

LEGAL REMEDIES IN CASES OF PATENT INFRINGEMENT AND LEADING CASES IN INDIA

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ABSTRACT

Today, man is a knowledge worker. He uses the science and technology as instruments of development. There are no boundaries for the knowledge and it is transnational in nature. Patents can be bought, hired, sold or licensed. Legal action can be taken against those who infringe the patent by copying the invention or selling it without permission from the patent owner. The paper focuses on kinds of remedies in the case of infringement of patents in India, consequences of such patent infringement. The paper also illustrates various case laws relating to patent infringement including Basmati Rice case which acted as an alarm for India and consequent changes in Indian patent system.

Key Words: *Legal remedies, patent infringement, basmati rice case, IP enforcement*

Introduction

Modern era is an era of science and technology. A legal system should reward innovative enterprise by conferring limited and regulated monopoly rights for the commercial exploitation of an invention. The effectiveness of the law of patents depends upon the nature of the remedies available to the patentee or holder of an exclusive license. The law confers upon him certain rights. Doing anything by anyone else than the patentee without the authority of law, which the patentee alone has the right to do, is infringement. Every right has a remedy in the same law. A suit can be filed in a civil court and section 108 deals with reliefs in suits for infringement.

Exclusive licensee can also take proceedings against infringement (sections 109 and 110). The reliefs provided are; injunction, damages or account of profits. The circumstances under which the relief could be claimed and the limitation of the court in regard thereto are dealt with Section 111, 112 and 114 and Section 113 deals with the cost, in case the validity has been certified by the High Court. Section 105 empowers the court to grant declaratory decrees in case of non-infringement, and Section 106 provides for relief in cases of groundless threats of infringement proceedings. Section 107 deals with defence in suits for infringement discussed below in detail.

1. Infringement of Patents in India

Infringement connotes trespass upon, interference with, or violation of some legal rights of the patentee. When a patent is granted, the patentee has an exclusive right to create, exploit, exercise, sell, assign or distribute the product or process. He may do

so by himself, or through his agents or licensees. Other persons are prohibited. The prohibition includes the product of the patented machine or of the patented process. Making, using or vending such prohibited product is infringement. In order to make out infringement, it must be established, to the satisfaction of the court, that the alleged infringer, dealing with what he is doing as a matter of substance, is taking the invention claimed by the patent. Infringement must be infringement of that which is protected, of that which is specified. Intention is not relevant.

Immaterial variations do not absolve infringement. What has to be seen is whether what is done is taken from the substance of the invention.² No one who borrows the substance can escape by making. Immaterial variations. Absolute similarity is not a requirement but a need to consider that whether the pith and marrow is present or not. If present, there is an infringement in spite of any modification, unless the modification has a patentable matter itself.³ The question is the questions of essential features of the invention having been infringed and whether the infringing apparatus is substantially the same as the apparatus said to have been infringed.⁴ "Substantially the same" means same in all essential respects. "All essential respect" is a matter of construction of the claim.⁵ The patentee himself may specify with peculiarity those elements of integers which he claims to be essential. The monopoly which he obtains is for that specified combination of the elements or integers in relation to one another. There is no infringement unless each and every one of such elements is present in the process or product alleged to infringement and these elements also acts in pursuance with another in the manner claimed for.⁶ The doctrine of "pith and marrow" is modified to this extent. A person

cannot get out by some trifling or unessential variations⁷, or mechanical equivalents of unessential features. Infringement cannot be avoided by substituting an obvious equivalent for an unessential integer.

There cannot be a question of presumption of validity in relation with patents granted by the Controller. In a suit for permanent injunction restraining the defendants from infringing in any manner certain patent of which the plaintiff claimed to be proprietor and patentee, the plaintiff had to make out a prima facie case about the existence of his monopoly right and its infringement by the defendant independently of the grant of the patent as such.

