IP Flavors

Bi-Monthly Magazine

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3rd Edition

Kashish Intellectual Property Group (KIPG)

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TRADEMARK INFRINGEMENT

LIABILITY OF E-COMMERCE WEBSITES FOR TRADEMARK INFRINGEMENT

One of the benefits of the advancement in information and communication technology is the emergence of online markets, otherwise known as e-commerce websites. Over time, these websites have become the preferred choice of shopping for many since it is perceived that purchasing desirable products online is much more convenient. The products and services provided by e-commerce websites have also advanced from just offering electronics and household products to virtually all products and services that humans require. The attractiveness of e-commerce websites to the people, which has led to its popularity and high patronage, has also attracted several sellers online. The influx of various online stores on e-commerce websites has also increased the counterfeit products on websites. By facilitating the sale of products that may be counterfeit, can the e-commerce website be held liable for Trademark Infringement?

Such e-commerce platforms fall under the category of 'intermediaries.' The question of their liability for any unlawful act or infringing content has been widely debated under the concept of 'intermediary liability.' Intermediary liability, which is based on the legal principle of vicarious liability, means that the service providers shall be held accountable for any illegal act of the user on their platform. Intermediary liability means that the intermediary, a service that acts as an 'intermediate' conduit for the transmission or publication of information, is held liable or legally responsible for everything its users do.

To answer the perplexing question regarding intermediary liability, specifically e-commerce websites, various jurisdictions have laid down innumerable legislation and guidelines and are constantly re-examining and reframing them. It is observed that the governments and courts worldwide are becoming more 'consumer-friendly' owing to the rise in the complaints of the rights holders and are adopting the stricter approach and demanding more accountability from intermediary websites.

ASSESSING THE INFRINGEMENT

Assessing trademark infringement can be a difficult task. Not just concerning which court has jurisdiction, but as to who is behind the infringement itself. As the primary act can often be hard to identify or take action against, trademark owners sometimes turn towards third-party intermediaries who may somehow be involved in the infringement. For instance, they might be hosting the infringing content or providing a platform from which counterfeit goods have been sold. Liability of e-commerce websites can be of two kinds – Direct Liability or Secondary Liability.

A) Direct or Primary Liability

The first step is to enquire whether or not the e-commerce website is itself potentially performing direct acts of infringement. For instance, in the European Union, the assessment follows ordinary principles flowing from harmonized European legislation, as developed by case law. The question of whether an online intermediary may itself be responsible for 'using' a trademark has been analyzed in the case of L'Oréal vs. eBay. L'Oréal took action against eBay for infringement of its trademarks occurring through various listings that infringed L'Oréal's trademarks. Among other things, L'Oréal pointed to the fact that eBay was bidding on keywords containing L'Oréal's registered trademarks and producing advertisements that linked to items for sale on the eBay website that infringed L'Oréal's trademarks. The UK court referred several questions to the CJEU as to the 'use' that eBay was making of the L'Oréal trademarks and its ability for that 'use.'

The CJEU held that in the context of liability for trademark infringement under the Trade Mark Directive and Trade Mark Regulations, an online marketplace is not 'using' a trademark in circumstances where an end-user has placed an offer for sale on the marketplace, and that offer includes the rights holder's trademarks. It was the seller who was 'using' those signs, rather than the website operator. In those circumstances, the online marketplace did not have primary liability. There might be questions of secondary liability, but eBay would be shielded from that if it came within the 'hosting defense.' Hosting defense means that an operator of an online marketplace would be shielded from liability where the online marketplace had not played 'an active role' concerning a particular listing of such a kind as to give it knowledge or control of that listing. Even if the online marketplace has not played an active role concerning a given infringing listing, if it subsequently becomes aware of the infringement and fails expeditiously to remove it, then the online intermediary could lose the benefit of the defense.

The CJEU also explained that injunctions could be ordered against intermediaries, notwithstanding that the intermediaries may not have any liability and/or may benefit from a safe harbor defense. Online intermediaries could be required not only to stop the infringement but also to ensure that further infringement was prevented, provided the injunction was effective, proportionate, dissuasive, and did not create barriers to legitimate trade.

In the case of Louboutin vs. Amazon, the Brussels commercial court held that Amazon's advertising and storing activities constitute direct use of the applicant's trademarks (in this case, Christian Louboutin), and therefore, held Amazon liable for trademark infringement. Amazon's shipping and dispatching activities were also covered by Louboutin's claim but were excluded from the scope of the injunction due to lack of evidence.

In India, in the case of Christian Louboutin SAS vs. Nakul Bajaj & Ors., the defendants, i.e., luxury goods e-commerce portal Darvey's.com, which provides its users access to luxury products upon the payment of non-refundable membership fees, was held liable for infringement. Christian Louboutin argued that the products sold on the e-commerce platform bearing Louboutin's trademarks were not authorized for sale by Louboutin and were not genuine products. The fact that Louboutin's trademarks were used as ad-words and meta-tags for promoting the website was a significant factor and was also impugned as infringing use. The Delhi High Court ruled in favor of Louboutin and was of the view that the e-commerce portal was also assuring the genuineness of the products hosted therein. Thus, it was not merely acting as a conduit but was equally responsible for infringement in the present suit.

B) Secondary Liability

If there is no primary liability, the next step is to consider whether the intermediary has nevertheless bound itself up in the acts of the primary infringer to be jointly liable with that infringer (secondary or joint liability).

The first theory of secondary liability to emerge was a contributory liability. In the United States, the Supreme Court, in the case of Inwood vs. Ives, set forth the two-part test for contributory infringement. To establish contributory liability, a plaintiff must show that the defendant either (1) "intentionally induced another to infringe his or her trademark" or (2) "continued to supply its product to one whom it knows or had reason to know was engaging in trademark infringement." Today, courts have begun to find this test inappropriate in situations where the plaintiff can neither allege intentional inducement nor point to a specific product, but where the defendant has contributed in some way to trademark infringement. In these cases, a modified version of the Inwood standard has evolved in which the court considers the "extent of control the defendant has over the infringing activity." Specifically, courts have held that direct control or monitoring of the instrumentality used by a third party to infringe the plaintiff's mark allows for expansion of Inwood's 'supply of a product's requirement for contributory infringement.

In Tiffany vs. eBay, it was held that "more than six million new listings are posted on eBay daily, and at any given time, some 100 million listings appear on the website." In this case, Tiffany brought an action against eBay after noticing that thousands of counterfeit pieces of silver 'Tiffany' jewelry had been sold on eBay. The parties mainly disagreed on the role eBay should play in curbing infringement.

While Tiffany expected eBay to take preventive filtering measures to avoid infringement, eBay insisted that its legal liability was limited to taking down content that it was expressly notified of. In June 2004, Tiffany, therefore, brought an action against eBay for direct and contributory trademark infringement, trademark dilution, unfair competition, and false advertising, on the ground that eBay would have knowingly facilitated the sale of counterfeit items on its website while exercising control over and deriving profit from, these sales. The Southern District of New York, affirmed by the Second Circuit in April 2010, dismissed all of Tiffany's claims and held that eBay was neither directly nor indirectly liable for third parties' sales on its website. Concerning eBay's potential direct liability, the court held that eBay's use of Tiffany's trademark in its advertising, on its homepage, and in the sponsored links purchased through Yahoo! or Google was a protected, nominative fair use of Tiffany's trademark, in that it was necessary to describe Tiffany's pieces of jewelry offered on its website. As for eBay's potential contributory liability for 'facilitating' third parties' infringing sales, the court determined that the relevant standard to assess eBay's liability was the Inwood test. Under this test, the court had to determine whether eBay continued to supply its services to sellers when it knew or had reason to know that it was engaging in trademark infringement, rather than whether it could have prevented it. Because Tiffany was not able to show that eBay had specific knowledge of specific items infringing its rights, the court ruled that eBay did not have any affirmative duty to remedy the situation.

In the United Kingdom, intermediaries can potentially be joint tortfeasors with the users of their services who have conducted the infringing activity. Such liability requires that the intermediary has acted with another under a common design or has procured the other to do the infringing act. The mere knowledge that a service is being used, or could not be used, to infringe third-party rights is not necessarily sufficient. It has historically been arduous to show that an online intermediary was acting in a common design with an infringer.

In Germany, there is a doctrine of Stroerhaftung, which translates as 'interferer liability.' Under this doctrine, knowledge is not required; the question of liability is one of harm and causation.

TAKEDOWN NOTICES: PRECAUTIONARY MEASURE?

