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A STUDY OF IPR THROUGH VARIOUS CASE LAWS WITH SPECIAL REFERENCE TO IT INDUSTRY

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Abstract: The paper attempts to understand the relevance of IPR with reference to IT industry by analyzing various case laws in the field. This paper relies very heavily of secondary data published in print as well as electronic media. Through the study we conclude that Patenting is an effective tool against stealing of ideas, technologies and other form of violation of ideas. On analyzing the above cases, we found that the commonly violated IPR CASE is "Patent".

Keywords: IPR, Infringement, Case Laws, Patent



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INTRODUCTION

Although many of the legal principles governing intellectual property rights have evolved over centuries, it was until the 19th century that the term intellectual property began to be used and not until 20th century that it became commonplace in the majority of the world. Intellectual property rights in India were imported from the west. The Indian Trade and Merchandise Marks Act 1884 was the first Indian Law regarding IPR. The Patent law was enacted in 1856 followed by the series of acts being passed. They are Indian Patents and Designs Act in 1911 and Indian Copyrights Act in 1914. Indian Trade and Merchandise Marks Act and Indian Copyrights Act have been replaced by Trade and Merchandise Marks Act in 1948. The modern concept of IPR originated in the United Kingdom, in the year 1710, with the Statute of Anne.

The current Copyright Law of the United Kingdom is to be found in the Copyright, Designs and Patents Act 1988 (the 1988 Act), as amended. This came into force on 1 August 1989, for the most part, save for some minor provisions that were brought into force in 1990 and 1991.

Each and every product used in our day to day lives is a result of human creativeness and innovation. Parker, a multi-national company famous for its pens has several patents to its name for the technology used. The trademark on the pen is also an intellectual property [IP], which helps the manufacturer to market the product and develop a clientele. The product and the design are legally protected through the acquirement of IP rights. In order to secure the best commercial results from any products or services a business produces, there ought to be systematic protection, management and enforcement of the intellectual property that it creates.

IP rights foster a competitive marketplace by protecting the original work of the producer for a certain period of time. A business has a trade name, valuable confidential business information, creative original designs, inventions or publications, a business enterprise shall protect all of these. A business enterprise should make the best use of IP for the development of business and in order to develop a competitive approach. With the advent of a global business market, the competition between companies has been rapidly increasing. Having a strong IP protection is relevant for the development of a business in the market.

SCOPE OF STUDY

This paper attempts to study Relevance of IPR in IT industry Through Analysis of various case laws partnering to IPR issues. This paper relies heavily on secondary data through published articles and research reports on the web as well as print media.

OBJECTIVE OF THE STUDY

- To understand the relevance of the IPR in growing IT industry which driven by the innovations.
- To study the common Infringement of IPR with special reference to IT industry.

RESEARCH METHODOLOGY

The methodology of the study relied on web – based research for the secondary data.

CASE LAW 1. Apple Inc. vs. Samsung Electronics Co., Ltd.

In the mid April Apple filed infringement suit on Samsung in US District court that several Android based smart phones and tablets of Samsung are infringing design and technology of apple intellectual property. Apple suit against Samsung covered the Samsung Nexus S, Epic 4G, Galaxy S 4G and Galaxy tab. Samsung claimed Apple iPhone and iPad infringing on selected Samsung wireless communication patents covering methods of handling phone calls and data simultaneously. Apple won a permanent injunction on Galaxy tab 10.1 in Germany, USA. However Samsung won infringement suit in Japan.

Apple vs. Samsung case started on April 15, 2011 when Apple filed an infringement suit on Samsung for copying not only its technology but also its design. Apple filed case in US District against Samsung for copying Apple Innovative technology, distinctive user interfaces and elegant and distinctive product and packaging design, in violation of apple valuable intellectual property rights. Apple sued Samsung on Samsung Nexus S, Epic 4G, Galaxy S 4G and Galaxy Tab.

Apple and Samsung are correlated to each other as Samsung is the world largest memory chip maker and Apple is the largest consumer of flash memory. Apple buy flash memory from Samsung for its iPhone and iPad. Samsung also manufacture A4 processor used in Apple original iPad along with processor used in iPhone 3GS. They are the two big technology giants. Now Apple is looking for new supplier of memory chip.

