

START-UP INDIA

In order to provide advancement to entrepreneurship and startup culture in India Prime Minister Narendra Modi launched the striving 'Startup India' Movement. Further, to improve the growth of innovation in India, he promised faster patent registrations and quicker exits for companies. His announcement about income tax exemption to startups for the first three years has also given a boost to Start-ups in India.

A report published on the Intellectual Property India website titled "Scheme for Facilitating Start-ups Intellectual Property Protection", has explained in detail the benefits the Start-ups can now reap for their Intellectual Rights (IP).

As per the report, Intellectual Property Rights (IPRs) are emerging as a strategic business tool for any business organization to enhance industrial competitiveness. Start-Ups, with limited resources and manpower can sustain in this highly competitive world only through continuous growth and development oriented innovations; for this, it is equally crucial that they protect their IPRs. The scheme for Start-Ups Intellectual Property Protection (SIPP) is envisaged to facilitate protection of Patents, Trademarks and Designs of Innovative and interested Start Ups.

This scheme of SIPP was introduced to promote awareness and adoption of Intellectual Property Rights amongst Start-ups. The SIPP scheme nurtures and mentors innovative and emerging technologies among Start-Ups and assists them in protecting and commercializes it by providing them access to high-quality IP services and resources.

IMPORTANCE OF PATENTS FOR START-UPS

Getting a Patent registered, a Start-up can enhance its market valuation and competitiveness. Startups with limited resources can thrive and compete against established players only through protection of its innovative intellectual properties.

For most start-ups/entrepreneurs, Intellectual Property (IP) rights are sometimes the only tool that can give them business/competitive advantage in the marketplace. By using the exclusivity offered by IP, a start-up can get a head start in business and generate revenues.

However, a start-up cannot avail the said advantages by merely creating intellectual

¹Scheme For Facilitating Start-ups Intellectual Property Protection. (2016, May 05). Retrieved September 15, 2017, from http://www.ipindia.nic.in/writereaddata/images/pdf/statupUps_Scheme_05May2016.pdf

assets. An invention or creation of an entrepreneur has value only if it is properly protected and safeguarded. Unprotected IP is considered to be in the public domain, free for all to use, and economic strength, presence in the market, etc, supersede a start-up's business future. Apart from protecting its Patents and other forms of IP, a start-up needs to know how Patents and other forms of IP can be used to benefit its business.

There have been many developments recently that have streamlined the of registration of Intellectual Properties (IPs) of Start-Ups. However, before the developments in IP for start-ups are discussed, first this article deals with the process to qualify as a Start-up in India.

CRITERIA TO QUALIFY AS A START-UP

The criteria are subjective and objective in nature. Following are the criteria which need to be fulfilled by an entity to be qualified as a start-up.

1. The applicant needs to be:
 - a. **Private Limited company** as defined in the Companies Act, 2013 or
 - b. **Registered Partnership firm** registered under section 59 of the Partnership Act, 1932 or
 - c. **Limited Liability Partnership** under the Limited Liability Partnership Act, 2002
 - d. At present, Non-Indian partnership and Non-Indian limited liability qualify as Start-ups only when they are registered in India as "Private Limited Companies".
2. The entity has been founded not more than **Five** years ago.
3. The turnover of the entity in each of the financial year in the last five years should be less than INR **25 Crores**
4. The entity should be formed **without splitting up** or **reconstructing** a business, which was already in existence.
5. The entity should be working **towards innovation, development, deployment or commercialization of new products, processes or services** driven by technology or intellectual property.

The entity is required to provide evidence to support the eligibility for the above listed criteria to be recognized as start-up. The evidence for an Indian entity can include registration or incorporation certificate, and Balance sheet/Income tax acknowledgment for the corresponding years. Whether a declaration by a Chartered accountant regarding the income of the company be accepted is yet to be determined. A foreign entity may provide equivalent documents as evidence.

