

TRADE MARK SUIT NO. 05 OF 2015*Sahjanand Laser Technology Limited*

...Plaintiff

v e r s u s

Mr. Bharat Bhogilal Patel

...Defendant

ORDER BELOW EX. 5

[1] The short facts of the present suit are that the plaintiff is a limited company, having registered office at Gandhinagar and according to the plaintiff, it has good reputation and goodwill in state of Gujarat. The defendant had sent e-mail to the Secretary of the plaintiff on 14.09.2015 and wherein he had threatened the plaintiff for the proceedings of infringement of defendant's patent No. 188787 and 189027.

[1.2] It is the case of the plaintiff that the plaintiff's machines are completely different from the technology, claimed to have been invented by the defendant. It is also contended that the defendant's patents were revoked by the Intellectual Property Appellate Board (IPAB), therefore, the said judgement is quashed and set aside by the Hon'ble Bombay High Court and the

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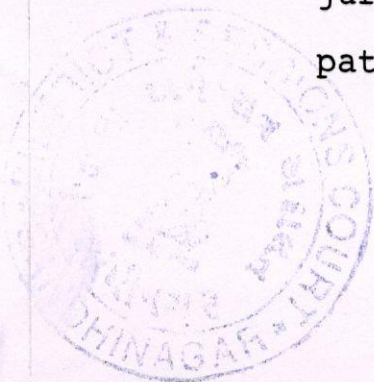
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matter is remanded to IPAB. It is the case of the plaintiff that the plaintiff is manufacturing and marketing laser marking machines, long before the date of the patent of defendant. It is contended that the defendant's patents are wrongly granted and defendant had copied the specifications of the other company.

[1.3] According to the plaintiff, the notice of the defendant is vague and it does not show, how the patents are being worked in India, as per The Patents Act. It is prayed that during the pendency of the suit, the order of the injunction may be passed, restraining the defendant from giving any threat or issuing legal notice or public notice by written or oral communication, addressed to the plaintiff or its customers.

[2] The notice was issued to the defendant and defendant has appeared as party-in-person and filed written statement at Ex.11 and *inter alia* contended that no cause of action has arisen within territorial jurisdiction of this court and therefore, this court does not have any jurisdiction. It is contended that the defendants patent is renewed time to time and they are legally



in force, and enforceable. The patent office in their e-register has also said that defendant's patents are in force and enforceable as per law.

[2.1] It is contended that the patents are registered in the year 1998 and there are only three years pending to go in public domain. It is contended that the defendant is registered owner of the patents and therefore, in exercise of right of patentee, under the provision of The Patents Act, such communication cannot be termed as threat and threats are unjustifiable under Section 106 of The Patents Act.

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[2.2] It is also contended that the defendant has also filed criminal complaint bearing Registration No. 276/2008 under Section 406, 420 read with section 51, 52A, 63A and 63B of Copyright Act at Mumbai, as the plaintiff and its directors were infringing the defendant's patent and were manufacturing and exporting counterfeit / pirated goods and distributing it in the channel of commerce for their commercial gain. The Metropolitan Magistrate has passed the order under Section 156(3) and the police has filed FIR and charge-sheet. The police has filed C-Summary report, but the court dismissed that summary report



and ordered for reinvestigation on 18.09.2014. The plaintiff has not challenged the said proceedings and therefore, the plaintiff do not have right to file such suit.

Xe [2.3] It is contended that there is clear cut case of the infringement by plaintiff and therefore, the notice issued by the defendant is correct and legal and no relief can be granted and the suit is required to be dismissed. It is contended that the difference between the product of the plaintiff and defendant are purely cosmetic in nature, and the products are same. Therefore, there is no *prima facie* case in favour of the plaintiff. It is contended that the defendant's patent is 17 year old and it is in force. It is repeatedly submitted that only three years are left for the patent to be in public domain and therefore, injunction cannot be granted to the plaintiff.

[3] The following issues are required to be decided in this injunction application:

1. Whether this court has territorial jurisdiction to try this suit?
2. Whether there is *prima facie* case, in favour of the plaintiff?



3. Whether balance of convenience lies in favour of the plaintiff?
4. If the injunction is not granted, whether it will cause irreparable loss to the plaintiff?
5. What order?