Most nations do not have any statutory rules regarding takedown notices. In some countries, takedown notices are only binding on the online platform if confirmed by a court or administrative body, for instance, Italy. In the UK, a takedown notice is only one form by which 'actual knowledge' of the e-commerce platform may be established. Switzerland relies on self-regulation internet platforms. None of these rules explicitly provide for counter-notices by the affected seller.

The takedown notice mechanism is well established in some countries such as the US and also by the online platforms themselves. The takedown notices are inefficient tools, however, against repeat infringers that refile their offerings immediately after a takedown, do so under a different name, or keep offers on the website open only for a very limited time (e.g., overnight offers). Moreover, individual takedown notices are outrun by the utter number of sellers and dealings conducted over the Internet and caught up in a massive load of infringement proceedings.

The best method is the development of the court and enforcement systems in the home countries of the important sellers. Also, alternative legal remedies should be considered, such as measures by the customs authorities or measures directed at credit card organizations and other financial intermediaries.

GREY MARKET GOODS: A GREY AREA?

Amazon Europe gives sellers the option to list their products for sale on the 'Amazon-Marketplace' and to use Amazon's fulfillment center to store and ship the products once sold. A test buyer for Coty Germany, which holds the license to sell Davidoff perfumes and cosmetics, identified perfumes for sale on Amazon.de by an unauthorized seller. The Trademark Rights for the products (Davidoff Hot Water EDT 60 ml) had not yet been exhausted, and Coty took action against Amazon.

EU Trademark Regulation (EUTMR) allows a trademark owner to take action against any party that uses the trademark in an infringing manner. The inquiry before the courts in the case was whether or not the storage and shipping of the products should also be regarded as infringing use. First, the CJEU opined that the trademark owner has the right to prohibit others from offering infringing goods, putting them on the market, or stocking them for sale under the EUTMR. However, it remarked that Amazon has neither offered nor marketed the products itself, nor does it intend to do so. Amazon merely takes care of the technical provisions and receives compensation for those services. According to the CJEU, therefore, the fact that Amazon had the products in its warehouse in stock does not constitute infringing use. Keeping the products in-stock can only be prohibited if the company markets them or intends to do so. As a result, there has been no infringing use of the trademark by Amazon. This decision is good news for e-commerce websites in the EU, but it does not mean that trademark owners are left helpless. There are options for taking action through some nationally implemented directives. Besides, the different online marketplaces have also established their methods and takedown procedures for enforcing the Intellectual Property Rights (IPRs).

CONCLUSION AND THE WAY FORWARD FOR E-COMMERCE PLATFORMS

The business of an e-commerce website by its nature is likely to facilitate and multiply Intellectual Property (IP) Infringement. This is why today, all major e-commerce platforms have set up complaint systems to facilitate takedown procedures, and their rules must be observed if brands are to enforce their rights on them. The online platforms may also avoid liability by installing a system for eliminating from or at least containing the number of infringing offers on their platforms that are both efficient and economically and financially reasonable; for instance, YouTube's Content ID Filtering System. Concerning reactive measures, the e-commerce websites should apply to all types of IP infringement a notice and counter-notice mechanism. The websites should apply varying proactive measures depending on its involvement in the offering process: A passive trading platform may use mechanical filtering for the IP of which it has been informed is likely to be infringed. A virtual store that sells goods both in its name and through other shops has to stop infringing offers through its initiative. Intermediaries worried about their liability should examine what products/services they offer, how they describe those services/products in advertisements and contracts, how much control they exercise over the users' activity insofar as the use of trademarks is concerned, how much involvement they have in putting goods on the market, and so on. Seller verification is also a brilliant way of ensuring that the sellers have the requisite authority to deal with the goods they are planning to offer on the website.

In a world without borders, owing to the Internet, the liability of e-commerce platforms for third-party content is necessarily a global question. As platforms like Alibaba and Amazon are acquiring exponential market shares in online distribution, and as international brands, notably in the luxury, cosmetics, and wine and food worlds, are gaining more and more traction in the various online markets, the question is no longer whether a particular country's domestic laws can offer protection to its national platforms or rights holders, but rather what practices should e-commerce websites and trademark owners adopt to limit their liability and protect their rights in the best possible manner, respectively.

INTERESTING FACTS ABOUT IP

#1 Intellectual Property Rights (IPRs) are Territorial:

IPRs are limited to the territory of the country where they have been granted. For protecting the same IP in any other country across the globe, one has to seek protection separately under that specific country's relevant law.

IP NEWS IN BRIEF

NEWS ARTICLE - 1

THE HERBIVOROUS BUTCHER & NESTLÉ END LEGAL DISPUTE OVER 'VEGAN BUTCHER' TRADEMARK

Nestlé (a Swiss multinational food and beverage company) has quite recently abandoned the effort to trademark the term 'Vegan Butcher' and put an end to a year-long legal dispute. A legal opposition was filed in September 2019 by The Herbivorous Butcher (the first vegan butcher shop in the United States opened and run by Guam-born siblings) to block the attempt by food giant Nestlé to trademark the terms 'The Original Vegan Butcher,' 'Vegan Butcher,' and 'The Vegan Butchers.' The Herbivorous Butcher had previously sought to get the term 'Vegan Butcher' registered with the US Patent and Trademark Office (USPTO) in August 2017, which wasn't successful. So, when the pursuit by the food giant appeared to be nearing approval, it prompted the brother-and-sister duo Kale and Aubry Walch (Guam-born siblings) to initiate the opposition proceedings against it.

In its opposition filed, The Herbivorous Butcher argued by saying that all these terms (mentioned above) have been an integral part of the independent operations and marketing of its products, which to this date remain small-batch and house-crafted and serve the residents nearby who are looking for delicious plant-based alternatives to charcuterie favorites. Some of the products that the customers can look forward to finding in their deli counter include meats, ribs, sausages, cheeses, meatloaf, brats, chorizo, turkey, amongst many others – all of which are 100% vegan and made from ingredients such as vital wheat gluten, soy, and natural flavorings.

Now that Nestlé has decided to abandon its pursuit of the trademark 'Vegan Butcher,' it is a win for The Herbivorous Butcher. The vegan specialty food shop says that it doesn't plan on pursuing a trademark for supporting the entire vegan ecosystem to keep innovating sustainable and ethical products.

Co-founder Aubry Walch said in a recent statement that the term 'Vegan Butcher' belongs to every other plant-based meat monger that is working efficiently towards better food and a better tomorrow for animals and humans alike. She further added that it is a movement and therefore shouldn't belong to any corporation or business in specific

This is certainly not the first time that Nestlé has entered into legal disputes with plant-based firms, specifically from the time it has made its intentions pretty clear of pursuing the alternative protein industry in response to mass demand.

It previously lost a legal dispute against Impossible Foods (a Silicon Valley company that develops plant-based substitutes for meat products). In that scenario, the ruling had ordered Nestlé to rename its already existing plant-based 'Incredible Burger' (the rights of which belonged to Impossible Foods) sold across the European Union under its brand Garden Gourmet. The case was submitted by Impossible Foods, which argued that Nestlé had infringed upon its trademarks, which could confuse consumers in the market.

NEWS ARTICLE - 2

AFTER RECEIVING GI TAG FOR BASMATI, PAKISTAN IS ALL SET TO REGISTER PINK SALT AS GI

After receiving the Geographical Indication (GI) tag for Basmati Rice, Pakistan is now all set to register pink salt from the Salt Range Mountains of Pakistan as its GI product.

As per the details, a meeting was recently held at the Ministry of Commerce (MOC) with the office bearers of Intellectual Property Organization (IPO) - Pakistan. The meeting was chaired by the Adviser to the Prime Minister on Commerce and Investment, Abdul Razak Dawood. It also had Pakistan's IPO Chairman, Mujeeb Ahmed Khan, in attendance. During the meeting, the officials deliberated upon potential Pakistani products for GI Registration to curb their unauthorized use by other nations. Abdul Razak Dawood said that in the meeting, it was decided that after the GI registration of Basmati Rice, the pink salt will be registered as GI for encouraging and motivating the producers to expand their business at a global level. He also mentioned that a list of other products for GI registration on a priority basis would be pursued. He even urged the business communities to identify and inform Pakistan's IPO of other products that can be registered as GI to protect them from global exploitation.

Reemphasizing the importance of GI registration for various products, Dawood said that the same would undoubtedly serve as a potential economic tool for promoting and enhancing the national and international trade of Pakistan. He further mentioned that speedy GI registration would protect Pakistan's products and eradicate the possibility of their violation. He even advised the MOC to double its efforts for GI registration of potential products on a priority basis.

