INJUNCTION AS A REMEDY FOR INFRINGEMENT OF PATENT

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INTRODUCTION
The law related to patent is governed by the Patent Act of 1970. The act lays down various laws which decide what kind of inventions can be patented and the act also lays down the rights of patentee in order to protect his innovation. The law relating to patent lays down various remedies that a patentee can seek whenever there is an infringement of the patent. Injunction is one of the most effective remedy available to a patentee in occasions wherein his/her patent is infringed. Injunctions under the Patents Act, 1970, are of two kinds i.e. permanent injunction and interim injunction. Injunction is an action of the court ordering a person to do or stop to do a particular act. Today, though inventions are patented there are many infringements to the same though there is law relating to patent being in existence. This may be due to the anonymity one can maintain on the internet or it may be due to the patent law varying in every country, for instance inventions that may be patented in India may not be patented in other countries. This results in great loss for the patentee and the further raises the question as to whether the remedies available under the law are effective or not. In order to understand the whether the remedied under law relating to infringement of patent and granting injunction are effective or not, it is necessary that various provisions of the act relating to patents are analysed and it is also necessary to analyse the judicial pronouncements in order to understand the opinion and the trend of the judiciary in these cases.

1. **What is patent infringement**
As mentioned above, patents are used to protect an idea or invention. The term “Patent infringement” has not been defined under the The Indian Patents Act, 1970. However, the confers certain rights upon the investor in order to prevent third parties from making, manufacturing, or selling the invention that has been patented. Therefore, whenever a third party indulges in any of such, he is said to have committed the act of infringement of patent. Upon granting a patent, the patent holder is conferred upon with various rights over his invention or product, the court in the case of Raj Prakash v. Mangat Ram Choudary, while discussing the rights guaranteed upon granting a patent, had observed that upon the grant of patent, the patentee is conferred with a right of “Quid Pro Quo”, the court had further held that the term “quid” is the knowledge of the patent informed to the public and the term “quo” is the absolute right that has been conferred upon the patentee. A patent may be infringed in many ways for instance, by using the same
mechanical aspects, or by slightly changing the invention for name sake, or by replicating the vital features of the invention, etc. The types of patent infringement may be broadly classified as follows –

A. Direct infringement - Direct infringement of patent is the most common type of infringement, this type of infringement takes place when a person replicates the invention or develops a product which works the same as the patented invention.

B. Indirect Infringement - indirect infringement of patent can be further classified as follows -

• By inducement - this is type of infringement takes place when by the actions of third party, another person directly infringes with the patent. For example, when third party develops a product similar to the patented product, due to which another person starts producing and selling parts and products that could be only utilised for the patented invention. Infringement by inducing can also taken place when a person has patented a method and a third party starts selling an invention with a method which is similar to the patented method.

• Contributory infringement - This method of infringement takes place when a third party starts selling their party components or parts for the patented product. Though this type of infringement may seem similar to infringement by inducement, however, the guilt is higher in this type of infringement as the third party shall have a malafide intention to directly infringe the patent of the inventor.

A patentee, whose patent has been infringed by a third party can approach the court. The jurisdiction in such cases lies with the civil court having territorial jurisdiction to try the suit. The jurisdiction of such cases are governed by the Code of Civil Procedure, which means that the cause of action must have arose within the jurisdiction of the disquiet court.

2. Reliefs in cases of infringement

In cases of infringement there are various reliefs available to the patentee whose patent has been infringed by a third party. Section 108 provides for the following reliefs -

Injunction - Injunction is an order of the court which restricts a person from doing a particular act or which commands a person to perform a particular act. An order of injunction is granted by the court in order to ensure that the plaintiff occurs no loss or damage during the continuation of a suit. Injunctions are of many types, they can be classified as follows -

B. Damages - a plaintiff who succeeds to prove that his patent has been infringed can also claim damages for the actual loss incurred by him due to the infringement by third party. A plaintiff may also claim the profit incurred by the third party on the account of infringement. It is relevant to state that a plaintiff, however, cannot claim for both damages and account of profits together.

