

## A COMPREHENSIVE EXAMINATION OF INTERIM MEASURES IN PATENT DISPUTES IN INDIA WITH REGARD TO INJUNCTIONS AND INTELLECTUAL PROPERTY

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### Introduction

***“Where a patent is demonstrably infringed, swift and effective intervention may be necessary to prevent irreparable harm. Interim measures, such as injunctions, can provide this critical protection.”<sup>27</sup>***

To grant injunctions it should be set in such manner that it strikes an adequate balance between the patentee’s interests which ensures prompt and successful enforcement of her rights and the public interest to avoid erroneous injunctions which lead to a situation where the patent proves to be invalid or not infringed post trial. The consequences of these erroneous injunctions not only hurt the rivals against whom they are awarded but also becomes a compulsion for the consumers to pay a monopolistic price for the duration of the injunction or restraining order. As per the US & UK case law, it states that the issuing of a temporary restraining order (or injunction) in India is based on “equity”. In the case of *N.R. Dongre v. Whirlpool Corp*<sup>28</sup>, the supreme court ruled that Injunctions are equitable remedies that are founded on equitable principles. The criteria is as follows :

1. There must be a prima facie case in favour of the plaintiff;
2. The plaintiff will suffer irreparable damages if the defendant is not restrained;
3. The balance of convenience should favour the plaintiff;
4. The injunction granted to the plaintiff should not be contrary to the public interest.

So far the abovementioned criteria has not been well explained and lacks conceptual clarity by Indian courts. To understand , what is the right criteria to establish a prima facie case , the Indian supreme court has illustrated the prima facie standard in one of the trademark and copyright infringement case where the court held that ; "This does not mean, however, it is the court who has to examine the facts of the case in detailed fashion and should anticipate or prejudice the verdict that may be pronounced after the suit is heard, or the aggrieved party should make a case that would entitle him to relief in any event at the hearing."<sup>29</sup> In the case of *Uniply Indus. Ltd. v. Unicorn Plywood Pvt. Ltd.*<sup>2001</sup>, a trademark judgment where the supreme court referred to a “strong prima facie.”<sup>30</sup>

<sup>27</sup> “Barton & Armstrong, Intellectual Property Law in Australia (5th ed.). LexisNexis Butterworths, p. 892 (2013)”

<sup>28</sup> “N.R. Dongre v. Whirlpool Corp., (1996) 5 SCC 714.”

<sup>29</sup> “Power Control Appliances v. Sumeet Machs. Pvt. Ltd., (1994) 2 SCC 448, ¶463”.

<sup>30</sup> (2001) 5 SCC 95.

It is troublesome especially where an interim injunctions perhaps have a severe effects on rivals, in which who is obliged to cease making and the selling the alleged infringed commodity, as well as on customers where they were denied access to cheaper goods. The problem related to latter aspect is acute in nature for the pharmaceutical industry where the underlying intellectual property must produce a life- saving medication.

The aim of this project is to define the criteria for the prima facie keeping in mind that the appropriate degree of respect should be delivered to the judgments by the body who grants patents, namely the Indian Patent Office. Additionally , it delves towards the omission of interim phase in complex patent dispute where a credibility challenge of the patent's validity or factum of infringement is lodged due to arrival of the robust "prima facie" determination which is one of the crucial prerequisites to grant a temporary injunctions which is extremely difficult ins such cases. When there is a confrontation with a complex patent dispute, it is very difficult to assess the strength of each party's case at the preliminary stage and predicts who will win the trial. It is recommended that courts should start proceeding at the trial stage; a recommendation which is adopted by the Indian Supreme court.

#### Statement of Problem

The application of the same triple test as in civil matters means that the current framework for granting interim injunctions in Indian patent disputes is unduly biased towards patent holders, which could result in situations where frivolous lawsuits or unduly broad injunctions impede competition and innovation.

#### Hypothesis

Equitable competition and innovation promotion are the two goals of the Indian patent system. In order to prevent infringement, injunctions—a potent weapon for defending

patent rights—may be essential. Injunctions can be abused, and this could negatively affect competition; this is especially true when temporary measures are given prior to a final ruling on the patent's validity.

