Entrepreneurship and IP strategy
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Lecture 32: IP Transaction - Introduction

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A very warm welcome in the second module of week 7 of the course Entrepreneurship and IP strategy, titled IP Transaction - Introduction. Now why we are giving a title as IP Transaction - Introduction, because IP transaction itself is a big subject and we will just briefly go through that particular IP transaction, what are the different points are there, we will just touch base upon that points.

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IP transaction, when we are talking or considering this term, it is the meaning of that term is a monetization of a intellectual property. So the, whenever we are considering that monetization of a IP, a various modes are there and through that modes, whenever you, you are creating a wealth, we say that okay, IP transaction has happened. Now, a few points we will take as a reference and with respect to that few points, we will consider this IP transaction we will go according to these points.

So these points here are technology development, technology acquisition, turnkey projects, divestitures, collaborations, strategic alliances, joint ventures, foreign direct investment, IP licensing, specialized IP holding company. So these are the 10 points and we will look into these 10 points briefly and we will get idea about the IP transaction. Now, we already know that intellectual property it is a playing a critical role in business and corporates and transactional, whatever the corporate transactional and corporate matters are there, the IP is like a kind of a important part.

Now when we are talking about that transaction mode or any transaction, contract law comes into the picture and it plays a very crucial role when we are talking about a transaction. So always it is a dilemma or always it is a question when you want to relate intellectual property laws, which law will be more near to intellectual property law, is it a property law or is it a contractual law.

When this kind of a transaction comes, we say that yes, contract is playing important role actually. Now, generally when we are following the basic points related to IP transaction, these few points which come up when we are drafting that contract, these are like general terms, conditions whatever you are dealing with when you are doing that particular transaction, obviously that will be the major part.

And it looks very simple now to give a in a few minutes, the idea about a contracts but this transactions are like a time taking. Sometimes, means you cannot imagine that IP transaction may continue for nine years, ten years also and then after that, that transaction may happen. So sometimes, it is a very extreme condition or extreme case I have given and sometimes it will be very fast as fast as like in two days, three days also that transaction can happen.

So it depends on what kind of, the, the various factors are there and depending on that various factor, that transaction will be decided. But whenever you are drafting that contract, a IP council or any person who is drafting that contract, that basic terms and conditions will be taken into consideration and along with that, yes, confidentiality, force measure, indemnity, then ownership related whatever the clauses are there, then mutual indemnification, mutual non-disclosure, termination and these are the few, points which will be covered in the contract.

And one tip I will give you here that one caution you can do when you are doing a contract, when you are talking about a IP transaction. The tip is like that, always keep a contract as a open end kind of thing. Means whenever you feel that the contractual terms are not followed by a other party, you should have a way out of that particular, whatever the relationship you are entered now, you should have that way out easily and that kind of a clause must be there and you cannot continue with that, the if this other part is not following the terms according to your, whatever the other party is expecting, then it is always better that, that contract should be cancelled and the processes means that separation should happen.

And you have to take a, that caution when you are drafting the contract. Now, a few more things which are there is like a arrangement of internal IP structure related to steps, that is a (negotiation) whenever you are doing a negotiation you are taking into consideration that particular point. Obviously IP awareness related important, that is playing a important role if wherever that personal who require that IP awareness mandatorily, yes he or she should be aware about that IP.

Then, when we are talking about IP transaction, a few steps generally we follow. Due diligence is a important phase and you follow that due diligence when you are doing a IP transaction. That is a obviously, that is a first step before taking a decision you are doing that particular thing. Then if patent, patent is IP which is involved in that transaction because there may be a copyright industrial design, there may be any type of IP; but if patent is there, please make sure that the, you are doing a freedom to operate search for all the patents which you are trying to, that, that will be transferred so that you can get the idea about their current status of that particular IP.

Then, probably you would like to evaluate that particular processes and all that thing. And then you would like to value that particular portfolio and whatever other related things are there. So we have to remember that when you say IP transaction, it is not only IP transaction, there is like a okay, that IP portfolio is there but along with that, so many other things come into the picture like a know-how is there, tacit knowledge is there or the company's that, the structure, organizational structure is there probably you may require a human resource who is expert in that, who can give you idea about the particular processes because he, he has that expertise in that particular thing.

So there are so many other things when we talk about a transaction but as a caution, we are taking a precaution that okay, these are like a, we are checking out that particular like a due diligence you are doing, evaluating, you are evaluating. So these three steps mainly you are taking care of. And if you feel that IP awareness in the staff is necessary, probably you will do special training for that particular thing. Now we will go one by one into each of the point and we will try to understand that IP transaction.

