

# INTELLECTUAL PROPERTY RIGHTS

A SUCCESS MANTRA



*Sustainability of any business entity finds its dependence of a well-established equilibrium. Equilibrium between demand and supply; between assets and liabilities; between internal and external factors or variables; between market driven changes and entity's response time; and between identification and resolution of a given problem. One important aspect for establishing and maintaining such equilibrium is innovation and Intellectual Property.*

*Change, being the only constant, should come naturally to a growth oriented business entity. This stands equally true for Intellectual Property (IP), where to realize and redeem the investment in an innovation, a perfect balance is needed during its generation, protection, enforcement, and exploitation. If the originator doesn't improve his own creation, someone else will do. A well-managed IP can be a goldmine for a creator.*

*To sustain in long run in a competitive business environment, acquiring IP Rights is the best "Success Mantra". However, during foundation period many organizations often undermine this and in long run they find themselves struggling for survival when sudden technological drift happens in the market.*

## Generation

Creativity is valued most when it is 'ORIGINAL'. Knowingly or unknowingly, sometimes, creativities end up being a sheer cases of 'Reinventing the wheel'. This may be due to many reasons like, unawareness, misplaced objectives, or unplanned R&D activities. Though mind is the basic ingredient of innovation process, the genuine mind to machine effort is not reflected most of the time in the process or product outcome. "Patent from Patents" is a very rare practice, which should be applied by the innovators during the process of innovation. A fair and genuine effort should appear first during generation by conducting prior art searches which easily reveal the exact genuinity of the invention. A prior art search gives an eagle's eye view towards innovation process and ultimately saves lots of time, effort, and cost while reinventing the wheel.

Competitiveness is the real essence in a business of monopolistic right but we seldom identify and realize the same and hence always stay behind in the process of generation. For patents, generation is the foundation where either we can easily reach a gold mine or create liability, later is more prevalent than former. Worldwide patent commercialization statistics shows that only 8-10% of worldwide granted patents generate 90% of the total IP revenues.

If a patent is filed with an objective of doing business rather than for achieving other short term goals, patent will surely drive you towards the gold mine and will be your success mantra to strive and lead in a long run.



## Protection

Protection of IP is among the crucial building stones while creating a success model. If the building stones are not placed strategically, the whole model will collapse. Since patent is a techno-legal document, involvement of various expertise should be there during drafting, filing, and prosecution of the application. One of the best methods during protection is to start with a provisional filing followed by complete filing. The provisional application gives a priority right worldwide with the opportunity of add/amend/refine the invention within the time frame of 12 months. This 12 months time frame has great advantage, as it allows the Applicant to rethink and re-strategize if needed. During this period, the applicant may discuss the potential and viability of particular technology with others and simultaneously improve the quality on the basis of feedback received during such discussions.

A preliminary prior art search should be considered before provisional filing. However, a detailed prior art search is strongly recommended, but after 8-10 months from the date of filing of provisional application. By doing so, the applicant will be able to dig those prior arts as well which are published after the filing of provisional. Hence, the probability of grant of invention or improvement of quality of patent might be increased to certain level. One may engage expert patent attorney during the prior art search and drafting of the complete specification.

Foreign filing strategy is one of the major milestones during protection phase. It is always advisable to invest strategically rather than heavily. The potential of particular technology must be first analyzed on territorial basis before protection in such territory. Obviously, there is no point to file a patent relating to malarial drug in France. Since patent system provides an ample time to think upon foreign filing strategy, applicant should strategize their foreign business prospects just after filing the provisional. However, the applicants seldom plan these strategies and ultimately fail to protect the potential invention in potential jurisdiction due to lack of proper fund or strategy for protection.

If the patent protection systems are well placed, the patent will surely drive you towards the gold mine and will sustain the growth in difficult market scenario.

## Enforcement

Right to enforce is the basic right given to IP holder by the government. This exclusivity is an edge over the competition and has power to ultimately drift the entire market in your favour. If your IP has potential which allows you to outperform competitors and solves problem of the consumers, you are on the right path of journey. Since “Right to Enforce” is your call, you must take on any anti-competitive activities by any third party. The message of enforcement must be strong enough to be echoed to keep your competitors at bay. It is always to be kept in mind that enforcement is as important as generation and/or protection. If we are not taking courage to enforce our right, we are not respecting the innovation and the process of generation.

