

PROBLEMS FACED BY SMALL AND MEDIUM-SCALE ENTERPRISES IN TERMS OF INTELLECTUAL PROPERTY RIGHTS

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Abstract

In today's time, Intellectual Property Rights is a fast-growing legal field all over the world. The scope of intellectual property rights has become extremely wide with time. More and more industries, whether small or a multinational company have opted for protecting their innovations and ideas through IPR. Simply because, IPR not only, protects these ideas, but also ensures security in terms of customer loyalty and commercialization of products/ services. However, obtaining IPR for any innovation, idea or brand for that matter has become a huge hassle for small and medium industries, which suffer from a tight budget and human resource. This paper, therefore, aims to identify these problems, faced by the Micro, Small and Medium Enterprises in India which stand in the way of obtaining IPR. It also contributes in finding a way out to make things comparatively easier for these MSMEs to opt for IPR and avoid unnecessary future problems in relation to their own creation.

Key words: Intellectual Property Rights; Innovation; Micro, Small and Medium Enterprises; Cost of obtaining IPR; Circuit Benches

Introduction

Innovation is everywhere, including big or small. The process of innovations is never ending. One of the most significant reasons, because of which is said so is because it includes all kinds of innovations. These dynamic innovations make most of the subject matter of IPR. Almost all SMEs consist of tradenames/ trademarks. A huge part of credibility of SMEs of any kind is vested in its business information which can be sealed through trade secret as it is called. In all such cases, your SME should consider how best to use the IP system to its own benefit. Remember that IP may assist your SME in almost every aspect of your business development and competitive strategy: from product development to product design, from service delivery to marketing, and from raising financial resources to exporting or expanding your business abroad through licensing or franchising. (WIPO, 2016)

Small Scale and Medium scale Industries have been holding the foundation of fast increasing economy since post-Independence. SMEs hold 90% of India's economy. (Fernandes, 2018) Along with being the centre of the booming trade of India, SMEs/ SSI (Small Scale Industries) have aided the people of India in rebuilding their lives post-Independence. This paper revolves around putting forth problems faced in recognizing IPR by whole of the SSI sector of India. One of the reasons being that protecting patents abroad is a very expensive task. Small- Scale industries as the name suggests does not every time have extravagant nature of funds to keep them flowing towards maintaining their patented status in the market abroad. (Gera, 2013)

This paper also lays down that, SSIs fail to understand the crux of patenting their products or processes, through which, they stop the entries of their competitors in the market. Protection through trade secret is a well-established strategy but the right knowledge to maintain the trade secrets should also be applied.

Methodology:

The research paper specifically uses doctrinal methodology by analysing the laws and case laws for its research purposes to provide quality analysis and suggestions.

Research Gaps:

1. In today's time, intellectual property is looked at as a legal monopoly for all the MSMEs that exist. Although, acquiring these rights is observed to exceed the decided budget of any small industry it is looked at as a worthy investment.
2. The centre and state have introduced multiple institutions and taken up several initiatives in order to make small industries aware about the existence and importance of Intellectual Property rights in their business framework.
3. Several facilitation centres have been established, like the Confederation of Indian Industry (CII) which being a not for profit centre has done a commendable job at facilitating several small industries into opting for intellectual property rights for their protection.
4. However, there is not much ground work done when it comes to observing which parts in India actually need protection from the illegal and unfair practices taking place all around the world.
5. The awareness initiatives taken by several facilitation centres have been conducting seminars and workshops which provide for more information to the small enterprises.

Research Objective

Considering above discussed research gaps researchers specifically derived following research objectives:

1. The preliminary research objective of the paper is to, very meticulously understand the need of Intellectual Property Rights for the Medium Small and Micro industries. India's economy majorly depends upon the start-ups and MSMEs to be specific. The very foundation of these enterprises is innovation, which has till date shown the world some of the most prosperous days.
2. The secondary objective of the paper is to observe and analyse the policy frameworks set out by the government to serve as a helping hand for protecting these enterprises from unfair practices.
3. Alongside, observing and suggesting how an already existing IPR mechanism can be revamped in order to smoothly run the whole system without disturbing it completely.

Research Questions:

1. Whether cost is the sole deciding factor for MSMEs to gain IP protection.
2. Whether there is a need for setting up of circuit benches for effectively regulating all the IPR processes in a region-specific format?

