

NEED OF INNOVATION AND RECOGNITION OF INTELLECTUAL PROPERTY RIGHTS- AN INDIAN SMES PERSPECTIVE

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ABSTRACT

With the due importance of small scale industry in the total industrial growth of India, it becomes important and imperative to focus on the inclusive growth on the value creation activities amongst Small and Medium Enterprises (hereinafter referred to as SME) players. As in the most cases, the entrepreneurs of SMEs are backed by poor knowledge and experience. They in most of the cases skip the very value creation activities or processes either because of poor knowledge and experience or due to constraints of funds availability. There are activities which if undertaken are very cost effective but really value adding. Intellectual Property Rights (hereinafter referred to as IPRs or IP assets) are one of the most inclusive example of those activities. SME like other sectors of economy are producing goods or providing services under various nomenclatures but in most of the times their nomenclature does not find due recognition and identity. This is because SMEs are not aware of the benefits of IPRs, a method of unique identification and recognition across the markets. The IPR includes trademarks, patents, copyrights, industrial designs etc. having so cold negligence on part of SME entrepreneurs. There are many reasons or causes of this poor awareness regarding IPR amongst SME entrepreneurs. This paper puts the light on the key importance of SME sector, lack of awareness of IPR amongst SMEs, causes for non adoption of IPRs and other related issues. Further, this paper suggests for the proper adoption of IPRs and the ways by which IPRs can be utilized as a tool of value creation and tool of wealth maximization.

Keywords: - India, SMEs, IPRs, Value creation through IPRs, Industry.

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CLASSIFICATION OF SMEs

As per Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 the enterprises are widely bifurcated into two categories such as enterprises engaged in the manufacturing and enterprises engaged in the services.

According to Act, manufacturing/production enterprises are defined in terms of investment in plant & machinery while the service enterprises are defined in terms of investment in equipments. Both types of enterprises are further categorized in Micro, Small and Medium enterprises, investment ceilings of whose are as follows:-

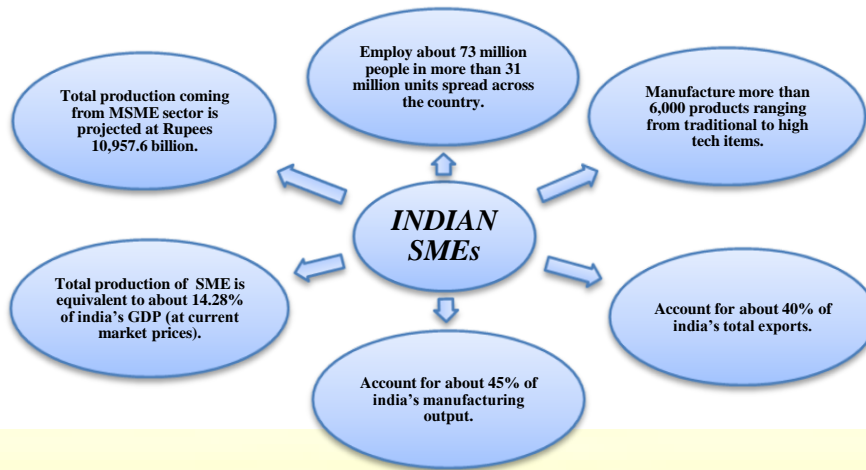
CATEGORIES	INVESTMENT CEILINGS	
	Manufacturing Sector	Service Sector
Micro	Up to Rs. 25 lakhs(\$50 thousand)	Up to Rs. 10 lakhs (\$20 thousand)
Small	Above Rs. 25 lakhs (\$50 thousand) & up to Rs. 5 Crores (\$1 million)	Above Rs. 10 lakhs(\$20 thousand) & up to Rs. 2 Crores (\$0.40 million)
Medium	Above Rs. 5 Crores (\$1 million) & up to Rs. 10 Crores (\$2 million)	Investment is more than Rs. 2 Crores (\$0.40 million) & up to Rs. 5 Crores(\$1 million)

