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WHEN INNOVATION MEETS LITIGATION: UNDERSTANDING PATENT INFRINGEMENT AND AVAILABLE REMEDIES IN INDIA

~Sai Indira G

INTRODUCTION

Innovation has been one of the drivers of economic growth and development. It can be defined as coming up with ideas that lead to inventions in terms of medicines, devices, processes, etc. to promote more innovation and safeguard inventors, there are intellectual property laws which give protection by issuing patents for new inventions.

A patent is defined as the exclusive right provided under the Patents Act, 1970¹ to enable an inventor to stop others from making, using, selling, offering for sale or importing a patented invention for twenty years from the date the application was filed for. This provision is made under Section 48 of the Act².

Protection of a patent plays a dual role; firstly, to reward the creator and secondly, to promote the release of information on his/her innovations to the community at large. However, problems arise in cases where there are third party uses of patented inventions without the consent of the owner.

WHAT CONSTITUTES PATENT INFRINGEMENT?

Patent infringement arises in the scenario where an individual or entity, without the consent of the owner of the patent, manufactures, uses, sells, offers for sale, or imports the patented

¹ The Patents Act, No. 39 of 1970

² The Patents Act, No. 39 of 1970, Sec. 48(1970)



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invention. This would constitute a breach of the exclusive rights accorded to the patent holder as per Section 48 of the Patent Act of 1970³.

Patent infringement has been generally categorised into two forms:

- Direct Infringement – Manufacturing, using, selling, or importing a patented invention without authorisation.
- Indirect Infringement – Encouraging or assisting someone else in committing the act of infringement.

Furthermore, the Doctrine of Equivalents also serves as the basis to establish patent infringement even if the accused item differs from the patented invention in that it identically performs the same function.⁴

The patent infringement is determined by comparing the patent with the product or process that is being alleged to infringe. As the Delhi High Court stated in the case of *F. Hoffmann-La Roche Ltd. v. Cipla Ltd.*⁵, An “in-depth scrutiny” of the patent claim and technical aspects was required. In another case of *B. Braun Melsungen AG v. Rishi Baid*⁶, The Court reiterated that the patentee had to establish that the key features of the patent had been infringed.

DEFENCES AND REMEDIES IN PATENT CASES

Patent infringement actions do not necessarily lead to liability, since according to Section 107 of the Patents Act 1970⁷, defendants can put forth any reason that would otherwise be applicable in a case of revocation of a patent.

The following are some of the commonly used defences in a patent infringement proceeding:

³ Id.

⁴ Suyash Joshi & Ayush Saran, "Infringement of Patent and Remedies Available under the Patent Act, 1970," 8 Int'l J. L. Mgmt. & Human. 5311 (2025)

⁵ *F. Hoffmann-La Roche Ltd. v. Cipla Ltd.*, (2016) 65 PTC 1 (Del.) (India)

⁶ *B. Braun Melsungen AG v. Rishi Baid*, 2024 SCC Online Del 2186 (India)

⁷ The Patents Act, No. 39 of 1970, Sec. 107 (1970)



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- **Novelty:** The invention was known before the filing of a patent application.
- **Lack of Invention:** The invention is an obvious one to persons skilled in that particular field.
- **Prior Public Disclosure:** The invention was made public before the filing of the application. Use by Third Party: The invention was being used by another party before the grant of the patent.
- **Non-Patentable Invention:** The invention belongs to the exceptions set out in sections 3 and 4 of the Patents Act⁸.
- **Malicious Registration of the Patent:** The patent fails to meet the conditions of protection.

The importance of such provisions can be highlighted in the case of *Novartis AG v. Union of India*⁹, wherein the Supreme Court of India refused to grant a patent to Novartis for a new form of cancer medication called Glivec on the ground that it did not exhibit any increased therapeutic efficacy as mandated under Section 3(d)¹⁰.

In case the infringement is proven to have been done by someone, then, according to Section 108 of the Patents Act of 1970¹¹, the following measures can be taken against the infringer by the courts:

- **An injunction** – which is a court order directing the infringer not to manufacture, sell, use or import the patented invention.
- **Damages** – financial reward to be paid to the owner of the patent for any damages suffered as a result of the infringement.

⁸ The Patents Act, No. 39 of 1970, Sec.3-4 (1970)

⁹ *Novartis AG v. Union of India*, (2013) 6 SCC 1 (India)

¹⁰ Gunjan Chawla, Shielding Patent Attacks: A Peek into the Defences and Exceptions to a Patent Infringement Suit, 13 Nat'l L. Sch. J. 51 (2015).

¹¹ The Patents Act, No. 39 of 1970, Sec.108 (1970)



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- **An account of profits** – this is where the courts make an order requiring the infringer to turn over any profit obtained as a result of infringement of the patented invention.
- The **seizure, forfeiture, and destruction** of infringing goods and also materials used in their manufacture.
- **The non-infringement declaration (Section 105)¹²** – This gives one the right to apply to the courts for a determination whether a product or process is non-infringing.
- **The protection against unjustified threats (Section 106)¹³.**

The importance of balancing patent rights with public interest was highlighted in *Bayer Corporation v. Union of India*¹⁴, where India's first compulsory licence was granted for Bayer's patented cancer drug Nexavar after authorities found that the medicine was not available at a reasonably affordable price. The decision demonstrated that while patent law protects innovation, patent rights cannot be exercised in a manner that compromises access to essential medicines.¹⁵

CONCLUSION

Patent infringement continues to be an important concern in intellectual property laws, especially during an age dominated by continuous advances in science and technology. It is clear that patenting is important to protect innovators and promote research and development, but there comes a point where the protection offered under patenting should take into account other social considerations like fair competition, availability of technology, and accessible health care. With the help of the Patents Act, 1970 and its interpretations through courts, Indian patent law tries to ensure that innovations are protected without abusing patenting laws. With emerging technologies, it would be important to have a proper patent system in place.

¹² The Patents Act, No. 39 of 1970, Sec. 105(1970)

¹³ The Patents Act, No. 39 of 1970, Sec.106 (1970)

¹⁴ *Bayer Corp. v. Union of India*, (2014) 60 PTC 277 (Bom.) (India)

¹⁵ V.K. Ahuja, *Law Relating to Intellectual Property Rights* (3rd ed., LexisNexis 2022)