

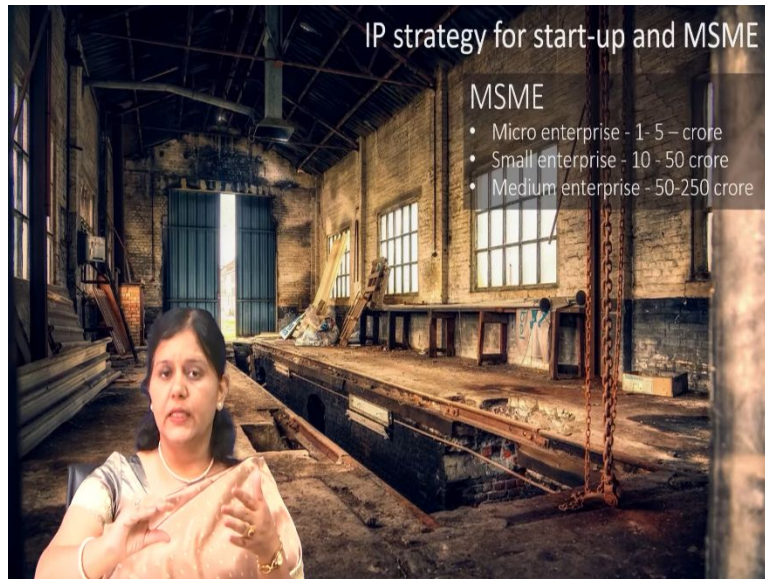
Entrepreneurship and IP strategy
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Lecture 31: IP Strategy for Start-up and MSME

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A very warm welcome in the first module of week 7 of the course, Entrepreneurship and IP strategy titled IP strategy for start-up and MSME. We will see first, what do you understand by MSME and start-up.

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So according to the definitions if we see or the guidelines of government of India, what do you mean by MSME? Now, a recent notification came in July 2020 and according to that, micro, small, medium; that MSME that is a micro, small, medium enterprises. So what do you mean by micro, what do you mean by small and what do you mean by medium enterprises?

So guideline is like this, when we are talking about a micro enterprise, it is expected that the investment in plant and machinery or equipment, whatever it may be, it should not exceed 1 crore rupees and turnover does not exceed 5 crores. And therefore, you can see the number like 1 and 5 in the, on the screen. So it is like a, 1 crore is a investment and 5 crore kind of a turnover, this is a maximum cap it is given.

When we are talking about a small enterprise, here the investment in plant and machinery or equipment, it is expected that it should not exceed 10 crores and turnover, it should not be more than 50 crores. So that is a 10 and a 50 investment and a turnover. And when we are talking about a medium enterprises, here, the investment in plant and machinery is like a, it should not exceed more than 50 crore rupees and turnover, it should not exceed 250 crore rupees.

So that is a 50 and a 250, that is a investment and a turnover. So that is a cap which is given and we know that there is a special kind of a arrangement and you can get a Udyog Aadhar certificate from government, that is MSME that you have to follow certain procedure and you have to, means why I am telling you this because when you are filing patent or when you are filing trademark, if you have seen or any IP when you have seen, there they have given the categories.

Now in that categories, if you see, there is a category like individual and start-up, that is a one category and then that fall, that is a one categorization is there I am talking about a patent because in trademark, that categorization is changing. So that is a categorization in the patent. Startup and individual. Second category they have given a MSME, that is a this category. And the third category like a other kind of thing. So if you have to file, and what is the benefit of that?

There is a definitely the change or fee structure if you see, that fee structure is changing and we have, we know that if it is a individual or a startup, that fee structure is a 1650, I am talking about a online mode, 1650. If it is a MSME, it is a 4000 and if it is a other, that is a rest whatever is there, they have to give 8000 as a application fee. And then accordingly if you see, that fee structure either twice it is or four times it is, that difference you can see in between MSME and a other.

And so therefore, you require this certificate, Udyog Aadhar certificate when you are filing that under that category you will require and we should know whether I am falling in that category, we have to check this limit of turnover and a investment. So this is about the MSME. Now how, how you will know about a start-up? What is a definition of a start-up or what are the criteria for a you to be become as a start-up?

