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**(2013) 10 DEL CK 0038**

**In the Delhi High Court**

**Case No :** IA No. 10403 of 2013 in CS (OS) No. 2801 of 2012

Bristol Myers Squibb Company and Another — APPELLANT

Vs

V.C. Bhutada and Others — RESPONDENT

**Date of Decision :** 11-10-2013

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 10, 20, 20(a)
Copyright Act, 1957 — Section 62(2)
Patents Act, 1970 — Section 104, 2(1)(e), 48, 48(a), 62
Trade Marks Act, 1999 — Section 134(2)

**Citation :** (2013) 56 PTC 268

**Hon'ble Judges :** S. Muralidhar, J

**Bench :** Single Bench

**Advocate :** Guru Krishnakumar, Mr. Sudhir Chandra, Mr. Pravin Anand, Mr. Prasanna Venkat, Mr. Nischal Anand and Mr. Aman Taneja, for the Appellant; Vivek Sarin and Mr. Manish Jain, Advocates for Applicant in IA No. 10403 of 2013 and Mr. Garud M.V., Advocate for Defendants No. 3, for the Respondent

**Final Decision :** Dismissed

## Judgement

S. Muralidhar, J.

IA No. 10403 of 2013

1. This is an application by the Defendant No. 2 u/s 20 read with Order VII Rule 10 of the Code of Civil Procedure, 1908 (''CPC'') seeking return of the plaint to the Plaintiff for presentation in the appropriate court. The background to the present application is that the aforementioned suit has been filed by Bristol Myers Squibb Company (Plaintiff No. 1) and Bristol Myers Squibb India Private Limited (Plaintiff No. 2) against Mr. V.C. Bhutada, the Managing Director (''MD'') of Shilpa Medicare Limited (Defendant Nos. 1 and 2 respectively), both located at Raichur, Karnataka and Natco Pharma Limited (Defendant No. 3), having its office in Hyderabad and also shown as operating from D-70, Okhla Industrial Area, Okhla Phase-I, New Delhi. The prayer in the suit is for a permanent

injunction restraining infringement of Indian patent No. 203937, damages, rendition of accounts and delivery up.

2. The Plaintiffs state that Plaintiff No. 1 was founded under its present name in the year 1989 as a result of a merger between Bristol Myers Company and John Ripley Myers and Squibb Corporation, both stated to be pharmaceutical giants. Plaintiff No. 1 has its principal place of business in New York, USA. Plaintiff No. 2 was incorporated under the Indian Companies Act 1956, and has its registered office in Mumbai. It is stated that Plaintiff No. 2 also carries on business from its office at Barakhamba Road, New Delhi. Plaintiff No. 2 is a subsidiary of Plaintiff No. 1 and markets pharmaceutical products in the domestic market. It is stated that the Plaintiffs have a strong presence in various therapeutic areas, including cancer, cardiovascular disease, diabetes, obesity, psychiatric disorders, Alzheimer''s disease, hepatitis, HIV/AIDS and rheumatoid arthritis.

3. It is stated that an active pharmaceutical ingredient (''API''), DASATINIB was invented by Plaintiff No. 1, for which it enjoys patent protection in several countries, including India, under Patent No. 203937 dated 12th April 2000. The details of the patent registration in relation to DASATINIB under Indian patent No. 203937 in favour of Plaintiff No. 1 have been set out in para 13. It is stated that marketing approval for DASATINIB was granted by the Drug Controller General of India (''DCGI'') on 30th August 2006 to Plaintiff No. 2, who is, since then, marketing DASATINIB under the trade name ''SPRYCEL'' across India.

4. It is stated that DASATINIB is an anti-cancer molecule used in the treatment of adults with chronic, accelerated or myeloid or lymphoid blast phase chronic myeloid leukaemia (''CML'') with resistance or intolerance to prior therapy, including imatinib as well as treatment of adults who have a particular form of acute lymphoblastic leukaemia (''ALL'') called chromosome-positive (Ph+) ALL. It is stated that CML is one of the most common forms of leukaemia. It is stated that although imatinib mesylate, a small molecule tyrosine kinase inhibitor (''TKI''), was the designed drug for CML, since certain cases of imatinib resistant CML were emerging, for combating imatinib-resistant CML, a new generation of inhibitor, such as DASATINIB, was invented.

