

A DETAILED STUDY OF MANAGEMENT OF INTELLECTUAL PROPERTY

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ABSTRACT

Individual creativity has led to some of the greatest inventions in this world. These inventions have progressed the civilizations and led to technological development. Overall, it has improved the standard of living for mankind. However, these creations or intellectual capitals are often marred by copyright violations or other forms of violations that discredit the creator or the inventor directly. It is important to protect the rights of inventors or creators and preserve the exclusivity of the products that have been created. This can be done through Intellectual Property Management. This paper discusses the framework of Intellectual property management with a brief background on it. To develop a better understanding of the subject, this paper discusses the evolution of intellectual property rights and its brief history right from the ancient periods. Different kinds of intellectual properties are discussed in detail in this study, along with different methodologies that are followed for intellectual property management. Overall, this paper provides a comprehensive view on different aspects of intellectual property management, and the framework that is used to achieve this.

Keywords: *Intellectual Property, Patent, Novelty, Copyright, Usefulness.*

Introduction

A creative idea can get noticed and bring in a lot of appreciation. However, it is unlikely to bring any kind of economic benefits unless it is patented. Intellectual property or Intellectual capital are referred to intangible assets. These are the assets that get created out of the human endeavor. These assets are original and have a certain value. Examples of such kinds of assets will be design created by a designer, music created by a musician, architecture created by an architect, or could be any inventions created by an inventor. These creations are economically valuable only if they are protected or a more specific term will be copyrighted. Protection allows individual ownership of the products. There is commercial viability, leading protection as well as management of the intellectual properties with the help of certain practices and regulations in the field of Intellectual Property Management.

Objective of the Study

This paper tries to put light on why management of IP are important and how IP can be managed.

History of Intellectual Property Rights

The intellectual property laws and regulations are strongly based on John Locke's labor theory on property. The theory emphasizes the fact, there should be the protection of the fruit or output derived out of one's intellectual labor. By nature, human minds are creative without any limitations and are prone to develop their creations. Moreover, it was found that in one typical segment, there are different types of creations and inventions, which have been conflicting and resulting in copyright issues. In ancient eras, these kinds of conflicts were quite common in the fields of art and literature.

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Europe was the first continent historically, which formed regulations towards the protection of intellectual capital. In Europe, the concept of patenting started right from the 14th century. England which was considered to be advanced in terms of technology in those days was spearheading patenting activities in Europe. As a result, it became one of the attractive destinations for the artisans in Europe. The first-ever copyrights were recorded in Italy. A significant development took place in Tudor, England, where the "Enclosure Act" was introduced. This act allowed the peasants to control their land, which was previously held by the public trusts. This act also entrusted that owner can perform buy and sell, for an agreed value. In this case, the land was an intangible asset but it gave rise to the concept of protection of individual intangible assets, which is also referred to as intellectual capital. This transformation brought a new concept that entrusted that not only the tangible properties but also the intangible properties need to be protected from ownership issues. In India, Patent Act was introduced 150 years back. It was first introduced in 1856, that was based on the British patent system. This act was amended in the next decades, as per the changing requirements.

Different Kinds of IPR (Intellectual Property Rights)

The management of intellectual capital is done in two different ways, based on the scope of the ownership of the individual capital. Intellectual property rights are generally territorial, except for the global copyright. This is something that was determined in the Berne Convention. Berne convention was adopted in the year of 1886 and was originally meant for the protection of works, along with the rights of the authors. Intellectual property rights are implied by the states, and they directly imply that the intellectual rights cannot be transferred or availed, without the approval of the owner. A good example will be the recreation of music that is originally composed by another musician. In this case, the music recreator needs to take approval from the original musician, by paying proper copyrights fees. In case, the music is recreated without any approval from the copyright owner, the owner is liable to take legal action against the violator. In other words, the owner has a monopoly on his intellectual property.

Except for copyright, all the other forms of intellectual rights are renewed from time to time so that they remain enforced. All IPRs have definite tenure and post that if not renewed they automatically expire, and allow. The exceptions to this will be trademark and GI (Geographical Indications). The renewal is done by paying stipulated fees to the patenting authorities. It has to be noted that all forms for IPR can be gifted to another party, assigned to another party and even it can be sold to another party. The rights can be held at the same time in different regions, unlike rights for the tangible properties. For example, music is created in one country, its rights can be sold by its creators in other countries. This is a unique feature of intellectual capital management, and this is what distinguishes it from the management of tangible capital. In this section, different components of Intellectual Property Management have been discussed, which provides a complete overview of IPR, and its management.

