

The Confronting Methods against Patent Abuse in Iran's Patent Law

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Abstract: The study of confronting methods against patent abuse in Iran's law is the subject of the present analytical article. In this article the confronting methods against patent abuse are mentioned, and there are included suggestions to amend some of the regulations of Iran's intellectual ownership law.

Key words: patent, abuse, compulsory license, decline of patent rights.

1. Introduction:

The main purpose of patents is to protect the inventor, and give him economic advantages to capitalize his inventions and therefore propose more new inventions. Obtaining a patent is also a means of establishing recognition of an invention and the primacy of the inventor, protecting him from unlawful imitation or competition. There must be a fair balance between patentee's rights and the community's right which gives the holder of the patent certain exclusive rights. In some minor cases patentees try to achieve more than they desire. Patent abuses and confronting methods of the government is the main subject of this article and the author tries to restrict the study in Iran's patent regime.

2. The methods of confronting against patent abuse:

Before focusing on the methods and their definitions, it is mandatory to tell that some of these methods are the instruments to prevent the patent abuse like the decline; some other are the remedial ones like confronting the unfair competitions, and some others contain dual goals of both remedial and preventing like policies made in the way of invention reveal and registration and the compulsory license (Ahmadi: 2011).

A general view to the confronting instruments with these methods shows that among these methods, the ones known as remedial contain preventing strength, and the preventing methods like the decline and the exhaustion of rights contain remedial specifications. Therefore, the further matters are presented without noticing these classifications.

2.1. The decline, definition, history and its current condition within the regulation of Iran and TRIPs:

2.1.1 The definition of the decline or the exhaustion of the rights:

Based on this doctrine, when a product containing the rights of intellectual ownership (like patent) is sold in a market, the rights of the first owner (intellectual owner) will be finished under circumstances (Mirhosseini: 2008). In other words, when an invented product is distributed by the inventor's consent, the owner of the invented product is not permitted to claim prevention of import or using it (Habiba, Shakeri: 2008).

2.1.2 The selected method in Iran's Law about the decline:

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Except article C of the Clause 15 of the Law of Iran “exploiting the goods distributed in the market by the owner or by his/her agreement is not concluded the invention certificate”. It means that by selling and trading a product in the country of Iran, the owner or the seller does not have the right to ban the resell or any kind of transfer by the buyer, in contrast he/she has the right to forbid any import of that special product. By this, the patentee that has the right to produce and distribute the product can sell his/her product with a high price and forbid any import of the same product from abroad even with a lower price.

The national decline is not in accordance with the economic interests of Iran (Ameri: 2009). The legislator would better reform this clause and replace the national decline by international decline.

2.2. Compulsory license:

2.2.1 Definition of compulsory license:

Compulsory license is the license made by the Law to produce and exploit the invention and other intellectual ownership without the agreement of the owner, by the government for itself or for the third party in health matters and public interest conditions by paying the economic value of the intellectual owner (Mirhosseini: 2006).

2.2.2 The history of compulsory license issuance and making use of it for invents rights throughout the world:

Paris convention is known as the first regulation in the world that predicated the compulsory license issuance. In the content of the clause 5 of the convention to support the industrial ownership it is mentioned that any country has the right to make policies in which presenting compulsory licenses in order to prevent abuses is possible (Ameri: 2009). There are also regulations about this matter in clause 31 of TRIPs (Fathizadeh, Bozorgi: 2004).

2.2.3 A criticism on the conditions of using compulsory license in the Law of Iran, TRIPs regulations, and Paris convention in view of the problems:

Since Iran is a member of Paris convention, and that clause 62 of the Law of Iran declares that in any contradictory situation in the contents of the laws of Iran and the international regulations about industrial ownership, the priority will be with the international treaty, it is considerable that although this kind of solution is incompatible with the national interest and domestic regulations of Iran, but this matter shows the superiority of Paris convention on industrial ownership regulations of Iran. So when we aim to describe the Laws of Iran by taking into account the TRIPs regulation, we are forced to describe the regulations of Iran by following the regulation of Paris convention.

According to this, since the regulations of Paris are only mentioned for compulsory license issuance to confront against the patent abuse, and there is a 3 or 4 year deadline from the date of patent sheet request and also a 2 year deadline from the first exploitation issue, we first focus on the way of compulsory license issuance to confront against patent abuse and then we will describe the other terms:

First: compulsory license issuance to confront against patent abuse:

As mentioned before, compulsory license issuance is one of the predicted ways in the regulations of the country of Iran, the Paris convention, and the TRIPs against patent abuse.

