

Entrepreneurship and IP Strategy
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Lecture 18
Patent Strategies – 1

A very warm welcome in the third module of week 4 of the course entrepreneurship and IP strategy titled patent strategies. I am sure as suggested you have browse through a few videos sessions from the course roadmap for patent creation as inform as we have hosted the complete course structure of roadmap for patent creation and the 40 videos whatever the 4 live sessions are there for your easy access that link is hosted in the reading material.

Now in earlier session you have get introduction about, what is patent infringement? Now based on this whole exploration then RFPC sessions and infringement related details probably you have plan your patent filing for your Venture. Do you think this is a good enough for patent lifecycle management that RAPC and the patent infringement? This what we can say that that is not sufficient enough.

Because you require a little bit more information about a patent strategy because if you are a technology driven organization, probably you need that need to know that how exactly organizations which are what we can say or technology focus, how they handle their patent portfolio. But before going into the details of that, do you know what is a patent life cycle?

So, patent life cycle involves generation, protection, maintenance, commercialization and fifth enforcement of a patent. Now do not worry about much details about that thing. Whatever you need for your patent management or patent lifecycle management, we will cover in this session and that will be sufficient for you now. Now we will check relevant basics and we will go through this relevant basics in a few minutes now.

So, what we were discussing whether the information you receive till is good enough or not. So, the answer is no and we are going into the detail. Now when you are talking about patent strategy diffusion in the market of your technology or international presence of your product or services you need a little bit more information. If you are thinking of a very local level business then probably you may not require to know about a patent strategies but you are planning for the international market and offshore business, then you must know a little bit about a patent strategies.

Now, so in this session, we will try to focus on a few patent strategies along with the relevant background information and I know it is not possible to cover this in half an hour. However, we will try to give you idea that if necessary, you feel to explore it further you can explore but we should give little bit idea about what different points or what different patent strategies are followed by the organization.

Now we offer here a dedicated 4 credit course on patent strategy so you can imagine the depth of that subject. But because a paucity of time what I will do here like of I will concentrate only on 2 or 3 minutes per slide and I will try to finish this session in 35 or 45 minutes. ok So, please focus here because this will be little bit what we can say little bit fast session compared to other sessions because I want to cover a more points in a short time.

Now before starting one more important activity. I would like you to do in earlier week we have requested you to be ready with a venture details and probable trademark and we have also requested you to explore trademark search and a trademark filing. So, while going through this session, please keep in front of you that exercise. So, if you have not done, please take a pause here go visit that trademark related sessions do that activity and then only you start this session. Because you may not have time again to invest that 35, 40 minutes again.

So, better you do that activity keep ready that exercise in front of you. Why I am telling you? Because once you have that clear-cut idea about your venture, probably you can relate what we are saying here immediately and you can take action immediately for your venture and as an entrepreneur you may not have time later to ponder on that patent strategies or there may be when you of after one year of your venture initiation or incorporation.

If after one year or two years if you think of patent strategy probably that will not be a right time. So, before starting your venture, better you should know what the patent strategies provided you are thinking of overseas business or you are thinking of a little wide spread of your business. So, ok after I hope that you have now ready with that pen and paper. Keep pace with me, here we go.

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First question you will ask, whether patent protection will work for this? That is very important, because though we are talking about a IP strategy. It is not necessary that for every venture you will require patent. So, please remember although I am a hardcore IP person, please listen carefully. I am saying that for every venture there is no possibility of a patent protection. So, every venture you cannot get competitive advantage by a patent, how for example I can give you. Suppose you have a business or a service like say Make My Trip or Amazon.

At the back end, there may be some technology-driven things which are going on. But at a front they are providing the service Make My Trip. Right? Now probably for that particular business model you may not get a patent obviously, you are not getting a business method patent in India. If you are trying to explore your business in USA, definitely you should try business model patent there, you will get that patent there in USA but not in India.

But please remember that every business will not require patent every technology related business requires a patent. Ok. Now second example, if you are a film industry related your business is something related to film industry, probability of patent protection is very less in that case, copyright will play a very important role there. So, you have to focus on copyright and trademark if your venture is related to film industry.

So, try to understand that differentiation. You may require all kinds of IP, but probably the weightage of each IP in your venture may differ. So, you have to appreciate that first. Now, so

please ask question whether patent protection will work for this? That is your first question you should ask for the write up of whatever you have written ask yourself this question. If you are not getting answered try to explore patentability tool which is refer that RFPC course and take a decision on that. Once you clear then you decide on the patent protection decision. Now next question after your decision about a patent protection will be, what is a marketing focus?

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So, you have decided on IP now you will focus on the market. So, in market you may have to focus on a feature or quality, means what will be your marketing focus considering your venture that you have to determine first whether I am going to concentrate on feature or quality, whether it is a service or a product or whether it is a concept. We will go in a little bit details of that whether you are focusing on feature or quality.

