



INTELLECTUAL PROPERTY AND TECHNOLOGY LAW UPDATES

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Delhi High Court reserves patentee rights by restraining rival pharma company from manufacturing anti-cancer drugs

Vijaylaxmi Rathore

On May 02, 2019, the Delhi High Court restrained Hyderabad-based Natco Pharma from manufacturing fresh stock of drugs comprising of a compound named 'Ceritinib' meant for treatment of non-small cell lung cancer, however in the interest of the patient community it allowed the sale of the existing stock¹ thereby reserving the rights of the patentee under Section 48 of the Patents Act.

About the Matter

The Plaintiff Novartis AG had filed patent for 'Ceritinib' as a Patent Convention Treaty (PCT) application claiming priority since 2007, which was granted on 28th September 2015. Later it came to the notice of Novartis that an Indian pharmaceutical company - 'Natco Pharma' has launched 'Certinib Capsules (NOXALK)', which was an infringement of its patent. Thereafter, the plaintiff filed the patent suit seeking permanent injunction, damages, rendition of accounts and delivery up in respect of its granted patent (Indian Patent No. 276026) against Natco.

Subsequently, the defendant Natco Pharma Ltd. filed a post grant opposition within the statutory period under Section 25 (2) of the Patents Act, 1970. The said opposition was initially referred for the consideration of the Opposition Board, which gave a report in favour of the plaintiff. However, Natco Pharma thereafter, filed additional material and now the hearing in the post grant opposition itself stands concluded for which the order was reserved for 10th April, 2019.

¹http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=110752&yr=2019

In the meantime, while the post grant opposition was yet to be decided, Natco launched the product.

Then the plaintiff prayed that an interim injunction deserved to be granted in the present case, as the defendant had chosen to launch the product despite the patent having been granted, the opposition having been filed and the decision in the same being pending.

The Court after hearing both sides on the grant of ad-interim relief said that it was the admitted position that the post grant opposition was pending decision with the Patent Office and the question as to whether the patent is to be maintained or not was to be decided there in. Thus, as far as the validity of the patent itself was concerned, the Court would not like to make any observation at this stage, so as to ensure that the post grant opposition was decided without being affected by any observation which may be made by the Court.

Thus, during the pendency of the post-grant opposition decision, the defendant had chosen to commercially launch its product. While the Supreme Court in *Aloys Wobben* (supra) held that the rights would be crystallized once the post grant opposition was decided, launch of an allegedly infringing product under Section 48² of the

² "Section 48. Rights of patentees – Subject to other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee- (a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India (b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India "

Patents Act grants rights in favour of a patentee, which will not be affected during the pendency of a post-grant opposition.

However, Natco Pharma, in all its conscious mind had launched the product knowing the fact that the post grant opposition was pending decision in the patent office. Consequently, the Court restrained Natco from carrying out any fresh manufacturing

of 'Ceritinib' formulation till the next order of the Court.

Note – The Court has restrained Natco from carrying out any fresh manufacturing of NOXALK (Ceritinib), but has allowed the sale of already manufactured product during the pendency of the hearing for the benefit of the patient community.

Bayer vs Union of India Acts not to be considered as infringement

Mohit Kohli

The first compulsory license was granted to Natco Pharma by Bayer in a landmark judgement under the Indian Patent law. Both the parties have again approached the Court over a dispute regarding export of Bayer's Patent by Natco contesting a different interpretation of Section 107A of the Patents Act 1970 (hereafter "the Act").

Bayer filed a suit in 2011, for injunction against Natco from making, importing, selling, offering for sale "Sorafenib", "Sorafenib Tosylate" ("Bayer drugs") or any generic version or any other drug or product thereof, which was a subject matter of Bayer's Patent No. 215758. While the suit was pending, Natco applied to the Patent Office for grant of compulsory license over the said patent. Compulsory License was granted on March 09, 2012 by the Controller under Section 84 of the Act. The terms were solely for the purposes of making, using, offering to sell and selling the drug covered by the patent within the territory of India. However, Natco manufactured the product covered by the compulsory license for export outside India. To which, Bayer filed a writ petition seeking a direction to the Customs Authorities to seize the consignments for export containing products covered by Compulsory License including "Sorafenat" manufactured by Natco. The Customs Authorities were directed by learned single judge to ensure that no consignment from India containing "Sorafenat" should be exported. At the same time, Natco was given the liberty to apply to the Court for permission to export the drug. Later, on May 23, 2014, Natco pointed out that it had already been granted a drug license and was permitted to export the drug

Sorafenib Tosylate not exceeding 15 gm for development/ clinical studies and trials.