Though the Indian Patents Act, 1970 does not define the concept of infringement, the case laws of the Indian courts and other jurisdiction can be effectively used in finding infringement.

2. Who can file a suit?

The following person can file a suit for the infringement of patent-

- i. the patentee or co-owner of patent
- ii. exclusive licensee, if registered
- iii. a compulsory licensee, an
- iv. assignee

3. Who may file petition the High Court

The persons entitled to file a petition before the High Court for revocation of a patent can be:⁸

- i. Any interested person
- ii. Central Government
- iii. Person who makes a counter-claim in a suit of infringement.⁹

An action for infringement is the means of enforcing a patentee's rights, and generally provokes a counter claim for the revocation of the patent. Such action can be taken by filing a suit in a court not inferior to a district court having jurisdiction to try a suit, by a registered proprietor of the patent, co-owner of the patent, exclusive licensee, the licensee under any licence granted to him under the provisions relating to compulsory licensing. The defendant is normally the person who has committed the infringement, and his servant or agent. The patent can be made defendant in a suit instituted by the licensee under compulsory licensing, if he has refused or neglected to institute proceedings to prevent infringement, when called upon by the license to do so within two months after so-called upon.

The suit can be instituted only after the patent has been scaled.¹⁰ But since the plaintiff has the like privileges and rights as if the patent has been scaled on the date of advertisement of the acceptance of the complete specification, he can claim relief from that date. For infringement committed before that date, no suit can be commenced or prosecuted.¹¹ The period of limitation for bringing the suit is three years from date of infringement.¹² It commences from date of infringing and not from the date of grant of the patent.¹³ No notice is required as infringement does not depend on defendant having a notice that what he is doing is an infringement.¹⁴

Remedies in cases of infringement of patents

The following remedies are available to the patentee in case of infringement of his right:

1. Injunction
2. Damages

1. Injunction

Injunction is an explicit order of the court forbidding commission of a wrong threatened or continuance of a wrongful course of action already begun, or in some cases commanding active restitution of previous state of things. It is judicial process whereby a party is ordered to refrain from doing, or to do a particular Act or thing. The former is called the restrictive injunction and the latter, a mandatory injunction. An interlocutory injunction or interim injunction is to preserve matters "in site" until the case can be tried.¹⁵

1.1 Preventive Injunction

Injunction may be issued, temporary or permanent, as a preventive relief. This could be done at the discretion of the court. Specific relief given by preventing a party from doing that which he is under an obligation not to do, is called a preventive relief.

1.2 Temporary or Interlocutory Injunction

Temporary injunction is intended to maintain status quo and not conclusive of a right. It is provisional and is operative till further order of the court or for some specific time. It is issued during the pendency of the suit, *ex parte* without hearing the other party. Granting interlocutory injunction during pendency of a suit is a matter which requires exercise of discretion of the court for which the court applies the following tests: -

- i. Whether or not the plaintiff has a *prima facie* case
- ii. Whether or not balance of convenience is in favor of the plaintiff

iii. Whether plaintiff will suffer an irreparable loss or injury if his prayer for interlocutory injunction is not allowed.

The objective behind granting interlocutory injunction is to protect the plaintiff from Injury arising out of violation of his right for which he could not be effectively compensated in terms of damages recovered in the suit if uncertainty were resolved in his favor at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weight one need from another and determine where the 'balance of convenience lies'.¹⁶ In order to protect the defendant while granting an interlocutory injunction in his favour the court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour in trial.¹⁷

1.3 Perpetual Injunction

A perpetual injunction is granted only, after the plaintiff has established his right and the actual and threatened infringement by the defendant. The relief by way of perpetual injunction is discretionary and depends upon the facts of each case. No injunction can be granted with respect to patent infringement endorsed or considered to be endorsed with the words 'Licences of rights', if the infringing defendant is ready and willing to take the licence upon terms to be settled by the Controller.¹⁸

2. Damages

In any proceeding for infringement, the court may grant an

account of profit which the defendant has gained the wrongful conduct, or an enquiry as to and payment of damages, at the option of plaintiff. The court may award nominal damages or a fixed sum, without ordering an account, or an enquiry as to damages. The plaintiff cannot ask for both damages and also the profit. The remedy is alternative.

