

***INTELLECTUAL
PROPERTY RIGHTS
AND RELIEF OF
INJUNCTIONS***

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Meaning

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive rights over the use of his/her creation for certain period of time.

Intellectual property is the property created by virtue of human intellect. It is intangible and is protected under the law

across jurisdictions just like any tangible property would be.

Types

The different types of intellectual properties include Trademarks, Patents, Copyrights, Geographical

Indications, Designs etc. which are recognized and protected under the statutes like the Trademarks Act, 1999, the Copyrights Act, 1957, Patents Act, 1970, Designs Act, 2000, Geographical Indications of Goods (Registration and Protection) Act, 1999 etc.

Remedies for intellectual property rights infringement

Any expression of an idea emerging from the intellect of a person renders it protection as an intellectual property. Such protection is granted against infringement of the exclusive rights granted to the owner of an intellectual property by law.

Various criminal and civil remedies are available against the infringement of these IPs. The availability of appropriate reliefs in cases of patent infringement is the key for ensuring the global patent protectionist regime.

In case of intellectual property infringements or possible future infringements the owner of intellectual property generally has the following options to pursue:

- 1- apply for an interim injunction (during the pendency of suit to protect its interests).
- 2- apply for a perpetual injunction in case the infringement has already commenced (granted after completion of trial).
- 3- sue the infringer for damages (relief is granted only after completion of trial).

Patent act 1970 provides a legal framework for the functioning of patent system in India. Section 108 of the act provides for reliefs that a court may grant in the suits of patent infringement. Basically it provides two kinds of remedies: one is the grant of injunction against the patent infringer and second is the appropriate damages that the patentee has suffered from the infringement of his patent.

Both of these remedies are granted after the actual determination of infringement. This kind of situation, many a times, poses a difficulty for the patent holder to retain and hold damages, arising out of infringement, till the actual guilt is proven. Therefore, the patentee generally pleads for an

interim injunction as a temporary and immediate remedy.

Relief Of Injunctions

An injunction is a form of preventive relief grant of which depends on the discretion of the court. It is a prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action or to a party made/a defendant for that purpose, forbidding the latter to do some act or to permit his

servants or agents to do some act, which he is threatening or attempting to commit or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law.

✘ ~~The act, primarily, is silent about the interim injunction but the liberal interpretation of section 108 (Patent Act, 1970) as done by courts several times, permits the grant of interim injunction. Moreover, Article 50 of Trade Related Aspects of intellectual~~

property rights (TRIPS) agreement, to which India is a signatory, provides the power to judicial systems to grant temporary injunction.

Order 39- Rule 1&2of Code of Civil Procedure 1908, Section 151 of code of civil procedure and Section 37 of Special relief act 1963 provide general provisions for the grant of interim injunction. Courts heavily rely upon these provision for the grant of temporary relief.

Jurisprudence around interim injunction in intellectual property rights

The jurisprudence around interim injunction in IPR has gone through a lot of

phases in the last five decades. Therefore, understanding these phases become important for comprehending the concept of interim injunction in its holistic sense.

The six year rule

It was a well-established principle that an interim injunction cannot be granted if the validity of patent is itself in question. The courts used to follow the six-year rule, which says that patents cannot be presumed to be valid if they are less than six-year-old.

This conception of six-year was originally developed in English courts and subsequently crept in the Indian jurisprudence with the case of "**V. Manicka Thevar v Star Plough Works**" in 1965. Madras High Court, in this case, heavily relied upon the English judgements and held the six-year rule to be of prime importance for determining the validity of patent.

This was the position of law with regard to interim injunction until early 80's when it started to lose its significance. The well-established six-year rule started to fade away with the enactment of the act of 1970. Section 13(4) provides that mere grant of the patent is not a sufficient ground for validity of patent. Courts started considering it to be a pertinent point against the presumption of validity of patent on the basis of six-year rule.

