 DOI: https://doi.org/10.63108/IJLMH.13174

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 6

2026

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Regulating the Misuse of Patent Rights in India: A Doctrinal Analysis of Groundless Threats and Restrictive Licensing under the Patents Act, 1970

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ABSTRACT

The Patents Act, 1970 grants the patentee the exclusive right to make use of an invention and also contains certain provisions to stop the right from being used for purposes beyond what patent law actually protects. This paper examines the practical application of sections 106 and 140. Section 106 provides relief to a person threatened with infringement proceedings without justification, through a declaration, an injunction and damages. Section 140 renders void certain restrictive conditions that a patentee may impose in contracts of sale, lease or licence. The study is based on doctrinal methodology, examining the statutory language, Indian case law on these provisions and legal commentaries. The analysis suggests that courts have not yet developed a settled interpretative test for either section, which leaves their scope and application uncertain. The Act does not say when a communication becomes a "threat" or when a threat becomes "groundless", and the courts have so far answered those questions case by case. Section 140 has attracted even less judicial attention, so its categories, in particular the newer ones concerning grant-back, validity challenges and coercive package licensing, remain largely unexplained. The paper argues that this gap between legislative intent and judicial interpretation, and the lack of clarity in the legal words used, reduce the effectiveness of these provisions in regulating misuse of patent rights. It concludes that clearer judicial standards and more consistent application are necessary to ensure that patent rights are exercised within reasonable and legally defined limits.

Keywords: *Patent Misuse, Groundless Threats, Restrictive Licensing, Patents Act 1970, Doctrinal Analysis*

I. INTRODUCTION

The Patents Act, 1970 provides certain rights to inventors but also guards against the misuse of those rights. A patent gives the patentee a limited monopoly, subject to statutory limits intended

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to prevent unfair use of legal and commercial power.[1] Two important safeguards are sections 106 and 140 of the Patents Act, 1970. Section 106 deals with protection against groundless threats of infringement proceedings, and allows a person aggrieved by such threats to seek relief from the court in the form of a declaration, an injunction and damages.[2] Section 140 deals with restrictive conditions in patent-related contracts and licensing agreements. It declares certain conditions unlawful where they extend the control of the patentee beyond the scope of the patent itself.[3] Together the two provisions are directed at the misuse of patent rights, whether through groundless threats of legal action or through restrictive conditions in patent-related agreements. The Ayyangar Committee Report formed the foundation of modern Indian patent law; it recognised the risk of abuse of monopoly rights and recommended safeguards against such practices.[4]

This paper examines how far sections 106 and 140 prevent the misuse of patent rights while leaving room for legitimate enforcement. It follows a doctrinal method: it reads the text of the two provisions closely, tests that text against the Indian judicial decisions that engage with it, and uses secondary writing to understand how commentators have approached the same material.

II. Background of the Study

The Patents Act, 1970 balances private rights and the public interest by granting exclusive rights to encourage innovation, while requiring those rights to be exercised within the limits set by law. Sections 106 and 140 represent two different ways in which the law controls the misuse of patent rights. Section 106 deals with enforcement conduct. A patentee, or indeed anyone else, may write to a competitor, a distributor or a customs office and suggest that infringement proceedings will follow, and such a suggestion can change business decisions suddenly. A retailer may withdraw a product from its shelves, and a manufacturer may stop a production line, long before any court has looked at the patent. Section 106 gives the person aggrieved a statutory remedy: a suit for a declaration that the threats are unjustifiable, an injunction against their continuance, and damages.[5] Section 140 deals with contractual conduct. A patentee who sells, leases or licenses a patented article or process is in a strong bargaining position, and the

[1] Patents Act, No. 39 of 1970, §§ 48, 106, 140, India Code (1970).
[2] *Id.* § 106(1).
[3] *Id.* § 140(1).
[4] N. Rajagopala Ayyangar, Report on the Revision of the Patents Law ¶¶ 44–45, 191, 823 (1959), https://ipindia.gov.in/storage/uploads/media/1959-_Justice_N_R_Ayyangar_committee_report.pdf; *see also* *Ayyangar Committee Report vis-à-vis TRIPS Agreement*, The IP Press (Mar. 30, 2021), https://www.theippress.com/2021/03/30/ayyangar-committee-report-vis-a-vis-trips-agreement/.
[5] *Bata India Ltd. v. Vitaflex Mauch GmbH*, CS(OS) No. 1112/2006 (Del. Aug. 24, 2015), 222 DLT 498, https://indiankanoon.org/doc/67493713/.

temptation to use that position to tie the buyer or licensee to other products, to other processes or to unfavourable terms is obvious. Section 140 declares several such conditions unlawful and void. Its purpose is to keep the monopoly within the boundaries of the invention rather than allowing it to spread into neighbouring markets.

