

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 2

2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to submission@ijlmh.com.

Infringement of Patent and Remedies Available under the Patent Act, 1970

SUYASH JOSHI¹ AND AYUSH SARAN²

ABSTRACT

This paper seeks to explore the historical background, patent infringement concept and related sections under the Patents Act, 1970. Apart from this, patent infringement-based judgements have also been dealt with in this paper. Patent infringement is a critical issue as regard to not only patent holders' rights but also innovation. The methodology used involves analysing sections along with landmark judgements and thereby displaying practical aspects in cases of patent infringement. The paper reflects how judgements have impacted understanding of patent infringement from a legal perspective and ends with a few suggestions.

Keywords: Patent. Infringement, suit, licensee

I. INTRODUCTION

When science developed, what became inevitable was publishing knowledge and protecting the creator became pertinent. Previous inventions laid the foundation for the modern ones. Only improving industrial techniques can lead to industrial development. Incentivising disclosure was used to encourage disclosure. This transformed scientific knowledge into some property form. Intellectual property is non-existent in just ideas; however, its specific expression gets protected. Intellectual property is a loose bunch of legal doctrines which regulate usage of different ideas as well as insignia. Positive as well as negative rights is provided by intellectual property. Positive one allows commercial exploitation of the previous expressed idea, while, negative one prevents anyone else from doing that which owner has been permitted.³

The motive behind safeguarding intellectual property is promoting scientific progress along with technology, literature, among others, while rewarding and encouraging creativity. Property means any such object over which ownership extends.⁴

Patent office is the one conferring an exclusive right to inventors for exploiting their inventions, however, subject to Patent Act, 1970 (hereinafter called, the Act) for finite time period. Such

¹ Author is a Student at Amity Law School, Amity University Uttar Pradesh, India.

² Author is an Assistant Professor (Grade-1) at Amity Law School, Amity University, Lucknow, India.

³ Elizabeth Verkey, Jithin Saji Isaac, Intellectual Property 1 (EBC, Lucknow, 2nd edn. 2024).

⁴ VK Ahuja, Law relating to intellectual property rights 3 (LexisNexis, New Delhi, 3rd edn. 2022).

right is patent and during such period, inventor can exploit his invention while exclusive others. Such right, with prior inventor authorization, can be exercised by anyone. Patentee is the one whom patent is granted. Though applying for patent is optional as inventor might prefer keeping his invention a secret, but he would risk its disclosure either through someone possessing its info or through reverse engineering and would be left without remedy. Prior to patent grant, in patent application, patentee has to clearly and completely describe his invention such that anyone possessing ordinary skill can through reading its description carry out such invention. Thus, disclosure is necessitated prior to grant, which would prevent duplicate efforts as well as multiple costs.⁵

II. HISTORICAL BACKGROUND

Historically, intellectually property can be found during Byzantine Empire, when monopolies existed. Ancient Greece even granted monopoly to chefs for one year for exploiting their recipes till Zeno, a Roman Emperor, rejected such concept. However, by 1432, exclusive privileges were granted by Senate of Venice, to silk related machine or process inventors, which got extended to even other devices later on. Even the earliest intellectual property law was on patent. In 1474, Venetian Senate voted for patent related first ordinance and in 500 years, patent system evolved.⁶

Due to uncertainty as to patent's origin, claim of bring first as regard to the patent system can be made by no nation. Though longest and continuing patent tradition is of Britain only and as such originates in 15th century wherein certain privileges were accorded to not only manufacturers but also traders by the then Crown. Beginnings date to when Queen Elizabeth, for advancing her policies, gave monopoly privileges. As a term 'Patent' reveals that its origin dates to the royal privilege as to the grant of letters patent. Such patents enticed for coming to England not only tradesmen but also industrialists. King Edward III, since 14th century, gave letter patents to those foreigners who ready to train such trades to his own subjects, like grant of 1331 to John Kempe who was from Flanders. However, Henry VI was the one to receive first known patent that was English in 1449, granting him monopoly as to stained glass making for 20-years. Such glass, not earlier known, was used in Eton College's windows. In 16th century, even those with manufacturing monopolies got letter patents, like in 1552, Henry Smith got for 20 years for Normandy glass. Old patent law got replaced with The Patent Act, 1977, which remains in force and provides patent grant by European Patent Office.⁷

⁵ Ibid.