- **Patents:** A patent is granted by a particular country to an inventor who owns an invention. Patent ensures the owner to manufacture his invention, recreate it, and even sell his invention in the market. The selling of the invention will be regulated as per the normal market laws that are applied to even other sellers. Patents guarantees exclusive right to the inventor or owner of the invention that no one else can recreate or market the invention without the permission of the owner of the patent holder. Patent ensures exclusive rights only for a limited period. Patented rights might be overridden by the other local laws, that might already exist. This includes monopoly laws, food safety laws, security laws. The other laws limit the exclusivity of the patent rights. Also, most of the countries have the provisions of revoking the rights under certain requirements and conditions. The patent will be exclusive only in the country, where the patent has been given. The inventor has to file separate patents in different countries.
- **The Indian Patent Act:** The roots of the Indian Patent Act can be found way back in 1856. The act was modified from time to time, thus paving the way for The Indian Patent Act 1970. The same act was modified further with multiple provisions to make it compliant with TRIPS (The Agreement on Trade-Related Aspects of Intellectual Property Rights). TRIPS is an international agreement and is legally accepted by different countries across the globe. India became completely compliant with TRIPS, after signing the Budapest treaty and Patent Cooperation Treaty. As per the current provisions, a patent provided under the Act will be valid for 20 years from the date of filing.
- **Novelty:** Any invention that is not part or constituent of the global start of art is considered novel. Here state of art refers to the information that appears in books, journals, magazines, technical books, etc. In this case, even if the invention is described orally in any of the

conferences or seminars, it will spoil the novelty of the invention. To preserve the novelty of a given invention it cannot be disclosed in public. The moment it is disclosed publicly, its novelty will cease from that moment. Hence, an invention can be disclosed publicly, only once the patent is filed else the intellectual property will lose its novelty. Hence, an investor should always file a patent for his intellectual property before publishing his invention in a paper or journal. In this case, one of the key requirements will be that invention has to be patentable.

- **Inventiveness:** This property of IPR signifies that invention is an original idea. It should not be part of any other patents, even though the patent is unpublished. In this case, the simplicity or the complexity of the inventive process doesn't hold any form of relevancy.
- **Usefulness:** This is an important and mandatory requirement for acquiring a patent. The intellectual property that will be patented should have some form of demonstrated utility. If the invention is devoid of any form of utility, then the patent application will be rejected. The patent application of an individual capital developed through invention should mention how the invention should be practiced, along with its usefulness. This also relates to the fact that the invented individual capital should be effectively converted from a creative idea to practice. This is where a patent management firm could be extremely handy, as they can document patent application justifying their usefulness. These patent management firms play an important role in the management of intellectual capital, right from evolution to patenting to the distribution of patented products for marketing.

Commercial Rights

Commercial rights or exclusive market rights (EMR) is mandated by TRIPS. EMR is applicable for agrochemical products or drugs that cannot be patented. EMR ensures exclusive marketing of the product and is not same as the patenting or granting patent rights. EMR can be granted only if the product is not patented, or there are no patent laws in the company. The classic case of Novartis can be cited where there were some delays in acquiring patents for one of its drugs in India. As a norm, since India is a member of WTO, it pressed for EMR while the patenting was in progress. As a practice, once EMR is granted, patenting needs to be completed within 5 years. Post 5 years EMR will become invalid.

Copyrights

Copyright provides the right for original work, which could be a literary work, artwork, music or even drama, films, soundtrack, disc recordings, or any other original form of creations. The copyright act was annulled in 1957, but it was amended multiple times. It has got enhanced exclusivity or coverage in comparison to patent. For a literary work, exclusivity is guaranteed for the lifetime of the author, with additional sixty years. For photography, cinematography, and government work it is for sixty years, from the date of publication. Similarly, for broadcasting, it is twenty-five years. The copyright owner can transfer the rights either completely or partially. The transfer can be done for a specific region or a country, or it could be transferred as a whole. Often intellectual property management consultants are involved in modern times to derive copyright valuation before making any kind of transfer.

Trademarks

Trademarks signify the producer of intellectual property, which can be goods or services. Here producer can be an individual or an enterprise. Trademark might have symbols, words, 3D signs, or even drawings. Trademarks might regulate the pattern of service, size or shape of goods, colors, and quality level. These might be the distinguishing features for the products and services, which are trademarked. Trademarks will also have certification standards, such as ISO9000. With the help of the trademark owner identifies his goods or services, and allows others to use the same in place of certain fees or payments. In other words, whoever uses that trademark needs to pay the owner of the trademark. All the trademarks are created under Trademarks Act 1999.

Geographical Indication

Geographical Indication (GI) refers to the name or the sign that is used for the products from a particular geographical region. This can be the town, region, or country, from where the product originated. The GI certifies that the product has got a standard or a quality, as it has originated from the same region, from where the product has been GI certified. A good example of this will be the GI certification of Basmati rice. GI certification retains exclusivity only for the standard and the quality, that originated from the particular region. The same goods can be produced in any other region, but they will be identified by the same GI tag.

Conclusion

Intellectual property is an asset for different industries and markets. Hence, it needs to be managed and regulated by the owner, so that he gets the value of his inventions. It safeguards the inventions and creations and encourages the other creators and inventors. In recent times management of the intellectual property has been crucial, because of technological developments, where copyright infringement or patent violation can be done at ease owing to the technological developments.

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