

# IPR

## PATENT

A patent is a set of exclusive rights granted by a sovereign State to an inventor or assignee for a limited period of time in exchange for detailed public disclosure of an invention. An invention is a solution to a specific technological problem and is a product or a process. Patents are a form of intellectual property.

Under the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights, patents should be available in WTO member states for any invention, in all fields of technology, and the term of protection available should be a minimum of twenty years. Nevertheless, there are variations on what is patentable subject matter from Country to Country.

### Law:

#### Infringement

- ✓ Patent infringement occurs when a third party, without authorization from the patentee, makes, uses, or sells a patented invention. Patents, however, are enforced on a Nation by Nation basis. The making of an item in China, for example, that would infringe a U.S. patent, would not constitute infringement under US patent law unless the item were imported into the US.

#### Enforcement

- ✓ Patents can generally only be enforced through civil lawsuits (for example, for a U.S. patent, by an action for patent infringement in a United States federal court), although some Countries (such as France and Austria) have criminal penalties for wanton infringement. Typically, the patent owner

seeks monetary compensation for past infringement, and seeks an injunction that prohibits the defendant from engaging in future acts of infringement.

- ✓ An accused infringer has the right to challenge the validity of the patent allegedly being infringed in a countersuit. A patent can be found invalid on grounds described in the relevant patent laws, which vary between Countries. Often, the grounds are a subset of requirements for patentability in the relevant country. An example is the UK Certificate of contested validity.

## Governing laws globally:

- ✓ There is a trend towards global harmonization of patent laws, with the World Trade Organization (WTO) being particularly active in this area.
- ✓ The TRIPs Agreement has been largely successful in providing a forum for Nations to agree on an aligned set of Patent Laws.
- ✓ In addition, there are international treaty procedures, such as the procedures under the European Patent Convention (EPC) [Constituting the European Patent Organization (EPOrg)], that centralize some portion of the filing and examination procedure.
- ✓ A key international convention relating to patents is the Paris Convention for the Protection of Industrial Property, initially signed in 1883.
- ✓ Another key treaty is the Patent Cooperation Treaty (PCT), administered by WIPO and covering more than 140 countries.

## Application and prosecution

- ✓ A patent is requested by filing a written application at the relevant patent office. The person or company filing the application is referred to as "the applicant".
- ✓
- ✓ The applicant may be the inventor or its assignee. The application contains a description of how to make and use the invention that must provide sufficient detail for a person skilled in the art (i.e., the relevant area of technology) to make and use the invention.
- ✓

- ✓ In some countries there are requirements for providing specific information such as the usefulness of the invention, the best mode of performing the invention known to the inventor, or the technical problem or problems solved by the invention. Drawings illustrating the invention may also be provided.
- ✓ The application also includes one or more claims that define what a patent covers or the "scope of protection".
- ✓ After filing, an application is often referred to as "patent pending". While this term does not confer legal protection, and a patent cannot be enforced until granted, it serves to provide warning to potential infringers that if the patent is issued, they may be liable for damages.
- ✓ Once filed, a patent application is "prosecuted". A patent examiner reviews the patent application to determine if it meets the patentability requirements of that country.
- ✓ If the application does not comply, objections are communicated to the applicant or their patent agent or attorney through an Office action, to which the applicant may respond.
- ✓ The number of Office actions and responses that may occur vary from Country to Country, but eventually a final rejection is sent by the patent office, or the patent application is granted, which after the payment of additional fees, leads to an issued, enforceable patent.
- ✓ In some jurisdictions, there are opportunities for third parties to bring an opposition proceeding between grant and issuance, or post-issuance.
- ✓ Once granted the patent is subject in most countries to renewal fees to keep the patent in force.
- ✓ These fees are generally payable on a yearly basis. Some countries or regional patent offices (e.g. the European Patent Office) also require annual renewal fees to be paid for a patent application before it is granted.

## PATENT LAWS IN INDIA

Foreign companies file cases for claims on the basis of IPR this varies from country to country depending on the individuals and also the support received from the government on the respective countries. These Patent cases affect local manufactures. The patent amendment act 2005 is followed in India. This is amendment to the original India amendment 1970.

