



Indian Chamber of Commerce



Theme Article

International Intellectual Property Rights Conference

“Empowering Business Entities through IPR”

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Introduction:

Intellectual Property is the creation of human mind and therefore it has a direct linkage with the human resource. In the present era of knowledge and technology intellectual property plays an important role as the driver of economic growth. The Paris Convention and the Berne Convention provided for protection of intellectual property rights during industrial revolution in 19th century. The present era of globalisation and closely knit economic activities in an integrated world call for harmonisation and uniformity of the rules of protection and enforcement of intellectual property, which is essential part of global trade and investment. The World Trade Organisation (WTO) deals with Trade Related Aspects of Intellectual Property Rights (TRIPS) which provide for standardisation and uniformity of the intellectual property laws amongst the member countries. The World Intellectual Property Organisation (WIPO) has been working on Patent Cooperation Treaty (PCT) and is also engaged in facilitation for global Trademark registration through Madrid Protocol, global design registration under Hague Convention, geographical indication under LISBON Treaty and Micro organism under Budapest Treaty. WIPO helps in protecting IP rights worldwide and extend the benefit of the international IP system to all its 183 member countries. According to Kamil Idris the former Director General of WIPO, “In the era of knowledge driven economy, the efficient and creative use of knowledge is essential for international competitiveness and wealth creation.”

There are three basic ingredients for effective IP system –

- (i) Legal Framework – WTO – TRIPS; WIPO-PCT and other convention
- (ii) Administration – Computerization and National Patent Office Infrastructure
- (iii) Enforcement – Through Police, Customs and Judiciary.

While invention depends upon creatively innovation is a step further to invention by integrating it with multiple business functions. According to Peter Drucker, “Innovation is the creation of new ideas processes which will lead to change in an enterprise’s economic or social goal”.

The objective of innovative thinking ought to be “Avoid Dinosaur Syndrome” by translating creative idea into useful application.

Intellectual Property Management is gaining significance as the value of intangible assets contributed to as high as 74% of the total consideration in the recent mergers and acquisitions. The World Bank studies also confirm that intangible assets comprise almost eighty percent of the global wealth in developed economies.

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The official data reveals that Copyright revenues alone amounted to US\$ 1.4 trillion contributing around 11 percent of US GDP which was around US \$ 12 trillion in the year 2005. IP contributes nearly 40% of the growth achieved by all U.S. private industry and nearly 60% of the growth of U.S. exportable products and services. In 2003 the "core copyright industries contributed US \$33 billion in reported net export revenues, and the patent-dependent aerospace industry reported 2004 net export revenues of US \$32 billion; these two sectors are the largest positive contributors to U.S. balance of trade.

According to a research study, approximately 83 percent of the aggregate market value of listed companies in the Standard and Poor's (S&P 500) index is attributable to intangible assets. The Value of Intellectual Property in US is approximately 5.5 trillion US \$.

The global investment summits and IP auctions conducted by various organizations including Ocean Tomo of USA justifies the huge value of transactions taking place in technology transfer which also bridges the gap between the inventors and the investors. The issues relating to due diligence of Patents, Trademarks and other IP assets is an essential item in every kind of technology transfer e.g. licensing, franchising, sale, auction, securitization and take over by way of amalgamations or mergers.

However, there is a gap of crisis in IP awareness amongst business and industry about their IP rights, IP risk, IP valuation and IP asset management and there remains lot of myths and fallacies in their mind.

It is therefore very import for any business enterprise in today's globalised world to identify and protect its intellectual property rights. The increasing volume of international trade and investment envisages the need for IPR protection not only within the national boundaries of the inventor but across the globe in order to protect the invention from piracy.

Today, the strength of any organisation is measured, not by the tangible asset as reflected by the book value appearing in the Balance Sheet but by the intangible assets as reflected in the market capitalization. The difference between the two represents the value of intangible assets in broader sense of computation of IP valuation though there are different methods for precise and accurate valuation. Today most of the technology driven companies are appearing in the list of Fortune 500 companies. There is talk of creating "a new IAM Index (Intangible Asset Market Index) apart from Dow Jones Industrial Index and the NASDAQ index in the New York stock Exchange for technology based companies". The mergers and acquisitions are taking place on the basis of the brand and technology. IP leveraging is the MANTRA for corporate empowerment. The present paper will deal with various important issues whereby an organisation can empower themselves and continue to gain strength in the globalized competitive word. Intangible asset management (IAM) or the Intellectual Capital Management (ICM) will determine the strength of survival and growth in the present knowledge era of innovation and technology.

Meaning of IP, IPR and IP Asset

Intellectual Property (IP) and Intellectual Property Rights (IPR) are two distinctive features of any intangible assets. IP or the Intellectual capital refers to any idea, innovation, invention or creativity in the form of any art, paintings, literature, popular brand of a commodity or services and any form of technology. It has essentially three ingredients namely 1) identification of IP 2) legal enforceability and 3) economic benefits. IPR on the other hand, refers to the legal framework by virtue of which protection is granted to any of such invention or creativity, in the form of patent, trademark, copyright, etc. An intellectual property right does not take the colour of Intellectual Property Asset until it is commercially exploited and is able to generate some economic benefits to the creator of art or to the inventor of the technology.

Thus, we find that any IPR to become an IP asset needs commercialization. This phenomenal difference between IP, IPR and IP asset can also be resembled as a gap between invention

and investment, which is filled up by an expert tool of IP commercialization, which may help licensing or technology transfer by way of assignment of patent right, trademark or copyrights.

There is a famous saying of Josh Billings that "Necessity is the mother of invention, but patent right is the father". If invention is the mother, the legal protection is the father and thus the intellectual property in the form of an invention becomes a patent or IPR which ultimately converted an idea into a commercial asset which is realized through an IP Exchange or a technology exchange facilitated by IP broking or IP Auctions. Most of the time an inventor himself does not know the value of his own invention. The society has recognized that the inventor must be rewarded for at least some period of time for its eternal contribution to the society. The reward for the ideas and inventions is in the form of protection under various Intellectual Property [IP] laws, viz. patent laws, trademark laws, and so on. The invention in any field of technology once registered as a patent, either for the process or for the product becomes an Intellectual Property Right (IPR).

Intellectual Property (IP) Management

Intellectual Property management implies optimum utilisation of intellectual properties belonging to the organisation in different forms such as inventions, art and designs and goodwill of its products and services. The process of identification is broadly known as IP mining, whereby an inventory is prepared for different research and development activities and the technologies being used in the business and then converting the respective intellectual property (IP) into intellectual property rights (IPR) through proper legal process of registration process. The other various aspects of intellectual property management include IP commercialisation, IP financing through securitisation, IP risk management, IP Valuation, IP audit, IP taxation and IP leveraging.

In this era of knowledge based economy, intellectual assets (in terms of technological information) are economic assets that is required to be managed efficiently in order to protect their commercial potential for the sustained growth of technology-dependent businesses.

