



Civil liability arising from patent rights infringement

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Abstract. Invention is originated from think of people who provide process and special products and solve problem in a profession, technology, industry, and techniques. Iran is one of countries where innovation after reaching record is supported by patent Law. Furthermore, In case of violation of the rights of the inventor, he could use both civil and criminal enforcement for his rights. Therefore, we try to identify different dimensions of patient and seek to guarantee of performing patent infringement.

Keywords: Innovation, Copyright, infringement, criminal and civil enforcement

1. INTRODUCTION

Right of intellectual ownership and effect of human intellectual is one of important component of civilization. Therefore, in order to ensure the implementation of various provisions is predicted. Intellectual property is divided into two major branches of literary art and industrial property ownership. Industrial property deals with several topics such as patent rights, trademarks, industrial designs, and integrated circuits. Patent is defined in European languages in two ways: First mean define as document which gives to inventor in order to use experience invention. Second mean is content as a result of patent protection (Mir Hossein, 2008). World of invent means create, build and make something new. An innovator achieve in the creation of new phenomena and new constitutional right to assume that others are obliged to follow it and innovator give them peace of mind and following society use of their think. Meanwhile, mean of invention is not very obvious in was of patent rights. The model legislation which has been prepared by the World Intellectual Property Organization, the invention is "practically invented the idea of a technological solution solves a specific problem." Patent rights an exclusive right that the author of an industrial instrument or new initiatives to achieve a specific topic. World Intellectual Property Organization has prepared a model law which an invention is "Practically invented the idea of a technological solution solves a specific problem" and easier to invent new solution of industrial problems. Create of the right need innovation and provide tools, process, or new implications and secondly means including the use of innovation in industry.

The task of assessing the value of patent rights is a particularly difficult one, since the distribution of these values is highly skew. The skewness property has been discussed by numerous authors, e.g. Scherer (1965), Pakes and Schankerman (1984), Pakes (1986), and Griliches, 1990. Summarizing the insights from several studies on this point, Griliches (1990, p. 1702) concludes: "These findings, especially the large amount of skewness in this distribution, lead to rather pessimistic implications for the use of patent counts as indicators of short-run

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changes in the output of R&D.” Any attempt to cast more light on the value of patent portfolios must therefore turn to additional information which is correlated with the value of patent rights. Such correlates could conceivably be used to construct quality- or value-weighted patent counts which would measure inventive output with much greater accuracy than unweighted count statistics.

Using information contained in the renewal behavior of patent-holders has been one attempt to solve the problem described here. Studies in the patent renewal literature exploit the fact that it is expensive to holders of European patents to renew patent protection for an additional year. The value measures obtained in this literature approximate the return to continued patent protection, given that the patent has already been published. Pakes and Schankerman (1984), Pakes (1986), and Schankerman and Pakes (1986) have been the first to develop and estimate models in which the observed renewal decisions are used to estimate the distribution of patent values. Lanjouw (1998) has refined this approach to the estimation of patent values. However,⁸⁰ the results of these studies rest on assumptions regarding the unobserved value distribution of the most valuable patents those which are renewed to full statutory term. The Introduction should lead the reader to the importance of the study; tie-up published literature with the aims of the study and clearly states the rationale behind the investigation.

1.1. Protection of Invention

Patent protections of both procedural and substantive aspects can be evaluated. Content conditions of supporting innovation right are as following: 1. Initiative: It means when we can approve accuracy of patent which add knowledge and the innovation is step to forward for public level of knowledge in the society. Lack of this condition means somebody who do not add social knowledge try to gain support for the creation of a monopoly on the part of the knowledge society. The original condition of Article 27 requires that patents: Anyone can claim to be one of the following shall apply for registration: 1. Invention of new industrial 2. Discover of new tools or action of available tools in new way.

1.2. Principles of patent protection

In justifying the need for legal protection, various opinions have been expressed that the protection of property rights is a clear manifestation.

1.3. Philosophical perspective

Philosophical perspective is based with believe of English philosophy “John Luck” (1632, 1704), Thomas Hobz (1588-1671) German philosopher, "George Wilhelm Friedrich Hegel” (1770, 1831). Based on the ideas of "Luck", property rights like all other rights is natural rights. The philosophy of natural rights, God considered as the creator intended. According to this view, the creation of the world God has granted jointly to everyone. Therefore, how that is an individual can obtain the right to exclusive possession rights reserved.

