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EXPLORING THE AMBIT OF INJUNCTION UNDER THE IPR

Prity Kumari Suman¹

ABSTRACT

Injunctions are court orders that protect intellectual property (IP) owners' rights by prohibiting certain activities. They can be types like preliminary, permanent, or temporary restraining orders. The legal standards for injunctions include merits, irreparable harm, hardships, and public interest. Enforcement of injunctions involves contempt proceedings and damages. International perspectives on injunctions are discussed, as are the potential impact on innovation, competition, and consumer welfare. Understanding these aspects can provide a comprehensive analysis of IP law's crucial role in protecting IP rights. This text explores the challenges and mechanisms for enforcing injunctions in IP cases, their international perspectives, and their potential impact on innovation, competition, and consumer welfare, balancing protection of IP rights with market competition.

Keywords: Injunction, Preliminary Injunction, Permanent Injunction, Intellectual Property owner.

INTRODUCTION

“The judiciary's ability to adjust to changing conditions and its dedication to providing strong protection for intellectual property rights are both demonstrated by dynamic injunctions in intellectual property rights.”

Intellectual Property is an intangible property created by virtue of human intellect and protected as just like any other tangible property under the laws across jurisdiction is. Any commercially valuable product of the human intellect, in a concrete or abstract form such as a copyrightable work, a protectable trademark, a patentable invention, or a trade secret renders it protection in intellectual property. Such protection is granted to protect these creation against infringement

¹ Student at School of Law and Governance Central University of South Bihar, Gaya

and allow the creators benefit out of their intellectual investment and efforts.

The various types of intellectual property includes Copyright, Related rights, Trademarks, Geographical Indications, Industrial Designs, Patents, Trade Secrets, Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources. These are safeguarded and acknowledged under Copyright Act of 1970, Trade Marks Act of 1999, and Patents Act of 1970, and Geographical Indications of Goods (Registration and Protection) Act of 1999 e.t.c. Effective protection of exclusive right is crucial for fostering creativity, innovation, and economic growth by enticing companies and peoples in research.

There exist several Civil and Criminal remedies at infringement of these IP rights. This research paper aims to give to the reader, the concept of injunction under the IPR laws, judicial development to dynamic injunction.²

WHAT IS INJUNCTION

A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action fit law.³

The legal process is an unpredictable journey filled with highs and lows, turns and twists, and obstacles. By definition, an injunction is a form of preventive remedy. An equitable remedy known as an injunction can be granted to stop a defendant party from performing specific acts or demonstrations, or it can force them to perform such acts such that the plaintiff is not inconvenienced or bothered by them. In such a lawsuit, the court renders a judgment, which the parties are required to follow; otherwise, there may be harsh financial penalties or, in certain situations, even jail time.

Another way to think of an injunction is as a discretionary remedy granted by the court that either compels the party to do something or forbids them from doing something. It could come in the form of a final or temporary order. Only a few situations call for the application of the injunction remedy:

(a) To stop someone from posting anything offline or online, or to remove information that has already been published,

² <https://blog.ipleaders.in/injunction-all-you-need-to-know-about-it/>

³ Black's Law Dictionary: 2nd Edition

- (b) In order to stop additional building on a plot of land, as well as the sale or transfer of any related property,
- (c) If a search order is granted,
- (d) to stop someone from leaving the nation or location.

One of the most potent instruments available to judges is the issuance of an injunction, which can be used to both order someone to refrain from infringing the rights of another person and to order them to be carried out in order to uphold those rights.⁴

HISTORICAL BACKGROUND OF INJUNCTION

The genesis of the concept of injunction is grounded on the principle of equity, and it is solely the discretion of the courts under equitable considerations. The traces of injunction is found in the England's Equity Jurisprudence, where it is borrowed from the Roman law which call injunction as 'Interdict'. Earlier in the era of Henry 6th, it was evolved as chancery remedy. It was prohibited by the chancellor, after that effect the common law decrees were prohibited to be executed through this remedy. This civil remedy is a strong mechanism and also entitled as powerful legal tool.