Now, here it is said that it should be a incorporated as a private limited company, absolutely fine according to Company's Act. Second, that is it may be a partnership firm. Then according to that Partnership Act or it may be a limited liability partnership according to that Limited Liability Partnership Act. And if any of these categories is absolutely fine, then the period of incorporation and today's date, whatever it may be, it should be less than 10 years.

So this facility, or you will be as a start-up, we have seen, in one of the module, we will see that related to that incubator, whatever incubator and research parks are there, we have seen that probably it is a upcoming module, in that you will see that in the incubator that generally 3 to 5 years timeline is given by the incubators for any organisation, any start-up to graduate. Here, when you are talking about a start-up, government is giving you a status of a start-up for a 10 years.

I guess this is a good enough time to be remain, to be in that particular category as the start-up because you are getting so many facilities when you register yourself as a start-up. That specific

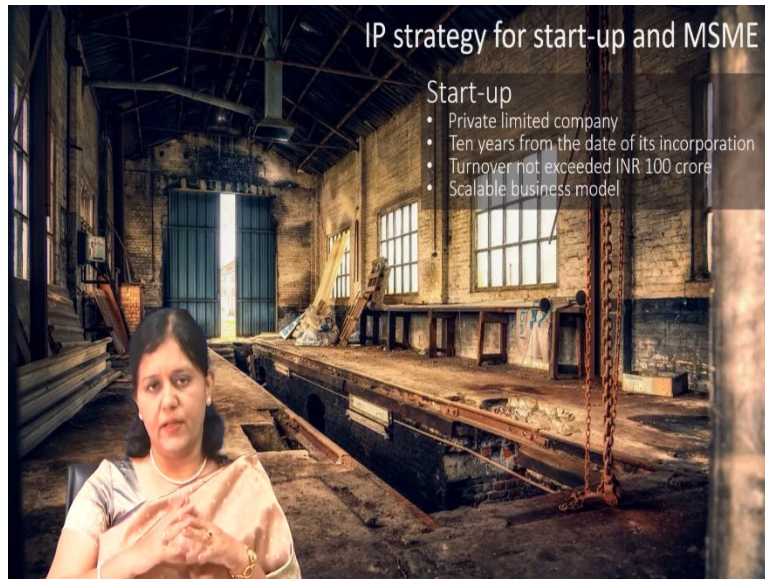
procedure is there and if we follow that procedure, you will be considered as a start-up according to that guidelines of a government of India and you are getting benefits accordingly. Then the next is like a turnover. They have given the cap on the turnover also that it should not exceed 100 crore. So when you are talking about a start-up, your turnover should not cross that 100 crore.

So this is a cap which is given. So when we are talking about a start-up, you have to follow that criteria that is registration, that cap that is of a 100 crores and a timeline that is of a 10 years. This three important things are there. And then, a four important points we have to follow if you are a start-up, it is expected that you should be working towards a innovation development or improvement of a product or process. So it is expected you are developing something, you are adding something into the domain and you are developing your entrepreneurial activity around that particular thing.

It should be a scalable business model, second thing. Then it should have a high potential of a employment generation, all these events, Make in India or Start up India, all these like a schemes, government schemes are there, definitely it is expected that there should be employment generation and there should be a contribution into the economy. So obviously, this two, that is employment generation and wealth creation, these are the major, what we can say, points when we are talking about a start-up.

So, if we follow this particular three characteristics like a registration, then that particular kind of a cap of 100 crore and that is of a timeline of 10 years and if you are showing that yes, you are like a working towards innovation, improving that product processes, your model, business model is a scalable kind of thing and you are generating employment and creating wealth, yes, you are coming under the, that particular what we can say, start-up category. Now, when we see now, we have seen that definition or a guidelines or a criteria which are followed by the, this start-up and whatever MSME is there.