Dispute

Natco next applied for permission to export 1 kg of Active Pharmaceutical Ingredient (hereafter "API") Sorafenib to China for regulatory purposes. The application was rejected by Bayer and argued that if permission was granted to Natco, it would be contrary to Section 107A and that such a transaction would be a commercial sale and hence, a patent infringement. Bayer contested that, Section 107A was not applicable because Natco was not conducting any research. Bayer's interpretation of Section 107A was that the provision mentions the word "sale" and also "import" but excludes the term "export".

Natco denied the allegations and argued that the words "sale" for the purpose of drug development i.e. *"solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product"* clearly pointed to the legislative intention that exports, for the purpose of drug development was permissible.

Impugned order

The impugned judgment by single judge rejected Bayer's arguments and found that the quantity exported by Natco was just enough for 1000-2000 tablets and cannot be termed a commercial activity. The Court then said that *"the intention of the legislature in interpreting Section 107 must be gathered from the plain meaning, which clearly does not exclude sale outside India"*. The only requirement is that the sale must be "reasonably related to" the submission of

information under the law (in this case, Chinese law).

Bayer stated that Section 107A is clearly an exception and argued that Section 48 of the Act defines infringement by listing the exclusive rights of the patentee where Section 107A of the Act describes a particular set of circumstances in which those acts would “not constitute infringement. Furthermore, Bayer said that the nature of Section 107A of the Act as a proviso/exception can be seen from its placement in the statute by the legislature as it is mentioned in Chapter XVIII titled “suits concerning infringement” meaning that Section 107A of the Act was intended to be used as a defense that may be claimed in the course of a suit for infringement rather than form the basis for an independent right or separate actionable claim. Moreover, Section 107A of the Act is placed just after, and along with, Section 107 which is titled “Defenses etc. in suits for infringement”.

Natco denies Bayer’s allegation as baseless that, under the guise of the grant of compulsory license, it was exporting the formulation to diverse countries. Natco disputed Bayer’s factual assertion with a contention that it had nothing to do with the alleged exports of the formulations. They urged that anybody can buy the formulated drug in the market and send it out of the country. Natco submitted that selling of API (bulk drug) Sorafenib Tosylate to M/s Hisun Pharmaceutical Co. Ltd (“Hisun” hereafter) in China was solely for generating data in China through Hisun to submit it to Chinese drug regulatory authorities and urged that Chinese law *does not permit any non-Chinese entity to submit regulatory dossiers based on data and information generated in a country other than China*. Natco also submits that Bayer’s patent expires on January 12, 2020 and Article 19 of the Chinese drug registration law allows an

entity apart from the patentee to apply for patent registration two years prior to the expiry of its term.

High Court Order

The High Court said that “*the approach of the learned single Judge in permitting export, without any inquiry and holding that export of 1000 or 2000 tablets constituted reasonable use, in this case, cannot be countenanced. In such cases, upon the patent proprietor alleging the infringement was to institute legal proceedings to injunct the alleged exporter or seller, it is equally possible for the seller or exporter to seek a declaration or appropriate relief (including in a suit for groundless threat, if such action lies) that its overseas sales are for research and purposes covered by Section 107A. This Court is of the opinion that the inquiry and adjudication in such cases would be in regard to the following:*

- (1) *The patent granted;*
- (2) *The nature of the product or elements sought to be exported;*
- (3) *The details of the party or party importing the product,*
- (4) *The quantity sought to be exported*
- (5) *Other particulars with respect to the end use of the product, to establish that it is solely for research and development of information to regulatory authorities in the other country;*
- (6) *All particulars regarding the relevant regulations, covering the kind and scope of inquiry, including the quantities of the product (i.e. the patented product or compound, API or fine chemical needed). These details must be supplied by the exporter/seller of the product to the overseas buyer. In case the defendant is not the seller, it should disclose who had purchased the*

product in the relevant quantities, to facilitate its impleadment in the proceedings. In the event it cannot do so, the consequences of such result ought to be considered by the Court.

