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MICRO, SMALL AND MEDIUM ENTERPRISES (MSMEs) AND INTELLECTUAL PROPERTY RIGHTS (IPRS)

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ABSTRACT

This paper seeks to highlight the need for Micro, Small and Medium Enterprises (MSMEs) to be aware of the Intellectual Property Rights (IPRs). In the changing global scenario, the issues of IPR have gained special importance for the Micro, Small & Medium Enterprise (MSME) sector. IPR are of immense importance to entrepreneurs. Patents in new and latest technologies help in survival, trademarks in building consumer confidence and designs in creating buyer appeal. However, Indian MSME sector is lagging behind in recognizing the importance of IPR and adopting IPR as a business strategy and needs more information, orientation and facilities for protecting their intellectual powers. Under product patent regime, Indian firms will have to find new sources of growth in the future and productive Research & Development. No doubt, it is necessary that the MSME in India should show a positive approach towards creation, protection and management of IPR, so as to enable them to compete in the global market and achieve growth in business, higher exports, import containment and making Indian Industry more competitive in the present and future changing global scenario.

KEYWORDS

enterprises, facilitation center, implications, intellectual property rights (iprs) programme, legislations, tools.

1. INTRODUCTION

Micro & Small Enterprises (MSEs) Sector is a vibrant sector registering a higher growth rate than the rest of the industrial sector. It forms the power and spirit of economic growth in the 21st Century. It has also been estimated that the Sector consisting of 36 million units, as of today, provides employment to over 80 million persons. The Sector through more than 6,000 products contributes about 8% to GDP besides 45% to the total manufacturing output and 40% to the exports from the country. It has the potential to spread industrial growth across the country and can be a major partner in the process of inclusive growth.

The Micro, Small and Medium Enterprises Development Act, 2006 defines the small and medium sector as micro, small and medium enterprises with effect from October 2, 2006.

MANUFACTURING ENTERPRISES

- Micro Enterprises – Investment up to Rs. 25 Lakh.
- Small Enterprises - Investment above Rs. 25 Lakh & up to Rs. 5 Crore.
- Medium Enterprises – Investment above Rs. 5 Crore & up to 10 Crore.

SERVICE ENTERPRISES

- Micro Enterprises- Investment up to Rs.10 Lakh.
- Small Enterprises- Investment above Rs. 10 Lakh & up to Rs. 2 Crore.
- Medium Enterprises- Investment above Rs. 2 Crore & up to 5 Crore.

The Ministry of Micro, Small and Medium Enterprises, a branch of the Government of India, is the apex body for the formulation and administration of rules, regulations and laws relating to micro, small and medium enterprises in India. ni-msme (National Institute for Micro, Small and Medium Enterprises) an autonomous arm of the Ministry, provides pro-business environment to foster progress of MSMEs towards success and prosperity. Since its inception in 1960 by the Government of India, it has been the premier institution for the promotion, development and modernization of the SME sector. ni-msme, has been conducting number of national and international training programmes in the field of IPRs for different interest groups over the years. The schemes/programmes undertaken by the Ministry and its organizations seek to facilitate/provide:

- (i) adequate flow of credit from financial institutions/banks;
- (ii) support for technology upgradation and modernization;
- (iii) integrated infrastructural facilities;
- (iv) modern testing facilities and quality certification;
- (v) access to modern management practices;
- (vi) entrepreneurship development and skill up gradation through appropriate training facilities;
- (vii) support for product development, design intervention and packaging;
- (viii) welfare of artisans and workers;
- (ix) assistance for better access to domestic and export markets; and
- (x) cluster-wise measures to promote capacity-building and empowerment of the units and their collectives.

2. OBJECTIVES

1. To understand the meaning and importance of IPRs.
2. To create awareness of the facilities provided by the Ministry of Micro, Small and Medium Enterprises.

