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A STUDY OF INTELLECTUAL PROPERTY RISK ASSOCIATED WITH THE INTERNATIONAL PARTNERSHIP & TRADE

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ABSTRACT

Intellectual property rights have been defined as ideas, inventions, and creative expressions based on which there is public willingness to bestow the status of property. There are several types of intellectual property protection like patent, copyright, trademark, etc. that's provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. Individual nation states have developed intellectual property rights (IPR) regimes reflecting their domestic needs and priorities. Intellectual property pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights refer to the legal rights given to the inventor or creator to protect his invention or creation for certain period of time. These legal rights confer an exclusive right to the inventor/creator or his assignee to fully utilize his/her invention/creation for given period of time. Intellectual Property rights protect intellectual capital, your most valuable asset. However, IP risk poses a threat not only to your intellectual capital but also to financial success. By understanding the nature of Intellectual property risk and quantifying the potential financial impact, organizations can effectively evaluate their options and make informed decision The major international risk for business include trust issue, foreign exchange risk, political risks, regulatory risk, cybersecurity risk, Intellectual property risk, commercial risk, cross-cultural risk, etc.

Keywords: *Intellectual Property Risk, Foreign Exchange Risk, Political Risk, Commercial Risk.*

Introduction

While every nation presents opportunities for overseas investors and companies, the international business market is volatile and dynamic, with unprecedented risks. However, risks in international business are not restricted to one region. When companies engage in cross-border trade and economic activities, they face challenges on multiple level, from country-specific trade restrictions to international trade laws. Intellectual Property Rights (IPRs) are the rights associated with intangible property owned by a person/company and protected against use without consent. Thus, rights relating to ownership of intellectual property are called Intellectual Property Rights. These rights aim to protect intellectual property (creations of human intellect) by allowing the creators of trademarks, patents, or copyrighted works to benefit from their creations. The universal declaration of human rights also refers to intellectual property rights under Article 27 which states that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Thus, the purpose of IPR is to reward human intellect by providing exclusive rights to the creators over their inventions, artistic, musical works, etc

The term "Intellectual Property Rights (IPR)" is used to refer to the bundle of rights conferred by law on a creator/owner of intellectual property. These are the rights that a person has over the creations of his mind. They seek to protect the interests of the creators by rewarding their mental labour and allowing them to retain property rights over their creations. The creators and inventors are thus allowed to benefit from their creations. IP rights are the legal rights governing the use of intellectual property.

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Partnership risk implies the possibility of some unfavourable happening. It is the possibility of loss due to some future occurrence. International business risk may be defined as the possibility of loss caused by some undesirable event in international partnership. Profit and growth rates in international business are higher but so are the attendant risk. Changes in international environment and difference in economic system, objectives and culture of different countries are the main causes of international partnership risks. The degree of such risk differs from company to another company and from one country to another country.

Review of Literature

Risk is one of the categories most often applied in various research fields and disciplines. Research into risk broadly understood in the context of corporate management has been conducted for nearly thirty years now (Bromiley, Miller & Rau, 2001). It is characterised by a great diversity in terms of risk construction, measurement methods, and theoretical foundations. Since it is hardly known how probable are the consequences of the vast majority of strategic and management decisions, the term risk is clearly extended often referring to variants with both a known and an unknown probability So far the majority of studies on risk in strategic management have concerned the level of a single company making strategic decisions. In certain areas, some companies are already adept at measuring and managing a wide range of threats, such as financial risk (e.g. exchange rate fluctuations), risk of catastrophes (e.g. leakage of chemical substances) or operational risk (e.g. breakdown of a computer system). Such threats can be countered by means of tried and tested tools such as hedging, insurance or backup systems. However, there are still many types of risk which are inadequately identified or managed. The diverse risk an enterprise deals with hinders a holistic approach to the problem of risk management. In recent years attempts have been made to systematize strategic risk in an enterprise.

Svitlana Sidenko (2015), evaluates the driving forces for economic globalization and characteristics of its process, the growth of world trade, the rise mobility of financial capital, the growing role of transnational corporations, the development of network technologies and internet. Problems arising from the growing interdependence of a globalized world: environmental issues, security, worldwide disparity of socio-economic development of countries and regions. In conclusion attest he is trying to say the urge of global management.

Ravi Kiran (2016), explains the cultural adaptation of IPR tactics into the pharmaceutical industry and the effect of the same on the growth of the industry not just in the domestic market but also in the global market. The search conducted in this paper determines status of IPR in individual firms and the results indicate noticeable growth but states need for improvement in awareness and implementations of IPRs across the industry.

