



HANDBOOK ON IP

# A Critical Factor for Business Success & Sustainability

EDITION 1



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**HANDBOOK ON IP**

**A CRITICAL FACTOR FOR  
BUSINESS SUCCESS &  
SUSTAINABILITY**

**EDITION 1, JULY 2024**

# Acknowledgement

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This handbook is prepared

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# P R E F A C E

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In an era defined by innovation and creativity, the protection and management of Intellectual Property (IP) have become critical components of economic growth and competitiveness for businesses around the world.

This handbook aims to provide a comprehensive study of the current state and evolving dynamics of IP in the modern landscape. It delves into the multifaceted dimensions of IP rights, examining their legal framework, enforcement mechanisms, societal impacts, and the role of stakeholders ranging from individual creators to multinational corporations. It aims to provide a clear and thorough understanding of the intricate regulations governing different kinds of IPs globally. It explores the interplay between policy objectives, regulatory reforms, and industry practices, shedding light on the complexities faced by innovators, entrepreneurs, and investors.

In preparing this handbook, our goal was to create a resource that not only outlines the fundamental principles of IP law but also addresses the complexities and nuances that arise in practice. We have attempted to make the content accessible to a wide range of readers, including legal professionals, business executives, academics, and students. Each chapter has been meticulously crafted to provide insightful analysis, practical examples, and guidance on navigating the ever-evolving landscape of IP. Through this book we want to share conversations and ideas to help create a strong system for IP, a system which supports creativity, encourages new ideas, and makes sure everyone can benefit fairly from intellectual work.

We hope that this handbook serves as a valuable tool for enhancing your understanding and application of IP laws, fostering innovation, and supporting equitable access to intellectual endeavours.

# Foreword



## Anand Verma

Founder, Let's Learn Law  
Managing Partner, Team Legal

The advent of the digital age has fundamentally transformed the global business landscape, making intellectual property (IP) a cornerstone of economic growth, innovation, and competitive advantage. In this rapidly evolving environment, understanding, managing, and leveraging IP has become essential for businesses of all sizes and industries. It is with great enthusiasm that we present this comprehensive handbook on Intellectual Property, crafted to serve as an indispensable resource for professionals navigating the complex world of IP at an international level.

This handbook is meticulously designed to provide a thorough understanding of IP, from its foundational concepts to advanced strategies that can be employed by businesses to protect and maximize the value of their intellectual assets. Recognizing the pivotal role that IP plays in fostering innovation and economic development, our goal is to equip readers with the knowledge and tools necessary to effectively manage IP in a global context.

The handbook offers a detailed overview of intellectual property, including its various forms such as patents, trademarks, copyrights, industrial designs, geographical indications and trade secrets. We explore the valuation of IP laws, their fundamental principles, and the critical importance of IP in today's knowledge-driven economy. Through this foundational knowledge, readers will gain a solid grasp of the legal and economic underpinnings of IP.

This handbook was born out of a recognition of the growing importance of intellectual property in shaping the success of modern enterprises. Our aim is to provide an authoritative and accessible resource that covers the full spectrum of IP management. From understanding the foundational principles of IP to mastering advanced strategies, this handbook offers a detailed roadmap for leveraging intellectual assets to achieve competitive advantage and long-term growth.

This handbook is designed to be an invaluable resource for IP professionals, business leaders, legal practitioners, and policymakers. By providing comprehensive, practical, and up-to-date information on all aspects of IP, we aim to empower our readers to harness the full potential of their intellectual assets. As the significance of IP continues to grow in the global economy, staying informed and adept at managing IP will be crucial for driving innovation, securing competitive advantage, and achieving sustainable success.

I am deeply grateful to the contributors, experts, and practitioners whose insights and expertise have enriched this handbook. It is my sincere hope that this resource will not only inform but also inspire a deeper appreciation of the strategic value of intellectual property.

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# Understanding Intellectual Property (IP)

## Introduction

In today's rapidly evolving global economy, knowledge, innovation, and creativity are key drivers of success. Intellectual Property (IP) serves as the legal framework that protects these intangible assets, enabling creators and innovators to reap the benefits of their work. From groundbreaking inventions to artistic expressions, IP Rights (IPRs) provide the foundation for fostering innovation, promoting economic growth, and safeguarding the fruits of human ingenuity.

IP refers to a category of legal rights that protect intangible creations of the human mind. These creations can take various forms, including inventions, artistic works, literary works, designs, symbols, names, and images, among others. IPRs grant creators or owner's exclusive rights to use and control their creations for a specified period, enabling them to derive economic benefits from their intellectual endeavor's. IP laws aim to encourage innovation, creativity, and economic growth by providing legal frameworks for the protection and enforcement of these rights.

## Importance and Implications

IP plays a fundamental role in driving innovation, entrepreneurship, and economic development. By providing incentives for creativity and innovation, IPR encourages investment in research and development, leading to the development of new technologies, products, and services. Additionally, IP protection fosters competition by rewarding those who contribute to the advancement of knowledge and discouraging free-riding and unauthorized use.

However, the management and enforcement of IP rights also present challenges, including navigating complex legal frameworks, addressing infringement and counterfeiting, and adapting to technological advancements since a robust IP regime is essential for fostering innovation, protecting investments, and promoting economic growth in an increasingly knowledge-driven economy.

IPRs provide the necessary incentives for individuals and organizations to invest time, resources, and effort into creating new and valuable intellectual assets. Moreover, IP rights serve as the bedrock of knowledge exchange and collaboration, enabling individuals and businesses to share ideas, collaborate on research, and build upon existing innovations. This not only fuels further innovation but also promotes the dissemination of knowledge and the advancement of human progress. As we continue to witness technological advancements and the increasing interconnectedness of the global economy, the role of IP in shaping the future of innovation and economic development will only become more pronounced.

## Types of creations which fall under IP are as follows:

- **Inventions:** Inventions refer to new and useful processes, machines, compositions of matter, or improvements thereof. They are novel solutions to technical problems that provide practical utility. Inventions can include innovative products, methods, or techniques that offer advancements in various fields such as technology, engineering, medicine, and manufacturing.
- **Literary and Artistic Works:** Literary and artistic works encompass a broad range of creative expressions, including writings, books, articles, poems, scripts, musical compositions, paintings, sculptures, photographs, films, and other forms of artistic creations. These works are the result of individual creativity and are typically protected by copyright law.
- **Symbols:** Symbols are visual representations that convey meaning or identity. They can include logos, emblems, trademarks, and graphic designs that serve as distinctive marks associated with specific brands, products, or organizations. Symbols play a crucial role in branding, marketing, and consumer recognition.
- **Names:** Names refer to words or phrases used to identify individuals, businesses, products, or services. They can include company names, brand names, trade names, domain names, and product names. Names are important identifiers in commerce and are often protected as trademarks to prevent confusion or misrepresentation.

- **Images:** Images are visual representations or depictions of objects, scenes, or concepts. They can include photographs, illustrations, graphics, icons, and digital images used in various contexts such as advertising, marketing, publishing, and multimedia content. Images may be protected by copyright or used as part of trademarks or design rights.
- **Designs:** Designs encompass the ornamental or aesthetic aspects of products or articles. They can include the shape, configuration, pattern, or surface ornamentation of a product or its packaging. Design rights protect the visual appearance of products and contribute to their commercial value and marketability.

### Components of IP from a business standpoint

From a business perspective, IP consists of various components that are essential for protecting and leveraging the intangible assets of a company. These components play a crucial role in maintaining competitiveness, fostering innovation, and securing market advantages.

- **Patents**

**Description:** Patents grant inventors exclusive rights to their inventions, preventing others from making, using, selling, or importing the patented invention without permission.

**Business Perspective:** Patents provide businesses with a competitive edge by protecting innovative products, technologies, and processes. They allow companies to capitalize on their research and development efforts, secure market exclusivity, and generate revenue through licensing or commercialization.

**Example:** 3D printing is one of the biggest scientific advances of the 21st century and is already revolutionizing a wide range of industries. Recently, Airbus obtained a patent that would enable them to use 3D printing in the manufacture of aircraft.

- **Trademarks**

**Description:** Trademarks are distinctive signs, symbols, or expressions used to identify and distinguish the goods or services of one company from those of others.

**Business Perspective:** Trademarks are invaluable assets for businesses as they build brand recognition, consumer loyalty, and market reputation. Strong trademarks enable companies to differentiate their products or services, establish brand identity, and enhance market competitiveness.

**Example:** The unique bottle shape of Coca-Cola is a trademark known for its brand all over the world.

- **Copyrights**

**Description:** Copyrights protect original works of authorship, including literary, artistic, musical, and software creations, from unauthorized copying, distribution, or reproduction.

**Business Perspective:** Copyrights safeguard the creative works produced by a business, such as marketing materials, software code, product manuals, and website content. They ensure that companies retain control over their intellectual assets, maintain brand consistency, and prevent infringement by competitors.

**Example:** One of the most famous songs of the famous band The Beatles, “Yesterday” holds a copyright. The copyright protects not only the musical composition itself but also any recordings of the song made by The Beatles.

- **Trade Secrets**

**Description:** Trade secrets encompass confidential information, such as formulas, processes, methods, or customer lists, that provide a competitive advantage to a business.

**Business Perspective:** Trade secrets are critical for businesses to protect proprietary information that gives them a competitive edge in the marketplace. They enable companies to maintain confidentiality, preserve market position, and sustain innovation by safeguarding valuable know-how and business secrets.

**Example:** The secret blend of 11 herbs and spices for KFC's fried chicken is a trade secret which is protected by the confidentiality agreements.

- **Industrial Designs**

**Description:** Industrial designs refer to the aesthetic or ornamental aspects of products, including their shape, configuration, pattern, or decoration.

**Business Perspective:** Industrial designs enhance the visual appeal and commercial value of products, distinguishing them from competitors' offerings and attracting consumers. They contribute to brand differentiation, product recognition, and market positioning, thereby driving sales and customer loyalty.

**Example:** The Mini Cooper's compact design, efficient use of space, and playful aesthetics make it a classic example of industrial design in the automotive industry.

- **Domain Names**

**Description:** Domain names are unique identifiers used to access websites on the internet.

**Business Perspective:** Domain names play a crucial role in branding, marketing, and protecting the reputation of products or services. They help businesses establish online presence, protect regional specialties, and maintain consumer trust in the quality and authenticity of their offerings.

**Example:** One famous domain name is google.com. Google.com is one of the most visited websites globally and has become synonymous with internet searching.

- **Geographical Indications**

**Description:** Geographical indications identify goods originating from a specific geographical location.

**Business Perspective:** Geographical indications enhance brand recognition by linking products to their geographical origin. They guarantee adherence to specific production methods, ingredients, and standards. GIs contribute to local economies by promoting unique products and attracting tourism.

**Example:** Known for its intricate embroidery style from Punjab, Phulkari holds a GI for it adorns textiles with colorful floral patterns.

# Importance of IP for Business

IP is pivotal for any business, serving as its cornerstone. It's crucial for businesses to proactively identify and implement IP solutions to propel them to new levels of success. The notion that only lawyers can handle IP assets is unfounded; rather, it's imperative for companies to manage and strategize their IP assets effectively to establish themselves as leaders in the market. Developing the skills and competence to manage IP assets has become essential for sustainable competitiveness. Management professionals are ideally suited to oversee and monetize these assets, driving revenue and growth.

Here are some comments from industry experts:

“

*Intellectual property is Systematic, Analysis and Review of Your Utility in terms of Innovation, idea that you practice in your Business. It is assets only when you give it legal frame, exclusive and distinguish to you only when you practice it continuously. Smarter business needs to be diligent in Intellectual property.*”

**Sangeeta Pal**  
IPR Practitioner  
High Court of Bombay



“

*Intellectual property protection laws, including patents, trademarks, and copyrights, are crucial for any business. They safeguard innovations, ensure a competitive edge, prevent unauthorized use, and secure revenue streams, fostering a culture of innovation and economic growth.*”

**Narmadeshwar Nath Sudhanshu**  
Director  
Digiversal Consultants Private Limited

“

*In today's knowledge-driven economy, intellectual property law is essential. It encourages innovation by protecting the works of artists, entrepreneurs, and innovators. The present legal system encourages creativity by guaranteeing that unique ideas will be acknowledged and may even result in financial benefit. Intellectual property law safeguards clients from confusion and encourages fair competition by safeguarding brands and designs. In a society where innovation and artistic expression are highly valued, intellectual property law establishes the groundwork for a thriving atmosphere.*”

**Somesh Chandra Jha**  
Advocate on Record  
Supreme Court of India



“

*It's what sets you apart from the competition, ensuring your innovative products and services can't be easily replicated. IP is the secret sauce that gives your business its unique flavour.*”

**Abhijit K. Bhand**  
Co-founder & CEO  
Kanadlab Institute of Intellectual Property & Research

“Intellectual property awareness is essential for businesses aiming to thrive in a competitive landscape. Our role as IP litigators extends beyond legal defense—we educate and empower businesses to recognize the value of their IP assets. Through proactive awareness efforts, we help clients leverage their innovations strategically and mitigate risks associated with infringement.”

**Rohan Rohatgi**  
Managing Partner  
RSR Legal, Advocates



“In the present era of the globalised world, the most precious and valuable property may be recognised as the Intellectual Property of any person, which is his own creation or invention. But the protection and safety of this property is a challenge for every person and business organisation. If timely protection under law is not taken under proper guidance of an expert, he may lose his valuable creation by any unscrupulous opportunist person making himself rich and legally authorised.”

**Prof. Ashok Kumar Srivastava**  
Former Professor  
Maharashtra National Law University

“The surge in IP filings reflects a global recognition of its pivotal role in innovation, driving businesses and economies forward into a new era of creativity and competition.”

**CS Ajay Kumar Jaiswal**  
Past Chairman  
Varanasi Chapter of NIRC-ICSI



“Intellectual Property is the cornerstone of innovation and competitive advantage. Protecting IP ensures businesses can thrive and continue to drive progress in their industries.”

**Sumit Kochar**  
Partner  
Dolce Vita Advisors, Dubai

“The 21st Century has witnessed intellectual property gaining supremacy besides playing an instrumental role in economic growth of any nation. Every nation now finds itself operating in an increasingly competitive and globalized international environment where information infrastructure, research and innovation systems, education and lifelong learning are crucial variables. In the next few decades India will probably have the largest set of young people in the world. Given this demographic advantage through IP India can leapfrog in the race for social and economic development.”

**Dr. Vijay Agrawal**  
Associate Professor, Department of Management  
Birla Institute of Technology, Mesra





“ IP safeguards the unique work of companies, inventors, researchers, engineers, artists, and entrepreneurs. It covers a range of intangible assets, along with legal protection. ”

**Ravindra Ashok Lokhande**

Advocate Supreme Court of India  
Additional Advocate General, Arunachal Pradesh

“ Intellectual property Rights has hidden value which is not visible but has of significance. In a present word where everything is technology driven IP has more meaning and time is coming when balance sheet strength is measured by IP rights rather than physical assets ”

**Maneesh Srivastava**

Founding Partner, Alphavalue Consulting  
Charter Member, TiE Bangalore



“ Intellectual Property is the cornerstone of innovation and growth; it protects your ideas, fuels your competitive edge, and ensures your business's long-term success. ”

**Dr. Pankaj Kumar**

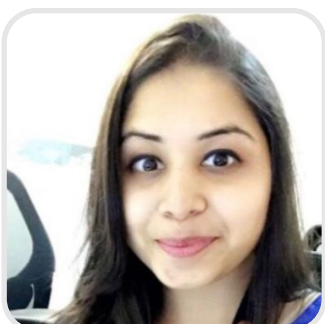
DPIIT IPR Chair Prof.  
National Law University and Judicial Academy, Assam

“ IPR encourage innovation by providing a legal framework that safeguards new ideas and inventions, motivating companies to invest in research and development. IPR fosters a competitive advantage, as it prevent competitors from copying or imitating products, allowing businesses to maintain their unique market positions.

IPR facilitates market expansion and global reach by protecting products and services in foreign markets, enabling businesses to confidently enter new territories. ”

**Pankaj Jain**

CMA, CS, AMT  
Founder, Jain Ventures Consulting Pvt. Ltd



“ Enforcing Intellectual Property Rights safeguards legal validity, protects brand reputation, and ensures fair compensation for infringement, enhancing the value of intellectual assets in the marketplace. ”

**Dr. Ankita Jain**

IPR Consultant and Trainer

“Intellectual property is a strategic asset that helps companies gain and maintain a competitive edge. A robust IP strategy safeguards brands, products, and trade secrets, unlocking their full potential and ensuring global market success.”

**Rajesh Jagaasiia**

CEO  
Right Justice Advocates & Associates



“In the fast-paced world of SMEs and start-ups, trade secrets are vital for securing a competitive edge. Real-world breaches highlight the need for robust protective measures and a culture of confidentiality to ensure enduring success.”

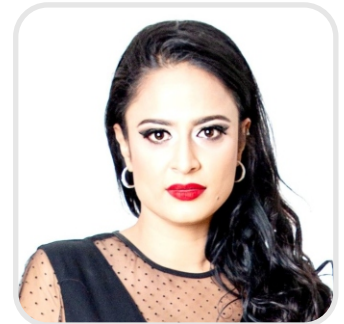
**Randa Habib**

Scientific & Regulatory Affairs Manager  
First Food Consultancy, Dubai, UAE

“In the dynamic and competitive business landscape, intellectual property protection is not just a legal requirement; it is a strategic imperative for businesses aiming to establish a strong brand presence and secure their market position.”