If you are trying to protect feature in India industrial design protection and for US design patent will be the near just try to understand this, we call in India as an industrial design protection, in USA you will get a design patent. You will get details about industrial design protection in week 5, but just keep in mind about a differentiate between the IP Arrangement the differentiation between IP arrangement in different jurisdiction, we call industrial design protection, we never call in India design patent.

If you are in a USA, they are giving USA is giving design patent. So, just try to understand that differentiation. Now if you are focusing on a quality, then yes technology may be

involved. So, think of a patent protection. Now next is you are offering a service or a product that is again very important question. Then accordingly your patent decision may vary, how?

If it is a product which is an outcome of a technology development, no question, go for a patent. After following all procedures as discussed in one of the sessions in RFPC course “Roadmap for patent creation” course, you will get idea of what exactly procedure followed for a patent protection. Now if it is a service any chances of patent, here is an example suppose you are a solar energy provider suppose that kind of business you are thinking.

A renewable source of energy you are providing, chances are for solar energy development, maybe so much R&D investment you have done and definitely plethora of patents, you may have generated, that potential IP maybe there just identify that thing. IP audit is a good what we can say exercise to know what different kinds of patents are possible out of your R&D and again refer RFPC for knowing details about IP audit and how to do patent mining and then take a decision about the protection of IP.

However, if services like a food delivery Swiggy or something like that, there is a more a business model. So, at that point business model will play important role probability of patent maybe less in India, in US again business method is patentable. So, some if your business in India related to these deliveries little bit what we can say very much advance and if you are thinking of using artificial intelligence or robots or drones for food delivery, if that kind of business you are thinking definitely you are a technology driven organization, although you are in a food industry.

So, in this scenario again patent will play a very a important role. So, next is a concept as told no concept can get any IP protection. Any type of IP will not protect you or concept. So, work on it develop prototype if that concept is there, get a confidence on the project completion, file provisional, again for provisional and complete filing PCT or conventional, cognate whatever type of patent you are thinking of refer week 5 of a RFPC. Now you answered whether patent protection will work for this, what is a marketing focus now?

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The next question you need to answer is what is market? Where is a market? So, your market may be domestic or international? It may be an urban all or rural or it may be a web world. Now, this is very, very important when you are talking about a market. If it is a domestic international, your patent decision is very important because patent timeline is a very stringent ,12 months' timeline you have to follow, one important thing.

When you are talking about urban and rural probability of a your patented product maybe your product is patented, but you may require more what we can say the weightage on Industrial design considering and your industrial design protection for your product may differ if your customer is urban customer, if your customer is rural again, you are industrial design will be different.

And if your product or service which is a patent intensive and if it is offered through online mode if it is a web word, obviously the strategy for IP will be totally different. So, please focus on what is your, where is your market and accordingly define your IP portfolio for your venture.

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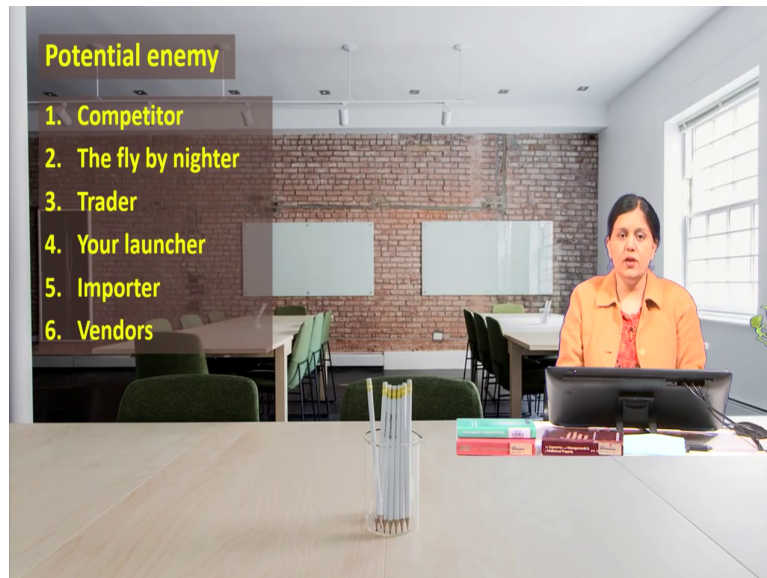
Now next question is, who is a potential buyer whether that is making a difference? Definitely that is making a difference. There may be an informed buyer. There may be an impulsive buyer. There may be unskilled or semi-skilled individuals who are buying your product. So, you can easily understand this concept who is your potential buyer? Decide I will not spend much time on this. Only one example I can give, Apple all of you know, what is their focus protecting the look and feel of the product?

