

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 2

2025

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Safeguarding Innovation: IPR Protection for Youth Start-Ups

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ABSTRACT

The intellectual property rights provides for optimal protection to a product of a human's intellectual and creative efforts. In recent times, hike in number of start-ups by youth has been observed in various sectors related to technology, artificial intelligence, food ventures, cosmetics, medical etc. In all these innovations and inventions it is important to get protection under intellectual property rights system, which will entrust the innovator or the entrepreneur with bundle of rights and ultimate protection against infringement. In today's period these start-ups are creating various job opportunities for others which increase the standard of living and GDP in the country. In other words, it can be said as these start-ups are stepping stone to better future. In this article, protection of rights of such innovators and entrepreneurs under Intellectual Property regime has been discussed.

Keywords: Intellectual Property, Protection, Start-ups, Entrepreneur, Youth.

I. INTRODUCTION

Intellectual property (IP) can be defined as a product of human being's intellectual efforts and creativity, and the outcome of those intellectual efforts are intellectual property rights commonly known as IPR such as copyright, patents, trademarks designs etc. which gives protection to intellectual property.²

The important features of the intellectual property are originality, novelty and distinctiveness. In present era, the youth is working towards start-ups and entrepreneurship with their own ideas. When a start-up is launched there are various variables accounted such as branding, finance and the idea and, that idea is the entrepreneur's own intellectual property which needs to be protected as that IP is an intangible asset for a business or start-up. It provides for improved probabilities of alluring potential outcomes being there for a business visionary.³

There are some Intellectual property rights which are expensive and time consuming for start-ups but they ensure unparalleled insurance to an entrepreneur for his intellectual property.

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² Dr. S.V. Damodar Reddy, Intellectual Property Rights-Law and Practice, 01 (Asian Law House, 2019)

³ Legal bites, <https://www.legalbites.in/importance-of-ip-for-startups/>, last visited on 28 December,2024

Moreover, it has been observed that investors are potentially interested in investing in start-ups with well protected intellectual property rights, as these helps a start-up to stand out in this competitive industry and further these can be reason for the success of a start-up business.

II. IPR NEED FOR START-UPS

In present era, the youth is more keen to work on their own start-ups and make a business out of their own invention and ideas. So, it is crucial for a start-up to secure all the legal components to have a reasonable procedure on the most proficient method to continue with their idea. Such as protection of company name by trademark, protection of idea or invention by patent and protection of Design under designs etc.

The start-ups should first ensure to undertake all necessary safeguards such as protection of intellectual property before putting the product in public domain. In the initial stage, most start-ups need to protect their USP's (Unique selling proposition) and for that they require protection under the Intellectual property rights and, for that the innovators and entrepreneurs must seek professional advice on product commercialization and procedure for filing for patents etc.

Moreover, the government also support for start-ups such as the Indian government has introduced scheme such as "STARTUP INDIA". These types of schemes motivate the youth to work towards their own ideas and inventions and turn them into their own business.

In various scenarios the success of a company can be traced back to a good idea or invention for which the innovator/ entrepreneur have made a journey from manufacturer testing to market and throughout this process intellectual property system plays a crucial role.⁴

The start-ups in present era are mainly started by youth which is working towards better future of nation, and in this the intellectual property rights gives a sense of insurance to the innovator. In the recent years a hike in the number of start-ups have been seen and most of which are youth start-ups, and these start-ups play a major role in the growth of GDP and the national economy by bringing in foreign investments.

The essential what makes a business or start-up successful is the product or service which is created valuing customers and customer needs and requirements.⁵ There can be various examples of them such as products involving a new technology which makes the work of consumers more efficient, etc. So, it becomes important for an entrepreneur to make detailed projections in relation to his business model to bring it up in market and also ensuring that their

⁴ A guide to Intellectual Property, WIPO, ISBN: 978-92-805-3265-4, Page 08

⁵ A guide to Intellectual Property, WIPO, ISBN: 978-92-805-3265-4, Page 08

products and services are being protected even in the cyber space. Further, being a young entrepreneur they are at very early stage so, for that they should take reasonable care and time to study market and then make their business plan.

In such business plan a company's USP (unique selling proposition) which is a company's Intellectual Property should be an integral part and there should be a model created that how that Intellectual Property will support in the successful implementation of the business model created.

Protection of innovation of a product or process is vital as that innovation might be either new in the commercial space or it may enhance productivity or performance of the existing service or product. In such circumstances, the young entrepreneurs should develop an appropriate IP strategy supporting the business plan.

In other words, it can be said that a start-up with adequate and accurate IP portfolio can protect its company's space in competitive market, which will delay the entry of competitors which will give time for the start-up to establish eliminating the competition.

