



## **Patent rights and judicial view in India**

**Dr. Jetling Yellosa**

Associate Professor, Head, Department of Law, Telangana University, Dichpally, Nizamabad, Telangana, India

### **Abstract**

Intellectual Property laws are extremely important for the all-round development of any society. It is of utmost indispensable that a strong intellectual property regime is to be effectively implemented. The strong intellectual property regime helps attract new investments and allows innovators to develop new technologies which directly or indirectly boost the economy of the country. The weak intellectual property enforcement is a major barrier to increase trade and development. The judiciary is one of the key organ of the government is entrusted with interpretation of laws and protect from infringement from legislature, executive and protect private and public rights.

The Patent rights occupy an important component of the intellectual property domain and for smooth law to available the Parliament after attainment of independence had enacted Patent Act of 1970 by replacing British made laws. The act was greatly influenced by socialist principles. The Patent Act is result of recommendations of two notable committees. At the time of inception of the Act the product patent was not in its domain but as per international obligations namely TRIPS had forced our country to incorporate in its domain. The Indian Patent Act of 1970 providing various procedures in case of infringement of patents rights, counterclaims, revocation of patents and other issues concerning the patent.

The paper deals with origination of patent legislation in our country, the international obligations which carrying out of milestone amendments and land mark judgments delivered by judiciary in our country.

**Keywords:** standards, organisation, therapeutics, infringement, interpretation, applications

### **Introduction**

Intellectual Property laws are extremely important for the all-round development of any country whether advanced or developing one. It is of utmost indispensable that a strong intellectual property regime must be aptly supported by an equally strong enforcement mechanism as well. The strong intellectual property regime helps attract new investments and allows innovators to develop new technologies. The weak intellectual property enforcement is a major barrier to increase trade and development. This is unfortunately the case with the intellectual property rights enforcement in most of the developing countries, including India.

### **Importance of Judiciary**

The importance of judiciary in a democratic set up for protection of personal and proprietary rights can hardly be overestimated. The principal function of judiciary is to provide legal remedies against infringement of personal and property rights of persons. Infringement of intellectual property rights is a tortuous invasion of property <sup>[1]</sup>.”

### **Historical Prospective**

Among the Intellectual Property Rights, this situation is particularly true in the area of patents. In India the patent legislation is governed and regulated by the Patent Act, 1970. The 1970 Patent Act was an outcome of various previously existing patent legislations including the Patents & Designs Protection Act, 1872, the Protection of Inventions Act, 1883, the Patent Act of 1911. The Patent Act of 1970 was made by

the government under influence of socialist principles, before enacting the Patent Act, the government of the day appointed two committees one was headed by Dr. Bakshi Tek Chand Committee in 1948 and other one Justice Raja Gopala Ayyangar Committee in 1960. The both committees have extensively studied then existing Patent and Designs Act of 1911 and recommended the existing law was not catering to emerging demands and recommended the overhaul patent system. In honouring and implementing those committees’ recommendations the present patent legislation was enacted in year 1970. The Act also got tremendous influence by the Nehruvian socialist principles. Because of this the Patent Act of 1970 purposely avoided placing the product patent regime in the patent system at the time of enacting it.

The Patent Act, 1970, provided various provisions for enforcement of patents rights by way of suits for infringement of rights. In dealing with these suits, the Indian courts have been following the traditional principles and procedures common law which we had accustomed during British regime.

### **Trade Related Aspect of Intellectual Property Rights Agreement**

The international community around the early 1990s came to realize the importance of Intellectual Property Rights and their effective enforcement for the growth and prosperity of any country. Fallout of this realization was the Trade Related Aspect of Intellectual Property Agreement (TRIPS) which was signed in the Uruguay Round of the General Agreement on Trade and Tariff and later it became known as the World

Trade Organisation which came into force from 1st January 1995. The Trade Related Aspects of Intellectual Property Rights Agreement strives to achieve more effective patent enforcement measures in its member countries. India with other developing countries like China and Brazil had initially strongly opposed putting the intellectual property regime in per view of the General Agreement and Trade and Tariff (GATT), but due to pressures from western powers these countries have succumbed and signed the document keeping aside of socialistic sphere of patent regime.

These international obligations have been castigated upon us and to meet these we have forced to amend the Patent Law of 1970 three times in quick succession by bringing major clauses to existing law including identifying the product patent regime in our system. In addition to these we have enacted new enactments like Geographical Indications Act 2002 in our domain. .

### **Relevant Provisions of Patent Act of 1970**

The Indian Patent Act of 1970 providing various procedures in case of infringement of patents, counterclaims, revocation of patents and other issues concerning the patent. The suits for a declaration as to non-infringement is incorporated in Section 105 of the Patents Act, for any relief in cases of groundless threats of infringement proceedings are in Section 106, for infringement of a patent matters have been there in Section 107 and 108 of the Patent Act and as per Section 104 the suits relating to patents have to be instituted in a District Court having jurisdiction. However, if there is a counter claim for revocation of patent, the suit and the counter claim shall be transferred to the High Court for decision. As per Section 106 of the Act, the District court is empowered to issue injunction against violation of patent rights, award damages, and also pass injunctions (subject to such terms as the court thinks fit) and, at the option of the plaintiff either damages or an account of profits as mentioned Section 108 of the Act. It is pertinent to note that all appeals lies to the High Court against the decision, order or direction of the Controller as provided by Section 116(2) of the Patent Act.

