

TRADE AND COMMERCE**The Indian patent regime and its clash with the U.S. norms**

CONTEXT: The U.S. Trade Representative (USTR) said in a report released recently that India is one of the most challenging major economies as far as IP protection and enforcement is concerned.

- A patent is an exclusive set of rights granted for an invention, which may be a product or process that provides a new way of doing something or offers a new technical solution to a problem. Indian patents are governed by the Indian Patent Act of 1970.
- India has gradually aligned itself with international regimes pertaining to intellectual property rights. It became a party to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement following its membership to the World Trade Organisation on January 1, 1995.
- India is also a signatory to several IPR related conventions, including the Berne Convention, which governs copyright, the Budapest Treaty, the Paris Convention for the Protection of Industrial Property, and the Patent Cooperation Treaty (PCT), all of which govern various patent-related matters.
- The original Indian Patents Act did not grant patent protection to pharmaceutical products to ensure that medicines were available at a low price. Patent protection of pharmaceuticals were re-introduced after the 2005 amendment to comply with TRIPS.
- Recently, the U.S. released its yearly Special 301 report, its annual review highlighting the state of intellectual property rights protection in different countries which are its trading partners around the world.
- In its India section, the report highlighted a range of issues in domains ranging from copyright and piracy to trademark counterfeiting and trade secrets, saying that India “remained one of the world’s most challenging major economies with respect to protection and enforcement of IP.”
- According to the report patent issues continued “to be of particular concern in India,” highlighting the threat of patent revocations, lack of presumption of patent validity and narrow patentability criteria as issues which “impact companies across different sectors.”
- The USTR had also released a similar report in 2021, addressing much of the same concerns.
- These, and general issues regarding IPR were extensively tackled by the Parliamentary Standing Committee which undertook a ‘review of the intellectual property rights regime in India.’. The Committee tabled its findings before the Rajya Sabha and Lok Sabha in July 2021.

❖ **Article 3(d) of the Indian Patent Act**

- This offered an insight into the landscape of Indian intellectual property law and where it is reasonably in sync with American patent laws and where it diverges.
- One of the main points of contention between India and the U.S. has been Article 3(d) of the Indian Patent Act.
- Section 3 deals with what does not qualify as an invention under the Act, and Section 3(d) in particular excludes “the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant” from being eligible for protection under patent law.
- This was addressed by the Parliamentary Standing Committee as well, which pointed out that the section “acts as a safeguard against frivolous inventions in accordance with the flexibility provided in the TRIPS agreement.
- Section 3(d), as mentioned earlier, prevents the mere discovery of any new property or new use for a known substance from being patented as an invention unless it enhances the efficacy of the substance repetitive. This prevents, what is known as “evergreening” of patents.

- According to the Committee's report, Section 3(d) allows for "generic competition by patenting only novel and genuine inventions.
- ❖ **TRIPS and the Doha Declaration**
- The Doha Declaration on the TRIPS Agreement and Public Health was adopted on November 14, 2021, by the WTO member states.
- This declaration recognises the "gravity of public health problems affecting developing and least developed nations" and stresses the need for TRIPS to be part of the wider national and international action to address these problems.
- It recognises that "intellectual property protection is important for the development of new medicines," and acknowledges concerns about its effects on prices.
- The TRIPS agreement "does not and should not prevent members from taking measures to protect public health," the declaration points out that the agreement "can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all."
- Compulsory licences can be invoked by a state in public interest, allowing companies apart from the patent owner to produce a patented product without consent.
- It concluded that India must not compromise on the patentability criteria under Section 3(d) since as a sovereign country it has the "flexibility to stipulate limitations on grants of patents in consistence with its prevailing socio-economic conditions." It said that this ensures the growth of generic drug makers and the public's access to affordable medicines.
- It indicated that India should resolve its differences with the U.S. regarding the disqualification of incremental inventions through bilateral dialogue.
- ❖ **Positive steps**
- Positive steps taken by India in the recent past, such as the accession to the World Intellectual Property Organisation (WIPO) Performances and Phonograms Treaty and WIPO Copyright Treaty, collectively known as the WIPO Internet Treaties, in 2018 and the Nice Agreement in 2019.
- The Parliamentary Standing Committee too noted amendments pertaining to Form 27, under the Patents (Amendment) Rules, 2020. Some notable changes include allowing a single Form 27 to be filed for multiple related patents, filing of joint forms if there are more patentees and allowing authorised agents to submit forms.