**Natasha Mohunlal**

Founder and Managing Director  
Natasha Mohunlal and Associates Inc.



“IPR, encompassing rights, such as, patents, trademarks, copyrights, and trade secrets, are vital business drivers these days. They foster innovation by incentivizing research and development, protecting brands, enabling entities to monetize their creations, ultimately enhancing competitiveness and overall market value.”

**Kalyan Potukuchi**

Director  
BKSAY Works Pvt. Ltd.



# Relevance of IP for Business

Intellectual property (IP) plays a pivotal role in safeguarding the innovations and creations that drive businesses forward in today's competitive landscape. For example, by securing patents, businesses protect their inventions from being exploited by competitors, thereby fostering an environment conducive to innovation. This protection encourages companies to invest in research and development (R&D) without fear of immediate replication, ensuring that groundbreaking ideas can be nurtured and brought to market with confidence. IP rights also provide businesses with a framework for negotiation and collaboration, enabling them to enter into partnerships secured in the knowledge that their proprietary assets are safeguarded. By asserting ownership over these assets, businesses gain the leverage needed to license their IP for additional revenue streams, expand into new markets, or even attract investors confident in the solidity of their intellectual property portfolio.

A company should be proactive in implementing IP solutions to identify novel innovations and increase revenues. A well-defined IP goal can result in achieving business objectives and help position the business as a leader in the marketplace. With growth in business revenues, the IP strategy can include protecting the unique aspects of the assets and foster innovations to explore new geographies. This can be achieved through licensing or joint ventures to create novel solutions that satisfy the unmet needs in the market.

Below are some of the strong traits on how IP helps businesses

- **Competitive Edge:** IP protection allows businesses to differentiate themselves from competitors by safeguarding their unique innovations, products, and branding elements. For example, patents protect technological advancements, trademarks protect brand names and logos, and copyrights protect creative works such as software, literature, and music. This exclusivity grants businesses a competitive edge in the market, as competitors cannot legally replicate or use their protected IP without permission. For instance, Nike, a global leader in the sports apparel and footwear industry heavily relies on its IP to maintain a competitive edge. Nike holds numerous patents for its innovative footwear technologies, such as Nike Air cushioning and Flyknit upper construction. These patents protect Nike's inventions from being copied by competitors, allowing the company to offer unique products that stand out in the market. Nike's iconic swoosh logo and brand name are among the most recognized trademarks globally. These trademarks not only distinguish Nike's products from competitors but also evoke a sense of quality and authenticity, contributing to customer loyalty and brand value. Nike also copyrights its designs, marketing materials, and even athlete endorsement campaigns. This protection ensures that Nike's creative works are not unlawfully reproduced or used by others, preserving the brand's distinct identity and market positioning. By leveraging its IP rights strategically, Nike maintains its position as a market leader, continuously innovating and setting trends in the highly competitive sports apparel industry.
- **Fostering Innovation:** IP rights incentivize innovation by providing creators with the assurance that their efforts will be rewarded and protected. IPRs encourage research and development investments by granting inventors exclusive rights to their inventions for a limited period. A real time company widely known for its continuous innovation is Tesla. Tesla's extensive patent portfolio not only protects its innovative technologies but also facilitates collaboration and innovation within the broader automotive and clean energy sectors. In 2014, Elon Musk announced that Tesla would open up its patents to the public, allowing competitors to utilize its technology to accelerate the adoption of electric vehicles and mitigate climate change.<sup>1</sup> This bold move not only demonstrated Tesla's commitment to advancing sustainable transportation but also served as a catalyst for industry-wide innovation and collaboration. In addition to patents and trademarks, Tesla leverages trade secrets to protect valuable proprietary information, such as manufacturing processes, battery technology, and autonomous driving algorithms. By safeguarding these trade secrets, Tesla maintains a competitive edge in an increasingly crowded market while fostering a culture of innovation and continuous improvement within its organization. This stimulates competition and drives technological progress across various industries, leading to the development of new products, processes, and solutions.
- **Revenue Generation:** IP assets can be monetized through various means, contributing to revenue generation and profitability. For instance, businesses can license their patents, trademarks, or copyrights to third parties in exchange for royalties or fees. Additionally, they can sell or assign their IP rights outright, generating immediate capital. Furthermore, IP enhances the value of a business, attracting investors and

potential buyers seeking to capitalize on its innovative assets. For example, Qualcomm's business model revolves around licensing its patented technologies to smartphone manufacturers and other device makers. These technologies are essential for enabling wireless connectivity, data transmission, and mobile computing, making them indispensable components of modern smartphones and other mobile devices.

*For instance, Senior Vice President and General Manager of Qualcomm, John Han in an interview stated that "Licensing these fundamental innovations fuels that R&D engine, while also enabling and encouraging innovation at device makers."*<sup>2</sup>

Through its licensing agreements, Qualcomm earns significant revenues in the form of royalties from virtually every smartphone sold worldwide.<sup>3</sup> The company's licensing revenue stream is often highly lucrative, representing a substantial portion of its total revenues. Qualcomm's strategic focus on IP licensing, combined with its innovative product offerings, has enabled the company to generate substantial revenues and maintain a dominant position in the global wireless technology market.

- **Market Expansion and Brand Building:** Strong IP protection facilitates market expansion and brand building efforts by enabling businesses to establish and protect their presence in new markets. Trademarks, for example, help create brand recognition and loyalty among consumers, driving market share and revenue growth. With robust IP protection in place, businesses can confidently enter new territories, knowing that their innovations and brand assets are secure from infringement. Coca-Cola's IP extends beyond its logo to include its brand reputation and goodwill. Over decades of marketing and advertising efforts, Coca-Cola has cultivated a positive brand image associated with happiness, refreshment, and enjoyment. This intangible asset, protected by IP laws, contributes to consumer loyalty and trust in the Coca-Cola brand. This is also evident from an excerpt from the World Trademark Review from head of intellectual property of Coca-Cola, Ms. Danise Lopes stating: "The founding fathers of The Coca-Cola Company had a great awareness of the value of intellectual property and knew that they had created something that needed protecting".<sup>4</sup>

Coca-Cola has utilized its IP, particularly its trademarks, to enter into licensing agreements and franchise arrangements with local bottlers and distributors worldwide.<sup>5</sup> These partnerships allow Coca-Cola to extend its brand reach into new markets while leveraging the local expertise and distribution networks of its partners. Through franchising, Coca-Cola expands into new territories without bearing the full costs and risks associated with direct market entry.

- **Risk Mitigation and Legal Protection:** IP rights provide businesses with legal recourse against unauthorized use, infringement, or misappropriation of their creations by competitors, counterfeiters, or other parties. This protection mitigates risks associated with IP theft, infringement lawsuits, and reputational damage. By enforcing their IP rights through litigation or other means, businesses can safeguard their market position, revenue streams, and brand reputation. For instance, Apple is known for its aggressive stance in enforcing its IP rights through litigation. It has engaged in numerous legal battles with competitors over patent infringement, copyright violations, and other IP-related disputes. A patent infringement was filed by Apple namely *Apple Inc. v. Samsung Electronics Co.*<sup>6</sup> alleging copying features of Apple's original iPhone. The case began in 2011 and Apple won the case in 2018.<sup>7</sup>

These lawsuits serve as deterrents against potential infringers and reinforce Apple's commitment to protecting its IP.

- **Strategic Partnerships and Collaborations:** IP can serve as a valuable bargaining and negotiations for strategic partnerships, collaborations, and joint ventures. Businesses can leverage their IP assets to forge mutually beneficial agreements with other companies, leveraging each other's strengths and resources to drive innovation, expand market reach, and create synergies. For instance, TCS has partnered with leading technology companies such as Microsoft, SAP, and Oracle to jointly develop innovative solutions and services.<sup>8</sup> These collaborations often involve TCS integrating its domain expertise and proprietary technologies with the partner's platforms or technologies, creating value-added offerings for their clients worldwide. Additionally, TCS actively engages in co-innovation initiatives with clients across industries, where it shares its IP and collaborates closely to develop customized solutions addressing specific business challenges. This approach not only enhances TCS's service offerings but also strengthens its position as a trusted partner in digital transformation and IT services globally.

## Capitalizing on IP for Business Expansion

In today's business world, owning an IP is crucial. It's like having a valuable asset that companies can use to gain an edge over competitors and find new ways to grow and innovate. This part of the chapter explores different ways businesses can use their IP to create opportunities and establish a strong presence in the market.

- **Revenue Generation**

**Licensing Agreements:** Businesses can license their IP to third parties in exchange for royalties or licensing fees. This allows them to leverage their innovations, trademarks, copyrights, or patents to generate recurring revenue streams without directly manufacturing or distributing products themselves.

**Franchising:** Franchising involves granting others the right to use a business's brand name, trademarks, and operating methods in exchange for franchise fees and ongoing royalties. This allows businesses to expand their presence rapidly while earning revenue from franchisees.

**Merchandising:** Companies can monetize their brands and trademarks by licensing them for use on merchandise such as apparel, accessories, and consumer products. This not only generates additional revenue but also enhances brand visibility and consumer engagement.

**Outright Sales:** Businesses may choose to sell their IP assets outright to interested buyers, particularly if they no longer align with their strategic objectives or if they receive a lucrative offer. This can provide a significant one-time influx of capital.

- **Tax Liability Reduction**

**Tax Optimization Strategies:** Businesses can strategically manage their IP assets to minimize tax liabilities. This may involve transferring IP rights to subsidiaries or entities in low-tax jurisdictions, taking advantage of tax incentives for research and development activities, or structuring licensing agreements to optimize tax efficiency.

**Tax Deductions:** Expenses related to the creation, acquisition, and maintenance of IP assets may be eligible for tax deductions or credits, reducing the overall tax burden for businesses.

**Patent Box Regimes:** Some countries offer preferential tax treatment for income derived from patented technologies, known as patent box regimes.<sup>9</sup> By obtaining patents and qualifying for these regimes, businesses can benefit from lower tax rates on their IP-related income.

- **Competitive Intelligence**

**IP Analysis:** Businesses can analyze publicly available data to gain insights into competitors' innovation strategies, technological advancements, and branding efforts. This intelligence helps businesses anticipate market trends, identify emerging opportunities, and refine their own strategies accordingly.

**Market Monitoring:** Monitoring IP Filings and publications provides valuable information about industry dynamics, competitive landscapes, and emerging technologies. This enables businesses to stay ahead of competitors, identify potential threats, and capitalize on market gaps.

**Freedom to Operate Analysis:** Conducting freedom to operate (FTO) analyses helps businesses assess the risk of infringing existing patents or trademarks when launching new products or entering new markets. By identifying and addressing potential IP obstacles early, businesses can mitigate legal risks and avoid costly litigation.

- **Access to Financing**

**Relevant National Laws:** Intellectual property can serve as collateral for bank loans if companies can demonstrate its liquidity, value, durability, and marketability. A reliable valuation of the IP asset is essential for this purpose, supported by different jurisdictions. For example, the Development Bank of Japan allows patents, patent applications, copyrights of computer programs, and content as collateral, assessing the future cash flows generated by the IP. In Europe, Landesbank Rheinland-Pfalz accepts technical documentation from research projects as additional collateral for mid-sized company development projects. Only a few banks offer IP-based loans due to challenges in valuing intangible assets and their preference for tangible collateral like furniture or software. Banks often lack expertise in technology valuation and tend to fund lower-risk projects.

**IP-backed Loans:** Some financial institutions offer specialized IP-backed lending products, where businesses can borrow against the value of their IP assets. These loans provide flexible financing options without diluting ownership or equity. Banks like JP Morgan Chase, and Royal Bank of Canada are the top banks which provide financing by treating IP as collaterals.<sup>10</sup> IP assets can serve as collateral for securing financing from banks, venture capitalists, and other lenders. Lenders may be more willing to extend credit to businesses with valuable IP portfolios, viewing them as less risky investments due to the potential for future revenue streams and asset value appreciation.

**Investment Attraction:** A strong IP portfolio can attract investment from venture capitalists, private equity firms, and angel investors seeking promising opportunities for growth and innovation. Investors may be particularly interested in businesses with proprietary technologies, unique market positioning, or strong brand recognition. For instance, Lally Rementilla, the Managing Partner of BDC Capital states the importance of IP in the financing sector by quoting: -

*We're not just looking at the value attributed to the IP portfolio. We want to know how that creates a moat around the company to give increased market share going forward and increased value to potential investors or acquirers.<sup>11</sup>*

- **Investor and Partner Attraction**

**Strategic Asset:** A robust IP portfolio demonstrates a company's commitment to innovation, market differentiation, and long-term value creation. This can enhance its attractiveness to potential investors, partners, and acquirers seeking strategic opportunities for collaboration or expansion.

**Negotiating Power:** Owning valuable IP assets gives businesses leverage in negotiations with potential partners, licensees, or investors. It allows them to negotiate favorable terms, such as higher royalties, equity stakes, or access to complementary resources and capabilities.

**Risk Mitigation:** Investors and partners may perceive businesses with strong IP protection as lower risk investments, as they are less susceptible to infringement lawsuits, market competition, or brand dilution. This can facilitate smoother deal negotiations and faster decision-making processes.

- **Risk Avoidance and Mitigation**

**IP Audits:** Conducting regular IP audits helps businesses identify, catalog, and assess the value of their IP assets. It allows them to proactively manage their IP portfolios, identify potential gaps or vulnerabilities, and implement appropriate risk mitigation strategies.

**Clearance Searches:** Before launching new products or entering new markets, businesses can conduct clearance searches to assess the risk of infringing existing IP rights. This helps avoid costly legal disputes and ensures compliance with relevant IP laws and regulations.

**Enforcement Strategies:** Implementing robust enforcement strategies, such as monitoring competitors' activities, sending cease-and-desist letters, or pursuing legal action against infringers, helps protect valuable IP assets and preserve market exclusivity. It sends a clear message that the business is committed to defending its rights and deterring potential infringements.

IP rights play a crucial role in a nation's development. These rights vary across countries due to differences in IP law. In many developed nations, robust enforcement of IP regulations significantly contribute to economic growth. By fostering innovation, IP rights drive economic progress. In today's global business landscape, every country is built upon innovation. IP rights profoundly impact a country's financial well-being too and their effects can be both positive and negative in terms of economic development.

By legally protecting and acknowledging intellectual assets, IP rights motivate individuals and organizations to invest in innovation and entrepreneurship, leading to the creation of new technologies, products, and services that boost economic growth. IP rights also enhance competition and market dynamism by protecting against unfair competition and unauthorized use of intellectual assets. By safeguarding inventions, trademarks, copyrights, and other forms of IP, businesses can distinguish their offerings in the market, attract consumers, and gain market share. This protection stimulates further innovation by providing a clear path to profit from new ideas, thereby driving economic growth. This promotes healthy competition among market participants, triggering further innovation, efficiency improvements, and consumer choice.

Data from the World Intellectual Property Organisation (WIPO) indicates a significant rise in patent filings in India. The IP office of India received 25.2% more patent applications in 2022 than in 2021.<sup>1</sup> This shift is attributed to heightened awareness of IP rights (IPR) among businesses and policymakers over the years, transitioning from a prior lack of awareness in the early 2000s. The increased emphasis on research and understanding of patent processes, coupled with a stringent patent regime, has positively impacted India's economic trajectory. Particularly in healthcare, India has excelled in replicating advanced technologies from developed nations and making them accessible to a broader demographic.

For developing nations, research and innovation are pivotal for enhancing human development indices and addressing local challenges. For instance, India's strong innovation environment has allowed it to defy the global decline in intellectual property (IP) activity. Instead, India has seen an increase in patents, trademarks, designs, and GI applications.<sup>2</sup>

## Correlation Between IP Rights and Economic Growth

IP rights encourage people to bring their ideas and innovations to the market, thereby promoting the widespread circulation of technology and R&D for the betterment of an economy. The effect of IP rights on economic development in different countries depends upon various stages of development such as GDP growth, human capital, innovative activities etc. therefore, IP rights are presumed to have a positive impact on the economic growth of a country.

Strong IP rights are instrumental in driving economic development as these rights have a significant impact on the process of improvement of a country's economy. They do so by stimulating innovation, attracting investments, and contributing to the growth of creative industries. There is generally a positive correlation between strong IPR regime and economic growth, the nature and extent of this correlation can vary depending on specific contexts, industries, and national policies. Listed below are the key points to be considered in determining the correlation between IP and Economy.

- **Incentives for Innovation:** Strong IP rights can provide incentives for innovation and creativity. When individuals or companies know they can protect their inventions, brands, or creative works, they are more likely to invest in developing new technologies, products, and artistic creations. This can lead to increased productivity and economic growth.<sup>3</sup>
- **Increasing Investment:** Countries with robust IP systems often see more inflows of capital from technology-driven industries. Investors are more likely to allocate resources to ventures where IP rights are protected. The assurance that intellectual and artistic properties are safeguarded makes a country more attractive for foreign direct investment (FDI). This influx of capital is essential for the development of new industries and the expansion of existing ones, leading to job creation and economic prosperity.
- **Technology Transfer:** IP rights can facilitate technology transfer between countries and firms. Licensing agreements and partnerships often rely on the protection of intellectual property to ensure that the originator of the technology receives fair compensation, thus encouraging further innovation and diffusion of technology. This not only contributes to the diversification of the economy but also enhances its

competitiveness on a global scale.

