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Patent Infringement and Law of Injunction in India

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This paper presents a comprehensive study on availing injunction in the event of a patent infringement. An injunction is one of the most powerful remedies accessible to a party in a legal dispute. Permanent injunctions and interim injunctions are the two types of injunctions that may be obtained under the Patents Act, of 1970. American Cyanamid Co v Ethicon Ltd serves as a foundation for the Indian courts' injunction law, it states that the objective of injunction is to defend plaintiffs from damages that they could not reasonably expect to revive if the case was to be decided in their favor at trial, but this must be balanced against defendants' needs to be secured from damages that they could reasonably expect to recover if their legal rights were violated. It talks about the three grounds for issuing an interim injunction (creating a prima facie case, the balance of convenience, and irreversible damages). The guidelines issued by the Supreme Court in Ramrameshwari Devi v Nirmala Devi to grant ex-parte injunction have been briefed upon alongside Quia timet injunction. The courts are becoming particularly cautious when dealing with issues that involve an injunction that is granted when a patent is infringed upon. Interim injunctions in Intellectual Property Rights have been a subject of much debate in Indian law. But the current scenario is reasonably robust. Generally speaking, the three-rule approach is widely acknowledged. However, this is not a continuous idea in the traditional sense. This segment of law is still evolving, adapting, and, without a question, garnering more emphasis than it has in the last several years.

Keywords: *patent, law, injunction, infringement.*

INTRODUCTION

An injunction is a legal recourse issued by a court that prevents the performance of wrongdoing that has been feared or the continuation of a harmful action that has already been commenced by the defendant. The non-compliance with an injunction imposed by a court may result in criminal or civil consequences, as well as the possibility of being found in contempt of court. In simple terms, it is an equitable right that occurs as the result of a court order, and it obligates one party to perform or abstain from performing particular actions against the other party¹.

In India, provisions about the law of injunctions are either under civil or criminal law, and they can be obtained through the courts. While Sections 133², 142³, and 144⁴ of the Code of Criminal Procedure, 1973 deal primarily with injunctions in criminal proceedings, Order XXXIX Rules 1 to 5 of the Civil procedure code, read in conjunction with Chapters 7 and 8 of the Specific Relief Act, 1963 specifically deals with injunctions in civil proceedings. *American Cyanamid Co v Ethicon Ltd* serves as a foundation for the Indian courts' injunction law, it states that the objective of injunction is to *defend plaintiffs from damages that they could not reasonably expect to revive if the case was to be decided in their favour at trial, but this must be balanced against defendants' needs to be secured from damages that they could reasonably expect to recover if their legal rights were violated*⁵.

A BRIEF EVOLUTION OF THE LAW OF INJUNCTION

- Since the English Equity Jurisprudence⁶ formed the basis of the country's current legal system, Indian injunction law can be traced back to that tradition. Interdict is a term that was first used in Roman law, and it was later adopted by England.

¹ P P Joshi, 'RULE OF INJUNCTIONS: Temporary Injunction comprising Exparte Injunction, Perpetual Injunction and Mandatory Injunction' (2015)

² Code of Criminal Procedure 1973, s 133

³ Code of Criminal Procedure 1973, s 142

⁴ Code of Criminal Procedure 1973, s 144

⁵ *American Cyanamid Co v Ethicon Ltd* [1975] 2 WLR 316

⁶ Justice R R K Trivedi, 'LAW OF INJUNCTIONS' (1996) IJTR

<<http://ijtr.nic.in/articles/art25.pdf>> accessed 20 February 2023

- Prohibitory, Restitutory, and Exhibitory comprised the Roman interdicts. An injunction is the legal equivalent of a prohibitory Interdict. As a chancery recourse, the injunction emerged during Henry the VIth era.
- The Common Law Court was resentful of the Chancery Court's ability to issue injunctions, and this led to a rivalry between the two courts. It was argued that this approach to issuing injunctions was erroneous.
- It was Bacon, the Attorney General, who eventually finalized the dispute in support of the Chancellor.
- So, the power to grant injunctions was reaffirmed, as was the remedy known as the '*strong-arm*' of equity courts, which helped a great deal to solidify the judiciary's status in the interests and enforcement of justice between the parties in dispute.

