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INTELLECTUAL PROPERTY RIGHTS COMMITTEE | SCHOOL OF LAW, CHRIST(DEEMED TO BE UNIVERSITY) |  
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# INTELLECTUALIS

IP and SMEs: A New Development Agenda



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# PREFACE

Dear Readers,

As the *Intellectualis* manifests itself in its 7<sup>th</sup> issue, what astounds one is the sheer talent and conviction of the editorial team and the contributors that goes into its making. Besides keeping abreast of what is topical in the realm of intellectual property rights across the world, the endeavor is a reflection of the responsiveness of the students to the raging concerns around them. The last six issues have explored themes ranging from the pandemic, the pop culture, convergence of IP, media and entertainment, taking stock of TRIPS@25, IPR law and policy reforms to analyzing IP decisions. It displays a keen editorial foresight and execution. The journalistic flair is evident in the engrossing content that is presented through lucid prose and the unrelenting research that goes into each story. The fledgling *Intellectualis* from the IPR committee School of Law, CHRIST (Deemed to be University) could be filling a void and be the answer to the shortage of publication avenues from the Indian terrain on intellectual property rights. I am sure that the journal and its fine workmanship will scale newer heights and create a benchmark of its own in the future.



Best wishes,

Dr. Jayadevan. S. Nair

Dean

School of Law

CHRIST (Deemed to be University)

# EDITORS' NOTE

**Dear Readers,**

We proudly present Volume 3, Edition 7 of Intellectualis with the theme 'IPR & SMEs: A New Development Agenda'. In this issue, we focus on the theme of the World IP Day celebrated on 26<sup>th</sup> April 2021 i.e. 'IP & SMEs: Taking your ideas to market'. The issue highlights various facets of IP Rights and its relevance to the growth of SMEs; our contributors have provided a diverse range of interesting articles. We also bring to you an exclusive interview with Mr. Manik Mehta, Co-founder Leaf Studios, winner of the XPRIZE, who shares his insight on the practicalities of bringing your ideas to the market and how the pandemic has changed the way we see this industry. This will be our last edition for the current volume and as we strive to constantly better ourselves, we took to some testimonials from readers to reflect upon how *Intellectualis* has evolved over the year.

We hope that you take the time to read what our e-newsletter has to offer. We would like to extend our gratitude to the student body of School of Law, CHRIST (Deemed to be University) for their overwhelming response to the newsletter. We would also like to thank our Chairpersons, Dr. Avishek Chakraborty and Dr. Aradhana Satish Nair for constantly supporting us and guiding us through the drafting of this newsletter.

We hope you enjoy reading this Edition!

## EDITORS

**Maria Grisha Borges**

([linkedin.com/in/maria-grisha-borges-1792b7174](https://www.linkedin.com/in/maria-grisha-borges-1792b7174))

**Ankita Malik**

([linkedin.com/in/ankita-malik-7230971a6](https://www.linkedin.com/in/ankita-malik-7230971a6))

## FACULTY CONVENERS

Dr. Aradhana Satish Nair & Dr. Avishek Chakraborty

## FROM THE DESK OF THE FACULTY COORDINATORS



With the primary objective of dissemination of information related to IP, and researching on contemporary topics related to IP law, IPR Committee decided to publish the newsletter, *Intellectualis*. I am very happy to see that the members of the committee have been very consistent and sincere in fulfilling these objectives. The kinds of topics that have been chosen and the research that has been undertaken are prima facie evidences of the same. The members have been able to translate the theory that they learn in the classroom into real learning about the recent developments in the field of IP. Not only well researched articles, but also the other wide range of interesting features of the newsletter are really praiseworthy. I will like to take this opportunity to congratulate and thank the committee convenors as well as each and every member of this committee for their outstanding efforts in fulfilling the real intention behind publishing *Intellectualis*.

- **Dr. Avishek Chakraborty, Faculty Coordinator, Intellectual Property Rights Committee**

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*Intellectualis* focuses on the areas of prime concern and contemporary issues in the society like analysing IP decision, Pop Culture or the present theme about the SMEs. This e-newsletter is a food for thought for everyone. As a team member it is seen that every edition tries to strike a balance between knowledge about IP and analysis, interpretation need for further research. A small initiative can bring out a major change is what the team has proved with each edition of the newsletter. Let the same flame of hard work and perseverance burn throughout the series of publications in the coming future and help us explore more emerging issues of IP.

- **Dr. Aradhana Satish Nair, Faculty Coordinator, Intellectual Property Rights Committee**



## TESTIMONIALS



“As we live in an innovation driven world – powered by knowledge, academia has a vital role in policy making that strongly support development. The monthly e-newsletter "Intellectualis", brought out by Intellectual Property Rights Committee, School of Law, CHRIST (Deemed to be University), Bengaluru is precisely in this journey of making an immense impact through its deliberations, discussions & debates manifested through the research writings in this Newsletter. The 6 Editions consistently enlightening emerging & niche spheres in IPR has been an intellectual feast. I heartily congratulate Dr. Avishek, the Faculty who edited the newsletter & student convenors Ankita Malik & Maria Grisha Borges for their humongous contribution who did not let pandemic dampen their spirits! ”

**-Dr. Sapna S, Head of Department, School of Law, Christ (Deemed to be University)**



“Intellectualis is a wonderful initiative by the IPR Committee. The Committee has created a diverse and informative newsletter in line with the challenges of IPR during current CoVid-19 pandemic. The students' interest and innovation is reflected in the structure of Intellectualis containing interviews with advocates & academicians from the IPR sector, pieces on contemporary IPR concerns, notes on latest IPR judgments and even a crossword puzzle based on IPR. Focusing on offbeat areas which are growing in these unprecedented times of work-from-home & play-from-home, Intellectualis provides through-provoking information on IPR & Pop culture, Patent pooling, Copyright & comic characters, IPR in food presentations in several social media platforms, IPR & OTT platforms like Netflix and also looks to the future through pieces on IPR Reform policies and amendment bills. Intellectualis is a treasure-trove of quick intake of news from the current IPR world as well as thoughtful innovative analysis of upcoming concerns there. Excellent Work by IPR Committee faculty co-ordinators, student co-ordinators, members and volunteer authors!”

**- Ms. Ujwala, Assistant Professor, School of Law, Christ (Deemed to be University)**



**Ananya K. , 3rd Year Student, School of Law, Christ (Deemed to be University)**

Over the years the quality of the Newsletter has significantly developed. The committee also does a great job in updating all the recent events and news relating to IP and other allied fields like Tech law as well. One of the unique features of their newsletter is the interview section, with an expert in IP law, as it aids in giving practical insight of this field. The topics that are covered under the newsletter is of wide range. This is especially helpful in the understanding the interplay between IP and other laws like, Media law, Competition law, etc.



**Anita Winsome, Advocate**

Intellectualis is a very enjoyable read for the IP enthusiasts. It covers the latest and the most interesting developments in IP law. The curated topics discussed in every issue makes the readers eagerly wait for the next edition. Keep up the good work!



**Joseph K Iype, MCA Student, Christ (Deemed to be University)**

I really appreciate the work put into the newsletter by all members. All articles were fascinating. I wish all members more opportunities to showcase their ideas and talents in the forthcoming years. I want to congratulate the team for compiling the 6th issue (A Retrospective Lens: Analyzing IP Decisions), I found this issue to be the most riveting of all. Keep it up, team.



**Anjali Bhaskar, 4th Year Student, School of Law, Christ (Deemed to be University)**

Although IP issues can be complex and challenging, Intellectualis has always provided a comprehensive and functional perspective to the dynamic field of IP. The Intellectual Property Rights Committee has consistently displayed enthusiasm in encouraging the student community to participate actively in the discussions that extend beyond developments limited to the realm of IP, to include other conjunctive areas of law

# IN CONVERSATION WITH MR. MANIK MEHTA

*-Hosted by Ankita Malik & Maria Grisha Borges*

In this edition of Intellectualis, we focus on the theme of the World IP Day, 2021 - IP & SMEs. In lieu of this, we bring to you our exclusive interview with Mr. Manik Mehta. He is the co-founder of Leaf Studios, a sister concern of Leaf Wearables, which was created after winning the XPRIZE. The startup aimed at women's safety wherein they focused on wearable tech, thereby garnering a lot of goodwill. In our conversation, we talk about his team's journey and the motivation behind the start-up, the effect the pandemic had on his enterprise as well as the SMEs sector as a whole. He shares with us his views on the importance of IPR within this industry as well as some of his personal experiences while dealing with IP Rights.

- 1. Could you tell us about how you found inspiration for Leaf Wearables and your underlying objectives for the same?**



To start off with, Leaf wearables was disbanded a year ago but there's a sister company called Leaf Studios which still exists. Leaf Wearables was started in New Delhi due to the concerns around women's safety in the capital, especially after the Nirbhaya Case. We figured it was the need of the hour and we started working on wearable tech as well as networking solutions where people could come together and help each other out.

We continued working on this for around three and a half years where we sold a certain number of units, but we realized that the issue of women's safety cannot be solved merely by a private organization,

it's also a cultural as well as a policy issue. That was unfortunately the reason why we had to shut it down because we couldn't get the support which was required. However, I'm extremely proud of what we did, and I still remember people telling us that someone's life was saved because of your product and that used to make our day. So, the technology combined with the fact that people were able to help each other out gave us a ray of hope since each life matters and if you can even save one, then it amounts to a lot.

**2. Can you shed some light on the challenges you have faced along the path of developing your brand and business?**

I think starting anything is a huge challenge in itself.

There are obstacles at every step where the only way to move forward is to keep learning with every decision you make and

*“There are obstacles at every step where the only way to move forward is to keep learning with every decision you make and every situation you face.”*

every situation you face. As a start-up founder the only thing I can say to anyone is that you really have to get up and do what needs to be done. It can range from packaging to taking customer calls. The main aim of this is that one should learn everything that is remotely related to their business. I remember one time I learnt how to do taxes because as a startup you don't have the capital to hire an accountant. For that matter, I had to file for our first patent on my own because we couldn't hire a lawyer. So, the primary

principle which comes out of this is that you do what needs to be done, irrespective of all other factors which might be stopping you.

