



Patent Infringement: Turning into a Matter of Concern

Mahabub Ul Alam Khan^{1*} Rajes Chakraborti² Karima Basher Bristy²

¹Department of Law Legal and Arbitration Wizards, Daffodil International University, Dhaka, Bangladesh; ²Department of Law Daffodil International University, Dhaka, Bangladesh

ABSTRACT

This paper has been focused on the patent infringement right. The researchers had tried to elaborate the patent infringement including describing the “Apple’s Patent Infringement” case of for more reference and a comparative analysis with some recommendations has also been provided in this paper. Patent infringement is not weighed in terms of whether a substantial part has been taken as is infringement of a work of copyright, but there are difficulties where the discover or findings has not been taken in its entirety by an alleged infringer, or where some feature of the invention has been changed. Basically, Patent infringement of Bangladesh has been focused on this paper. Although, this particular paper also tried to find out the laws regarding patent infringement from different countries like India, United Kingdom and Philippine including the national legislation.

Keyword: Patent infringement; Mercantile harm; Monopoly rights; Personalized media communication

INTRODUCTION

Patent infringement

Patent are one of the primitive forms of intellectual property protection. The purpose of a patent system is to encourage economic and technological development by rewarding intellectual creativity. Generally patenting of intellectual property protects new inventions and covers the process how things work, what they do, how they do it, what they are made of and how they are made of. So, in that aspect, patent means giving of protection for any kind of desertion [1]. Patent protection means that the invention which cannot be made, used, distributed or sold for commercial purpose without the patent owner's consent. These patent rights are usually enforced in a court, which, in most systems holds the authority to stop patent infringement. Patents provide stimulus to individuals by offering them recognition for their creativity and material premium for their marketable inventions [2]. In that case, patent may be described in few words as it is a document that issued upon application to the government office which indicates an invention and creates a legal binding perspective regarding the

manufacturing, selling and using of the patented inventions with the authorization of the owner of the patent.

Infringement of patent

Patent infringement is a civil wrong causing mercantile harm. Patent infringement consists of unauthorized making, using, offering for sale or selling any patented discover. Whoever actively induces infringement of a patent shall also be liable as an infringer. In general it is the commission of a prohibited act with respect to a patented discover without permission from the patent holder. So a patent delegates the exclusive or individual right on the patentee to make, distribute or sell the invention. An infringement would be when any of these rights is elapsed. A patentee may assign or license or some of these rights. The exercise of the rights so transferred in favor of the assignee or the licensee by the assignor or the licensor would not amount to infringement of the patent [3]. The power of the rights granted by patent law is such that infringement of patents and defense to infringement has to be carefully drawn out. Patent infringement is not weighed in terms of whether a substantial part has been taken as is infringement of a work of copyright, but there are difficulties where the discover or findings has not been taken in

Correspondence to: Mahabub Ul Alam Khan, Legal Associate, Department of Law Legal and Arbitration Wizards, Daffodil International University, Dhaka, Bangladesh, Email:khanemon810@gmail.com

Received: 24-Aug-2022, Manuscript No. IPR-22-17880; **Editor assigned:** 29-Aug-2022, Pre QC No. IPR-22-17880 (PQ); **Reviewed:** 08-Sep-2022, QC No. IPR-22-17880; **Revised:** 16-Sep-2022, Manuscript No. IPR-22-17880 (R); **Published:** 26-Sep-2022, DOI: 10.35248/2375-4516.22.10.211.

Citation: Khan MA, Chakraborti R, Bristy KB (2022) Patent Infringement: Turning into a Matter of Concern. Intel Prop Rights.10:211.

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its entirety by an alleged infringer, or where some feature of the invention has been changed. Where the alleged infringement is not a direct copy but a variant, the courts may have some difficulty in determining whether the different does indeed infringe the patent.

Patent infringement in Bangladesh

Patent and Design Rights are basically provided under the guidance of the Patents and Designs Act of 1911 and the Patent and Design Rules of 1933 [4]. Throughout the provided provisions of these particular Acts, the Department of Patent, Design and Trademark (DPDT) provide patent protection to the patented particulars for 16 years. A patentee may institute a suit in the District Court as it is having jurisdiction to try the suit against any person who during the continuance of a patent acquired by him under Patent and Design Act in respect of a discover, makes, sells or uses the invention without license or counterfeits it, or emulates it. And also where a counter claim for revocation of the patent is made by the defendant, the suit, along with the counter claim, shall be transferred to the High Court Division for decision [5].

CONTEMPORARY CASE ON PATENT INFRINGEMENT

Apple was liable for patent infringement

Fact: Personalized Media Communications (PMC) is an organization that owns a patent portfolio regarding controlling of network equipment. Personalized media communications has licensing business that means PMC also provide patent license with third party contract with the patent and design board of USA. In 2015, PMC alleged that Apple infringe 7 of its patent including fair play technology, Apple music, i-tune, Apple app store etc. and filed a suit against Apple to the Patent Trial and Appeal Board. Apple then challenged the validity of such patent and this board give its decision in favor of Apple, reasoned that such patent has not any validity. Then PMC has filed appeal petition against such decision to the appeals court with demands of royalties. In March 2020, the appellate court took cognizance of the appeal and gives the permission to further trial.

