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The Article

In today's dynamic and competitive business environment Intellectual Property (IP) rights are key elements needed to maintain a competitive edge in the market. IP is a business asset, an integral part of the business process. Effective acquisition, management, and protection of intellectual property can mean the difference between success and failure in businesses today.

Intellectual property encompasses the properties that are the creations of the human mind, labour, capital and intellect. It can be an invention, original design or the practical application of a good idea. Ownership of IP rights is the legal recognition and reward received for one's creative effort.

Traditionally, every business was valued for its physical assets comprising of buildings, machinery, and infrastructure. Technological inventions, implementation and growth of new ideas and evolution of knowledge-based industries have made intangible assets viz. Intellectual property more valuable than physical assets. Today for a large and growing number of businesses worldwide, IP is the main source of income replacing large production factories and warehouses.

The convention establishing the World Intellectual Property Organization defines IP as follows: *“Literary artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”*

The protection of intellectual property is provided through a variety of tools namely patents, trademarks, copyright, designs, utility models, geographical indicators, trade secrets, protection of plant breeders and farmers rights, protection for semi-conductors and integrated circuits, etc. These tools are further complemented by specific provisions of legislations relating to unfair competition, contract laws, etc, thus providing comprehensive protection to IP.

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Every business, whether it is manufacturing or service oriented uses and creates IP. The IP so generated can assist the business in its marketing, product development, raising financial resources, export and also expanding the existing business through licensing and franchising. It has thus become vital for business to create an environment that is conducive and would harness IP for strategic competitive advantage. Business should thus introduce the concept of IP Management wherein appropriate IP tools are deployed to protect, manage and enforce the IP, so as to get the best possible commercial results from its ownership.

The effective use of an IP Management System thus necessitates the basic understanding of the various IP Tools:

Patents: It is often said that a patent is society's contract with the inventor. Patents protect inventions that are novel, non-obvious with respect to the prior art and useful. The invention must be disclosed in a specified format in a patent specification. A patent once granted has a specific “term” and must be periodically renewed up to the end of the term to retain the exclusive rights derived from it such as the unauthorised production, use & sale of the invention.

Trademarks and Service Marks: Trademarks and service marks are primarily intended to indicate the source and distinguish goods and services of others. They also symbolize the quality of the goods or services with which they are used. Most trademarks and service marks are words, but they can be almost anything such as symbols, logos, sounds, designs, or even distinctive non-functional product configurations. A trademark once granted is valid for a period of 7 years and can be perpetually renewed every 7 years. The owner of a mark may preclude others from using a similar mark if such use is likely to cause confusion in the minds of purchasers. Some countries grant rights to a person for first use of the mark in the course of business, while other countries grant rights to the person who first obtains a registration in that country.

Design: An industrial design, also known simply as a design, is the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines, or colour. Industrial designs make an article attractive and appealing, thereby adding to its commercial value. For this reason they are protected; an owner of a registered industrial design is assured an exclusive right against unauthorized copying or imitation of the design. Protection initially lasts for a period 10 years, after which it can usually be renewed for another 10 years only.

Copyright: Copyrights are the rights given to creators for literary, musical, and artistic works, such as novels and poetry, songs and musical scores, paintings and sculpture etc. Other works protected by copyright include films, choreography, architecture, advertisements, maps, and technical drawings, as well as computer programs and databases. The different rights conferred by the copyright Act are:

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| 1. Reproductive rights | 5. Broadcasting rights |
| 2. Performing rights | 6. Translation & adoption rights. |
| 3. Recording rights | 7. Moral rights |
| 4. Motion picture rights | 8. Neighbouring rights. |



Layout Designs for Integrated Circuits: Internationally the Washington Treaty has substantive provisions for protection of Layout Designs for integrated circuits. The scope of protection not only includes the protected chip but also the articles incorporating it. The term of protection is 10 years only.

Trade Secrets: A trade secret is information that is secret or not generally known in the relevant industry and that gives its owner an advantage over competitors. Trade secret protection exists as long as the information is kept secret or confidential by its owner and is not lawfully and independently obtained by others. Examples of trade secrets include formulas, patterns, methods, programs, techniques, processes, or compilations of information that provide one's business with a competitive advantage. Trade secrets are not registered like other forms of intellectual property and do not attract statutory protection. Instead, the judicial system of each country determines the requirements for obtaining trade secret protection.

Geographical Indications: Geographical Indications are similar to trademarks in that they function as source indicators. Geographical Indications prevent misuse of designation or presentation of a product, which indicates that the product originates in a place different from where it actually originates. However, the key distinction lies in the fact that while a trademark identifies a good or service as originating from a particular producer, a geographical indication identifies not the producer of the goods concerned, but the geographical region from where the product originates.

Protection of New Plant Varieties: The protection of new plant varieties is another aspect of intellectual property rights, and as such seeks to acknowledge the achievements of breeders of new plant varieties by giving them, for a limited period, an exclusive right. To obtain such protection, the new varieties must satisfy specific criteria.

Anti Competitive Practices in Contractual Licenses: It is accepted that some licensing practices related to IPR, which restrain competition may have an adverse impact on trade and impede transfer of technology. Examples of such restrictive practices may include exclusive grant back conditions, conditions preventing challenges to validity and coercive packaging, licensing etc. These generally are linked to the national anti-trust/anti-competition laws and “compulsory licensing” that regulate “monopolistic practices”. These are country specific and are guided by international principles

The value of IP is often not adequately appreciated and its potential for providing opportunities for future profit is widely underestimated by businesses. However, when IP is legally protected and there is demand for the IP-protected products and/or services in the marketplace, IP can become a valuable business asset. The strategic utilization of IP assets can, therefore, substantially enhance the competitiveness of a business.

1. IP may generate an income for a business through the licensing, sale, or commercialisation of the IP-protected products or services that may significantly improve a business' market share or raise its profit margins.
2. IP rights can enhance the value or worth of your business in the eyes of investors and financing institutions.
3. In the event of a sale, merger or acquisition, IP assets may significantly raise the value of a business, and at times may be the primary or only true assets of value.



Incorporating an IP Management System enhances the company's worth and provides businesses with appropriate knowledge of its IP. This will assist in deciding as to which IP rights are to be acquired and maintained, and how best to manage the IP assets of a company. The following illustration shows how IP can be used both offensively & defensively:

1. IP as an offensive tool:
 - a. To prevent 'free riding' on your success by competitors.
 - b. To prove the innovativeness, unique or superior nature of products/services.
2. IP as a defensive tool:
 - a. To ensure that products/services do not rely without authorization, on other companies' trade secrets, copyrighted materials, patents or other IP rights as this may bring the downfall of its business through expensive litigation.
 - b. To avoid wasteful investment in research & development and marketing.

Organisations often face challenges in extracting the hidden value of IP and using it effectively as part of its business strategy. Further when IP is not protected somebody else might misappropriate the same, competitors might take advantage of your IP, and opportunities to license, sell or transfer technology will be severely hindered. Though the benefits of IP are multifaceted, building an IP portfolio is a complex task requiring set systems & procedures. To promote innovativeness and systematically build an IP portfolio, it is very important to implement an IP Management System. An effective IP Management System would help identify & evaluate:

1. The resources that are required to meet its business objective;
2. The viability and growth potential of a particular business or division.
3. The commercial relevance of IP assets; whether owned by or to which the organisation has authorized access, and the resources needed for obtaining and maintaining these assets.
4. Provide information about competitor's IP strategies and IP portfolios.

It is therefore very important that every business be aware of issues relating to IP and take concrete steps towards building an effective IP Portfolio for strategic competitive advantage.