[4] The findings of this court are as under:

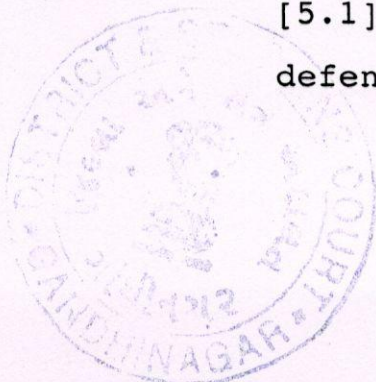
Issue No. 1 : In affirmative.
Issue No. 2 : In negative.
Issue No. 3 : In negative.
Issue No. 4 : In negative.
Issue No. 5 : As per final order.

REASONS

ISSUE NO. 1:

[5] So far as the point of jurisdiction is concerned, it is contended in the written statement that this court does not have the jurisdiction. However, as per Section 104 of the The Patents Act, the patent suit shall be instituted in the District Court, having jurisdiction to try the suit and there is no counter claim for revocation of the patent. While the plaintiff has contended that this court has jurisdiction, as the plaintiff has received threat within jurisdiction of this court.

[5.1] The defendant has argued that the defendant has obtained two patents at Mumbai, the



defendant resides and carries out business at Mumbai. The patent office is at Mumbai for Maharashtra and Gujarat. The patent office maintains its register at Mumbai office. The patentee-defendant has filed criminal case against the plaintiff at Mumbai. The plaintiff has his office at Mumbai and the notice, by way of e-mail was sent to plaintiff's office at Mumbai. So, only the court at Mumbai has jurisdiction and this court has no jurisdiction.

[6] The plaintiff has relied on the following judgements:

ke (i) 2010(42) PTC 288 (Del.) High Court of Delhi in the case of Dashmesh Mechanical Works v/s. Hari Singh & Anr., wherein it is held that

a (18.) From the above said decisions given by the Supreme Court while examining the expression 'cause of action' the court has to see the factual situation that gives rise to an enforceable claim made by the plaintiff in the plaint which is to be read collectively to constitute a bundle of facts that form the basis of institution of the present suit filed by the plaintiff.



(19.) In the present case the plaintiff has specifically made a statement in the plaint that the plaintiff is carrying on business in Delhi where the threat has been extended by the defendant through Counsel, therefore, it cannot be held that no part of cause of action has arisen in Delhi within the jurisdiction of this court in the absence of filing of any evidence.

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(20.) At this stage the court has to believe the version pleaded by the plaintiff in the plaint that the plaintiff is carrying on its business within the territorial jurisdiction of this court and that the defendant would disturb the business of the plaintiff in Delhi and embarrasses the plaintiff. A statement has also been made in the plaint that the plaintiff apprehends to receive threats from the defendants within the jurisdiction of this court.

(ii) 2008 LawSuit (Del) 3228 in the case of Bata India Limited v/s. Vitaflex Mauch GMBH.

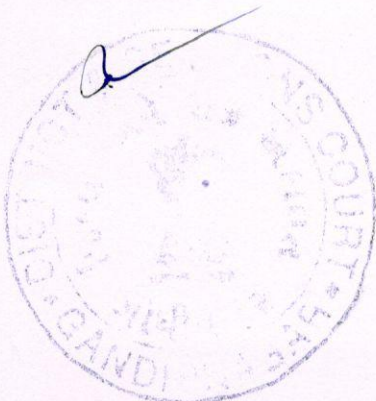
19. In the present case the plaintiff has specifically made a statement in the plaint that the plaintiff is carrying on business in Delhi where the threat has been extended by the defendant



though counsel, therefore, it cannot be held that no part of cause of action has arisen in Delhi within the jurisdiction of this court in the absence of filing of any evidence.

20. At this stage the court has to believe the version pleaded by the plaintiff in the plaint that the plaintiff is carrying on its business within the territorial jurisdiction of this court and that the defendant would disturb the business of the plaintiff in Delhi and embarrasses the plaintiff. A statement has also been made in the plaint that the plaintiff apprehends to receive threats from the defendants within the jurisdiction of this court.