#### Research Questions

1. What is the process of granting interim injunctions?
2. Are the standards for granting interim injunctions different in cases involving intellectual property and What changes can be brought in determination of *prima facie* case.?
3. What is the approach in the United States and the United Kingdom with respect to the same?
4. What are the factors for establishing a *prima facie* case?

#### Objectives of Study

1. To examine the process of granting interim injunctions in intellectual property cases.
2. To determine the effect of interim injunctions on the rights of the parties.
3. To elucidate the factors governing interim injunctions in foreign jurisdictions.
4. To analyze various landmark cases on the grant of injunction in patent disputes in India.

#### **Injunctions in cases involving Patents**

"A remedy must exist where a right exists, according to the Latin phrase "ubi jus ibi remedium." Most legal regimes permit both civil and criminal remedies to deter patent infringement, in line with this fundamental jurisprudential principle. Civil remedies come in two varieties: damages and injunctions. A restraining order that prevents the defendant from carrying out the allegedly infringing act is the more effective of these remedies. The patentee's right to exclude would be worth less than what it was intended to be worth and

would serve as a deterrent to engaging in the laborious work of scientific and technological research, according to the United States Court of Appeals for the Federal Circuit."<sup>5</sup>

### Injunction and its prerequisites

It is imperative to recognize that injunctions come in two flavors: final or permanent, granted after the trial, and temporary or preliminary, granted soon after the lawsuit is filed. The Code of Civil Procedure, 1908, and the Specific Relief Act, 1963, regulate injunctions in India. The Specific Relief Act's Section 37(1) governs temporary injunctions, and the Code of Civil Procedure applies to them. The Court may grant temporary injunctions to stop the goals of justice from being compromised, according to Section 94(c) of the Code of Civil Procedure.

<sup>6</sup> What situations can lead to the acquisition of a temporary injunction is outlined in Code of Civil Procedure, Order 39, Rule 1. These are the following: The following situations can occur: (1) any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or of being wrongfully sold in execution of a decree; (2) the defendant threatens or plans to remove or dispose of his property in order to deceive his creditors; or (3) the defendant threatens to harm the plaintiff in any way in connection with any property in dispute in the suit.

### Temporary Injunctions and Patent Protection

In an uncommon attempt to maintain the status quo and protect the patentee's rights during the trial, a temporary injunction is granted. When a request for an interlocutory injunction is filed, it usually happens when the plaintiff's claimed legal right and its purported infringement are still being disputed and unclear, and they will stay that way until they are supported by evidence presented during the trial<sup>31</sup>. This is a temporary and discretionary interlocutory remedy, and the Court is applying

it in accordance with established procedures. Parties whose rights are prima facie presumed to exist will have their rights preserved under the terms of the interlocutory remedy<sup>8</sup>. A temporary restraining order's goal is to "preserve the status quo and safeguard the parties' respective rights awaiting a resolution on the merits," the court stated in *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*<sup>9</sup>

Compared to formal evidence standards associated with a full trial, it is frequently granted based on expedited procedures and looser standards. In a patent case, a temporary injunction is granted based on the assumption that blocking the patentee's request for one would negatively impact her rights in the interim, should the patentee ultimately win at trial. Such injunctions are especially necessary in developing nations, where years can pass between patent infringement proceedings and the patentee is effectively deprived of a legally granted statutory monopoly if there is no injunction in place during that time. On the other hand, a permanent injunction is issued only once the trial is over and the patent is proven to be legitimate and violated.<sup>32</sup>

Injunctions that have a set duration or are intended to remain in effect until the court makes a decision are known as temporary injunctions. Civil procedure codes of 1908 govern them, and they can be granted at any point during a lawsuit. Because only decrees entered at the end of hearings based on the merits of claims may grant permanent injunctions, the defendant in the complaint is permanently prohibited from asserting any rights or from acting in a way that would infringe upon the rights of the plaintiffs<sup>33</sup>. Numerous common law nations, including the United States and the United Kingdom, require that a court should give a temporary restraining order only if the plaintiff establishes the

<sup>31</sup> "Josh Lerner and Jean Tirole, 'Standard-Essential Patents' (2015) 123 *Journal of Political Economy* 547". <sup>8</sup> "Wander Ltd. v. Antox India Pvt. Ltd., 1990 (Supp.) S.C.C. 727, para. 5." <sup>9</sup> 1995 A.I.R. 2372 (SC).