Apart from that if we look at specific challenges, we have many, this includes hardware, getting the capital, having the privilege of doing all things the way you want, and most importantly getting people to accept you as a brand. So, like I said, you face challenges at every aspect you could possibly think of, but there are always solutions waiting to be found.

**3. You have two patents to your name, could you tell our readers about your first-hand experiences with the patent system? What was the toughest aspect of filing a patent application?**

I think the system has changed quite a lot because when we filed the first patent, the procedure was longer as compared to the

second one where we could fast track the process. I think at that point of time I wasn't too sure about how to conduct patent searches, so I faced a few problems with the Indian system. The Global system was also a little tough too, because at that level you can't be sure of what needs to be done the first time.

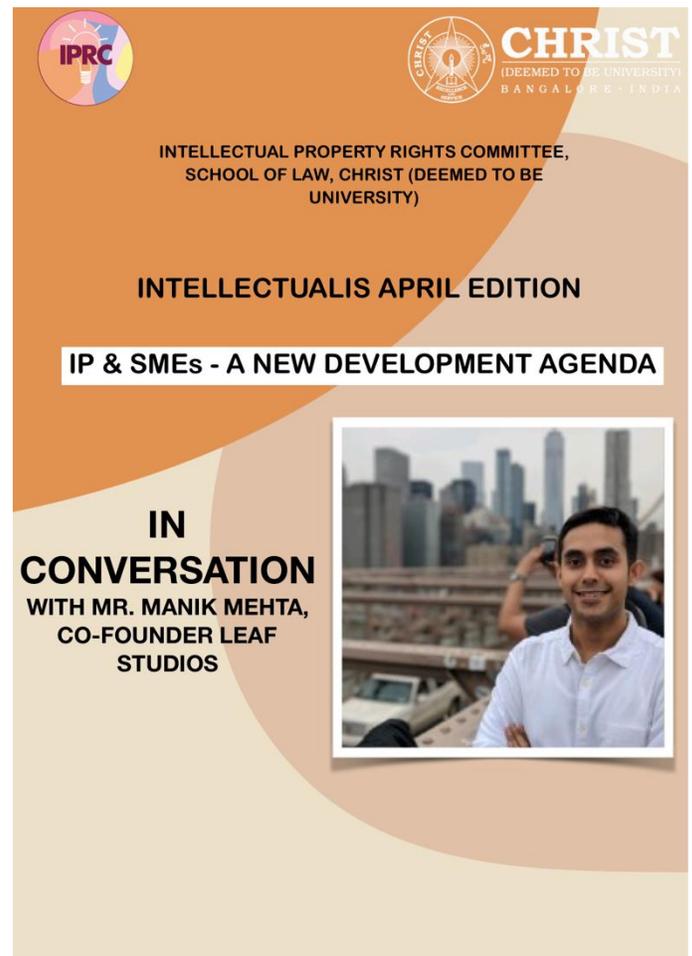
Another aspect was language. While conducting the prior search we figured that the language used or the manner in which it was written was tough and

confusing. We on the other hand wanted it to be simple as our aim was to help people understand what we were trying to do and in which context. So, I think language plays an important role here. Things, however, became easier later on as we grew accustomed to the procedure. The government systems have improved to a certain extent due to increased accessibility via the internet as compared to the earlier procedure which required us to file the patent. The aspect of filing a provisional patent also helps a lot and I would suggest that most people make use of it in order to get an idea of the entire process and application. But I would say it's a challenging job and if you can afford it, please go to a lawyer.

**4. COVID-19 has affected all of us drastically and we've seen businesses suffer to a great extent. Could you tell us what the impact has been for SMEs and whether there was a silver lining to this situation?**

The industry faced several impacts. However, something that we have not taken into account is that the productivity of every industry has gone down due to the pandemic. If you look at money as a flow, there has to be a generation of money whereas currently everything is working on credit. The government has pumped in money for companies to not shut down and employers are paying salaries while there is no demand in the market. At a certain point this money has to translate into productivity or services being offered, so when there's no productivity things will

automatically collapse. The reason why people are predicting a recession is because there is going to be a tipping point whereafter creditors will start recalling the money they have lent. This has been a paramount characteristic of the pandemic i.e., no productivity. Thus, the reason why there isn't a complete lockdown despite many cases is because if there is no productivity, it will become very



difficult for the country to sustain itself.

Even if we print more money, it will only mean that the Rupee is going to be devalued further. As we see

that other countries managed to sustain their economies despite taking blows and are now in the process of recovering and increasing productivity. So right now, we are facing a situation where we might have to choose between people dying of hunger or people dying of COVID-19. However, it is easier to speak of these things on a macro level, but extremely difficult to pass decisions and manage the situation at a micro level.

The silver lining however is that there are a few industries which have popped up, for example the dynamics around healthcare have completely changed; there is a lot of privatization, which means there will be opportunities for players to come into the market. Moreover, we see that various licenses which were giving a monopoly hold are being revoked. This will give SMEs more space to come in. While SMEs in India have been tilting towards the service sector for a while, we might also see a change in the manufacturing industry, due to the variation in the flow of international trade in a post-pandemic regime.

**5. What, according to you, will be the way forward for SMEs to rise up from the pressures of a pandemic?**

The pressures that SMEs face are dependent on the country's fiscal policy. At the micro level, at Leaf's the audio market increased due to the pandemic. As humans, we intend to evolve forwards. Capitalism is

the same too. The pandemic has been the most progressive time for capitalism. However, there need to be adequate safeguards in place to confine the power of monopolies while bearing in mind that monopolies have also helped the economies in an unprecedented manner, for instance, imagine life without Google. Emerging technologies are increasingly becoming popular among businesses and even SMEs due to their inherent nature to cater to the market and the confidence that they bring. For example blockchain and bitcoins are doing extremely good because it places trust in the system itself sans any government intervention.

**6. SMEs are an attractive option to global market players due to their inventive capabilities and even their eco-friendly way of business. Do you see any new or different problems, IPR-related or otherwise, with the launch of an Indian SME into the global limelight (such as winning the XPrize)?**

The United States is a very difficult market to crack. The aim of a typical Indian MSME is to get to a developed country in terms of its business outreach. However, this comes with its own set of problems. Every lawyer or professional has expertise in a particular jurisdiction and given the varied IPR and otherwise legal systems, money crunch is a glaring issue. Talking to the right people is an important and often sidelined aspect that MSMEs need to account for. One must research into other businesses and their innovative offerings in terms of professional help

(e.g.CFO on demand). There is a lot of scope in India to appreciate and draw inspiration from foreign legal systems for example reforms in closing of a company which could significantly boost its position on the Ease of Doing business index. Certain foreign jurisdictions such as Singapore or Delaware seem very attractive for startups (in terms of laws and legal formalities) which eventually open subsidiaries in India. To prevent such capital and innovation flight, India must become more MSME friendly.

**7. How important is the knowledge of IPR for young entrepreneurs and what advice would you give to them on the basis of your past experiences?**

IPR is extremely important for any MSME. A US patent is a valuable asset in terms of its utility towards the business. I believe that IPRs provide a legitimacy to the business of an MSME or any business. Most

MSMEs are not aware of the differences between the various IPRs and the need to secure any IPR. I would suggest that an MSME should explore the option of investing in a lawyer if its resource pool allows for the same to help the business become more aware of its potential in terms of legal rights and assets.

**8. What would you recommend as the first IPR an MSME should acquire?**

In my opinion, I think a copyright would be apt and then a patent for when you build a technology. However, this may be different for a start-up. In a start-up, the value of a technology is realized only after it is built. Which is why the developers procure a patent in their name since there is no company in place, and only after they incorporate a company, they may move to procuring trademarks, copyrights and designs, in that order.

## A COMPREHENSIVE IPR MONETIZATION SME'S

### **Introduction:**

When it comes to the initial stages of a Small or Medium sized enterprise, it is crucial to make every asset count for improved efficiency. One such asset is the enterprise's Intellectual Property (IP). Most startups and SMEs neglect their intellectual property in the early stages of their operation, even

## INTRODUCTION TO STRATEGIES FOR

*-Joanna L. Mathias*

though, it is one of their most valuable assets. Incorporating intellectual property into the business plan not only sets the business apart from competitors, but it also helps to establish brand identity by giving the product a monetary value. Business must recognize their intangible assets which includes their intellectual property and ask

themselves on how their short term and long-term goals can be achieved by using these assets to generate profits. It is common for new or small business to think that IP is either too expensive or too complex. This belief is false as the short-term gains need to be compared to the long-term gains. Assessing intellectual property and developing a monetization strategy entails several steps. These steps are discussed below. It is pertinent to note that there is no straitjacket formula or strategy that would work for every SME.

### Initial Steps:

- **Identify the Intellectual Property**

For SMEs, the first step would be to identify their intellectual property assets (IPA). Elements such as the brand logo, slogans, and physical inventions such as prototypes or unique software codes are all things to consider. This step will help SME's to better assess which aspects of their IP require immediate protection and further help them gain valuable insight into how to position their products and services in the market. This in-depth analysis will eventually assist in turning the SME's unique selling points into a commercial success. Using a well-designed portfolio to identify, protect, and maintain the intellectual assets will increase the

overall commercial value in the eyes of potential investors or strategic partnerships.

- **Evaluate your Intellectual Property**

SME's must effectively determine and understand their IPA's value in order to have a complete understanding of the role it plays in their business.

*“It is common for new or small business to think that IP is either too expensive or too complex. This belief is false as the short-term gains need to be compared to the long-term gains.”*

Both qualitative and quantitative methods of evaluation can be extremely useful in accomplishing this. Quantitative methods rely on measurable data to calculate the value of an IPA. Qualitative methods, on the other hand, provide a non-monetary estimate of IPA value based on intangible metrics such as brand loyalty, strategic impact, and future growth impact, to name a few. Keep in mind that these two methods of evaluation are not mutually exclusive.

### Monetization Strategies

After the first step which basically works as a preliminary evaluation of a startup, the SME must decide on a strategy that works best for in in order to benefit from its IP. There are multiple effective monetization strategies but for the sake of simplicity this article delves into 5 of the most widely used strategies. These are Licensing, Securitization, Collateralization, Sale-Leaseback and Co-development.

