
START-UPS AND INTELLECTUAL PROPERTY (IP)

The initial few steps of a start-up are like that of a baby learning to walk upright. If it is not given proper support and nurturing it will not learn to walk and eventually run. The support for the nascent business comes in many forms viz, strong core team, intensive and extensive R&D, trafficable product line, effective business / marketing strategy, and capital investments. Traditionally, up till last two decades, without these crucial support measures it was hard to materialise a business idea into a practical running model.

Today, besides the already mentioned, there is one aspect, which started off as a vestigial organ, but has transformed to become the backbone of all businesses i.e. Intellectual Property (“IP”). In earlier times there was no value or protection to ideas and innovations. But with the evolution of law, driven by the need of the hour, protection was granted for these ideas and innovations, consequently giving them value. Gradually their worth became considerable and furthermore equivalent to real properties already in the market. Intellectual Property may refer to, *inter alia*, patents, trademarks, copyrights, designs, and geographical indicators.

According to a survey of an US weekly, “As much as three-quarters of the value of publicly traded companies in America comes from intangible assets, up from around 40% in the early 1980s.” And in some start-ups the whole 100% worth of them comes from Intellectual Property. Nowadays, intellectual property is being treated at par with real property; it is being bought, transferred, and licensed out.

Notwithstanding the above, the IP culture has still not become popular with the Indian start-ups. Either due to oblivion or an impertinent phobia, entrepreneurs have shied away from acquiring intellectual property rights. What they have failed to acknowledge is that IP has become an integral part of a successful business strategy and even gives leverage to other aspects of the strategy. Undoubtedly, raising capital has always been the nightmare for start-ups, but an entity has a patent or two in its kitty, it enhances its prospects for acquiring capital. Venture capitalists see it as a potential money maker as they know it’s true worth. A hefty patent portfolio may work as a double edged sword, by attracting investors and deterring competitors. Even if you have not acquired the patent, a patent filed or a patent pending status may attract the eyes of venture capitalists. Furthermore, while doing the prior patentability searches you may get to

know if you are in infringement of someone else's patent thus saving you from damages/fines resulting out of law suits.

Another important type of intellectual property that is being missed out by the Start-ups is trademark. Trademark is the sign, insignia, colour, words, numerals that represent an enterprise. It represents your business entity, your products and your quality. No market strategy can be thought of without trademarks. It is essential for building a good will amongst your customers in the market. Moreover, registration of a trademark help you in protecting the same in the event of misuse by unscrupulous entities.

Depending on the field of business, the type of technology being used, an entrepreneur can think out his IP strategy. Software, per se, is not protected by patent laws in India, but by the copyright laws. Start-ups should be vigilant about any infringement of their copyrighted software or if they are in infringement of another party's copyright. Like trademarks, it is not mandatory to get the copyright registered, but yet again, to protect it from infringement it is better to have it registered with the Indian copyright office.

Nevertheless, in the process of being conferred the above mentioned IP rights comes along a major drawback, the protected information goes in public domain. That puts businesses in extreme vulnerability after the exhaustion of the period of protection. So, to protect them from going into public domain or due to the non-patentability of some key ideas or innovations, another type of Intellectual Property has strengthened its existence viz. trade secrets or know how's. The World Intellectual Property Organization ("WIPO") defines trade secret as, "Any confidential business information which provides an enterprise a competitive edge". Entry level business entities should be extra cautious about their trade secrets as they are weak in protecting them. There are no laws or treaties to directly protect trade secrets or know how's. Legally, they may be protected through strong contracts, and non-disclosure or confidentiality agreements. India being a signee to the Trade Related Aspects of Intellectual Property Rights ("TRIPS") agreement recognises trade secrets as long as proper precautions have been taken by the holder for concealing them. But, it is advisable to opt for patents if a trade secret is patentable and it is vulnerable to get leaked out, or the secret susceptible to be revealed through reverse engineering or using any other process.

It is time the small enterprises in India get serious about capitalising on the intellectual properties. While indomitable brand image, perpetual customers list, real assets, etc may take an

era to acquire, one's intellectual assets may catapult a business through the market and portray the business as a force to reckon. The numbers may seem to be unjustly polarised towards start-ups but right use of IP laws may protect one's launch pad and flight trajectory.

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