### **Statutory interpretation and treaties**

In interpreting a statute, the courts in India would, so far as its language permits, construe it so as not to be inconsistent with the comity of nations or the established rules of International law. If the terms of the legislation are not clear and are reasonably capable of more than one meaning, the international agreements or conventions on the points become relevant, for, there is a prima facie presumption that Parliament does not intend to act in breach of International law, including therein specific treaty obligations; and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and the other is not, the meaning which is consonant is to be preferred is stated in *Kubic Dariusz v. Union of India* <sup>[2]</sup>. Where an international agreement is incorporated in an Indian Statute, the statute should be construed with a view to attaining uniformity in the different jurisdictions in which the agreement operates. This would ordinarily be the approach of Courts in India while dealing with the matters relating to intellectual property rights which is warranted by the

constitutional directive to the State to foster respect for International law and treaty obligations as mentioned Article 51 of the Constitution of India.

Much of the patent litigation in our country deals with the process of inventions, meaning of novelty and utility, the infringement of patents, grant of injunctions, counter claims, the revocation of patents and the assignment of patents etc. The Indian Law is not subscribed to awarding criminal punishments in case of infringement of patent rights as those are available to other intellectual rights like copy rights and trademarks.

### **Landmark cases**

In our country in quick succession carried out amendments to the Patent Act of 1970 in 1998, 2002 and 2005 in compliance with international obligations which are came out in form of Trade Related Aspect of Intellectual Property Rights. After 2005 when real effects of Trade Related Aspects of Intellectual Property regime started in our country one important case come out in form of *Novartis AG represented by it's Power of Attorney Ranjna Mehta Dutt v. Union of India (UOI)* and through the Secretary, Department of Industry, Ministry of Industry and Commerce and Others <sup>[3]</sup>, before the High Court of Madras,

The brief facts of the case is as follows, the world third largest pharmaceutical company and the number two global manufacturing of generics M/s. Novarties has filed a petition in the Tamil Nadu High Court for granting of patent for the life-saving medicine 'Glivec', when the Joint Controller of Patent and Designs has denied granting of patent to it. The drug is most useful to patients affected by rare cancers such as Philadelphia chromosome positive chronic myeloid leukemia (C.M.C) and gastro intestinal stromal tumors (G.I.S.T). The Novarties claims that the drug is patented in forty countries in the world over including China. The application for patent is denied to it in 2006 by the Controller of Patents. The petitioner believes that Glivec is an important innovation and that Indian Patent Law does not comply with international patent standard as Indian agreed when it joined the World Trade Organisation. In this case the petitioner is challenging the Section 3 (d) of the Indian Patent Act 1970 that does not permit to patent innovative medicines with therapeutically referent safety advantages. The judgment in above case was delivered by the divisional bench consisting of R. Balasubramaniam and Prabha Sridevan J.J. The divisional bench of Madras High Court set a side contention of the petitioner stating that Section 3 (d) of the Act within the ambit of the Constitution.

It is submitted that the judgment of the Madras High Court in the *Novartis* case is in the right direction. Patent law is emerging in India and the Indian courts have followed a strict interpretation of an Indian statute which involves compliance with an international agreement. In history, every monopoly power has been abused and patent monopoly is not an exception. The interests of cancer patients are more important than monopoly rights. The Court held that the Patent Controller's decision to reject the claim is fully justified on the following grounds: (i) Novartis had not satisfied the pre-requisites for patenting, viz., novelty, inventive step and non-obviousness. (ii) There is prior publication of the invention

through patent applications filed in many countries, including Canada and the United States in 1993, by taking priority from the Swiss applications filed in 1992. (iii) The patent application does not claim any added therapeutic efficacy from the -crystal form disclosed in the earlier applications. Hence, the patent application cannot satisfy the scrutiny of Section 3(d) of the Indian Patents Act. This judgment has given a sort of great relief to public health and drug prices in our country.

Aggrieved of above decision the Novartis had preferred an appeal before the apex court of the land and the Supreme Court had delivered an remarkable judgment on April 1 2013, again the Supreme Court rejected Novartis' plea on blood cancer drug Glivec, and denied patent protection on the grounds that the drug Glivec was not patentable in accordance with the provisions laid down under section 3 (d) of the Indian Patent Act, which draws a clear distinction between "evergreening" and "incremental innovation". Novartis had been fighting since 2006 to obtain patent protection for its drug Glivec. The said judgment has not only been warmly embraced by the generic drug makers, but also by social organisations and public health aid groups in India, as it was seen to paved the way for lowering the prices of patented drugs and their fair availability to the public. The apex Court has clearly stated that Section 3 (d) within the constitutional ambit and there is no violation of fundamental rights of petitioners in the case. Moreover the Constitution of India guarantees welfare state the petitioner action of claiming patent on evergreening and incremental innovation is nothing but infringes the principles of welfare state enshrined in the constitution.

### **Conclusions and Suggestions**

The judiciary is playing an important role in protecting the infringement of patent rights in India. The District and higher courts are only conferred of jurisdiction over the patent matters as it involves a lot of technicalities. The much of patent litigation in our country basically comprises of infringement of patents, revocation, and counterclaims. As the Trade Related Aspects of Intellectual Property Rights became effective from 2005 after ten years of waiting period, the role of judiciary now became more and utmost important . In years to come we shall see new kind of crucial cases and matters may be come out for interpretation before the judiciary in our country. In view of it the judges should be well trained in all these matters, as on today they are not fully geared up to face situation. The judiciary is playing a crucial role in preventing infringement of patent rights as and when time arises in our country.

### **References**

1. B.Com, LL.M., Ph.D. Associate Professor, Head, Department of Law, Telangana University, Dichpally, Nizamabad – Telangana. Email: jetlinglaw@gmail.com
2. German-Swiss-American scientist, Nobel Laureate, 1879-1955.
3. Cornish WR. Intellectual Property Patents, Copyright, Trade Marks and Allied Rights, II Edition, 28.
4. AIR, 1990 SC, 605.
5. 4 MLJ 1153, 2007.