

Intellectual Property Rights: Barriers in the Small and Medium Enterprises (SME's)

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ABSTRACT

Small and Medium Scale Enterprises are an extremely diverse and heterogeneous group with a very wide range of needs and concerns. For small and medium-sized enterprises (SMEs) intellectual property (IP) is an important business asset. Where Small and medium sized (SME'S) account for 90% of the business population and also where it plays a significant role in the economy by contributing to the GDP by achieving sustainable national economic development, most governments have put an effort to establish the SME'S sector in their respective countries. SMEs can benefit from the wealth of technological and commercial information available in patent and trademark databases to learn about recent technological breakthroughs, identify future partners, and find out about the innovative activities of competitors. This paper highlights the significance of the intellectual property for the SME's and also the barriers which are the reasons for ineffective use of the IP system and which has the impact on ability to exploit the innovative capabilities of SME's.

1. Introduction

The Micro & Small Enterprises (MSEs) Sector, continues to be a energetic sector of the Indian economy. Small and medium-sized enterprises (SMEs) represent over 90% of enterprises in most countries. They are the driving force behind a large number of innovations and contribute to the growth of the national economy through employment creation, investments and exports. The major advantage of the sector is its employment potential at low capital cost. The labour intensity of the MSME sector is much higher than that of the large enterprises. In India the MSMEs play a pivotal role in the overall industrial economy of the country. MSMEs in India account for more than 80% of the total number of industrial enterprises and produce over 8000 value-added products. It is estimated that in terms of value, the sector accounts for 45% of the manufacturing output and 40% of the total export of the country and employs over 6 crore people. The small enterprises sector holds good potential for further expansion and growth in the future. In fact, the employment potential of the sector is unmatched by other sectors of the economy.

Generally, SMEs are defined on the basis of one or more quantitative parameters such as number of persons employed the annual turnover, or the level of their investment. SMEs are an extremely diverse and heterogeneous group with a very wide range of needs and concerns. They could help promote innovative new technologies, managerial growth and competitiveness and the absorption of technological innovations and exploitation of indigenous research findings. Their intellectual property needs and concerns are, therefore, dependent on the nature and scale of their operations and on their relationships with other entities and enterprises. Despite the importance of SMEs for the vitality of the economy and the potential offered by the IP system for enhancing SMEs competitiveness, SMEs often underutilize the IP system. At present, the Small and Medium Enterprises (SMEs) in India are at a crossroad and there is a strong debate over the questions like what would be the future of these SMEs? How the SMEs can endure in the trade ring? What role the government should

play in making these SMEs more competitive? How can the Intellectual property generate wealth in the business? While the government might be considerate to SMEs in terms of it's policies, consumers do not differentiate between the "goods and services" of large companies or SMEs.

The concept of intellectual property rights has gained importance in the recent years. Intellectual property is also seen as an important source of competitive advantage and a means for the creation of wealth. IPR are meant to encourage innovation. The accompanying legislation allows the society at large to reap all the benefits of the new knowledge that has been generated. It enables a society to evolve economically which results in higher living standards. The monopoly offered by these rights is a major incentive to work on new knowledge creation without any fear of unjust appropriation.

2. Intellectual Property Significance For Small And Medium Enterprises (SMES)

In the changing global scenario, the issues of IPR have gained special importance for the Micro, Small & Medium Enterprise (MSME) sector and SME. Small & Medium Enterprises are the pillars of the Indian manufacturing sector and have become significant in the stable monetary growth of India. Intellectual property (IP) may assist SMEs in almost every aspect of 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 business abroad through licensing or franchising. The value of IP is often not adequately appreciated and its potential for providing opportunities for future profit is widely underestimated by SMEs. If the innovative ideas, creative designs and powerful brands of SMEs are not legally protected by IP rights, then the survival of SME will be under stake. As SMEs contribute wide range of employment opportunities i.e., over 42 million people in the economy it is vital for these companies to invest in their own IP by adopting unique trademarks and brand names, every trader can create a strong recall value and a position for its product and/or service in the market.

There are number of factors that discourage SMEs from filing patents, including the lower level of familiarity with the procedures involved, the high costs of filing and maintaining a patent, uncertainty about the protection offered by a patent and the uncontrollable and unpredictable costs of litigation. Large multinational companies often have critical mass to maintain their own patent departments and benefit from already established technology and markets to generate continuous stream of IP knowledge. In contrast SMEs usually focus on cutting edge technology and in many cases they still need to find a market for it. SMEs lack financial means to maintain an in-house patent department as well as the financial strength to mount successful legal challenges to rivals infringing their IP rights. As a result there is a need to assist local SMEs with the patent filing procedures to facilitate the acquisition of tangible protection for their IP and to secure IP protection at a broader international level.

