INTELLECTUAL PROPERTY MANAGEMENT AND COMMERCIALIZATION OF NEW PRODUCTS

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INTRODUCTION

1. Does every enterprise, big or small, rely on intellectual property (IP) assets in developing a link between the market, technology and its business strategy? The answer is yes. So, does this also imply that in today’s highly competitive markets every business needs to understand and effectively use the intellectual property system? Well, the plain answer is again YES. Matters concerning IP assets arise in almost every business activity. If one or more of the following types of activities are considered or undertaken by a business, then it must squarely deal with IP issues to reduce the risks associated with doing business and/or to gain a competitive edge over its competitors:

   (a) Starting a new enterprise;
   (b) Buying or selling a business;
   (c) Selecting or creating a suitable name and/or logo for a new product, service or business;
   (d) Developing and commercializing a new product or services; improving an existing product or service;
   (e) Entering a new market or developing a new product line;
   (f) Hiring new employees in areas such as research, design, development, marketing, accounting, finance, etc;
   (g) Sharing business or technical information with banks, venture capitalists, business partners, contractors, consultants, employees, etc;
   (h) Developing a new advertising and/or marketing campaign;
   (i) Maintaining a list of customers, suppliers, etc;
   (j) Buying proprietary software products or getting customized software developed;
   (k) Gathering business intelligence;
   (l) Creating and maintaining computerized systems, web sites, etc;
   (m) Developing original designs, artistic works, or other creative output of interest to competitors;
   (n) Safeguarding business secrets, databases, etc.;
   (o) Developing and maintaining brand equity;
   (p) Entering into a new business relationship or modifying an existing business relationship with another company, supplier, R&D institution, etc;
   (q) Exit planning: Closing a line of business or company, mergers and acquisitions, bankruptcy; and
   (r) Developing export strategy and pursuing global ambitions.

2. It is a truism that for competing in the knowledge-based economy of the 21st century, successful companies cannot afford to rely solely on the traditional factors of production, namely, land, labor or capital. They have to supplement their tangible assets with effective management and exploitation of their intangible assets, notably IP assets. Integrated management of all the resources of the enterprise, therefore, must encompass in its ambit IP assets as well.

THE WORLD INTELLECTUAL PROPERTY ORGANIZATION: AN OVERVIEW

3. Before explaining what is Intellectual Property (IP) a few words about the World Intellectual Property Organization (WIPO) are in order. WIPO is an intergovernmental
organization dedicated to promoting the use and protection of innovative and creative works of the human mind - intellectual property -, such as inventions, designs, trademarks, artistic and literary works, etc. With headquarters in Geneva, Switzerland, WIPO is one of the specialized agencies of the United Nations (UN) system of organizations. It administers 23 international treaties dealing with different aspects of intellectual property (IP) protection. The Organization has 179 member States, which represent over 90 per cent of the world's countries.

4. The activities of WIPO fall into four main categories. Firstly, a fundamental part of WIPO’s activities is the development and application of international norms and standards. IP rights are territorial rights i.e., they exist and can be exercised only within the jurisdiction or country under whose law they were granted. But works of the mind, including inventive ideas, do and should cross borders with ease in a world of interdependent nations. This is why it is crucial that countries engage in international harmonization and mutual recognition of rights and duties through international treaties and norms.

5. A second focus for WIPO’s activities is to facilitate the acquisition of IP rights by companies and inventors in various countries. A number of treaties covering inventions, trademarks and industrial designs, ensure that one international registration or filing will have effect in any of the relevant signatory States. The services provided by WIPO to companies and individuals under these treaties simplify and often also reduce the cost of making individual applications or filings in the countries in which protection is sought.

6. Thirdly, through its cooperation for development activities, WIPO assists countries in the implementation of treaties, the enhancement of the development of the IP system, the modernization of IP offices, and in raising awareness in the private sector of the importance of IP and the benefits that may be drawn from its use.

7. Fourthly, through its Arbitration and Mediation Center WIPO provides services which can help individuals or companies from any country in the world to resolve their IP-related disputes. The Arbitration and Mediation Center represents a response to the vital need for quick and inexpensive ways of settling commercial disputes involving IP rights, and providing private parties with an alternative to lengthy and costly court proceedings.

8. Given the nature of WIPO’s activities, and in particular its services to the private sector, WIPO differs significantly from other UN specialized agencies in terms of its funding. In fact, over three-quarters of WIPO’s funding is derived directly from the services rendered by WIPO to the private sector. For more information on WIPO please visit the web site at www.wipo.int.

INTRODUCTION TO INTELLECTUAL PROPERTY

9. In today’s knowledge-driven economy IP rights have become valuable business assets. Most successful companies in recent years have relied heavily on their creative and innovative capacity as their main source of competitiveness. Such inventiveness, know-how and creativity are captured and transformed into exclusive business assets through the acquisition of IP rights. This is why IP protection offers an important tool for businesses to enhance competitiveness and strengthen the position of their products or services in the marketplace. In legal terms, IP is divided into two main categories: *industrial property*, which includes inventions (patents), trademarks, industrial designs and geographical indications; and
copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

10. Valuable undisclosed information (often referred to as trade secrets) of an enterprise that provides it competitive advantage is IP in its own right or is the precursor of other types of IP rights and therefore needs to be adequately identified, protected and managed. Trade secrets refer to any confidential business information that provides an enterprise a competitive edge and may include sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and manufacturing processes.

11. Within a business, IP assets may include a wide range of intangible assets, ranging from the innovative features of its products to the trademark it uses for making its products or services distinguishable and recognizable by consumers, to its creative designs that assist the company in making its products more appealing. By formally registering and protecting certain categories of IP assets a business acquires the exclusive right to exclude all others, generally for a limited period of time, to use its IP without its prior permission. This may provide an enterprise with a wide range of business opportunities.

A. Using the Intellectual Property System

12. Entrepreneurs having a good understanding of the IP system will be able to establish an IP strategy suitable to the needs, possibilities and capacities of their business. The central question is how an effective IP strategy can assist small and medium-sized enterprises (SMEs) to face some of their key business concerns, including raising finances, increasing the market value of the enterprise, marketing products and services, finding partners and suppliers, exporting, acquiring technology and conducting business transactions on the Internet. The following overview briefly describes ways in which IP rights may be used by SMEs to pursue their business goals:

13. Increasing market value of the firm: ownership of a portfolio of IP assets increases the market value of an enterprise. Companies with a high innovative capacity operating in high technology sectors and companies with an established brand name with a good reputation often find that, in case of a merger or acquisition, the value of IP assets are higher than the value of their physical assets. On occasion, a single key patent may significantly increase the market value of an enterprise as well as its overall image vis-à-vis investors, other companies and shareholders. See: http://www.wipo.int/sme/en/ip_business/ip_asset/sme_market_value.htm

14. Marketing and product differentiation: trademarks and designs help in marketing a product. They are the ‘face’ of a product or service which makes it distinguishable from other similar products or services. They are often the crucial elements of a branding and marketing strategy. Without protection of their trademarks and designs, SMEs may find that their investments in marketing their products or services fail due to confusion among consumers. See: http://www.wipo.int/sme/en/ip_business/marketing/marketing.htm

15. Acquiring new technology and finding suppliers: SMEs seeking access to innovative technology developed by other companies should consult patent databases to identify the necessary technology. They may have to negotiate licensing agreements with the patent
holder in order to obtain the right to use the technology. IP rights are an essential part of any contract for the acquisition of technology and SMEs acquiring technology should be well aware of the IP implications during licensing negotiations. Information in patent documents may also assist entrepreneurs in their search for alternative suppliers of identical or similar technologies.


16. **Commercializing innovative new products**: an invention on its own has little value for an SME. The acquisition of a patent gives the SME exclusivity over the commercialization of an innovative new product or a new and improved process of manufacture and also opens the possibility for allowing its commercialization by other firms through licensing.


17. **Exporting goods and services**: SMEs that intend to export their products or services should consider IP protection in their export markets. IP protection will not only provide exclusivity in the commercialization of the inventions, trademarks or designs in those countries but will also provide the opportunity for licensing, franchising or establishing joint ventures with foreign companies. This may be particularly the case for companies lacking the capital to commercialize the product or service directly in the export market.


18. **Raising finances**: obtaining financial resources for the development of innovative products/services may be significantly assisted by exploiting IP assets, particularly patents. Patents provide exclusivity for the commercialization of inventions and may be important to convince investors/lenders of the market opportunities open to the enterprise for the commercialization of the product or service in question.


WIPO AND SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

**B. Objective and Strategy**

19. WIPO’s SME strategy has a clear and overarching objective: to assist SMEs in all sectors to enhance their competitiveness through a wider and more effective use of the IP system. This is largely to be done through a two-fold approach: (a) by enabling SMEs to make informed decisions concerning how to fully exploit their innovative and creative potential through an effective use of the IP system and (b) improving the policy framework and business environment to make it conducive and easier for SMEs to use the IP system.

20. At the heart of WIPO’s strategy for SMEs is the conviction that IP represents an important tool for the development of dynamic and SMEs. This conviction goes hand-in-hand with the understanding that WIPO’s objective requires working jointly with other institutions providing services and support to SMEs. WIPO therefore works closely with institutions at a national level, including IP offices, chambers of commerce, associations of SME, NGOs, and other civil society institutions committed to promoting the development of the SME sector. The aim is that of including IP services (e.g., legal, technical and commercial advice as well as financial support) within the wider framework of services and support to SMEs.
21. Another crucial element of WIPO’s strategy concerning SMEs is to demystify the IP system and to present its utility from the perspective of the business community. IP should not be perceived as a complex legal issue with little bearing on the daily business activities of SMEs. The IP system should be understood as an important tool for business, and entrepreneurs should begin to better appreciate the opportunities the system offers for their enterprises.