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Generally, when we are dealing with this start-up activity or MSME, both means I will consider both because both these categories when we see, obviously you, you are, means when we are in that particular mode, we are much more in that many other things like a development of product or a we are searching for a qualified employees or a capital raise, fund raising that is one of the, like a important challenge when we are talking about these activities when we are going.

And probably what will happen that in that particular activity, probably you will forget about intellectual property which is giving you a competitive intelligence the advantage into the market. And again, the important thing is, when we are talking about a intellectual property, especially patent when we are talking, it is little bit costly compared to trademark industrial design and copyright and in the modules we have seen that, yes you can do on your own trademark registration, copyright and industrial design so you can save on that particular thing.

Only you can just give that government fee and you can do away with that particular thing. But for patent, you have to invest some amount of money and probably you may not be easily ready for that particular investment but probability is very high that if you will not take a decision about that thing properly, you may make a mistake and may be your important invention may go into public domain.

But, so when we are talking about a IP strategy, we have to very careful when we are talking, we do appreciate the that burden of fundraising, employment, employee search and all that thing, but along with that, this is a very important thing we have to look into and we have seen the Google

case that how with a one patent they have created, Stanford also created that particular license fee and all that thing and Google, you have seen the growth and all and we have seen the few points when we are dealing, when we have dealt with a Google case that how the start-up or how the entrepreneur can look into the five important points and we have taken the example of Google. So considering that, what we will see, we will focus now on the IP strategy of this MSME and this start-up on a 10 point actually.

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So we will see 10 points related to that and around that 10 points, we will see how we can concentrate on the IP strategy. So the points are like confidentiality, ownership and percentage sharing, IP policy is there, IP auditing is there, trademark, patent filing and administration, marketing strategy and related IP decisions, use of open innovation, avoid litigation and then the talent acquisition and IP. So we will keep our discussion very focused towards IP and based on that, we will see these 10 points.

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So let us start with a confidentiality. Now when we are talking about a confidentiality and a IP, we should be aware about a importance of confidential, especially the patent filing. In trademark filing, there will not be any issue kind of thing because used trademark, you can do registration of a trademark after use also that facility is available. But in a patent, if you discuss something, probability is like that, there is a probability of a theft, there is a probability like a somebody will start venture before you and he can, he or she will be a competitor you.

And the most important thing is like, if it is published in a public domain and you file in the examination, during that examination probably examiner will reject your patent granting based on already it is on a public domain. So, we have to take a utmost care about a technology related activity if you are doing, confidentiality is a very important, either in the start-up or in the MSME, anywhere we have to take that caution. Now, further that is the next thing, ownership and percent sharing.

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Now, when we are talking about ownership and a percent sharing, we have to be very careful about that particular contribution of everybody who have involved in that particular activity of a invention or innovation creation whatever it may be. Probability is like this, that when you, MSME when you take, the employee number is very small, it is a close group that relationship is like a more emotional and kind of activity, means that, that is more, what we can say, important there in that particular small setup.

And during that, there is a probability or sometimes we get carried away because of that thing and we forget to be very professional and keeping the percentage sharing and this documentations related to that particular activity which is going on that who have contributed what. And if we forget to do that particular activity, that creates issue whenever exactly your venture grows and when the, that revenue generation starts, at that time it become a problem that what share who will get and that creates a problem.

And then the, what we can say, it will hamper relations also, there will be litigation also and all other things will come into the, in that scenario and completely the activity means it will hamper the activity also. So therefore, it is always better that, if there are 10 people suppose, better that write down how much share of that 10 who have contributed. That is a very important when we are talking about a percent sharing.

About ownership, when we will see about a IP policy, we will elaborate on that but for ownership, we have to be very careful when we are talking about a start-up and MSME. And generally, suggested thing is that better do a registration on the name of a company. That is a one safest way we can say, and why it is important? Suppose, you are a founder, so 3 founders are there, and you say that individual filing is saving money like a 1650 and a 4000, I am just taking one application related example.

Now if that saving is there, probability is that you get attracted towards that I am getting saving on that money, fund is issue and it is better that now I should not do registration as a MSME, instead of I will do a registration on my colleagues, you are there or your partner and on partner's name that, means application is done, with the MSME example I am talking about this, I am not talking with a start-up example.