Objectives of the Study

- To study the various types of intellectual property components.
- To understand why the IPR is important for the business.
- To understand the risk in the international partnership and business.

Research Methodology

The process used to conduct research is referred to as "research methodology". It describes the nature of the study, the method of data collection, and the tools used to analyze the data. This paper is descriptive because it describes the current situation and study features. It aids in the reduction of bias and increases the reliability of data in research. In the paper, secondary data is used. Data was gathered from journals, research papers, periodicals, published reports, various websites, etc.

Intellectual Property

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

Components of Intellectual Property Rights

- Copyright
- Patents
- Trademarks and service marks
- Industrial designs
- Geographical indications
- Layout designs of integrated circuits

Copyright

The term 'copyright' concerns the rights of the creators/authors of literary and artistic works. A copyright is also called a 'literary right' or 'author's right'. Copyright gives an author exclusive rights to his creation and prevents the copying and unauthorised publishing of his work. Copyright protection begins at the very moment a work is created and expressed in some tangible form. Copyright protection is granted to a work that is an original creation. Also, the protection extends only to expressions. Mere ideas without any tangible expression are not granted legal protection and do not form the subject matter of copyright. Copyright protects the following two rights of the author:

- **Economic Rights** i.e., the right of the owner to derive financial benefit from the use of their works by others. For instance, the right to prohibit or authorise reproduction of the work in various forms, the right to prohibit unauthorised translation of the work, etc
- **Moral Rights** i.e., protection of non-economic interests of the author. For instance, the right to oppose changes to work and the right to claim authorship, etc.

The following categories of works typically come under copyright protection:

- Literary works such as novels, plays, poems, and newspaper articles;
- Computer programs and databases;
- Films, musical compositions, and choreography;
- Artistic works such as photographs, paintings, drawings, and sculpture;
- Architecture and advertisements, maps, and technical drawings.

In India, the term of copyright protection extends throughout the lifetime of the author and then 60 years after his death.

Patent

A patent is an exclusive right granted for an invention or innovation, which might be a product, a method or a process, that introduces a novel way of doing something or offers a new technical solution to a problem. In other words, it is a right of monopoly granted to a person who has invented:

- a new and useful article, or
- improvement of an existing article, or
- a new process of making an article.

A patent is granted for inventions having industrial and commercial value. It is the exclusive right to manufacture the new article/manufacture the article with the invented process for a limited period of time (usually 20 years from the filing date of the application) in exchange for disclosure of the invention. A patent owner can sell his patent or grant licence to others to exploit the same. Criteria for Patentability of an invention:

- It should be novel.
- It should have inventive steps or it must be non-obvious.
- It should be capable of Industrial application

Trademarks and Service Marks

A trademark is a symbol that is used to distinguish the goods of one enterprise from its competitors. A trademark may consist of a single letter, logo, symbol, design, or numerals and three-dimensional features such as shape and packaging, etc. Section 2(zb) of the Trademarks Act, 1999 defines "trademark" as a mark capable of graphical representation and which can be used to distinguish the goods or services of one person from those of others. A trademark may include the shape of goods, their packaging, and a combination of colours. Hence, distinctiveness is the hallmark of a trademark.

Trademarks used in connection with services such as tourism, banking, etc., are called Service Marks. The owner has the exclusive right to the use of a registered trademark. There are 45 classes of trademarks, consisting of 34 classes of products and 11 classes for services.

The function/purpose of a trademark is:

- A trademark is a symbol that identifies a product and its source.
- It reflects the goodwill of a business.
- It assures the consumer about the established quality of the product.

- It serves as an advertisement for the product.
- A registered trademark provides legal protection to your brand.
- It helps to establish a dedicated consumer base by preventing others from imitating your brand.

Industrial Designs

An industrial design means the ornamental or visual aspects of an article. It may consist of three-dimensional features, for instance, the shape of an article, or two-dimensional features, such as lines, patterns, or colour. An industrial design is purely aesthetic, non-functional, and has no utility. It is necessary to provide legal protection to the creative originality of an industrial design to prevent others from copying it. protection provided by industrial design The owner of registered industrial design reserves the right to prevent others from manufacturing, selling, or importing articles bearing or embodying a design which is a copy of or is substantially similar to the protected design. Products that can come under Industrial design protection are:

- Products of industry and handicraft items
- Household goods
- Lighting equipment
- Jewellery
- Electronic devices
- Textiles, etc.

Geographical Indications

A geographical indication (GI) is used to identify goods having a specific geographical origin. These indications denote quality, reputation, or other characteristics of such goods essentially attributable to their geographical origin. Generally, geographical indications are used for foodstuffs, agricultural products, wine, industrial products and handicrafts. Examples of GI include Basmati Rice, Darjeeling Tea etc.

