

Strategies For Management Of Intellectual Property Rights In India In The Changing Business Environment

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Introduction :

Intellectual property plays vital role in the economic development of a nation. Intellectual Property Rights (IPRs) are the rights given to persons over the creation of their minds. All these rights exist in various forms viz. copyrights, patents, trademarks, designs, trade secrets, geographical indications etc. The intellectual property has become the driving force for augmenting growth of economy of any nation. Inventions in technology are becoming, increasingly, the dominant factor in determining international competitiveness. In order to create strong base and making Indian economy competitive in the global scenario, we have to capitalize and explore our potential of Intellectual Property Rights. Laws relating to intellectual property are important aspect of regulation of investments, products development, market incentives, trade policies and other regulations. Protection of IPRs would help to foster economic growth, provide incentives for technological innovations and attract investment, which in turn, will also generate new job opportunities. It is pertinent to note that the total patent applications filed in India are very less as compare to other nations, 80 per cent are from non-residents or foreigners and only about 20 per cent are resident applications.

Considering the above facts, the present research paper highlights the importance of IPRs in WTO regime, discusses certain issues relating to patents and tries to appreciate the initiatives taken by India to protect IPRs. The paper further emphasizes that Indian industry must realize the hidden potential of intellectual property and frame their IPR strategies. It also focuses on the need to protect its tradition knowledge and geographical indications. The efforts have also been taken to suggest certain strategies for management of IPRs so as to enhance competitiveness of Indian industries in the global scenario.

Concept of property has gained new dimension after industrialization. Broadly the term 'Property' is classified in to two, tangible and intangible. Tangible property includes land, buildings, chattels etc. And intangible property cannot be seen through eyes such as mortgages, lease, and intellectual property rights. Intellectual property is the property which results out of intellectual efforts in the practical application of innovative ideas resulting from human intellect. Traditionally, a number of intellectual property rights (IPRs) such as patents, trademarks, indications of sources and industrial design were collectively known as industrial property. The name intellectual property was evolved when copy rights were brought alongside patents, trademarks and designs under one umbrella. It is now crystal clear that intellectual property rights are offered protection only when they are capable of industrial application or useful in Commercialization. In this context, it is necessary to determine the potential of intellectual property rights as a tool to achieve success in the entrepreneurial ventures in the business world.

Intellectual Property Rights in WTO Regime:

Intellectual Property Rights are the rights given to persons over the creations of their minds. By such rights creator gets an exclusive right to use his/ her creation for a certain period of time. Hence, 'inventions' can be protected by 'Patents'. Law of Patents concentrates on the concept of 'novelty' and 'inventive step'. Design Law

talks on novelty or originality of the design not previously published in India or any other country. The Trade Marks Law is based on the concept of distinctiveness and similarity of marks and similarity of goods. The Copy rights Law provides for protection of original, dramatic, musical and artistic works. The issue of IPR has become very crucial in World Trade Organization (WTO) regime. India is a member of the World Trade Organization (WTO) and is a party to Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreements, which came in to force on **1.1.1995** and as a result various amendments were required to be made in laws relating to IPR in India. The lead taken by the World Trade Organization (WTO) to liberalize the global economy has abridged the distance between the local and global markets and facilitated easy flow of technologies, technical know-how and investments into the international trade. The strong protection of IPR motivates the inventions of new products as the inventor is able to commercialize his inventions.

Foreign investors are ready to invest funds in underdeveloped countries. Laws relating Intellectual Property are important aspect of regulation of investments, product developments, market incentives, trade policies and other regulations. The formation of the WTO mainly aimed at free trade practices across the globe to overcome the stiff resistance over non tariff barriers in various rounds of GATT negotiations. The TRIPS agreement has completely uniformed the law on intellectual property rights in all the member states. The agreement has actually reformed, restructured, rationalized and uniformed the intellectual property laws across the world. Taking in to consideration, the monetary value of IPR, the business organizations have started investing huge funds in research and development (R&D) to acquire intellectual property. Hence, IPRs have gained importance in overall functioning of business activities in WTO regime and in the process of globalization around the world.