2. LITERATURE REVIEW

Patent Rights and Economic Freedom What are our prior beliefs? Is patent protection hindrance to economic freedom or does it helps enhance economic freedom? If patent rights do reduce economic freedom, does this render patent protection undesirable? Does it imply a trade-off between economic freedom and technological progress? These are dive cult issues to address informatively given the lack of formal research on these issues (although a P rst tryat some

causality tests are reported in Chapter 4 of the Economic Freedom of the World: Annual Report 2001).

It would be useful to clear up a few matters. First, questions of whether patent rights are desirable are illposed for two reasons; the desirability of patent rights is not an issue. It is well recognized that patent protection brings both social benefits and costs.

Thus, the issue more properly is the appropriate degree of patent protection (or the optimal level of patent protection). The social benefits or costs of patent protection are often cast in terms of utility. The effect on productivity growth, innovation, technological diffusion, and so forth or of morality. The rights of the individual inventor versus that of the community and so forth. Secondly, however desirable a system of patent rights may be, there exist reasonable disagreements about the manner in which patent rights should be allocated or about the efficiency of patent systems in practice. Thus, it is useful to distinguish between the principles of patent rights and the practice. Proponents of patent rights may also be proponents of reform who seek changes or alternatives to current practice.

A second set of matters to clear up concerns misconceptions about the nature of the monopoly power that patent rights create. First, the patent right is the right to exclude others from exploiting the protected invention. This right is transient. It has a maximum life span and the right must be periodically renewed if it is not to expire. Second, some stylized facts: the vast majority of patents granted turn out to be economically worthless (i.e., not commercially viable). Thus, a vast majority of patents granted do no real good or harm on industries other than waste the resources of the patent office (for examining patent applications).

Of those patents that are valuable, not all of them last the full statutory duration. The majority of those patent rights last fewer than seven or eight years. By that time, the value of a patent may have diminished because either the invention's purpose or usefulness has a finite life or a new and better technology has displaced it. Thirdly, with the exception of certain chemical or pharmaceutical patents, the right to exclude extends not to an entire industry or final product but to particular parts or components of products.

The more appropriate model for the market structure is monopolistic competition rather than monopoly. That is, within an industry, there are many competing

These inventions compete because they are close substitutes. They may be functionally similar (e.g., represent different ways of operating a machine or cleaning stains, and so forth). There is free entry and exit in the sense that other inventors are free to try to develop a new alternative variety (as long as it does not infringe upon existing patent rights). Moreover, new inventions also compete with old inventions. Consumers need not purchase Windows XP. If the price does not justify the increase in quality over Windows 98. Thus, while patent rights create (temporary) deviations from marginal cost pricing (in order to allow the inventor to recoup the fixed costs for research and development of the new variety), the view that they create pure monopolies is a mischaracterization.

2.1. Perspective of rights granted by the government

Some lawyers believe that the legitimate rights of intellectual creation should be sought in the will of governments and laws. In other words, the phenomenon and of the rights of intellectual creation is part of the common heritage belonging to the community and has no owner. In this view, the government on behalf of the community and the public interest to encourage innovators and development initiatives in some specific types of benefits and privileges granted. Adherents to this view, the usual procedure is for governments to limited and specific

Civil liability arising from patent rights infringement

concessions given to creator's initiative. This view is more of the nature and basis of intellectual property rights in relation to the creation and protection of the rights guaranteed and reflecting the shape and style of intellectual property protection in legislation relating to intellectual property.

2.2. Game theory

We provide theoretical hypothesis which indicate that how this right can affect on behavior of people and how government intend to provide effective performing of this right. Game Theory is considered standard hypotheses for individual players. Among the wise, that they are, in their own interest to act and the incentives provided by the rights of intellectual creations are aware.