C. WIPO’s SME Web Site

22. In June 2001 WIPO launched its SME web site targeting directly entrepreneurs and associations and institutions providing services to SMEs. The SME web site explains basic issues and answers practical questions on IP in a simple, business-friendly language. The web site currently contains over 500 pages of substantial information, advice, documents and links on various issues of interest to SME entrepreneurs, managers, investors and business consultants. The web site may be visited at www.wipo.int/sme.

D. Initiatives Aimed at Encouraging SMEs to use the Intellectual Property System

23. On a regular basis, WIPO collects information on policies, programs and strategies adopted by a range of institutions to assist SMEs to use the IP system effectively. The information is gathered with a view to allowing for wider information sharing and exchange of experiences among and within countries. WIPO seeks to provide technical assistance to institutions (e.g., national IP offices, ministries in charge of SMEs, chambers of commerce, SME associations, etc.) to implement similar activities. Initiatives have been grouped into six broad categories. The following is a list of the types of activities conducted by a wide range of institutions from which information has been collected and for the planning and implementation of which WIPO would be willing to provide technical assistance:

(a) Awareness-raising and Training on IP:

- Awareness-raising seminars for entrepreneurs;
- IP guides and other information material on IP for SMEs;
- Web sites with practical information and/or distance learning programs on IP for entrepreneurs;
- Collection and dissemination of case studies illustrating the success stories of SMEs using IP;
- General advice to applicants on administrative issues relating to the application process (e.g., helpdesks within IP offices);
- Multimedia products (e.g., CD-ROMs) with information and advice on management of IP assets;
- Participation in business fairs, contribution of articles to business magazines, and other promotional activities;
- Monthly radio and/or television programs on issues relating to IP and innovation;
- Inclusion of IP within national training curricula for entrepreneurs;
- Proactive visits to SMEs;
(b) Technological Information Services:

- Regular workshops for entrepreneurs on how to use patent information services;
- Free access to IP databases;
- Provision of a range of technological information services for SMEs at a reduced price;
- Establishment of Centers for Technological Information or decentralized branches of the IP office for the provision of technological information;

(c) Financial Assistance:

- Financial assistance to SMEs rendered by banks, venture capitalists, and SME support organizations for patenting their innovative products;
- Fee reductions for SMEs applying for IP rights;
- Partnerships between IP offices and associations of patent attorneys for the provision of legal advice for SMEs, free-of-charge or at reduced cost;

(d) Customized Advisory Services on IP

- Legal and managerial assistance to enterprises on how to manage their IP assets and how to develop an IP strategy;
- Promotion of and legal assistance on the use of collective marks, certification marks and geographical indications by small-scale businesses;
- Pilot projects on IP management with a selected group of enterprises;
- Assistance in the creation of trademarks or distinctive signs;

(e) Assistance for Technology Transfer:

- Creation of databases on licensable technologies (e.g., virtual marketplaces for IP);
- Tools for the valuation of IP assets;
- Business fairs of licensable technologies where potential licensees and licensors may meet;
- Advice for licensing negotiations;

(f) Partnerships between institutions:

- Partnerships between IP offices and other institutions providing services to SMEs such as chambers of commerce, incubators, research centers and science parks for the inclusion of IP within a wider range of services to SMEs;
- Partnerships with universities and public research centers for the establishment of Technology Licensing Offices (TLOs), for the promotion of the development of spin-off companies and for the inclusion of IP issues within technical and management degrees; diplomas, etc.
THE RELEVANCE OF INTELLECTUAL PROPERTY TO INDUSTRY AND BUSINESS

24. Generally speaking, a core concern for any enterprise, big or small, is how to remain ahead of its competitors. It could do so by introducing a radically new product or service, but this is a rarity. Often all it takes is to make a small improvement to the quality of existing products or services as compared with those of its competitors. If it is able to do so, then a linked concern is how to maintain the quality consistently and how to market its products and services to consumers so as to develop a long-term customer loyalty. To make improvements and to maintain quality consistently and to communicate it effectively to the consumers, an enterprise invariably relies on use of new and/or original knowledge. Such useful knowledge has to be created either in-house by its own employees or it has to be obtained from others who may be willing to provide it, generally on payment of a fee or honorarium.

25. The primary key to successful management of such knowledge for business purposes is provided by the modern system of intellectual property rights (IPRs). The term IPRs refers to legal rights available in relation to such innovative or creative output of the human mind provided the necessary conditions or requirements are fulfilled. Once created, published, granted or registered, as the case may be, these rights are generally limited to the national boundary of the country concerned. The main types of such intellectual property rights are:

   (a) patents or utility models (for inventions); India does not have any law for protecting utility models,
   (b) trademarks,
   (c) industrial designs,
   (d) valuable undisclosed information or trade secrets, and
   (e) copyright and related or neighboring rights.

26. The acquisition of many IP rights (in general, those of the first three categories referred to above) requires an application to be filed in the prescribed manner before an office set up by the national government. The relevant office in India is the Office of the Controller General of Patents, Designs and Trade Marks; for detailed information on this office, visit the web site at http://www.ipindia.nic.in/. This office undertakes an examination of the application before grant or registration of the relevant IP rights. Disputes concerning IP rights are resolved partly by the IP office, mostly so far through pre-grant/registration opposition procedure and, later on, by the judicial system of the country, including use of alternative dispute resolution mechanisms, such as those of mediation and/or arbitration. Therefore, for any business or industrial enterprise, understanding the importance of the various components of the national and international IP system and using it effectively, as an integral part of its business strategy, is a crucial necessity for success in the market place.

E. Business and Industry Cater to Practical Needs of Users or Consumers

27. In response to customer needs, almost every product or service that we use in our daily lives gradually evolves as a result of a series of big or small innovations, such as changes in its design, or improvements that make a product look or function the way it does today. Take a simple product, for example, a pen. In many ways Ladislao Biro’s famous patent on ballpoint pens was a breakthrough. Subsequently, many others have made various improvements and legally protected their improvements through the acquisition of patents or design rights. A trademark on a pen is also intellectual property, which helps a business enterprise to market the product and develop a loyal clientele by differentiating it from competing products of other enterprises.
28. And this is invariably the case with almost any other product or service in the marketplace. Thus, for a CD player, the business or industrial enterprise concerned would have obtained patents for its various technical parts and mechanisms. For its three-dimensional shape and surface characteristics that appeal to the eye, industrial design protection would have been taken by registering the new or original design. Similarly its distinctive brand name would be registered as a trademark and the music played on the CD player protected by copyright. For protecting any manufacturing secrets and/or other useful information for remaining ahead of the competition and for successfully running the business or industry, it would have relied on using the trade secrets route to safeguard its interests.

F. IP Assets Affect the Profitability of Every Industry or Business

29. Any industry or business, whether traditional or modern, regardless of what product or service it produces or provides, is likely to regularly use one or more IP assets, which it has itself created or has lawfully obtained from its owner. Therefore, it should also act to prevent others from encroaching on its due reward or free riding on its goodwill in the marketplace. This being the case, every industry or business should systematically take steps required for identifying, protecting, and managing its IP assets, so as to get the best possible commercial results from its ownership. If any business or industrial enterprise is intending to use an IP asset belonging to someone else, then it should consider buying it or acquiring the rights to use it by taking a license in order to avoid disputes and consequent expensive litigation. But in many instances, a business or industry may even come to grief for inadvertently violating the IP rights of others out of sheer ignorance of the IP system. Hence a basic understanding of the IP system has become a prerequisite for success in the marketplace.

30. Every industry or business, including an SME, needs a trade name, and often also one or more trademarks for advertising and marketing its products or services. In choosing or creating a new trade name or trade mark it must take great care in not getting into conflict with others businesses or industrial enterprises which may be already using, and having legal rights over, identical or deceptively similar trade names or trademarks. After a proper search, and selection, every industry or business should consider protecting its trade name and trade mark(s). Most enterprises have valuable confidential business information, from customers’ lists to sales tactics that they may wish to protect. A large number would have created new or original, visually appealing and distinctive designs for its various products. Many would have produced, or assisted in the creation, publication, dissemination or retailing of a copyrighted work. Some may have invented or improved a product or service. In each of these situations considerable time and energy should be spent by the enterprise concerned to prevent possible legal conflicts with the IP rights of others.

31. In all such cases, the enterprise should consider how best to use the IP system to its own benefit, and at the least possible cost. It is worth remembering that IP assets add value by assisting an enterprise in almost every aspect of its business development and competitive strategy: from product design to product development, from service delivery to marketing, and from raising financial resources to exporting or expanding its business abroad through licensing or franchising.

G. Patents

32. Innovative and creative ideas are at the heart of most successful businesses. Ideas by themselves, however, have little value. They need to be developed, turned into innovative
products or services and commercialized successfully so as to enable your SME to reap the benefits of your innovation and creativity. Intellectual Property (IP), patents, in particular, can be crucial for turning innovative ideas and inventions into competitive products that significantly increase profit margins. A patent is an exclusive right granted for a product or a process that provides a new way of doing something or offers a new technical solution to a problem (for a more detailed explanation, see [http://www.wipo.int/about-ip/en/patents.html](http://www.wipo.int/about-ip/en/patents.html)).