21. It is settled law that the plaintiff is a dominus lites i.e. master of or having dominion over the case. He has a right to have his forum of convenience by approaching the court where part of cause of action arises. Actually he is the person who has to control all his actions unless the said forum is opposed to public policy or will be an abuse of the process of law. The plaintiff has every right to choose the forum best suited to him. No doubt, the plaintiff during the trial has to prove that the court has territorial jurisdiction after



producing evidence in this regard. At this stage in the present matter, prima facie it cannot be said that this court lacks the inherent jurisdiction to entertain the suit. The mere failure to mention in the paragraph stating the cause of action that the plaintiff has been threatened in Delhi is not enough to return the plaint because while deciding the application of the defendants, the whole plaint has to be taken into consideration.

xe [7] Considering the above ratio laid down by Hon'ble Delhi High Court, it is clear that the plaintiff can file a suit where he carries on his business, in the territorial jurisdiction of the court because the business is likely to be adversely affected by the purported groundless threats issued by the defendants. Therefore, the issue No. 1 is decided in affirmative.

ISSUE NO. 2 TO 4:

6 [8] Learned advocate appearing on behalf of the plaintiff has submitted that the patent of the defendant is not valid as envisaged under Section 113 of The Patents Act r.w.s. 13(4) of The Patents Act.



[9] Learned advocate for the plaintiff has also relied on the judgement of our own Hon'ble High Court in the case of Garware-Wall Ropes Ltd. v/s. Techfab India and ORS. Reported in 2009 (39) PTC 297 Guj., wherein it is held that:

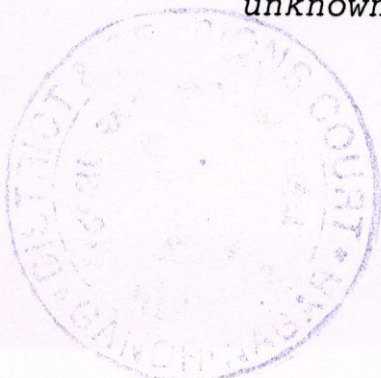
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"The defendant's contention that grant of patent is not a prima facie proof of validity certainly merits consideration. Section 13(4) of the Act states that examination and investigation required under Section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officers thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon. Therefore, the Legislators have very clearly and unambiguously stated that grant of a patent does not warrant any validity and, therefore, a separate provision has been provided in Section 113(1) authorizing the High Court in such proceedings as the present matter to provide a certificate of validity to a claim in a patent. Therefore, if the High Court finds that in such a matter, the claim is not valid, the patent should be revoked. Section 13(2) states that the examiner shall, in addition, make such investigation for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete

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specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in Sub-section (1) before the date of filing of the plaintiff's complete specification. Thus, it is humanly impossible for any examiner to check for prior art in all the databases not only of patents granted or pending in all languages all over the world, but also all other documents or publications including prior knowledge in any language anywhere in the world. Therefore, Section 13(4) examination and investigation leading to grant of patent shall not be deemed in any way to warrant the validity of any patent. In affidavit-in-rejoinder of Mr. Wagle, it is stated that invention is in respect of a particular way of manufacturing the gabion which has a particular utility and advantage and to cure the drawback in the earlier products available in the market. The plaintiffs in their reply and counter statement to counter claim have stated at various places that all elements were not known and/or available in the art and/or to the public and that what was known prior in the technology in the related field were gabions made of wire which could be either welded or woven and that although gabions were generally known for a long period and substantially increased the efficacy of the product and has solved many known problems and that the invention though seems simple was unknown before and solves the known



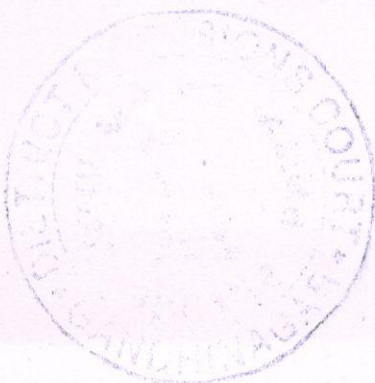
limitations of the technology known earlier. Thus, the plaintiffs have at different places in different pleadings stated that their invention is for an improvement over the prior art and not for a new product. They were alleged to have concealed the material fact on their patent application, which they later admitted that Gabions of other kind were in existence before the date of their patent application."

