

Economics of IPR
Prof. Nalin Bharti
Department of Humanities and Social Science
Indian Institute of Technology, Patna

Module - 04
Lecture - 01
IPR: Commercialization and Unfair Competition

Continuing the discussion on issues related to intellectual property right. We have seen that there are different issues related to intellectual property rights today and the as a part of the 4th week course this particular lecture is discussing about how intellectual property right today is a matter of great commercialization and fair competition.

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So, we are going to a really focus on the discussion today the brief outline of this discussion is the Introduction Commercialization. We will try to explore some of the instances then the rules, the global rules of unfair competition and then concluding remarks.

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INTRODUCTION

- Commercialization is a process which introduces a new product or technique of production to the market
- Intellectual Property is not only a legal asset, but it has also a commercial value
- Commercial benefits of an IPR can be extracted through selling, licensing or setting up own commercial venture
- Rapid technological progress and globalization has commercialized the IP



So, when we say commercialization what comes in our mind? It is basically a process which introduces a new product or technique of production to the market. So, intellectual property right is one of the major helpful tool to commercialize the product because when a product is added with new intellectual property with the new intellectual exercise then the product is really capturing the market and the forms are trying to commercialized those intellectual properties to the market and the intellectual property is not only the legal asset, but it is really having one of the commercial value today.

So commercial benefits of an intellectual property right can be extracted through selling, like licensing or setting up own commercial venture, rapid technological progress which is one of the recent trends, especially in newly emerging economies and also in some of the developing countries we are finding that there are certain technological progress going on and which has very much impact on the commercialization of those new inputs, which is used for the making the new output to the market and those outputs are commercialized today and it has a very global demand and such commercialized intellectual property rights are the matter of a globalized market.

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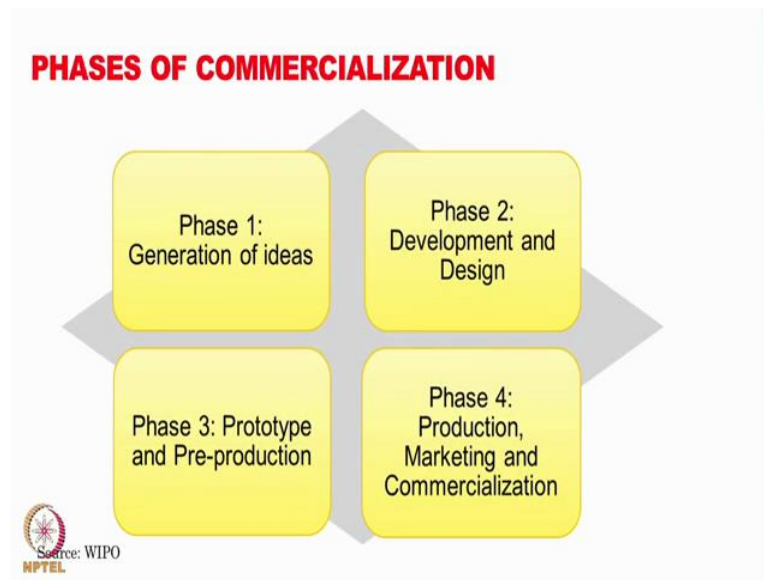
COMMERCIALIZATION OF IP

- Innovation process inculcate technology and inventions and are essential for transforming inventions into profitable marketable products
- However, the process is complex and entails to a large extent, specialized efficiency, skills and professional knowledge
- For the success of any invention and innovation (intellectual property), the ultimate and critical stage of the innovation process is the marketing and commercialization

So, the commercialization of intellectual property is including the innovation process of technology and inventions and these are essential for transforming inventions into profitable marketable product; however in the process the process is not. So easy the entire process of commercialization includes various steps and it is complex and entails to a large extent specialized efficiency skills and professional knowledge. So for any successful commercialization of intellectual property right it is indeed important to have a proper invention, a proper innovation and the ultimate and critical stage of the innovation process is the marketing and commercialization.

The fact is that most of the patents, most of the commercial intellectual property, if it is not commercialized the market value of those patents and market value of those intellectual property rights, the commercial value of those intellectual property rights are not, if it is not exploited it means that patent has lost its value which is linked with the marketed commerce. So that is a set we for the commercial for the patenting system if it is not really commercialized.