A patent, once granted, gives the patent owner the right to stop all others from exploiting the patented (claimed) invention. A patent is granted to the patent owner by the government, generally for a period of 20 years, in return for a complete description of the invention in the patent application. This is considered to be a fair reward to the inventor or patent owner for an adequate disclosure of a claimed invention which is new, non-obvious and capable of industrial or business application. In this way the patent system seeks to balance the need for exclusivity of the patent owner with the need to encourage the wider dissemination of new knowledge or information so that others may learn from it and improve upon the so-called ‘prior art’ (which may otherwise be kept as a trade secret indefinitely). The patent owner can then benefit from a limited monopoly as defined in the claims of the granted patent - in that she/he can commercially exploit her/his invention, and/or can license the “intellectual property rights” to others to exploit the invention, perhaps in return for a royalty. While the acquisition of patent protection is not a guarantee for commercial success, such acquisition is always important in ensuring that the patent owner has the opportunity to look for ways in which he/she can commercialize his/her invention. As SMEs are often at the center of innovative activities, therefore owners/managers of SMEs must be made aware of the basic principles and practices in designing and using the patent system. Let me therefore, very briefly summarize the key reasons why an SME should consider patenting an invention, provided it meets the criteria of patentability:

(a) **Exclusive rights** - Patents provide the exclusive rights, which usually allow your SME to use and exploit the invention for twenty years from the date of filing of the patent application in the national or regional Patent Office.

(b) **Strong market position** - Through these exclusive rights, the SME is able to prevent others from commercially using your patented invention, thereby reducing competition and establishing itself in the market as a pre-eminent player.

(c) **Higher returns on investments** - Having invested a considerable amount of money and time in developing innovative products, an SME could, under the umbrella of these exclusive rights, commercialize the invention enabling it to obtain higher returns on its investments.

(d) **Opportunity to license or sell the invention** - If the SME chooses not to exploit the patent itself, then it may sell it or license the rights to commercialize it to another enterprise and get an one time or recurring income.

(e) **Increase in negotiating power** - If an SME is in the process of acquiring the rights to use the patents of another enterprise, through a licensing contract, then its own patent portfolio will enhance its bargaining power. That is to say, the patents owned by an SME may prove to be of considerable interest to the other enterprise or institution with whom the SME is negotiating. Through a cross-licensing arrangement it becomes possible to exchange the patent rights between the two parties to mutual advantage.

(f) **Positive image of the SME** - Business partners, investors and shareholders may perceive patent portfolios as a demonstration of the high level of expertise, specialization and technological capacity within an SME. This may prove useful for raising funds, finding business partners and raising the market value of an SME.
Take action against free riders – As patent owner the SME is in a stronger position to combat unlawful imitation or copying by competitors. It needs no emphasis that innovative SMEs alone can play a leading role in stimulating industrial evolution and development. Most of you will agree with me that in the new knowledge-driven economy the more innovative a firm/an enterprise, the more competitive it can be. In order to maintain its competitive edge a firm can and should ensure that it has legally protected all its key inventions. Such protection is possible by obtaining a patent or by keeping it as a trade secret. In fact, most innovations or inventions do not meet the legal requirements of patentability and therefore the only way to legally protect such inventions is through the secrecy route. Before elaborating on trade secrets let me highlight the importance of making using patent information as part of business strategy of an SME, as often that alone may provide the desired competitive advantage.

H. Patent Information

33. Effective use of patent information can be very useful in ascertaining a firm’s competitive position in the marketplace. “Patent information” refers to the technical, commercial and legal information contained in patent documents that are published periodically by national and regional offices and by the World Intellectual Property Organization under the Patent Cooperation Treaty. A patent document includes the full description of how a patented invention works and one or more “claims” which determine the scope of protection as well as details on who patented the invention, when it was patented and reference to relevant literature. About two-thirds of the technical information revealed in patents is never published elsewhere and the entire set of patent documents worldwide is well over 40 million documents. More than 90% of the information contained in patent documents is in the public domain, which means its use is in no way constrained by having to seek the prior approval of any one. This makes patent documents as the single most comprehensive collection of classified technological information of immense commercial and technological value. Most SMEs are not aware of this basic fact and therefore do not use patent information. Access to patent information may also pose a challenge. The Internet and digitization of patent information is helping in reducing the access to patent information by SMEs. Affordability is still a concern for SMEs in many countries, apart from the inherent difficulty in interpreting the techno-legal language in which “claims” are written.

34. Even so, learning to use patent information in many ways is the first step towards sustainable technological progress of an SME. The availability of such wealth of technical knowledge provides enterprises with the following competitive opportunities:

(a) Information on new or alternative source of inputs, components or machines: By using patent information an SME may be able to identify new or alternate sources of inputs, components or machines for its products or services. This may provide it with valuable options regarding price, quality and terms of delivery which may ultimately have an impact on the final price of its products or service, and hence on its competitiveness.

(b) Information about potential new markets: patent information can also prove to be a useful source of information on potential new markets. An SME can identify other enterprises that can use its products or services as inputs, components or machines.

(c) Avoiding unnecessary costs: investing in a new product is an expensive and risky exercise. The information contained in patent documents may save time and scarce financial resources from being wasted on a nonviable product, as someone else has
already patented a key invention. The information can also enable an SME to avoid unintentional infringement of others' patents, thus saving the SME from unnecessary litigation procedures and expenses. It goes without saying that avoidance of unnecessary costs contributes to a firm/SME efficiency and competitiveness.

(d) Information on the market (market intelligence): for competitive enterprises information on the trends in the market and what the competitors are doing is very important. A proper analysis of patent information often provides the needed information. For example, by analyzing the patents owned or acquired by competitors it is possible to ascertain the trend of the market, and to plan the direction of the SMEs future strategy which may sometimes involve taking timely steps to not invest further in plant and machinery for making products that would be unprofitable in the near future and/or to take timely action to exit business lines and products that would soon be obsolete with the emergence of alternate products in the marketplace. It can also provide valuable information on who are the emerging key players in the field i.e. who are going to be providing intense competition in the field/market. Such information would be very useful in reviewing an enterprise competition strategy. Apart from the manufacturer, even as a distributor or retailer of products patent information may be of great assistance in choosing new products early and wisely.

ROLE OF TRADEMARKS IN MARKETING OF PRODUCTS

35. Peter Drucker, a well-known management guru, said that a “business enterprise has two basic functions: Marketing and innovation. Marketing and innovation produce results; all the rest are costs.” These two basic functions guide the underlying desire of a business to make a monetary profit in the process of providing quality products and services to customers. Intellectual property plays a role in both of these functions, and specifically trademarks are of primary importance in the marketing process.

36. Every product in the market faces competing products that are often almost identical, similar or good substitutes to it. Meeting or exceeding the customers’ expectations is a challenging task, especially when tastes and preferences continuously evolve in a dynamic and competitive marketplace with too many look-alike products with more or less the same functionality. Only businesses that can meet these challenges can expect to develop and retain a loyal clientele. To develop trust, confidence and loyalty in its products, every business has to develop and maintain a distinct identity, image or reputation. Only then is it able to distinguish itself and its products or services from those of its competitors and, at the same time, provide a mechanism for linking the provider of a product or service to the valuable business assets of trust and goodwill.

37. In a crowded marketplace, this happens mostly through a distinctive trade name and one or more trademarks. These play a pivotal role in the marketing strategy in differentiating products or services from those of rivals at a glance and in developing a longer-term positive – and often emotional relationship – with customers by communicating and assiduously nurtured image or reputation. Every business must woo customers so as move them quickly from brand awareness, via brand recognition, to brand preference and finally to brand insistence, where the consumer refuses to accept alternatives and is willing to pay an even higher premium for the desired branded product.
38. The popular term used in marketing jargon ‘brand’ or ‘brand name’ is interchangeable with ‘trademark,’ the preferred term in intellectual property legal circles. Of course, a product brand or a corporate brand is a much larger concept than a mere trademark, as building a strong brand and establishing the brand equity of a business is a bigger challenge than choosing, registering, or maintaining one or more trademarks. Strong brands and successful branding generally refers to successes in terms of contribution to market share, sales, profit margins, loyalty and market awareness. However, the ultimate success of a brand is also judged in terms of the total value derived by the customer from the product or service to which it relates.

I. Designing a Trademark

39. Businesses often use a portfolio of trademarks for diversifying their market strategy to meet the expectations of different target groups in the same or different countries. Building a strong brand image is no easy task. Use of trademarks for effective marketing of products requires an excellent knowledge of trademark law and practice at the national and international levels – seeking professional guidance becomes necessary, as this is a specialized task. However, a few basic elements must be kept in mind in designing a good trademark. Trademarks should be

- inherently distinctive,
- easy to memorize and pronounce,
- fit the product or image of the business,
- have no legal restrictions, and
- have a positive connotation.

40. A brand/trademark may be a word, letter, symbol (logo), number, color, shape or, where the legislation of the country so allows, sound or smell, or a combination of one or more of these elements.

J. Brand Value

41. The value of brands varies across sectors of the economy and within the same sector as well. According to a recent survey of businesses in some developed economies, it represents just over 10% of the total value of the firm in the industrial sector, around 40% in the financial services and the automotive sectors and as much as 70 to 90% in the food or luxury goods sector.

42. In absolute terms the value of a brand, excluding the value of its other intellectual property and intangible assets, may be a phenomenal sum. Believe it or not, many well known trademarks for mundane products such as a ‘Bidi’ (indigenous Indian cigarettes) are worth well over Rupees 100 crores in the Indian market. As such trademarks/brands are extremely valuable assets, which need careful handling, care, nurturing and protection; otherwise they may loose value, be stolen or simply be destroyed or lost.

K. Protect Your Trademark(s)

43. A major step in eliminating wasteful expenses and reducing risk is to register the trademark early so that it is legally secure and others cannot free-ride on it. This is often done
well before test marketing the new product to avoid incurring expenses on advertising and other promotional activities just to discover the brand name is not available.

