companies and other organizations without any systematic approval from a nation or its related people is known as Bioprospecting.

Ans. Here are the evaluations of the statements:

(i) True: A patent application can be updated to incorporate new features through amendments or modifications during the application process, provided that these amendments adhere to the patent laws and regulations.

(ii) False: Customs authorities do have a role in the enforcement of Intellectual Property Rights. They can play a significant role in preventing the import or export of counterfeit or infringing goods, helping protect intellectual property rights holders.

(iii) True: BMW is indeed an example of a brand trademark. It's a well-known automobile brand recognized by its logo and other distinctive elements.

(iv) False: "Coorg orange" appears to be a typo or misunderstanding. The statement is not clear. If you provide the correct term or context, I can evaluate the statement accordingly.

(v) False: The Industrial Design Headquarter patent office is located in Kolkata. It seems that there might be a typo or error in the statement. If you provide the correct term or context, I can provide a more accurate evaluation.

(vi) True: The use of bioresources by multinational companies and other organizations without proper authorization or approval from the nation or its local communities is known as bioprospecting. This practice has raised ethical and legal concerns regarding the exploitation of biological resources and traditional knowledge.

Q2 Explain how patents can be registered in India with the help of suitable flowchart. What are the basic criteria of Patenting?

Ans. I can certainly provide you with a textual step-by-step explanation of how patents can be registered in India, along with the basic criteria of patenting.

Steps to Register a Patent in India:

Determine Patentability: Ensure that your invention is novel, non-obvious, and industrially applicable. Conduct a thorough search to make sure your invention hasn't been patented before.

Choose the Appropriate Type of Patent: Decide whether your invention falls under the category of a product, process, or innovation.

Draft a Patent Application: Prepare a detailed patent application that includes a description of your invention, claims defining its scope, and any necessary drawings or diagrams.

Filing the Application: Submit the patent application to the Indian Patent Office (IPO) either online or through physical submission.

Examination: The patent application undergoes a formal examination to check if it meets the requirements. If there are any discrepancies, you might be required to provide clarifications.

Publication: Once the application passes examination, it is published in the Patent Office's official journal after a period of 18 months from the filing date.

Request for Examination: Within 48 months from the priority date or the filing date (whichever is earlier), you need to request the examination of your patent application.

Examination Report: The Patent Office will provide you with an examination report detailing any objections, modifications, or clarifications required.

Response to Examination Report: You need to respond to the examination report within the specified period, addressing all the objections raised.

Hearing: If required, attend a hearing to present your case before the patent examiner.

Grant of Patent: If the examiner is satisfied with the responses and amendments, your patent will be granted.

Renewal: Pay the requisite renewal fees to maintain your patent in force for the prescribed periods (usually 20 years from the filing date).

Basic Criteria for Patenting:

Novelty: The invention must be new and not disclosed or published anywhere in the world before the filing date.

Non-Obviousness: The invention should involve an inventive step that would not be obvious to a person skilled in the relevant field.

Industrial Applicability: The invention must be capable of being made or used in some kind of industry.

Inventive Step: The invention should be a non-obvious improvement over existing technology.

Full Disclosure: The patent application must provide sufficient details for a person skilled in the field to understand and reproduce the invention.

Exclusions: Some inventions like discoveries, scientific theories, and methods for medical treatment are not eligible for patenting.

Q3. Differentiate between:

(i) Infringement of Trademarks and Passing-off

Ans. Both concepts are related to the protection of trademarks, but they involve different legal principles and considerations.

Infringement of Trademarks:

Definition: Trademark infringement occurs when a person or entity uses a registered trademark without the owner's permission in a way that may cause confusion among consumers regarding the origin or quality of goods or services.

Legal Basis: Trademark infringement is governed by the specific laws and regulations related to trademarks in a particular jurisdiction. It typically involves the violation of the exclusive rights granted to the trademark owner.

Criteria: Infringement is determined based on a comparison of the allegedly infringing mark with the registered mark. If the use of the mark is likely to cause confusion among consumers, leading them to believe that the products or services are associated with the registered trademark owner, it can be considered infringement.

