

AMCHAM



SRI LANKA

AmCham Sri Lanka Publication Series: Intellectual Property Rights

by Revan Weerasinghe

LLM(Col), LLB(Lon), BSC (Lon), Attorney-at-Law

Published in tandem with

"AmCham SL Signature IPR Series – Part I & Part II"

Online discussions, held on 26th November & 03rd December 2020

Click the Link above to watch the LIVE presentation

THE AMERICAN CHAMBER OF COMMERCE IN SRI LANKA

The American Chamber of Commerce in Sri Lanka (AmCham SL), is one of the most influential and prestigious business chambers in the island, recognized as *the* forum for the facilitation and development of trade, investment and business relations between Sri Lanka and the United States.

The AmCham SL is an Association whose stakeholders are made up of top blue-chip organizations in the island and provides its members a multi-dimensional resource network that delivers information, tools and knowledge they need to succeed in bilateral business relations between the two Nations through information share, LQAs, Seminars, Workshops, B2G and B2B networking and exclusive connect & advisory services.

AmCham SL may be contacted at | ed@amcham.lk

Re-inventing business to survive the storm – the basic blue print of an innovative company

The three storms

This year is not short of its trials. Covid 19 has changed the way everything works. Some people call it the new normal; some call it a global reset.

Be it what it may, it has certainly changed the way people do business.

With the advent of Covid19, most business has been forced to re-engineer the way they supply goods and services. A majority of restaurants have chosen to deliver food through 3rd Party delivery services, schools and education institutes choose to have their classes online, and most offices have chosen to allow their employees to work from home. A number of companies have also been forced to close down their operations, large-scale retrenchment and salary cuts taking place in all industries, resulting in a major down turn in consumer spending, cash flow, job security and relevance in the market place.

In the midst of both Covid 19 and a severe economic downturn the country also has to face an age-old problem that is coming to fruition. That is the problem of being relevant in an ever changing, extremely competitive global market place.

For the longest time Sri Lanka has been an exporter of tea, rubber, coconut, spices, textiles and precious stones. Whilst Sri Lanka has excelled and gained a reputation internationally for excellence in these areas, these products are increasingly becoming out-priced in the global market place as countries like China, India, Vietnam and Bangladesh are able to sell the same products at a much cheaper price point leveraging on economy of scale and mechanization of industry.

Hence, each of the aforementioned problems could be seen as three separate storms that would cause significant turbulence to Sri Lankan businesses large and small within a reasonably short time span. It is my position that unless businesses leaders keep a watchful eye to these coming storms and are able to change direction in the way business is performed, most businesses will succumb to the injuries caused by each of these storms, which will in turn drastically impact the economy of Sri Lanka.

Whilst there is no quick fix or one size fits all solution for each of the problems highlighted above, there needs to be a drastic change in mind set in order to overcome the several obstacles enumerated above. A step in the right direction would be to espouse innovation and the concept of an innovative company.

Disclaimer: The views, opinions and/or analysis expressed in this article are those of the author and do not necessarily reflect the views, opinion and/or official policy or position of the American Chamber of Commerce in Sri Lanka.

An innovative mind-set

For the longest time, innovation and R&D have been considered a luxury to be performed only at times when there is a profit in the company. There is also a misconception that innovation and R&D is exorbitantly expensive and is outside the purview of smaller companies. This is an absolute misconception and limiting belief, that results in poorer countries remaining poor and more developed countries widening the gap on poorer and developing countries. The same may be said about companies big and small.

The actual problem is the limiting belief that innovation is only a luxury for developed countries and large well-established companies. As a result of this limiting belief little or no time is set apart for innovation resulting in there being only a handful of value-added products being added to the Sri Lankan market place each year. The said limiting belief however has been proven false time and time again with some of the most ground breaking innovation been created the world over during times of crisis, necessity and great hardship.

Contrary to this limiting belief, I am of the opinion that any person can innovate and you do not need large budget for the purpose of innovation. You merely need an innovative mindset and the ability to think outside the box. This position is supported by the simple definition given in the Intellectual Property Act no 36 of 2003, which defines an invention as “an idea of an inventor, which permits in practice the solution to a specific problem in the field of technology”.

i.e- “an idea which is a solution to a problem”.

