
(2009) 04 IPAB CK 0006

In the Intellectual Property Appellate Board

Case No : ORA/3/2007/PT/CH

K. Manivannan, Proprietor, Trading As Kumar Industries

APPELLANT

Vs

M. Mani, Proprietor Valasumani Lathe Works

RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Patent Rules, 2003 — Rule 24, 24A

Patents Act, 1970 — Section 7, 9(1), 11A, 11A(1), 21(1), 35, 64, 64(e), 67

Citation : (2009) 41 PTC 561 (IPAB)

Hon'ble Judges : Z.S. Negi, J;S. Chandrasekaran, Technical Member

Bench : Division Bench

Advocate : A. Prabhakara Redd, J.V. Raghavan

Final Decision : Dismissed

Judgement

“

S. Chandrasekaran, Technical Member”,,

1. This is an application for revocation of patent No. 204322 granted in the name of Valasumani Lathe Works, Sivagiri, Erode District, Tamil Nadu”,,

(hereinafter referred to as the respondent) registered under Section 64 of the Patents Act, 1970 (hereinafter referred to as the Act) filed by the”,,

applicant.,,

2. The brief facts of the case are that the respondent had applied for a patent for an invention titled “IMPROVED THRESHING AND”,,

SEPARATING MACHINE”, and the sa was granted under number 204322 (921/CHE/2004) on 13th February, 2007. Based on this patent, the”,,

respondent claimed that he filed a patent infringement suit being OS No. 243/2007 against this applicant which is pending before the District Judge”,,

Erode.,,

3 . The applicant stated that they are the leading manufacturers and marketers of agricultural implements such as paddy threshers, groundnut",,,

degadicator, paddy cleaner, de-stoner, neem seed degadicator, paddy threshing machine and so many agricultural machines for the past 30 years.",,,

During the course of the business, the applicant has invented a machine for threshing paddy and filed an application for",,,

patent numbered as 455/MAS/2000 on 14th June, 2000 for an invention relating to machine for threshing of corn, but patent has not been granted, as",,,

the said application for patent has been deemed to have been abandoned under Section 21(1) of the Act. The applicant had come to know of the grant",,,

of Patent to the respondent only from the aforementioned suit filed by the respondent which was served on him in June 2007. Thus as counter",,,

measure the applicant has applied for the revocation of the said patent.",,,

4. The matter came up for hearing before the Appellate Board on 27th January, 2009. Shri A. Prabhakara Reddy, advocate appeared for the applicant",,,

and Shri. J.V. Raghavan, advocate appeared on behalf of the respondent. The counsel for the applicant stated that the applicant having been in the",,,

field for the past 30 years, having vast experience in the said field, had invented a machine for threshing paddy and other related crops and filed a",,,

patent application in the patent office as stated earlier. The applicant's machine uses cycling technology with the helical/helix plates which cycles",,,

paddy or other crops in conjunction with rotors creating continuous cycles pushing the material fed through the hopper, while threshing from one end to",,,

other end, thus threshing the hay and separating from the grains. The straw or hay or the waste materials are pushed out through upper rear outlet of",,,

the machine. The counsel for the applicant also stated that the inventive step of his machine is that the helical/helix plates are provided in the upper",,,

hemisphere cover which receives and threshes paddy or the other crops, wherein the cover is fitted with the rotor. The rotor has a filter having",,,

straight angle rods which functions as the filter and separates the straw from the grains and the raw material is advanced by the helix plates in the",,,

cover. The counsel for the applicant further stated that the respondent had fraudulently filed an application for patent on 14.9.2004 keeping the entire",,,

technology of the applicant but making little variation in respect of studs and the

