

Intellectual Property Protection for Startups and Small Businesses

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Introduction:

Intellectual property rights (IP Rights) are intangible property rights like all other types of property rights. For a set amount of time, the IP Rights often grant the inventor the sole right to utilise his or her creation. The “Intellectual Capital” has emerged as one of the primary wealth generators in the modern period as a result of the rapid acceleration of globalisation and the opening up of new vistas in India. In addition to international laws and treaties, various national laws also regulate IP rights.

Intellectual property (IP) protection is crucial for startups and small businesses to safeguard their innovative ideas, inventions, and brand identities from being copied or misused by others. Every startup has intellectual property rights that it must be aware of and safeguard in order to succeed in business. Every startup employs a trade name, brand, logo, advertisements, ideas, designs, goods, or website in which it has important intellectual property rights. To avoid unjustified litigation or legal action that could stymie its company operations, the startup must ensure that it is not violating any other parties’ intellectual property rights before beginning any initiative. Additionally, new businesses should take the initiative to develop and protect their intellectual property for a variety of reasons, including enhancing the value of their company, creating better

goodwill, protecting their competitive advantage, using intellectual property as a marketing advantage, and using the IP Rights as a legal defence.

Intellectual Property Rights (hereinafter "IPR(s)") are exclusive rights granted for the specific time period for innovations or creations. It is intended to protect inventions, designs, logos, artistic or literary or dramatic works and confidential information relating to any business which enables it to be successful. For the purpose of promoting better innovation and stimulating growth in society, intellectual property rights are granted to support R&D.

Startups are disruptors that fill the void between a problem and a solution by proposing fresh and original ways to address the issue. These innovations are works of intellect since they create their own special product or service and offer it at a fair price. Therefore, it is important to safeguard these start-ups' intellectual property (hereafter, "IP(s)") in order to secure their success. The following are the most important advantages of IP protection: First off, it motivates start-ups to do more research and development for novel technologies and it shows the value of the money invested in the start-up. Second, it equalises the playing field between start-ups and established businesses, prohibiting the exploitation of innovations. Additionally, a competitive advantage expands a start-up's customer base and revenue. Thirdly, the assurance that IP assets are secured draws significant investments because it is known that the start-up is strong enough to defend itself. Fourthly, startups must safeguard their trademarks and secret business information against infringement in order to preserve their reputation and brand value. In general, IP protection gives start-ups a credible brand, which lowers the danger of exploitation.

Different Types of IPR which can be protected as per Start-ups requirements:

1. Patents are exclusive rights awarded for innovative inventions that took an inventive step and might be used in industry. The creator has the right to prohibit anyone from using his innovation for profit during this time. The Patents Act of 1970 is the controlling law.
2. Any item, brand, heading, label, ticket, name, shape of a good, packaging, or combination of colours is considered a trademark. A trademark should be able to differentiate the products or services of one brand from those of another and be graphically displayed. The Trademarks Act of 1999 is the controlling legislation. The trademark registration is valid for ten years and is renewed every ten years.
3. Under the provisions of The Copyright Act of 1957, copyright provides protection and legal rights to any creator/author/owner of "original" literary, dramatic, musical, creative works, and cinematograph films. Computer software is protected under copyrights since, in accordance with Indian IP Law, it is regarded as literary creation.
4. Industrial Designs safeguard patterns and shapes that can be implemented in two-dimensional, three-dimensional, or both forms through an industrial process and are only seen with the naked eye. It is protected by the Designs Act of 2000 and leaves out the utilitarian component of any design.
5. Trade secrets are proprietary knowledge held by a company or organisation. It must be safeguarded at all costs because it has significant commercial value and provides a significant economic edge over the competition. Coca-Cola's recipe, for instance. It is impossible to protect data that already exists in the public domain, has been willingly disclosed, has undergone reverse engineering, or is not properly protected. The protection of trade secrets is not specifically regulated by Indian law; but, according to judicial precedents, trade secrets may be protected

under the Copyright Act of 1957, the Indian Contract Act of 1872, and other legal proceedings such as breach of confidence.

