

The perils of not protecting intellectual property for new ventures

The Economic Times, 20th March 2015

<http://economictimes.indiatimes.com/news/emerging-businesses/startups/the-perils-of-not-protecting-intellectual-property-for-new-ventures/articleshow/46628782.cms>

Soothe Healthcare's big dilemma ahead of the launch of its affordable sanitary napkin was whether or not to patent the technology and design. In the end, the company decided against it.

"At this point, it's not worth the risk-reward," said Sahil Dharia, managing director of the two-year-old startup. "It's an acceptable loss." The startup world has two kinds of entrepreneurs: those who patent their ideas, and those who don't.



Dharia falls in the latter category, and with good reason. He would rather Soothe use its capital to build the brand, Paree, than to fight lawsuits over infringements. In the first group are a small number of hardware product startups following strong intellectual property traditions established abroad, both for legal protection and to be taken seriously by investors.

As a long-term business strategy, protecting a company's intellectual assets has its advantages. For instance, a patent would allow a startup to expand to new geographies quicker by entering into licensing agreements with other firms. But given that acquiring and protecting an intellectual property right is tedious and expensive, it is not an easy decision for startups.

"There is definitely a risk when these businesses accumulate market or technology, when they have huge revenues and are sitting on cash reserves. Competition will use every possible lever against them," said Sunil Abraham, executive director of Bengaluru-based research organization Centre for Internet and Society.

As a startup matures in terms of size and scale, the importance of intellectual property becomes evident, particularly when raising funds. "Having an IP portfolio is valuable if the company is being acquired by a larger company that can leverage and protect the IP," said Sandeep Singhal, co-founder and managing director of Nexus Venture Partners. Nexus has backed product startups such as solar firm

WHY PATENT	WHY NOT TO PATENT
 <ul style="list-style-type: none"> Establish legitimacy for investors and acquirers Protect your assets from the start If you have potential licensees in other geographies for your product If you're selling in the US 	 <ul style="list-style-type: none"> Avoid law suits with copycats Save capital Short innovation cycle If you're selling only in India

AVERAGE COST AND TIME TO FILE AND GRANT A PATENT	
US UP TO 10 LAKHS ✓ 2-4 YEARS	SINGAPORE UP TO 8 LAKHS ✓ 4-7 YEARS
INDIA UP TO 5 LAKHS ✓ 5-7 YEARS	EU UP TO 6 LAKHS ✓ 3-5 YEARS
 Average cost to file a patent, not including agent and attorney fees	 Average time for patent to be granted

d.light and enterprise solutions company Druva, which has registered patents abroad. "While valuation is not determined by IP, we will look at a business plan that has proven differentiated IP than one without," Singhal said.

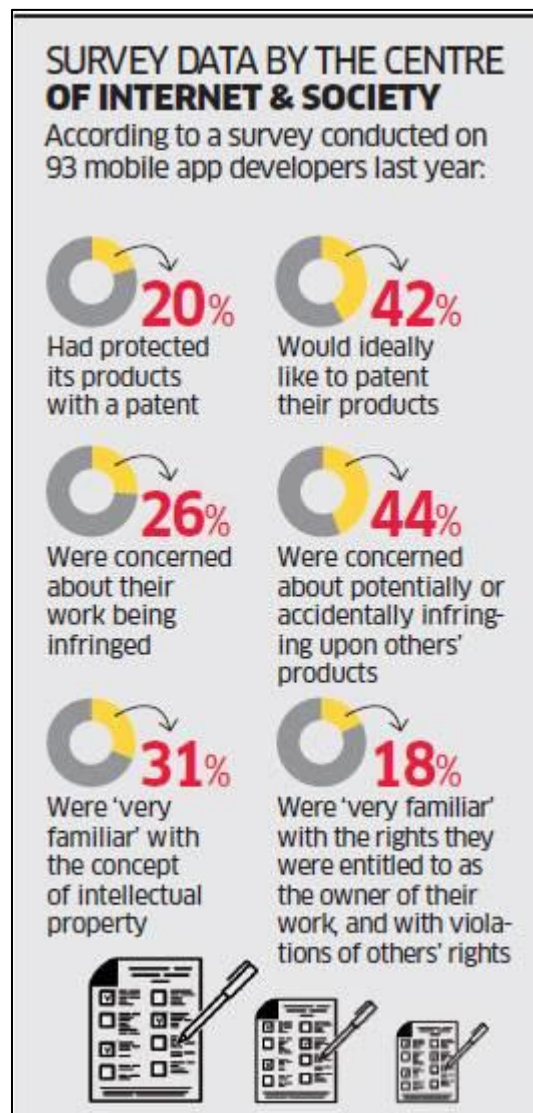
"It is like a double-edged sword. Patenting is very expensive, but if somebody else is doing something similar and they patent it, you could be out of business," said Abhishek Latthe, founder of two-year-old Internet of Things company SenseGiz, which filed for two patents last year on product and algorithmic design. The company has sold 20,000 units of its first product, a bluetooth tracking tag, and is in talks to raise capital.

Patent litigation in India is still at a nascent stage, bogged by inefficient and inconsistent courts. "A lot of out-of-court settlements happen, and the compensation that courts are awarding for IPR infringements are still not very high - Rs15 lakh is one of the highest I've seen," said Abhishek Pandurangi, partner at Mumbai-based law firm Khurana & Khurana, which advises startups on IPR.

Taking the longer view, Indian startups -especially those focusing on the US market that is awash with non-practicing entities or so-called "patent trolls" - have taken steps to license their intellectual property, often in focus markets with strong IP regimes such as the United States, Singapore and Europe. Software startups, the bulk of India's startup ecosystem, are divided on the issue. Given the rapid innovation cycle that renders most new technology irrelevant in six months, any effort channeled into protecting intellectual property seems futile.

Besides, many budding startups cannot afford to file a patent. Taking into account attorney and agent costs, registering a patent could cost up to Rs 5 lakh in India and Rs 10 lakh in the United States. The effort can take up to 9 years, or, given that patent decisions highly depend on local policy, "go down the drain," as one IP researcher put it. According to the Indian Patents Act, 1970, mathematical methods, computer programmes and algorithms fall under the category of "Inventions not Patentable," meaning that software innovations cannot be patented in India.

For many entrepreneurs in India, intellectual property is not core to their company's value or business model. They prefer instead to focus on priorities that pay off in the short term - acquiring customers, developing products and raising funds. "There is no reason to patent sometimes," said Jayesh Badani, founder and chief executive of innovator marketplace Ideaken.



The Centre for Internet and Society found that of 93 mobile app developers in India who were surveyed for a study last year, only 20% had acquired patents to protect their products, and 26% were concerned about their work being infringed. Patent grants to Indian applicants grew 45% between 2002 and 2013, compared with 300% for foreign inventions, show data available from the Controller General of Patents, Designs, and Trademarks.

Consider the case of Jaydeep Mandal, a 29-year-old inventor who won a national invention award while an engineering student in Calcutta, which paid for him to patent his technology. Today, he is a managing director at four-year-old Aakar Innovations, which spent a year-and-half developing a machine that produces compostable menstrual hygiene products. The company has filed patents in India, Bangladesh and Cambodia.

"I learnt the importance of IPR from day one so I'm concerned, but many entrepreneurs would not know how important it is. That's how many individual innovators lose out," Mandal said. Dharia of Soothe Healthcare has a different take on this. "If I had lots of money I would patent," he said. "But I believe in free markets - people will copy design and that is how the market raises its standards, and it forces me to innovate again."