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PATENT RIGHTS AND PUBLIC INTEREST

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What is a Patent ?

In its simplest term a patent is an agreement between an inventor and the public, represented by the government : in return for a full public disclosure of the invention the inventor is granted the right for a fixed period of time to exclude others from making, using, or selling the defined invention in the country. It is a limited monopoly designed not primarily to reward the inventor, but to encourage a public disclosure of inventions so that after the monopoly expires, the public is free to take unrestricted advantage of the invention. Because there exists no duty to disclose inventions, an incentive to disclose is embodied in the patent laws of almost all the countries of the world. These laws, in effect, say to the inventor :

> "You have made an invention, but nobody can use it unless you reveal it. It is thought the public will benefit from knowing about it. If you will disclose your secret in such a thorough and orderly manner that anyone skilled in the art can put it into practice, we will give you in return a contract, called a patent, giving you exclusive rights to stop others form making, using, or selling the invention, for a limited period of time.
>
> During this time you may exploit the invention as you please, or sell or lease your rights, and if you die the rights shall pass to your heirs. But at the end of the limited period of time, the invention shall become public property"[1]

Originally, the term "patent" had a broader meaning than that it is now assigned to it. A grant from a sovereign of any special license or privilege, in the form of an open letter addressed to the public at large, was called a letters patent, from the latine *literae patentes*—literally open letters. The term is commonly shortened to "patent[2]. The Letters Patent were addressed by the sovereign

1. Alf K. Berle and L. Sragne De Camp, *Inventions, Patents, and their Management,* D. Van Nostrand Company, Inc., Princeton, New Jersey, 1959 pp. 5-6.
2. J. K. Wise, *Patent Law in the Research Laboratory.* Reinhold Publishing Corporation, New York, 1955, pp. 1-2.

"to all to whom these presents shall come". These grants, or patents included charters, land, titles, offices and many other subjects in addition to monopolies for inventions.

In a document, written by the Director General of WIPO, for the preparatory work on the revision of the Paris Convention for the Protection of Industrial Property, the notion of patent is described as follows : "a patent is a document, issued, upon application, by a government office, which describes an invention and creates a legal situation in which the patented invention can normally only be exploited with the authorization of the owner of the patent[3]. The patent contains a grant to the patentee and a printed copy of the specification and drawings of the invention is annexed to the patent and forms a part of it.

Thus, a patent for an invention is a grant of a property right by the Government to the inventor (or his heirs or assigns), acting through the patent office. The right conferred by the patent grant is "the right to exclude others from making, using, or selling" the invention.

Nature of Rights Conferred by the Patent

The exact nature of the rights conferred by the patent grant must be carefully distinguished, and the key is in the words "right to exclude others from making, using, or selling" the invention. The patent does not grant the right to make, use, or sell the invention but only grants the exclusive nature of the right. Any person is ordinarily free to make, use, or sell anything he pleases, and a grant from the Government is not necessary. The patent only grants the right to exclude others from making, using, or selling the invention. Since the patent does not grant the right to make, use, or sell the invention, the patentee's own right to do so is dependent upon the rights of others and whatever general laws might be applicable. A patentee, merely because he has received a patent for an invention, is not thereby authorized to make, use or sell the invention if doing so would violate any law. An inventor of a new automobile who has obtained a patent thereon would not be entitled to use the patented automobile in violation of the laws of a state requiring a license, nor may a patentee sell an article the sale of

3. WIPO documents PR/GE/II/2 of September 5, 1975

which may be forbidden by a law, merely because a patent has been obtained. Neither may a patentee make, use or sell his/her own invention if doing so would infringe the prior rights of others. A patentee may not violate anti-trust or anti-monopoly laws, such as by resale price agreements of entering into combination in restraints of trade, or the pure food and drug laws, by virtue of having a patent. Ordinarily there is nothing which prohibits a patentee from making, using, or selling his/her own invention, unless he thereby infringes another's patent which is still in force.

Since the essence of the right granted by a patent is the right to exclude others from commercial exploitation of the invention, the patentee is the only one who may make, use, or sell the invention. Others may not do so without authorization from the patentee. The patentee may manufacture and sell the invention, or may license, that is, give authorization to others to do so.

