

INTELLECTUAL PROPERTY PORTFOLIO MANAGEMENT

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Lecture - 25

Welcome friends. So, we have understood the larger role of portfolio. and there are various issues when you have a portfolio of some assets. In this case, we are talking of IP related portfolios. Now, when I am saying that IP portfolio management, you actually keep all your intellectual property in this portfolio, but it is not necessary that all these IP which you are holding in your portfolio.

is properly registered or not registered the second question can be there are some kind of confusion also whether you should use this IP tool or that IP tool so therefore, how to decide which IP tool is more suitable for my particular IP in some cases it can be as difficult as whether to use "GI" for this particular IP or use a trademark for this particular IP. In particular, in cases like tea, coffee, etc, there is always confusion about whether it is a trademark or it is a GI. And similarly, in many other cases there may be some kind of debate, or confusion whether it is copyright or whether it is a trademark, whether it is patent or it is design, So, these kind of issues are there.

So, every time, it is also not possible that we should be able to guide you in black and white that, okay, this is a trademark and this is a copyright, this is a patent, this is a design. So, there may be some overlapping issues also and here comes the role of which IP I should use, what is going to give me more benefit and therefore, in this particular session we are going to discuss the strategies to protect innovation, strategies with respect to IP, which type of IP is more suitable for my innovations, that is what we are going to discuss in this particular session. So, as we are going to start this session, the first particular thing we are going to discuss that is about Trade Secret v. Patent. and many a time, this confusion is there should I go for trade secret? Should I go for a patent?

Then, we will see what are the other types of innovations and based on that, we will discuss which IP strategy or how we are going to protect our innovations. Here the whole idea is you have a portfolio where you have some patents, where you have some designs, where you have some trademarks, where you have some know-how. Now, these know-how are not protected knowledge. Therefore, sometimes you will think, okay, can I transfer this know-how to a patent?

Can I transfer this know-how to design? Should I transfer this know-how to a trademark? Should I transfer this know-how to, let us say, trade secret, etc? And all these things are basically to improve our protection so that we can have better management of our portfolio. With this idea, in this session, let us first start with this example of a trade secret.

Our issues related to Trade Secret v. Patent. So, why this issue is there? Because all commercially viable ideas cannot be patented because a patent has three conditions. We all know that there are three very important conditions: novelty, non-obviousness, and industrial application. Sometimes, it may be difficult for you to prove either novelty or non-obviousness in your ideas, and therefore, you will like to go for a trade secret kind of route.

That is the easiest way to understand why Trade Secret v. Patent. But there may also be one more reason. Even if it is novel, even if it is non-obvious and even if it has some industrial application, you may prefer a trade secret over the patent. Because it will be challenging for you to minimize your patent infringement. If it is a very easy thing to copy, if it is a very easy thing to copy and that copying of your patent and authorized use of your patent is possible without much effort, then it is difficult to maintain the exclusivity of that patent.

And in that case also because whenever you are doing a patent, your complete know-how is available in the public domain. So, if for example, you have a new recipe of some dish and you take a patent on this that how to make this type of cake and you have taken a patent on this, it is a novel dish of that cake, you have added some ingredients of your own and a company can make a cake using that particular recipe, and I am sure that it is going to have a good success. Now, I read your entire patent document, which is available on the Indian Patent Office website, and now, in my home, I started making that cake according to that recipe. Like me there may be thousands of people, lakhs of people

who can use that recipe for making the cake. It is almost impossible for you to ensure that infringement does not occur. So, in this case, because it is easy to copy your patent, you will not like to go for the patent, you will like to go to the trade secret way. So, we again and again say the example of Coca-Cola that is the best example we have in the trade secret, but there are similarly All these examples of important recipes are also a type of trade secret.

Generally, you say that you go to a restaurant where you find some very tasty dish. So, the chef will say that it is my trade secret. They know that if they give you the ingredients and other things for that dish recipe, you will easily be able to make it in your home. So, a trade secret is because of... Either it is not patentable, or it is not easy to maintain the patent, both things.

Now, sometime trade secret is the initial way and once you have enough data, then it can go into the patent. For example, I start working in my lab on an idea. Now, during, let us say, the initial few weeks or a few months, I do not have enough data on this idea, and when I do not have enough data, it will be difficult to go for a patent. So, during this process till I get. So, you can say trade secret may lead to patents yes because this is the time when you are

collecting data and you need to ensure novelty otherwise your own idea may become prior art. So therefore, once you have enough data, you have protected the novelty, and then you can go to the patent office and submit your application for a grant of the patent. So, that trade secret which is in the inception stage which is in the initial stage may become a patent in the later stage. So, one more thing when we are talking of trade secret v. patent important points to remember. Trade secret offers perpetual protection.

Why? Because trade secret has no legal sanctity. You are not going to any office for getting a trade secret. It is just you have to ensure that your locker in your office is in some confidential place, and that confidential place may be your brain itself. There may not be any paper available on that particular process for that innovation.