⁶ Elizabeth Verkey, Jithin Saji Isaac, *Intellectual Property* 301 (EBC, Lucknow, 2nd edn. 2024).

⁷ Ibid.

Emergence of patent system happened in India during colonial rule and thus, British drew from their patent system in creating Indian Patents Act. Act VI of 1856 was to protect inventions herein drew basis from British Patent Law, 1852. This law granted specific and exclusive privileges for 14 years period to new manufacturers. In 1859, this law got further modified to provide specific and exclusive privileges to Indian inventors. Patent & Designs Protection Act and further came Protection of Inventions Act in years 1872 and 1883 respectively and after their consolidation in 1888 came the Inventions and Designs Act. In 1911 came The Indian Patents and Designs Act. The Indian Patents Act came up on 20th April 1972 and later amended in 1999, 2002 and then in 2005.⁸

The Patent Act provides the procedure for granting patent to any inventor through which he can utilize his invention for 20 years. However, such utilization remains subject to fulfilling specific conditions.⁹

Section 2(1)(m) states patent to mean patent granted for any invention under the Patent Act, 1870. Invention would include any product or any process that is new, has industrial application and involves inventive step.¹⁰

III. CONCEPT OF PATENT INFRINGEMENT

Patent infringement would occur when invention that is patented is used, made, sold or even imported without patent owner's permission and leads to not only undermining of patent owner's rights but also discourages innovation. Thus, to promote creativity and for rewarding inventors, it becomes pertinent to safeguard patent related rights.¹¹

Below are the types of patent infringement¹²-

Direct infringement- Happens when one directly does that activity which is forbidden by the patent like selling of patented product without prior authorization of patent holder.

Indirect infringement- Happens when one either contributes or induces direct infringement like supplying such parts that are to be used for direct infringement.

Doctrine of equivalents

Determining patent infringement would involve two steps. Firstly, construing claims properly so as to determine their scope as well as meaning. Thereafter, comparing such claims to the

⁸ *ibid.*

⁹ *Ibid.*

¹⁰ VK Ahuja, Law relating to IP rights (LexisNexis, New Delhi, 3rd edn. 2022).

¹¹ <https://www.mondaq.com/india/patent/1469980/patent-infringement-in-india-recent-case-studies-and-legal-updates>

¹² *Ibid.*

accused device and wherein such device or even method completely falls under the asserted claims ambit, literal infringement might be found, but not if any claim limitation lacks from such device or method. However, even where literal infringement is lacking, through this judicial doctrine and under certain circumstances, infringement might be found and thus doctrine of equivalents safeguards patent holders from minor variations that could escape liability.¹³

IV. PATENT INFRINGEMENT AND REMEDIES

Through section 48, Patent Act provides for infringement via enforcement right, that is implied through those exclusive rights given to patentee against unauthorised usage by any third party which is not the same case as with Copyright or Trademark laws, which define 'infringement'. For any independent development, liability is provided by Patent law, which means even a claim of defendant falling under the subject matter as well as scope of claims of patentee could make former liable. Whatever the intention as to infringement remains irrelevant.¹⁴

Section 104-Jurisdiction

Following suits are not to be instituted in any court that is below District Court holding power of trying such suit-

- Suit seeking declaration (Section 105);
- Suit seeking relief (Section 106);
- Suit for patent infringement.

Section 104-A-Burden of proof

In a suit pertaining to patent infringement wherein patent's subject matter is that process which is used to obtain a product, defendant may be directed by court to prove that the process employed by him for obtaining the product even though identical to a patented process differs from such patented process, when-

- Process employed so as to obtain a product is the patent's subject-matter; or
- High likelihood of product being made by the process and patentee failed even after reasonable efforts in identifying such process.

