YUSARN AUDREY

Yusarn Audrey
Advocates and Solicitors · Registered Patent and Trademark Agent
24 Raffles Place, #27-01 Clifford Centre Singapore 048621
T 65 6358 2865 F 65 6358 2864
enquiries@yusarn.com | www.yusarn.com
UEN No. 53130798X

IP and SMEs - Taking your ideas to market

Practical Considerations in the IP Journey

Small Medium Enterprises (SMEs) evolving, adapting and innovating to embrace intellectual property (IP) and all it represents, will be key to the economic future of many industries and countries.

In these times, we cannot talk about the economy without at least touching on the impact of the Covid 19 pandemic around the world. Many companies have been impacted and SMEs hardest hit, particularly in sectors that involve touch, travel and physical interaction. Given SMEs contribute to the economy significantly in most countries, representing 90% of business and more than 50% employment worldwide, understanding and supporting SMEs, is critical.

In a recent survey conducted by Ocean Tomo, published in our LESI publication les Nouvelles December 2020 edition, Covid 19 has accelerated the digitization of the global economy, allowing telemedicine, telework and online education during the lockdown of many countries. Online shopping grew exponentially and work from home (WFH) is now the new normal rather than the exception with escalating demand for Zoom, Skype, WebEx, WeChat, DingTalk and Microsoft Teams to name a few. All this underscores the importance of IP in the Post Covid world as IP remains resilient given that business will need to prioritise investment in the above described models. The article concludes that all this will accelerate the economic inversion for countries to move from tangible to intangible economics.

It is therefore timely that the World IP Organisation has chosen the theme "IP & SMEs: Taking your ideas to market" for the World IP Day launching on April 26th, 2021. We all recognise that SMEs when nurtured, when facilitated in their journey to translate products and services to useful applications and contributions in the marketplace, can emerge stronger and more resilient.

Commercialisation of IP has been the business of LES globally for over 50 years! Training and education, sharing of best practices and in particular growing IP deals is what has progressed this association of which I am proud to serve as President of LES International, an umbrella organisation of 33 chapters covering 90 countries.

There are a myriad of aspects that can be discussed in this article as it is indeed acknowledged that getting products and IP to the marketplace requires an appropriate and well-oiled ecosystem as well, one WIPO is well placed to influence through its policies and programmes. LESI is happy to partner with WIPO in moving towards that goal.

However for the purpose of this article I would like to focus on two key points:

(1) The need for SMEs to seriously start focusing on its IP.
(2) Commercialisation means you need to know how to be "IP attractive".

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Why IP?

It may appear trite but whilst SMEs are creative and innovative, many forget to think about building their IP to protect those very ideas that help them generate revenue and wealth.

IP is not one single thing but a bundle of different categories in law that protect different aspects – for example, patents cover technology and innovations whilst trademarks help protect reputation, goodwill and the identity of the producer (source of goods or services) and help ensure quality (assuring to the consumer). SMEs need to understand what IP does and how it can help them.

Here I pause to add whilst IP is the ultimate fruit, there are necessary seeds to be planted and trees to be grown in order for this to happen.

In this regard a term that has been used to help SMEs understand this better is the bigger group called intellectual assets (IA), of which intellectual property is a subset.

Whilst IP is very legally driven, as IP does not operate without a strong legal ecosystem and infrastructure at national and regional level, IA is arguably people driven as it covers all products of the mind.

There are those who would submit that the potential value of technology and intellectual assets can only be fully realised if it is accompanied by people-centric perspectives (see "People as Enablers", article by Thomas Bereute et al, les Nouvelles June Edition 2020). This management of the human factor is what will achieve value realisation through business transactions that are innovation and IP driven because the business owners and decision makers together with IP managers support and complement each other throughout the process.

Accordingly the important considerations here in summary are:

(a) Know what IP is, what IP you may have and what IA drives that.
(b) Get your people involved early and preferably in an integrated fashion.
(c) Protect your IP to get a strong foundation to transact with.

Becoming IP attractive

I love the quote by Douglas C Engelbart:

"Stanford Research Institute patented the mouse but they really had no idea for its value. Some years later I learned that they had licensed it to Apple for something like $40,000".