Damages are compensation or indemnity for the loss suffered by the plaintiff owing to infringement. The principle is that the injured party should be put as nearly as possible in the same position, as if it had not been injured, in terms of money. They are pecuniary equivalent of the injury which the plaintiffs have sustained by the wrongful acts done by the defendants. For doing that every injury is not included, however remote. Pecuniary resulting from the natural consequence of the acts done by the defendants has to be ascertained. For the matter the proper mode is to ascertain the extent to which the trade of the plaintiffs has been interfered with by the acts of the defendants.¹⁹ The proper measure of damages is the loss which the patentee has suffered owing to the infringement, i.e. the profit he would have himself derived if he had sold the articles which the defendant had sold or obtained royalty upon them. Measure of damages should be, so far as possible, that sum of money which will put the injured party in the same position as he would-have been in if he had not sustained the wrong.²⁰ If the plaintiff claims substantial damages, he has to prove the loss he has actually suffered by reason of the defendant's conduct. Damages are assessed to compensate the plaintiff and not to punish the defendants.²¹ Account of profits made by the infringer may provide a rough and ready reckoning of the loss suffered by the plaintiff.

Remedies Available to the Patent Owner

- The remedies available to the patent owner, in cases where infringement is established, is generally in forms of civil sanctions which are provided for in national patent laws. The civil sanctions are available in all cases of infringement.
- Civil sanctions normally available include the award of damages, the grant of an injunction, or any other remedy provided in the general law such as the seizure and destruction of the infringing products or the tools used for the manufacture of those products.
- In cases of continued infringement or where it is established in court that infringement has occurred, the patent owner is entitled to damages as assessed by the court. The damages may be calculated in at least two different ways and are awarded against the infringer for infringement committed.
- One way of calculating damages is to estimate the financial loss suffered by the patent owner as a result of the infringement. The other way is to estimate the account of profits. This does not mean that the patent owner will necessarily receive all the profits the infringer has made on the infringing articles but, nevertheless, an account of profits can be very near to the actual profits made. Damages may also be assessed by taking into account the royalty being paid by any licensees. In this case a court may decide that damages should be no less than the royalty payments per article and, as they are damages and not royalties, it is likely that damages will be fixed at a higher figure.
- An injunction is a prohibition of the infringing act. In such a case the court will issue an order directing the infringer to stop making

further copies or infringements of the patented invention. Where the infringing act has not yet been committed but where preparations have been made by a third party with a view to committing an infringing act (imminent infringement) the injunction means that infringement may not be started.

1. Suits Concerning Infringement of Patents

- Under the Patents Act no court inferior to a District Court has the jurisdiction to try the suit concerning infringement of patent where against the suit concerning infringement of patent, a counter claim for revocation is made by the defendant and both the suit filed and counter claim is transferred to the High Court.
- In an infringement suit, the High Court can order the defendant to prove that the process adopted in obtaining the product is not similar to the patented process. For this the Court will consider the test of substantial likelihood where the identical product is created by process and patentee or his representative has failed to determine the actual process used through reasonable efforts and if he proves that the product is identical then, the above order is not required to be passed.
- The court will not require the defendant to disclose secrets relating to manufacture or commercial activities, if it is unreasonable to do so in the process of discharge of burden of proof by the defendant.
- To provide protection against frivolous infringement suits, the Patent Act provides filing a suit for declaration that such process or use, make, sale of product by him does not constitute a claim of infringement. However, the suit can be filed even if such person has no assertion for the infringement under patent.

