

INTELLECTUAL PROPERTY PORTFOLIO MANAGEMENT

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Welcome friends. In our last few sessions, we are discussing about the IP strategies for maintaining managing our IP portfolio. In our last session we discussed about if you have a portfolio which is only having patents then what type of strategies you can use for taking better use of that portfolio. We discussed about offensive defensive transactional strategies which can help us in better utilization of our portfolio.

Now, when we are discussing different types of IP, it is also very important to discuss that there can be a portfolio which is only consisting of trademarks, there can be a portfolio which is consisting of copyrights, trade secrets. So, there can be two types of portfolios. One portfolio where you have variety, there is a patent, there are few copyrights, there few trademark, few trade secrets, few designs, etc. And then there can be another type of portfolio where you have only patents, you have only trademarks.

So, there can be variety in portfolio that a portfolio may have multiple type of IPs, and a portfolio may have only one type of IT IP, but in plenty. So, in our previous session we discussed about patent portfolio where my all IPs are of patent type. Now, today we are going to discuss in this session that if you have trademark, you have copyrights, you have trade secrets, then in that case how are you going to use different type of strategies for taking the maximum benefit of your portfolio let us first discuss about trademark related portfolios now when we talk of trademark actually trademark is indicator of a growth business if i go to a marketing class we understand that businesses are known because of their brands most of the startups

They have this aspiration to make big brands and as soon as this brand comes into the picture you have a portfolio of the trademarks. You see that how companies like Leo, companies like Nestle, companies like Apple over a period of time they have different types of trademarks, logos and now all of them are the part of their portfolio. If you see

the data of WIPO, the global filing with respect to trademark is continuously increasing. The data says that between 2001 to 2016, there is a three-time increase in the applications related to trademark. And from the marketing classes, we know that brand-rich businesses is not possible without trademark strategy.

Particularly, if I talk of FMCGs, if you are a FMCG company, fast moving consumer goods, it is impossible to survive in that market without creating your brands. There is a very popular startup from India and the success of that startup is only because of developing a good brand for itself. So, different type of organizations now they are understanding the importance of brand and there are large number of global brands, brands which are coming from Japan, brands which are coming from America, brands which are coming from Germany. So, we give some extra reputation respect to those brands. So, now managing this entire portfolio is the part of your trademark portfolio strategies.

Now, we need to make one strategic attempt with respect to our trademark portfolio. Now, first important thing is to decide which trademarks fall into the portfolio. Where you have some kind of business interest those trademarks will part of your trademark portfolio and for that purpose the IP team, the creative team needs to work with the business team of your organization. So, that you understand

Which brand we want to promote in future and how we are going to see the long term expectations from these brands. Because you know like in India there was a very popular car Maruti 800. Over a period of time Maruti was discontinuing this car and then they were promoting another car that is Gen. And then they discontinued Jain also and then they promoted slightly different type of car like Wagon R etc. So, this is how you know that what is my long term expectations from these brands and accordingly you are going to emphasize keeping them in your portfolio.

Then the second important thing the production needs to focus on on the geographical aspects of your registration. We know that almost all IPs are governed by particular geography and therefore, country where you are going to protect your portfolio or particular trademark that is also a very important strategic aspect. Third important thing is it is not that which is important today. will remain important all the time.

With time with passage of time your priority will change and therefore, you have to regularly review your commercial priorities. As a rule of thumb people say that every three year we should review our portfolio and see which trademarks are more important

or where our strategic interest is there. for next few years and which are less important. So, accordingly we need to see the regular monitoring which we have already discussed in one of our videos that regular monitoring of our IP portfolio is very very important. Now, when we are talking of how you are going to enforce the trademark related strategies obviously, monitoring just now we discussed regular monitoring.

Now, regular does not mean daily basis you need to decide frequency and as I just said it may be three years or in a very fast changing world particularly let us say fashion it may be annually also. So, if it is a consumer durables. it can be may be 5 years. So, depending upon the category in which you are, you need to have a frequency of monitoring your trademark portfolio. So, that you can see which trademark, which brand has more business interest as compared to others.