2.3. Civil executive guarantees for patent infringement

Patent right is one of important branches of industrial ownership's right and It means granting exclusive rights in internal and external law for patent right's owners for inventor in determined period. In according to importance of rules about rules about guarantee of performing patent right should play essential role in supporting right of owners in trade and economical developing of countries and the social welfare of society. In according to principle of performing the guarantee can be pointed to jurisprudence and the progressive principle of "Free loss". Legal enforcement of patent protection is more to avoid violating rights reserved and rape and sentenced to pay damages and stop violating the rights. It can be possible throughout substantive claims filed or issued a temporary order and then follow the wishes of the nature of the claim. The most important factors which can be beneficial in order to guarantee performing against patent infringement such as Compensation, cancellation sheet issued patents, Security (temporarily) outside the product infringes the trade channel.

2.4. Revocation of patents issued plate

Civil enforcement is not always for guarantee, but sometimes pays compensation to prevent further infringement. The cost and time required dealing with the objections often long and most of the time is useless. In some issues which invention is not new cannot approve. If this invention is approved can violate the rights of any other inventor. It means that someone approve right of invention's document and no one else can approve this right for himself. If someone violates this right and approved this document for himself. In this condition, the real inventor can request from court for revocation of patents issued ballot vote.

2.5. Provisional and precautionary measures

Provisional and precautionary measures may be continued to prevent the breach and prevent further damage from the violation of the right to issue a temporary order, the prohibition, the confiscation, or destruction of goods and violates the right. Thrips in Article 44 of the Agreement provides that the judicial authorities in order to violate the intellectual property rights to halt. Including those imported goods entering into commercial channels located in its jurisdiction which requires an intellectual property right.

2.6. Published in newspapers Court

Some times, the harm caused by the violation of intellectual prestige, credibility and reputation of the moral and material and it might be the sentencing court to sentence the offender to a penalty or compensation does not compensate for the sentence in the press release is necessary.

Thus, the legislator as an exception to the private complainant has the right to demand that the court issued the warrant that the content of the sentence in the newspaper. Therefore, Article 27 of the Law on copyright protection can be provided by a private plaintiff requested the court issued a final ruling and in order to select the contents of a newspaper and he advertised fee. Article 14 of the Law on the protection of the rights of creators of computer software as well as to software creators anticipated.

3. CONCLUSION AND DISCUSSION

In today world achieving to new technologies and fundamental knowledge is one of developing index for improving the country. In order to create motivation in among inventors and scholars as well as research and developing units is one of effective strategies for providing mechanisms for invention and countries try to reduce cost of R&D throughout exclusive right system. Infringement of patent enforcement with two faces: Criminal enforcement and civil enforcement. Under Iranian law allows the owner the possibility of an imminent violation of his rights in accordance with the rules on patents to prevent violent actions; however, general rules of procedure such authority in respect of all right. Therefore, apparently the laws of thrips and other countries are no different from those of the agreement; however, failure to respect the rights of certain laws relating to industrial property is problem which confusion of persons entitled to the use and citing their rights have doubled. Benefit of using the specific rule in according to content of right and the possibility of violations and other cases can provide specific actions in order to make general rule. To prevent violations of rights that is committed to the detriment of the owner as well as temporary measure can not only damage the interests of the owner to ensure the long-term. While thrips in various materials such as Article 46 agreements and 59 other facilities for the benefit of the rights owner is predicted. Therefore, we can point to removal of the goods and the violation of the right tools and equipment used in the business cycle and destruction of infringing goods in violation of the right. In Iranian law is not predicted any of predicted factors and it is necessary to pay attention for reforming legislation. In according to provisional measures and precautions to be taken merely procedural law of patents and products is banned. Furthermore, there has not been any tool in order to prevent infringement or actions after the seizure of products. Regardless of the problems mentioned in these Regulations to abolish the current provisions of the Penal Code and ambiguity in reference to criminal throughout non-criminalization of the mark and patent infringement. Now, only the owner of the goods seized enforcement in combating counterfeit products is that it is a temporary measure in order to measure gains and losses on long-term owner and can not be guaranteed. While, the agreement infringes trips out items and tools and equipment used in the business cycle and destruction of infringing goods in violation of the right. The patents cover compensation law in criminal cases and civil damages, including damages and interest on behalf of those who have been deprived. In according to damages caused by non-profit in violation of intellectual property rights may have been over-current losses. Article 49 of the Regulation is progressive.

