



Intellectual Property Rights- Benefits And Challenges To Smes

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Abstract

Small and Medium sized enterprise(SMEs) play a prominent role in socio-development of economy. As we know challenge in the countries with large population of employment. Our government is doing every possible step to make people self-reliant. We are witnessing growth in SMEs. But we find yet is to be done. And the fruits of hard work are yet to be reaped by the SMEs. IN this context the role of IPR become significant in giving full benefit to the SMEs. In the present paper we will study the meaning and importance of IPR to SMEs and the challenges before SMEs in IPR.

Keywords: Small and Medium sized enterprise(SMEs), Intellectual Property Rights(IPR), World intellectual property organisation(WIPO)

1. Introduction

World intellectual property organisation(WIPO) defines intellectual property as “creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.”

Intellectual property is the outcome of intellectual capability and hard work and is therefore considered as another class of property referred to as the activities of human intellect. IP can be bifurcated into two categories: i.) industrial property that includes inventions (Patents), trademarks, designs of industries & geographic indications of source. ii.) copyright that includes literary and artistic works such as drawings, paintings, photographs, sculptures and architectural designs. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

It has been seen that the worth of IP surpasses the value of physical assets. Bill Gates one of the richest person is dependent on IP for his wealth. He created a software, Microsoft, a software without which anything can't be imagined and it is not wrong to say that IT industries are dependent on Microsoft. And the list didn't end here

many companies like Apple Inc., Amazon Inc., Alibaba group, Facebook, Infosys, Wipro, Mahindra Tech etc. are some of the companies that are dependent on their IPs.

2. Literature Review

Sati-Salmah Sukarmijan, 2014, concluded in their study that, “There is a need to strengthen interaction between IP offices, SME support institutions, business associations, national, regional and local governments and other relevant institutions with a view to better identifying the IP needs of entrepreneurs and SMEs and the barriers to a more effective use of the IP system by entrepreneurs and SMEs”

C.N. Saha, S. Bhattacharya suggested in their paper, “Different forms of IPR demand different treatment, handling, planning, and strategies and engagement of persons with different domain knowledge and therefore each industry should evolve its own IP policies, management style, strategies, etc. depending on its area of specialty.”

C. Ravivarma, D Bhuvankumar suggested that “ IPRs help MSMEs to sustain themselves in the market and compete with MNCs and global players. Government financial support to MSMEs in acquiring IPRs and its efforts to create awareness among MSME players is significant but it needs more clustered approach to make MSMEs more creative and viable.”

3. Objectives of the study

- a. To identify the importance of IPs in context of SMEs
- b. Status of IPR in India
- c. Benefits of IPR to SMEs
- d. Challenges before SMEs

4. Discussion:

IPs and SME

Importance of IP for SMEs:

As per report published in European Patent Office (EPO) in May 2019 “SMEs which have applied for Intellectual Properties (patents, trademarks or designs) have a greater probability of experiencing high growth than SMEs that do not.” A study conducted by EPO and EUIPO shows that

- i. “SMEs that manage their Intellectual Properties (IP) effectively are often better placed to identify risks and grow their business through acquisition and access to additional funding.”

- ii. “SMEs that have filed at least one IP right are 21% more likely to experience growth, and are 10% more likely to become high growth firm (HGF) than those without IP rights applications.”
- iii. “SMEs that file for IP rights at European level have an even greater likelihood (17%) of becoming an HGF”

If we look around us we will find that new products, creative designs and brands are launched almost daily in the market. There are many platforms to showcase one’s talent even amazon and Flipkart are promoting creative stuffs and giving platforms to sell one’s unique ideas. Shark tank is there. But condition is one product or idea should be original and unique. And we can see people are coming up with something unique every day. The driving force behind innovations are SMEs but their creativeness is yet to be exploited completely. And the reason they lack is that they are not aware about the IPR or we can say that they are not aware regarding how they can safeguard their invention, brand and designs.