It is to be noted, however, that many patent laws permit under certain circumstances precisely defined in such laws—exploitation of the patented invention without the authorization from the patentee. An example is exploitation under a compulsory license[4], that is, a licenses granted not by the patentee but by a government authority. The word compulsory license is sometimes called "non-voluntary license", which clearly shows that it is granted against the will of the patentee. A compulsory license is a sanction imposed upon the patentee if that patentee fails to fulfil its or his obligation to work the patented invention[5]. "Working" of a patented invention means, where the patent has been granted in respect of a product, the making of the product and where the patent has been granted in respect of a process, the use of the process[6]. Purely commercial acts such as importing or selling do not constitute working : there must be manufacture of the product or use of the process.

The patent law of Bangladesh provides that if, by reason of the default of the patentee to manufacture to an adequate extent and to

4. *Background Reading Material on Intellectual Property*, WIPO, Geneva, 1988, p, 92
5. *Ibid*, p. 108
6. WIPO model law for developing countries on inventions, volume 1, Patents, WIPO, Geneva, 1979, p. 27

supply on reasonable terms, the patented article, or any parts necessary for its efficient working, or to carry on the patented process to an adequate extent, any existing trade or industry or the establishment of any new trade or industry in Bangladesh is unfairly prejudiced, any person interested may present a petition to the Government requesting the grant of a compulsory license or revocation of the patent. If the parties do not come to an arrangement among themselves, the Government decides upon the petition or refers it to the High Court. A compulsory license may be granted on such terms as the Government or the High Court may think just.[7]

A number of countries provide for the grant of compulsory licenses on the public interest grounds.[8] Generally national defence, public health and the development of other vital sectors of the national economy constitute public interest grounds. For instance, if the protected product is not available in the country but is urgently needed, and if the time required for its manufacture or production in sufficient quantity is too long, the concerned government authority may decide that the product should be imported despite the patent. If, on the other hand, the protected product is available on the market in the country as a result of importation, but its manufacture locally would enable a vital sector of the national economy to be developed, the concerned government authority may decide that it should be manufactured in the country notwithstanding the patent. The patent law of Bangladesh provides that if the patented article or process is manufactured or carried on exclusively or mainly outside Bangladesh, the Government, on the basis of a petition from any interested person, on being satisfied that the allegations contained in the petition are correct and that the applicant is prepared, and is in a position, to manufacture or carry on the patented article or process in Bangladesh and that the patentee refuses to grant a license on reasonable terms, may revoke the patent forthwith or after such reasonable interval as may be specified in the order, or order the patentee to grant a license.[9]

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7. Patents and Designs Act, 1911, Section 22
8. *Background Reading Material on Intellectual Property*, WIPO, Geneva, 1988 p. 109
9. *Ibid*, Section 23

Limitations of patent Rights

Even when a patent is prefectly sound, valid, and legally granted, the patentee is subject to certain limitations in exploiting it. The main limitations are as follows :

(a) A patentee may sell a sample of his invention as he pleases, or refuse to sell it at all. But once he has sold it, he loses all control over it. This important limitation applies to those products which have been put on the market in the country by the patentee or with its or his authorization. "Putting on the market" typically means sale. Other ways of putting on the market include renting and transfer by way of gift; for example, an entity gives away a certain number of articles that contain the patented product for publicity purposes.

Putting on the market of any given article incorporating the patented product can occur only once. For example, the article containing the patented product may be sold by the entity that manufactured the article and which is the owner of the patent for inventeon. By this sale, the product has been put on the market and its use by the buyer or its possible further sale by the buyer to another person are acts done in respect of an article which is already on the market because the owner of the patent for invention has sold it. And as already stated, acts done with products which have been put on the market are not prohibited acts.

(b) The manufacture, sale, and use of specimens of an invention are subject to the police powers of the government, which may regulate, limit, or forbid such acts on the gorund that the invention is dangerous or may be used for illegal purposes. Drugs, gambling devices, fuels, and explosives are often regulated thus.