Pakistan had recently registered Basmati Rice as GI under its Geographical Indications Act of 2020. As a part of this Act, a GI registry has been formed, which is responsible for registering GIs and maintaining the basic record of their proprietors and authorized users.

On the GI registration of Basmati Rice, Dawood said that it would protect their products against misuse or imitation, and therefore, guarantee that their share in the international markets is well-protected. As per a few reports, Pakistan had managed to save near about $1 billion in export revenue, which it gets through the export of Basmati Rice to the EU.

IP Blog Posts

1. TRADE SECRETS: AN OVERLAP OR COMPLEMENT TO PATENTS?

Trade Secrets comprise any protected business information – whether technical, financial, or strategic that is not commonly known; and that affords a competitive benefit to the proprietor. Innovative companies use this form of protection all through their operations, and they consider it to be a method to handle their exclusive information. Trade secrets may induce innovation since they deliver a method for businesses to reap the profits of their innovation. Nevertheless, trade secrets also have demonstrated controversy since they hide, rather than divulge, actual inventions to the society due to the requirement of secrecy. Thus, it is imperative to examine the utility of such protection vis-à-vis Patent Protection and whether it impedes or furthers the development of technology.

Global descriptions of trade secrets have agreed on the criteria laid down in the TRIPS Agreement. Nations are obligated to safeguard a trade secret or 'undisclosed information' that is secret; has commercial value because it is secret, and has been subject to reasonable steps to keep it secret. The information should be protected from revelation, procurement, or use by others in a way that is dissimilar to honest commercial practices. The TRIPS Agreement does not stipulate a precise way to protect trade secrets, but, in reality, nations have separate trade secret laws and include trade secrets in their competition laws, contract law, and may also depend on the common law.

Trade Secrets as a Tool for Innovation

The basis of a trade secret is to promote research and development by protecting the originator of business information and maintaining appropriate ideals of professional ethics. Trade secrets may be typically cherished when technology is at an early level of R&D and does not fulfill the criteria for a patent or when the changing laws make the obtainability of a patent uncertain. For instance, ambiguity about the patentability of few biotechnologies, business methods, and/or software under the legal system of a country is allegedly encouraging firms to depend on trade secrets. The creations safeguarded as utility models, industrial designs, trademarks, artistic or literary works are frequently kept as a trade secret until revealed through the process of registration of the respective Intellectual Property Right (IPR). A considerable portion of commercial technology, mainly novel and ground-breaking innovations, are susceptible to reverse engineering, hence, preserved as trade secrets. It means that a trade secret does not offer a definite and perpetual right to use the data, and a third party can even obtain the information through the public domain or by employing fair methods. Therefore, contrasting patented inventions, copyrighted works, or trademarks, trade secrets are not safeguarded for a particular period, and they may be revealed in the day-to-day course of trade.

The modern methods of innovation give great attention to transformation and joint association. A lot of emphasis on secrecy by a company can shift focus from the skills and work of employees to expenditure on secrecy, security systems, and giving information only to a trusted inner circle. Therefore, the legal protection accorded by trade secret laws helps in this regard since it allows the dissemination of sensitive information between parties.

An efficient trade secret regime that affords protection to exclusive information holds numerous benefits. It may permit businesses to seize the profits of the expenditures and time that it takes to create the information without having to share the profits of that information with others. Trade secret law, thus, may be seen as giving incentives to invent. Firms may also create a trade secret effortlessly on their own. Commercially valued information is sheltered once a business makes reasonable efforts to uphold it in secret. There is no necessity for official government participation, as is needed for patent protection.

TRADE SECRETS VS. PATENTS OR TRADE SECRETS AND PATENTS?

Every patentable invention starts as a trade secret since trade secrets can be used to protect pre-patented R&D, and both patent protection and trade secrets offer significant inducements for invention and investments in uncertain projects. Nonetheless, there are significant dissimilarities in the practical operation of these two types of protections. Trade secrets, as opposed to patents, do not need registration, and therefore, there are no government levies or other regulations in most of the countries. They occur upon formation by their potential commercial value and being kept secret. While trade secrets can contain any valuable data, the matter of a patent is technical and must satisfy patentability standards such as novelty, utility, and non-obviousness. Patent regimes provide a temporary exclusive right in return for public disclosure, thereby enabling the distribution of data, decreasing duplication of innovative labor, and allowing creators to build and improve on earlier inventions. This limited right may allow the patentee to recuperate investments and get the worth of his or her invention, simultaneously allowing people to profit from the publication of data about the invention. Since patents are temporary, the invention will eventually come into the public domain. Trade secrets, however, have a possibly unlimited period if they do not get disclosed in public. Patent Infringement is founded on strict liability, meaning that infringement may even happen without someone intending to do so. On the contrary, in trade secret misappropriation, it is usually essential to prove that the respondent used incorrect ways to get the information or had knowledge that it was acquired or used wrongly.

Some have questioned whether or not the safeguard of inventions without revelation, in the form of a trade secret, is an adequate public policy. More precisely, the contrasting justifications of trade secrets and patents bring the issue as to whether the former may affect the dissemination of information sought by the latter. Still, in reality, the two systems co-occur quite adequately. The presence of trade secret legislation inspires technology dissemination via licensing since the substitute may be hoarding. The dependability of patent and trade secret systems was assessed and recognized by the United States Supreme Court in the case of Kewanee Oil vs. Bicron Corp., where it was pronounced that patent protection does not obstruct trade secret protection, and both types of Intellectual Property (IP) systems can exist in harmony. The Court stated that the patent policies of boosting invention and not eradicating things from the public domain are not inconsistent with the presence of trade secrets. The more problematic objective of patent legislation to settle with trade secrets was that of disclosure, i.e., "the quid pro quo of the right to exclude." Supreme Court characterized trade secrets as protecting: (i) inventions not patentable; (ii) inventions with questionable patentability; and (iii) inventions that are patentable. Then it established that in the first two classes, there is no problem between a trade secret and the patent's rule of disclosure, and in fact, it is better to have trade secret protection than not have it. For inventions that are not patentable, trade secret law inspires innovation since there is no motivation to innovate otherwise. In the inventions of doubtful patentability, trade secrets play a significant role when it comes to decreasing the amount of non-patentable inventions at the patent offices and consequently in the courts, as it is better to have the invalid patent never issued or disclosed at all. Concerning the third class of patentable inventions, the Court stated that trade secrets present "no reasonable risk of deterrence" from patenting for two causes. Firstly, that trade secret protection gives much frailer protection in many aspects than patent protection. Secondly, for the occasional innovator that picks trade secret safeguard over a patent, there is no obstruction to scientific or technical advancement due to the 'ripeness-of-time' notion of invention, wherein others are probable to make the identical discovery in a comparatively shorter time.

Trade secret protection may be a specifically eye-catching means for innovative small and medium enterprises (SMEs), which generally have limited capital and restricted know-how and ability to manage intellectual properties using formal IP protection. Trade secrets can apply to a range of methods used by SMEs to reap the benefits of their inventions. The same does not mean that patents are not just as vital to small enterprises. For indicating the value of an invention to possible allies and the market, an SME may be required to secure patents on crucial characteristics of its creations – especially in areas where reverse engineering is fairly easy and hence exclusivity is necessary. An ideal IP policy of a business combines trade secrets and patents for safeguarding innovation.

Concluding Remarks

Thus, we have seen that in practice, trade secrets successfully complement the patents. Trade secret laws apply to areas that Patent Law doesn't, thereby permitting the safeguard of commercial strategies, customer lists, and negative expertise. Trade secrets are principally valuable in shielding implicit or knowledge that is not codifiable viz. data indispensable for the operation of a patented invention. Certainly, technology transfer often includes the authorizing of both patents and trade secrets.

Therefore, trade secret allows businesses to share the matching information not only needed to apply but also to commercialize and enhance already patented technologies. In some segments, trade secrets may be the most crucial portion of a technology transfer agreement because a patent license by itself may not permit the full placement of patented technology.

The protection afforded by trade secrets matches the needs of contemporary modes of innovation. Nowadays, innovation is progressively categorized by a high degree of partnership and also by stress on incremental innovation. Trade secrets help to institute safe networks for exchanges of knowledge, serve to build absorptive capability, which is well-defined as the capacity to recognize, integrate, and apply new information. They also deliver a substitute tool for guarding steady growth for which patents may not be obtainable or fiscally possible. To summarize, trade secrets are directly connected in the distribution of proprietary skills and information, motivating larger revelation and use of data. As patent protection inspires the distribution of exclusive technology, trade secret simplifies the distribution of proprietary know-how and expertise. The joint placement of trade secrets and patent protection delivers exclusivity to the innovator while promoting technology transfer through licensing and other dealings.