If one’s work is not protected than another firm may take benefit of the situation and can commercialise the product at more affordable price and because of which the original creator will not get any benefit. Converting mere ideas into assets of the business with actual market value and to deter potential infringement it is important to take adequate protection of company’s IP. In order to compete successfully not only at global level but at domestic level too SMEs are required to have in depth knowledge on IPs.

IP rights will also help in enhancing the worth of the SMEs which will benefit in terms of profitability and in case of ‘sale, merger or acquisition’, it may raise the value of the enterprise significantly.

5. Types of Intellectual property and their protection

5.1 Patents

As per the U.S. Patent and Trademark Office(USPTO) “a patent is a type of limited-duration protection that can be used to protect inventions (or discoveries) that are new, non-obvious, and useful, such a new process, machine, article of manufacture, or composition of matter.”

In India “patent” gets its meaning statutorily under “The Patents Act 1970”

“Patent is one of the way through which scientific inventions potential for industries application are protected and promoted. As per the Act patents are granted to inventor for a period of 20 years.” The patent law recognises the patentee’s exclusive right to gain benefit out of his invention commercially, so that he can be encouraged and can enjoy the exclusive rights over his invention.

The criteria for securing a patents are:

- a. It should be novel: novelty means invention must be new technology that has not been available or published prior to this invention.

- b. It should have utility: it must be useful either in industries or applied for practical purposes.
- c. It should be non-obvious or inventive: any invention that is done by applying any ordinary skill is obvious and therefore that is not patentable.

As per sec. 3 of "The Patents Act 1970" the below mentioned is not considered as inventions and are therefore not patentable

- i. "Frivolous invention or which claims anything contrary to law"
- ii. "Inventions that are not good for health of humans, animals, plants or for environment. Or any inventions that are contrary to morality or public order."
- iii. "Discovery of any living thing or of any non-living substance occurring in the nature"
- iv. "Formulation of any abstract theory or discovery"
- v. "Any chemical or substance that is obtained by mere admixture resulting only in the aggregation of properties or is a mere arrangement or re-arrangement of known devices"
- vi. "Inventions that are related with atomic energy or are related with security of the nation."

5.1.1 Trademarks

Signs, words, names, symbols or device that distinguish the goods or product of one enterprise from other are known as trademarks. According to WTO, "a trademark protects the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities."

Trademarks provides with exclusive rights to the owner of the marks to use the special rights or to authorise the another person to use the same for consideration. The period for protection may vary and it can be renewed indefinitely by paying additional fees. Trademarks rewards in the form of recognition and financial profit to the owners of the trademarks by promoting enterprise & initiative worldwide.

5.1.2 Industrial design

Industrial design is the key factor that attracts customers towards a product or it prefers customer to choose a particular product over others. It enhances the commercial value of the article by making it looking appealing.

In legal terms "it constitutes the ornamental aspect of an article. It may consist of three dimensional features, such as shape or surface of an article, or of two dimensional features such as patterns and lines or colour of the products."

An industrial design right protects the visual design of the product or we can say it protects the appearance of a product. Example includes mobile phone, vacuum cleaner, design of the chair, label of the drinking bottle.

5.1.3 Geographical Indications

These referred to the signed used on the products or articles that possess the qualities or a reputation which are essentially attributable to the place of origin. In order to function as “Geographical Indicator”, a sign must identify a product as originating in a given place. There is a clear relationship between the products and its place of production since the quality of the product depends upon the geographical place of production. Example Tirupati laddu, silk saree Mysore, scotch whisky U.K

5.1.4 Trade secrets

It refers to private specific information including formulae, methods or techniques that are not being generally available or known by others giving the business competitive advantage in its marketplace.

These are the IP rights on confidential information that can be sold or licensed. Using or acquisition of these rights in an unauthorised way or disclosure of the trade secrets in contravention to honest commercial practices is considered as “unfair practices and the violation of the trade secret protection”.

To maintain the confidentiality, the owner of the trade secrets must take the reasonable measures. “This novel or creative can also be kept as trade secret even when the registration of the patents, industrial design, copyright, etc are pending or is in the process.”

Formally there is no official protection from the government so the owner of the TP must take measures to protect their own secrets.