[10] He has also relied on the judgement of Hon'ble Apex Court in the case of Bishwanath Prasad Radhey Shyam v/s. Hindustan Metal Industries reported in 1979 2 SCC 511, wherein it is held that:

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"32. It is noteworthy that the grant and sealing of the patent, or the decision rendered by the Controller in the case of opposition, does not guarantee the validity of the patent which can be challenged before the High Court on various grounds in revocation or infringement proceedings. It is pertinent to note that this position, viz., the validity of a patent is not guaranteed by the grant, is now expressly provided in Section 13 (4) of the Patents Act' 1970. In the light of this principle, Mr. Mehta's argument that there is a presumption in favour of the validity of the patent cannot be accepted."

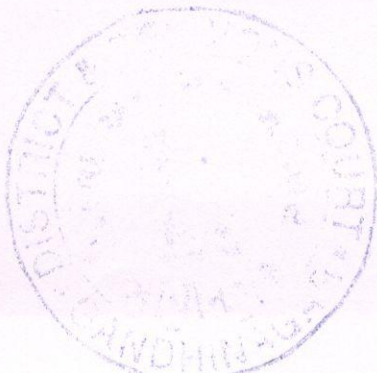
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[11] At the time of argument, learned advocate appearing on behalf of the plaintiff has relied on the documents produced at Ex. 3/21, which is brochure of Excel Quantronix. Relying on the same, it is submitted by learned advocate for the applicant that the technology, which is patented by the defendant is already in existence and it is the copy of the specifications and machinery used by Excel Quantronix Laser Industries, USA. Thus, there is nothing inventive or nothing useful addition to the said technology. Under the circumstances, the defendant is not entitled for any patent for the laser marking and engraving machine.

[12] It is vehemently submitted by the learned advocate appearing on behalf of the plaintiff that the defendant's patent is not valid as per The Patents Act and the defendant has nowhere stated in his reply or in his notice specifying, which patent is alleged to have been infringed by the plaintiff.

[13] It is contended that the defendant is resorting to unfair trade practice by issuing the legal notice to hamper the business of the plaintiff and , there is groundless threat by the defendant, therefore, the injunction may not be granted as prayed.



[14] He has submitted that the onus to show that the patent of the defendant is infringed by the plaintiff is of defendant. He has relied on Section 106 of The Patents Act.

[15] He has also relied on the judgement of *Bata India Limited vs Vitaflex Mauch GmbH* reported in 2015 Lawsuit (Del) 3816, wherein it is held that:

8. The aforesaid Sections entitle the plaintiff to file the subject suit seeking injunction against groundless threats, and in this suit, onus was on the defendant to show that the defendant had a right in the reflex/pressure points depiction as a trade mark including by registration thereof or that the defendant had a valid patent and which as per the defendant is being infringed by the plaintiff.

12. In view of the fact that the defendant has led no evidence that it has a valid patent with respect to the so called five pressure points/reflex points in the insoles of their shoes, the plaintiff cannot be said to have infringed any patent of the defendant and hence the Legal Notice sent by the defendant to the plaintiff dated 03.04.2006 will amount to groundless threats of legal proceedings."



[16] He has also relied on the judgement of S.Ram Kumar Versus Micromax Informatics Limited reported in 2010 (44) PTC 409 (P & H), wherein it is held that:

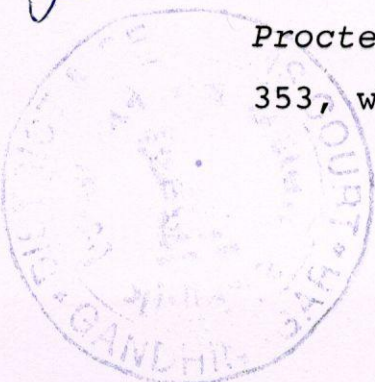
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“(12.) A reading of Section 106 of the Patents Act, 1970 shows that a defendant is rather called upon to prove that his act would not amount to an infringement in respect of a claim of the specifications not shown by the plaintiff to be invalid. Thus, the impugned order has to be examined in the light of the provisions of Sections 105 and 106 of the Patents Act 1970 and as such, no fault can be found with the impugned order for having discussed the patent in order to discuss whether the same amounts to infringement or not for the reasons that the protection is already provided under Section 105 of the Patents Act, 1970 , as discussed above.”