Source: - Ministry of Micro, Small and Medium Enterprises (MSME), Govt. of India

*1US \$= Rs. 50

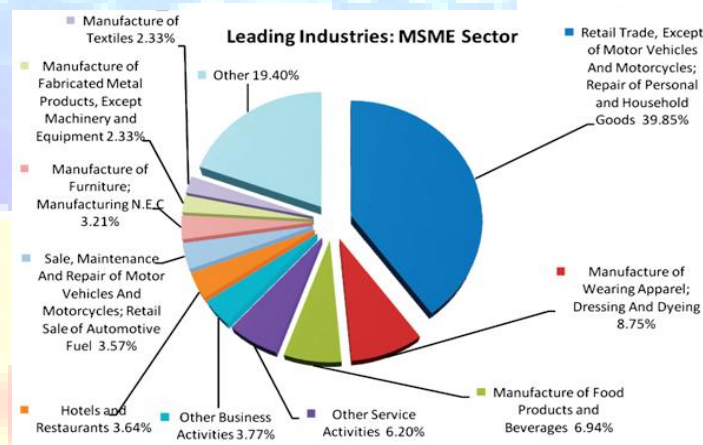
IMPORTANCE OF SMEs

Small and medium enterprises are the nerves of Indian economy which is crystal clear from the *Annual Report 2012-13, Ministry of Micro Small and Medium Enterprises, Govt. of India*, which shows that SMEs have expanded their scope from 105.21 lakhs units in 2001-02 to 447.73 lakhs units in 2011-12. Their importance has also increased manifold in terms of increased exports, reservation of items by Government exclusively for SMEs, increase in employment opportunities and many more.



SME sector is the second largest sector, comes next to the agricultural sector in terms of providing maximum employment in all industries as depicted in the below mentioned chart 1. SME sector further have huge potential for innovations, growth, investment and creation or enhancement of job opportunities in future also.

Chart 1:- Leading Industries in SME sector



Source: - Annual Report 2012-13, Ministry of Micro Small and Medium Enterprises, Govt. of India

INTELLECTUAL PROPERTY RIGHTS (IPR)- An Endless Asset for SMEs

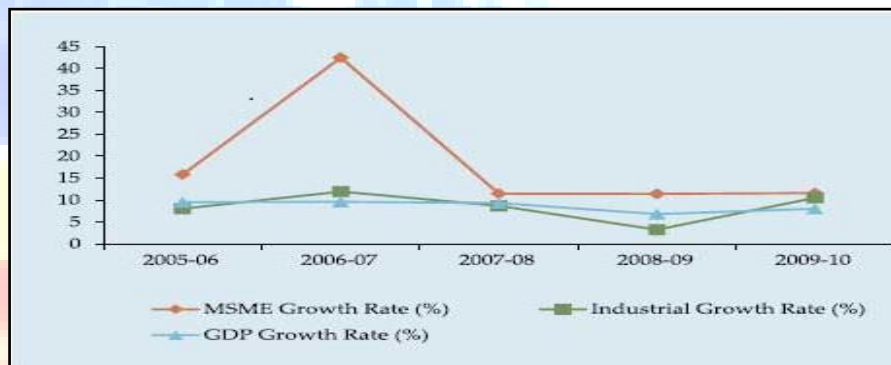
“There are no old roads to the new directions.”