- Before filing a suit, the plaintiff should —
 - a. apply in writing to the patentee or exclusive licensee acknowledging the effect of declaration claimed and also provide him with full details in writing about the product or process in question and
 - b. Such acknowledgement has been refused or neglected by the patentee of licensee.
- The cost for the suit for a declaration is to be borne by the plaintiff unless for special reason the Court decides otherwise. In such suits for declaration the validity of class of patent specification cannot be put to question. However, refusal of such declaration will not make the patent invalid. The suit of declaration may be filed at any time after the publication of granting a patent.
- In case threat by any other person in oral or filing with for patent infringement, the aggrieved person can file a suit against him for relief relating to-
 - declaration to effect that such threats are not justifiable,
 - injunction against the continuation of such threats,
 - damages, if sustainable.
- The court may grant the plaintiff all or any of the relief's provided for unless the defendants prove that the acts if done would constitute an infringement of the patent.
- In a suit for infringement of patent the defendant may use any or all of the grounds for revocation of patent as defense. The defendant may also prepare his defense on the grounds that the grant of patent is subject to certain conditions specified in Section 47.
- The use of patented invention only for reasonable uses relating to

development and submission of information required under Indian law or outside does not constitute an act of infringement.

- The importation of patented product by a duly authorized person as per law does not amount to infringement.
- The court may grant an order of injunction subjected to conditions as the court may think fit to stop the infringement. The court may also grant an option to the plaintiff either to grant damages or an account of profit.
- The court may also order for seizure, forfeiture of goods found to be infringing and creating infringing goods or can also pass an order to destroy the goods without paying any sort of compensation.
- The exclusive licensee has a right similar to the patentee to file a suit for infringement committed after the date of license. In such a case, the court will take into consideration the losses suffered or likely to be suffered by exclusive license due to infringement.
- In a suit for patent infringement the patentee can join the exclusive licensee in the suit. Or else, the patentee may be added as a defendant, wherein he will not be liable to any costs unless he enters an appearance and take part in the proceedings.
- The holder of compulsory licensee will be entitled to call upon patentee for the proceedings to prevent any kind of infringement and if the patentee refuses or neglects to do so within 2 months after being called, the holder of compulsory licenses can file a case for infringement in his own name as if he was the patentee, making the patentee as a defendant. The patentee so added, as defendant will not be liable for any costs unless he enters an appearance and takes part in the proceedings.

- The court will not grant damages or an account of profit against the defendant if he proves that at the date of infringement, he had no reasonable ground for believing that such patent is already available or he wasn't aware. The number of the patent must accompany any such word 'patent', 'patented' or any other word expressing or implying that a patent has been obtained for the product.
- In the suit for infringement no relief is granted by the court if infringement is committed after a failure to pay any renewal fee within the prescribed time period allowed.
- No damages or account of profit are granted in any proceedings in respect of the use of the invention before the date of the decision allowing the amendment of the specification, unless the court is satisfied that the specific action as originally published was framed in good faith and with reasonable skill and knowledge.

Basmati Rice Patent Case²²

In late 1997, US patent office granted a patent to an American company Rice Tec Inc. to call the aromatic rice grown outside India 'Basmati'. Rice Tec Inc. tried to enter the international Basmati Market with brands 'Kasmati' and 'Texmati' defined as Basmati type rice with minimal success. However, with the patent rights, Rice Tec will now be able to call its aromatic rice Basmati within the US, and also label it as Basmati for exports. This incurred grave repercussions for India and Pakistan because not only India will lose out on 45000 ton US import market, which forms 10 percent of total Basmati exports, but also its position in crucial markets like the European Union, the United Kingdom, Middle East and West Asia

simultaneously. The patent on Basmati is believed to a violation of fundamental fact that the long grain aromatic rice which is grown only in Punjab, Haryana and Uttar Pradesh is called Basmati. According to sources from the Indian newspapers, Economic Times "Patenting Basmati in the US is like snatching away our history and culture".