The legislative roots of both provisions lie in the thinking that preceded the 1970 Act. The Ayyangar Committee, whose report shaped the modern Indian patent system, accepted that patent monopolies carry a risk of abuse and that the statute should contain safeguards against it.[6] Sections 106 and 140 are two of the ways in which that concern found its way into the text. Indian courts have had few occasions to interpret either section, and the Act itself leaves the key expressions undefined. The paper therefore examines not only what sections 106 and 140 provide, but also whether the law surrounding them is developed enough for patentees, competitors and licensees to know where the lawful limits of patent enforcement lie.

The question matters in practice. Section 140 touches the commercial heart of patent licensing. Modern licences are long, technical and often negotiated between parties of unequal strength. Clauses dealing with grant-backs, challenges to validity and bundled rights are common, yet parties and their advisers have no clear judicial interpretation of how far such terms can go.

The existing writing does not close this gap. Madhumitha treats a threat as groundless where there is no basis for it and assesses a communication from the perspective of an ordinary prudent person, but does not set out a settled judicial test.[7] Mangal compares the groundless-threat provisions across Indian intellectual property statutes and explains the remedies and the statutory structure, but offers little guidance on how courts apply these principles.[8] Lai and Kathuria write about restrictive conditions and the interface between patent law and competition law, with India among the systems they compare; their article is not organised around how courts interpret the individual clauses of section 140.[9] Shaikh describes misuse as conduct by which a patent owner stretches exclusivity past the physical and temporal scope of the patent, and gives tying arrangements and extension of the patent term as typical examples, but the

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[6] Ayyangar, *supra* note 4, ¶¶ 44–45, 191, 823; *see* Abhilasha Nautiyal, *Antitrust Scrutiny in Patent Licensing Disputes: An Alternative Approach to Delhi HC's Decision in Monsanto v. CCI*, SPICYIP (June 2020), https://spicyip.com/2020/06/antitrust-scrutiny-in-patent-licensing-disputes-an-alternative-approach-to-delhi-hcs-decision-in-monsanto-v-cci.html.

[7] D.S. Madhumitha, *Groundless Threat of Infringement of Patent*, 10 BEIJING L. REV. 480 (2019), https://www.scirp.org/journal/paperinformation?paperid=92870, https://doi.org/10.4236/blr.2019.103029.

[8] Shashank Mangal, *Guest Post: Groundless Threat of Infringement Proceedings: A Comparison Spanning a Few India IP Legislations*, SPICYIP (Sept. 20, 2014), https://spicyip.com/2014/09/guest-post-groundless-threat-of-infringement-proceedings-a-comparison-spanning-a-few-india-ip-legislations.html.

[9] Jessica C. Lai & Vikas Kathuria, *"Restrictive Conditions" in Patent Law and the Competition Law Interface*, 21 J. WORLD INTELL. PROP. 256 (2018), https://doi.org/10.1111/jwip.12105.

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discussion is directed at American doctrine and at the TRIPS Agreement, and does not examine section 140 or any Indian decision.[10]