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So technology development, when we are talking about a technology development, obviously R&D department coming into the picture. And we know that research is a risky activity and the percentage of success is like a very less actually. And especially this follows when we are talking about a pharma industry. So we have to make sure that we have to compensate that losses also when we are doing a technology transfer. I guess I am able to clarify this thing or you are able to understand what I want to say, that suppose you are running a three or four or say five projects, probability is that out of five projects, four will fail and one only will be successful.

So when you are doing a IP transaction, you have to consider cost which is invested in the failures also. So that is very important when you are considering the IP transaction and when you are monetizing that particular thing, you have to consider that complete investments, that particular technology you have developed, not in one shot you have developed that thing, that particular so many failures are there and then you have reached to that point. So that you have to take into consideration.

Now, we know that when you are talking about a technology development and that related activities if you see, now that cross-border activities are very common because of globalization and markets are like a depends means it depends on the organization, they will carry out the analysis and based on that business analytics or market analytics, both will be carried out and they will decide where exactly they want to do the expansion of their business. So all these activities will go when they are developing that particular technology.

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So now, after technology development, next point is like a technology acquisitions. Technology acquisitions involves bringing in a new technologies from a external sources rather than using the firm's own resources or a R&D. Now here, what the thing is happening that you are getting a readymade things, when you are deciding that technology acquisition, you are getting a readymade things from the outside.

Now here, generally, you are saving on that particular development of a technology and we have seen in the first week we have seen in one example there, what we have seen that, that yes, startups, that big organizations are generally, when they are doing a mapping, that is a very common activity in big organization and in that, they will map the potential, maybe academic organization, maybe potential startups and they themselves can approach you if you are a startup or if you are a, in a academic institute, your research is going on, probability is very high that if your research is so promising to that particular organization, they themselves will contact you and that technology acquisition related processes probably you can, you maybe involved in that particular activity.

Now, what are the different steps which are involved in technology acquisition? The first step is like a identification of a attractive technologies or a partners, with that technological capabilities. And I have told you that mapping is activity which organizations are following for that particular thing. That is a first step. Second thing is like a assessment of the opportunities and then the selection of a most promising one. So that is a second thing, that once you have identified, next is like a opportunities you have, then the assessment of that.

Once you do assessment and you are sure about yes, this is a technology and this is a organization or a this, from where you are going to do that acquisition, then you start a negotiations of the terms of that acquisition. So that is a third step. And then the next is like a transfer of technology. Obviously again, contract will come into the picture and then you are doing that particular transaction related to that particular IP or technology, whatever it may be.

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Now the next point is like a turnkey projects. Now, when we say turnkey projects, generally this kind of activities are more common in a construction industry. But yes, it may be possible that this kind of activity may happen in a particular manufacturing unit or a specialized technology where you expect that a complete setup can be done by that particular technology, who is owning that particular technology.

That is a types of project, that is a constructed so that it can be sold to a buyer as a completed product and it is like a complete ready and that particular plant or that particular technology it is a such a well kind of a plant is developed and then, that particular transaction happen. And here, what the thing is happening that yes, when you are doing a turnkey kind of a project, especially as I have told you it is a more in construction industry, but if it is in a manufacturing unit, yes it can be possible in a manufacturing unit definitely.

There what the thing is happening is like a complete know-how will be transferred, complete skills will be transferred from the owner who is owning that particular skill set. And that will be completely implemented, it will be completely replicated where exactly that project is implemented, and that is what the turnkey project is.

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Now next is a divestitures. Now whenever we are talking about a divestments, what the thing is happening? Here, if you see the definition or a what exactly divestment is, generally when this word comes, we are thinking of immediately of a bankruptcy and all that kind of a scenario but it is not necessary that every time this kind of a scenario is there and because of that, company is taking a decision about a divestment.

So if we see the definition, divestment is the partial or a full disposal of a business and it is maybe through sell, it maybe through exchange, it may be complete closure or a bankruptcy. Yes, bankruptcy is a part of that, but it is a one part, there are other reasons also maybe because of that, divestment is strategy which is used. It is a very good strategy by organizations or startups. They use that particular strategy and there are reasons for that particular strategy and they are developing based on that particular divestment.

And many times what the thing happening, if company want to, I can give you the one example where exactly it can be used. That when company want to introduce their own new products, probably they will shut down the initial unit, they will shut down complete production of the old one and so that it will not be available in the market and customer or consumer have been offered with a completely new kind of a offerings maybe service, maybe product whatever it may be, but it generally related to product kind of a offering.

So this divestment, it is a management decision, it is like a depends on the market and what is the scenario currently there in the market, management take a decision and that maybe a sale, that maybe exchange, that maybe a closure completely. These are like a willingful decisions kind of thing is there. Bankruptcy is little bit, what we can say, is a force due to that particular maybe so many reasons might be there, but it is kind of a unfortunate phenomenon which is happening. And because of that particular probability is that the divestment will happen.