PATENT INFRINGEMENT AND LAW OF INJUNCTION

Because a patent is an absolute right, the foremost recourse to patent owners in the event of an infringement is an injunction, which prevents the infringer from engaging in further infringement pursuits. Injunctions are widely regarded as the most effective means of redress for patent owners who have experienced serious infringements. Moreover, under Part III of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), patent holders may be permitted additional remedies such as declaratory relief and product recall and destruction as well as the publication of the judgment and monetary compensation.

In India, the Patents Act, of 1970 grants product patentees the exclusive right to prohibit third parties who do not have the patentee's permission from making, using, offering for sale, selling, or importing for those purposes a product covered by the patent⁷. Civil proceedings for patent infringement can be used to protect a patentee's interests. The following may be granted by a court⁸.

- The plaintiff can seek both an injunction and compensation for lost earnings.

⁷ Patents Act 1970, s 48

⁸ Patents Act 1970, s 108

- Without paying any compensation, a court can declare that any items and resources used to make them be confiscated and forfeited or eliminated.

THE TRIO FACTORS INVOLVED IN GRANTING INTERIM INJUNCTION FOR PATENT INFRINGEMENT CASES

The Indian courts have been applying the American Cyanamid triple test, under which the plaintiff must establish three elements to obtain an interim injunction in his favour:

Creating a prima facie case: It mandates the plaintiff to prove that there is a prima facie case of patent infringement in his or her favour before the court can proceed. Injunctions should not be sought based on speculative possibilities involving unfathomable, unbelievable potential liabilities. To get a mandatory injunction, the plaintiff must prove a compelling and credible case. A stronger argument than the usual prima facie case requirement is necessary for obtaining a prohibitory injunction.⁹ Whereas, In *Biswanath Prasad Shyam v Hindustan Metal Industries*, the court decided that the American Cyanamid principle cannot be held valid if the plaintiff has to prove the patent's validity¹⁰. Many distinct interpretations of the phrase "*prima facie*" have been given by different courts throughout time, resulting in a variety of inconsistent and incoherent sets of legal rules.

The balance of convenience is in favour: It is necessary to demonstrate that the plaintiff has endured greater damage as a result of the alleged infringement than the defendant. In *Hindustan Petroleum Corporation Ltd. v Sriram Narayan*, it was determined that the balance of convenience requires the court to consider what danger the plaintiff would be exposed to if the interim injunction is not provided while the claim is proceeding and the court will also take into account the cost of unfairness or damage that the defendant may suffer if the interim injunction is approved¹¹.

⁹ *D C Warden v C S Warden* (1990) (2) SCC 117

¹⁰ *Biswanath Prasad Shyam v Hindustan Metal Industries* (1982) AIR 1444

¹¹ *Hindustan Petroleum Corporation Ltd. v Sriram Narayan* (2002) 5 SCC 760

Irreversible Damages: To show irreversible damage, the evidence must be produced. It is the Judge's responsibility to determine whether or not the plaintiff would suffer irreversible damage if the respondent is not enjoined immediately. If the plaintiff can be fully protected from the damages, then an injunction is not necessary in this case. In the case of *Dalpat Singh v Prahlad Singh*, the court observed that to acquire an interim injunction, the complainant must demonstrate to the court that he has no further solution available to him other than to reach the court and that, if the court does not intervene, he will be seriously affected¹².

PERMANENT INJUNCTION

Courts may award a permanent injunction after they have determined the rights of the parties involved in a lawsuit. The essentials of a permanent injunction are the same as the interim injunction. Only a few patent lawsuits in India end up with a permanent injunction, which is definitive in form and lasts until the patent expires. Since the patent was set to expire by the time the court adjudicated the action, it did not issue the plaintiff in the case of *Hoffmann-La Roche Ltd. v Cipla Ltd*¹³ an interim injunction and hence did not grant a permanent injunction.