- (THE BOSTON CONSULTING GROUP)

The phrase *“New directions”* in the context of Indian SMEs means the path towards a developed nation from a developing nation and *“old roads”* implies the traditional methods

adopted by the SMEs to work with innovation, generation and knowledge. Intellectual property law is the only law which protects the innovation, generation, knowledge, methods and ideas of entrepreneurs legally. Intellectual Property Laws gives the holder of Copyright, Patents, Trademark, Industrial Designs and Geographical Indications an exclusive right to exploit these rights fully by excluding others for certain period of time as prescribed in the relevant Laws. Intellectual property right if exploited properly by the SMEs entrepreneurs may prove boon for the SMEs in all spectrum. This would have possible only if entrepreneurs of SMEs approach towards IPRs as value addition and advancement opportunity. But entrepreneurs of SMEs does not recognize their own worth and contribution towards growth of Indian industrial sector. A comparison between SMEs growth rate with overall industrial growth rate and SMEs contribution in total production and GDP is depicted in the chart given below (see Chart 2).

Chart 2:- Comparing the Growth rate of MSMEs with IIP and GDP%



Source: - Ministry of Micro, Small & Medium Enterprises, Government of India & Economic Survey 2010-11, Ministry of Finance

Further, the data shown by the chart shows the impeccable importance of SME sector Vis -a - Vis overall industrial and economic growth. Given the importance of SME, it becomes practical for SME to grow and innovate in their respective lines of business. The innovation may be laid in the shape of research & development activities (R&D), market promotions & research and development of industrial know-how of their respective businesses.

HOW IMPORTANT INDUSTRIAL TECHNICAL KNOW-HOW IS FOR SMEs-

Technical know-how having many types i.e. Trademarks, Patents, Copyrights, Industrial Designs and other industrial literatures like Logo is critical to the SME sector.

This property is the result of internal intellectual proficiencies of the industrial units, like brand building & awareness is depicted by Registered Trademark; the technological advancements achieved by R&D activities are depicted by Registered Patent; achieved proficiencies in production process designs, plant layout is depicted by Registered Industrial Design; the achieved proficiencies in product specifications & other product or process related literature including contents of organizational websites is depicted by Registered Copyright.

Intellectual property	Meaning & Purpose	What is included
Patent	A patent is an intellectual property right relating to inventions and is the grant of exclusive right, for limited period, provided by the government to the patentee, in exchange of full disclosure of his INVENTION , for excluding others, from making, using, selling and imported the patented product or process producing that product for those purposes.	INVENTIONS in respect of manufacturing & production processes, machines & equipments.
Copyright ©	Copyright is a set of exclusive rights granted by the law to the creators of an original work, including the right to copy, distribute and adapt the work.	Literacy work, musical works, dramatic works, choreographic work, pictorials, graphics, architectural works, business work, work on the web, work of applied art, computer work.
Industrial Designs	Essential purpose of Designs Act is to protect and promote the	Shape, configuration, pattern or composition of colours or lines

	design element of industrial production (includes original or new design, not disclosed to the public anywhere, distinguishable from known designs and does not contain obscene matter)	applied to article (applied to any article in two dimensional or three dimensional or in both forms)
Trademark ®	A trademark is a sign or indicator or a combination of these used by a manufacturer/merchant to identify his goods and distinguish them from those of competitors.	Any distinctive words, letters, shapes and designs, colours & images, labels, logo, pictures, symbols, combination of all these.
Geographical Indications	Geographical indications is an IPR, which identifies a good as agriculture goods/natural goods/ manufactured goods as originating or manufactured in a specific country or certain territory of that country or region of that territory.	Where a given quality, reputation or other characteristics of the product is essentially attributable to its geographical origin.

After going through with the above mentioned IPRs it is evident that SME sector is more conspicuous of innovations, leading indicators of which are as follows :-

- Low investment required to start up
- Less legal formalities as compared to other sectors
- Less number of persons required
- Govt. exclusive support in the form of items reservation for SMEs
- Expansion of SMEs – more employment opportunities
- Adequate support from organized intermediaries
- Attractive sector for policy makers

Further we will continue with the opportunities available to the SMEs by the means of fully exploitation of IPRs.