REGISTRATION OF PATENTS BY START-UPS

The amended rules give emphasis to fast tracking option for patent applications so that start-ups can realize their IPR value promptly and speedily. To facilitate smooth procedure of registration for start-ups and empower them to grow through innovation, the Indian government has launched Startup India Action Plan (SIAP). By reducing the turnaround time to register a patent in India, the Government has made it cheaper for startups. A new 'tatkal' option also has been introduced that seeks to expedite the registration process for all new applicants, even the first timers.

Before the amended rules were implemented, patent registration process took around 5 and 7 years. With the new rules in place Government plans to bring down the time to two and a half years by year end and one and a half by March 2018. 'Tatkal' would bring this duration down even further to expedite the process.

The key benefits for start-ups with respect to Patent (Amendment) Rules, 2016 are:

- **Start-ups and Individuals similar category with respect to Fees:**
Now the startups have been introduced as a new entity type apart from individual, small entity and large entity, i.e., they are entitled to get fee reduction equivalent to "individual persons" instead of small entity/large entity in amended rules.
- **80% rebate on fees:**
With the start-ups being considered as a new entity, the patent fees has gone down with 80% rebate on official fees, as per the startup action plan. The application fees for startups will now be INR 1600/- and for companies INR 8,000/-
- **Examination process within 105 days:**
The amended rules provide fast tracking of patent applications, introduced only for startups. It makes sure that a request for expedited examination mandates the Controller to issue the First Examination Report (FER) within 105 days, when the expedited examination request is accepted. For the expedited examination fee, the startups will now have to pay only INR 8000.
- **Reduction in time period to file response to First Examination Report (FER):**
With the new amendment, the response to FER needs to be filed within 6 months (extendible by up to 3 months). Also, the Controller needs to dispose the applications within 3 months from the date of receipt of last reply, or within 3 months from the last date to put the application in order for grant, whichever is earlier. This helps in getting the patent application granted in much less time.

- **Application withdrawals:**

The Government has introduced withdrawal of patent application without any extra fee to reduce the pending cases. An applicant will also be entitled to a refund of 90% of the patent fees upon withdrawing the application. However, this refund can only be claimed before the FER is issued. In other words, patent fees can now be reimbursed when the application is withdrawn after filing the request for examination but before issuance of FER.
- **Expedited issuance of foreign filing licensing request:**

With the new amendments a foreign filing license request will be disposed of within 21 days from the date of request where the applicant opts for filing patent application in foreign country without filing the application in India.
- **Global Start-ups:**

Globally startups will be able to enjoy the benefits of the new Patent (Amendment) rules. In case a startup feels their patent needs to be registered urgently, they can select India as International Search Authority or International Preliminary Examining Authorities to file applications in India before any other country.

Conclusion

The speedier process and smoother transaction method, the Government is aiming to benefit the individuals or the companies applying for patent. There was a drop of patent applications in India to 1,400 only in the year 2015. The lack of innovation is not to be blamed instead the tedious and expensive patent registration process was the main problem. Startups cannot afford to wait for 5-7 years to get their patent registered since they are doubtful that the situation would remain the same for them in those 5 years.

For Global applicants, Asia's top three patent applicants China, South Korea and Japan were not able to register their patents in India and get fast-track responses to their technologies due to this sluggishness of Indian Patent Office.

However, with the new amendments, the time taken to get a patent in India is going to shorten, which will in-turn help attract foreign startups as well. An excellent move from the Government to ensure startups does not lose their due credit in the world of technology these days. Intention behind introducing these amended rules and SIPP is to promote awareness and adoption of intellectual property rights by startups and facilitate them in protecting and commercializing those rights.

Startup India is a welcome step to foster innovation and credibility in Global markets. 'Innovate in India' and 'Make in India' can be a huge success when we realize and innovate to solve simple problems to make life easy.

Since the implementation of Patent (Amendment) Rules, 2016, there has been a surge in Start-ups IP registrations. However, even with the new rules, it is complicated for the start-ups with limited knowledge about the IP laws, to register their patents. We, at **Dubey & Partners - Advocates**, help start-ups, individuals and small/large entities and companies to register their Patents with ease. The fuel that drives us to contribute in "Make in India" is by helping Start-ups protect their IP rights without any hassle.

Feedback

Your feedback is appreciated by the Firm.

We are available for any Clarification/Information needed.

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