# White-Collar Crime in the Age of Innovation: The Case of Patent Infringement

*By* ***Jai Vardhan srivastava[1] & Amar Singh[2]***

*[1, 2]Advocate High court of Judicature at Allahabad, Lucknow Bench*

**Abstract:**

*This paper scrutinizes the intersection of white-collar crime and patent infringement, a largely under examined aspect of corporate deviance. patents are exclusive rights granted to a patent holder. When these rights of the patent holder or the claims in the patent are violated by a third party, without the consent or license of the patent holder, such third party is said to have infringed the patent rights of patent holder. The study underscores the complex nature of patent infringement as a form of white-collar crime, elucidates its consequences on industry and society, and proposes measures to mitigate its occurrence.*

**Keywords:** White-Collar Crime, Patent Infringement, Intellectual Property, Corporate Crime, Legal Enforcement

## 1. Introduction

Patent is an award for the inventor and a reward for the investor. The grant of patent for an invention attracts investment because the commercial exploitation of the invention is possible to its fullest extent during the term of patent. Another major advantage of the patent system is that it promotes 'invent around' concept. Patent is granted only when the invention and its operation or use and the method by which it is to be performed are fully disclosed.

A patent represents a *quid pro quo.* The *quid* to the patentee is the monopoly; the *quo* is that he presents to the public the knowledge which they have not got. It is a 'give and take' relationship, where an inventor gives his invention to the society and takes exclusive rights over it for limited period of time, after which the invention enters the public domain.

## 2. Theory of Patent Grant System

The theory upon which the patent system is based is that the opportunity of acquiring exclusive rights is an invention stimulates technical progress in four ways: first, that it encourages research and invention; second, that it induces an inventor to disclose his discoveries instead of keeping them as a trade secret; third, that it offers a reward for the expenses of developing inventions to the stage at which they are commercially practicable; and fourth, that it provides and inducement to invest capital in new line of production which might not appear profitable if many competing producers embarked on them simultaneously. Manufacturers would not be prepared to develop and produce important machinery if others could get the result of their work with impunity.

## 3. True and First Inventor

"True and first inventor" is a person who first made the invention and applied for the patent. He is a person who conceives the invention. If two persons have independently made the same invention and neither has used or disclosed it to the word, the one who applies first for the patent will be the first and true inventor although the other might have made it earlier in point of time. According to Sec. 28, the person who has invented anything patentable, must request or make a claim that he is the inventor of an invention in respect of which application for a patent has been made. Thus, Sec. 28 gives recognition to the right of the first inventor to be mentioned in the patent.

Sec. 2 (y) of the Act states that "true and first inventor" does not includes either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India. The 'first and true inventor' denotes the first and true inventor in the world. Thus, in the respect of an invention, which has been invented abroad, there can be no true and first inventor in India, though the person claiming to be the true and first inventor in India has got know-how of that invention. An importer of an invention, developed, abroad, is also not true and first inventor.

Thus the person who obtained the invention from another will not be considered the true and first inventor even if he was the first to apply for patent. A person who finances an invention but does not play any role in conceiving the invention cannot be considered to be an inventor[4].

A firm or a company cannot be named as an inventor in a patent application. A corporation or firm can apply as assignee (along with true and first inventor) and not as true inventor. The Minors can also apply for a patent.

If there is a contract between an employer and employee, then only that invention will belong to the employer (the employer can file a patent as an assignee). Otherwise, not, even if the invention was made at the expense of the employer. In case of inventions made by employees specifically employed for research and development, the invention belongs to the employer e.g. an invention made by scientist in the Government Forensic Science Laboratory belongs to the Government.