5. Relevant to the present application, the facts are that Defendant No. 2, Shilpa Medicare Limited, having its principal place of business at Raichur, Karnataka, is a bulk drug manufacturer, which carries on the business of manufacturing, selling and offering for sale and exporting bulk API, fine chemicals, intermediates, herbal products and specialty chemical products to various pharmaceutical companies within the domestic and global markets. It is stated that Defendant No. 1 is the MD of Defendant No. 2. Defendants 1 and 2 are stated to have tied up with various generic pharmaceutical companies in India. Defendant No. 3, Natco Pharma Limited, having its principal place of business in Hyderabad, carries on the business of manufacturing, selling, offering for sale various generic pharmaceutical products all over India, including within the jurisdiction of this Court.

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6. In para 27 of the plaint, it is stated that in the third week of August 2012, the Plaintiffs came to know that Defendants 1 and 2 were in the process of manufacturing DASATINIB (API), covered by the Indian Patent No. 203937. As on the date of the filing of the suit, i.e., 13th September 2012, the Plaintiffs stated to the best of their knowledge that "the said Defendants have not started supplying DASATINIB (API) to various generic companies." Through an application made under the Right to Information Act, 2005 to the Drugs Control Department, Karnataka, the Plaintiffs learnt that Defendant No. 2 had applied for and had been granted a manufacturing licence by the Drug Controller Licensing Authority, Karnataka for manufacturing DASATINIB bulk drug. It is further stated that, on its website, Defendant No. 2 has listed DASATINIB in their product list as ''under developed Oncology Active Pharmaceutical Ingredients.''

7. As regards Defendant No. 3, it is stated that in relation to its conduct in the past, with respect to the invention claimed in the suit patent, the Plaintiff has filed CS (OS) No. 2279 of 2009, which is pending in this Court. It is stated that in the said suit, on 22nd June 2012, an interim order was passed by the Court restraining Defendant No. 3 in the present suit and the other Defendants in the said suit from manufacturing and selling any product that infringes the Plaintiffs'' registered patent No. 203937. In para 35, it is stated that Defendant No. 3 had approached Defendants 1 and 2 for procuring bulk DASATINIB (API) and, therefore, the Plaintiffs had a real and reasonable apprehension that Defendant No. 3 would continue to infringe the invention of the Plaintiffs with the assistance of Defendants 1 and 2.

8. In para 36 of the plaint it is averred as under:

36. It is respectfully submitted that in light of the aforementioned facts and circumstances, the Plaintiffs have real and reasonable apprehension that the Defendant Nos. 1 & 2 are in the process of manufacturing DASATINIB (API) and are soon going to sell and/or offer for sale DASATINIB (API) to various generic pharmaceutical companies located in India including but not limited to Defendant No. 3. Defendant Nos. 1 & 2 are further likely to increase their revenue by exporting bulk quantities of DASATINIB (API) to various international pharmaceutical companies located abroad.

9. Para 40, which is the cause of action paragraph, reads as under:

40. In the light of the abovementioned facts, it is submitted that the cause of action first arose in the third week of August, 2012 when the Plaintiff received information that the Defendants had applied for and had been granted manufacturing licenses for bulk DASATINIB (API) and intend to soon commercialize and market and supply the same to various generic manufactures in India and abroad. The cause of action is a continuing one and will continue to subsist until this Hon''ble Court restrains the Defendants from their infringing activities.

10. As regards the jurisdiction of this Court the Plaintiff has averred in para 41 as

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under:

41. It is respectfully submitted that this Hon''ble Court has the jurisdiction to try and entertain the present suit u/s 20 of the Code of Civil Procedure, 1908.

(i) It is respectfully submitted that a part of the cause of action has arisen in Delhi as Defendant Nos. 1 & 2 have customers, consumers, buyers and host of other persons for various aspects of their business activities and are thus involved in a large number of activities which establish beyond doubt that they have purposefully availed of Delhi and targeted Delhi. Defendant Nos. 1 & 2 have numerous commercial arrangement by virtue of which they supply bulk API especially oncology APIs to various generic companies located within the jurisdiction of this Hon''ble Court. It is respectfully submitted that Defendant Nos. 1 & 2 have thus purposefully availed the jurisdiction of this Hon''ble Court.