- **Strong IP Laws:** In a globalized economy, countries with strong IP frameworks tend to attract businesses that value innovation and creativity. These frameworks ensure that businesses can operate with confidence, knowing that their intangible assets are protected both domestically and internationally. This confidence not only expands domestic innovation but also enhances a nation's competitiveness on the global stage. Strengthening IP laws lead to an increase in IP filings, a surge in creative outputs, and enhanced investor confidence. Conversely, restrictive IP laws deter innovation and limit access to essential technologies, particularly in developing countries, exacerbating global economic disparities.
- **Increase in Entrepreneurship:** IP rights can empower entrepreneurs and small businesses by enabling them to protect their innovations, brands, and creative works. This protection can attract investment, foster growth, and create jobs within startups and small enterprises. This lead to job creation across various skill levels and industries, ranging from high-tech research positions to administrative and support roles. For instance, Growing IP offices have contributed significantly to the U.S. economy, generating over \$6 trillion in GDP and supporting more than 45 million jobs domestically.<sup>4</sup> Beyond direct jobs, IP-intensive industries also supported an additional 15.5 million jobs in other sectors that supply them with intermediate goods and services. In total, IP intensive industries contributed to 62.5 million U.S. jobs, which is 44% of total employment.<sup>5</sup>
- **Balance between access and exess:** While the protection of IP rights is fundamental for economic development, it is equally important to maintain a balance between protecting rights and allowing access. Overly stringent IP laws can stifle innovation and hinder the dissemination of knowledge. Therefore, policymakers face the challenge of crafting laws that protect creators' rights without impeding the flow of information crucial for societal advancement. Excessive or overly restrictive IP rights can sometimes stifle innovation, especially in areas where collaboration and open access to knowledge are crucial. Balancing strong IP protections with mechanisms that ensure access to essential technologies and knowledge (like through licensing, compulsory licensing, or public domain provisions) is critical for fostering inclusive economic growth.
- **Business growth:** IP rights aid in the distribution and transfer of knowledge and technology, encouraging collaboration, partnerships, and investment in research and development. Through licensing agreements, technology transfers, and strategic alliances, businesses can utilize their intellectual assets to generate income, penetrate new markets, and expedite innovation. This exchange of ideas and expertise not only leads to productivity enhancements and efficiency gains but also aids in the development of human capital and technological skills, setting the foundation for sustained economic growth and prosperity.
- **International treaties:** International IP treaties, such as those administered by the World Intellectual Property Organization (WIPO) and agreements like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), establish minimum standards for IP protection and enforcement among member countries. This harmonization reduces uncertainty for businesses operating internationally and encourages cross-border trade and investment. This transfer of knowledge and innovations supports economic development by enabling countries to adopt and adapt technologies more efficiently, leading to improvements in productivity and competitiveness. Effective implementation and enforcement of these treaties contribute to a global IP system that benefits economies and societies worldwide.
- **Access to global markets:** Consistent IP standards across countries facilitate market access for businesses, particularly small and medium-sized enterprises (SMEs) that rely on IP protection to compete globally. SMEs can leverage their IP assets (such as trademarks and patents) to expand into new markets, attract licensing opportunities, and collaborate with international partners, thereby enhancing their growth prospects within the economy.

The future of IP rights and their impact on economic development is promising. As the global economy becomes increasingly knowledge-based, the importance of protecting intellectual and artistic property rights will only escalate. Advancements in technology and the digitalization of creative content underscore the need for adaptable and forward-thinking IP policies that can keep pace with rapid changes while promoting economic prosperity.

## The Surge in Indian IP Filings

In recent years, India has witnessed a significant surge in IP filings across various sectors, reflecting a growing recognition of the importance of protecting innovative ideas and creative works. This surge can be attributed to several factors, including increased awareness about the value of IP rights among businesses, entrepreneurs, and creators. As India transitions towards a knowledge-based economy, there is a heightened emphasis on innovation and technology-driven growth, driving companies to safeguard their intellectual assets through IP. Furthermore, initiatives such as the government's "Make in India" campaign and various policy reforms aimed at simplifying and expediting the IP registration process have contributed to the rise in filings, fostering a conducive environment for innovation and entrepreneurship.

The surge in IP filings in India also reflects the country's evolving role in the global economy, with Indian companies increasingly seeking protection for their inventions and brands not only domestically but also internationally. As Indian businesses expand their operations and compete in global markets, securing IP rights has become essential for maintaining a competitive edge and mitigating the risks of infringement and unauthorized use. Additionally, the proliferation of technology startups, research institutions, and creative industries in India has fuelled demand for IP protection, driving a surge in filings across sectors such as information technology, biotechnology, pharmaceuticals, and entertainment. With the continued growth of India's economy and innovation ecosystem, the trend of increasing IP filings is expected to persist, signalling a positive outlook for the country's role in the global innovation landscape. As seen in the WIPO Statistical report, 2023 that India has a total number of 77,068 application for patents; 500,305 applications for trademark count; and 429 Geographical Indications in force.

India has seen increases in patents, trademarks, designs, and geographical indications (GIs) applications in contrast to the global trend of declining IP activity, because of its robust innovation ecosystem. Despite a decline in filing activity worldwide, the Indian IP Office's Annual Report 2022–2023 shows that IP filings in India are still rising. Over the last ten years, the number of filings for patents, trademarks, designs, and geographical indications (GIs) has almost doubled. The number of patent applications filed by startups increased by almost 150% over the previous five years, according to the IPO's Annual Report 2022–2023.<sup>1</sup>

In 2023, India boasted the world's third-largest startup ecosystem, with over 110,000 startups, and ranked third globally in the production of unicorns, with 67, according to the Hurun Global Unicorn Index.<sup>2</sup> This thriving ecosystem presents a compelling opportunity for budding entrepreneurs worldwide, buoyed by India's expansive consumer base, high internet penetration, supportive government policies, and vast scalability potential, particularly given its youthful, tech-savvy population eagerly embracing innovative solutions. These factors are in alignment with India's ambitious goal of achieving a 5 trillion-dollar economy in the year 2047. According to the IPO's Annual Report 2022–23, the number of patent applications filed by startups has surged by more than 150%<sup>3</sup> over the past five years, with Indian applicants surpassing foreign counterparts in such filings. This trend reflects a broader pattern—patent filings by Indian residents have soared by nearly 300% over the last decade. Remarkably, in 2022–23, resident patent applications, totalling 43,301 applications, outpaced foreign patent applications, marking the first time this has occurred.

The below table highlights yearly progression of patent applications filed by startups over the last five years.

Year	Indian Filings	Foreign Filings	Total
2018-19	801	10	811
2019-20	1650	2	1625
2020-21	1598	13	1611
2021-22	1482	19	1501
2022-23	2016	25	2041

The data reveals an encouraging trend in the filing and grant of patents, designs, trademarks, geographical indications, and Semiconductor Integrated Layout Designs (SCILD) applications by startups in India. As India continues to prioritize innovation-led growth and economic diversification, the role of IP rights in driving entrepreneurship, technology transfer, and economic prosperity is expected to become even more pronounced in the years to come.

The following is a brief overview of how the scenario of IP filings has changed in India, aiding in the growth of the economy.<sup>4</sup>

- The total number of IPR applications filed in India increased from 568,049 in the fiscal year 2021-22 to 601,789 in 2022-23. This upward trajectory indicates a growing awareness and emphasis on IP protection among businesses and innovators.
- Patent application filings surged by 24.64%, from 66,440 in 2021-22 to 80,211 in 2022-23, representing a significant increase in innovation and technological development. Notably, there was a 13.5% increase in patents granted for patent applications, rising from 30,073 to 34,134 compared to the previous financial year. This rise in patents granted signifies the Indian government's commitment to fostering innovation and rewarding inventors.
- The filing of trademark applications witnessed a positive growth trajectory, increasing from 447,805 in 2021-22 to 466,580 in 2022-23. This trend reflects the importance of brand protection and the competitiveness of the Indian market.
- There was a remarkable surge of 81.89% in the filing of geographical indications applications, rising from 116 in 2021-22 to 211 in 2022-23. This underscores the value placed on protecting products with unique geographical origin and characteristics.
- The filing of Semi-Conductor Integrated Layout Design applications exhibited an extraordinary rise of 700%, increasing from 1 in 2021-22 to 8 in 2022-23. This surge reflects the growing significance of semiconductor design protection in India's burgeoning electronics industry.

#### Trends In Last Five Years With Respect To Filing Of IP Applications:

Application	2018-19	2019-20	2020-21	2021-22	2022-23	% change in 5 years
Patent	50659	56267	58503	66440	<b>82811</b>	<b>63.46%</b>
Design	12585	14290	14241	22699	<b>22698</b>	<b>80.34%</b>
Trade mark	323798	334805	431213	447805	<b>466580</b>	<b>80.34%</b>
Geographical Indications	32	42	58	116	<b>211</b>	<b>559.38%</b>
Copyrights	18250	21905	24451	30988	<b>29466</b>	<b>61.46%</b>
Semiconductor Integrated Layout Designs (SCILD)	NIL	NIL	05	01	<b>23</b>	<b>360%</b>

During the reporting year 2022-23, The Office of Controller General of Patent, Designs, Trademarks and Geographical Indication (CGPDTM) has been working towards advancing the government's efforts to streamline IP processes, increase IP awareness and promote commercialization. The Office has taken concrete steps during the past years towards effective implementation of National IPR policy, improving accessibility of IP information and making IP system more transparent and user friendly. The Office also undertook steps to make grievance and feedback system more efficient and transparent.



## Trends in respect of different intellectual properties:

- **Patents:** In the year 2022-23, there was a notable increase of approximately 24.64% in patent applications filed, totalling 82,811. The share of domestic filings rose to 43,301, accounting for 52.29% of the overall filings, up from 44.41% in the previous year. The five-year trend shows data on the number of patent applications filed, examined, granted, and resolved. The term 'resolved' encompasses patents that were granted or refused by the Patent Office, as well as those abandoned or withdrawn by the applicants.

### Trends in Patent Applications<sup>5</sup>

Year	2018-19	2019-20	2020-21	2021-22	2022-23
Filed	50659	56267	58503	66440	<b>82811</b>
Examined	85426	80080	73165	66571	<b>49961</b>
Granted	15283	24936	28385	30073	<b>34134</b>
Disposal	50884	55945	52755	35990 <sup>6</sup>	<b>60046</b>

- **Trademarks:** The trend of trademark applications filed for registration in India has shown a remarkable increase. The number of applications received by the Trademark Registry has increased from 447805 in 2021-22 to 466580 in 2022-23. Also, during the year 2022-23, 14366 international applicants under the Madrid system were designated to India for protection of trademarks. These foreign registrations were processed as national applications.

### Trends in Trademark Applications<sup>7</sup>

Year	2018-19	2019-20	2020-21	2021-22	2022-23
Filed	323798	334805	431213	447805	<b>466580</b>
Examined	323798	338551	463912	431520	<b>395405</b>
Registered	316798	294172	255976	261408	<b>231977</b>
Disposal	519185	419566	294944	318878	<b>292154</b>

- **Designs:** As regards to the filings of design applications, the filing remained almost same as compared to the last year, however an increase of 53.33% and 52.65% was in registration and overall disposal of design application respectively.

### Trends in Design Applications<sup>8</sup>

Year	2018-19	2019-20	2020-21	2021-22	2022-23
Filed	12585	14290	14242	22699	<b>22698</b>
Examined	12661	13642	13847	22120	<b>21905</b>
Registered	9483	12256	9147	15262	<b>23400</b>
Disposal	11414	14701	9281	15655	<b>23897</b>

- **Geographical Indications:** During the year 2022-23, 211 applications were filed, 100 applications were examined and 55 Geographical Indications were registered. The trends in GI applications filed, examined and registered during the last five years are given below.

#### Trends in GI Applications<sup>9</sup>

Year	2018-19	2019-20	2020-21	2021-22	2022-23
Filed	32	42	58	116	<b>211</b>
Examined	43	51	0	46	<b>100</b>
Registered	23	22	05	50	<b>55</b>

- **Copyrights:** A total number of 29466 applications were received for copyright registration during the year. Total 24896 applications were examined and 12082 registrations of Copyright (ROC) were done, whereas a total number of applications disposed were 21171.

#### Trends in Copyright Applications<sup>10</sup>

Year	Total applications received	Total applications examined	Total applications examined	Total Disposal
2018-19	18250	22658	14625	25943
2019-20	21905	29670	16029	22516
2020-21	24451	21523	16399	19477
2021-22	30988	29106	20673	20820
<b>2021-22</b>	<b>29466</b>	<b>24896</b>	<b>12082</b>	<b>21171</b>

#### India Retains 40<sup>th</sup> Rank In The Global Innovation Index 2023<sup>11</sup>

Global Innovation Index 2023 (GII), is a leading reference for measuring an economy's innovation ecosystem performance. Published annually, it is also a valuable benchmarking tool used by policymakers, business leaders, and other stakeholders to assess progress in innovation over time. Its aim is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all. India retained the 40<sup>th</sup> position in Global Innovation Index<sup>12</sup> with a score of 38.1, due to its vibrant start-up ecosystem, knowledge capital and the work done by public and private research organisations among the top innovative economies globally as per GII 2023 out of 132 economies around the world. As per Global IP Report 2023, India is ranked at 7th position in terms of Resident Patent Filing activity in the world India is holding top rankings in key indicators including ICT services exports (5th rank), flow of venture capital (6), graduates in science and engineering (11) and global corporate R&D investors (13) in the released GII 2023 ranking. India maintains the leading position in overall ranking among the lower middle-income country group too, as said by WIPO.<sup>13</sup>

The GII 2023 uses 80 indicators to track global innovation trends and ranks 132 countries on the basis of their innovation capabilities. India's development is ascribed to its enormous intellectual capital and strong startup ecosystem, as well as noteworthy efforts by public and private research groups.

# The Issue of IP Awareness and Strategies to Overcome

The issue of IP awareness revolves around the lack of understanding or knowledge about IP rights among individuals, businesses, and organizations. Many individuals and businesses have a limited grasp of what constitutes IP and how it applies to their endeavours. This shortfall can lead to unintended infringement or failure to adequately protect their own IP assets. Moreover, some may underestimate the value of their IP, missing opportunities for revenue generation through licensing or strategic partnerships. Inadequate protection due to this lack of awareness leaves IP vulnerable to theft or misuse, jeopardizing competitive advantages.

Furthermore, insufficient awareness can act as a barrier to innovation, hindering progress and technological advancements. Legal risks and costs also loom large, as ignorance of IP laws may lead to unintentional infringement or failure to defend against challenges. Addressing this issue requires collaborative efforts from various stakeholders, including governments, educational institutions, and industry associations, to promote IP education and responsible management practices. By enhancing IP awareness, businesses and individuals can better protect their innovations, maximize the value of their intellectual assets, and contribute to a more vibrant and innovative economy. Addressing the issue of IP awareness requires educational initiatives aimed at raising awareness about the importance of IP rights, providing guidance on how to protect and enforce those rights, and promoting a culture of respect for IP across various sectors and regions.

Here is what industry professionals have to say about the importance of IP awareness.

“  
*Despite progress, many individuals and businesses in India remain unaware of their IP rights. In such a scenario, legal professionals play a crucial role in educating clients, businesses, and the public about the importance of IP rights.*”

**Sangam Tiwari**

Founder & Managing Partner, Digital Fruits  
Co-Founder & Director, Let's Learn Law



“  
*Raising awareness about intellectual property is crucial because understanding its complexities ensures fair protection and fosters innovation, bridging the gap between creativity and legal safeguarding. A business well-versed in IP not only protects its innovations but also paves the way for sustainable growth in a competitive marketplace.*”

**Mr. Sourabh Sachdeva**

Proprietor  
KS Wealth Variksh

Despite India having a significant knowledge base, a large part of it remains unprotected due to the lack of awareness about IP legislations. There is a lack of awareness among students about filing patents, which could be a contributing factor to India lagging behind many nations when it comes to IP rights. Many believe that IP protection is either not necessary or that the process to obtain it is unnecessarily complicated. The Indian government has recognized these issues and has implemented policies to increase awareness and promote the importance of IPRs as a marketable financial asset and economic tool. However, the effectiveness of these measures will only be seen over time.

