

WORLD INTELLECTUAL PROPERTY DAY SPECIAL

LAW OPINION

Protection of IP rights in Bangladesh with special reference to SMEs

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Intellectual property (IP) refers to ideas of human intellect embodied in physical objects. The ideas coming from both natural and legal persons including SMEs may result in inventions for a product or process in any field of technology and may receive patents. The ideas may come up with shapes and get industrial designs; the ideas as symbols and names may qualify for trademarks; and ideas as literary and artistic works may be endowed with copyrights. Even products originating from a specific geographic place having a reputation attributed to it may obtain geographical indications. All such falls within the ambit of IP amounting to an asset that can create ownership, possession, and transfer rights therein.

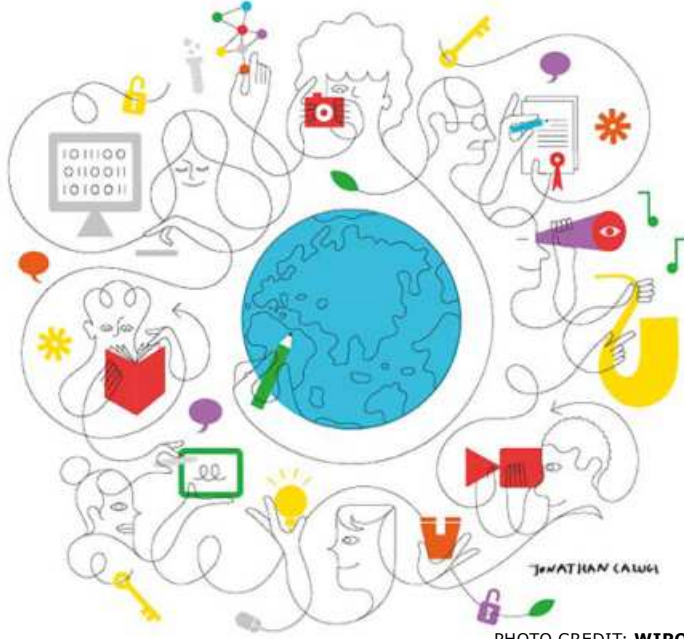
SMEs with assets of BDT 5 to 100 million and employing 25-99 workers in the manufacturing sector and with businesses worth BDT 500,000 to 10 million and employing 10 to 25 people in the service sector can develop ideas through R&D or licensing contracts, turn them into an IP asset, and commercialise them through direct sales or licensing. For ensuring proper outcome of an enterprise's huge brainwork, time and investment, enterprises require IP registration so that their fruits are not taken away by competitors. Further, IP creates economic value for a business and adds up to its existing asset. Finally, enterprises can gain competitive advantage through IP in terms of usefulness, attraction, and market superiority. IP can also be used as collateral to secure an enterprise's loan.

IP protection can lower the risks of commercialisation by frightening competitors from using the protected IP. Primarily, protection can keep the IP a secret, not commercially achievable for businesses. There are multiple legislation that protects IP in Bangladesh. They include the Patents and Designs Act 1911, the Trademarks Act 2009, the Geographical Indications of Goods (Registration and Protection) Act 2013, the Copyright Act 2000, and the Plant Varieties Protection Act 2019. Under such legislation, IP registration is mandatory for patents and designs. However, without registration it is difficult to prove infringements and no assignment and licensing of IP is possible as well.

It is said that if four factors - licensing, monetisation, funding, and valuation are present in a jurisdiction, that jurisdiction is fit for IP commercialisation. In Bangladesh, under the legal framework, commercialisation of IP for businesses can occur through licensing or franchising, and monetisation is made by direct sales and licensing royalties. Here some SMEs' start-ups are funded by the government grants, loans, and incentives in some scattered ways but there is no legal framework and practice for funding through venture capital companies, export market development grant, R&D tax incentive, entrepreneurs' programme, crowdfunding and initial public offerings. Further, there exists no such rule or practice here for valuation

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of IP which is needed for IP assignment and licensing, and which usually determines the valuation through income method based on the amount of financial income generated therefrom, market method based on the actual price paid in a similar case, and cost method based on the cost of a comparable or exact IP asset.

