

The Trends of Commercial Exploitation exist in Patent and Intellectual Property Rights

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Intellectual Property has increasingly assumed a vital role with the rapid pace of Technological, scientific and medical innovations that we are witnessing today. Moreover, changes in the Global Economic Environment have influenced the development of business models where intellectual property is a central element establishing value and potential growth.



In today's world, the abundant supply of goods and services on the markets has made life very challenging for any business, big or small, in its on-going quest to remain ahead of competitors in this environment, every business strives to create new and improved products that will deliver greater value to users and customers than the product offered by competitors.

To differentiate their products a prerequisite for success in to-day's markets businesses rely on innovations that reduce production costs and / or improve product quality. The TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement aims at protecting Intellectual Property Rights and rewarding creativity and inventiveness. Article-7 of the TRIPS Agreement states its objectives as "The Protection and Enforcement of Intellectual Property Rights should contribute to the promotion of technology innovation and to the transfer and dissemination of technology, to the mutual advantages of producers and users of technology and in a manner conducive to social and economic welfare and to a balance of rights and obligations.

Article 27.2 provision read follows: "Members may exclude from patentability inventions, the prevention within their territory of commercial exploitation of which is necessary to protect order, public or morality including to protect human, animal or plant life or health or to avoid serious prejudice to the environment".

TRIPS consist of seven parts ranging from Patents, Trade Marks and Copy Right to maintenance of confidential information. The seven parts of TRIPS:

A. Patent.

- B. Copy right.
- C. Trade Mark.
- D. Industrial Designs.
- E. Geographical Indications.
- F. Integrated Circuits.
- G. Undisclosed Information.

AWTO Member is obligated to grant a minimum degree of Patent Protection to any product or process that qualify the criteria of inventiveness, novelty and usefulness. The Patent holders has the right to stop any one from making, using, selling or importing the patented product obtained from patented process without his consent.

The Agreement sets minimum IPR standards and leaves members free to determine the appropriate method of implementing them in their own legal systems and practices. Transfer of Technology is a hot issue at WTO. Technology deficient developing countries are quite vocal on transfer of technology from MNCs of developed countries.

However, developed countries do not seem to be interested in sharing technology /know how with developing countries as they do not want their monopoly on cutting edge technology broken. After all, it is technological superiority that gives MNCs the competitive edge over domestic firms. The field of Intellectual Property is expanding very fast and for which new creative idea to be protected under Intellectual Property Rights.

There are many similarities in the law relating to different branches of Intellectual Property in regard to the nature of the Property, the mode of its acquisition, the nature of rights conferred, the commercial exploitation of those rights, the enforcement of those rights and the remedy available against infringement of those rights etc. The Law of Intellectual Property based on certain basic concepts. The Concept of Patent Law is novelty and inventive step, Design Law is based on originality or novelty of the design. The Trade Mark Law is based on the concept of distinctiveness, similarity of marks and similarity of goods and copy right is based on the concepts of originality.

The contribution of Intellectual Property to the economic and cultural development of a country is substantial. The piracy of Intellectual Property has become international in character. This is particularly important in case of Copy Right. The International characters of Intellectual Property is recognized in the various International Conventions for the protection of such property such as "Berne Convention ", "Universal Copy Right Convention" and India has also a member of those convention.

Intellectual Property law is one of the fastest growing branches of law today all over the world. Broadcasting, cable casting and telecasting rights are some new branches of Intellectual property. now the internet, website and cyber space facilities have produced many problems relating to protection of intellectual property.

The commercial exploitation of the different kinds of intellectual property is made in different ways, in the case of Patent, the patentee may himself exploit the patent or assign his rights or license them to industrialists for a lump sum payment or on a royalty basis. A registered design can be similarly exploited by assigning or licensing the rights to others capable of exploiting it on a royalty or lumpsum basis. Copyright can also be exploited in a similar manner, the scope of assignment or licensing being much wider having regard to the variety of rights conferred on the copyright owner.

Commercial exploitation of a registered trademark by licensing other to use it on a royalty basis is not permissible except by registration of the license as a registered user under conditions prescribed by the statute, unfettered licensing of trademark in the same manner as a licensing of a patent, design or copy right will destroy the property rights in the trade mark. This is very vital differences between a trade mark and others forms of Intellectual Property.

In case of copyright, ordinarily the authors of creative works are not business minded and this have seldom the financial resources or the business skill to exploit their work by themselves.