Basmati rice means the "queen of fragrance or the perfumed one". This type of rice is been grown in foothills of the Himalayas for thousands of years from time immemorial. Its fragrance, nut-like flavour and aroma can be accredited to the fact that the grain is aged to deduce its moisture content. Basmati, a long-grained rice with a fine texture is the expensive rice in the whole world and has been favored by emperors, praised by poets for hundreds of years. India is the second largest producer of rice after China, and grows over a tenth of the world's wheat according to the Agriculture and Processed Food Products Export Development Authority (APEDA). In 1993, Basmati rice attracted the highest premium because of its very-long grained rice, with aroma of its own enhancing the flavours it is mixed with.

1. India in Basmati, Turmeric & Tamarind Soup

The Intellectual Property Laws in India have had almost a docile and stagnant existence ever since they were framed with the result that the inadequacy of Indian laws, particularly the patent law, is now being exploited by commercial opportunist's world over.

India is now in basmati-turmeric-tamarind soup. The absence of any provision for protection of geographical indications in the domestic law coupled with the ignorance about ensuring their

protection in other countries resulted in the grant of patent to the American company Rice tec for Basmati like rice, branded Texmati and Kasmati. The unique qualities of Basmati-long grain aroma are peculiar to the rice grown in northern plains of India and Pakistan. Article 22 of the TRIPS Agreement defines geographical indications as indications which identify a good as originating in the territory of a member or a region or locality in that territory, where a given quality reputation or other characteristics of the goods is essentially attributable to its geographical origin. Basmati thus qualifies the definition of the term geographical indications hence are entitled to protection even under the TRIPS Agreement.

India is in trouble because the American patent system first grants a patent and then advertises a patent for opposition, if any. Once the patent has already been granted, revocation of much more difficult than opposing the grant before Patent Act where opposition is invited before the grant of the patent has been sealed (as is the procedure under the Indian Kasmati would be the unfair competition posed to Indian patent). Whether India is successful in seeking a protection should however sound warning bells and awakens us to the revocation of this patent in the USA is yet to be seen. This does not merely need a continuation of their existence but also statutory protection and preservation. Statutory protection of our heritage is the only mechanism of preventing their transfer into the hands of foreigners. There is some cause of jubilation for India as it has been successful in seeking the revocation of the patent for Turmeric. The grounds pleaded were traditional knowledge, public use, and non-novelty of the product. This victory should not, however, make us complacent expecting that we would be lucky every time. The threat

of Tamarind being patented has already surfaced. The immediate protection of our traditional knowledge, plant varieties, and products is called for. The Indian Patent law has to be amended to serve our national interest besides conforming to the TRIPS Agreement.

2. Legal Procedures of Obtaining a Patent in the US and India

The law firm representing India in the dispute, Sagar and Suri, criticized the procedure for granting patents. In the US claiming it is diametrically opposite to the one followed in India and Europe. According to them, India first examines a patent application then widely publishes it for third parties to challenge and only then grants the patent. However, the US keeps the patent application a closely guarded secret and grants it without allowing other parties a closely guarded secret and grant it without allowing other parties to challenges it. After the patent has been granted, third parties are then allowed to petition against the patent as India is currently doing in the Basmati case. This criticism clearly illustrates the shortfalls in the patent process in the US that ultimately needs to be revised to prevent future cases like this from occurring.

3. TRIPS and World Trade Organization

Indians feel that the US government's decision to grant a patent for the prized Basmati rice violates the International Treaty on Trade Related Intellectual Property Rights (TRIPS). The president of the Associated Chambers of Commerce (ASSOCHAM) said Basmati rice is traditionally grown in India and Pakistan and granting patent to it violated the Geographical Indication Act under the TRIPS. The TRIPS clause defines Geographical indication as-

"A good originating in the territory of a member, or region or locality

in that territory, where a given quality, reputation, or other characteristics of the good is essentially attributable to its geographical origin."

