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Significance of Patenting in E-Commerce Industries

Parth Mangal^a

^aNirma University, Ahmedabad, India

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Intellectual property rights and its laws in the e-commerce sector is a very important aspect of it in today's competitive world. IPR refers to the intellectual property rights, which are the privileges that allow a company to use its invention to outperform rivals in the market and reap financial rewards. Due to the fact that most people are unable to comprehend it and because its linkages to e-commerce really aren't readily apparent, despite its great worth, it is frequently disregarded. Intellectual Property and e-commerce are, nevertheless, intrinsically linked. E-commerce often entails the sale of goods or services relying on licenced intellectual property. Musical works, photos, graphics, digital softwares, content and literature works, and so many other sorts of intellectual property can all be traded on internet via the medium of e-commerce platform, in this realm of digital goods. IPR is extremely critical in each of these situations since it's important to safeguard the items' worth. Technology-based security measures and laws governing intellectual property are some of the techniques used to provide the protection. Intellectual Property Rights in the e-commerce industry is particularly important since IP theft can potentially kill an online firm if it is prevalent. Being most common kind of IPR, patent and product licencing is the normal foundation for every online e-commerce firm carrying out its business. The majority of internet businesses opt to outsource the creation of very few parts or distribute their technology through licence agreements because it requires numerous different technologies to generate a single product. The agreement is basically a set of rules and guidelines for IPR protection. In this article, we shall go through a detailed analysis of the significance and the procedure of Patenting under Intellectual Property in the e-commerce industries.

Keywords: *patent, product licencing, protection, e-commerce, technology.*

INTRODUCTION

A patent is a limited-time intellectual property right provided to any inventor for an invention or a discovery made by him in exchange for public disclosure of that discovery. According to the Indian Patents Act, 1970, "a patent is granted to block others from creating, using, offering for sale, selling, or importing the invention."¹ Patents are an important entity in numerous industries in today's time because to their innovation and high level of competitiveness. E-Commerce patents protect the process of purchasing or selling goods in a physical store or over the internet. They can be used to defend a variety of internet commercial activities and trading. Some patents cover specific procedures or technology that help consumers make electronic purchases faster, easier, and more fun. A larger range of issues are covered by e-commerce patents, including infrastructure and databases, search engines, consumer incentive programmes, online auctions, sales as well as purchasing techniques, and financial activities.

REQUIREMENT OF PATENTING IN E-COMMERCE INDUSTRIES

Patents are really important and are required because of how much allowing, contracting out, reexamining and imperative associations drew in with e-Commerce throughout the developing era. Patents assists e-Commerce businesses in various ways, since they record any kind of new and innovative ideas developed by the innovators, block rival licenses on related improvements, increase valuation and overhaul the remaining of an association and become a wellspring of eminences in allowing trades. For instance, we all know about the online retail giant Amazon. It developed one of the most staggering known improvement and business programming licenses in the world - "One - Click feature",² which grants clients to purchase things in just a single click. In October, 1999, Amazon filed a suit against a company, Barnes and Nobles Inc. for infringing Amazon's "One - Click feature" patent and was conceded an essential order. However, later in February 2001, the Court of Appeals for the Federal Circuit upheld the District Court's interpretation and determined that Amazon.com was not qualified

¹ Patents Act, 1970

² 'Why Amazon's '1-Click' Ordering Was a Game Changer' (*Knowledge at Wharton*, 14 September 2017) <<https://knowledge.wharton.upenn.edu/article/amazons-1-click-goes-off-patent/>> accessed 06 July 2022

for the primary mandate, thereby demonstrating what it meant to protect an improvement or gathering in the e-Commerce Industry.

An e-Commerce company that accepts business method payments might easily outsource some of its products to improve profits. To demonstrate this point, there was a case where Sightsound.com, a music developing company, obtained a patent in the year 1993 for obtaining digital music via the internet. Afterwards, they got to know about their patent's infringement by a company named CDNow. Sightsound sought royalties from CDNow and other internet businesses that also allowed customers to download digital movies or music, like MP3.com, and it sued CDNow for its patent infringement. The primary reason for the increase of e-Commerce patents here is that the business method patent rights could guarantee monopoly rights over vital business techniques while also adding significant value through long-term competitive edge.

Priceline.com's patent of "Reverse Auction" commonly known as the "name your own price" bidding system, is another of such example. Buyers can now indicate the price they are prepared to spend for particular goods or services through online mode. In October 1999, Priceline.com sued Expedia.com, a website that offers similar travel services, for violating Priceline.com's "Reverse Auction" patent.

*"I think the Amazon patent may be patentable because it is a rather discrete way of how to maintain the confidentiality of information" said Dort. "But the Priceline.com patent gets a little closer to the line. What it describes is way of conducting business. I think Priceline-type patents really do go too far afield by trying to keep people out of the industry in question."*³

But Mr. Jeffrey R. Kuester, an intellectual property attorney and also a partner at Thomas, Kayden, Horstemeyer & Risley LLP in Atlanta and the chairman of the special committee on patents and the Internet by American Bar Association, said, he doesn't agree to what is been said. People who doesn't grasp what actually the patents protect, according to Kuester, overstate the Internet patent problem. *"It's easy to overestimate the breadth of a patent application if*

³ Steve Alexander, 'Patents in e-Commerce' (*Computer World*, 24 April 2000)

<<https://www.computerworld.com/article/2595565/patents-in-e-commerce.html>> accessed 06 July 2022

you read only the title or the abstract. Nine out of 10 patents are not as broad as they sound" he stated.⁴ The value of patents in the eCommerce sector will grow more than ever in the future thanks to innovations like offline and online integration, curation, customization, and personalization, virtual currencies, and retail via TV and many other devices.