The Six-Year Rule¹⁴: According to Indian patent law, the six-year rule refers to a regulation established in 1965 by the Madras High Court, which established a time limit for awarding interim injunctions. Injunctions would not be given in circumstances where the patent had not been in force for more than six years, according to the regulation in place. According to the Madras High court, if a patent is less than six years old, it is considered a new or recent one. This six-year rationale was widely used in many cases to get an interim injunction. In the case of *Biswanath Prasad Radhey Shyam v Hindustan Metal Industries*, the Supreme Court stated that the validity of patents is presumed and it held the six-year rule as an invalid argument¹⁵. Later in *Mariappan v A.R. Safiullah*, it was decided by the Madras High Court that a patent that is less than six years old is considered to be a recent patent. But in light of the most recent

¹² *Dalpat Singh v Prahlad Singh* AIR (1993) SC 276

¹³ *Hoffmann-La Roche Ltd. v Cipla Ltd* RFA (OS) 92/2012

¹⁴ 'Consolidating law of injunction in patent infringement – Indian experience' (*Mondaq*, 10 October 2019) <<https://www.mondaq.com/india/patent/851422/consolidating-law-of-injunction-in-patent-infringement-indian-experience>> accessed 20 February 2023

¹⁵ *Biswanath Prasad Radhey Shyam v Hindustan Metal Industries* AIR (1982) SC 1444

advancements, this view is no longer relevant. Due to the constant occurrence of innovative ideas and products, a new product's effectiveness and practicability are diminishing rapidly, making the lifespan of a patent extremely brief.

EX-PARTE INJUNCTION

An ex parte court process is one in which the petitioner brings a lawsuit against the defendant while the latter is not present. These injunctions are often issued in cases of extreme necessity and are usually only valid for a limited amount of time. Ex-parte applications are to be only used in extreme cases. Ex-parte interim injunctions, in patent matters, are generally more difficult to obtain. Ex-parte decrees have the same applicability and legality as bi-party decrees. Within thirty days of an ex-parte decree being issued, a petition to set it aside must be filed and a justification must be stated for why it cannot. In *Ramrameshwari Devi v Nirmala Devi*, the Supreme Court established the grounds under which an ex parte order might be obtained. Following are a few of the guidelines issued by the Supreme Court in the said case¹⁶:

- The court should mandate the preparation and submission of records as soon as possible to concentrate on the trial's core challenges and get to the bottom of it.
- Courts must punish frivolous litigants with reasonable charges. In the above-mentioned case, the court fined the Appellants Rs. 2 lakhs for unduly extending the issue.
- Ex-parte orders must be used with caution. If an injunction is issued based on fraudulent affidavits or counterfeit papers, the parties must bear the cost.
- Ex-parte orders must be given with brief warnings to the respondents and must be heard by both participants before being amended.
- If an ex-parte injunction is granted, the court must note that if the complaint is rejected, the applicant must pay for all the costs.
- If an ex parte order is issued, the injunction petition must be dealt with as soon as practicable.

¹⁶ *Ramrameshwari Devi v Nirmala Devi* (2011) (8) SCC 249

QUIA-TIMET INJUNCTION

Quia timet¹⁷ translates to, '*because he fears*'. When there is a reasonable suspicion that a patent may be violated, a quia timet injunction is awarded. Although it is granted in very few situations. Fletcher v Bealey put forth the two prerequisites that must be met for this injunction to be granted. Firstly, it must be demonstrated that there is a high chance of infringement shortly and the plaintiff must show that he or she would suffer irreparable harm if the injunction is not issued, which is the second requirement. Quia timet injunction has been widely recognized by Indian courts and the concept has been derived from several English judgments. When it comes to giving relief to the Plaintiffs, the Courts are still wary, perhaps due to their concern that the Complainants do not always access the Judiciary with pure intentions.