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Now, moving further, if you see the next is like a collaborations and we can easily appreciate that particular collaborations. Co-operations, they are like a, it is a most, what we can say, a low cost route for a new competitors to gain a technology and a market access. It is generally said it in that way, that without much efforts, if you collaborate with a someone who is a very competitive, probability that synergistic action may develop a something new or you can pay for that particular thing and you can get the low cost, in a very, without much efforts, that particular technology and you can develop based on that technology or you can start offering using that particular technology.

Now it reflects a commitment and a capacity of a each partner to absorb skills and it is always necessary that whenever the collaboration is happen. Yes, skills and technology, this is a most important part organization will look into or two parties, or there maybe a many parties, they will look into. But the most important part is like a the connection or a transaction which is happening.

It should be a smooth, means the, the culture, organizational cultures should match and that commitment and that particular, the, the way with which the particular project will move, that, both the parties or whatever the parties are there, it should be a smooth transaction, smooth merging should be there and that particular project should go, the development should go smoothly.

Therefore, along with a technology and skill, this is another important point that should be looked into. And therefore we can say that the self analysis kind of thing that, that is very important. Second is like a chemistry means just like a personal side, whatever I have told you that it is a cultural side, that kind of thing is taken into consideration, that personal side, that personal relations and relationship and all that thing, and the compatibility is again playing a important role here.

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Then the next is like a strategic alliances are there. Now in the strategic alliances, what the thing is happening, it is a agreement between a two or more parties to pursue a set of, that objective is like a define and to for that fulfillment for that objective, these two organizations are coming together, otherwise they are independent organizations. So they have their own independent standing in the market, obviously. And for that particular thing only, they will come together and they will develop that particular, what we can say, the whatever that objective is there, that will there.

For, for example, Siemens and Philips can come together in a semi-conductor industry and they can develop something which they, both of them are interested in. But they have their own, what we can say independent market reputation, independent market standing. Then Canon supplies some photocopiers to Kodak kind of thing, that kind of activities are happening. Or General Motors and Toyota, they will come together to develop something related to automobile.

So here, when we are talking about a strategic alliances, obviously it is a very very very well examined kind of a way, the due diligence is very stricter we can say and these organizations, they will have the particular terms, conditions, very strict contracts and then based on that particular thing, probably they will develop and whenever they are developing this kind of activity, yes that is very useful to the society. So, Motorola sometimes use a, means they have done that thing that they used Toshiba's distribution capacity and they entered into the Japanese semi-conductors market.

So here, something like that alliances, that objectives are very clear, that parties which are involving, their objectives are very clear. So this is like a strategic alliance where maybe flexibility is there, acquisition is there, strength adding is there, that obviously access to new market or technology is there, resources will be, common resources will be used, whatever it, whatever the reason may be there, but considering all these factors, the that strategic alliances grows generally.

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Now the next is like a joint ventures. When we are talking about a joint venture, it is a completely new venture. And the two or more that organization, they will come together and they will start that completely new venture and here the, the reason, or there may be a possibility that, that new venture is in the area where probably the technology is still developing, there is certain uncertainty is there, unanticipated roadblocks are there.

And we see that in artificial intelligence or block chain, means whenever the technologies, new technologies are coming, in that new technologies, joint ventures will be very common and organizations will do that joint ventures and they will develop that particular technology by that risk sharing we can say. And by risk sharing that particular thing will be develop. Moving further, what we can do here that we have seen now that joint venture is there, collaboration is there, turnkey is there.

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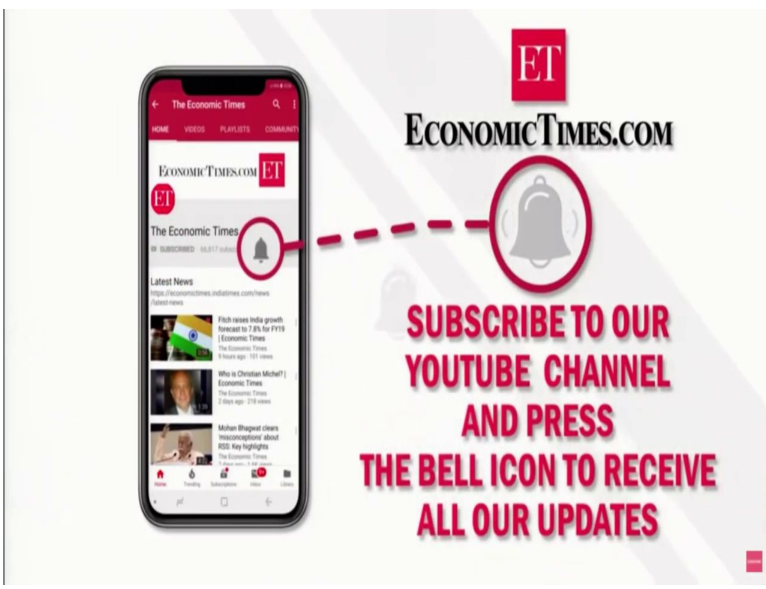
Now what we will do, we will just watch a video related to joint venture and this is a good example of a Mahindra and Mahindra and how they have done the joint collaboration with a Ford. And that we will see that Mister Anand Mahindra is giving a idea about that particular joint venture. Please watch this.