(ii) It is further apprehended that if, Defendant Nos. 1 & 2 start supplying, DASATINIB (API), the same would be available within the jurisdiction of this Hon''ble Court. It is submitted that the threat that Defendant Nos. 1 & 2 will sell and/or offer for sale bulk DASATINIB (API) within the jurisdiction of this Hon''ble Court is credible and imminent. Thus, giving rise to a substantial and integral part of the cause of action within the jurisdiction of this Hon''ble Court.

(iii) It is further submitted that it is verily believed that Defendant No. 3 has approached Defendant Nos. 1 & 2 for procuring bulk DASATINIB (API). It is submitted that Defendant No. 3 carries on business within the jurisdiction of this Hon''ble Court from its office located at D-70, Okhla Industrial Area, Okhla Phase-I and D-70, second floor, Okhla Industrial Area, Okhla Phase-I, New Delhi 110 020 and through various exclusive agents and authorized agents located within Delhi. It is thus apprehended that Defendant No. 3 will procure DASATINIB (API) from Defendant Nos. 1 & 2 and sell and offer for sale the finished impugned product DASANAT, which infringes the suit patent within the jurisdiction of this Hon''ble Court. It is further submitted that pleading in CS (OS) No. 2279 of 2009 clearly show that the impugned product DASANAT is available within the jurisdiction of this Hon''ble Court.

11. Summons in the suit and notice in the application were issued on 14th September 2012. In its written statement filed on 17th December 2012, Defendant No. 3 stated that it had no relationship with Defendant Nos. 1 and 2 and that the suit had been filed only to multiply the litigation against Defendant No. 3. Defendant No. 3 questioned the validity of the patent granted in favour of the Plaintiff. Defendant No. 3 denied planning to procure any DASATINIB (API) from Defendants 1 and 2. Further Defendant No. 3 stated that as of date it is not manufacturing or selling DASATINIB in the market and "to the best of (the knowledge of) this Defendant even Defendant No. 1 and 2 are not selling the product in the market." Defendant No. 3 pointed out that the Plaintiffs have not filed a single document to show that the Defendants are carrying business activities within the territorial jurisdiction of this Court.

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12. In its written statement Defendant No. 2 has stated that it has not entered into any commercial understanding with any of its customers located in Delhi and, therefore, no cause of action arose against Defendant No. 2 within the territorial jurisdiction of the Court. It is pointed out that "no document to at least substantiate prima facie the existence of any commercial understanding between the Defendant Nos. 2 and 3 and also between the Defendant No. 2 and its customers has been produced." Defendant No. 2 stated that it is located in Raichur district, Karnataka and has no principal or subordinate office within the territorial limits of this Court and therefore no cause of action arises within the state of Delhi. It is stated that the alleged act of manufacturing which formed the basis of filing the present suit has never taken place either in Delhi or in Raichur.

13. Defendant No. 2 further stated that it is in the process of seeking clarification from the Drugs Control Department, Government of Karnataka, as the manufacturing license does not mention DASATINIB MONOHYDRATE and merely refers to DASATINIB. It is stated that DASATINIB and DASATINIB MONOHYDRATE are two different molecules and are two different chemical entities and, therefore, no action can be brought against Defendant No. 2 on the basis of the alleged claim for DASATINIB under Indian Patent No. 203937.

14. In the present application filed under Order VII Rule 10 CPC, it is stated by Defendant No. 2 that the manufacturing license has been granted to it by the State Drugs Control Department of Karnataka for its manufacturing unit located in district Raichur, Karnataka. It is reiterated that Defendant No. 2 neither has a registered office nor a branch office in Delhi and, therefore, the Court does not have any territorial jurisdiction to entertain the suit. It is alleged that the Plaintiffs have indulged in forum shopping and, therefore, the plaint must either be rejected or returned.