INTERESTING FACTS ABOUT IP

#2 Don't Disclose your Invention before Filing a Patent Application:

You should never publicly disclose your invention, for instance, by including details on your website, before filing a patent application. Any disclosures that you make become part of the 'prior art' and could be cited against you or your business when your patent application gets examined by the Patent Office. So, in the worst-case scenario, your disclosures could indeed preclude you from getting a patent granted.

Now, in some situations, you may require disclosing information to some person outside your company, for example, an investor or a developer. A confidentiality agreement plays an integral role in such situations; however, if possible, it is highly advisable to file a patent application in that situation too before you make the disclosure.

2. CONSIDERING INTELLECTUAL PROPERTY (IP) DUE DILIGENCE IN M&A

Intellectual Property (IP) counts as one of the most crucial elements when it comes to perusing a merger and acquisition activity. Whether directly or indirectly, a company's brand value is built and maintained, attributing to the strength of its innovation portfolio, which can be utilized strategically to extract optimum commercial benefits and eventually a worldly reputation as well. Therefore, it is integral for corporations to maintain precise records as well as read their assets in line with the company objectives to secure the edge in the market.

Advantages of Intellectual Property in M&A

1. Value Creation and Addition: IP can help maintain and build the value of the asset portfolio held by the company, which finally adds to the reputation of the entity. Consider, for example, Johnson and Johnson, whose value of IP assets totals up to 87.9%; others like Microsoft and Merck are evaluated at 98.7% and 93.5%, respectively when it comes to their intangible assets. Since innovating through one's R&D section may not always be a feasible option, considering IP as a subject-matter inclusive of the M&A transaction can be a better option. Therefore, companies should be on a constant lookout to identify novel and commercially viable innovations to add to their individual company portfolio.

2. Transfer of Technology: IP, both as a consideration and subject-matter of the M&A, aids in acquiring the IP assets at much greater ease. The transfer of technology is simplified when compared to tangible assets.

3. Diversification: While pursuing an M&A, diversification of business goals can be achieved through acquiring IP assets. Doing so also enables an entity to experiment in different directions before actually expanding into a particular fixed direction. Hence, it is a good option and can open many different doors.

A successful example of this is when Dabur acquired Balsara Group companies, which eventually gave it extended access to seven well-established brands like Promise, Babool and Meswak toothpaste, Odonil air freshener, Odopic utensil cleaner, Sanifresh toilet cleaner, and Odomos insect repellent.

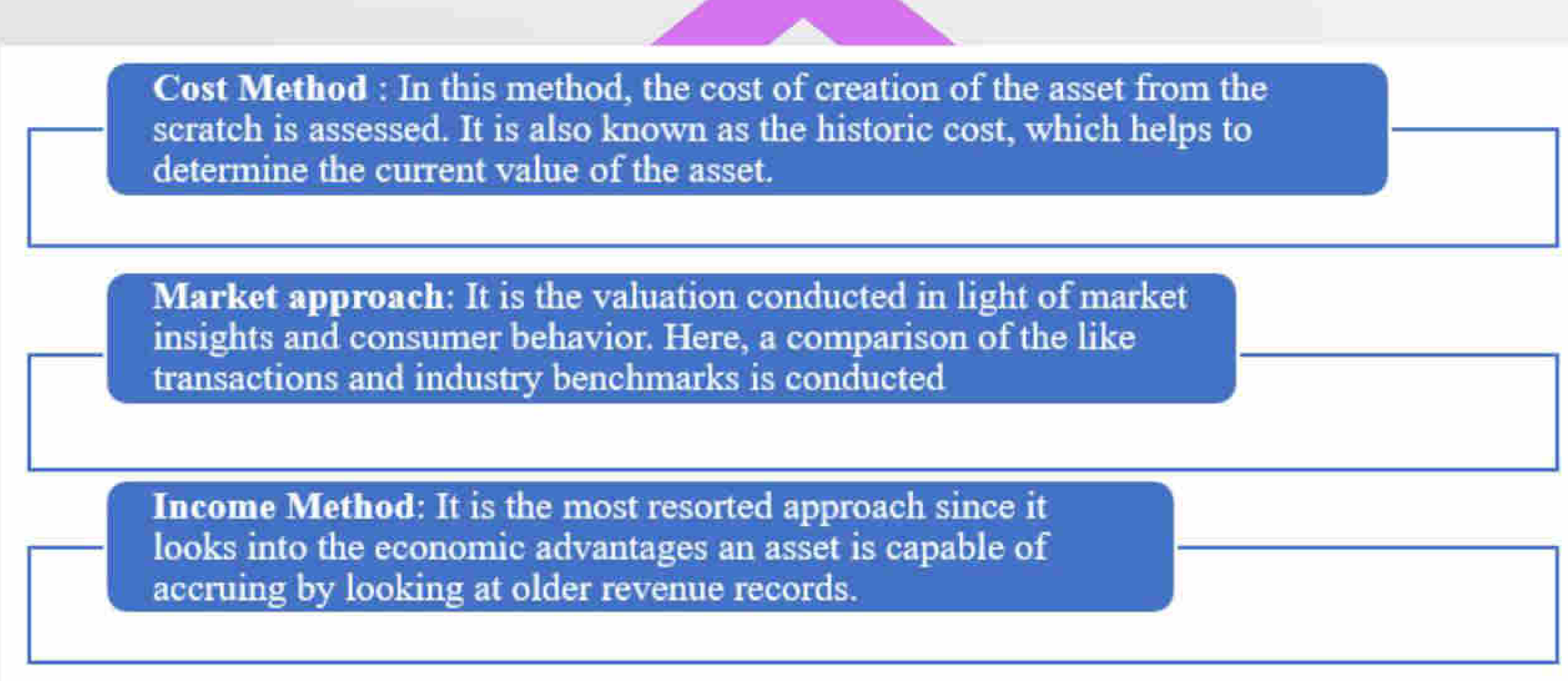
What is IP Due Diligence?

IP due diligence is a thorough investigation, which is conducted to understand the potential and value of the IP portfolio that a target company holds. The evaluation is conducted by considering all forms of IP assets like patents, copyright, industrial designs, trademarks, etc. The same can be offensive or defensive. Defensive due diligence is when the seller conducts the diligence, while offensive due diligence occurs when the initiative is undertaken by the buyer.

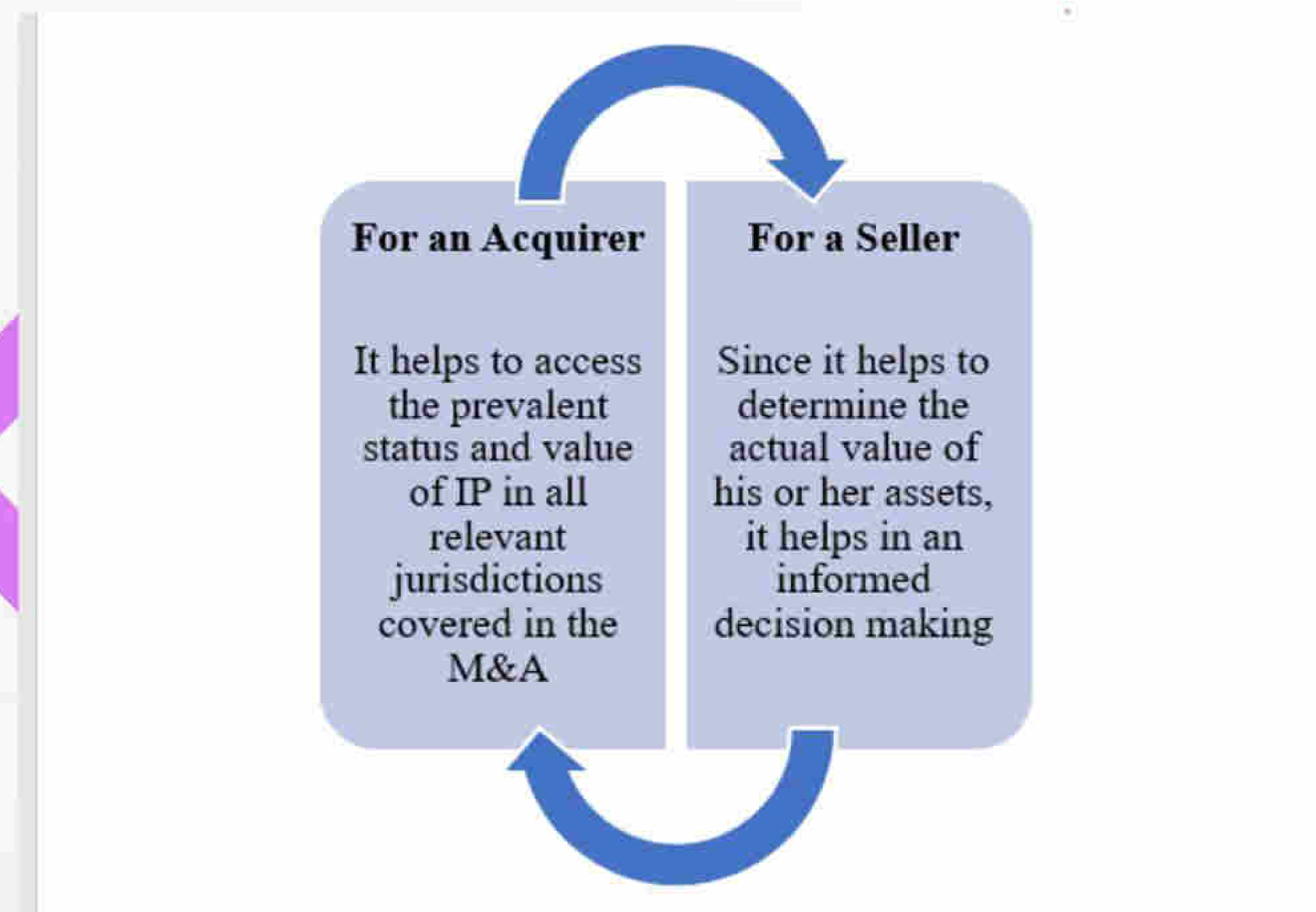
The Role of IP Due Diligence and Valuation in M&A

