

ISSN: 2582 - 2942



LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- III

APRIL 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR IN CHIEF

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

EDITOR IN CHIEF

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE
OF ARBITRATORS

PHONE - +91-8500832102

EDITOR

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICFAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;

EDITOR

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS. SHAMBHAVI SHIVANI

STUDENT EDITOR

ABOUT US

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



The Infringement of Patents and its Remedies in India

S. Yashwont Kiran

ABSTRACT:

This paper deals with the brief study on the infringement of patents and its remedies in India. Each and every inventor puts their own efforts to come out with a patented invention for selling it to the public domain for the purpose of monetary gain for a certain period as prescribed by the law. As usually even in India, people always tries to duplicate the patented inventions of others, then manufactures it and sells the same invention to the public by a new brand name, by which the act is commonly said to be the infringement of patents. The infringement of patents creates unnecessary burden, financial loss and sometimes it creates loss of reputation to the original patented inventors. The infringement of patents makes the people to roam in confusion in the market due to the forced discretion of choosing between the original patented invention and a duplicate invention which is because of the price comparison between the original patented invention and the duplicate products or inventions. Generally patent rights allows the inventor to enjoy the monopoly in the business for a certain period. The act of infringement of patents and the remedial actions taken by the court of law are closely connected with each other.

KEYWORDS: *Infringement, Remedies, Invention, Patent, India*

INTRODUCTION

Patent is one of the intellectual property rights which deals with the rights of the inventors who comes out with new inventions. The law relating to patents deals with the inventions and the patent laws in India is governed by the *Patents Act, 1970*. The patents Act, 1970 deals with the registration, rights, revocation, license, infringement, remedies of patents, etc. Patent rights in India are the exclusive rights granted to the inventor of an invention by the government of India for the purpose of doing business. The patent law of India is universally recognised because India is one of the signatories of the patent cooperation treaty of 1970.

The patent rights is all about the encouragement of monopoly rights of the inventor which makes the inventor to expand the business of selling the invention to many countries including India and before selling an invention to other countries, first of all that invention has to get patent rights in the respective countries through the patent cooperation treaty of 1970 or otherwise which is shortly called as PCT application, if not then there are more probability of duplicating the original invention and the person who duplicated the exported original invention may get the patent rights irrespective of the original inventor who doesn't have the patent rights or failed to get the patent rights.

The grant of patent enables the inventor to sell the invention with a monopoly up to 20 years, but the inventor even have the discretion to give license for others to enjoy the patent rights. When any person tries to duplicate the original product or does any activity by affecting the monetary gain of the patentee without the permission of the patentee or the original owner then it is said to be a clear infringement. A patent infringement is a breach of law or violation of rights which causes financial loss to the inventor and leads to take legal actions against the duplicator by the original patentee or the original inventor. Infringement of patents is absolutely illegal and if it is made then the concern person must give remedy to the patentee or the original inventor through the court of law.

The term '*infringement*' has not been defined under the patents act, 1970 but however the term infringement can be understood has the violation of the monopoly rights of the patentee to make, use, or sell or distribute the invention in India for the purpose of monetary gain. However a negligent use of patents especially in the experiments, educational purposes, use of invention in foreign vessels is not an infringement. It is important to note that the infringer is a person who actually manufactures a patented article without authorisation for the purpose of monetary gain.

Objectives:

- To briefly analyse the laws or the provisions relating to the infringement of patents in India under the patents act, 1970.
- To briefly analyse the laws or the provisions relating to the remedies for the infringement of patents in India under the patents act, 1970.

CHAPTER I: THE INDIAN LAWS RELATING TO THE INFRINGEMENT OF PATENTS

The patents act, 1970 and the patent rules, 2003 deals with the laws and rules relating to the patents in India. The patents act, 1970 is a statutory law or the substantial law, and the patents rules, 2003 is a procedural law. The main object behind the enactment of patent laws is to develop and encourage the research, development and innovation. The Indian Supreme Court in the case of *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, observed that the object of patent law is only to encourage the scientific research, development, new technology and industrial progress. The grant of exclusive rights to own, use or sell the method or the patented product for a certain limited period, stimulates new inventions of commercial utility. The price of the grant of monopoly rights or the patent rights is through the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the patent rights; the product passes into the public domain.¹

Before knowing about the laws relating to the infringement of patents it is important to know about the kinds of infringement of patents. The following are the kinds of infringement of patents.