Creating an invention therefore need not be a daunting task, its merely finding a solution to an existing problem.

The starting point to all innovation therefore is identifying the problem, and identifying solutions to this problem. This level of brainstorming can be carried out by the staff members of the company or hired professionals competent in a specific field of technology. The key, however, is to make time for this activity, for without making time you are not going to have any outcome.

Systematic idea generation is ideal not only for creating greater value-added products but also in order to pivot the direction of one’s company during times of crisis such as what most companies are facing today.

Disclaimer: The views, opinions and/or analysis expressed in this article are those of the author and do not necessarily reflect the views, opinion and/or official policy or position of the American Chamber of Commerce in Sri Lanka.

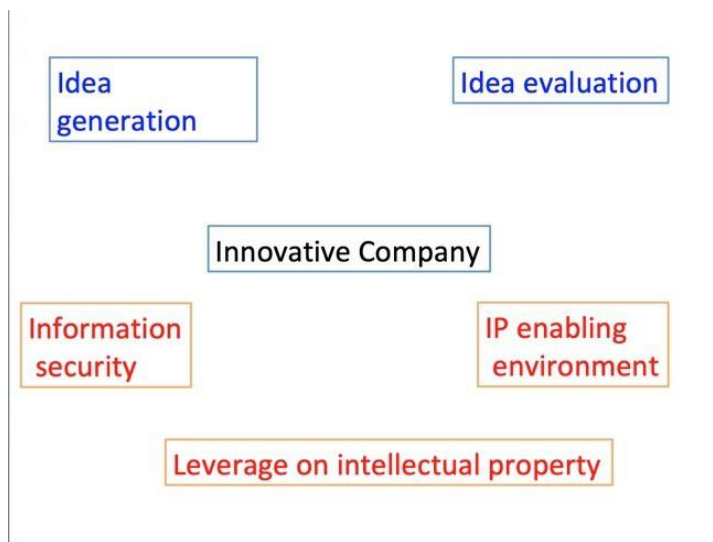
An innovative company

The object of this article is to set out a basic blue print of an innovative company. The company proposed ensures safe sharing of ideas protecting both the interests of the company and the inventor, or person sharing an idea with the rest of the company. The proposed model leverages intensely on intellectual property which functions as a catalyst for greater opportunity, profit and growth and incorporates best practices of information security to ensure that ideas are not replicated or stolen.

The proposed model, although highly scaled down, is very nimble in its outlook towards facing challenges in the market place and is designed to pivot in times of crisis. Failure to incorporate such structures in an organization may result in stagnation and a company becoming obsolete during changing times such as what is seen today.

I propose below the basic blue print of an innovative company. Outside the operations of a regular company, the innovative company incorporates five (05) separate limbs or activities that push forward an innovative agenda. In blue I have highlighted specific activities concerning idea generation and idea evaluation, whereas in red I have highlighted specific activities that help support creation and commercialization of intellectual property.

For this system to work at its highest potential, I advocate that all five of these processes are incorporated in a company and work in conjunction to each other.



Disclaimer: The views, opinions and/or analysis expressed in this article are those of the author and do not necessarily reflect the views, opinion and/or official policy or position of the American Chamber of Commerce in Sri Lanka.

Systematic idea generation and idea evaluation

What makes an innovative company different from an ordinary company is that there is systematic idea generation and idea evaluation taking place within the company at all times, where rest of the processes enumerated above are merely support structures.

In this regard, the Company allows room for sharing of ideas and systematically selects from the ideas proposed the best ideas that support the goals of the company, for example, ideas pertaining to creation of value-added products or solving a problem in industry such as communication with clients during a lock down period.