3. METHODOLOGY

This paper consists of Section I Introduction; Section II Objectives; III Methodology; Section IV Meaning of IPR.; Section V Types / Tools of IPRs; Section VI Implications of IPRs for MSMEs; Section VII The Intellectual Property Facilitation Centre (IPFC) for MSMEs; VIII National IPR Programme for SMEs in India; IX Need of the Hour; Section X Conclusion. The study is based on secondary sources of data such as books and internet.

4. MEANING OF INTELLECTUAL PROPERTY RIGHT (IPR)

Intellectual Property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IPRs are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. IPRs protection plays a key role in gaining competitive advantageous position in terms of technological gain for achieving higher economic growth and becoming competitive under liberalization and globalisation.

The IPR Legislations in India consist of Patents Act 1970 as amended in 2005, Industrial Designs Act 2000, Trade Marks Act 1999, Geographical Indication Act 1999, Copy Right Act 1999, Protection of Plant Varieties & Farmers' Rights Act 2001, The Biological Diversity Act, 2002 (All IPR Laws are fully TRIPS compliant). Several initiatives have been taken by the Government of India in the field of IPR, including amendments in patent laws and modernisation of the IPR / Patent Offices, as

a strategic response to the globalisation and liberalisation of the Indian economy. India ratified the agreement on Trade Related Aspects of Intellectual Property Rights [TRIPS] which came into force from 1st January 1995 which provides for minimum standards for protection and enforcement on intellectual property rights in member countries which are required to promote effective and adequate protection of IPR with a view to reducing distortions and impediments to international trade.

Use of IPR by MSMEs for its commercial competitive advantages involves Recognition of one's rights over innovated tools / machinery developed or other products of intellect and Registration of patent, industrial designs, trademarks and other available rights over the same.

5. TYPES/TOOLS OF IPRS

- Patents- an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent. The protection is granted for a limited period, i.e 20 years
- Trademarks- a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise.
- Copyrights and related rights- a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.
- Geographical Indications- are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin.
- Industrial Designs- creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design.
- Trade Secrets- confidential business information that provides an enterprise a competitive edge. These are manufacturing or industrial and commercial secrets and include sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and manufacturing processes.
- Layout Design for Integrated Circuits- right to use the layout-design, commercially exploit it and obtain relief in respect of any infringement.
- Protection of New Plant Variety- to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution and to stimulate investment for R & D for the development new plant varieties to facilitate the growth of the seed industry.

6. IMPLICATIONS OF IPRS FOR SMES

Awareness of IPR benefits the MSMEs mainly in two ways. Firstly, how they can protect their creations i.e. to protect their own intellectual property rights and secondly, how they can avoid violating *intellectual property rights* of others. Hence the need to convert intellectual abilities into intellectual properties carrying appropriate rights. There are two kinds of implications of IPRs for SMEs. Firstly, the IPR of a small enterprise may be usurped by somebody and thus it stands to lose if it is not enabled to protect its IPRs. Secondly, knowingly or unknowingly, a small enterprise may infringe on others IPRs if it does not possess knowledge of it.

Furthermore, increased awareness encourages MSMEs to make better use of IPR system, helps them to face global competition and provides the desired "winning edge" over the Competitors. IPRs will aid Indian MSMEs, with limited resources and manpower to sustain in this competitive world through continuous growth and development oriented innovations.

The protection of IPR improves the competitiveness of MSMEs as follows:

- Preventing competitors from copying or closely imitating a company's products or services;
- Avoiding wasteful investment in research and development (R&D) and marketing;
- Creating a corporate identity through a trademark and branding strategy;
- Negotiating licensing, franchising or other IP-based contractual agreements;
- Increasing the marketing value of the company;
- Acquiring venture capital and enhancing access to finance; and
- Obtaining access to new markets.

Not only an intellectual property is to be created or acquired, but it also needs to be managed to generate financial returns to its full potential.