44. Some countries, such as India, do provide a degree of protection to unregistered trademarks, but in most protection is contingent upon successful registration. Many countries, including India, allow registration without prior use, but the trademark may be cancelled if it is not used in the marketplace in relation to the product for a certain period of time. It is easier to deal with the willful free-riding (known as counterfeiting of a trademark) and with gray market products (so-called parallel imports) if the trademark is validly registered. Registration of trademarks for services is not yet available in India, but is expected to become available as soon as the new trademark law is implemented.

45. Applications for registration of a trademark are to be filed with the competent regional office of the Indian Trademark registry in Ahmedabad, Chennai, Delhi, Kolkata or Mumbai. The Madrid system of international registration of marks gives the possibility to have a mark protected in several countries by simply filing one application with WIPO. At present, 70 countries (but excluding India) are member of the Madrid system.

46. Informed businesses take active steps to educate employees, dealers, distributors, newspaper editors, publishers of encyclopedias and the public that their trademark identify their specific products alone and therefore, should be used in a proper manner.

47. Another major step that must be taken by every business is to annually review its portfolio of trademarks to check whether timely action has been taken to register all trademarks in use or proposed to be used in the domestic or export markets, to record licensing of a trademark if required under the trademark law; to adequately control the quality of the product provided by a trademark licensee or franchisee; and to renew trademark registrations.

L. Trademarks in E-Commerce

48. For businesses in e-commerce, the Internet opens a lot of new marketing opportunities, but it may also pose a number of challenges for the effective protection and enforcement of intellectual property rights, including trademarks. The use of trademarks as “metatags” and keywords, the infringement of trademark rights through the use of a sign on the Internet, the scope of protection of well-known marks and unfair competition in e-commerce are some of the controversial issues and challenges which any business on the Internet would have to prepare for and deal with much more often than through an annual review. Additionally, doing business via the Internet requires an Internet address, technically known as a domain name. In spite of their different function, domain names often conflict with trademarks. Businesses should, therefore, avoid using a domain name that conflicts with the trademark of another business.

USING COLLECTIVE MARKS AND GEOGRAPHICAL INDICATION TO FOSTER BUSINESS SUCCESS OF ENTERPRISES

M. Collective Marks: The Dynamics of Joint Efforts

49. A collective mark is generally owned by an association or cooperative whose members may use the collective mark to market their products. The association generally establishes a
set of criteria for using the collective mark (e.g. quality standards) and provides individual companies the choice to use the mark if they comply with such standards. Collective marks may be an effective way of jointly marketing the products of a group of enterprises which individually may find it more difficult to make their individual marks recognized by consumers.

50. The following hypothetical example may illustrate the use of a collective mark: A group of shoe manufacturers, making a particular type of shoes characteristic of a given region, form an association to jointly promote and market their products. While each manufacturer maintains its own trademark, they choose to adopt the collective mark IMPERIAL® to market their products collectively. All members of the association are entitled to use the collective mark as long as they produce shoes that meet certain specified characteristics. Once the mark is registered the members of the association choose to advertise the collective mark extensively in order to enhance consumer recognition. All the member of the association benefit from the collective marketing effort and may continue to use both their individual trademark as well as the collective mark.

51. In a number of countries, a distinction is made between collective marks and certification marks. Certification marks generally indicate compliance with defined standards, but are not confined to any membership. They may be registered by anyone who can certify that the products involved meet certain established standards. In many countries, the main difference between collective marks and certification marks is that the former may only be used by a specific group of enterprises, e.g. members of an association, while certification marks may be used by anybody who complies with the standards defined by the owner of the certification mark.

N. Using Geographical Indications for the Benefit of an Entire Region

52. Geographical indications may be protected as such by virtue of special provisions in the national or regional intellectual property legislation and/or by collective marks or certification marks. Today, geographical indications are often defined as indications which identify a good originating in the territory of a country or a region or locality in that territory where a given quality, reputation or other characteristic of the good is essentially attributable to its origin. Geographical indications are usually protected against misleading and unfair use. A number of countries provide for a stronger protection of geographical indications for wines and spirits.

53. There are many examples for the successful use of geographical indications. One example, from a developing country, is the logo consisting of figurative elements and the words “Egyptian Cotton” developed to promote and increase of the export of cotton products from Egypt. In early 2001, the Egyptian Ministry of Economy and Foreign Trade, the Alexandria Cotton Exporters’ Association and two leading textile firms in the United States concluded an agreement authorizing the latter companies to use the logo on their products made of Egyptian cotton in the United States of America and Canada. According to the Spring 2001 issue of the quarterly newsletter of the Development Alternatives, Inc., which was involved in the development of the logo, it was expected that the use of the logo, together with intensive promotion, would result in a twofold increase in the export of cotton and cotton products over a period of five years. Other examples for a geographical indications are “Ceylon tea” and “Champagne”.
THE POWER OF DESIGN FOR MARKETING SUCCESS

54. It is not surprising that consumers attach particular importance to the eye appeal of shoes and clothes they buy, or the look and style of gadgets or cars. The appearance of an article certainly counts in making a first impression on a customer, and often plays a decisive role in the final decision to buy or not. Smart businesses take note of changing consumer tastes and choices to develop and deliver better products, both in functional and aesthetic terms. Design, therefore, makes a critical contribution to the overall corporate business strategy and success.

55. Effective use of design adds value to a product by creating variety in a world of commodities. Attractive designs help in differentiating between competing products and also in customizing and segmenting the market for a particular product, ranging from ordinary items such as locks, cups and saucers to potentially big ticket items such as watches, jewelry and cars. Creating higher perceived value through aesthetically pleasing industrial designs helps build trust and lasting customer relationships which translate into higher market share, better price and bigger profits.

56. Many companies have successfully redefined their brand image through strong focus on product design. Most senior managers recognize that design excellence brings stronger brand recognition and higher profitability. Forward-looking businesses create and choose appropriate trade names and logos to protect their corporate identity, brand image and the resultant competitive advantage, and also devote attention, in equal measure, to the creation and management of distinctive designs as part of their corporate strategy for identity and brand management.

O. Design Management Basics

57. First and foremost, diligent design management requires cost-effective protection of valuable designs to prevent the look of the product from becoming a commodity and freely imitated by less expensive look-alikes. This entails timely registration of new, novel, or original designs at the national or regional design office.

58. The terms design, industrial design or design patent, when used in intellectual property law and practice, have a specific connotation. In most cases they refer to the eye appeal of – that is, the features of shape, configuration, pattern or ornament, or any combination of these features – of a finished article made by hand, tool or machine, as opposed to functional features which may be protected by other types of intellectual property rights, such as patents, utility models or trade secrets. In many countries, the requirement of eye appeal of an article of manufacture or handicraft has been modified to that of perceptible features of appearance, and the rule of novelty has been replaced or supplemented by an individual character requirement.

59. Designs may be two or three-dimensional. Examples of two-dimensional designs are textile, wall paper and carpet designs, and of three-dimensional ones are the shape of a toy, package, car, electrical appliance, mobile phone, piece of furniture or the shape and ornamentation of kitchenware. In certain circumstances, the features constituting a design may be the color, texture or material of an article. In some countries, computer icons have recently been protected as industrial designs.
P. Legal Options for Protection

60. Good design strategy must compare the various alternatives for protecting industrial designs, as there are different legal ways to prevent unscrupulous competitors from unauthorized copying. Legal options may include one or more of the following: protection under industrial design law, copyright law, trademark law – as a two or three-dimensional mark – and unfair competition law. In some countries the protection of these different laws may be mutually exclusive, in others it is cumulative to varying degree. It is advisable to seek expert advice.

61. Industrial design issues affect various types of business decisions. For example, the type of protection and its cost or effectiveness may affect

(a) which details should be disclosed to the designer, especially when the designer is employed by a contractor,
(b) whether to undertake design development entirely in-house, or to contract or commission an outside agency or do it jointly;
(c) timing of the initial use of a new design in advertising, marketing or public display in an exhibition;
(d) if and when to seek or continue to maintain design registration;
(e) if and when to initiate action against unauthorized/infringing acts of competitors, counterfeiters or importers;
(f) if and when to license or partially assign a design; and
(g) if and when to register the design in other markets for export or for exploring the potential of entering into strategic business alliances, joint ventures, setting up wholly owned subsidiaries, etc.

Q. Nature of Design Right

62. Most countries require registration of an industrial design as a condition for protection. Registration gives an absolute right that excludes all others from using the design for making, importing for trade or business or selling any article in respect of which the design is registered, and to which the design or a design not differing substantially from it has been applied. This right is for a limited period of time and subject to renewal. The maximum term of protection is 10 to 25 years, depending on national legislation. In many countries, an industrial design cannot be registered as such if it has been used or published before applying for design registration.

63. Only the owner of a design, namely the creator/author (or – depending on the legislation and the context – his employer) or his successor in title may apply for and obtain registration for an industrial design. If a number of persons have worked together to create a design, then they must file for registration as joint owners – unless all of them are working under contract or commission. While the application must be filed with the office competent for the country or region for which protection is sought, the Hague Agreement concerning the international deposit of industrial designs offers the possibility of obtaining protection for industrial designs in a number of countries through a single deposit made with WIPO. At present, 30 countries are members of the Hague Union. India, however, is not a member.

64. Basic information for filing an industrial design application and the possibility, where available upon request, of the deferred publication of a design, which may be critically important for marketing fashion articles such as textiles, clothing or jewelry, can be obtained
from the respective national or regional office. However, the office will not prepare the application or conduct a preliminary search of existing design registrations, nor will it express an opinion about the aesthetic or commercial merits of a design or confirm in advance of filing whether it qualifies for registration. Hiring the services of a qualified agent is advisable for fully unleashing the power of a design in marketing, sales and other business transactions, including its valuation as an intangible asset.

