

INTELLECTUAL PROPERTY PORTFOLIO MANAGEMENT

Professor Name – Prof. Rajat Agrawal

Department Name – Department of Interdisciplinary

Institute Name – IIT, Roorkee

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Welcome friends. We are on the verge of completion of this particular course on IP portfolio management. As we are discussing some generic issues which are important to know as a professional in the field of IP management because when we are managing our portfolio and particularly what are the assets in that portfolio that makes it very important. You know that we have already discussed that you may have a portfolio of simply various types of securities in your portfolio. You may have some securities which are for long term investment.

There are few securities which are for intermediate investment and there may be few securities which are for immediate requirement which you can liquidate immediately. So, why we keep all these types of securities in our portfolio? Because we want to optimize our risk and gain. Same is the case in the field of IP portfolio management. We are keeping different types of IP assets because we want to maximize our gain and we want to optimize our risk.

Now, one of the very important type of risk is possible that somebody starts infringing your IPs and if somebody starts infringing your IP, you need to be doing proper IP enforcement. And in one of our classes, we discussed that organizations use IP enforcement as one way of generating revenue. It is quite possible that organizations indirectly promote that you infringe their IP, you take some kind of generic solutions or solutions that are pirated ones, and then they will sue you so that, in this process, they can make money.

So, all these types of managerial activities are there so that they can optimize, they can take maximum revenue, maximum gain from their IP assets. So, in this particular video we are going to discuss about the issue of IP enforcement that what are the meaning of IP enforcement we are going to cover, what is this IP enforcement, why enforce IP rights,

different forms of IP infringements, then damages and consequences of IP infringements, enforcement of IP rights under TRIPS agreement, WIPO role in enforcement of IP rights. This IP infringement is a very common problem in small and medium enterprises. So, we will have a specific discussion on SMEs and IP infringement and then how these SMEs because they are going to have a very important contribution

particularly if I talk of dynamic economies like India, SMEs are right now contributing around 29% of our GDP and we are expecting that this contribution should increase around 40 or even there are people who are so ambitious that they want SMEs should contribute around 50% in our GDPs and all these issues we are going to touch in this particular session. What is this IP enforcement? Now, intellectual property enforcement is the act of taking legal action when any IP rights including trademark, copyright, design, patent, GI, trade secret have been infringed. Whenever you are holder of IP and there is a company B, which is trying to infringe your IP means the exclusive right which is available to you this company B is trying to violate that exclusive right condition and without your permission without your due consideration it starts using your IP rights that is known as infringing and that is possible with respect to all types of IP.

Your name is your trademark and we see that there is a rampant violation of trademark in our country. We know that how names of institutions are misused. There are large number of examples you will find where people use on their products government of India symbols etc. That is the violation of simply the trademark act and so is the case with the copyright. particularly in this digital era, it is so easy to violate the copyrights.

So therefore, a lot of research, lot of discussions, and debates are happening in this digital era, when things are so simple, so easy to copy, how to maintain your copyrights, and how the entire entertainment industry is so worried about pirated content. Music, CDs, videos are available in the form of pirated videos. Lot of movies which are released in theatres, their CDs are available in the pirated form. All that is the violation of simply the copyright IP. Similarly, we see that there are mobile phones that use the shape and design of iPhones, which is a violation of design-related IP because you are giving a fake message to the user that you are using an iPhone, though it is not an iPhone but you have copied the design of the iPhones.

Patent is very easy and because the entire knowledge is available on the patent journals it is easily accessible and you can easily know that what is the technology and you can start using that technology in your own product without the permission of the actually owner

of that patent. Geographical indicators we know that in India there is a very popular GI product Banarasi Saree. Now Banarasi Saree which is actually made in Banaras with there are so many hand weavers Now, Banarasi saree is also manufactured on the power looms that is violation of GI.

As a consumer, I do not know whether I am buying a genuine Banarasi saree or a fake Banarasi saree. And this is just one example. There are plenty of other GI products, large number of teas are GI registered. Assamese teas, Darjeeling teas. Now, a local tea, if it is labelled as Darjeeling tea or Assam tea, I will hardly be aware whether it is a genuine product or a fake product.

So, all types of IPs are subject to infringement. All types of IPs are subject to infringement. Therefore, to actually take the benefit of exclusive right of your IP, you need to understand IP enforcement. So, the objective of IP enforcement is to stop the infringement, prevent further violation of IP rights and remedy the prejudice caused by these actions.