The mere presence of star patents or IP assets does not suffice a successful M&A capable of accruing benefits. Thorough due diligence is mandatory for strategic exploitation. Therefore, the portfolio comprising all IP assets should be read in terms of their strengths and the cost of maintenance, including the remaining time in the total period of exploitative rights reserved in the entity holding such assets. The same constitutes the overall health of the entire portfolio. Reading into the same allows the identification and mitigation of potential risks that may be associated with such a transaction. IP valuation is the most crucial step in IP due diligence. Therefore, to evaluate IP assets, the results of the due diligence are relied upon as they spell out the actual position and standing of the IP portfolio of the target-seller.

Since due diligence is subject to the needs of a particular company, IP valuation should be conducted in line with the goals to be achieved. A wrong method of discovering the value of the IP could lead to faulty findings. IP valuations must include all Intellectual Property Rights (IPRs) and intangible rights, for example, goodwill, employee know-how, etc. It is vital to consider not only the present value of the IPRs but also their future value. There are three methods of conducting an IP valuation (not exhaustive) as enlisted below:



Importance of Due Diligence from Different Viewpoints



Where due diligence is not conducted or is not comprehensive enough to derive decisive conclusions, it can invite much more than just trouble. A frequently cited example of this is that of Rolls-Royce Motor Cars being acquired by Volkswagen from the conglomerate Vickers PLC for a lump sum amount of US$790 million. The most crucial asset of the transaction, the Rolls Royce brand itself, was left out during negotiation. This brand-name was then, in a separate transaction, acquired by BMW for US$66 million, which was sold by a British jet engine maker, Rolls-Royce PLC. It is amusing how Volkswagen owned the Rolls-Royce automobile business but could not sell the manufactured cars under the Rolls-Royce brand name. This example is a valuable lesson.

Important Steps of Conducting Due Diligence

1.Non-Disclosure Agreement (NDA) - The fundamental step before exchanging any priority-class information is the signing of NDAs. These should be mutually signed between both the parties to the transaction, the acquirer as well as the target-seller, to safeguard information culminating from either end. In the absence of such an agreement, enforcing one's right in court may prove to be arduous, although not impossible, as observed in the Stac vs. Microsoft case. In the said case, Microsoft willingly expressed to collaborate with Stac on its data compression program, and later, it introduced an update in Microsoft MS-DOS 6.0 with its version of Stac's program in the absence of a license agreement for which Microsoft was taken to court.

2. Identification - After signing the NDA, the acquirer can be safely exposed to IP assets, including not just patents but trademarks, copyright, industrial designs, etc. Transparent disclosure of information with respect to each asset can be exchanged to ensure informed decision making.

3. Subject-matter Evaluation - Once the IP assets of the target-seller are identified, an evaluation of their current footing can be made. Such an evaluation should include the following:

- The validity of IP assets should be assessed concerning both registered and pending applications. Companies should read into the assets with expired registrations as well to collect antecedent data and how the assets performed and influenced in maintaining the target seller company. Pending applications are equally vital since they might mature into full-fledged registration accruing the owner's statutory rights against infringing use.

- Ownership of the IP assets should be determined. There are instances where the target seller has subsidiaries that utilize the assets without concluding a formal agreement as it becomes a customary practice. Such instances should be identified and addressed while negotiating an M&A transaction.

4. Jurisdictional Evaluation - All IPRs are territorial and have an expiry date within each particular jurisdiction where the rights are registered. Therefore, it is imperative to evaluate the IPRs in each respective jurisdiction where the acquirer wishes to exploit the said right. The subject-matter evaluation of each of these jurisdiction-specific IPR has to be conducted.

5. Third-party Rights - As also mentioned above, it is imperative to determine the existence of any third-party rights in the targeted IP. If the third-party interest is identified, the scope and nature of those rights should be evaluated as they might deter the acquirer from exploiting his rights. These third parties could include a wide range of actors participating through distribution agreements, packaging agreements, licensing agreements, contractual agreements with third parties, and internal employee agreements.

6. Litigations - A lot of capital is wasted in costly litigations or dispute settlement. Therefore, an analysis of an existent dispute or a probable dispute can have severe implications on the rights of the acquirer to utilize the IP asset. After establishing that a certain asset is disputed, the acquirer should consider the probability of having a decision in his or her favor from the court, the costs that may be incurred in furtherance of such proceedings, the total time it may take to come to a decisive conclusion.

A much-cited example of these aspects is when Viacom had proceeded against Google for a US$1 billion action following Google's US$1.6 billion purchase of YouTube, for the reason that YouTube had infringed upon its rights. Google's acquisition team had not taken into consideration YouTube's business conflicts with other parties, which ended up costing it heavily.

7. Report Formation - Once the data is collected and all aspects are determined, a due diligence report is prepared, which points out the potential risks and liabilities that should be weighed against the listed benefits associated with the IP being dealt with in the transaction. The risk management strategies may also be listed in the report with the many alternatives that can convert viable disadvantages into beneficial stances.

8. Warranties and Indemnities - The relevant IP warranties and indemnities must be executed by both parties. IP warranties are the warranties that explicitly state that the target seller is the lawful owner of the IP assets forming part of the transaction, and they do not infringe upon any third-party's rights. IP Indemnities are taken from the target seller wherein he or she agrees to

indemnify the acquirer against any third-party infringement claims concerning the IP rights assigned. The terms of these instruments can be conditional depending on the mutual agreement between the parties.

Once the M&A is concluded between the parties, the acquirer must update the IP assets against his or her name with each IP office located in different jurisdictions. Timely recordal of changes is a must.

Conclusion

It can be concluded that IP assets have greater implications, and therefore, play a vital role in transactions like M&A. As a general principle of caveat emptor, the acquirer should make all decisions following a well-informed backdrop, which is many a time handed over by the seller in the form of a due diligence report. However, it is preferable to conduct one's due diligence inclusive of IP valuation. Organizations that administer their IP portfolios efficiently will ultimately be the title holders since a majority of M&As, in times to come, will take place only to transact the IP of the target seller, leading to rapid growth on such a basis.

INTERESTING FACTS ABOUT IP

#3 Trademark vs. Generic Name - Understanding the Difference:

A trademark refers to the brand name for a product or service of a specific company or individual.
A generic name refers to a common word for a product or service.
Let's consider a few examples:
- Reebok and Adidas are brand names; athletic shoes and sneakers are the generic names.
- Similarly, Whopper and Big Mac are brand names; hamburger is the generic name.

TRADEMARK REGISTRATION IN MALDIVES

It takes a great deal of effort and resources to build a brand. Hence, it is imperative to ensure that you hold the exclusive ownership to use the logo, slogan, shape & packaging of goods, sound, smell, color combinations, or anything else that gives your brand a unique identity.