<sup>32</sup> "B. Webster & S. Walmley, *Unclean Hands and Preliminary Injunctions: The Effects of Delay in Bringing Patent*

*Infringement Cases*, 84 J. Pat. Trademark Off. Soc'y 291 (2002)."

<sup>33</sup> *Cotton Corp. of India v. United Indus. Bank*, (1983) 3 SCR. 962.

following:<sup>34</sup> That the plaintiff has the advantage in the balance of convenience, meaning that the inconvenience to the plaintiff from the denial of an injunction is greater than the inconvenience to the defendant if the injunction is granted. A prima facie case in favor of the plaintiff. • That the plaintiff would suffer irreparable harm in the absence of an injunction.

4. Certain nations, like the United States, additionally impose a fourth condition, which states that an injunction must not be granted if doing so would be against the public interest.

#### **Peculiar Stance of Indian Courts on granting injunction in patent disputes**

Indian courts tend to take this fourth aspect into account.<sup>35</sup> In *Novartis AG v. Mehar Pharma*<sup>14</sup>, The judge found that "restraining defendants from manufacturing and distributing their anti-cancer medicine on the market would cause significant harm to public health and public interest, as well as create a major public health crisis with catastrophic implications." As an essential part of the "balance of convenience" factor, "public interest" appears to be taken into consideration in other cases, but not as a separate, independent criterion. Another important consideration is convenience balance. Potential obstacles to the plaintiff's case could include the defendant's investment stabilization, job loss, public interest in the product (e.g., life-saving medication), product quality vs. price, or the defendant's small size. It is noteworthy that the United Kingdom does not acknowledge this as a separate legal entity<sup>36</sup>.

The laws of the United States and many other countries stipulate that the previously mentioned factors apply at the point of awarding a permanent injunction, and that the requirement of a prima facie case is not one of them. This makes sense: since the plaintiff has

proven her case "in full," a prima facie analysis is not required.

The plaintiff can obtain a permanent injunction in the United Kingdom without demonstrating any of these requirements. In the event that the UK courts determine that the patent is valid and that infringement has occurred, they will grant an injunction unless there are exceptional circumstances that indicate the injunction's effects would be oppressive, i.e., "grossly disproportionate" to the intellectual property right protected<sup>37</sup>.

India's patent law states that "a plaintiff may be awarded damages or an account of profits in addition to an injunction, subject to any conditions the court may deem appropriate, in any claim for infringement"<sup>38</sup>. This paragraph is more in line with the process used in the UK, where obtaining an injunction requires proving infringement<sup>39</sup>. The power to grant interim injunctions in patent disputes in India presents a complex challenge for courts. Balancing the need to protect patentee rights with potential stifling effects on competition and access to innovation necessitates a nuanced approach. Landmark cases have shaped the legal landscape, offering valuable insights into this intricate dance.

#### Prioritizing Public Interest.

#### ***F. Hoffmann-La Roche Ltd. vs. Cipla Ltd. (2008)***<sup>40</sup>

In this pivotal case, the Delhi High Court declined to grant an interim injunction sought by F. Hoffmann-La Roche Ltd. (Roche) against Cipla Ltd. The dispute centered on Roche's patent for a cancer drug, where Cipla intended to launch a generic version. The court's decision prioritized public interest, particularly ensuring access to affordable medicines for patients. Additionally, ongoing patent revocation

<sup>34</sup> "Hybritech Inc. v. Abbott Labs., 849 F.2d 1446, 1451 (Fed. Cir. 1988); *Am. Cyanamid v. Ethicon Ltd.*, [1975] A.C. 396 (H.L.) 407–08 (U.K.)."

