

## A New Era of Innovation? How to Manage IP in Open Innovation

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With globalization and increasing competition, technological self-reliance has become a necessity. India has always believed in the middle path. It can be traced to the tendency in our cultural milieu to avoid extremes in any thought process. Intellectual property rights (IPR) management is no exception. However, while the law is evolving, the practices are changing even faster. The

companies which traditionally held our hands on technology and supplied us know-how (at a price), have started to see us as a competitor. As a result of which in the recent years there have been several cases filed by Indian companies against other Indian companies demonstrating increasing awareness among the inventors of their rights. At the same time the case for open source technologies has also become quite strong. It is not just in softwares that one ought to be concerned about open source technologies, but even in hard technologies, government can incentivize innovators to bring their technologies in public domain.<sup>1</sup>

The most closely linked intellectual property relating to the open innovation is patents, and that is where the column focuses on. Most patent jurisdictions in the world were designed keeping in mind the lone inventor who, through the marshaling of extraordinary insight and experimental toil, conceives a novel invention.

### **Managing the open innovation model vis-à-vis patent laws**

It is well established that traditional patent laws, offering monopoly rights to the innovator, discourage the very idea of open innovation. But the author would like to postulate, that if the intellectual property of an innovator firm is managed in an intelligent manner it would be helpful in developing innovation model, should they choose to do so. By systematically managing the

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<sup>1</sup> Chesbrough, Henry W. (2003). Open Innovation: The new imperative for creating and profiting from technology. Boston: Harvard Business School Press.

open innovation and patent management processes a firm might optimize the benefits that are to be gained by these two seemingly conflicting systems.

Some of the world largest patent holders (firms like Philips NV, IBM, and Microsoft) have embraced the open innovation model. As an example transformation of Microsoft's IP strategy due to the increased demand for interoperability of their linux and windows systems has encouraged the move. And if we examine the patenting activities of Microsoft, we observe that it does not appear to have reduced its patenting activities in response to this strategic shift. Microsoft has maintained a constant patenting.<sup>2</sup>

### **Managing the open innovation process**

The volatility and the conflict in the open innovation model make it difficult to manage especially in the light of patent laws. The facts that make management difficult are:

- There are always multiple claim holders who have heterogeneous interests.
- Open innovation requires openness in the communication and exchange which is not always forthcoming.
- Joint ownership and management of intellectual property is complicated.

These demand formation of a governance structure that can decide how multiple claims be prioritized. The open innovation model requires an open exchange of communication, but at the same time an understanding of confidentiality. This becomes all more important due to the sensitive nature acquired by patents with regards to the time and value. Such confidentiality can be achieved by either signing a formal non-disclosure agreement, or by informal means of community norms, trust and implicit corporate culture.

### **Managing the intellectual property**

To foster the open innovation culture without letting go of the advantages brought by the patent laws, firms must be very intelligent in the management of their intellectual property. This is not

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<sup>2</sup> Phelps, Marshall, and David Kline. (2009). *"Burning the Ships: Intellectual Property and the Transformation of Microsoft."*

to suggest that one circumvent the patent laws but only that firm's utilize it in such a way that it provides a harmonious environment for the open innovation model.<sup>3</sup>

First, in competitive field of technology, since patent rights are granted to the first person who files for it, the application must be made at the earliest.<sup>4</sup>

Second if possible, the patent application should be filed before collaborating with the partner. This helps with the issue of non-confidentiality encountered while entering into an agreement with a partner.<sup>5</sup>

Third, it is very important to refrain from making any public disclosures about the invention at least till the provisional specification has been filed.<sup>6</sup>

Fourth, third party technology-based solutions with staged disclosure can perhaps ease the tension that arises from receiving ideas that are not yet patented or subject of patent application.

## **Conclusion**

Innovation as a process has increasingly become dependent on many factors including external technologies. It has become so saturated that groundbreaking innovations are becoming more prominent in the intersection of two or more technologies rather than in the realm of one. This has led to the increasing need for firms to collaborate among themselves to continue to increase their innovative output. But at the same time the concept of sharing technologies is directly in contrast with the intellectual property regime built in most jurisdictions.

But we can conclude that with proper management of open innovation model and of the intellectual property, a harmonious environment, where both can survive, can be made. This can be achieved by adopting better mechanisms for technology transfer and by adopting proper licensing practices.

Also, it is imperative to speed up the patent application filing process to supplement the open innovation made adequately. Some problems faced by the open innovation model can be directly

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<sup>3</sup> The Open Innovation Model, © International Chamber of Commerce (ICC), 2014: [www.iccwbo.org/Innovation-and-intellectual-property](http://www.iccwbo.org/Innovation-and-intellectual-property).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

solved by optimally utilizing the patent law. The two systems, through prima facie at loggerheads with each other, are actually beneficial to each other. Open innovation fosters radical innovation and the intellectual property regime helps to design a better open innovation model. Therefore, the two systems share a symbiotic relationship. They aid in each other's growth, provided that both are managed in an intelligent manner.