As a result, it is safe to say Basmati rice is as exclusively associated with India and Pakistan as Champagne is to France and Scotch Whiskey is to Scotland. Indians argue that just as the US cannot label their wine as Champagne, they should not be able to label their rice Basmati. If the patent is not revoked in the US because unlike the Turmeric case, rice growers lack documentation of their traditional skills and knowledge, then India as have been urged by many activists in the field should take the case of the WTO for an authoritative ruling based on the violation of TRIPS.

In the wake of the problems with patents that India has experienced in recent years, they have realized the importance of enacting laws for conserving biodiversity and controlling piracy as well as intellectual protection legislation that confirm to international laws. There is a widespread belief that Rice Tec. Inc., took out a patent on Basmati only because of weak, non-existent India laws and the government's philosophical attitude that natural products should not be patented. According to some Indian Experts in the field of genetic wealth, India needs to formulate a long-term strategy to protect its bio-resources from future bio-piracy and of theft.

India and Pakistan who are joining hands to tackle the crisis have a strong case against Rice Tec Inc. British traders are also supporting India and Pakistan. According to Howard Jones, marketing controller of the UK's privately owned distributor Tilda Ltd., "True Basmati can only be grown in India or Pakistan. We will

Support them in any way if it is necessary."

The Middle East is also showing support by only labeling Indian or Pakistani rice as Basmati. The case is still unfolding and it will be interesting find out what happens in the end once the government and government agencies have gathered the necessary data and information to support their case and to prevent their cultural heritage from being taken away from them.

4. Other relevant cases

In *Stophik Services India Pvt. Ltd. V. Panacease Biotech Ltd.*²³, the application was made for invention in lieu of "a process for preparing a therapeutic Anti-inflationary and analgesic composition containing Nimesulide to use transdermally". The opposition was made to grant to patent. The allegation was that the applicants copied the contents of the prior application of opponent.

Held: The process being not new and lack the requisite of novelty, application for grant of patent was rejected.

In the case of *Danieli AC Officine Meccaniche SPA V. Controller of Patents and Designs*²⁴, the application claimed priority on the basis of application filed in Italy as a convention country, an applicant is not entitled to claim priority based on application not been filed before a convention country because when the application was filed in Italy, Italy was not a convention country and so application of the applicant shall not be proceeded as a convention application and if the application complied with the requirements as specified under the law, it may proceed as an ordinary appeal applicant accordingly dismissed.

In *Standipack Private Limited V. Oswal Trading Co. Ltd.*²⁵, Suppression of material facts- Injunction as sought for is refused on the ground that the plaintiff did not act with clean hands, rather suppressed material fact from the Trial Court where a suit was instituted by the plaintiff against one of the defendants- Application seeking for interim injunction stands rejected and the applications filed under Order 39, Rule 4, CPC stand allowed- Injunction order granted by Trial Court stands vacated.

In *Giridhari Balaram Radhakrishnani V. Mahisa Electronics*²⁶: A dispute arose between the parties regarding monopoly right over patented goods. The respondents having infringed the said patent, the appellants had filed a suit ex-parte temporary injunction was granted. The learned single judge proceeded to take the view that no temporary injunction could be granted when the patent was only a recent one and the validity of which is seriously disputed vacating interlocutory injunction. The High Court held that the learned single Judge had not taken note of all the relevant factors necessary for considering the issue in question. The impugned order glossed over several essential features of the matter. The order was set aside and injunction granted by trial court was to continue and to be in force until consideration of the application. It was directed that the parties will proceed for trial expeditiously. While allowing the appeals the High Court had noted that trial was the best process to be adopted.

In *Hindustan Lever Ltd. V. Godrej Soaps Ltd.*²⁷ Petitioner company is a manufacturer of various kinds of soaps, detergents, cleaning preparations, chemicals and fertilizers whereas respondent

is also manufacture of bathing bar and soap named VIGIL. Basic pattern in the composition of the two are more or less the same though the Percentage are not identical.

