

Investing in Intellectual Property by Small to Medium Enterprises (SMEs) for Competitive Advantage

Introduction

Interestingly, SMEs i.e., Small to Medium Enterprises, account for almost 90% of the industrial units in India. These businesses are varied from small establishments and trading concerns to consultancies for other businesses, from retail shops to large retail chains, from small eateries to big restaurants etc. It is also true that in an economy like India SMEs generate lot of employment and the bulk of income. According to one estimate, there are over 13 million SMEs in India, providing employment to 42 million people in India. Thus it becomes imperative for such Companies to develop and invest in their own Intellectual Property so that these can be commercially exploited to the benefit of all connected with them. Based on the Expert studies, it is established that SMEs are more innovative than large corporations. One example of this is that SMEs in United States of America file for more patents and adapt to newer technologies than large corporations.

As India's economic liberalization continues and expands into various sectors and regions the role of SMEs take far more

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prominence and with this comes the investment to be made in Intellectual Property. It is now apparent that with the industrial sector growing in India, the Indian economy is undergoing transition from agrarian based economy to Industrialised economy. A traditional occupation like agriculture is no longer able to hold any attraction for the youth of India, and provide income and employment opportunities to them.

Thus it can be seen as to how important role do these SMEs play in shaping up the economies and especially for a country like India, being geographically vast and demographically varied, which is passing through its transitional phase. Thus by having laws which protect and safeguard the interest of the owners, the Indian government has put in place policies and laws vis-a-vis patents, copyrights, trademarks and designs that are critical for the small businesses to take advantage of their intellectual and brand capital.

Technological innovation is now becoming the most important driver of competitive success in many industries. The importance of innovation is due in part to the globalization of markets. To survive in today's competitive era, the companies must be innovative in technological changes. It is not enough for a company to be innovative.

Intellectual Property – An Asset for SMEs

Intellectual Property (IP) is an intangible asset or product of one's mind or intellect that has commercial value.

Intellectual property rights (IPRs) give the owners of ideas, inventions, and creative expression the right to exclude others from access to or use of their property for a certain period of time. As the international treaties and IP laws of the various countries differ significantly in terms of the degree of protection and enforcement available, there is always a challenge of globalization and harmonization.

IP is an important asset for any Company – be it small or big enterprise as it is the main identity or source identifier by which the business is known and developed. It also becomes a source of revenue generation for the business considering that it is the face for it. It is regarded as an intangible asset and reflects the Enterprise's creative and innovative capacity. With the commercial reach of the business/es increasing, it is also

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becoming more valuable than the physical assets of the Enterprise. Thus the acquisition, protection and commercial exploitation of IP is equally important for the business/es or SMEs if they have to look at and enhance their future growth prospects. In fact more and more companies are now becoming dependent upon information technology and software which does give them access to being competitive in the market and thus increase their share in revenue generation and resultant profits.

In general, the IP may be divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright which includes literary and artistic works.

Use of Intellectual property for marketing/promotion of business

It is also seen that for most SMEs marketing products or services is a big challenge considering that that they do have budget constraints and their reach of the market is also limited. Thus it becomes very important for the SMEs to develop a link between their products or services vis-à-

vis the business/es in which they are engaged. In other words, a customer should be able to distinguish a particular SMEs brand of products or services vis-a-vis those of a competitor and can also associate the business with some good qualities by which the products or services are known and recognised. Thus, in these circumstances, Intellectual property such as a Trademark or a patent plays an important role if the business were to realise its potential and wishes to have a competitive edge over its rivals.

The purpose served by a Trademark is as follows;

Distinguish between the rival set of goods/services and businesses;

- Promotes products/services of a SME using various tools such advertising, sales promotion through ad campaigns and marketing schemes etc;
- Easier to reach the target groups or customers;
- Developing more business potential from other markets or areas and especially those where the products or services under a particular brand are not available.

On the other hand, patents provide the following benefits:

- Reducing the number of competitors in the market
- Cross-licensing, joint-development, or joint-

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marketing for needed technology or marketing resources

- Revenue from licensing
- Increase the market value of the company
- In case of insolvency, can sell the IP portfolio

In view of aforesaid benefits, there is an utmost urgency for an IPR and Patenting infrastructure for SMEs in India which may be developed at three levels: (a) within the company (b) an intermediation structure and (c) a regulatory and enforcement mechanism. Within the company, IPR training and awareness will enable it to keep track of globally evolving innovations and technologies and using this knowledge for its business advantages. Intermediation structures such as hiring IP firms/attorneys would facilitate this process. The regulatory and enforcement structures such as awareness of the patent practice, courts mechanisms would help in resolution of conflicts in case of IP infringements.