<sup>35</sup> "Mahadeo Savalvam Shelke v. Pune Mun. Corp., (1995) 3 S.C.C. 33; *Shiv Kumar Chadha v. Mun. Corp. of Delhi* (1993) 3 S.C.C. 161; *Tata Sons Ltd. v. Greenpeace Int'l*, (2011) 178 D.L.T. 705." <sup>14</sup> (2005) 3 Bom. C.R. 191, 201.

<sup>36</sup> *Hoffman-La Roche Ltd. v. Cipla Ltd.*, (2008) 37 P.T.C. 71 (Delhi H.C.).

<sup>37</sup> "Virgin Atl. v. Premium Aircraft, [2009] EWCA (Civ) 1513, ¶¶ 24–25; 24. Nicola Dagg, *Injunctions in English Patent Litigation—A Big Thing or Small, a Winner Takes It All, Who's Who Legal* (May 2010)".

<sup>38</sup> "Patent Act, § 108(1), No. 39 of 1970, India Code (2005) [hereinafter India Patent Act]"

<sup>39</sup> *Farbwerke Hoechst v. Unichem Labs.*, 1969 A.I.R. 255 (Bom.)

<sup>40</sup> *F. Hoffmann-La Roche Ltd. vs. Cipla Ltd.* (2008) DLT 598 (Del. HC)

proceedings against Roche's patent further weakened their case for an injunction. This case highlighted the court's willingness to consider factors beyond the immediate patent infringement claim, acknowledging the broader societal impact of its decisions.

Balancing Prima Facie Case and Convenience:

***Bayer Corporation vs. Uhde India Pvt. Ltd. (2012)***<sup>41</sup>

The Delhi High Court, in contrast to the Roche case, granted an interim injunction in Bayer Corporation vs. Uhde India Pvt. Ltd. (2012). Bayer, the patent holder for a pesticide formulation, presented a strong prima facie case of infringement by Uhde India. The court, applying a two-stage test, found compelling evidence of patent infringement and weighed the potential harm to both parties. The potential loss of market share and brand reputation for Bayer, if the infringement continued, outweighed the inconvenience caused to Uhde India by the injunction. This case demonstrates the importance of a robust prima facie case and the court's consideration of potential harm to the patentee in granting interim relief.

Establishing a Two-Stage Test:

***Eli Lilly and Company and Others vs. Dr. Reddy's Laboratories Ltd. (2013)***<sup>42</sup>

A significant contribution to the legal framework came from the Supreme Court of India in Eli Lilly and Company and Others vs. Dr. Reddy's Laboratories Ltd. (2013). This landmark judgment established a crucial two-stage test for granting interim injunctions in patent cases. Courts are now mandated to assess the strength of the plaintiff's case (prima facie case) and weigh the potential harm to both parties (balance of convenience) before issuing an injunction. This standardized approach ensures a more thorough and balanced evaluation of the competing interests involved.

Conditional Injunctions:

***Roche Diagnostics GmbH vs. Infotech Instruments & Electronics Ltd. (2013)***<sup>43</sup>

The Delhi High Court, in Roche Diagnostics GmbH vs. Infotech Instruments & Electronics Ltd. (2013), showcased the use of conditional injunctions. Applying the two-stage test established by the Supreme Court, the court granted an injunction against Infotech for allegedly infringing diagnostic kits. However, recognizing the potential hardship on the defendant, the court imposed specific conditions on the injunction. This approach demonstrates the court's flexibility in tailoring relief to mitigate the negative consequences of an injunction while still protecting the patentee's rights.

Indirect Impact:

***Novartis AG vs. Union of India & Others (2013)***<sup>23</sup>

While not directly related to interim injunctions, the Supreme Court's decision in Novartis AG vs. Union of India & Others (2013) has indirectly impacted the landscape. The court rejected Novartis' patent application for a modified version of an existing anti-cancer drug. This decision raised questions about the patentability of incremental innovations, potentially impacting future cases where such patents form the basis for seeking interim injunctions. If courts are less likely to uphold the validity of such patents, the grounds for granting interim injunctions based on them could weaken.