C. Other reliefs - other than the above-mentioned reliefs the court may also order the infringer to deliver the infringed goods to the court so that those products or goods can be destroyed and erased.

3. Injunction as a relief in cases of infringement of patent

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As mentioned above, injunction is one of the reliefs that is granted to the patent holder in cases when his/her patent is infringed. However, injunctions are not granted in all cases. There are certain criteria that needs to be satisfied in order for the court to grant a injunction to the aggrieved party. In the case of National research and Development Corporation of Delhi Cloth & General Mills v. General Mills Co.Ltd, the court while discussing the aspect of induction in patent cases had issued the following guidelines for the grant of interlocutory injunction, firstly, the plaintiff shall make a prime facie case, secondly the plaintiff has to prove that the patent is valid in law and that the same has been infringed by a third party. thirdly, the plaintiff has to also prove to the court that the patent that is alleged to be infringed is a old one, and finally, the balance of conveyance shall be in favour of the plaintiff.

- **Interlocutory Injunction** - these type of injunctions are also called as temporary injunctions. These injunctions are granted by the court for a specific period of time, usually, this kind of injection is granted during the proceedings of the suit so that the plaintiff does not incur any loss until the suit is finally decided. There are a list of ingredients that are needed to be stained for the court to grant interim inactions, those will be dealt in the subsequent chapters.

- **Permanent Injunction** - This type of injunction is granted by the court after the completion of the trial i.e. when the court has decided the rights of the parties to the suit. The ingredients for granting permanent Injunction is same as interim injunction except the fact that the plaintiff need not prove that he has a prime facie case. As the name suggests permanent injunction is conclusive is nature and it remains in force until the expiry of the patent. However, in reality, in India only few cases reach to the stage of granting a permanent injunction. For instance, in the case of F. Hoffmann-La roche Ltd. v. Cipla Ltd, the court initially did not grant interim injunction to the plaintiff and by the time when the court had finally decided the suit, the patent was about to expire therefore the court did not grant permanent injunction on that ground. Such cases result in huge loss for the patent holders as they cannot enforce their patent rights.

- **Ex-parte Injunction** - This type of injunction is granted in extra-ordinary cases only. As the name suggests, an ex-parte injunction is granted to the plaintiff when the defendant fails to appear before the court after reasonable notice. However, the courts have to take extreme Care while granting ex-parte injunctions. The apex court, in the case of Venkatashobiah Naidu v. S. Chellappan and Ors, had held that an ex-parte order shall only be granted in exceptional cases and further that such an order shall be vacated within 30 days from the date of order. There may be many situations wherein the plaintiff may produce false documents in order to make loss to the defendant, therefore, the court in the case of Rameshwari Devi v. Nirmalal Devi held that while granting ex-parte injunction the plaintiff has to give an undertaking to pay mere profit and costs if he fails to abstain interim relief.

- **Quia-Timet Injunctions** - This type of induction is granted by the court where there

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8 1980 AIR Del 132  
9 Id at 3  
10 225 DLT 391  
11 2000 AIR SC 3032  
12 8 SCC 249 para,44-46
is a apprehension that a patent may be infringed. However, it is only granted in rare cases. There are two essential conditions that are needed to be satisfied, these conditions were laid in the case of Fletcher v. Bealey\textsuperscript{13}, wherein the court held that in order to obtain a Quia-Timet Injunction, the plaintiff has to firstly prove that there is an imminent danger of infringement and second that there is also enough proof that, the plaintiff would suffer irreparable loss if the injunction is not granted.

### 3.1 Interim injunction -

The following ingredients need to be satisfied for a court to grant interim injunction in cases of patent infringement -

\textbf{I. Prima Facie Case} - The first retirement is that the plaintiff shall prove to the court that he has a prime facie case. This principle was first laid down by the house of lords in the case of American Cyanamid co v. Ethicon Ltd\textsuperscript{14}, wherein the court held that the in order to grant interim injection, the plaintiff needs to prove that the claim is not false and vague. This principle was adopted by the courts in India to grant interim injunction to the aggrieved parties. However, in the case of Biswanath Prasad Shyam v. Hindustan Metal Industries\textsuperscript{15}, the court had held that the principle laid down in the American Cyanamid case will not apply in cases where the plaintiff has to show the validity of the patent as there cannot be any presumption to that respect. Over the years courts have passed many judgments that have interpreted the term “prima facie” in different ways, this gave rise to various contradictory and un-uniform set of principles. In the case of Rajesh kumar v. Manoj Jain\textsuperscript{16}, the court held that it is enough for the plaintiff to show that his claim is not false, however, in the case of Colgate Palmolive v. Hindustan Unilever\textsuperscript{17} the court was of the opinion that a plaintiff in order to prime facie prove his case has to show that he is entitled to the relief.

