

A Study on Intellectual Property Rights (IPR) For Micro, Small and Medium Enterprises in India

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Abstract -- Intellectual property is a rising out of one's idea, thoughts and intellectual influence. Today, the government and law makers, identifying its power and wide operation, gave it legal protection in terms of patents, trademarks, copyrights, industrial designs and geographical indications. IP can assist MSMEs grow worldwide as big as their competitors in all aspects of their business. IP will assist MSMEs to develop their industry and aggressive management policy. The small scale sector has played a greater role in the socio economic development of the country during the past fifty years. The MSMEs are of immense strategic importance to the Indian Economy because of its their contribution in terms of output, export, employment, flexibility, competitiveness, innovation, offering economical solutions and promotion of sustainable development. The prime intention of this paper is study how IP helps Micro, Small and Medium Enterprises.

Index Terms: GI (Geographical Indication), India, Intellectual Property Rights (IPR), Micro, Small and Medium Enterprises (MSMEs), World Intellectual Property Rights (WIPO).

I. INTRODUCTION

Small scale industries are a vital constituent of India's industrial sector. Small scale industries encompass vast scope covering activities like manufacturing, servicing, financing, construction, infrastructure etc. In view of the Government of India ever increasing importance given to the small scale industries they need to be set up in the years to come. By contributing its increasing share to the national production, employment and exports, small scale industries also contribute to the economic development of the country. The MSMEs in India are acting as power and spirit of economic growth in the 21st century.

Micro, Small and Medium Enterprises Development Act, 2006

The Government of India enacted the Micro, Small and Medium Enterprises Development

(MSMEs) Act, 2006 on June 16, 2006 which was notified on October 2, 2006. With the ratification of MSME Act 2006, the paradigm shift has included the services sector in the definition of micro, small and medium enterprises, apart from extending the scope to medium enterprises. The MSMEs Act, 2006 has modified the definition of micro, small and medium enterprises as those that are engaged in manufacturing or production and providing or rendering of services. (The investment limits of these enterprises are as shown in figure1)

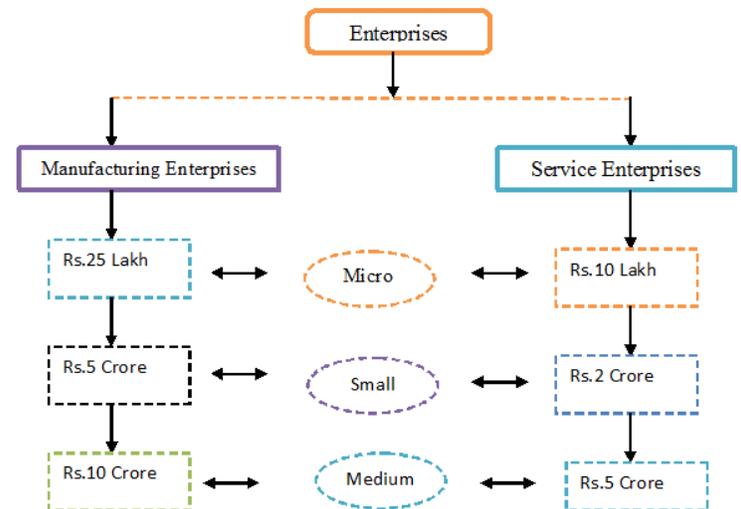


Figure 1. Classifications of Micro, Small and Medium Enterprises

(As per Micro, Small and Medium Enterprises Development Act, 2006)

The Micro, Small and Medium Enterprises constitute the overall industrial sector of the country.

II. INTELLECTUAL PROSPERITY RIGHTS

Intellectual Prosperity Rights are the rights given to person over the creations of their minds and provide the creator an exclusive right over the use of his/ her creation for a certain period of time. Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literacy

and artistic fields. Intellectual Property Rights (IPR) in India was imported from the West. The Indian Trade and Merchandise Marks Act 1884, was the first Indian Law regarding IPR. The first Indian patent law was enacted in 1856 followed by a series of Act being passed. They are Indian Patents and Designs Act in 1911 and Indian Copyright Act in 1914.

The convention establishing World Intellectual Property Organization (WIPO) has given a wider definition of IPRS. According to this definition the IPRS includes the rights relating to

1. Literary, artistic and scientific work
2. Performances of performing artists, phonograms and broadcasts.
3. Inventions in all fields of human Endeavour.
4. Scientific discovered.
5. Industrial designs.
6. Trademarks, service marks and commercial names and designations.

In India, The Trade Related Aspects of Intellectual Property Rights (“TRIPS”) came into force on 1st January 1995 after its ratification with the agreement of establishing World Trade Organization. The enforcement of TRIPS was started with the provisions for protection of and enforcement of intellectual property rights with minimum standards with the assurance of promotion of IPR with the view of removing obstacles from the international trade. There are several forms of the Intellectual Property recognized by the legislators and are enacted upon.

