



# IPR as a double-edged sword

A thorough knowledge of the implications of intellectual property rights is essential for business managers, says **Subramaniam Vutha**

A company can have an intellectual property rights (IPR) portfolio replete with trademarks, service marks, copyright registrations and patents. And its legal department can take care of the filings, maintenance and agreements related to these patents, trademarks, copyrights, etc.

But if the company seeks additional benefits in the form of risk mitigation, competitive advantage and new business options from its IP assets — as indeed, it should — then the onus falls on the managers of the company. Managers need to understand their role in harvesting, protecting and leveraging IP assets. Otherwise, there is the risk that even IP assets harvested at considerable cost will remain ‘non-performing assets.’

## A treasury of assets

Most managers today are unaware of the number of IP assets that are being generated in the company, and the IPR implications involved. For instance:

- ▶ Researchers generate inventions.
- ▶ Developers create software.
- ▶ Technologists develop techniques, methodologies, know-how and inventions.
- ▶ Managers create and improve business or operational processes.
- ▶ Sales and marketing people generate customer and market data, and market studies.
- ▶ Safety engineers create new safety methods and apparatus.
- ▶ Architects and designers create new designs, drawings and blueprints.
- ▶ Purchase and supply chain managers generate vendor and sourcing information.
- ▶ Accountants and finance persons create pricing policies and cost and pricing data.

- ▶ Quality people generate quality tests, processes and methodologies.

## The role of managers

Typically it is the people who generate the IPR or their colleagues who control and leverage such IPR. However, for several reasons explained below, it is best if a business manager handles it.

Inventions, techniques, processes, data, studies and the like are valuable in business because they provide some form of competitive advantage or business benefit. The lawyer does play an important role in protecting such IPR — usually through patent or copyright filings or through secrecy contracts and so on. The lawyer also helps leverage such IPR by helping draft and negotiate licensing and other deals. But it is the business managers who primarily control and leverage such IPR.

The role of patents has changed dramatically. Earlier they were stored — and deployed when needed — in order to counter infringement claims from competitors. Today patents are being used even for all forms of cooperation, such as teaming arrangements, joint ventures, collaborations, equity ventures and so on. And it is the business manager who needs to initiate business plans that leverage the power of the company’s IP asset portfolio.

When two or more companies own patents to key technologies, it could lead to internecine rivalry; an increasingly common solution is patent pooling (with due consideration for anti-trust regulations). Patent pooling happens when two or more companies, who hold the patents to the same technology, decide to avoid debilitating rivalry and agree to license to each other their respective patents.

This is also called cross-licensing. The end result is that various patent pieces that are required to build a

single technology or product are now available with all the companies participating in the patent pool. This benefits markets and consumers too, and renders it easier for companies to bring their new products to the market with lower costs and risks.

Companies are tempted to try patent pools when rivals have assorted pieces of the jigsaw puzzle of patents needed for a single product. And they think it is better to cooperate and get out into the market quickly with their respective products, and avoid fighting in courts of law. Who else but managers are best suited to handle such matters?

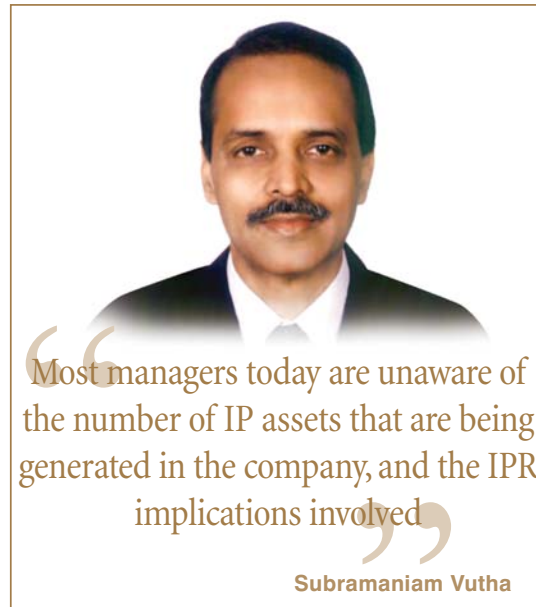
Most managers are familiar with outsourcing deals. But IPR aspects are often not clear to them. Nor are the valuable business options that IPR opens up in outsourcing deals. In many outsourcing deals, company procurement or vendor development managers provide drawings to their vendors. Such managers also provide specifications, quality standards and test materials along with valuable know-how that the buyer company has developed internally. But what prevents Vendor A of that company from sharing these with the competitors of the company who also buy from Vendor A?

IPR opens up useful options to address this problem:

- ▶ Copyright notices on drawings, standards, documents and blueprints provided to a vendor will put them on notice that they would be infringing copyright if the documents are used for work not connected with the parent company. This will make the vendor liable to a claim for damages.
- ▶ If the company has a patent or patents on the technology that it is sharing with a vendor, the company can prevent the vendor from sharing such technology with the company's rivals or others, except under a licence arrangement. This works as a source of revenue for the company, even as it imposes additional costs on other players.

Consider OEM deals that managers often engage in. The drawings, specifications, know-how and other details the managers share with their OEM manufacturers are the company's valuable trade secrets and the outcome of effort, skill, judgement, money and time expended on their creation. In such cases, the manager should mark these as proprietary and confidential, and have the vendor sign a secrecy and non-disclosure agreement, thus making it contractually binding on the vendor to desist from sharing these with rivals. This way, managers can keep the company's rivals from getting access to the fruits of the innovation and intellectual efforts of their company's employees.

Another aspect is cost-cutting and its implications. After all, IPR entails expenses. IP filings and registrations do cost money. When a manager has developed a new



process, technique or methodology to cut costs, how does the company prevent rivals from copying these? Without IPR, rival companies can copy cost-cutting ideas with impunity, leading to the end of the competitive advantage from such cost-cutting exercises. There are many ways by which rival companies gain cost-cutting know-how — by reverse engineering, inspection of your products, recruiting your employees, using your vendors or suppliers, hacking your systems, through commercial intelligence gathering and so on.

The way to counter these threats is by developing and deploying various IP measures such as trade secrets. Managers should keep their cost-cutting know-how a secret and share it only with employees, vendors, agents and suppliers who sign a secrecy agreement with their company. Or, if such know-how is in the form of a tool or a process, the company can apply for a patent for the new and inventive features. Further, since the manager's company owns copyright in the documents that contain such cost-cutting know-how, the manager should mark them as copyright-protected materials.

In conclusion, a company can gain significant competitive advantage, mitigate risks to a considerable extent and open up new business options if its managers are aware of the power of IPR in business situations. On the other hand, without such knowledge the company faces increasing risks and lost business opportunities. ●

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