The consequences of a lack of awareness of IP can hamper innovation, economic development, and the overall competitiveness of businesses and industries. Promoting awareness and understanding of IP rights is crucial for fostering a conducive environment for creativity, innovation, and sustainable growth. Some of the consequences may include:

- **Loss of Revenue:** Without a proper understanding of IP rights, businesses may fail to protect their innovations, brands, or creative works, leaving them vulnerable to infringement. This can result in a loss of revenue as competitors freely exploit or replicate their IP assets without consequence. Thousands of small and medium enterprises (SMEs) in India are reported to be losing millions in revenues due to lack of awareness about IP rights.
- **Competitive Disadvantage:** In today's knowledge-based economy, IP often serves as a key driver of competitiveness. Businesses that do not prioritize IP protection may find themselves at a significant disadvantage compared to competitors who actively safeguard their innovations, trademarks, and other IP assets.
- **Stifled Innovation:** Inadequate awareness of IP rights can discourage innovation, as individuals and businesses may be hesitant to invest time and resources into research and development without the assurance of IP protection. This can stifle creativity and limit the development of new products, technologies, and solutions.
- **Legal Battles and Litigation Costs:** Ignorance of IP laws and regulations can lead to unintentional infringement, resulting in costly legal battles and litigation. Defending against IP infringement claims or asserting one's own IP rights in court can drain financial resources and distract businesses from their core activities.
- **Damage to Reputation:** Being accused of IP infringement or having one's own IP rights infringed upon can damage a company's reputation and credibility. Customers, investors, and partners may view such incidents as indicators of unethical business practices or a lack of professionalism.
- **Missed Business Opportunities:** Failure to recognize and capitalize on IP assets can result in missed business opportunities, including potential partnerships, licensing agreements, and collaborations. Businesses may also struggle to attract investors or secure funding without a solid IP strategy in place.
- **Global Market Access Barriers:** In international markets, where IP laws and regulations may vary, businesses without a clear understanding of IP rights may encounter barriers to market access. Failure to navigate these complexities effectively can limit expansion opportunities and hinder global competitiveness.

## Strategies for IP Awareness

Addressing the lack of IP awareness among businesses and individuals requires targeted strategies tailored to different stakeholders. Strategizing the generation of IP awareness involves a multi-faceted approach. The strategic use of IP can play a crucial role in sustaining business growth. Here are some significant strategies to increase IP awareness and contribute to the overall growth of the economy.

- **Education and Training Programs**

Conducting regular educational workshops, seminars, and online courses aimed at raising awareness about IP rights, their importance, and how they apply in different contexts.

The initiative involves the development and implementation of a comprehensive array of educational resources meticulously crafted to raise awareness and enhance understanding regarding IP rights. Through a multifaceted approach, it should aim to elucidate the significance of IP rights across various domains and illuminate their practical applications in diverse contexts.

Collaborate with industry associations, universities, and government agencies to offer specialized training programs on IP management and protection tailored to the needs of specific sectors or industries.

- **Resource Centres and Information Hubs**

Establish dedicated IP resource centres or online portals where businesses and individuals can access information, tools, and resources related to IP rights, registration processes, enforcement mechanisms, and case studies.

Provide guidance materials, FAQs, and interactive tools to help stakeholders understand complex IP concepts and navigate legal frameworks.

- **Partnerships and Collaboration**

Forge partnerships with legal firms, IP professionals, and industry experts to provide pro bono or discounted services such as IP audits, consultations, and legal advice to small businesses, startups, and entrepreneurs.

By integrating IP awareness initiatives into existing programs and activities offered by chambers of commerce, trade associations, and business networks, we can reach a broader audience of businesses, entrepreneurs, and professionals at various stages of development and across diverse sectors and industries.

Collaborate with chambers of commerce, trade associations, and business networks to integrate IP awareness initiatives into existing programs, events, and networking opportunities.

- **Outreach and Awareness Campaigns**

Having targeted outreach campaigns using various channels (e.g., social media, webinars, podcasts, print media) to raise awareness about IP rights, common pitfalls, and best practices.

Recognizing the diverse needs and interests of businesses and entrepreneurs necessitates tailoring IP awareness initiatives to align with specific industry sectors, market segments, and geographical regions. This strategic approach involves offering sector-specific guidance on IP strategy development, conducting targeted IP risk assessments tailored to each industry, and organizing specialized webinars and seminars. Delivering relevant and actionable information will empower businesses, enabling them to effectively protect and leverage their intellectual assets.

Sharing success stories, testimonials, and case studies highlighting the benefits of IP protection and the risks of neglecting it to illustrate real-world implications can generate mass awareness.

- **Incorporating IP Education into School Curriculum**

Include basic IP education in school curriculum at both secondary and tertiary levels to instil awareness and understanding of IP rights from an early age. By equipping students with the knowledge, skills, and ethical principles needed to navigate the complexities of IP rights, we can empower them to become responsible stewards of IP. Regular workshops or guest lectures by IP experts in educational institutions should be offered to supplement existing course work and provide practical insights into IP issues.

- **Tailored Support for Small and Medium Enterprises (SMEs)**

Governments should provide targeted assistance and support services for SMEs, including simplified guides, online tools, and dedicated helplines to help them navigate the complexities of IP rights and enforcement.

The guides should include easy-to-understand language, illustrations, examples, and step-by-step procedures. The helplines shall be staffed by trained professionals who are knowledgeable about IP rights and enforcement. They will be available to answer queries, provide guidance, and offer support to SMEs.

Increased grants, subsidies, or vouchers should be offered to offset the costs associated with IP registration, enforcement, and commercialization for eligible SMEs.

- **Policy and Regulatory Support**

Advocate for the development of clear and accessible IP policies and regulations that balance the needs of rights holders with the broader public interest in promoting innovation, competition, and access to knowledge.

Engage policymakers and government agencies in dialogue to address gaps in IP legislation, enforcement mechanisms, and institutional capacity building.

# Leveraging IP for Business Growth

Leveraging IP for business growth refers to utilizing the assets and rights associated with IP to drive expansion, innovation, and competitive advantage within a company. By protecting unique products, services, or brand identities, businesses can prevent competitors from eroding their market share. Further, IP can be used as collateral for financing, to attract investors, or to improve the terms of business deals.

In addition, companies can foster innovation and maintain a competitive edge by investing in research and development to expand their IP portfolio. This not only leads to the creation of new products and services but also opens up opportunities for partnerships and collaborations that can lead to further growth. Effectively managing and leveraging IP requires a clear strategy that aligns with the company's overall business goals and includes understanding the value of IP assets, how they fit within the market, and how they can be monetized or used to secure strategic advantages.

Here's how leveraging IP can contribute to business growth:

- **Identification and Protection:** Protecting an IP is not just about legal compliance, it is a strategic business decision that can support sustainable growth, enhance competitiveness, and unlock new opportunities for revenue and expansion. Early identification and protection of an IP will give businesses an exclusive competitive edge and prevent erosion of market share due to knock-offs or cheap imitations.
- **Innovation and R&D:** IP often arises from innovation and research and development (R&D) efforts. By investing in innovation and R&D activities, businesses can generate new IP assets that can be leveraged for growth. This may involve developing new products, processes, technologies, or services that offer unique value propositions to customers and provide a competitive edge in the market.
- **Commercialization and Monetization:** Once IP assets are secured, businesses can explore various avenues for commercialization and monetization. This may include licensing IP rights to third parties in exchange for royalties or fees, selling or assigning IP assets outright, or using IP as collateral for financing or investment purposes. Monetization agreements allow businesses to leverage their IP to generate revenue streams without the need for significant capital investment or operational infrastructure.
- **Brand Building and Marketing:** Trademarks play a crucial role in brand building and marketing efforts. By protecting and leveraging trademarks, businesses can establish strong brand identities, enhance brand recognition and loyalty, and differentiate themselves from competitors. This can lead to increased customer trust, preference, and market share, ultimately driving business growth.
- **Market Expansion and Globalization:** IP rights provide businesses with exclusive rights to their creations and innovations, which can facilitate market expansion and globalization efforts. Strong IP protection enables businesses to enter new markets with confidence, mitigate the risk of infringement by competitors, and establish a foothold in foreign markets. International expansion strategies may involve securing IP rights in multiple jurisdictions, navigating complex legal and regulatory landscapes, and adapting products or services to local market preferences and requirements.
- **Strategic Partnerships and Collaborations:** Collaborating with strategic partners, suppliers, or other stakeholders can provide opportunities to leverage IP or mutual benefit. Businesses can enter into licensing agreements, joint ventures, or strategic alliances to combine complementary IP assets, share R&D costs and risks, and access new markets or technologies. Strategic partnerships can enhance competitiveness, accelerate innovation, and fuel business growth through synergistic collaboration.
- **Defensive IP Strategies:** Businesses must also develop defensive IP strategies to protect their competitive position and mitigate risks. This may involve monitoring competitors' IP activities, enforcing IP rights against infringement or misappropriation, and implementing robust IP management and enforcement policies. Defensive IP strategies help safeguard businesses' IP assets, preserve market share, and prevent unauthorized use or exploitation by competitors.
- **Continuous Evaluation and Adaptation:** An effective IP strategy is dynamic and adaptive, requiring continuous evaluation and refinement based on changing market conditions, technological advancements, and competitive dynamics. Businesses should regularly review their IP strategy, assess the performance and effectiveness of IP initiatives, and adjust strategies and priorities as needed to optimize outcomes and maximize the value of their IP assets.

## Practical Insights on How Businesses can Leverage their IP Assets for Growth

Below are some strategies through which businesses can leverage their IP assets for growth, along with detailed case studies of successful companies.

### • Patent Portfolio Management

**Practical Insight:** Businesses should strategically manage their patent portfolios to protect valuable innovations and gain a competitive edge. This involves identifying key inventions, filing patent applications to secure protection, and actively managing patents to ensure they align with business objectives. By evaluating factors such as market demand, technological feasibility, and potential commercialization opportunities, businesses can prioritize their patenting efforts and focus their resources on protecting innovations with the greatest strategic significance and commercial value.

#### Case Study: Infosys<sup>1</sup>

- Infosys, a global leader in consulting, technology, and outsourcing solutions, has strategically built a substantial patent portfolio<sup>2</sup> over the years. They focus on innovations in areas such as artificial intelligence, machine learning, cloud computing, and digital technologies.
- Infosys has been proactive in filing patents both in India and internationally to protect its technological advancements. By managing its patent portfolio, Infosys not only protects its intellectual property but also enhances its competitive edge in the global IT services industry.
- Infosys has been involved in various initiatives to promote innovation and intellectual property awareness in India, contributing to the growth of the country's technology ecosystem.

### • Brand Protection and Expansion

**Practical Insight:** Businesses can leverage trademarks to build strong brand identities, expand into new markets, and differentiate themselves from competitors. This involves protecting trademarks through registration and enforcement while implementing branding strategies to maintain brand consistency and consumer trust. Through strategic IP acquisition and protection strategies, businesses can establish a formidable barrier to stop competitors from getting involved in infringement, and safeguard their market position. IP assets, such as patents, trademarks, and copyrights, not only protect innovations and creative works but also serve as valuable assets that underpin brand identity, reputation, and customer loyalty.

#### Case Study: Amul India<sup>3</sup>

- Amul is a prime example of a company that effectively leverages its trademarks to build a global brand empire.
- Amul has registered trademarks for its brand name "Amul" and its iconic logo featuring a young girl with a ponytail holding a glass of milk.<sup>4</sup> These trademarks prevent others from using similar names or logos that could confuse consumers.
- Amul also protects its advertising campaigns, which are famous for their witty and humorous topical advertisements featuring the Amul girl. Copyright protection ensures that these creative works cannot be reproduced or used without permission, maintaining the uniqueness and appeal of Amul's advertising strategy.

### • Licensing and Commercialization

**Practical Insight:** Businesses can monetize their IP assets through licensing agreements with third parties. By licensing IP companies can generate revenue streams while expanding market reach and leveraging the expertise of licensees. Franchising involves granting individuals or businesses the right to operate under a brand name and business model in exchange for franchise fees and ongoing royalties. Franchising allows businesses to expand their market reach and grow their business without incurring significant capital investment.

## Case Study: Dolby Laboratories

- Dolby Laboratories is renowned for its audio and visual technologies, including Dolby Digital and Dolby Atmos.<sup>5</sup>
- Through licensing agreements with manufacturers of consumer electronics, entertainment products, and cinema systems, Dolby generates significant royalties from the use of its patented technologies.<sup>6</sup>
- By licensing its IP Assets, Dolby ensures widespread adoption of its audio and visual technologies in industries such as film, television, gaming, and home entertainment, driving growth and market penetration.<sup>7</sup>

### • Open Innovation and Collaboration

**Practical Insight:** Collaborating with other companies through joint ventures, strategic partnerships, or co-development agreements can provide opportunities to commercialize IP assets. By pooling resources, expertise, and IP assets, companies can accelerate product development, access new markets, and create innovative solutions that leverage complementary strengths and capabilities. Embracing open innovation models allows businesses to leverage external IP assets and expertise to drive innovation and accelerate growth. By collaborating with external partners, startups, or research institutions, companies can access new technologies, markets, and talent.

## Case Study: IBM

- IBM has embraced open innovation<sup>8</sup> through initiatives such as IBM Research collaborations with universities, research institutions, and industry partners.
- By sharing its research and technology resources with external collaborators,<sup>9</sup> IBM fosters innovation ecosystems and accelerates the development of breakthrough technologies.
- Through collaborative projects in areas such as artificial intelligence,<sup>10</sup> quantum computing, and cloud computing, IBM leverages external expertise to drive innovation and maintain leadership in the technology industry.

### • Defensive IP Strategies

**Practical Insight:** In addition to monetizing IP assets directly, companies can also use their IP portfolios defensively to protect against competitive threats and litigation risks. By strategically acquiring patents, trademarks, and copyrights that cover key technologies, brands, or creative works, companies can deter competitors from infringing on their IP rights and assert their position in the marketplace. Businesses should implement defensive IP strategies to protect their market position and mitigate risks. This involves actively monitoring competitors' IP activities, enforcing IP rights against infringement, and building a robust IP defensive portfolio to safeguard against litigation or competitive threats.<sup>7</sup>

## Case Study: Mahindra & Mahindra

- Mahindra & Mahindra has built a substantial portfolio of patents,<sup>11</sup> particularly in the automotive and farm equipment sectors. These patents cover various aspects of vehicle design, engineering innovations, agricultural machinery, and sustainable technologies. By securing patents, M&M not only protects its own innovations but also establishes a defensive shield against potential infringement claims from competitors.
- Before launching new products or technologies, M&M conducts thorough Freedom to Operate analyses to assess whether its innovations might infringe on existing patents held by others. This proactive approach helps M&M avoid legal disputes and ensures that its products can be commercialized without hindrance.<sup>12</sup>
- By disclosing technical details through publications or patent applications without seeking patent protection, M&M prevents competitors from obtaining exclusive rights to similar technologies.<sup>13</sup>



# Navigating the IP Landscape

In the contemporary swiftly changing digital environment, IP rights have surfaced as a pivotal catalyst for fostering innovation and gaining competitive superiority. It is paramount to grasp the intricate nature of IP rights and their ramifications for the advancement and durability of an organization.

The process typically begins with identifying the specific type of IP relevant to the business or individual, whether it be patents for inventions, trademarks for brands, copyrights for artistic works, or designs for unique product appearances. In India, the first step often includes conducting thorough searches to ensure the proposed IP does not infringe upon existing rights. Once cleared, formal applications are filed with the Indian IP Office. Each application undergoes examination to assess novelty, inventive step, or distinctiveness, respectively. Upon approval, registration grants exclusive rights, allowing holders to prevent unauthorized use and seek legal recourse against infringements, thereby fostering innovation and protecting market share.

Filing for IP rights involves a multifaceted process that can vary depending on the type of IP protection sought, the jurisdiction, and the nature of the innovation. The following are the steps that guide on how an applicant should go about filing their IP.