15. In reply to this application, it is stated by the Plaintiffs that a part of the cause of action has arisen in Delhi, as Defendants 1 and 2 have customers, consumers, buyers and host of other persons for various aspects of their business activities in Delhi and thus have "purposefully availed of Delhi and targeted Delhi". It is pointed out that in its written statement Defendant No. 2 admitted that it has customers located in Delhi. It is further reiterated that Defendant No. 2 has numerous commercial arrangements with generic companies such as Defendant No. 3 and supplies API to the said companies, who, in turn, sell/offer for sale, distribute the same within the jurisdiction of this Court. A reference is made to the website of Defendant No. 2 which advertises/ offers for sale the impugned product and which offer is accessible within the jurisdiction of this Court. It is submitted that the threat that Defendant No. 2 will sell/offer for sale DASATINIB (API) either on its own or through its customers or other generic companies, including Defendant No. 3, within the jurisdiction of this Court "is credible and imminent" and, therefore, "a substantial and integral part of the cause of action has arisen within the jurisdiction of this Hon''ble Court."

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16. This Court has heard the submissions of Mr. Guru Krishnakumar, and Mr. Sudhir Chandra, Senior Advocates appearing for the Plaintiffs, Mr. Vivek Sarin and Mr. Manish Jain, Advocates for Defendants 1 and 2 and Mr. Garud M.V., Advocate for Defendant No. 3

17. In approaching the issue whether the Court has territorial jurisdiction to entertain the present suit, reference has to necessarily be made to Section 20 of the CPC and Section 62 of the Patents Act 1970 (''Patents Act''), which read as under:

Section 20 CPC

Other suits to be instituted where defendants reside or cause of action arises.- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Section 62 Patents Act Rights of patentees of lapsed patents which have been restored.--

(1) Where a patent is restored, the rights of the patentee shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the patented invention between the date when the patent ceased to have effect and the date of publication of the application for restoration of the patent under this Chapter.

(2) No suit or other proceeding shall be commenced or prosecuted in respect of an infringement of a patent committed between the date on which the patent ceased to have effect and the date of the publication of the application for restoration of the patent.

18. Also relevant is Section 48(a) of the Patent Act which states that the holder of a patent for a product can seek to prevent infringement of such patent by a person who "offers for sale" that product anywhere in India. In the present case, the attempt by the Plaintiff is to show that on a collective reading of Section 20(c) CPC and Section 62(2) Patents Act, the Defendants carry on business by

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"offering for sale" their products within the jurisdiction of this Court and further that the cause of action wholly or partly arises within the local limits of this Court. At this juncture, it may also be noted that u/s 104 of the Patents Act, a suit for infringement is required to be instituted in a district court "having jurisdiction to try the suit." The proviso states that where a counter-claim for revocation of the patent is made by the Defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision. u/s 2(1)(e) of the Patents Act the district court has the meaning assigned to that expression by the CPC. Therefore, relevant to the question that arises for determination in the present application are sub-clauses (a) and (c) of Section 20 of the CPC.

19. From the averments in the plaint it is seen that the Plaintiffs are seeking to invoke the jurisdiction of this Court on the basis of the threat or apprehension that the actions of the Defendant within the territorial jurisdiction of this Court are likely to cause prejudice to the Plaintiff. In other words, this suit is in the nature of quia timet action. The Plaintiffs urge that such action can be entertained by the Court, even if the threat has not culminated into a reality. So, one of the issues that arises for determination is whether, in the facts and circumstances of the present case, based on the averments made in the plaint, it can be said that the Court has territorial jurisdiction to entertain the suit. Particular to the present case, the question that arises is whether the mere apprehension of the Plaintiff or its perception of a threat of infringement by the Defendants of its patent occurring within the local limits of this Court is sufficient to attract the jurisdiction of this Court.

20. Learned counsel for Defendant No. 2 referred to the decision in Dhodha House Vs. S.K. Maingi, which held that mere sale through a commission agent or otherwise of the goods will not satisfy the requirement of the expression "carries on business" occurring in Section 20(a) CPC. Such a defendant would have to be shown to be a special agent exclusively working for his principal and for no other person which may be in control of the principal. It was further held in Dhodha House that only because the Defendant''s goods have been sold at that place would "evidently not mean that it carries on a business at that place."

