



Intellectual property rights. Imperatives for the knowledge industry [☆]

Prabuddha Ganguli

Hindustan Lever Ltd., Corporate Planning, 165–166 Backbay Reclamation, Near Churchgate, Mumbai 400020, India

Abstract

This paper provides a broad-ranging review in a global context of many aspects of developing changes in intellectual property rights (IPR) in response to the currently rapidly changing technological and information industries. As such, it covers such matters as knowledge ownership, the IPR framework, TRIPS and WTO in relation to developing countries, technology transfer and balance in a world-wide context, and developments in dealing with counterfeiting and piracy – with particular reference to the Asia/Pacific region. Brief snapshots are also provided of a number of specific and significant IPR enforcement decisions and their implications. Further policy and practical matters also discussed include domain names and cyber squatting, traditional knowledge as prior art, bio-prospecting, and software patenting. Finally, a list of steps need to be considered in formulating IPR policy, with especial reference to India and countries in a similar situation, is set out. © 2000 Elsevier Science Ltd. All rights reserved.

Keywords: Knowledge ownership; Licensing; TRIPS; WTO; Trade secrets; Technology transfer; Counterfeiting; Piracy; IPR enforcement; Infringement; Domain names; Traditional knowledge; Bio-prospecting; Software patents

1. Introduction

With the world population approaching 7.3 billion by 2020, demand in priority areas such as food, shelter and health is on an exponential trajectory. The challenge for this century is to innovate with speed and convert the resulting innovations into utilitarian commodities for rapid diffusion in society. The drive is to evolve environmentally friendly and cost effective technologies that ensure conservation of natural resources, optimization on manpower and energy with simultaneous maximization of productivity. This will require concerted global real-time teamwork in the creation of new knowledge, exploitation of the cumulated human learning over the centuries and frameworks for sharing expertise, infrastructure and know how in a scale the world has not so far experienced. There will be newer ways of working and benefit sharing among nations, corporates and individuals, all designed to enrich the quality of life under the most demanding societal dynamics. One of the decisive enabling features in this evolution of a knowledge-led future, is the thorny issue of “knowledge ownership” that will resolve controversies bordering on “knowledge

prospecting” and “knowledge piracy”. It is in this context of an appropriate and balanced harmonized legal framework to deal with the definition and fair transaction of intellectual assets that the success and survival of a “border-less knowledge world” will be determined. The various tools of Intellectual Property Rights (IPR) were created to provide the take-off platform in such an effort [1,2].

IPR provide the formal basis for ownership of developed knowledge with benefit sharing between “partners in innovation” to create niche domains of “value added knowledge” and “wealth creation”. USA’s annual licensing revenue in 1997 was \$20 billion vs \$200 million in 1980. It may be noted that IBM in 1998 had 2658 patents registered in the USA as against 1724 patents in 1997. The company made over \$1 billion through licensing arrangements. Similarly Samsung Electronics earned around \$400,000 from its IPR in 1998. It is expecting to generate royalties of more than \$1 billion from its MPEG2 technology.

IPR are already a part of the strategic options in the knowledge industry. To ensure sustained growth, enhanced profits, market leadership many corporations have designed their project management systems for:

- optimized use of inter/intra knowledge base;
- strategic management of IPR;
- external channels for knowledge and inventions as inputs;

[☆] Invited talk at the 14th NIAS “Course on Globalization and Development” for Senior Executives on 12 January 2000, at the National Institute of Advanced Studies, Bangalore, India.

E-mail address: ramu.p.ganguli@unilever.com (P. Ganguli).

- internal expertise to manage research and collaborations;
- clarity on knowledge ownership issues through mutually beneficial licenses;
- pooling of IPR as in the case of several companies who have formed patent pools of their DVD patents for mutual benefits.

The emerging scene in the future will seek positive linkages between enhancing competition in society on one hand (discouraging monopolistic practices) and establishing legal ownership of innovations (with enforcement of acquired rights) on the other. Strongly inter-knitted societal, moral and ethical issues are already influencing approaches to international trade involving technology management, ownership of knowledge and business processes.