However the number of patent applications filed by SMEs is relatively low compared to the number filed by multinational companies. There are number of factors that discourage SMEs from filing patents, including the lower level of familiarity with the procedures involved, the high costs of filing and maintaining a patent, uncertainty about the protection offered by a patent and the uncontrollable and unpredictable costs of litigation. In India. Large multinational companies often have

critical mass to maintain their own patent departments and benefit from already established technology and markets to generate continuous stream of IP knowledge.

3. Challenges Faced By SME In IP System

SMEs face a number of difficulties in using the IP system (WIPO Magazine, 2005). This is often the result of their limited knowledge of the ins and outs of the IP system, lack of clarity about its relevance to their business strategy and competitiveness, and of their finding the system too complex and expensive to use.

Insufficient **information** on the relevance of IP in day-to-day business, high **costs** associated with obtaining and enforcing IP rights, perceptions that the IP system is esoteric, too **cumbersome and time-consuming** (Gee, 2007). These are among the reasons why many SMEs are sometimes slow to protect their IP assets. This is often the result of their limited knowledge of the ins and outs of the IP system, lack of clarity about its relevance to their business strategy and competitiveness, and of their finding the system too complex and expensive to use. Available studies on the use of the IP system by SMEs are largely limited to the use of patents.

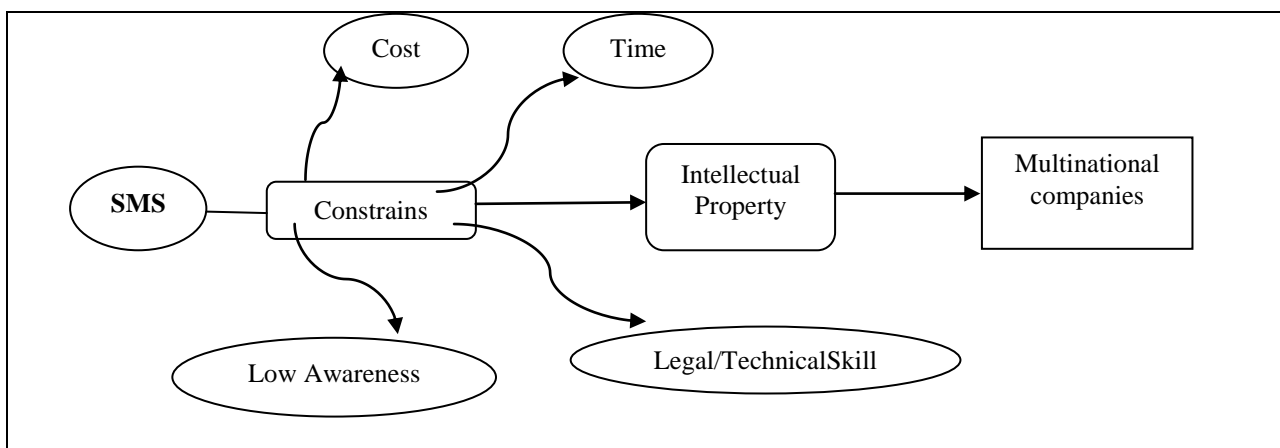


Fig. 1: Constrains preventing the smooth protection of IP of SMSs as compared to multinationals

Apart from lack of awareness and knowledge on IP, the costs of registering IP are generally perceived as one of the greatest barriers for SMEs (Sajilan, 2008). In budgeting the costs relating to the acquisition of IP rights, entrepreneurs need to take into consideration not only the official fees (including application fees, publication fees and maintenance fees) but also the costs relating to application preparation and prosecution, legal advice and translation costs whenever the applicant intends to apply for protection abroad.

The costs of getting IP protection may be perceived by many SMEs as exceeding the potential benefits to be obtained from protection, particularly considering that a significant part of the costs may be incurred before the product has reached the market and that lenders, investors or government programs rarely provide financial support for the protection of IP rights (Idris, 2003).

Aside from the costs, there are a number of additional elements of the application process that may act as a disincentive for SMEs to seek IP protection, including the time

required to be granted a patent or to obtain a trademark registration. The increasing number of applications has often led to an increase in the backlog and therefore an increase in the time required from filing to grant of a patent or registration of a trademark. For SMEs, a long delay for obtaining a patent leaves a great degree of uncertainty and delays the possibility of finding potential licensees or partners for exploiting an invention (WIPO Magazine, 2005). The barriers to a wider and more effective use of the IP system by SMEs are, therefore, many.

To conclude, the first challenge would be **low awareness of the system limits the exposure SMEs** have to the IP system and their ability to use all the elements offered by the IP system effectively, including not just patents but also utility models, trademarks, industrial designs, trade secrets, patent databases, copyright and other IP rights (Saleh, 2008). Poor IP management skills within SMEs reduce their ability to fully benefit from the system and, therefore, discourage its future use.