¹³ <https://www.mondaq.com/india/patent/1469980/patent-infringement-in-india-recent-case-studies-and-legal-updates>

¹⁴ Chawla, Gunjan (2015) "Shielding Patent Attacks: A Peek into the Defences and Exceptions to a Patent Infringement Suit," National Law School Journal: Vol. 13: Iss. 1, Article 4. Available at: <https://repository.nls.ac.in/nlsj/vol13/iss1/4>

Firstly, patentee shall prove existence of similarity between the product and product obtained via patented process and if proved, defendant shall bear burden as regard to proving difference in processes employed in obtaining their respective products.

While court considers whether burden was discharged under Section 104-A (1) shall not require from the party any disclosure as to the manufacturing secrets or the commercial ones, if Court finds it unreasonable.

Section 105-Declaration making power

Suit maybe instituted, even though no contrary assertion has been made by either the patentee or his licensee, seeking declaration that usage of whatsoever process, or any article's usage, making or sale is or will not cause infringement of any claim as to the patent against-

- The patentee, or
- The licensee.

For seeking declaration, what has to be shown is that even though plaintiff, in writing, applied to either the patentee or his licensee seeking written acknowledgement that has effect of the claimed declaration and all particulars, in writing and fully, regarding process or product that are in question, were furnished, but such acknowledgement sought was refused by either the patentee or his licensee.

Plaintiff will be the one bearing costs for such suit unless Court deemed fit ordering otherwise.

The validity cannot be called in question of a claim of patent specification in a suit seeking declaration under Section 105 and valid of a patent cannot be implied based on whether or not declaration is made. And suits which seek declarations under Section 105 can be brought at whatsoever time once the patent grant is published. Also, accordingly happens is interpreting reference under Section 105.as to the patentee

Section 34 under Specific Relief Act, 1963 herein shall not impact courts power .

Section 106-Power to grant relief

Anyone threatened by means of circulars, communication, advertisements with proceedings for patent infringement may bring suit against the one threatening for seeking reliefs under Section 106. The one threatening maybe interested or entitled to in a patent or maybe or maybe not an applicant seeking patent. Communication under Section 106 maybe oral or written and such threat may be addressed either to him or others. Reliefs under aforesaid section are-

- Declaration that such threats are unjustifiable;

- Injunction maybe granted against such threats;
- Damages, if any, were sustained by the one threatened.

In case of defendant failing to prove that those acts in regard to whom such threat was given constitute patent infringement or infringement of rights that arise from publishing complete specification as to the specification claim which plaintiff has not shown to be not valid, court may grant either all or any of those reliefs prayed. However, only notifying that the patent exists shall not be taken as threat of proceedings under Section 106.

Section 107-Defences, etc.

In patent infringement suit, all the grounds on which patent can get revoked under 64 shall be also available as defences.

Any suit for patent infringement by the usage, making or even importing of a machine or other article or the usage of a process, or by import, usage or distribution of a drug shall constitute as ground for seeking defence that such usage, making, import or distribution is as per any one or more conditions under Section 47.

Section 107-A-Acts not taken as infringement

Under the Patents Act, 1970, below acts do not cause patent infringement-

- Making, using, constructing, importing or selling of patented invention only for usages reasonably relating to developments and submission of that information which law requires whether in India or outside for regulation of manufacturing, usage, sale, construction or importing of a product;
- Import of patented product by anyone from the one duly authorised by law to produce and distribute or sell such product.

Section 108-Reliefs

In a suit for patent infringement, relief by court may include injunction along with either damages or account of profits, depending upon plaintiff's preference. Injunction maybe subject to certain terms which court may deem fit.

Alos, court may order seizure, forfeiture or destruction of infringing goods together with those materials and implements used heavily in creating infringing goods, depending upon what court deems fit and no compensation shall be granted.

Section 109-Exclusive licensee right against infringement

Exclusive license holder shall be entitled like patentee as regard to institution of suit in case of

patent infringement after license grant date as well as any loss which licensee suffered or likely will suffer or profits received by infringement shall be considered during award of damages, account of profits or whatever other relief in such suit. Wherein patentee was not made plaintiff, he is to be added as defendant, but if added as defendant, his liability as to costs is none unless he not only entered appearance but also took part in proceedings.