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So, ultimate goal of the forms research and development activity today is to have some output which may be commercialized. So, the entire commercialization process is it can be divided in 4 phase as a world intellectual property rights. Highlight these 4 phase as the generation of ideas. First phase the development and design, and the second phase prototype and preproduction is the third phase and the fourth phase is the final production marketing and commercialization. So, the each phase is really having different steps, different level of preparation. So, commercialization cannot be without a (Refer Time: 05:08) as we have seen that different stages it has to be exercised and so, there are certain a strategy to commercialize the final product.

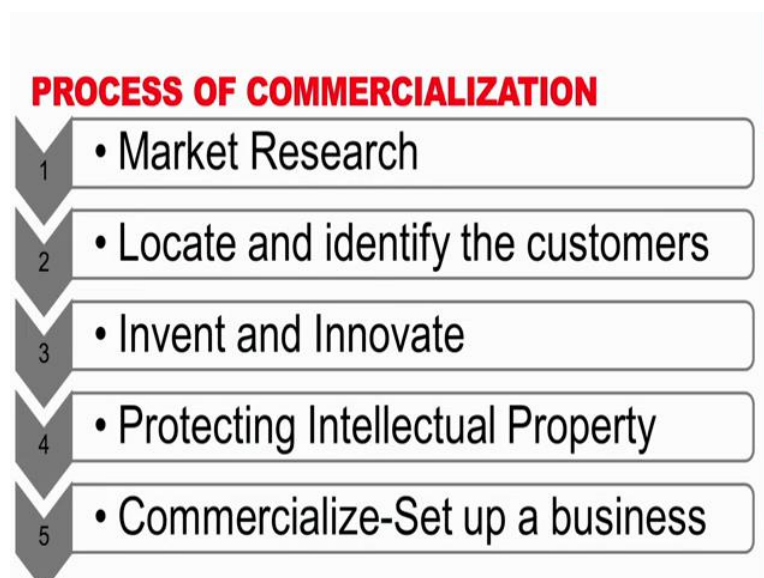
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COMMERCIALIZATION STRATEGY	
1	Set up personal manufacturing and marketing
2	Authorize others through licenses
3	Sell the patent rights
4	Any amalgamation of the above

The first is setting up its own a owners personal manufacturing and marketing unit, the second is to authorizing some of other producers or some other people to get the license for the marketing and manufacturing and the third is to really having the patents rights and then any other problem and associated issues if it is available.

Then it is also the responsibility of the patentee or the intellectual property owner to find out the strategy to solve the issues related to commercialization of those patent rights for any intellectual property rights.

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So the process of commercialization includes the knowing what type of market is there to launch a product for example, if there is a pharmaceutical product you have to find out that what type of market, in which capacity you are going to launch the product, how many customer you are going to get it. If it is electronic product before that you have to have a before launching the product you have a survey to find out that what type of market adjust, what type of demand adjust for your product and locate and identify the customers because how you will you are going to reach to the customers, without locating the customers, without identifying the customers it is not.

So easy to really reach the really reach with the commercial products to them and then invent and innovate, when you have you are knowing this strength or if you are knowing current condition in the market, when you are aware that what type of demand is existing where is the consumer, what type of consumer you are having then you are more sure about your invention and innovation. And then you have the invention and innovation it is your responsibility the inventor's responsibility to protect the intellectual property because we have seen when we were discussing about the issue issues related to intellectual property right.

We have seen that there are unfair usage of intellectual property rights on a very large scale, not only in the patent related areas, but also related to traditional knowledge related to biotechnology related to the plant variety and so, it is the responsibility of a particular owner to really look for protecting the intellectual property and then you have these process involved then you the right to commercialized and to set up a business. Any such drawback on your process of commercialization is going to really get you a set back and you are not really able to continue in the market.

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COMMERCIALIZATION OF PATENTS

- Patents are extensively created means that promote innovation
- This IPR grants the holder the limited right of exploitation and allows them to venture the invention by manufacturing, using, or selling products or processes incorporating the technology covered by the patent
- The owner may also allow the invention to be exploited by others over a set period of time, in return for fair reward to recoup for the R&D costs and others




So for example, if we are talking about the commercialization of patents, as we know that patents are extensively created means that promotes innovations and when intellectual property this IPR grants the holder the this particular patent is granting the patent owner the limited right of exploiting and allows them limited right because you have a time frame work and you have a limited time. Within that time only you are going to exploit at the market and then the owner is allowed to venture the invention by manufacturing using selling or processing incorporating the technology covered under the patent ownership.