India is a member of WTO and follows TRIPS Agreement. The details are in below...

The Indian Patents Act 1970 was implemented in 1972. It allowed innovations patented elsewhere freely copied and marketed in India. Further, this Act restricted import of finished – formula, imposed high tariff rates and introduced strict price control regulation.

India being a member of WTO, to comply with the requirements under the TRIPS Agreement.

The Patents Amendment Act 2005 and 2007; Was Based Main Provisions:

### Product Patent:

The Act extends product patent protection in all fields of technology, i.e. drugs, food and chemicals.

### Embedded Software:

The Act allows for patenting of embedded software

### Other provisions:

The Act allows the patent holder to challenge the license so that he can block general production of his drug.

Pre-grant and post-grant opposition clause has been provided.

The Act also removes provisions relating to EMRs besides strengthening the provisions relating to national security to guard against patenting abroad of dual use technologies.

## Term of Patent

The term of every patent in India is twenty years from the date of filing the patent application, irrespective of whether it is filled with provisional or complete specification. However, in case of applications filed under the Patent Cooperative Treaty (PCT), the term of twenty years begins from the international filing date.

## Payment of Renewal Fee

It is important to note that a patentee has to renew the patent every year by paying the renewal fee, which can be paid every year or in lump sum.

## Restoration of Patent

A request for restoration of patent can be filed within eighteen months from the date of cessation of patent along with the prescribed fee. After the receipt of the request, the matter is notified in the official journal for further processing of the request.

## Compulsory Licensing

This is a TRIPS compliant provision empowering the Governments to check and control the misuse of patents.

In spite of the existence of a Patent, the Government can invoke the compulsory license to make available the patented product to the people in case of national emergency for public non-commercial use.

The Government can also invoke compulsory licensing if it feels that the public requirements with regard to a patented product have not been met and the product is not available for the public at an affordable price.

One of the most important aspects of Indian Patents Act, 1970, is compulsory licensing of the patent subject to the fulfillment of certain conditions. Subject to fulfillment of following conditions, i.e.

- ✓ The reasonable requirements of the public with respect to the patented invention have not been satisfied; or that the patented invention is not

available to the public at a reasonable price; or that the patented invention is not worked in the territory of India.

- ✓ It is further important to note that an application for compulsory licensing may be made by any person notwithstanding that he is already the holder of a license under the patent.
- ✓ For the purpose of compulsory licensing, no person can be stopped from alleging that the reasonable requirements of the public with respect to the patented invention are not satisfied or that the patented invention is not available to the public at a reasonable price by reason of any admission made by him, whether in such a licence or by reason of his having accepted such a licence.
- ✓ The Controller, if satisfied that the reasonable requirements of the public with respect to the patented invention have not been satisfied or that the patented invention is not available to the public at a reasonable price, may order the patentee to grant a licence upon such terms as he may deem fit. However, before the grant of a compulsory license, the Controller of Patents shall take into account following factors:

### The nature of invention

- ✓ The time elapsed, since the sealing of the patent.
- ✓ The measures already taken by the patentee or the licensee to make full use of the invention.
- ✓ The ability of the applicant to work the invention to the public advantage.
- ✓ The capacity of the applicant to undertake the risk in providing capital and working the invention, if the application for compulsory license is granted.
- ✓ As to the fact whether the applicant has made efforts to obtain a license from the patentee on reasonable terms and conditions.
- ✓ National emergency or other circumstances of extreme urgency.
- ✓ Public non commercial use.
- ✓ Establishment of a ground of anti competitive practices adopted by the patentee.

- ✓ The grant of compulsory license cannot be claimed as a matter of right, as the same is subject to the fulfillment of above conditions and discretion of the Controller of Patents. Further judicial recourse is available against any arbitrary or illegal order of the Controller of Patents for grant of compulsory license.

## Infringement of Patent

- ✓ Under the (Indian) Patents Act, 1970 only a civil action can be initiated in a Court of Law. Further, a suit for infringement can be defended on various grounds including the grounds on which a patent cannot be granted in India and based on such defence, revocation of Patent can also be claimed.