Copyright is not a positive right but a negative right, that is the right to stop other from exploiting the work without the copy rights owner's consent or license. Copyright is not a single right but bundle of rights which can be exploited independently. Further the nature of these right depends upon the category of works. The owner of a copy right may exploit the work himself or license others to exploiting one or more of the rights for a consideration in the form of royalty or a Lum sum payment.

In case of Patent- in consideration of the grant of monopoly for a limited period, the inventor discloses the details against Lum sum price. Under modern condition only big corporation and institution can afford to engage in research and development of new products or process.

All most all major patents relating to new useful invention, particularly in the medical field are held by big transnational corporation.

The patents Act contains provision against abuse Patent Rights by providing for compulsory licensing and even for revoking the patent for non-working. Besides the publication of the specification enables competitors to experiment and find out ways & designing around the

patent, thus encouraging bringing out substitute products for the patented goods. This is very common in the pharmaceutical field.

Where technology is advancing rapidly. The monopoly period of a patent cease to be of great importance. Inventors therefore try to keep the claims broad to avoid competitors trying to design around the Patent.

A patent is a statutory grant conferring certain monopoly rights on the grantee for a defined period subject to certain condition. The rights of a patentee to the exclusive use of patented invention during the period of its protection is a right to property.

The government may also acquire a patent or payment of suitable compensation. The possession of a patent confers on the patentee not only certain valuable monopoly right and privileges but also certain obligation and duties. Patents are granted not only to encourage inventory but also to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is practicable without undue delay. It is also essential that the monopoly created by the Patent should not unfairly prejudice the interest of the public.

Abuse of the monopoly rights granted under a Patent is a common phenomenon on in all countries. Compulsory license may be issued if the patented invention is not available to the public at a reasonably affordable price. A balance should be struck between the Patentee's interest and the public interest.

As per MRTP Act 1969 (Monopolies and Restrictive Trade Practices Act) one of the basic tenets of state policy is, therefore to ensure that while promoting economic and industrial growth for the welfare of the citizens, progressive reduction in the concentration of wealth and economic power is also brought about to secure social and economic justice as Monopolistic trade practice deemed to be prejudicial to public interest expect in certain cases.

We cannot do away with value judgments in Welfare Economics because welfare economics is concerned with the desirability of economic policies for the attainment of maximum social welfare. So, the whole gamut of various concern laws to be studied and the present "Intellectual Property Law" seems to be inadequate considering the changes introduced in the present new era of enormously increased the opportunities and scope of Piracy of Intellectual Property.

I am of the opinion that we should use the term as "Intellectual Property Rights and Obligations" in place of existing term "Intellectual Property Rights" and for which legal sanction is needed.

Intellectual Property Rights Management in Indian Business:

In the highly competition world, where a fair competition as well as protection of IPRs are required to serve the growth to business, it becomes essential to understand the relations between Intellectual Property Rights and Competition law.

IP Laws and Competition laws can be seeming as complementary rather than conflicting because both the laws share the same fundamental goals of enhancing consumers welfare and promoting innovation. IP Protection provides incentives for innovation and technological diffusion, which is itself is an important source of competition in the market place and there for support competition.

The Competition Act 2002 in India recognizes the importance of IPRs such as Patents, copyrights, trademark, geographical indications, industrial designs and integrated circuit design. It may be mentioned here that unreasonable conditions imposed by an IPR holder while licensing his Intellectual Property Rights would be prohibited under the Competition Act.

Competition law maximizes social welfare by condemning monopolies while Intellectual Property Law somehow also does the same by granting temporary monopolies. The rationale behind this approach is that the Intellectual property law should provide economically meaningful monopolies. Hence, there should be reasonable exercise of the monopoly power in order to protect the consumer's interest, otherwise Competition law would surely hinder the practices of the monopoly market.

As the Intellectual Property forms an important part of Companies' assets, its adequate protection is crucial in deterring potential infringement and in turning ideas into business assets with a real market value. In fact, the Intellectual Property system enables companies to protect from their innovative capacity and creativity and enhance their competitiveness.

The effective management of Intellectual Property assets requires implementation of a comprehensive assets management plan.

Thus, effective management of Intellectual Property may be seen as critical business strategy to maintain sustainable corporate growth and maximization of shareholder value resulting into the economic growth.

“Learning gives creativity, creativity leads to thinking, Thinking provides knowledge and Knowledge makes you great.” -

APJ Abdul Kalam

Source: Intellectual Property Law & Competition Law.



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