(7) If the regulations are in the language of that country, an authentic English translation to facilitate a speedy resolution;

(8) Appropriate interim order, including undertaking by way of affidavit to compensate the plaintiff, in the event the suit were to be decreed and the extent of such monetary compensation. The affidavit should be of an authorized personnel, and kept alive during the pendency of litigation, duly authenticated by the board of director or other controlling body of the defendant- and whenever the company or entity undergoes amalgamation or transfer, suitable undertaking from the successor organization;

(9) If necessary, verification through the Indian mission (and its trade division) abroad regarding the authentication of the third party and/ or its facilities abroad.

(10) If it is held by the Court that the exporter is not involved in sale or export of any patented product, but a generic article, unprotected by patent law, when denying relief, suitable restitutionary relief should be awarded to the defendants in monetary terms, to preclude litigation that prevents trade or competition.

The above aspects are only indicative of the matters that need examination, they are in no way exhaustive and the Court may consider any other matter relevant to the subject.”

The High Court affirmed the order of the Learned Single Judge and directed that “*sale, use, construction of patented products (by individuals and entities that do not hold*

patents) in terms of Section 107A of the Act for purposes both within the country and abroad is authorized and legal provided the seller ensures that the end use and purpose of sale/export is reasonably related to research and development of information in compliance with regulations or laws of India (or the importing country).”

The Court also added:

“119 (c) The Court trying the suit would suitably take into account the factors that need to be examined (which are elaborated in the previous part of this judgment) and other relevant factors;

119 (d) Such disputes are not ordinarily the subject of public law proceedings, as they involve investigation into facts and also result in reliefs to private parties for enforcement of private property entitlements. Therefore, such disputes should not be the subject matter of writ proceedings; petitions under Article 226 of the Constitution of India should not be entertained and wherever filed, the parties should be relegated to civil remedies.

119 (e) CS(OS) No.1090/2011- subsequently renumbered as CS(Comm) 33/2017 (Bayer’s suit against Natco) is pending. Issues were framed in the said suit, on 09.01.2017. In these circumstances, no separate orders are called for.”

Conclusion

The Delhi High Court held that exportation of a product under Section 107A is permissible and affirmed the finding of the Lower Court. This judgement will allow other market players to export the patented products for research and regulatory purposes under Section 107A.

Software Patent and Related Issues

Ishan Sambhar

Introduction

Patentability of computer programmes has always been in dispute and deliberation since 1970s. Under common practice patents are granted to those inventions or technologies whose description or specification are inferable by human beings rather than being a program or software interpretable by computer or a machine only. There are many countries including India which provide explicit laws in their legislation on non-patentability of software “per se” or “as such”; on the other hand there are some countries which indirectly exclude software from non-patentability clause on the basis of ‘mathematical method’, ‘rules and methods of mental activity’ or being ‘mere scientific principle or abstract theorem’. So, we can say that most of the countries around the world consider software as a non-patentable subject matter.

If we look at different treaties and conventions, there is no explicit direction on excluding software from the scope of patentable subject matter. In Singapore (1995) the section excluding software from patentable subject matter was removed. In 2001, a study was undertaken by the UK government over patentability of software where it was concluded that the law with respect to this matter was not clear and there was a requirement to define when a software was patentable or not. Subsequently, a substantial change was seen in EPC for computer programs, programs comprising of ‘technical character’ shall be treated as a patentable subject matter. These changes in EPC were applied by UK Courts where it was laid down that patent can be granted with respect to those softwares or programmes which were associated with technical feature

of the invention. In US as well, Courts have given patent to computer programs on the ground of technical character. However, in India, no substantial case is reported on patentability of computer program or software. In this article, we will attempt to understand the scope of computer program in patent regime.³

Computer Program and Non-Patentability

In general sense computer programme or software can be understood as a set of electronic instructions on which computer performs any task. According to section 2(ffc) of the Copyright Act 1957 computer program “means a set of instructions expressed in words, codes, scheme, or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result”⁴. Thus, a computer program or software is a set of instructions and commands when expressed or recorded in electronic writing basically in codes, schemes, numeric data, text, graphical images etc.; it almost resembles any kind of copyright work of literature etc. on conventional basis - it becomes protectable in copyright rather being a matter of patent system. The intent behind putting restriction on patentability of computer programme is to prevent monopoly over ways of using computer and related function.