There were three types of injunctions at that time, are as follows:

- Prohibitory Injunction
- Restitutory Injunction
- Exhibitory Injunction

At that time, the prohibition through injunction on execution of the common law court's decree raised as a matter of clash between the common law courts and the Chancery Court. This conflict was fixated by the Attorney General, Bacon, as the affirm and strong legal tool of the court of equity. He settled this case in the favour of the chancellor and held it as strong arm.

NEED OF INJUNCTION IN INTELLECTUAL PROPERTY RIGHTS

When an intellectual property holder suffer by the actions of any individual, to bridge the gap of IP holder's loss the injunction is needed as remedy. The suffering of irreparable harm can only be resolved through injunction, and no other means can provide the same. In order to stop individuals from breaching the IP holder's right by such actions, injunction is needed to prevent such irreversible damages. Injunction is used as preventive measure, to prevent continuous

⁴ <https://blog.ipleaders.in/injunction-all-you-need-to-know-about-it/>

infringement or any as such initiatives which is helpful in maintaining the values and exclusivity of the intellectual property. It is required to preserve the rights of IP holders by putting full stop on unauthorized use, distribution and reproduction of protected work and also protecting the services given under different sectors. It can also be termed as a strong enforcement tool, compels to cease the infringement of IP rights and stop infringing activities. It ensures compliance and protection IP laws. Injunction controls the damages which cannot be fixated in long term. It is used to controls the duplication of the protected work which helps in minimising the financial losses and also harm one's reputation which can be made by potential infringers.

The purpose of the availability of the injunctions is to create sense of deterrence among infringers and the potential harmers. The unauthorized use of protected work is clear breach of exclusive rights of IP owners which is granted by IP laws itself. It cannot be tolerable to the legal system and the suffering IP holders; it will result into legal consequences.

In a round figure, injunction is an essential enforceable tool to avail remedy to IP owners and provide timely relief to prevent from monetary losses.

Court should keep favour the purpose of injunction to defeat the infringement of IP laws and should stick to these important guidelines:

- The injunction should be granted to protect and enforce rights of people and to prevent infringement of rights of IP holders.
- Injunction should be in favour of public interest. It should not defeat the purpose of preventive measure.
- Court must also record reasons and also cite proper objects that how delay may defeat the purpose of law regarding injunction.
- Injunction cannot be issued against third party and only after considering the accurate joinders of the case.
- The court can refuse the appliance of injunction if there is other efficacious relief is available and the sole ground for claiming irreparable losses under an injunction is monetary loss.
- It is an equitable relief based on equity principle which aims to provide equity in law and used as essential preventive measure to protect rights of individuals from getting breached by the potential infringers.
- Injunction do not only restrict also guarantee to specific performance of certain acts to uphold the affected party's rights.
- It is recognised as enforceable tool to serve justice as it aims to maintain the status quo

of both parties by issuing injunction against the potential infringer.

- Furthermore, it aims to undo the irreparable damages. It is a tailored solution for both parties based on facts and circumstances of each case.
- Conclusively, it restricts wrongdoers by creating any sort of nuisance or scenarios which may potentially harm the intangible properties and lead their owners to monetary losses and many more irreversible damages.

LEGAL FRAMEWORK OF INJUNCTIONS IN IPR

Injunction have pivotal role in the realm of Intellectual Property Rights (IPR), as powerful legal tool it is prohibiting the infringement of products or services. Injunction is a civil remedy, sought by the right holders for redressal of unauthorized use and their exclusive rights to their intellectual property. This remedy is available to the IP owners in actual and possible infringement of their Intellectual Property Rights. Injunction is sought against possibility of future infringement of IP rights. This remedy is in the nature of Interim/Temporary for pre-trial and Permanent/Mandatory for the latter.

This research work will explore the definition “A Court order commanding or preventing an action. To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted.”

Intellectual Property Rights govern injunctions by national laws and also committed to state laws. The legal framework of injunction varies in IPR cases depends on jurisdictions but the doctrine and principle of IPR applies commonly across many legal systems.