Temporary and perpetual injunctions

As already stated above, the IP owner can apply for injunctions when there is an anticipation of infringement or the infringement has already commenced.

~~In an application for an interim or temporary injunction the court shall keep in mind the following requirements:~~

i. prima facie case;

ii. whether the plaintiff can establish a balance of convenience in its favor; and

iii. whether irreparable loss may be caused to the plaintiff if the court does not grant an order of interim injunction.

MANDATORY INJUNCTIONS

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A mandatory injunction is granted only in exceptional cases. Generally, a mandatory injunction is granted only to restore the status quo and not to establish a new state of affairs differing

from that which existed when the suit was instituted.

~~D.C.Warden v C.S.Warden (1990) 2 SCC 117~~

The Supreme Court held that the plaintiff should establish a strong case for trial to obtain a mandatory injunction; a standard higher

than the normal prima facie case standard required for grant of a prohibitory injunction.

Quia Timet Injunctions

Quia timet literally means “because he fears”.

These Injunctions are granted in cases where the Infringement of the Intellectual property has not yet occurred but there is a strong possibility for its occurrence. The applicant has to show reasonable apprehension that the

illegality is on the verge of occurring, and will most certainly happen unless there is intervention by the Court, by way of granting an order of injunction.

In the Case of **Super Cassette Industries Ltd. v Myspace Inc.** (MIPR 2011 (2) 303) the contention made was that Quia Timet Injunctions shall only confine to Copyright Infringements and not extend to Trademark Infringements, the Court held that the principle of Quia Timet is applicable to any tortious liability wherever there is an apprehension of infringement that is likely to happen.

The Court shall make sure that following two conditions are satisfied when granting Quia Timet Injunction to the IP owner:

- i. proof of imminent danger even if there is no actual damage.
- ii. proof that the apprehended damage whenever occurs would be huge and substantial.

Mareva Injunctions

Mareva injunctions are restraint orders “freezing” the assets of the defendant, and can be issued even if the property or the person concerned is outside the jurisdiction of the court. It prevents a foreign defendant from removing his assets from the jurisdictions of the

Court. Mareva Injunction and attachment before judgement are similar to each other.

These Injunctions are popularly known as so from the popular case of **Mareva Compania Naviera SA v International Bulkcarriers SA** ([1975] 2 Lloyd's Rep 509: [1980] 1 All E.R. 213). Mareva Injunction conserves the assets of the Infringer so that they are useful in case of paying damages to the IP Owner post judgment. It is granted in exceptional cases and there must be evidence or material to show that the debtor is acting in a manner,

or is likely to act in a manner, that frustrates enforcement of any subsequent order/decreed of the court or tribunal.

Enforcement

Rule 2-A of Order XXXIX of CPC, 1908 provides the procedure in case of disobedience of Interim Injunctions in particular. According to it, the Plaintiff can directly approach the same court which had granted it the Injunction and seek the attachment of the property of the person who has disobeyed the order. This rule does not apply to the Permanent Injunctions and the final decree passed by the Court at the end of the trial.

CONCLUSION

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Injunctions are one of the most favoured, most popular and widely sought remedies for Intellectual Property Rights Infringement. Since

IP Rights are time-bound monopoly rights,
Injunctions of different kinds make it possible for
the owner to exploit them exclusively.

It could be concluded that a party cannot demand a temporary injunction as a matter of right, nor can the Court deny it arbitrarily. The Court's discretion, on the other hand, is informed by the principles outlined above and is dependent on the circumstances and facts of the case. The party requesting temporary injunction must show not only that he has a prima facie case, but also that he would suffer irreparable harm if relief is denied, and that the balance of convenience favours him.

Indian Jurisprudence has taken a lot of rollercoaster rides, when it comes to the aspect of interim injunction in IPR. However, the present situation is arguably a stable one. The three rule principle is well accepted. But still, this concept is not a linear one; there are some fields, for example medicine, where a lot of other factors such as public interest etc. come into play while determining the grant of interim injunction.

THANKS