Secondly, limited access to the necessary human resources and/or accessible legal advice make use of the IP system complicated and **decreases the chances of success in the application process** for registration/grant of IP rights. Efficient IP management requires an array of skills ranging from the legal to the scientific/technical and the commercial that not all SMEs have in-house. In fact, such expertise is generally lacking in many if not most SME support institutions; this is equally true of SME consultants and business advisors in the private sector. Thirdly, high costs, not just for acquiring and maintaining but also for monitoring and enforcing IP rights are an additional barrier, particularly for firms that are operating in a number of geographically dispersed markets.

Another major challenges face by entrepreneurs is **combating counterfeit goods and piracy issues**. Counterfeiting and piracy harms commerce and the public well being, and undermines confidence in the quality of brand name products, resulting in billions of dollars of lost revenue, investment, future sales, and growth opportunities. It also harms legitimate businesses and workers who play pivotal roles in creating, manufacturing, distributing, and selling genuine products. In addition, because infringing products are often substandard in quality, they can harm consumers in a myriad of ways, by for example posing serious health and safety risks (Gee, 2007).

The next challenge is the costs, high costs and capital, not only for acquiring and maintaining IP rights but also for monitoring and controlling IP rights are an further future barrier, chiefly for firms that are working in various geographically dispersed markets and areas.

There are other prevailing elements including application process that may act as a deterrent for SMEs to hunt for IP protection, including timely process for grant of a patent or to obtain a trademark. The increase in number of application for IP protection has resulted in backlog of earlier registration and more time is required for the registration process. There may be a possibility that licenses or partners or exploitation of invention may take place due to delay and uncertainty in granting IP protection to SMEs.

Lastly the **limited access to the experts and technical member in the field providing legal advice** in the IP system complicates and reduces the probability of success in the application procedure for registration and granting of IP rights. Well-organized IP management requires a series of skills starting from the legal to the scientific, expertise and technical and the commercial which SMEs do not possess. Truly, such expertise is lacking in many SME institutions; which also includes some SME consultants and business advisors in the private segment.

4. Solution to SMEs with government assistance and other measures

In the past, there has been an increase in the significance of IP rights which has begun to change the nation, state and local levels in IPR for knowledge-based industry. In numerous countries, there has been a move in the hub of national IPOs. While the customary functions of IPOs is examination of product, registration and granting IP rights that are limited to patents, trademarks and industrial designs. IPOs are increasing their field of work and providing services which are aimed to have an access to, and reaping the benefit from, the

IP system by various users of the IP system, including researchers, entrepreneurs and SMEs. **Some hurdles can be resolved by:-**

Awareness programs on IPR: In this altering global market the issues of IPR are one of the key concerns that is felt by the SMEs. It is of the view that different aspects of IP require more understanding and conceptual knowledge. SMEs by registering their products in intellectual property can boost their competitiveness in different areas.

SMEs can come up in the market if initiatives are taken to organize campaigns and spread awareness about use and advantages of IP. The motive of these programs is to present an overview of IPR issues with in depth details on patents, trade mark, copyrights, industrial design and geographical indications.

Technological Information Service: The SMEs are not an expert to have knowledge about the complex knowledge of IP. There should be committees and session or offices that provide technical information on IP rights so that SMEs are able to handle the rights with ease.

Setting up of Intellectual Property Advisory Cell: SMEs are not big enough firms to avail the advantages arising out of IP rights. Most of the SMEs do not have enough assets to make use of IP resources but no doubt have vast ideas and thoughts to convert them into IP rights. Starting of IP Advisory Cells will answer many issues and this will help in increasing and developing the data-base of SME which have noteworthy role in updating the IP system. It will also help SMEs in developing to go for International patents.

Specialized expert training on IPR provided to entrepreneurs/ officers, members of industry associations: To generate consciousness on IPR concerning patents, trademark, copy right, industrial designs, trade secrets and geographical indications, it is proposed to higher end and small end training programs for the benefit of SMEs manufacturers and producers, members of industries having IP application, experts involved in R&D activities, Government bodies connected with the implementation of IPR and scholars of the management and engineering institutions and other fields connected to IPR. The basic motive is to train people in the area of IPR who act as an assistance to their bodies and help IP generate more profits and reach new heights.

Monitory benefits on grant of patent: An incentive is given as a financial assistance is considered to be best source of encouragement to SME development. Government should come up with more financial assistance schemes to promote SME in filling patent whether the IP process is domestic or foreign owned. Providing adequate and in depth information, direction and facilities for protecting their IP can also help SMEs in coming up and dealing with the Patents.