Challenges faced by the MSMEs:

Challenges that are faced by the Micro Small and Medium Enterprises in terms of incorporating Intellectual Property Rights for the protection of their products are wide in nature. On observation these are the challenges which were recognized:

1. Low awareness of IP Protection of SMEs.
2. IP strategies and management requires a series of extraordinary skills, ranging from legal expertise to scientific, Human resource management, support institutions and technical assistance which collectively form the foundation of these MSMEs. They often lack expertise in these arenas which results in forming of an irrecoverable gap. Having stated that, the revenue needed to obtain to fill in the gap becomes beyond the reach of these MSMEs.
3. Piracy issues faced by these MSMEs have become quite rampant these days. This is because pirating their product becomes very easy. This involves a lot of collateral damage of undermining the confidence of the

SMEs as a whole and results in the huge loss of revenue. Consumers are also harmed in the process because the pirated version of any product turns out of a very bad quality.

Way Forward

One of the most significant way of breaking the wall of challenges is to taking maximum help from the Government. The small administration has helped a lot of SMEs in becoming familiar with the trend of IPR and the way in which any SME can protect itself merely by taking assistance of these small administration. Setting up seminars and training sessions so as to guide the entrepreneurs and Small businesses to set up along with obtaining IP strategies for protection. (FISME, 2014) Collaboration of private and public sectors to identify the pirated the goods and to disallow them to entering the local or the international market at any cost. Whilst, the private and public sector look into this the MSMEs should secure their production and distribution chains which will eliminate the chances of consumer's rights getting affected.

The MSMEs should essentially beware of the new goods introduced in the market and ensure their authenticity at all costs including the raw materials and other components which are put together to make that one product. (Saha, 2012) The Purchasers should refrain themselves from buying goods whose prices are very low as compared to the quality of the product.

Various articles and papers enlist numerous challenges and the way forward which state the ways in which these challenges can be solved. Most solutions include making MSMEs aware of the use of IP Laws and the way it can be exploited. It is said that there is no meaning of the existence of the Intellectual Property Rights if they are not efficiently exploited. But, when problems faced by all the MSMEs are observed closely, one might notice that being unaware of its existence isn't the main problem. Making them aware of its existence merely plays a preliminary role in uplifting these enterprises. One of the problems identified in the abovementioned papers is that the funding of these enterprises is inadequate. Seeking IP protection and then maintaining it becomes a huge question for these small and medium enterprises. (Saha, 2012) Therefore, there is a need to establish a middle ground between the accessibility of IP protection to the poorly funded industries, so that they can protect their idea and hard-earned money from that idea at the same time.

Economy of the entire world depends on the Small- Medium enterprises. The heart of these SMEs is the innovations that they come up with. These innovations mark the overall development of the world. A connection has been made between the small and medium enterprises and the Intellectual Property Rights. Because, cases of piracy, grey products and many other unfair practices have become very prominent. Let alone the product, name of any small and medium enterprises is often copied. (Rautdesai& Nandekar, 2017) Intellectual property rights not only protect the products, names, designs and ideas but also protect the idea of being original and releasing novel products in the market for the purposes of healthy and fair competition. (Soni, 2020)

1. What all does SMEs/ MSMEs (Micro Small and Medium Enterprises) include?

In India, Micro, Small and Medium Enterprises are very evidently classified in section 7 of the MSME Act, 2006. Furthermore, the Micro, Small and Medium enterprises have been categorized as (i) Manufacturing enterprises and (ii) Service Enterprises. Under Manufacturing Enterprises, the Micro enterprises are the ones having their investment in plant and machinery not more than twenty-five lakh Indian Nation Rupees.

Small Enterprises are those whose investment in plant and machinery is more than twenty-five lakh rupees, however it doesn't exceed five crore rupees. Lastly, the medium enterprises are those who have invested more than five crore rupees and it does not exceed ten crore rupees in their plant and machinery. (Sankara& Rahman, 2013)

On the other hand, under service sector, micro enterprises do not exceed ten lakh rupees, small enterprises are more than ten lakh rupees, but do not exceed two crore rupees and medium enterprises have investment more than two crore rupees but do not exceed the investment mark of five crore rupees. It has been observed by many

experts and the government of India itself these enterprises significantly contributed to the economy of the country. In the year 2016-17 the share of MSME Gross Value Added was 31.8% as inferred by the Central Statistics Office (CSO). Subsequently, MSME product distribution export from India reached the mark of 48.10% in the year 2018-19 according to the Directorate General of Commercial Intelligence and Statistics (DGCSI).