Then another important thing is administrative actions related to your trademark enforcement. so many paperwork because you are not only protecting your trademarks in one country, but in many other countries also. So, you need to see that what type of administrative actions are required. Like for example, company like Nestle, it has as on date around 800 plus trademarks in its portfolio. Out of that, many are already granted, many are pending also.

So, you need to see that what specific administrative action is required with respect to each of them. Because every trademark is a separate application, every trademark has a different stage in different countries and therefore, lot of administrative activities are also needed with respect to enforcing your trademarks. Third is trademark litigations a lot of trademark litigations happen sometime you see that there is a deliberate attempt to infringe your trademark sometime it may be a kind of a by oversight also. So, in these cases having a team which can go for litigation related matters those who business also and those who understand law also.

We need that type of people in this team who will help us in filing the appropriate litigation in appropriate court of law. Then another important issue is customs recordation and enforcement. Generally, you will see that when we are discussing about litigation, these litigations are mostly related to global businesses. Your violation may not happen in your own country, but there will be lot of violations in other countries and there will be lot of copy products which will come using your trademarks. So, across the globe there is a problem of copying your trademark.

There will be first copy, second copy of your products and therefore, the custom department plays a very important role if illegal products are being exported, imported in your country. So, that is also a part of your trademark enforcement strategy. And nowadays online exploitation, online infringement of your trademark is also happening. Many a time

You are not sure whether you are accessing the right website or not the right website. Many time when you are going for e-commerce, e-supply chains, there are lot of chances because you are not meeting the sellers and they may be using your trademark without your knowledge. So, because of this digital world, lot of online challenges are also coming up and I anticipate that these challenges will continue to grow in near future. So, all these are the important part of our trademark enforcement strategies. Now, let us discuss what are the different types of trademark strategies.

Like in the case of patent here also we have offensive and defensive trademark strategy. As the name says offensive trademark strategy it means taking aggressive position with respect to your trademarks. So, I will try to protect all possible variants of my trademark so that there cannot be any competitor. There is no possibility that in any way your name or your trademark can be copied or influenced.

My name is Rajat. Now, I will try to protect all possible variations like this also. like this also like this also may be this also. So, that I have maximum possible protection of my identity. And various organizations, they use offensive trademark strategy when they feel that it may be easy to copy their trademarks.

And multinational organizations, I was just giving the example of Nestle, which is a FMCG company. But on the other hand, if you see a very interesting example like TCS, which is a IT, IT enabled services type of organization. It also has a very large portfolio of trademarks. May be 1000 plus trademarks are available with TCS.

It is not necessary that only FMCGs or those who are dealing with the consumer products will go for offensive trademark strategy. But other type of organizations, wherever they want to have aggressive position in the market, so that you are creating lot of entry barriers for your newcomers in that market, they all will go for offensive trademark strategy. Now, different researchers in this field whether it is Appelt in 2009 or Gao in 1996 they all have mentioned the similar kind of thing that we are creating the trademark portfolio for the advantage. So, that we can occupy the long term market share and for better economic interest. Applet says that here we are using

this trademark system to create barriers to enter for any newcomer in our industry. Manufacturing firms can use this strategy to package the products and prevent competitors from gaining a kind of entry in this particular market. When you are having a particular brand name, it is very critical to maintain competitiveness companies may adopt a strategic and preemptive approach to trademark registration. So, they as I just mentioned they may go for alternative trademark applications.

So, that in all possible ways you are creating entry block to your competitors and in this way we are creating a superior position in that particular market for ourselves. Then comes another trademark strategy that is the defensive trademark strategy. As the name says defensive trademark strategy means we are protecting our self with the trademark. Our business is working either on some other types of IP or we do not have any uniqueness in our work but we want some protection. so that others do not copy us or we are able to maintain some kind of identity for our self.

In that case defensive strategy is suitable and here let us say many small medium enterprises many startups, all these are good examples where they are using this trademark strategy, defensive trademark strategy for protecting their business interest. So, they are not creating any barriers, they are not creating any kind of challenges for others by filing multiple applications, by creating blocks for others. But I am interested in protecting my interest. If you want to create something for yourself, you are welcome.

