

Trade Secret as Intellectual Property Strategic Tool in Industry 4.0

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Abstract -- In covid situation, most businesses have reviewed their existing contracts to understand scope of parties involved and thereby Intellectual Property clauses and sub-clauses of any contract or agreement become very important. Private blockchain implementation in the current scenario is key to the maze to protect trade secrets in a confidential manner.

Progressive IP strategy and partnering with right partners to create and maintain sustainable development positions in the market to serve customers and catering to their needs is the need of the hour. Proactive strategic signed contracts and agreements should be mandatory for smooth functioning of any start-up or enterprise. Negotiation, Mediation and Arbitration are like trinity in law to resolve any arising conflict.

Keywords: Intellectual Property, Trade secrets protection, Blockchain implementation, Industry 4.0, Public domain

I. INTRODUCTION

EVERY technology launch contributes to macroeconomic growth of the country. Contracts and agreements drafted around technology licensing or assignments play a pivotal role as to how developed innovation would be deployed in different verticals. Over the last one decade, we have witnessed a very strong nonlinear curve and especially with what forms part of terms and conditions to exert control over under applicable contract law while collaborating with different parties to manage successful ventures in Industry 4.0 operating in multiple jurisdictions and protecting trade secrets.

Primarily, contracts and proper agreements in place sets the ambit right to protect trade secrets of technology driven start-up ventures. Understanding Intellectual property landscape and conducting IP due-diligence is very important and is essentially a first step to understand short-term and long-term goals to prepare rock solid IP strategy with a holistic viewpoint.

Intellect is the creation of the mind and protecting intellectual capacity by utilizing different IPRs is key to deliver market cap results. In covid situation, most businesses have reviewed their existing contracts to understand scope of parties involved and thereby Intellectual Property clauses and sub-clauses of any

contract or agreement become very important which would be helpful to set out the liabilities of the parties and individual party to the agreement to protect information under “trade secret” clause. Generally, sharing technical knowledge, experience, skill know-how and associated flow processes to define the ambit of any business model forms important clauses and sub-clauses while drafting different contracts.

Trust is a very important factor to keep trade-secret in a confidential manner. Classifying information among the individuals to develop trust between the individuals and strategies deployed to keep disclosure of information relating to a trade secret confidential is key to define trust. Private blockchain implementation in the current scenario is key to the maze to protect trade secrets in a confidential manner. Blockchain implementation creates transparency and trust between the parties to provide clarity as to who owns what aspect of Intellectual Property Right.

Progressive IP strategy and partnering with right partners to achieve SDG 17 to create and maintain sustainable development positions in the market to serve customers and catering to their needs is the need of the hour.

II. PROTECTING TRADE SECRETS IN INDIA

Trade secret protection in any jurisdiction is only invoked once cause of action in law is explained with facts. Vague contracts and agreements are the main causes and challenges while litigating issues of violation of trade secrets before the courts. If any kind of injunction order is sought with respect to trade secrets before the courts, the ownership of specific trade secrets has to be disclosed with sufficient exhibits to show the intent of the parties in question of wilful disclosure of trade-secrets, if any.

To obviate this challenge organizing in-house sensitization programs and strategic interactions with key employees should be well documented to create valid contracts and agreements. In many cases getting a no-objection certificate (NOC) while switching employment is a good step for both employer and employee.



In Industry 4.0, most of the cases related to trade secret theft pending before courts generally come under the ambit of the Information Technology Act, 2000, and the Competition Act, 2002. Trade secret theft includes data related to proprietary information which might cover invented technologies, industrial designs, brand strategies, customer acquisition strategies, trade secrets/Know-how and related processes.

Restraining any third party when trade secret theft has been established in court of law takes into consideration intent of the parties in question, time frames and different contracts and agreements submitted as Exhibits acts as data matrix for in-depth analysis. Many times when facts of the case in question are absolute a decree for permanent injunction and damages as valued for the purposes of the suit and for loss of sales, reputation and good will is looked into with hawk eye approach. For example, strategically nowadays most of the internet driven technology unicorn business models create Intellectual Property portfolios with special focus on trademarks as it is easy to establish profit and loss data with respect to customer brand acquisition cost which is a new age rule book.