2. Amalgamation of SME and IPR Laws

The connection between MSMEs and Intellectual Property Right is not known by many. The term “Intellectual Property” simply means innovation. It is a unique property which is inherently owned by the person whose intellect has created that idea. Creating something and transforming it into reality is what is called intellectual property. The creator of this unique product has some rights with him which cannot be taken away without any explicit permission granted by himself. Otherwise, the act is called infringement of the intellectual property rights of the owner of the property. (Saha, 2012) The foundation of MSMEs is innovation. Enterprises built on this foundation and operating on small scaler yet, in today’s time they manage to contribute significantly to the Indian economy.

Products of MSMEs being so vital for our economy need the utmost protection from unfair practices raging from national to overseas. Therefore, Intellectual property rights play a huge role in safeguarding MSMEs, their product and name. these rights are territorial in nature because of which the owner of the product can grant licensed to others for the use his products just like the use of physical property is licensed. (Singh & Nayak, 2017) In order to claim these rights, the product or the idea has to be tangibly registered with the concerned authority. This will bring any new idea into picture and will be legally recognized and protected.

One of the reasons, as to why Intellectual property rights should be adopted is to make the best commercial use of the name of the enterprise started. Adopting Intellectual property rights increases the value of MSMEs in the local as well as global market. IP clubbed with other marketing strategies forms a qualitative strategy to earn the loyalty, respect and quantity of customers. (Soni, 2020) Finally, it becomes convenient for the customers to compare your and the competitors’ product because it will be out there in the market and will be known to everybody.

Hurdles faced by MSMEs in terms of IPR Laws and their solutions.

All enterprises face hurdles with respect to registering Intellectual Property. Solid solutions are needed for these problems in order to make registering any kind of Intellectual Property a piece of cake for the MSMEs situated in any part of India. (Saha, 2012) The inception period of any MSME is financially exhausting. Because these enterprises need to not only look into setting up appropriate plants and machinery, but also to hire manpower so as to commence the work. in order to become financially stable, these enterprises need to start working at the earliest so that they can generate more funds from the ones which they have already invested in their assets.

This is to say, that in the start they are need of money and some financial support rather than being in the state of spending it incessantly. Investing in Intellectual Property is the last thing that comes to their mind. Until today, the concept of investment in IP was a remote concept for almost all the Indian MSMEs. The ones who knew about the concept of this kind of investment usually deny paying heed to it looking at various hurdles that come in the way until a person gets IP registered. (IPO, 2016)

However, there are no less hurdles even after getting it registered because every MSME needs to maintain it, otherwise, the registered IP is terminated. These hurdles will be observed in tow-fold manner: (1) Cost of the process of registering the IP is one of the major deciding factors for IP Protection, (2) Lack of effective awareness – Need for improved machinery for spreading awareness through already existing facilitation centres – need of an expert who consistently keeps IP Rights in check and prevents unfair practices. (need for circuit benches in the field of IP).

3.1 Cost of the whole process is one of the major deciding factors for IP Protection.

Getting any form of IP registered for it to be legally recognized and for the owner to reserve all the rights which he/she is entitled to, has been a weak area (in cases of MSMEs). Because, even if the cost of the application itself has been reduced, there are additional payments to be done from the tight budget of MSMEs. These payments include different elements of application of filling additional claims (which have separate charges). While filling an application for obtaining a patent, one has to attach several claims relating to the product/ idea. This is to appropriately describe and lay down the specifications of the concerned product in front of the patent office in order to obtain the grant.

If the specifications are not laid down specifically and as clearly as possible then there are chances of the grant getting terminated. There is also the need to clearly distinguish between the prior art and the product for which the owner needs patent for. Extra claims are bound to consume more space in the application which will, as a result, lead to extension of the already tight budget of any MSME. (Soni, 2020) This is because the size of the application also decides the cost of that application, i.e. after a certain number of fixed pages, the longer the application, higher is the cost. After going through the Patent (Amendment) Rules, 2018 it is concluded that there are no other major amendments included in the rules. Therefore, more attention is required to be given to the reduction of fee.

Although, after the fee reduction for filling any kind of intellectual property with the patent office, the professional fees are found to be one of the persistent problems faced by MSMEs. (Saha, 2012) Due to the extravagant fees charged by the professionals' half of the MSMEs drop the idea of getting their IP filed. This is because, taking help from these IP professionals is unavoidable owing to the lack of knowledge about IP rights of MSMEs.