Remedies: If trademark infringement is proven, the trademark owner can take legal action against the infringing party. Remedies may include injunctions to stop the infringing use, damages for losses suffered, and even destruction of infringing goods.

Passing-off:

Definition: Passing-off is a common law tort that deals with the unauthorized use of a mark or name that is similar to an established trademark, causing confusion among consumers about the source of goods or services.

Legal Basis: Unlike trademark infringement, passing-off is based on common law principles rather than statutory law. It seeks to prevent unfair competition and protect the goodwill associated with a well-known trademark.

Criteria: To establish passing-off, the plaintiff must demonstrate that their trademark has a reputation or goodwill in the market, that the defendant's use of a similar mark is likely to deceive or confuse consumers, and that the plaintiff has suffered or is likely to suffer damage as a result.

Remedies: In cases of passing-off, the remedies available include injunctions to prevent the unauthorized use of the mark, damages, and an account of profits obtained by the defendant through the wrongful use of the mark.

Key Difference:

The key difference between infringement of trademarks and passing-off lies in their legal basis and criteria. Infringement is typically based on statutory trademark laws and focuses on the likelihood of consumer confusion due to similar marks. Passing-off, on the other hand, is rooted in common law principles and aims to protect the goodwill associated with a well-established trademark. Both concepts serve to safeguard the rights of trademark owners and maintain the integrity of the marketplace.

(ii) Bio-prospecting and Bio-piracy

Ans. These terms are related to the utilization of biological resources, but they have distinct implications and ethical considerations.

Bio-prospecting:

Definition: Bio-prospecting refers to the scientific exploration of biodiversity to discover and develop new products, processes, or applications, often for commercial or research purposes.

Purpose: Bio-prospecting involves studying biological organisms, their genetic materials, and their biochemical compounds to identify potential benefits for various industries, such as pharmaceuticals, agriculture, cosmetics, and more.

Ethical Considerations: Ethical bio-prospecting involves obtaining prior informed consent from the local communities or countries where the biological resources are sourced. It also emphasizes fair and equitable sharing of benefits with the source communities or countries.

Regulation: Bio-prospecting is often subject to national and international regulations to ensure responsible use of biological resources and equitable distribution of benefits.

Examples: Discovering new medicinal plants for drug development, identifying microorganisms for bioremediation, and studying unique genetic traits in crops for improved agriculture are all examples of bio-prospecting.

Bio-piracy:

Definition: Bio-piracy refers to the unauthorized and unethical exploitation of biological resources, traditional knowledge, or genetic materials from indigenous communities or countries without providing fair compensation or benefit-sharing.

Negative Implications: Bio-piracy involves taking advantage of the biodiversity and traditional knowledge of local communities without their consent or proper compensation. This can lead to the unjust enrichment of corporations or entities at the expense of the source communities.

Examples: If a corporation extracts genetic material from a plant traditionally used by an indigenous community for medicinal purposes without their knowledge or consent and develops a commercial product without sharing benefits, it can be considered an instance of bio-piracy.

Regulation: International agreements such as the Convention on Biological Diversity (CBD) and related national laws aim to prevent bio-piracy and promote ethical utilization of biological resources.

Key Difference:

The key difference between bio-prospecting and bio-piracy lies in their ethical considerations and legal implications. Bio-prospecting involves responsible exploration and utilization of biological resources with consent and benefit-sharing. Bio-piracy, on the other hand, involves unethical exploitation without proper authorization, often resulting in unjust enrichment and harm to local communities or countries of origin.

(iii) Process and Product patent

Ans. These terms pertain to different aspects of patent protection and focus on the type of innovation being patented.

Process Patent:

Definition: A process patent grants exclusive rights to the inventor or patent holder for a specific method or process used to create a particular product, regardless of the end product itself.

Scope: With a process patent, the protection applies to the method or steps involved in producing a product, regardless of whether the end result is novel or already known.

Example: If a company develops a new and innovative method of manufacturing a specific type of pharmaceutical tablet, they may obtain a process patent for the manufacturing process, even if the tablet's chemical composition is not unique.

