

PATENT RIGHTS AND ITS INFRINGEMENT

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ABSTRACT

The patent is one of the forms of Intellectual Property Rights. Patent is a grant made by the inventor, providing him the exclusive right to make, use and sell his invention for a term of 20 years. The law relating to the patent is governed by the Patents' Act, 1970. The patentee has several rights such as Right to exploit the Patent, Right to Assign and grant license to others, Right to surrender the patent, Right to have Exclusive marketing rights, Right to sue for infringement. But when an infringement takes place, it can be instituted by way of suit in the District court or High Court. Under section 108 of the Act, they have been remedies like, Injunction, damages on account of profits and seizure, forfeiture or destruction. Thus patent work is encouraged in India for new scientific invention.

KEYWORDS: *Patent, Infringement, Rights, Patentee, Exclusive, Invention*

INTRODUCTION

Patent is a grant made by the inventor, providing him the exclusive right to make, use and sell his invention for a term of 20 years. The law relating to the patent is governed by the Patents' Act, 1970. The patent is one of the forms of Intellectual Property Rights.

Patent

The term patent is defined under the Section 2(1)(m) of the Patent Act, 2005. According to it, patent is Patent for any invention is granted under the Act. The patent right is given to any material capable of being manufactured.

In *Industrial Gases Ltd Vs. The Kamsup Industrial Gases Ltd*¹, the Court held that an idea by itself can never be patented.

In *Bishwanath Radhey Shyam vs. Hindustan metal Industries*², the court observed that the object of patent law is to encourage scientific research, new-technology and Industrial Progress.

The Fundamental principle is that patent should be granted for an invention which is useful, new and non-obvious. Novelty and utility factors should be considered.

According to Section 2(1) (j), the invention means any new and useful

- Art, process, method or manner of manufacture.

¹ (Supp) 2 (358) Cal p.368

² AIR 1982 SC 1444

- Machine, apparatus or other article.
- Substance produced by manufacture and includes any new and useful improvement of any of them and an alleged invention.

Thus Conditions to be satisfied for an Invention are

- The Product or process patent must be new.
- It must involve an inventive step.
- It must be capable of an Industrial Application

RIGHTS OF PATENTEE

Section 48 of the Patent provides the right of patentee. They are

Right to exploit the Patent.

Right to Assign and grant license to others

Right to surrender the patent

Right to have Exclusive marketing rights

Right to sue for infringement

Right to Exploit the Patent

Patentee has rights with respect to product as well as patent rights. In case of product patent they have exclusive right to prevent third parties from using or selling it without the consent. The effect of grant of patent is **Quid Pro Quo**. The word **quid** means knowledge. The term **quo** means monopoly granted for the term of patent.

In *Raj Prakash vs. Mangat Ram Choudhury*³, the Court observed the patentee acquires an exclusive right on the patent.

Right to Assign and Grant License

The patentee can himself exercise the right or can grant license to others. So he can grant license for Consideration. A co-owner under Section 50 may assign his share in the patent or grant license to others with the consent of co-owners. The assignment of grant of license should be in writing.

Right to Surrender the Patent

A person who obtained patent is entitled to revoke his patent. For surrendering, he may give notice to the controller expressing his intention to surrender. When such an offer is made, the controller will advertise such offer under Section 63(2). Any person interested to oppose the surrender should notice his opposition to the controller. After hearing both the parties, the Controller may accept or revoke the patent.

³ AIR 1978 Del 1

Right to have Exclusive Marketing Rights

Prior to the amendments Act 2005, the Patentee was entitled to Exclusive Marketing Rights. It means exclusive right to sell and deal with patented Article. The applicant applying the patent enjoyed the monopoly right to sell, distribute, market and deal with his product in India. It was in effect from 1.1.95 to 1.1.05. Now exclusive Marketing Rights is deleted by the Patents Act, 2005.

Right to Sue for Infringement

The exclusive right conferred on the patentee includes right to sue for infringement. Thus it prevents others from interfering in his exclusive rights. He can initiate legal actions against the infringement of his right. His assignee or licensee can also initiate a civil suit in District Court. He is entitled to get remedies of injunction, damages or account of profits.

Limitations

Under section 47 of the Act, the Government under certain circumstances can use the patented invention, acquire it or prohibit from using an invention.

Section 100 empowers the Government to use the invention for the purpose of the Government.

The Government is empowered to acquire it for public purpose or defence purpose.

Under Section 84, the Controller may grant compulsory license after expiry of 3 years, if the patentee fails to satisfy the reasonable price.

INFRINGEMENT

The grant of patent effectively gives the inventor to work for a period of 20 years. Any person who uses the invention without permission is said to infringe the right unless the act is permitted by law.

Forms of Infringement

An infringement may arise in different ways. It may be with respect to product or process. An infringement can arise due to

- Variation in Invention
- Colourable Intimation of an Invention
- Equivalents

Variation in Invention

If the alleged infringer has duplicated the product or process patented, then it is a clear infringement. But difficulty arises when alleged infringer has not only duplicated the invention but has introduced some changes in producing a variant. If such a variant arises then it is necessary to find out the extension of variant to the patent granted. If the patentee establishes that variant falls within patent granted, then there is an Infringement. When question of Infringement arises, it is necessary to find out the extension of variant to patent granted. If the patentee establishes that variant falls within the patent granted then there is an infringement. When question of infringement arises by variant, it is necessary to

consider the difference between variant and patented invention. It should be checked whether they differ in essential and non-essential aspects. If the alleged infringer has used all the essential ingredients then there is an infringement even though there is substantial difference in respect of non-essential integers.

Colourable Intimation

In some cases, the infringer may adopt may adopt all the essential features but may alter some unessential features or add some new features which may involve some inventive step. This is known as colourable intimation. A process or an article which makes use of same principle as patented invention or achieves same result or makes use of some only essential features is not a colourable intimation. Copying essential features of the invention is known as taking the essential features of the invention. The courts may apply the doctrine of pith and marrow which means the court will not detect the absolute similarity only if pith and marrow of invention is done.

Equivalents

The use of chemical equivalents in place of chemicals used in patented process is an infringement. Infringement by mechanical equivalents occurs when he merely substitutes the features to get the same results obtained by patentee.

CONCLUSIONS

Thus patentee has every right to use the patent as he likes. But when an infringement takes place, it can be instituted by way of suit in the District court or High Court provided the suit should be filed within 30years. Under section 108 of the Act, they have been remedies like, Injunction, damages on account of profits and seizure, forfeiture or destruction. Thus patent work is encouraged in India foe new scientific invention.

REFERENCES

1. (Supp) 2 (358) Cal p.368
2. AIR 1982 SC 1444
3. AIR 1978 Del 1
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