Whenever I do not have enough resources one thing may be clear to you with this discussion offensive strategy requires more resources and defensive strategy is with limited amount of resources. So, whenever organizations have limited resources they go with defensive strategy and therefore, I say that SMEs, startups, individuals all of these go with defensive strategy. In fact, educational institutions, we are IIT Roorkee, we also have our logo and that logo is also registered under this Trademark Act. Now, that is a defensive strategy because there may be so many IITs, there may be so many other educational institutions. So, they cannot be IIT Roorkee because of some other kind of provisions available in Government of India Act.

But We want to create our identity so that our name should not be misused and for that purpose it is a defensive strategy example. There is a very popular case which is available at WIPO. The link is also available here. You can go to this link and see that there was a case between a very large company which is in the projects of coffee, Starbucks and the government of Ethiopia.

And it is all about this particular trade name Sedamo which this company wanted to use for its coffee but ultimately when the matter went to the court this was given to government of Ethiopia. The entire detailing of this that how there may be issues related to two companies may for the same type of trademark and then the matter may go to the court and then based on the arguments of the two parties, court may decide which party to hold that particular trademark. Then another important IP after this discussions on trademark is copyright and I think out of all the discussions of different types of portfolio management, the most important one is copyright. Everyone is important patent was also important just now we discussed about trademark that is also important, but copyright I feel is the most important one.

Because there are lot of conditions which make copyright as a unique type of IP we know that it is auto generated kind of IP. So, management of these IP is very important and without any efforts the portfolio of your copyrights keep getting updated. So, therefore, how to use this portfolio that is a very important question and therefore, it becomes even more important for individuals because individuals do not have enough resources how to use your copyright portfolio for your advantage. However, organizations have more resources

They have better understanding of business objectives. Individuals may not have the business objectives. So, there are chances of exploitation of individuals with respect to their copyright portfolio. However, this exploitation may happen at the organizational level also, but chances are less at that level. Now, when we are talking of copyright related matters.

So, there are various important things we will be discussing here like copyright is intangible asset and it can create huge source of revenue earning for you when you are using these IP portfolio in a very intelligent manner. You are a author you are writing a book generating the copyright of that book. You as an individual writing a book, how to use the copyright of that book? It is up to you. You can go to a printing press, publish that book and start selling that book.

That is one way that you are maintaining your own copyright and you are earning money by selling that book. Other possibility, it is a very tedious task going to a printing press and then distributing the book on your own. So, you think that okay let me talk to a publisher, I will give this entire copyright of my book to that publisher. Publisher will publish, publisher will put his money in publishing the book and then publisher will

distribute the book. Let publisher earn the money, but publisher may give some 10 percent, 20 percent, 30 percent royalty on whatever profit publisher is earning every year.

So, these are the two models. which model you want to earn. Third model can also be there that you publish the book first and then you give all the copies of the book to a publisher. Now, you sell it and you will earn let us say 30 percent the profit of the sale and remaining will come to me. This is also a possible point.

So, point is that copyright is a very direct source of revenue income and therefore, it has immense value People write so many books over their life. People write so many songs. They write so many dramas. They write so many stories.

How to generate income from your copyright? That is the point of copyright strategies. And in this case, there are different type of challenges also. Let us consider a music video. In this music video, there are different types of people who are generating their IPs and most of them are let us say artist.

One is singer, another is musician, another is composer, another is performer. another is the person who is doing the recording. So, they are different type of people who are part of this development of music video and they all have the IP of their skills, their abilities, their creativity. Now, in this particular case the label, the label will procure the IP or the copyrights of all these artists.

There will be a contract and under that contract you will be paid some fee and in lieu of that fee your copyright will go to this label that is one option. The second option is you are a senior artist. So, you say there will be a fee for transferring the copyright. and then there will be some royalty component also. Once you are going to sell your video on different platforms so whatever you are going to earn 5 percent of that will come to singer that is another possibility.

And nowadays one more possibility is there I am a singer I can record my own video using my mobile phone and I am creating my own copyright Now, once I have created by copyright, I may license this video to you to a particular for one year, then to another for another one year and these may be like Jio 7 for one year, then after that I will give it to Spotify, then I give to iPhone music. So, in this way also I may earn profits at a regular interval by giving my work to different labels. So, all these are the different types of possibilities of generating revenue from your copyrighted work.