So, if you want to stop the infringement, violation, abuse of your IP, you need to know the IP enforcement. Since, we all have understood in the last seven weeks, that IP is for some kind of economic development. IP means we are looking for some kind of benefit to all the stakeholders who are associated in the process of generating and owning the IP. Now, therefore, if any kind of infringement happens it is actually compromising the benefits which we are expecting for those stakeholders.

So, for our benefits for our all the kind of development which we are expecting from IP owned product. For example, let me give you a very simple case. You have a cream which is for a particular type of skin quality and let us say it is a dry skin and you are taking a cream of one company which is helping in keeping your dryness at the minimum level. Now, there is a fake cream available which has the same logo, same packaging. Now, it is a fake cream.

You do not know as a consumer that it is a fake cream. Now, you apply that cream on your skin on your dry skin it is quite possible that this may give a kind of a reaction it may further damage your skin and your skin may face some kind of irreparable loss. So, therefore, it is not only in the interest of business because business is the interest from the point of view of the economic gains. but it is also in the interest of consumers because if they buy fake products, copied products, it may rather damage, it may actually damage which is quite possible in the field of all these kind of personal care products, it is

possible in the footwear also, it is possible in the field of healthcare also. So, all these crucial activities which are very very sensitive

And in that case, if any kind of IP infringed product you are buying, it may actually be a damaging one. You are in operation theatre and there is a fake product which is there and for example, you are doing heart surgery and stunts which we are using. Rather using the original stunts, if I start using the fake stunt, we are playing with the life of the patient. So, therefore, enforcement of IP rights are necessary from the point of view of the business, for the point of view of the consumers and for the point of view of the government also. Because the revenue that you are expecting from all copying of the products and infringement of the products also leads to tax evasions for the government.

So government also compromises on its tax collection because of infringed products. So therefore and in fact though it is not very confirmed but there are reports which are saying. That if these influence products are there the money generated from these influence products sometime used in anti-social activities also. So that is a big problem challenge for the governments that you are. authorizing or you are having a source of revenue generation which is actually leading to various anti-national activities.

So, enforcement of IP right is necessary from all these three very important stakeholders business and when I say business it includes R&D activities itself then for consumers and for government also. Now, let us see quickly what are the different forms of IP infringements. So, the different forms of IP infringements counterfeiting piracy these are the two very popular forms of IP infringement whenever we are talking of so, one and two. And as I was just mentioning the most commonly affected products because of IP infringements computer software or record I can say that some of the softwares all of us are using which are pirated softwares.

Many time even in my office researchers use pirated versions of software for their calculations for data analysis etc. So, this is I think the most commonly used in India there are certain markets where you only go for getting the pirated versions of the softwares. So, pirated software is the most commonly affected product. I already told about music, films, all the entertainment industry products. These are, again, the most abused products in terms of IP infringements.

Automobile and aircraft components. Now, it is a serious thing, particularly the aircraft components. I can give you an example because some of you may wonder how such a sensitive product can also be counterfeited or have piracy elements. So, there was a news

few years back that there were continuously wrong landing of their aircrafts. Aircrafts were landing on the nose wheels.

Now, after thorough investigation, it was observed that the angle at which the aircraft should land that compass was giving the wrong readings and that wrong readings will leading to landing of the aircraft on the nose wheels and then it was realized that the compass were a kind of a counterfeit product it was not the original product and fortunately no major accident took place except the some jerks to the passengers during those periods. But there was a possibility of some major mishap also and therefore, in such critical products also we see examples of counterfeit products. Automobiles plenty

Particularly in automobile case, there are two types of supply chains which are running. In automobiles, there is a supply chain where you have OEM into the picture and then you have tier 1, tier 2, tier 3 suppliers. which are supplying to this original equipment manufacturer. So, probably there is no counterfeiting in the case of this original supply chain. But there are large number of component suppliers.

These component suppliers are supplying to open market. For example, a simple product spark plug. So, spark plug is used in various IC engine vehicles. Now that spark plug which is manufactured by a supplier which is in the original supply chain of OEM probably it is supplying the original product no counterfeiting. But there will be large number of suppliers who are supplying their products

components, spare parts to the open market. And you will see that almost all these suppliers are supplying counterfeit products to the open market. So, whenever you are going for servicing, repair, or maintenance of your vehicles, the spare parts you are purchasing from the open market, there is a high chance that these spare parts are counterfeit products. Food, drinks, beverages we all know. A lot of counterfeit products are available.