IP in Bangladesh faces several challenges for ensuring its proper protection. Currently, there is no framework legislation for supporting innovations and technology transfers. Even in the existing legislation there are ambiguities hindering the IP implementation. Further, there is no specialised court to deal with IP matters, which is necessary considering the complexities of IP. Also, no uniform appellate authority is in operation, which could be resorted in case a registration application is refused. It is submitted that the IP offices are centralised which in turn impacts people's access to IP protection. The lack of IP academy, institute or centre has a profound impact on the development of IP jurisprudence in Bangladesh. Consequently, there is a lack of awareness regarding IP amongst officials, judges, law enforcing agencies, researchers, industries, media, and the public.

Structural changes are required for addressing these challenges. First and foremost new legislation has to be enacted, which include *inter alia*, the Patents Act introducing petty patent, compulsory licensing provision for pending patents and TRIPS transition benefits, the Designs Act to comply with the TRIPS Agreement and an Innovation Act to establish Technology Transfer Offices that can enrich linking between academia and industry, especially SMEs; to establish R&D wing for industries, to provide funding rules for R&D and to facilitate IP commercialisation

etc. The existing legislation should be amended to establish IP Court or Commercial Courts. Although establishing a separate IP Court could be hard financially, establishing Commercial Courts dealing with business matters as well as IP could be established. The Plants Varieties Protection Act 2019 by entering effect will prevent seeds from being patented that can ensure farmers reusing them. IP offices should be decentralised to ensure proper public access. The text of the legislation is to be simplified so that law enforcers and public can easily understand the law and ensure proper IP protection. Awareness regarding IP protection should also be raised through seminars, workshops, and conferences. Law schools can open IP Law Centres/Clinics to help commercialising, registering, and protecting IP, and provide training on IP to industries, especially SMEs by involving the academia, lawyers, judges, IP officials, and law enforcing agencies.

IP protection is not only a matter of concern for the rights-holder but also for the society and the country at large. It provides incentives for innovators and businesses to invest for better innovations and technologies. In the manufacturing sector, IP protection will help businesses grow. This in turn will help the country with the economic development. Its proper protection ensures higher foreign investments as foreign investors will be assured of the protection. For SMEs, especially in the manufacturing sector, IP protection will ensure big businesses are not able to unjustly expropriate their IPs. It also ensures better competition as it will encourage better innovations than existing ones.

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LAW NEWS



Access to vaccines and strengthening public health systems

On 19 April 2021, The Committee for Development Policy (CDP) has launched its Comprehensive study on the impact of COVID-19 on the LDC category, prepared at the request of the Economic and Social Council (ECOSOC). The study, among others, has dealt with the contentious question of access to vaccines and strengthening public health systems. The study notes that failing to achieve universal access to vaccination would not only violate the "leaving no one behind" principle but also hamper efforts towards a global economic recovery. An effective mechanism for equitable access to vaccines needs to go beyond procuring vaccines by mobilising the global manufacturing capacity, including in LDCs, to a much larger extent. This underscores an important link between expanding access to COVID-19 vaccines and expanding productive capacities. Considering vaccines as a global public good, as called for by the Secretary-General, among many, requires massively scaling up production, which in turn may include removing obstacles created by intellectual property rights. For example, the WTO General Council is currently considering a proposal tabled by India and South Africa to suspend certain provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights while the pandemic is ongoing, which is a very welcome initiative.

The pandemic also demonstrated, the study notes, that pharmaceutical interventions, treatment technology and lockdowns are insufficient. Effective responses to COVID-19 and any possible future pandemic require robust public health infrastructure and enabling testing, tracing, and isolation as the backbone of pandemic control. However, public health remains severely underfunded in most LDCs, despite its relatively low costs. This highlights the need for the international community to support national efforts to build public health capacity.