The Intellectual Property Rights are defined as “a set of exclusive rights protecting the innovative activity behind new products, new procedures or new designs, and the commercial activity that exclusively identifies products and services supplied in the market”. Intellectual Property Rights bring progress by supporting creativity in the human nature. The creators or owners of the Intellectual Property Rights are awarded with benefits when commercially exploited. Intellectual Property Rights are governed with the provisions of related legislations and are classified as Trade Mark, Patent, Copyright, Industrial Design, and Geographical Indications, Lay out designs of integrated circuits, Trade Secret according to TRIPS agreement. Intellectual Property Rights are divided into two categories i.e. industrial property and copyrights. The industrial property includes inventions, industrial designs, trademarks, and geographical indications; whereas the copyrights comprise rights related to the literary, artistic, musical works etc. Intellectual Property Rights can be

subdivided into the following major categories as shown in figure 2.

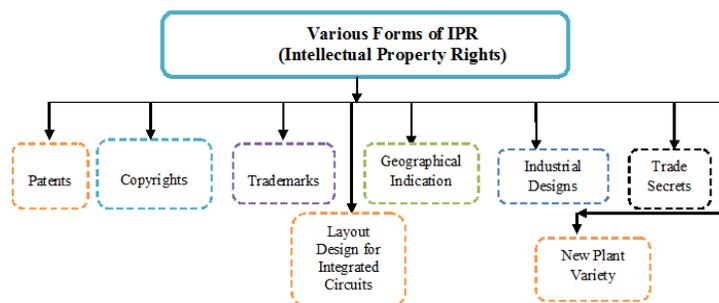


Figure2. Various Forms of IPR

1. Patents

Patent is a statutory right granted to the patentee by the Government for a period of 20 years upon complete disclosure of the invention. It is a monopoly right, granted for protecting inventions and processes. There are product patents as well as process patents granted. Even though the right holder does not get right by default to manufacture the patented invention, the holder of the patent has right to prevent others from exploiting the same without the owner's permission. The statutory requirement for an invention to be patentable invention is related either to a product or process that is novel, having inventive step and is capable of industrial application. In India, patents are protected under the Patents Act 1970.

2. Copyrights

Copyrights are the rights awarded to protect authorship of original and creative work like literary, musical and dramatic in nature.

The rights awarded are exclusive rights and are symbolized as “©”. In India, Copyrights are protected by the Indian Copyrights Act, 1957 and various amendments made thereafter.

3. Trademarks

A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services or to authorize another to use it as return for payment. It

helps consumers identify and purchase a product or service because of its nature and quality, indicated by its unique trademark.

Categories of Trademarks

The protection awarded is dependent on the character of the mark itself. There are four categories of trademarks.

- i. Coined marks denote no relationship between the mark and the goods or services (e.g., Bata, Kodak) and afford the possibility of expansion to a wide range of products.
- ii. An arbitrary mark is one that has another meaning in our language (e.g., Apple) and is applied to a product or service.
- iii. A suggestive mark is used to suggest certain features, qualities, ingredients, or characteristics of a product or service (i.e., Halo shampoo). It differs from an arbitrary mark as it tends to suggest some describable attribute of the product or services.
- iv. A descriptive mark must have become distinctive over a significant period of time and gained consumer recognition before it can be registered. The mark then is considered to have secondary meaning, that is, it is descriptive of particular product or service (e.g., Rubberier has applied to roofing materials that contain rubber.)

4. Geographical Indications

Geographical Indications of Goods Act, 1999 came into effect in September 2003. Geographical Indications (GI) are the names associated with goods that identify such goods as agricultural goods or manufacturing goods as originating, or manufactured in the territory of a region or locality in that territory where a given quality, reputation or other characteristic of such goods are essentially attributable to its geographical origin. It is worth mentioning that a GI cannot be created, it can only be recognized. The product derives its qualities and reputation from that place. It confirms the value of products which already exist. The place of origin may be a village or town or region or country. GI is an exclusive right given to a particular community. Hence, the benefits of its registration are shared by all members of the community.

5. Trade secrets

Trade secrets are confidential business information that provides an enterprise a competitive edge over its competitors. Trade secrets are manufacturing / industrial or commercial secrets that

include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. Trade secrets are protected without registration. Though a trade secret can be protected for an unlimited period of time, it is necessary that a substantial element of secrecy must exist. Keeping in view the vast availability of traditional knowledge in the country, protection of trade secrets will be very crucial in reaping the benefits from such type of knowledge. In a way, trade secret or traditional knowledge are also interlinked / associated with the geographical indications.

6. Industrial Designs

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act serves its purpose well in the rapid changes in technology and international development. India has also achieved a matured state in the field of industrial designs and in view of globalization of the country, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration.