REFERENCES

- [1] Asghari, Aghmashhadi, Fakhraldin (2012), Intellectual Property, Mazandaran University
- [2] Aslani, Hamid Reza, Introduction to protect the rights of patent and legal challenges of accession to Agreement of the thrips, Law and Rights, Vol 4 (13)
- [3] Emami, Asad Allah, (2011), Law of industrial ownership, Mizan Publishing, First volume
- [4] Esaei Tafreshi, Mohammad, Hekmat Nia, Mahmood, Article political philosophy of Thomas Hobbes, International Journal of Phiolesephy Transedent, No 14-25
- [5] Griliches, Z., 1990. Patent statistics as economic indicators: a survey. *Journal of Economic Literature* 28, 166–170
- [6] Jaffar Zadeh, Mirghasem, Shikhi, Maryam, (2009), Curriculum booklet creation of intellectual rights, Shahid Beheshti University

Civil liability arising from patent rights infringement

- [7] Katozian, Naser, (1999), Requiring out-of-contract, Civil liability, Tehran, Vol.1(2)
- [8] Hekmat Nia, Mahmood, (2008), Principle of intellectual property, Islamic Culture and Thought Research Publications
- [9] Langrodi, Jaffar, Mohammad Jaffar, (2006), Law Terminology, Gang Danesh publication, Vol. 16
- [10] Mir Hosseini, Seyed Hassan, (2008), Invention Law, Mizan Publication, Tehran
- [11] Moradi, Zahra, (2009), Abuse of patent rights, licenses, Journal of World Trade
- [12] Mohammadi Savoji, Mohammad, (2006), Position and draw theoretical understanding of intellectual property, Journal of Law and Jurisprudence, Vol 2
- [13] Pakes, A., Schankerman, M., 1984. The rate of obsolescence of patents, research gestation lags, and the private rate of return to research resources. In: Griliches, Z. (Ed.), R&D, Patents, and Productivity. University of Chicago Press, Chicago, pp. 73–88.
- [14] Pakes, A., 1986. Patents as options: some estimates of the value of Holding European Patent Stocks. *Econometrica* 54, 755–784

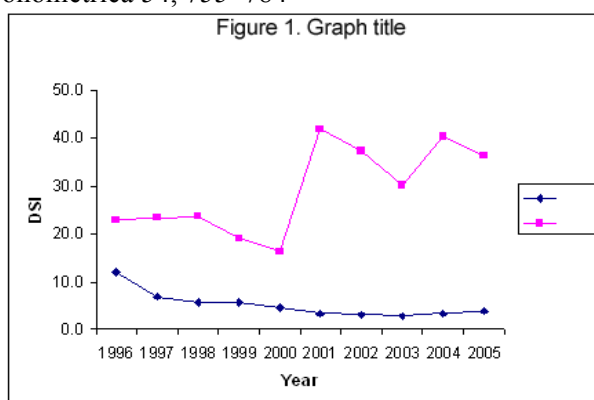


Figure 1. Legend for figure 1.



Figure 2. Legend for figure 2.

Table 1. Legend for table 1.

	Reading 1	Reading 2	Reading 3	Reading 4
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Day2	data	data	data	data
Day3	data	data	data	data
Day4	data	data	data	data

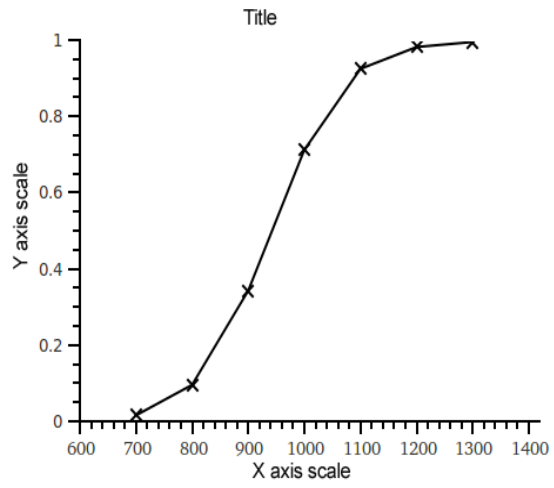


Figure 3. Legend for figure 3.