

MODULE

01

Importance of IP for SMEs

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OUTLINE

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LEARNING OBJECTIVES

1. You understand how IP relates to business.
2. You use IP effectively as a business asset.
3. You understand the importance of IP audit

LEARNING POINT 1: IP is all around us

IP is all around us. Every product or service that we use in our daily lives is the result of a long chain of big or small innovation, such as new designs, or improvements that make a product look or function better. We can easily find IP in almost every product like a ballpoint pen or a MP3 player.

1. BALLPOINT PEN

Ladislao Biro's famous patent on ballpoint pens was in many ways a breakthrough. But, like him, many others have improved the product and its designs and legally protected their improvements through the acquisition of IP rights.

The trademark on your pen is also intellectual property, and it helps the producer to market the product and develop a loyal clientele. And this would be the case with almost any product or service in the marketplace.

2. MP3 PLAYER

Patent protection is likely to have been obtained for various technical parts of a MP3 player. Its design may be protected by industrial design rights. The brand name is most probably protected by a trademark. And the music played in the MP3 player is (or has been) protected by copyright.

LEARNING POINT 2: Why is IP relevant to your SME?

Along with human creativity and inventiveness, intellectual property is all around us. Every product or service that we use in our daily lives is the result of a long chain of big or small innovations, such as changes in designs, or improvements that make a product look or function the way it does today. Take a simple product. For example, a pen. Ladislao Biro's famous patent on ballpoint pens was in many ways a breakthrough. But, like him, many others have improved the product and its

designs and legally protected their improvements through the acquisition of IP rights. The trademark on your pen is also intellectual property, and it helps the producer to market the product and develop a loyal clientele.

And this would be the case with almost any product or service in the marketplace. Take a CD player. Patent protection is likely to have been obtained for various technical parts of a CD player. Its design may be protected by industrial design rights. The brand name is most probably protected by a trademark and the music played in the CD player is (or has been) protected by copyright.

So, How Does this Affect Your Business?

Regardless of what product your enterprise makes or what service it provides, it is likely that it is regularly using and creating a great deal of intellectual property. This being the case, you should systematically consider the steps required for protecting, managing and enforcing it, so as to get the best possible commercial results from its ownership. If you are using intellectual property that belongs to others, then you should consider buying it or acquiring the rights to use it by taking a license in order to avoid a dispute and consequent expensive litigation.

Almost every SME has a trade name or one or more trademarks and should consider protecting them. Most SMEs will have valuable confidential business information, from customers' lists to sales tactics that they may wish to protect. A large number would have developed creative original designs. Many would have produced, or assisted in the publication, dissemination or retailing of a copyrighted work. Some may have invented or improved a product or service.

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.

To find out how all this and many other things may happen, follow through the pages of this web site and discover the world of intellectual property and the opportunities it offers to your SME.

LEARNING POINT 3: IP as a business asset

An enterprise's assets may be broadly divided into two categories: physical assets - including buildings, machinery, financial assets and infrastructure - and intangible assets - ranging from human capital and know-how to ideas, brands, designs and other intangible fruits of a company's creative and innovative capacity. Traditionally, physical assets have been responsible for the bulk of the value of a company, and were considered to be largely responsible for determining the competitiveness of an enterprise in the market place. In recent years, the situation has changed significantly. Increasingly, and largely as a result of the information technologies revolution and the growth of the service economy, companies are realizing that intangible assets are often becoming more valuable than their physical assets.

In short, large warehouses and factories are increasingly being replaced by powerful software and innovative ideas as the main source of income for a large and growing proportion of enterprises worldwide. And even in sectors where traditional production techniques remain dominant, continuous innovation and endless creativity are becoming the keys to greater competitiveness in fiercely competitive markets, be it domestic or international. Intangible assets are therefore taking center stage and SMEs should seek how to make best use of their intangible assets.

One crucial way of doing so is by legally protecting intangible assets and, where they meet the criteria for intellectual property protection, acquiring and maintaining IP rights. IP rights may be acquired in particular for the following categories of intangible assets:

- (1) Innovative products and processes (through patents and utility models);
Patent and Utility model
- (2) Cultural, artistic and literary works including, in most countries, also for computer software and compilation of data (through copyright and related rights protection); Trademark, Collective mark, Certification mark, in some cases, Geographical indications
- (3) Creative designs, including textile designs (through industrial design rights);
Industrial design
- (4) Distinctive signs (mostly through protection of trademarks including collective and certification marks, but in some cases through geographical indications);
Trade secrets
- (5) Microchips (through protection of layout-designs or topographies of integrated circuits); Copyright and Related rights
- (6) Denominations for goods of a given quality or reputation attributable to the geographical origin (through protection of geographical indication);
Geographical indication
- (7) Trade secrets (through protection of undisclosed information of commercial value): Protection of layout-designs or topographies of integrated circuits.

Learn more: IP Protection as an investment

Making the right investments is crucial for enhancing the market value of your SME. Investing in equipment, property, product development, marketing and research can strongly enhance your company's financial situation by expanding its asset base and increasing future productivity. Acquiring intellectual property may have a similar effect. Markets will value your company on the basis of its assets, its current business operations and expectations of future profits. Expectations for future profit may be considerably affected by the acquisition of key patents.

There are numerous examples of SMEs that have seen their market value increase overnight as a result of their acquisition of important patents in key technologies. Similarly, a good trademark with a good reputation among consumers may also enhance your company's current value and may decisively contribute to making your company's products and services more attractive to consumers.