When Idea generation takes place on a regular basis and can be rewarded through incentives provided to the workforce from the leadership. The company can also record the ideas being shared and actively give credit to the author of each idea. Once the employees have shared a number of ideas, these ideas are assessed based on a criteria set by the management. Idea selection takes place in a manner similar to a funnel, and products and processes are chosen from the ideas suggested based on their intellectual property value, cost saving benefit and/or the ideas ability to generate profit for the business.

In the event an idea has been selected by the Company for commercialization, as and according to the intellectual property policy active in the Company, the employee stands to be rewarded.

Information security

For there to be any idea generation and/or innovation within a company, information security is of paramount importance. Having a high standard of information security, ensures firstly the patentability of an invention and further prevents ideas from been copied or stolen. Having a high standard of information security also makes it easier for the company to take action against perpetrators of commercial espionage under the sections pertaining to unfair competition found in the Intellectual Property Act.

I find there to be 4 pillars in establishing information security best practices within an organization. By leveraging on each of these pillars, an organization may best protect its valuable information within the organization.

The first of these pillars is the act of leveraging on statutory protection afforded by law. There are several statutes that protect information in Sri Lanka, such as the Intellectual Property Act no 36 of 2003, the Computer Crimes Act No 24 of 2007 and the Electronic Transactions Act No 19 of 2006. The Intellectual Property Act has several provisions including provisions pertaining

Disclaimer: The views, opinions and/or analysis expressed in this article are those of the author and do not necessarily reflect the views, opinion and/or official policy or position of the American Chamber of Commerce in Sri Lanka.

to copyright, trademarks, patents, industrial designs and unfair competition that protect unauthorized use of information.

The second pillar that protects information security within a company is the summation of all the various agreements that a company must enter in to, to ensure information protection. These agreements include Non-Disclosure Agreements, Material Transfer Agreements, Labour and Service Agreements and License Agreements.

The third pillar comprises of internal policy documents that govern the sharing of ideas within the organization. These policy documents may differ from company to company, and serves the purpose to communicate what information is proprietary and confidential to the organization and what information may be accessed by different segments of employees within the organization.

The fourth pillar is of utmost importance, and concerns access control and access to information. By setting out parameters of access control, one may establish how information is accessed by different segments of the employment cadre.

4 Pillars of Information Security

Statutory protection	Protection by Agreements	Protection by Policy	Protection through Access Control
Patents	NDA's	IP Policy	Right to know
Industrial Designs	MTA's	Confidentiality Policy	Classification of documents
Copyrights	Labour and service contracts		ERP solutions
Trademarks	License Agreements		CCTV, Fingerprint Scanners, NDA's signed upon entry
160(6) IP Act			Firewalls, separate servers, anti virus and anti hacking software

Disclaimer: The views, opinions and/or analysis expressed in this article are those of the author and do not necessarily reflect the views, opinion and/or official policy or position of the American Chamber of Commerce in Sri Lanka.

Creating an intellectual property enabling environment with an organization

Apart from information security creating an IP enabling environment within an organization, it is of utmost importance in establishing an innovative frame work for a company, as it protects and encourages employees of a company to share ideas with the management, without fear that the ideas shared will be touted as someone else's idea. The following documentation can be utilized, though not essential, to encourage employees to share their ideas:

- Invention disclosure form

An invention disclosure form or idea disclosure form will enable the ideas shared by employees to be recorded and time stamped. The said form will be submitted and signed by the employee that submitted the idea, allowing the employee to be confident, and that the moral right for the idea or invention will be attributed to the actual employee that put forward the idea.

- Intellectual Property Policy document

Whilst there is no hard and fast rule in the manner in which an IP Policy document is drafted, it too along with the invention disclosure form acts as a tool to instill confidence among the employees to share their ideas with the management. Some IP Policy documents incorporate reward systems that will accrue to the employees in the event an idea is commercialized, has the benefit of creating a culture of innovation within the organization.

Leveraging on intellectual property and creating an intellectual property strategy

The next and most important practice that needs to be built in to an innovating organization is the ability to leverage on intellectual property and the ability to create an intellectual property and commercialization strategy that seeks to maximize profit and passive income, through exploitation of intellectual property.

