
THE INTERFACE OF INDIAN PATENT LAW AND INFRINGEMENT: A PRECEDENT-BASED ANALYSIS

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“Innovation distinguishes between a leader and a follower”– Steve Jobs

Intellectual property rights are cornerstones of the innovation-driven economy, ensuring inventors and creators are accorded an exclusivity, albeit limited, ownership of their inventive contribution. Among these rights, patents hold a central position, ensuring technological development and economic advancement. A patent confers upon the inventor an exclusive legal right over the invention, thereby prohibiting others from manufacturing, using, distributing, or commercializing it without authorization.

The Patent is elucidated under the provision of section 2 (m) of the Patents Act,1970. One of the best examples of patent invention would be the most famous invention of the electric bulb by Thomas Alva Edison in 1878.¹ In accordance with the principles of the Patents Act,1970, a patent owner has a lawful right to prevent or restrict others from using by any means, whether it is selling, producing, or distributing, the patented invention, without the permission of the holder. The provision of sections 3 and 4 provides what inventions shall be considered patentable and what are not. Any unauthorized use of a patent holder’s invention or creation, without the consent of the patent holder, amounts to patent infringement. There are three essential elements for the criteria of registration of the Patent – Novelty (Section 2(I)), Inventive Step (Section 2 (ja)), and Industrial Process (Section 2 (ac)).

As per the provision of section 43 of the Patents Act, 1970(Chapter VIII – Grant of Patents conferred thereby) and Rights Conferred Thereby and rule 74 of the Patents Rules, 2003 (Chapter VIII-Grant of Patents), a patent is granted to the patent holder. The provision of section 53 of the Patents Act,1970 provides that an exclusive patent right shall be granted to the patent holder for a period of twenty years from the date of filing of the application. As per the explanation provision, the term of patent in case of an international application filed under

¹Analysing patent laws and infringement in India and the United States, (last visited on 2 November,2026, at 4:22PM) <https://blog.ipleaders.in/analyzing-patent-laws-and-infringements-in-india-and-the-united-states/>.

the Patent Cooperation Treaty designating India, shall be granted from the international filing date.²

Albeit Infringement is not defined in the act, the scope is drawn from the provision of section 48 of the Patents Act,1970, in which clause (a) provides that where the subject matter is products in India, an exclusive right to prevent a third party from using, offering for sale, or distributing. Clause (b) of section 48 of the Patent Act,1970, provides that where subject matter is a process in India, exclusive right is granted to prevent third parties from using, offering for sale, selling, or importing.³

In the case of *FMC Corporation & Ors. v Natco Pharma Limited (2022)*⁴, It was held by the Hon'ble Delhi High Court that sulfonyl chloride was an essential element of the Patented process and the accused process was materially different, hence it did not amount to infringement. It was also emphasized by the court that element by element comparison shall be taken into consideration rather than broad similarity.

In the case of *GSP Crop Science Pvt ltd. v BR Agrotech Ltd. (2025)*⁵, It was stated that, other than pharmaceuticals, formulation of patents in agriculture is also enforceable in India. In the present case, the issue pertained to the literal infringement of a formative patent, and the court consequently granted a permanent injunction along with damages.

The case of *Biswanath Prasad Radhey Shayam v Hindustan Metal Industries(1979)*⁶Hon'ble Supreme Court laid down the guidelines from which infringement of patent shall be determined: firstly, read the description and claims; then identify prior art, and determine improvement over the prior art and list the broad features of the improvement, lastly if the defendants process or apparatus is either identical or comes within the scope of plaintiff's process, it shall be considered that there is an infringement.⁷

The provision of section 104 of the Patent Act,1970, governs the jurisdiction to institute a suit for infringement, it provides that no suit shall be filed in a court inferior to the District Court

²The Patents Act,1970 & The Patents Rules Act,2003.

³The Patents Act,1970

⁴ FMC Corporation & Ors. v Natco Pharma Limited (2022) 92 PTC 257(Del)

⁵ GSP Crop Science Pvt ltd. v BR Agrotech Ltd. CS(COMM) 82/2023, I.A. 3231/2024 (25 July 2025).