To obtain an injunction the legal standards of IPR cases varies according to raised different IP issues and infringement of different IP rights. For instance, to claim IP rights on patent at issue the patentee can sought an injunction only if there is strong likeness to occur the irreparable harm if injunction will not be granted. The granting of injunction should be in public interest and in scenarios when patentee is likely to succeed on claiming merits of intellectual property rights infringement and must maintain the equilibrium of favoured adversity of an injunction. In case of trademark, to get an injunction the plaintiff should show the distinctiveness of their trademark and not non-confusing to prove as an enforceable and valid trademark. To get an injunction for the protection of trademark, the plaintiff need to prove the confusing nature of trademark used by the defendant and their malafide intention to steal the goodwill of proprietor. The use of like trademarks is likely to create confusion and peoples with rational minds would not be able to differentiate and may lead them to irreparable harm to the consumers and monetary damages to the plaintiff. Hence, the injunction should be passed in the interest of public at large and also to protect the goodwill and the brand value having span of years in

market.

To sought an injunction in case of copyright infringement, the plaintiff should must be the the owner of an authorized and valid copyright and they will suffer irreversible damages on violation of their exclusive rights. For instance, direct copy of someone's work or plagiarisms, is breach of copyright owner's exclusive right on their work. Illegal reproduction of protected work is another example of copyright infringement. Creation of derivative work without the prior permission of author or the copyright owner is termed as "Fan fiction" which is a clear infringement of their exclusive rights which is guaranteed to them by the copyright laws to control their work distribution, reproduction of their work and its uses. In such cases, if the injunction is not granted, it may led the copyright owners to suffering of irreparable damages. In Intellectual Property Rights cases, to obtain an injunction requires typical legal process as complaint filing with the court to seek a preliminary injunction at primary stage of alleged breach of copyright or in situation of pending case plaintiff can seek a restraining order temporarily. The Copyright owner can also seek permanent injunction in case if their merit prevails and after the proper consideration of both parties contentions and admitted evidences the court will grant injunction according to the situation of issue.

As the legal standards to obtain an injunction in IPR cases may vary on the type of IP right at issues. Jurisdiction is one of those major legal standards and to sought an injunctive relief different jurisdiction have different legal process. In some jurisdiction, it may require the plaintiff to post a bond with court due to the compensatory reasons. This bond is related to the compensation which is given to the defendant in case if the granted injunction is later proved to be granted wrongfully and have widely affected the defendant. The process of posting a bond to court clearly intends to ensure fairness and justness of the purpose behind granting the injunction. It is a preventive measure for the protection of defendants to prevent the misuse and ensure the pre-emption of abuse of injunction and assure fairness to both of the parties. Furthermore, to get an injunctory relief an IP owner may seek injunctive relief directly from arbitration processes and through the agencies of administration and their by their administrative agents. The other mechanisms of seeking injunction in IP cases totally depends on the jurisdictional factor of the issue which may differ with place of that specific jurisdiction. In precise, injunction is overall a crucial civil remedy available to the IP owners to get their exclusive rights protected. It plays a pivotal role in protection of Intellectual Property Rights and smoothens the implementation of intellectual Property Laws and their Acts which specify different types of Intellectual Properties. To understand the legal framework of injunction is critical to enforce the rights of Intellectual Property owners for the effective protection of their

valuable intangible assets.⁵

LAWS GOVERNING INJUNCTION

In context of Intellectual Property Rights (IPR), injunction have wide arena, it is governed by specific regulations and laws which vary as per jurisdiction. Specifically, the injunctions covered under three major Acts:

- Specific Relief Act, 1963
- Code of Civil Procedure, 1908

In India, to succeed an injunction the following laws and their respective section are referred to provide with preventive reliefs under these Acts.

The purpose of enactment of Specific Relief Act, 1963, was enforcement and protection of the primary rights and to offer the some alleviation, mentioning it further.

An injunction under this Act is passed to declare decree, for specific performance, to recover the possession of property, for the rectification or cancellation of instrument and one of them is injunctions.