7. THE INTELLECTUAL PROPERTY FACILITATION CENTRE (IPFC) FOR MSMEs

Globalisation and Liberalisation has offered business opportunities in the form of new target markets, possibilities to exploit technological advantage, etc., as well as challenges in this process have flowed mainly from their scale of operation, technological obsolescence, inability to access institutional credit and intense competition in marketing. In India, we need to enhance awareness about the Intellectual Property Rights (IPR) to enable MSME to make informed decisions. Hence, IPFC has been established at ni-msme in the year 2009-10, sponsored by Development Commissioner (MSME), Ministry of MSME, Government of India which aims at helping MSMEs in promoting innovation, niche products/ services. It also registers MSMEs for filing of IP Tools in a cost effective manner backed by the incentive schemes of Government of India.

Its objectives are to encourage and empower MSMEs to create value addition and building assets through effective exploitation and commercialization of IP such as Patents, Designs, Trademarks, Copyrights, and protect the trade secrets and confidential information; to serve as a repository of IP information for MSMEs in the country; and to establish networks in the above areas for use and sourcing by MSMEs and entrepreneurs.

It addresses the following service requirements: IPR awareness campaigning and training to sensitize MSMEs on IP related issues; IPR information and advisory services to foster an IP culture which would enhance the intellectual capital for the growth of MSMEs; Drafting and preparation of specifications for IPR applications; Filing of applications for Patents, Trademarks, Copyrights and GIs with follow up services; Partners with MSMEs of India and abroad to introduce IP management within the enterprise.

Its services comprise of: rendering IPR awareness, training, protection; identifying areas of IP services and providers for MSMEs; facilitating e-mail alerts for members about the latest developments in the field of IPR at national and global level; and bring out a quarterly IPFC 'e- newsletter'.

Its membership is open to individuals, consultants and consulting firms, lawyers, entrepreneurs, industry and trade bodies/associations.

8. NATIONAL IPR PROGRAMME FOR SMES IN INDIA

The Government has put in place several measures to help small enterprises to become globally competitive like schemes /programmes for technology up gradation, development of clusters, making collateral free bank credit available, creating awareness among these industries regarding export-related issues, etc. The Ministry of Micro, Small & Medium Enterprises (MSME) in India also conducts workshops on various aspects of WTO, Anti-dumping seminars, IPR, etc. to sensitize the MSEs entrepreneurs. *Some of the Challenges faced by Indian MSMEs are: Access to Technology, I.P.R. related issues, Design as market driver, Wasteful usage of resources / manpower, Energy in-efficiency and associated high cost, Low ICT usage, Low Market penetration, Quality Assurance / certification.*

Hence in the 2005-06 Budget, an announcement has been made regarding setting up of the "National Manufacturing Competitiveness Council (NMCC)" a continuing forum for policy dialogue to energise and sustain the growth of manufacturing sector in India, visualized a National Manufacturing Competitiveness Programme (NMCP) to enhance the competitiveness of the SMEs sector.

Under the NMCP programme, 10 components have been conceptualized, namely:

- Lean Manufacturing Competitiveness scheme
- Enabling manufacturing sector to be competitive through Quality Management Standards / Quality Technology Tools (QMS/QTT).

- Promotion of ICT (Information & Communication Technology) in MSME Sector
- Technology & Quality Up Gradation Support to MSMEs (TEQU)
- Marketing Assistance & Technology Up gradation scheme
- Marketing Support / Assistance to MSMEs (Bar Code)
- Design Clinic Scheme for Design Expertise to MSME Sector
- Setting of Mini Tool Rooms
- National Campaigns for building awareness on IPR
- Support for Entrepreneurial and Managerial Development of SMEs through Incubators.

As one of the components of the NMCP is "Building Awareness on Intellectual Property Rights (IPR)" for the MSME, they have identified and recommended nine schemes, including the programme on IPR to sustain the growth of SME sector in India. The objective of this programme is to enhance awareness about IPR and thus enable MSME to make informed decisions about protecting their ideas and business strategies; effective utilisation of IPR tools by MSME for technology up-gradation & enhancing competitiveness; and providing access to technical facilities and expertise for value addition to their business.