Issues relating to Patents:

A patent is an exclusive right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. It is granted to the person who first invents a process or a product involving inventive steps and is capable of industrial use. Patent grants an exclusive right to the inventor for limited period over his invention in exclusion of others, for making, using, selling, and importing the patented products or process producing that product for those purposes¹.

Products were not patentable in India earlier to the amendment made to the Patent Act in 2005. This new amendment allows product patenting. The term of patent is for 20 years from the date of filing. The Patent Co-Operation Treaty (PCT) provides for international patents, and hence filing of international application can be done through local patent office with designation of states where protection for invention and patent is sought. It is pertinent to note that the developed countries got highest number of patents in the world. Japan is having highest number of patents in the world followed by USA and South Korea. Among developing countries, China possesses highest number of Patents. China emerges as the front runner in protecting intellectual properties as data show that China has already set-up 5000 patent training institutes all over the country with 3 state-of-the art 20 storied central patent offices in the country with lot more offices in different states².

Due to its positive attitude towards protecting intellectual properties, it took 95 years to grant first 1 million patents, which took only 15 years to grant next 1 million patents. Its patent revenue increased from \$ 3 billion in 1980 to more than \$ 100 billion in 2006. Multinationals, which are spending more money in to R & D, getting more patents over the years. IBM registered 2658 patents in 1998 in USA as against 1794 in 1997. It also realized over \$ 1 billion in 1998 and \$ 1.7 billion in 2000 by patent licensing of its patented technologies³.

All these examples show how patenting has encouraged industrial production as well as revenue of the developed countries. Hence, developing country like India has to utilize its technological excellence by capitalizing its intellectual properties. CSIR has taken Positive Steps in this regard and it has maintained 30 per cent to 40 per cent share of US patents granted to Indians in India. India has to take strategic steps to take advantage of a product patent-regime, which came in to force from 1st Jan 2005. India ranks third in patent application through PCT in Asia Pacific region next to South Korea and China⁴.

For India, protection of IPR is possible with dedication of experts, extensive sound research and proper docu-

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mentation. The internet related patent is going to become invaluable assets in the coming years. India will be a 40 trillion dollar economy by 2030. The size of India's biotech industry is 5 billion dollars, second only to America. India's scientists have created a solar-powered touch screen computer technology cheaper than the iPad. 90 per cent of the world's computers run on a chip designed by an Indian⁵. Hence, such talents and potential of India are required to be encouraged.

Compulsory Licensing:

Provisions of the Patent Act relating compulsory licensing are very important for pharmaceutical products. These provisions have limited the scope for countries like India to produce or manufacture pharmaceutical products, especially life saving drugs. For India, compulsory licensing is a tool to counter the public health related calamities. One of the observations regarding product patent regime is that the Multi-national Companies (MNCs) will benefit significantly by way of introducing new pharma products in Indian domestic market, and prices of life-saving drugs would shoot upwards beyond the reach of people below poverty line. Of course, under health emergency, the central government has all powers to scrap patents or, at least, ask multinational pharma companies to sell their products at reasonable prices. India with a low production cost of generic drugs has an edge over its competitors in foreign markets. India, already produces 22 per cent of the world's generic drugs, can definitely do better by taking suitable steps of utilizing its intellectual property resources through effective administration and encouragement in the field of research and developments. It is necessary to establish as close liaison between public and private investment in pharma sector in R&D, which is not significant today.

Initiatives to protect IPR in India:

Plant varieties and farmers Rights:

Indian parliament has enacted The Protection of Plant Varieties and Farmers Rights Act, 2001, which tried to seek balance between the rights of breeders and farmers. It acknowledges the role of rural communities as contributories of landraces and farmers varieties in the breeding of new plant varieties. Hence share of profit made from the new variety would go to the farmers and local communities.

