

IPR: COMMERCIALIZATION AND UNFAIR COMPETITION

BRIEF OUTLINE

Introduction

Commercialization

Some Instances

Unfair Competition

Concluding Remarks

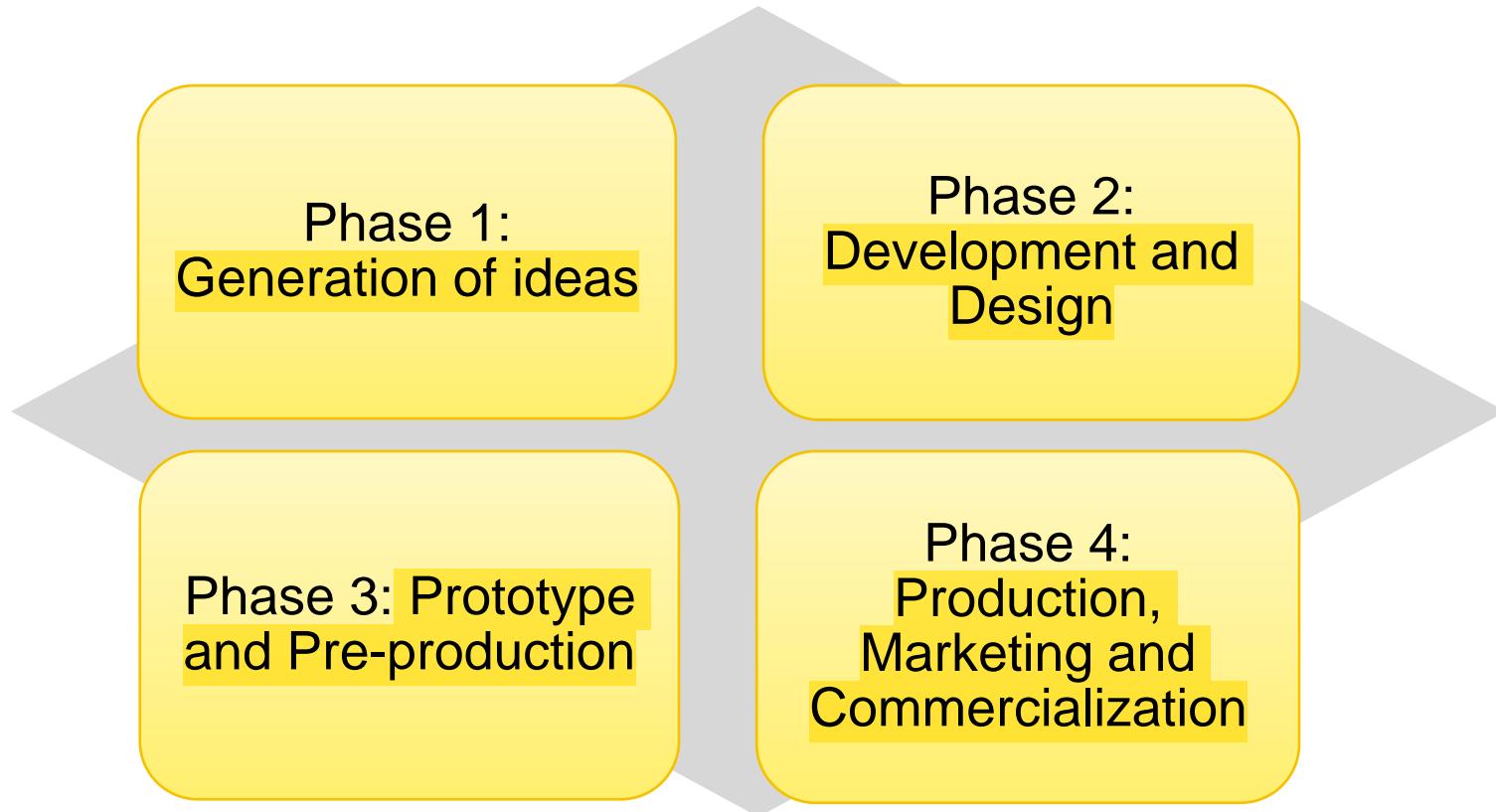
INTRODUCTION

- Commercialization is a process which introduces a new product or technique of production to the market
- Intellectual Property is not only a legal asset, but it has also a commercial value
- Commercial benefits of an IPR can be extracted through selling, licensing or setting up own commercial venture
- Rapid technological progress and globalization has commercialized the IP

COMMERCIALIZATION OF IP

- Innovation process inculcate technology and inventions and are essential for transforming inventions into profitable marketable products
- However, the process is complex and entails to a large extent, specialized efficiency, skills and professional knowledge
- For the success of any invention and innovation (intellectual property), the ultimate and critical stage of the innovation process is the marketing and commercialization