- **Understanding IP Requirements:** Before filing, applicants need a clear understanding of the requirements for the specific type of IP protection they are seeking. This may include criteria such as novelty, non-obviousness, utility, distinctiveness, or originality, depending on the type of IP (e.g., patents, trademarks, copyrights).
- **Prior Search:** For patents and trademarks, conducting a prior search is essential to determine the novelty and non-obviousness of the invention or mark. This involves searching existing patents, trademarks, publications, and other sources to assess whether the innovation is novel and inventive or the mark is distinct.
- **Drafting Application Documents:** Crafting the application documents requires precise language and adherence to specific formatting and legal requirements. For patents, this includes drafting detailed patent claims and specifications that accurately describe the invention and distinguish it from existing technology. Similarly, trademark applications must provide clear representations of the mark and specify the goods or services associated with it.
- **Navigating Legal and Procedural Requirements:** Filing an IP in India demands focus to the specific type of IP due to the distinct legislative frameworks in place. For instance, the procedural norms for patent filings are regulated by the Patents Act, 1970. Similarly, copyright matters fall under the purview of the Copyright Act, 1957 while trademark registrations are governed by the Trademarks Act, 1999. Designs are regulated by the Designs Act, 2000, and geographical indications are overseen by the Geographical Indications of Goods (Registration and Protection) Act, 1999. Each of these statutes outlines the procedural steps, criteria, and conditions essential for securing legal protection for the respective forms of IP in India.
- **Responding to Office Actions:** Applicants and stakeholders receive updates from Indian IP offices through formal letters, notifications, and updates on their separate websites or by regular mail. To avoid delays or rejection of their applications, it is important for applicants to promptly respond to any questions or issues raised by the offices. Each office sets specific deadlines for different stages of the application process, such as opposition periods or responding to examination reports. It is crucial to align with these timelines to keep the application moving forward.
- **Examination Process:** IP offices conduct thorough examinations of patent, trademark, copyright, design, and GI applications to assess compliance with legal requirements and determine whether the claimed subject matter is eligible for protection. The examination process can be lengthy, especially in jurisdictions with high application volumes or complex examination procedures.
- **International Filing and Prosecution:** International treaties and agreements, such as the Patent Cooperation Treaty (PCT) or the Madrid System for international trademarks, provide streamlined procedures for filing and prosecuting IP applications globally. India is a signatory to the Patent Cooperation Treaty (PCT) which permits an applicant to file an application for registration of an international patent. Upon filing such application, an inventor can obtain patent protection in multiple countries (members of PCT), simultaneously. India is also a signatory to the Madrid Protocol under which a trademark can be applied for

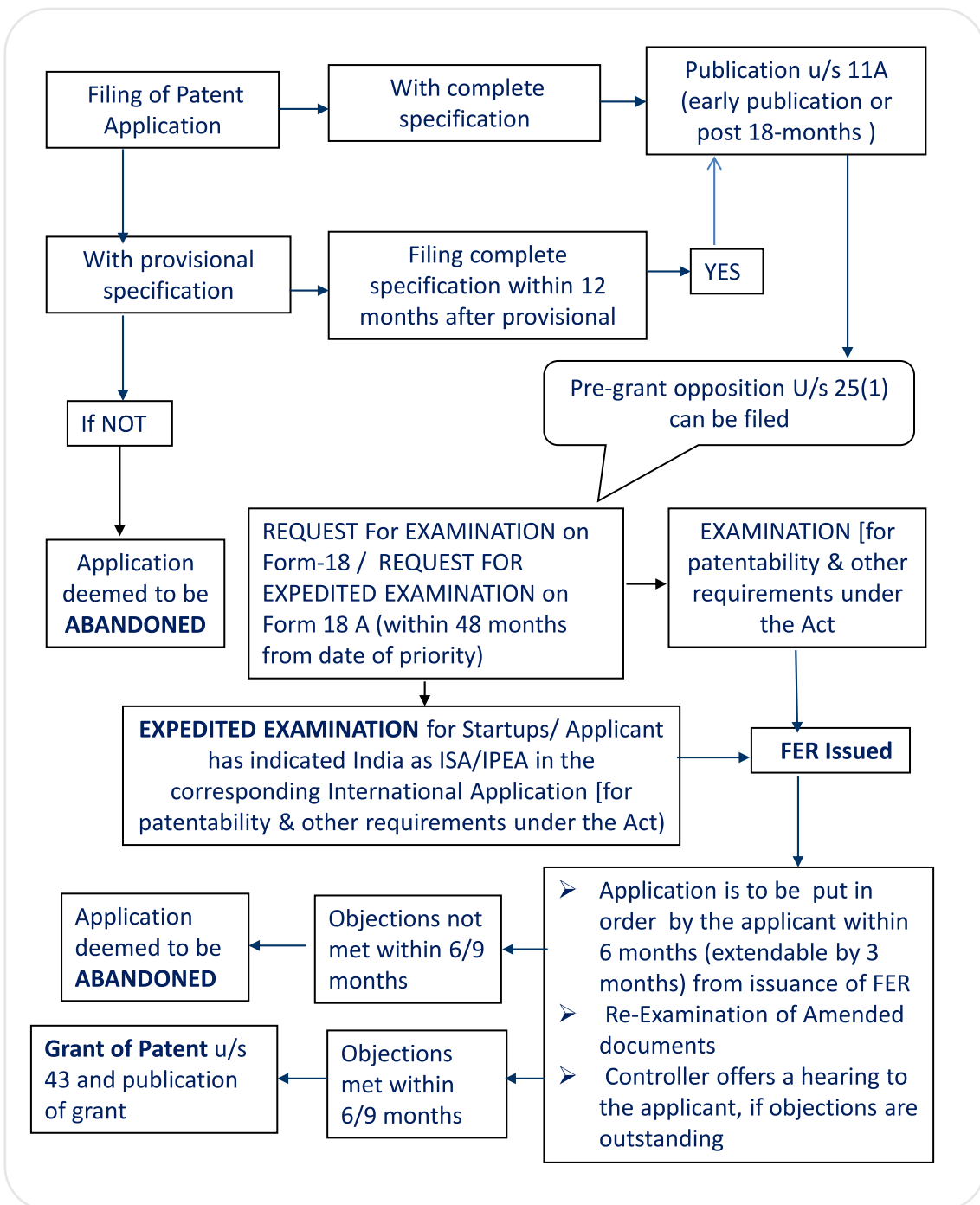
and registered internationally. The prerequisite for filing and registering an international application (under the Madrid Protocol) in a foreign jurisdiction is that the mark needs to be first filed in India.

- Enforcement and Maintenance:** The enforcement of IP rights in India requires vigilant monitoring for infringements and swift legal action when violations occur, demanding substantial financial resources and strategic planning for effective litigation or negotiation of settlements. This enforcement safeguards the value and exclusivity of IP assets, deters potential infringers, and preserves the rights holder's competitive advantage and market position. Maintaining IP rights in India involves meeting regulatory requirements and fulfilling periodic obligations such as paying annuities for patents, renewing trademarks to prevent cancellation, updating copyright registrations, and defending designs from unauthorized use.

In the following pages we will understand the different kinds registration process of IP filings in India.

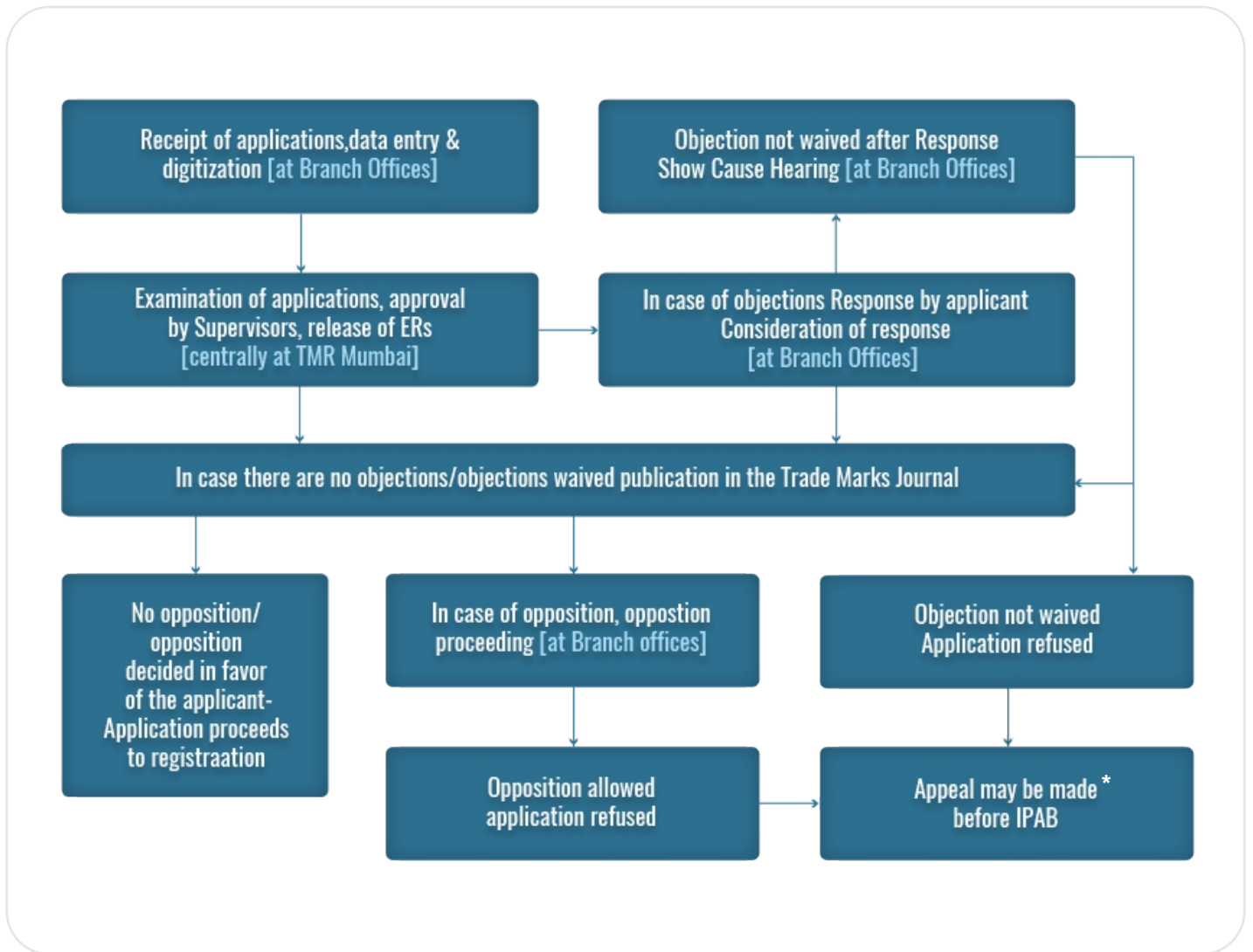
- Patent Registration<sup>1</sup>**

Filing and registration of a patent allows the patent holder to enforce their rights through litigation or negotiation, thereby protecting their investment in research and development. The steps to register a patent in India are as follows:



- **Trademark Registration<sup>2</sup>**

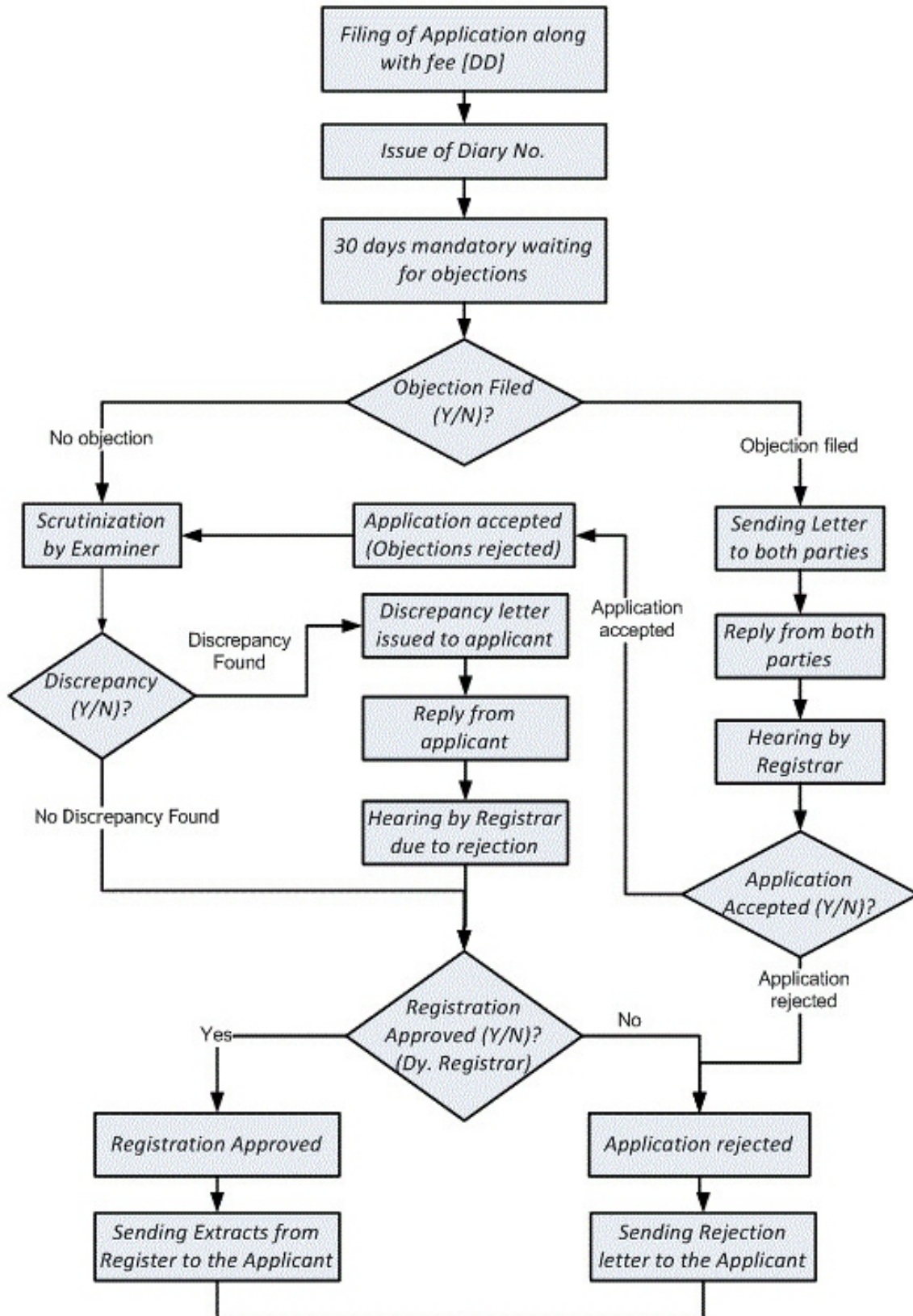
Trademark Registration is vital for safeguarding your brand's identity and securing exclusive rights to your distinct mark. Here's a breakdown of the trademark filing procedure in India:



\*It should be noted that IPAB is abolished in India and all matters pertaining to IPAB are now being decided by the Hon'ble High courts.

- **Copyright Registration<sup>3</sup>**

Copyright protection is essential for creators and rights holders to control the use and exploitation of their creative works, encourage innovation and creativity, and ensure fair compensation for their efforts. The process flow of a copyright registration in India is as follows:

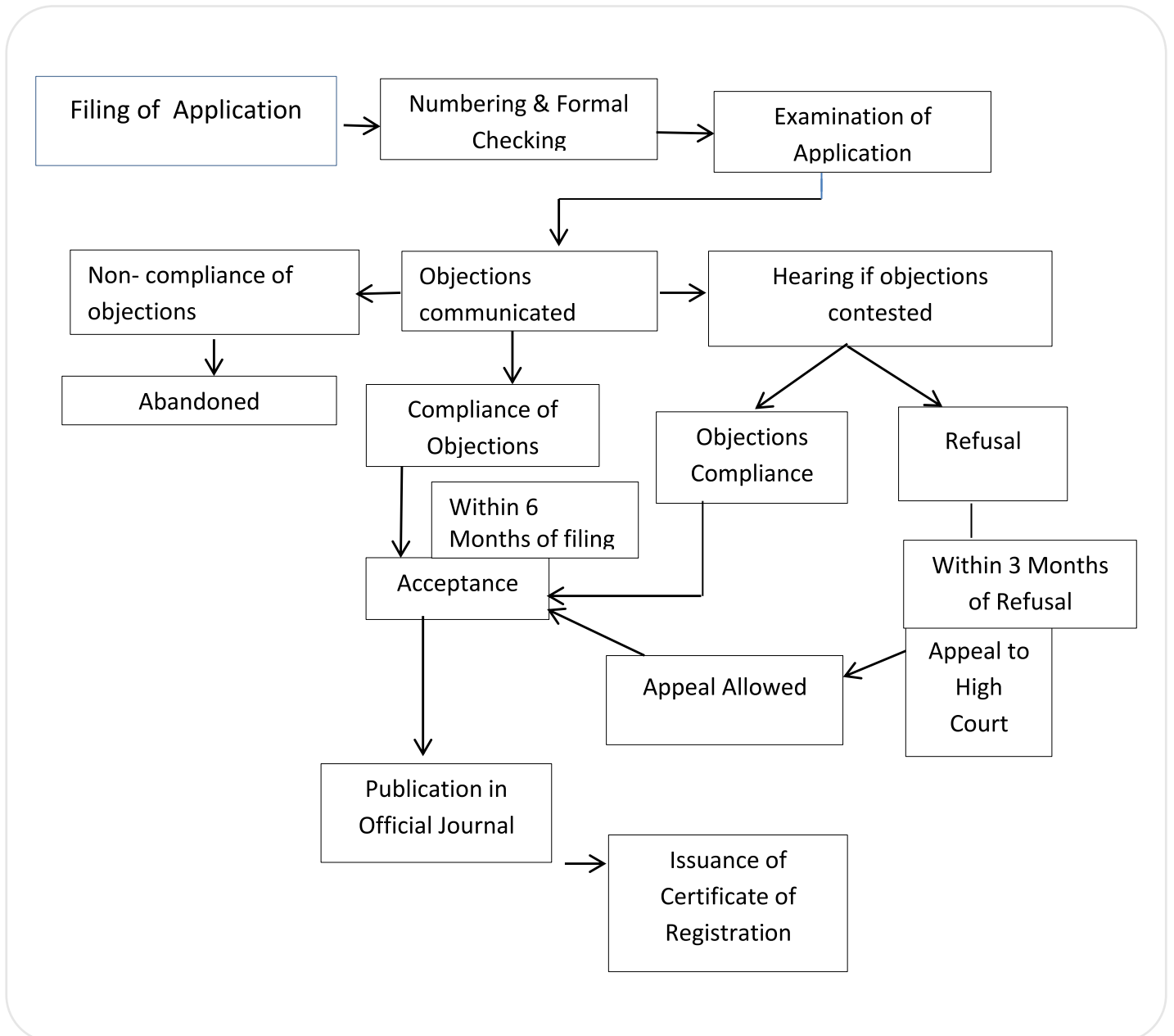


## • Design Registration<sup>4</sup>

In order to make a design registered in India, it should fulfil the eligibility criteria listed below:

- Design should be new or original
- It should not be published in any country
- It should not be contrary to public order or morality
- It should not attract the provision of Section 4 of Designs Act,2000