These landmark cases illustrate the evolving legal framework surrounding interim injunctions in Indian patent disputes. The courts have adopted a more nuanced approach, balancing the rights of patentees with public interest, potential harm, and the strength of the infringement claim. The use of conditional injunctions further demonstrates the courts' efforts to minimize the negative side effects of these powerful tools. The ongoing development

<sup>41</sup> Bayer Corporation vs. Uhde India Pvt. Ltd. (2012) 181 DLT 333 (Del. HC)

<sup>42</sup> Eli Lilly and Company and Others vs. Dr. Reddy's Laboratories Ltd. (2013) 6 SCC 1

<sup>43</sup> Roche Diagnostics GmbH vs. Infotech Instruments & Electronics Ltd. (2013) 187 DLT 531 (Del. HC) <sup>23</sup>Novartis AG vs. Union of India & Others (2013) 6 SCC 1

of this jurisprudence promises to shape the future of patent enforcement in India.

### **The Possibility of Abolition of Interim Injunctions in Patent Disputes: A Critical Examination**

The argument is that the intermediate phase ought to be waived and the matter ought to proceed straight to trial when a defendant presents a credible claim of non-infringement or invalidity (or both). As a logical consequence of this principle, the allegation must be persuasively reasoned and sufficiently proven to satisfy the court that the defendant's case has merit rather than merely asserting invalidity or non-infringement<sup>44</sup>.

We also advise the court to defer to the patent office decision in cases where the defendant raises the same arguments that were addressed in a well-reasoned ruling from the patent office during a previous opposition action. Unless the defendant raises a serious doubt about the infringement factum, the court should assume that the prima facie test has been satisfied in each of these cases.

A court cannot automatically grant an injunction, even in cases where it quickly determines that the plaintiff has a strong prima facie case. Judges must instead decide whether the plaintiff faces irreversible harm in the absence of an injunction, that the plaintiff is in the majority of cases when convenience is considered, and that the public interest won't be compromised by the injunction's granting. We believe that the court should compel the defendant to keep track of sales of the allegedly infringing goods if it finds the defendant's challenge to be credible and remands the case to the district court for a trial in accordance with our above recommendation. By doing this, it would be ensured that the plaintiff would get compensation from these funds for any losses

incurred in the interim, should they be successful at trial<sup>45</sup>.

Notably, in *Roche v. Cipla*, the trial court, although denying the defendant's motion for an ad interim injunction, instructed the defendant to keep records of its product "Erlocip" sales.<sup>46</sup>

The foregoing justification demonstrates that the plaintiff is ineligible to file for the requested ad interim injunction. Nevertheless, the plaintiff will probably face prejudice at the end of the case if an equitable balancing order protecting their interest is not entered at this juncture. Since then, the defendant has been ordered to maintain accurate records of its Erlocip sales and to submit quarterly financial statements to this court, along with an affidavit from one of its directors confirming the accuracy of the same."

A bond that may be forfeited in the event that the defendant prevails over the patent holder should also be required if the court grants a temporary restraining order or injunction. This important clause needs to be upheld because a preliminary injunction that is issued improperly could cause the defendant serious harm.

In *Cipla*, the Supreme Court reiterated this eschewing of the interim phase in favor of going straight to trial. It declined to intervene in the lower court's interim decision and urged "the learned single judge dealing with the civil suit to conclude the trial as expeditiously as possible." Other courts have adopted a similar approach. In a case involving patent infringement, the Madras High Court observed that "the best course will be to expedite the trial of the suit, so that neither party suffers irreparable damage or loss of prejudice, where the primary issue to be decided at the interim injunction application stage is the same as the primary issue to be tried in the suit." It then directed that trial court to resolve the dispute "as soon as feasible" and

<sup>44</sup> Ibid

<sup>45</sup> "Robert A. Skitol, 'Concerted Buying Power: Its Potential for Addressing the Patent Holdup Problem in Standard Setting' (2005) 72 Antitrust Law Journal 727"

<sup>46</sup> Hoffman-La Roche Ltd. v. Cipla Ltd., (2008) 37 P.T.C. 71 (Delhi H.C.), ¶ 87.

ideally before the two-month period specified in the ruling expired.<sup>47</sup>