III. Analysis of sections 106 and 140 on the misuse of patent rights

A. Section 106: nature and purpose of the remedy against groundless threats

Section 106 provides a remedy to a person aggrieved by a threat of patent infringement proceedings. The section applies where a person threatens another, through circulars, advertisements or oral or written communications, with proceedings for patent infringement. The threat can be made by any person, who need not be the patentee or any other interested person. Any person aggrieved by such a threat may approach the court.[11] The purpose of section 106 is to protect a person from the harmful effects of an unjustified patent threat. A threat of legal proceedings can affect a business even before an infringement case is filed. A manufacturer may stop producing a product, a distributor may refuse to sell it, or customers may avoid dealing with the business because they fear becoming involved in a patent dispute. Section 106 therefore provides a remedy at the stage when the threat itself causes harm. Section 106(1) provides three kinds of relief. A person aggrieved by threats may ask the court for a declaration that the threats are unjustifiable, for an injunction against their continuance, and for damages to compensate any loss the threats have caused, all of which address commercial harm. It has been observed that many parties who receive an infringement threat would rather change what they are doing than carry the cost of litigating a patent suit, so a threat can succeed in its purpose without any suit being filed.[12] A distributor who stops stocking a product after receiving such a letter has suffered a loss, yet there is no infringement judgment against anyone. Section 106 allows the recipient to take the initiative and put the person making the threat to proof of the claim.

Section 106 deals not only with the legal standing of the threat but also with its effect on business and the losses it produces for the person targeted. It nevertheless leaves a patentee free to notify others that a patent exists, so giving notice of a patent is not in itself actionable. The Explanation to section 106 states that a mere notification of the existence of a patent does not constitute a threat of proceeding within the meaning of the section. A patentee may therefore tell the market that it holds a patent without incurring liability, a point that practitioners writing on the provision consistently emphasise.[13]

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[10] Owais Hassan Shaikh, *The Doctrine of Patent Misuse: Origins, Antitrust and the TRIPS Agreement*, 29 J. Intell. Prop. Rts. 247 (2024), https://doi.org/10.56042/jipr.v29i4.6647.

[11] Patents Act, *supra* note 1, § 106(1).

[12] Lakshmikumaran & Sridharan, *Groundless Infringement Threats*, IPR Amicus (Sept. 2017), https://lakshmisri.com/insights/articles/groundless-infringement-threats.

This distinction is important because a patent owner must be able to communicate the existence of a valid patent without automatically becoming liable under section 106.

In *Bata India Ltd. v. Vitaflex Mauch GmbH*, the defendant sent Bata a legal notice in 2006 asserting that Bata's footwear infringed its trade mark and patent rights in the pressure-point configuration of an insole. The defendant was proceeded against *ex parte* and led no evidence. The Delhi High Court treated the legal notice as a threat for the purposes of section 106, found it unjustified because the defendant had not shown a granted Indian patent covering the feature relied on, and restrained further threats.[14] The decision therefore shows that the form of a communication is not decisive. A notice becomes a threat where its substance goes beyond simply informing the recipient about the existence of patent rights. The Delhi High Court also considered section 106 in *LG Electronics India Pvt. Ltd. v. Bharat Bhogilal Patel*. The case concerned a complaint made to the customs authorities alleging patent infringement. The plaintiff argued that the complaint and the resulting action against its imported goods amounted to a groundless threat. The court examined the effect of the customs action and granted interim protection against the border enforcement action pending determination of the infringement issue.[15] The World Intellectual Property Organization's guide to patent case management also identifies section 106 as a remedy against groundless threats and discusses *LG Electronics* and *Bata India* in this context.[16]

A recent development is the Supreme Court's decision in *Atomberg Technologies Pvt. Ltd. v. Eureka Forbes Ltd.* The dispute involved a suit under section 106 alleging groundless threats made to distributors and retailers. The Supreme Court held that a suit under section 106 has an independent cause of action from a patent infringement suit governed by sections 104 and 108.[17] The Court also noted that the proviso contained in the corresponding provision of the Indian Patents and Designs Act, 1911 was not retained when section 106 was enacted.[18]

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[13] Avadhi Joshi & Pratik Das, *Groundless Threat of Patent Infringement*, KHURANA & KHURANA (Sept. 6, 2017), https://www.khuranaandkhurana.com/2017/09/06/groundless-threat-of-patent-infringement/; Lakshmikumaran & Sridharan, *supra* note 12.

[14] *Bata India*, *supra* note 5, ¶¶ 12, 14, 16; *Delhi High Court Rejected Patent Infringement Claim by Vitaflex Against Bata India Ltd. on the Basis of Groundless Threats*, S.S. RANA & CO. (Sept. 14, 2015), https://ssrana.in/articles/delhi-high-court-rejected-patent-infringement-claim-by-vitaflex-against-bata-india-ltd-on-the-basis-of-groundless-threats/.