(c) The anti-trust or anti-monopoly laws forbid certain methods of exploiting patents; for instance, the use of a patent to restrict or monopolize trade in any article other than the thing patented, or trying to fix prices on resale of a patented article.

(d) Patents as such are not taxed, but the income from exploiting them is subject to income taxes like most other income.

(e) Another common rule of substantive importance, containing a limitation of the rights of the patent owner under special circumstances is contained in the Paris Convention. It deals with the transit

of devices on ships, aircraft or land vehicles through a member country of the Paris Union in which such device is patented.[10]

The effect of this provision is essentially the following: where ships, aircraft or land vehicles of other member countries enter temporarily or accidentally a given member country and have on board devices patented in that country, the owner of the means of transportation is not required to obtain prior approval or a license from the patent owner. Temporary or accidental entry of the patented device into the country in such cases constitutes no infringement of the patent for invention.

(f) The protection conferred by the patent grant is also limited in time. For instance, the term of a United States patent is 17 years and is non-renewable.[11] At the expiration of the term, the invention automatically is dedicated to the Public and everyone then has the right to make, use, or sell the invention. The term of a Bangladesh patent is 16 years[12] and is renewable. This term may be extended, on a petition to the Government, for a further term not exceeding five years or, in exceptional cases, ten years, on the ground that the patent has not been sufficiently remunerative.[13]

(g) Another limitation of patent rights is a geographical limitation. A patent is granted by a particular Government and only covers those actions that take place within that Government's jurisdiction. For instance, a owner of a patent in Bangladesh for for a given invention can not prevent anyone else outside of Bangladesh from making, using or selling the said invention[14]. The reason behind this is that the grant of a patent for invention in one country for a given invention does not have any effect in other countries; in order to obtain protection in other countries, the grant of patent needs to be obtained in each country.

Anti-Trust or Anti-Monopoly Laws and Patents

A patent is a grant of a monopoly to the inventor based on the public interest in promoting the growth and diffusion of techno-

10. The *Paris Convention* for the Protection of Industrial Property of 1883, Article 5 ter.
11. 35 United States Code, S 154
12. Patents and Designs Act, 1911, Section 14.
13. *Ibid.*, Section 15.
14. *Ibid.*, Section 12.

logy. It is the monopoly grant that makes tangible the inventor's reward and converts a formal into a realistic property right. However, the monoply grant has a *prima facie* adverse impact on trade, because the monopoly conferred by the patent is the right to exclude others from making, using or selleng the patented product, or from practicing the patented process.

Society's aversion to monopolies, price fixing, and the allocation of business among competitors found an early expression predating the common law of England. In A D 483, the Emperor Zeno reportedly issued to the Practorian Prefect of Constantinople an edict, which provided in pertinent part:

> "We command that no one may presume to exercise a monopoly of any kind of clothing or of fish, or of any other thing serving for food, or for any other use, whatever its nature may be, either of his own authority or under a rescript of an emperor already procured, or that may hereafter be procured, or under an Imperial decree, or under a rescript signed by our Majesty; nor may any persons combine or agree in unlawful meetings, that different kinds of merchandise may not be sold at a less price than they may have agreed upon among themselves. Workmen and contractors for building, and all who pracrice other professions, and contractors for baths are entirely prohibited from agreeding together that no one may complete a work contracted for by another, or that a person may prevent one who has contracted for a work from finishing it, full liberty is given to anyone to finish a work begun and abandoned by another, without apprehension of loss, and to denounce all acts of this kind without fear and without costs. And if any one shall presume to Practice a monopoly, let his property be forfeited and himself condemned to perpetual exile."[15]

The concept that monoplies violated the principles of common law was first perceived by Sir Edward Coke who argued in the 1600s that monopolies violated the civil law, the Megna Carta, and certain statutes of Edward III's reign.[16]

Coke (1552-1634) was a brilliant English courtroom lawyer who rose to prominence as speaker of Parliament in 1593 and in 1594

15. Code IV, p. 59. Translation of A. H. Marsh, Q. C., reprinted in 23 *American Law Review*, p. 261 (1889).

16. Wagner, "Coke and the Rise of Economic Liberalism", *Econ. Hist. Rev.* VI. p. 30 (1935)

was selected over Sir Francis Bacon as Queen Elizabeth's attoney-general. In 1606 he became chief justice under King James I, at which time he insisted that even the King was subject to the law.