Kinds of Patent Infringement:

- Direct Infringement:

¹ Bishwanath Prasad Radhey Shyam Vs. Hindustan Metal Industries, AIR 1982 SC 1444

The direct infringement of patent means making, or selling, something without obtaining a proper or a valid license from the patent holder is considered direct patent infringement. The offender is completely liable for the act of infringement of patent.

- Indirect Infringement:

The Indirect infringement of patent means the contributory infringement and inducement of others to infringe a patent. Here, a company can still be held accountable for patent infringement even though a company didn't even originally infringe a patent.

- Contributory Infringement:

The contributory infringement is a type of infringement of patent which involves the purchase or buying or importation of a part of a product that aids or involves in making a patented invention or a product. For proving a contributory infringement, a person must show that the component's substantial use would be used to create a patented item.

- Induced Infringement:

The induced infringement of patent occurs when a person or company provides components or helping to create a patented product. It occurs even by offering instructions, making plans or processes for the purpose of duplicating an existing patented invention.

- Literal Infringement:

The literal infringement of patent is all about the direct relation between the infringing device or process and the patented device or process through their respective claims.²

Doctrines related to Patent Infringement:

There are following are some of the doctrines related to patent infringement:

1. Doctrine of Equivalents
2. Doctrine of Complete Coverage
3. Doctrine of Compromise
4. Doctrine of Estoppel
5. Doctrine of Superfluity³

²Types of Patent Infringement: Everything you need to know, UPCOUNSEL (Dec. 08, 2019, 05: 48 PM),

<https://www.upcounsel.com/types-of-patent-infringement>

1. Doctrine of Equivalents:

The doctrine of equivalents is applied in the court of law when the device or method didn't even exactly infringe a patent, but a judiciary might declare the order in favour of the patent holder in the circumstances of when the device does exactly the same thing and produces the same results, it could be an infringement.

2. Doctrine of Complete Coverage:

The doctrine of complete coverage means when an interpretation of a claim has been made, the same interpretation must be seen in the lights of determining the literal infringement and infringement under the doctrine of equivalents. The owner of a patent must prove by submitting the evidence in the court by which it proves that the alleged infringer has made, or sold a product or employed the process which directly relates to the original patented invention.

3. Doctrine of Compromise:

The doctrine of compromise is a principle with respect to the patent right protection of an invention and utility model. In the method of explaining and determining the claim of patent right protection, there were two representative practices in the world, one is the limitation system represented by Germany, and the other is the periphery limitation system represented by England and USA.

4. Doctrine of Estoppel:

The doctrine of estoppel is a principle is originated in the England, and has latter been accepted into the common law in almost all the judiciaries of the world. The doctrine of estoppel principle in a broad sense means that, from the date of publication of a technical statement, no different explanation is allowed to be made.

5. Doctrine of Superfluity:

The doctrine of superfluity is an establishing principle which is also referred to as principle of excluding unnecessary technical features. The substantial meaning is that, when explaining the patented claims and determining the patent right protection, the doctrine omits the obvious additional technical features recorded in the patented

³Types of Patent Infringement: Everything you need to know, UPCOUNSEL (Dec. 08, 2019, 06: 00 PM),

<https://www.upcounsel.com/types-of-patent-infringement>

independent claims, and determines the patent right protection only by the necessary and the most important technical features.⁴

The following are the important sections or the provisions relating to the infringement of patents in India by which the patentee can move to the court to take legal actions against the infringer of patents under the patents act, 1970. **Sections 104** to **section 115** of the Indian patents act, 1970 deals with the suits concerning infringement of patents.

Section 104:

Section 104 of the patents act, 1970⁵ deals with the **jurisdiction** to file a suit concerning the infringement of patent which states that an action for infringement of patent must be instituted by the way of suit in any district court or a High Court having the jurisdiction to try the suit but not in the courts inferior to that. Where the defendant counter claims for the purpose of revocation of the patent, the suit along with the counter - claim will be transferred to the respective High Court for decision. The procedure to be followed in conducting a suit for the infringement is governed by the relevant provisions of the Code of Civil Procedure. A suit for infringement can be instituted only after the grant of patents.