High abuse of your trade secrets. Pharmaceuticals, medical products I mentioned. Pharmaceuticals I will add healthcare. So, in this case also a lot of counterfeit products are available in the market. Again a very sensitive area where we need to have a lot of knowledge.

Then you have another very interesting area that is fashion, apparels. You see that there are companies like big names Adidas, Nike, Reebok, Skechers etc. And all these

companies counterfeit products are available in plenty. So, fashion industry because the original product may be very expensive. So, however, it is not very critical.

It is not going to damage you. If you are using a counterfeit product, duplicate product, it is not leading to any big loss to you. But that is also one of the area which is highly abused area in terms of IP infringement. This is the abuse of trademark related IP. as we have already understood to some level that the damages and consequences of IP infringements are possible at different levels.

So, the simplest level which is easy to understand is the economic level at which you will have the damages and there are different types of studies which are available. which are suggesting that up to what tune the damages are possible at the economic level. So, an OECD study says that the volume of international trade in counterfeit and pirated products amounted to somewhere close to US dollar 464 billion in 2019 or 2.5 percent of the entire world trade. So, around 2.5 percent of the world trade is amounting to the counterfeit and pirated products and which is coming in the absolute number around 464 US dollars, 464 billion US dollars. So, you can understand the amount of all these things.

So, that is purely a loss of business. The money which should come to the R&D institutions, the actual owner of these IPs, that much of money is going to these companies. companies which are into the counterfeit and pirated products. It actually discourages the international trade and foreign direct investment. For example, if I want to purchase a product from any other country.

I want to import something, I will always have this kind of fear whether I am getting a genuine product or a counterfeit or a duplicate product. So, I will be having less confidence in importing and therefore, this will result into discouragement of international trades. It loses direct sales revenues, taxes and it undermines the formal employment because the people who are working in these organizations which are responsible for counterfeit products, they do not have much records. They are mostly involved in various illegal activities. So, they lack the formal employment.

Most of the employees are on a very informal contractual basis and you will not find proper record keeping of these employees. Sometime they are not even paid well. So, because of all these lack of data and lack of record keeping. Then at the social level also there are certain damages and consequences. You must have some idea now that WHO with the inputs of OECD and Pharmaceutical Security Institute, it indicates that over 50% of the medicines purchased over the internet could be counterfeit.

Now, it is a very damaging statement that all the e-commerce companies which are distributing medicines online way around 50 percent of that has kind of a duplicate issue. Now, if you see that those duplicate medicines, counterfeit medicines are being distributed and you and me consume them. So, it will be so much of negative effect to us. So, it is basically compromising Health of the human being, safety of the human being, so that's a big social issue that because of the IP infringements.

Developing countries like Africa, some in Asia, and Latin America have areas where 5% to 30% of the medicines on sale are probably counterfeit. So, the developing nations where IP enforcement is not so robust. Therefore, in these areas the problem is even severe where up to 30 percent you see out of three medicines. One may be counterfeit, which is a very alarming number and this is not my data, this is the WIPO's data and therefore, we have to trust this data and we need to understand that, identify the appropriate sources so that you are not a victim of these counterfeit medicines. But unfortunately, people who are suffering from low purchasing power,

low awareness, low education, minimal access of formal supply chains, they generally get trapped in these counterfeit activities. And therefore, the impact of IP infringement is much much severe for people those who are below poverty line, those who are at the bottom of the pyramid. they actually get impacted. So, therefore, IP infringement has a very serious, severe consequences at the social level also. The enforcement of IP rights under the TRIPS agreement.

So, TRIPS agreement which came into effect on January 1, 1995. A lot of development in the field of intellectual property right, development, intellectual property management, its awareness, countries need to be IP savvy, etc. The genesis or the seed is in this TRIPS agreement. And this is the most comprehensive multilateral agreement on intellectual property till date. So therefore, we should know what the TRIPS agreement suggests with respect to our IP activities.

So, the provision on enforcement are contained in part III of this agreement which is divided into four important things, general obligations, civil and administrative procedures and remedies, provisional measures and criminal procedures. So, it may go up to the criminal procedures if there is a violation of IP. So, now the first part is general obligations. The general obligations relating to enforcement are contained in Article 41 of the TRIPS agreement where para 1 is it mandates enforcement procedures allowing effective action against any act of IP infringement with remedies to prevent infringement

and deter further violations. Para 2 is about the procedures of enforcement should be fair and equitable.

So, it does not discriminate between domestic, foreign, etc. The procedure should not be unnecessarily complicated or costly. Decisions on cases must be promptly provided to the involved parties solely relying on evidence presented during the hearings where all parties had a chance to speak. So, this is the general obligations. Then civil and administrative procedures and remedies that is the second important part of this IP enforcement.