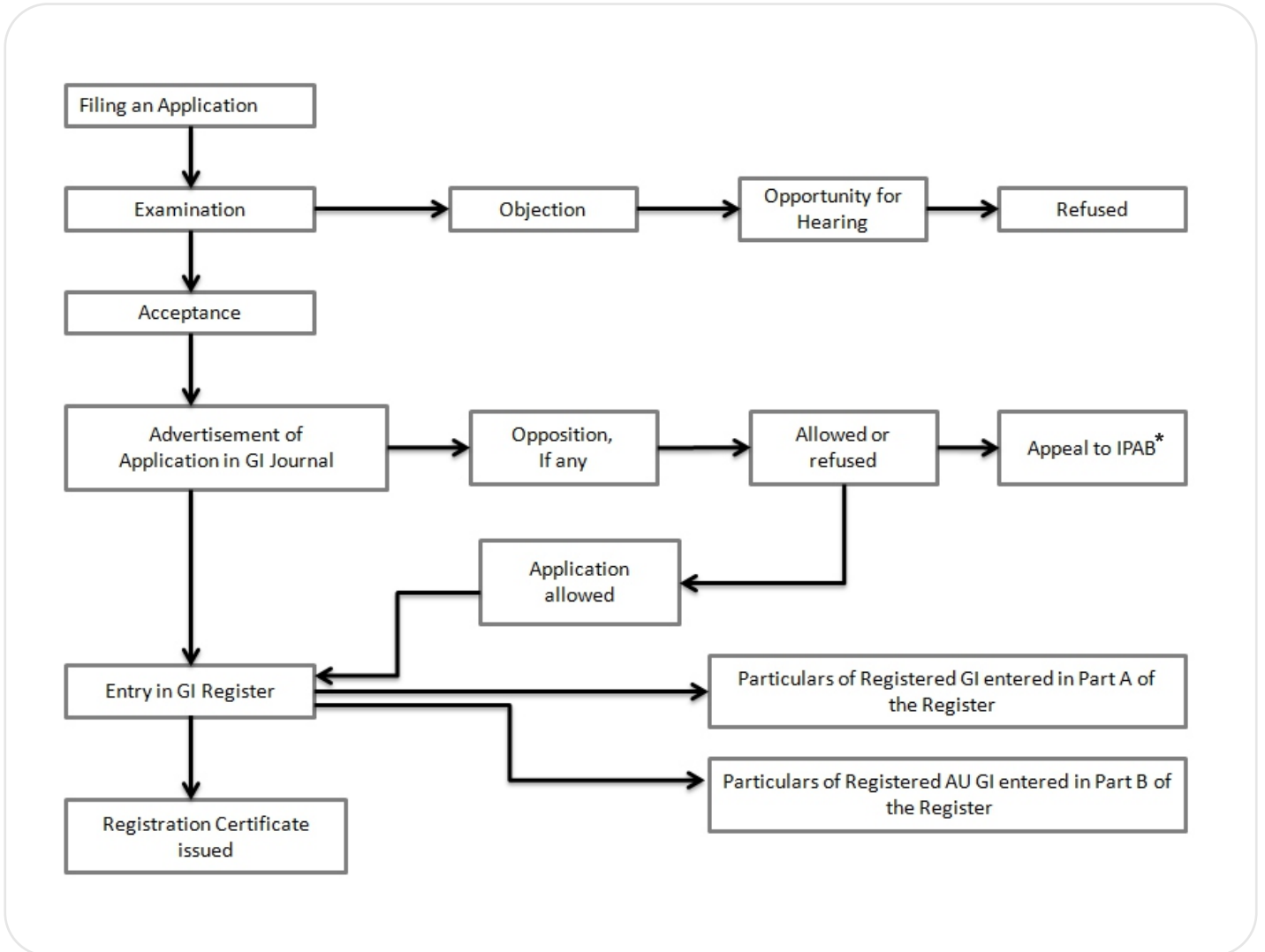
The process of registering a design in India involves the following steps:



- **Geographical Indications Registration<sup>5</sup>**

Registration of a GI provides legal recognition and protection for products that derive their qualities and reputation from their specific geographical origin, ensuring fair trade practices and preserving the cultural and economic value associated with these products.

The following is an overview of the registration process for obtaining a Indian GI tag for a specific product



\*It should be noted that IPAB is abolished in India and all matters pertaining to IPAB are now being decided by the Hon'ble High courts.

Every aspect of IP is changing, with the rise of AI, blockchain, and biotech & other emerging technologies and the digital age's challenge to established protection strategies. Businesses, legislators, and legal professionals must stay up to date on these developments and modify their strategy as the patterns in dissemination of technology continue to develop. In addition to creating opportunities for content development and dissemination, the growth of the internet, e-commerce, and digital media has also presented issues for IP holders along with bringing opportunities. IP law is also evolving as a result of the global sustainability movement. One major trend to keep an eye on is the rise of green technology and the use of IP to solve environmental issues.

Developing economies like India are recognizing the role for a strong IP system in attracting investment and fostering growth and innovation in businesses. Developing efficient IP offices, increasing participation in international IP agreements and treaties reflects the micro trends marked in the IP sector.

## Key Trends in Indian IP Registration

- **DeepTech Start-ups fostering IP Creation**

Focus on innovation continues to grow in India with major Indian DeepTech start-ups filing 922 patents since 2008. Chennai patent office accounts for ~70% of the India origin filing by DeepTech start-ups, also leading in the AI and Healthcare space.

- **India making a bigger mark on the global stage**

83,000 patents were filed in India in FY23 – growing at 24.6%, highest since FY05. Increasing share of India resident filers over MNCs- the former accounted for over 50% of the applications in FY23. Growing prominence of India as a key market leading to a rise in PCT Applications filed by major countries in India

- **Global innovation focus reaches new highs**

Globally, IP creation is gaining prominence with more than 3 million patents been filed in the last 2 years and India's share increasing to more than 2% computer technology continues to maintain its top position among all application areas, doubling its share over the last decade

## Emerging IP Trends: Implications For Businesses

Emerging trends in the world of IP present both opportunities and challenges for businesses as they navigate an increasingly complex landscape. Several emerging trends are reshaping the landscape of IP and influencing businesses in various ways:

- **AI-Powered IP Management Tools:** The emergence of AI-powered tools for IP management offers businesses the opportunity to streamline processes, improve efficiency, and gain valuable insights from their IP portfolios. As AI technologies become more sophisticated, questions regarding the ownership and protection of AI-generated creations arise. Also, as AI generates music, art, literature, the traditional methods such as authorship, inventorship, and human creativity are constantly becoming subjects of discussion. By leveraging AI for tasks such as patent searches, prior art analysis, and trademark monitoring, businesses can enhance their IP strategy and make more informed decisions. However, integrating AI into IP management practices requires careful consideration of data privacy, security, and ethical considerations as this can raise questions.
- **Globalization and Harmonization of IP Laws:** As businesses expand their operations across borders, the globalization and harmonization of IP laws are becoming increasingly important. International treaties and agreements are playing much crucial role than before to establish consistent standards for IP protection, facilitating cross-border trade and innovation. However, differences in legal frameworks and enforcement mechanisms across jurisdictions can present challenges for businesses seeking to protect their IP rights globally. Developing a comprehensive understanding of international IP laws and leveraging regional strategies can help businesses navigate these complexities effectively.
- **Digital Transformation and IP Challenges:** The ongoing digital transformation presents new challenges and opportunities for businesses in terms of IP protection with the rise of digital content distribution platforms,

e-commerce, and online collaboration this space has also witnessed an increase in copyright infringement,<sup>1</sup> counterfeiting, and cyber theft.<sup>2</sup> With the rise of digital content distribution platforms and file-sharing technologies, protecting copyrighted material online has become increasingly challenging.<sup>3</sup> As businesses are exploring new strategies and technologies for copyright enforcement, they must implement robust strategies to safeguard their digital assets, protect against IP infringement, and mitigate cybersecurity risks.<sup>4</sup> Additionally, the digitization of traditional industries such as manufacturing and healthcare requires careful management of IP rights in relation to new technologies and business models.

- **Shift Towards Open Innovation and Collaboration:** As companies increasingly engage in open innovation, where ideas and technologies are sourced externally as well as internally, they gain access to a broader pool of expertise and resources. This can lead to accelerated innovation cycles, reduced costs through shared development efforts, and enhanced market responsiveness. Open-source software development, crowdsourcing, and collaborative research initiatives enable businesses to access new ideas, technologies, and talent pools. They are also challenging traditional notions of IP ownership. Businesses are embracing new approaches to IP management to foster collaboration while protecting their interests and must carefully strategize to protect their proprietary knowledge while effectively leveraging external innovations. This involves establishing clear agreements and frameworks for IP ownership, licensing, and usage rights in collaborative projects. It also requires fostering a culture of trust and transparency with external partners to ensure mutual respect for IP.
- **Rise of Non-Traditional IP Assets:** The increasing importance of intangible assets such as data, trade secrets, and brand reputation highlights the need for businesses to broaden their perspective on IP beyond patents, copyrights, and trademarks. Trade secrets, in particular, have gained prominence as businesses seek to protect proprietary information such as formulas, algorithms, and customer data. Effective management of non-traditional IP assets requires robust security measures, confidentiality agreements, and employee training programs to mitigate the risk of misappropriation and unauthorized disclosure. Non-traditional IP assets, such as data, algorithms, software, and digital content, have become increasingly valuable in the digital economy. Businesses often rely on these assets as core components of their products, services, and operations.

These assets face unique risks, such as cybersecurity threats, unauthorized use, and regulatory compliance challenges (e.g., data privacy laws). Effective management helps mitigate these risks by implementing security measures, establishing usage policies, and ensuring compliance. Even though non-traditional IP assets may not always fit traditional IP categories like patents or copyrights, they still require legal protection. Businesses need to understand and utilize appropriate legal mechanisms (e.g., contracts, trade secrets protection) to safeguard these assets.

- **Climate Change and Green Technology:** The growing focus on sustainability and environmental protection is driving innovation in green technologies. Businesses are increasingly investing in IP related to renewable energy, clean technologies, and carbon capture solutions. As a result, businesses are progressively allocating resources towards IP protection in this segment. This shift underscores a strategic commitment to developing and securing innovations that not only address current environmental challenges but also pave the way for a more sustainable future.
- **E-Commerce and Trademark Protection:** The proliferation of online marketplaces and social media platforms has led to new challenges in protecting trademarks and combating counterfeit goods. Businesses are employing strategies such as brand monitoring tools and enforcement actions to safeguard their brands online. With millions of users and sellers operating worldwide, monitoring unauthorized uses of trademarks has become exceedingly complex. These platforms often host a vast array of products and content, making it challenging for trademark owners to detect and address infringements promptly. The legal landscape governing online trademark protection is evolving, with laws and regulations often lagging behind technological advancements. This creates uncertainty and additional challenges for businesses seeking to protect their trademarks across different jurisdictions and platforms.



IP rights are valuable assets for businesses, driving innovation and fostering growth. Yet, disputes over these rights often arise, especially in case of infringement requiring businesses to deal with the intricacies of IP litigation. IP infringement occurs when an unauthorized party infringes upon the IP holder's exclusive license to exploit the IP. The disputes over IP rights are inevitable. It is important for businesses to be aware of circumstances revolving around IP litigation, providing practical insights and strategies to help businesses effectively manage and respond to legal challenges. Disputes in IP infringement arise due to various reasons, often centred around the ownership, use, and protection of IP assets. The cause of IP litigation can include reasons like-

- Validity of IP rights
- Licensing and permission
- Misuse and abuse
- International considerations
- Protection of traditional knowledge

The following examples illustrate different situations of IP infringement:

- **Patent:** Patent infringement occurs when someone uses, makes, sells, or imports a patented invention without authorization during the patent's validity term. An infringer creates a product or service based upon designs and processes that belong to the patent holder. Suppose a tech company develops a new smartphone with innovative feature and such features are covered by an existing patent held by another company. The patent covers a unique user interface and a specific method for data processing. Despite being aware of the patent, the tech company proceeds to produce and sell the smartphone without obtaining permission from the patent holder. In this case, the tech company's actions may be considered patent infringement.
- **Copyright:** Copyright infringement occurs when an infringer makes an unauthorized copy of a copyright-protected piece of work and sells it to consumers. For instance, if a musician creates an original song. If another artist samples significant portions of that song in their own recording without giving credit or obtaining permission, it would be a copyright violation.
- **Trademark:** Trademark infringement occurs when someone uses a trademark (such as a brand name or logo) that is identical or confusingly similar to a registered trademark owned by another party, in a way that is likely to cause confusion among consumers about the source of goods or services. For example, a company called "GreenLeaf Tea Co." that specializes in selling organic teas and has a distinctive logo featuring a green leaf intertwined with the letters "GL" in a unique font. Now, a new tea company called "GreenLeaves Tea Emporium" emerges and adopts a logo that closely resembles "GreenLeaf Tea Co.'s" logo. In this scenario, "GreenLeaf Tea Co." could potentially claim trademark infringement against "GreenLeaves Tea Emporium" due to the confusing similarity between their logos, which could mislead consumers about the source of the products.
- **Trade Secret:** Trade secret infringement cases often involve proving that the information in question meets the legal definition of a trade secret (i.e., it is not generally known and provides economic value because it is not readily ascertainable by others). If proven, a company could seek legal remedies such as injunctions to stop further use of the trade secret, damages for economic harm caused by the infringement, and potentially punitive damages if the infringement was willful. Trade secret infringement may occur when an infringer enters a new market sector, its strategy based upon client analyses considered to be the exclusive property of the IP holder.
- **Design:** Design infringement may occur in case of, any fraudulent or obvious imitation of a Design that is already registered without the consent of the owner or proprietor of the registered design. For instance, if company PQR has an industrial design over its diamond shaped glass, and if, any other company who tries to replicate such diamond shaped design and sells the same in the market then such company will be liable for design infringement by PQR.

## Remedies Available in IP Litigation

- **Temporary Injunction:** Under temporary injunction, the court imposes a temporary restraining order on the alleged infringer/defendant until the final disposal of the civil suit or for such time as stated in the court order. A temporary injunction aims to preserve the status quo until the court reaches a final decision on the case. It prevents the defendant from taking certain actions that could harm the plaintiff's rights during the litigation process. Courts can grant a temporary injunction at any stage of a lawsuit. It is typically requested by the plaintiff (the party alleging trademark infringement) to prevent the defendant (the alleged infringer) from continuing the disputed activity while the case is ongoing.
- **Permanent Injunction:** Permanent infringement refers to a court's final determination that infringement of the IP rights has occurred after a full trial on the merits. If the court finds that the alleged infringer has indeed infringed upon the IP rights, it may issue a permanent injunction and award damages or other relief to the IP rights holder. The court can also issue a final order restraining the defendant from carrying out activities constituting patent infringement in India.
- **An Anton Piller Order:** It is an order that gives the plaintiff unannounced access to the defendant's property in order to search for and seize evidence. In situations involving intellectual property infringement, this order is usually used, especially if there is a chance that the defendant could destroy important evidence if they were informed of the search. On the Plaintiff's request or otherwise, the court may designate a local commissioner to seize or seal any documents or accounts that violate intellectual property rights on the Defendant's property. Anton Piller orders are cautiously granted by courts under stringent guidelines to avoid abuse, such as the possibility of the defendant being harassed or intimidated.
- **A John Doe Order:** A "John Doe" order, also known as a "John Doe injunction" or "Ashok Kumar order" is a court order issued against unknown persons or entities who are engaging in wrongful activities that harm the plaintiff's rights. This type of order is particularly relevant in cases where the identity of the defendant is unknown at the time of filing the lawsuit, but there is evidence of ongoing or imminent harm caused by anonymous parties. For instance, XYZ Music Corp. files a lawsuit against unknown individuals ("John Does") who uploaded and distributed the leaked album without authorization. XYZ Music Corp. will seek a John Doe order to identify the individuals responsible and to prevent further distribution of the leaked material.
- **Imprisonment:** Chapter XII of the Trademark Act 1999, (India) lays down the various provisions under which criminal action can be initiated against infringement. Section 103 & 104 provide for the penalties for applying false trademarks, trade descriptions and for selling goods or providing services to which false trademarks or false trade description is applied which includes imprisonment for a term not less than six months which may extend up to three years and fine not less than fifty thousand rupees which may extend up to two lakh rupees.

The provisions with respect to the procedure and penalty for infringement of copyright are provided under Chapter XIII of the Copyright Act 1957, (India) according to Section 63, anyone who willfully violates or aids in the infringement of another person's copyright faces a minimum sentence of six months in prison, with the possibility of a three-year sentence, as well as a fine of at least fifty thousand rupees, with a maximum amount of two lakh rupees. According to Section 63A, the enhanced punishment for second or subsequent convictions is a fine of not less than one lakh rupees but not more than two lakh rupees, as well as a term of imprisonment that cannot be less than one year but can be up to three years.

## How Litigation Affects The "True IP Owner"

Litigation is indeed an inevitable aspect of IP management. It acknowledges that conflicts and legal challenges related to IP rights are bound to occur in the course of managing and protecting those rights. This could include disputes over ownership of IP, allegations of infringement by others, defensive actions to protect one's own IP, or challenges arising from competitive market dynamics. IP Litigation underscores the importance of understanding and being prepared to address legal issues as an integral part of effectively managing IP assets.