So, the owner may also allow the invention to be exploited by others, over a set period of time in return of fair reward, which is named as the license fee to maintain the R and D cost and others.

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PATENT SOME FACTS

- According to Ted Sichelman (Commercializing Patents, Stanford Law Review, 2010), about more than 50% of all the patents granted for inventions are never commercially exploited in the US
- IBM was granted approximately 67,000 US patents during 1993-2012
- It has received 6,478 patents in 2012, outpacing the aggregate of Accenture, EMC, Amazon, Intel, Apple, Oracle, Symantec, and HP
- IBM owns about 50000 active patents, which makes it one of the largest patent owner company in the world



So, there are certain fact which is important to learn to day which is related to patents according to the statesmen commercialized patents extent for the law review 2010, about more than 50 percent of all the patents granted for inventions are never commercially exploited in united states. IBM was granted approximately 67000 us patents during 1993-2012. It has received 6478 patents in 2012 out placing the aggregate of Accenture, EMC, Amazon, Intel, Apple, Oracle, Symantec and HP. IBM owns about 50000 activity patents which make it one of the largest patent owner companies in the world.

So, we find that due to the huge value of commercialization of these patented items some of the forms are so strong in patenting that they are really working hard to go with new and more novel idea to patent it.

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PATENT: STATISTICS

Table 1: Number of Patents Granted by US Patent and Trademark Office

Origin	2010	2011	2012	2013	2014	2015
U.S. And Foreign Origin	219614	224505	253155	277835	300677	298407
U.S. Origin	107791	108622	121026	133593	144621	140969
Foreign Origin	111823	115883	132129	144242	156056	157438

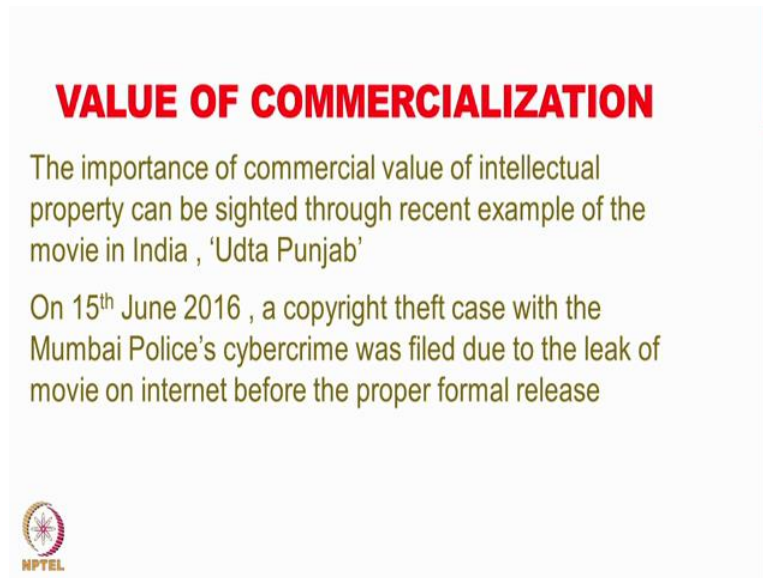
Source: http://www.uspto.gov/web/offices/ac/ido/ocip/ta/cst_utl.htm

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So, some of the statistic which is related to united states we can see here in last 5 years data, 2010, 11, 12, 13 and 14 and 15, a 6 years data we are finding that the number of patents in 2015 compared to 2000 is very high because in 2015 US is about to reach to the level of 300000 patent, out of 300000, 140969 patents are by the US origin well the 157438 patents are related to the foreign origins in 2015.

So, this show that the statistic source that there is a rich patent awarded in United States and this type of data. So that patent granted in united states and trade mark offices are convincing us that there are commercial value involve even a 50 percent, only hardly 50 percent patents are being marketed, but nowadays there is a again rethinking on these patented items, that before going for the patent applications they are also finding that what type of real uses of those patented items are further marketing purpose.