PHASES OF COMMERCIALIZATION



COMMERCIALIZATION STRATEGY

1

Set up personal manufacturing and marketing

2

Authorize others through licenses

3

Sell the patent rights

4

Any amalgamation of the above

PROCESS OF COMMERCIALIZATION

1

- Market Research

2

- Locate and identify the customers

3

- Invent and Innovate

4

- Protecting Intellectual Property

5

- Commercialize-Set up a business

COMMERCIALIZATION OF PATENTS

- Patents are extensively created means that promote innovation
- This IPR grants the holder the limited right of exploitation and allows them to venture the invention by manufacturing, using, or selling products or processes incorporating the technology covered by the patent
- The owner may also allow the invention to be exploited by others over a set period of time, in return for fair reward to recoup for the R&D costs and others

PATENT SOME FACTS

- According to **Ted Sichelman** (Commercializing Patents, Stanford Law Review, 2010), about more than 50% of all the patents granted for inventions are never commercially exploited in the US
- IBM was granted approximately 67,000 US patents during 1993-2012
- It has received 6,478 patents in 2012, outpacing the aggregate of Accenture, EMC, Amazon, Intel, Apple, Oracle, Symantec, and HP
- IBM owns about **50000 active patents**, which makes it one of the largest patent owner company in the world

PATENT: STATISTICS

Table 1: Number of Patents Granted by US Patent and Trademark Office

| Origin | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|-------------------------|--------|--------|--------|--------|--------|--------|
| U.S. And Foreign Origin | 219614 | 224505 | 253155 | 277835 | 300677 | 298407 |
| U.S. Origin | 107791 | 108622 | 121026 | 133593 | 144621 | 140969 |
| Foreign Origin | 111823 | 115883 | 132129 | 144242 | 156056 | 157438 |

Source: http://www.uspto.gov/web/offices/ac/ido/oeip/taf/cst_utl.htm

VALUE OF COMMERCIALIZATION

The importance of commercial value of intellectual property can be sighted through recent example of the movie in India , ‘**Udta Punjab**’

On **15th June 2016** , a copyright theft case with the Mumbai Police’s cybercrime was filed due to the leak of movie on internet before the proper formal release

OTHER INTELLECTUAL PROPERTY

Other intellectual properties appear to be very significant when successful innovation comprises captivating a new product to the market

For the marketing process industrial designs and trademarks play a critical role

However, for launching new products in the market, a trademark is an effective tool

COMMERCIALIZATION OF IP: SOME INSTANCES

- Trademarks can be extremely successful in exploring, penetrating and entering into new markets for products
- For instance, Honda captured the advantage of its brand name in motorcycle manufacturing to penetrate the United States car market
- Combination of various types of IP tools such as patents, industrial designs and trademark can be traced by the example of the vacuum cleaner that offers a good case of commercialization of different intellectual properties

SOME INSTANCES...

- Trademarks can also assist in enlarging the commercial benefits outside the life of a patent
- The example may be the Aspirin®, which was developed by Felix Hoffman in 1897 while working for Bayer Company in Germany and was patented in 1899
- Since, patents are granted for a limited period, the Bayer Company resorted in endorsing a trademark for its new drug
- After the expiry of the patent, Bayer started benefitting from the selling of aspirin by trademark Aspirin®
- The Company has also exploited the dual-way intellectual property strategy, for its Cipro® drug (used in the cure of infections).

SOME INSTANCES...

Intellectual property may be separately or any combination of patents, industrial designs, trade secrets, copyright or trademarks can be used to assist the commercialization of any new product

Higher profits, premium price, or significant market share can be sustained through strategic use of a combination of intellectual property tools

UNFAIR COMPETITION

**Paris Convention (1883), Article 10 bis categories
unfair competition into:**

- Confusion causing acts
- Damaging reputation
- Misleading acts

UNFAIR COMPETITION...

Any action or practice taken out in the way of industrial or commercial enterprise opposed to honest practices is regarded as the act of unfair competition

‘contrary to honest practices’ has become the crucial criterion for defining unfair competition

UNFAIR COMPETITION...

Thus, the Paris Convention (1883) safeguards a member against unfair competition by making it binding for the other members

This commitment is underlined by Article 2 of the TRIPS and obligates members of the WTO to abide by the Paris Convention

COMPETITION LAW: PROMOTING FAIR COMPETITION

The competition law aim at prohibiting the strategy of the firms and big corporations to reduce competition and monopolizing the markets. Three broad laws are:

- (i) Anti-monopoly law
- (ii) Anti-collusion law (cartels, etc.)
- (iii) Non-competitive merger control law

CONCLUSION

Converting an invention or innovation into a marketable (commercialization) product, involves the strategy of due thoroughness which aim at recognizing significant legal and commercial risks, and application for and acquiring of the proper selection of IPRs

It also requires formation of a strong business organization and a system of license agreements with potential investors, manufacturers and distributors

Robust IPR protection ensures entrepreneurs to commercialize by cooperating rather than competing with others.

Intellectual property rights are essential for encouraging innovation, but it can create monopoly, though competition law combats it.

FURTHER READINGS

Video link on Commercialization of Patents:

<https://www.youtube.com/watch?v=TBtj3qCNkpQ>

Protection Against Unfair Competition:

http://www.esa.int/About_Us/Law_at_ESA/Intellectual_Property_Rights/Protection_against_unfair_competition

THANK YOU