PRELIMS

1. National Air Sports Policy(NASP)2022

- ❖ **Recently, The Minister of Civil Aviation launched National Air Sport Policy 2022 (NASP 2022).**
- **Air sports, as the name suggests, encompasses various sports activities involving the medium of air. These include sports like air-racing, aerobatics, aeromodelling, hang gliding, paragliding, paramotoring and skydiving etc.**
- ❖ **Coverage**
- Aerobatics ,Aero modelling and model rocketry
- Amateur-built and experimental aircraft
- Ballooning, Drones
- Gliding and powered gliding
- Hang gliding and powered hang gliding
- Parachuting (including skydiving, BASE jumping and wing suits etc.)
- Paragliding and paramotoring (including powered parachute trikes etc.)
- Powered aircraft (including ultra light, micro light and light sports aircraft etc.)
- Rotorcraft (including autogyro)
- ❖ **Governance Structure**
- Air Sports Federation of India (ASFI) as the apex governing body

- National associations for individual air sports or a set of air sports, as appropriate Regional (e.g. West/ South/ North East etc.) or State and Union Territory level units of the national air sports associations, as appropriate; and
- District-level air sports associations, as appropriate.

❖ **Objectives**

- Promote an air sports culture in the country
- Enable adoption of international good practices in safety including but not limited to, air sports infrastructure, equipment, operations, maintenance and training
- Develop a simple, stakeholder-friendly and effective governance structure
- Enhance participation and success of Indian sportspersons in global air sports events; and
- Promote design, development and manufacturing of air sports equipment in India in line with the Atmanirbhar Bharat Abhiyan.

2. Next-generation Corvettes

- ❖ **The Defence Acquisition Council (DAC) has given the Acceptance of Necessity (AoN) for several capital acquisition projects of the Indian defence forces. This includes the procurement of next-generation Corvettes for the Indian Navy at an approximate cost of Rs 36,000 crore.**

❖ **What is a Corvette?**

- A Corvette is the smallest class of naval ships and it falls below the warship class of a frigate.
- These are highly agile ships and are categorised as missile boats, anti-submarine ships, coastal patrol crafts and fast attack naval vessels.
- The word corvette itself is derived from French and Dutch origin.
- Corvettes date back to the 18th and the 19th century when they were extensively used in the naval warfare duels that were fought at high seas.
- However, these were powered by sails and masts, and disappeared for a while when steam powered naval ships made their appearance.
- During World War II, the term Corvette was used to describe vessels which had anti-submarine roles assigned to them. Modern Corvettes can go up to 2,000 tons in displacement which helps in keeping them agile.

❖ **What kind of Corvettes does the Indian Navy possess?**

- The Indian Navy at present has the Kamorta Class Corvettes, which are also known as Project 28.
- These ships have an anti-submarine role and are manufactured at Garden Reach Shipbuilders and Engineers in Kolkata.
- The four Kamorta Class Corvettes that the Indian Navy possesses are named INS Kamorta, INS Kadmat, INS Kiltan and INS Kavaratti. The first of these was commissioned in 2014 and the last one in 2020.