TrademarkMaldives is an IP law firm in Maldives specializing in delivering economically feasible trademark-related legal services coupled with creative and innovative solutions.

3.

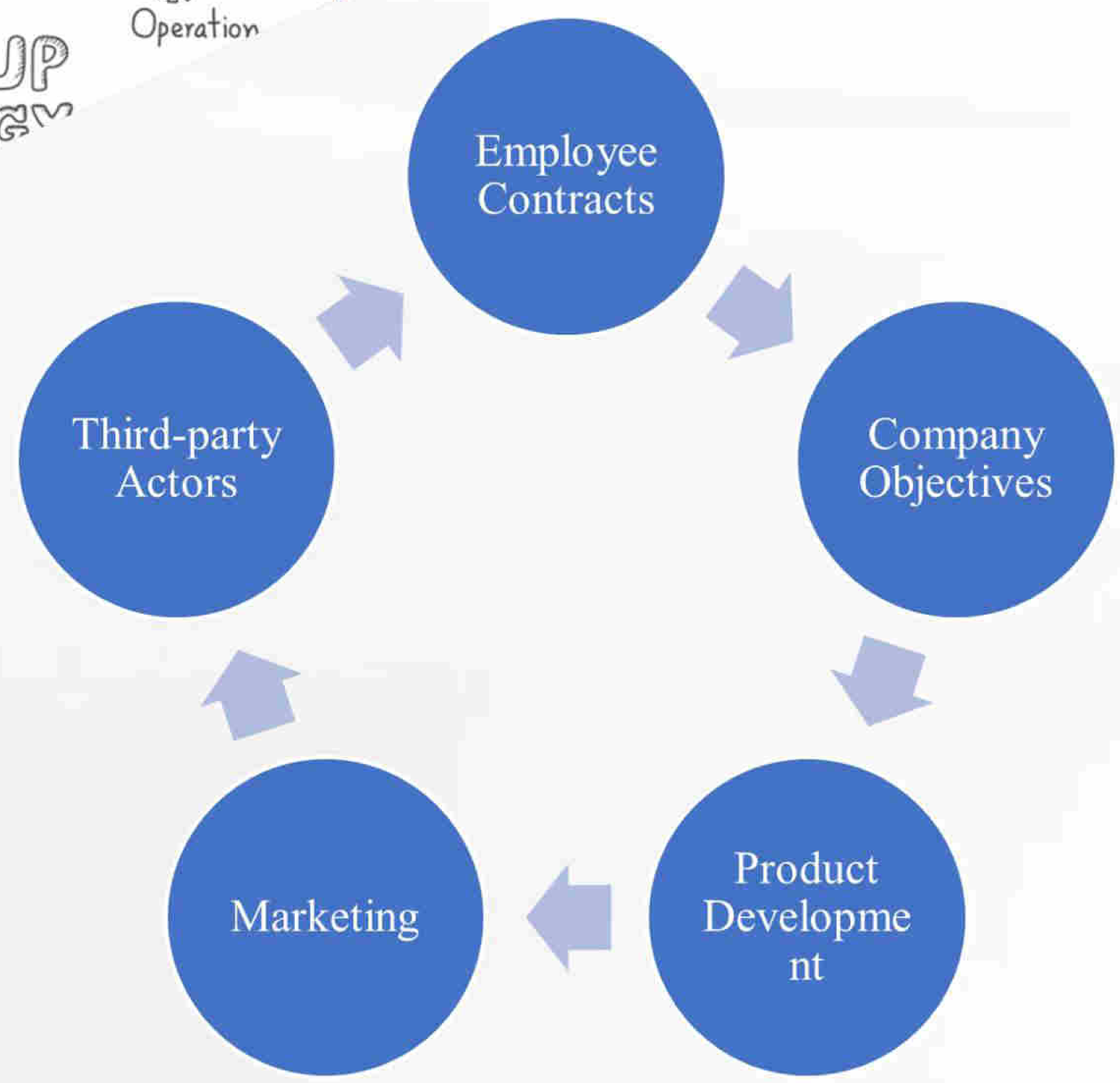
IP STRATEGY: DO'S AND DON'TS FOR STARTUPS

In the words of Mark Getty ('Blood and Oil,' The Economist, March 4, 2000): "Intellectual property is the oil of the 21st century. Look at the richest men a hundred years ago; they all made their money extracting natural resources or moving them around. All today's richest men have made their money out of intellectual property."

Intellectual Property (IP) plays a vital role when it comes to startups for the reason that a startup may put a lot of hard work and capital that it has invested and curated on the line, which could risk its competitiveness, and in many other cases, its existence as well. Intangible assets like patents and copyright are prone to be copied or stolen. Therefore, devising an appropriate strategy to manage IP is crucial.

Why is IP Relevant for Startups?

- It safeguards the core ideas upon which the startup is built.
- It helps to generate and maintain a competitive advantage.
- It helps protect and promote investment in R&D in terms of time as well as capital.
- It helps in generating and safeguarding the revenue of the startup.
- It attracts potential investors in the market.
- It generates and poses IP assets as collateral to secure investment.



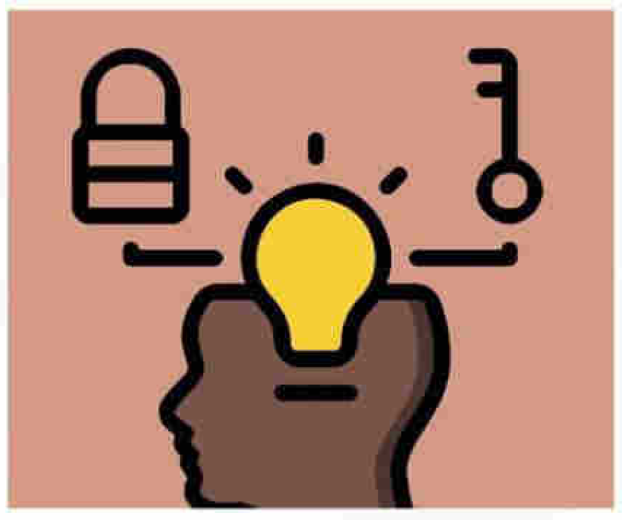
Factors on which IP Strategy Depends

Frequent Mistakes that Startups Make

Startups may fail to acknowledge the gravity of the impact that IP assets are capable of making. Such avoidance can cost heavily and can hamper the growth of the startup. These are the commonest mistakes that should be avoided:

1. DIY Method: Startups may find the allocation of their resources difficult, and on their priority list, the formation of the IP strategy is probably not at the top. The Do-It-Yourself (DIY) method is by far the riskiest. Startups should consider employing qualified IP counselors to identify the needs and offer solutions, keeping in mind the objectives and capabilities of the company.

2. Disorganized Form of Documents: Much too often, a startup gives little or no consideration as to how a pro-forma agreement stating the terms of a non-disclosure agreement defines 'confidential information,' along with what it includes, what it excludes, and its duration. Standardized



forms rarely deliver the needed result/information, and this is where qualified legal counsel is necessary.

3. Failing to Create and Optimize IP Strategy: Premature companies develop all kinds of plans like business plans to obtain investment capital, marketing plans, recruitment plans, and even search engine optimization strategies; what they may forget is their most important asset, including IP.

What are the Different Strategic Options one can Avail?

1. Proactive Safeguarding of IP Portfolio: A startup should consider protecting all its IP assets, including trademarks, patents, copyright, to name a few, all alike. Such safeguarding should be extended irrespectively to all kinds of IP regardless of their strengths or weaknesses. Once all the Intellectual Property Rights (IPRs) are safeguarded, a strategy to exploit the same in each respective jurisdiction following the market and consumer response should be devised. If the startup wishes to maintain exclusivity only in one jurisdiction, regional strategies can also be devised. The building of a portfolio only based on R&D initiatives could be detrimental and costly; therefore, where it seems appropriate, collaborating and acquiring IP assets should be considered.

2. Separation of Ideation and Work Space: The obligations stating the employment and employee relation should be explicit in the contract of employment to ensure the status of those inventions or creations that come into being while the employee is acting in the course of employment. Most companies and startups will requisition their employees to sign a Confidentiality and Invention Assignment Agreement wherein the employee takes cognizance and concurs that any new ideas and inventions emerging through the efforts of the employee related to the concerned business of the employer are owned fully by the employer.