TRADE SECRETS ARE MOST VALUABLE: PROTECT THEM CAREFULLY

65. “The Company relies primarily upon trade secret laws to protect its proprietary rights in its specialized technologies.” This statement accompanied Stantec’s announcement of March 4, 2002, of a record quarter and fiscal year-end results that mark 48th year of uninterrupted profitability. Stantec provides lifecycle solutions to infrastructure and facilities projects through value-added professional services and technologies.

66. All businesses have trade secrets. Some are so acutely aware of their importance that they make formal statements like the one of Stantec above. Most only become aware of them when a competitor asks to see their client lists and marketing plans, or merely to allow them to talk to employees and observe the way they do business. Only then does it becomes obvious that they have something valuable to protect. A growing number of successful enterprises realize that valuable information or knowledge is what gives them an edge over the competition. Original confidential information, knowledge and expertise, gives a unique competitive quality and identity that enables enterprises to attract customers.

67. Much valuable information may appear trivial and, therefore, may not be sufficiently appreciated. Many enterprises are also unaware that secret information is considered intellectual property – often referred to as trade secrets – and protected by legislation. Companies also face a perpetual struggle between developing lasting relationships with customers, stakeholders and suppliers which requires revealing more and more about their products, processes and systems and the need to safeguard valuable trade secrets, key to their continued success. Finding the right balance is an issue needing careful and informed handling.

68. Today’s business environment has increased the importance of trade secret protection for business by developing and implementing information protection practices that address the risks associated with a global marketplace, rapid advancements in technology and telecommunications, a mobile, highly skilled work force, networked strategic business relationships, including extensive outsourcing. Technology is changing so rapidly that trade secret protection is, in some cases, the most attractive, effective and easily available intellectual property right. As with all intellectual property, trade secrets can be valuable to a company's growth, competitive advantage and, sometimes, survival.

69. Trade secret protection is most valuable as it protects a business against tomorrow’s competitors who were its most valuable employees yesterday. Accordingly, there is need for awareness creation, commitment and above all leadership from senior management in companies to properly identify trade secrets and protect them as valuable assets.
R. Strategies for Staying Ahead

70. Tom Peters while discussing the issue of employees taking secrets to a competitor in his book, *The Pursuit of Wow!*, suggests that the trick for any sensible company to survive and thrive in is to keep topping itself – so that stolen secrets are secrets to yesterday’s success. Most companies would indeed find this a difficult feat to emulate.

71. Another strategy, ordinarily suicidal, would be to post business secrets on a web site for all to see, copy and use. Interestingly, a start-up software company, Open Cola, posted a secret recipe for cola on its web site as a marketing strategy to promote its software. This resulted in its selling substantial amounts of the ‘open source’ cola drink as an additional product through another company which advertises ‘OpenCola’ on its web site. Such examples are exceptions to the rule that valuable business secrets that provide competitive advantage be properly safeguarded by all possible means.

S. Defining Trade Secrets

72. A trade secret is information of any type that is actually or potentially valuable to its owner, not generally known or readily ascertainable by the public, and for which the owner has made reasonable efforts to keep it secret. A trade secret generally has some cost associated with its development, and is not common knowledge in the industry. Even negative information, such as research options that have been explored and found worthless, can be trade secrets. Practically any type of technical and business information may be protected as a trade secret provided it meets these requirements; the following categories are illustrative:

(a) Data compilations, for example lists of customer and suppliers (the more information a list contains, the more likely it would qualify for trade secret protection);
(b) Designs, drawings, architectural plans, blueprints, and maps;
(c) Algorithms and processes that are implemented in computer programs and the programs themselves;
(d) Instructional methods;
(e) Manufacturing or repair processes, techniques and know-how;
(f) Document tracking processes;
(g) Formulas for producing products;
(h) Other data compilations such as certain databases;
(i) Business strategies, business plans, methods of doing business, marketing plans;
(j) Financial information;
(k) Personnel records;
(l) Schedules;
(m) Operating and training manuals;
(n) Ingredients of the product; and
(o) Information about research and development activities.

73. A trade secret may comprise of a combination of characteristics and components, each of which, by itself, is in the public domain, but where the unified process, design and operation of such characteristics or components, in combination, provides a competitive advantage.
74. Inventions and processes that cannot be patented can be protected as trade secrets. Companies rely on the trade secret route to safeguard the details of research and development, including draft patent applications, and patent applications before their official publication or grant. Even after grant of a patent, the associated knowledge is protected as a trade secret. A newly developed but not yet published or used industrial design or even trademark may be a valuable confidential information.

75. Trade secrets can create an advantage over competitors in many ways. The right to use trade secret information can also be licensed or sold. Although trade secrets provide no protection against those who independently develop the trade secret information, trade secrets never expire as do patents, industrial designs and copyright. Enterprises may rely more on one type of intellectual property right than another in using the intellectual property system as part of their business strategy.

76. The American company Dell has a number of patents, some pending, on its unique business model covering the customer-configurable online ordering system, the method in which the system integrates with Dell’s “continuous flow” manufacturing, inventory, distribution, and customer service operations in the United States. A patent may reveal a lot of valuable information to the competitors, but at the same time, it provides exclusivity in the marketplace. In 1999, Dell used its patent portfolio as collateral in a $16 billion cross-licensing deal with IBM that provided Dell with lower cost computer components. This freed Dell from having to pay IBM several millions of dollars in royalties and further reduced Dell's cost of doing business.

77. Another American company, Wal-Mart, relies on the protections afforded by the law of trade secrets for protection of its business model, regardless of the fact that the law protecting secret information is often regarded as a relatively ineffective mechanism for protection against theft of proprietary information from past key employees to competitors.

T. Policy Framework and Best Practices

78. Every business would like to know the secrets of success of its competitors, including any proprietary information of commercial value. As confidential information and knowledge increasingly drives business success, companies are honing their policies and practices to safeguard confidential information of commercial value from accidental, inadvertent or willful misappropriation, misuse, sabotage, loss or theft. Competitive intelligence, industrial espionage and sabotage are facts of life that cannot be glossed over; therefore, secret information or data needs to be properly protected and managed for it to be leveraged for competitive advantage. Once confidential information is disclosed to competitors its value is lost forever.

79. Only with due effort to keep information confidential or secret does such an intellectual asset become a property which may be licensed as a trade secret or used to obtain protection for another type of marketable intellectual property asset. Inventions (protected by utility models or patents), trademarks, industrial designs, artistic or literary works and the like (protected by copyright and related rights), which have not yet been made public, are kept as trade secrets until used or published as such, or during the process of registration or grant of the relevant intellectual property right.

80. An enterprise-wide information security and protection program is essential for the protection of trade secrets. Such a program should have a wider scope beyond trade secrets to
protect other types of secret information not having commercial value, such as medical records of employees, attorney-client communications, etc. It should also deal with issues of business continuity and disaster planning for the secure and continuing delivery of information during times of natural or man-made disasters. This step involves adopting a formal information security and protection policy. As many legal and technical considerations might bear on an information security and protection policy, companies should consult with legal and technical specialists to develop a suitable policy.

81. A basic step in developing and implementing such a policy and program is to identify and prioritize business secrets based on their value and sensitivity. This exercise is carried out periodically to review and update the findings, given the fact that value of information changes with time. Regular trade secret audits have emerged as an effective means of identifying, protecting and managing trade secrets, as they provide a basis for timely adaptation of the information security and protection system to the constantly evolving business environment.

U. Means of Protection

82. A common way of protecting trade secrets is through confidentiality or non-disclosure and non-compete clauses in an employment contract. In addition, an astute company has similar rules and requirements for protection of confidential information from contractors, consultants, vendors, customers, prospects, temporaries, interns, visitors, non-employees working on site, etc.

83. There is no government registration process in any country worldwide forcing enterprises to reveal their confidential business information to the authorities for obtaining trade secret rights. So, the cost of protecting trade secrets is largely the cost of putting in place an information security and protection policy and program in the company and the cost of monitoring, surveillance, audit and legal measures against insiders or outsiders who try to or succeed in breaching the security system.

84. So long as a company has made systematic efforts which are considered to be reasonable under the circumstances to preserve confidentiality or secrecy, it may take legal measures to redress the misappropriation of almost any kind of information of competitive value. It is illegal to acquire a trade secret of another if a person knows or has reason to know that the trade secret was acquired by improper means. Improper means include theft, bribery, misrepresentation, breach or inducement of breach of a duty to maintain secrecy, or espionage through electronic or other means. Reverse engineering or independent derivation alone shall not be considered improper means. Thus, a trade secret suit will not succeed if an aspect of a product's design or construction was easily obtained by examining an item purchased in the marketplace. Nor will a suit be useful against those who independently discover a secret process or compile commercially valuable information.

V. Employee Relationships

85. Employee education is an important component of a corporate trade secrets program. A good in-house information protection program informs employees of a company's policies regarding non-disclosure, educates and trains all employees on the practical aspects of information protection by providing clear, consistent definitions of confidential information and specific examples from the work environment. It also includes a system for monitoring compliance and a process for audit, evaluation and continuous improvement.
86. It also specifies that when hiring, the company exercises caution to avoid allegations that a new employee has misappropriated trade secrets from a former employer. Newly hired employees receive a copy of the information security and protection policy along with a briefing on the subject, and they agree to abide by the policy by signing an acknowledgment to that effect. Periodic reminders of the policy and proper training in its implementation are necessary throughout the period of employment. Employees leaving the company are reminded of their continuing responsibilities in this regard and of the need to return any information or document that may contain trade secrets. They also sign a separation report attesting to the return of all confidential information and trade secrets.

