

**Intellectual Property**  
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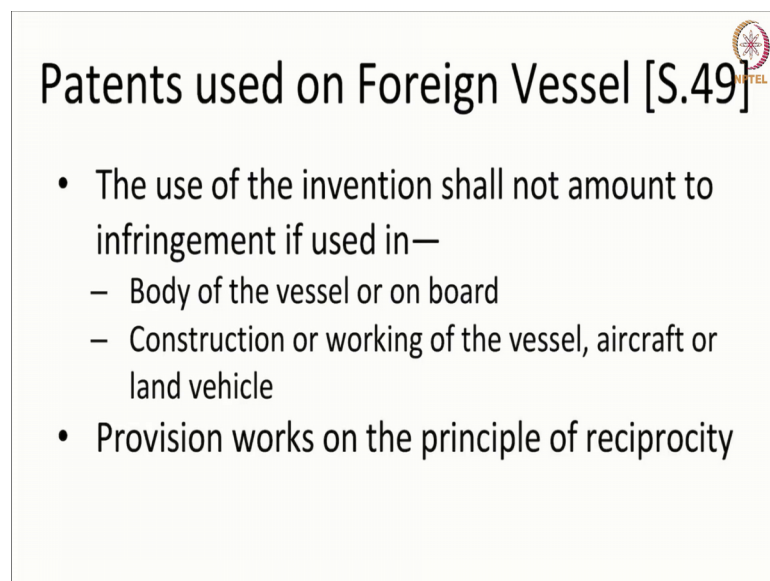
**Lecture – 34**  
**Defences to Patent Infringement**

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What are the defenses that can be taken in an infringement suit?

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A slide with a light yellow background. The title "Patents used on Foreign Vessel [S.49]" is at the top in a large, black, sans-serif font. Below the title is a bulleted list. In the top right corner, there is a small circular logo with a red border and a white center, containing a stylized figure, with the text "NPTEL" below it.

**Patents used on Foreign Vessel [S.49]**

- The use of the invention shall not amount to infringement if used in—
  - Body of the vessel or on board
  - Construction or working of the vessel, aircraft or land vehicle
- Provision works on the principle of reciprocity

There are provisions in the patents act, which tells us that certain acts do not amount to infringement, for instance patents used on a foreign vessel. The use of an invention will not amount to infringement if a patent is used in the body of a vessel or on board or on the construction or working of the vessel aircraft or land vehicle and that land vehicle enters the Indian Territory for a brief period of time.

So, these acts the fact that a vessel or an aircraft or a land vehicle that came into India as a part of a transit, the fact that the vessel or the aircraft or the land vehicle had a patented part it coming into the territory of India will not be deemed as infringement this works under the principle of reciprocity.

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## Bolar Exemption [S.107A(a)]

- Submission of sample to regulating authority
  - Without intention to market until patent expires, amounts to use of invention
  - All pharma research covered under S.107A(a)

Another act or set of acts which do not amount to infringement are what is popularly called the Bolar Exemption. Now, submission of a sample for regulatory purposes, a manufacturer submits a sample of a patented product for getting approvals. So, that when the patent expires the manufacturer can involve or engage in large scale production.

All those acts which go with the intent of seeking regulatory approval will not amount to infringement. So, if there is a drug which will expire in 2019 and the drug is patented by a company. Another company which wants to enter the market after the expiry of the drug may approach the drug regulatory authority in India, for getting seeking approval regulatory approval so, that when the patent expires it can launch the product.

Now, such acts of submitting samples for getting regulatory approval, even if that be for a patented product will not amount to infringement. Pharmaceutical research is largely covered by this provision.

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## Parallel Importation [S.107A(b)]

- International exhaustion of patent rights
  - Patented goods sold by patentee, he shall have no further control over it
  - Importation allowed
- No infringement

Another provision which says that certain acts will not amount to infringement is the provision of parallel importation. In India, we follow the principle of International exhaustion of patent rights, patented good sold by the patentee then the patentee will not have any further control over it.

So, if the good is sold in China and the goods are patented there and a person buys the patented product from China for by paying lawful consideration and he imports that product into India. Even if there is a patent in India it will not amount to infringement because, the consideration for that product has already been paid in another jurisdiction.

So, a patentee normally will not have control post sale, once he sells the product then resale is not something which is within the control of the patentee. So, India allows international exhaustion meaning which if the first sale happens in a foreign jurisdiction it cannot be stopped from entering India, because the consideration has already been paid. Like bowler exemption parallel importation will not amount to infringement.