21. Learned counsel for Defendant No. 2 contended that u/s 48 of the Patents Act what is prohibited was "the act of making, using, offering for sale, selling or importing for those purposes that product in India". Since, Defendant No. 2 did not sell DASTANIB in Delhi or have any subordinate office there or any arrangement of special exclusive agency with Defendant No. 3, this Court did not have territorial jurisdiction to entertain the suit. He further pointed out that the Defendant does not have any registration with the Delhi VAT Department. It is submitted that there must be a substantial causal connection of Defendant No. 2 with the forum to bring the present action against it. Reference is made to the decision in Graigola Merthyr Company Limited v. Mayor, Aldermen and Burgesses of Swansea [1928] Ch. 235 that in a purely quia timet action the burden of proof resting on the plaintiff is far heavier than in an action where an act has already

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been done and has already caused actual damage. It is stated that in the cases of long arm jurisdiction, the Court has to carry out a three part inquiry to determine whether a non-resident has sufficient minimum contacts with the forum State to support the exercise of limited personal jurisdiction. Reference is made to the decision in Walter v. M Walter & Co., Inc. 446 N.W. 2d 507. It is stated that unlike Section 62(2) of the Copyright Act and Section 134(2) of the Trade Marks Act, 1999, which provide for long arm jurisdiction, there is no corresponding provision in the Patents Act which can be invoked by the Plaintiff for justifying the jurisdiction of this Court.

22. As far as the above submissions are concerned, there can be no doubt that in quia timet action the burden of proof on the Plaintiff is heavier than any other cases where the threat of infringement has already been materialized. It is also not in dispute that in cases of long-arm jurisdiction, as the present one, the Plaintiff must have prima facie pleaded that the Defendant has availed itself of the privilege of conducting activities; that the cause of action arising from the Defendant''s activities in the foreign state and that the Defendant''s activities must have a substantial connection with the foreign state to make the exercise of jurisdiction over the Defendant. However, each of the above tests would require evidence to be led since invariably it would be a mixed question of law and fact. At the stage prior to the trial, where a Defendant is in a quia timet action seeking the return of the plaint for want of jurisdiction, the Court will have to take the allegation contained in the plaint to be correct. In other words, the Court is not expected to examine the written statements to test the veracity of the averments in the plaint. Also, considering that in a quia timet action the averments in the plaint would invariably express only an apprehension of an infringement, the Court can only examine whether such apprehension is prima facie credible enough for entertaining the suit, postponing the testing of the veracity of such averment to the stage of trial.

23. In Jawahar Engineering Co. and Others Vs. Javahar Engineering Private Ltd., , the Court was faced with a similar question under the Trade and Merchandise Act 1958. The learned Single Judge had held that the Delhi Courts do not have the jurisdiction since no sale by the Defendant was shown to have been made in Delhi. In reversing the said judgment, the Division Bench explained that "when an injunction is sought, it is not necessary that the threat should have become a reality before the injunction and it can even be sought for a threat that is still to materialize. An injunction being prohibitive in nature is intended to prevent something that is likely to happen."

24. In Mars Incorporated Vs. Kumar Krishna Mukerjee and Others, , the Court discussed at some length the concept of quia timet action and explained as under:

21. To expect the aggrieved party to wait and watch for the opening of business or manufacturing or sale or goods under the apprehended infringement of trade mark is too much. A stitch in time always saves nine and that is what is the

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essence of Quia Timet Action. With the onset of information technology in modern times, registration of a website which is popularly known as domain name, a party owning a website has a right to protect the same if any person registers the website with a name which is inherently deceptive. In such cases either party is directed to change the name of the site or handover to its owner. On the same pattern and pedestal is the threatened or apprehended invasion of the trade mark or corporate name.

25. In Pfizer Products Inc. Vs. Rajesh Chopra and Others, , the Court observed as under:

The other aspect of the matter is that a threat of selling the offending goods in Delhi would in itself confer jurisdiction in the courts in Delhi to entertain a suit claiming an injunction in respect thereof. Whether the threat perception is justified or not is another matter which has to be considered and decided upon in the application filed by the plaintiff under Order 39 Rules 1 and 2 or on merits when the suit is taken up for disposal. Insofar as Order 7 Rule 10 is concerned, assuming that whatever is stated in the plaint is correct, one would have to also assume that the threat or the intention of the defendants to sell and offer for sale the offending goods in Delhi is also correct. Therefore, if the threat exists then this court would certainly have jurisdiction to entertain the present suit.