filter and finally managed to get a patent for his application. The,,
counsel for the applicant also stated that the subject matter of the said patent was available to the public openly by way of the machine manufactured,,
by the applicant for revocation, as the applicant had been manufacturing such threshing machine and marketing such identical machine even prior to",,,
the filing of the application for grant of patent by the respondent. Therefore, the counsel for the applicant argued that the subject matter of the patent",,,
was identical or similar to the invention claimed in the patent application No. 455/MAS/2000 of the applicant which application had only been deemed,,
to have been abandoned and the applicant had not got the patent, but had been manufacturing and marketing such threshing machine available for",,,
public even prior to the date of filing of the application for patent to the respondent. The counsel for the applicant submitted that while comparing the,,
abstract of both the applications for patent (the patent application of the applicant and the respondent) the inventive step is only in providing helical,,
path for the crop during threshing operations which has been ensured by the helical thresher cover which is the subject matter of both the patent,,
applications. Therefore, the counsel for the applicant submitted that the respondent's patent was completely anticipated by way of anticipation by prior",,,
claiming, anticipation by prior publication and prior public knowledge because the applicant had been manufacturing it since the year 2000. Thus, when",,,
the patent is anticipated by prior public knowledge and prior publication as cited above, the patent granted to the respondent is liable to be revoked",,,
under Section 64(e) of the Act. The counsel for the applicant also argued that the invention so far as claimed in the claims of the patent granted to the,,
respondent is completely similar or identical to the subject matter claimed in the earlier application filed by the applicant under the patent No.,,
455/MAS/2000. The counsel for the applicant by submitting that the invention claimed in respondent's patent was fully anticipated by prior public,,
knowledge also referred to many advertisements published in various Tamil dailies since the year 2000 and up to the date of filing of the application for,,
patent by the respondent. Thus the counsel for the applicant submitted that the subject matter of the patent granted to the respondent was already,,
known to the public and public had been using in India before the priority date of the claim of the patent granted to the respondent and so the,,

impugned patent should be revoked under Section 64 of the Act.,,

5 . The counsel for the respondent stated that the respondent is a leading entrepreneur engaged in the business of manufacturing agricultural,,

implements since the year 1986. The respondent is a pioneer in designing various agricultural machines, which has tremendous response among the",,,

farmers and in recognition to the said service, he has been awarded certificates and medals for his innovation. Thus by virtue of the constant research",,,

and innovation by the respondent, had invented one such threshing and separating machine for Multi Crops, for which he filed an application for patent,",,

which was duly examined and published in the Patent gazette after the learned Controller satisfied himself about the invention and finally the patent,,

was granted to the respondent. The counsel for the respondent submitted that the subject matter of the patent is entirely different from any other,,

machine and by no means, the subject matter of the patent granted to the respondent be said to be even remotely similar, much less, identical or similar",,,

to any of the existing machine that are in use till then. The counsel for the respondent also pointed out that the applicant had filed an application for,,

patent but due to lack of confidence, the applicant could not get the patent in his name as the said application having been deemed to be abandoned",,,

under Section 21(1) of the Act, the subject matter of the said abandoned patent application was not open to public till the priority date of the patent",,,

granted to the respondent and hence, the respondent's patent was not anticipated by prior claiming or prior publication or by prior public knowledge.",,

The counsel for the respondent also denied that the respondent had pirated the so called technology of the applicant and only when the respondent,,

filed an infringement suit, in addition to several other cases against the applicant, the applicant had set-up a fictitious allegations upon the respondent by",,,

claiming that the respondent had usurped the technology. The counsel for the respondent submitted that the applicant had not followed or taken,,

adequate and appropriate measures available to him under the law either by initiating a pre-grant or post grant opposition to the said patent but initiated,,

the present proceedings only when he came to know by way the infringement notice.,,,

6 . The counsel for the respondent further submitted that the inventive step in the respondent's threshing machine is that the rotor has atleast 10,,

thresher vanes positioned at an angle of 20 degree on each line having 5 to 6 circumferentially spaced lines for positioning the said vanes and at least 4,,
hay thrower vanes have been positioned straight for throwing out the hay at the non-driving end of the rotor. The counsel for the respondent submitted,,
that helical guide for guiding the hay after threshing and separating from the hay similar to what is claimed in applicant's patent, was not open to public",,,
because of the fact that the said application had been deemed to have been abandoned under Section 21(1) of the Act. There is a definite change in,,
the constructional features of the helical assembly of his client's invention, which makes the whole subject matter completely different from that of the",,,
earlier patent as claimed by the applicant. Thus, the counsel for the respondent said that the said patent No. 204322 is not anticipated by prior public",,,
knowledge or prior publication or prior claiming and it is a novel invention meeting all the criteria for patentability and the said patent has been granted,,
after due process of examination by the learned Controller in the Patent Office and thus the present application for revocation of patent is liable to be,,
dismissed.,,,

7. We have heard the arguments and the submissions of the learned Counsel for the applicant and the respondent. Here it is pertinent to note the,,
correct provisions of law as to the filing of patent applications and their publication thereof and the relevant provisions therefore are extracted as,,
under:,,

Section 7. Form of application.- (1) Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in,,
the patent office.,,,

(1A to 4) xxxxx,,

Section 11A. Publication of applications for Patent.- (1) Save as otherwise provided, no application for patent shall ordinarily be open to the public for",,,
such period as may be prescribed,,

(2) The applicant may, in the prescribed manner, request the Controller to publish his application at any time before the expiry of the period prescribed",,,
under Sub-section (1) and subject to the provisions of Sub-section (3), the Controller shall publish such application as soon as possible.",,,