Now, what will happen that, if you do that registration, that application and then the among that 3 partner if some one partner leaves the company because of any reason, it may be a, means the movement or that move from that, the partner, from that partnership firm may be like on good terms but sometimes it may be on bad terms and if it is that, then you will be in a big problem when the further patent prosecution will start.

And therefore, instead of keeping it on a individual name, if you keep on the company name, that is always a safe way that, that is a considering the ownership. So that is about the ownership. I guess this is good enough for you. Now, the next is like a, about a IP policy.

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Now when we are talking about a IP policy, you, it will feel like, why we will need a policy, we are just now starting or MSME will say, we are a such a small group, why we will require a policy and that also IP policy? It is better that the, some guidelines related to IP filing who will be the owner, what will be the percentage and what will be about a confidentiality, if that kind of things are there, if you note down some guidelines about that or how you are expecting things related to confidentiality, what will be the terms and conditions you are expecting.

If you write down something like that and then you convert it into the policy document, probability is very high that it will be a very safe kind of a way or a very systematic way, a very professional way to keep your IP protected. Suppose you are taking help of consultant or independent contractors in that agreements and contracts will be there, what that agreements are, what that, there is a difference in agreement and contracts.

So I am using both words like agreements are there, contracts are there, we should be very careful about that particular thing and a in policy document, there should be some clause related to that particular like a, how consultant that input, intellectual input of a consultant or if vendor is

there, if that intellectual input is there, how you are treating that particular thing. If business partner is there or a joint development is there, how that particular activity will go and who will own the IP.

Or if confidentiality information is there and you are deciding on, deciding that you will keep it as a trade secret, then if something goes wrong about that particular thing, what remedies you are taking, what action you are taking about that - you have to be very clear on that particular thing. So if disclosure requirement is there, or, related to any idea or invention or (discoveries), discoveries it will not come into the IP but inventions and ideas are there, how you are going to, like procedure, which procedure you are going to follow.

So all these things when we are talking about IP related whatever procedures are there, whatever procedures you are following, it is always better, you maybe MSME, you may be a start-up, start-up with a three people only, till we will suggest that follow IP policy because we have seen the cases, we have seen the cases with a five person start-up also and that was a big mess actually.

So therefore it is a better, you may be a five person kind of a activity, a start-up activity may be there or MSME group is there, IP policy and some guidelines, clear cut ownership related decisions, that guidelines you should put into the policy document and that will be the safest way for you.

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Next is like a IP audit. Now, when we are talking about a IP audit actually, you will say why we will require IP audit, we are MSME or a start-up, big organizations will require IP audit and why should we do? Now the reason is like this, that if you do IP audit, it is not necessary that you should do it in a starting phase like a first month of your activity and all that thing, probably you will not require or I will say it is not required at that time.

But when your activity like technology development is there and if it is going on, we will suggest you that after say, at least, at least means one year span if is over, better you do a IP audit. Allow that one year kind of a activity and after one year probably if you do the IP audit, IP audit is like a check whether there is, there are various, if you do detailed IP audit, that is a very different thing. For you, as a start-up or MSME, that detailed audit is not required and it is not applicable also to you.

It may not be applicable to you, it is like a small kind of activity to check whether really something, potential IP it is there, or whether you have taken a right decisions related to your IP related kind of a, say means trademark related, or a patent related, or a design related, copyright related, whether your decisions are in a right direction or not. Whether a particular contracts and agreements which you have executed in that one year, whether that terms, whatever you have put, the language whatever you have used in that, whether it is in a right way or not.

Or whether the policy document whatever you have created, whether it is in a right way it is drafted or not. So, something like that, if you could check through that IP audit, probably that

will help you to take action immediately at the starting phase only and you can plan with the help of IP audit, you can plan your IP related kind of further procedures effectively and that will be very helpful to you. So this is I guess for IP audit. Now what we will do, we will do, we will watch one video, it is related to a start-up India and you can see the, that how government of India is giving various benefits through this Start-up India kind of activity. Please watch this video.