Every organisation whether big or small has some intellectual property, either in the form of copyright being logos, art or literary works, music, software or trademark and brand names or inventions, industrial designs, confidential information or as trade secrets. It is essential to identify all such IPs and to protect them in order to stay competitive in business for its survival and growth. It is also important to evaluate whether there is any infringement of others IP within the organisation and to take appropriate action for getting due licence before using others IP. Similarly enforcement of one's own IP for infringement by others should also be undertaken by developing proper IP strategy. It is also necessary to have IP policy for training and education for IP at all different levels of organisation for effective protection and enforcement of IP. Sometimes renewal of IP from time to time also needs proper attention. Thus there are several aspects through which an organisation needs to manage its IP, also known as intangible asset management or intellectual capital management.

Precisely speaking Intellectual Property management helps the enterprise in the following specific areas:-

- (i) Identify all IP assets and their early protections.
- (ii) Avoid and reduce redundant R & D activities through IP analysis.
- (iii) IP Commercialization by licensing and franchising through IP Exchange or Auctions.
- (iv) To ascertain validity of in house technology and acquired technology through IP Audit and IP due diligence and avoid IP litigation.
- (v) Proper IP Risk Management and due protection/Enforcement of IP assets.

This chapter shall deal with all different types of tools of IP management which can be broadly classified as below –

Various tools of IP ASSET MANAGEMENT

- IP Mining
- IP Policy and IP Strategy
- IP Protection, Crime and Enforcement
- IP Accounting and Valuation
- IP Portfolio Management
- IP Commercialization, IP Broking & Auctions
- IP Technology Transfer and IP Taxation
- IP Financing & Securitization
- IP Insurance & Risk Management
- IP Audit
- IP due diligence
- IPR Right and International Trade
- IP Patent Analysis and Landscaping

IP Mining:

The process starts with identification of Intellectual Property (IP) which is known as IP Mining. The Intellectual Property Management team makes a survey of the manufacturing process and the various kinds of products of any given organization with the engineers and other technical experts and notes down the inventories of the various manufacturing process and the products. The process also includes listing down all types of intellectual property in the form of an IP Asset Register. A questionnaire is prepared and all probable IP assets whether registered or unregistered are identified by interviewing key management personnel.

It is a common experience that by conducting this process of IP Mining, some hidden Intellectual Property is noticed which has not been protected by registration with the respective IP authorities. This leads to a clear distinction between Intellectual Property and Intellectual Property Rights. Intellectual Property is the invention of the process or the invention of the process or the product and it becomes Intellectual Property Right-the moment it is registered with the respective Intellectual Property authorities. In other words, the process of IP Mining helps in identification of Intellectual Property within the organization and it helps the management to get a legal right by converting the same into an Intellectual Property Right through a legal process.

IP Policy & Strategy

IPR policy and strategy determines the strength of any organization to stay competitive in business and to provide for the protection of the intellectual properties by minimizing the risk of IP litigations. It sets the guidelines for timely filing of patent application, licensing and commercialization for full exploitation of the intellectual property assets. It also establishes a closer link between the research and development department with the legal and IP department and avoids duplication of research with the help of patent landscaping and patent analysis.

An IPR Policy plays a key role in developing IP strategy of a business. An IP strategy is developed by conducting IP landscaping in the field of technology, where the company intends to commence its business. IP landscaping maps all the patents in the particular field of technology and identifies the gaps, thereby saving the company from infringing into others IPR and providing the business unique opportunities to develop innovation products, and thus building its own IP portfolio.

The concept of IPR policy is equally important for a nation in order to have effective administration of countries' intellectual property in different fields of technology and to develop

conducive and competitive environment for inflow of foreign direct investment and development of international trade. Transparency in the IPR policy also avert counterfeiting and piracy of copyright, trademark and patented inventions.

IP Strategy should be an integral part of the overall business strategy of an enterprise and should not be looked into isolation.

IPR strategy helps in effective IP commercialization by determination of licensing of certain patented technologies which cannot be used within the organization due to either the lack of funds for investments or inadequate marketing outlet. It helps in decision making about the exclusive and non-exclusive licensing of the IPR whether it relates to copyrights or any technology. Determination of the IPR policy for proper training of employees for protection of trade secrecy and signing of confidentiality / non-disclosure agreements at different levels while employing staff or while engaging third party vendor has also become very essential.

Microsoft has declared its "Open Specification Promise" (OSP) for certain software which are patented but are free for open use without infringement. OSP is a kind of irrevocable promise which allows use of certain specified technology without license from the patentee. This avoids litigation and also meets the corporate social responsibility to a large extent. Sometimes the clients or customers require the disclosure of the IPR policy before awarding a contract. In overall objectives of achieving growth in the present global environment an organization must identify and specify its IPR policy and strategy to optimize the value of its IP assets. An organisation needs to have an 'IPR Policy Manual' which is equally important as other business policies.

IP strategy is more than acquiring an IPR. It includes the decision either to register a patent by making disclosure of invention or to keep it as trade secret like the formula of Coca Cola. It involves policy decision for registering the patent in one or more country. It also involves a policy decision about the manner in which the IP is to be commercialized or to be exploited. It means whether the IP is to be used for own business by making investment or to sell it or to license it and earn either one time revenue or royalty for future years. It also involve the decision to get the proper valuation for different IPs including patent, trade mark and copy rights and to use the valuation to determine the value of the enterprise. The IP can be used as collateral to get funding from the private investment fund or from the lending institution by securitization. IP policy also involve decision for due enforcement upon infringement by others. WIPO has suggested different strategies for small and medium enterprises (SMEs) as below:-

- (i) A Policy on IP Acquisition i.e. whether to register an invention as patent considering the cost of acquisition of a patent as per its budget.
- (ii) A Policy on IP Exploitation i.e. whether to license it or to grant franchise. The SME may also think of a joint venture or to go for a cross licensing to take advantage of other's IP on mutual basis.
- (iii) A Policy on IP Monitoring in order to stay competitive a regular search of data base is essential about the research and development by peers in the industry. IP watch also helps to identify infringement by others. SMEs can take advantage of legal resorts by filing pre-grant or post grant opposition for patent application filed or patent granted to same or similar technology.
- (iv) A Policy on IP Enforcement The SME should have a policy to take action against infringements. There one different strategy for enforcement by engaging experts by conducting surveys in exhibitions, trade fair and market places and to take appropriate action against infringement to comparative the losses to the enterprise.

Some other important steps may also be considered while developing an intellectual property

strategy such as:-

- (i) Data base search to avoid existing trade mark belonging to others.
- (ii) Conducting due prior art search before filing a patent application.
- (iii) To take abundant care for non-disclosure of invention to public before filing patent application before Govt. Authorities.
- (iv) Entering confidentiality agreement with employees and vendors to protect trade secrets.
- (v) Proper drafting of engagement letter or letter of appointment about the ownership of copy rights or invention during the course of employment or for services outsourced.
- (vi) Considering IP audit for the validity of the IP owned in the organization or acquired by conducting IP due diligence.

The above strategies are suggested but the list is not exhaustive.

