



OPEN INNOVATION IN IP EVOLUTION: A COMMERCIAL SOLUTION

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❖ ABSTRACT:

In this developing age, creation of useful intellectual property is half work done, other half is its successful commercialization in the market. Open innovation is one of the emerging concept which helps in strengthening & supplementing the firm's or other industry's research and development wing by absorbing technical know-how or creativity from the outside world, such working methodology successfully accomplished from the process of delegation. But such process works in contrast with the ideas of rights provided under the intellectual properties viz. right of patent which grants monopoly right to the innovator for the development of any innovation work. This paper has studied to join the dots to signify the relation between them in order to understand beneficial usage of both systems. This paper provides mechanism relating to assigning and licensing and concludes towards the optimum application of delegated innovation. This paper concludes that although both the concepts are opposite in nature but can be worked in synchronization with each other.

- Open innovation
- Delegation
- Technology
- Assignment

- Licensing

❖ INTRODUCTION:

Open innovation is one of the management concept that promotes outsourcing of ideas from the outsiders aims at increasing the invention values or output of the industries. The advantages of such concept is easily visible at small or medium sized who would be easily suppressed by big players in the market in the cases of high quality innovation. If the small or medium size firms or industries given the opportunity to collaborate and import the methodology and technologies from large firms & industries, such collaborations may result in feasible growth in the working conditions of such small and medium size industries.¹

The basic ideology of this concept should not be interpreted as to replace the home or internal research or development department of the small or medium size firms but instead it meant to boost and supplement the firm's output with the innovative ideas of external firms to maintain its position in the ruthless competition of present market. The concept of open innovation contradicts this concept of closed innovation which was prominent in earlier times mostly in large firms.

Although, in the eyes of law, it seems very obvious to not to share any high level technological know-how, which indeed considered in the concept of intellectual property. So, in order to illustrate the point,

¹DEEPAK SOMAYA, 'COMBINING INVENTIONS IN MULTI-INVENTION PRODUCTS: ORGANISATIONAL CHOICES, PATENTS AND PUBLIC POLICY' [2001] HAAS SCHOOL OF BUSINESS.



patent is one of the major tool which can be taken as it is directly relatable with open innovation. Most of the jurisdiction for patent in the world were embossed by keeping in mind about the extraordinary efforts inferred by the innovator to conceive his novel invention and rights to protect such invention is provided to him under the intellectual property rights as a prize for such invention. But open innovation does not found this idea as a successful one because the parallel growth of any alternative model technology may result as a challenge anyway in front of innovator or research and development department of any industry.²

OPEN INNOVATION & JUSTIFICATION:

Traditionally, the doctrine of patent hunts for “gods of creativity” which was also elaborated in the case of “*Graham v. John Deere Co., 383 US 1, 15(1966)*”³. But in the prevalent time, it is largely affirmed that the concept or process of innovation is not random. As creativity in the present times put more reliance on the existing ideas and found its base of creation upon them.

One of the major challenge in order to transfer any technology is when its own performance suddenly increases but it has been already successfully marketed by the industry or firm. Such a case in small or medium industry may be miserable for them

which may result in throw them out of market. In such conditions, it would be a wiser step to make a collaboration or partner with the competing industries or firms than to commercialise the invention from its own. Such collaboration anyhow will be more beneficial for the small or medium size industries or firms rather than doing it individually.⁴

One of the direct illustration to grasp the practical application of the open innovation concept which creates developing relation between two firms can be understood as a firm X, who possess expertise in ABC technology, and a firm Y, who possess expertise in PQR technology, under the model of open innovation they can create technological know-how between them which may increase mutual growth rate of both of them, which may help them for overall evolution.

An open innovation model opens gate of opportunities for the innovators. This may also penetrate many different solutions for the same problems faced by many different firms and industries.

The idea of open innovation model may pass the litmus test on its practical & beneficial grounds in many ways like maximizing profits and to create something which may be intersecting for two different fields of art.