Copy rights:

The Copy Right Act, 1957 with amendments in the year, 1983, 1984, 1992, 1994 and 1999 tries to cover the field of writing, music, communication, entertainment and computer industries. In the case of literary, dramatic, musical, artistic work the term of copy right, in case of natural person, is life time of the author plus sixty years. In another cases the term of copy right is sixty years from the year of publication. Government of India has taken positive steps for effective implantation of this Act which include-the constitution of a Copyright Enforcement Advisory Council (CEAC), setting up number of copy right societies such as-the Society for Copyright Regulations of India Producers of Film and Television (SCRIPT) for Cinematography Films, India Performing Rights Society Ltd. (IPRS) for musical works and Phonographic Performance Ltd. (PPC) for sound recordings.⁶ Special cells for copy right enforcement have so far been set-up in 23 States and Union Territories⁷.

Patents:

Patents filings at the Indian Patent Office (IPO) have been increasing at a rate of about 25 per cent for the past 8 years. Patent filings by the Indian applicants in every year are growing only with a rate of about 11.6 per cent, whereas, foreign applicant filing growing at a rate about 31.7 per cent.⁸ This kind of situation is not encouraging for India.

Trademarks:

Due to its extensive use and advertisement, trademark has begun to acquire goodwill and reputation among the customers of the goods. Well-known trademarks are likely to be copied by the competitors and they could earn profits by trading on the reputation and goodwill of another trade mark. For the purpose of protecting trademark, and to fulfill the expectations of TRIPS, in India, new statute namely the Trademarks Act, 1999, was enacted. Under this Act, falsifying i.e. using identical or deceptively similar mark has been made as cognizable offence. The police have been given the power to search and seize without warrants and if found quality to impose a

punishment from 6 months to 3 years and a fine of Rs. 50,000 to Rs. 2, 00,000. The Act has provided equal protection to service marks.

Designs:

The Designs Act, 2000 provides that no person shall imitate any design of an article without the license or without the consent of the registered proprietor (Sec. 22). It provides for protection for a period of 10 years, renewable for further five years. This Act permits colour patterns for design protection. In the competitive business world, the new, novel, ever-changing shape, aesthetics, cosmetics and such attributes of product has gained importance and hence industrial designs are, influencing and are, in turn, re-influenced by world economy mainly in the engineering field. The filing applications for Designs have increased from 2874 in 1999-2000 to 5372 in 2006-07. The number of Designs registered has also increased from 1382 in 1999-2000 to 4431 in 2006-07⁹.

Traditional Knowledge:

Traditional knowledge (TK) is one of such community-owned and managed intellectual property. It is known fact that TK has been used for profiteering by big business houses, hoteliers, film industries and music ty-coons by using cultural expression of nomadic, tribal and village community. TK is also used in allopath and *ayurvedic* medicines. Most of the TK is in unwritten form. It includes knowledge of harvesting practices, spirituality etc. In India, the TK includes the usage of *neem*, turmeric and tamarind etc. with the initiative of CSIR, India, and TK is being protected at various levels. The Government of India has prepared Traditional Knowledge Digital Library on traditional medicines, plants and systems. Accordingly, nearly 35,000 *Ayurvedic* medicinal formulations based on TK have been recorded.

Sanskrit texts having such traditional knowledge have been translated in to English to prevent such bio-piracy. In India, there is no special law to protect traditional knowledge. However, better protection is extended to traditional knowledge under the Geographical Indications of Goods (Registrations and Protection) Act, 1999. The Bio-Diversity Act, 2002, is enacted to provide for conservation of biological diversity and sustainable use of its components, and for fair and equitable sharing of profits. The protection of Plant Varieties and Farmers Rights Act, 2001, is enacted to protect the farmer's traditional knowledge including the right to save, use, share or sell his farm produce of a variety protected under this Act¹⁰.

Geographical Indications:

More than 39 geographical indications products have been registered since, 2003. These include Darjeeling Tea, Chanderi Saree, Solapur Chaddar, Mysore Silk, Kullu Shwall, Mahabaleshwar Strawberry, Puneri-Pagadi etc.

Establishment of NIPM: The Government of India has already approved the proposal for establishment of a National Institute for Intellectual Property Management (NIPM) at Nagpur. The Institute will perform training, education and research in this field¹¹.