Section 110-Licensee right to take proceedings

If upon licensee's request under Section 84 of initiating legal proceedings so as to prevent patent infringement, patentee either refuses or fails in doing so within two months of being requested, licensee may initiate proceedings in his own name but has to treat patentee as defendant, but even as defendant patentee will bear no costs unless he not only entered appearance but also took part in proceedings.

Section 111-Restriction on courts power

In patent infringement suit, neither damages nor accounts of profit shall be granted against such defendant who has proven being unaware and having no reasonable ground for believing in patent's existence. Further, merely applying 'patent', 'patented' or other word that implies patent existence will not be considered as sufficient notice of patent existence unless patent number is accompanying such word.

Failure to pay renewal fees within prescribed time and prior to any extension may cause the court to not grant damages or profits in relation to patent infringement.

Wherein amendment has been permitted under the Act after specification being published, neither damages nor account of profit will be granted in proceedings in regard to the usage of invention prior to the date of that decision which allowed amendment.

Section 111 shall not be influencing power of injunction granting held with court in any patent infringement suit.

Section 113-Certificate of validity

In proceedings before either the Appellate Board or the High Court seeking patent revocation under Section 64 or contesting validity of any claim of a specification under Section 104 and claim is found as valid, aforementioned board or court may certify that claim's validity was not only contested in proceedings but also upheld.

Further, if in subsequent suit dealing with either infringement or revocation before any court, the patentee successfully obtains judgement in his favour, he will be entitled to obtain his full costs along with charges and expenses related to proceedings unless otherwise given in

judgement. Though such entitlement will not give if the one who disputed the claims validity has satisfied the court that he lacked awareness as to certificate grant when he had raised the dispute and even withdrew his defence upon becoming aware.

Section 114-Relief for infringement

In patent infringement proceedings wherein, it is found that a claim as to the specification, being claim in regard to alleged patent infringement, is valid but other claim is not, relief in regard to the valid claim may be granted by the court. However, relief shall only be given through injunction.

Wherein it is proven by plaintiff that invalid claim was made in good faith and not without reasonable knowledge as well as skill, relief shall be granted by court as regard to the valid ones which got infringed depending upon its discretion related to costs and date of reckoning damages or account of profits. Conduct of parties may be considered in putting invalid claims or allowed them there while court exercises discretion.

Section 115-Scientific advisers

In suit of patent infringement or in any proceeding under the Patent Act, 1970, irrespective of application been made for such purpose, independent scientific advisor may be appointed by the court for assisting it or for inquiring and reporting on the court formulated opinion or question of fact for the purpose, but such question shall not be in related to law interpretation.

Court shall fix such adviser's remuneration including report making cost and fee for that day on which he attends court. Such remuneration has to be defrayed out of the Parliament provided money by law for such purpose.

V. LANDMARK JUDGEMENTS

Monopoly acts as reward for the inventor and what must exist is presumption as to patent validity, however, as per law court is mandated to look at the entire case and strength of not only the defences raised but patentee's arguments also. Herein, court had rejected plaintiff's contention that apart from claim and product, nothing else should be looked at by the court and that import of no further documents should be required for drawing of inference. Court held that claim cannot be every time decisive and that those factors which co-related the roles of variant and reactant to that of patent claim were pertinent and inference by court could be drawn after seeing and analysing documents.¹⁵

¹⁵ F. Hoffmann-La Roche Ltd. v. Cipla Ltd., Mumbai Central, Mumbai, 2012 (520 PTC 1 (Del)).