We can better understand the various industry requirements that lead to original inventions by analysing e-Commerce patents. They also help us to understand the importance of an innovation and also financial benefits of innovations because patent regimes are meant to promote innovation. They also force us to think outside the box as we improve the design procedures that form the technological backbone of the sector with the thought behind of protecting such innovations from getting copied.

HOW LONG IS THE TIME PERIOD AN E-COMMERCE BUSINESS GETS PATENTED IN INDIA

In India, the e-commerce sector is rapidly expanding. It is expected to rise by 21.5 percent, expected To reach US \$74.8 billion by the year 2024. It is predicted that it'd reach US\$ 350 billion by 2030. In India, the government have set a patent length of 20 years, which is consistent with the rest of the globe. To obtain patent protection, Indian e-commerce enterprises must follow the same method as other industries or the personal creators follow to obtain it.

THE PATENTING PROCEDURE

Step 1: Determining the type and searching and Opinion on Patentability - The patentability opinion and its search, which involves a review of the prior art, is the very first step in the patent procedure. During the analysis, an opinion is made about whether or not the patent office will grant you patent on the innovation. You are not required to go outside and look for previous art references that could jeopardize your patent. However, you must report to the intellectual property office any relevant facts that you are aware of. In other terms, there is no obligation to seek previous art, but there is an obligation to provide necessary details to the intellectual property office.

⁴ *Ibid*

Step 2: Determining if your innovation is patentable - If you want to obtain protections for your research and innovation, this is likely the first query that will come to mind. It is advised to seek help from a registered attorney or an agent if you have no prior expertise conducting the patent searches. Discussion with an agent or the patent attorney won't cost you any money or fees as the initial patent discussion is free. In addition, the confidentiality and secretiveness of your invention are maintained because of the signing of non-disclosure agreement (NDA) by a patent agent or intellectual property firm before discussing inventions. The innovator although and also the attorney may refer to the points mentioned below before reaching to a conclusion.

- The invention in India should be Patentable is a subject matter that it must not fall under the non-patentable inventions mentioned in the section 3 and section 4⁵ of the patents act of India.
- Also it must qualify the patentability criteria of novelty, non-obviousness and industrial application.

Step 3: Preparation and documenting of a patent application-It is then, in the third step, required to prepare your patent application further in the process. Then it is required to register the patent application well with Patent Office after you have checked and permitted. Preparing and filing a patent application entails creating a document that details your innovation. This document must allow someone else to make and use the idea. The patent application is not really a simple checkbox exercise.

Step 4: Patent Prosecuting - Patent prosecuting refers to the correspondence here between patent attorney to represent the innovator and the Intellectual property Office. Correspondence includes documentation such as with a written response to an Office Action issued by the Patent and Trademark Office. It is an argument used to convince the inspector that your innovation is patentable. The Office Action is the formal position of the Patent Office on whether or not to issue someone a patent.

⁵ Patents Act, 1970, ss 3 and 4

Step 5: Issuing, Reconsideration, or Rejection - The patent application becomes a patent if the party seeking for patent is successful during the prosecution phase of the patent process. If the applicant of patent fails in the stage of prosecution, they will then have two options; they can either withdraw the patent application or they can appeal, the examiner's judgment, to an impartial board, which will then determine whether the examiner was right or not.

Step 6: Maintenance of your Patent - A patent typically lasts for 20 years. The owner must pay a nominal price to renew and maintain the patent once 20 years have completed and the term has expired (*Section 53⁶, Rule 80⁷* of the Indian Patents Act). The renewal of a patent does not require a different form. By submitting a request to the controller of patents, the patentee could directly pay its renewal fee. A renewal fee is required for the remaining term of the main patent if the original patent is cancelled and the patent of extension is converted into the dependent patent. Otherwise, no charge is required for patents of addition.

CONCLUSION

Indian e-commerce industry is currently the focus of attention on the international stage. Besides from China and the US, its customer base is expanding. The e-retail industry is increasing steadily. It has a 35 percent CAGR (Compound Annual Growth Rate) and will create 1.8 trillion in the fiscal year 2021–2022. According to projections, the Indian e-Retail sector would draw 300–350 million customers, increasing GVM (Gross Merchandise Value) to US\$ 100–120 billion at the end of 2025.⁸ It's critical to comprehend the complexities involved in the procedure before applying for a patent to create such an e-commerce network. Without a doubt, intellectual property laws are necessary for the ethical and fair adherence of digital practises and operations, particularly in a sector “*as complex and multicultural as e-commerce and retail.*” IPR in e-commerce aids in defending companies that use online platforms. Intellectual property rights assist businesses in preserving and protecting their covert business operations as the internet retail market expands exponentially.

⁶ Patents Act, 1970, s 53

⁷ Patents Act, 1970, r 80

⁸ Alnoor Peermohamed, ‘Bharat to Haul Ecomm GMV Past the \$100 Billion Mark by 2025’ (*The Economic Times*, 16 June 2020) <<https://m.economictimes.com/small-biz/startups/newsbuzz/bharat-to-haul-ecomm-gmv-past-the-100-billion-mark-by-2025/articleshow/76396865.cms>> accessed 06 July 2022