Benefits of Registration of GI

- Confers legal protection to domestic/national GI which in turn boosts exports.
- Prevents others from making unauthorised use of a Registered Geographical Indication.
- Promotes the economic well-being of producers of items produced in a specific geographic area.

Trade Secrets

Trade Secrets are IP rights on confidential information which may be sold or licensed. A trade secret refers to any confidential business information and may include designs, drawings, plans, business strategies, R & D related information, etc. In order to qualify as a trade secret, the information should be commercially valuable i.e.. useful in a trade or business, known to a small number of people, and subject to reasonable steps taken by the rightful holder of the information to keep it secret.

Types of Trade Secrets

- Technical information such as information regarding manufacturing processes, designs, drawings of computer programs, etc.
- Commercial information, such as distribution methods, advertising strategies, etc.
- Financial information, formulas, recipes, secret combination of elements, source codes, etc

A Quick Glance at the Important Intellectual Property Rights

	Patent	Copyright	Trademark
Subject of protection	Patents may be granted in any field of technology for inventions that are new and useful including a new product or an improvement of an existing product or a new process of making a product.	Original works of authors and artists ranging from books, music, paintings, sculpture to computer programs, databases, advertisements, maps and technical drawings.	Any symbols, phrase, word, design that identifies and distinguishes the source of the goods of an enterprise from those of others.

Requirements	Novelty and usefulness Inventive step/ Non-obviousness Industrial application Must be patentable according to the Patent Law in force	Original creative work Must be in some tangible medium	Distinctive (capable of identifying the source of a particular good
Term of protection	20 years from the date of filing of application	It should be equal to or longer than 50 years after the creator's death. In India, the copyright protection lasts for the life of the author plus 60 years after death.	Can vary but is usually 10 years and can be renewed on payment of an additional fee.
Rights granted to patentee/ copyright owner/ trademark holder	Right to decide who may use the invention/Right to authorise the use of patent by issuing licence and through assignment Right to exploit the patent Right to surrender the patent Right to be issued duplicate patent Right against infringement	Right to derive financial reward from the use of work by others Right to authorise or prevent certain uses of the work Right to authorise or prohibit reproduction of work Right to authorise or prohibit recording, for example in the form of CDs and DVDs Right to prohibit or authorise broadcasting by radio, satellite Right to authorise or prohibit translation of work in other languages Right to authorise adaptation of the work into a movie etc. Moral right to claim authorship of the work Right to transfer the rights through assignment or grant permissive use of the copyright to any person Right against infringement	Right to exclusive use of trademark by the owner or its licensee Right to assign Right to seek legal remedies against infringement
Registration	Being a territorial right, a patent must be registered in a country according to the procedure prescribed by its Patent Law	Copyright protection runs automatically without the need for any registration formalities. However, a system of voluntary registration is established by most countries.	Trademarks can be registered or unregistered. The Trademark Law offers protection for both registered and non-registered trademarks. However, a registered trademark provides prima facie evidence of its ownership.

Risk in International Partnership

Engaging in cross-border trade and business activities has its advantages. However, it comes with a fair share of risks. From national conflicts to the dynamic political, economic, and regulatory environments worldwide, international business risk factors and challenges make it difficult for companies to maintain consistent growth and revenue. Although the meaning of business risk is contextual, the general implication is a decline in business performance or a significant dip in projected returns.

The risks of doing business overseas comprise of price distortions due to supply shifts, resource reallocation, loss in capital, diminished earnings, etc. Given the vulnerabilities associated with international business, cross-border expansion calls for increased focus on risk identification, assessment, and mitigation.

While every nation presents opportunities for overseas investors and companies, the international business market is volatile and dynamic, with unprecedented risks. However, risks in international business are not restricted to one region. When companies engage in cross-border trade and economic activities, they face challenges on multiple levels, from country-specific trade restrictions to international trade laws. Here is a list some key international business risk factors companies encounter when expanding overseas.

Foreign Exchange Risk

Also refers to as currency/financial risk. Every country has its own currency system as the currency of one country is not in circulation in the other country. Therefore, one currency is exchanged with another currency some rate. The exchange rate keeps on fluctuating causing risk of loss to participants in international business. Foreign exchange risk refers to the fluctuation in investment value due to currency exchange rate changes. Also known as exchange rate risk, currency risk, or FX risk, it implies a decrease in the investment value due to changes in the relative values of the participating currencies.

Political Risk

Political risk arises due to uncertain activities and events. The political actions and instability may make it difficult for companies to operate efficiently in these countries due to negative publicity and impact created by individual in the top government. A firm cannot effectively operate to its full capacity in order to maximize profit in such an unstable country's political turbulence. A new and hostile government may replace friendly one, and hence expropriate foreign assets.