- **Licensing**

In a licensing agreement, the SME can retain ownership of its patent, copyright, or trademark under an intellectual property licensing agreement but it grants another party permission to use some or all of its intellectual property rights for a fee or royalty. Termination dates and procedures are usually specified in the intellectual property contracts. Because of the increasingly global nature of business, licensing IPA in both competing and non-competing industries is becoming a more lucrative and effective method of gaining and maintaining a competitive advantage<sup>i</sup>.

- **Securitization, Collateralization and Sale-Leaseback**

Intangible assets may be used to raise capital due to the reasonably secure risk/return characteristics associated with a specific IPA. As a result, most investments are dependent on the projected uncertainty of expected return sources. The issuance of market-traded securities based on the expected future earnings of intellectual property is referred to as securitization of intellectual property. Corporations that have little or no tangible assets can obtain significant funding without selling a significant portion of the ownership of the corporation through securitization<sup>ii</sup>.

Intellectual Property may also be used as collateral for raising capital. Third-party lenders can make loans while keeping IPAs as protection. Intermediate guarantors can give third-party lenders

additional assurances about their rights in the event of a default. Finally, the sale-leaseback of intangible assets could be a viable financial option. Intellectual property rights can be pooled together and marketed as a package. A portion of the proceeds can be returned to each contributor over time under this agreement, thus diversifying risk.

- **Co-development**

Companies have traditionally put their own time and money into developing intellectual property or intangible assets. Co-development partnership, on the other hand, is a beneficial approach because it drives towards a shared target while sharing risk and integrating capital. It is critical to specify who owns intellectual property assets created during the relationship to prevent disputes later, since the costs of resolving disputes typically exceed the costs of investigating and negotiating intellectual property ownership rights.<sup>iii</sup> Co-development arrangements can be a great way to spread risk and pool resources to accomplish a shared objective for several parties.

### **Conclusion**

Overall, using IPAs to generate alternative revenue streams will help a company's overall income and diversify its risks. Creating a successful monetization plan does not imply that the work is finished. The monetization plan must be continuously checked and maintained in compliance with the guidelines of the respective jurisdiction. The monetization of IPAs may aid an

entity's overall productivity and growth if done with a thorough understanding of the current environment.

<sup>i</sup> Christopher Heer, Dominic Cerilli, Daryna Kutsyna, 'How to Monetize Intellectual Property', (Heer law, 26 September 2020), < <https://www.heerlaw.com/monetizing-intellectual-property>> accessed 21 April 2021.

<sup>ii</sup> William J. Kramer and Chirag B. Patel, 'Securitisation of intellectual property assets in the US market', (Marshall,

Gerstein & Borun) < [https://ipo.org/wp-content/uploads/2013/04/Securitisation\\_of\\_IP\\_in\\_the\\_US.pdf](https://ipo.org/wp-content/uploads/2013/04/Securitisation_of_IP_in_the_US.pdf)> accessed 22 April 2021

<sup>iii</sup> Supra at 1

## IMPORTANCE OF TRADEMARKS IN PREPARING MSMES FOR THE GLOBAL MARKET

- *Nidhi Rachel Kurian*

Small and Medium Enterprises (SMEs) have different definitions all over the world due to their dynamic nature. In India, The Micro, Small and Medium Enterprises Development Act of 2006 was specifically enacted to provide for policy promotion and development of the sector.<sup>i</sup> Section 7 of the Act classifies enterprises into micro, small and medium on the basis of their investment in plant machinery or equipment.<sup>ii</sup>

The protection of Intellectual Property is what encourages innovativeness, therefore there is no doubt in the importance it has in a growing SME sector. Due to the boom in this sector and their inevitable scope in the economy, SME's are increasing in number and innovativeness wherein, it becomes especially important for them to strategize

and protect their ideas from both their own global counterparts and larger corporations that are in a better position to commercialize the product or service. While IP rights contribute to the increase in value of enterprises, it is also important to note that for SMEs, their survival in the market itself depends on these rights more than value, as these firms require constant creativity and innovation to adapt to fast-changing market conditions.<sup>iii</sup> Therefore, adequate protection is an unmissable step not only in deterring potential infringement but also in turning ideas into business assets.<sup>iv</sup>

### Importance and motives behind Trademark filings in SMEs

In this process, trademarks are not only extremely beneficial in building the brands of these enterprises

but also important in increasing competitive awareness. Therefore, inevitably, trademark applications are more from SMEs whereby the reason for this is two-fold. First, their success often depends on their ability to create a niche for their product or service and second, since trademark filing is relatively inexpensive, it is particularly helpful for these enterprises whose resources are scarce.<sup>v</sup> Moreover, as opposed to patent filings, enterprises that are more customer and service oriented opt for trademarks for the enrichment of their brand.<sup>vi</sup>

In the interest of creating brand loyalty for their product or service, SMEs can rely on either corporate marks or product marks or both. Company image is often more important for smaller firms. In this sense, corporate marks serve to create a brand identity for these enterprises by virtue of the quality of their product or service which in turn encourages consumers. Its functionality is a primary reason which creates an image and mental association in the customers' mind thereby eliminating the need to spend heavily on advertising to create recognition among customers,<sup>vii</sup> which further reduces costs. Trademarks can also strengthen their negotiating position in their relationships with external partners.<sup>viii</sup>

*“Often, the losses faced by these SME’s are characterized by the lack of knowledge and understanding of entrepreneurs to convert their knowledge-based assets into business assets for commercial advantage.”*

### **Need to create awareness among entrepreneurs**

While Trademark filings seem to be rampant in SME’s of other countries, in India there is a serious lack of them possibly because of the unawareness surrounding it. Thousands of SMEs in India are reported to be losing millions in revenue due to this lack in awareness.<sup>ix</sup> In a National Study conducted under the WIPO Development Agenda,<sup>x</sup> one of the key findings was that awareness about IPRs in general was completely missing among SMEs. Even though there was a general awareness prevalent, especially in the pharmaceutical industry, for using the internet as a means of advertising their brands, only 61 per cent had websites displaying their trademarks.<sup>xi</sup>

Thus, it is important to bring awareness among SMEs about IPRs in general and trademarks in specific in order to make them understand the importance of preventing IP infringements. While this problem seems to be prevalent, a silver lining for these SMEs is their reliance on ‘passing off’ suits to protect their brand name.<sup>xii</sup>

Often, the losses faced by these SMEs are characterized by the lack of knowledge and understanding of entrepreneurs to convert their knowledge-based assets into business assets for commercial advantage. This is especially problematic

for India's performance in the global market amidst foreign companies where the competition is almost ruthless. Therefore, it is essential for these enterprises to have an in-depth and up-to-date knowledge of IP systems and convert their assets into profit-making tools. Without a comprehensive understanding of the benefits of registering for various Intellectual Property Rights, these enterprises will most likely be ousted from the global market even before they can establish a name or reputation for themselves.

In order to resolve this issue, various institutions are working to build awareness among SMEs in India like the National Institute of Intellectual Property Management, Confederation of Indian Industry, etc.<sup>xiii</sup> The NIIPM for instance, offers to train business owners in the basic knowledge of relevant IPRs in order to increase awareness. Further, in a post COVID era where the competition and degree of difficulty to run an establishment successfully has increased, this awareness would make SME owners more competent to handle the shock effect of the crisis.

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<sup>i</sup> 'About SMEs in India' (*smechamberofindia.com*) <<https://www.smechamberofindia.com/about-msme-in-india.php>> accessed 24 April 2021

<sup>ii</sup> Micro, Small and Medium Enterprises Development Act 2006

<sup>iii</sup> Sumanjeet Singh, 'The State of IP Protection, Exploitation and Valuation: Evidence from Select Indian Micro, Small and Medium Enterprises (MSMEs)' (2018) 4 *Journal of Entrepreneurship and Innovation in Emerging Economies* 159

<sup>iv</sup> Sati-Salmah Sukarmijan and Olivia De Vega Sapong, 'The Importance of Intellectual Property for SMEs; Challenges and Moving Forward' (2014) 1 *UMK Procedia* 74

<sup>v</sup> Jörn H. Block et al, 'Why do SMEs file Trademarks? Insights from Firms in Innovative Industries' (2015) 44 *Research Policy* 1915

<<https://www.sciencedirect.com/science/article/abs/pii/S0048733315001043>> accessed 22 April 2021

<sup>vi</sup> Geertjan De Vries et al, 'Trademark or Patent? The Effects of Market Concentration, Customer Type and Venture Capital Financing on Start-Ups' Initial IP Applications' (2016) 24 *Industry and Innovation* 325 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2247281](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2247281)> accessed 23 April 2021

<sup>vii</sup> Neil H. Borden Jr., 'Marketing Management: Analysis, Planning and Control' (1973) 37 *Journal of Marketing* 110

<<https://alphamedia.technology/show/marketing-management-analysis-planning-implement-1.html>> accessed 23 April 2021

<sup>viii</sup> Supra (n 5)

<sup>ix</sup> Komal Gera, 'Low IPR Awareness costing Indian SMEs Heavily' (*Business-standard.com*, 2021)

<[https://www.business-standard.com/article/sme/low-ipr-awareness-costing-indian-smes-heavily-113080500984\\_1.html](https://www.business-standard.com/article/sme/low-ipr-awareness-costing-indian-smes-heavily-113080500984_1.html)> accessed 24 April 2021

<sup>x</sup> R. Saha, *National Study on Intellectual Property and Small and Medium Sized Enterprises*, India, under the WIPO Development Agenda,

<[https://www.wipo.int/edocs/pubdocs/en/wipo\\_natstudy\\_sme\\_india.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_natstudy_sme_india.pdf)>

<sup>xi</sup> Ibid

<sup>xii</sup> Rahul Bagga, 'How Trademarks can work as Assets for MSMEs' (*The Economic Times*, 2021)

<<https://economictimes.indiatimes.com/small-biz/legal/how-trademarks-can-work-as-assets-for-msmes/articleshow/70509011.cms?from=mdr>> accessed 25 April 2021

<sup>xiii</sup> Amit Aggarwal, 'Intellectual Property – Importance and benefits for Enterprises and SMEs' (*Entrepreneur*, 2021)

<<https://www.entrepreneur.com/article/338815>> accessed 25 April 2021

## IPR REWIND

- April 25, 2021, NUJS Webinar on ‘IPR& SMEs (Special Focus on Agriculture & Food Sector): Strengthening Bonds in Prime Times’.
- April 27, 2021- WIPO-IPOS Webinar: Resolving IP and Technology disputes through WIPO Mediation.
- April 29, 2021- How SMEs can use WIPO Mediation and Arbitration to resolve IP and innovation disputes efficiently?
- April 20, 22, 2021, WIPO - Virtual TTO Summit & Mentoring Conference for Remote Mentoring Round 2020-21 of the Enabling Innovation Environment Project for IP & Technology Support.

