



TECH FRONTIERS

Intellectual Property – A driving force for Start-ups

The protection of intellectual property rights is of crucial importance for new concepts or new technological processes in business, especially for start-ups. The content of this article should be considered as general guideline for the subject. Specialist advice should be sought for specific requirements

BISWAJIT SARKAR

Mr Sarkar is an Advocate and IP Attorney

MAGINE one day you learn that someone has already protected the same idea or the product on which you have already geared up your business by investing huge capital as well as intelligence.

Indeed it is utter frustrating but may happen in today's global or e-commerce business. Intellectual Property Rights are the cardinal issues to initiate any kind of business activity right from manufacturing or marketing.

Most often, intellectual property is present in the ideas of the start-ups but not recognised. For a start-up, the pro-

tection of intellectual property rights is usually not something that they prioritise or have the resources to prioritise. What they fail to realise is that they are very vulnerable to being replicated by someone else and can eventually lose their spark.

It is in the best interests of the start-ups that they consider protecting their ideas or concepts sufficiently at an early stage.

This may act as a hindrance for the competitors to duplicate their ideas. Intellectual properties are the very essence of the business. If there is any doubt regarding the presence of intellectual property in a business, consulting an intellectual property expert in that situation is a wise decision.

In order to promote domestic business, the Government of India has promoted the concept of Make in India, which has introduced various subsidies for start-ups. This concept has created a viable environment for the growth of people's entrepreneurial instincts. It has been observed that any fast-growing business spins on a new concept or an invention. Thus, it is necessary to pave ways for creation of intellectual properties and the protection of such intangible properties is very essential before the business starts its operation. A start-up can be a million dollar entity for creating monopoly in the market through intellectual property rights. Intellectual property can be in many forms, which can protect a new product or a new kind of service and it can be a sustainable and defensible differentiator for an entity.

The various forms of intellectual properties are generally known as Patents, Trademarks, Industrial Designs and Copyrights where a start-up can protect their invention related to any new product, process, or a new design which attracts the human eye, or the product name or business name which is known as trademark or brand name. Trade secrets are also an option if the organisation has the knowledge to handle them. A trademark can be a word or letters or the combination of letters and artistic works for creating a distinctive character therein. A distinctive trademark always helps any business to grow infinitely.

Problems faced by the start-ups

Although awareness of Intellectual Property Rights is increasing in India, the business community is still not acquaint-

IT IS NECESSARY TO PAVE WAYS FOR CREATION OF INTELLECTUAL PROPERTIES AND THE PROTECTION OF SUCH INTANGIBLE PROPERTIES IS VERY ESSENTIAL BEFORE THE BUSINESS STARTS ITS OPERATION. A START-UP CAN BE A MILLION DOLLAR ENTITY FOR CREATING MONOPOLY IN THE MARKET THROUGH INTELLECTUAL PROPERTY RIGHTS

ed with the various kinds of Intellectual Property Protection and its benefits. In India, the business community steps into a business without thinking about Intellectual Property Protection and, in the passage of time, the business encounters several legal issues created by other competitors.

Major hardships faced by the start-ups

Initiating protections after launching the product in the market or moving ahead with a new concept can be a debacle for a business proposition. Proper planning should be followed from the beginning when any concept or any new product has been developed. Any kind of casual approach can result in a huge loss in securing intellectual property rights.

For example, if there is any exposure of an invention in the public domain before the filing of the patent application, it will surely jeopardise the novelty claim before the patent granting authority. Similarly, in the case of choosing the right kind of

trademark, professional support from an intellectual property attorney is helpful to locate similar pre-existing trademarks. Without such precautions, serious legal issues like infringement case or cease and desist notice can push the business out of the window. To acquire the distinctiveness of a trademark, there should be an extensive use of the mark in physical form. But before such use, it is extremely important to be careful about any similar kind of trademark which is already in commercial use. If such professional exercise is not being followed before movement of the product, a serious legal proceeding may hinder future business prospects.

It is also a major problem for the common business community to understand the appropriate form of intellectual property protection which may be granted by the statutory bodies in India. For example, a design or a shape of any product can be a subject matter of Trademark, Copyright, as well as Design. In order to safeguard the right for a distinctive shape of a product, it is of utmost importance to choose an appropriate protection, which may result in the maximum benefit out of the intellect put in creation of the shape. The guidance of an expert in this regard is a right decision.