TRIPS and Software

³³ Dr. S. Z. Amani, “computer programme- does it warrant patenting: a case study of India”, page 1, available at <https://www.manupatrafast.in/pers/Personalized.aspx> (last visited May 21, 2019)

⁴ Dr. S. Z. Amani, “computer programme- does it warrant patenting: a case study of India”, page 3, available at <https://www.manupatrafast.in/pers/Personalized.aspx> (last visited May 21, 2019)

According to paragraph 1 of Article 27 of TRIPS, patent protection can be availed against all kinds of inventions without any discrimination on the basis of the field of technology. However, this clause doesn't define the word 'invention' but cites three requirements which determine patentability - novelty, inventive step and industrial application. If we further examine para 2 and 3 of the Article 27, no exclusion for software from patentability is traceable. On the other hand, Article 10 of the TRIPS says "Computer programmes, whether in source or object code, shall be protected as literary works under the Berne Convention (1971)". The TRIPS provides copyright protection over object and source code but does not give any expression about protection of valuable behavior of these software and programme. That is why protection of pure software or its technical application or its tangible manifestation still stands unanswered.

EPC and US on Software Patent

Paragraph 2 of the Article 52 of EPC manifests that programmes related to computer are not patentable but paragraph 3 puts limit on the ambit of the article by stating that "paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which an European patent application or European patent relates to such subject-matter or activities as such". By interpretation of the word 'as such' we can say that under EPC a computer software or programme is not patentable unless it depicts some technical feature or application⁵.

In the US system, computer programme or software can be protected under copyright or

⁵RavindraChingale and Srikrishna Deva Rao, "software patent in India: a comparative judicial and empirical overview" vol-20, page-2 (JIPR).

patent; traditional distinction on protection of computer programme was completely blurred by the US Supreme Court and Congress. In 1980, Congress adopted a recommendation by CONTU⁶ to expound that copyright law protected software programs, but a year later Supreme Court ruled that the implementation of a mathematical formula in a computer programme qualified it to be protected under patent law.⁷ There are three salient rules on which patentability is to be checked- law on nature, physical phenomenon and abstract idea. The US Federal Court while looking into patentability of a method claim based on use of computer contemplated whether use of computer plays 'a significant part' in invention or it is just an obvious step for a person skilled in the art to achieve the result quickly.⁸ In 2012, in *Bancorp Services, LL.C. v. Sun life Assurance Co. of Canada(US)*⁹, the patentability of a 'method for determining values required for managing a stable value protected life insurance policy' was in question before the Federal Circuit Court wherein it was held that computer use is not in itself an integral part of the claimed invention thereby terming it to be non-patentable under abstract-idea exception.

In *Alice Corp. v. CLS Bank International*¹⁰(2014), patent eligibility was denied on the ground of abstract idea on which the Court opined that:

"The mere recitation of a generic computer cannot transform a patent-ineligible

⁶ National Committee on New Technical Uses.

⁷ Weiser Philip J, the internet, innovation, and intellectual property policy, *Columbia law review* (103) (2003) 534-552.

⁸RavindraChingale and Srikrishna Deva Rao, "software patent in India: a comparative judicial and empirical overview" vol-20, page-3 (JIPR).

⁹ 687 F.3d 1266 (Fed. Cir. 2012)

¹⁰573 U.S. 208, 134 S. Ct. 2347

abstract idea into a patent-eligible invention. Stating an abstract idea "while adding the words 'apply it'" is not enough for patent eligibility. Nor is limiting the use of an abstract idea "to a particular technological environment". Stating an abstract idea while adding the words "apply it with a computer" simply combines those two steps, with the same deficient result. Thus, if a patent's recitation of a computer amounts to a mere instruction to "implement" an abstract idea "on a computer," that addition cannot impart patent eligibility."

Indian Perspective on Software Patent

In India, the Patent Amendment 2005 sought to introduce software patent. The amendment proposed for section 3(k) was, *"a computer program per se other than its technical application to the industry or a combination with hardware; a mathematical method or a business method or algorithm."* This amendment was not accepted by the Indian parliament and section 3(k) remained as it is. If we observe Draft Patent manual (2008) it can be stated that it was an attempt to make technical application of the software patentable.

