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Remedies for Infringement of Intellectual Property Rights

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ABSTRACT: In essence, IPRs are pessimistic in nature: they all confer on their owners the right to prohibit someone from doing such activities without the permission of the holders of the rights. The prohibitory injunction is the actual expression of this power to deter infringers. A prohibitive injunction is an order issued by a court that allows a specified party or entity to refrain from performing those identified actions that are the exclusive preserve of the owner of the IPR. The prohibitive injunction is by far and away the most relevant solution in effect in most IPR violation cases. Therefore, this paper discusses in brief all the remedies available to the proprietor against the infringement of an intellectual property right.[1]

KEYWORDS: Infringement, IPR, Prohibition, Remedies.

I. INTRODUCTION

In essence, IPRs are pessimistic in nature: they all confer on their owners.

The right to prohibit someone from doing such activities without the permission of the holders of the rights. The prohibitory injunction is the actual expression of this power to deter infringers. A prohibitive injunction is an order issued by a court that allows a specified party or entity to refrain from performing those identified actions that are the exclusive preserve of the owner of the IPR.[2] The prohibitive injunction is by far and away the most relevant solution in effect in most IPR violation cases. The search and confiscation of infringing products, including plates described as including blocks, moulds, shifts, negatives, duplicating devices or any other device used or intended for the printing or reproduction of copies of the job.[3]

Delivery to the copyright holder of the infringing copies or covers. The deadline for lodging a lawsuit for copyright infringement is three years after the date of the infringement. Where the cause of action for the filing of a copyright infringement case is that of a recurrent nature or a continuous one, the suspension duration of three years shall begin on the day of the last infringement. There are particular solutions for violation of copyright online as well.

The patent proprietor may bring legal action in respect of any act of infringement of the patent and may, in such proceedings, bring an injunction relating to the limitation of the infringement, an application for distribution or dissolution, a demand for damages or a benefit account and/or a complaint that the patent is legitimate and has been infringed.[4]

In view of infringements that take place at some point since the publication of the patent application, a claim for damages or an account of income can be made. Only after the patent has been granted is a claimant entitled to bring litigation.

Article 10 of the EU Directive on the protection of intellectual property rights provides that EU Member States shall ensure that, at the request of the claimant, the competent judicial authorities may require appropriate remedial measures to be taken with regard to the products which they have found to be infringing an intellectual property right and, where

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appropriate, with regard to the materials and implements used. These steps include demolition, recall and exclusion from commercial outlets of infringing products.

The court would consider the proportionality between the nature of the breach, the remedy ordered and the rights of third parties before the grant is granted.

The most common form of remedy obtained and granted in patent infringement cases is an injunction to prohibit a criminal from violating a patent. An injunction is a fair relief and, hence, it is at the discretion of the judge to issue it. It can decline to issue one if the court finds that an injunction will be unreasonable.

Before the case can be heard at trial, an interim order is indefinite and prevents the suspected infringement(s). In general, injunctive relief is issued on the grounds of a first-instance ruling that at least one of the legitimate claims of a patent has been infringed, such an injunction being permanent.

Not only is the grant of an injunction voluntary, but due to the seriousness of the offending statute, the requirements to be enforced which vary. In such cases, the court may deem it necessary to issue an injunction extending past the expiry of the patent in order to prohibit the selling of goods made within the life of the patent, or to preclude the defendant from entering the market after the expiry of the patent.

The court may stay the injunction pending appeal if the court finds that, on appeal and based on the balance of convenience, the infringer has a real prospect of success.

II. DISCUSSION

The first two solutions, constitutional and penal, are the only ones with any particular functional value. Under civil remedy, interlocutory injunction, pecuniary remedies, Anton Piller orders, Mareva injunction and rendition of accounts, distribution of infringing copies and restitution for transfer can be brought under civil remedies. One may file for imprisonment and a fine, seizure of infringing copies and transfer of them to the owner under criminal remedies. Under administrative remedies, to preclude the importation of infringing copies and the delivery of seized infringing copies to the purchaser, one can file for the Registrar to be transferred. The Act provides that any person who, in order to infringe those rights, circumvents an appropriate technical measure applied for the purpose of protecting any of the rights granted by the Act is punishable.[5]

The Act provides that the deliberate violation or abetment of a copyright infringement in a production will be treated as a criminal act. Legal remedies for violation of copyright include:

Imprisonment sentence which will not be shorter than six months but may be extended to three years. Fines that are not less than Rs.50,000 and can be extended to Rs.200,000

Similarly, awaiting appeal, the court may grant injunctive relief if it finds that an injunction is appropriate in order for the Court of Appeal to be in a position to bring justice between the parties. If this is the case, if the injunction is lifted by the Court of Appeal, the complainant will be obliged to grant an undertaking to pay the defendant.

Damages or a profits record

The copyright owner can only claim penalties for injuries incurred by infringing actions or an estimate of the infringer's earnings, but they cannot seek both. The complainant would usually apply for these solutions in the alternative when drawing up allegation data.

Following a finding of breach, the court will order an investigation as to restitution or an income statement. At the outset of this process, disclosure will be given to the applicant to allow him to make a decision between the two. The burden of evidence is on the complainant to assess the degree of the harm during the investigation.

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III. CONCLUSION

The object of the grant of damages is to compensate the copyright owner for the loss incurred and to place them in the same condition as they would have been except for the actions of infringement. They can be calculated by reference to a fair royalty rate (particularly when the patent has been granted) in connection with the loss of income incurred by the patentee attributable to the infringing activities.[6]

If the complainant fails to obtain sufficient compensation for the real discrimination incurred, then an extra amount, such as the moral prejudice rendered to the right-holder, can be awarded in compliance with the IP Enforcement Directive, referring to the benefit made by the defendant from understanding the violation.

Exemplary awards in a patent infringement proceeding could be possible if the complaint comes under the scope of:

Oppressive, unreasonable or unlawful acts by government servants; where they have measured the conduct of the defendant to make a benefit for themselves that could well outweigh the fee owed to the plaintiff; or where the law expressly allows the same.

REFERENCES

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