❖ **What new capabilities will the new generation Corvettes have?**

- The next-generation Corvettes will be manufactured for various roles like surveillance missions, escort operations, deterrence, surface action group operations, search and attack and coastal defence. It is worth noting that these roles will be in addition to the anti-submarine roles being already performed by the existing Corvettes in the Navy.
- As per the AoN accorded by the DAC, these next-generation generation Corvettes will be constructed based on new in-house design of the Indian Navy using latest technology of ship buildings and would contribute to further the government's initiative of Security and Growth for all in the region (SAGAR).
- The in-service Kamorta Class Corvettes also have a high degree of indigenous equipment being used on the platform.
- This includes Bharat Electronic Limited (BEL) manufactured 'Shikari' sensor and processing system and Bomber and Electronic Warfare Suits also manufactured by BEL and named 'Ajanta'. These vessels also have the 'Sanket' electronic warfare systems and 'Kavach' decoy launchers.

3. **FAST RADIO BURST**

- ❖ **Astronomers have reported a fast radio burst (FRB) whose characteristics are different from almost all other FRBs previously detected, except one.**
- FRBs are bright flashes of light that appear for a few milliseconds and then vanish. Since the first FRB was discovered in 2007, 140 more were discovered until June 2021,
- Their origins are unknown, and their appearance is unpredictable.
- The new study describes FRB 20190520B, first discovered in 2019. What makes it different is that unlike many other FRBs, it emits frequent, repeating bursts of radio waves. And between bursts, it constantly emits weaker radio waves.
- Only one FRB has been previously observed to behave this way. Called FRB 121102, that was discovered in 2012.
- The discovery raises new questions about the nature of these mysterious objects and also about their usefulness as tools for studying the nature of intergalactic space.
- The scientists used the National Science Foundation's Karl G Jansky Very Large Array (VLA) and other telescopes to study the object.
- These characteristics make this one look a lot like the very first FRB whose position was determined — also by the VLA — back in 2016.
- The astronomers have suggested that there may be two different mechanisms producing FRBs, or that the objects producing them may act differently at different stages. Among the candidates for the sources of FRBs are the super dense neutron stars left over after a supernova, or magnetars (neutron stars with ultra-strong magnetic fields).

ANSWER WRITING

Q. E-commerce is emerging as a key enabler and critical determinant of India's growth and economic development. Analyse the statement in light of India's e commerce policy (150)

Introduction

- E-Commerce marketplaces are digital platforms, i.e. online platforms on which goods (physical or digital) or services are sold. An e-commerce marketplace is expected to provide all-round benefits in comparison to its physical counterpart, by an increase in access and economies of scale in operation.
- The global economy is swiftly moving towards digitization. Automation in the manufacturing sector, use of artificial intelligence, online retail, etc are few indicators of reduced human interference and increased technology adoption. India too is not left untouched by these developments. The E-commerce sector in India has emerged as one of the fastest-growing sectors and is expected to grow from 38.5 billion in 2017 to \$200 billion by 2026 in India.
- ❖ **e-commerce provides the following benefits to its users and the economy overall:**
- Domestic manufacturers/MSMEs/start-ups/sellers/retailers stand to benefit from the enhanced visibility provided by e-commerce platforms.
- e-Commerce provides an opportunity to sellers or traders and consumers to communicate and connect beyond the limitations of geography and time, thus providing avenues for exports.
- Consumers have benefitted from increased competition in the market by way of getting access to a greater variety of products at competitive prices.
- Another benefit in this field has been the development in the area of logistics (delivery partners), which has provided employment to a significant number of people.
- E-commerce also provides scope for symbiotic growth where producers of traditional products are provided opportunities to create a steady supply of items for sale.
- Despite all the benefits and potentials e-commerce promises, it faces issues such as: selling at a loss and 'cash-burning' and capital burning which has anti-competitive consequences, Regulators find it difficult to hold entities responsible, that have physical presence hundreds of millions of miles away, abuse of data are few of the major threats.

