



Training & Awareness Program on Intellectual Property Rights

Organized by

The Office of the Controller-General of Patents, Designs and Trademarks
In cooperation with
The Federation of Indian Chambers of Commerce & Industry (FICCI)

Conference Report

New Delhi
1st & 2nd November 2014

Supported by
MHRD IPR CHAIR- Delhi University

About FICCI



FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY (FICCI) since 1927 has been the rallying point for free enterprises in India. It has empowered Indian Businesses in the changing times, to shore up their competitiveness and enhance their global reach. With a nationwide membership of 500 chambers of business association, FICCI stands for quality, competitiveness, and transparency, accountability and business –government-civil society partnership to spread ethics based business practices and to enhance the quality of life of common people.

FICCI has a reach in all 29 states and 7 Union Territories; through its Secretariat at New Delhi & 12 State Offices. FICCI has 1,800 direct members from the corporate sector, both private and public, including SMEs and MNCs and 2,50,000 lakh (approx.) indirect members through various regional chambers of commerce, ranging from 44 industrial verticals including public & private industries, associations, individuals, SME's etc.

FICCI strongly believes that it is important to provide entrepreneurs conducive environment which can foster innovation. FICCI IPR DIVISION is dedicated to the task of holistic development, protection, incentivization and promotion of Intellectual Property in India.

The ***Intellectual Property Education Centre (IPEC)*** is one of its kind online educational website second only to the WIPO educational initiative. Since its inception FICCI IPEC has successfully provided the certificate course to over 5,000 students, industry professionals, ex-government employees, etc. The courses include general course on IPR; specialized courses on Competition Law, Pharmaceutical R&D and US Patent. The plan for 2015 includes revamping the IPEC website alongwith updating the existing course material and also adding courses on IP enforcement, IP landscaping, IP Commercialization, R&D and Tech Transfer.

FICCI also established the *Intellectual Property Facilitation Centre (IPFC)* in New Delhi and Guwahati under the mandate of the Ministry of Micro, Small & Medium Enterprises (MSME). Headed by a team of experts from Legal & MSME; the IPFC helps MSME, Entrepreneurs, Individual Inventors etc. to identify, develop, protect, register, commercialise and use IP to business advantage. IPFC in 2015 endeavours to develop a holistic web system to provide the services IP consultancy, IP related knowledge, Commercialization Consultancy, Tech Transfer, linking international and national search databases; providing technical training in searching these databases; for payment of fee or for free to MSME; individuals innovators, etc. all over the Country and abroad.

FICCI IPR Division is dedicated to tackling IP related problem at the grass root level. The Division is engaged in conducting roving seminars for general IP Awareness & International Filling; Police & Customs Training for identifying IP related Offences and tackling them effectively; Judiciary Roundtables for making the Judiciary sensitive to the industry perspective of the losses and the impact of IP infringement.

In addition the Division is also involved in developing education curriculum to be included in the school syllabi at primary, secondary & higher secondary level. The division is actively involved in making policy suggestions to the IPR Think Tank.

CONTACTS

Dipankar Barkakati

Additional Director – IPR Division

Email: dipankar.barkakati@ficci.com

Federation of Indian Chambers of Commerce and Industry

Federation House, Tansen Marg, New Delhi-110001

THE SPEAKERS

Mr. Narendra Sabharwal, Chairman, FICCI IPR Committee & Former Deputy Director general, WIPO; is also the Convener the National IPR Think Tank formed by the Ministry of Commerce.

Mr. Chaitanya Prasad, Controller General of Patents, Designs & Trade Marks, DIPP, Ministry of Commerce and Industry

Mr. Vipin Aggarwal is the Senior Attorney & Director Intellectual Property, Legal & Corporate Affairs (LCA) at Microsoft Corporation India Ltd.

Mr. Vishnumohan Rethinam, Partner, Remfry & Sagar

Ms. Lucy Rana, S.S. Rana & Co.

Mr. Hemant Singh, Founding Partner, Intl Advocare

Mr. Sachin Gupta, Associate Partner, Intl Advocare

Ms. Malathi Lakshmikumaran, Director, Lakshmikumaran & Shridharan

Mr. Prashant Philips, Joint Partner, Lakshmikumaran & Shridharan

Mr. C. Pal Singh, Former IG of Police, Brand Protection Associates

Ms. Archana Sahadeva, Senior Associate, Singh & Singh

Mr. Tabrez Ahmed, Secretary General, OPPI

Mr. Ashok Shukla, Partner, SPA Associates;

Mr. Bijay K. Sahu, Deputy Manager-IPR, National Research Development Corporation (NRDC), An Enterprise of DSIR, Ministry of Science & Technology, Govt of India