IP Protection, crime and Enforcement:

IP Protection

Intellectual Property relates to creations of the mind such as musical, literary, and artistic works; inventions; and symbols, names, images, and designs used in commerce, when such an intellectual property can be enforced by law, such an idea or innovation becomes a right in the hands of the intellectual property holder in the form of copyrights, trademarks, patents, and related rights.

Intellectual property protection in India comprises that of Patents; Trademarks; Geographical Indications; Industrial Designs; Layout-Designs (Topographies) of Integrated Circuits; Plant Variety Protection and Copyright. India is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention for the Protection of Industrial Property (relating to patents, trademarks, designs, etc.) of 1883 and Berne Convention for the Protection of Literary and Artistic Works (relating to copyright) of 1886. Apart from these, India is also a member of the Patent Cooperation Treaty (PCT) which facilitates obtaining of patents in several countries by filing a single application.

In addition, India is also a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) signed under the auspices of the World Trade Organization (WTO). Therefore, India's intellectual property laws are in conformance with international standards and provide adequate protection to both local and foreign investors.

The Patents Act 1970 governs patent protection in India.

Trade mark protection is governed by the Trade Marks Act 1999.

Industrial design protection in Malaysia is governed by the Industrial Designs Act 2000.

The Copyright Act 1957 administered by Department of Higher Education provides comprehensive protection for copyrightable works.

Semi-conductor Integrated Circuits Layout-Design Act, 2000 provides for the protection of layout designs of integrated circuits based on originality, creator's own invention and the fact that the creation is freely created.

The Geographical Indications of Goods (Registration & Protection) Act, 1999 provides protection upon registration to goods following the name of the place where the goods are produced.

IP Crime

IP crime is one of the prime challenges in the current era of technology and globalisation. IP crime refers to counterfeiting of trademark and piracy of copyrights and these are the two most common threats to the IP world. The study says that almost 7% of the world trade valuing approximately US\$ 500 billion is counterfeited goods.

United Kingdom has set up an IP Crime Group in February 2004 and similar such groups are being formed in US and Europe to combat the IP crime through different enforcement agencies including customs, police and various NGOs by framing different national strategies. IP crime has several disadvantages including loss of tax revenue, adverse impact on the innovation, illegitimate linkage with smuggling and other criminal activities. IP crime has a direct bearing on the international trade and therefore the importers of goods need to be very cautious as it may involve huge penalty and even imprisonment for import of counterfeited goods and or pirated music or software CDs or DVDs. The growth of international trade and inflow of FDI may be adversely affected due to lack of proper enforcement of IP laws in respective countries.

The response to the menace of IP crime is possible through a combination of efforts namely,

1. Government to act in partnership with various agencies by sharing intelligence,
2. Internet investigations,
3. Use of media with intensive publicity,
4. Developing national level IP crime strategy,
5. Educating and training enforcement agencies,
6. Strengthening the judicial and legal system.

Above all, it is the self defence by registering one's trademark, copyright, patent and design with appropriate authorities and their timely renewal that can help protection from IP crime, along with enforcement by different Government agencies and inter-governmental cooperation in detecting IP crimes.

Protection and enforcement are the two key elements of Intellectual Property Rights, obtaining the protection for any kind of intellectual Property Right (IPR), be it Copyright or Trademark or Patent or Industry Design is comparatively much easier, but the real complexity arises while enforcing the IPR. There are provisions in the respective IP laws for infringement of rights in the form of compensation, damages and also for imprisonment. Although the law provides for information to the police authorities and conducting raid against infringement of Copyrights and Trademarks, the real difficulty arises due to local elements which act as impediments for enforcement in effective manner.

We have been encountering cases for infringement of Trademarks where legal owners of the trademark are often the victim of counterfeited goods of inferior quality being sold in the open market. This results into loss of goodwill and also loss of market share, besides bearing the risk of being sued by the consumer for any loss to him due to inferior quality. Sometimes, the counterfeited inferior quality goods are produced in the domestic market and sometimes are there imported from other countries. In such a situation the original owner of the trademark or the copyright need to take help not only from local police and judicial authorities but also from the customs authorities of both the countries.

Therefore, it is important that the owner of the Trademark or the Copyright take immediate actions by giving a public notice and giving information to the police and customs authorities. In case of export to the neighbouring countries it is advisable to get the trademark registration in the respective neighbouring countries for protection and timely enforcement from any kind of possible misuse of the brand and to safeguard one's business interest from illegitimate competition.

India is facing difficulty for import of counterfeited goods from China. According to a recent interim report, United States has won two cases of claims against China at WTO dispute resolution body in a trademark case for inadequate enforcement measures.

IP Enforcement

Enforcement of IPR is done at three levels, viz. by customs at the border, by police, and by judiciary. The copyright laws and the trademark laws provide for criminal action where police authorities can intervene. In case of patent infringement and for enforcement of other IP laws only civic remedies

are available by way of damages and compensation. Articles 51 to 60 of TRIPS provide for mandatory Border Measures. India has fulfilled its TRIPS obligations by framing guidelines of border protection for infringement of different IPRs including trademark, copyright and patent under 'Intellectual Property Rights (Imported Goods) Enforcement Rules 2007'. Though the TRIPS require enforcement measure at custom level for copyright and trademark only, the said custom guidelines is more comprehensive and encompasses provisions for infringement of copyright, trademark, patents, designs and geographical indications in conformity with the practice followed in European Union.

The IP right holder is required to give a notice for registration to the custom authorities for a period which may vary from one year to five years. The said regulations enable custom authorities to seize the infringed goods and help the IP holders from unfair competition of counterfeited goods.

According to a study of International Anti-Counterfeiting Coalition (IACC), the annual value of counterfeited goods is approximately USD 350 billion in the international trade.

IP Accounting & Valuation:

IP Accounting:

Accounting is very important aspect of IP particularly the distinction between the revenue and the capital expenditure. Accounting of IP in India is covered under Accounting Standard 26 issued by the Institute of chartered Accountants of India, which states about recognition of Intangible assets.

There is a gap between the economic framework of accounting which attempts to recognize intangibles as assets and legal framework that recognizes intellectual property rights (IPR). This lack of consensus creates significant challenges operating in a global environment. Accounting as with the legal environment has entered into the global arena through the introduction of an international suite of accounting standards for financial reporting in domestic regimes. Accounting regimes seek to measure and quantify according to the economic benefit that the intangible will accrue to an entity and subsequently capital providers.

In 2001, the International Accounting Standards Board (IASB), with a new constitution and structure, effectively revitalised the effort for global harmonization of accounting system. By 2005, a suite of international standards were ready for adoption in national contexts. First adoptees included the European Union, Australia and New Zealand. Whilst each country may choose not to endorse all standards, or indeed any standard in its entirety, in substance local standards are virtually word-for-word International Financial Reporting Standards (IFRS). In 2006 more than 100 countries have committed to adopt International Financial Reporting Standards, with many more expected to commit to adopt by 2011 (including India).

