



# The IPR route to leadership

Smart companies all over the world are using their intellectual property assets as tools for strategic business advantage, says

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Is there a co-relationship between leadership in a business sector and leadership in intellectual property rights (IPR) or the management of IP assets? The answer seems to be yes: businesses that have consistently led their respective business sectors, globally, almost always have powerful IP assets in their portfolios, and are increasingly viewing their IP assets as tools for strategic business advantage rather than for 'ring-fencing' or 'trophy' value.

Global leaders in various sectors are good examples of this premise: IBM in information technology; GE in plastics, turbines, etc; Procter & Gamble in a wide range of consumer products; Samsung, Toshiba and Sony in electronics; Canon and Xerox in copiers; Toyota in contemporary car technology; Dell in computer business models and Nokia in mobile telephony. Two emerging leaders who are also using IPR to strategic advantage are Huawei in communication technologies and Aramco in oil exploration.

## Where did this begin?

Starting in Europe, where the emphasis shifted from copyright law to patents and trade secrets (know-how, know-why and show-how) as the industrial revolution unfolded, IPR later became key to US competitiveness well after World War II. Later, Japan joined the fray, when Japanese companies which took away market share from American companies found themselves paying huge royalties or damages in law suits to US companies, for patent or other IP rights they had infringed.

Thereafter it was the turn of the Koreans with Samsung and others featuring among the highest patent applicants even in the US. Now, Chinese companies such as Bao Steel and Hua Wei are amassing huge patent portfolios preparing for the potential legal onslaught from American, Japanese and Korean companies from whom they are taking away market share.

## Where does India fit in?

Long after we signed the TRIPS (trade-related aspects

of intellectual property rights) agreement, we still have debates in India on the need for IP protection. By now, most, if not all, technology companies should have had IP management roadmaps — benchmarking with the world's best. To some extent, the success of Indian companies (without IP portfolios) has contributed to the tepid interest in IPR, IPM (IP Management), and the lack of preparedness for what will inevitably occur.

## What do global IP leaders do?

Among other things:

- ▶ They use sophisticated tools for patent mapping of rival portfolios to avoid a rival's patent clusters and to identify 'white spaces' to focus their R&D and patent filings.
- ▶ They study the patent portfolios of rivals as rich sources of competitive intelligence.
- ▶ They screen open source components and materials very carefully to avoid 'contaminating' their proprietary copyright materials and neutralising their patents with the 'open source virus'.
- ▶ Their IP departments provide support to ensure IP allocation to their advantage. Licensing training helps immensely in this.
- ▶ They have large multi-disciplinary IP teams with technologists, financial experts, lawyers and business development executives.
- ▶ They have well-trained experts, within their organisations, on patent writing and patent analytics.
- ▶ They have sophisticated systems, processes and tools, usually specially designed and web-based, for innovation disclosure and IP management.
- ▶ Their IP 'catchment' areas go beyond research units.
- ▶ They have varied recognition schemes for IP generators.
- ▶ They place great emphasis on innovator and inventor training to maximise IP disclosures.
- ▶ They have copyright protection programmes in place.
- ▶ They have sophisticated trade secret and know-how protection measures linked to information

security measures.

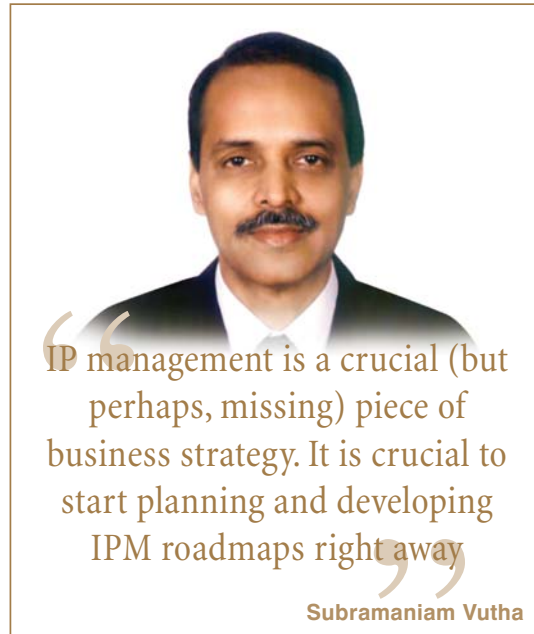
- ▶ They nurture and protect their brands vigorously.
- ▶ Their contracts with employees, vendors, technology partners, distributors, strategic allies and others ensure allocation of IPR as agreed with these parties and contractual protection of IP beyond the statutory protection available.
- ▶ They have vigilance mechanisms to identify IP infringements.
- ▶ They engage vigorously in influencing and setting standards for safety, emissions, interoperability and so on. Their patent portfolios often constitute the 'essential technology' for compliance with such standards.
- ▶ Their IP is licensed out for gain in useful packages. Often these consist of a package of patents + know how + consultancy + testing and prototyping + trademark licensing + (even) promotional support.
- ▶ Their IP departments proactively help to identify technologies that are better acquired by purchase or in-licensing ('make or buy' technology decisions). Thus, they act as a DSS (decision support system) partners for R&D and also help license-in to fill technology and business gaps.

To sum up, IP management plans form part of the basis for opening up new business options, creating roadblocks for rivals, imposing costs on rivals, exercising some degree of control over vendors and the supply chain, also, as a major factor in risk mitigation plans, especially in relation to third party IPR infringement claims.

### Why does this not happen (yet) in India?

Perhaps for the following reasons:

- ▶ Indian companies have not yet faced any major IP infringement claims. (Apart from those faced by a few pharmaceutical companies like Ranbaxy, Lupin and Reddy Laboratories in the US). This may change soon because over 80 per cent of patent filing in India is by foreign companies.
- ▶ IP claims and damages in India are, as yet, modest.
- ▶ Few Indian companies have places at the 'standards-setting' tables.
- ▶ IP is seen as a 'distraction' from more important business improvement programmes such as Kaizen, TQM, knowledge management, innovation, suggestion schemes, Six Sigma (although IP should be threaded with these programmes).
- ▶ Indian companies have been very successful without IP portfolios.
- ▶ The long-term benefits of IPM are not visible.
- ▶ Indian companies are still benefitting from comparatively "low" labour prices.
- ▶ Indian companies are busy harnessing the collateral or incidental benefits of the knowledge economy.



### Why should IP be taken seriously?

Indian companies are already rich in IP assets but have not formally recognised their valuable IP assets. The time to start taking IP serious is now because:

- ▶ Business improvement initiatives will lead to innovations in products, business models, etc. But no sustained competitive advantages are possible without IP around these programmes.
- ▶ The ability to attract innovative employees, good partners, agents, collaborators, will be impaired without IP programmes.
- ▶ IP opens up new business options such as licensing, cross-licensing, new ventures, collaborations, teaming, outsourcing and franchising.
- ▶ IP-related threats are no longer a remote possibility for Indian companies.
- ▶ Technology providers will impose higher costs if Indian companies do not have IP assets for cross-licensing.

### Conclusion

IP management is a crucial (but perhaps, missing) piece of business strategy. It is crucial to start planning and developing IPM roadmaps right away. The experience of Japanese, Korean and Chinese companies is available to India; there are several warnings and examples that Indian companies should heed. ●

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