# TACKLING CHALLENGES IN REGARD TO PIRACY AND MSMEs

**-Shefali Tasha Fernandes**

## Introduction

While India has been largely an agrarian economy engaged in the primary sector for decades, however, there has also been a branching out of employment increasingly to the secondary and tertiary sectors as of recent years. Today, MSME's are an integral and big part of the economy. MSME's in India deal with products such as food, chemical products, metal products, rubber and plastic products, as well as electrical and machinery parts and so on<sup>i</sup>. Such enterprises however can have issues of being the targets of piracy wherein, they can be overshadowed

by large firms or establishments as a result of their strength and position in the market.

‘Product Piracy’ refers to when there is a duplication of a material that already exists, which is done without taking prior permission or authorization of the owner of the product. This has an especially dangerous impact on MSMEs when there is intellectual property in the same.<sup>ii</sup>

They have the potential of having various types of intellectual property such as that of trademark in the distinguishing logo or mark, industrial design in a

shape or design of a product such as a watch, geographical indications like that of *Kutch embroidery or Chanderi fabric*, copyrights in a pamphlet, brochure or artistic works and patents in a machine or a process<sup>iii</sup>. Furthermore, other essential intellectual property for such MSE's are also trade secrets, and topographies of integrated circuits as well.

If not protected, then an invention or creation can be potentially lost out to a bigger competitor, therefore causing significant damage to its creator who may end up getting no reward for something that he has put in creativity,

skill,  
knowledge,  
time as well as  
monetary

resources<sup>iv</sup>. However, it is to be noted that one such manner in which these enterprises can protect their goods and services from the threat of piracy is by adapting and enforcing intellectual property rights.

### **Steps taken by the Government to protect MSME's against piracy.**

Intellectual Property here can be a key element in paving a road to success for establishments like MSME's and can also be pivotal for boosting competition. One of the main concerns in this regard, has been the lack of awareness about these rights by MSME's carrying businesses in India.<sup>v</sup> Other concerns include the fact that a majority of the

MSME's believe that this would lead to shelling out of a large amount of money.

In the 2005- 2006 Union Budget, the Government announced the Setting up of the National Manufacturing Competitiveness Council (NMCC). The NMCC also set the National Manufacturing Competitiveness Programme (NMCP) in order to increase competitiveness for MSMEs, prepare them to face challenges they may encounter with regard to protecting their ideas and products from piracy.<sup>vi</sup>

Sensing these issues, the Government had in 2019<sup>vii</sup>,

*“In addition to this the Government has also offered financial assistance to persons engaging in setting up MSME's for patents, registration of geographical indications and also trademarks.”*

made a proposal to reduce the fees for patent applications significantly for start-ups as well as

MSMEs. According to this proposal, the fees for filing patent applications would be slashed to a great extent- from Rs. 4000-4400 to Rs. 1600-1750.

In addition to this the Government has also offered financial assistance to persons engaging in setting up MSME's for patents, registration of geographical indications and also trademarks. This assistance also includes allocation of funds for the creation of an IP Facilitation Centre<sup>viii</sup>. Furthermore, the Government has also provided for raising awareness and sensitization on IPR by arranging for various programmes, interactions with international agencies, seminars and studies on the subject, all of which are

monitored by a Project Monitoring and Advisory Committee.<sup>ix</sup>

### Potential solutions for MSME's to combat piracy

It is suggested that the government takes inspiration from the model of Italian Society of Authors and Publishers (SIAE) which has an antipiracy department created with a vision to protect its members' interests by fighting against pirated and counterfeit products, which consists of inspectors who have the power which can be used in factories of those who are involved in such a distribution store, factories etc.<sup>x</sup> This Society also uses a method of stickers which provide authentication to distinguish between what is an original work and a copy, which ensures that consumers are also not duped and

misguided as it helps them to immediately distinguish between what is a counterfeit and what is the original work.<sup>xi</sup> In this manner, the interests of the MSMEs are protected and at the same time, the consumers interests are also safeguarded. Other techniques to prevent piracy are by using technical means such as cryptography and stenography, public-key methods. Additionally judicial and administration methods can also be used in this regard.<sup>xii</sup> It is essential, that intellectual property rights are strengthened and encouraged for all those employed in MSMEs. As it is now an essential part of the economy, protecting its interests is vital. It is necessary to ensure this so as to all keep the best interests of consumers. Therefore, it is paramount that sufficient measures are taken to prevent such piracy in this arena.

<sup>i</sup> Anjan Das, 'Publicly funded IP support service for entrepreneurs' [2020] <[https://www.wipo.int/edocs/mdocs/sme/en/wipo\\_smes\\_rom\\_09/wipo\\_smes\\_rom\\_09\\_g\\_workshop04\\_5-related1.pdf](https://www.wipo.int/edocs/mdocs/sme/en/wipo_smes_rom_09/wipo_smes_rom_09_g_workshop04_5-related1.pdf)> accessed 19 April 2021

<sup>ii</sup> V Ignat, 'Patent and Product Policy' [2016].

<sup>iii</sup> Rahul Bagga, 'Why MSME's should treat Intellectual Property Rights as assets', (*Economic Times*, 13<sup>th</sup> May 2019) <<https://economictimes.indiatimes.com/small-biz/sme-sector/why-msmes-should-treat-intellectual-property-rights-as-assets/articleshow/69304077.cms?from=mdr>> accessed 23 April 2021

<sup>iv</sup> Sati-Salmah Sukarmijan and Olivia De Vega Sapong, 'The Importance of Intellectual Property for SMEs; Challenges and Moving Forward' (2014) 1 UMK Procedia74.

<sup>v</sup> 'Siddharth Mahajan, MSMEs must protect their ideas; investment in IP protection is asset not expense' (*Financial Express*, 23 December 2019) <<https://www.financialexpress.com/industry/msme-other-msmes-must-protect-their-ideas-investment-in-ip-protection-is-asset-not-expense/1801781/>> accessed 19 April 2021

<sup>vi</sup> Supra (n 1).

<sup>vii</sup> Govt proposes to significantly reduce fees for IPRs for MSMEs, (*ET Government*, 16<sup>th</sup> September 2019) (startups <<https://government.economictimes.indiatimes.com/news/governance/govt-proposes-to-significantly-reduce-fees-for-iprs-for-msmes-startups/71152317>> accessed 20 April 2021

<sup>viii</sup> Rishabh Mansur, How the government is building awareness on Intellectual Property Rights for small businesses (*YourStory*, 7<sup>th</sup> October 2019) <<https://yourstory.com/smbstory/small-business-msmes-patents-intellectual-property-rights>> accessed 22 April 2021

<sup>ix</sup> Ministry of Micro, Small & Medium Enterprises, 'MSME Schemes', <[https://msme.gov.in/sites/default/files/MSME\\_Schemes\\_English\\_0.pdf](https://msme.gov.in/sites/default/files/MSME_Schemes_English_0.pdf)> accessed 23 April 2021

<sup>x</sup> Supra (n 1).

<sup>xi</sup> *Ibid*.

<sup>xii</sup> Supra (n 2).

# LEVERAGING THE BENEFITS OF PCT FOR SMES

- *Abhisvara K*

## **Introduction**

To reduce the duplication of the effort for the applicants as well as the National Patent Offices, a proposal was made in 1967 calling for international cooperation in patenting. It resulted in a draft of an international treaty from the United International Bureau for the Protection of Intellectual Property, a forerunner for the World Intellectual Property Organization (WIPO). The draft was revised and the Diplomatic Conference that took place in Washington in 1970 adopted this 'Patent Cooperation Treaty', popularly known as PCT. With 13 contracting countries, PCT came into effect from 1st June 1978. At present, it has 152 member states, of which nearly 80% are developing and least developing countries<sup>i</sup>. The PCT's main objective is to make the process of patenting more efficient, effective and economical. It enables the applicant to have protection over the invention across several countries by filing an 'International Patent Application'. The applicant needs to be a national or resident of a contracting country party to the PCT. It facilitates the filing of a single application with just one patent office to be valid in each of the designated contracting countries, as indicated in the application. Such an application can also be filed with the International Bureau of WIPO in Geneva if the

applicant desires. PCT provides the possibility of assessing the chances to obtain a patent. It also offers a possible range of protection for any patentable claims. PCT is administered by the International Bureau of WIPO.

## **SMEs and PCT**

Many innovative small and medium enterprises (SMEs) show reluctance in getting patent protection for their innovations, because they are either skeptical about the perceived benefits or afraid of the perceived expenditure to obtain the patents.<sup>ii</sup> SMEs should use patent or the patent application as an asset in a benign manner for generating that all-important revenue stream. Moreover, the failure of SMEs to get their intellectual property protected with a patent can make them vulnerable to attack by other patent holders.<sup>iii</sup> The SMEs looking to protect their technologies in international markets have several benefits from PCT. Unlike the patent, which does not give protection beyond the jurisdiction for which they were given, PCT helps in streamlining the process of getting patent rights for the invention in the 152 member nations.<sup>iv</sup> Through the mechanisms like licensing or joint-venture agreements or collaborations for research and development, SMEs

can share the risks and financial burden of venturing into the new markets by teaming up with business partners in the countries with market potential for their inventions.<sup>v</sup> PCT also gives the SMEs sufficient time (up to 30 months) to test the new markets through their partners in other countries. Exploring the commercial value of the invention helps them to postpone their major costs on patenting. A PCT application automatically goes through both search and examination. Hence, it provides some information to SMEs to assess the prospects of actually obtaining granted patents and their potential scope of protection. These major points greatly help the SMEs in forewarning them before the major filing and prosecution costs are incurred. Though the PCT application is called an 'international application', PCT does not provide for the 'international patent' which is left to the specific country in which the patent is sought by the applicant.<sup>vi</sup>

PCT also enables the SMEs to access international search report to get first-hand information on any pre-existing technology related to the invention that these enterprises are hoping to patent. It helps in getting a lot of business intelligence related to the invention along with the patentability of their technology. SMEs can inform WIPO to publish the information related to their willingness for licensing of the

inventions to the parties interested in their technologies. It is a free service provided by WIPO to start-ups and SMEs.