\textbf{II. Irreparable Injury} - The second ingredient is plaintiff has to prove that, if the court does not interfere with the infringement, the same could result in irreparable loss to the plaintiff. However, the same has been a constant matter of debate, as every loss incurred by the patent holder on the account of infringement can be recovered by the way of damages. The court in the case of Dalpat Singh v. Prahlad Singh\textsuperscript{18}, while discussing the necessities for granting injunction, had held that in order to obtain interim injunction the plaintiff has to prove to the court that he has no other remedy available except to approach to the court and further that if the court does not interfere with the infringement, he would suffer great loss.

\textbf{III. Balance of Convenience} - This factor will help the court to assess the effect of the order of injunction on the parties. While discussing the aspect of balance of convenience, the court in the case of Hindustan Petroleum Corporation Ltd. v. Sriram Narayan\textsuperscript{19}, held that balance of convenience means the court shall see that if interim injection is not granted then what would be the risk faced by the plaintiff while the suit is pending and on the other hand the court shall also consider the amount of injustice or loss caused to the defendant if the interim injunction is granted.

**Conclusion and suggestions**

\textsuperscript{13} 28Ch.D.688 (1885)
\textsuperscript{14} 1975 AC 396
\textsuperscript{15} 1982 AIR 1444
\textsuperscript{16} 47 DRJ 353
\textsuperscript{17} 7 SCC 1 (1999)
\textsuperscript{18} 1 SCC 719
\textsuperscript{19} 2002 5 SCC 760
As discussed above, in cases wherein a patent has been infringed, the patent holder has many reliefs available not him under the The Indian Patents Act, 1970. One of the most needed relief out of those is injunction. Injunction restricts the third party from selling the product or method developed that infringes the patent. However, there are many cases wherein the courts have laid down contradictory principles for the grant of injunction, this creates a hindrance to the effectiveness of an injection as there is no uniformity in the grounds. Moreover, another issue with effectiveness of injunction in cases of patent infringement is that, permanent injunction is granted in the nearest of the rare cases as no suit reaches to that stage or the patent might have expired in cases where a suit reaches to the final stage, this may be due to the reason that patent holders have to approach traditional civil courts in cases of infringement and due to the burden of excessive litigation cases are not concluded soon. Therefore, it is suggested that a separate forum has to be instituted which will hear suit related to patent and infringement of patents and any issues thereof and it is also suggested that a uniform set of principles which guide the grant grant of injunction have to formulated.

BIBLIOGRAPHY

primary sources -
1. The Patents Act, 1970
2. The civil Procedure Code, 1908

Secondary sources
4. Abhijeet Kumar, “patent infringement in India” retrieved from https://www.ijsr.net/archive/v8i5/9051902.pdf
6. Zakir Thomas, “IP Case law development”, retrieved from http://nopr.niscair.res.in/bitstream/123456789/411/1/IPR%202013%289%20%29%202008%20%29%202057-64.pdf

List of cases
- Raj Prakash v. Mangat Ram Choudhary
- National research and Development Corporation of Delhi Cloth & General Mills v. General Mills Co.Ltd
- Rameshwari Devi v. Nirmalal Dev
- Hindustan Petroleum Corporation Ltd. v. Sriram Narayan
- Dalpat Singh v. Prahlad Singh
• Rajesh kumar v. Manoj Jain
• Biswanath Prasah Shyam v. Hindustan Metal Industries
• American Cyanamid co v. Ethicon Ltd
• Venkatasubbiah Naidu v. S. Chellappan and Ors

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