Both parties had a family business and were dealing in the product “Livolic classic” and were aware of their ingredients. They got separated and began their own businesses. Plaintiff developed ‘Zigbir’ as product wherein usage of four ingredients was done in different proportion out of total eighteen as in ‘livolic classic’, while, defendant developed ‘Livolic 250’ using all eighteen. One report stated only chemical composition as same and not that products were identical. Burden of proof was not imposed under Section 104-A by the court on the defendant and plaintiff failed in proving patent infringement. Even usage of four ingredients on plaintiff’s part was not held as novel or inventive as they were in usage in ‘Livolic classic’. Revocation ground was made out under Section 64.¹⁶

Intellectual Property Appellate Board that is located in ‘Chennai’ was approached by the defendants, who contented to not offend plaintiff’s product through their product that was about to be produced, but filed revocation petition under apprehension of objection to it by the plaintiffs. Court held aforementioned fact to give itself the jurisdiction and even allowed revocation. It was found to be part of cause of action which had arisen in Chennai and within such court’s jurisdiction. Also, leave that such court granted was not revocable due to jurisdiction.¹⁷

Plaintiffs had patented safety IV catheter wherein needle tip got automatically covered when needle was withdrawn so as to prevent healthcare workers getting contacted with needle tip. Plaintiffs manufactured both low cost and improved safety catheters. Defendants through an exclusive agreement with plaintiffs were manufacturing basic catheters. Defendants by taking help from info which plaintiffs had provided for manufacturing basic IV catheter along with other confidential info manufactured safety catheter. Plaintiffs pleaded minor additions as not material and that essential features collectively amounting to as invention shall only be seen. Defendants argued that nothing was novel as to the plaintiff’s invention keep in view the prior art in such field and that theirs differed from plaintiffs. Court while reiterating that patent registration per se does not entitle for injunction and that only after considering complete case can such decision be made found plaintiffs as not entitled to it. Court has even considered that plaintiffs patent was a recent one and was challenged as to validity.¹⁸

VI. CONCLUSION

Patent infringement forms a pertinent issue as regard to the rights of patent holders. Safeguarding their rights is pertinent for continued innovation and development. The Patents

¹⁶ Natural Remedies (P) Ltd v. Indian Herbs Research & Supply Co Ltd, AIR 2013 NOC 78 (Kant).

¹⁷ F. Hoffmann-La Roche Ltd. v. Matrix Laboratories Ltd, AIR 2012 NOC 183 (Mad.).

¹⁸ B. Braun Melsungen AG v. Rishi Baid, (2009) 40 PTC 193 (Del.).

Act, 1970 deals comprehensively with patent infringement by providing sections dealing with jurisdiction, reliefs, power of court, right of licensee, etc. This paper reflects that sections dealing with infringement are sufficient and even provide for licensee rights in patent infringement cases.

Despite such brief sections, patent infringement continues and even there cross-border infringement cases. Not only complexity of patent infringement cases but also delayed judicial process hampers justice. Also, awareness as to the rights of not only patent holders but also licensees need to be created. For faster resolution and for reducing courts burden, alternative dispute resolution could be even more encouraged.

VII. REFERENCES

Books

- Elizabeth Verkey, Jithin Saji Isaac, Intellectual Property 2 (EBC, Lucknow, 2nd edn. 2024).
- VK Ahuja, Law relating to intellectual property rights 3 (LexisNexis, New Delhi, 3rd edn. 2022).

Research paper

- Chawla, Gunjan (2015) "Shielding Patent Attacks: A Peek into the Defences and Exceptions to a Patent Infringement Suit," National Law School Journal: Vol. 13: Iss. 1, Article 4. Available at: <https://repository.nls.ac.in/nlsj/vol13/iss1/4>

Website

- <https://www.mondaq.com/india/patent/1469980/patent-infringement-in-india-recent-case-studies-and-legal-updates>

Judgements

- F. Hoffmann-La Roche Ltd. v. Cipla Ltd., Mumbai Central, Mumbai, 2012 (520 PTC 1 (Del)).
- Natural Remedies (P) Ltd v. Indian Herbs Research & Supply Co Ltd, AIR 2013 NOC 78 (Kant).
- F. Hoffmann-La Roche Ltd. v. Matrix Laboratories Ltd, AIR 2012 NOC 183 (Mad.).
- B. Braun Melsungen AG v. Rishi Baid, (2009) 40 PTC 193 (Del.).
