

INFRINGEMENT OF PATENT CLAIMS – INDIAN CONTEXT

Claims of a patent define the scope of protection conferred by the patent. Hence, patent claims are worded carefully with an objective to make it harder for those attempting to work around the claims. While patent holders dread a situation where competitors make minor changes to a patent protected product/process to evade patent infringement, competitors on the other hand dread a situation where changes made to a patented product/process are not sufficient to evade patent infringement. Insight into how patent infringement is determined can go a long way in addressing concerns of patent holders and those attempting to work around existing patents.

Patent infringement analysis is usually conducted in two stages, namely, literal infringement analysis and non literal infringement analysis (infringement under the doctrine of equivalents). In the first stage of analysis, a claim and the alleged infringing product or process are analyzed to determine whether all the elements of the claim are present in the alleged product/process when the scope of the claim is construed by the literal language of the claim. If the alleged product/process includes all the elements of the claim when the scope of the claim is construed by the literal language of the claim, the claim is said to be literally infringed by the alleged product/process.

Patent infringement analysis proceeds to the second stage if literal infringement is not established. In the second stage, the scope of protection conferred by the claim is extended beyond the literal language of the claim. Several countries including US, UK and India apply various principles which extend the scope of protection conferred by a patent claim beyond the literal language of the claim while analyzing non literal infringement. Courts in the US have dealt extensively with situations relating to non literal infringement. The courts in India on the other hand have had relatively fewer occasions to deal with situations relating to non literal infringement.

On occasions the Indian courts have had to deal with situations relating to non literal infringement, the courts have favored purposive construction of claims, thereby extending the scope of claims beyond the literal language of the claims. The Delhi High Court in *Raj Parkash Vs. Mangat Ram Chowdhry* held:

“It is the pith and marrow of the invention claimed that has to be looked into and not get bogged down or involved in the detailed specifications and claims made by the parties who claim to be patentee or alleged violators.”

Purposive construction of claims was also suggested by the Madras High Court in TVS Motor Company Limited Vs. Bajaj Auto Limited. The court in the instant case held:

“In construing an allegation of infringement, what is to be seen is whether the alleged infringement has taken the substance of the invention ignoring the fact as to omission of certain parts or addition of certain parts.”

The above cited judgments suggest that the “pith and marrow” or the “substance” of the invention has to be looked into in defining the scope of a claimed invention. The Madras High Court also refers to House of Lords decision in Catnic Components Limited Vs. Hill and Smith Limited, which favors purposive construction of claims.

In light of the foregoing discussion, it is evident that the Indian courts do not limit the scope of protection conferred by a claim to the literal language of the claim. The instant position of the courts is in favor of patent holders who can be optimistic about enforcing their patent rights against those attempting to work around their patents by making modifications, which may be within the “substance” of the claim. Nonetheless, claims should be carefully crafted to capture the “substance” or “crux” of the invention, and should avoid including non-essential elements in the claim. On the other hand, those attempting to work around a patent claim should not rely on minor modification to a claimed product/process, which may be inferred to be not going beyond the “substance” of the target claim.

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