The **Indian Limitations Act, 1963** governs the period of limitation for bringing a suit for infringement of a patent, which is for **3 years** from the date of infringement. If the patentee didn't paid the renewal fee, then the patentee will not be entitled to institute the proceedings for infringement.⁶

The doctrine of ***pith and marrow*** means copying all the essential features of the invention and which is sometimes referred to as taking the '***pith and Marrow***' or otherwise the basic features of the invention. The Courts apply the '**doctrine of pith and marrow**' which means that the court is to see that whether the pith and marrow of the invention or the essential features of the

⁴*Judging principles of patent infringement litigation in China*, LEXOLOGY (Dec. 08, 2019, 06: 30 AM), <https://www.lexology.com/library/detail.aspx?g=1994f565-b433-47d1-adb7-5d33c21359bc>

⁵Section 104, Patents Act, 1970

⁶Jash Vaidya, *Patent Infringement in India*, INDIAN VAKIL (Dec. 08, 2019, 06: 30 AM), <https://jashvaidya.wordpress.com/2015/11/26/patent-infringement-in-india/>

invention has been taken and if it has been done, there is an infringement of patent rights of an invention.⁷

Test for the infringement of Patents:

In *Improver Corp. vs. Remington Consumer Products Ltd*⁸, three tests were followed:

1. Does the new invention have any material effect upon the way of the invention works? If yes, then the variant or the new invention is outside the claim. If no:—
2. Would this invention have been obvious or similar at the date of publication of the patent to a reader skilled in the art? If no, the invention or the variant is outside the claim. If yes:—
3. Would the reader skilled in the respective art nevertheless have understood from the language of the claim of the invention that the patentee intended that strict relation with the primary meaning was an essential need of the invention? If yes, the variant or the new invention is outside the claim.

This is a landmark case which is considered by the courts for determining the test for the infringement of a patented invention. The above mentioned conditions in that respective case are considered for the primary reasons or the conditions for the infringement based on the similar questions or the related evidences produced in the court of law.

Section 104A of the Patents Act, 1970 deals with the **burden of proof in case of suits concerning infringement**⁹ which states that the court has the power to direct the defendant to prove that the process used by the defendant to obtain the product, identical to the product of the patented process, is different from the patented product or process.

In *FDC Limited, Chennai vs. Sanjeev Khandelwal Prem Niwas*, it was held that if the defendant contends that his process is different of the plaintiff, the burden is on the defendant to prove the fact, because the process employed by the defendant being within the special knowledge of the defendant, under section 101 of the Indian Evidence Act, the burden of proving the process employed by the defendant is rested on the defendant.¹⁰

⁷A. Chandrasekaran, *Intellectual Property Law*, C. SITARAMAN & CO. PVT. LTD, 249, Third Edition (2013)

⁸*Improver Corp. Vs. Remington Consumer Products Ltd*, (1990) FSR 181 at 189

⁹ Section 104A, Patents Act, 1970

¹⁰*FDC Limited, Chennai Vs. Sanjeev Khandelwal Prem Niwas*, (2007) 5 MLJ 971

Section 105 deals with the **power of court to make declaration as to non-infringement**, which states that there are few essential conditions under which the court can consider for making declarations as to non-infringement, they are,

(a) that the plaintiff has made in writing to the original patent holder or to the exclusive licensee for a' written acknowledgements to the effect of the declaration claimed and has furnished the person with full particulars in writing of the process or article in question; and

(b) that the original patent holder or the licensee has refused to give such an acknowledgement or the permission.¹¹

In *Bharatbhai Padmakant Raut & vs. Madhu Silica Pvt Ltd*, the court finds that the petitioner No.1 had illegally transferred the secret data of the respondent No.1 company for the purpose of manufacturing highly dispersible silica. Therefore, it cannot be said that there is no cause of action disclosed for filing the suit. Therefore the suit came to an end by **Section 104** of the Act, and also it is required to note that the **Section 104** of the Patent Act, 1970 provides for bar against the institution of the suit for declaration under the **Section 105** or for any relief under the **Section 106** or for infringement of a patent before any of the inferior Court or a District Court having jurisdiction to try the suit.¹²