Interaction with International Organizations: In many developed countries, the exploitation of IP is lawfully protected by way of IPRs. The areas of protection and visibility could be dealt at a worldwide level with help of global network economy. Initiatives of awareness, protection and measures of

harmonization could be initiated by providing help in fields of Science & Technology (S&T) in between various nations.

5. Steps required to be initiated by government and other agencies

Petty patent Legislation: Legislatures need to ponder over and allow legislation, the approval of petty patents to protect incremental innovations. Such small innovations are of great significance since they help to encourage smaller invention and innovative new ideas and steps leading to bigger inventions. The local industry would be more benefitted by these incidental patents. It can aid these small entities and businesses by allowing IPR that are comparatively cost efficient, quicker, easier to obtain with a short span of commercial use. Such a policy has been taken up by many developed and developing countries.

Legal Support: IP kiosks can search the possibility of aiding *pro bono* support from the legal firms, wherever required. Assistance from intellectual property lawyers can be provided and meetings can be fixed for consultancy purposes. The services experts can be made accessible through these kiosks to furnish to specific requirements.

Valuation of IPR: Exercises to add to expertise in and enhance understanding the conceptual issues relating to the evaluation of intangibles assets, and intellectual property specifically, requires be undertaken. In this world of globalization, the systems of calculating that are present in typical industrial and organizations set up will require undergoing a numerous change. Consequently, the financial incentive systems and consultancy services in present will have to be revamped.

IP Audit: An IP audit can be called for which own IP assets. A system to categorize the types of intellectual property; identify those intellectual properties, create a method for the valuation of these IPs; keep a check on the intellectual properties of competitors; and calculate the life of each of the intellectual properties, the remaining time period as well as the maintenance charge payable and renewal fees in coming years all these are covered under IP audit. Such audit processes are required to enable organizations to efficiently and effectively plan and administer their intellectual property rights. If due care is not taken to protect IP for coming years, the capital and labour invested in acquiring these IP will become futile.

Insurance: Insurance agencies for intellectual property should provide compensation for both offensive and defensive situations. These should cover insurance for loss and compensation and insurance to guard the insured against any infringement claims by an IP holder. The insurance would cover trademarks, copyrights, design rights and computer software, apart from patents. These mechanisms would give confidence SMEs to go for IPR protection systems.

Ideation exercises: Creative ideas that can be captured and converted into practical technology, even in backward rural areas. Mechanisms to tap such creative ideas include: the Technopreneur Promotion Programme, conducted by the Department of Science & Technology, Government of India, which extends monetary support to SMEs for converting their innovative ideas into useful inventions; and the National

Innovation Foundation, which aims the investors to develop at grassroots level.

License exchanges: A process that should be incorporated to aid organizations and institutions which are IPR holders to leverage these assets is an IPR exchange. A license exchange is designed to assist organizations, especially SMEs, to access information and to team up with the right institutions and partners more effectively. The licenses if granted to small and medium sized firms can convert the IPR in to more profits as they have the potential and capacity to work on similar areas.

Patent pools: A patent pool is a contract of agreement entered by two or more patent owners to grant license one or more of their patents to one another or third parties. Thus it is process to compile the IPR is so demanded by the situation depending on the parties and further transferring it to parties. Government in some countries has come up with such policies for public good. Such systems include the creation of collective IP rights of entities, mandatory licensing of patents, filing fees, creating and managing patent pools, buying key enabling-technology patents and putting them in the public domain, and even creating mergers of IP rights between firms.

Safeguarding Secrecy: The practice of unintentionally or silently disclosing critical technology-related information is quite common at times where the applicant applies for application it is possible the vital secrets may be disclosed. Thus non-disclosure and secrecy agreements entered are prevalent measures, so as to prohibit the leaking of information provided in confidence and trust.

6. Conclusion

There is a need to strengthen interaction between IP offices, SME support institutions, business associations, national, regional and local governments and other relevant institutions with a view to better identifying the IP needs of entrepreneurs and SMEs and the barriers to a more effective use of the IP system by entrepreneurs and SMEs. In addition, government and policy makers may promote a more effective use of the IP system by entrepreneurs and SMEs by enhancing awareness and knowledge of all elements of the IP system, including not just patents but also trademarks, geographical indications, industrial designs, utility models, trade secrets, copyright and related rights, new varieties of plants, non-original databases and relevant aspects of unfair competition law, among entrepreneurs and business advisers within public and private SME support institutions (N.P. Louwaars, 2005).

The other relevant areas of policy-making that could be of use are support initiatives that seek to facilitate the application process and reduce transaction costs for entrepreneurs and SMEs for using the IP system and study the impact of the introduction of procedures for accelerated grant of IP rights and of lower or discounted application fees entrepreneurs or SMEs in general (WIPO Magazine, 2005).

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