The study suggests that additional attention and support should be given to the sharing among LDCs of their experience in designing and implementing national pandemic response policies, as many LDCs have used different strategies to control the spread of the disease effectively.

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LAW VISION

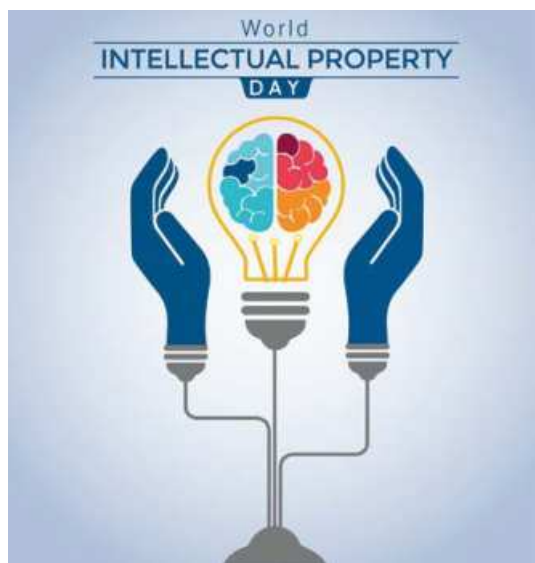
Acute need to have organisational IP strategies

OMAR H. KHAN

Intellectual Property is one of the most valuable assets to a business that has the potential to enormously maximise the value of it. These IP Rights (IPR) may be acquired, exploited, licensed, assigned, sold, used as a vehicle for raising equity and even used as collateral to secure loans, similar to tangible property. In the western countries, intangible assets are now much more valuable than the tangible assets. Businesses should, therefore, utilise, manage and expand their IPs by way of managing them through formulating well-defined and well-articulated IP strategies. In Bangladesh, Trademarks are governed by the Trademarks Act, 2009, Copyrights by the Copyright Act, 2000, Patents & Designs under the Patent and Design Act, 1911 and Geographical Indications (GI) under the Geographical Indication of Goods (Registration and Protection) Act 2013.

IP strategy is an objective-oriented and defined plan of actions for making use of IP to empower businesses, secure high prices for the products and services, increase market shares, maintain reduced costs compared to the competitors, protecting the IPs and extending the horizon and value of the IPs etc. With a carefully formulated IP strategy, organisations can protect their creative works and inventions, keep the resources in check and identify the appropriate time for exploring new research and development opportunities. An IP strategy puts a legal framework around intangible assets and makes the protection, enforcement and valuation of these assets much easier and more quantifiable. It has been found all around the world that the organisations demonstrating IP sophistication and management consistently outperform their competitors. In Bangladesh, we are yet to see that organisations are having proper IP strategies. Here, the IP related activities are mostly confined to brand protection and registration and sometimes, enforcement. Even large MNCs also focus on brand protection in a compartmentalised manner; and even when they have a strategy, the same is not localised in the country context as they mostly adopt the global ones prepared at the HQ levels. It is high time that all organisations shall not only formulate a uniquely designed IP strategy but also pursue a holistic IP strategy irrespective of their kinds, sectors, sizes, origins etc.

Such strategy, once formulated, cannot be considered as a fixed one as the same needs to be updated and periodically modified with the prevailing facts and circumstances. There is no



single rule or even set of rules for formulating the strategy rather the same shall vary from organisation to organisation. Several variable factors shall be considered. To develop an IP strategy, organisations must first consider their type, the products/services that they offer, size of the Organisation, stage of development of the Organisation and other factors like barrier to entry/market barrier, exit strategy, IP protection budget, defined mechanism to regulate third-party interventions, including: employment contracts, Key Person insurance, succession planning, confidentiality agreements, development agreements, documentation protocols, visitor protocols, award schemes, licenses, IP trends, technological development and trend, marketing trend, consumer focus and evolving behavior, regulator's behavior, local and international legislations, forthcoming legislations, knowledge about both organised and disorganised competitors, timing, auditing etc.