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VALUE OF COMMERCIALIZATION

The importance of commercial value of intellectual property can be sighted through recent example of the movie in India , 'Udta Punjab'

On 15th June 2016 , a copyright theft case with the Mumbai Police's cybercrime was filed due to the leak of movie on internet before the proper formal release



Because the importance of commercial value of intellectual property, one can also find today which is which the case of copy right theft is. In the recent case in India very recent on 15th June 2016 a copy right theft case with the Mumbai police crime branch was filed due to the leak of movie on the internet before the proper formal release.

So, one side we have seen that how number of patents has one of the important implication, but here we can see that apart from those legal implication for business, if unfair practices are already gone, that in case of investors especially for the copyright material, it is really going to have a very different level of challenge because those intellectual property right, especially the copyright materials are having a huge market and there is a parallel market which do not want to really pay for the copyright holders and they want to really have a free access of those films those audio those videos which can be the matter of privacy.

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OTHER INTELLECTUAL PROPERTY

Other intellectual properties appear to be very significant when successful innovation comprises captivating a new product to the market

For the marketing process industrial designs and trademarks play a critical role

However, for launching new products in the market, a trademark is an effective tool



So before release also the film was available and these types of incidents are not single, but there are large numbers of such incident not only in India, but also in other country.

So other intellectual properties appear to be very significant when successful innovation compromises, captivating a new product to the market. For the marketing process industrial design and trademarks play a very critical role. In our previous lecture also we have seen that certain industries especially fashion industry textile industry and electronic another industry. They are using this industrial design and trademark in a very great sense to acquire the market because these intellectual properties are helping them to really go ahead with a market.

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COMMERCIALIZATION OF IP: SOME INSTANCES

- Trademarks can be extremely successful in exploring, penetrating and entering into new markets for products
- For instance, Honda captured the advantage of its brand name in motorcycle manufacturing to penetrate the United States car market
- Combination of various types of IP tools such as patents, industrial designs and trademark can be traced by the example of the vacuum cleaner that offers a good case of commercialization of different intellectual properties



However for launching new products in the market, a trade mark is again one of effective tool. So, some of the instances of trademark under the intellectual property rights which can be seen here; the trade mark can be extremely successful in excluding when you trading and entering in to the new markets for products, for an instance Honda captures the advantage of its brand name in motorcycle manufacturing to penetrate is to the united states car market.

Combination of various types of IP tools, such as patents, industrial design and trademark can be traced by the example of to vacuum cleaner that offers a good case of commercialization of different intellectual properties.

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SOME INSTANCES...

- Trademarks can also assist in enlarging the commercial benefits outside the life of a patent
- The example may be the Aspirin®, which was developed by Felix Hoffman in 1897 while working for Bayer Company in Germany and was patented in 1899
- Since, patents are granted for a limited period, the Bayer Company resorted in endorsing a trademark for its new drug
- After the expiry of the patent, Bayer started benefitting from the selling of aspirin by trademark Aspirin®
- The Company has also exploited the dual-way intellectual property strategy, for its Cipro® drug (used in the cure of infections).



So apart from these examples, we can also see the example may be the explained, which was developed by Felix Hoffmann in 1897, while working for Bayer company Germany and was patented in 1899, since patent patents are granted for a limited period the Bayer company resorted in endorsing a trademark for its new drug. After the expiry of a patent, Bayer started benefiting from the selling of aspirin by trademark aspirin or in the circular. So, the company has also exploited the dual way intellectual property strategy for its Cipro drug used in the cure of infections.

So trademark are also assist in enlarging the commercial benefits outside the life of a patent. If so this is the case of dual intellectual property, the product was previously got the patent owner abraded. Now the company has filed trademark registration for that and then dual way of intellectual properties strategy help the company to really continue their monopoly in the market, because such a strategy is having the commercial importance.

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SOME INSTANCES...

- Intellectual property may be separately or any combination of patents, industrial designs, trade secrets, copyright or trademarks can be used to assist the commercialization of any new product
- Higher profits, premium price, or significant market share can be sustained through strategic use of a combination of intellectual property tools

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So, intellectual property maybe separately or may be a combination of patents industrial design and trade secrets, copyright or trademarks, and it can be used to assist the commercialization of any new product, higher profits, premium prize or significant market share can sustained through strategic use of a combination of a intellectual property rules.