6. A geographical indication (GI) is a label applied to goods with a particular geographic origin and qualities or a reputation derived from that origin. An indication that a product is made in a certain location is necessary for a sign to be considered a GI. The Geographical Indications of Goods (Registration and Protection) Act, 1999 allows for the protection of GIs.

Intellectual Property Start-up Protection Scheme (SIPP):

The government created SIPP to provide start-ups in specific categories with affordable choices to register and protect their intellectual property. Start-ups can affordably protect their patents, trademarks, and designs with SIPP. It began on January 16th, 2016, for a year, and was then repeatedly extended until March 31st, 2023. The following startups are eligible to sign up for this programme:

1. Start-ups that the Department of Industrial Policy and Promotion's (DIPP) Certification Inter-Ministerial Board has certified as having an "innovative business".
2. An organisation is regarded as a start-up for five years (now increased to ten years) following the date of incorporation or registration.
3. If the entity's annual revenue for any fiscal year is not more than Rs. 25 crores (now 100 crores).
4. If the organisation is attempting to innovate, create, deploy, or commercialise new goods, processes, or services that are based on technology or intellectual property and this occurs as it does so develop: A novel good, service, or method an enhanced version of an existing good, service, or procedure that benefits customers.

The Controller General of Patent, Trademark and Design

(CGPD TM) has appointed facilitators to offer start-ups guidance on IPR, filing for IP registration, drafting patent applications, and other topics in order to implement the aforementioned system. These intermediaries offer start-ups all the assistance they need to affordably safeguard their intellectual property.

Reasons to Secure IP Rights for Your Startup:

1. Many startups simply can't afford not to secure rights in their IP. A startup doesn't need millions of dollars and a team of attorneys to get basic IP protections. Getting basic domestic IP protection usually involves only a few small fees and some legal research. The benefits, by comparison, are huge.
2. Deterring other companies from unfairly profiting off your material. Formal IP protection comes with registration, which puts the world on notice that your patent, logo, or software belongs to you. This protection can help your company avoid litigation in many cases. Other companies should first check with the United States Patent and Trademark Office (USPTO) to see if material like yours is already in use.
3. Presumption of ownership. When you successfully gain legal rights in a copyright, patent, or other type of IP, you create a rebuttable presumption that the property belongs to you. In other words, when another company infringes on your IP and you sue, the courts will presume that the IP belongs to you unless the other company proves otherwise. This position gives you an advantage in infringement litigation.
4. Protection from infringement suits. If your startup doesn't go through the process of securing IP rights, you have no way of knowing whether what you're using already belongs to someone else. Properly acquiring IP rights protects your startup from expensive infringement litigation later when you discover that someone else

already owns the rights.

5. The key ingredient to competitive advantage. According to the Startup Genome Project, the most critical step in gaining competitive advantage in your market is intellectual property, which is even more true for tech-based startups.
6. Security and investor appeal. If your startup connects with a novel idea or type of software, not protecting your IP could put your entire business at risk. IP protection advertises stability and security to investors who like to see startups with a well-developed IP strategy from the beginning.

Conclusion:

Intellectual Property Rights (IPR) play a crucial role in promoting innovation, creativity, and economic growth in today's knowledge-based economy. IPR provides legal protection for various forms of intellectual property, including patents, copyrights, trademarks, and trade secrets. These rights enable individuals and organizations to safeguard their innovations, creations, and brands, granting them exclusive rights and incentives to reap the benefits of their intellectual endeavors.

Intellectual Property Rights provide a framework for protecting and incentivizing innovation, creativity, and economic growth. They encourage investment in research and development, foster technological advancements, and enable individuals and organizations to profit from their intellectual endeavors. However, it is important to maintain a balance between protection and access to ensure the continued advancement of knowledge and the greater benefit of society as a whole.