W. Controls for Physical Access

87. A good policy provides that physical access to a trade secret document depository, manufacturing or research and development facility requires a security pass. A well defined and clear system consistently marks and controls the distribution of documentation containing confidential or secret information. Access to such information is limited to key personnel and disclosed only after a written confidentiality or non-disclosure agreement has been signed. A good confidentiality agreement is detailed, direct and limits post-employment restrictions, if at all, in time and geographical scope.

X. Security in the Electronic Environment

88. What is relatively easy in the physical world is much more complex when a company relies on computers, e-mails, instant messaging and web sites for sharing information and engaging in e-commerce. A smart company knows its information and information systems in order to protect them. It understands all the types of information available anywhere on the company's various computer systems.

89. The top management of an enlightened company has a working understanding of the different kinds of information that enter the system, what the system does with it, how it is stored, and when information leaves the system. Which employees have access to what kinds of information? How are employees prevented from accessing information without authorization? Are the internal barriers protecting different kinds of information secured? How are electronic archives created, accessed and protected? All employees are regularly reminded that on-line communications should receive the same care as written communications and that a trade secret requires the same protections whether using on-line, written or oral communications.

90. Electronic communications, however, are more likely to leave a trail of inadvertent copies that can be seen with special software tools or during maintenance of computer systems. Every company should, therefore, have a system for encrypting and/or monitoring communication and employees should know that this is being done. A company should monitor only enough to obtain legitimately needed information and should stop once it has obtained sufficient information to establish employee behavior in violation of its information security and protection policy.

91. In a computerized workplace, consideration is given to the kinds of information needed for specific job functions and to conforming that the information system's internal barriers ensure that employees have access to only the information needed for their respective jobs. A centralized service assigns each authorized user with a unique password, to be protected and
kept confidential by that individual, that is difficult to crack, changed on a regular basis and deleted when no longer authorized. A good in-house policy clearly states that all employees are strictly prohibited to access another employee's e-mail or voice mail and that violating this policy will lead to serious disciplinary action.

92. Electronic storage media with secret information/data in, such as diskettes, Compact Discs, and DVDs, should be physically segregated and secured in the same way as confidential or secret paper documents are done. Documents on such media, on hard drives of computers, and on secure central or network servers should contain a legend that shows up on trying to open the document indicating that the document sought contains confidential or secret information or data of commercial value. Technical measures, software and encryption techniques may be employed to restrict access to classified information on secure networks, and to prevent or track unauthorized access to confidential information.

Y. E-Commerce Concerns

93. Of the various concerns in e-commerce, protection of trade secrets is an important one. The main source of trade secret information created by a web site is the web server, which systematically registers every visitor to the web site, along with other information, which may be useful for developing business strategy and marketing plans. This becomes a real issue when a company uses an external web site hosting company. In this situation, such a company’s directory on the web server often contains other information, data and programs that can constitute trade secrets, such as customized software. Therefore, every business should ensure that its external web site host is contractually bound to ensure that the data stored on its web server is adequately protected.

Z. Take All Cases of Abuse Seriously

94. Companies frequently overlook the problem of loss of trade secrets by acts of omission or commission of employees with computer access. This may have serious repercussions as employees of today may be tomorrow’s competitors. Therefore, companies must take steps to protect themselves from the abuse of company information by errant employees. A coherent approach to controlling information may even provide a company with an enhanced set of legal defenses and affirmative claims against employees who abuse confidential information.

95. A farsighted employer treats every known abuse of its secret information seriously. If the facts establish that an employee has accessed company information without authorization, then such an employer never fails to take the appropriate disciplinary action, as failing to apply appropriate disciplinary measures to one employee is simply putting arguable evidence of discrimination into the hands of another employee. Moreover, the wrongful nature of the employee's conduct may provide an extremely potent defense for the employer, should the employee ever sue the employer. Thus, disgruntled current employees are not at liberty to surf the company's computer system looking for evidence to use against the employer in future or current discrimination litigation.

96. As enterprises rely increasingly on intangible or knowledge-based assets for creating and maintaining their competitiveness in the marketplace, as opposed to reliance on tangible or physical assets, their ability to create, deploy and strategically manage such proprietary assets is becoming a crucial factor for business success. Adequate and effective creation, protection, use and management of trade secrets is the starting point on the road to
successfully developing, managing and integrating the intellectual property strategy with the business strategy of an enterprise.

COPYRIGHT AND RELATED RIGHTS

97. In most countries worldwide 80 to 90% of the creative industries are SMEs. The creative industries sector includes publishing, software, music, television and radio, architecture, advertising, designer fashion, visual arts, crafts, etc. They account for 3 to 6% of the GDP in most countries. In fact, the creative industries are the backbone of a knowledge economy and their rapid growth demonstrates the potential for a future enterprise economy.

98. Protecting copyright and related rights is important because it enables creators and users of such works to support themselves from their artistic work and for creative entrepreneurs to generate profits to reinvest in tomorrow's creators. In addition, protection of such works promotes cultural integrity, diversity and variety as most of such works are created or used by SMEs.

99. Copyright literally means the right to make a copy of an original literary or artistic work. As a legal term copyright refers to the rights given to creators for their literary and artistic works. The kinds of works covered by copyright include literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; and artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Related rights are the rights that belong to the performers, the producers of phonograms and broadcasting organizations in relation to their performances, phonograms and broadcasts respectively. Related rights differ from copyright in that they belong to owners regarded as intermediaries in the production, recording or diffusion of works. The link with copyright is due to the fact that the three categories of related rights owners are auxiliaries in the intellectual creation process since they lend their assistance to authors in the communication of the latter's works to the public. A musician performs a musical work written by a composer; an actor performs a role in a play written by a playwright; producers of phonograms - or more commonly "the record industry" -- record and produce songs and music written by authors and composers, played by musicians or sung by performers; broadcasting organizations broadcast works and phonograms on their stations. The related rights grew up around copyrighted works, and provide similar, although often more limited and of shorter duration, rights to:

(a) performing artists (such as actors and musicians) in their performances;
(b) producers of sound recordings (for example, cassette recordings and compact discs) in their recordings;
(c) broadcasting organizations in their radio and television programs.

100. The owner of a copyright is the only person/entity who/which has the right to make a copy of it in any form, or to permit someone else to do so. The owner of a copyright has the sole right to control any copying/reproduction, public performance, recording or broadcasting of a work, and its translation or adaptation. This control may be exercised for a fee termed 'royalty'. Royalty payments may be arranged through performing rights societies, collective management organizations or societies, publishing houses or by the owners of copyright directly.
101. Collective management organizations or societies act on behalf of copyright or related rights owners and administer some or all of their rights on behalf of the membership and members of foreign affiliated rights societies. There are often separate national societies for different types of rights such as: performing and broadcasting rights for music, reprography rights, mechanical reproduction rights and retransmission rights. The primary function of these societies is to act as "licensing bodies" on behalf of the members. Membership of collective management organizations is open to all owners of copyright and related rights, whether authors, composers, publishers, writers, photographers, musicians, or performers. Broadcasting organizations are not included in the list, as they are considered users, even though they have certain rights in their broadcasts. Collective management organizations grant permission and give terms for use of works in their respective repertoires. After deducting the administration charges, the royalty collected is distributed periodically to the owners of copyright and related rights.

102. Examples of public performance are the playing of recordings in shopping malls, bars, nightclubs, discotheques, hotels, airlines, and restaurants. An example of the broadcasting of performances and sound recordings is radio airplay. In fact, radio stations are the largest single broadcast users of recorded music. Each time a radio station plays an eligible sound recording a royalty is paid to the composer, the maker of the sound recording and any performer whose performance is fixed in that recording. This makes it clear that various types of SMEs are users of works protected by copyright and related rights, not to mention the widespread use of software by an even wider range of SMEs. The digital revolution and an era of converging technologies have created exciting business opportunities for SMEs in the entertainment, mass media, computer, and telecommunications industries, as well as for multimedia, consumer products and financial services companies that can take advantage of the new interactive technologies. There is a greater need than ever to safeguard copyrightable material on the Internet in the entertainment industry, including film, theater, music and print publishing transactions. While the first line of action concerns dealing with IP issues in relation to e-mails, the next one is about IP issues in relation to the web site of the enterprise. All enterprises, including SMEs, have to take special measures to deal with the problem of protecting widely distributed factual confidential or copyrighted information on or in relation to web sites— even claiming trademark rights against unwelcome hypertext links to their web sites. Multimedia is a new form of expression made possible by digital technology. With multimedia technology, graphics, video, animation, text, still images, sound and data can simultaneously appear on a computer screen and the user can interact with the content.

103. Copyright or related rights of course protect most of these works (music, photos, paintings, texts, film extracts, etc.). To exploit them in an interactive multimedia product, it is first necessary to clear the rights. Clearing the rights simply means obtaining authorization from the owner of the rights to exploit the work or parts thereof in a multimedia product, and negotiating how much that will cost. This authorization is generally in the form of a user license in writing granted by the owner of the rights. Examples of multimedia content include distance learning, virtual visits to historic sites, and interactive games for children. Frequently offered on CD-ROM or on the Internet, multimedia presentations have become an innovative and efficient means for communicating information and for storytelling or entertainment. Most multimedia companies are SMEs and many are being nurtured in high tech incubators in different countries. As users of copyright these companies need to understand the importance of proper use of the IP system in all facets of their business. This is not limited to use of copyright and related rights but often includes protection of trade secrets, creation, protection and use of trademarks, and protection of novel software by patents in some countries. For more information on how an SME may benefit from works...
USING IP ASSETS TO MARKET NEW PRODUCTS AND SERVICES

104. For most small and medium-sized enterprises (SMEs), marketing products or services is a major challenge. A marketing strategy should establish a clear link between your products or services and your SME, as the producer or provider of such products or services. That is to say, customers should be able to distinguish, at a glance, between your products or services and those of your competitors and associate them with certain desired qualities. Intellectual property, when efficiently used, is an important tool in creating an image for your business in the minds of your current and potential customers and in positioning your business in the market. IP rights, combined with other marketing tools (such as advertisements and other sales promotion activities) are crucial for:

(a) Differentiating your products and services and making them easily recognizable;
(b) Promoting your products or services and creating a loyal clientele;
(c) Diversifying your market strategy to various target groups;
(d) Marketing your products or services in foreign countries.