That entire innovation is only in your brain and you are not sharing that information with anybody. And since it has no legal sanctity, it is a perpetual protection. There is no need to renew, no need to register, no need to pay any fee for maintaining the trade secret, it is like a patent where you have a limited duration of 20 (Twenty) years, and then you have to pay the annual charges also for maintaining the patent, etc. So, a trade secret is free from all these issues. It is a perpetual without any payment.

and there are no obligations of domestic patent v. foreign patent etc. So, as I just explained to you, now you can easily understand this slide is a kind of homework for you that trade secret protection offers enhanced confidentiality. Because you have complete secrecy of your information. So, competitors or anybody, not only competitors but also nobody, can see what your intellectual property is exactly. So, that is, the complete information is secured.

Long term competitive advantage because it is a perpetual kind of protection. So, you can see that if you can have a good trade secret, it gives you some kind of advantage. So, you will be able to maintain that advantage for the long term, and you will not have any scope for your competitor to come up with a better product because they will come with a better product only when they know what is your current product. Because there is no information available about your current product. So, the delta improvement on that current product is not possible.

Either they will come up with a new product, which is okay. Then, it becomes a game of marketing in which the company is able to market its products in a better way. But because of lack of information, you are able to ensure long-term competitive advantage, which is the second important benefit of the trade secret. The third is a cost-effective strategy. Because there are no expenses, avoid the expenses, no charges of IP offices, no charges of annuity, no charges of PCT etc.

So, it is a very cost-effective way and therefore, sometimes The only challenge in this case of trade secret is that you need to ensure that you are able to maintain this particular secrecy system in your organization. That is a very challenging thing. Sometimes, you share this information with somebody, and he may pass this information to your competitor, and it is quite possible that you may end up losing your advantage because of no legal protection available to you. This example of a mug factory is very pertinent to discuss this particular issue and the mug factory which is in Queensland, Gold Coast and it has actually done some kind of innovations in the coffee mug market through its innovation and branding activities.

Now, the founder of this company, Michael Beverly, recognized the potential of coffee mugs. It is such a common product nowadays as a popular gift item globally, particularly when adorned with licensed imagery from popular culture, movies and television shows. You must have seen that the coffee mugs which are of big size there are different types of pictures and I have seen that these are very very expensive. You go to, let us say,

Starbucks kind of outlets, and you want to buy these coffee mugs. These are really very expensive coffee mugs which may cost more than 1000 rupees.

So, you can see that this is a good business opportunity where the issue is everywhere it has a gifting item particularly. Now, in this case the founder Michael he understood that the appeal of coffee mugs it is in the external design rather than their utility. So, the design of the pictures you are painting when you write Starbucks is on that. So, the value of that logo.

people are printing you must have seen their anniversary photos, the logo of their companies on that I have seen in various academic institutions they are printing the buildings of their organization on the coffee mugs. So, the utility point is not that important but the external design That is the point that you generally do not find in other tea cups, etc. It is a unique feature of these coffee mugs. So, he pioneered the living picture process, leveraging low heat transfer technology to create vibrant, cost-effective mugs with striking imagery.

So, all these are very interesting images. You can go to any gift shop. The coffee mugs are good souvenir items because of their designs. And for printing that design on the coffee mug, Michael used this low heat transfer technology, and with this, we are able to create customized designs on the coffee mugs. Now, let us discuss the intellectual property issue in this process. Recognizing the value of his innovation, the Michael documented his trade secrets of this low heat transfer technology and registered living picture as a trademark. So, this living picture it is the trademark logo

he ensured protection through confidentiality and secrecy agreements safeguarding his intellectual property from exploitation. So, with this low heat transfer technology, he could have also patented this technology. But, if he patents this technology, it was not that rocket science technology. So, there was a possibility that all the printing presses, all these picture labs, they may start using these technologies for printing the coffee mugs with their customized designs.

So, to minimize the exploitation of their IP, they rather preferred the trade secret route, and through multiple agreements with their stakeholders, their employees etc., confidentiality agreements, etc., they are able to protect it. The name of their company living picture that he protected using the trademark that is one part. The technology part where, he could have used a patent also, but rather than a patent, he used trade secrets for this printing technology, which is used for printing the coffee mugs. So, we all know that

how this product is so successful. featuring iconic licensed properties such as Star Wars, Elvis, Garnard, Immediate Success, and distributed partnerships with major wholesalers like Crystal Craft facilitated widespread availability across Australia.

Not only in Australia, but it is now available across the globe also. Then, the mug factory plans to expand its product ranges by incorporating Australian images into the living picture process and the visual appeal of its mugs, capturing consumer interest. As I said even today, we are able to print our own pictures on these coffee mugs. So, it is now becoming a very popular case everywhere. Through continuous innovation, strategic branding, and effective protection of IP, the mug factory has established itself as a leader in the coffee mug industry, and it is continuously on the path of success and growth.