Under Specific Relief Act, 1963, injunctions are granted as a remedy to prevent breach of plaintiff's rights and provide relief to them. As per this Act, there are three different kinds of injunctions:

- Obligatory Injunction
- Temporary Injunction
- Permanent Injunction

Code of Civil Procedure, 1908, also talk about an interim injunction. Unlike a temporary injunction, a perpetual injunction is permanent in nature, and a decree will be issued for the same. An obligatory injunction is also called mandatory injunction, like an injunction for destroying copies which have been already published. Mandatory injunction is committed to the aim to force someone to do action in reference to the enforcement of the rights another person.

These preventive reliefs are dealt under the Part III of the Specific Relief Act of 1963. The discussion of injunction is given under the, Chapter VII of this Act. This chapter deals with injunction in general and not specifically. The section 36 is specific about the discretion of court, that court may, at its discretion, give preventive relief through both of the injunctions, interim and permanent injunctions.

⁵ The Yale Law Journal, Vol. 29, No. 4 (Feb., 1920), pp. 462-463

Furthermore, section 37 provides an explanation of permanent and interim injunctions. In addition, Chapter VIII discusses perpetual injunctions which last forever. The cases in which a court may issue perpetual injunctions are listed under Section 38. The mandatory injunction is mentioned under Section 39.

Additionally, Section 40 specifies that a plaintiff may request an injunction in such cases, damages may be awarded in lieu of or in addition to the injunction claimed. The circumstances in which an injunction cannot be granted are outlined in Section 41. Additionally, Section 42 also specifies that the court may issue an injunction for the performance of agreements having negative nature or an affirmative agreement. The court can issue an injunction even if the court is not able to compel specific performance of an affirmative agreement.

Further, under Sections 133, 142, and 144 of the Code of Criminal Procedure, 1973, also court may issue injunctions in cases dealing with nuisance matters.

Under the Code of Civil Procedure, 1908, with the consent of the court two or more individuals or an Advocate-General may institute a suit for a declaration and injunction in cases of illegal conducts affecting the public and which may harm them or creating public nuisance, under the Section 91 of the Code. In addition, Sections 94 and 95 also states about the temporary injunctions granted by the courts in order to fulfil the goals of serving justice and commitment of justness as well as the compensation which is given to the plaintiff in order of obtaining an injunction on insufficient and inadequate grounds. Further, under the Rule 32 of Order XXI, execution of injunction or a decision for a particular performance is addressed. Interlocutory orders and temporary injunctions are particularly covered by Order XXXIX of the Civil Procedure Code, 1908.⁶

Types of Injunction

To prevent the infringement of plaintiff's rights, there are various types of injunctions available in the Specific Relief Act of 1963. This Act has discussed many forms of injunctions which are discussed below in detail:

1. **Interim Injunction:** Section 37 of the Specific Relief Act of 1963 addresses interim injunctions. Temporary injunctions are continued for a predetermined period of time or addition of further rulings by the court. They are addressed under the Code of Civil Procedure, 1908 and it may be admitted at any point of lawsuit.

The main objective to grant an injunction is the protection of the interest of party or the

⁶ <https://blog.ipleaders.in/injunction-all-you-need-to-know-about-it/#:~:text=Historical%20background%20of%20injunctions,injunctions%20were%20called%20'Interdict'>

property until the verdict is rendered. Injunction sticks with its primary objective to prevent infringement of parties rights. The following factors should must be considered while granting such injunctions.

- In case, if a party has a prima facie case for one side
 - In the case of measured balance of convenience in the complainant's favour
 - If the injunction would not be granted, the plaintiff will suffer irreparable damages.
2. **Perpetual Injunction:** The injunction suit is fully resolved when the perpetual injunction is granted. Perpetual injunction is given at the time of final judgement. Section 37 (2) of the Specific Relief Act, 1963 defines the issuing of a perpetual injunction. This is relief is not provisional relief injunction rather it is definitive. Under this section, to grant a perpetual injunction an enquiry should must be followed to issue a decree and also a hearing is required on merits of case. It bars the defendant from exercising his rights permanently or getting engaged in as such behaviour that would breach the plaintiff's rights.

