

All Things IP



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RIGHTS GRANTED TO PATENTEE - AN OVERVIEW

The word “*patent*” when used as an *adjective* in English, means “*easily recognisable*” and is the antonym of the word “*latent*” which means “*hidden or concealed*”, and thus the word “*patent*” is used as a *noun* to denote the intellectual property rights associated with an invention.

An application for grant of patent is an application seeking *quid pro quo* from the government by the applicant/inventor. The applicant by making an application for grant of a patent, comes forward to make his invention public, make it known to mankind as a whole (i.e.) keeping it *patent*, instead of keeping his invention “*latent*”, and in return, seeks from the government an exclusive right to exploit his invention for 20 years.

When an inventor chooses not to file an application seeking a patent, then the invention will be in the realm of a ‘trade secret’.

Patent rights, on grant are territorial in nature, and the predominant rights offered are:

1. *Right to exploit the patented invention*: The patentee has rights to manufacture, use, sell and distribute the patented invention within the respective jurisdiction.
2. *Right to assign and license*: The patentee is conferred with rights to assign his patented invention or license the patented invention, for marketing and other commercial purposes, and the assignor will have similar rights of the patentee to use or sell the patent as his own.
3. *Right in case of infringement*: Infringement arises when the rights granted to the patentee under the law have been violated, such as unauthorised selling, making, importing, or distributing of the patented invention (product or process) by a third party. In the event of any infringement, the patentee or the assignee can seek reliefs from IPAB, or district courts or higher in the relevant jurisdictions.

Factors determining Patent infringement

Any person performing the following actions without the consent of the patentee would be infringing the patent:

- making
- using
- selling; or
- importing for these purposes the invention (product/process) in India without the permission of the patentee.

Who can file a suit in Patent infringement proceedings and when:

In case of Patent infringement, a suit can be instituted by:

- Patentee
- Assignee
- Exclusive Licensee
- A Compulsory Licensee

However, any suit for infringement can be instituted only after the patent is granted and in the jurisdiction where the infringement has taken place.



Remedies available under Patents Act 1970

1. **Administrative remedy:** The patent owner can reach the collector of customs and prohibit the entry of the infringing goods into the market by providing the name of the exporter, consignee, port of entry, and other details.
2. **Civil remedies:**
 - a. There are two types of injunctions granted by courts according to the Indian Patents Act 1970:
 - Temporary injunctions are granted during the pendency of the case before the full trial, provided there is a prima facie case in favour of the Plaintiff.
 - Permanent injunctions: They are granted after a complete trial.
 - b. The court may also order the infringing goods and materials to be seized, forfeited, or destroyed.
 - c. **Damages or accounts of profit:** The courts may also grant either damages or an account of profits as opted by the Plaintiff in case of infringements. The Plaintiff may either obtain damages in respect of losses caused by infringing activities or an account of profits obtained by the infringer, but cannot seek both.
 - d. **Relief of Delivery Up:** Indian courts, apart from granting injunctions, may also order delivery up of the infringing goods where a commissioner is appointed by the court who visits the defendant's premises and takes the inventory of the infringing articles that are present in the defendant's premises, without sending any notice to the infringer.

The content of this article is intended to provide a general guide to the subject matter. For specialist advice about your specific circumstances, please write to us at ip@eshwars.com