[17] While the defendant has contended that the plaintiff has knowingly infringed the patents from 1998. It is contended that the plaintiff has admitted that he is using laser marking machine patented technology of the defendant. It is contended that the plaintiff has made colourable variation of the patented machine and process.

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[18] He has also relied on the case of case of Procter v/s. Bennis reported in 1884(4) RPC 333 at 353, wherein it is held that :



"A colourable variation is where a man makes slight difference in the parts of his machine, although really he takes in substance those of the patentee and gives a colour to the suggestion that he is not infringing the patented machine when he is really using mere substitutes for portions of the machine so as to get the same result for same purpose."

10 [19] It is contended that the defendant is inventor in the field of laser technology. He has science background with management qualification and he has been in laser industry and being actively involved in extensive research in laser technology since 1995. It is contended that he had filed two patent applications in the year 1998 before the patent office at Mumbai and sought patent registration for two inventions. After detailed and careful scrutiny and examination by Patent Office, the patents were registered vide patent No. 18787 (for product patent) and 189027 (for process patent). The patents were granted in the year 1998 and since then, the defendant is enjoying his patent rights.

11 [20] It is also contended that the defendant had filed Criminal Complaint before the Metropolitan Magistrate, 10th Court, Mumbai seeking investigation under Section 156(3) of the Code of



Criminal Procedure. The process is also issued by the court and the plaintiff has filed this suit as counter-blast to the said legal proceeding.

[21] It is vehemently submitted that under Section 48 of The Patents Act and under Article 34 of the Trip Agreement, clearly defines the right of patentee, till validity of the patent. It is vehemently submitted that patent validity cannot be ascertained by any judicial pronouncement, once a patent is granted. It is contended that the defendant's patent is working and valid till date s the order has been passed by Bombay High Court in Writ Petition on 03.09.2015 and the revocation order of the IPAB has been quashed and set aside.

[22] After considering rival submissions and on perusal of record, it appears that is not in dispute that the defendant has obtained patent for laser marking machine by patent No. 188787 and 189027. The patent of the defendant was revoked by Intellectual Properties Appellate Board (IPAB) on account that the invention was known and the patent of the defendant lacks novelty and inventive steps. The said order was challenged before the Hon'ble Bombay High Court, by way of writ petition No. 2867 of 2014. The Bombay High Court has quashed and set

aside the order of IPAB and the matter is remanded to IPAB as both the parties agreed before the Hon'ble Bombay High Court.

[23] It is pertinent to note that the Bombay High Court has also ordered the present defendant that he should not initiate any proceeding against the contesting Respondent No. 4 in any court of law or tribunal or legal forum. The copy of the order is also produced by the defendant along with his reply. It also transpires from the order that the matter before the IPAB is ordered to be decided expeditiously. It is submitted by the defendant that till date, the matter is not decided by the IPAB and it is pending for adjudication.

[24] It is pertinent to note that the writ petition was also pending before Madras High Court and therefore, the IPAB has further ordered that the parties were entitled to move the application according to the result of Madras High Court as the Madras High Court has granted a limited stay, relating to the patents.

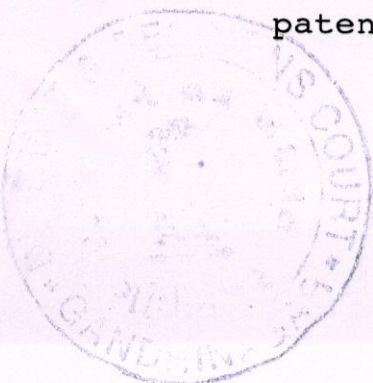
[25] It is needless to say that for grant of temporary injunction, the principles applicable to groundless threat are that if there is a *prima*



facie case that the patent is not valid and or not infringed, that the balance of convenience is in favour of the plaintiff, if injunction is not granted then the plaintiff will suffer an irreparable loss. While if the defendant a patentee and the original inventors showed that the plaintiff did not have the know-how of the patented possesses and that he has the validity of the patent, the defendant has developed his own technology or working the process successfully a temporary injunction restraining the defendant for groundless threat pending suit can not be granted.

