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## Who stole my idea?

*If it's the lab where ideas are generated, then it is the lab where it is leaked from. **Garima Arora** examines the safety of Intellectual Property (IP) at the lab level*

As Indian pharma companies move from a process industry mindset to actually being a centre of creation and invention, protection of intellectual property (IP) has gained paramount importance. However, as the industry evolves and the need for research professionals increases, attrition rates seem to be soaring. In such a scenario, with every leaving employee there is a constant threat of IP leaving with him.

### A question of ownership

"If a scientist creates IP, he becomes the creator, however, there is a need to protect IP from the creator itself, as being the creator may not necessarily translate into being the owner," says Rajiv Shukla, Executive Director, Avendus Advisors. Whenever a scientist joins a company, it is mandatory for him to sign a 'document of ownership'. This 'document of ownership' has a clause that clearly states that the ownership of whatever IP is generated by the scientist during his tenure of employment with the company, rests with the company and not the employee himself. Hence, once IP is generated there is always transfer of ownership and rights to the employer or the company. Even though every employee is bound by this clause of ownership, loss of IP might still become a problem; most importantly if the scientist is leaving midway through the project. "This is a very common occurrence. We have represented one of the top pharma companies when they came across a problem, where somebody who was at R&D factory of the company left the job and joined another company abroad and took important IP with him. At that time, breach of confidentiality arose, litigation happened and ultimately the latter company had to stop marketing their product," recounts Dr Milind Antani, Senior Associate, Nishith Desai Associates.

### Signs to watch out for

So are there any ways to prevent this loss of IP? "To begin with," says Shukla, "you have to make sure you hire people who are ethical and professional. Secondly, there is sufficient legal support on whatever policies that the employer needs to put in place. Today, the employer not only applies these thoughts, but also enforces them." A third way to prevent loss of IP is to distribute information on a strictly need-to-know basis. Shukla elaborates, "Companies make sure everybody who works on project are exposed to information that is necessary for them to perform their functions."

A lot of research companies and Clinical Research Organisations (CROs) seem to be walking along the same lines of precautions.



A common practice is never to give one CRO or research company an entire lead molecule to work on. Most pharma companies choose to give fragments of it and then put together these independent parts themselves. Another common practice is that CRO companies never reveal the name of their clients. Every scientist working on a molecule has a project code to identify himself with. Also, every employee is expected to sign and adhere to the employment agreement. The employment agreement has all the clauses and provisions, which an employee has to abide by for smooth employment.

Another important document is the NDA (Non Disclosure Agreement) and confidentiality agreement. This is especially stringent for scientists working on hard core R&D projects. "This document defines what exactly the confidential information is. It usually covers not only the research but also information like trade marks, trade secrets, ideas, original work, details of original work, technical know-how, concepts, research papers etc. The NDA also clearly states what information an employee can pass, or cannot pass on," explains Antani. "It also includes provision of termination due to breach of this agreement and most importantly a clear standalone definition of ('third party', to whom confiding of information is banned," he adds.)

### To the rescue

There are plenty of legal and non-legal recourses a company or an employer can take if there is a breach of any agreement. "Now the course a company might choose to take depends upon the NDA and the employment agreement as signed by the employee in question, (which) has a specific clause of termination," says Antani. This could include a general clause of breach of contract, any obligations and duties neglected, theft of information, moral misconduct etc. There is a possibility of 'cessation of employment' as there is another provision in the same clause that the company may terminate the employee by giving a due notice period and vice versa.

However, whenever there is theft of information, the management gauges the magnitude of the situation before deciding on a particular course of action. Since, there is no 'hire-and-fire' policy in India—unlike the US—a specific notice period has to be given. There have been instances where a company has dismissed the employee concerned without warning. However, it is important to realise that scientists are the real players in any R&D pool. They are the soul of an R&D company and no company wants to lose a scientist. Unless there is a very big breach on part of the scientist, a company will usually not dismiss with or without warning. However conformity to NDA is very severe. And a breach usually leads to dismissal. The company can also take an employee to court under the purview of prevailing Indian labour and employment laws

### Know your matter



As the Indian research scenario is still evolving, there is a tremendous need for increased awareness of the need to protect IP and confidential information. As far as developed countries like the US are concerned, every scientist knows the importance of patents, what they are, what they can

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cause and what leakage of information can lead to. Developed markets have strong provisions dealing with IP theft and transfer of information. And the policy of 'hire-and-fire' also helps the cause. Most importantly, there is a vast difference in the technology used by developed markets, as compared to that used in developing countries like India. "These companies implement tracking and monitoring software that trace and detect all communication networks of their employees. These are very sophisticated technologies," says Antani.

What is important at this stage is creating awareness not only amongst top-level management, but also at the grass root level. And Indian companies seem to be catching up with the latest technology and using it to their advantage. For example, at Intas Biopharmaceuticals (IBPL), the HR department works closely with the in-house IT department to protect IP at the lab level, by protecting data in computers. The company has an IT policy in place, which restricts users from using data for personal use and minimises chances of any leakage of information. The IBPL IT department utilises advanced security software to keep a strong vigilance on important data and information that is stored in the computers of users (in this case the, staff of the R&D department).

### Getting the HR involved

Irrespective of varying trends in attrition rates in the biotechnology industry, companies are aware about the seriousness of issues related to IP at the research laboratory level. As far as the biotechnology industry is concerned, the magnitude of this issue is higher in R&D as compared to other departments and can be a major concern for any organisation. Companies cannot ignore the need to effectively deal with this issue with the help of a proper HR infrastructure.

"At the corporate/management level, we, for example, have adopted various measures to tackle this critical issue. Identify functionalities/people that are in the creation of IP and have individual agreements with the people who are directly related to it. If there is a change in role within organisation, eg. if a personnel is shifted from R&D to marketing or vice versa, then the company has a separate agreement with the concerned person to protect the IP of the concerned department," says Dr Kashmira Pagdiwalla, Director-HR Practises, IBPL. On a regular basis, the companies conduct training programmes (seminars/discussions) to inform and sensitise people on IP issues and IP creation at the laboratory level.

IP theft is a sensitive issue and most companies tend to first ignore the problem. It is therefore a good sign that pharma companies are admitting the problem and taking the first steps to dealing with it. With all these efforts, one hopes that companies will succeed in plugging all IP leaks in the near future.

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