Strategies to utilize IPR as a tool for economic growth of India:

1. IPRs are gaining importance as one of the valuable assets of the business organizations. Business should take systematic steps to formulate policy to create and protect intellectual property.
2. Business houses should review and make detailed analysis of its copyright, trade secrets, patents and trademarks portfolio. In other words intellectual property audit should become regular feature of companies. It may include valuation of various properties and information regarding any potential claim of infringement.
3. Companies should improve the quality of goods and services, cut down costs and wastages and improve patient management system by concentrating on R&D departments. The planners and policy makers of developing countries can use the power of the patent system for economic developments by implementing pro- active patent policies.

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4. Appropriate legal and organizational steps should be taken to reserve the rights of the indigenous communities of their traditional knowledge about their biological resources and traditional remedies.
5. It is necessary to design and structure IPR system in agriculture so that issues relating to farmer's rights and food securities can be tackled in a better way.
6. For the purpose of building a strong Indian economy, India has to invest in Research and Development, technology, infrastructure and human resource development. Private investment in R&D is required to be increased.
7. Non Government Organizations can play vital role in education and increasing awareness amongst public about IPR and help them to protect their IPR by availing legal and technological support.
8. According to Dr. R. A. Mashelkar (Former Director General, CSIR, India), ".....instead of 'publish or perish', our new slogan is 'patent, publish, and prosper'.....we must patent every new innovation before publishing.....we lost out because we did not patent"¹². Such opinions are required to be taken seriously by every Indian so as to make India as a Super Power.
9. It is the need of day for India to strengthen its R&D sector so as to equip it to meet stringent international quality standard right from raw material sourcing to packaging of a product, by this way TK can be effectively used for the betterment of the country.
10. Companies, for protecting their intellectual property, can manufacture leading products, enhance their market share. One invention which leads to one patent is capable of starting one industry. Hence it would be beneficial for companies to focus on protecting the proprietary technologies which give their products and services an advantage over those of competitors.
11. For promotion of IPR management, IP offices in India are required to be modernized. Appointing additional staff, establishing a higher level of computer network support on-line processing, providing an access to international treaties/conventions, easily would help enhance efficiency of IP offices and which would ultimately help to protect patents in a better way.
12. Proper management of IPRs can attract new capital to the companies. Companies can communicate their IPRs assets picture and attract the investors. It has been observed that companies, whose patents were more frequently cited in assets of the companies, saw their stock prices rise for more rapidly than those of companies in the less frequently cited patents.
13. India can top its potential of patent outsourcing. Patent outsourcing is possible with skilled labour. Presently 60 per cent of the total work is done by U. S. Law firms. Indian legal industry is expected to grow on that account creating about 6950 jobs by 2012¹³. Hence, legal process outsourcing (LPO) industry in India has more opportunities, and hence trained man power of legal expertise is required to be created for protecting better interests of India.

Therefore, the new IPR regime is required to be viewed as an opportunity rather than threat; however, it is not possible without proper and effective management of IPRS in India.

References:

1. Sreenivasulu N.S., (2nd Edition-2011), "Intellectual Property Right", Regal Publications, New Delhi.
2. Pal Prankrishna (Dr.), (2007), "Intellectual Property Rights in India: General Issues and Implications", Regal Publications, New Delhi, Page No. 119.
3. *ibid*, p. 120.
4. *ibid*, p. 121.
5. DNA (News Paper), Dated 26/01/2011, Page No. 1.
6. See Foot note 2, p. 137.
7. Singh Shiv Sahai, (2005), "Intellectual Property Rights", Deep and Deep Publications Pvt. Ltd., New Delhi.
8. <http://www.ipindia.nic.in>.
9. *ibid*.
10. Chaudhary P. N., (1st Edition-2010), "Business Regulatory Framework", Nirali Prakashan, Pune, Page No. 6.59.
11. See foot note 8.
12. See foot note 2, Page No. 150.
13. Hingmire Ganesh, (April, 2010), "Students Guide to Intellectual Property Rights", Pune, Page No. 6.