

Bharat Bhogilal Patel

1/43, Juhu Goldmist C.H.S., Juhu Gulmohar Road, Near
Saurashtra society, Mumbai 400 049.

E-mail: bharatbhogilalpatel@yahoo.in, website: www.bharatbhogilalpatel.com

Date: 06-05-2013

To,
Dr. Ashwani Kumar
Hon'ble Minister of Law & Justice
Room No. 415, A Wing, 4th Floor,
Shastri Bhawan, New Delhi-110 001.

Subject: - Patent Act 1970

Respected Sir Shri. Dr. Ashwani Kumar,

I, Bharat Bhogilal Patel have registered 2 (two) Patents in India in the year 1998. After through scrutiny of my submitted papers, the Patents were granted to me in the year 2003. Post the grant of Patents, I am trying to enforce and implement my patents but with no result. To enforce and implement my Patents, I have filed a number of cases and have also registered my Patents with the Customs under IPR Enforcement Rule, 2007.

In the process of implementation and enforcement of my patents, I have gone through the Patent Act, 1970 and it's Amendment Act of 2005. THE PATENT (AMENDMENT) ACT, 2005 amends SECTION 11A of the principal act. The amendment in section 11A(c) says that "provided also that after a patent is granted in respect of application made under sub-section(2) of section 5, the patent-holder shall only be entitled to receive reasonable royalty from such enterprises which has made significant investment and were producing and marketing the concerned product prior to the 1st day of January, 2005 and which continue to manufacture the product covered by the patent on the date of the grant of the patent and no infringement proceedings shall be initiated against such enterprise".

I would like to have few clarifications on the above amendment:

1. Whether section 11A(c) as mentioned above is applicable to my patents number 188787 and 189027?
2. If it is applicable, then does it mean that I cannot file infringement proceedings against such enterprises who are making use of my patented technology without my consent?
3. If I cannot file infringement proceedings, then whether the infringement party can file a patent revocation petition against my patents?

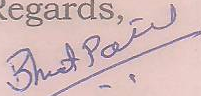
I would also like to know that when Patents are territorial in nature and Patent granted in one country cannot be enforce in other country unless

you have registered Patents in that country also, then why a prior art of another country is taken into consideration though the economic, social and political condition of each country differ and accordingly the invention will also differ. For example in USA the electricity mains work on 120V/60Hz and in India it is 240V/60Hz. In USA, they have left hand drive cars and in India we have right hand drive cars. The Ayyangar Report has also commented on this issue. Please also clarify on the issue of prior art.

The third issue on which I would like to have clarification is the issue of Burden of Proof in case of infringement of my process patent number 189027. Please let me know who has the burden of proof in an infringement proceeding filed by me against a third party for infringement of this process patent. This question is raised here as at the Customs, the Importers who are infringing my process patents are saying that as they are importing the material from abroad they do not have burden of proof.

I request you to clarify above said point as per our law at the earliest. All my papers related to my Patents are available on my website www.bharatbhogilapatel.com.

Regards,



Bharat Patel

Mob : 09223499562

No. 10/89/2010-IPR-III
Government of India
Ministry of Commerce & Industry
Department of Industrial Policy & Promotion

Udyog Bhavan
New Delhi

Dt.: December 5, 2013

To,

Shri Bharat Bhogilal Patel,
1/43, Juhu Goldmist CHS,
Juhu Gulmohar Road
Newr Saurashtra Society
Mumbai-400049

Sir,

I am directed to refer to your letter dt. 6.5.2013 addressed to hon'ble Minister of Law & Justice and received in this Department on 7.10.2013 from the Department of Revenue and to furnish the following information as requested by you:-

It is stated that the matter concerns specific patents that have been granted and applicability of specific provisions and ability to file infringement proceedings would need to be assessed on the basis of legal advice. On the issue of burden of proof in an infringement proceeding, it is informed that Article 34 of TRIPS deals with this issue in great detail and the provisions of this article could be used for determining the party on whom the burden of proof would lie. However, in this case also legal opinion may be sought. This Department is not mandated to provide legal opinion in respect of legislative provisions.

As far as territorial nature of patents is concerned, it is a fact that patents can be enforced only in the countries where they are granted. However, the Patent Office needs to search on global basis, the patent and non-patent literature to examine the novelty and inventive step involved in the invention for which patent is being sought.

Yours faithfully,



(Sanjay Kumar Lal)

Under Secretary to the Government of India
Tel: 23062906

Received
9/12/2013
Shri Patel

Copy to: 1.Shri Nirmal Singh, Director, Ministry of Law & Justice, Department of Legal Affairs, Shastri Bhavan, New Delhi – 110011.(w.r.t. their letter no. A-6011/3/2013-Adm.-I(LA) dated 20.6.2013)

2.Shri M. Satish Kumar Reddy, Director(ICD), Department of Revenue, Central Board of Excise & Customs, International Customs Division, North Block, New Delhi-110011(w.r.t. their O.M. No. 26000/7/2011-OSD(ICD) dated 20.9.2013).