Mr. Yashwant Dev Panwar, Scientist E and Head PFC, TIFAC

Mr. Nitin Masilamani, Partner, Amarchand Mangaldas

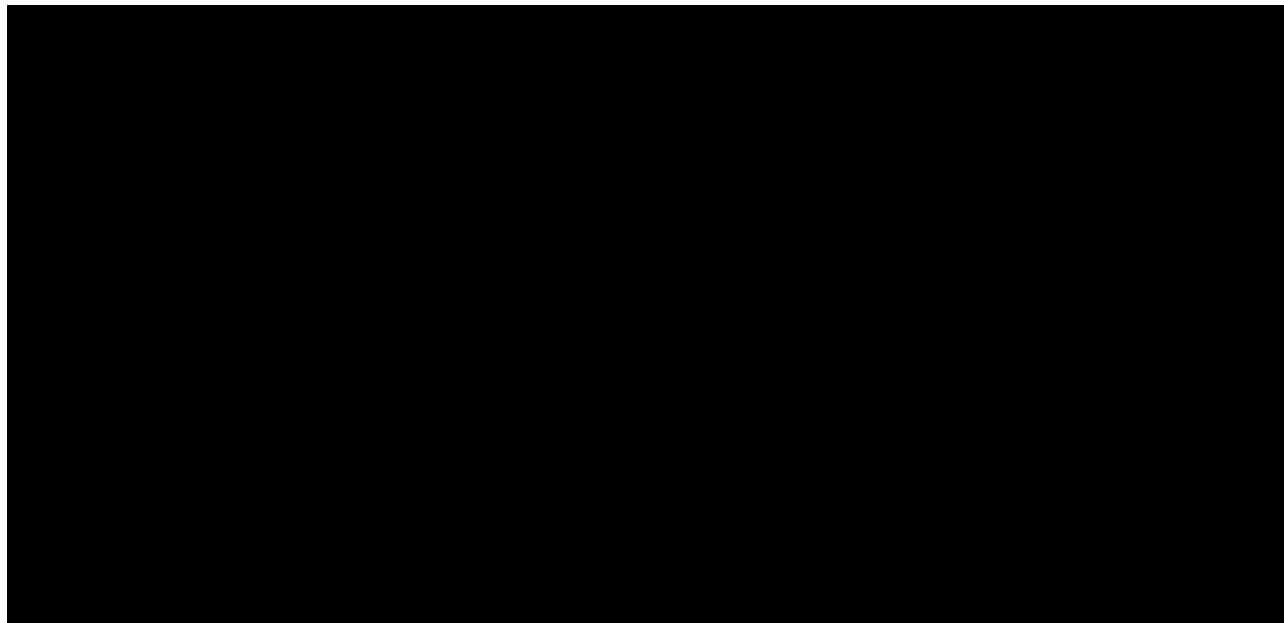
Ms. Sunita K Sreedharan, CEO, SKS Law Associates;

Dr. Alka Chawla, Professor, Campus Law Centre, Delhi University

Mr. Ranjan Narula, Managing Partner, RNA Intellectual Property Attorneys

SUMMARY OF PROCEEDINGS

INTELLECTUAL PROPERTY AWARENESS



(Left to Right) **Shri Narendra Sabharwal**, Chairman, FICCI IPR Committee & Former Deputy Director general, WIPO; **Shri Chaitanya Prasad**; Controller General of Patents, Designs & Trade Marks, DIPPI, Ministry of Commerce and Industry; **Shri K Mahesh**; Special Commissioner (Industries), Govt of NCT Delhi; **Mr. Vipin Aggarwal**, Senior Attorney & Director Intellectual Property Legal & Corporate Affairs (LCA), Microsoft Corporation India Ltd. during the Inaugural Ceremony.

Introduction

Intellectual Property Rights (IPRs) are a set of exclusive rights protected by law which are accorded to creators or persons over their creations for a certain time period. An IP right holder can realize value from its intellectual assets through utilizing it internally for its own processes or share it externally through provision of goods and services to customers. The latter can be achieved through legal mechanisms such as licensing or assignment. In today's globally competitive environment, intellectual property has placed itself on a pedestal in the context of economic growth and is becoming increasingly important. Intellectual Property (IP) is the fuel that powers the engine of prosperity, fostering invention and innovation. The increasing significance of intangible assets in the global economy is forcing business organizations to actively manage their IP as a key driver for building and sustaining their competitive advantage and achieving superior performance.

Innovation is the key driver of economic growth and development in the medium to long term. It can be defined as the process of introducing new products, services and production processes into the market place and to create new profitable enterprises and higher-paying jobs on this basis. A well-balanced, affordable and reliable system of intellectual property rights has an important role to play in this process. Intellectual property rights serve to protect the - often large and highly risky - investments of innovative and creative companies against potential imitators and thereby provide key incentives to undertake such investments in the first place.

Intellectual property management starts with the germ of an idea.