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[26] It is not in dispute that the defendant has obtained his patent registration for laser marking and engraving machine comprising of head, mirror mount to mount the mirror, Q-switch to mount the Q-switch, Aperture mount to regulate the aperture so as to vary the intensity of the laser beam, which is further provided with a beam blender for positioning the beam in a required direction, which is supported in a rail and connected to a control panel provided with power supply, which is registered as patent No. 188787.

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[27] The defendant has also obtained process patent for process of manufacturing engraved design

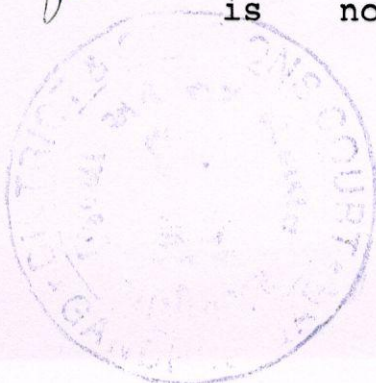


articles on metals or non-metals using laser beam technology, consisting of:

- a. Marking the required design on metal or non-metal.
- b. Etching the outer and inner area of the design; and
- c. Engraving the etched area and finally drilling the engraved area by means of laser beam through sequential command from a computer to obtain ornamented design on precious metals and non-metals.

[28] While the plaintiff came with a case that the defendant has issued illegal threat and according to the plaintiff, the defendant's patent is not valid patent and the plaintiff has not infringed any of the product or process of the defendant. Further, it is contended that the defendant's patents are revoked by IPAB. Further, it is the case of the plaintiff that the method of apparatus for laser engraving, stated by the defendant, is already patented before as Japanese Patent No. 141679 and as U.S. Patent No. 4.467172.

[29] It is also contended that the Excel Quantronix brochure also shows that laser is most frequently used for marking and the work of the defendant is copy of Excel Quantronix. Thus, there is no infringement and the patent is wrongly



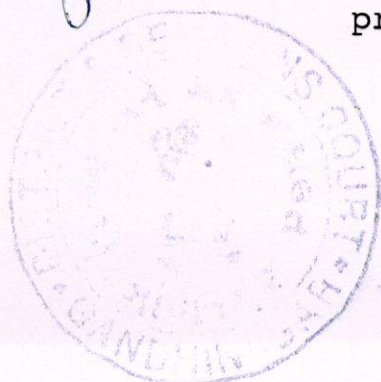
registered by the Patent Office. Further, the plaintiff has also contended that the patent of the defendant are revoked by IPAB, Circuit Bench, Mumbai M.P. No. 41 and 42 of 2012 by order dated 12.06.2012, wherein it is observed by IPAB that the patent for the invention claimed by the defendant was already known and it is found by the board that it is neither any novelty nor any inventive steps.

[30] It is also not in dispute that the said order was before Hon'ble Bombay High Court wherein both the parties have agreed that the matter should be remanded to IPAB and the matter would be decided by the IPAB, after affording full opportunity to the defendant. It was also directed that the proceeding should be concluded expeditiously. But unfortunately, it is reported to this court that the matter is pending before the IPAB, Circuit Bench, Mumbai.

[31] It would be fruitful to refer Section 106, 113 and Section 13 of The Patents Act.

[31.1] Section 106 of The Patents Act, reads as under:

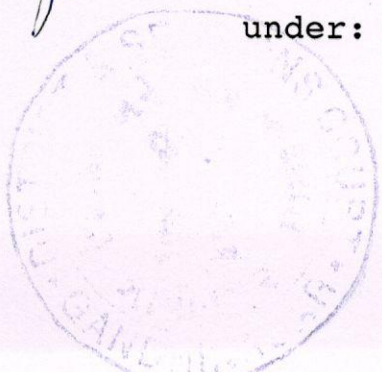
SECTION 106 : Power of court to grant relief in cases of groundless threats of infringement proceedings:



- (1) Where any person (whether entitled to or interested in a patent or an application for a patent or not) threatens any other person by circulars or advertisements or by communications, oral or in writing addressed to that or any other person, with proceedings for infringement of a patent, any person aggrieved thereby may bring a suit against him praying for the following reliefs, that is to say-
- (a) a declaration to the effect that the threats are unjustifiable ;
 - (b) an injunction against the continuance of the threats ; and
 - (c) such damages, if any, as he has sustained thereby.
- (2) Unless in such suit the defendant proves that the acts in respect of which the proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the court may grant to the plaintiff all or any of the reliefs prayed for.

