

INTELLECTUAL PROPERTY RIGHTS: ENFORCEMENT AND LITIGATIONS

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ABSTRACT

Intellectual Property enforcement is necessary to protect your intellectual property asset. It prevents free riders causing harm to the intangible assets. It helps in maintaining a fair competition in the business environment by preventing unauthorised use, infringement or misappropriation or valuable IP assets. Therefore, it is imperative to know the various course of actions to protect the Intellectual Property. The Intellectual Property Rights (IPRs) in India mainly include encompassing trademarks, copyrights, patents, trade secrets and design, etc. This paper elucidates the need of IPR enforcement and provides information about various remedies that are available in India.

Keywords: *IPR, laws, governance, innovation, new invention, legal.*

INTRODUCTION

Intellectual property has a rich history which dates back to 500 B.C.E. when chefs in Greek of Sybaris (a city in Ancient Greece) granted the monopoly for creating particular culinary delight. The term “intellectual property” started to be used in the 19th century, though it was not until the late 20th century the intellectual property became commonplace in majority of the world's legal systems. The most well-known type of intellectual property are copyrights, patents, trademarks and trade secrets. The modern concept of intellectual property developed in England in 17th and 18th century.

The term Intellectual Property refers to creation of the mind, it is a type of intangible asset which is created out of human intelligence. It is a non-physical property that is the product of original thought. There are various types of intellectual property, such as copyrights, patents, designs, trademarks, trade secrets etc. The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods, unlike traditional property, intellectual property is indivisible, since an unlimited number of people can consume an intellectual goods unlimited number of times. Therefore, there is need to protect the intellectual property assets and need to enforce it legally.

INTELLECTUAL PROPERTY ENFORCEMENT

Intellectual property enforcement is a legal framework to protect our intellectual property rights. It is an act to protect our intangible assets. There are many benefits of IP enforcement which are as follows.

- i. It helps companies/inventors to lose proprietary knowledge.

- ii. It helps in solving disputes over the ownership.
- iii. It gives monetary incentive for the creation, as it allows people to earn profit out of the intellectual property.
- iv. In case of litigation onus to proof shifts on the opposite party.
- v. Prima facie presumption is raised in favour of the registrant.
- vi. Monopoly for the specified period is created in favour of the registrant.

IPR Enforcement also ensures that others cannot benefit financially from your hard work or, indeed, damage your reputation by forbidding others from creating an inferior product of service that appears to be associated with your business. IPR Enforcement provide remedies for infringement for civil and criminal action by right holder. Before learning about our rights and remedies first we should know about the various forms of Intellectual property rights protected in India.

FORMS OF IPRIGHTS PROTECTED IN INDIA

1. Laws relating to Trade Marks/Brands, Trademarks Act, 1999. Governed by DIPP, Ministry of Commerce and Industry.
2. Laws relating to copyrights of artistic work, literary work, audio, video records and software etc., Copyright Act, 1957. Governed by Copyrights Office, Ministry of Human Resource Development.
3. Laws relating to the Patents, The Patent Act, 1970. Governed by DIPP, Ministry of Commerce and Industry.
4. Laws relating to Industrial Designs, Designs Act, 2000. Governed by DIPP, Ministry of Commerce and Industry.
5. Laws relating to geographical indications, Geographical

Indications of Registration and Protection Act, 1999. Governed by DIPP, Ministry of Commerce and Industry.

6. Laws relating to Internet, web and information technology. Information Technology Act, 2000. Governed by Ministry of Electronics and Information Technology.
7. Semiconductors and Integrated Layout Design Act, 2000. Governed by Ministry of Electronics and Information Technology.

India announced its first National IPR policy in 2016. Today, the portfolios of Patents, Designs, Trademarks, Copyright, Geographical Indications, and Semiconductor Integrated Circuits Layout Design all fall under the Department for Promotion of Industry and Internal Trade (DPIIT). Under DPIIT, the Cell for IPR Promotion and Management is tasked with implementing India's National IPR Policy. It spearheads the Indian government's efforts to streamline IP processes, increase IP awareness, promote commercialization, and enhance enforcement.

INTELLECTUAL PROPERTY LITIGATIONS AND REMEDIES

Over the past five years, the Indian government has taken positive steps to strengthen its IPR regime, such as efforts to modernize its IP offices; increase manpower; use IT and technology in e-filing of applications; deliver certificates of grant and registration of patents, trademarks and designs in a digital format; reduce the number of trademarks forms; use video conferencing for hearing of IP applications; create expedited examination procedures; and spread awareness on IP issues. There are many ways in which we can enforce our IPR and get remedies.