More than being an aspect of an organization, this is a skill that is learnt by emulating different business strategies used across the world especially in the practice of exploiting intellectual property. In the arsenal of the various strategies that can be used for maximizing commercial potential of a product, one would find different legal mechanisms such as licensing, franchising and assignment of intellectual property as being key tools used to maximize the income generation of a company.

However, in order to really exploit the potential of intellectual property, it is important to understand the manner in which it can be exploited.

Disclaimer: The views, opinions and/or analysis expressed in this article are those of the author and do not necessarily reflect the views, opinion and/or official policy or position of the American Chamber of Commerce in Sri Lanka.

The first thing you need to know about intellectual property is, it concerns a bundle of rights given to the right holder by law, allowing the right holder to exploit the intellectual property created as he so chooses, either for his own exclusive use or for the purpose of profit generation. Upon study of some of the more successful companies the world over, one would see that most of these companies leverage heavily on intellectual property for their success either for the purpose of obtaining exclusivity in the market place or for generating passive income through licensing and/or franchising the intellectual property.

In studying intellectual property, one would find 4 main different types of IP and they are Copyrights, Trademarks, Industrial Designs and Patents.

Copyright protects and governs literature, movies, paintings, photographs, software, poetry, sculptures, drawings and plays;

Patents protect and govern inventions;

Trademarks protect and govern business identifier; and

Industrial Designs protect and govern shapes of 3d objects (shapes of products)

Upon grant of these rights the rights holder has the right to exclusively use the said intellectual property, assign the said intellectual property or license the said intellectual property as they see fit. They similarly hold the right to prevent others from doing the same.

In the event the intellectual property created is that of significant value, the exclusivity that accrues to the author gives the author a significant advantage in the market place. For example, companies like apple, IBM, BMW and Toyota by keeping some of their patents to themselves have been able to distinguish themselves from their competitors giving the consumer a number of benefits they would not find elsewhere.

Similarly, companies such as Adobe, Microsoft and Facebook license their intellectual property for greater profit generation. As a result of which, any person that wishes to utilize the Microsoft Office suite have to pay royalties to Microsoft.

Similarly, companies such as McDonalds, Burger King, Pizza Hut and KFC franchise the entire business for the purpose of accruing royalties.

IP therefore is a very powerful tool for profit generation. However, to maximize its potential the innovative company needs to understand its potential and build a strategy for its exploitation.

Disclaimer: The views, opinions and/or analysis expressed in this article are those of the author and do not necessarily reflect the views, opinion and/or official policy or position of the American Chamber of Commerce in Sri Lanka.

Any strategy that is developed should seek to address the following:

- a) the manner in which the IP is protected;
- b) the countries in which the IP is exploited;
- c) the countries to which such IP is registered; and
- d) the manner in which the IP is exploited or commercialized.

A well-established IP strategy would also plan out the different partnerships that would be used to exploit the IP overseas. Creating a plan for one's innovation at the earliest stage of innovation will ensure, a robust and solid IP being exploited overseas. Failure, however, to perform necessary due diligence at the early stages of innovation, will result in the IP holder getting sued or re-inventing the wheel in the event such innovation already exists in the market place.

Conclusion

The above article is a summary of the Webinar series made by me to the membership of American Chamber of Commerce in Sri Lanka. I have highlighted above, all the key processes that are needed for a company to remain innovative and to survive in an ever-changing landscape.

Whilst I apologize for the length of this article, I wish to encourage the reader to realize the commercial gains that can be made from intellectual property exploitation both from a corporate standpoint and from the standpoint of the country that is rich in resources not found in such abundance anywhere else in the world.

It is my contention that for Sri Lanka to brace the storm, and to develop to be greater than even the likes of Singapore, it needs to invest heavily in value added products and intellectual property. It further needs to create a mindset of innovation that has the potential to bring an exponential yield to the country.

However, this all begins with a simple decision.

The decision made to change.

Disclaimer: The views, opinions and/or analysis expressed in this article are those of the author and do not necessarily reflect the views, opinion and/or official policy or position of the American Chamber of Commerce in Sri Lanka.