(A) IPR protections for Entrepreneurs

A patent can be obtained for the development of a technical solution to a problem by any start-up. But for that, the entrepreneurs need to ensure that the idea or innovation is not disclosed in public domain such as in trade journals, trade shows etc. This may hamper the patentability process for a start-up, as it can be used by potential competitors.⁶

The patents provide for bundle of rights such as - It gives a monopoly right to the inventor, right of exclusive use, right of assignment, license and mortgage, right of transmission, right to sue in case of infringement, right to earn from it, etc.⁷ The patents provide protection to inventor for a process, product or utility which is novel, unique and have industrial applicability for 20 years. In order to get protection globally, the entrepreneur is required to file patent application separately in countries to obtain protection of its invention globally, but this process has been simplified after TRIPS Agreement.⁸

In case of trade secrets- which include manufacturing methods, market strategies, etc. are valuable assets for a start-up, essentially in initial stages of the start-up. Therefore, it becomes

⁶ A guide to Intellectual Property, WIPO, ISBN: 978-92-805-3265-4, page 17

⁷ Dr. S.V. Damodar Reddy, Intellectual Property Rights-Law and Practice, 250-251 (Asian Law House, 2019)

⁸Startup India, https://www.startupindia.gov.in/content/sih/en/reources/startup_india_notes/industry_insights/protecting_Intellectual_Property_using_IPR.html, last visited on 28 December, 2024

a mandate for the entrepreneur to protect the same as that can be a reason for the success.⁹

As, there is no formal process to protect a trade secret the entrepreneurs should take certain reasonable measure for it such as¹⁰-

- Restricting third party access to information or
- any procedure can be mandated to protect sensitive information or
- Various software can be used to protect the information in computer systems such as by limiting access or limiting sharing.
- Further, the non-disclosure agreements can be made to be signed by any person related to the company such as employees, partners etc.

These can be certain reasonable ways for a start-up to protect its sensitive information or trade secret.

Moreover, there are various start-ups coming up which are based on traditional knowledge such as business based on ancient medicine, recipes etc. The traditional knowledge has passed on from generations to generation and today's youth is turning that into business. Such businesses based on traditional knowledge can be protected under trade secret. Further, various start-ups based on traditional knowledge such as business in health sectors, like- health drinks, pickles, protein ice-creams etc.

Entrepreneurs should try to attract customers and ensure availability of product easily in marketplace along with development of a product or service and protection of such by under Intellectual property system. So, it becomes important for an entrepreneur to establish a distinct identity for its start-up in a market space in respect to name, logo, signs etc.

The protection of such logos and designs can be ensured by trademarks. In the era of growth of cyber world it becomes crucial for a start-up to protect its name under IP system of trademarks as it will give assurance of safety to entrepreneurs in respect of the unique identity of their business.¹¹ Trademarks are even important for start-up as the business name gives a distinctive identity to business in commercial world.

In today's world, many businesses are operating in online mode through websites, and by social media sites such as Facebook and Instagram. So, where are registered by way of websites it becomes important for start-up owners to register their domain name as it gives unique identity

⁹ A guide to Intellectual Property, WIPO, ISBN: 978-92-805-3265-4, page 20

¹⁰ A guide to Intellectual Property, WIPO, ISBN: 978-92-805-3265-4, page 20

¹¹ A guide to Intellectual Property, WIPO, ISBN: 978-92-805-3265-4, page 23-25

to business and district it from other websites available online. Especially after Covid-19 it has been observed that no. of start-ups are operating and working in online mode only. So, it's vital for such entrepreneurs and business owners to ensure their online presence and register their domain name.¹² Globally the technical management of domain name system is ensured by "The Internet Corporation for Assigned Names and Numbers" (ICANN).¹³

The designs can also be protected under designs also, as the well designed products and packaging are both appealing and attracts more customers in this competitive market space.

In order to get protection under designs the entrepreneurs should ensure that designs are new and do not resemble design of any other company. The designs can be protected by getting them registered but it is also important to ensure that the designs are not disclosed prior registration. The protections under designs are given for a term of 10 years, which varies from country to country.¹⁴ Moreover, the matters related to Intellectual property rights worldwide are regulated by organisation such as WIPO, Patent Corporation Treaty (PCT), TRIPS etc.

In case of infringement of any of the intellectual property rights, the entrepreneurs have right to sue the infringer and get remedies in form of civil remedies such as compensation, and criminal remedies such as imprisonment, fine etc.¹⁵

In India it has been observed that there has been an immense increase in number of recognised start-ups from 726 start-ups in financial year 2016-17 to 65,861 start-ups in financial year 2021-22.¹⁶

Moreover, these start-ups have reported created approximately 7 lakh jobs across 640 districts in India. These start-ups are in variety of sectors such as IT services, technology, software enterprise, artificial intelligence etc.¹⁷ In order to protect the unique selling proposition of these start-ups there is need of protection under Intellectual property System. For that the entrepreneurs should go for professional Intellectual property advice. Some of the reasons for which entrepreneurs should try to get professional advice with respect to the Intellectual property-¹⁸

¹² A guide to Intellectual Property, WIPO, ISBN: 978-92-805-3265-4, page 25-26

¹³ Ibid

¹⁴ Dr. S.V. Damodar Reddy, Intellectual Property Rights-Law and Practice, 299 (Asian Law House, 2019) Startup India,

¹⁵ Dr. S.V. Damodar Reddy, Intellectual Property Rights-Law and Practice, 280-285 (Asian Law House, 2019)