IP by itself neither helps nor hinders development necessarily. It is how laws, policies and practices are designed and used in different countries that determine whether IP is effective for development purposes.

Further, there are intellectual assets and then there are intellectual properties- intellectual properties are where a government gives you an authority in return of an annuity, just like normal property; but before an IP there is something called the intellectual assets, where you keep them as trade secrets.

WHAT BENEFITS WILL IPR GIVE:-

EXCLUSIVE RIGHT

- a). Creates entry barriers for others.
- b). Allows Premium Pricing
- c). Protects Competitive Advantage

ASSET CLASS FOR INVESTMENT

- a). Increases valuation of company
- b). Increases Good will and Brand Value
- c). Can be Licensed and Sold

USED FOR NEGOTIATIONS

- a). Cross-Licensing
- b). Re-search Partnerships
- c). Joint Ventures

ADVANTAGES OF INTELLECTUAL PROPERTY RIGHTS

- a). Prevents People from Copying other's work.
- b). Prevents import of counterfeit Goods.
- c). Registered IP can be effectively protected under Relevant Laws
- d). Licensing
- e). Foster economic Growth and Development.

EMERGING IMPORTANCE OF IPR

- a). Globalization
- b). Harmonization with International Laws
- c). Enhanced IP awareness.
- d). Rise in Counterfeit & Pirated Goods
- e). Cut throat competition in Market.

WHY SHOULD A COMPANY BE IP INTENSIVE?

INDIA AN INNOVATION CHAMPION

GE's second annual GE Global Innovation Barometer - India ranked as world's 6th most innovative nation. 36% Indian respondents expected 'large business' to drive most of the innovation; 35% believed small and medium enterprises would be the most innovative.

Many believed Intellectual property protection and research and development partnerships with academic universities were the key challenges in creating an innovation-friendly environment in the country. Innovation is indeed very essential for a developing economy not only for financial stability but also for the progression of human well being and for gaining competitive advantage.

DISADVANTAGES OF BEING A NON-IP INTENSIVE COMPANY

- a). Ideas or Innovations developed can be copied easily.
- b). Lower Investor Confidence
- c). Discourage Innovation
- d). Difficulty in enforcing rights
- e). Dilution of Brand value and Monetary Loss
- f). Affect growth & sustainability of Business

ADVANTAGES OF INTELLECTUAL PROPERTY

- a). Enhances Market Value
- b). Opportunity to License or Franchise IP Assets.
- c). Prevents Competitors to use, Make or invent the same product or invention.
- d). International Registration of IP to scale up business into the Global market
- e). Builds investor confidence, attracts funding.
- f). Trust, reliability and loyalty in the minds of consumers.

BENEFITS OF IPR CREATION AND PROTECTION

- a). Creates entry barriers for others,
- b). Increases value of company,
- c). Increases brand value.
- d). Can be sold or licensed.

- e). Can be used for negotiations during acquisitions and mergers.
- f). Attracts collaborations.

BRIDGING THE GAP

- a). Innovation is required to take an invention to the market,
- b). the academics are Inventive but not always innovative,
- c). Big gap exists between industry and academia.
- d). the academics pay scant attention to the needs of the industry,
- e). the Industry does not have full faith in academia if the fruits of their labor would be market worthy,
- f). R&D for technology development is a long process and quick returns is not possible for which industry does not have patience.
- g) The duplication of research and innovation efforts leads to consequent dissipation of research investments.
- h) The utilization of information services to provide information on industry trends, markets, competitors, potential partners and other market information is scarce.
- i) Avoid duplicating research and development effort;
- j) Determine the patentability of their inventions;
- k) Avoid infringing other inventors' patents;
- l) Estimate the value of their or other inventors' patents;
- m) Exploit technology from patent applications that have never been granted, are not valid in certain countries, or from patents that are no longer in force;
- n) Gain intelligence on the innovative activities and future direction of business competitors;
- o) Improve planning for business decisions such as licensing, technology partnerships, and mergers and acquisitions;
- p) Identify key trends in specific technical fields of public interest
- q) Collaborate with Industry for innovation to develop commercializable product/service.

CHALLENGES FOR INDIAN INDUSTRY IN A KNOWLEDGE ECONOMY

- a) The major issue facing the domestic industry is availability of investments for R&D so as to compete better with International corporations in creating new products.
- b) Developing countries need to look at Knowledge, IPR and Innovation as a central theme to business strategy.

CURRENT SCENARIO

- a) Indian industry has emerged mainly as a service provider / or component producers to industries such as automobiles, pharmaceuticals, agro-chemicals, computer hardware, FMCGs, heavy industry and information technology.
- b) our intellectual wealth has been utilized by external agencies for service provision.
- c) In spite of significant technological advancement, indigenous production of finished products with 100 percent technology from India is not common.

“Intellectual property” are type of property that results from creation of the human mind, the intellect.