## Brief Patent Law of Different Country:



### Republic of China

## Types of patent protection

Patents in China are granted by the State Intellectual Property Office (SIPO). There are three types of patents: invention patents, utility model patents, and design patents. Invention patents are substantively examined, while utility model patents are subject only to a formal examination.

## Enforcement of patents

- Administrative patent enforcement

- ✓ The legal basis for administrative patent enforcement is found in the Patent Law, the Enforcement Regulations for the Patent Law, and SIPO's Regulations on Administrative Patent Cases.
- ✓ Two types of illegal patent acts can be handled by administrative authorities - ordinary infringement complaints regarding the making/importation, use, and sale/offering for sale of patented articles; and patent counterfeiting (which encompasses several acts similar to false marking). Administrative enforcement is traditionally the most commonly used option by patent owners and is handled by provincial or city-level intellectual property offices (formerly and still colloquially known as Patent Bureaux).
- ✓ On accepting a complaint, which requires some prima facie evidence of infringement, the local Bureau can raid infringers' premises and confiscate infringing materials and tooling. Often, the Bureau will attempt to mediate settlement between the parties. However, it is also empowered to make its own decisions. Sanctions can include destruction of products/tooling and an order to stop infringement, but Bureaux cannot award damages to patent owners. In cases of patent counterfeiting, the Bureau can however impose a fine on the infringer. Administrative decisions can be appealed to the People's Court.

## ➤ Civil litigation

- ✓ Courts' jurisdiction over patent proceedings is clarified in the Supreme People's Court's Several Provisions on Issues Relating to the Application of Law to Adjudication of Cases of Patent Disputes. Cases are usually begun in the Intermediate People's Court, although serious cases can be tried in the Higher People's Court and even exceptionally the Supreme People's Court.
- ✓ A degree of forum shopping is permitted as disputes can be heard either where the defendant is domiciled, or where the infringing act (e.g. sale of infringing goods) took place.
- ✓ Interim injunctions are available (including the equivalent of an Anton Piller Order), but if relief is granted the plaintiff is bound to initiate proceedings within 15 days thereafter.
- ✓ On a finding of infringement, the Court has a wide range of remedies available, including final injunctions, destruction of infringing



goods/tooling, and compensatory damages (if the plaintiff cannot prove his loss, the maximum statutory damages available are RMB500, 000 per infringement).

## Criminal proceedings

China's Criminal Code enables Public Security Bureaux under the People's Procuratorate to take action in cases of serious infringement. Private prosecutions are possible in limited circumstances.

## Patent interpretation

- ✓ Patents are construed both literally and according to the doctrine of equivalents.
- ✓ An equivalent is an element of an article which is "insubstantially different from" an integer of the patent's claim.

## Patent validity

- Any person can contest a patent's validity.
- post-grant opposition procedure available through SIPO
- Otherwise actions can be initiated at the Patent Review Board (PRB). Appeal lies to the Beijing Intermediate People's Court.

Patent litigation proceedings are bifurcated, meaning that issues of infringement are tried separately (and in a separate venue) to invalidity. Normally infringement proceedings will be stayed (on application by the defendant) pending outcome of the invalidation hearing.

## Novelty

With the Third Amendment to the Patent Law, China now applies a standard of absolute novelty. Invention is not new (and therefore unpatentable) if it has been published or publicly disclosed anywhere in the world at the priority date.

## Inventiveness

- eyes of the notional addressee,
- prominent substantive features that mark a notable progress in the state of the art;
- Alternatively, that the addressee cannot obtain from existing technology all the necessary technical features of the invention.

SIPO's examination guidelines, which are often followed by the Courts also, recommend the "problem-solution" approach to assessing obviousness:

1. Identify the closest prior art.
2. Identify the technical problem to be solved
3. Identify the differences between the prior art and the invention;
4. Would those differences be obvious to the skilled addressee trying to solve the technical problem?

The notional addressee is an ordinary technician skilled in the field of the invention



## Australian

The primary piece of legislation is the Patents Act 1990 (Cth). Patents are administered by the Commonwealth Government agency IP Australia. Australia is a member state of the World Intellectual Property Organization (WIPO), and compliant with Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

### Australian patent databases

The Auspat Patent database is the official Australian patents database operated by the Australian Intellectual Property Office. Auspat records patents dating back to 1904.

