

## **PE/VC- IPR STRATEGY FOR START-UPS**

Almost every business, be it a startup or an established company, has intellectual property (IP) which provides it with a competitive advantage and a unique identity. Any business with a logo, invention, software, website or even proprietary customer list may have valuable intellectual property and should introspect upon the need and modes of protecting it.

### **WHY IPR ARE CRUCIAL FOR START UPS:**

- Intellectual Property Rights (IPR) are a key business asset and may comprise of a significant portion of the commercial value of a start-up and therefore needs to be protected to preserve and maintain the valuation.
- The distinctive character of the IPR provides an advantage to the business over its competitors which needs to be protected from infringement by the competitors and associates.
- Every tradename or trademark carries with itself some goodwill and consumer trust, which a business gains over a period of time. The same need to be adequately protected from passing off and infringement.
- A company's IPR portfolio is of significant interest to potential investors.
- IPR, such as software, patented processes and literary works, can also be used as a potential revenue stream by way of licensing or assignment arrangements.

### **RISKS TO IPR:**

- From Employees: IPR can be stolen or misused by employees or can be leaked to the competitors. Employees can also claim ownership of any IPR created during the course of their employment.
- From Business Partners: IPR can also be misappropriated and misused by business partners with whom the information has been shared in the ordinary course of business.
- Misuse by Technical Consultants: Often, many start-ups (especially tech-based startups), engage certain technical consultants for development of the products. Infringement or claims of ownership by such consultants also poses a significant risk to IPR.
- Infringement by competitors: Infringement of trademarks by a competitor can result in diminishing of the value of brand name of the company. Further, infringement of patents, designs and proprietary information belonging to the company by the competitors can lead to loss of revenue and disruption of the business.

### **MODES OF PROTECTION OF IPR:**

- Registration: Companies need to take proactive steps to protect IPR by filing patent applications, registering trademarks and copyrights.
- Careful scrutiny of agreements with employees and consultants: Agreements with the employees, technical consultants and business partners should have adequate IPR protection clauses to ensure that ownership of any IPR generated during the term of the agreement directly passes on to the company and the employee/consultant/business partner expressly disclaims all its rights to the same. Special focus should be laid on protection of the confidential information which an employee/consultant/business partner gathers during the course of its agreement.
- Licensing arrangements – Any licensing arrangements entered into by the company should be carefully vetted to ensure that no excess rights are granted. Companies should also keep track of such arrangements to see that there is no infringement taking place under the same.
- IP Audit: Slightly older companies may also consider conducting an IP Audit to conduct a systematic review of the IPR owned or acquired by the company to accurately gauge and assess its IP portfolio.

## CONCLUSION

While issues pertaining to the protection of intellectual property may sometimes get brushed aside during the early stages of a business, the risks of not having a diligent and structured IP strategy in sync with the IP landscape of the industry, are too serious to be ignored. Investing in protection of IPR might seem as expensive and time consuming for start-ups, but any IPR if not secured at the right time, may be lost forever and may also have an impact on company's valuation to that effect.

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