In accounting, expenditure on item of intellectual property nature can be recognized as an asset if certain criteria are met. Intellectual property generally falls within the ambit of the International Accounting Standard (IAS) devoted entirely to intangible assets, IAS 38. The critical attributes of an intangible asset are (i) identifiability, (ii) control, (iii) future economic benefits, (iv) ability to measure reliably. Intangible assets are classified as identifiable and non-identifiable based on the reliability of their cost measurement. International Financial Reporting System (IFRS) 3 regulates the definition and measurement of goodwill. Intangibles can either be generated internally or purchased. Therefore except in the case of development cost intellectual property is recognized as an intangible asset only when it is the result of a commercial transaction.

In India Accounting Standard (AS) 26 regulates accounting for intangibles. AS 26 only identifies those intangibles which are a acquired or are a result of a commercial transaction. Self generated intangible assets are not recognized under AS 26 because their cost cannot be reliably measured. Expenditure incurred on self generated intangible assets during research phase shall be charged to Profit and Loss account and never be reinstated as an asset in future. Whereas development expenditure shall be capitalized as an intangible asset till such asset is really for use. Amortization

of intangible assets will be for a period of ten years and five years in case of software.

Despite the importance of IP in modern business, accounting for intangibles, remains a challenge for both preparers and users alike. Accounting rests on the twin pillars of the efficiency of markets and representational faithfulness for valuation at both asset level and corporate level. In a world where a significant number of the most powerful economic entities are corporations and intangible assets like reputation and technological innovation carry enormous value, the space occupied by IP is important. Acknowledging this importance, various constituencies have sought to develop international frameworks to allow the creation, identification, protection and management of IP. IAS 38 has sought to harmonise the accounting treatment and agreements such as TRIPS has sought to standardise the legal treatment for IPR. However, these two regimes are not necessarily aligned and the contested domain of IP extends beyond the problem identified as a 'knowledge gap'.

IP Valuation:

Valuation procedure is, essentially, a bringing together of the economic concept of value and the legal concept of property. The presence of an asset is a function of its ability to generate a return and the discount rate applied to that return. The cardinal rule of commercial valuation is the value of something cannot be stated in the abstract; all that can be stated is the value of a thing in a particular place, at a particular time, in particular circumstances. One can adhere to this and the questions 'to whom?' and 'for what purpose?' must always be asked before a valuation can be carried out. This rule is particularly significant as far as the valuation of intellectual property rights is concerned. More often than not, there will only be one or two interested parties, and the value to each of them will depend upon their circumstances. Failure to take these circumstances and those of the owner, into account will result in a meaningless valuation.

There are four main value concepts, namely, owner value, market value, tax value and fair value. Owner value often determines the price in negotiated deals and is often led by a proprietor's view of value if he were deprived of the property. The basis of market value is the assumption that if comparable property has fetched a certain price, then the subject property will realise a price something near to it. The fair value concept, in its essence, is the desire to be equitable to both parties. It recognises that the transaction is not in the open market and that vendor and purchaser have been brought together in a legally binding manner. Tax valuation has been the subject of case law worldwide since the turn of the century and is an esoteric practice. There are quasi-concepts of value which impinge upon each of these main areas, namely, investment value, liquidation value, and going concern value.

Methods for the IP Valuation

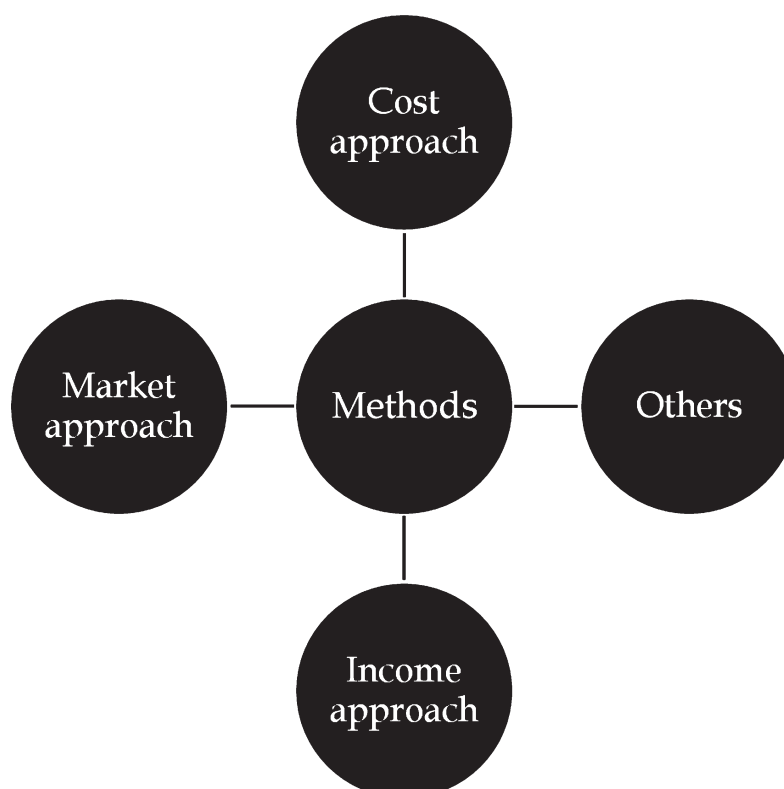
The method of valuation flowing from an estimate of past and future economic benefits can be broken down to four limbs; 1) capitalisation of historic profits, 2) gross profit differential methods, 3) excess profits methods, and 4) the relief from royalty method.

❑ Value is all future economic benefits of ownership compressed in one payment, not being only price and cost. It is continually changing (as the future benefits increase or decrease with the passage of time). It is something that cannot be stated in the abstract; all that can be stated is the value of a thing in a particular place, at a particular time and in particular circumstances.

❑ Various Approaches

The choice of approach will be determined primarily by the type of Intellectual Property asset that is to be valued, the circumstances of the specific transaction, the availability of information and the level of due diligence that the corporate is willing to take on. When multiple approaches are applied a comparison and reconciliation of resulting value is possible.

Methods of IP valuation



Cost Based Approach

Cost Approach: Estimates the value of underlying IP asset based on historical cost incurred in developing the asset

Replacement cost

Reproduction cost

Depreciation cost

Original cost

Book cost

Market Based Approach

- ✓ Estimates the value of an intangible asset based on market prices of comparable intangible assets that have been bought/sold or licensed between independent parties.
Also referred to as the Comparable Uncontrolled Transaction (CUT) method.

Income based approach

- Based on the income-producing capability of underlying IP asset, also known as “Discounted cash flow analysis”
Therefore this approach require 3 ingredients
- Amount and model of economic benefits to be received.
- The duration of economic benefits.
- The risk involved with achieving the anticipated benefits.

Other IP valuation methods

- Profit based method
- Premium pricing method
- Cost savings method
- Royalty savings method

IP Portfolio Management

IP Portfolio Management is an important tool of IP strategy. Portfolio management creates checks, balances and regular evaluations to leverage and protect intellectual assets of a company. It maximizes IP protection and at the same time minimizes exposure of the IP portfolio of the company to IPR of third parties.

IP portfolio management helps a business to classify its intellectual property rights into offensive and defensive tools and dividing the IP assets into various categories according to their productivity. Thus, licensing out unproductive patents that are not used in the core business to another industry or segment saves the business from unnecessary maintenance fees on unproductive patents and at the same time converting them into a revenue source.