Hiring an IP professional gives a helping hand to the MSMEs, this is because main work of the IP professional is to check if the concerned idea or product fulfils the patentability criteria or conduct the prior art and name search in case of trademark or copyright filing. An IP professional is trained to run such tests and knows how to get any IP registered without getting into much hassle. But even before that, if a company is new or it brings out a new product, they would not want to waste much time in such processes which are not relevant to the immediate profit earning. This is another reason for them to hire such professionals.

On the other hand, there is one benefit for the MSMEs in case of IP protection. The MSMEs are offered reimbursement for applying for Trademark, Patent or Geographical Indicators which will only apply for this reimbursement once the IP Right is granted. Although, the MSMEs can avail this scheme, not many people know about it.

In case of objections, replies and other steps including the fees charged in lieu of all these additional steps in the process. Therefore, this whole scheme in totality although reduces the burden of cost somewhat, but, is still a very costly affair at a time when the MSMEs are just coming into the market.

3.2 Lack of effective awareness – Need for improved machinery for spreading awareness through already existing facilitation centres.

It is rightly said by D R Agarwal, the director of Innovation Technology Advancement Gateway Business Solutions Ltd. that maximum number of innovations are done by the small industries around the world. The mere foundation of these small industries is innovation. For promoting these innovations and encouraging more such innovations to spring up, getting a concerned IP registered relating to the innovation holds utmost importance. Otherwise, those innovations become prone to unfair practices taking place across the world, which eventually serves as a disincentive for these small and medium enterprises in the long run.

The centre regulates Intellectual Property Rights under multiple ministries. The Department of Industrial Policy and Promotion of Ministry of Commerce and Industry regulates different kinds of IPs which include: patents, geographical indications, trademarks and industrial designs. Copyrights, on the other hand, are regulated by the Ministry of Human Resource Development. Each year, approximately 40,000 IP applications are filed. Out of these, 40,000 applications, 85 percent of the IP are filed by the Multinational Companies. Only a handful

amount of Small and Medium Industries file IP applications. In order to build awareness among the small players, government has set up various institutions for spreading awareness.

These Institutions include: Confederation of Indian Industry (CII), The Associated Chambers of Commerce and Industry (ASSOCHAM), the Federation of Indian Chambers of Commerce & Industry (FICCI), Federation of Indian Micro & Small & Medium Enterprises (FISME) and PHD Chamber of Commerce and Industry (PHDCCI). There are many more organizations set up by the centre in order to facilitate proper research and development. They also spend their considerable amount of time in training and imparting exceptional skills to IP professionals and trainers. This is done to give the MSMEs quality training and guidance. In today's time, the facilitation centres of IP have been spread out in almost all parts of the country. These facilitation centres focus, not on all, but very specific numbers and types of IP.

In order to solve the problem of being unable to reaching out to the MSMEs which come under the cluster areas, a proper cluster plan has to be structured. In this cluster analysis, the number cluster areas have to observed. From which the most remote and unrecognized cluster area can be chosen. These handful of cluster areas can be personally looked into by the IP experts. The cluster system includes small enterprises which normally manufacture the same kinds of products or provide same or at least similar kinds of services in the market. These functions are held in a chosen and identifiable area or a cluster of any geographical location. This system makes the operating procedure simple and easy for all kinds of people working in these small enterprises. This also makes the IP offices recognize the clusters easily which will eventually lead to making the work of the IP officers easy in helping these small enterprises in applying for the grant of IP. (IPO, 2014)

Multiple seminars have been conducted in the past by many distinguished IP professionals in different cities like Gujarat, Maharashtra, Madhya Pradesh, Rajasthan, etc. but, it does not seem possible for these facilitation centres to rope in all the MSMEs or small enterprises existing in the internal part of these cities while making their living. Having facilitation centres in all the main areas has not proven to be effective for the remote small industries. FICCI has taken initiative to develop cluster programs and spreading it all across the country. This is one simple step that has to be taken up in order to spread more awareness. (IPO, 2014) Getting the small enterprises into limelight can serve effectively in terms of awareness. Getting identical industries into a cluster form will also help them to get their common problems solved more speedily. One of the major problems being IP application and the tight finances that they hold which also includes they're overall manufacturing and functioning costs.