[15] *LG Elecs. India Pvt. Ltd. v. Bharat Bhogilal Patel*, CS(OS) No. 2982/2011, ¶¶ 110–11 (Del. July 13, 2012), 2012 (51) PTC 513, https://indiankanoon.org/doc/48055807/; Joshi & Das, *supra* note 13; Mathews P. George, *Customs Dept. Pulled Up for Overstepping Its Jurisdiction*, SPICYIP (Dec. 2011), https://spicyip.com/2011/12/customs-dept-pulled-up-for-overstepping.html (discussing the earlier *ex parte* ad interim order in the same suit).

[16] WORLD INTELLECTUAL PROPERTY ORGANIZATION, *An International Guide to Patent Case Management for Judges* ch. 6 (India), §§ 6.8.1.1–.2 (2023), https://www.wipo.int/patent-judicial-guide/en/full-guide/india/6.8.1; *see also id.* § 6.8, https://www.wipo.int/patent-judicial-guide/en/full-guide/india/6.8.

[17] *Atomberg Techs. Pvt. Ltd. v. Eureka Forbes Ltd.*, 2025 INSC 1253, ¶ 9, https://indiankanoon.org/doc/80572430/.

[18] *Id.*

However, *Atomberg* should not be treated as a final decision on whether the threats were actually groundless. The Supreme Court was dealing mainly with the question of transfer of two connected proceedings. It found substantial overlap between the issues and transferred the later infringement suit so that the matters could be tried together.[19]

Thus, section 106 attempts to maintain a balance. It allows a patent owner to protect genuine patent rights but gives a remedy where the patent is used to make unjustified threats. The difficulty is that the Act does not provide a detailed statutory test for deciding when a threat becomes "groundless". This leaves an important part of the operation of the provision to judicial interpretation.

i. Meaning of "threat" and "groundless"

The words "threat" and "groundless" are central to section 106, but the Act does not separately define either expression. Section 106 identifies different methods by which a threat may be made, including circulars, advertisements and oral or written communications. The court must therefore determine from the facts whether the particular communication amounts to a threat. A simple statement that a patent exists should not ordinarily be treated as a threat, and the Explanation to section 106 protects such a communication.[20] The position changes where the communication indicates that legal proceedings will be taken against the recipient or another person because of alleged infringement.

In *Bata India*, the Delhi High Court treated the notice as a threat and examined whether there was a proper Indian patent on which the threatened proceedings could be based. The court ultimately restrained continuation of the threats.[21] In *LG Electronics*, the complaint was made to the customs authorities and resulted in interference with imported consignments. The court examined the connection between the patent complaint and the action taken against the goods. The case shows that the practical effect of patent-related communications can be relevant when examining a claim under section 106.[22]

The expression "groundless" also has to be considered with section 106(2). The provision requires the defendant to prove that the acts in respect of which proceedings were threatened constitute, or if done would constitute, an infringement of a patent or of rights arising from the publication of a complete specification, in respect of a claim of the specification not shown by

[19] *Id.* ¶¶ 10–13.
[20] Patents Act, *supra* note 1, § 106 explanation.
[21] *Bata India*, *supra* note 5, ¶¶ 12, 16.
[22] *LG Elecs.*, *supra* note 15, ¶¶ 97–99, 111.

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the plaintiff to be invalid.[23] Any justification offered for a threat has to be tied to a real patent right and to the specific conduct of infringement. The difficulty with section 106 is not that it fails to provide a remedy, for the remedy clearly exists. It is that there is no detailed test for deciding when the assertion of a patent right stops being legitimate and turns into a groundless threat, a question which is decided case by case. Courts have to examine the language of the communication, the patent relied upon, the conduct complained of and the circumstances in which the communication was made. A clearer judicial approach would help both sides. A patentee would know how far an infringement notice can go, while a business receiving such a notice would have greater certainty about when section 106 can be used.

ii. Section 106(2): burden of proof

Section 106(2) places an important burden on the defendant in a groundless-threat action. Unless the defendant proves that the acts in respect of which proceedings were threatened constitute, or if done would constitute, an infringement, the court may grant the relief sought by the plaintiff. This requirement is important because a person should not be able to make an infringement threat without having a proper basis for it. The person who makes the threat must be able to show that the threatened proceedings are connected with an enforceable patent right and with conduct which can amount to infringement. At the same time, the provision may create a practical burden for the person who receives the threat. Patent disputes often involve technical evidence, the interpretation of patent claims and a comparison of the patented invention with the allegedly infringing product. The person seeking relief from the threat may therefore become involved in a technically difficult dispute. The nature of the remedy also creates difficulties in relation to damages. Section 106(1)(c) permits such damages, if any, as the plaintiff has sustained by the threat. The plaintiff must therefore establish that the loss was actually caused by the threat.[24] For example, where customers stop purchasing a product after receiving an infringement warning, the plaintiff may need to show a connection between the warning and the loss of business.