"A mathematical method is one which is carried out on numbers and provides a result in numerical form (the mathematical method or algorithm therefore being merely an abstract concept prescribing how to operate on the numbers) and not patentable. However, its application may well be patentable, for example, in Vicom/Computer-related invention [1987] 1 OJEPO 14 (T208/84) the invention concerned a mathematical method for manipulating data representing an image, leading to an enhanced digital image. Claims to a method of digitally filtering data performed on a conventional general-purpose computer were rejected, since those

*claims were held to define an abstract concept not distinguished from a mathematical method. However, claims to a method of image processing which used the mathematical method to operate on numbers representing an image can be allowed. The reasoning was that the image processing performed was a technical (i.e. non-excluded) process which related to technical quality of the image and that a claim directed to a technical process in which the method used does not seek protection for the mathematical method as such."*¹¹

Chapter 8.03.05.10 of Manual of Patent Office Practice and Procedure 2011, laid down guidelines for patent under section 3(k) of India Patent Act 1970, under which patent protection cannot be granted for mathematical method, business method, algorithms or computer programmes. Differences are also found in draft manual and this final manual. Provisions under draft manual were not accepted. In *Enercon India Limited, Daman v. Aloys Wobben, Germany*, IPAB decided on the patentability of the invention consisting of steps for controlling wind turbine based in external ambient condition through using automatic control unit like a computer. IPAB stated that, the invention cannot be called as computer programme *per se* or set of rules like algorithms and thereby no objection on the patentability.¹²

Draft guidelines were published by India Patent Office in 2013 with respect to the examination of the computer related inventions. These guidelines depicted various points on patentability of invention related to computer. It was stated that these guidelines were not to be taken as rules and in case of any conflict with Patent Act, 1970

¹¹http://www.ipindia.nic.in/writereaddata/Portal/IPO/GuidelinesManuals/1_59_1_15-wo-ga-34-china.pdf (last visited May 22, 2019)

¹²*Supra note 6*, Page 4

and Patent rules made there under, Act and rules shall prevail over them. The document also attempts to define '*per se*' but definition is not precise enough to overcome existing ambiguity on patentability of software. The requirement of the novel hardware was also criticized by many patent agents and firms on the ground that in most of the cases software is based on existing hardware so as to provide enhancement in performance of the software. Guidelines restricts the patentability in case of non-novel hardware. Apart from this, many patents have been granted by IPO in the area of computer and electronics on the basis of the existing technical features.

Conclusion

During 1970s, the demand for putting computer programmes or software in patent regime was refused on the ground of being a literary work and thereby protectable matter under the copyright system. However, with passage of time it has been an accepted notion almost by everyone, that computer program by itself is not a subject matter of patent unless it manifests a technical application. As for now, a computer program in combination with a new machine or apparatus where the combination is giving a totally new output is acceptable as a patentable invention.

The Growing Video Games Market and its Intellectual Property Needs

Kartikeya Prasad

In the last few years, the video game industry has grown exponentially to overtake the entire entertainment industry, which includes both film and music industries, to become the market leader globally. It has also become an exciting avenue for competitive tournaments like Fortnite, one of the most popular current video games, which gave out around \$100 million as prize money in a 2018 competition. Game revenues hit \$108.9 billion in 2017, estimates suggest that India's mobile games market will be worth \$1.1 billion by 2020.¹³

The global player base is estimated at 2.2 billion.¹⁴ The gaming industry has proven to be a significant driver of economic growth as it has created millions of jobs worldwide, providing exciting opportunities for software engineers and artists, along with writers and musicians.