Explanation : A mere notification of the [existence] of a patent does not constitute a threat of proceeding within the meaning of this section.

[31.2] Section 113 of The Patents Act, reads as under:



SECTION 113 : Certificate of validity of specification and costs of subsequent suits for infringement thereof

[(1) if in any proceedings before the Appellate Board or a High Court for the revocation of a patent under Sec. 64 and Sec. 104, as the case may be, the validity of any claim of a specification is contested and that claim is found by the Appellate Board or the High Court to be valid, the Appellate Board or the High Court may certify that the validity of that claim was contested in those proceedings and was upheld.]

(2) Where any such certificate has been granted, then, if in any subsequent suit before a court for infringement of that claim of the patent or in any subsequent proceeding for revocation of the patent in so far as it relates to that claim, the patentee or other person relying on the validity of the claim obtains a final order or judgment in his favour, he shall be entitled to an order for the payment of his full costs, charges and expenses of and incidental to any such suit or proceeding properly incurred so far as they concern the claim in respect of which the certificate was granted, unless the court trying the suit or proceeding otherwise directs:

Provided that the costs as specified in this sub-section shall not be ordered wher



the party disputing the validity of the claim-satisfies the court that he was not aware of the grant of the certificate when he raised the dispute and withdrew forthwith such defence when he became aware of such a certificate.

[(3) Nothing contained in this section shall be construed as authorising the Courts or the Appellate Board hearing appeals from decrees or orders in suits for infringement or petitions for revocation, as the case may be, to pass orders for costs on the scale referred to therein.]

[31.3] Section 13 of The Patents Act, reads as under:

SECTION 13 : Search for anticipation by previous publication and by prior claim

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(1) The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification-

(a) has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;



(b) is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.

- (2) The examiner shall, in addition, make such investigation ⁴¹—[* * * *] for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.
- (3) Where a complete specification is amended under the provisions of this Act before ⁴² ["the grant of a patent"], the amended specification shall be examined and investigated in like manner as the original specification.
- (4) The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such



examination or investigation or any report or other proceedings consequent thereon.

[32] It is needless to say that as per Section 106 of The Patent Act, it is the defendant has to prove that the act of the plaintiff, in respect of which the suit is filed, constitute or if done, would constitute the infringement of the defendant's patent. But in the case on hand, the defendant has only submitted to this court that the patent is duly registered and therefore, he is entitled to restrain the plaintiff from infringing his patent and therefore, the notice issued by him, is legal. The defendant has not whispered a single word about the allegations made by the plaintiff that the patent of the defendant is not valid. Or the contrary, plaintiff has submitted that defendant's patent is not any novelty or inventive step than the patent already registered in Japan and U.S. and the defendant has made copy of the brochure and specifications of Excel Quantronix.

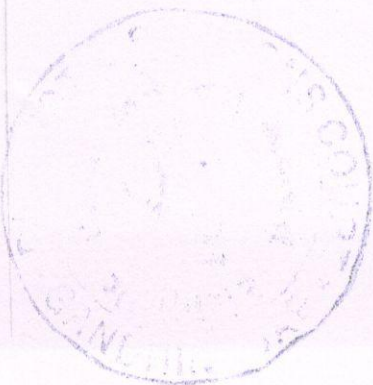
[33] It also appears from the record that the patent, which is registered is disputed by the other party than the plaintiff, and the dispute is also pending before the IPAB, Circuit Bench, Mumbai.