Section 106 of the Patent Act, 1970 deals with the **power of the court to grant relief in cases of groundless threats of infringement proceedings** and it states that, where any person threatens any other person by commercials, communications, or by circulars or oral form or in writing addressed to that or any other person, with proceedings for infringement of a patent, and if any such person aggrieved thereby may bring a suit against the person praying for the following reliefs, that is to say—

(a) a declaration that the threats are unjustifiable;

(b) an injunction relating to patent against the continuance of the threats; and

(c) such damages, if any, a person has sustained thereby.¹³

In *S. Ram Kumar vs. Micromax Informatics Limited*, the court observed that reading of **Section 106** of the Patents Act, 1970 shows that a defendant is rather called upon to prove

¹¹Section 105, Patents Act, 1970

¹²Bharatbhai Padmakant Raut & Vs. Madhu Silica Pvt Ltd, C/SCA/15331/2017

¹³Section 106, Patents Act, 1970

that his act would not amount to an infringement in respect of a claim of the specifications not shown by the plaintiff to be invalid. Thus, the impugned order has to be examined in the light of the provisions of **Sections 105 and 106** of the Patents Act 1970 and as such, no fault can be found with the impugned order for having discussed the patent in order to discuss whether the same amounts to infringement or not for the reasons that the protection is already provided under **Section 105** of the Patents Act, 1970¹⁴

Section 107¹⁵ deals with the **defences in a suit for infringement** which deals with the defences which are available to the defendant against the plaintiff in a suit for infringement. Section 107 of the patents act, 1970 is a legal instrument used by the defendant in solving the suit for infringement in the court of law. **Section 107** states that in any suit for infringement of a patent may be revoked under **section 64** shall be available as a ground for defence and also it states that in any suit for infringement of a patent by the making, using or importation of any machine, apparatus of other article or by the using of any process or by the importation, use or distribution or any drug or medicines and it shall be a ground for defence.

In *Galatea Ltd vs. Diyora And Bhanderi Corporation*, the defendants have preferred a counter claim and sought the revocation of the plaintiffs' patent. At this juncture, it was also be pertinent to note **Section 107** of the Patents Act, 1970, which relates to defences, etc., in suits for infringement.¹⁶

Section 107A deals with certain **acts not to be considered as infringement** which states that for the purposes of this Act,—

(a) any act of making, or constructing, or using, or selling or importing a patented invention only for the purpose of development and submission of information required under any law in India, or in a country other than India, which regulates the manufacture, or construction, or use, sale or import of any product or an invention;

(b) Importing or buying of any patented invention by any person from a person who is properly authorised under the law to produce and sell or distribute the patented product, shall not be considered as infringement of patent rights of an invention.¹⁷

¹⁴S. Ram Kumar Vs Micromax Informatics Limited, FAO No.2757 of 2009

¹⁵Section 107, Patents Act, 1970

¹⁶Galatea Ltd Vs Diyora And Bhanderi Corporation, C/CS/2/2017

¹⁷Section 107A, Patents Act, 1970

In *Bayer Corporation vs. Union Of India*, the Delhi High court notices that **Section 107A** is not made subject to the other provisions of the Act - on the other hand, **Section 48**, which talks of the rights of a patent holder is subject to other provisions of the Act that includes **Section 107A**.¹⁸

Rights of Licensee to take patent infringement proceedings:

Section 109 deals with the **right of exclusive licensee to take proceedings against infringement** and it states that the holder of an exclusive licence shall have the patent rights like the patentee to institute a suit in respect of any infringement of the patent committed after giving the licence and in awarding damages or an account of profits or granting any other relief in any such suit the court shall take into consideration of any loss suffered or likely to be suffered by the exclusive licensee.