Market Value Ameliorations through IPRs

Entrepreneurs of SMEs can use IPRs to enhance the market value of their products. In marketing arena IPRs can be practiced in following mentioned ways:-

- **Trademark™ and Service MarkSM:** - These marks as protected by law, helps the entrepreneurs to distinguish their products or services from those of competitors and leaves their acknowledged image in the minds of consumers thus helps the SMEs to easily promote their products with the help of advertising and other tools available in the market for brand and goods promotion.

- **Collective Marks:** - *“IF YOU CAN'T BEAT THEM, JOIN THEM”*

These marks as the name suggests gives an advantage to the entrepreneur of SME to work with other SMEs collectively for some mutual benefits instead of competing with each other. Collective marks are not in nature of partnership but a mark used by an association or group of persons.

- **Industrial Designs:** - Innovative and legally protected designs reach diversified group of consumers and thus enhance the number of clientele and makes the entrepreneur as the pre-eminent player.

These IPRs if properly applied by the SMEs may prove advantageous in the following ways:-

- Prevents competitors from imitating the product.
- Access to new markets –Domestic and Global.
- Creates unparallel corporate identity.
- Heighten the market value of enterprise.

SMEs should take steps to strategically exploit the IPRs wherever possible which may prove a boon for SMEs in the form of increased competitiveness.

Intensification of Profits by Adoption & Use of IPRs

“Necessity is the mother of invention.”

- A proverb.

Same applies here in the context of SMEs. Development of products and services by using Innovation of new technologies, Creation of new ideas, development of new processes and methods certainly add their value in shape of enhanced profits. These creativities when protected by the IPRs are reflected in commercialized products, enable SMEs to glean the benefits in the form of increased profits.

Further, if entrepreneurs of SMEs are not able to reap the benefits of their IPR assets due to financial or marketing constraints, in that situation SMEs may earn the huge profits in the form of royalty payments by the means of licencing or selling their IPR assets to some other firms for a lumpsum amount who could make full exploitation of these assets.

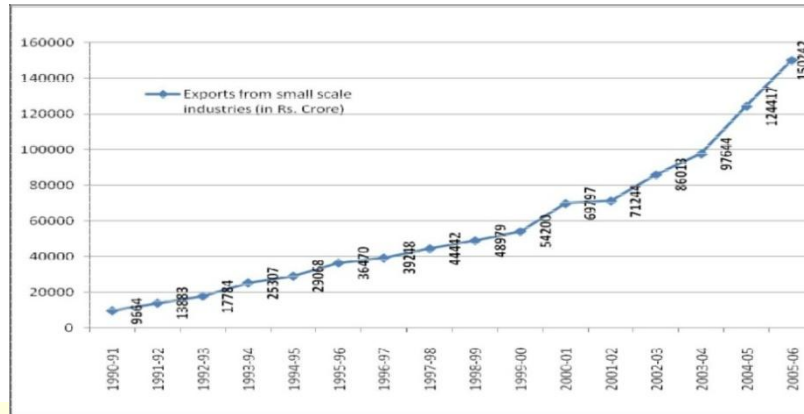
Increment in sales because of recognition of brand name in the market raises the share prices of SMEs thereby increases investors value. Such a thing is a good indicator of SMEs proposed growth in the eyes of financial institutions, business partners & shareholders which enables entrepreneurs to easily raise funds for their expansion and restructuring programmes whereby forthcoming profits will increase.

Spurt Opportunities to Export and Work in Overseas Markets

2010-11 Annual report of Ministry of MSME (Government of India), depicts that, in terms of value, the SME sector accounts for about 40 per cent of the total exports of the country.

Chart 3 (given below) clearly depicts that exports from the small scale industry has increased from Rs. 9,664 crore in 1990-91 to Rs. 1,50,242 crore in 2005-06, which is a good indicator of SME sector achievements. This percentage would have been increased if IP Assets are milked by the SMEs to full extent because globalization has weakened the SME sector and percentage of total exports made by the SME sector are disproportionate to its size.