5.1.5 Copyrights

Copyrights and patents are often confused with each other but they are not same. Patents are used to protect the inventions and discoveries whereas copyrights are used to protect the expressions of ideas and creations.

6. IPR in India

With rapid innovation in technology, scientific and medical the Intellectual Property plays a vital role and has emerged as one of the largest and fastest growing field. To fulfil the international requirements under “WTO agreement on Trade related Aspects of intellectual property rights(TRIPS)” India has passed several new legislation has passed and has been updated from time to time. The following rights have been recognised:

“The Patents Act 1970”

“The Trade Marks Act 1999”

“The Copyright Act 1957”

“The Design Act 2000”

“The Geographical Indications of Goods (Registration and protection) Act 1999”
 “The Semiconductor Integrated Circuits Layout Design Act 2000”
 “The Biological Diversity Act 2002”
 “The Protection of Plant Varieties and Farmers Right Act 2001”

7. Regulators of IPR:

The following government functionaries regulates the IPR:

Intellectual Intermediaries	Concerned Ministries
Patent, Designs, Trademarks, Geographical Indicators	“Controller General of Patents”, “Designs and Trade Marks (CGPTDM) under the department of Industrial policy and promotion, ministry of commerce & industry”
Copyright	Ministry of Human Resource department
Plant varieties, farmers’ right	Ministry of Agriculture

8. Benefits of IPR

IPR protects the owners, creators, inventors of the IP in numerous way. There are certain myths that IPR give benefits only to large businesses and it is unsuited to SMEs. Some of the benefits to SMEs are highlighted below:

- i. It helps in growing license sales and revenue from loyalty
- ii. It makes SMEs more valuable especially when it comes to acquisition
- iii. It keeps SME under competitor radar
- iv. It gives right against any misuse or use of work
- v. It helps in availing benefits from creativity.
- vi. It turns ideas into profit making assets
- vii. It markets the business products and services
- viii. It helps in raising finance for the businesses
- ix. It enhances the opportunity of exports for the business

9. Challenges before SMEs

SME plays a significant role especially in countries which has large population, where people needs employment for livelihood. In India, SME plays a significant role especially when it comes to socio economic development.

There are certain challenges that SMEs are facing:

- i. One of the challenge that SMEs are facing are from aggressive competitors who don't want to play fair and utilize IP litigation for threatening small players with consequences. E.g (JCB case (case 105 of 203)
- ii. There is no clarity about their relevance, strategy and competitiveness and SMEs find the process costly and too complex.
- iii. Many SMEs perceive that the cost of getting their IPR protected may exceed their potential benefits as they are of the mind-set that they have to incur the expenses even before their products get enter into the market.
- iv. Besides the above the time required to be granted for a patent or to obtain a trademark also act as disincentive to SMEs. Longer the time required to get patents or registration of TMs may bring uncertainties and it delays the chances or possibility of finding a potential licences or partner for exploiting an innovation (WIPO 2005)

10. Conclusion

In 2012, National Study on “Intellectual Property and Small and Medium Sized Enterprises – India”, under the WIPO Development Agenda highlighted “Contrary to the common belief that awareness about IPR among MSMEs is completely missing, some MSMEs appear to be aware of IPRs and comprehend the need for protecting IPR. The awareness seems to be more about trademark and designs as compared to patents. However, the number of MSME engaged in IPR activities is still very small considering the large size of the MSME sector in India”.

Picture is changing gradually; “India has witnessed a jump of 33 places in Global Innovation ranking since 2015. India ranks 48th among the 131 economies featured in GII in 2020” released by WIPO along with Cornell university and INSEAD Business School.

In a report released by US chamber of commerce global innovation policy centre (GIPC), “India ranks 40 out of 53 global economies.”

Things are getting better as government is taking every single step to support the local business men. Even many big companies along with their apps are collaborating with the local vendors so as to promote their business. In coming years, we can see the jump in the ranking as we are already ahead and we are still going on.

But more awareness campaign should be organised so as to spread the awareness. Also the environment should be improved so that SMES find easier and participate.

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