IP Monitor is a customizable monthly Australian Intellectual Property report generator for monitoring the prosecution of Australian patents and trademarks.

IP Australia is the Australian Government agency responsible for administering patents, as well as trademarks, designs and plant breeder's rights in Australia.



# Canada

- ✓ Canadian patent law is the legal system regulating the granting of patents for inventions within Canada, and the enforcement of these rights in Canada.
- ✓ The granting of Canadian patents is within the exclusive jurisdiction of the Canadian federal government and is governed by the federal Patent Act, the Patent Rules, and various international treaties and the regulations there under.
- ✓ The enforcement of Canadian patents is the responsibility of the Canadian Federal Court, or the Courts of the Canadian provinces.

## Definition of a patentable invention

To be considered patentable, an invention must pass three criteria: novelty, non-obviousness and utility

### Novelty

To be patentable, an invention must be novel. That is, the invention must not have been described or claimed in a previously filed third party Canadian patent application, and must not have been previously publicly disclosed by a third party, anywhere in the world.

The test for novelty is whether or not a single, publicly disclosed example of prior art "contained all of the information which, for practical purposes, is needed to produce the claimed invention without the exercise of any inventive skill".

### Non-obviousness

The test for non-obviousness (also sometimes referred to as "inventive ingenuity" or "inventive step") is whether an "unimaginative skilled technician, in light of his general knowledge and the literature and information on the subject available to him on would have been led directly and without difficulty to [the] invention."

## Utility

For a product to have utility it must perform some useful function.

The requirement for utility originates from the definition of invention as a "new and useful art"

## The Patent Cooperation Treaty

Since 1990, Canada has been bound by the provisions of the Patent Cooperation Treaty (PCT).

## Europe

European patent law covers a wide range of legislations including national patent laws, the Strasbourg Convention of 1963, the European Patent Convention of 1973, and a number of European Union directives and regulations in countries which are party to the European Patent Convention. For certain states in Eastern Europe, the Eurasian Patent Convention applies.

Patents having effect in most European states may be obtained either nationally, via national patent offices, or via a centralized patent prosecution process at the European Patent Office (EPO).

The EPO is a public international organisation established by the European Patent Convention. The EPO is not a European Union or a Council of Europe institution.

European patent law is also shaped by international agreements such as the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement), the Patent Law Treaty (PLT) and the London Agreement.

## Patent protection in Europe

- ✓ Regional patent convention membership in Europe
- ✓ Parties to the European Patent Convention
- ✓ Extension states by the European Patent Convention

- ✓ Parties to the Eurasian Patent Convention
- ✓ Other European States

## European patents

A European patent is the product of a unified grant procedure before the European Patent Office (EPO) under procedures established by the European Patent Convention (EPC).

In Europe, patent infringement of both national patents and European patents are essentially dealt upon by national courts. Although European patents are granted by the European Patent Office, these European patents lead are enforced at a national level, i.e. on a per-country basis. A majority of the member states of the European Union have agreed to set up an unitary patent (formerly called Community patent) system, according to which patents would be centrally enforceable before a Unified Patent Court. However, the corresponding legal texts have not entered into force yet.

## Japan

Japanese patent law is based on the first-to-file principle and is mainly given force by the Patent Act of Japan. Article 2 defines an invention as "the highly advanced creation of technical ideas utilizing the law of nature".

## Patent prosecution

A patent may be granted for an invention if:

- the invention as claimed is industrially applicable (Article 29, paragraph 1),
- the claims are novel (Article 29, paragraph 1),
- the claims are inventive (Article 29, paragraph 2),
- the patent does not harm public order, morality or public health (Article 32),
- amendments to the specification, claims or drawings remain within the scope of the features disclosed in the original version (Article 17bis),
- the specification discloses the invention in a manner sufficiently clear and complete for a person skilled in the art to carry it out (Article 36, paragraph 4),
- the statement of the claims is clear (Article 36, paragraph 6),

- the application meets the requirement for unity of invention (Article 37),
- the applicant is the first to file an application for a patent for the invention (Articles 29bis and 39), and
- The applicant has the right to obtain a patent for the invention (Article 25 and 38, and Article 49, paragraph 7).