Unlike other creative industries, the gaming industry depends equally on both creativity and technology as it creates the perfect synergy between latest technologies and artistic expressions. The underlying computer code of every game ever produced is a bunch of computer instructions to transform an artist's ideas into expressions rich in audio-visual which are transmitted through various media like gaming consoles, PCs, smartphones etc. Video games, however, differ from other conventional

entertainment products. While the design and story fall under copyright, comparable to films and books, video games also require software and engineering knowledge. For that reason, patents are another solution for game developers to further protect their content. Developing a proactive IP strategy to secure appropriate IP rights is essential to the success of a game developer's enterprise. The following table lists down all the protectable elements of a video game under relevant headings:

¹³<https://www.nasscom.in/knowledge-center/publications/mobile-gaming-rise-india>

¹⁴ 'Video Games: A Growing Market And Its Intellectual Property Needs | JIPEL Blog' (*Blog.jipel.law.nyu.edu*, 2019) <<https://blog.jipel.law.nyu.edu/2018/04/video-games-a-growing-market-and-its-intellectual-property-needs/>> accessed 29 May 2019.

Copyright	Trade Secret	Trademark	Patent
Music	Customer mailing lists	Company name	Hardware technical solutions
Code	Pricing information	Company logo	Inventive game play or game design elements
Story	Publisher contacts	Game title	Technical innovations such as software, networking or database design
Characters	Middleware contacts	Game subtitle	
Art	Developer contacts		
Box design	In-house development tools		
Website design	Deal terms		

Copyright protects, for example, computer code, illustrations, stories, characters and music. Larger gaming companies routinely register works for copyright, but smaller gaming companies often fail to do so. However, copyright does not protect an idea; it protects the expression of an idea from copying, the expression embodied in the words used, computer code, etc. Gaming companies may also have other works that may be copyrightable including brochures, advertising and web pages, for example.

Trade secrets or confidential information refers to valuable business information that can provide a video game company with an advantage over its competitors. An example of this could be those lines of computer codes that can't be revealed through methods like reverse engineering components like executables. Other examples include internal documents detailing strategies for a game's launch or list of people who have shown a preference for a particular genre of video games. Although India has no specific trade secrets law, Indian courts have upheld trade secrets

protection under various statutes, including contract law, copyright law, the principles of

equity and – at times – the common law action of breach of confidence (which in effect amounts to a breach of contractual obligation). However, trade secrets are only protected to the extent a trade secret owner takes proper measures to protect and ensure its secrecy. Although there are no hard and fast rules regarding steps to be taken by trade secret owners, but steps such as having employees sign confidentiality agreements, keeping the information in a secure location, and providing access on a need-to-know basis are common.

Trademark or service mark can protect logos or game titles. Moreover, color, sound (excluding voices) and designs serving as trademark/service marks may also be eligible for trademark protection. Registered trademarks/service marks have an unlimited lifespan, provided that post-registration maintenance (e.g. renewal) is timely undertaken.

Patents protect inventions and guarantees that the inventor obtains the exclusive right to commercially exploit the invention for 20 years in return of disclosing the functioning of the invention for the benefit of the society. This means no other person can bring to market a product with same/similar technical characteristics. Video games are software and hence are normally not

included in the patentable subjects. However, there are situations where an invention related to games can be patented, if the said matter is a technical solution to a technical problem.

One might wonder why a gaming company would want to seek any of these intellectual property protections. Intellectual property is an asset, just like any other machinery or land that generally adds value to the business whether it's a think sale or licensing value. There are as many reasons to seek intellectual property protection as there are the number of gaming companies. However, some common reasons are to combat copying by others, including those located abroad. This is particularly true in the software and gaming industries where copying takes sales or subscription fees away from the authors/owners. If a person is investing a lot in developing his intellectual property, he should also invest in protecting it.

Accordingly, starting a new project and registering all the relevant intellectual property rights should be the priority for any game developer or publisher as it provides them with an edge over their competitors.

Strategic Use of Patent Information

Manish Kumar

Introduction

Intellectual Property (IP) valuation is a domain which is attracting more and more attention as we move into the knowledge economy where market competition is swift and closely aligned to intellectual property assets.

Traditionally, patent information was used only by a small number of legal practitioners before drafting a patent application to check the patentability of the invention or while planning and preparing for patent litigation where not many were really bothered with it. But with the technological evolution and ever-increasing competition in business, this micro level use of patent information has become a key factor for future business competitiveness.

People from different arenas use the patent information to deconstruct patenting activities in a particular sector, technology or company to determine the direction of technical change or to locate the technological status of a company in a marketplace etc. It helps in getting an overview of the technologies the competitors are working on and to ascertain the competitor's strength, weaknesses and business strategy.