Patent abuse is illustrated in different factors like failing to produce enough production, failing to adequate distribution, selling the product with high price, and illegal exclusivity or unfair competition and acting against free competition by trade limiting contracts. To confront against unfair or non-free competition there exist special condition that will be mentioned later. Now, the terms of compulsory license issuance in other terms of abuse are mentioned:

- The main problem with this solution is the 3 or 4 year deadline, usually lasts for more than 6 years. In fact, license issuance after a long period of time causes governments not to issue such licenses or the issuance become less important.

- The other problem is the payment to the owner of the patent for the compulsory license issuance. If the payment become lawful in the conditions that the owner does not aim to abuse and is not capable of enough producing the product or he/she is not capable of suitable selling or distributing the productions, then paying to the owner who aims to abuse and harm the society is not logical. Is it fair that the government pay them both?(Ahmadi: 2011)
- The other problem decreasing the effectiveness of the compulsory license against patent abuse is the authority of the owner to exploit and also the owner's authority of making contracts with others that causes the owner who used to abuse by the patent, make contracts with others to void the compulsory license or to produce the product by himself and cause the receiver of the compulsory license loss, because the main knowledge is with the inventor and most of the patentees are big and powerful companies that cause the holder of the compulsory license loss and become excluded (Ameri: 2009).

Second: compulsory license issuance in the time of public and national interest, health necessities, and alike:

- ambiguity in defining national interest or social necessities
- the possibility of the patentee to meddle in producing or making exploitation contracts which causes loss for the holder of the compulsory license and even excluding him from activity and also cause lack of prediction to compensate the damages .
- Limiting the good production out of compulsory license issuance to remove the domestic needs is also a problem unable to be ignored easily. if a national urgent or a health problem occur. Because of a disease in several countries and only one country is capable of producing the special medicine through compulsory license issuance, forbidding the very country of distributing the produced medicine to the other countries challenging with the so called disease, then the matter will not be in accordance with human rights. Based on this, solving such a problem needs international effort.

2.2.4 A criticism on predicted commission in the regulation of 2007 for compulsory license issuance:

According to the mentioned 17 regulation, the commission containing the highest person of the related organization, according to the kind of invention in addition with the director of state deed and property registry organization, a member of Supreme Court, with introducing the director of the judiciary, Attorney General, representative of the president will be responsible for issuing the compulsory license. The decision of the commission can be reviewed only once in the commission, and then it is able to be complaint in general court.

One of the criticisms about combining the very commission is as follows: combining the commission is a judicial matter by paying attention to the majority of its members. It is considerable that defining a national urgent or anti-competitive problems and alike needs individuals of executive specialty.

The other factor is about the number of members that increasing of them can increase the accuracy in making decisions.

The other problem is about the possibility of changing commission polices in a chamber of the general court (according to the clause 22). In fact, only a judge will be capable of violating the decision made by the commission combined from attorney general and two notable members of the judiciary.

The other ambiguity is about the possibility of changing the policy issued from the public court about the compulsory license not mentioned in law; the demand of TRIPs is not fulfilled in this element. Clause 31 of TRIPs asks the members that the decision about paying the owners whom invention being used through compulsory license and also the legal validity of the decisions made about the compulsory license becomes capable of being reviewed by the judiciary or any other independent by higher authority (Taromsari: 2008).

The prediction of appearing in front of public court to change decision of the commission combined from attorney general, not only is it transferring the matter to a non supreme reference, but also it is transferring the matter to an incapable entity the other problem resulting out of law ambiguity is about the supreme entity or the minster is responsible for the invent with registration license. Now, if the patent is related to several fields or is multi-dimensional who can attend the commission?

3. Conclusion and suggestions:

The question was about that whether law of Iran contains adequate and suitable regulations against patent abuse or not and that whether the very regulation agrees TRIPs regulation or not. In reply we shall tell both of them lack such instrument. Ambiguity in compulsory license, too much time taking of license issue, compensation to the patentee even if he/she aims to abuse in a way of lack of presentation of the invention and failing to produce the invention, ambiguity in the commission responsibilities predicted in patent law, industrial plans and trademarks, ambiguity in defining anti-competitive acts, the national decline prediction are the dements of threat in the authors point view. If Iran joins the WTO the increased rate of foreign patents will be a harsh threat to the national interest of Iran. According to the above mentioned matters, the author, here, presents some suggestions:

- Changing the reference of commission of clause 17 of the law from the public court to a higher reference which is able to act freely without any hesitation.
- Replacing national decline by international decline.
- Education judges for the cases of intellectual ownership the once who are graduated in the very related field of study.

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