So, therefore, copyright IP strategy is also very important that it may drive your entire business model that what type of business model you have that is the reason of copyright IP strategy. Now, as I just said you can license your copyright. Just now we see that I can develop a music video and then I can license this music video on some conditions and a large number of IPs particularly if you see the cricket matches, football matches etcetera. So, the recording is done by a company and then it is licensed to some broadcaster and that is that broadcaster is giving a lump sum amount to this company which is producing the matches and that company then earns huge amount of money.

So, because of advertisements, because of subscription charges etc. Then you can sell the copyright also. I do not want to maintain because in licensing I am maintaining. So, I am giving license to you for a particular period. Then I will give license to you for another particular period.

So, I have to regularly maintain the copyright. But there can be a option of selling the copyright. which is slightly strategic decision because I do not want to keep the copyright and when I see that there is a good deal which is possible I can even take a decision to sell the copyright also. Now, when I am good in creativity it is also possible that I develop some characters and those characters may have their own copyrights. I may create nowadays we have digital characters also.

And these digital characters are also kind of a IP you have. And these digital characters can be used for merchandising. We see that lot of items like t-shirts, stationery items, your other school items, all these things are having the different type of cartoons, characters printed on them. And that is merchandising. So, there can be this merchandising is part of that licensing.

I am giving license of my IP, my copyright to be used by some toy company, to be used by some stationary company. They can print that on their stationary and through which some kind of royalty sharing agreement also happens. So, merchandising which is a subset of licensing is also possible. So, we just discussed that there are two possibilities either you can license or you can sell. So, depending upon you want regular income or one time income when you want regular income you will like to go for licensing.

When you need immediate money you will like to go for selling then when you are licensing you are regularly involved as I said that you need to maintain the copyright on your own. When you are selling, you are less involved. Now, it is the responsibility of the person who has the license, who is buying the IP from you and long term plans for that

one. Like if I have a book and if I sell the copyright of that book to some publisher, it will be difficult for me

to bring translation of that book. It will be difficult for me to bring new editions of that book because now the copyright is available with that publisher. But if I license to a particular publisher that you can bring you can print this particular work and then I feel that now that work needs to be updated. I can get new editions, new volumes of that work and that is depending upon the long term plan of the work. So, like in entertainment industry also you see most of the movies are having sequels.

So, you know that I am going to make a part 2, part 3 of this movie. So, in that case it is licensing is more suitable rather selling. When you do not have any long term interest you can sell that IPs. So, these are the important strategies with respect to copywriting or copyright related IP portfolio and then trade secret is another important type of IP which is there and in fact trade secret is a type of IP where we do not have much legal involvement. So, it is very difficult to actually say that in case you violate the trade secret

what kind of legal remedies are available. You need to keep something under excessive confidentiality and limited access to these kind of IPs. So, because of the high level of confidentiality, you cannot tell anybody that what it is. Like in case of patent, in case of copyrights, in case of trademark design, databases are available. and you can see that what is available in that database and the clause of novelty is applicable in that.

But here because of trade secret the most important strategy which I can understand is to keep your activity confidential that is the main reason of trade secret. If you want to open yourself then there are other types of IPs which are available but when you see that it is easy to copy. For example, recipes of any kind of dish, if you go for patenting of that recipe, everybody can make the similar kind of dish in their homes. And it is almost impossible to stop or to go for litigation for that purpose.

So, recipes are generally kept under trade secret. So, there are important thing that confidentiality and it is applicable wherever it is easy to copy and difficult to enforce. You should go for trade secret and the most important thing is how to maintain the confidentiality. So, with this we discussed important type of strategic aspects.

of three important type of IP in this particular session. We discussed how to keep different type of trademark related strategies, we discussed about offensive defensive strategies, we discussed the copyrights, you can use licensing versus selling kind of

strategies and in trade secret the strategy is to keep confidentiality of your secret. So, with this We come to end of this particular video. Thank you very much.