LEVERAGING THE IP-:

Monetization of IP is another issue that can be done by various methods like IP licensing, Patent cross licensing, IP sales, IP contribution and Leverage IP.

A well balanced system of granting and exploiting IP rights is a factor in economic growth as it encourages investment and trade, but if designed and used appropriately, it can also help cultural creativity to thrive, educate a population or workforce, drive technological innovation to improve health and nutrition and yield other social benefits as well.

Contractual agreements i.e. IP licensing should be done because it can give a company a head start on product design and market introduction and also provides compatibility of design broadening a market product.

Licensor and licensee have different goals of licensing, like Licensor's goals include strategic use of IP, Revenue generation and ecosystem of products. On the other hand, Licensee's goals include commercialization for gain and technical know-how.

So, IP licensing is a tool that helps licensor to achieve to determine how its intellectual property supports its macro and micro business strategies.

Collaborating through patent licensing could be an especially attractive option for government, universities and private sector firms in developing countries, which may not yet have the research and development capacity or access to the scientific and technical resources to commercialize innovations alone.

COMMERCIALIZATION OF IP:-

Now there are different stages to Intellectual property commercialization anywhere in the world:-

The first is to assemble teams like legal involvement team, business development team and taxation team etc.

The second stage is called the penetration and discovery stage, this stage is for the companies that know they have something but don't know where to go with it.

At this stage we combine Intellectual property and technology transfer that is to create a smart management system that will make the intellectual property multiply and hence generate multiple revenues.

Today companies are making supernormal profits in intellectual property development e.g. Facebook pay US \$19 billion dollars to whatsapp(for its customer data i.e. an intangible).

For valuation of IP you have to-

1. Recognize the need of new technology in business.
2. Identify the potential license, then
3. Identify if licensing arrangement is the most appropriate strategy or is it better that you may partner with the licensor.

After solving these issues, then the issue of actual valuation arises because valuation is not an exact science, it is more of an art.

Valuation is just an indication for the price you want to pay, you have to decide how much you can afford to pay, in which ways can you pay the licensor and there is no specific method of valuation and also it is very subjective and also depends upon the underlying data, the ability to reject data. Every intangible is a unique intangible where you won't get an exactly similar licensing agreement. You can only get a similar license agreement.

IP IN INDIAN INDUSTRIAL MARKET:-

The case in point here is IP in Electronics industry in India:-

Indian market for electronics industry is US \$ 80 billion dollars. India is largest chip designers after US. There is enormous capacity for employment generation

for nearly 28 million peoples in 1:4 ratio (Direct employment: indirect employment) by 2020.

But, this sector is also 3rd largest contributor to CAD. So there is urgent need to kick start manufacturing of electronics in India. Here India can't go for price reduction because China can beat us in this way. So only way is to constantly innovate.

E.g. India is largest provider for semiconductor designing services, but have no single Indian chip company.

Every electronics product you have 10-15% of its price as royalty. Here only way to go for innovation. Because innovation leads to design, design leads to manufacturing. And India needs to boost its manufacturing sector. Here governments setting up many manufacturing zones for this purpose. Karnataka state also stats giving subsidies for Patent filing.

CONSTRAINTS AFFECTING COMMERCIALIZATION OF INTELLECTUAL PROPERTY

- a) Insufficient subsidies; Lack of concessions for power usage.
- b) Financial crunch stops collaborative projects as public R&D charges.
- c) Exorbitant costs required to be paid for facilities and services.
- d) Fiscal Tax holidays are not enough.
- e) Non-existent sales tax concessions, exemptions etc.
- f) Infrastructure: Insufficient number of incubators.

CONCLUSION-:

Innovators must need to know and plan out IP life-cycle. Process of granting IPR have long gestation period. The initial patent filling cost can be less but to file international patent application to enter foreign jurisdiction etc, the cost are exponentially high. Innovators have to make risk-time period calculations.

So, it is not an impossible task to make an IP work for you; what is usually critical and keen in these kind of situations are to chart out each step over the next 3-5 years to what scenarios are you likely to face and secondly in leveraging that environment.

WHAT IS NEEDED? FUTURE PERSPECTIVES

- a) R&D policies: Indian companies should focus on a long term vision for increasing investment in R&D.
- b) Indian industry should focus on innovative R&D also besides production of generics, components, rendering services only or just exploit trade opportunities arisen from FTO searches.
- c) Intellectual Property Rights (IPRs) should be respected during the process.
- d) The industry should take care of the infringement issues,
- e) The R&D organizations and universities should first gauge and identify the research needs of the industry,
- f) The industry should be willing to collaborate with the R&D labs and universities to up-grade and commercialize the lab level know how created by them.
- g) A viable inter-phase free from bureaucratic hurdles should be created between industry and R&D organizations to identify the needs of the industry,
- h) A policy change is required for such efforts.