The Supreme Court's decision in *Atomberg* adds an important procedural point. A section 106 action is legally independent of a patent infringement action. At the same time, the two proceedings may involve substantially overlapping facts and legal questions. The Supreme Court therefore considered it appropriate to transfer the later infringement proceeding to the court where the earlier section 106 action was pending.[25] The decision is a procedural one and

[23] Patents Act, *supra* note 1, § 106(2).
[24] *Id.* § 106(1)(c); *see also Bata India*, *supra* note 5, ¶ 15.
[25] *Atomberg*, *supra* note 17, ¶¶ 12–13; Amisha Shrivastava, *Supreme Court Transfers Eureka Forbes' Patent Infringement Suit Against Atomberg's "Intellon" Water Purifier to Bombay High Court*, LIVELAW (Oct. 27, 2025),

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should be read as such. It does not decide whether any particular threat was groundless. It does, however, confirm that a threatened party need not wait for the patentee to sue, and that a patentee cannot defeat a threats action simply by filing an infringement suit. It has been welcomed in commentary as bringing section 106 out of the shadows.[26]

This shows that section 106 may operate alongside an infringement action rather than simply being replaced by it. The two actions protect different interests. The infringement action protects the patentee's rights, while the groundless-threat action protects a person against unjustified enforcement activity.

The practical effectiveness of section 106 therefore depends on the ability of courts to apply the provision without placing unnecessary procedural or evidentiary burdens on either side. Clearer standards concerning the meaning of a threat, the justification required under section 106(2) and the proof necessary for damages would make the provision easier to use.

B. Section 140: restrictive conditions in patent agreements

Section 140 restricts the manner of exercising patent rights through contractual arrangements. It applies to contracts for the sale or lease of patented articles or articles made by a patented process, licences to manufacture or use patented articles, and licences to work patented processes. The provision is important to the present study because it deals with situations where the rights arising from a patent may be used to impose conditions going beyond the patent itself.[27]

The importance of section 140 lies in the fact that it does not leave the control of restrictive patent agreements entirely to general principles of contract law. Parliament has identified certain conditions as unlawful and has declared them void. These include conditions concerning the compulsory acquisition of other articles, restrictions on the use of articles obtained from other sources, restrictions on the use of alternative processes and, under clause (d), exclusive grant-back, prevention of challenges to patent validity and coercive package licensing. Clauses (a) to (c) address the familiar forms of tying and exclusivity. They strike at conditions requiring the buyer or licensee to acquire other articles from the seller or licensor, conditions restricting the use of articles the seller does not supply, and conditions restricting the use of processes other than the patented one. The underlying principle is that a patent protects an invention and nothing beyond it. Those who leverage the patent to control unpatented goods or competing methods

https://www.livelaw.in/supreme-court/supreme-court-transfers-patent-infringement-case-eureka-forbes-vs-atomberg-307980.

[26] Hafsah Azhar Ansari, *Atomberg v. Eureka Forbes: Section 106 Steps Out of the Shadows*, SPICYIP (Nov. 2025), https://spicyip.com/2025/11/atomberg-v-eureka-forbes-section-106-steps-out-of-the-shadows.html.

[27] Patents Act, *supra* note 1, § 140(1).

are, in the language of misuse scholarship, extending exclusivity beyond its proper physical scope.[28] Clause (d) is of a different kind. It addresses exclusive grant-back, the prevention of challenges to the validity of the patent, and coercive package licensing. These conditions are not about related products. They concern the terms on which the patent itself is licensed. Grant-back conditions can pull the licensee's own improvements under the licensor's control, restrictions on validity challenges keep potentially invalid patents in force, and coercive bundling forces a licensee to take rights it does not want. Lai and Kathuria's study of restrictive conditions treats a patentee's ability to extend its reach beyond the scope of patent rights as a question for both patent law and competition law.[29] Such restrictions reveal the intention of the Patents Act, 1970 that patent rights be exercised within limits. A patent gives its holder a statutory right over the invention, but it does not follow that every contractual condition tied to the patent is valid. Section 140 works as a statutory boundary on how patent rights may be used in contracts. The relevant question is whether the condition imposed in the agreement falls within one of the restrictions identified by the Act.