A. CEASE AND DESIST NOTICE

Notice is at the end of the day, it's only a written communication. The person who receives it, the alleged infringer, has an option to abide by the notice and stop the action or the person can, if there are reasons to do it, continue with the infringement. There are a lot of disadvantages of cease-and-desist notice, suppose quite a lot of pirated copyrighted works. Now, if you issue notice, this is the person who receives the notice can quickly wipe out all the entrenching material. And when you go for a search, a quota assisted search, nothing incriminating could be found in the premises. So, the infringement material can be especially in the case of fly by night operators. They can just dismantle the entire setup, and it will be very hard for you to find infringing copies to prove infringement.

B. ACTIONS BEFORE THE INDIAN PATENT OFFICER

Patent agent is a coordinator between the patentee and the Patent Office. The role of the patent agent is to act on behalf of the Patentee or the inventor. A patent agent has legal and technical skill to define the scope of the patent and extend of the claims. They are largely opposition proceedings.

C. CIVIL REMEDIES

In case the rights provided by IP regime is violated. A civil remedy can be imposed by filing a suit of infringement in the court. Below are the remedies

1. INJUNCTIONS

(1) Interim/Interlocutory Injunction objective is to maintain status quo in the essence of time. The factors which are considered before

granting an interim/interlocutory injunction are

- (i) Prima facie case
- (ii) Balance of convenience
- (iii) irreparable injury,

The relevant case study is Gujarat bottling company v. Coco Cola 21 IPLR, 201.

2. EX PARTE ORDER

When the matter is extremely urgent after a preliminary hearing of the interim application without notice to the answering defendant, the court grants an ex-parte order in favour of the plaintiff. It is granted for

- (i) Discovery of documents
- (ii) preserving of infringing goods, documents of other evidence related to the subject matter of the suit;
- (iii) restraining the defendant from disposing of his asset in a matter of which may be adversely affects the rights of intellectual property owner to claim damages cost or other pecuniary remedies.

3. ANTON PILLAR ORDER

This type of order came from the case the English case of Anton Pillar vs manufacturing process 1976 RPC, 719 It is similar to the ex-parte order. The court which provides the rights to search premises and seize evidence without prior warning. It is used to prevent the destruction of Incriminating evidence, particularly in case of alleged trademark copyright or patent infringement. The precondition for grant of Anton Pillar Order is

- (i) extremely strong, prima facie case
- (ii) damages are very serious
- (iii) Clear evidence that defendants have in their possession incriminating documents, materials which are which they may destroy.

4. JOHN DOE ORDER

Court appointed commissioners to enter the premise of any suspected party and collect evidence of infringement. Suspect party may not be named in the suit. Indian courts have conferred expanded powers to commissioners- Roving commissioners. The relevant case law is Ardhat Tobacco Company Limited vs Mr Munnabhai and others. 2009

5. Damages or profits made These are mutually exclusive alternative remedies It is a form of equitable relief The plaintiff can get the monetary relief of the losses suffered by him on the account of defendant's act.

D. CRIMINAL REMEDIES

- 1. Falsification of Trademark/Infringement of copyright is a cognizable offence, a complaint can be filed before the Magistrate or an FIR can be registered with the Police
- 2. Fine can be up to Rs 50000 to Rs 2 lakhs.
- 3. As per trademark act 1999 applying for a false trademark owning instruments of falsifying trademarks. The wrong description of trade, which includes imprisonment of up to three years including or excluding.
- 4. As per the Copyright Act of 1957 and patents of 1957, infringement is punishable by an obligatory six-month maximum

imprisonment up to three years.

5. As per patent act 1970 false of entries in register claiming patent rights in unauthorised way can be led to punishable offence as well also punishment of six months maximum up to three years
6. Seizure, forfeiture and destruction order of infringing goods/material can be passed by the Magistrate.

E. APPELLATE BOARD

Appellate board established under section 83 of the Trade Mark Act 1999. It has technical members. Make an action for revocation of your competitors. So, it is a part of enforcement that you ensure that your competitor does not get an IP. It also has power of rectification. The IP has reserved the power to decide these matters. So, there is a bar on the jurisdiction of the courts.

CONCLUSION

Intellectual Property Rights and its enforcement is crucial for business and individual owning intellectual property assets. It helps in maintaining fair and competitive business environment by preventing unauthorised use, infringement or misappropriation of valuable IP assets. It is also important to get monetary benefit for its creation to the inventors who worked hard for developing these IP assets. For example, the manufacturing of the IPHONE is in China but it only gets 3 to 5% of the profits from the IPHONE and the main profit is earned by the Apple, which is a US company because as per Design Act the attribute to the value added by designing research which is based in USA. The given example makes it clear that why it is imperative to enforce Intellectual Property Rights.

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