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(Video Startup India journey shown 21:30 to 22:18)





#startupindia

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Narration: A billion dreams and behind each, there is an idea. Launching a start-up is a dream for many entrepreneurs today. And our honorable Prime Minister's vision is a guiding light.

Prime Minister of India (Speaks in Hindi): Hindustan ka koi zilla, Hindustan ka koi block aisa na ho, ke aane wale dinon mein, naye start-up shuru na huae hon.

Narration: Startup India, an initiative of the government of India, that promotes entrepreneurship by nurturing, mentoring and facilitating start-ups throughout their lifecycle. January 2016 saw the launch of the action plan, a big step to help entrepreneurs get started.

Shubham Khurana: We had a tech start-up idea, but did not know where to begin.

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Professor: So, now we will move further and we will see a little bit about a trademark. Now, we have told you that trademark registration, you can do at the initial phase or maybe after a some time span also, if you could do, means you can use a trade name that registration is allowed and you can do registration after that time also, means you have started your activity, your MSME activity is going on, incorporation is done, MSME already you have done the incorporation private limited or something like that, already that kind of activity is over and now you are offering some product or service into the market, you have worked on that particular thing and probably you would like to name that particular product kind, the product and you have to sell with that particular name, that particular product into the market.

And probably, here you have to choose right (trade) trademark for that particular product or about that particular service. How will you do that? It is like a, in short like a naming ceremony kind of activity is there, but it is should be a very, what we can say, a very planned activity it is, how you can do that thing, few tips about that, how you can choose a trademark, in the trademark week you have already seen a different kinds of a trademarks and which can be, you probably have thought about your trademark already.

But here, a few more tips we can give, you can do a Google search, best one. You can search on a patent and trademark office website, you know now that trademark search and all, we have, we have visited that site. So you can visit that site and related to that particular class or that

particular product, where you are now trying to develop that particular activity, you can do the search maybe India Patent and Trademark Office, US Patent and Trademark Office.

If your market, you have decided, you can go all that kind of a countries and you can check their website and you can see that what are the trademarks already registered kind of a thing. Then you can, you will require a domain name also, for domain name also you can do a search in the registrars of that Godaddy and the such kind of a that domain name providers are there, you can do the search there also and you can see which will be the good fit for that your particular activity.

So, and we know the characteristics of a trademark, it should be distinctive, it should be like a memorable or something like that, accordingly you can go and you can do the, that decide on the name and you can do the registration of a trademark and you, you are very well aware about good trademarks like Ola, Oyo, Google, Yahoo and all this kind of a names. So this is a trademark.

Next is like a patent filing and administration. Again, this is something very important thing and observation, it is a observation means MSME, when they file one patent, they start filing a series of patents and that is a general observation means you will file some patent now and then you realize.. you realize the value of that and you definitely get benefit of that and then you go on filing further patents.

And wherever I have dealt with a MSME, I have found that I have filed one patent and immediately with a gap of six months or one year, I have filed that one or two patents immediately after gap of one year. Related to that domain, with a higher kind of a development and all. Or some, in other sector whatever that particular activity is going on in that MSME.

So it is a very common kind of a activity which is going on in MSMEs and they are doing a very good patent filing and they are administrating that and they are getting a very good, big organizations themselves, this is my observation or this is my experience when I was working with a MSME, that yes, that big organization themselves have contacted these MSMEs for the further development on that particular product because already it is patented, very promising and

they are now jointly they are developing that further kind of offerings related to that particular product.

So therefore, what we can say, if you have a that patent filed at a first place, that chances of that collaborative activity or a very good negotiation are very little bit higher and you can get a benefit out of that particular thing. So that is about a patent filing.

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Now the marketing strategy and related IP decisions kind of a thing. So for example, if we have to, if we are very clear on a IP, if, if you are in a manufacturing, for example, probably you would like to enter into the country, the protect yourr IP, means if you are thinking of a development of your business in other countries, probably you would like to protect your IP in other countries.