The PCT system helps SMEs to manage risk. For example, if the invention described in the PCT application is later found to be non-patentable, SMEs can take a timely decision to withdraw or abandon their application. It greatly helps them to avoid the national phase filing costs. The "Patentscope" maintains the WIPO's database of 90 million PCT applications as well as national and regional patent documents.<sup>vii</sup> It helps interested companies to take the

***“The SMEs looking to protect their technologies in international markets have several benefits from PCT.”***

license from SMEs prior to patenting itself, resulting in

SMEs sharing the burden of the cost of patenting an invention through a licensing agreement in each country. The PCT system is an important and accessible tool for SMEs to support their innovations, R&D as well as investments. The top four technology fields featuring in the bulk of PCT applications include computer technology, medical technology, electrical apparatus and digital communication.<sup>viii</sup>

As several small and medium enterprises are operating in these four fields, they have a great scope to leverage the benefits of the PCT system. SMEs can leverage PCT as an international patent filing deferral strategy. The PCT allows an applicant to delay filing in any country or region that is a signatory to the PCT for up to 30 months from the earliest filing date i.e.,

the priority date or the PCT international filing date.<sup>ix</sup> As SMEs generally have financial constraints, these companies seek potential licensors to bear the prosecution costs.<sup>x</sup> Also, they look forward to the big companies interested in buying their inventions. The PCT allows a central prosecution before a single patent office and so, is greatly helpful to reduce the number of objections that need to be addressed later before individual patent offices. Hence, the PCT system is highly beneficial to SMEs for lowering prosecution costs. Overall, the PCT is more cost-effective for these small enterprises due to the efficient mechanism of streamlined prosecutions.

The PCT does not examine patent applications completely and also, does not grant patents.<sup>xi</sup> The examination of the claim is done either with or without any interaction between the applicant and the examiner. General practice is ‘examination without the need for interaction’ unless a specific demand is made by the SMEs. International Preliminary Examination (IPE) is done by an IPE Authority when

a request is made by the applicants like SMEs. As per Article 33(1) of PCT, IPE is used to obtain “a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable”.<sup>xii</sup> It allows the SMEs to evaluate the prospects of securing a patent in the countries of interest before incurring any expenses and also, to avoid the trouble of entering the national phase.

## Conclusion

The IPE procedure offers benefit to the SMEs, as several issues would have already been sorted out well before the national phase prosecution. It results in a potentially faster prosecution in these countries, leading to the reduction of overall costs for the SMEs. Though, generally the IPE report is considered as a preliminary and non-binding opinion, generally, the national patent office takes into account its reasoning, thus leading to reduced legal fees associated with an official action for the small enterprises and start-ups.

<sup>i</sup> Adina Badarau, ‘Effective use of the Patent Cooperation Treaty’ (iam-media.com, 3 October 2019). <<https://www.iam-media.com/effective-use-patent-cooperation-treaty-0>> accessed 23 April 2021

<sup>ii</sup> Kevin G. Rivette and David Kline, ‘Reasons for Patent Protection and Cost-effective Patent Filing Options for SMEs’ [2011] Technology Innovation Management Review <<https://timreview.ca/article/505>> accessed 23 April 2021.

<sup>iii</sup> Ibid.

<sup>iv</sup> Supra (n 1).

<sup>v</sup> Supra (n 2)

<sup>vi</sup> ‘Patent Cooperation Treaty’ (NAARM) <<https://naarm.org.in/VirtualLearning/vlc/iprptct.htm>> accessed 23 April 2021.

<sup>vii</sup> WIPO, ‘Report of the Director General to the 2020 WIPO Assemblies’ (World Intellectual Property Organization) <[https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1050\\_2020.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1050_2020.pdf)> accessed 23 April 2021.

<sup>viii</sup> ‘PCT Yearly Review 2019: The International Patent System’ (Geneva: WIPO, 2019). <[https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_901\\_2019.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_901_2019.pdf)> accessed 23 April 2021.

<sup>ix</sup> Supra (n 2).

<sup>x</sup> Ibid.

<sup>xi</sup> ‘Chapter 10: International Preliminary Examination under Chapter II of the PCT’ (World Intellectual Property Organization) <<https://www.wipo.int/pct/en/guide/ip10.html>> accessed 23 April 2021.

<sup>xii</sup> Ibid.

## Watch Out For These Events!

### **July 1st – July 30th, 2021: Certificate Course on Trademarks co certified by NIPO**

This course is mainly designed for law students interested in IP laws, practicing lawyers looking to start or get into the practice of Trademarks and legal academicians.

Distinguished faculty members such as Mr. Akshay Ajaykumar an associate at ALG India Law Offices, Mrs. Amit Jyoti, assistant professor at JGLS etc. will be mentoring the students. The last date to register for this course is 10th May, 2021.

### **May 24th – June 11th and June 14th – July 2nd, 2021: UNH Franklin Pierce's IP Summer Institute**

Franklin Pierce Centre for IP of the University of New Hampshire (UNH) School of Law is offering an Intellectual Property Summer Institute (IPSI) this summer in two sessions. The program is open to legal professionals, recent law school graduates, and foreign law students entering the 4th or 5th year of their LL.B., current UNH Franklin Pierce School of Law graduate students, and the law school's alumni.

### **May 24th – May 25th, 2021 - International Conference on Intellectual Property Law and Regulations.**

The International Research Conference is a federated organization dedicated to bringing together a significant number of diverse scholarly events for presentation within the conference program. High quality research contributions in all areas of Intellectual Property Law and Regulations are cordially invited for presentation at the conference.

### **May 14th, 2021 – Conference: The European Policy for Intellectual Property Association**

The European Policy for Intellectual Property Association EPIP announces its 16th Annual Conference in Madrid, Spain, from 8 to 10 September 2021, hosted by the Institute of Public Goods and Policies at the Spanish National Research Council (CSIC-IPP).

# PROTECTING INNOVATION THROUGH PATENTS

*-Lian Cicily Joseph*

## **Introduction**

Intellectual property plays an essential role in preserving and fostering innovation specifically when it relates to smaller enterprises or start-ups. This year, the theme of World IP day is ‘IP & SMEs: Taking your ideas to the market.’<sup>i</sup> The WIPO’s website also has a list of resources that are aimed at making it easier for small businesses to navigate and understand the ways that intellectual property assists in strengthening their businesses. One of the most significant aspects of this theme is its focus on education and awareness generation. It has been argued that any policy can be made truly effective only if the program reaches the targeted audience and incidentally if they are made aware of the same. For micro, small and medium enterprises the protection of intellectual property and more specifically patents play a much more significant role. Not only do they act as an incentive and essential asset, they are also important from a strategic point of view.<sup>ii</sup> Patents play a very significant role in this regard and amendments have been made to keep up with changes in trends ultimately to benefit businesses.<sup>iii</sup>

## **Evaluating existing policy measures**

Several benefits have been announced in lieu of the recognition of the importance of providing adequate

safeguards. The Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as Act) classifies MSMEs based on the investment in plant and machinery (in case of enterprises engaged in manufacturing/production of goods) and equipment (in relation to those providing services).<sup>iv</sup> MSME registration is not compulsory but in order to avail these services, registration is needed. The awareness among MSMEs while not entirely missing is low when patents are considered. Some of the reasons identified for the same include inadequate knowledge about patents, costs involved in generation, protection and maintenance, etc.<sup>v</sup> The government has launched a series of plans and schemes aimed at incentivising enterprises.

Some of these schemes<sup>vi</sup> include programmes that include providing funding for conducting awareness, sensitization programmes with government assistance of Rs. 1 lakh, conducting pilot studies with government assistance by select groups/ clusters of industries up to Rs. 6 lakhs, funding support in the form of grant of Patent/Geographical Indications applications, etc. A further important advantage of registration of MSMEs include subsidy on patent registrations, 100% tax exemptions for innovation start-ups, loans on collaterals, discounted fee for

patent filing, and reimbursement in some cases related to patents.<sup>vii</sup>

Another important scheme includes one called the Start-up Intellectual Property Protection (SIPP). Under this scheme the government will bear the entire fees of any number of patents, trademarks, etc that a start-up may file with the startup only paying that state registration cost. Another significant scheme is the Support International Patent Protection in Electronics and IT (SIPEIT) where expenses incurred in international patent protection will be reimbursed not exceeding 15 lakh or 50% of the total expense, whichever is less.<sup>viii</sup>

### Where does India stand?

In WIPO's World Intellectual Property Indications, 2020 certain interesting observations were made. India retained her position in the top 10 ranking patent offices coming in 7<sup>th</sup> place. This was a fourth year of successive growth and moved the country up to the seventh place. India granted 69.5% more patents in 2019 than it previously did. However, India had a significant proportion of withdrawn or abandoned applications and also ranked with China and the US in terms of the ratio of patents granted to the number of applications recessed, coming in at 43%. India incidentally also witnessed a significant

increase in terms of the number of applications filed in 2019. This growth reportedly occurred due to an increase in resident applications.<sup>ix</sup>

These numbers show the impact that incentives and other schemes have in terms of supporting or fostering a positive environment. Recently India ranked 40<sup>th</sup> on the Intellectual Property index with the report noting that India had made significant improvements. However, in the arena of patents, the report said that the policy framework continued to deny patent eligibility to a broad range of innovations which

hamper the further growth of the sector.<sup>x</sup> As mentioned innovative products and inventions are central to an effective intellectual property and more specifically patent policy.<sup>xi</sup> India has made several changes targeted at keeping up with international standards, for instance, India adopted the Patent Prosecution Highway programmes in 2019 to speed up patent examinations, etc.<sup>xii</sup>

Several MSMEs rely on patents to attract investors or research partners and to gain a significant competitive advantage. It is also believed that consequently MSMEs sometimes fail to maximize their potential returns on their investments by failing to recognise the value of their intellectual property with their value not being fully appreciated.