India alone consists of 6.33 crore MSMEs. Out of which only 16,695 have been the beneficiaries of the reimbursement scheme undertaken by the Indian government in last six years' span. This initiative, as mentioned above was taken to financially support the MSMEs. However, looking at the statistics and the number, it can be inferred that there is lack of awareness about this initiative among the MSMEs owners. (Soni, 2020)

The Indian government has introduced varied policies for the small industries to grow over a long period of time. Which includes giving MSMEs concession in the IP application fees as well as processing fees, opening facilitation centres across the countries which also aided the MSMEs in improved and more qualitative research and development. However, one of the measures that also be taken by the state as well as the authorities of each district is spread awareness among the investors and the wealthy chunk of the society in those chosen clusters or the identified areas and invest in the small enterprises. This will not only provide them with additional funds but also, help the enterprises in obtaining exposure. This exposure will lead to further development and therefore product/ service credibility. The yielded credibility will eventually lead to providing the investors with improved returns. The government has also, recently notified an Act on Limited Liability Partnership which will essentially help in attracting more investors. This initiative by the government involves campaigns about LLP among the MSMEs as they would be motivated into taking up more risk.

Scrutinizing the present times in terms of the costing of IPR

For more than hundred days India has been experiencing a total lockdown. With people being idle at home, not being able to go anywhere. They therefore have come up with ideas of starting something new, something of their own. These ideas having their roots in their intellect need to be protected. With physical filing for IPR restricted, e-filing remains the only way to go ahead with protecting their ideas.

Electronic filing (or E-filing, as it is called) is wholly dependent upon the internet. There are many parts of this country which still don't have proper access to internet, and therefore, people in such parts have to pay a lawyer's fees additionally for an offline registration. Poor connectivity of internet does not play a supportive role which directly becomes a hindrance in the way of getting their rights protected. Internet is not the only factor which hinders filing of IPR. (IPO, 2014)

After considering all the hurdles together, which are – joblessness of people with low income, fragile internet facilities, a complicated process of IP filing and skyrocketing costs charged for getting IP registered, it is observed that the wall of hurdles is taller than one can think. Amidst all this, if any IP applied for is not granted by the controller, then a whole new process of filing an appeal in the Intellectual Property Appellate Board is started.

3.3 Need of improvising the already existing IP administrative system.

With a constant increase in the number of daily innovations and new MSMEs coming into picture, the high inflow of IPR applications and their appeals to the Intellectual Property Appellate Board is going to be inevitable. With the already existing backlog and the preferential needs of the people changing towards seeking protection under IPR has been incessantly increasing. A 2018 research shows that approximately 2,00,000 patents have not been examined. One of the main reasons quoted for this is the manpower crunch. Under such circumstances, the IPABs which are situated in Chennai, Kolkata, Mumbai, Ahmedabad and Delhi, having its headquarters in Chennai will be overburdened by the overwhelming number of applications and appeals. IPABs are situated in handful of states in India which automatically limits the numbers of cases that can be handled by these pre-existing bodies. (PTI, The Stateman & ET, 2015)

Therefore, introducing a greater number of such Boards and Authorities which exist by the authority of such boards to widen the geographical reach of the individual Board will not only increase the reach of these adjudicating authorities, ensuring the systematic resolution of problems, but also will reduce the money, time and energy spent just on trying to reach the far situated authority. Setting up of circuit courts to look into only IPR matters in almost all the states will ensure productivity and more effective use of human resources which will eliminate the problem of manpower crunch. These Circuit Courts will sit from time to time to hear and resolve the disputes of IP related matters.

However, handling the IPR applications and appeals will not be solved just by setting up circuit benches. In order to take one more step further in terms of achieving an effective IPR mechanism in terms of MSMEs, the examiners and the assistant examiners should receive proper training from one of the several existing IP training universities. One of the organizations which can incorporate the idea of effective and quantitative training of examiners of IP is the Small Industries Development Organization (SIDO).

Conclusion

Intellectual Property Rights have been ever evolving. Since they protect something which has been created on the basis of an idea or a thought, no two things are the same. Therefore, taking small and realistic steps towards revamping the internal machinery of IPR will prove to be fruitful for the existing and the future MSMEs. The ideas put forth and the observations made in the paper aimed at providing that some minute and realistic changes in its already existing mechanism due to certain current problems will benefit this system to a great extent and will also help the general public. These mechanisms include lowering the costs of filing, spreading awareness effectively and providing for a mechanism of circuit benches all over India for a better reach of the aggrieved and the adjudicating authority. This all will ensure that a more helpful system will be in place which is also able to better regulate the whole process of obtaining an Intellectual Property Right, because when it comes

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