Article 30 provides a six-month grace period for disclosures made through an experiment, publication, presentation at a study meeting or an exhibition (a trade fair or the World's Fair) or for if the invention becomes known to public against the applicant's will. Such disclosures do not form part of the prior art. This is a much broader exemption than the one available under European patent law (Article 55 EPC) but is significantly narrower than that provided under United States patent law.

## Patentable subject matter

### ➤ Novelty

Sharing the same rule as other jurisdictions, Japanese patent law does not grant exclusionary rights to existing technologies.

Article 29(1) of Patent Act stipulates this point; an inventor may not obtain a patent for inventions that were known to the public ("publicly known") (Item (i)), inventions that were publicly worked ("publicly used") (Item (ii)) or inventions that were described in a distributed publication or made publicly available through an electric telecommunication line (Item (iii)), in Japan or a foreign country prior to the filing of the patent application.<sup>[5]</sup>

### ➤ Inventive step

Where at the time of the application a person ordinarily skilled in the field of art to which the invention belongs (a "person skilled in the art") would have been able to easily make the invention based on a technology falling under any of the items under Article 29(1) of the Patent Act (that is, an invention involving prior art or that is publicly known), the invention cannot be patented (Patent Act Article 29(2)). For this decision to be made, in the abstract, an accurate assessment is firstly to be made of the standard of art in the field of art to which the invention belongs as at the time of the application, and the points where the application invention varies from the prior art are to be made clear. Then, while making allowance for the purpose and effect of the invention, a decision is to be made depending on whether or not it is possible to logically support a person skilled in

the art having been easily able to achieve the application invention by altering the prior art.

## Infringement and remedies

### ➤ Doctrine of equivalents

In 1998, the Supreme Court of Japan showed in judgment the requirements for applying the doctrine of equivalents. The judgment says:

Even if, within the construction as indicated in the claim in the patent specification, there is a part which is different from the products, if

(a) This part is not the essential part of the patented invention,

(b) The purpose of the patented invention can be achieved by replacing this part with a part in the products and an identical function and effect can be obtained,

(c) a person who has an average knowledge in the area of technology where this invention belongs could easily come up with the idea of such replacement at the time of the production of the products,

(d) the products are not identical to the technology in the public domain at the time of the patent application of the patented invention or could have been easily conceived at that time by a person who has an average knowledge in the area of technology where this invention belongs, and

(e) there were no special circumstances such as the fact that the products had been intentionally excluded from the scope of the patent claim in the patent application process, the products should be regarded as identical with the construction as indicated in the scope of the patent claim and fall within the scope of the technical scope of the patented invention.

Infringement under the patent law in Japan is defined by Article 101 of Patent Act (Act No. 121 of 1959), which shows the following acts shall be deemed to constitute infringement of a patent right or an exclusive license:

- (i) where a patent has been granted for an invention of a product, acts of producing, assigning, etc., importing or offering for assignment, etc. any product to be used exclusively for the producing of the said product as a business;
- (ii) where a patent has been granted for an invention of a product, acts of producing, assigning, etc., importing or offering for assignment, etc. any

product (excluding those widely distributed within Japan) to be used for the producing of the said product and indispensable for the resolution of the problem by the said invention as a business, knowing that the said invention is a patented invention and the said product is used for the working of the invention;

- (iii) where a patent has been granted for an invention of a process, acts of producing, assigning, etc., importing or offering for assignment, etc. any product to be used exclusively for the use of the said process as a business; and
- (iv) where a patent has been granted for an invention of a process, acts of producing, assigning, etc., importing or offering for assignment, etc. any product (excluding those widely distributed within Japan) to be used for the use of the said process and indispensable for the resolution of the problem by the said invention, knowing that the said invention is a patented invention and the said product is used for the working of the invention as a business.



## South African

The South African patent system is the system by which patents are granted in South Africa.