The main activity and funding limits proposed under this scheme cover the following broad areas of interventions:

- (a) Awareness /Sensitisation Programmes on IPR (1.00 lakh) – Regarding different aspects of IPRs.
- (b) Pilot Studies for Selected Clusters/Groups of Industries (2.50 lakh) - strengthening the IP needs of the MSEs Clusters taken up under the Micro & Small Enterprises Cluster Development Programme (MSE-CDP) of the Ministry of MSME.
- (c) Interactive Seminars/Workshops (2.00 lakh) - to protect their intellectual property rights and are product specific and cluster based.
- (d) Setting up of Intellectual Property Advisory Cell - Micro Small & Medium Enterprises do not have adequate resources to develop their own IP assets whereas there exists a huge potential in developing and safeguarding their ideas/inventions.
- (e) Specialized Training - on IPR related issues for the entrepreneurs, officers, members of industry associations and other stakeholders with focus on cluster development.
 - (i) Short term (ST) (6.00 lakh)
 - (ii) Long term (LT) (45.00 lakh)
- (f) Assistance for Grant on Patent/GI Registration - proposed to provide lump-sum financial assistance on grant both domestic & foreign patents.
 - (i) Domestic Patent (0.25 lakh)
 - (ii) Foreign Patent (2.00 lakh)
 - (iii) GI Registration (1.00 lakh)
- (g) Setting up of 'IP Facilitation Centre for MSME' (65.00 lakh)
- (h) Interaction with International Agencies - Initiatives of awareness and actions of harmonization in various fields could be initiated by extending co-operation in the area of Science & Technology (S&T) between various countries.
 - (i) Domestic Intervention (5.00 lakh)
 - (ii) International Exchange Programme (7.50 lakh)

9. NEED OF THE HOUR

The present era is that of survival of the fittest and stronger which means 'competitive advantage.' To gain competitive advantage by the MSMEs is to make use of IPR. According to some critics, IP creates intellectual monopolies that are harming health, preventing progress, and benefiting concentrated interests to the detriment of the masses. They argue that IPRs harm public interest by ever expanding monopolies in the form of copyright extensions, software patents and business method patents. However, majority of the countries in the world today have strong IPR regime to power their industries. And hence some of the reasons why IPR must be one of the most important item on India's economic development agenda are - (i) To make the Indian economy knowledge-based, to the maximum extent possible, and build up India's international competitiveness more on the basis of knowledge rather than on the basis of cheap labour and raw materials, (ii) An effective and enabling administrative and legal regime for IPR bestows confidence to the IP-owner and creator allowing them to manage and eventually create the crucial link between research (innovation) and its economic applications. (iii) An effective IPR protection system is a basic requirement agreed upon by all 149 WTO members.

It is therefore highly inevitable that the representatives of MSME should be trained to understand the product specific/sector specific IPR related needs for change in view of changing trade environment, limited access to technology, global competition, high innovation risks, short product cycle needs for rapid changes and technologies and needs for highly skilled human resources.

10. CONCLUSION

In the changing global scenario, the issues of IPR have gained special importance for the Micro, Small & Medium Enterprise (MSME) sector. IPR are of immense importance to entrepreneurs. Patents in new and latest technologies help in survival, trademarks in building consumer confidence and designs in creating buyer appeal. However, Indian MSME sector is lagging behind in recognizing the importance of IPR and adopting IPR as a business strategy and needs more information, orientation and facilities for protecting their intellectual powers. Under product patent regime, Indian firms will have to find new sources of growth in the future and productive Research & Development. No doubt, it is necessary that the MSME in India should show a positive approach towards creation, protection and management of IPR, so as to enable them to compete in the global market and achieve growth in business, higher exports, import containment and making Indian Industry more competitive in the present and future changing global scenario.

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