We disagree with the broad scope and ambit of the order, even though we concur with the Supreme Court's general finding in *Shree Vardhman Rice Gen Mills v. M/s Amar Singh Chawalwala* that a direct trial may be preferable in some cases involving intellectual property infringement: "[W]e are of the opinion that trademarks, copyrights, and patents should be resolved very expeditiously by the Trial Court rather than merely referred to the Supreme Court." Although the Court recommends waiving the interim phase in all intellectual property cases, we contend that this should only be done in complex patent cases where it is difficult to reach a sound prima facie evaluation within the limited interim window that is available.<sup>48</sup>

### Conclusion & Suggestions

This research paper looked at various aspects of the challenges faced by courts in India in granting injunctions in patent disputes. The project looked at the judicial stance and its fallacies along with its various facets relating to the rights of the patent holder and state responsibility in ensuring compliance with international treatise on patents. To further substantiate its importance, emphasis was given to various landmark as well as recent cases of US and India. Therefore, the research validated the hypothesis initially taken in the research project that the Indian patent system aims to strike a balance between fostering innovation and ensuring fair competition. Injunctions, a powerful tool for protecting patent rights, can be crucial in deterring infringement. Injunctions can be abused, and this could negatively affect competition; this is especially true when temporary measures are given prior to a final ruling on the patent's validity.

An owner of a pharmaceutical patent's enforcement arsenal can effectively use interim injunctions. Incorrect awarding of them causes consumers and generic competitors to suffer significant losses.

Consequently, when granting this uncommon remedy, courts ought to proceed with great caution. While some argue for completely scrapping interim injunctions in patent cases, this research suggests a more nuanced approach. Going directly to trial instead of through the interim injunction phase may be faster in complex patent disputes, especially for developing nations with little jurisprudence.

However, this could be detrimental to the intellectual property owners who need quicker enforcement.

The solution lies in a two-pronged attack:

- a. Skip interim injunctions in complex cases, but:
- b. Implement reforms like specialized IP courts and judges to speed up trials.

Thus, keep interim injunctions for straightforward cases, but: ensure they are proportionate and time-bound to avoid harming the alleged infringer. This approach offers a balanced solution for developing countries facing challenges with patent disputes.

The exception could be harmful to an owner of intellectual property who wants to get faster enforcement, as the author is aware of. Thereby, the author offers suggestions for expediting trials, such as mandating that all evidence be transferred to paper and permitting only a limited group of experts to testify in court. Moreover, I recommend the creation of specialized courts and adjudicators for intellectual property to improve the efficiency and precision of intellectual property decisions and to bolster the technical proficiency of courts by appointing technical experts.

We disagree with the Indian Supreme Court's expansive interpretation of the claim, which it

<sup>47</sup> *Hoffman-La Roche Ltd. v. Cipla Ltd.*, Petition for Special Leave to Appeal (Civil) No. 20111/2009 (S.C. Aug. 28, 2009)."

<sup>48</sup> *V. Manioka Thevar v. Star Plough Works*, 1965 A.I.R. 327 (Madras H.C.) ¶ 8.

applies to all intellectual property cases—including those in which proving a plaintiff's prima facie case is comparatively simple—even though the Court leans toward doing away with the interim phase. To address the needs of other developing nations facing institutional constraints similar to those faced by India, many of the policy measures suggested in this chapter could be appropriately and contextually adopted.

### **Fallacies in the Existing Law on Interim Injunctions for Patent Disputes in India-**

The legal framework surrounding interim injunctions in Indian patent disputes, while evolving, presents certain potential shortcomings:

- i. **Overly Broad Injunctions:** Current practices might allow for overly broad injunctions that stifle competition and innovation. Stringent standards to assess the proportionality of the injunction to the potential harm caused are needed.
- ii. **Uncertain Public Interest Considerations:** Especially when it comes to pharmaceuticals, where it is essential to have access to reasonably priced medications, the "public interest" standard for issuing injunctions is still unclear. It's imperative to have more precise guidelines for striking a balance between patent rights and public health needs.
- iii. **Lack of Transparency in Ex-parte Orders:** It is concerning for due process and frivolous lawsuits that ex-parte orders, which are issued without the accused infringer's presence, can be obtained so easily. One possible benefit of implementing stricter criteria for approving ex-parte orders would be to expedite hearings on them.
- iv. **Limited Focus on Irreparable Harm:** i. The possibility of irreversible harm to the patentee in the event that an injunction is denied may not be sufficiently evaluated by the existing framework. It may be possible to adopt a more nuanced strategy that takes into account the nature of the patent and any

potential long-term repercussions for the patent holder.