Apple claimed IP in their war with Samsung like this that they have claimed in the that that big fight between Apple and Samsung was going on how they have projected their product or you can just check out. They have total seven utility patents, utility patent concept is not there in India, it is in USA, but they have seven utility patents, three design patterns that is again design patent in USA, they should have taken industrial design protection in India.

Trademarks on several iOS systems again, please remember whatever venture you may have trademark is I will say you should have a host of traders registration on the iPhone, iPod touch and iPad that they have protected and the packaging. So, you can imagine again packaging then traddress will come industrial design and copyright all what we can say play a major role here. So, this was their focus. So, now you think with this example and try to answer what is your focus? You may take a pause think over it and complete this exercise and then you move further.

Now next important thing after concentrating on who is a buyer, next is you have done the internal development related tasks.

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So, next question is from where you will have a threat because that is a for that only incubator concept, starter concept came, so you should know who is your potential enemy. So, there are probabilities that there are 6 potential enemies. I am just listing 6 here your competitor, then fly by nighter, trader, then your launcher, then importer and a vendors. Who can be your competitor?

Already present several product providers already in the market product provides the other. Obviously, but who else listen carefully that accept what I am saying is that in unfortunate scenario, what I am saying is that your friend, your friend with whom you are sharing details or your founder colleague or your team member they can be your competitor? So, we have to accept that.Ok

They may be your, that team member or colleague or a founder colleague or a your friend, maybe your competitor. So, it is like an alarming, you it is very difficult for you to accept that thing but think in a this way only because if you, if you are thinking of your venture as a long-term what we can say business, then you should be careful, that there is a probability this may happen.

So, anyone can be a competitor. It is harsh to handle such a cases if your near ones become a competitor for you. So, how to handle this we check in a while so we will go into details in a

few minutes. Next is like a fly-by-nighter. Now what is this category? These are the temporary competitors. You did not need to what we can say worry about them, but the probability is that in short time they may take a substantial market share.

So, keep watch on them. Next is like a traders. Now this is like you can understand easily and appreciate and I think you can able to manage if your trade become your competitors. A few tips we will give in a few minutes that what kind be the protection, how you can handle these potential enemies. So, moving further next is like a your launcher.

So, you can appreciate this too, that so decide on how much information please listen how much information you will share with launcher. You should be very careful about that particular thing. Now next is like an importer and that is a big problem like a big issue. So, chances are your own license holder, when you do the develop your product, you will do licensing activity, technology transfer related activity, that your license holder or the one other potential enemy may import the product and they will dump that counterfeit product and that is a big issue actually.

When importing is there without valid license. Next is like a vendor. Now, this is a universal problem. Yeah, we have to accept that thing. This is a very common thing that we have discussed in earlier module, but this is always a headache to organization. Many big organization many times ignore this. They just accept that 5 percent or 10 percent leakage will be always there.

It is affordable to big organization. For you as a start-up or if you are MSME, or if you are an individual entrepreneur, it is not affordable for you that somebody is imitating your product in an early stage of your venture development. So, please keep watch on that kind of a potential enemy and remember generally first imitator is your what we can say a local vendor or a competitor. So, I guess that is good enough for you.

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So, the next question is how you are going to handle a potential enemy 6 potential enemy we have listed how you can handle? So, there are six ways again potential IP identification first thing, second inventor share that is very important. The next is a competitor we will check that also, contracts, then trade secret and insurance. So, these are the 6 ways by which you can take care of a potential enemy. So, always do check on a potential IP identification, do periodic audit it is always better to avoid loss of any important IP.

So, always do check on potential IP identification, do periodic IP audit to avoid loss of any important invention protection. My general observation is, as MSME if you start filing one patent that is observation, in a few months' time you come up with a new better solution. So, you become a serial patent filing organization and of course, all IP of MSME is generally commercialized. It is like a 100 percent commercialization.

Now, I just give you the difference MSME, my observation is that if they file 10 patent they will always have a product with that 10 patent, 100 percent commercialization. In big organization the probability is like this and they say also that only 2 percent of a patent in a big organization are the core patent all other are like a strategic patents. So, we will not go much in details of that but MSME there are, they are like a what we can say once they file they become a series of patent come out of their venture.

So, next is like a MSME once they do this what we can say patent filing. Generally, what the thing is happening, my observation is like this that they get lot of benefits in the national as

well as international market. There are a few cases that big organizations are approaching MSME for a license that is also the scenario.

So, if you are start-up or if you are an individual entrepreneur or MSME if you, your patent is having that potential that to capture the market and you yourself are able to make what we can say little bit what we can say standing in the market and you have proved your product in the market probability is that big organization themselves will approach you and they will ask for a license.