Trademarks

From the above it is apparent that the brand or trademark becomes

the face of the Company. Such an Intellectual property helps in differentiating between the products of a Company from those of the other business/es. Further, these are also seen as symbols of high quality that is associated with a particular product or services. Thus it becomes very important that a trademark or a brand is chosen with utmost care and sincerity keeping in view that it does not in any way encroaches upon the rights of the third parties. This can be done by way of simple exercise of searching the Register before adopting any mark. Though the search so conducted is not conclusive, it can still give an idea of how crowded the Register is and whether or not the mark is available. The next step, of course, involves registering the mark with an appropriate Trademarks Authority as registration does give the exclusive right to use that particular mark.

The other issue which is of importance is to protect your IP which you have nurtured and developed over the years. If the intellectual property is well known and very valuable, there is every possibility of it being used by others for their illegal gains. The SMEs do have the option to either ignore it or take an aggressive stance to prevent such misuse. In case such misuse is ignored there is every chance of the IP losing its distinctive character and its association with the business. Thus in such cases it is always prudent to take the help of a legal

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Also it is crucial for the SMEs to enhance their market value. Thus investing in machinery, product development, marketing and research can greatly enhance SMEs financial situation and all these factors when combined would extend the asset base and future productivity which will greatly enhance the business capabilities of an enterprise.

Hence, in order to realise full potential of business it is important for these SMEs to acquire and protect intellectual property. A Trademark which is very well regarded in the trade would always lead to increasing the business potential of the Company as it will make the consumer goods/services more attractive to the customer. It will not only enhance the revenue generation by way of increased demand for such products or services but also enhance the market value of a Company. It is generally seen that the IP protected products command

demand in the market as there is always good quality associated with such products. If an IP is well protected it can significantly raise the value of the SME in the eyes of an investing public and financial institutions. Also such well protected IP can become collateral in raising loans from banks and financial institutions and the funds so raised can be utilised for the expansion of the business. In fact it is seen that the market values Companies/SMEs based upon assets, current business operations and future forecasts for the productivity of an enterprise.

Patents

While India has entered the global patent regime, awareness and expertise on the subject of IPR, in particular patents, in India is still highly inadequate. The awareness with regard to protecting indigenous inventions or understanding the implications of patents granted to competitors needs to be understood in today's competitive era.

In India, there are two types of patents: invention and design. Invention means any new technical solution relating to a product, a process or improvement thereof. Design means any new design of the shape, the pattern or their combination, or the combination of the colors with shape or pattern, of a product, which

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creates an aesthetic feeling and is fit for industrial application.

Patent protection is a tool to ensure that companies can keep their competitive advantage they have earned. It is part of the technology strategy which is to achieve and maintain competitive advantage. This is often viewed as a decisive tool to secure sufficient payback for R&D investments, especially in an environment of increased national and international technological competition. To define this, it is the patentee the exclusive rights to use and exploit the invention for twenty years from the date of filing of the patent application. Through these exclusive rights, applicant/inventor is able to prevent others from commercially using the patented invention thereby reducing competition and establishing a company in the market as the pre-eminent player. Commercialization of the invention helps in obtaining higher returns on investments made for the invention. As stated above, the invention may be sold or licensed the rights to commercialize it to another enterprise which will be a good source of revenue. Patents enhances the bargaining power

i.e. patents may prove to be of considerable interest to the company with whom the applicant (s)/inventor (s) are negotiating and could enter into a cross licensing arrangement. A healthy patent portfolio certainly helps in developing a positive image for a company. This may prove useful for raising funds, finding business partners and raising your company's market value.

If inventions are not patented, others may develop/copy the idea/innovation or may come up with an equivalent invention later and legitimately exclude company from the market, limit its activities to the continuation of prior use, where the patent legislation provides for such exception, or ask that company to pay a licensing fee for using the invention. Further, competitors will take advantage of such an invention – If the product is successful, many other competitor companies will be tempted to make the same product by using such an invention but without having to pay for such use. Larger companies may produce the product more cheaply and compete at a more favorable market price which may reduce the company's market share for that product. Even small competing enterprises can produce the same product and often sell it at a lower price as they do not have to regain research and development costs. Without patents, there is no possibly to license, sell or transfer technology as it is linked to

ownership of a technology which can only be effectively obtained through appropriate IP protection. Therefore, patent protection, is crucial for acquiring technology through its licensing.