Infringement cases are common in technology but Apple complaint against Samsung is notable because it also focus on overall product design and onscreen interface (Trade dress issue), which means Samsung has copied Apple product design along with technology. The products which are in question are iPhone 3GS, Samsung galaxy S i9000, Samsung galaxy tab 10.1. They are challenged of having the same style, user interface and even packaging copied from that of Apple product.

As Apple sued Samsung of infringing its product and techniques, Samsung also filed lawsuit against Apple iPhone and iPad for copying Samsung wireless technique and user interface. In Korea Samsung alleged Apple of violating 5 patents, in Germany covered 3 cases, in Japan 2 and in USA 10 patent infringement case is filed.

Fight was initiated by Apple on April 15, 2011 and took globally by Samsung including countries Germany, USA, Japan, Australia, South Korea and European Union.

By filing lawsuits Apple and Samsung wanted injunction against each other so that the other cannot sell its product in one market area. In this litigation war Apple is winning over Samsung by granting injunctions on some of Samsung products .These are ““Permanent injunction against Galaxy Tab 10.1 in Germany ^Injunction on selected Samsung Smart phones in Europe. Injunction only applied if the device is running Android 2.2 ‘Samsung has been forced to delay the galaxy Tab 10.1 in Australia over the litigation. ‘Samsung forced to remove the Galaxy Tab 7 from the IFA show floor as Apple won second injunction barring the sale and marketing of tablet in Germany.

By this lawsuit case Apple is warning other companies also for infringing products.

CASE LAW 2. Micromax sued by Ericsson for Rs. 100 Crore over patent infringement

Indian handset maker Micromax has been sued by Ericsson on charges of patent infringement. The Swedish network equipment maker is seeking a whopping Rs. 100 crore in damages. The company also claims that it has been negotiating with Micromax for about three years now and has finally moved the Delhi High Court to seek legal remedy.

Patent Infringement cases have become a common in the western countries where large technology companies such as Apple, Samsung, HTC, Motorola, Google, Microsoft et al are battling multiple cases. However, this is the first time a patent infringement case of such high stakes has rocked the Indian telecom space. As per Ericsson, the bone of contention is Micromax's refusal to enter into a licensing agreement covering its patented innovations across several wireless technology standards such as GSM, EDGE and 3G.

Commenting on this case, Micromax via a press statement said, "Micromax is committed to negotiating a FRAND license with Ericsson as has Ericsson undertaken to providing a Fair Reasonable and Non-Discriminatory (FRAND) license to Micromax. Since the matter is pending before the Hon'ble court it would be incorrect for Micromax to make any further statements on the matter".

Micromax is one of the most popular handset brands in India. The company has recently churned out Android-based smart phones like A110 Canvas 2 ([Review](#) | [Pictures](#)) and A116 Canvas HD (Review Pictures). As per the company, both these smart phones have got an encouraging response from the Indian market. According to a news report in [The Economic Times](#), the disputed smart phones include Micromax Ninja smart phones and the popular Canvas 2 series. Micromax's Fun book Talk tablet too is reportedly under the scanner.

While Micromax and Ericsson are at loggerheads for the patent infringement case, several other Indian handset makers are feeling the heat. Ericsson is reportedly planning to take similar legal action against some of other Indian handset makers, though at this point it is hard to comment who will be next in the firing line.

CASE LAW 3. Samsung to pay \$2 million to Nokia & Apple in the patent agreement leak case

Nokia and Apple have got favorable ruling against Samsung & Quinn Emmanuel lawyers in the confidential patent agreement leak case. Samsung will pay \$2 million to Apple and Nokia under this ruling.

If you remember, Nokia and Apple have proposed sanctions against Samsung and its representative law firm in US court. This was in relation to leak of confidential **Nokia-Apple patent licensing agreement** by one of Samsung's executives sometime back. Apple has produced this licensing agreement in court during the Samsung-Apple litigation meant to be used only by **Samsung's outside counsel (marked as "Highly Confidential — Attorneys' Eyes Only")**.

Nokia Corporation (ADR) (NYSE:NOK) and its peer **Apple Inc. (NASDAQ:AAPL)** will be paid \$2 million by Samsung & Quinn Emmanuel lawyers for leaking secrets. It is about the matter concerned with the leaking of the confidential patent licensing agreement between Apple and Nokia.