Last but not the least, every organisation shall have their IP strategy. As most of the discussions take place around trademark and design and around brand protection of FMCGs, other types organisation sometime feel that IP Strategy is something not to be considered by them. On this note, it is heavily stressed that not only commercial enterprises but even the development sector organisations shall also equally focus on formulating their IP Strategy.

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LAW LETTER

Plagiarism: A serious ethical infraction

Plagiarism, despite being a problem with old origins, is making news anew. So to start our discussion, we first need to know what plagiarism is. According to Black's Law dictionary, the act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind.

The University of Oxford defines Plagiarism on its website to guide its students in the following way- "Plagiarism is presenting someone else's work or ideas as your own, with or without their consent, by incorporating it into your work without full acknowledgment. All published and unpublished material, whether in manuscript, printed, or electronic form, is covered under this definition. Plagiarism may be intentional or reckless, or unintentional. Under the regulations for examinations, intentional or reckless plagiarism is a disciplinary offense".

Plagiarism can take various forms- from reusing a whole document to rewriting one single paragraph. The common types of plagiarism are- copy-and-paste plagiarism, mosaic plagiarism, self-plagiarism, global plagiarism. Copy and paste plagiarism (also known as direct plagiarism) means using a paragraph from another source without citation. Mosaic plagiarism is copying and pasting different pieces of texts together to create a kind of 'mosaic' or 'patchwork' of other researchers' ideas. When parts of one's previous work are used by him without properly citing it, that is called self-plagiarism (also known as auto plagiarism). Finally, global plagiarism happens when you use someone else's paper, pretending that the words and ideas are yours. The University of Oxford has a broader view of plagiarism which includes paraphrasing, collusion (an unauthorised collaboration between students, failure to attribute assistance received, or failure to precisely follow regulations on group work projects), inaccurate citation, failure to acknowledge the assistance, and use of material written by professional agencies or other persons.

It is very important to dissuade students and persons involved in

research work from taking resort to plagiarism. Plagiarism is a hurdle to learning, a serious ethical offense. The whole point of education is to learn and flourish and celebrate knowledge and plagiarism merely facilitates the reproduction of the existing knowledge. Citing is part of a long tradition of scholarly research and not using sources effectively decreases authorial credibility. Plagiarism gives rise to serious misconduct of academic ethics and degradation of academic integrity. Plagiarism is regarded as serious misconduct of academic integrity around the world. Many universities have a no-tolerance policy regarding plagiarism. Such academic misconduct is taken rather as a serious offense in European, North American, or Australian universities. There are

online plagiarism checker. However, all the information we use does not need to be cited. Some information is considered as common knowledge. Common knowledge is information that most people know. Universities should take serious scrutinising measures to keep their students from plagiarising. Ken Larsson in his article 'Anti-plagiarism strategies: how to manage it with quality in large scale thesis productions' states that, "When using software for detecting plagiarism there are four different phases according to Culwin and Lancaster (2001): collecting the text, analysis of the text, verification of the analysis and finally, investigation of those submissions that may be cases of plagiarism".

Currently, there is no specific policy



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serious consequences of plagiarism- it destroys academic, professional, and student reputation and professional integrity. Plagiarism can cause failing the course, expulsion or suspension, and potential end of the career.

Plagiarism can be simply avoided by giving a citation- by paraphrasing, or summarising the words or ideas from someone else and by giving credit to the original source by including a citation in the text and the reference list. Plagiarism can also be checked by simply putting the text on an

against the practice of plagiarism in Bangladesh. Although many universities in Bangladesh are being strict regarding plagiarism nowadays, making this treated as an academic offense, and many practices a no-tolerance policy, lowering course grades and similar punishments. Despite these measures, it is high time to formulate a comprehensive policy against plagiarism.

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