

**INTELLECTUAL PROPERTY RIGHTS AND STRATEGIC
PARTNERSHIPS IN MICRO, SMALL AND MEDIUM ENTERPRISES**

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ABSTRACT

“Micro, small and medium enterprises development” (MSMED) Act 2006 has provided the legal framework for recognition of the concept of “enterprise” and unite the 3 tiers of these enterprises with a view to boost the development of small enterprises in India as these are the lifeblood of developing economies. There is an aspect which is as similar as a marriage, a strategic partnership, a mutually beneficial relationship between two or more enterprises either from marketing, supply chain, integration, technological or financial standpoint. A major distress that can also be seen as a boon for these types of partnerships is the protection of intellectual property rights (IPRs). Since the backbone of MSME is innovation and creativity, which results in employment creation, productive investments and exports, therefore it is essential to protect this against unauthorized exploitation. Intellectual property rights (IPRs) are given to protect the intellectual creations of a mind. The IPRs are granted for any new invention, dramatic, literary, artistic work, designs, slogans and symbols. IP ownership agreements before signing a partnership agreement now have become essential to protect the IPRs. Various

institutions are creating awareness about strategic benefits and enable to protect innovative and creative capacity of MSMEs through IPRs in India.

Key words- Intellectual Property Rights, Intellectual Property, Strategic Partnership, MSMEs

I. Introduction

India is the country where poverty and unemployment are the main problems since the independence but MSMEs solve these problems by providing immediate large scale employment and proves to be a second largest employer, 1,061.52 lakh employments in 2012-13 as per the annual report of MSMEs 2013-14 after agriculture, thus, increases its importance in an economy where wealth is created by using knowledge along with the conventional factors of production, to be specific, land, labour and capital (knowledge based economy). IPR and “strategic partnerships” in MSMEs is a system for legally protecting this knowledge or intellectual property like invention, dramatic, literary, artistic work, designs, slogans and symbols. MSMEs contributed to 37.52% of total manufacturing output of India in 2012-13 as per the annual report of MSMEs 2013-14), therefore, IP protection must not be unnoticed anymore and obtaining IPRs before entering into a strategic partnership agreement has become essential for all the partners to get value from such partnerships and also take care not to agree to joint ownership of IP in order to avoid conflicts at a later stage. Any assets created during a strategic partnership need to be accounted for before the partnership starts; this includes dividing ownership and/or establishing licensing agreements. To formally determine rights and ownership of any potential IP resulting from a strategic partnership, members can sign a legal agreement that lays out expectations of IP creation and ownership before any thoughts ideas are shared. Most of the MSMEs neither aware of the IP nor the safeguard it can provide to their IP, so it is very much necessary to make MSMEs aware about IPRs and how to protect the same.

II. Objectives

- To explain the importance and need of IP protection for MSMEs before entering into a strategic partnership.
- To explore the reasons of avoiding IPRs by MSMEs.

III. IP and its Management

Indian legal system has formulated a number of rules, policies, procedures, regulations and acts to protect the Intellectual property of a person; it is regulated mainly by Department of Industrial Policy, Ministry of Human Resource Development, Ministry of Agriculture, Ministry of Information Technology and Ministry of Environment and Forests. There are a number of other Ministries and Departments such as Information & Broadcasting, Tribal Affairs, Culture, Ministry of Micro, Small & Medium Industries which are also involved with either enforcement or commercialization of IP. It is also important to note that IP protection will help prevent copycats and competitors from duplicating innovations so its management in MSMEs is also equally important. Effective IP management enables MSMEs to use their intellectual property to improve their competitiveness and strategic advantage. Acquiring IP protection is a crucial initial step, but effective IP management means more than just protecting an enterprises's inventions, trademarks, designs, or copyright. It also involves a company's ability to commercialize such inventions, market its brands, license its know-how to other companies, conclude strategic partnerships involving IP, and effectively monitor and enforce its IPRs. Indeed, a company's portfolio of IP must be viewed as a collection of key assets that add significant value to the enterprise. MSMEs can also benefit from the wealth of technological and commercial information available in patent and trademark databases to learn about recent technological breakthroughs, identify future partners, and find out about the innovative activities of competitors. Managing IP effectively and using it to devise business strategies is an increasingly critical task for entrepreneurs worldwide.