Section 140(2) strengthens this protection by preventing parties from avoiding the provision merely by placing the restrictive condition in a separate agreement. A condition falling within section 140(1)(a), (b) or (c) remains within the scope of the provision even where the agreement containing it is separate from the main contract relating to the patented article or process.[30] This is significant because otherwise the statutory restriction could potentially be avoided through the form in which the contractual arrangements are drafted.

Section 140(3) also deals with patent infringement: in proceedings for infringement, it is a defence to prove that at the time of the infringement there was in force a contract relating to the patent and containing an unlawful condition. The defence is not available where the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted without the plaintiff's knowledge and consent, express or implied.[31] Thus, section 140 is not limited to declaring certain contractual terms void. It also gives the statutory restriction practical relevance in infringement proceedings.

At the same time, section 140 does not treat every condition in a patent agreement as an abuse. Section 140(4) preserves certain contractual arrangements, including a condition prohibiting a

[28] Shaikh, *supra* note 10, at 247.
[29] Lai & Kathuria, *supra* note 9; Mamta Rani Jha, *The Interplay Between Patents and Anti-Competitive Practices*, IAM (Apr. 16, 2018), https://www.iam-media.com/article/the-interplay-between-patents-and-anti-competitive-practices.
[30] Patents Act, *supra* note 1, § 140(2).
[31] *Id.* § 140(3).

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person from selling goods other than those of a particular person, and a condition in a lease or licence of a patented article reserving to the lessor or licensor the right to supply new parts of the article or to keep it in repair.[32] This suggests that the provision targets particular restrictive conditions and does not prevent ordinary contractual dealings involving patented products. Section 140(1)(d) brought exclusive grant-back, restrictions on challenges to patent validity and coercive package licensing expressly within the statutory prohibition, which shows that the legislature recognised that misuse of patent rights may occur not only through restrictions concerning related products or processes but also through the terms on which patent rights are granted to licensees.

However, the existence of these statutory restrictions does not by itself establish that section 140 is fully effective in practice. The main difficulty is the limited judicial interpretation of the provision. The Act categorises prohibited conditions, yet there is little Indian case law showing how a court should decide whether a given term falls within them, particularly in relation to the restrictions under section 140(1)(d).

The limited judicial development is therefore important to the argument of this paper. The difficulty is not that section 140 contains no statutory guidance. On the contrary, the provision identifies several specific categories of prohibited conditions. The difficulty is that there is limited judicial guidance on how those statutory categories should be applied to different patent licensing arrangements. The distinction between a permissible contractual term and a prohibited restrictive condition therefore remains insufficiently developed. In *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India*, a single judge of the Delhi High Court recognised the statutory treatment of restrictive conditions under section 140.[33] On appeal, a Division Bench set that judgment aside. It noted that section 140 declares such conditions void and allows them to be raised as a defence to infringement, and it held that the Competition Commission cannot inquire into the exercise of rights by a patentee, because Chapter XVI of the Patents Act, 1970 is a complete code on unreasonable licensing conditions and abuse of patentee status.[34] The Supreme Court issued notice on the Commission's special leave petition in March 2024 but in September 2025 declined to interfere and disposed of the matter, having regard to paragraph 58 of the High Court's judgment, on the Commission's want of power and

[32] *Id.* § 140(4).

[33] *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Comm'n of India*, W.P.(C) No. 464/2014, ¶ 133 (Del. Mar. 30, 2016), 2016 SCC OnLine Del 1951, https://indiankanoon.org/doc/164770226/.