[34] Under the circumstances, I am guided by the judgement of Hon'ble Delhi High Court in a case of Standipack Pvt. Ltd., M/s. v. M/s. Oswal Trading Co. Ltd. reported in AIR 2000 DELHI 23 DELHI HIGH COURT, wherein it is held that :

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"16. When the conditions referred to in Section 64 are examined and applied to the facts and circumstances of the present case in the light of the observations made, hereinbefore, it is clear that the use of the pouches for packaging purposes of the nature of the one used by the plaintiff and in respect of which patent has been granted was widely prevalent. The same is also an admitted position when the plaintiff has stated that the storage of liquid products other than liquid in a pouch does not constitute a novel idea. Some of the defendants have filed applications for revocation of the patent granted in favour of the plaintiff under Section 64 of the Patents Act. There are cases where it is held that when an application is filed seeking for revocation of the patent and questioning the validity of the patent the Court should not grant an injunction. It is settled law that in an action for infringement of a patent an injunction would not be granted where the validity of the patent itself has been questioned and a revocation petition has been filed. In this connection reference may be made to a decision of the Madras High Court in V. Manicka Thevar v. M/s. Star Plough



Works, AIR 1965 Mad 327 at 328, wherein it was held that if from the objections raised by the defendant it is clear that a serious controversy exists as to whether or not the invention involves any new inventive skill having regard to what was known or used prior to the date of the patent; courts would not grant an injunction restraining the defendant from pursuing his normal business activity. It was also held that an interim injunction would not be granted if the defendant disputes the validity of the grant. In *M/s. Niky Tasha India Pvt. Ltd. v. M/s. Faridabad Gas Gadgets Pvt. Ltd.*, AIR 1985 Delhi 136 at 140 (supra) it was observed by this Court that no injunction should be granted when there is a serious question of the validity of the design to be tried in the suit and an application for cancellation has been made."

[35] In the case on hand, revocation application before IPAB is pending. The Hon'ble Bombay High Court has also ordered for expeditious hearing. The plaintiff has challenged the novelty and invention of the defendant. So, the above authority is squarely applicable to the facts of the present case.

[36] On forgoing discussions, I am of the view that the present application is required to be dismissed. Hence, following order is passed:

ORDER

1. The present application is hereby dismissed.
2. The Intellectual Properties Appellate Board, Circuit Bench, Mumbai is hereby directed to decide the dispute between M/s. Aditi Manufacturing Co., Mumbai and present defendant, in M.P. No. 41 & 42 of 2012, within 03 (three) months from receipt of this order.
3. If the decision of Intellectual Properties Appellate Board, Circuit Bench, Mumbai comes in favour of the defendant, he is at liberty to move an application under O.39 R.4 of the Civil Procedure Code before this court.
4. This court has not expressed any opinion about the validity of the patents. The criminal investigation pending before Mumbai Police about the complaint of defendant, and the dispute before Intellectual Properties Appellate Board should be decided independently, without influenced by this order.
5. No order as to costs.

Signed and Pronounced in open Court on 05th day

of December, 2016.

Date : 05.12.2016
Place : Gandhinagar

XERO
[AJAYKUMAR C. RAO]
GJ00022
PRINCIPAL DISTRICT JUDGE
GANDHINAGAR

vb/gnr



આ નકલ લેવા વ. શ્રી. સુ. ૧૦૦૦. ૦૦. ૫૨૮૧
ની અરજી આવ્યા તા. ૧૨ માહે ૧૨
સને ૨૦૧૬

૩. રજીસ્ટ્રાર
અસલ મળ્યા તા. ૧૪ માહે ૧૨
સને ૨૦૧૬

૩. રજીસ્ટ્રાર
નકલ તૈયાર થયા તા. ૧૪ માહે ૧૨
સને ૨૦૧૬

૩. રજીસ્ટ્રાર
નકલ આપી તા. ૧૪ માહે ૧૨
સને ૨૦૧૬

૩. રજીસ્ટ્રાર

નકલ તૈયાર કરનાર.....
મુકાબલ કરનાર.....

આથી દાખલો આપવામાં આવે છે
કે આ નકલ ખરી છે.
તા. ૧૪ માહે ૧૨ સને ૨૦૧૬

૩. રજીસ્ટ્રાર
ડિસ્ટ્રીક્ટ એન્ડ સેશન્સ કોર્ટ,
ગાંધીનગર

