

A decorative graphic consisting of a series of orange dots forming a wavy, horizontal shape that tapers from left to right, positioned in the upper left quadrant of the page.

Keeping an Eye on India USA's IP Priority Watch List

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Since its inception, India's IP regime has undergone a lot of changes to comply with TRIPS agreement and for harmonious interplay with international standards/practices. Yet, its IP framework is rife with deficiencies bringing it under the scrutiny of big IP giants such as the US.

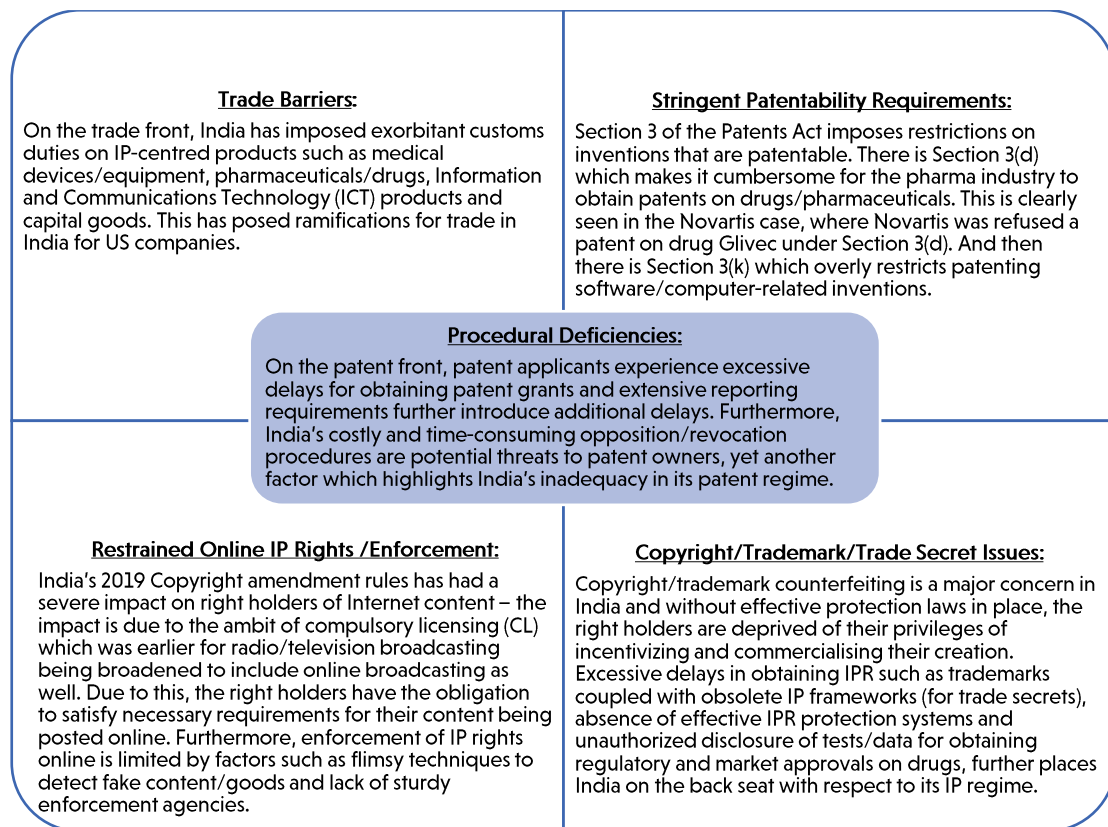
Compared to other jurisdictions, the US has been quite liberal concerning its IP laws and it expects other countries to be more embrative and acquiescent of the US IP norms so as to have a uniform enforcement and protection of IP rights on expected lines. To ensure this, the US keeps a constant tab on the IP scenario in different countries and officially places them under a "watch list" if their IP regimes are deemed to be of concern.

Every year, the United States Trade Representative (USTR) office in its 'Special 301 Report' identifies countries with deficient and counter intuitive IP policies/norms and categorizes them either under "Priority Foreign Country", "Priority Watch List" (PWL) or "Watch List". Thus, the USTR identifies countries which do not provide adequate and effective protection of IPR or fair and equitable/unbiased market access to US IP right owners, and places them on its watch lists.

Countries with grave IPR deficiencies that require the USTR's undivided attention in dealing with certain IPR aspects are placed under the PWL. As of April 30, 2020, the USTR identified 10 countries to be on the PWL – Algeria, Argentina, Chile, China, India, Indonesia, Russia, Saudi Arabia, Ukraine, and Venezuela

India on the PWL:

India's IP system has been on the radar of the US for quite a while now. So to speak, India has been on its PWL for over 25 years. The USTR, in its 2020 report, has cited several reasons for yet again placing India on the PWL – the primary reason being lack of sufficient measurable improvements to its IP framework on the "long-standing" and "new challenges" which have negatively impacted US IP right holders. In addition, the report mentions that although India has made "meaningful progress" to enhance IP protection/enforcement in some areas, it does not resolve recent and long-standing challenges, and in fact has created new ones. This was attributed to the following factors.



Getting into the 'Good Books':

Owing to the expectations of the US for countries in its PWL, India is required to work its way up the IPR ladder to satisfy US requirements to be off the PWL in due course. Beginning with its policies on CL on patents, India should enforce such CLs only in limited circumstances prioritizing the patent owner's privileges and consent and granting the CLs only on reasonable terms and conditions.

India has justified its stringent IP laws as being favourable against monopoly and anti-competitive practices to foster innovations. Nevertheless, some flexibility towards its patentability laws especially for pharmaceutical inventions and concrete IPR norms for protection, enforcement, and commercialization of IP by IP right holders, will go a long way to show India in good light as far as IPR is concerned. In addition to this, India should ensure that it bridges the gaps/loopholes in its IPR laws, with emphasis on objectivity in its guidelines and interpretation.

Having said this, India being a sovereign nation should take the liberty to deal with its IP laws from its own standpoint and not worry too much about how the US perceives it. It is understandable that congruence between nations is key when it comes to IP laws – nevertheless, it is important to determine to what extent India is willing to toe the line when the US takes the upper hand, or sway in a manner that may prevent it from being subjugated to grave implications of being on the PWL. The overall approach should be to promulgate IP growth in India, and

anything contrary to this should be a cause of concern, requiring undertaking of diplomatic actions.

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