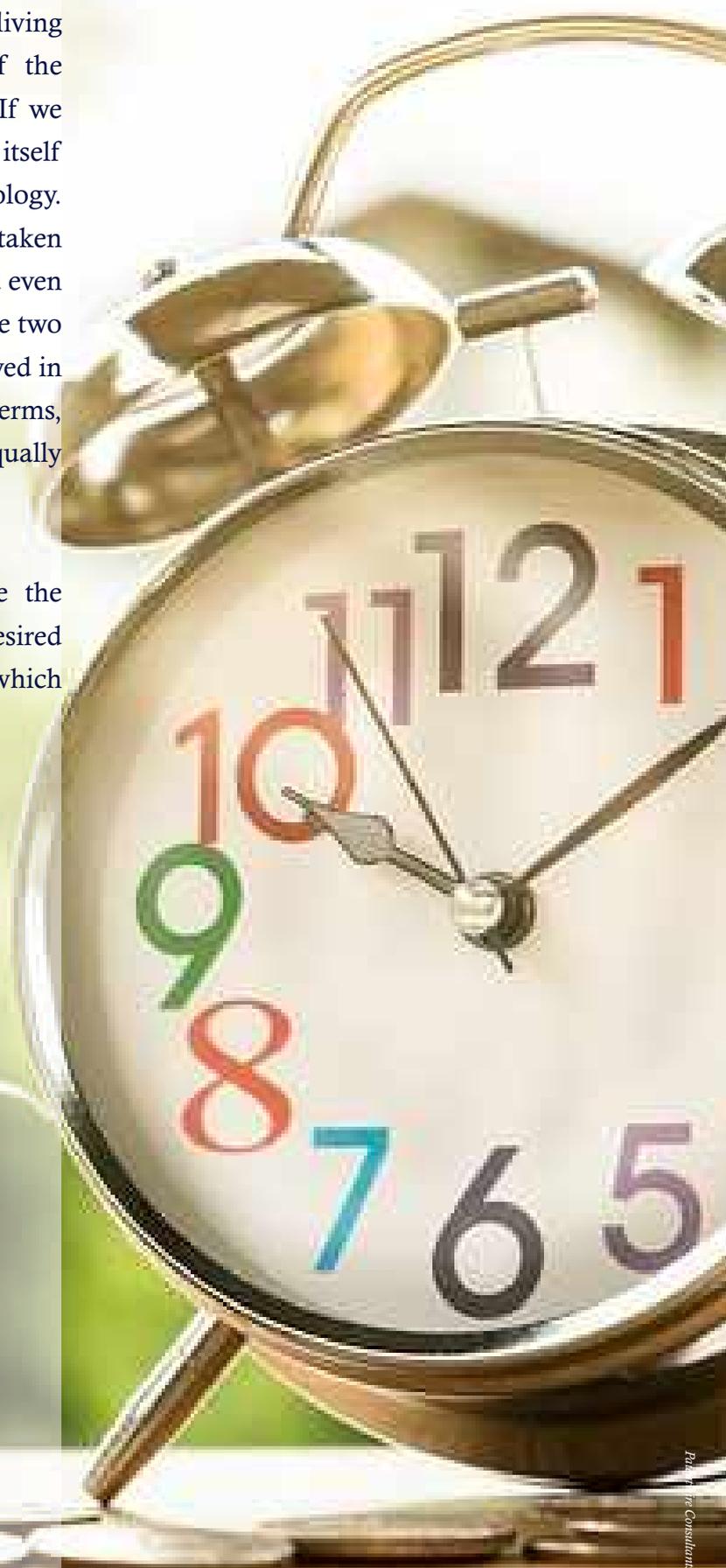
However, enforcing your IP rights too early or too late may have negative effects on the outcome. Since enforcing IP right involves a complex and strategic planning, an experienced intellectual property lawyer is always recommended to reap the best.



## Monetization

Monetizing your IP is the real adventure in journey towards gold mine, however, for that, the real mantra is time and decision management. Since we are living in technology era, the life span of most of the technologies is very less, sometimes 2-3 years. If we wait for a potentially big deal, the technology itself may be replaced by someone else's technology. Therefore, decision of monetization should be taken in timely manner and planning be rightly placed even before filing of the application. Apart from these two essential elements, there are many factors involved in utilization process viz. valuation, royalty terms, negotiation, deal making, etc. which are equally important and must be dealt by an expert.

Since it requires lots of expertise to handle the technology transfer processes, involvement of desired professionals is required for this journey which ultimately drives you to the gold mine.



## Re-Generation

Re-generation process is required to keep the innovation cycle running. A successful commercialization leads to more innovations by spreading continuous motivation to the innovators. If we stop to innovate, others will take advantage over the improvement and would capture the already created gold mine. The innovation process should be like a chain reaction and must go on and on. One of the best example of such continued re-generation process is General Electricals.

These steps if followed strategically will automatically convert opportunity into reality.

*Author*



*Lalit Ambastha is founder of Patentwire, an Independent Patent & Technology Consulting Firm. He is Patent Attorney in India and is specializing in the area of Intellectual Property. He can be reached at [lalit.ambastha@patentwire.co.in](mailto:lalit.ambastha@patentwire.co.in)*

# कर्मण्येवाधिकारस्ते मा फलेषु कदाचन । मा कर्मफलहेतुर्भूर्मा ते सङ्गोऽस्त्वकर्मणि ॥

*A person has the right towards action alone and not towards the fruit of action.  
Let not the fruit of action be the motive for acting. Also, Let there not be any attachment to inaction.*

*Gita Shlokas Chapter 2, Verse 47*

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Patentwire | Intellectual Property Attorneys  
A-199, Ground Floor, Defence Colony  
New Delhi-110024, India

Tel: +91-11-40366109; Fax: +91-11-24330039  
Mob: +91-9811367838; Email: desk@patentwire.co.in  
www.patentwire.co.in