Portfolio management creates a procedure whereby intellectual property rights are recorded in a manner that those IPRs which form core to the business are maintained and is used to leverage its position against competitors. It promotes branding of the business by adopting relevant trademarks and making relevant agreements between the employees and management for fair use of copyrights and non-disclosure of trade secrets.

IP Commercialization, IP Broking and IP Auctions

In today's era of knowledge the business philosophy has shifted from 'Survival of the fittest' to 'Survival of the wisest'. The companies having a larger amount of intangible assets and intellectual property (IA and IP) are making more profits than those who are having comparatively lesser amount of intellectual property. According to a survey done by a renowned consultancy firm, DuPont Company with only 3% of IP and IA has an operating profit of 7.03% as against Johnson & Johnson with IP and IA of 84.3% having an operating profit of 21.98%. Similarly, Merck and Co. with an IP and IA of 87.2% has an operating profit of 21.6%. The Dow Jones Industrial average comprises 30 companies and the value for intangible assets and intellectual property represent 43% of the total value of their assets.

There are three steps involved in the IP asset management, namely, innovation, protection and leveraging. There are different strategies for leveraging the IP asset, in order to optimize the benefits by way of commercialization in the form of licensing the technology. Rambus technology (RDRAM ®) and MIPS Technologies, Inc. of United States follow the policy of pure licensing which implies

that they do not manufacture any products but simply license the technology to computer manufacturers and to semiconductor industries.

IP commercialisation has several aspects including IP leveraging and IP financing. The traditional mode of IP financing was limited to licensing of patent or copyright and thereby earning royalty or direct sale by way of assignment. The modern approach includes IP auctioning through online established auctioneers and through IP exchanges with the help of technology market and technology trading exchange. IP securitisation is gradually gaining recognition in the banking field and also by the private investment funds. IP is used as collateral by pledging patents, trademark or copyrights similar to tangible assets such as real estate, equipments and inventory.

Altitude Capital Partners is a US\$250 million private investment fund which invests in IP asset and IP focussed companies. The credit lending institutions classify the IP assets into two categories: 1) Cash flow assets and 2) Assets with implicit value which is generally based on customers list and database. The cash flow assets are generally identified in film and music industry and its span is expanding in biotechnology and software industries. The legal framework for IP securitisation varies from country to country but United Nations Commission on International Trade Laws (UNCITRAL) and International Chamber Of Commerce are working out a common legal framework for such securitisation. Generally a legal mortgage is created whereby the lender becomes the IP owner or sometimes an assignment of license is executed in favour of the lender which is licensed back to the debtor. There have been successful instances of such licensing of copyrights of songs and music whereby the artists and the credit institutions have helped each other in IP leveraging through IP securitisation.

IP valuation is one of the most important aspects of IP financing. The IP valuation is generally done for the purposes of taxation, securitisation, sale, licensing and for determination of the price of shares in case of initial public offerings. German Institute of Standardisation has laid down the principles of proper patent valuation in its document PAS 1070 (SAB). International Chamber of Commerce has also suggested for a Patent Valuation Committee for developing an International Standard for IP valuation as per ISO standard. IP taxation is also a critical area in case of transfer of technology to determine transfer pricing in case of licensing and assignment involving arm's length transactions.

IP due diligence and IP audit are the tools which help transfer of technology by way of licensing or assignment or in cases of mergers and acquisition. The process of IP due diligence is highly technical and is carried out by experts who have the knowledge of different IP laws and who are well versed with the intricacies of the technologies involved in the transfer. Adequate compliance of IP audit and due diligence avoid future litigations and establishes the genuinity of the transaction by holding legal title of the transferor. IP audit is important not only in case of transfer of technology but also for proper IP portfolio management.

IP Commercialisation

- After the intellectual property is developed and protected, it needs to be commercialized to create revenue. Essentially, commercializing IP is the process one undertakes to move its innovation from "just another brilliant idea for a product or service" to the market place.



IP Broking

- A broker buys and sells property, unlike stock broker IP brokers are database producers and vendors.
- Are true information brokers, buying information in bulk from one or many companies and repackaging and selling information to other organizations

Steps to be taken

- ✓ Marketing/Sales.
- ✓ Eliminate Shrinkage
- ✓ Data Cleansing - removes files, data, software and other customer identification tags and marks from your system to ensure the protection of sensitive data, exclusively owned software and embedded passwords.
- ✓ Sales Tax - handle all sales tax issues within the appropriate regional guidelines.
- ✓ Legal Contracts - purchase contracts and waiver forms.

IP Auction

- ▣ Marketplace to exchange (e.g., buy and sell) of intellectual property.
- ▣ Helps the owner to monetize their intellectual property as well as maximize the return from their investment (e.g., time and money).
- ▣ Safe means of purchasing or licensing intellectual property like domain names, trademarks, etc due to their legal nature
- ▣ Fast way to sell or license IP
- ▣ Swift and effective way to find a purchaser or a licensee for their IP rights.
- ▣ IP auction inc, Reno, Nevada USA, Internet based auction company only involving IP: **IPEG**, The Hague; **IP-Trader**, United Kingdom
- ▣ Indian Co.- Tecom Intellectual Ventures ,Delhi ; Legal force, Bangalore

The nature of the IP right creates a big imbalance in terms of knowledge between owner of the IP and the purchaser or licensee; the latter party can only minimize the risk of purchasing or licensing a "zero" or low value IP by receiving sufficient time to investigate the patents. So, it is imperative that the bidders themselves conduct a proper due diligence of the patents offered, corresponding to their needs and to their assessment of their true financial and business value.

IP Technology Transfer and IP Taxation (in the context of Transfer Pricing)

The issue of Intellectual property and taxation has gained much importance in recent days. The famous 'rocket scientist' Werner Von Braun, once said that his two greatest problems were gravity and paper work. In today's time the greatest problem of a business man is taxation, which is pervasive as gravity and also involves lot of paper work. In case of transfer of any IPR either by way of licensing or by way of assignment, the income from royalty or the value of sales on transfer of technology involve lot of issues for withholding tax, applicability of VAT, service tax, stamp duty, capital gains tax and the transfer pricing regulations. All the different kinds of taxation are levied on the basis of the value of the IPR which is transferred or licensed and thus the question of IP valuation also become relevant whenever any transfer takes place.

The principles of arms length transactions are contained in 1995 OECD guidelines. Broadly, the related party or inter-company transactions are looked closely by the taxation authorities with the market comparable data. In case of licensing of technology the arms length nature of the royalty maybe determined by comparing the arrangement with third parties by identifying similar transactions and the market price, thereof. In case of assignment, the valuation is also done on the basis of cost incurred by applying some profit margin on the same or on the basis of the income approach. The value may also depend on the remaining life of the patent.