One of the most important case of significance in the common law concerning monopolies, is *Darcy* V. *Allein*, or The case of Monopolies, decided in 1603.[17] *Darcy* v. *Allein* established the principle that a royal grant by patent was invalid if it created a monopoly. In that case Queen Elizabeth granted Darcy, her groom, a patent for a monopoly on the manufacture and importing of playing cards. Shortly thereafter, in 1601, Allein, a London haberdasher, made and sold some playing cards and was subsequently sued by Darcy for infringement of his patent. The court held the patent void as a "dengerous" and "unprecedented" innovation and in order not to offend the Queen, adopted the fiction that "the Queen was deceived in her grant; for the Queen, as by the preamble appears, intended it to be for the real public."[18] The court further held that the grant prejudiced the public good by raising prices and lowering the quality of the cards. More importantly, by depriving various workmen of their livelihood the patent was void because it violated the right of others to carry on the trade.[19]

The British Statute of Monopolies, passed in 1624 declared that all monoplies, combinations, grants, licenses, charters, patents etc., for the sole buying, making, using and selling of any commodity or article within the Kingdom were contrary to law. The historic importance of the Statute is that it did recognize the exception of patents for invention, stating in Section 6:

> "Provided also, and be it declared and enacted, that any declaration before mentoned shall not extend to any letters patents and grants of privileges for the term of fourteen years or under, hereafter to be made of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor and inventors of such manufactures, which others at the time of making such letters patents and grants shall not use, so as also they be not contrary to the law nor mischievous to the state, by raising prices of commodities

17. 11. Co. Rep. 84b,77 Eng. Rep. 1260 (k. B. 1602).
18. *Ibid.*, at 87a, 77 Eng. Rep. at 1264.
19. Gordon, *Monopolies by Patent*, p. 226
20. J. K. Wise, *Pntent Law in the Research Laboratory*, Reinhold Publishing corp., New York, 1955, p. 8.

> at home, or hurt of trade, or generally inconvenient, the said fourteen years to be accounted from the date of the first letters patents or grants to such privilege hereafter to be made, but that the same shall be of such force as they should be if this Act had never been made and of none other."[20]

The evils of monopolies in England were clearly in the minds of the early American colonists and these evils found expression in such laws as a 1641 Massachusetts statute:

> "There shall be no monopolies granted or allowed among us, but of such new inventions as are profitable to the country, and that for a short time."[21]

It should be recognised that the term "inventions" was not restricted to the rather narrow present-day meaning but that it included establishment of new industries and enterpises.

The principal monopoly activity was in the colonies of Massachusetts and Connecticut and to a lesser extent in New York. Owing to the necessity for new industries, the grant of monopolies persisted in the colonies long after the practice had died out in England. Under the Articles of Confederation, Patents continued to be granted to inventors.

In the years preceding 1890, a strong feeling arose against certain large business combinations whose practices were thought to be against the public welfare. Hence, in 1890, the Sherman Anti-trust Act was passed. Section 1 of this Act provided that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce" between the states or with foreign nations, was illegal. Section 2 provided that every person "who shall monopolize, or attempt to monopolize or conspire with any other person or persons, to monopolize any part of" interstate or foreign commerce was guilty of a misdemeanor, the punishment of which was the same as provided in Section 1.

The next important anti-trust legislation of singnificance was the Clayton Act, passed by the United States Congress in 1914. Whereas the Sherman Act prohibitions are expressed in general terms, the Clayton Act prohibits specified trade practices. Furthermore, the Clayton Act, unlike the Sherman Act, condemns

20. J.K. Wise, *Patent Law in the Research Laboratory*, Reinhold Publishing Corp., New York, 1955, p. 8.
21. *Ibid.*, p. 10.

practices the effect of which may be substantially to lessen competition, rather than only those restraints which in fact unreasonably restrain trade.