The most significant issue therefore is for MSMEs to recognise this value and to convert their knowledge into business value.<sup>xiii</sup> In a study conducted many were unaware of the potential of their IP and its application to their inventions. Most enterprises were unaware of existing policies and found it difficult to classify their own products/inventions. Some also faced issues with regards to implementation and enforcement of their rights due to a host of issues including structural issues. Intellectual property valuation was also impacted by the fact that many rely on trade secrets and do not want to disclose the process followed in terms of valuation.<sup>xiv</sup>

## Conclusion

MSMEs form a major portion of the economy and there is a positive relationship between economic

growth and increased intellectual property protection. While enterprises are aware of the benefits and purposes served by the registration of their patents, more emphasis has to be laid on ensuring that such practices are promoted and made simpler. Schemes and policies would have significant impact incidentally on the number of registrations and as identified, this process needs to be simplified even more and made even more accessible. India's past growth is significant and important but the same must not be undermined subsequently through poor policy decisions. The effects of the pandemic will undeniably alter/ affect some of the growth observed however, it must be emphasized that patents are exceptionally lucrative for MSMEs and that the existing schemes and policies must be adequately explored by them.

<sup>i</sup> 'World Intellectual Property Day – April 26, 2021' (*Wipo.int*, 2021), <<https://www.wipo.int/ip-outreach/en/ipday/>> accessed 26 April 2021

<sup>ii</sup> Sumanjeet Singh, 'The State of IP Protection, Exploitation and Valuation: Evidence from Select Indian Micro, Small and Medium Enterprises (MSMEs)' (2018) 4 *Journal of Entrepreneurship and Innovation in Emerging Economies* 159.

<sup>iii</sup> Sreenivasa Rao, 'Micro, Small and Medium Enterprises (MSMEs) and Intellectual Property Rights (IPRs)', (2020) 7(2) *Int. J. Adv. Res.* 147.

<sup>iv</sup> Lucy Rana, Saroj Kumari, 'Patent Discounted Cost For Msmes And Start-Ups India - Intellectual Property - India', (*Mondaq.com*, 22 April 2021) <<https://www.mondaq.com/india/patent/1060308/patent-discounted-cost-for-msmes-and-start-ups-india?type=related%27>> accessed 26 April 2021.

<sup>v</sup> R. Saha, *National Study on Intellectual Property and Small and Medium Sized Enterprises*, India, under the WIPO Development Agenda, <[https://www.wipo.int/edocs/pubdocs/en/wipo\\_natstudy\\_sme\\_india.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_natstudy_sme_india.pdf)>

<sup>vi</sup> 'Guidelines On Implementation Of The Scheme Building Awareness On Intellectual Property Rights For Micro, Small

And Medium Enterprises' (*M sme.gov.in*, 2014) <[https://msme.gov.in/sites/default/files/Revised%20IPR%20Guidelines\\_5.pdf](https://msme.gov.in/sites/default/files/Revised%20IPR%20Guidelines_5.pdf)> accessed 26 April 2021

<sup>vii</sup> *Ibid.*

<sup>viii</sup> *Supra* (n 3).

<sup>ix</sup> 'World Intellectual Property Indicators 2020', (*Wipo.int*, 2020) <[https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_941\\_2020.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2020.pdf)> accessed 26 April 2021.

<sup>x</sup> Press Trust of India, 'India Ranks 40Th On International Intellectual Property Index', (*Business-standard.com*, 24 March 2021) <[https://www.business-standard.com/article/current-affairs/india-ranks-40th-on-international-intellectual-property-index-121032301401\\_1.html](https://www.business-standard.com/article/current-affairs/india-ranks-40th-on-international-intellectual-property-index-121032301401_1.html)> accessed 26 April 2021.

<sup>xi</sup> Karri Shankar Rao and Abdol Rahman Noorinasab, 'IPR Awareness Among MSME's in India', (2013) 15(2) *IOSR Journal of Business and Management* 13

<sup>xii</sup> Global Innovation Policy Centre, 'Art Of The Possible, US Chamber Intellectual IP Index', (*theglobalipcentre.com*, 2020) <[https://www.theglobalipcenter.com/wp-content/uploads/2020/02/GIPC\\_IP\\_Index\\_2020\\_FullReport.pdf](https://www.theglobalipcenter.com/wp-content/uploads/2020/02/GIPC_IP_Index_2020_FullReport.pdf)> accessed 26 April 2021

<sup>xiii</sup> *Supra* (n 2).

<sup>xiv</sup> *Supra* (n 2).

# THE ROLE OF INDUSTRIAL DESIGN PROTECTION IN THE SUCCESS AND GROWTH OF MSMEs IN INDIA

-Melita Tessy

## Introduction:

India is one of the fastest growing economies in the world.<sup>i</sup> Micro, Small and Medium Enterprises (MSMEs) are expected to play a significant role in this growth.<sup>ii</sup> These enterprises which provide job opportunities and facilitate rural development must be legally incentivized and nurtured to promote their success. One of the most important aspects of the said incentivization falls under the domain of Intellectual Property (IP) law. IP law provides for the legal recognition and protection of inventions, brands, literary works and external appearance among other things. In this article, the author explores the protection offered under Indian law to the external appearance of an article. This protection, known as Industrial Design (ID), is provided for under the Designs Act, 2000<sup>iii</sup> and the corresponding rules<sup>iv</sup> under the said Act. The essential role played by ID in the context of MSMEs is analyzed in this article.

## Industrial Design in India:

The role of ID experts is to seamlessly integrate the form and function of a product. Their work is not merely restricted to making products aesthetically appealing. Rather, good design enables the user to handle the product with ease while making it easy to store and maintain. In India, ID protection is provided in the cases of both 2D and 3D articles which are functional in nature. To be functional, these articles must have some use or application in addition to their creative exterior. If they are not functional, they can only be registered as copyrights and not IDs. If the article is novel and functional, but lacking in terms of innovative external appearance, then, it can only be registered as a patent.

That being said, an article can be given both patent and ID protection if the requisite criteria is met.

The external appearance of the said articles must be either novel, ornamental or aesthetical. The shape, colour or pattern of the article are some of the factors that are taken into consideration. If one wishes to register an ID, he/she must file an application for

registration with the Office of Designs before the design hits the market. This means that the design must not be publicly disclosed or published before registration. If the registration is successful, the concerned article will have ID protection for a period of 10 years. Upon the expiry of the said period, the protection can be renewed once every 5 years by paying a fee.

### **The Importance and Benefits of IDs for MSMEs**

Registration of IDs have numerous benefits for MSMEs. They are as follows:

- a. **Creation of Better Products:** Consumer products with an external design which makes them easier to use, store and maintain are better equipped to serve the interests and needs of the consumer. IDs incentivizes MSMEs to create such products. Moreover, MSMEs also play a complementary role to big players in the industrial sector. The products that MSMEs manufacture have the potential to have a positive impact on the industrial processes carried on by the big players. In the context of IDs, this positive impact would be attributable to the reduction of inefficiencies that may arise due to design deficiencies. More efficient industrial processes will in turn, benefit the economy.
- b. **Increase in Competition:** The creation of better designed products will increase competition not only locally, but also

globally. A competitive market will result in the production of better products. This will benefit both consumers and industry.

- c. **Unique Design as a Marketing and Advertising Tool:** It is well-known that products with an iconic outward appearance draw more attention than products with a dull or common exterior. MSMEs can take advantage of this by making products that are visually pleasing and intriguing. This will translate into more customers for their product. Furthermore, if a product's design is unique, it will be easily distinguishable from other similar products. This will make it easier to indirectly advertise a product by simply having a consumer use the said product in the presence of other potential consumers.
- d. **Legal Recognition and Damages:** The making of a well-designed product requires an immense amount of skill and time. The design of such a product is worth protecting from appropriation. If a competitor copies the design of a product, the initial product will lose its distinctiveness. This will negatively impact the marketing efforts and reputation of the MSME which put in the requisite amount of effort, research and resources into the making of the product. For example, competitors may produce a sub-standard product with the same design. This will also

negatively affect both the individual and industrial consumers of the said product. Inadvertently, fair competition would diminish and there will be no incentive to make better products. To avoid these undesirable circumstances, it is essential not only to legally recognize IDs, but also to promote registrations of the same. A MSME with a registered ID can pursue legal action if the said ID is infringed.

## Conclusion

Due to the liberalisation and globalisation of the Indian business sector, MSMEs face both unparalleled opportunities and unprecedented

challenges. To increase the chances of favourable outcomes, it is upto the Government of India to guide MSMEs through this wide range of possibilities. IDs, for the reasons explained in this article, certainly have the capacity to optimize the performance of MSMEs. The World Intellectual Property Organization has advocated for a national IP law programme for MSMEs in India.<sup>v</sup> It recommends the organization of interactive workshops and seminars on IDs. It also proposes that specialized training programmes on IDs among other IP related concepts, be conducted for entrepreneurs and other stakeholders. If these recommendations are followed, the MSME sector will get a step closer to realizing their ID dreams. Over time, this would have transformative potential and benefit the nation and its people.

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<sup>i</sup> Prathamesh Mulye, 'India is on the path to reclaim its title as the world's fastest-growing major economy', (*Quartz India*, 19 January 2021) <<https://qz.com/india/1959086/india-to-beat-china-become-fastest-growing-major-economy-in-2021>>

accessed 21 April 2021.

<sup>ii</sup> KPMG and CII, 'The new wave Indian MSME - an action agenda for growth' (KPMG 2015).

<sup>iii</sup> Design Act ,2000.

<sup>iv</sup> Design Rules, 2001.

<sup>v</sup> Ministry of MSME, 'Building Awareness on Intellectual Property Rights (IPR) for the Micro, Small & Medium Enterprises (MSME) in India', (WIPO) <[https://www.wipo.int/edocs/mdocs/sme/en/wipo\\_smes\\_co\\_11/wipo\\_smes\\_co\\_11\\_ref\\_theme\\_16\\_02.pdf](https://www.wipo.int/edocs/mdocs/sme/en/wipo_smes_co_11/wipo_smes_co_11_ref_theme_16_02.pdf)> accessed 22 April 2021

# MANAGING COPYRIGHT IN SMALL AND MEDIUM ENTERPRISE

## Introduction

MSMEs (Micro, Small, and Medium Enterprises) are the cornerstone of our country's socio-economic growth. It also adds greatly to India's GDP, accounting for 45 percent of overall manufacturing output and 40 percent of total exports. The manufacturing sector of the MSME accounts for 7.09 percent of GDP.<sup>i</sup> Intellectual property (IP) is a very important aspect of economic growth and growth of the

enterprise itself.