The **Section 109** of the patents act, 1970 empowers the licensee of a patent to have the same **rights of a patent holder to take the proceedings against the infringement**. It states that in any suit for infringement of a patent by the holder of an exclusive licence, the patentee shall, unless he has joined as a plaintiff in the suit, the patentee shall be added as a defendant, but in any case a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings as per the law.¹⁹

In *Laila Nutraceuticals vs. Vittal Malya Scientific Research*, the Bangalore district court held that the Arbitrator has failed to note that **Section 109** of the Patents Act, 1970 can be invoked only when the License Agreement is registered with the patent office. The statutory right of a license is available only when the agreement is registered with the patent office. If there is no entry in the register, based on an unregistered agreement, the Plaintiff is not able to file any suit against the infringer.²⁰

¹⁸Bayer Corporation vs. Union Of India, FAO (OS) (COMM) 169/2017

¹⁹Section 109, Patents Act, 1970

²⁰ Laila Nutraceuticals vs. Vittal Malya Scientific Research, AS.74/2013

Section 110 deals with **rights of licensee under section 84 to take proceedings against infringement** and it states that any person to whom a licence has been granted under **section 84** shall have the rights to call upon the patentee to take proceedings to prevent any infringement of the patent, and, if the patentee refuses or neglects to do so within a period of **two months** after being so called upon, the licensee may institute or start the proceedings for the infringement in his own name as though he were the patentee, making the patentee a defendant..²¹

The only difference between **section 109** and **section 110** is that the **section 109** deals with the basic rights of the licensee to take proceedings against the infringement of patent and **section 110** deals with the time period of **two months** in which the licensee is expected to wait for the patentee after calling upon the patentee for the purpose of taking the infringement proceedings.

²¹Section 110, Patents Act, 1970

CHAPTER – II THE INDIAN LAWS RELATING TO THE REMEDIES FOR THE INFRINGEMENT OF PATENTS

There is a famous Latin legal maxim called as '*Ubi jus ibi remedium*' which means where there is a right there is a remedy. Patent is a right which is given to a person who had made an invention with novelty and usefulness. The holder of patent rights is commonly called as 'patentee'. Each and every patentee has the right to receive remedies in the suit of infringement of patents. The patent Act, 1970 deals with the important provisions dealing with the infringement and remedies. This chapter deals with the provisions related to the remedies or the relief for the infringement of patents.

Section 108 deals with the **reliefs in suit for infringement** which states that the reliefs which a court may grant in any suit for infringement include an injunction and, at the discretion of the plaintiff, i.e., either damages or an account of profits.

The court may also order that the inventions or the products which are found to be infringing which is in the creation of infringing goods shall be seized, forfeited or destroyed by a judicial order as the court deems fit under the circumstances of the case without payment of any compensation.²² In other words, the section 108 says that the relief or the remedies for a suit filed in the infringement of a patent can be classified into three types, they are:-

1. Injunction
2. Damages
3. Seizure, forfeiture or destruction.

1. Injunction:

Injunction means the order or a legal remedy given by the court of law. The injunction is the most common way of giving the remedy to a party who files a suit for infringement of patents.

There are three kinds of injunctions and they are,

- Preliminary injunction
- Temporary injunction
- Permanent injunction

Preliminary Injunction:

²²Section 108, Patents Act, 1970

Preliminary injunction is one which is given to a party during the beginning or before of an inquiry. The courts generally issue this preliminary injunction when it feels that it is absolutely necessary and great damage may occur without the preliminary injunction.

Temporary Injunction:

The temporary injunction is effective for only a short period of time and it has a limited scope in its impact. This injunction is one step before the permanent injunction and stands in between the preliminary injunction and permanent injunction and it is issued basically for the purpose of solving the issues during the inquiry of the court proceedings.

In *Ramu vs. Adyar Ananda Bhavan, Chennai*, the plaintiff has been issued with patent rights for both process and product. It is also relating to the preparation of low glycemic sweets and selling of Indian sweets made of fructose. This suit was filed for restraining the defendant from making or selling products made with the patented process. The court granted an order of injunction in this case.²³

Permanent Injunction:

The permanent injunction is issued only after the inquiry of the matter. It is issued only after the temporary injunction or sometimes after the preliminary injunction. It is the last injunction given in a suit for the purpose of bringing an end to the suit. The permanent injunction is also called as conclusive injunction.