7. Integrated Circuits

Integrated circuit means a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulating material and designed to perform an electronic circuitry function. Integrated circuits are also, thus, an element of IPR and are protected under Semiconductor Integrated Circuits Layout Design (SICLD) Act 2000. The main focus of SICLD Act is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it. The SICLD Act empowers the registered proprietor of the layout design an inherent right to use the layout design, commercially exploit it and obtain relief in respect of any infringement. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

8. *New Plant Variety*

The plant Variety Protection and Farmers Rights Act 2001 was enacted to reward them for their contribution and stimulate the growth of the seed industry in the country. The Act has come into force on 30-10-2005 through Protection of Plant Varieties and Farmers Rights Authority'. Initially 12 crop species have been identified for registration, i.e. Rice, Wheat, Maize, Pearl Millet, Green Gram, Black Gram, Lentil, etc.

India has opted for Sui generic system instead of patents for protecting new plant variety. Registration and other matters relating to protection of new plant variety are looked after by Department of Agriculture and Cooperation.

III. WHY IPR FOR MSMES

MSMEs which use of IPR have become a precious commodity in today's world. It seems pertinent to briefly reflect on a debate: Does IPR enhance the competitiveness of MSMEs? One view is that IPR enables MSMEs to become more competitive through technological gains. But it seems that this argument glosses over the problems, complexities, and uncertainties inherent in innovations and also ignores the fact that most innovations either not exploited or more often than not fail. If innovation is to play a part in enhancing the competitiveness of MSMEs, it seems to follow that IPR must also have a role to facilitate innovations. MSMEs in India also make efforts to glean the benefits from IPR system. However, most of the Indian MSMEs have not yet been able to effectively use IPR as a business tool to increase their competitiveness in the national and global markets.

The protection of IPR helps increase the competitiveness of MSMEs in a variety of ways. It helps in:

- Preventing competitors from copying or closely imitating a company's products or services;
- Avoiding wasteful investment in research and development (R&D) and marketing;
- Creating a corporate identity through a trademark and branding strategy;
- Negotiating licensing, franchising or other IP-based contractual agreements;
- Increasing the marketing value of the company;

- Acquiring venture capital and enhancing access to finance;
- Obtaining access to new markets.

Research evidence credits the existence of IPR laws with significant contributions toward economic growth. The role of MSME sector in India's growth is also not hidden. It helps in contributing to high and inclusive growth with better job opportunities, increased productivity, better skills and education.

Intellectual Property Rights (IPRs) are being increasingly used the world over as a business tool to achieve economic gains in the era of technological competitiveness. With the opening up of our economy, MSMEs too have become vulnerable to competition from the overseas giants. MSMEs in India consider IPRs to be an esoteric concept and are still unaware of the fact that their ability to convert knowledge into wealth through the process of innovation will determine their future. The issues of generation, valuation, protection and exploitation of intellectual property are going to become critically important for MSMEs all around the world. It is with this view, to address the need of development of skills and competence to manage IPRs, and leverage its influence amongst MSMEs in India; is proposed to to the set up a Centre for IPRs at nisiet. The Centre will endeavour to narrow the knowledge gap that exists between the, MSMEs of developed and developing countries.

IV. HOW IP HELPS MICRO, SMALL & MEDIUM ENTERPRISES

In India, Intellectual property plays an important role in MSMEs development and protection. They should identify various prospects viz. how best to use an IP structure for their own payback and profits? IP may support MSMEs in every part of business development and competitive strategy which ranges from product development to product design, product marketing to service and from raising financial resources to export or mounting business abroad through IP assignments i.e. franchising and licensing. MSMEs can identify various potential such as improvement in the market values and competitiveness of MSMEs by generating an income for MSMEs through IP assignments of IP

protected products. IP helps in enhancing the value or worth of the company in the eyes of investors and financial institutions. At the time of sale or merger and acquisitions of assets IP play an important role in increasing the MSMEs value to certain level which cannot be achieved without considering IP assets. A successful IP management enables companies to recover their IP system properly and in a profitable way. In a very initial stage acquiring IP may sometimes crucial and costly but if started in a systematic way profits a lot for a company. It involves company's ability to commercialize their inventions, market their brands and license their know how to other companies

V. CONCLUSION

Micro, Small and Medium Enterprises form the bedrock of economies of all major nations. The significance of IPR for MSMEs lies in the fact that IPR provides competitive advantage of MSMEs through technological gain. There are different forms of IPR, namely, patents, trademarks, copyrights, geographical indications, industrial designs, trade secrets, integrated circuits, and new plant variety. Registration of patent involves a process consisting of five steps, namely, document disclosure, patent search, patent application, patent examination, and patent grant. IPR is needed for MSMEs to prevent competitors from copying or closely imitating a company's products or services; create organizational identity, increase market value of the company, and access new markets. IPR can be made more effective for MSMEs by organizing awareness and sensitization programs at different paces on regular basis. MSMEs can be encouraged to use IPR by providing them the required consultancy services and technical and financial support. Those MSMEs which make use of IPRs should be recognized and rewarded to further disseminate the relevance of IPR for MSMEs. IPR are considered to achieve economic, social and technological advancement that protects the idea and stimulates innovation, design and helps create of technology.

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