3. Claim Ownership: Many ideas are developed over brain-storming sessions, cafeterias, etc. Therefore, exchanging ideas for recreational purposes should translate into formal agreements, probably in the form of 'pre-nuptial agreements' among co-founders whenever it deems necessary. Co-founders of any IP asset should take the following into careful consideration:

- The percentage of sharing of revenues accruing out of the asset
- The percentage of ownership interest in the asset
- The rights and duties of each of the co-founders
- The mode of decision making concerning the asset; for instance, licensing related or assignment related decisions
- Conditions of using and circumstances of disposing of the said asset

4. Consider Continuous Evaluation of IP Assets: Evaluation of assets helps validate and assess the actual value of the IP after performing rigorous IP due diligence of the assets. Technology startups, specifically, frequently ignore the value of their non-patent IP.

5. Exercise Precautionary Measures while Utilizing Open Source Software: A common perception of open source software is that it is free for use, and absolute utilization of the software emanating from its use for commercial gains is indefinitely allowed. While open-source software may be an expedited way to move up the ladder, it may not allow commercial exploitation of the same. Therefore, not reading or ignoring the agreements or the terms of their use may lead to a suit for the breach of contractual terms impacting the startup's pocket. Some specific open-source software programs require the object code developed by the startup utilizing the platform to be made open to public use as well. In such a case, the IP asset is lost.

6. Litigation may not always be the Best Strategy: Engaging in lawsuits can be a costly affair, including a waste of a lot of potential time and company resources. The same can be diverted towards the development of the company since, in the initial years, it is the business that matters more than victory-losses as reputation building is at a preliminary stage. Therefore, if you feel the need to litigate, make sure that you consider the long-term view. Only litigate at the last resort or where the upside is very beneficial.

7. **Branding and Marketing:** The star patents or the commercially viable IP assets should be utilized through suitable branding. This may enable building the goodwill of the brand. While branding, the appropriate use of symbols like TM, ®, and © should be carefully utilized as they may act as an apparent warning for infringing users or those who resort to practices like patent trolls.

8. **Third-party Use:** If a startup wants to permit and leverage third parties to use its IP assets, the startup should put it in the form of a written license agreement. The licensing agreement should specify the duration of the license, who can utilize the IP asset, method of utilizing it, what they can use it for, how it can be terminated, and whether it can be sub-licensed to third parties. An explicit statement of anti-competitive practices should also be made. Therefore, if the entity has invested for something to be developed for your business, make sure you own or are appropriately licensed to use the IP. The same is particularly true when it comes to software; hence, make sure that the underlying copyright of critical codes are transferred to your business.

INTERESTING FACTS ABOUT IP

#4 IP Assets Need to be Reviewed from Time-to-Time:

Just like business companies are not static, neither is IP. As a company grows and changes, it needs to undertake a thorough review of its IP portfolio to determine what is worth keeping in terms of IP for further development and commercialization and what might be better to sell or lease.
Additionally, patent portfolios need to be reviewed from time-to-time to ensure that as companies and legislation change, complete protection remains in place.

INDIAN SUB-CONTINENT - PATENT PROTECTION

A patent provides its owner with the exclusive right to exclude others from exploiting the patented technology, including, for instance, making, utilizing, distributing, or selling the patented invention. This 'exclusive right' allows the inventor or the patent owner to recoup development costs and obtain a return of investment in the development of the patented technology. Robust patent protection stimulates research and is a prime requirement for raising venture capital. A company that decides to file a patent application should adopt a strategic policy or approach that obtains value from the patent while minimizing the costs associated with obtaining patent protection.

Kashishipr helps applicants secure patent protection in the Indian Sub-Continent, which includes Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

DETAILED ANALYSIS: US Trademark Modernization Act of 2020

The US Trademark Modernization Act of 2020 (TMA) became law on 27th December 2020 after it was passed by the US Congress and signed by the President as part of the year-end Consolidated Appropriations Act for 2021. The TMA sets forth new Trademark Rules that will come into effect at the end of 2021. It provides new procedures to challenge the trademark applications and registrations with inaccurate claims of use. These new procedures look forward to strengthening and enhancing the accuracy and integrity of the federal trademark register. Furthermore, they shall help US businesses in making well-informed marketing and branding decisions when it comes to their trademarks.

WHAT TO LOOK FOR - MAJOR NEW PROCEDURES

A) Two New Procedures to Challenge a Trademark Registration based on Non-Use apart from Petition to Cancel or Claim of Abandonment

Ex-Parte Expungement (Removal) of a Trademark Registration Based on Non-Use

• Any individual, including the USPTO Director, may file a petition to expunge (remove) a trademark registration based on non-use for some or all of the goods or services because the registrant never used the trademark in commerce with those goods or services.

• This procedure is intended for US trademark registrations based on foreign registrations and designated under international registrations.

• It can be filed between 03 to 10 years after the trademark registration date.

• The registrant, in this scenario, can submit evidence of use that excuse non-use. For trademarks registered under Sec. 44(e) or 66(a), he or she can quote special circumstances that excuse non-use.

Ex-Parte Re-examination of a Trademark Registration Based on Non-Use

• Any individual, including the USPTO Director, may file a petition to re-examine a trademark registration based on non-use for some or all of the concerned goods or services.

• This procedure is intended for US trademark registrations based on use-in-commerce under Section 1(a).

• Such a petition can be filed within the first 05 years after the trademark gets registered.

NOTE - Few Things to Keep in Mind Concerning these two Procedures

• The individual (petitioner) needs to conduct a reasonable investigation for proving non-use and submit a verified statement and evidence with the petition.

• The USPTO Director can cancel a trademark registration wholly or partly after the time for an appeal has expired - or any appeal proceeding has terminated.

• Co-pending cases (pending applications filed by the same applicant) are not allowed. It implies that if a case is pending, no more cases can be filed concerning the same challenged goods or services.

• If a proceeding proves to be unsuccessful, no further proceedings may be initiated by anyone concerning those goods or services.

B) Shortened/Flexible Response Periods for Office Actions

At present, the applicants have 06 months to respond to an Office Action, and such deadlines are not extendible. As part of the TMA, the Office Action response deadlines will be between 60 days and 06 months. Extensions of the deadline will be possible for a fee; however, the time to respond won't still be longer than 06 months in total.

C) Third-Party Submissions during Trademark Examination

Refined Rules for Letters of Protest

• During the examination stage of a trademark application, a third-party can submit evidence (by paying the required fee) of a relevant ground for refusal of trademark registration to the USPTO Director.

• The USPTO Director shall have 02 months to decide whether or not the evidence should be included in the record.

• The USPTO Director's decision shall be final and non-reviewable.

• The USPTO Director's decision will not prejudice any party's right to raise any concern or depend on any evidence in another proceeding.

D) Rebuttable Presumption of Irreparable Harm for Trademark Owner

The TMA provides that a trademark owner seeking injunctive relief is entitled to a rebuttable presumption of irreparable harm upon finding an instance of infringement or a likelihood of success on the merits. This rule shall help the trademark owners in enforcing their exclusive rights against the infringers in the federal court. It shall also protect the consumers from being misled about the source of a good or service.

BOTTOM LINE

With the TMA, trademark owners will have new options in their brand protection arsenal. They will have an expanded tool chest to challenge fraudulent or problematic trademark applications and registrations; however, they should also understand that these procedures could open their trademark applications and registrations to new types of challenges from the competitors in the market.