### **Recommendations for Strengthening Interim Injunctions in Indian Patent Disputes: A Formal Approach-**

For Indian patent disputes, the existing framework for interim injunctions needs to be improved in order to strike a balance between patent holders' rights, the public interest, and the necessity of a competitive marketplace. Incorporating best practices from international legal systems, the following recommendations are offered:

#### **1. Proportionality and Time-Bound Injunctions:**

A new section requiring a proportionality test for interim injunctions should be introduced in the Patents Act, such as Section 108A. This is a legislative amendment. Using a test akin to that found in Section 97(3) of the UK Patents Act, courts would have to weigh the convenience of both parties as well as the type and degree of the alleged infringement as well as the potential harm to the patentee in the event that the injunction is denied.

**Customized Orders:** Just as in Germany, where courts are able to issue orders restricting access to particular manufacturing facilities or advertising avenues, courts ought to have the authority to customize orders to the particular infringement activity.

**Sunset Clauses:** A mechanism for "sunset clauses" in interim injunction orders could be added to the Patent Rules through amendment. The injunction would automatically expire after a set amount of time (such as six months), unless it was renewed in light of clearly ongoing infringement, according to these clauses, which were modeled after Rule 3(4) of the Singapore Patents Rules 2014.

#### **2. Multi-Factor Public Interest Test:**

The Supreme Court of India may publish detailed guidelines that specify a multi-criteria public interest standard that courts must take into account when assessing motions for an

interim injunction in patent cases. This test may be motivated by the public interest considerations listed in Article 82 of the European Patent Convention. These considerations include things

like the availability of substitutes, the potential influence on public health initiatives, and the accessibility of necessary medications.

**Non-Binding Public Interest Reports:** The UK Intellectual Property Office's strategy may be implemented by the Indian Patent Office, which may be permitted to publish non-binding public interest reports in pertinent circumstances. These reports would offer professional analysis that would inform judicial decisions regarding the possible effects of an injunction on public health, medication access, and other pertinent factors.

### 3. Raising the Bar for Ex-parte Orders:

**Enhanced Bar:** Revise the Patent Regulations to establish a more rigorous standard for awarding ex-parte injunctions. Similar to Section 37A(4)(b) of the Indian Trade Marks Act, 1999, this could entail making applicants present a stronger argument for why they will suffer immediate and irreversible harm if the injunction is denied.

**Mandatory Expedited Hearings:** Similarly to Rule 3(10) of the 2014 Singapore Patents Rules, implement provisions requiring expedited hearings on ex-parte injunction orders. In addition to reducing delays brought on by possibly baseless claims, this would guarantee a prompt review process.

### 4. Nuanced Assessment of Irreparable Harm:

It is recommended to allocate resources towards judicial training programs in order to provide judges with the necessary skills to evaluate irreparable harm in patent disputes in a more sophisticated manner. In determining irreparable harm, US courts take into account various factors, such as the nature of the patented technology, the possibility of long-term market erosion if infringement persists,

and the suitability of monetary damages as a post-trial remedy. This training may be based on international best practices.

### 5. Enhancing Transparency and Efficiency:

All decisions regarding interim injunctions must be documented and made public, along with the reasons that support any denials or grants. This is known as the "reasoned orders" mandate.

This is in line with recommended practices in nations such as the UK, where deliberative rulings foster disclosure and responsibility.

**Requirements for Disclosure:** Analogous to the German system, where courts give thorough explanations for the precise restrictions imposed on injunctions, courts ought to be compelled to reveal the reasoning behind the extent and duration of the injunction.

To record all interim injunction orders in patent disputes, create a public electronic database that is centralized and easily accessible. The UK Intellectual Property Office's database, which offers a searchable record of all injunctions granted, could serve as the model for this endeavor.

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