3. **Mandatory Injunction**

The Mandatory Injunction is covered by the Special Relief Act of 1963, under Section 39. This provision addresses the mandatory injunction and ground on which it is granted but does not provide a precise definition. As per this clause, the court is authorised to impose injunctions against the potential infringers, those who are allegedly infringing and can compel the performance of certain acts at its discretion in order to prevent the duty from being breached. While providing a definitive and long-term remedy inspite of temporary relief, like in exceptional or model situations like protecting lives.

4. **Mareva Injunction**

Mareva injunction is to protect the interests of the plaintiff during the pendency of the suit and is granted to restrain the defendant from disposing of their assets within the jurisdiction until the trial ends or judgment in the action for infringement is passed.

5. **Anton Pillar Orders**

In appropriate cases, the court has inherent jurisdiction on an application by the plaintiff made ex parte and in camera to require the defendant to permit the plaintiff to enter his premises and take inspection of relevant documents and articles and take copies thereof

or remove them for safe custody. These are known as Anton Piller orders. The necessity for such an order arises when there is grave danger of relevant documents and infringing articles being removed or destroyed, so that the ends of justice will be defeated.

6. John Doe Orders

John Doe orders are the orders issued by the court to search and seize against unnamed/unknown defendants; which virtually translates into untrammelled powers in the hands of the plaintiffs, aided by court-appointed local commissioners, to raid any premises where infringement activities may be carried out.⁷

AMBIT OF INJUNCTION IN IPR

An injunction in IPR is a legal remedy can be sought in case of infringement of Intellectual Property Rights of an IP holder. Injunction have a significant ambit in the field of Intellectual Property Rights. It is pivotal in IP laws because it successfully defend the Ip rights of Ip holders and protect their rights from getting breached. It ensure the compliance and enforceability of Intellectual Property Laws. To consider the ambit of injunction in Intellectual Property Rights, we will understand the legal principles governing injunctions in IPR cases.

Equity should be balanced, when we consider that whether an injunction to be granted or not, the balance of equities among parties should must be checked. Only in case of balanced equities, the court can grant an injunction in an IPR case. The weighing of harm and and its consequences in case the injunction is not granted to the owner of IP rights, what irrep[arable] damages he may suffer is very crucial before granting such injunction. It would be allowed in case of alleged infringement of IP rights.

To seek an injunction in IPR, the interest of public cannot be curtailed and court should also consider it as one of the aspect of case. In case the public interest is in favour of the mechanism of grating an injunction to get the integrity of products is protected. Injunction should be grated to enhance the creativity and encourage the innovation in our country but not the stake of public interest at large.

The doctrine of IP laws should be applied such as the fair practice and also considering the exceptions of these principles we should also focus on the justness and fairness of practices. To measure the fairness, we may refer to the clean hands doctrine. This doctrine is all about the conduct of owner itself. The dependency of this doctrine is principled on the question wjhether the owner itself is engaged in inequitable work or any misconduct is raising at their own part. The clean hand doctrine is completely based on the people seeking the relief should

⁷ <https://www.indialaw.in/blog/civil/types-of-injunctions-under-civil-laws/>
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have equitable conduct and clean and fair hands on their work.

To decide the authenticity of the case to grant an injunction the court considers some of the major factors. Those factors includes irreversible damages, hardships balance, chances of successful claim on merits of the case and also the public interest should be considered.

The court need to go for proper assessment to determine the strength of the case and the gravity of the situation before granting injunction. Injunction cannot be granted in case of no likelihood of success over claims of merits in issue. It need to determine whether they are likely to successfully claim on merits in issue and to prove the actual breach of their IP rights. The court should also be fully satisfied by the fact that damage is going to be irreparable and irreversible and in case of non-granting of injunction will made an IP owner suffer adversely. The harm cannot be repaired and compensated adequately if an injunction is not granted. To balance the hardships court will measure the gravity of situation and hardships which may happen to IP owner. The damage should be hard for defendant the parties to seek an injunction. The hardship should be overweigh at the side of defendant to get an injunction for immediate seize at the IPR infringement. Furthermore, considering public interest as one of the major factor to decide an injunction is a compliment to the public at large and the respect of their interest. The injunction should be in the favour of the public interest and should be of positive nature which affects creativity and innovation positively.