(Video shown about a joint venture of Mahindra and Mahindra with Ford 20:46 to 21:51)

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ET NOW
RISE WITH INDIA

Narration: Okay, Anand Mahindra is speaking right now at M and M press, let us listen into that.

Anand Mahindra: Is to do, is to try and share some thoughts in very broad terms about this new joint venture. The new company that is being born here today is built on the best foundations, friendship and synergy. Friendship of course is a given, it is really a pleasure to be working again with Ford. And this friendship comes reflexively to us. In fact when I came in here, Jim noticed the, he said you got the right colors on for your tie, both the Ford and Mahindra colors. And I told him, I reflexively reached out and found the right tie today. It comes naturally to us, Jim this working together. Now from the strategic perspective, synergy which I spoke of as one of the foundation, that is something.

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Professor: Now the next is like a foreign direct investment. Now the, many times we come across this word that is a foreign direct investment. And it is a significantly, policy ..pro.. priority in developing countries and based on that policy decisions, means these policy decisions are generally bringing that foreign direct investments. And the purpose is like a bringing the technology from developed nations to the, the our nation or whatever the, whichever nation is following that particular strategy, they try to bring that particular technology from that other country and they will get the complete setup from that, the who so ever have developed that particular thing.

And also a probability is that they help in creating jobs or capital injection will be there means you will get a capital also, then the jobs also and then the probability is that it is expected that economies should get a, it should be get flourished because of that kind of a foreign direct investment. So this is one of the kind of, what we can say, a technology which maybe come from the outside and it may flourish into the that country wherever it will be, it will be like a accepted or it will be, it will be taken into consideration and that will grow and that project will develop some kind of a economic development. And all kind of activities related to that certain rules regulations are there, all these rules regulations must, it is required to follow that regulation.

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Next is like a IP licensing. When we are talking about a IP licensing, it is a very common, commonly known activity related to IP transaction you are well aware. It is like a simply that you are giving your IP to someone for a limited period of time and that one is a licensor, one is, another is a licensee and the transaction is between the owner and the receiver, and that receiver is getting the rights for that particular period of time. And generally see, for example, I can give you example here, two examples we can consider here.

That suppose you are in a academic institute, probably you may not be interested in developing that particular technology or bringing that technology further to make a product and bring into the market. So in that case, probably you would like to give your IP to somebody else who can develop that and they can make a product out of that, that is a one thing is there. The second is like a scenario is like that, suppose you are in India and you have developed your IP and you want to expand your business in USA suppose, so you can do the activity like and you have protected through PCT your IP there.

So, but you do not want to go there, but you know that your IP is very promising. So sitting here you can give a contract to someone else, you can give the, that IP to someone else and they can do the marketing and capture the market there and yes, you are getting a certain share in that particular kind of activity. So I guess this is pretty well enough for you to know about a IP licensing.

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Now the next is like a, the specialized IP holding company is there. And this is like a one what we can say the example, it is a type of business where the company, means holding company we know that what is holding company, it is generally a business where that stocks or bonds or mutual funds, gold, silver, some this kind of a things are like a that company is, they are like owning that kind of thing.

Now when we are talking about a specialized IP holding, you just replace that particular bonds, mutual funds, gold, silver with a IP like a patent copyright license, this industrial designs kind of a thing. So what, what these organizations are doing that they will buy that particular patents or copyrights or related whatever that industrial design is there, they will brought it from various resources, probably they will bundle that particular thing and because of that bundling of that particular IP, that value addition will be there.

And then they can offer it to someone else and that way that transaction can happen. It looks very simple but it takes, it is a very all this transactions are a time taking activity actually. So I guess this, this examples, when we are seeing these examples like all these kind of a technology acquisition is there, technology development is there, foreign direct investment is there. So this, when we are, we have seen this specialized hold company, that specialized IP holding company. Now, you got the idea how they are doing the transaction all that thing.

So you can see now this technology development, technology acquisition, turnkey projects or divest… divestment kind of thing, collaborations are there, strategic alliances are there, joint ventures are there, foreign direct investment, IP licensing and this specialized IP holding company. So these are the few, what we can say, the examples are there which are taking, or the instead of examples, I can say these are the few points which will be considered in the IP transaction. So I guess, you got the pretty well idea about IP transaction and with this we are coming to the end of this session. See you in the next session, thank you.