

- i) bio-piracy

Patent Infringement Remedies

A Suit for infringement of patent has to be filed before the District Court or the High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen. However if the counter claim for revocation has been filed against the same, only the High Court has the jurisdiction to entertain the matter. The right to move the court of law to enforce a patent is vested with any person who holds a valid claim on the subject matter of the patent.

The reliefs that a court may grant in a patent infringement suit, would include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff either damages or an account of profits. The court may also order that the goods which are found to be infringing and materials and implement, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

Trademark Infringement Remedies

An owner of a trademark may commence legal proceedings against a party which infringes its registration. In case of trademark, statutory protection is available to both registered as well as unregistered trademarks. They are given both civil as well as criminal remedies for infringement or passing off. A suit for infringement has to be filed before the District Court or the High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen.

The proprietors of the trademark as well as licensed users have the option to initiate criminal prosecution against the infringers. The acts recognized as offences against which criminal complaints can be filed are falsifying and falsely applying a trademark,

making or processing instruments for falsifying a trademark, applying false description, applying false indication of the country of origin, tampering with an indication of origin already applied to goods, selling goods or possessing or exposing for sale of goods falsely marked, falsely representing a trademark as registered, improperly describing a place of business as connected with the trademark office and falsification of entries in the register.

The criminal remedies available are that a suit for the above offences can be filed before the magistrate within whose territorial jurisdiction the offence is committed or Police can register an FIR and prosecute directly. (statutory requirement to obtain the Registrar's approval). Besides

confiscation of goods and machinery, the Code of Criminal Procedure, 1973, also provides for the imprisonment starting from six months which can be extended to three years or fine of Rs. Fifty thousand which can be extended to two lakhs or both.

Copyright Infringement Remedies

A suit for infringement of copyright has to be filed in a District Court or a High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen.

Copyright infringement is a cognizable (non-bailable) offence punishable with an imprisonment of six months which can be extended to three years or a fine not less than fifty thousand which can be extended to two lakhs. For the second and subsequent conviction, the minimum term of imprisonment has increased to one year which may extend to three years and minimum fine has increased to one lakh which may be extended to two lakh rupees. (These are the criminal remedies available to the copyright holders for infringement of their copy right).

The copyright act authorizes a police officer, not below the rank of a sub-inspector to seize without a warrant, all copies of work, and all plates used for the purpose of making infringing copies of work and produce them before the magistrate.

These should be considered as an alternative to civil remedies/actions, since they are conducted by local authorities, thereby causing a great cost saving to the intellectual property owner.

The civil remedies available to the aggrieved parties are almost the same for all the intellectual properties. They are injunctions against future violations civil raids and seizures, damages or accounts of profits, delivery up/ discovery of infringing material/ documents, preservation of assets and interim / interlocutory injunction.

There are also administrative remedies available to the copyright, trademark and patent which include ban of import or export of goods including protection of patents, trademarks and copyrights confiscation of infringing material by Excise Authorities and delivery to the owner and restrictions against parallel importation of goods.