This quote is helpful in reminding enterprises that it isn't enough to invent great breakthroughs or useful products but it is equally important to understand the value of what you have, how to sell

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the idea and, in that, how to price it. It also requires understanding the marketplace and delivery of that product to where it is needed. Interestingly, the main way to be able to get support towards all this is if you already have an IP portfolio in place. Why? Because if there is no IP to begin with, you are unlikely to even attract investors needing assurance their investment can make a return, nor licensees who are savvy enough to ask why they should pay for something they can just copy or reproduce for free?

The above is only intended to tease out thought, as the solution is not a one line answer or a simplistic "just file IP". It recognises that surely commercialising IP goes beyond just having a patent or trademark. This why the formulation of cohesive IP strategies, putting in place IP management systems and even, where needed, valuing your IP portfolio are important concepts to understand.

One thing that comes across as critical is that this journey is best not set out alone. The immense market opportunities out there mean often you cannot resolve all technical problems in-house – there will be innovation gaps that you will encounter which need a more integrated approach. Collaboration and cross licensing become significant tools to be deployed. Some may query the value of open innovation in this conversation but it too has its role in the emerging IP ecosystem that SMEs and enterprises need to work and play in if they want to grow, globally. Here I would say, how open innovation is harnessed, is part of a strategic IP plan for any business taking ideas to market.

Entrepreneurs are often up at night because they worry about the need for "speed to market" but are desperate for quick development of products and services. Also access to technology which is converging at breakneck speed emphasises this requirement.

Developing a more sophisticated appreciation of this innovation need will help SMEs begin a more integrated approach to obtaining the technology and therefore remain in the market, if not excel. Here considering the option to acquire IP or technology by licensing-in, either for further development of in-house products, or for monetisation of existing IP is strategically. Large companies like Apple, Facebook or Google do so, why not SMEs? Owners of SMEs need to start asking those questions too.

Recognise though that this is just the beginning, as SMES work with tight budget constraints. So being focused, by clearly understanding the tech licensed or acquired and its qualifications or characteristics are crucial.

What is remarkable is that the Covid 19 global challenge has caused governments around the world, especially these with limited R&D capabilities, to start encouraging the sourcing for technology transfer for their local companies – these countries are seriously looking into what is needed to be licensed to create local capabilities.

The definition by Pedro Roffe, "Transfer of Technology" UNCTAD's Code of Conduct is instructive (International Lawyer Vol 19. No. pp 689-707):

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"The transfer of systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service. Transactions involving the mere sale or the mere lease of goods are specifically excluded".
(emphasis mine)

Indeed the work of WIPO to continue to engage IP offices around the world to support this is to be applauded.

In Singapore, where I am based and have served as board member of the IP Office of Singapore (IPOS) since 2015, this emphasis has been included in the masterplan to be an IP hub as the need to raise innovation capabilities is acutely felt as an industrialised economy which is very open. Singapore has consistently ranked high in various independent innovation indexes including WIPO's Global Innovation Index ranking and Bloomberg's annual equivalent.

The co-relation between technological change and economic impact is clearly underscored.

Nevertheless there are challenges such as asymmetry of capability to absorb or understand and digest complex aspects of technology transfer and so the efforts must continue, policies specially customised to address these issues.

Zooming back down to the companies within these economies, SMEs can help themselves by working with professionals who understand how to do so cost effectively or be plugged in to a network, such as with publicly funded research institutes, universities or other SMEs of similar interest or joining a group at its forefront (like LESI!) engaged in the business of education and training in advancing the business of IP globally.

Conclusion

Building strong core local companies especially SMEs is crucial to all countries. Helping SMEs understand the underlying value of the IP they create and valuing protection of the same, and dealing with assets effectively, including learning to embrace technology transfer and / or transacting with their own IP is an important work that should continue globally.

If you would like to have further information on this write-up, please contact:

Audrey Yap (Ms.)
Regional Managing Partner

D (65) 6358 2865
F (65) 6358 2864
audrey@yusarn.com

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