Intellectual

property gives recognition to these enterprises and protects their business ideas. Copyright is mostly used for those who create imaginative works such as music, novels, photos, sculptures, and films.<sup>ii</sup> Many involved in the creation and delivery of goods and services often undervalue Copyright as an IP asset, and MSMEs, in particular, seriously underestimate Copyright as a valuable IP asset. Copyright laws cover any original literature<sup>iii</sup> created by an MSME, including regulatory and marketing literature such as brochures, pamphlets, box inserts, product manuals, and so on.

## The Need to manage Copyright in SME

**-Sahana R**

MSMEs who are into the creative industries such as computer programs, books, music, films, original databases, advertisements, content on websites, video games, sound recordings, radio etc may need protection of their intellectual property so that their creative efforts are not copied or exploited commercially by others without the prior permission of the right holder. Other businesses will be able to benefit from the MSME's work in implementing this

***“The copyright can help the MSMEs to generate income in various other ways such as character merchandising, licensing of the copyrighted material etc.”***

new concept. This would help the MSME maintain its competitive

advantage<sup>iv</sup>. Paper weight Entertainment is a micro enterprise that creates original video content for social media and other platforms.<sup>v</sup> Therefore, in order to stop other companies and firms from copying the online content and any form of piracy, a copyright would help Paper weight to protect their content.

Furthermore, the owner of copyright or similar rights in a work, may use it, sell it, give it up, or inherit it. Copyright and similar rights can be commercialised in a variety of ways. The copyright can help the MSMEs to generate income in various other ways such as character merchandising, licensing of the copyrighted material etc. When a company succeeds in developing an original product over which it holds the intellectual property rights, commercial success is

usual. A variety of factors influence a company's ability to harness the appeal of a new innovation.<sup>vi</sup> One of the first decisions a small business must make is whether to package an invention into a product it offers or to license the innovation's use to someone else. For example, Ramnarayan Blue Art Potteries, from Rajasthan is a Micro enterprise that specialises in blue pottery and making aesthetic pots with beautiful sculptures and pictures.<sup>vii</sup> The need to protect such pieces of art is very important and at the same time to generate more income, the enterprise may choose to commercialize the copyright by other methods such as merchandising. At the same time, the micro enterprise can give the license to manufacture goods using these pictures and sculptures.

MSMEs who hold copyright and associated assets are able to raise money from a bank by using the rights as collateral and allowing buyers and lenders to take a "trust interest" in them.<sup>viii</sup> Copyright is an intangible asset and can be used to raise money for the MSMEs.

## Conclusion

<sup>i</sup> 'About SMEs in India' ([smechamberofindia.com](https://www.smechamberofindia.com)) <<https://www.smechamberofindia.com/about-msme-in-india.php>> accessed 20 April 2021

<sup>ii</sup> Copyright Act 1957, s 14.

<sup>iii</sup> Copyright Act 1957, s 13.

<sup>iv</sup> Department of Trade and Industry South Africa, 'Creative expressions', 4(4) Intellectual Property for Business Series (*WIPO*) <[https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/creative\\_expression\\_sa.pdf](https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/creative_expression_sa.pdf)> accessed 20 April 2021

According to estimates, India has over 13 million MSMEs that employ 42 million people.<sup>ix</sup> As a result, it is much more important for these businesses to create and invest in their own intellectual property so that it can be strategically used to the good of all parties involved. In order to help the MSMEs to invest more in copyright and other IP assets, awareness programmes are to be made to educate MSMEs on the importance of copyright. Furthermore, The Ministry of Micro, small and Medium enterprises has started a scheme to build awareness of Intellectual property to various MSMEs across the country.<sup>x</sup> However, an advisory cell on Intellectual property such as copyright, to advise the MSMEs on copyright and provide any assistance required to acquire the copyright is suggested. The Ministry of MSME can also encourage MSMEs to file for copyright protection and acquire the same by providing subsidies. As MSMEs are a significant section of our economy and a significant part of the innovation in the country, there is a need to manage IP, mainly copyright in MSMEs that specialize in literary works such as sculptures, paintings, music, books, films etc.

<sup>v</sup> Mansur R, 'Brands of India 2019: 41 MSMEs in 17 Sectors Awarded for Exemplary Work' (*YourStory*, 1 March 2019) <<https://yourstory.com/smbstory/msme-brands-of-india-awards-giriraj-singh>> accessed 21 April 2021.

<sup>vi</sup> Kris Erickson and Bartolomeo Meletti, 'Copyright for Enterprises', (*CopyrightUser*, 5 February 2018) <<https://www.copyrightuser.org/create/public-domain/sme/>> accessed 21 April 2021

<sup>vii</sup> *Supre* (n 5)

<sup>viii</sup> *Supra* (n 4).

<sup>ix</sup> Neeraj Parnami , ‘Commercialization of Intellectual Property (IP) for Small and Medium Enterprisers (SMEs) in India’, (*Munich Personal RePEc Archive*,10 February 2008) <[https://mpa.ub.uni-muenchen.de/8232/1/MPRA\\_paper\\_8232.pdf](https://mpa.ub.uni-muenchen.de/8232/1/MPRA_paper_8232.pdf)> accessed 23 April 2021

<sup>x</sup> Ministry of MSME, ‘Building Awareness on Intellectual Property Rights (IPR)’ <<https://msme.gov.in/node/1765#B3>> accessed 22 April 2021

## CASE INGOTS

### **Rakesh Malhotra v. Government of National Capital Territory of India and Ors. [W.P.(C) 3031/2020]**

In deciding this writ petition, the Delhi High Court has issued a directive to the Government to immediately reach out to the manufacturers, patent holders and licensees for ramping up the production of drugs and other medications required for the treatment and management of COVID patients. The Court also made an observation of the compulsory licensing provisions in the Patents Act i.e. Section 84 and Section 92. It also made a reference to Section 100 which empowers the Central Government to use inventions for the purposes of the Government.

### **Gaurav Polymers v. Delight Chemicals (P) Ltd. [C.M.A. No. 209 of 2019]**

The Andhra Pradesh High Court decided in favour of Gaurav Polymers, which is a manufacturer of white lime wash, with respect to the usage of the mark ‘Surya’. The suit was against Delight Chemicals for their usage of deceptively similar mark ‘Surya Magica White’. The Court observed that the manner in which the mark ‘Surya’ had been used along with a rising sun in the logo made the mark distinctive and eligible for trademark protection, even though the term ‘Surya’ is a generic term. Injunction was granted against Delight Chemicals.

# SMES' GUIDE TO INTELLECTUAL PROPERTY FOR PROMOTING INTERNATIONAL TRADE OPPORTUNITIES

-Sanjana Rebecca

## Why is it necessary for SMEs to shift their focus onto Intellectual Property?

One of the biggest issues for SMEs when entering the global market is maintaining exclusivity and preventing imitators from overstepping their markets.

Firstly, SMEs do not possess the resources to be tangled in litigation costs and it is important for upcoming new players to ensure that they are not infringing upon the intellectual property rights of others. Raising awareness on intellectual property rights for SMEs that wish to permeate the

international sphere will aid them in accessing new

*“Harmonizing TRIPS and bringing IP rights under common international rules would establish minimum levels of protection and would enable SMEs to function in the international market with low cost”*

opportunities through licensing, franchising, joint ventures etc. For instance, showcasing a product that is proprietary increases chances for investment and serves as an attractive proposition especially during negotiations with distributors, importers or other partners. Understanding the influence of IP in terms of pricing the product and marketing the product is very essential for growing SMEs. The ways in which SMEs participate in international trade is by franchises with multinational, often manufacturing firms. The franchisers provide a trade mark and IP

know-how but for SMEs with limited funds, it is always better to educate themselves. SMEs may also engage in international trade by using foreign Internet platforms to connect with local customers to whom they deliver the service offline<sup>i</sup>. Intellectual property is specifically important for SMEs that manage their service through international outsourcing. The direct route entails SMEs selling and delivering over the Internet. International outsourcing is a practice when an enterprise makes an arm's length alliance with one or more entities or enterprises abroad to perform

carefully selected operations and day-to-day processes that

might have been previously done in-house. Undoubtedly, this requires the sharing of a wide array of proprietary knowledge involving different IP rights on each level. Each type of IP asset is generally governed by its own distinct national law, which varies from one country to another. The entity to whom outsourcing has been done should ensure against theft or misappropriation of the SMEs trade secrets.<sup>ii</sup> It is also essential for SMEs to focus on the enforcement of IP rights through means other than litigation, let us look at some ways in which SMEs

can protect their IP rights and sustain their exclusivity.

### **How do SMEs design a strong International IP strategy?**

For promoting their business internationally, it is pertinent for SMEs to follow through with identification of their interests and strategies. Starting off, SMEs should ensure that the application and registration deadline to maintain the novelty of their innovations are followed. Additionally, they should look into markets that they are looking to commercialize globally and discover whether those countries follow a first file/first invent system. It would also be beneficial for SMEs to conduct a study on how difficult it would be to enforce IPR in a given country and make note of the territorial nature of IP rights in different jurisdictions. Further, also considering the economic aspects in the decision making would prove to be fruitful in the long run. Analyzing costs of protection of IP in each market would enable SMEs to strategize their budget allocation in a more efficient manner. The three most

important intellectual property rights for SME exporting companies are: patents, trademarks and trade secrets. Any SME wishing to export its products must register a trademark, otherwise, its prestige in the market could be seized by another company profiting from the same name. Patenting its innovations and protecting its trade secrets is an absolute must for SMEs exporting to other countries.<sup>iii</sup>

### **Conclusion**

It is critical for SMEs to be acquainted with the intellectual property system to avoid getting involved in activities that border on the illegal. Policies that directly target SMEs and their entry to foreign markets, on the other hand, should be limited to providing information about foreign markets and their intellectual property compliances and procedures. With the harmonisation of TRIPS and bringing IP rights under common international rules would establish minimum levels of protection and would enable SMEs to function in the international market with low cost and minimise barriers of entry into different IP regimes.