So, it is appropriate to use an IP strategy. They could have gone for a patent, also. But now, in retrospect, we all can suspect that a patent could not be a successful way of IP protection as a trade secret in this particular case. Therefore, it is important now to understand that our innovation and IP strategy should have a proper match. Then only you will be able to exploit IP for or exploit innovation rather for your advantage, and you should be using all the tools of the IP system for the benefit of or for exploitation or for creation value from the innovations.

So, here we will see how we are going to classify innovations on the basis of technological and market issues. When we are talking of technology, it can be either existing technology or new technology. For example, just to give you one idea, the IC engine is an example of existing technology and electric vehicles. is the new technology, if I talk in terms of the transportation sector. Market, the existing market, for example, existing market in some cases can be if I am in the USA, and the new market can be Africa.

In this case, you see that we have these four quadrants. The one is, you are creating new technologies in the existing market. You are creating new technologies in the existing market. So you are disrupting your existing market. This is one type of innovation.

Technology is also new and market is also new. There was nothing in that particular market with respect to this type of technology. So, the market and technology are both new. This is radical innovation. No market was using this technology.

So, the market and technology are both new. Technology exists, and the market also exists. Technology is also existing. There is nothing happening. So, in this case, whatever

innovations are happening, these are possibly incremental innovations which we are not able to see from the outside.

And then the fourth is architectural innovations, where technology exists and the market is new. That is the Just identifying new customer segments for my existing technology, the new customer segments. For example, if you think of there is a market at this moment where mobile phones have not reached. So, that is the architectural innovation.

In India, we got mobile phones in 1996, but before that, mobile phones were very popular already in Europe and America. So, at that time, this was an architectural innovation for mobile phones coming to India. So, that is how you can have four broad categories of innovation. And then we see how, with respect to these categories, you are going to have different types of IP strategies. So, we have already addressed the market and technology.

Now, based on this one is incremental innovation. Incremental innovation is where both technology and the market exist. Now, existing product or service by utilizing the current technology targeting the existing market. For example, as I always say in the automobile industry, some incremental improvements in our IC engine were happening. Like you are having better shockers whenever a new car is coming.

You had better you can say safety systems continuously. You had Euro 1, Euro 2, BS 1, BS 2, BS 3, and BS 4 stages so that they are more environmentally friendly vehicles, continuously improving the emission issues with respect to that. All these are actually examples of incremental innovations. So, incremental innovations are very common in some existing markets and existing technologies. Because even in that, you have to improve the performance continuously.

So, it is one type of innovation. Here, you will not see a direct impact, you will not see a big impact, but organizations keep doing incremental innovation regularly. These are examples of incremental innovation, like in the case of automobiles. Similarly, now you see new types of mobile phones which have better cameras, better processes, more memory, lightweight, and longer batteries. All these are the examples of incremental innovation.

Now, second is disruptive innovation. So, if you see disruptive innovation. Now, for the same market, you are coming up with a new technology. So, in this case, a new way of doing things that challenges and could replace the old method. This happens when a new product or service uses new technology to enter the existing market.

Like the iPad is an example of disruptive innovation because when Apple released it in year 2010, Many people switched from bulky laptops to the sleek tablets. And Apple got a good share of the market because they were the first to introduce this type of product into the market. And there are various other products. examples that those people who are using digital cameras.

So, they shifted from, let us say, photography reel-based systems to digital cameras and from digital cameras, they are coming to smartphones. So, the new technologies are coming for the same people, those who were professional cameras persons or even amateurs also. from wheel-based to digital and digital to smartphones. So, many such examples you will see around you where we are in the same market but continuously giving you new technological solutions. Then the architectural innovation, when the technology is the same but you are entering into the new markets etc.

So, for example, like I told you that in India mobile phones came in 1996 when mobile phones were already available in Europe and America. So, that is an example of architectural innovation. And radical innovation where both things market are new, with new customers and new technology altogether. So, a new product coming for a new group of customer.

which was not there at all. So, it creates a new type of market. For example, I will say the use of OTT is a new type of technology, and it creates a new market, maybe with Netflix and that kind of organizations. This is a good example of how radical innovations are also happening and radical innovations if they become successful There will be a lot of you see continuously if I see this diagram of classification if radical innovation becomes successful.

So, radical innovation will soon will try to go into this path or this path. So, they will go for after some time the radical technologies will become the existing technologies and radical technologies. will become part of some of the new markets, they will become the existing markets. So, more and more radical technologies will become part of disruptive or architectural technologies if they are successful. So, and sometimes, those technologies which are not successful those examples which are not successful will not be discussed in our classroom discussions.

So, depending on what type of innovation you have You need to align your IP strategy with the type of innovation as we just discussed in the case of mug factory example where we saw that it is a new technology. It was a, I feel, example of radical because it

created a new segment of coffee mug. and technology is low heat transfer technology, but they did not use patent, but used trade secret for their protection purpose. So, it is important that you need to understand what type of characteristics your IP has.

And accordingly, using the appropriate strategy of protection is very important. And the alignment of your IP strategy with the organization's strategy also needs to be taken into account. With this, we come to end of this particular session where we understood the role of IP strategy in our IP portfolio strengthening. Thank you very much.