❖ MODULATION OF OPEN INNOVATION:

²JOHN DUBIANSKY, ‘THE ROLE OF PATENTS IN FOSTERING OPEN INNOVATION’ (2006) 11 VIRGINIA JOURNAL OF LAW AND TECHNOLOGY.

³‘GRAHAM V. JOHN DEERE CO., 383 U.S. 1 (1966)’ (*JUSTIA LAW*)
<<https://supreme.justia.com/cases/federal/us/383/1/>> accessed 1 August 2018.

⁴ASHISH ARORA, ‘MARKETS OF TECHNOLOGY: THE ECONOMICS OF INNOVATION AND CORPORATE STRATEGY’ [2001] THE MIT PRESS, CAMBRIDGE, MASSACHUSETTS.



The minor self-conflict makes it difficult to manage the open innovation model without complete idea about this concept. This model demands an open correspondence of ideas all with the assimilation of confidentiality at the same time.⁵ Such types of process may also come into action at the time of preparation of agreements & other documents for licensing. But, the priority at this juncture should be the basic norms of intellectual property laws over the other corporate laws.

It seems anecdote to promote the culture of an open innovation without compromising its advantages brought by the intellectual property laws especially by the patent laws, the portfolio management team of the firms or industries must be vigilant towards the present intellectual property dealings to smell the advantageous deals from the market.

The mechanism of open innovation comes into play after filing of the provisional patent application and before the step of collaboration with any other party which may eliminate any unwanted confidentiality conflicts during the creation of any agreements between them. Even if it is advisable to file the full specification application but it may not be feasible in every circumstances.⁶

It is very important for the firm or industry to secure themselves from any leakage or unwanted disclosures about the invention for which they toiled day-night. Especially the industries or firms who adopted such delegating know-how system should be very careful while dealing with any of the secrecy issues, as it may badly effect their claim for any joint-ownership collaboration for such intellectual property in future.

Along with this model of open innovation, the secrecy is also very important factor which may be achieved by the way of non-disclosure agreements, as the market is not so emotional or trustworthy, it maintains nail biting competition which may turn the table overnight if any loop holes found in the maintenance of the confidentiality of innovation.

There are two major modes for technology acquisition to provide path to transfer the specified knowledge to the transferee, such as: -

1. **Licensing:** This is one of the famous mode to transfer information through know-how agreements on the process to perform any innovation.⁷

There are two modes of licensing in the case of patent laws, enumerated as:

1.1 **Active licensing:** It deals with the transfer of idea openly through know-how to work and explore that invention. This needs a very strong relationship between both the transferor and the transferee. The concept of active licensing is fascinating because along with the technological methods person also

⁵JOHN R HARRIS, 'PATENT ISSUES IN OPEN INNOVATION' (2013) 6 AMERICAN BAR ASSOCIATION SECTION OF INTELLECTUAL PROPERTY.

⁶LEE FLEMING, 'RECOMBINANT UNCERTAINTY IN TECHNOLOGICAL SEARCH' (2001) 47 GRADUATE SCHOOL OF BUSINESS.

⁷FUMIO KODAMA, 'TECHNOLOGY TRANSFER AND THE NEW R&D' [1992] HARVARD BUSINESS SCHOOL PRESS.



transfers his personal experiences which is invaluable in nature. There are many small informations which lead to great creation of any invention which may provide edge while its usage or presentation to use. Sometimes transferee from a different field fails to absorb the in and out of the concept relating to the invention which leads to the inappropriate outcomes, which may demise the expectations of transferor, in such cases the application of active licensing emerges as the successful concept to comply the internal demands between the parties.⁸

Sometimes, due to limited understanding between transferor and transferee, either fails to comply with the conditions of the agreement which leads to create frustration in the relations of the parties. In such cases, active licensing is the concept which provide boundless conditions in order to maintain better understanding between the parties who creates such know-how for their invention.

Active licensing considered as most efficient mechanism in order to provide optimum output from the licensing for any invention.

1.2 Passive licensing: Passive licensing apparently founds in Patent Laws. The concept of passive licensing is not like active licensing; it works as its name suggests. In passive licensing, there are various limitations in sharing informations through technical know-how. The extra knowledge or additional personal experience along with such technical know-how are not shared between the parties. They share only on-paper technicalities which indeed

important but lack personal touch factor for transferee due to limitations.