INTERESTING FACTS ABOUT IP

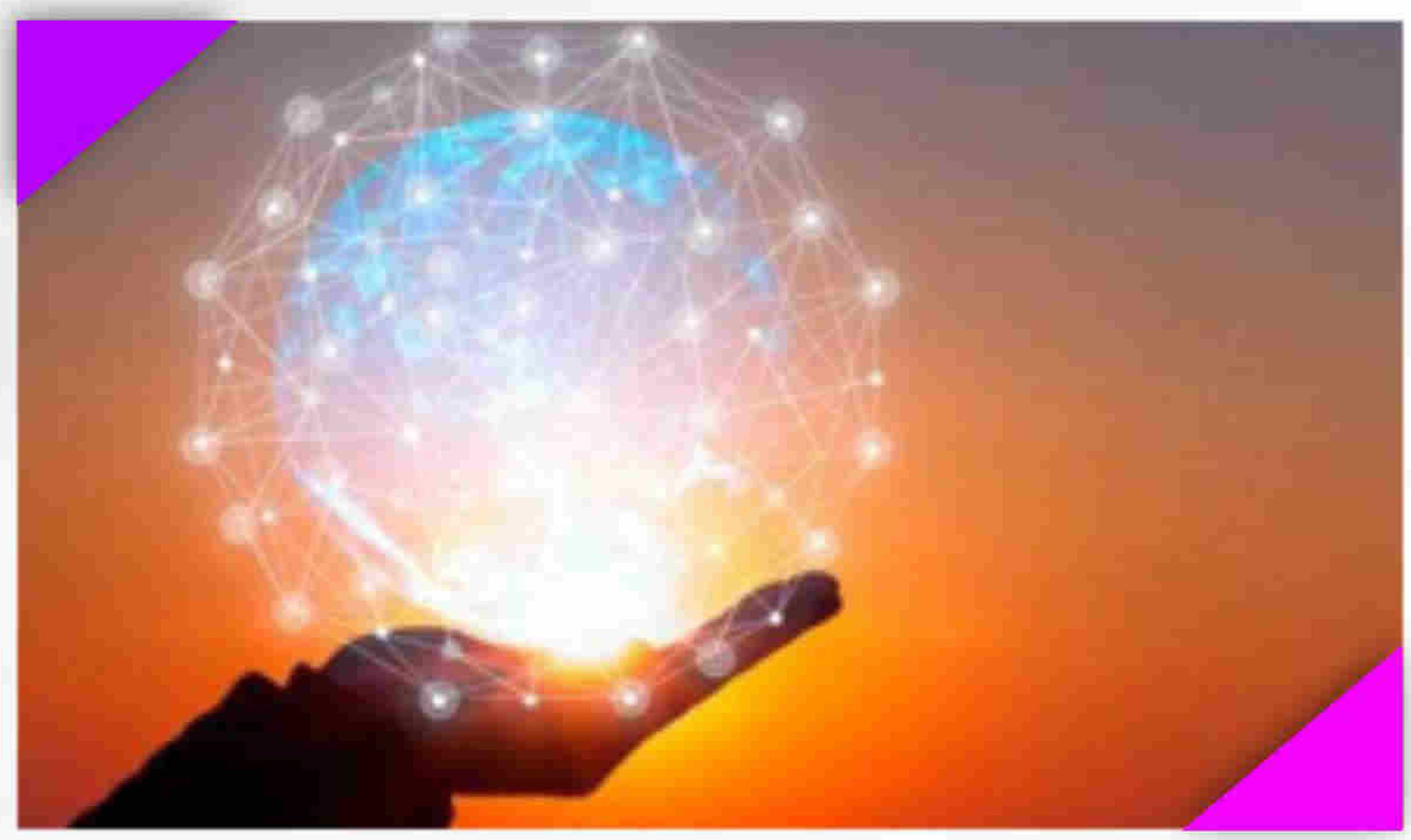
#5 One Trademark can Identify or be the Brand Name of more than just One Thing:

Let us understand this with the help of two examples.

• You may be knowing that Nickelodeon is a trademark registered for a television channel for children. However, it is also registered for mobile phone services, knapsacks, towels, sheets, and pillowcases.

Similarly, you may be knowing that Crayola is a trademark registered for crayons. However, it is also registered for rulers, staplers, paints, and restaurant services.

EXPLORING SOME OF THE SIGNIFICANT CHANGES IN IP LAWS OVER THE PAST 25 YEARS



With the rise of new technologies and the development of businesses across the globe, Intellectual Property (IP) laws keep evolving. The established IP rules and regulations refine nuances to fit the new understandings of previous IP laws. Furthermore, growing and changing IP regimes continue to confront the internal inefficiencies to keep pace with the rest of the world. Now, let's discuss some changes that have been observed to influence the practice of IP significantly in the past few years.

1. IP as a Key Business Asset

In the present cut-throat competition economy and global market, the concept of a unique idea and its commercial use has turned out to be an integral asset for any business to succeed and flourish. Such an idea can also be referred to as the intangible asset or IP of a business that brings commercial value by creativity, invention, and innovation.

In 1975, intangible assets accounted for only 20% of a company's valuation, whereas tangible assets like buildings and merchandise comprised the other 80%. In the present era, the situation is the opposite, with many big companies and firms attributing somewhere around 80% of their total value to intangible assets. There are various reasons behind this noticeable increase, including a pretty basic fact as per the International Journal of Industrial Organization, which says that on average, a patented invention has a 50% higher ROI as compared to an unpatented invention. Moreover, intangible assets acquired or created by a company during the business enhance its goodwill and reputation in the market.

2. The Impact of the Internet on IP

Without any second thoughts, the internet has changed everything in our present lives. It has brought an enormous change in the way we interact with people internationally, conduct our daily business processes, and manage our assets. The internet has indeed opened doors to allow people to copy and reproduce your exclusive works easily without seeking permission. Additionally, social media sites also are a major cause for concern as they make it extremely convenient for people to post and share content that may not belong to them. Patents, trademarks, and copyright, and other forms of IP, are all at risk on the internet; however, regulations are being implemented by government authorities, individual websites, and other platforms to ensure that the IP assets are being protected to the fullest extent.

3. Domain Names

The internet led to another major development in the field of IP, which is domain names, governed by the International Corporation for Assigned Names and Numbers (ICANN) and searchable through their WHOIS database. A domain name is in the form of .com, .org, .net, or other web addresses existing for people and companies to find your business online.

In today's internet age, your company's domain name not only adds credibility to your business but also builds your brand image by increasing its awareness. Domain names help in generating traffic to your website, which results in more customers and better sales. Therefore, they must be efficiently protected to avoid any unforeseen circumstances that might arise, leading to disruptions in business.

4. The Madrid Protocol

The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks - the Madrid Protocol is one of two treaties comprising the Madrid System for international registration of trademarks. It provides a cost-effective and efficient way for the trademark holders - individuals and businesses, to ensure the protection of their trademarks in several countries by filing one application with a single office, in one language, with one set of fees, in one currency.

The Madrid Protocol came into operation on 1st April 1996. The United States (US) and the European Union (EU) ascended to the Madrid Protocol in 2003 and 2004, respectively, thereby marking the most significant development to the Protocol ever since its implementation. The Madrid Protocol indeed reflects a more globalized world where a lot many industries can't survive by safeguarding their trademark rights in only one nation.

5. Patent Trolls

Have you ever read about legal disputes between tech giants and entities referred to as 'Patent Trolls' and wondered, "What exactly is a patent troll?" Generally speaking, a patent troll refers to a business entity that does nothing but own patents and sues potential infringers far beyond the patent's actual value or contribution to the prior art, often through hardball legal tactics. The patent trollers are referred to as Non Performing Entities (NPE). These entities don't sell or produce their product; instead, they simply license money out of those who appear to have been infringing upon a patent that the NPE owns. However, in recent years, legislative and judicial actions have diminished the importance of patent trolls to the point that they are nothing more than a nuisance.

FUN & Games

Motivational Quote of the Month

Owning intellectual property is like owning land. You need to keep investing in it again and again to get a payoff; you can't simply sit back and collect rent.

-Esther Dyson

Match the following Inventions to their Inventors:

Inventors	Inventions
1. James Watt	a. Telegraph
2. Charles Babbage	b. Battery Cell
3. Stephanie Kwolek	c. Radio and Microwave Optics
4. Jagadish Chandra Bose	d. Dynamite
5. Alessandro Volta	e. Steam Engine
6. Tim Berners - Lee	f. The Antibiotic - Penicillin
7. Martin Cooper	g. Cellular Mobile Phone
8. Samuel Morse	h. Kevlar
9. Alfred Nobel	i. Mechanical Computer
10. Alexander Fleming	j. The World Wide Web

CLICK TO PLAY

Can you Identify the Correct Logos/Trademarks of these Famous Companies?

1. Adidas

(A) (B)

2. Burger King

(A) (B)

3. BMW

(A) (B)

4. Amazon

(A) (B)

5. Instagram

(A) (B)

CLICK TO PLAY

HERE ARE THE ANSWERS TO THE 'HAVING FUN WITH IP' SECTION OF THE 2ND EDITION OF IP FLAVORS:

HAVING FUN WITH IP!

1. Match the countries with their correct Industrial Designs Act.

The Registered Designs Ordinance, 2000	India
The Patent, Design and Trademark Act, 1965	Sri Lanka
The Patent & Design Rules, 1933	Pakistan
The Design Act, 2000	Nepal
The Intellectual Property Act No. 36 of 2003	Bangladesh

2. Can you guess the 'Patent Protection Terms' of the countries given below?

- Bangladesh - 16 Years
- India - 20 Years
- Nepal - 07 Years from the Date of Patent Grant, which can be further Renewed for 02 Terms of 07 Years Each
- Pakistan - 20 Years
- Sri Lanka – 20 Years

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