Some of the pertinent provisions of the Act provide as follows: As enacted, Section 2 of the Clayton Act made it unlawful for any person to discriminate in prices, services, or facilities where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce. Section 3 makes illegal (1) tying (or tie-in) agreements, that is, agreements to sell a desired product only on the condition that the buyer purchases a second unwanted or less disirable product, (2) exclusive dealing contracts, that is, agreements that the buyer will purchase only from the seller and no other supplier, and (3) requirements contracts, that is, agreements that the buyer will purchase all his requirements of a certain product from the the seller.

The Sherman Act, the Clayton Act, and the court decisions under them forbid not only monopolies but also any acts that might bring about monopolies, such as conspiracy to monopolize and combinations or mergers that might monopolize.

The patent laws give the owner of a patent a temporary monopoly on the invention claimed in the patent. A patent is, in fact, a legal monopoly with the same purpose as other monopolies : to enable the monopolists to make more money in trading in a certain commodity than he could under conditions of free competition. The distinction between patents and other monopolies is that the extra profit made by a patent owner is a reward for making the invention available to the public, whereas a monoplist whose position is based merely on his skill at the manipulation of securities and corporate intrigue has performed no such service.

Thus, patents constitute an exception to the basic rule of competition embodied in the anti-trust laws, since, within the scope of the patent claims, the patentee has a recognized legal monopoly. And a patentee that uses the lawfully procured patent merely to exclude others from making, using or selling the patented invention will not incur anti-trust difficulties. And when the patentee manufactures and sells the patented product or uses the

patented process in his business, based on these facts alone he should not run afoul of the anti--trust laws, even though the patent permits him to exclude competing products and procsses from the market. On the other hand, because the patent monopoly is a limited exception to the prohibitions of the anti-trust laws, use of the patent to secure a competitive advantage outside the scope of the patent grant is likely to create anti-trust issues. These issues usually arise during the course of the patentee's dealings with others — salcs of the patented products, cooperation in patent pools, granting licenses, and the like.

Tie-In Arrangements under the U. S. Anti-trust laws

Where a contract expressly requires the purchaser of certain products to purchase other, less-desired products of the supplier as a condition for buying the preferred product, there is an arrangment known as a tie-in. Tie-in contracts are ususlly violations of the anti-trust laws and many cases illustrating this violation have involved patented products or processes.

The test for a finding of *per se* illegality in tying cases under Section I of the Sherman Act is that the supplier has sufficient econmic power in the tying product appreciably to restrain competition in the tied product and a "not insubstantial" amount of interstate commerce is affected. *Per se* violations of section 3 of the Clayton Act result when the supplier has a monopoly position in the tying product or if a substantial volume of commerce in the tied product is restrained. It is significant that the economic power required for a Section 1 violation is presumed when the tying product is patented.

In the patent field, tie-ins often involve conditioning the sale or lease of certain desired patented goods on the requirement that the dealer or user also purchase certain unpatented goods. Often the unpatented goods are not wanted for price reasons or are inferior to other similar unpatented goods available on the open market.

In *International Business Machines Corporation* v. *United States*[22], a case brought under section 3 of the Clayton Act[23], IBM leased its

22. 298 U. S. 131 (1936)

23. The same action could have been brought under Section 1 of the Sherman Act.

tabulating and computer machines upon the condition that the tabulating cards used in the machines would be purchased only from IBM. The reason given for this requirement was to ensure satisfactory performance of the machines, which could use only cards conforming to precise specifications as to size and thickness, and which were free from defects due to slime or carbon spots that cause unintended electrical contacts and consequent inaccurate results. The cards manufactured by IBM were electrically tested against for such defects. A provision in the lease agreement provided that the lease whould terminate if the lessee used a card not manufactured by IBM. The Court noted that approximately one third of IBM's annual income was derived from the sale of these cards.

The court found the tie-in to be illegal on the ground that others were quite capable of manufacturing cards suitable for use in IBM's machines. The court stated that IBM.

