

*Commentary***Overview on patent and patent infringement****George Berman***

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DESCRIPTION

A patent is a type of intellectual property that gives its owner the legal right to prevent others from making, using, or selling an invention for a specified period of time in exchange for publishing the invention's enabling disclosure. In most countries, patent rights are protected by private law, which means that the patent holder must sue someone who infringes on the patent in order to secure their rights. In some industries, patents are a significant source of competitive advantage, whereas in others, they aren't. According to national laws and international agreements, the system for issuing patents, the conditions put on the patentee, and the scope of the exclusive rights differ greatly between countries. A patent application, on the other hand, must always include one or more claims that describe the protected region. A patent might include many claims, each describing a particular form of property right. In the United States, these claims must meet a number of patentability requirements, including invention, utility, and non-obviousness. According to the World Trade Organization's TRIPS Agreement, any discovery in any field of technology that is new, contains an innovative step, and is capable of industrial application should be patentable in WTO member nations (WTO). Nonetheless, what is patentable subject matter varies from country to country, as well as across WTO member states. TRIPS further stipulate that the duration of the protection shall be at least twenty years. Patent infringement happens when a third party makes, uses, or sells a patented invention without the patentee's permission. Patents, on the other hand, are enforced

on a national level. Making an item in China that infringes on a US patent, for example, would not be considered infringement under US patent law unless the item was imported into the US.

Infringement can take the form of a literal infringement of a patent, which means they're doing something the patent forbids. There's also the Equivalents Doctrine. This doctrine guards against someone making a product that is essentially the same as the one that is protected with a few minor changes. Another two types of infringement are punishable in some nations, such as the United States. The first is contributory infringement, which is when you participate in someone else's infringement. This could be a corporation assisting another in developing a patented product or a company selling a patented product developed by another. Inducement to infringement occurs when one party encourages or supports another in infringing on a patent. A firm paying another party to manufacture a patentable product in order to diminish their competitor's market share is an example of this. This is crucial when it comes to grey market goods, which occur when a patent owner sells a product in nation A, where the product is patented, and then another party buys and sells it in country B, where the owner also holds a patent for the product, without the owner's consent. If country B has a national or regional exhaustion policy, the patent owner may still be able to enforce their rights; however, if country B has an international exhaustion policy, the patent owner will have no legal grounds to enforce the patent in country B because it was already sold in another country.

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