Patents are exclusive rights granted to a patent holder to prevent third parties from making, using, selling, offer for sale and importing a product or a product manufactured by a patented process. When these rights of the patent holder or the claims in the patent are violated by a third party, without the consent or license of the patent holder, such third party is said to have infringed the patent rights of patent holder. While doing a patent infringement risk analysis, it is necessary to understand the types of patent infringement to ensure that the invention is not likely to infringe any of the existing patent rights. In a patent specification, "Claims" define scope of the legal protection extended to the invention. Therefore, in case of infringement analysis, careful analysis of claims is extremely critical. Claims are usually very crisp and a precise language is used to write them. Each and every word of the claim shall be very carefully understood and interpreted. In case of patent infringement, extent of infringement is directly proportional to the extent of infringed subject matter claimed in the patent. Interpretation of claims can never be done in isolation but shall always be done with respect to the patent specification disclosed by the patent holder. Though there are various types of claims, there are two main types of claims i.e. independent claims and dependent claims. Independent claim is usually the first claim and rests of them are the claims that are dependent upon the independent claim, and hence, called as dependent claim. The dependent claim cannot be infringed without infringement of the independent claim. For example, if independent claim of the patent relates to a product and dependent claims primarily claim the process to make the product, infringement of patent cannot restrict to infringement of process without infringing the independent claim that claims the product itself. Please note that though most of the patents

have one independent claim, a patent specification may have more than one independent claim as well.

## 4. What constitutes Infringement

'Infringement' is the unauthorized use of a patented invention. An infringement of a patent occurs when the exclusive rights of a patentee are violated. What constitutes an 'infringement' has not been defined in the Patent Act. Whether the act of a person other than the patentee amounts to infringement or not would depend upon:

- The extent of the monopoly right conferred by the patent which is interpreted from the specification and claims contained in the application of the patentee. An action which falls outside the scope of the claims would not amount to infringement.
- Whether he is infringing any of the monopoly rights of the patentee to make, distribute or sell the invention.

## 5. Infringement Suit

A suit for enforcing a patent has to be filed for a District Court having jurisdiction to try the suit. Provided that where a counter-claim for the revocation of the patent is made by the defendant, the suit along with the counter-claim shall be transferred to the High Court for decision (Sec. 104)

The decision of District Court is appealable to the High Court. An appeal from a decision of the High Court may be filed before the Supreme Court.

The burden of proving infringement of a patent is on the patent holder i.e the plaintiff. Under certain circumstances the onus of proving and infringement of a 'process' claim is shifted to the defendant. Thus, in case of infringement of a process patent to obtain a product, burden of proof is on an alleged infringer to prove that the product was not made by the patent holder's process. However, the burden will shift to the alleged infringer only if the patent holder proves that the product by the alleged infringer is identical to that made by the patented process and if:


ISSN 2454 1273
Volume 10 Issue 1 – January February 2024

1. If the patent is over a process to obtain a new product; or,
2. It is most likely that the product of alleged infringer is made using the patent holder's process; and,
3. The patent holder is unable to determine the process used by the alleged infringer to make the product through reasonable efforts [Sec. 104A(1)].

While determining whether the alleged infringer discharged his burden, the court will not require him to disclose trade secrets if disclosure of such information would be unreasonable to the alleged infringer in the context [Sec. 104A(2)]

## 6. Relief in Suit

The relief that a court may grant in a patent infringement suit, would be either damages are account of public profits. A suit for infringement of a patent can be instituted only after the sealing of the patent. Damages caused in respect of infringement during the period between the date of advertisement of acceptance and the date of the sealing may be declared in the suit.

It is common and possible for the plaintiff to move and entering application for 'temporary injection' the court may on the basis of ***prima facie*** evidence grant a temporary injection restraining the infringer from working the invention. The main reason for a possible delay in getting orders in a patent infringement suit is the provision for preferring appeals from interim order of trial courts. This makes the main suit to remain pending without entering the trial stage and final order.

## 7. Rights of Patentee

The expression 'patent' connotes a right granted to anyone who invents or discovers a new and useful process, product, article or machine of manufacture, or composition of matter, or any new and useful improvement of any of those. It is not an affirmative right to practice or use the invention; it is a right to exclude others from making, using, importing, or selling patented invention, during its term. It is a property right, which the State grants to inventors in exchange with their covenant to share its details with the public.