In *Bajaj Auto Ltd. vs. TVS Motor Co. Ltd*, a suit filed under **Section 108** of the Patents Act, 1970 for the relief of permanent injunction in respect of plaintiff's patent. In this suit the plaintiff claimed the damages for infringement to the extent of Rs. 10, 50, 000/-²⁴

2. Damages:

The next remedy or the relief available for the plaintiff is the award of damages. The court has the discretion to award damages in addition to an injunction in certain cases where the money can be easily estimated and compensated. The object of damages is to compensate for the loss or injury happened due to an infringement of patent.

Section 111 of the Patent Act, 1970 deals with the **restriction on power of court to grant damages or account of profits for infringement**²⁵ which states that in a suit for infringement of patent, the damages shall not be granted against the defendant who proves in the court of law

²³Ramu Vs. Adyar Ananda Bhavan, Chennai, (2007) 2 MLJ 339

²⁴Bajaj Auto Ltd. vs. TVS Motor Co. Ltd, C.S No. 979 of 2007

²⁵Section 111, Patents Act, 1970

that at the date of the infringement he was unaware and had no reasonable grounds for believing that the patent existed in an invention.

It also states that in any suit for infringement of a patent the court may, if it thinks fit, refuse to grant any damages or an account of profits in respect of any infringement committed after a failure to pay any renewal fee within the prescribed period and before any extension of that period and also where an amendment of a specification by the way of any disclaimer, or correction or explanation which has been allowed under this Patent Act, 1970 after the publication of the specification, no damages or account of profits shall be granted in any court proceedings that too in respect of the use of the invention before the date of the decision allowing the amendment, unless the court is satisfied that the specification as originally published was framed in good faith and with reasonable skill and knowledge, in other words the court cannot grant the damages for the infringement of patent which was occurred before the amendment of the specifications.

In *Rajpraksh vs. Mangat Ram Chowdhury*, it is observed that the ingredients of infringements were discussed. The patented article or where there is a process, then the process has to be compared with the infringing article or where there is a process, then the process has to be compared with the infringing article of process to find out whether the patent has been infringed.²⁶

3. Seizure, forfeiture or destruction:

The plaintiff has another way of remedies by the way of seizure, forfeiture or destruction of goods without payment of compensation, in other words the court can order that the goods which are found to be infringing shall be seized, forfeited or destroyed by any judicial order as the court deems fit under the circumstances of the case without payment of any compensation. This is a kind of administrative remedy.

In *Bayer Corporation vs. Union Of India*, a writ petition was filed for the purpose of seeking a direction to the Customs Authorities to seize the consignments for export containing products covered by compulsory Licence.²⁷

Section 114 deals with the **relief for infringement of partially valid specification** which states that during the proceedings for infringement of a patent it is found that any claim of the

²⁶Rajpraksh vs. Mangat Ram Chowdhury, AIR 1978 Del 1

²⁷Bayer Corporation vs. Union Of India, FAO (OS) (COMM) 169/2017

specification is in respect of which the infringement is said to be valid, but then any other claim of the invention is invalid, the court of law may grant a relief in respect of any valid claim which is infringed, and provided that the court shall not grant relief except by the way of injunction.

It also states that where the plaintiff proves that the invalid claim was framed in good faith and with reasonable skill and knowledge, the court shall grant relief in respect of any valid claim of the invention which is infringed by subject to the discretion of the court of law as to costs and as to the date from which damages or an account of profits should be established by calculation, and in exercising such discretion the court may take into consideration the conduct of the parties in inserting such invalid claims in the invention or in the specification or allowing them to remain there.

In *Galatea Ltd vs. Diyora And Bhanderi Corporation*, the Gujarat High Court in its order it was contended that as provided under **Section 114** of the Act, a mere non- infringement of only one claim under the entire patent does not absolve the defendants from being liable for infringement of all other claims under the patent.

CONCLUSION:

Patent is a right given in a national or international level which increases the trade and commerce of a nation and leads to the increase of tax payers. Patent law acts as a security guard to protect the originality of the invention and it also encourages the inventors or the scientists to invent further more inventions for their profit gain which directly increases the fame, reputation and financial status of a nation. Today the world believes that the technological advancement of a nation is primarily equal to the development of a nation, so all the developing and developed countries of the world are giving more importance to the patent law. The patented invention plays a major role in the growth of poor countries. The patented inventions creates globalisation and also promotes friendly relations with the other countries, so it is highly important to protect the patented inventions from against the infringement of patent rights.