As is the case in many other countries, a patent provides legal protection for a new and industrially applicable invention. This invention, which constitutes either a product or process, has to be brought about as a result of an inventive step. Essentially, this new product or process has to represent a new way of doing things or has to provide a technical solution to a real life industrial problem. An invention is only considered to be new and based on an inventive step if the same idea has not been expressed in writing, orally or practically, or in any other way, anywhere immediately prior to the priority date of the invention.<sup>[1]</sup>

### South African Patent Act and CIPC

In terms of the South African Patent Act 57 of 1978, the Companies and Intellectual Property Commission (CIPC) is the custodian of all new patent applications that are filed within the Republic of South Africa. An individual can privately file a provisional patent application. However, only a patent attorney can file a non-provisional patent application and assist in drafting the patent



specification; see Patent attorney: South Africa. It is essential that the content of the patent specification - referring to the definition and description of the invention - is clear, coherent and concise so that the patent is assured the maximum protection. Protection is granted for twenty years from the filing date of the non-provisional patent application.

## Patent Cooperation Treaty

South Africa is a signatory of the Patent Cooperation Treaty (PCT). This means that South Africans are able to file both national and international applications.



## United States

Under United States law, a patent is a right granted to the inventor of a (1) process, machine, article of manufacture, or composition of matter, (2) that is new, useful, and non-obvious.

United States patent law is authorized by the U.S. Constitution. Article One, section 8, clause 8 states:

### Substantive law

Patent law is found under Title 35 of the United States Code. The "patentability" of inventions (defining the type's things that qualify for patent protection) is defined under Sections 100-105.

#### ➤ Patentable Subject Matter

To be patent eligible subject matter, an invention must meet two criteria.

First, it must fall within one of the four statutory categories of acceptable subject matter: process, machine, manufacture, or composition of matter.

Second, it must not be directed to subject matter encompassing a judicially recognized exception: laws of nature, physical phenomena, and abstract ideas.

#### ➤ Novelty

The novelty requirement prohibits patenting a technology that is already available to the public. Specifically, 35 U.S.C. 102 states:

#### ➤ Obviousness

A technology is obvious (and therefore ineligible for a patent) if a person of "ordinary skill" in the relevant field of technology, as of the filing date of the patent application, would have thought the technology was obvious.

In the US there are safe harbor provisions to use a patented invention for the purposes of gathering data for a regulatory submission.

## Canada

In Canada, patents are governed by the Patent Act, Canada is considered to be more friendly for rights holders in pursuing patent claims than in the United States of America, due to significant differences between the two jurisdictions:

- Patents in Canada are subject to a purposive construction, which relies on reading both the claims and the specifications to determine the scope of a patent, and extrinsic evidence is not permitted, leading to the absence of prosecution history estoppel.
- While US patent trials are heard by a jury, Canadian trials are heard by a judge only, and thus the claims of a Canadian patent are construed only once as part of the trial judge's decision on the merits of the case as a whole. In that regard, the Federal Court of Appeal has ruled that Markman hearings are not allowed under Canadian law.
- In Canada, the applicant has no obligation to disclose material prior art, so patents cannot be invalidated on that basis.
- The same absence of obligation also means that the Competition Act will not come into play, unlike what occurs with antitrust law in the US.
- The Canadian discovery process is more streamlined than the US procedure, resulting in less cost and time in pursuing the lawsuit, and it also possesses an implied undertaking rule, barring use of information produced or disclosed in discovery from any purpose other than the present litigation (other than by leave of the court).
- Canadian law allows a plaintiff to elect to claim either compensatory damages or an accounting of profits, which can either act as a deterrent on infringement or as an incentive to reach a settlement before trial.
- The availability of costs in Canadian courts is a significant advantage to a plaintiff confident of success, but is also a deterrent to pursuing more speculative cases.

- Treble damages are not awarded in Canadian courts, and punitive damages are less likely to be awarded.

## United Kingdom

Infringement under United Kingdom patent law is defined by Section 60 of the UK Patents Act 1977 (as amended), which sets out the following types of infringement:

- Where the invention is a product, by the making, disposing of, offering to dispose of, using, importing or keeping a patented product.
- Where the invention is a process, by the use, or offer for use where it is known that the use of the process would be an infringement. Also, by the disposal of, offer to dispose of, use or import of a product obtained directly by means of that process, or the keeping of any such product whether for disposal or otherwise.
- By the supply, or offer to supply, in the United Kingdom, a person not entitled to work the invention, with any of the means, relating to an essential element of the invention, for putting the invention into effect, when it is known (or it is reasonable to expect such knowledge) that those means are suitable for putting, and are intended to put, the invention into effect in the United Kingdom.