- **Protecting IP Rights:** Litigation serves as a means for IP owners to protect their rights and enforce their IP. When someone infringes upon their IP, litigation provides a legal recourse to seek damages, injunctions, and other remedies.
- **Defending Against Allegations:** On the flip side, businesses may find themselves on the receiving end of IP litigation, accused of infringing upon someone else's IP rights. Litigation allows them to defend themselves, challenge the validity of IP claims, and assert their own rights.

- **Resolving Disputes:** Sometimes, disputes over IP rights cannot be resolved through negotiation or alternative dispute resolution methods. Litigation offers a formalized process for resolving these disputes, with courts providing judgments based on legal principles and evidence.
- **Setting Precedents:** IP can set legal precedents that influence how future cases are decided. Landmark rulings can clarify ambiguities in IP law, establish standards for patentability and infringement, and shape industry practices.
- **Deterrent Effect:** The threat of litigation can act as a deterrent against IP infringement, encouraging businesses to respect others' IP rights and avoid costly legal battles. Knowing that they could face litigation may prompt companies to conduct thorough IP clearance searches and obtain proper licenses before launching products or services.
- **Market Impact:** High-profile IP litigation cases can have significant repercussions beyond the courtroom, affecting market dynamics, investor confidence, and consumer perceptions. Companies involved in litigation may experience fluctuations in stock prices, brand reputation, and market share.
- **Global Considerations:** IP litigation may involve complex jurisdictional issues, especially in cases with international dimensions. Businesses operating in multiple countries must navigate differences in legal systems, procedural rules, and enforcement mechanisms when litigating IP disputes across borders.

### **Enhancing Business Readiness: A Comprehensive Approach to IP Litigation Preparedness**

Preparing for potential litigation related to IP assets is crucial for businesses to safeguard their rights and interests. Here's a comprehensive guide on how businesses can prepare themselves:

- **Understand Your IP Assets:** Start by conducting a thorough audit of your IP portfolio. Identify and document all trademarks, patents, copyrights, and trade secrets owned or used by your business.
- **Keep Records:** Maintain detailed records of the creation, development, and ownership of your IP assets. This includes documentation of invention disclosures, trademark registrations, copyright filings, licensing agreements, and assignments.
- **Implement Internal Policies and Procedures:** Establish clear internal policies and procedures for the creation, use, protection, and enforcement of your IP assets. Ensure that employees are aware of their responsibilities regarding IP protection and that any work done on behalf of the company is properly documented and assigned.
- **Monitor and Enforce IP Rights:** Regularly monitor the marketplace for potential infringements of your IP rights. Implement monitoring tools and services to detect unauthorized use of your trademarks, patents, copyrights, and trade secrets. Take prompt action to enforce your rights against infringers.
- **Protect Trade Secrets:** Implement measures to protect your trade secrets, such as confidentiality agreements, restricted access to sensitive information, and encryption of digital data. Clearly mark confidential information and limit disclosure on a need-to-know basis.
- **Secure Confidential Information:** Implement cybersecurity measures to safeguard confidential information and prevent unauthorized access or data breaches. Regularly update security protocols and train employees on best practices for data protection.
- **Maintain Proper Documentation:** Keep accurate and up-to-date records of all IP-related activities, including correspondence, agreements, licenses, and enforcement actions. These records can be valuable evidence in the event of litigation.
- **Develop a Litigation Strategy:** In consultation with legal counsel, develop a comprehensive litigation strategy that aligns with your business objectives and risk tolerance. Consider factors such as the strength of your IP rights, the likelihood of success in litigation, potential damages, and the cost of enforcement.
- **Establish Relationships with Legal Experts:** Build relationships with experienced IP attorneys who can provide guidance and representation in the event of litigation. Work closely with legal counsel to assess risks, explore options for dispute resolution, and develop proactive strategies for protecting your IP assets.
- **Stay Informed and Adaptive:** Stay informed about changes in IP law, industry trends, and emerging risks related to your IP assets. Continuously reassess and update your IP protection strategies to adapt to evolving threats and opportunities.

# IP Valuation: A Practical Approach

IP Valuation is the process of determining the monetary value/ worth of IP assets owned by a company or an individual. Valuing IP is crucial for various reasons, such as financial reporting, licensing agreements, royalties transactions etc. However, quantifying the worth of these intangible assets presents a complex challenge due to their diverse nature and the absence of standardized valuation methods.

## Prerequisites for Undertaking IP Valuation:

- To be able to do the valuation of an IP asset, it must be separately identifiable
- There should be some tangible evidence or manifestation of the existence of the IP asset (e.g., a contract, a license, a registration document, a CD, a set of procedural documentation, a listing of customers, recorded on a set of financial statements, etc.)
- IP should have been created or have come into existence at an identifiable time (or time period) or as the result of an identifiable event.
- IP should be capable of being legally enforced and legally transferred.
- IP should be capable of having its income stream separately identifiable and isolated from the contribution of other assets employed in the business.
- It should be capable of being sold, without selling the other business assets of the enterprise to the same buyer.
- It should be subject to being destroyed or to a termination of existence at an identifiable time (or time period) or as the result of an identifiable event.

## Reasons Behind Conducting IP Valuation

There are numerous individual reasons or motivations for conducting an IP valuation. The valuation triggers refer to the reason or purpose of the valuation. These include the following:<sup>1</sup>

Classification	Valuation Trigger
Transaction	Licensing of IP assets; franchising
	Sale or purchase of IP assets
	M&A; divestures, spin-offs
	Joint venture or strategic alliance
	Donation of IP assets
Enforcement of IP rights	Calculation of damages when IP right is infringed
Internal use	Investment in R&D
	Internal management of IP assets
	Strategic financing and/or raising equity/capital
	Strategic financing and/or raising equity/capital

Other purposes	Investor relations
	Financial reporting
	Bankruptcy/liquidation
	Optimizing taxation
	Insurance of IP assets

A practical approach to IP valuation is indispensable, demanding a thorough understanding of the specific context, objectives, and methodologies tailored to individual circumstances. This introduction sets the stage for navigating the intricacies of IP valuation, emphasizing the critical considerations and approaches necessary to unlock the true value of IP assets. Factors such as date and time of IP registration, premise of value, standard of value, reliability of relevant data may influence the process of IP valuation.

### Importance of IP Valuation

Valuing IP is crucial for businesses looking to monetize their IP assets or attract investors or partners:

- **Monetization:** Understanding the value of their IP allows businesses to effectively monetize their assets. Whether it's through licensing agreements, selling patents, or using IP as collateral for financing, knowing the value of their IP enables businesses to make informed decisions about how to leverage it for financial gain.
- **Attracting Investors:** Investors often consider a company's IP portfolio as a key factor in their investment decisions. Demonstrating a clear understanding of the value of their IP assets can make a business more attractive to potential investors, as it shows that the company has valuable and potentially lucrative assets that can contribute to its long-term success.
- **Partnerships and Collaborations:** Businesses frequently enter into partnerships or collaborations with other companies to develop new products, technologies, or services. Having a solid valuation of their IP can facilitate negotiations and ensure that the terms of the partnership adequately reflect the value of the IP contributed by each party.
- **Strategic Planning:** Valuing IP also plays a crucial role in strategic planning. It helps businesses assess their competitive position in the market, identify opportunities for growth and expansion, and allocate resources effectively to maximize the value of their IP assets.

### Practical Insights for Valuing Business IP Assets<sup>2</sup>

Here are practical insights on how businesses can value their IP assets using various methods:

- **Cost-Based Valuation:** Cost method is based on the intention of establishing the value of an IP asset by calculating the cost of developing a similar (or exact) IP asset either internally or externally. It seeks to determine the value of an IP asset at a particular point of time by aggregating the direct expenditures and opportunity costs involved in its development and considering obsolescence of an IP asset. For example, if the IP owner has data pertaining to the cost it incurred for the preceding five years and wants today's value of that IP, the cost incurred in its development, adjusted to inflation, will provide a current value which, in turn, will be further adjusted for obsolescence to arrive at a final opinion of its value. The cost method is generally the least used method as, in most cases, it is considered suitable only as a supplement to the income method (if the valuation is not for bookkeeping purposes). The method is normally used in situations where the subject IP is currently not generating any income.
- **Market-Based Valuation:** The market method is based on comparison with the actual price paid for a similar IP asset under comparable circumstances. To do a valuation with this method, one needs to have: - An active market (price information, arm's length) - An exchange of an identical IP asset, or a group of comparable or similar IP assets - If the IP assets are not perfectly comparable, variables to control for the differences. The more information available on the nature and extent of rights transferred, including the detailed terms and conditions, the circumstances of the transaction (e.g., cross-licence, licence agreed in settlement of litigation), the more accurate the valuation will be. This method is much more likely to reflect market perceptions and moods than a valuation based on the income method.

- **Income-Based Valuation:** The income method values the IP asset on the basis of the amount of economic income that the IP asset is expected to generate, adjusted to its present day value. This method is the most commonly used method for IP valuation. To determine economic income first project the revenue flow (or cost savings) generated by the IP asset over the remaining useful life (RUL) of the asset. Then, offset those revenues/savings by costs related directly to the IP asset. For instance, Labor cost and materials, required capital investment, and any appropriate economic rents or capital charges and lastly, we shall take account of the risk to discount the amount of income to a present-day value by using the discount rate or the capitalization rate Different measures of economic income may be relevant to the various income methods. Some of these measures include the following:
  - Gross or net revenues;
  - Gross profit;
  - Net operating income;
  - Pretax income;
  - Net income (after tax);
  - Operating cash flow;
  - Net cash flow;
  - Incremental income;
  - Cost savings.

Given the different measures of economic income that may be used in the income approach, an essential element in the application of the income method is to ensure that the discount rate or the capitalization rate used is derived on a basis consistent with the measure of economic income used.

### Practical Insights

- **Holistic Approach:** Combining multiple valuation methods can provide a more comprehensive understanding of the IP asset's value. Each method has its strengths and limitations, and using them in conjunction can mitigate biases and provide a more robust valuation.
- **Accurate Data:** Valuations rely heavily on accurate and up-to-date data. Businesses should gather relevant information on development costs, market transactions, financial performance, and industry trends to ensure the accuracy of the valuation.
- **Consideration of Risk:** Assessing the risk associated with the IP asset is crucial. Factors such as technological obsolescence, competition, legal issues, and market demand should be evaluated to determine the appropriate discount rate and risk adjustments.
- **Professional Expertise:** Engaging experienced IP valuation professionals or consulting firms can ensure accuracy and reliability in the valuation process. Professionals bring expertise in financial analysis, market research, and industry knowledge, enhancing the credibility of the valuation results.
- **Regular Review:** IP asset values can change over time due to market dynamics, technological advancements, or regulatory changes. Regularly reassessing the valuation helps businesses adapt to evolving circumstances and make informed strategic decisions

# Experts Corner

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### The Strategic Significance of Intellectual Property in Achieving Competitive Advantage



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In today's dynamic business environment, intellectual property (IP) assets have risen to prominence as indispensable resources for organizations, particularly small and medium-sized enterprises (SMEs), striving to create and sustain a competitive edge. This article explores the pivotal role of IP in driving value and fostering a position of advantage in a globalised and knowledge-based economy.

#### Leveraging Intellectual Property in the Knowledge Economy

The modern economy is increasingly characterised by knowledge and innovation, making intellectual property rights (IPR) an essential element in distinguishing businesses from their competitors. These rights provide companies with exclusive control over their inventive products, unique designs, and brand identities. This exclusivity serves as a powerful incentive for investments aimed at enhancing competitiveness.

#### Guarding Your Brand: A Strategic Imperative

A brand is the face of a business, differentiating it from rivals and building trust among consumers. The strategic use of intellectual property, such as trademarks, can safeguard your brand and, in turn, reassure investors, boost profit margins, and fortify your bottom line.

#### Maximizing the Value of Patents, Copyrights, and Trade Secrets

Key elements of IP play instrumental roles in shaping a company's competitive advantage.

##### Patents

These safeguard innovations, providing a competitive edge by granting exclusivity in the market. Patents

can generate revenue streams, reduce tax liabilities, and elevate a company's position in the industry.

##### Copyrights

Copyright protection extends to the creative expression of ideas in various forms, from literary works to software code. Copyrights are essential for protecting a company's intellectual assets.

##### Trade Secrets

Sometimes, the most potent competitive advantages come from keeping vital information concealed from competitors. Trade secrets, encompassing proprietary processes or business methods, can confer significant benefits when maintained as confidential assets.

##### Industrial Designs and Geographical Indications

In addition to patents, copyrights, and trade secrets, industrial designs and geographical indications also contribute significantly to maintaining a company's competitive edge.

##### Industrial Designs

Protecting the visual appearance of products can be transformative, setting your offerings apart from competitors and increasing their desirability.

##### Geographical Indications

When authenticity and origin are paramount, geographical indications are invaluable in distinguishing your products as genuine, attracting customers who prize authenticity.

##### Crafting an Effective IP Strategy

Organisations must formulate a robust IP strategy to unlock the full potential of IP. Such a strategy can help secure competitive advantages, create revenue streams, reduce tax liabilities, offer a source of competitive intelligence, facilitate access to financing, attract investors and partners, and mitigate relevant risks effectively.



## Brand Protection Case

In the ever-evolving landscape of IP enforcement, the pursuit of truth and justice often unveils intriguing narratives that challenge the boundaries of expertise. This is a story of one such remarkable journey, where IP serves as the strategic lynchpin to create value and secure a competitive advantage.

It started with a distressed company approaching us with their problem. Their product was being duplicated with astonishing precision, boasting a staggering 99.9% similarity to the genuine article. In response to this urgent call for assistance, we embarked on a journey to protect our client's interests.

Our credentials as IP enforcement experts were not without merit. Having successfully executed the first counterfeit seizure for our client, we were entrusted with the task of cracking the counterfeit conundrum. What lay ahead was a complex puzzle, with one vital difference setting apart the genuine from the counterfeit.

In our pursuit of truth, we ventured into the market to identify the traders peddling these counterfeit products. Astonishingly, we unearthed seven leads, and an even more astonishing revelation awaited us – all seven companies were under the ownership of the same individual. This tantalizing breadcrumb trail led us to a crossroads – all these companies seemed to have mysteriously shuttered their offices.

Unyielding in our pursuit of justice, we pushed further into the labyrinth, finally discovering an alternative office associated with the enigmatic owner. Armed with a mobile number, we took a leap of faith and made the call.

With the precision of a seasoned detective, we opted for a stratagem. Disguised as a South African buyer, we equipped ourselves with a South African mobile number and a visiting card to complete the façade. The target, initially skeptical, required convincing of our authenticity. Our objective was clear - to infiltrate the counterfeit network.

Our encounter with the target commenced over coffee. Playing the part of a significant buyer, we boasted of our specialization in counterfeit dealings concerning our client's products. Initially hesitant, the target yielded a few boxes of the counterfeit stock they held. This interaction was a prelude to a series of meetings, with each encounter building trust and establishing our credibility.

As trust grew, we seized the moment and placed a substantial order - multiple containers of our client's specific product, with a commitment for regular monthly shipments. We offered a 25% advance payment for a year's worth of bookings, with one

crucial condition - we demanded a better price than the original product.

Confident that the target was ready to supply, we presented an irrevocable Letter of Credit (L/C) at sight, featuring a non-negotiation clause. This L/C would serve as a guarantee of payment, with the promise that when the goods arrived, cash payment would follow.

The most audacious move came next. We invited the target for a lavish dinner in a revolving restaurant, an experience that left an indelible mark. We spent four hours engrossed in a conversation that would reveal the inner workings of the counterfeit operation.

In a moment of candour, we delved into the heart of the matter. We questioned the target about the seemingly impossible feat of offering a price significantly lower than the original product yet appearing indistinguishable upon inspection. The answer was nothing short of a revelation.

The target disclosed that their operation had an office in Europe, providing intimate knowledge of the product's origin. They had identified a subtle detail - a marking on the bottom of the original product's packing. The product was counterfeited in Europe, where the product dominated the market. The packing was imported into Europe and then, exported as original.

With this newfound insight, we took swift and decisive action. The client seized the goods from the packaging company, effectively dismantling the counterfeit operation. The moulds used for packaging were confiscated, ultimately putting an end to the counterfeit issue once and for all.

In another case, a European company that had become complacent in safeguarding their brand against counterfeiting, confident that it had caused no harm to their reputation. Despite receiving warnings about counterfeit products, they consistently ignored them. Their turning point came when a European couple, while vacationing in North Africa, applied their counterfeit cosmetics, which led to severe skin burns, making headlines in newspapers. The company's stock price saw a sharp decline, forcing them to take swift measures to address the risks posed by their unguarded brand.

### **Conclusion:**

*Intellectual property is vital for SMEs to gain a competitive edge in the knowledge-based economy. Protecting brands, products, and trade secrets through IP rights offers key benefits. A strong IP strategy is essential for global success, while neglecting IP can lead to severe setbacks.*

### Developing A Strong Brand Name Through IP: Safeguarding Your Business Identity



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Inc.

In the fast-paced and highly competitive business world, establishing a strong brand identity has become more critical than ever before. With an ever-increasing number of businesses competing for consumer attention, safeguarding one's intellectual property (IP) has become a fundamental necessity. Effective protection through IP laws plays a vital role in nurturing and developing a robust brand name, securing a business's distinct identity, and fostering long-term growth and success.