In the context of Indian Taxation Laws, there are various provisions in the Income Tax Act which is allowed for claim of expenditure on patent and technical know-how over a period of years. The provision of charging depreciation on intangibles has also been introduced in the Income Tax Act. The issue of IP taxation is also relevant for payment of royalty and technical fees to non-residents, where one has to look the provisions of withholding tax under Section 195 and the accrual of income on such income under Section 9 of Income Tax Act vis-à-vis the provisions contained in the International Double Taxation Agreement of respective countries. In case of merger and acquisition the effect on transfer of technology including on other IPRs is tax neutral but the issue of IP due diligence, IP valuation and IP accounting remain very relevant.

It is also observed that the countries follow different kinds of tax policy for taxing the income arising from the performance of art, music and for creation of inventions. Sometimes it is found beneficial to register a company in certain tax shelters and/or tax havens where there are lower rates of taxation on intellectual property rights. Netherlands offers attractive tax rates on taxation of income derived from different kinds of intellectual property and attracts receipt of millions of dollar on this account from around the world.

Increasing participation of multinational groups in IP transaction in our country has given rise to new & complex issues emerging from transactions entered into between two or more enterprises belonging to same multinational group. The profits derived on IP business in India can be controlled by multinationals by manipulating prices charged and other costs, thereby leading to erosion of tax revenue. To prevent this government has introduced provisions on Transfer Pricing.

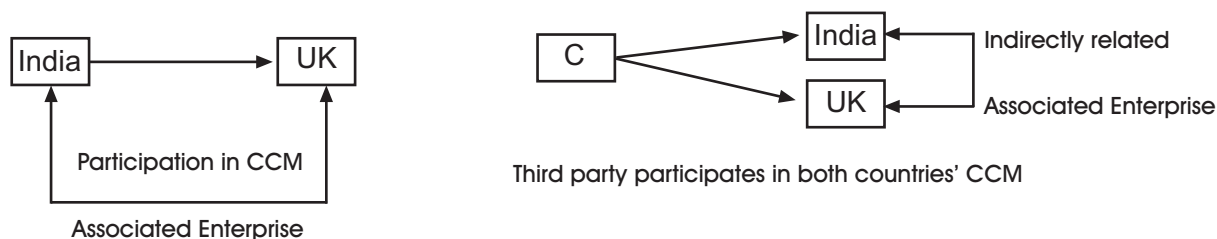
Where the IP in question arise, there are basically two types of transaction: (i) Licensing of IP and (ii) Assignment (sale) of IP.

If an IP has been licensed then remuneration will be in the form of royalty. Theoretically Market Price of royalty can be determined but practically but it is not easy, because transactions are influenced by many factors like term, duration etc. Same applies in the case of assignment, because it is more difficult to get the market price. Only way left is the application of most appropriate method given in the sec 92C of Income tax Act, Comparable price method or Cost plus method or profit split method .

As per Income Tax Act section 92,92A to 92F cover all the provision on Transfer Pricing, which relates to international transactions with associated enterprises. For IP International transactions it will provide a guideline to value IP and prevent tax evasion. Income from IP transactions with non-residents shall be computed on the basis of Arm's Length Principle, which have been accepted by OECD member country's & also backed by Sec 92 of the Act.

Arm's Length Price is the price which is applied in a transaction between persons other than associated enterprises in uncontrolled conditions, or a price which are arrived after negotiations between two unrelated party, or what third party have done, if they were in the taxpayers position, or roughly it can be said that market comparable datas.

Term Associated Enterprise as stated in sec92A of the Act put simply means an enterprise which participates directly or indirectly or through intermediaries in the capital or control or management (CCM) of other enterprise.



There are certain percentage rates prescribed for participation in (CCM) in the act. Like 26% of voting power in case of capital control, 51% of book value of assets in case of loans, 10% as guarantees and many more to satisfy the test of relation. Most important to focus is that the manufacture or process of goods or article or business carried by one enterprise is wholly dependent on use of know-how, patents, copyrights, design, secret formula of which other enterprise is owner, when they are said to be related.

If we say what is international transaction then it means a transaction between two or more Associated Enterprises either or both of whom are non-resident, in nature of purchase, sale or lease of IP. However transaction between a resident assessee and its foreign branch will not be considered as transaction, but will be Head office & branch relation, as stated in sec 92B of the act.

As per 92C of the act various methods of computation has been discussed. Whereas in section 92D of the act it is explained how to maintain and keep the information and document by persons relating to International transactions. Documents include like ownership structure, profile of multinational group, nature & terms of international transaction etc. however if a person fails to maintain act prescribed documents then a penalty of 2% of value of international transaction will be imposed.

Sec 92E of the act specifies for report from a accountant in form no.3CEB stating various details related to transaction and furnish such report on or before due date mentioned in sec 139(1) along with Return of income. However if there is any failure in above provision, a penalty of Rs 100000 will be imposed.

IP Technology Transfer/ Merger and Acquisition

- ▣ Theoretically merger takes place when two companies agree that they want to go forward as a single company, rather than being separate entities.
- ▣ Suppose -two companies merges (X and Y), X owns IP, Y is Surviving Company, after merger IP of X will become property of Y. Or say IP is transferred from X to Y. But there is no transfer of interest in IP, only transfer of control takes place.

IP Financing and Securitisation:

The traditional mode of IP financing was limited to licensing of patent or copyright and thereby earning royalty or direct sale by way of assignment. The modern approach includes IP auctioning through online established auctioneers and through IP exchanges with the help of technology

market and technology trading exchange. IP securitisation is gradually gaining recognition in the banking field and also by the private investment funds. IP is used as collateral by pledging patents, trademarks or copyrights similar to tangible assets such as real estate, equipments and inventory.

Altitude Capital Partners is a US\$250 million private investment fund which invests in IP asset and IP focussed companies. The credit lending institutions classify the IP assets into two categories: 1) Cash flow assets and 2) Assets with implicit value which is generally based on customers list and database. The cash flow assets are generally identified in film and music industry and its span is expanding in biotechnology and software industries.

The legal framework for IP securitisation varies from country to country but United Nations Commission on International Trade Laws (UNCITRAL) and International Chamber Of Commerce are working out a common legal framework for such securitisation. Generally a legal mortgage is created whereby the lender becomes the IP owner or sometimes an assignment of license is executed in favour of the lender which is licensed back to the debtor. There have been successful instances of such licensing of copyrights of songs and music whereby the artists and the credit institutions have helped each other in IP leveraging through IP securitisation.

IP valuation is one of the most important aspects of IP financing. The IP valuation is generally done for the purposes of taxation, securitisation, sale, licensing and for determination of the price of shares in case of initial public offerings. German Institute of Standardisation has laid down the principles of proper patent valuation in its document PAS 1070 (SAB). International Chamber of Commerce has also suggested for a Patent Valuation Committee for developing an International Standard for IP valuation as per ISO standard. IP taxation is also a critical area in case of transfer of technology to determine transfer pricing in case of licensing and assignment involving arm's length transactions.

IP Securitization

It is the financing technique for monetizing intellectual property by collateralisation. It is based on revenues from copyrights, trademarks or patents. It allows right holders to obtain financial benefits in return for the right to receive royalties from their innovations over a predetermined time. It requires to prepare a discounted cash flow of the fixed income flow from royalty or the franchisee commission or the fees from technical fees.