Advantages: Process patents can be valuable because they prevent competitors from using the same method to produce a similar product, even if the competitors use different ingredients or components.

Product Patent:

Definition: A product patent grants exclusive rights to the inventor or patent holder for a novel and non-obvious product or invention.

Scope: The protection offered by a product patent is specific to the actual product, substance, or composition, regardless of the methods used to produce it.

Example: If a company develops a new type of smartphone with unique features, they may obtain a product patent for the smartphone itself, covering its design, functionality, and components.

Advantages: Product patents provide a broader scope of protection since they cover the entire product and prevent others from making, using, selling, or importing similar products.

Key Difference:

The key difference between process and product patents lies in what they protect. A process patent protects the method or process used to create a product, while a product patent protects the specific product or invention itself. In the case of process patents, different inventors may develop the same product using different methods, but the patent holder has the exclusive right to their specific process. In product patents, competitors cannot make, use, sell, or import the patented product, regardless of the method used to create it.

Q4. (a) What has led to the establishment of TKDL by the Government of India? Discuss the setup of TKDL.

Ans. The Establishment of Traditional Knowledge Digital Library (TKDL) by the Government of India: The establishment of the Traditional Knowledge Digital Library (TKDL) by the Government of India was driven by the need to protect India's rich traditional knowledge from exploitation and

misappropriation. Traditional knowledge, which includes traditional medicine, indigenous practices, and cultural expressions, is often vulnerable to biopiracy and unauthorized use by individuals, corporations, and institutions globally. The government recognized the importance of safeguarding traditional knowledge and preventing its misappropriation, especially in fields like pharmaceuticals, agriculture, and biotechnology.

Setup of TKDL:

The Traditional Knowledge Digital Library (TKDL) was established as a comprehensive and accessible repository of India's traditional knowledge. Its primary goal is to prevent bio-piracy and the unauthorized commercialization of traditional knowledge by providing a digital platform that documents and catalogs various aspects of traditional knowledge. **Here's an overview of the setup and functioning of TKDL:**

- 1. Documentation:** TKDL documents traditional knowledge related to medicinal formulations, treatment methods, and other aspects of traditional practices, primarily in the areas of Ayurveda, Yoga, Unani, and Siddha.
- 2. Language Conversion:** Since much of India's traditional knowledge is documented in local languages, TKDL involves translating and codifying this knowledge into internationally recognized patent classification codes. This helps prevent the exploitation of traditional knowledge due to language barriers.
- 3. Patent Offices Collaboration:** TKDL collaborates with international patent offices, such as the United States Patent and Trademark Office (USPTO) and the European Patent Office (EPO), to provide examiners with easy access to traditional knowledge prior art during the patent examination process.
- 4. Searchable Database:** TKDL maintains a digital database that can be searched by patent examiners globally to identify instances of prior art related to traditional knowledge. This helps prevent the issuance of patents for inventions that are not truly novel.
- 5. Preventing Biopiracy:** By providing patent examiners with access to TKDL's digital database, the government aims to prevent instances of biopiracy, where patents are granted for traditional knowledge that has been previously known and used by indigenous communities.
- 6. Benefit Sharing:** TKDL also aims to ensure fair and equitable benefit-sharing with local communities and traditional knowledge holders when commercial utilization of traditional knowledge takes place.
- 7. International Recognition:** The successful establishment and functioning of TKDL have garnered international recognition and appreciation for India's efforts to protect its traditional knowledge and prevent its misappropriation.

In essence, the setup of TKDL reflects the Indian government's proactive approach to protecting traditional knowledge from unauthorized commercialization, promoting ethical utilization, and ensuring that the benefits of traditional knowledge flow back to the communities that have preserved and passed down this knowledge for generations.

(b) What is a domain name? What are the safeguards provided to protect domain names under IPRs.

Ans. Domain Name:

A domain name is a unique and human-readable address that is used to access websites on the internet. It serves as an online identity for individuals, businesses, organizations, and other entities. Domain names are composed of a memorable name followed by a top-level domain (TLD), such as .com, .org, .net, and country code TLDs like .uk, .in, etc. Domain names make it easier for users to navigate the internet and access websites using familiar words or phrases.