CHART 3- Exports from small scale industries (in Rs. Crore)



Source: - Handbook of Statistics on Indian Economy (2009), Reserve Bank of India

Further to discuss, Reasons of how these IP Assets can boost the export potential of SMEs are as follows:-

- Pricing of products in export market depends upon the competitiveness of the product among alike and identical products, extent of which are made restricted by IPRs.
- Creative and innovative designs which are protected by IPR laws, guarantees the absoluteness of the products in export market, which makes access over trustworthy clientele of export markets.
- IPR increases the negotiating power of SME entrepreneurs with dealers/agents, investors, business partners and intermediaries in export markets whereby returns on exported products increases.

IPR protected products when exported, creates new avenues for SMEs entrepreneurs abroad. These IPRs may benefit the entrepreneurs in some other modes too by:-

- Generating pathway for joint venture and strategic alliance abroad.
- Licencing the IP assets abroad for lifetime royalty payments or huge returns on the IP Assets in the form of lump sum fees.
- Merging/amalgamating with a foreign firm abroad for their mutual growth- wherein priority is given on intangible assets(IPR is an intangible asset)

- Franchisee option is also available to SME entrepreneurs for doing business globally.

PROTECTION PERIOD OF EXCLUSIVE RECOGNITION THROUGH IPRs

IPR	Acquisition (Governing Law)	Term Of Protection (Holding Period)	Renewal
Patent	The Patents Act, 1970	Term of every patent in India is 20 years from the date of filing of patent application.	Renewal on payment of prescribed renewal fees.
Copyright	The Copyright Act, 1957	The general copyright term of protection in India is for the life of the author plus 60 years. In the case of cinematograph films, sound recordings, photographs, posthumous publications, works of government and works of international organizations, the copyright term last 60 years from the calendar year following the year of publication.	Non-renewable
Industrial Designs	The Designs Act, 2000	The term of protection under industrial design laws is generally ten	Renewal up to, in most cases, 15 years.

		years	
Trademark	The Trademark Act,1999	The term of a registered trademark as per trademark act is ten years	Can be renewed further after every ten years on payment of prescribed renewal fees.
Geographical Indications	The Geographical Indications of Goods(Registration & Protection) Act,1999	The term of a Geographical Indication as per act is ten years	Can be renewed further after every ten years on payment of prescribed renewal fees.

REASONS OF IMPERFECT EXPLOITATION OF IPRs

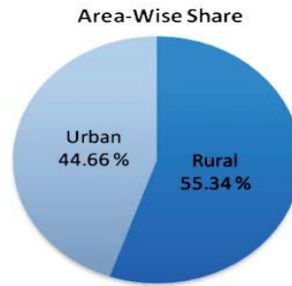
Imperfect exploitation of IPRs among SME entrepreneurs is the major reason of loss of millions of revenues to SME sector, thereby cost increases considerably. This unawareness of partial exploitation of IPRs and other like reasons has serious repercussions and will have in the future also.

“I think that that's the wisest thing - to prevent illness before we try to cure something.”

-Maya Angelou

The illness (partial exploitation) of SME sector entrepreneurs can only be prevented if reasons of that would be there for diagnosis. There could be dozens of reasons if scrutinized from all perspectives. Some major reasons are as follows:-

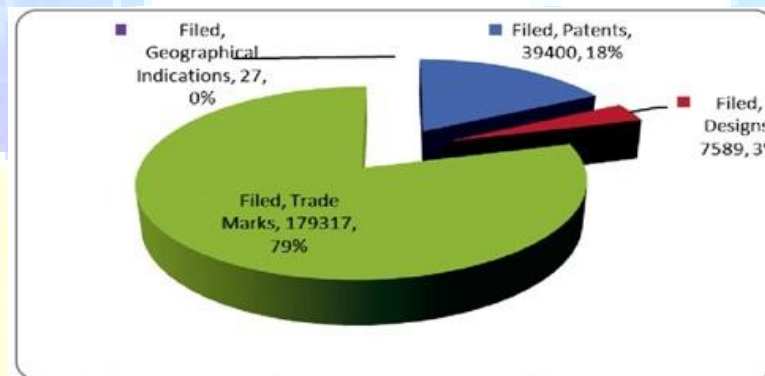
- More than 55% of SME sector enterprises are located in **rural arena**, so the literacy level, surrounding environment, resistance to change/upgrade force the entrepreneurs to operate in local boundaries only with provincial resources available to them (fixed tangible assets only).