Oversight of start-ups

Assuming IP is not valuable

Intellectual property is of immense value to any business. It is one of the essential parameters in the valuation of a business. The absence of intellectual property may result in lower valuation, thereby leading to lesser investment. It is crucial for a start-up to save the intellectual property from disclosure as it may attract funds at a later point of time.

Lack of research before launching of any idea or product

Intellectual property right is a unique monopolistic right which helps the busi-

ness to grow fast without any competition. Thus, a lack of research to find out appropriate protection before establishing a business is a sheer risk. Therefore, the prior art search in case of a patent protection of a product or a database search in case of selecting a trademark should be followed before investment is made; otherwise time and money invested in an idea or a product may turn out to be of no use.

Lack of secrecy before the launching

Major intellectual property rights are based on priority claim and once it encounters challenges, it does not lead to anything. In the present culture of social media, it is of utmost importance to maintain secrecy during the development of any idea or a product. If required, appropriate nondisclosure terms have to be followed.

Licensing or franchising

One challenge that all start-ups face is to remain profitable and ahead of everyone else in an increasingly global economy. They are always looking for new opportunities to grow their business. This is possible with the help of intellectual property that gives way to wider business options like licensing or franchising, fetching good amount of royalties in addition to their stand-alone involvement in the business. Licensing helps a company to commercialise its intellectual properties or expand its ongoing operations to new markets more effectively and with greater ease than on its own. If a trademark is licensed for use, the licensee's marketing efforts will add to the licensor's goodwill and reputation.

Thus, licensing and franchising have proved to be useful tools to reach a market where the licensor's own production and marketing resources are not sufficient. If a technology is licensed to large distributors in the market, it becomes easier for the product to get infiltrated into the market, which likely results

in increase in the sales and promotion of the brand to as many customers as possible. It is sometimes better to find a local partner than to set up a new establishment in a foreign country so as to speed up the entry into a new market, ahead of competitors. A major example of franchising is that of KFC, one of the world's largest restaurant chains.

Safeguards to be taken by the start-ups

Proper agreements related to IPRs

It is very important for start-ups to have in place proper agreements with nondisclosure terms with employees or independent contractors as, most often, they are the ones creating the intellectual property. Thus, these intellectual properties created must be protected through proper agreements to maintain secrecy. It is also crucial to enter into post-termination agreements where employees will be prohibited to enter

into similar kind of trade or disclose the intellectual property, as a part of legal protocol. If the novel idea which was created during the course of the previous employment is disclosed, the start-up will not be able to benefit out of it after the idea becomes successful. Thus, taking sufficient safeguard measures to protect the intellectual property created in the course of operation of the business is vital for the success of the start-up.

Prospective assistance

The Government of India has brought various schemes to develop the intellectual property for any individual or for any start-up company. The provision of Start-ups Intellectual Property Protection (SIPP) aims to promote awareness and adoption of intellectual property rights widely. The scheme is aimed to provide guidelines and develop the innovation and new technology among the start-ups. It also provides assistance in protecting and commercialising new products or new concepts of business.

If the approach has been made, the government will provide a list of facilitators, who will provide IPR-related services to start-ups without any cost. The government will bear all the charges for assistance provided by the facilitator.

The provision of filing fast-track application for patent or trademark has also been introduced.

There is a huge rebate of 50 percent for filing the application.

It is generally observed that the start-ups fail to realise the need of intellectual property protection or might focus in developing the product. The idea of creating or protecting the intellectual property rights are often ignored by the start-ups. However, it is highly recommended to utilise the various facilities provided by the government for intellectual property protection as the negligence of such protection may be detrimental to the growth of the business in future.

**LICENSING AND
FRANCHISING HAVE PROVED
TO BE USEFUL TOOLS TO
REACH A MARKET WHERE
THE LICENSOR'S OWN
PRODUCTION AND
MARKETING RESOURCES
ARE NOT SUFFICIENT. IF A
TECHNOLOGY IS LICENSED
TO LARGE DISTRIBUTORS IN
THE MARKET, IT BECOMES
EASIER FOR THE PRODUCT
TO GET INFILTRATED INTO
THE MARKET**