2. **Integrated Modulation:** In this mode, the transferee sets standards or provides mark and innovator provides innovation that can work under that standards.⁹ It is getting popular now-a-days due to its advantage of less transaction costs. Modulation can be encapsulated in the system to make it autonomous through various management mechanism. Any collaborative design effort in which the design tasks are partitioned ex-ante are essentially modular. The process of integrated modulation can be enumerated in three ways, as:

2.1 Open Architecture: Open architecture is the paramount concept of modulation. In such case, the firms or industries can freely provide interface in public. Any other developing firms or industries can be used by them by assembling innovation with the interface to understand a suggestive end.¹⁰

Illustration: Firm 1 provided interface A in the open market. This interface helps firm 3,4&5 to create any innovation on the basis of the interface provided by firm 1 in the open market to public. It provides ease to concurrently use such interface without any fear of heavy opposition upon it vis-à-vis provides opportunity to create their own innovation on its basis and improve

⁸TSUTOMU HARADA, 'THREE STEPS IN KNOWLEDGE COMMUNICATION: THE EMERGENCE OF KNOWLEDGE TRANSFORMERS' (2003) 32 ELSEVIER, AMSTERDAM.

⁹HENRY W CHESBROUGH, *THE NEW IMPERATIVE FOR CREATING AND PROFITING FROM TECHNOLOGY* (HARVARD BUSINESS SCHOOL PRESS 2003).

¹⁰JAE NAHM, 'OPEN ARCHITECTURE AND R&D INCENTIVES' (2004) 52 THE JOURNAL OF INDUSTRIAL ECONOMICS 547.



their position through its successful commercialization in the market.

The drawback of open architecture is it may hamper the income of the interface providing firms or industries who toiled for such innovation from the beginning but end up providing its interface openly for public. They indirectly loose protection over the innovation and the commercial benefits as well.

2.2 Component Modulation: In this system, firms or industries provides various components in relation to the innovation, combination of which provides final output. This system is more prevalent in the technology market.

Illustration: Industry 1 uses wire A required for the creation of technology X. Other industries who tends to creates similar technology may use wire A as its essential component to enhance to make their technology successful from the experience of firm 1 which may provide them success commercially.

2.3 Design Modulation: Many times, the outline or pattern of provided interface becomes more useful than interface itself. The famous example of this system is semiconductor integrated circuit layout. As per this system, the design of the interface itself modularized instead of its provided component. It also includes shape, size, combination or any other things directly or indirectly includes design for modulation of invention done by any other party from such design.

Illustration: Firm 1 creates structure X of machine A provided to the open market. Firm 2, 3, 4 uses that structure on their own machines along with the design patterns of machine A which helps them to

feasibly commercialise their product in market.¹¹

Open innovation needs huge range of communication in market and essential exchanges of ideas for the collaboration without compromising the internal confidentiality of firm or industry risking it. Such secrecy can be maintained in multiple ways, as either by signing non-disclosure agreement or by the way of informal means such as putting trust on the other party in order to share their sheer hard work with them for the purpose of mutual development out of that collaboration between them.

CONCLUSION:

The completion of any innovation is not ending but it is starting itself to make visible its output by facing after process challenges. This indicates rising demand for the firms or industries to collaborate among themselves to achieve their innovative output. The appropriate management of open innovation model and of the intellectual property, a needy environment to synchronize them. This can be achieved through strategic assignment or licensing schemes and integrated modulation of their work.

Thus, open innovation model in intellectual property world can provide unexpected results to speed up the IP filings in various sectors by the firms and industries, if managed in a strategic, logical and practical manner.

¹¹JOSHUA GANS, 'THE PRODUCT MARKET AND THE MARKET FOR IDEAS: COMMERCIALIZATION STRATEGIES FOR TECHNOLOGY ENTREPRENEURS' (2003) 32 ELSEVIER, AMSTERDAM 333.