IP Insurance & Risk Management

An enterprise having IPs in the form of patents, trademarks, designs and plant variety rights need to protect them against theft in the same manner as of tangible property, goods and chattels. IP insurance can also be taken to cover legal costs incurred for taking enforcement action and can also act as a deterrent to potential infringers. Sometimes the IP funding agencies including the venture capital funds ask for insurance of the concerned IP assets.

Such policies are known as 'IP insurance policy'.

The enterprise also need IP insurance if the threat exists that it could be sued by a competitor for infringing on an idea or intellectual property belonging to someone else. The policies can offer insurance against legal expenses either to defend IP rights or to enforce IP rights.

A number of criminal and civil offences exist in copyright law. Careful consideration needs to be given to determine if the offence is indeed criminal or if it is a matter that can be resolved under civil law. Intellectual property laws vary from country to country.

Intellectual Property Insurance coverage protects companies for copyright, trademark or patent infringement claims arising out of the company's operation. It pays the costs of defending the suit against any unknown infringement by the enterprise up to the policy limits.

Many new companies compete to be the first to develop and sell new products and ideas. A competitor can financially wreck your company if you do not have the funds to hire an attorney and pay the cost of all the legal fees associated with defending your right to a patent or trademark. An Intellectual Property policy will pay the costs to defend you if someone tries to claim the rights to the same business model, process, or application.

More than ever before, intellectual property claims involving infringement of patent, copyright and trademark are being filed and litigated at a tremendous cost to both parties. Few standard insurance policies protect businesses from loss or damage to their intellectual property. However, a growing range of policies aimed specifically at intellectual property is available and businesses would do well to consider whether such a policy is available that is right for them.

People now are more aware than ever before about intellectual property and are seeking protection for their intellectual properties in the form of patent, trademark and copyrights. Sometimes, they accidentally infringe into others IPR and are liable to get sued. In such a case an IP insurance policy will cover all the legal damages. Infringement and litigation cases are on rise these days as companies do not weigh the risks related to their IP. Risks are higher if a proper search is not conducted before making the patent or trademark application. R&D companies are increasingly falling prey to **patent sharks**, firms with hidden intellectual property that surface, threatening to sue, when their rights are inadvertently infringed.

Similarly, risks run high if a company's IPR is exposed to patent trolls. **Patent troll** is a term used for a person or company that enforces its patents against one or more alleged infringers in a manner considered unduly aggressive or opportunistic, often with no intention to manufacture or market the patented invention. IP insurance also covers the legal costs of legal enforcement when a third party infringes the IP rights. A case of IP infringement is treated as a civil case in a Court of Law.

Business secrets are exposed to the risk of IP theft and may cause huge business losses to a company. Unlike infringement, theft is a criminal offence. Infringement deprives the IP holder from a potential sale but a theft may lead a company to shut down. Henceforth, IP insurance has become a very essential tool in the hands of the IP holder to cover the risks to which IP is exposed and save the business from any potential loss. IP insurance has also become a very important aspect of business continuity.

IP Audit

IP audit may be defined as a systematic review of the IP assets owned or developed, used or acquired by a business. Audit is not just an inventory but also an analysis. IP audits are generally undertaken either as part of an ongoing IP asset management program or at the time when a business is being bought, or sold or while enforcing or defending IP rights. IP audit is part of a management strategy. It is suggested that an IP register should be prepared containing details of all different types of IP assets with details about their legal life, whether licensed or owned and whether any litigation is pending against any of them.

Once IP register is prepared one can develop policies and procedures to ensure that each time you create new IP it can be identified and effectively maintained and protected. The audit can be conducted on periodic intervals by competent in-house or outside experts. It also helps due diligence for the new assets to be acquired in pursuance of any merger or otherwise. In certain cases like IPO listing or during the sale of a business, an IP audit may be necessary to protect the vendors from liabilities which may be imposed by specific laws or the terms of the sale documentation. Sometimes due disclosure is required about ongoing litigations in the prospectus and the valuation of IP can also be done during the course of such audit and due diligence of the IP assets of the enterprise.

IP audit ensures validity of patents and the right of the IP owners. Sometimes it is necessary to ensure the unencumberedness of the IP assets by conducting a thorough audit either by the purchaser or by the lending institution. IP audit also ensures timely filing of Application, timely renewal and due maintenance of all IP assets. The audit ensures due accounting and proper valuation as all assets are duly recorded in IP register.

Importance and Benefits of IP Audit

There are several advantages of IP audit as it enables in identification of all the IP assets and help in taking management decision to register and get legal protection for all such intellectual properties which are unregistered. It also helps in identifying technologies and patents which are not in use and can be either sold or licensed just like the non-performing assets. It enables management to identify the areas of infringement unknowingly taking place within the organisation and thus help in risk management by either obtaining the license from the concerned IP owners or to obtain insurance from the contingent liability against such infringement. It also help in keeping a watch by searching databases and identifying the infringement of the enterprise's IP assets by others. It also help in guarding the trade secret by insuring confidential clauses in all agreements with employees and the third party vendors. It also ensures effective economic use of IP assets through a docketing system for realisation of fees from the licensees. It also ensures proper maintenance of all IP assets and their timely renewal by filing renewal fees. It also helps the management in determining its position in relation to other competitors by ensuring timely IP analysis as per the IP strategy and its compliance.

When to conduct an IP audit?

An IP audit can be either an event driven such as upon formation of a company or upon acquisition of a company, product or technology. While, introducing a new product it can ensure that there is no infringement upon third party rights by conducting a prior art search. Similarly, while choosing a trade name it can ensure that the same name is not registered in the name of a third party. Whenever, there is a legal decision in relation to intellectual property the audit can ensure its implications on the IP assets of the enterprise. There can be a fixed periodic review either on annual basis or quarterly basis depending upon the volume of various IP assets in the organisation.

IP due Diligence

All of us at some point must have made a purchase that has failed to satisfy our demands, and have been told "caveat emptor" or buyers beware. The only reassuring thing about this fact is that the magnitude arising from such dissatisfaction, which can range from a little botheration to a complete devastation. Unfortunately, the same is absolutely applicable in a business scenario, especially while dealing in Intellectual Property (IP), where it is a prerequisite to minimise threats against negligence.

Due Diligence is an evaluation, performed by investors or their agents, into the details of a potential investment or purchase, where the evaluation involves a verification of all the material facts relevant to the investment or purchase. IP Due Diligence assesses the strength of the company's IP rights in the market, the strength of the competitor's IP rights in the market and the effect of the IP on the base company's products and other IP related rights.

IP Due Diligence is very important in case of mergers and acquisitions to establish the validity of the patents, design and trademark of the concerned company. Sometimes there may be litigations or hidden infringements of others IP for which IP risk assessment has to be done as

a part of due diligence. It highlights areas such as the true ownership of the IP, its validity, will the transfer of rights be exclusive etc.