Then, if business if you are planning to go into other country, obviously you have to protect the IP and as we know, IP is very time bound activity is there. We have to take decisions, especially in patent, we have to take decisions within that first 12 months only. So that decisions, you have to be very careful PCT filing or conventional patent application, we have to be very careful about that decision. That is a one.

Then about a trademark, if you are filing, you should be aware about a, if you are a expanding like a 20 countries or 25 countries, you should be aware about a Madrid Protocol kind of activity

is there, that is a, one route is there. Just like in patent, there is a PCT route is there, in trademark there is a Madrid Protocol is there. So if you are very clear on your marketing and where your market is, probably these decisions are very easy for you and you can take these decisions with a PCT filing or a Madrid Protocol, these are the easy way kind of a thing.

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Next is like a open innovation. Now, use of open innovation in a starting phase probably you may not be comfortable but collaborative activity can be possible when you have a first patent which is filed and when you are very like a confident about your, you are confident about that technology and you are confident that yes, I can negotiate with the other party, probably at that time you can go for a, like a little bit towards open innovation.

Now, second kind of a scenario related to open innovation will be like, this for this you should be very careful. If you are using a open source software and based on that if you are developing something, you should be very careful because if something which is in open source and if you develop something based on that, what will happen, you will not able to do commercialization of that. So, you have to be very careful, you have to read that license what it is, if it is allowing commercialization or if it is not allowing, what that license is, so we should be very careful about that thing and then accordingly you have to take a decision. So this is about the open innovation.

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Then, avoid a litigation. That is the most important thing is avoid litigation. Maybe by ignorance also, means law, law do not see that ignorance and all so we, by ignorance also we cannot enter into the litigation. If you have to enter or file a patent and all that thing, do proper patent search and then only file that patent (draft) patent and go for that examination and all. But after application only, you generally start the activity and if you come to know about a it will not be granted and all that thing, probably it will be a big setback for you.

And you should be very careful about this particular patent filing, do search report and then only you go for that particular thing. And if somebody copies your kind of a patent or if your IP, the easy way, means it is not necessary that immediately go and file a case against that particular party, it is not necessary. Simple notices, simple emails is good enough for them to give the warning that yes, first information then warning.

If with the first information they get, they get the information about yes, it is like a IP protected, probably most of the people, if they are, by ignorant they are doing that particular activity they will stop that thing. If somebody willfully doing that thing, yes you can give warning. And then if it is not able, you are not able to stop that thing, you can go for the litigation but litigation is not the first step to enter if any infringement happen.

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Now the last thing is a talent acquisition and IP. Now why I have taken this thing? A big organizations when, if you see now the cases, privacy law and the data privacy and all, all these activities are going on. IP related, confidential trade secret and all that thing, material is always there with a big organization and data is a very important thing. So when you are thinking about a talent acquisition, and especially if you are hiring somebody from your competitor, if this kind of activity is happening, you have to be very careful and make sure that there will be no any malpractice or no any your that person who is, or that person who is coming from that organization is not carrying any data with him and we have to be very careful.

Otherwise, you, as you have hired him and that person, both will be in a big trouble because of this kind of a activity. So that is a talent, when you are doing talent acquisition, you be careful when you are talking about that particular. Probably you can clearly ask to that person or you should have that one document related to that saying that yes I have not carrying any confidential material and I will not use it here. That will be the best way actually that you will be very safe kind of a thing, safe for you and you can do that particular kind of a measure for that kind of a activity. So this is about a talent acquisition and a IP. So, with these 10 points, I guess, means it is good enough for you to design your IP strategy.

This, this means, so with considering time we cannot go in more details of these points, but I guess this information is good enough for you, that yes, confidentiality, ownership and percent sharing, IP policy, IP audit, trademark, patent filing and administration, marketing strategy and

related IP decisions, use of open innovation, avoid litigation and a talent acquisition and IP. I guess, if we follow these 10 points related to IP, probably that will be good enough for you to handle your start-up activity and MSME activity considering IP point of view. With this, we are coming to the end of this session, see you in the next session. Thank you.