## 8. Patent Infringement as Criminal Conduct

Criminal and civil law differ greatly in their use of the element of intent. The purposes of intent in each legal system are tailored to effectuate very different goals. However, imported a criminal concept of intent-wilful blindness-into the statute for patent infringement, a civil offense. This importation of a criminal law concept of intent into the patent statute is novel and calls for examination. Criminal law jurisprudence requires an intent element for three reasons: to ascribe a level of moral blameworthiness to an act, to separate criminal from civil liability, and to shield otherwise innocently acting defendants from criminal punishment. Patent infringement actions, by contrast, lack an intent element because they almost exclusively seek to remedy economic harms. The importation of criminal concepts of knowledge into the patent infringement statute may therefore lead to unwanted consequences, particularly, higher than-warranted burdens of proof for patent holders. To this end, equating criminal mental states to civil one's risks treating patent infringement as criminal conduct.

## 8. Patent Infringement as White-Collar Crime

White-collar crime, a term coined by Edwin Sutherland (1949), has increasingly been a subject of interest in criminological studies[1]. However, its less palpable facet - patent infringement - often eludes due scrutiny. Defined as unauthorized use of another's patented invention, patent infringement exemplifies a sophisticated form of white-collar crime, with significant ramifications for industries, inventors, and society at large. This paper seeks to illuminate the nature of patent infringement, its societal and economic impact, and propose strategies to counteract this form of white-collar crime.

Traditional understanding of white-collar crime often overlooks intellectual property (IP) violations, including patent infringement. Yet, these nonviolent, financially motivated crimes by individuals or corporations fulfill the very definition of white-collar crime. Offenders, typically well-educated and holding reputable positions, exploit gaps in legal and administrative structures to gain unjust advantage. Such crimes erode trust, hamper innovation, and skew market competition.

### 9. Socio-Economic Impact of Patent Infringement

Patent infringement has far-reaching socio-economic implications. Firstly, it impairs the intrinsic value of patents and discourages innovation. For inventors and corporations, the financial loss resulting from unauthorized use of their patented technology can be monumental. Secondly, the broader societal impact includes skewed market dynamics, as unlawful advantage gained through patent infringement often leads to an unlevel playing field. This can inhibit competitiveness and hinder economic growth.

### 10. Legal and Enforcement Challenges

One of the major challenges in addressing patent infringement as a form of white-collar crime is the complexity of patent law enforcement. Differences in national patent systems, high litigation costs, and technical intricacies of patent infringement cases often deter enforcement. Furthermore, tracking patent infringements, especially in an increasingly digitalized world, presents substantial difficulties.

### 11. Strategies to Counteract Patent Infringement

Mitigating patent infringement requires concerted efforts at multiple levels. Strengthening international legal frameworks, encouraging cross-border cooperation, enhancing capacity of patent offices, and digitalizing patent processes could be key to effectively combat patent infringement. Additionally, fostering a culture of integrity within organizations, coupled with stringent internal audit mechanisms, could deter potential white-collar criminals from engaging in patent infringement.

### 12. Conclusion

Patent infringement, as a form of white-collar crime, necessitates focused attention from policymakers, enforcement agencies, and organizations. While it's an uphill task to completely eradicate patent infringements, a comprehensive approach entailing legal, institutional, and cultural measures can significantly reduce its prevalence and impact. Future research should

aim to elucidate more sophisticated mechanisms of patent infringements and ways to counteract them, shedding light on this somewhat invisible form of white-collar crime.

## 13. References

[1]. R. Anita Rao & V. Bhanoji Rao, Intellectual Property Rights – A Primer, p-81 (2008)

[2]. Raj Prakash v Mangat Ram Chowdhary MANU/DE/0152/1977

[3]. Ayyangar's Report, 1959; Patents Act, 1970

[4]. V. B. Mohammed Ibrahim v Alfred Schafraneck, MANU/KA/0061/1960

[5]. Text Book on Intellectual Property Laws-II by Dr. Ashok K. Jain

[6]. F. Hoffmann-LA Roche Ltd. V Cipla Ltd., 2009 (40) PTC 125 [(Del)(D.B.)]

[7]. Jacob S. Sherkow, Patent Infringement as Criminal Conduct, 19 MICH. TELECOMM. & TECH. L. REV. 1 (2012),

[8]. Text Book on Intellectual Property Laws-II by Dr. Ashok K. Jain