Source: - Annual Report, 2012-13. Ministry of Micro, Small and Medium Enterprises, Govt. of India

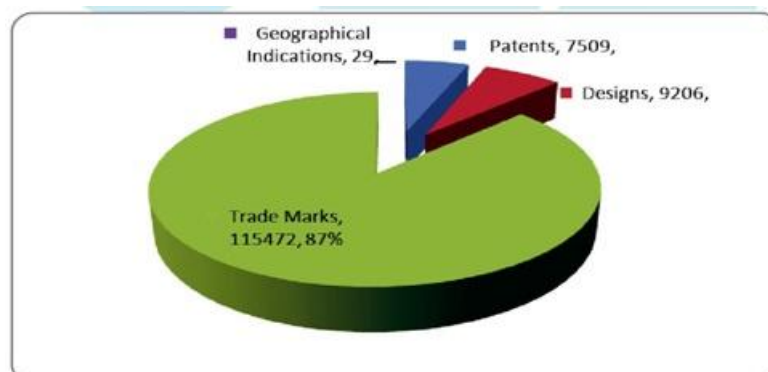
- Unawareness** is the major and biggest reason of imperfect exploitation of IPRs by SME Sector. According to *Annual Report (2010-11), Controller General of Patents Designs and Trademark (CDPDTM), Govt. Of India, Ministry of Commerce and Industry*, number of IP applications filed and IP granted in 2010-11 is depicted in given charts below (4, 5 and 6 respectively), numbers of which are disproportionate to total industries.

Chart 4:- Number of IP applications filed in 2010-11



Source: - Annual Report (2010-11), Controller General of Patents Designs and Trademark (CDPDTM), Govt. Of India, Ministry of Commerce and Industry

Chart 5:- Number of IPRs Granted/ Registered in 2010



Source: - Annual Report (2010-11), Controller General of Patents Designs and Trademark (CDPDTM),
Govt. Of India, Ministry of Commerce and Industry

Chart 6:- Comparative Trends of IPRs Granted/Registered

Year	2006-07	2007-08	2008-09	2009-10	2010-11
Patents	7539	15316	16061	6168	7509
Designs	4250	4928	4772	6025	9206
Trade Marks	109361	100857	102257	67490	115472
Geographical Indications	3	31	45	14	29

Source: - Annual Report (2010-11), Controller General of Patents Designs and Trademark (CDPDTM),
Govt. Of India, Ministry of Commerce and Industry

- Those who are aware of IPRs aid to industry growth but lacks understanding of IPRs because of their **Misconceptions** about IPRs don't rely on IP Assets to exploit them. Misconceptions may be:-
 - IPRs required analytical abilities or persons of technical understanding.
 - IP Assets required heavy expenditure in terms of costs and fee paid to acquire them.
 - IPR is meant for large organizations only, what is their concern for our enterprise. (According to *Annual Report 2012-13, Ministry of Micro, Small and Medium Enterprises, Govt. of India*) 94.41% of SMEs are Propertiership enterprises.
 - Numerous legal formalities and lengthy procedures will have to follow to get IPRs registered.

Infinite number of myths and misconceptions are adopted by SME enterprises, which drive them to stay away from IPRs adoption.

- Some SMEs product serves as intermediate product for large organizations, so entrepreneurs think they don't need to adopt IPRs because they are **not the ultimate sellers in market** and they blindly sell their products to large organizations at very low percent of profit because of non-recognition of their brand name and design in the

ultimate market.