As per most of the Indian IP laws, IP protection is strictly based on 'first come first serve'. So the sooner a company protects its ideas/technology, the better it is as same would lead to an effective long-term business strategy and will give early returns could be from licensing, assigning or contracting out its IPRs.

Patent protection is available for nearly all manufactured items. In order to qualify for patent protection, an invention must be new, useful, and unobvious to somebody with ordinary skill in the area related to the invention. In simple terms, an invention being **new or novel** means it has not been previously invented by somebody else. To be **useful** means the invention must provide some form of benefit or it should be useful for a legitimate purpose. **Obvious** is whether it would have been obvious to somebody with ordinary skill in the area related to the invention at the time the invention was made.

Prior to the filing of a patent application, a search of existing patents and 'prior art' is made to help determine if your invention will be viable. An application is required to be filed at the Indian patent office for a patent. This

application is a formal document which fully describes an invention in a legally sufficient manner and includes a specification, a series of claims, and, if necessary, drawings or illustrations to assist in understanding the invention. The specification must describe the invention in such a manner that any person skilled in the area pertaining to the invention will be able to obtain all information necessary to make and use the invention. It must also describe the best mode known to the inventor for practicing the invention as of the time the patent application is filed. The claims define what the applicant or the inventor may exclude others from making, using or selling as a result of a successful patent application. It is thus very important that the claims be drafted in as broad a manner as possible, so as to provide maximum protection for the invention but at the same time that they be sufficiently narrow so as to avoid invalidating the patent on the basis of prior inventions.

After the application is submitted, it will be reviewed by the Patent Office, which may accept the application, reject the application, or request that the application be amended or clarified. The process of refining the patent application can be complex, and is usually best handled by or in close cooperation with a registered patent agent/attorney.

Patents are territorial rights i.e., a patent applies only within the borders of the nation which

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grants it. Thus, if your invention has a market in foreign nations, you will benefit from seeking patent protection in those nations.

With regard to IP protection for the features of shape, configuration or ornamental for manufactured items, one may look for Design protection instead of patent protection which is for a maximum of fifteen years from the date of issuance. Registering a design gives exclusive rights to the applicant/inventor for the look and appearance and does not count the functionality or the constructional features of the item/article in question.

SMEs making big and developing their Intellectual Property

There are many examples where such SMEs have steadily raised their value and in the process developed incredibly high valued Intellectual property for their businesses. One such example is that of the 'Biocon' Ltd., which over the years, has grown into a large enterprise simply by innovation and research in the field of Biotechnology. Biocon extracted and manufactured enzymes used in everything from

Lipton Ice Tea to tomato purée. In fact the Company is now seen as a global player, just as India tries to evolve from a producer of inexpensive generic drugs to a hub for research and development of blockbuster drugs. Biocon Ltd., which was listed on India's stock market in 2004; has acquired a German pharmaceutical-distribution company, AxiCorp GmbH and is looking to invest more in Europe. In its biggest bet, Biocon has invested nearly \$20 million in developing oral insulin, used to treat diabetes.

Another good example is that of 'Nirma' group of companies which is based in the city of Ahmedabad in western India manufacturing products ranging from cosmetics, soaps, detergents and salt. The owner of Nirma group, Mr. Karsanbhai Patel, started Nirma as a one-man operation in the year 1969. Nirma became a very successful company within three decades. The company had multi-location manufacturing facilities, and a broad product portfolio under an umbrella brand – Nirma. By 1999, Nirma was a major consumer brand – offering a range of detergents, soaps and personal care products. Nirma's success in the highly competitive soap and detergent market – considering it was in direct competition with the FMCG giant, Hindustan Lever limited - was attributed to its brand promotion efforts, which was complemented by its distribution reach and market penetration. Nirma's network consisted of about 400

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distributors and over 2 million retail outlets across the country. This huge network enabled Nirma to make its products available to the smallest village. In November, 2007, Nirma purchased the American raw materials company Searles Valley Minerals Inc.

Conclusion

From the above discussion and examples, we can clearly see how the Intellectual Property qualifies to be an asset of immense value to the SMEs and how these can be protected to safeguard the interest of its owners. Also, commercial exploitation of such Intellectual Property right is very important for development of these SMEs. The two examples illustrated above clearly prove this point as these have been catapulted to one of the leading Companies in their respective fields.

We can also conclude by the above discussion that IPR protection plays an important role to eliminate competitors and guarantees the company's benefit from its technological innovation. Thus, it is important that special

mechanism may be created by
SME's to upgrade their technical

capacities and seek protection for
their intellectual property rights.

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