IV. IP Protection-As a Competitive Strategy:

MSMEs that invest time and resources to protect their intellectual property can increase their competitiveness in multiple areas:

- preventing competitors from copying or closely duplicating a company's tangible goods or intangible services;
- avoiding heavy and wasteful investment in research and development
- avoiding wasteful investment in promotion and marketing
- creating a separate legal identity by developing a trademark and branding strategy
- negotiating licensing, franchising or any other IP-based contractual agreements
- increasing the goodwill and market value of the company
- acquiring venture capital easily and enhancing access to finance
- increasing access to new and untouched markets

V. Offering Opportunities for MSMEs

IP affects MSMEs in almost every aspect of business, from product development to product design, from service delivery to marketing, and from raising financial resources to exporting or expanding businesses through licensing or franchising. IP may generate an income for MSME through the licensing, sale, or commercialization of the IP-protected products or services that may significantly improve an enterprise's market share or raise its profit margins. IP rights enhance the value or worth of MSME in the eyes of investors and financing institutions. The strategic utilization of IP assets can, therefore, substantially enhance the competitiveness of MSMEs. MSMEs should make sure that they are ready to face the challenge and take measures to exploit their IP and protect it wherever possible. Investing in equipment, property, product development, marketing and research can strongly enhance company's financial situation by expanding its asset base and increasing future productivity. Acquiring intellectual property may have a positive effect. Markets will value company on the basis of its assets, its current business operations and expectations of future profits. Investment in developing a good IP portfolio is, therefore, much more than a defensive act against potential competitors.

VI. Benefits to MSMEs and the Society:

- Intellectual Property and Strategic Partnerships-Obtaining IPR benefits to the MSMEs in two direct ways, firstly, how they can protect their creations and secondly, how they can avoid violating intellectual property rights of others. It will encourage MSMEs to make better use of IPR system and make it an integral part of their business strategy. The Ministry intends to help MSMEs to understand IPR from business perspective as well as exposes the IPR needs of the MSMEs to policy makers through awareness and capacity building programmes.
- Economic Growth-Economic growth may decline if the IP unintentionally creates a monopoly or acutely reduces competition in a developing economy. Vigilant consideration is given when determining IP ownership creation to avoid potential monopolies, therefore aiding continued economic growth.
- The Society-Intellectual property, except trademarks, has an objective to promote innovation and creativity in society. When an innovator imparts a discovery or invention or other creative work to society in exchange for absolute and complete rights to that work, both society and the IP owner get benefitted. Protection of IP is therefore encouraging inventors and authors to create and share their work.
- Financial-For innovators, the ability to gain exclusive rights to IP is a financial incentive to invest further in the research and development of future IP. Additionally, in the case of patents, IP rights can help pay for associated R&D costs.
- Morality-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. Some see IP as an extension of an individual person and therefore in need of protection, while others believe that IP stimulates social progress and therefore pushes inventors to further innovation. Additionally, the creation of IP protection validates the hard work of invention and creation.

VII. Challenges for MSMEs in IP Acquisition

- Inadequate knowledge of IPRs and procedures.

- Inadequate manpower to undertake the necessary groundwork needed for IP acquisition, such as, initial searches and pre filing procedures
- High cost involved in the patenting process such as, translation and agent fee.

VIII. Suggestions and Recommendations

Obtaining IPRs are essential for every enterprise but due to lack of awareness and financial resources they pull back themselves

- Government must organize regular campaigns to spread awareness and to make everyone aware about the importance and need of IPRs.
- Government must raise funds to subsidize partial or full exemption in obtaining IPRS, wherever applicable.
- The extra load associated with IP acquisition may get reduced if MSMEs have a greater understanding of how the IP system can be used effectively.
- MSMEs may also reduce the workload and costs of acquiring IP by applying for IP protection through regional arrangements in order to make use of special incentives offered to MSMEs, wherever available and applicable.
- MSMEs may opt for lower level of protection where the legislation of the country in question allows such forms of protection.

IX. Conclusion

A large no. of MSMEs in India is reported to be losing crores in revenues due to lack of awareness and absence of the IPRs. About 40,000 IP applications are filed in India annually and 85 per cent of these are filed by multinational corporations, leaving a sizable number filed by MSMEs, but most innovations across the world are done by MSMEs. In the developed world, owing to high awareness levels, small entrepreneurs approach venture capital and private equity funds to meet the expenses incurred on cost of protection, enforcement and commercialization of IPRs. In India, the lack of awareness among small players effectively denies them the fruits of the intellectual property they create. Exporters have to register a trademark of their brand in

overseas markets to prevent competitors from copying these and selling counterfeit products. Various chambers of commerce and industry are now coming forward to disseminate awareness among Indian companies about the benefits of creating intellectual property and applying for patents. The IP facilitation centres specifically aim to build greater awareness among MSMEs about IPR issues and provide insights to them on the creation, ownership and protection of intellectual property. All states in India now have patent facilitation centres and MSMEs should consult them to find out how they can benefit from them.

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