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<sup>i</sup> Hildegunn Kyvik Nordås, 'Services SMEs in International Trade: Opportunities and Constraints', (*World Economic Forum*, May 2015) <<https://ictsd.iisd.org/sites/default/files/research/E15-Services-Nordas%20FINAL.pdf>> accessed 22 April 2021.

<sup>ii</sup>Larysa A. Kushner, 'WIPO Training of Trainers Program on Intellectual Property Larysa A. Kushner and Small and Medium Sized Enterprises' (*WIPO*, 22 November 2010)

<[https://www.wipo.int/edocs/mdocs/sme/en/wipo\\_smes\\_waw\\_10/wipo\\_smes\\_waw\\_10\\_ref\\_theme\\_11\\_01.pdf](https://www.wipo.int/edocs/mdocs/sme/en/wipo_smes_waw_10/wipo_smes_waw_10_ref_theme_11_01.pdf)> accessed 22 April 2021.

<sup>iii</sup> 'What should SMEs know about intellectual property?' (*Connect Americas*, November 2017) <<https://connectamericas.com/content/what-should-smes-know-about-intellectual-property>> accessed 22 April 2021.

# GOOGLE V. ORACLE: LESSONS FOR SMES

-*Sravanti PL*

## **Introduction**

The theme for World IP Day, 2021 focuses on SMEs and IP where it seeks and encourages entrepreneurs to bring their ideas to the market. The market dynamics are entirely different in the IT industry, particularly in the development of programmes and codes. If you have a small IT business in the United States, *Google v. Oracle*<sup>i</sup> is a case that can be helpful to minimize your costs associated with programming and minimizing error margin.

In the aforementioned case, the main issue was related to copyright law for computer codes and fair use. The code was owned by Oracle, who had initiated the law suit, through its wholly-owned subsidiary whereby Google admitted that it used the code but argued that it was fair use. The decision was pronounced in April 2021 with a 6-2 majority.

## **Judicial Proceedings in Google v. Oracle**

In the District Court, Oracle argued that Google was aware of the Copyright vested with Oracle, and when they developed Android with the Java code without a license, it was infringing Oracle's Copyright. The jury held that there had been a violation of the

Copyright but, however, also noted that Google was operating under the belief that a license need not be obtained owing to the conduct of Oracle. But this belief was not relied upon when it was developing Android.

This led to the first appellate ruling that the API by Oracle was capable of being protected as it constituted original works as the work was creative, original and represented taxonomy and demanded a second trial.

In the second phase before the district court, the jury found that there has been no infringement by Google, resulting in an appeal by Oracle. In 2018, the Court of Appeal held in favour of Oracle, that the actions of Google do not fall within the requirements of fair use but are untransformed reuse. Since the purpose was commercial, it does not justify fair use.

*“While this judgement has limited applicability to Indian SMEs, it provides great insights to small IT businesses in the US.”*

A writ was filed by Google before the Supreme Court of United States in 2019, resulting in an amicus brief to be submitted by the Solicitor General to brief the Government's stance. The amicus brief favoured Java, whereas those filed by entities such as

Microsoft favoured Google. In its decision, the Supreme Court weighed the nature of the copyrighted work, purpose and use of work, substantiality of copyrighted work, and the market impact of the work. The court held that Google's use of the code satisfied this and amounted to fair use as it only used what was needed to allow its users to add in their talents to transform into unique work. Justice Breyer noted that allowing Oracle to enforce its Copyright would harm the general public.

However, the dissent opinion noted that this decision would raise policy issues in the future as it was difficult to predict in what circumstances the code would remain protected by copyright law. It also stated that the use by Google was anything but fair. The judgement does not discuss whether the API can be protected under copyright law as the majority opinion notes that traditional copyright concepts cannot apply to developments in technology.

### **What can SMEs learn from this judgement?**

Small businesses have to balance between exploration of new and innovative ideas versus employing the ideas of others.<sup>ii</sup> Creative small

businesses such as Frontier Developments have used the IP owned by Disney for the creation of games. With increasing SMEs in the IP sector, the decision gives new dimensions to practices of using and improving the computer code of another. This judgement is a clear winner as it reinforces the primary objective of the US copyright law- to foster innovation. You can use their code but must use it to provide new services programmes. Lastly, the substantiality and portion used are also taken into account. In the case of Google, less than 1% of the JAVA's codes were utilised, thereby favouring fair use.

### **Conclusion**

While this judgement has limited applicability to Indian SMEs, it provides great insights to small IT businesses in the US. Therefore, if you want to create software such as Android, you would not be violating any provisions of law for writing a basic set of functions of the APIs, which enables the communication between programs! In other words, you will be contributing towards innovation and development!

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<sup>i</sup> Google LLC v. Oracle America, Inc., 593 U.S. (2021).

<sup>ii</sup> Timothy J. Dowd, 'Concentration and diversity revisited: Production logics and the US mainstream recording market, 1940–1990' (2004) 82(4) *Social Forces* 1411

## VERITABLE VERSES

### IP-SME BUZZ

*-Meher Mansi*

There is a lot of bustle  
Around IP and SME ensemble  
A weird combination  
Of development and protection  
But it has become the talk of the nation  
How? You ask  
It's all in the IP regime basket.

Don't take it for a flaw or a scar  
It makes the business a star  
Dubbed to be the weapon of mighty business  
And too expensive  
But it is comprehensive.  
IP provides a venue  
To earn huge revenue  
IP gives world-wide reputation  
So have a reservation  
For the most valuable asset  
Which enunciates every facet.

Be it trademark, copyright or patent  
To realise the true future potent  
It saves the strive  
And makes the business thrive  
For what it is worth  
You can run the business race from birth.  
Be it logo, slogan or prototype or invention  
To attract investor attention  
Identification is the key  
To foresee.  
It gives you exclusivity  
Over any of your creativity  
And shuns the anonymity  
So embrace it and make it your companion  
The forms of IP will give you a battalion  
To win the race  
And let the SMEs have their grace  
So follow the buzz  
And don't think about 'twas.

# ENHANCEMENT OF PHARMA START-UPS IN IP

- Pawan SS

## Introduction

Pharma Startups have played a vital role in the pharmaceutical industry in enhancing and innovating new drugs that can benefit citizens. To support pharmaceutical companies in having patents on products and supporting innovation and enhancing research and development, many countries worldwide had signed the General Agreement on Tariffs and Trade (GATT) and Trade-related Aspects of Intellectual Property (TRIPS Agreement) to implement IPR in all technology fields, including product patents on Pharmaceutical products.<sup>i</sup> The need for a patent regime in respect of pharmaceutical products is mainly to safeguard their innovations, exploitation, and duplicity by fellow competitors. This would play a significant role in the research and development marketing of drugs in patent rights and the ability to sell the drugs at marginal prices.

## The Problems faced by Pharma Startups under Patent Regime

The development of a new drug by pharma startups takes up much time in research and development. In the later stage, these samples of drugs should be sent for clinical trials or pre-clinical stages for the

approval of drugs before consuming these drugs used in medicines for the general public's consumption. But the problem lies in when the small pharma startups face considerable difficulty balancing their budgets for<sup>ii</sup> allocating funds for generating patent portfolios, unlike the larger pharmaceutical companies like MNCs who can afford to spend mainly for their patent rights on the discovery of the new drugs. It is crucial that pharma startups be supported for setting up patent rights. There is a need for providing encouragement for new drug development processes.

## Recommendations

### *Opening the doors for Contract based researches with MNC and acquisition.*

To support the pharma startups, we must provide assistance to their research and innovation efforts by having vital contract-based research with MNCs, through a joint system of research and innovation. It will help to improve the clinical trials and perform and other tasks to help them bring a drug to the market. Due to contract-based research with MNC, small pharma companies would not face many financial losses even if their clinical trials fail. The rigid licensing process of manufacturing can be

taken care of by such collaboration. Thereby, motivating them to collaborate and share the ideas and focus for discovering and innovating new drugs that can benefit citizens of a nation.

***Government should start providing support to these Pharma startups by investing in their creative process of innovation.***

It is indeed that the government should start supporting these pharma startups to grow and evolve because it contributes a lot to the development and progress of health infrastructure in our country. Governments should provide incentives and reduce tax deductions in the initial stages of clinical research to make sure that they do not get into any losses, which may lead to the closure of the firms. Government should also set up expert committees to

assist these newly set up startup pharma firms by helping these firms.

## **Conclusion**

Pharma startups have played a critical role in the pharmaceutical industry in terms of improving and innovating innovative medicines that will help consumers of a nation. A country's true advancement and growth occur when it makes significant strides in the invention and exploration of various development fields. As such, we must address the problems of these startups and join our hands together to help these industries grow. There would thus, be true development in a nation which supports the growth of innovation and creativity in pharma start-ups.

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<sup>i</sup> 'Importance of establishing a patent regime in pharmaceutical industry', (*ET Healthworld.com*, 09 January 2020)  
<<https://health.economictimes.indiatimes.com/news/pharma/importance-of-establishing-a-patent-regime-in-pharmaceutical-industry/73084962>> accessed 23 April 2021.

<sup>ii</sup> Jian Siang Poh, Angus Fairbiarn, 'Patent filing strategies for pharma startups', (LSIPR, 16 March 2021)  
<<https://www.lifesciencesipreview.com/article/patent-filing-strategies-for-pharma-startups>> accessed 23 April 2021.

## CASE INGOTS

### **Cutis Biotech v. Serum Institute of India Pvt. Ltd., [Appeal from Order No. 53 of 2021]**

Cutis Biotech had instituted a suit for an interim injunction against Serum Institute from using the name Covishield for its Covid-19 vaccine. The allegation made was that Serum Institute was passing off its goods of similar nature under the trademark of 'Covishield'. While the Bombay High Court dismissed the petition, several important observations regarding goodwill, difference in products and their visual appearance, and lack of evidence of confusion being created in the minds of consumers.

### **Britannia Industries Ltd. v. ITC Ltd. and Ors. I.A 12115/2020 in CS (Comm) 553/2020**

Britannia Industries Ltd. filed this suit against ITC Limited for alleged trademark infringement and passing off. The plaintiff sought an interim injunction preventing the sale and manufacture of the defendant's allegedly infringing product. The Court dismissed the petition stating that the packaging was unlikely to result in deception or confusion in the minds of consumers. The Court observed that if the dissimilarities between the packaging outweigh the similarities, it will not amount to deception.