In *J. Mitra and Co. Ltd. V. Kesar Medicaments*²⁸, the Court held that order of the Controller of patents granting the patent and the decision on the opposition cannot by itself give rise to a presumption of validity of the patent notwithstanding the investigation and examination made. While the actual user and duration of the patent may be one of the factors that may be taken into account, that factor alone cannot give rise to a presumption of validity of the patent. But for the purpose of temporary injunction the Court can presume the same to be valid and hence the temporary injunction was granted.

The plaintiff averred that the attempt by defendant No. 2 to prove the ground of obviousness by citing a number of citations constitute mosaicing and same is not permissible as none of the documents is relevant to the said invention. The Court held that the defense of the Defendant to show the various integers were already known separately and the combination thereof cannot be patented would amount to mosacing and is not permissible for determining the validity of the patent. Hence in the present case it would not be permissible for the Defendant to rely on different documents disclosing different components/ features of the product relied on by Defendant No. 2 in the present matter really anticipate all the components of the Plaintiff's product. Hence, defense of mosaicing was not applicable in the present case.

The Defendant No. 2 placed reliance on the Gillette defence to submit that even if his product falls within the four corners of the

Plaintiff's patent, it would not amount to infringement as the impugned product is based on prior US patents. In the present case, perusal of features of the impugned product of Defendant No. 2 shows that almost all the components of the said product are identical with the Plaintiff's product. The Plaintiff's product does not appear to be based on the US patents or the products of third parties. Further documents relied on by Defendant No. 2 does not prima facie indicate that the product of the Plaintiff was obvious or was anticipated. Hence Gillette defense was not acceptable.

On the question, whether the interim injunction for alleged patent infringement could be granted, the Court held that Plaintiff has made out a prima facie case of patent infringement. Documents place on record by defendant with respect to US patent do not anticipate the product of Plaintiff. The Court held that use of patent being limited, irretrievable prejudice will be caused to the Plaintiff if interim orders were not granted. The balance of convenience being in favor of the Plaintiff, the application was allowed.

Suggestions & Conclusion

The above study, thus, reveals that right of patentee is legally safeguarded and remedial measures are provided in case of infringement. One of the most significant impediments to the effective enforcement of patent rights in India is the acute lack of awareness of patent basics in the judiciary and even the legal fraternity. A patent infringement is first to be filed in a District Court. With a counter-claim of invalidation, the suit moves to the High Court. Unlike in advanced patent litigation countries like USA,

Europe or Japan, the awareness and understanding of grounds of infringement, exceptions to infringements etc. are also poor and vague in India. Another important aspect is that no time frame is prescribed for legal recourse, unlike in EU & US. Judicial delays mean that the cases can take up to ten years to see resolution and payment of damages on patent infringements. The pendency of patent cases, especially of the main suit, is likely to remain a deterrent for enforcement. It is suggested that pendency of patent matter must be removed and the quick legal recourse should be maintain for recovery of damages.

Moreover, there is no criminal remedy available for infringement of patents, as opposed to that of copyrights etc. This often leads to insufficient remedy in the infringement suits. Also, the lack of criminal remedies fails to deter potential infringers from committing such acts in future. So for the criminal action against infringement must be necessary because without deterrent action everyone will be encouraged for violation of patent recently incident, criminal action has been initiated against a textile company for the alleged infringement of two highly controversial patents dealing with laser marking technology.

Apart from these legislative and judicial shortcomings, the patent regime also suffers from certain serious administrative problems. Though improved, the speed at which a patent application is granted still remains largely slow. The Indian Patent Office is faced with a growing backlog of approximately 40,000 unexamined patent applications. So the patent officers must be relaxed by appropriate legislative measures.

Subsequent to these amendments, India can boast of one of the best patent law regimes in the world. The problem, however, still lies entirely in the inadequacy of the enforcement machinery and the slow judicial process. So for more legislative requirement though the amendment needed and judicial system may be fasten, through set up exclusive court for the same.

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