



Patent Infringement in India: Law, Remedies and Litigation Practice

A Comprehensive Analysis under the Patents Act, 1970

Published by **Patenevo** | Indian Intellectual Property Knowledge Platform | www.patenevo.in

Patent infringement litigation in India is no longer rare or exceptional. Over the last decade, particularly in pharmaceuticals, telecommunications, mechanical engineering and emerging technology sectors, Indian courts have increasingly engaged with complex patent disputes. The Patents Act, 1970 provides the statutory foundation, but the real texture of infringement law emerges in how courts interpret claims, evaluate evidence and grant interim relief. A patent infringement action is rarely confined to a narrow technical comparison — it becomes a combination of statutory interpretation, claim construction, expert evidence, commercial impact and equitable principles.

Statutory Basis — Section 48

Section 48 of the Patents Act, 1970 defines the exclusive rights conferred upon a patentee. Where a patent is granted for a product, the patentee has the exclusive right to prevent third parties from making, using, offering for sale, selling or importing that product in India without consent. Where the patent is for a process, the patentee can prevent others from using the process and using, offering for sale, selling or importing the product obtained directly from that process. Infringement is essentially the unauthorized exercise of any of these exclusive rights.

Direct Infringement

Direct infringement occurs when a person performs any act falling within the scope of the claims of a granted patent. The critical exercise is claim construction. Indian courts follow the principle that the claims define the boundaries of the monopoly. The specification may assist in interpreting the claims, but it cannot expand them beyond what is claimed. Infringement analysis involves identifying each element of the claim, comparing it with the accused product or process, and determining whether all essential elements are present. If even one essential feature is absent, infringement may fail.

Process Patent Infringement — Section 104A

Section 104A deals with burden of proof in process patent cases. Where the patent relates to a process for obtaining a product and the product produced by the defendant is identical, the court may shift the burden onto the defendant to prove that their process is different. This is particularly significant in



pharmaceutical manufacturing, where internal processes are not publicly visible. Courts apply Section 104A cautiously — the plaintiff must first establish a reasonable likelihood that the defendant is using the patented process.

Importation as Infringement

Importing a patented product into India without authorization constitutes infringement under Section 48. This is especially relevant in cross-border manufacturing structures where goods are produced outside India and sold domestically. Indian courts have held that the place of manufacture is irrelevant if the product is imported and sold within India.

Jurisdiction

Section 104 provides that a suit for infringement must be filed before a District Court having jurisdiction. After the Commercial Courts Act, 2015, most patent infringement matters are heard by designated Commercial Courts or High Courts exercising original jurisdiction. Where a counterclaim for revocation under Section 64 is filed, the suit is transferred to the High Court. In practice, major patent disputes are litigated before High Courts at Delhi, Bombay, Madras and Calcutta.

Defences in Patent Infringement Actions

An infringement action rarely proceeds without a validity challenge. Common defences include:

Non-Infringement

The defendant argues that their product does not fall within the scope of the claims.

Invalidity — Section 64

Grounds include lack of novelty, obviousness, non-patentable subject matter under Section 3, insufficient disclosure and lack of inventive step. Indian courts permit defendants to challenge validity as a counterclaim.

Research and Experimental Use — Section 47

Certain acts done for research or experimental purposes may not constitute infringement.

Bolar Exception — Section 107A

Section 107A allows use of a patented invention for purposes reasonably related to development and submission of information required under any law regulating manufacture, construction, use or sale of any product. This is crucial in pharmaceutical patent disputes and allows generic manufacturers to prepare for regulatory approval before patent expiry.



Government Use — Section 100

The government may authorize use of a patented invention for governmental purposes, subject to compensation.

Remedies for Patent Infringement

Injunction

Injunctions are the most sought-after relief. They may be interim, ad-interim or permanent. Courts apply the traditional three-fold test: prima facie case, balance of convenience, and irreparable injury. In pharmaceutical cases, interim injunctions are often decisive. The American Cyanamid Co v. Ethicon Ltd [1975] AC 396 framework — establishing whether there is a serious question to be tried and evaluating the balance of convenience — has been influential in Indian courts.

Damages or Account of Profits

Under Section 108, the court may grant damages or account of profits — the plaintiff must choose one. Courts have historically been conservative in awarding high damages, though recent years have seen a gradual shift toward more realistic compensation.

Delivery Up and Destruction

The court may order infringing goods to be seized, delivered up or destroyed.

Anton Piller Orders

Although not explicitly in the statute, courts grant search and seizure orders in appropriate cases to preserve evidence.

Pharmaceutical Patent Infringement

Pharma disputes form the backbone of Indian patent litigation. Key issues include Section 3(d) compliance, evergreening arguments, polymorph patents, and process vs product overlap. Courts often balance public interest considerations, particularly where life-saving drugs are involved. The Cipla v. Roche litigation and the Novartis v. Union of India saga have shaped the boundaries of pharmaceutical patent enforcement in India.

Conclusion

Patent infringement in India is a commercially significant area shaped by evolving judicial practice, technical complexity and strategic litigation. The Patents Act, 1970 provides the framework through Sections 48, 104, 104A, 107A and 108. However, the real contours of infringement are drawn in courtrooms — through claim construction, expert testimony and equitable discretion in granting

injunctions. For patentees, enforcement requires preparation, technical clarity and strategic timing. For defendants, early validity analysis is essential.

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