26. In the above decision, the learned Single Judge deferred the question as to the correctness of the threat perception to the stage of trial, as it was held to be a mixed question of law and fact. This was consistent with the decision of the Division Bench in State Trading Corporation of India Ltd. Vs. Government of Peoples Republic of Bangladesh, which inter alia held that "If the determination of jurisdiction of the Court is a question of fact or mixed question of fact and law requiring evidence to be adduced before recording a finding, the determination of the question may in appropriate, cases be liable to be postponed till after the determination of all or several other issues if the evidence to be adduced by the parties may be common on the issue of jurisdiction and such other issues."

27. Referring to the decisions in M/s. Jawahar Engineering Company and Pfizer Products Inc, another learned Single Judge of this Court in LG Electronics India Pvt Ltd Vs. Bharat Bhogilal Patel and Others, held as under:

43. The said threat perception per se also cannot also be said to be acting as an escape route to invoke the jurisdiction of the courts by just averring so in the plaint. The judgments rendered in the Jawahar (supra) and Pfizer (supra) as well as the observations made herein have to be read in the context. The threats are accepted by the courts for the purposes of invocation of jurisdiction as a mixed question of fact and law when there are some facts indicating towards likelihood of the perfection of the said threats or furtherance of the threats becoming reality. The said nexus of the initial facts will allow the court to determine the likelihood aspect in such threat and will lead to the court drawing the inference treating it as a mixed question of fact and law.

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44. Thus, the real test would be when the court seized of such a matter is under doubt as to whether there is a possibility of threat becoming reality though the possibility of the same not becoming the reality is also not ruled out. In such cases, the question of jurisdiction on the basis of apprehension becomes a mixed question of fact and law and the same is thus deferred until the establishment of further facts in the trial.

28. The above decisions are in line with the position in common law as regards quia timet actions. Illustratively reference may be made to the recent decision in Merck Sharp Dohme v. Teva Pharma B.V. (2012) EWHC 627 (Pat). In the said case, the Defendant, Teva Pharma, obtained the market authorization for a drug. It was held that while the obtaining of such market authorization could not itself be constituted an infringement, "application for a market authorization is not a trivial matter and is the product of careful planning and work." It was held that such obtaining of market authorization provided "a concrete basis for inference that TEVA threaten and intend to sell efavirenz sometime."

29. Turning to the case on hand, para 36 of the plaint first expresses the apprehension that Defendants 1 and 2 are in the process of manufacturing DASATINIB (API) and are seeking to sell or offer for sale the said product to various generic pharmaceutical companies in India but not limited to Defendant No. 3. Secondly, it has been pleaded in para 40 that Defendant No. 2 intends to supply API to various generic manufacturers in India and abroad. Thirdly, in para 41(1), it has been averred that Defendants 1 and 2 have numerous commercial arrangements by virtue of which they supply bulk API especially oncology APIs to various generic companies located within the jurisdiction of this Court. The fourth averment is in para 41(2) where it is stated that "if Defendant Nos. 1 & 2 start supplying, DASATINIB (API), the same would be available within the jurisdiction of this Hon''ble Court."

30. It is not necessary at this stage, for the Plaintiff to name the particular customers of Defendants 1 and 2 to whom the product is to be sold since what is expressed is only an apprehension of "offer for sale". At this stage, the Plaintiff can at best refer to the fact that Defendant 2 supplies oncology APIs to various generic companies and that the said APIs are sold in Delhi. The apprehension that such oncology APIs may in the near future include the infringing product which is also an oncology API cannot, in the circumstances, be characterised as lacking credibility and having been asserted merely to attract the jurisdiction of the Court. The above averments in the present plaint, which is in a quia timet action, are prima facie sufficient to show that Defendant No. 2 "carries on business" in Delhi and that the prima facie the cause of action arises within the jurisdiction of this Court.

31. Needless to clarify that the final determination on whether the Court has territorial jurisdiction to entertain the suit will have to await the completion of the trial as it is a mixed question of law and fact. On the basis of the averment in the plaint at this stage it is not necessary for the Court to, and in fact it cannot,

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conclusively hold that this Court either has or lacks the territorial jurisdiction to entertain the suit.

32. In that view of the matter, this application is dismissed. However, a specific issue concerning territorial jurisdiction of the Court will be framed for determination at the appropriate stage.

CS (OS) No. 2801 of 2012

List before the Joint Registrar on 12th December 2013 for completion of pleadings and admission and denial of documents. List before the Court on 11th March 2014 for framing of issues and arguments on the pending applications.

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