[34] *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Comm'n of India*, LPA No. 247/2016, ¶¶ 43, 52, 55–56, 58 (Del. July 13, 2023), 2023 SCC OnLine Del 4078, https://indiankanoon.org/doc/150896661/; *Delhi HC Rules That Patents Act Must Prevail Over Competition Act in Exercise of Rights by Patentee*, AZB & PARTNERS (Oct. 27, 2023), https://www.azbpartners.com/bank/delhi-hc-rules-that-patents-act-must-prevail-over-competition-act-in-exercise-of-rights-by-patentee/.

the effect of a settlement, and to the fact that the original informants had nothing further to say, and kept any questions of law open for another appropriate case, so the position may yet change in other proceedings.[35] However, the Division Bench decision does not provide a complete judicial framework for applying each category of section 140(1) to different forms of patent licensing arrangements. The judgment signals that Indian courts regard the Patents Act as the proper home for control of restrictive licensing, which raises the importance of provisions such as section 140. But it does not interpret them. One commentator, writing before the Division Bench decision and proposing that a licence term be tested first under the Patents Act and only then under the Competition Act, notes that section 140 and Chapter XVI were introduced in part to check anti-competitive conduct by patentees, and that not every restrictive term is anti-competitive, a distinction that only careful judicial reasoning on the clauses can draw.[36]

Lai and Kathuria examine restrictive conditions in patent law and their treatment in different jurisdictions, including India. Their work is useful in showing that the use of contractual conditions can raise questions about the extent of control that should be permitted to a patent holder beyond the patent right itself.[37] Shaikh's discussion of patent misuse similarly explains the broader idea that misuse may arise where a patent owner attempts to extend the practical scope of patent exclusivity beyond its proper limits.[38]

For the purpose of this study, section 140 should therefore be assessed not merely by asking what conditions the statute declares void, but by asking whether the existing statutory rules and limited judicial interpretation provide a clear and workable mechanism for identifying and controlling misuse of patent rights in patent agreements. Examining this determines whether the safeguard created by section 140 is effective in practice.

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[35] *Patents Act, 1970 or Competition Act, 2002: SC to Decide Applicability on Actions of Patentee*, CYRIL AMARCHAND MANGALDAS BLOGS (Mar. 2024), https://corporate.cyrilamarchandblogs.com/2024/03/patents-act-1970-or-competition-act-2002-sc-to-decide-applicability-on-actions-of-patentee/; *Competition Comm'n of India v. Monsanto Holdings Pvt. Ltd.*, SLP (C) No. 25026/2023, ¶¶ 5–7 (S.C. Sept. 2, 2025), https://indiankanoon.org/doc/78791476/; Amisha Shrivastava, *Supreme Court Dismisses CCI's Appeal Against Delhi High Court Verdict Quashing Probe Against Ericsson & Monsanto*, LIVELAW (Sept. 23, 2025), https://www.livelaw.in/top-stories/supreme-court-rules-patents-act-prevails-over-competition-act-304774; Ambika Aggarwal, *Whose Jurisdiction Is It Anyway?: SC Dismisses CCI's Appeal Against Ouster of Jurisdiction on Patent Issues*, SPICYIP (Sept. 2025), https://spicyip.com/2025/09/whose-jurisdiction-is-it-anyway-sc-dismisses-ccis-appeal-against-ouster-of-jurisdiction-on-patent-issues.html.

[36] Nautiyal, *supra* note 6.

[37] Lai & Kathuria, *supra* note 9, at 256–68.

[38] Shaikh, *supra* note 10, at 247–52.

IV. FINDINGS

A. Section 106: groundless threats

1. Section 106 provides an independent statutory remedy against unjustified threats of patent infringement proceedings and permits the aggrieved person to seek a declaration, an injunction and damages.[39]
2. The provision covers threats made through different forms of communication, including circulars, advertisements and oral or written communications. A mere notification of the existence of a patent does not amount to a threat under the Explanation to section 106.
3. In deciding whether a communication amounts to a threat of infringement proceedings, the court considers its actual content and effect. The decision in *Bata India Ltd. v. Vitaflex Mauch GmbH* illustrates this approach.[40]
4. Section 106 does not lay down a specific test for deciding when a threat is "groundless". As a result, the issue is generally determined by examining the facts and circumstances of each case.
5. The recent Supreme Court decision in *Atomberg Technologies Pvt. Ltd. v. Eureka Forbes Ltd.* confirms the independent nature of an action based on a groundless threat. At the same time, the limited number of decisions dealing directly with section 106 shows that further judicial development is required to provide greater certainty in its application.[41]