105. Access to market is an important element in the overall competitiveness equation. To access a market and secure a stable and predictable market share is a major challenge facing most SMEs. In addition to patents and trade secrets, the proper use and protection of trademarks and industrial designs by an SME could provide it the much-needed competitive advantage.

ROLE OF INTELLECTUAL PROPERTY ASSETS IN STRATEGIC BUSINESS MANAGEMENT

106. In today’s knowledge-driven business environment the competitive edge of successful industries or businesses, big or small, is increasingly based on strategic business management of their intangible and intellectual assets. To remain ahead of competitors, an enterprise has to create in-house or buy new intangible and intellectual assets to successfully launch market-driven new products and prevent free riding on its success by unscrupulous competitors. The demand for a new or better product is driven by actual or potential customer needs, response of competitors, quality pressures, and investor or shareholder expectations. A new product may target an old market, which requires new product development, or a new market, which may require product diversification through transformation or adaptation of the existing product to the needs of the new market.

107. By using the IPRs system, each of the following six key elements for success of a new product in the marketplace should be leveraged to build market exclusivity, business partnerships, strategic relationships and customer loyalty:

(a) The new product solves a problem or performs a function in a new or better manner than competing or substitute products.
(b) The perceived value of the new product by the customer supports the retail-selling price.
(c) The new product is mass-produced/replicated, delivered, maintained and serviced in a cost efficient and environment-friendly manner. This may involve in-house automation, including Computer Aided Design (CAD) and Computer Aided
Manufacturing (CAM), and e-collaboration in design, manufacturing, delivery, maintenance, after sales service and/or repairs.

(d) Appropriate and attractive packaging and labeling designs are developed.
(e) The new product is properly branded and positioned. Further, it receives adequate promotional and advertising support.
(f) The new product is readily available to customers. This may require addressing issues of maintenance, after-sales service, repairs and ready availability of components and spare parts, if any, that may be needed.

108. A new product may be launched by the inventor who conceived it or by an entrepreneur. In either case the new product would be finally introduced into the market by an enterprise or through the collaboration, partnership or strategic alliance of enterprises where each enterprise in the network adds value at one or more points between the initial conception of a new product idea and its evolution through various stages to the final delivery of a new product to the user or consumer. This value addition at every step of the evolution of an idea or concept till its final delivery to a user or customer is essentially the result of new or original creative or innovative intangible or intellectual assets provided by the participants in the value chain. These participants include investors, R&D centers, design firms, prototype or technology testing and evaluation centers, suppliers of raw materials and parts, distributors (wholesalers, dealers, and retailers), advisors and consultants, and of course the final users or consumers who provide valuable feedback.

109. Converting an original or new idea, concept or design to a desired product available in the marketplace requires a) time, b) funds (own or borrowed), c) creative and innovative effort (own, of employees and of external collaborators, partners, advisors and consultants), d) persistence and e) focused management of the entire process from idea to market. Life Cycle of a New Product

110. In the life cycle of a product it passes through a number of stages. After an initial screening exercise the idea or concept is translated into a design or blueprint. Thereafter, further laboratory work may be required to refine the concept or design, keeping in mind the product definition in terms of what the new product must do for the customer, how it would be sold, at what price, with what performance parameters, quality requirements and timing. On this basis a set of technical product specifications are finalized in objective and measurable terms; next, the project milestones are fixed and the resources required for timely delivery deployed. Thereafter, a prototype of the product is developed and compared with the product specifications; this may be done in-house or with the help of an outside agency.

111. Next, the technical and commercial feasibility of the product is determined with the view to clearly understand the competitive advantages that might accrue to the enterprise by developing and introducing the new product in the market. Sometimes, timely introduction of a new product in the market may require an enterprise to license or cross-license patented technology and associated know how from other enterprises, universities, research and development centers, etc. These entities may be domestic or foreign. The technical and commercial information contained in patent documents is a very useful source for identifying such sources of patented technology and associated know how.

SOURCES OF COMPETITIVE ADVANTAGE OF A NEW PRODUCT

112. Another way of presenting the six points in paragraph 107 above is to list, as follows, the key factors that may provide competitive advantage to a new product:
(a) Profitability: Manufacturing costs versus proposed retail price;
(b) Availability and suppliers of raw materials and other inputs;
(c) Potential size of market (domestic, international); market research;
(d) Function; competing products/substitutes; competitor response;
(e) Modularity (reuse of components);
(f) Engineering and production assessment: fit with existing equipment or new manufacturing technology or processes needed;
(g) Distribution channel; existing or new;
(h) Ease of use;
(i) Ease of repair;
(j) Ease of recycling (environmental concerns);
(k) Compliance with safety regulations and other standards;
(l) Appearance (visual appeal) of the product;
(m) Durability and reliability; etc.

113. One or a combination of intellectual property rights (IPRs) invariably plays a crucial role in safeguarding the above-named sources of competitive advantage.

PARTNERSHIPS

114. A major decision to be taken while launching a new product is as to whether the inventor, entrepreneur, or enterprise should work alone or in partnership with others. The partnership may be in idea generation, designing, research and development, prototyping, actual commercial production, distribution, and/or marketing. Various forms of partnerships include outsourcing, sub-contracting, licensing, franchising, joint development, strategic alliances, etc. Intellectual property rights play a key role in determining the nature of collaboration and sharing of ultimate profits in all types of partnerships as knowledge creation and sharing is the primary reason for the partnerships. Of course, in some cases the inventor, entrepreneur, or enterprise may wish to sell the idea at some stage, during its evolution and development from an idea into a new product, to someone else. To do this sale or assignment one or intellectual property rights will have to be partially or fully transferred.

PRODUCTION PHASE

115. In the production phase, there may be improvements to the production process, which are protected as trade secrets. Some improvements may qualify for a process patent. This requires timely filing of a patent application with the Office of the Controller General of Patents, Designs and Trade Marks of India or in its relevant regional branch office in the form prescribed under the Indian Patent Law. If the incremental or breakthrough innovations embodied in the final product satisfy the requirements of patentability then one or more product patent applications would have to be filled at the appropriate time.

116. Generally, patents protect ideas or concepts that can be practically implemented. For example, patents can protect mechanical, electrical, electronic, chemical, agricultural and biotechnological processes and products (including microorganisms), and in some countries may extend to computer software and other living organisms such as plants and animals. A company should note that many inventions arising in the workplace are either overlooked or pursued independently by the employee-inventor. An adequate IP policy and review process with an IP consultant, patent agent or attorney can prevent a company's valuable technology from being wasted.
117. Depending on the expected length of the life cycle of a new product and other strategic business considerations an enterprise has to decide whether a patentable innovation has to be patented or be kept as a trade secret for a further period or indefinitely.

COMMERCIALIZATION AND MARKETING OF A NEW PRODUCT

118. For commercializing and marketing a new product, a marketing strategy is developed and implemented, based on the unique selling proposition of the new product so as to establish its unique identity, positive reputation/image and brand which distinguishes the new product from other competing or substitute products made by the same or other enterprises.

119. The marketing strategy may be implemented with or without the assistance of an outside agency or consultant. Even when done in-house some assistance of outside consultants may be needed, for e.g., in development of appropriately targeted advertising material with an appropriate brand name/trademark which may be advertised in various media including on the web site of the enterprise. The marketing strategy will determine whether the product will be launched only in the Indian market and abroad simultaneously or soon thereafter. In either situation the timely creation and registration of a new brand name or trademark is a prerequisite for preventing conflicts with identical or deceptively similar trademarks in the Indian or export markets. If a new product has a distinctive visual appearance, which is new or original, then a design registration application may also have to be filed in the Office of the Controller General of Patents, Designs and Trade Marks of India and in the national or regional IP offices in the countries of export interest.

PRODUCT MATURITY AND OBSOLESCENCE

120. Every new product sooner or later, reaches maturity after which it is unable to increase its market share. In a dynamic and highly competitive market environment, sooner or later, a new product may become obsolete. This should be expected to happen if a product begins to lose market share to competing, substitute or other new products. Therefore, even before a new product has peaked in the market place a farsighted enterprise would keep an eye on the evolving needs of the customers so as to make further changes to the existing product line or in parallel devote time, energy and resources to develop a new range of products based on \textit{ad hoc} feedback from customers, systematic market research, competitive intelligence, and technology mapping of competitors by using technical and commercial information contained in patent documents. A portfolio of new products should be judiciously managed by following a good management process aided by an appropriate management tool such as those provided by Stage-Gate Company.