> "...is not prevented from proclaiming the virtues of its own cards or warning against the danger of using, in its machines, cards which do not conform to the necessary specifications, or even from making its leases conditional upon the use of cards which conform to them. For aught that appears such measures would protect its good will, without the creation of monopoly or resort to the suppression of campetition[24].

International Salt Co. entered into a similar lease arrangement with customers. International Salt was, at the time, the nation's largest producer of salt for industrial uses and in this connection owned patents on two machines used in the commercial utilization of salt. Under its lease agreements International Salt required lessees to purchase from it all unpatented salt and salt tablets consumed in the leased machines. The agreements also provided that if a competitor should offer salt at a lower price, the lessee could purchase such salt unless International Salt furnished the salt at an equal price.

A suit was brought by the government, *Internationol Salt Co., Incorporated* V. *United States*[25], and the U.S. Supreme Court ruled that the tie-in arragument was *per se* illegal as violative of Section 1 of the Sherman Act. The Court noted that the patents in question conferred only the right to restrain others from making, vending, or

24. 298 U. S. at pp. 139-40
25. 332 U.S. 392 (1947)

using the patented machines, but it did not confer the right to restrain use of, or trade in. unpatened salt. The court also noted that the pricing provision, which permitted International Salt Co. to match a lower competitive price, did not cure the illegality of the tie-in because a competitor would have to undercut its price to have any hope of capturing the market, while International Salt could hold that market by merely meeting competition.

International Salt argued that since it remained under an obligation to repair and maintain the machines, it was reasonable to confine their use to its own salt beause its high quality assured satisfactory functioning and lower maintenance costs. The court answered this argument, stating that "a lessor may impose on a lessee reasonable restrictions designed in good faith to minimize maintenance burdens and to assure satisfactory operation—(and) the lessee might be required to use only salt meeting such a specification of quality"[26]. However, there was no showing by International Salt that others could not produce an equivalent salt or that its machines were "allergic to salt of equal quality produced by anyone except International"[27].

Absence of Specific Anti-Trust or Anti-Monopoly Statute in Bangladesh

Bangladesh has not yet adopted a statute similar to the anti-monopoly statute in England or anti-trust Laws in the United States of America. However, the contract law of Bangldesh contains some provisions that have a bearing on monopolistic practices.

Bangladesh contract law provides that an agreement is unlawful if the court regards it as opposed to public policy[28]. The doctrine of "public policy" covers political, social, economic or moral grounds of objection. Public policy is, in its nature, so uncertain and fluctuating, varying with the habits and fashions of the day, with the growth of commerce, and usages of trade, that it is difficult to determine its limits with any degree of exactness. This rule may, however, be safely laid down that wherever any contract conflicts with the morals of the time and contravenes any extablished interest of society, it is void as being against public policy. An agreement

26. *Ibid.*, at p. 397-98
27. *Ibid.*, at p. 398.
28 The Contract Act (Act IX of 1872), Section 23.

may also offend against public policy by attempting to impose inconvenient and unreasonable restrictions on the free choice of individuals in their liberty to exercise any lawful trade or calling.

To put it in another way, certain classes of contracts are said to be against public policy or against the policy of the law, when the law refuses to enforce or recognize them, on the ground that they have a mischievous tendency so as to be injurious to the interest of the state or the public. Among such classes of contracts are contracts tending to create monopolies.[29]

Bangladesh contract law also provides that "every agreement by which any one is restrained from excercising a lawful profession, trade or business of any kind, is to that extent void".[30] Freedom of trade and commerce is the fundamental right protected by the Constitution of Bangladesh.[31] Every agreement which interferes with this freedom is called an agreement in restraint of trade. Whether such restraint is general or partial, qualified, or unqualified, it is void. So, as a general rule, all agreements in restraint of trade, being void are not binding except in the case of a sale of the goodwill of a business. Other exceptions to the general rule are to be found in the Partnership Act, 1932, Ss. 11(2), 54 and 55(3).

Trade Combinations or Pool agreements.—Trade combinations or pool agreements are price-maintenance agreements. They can be divided into two groups :—

(i) where a number of persons engaged in the same trade or industry agree to maintain the price of their product by co-operating to regulate the output and distribution of that product; and

(ii) where a manufacturer or distributor of a particular article claims from those buying from him a contract not to retail the goods at less than specified prices.

