

THE INTERPLAY BETWEEN STARTUPS AND IPR: INDIAN PERSPECTIVE

Dr. Kshitij Kumar Singh, Assistant Professor, Amity Institute of
Advanced Legal Studies

Background



- Knowledge Economy
- Increasing importance of intangible assets
- Growth in ICT sector and use of online platforms
- Contribution of Startups in boosting economy and technological enhancement
- Startups as dynamic economic entities ensuring competitiveness, job creation, innovation into the business environment

Background



- ❑ IPR as a potential indicator of a company's economic status and functioning
- ❑ IPR as the most important factor influencing investment, providing competitive edge and ensuring effective legal protection
- ❑ For a new entrepreneur, IP rights can help his/her business get going as well as the monopoly and exclusivity can aid in gaining a market advantage over others
- ❑ IPR contributes providing a good business model for startups

Startups: Definitional Conundrum

- “the act or an instance of setting in operation or motion” or “a fledgling business enterprise.” (Merriam-Webster)
- “a business or undertaking that has recently begun operation.”(The American Heritage Dictionary)
- “A startup is a company working to solve a problem where the solution is not obvious and success is not guaranteed,” [Neil Blumenthal, cofounder and co-CEO of Warby Parker. (Forbes)]
- “A startup is a young company that is just beginning to develop. Startups are usually small and initially financed and operated by a handful of founders or one individual. These companies offer a product or service that is not currently being offered elsewhere in the market, or that the founders believe is being offered in an inferior manner.”

- Amy Fontinelle

Startups: Definitional Conundrum

On April 17, 2015, the Ministry of Commerce and Industry released a notification to define 'startups'. According to the Government notification, an entity will be identified as a startup.

- Till up to five years from the date of incorporation.
- If its turnover does not exceed 25 crores in the last five financial years.
- It is working towards innovation, development, deployment, and commercialisation of new products, processes, or services driven by technology or intellectual property.

Recently, the Indian Government has further enlarged the startup definition under the purview of 'Startup India, Standup India' initiative announced in January 2016.

- From now on, the overall age limit of startups has been raised from **five years to seven** and has been further extended to **10 years for biotech startups**.

Key Features

- “When I hear the word “startup,” my mind immediately begins playing a reel of a bunch of twenty-something year old web developers, huddled together in a retro office somewhere in the SF Bay Area. Drinking beer at midday, laughing about the epic, cool culture they’ve got going, and chatting about the fact that they spent the weekend hanging out with their venture capitalist besties, or snapping selfies wearing Glass” -Candice Landau

Key Features



- The key attribute of a startup is its ability to grow.
- A company designed to scale very quickly
- The focus on growth unconstrained by geography differentiates startups from small businesses.
- Startups have something they can sell to a very large market.
- To operate a business, you don't need a big market. You just need a market and you need to be able to reach and serve all of those within your market.
- This is one of the reasons, most startups are tech startups (outreach of online business)
- Startups tend to rely on capital that comes via angel investors or venture capital firms, while small business operations may rely on loans and grants.

Why Startups need IP



- Protecting core idea the startup is based upon
- Create and maintain a competitive advantage
- Protect R&D investment
- Generating revenue
- Defending company against infringement
- To protect once brand
- To attract investors
- To secure financing

What sort of IP?



- Depending upon the nature of the activity the startup is up to
- The resource available to the startup
- Viability of a particular IP (suitability)

When to think about IP?

- Even at the level of ideation, before actually starting it

India's IP Ecosystem

- “Though the government has come out with a National Intellectual Property Rights (IPR) Policy to promote a robust intellectual property (IP) environment across India, we need **an ecosystem to take a good idea to a logical end even before it is commercialised**”
- “...an ecosystem will be another very important ingredient for making an IPR Policy successful and therefore **partnering with industry associations, bringing in global players** will be necessary along with **finding out angel investors.**”
- “Even in ICT (information, communication technology) we should use innovation to make lives of people better thereby **addressing social issues through business products** that is the most sustainable and successful business model,”
- “If one has the possibilities of identifying social needs be it education, healthcare, transportation, agriculture and others and try to plug those with a business solution with an innovative approach, that is the best business model,” - **Suresh Prabhu** (Hindustan Times e-paper, April 27, 2017)

India's IP Ecosystem

- **Delivery System-** the IPO has overhauled its operations, putting into place a robust, accessible and transparent electronic service delivery platform.
- **Online Services-**Users can now access a comprehensive suite of secure online services that make it easier for them to submit their IP applications and track their status in real time.
- **Payment Gateway-**Secure personal e-dossiers give quick access to all relevant documentation, while a comprehensive payment gateway makes fee payment easier (via debit or credit cards, e-banking or directly with over 70 banks).
- **Discount on Web-based Services-** those using the IPO's web-based services benefit from a 10 percent discount on all applications filed online. Within months of implementing these measures, e-filing of patent applications rose dramatically, from 30 percent to around 78 percent of all filings (in March 2014).
- **Small entity category-**With a view to promoting greater IP use by SMMEs, in 2014 the IPO created a new "small entity" category of users. Companies falling within this category (both domestic and foreign) enjoy a 50 percent fee discount.