The following check list should be followed while undertaking an IP Due Diligence Investigation –

- Identify corresponding Intellectual Property involved while buying or selling products and services its related obligations to the buyer or seller.
- Prioritize (if necessary) what to buy and when to buy by determining its growth potential in its relevant industry.
- Determine scope of protection available by requesting details about the ownership of the IP, its history, significant timelines and fees involved such as the duration of the license, maintenance fees etc to ensure that rights are still in force. Such determination confirms the validity of the information being presented.
- Verify exploitability of IP assets by requesting details of any improvement patents that might exist. Also request details on significant third parties involved directly or indirectly. In case out Copyright implication – who owns the literature, manuals, brochures etc.
- Conduct non-infringement investigation to determine whether such IP is the subject of any litigation or infringement suits as it may restrict the owner to exercise his right in question
- Determine if there are any mortgage issues involved on the IP.
- Establish a value that you will be getting out of the transaction by discussing with your IP professional.

The Purpose of an IP Due Diligence is to:

- Give the Acquirer a better understanding of the business of the Target;
- Give the Acquirer an insight into the Target's liabilities;
- Reduce the risks of the acquisition in order to avoid significant losses for the Acquirer after closing of the acquisition;

Allow the Acquirer to cancel the acquisition or negotiate at a lower price if certain facts are revealed about the Target.

IPR and International Trade

There is a very close nexus between Intellectual Property Rights and International Trade and that is one of the reasons that WTO has incorporated Trade Related Aspects of Intellectual Property Rights (TRIPS) as one of the WTO agreement dealing with International Trade Laws. International Trade Center, a catalyst of UNCTAD and WIPO, has jointly published a paper titled "Secrets of Intellectual Property-A Guide for Small and Medium Size Exporters". The said guideline deals with Intellectual Property mistakes commonly made by exporters which sometimes result into tremendous harm to their export market and collapse of their business. Some of such common mistakes are: i) Believing that IP protection is universal and worldwide although these are territorial rights, ii) Not checking whether a Trademark is already registered or is being used by competitors in the export market, iii) Disclosing information too early or without a Confidentiality or Non Discloser Agreement, iv) Infringing the IP rights of others, v) Seeking to license a product in a market where the patent or design is not protected or the IP laws are not strictly enforceable. It is therefore advisable for an exporter to consult an IP consultant before entering into export business.

The words of caution for Technology based companies are, "Patent Sharks". Patent sharks are entities which intentionally attack the companies who inadvertently infringe on the sharks' IP rights and derive undue profit from them. These sharks have hidden intellectual property rights

which is divulged only when a company unknowingly infringes on the sharks' right. Just like parasites these sharks suck money out of the company by suing them for infringement of their hidden intellectual property rights. Notwithstanding these morally unfair practices, the activities of patent sharks' are perfectly legal. Manufacturers must understand that these patent sharks are extremely dangerous which can do major harm to a company. Some of the safeguards for such Technology Companies are prior art search, flexibility in technology, IP- mapping and IP-Landscaping.

IP Analysis and Landscaping

In the present era of technology driven economy, patents are Techno-legal Documents providing value added piece of information while protecting the innovative technological advancement. This intangible asset can be managed and protected when these are assessed and analyzed properly. Patent analysis fetches the reader to understand most of the interactions (Inventors, Applicant, important dates, family members, legal status). Further this analysis helps to utilize strategic information for more patents and licensing opportunity, reduce inadvertent infringement to reveal competitive intelligence. Analyzing the relevant patents also possible in citation analysis, text mining, assignee listing, claim assessment, gap analysis, IP risk management, increased revenue and reduced cost implication. Roughly there are two primary ways of analyzing patent information: qualitative and quantitative. The qualitative method shows more closely the content of the individual patent documents. The quantitative method results in statistical processing. These two methods have quite different objectives and different ranges of applications. Patent analysis can be displayed by visual representation using bar graphs, polygonal line graphs, pie charts, radar charts and other charts/graphs, which are called 'Patent Maps'. Visualization is an especially effective way of representing the results of this type of analysis.

Patent Landscaping

Patent landscaping is a tool for the organisations which are research based. This is a process in which comprehensive analysis of patents is done for planning future research. It helps one to focus his strategy on development of a new product, make market strategies, find gaps and the clusters in the technology so that one can carry effort to develop a technology which can fill the gap and work in such field which is not very congested in available technologies.

A patent landscape is an overview of patenting activity in a field of technology. Patent landscaping is suitable for planning research in virtually any area of technology. It provides a tool to avoid expensive and embarrassing problems later. A patent landscape reveals past and present activities of various companies in a given technology. It includes the white space analysis, which results in identification of problematic and safest research areas. It can also give insight to new potential areas, where there is a possibility of improvement. It provides additional insights, including trends in the IP activity over the time and what technological progress had been made during a defined period of time. Patent landscapes can also include data on published patent applications, as well as issued patents. Data extracted from the patent provides insight into many areas, including field-wide trends affecting the entire field of technology, the identity and activity of the various competitors active in that particular field, trends affecting specific technological subspecialties within the broad field of that technology; and, geographic information pertaining to where the research activity is happening. As it is so informative, patent landscaping is a powerful tool for strategic research planning. Patent landscape reports can be useful for the business strategists, market analysts, scientists and attorneys who take key decisions in new product development and R&D planning. Thus patent landscaping is vital to gain competency or dominate in a particular field of technology and

benefit in today's competitive market. In a gist, patent landscapes can be used to:

- ❖ Gain competitive insight
- ❖ Identify gaps and clusters in technology
- ❖ Develop future R&D strategies
- ❖ Identify new application areas of existing patents
- ❖ Develop a licensing strategy
- ❖ Develop new products and improve existing products
- ❖ Determine commercial value of patents
- ❖ Monitor patent activity in particular geographic markets

Concluding Remarks:

Intellectual Property laws will become more uniform and homogeneous gradually. Though the efforts in this direction are going since the Paris Convention signed in 1883, the process is still on through the efforts of WTO and WIPO. The menace of counterfeiting and piracy of Copy Rights, Trade Mark and Patented Inventions will reduce with improvement in IP system through various awareness programmes in years to come. However a greater challenge is still awaiting the consensus on the issues on extension of geographical indications beyond wines and spirits, recognition of traditional knowledge and bio-diversity as part of TRIPS Agreement in WTO.

The globalization has enabled free flow of capital, goods and services but proper protection of IP and its enforcement will increase the flow of trade and investment further for optimum allocation of economic resources. Intellectual Property Management is a holistic approach in the direction of IP protection, its commercial exploitation and technology transfer across the globe. Tomorrow's economic power will be in the hands of technology driven enterprises but those who have abhorrence to technology and lack due respect towards innovation will suffer from dinosaur syndrome.

Though special consideration is necessary for low income economies, they would get compensated with the recognition of their bio-resources, plant varieties and traditional knowledge. There is greater need for bridging the gap between the Research institutions and Universities on the one hand and the Industrial or Commercial enterprises on the other hand. This is how we can bring inventors closer to investors through an interface between the research institutions and the industry associations. This is how we can bring synergy between two societies in this information age of twenty First century.

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