#### Importance of Brand Protection

A brand is more than just a logo or a name; it is the face of a business, embodying its values, ethos, and commitment to its customers. Protecting this brand is crucial for maintaining its integrity and ensuring that it remains a symbol of trust and reliability for consumers. Intellectual property laws, including trademarks and copyright, provide the necessary framework for businesses to safeguard their brand assets, preventing unauthorized use and misuse of their unique identifiers. By establishing a strong legal foundation for their brand, businesses can ensure that their identity remains intact, distinguishing them from competitors and building a loyal customer base.

#### Mitigating Risks and Preserving Reputation

In an interconnected global marketplace, brand infringement and counterfeiting risk have become a pressing concern for businesses of all sizes. Unauthorized use of a brand's identity dilutes its market presence and poses a significant threat to its reputation. Through robust IP protection, businesses can mitigate these risks and uphold their brand's reputation, ensuring that consumers can trust the authenticity and quality of their products and services. By actively pursuing legal measures to prevent counterfeit practices, businesses can safeguard their market share and maintain a positive brand image, solidifying their position as a reliable and credible entity in the industry.

#### Fostering Innovation and Creativity

Intellectual property protection serves as a catalyst for innovation and creativity within businesses. By providing exclusive rights to their inventions, processes, and creative works, businesses are incentivized to invest in research and development, driving continuous innovation and fostering a culture of creativity. This not only benefits the business directly by allowing it to capitalize on its unique offerings but also contributes to the broader economy by spurring technological advancements and enhancing overall productivity. Robust IP protection encourages businesses to push the boundaries of their capabilities, leading to the development of groundbreaking products and services that can revolutionize entire industries.

#### Building Customer Trust and Loyalty

A strong brand is built on the foundation of trust and loyalty. When consumers associate a brand with quality, reliability, and innovation, they are more likely to develop a long-lasting connection with that brand. Intellectual property protection enables businesses to maintain consistency in their offerings, ensuring that consumers receive the same level of quality and value with each interaction. By safeguarding their brand's identity through trademarks and copyrights, businesses can reassure their customers that they are investing in products and services that meet their expectations, thereby fostering a strong sense of trust and loyalty that is essential for sustained business success.

#### Expanding Market Reach and Global Presence

In a globalized economy, businesses are constantly seeking to expand their market reach and establish a strong international presence. Intellectual property protection provides businesses with the tools to confidently enter new markets, knowing that their brand identity and innovations are legally safeguarded. By securing trademarks and patents, businesses can ensure that their products and services are recognized and protected across different jurisdictions, enabling them to establish a consistent brand image that resonates with consumers worldwide. This not only facilitates smoother market entry but also paves the way for sustainable growth and expansion on a global scale.

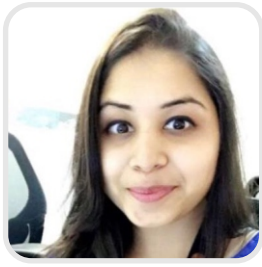
**Conclusion:**

*In the dynamic and competitive business landscape, intellectual property protection is not just a legal requirement; it is a strategic imperative for businesses aiming to establish a strong brand presence and secure their market position. By recognizing the significance of brand protection through IP laws, businesses can safeguard their identity, mitigate risks, foster innovation, build customer trust, and*

*expand their global footprint. Developing a comprehensive IP strategy is not just about protecting assets; it is about nurturing the essence of a brand and ensuring its longevity in the hearts and minds of consumers. With a robust IP framework in place, businesses can pave the way for sustainable growth and resilience in an ever-evolving marketplace, solidifying their brand identity as a symbol of trust, innovation, and excellence.*



## Enforcing Intellectual Property for Protecting Your Competitive Edge



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**E**nforcement of IPR means protecting your intellectual property against any illegal or illicit practice. It can also be described as protecting your rights on the created/owned intellectual properties.

### Enforcement is essential for an organisation for the following purposes

- Protects the legal and commercial validity before the relevant public authority/nation
- Protect your products and company reputation in the marketplace
- Seek compensation for the loss of profit which is caused as a result of infringement

### Infringement

It is an act of illegal activity, unauthorised use or violating the rights/law of the owner of IPR. It results into demeaning or diluting the brand image and value of the original IPRs of goods and services. It can be of several different types depending on the violation of different kind of intellectual property.

**Kinds of Infringement:** (Counterfeits, Piracy, Lookalike, Parallel Import – Please convert the same in an artwork of pie-chart) (Also suggesting if we could add pictorial examples of each kind of Infringement mentioned below)

**Counterfeit:** It is unauthorised imitation or copying of the branded goods.

**Piracy:** It is unauthorised imitation or copying of the creative/copyrighted work.

**Lookalike:** It is adapting the look, feel or pronunciation of the brand names/ goods. It is also known as passing off the original work.

**Parallel import:** It refers to the branded goods being imported and sold into market without complete authorisation or consent of the brand owner. This is often referred to as grey market.

### Kinds of Enforcement

**Cease and Deceit Notice:** It is a formal letter of warning to someone who is passing off the original brand and ask them to stop doing what they are doing.

**Civil Route:** The owner of the IPR enforces his rights by file a case against the infringer through court of law in the applicable jurisdiction. This route of enforcement is commonly chosen in case of IPR enforcement. It is time consuming.

**Criminal Route:** The owner of the IPR enforces his rights by file a case against the infringer through police/regulatory authorities on immediate basis. This route of enforcement is chosen in case of life damage created through IPR infringement. It is comparatively less time consuming.

**Customs Detentions:** In case of import/export the goods when suspected and detected as infringed goods are detained and later destructed. The exercise is majorly an initiative of the custom authorities. It is less time consuming.

**Parallel Import:** In case where the goods are sold in jurisdiction which are not meant to be sold in that jurisdiction without the permission of owner of the IPR. These are also known as grey imports.

### Enforcement in case of overseas business

- Secure IPR protection in the jurisdiction where the business is taking place.
- Create a clear existence of business on the e-commerce platform.
- Engage registered agents/lawyers to practice enforcement measures in foreign countries.

## Dos and Don'ts

### Dos:

- Seek registration of all your intellectual property in the respective IP laws.
- Conduct a clearance search in the jurisdiction where the IP is being launched or used
- Save evidences to prove earliest date of use of your IP such as advertisements, awards & recognition, sales invoice etc.
- Take appropriate legal actions against the infringers in the affected jurisdictions.
- Create and maintain water tight contracts and agreements

### Don'ts:

- Launch or publish your IP such as brand/invention before it is applied for registration.

- Allow your IP in use to become generic or dilute its identity.
- Assume that registration is enough for protecting IPRs.
- Assume the IP laws of another countries is similar to that of your national IP laws in case of overseas business.
- Give away your rights to licensors, franchisors, or distributors.

### Summary

Enforcement is an effective and efficient way to protect the intellectual property rights. Create a well framed and supportive legal approach for IPR enforcement. It protects as well as adds value to the intellectual assets of the individual/company.

### Trade Secrets - Applications for SMEs and Start-Ups



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In the world of Small and Medium Enterprises (SMEs) and start-ups, the journey to success is often paved with challenges and uncertainties. Amidst these hurdles, the strategic use of trade secrets has emerged as a potent weapon, offering these businesses a unique advantage in the fiercely competitive market. In this article, we delve into the distinct nature of trade secrets compared to other forms of intellectual property and explore real-world stories of trade secret breaches, highlighting the consequences and lessons learned.

Trade Secrets are different from other types of Intellectual Property in terms of nature of protection in the sense that they safeguard confidential business information crucial to maintaining a competitive edge. This can encompass a range of details, from innovative processes to customer lists. The protection hinges on confidentiality, requiring proactive efforts to keep the information secure.

On the other hand, other Intellectual Property types such as Patents, trademarks, and copyrights protect specific inventions, symbols, and creative works, respectively. Unlike trade secrets, these forms of intellectual property often involve public disclosure and formal registration processes.

Additionally, another main difference lies in the acquisition of protection: Trade Secrets protection is acquired through the company's efforts to maintain secrecy. This may involve secure protocols, non-disclosure agreements, and restricted access to confidential information.

Other Intellectual Property types require formal application processes with government agencies. Patents undergo rigorous examinations, trademarks may need registration, and copyrights are automatically granted upon creation.

Finally, the duration of Protection: **Trade Secrets protection lasts as long as the information remains**

**confidential, potentially providing indefinite advantages.**

Other Intellectual Property duration of protection varies according to the type...Patents have a limited duration (typically 20 years), trademarks can last indefinitely with renewals, and copyrights generally endure for the life of the author plus 70 years.

Looking at real Stories of Trade Secret Breaches and Consequences is a sure way to understand and assess the value and impact of trade secret.

#### **Uber vs. Waymo (Alphabet Inc.)**

In a high-profile case, Alphabet Inc.'s Waymo accused Uber of stealing trade secrets related to self-driving car technology. The allegations centered around a former Waymo employee who allegedly took confidential files with him when he joined Uber. The legal battle resulted in a settlement with Uber agreeing to pay Waymo \$245 million in equity.

#### **Tesla and the Departing Engineer**

Tesla faced a trade secret lawsuit when a former employee, Martin Tripp, allegedly stole confidential information and shared it with third parties. The information included details about Tesla's manufacturing processes and production numbers. Tesla filed a lawsuit against Tripp, highlighting the real threat of internal breaches within companies.

#### **The Apple Supplier Incident**

A case involving Apple's supplier, GT Advanced Technologies (GTAT), serves as a cautionary tale. GTAT filed for bankruptcy after entering into a deal to produce sapphire glass for Apple. The terms of the contract were kept confidential, but when Apple shifted its focus, GTAT faced financial ruin. The breach of confidentiality led to severe consequences for the supplier.

#### **Pepsi vs. Coca-Cola: The Battle of Trade Secrets**

In the world of beverage giants, the rivalry between PepsiCo and The Coca-Cola Company goes beyond market competition to a silent war over closely guarded recipes, highlighting the enduring power of trade secrets. Both Pepsi and Coca-Cola possess

iconic cola formulas, closely guarded for over a century. The secrecy surrounding these recipes exemplifies how trade secrets are vital in maintaining a competitive edge.

Coca-Cola's formula, crafted by Dr. John Stith Pemberton, is one of the most closely guarded trade secrets globally. Stored in a vault at the World of Coca-Cola Museum, only a select few, including top executives, have access to the complete formula.

On the other hand, PepsiCo, in the 1970s and 1980s, challenged Coca-Cola's dominance with the "Pepsi Challenge" marketing campaign. Beyond taste tests, both companies fiercely guarded their formulas, recognizing the trade secret's pivotal role.

In the 2000s, allegations of corporate espionage surfaced when a Coca-Cola employee attempted to sell trade secrets, including the coveted recipe, to PepsiCo. While the breach was thwarted, it highlighted the risks companies face in protecting valuable assets.

## **Lessons Learned and Strategies for Protection**

### **Implement Robust Security Measures**

Companies should establish stringent security protocols to safeguard trade secrets. This includes access controls, encryption, and employee training to raise awareness about the importance of confidentiality.

### **Use Non-Disclosure Agreements (NDAs)**

When collaborating with external parties or onboarding employees, SMEs and start-ups should

utilize NDAs to legally bind individuals to confidentiality agreements, mitigating the risk of information leakage.

### **Regularly Update and Review Security Protocols**

The business environment is dynamic, and technologies evolve. Regularly updating and reviewing security measures helps companies stay ahead of potential threats and ensures the continued protection of trade secrets.

### **Create a Culture of Confidentiality**

Fostering a culture where employees understand the value of trade secrets and the consequences of breaches is crucial. This includes education on the importance of confidentiality and the potential legal ramifications of trade secret violations.

### **Final Words...**

*In the fast-paced world of SMEs and start-ups, where innovation is the lifeblood of success, trade secrets offer a unique avenue for securing a competitive edge. However, with great power comes great responsibility. Real-world stories of trade secret breaches underscore the need for businesses to adopt robust protective measures and cultivate a culture of confidentiality.*

*By understanding the distinct nature of trade secrets and learning from the experiences of others, SMEs and start-ups can harness the power of trade secrets to unlock their full potential and navigate the path to enduring success.*



### The Kingdom of Ideas – A Patent-Parable on Lexical Instruments



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In a realm where imagination reigned supreme, there existed the grand Kingdom of Ideas. This was a land where inventors and creators thrived, their brilliant innovations shaping the very fabric of modern society. The most prized possessions in this kingdom were not jewels, diamonds or gold, but the blueprints of inventions themselves - the intangible treasures of the mind.

To ensure these treasures were protected, the kingdom employed meticulous Royal Scribes. These were the patent drafters, masters of word and definition. Their task was to painstakingly craft the boundaries of each invention, drawing invisible walls of protection around each precious idea.

#### The Language of Protection

The Scribes wielded a specialized language, filled with terms and phrases meticulously honed over centuries. These were the lexical instruments of their craft. Words like "means," "comprising," or "substantially" held immense power, defining the exact scope of an inventor's exclusive rights.

#### A Dispute Arises

One day, a dispute arose. An inventor Lady Brighthammer, believed her ingenious new forge design had been unfairly copied by a rival inventor. It was time for the kingdom's wise interpreters, the Judges, to step in. They became like cartographers of this kingdom's inventions, poring over the detailed maps (patents) granted by the Royal Scribes.

Their task was to compare Lady Brighthammer's invention to the accused design, using the lexical instruments within her patent application, in order to determine if the boundaries of protection had truly been violated. Had the rival inventor trespassed, or merely come close to the borders?

#### The Cartographers' Challenge

The Judges scrutinized Lady Brighthammer's patent. The specific wording of her forge design was crucial. Had she defined its central heating mechanism using a "means-plus-function" structure (a debate echoing the *Williamson v Citrix* case), leaving some room for variations? Or was her definition tightly focused on specific components? The answer would drastically impact how wide her protected territory extended.

Like cartographers comparing old and new maps, the Judges pored over past cases. Had similar disputes been resolved before? The case of *\*Williamson v. Citrix* echoed through the chambers – a reminder of how even single words within a patent claim could dramatically alter the outcome.

#### Contrasting Legal Realms

The Judges reflected on the vast differences in how the law uses language. Unlike in criminal law, where terms must be defined with absolute precision to ensure justice, patent law embraced a degree of ambiguity. This allowed the Royal Scribes to cast a broader net of protection for their inventor-clients.

Yet, such ambiguity was a double-edged sword. This also brought to mind the stark contrast of patent law with respect to contract law. In contract law, meticulous negotiation ensures that every word holds a meaning agreed upon by all parties involved. In contrast, a patent is intentionally open to interpretation, ensuring that only true and undeniable trespassing would breach its boundaries.

Family law, too, came to mind. The word "parent" held deep meaning based on societal expectations and relationships. In the Kingdom of Ideas, words like "inventor" held technical significance, devoid of emotion. A dispute over inventorship, like those seen in the *KSR International* case, focused on prior inventions and legal definitions, not on feelings of rightful ownership.

Even within other specialized legal realms, the lexicon held sway. In tax law, rigid definitions within intricate codes determined one's financial obligations. Environmental law hinged on the precise terminology used within regulations, a wrong word here and there could potentially shield a polluter or



harm a fragile ecosystem. Even other forms of intellectual property, like trademarks and copyright, possessed their own specialized vocabulary where battles over words shaped the boundaries of creative ownership.

### **Seeking Resolution**

In seeking a wholistic perspective, the Judges also reviewed past cases from a preceding kingdom, Bharat. Here the rulings, like *F. Hoffman-La Roche Ltd. & Anr vs. Cipla Ltd. (2008)* and *Bischoff Textil AG vs. Sutlej Textiles and Industries Ltd. (2010)*, highlighted the careful consideration given to the meaning of words and phrases within the context of patent law. Often, these cases emphasized procedural aspects specific to the legal system within Bharat, reflecting its unique approach to resolving such disputes. Hence, the judges made a note of this meticulously.

### **The Verdict**

The Judges pondered, while the weight of the kingdom's progress resting momentarily on their shoulders. But patent cases often turned into long, drawn-out battles of interpretation. Frustration gnawed at Lady Brighthammer. Her rival profited from her creation with each passing day, while the wheels of justice turned ever-so slowly.

Then, as if summoned by her fervent wish, a grizzled Dragon-Slayer arrived at the court. Word of the dispute had reached his remote guild, located deep within the treacherous borderlands of the Kingdom of Ideas. These legendary warriors were masters of both technical knowledge and legal intricacies, the rarest breed of all. They safeguarded the boundaries of the kingdom, pushing them ever outwards while keeping the shadows of ignorance and misuse at bay.

Many such "Patent-Wars" had these Dragon-Slayers witnessed on the frontlines of innovation. Even the learned Judges, with their vast knowledge and sway, were wary of the unforeseen arguments, that a Dragon-Slayer might conjure instantaneously.

With the arrival of this unexpected champion, Lady Brighthammer found renewed hope. A swift and decisive end to the dispute seemed possible. Dispatching a raven to the Dragon-Slayer's guild, she beseeched them to take on her cause. For Lady Brighthammer knew in her heart, against such legendary expertise even the rival inventor Count Pur-Loiner's deception, could prevail no longer.



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## Relevance of IP for Business

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