AMBIT OF INJUNCTION IN IP LAWS

To understand the circular ambit of injunction we need to explore the ambit of intellectual property and further we will understand injunction for different types of Intellectual Properties. To scale the ambit of injunction in intellectual property, we need to delve into the various types of intellectual property. We cannot deny that intellectual; property is vast. In this 21st century it has slipped from the recipe of our kitchen to the cloth/paper slips attached with our clothes, their brandings. In wider term the strategy to treat biometric details of humans as intellectual property under trade secret is in debate. The different types of IP includes:

- Trademarks
- Patents
- Copyrights
- Geographical Indications
- Designs
- Trade secret

All of these intangible properties rights are protected under various statutes like Trademarks

Act, 1999, the Copyright Act, 1957, Patents Act, 1970, Designs Act, 2000, Geographical Indications of Goods (Registration and Protection) Act, 1999 and Trade secret laws etc.

In case of infringement of intellectual properties rights or any future possible infringement of rights of intellectual property, the IP owner have right to get an injunction in relation to infringement of any of the rights. In India, injunction is governed under various laws in the field of Intellectual Property.

In case of Patent infringement, Section 108 of the Indian Patents Act, 1970 states the provision to seek an injunction in case of patent rights infringement. To get an injunction for breach of patent laws the owner should have a valid patent and as per the gravity of situation, court may grant temporary or permanent injunction after the consideration of issues merits. In case of a copyright infringement, the Copyright Act, 1957, the Section 55 of this Act advocates about the getting injunction in case of infringement of copyright. If we look at the Trademark Law, in case of infringement of trademark, Section 135 of Trademarks Act, 1999 advocates about the injunctions. In case where the design law is involved the Section 22 of the Designs Act, 2000 allows the courts to grant an injunction and prevent the infringement of designs rights and the monetary irreversible which may result out of that. To tackle with the Geographical Indications, Section 22 of the Geographical Indications of goods (Registration and Protection) Act, 1999 allows the court for granting an injunction. In addition to such specific laws, general principles of jurisprudence and equity is applied to seek an IPR injunction in India.⁸

JUDICIAL DEVELOPMENT TO DYNAMIC INJUNCTION

The dynamic injunction had started to develop way back, we can trace back with the consideration of need for smooth and easy remedies which can defensively response to the complex complications of global markets in modern times in era of tech. The traditional injunctions are rigid and so so traditional to be smooth. It is static and also fail to address the dynamic nature of intellectual property conflicts and disputes. On the other side of the issue, dynamic injunction is easy to mould and adaptable to changing scenarios. It easily mould as per the advancements of technologies, global markets, and shifting as per the competitive pressure.⁹

⁸ <https://indianlawportal.co.in/law-of-injunction/>.

⁹ The Cambridge Law Journal , November 2012, Vol. 71, No. 3 (November 2012), pp. 501-505

CONCLUSION

A remedy based on equity is an injunction. The court has full authority to decide whether or not to issue an injunction. It is not possible to claim the relief as a matter of right, regardless of how strong the applicant's argument is. Therefore, extreme caution, diligence, and attention must be taken when using the authority to issue an injunction. It is an incredible and delicate power that has the possibility of causing harm or losses to the innocent party. Thus, the granting of an injunction is likewise not absolute, unlike anything else in this world.

Delays are one of the biggest obstacles to justice administration in the modern world. All parties involved must work together to address the issue of justice delays. The unpleasant reality of today's world is that we are moving closer to a civilization where swarms of lawyers—hungry like locusts—and bridges of judges—in numbers never before imagined—overrun the landscape. However, it is untrue to say that the general public wants their conflicts settled by black-robed judges, elegantly attired attorneys, and well-functioning courtrooms. People who are facing legal difficulties, such as those who are in agony, desire relief as soon as possible, and one way to assist those people in obtaining remedy for protecting their rights is through the use of an injunction.