2. The IPR armory

The various aspects of IPR as they have developed are:

- copyright and related rights (i.e., the rights of performers, producers of sound recordings and broadcasting organizations);
- trademarks including service marks;
- geographical indications including appellations of origin;
- industrial designs;
- patents;
- protection of new varieties of plants;
- protection of the layout-designs of integrated circuits;
- protection of undisclosed information including trade secrets and test data;
- control of anti-competitive practices in contractual licenses.

The effective interplay between these IPR instruments and their enforcement provides possibilities of protection of intellectual assets resulting from all human endeavour.

2.1. TRIPS

Agreement on intellectual property such as the Trade Related Intellectual Property Rights (TRIPS) which is integrated into the international trading system outlines the minimum standards for protection and enforcement of IPR in the member countries of the World Trade Organisation (WTO). The agreement leaves scope for the member nations to develop their IPR laws (but staying within the spirit of the agreement) to promote their national interests. The basic approach of any IPR system is to balance interest between various contrasting parameters (see Fig. 1).

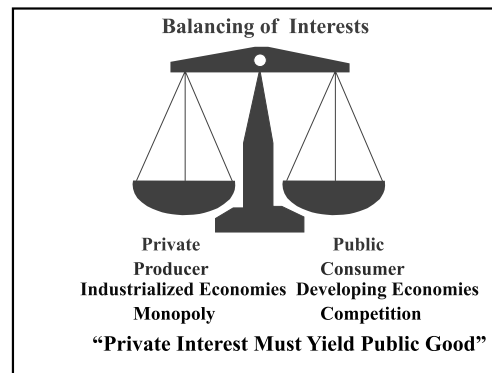


Fig. 1. Balancing of interests

As we know, patents build fortresses around inventions. Trademarks establish and identify brands. Copyright provides protection to accompanying literature and designs registrations cover novelties in shapes, forms and ornamentation, which visually impact consumers. These tools of IPR are key components of strategy formulation and implementation in businesses. These assets preserve exclusive markets, maintain profit margins and provide market access and freedom to operate. IPR portfolio has now become an effective means for benchmarking of intellectual assets and innovative capabilities. This is being used extensively in today’s world of mergers, acquisitions, strategic alliances, collaborations, licensing arrangements and venture capital funding in all industries.

Most IPR laws have developed to a reasonable extent in dealing with non-living materials and processes to produce them. However the laws deciding on proprietorship and trade of knowledge related to the “animate” or biological matter such as genes and DNA, microbes and biodiversity are still considered by many to be very rudimentary that need further refinement. Similarly communication using the cyberspace and a range of novel storage and transfer media for information and knowledge coupled with high performing robotics have already posed unforeseen and difficult issues to be dealt with by IPR. Nations have been intensely debating on the ownership of national biodiversity and traditional knowledge of communities and the rights associated with such ownership [3].

The pre-TRIPS era (i.e., before 1995) saw the world divided into groups: (1) a set of nations allowing product and process patents in all fields of technologies without discrimination, and (2) another group with restrictive and discriminatory patent laws providing for process patents in all fields of technologies but not for product patents in selected fields such as foods, agrochemicals, drugs and pharmaceuticals, chemical entities, specialty materials, etc. Other features related to the term of patents, conditions for compulsory licensing, clauses such as whether importation would be consid-

متن کامل مقاله

دریافت فوری ←

ISIArticles

مرجع مقالات تخصصی ایران

- ✓ امکان دانلود نسخه تمام متن مقالات انگلیسی
- ✓ امکان دانلود نسخه ترجمه شده مقالات
- ✓ پذیرش سفارش ترجمه تخصصی
- ✓ امکان جستجو در آرشیو جامعی از صدها موضوع و هزاران مقاله
- ✓ امکان دانلود رایگان ۲ صفحه اول هر مقاله
- ✓ امکان پرداخت اینترنتی با کلیه کارت های عضو شتاب
- ✓ دانلود فوری مقاله پس از پرداخت آنلاین
- ✓ پشتیبانی کامل خرید با بهره مندی از سیستم هوشمند رهگیری سفارشات