B. Section 140: restrictive conditions

1. Section 140 places statutory limits on certain conditions included in contracts and licences relating to patented articles and patented processes. It declares void certain specified restrictive conditions, which cover conditions about acquiring or using other articles, limits on the use of alternative processes, and the conditions listed specifically in section 140(1)(d). That clause deals with exclusive grant-back conditions, conditions that prevent a challenge to the validity of the patent, and coercive package licensing. This shows that the statutory control reaches some of the most important terms found in patent licensing arrangements.[42]

[39] Patents Act, *supra* note 1, § 106(1).
[40] *Bata India*, *supra* note 5, ¶¶ 2, 12, 14; *see also LG Elecs.*, *supra* note 15, ¶¶ 97–99.
[41] *Atomberg*, *supra* note 17, ¶ 9.
[42] Patents Act, *supra* note 1, § 140(1).

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2. The study finds that section 140 provides a statutory framework, but Indian courts have done little to interpret how its different categories of prohibited conditions should be applied to actual patent agreements. The main difficulty under section 140 is therefore not the absence of statutory provisions but the limited development of judicial standards. This creates uncertainty in determining how particular licensing conditions should be assessed and affects the practical effectiveness of section 140 as a safeguard against misuse of patent rights.

V. Conclusion

This study examined sections 106 and 140 of the Patents Act, 1970 to understand whether these provisions effectively control the misuse of patent rights in India. The study aimed to examine the statutory framework, the available judicial interpretation and the practical difficulties in applying these provisions. The study finds that sections 106 and 140 of the Patents Act, 1970 provide legal protection against the misuse of patent rights. However, the limited number of judicial decisions interpreting these provisions affects their practical application.

Section 106 gives a person who faces groundless threats of infringement proceedings the means to seek a declaration, an injunction and damages. What section 106 still lacks is a detailed standard for deciding when a threat should be treated as groundless. The reported decisions give some direction, but no consistent approach has yet taken shape. Section 140, for its part, deals with restrictive conditions in patent-related agreements. By declaring certain conditions void, it limits how far a patentee can use contracts to control other parties. Here again, there is very little judicial interpretation showing how those limits work across different types of licensing arrangements, and so the true reach of the provision remains uncertain.

The study points to a gap between what Parliament seems to have intended through sections 106 and 140 and how the courts have applied them so far. Its examination of the strengths and weaknesses of each provision as a safeguard against the misuse of patent rights suggests that clearer judicial standards and more consistent application are needed. Such developments would give patentees, licensees and other affected persons a firmer footing for planning their conduct, and would keep the protection of patent rights in proper balance with the lawful exercise of those rights.

VI. Suggestions

1. The courts should lay down a clear and uniform test for identifying a “threat” under section 106 and for deciding when that threat becomes “groundless”. At present the

question turns on the facts of each case, so a patentee cannot know how far a warning can safely go, and the recipient cannot be sure whether the law supports its position.

2. Section 106(2) needs to be made clearer, either through judicial reasoning or through an amendment by Parliament. What remains unsettled is what the defendant must prove: that infringement actually took place, or only that there was a reasonable technical basis for making the threat. The wording leaves the burden of proof uncertain on this question.
3. In applying section 140, courts should work through a settled line of reasoning that tells apart the ordinary terms found in commercial licences from those that stretch the patentee's control past the limits of the statutory monopoly. In the absence of any such framework, the parties to a licensing dispute are left guessing at how it will be decided.
4. Judicial decisions should explain "coercive package licensing" in section 140(1)(d). At present nobody can say with confidence how much pressure or compulsion is needed before a licence term falls within the prohibition.
5. Where a suit under section 106 and an infringement suit arise from the same facts, they should be heard together, avoiding duplicated evidence and findings that may contradict each other. The transfer ordered by the Supreme Court in *Atomberg Technologies Pvt. Ltd. v. Eureka Forbes Ltd.* illustrates how such connected suits can be brought before a single court.
6. The defence in section 140(3), which depends on the presence of an unlawful contractual condition, needs a fuller explanation. It remains unsettled in what manner, and at which stage of a case, a party may validly take advantage of it.
7. Courts deciding matters under these two provisions should set out their reasoning in an orderly way, which would turn isolated rulings into dependable standards that patent owners and licensors can plan around.

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