Safeguards to Protect Domain Names under Intellectual Property Rights (IPRs):

Intellectual Property Rights (IPRs) play a crucial role in protecting domain names from unauthorized use or infringement. While domain names themselves are not typically protected by traditional IPRs like patents or copyrights, they are closely related to trademarks and are subject to several safeguards to prevent their misuse. **Here are the safeguards provided to protect domain names under IPRs:**

1. Trademark Protection:

Domain names can function as trademarks if they are distinctive and used to identify specific goods or services. Trademark law provides protection against the unauthorized use of domain names that could cause confusion among consumers about the source of goods or services. Trademark owners can take legal action against those using a similar or identical domain name to their trademarked brand.

2. Cybersquatting Laws:

Cybersquatting involves registering, using, or selling a domain name with the intent to profit from the reputation of an existing trademark belonging to someone else. Various legal mechanisms and dispute resolution procedures, such as the Uniform Domain-Name Dispute-Resolution Policy (UDRP), allow trademark owners to challenge and recover domain names registered in bad faith.

3. UDRP:

The UDRP is a policy established by the Internet Corporation for Assigned Names and Numbers (ICANN) to provide a cost-effective and expedited mechanism for resolving domain name disputes. It allows trademark owners to file complaints against domain names that infringe their rights. If the complaint is successful, the domain name can be transferred to the trademark owner or canceled.

4. Anti-cybersquatting Consumer Protection Act (ACPA):

The ACPA is a U.S. federal law that provides legal remedies against individuals or entities engaged in cybersquatting. It allows trademark owners to file a lawsuit against those who have registered or used a domain name that is identical or confusingly similar to their trademark.

5. WIPO Arbitration and Mediation Center:

The World Intellectual Property Organization (WIPO) provides arbitration and mediation services for resolving domain name disputes. The WIPO Arbitration and Mediation Center offers a platform for parties to seek non-litigious resolution of domain name conflicts.

6. National Laws and Regulations:

Many countries have enacted laws and regulations to address domain name disputes and cybercrime related to domain names. These legal frameworks aim to protect trademark owners and provide mechanisms to prevent misuse.

In summary, while domain names themselves are not protected by traditional IPRs, they are closely linked to trademark law and benefit from a range of safeguards designed to prevent their misuse, unauthorized registration, and infringement. These safeguards help maintain the integrity of online identities and protect the rights of trademark owners in the digital landscape.

Q5. What is a Database? List various Biological Databases. Discuss the objectives and provisions of Database protection under IPR laws.

Ans. Database:

A database is a structured collection of data organized in a way that allows for efficient storage, retrieval, management, and manipulation of information. Databases can contain various types of data, such as text, numbers, images, audio, video, and more. They play a crucial role in modern information systems, helping organizations store and access data for analysis, decision-making, and other purposes.

Various Biological Databases:

Biological databases are repositories of biological information, providing researchers and scientists with access to data related to genes, proteins, sequences, structures, pathways, and more. These databases facilitate research, analysis, and collaboration within the field of biology. **Some examples of biological databases include:**

GenBank: A comprehensive genetic sequence database containing DNA sequences of genes from various organisms.

Protein Data Bank (PDB): Stores information about the 3D structures of proteins and other biomolecules.

National Center for Biotechnology Information (NCBI): Houses various databases, including GenBank, PubMed (scientific literature), and more.

UniProt: Provides information about protein sequences, functions, and interactions.

Kyoto Encyclopedia of Genes and Genomes (KEGG): Offers information about pathways, genes, and diseases.

Ensembl: Focuses on genome annotation and functional information for various species.

Reactome: Provides details about biological pathways and molecular processes.

DrugBank: Offers information about drugs, their interactions, and mechanisms of action.

Database Protection under IPR Laws:

Database protection refers to the legal mechanisms that safeguard the investment and effort put into creating and maintaining databases. In many jurisdictions, including the European Union and the United States, databases can be protected under specific legal frameworks. The two primary approaches are the Sui Generis Database Right (EU) and the Copyright approach (US).

