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Intellectual Property Protection Why it is Important?

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Albert Einstein once said that the “Imagination is more important than knowledge”. Whereas the knowledge is based on existing facts, research and observations, imagination is full of new ideas, thoughts, and innovation, has no precise limits and ultimately may lead to creation of valuable Intellectual Property (IP). The term “IP” basically means “creation of mind” such as machine, process, design etc with creative or useful output. IP, due to its intangible nature, gets protection under law as patent, copyright, trademark, industrial design etc provided it fulfils basic requirements for protection as prescribed by the legislation.

India still lags behind on IP awareness and protection

The term Intellectual Property (IP) has been increasingly used today but exact meaning of IP, rights of IP holders, risks of ignorance are still not very clear to many especially in developing countries like India. Indeed, most people are not even aware that they have developed and own an IP. Talking about the level of awareness and utilization of IP for economic growth in India, we are far behind the developed nations.

India is known as land of Gurus and Gurukuls and education in India has always been regarded as one of the basic inputs in human resource development. India's tremendous amount of intellectual contribution to the world is a great example of knowledge wealth and capabilities that we possess but unfortunately we have not been effectively successful in monetising the same so far. The trait of imparting education free of cost (vidya daan), defective policies, low awareness of IP and lack of timely enforcement of law are few reasons that third parties could file and own patents based upon Indian traditional knowledge such as basmati, neem, several yoga asanas or turmeric and more.

Low awareness of IP is reflected in a case whereon researcher in the Indian Institute of Science (IISc) after publishing a landmark paper in U.S. journal Science relating to ‘carbon nanotubes, miniature tubes made of neatly arranged carbon molecules, generating a voltage when a fluid flows over it’, realised that it was a potential patentable invention. As a result of publication, they missed filing a valuable patent as Indian patent law requires absolute novelty of an invention before patent filing. Hence they failed to receive full commercial advantage of their work.

Moreover, in addition to lack of awareness, there are several other reasons contributing to low patent filing from Indian inventors. According to Prof Rama Murthy, Professor & Head, Intellectual Property Cell at Centre for Emerging Technologies, Jain University, Bangalore and Scientific Advisor to Patent Office, Government of India, “most of the high technology based products in India, such as aircraft engines, sub-systems of space vehicles like cryogenic engines are imported or manufactured under license agreements from foreign companies. Hence, the patents of these technologies are owned by the foreign companies. Further improvements on such technologies to enable Indian companies to file and obtain the patents are very low”.

IP has various forms

IP can take various forms such as patent, copyright, industrial design, geographical indication (GI), traditional knowledge, trade-secret etc depending upon its nature. Patents protect invention, copyright protects works of authorship and trademark protects good-will of business. Patent is often called as “King of IP” and is the grant of exclusive statutory right given to patent holder by Government, for limited period, in exchange of full disclosure of his invention, for excluding others, from making, using, selling, importing the patented product or process producing that product for those purposes. The purpose of this system of granting patents to the inventors is to encourage scientific growth, promote technological innovation and to enable the transfer and dissemination of technology.

Out of various forms of IP, the trade-secret or the confidential information is the most neglected form of IP in most of the companies. Trade-secrets are usually not created intentionally but they develop without realisation and therefore companies usually fail to identify them and realise the importance of the same only after it is lost. In India, there is no separate law to protect trade-secrets but one may get remedy under common law.

IP is valuable

IP has been recognized as the most important asset of many of the world’s largest and most powerful companies in the world. IP and its economic impacts can be very significant for any company. As creation of IP requires huge investment in terms of time, energy, manpower and resources, its appropriate protection is extremely critical for any organization. The relationship between intellectual property rights and economic development has always attracted a great deal of attention from economists and now Indian companies have started realising importance of IP as indicated by increase in number of patent application filed by Indian applicants in recent years. Atulya Nath, CEO of Global Institute of Intellectual Property (GIIP), Delhi says, “as India becomes more sophisticated, it will create huge IP of its own and also protect the IP of other nations. Both these will bear fruits in terms of prosperity in India and around the globe. IP and the patent regime are of extraordinary significance in the global economy; India will be among the biggest beneficiaries of the services associated in this domain. That also means India needs to be prepared with a large pool and continuous supply of well trained professionals to meet the demand”.

IP infringement: Prevention is better than cure

Infringement in simple words is violation of rights of IP owner. Apart from appropriate protection of IP, one essential aspect that is ignored most of the times is infringement. Carelessness or ignorance of IP can be fatal for any organization by only losing rights over the IP created by it but also by accidentally using IP of third parties resulting in litigation or huge loss of time, money and reputation. With increasing number of patents granted in Indian territory especially when Indian now has provision for product patents too, it is extremely important for industries today to understand that reducing risk of infringement is equally important as the protection or registration of IP is. “Proper patent searches or vigilant analysis of patent rights of third parties, done by experts, shall be mandatory before a product is launched in a given territory, and this practice can be extremely helpful to maintain IP hygiene in organisation and minimize infringement risk to a great extent”, says Anita Kalia, IP expert, Origii IP Solutions LLP, Bangalore.

Where and how do we start?

Starting with IP protection of the products or processes as well as leveraging the same to generate revenue needs thorough understanding of IP. Having IP committee and IP policy in the company is extremely important to define various critical issues such as ownership, resolution of disputes, disclosure of ideas, IP processes to ensure security, confidentiality, identification and protection of confidential information and trade-secrets and more. Assessment of existing knowledge, planning of R & D systematically, understanding various aspects of IP is essential for organization to get started with protection of IP.

Conclusion

IP is a valuable asset and needs to be protected appropriately under legal regime. It can not only fetch tremendous revenues by licensing or assignment but also bring good reputation to the owner. The need of the hour is to be aware of important elements of IP to ensure not only protection of IP but also to respect IP belonging to third party to avoid disputes and litigations.

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