⁶Biswanath Prasad Radhey Shayam v Hindustan Metal Industries 1979 (2) SCC 511

⁷Patent infrgment in India v patent infrgment in the US, (last visited on 12 Novmeber,2026, at 12:20 PM) ,<https://blog.ipleaders.in/patent-infringement-in-india-v-patent-infringement-in-the-us/>.

or High Court of the original jurisdiction.⁸ It is pertinent to consider that under the provision of section 19 of the Civil Procedure Code, 1908, the patentee has a right to institute a suit for infringement, where he resides or carries on business, and the patent holder also has an option to file a suit for infringement in a court that has jurisdiction over the area where the cause of action arose.

There are exceptions where the act does not amount to infringement. As per the provision of section 107A of the Patents Act, 1970, there are two elements: the former is the Bolar provision (section 107A(a)), and the latter is the parallel import provision (section 107A(b)). The Bolar provision provides the right to the manufacturers of the pharmaceutical products to research existing patented products so that the products may be produced for the welfare of the general public. The parallel import provision provides a right to import the products from a person who is authorized by the patentee. Such importation would not amount to infringement of patent holders' rights. In simple words, any person may import patented products from a person who is duly authorized or has a license; it would not amount to infringement.

In a recent lecture, Prof. Padmashree Gehl Sampath, the research discussed how patent rights granted to the big private companies are affecting the welfare of the general public. There is a need for reform in the system. As exclusive rights granted to private companies in pharmaceutical cases provide them ownership rights that affect the society at large, as such access is given to only parties who can afford the product and process.

The provision of section 47 of the Patents Act, 1970 permits the use of inventions by the government, constituting one of the statutory exemptions for infringement. Furthermore, provisions of sections 99 to 103 of the Patents Act, 1970, govern the use of such inventions by the government and lay down the conditions under which such use may be exercised. Section 47(3) of the Patents Act, 1970, provides the exemption for research and development where scientific researchers are allowed to use information for the advancement of science and social goods. However, there are certain limitations to acts done in the process of research. The provision of section 47(4) grants the government the authority to supply patented medicines to medical institutions; however, this power must be exercised by balancing the public interest in access to healthcare with the exclusive rights conferred upon the patent holder. However, the use of patented medicine or drugs, without the consent of the patent holder, amounts to

⁸Ibid.

infringement.⁹

Furthermore, the Doctrine of First Sale, also known as the exhaustion doctrine. It provides that where a sale of a patented product is made by the patent holder or the patent holder's authorized agent, conferring upon the buyer the right to use or resell the product, such use or resale shall not constitute infringement. The doctrine is based on the concept that even though the patent holder's right is limited while the right of others to use, sell, or distribute a patented product should not be limited.¹⁰

Remedies available for infringement are provided under the provision of section 108 of the Patent Act,1970- a permanent injunction is a kind of measure that aims to protect the patent and prevent further harm to the patent holder. A permanent injunction is granted upon the final determination of a case, whereas a temporary injunction under Order XXXIX of the Civil Procedure Code,1908, is a remedy provided before the final verdict of the case. It is for the status quo of the patent holder.¹¹Moreover, the ex-parte injunction is granted under urgent scenarios and is usually granted without a hearing.

Patent law serves as a vital bridge between innovation and public welfare, ensuring that the patent holders are rewarded for their innovation while public welfare is aided by such new disclosure of information. Albeit such protection is provided for a limited time, it encourages development through society. A patent is granted protection for twenty years. Through the recent case laws, for instance, *FMC Corporation & Ors. v Natco Pharma Limited (2022)*¹², the Indian courts have established a fair and balanced approach by focusing on element by element rather than just similarity.

⁹Analysing patent laws and infringement in India and the United States, (last visited 14, November,2026, at 3:12PM), <https://blog.ipleaders.in/analyzing-patent-laws-and-infringements-in-india-and-the-united-states/>.

¹⁰Analysing patent laws and infringement in India and the United States, (last visited 14, November,2026, at 3:12PM), <https://blog.ipleaders.in/analyzing-patent-laws-and-infringements-in-india-and-the-united-states/>.

¹¹ An overview of the patent infringements and remedies available in India, (last visited on 15, November,2026, at 2:12PM) <https://blog.ipleaders.in/an-overview-of-the-patent-infringements-and-remedies-available-in-india/>

¹² Ibid.

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