Objectives of Database Protection:

Encouraging Investment: Database creators invest significant resources in gathering, organizing, and maintaining data. Protection encourages these investments by preventing unfair competition and unauthorized use.

Fostering Innovation: Protection incentivizes the creation of new databases, leading to the development of valuable resources for research and development.

Provisions of Database Protection:

Sui Generis Database Right (EU):

The European Union provides a sui generis (unique) database right that protects the investment in creating and maintaining databases, even if the data itself is not protected by copyright. This right prevents the extraction or reutilization of substantial portions of the database's contents without authorization.

Copyright Approach (US):

In the United States, databases are often protected through copyright law if they exhibit sufficient originality and creativity. This applies to the creative selection, arrangement, and coordination of data, rather than the data itself. However, factual information within the database is not protected.

Challenges and Balance:

Balancing the need for protection with the promotion of access to information remains a challenge. Striking the right balance ensures that databases can be used for research and innovation while preventing unfair commercial exploitation or unauthorized use.

In summary, database protection under IPR laws aims to incentivize investment in creating and maintaining databases while maintaining a balance between protection and accessibility for research and innovation.

Q6. List the classes of work for which Copyright protection is available in India. What amounts to Copyright infringement? Discuss the protective measures provided against copyright infringements under copyright laws.

Ans. Classes of Works for Copyright Protection in India:

In India, the Copyright Act of 1957 provides protection to a wide range of creative works. The classes of works eligible for copyright protection include, but are not limited to:

Literary Works: Books, articles, poems, essays, computer programs, databases, and other written or typed content.

Dramatic Works: Plays, scripts, screenplays, choreography, and other theatrical expressions.

Musical Works: Compositions with or without lyrics, musical scores, melodies, and arrangements.

Artistic Works: Paintings, drawings, sculptures, photographs, graphics, and other visual art forms.

Cinematographic Films: Audiovisual works, including movies, documentaries, and other video productions.

Sound Recordings: Recorded audio performances, music albums, spoken word recordings, etc.

Broadcasts: Radio and television broadcasts and transmissions.

Computer Programs: Software codes and programs, including source code and object code.

Copyright Infringement:

Copyright infringement occurs when someone violates the exclusive rights of the copyright holder without proper authorization. This can involve unauthorized reproduction, distribution, adaptation, public performance, or public display of the copyrighted work.

Protective Measures against Copyright Infringements:

The Copyright Act in India provides various protective measures to safeguard the rights of copyright holders and prevent infringement. **Some of these measures include:**

- 1. Exclusive Rights:** Copyright holders are granted exclusive rights to reproduce, distribute, perform, adapt, translate, and communicate their works to the public.
- 2. Civil Remedies:** Copyright holders can seek civil remedies through the courts, including injunctions to prevent further infringement, damages to compensate for losses, and accounts of profits made from the infringing activities.
- 3. Criminal Offenses:** Certain copyright infringements are considered criminal offenses, punishable by imprisonment and fines.
- 4. Technological Protection Measures (TPMs):** Copyright owners can use technological protection measures like encryption or access controls to prevent unauthorized copying or distribution of their works.
- 5. Digital Rights Management (DRM):** Copyright holders can implement DRM systems to control access and usage of digital content, ensuring that only authorized users can access and use their works.
- 6. Notice and Takedown:** Online platforms and intermediaries can remove or disable access to infringing content upon receiving a notice from the copyright holder.
- 7. Fair Use and Exceptions:** Copyright laws include provisions for fair use and exceptions, allowing limited use of copyrighted works for purposes such as criticism, review, news reporting, research, education, and parody.
- 8. Licensing and Agreements:** Copyright holders can grant licenses to others to use their works under specific terms and conditions.
- 9. Registration:** Although not mandatory, copyright registration provides a public record of ownership and facilitates legal action against infringers.

In summary, copyright laws provide a range of measures to protect the rights of creators and copyright holders, deter infringement, and promote the proper use of creative works in a balanced manner.

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