- Those who are aware and also understand the value of IP Assets for their enterprises, but they don't come ahead for IPRs adoption just because the **fear of possibility of disclosure** of their innovative ideas to their competitors.

GOVERNMENT INITIATIVES ON AWARENESS OF IPRs for SMEs

Indian government has been formulating range of schemes from post industrial period for SMEs to encourage them to embrace IPRs in their business plans/policies for protecting their ideas and innovations so that SME sector can compete globally and with large organizations without any hardship, whereby cost reduces and returns increases of SMEs.

- National Manufacturing Competitiveness Programme (NMCP) Scheme was announced in 2005-06 budget for SME manufacturing sector especially (SMEs contributes to 45% of manufacturing) with 10 schemes under this programme including Building Awareness on Intellectual Property Rights (IPR) for MSME is one amongst them.
- Workshops and Seminars are being organized by the government collectively with various research institutions, universities, academic institutes and other bodies to share knowledge & experiences on IPR aspects.
- Pilot studies are conducted to discover the IPR requirements of SME or group of SMEs or industries and to suggest feasible solutions of IPR problems/ issues and management of SMEs.
- Short and long term training programmes are being conducted for providing knowledge and awareness of IPRs with R&D institutions to suggest the techniques for fully exploitation of IP Assets by SMEs.
- Indian government is working with WIPO and other international organizations/agencies to share its IPR knowledge with different countries and to gain benefits by the IP knowledge of other treaties.
- Rajiv Gandhi National Institute of Intellectual Property Management (NIIPM) was established on 21st July, 2012 at Nagpur for blending all IPR resources at one place to provide Up to date and Technical training on Latest and current areas of IPRs to different parties (Examiners of Patents, Designs, Trade Marks and Geographical Indications, SME entrepreneurs, IP & Legal Professionals, Academics, Society,

R&D, Government officials, enforcement agencies such as Police and Customs and Judicial Officers, Inventors, Stakeholders).

RECOMMENDATIONS & SUGGESTIVE MEASURES

After all the initiatives taken by the government for awareness of IPRs for SMEs and entrepreneurs, IPRs are still not been exploited by the SMEs in a perfect way.

The following steps are being suggested with particular implications to the IPRs in the SMEs Sector of India:-

- Incentivizing the adoption of IPRs by Financial Institutions, Banks including development agencies.
- As in the case of ISO certification costs reimbursement schemes of Government of India, the same schemes of reimbursements of costs relating to IPR registration and protection.
- Research & Development programmes should be promoted with special emphasis on SME sector for creating value through IPRs.
- Professional bodies like associations of industries, chambers of commerce, bodies of professionals like BCI, ICAI, ICSI, CII, FICCI, ASSOCHAM, AIMA etc.
- Preference to be attached with the IPR protected goods & services should be emphasized by sectors across the economy.
- Preference should be attached to projects having IPR backup by financial institutions or banks while providing financing.
- Making valuation methods more expressive in terms of IPR valuation while calculating the enterprise valuation.
- IPR awareness programmes should be conducted with more focus on SMEs in tier II and tier III towns.
- The Government as well as major enterprises while sourcing goods or services from SME sector should make it express that the goods or services protected by IPRs are qualified for special exemptions in tendering process.
- Last but not the least, the SME entrepreneur should be awared of IPR value adding to their enterprise value.

CONCLUSION

As determined above it is evident that SME play a very important role in the overall and inclusive growth of the entire industrial sector. The IPRs play a very important role in the inclusive value creation of the production processes as the market maximization of the goods and services. With the due importance of IPR in SME their adoption and creation becomes a true contributor to the overall inclusive growth of an SME unit. The entrepreneurs of SME along with development agencies, regulatory agencies, industry associations and other professional bodies should work on developing a common understanding and awareness about the usage and value of IPR to reap the benefits of exclusive identification and recognition in the market place.



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