Issue:

- Whether the patent is valid?
- Is there any possibility of royalties?
- Whether the method of determining the royalties is valid?

Argument:

- As before, Apple has raised the question of validity regarding the patent. But regarding this allegation of Apple PMC as before, submit the report of Mr. Michael J. Dansky who is the damage expert of PMC, in which he claim that Apple did the infringement and he also mentioned estimate royalties.
- Apples argued that the testimony of Mr. Dansky should excluded because his experience is not sufficient to determine whether there is any agreement of running royalties structure between Apple and PMC. Regarding this PMC also argued

that, from such statement of Apple, it is deemed that they denied the provision of an expertise but hold the methodology of such expertise.

- Apple in their another argument stated that, the expertise of PMC by mistake incorporated all value of fair play which increase huge amount of royalties but PMC also counter that there is no consistency between the technical fact of the case and apple's argument regarding this issue
- Apple argues that, the expertise of PMC Mr. Dansky conduct a mistake regarding to determine the portfolio license or license to the patent-in suit between Apple and PMC. But PMC stated that their expertise claim that both portfolios license or license to the patent-in suit has the similarity in monetary value. So it may not be the main issue in determining the royalties.

Judgment:

- The first issue of this case indicated the validity of patent, the learned appeals court reverse the decision of the Patent Trial and Appeal Board.
- Concerning the second issue, the honorable appeal court mentioned that, 'A patentee is only entitled to a reasonable royalty attributable to the infringing feature'. Regarding this issue the court further said that, every patentee is entitled to adequate compensation in case of infringement of a patent but not less than a reasonable royalty for the use of the patented item by the infringer.
- Regarding the third issue, the court has been satisfied with the presentation of the expertise of PMC Mr. Dansky. There was no reason for the court to dismiss his testimony regarding the method of determining the royalties. So, the court in its judgment ordered Apple to pay \$308.5 million to Personalized Media Communication as royalties.

Re-action of Apple:

- The reaction of Apple regarding judgment of the appeals court that was exactly what was supposed to happen that means Apple was disappointed to this decision. Apple was likely to file the petition of appeal against the decision. The Apple Company gives a statement, which is highlighting as it was,
- "Cases like this, brought by companies that do not manufacture or sell any product, stifle innovation and ultimately harm consumers"

COMPARATIVE DISCUSSION ON PATENT

Indian perspective

Patent infringement with respect to a patented invention without the prior permission of the patent holder can be assumed as a prohibited act. A patent holder is also entitled to grant permission, if required any, in the form of a license. A patent infringement, normally with respect to usage or sale of the invention which is being patented, may differ in case of jurisdictions. In different countries, invented product's use is

intended to be commercial in order to make patent infringement [6].

If in a case the monopoly rights of the patentee are violated, the rights of the patentee might be secured by the Act through judicial interruption [6]. The patentee must need to institute a suit for infringement to get relief in such violation. The reliefs which may be availed in such a suit are [6]:

1. Interlocutory/interim injunction
2. Damages or account of profits
3. Permanent injunction

United Kingdom perspective

Most important law in the UK is found in the Patents Act 1977 (as subsequently amended by other Acts and secondary legislation), which has been supported through detailed procedures in the Patents Rules, 2007 [7]. With regard to the rules on patentability, the Patents Act has been nearly based on European Patent Convention 1973 (EPC), which can be considered as an international treaty [7].

In cases of infringement, the Patents Act highly mirrors the laws of the Community Patent Convention 1989, although this initiative of EU law was never fully ratified and never came into force [7]. The EU has also issued systematizing and directly productive legislation on certain issues relating to patents, most importantly Regulation (EC) 469/2009 concerning the supplementary protection certificate for medicinal products [7].

United Kingdom is a signatory party of different agreements related to Intellectual property, including the [7].

- WIPO Paris Convention for the Protection of Industrial Property 1883 (Paris Convention).
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS) [8].

DISCUSSION AND CONCLUSION

Patent is now a trending issue over the world. Patent law is a vast area of law which is overall designed to govern the same subject matter in each jurisdiction. As common law is the most used and adapted law in most countries, the precedents set-in common-law jurisdiction is often referred to by courts and academics. It is essential to understand that with modernization and globalization there is immense scope of fraud taking place, especially with patents. For instance, what is invented in China might be attractive to a businessman in Canada and he might try and pass it off as his invention. This is highly probable given

the geographical distance between the countries. Therefore, patent law exists to protect the individuality of the inventors and the uniqueness of their ideas and invention. There is always the fear of the 'unknown', what might happen and what will come next given the times we live in; therefore, it is with absolute certainty that we conclude that there are a lot more reforms that will be brought about with regards to patents and its infringement.

RECOMMENDATION

- The researchers tried to figure out some recommendations to make the patent more flexible and public worthy and those are as follows-
- Policy makers should introduce the extended version of the following Act which contains the necessary amendments for the patent right.
- Usage of International Conventions and Treaties should be executed in compliance with the local Legislation.
- The procedure of the Patent Infringement should be brought under proper surveillance of executors.
- Punishments for such kind of offences should be more strictly followed and implemented accordingly.
- Concern authority should increase the public awareness regarding patent infringement through different seminars and workshops among the public at large who are involved with this sector.

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