Investment in developing a good IP portfolio is, therefore, much more than a defensive act against potential competitors. It is a way of increasing your company's market value and improving future profitability.

LEARNING POINT 4: The value of IP assets

A crucial point about legal protection of intellectual property is that it turns intangible assets into exclusive property rights, albeit for a limited period of time. It enables your SME to claim ownership over its intangible assets and exploit them to their maximum potential. In short, IP protection makes intangible assets “a bit more tangible” by turning them into valuable exclusive assets that can often be traded in the market place.

If the innovative ideas, creative designs and powerful brands of your SME are not legally protected by IP rights, then these may be freely and legally used by any other enterprise without limitation. However, when they are protected by IP rights, they acquire concrete value for your enterprise as they become property rights which cannot be commercialized or used without your authorization.

Increasingly, investors, stock market brokers and financial advisors are becoming aware of this reality and have begun to value IP assets highly. Enterprises worldwide are also more and more acknowledging the value of their IP assets, and, on occasions, have included them in their balance sheets. Many enterprises, including SMEs, have begun to undertake regular technology and IP audits. In a number of

cases, enterprises have realized that their IP assets are in fact worth more than their physical assets. This is often the case for companies operating in knowledge-intensive and highly innovative sectors, or companies with a well-known brand name.

(1) Strong market position and competitive advantage

IP gives enterprises the exclusive right to prevent others from commercially using a product or service, thereby reducing competition for their innovative product and enabling the enterprise to establish its position in the market as a pre-eminent player.

(2) Higher profit or returns on investment

If your enterprise has invested a significant amount of money and time in R&D, using the tools of the IP system is important to recover your R&D investments and obtain higher returns on your investments.

(3) Additional income from licensing or selling (assigning) IP

IP owner may choose to license or sell the rights to other enterprises in exchange for lump sum payments or royalties, in order to generate additional income for the enterprise.

(4) Creating bargaining power

Owning IP assets that are of interest to others may be useful when you are seeking authorization to use the IP assets of others. In such cases, enterprises often negotiate cross-licensing agreements, which are agreements by which each side authorizes the other enterprise to use its IP assets in the manner specified in the licensing contract.

(5) Enhanced ability to acquire finance at reasonable rates of interest

In some circumstances, enterprises seeking to commercialize a new technology may be able to more easily raise capital, based on their IP assets, for example, by including information about their IP assets in their

business plans while approaching investors, financial institutions, government agencies, etc.

(6) Credibly threaten or take action against imitators and free-riders

To effectively carve out the exclusivity provided by an IP asset, it may occasionally be necessary to litigate, or at least to threaten to litigate with enterprises that are infringing on your rights. Owning IP assets will improve your enterprise's ability to take successful legal action against imitators and free-riders.

(7) Positive image for your enterprise

Business partners, investors and shareholders may perceive IP portfolios as a demonstration of the high level of expertise, specialization and technological capacity within your enterprise. This may prove useful for raising funds, finding business partners and raising your enterprise's profile and market value.

LEARNING POINT 5: Auditing your IP

One way your SME may acquire a better position to capitalize on the potential benefits of its IP assets and extract their full value is by conducting an IP audit. Ideally, this should be done by professional IP auditors, but often a preliminary IP audit may be done within your company. This entails identifying, monitoring, valuing your SME's IP assets so as to make sure that you are making the most out of them. By doing so, your SME would be able to make informed decisions when it comes to:

(1) Acquiring IP assets

Knowledge of your enterprise's intellectual property and of its value will assist you in deciding which type of IP rights to acquire and maintain, and how

best to manage the IP assets of your SME.

The value of your enterprise may be considerably affected by the acquisition of key IP rights.

(2) Mergers and acquisitions

An IP audit can identify all the company's IP portfolio and help to find strengths and weaknesses of IP assets. That allows the company to obtain potential areas and targets to acquire specific technology.

Once the potential targets are identified, the company can narrow down the choices and decide which one of the companies is the best acquisition target in order to strengthen its competitiveness and keep competitors out of market. The successful M&A can lead to a significant increase in the value of your SME.

(3) Licensing

SME can increase its cash flow (revenue) and marketing power by licensing out its IP rights to a third party.

An IP audit will assist your SME in determining the value of your own IP in order to obtain maximum benefit from license agreements. The revenue resulting from there has the potential of increasing the market value of your SME.

(4) Collateral

A well-structured IP portfolio can also be used as collateral. In such cases lenders will use your IP assets to determine the credit worthiness of your SME.

(5) Enforcement

Knowing the value of your IP assets will assist your SME in taking decisions on whether it is worth while taking action against infringement and in what way this may be done.

(6) Cost reduction

A well managed IP register would help you identify obsolete IP assets (thus enabling you to cut-down IP assets' maintenance costs), avoid infringing other people's IP rights, etc. This would undoubtedly lead to a reduction in costs.

Summery

IP is part of every aspect of life in an increasingly knowledge-driven society. It means that IP assets have become the most powerful tool that your enterprise can use in order to survive and grow in today's highly competitive business environment.

More and more enterprises are beginning to realize that intangible assets are becoming more and more valuable while tangible assets are becoming less and less valuable for the competitiveness of a business. Therefore, an enterprise should legally protect intangible assets by acquiring and maintaining IP rights.

IP assets enable your enterprise to achieve the following goals: strong market position and competitive advantage, higher profit or returns on investment, additional income from licensing, creative bargaining power in business deals and positive image of your enterprise.

As a powerful business tool, an IP strategy should be established systematically to identify, protect, evaluate, monitor and exploit your IP assets to ensure that you are reaping maximum benefit out of them.