- Thus to address issues pertinent to the sector and create a framework for achieving the holistic growth of the e-commerce sector the government has come up with the draft e-commerce policy.
- It addresses six broad issues of the e-commerce ecosystem viz, Data, Infrastructure development, E-commerce marketplaces, Regulatory issues, Stimulating domestic digital economy, and Export promotion through e-commerce.
- It establishes strategies that protect the misuse of data while maintaining the spirit of existing regulations.
- The policy encourages foreign investment in the 'marketplace' model alone. Thereby foreign investments are not seen as a threat by small offline retailers of multi-branded products.
- It seeks to provide a level-playing field to all stakeholders, including individual consumers and MSMEs and start-ups.
- Thus, to fully realise the potential of e-commerce, steps for streamlining the experience for consumers, expedite sustained growth of the sector and drive towards consonance with other areas of the economy should be taken. In this backdrop, India's move towards formulating a domestic policy for this fast-growing sector is a welcome step.

QUIZ

- Consider the following statements
 1. Recently Thailand became the 2nd country in Asia after Myanmar to legalize recreational marijuana
 2. Uruguay and Canada are the only two countries so far that have legalized recreational Marijuana

Select the correct statement/s using the codes given below

 - a) 1 only
 - b) 2 only**
 - c) Both 1 and 2
 - d) Neither 1 nor 2
- Consider the followings
 1. Shikari - Bomber and Electronic Warfare Suits
 2. Ajanta - Decoy Launchers
 3. Sanket - Electronic Warfare Systems
 4. Kavach - Sensor And Processing System

How many pairs from the above are correctly matched?

 - a) Only one pair**
 - b) Only two pairs
 - c) Only three pairs
 - d) All the four pairs
- Consider the following census periods
 1. Livestock census - Five years
 2. Tiger census - four years
 3. Rhino census - two years
 4. Elephant census- six years

How many pairs are incorrectly matched?

 - a) Only one pair
 - b) Only two pairs**
 - c) Only three pairs
 - d) All four pairs
- With reference to Indian patent law consider the followings
 1. GOI is bound to protect traditional knowledge by not allowing MNC's to get patents on traditional culture
 2. The provisions regarding compulsory licenses are given in the Indian Patents Act, 1970

3. Under section 3(d) of the Indian Patent Act, a company can acquire a compulsory license for private commercial use under certain circumstances.
Choose the correct statement/s using the codes given below
- 1 only
 - 2 and 3 only
 - 1 and 2 only**
 - 1 and 3 only
5. Consider the followings
- Paris Convention - Protection of Industrial Property
 - Berne Convention - Protection of Literary & Artistic Works.
- Which of the above is/are correctly matched
- 1 only
 - 2 only
 - Both 1 and 2**
 - Neither 1 nor 2
6. The Swiss Challenge Method (SCM), which was recently in news deals with?
- Auction of 5G spectrum
 - Awarding Public-Private Partnership (PPP) Projects**
 - Auction of Coal Blocks
 - Choosing Strategic Private sector partner for undertaking Strategic Disinvestment
7. The term FIRST RADIO BRUST is related to which of the following
- Universe**
 - Deep Ocean
 - Quantum computing
 - Communication satellite
8. Which among the following countries is the largest producer of Crude Steel in the World?
- China**
 - India
 - Japan
 - USA
9. With respect to the "Minimum Support Price (MSP)" for crops, consider the following statements:
- It is a "minimum price" for any crop that the government considers as remunerative for the farmers.
 - It is based on the recommendations of the Commission for Agricultural Costs and Prices (CACP).
 - The government is legally bound to pay the MSPs for 23 crops.
- Which of the statements given above are correct?
- 1 and 2 only**
 - 2 and 3 only
 - 1 and 3 only
 - 1, 2 and 3
10. The International Law identifies which of the following as the global commons?
- The High Seas
 - The Antarctica
 - The Atmosphere
 - The Outer Space
- Select the correct answer using the code given below:
- 3 and 4 only
 - 1, 2 and 3 only
 - 2, 3 and 4 only
 - 1, 2, 3 and 4**