RECENT CHANGE IN VIEWPOINT

When¹⁸ it came to considering the injunction in the matter of Sterlite Technologies v ZTT India Private Limited, the Delhi High Court, chose a distinct approach. Despite the lack of a prima facie case, the court diverged from the conventional three-rule concept (As mentioned above) and issued the temporary injunction. Given the short lifespan of a patent and the lengthy time required to complete the trial, the court concluded that denial of an interim injunction resulted in the infringement perpetrator remaining to enjoy the benefits of his or her actions until a final decision is reached. Additionally, when the patentee wins the lawsuit, he or she is only eligible for the respondent's earnings and it does not indicate the plaintiff's gains that would have been received had the infringement not occurred. However, although the court's motive was admirable, the verdict was contentious because the court did not adhere to the precautions imposed by established legal decisions. According to the case of Natco Pharma Ltd v Bristol Myers Squibb Holdings Ireland Unlimited Company and Ors, the perspective held by the Delhi High court in the Sterlite case is flawed. The Court further noted that awarding interim injunctions in patent infringement lawsuits should not be done on a broad basis. Temporary

¹⁷ Aparajita Lath, 'Analysing the pitfalls of Indian patent injunctions based on fear of infringement' (2014) 19 Journal of Intellectual Property Rights

¹⁸ Excel V. Dyquiango, 'The grant of interim injunctions in lawsuits' (*AsiaIP*, 31 May 2020)

<<https://www.asiaiplaw.com/article/the-grant-of-interim-injunctions-in-lawsuits>> accessed 20 February 2023

injunctions may be issued under order 39 of the CPC. However, when it comes to pharmaceutical patent injunctions, judges tend to be too careful in enforcing the basic principles of order 39 of the CPC. In patent-right infringement cases, the courts are hesitant to follow the broad requirements of Section 37 and Order 39 of the CPC straightforwardly. In cases involving apparent patent infringement, the courts have become more responsive and flexible. This is especially true in recent years. Even yet, the Apex Court's basic rules on injunction law maintained a constraint on the courts' flexibility. Non-use of the patent is another variable that does not allow an injunction to be granted. In *Glaverbel S.A. v Dave Rose & Ors*,¹⁹ the Court denied interim injunction because it specified that there must be a test to see whether the invention is being used commercially in India. The court found no further proof of commercial work that has been admitted by the court, save for assertions made in different filings. In *Sandeep Jaidka v Mukesh Mittal & Anr.* the Court held a similar viewpoint *if a patent in India has not been adequately utilized, and there is no consumer of the said patent in a commercially viable form in India, it is now well established that a court may lean its discretion in the interim stage in favour of the defendant*²⁰, as was the instance in this case where an interim injunction was rejected.

CONCLUSION

The courts are becoming particularly cautious when dealing with issues that involve an injunction that is granted when a patent is infringed upon. Appeal courts are not afraid to return arguments based on a well-established norm if the lower court fails to follow it. Although the courts have often established conflicting standards for granting injunctions, the lack of consistency in the justifications makes injunctions less potent. Also, in circumstances when an action approaches the final phase, the patent may have lapsed because patent holders must approach regular civil courts in situations of infringement, and cases are not resolved quickly due to the burden of extensive litigation. Interim injunctions in Intellectual Property Rights have been a subject of much debate in Indian law. But the current scenario is reasonably robust. Generally speaking, the three-rule approach is widely acknowledged. However, this is not a

¹⁹ *Glaverbel S A v Dave Rose & Ors* (2010) (43) PTC 630 (Del)

²⁰ *Sandeep Jaidka v Mukesh Mittal & Anr* (2014) 59 PTC 234 (Del)

continuous idea in the traditional sense. This segment of law is still evolving, adapting, and, without a question, garnering more emphasis than it has in the last several years.