¹⁶ Startup India,

¹⁷ Business Standard, https://www.business-standard.com/article/current-affairs/number-of-recognised-startups-in-india-rises-to-65-861-says-govt-122032500790_1.html, last visited on 23 April 2022

¹⁸ Ibid

¹⁸ WIPO, https://www.wipo.int/wipo_magazine/en/2021/02/article_0006.html, last visited on 24 April 2022

- Firstly, a professional can better assess the Intellectual property assets by using various Intellectual property diagnostic tools which can help level up the application procedure.
- Secondly, a professional Intellectual property practitioner can give better view towards protecting an unregistered or new intellectual property and can provide for appropriate IP plan which can provide for better strategy. The Intellectual property plan or strategy can serve as a starting point to present to potential investors.
- Thirdly, the Intellectual property professional have better understanding of Intellectual property laws and their changing interpretations with changing time. As being a young entrepreneur, one might not be aware of all such laws so it is better and advisable to take professional advice for a business in relation to Intellectual property protection.
- Further, an Intellectual property professional can help the young entrepreneurs with various aspects of application drafting and filing procedures.¹⁹

Even the investors give importance to whether what the company owner or entrepreneur are saying or stating to be his own intangible asset (intellectual property) is protected or not? In such scenario there are various kinds of protections that need to be obtained by the company by means of Intellectual property rights, and IP professionals can be best advisors in this regard.

III. ISSUES FACED BY ENTREPRENEURS IN RELATION TO GETTING INTELLECTUAL PROPERTY PROTECTION

As startups often begin as informal partnership of individuals with a mix of creative, technical and commercial expertise they lack the Intellectual property protection in the earlier stages. The problems with startups are identifying their Intellectual property. They may be indulged in the business of manufacturing and the finished product requires Patent Protection and their brand name required Trademark Protection. The first step is identifying Intellectual property.²⁰

After identification of the Intellectual property protection, the startups need proper documentation for applying for the identified Intellectual property. Every Intellectual property requires different documentation for application.

The problems faced by Startups are getting an Intellectual property Protection in easy and timely manner. The process of getting an Intellectual property protection in India is a very time taking process. There are many stages before Intellectual property protection is granted like application, provisional specification, and complete specification, pre-grant and post-grant

¹⁹ Ibid

²⁰ Supra note 18

opposition. The Startups should also choose the right Intellectual property protection as time period of protection is also very important.²¹

Non-Disclosure Agreement (NDA) and confidentiality are also very important clauses the Startups enter into and they should ensure that their Intellectual property is also protected and remains a part of Non-Disclosure Agreement and Confidentiality agreement.

IV. VITAL CONSIDERATIONS FOR YOUTH ENTREPRENEURS IN RELATION TO INTELLECTUAL PROPERTY

The start-up owners may not have adequate knowledge about the complete Intellectual property regime so they need to explore for different strategies in relation to Intellectual property rights for start-ups. Some of such strategies can be²² -

1. Prioritising protection of intellectual property - for every start-up with new and innovative solutions or products should prioritise getting Intellectual property rights on first place. This can even help the entrepreneurs to negotiate with investors better based on this intangible asset for the investment in their start-up.

2. Intellectual property rights registration- There are various Intellectual property rights which needs to registered for getting the benefit of protection such as patents and designs. Moreover, getting a registration done will add more value to the start-up.

3. Due diligence of Intellectual property rights - it needs to be ensured by all the start-ups that it do not violated the intellectual property rights of other person. This will ensure and protect the start-up from unnecessary litigation which can hamper the business.

4. Management and implementation of effective intellectual property rights strategies - every entrepreneur needs to maintain a intellectual property rights management system as a long term goal and should strategize to protect them. This will ensure that there is no dispute between promoters of start-up.

5. Agreements in relation to Intellectual property - there is need for an entrepreneur or business owner to have proper documentation in form of agreements such as non- disclosure agreement with employees, partners etc. to ensure optimal protection of the intellectual property.²³

²¹ IDG Connect, <https://www.idgconnect.com/article/3578816/top-tips-ip-challenges-facing-startups.html>, last visited on 24 April, 2022

²² Vinay Vaish, India: Intellectual Property Rights for Startups, Intellectual Property Rights (IPR) For Startups - Intellectual Property - India (mondaq.com) (April, 23,2020, 8:35PM)

²³ Ibid

V. CONCLUSION

The youth around the world is working towards innovations in various sectors and are further interested to change them into their business, specifically the age group between 16 years to 35 years. Even in India, an immense growth in number of start-ups has been observed, these start-ups further aids to GDP growth of nation and creates various jobs opportunities for others.

It has been observed that there is growth in start-ups related to technology sector and globally various young minds are working on the technological innovations and have a long term goal to further turn these innovations into business. In order to attain such long term goals getting intellectual property rights become an essential and key requirement. The intellectual property rights provides for bundle of rights which can be regarded as reward for the creativity of a human's mind or his mind's intellectual efforts.

So, it can be concluded that, getting a protection under intellectual property rights is a vital in today's growing world specifically with the growth of cyber space where many start-up are operating in online mode, and through these start-ups the youth by its innovative is aiding towards growth of nation and people leading the world to better future.