121. With the best of efforts almost 50% of new product launches fail to meet the financial and other targets set initially. Some new products are bound to fail, others produce average profits, and only a few capture the imagination of the users/customers so as to produce very substantial profits; this is also the normal experience of most investors such as ‘business angels’ and venture capitalists even after they very carefully select business plans of inventors, entrepreneurs, etc for funding of start-up companies seeking to develop and market new products.
IMPORTANCE OF TECHNICAL AND COMMERCIAL INFORMATION CONTAINED IN PATENT DOCUMENTS

122. The importance of the technical and commercial information in a patent document is very high at the beginning when it helps to stimulate generation of new ideas, avoid certain types of efforts, or in the evaluation of the novelty of a new idea or concept with reference to the 'prior art' worldwide. It also helps in ascertaining the trends in evolution of a particular technology and in mapping the technological trajectory of direct competitors and possible new competitors from other sectors of the economy. Finally, patent information is useful in licensing in or licensing out of complementary technology or associated know how. Of course, a lot of very useful free practical information of direct commercial or industrial relevance can also be obtained by a proper search of patent documents, as over 90% of information in patent documents is likely to be not protected by a patent in India.

SOME IPR-RELATED BEST PRACTICES FOR NEW PRODUCT SUCCESS

123. By following some basic rules an enterprise is be able to prevent valuable innovations from remaining unused or underutilized, or from being misused, lost or stolen:

(a) Put in place a good information security policy and program so as to ensure that new ideas and innovations are kept confidential, so that, wherever possible, other suitable protection (in the form of patents, registered trade marks and designs) is secured, and the remaining trade secrets are protected as long as they remain commercially valuable.
(b) Prohibit publication of any new ideas, concepts or designs until at least a formal application for grant or registration of a patent, trademark or industrial design has been made or better still till after formal protection has been secured;
(c) Ensure that all employees understand their confidentiality obligations and are bound to the company by appropriate non-disclosure and non-compete agreements;
(d) At the earliest possible stage of the new product development cycle (preferably prior to commercialization) ensure that new ideas and innovations, trademarks and industrial designs are adequately protected in India and abroad.
(e) Ensure that any modifications, improvements and/or developments of new ideas and innovations are monitored, reviewed and, if necessary, further protected (the original protection may not cover improvements).
(f) Before using services of outside advisors, consultants, designers, etc., ensure that the contractual agreement clearly provides that (1) the company will own any innovative output that such people/firms provide, and (2) they shall be responsible for keeping the confidentiality of all secrets revealed to them in the course of their work for the company. By merely having paid for their work it cannot be assumed that all intellectual property rights automatically belong to the hiring company. In some cases a company may have to agree to share IP rights but all this should be negotiated and agreed formally in a written and duly executed agreements prior to commencement of work by an outside individual or company. This applies even to the web site designer and/or external web site host of a company’s web site. As a web site server contains a lot of trade secrets, a company should take due steps to protect these by including appropriate clauses in its agreement with the web site hosting company.
(g) Systematically scan the external environment in various ways, including by reviewing relevant patent documents. This is facilitated if services of national and/or international patent and trade mark searching agencies or competitive intelligence
agencies is/are used to monitor whether someone is imitating, slavishly copying or infringing upon a company’s valuable ideas, trade marks, industrial design, copyright or using its patented process or trade secrets. Surveillance over key former employees who leave to work for a competitor or set up competing business may become necessary if timely action is to be initiated to prevent major damage to the future health of a company.

(h) Conduct proper and regular intellectual property audits. Begin by ensuring that all deadlines are respected for timely filing of applications for seeking registration or grant, and for timely payment of renewal or maintenance fees for such intellectual property assets nationally and abroad. Next, systematically store all present and past agreements with employees, and with all your external collaborators ad partners such as sub-contractors, designers, advisors, consultants, etc.

(i) Make sure that all concerned fully understand and provide for the anticipated costs associated with protecting, and managing intellectual property assets, including those for putting in place an information security policy and program, conducting IP audits, insurance of IP assets, and if possible for the cost of monitoring and surveillance. These costs are essential for reaping the full reward of IP assets.

(j) Make the intellectual property policy and strategy an integral part of the business policy and strategy of an enterprise. Manage the IP assets of an enterprise with a clear focus on wealth creation by using these assets in-house or by selling, licensing, franchising the IP assets or by leveraging these assets to raise finance or to enter into strategic alliances with others. This may require specialized advice from one or more types of intellectual property specialists.

(k) Address IP issues in the business plan for new product development in an existing company or for starting a new enterprise.

(http://www.wipo.int/sme/en/ip_business/managing_ip/business_planning.htm )

IP ASSETS AS BUSINESS TOOLS FOR COMMERCIALIZING NEW PRODUCTS

124. IP assets are practical business tools and not just a byproduct of the legal system of property rights over intangible assets. The IP rights are the raw materials or resources that are utilized for developing a business plan and strategy. Skillful management of IP assets in the commercialization of new products plays a central role in the management of an enterprise in the knowledge economy for gaining competitive edge. A proper understanding of the intellectual property system provides an enterprise a solid foundation for purposeful ownership of, or access to, strategic knowledge assets that are often a source of long-term and sustainable competitive advantage. This understanding is a pre-requisite to choosing the right path to successfully commercialize a new product and maximizing the value of an innovation.

125. Traditional accounting based views of enterprise performance no longer provide adequate information for managing a firm. Four views of an enterprise, namely, (1) financial, (2) internal business processes, (3) customer, and (4) an innovation and learning, collectively provide the basis for developing corporate and business strategy in the highly competitive environment of today. IP informs each of these four views.

126. Entrepreneurs, managers, researchers and investors are equally concerned about the importance, relevance and effective utilization of intellectual property assets. The management of intellectual property assets begins by identification and timely protection of such assets. This is never easy; problems in delineating intellectual property rights in rapidly
emerging new fields is even more challenging. Leveraging IP assets usually implies direct use of such assets in a business and/or licensing it to others. But there could be more advantageous ways for developing and commercializing IP assets in partnership with another enterprise, research institutions, or other entity. Such partnerships may take various forms such as: (1) Strategic Alliances, (2) Joint ventures, or (3) R & D partnerships, etc.

127. Notwithstanding the apparent simplicity of the above presentation, it must be emphasized that, inspite of the great deal of harmonization of national IP systems in most countries worldwide (pursuance to the requirements of the TRIPS Agreement administered by the World Trade Organization), the national IP laws are complex and full of pitfalls for an average entrepreneur, manager, researcher or investor. A broad preliminary understanding of the IP system is no substitute for informed professional advice of an IP agent/attorney or IP expert/consultant. Therefore, begin by asking yourself the following key questions:

(a) At what stage do I start thinking and planning about IP rights in relation to development of an idea, through various stages, into a commercially viable new product?
(b) What do I need to do to preserve my knowledge assets through IP rights during this process?
(c) While developing a new product, what should I do to avoid infringing the IP rights of others?
(d) What should I do to become aware of my IPR environment?
(e) How do I satisfy myself that I am ready to commercialize my idea or innovation?
(f) What are the risks and benefits of different routes to commercialization such as own-manufacturing, licensing/franchising, start up, spin-off, marketing collaboration, joint ventures, collaborative R&D, strategic alliances, sale, gift, etc.
(g) How can the IP system assist me in the conduct of negotiations for virtual integration of my business to capture value added by leveraging new or original knowledge, and in developing sustainable business relationships, in areas such as the following:

   (i) Outsourcing of non-core functions;
   (ii) Supplier agreements;
   (iii) Customer partnering, especially with lead customers;
   (iv) R&D collaborations;
   (v) Joint Ventures (Equity partnerships);
   (vi) Strategic alliances;
   (vii) Contract manufacturing (e.g. OEMs);
   (viii) Consultancy contracts;
   (ix) Hiring of key employees;
   (x) Licensing (in, out, cross); (exclusive, non exclusive)
   (xi) Franchising;

(h) Can the IP system assist me in identifying potential business partners, suppliers, customers, employees, etc to reduce the risks associated with developing and launching a new product?
(i) Can I use the IP system for gathering competitive intelligence? Do I need to invent or designs around a competitor's products?
(j) How do I get the valuation done of my IP assets associated with a new product development?
How do I prioritize my options relating to IPR assets based on my strategic business needs? Should IP issues be dealt with in my business plan, development plan, marketing plan, export plan, etc.? How do I develop a logical IP policy and strategy for my new product development efforts?

What is IP due diligence and IP audit? When should it be done and by whom? What purpose do they serve?

Should I leave IP management issues entirely to the IP/legal expert or should everyone in the enterprise be involved in development and implementation of the IP policy, strategy and plan for the company?

Can IP assets improve my access to finance, export markets, etc so as to underpin the success of my new product launch?

What are the tax implications of transactions concerning IP assets?

What kind of ownership issues are connected with IP assets in relation to funding agencies, employees, consultants, contractors, suppliers, customers, R&D collaborators, business partners, succession, bankruptcy, mergers and acquisitions, licensing in and licensing out, cross-licensing, etc?

Am I evaluating my IP assets or access to IP assets owned by others for their business significance and strategic fitness?

Am I looking at the costs and benefits in planning and executing all of the above activities? In other words, am I getting the best returns on my IP assets?

Is there any international or national standards setting activity in relation to the new product or service that I am trying to develop? If yes, then what are the IP implications in developing or adopting such product/process standards?

In relation to new product development, what is the appropriate timing for acquiring or divesting IP assets and how do I go about determining it?

It must be remembered that IP assets have no value in themselves without a commercialization strategy. For certain types of IP rights the maintenance costs are very significant. Litigating over IP assets can also be not only costly in financial terms but also in terms of uncertain and delayed outcome. So, a good understanding of the basics of the IP system from a practical business perspective will prepare an entrepreneur, manager, investor, financier, researcher, designer, etc to pose the right questions and develop meaningful criteria for evaluating the response or guidance provided by an IP professional when it is sought in the process of trying to successfully take an idea from the laboratory to the marketplace.