So, fair and equitable procedures mandate that members provide civil judicial procedure for right holder to enforce their intellectual property rights. And how those civil procedures will work that all is mentioned in this part of this chapter. Then third part is about provisional measures. and in the provisional measures the judicial authority shall have the authority to order prompt and effective provisional measures because if there is some violation of IP And if I am complaining against you I am suing you the first important thing is that on the day of complaint there has to come some provisional measure.

Otherwise the one who is infringing my IP he or she will keep making money or violating the IP. So, therefore, a provisional measure is immediately required prompt and effective. So, it prevents an infringement from occurring particularly to prevent entry into the channels of commerce including after customer clearances of imported goods, preserve relevant evidences of infringements and this is contained in article 50 of TRIPS agreement. Then the fourth part is criminal procedures. So, as per article 61 of the TRIPS agreement, criminal procedures and penalties will be applied, at least in cases of willful trademark and counterfeiting or copyright policy.

So, in fact the IP violation. may lead to IP infringement may lead to criminal procedures as per the TRIPS agreement. However, all these judicial things will happen in the country where the violation is happening or where your rights are violated. Let us say that way wherever your rights are violated in those country the procedures will take place. Then, WIPO and WIPO is continuously making the advisory committee on enforcement and it was established by WIPO's General Assembly in 2002 with a mandate to carry out technical assistance and coordination in the field of enforcement.

So, WIPO is also educating and making it kind of a system so that IP enforcement can be actually realized. Now, as I said in the beginning that SMEs are worst affected because of

the IP infringement and it is both way. Most of the SMEs they are unable to protect their IP rights.

They do not know when to go to the court judicial system, and sometimes, because of a lack of awareness, also they violate IP rights. They are not sure whether the technology which they are using it is protected under some IP or not. So, SMEs had dual you can say issue with respect to IP infringements and Like there are studies which are saying that 40% of SMEs in European Union do not monitor their markets for counterfeiting and potential infringements of their IP. So there are not only in country like India but in the developing part of the world.

like European Union there are rampant issues of IP violations and IP infringements at the SME level. And in case of China, Hong Kong also counterfeit goods infringing SMEs IP are very very common. So, as I already told there are lack of resources, lack of knowledge, lack of exposure which is leading to all these problems related to SMEs and IP infringement. This is a table which is available from the European Union Intellectual Property Office database where they are saying that how much of customer seizures and global seized value and these figures indicate that counterfeit goods infringing SMEs IPR mostly originated from China and Hong Kong.

These two economies were also the main source of counterfeit goods at the global level as well as for the counterfeit goods of large companies. So, unfortunately we have already discussed the name of China for creating a very effective IP ecosystem. But at the same time, the violation of IP, infringement of IP is also rampant in China and Hong Kong. You see in this list, these two countries and the third is UAE also you can add.

So, 1, 2 and 3. These are the countries where you see maximum IP violation of SMEs IP is taking place. India is also there in this list. But we certainly see that the seizures are much much higher in case of China, Hong Kong, UAE, then US, then Turkey and then seizures are reducing continuously. So, that is how you can see that the most abused are China and Hong Kong.

This is another way of presenting the data where we are giving you data of global seizures of goods infringing SMEs IPR by different types of product categories. So, you see in SMEs case most of the IP infringements which is happening in the field of electric machinery and electronics then clothing. perfumes, toys. So, this is all data which is we have taken from European Union Intellectual Property Office databases that most of the cases are in the field of electrical machineries and electronics, then clothing, then

perfumes, cosmetics and then toys and games. So, that is how you see the different types of articles which are affected because of IP infringement.

this gives you another way of understanding the issue of SME and IP infringement where they are giving you the classification on the basis of size of SMEs. So, therefore, SMEs need to work really very hard that they need to increase their awareness, they need to strengthen their supply chain resilience and they need to also have a very strong use of IT and coordination so that these infringements can be minimized and SMEs can also exploit their IP in gaining more and more business advantage. So, with this we see that IP infringement is a global issue and around 2.5 percent of global trade is happening in the form of infringed IPs.

So, it is a very alarming situation. Just by creating more awareness, more robust enforcement systems, capacity building, particularly capacity building of SMEs will help us in minimizing the IP infringements and maximizing the gains for all the IP portfolio managers or all the IP owners. With this, we come to end of this particular video. Thank you very much.