The political climate is a crucial determinant of how your business will fare in a country. When a country's government unexpectedly alters its policies, it gives rise to political risk that negatively affects the business. For instance, a country's national government may implement changes in its foreign trade policy, such as trade barriers that can adversely impact trade with overseas companies.

Regulatory Risk

Regulatory risk in international business implies that a sudden change in a country's laws and regulations affects global markets and specific business sectors. Companies must adhere to these regulations set by the governing bodies while conducting business with foreign firms.

Credit Risk

It is the risk of loss due to debtor's non-payment of a loan or other line of credit. It is difficult to ascertain the credit worthiness of a foreign buyer. When a foreign buyer goes bankrupt, an Indian exporter faces great loss.

Transport Risk

Due to long distance between countries, goods are despatched by shipping or airways. Sea and transport are exposed to many types of additional risk.

Market Risk

Competition in international business is severe and market conditions change frequently. It may not be possible for a firm to complete in international market.

Cultural Risk

Culture differs from one country to another. The language, value of time, customs and lifestyles differ from country to country. As a result a business firm faces additional risks.

Intellectual Property Risk

Intellectual property (IP) risk in international business involves third parties illegally using your intellectual capital. Hence, IP risk threatens your intellectual capital and financial success while directly impacting the value of your company's products and services.

The repercussions of intellectual property risk become manifold for overseas companies due to the challenges of defending business rights remotely. Thus, companies engaged in cross border business transactions must look for potential IP threats, including copyright infringement, patent infringement, brand impersonation, and trade secret theft.

Commercial Risk

Refers to the firm's potential loss or failure from poorly developed or executed business strategies, tactics, or procedures. Managers may make poor choices in such areas as the selection of business partners, timing of market entry, pricing, creation of product features, and promotional themes. While such failures also exist in domestic business, the consequences are usually more costly when they are committed abroad. For example, in domestic business a company may terminate a poorly performing distributor simply with advance notice. In a foreign market, however, terminating business partners can prove costly due to regulations that protect local firms. Marketing inferior or harmful products, falling short of customer expectations, or failing to provide adequate customer service may harm the firm's reputation and international performance.

Trust Issue in Partnership

Trust is the social glue that holds business relationships together. Business partners who trust each other spend less time and energy protecting themselves from being exploited, and both sides achieve better economic outcomes in negotiations The existence of trust in a relationship reduces the perception of risk associated with opportunistic behavior. Partners that trust each other generate greater profits, serve customers better, and are more adaptable.

Conclusion

Intellectual property is important for a person or company to safeguard. Without proper safeguards in place, one company's ideas can be replicated by another company and used for their profit. Some legal issues can arise from IP, but as long a company is on top of the paperwork and has an attorney they can prevent most of the issues or fight them if necessary. Having precautions in place can also help a company keep their trade secrets safe. With the use of a non-disclosure agreement with a non-compete clause can help a company keep their secret intact for their company to use when it is needed. While contracts are put into place to ensure a business will do what is required, a contract breach is possible. The violation can be resolved with employee input as well as mediation to ensure proper resolution for the breach. Using some of the techniques will prevent a company's IP from getting into the wrong hands.

The research presented in this article demonstrates the existence of a positive relationship between the results of companies' international strategic cooperation and relational norms shared by the partners. What adversely affects partnership performance is relational risk. It is imperative, therefore, to develop those partnership elements which reduce this risk. What can most strongly reduce perceived relational risk is the development of trust. Although relational norms are closely related to the results achieved, they do not directly reduce perceived risk, but they have a relatively strong impact on the development of credibility and benevolence in a partnership. Unfortunately, no statistically significant relationship was found between the nature of a contract on the one hand and relationship performance and risk on the other. A general conclusion can be drawn that the optimum way of dealing with relational risk is the development of a partnership based on trust. Building mutual trust, in turn, is helped by well-developed relational norms Formal instruments of control, such as a contract, do not seem to be effective tools for dealing with relational risk in partnerships of companies operating in international markets. On the other hand we did not find a confirmation of the view that a precise contract is destructive to trust in a relationship. On the contrary, in domestic relations a precise contract has a strong positive impact on the development of credibility in a partnership. Although this impact was not found in the case of international relations, it is believed that a contract is not a substitute for trust. Our research suggests that an extremely important co-operation mechanism is relational norms which might replace a deficiency in trust, especially in the initial stages of a relationship. This suggests the need to seek partners who have developed relational behaviour. It is in their interest to establish and maintain strategic partnerships which are profitable in the long term.

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