

# Business law patent rights



**ASSIGN  
BUSTER**

Anjali Gulati India 31st March 2009 Business Law Patent Rights Case The present article throws light on the patent rights scenario for a laboratory instrument invented by an engineer. The said instrument functions but waits to pass some safety tests. The possibility of patenting the above mentioned instrument is being discussed here.

### Patenting the Instrument

The instrument can be patented before undergoing the safety tests if it fulfills the required patentability criteria. In order to be patentable the invention instrument must fulfill all the criteria of patentability viz. novelty, non-obviousness and industrial applicability. An instrument can be protected as utility patent or even a design patent if it has any unique ornamental feature.

Utility patent protects the functionality of the instrument and the design patent just protects the design of the instrument. Utility patent will provide a stronger protection than the design patent.

### Obtaining a Patent

Primarily patentability of the invention needs to be determined, which can be done by conducting a thorough patent and non patent literature (prior art) search. Once the patentability established a patent application should be drafted and filed at the respective patent office.

The inventor can file a National Application in the parent country or an International Patent Application with WIPO. The international patent application is called a PCT application proves to be cheaper if the invention is desired to be protected in a number of countries. Patent application goes through examination at patent office and eventually the patent gets granted.

### After safety tests

In the present case if the safety tests conducted on the instrument enhance any feature of the instrument it should be protected. The enhanced feature of the instrument can be protected by filing a continuation in part patent application for the same.

### Assigning Patent Rights

Once the patent is granted the assignee can commercialize his invention or in other case assign rights. The rights can be granted completely, by assigning the patent to a single individual/ organization, or territory specific licenses can be given out for commercialization of invention to various interested parties.

### Patent Infringement

Patent Infringement is said to have occurred when a patented invention is used, sold, manufactured or offered for sale within the term of Patent, in the territory of protection, without permission. A product can infringe a patent if any of the features of the alleged product fall within the purview of any of the claims of the patent. The claims in the patent define the legal boundary of the invention.

### Remedies for Patent Infringement

Once the infringement is proved the patentee is entitled to the compensation for the same in the form of remedies decided by the court.

Two types of remedies are available for the infringer, these are;

#### 1. Injunction

Injunctive relief is given to the patentee in form of an order by the court to the accused infringer to stop the use or sale of patentee's invention and prohibit from any further use, sale or import of the patentee's invention.

## 2. Damages

Compensation of damages is awarded to the patent owner in the form of money to be paid by the accused infringer. This monetary refund is the relief against the past infringement. The amount to be paid has to be anything in consonance with the reasonable royalty, and in case where willful infringement is proved the award of damages can even be more. And in some cases the attorney's fees and the litigation costs are also awarded to the patent owner.

### Works Cited

United States Patent and Trademark Office. (2008, July). Manual of Patent Examining

Procedure. Retrieved March 28, 2009, from <http://www.uspto.gov/web/offices/pac/mpep/mpep.htm>