## Patent Infringement:

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

Patents are territorial, and infringement is only possible in a country where a patent is in force. For example, if a patent is granted in the United States, then anyone in the United States is prohibited from making, using, selling or importing the patented item, while people in other countries may be free to exploit the patented invention in their country. The scope of protection may vary from

country to country, because the patent is examined -or in some countries not substantively examined- by the patent office in each country or region and may be subject to different patentability requirements.

### ➤ Overview

In response to allegations of infringement, an accused infringing party typically asserts one or more of the following:

- That it was not practicing the patented invention, i.e. the invention claimed in the patent (the claims define the extent of protection conferred by a patent);
- That it was not performing any infringing act in the territory covered by the patent (patents are indeed territorial in nature);
- That the patent has expired (since patents have a limited patent term, i.e. a limited lifetime);
- That The patent (or the particular claim(s) alleged to be infringed) is invalid, because the invention in question does not meet the patentability requirements or includes a formal defect, this rendering the patent invalid or unenforceable;
- That it has obtained a license under the patent.

The parties may also resolve their dispute in a settlement, which may involve a licensing agreement, such as a cross-licensing agreement. Private settlements may not always serve the public interest, "because litigating patent disputes to completion tends to generate positive externalities, by clarifying the limits of patent protection if the patent is upheld or encouraging wider use of the innovation if the patent is invalidated".

### ➤ Indirect infringement

In certain jurisdictions, there is a particular case of patent infringement called "indirect infringement." Indirect infringement can occur, for instance, when a device is claimed in patent and a third party supplies a product which can only be reasonably used to make the claimed device.

### ➤ Patent infringement cost

A typical patent infringement case in the US costs 1 - 3 million dollars in legal fees for each side. This is despite the fact that 99% of all patent infringement cases are settled. Legal fees in pharmaceutical cases can run 30 million dollars

or more, although this should be contrasted with the fact that billions of dollars may be at stake.

## List of Patent Offices:

World Intellectual Property Organization (WIPO) maintained list. Here.....

- African Regional Intellectual Property Organization (ARIPO)
- IP Australia (IPA)
- Barbados Corporate Affairs and Intellectual Property Office (CAIPO)
- Canadian Intellectual Property Office (CIPO)
- Ethiopian Intellectual Property Office (EIPO)
- European Patent Office (EPO)
- Eurasian Patent Organization (EAPO)
- German Patent Office (DPMA)
- Gulf Cooperation Council (GCC) Patent Office (GCCPO)
- Indian Patent Office (IPO)
- Intellectual Property Office of Singapore (IPOS)
- Israeli Patent Office
- Italian Patent and Trademark Office
- Japan Patent Office (JPO)
- Korean Intellectual Property Office (KIPO)
- Mexican Institute of Industrial Property (IMPI)
- National Industrial Property Institute, France (INPI)
- National Industrial Property Institute, Portugal (INPI)
- Netherlands Patent Office
- Nordic Patent Institute (NPI)
- Norwegian Industrial Property Office
- "Organisation Africaine de la Propriété Intellectuelle" (OAPI)
- Patent Office of the Republic of Latvia
- Polish Patent Office (PPO)
- Russian Federal Service for Intellectual Property, (Rospatent), Russian Federation
- Spanish Patent and Trademark Office (SPTO)
- State Intellectual Property Office of the People's Republic of China (SIPO)
- Swedish Patent and Registration Office (PRV)
- Swiss Federal Institute of Intellectual Property (IGE)

- Taiwan Intellectual Property Office, (TIPO), Republic of China
- Turkish Patent Institute
- Ukrainian Patent Office (officially 'State Enterprise "Ukrainian Institute of Industrial Property"', or 'SE "UIPV"')
- United Kingdom Intellectual Property Office, (UK-IPO)
- United States Patent and Trademark Office (USPTO)
- World Intellectual Property Organization (WIPO)