Samsung's Dr. Seungho Ahn was well informed with the confidential terms of Apple and Nokia's earlier licensing agreement. Later, the leak problem of dubbed "Patent Gate" started because of the Samsung's Quinn Emmanuel lawyers. The lawyers didn't pay importance to the confidentiality of Apple documents during the case of iPhone patent infringement trial.

At the first place, Samsung should not have shared it with Quinn Emmanuel. But the company shared it with Quinn Emmanuel lawyers who even passed it around internally in the company. The information was even used as a means to get a lucrative bargain deal with Nokia in matter

of patent negotiations. Apple came to know about the breach much later. Following the breach, it marked a case against the Samsung and its attorneys in the court. Apple asked the court to sanction Samsung & Quinn Emmanuel for their irresponsible behavior.

The court charged the sanctions against Samsung and its attorneys on two parameters. Firstly they failed to respect the confidentiality of third party information and secondly they didn't abide by the notice and mutual-cooperation requirements as per the Section 18(a) ordered by the court.

The ruling was given in the favor of Apple and Nokia. The court ordered Quinn Emmanuel to pay for all the costs and fees incurred in the entire process. Apple and Nokia demanded the extensive legal fees that were reduced twice on the basis of assertions presented by Quinn Emmanuel. However, it cannot present a strong case to get a ruling completely in its favor. It will have to pay the amount to Nokia and Apple within 30 days.

CASE LAW 4. Satyam Infoway Ltd. vs. Sifynet Solutions Pvt. Ltd.,

This is a very famous and landmark case where the Supreme Court of India decided on the issue of domain name protection for the first time in its history. This was the case wherein the apex court declared that the Indian Trade Marks Act, 1999 was applicable to the regulation of domain names as well.

Satyam Infoway (hereinafter referred to as the appellant) had registered several domain names pertaining to its business: sifynet.com, sifymall.com, sifyrealestate.com, in the year 1999. It held that the word "Sify" was a combination of elements of its corporate name "Satyam Infoway" and was a term that had garnered substantial goodwill in the market. Meanwhile, Sifynet Solutions (hereinafter referred to as the respondent) had started using the word "Siffy" as part of the domain names under which it carried on internet marketing (namely siffynet.com and siffynet.net). It claims to have registered the same in the year 2001.

Subsequently the appellant filed a suit in City Civil Court, Bangalore seeking an injunction against the respondent. The appellant held that the respondent had registered the similar sounding domain names intentionally in order to carry out their business transactions under the goodwill and brand name of the former. And that it would create a confusion in the minds of the public who would think that the services of Sifynet belongs to Satyam Infoway. The respondent contended that unlike a trade mark, the registration of a domain name did not confer an intellectual property right in the name.

The court ruled in favor of the appellant and granted the injunction in their favor. It held that the appellant was the prior user of the word 'Sify' as a result of which it enjoyed immense popularity and goodwill in relation to internet and other computer related services. Thereby, if the respondent is allowed to further continue with the use of the domain names it would in all likelihood create confusion in the minds of the public. And that it may in all possibility affect the business of the appellant.

Thereafter, the respondents appealed to the Karnataka High Court. The Court stated that respondent had already invested a considerably high amount of sum in developing a customer base for its business and it would consequently suffer immense hardship and irreparable injury if the court ruled in the appellant's favor. Further it held that the business which the parties engaged in was different and therefore there was no likelihood of any confusion in the minds of the public.

Not satisfied with the decision given by the Karnataka High Court, the appellants went for an appeal before the Supreme Court of India. The case was decided by a division bench comprising Justices Ruma Pal and P. Venkatarama Reddi. It set aside the decision of the High Court and ruled in favor of the appellants. It held that though there was no law in India which explicitly deals with the domain names; it falls within the ambit of the Trade Marks Act. It further observed that a domain name enjoyed all features of a trademark. Accordingly it ruled that if the respondent was allowed to further continue using the domain names it would in all likelihood create confusion in the minds of the general public. A user could be diverted to the website containing the unauthorized domain name. And upon his arrival at the website, if he does not find the goods or services associated with the mark, he might think that the legitimate owner was misrepresenting the claims. This would result in the loss for the legitimate owner, thereby affecting his goodwill and brand name.