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UNFAIR COMPETITION

Paris Convention (1883), Article 10 bis categories unfair competition into:

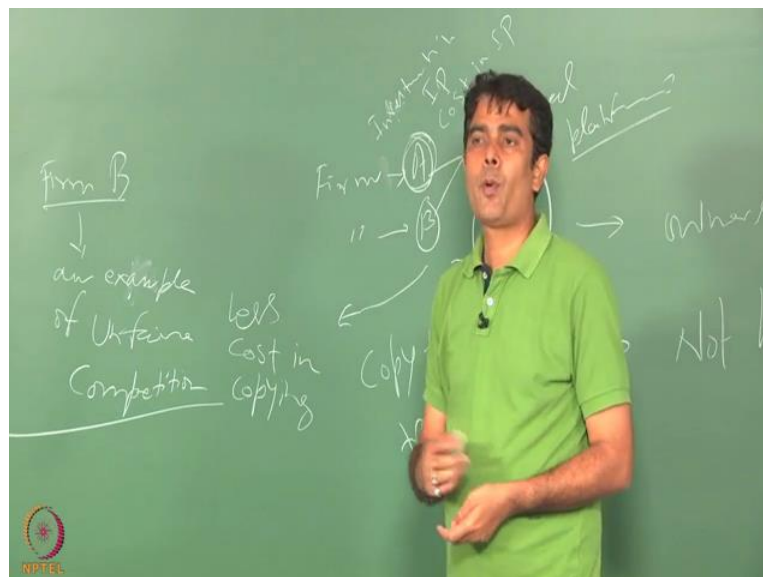
- Confusion causing acts
- Damaging reputation
- Misleading acts

For more details follow the links: http://www.wipo.int/treaties/en/text.jsp?file_id=288514#P213_35515




So what is unfair competition because in the first part of this lecture we have seen that there is a huge value, high value involved in the commercialization of these intellectual property rights, but what is what is basically unfair competition where is convention 1983 article 10 bis categorizes unfair completion into 3 level, Confusing causing act, damaging reputation and Misleading acts.

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The chalkboard contains the following handwritten notes and diagrams:

- On the left: "Firm B" with an arrow pointing down to "an example of Unfair Competition".
- In the center: "Firm A" with a circled 'A' and an arrow pointing to a circled 'B'. Below this, it says "copy" and "cost in copying".
- At the top: "Intellectual Property Cost in SP" and "al plank?".
- On the right: "Not h" and "ownh?".



So if your firm really wants to, suppose there are 2 firms. A firm which is having the ownership of intellectual property firm A and firm B is not having not having ownership of

IP.

Suppose we have 2 types of firm. One having the ownership of IP and the second one not having the ownership of IP and if this firm B, is trying to compete with firm A, because firm B is not having ownership of intellectual property. So, the firm B will try to copy the trade mark or may be trying to have the infringing of the patent rights trying to really produce a product, which is similar to the patented products, have try to esteem the competition and try to peep into the secrecy of a producers and try to damage the reputation also or try to confuse the customers with the similar symbols and similar logo, similar type or the name and brands.

So finally, the B is having the unfair competition with firm A. So, firm A and firm B is not at the level of equal platform. They are not have the equal platform because firm A has investment in IP, ownership of IP cost involved, cost in IP, but firm B has no cost or very less cost, less cost in copying. So, firm B is trying to compete, but the firm B is not to trying compete with a fair means, but firm B is trying to compete with unfair means. So the firm B is the of unfair competition because firm B is trying to copy the trademark, firm B try trying to copy the symbol, trying to copy the slogan, trying to copy the brand name and may be trying to infringe the patent rights or whatever means they are they are trying to adopt they are doing it.

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So ultimately the firm B is not support supposed to do that and the Paris convention 1883 providing the guide lines in this regard. So unfair competition is any action or practice taken

out in the way of industrial or commercial enterprises, opposed to honest practice is regarded as the act of unfair competition. So, if you are completely opposite to the honest practice like in case of firm B contrary to the honest practice has become the crucial criterion for defining unfair competition.

