



**RAMA
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FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB/LLB

SEMESTER SUBJECT:

INTELLECTUAL PROPERTY RIGHTS

SUBJECT CODE:

BALLB808/BBALLB808/LLB 604

NAME OF FACULTY: PANKHURI SRIVASTAVA

Lecture- 19



LECTURE 19: PATENT LAW: INFRINGEMENT

▣ Nature of Patent rights

A patent is a statutory right conferring a certain monopoly for a limited period, subject to certain conditions.

The essence of patent law does not lie in giving the right to use his invention, it lies in excluding others from making use of his invention for a limited period.

There is no exclusive right similar to that of a patent in a secret formula or process which is not patented.

1. The right contained under this section is an exclusive right, whether product or process.
2. No third party can exercise the patentee's right without his consent.

▣ Meaning of infringement

Patent infringement is the commission of a forbidden act with respect to a patented invention without permission from the patent holder.

The patent infringement may vary by authority, but it normally includes using or selling the patented invention.

The extent of protection is defined in the claims of the granted patent.

▣ What can amount infringement

1. The colourable imitation of an invention.
2. Immaterial variations in the invention.
3. Mechanical equivalents (substitutes)
4. Taking essential features of an invention.

▣ The colourable imitation of an invention.

A colourable variation or immaterial variation amounting to infringement is where an infringer makes slight modification in the process or product but in fact takes in substance the essential features of the patentee's invention.

▣ Immaterial variations in the invention.

Where the essence is same but there is slight change which is not affecting the essential characteristic of main invention.

☐ **Mechanical equivalents (substitutes)**

Infringement by mechanical equivalents would occur when he uses mere substitutes for those features so as to get the same result for the same purpose as obtained by the patentee.

☐ **Taking essential features of an invention.**

In this case the invention is apparently different but the main features are taken from the patent of alleged infringer

☐ **When a suit can be instituted**

A suit for infringement can be instituted only after the patent has been sealed.

When the term of the patent has expired and infringement occurred during the term of the patent, a suit can be instituted during the term of even after the expiry of the term.

When a patent was obtained wrongfully by a person and later granted to the true and first Inventor, no suit for infringement can be instituted for any infringement occurring before the period of such grant to the true and first inventor.

☐ **When a suit cannot be instituted**

When a specification has been accepted and published, the applicants cannot institute a suit for infringement, but damages sustained due to the infringement.

☐ **Period of limitation**

The period a limitation for instituting a suit for patent infringement is three years from the date of infringement.

☐ **Who Is Entitled To Sue**

(1) The patentee.

(2) The exclusive licensee if the license is registered (sec 109).

(3) A compulsory licensee when the patentee refuses or neglects to institute proceedings.(sec 110) *(within 2 months)*

(4) A licensee other than the above two licensees can bring an action for infringement upon the terms of the contract between the licensor and licensee.

(5) Assignee, he can sue only after the application for registration of the assignment in his favour has been filed. If a patent is assigned after the commencement of action, the assignee is to be joined as a co-plaintiff. An assignee cannot sue for infringement which occurred prior to assignment.

