

# BCA DS 5 SEM

## IPR

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### UNIT-4

#### TOPICS

- **Infringement**
- **What is Infringement?**
- **How is Infringement determined?**
- **Who is an Infringer?**
- **Direct, Contributory and Induced, Defenses of Infringement**
- **Research Exemption**
- **Invalidity**
- **Misuse,**
- **Failure to mark,**
- **Laches and Estoppel**
- **first sale doctrine.**

### **What Is Intellectual Property Infringement?**

Intellectual property infringement is a violation or breach that erodes, weakens, or damages intellectual property rights.

As a result, a wide range of IP protections, such as trademarks, patents, copyright, and trade secrets, have been enshrined to ensure IPs aren't stolen or violated through illegal malfeasance.

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## Who is Infringer ?

An infringer is someone who violates the law or the rights of another person by doing something they are not supposed to do with something that belongs to someone else. For example, an infringer might copy a book or movie, use a logo or name that belongs to someone else, or make something that is already patented

## The Types of Intellectual Property Infringement

Intellectual property is one of the most significant assets a business possesses. However, different forms of IP infringements diminish the benefits accrued to IP owners from their innovations. While IP infringements can occur through outright theft of intellectual property, other methods find ways to circumvent the legal protections afforded to IP owners.

IP rights like trademarks, patents, and designs are only obtained after due registration. Therefore, their enforcement can only take effect when the agency responsible for their oversight has examined, granted, and duly certified them for IP protection.

### Patent Infringement

Patents protect the fruits of innovation by granting the owner of an invention exclusive rights for a certain period. Patent infringements are actions that breach this confidence. This is typically done by appropriating, copying, or selling the invention without the express permission of the patent owner.

Patents cover things like processes, designs, machines, and manufactured items. Unlike copyrights, patents must be registered before they can come into effect. A typical example of patent infringement: Creating or manufacturing services or products with patent-protected items without obtaining the holder's express permission.

Patent infringements typically fall under these distinctions:

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- Direct infringement: This is a direct violation of patents, as straightforward as a patented product being manufactured without permission.
  - Indirect infringement: This is aiding, abetting, and otherwise encouraging patent infringement by other parties.
  - Contributory Infringement: This is a form of secondary infringement, holding someone liable for infringement for providing a direct infringer with an unauthorized IP. For instance, selling non-infringing components but accompanying them with instructions on how to utilize them in an infringing manner.
  - Literal Infringement: When there is direct correspondence and every construed claim element is correspondingly found in the accused device. An example is the *Polaroid Corp v. Eastman Kodak Co.*, a case where Eastman Kodak was accused of literally infringing on Polaroid's "Instant camera technology."

### Copyright Infringement

Original artistic work enriches society, and copyright is meant to protect this creativity. Copyright covers literature, songs, music, writings, and photos. Since copyright is tangible, copyright infringement is a more clear-cut violation.

A typical example of copyright infringement: Uploading a copyrighted picture or image to your website without any license or permission.

### Trademark Infringement

Trademarks offer brand protection, safeguarding their identifying features like their brand name and symbols like logos, including colors, sounds, and phrases associated with a business entity. Trademarks are vital for differentiating and distinguishing a business from its competition, thereby creating brand equity.

Hence, trademarks are commonly used where counterfeiting is a rampant problem. Accordingly, trademark infringements are the unauthorized use of a brand's symbols in

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a way that creates confusion in the mind of consumers as to the source, affiliation, or actual ownership of the trademark.

A typical example of trademark infringement: As the most prevalent manifestation of trademark infringement, counterfeiters produce fake replicas and unauthorized equivalents of actual products.

Counterfeiting not only defrauds the bona fide IP owner of their rightful profits but also the consumer who is swindled into paying for subpar products in the guise of the real thing.

### **Trade secrets infringement**

Unlike patents, trade secrets are part of a company's IP that isn't made public. Trade secrets represent a right to confidential information of a competitive nature.

This type of covert information only qualifies as a trade secret only if they have economic value. Trade secrets include know-how like formulas, recipes, design patterns, computer programs, and processes that uniquely provide a distinct, competitive advantage.

Companies typically use non-disclosure agreements (NDAs) to protect proprietary information.

A typical example of trade secret infringement: Potentially stealing Coca-Cola's recipe or copying Google's search algorithm.

## **Topic- Direct, Contributory and Induced, Defenses of Infringement**

### **Direct Infringement**

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One type of patent infringement is direct infringement, which takes place when an individual or company performs one or more of the actions that the patent holder has exclusive rights to, such as manufacturing, selling, using, or importing a product or process covered by a valid patent.

For example, if Company A owns a patent on a new type of smartphone and Company B begins manufacturing and selling a similar smartphone without first obtaining a license or permission from Company A, Company B may be held liable for direct patent infringement.

To prove direct infringement, the patent holder must demonstrate that the infringing process or product meets all the aspects of one or more claims in their patent. If the court finds that the alleged product or process violates the patent, the infringing party may be held liable. Further, they are ordered to cease using or selling the infringing process or product.

## **Indirect Infringement**

Indirect patent infringement occurs when one party assists or induces another party to infringe on a patent. It is classified into two types: contributory infringement and induced infringement.

### **1. Contributory Infringement**

Contributory infringement occurs when someone contributes a critical component or material to the infringing process or product. And they are fully aware, or should have been aware, that their actions will contribute to the infringement. For example, suppose a company sells a component that is primarily intended for use in an infringing product. Then it may be held liable for contributing to the infringement.

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## **2. Induced Infringement**

When someone actively promotes or persuades another party to infringe on a patent, this is known as induced infringement. For example, if a company provides instructions for using their product in a way that violates a patent. Therefore, they may be legally liable for induced infringement.

### **First sale doctrine**

This doctrine states that once a copyright holder distributes a copy of a work, they lose the right to distribute that specific copy. This allows the purchaser to resell the copy without infringing on copyright. The first sale doctrine helps create a secondary market for copyrighted works. However, there are some exceptions to the first sale doctrine, such as the rental right, which allows copyright owners to control the rental or lending of their copyrighted works.

### **Research exemptions**

There are exemptions to patent infringement for certain experimental activities during research and development. These exemptions include a judicially created exemption and an exemption created by the Hatch–Waxman Act.

### **Equitable estoppel**

This occurs when a patentee misleads an alleged infringer into believing that they won't be sued for using the patented technology