Thus the apex court granted an injunction in favor of the appellants, thereby restraining the respondents from further using the domain names in their business transactions.

CASE LAW 5. Amazon's 1-Click Patent

Amazon was granted a patent for 1-click technology on September 28, 1999. Also known as one-click buying, the technology allows customers to make an online purchase in a single click—without having to manually input billing and shipping information every time they purchase a product. Instead, 1-click uses a billing address and credit card or other payment info that is kept on file in the user's account.

There have been several patent disputes surrounding 1-click technology, including a patent infringement lawsuit filed against Barnes & Noble in 1999—only a month after Amazon's patent was issued. Barnes & Noble offered a checkout option called "Express Lane," which also enabled shoppers to make a purchase with one click. The lawsuit was settled in 2002; however, the terms were not disclosed.

CASE LAW 6. Digital Video Recording (TiVo Inc. v. EchoStar Corp.)

TiVo filed a lawsuit against EchoStar Corp, a company closely affiliated with Dish Network, in 2004, claiming that EchoStar's digital video recording boxes infringed on TiVo's patent for 'A Multimedia Time-Warping System.' Essentially, TiVo had a system whereby their boxes could parse real-time metadata for whatever show was being watched, allowing the user to fast-forward, rewind, pause, index, and speed up their shows. EchoStar lost the case and the appeal, and were forced to re-design their DVR, which they did by replacing the original parsing feature with one that used statistical estimation and an index-less system. TiVo, however, felt that this was not different enough from its own technology, and that EchoStar should be held in contempt. When judging for contempt, courts typically relied on a test established in 1985 called a KSM test, which determines whether or not there was a colorable difference between the old product and the redesign. After failing this test, EchoStar pushed for a rehearing en banc. In this case, the court actually determined the KSM test was unworkable and introduced a new precedent for determining if an infringer can be held in contempt. The new test is actually more rigorous, and requires the patent-holder to point to the specific elements of the re-design that still infringe on the same patent. EchoStar lost again, and eventually settled with TiVo, paying \$500 Million for the rights to license TiVo's technology, but the precedent will certainly affect future contempt hearings.

CASE LAW 7. Microsoft Corp. vs. Motorola Inc.

In the district court, Motorola's letters of assurance to the IEEE and ITU were seen as forming a contract that stated that Motorola would eventually have RAND terms of licensing with its licensees. The contract made no guarantee that any initial offers to license would include RAND terms; however, if Motorola were to offer blatantly unreasonable terms then it would act in bad faith by not wanting to eventually reach RAND terms with its licensees. As the qualifications for RAND terms are inherently different from company to company, the court made no immediate decision as to whether or not Motorola's initial offer was blatantly unreasonable and a breach of contract. The court did rule that Motorola was prohibited from further action against Microsoft based on patent infringement related to the 802.11 and H.264

standards, and that Microsoft and Motorola were to reach an agreement on RAND terms for licensing the same patents. Subsequently Microsoft and Motorola filed several claims and counterclaims on the same issue, with Microsoft claiming that Motorola had offered blatantly unreasonable terms and Motorola claiming that its offer was reasonable. As of September 4, 2013 Microsoft won its claims that Motorola's requested royalties were unreasonable and won approximately \$14.5 million in damages.

Several subsequent cases cited Microsoft v. Motorola as precedent that an agreement with a standard-setting organization to provide RAND terms to licensees constituted a contract, and that patent-infringement injunctions should be avoided in favor of negotiating a RAND licensing agreement.

FINDINGS & SUGGESTIONS

- On analyzing the above cases we found that the commonly violated IPR CASE IS "Patent".
- In the globalised business scenario where the sharing of information is only click-of-the button away the relevance of IPR is more predominant.
- We here by strongly suggest that all business organization, big or small, particularly engaged in research and development & immovable technologies to patent their product/idea.
- Patenting is an effective tool against stealing of ideas, technologies and other form of violation of ideas.
- It could be suggested from the above research that there can be more advancement in the intellectual property rights if made it aware to the layman and general public about the concept of IPR and its conventions.

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