Such agreements are for mutual benefit, the purpose being to avoid unhealthy competition. The parties to such agreements meet on terms of equality and are the best judges of their own

29. The principle that contracts tending to create monopolies are void or illegal has been established in *D. B. Jhelm* v. *Hari Chand.* 1934 Lah. 474, and *Devi Dayal* v. *Narain Singh,* 1928 Lah, 33

30. The Contract Act of 1872, Section 27.

31. *The Constitution of the People's Republic of Bangladesh,* Article 40.

interest. Therefore, the restraint on trade imposed by such agreements is bound to be reasonable as between the parties *inter se.* And unless it is proved that the intention of such agreement was to raise the price to an unreasonable extent, the agreement is not contrary to Section 27 of Bangladesh Contract Act, and is perfectly valid.[32]

These provisions impose no restrictions on the property right of an inventor granted to him under the Bangladesh Patent and Desingns Act, 1911. The exculusive rights granted to inventors for a limited period are governed by that Act.

Scientists and inventors made significant contributions toward the industrial revolution and economic and social advancement that occured in the West. Continuing advancement in technology fuelled the phenomenal economic and industrial growth in the West. To reward the inventors and to provide them with incentive to develop newer technology, products and processes and thereby contribute toward industrial and economic growth, advanced industrial countries adopted patent laws and periodically updated those laws.

In these countries, in the midst of industrial and economic activities and competitions, some traders and speculators tried to curve a monopoly market for themselves in certain products and industrial processes through various manipulations and practices including combinations, restrictive trade practices, price fixing, mergers, take-overs, etc.. In order to curb such activities and keep the competitions in the market unimpaired, anti-monopoly and anti-trust laws are adopted in advanced industrial countries. These laws play a significant role in countries like the United States of America where some big corporations try to become bigger through merger with or take-over of other corporations or enterprises and thereby try to monopolize the markets in particular products, processes or services.

Bangladesh is still very far from reaching the stage of technological, industrial and economic development that occured in advanced countries. Becaused of the low level of commercial and

32. *Fraser and Co.* v. *Bombay Ice Co.*, 1 Ch. D. 292 (1915).—In this case, certain ice manufacturers entered into agreement not to sell iee below *a certain* minimum price. The agreement was held to be valid.

industrial activities in Bangladesh and because of absence of very large Bangladeshi corporations and enterprises trying to monopolize the market in particular products or processes, the need for adopting a specific anti-monopoly statute has not yet been keenly felt in Bangladesh.

Conclusion

Stimulating the invention and development of new products and processes is without doubt the most important benefit expected of the patent system. For it society pays a price; the monopoly power conferred by the patent grants.

Inventions and innovations bestow benefits upon society. How beneficial inventions are depends upon how fully they are utilized. Under the patent system inventors are given the right to control and restrict utilization of their inventions, so that output may be lower and prices higher than they would be if the inventions were utilized under purely competitive conditions.

Normally, a patent holder can choose between alternative methods of controlling utilization. He can reserve exploitation of the invention exclusively to himself, calling upon the courts to enjoin anyone who attempts to infringe upon that right. In this way, the profit-maximizing price can be set directly. Or he can license as few or as many firms as he pleases to exploit the invention, charging royalties for the privilege.

That patent owners exercise their power to set prices exploiting whatever monopoly power their patents confer does not mean that society is denied all benefits which might otherwise come from inventions and innovations. On the contrary, the society as a whole and the consumers in particular benefit directly from them in two ways.

First, after the patent has expired, the patent holder should in principle have no further power to restrict output; competitive pricing will prevail and consumers will reap the full benefits of the invention.

Second, consumers may also realize inmediate gains even when innovations are exploited monopolistically. The gains come in the

form of new products, processes or services generated by the inventions and innovations.

The patent law grants monopoly privileges. However, these privileges are for a limited period and for a useful purpose. The purpose is to encourage inventions of newer technology, products and processes which benefit the society. The anti-trust law will check attempts to continue the monopoly privileges beyond the period allowed by the patent law.