In the court of law if firm B is proofed that, they have copied or they have use some other formula or some other some other existing intellectual property for the production of something to the market in that case firm B will be caught and punished and liable for the penalty.

The Paris convention 1883 safeguards a member safeguard to a member, against unfair competition by making it binding for the other members. This commitment is underline by article 2 of the TRIPS and obligates members of the WTO to abide by the Paris convention.

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UNFAIR COMPETITION...

Thus, the Paris Convention (1883) safeguards a member against unfair competition by making it binding for the other members

This commitment is underlined by Article 2 of the TRIPS and obligates members of the WTO to abide by the Paris Convention



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COMPETITION LAW: PROMOTING FAIR COMPETITION

The competition law aim at prohibiting the strategy of the firms and big corporations to reduce competition and monopolizing the markets. Three broad laws are:

- (i) Anti-monopoly law
- (ii) Anti-collusion law (cartels, etc.)
- (iii) Non-competitive merger control law



Apart from Paris convention, the competition law also adjusting countries to which is aiming at prohibiting; the strategy of the forms and big corporations to reduce competition and monopolizing the markets. Three broad are Anti monopoly law, Anti collusion law which is named as the cartels and Non competitive merger control law which is the part of competition law exist in most of the country today and this source that apart from the Paris convention domestic law is also available to control certain issues related to a monopoly collusion and competitiveness.

But that includes the intellectual property rights issues also because if certain forms are trying to really make something very norm serious and unfair to the existing firm which is really having a fair and very authentic intellectual property available, in that case certain competition law is there to prohibit those activities.

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CONCLUSION

Converting an invention or innovation into a marketable (commercialization) product, involves the strategy of due thoroughness which aim at recognizing significant legal and commercial risks, and application for and acquiring of the proper selection of IPRs

It also requires formation of a strong business organization and a system of license agreements with potential investors, manufacturers and distributors

Robust IPR protection ensures entrepreneurs to commercialize by cooperating rather than competing with others.

Intellectual property rights are essential for encouraging innovation, but it can create monopoly, though competition law combats it.



So converting an invention or innovation into a marketable to a commercial product, involve the strategy of a complete thoroughness, which aims at recognizing significant legal and commercial risk and application for and acquiring of the proper selection of intellectual property rights. So we have seen that some of the forms are various smart enough to have the dual strategy of intellectual property and it and some of the forms are really active and smart to do that. Some of the illegal forms like in case of firm B we have seen that firm B is trying to have a very unfair competition and using the tools to really acquire the market, that strategy is not a fair strategy that strategy is not a complete strategy, but these are the strategy which is very much on a unfair based on the unfair competitive motive.

So it also requires formation of a strong business organization and the system of license agreements with potential investors, manufactures and distributors. If unfair competitions has to be then you have to have a strong business organization and ethics in a system a system of license agreement, should be very much depending on the mutual respect and confidence and the then only manufactures and investors and distributors can really work for a very competitive, a fair competition and to reduce the unfair competition.

So if somebody really wish to boost the IPR protection without boosting the IPR protection in revenues cannot really commercialize the products in the market, because if the protection system is weak, the firm who really having or the revenue, who is really having the intellectual property rights ownership, they are not sure that how long they are really safe and

secure in protecting the rights.

So, intellectual property rights are essential for encouraging innovations, but it can create monopoly, but the competition law and certain obligations in trips agreement really provides a very wide range of controlling such monopoly power also.

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FURTHER READINGS

Video link on Commercialization of Patents:
<https://www.youtube.com/watch?v=TBtj3qCNkpQ>

Protection Against Unfair Competition:
[http://www.esa.int/About_Us/Law_at_ESA/Intellectual_Property_Rights/Protection against unfair competition](http://www.esa.int/About_Us/Law_at_ESA/Intellectual_Property_Rights/Protection_against_unfair_competition)

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I hope this discussion, which is the last part of the course is going to help you to linkage to link the previous discussion on issues related to intellectual property rights and why today lots of conflict and lots of challenges are on the way, because intellectual property right is not only a legal right. But it is also one of the commercial value involved in the intellectual property protection and that is why the world is really active and really smart enough to have the intellectual property rights with a proper strategy and some of the economies or really working hard to control their intellectual property in a much better way.

Thank you.