India's IP Ecosystem

- **SMS alert** facility for Patent applications operationalized (November 2, 2017)
- **Promoting International Patent Filing**-India became a member of the PCT in 1998. In that year, just 14 international applications were filed by Indian inventors under the PCT; in 2014 that figure stood at 1,428. IPO is itself actively embracing and promoting the use of PCT-related services
- **India takes on international patent search responsibilities**-In October 2013, the Indian IPO became an International Searching Authority and International Preliminary Examining Authority (ISA/IPEA) under the PCT, joining 20 other countries in fulfilling that role.
- **Ensuring Transparency**-A “Stock and Flow” utility, accessible on the IPO website, which provides an overview of the work of the office providing information on work inputs and outputs at various critical points
- **Real time list**-Real-time lists of patents that have lapsed or ceased in specific technology fields.

India's IP Ecosystem



- Cost-wise, startups are now on par with individual persons-introduced as a new entity type apart from individual, small entity and large entity, i.e., they are entitled to get fee reduction equivalent to “individual persons” instead of small entity/large entity in amended rules.
- 80% rebate on official fees, as per the startup action plan.
- Expedited Examination process within 105 days (FER)
- 6 months reduction to file response to First Examination Report (FER):
- Up to 90% refund for application withdrawals
- In just 21 days, foreign filing licensing request is issued

Policy Initiatives

Make in India

- In September 2014, Prime Minister Narendra Modi introduced a big initiative “Make in India”
- to promote the manufacturing sector by promoting companies to invest in the sector.
- The intent of the campaign is to attract foreign investments and encourage domestic companies to participate in the manufacturing thereby contributing to the growth story.
- The government increase the foreign Direct Investment limits for most of the sectors
- Protection of the intellectual property rights of innovators and creators by upgrading infrastructure, and using state-of-the-art technology

Policy Initiatives



- ❑ **Standup India**-On 6th January 2016, the Union Cabinet has given approval to Standup India campaign which aimed at promoting entrepreneurship among women and scheduled castes and tribes.
- ❑ **Digital India**-In July 2015, the PM announced the Digital India initiative that aims to connect rural areas by developing their digital infrastructure. This translates into a huge business opportunity for startups. E-Commerce companies in India are planning to break into India's rural market as a part of the government's Digital India initiative.

Potential Challenges



- Ensuring high-quality examination of IP titles
- Rising demand for IP rights (keeping pace with the demands)
- Dissemination of IP information
- Increasing IP awareness
- Building confidence in potential innovators to go for IP
- Enforcement scenario

Other Issues contributing to IPR ecosystem (Business Environment)

World Bank's Report: Doing Business 2016

- India is ranked 130th out of 189 economies on the ease of doing business, 133rd on the ease of trading across borders and
- 157th on the ease of paying taxes.
- India is ranked 155th in case of starting a business
- On an average, Indian businesses need to make 33 tax payments annually with around 243 hours spent to prepare and pay
- taxes in a year
- In contrast, China requires just nine tax payments annually, while the US doesn't trouble its taxpayers more than 11 times annually for tax payments
- Among South Asian economies, India made the biggest improvement in business regulation, increasing its distance to frontier score

Other Issues contributing to IPR ecosystem



Culture and Awareness

- The Indian culture has conditioned people to look down upon failure. For failures, opinions do come by but encouragement rarely so. Entrepreneurship is often about failing and learning from those failures and starting all over again. People need to start accepting failures and allow second chances.

Social Issues

- Mentorship/Guidance, Unorganised and Fragmented Market structure, Changing Consumer Behaviour, Varied culture and preferences of locations

Technology Issues

- Technology Infrastructure (growing list of online consumers)
- Cybersecurity

Other Issues contributing to IPR ecosystem



- **Financial Issues**-Operational finance mostly restricted to self/family funding (difficult to maintain record) financially); Flawed business models and lack of innovative revenue strategies; Funding/Capital Deficiencies
- **Sustainability Issues**-Not aware of potential that might exist for their startup business; Role of public funding in promoting sustainable enterprises is often overlooked
- **Regulatory issue**-Multi window clearances
- **Taxation issue**

Going to have first hand experience



- Associated with the startup “iprpolicy.com” (to be launched on November 29, 2017)