The success rate of establishing trade secret theft depends on a number of factors and the most important factor is disclosure of data in the public domain.

Public domain is defined in Black s Law Dictionary, Eighth Edition at page 1265 thus:-

When copyright, trademark, patent, or trade-secret rights are lost or expire, the intellectual property they had protected becomes part of the public domain and can be appropriated by anyone without liability for infringement.

Public domain is the status of an invention, creative work, commercial symbol, or any other creation that is not protected by any form of intellectual property. Public domain is the rule: intellectual property is the exception.

Dates of execution of contracts and filing of suit before court become very important from the point of view to establish

intent in good faith of even claiming **trade secret theft**. For example, a manufacturing contract is signed between two or more parties and one of the parties files a patent application to protect the invention. According to Indian patent laws, the patent application becomes a public disclosure once published. So, if the date of trade secret theft is established before the publication of the patent application then the suit in question has a good success rate. In our current practice, we observed that well-defined tailor-made definitions in contracts and agreements is a good pro-active strategy.

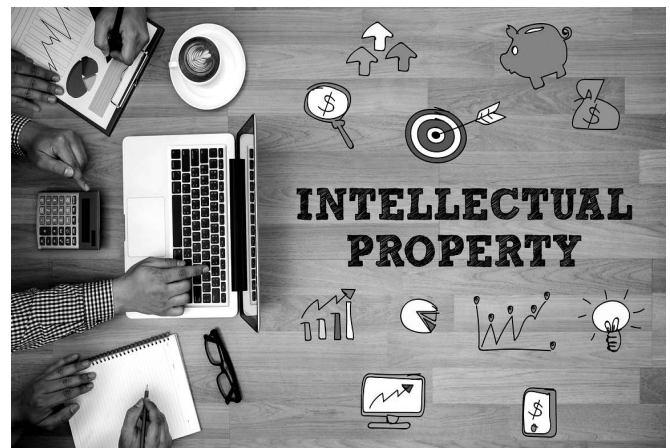
III. FUTURE OF TRADE SECRET REGULATION IN INDIA

To regulate any economy proactive checklists are very important parameters to regulate the economy and especially where technology is changing at rapid pace and different global entities are working together to pool their resources.

Even in the current scenario internet technology enterprises are working together to achieve their business goals in short span to create customer experience. Establishing ownership is key in determining who owns the trade-secrets and is an extremely valuable resource to stay ahead and be a constructive game changer.

Coding or compilation of big data is not a public disclosure and the owner takes proactive measures to safeguard those coding data matrices. Blockchain implementation in this case scenario is key to the maze to keep big data as confidential information. Nevertheless, technology has to marry jurisprudence and new age regulations should be drafted to protect trade-secrets as a whole.

In the current and future scenario, proactive strategic signed contracts and agreements should be mandatory for smooth functioning of any start-up or enterprise. For example, Memorandum of understanding (MoU) with well-defined time period to test the waters should be the first essential key element to determine terms and conditions of subsequent



contracts between the parties. Licensing agreements defining calculations of royalty terms is a good practice and a clever strategy to obviate any kind of litigation. To create a holistic and win-win approach, renewal period terms of the licensing agreements should be flexible and in alignment with short term goals of the parties to the contract.

Dispute resolution clauses and sub-clauses form a strong base to resolve disputes and especially IP disputes. Negotiation, Mediation and Arbitration are like trinity in law to resolve any arising conflict during the term of the contract or agreement between the parties.

“There is no scale to measure disruptions happening in Industry 4.0, where technology is evolving at a rapid pace beyond human imagination and that is what Blockchain and Big Data analysis is all about.”

REFERENCE

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Ms. Prity Khastgir (b.26 Dec 1984) is Director and chief research strategic officer at TCIS, India. Patent attorney and business strategist with 15+ yrs of experience, represents global clients to secure their IP rights in India. Working on Sustainable Development Goals mission projects on ad hoc basis with ITU, Geneva and WIPO, Geneva as technology strategist.

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