Next is like inventor share now this is one thing which is very crucial in academic generally my observation in academic institute, this is more problem in academic institute. I have seen that several disputes are due to not following this step that is an inventor share. Now what is it? Here what the thing is happening that whenever you are filing form 1 of a patent. Whenever you are first filing a provisional maybe complete is going on, you are filing form 1 at that time only file this document that is inventor share and keep with you.

If in future such unfortunate event happen, you will be saved from that headache and trouble because of this particular issue which will rise due to the there is no clarity on inventor share. Remember your venture grows many issues you have to focus as it grows. You cannot invest time on such pity things against about revenue sharing in that phase. So this document is a very crucial, please do not ignore this.

Also you who will be the inventor. Never be emotional in that case be practical. I should share a one example here inventor share related that if you are a start-up, generally you are as very small group, right a very close group and maybe two founders are there and maybe two three employees of team of five very closely working and you built up a very close relationship.

Now what happen out of that emotional what we can say bonding and all you forget that you are running a business and sometimes you say that I should give whole credit to my team and I will put their name into the inventor. Yeah, you should keep their name as inventor and you should decide on an inventor share at that time only when you are filing the patent, but do not put their name as an applicant be careful at that stage, applicant should be organization.

You should have a policy document and there should be clearly written that any IP filing will be either on the name of a founder or either on the name of a that particular organization you

have incorporated either a start-up, either MSME, whatever it may be but it should be on that name. So, again that decision depends on how much fees you want to give there are concessions in the fees but maintenance fee in patent and all the things you have to think so probability is that you may thought that okay I will put it on individual name.

So, when you are putting on individual name founder name as applicant is good enough, do not put name of inventor in applicant because legal right will go to inventor also and if unfortunately, if your relationship go toss some because of some or the other reason that may create a headache for you. So, therefore it is always better when your patent is like that generated and whenever you are filing form 1 at that time, you just give that inventor share form. Ok. I guess this example may help you.

In another case, due to the dispute in the inventors the problem arise this is another example I am stating, that we were required some signatures. Now what happened in the prosecution time, sometimes if some changes we have to do probability is that I have to give form 1 again, if some query came and some mistake happen, some typo error and all that thing.

I have to file this form 1 again and if and this process maybe after two years or three years of your patent filing. Now at that time if there is a dispute between you and your employee who you have put in the name of inventor again, then many times this getting that signature is again issue and you have to again what we can say the solution for that will be very difficult.

You have to handle this case very what we can say he is not signing, you are not able to file form 1 and that will be a big headache for you and sometimes you have to what we can say is without prosecution also the that patent may go into the public domain. So, that kind of scenario very unfortunate scenario also can happen. If you are not able to handle this scenario and therefore be careful inventor share is a very what we can say, you cannot ignore about inventor sharing. Ok.

So, next that is contracts, trade secrets and insurance. Now contract this is again a big topic for deliberation only one sentence I will say that a good contract is a one which is drafted after anticipating minimum next 5 years technology development. Again I repeat, good contract is a one, good lawyer is a one who is drafting that contract that he will anticipate minimum 5 years of technology development and considering possible chances of disputes and must be open for your contract must be open for a closure if any serious issue arises between two parties.

So, that arrangement should be there in your contract. So, it is not a very, many times lawyer do copy paste, not a what we can say experienced lawyer. But if many, few lawyers I should say they may copy paste the format and they will give you the that contract. Probably they will not think about that technology development, possible issues. So, it is your duty to involve this counsel or patent drafting lawyer whosoever is, involve him so that he can understand the intricacies, brief him about that thing so he can take care about that particular contract and put the clauses accordingly into your contract.

That is a very important. Spend time on it. It is worth to spend time on it. Next is trade secret, a very big subject again. In one sentence about trade secret if I want to say if possible and required keep core processes, please listen carefully keep your core processes as a trade secret instead of patenting it. Because, I have told you already process patent is a very weak, it is very difficult for you to enforce a process patent.

Now next is an insurance. It is necessary, absolutely necessary. So, although we were in academic institute we used to take an insurance for our copyright protection. So, our project was related to copyright and in that case also we have taken an insurance. So, we are following that particular caution. If you are a parent driven organization, it is must for you and there are many companies which are giving you the insurance. It is a very easy just like your car insurance you can take this insurance.

So, we have seen potential enemies, competitor, fly by nighter, trader, your launcher, importer and vendors and we have seen how to handle that is a potential IP, inventor share, competitor, contracts, trade secret, insurance. So, what I will do here we will take a break in this session and we will continue this session as what are the different patent strategies and technology strategies in the next part of this session.

So, with this we come to the end of this session on a patent strategy. I hope you enjoyed the session if you have any queries or need help with reference to patent strategy, please do not hesitate to communicate with us. You can just rewind this session. I guess this may be a little heavy. So, rewind it, revisit it, just go through, probably you will appreciate it. And if you are really entering into the venture, this is very, very important session for you.