What is Patent Information?

Patent Information comprises of published patent documents before and after the grant of patent in various jurisdictions. The published document inter alia contains the bibliographic information, technical information (state of the art, background, research areas) and legal status information (freedom to use, regions protected in). Hence, a patent document provides a

valuable dynamic indicator, unlike any other publication, which is useful for estimating and assessing current and future commercial activities of an individual or an organization.

Where to find Patent Information?

The web has revolutionized nearly every aspect of human endeavor. Most readily available free of cost database to access patent information inter alia are USPTO, Espacenet and Patentscope which contain almost 30 million patent documents. These databases work for simple searches based on keywords but are not suitable for conducting complex and legally motivated searches. Such searches are offered on commercial databases like Derwent, Questel Orbit, Micropatent, WIPS, etc.

The value and use of Patent Information¹⁵

- **Avoids re-inventing the wheel**

Before initiating any research project, it is essential to analyze what has already been done around the world in the relevant field in order to avoid substantial loss of time and money on something that is already known. Hence, patent analysis allows a rapid assessment of the state of affairs and avoids re-inventing the wheel¹⁶. It helps in finding out the flow and the life cycle of a technology (consisting of growth, development, maturity and decline), problems and solutions in the development of a particular technology, competitors' technologies and solutions to cope with possible problems. Knowing the life cycle of a technology makes it viable to judge the timing of

¹⁵https://www.wipo.int/sme/en/documents/patent_information_fulltext.html

¹⁶https://www.fitforhealth.eu/sites/default/files/03_using_patent_information.pdf

development policy and focus on certain development themes.

- **Evading cost of litigation**

Commercializing a new product in a particular country without doing a freedom-to-operate or infringement search from the available patent information, to ascertain whether there are any active patents in force in that country that the product might infringe, can result in expensive Court actions and awards of damages. Further, if there is a claim of infringement, the first line of defense against that may be to try and attack the validity of the patent in question by bringing up prior arts that shows that the patented invention is not new or inventive.

- **Monitoring Competitors**

Patent information can be used to navigate market trends and hammer out information about competitors – what products they are working on and where they are looking to market those products by observing their filed applications and granted patents. For example, an investor can examine a company's strength based on its patents in a specific technology and decide or decline to invest in long term shares in that company. Status and patterns of competition, areas of technology focus and technology gap, and future market direction can be presented to corporate strategy makers based on the patent intelligence research.

- **Input for Licensing Strategy**

Before entering into licensing negotiations, it is important that one ascertains a very good understanding of the target technology itself, its value, in terms of its strengths and weaknesses,

which is aided considerably by a thorough and careful analysis of relevant patent information.

Hence, a patent information can be helpful in dissecting whether the technology for “licensing in” is in public domain due to its non-protection, expiration or non-payment of maintenance or whether the technology is overvalued or undervalued by comparing it with other related or alternate technologies, etc.

Similarly, while “licensing out” the technology patent information can be helpful in ascertaining who could be prospective licensees in the market and how valuable is your technology in order to prepare an attractive offer.

- **Facilitate Merger and Acquisitions**

A patent search helps to identify all patents related to the area of interest. Hence, if a company wishes to acquire a specific technology and has no idea where to obtain it, then it first needs to identify all the companies with relevant patents. Once one or more potential target technologies/companies are identified, then the company can undertake an additional patent analysis to narrow down its choices to decide which of the companies are best for merger or acquisition target. Further a patent, which is more frequently cited than other patents of the same age, is regarded as a patent of greater impact or of higher quality. From links between patents revealed by Patent Citation Analysis, it is possible to target the acquisition of strong patents, which results in the enhancement of R&D output and, consequently, much improved or new products.

- **Human Resource Management**

In an enterprise a small number of fructuous inventors drive the technological enhancement and others just produce only one or two patents. Patent analysis, such as a co-inventor brain map, can show the key inventors who are vitally important for the future of the company, analysis of which is useful for headhunting.

Conclusion

Intellectual Property assets have become a valuable currency of business, used not just to protect technology rights, but also to gain competitive advantage and drive new revenue opportunities. Hence, patent documents have an unmatched wealth of detailed and practical business value, and legal and technical information which facilitate the advancement of the business operations, R&D, and IP activities.



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