(3) Every application for a patent shall, on the expiry of the period specified under Sub-section (1), be published, except in cases where the",,,

application--,,

(a) in which secrecy direction is- imposed under Section 35; or,,

(b) has been abandoned under Sub-section (1) of Section 9; or,,

(c) has been withdrawn three months prior to the period specified under Sub-section (1).,,

(4 to 7) XXXXX,,

Rule 24 of the Patent Rules, 2003",,,

24. Publication of application.- The period for which an application for patent shall not ordinarily be open to public under Sub-section (1) of Section,,

11A shall be eighteen months from the date of filing of application or the date of priority of the application, whichever is earlier:",,

Provided that the period within which the Controller shall publish the application in the Journal shall ordinarily be one month from the date of expiry of,,

said period, or one month from the date of request for publication under Rule 24A.",,

Guide lines of the Manual of Patent Practice and Procedure regarding the publication available to the applicants and public (on the IPO website), is",,,

given below:,,

Effects of Publication:,,

(i) After publication of the application for patent the depository institution will make the biological material (mentioned in the specification) available to,,

the public,,

(ii) The Patent office will make the specification (complete as well as provisional, if any), and drawings filed in respect of the application available to",,,

the public on payment of the prescribed fee as given in the First Schedule.,,,

(iii) The applicant shall have like privileges and rights, as if a patent for the invention had been granted from the date of publication of the application",,,

until the date of grant. But he shall not be entitled to institute any proceedings for infringement until the patent has been granted.,,,

We find it necessary to quote here, a similar patent revocation case of UK. In Synthon BV v. Smithkline Beecham plc. wherein Justice Jacob held as",,,

under:,,

Synthon seek revocation of SKB's UK Patent No. 2,336,364. Its earliest possible priority date is 2.7.1998. The principal basis of the attack is",,,

Synthon's prior patent application, filed on 10th June 1997. The Synthon application had not been published by SKB's priority date. Nonetheless",,

Synthon say that by reason Section 2(3) of the 1997 Act (corresponding to Article 54(3) of the EPC) their application ""shall be taken to comprise"" part",,

of the state of the Art On that basis they say that the SKB invention is not ""new"" and hence is not patentable, see Section 1(1) and Section 2(1) of",,

the UK act. SKB accept the position on dates. However they say it is not shown that the inventions of the two applications are the same. Hence",,

although the Synthon application forms part of the state of the art, it is not novelty destroying.",,

Take this UK case for instance regarding novelty. J Jacob analysed ""Suppose it were under the provisions of the UK act, the Synthon application had",,

actually been published before the priority date and suppose it were proved that by carrying out the process described one inevitably got the product of",,

the SKB claim. Then the SKB claim so far as covering the product made by the process would lack novelty"". ",,

As Lord Hoffmann said in Merrell Dow at p. 90:",,

In other words, if the recipe which inevitably produces the substance is part of the state of the art, so is the substance as made by that recipe.",,

We noticed that in Synthon's case argument and focus was on the word ""content."" J Jacob held ""it is the content of the prior document which must be",,

novelty destroying. If you have to do experiments then you are going beyond the content.""",,

Synthon's counsel focussed on the question of priority relying on what was said by Lord Oliver in Asahi (1991) RPC 485. The case was then actually",,

decided that under Section 2(3) of the UK act, stating that a prior application had to be enabling to invalidate on the basis of lack of novelty. Lord",,

Oliver said at p. 541:",,

Secondly, the ""matter"" deemed to be part of the state of the art by reason of being contained in a pending application unpublished at the priority date of",,

the application in suit must itself have an earlier priority date by reason of having been disclosed for the purposes of Section 5. It is difficult to see any",,

reason why there should be deemed to be included in the state of the art anything more than what was disclosed in the application which gave it is",,

priority under Section 5. If that disclosure would not, if published, have made the invention available to the public it is not easy to see why it should do",,,

so simply because fortuitously it was not published at the priority date.,,

I n Leslie Adrian Alfred Woolard Patent application No. GB9711337.7 : appeal case 2002 EWHC 535 (Patents) 12th April 2002, Laddie J. merely",,,

held that ""a withdrawn prior application did not count for the purposes of being part of the state of art""",,,

It is a well settled principle of interpretation that a word or expression that appears in a statute or rule should be construed in the sense in which it is,,

generally understood in common parlance. The words appearing in the patent rules namely litigation, suits, claims, cannot be construed to limit the",,,

meaning of suits, litigation to mean the suits or claims pending between the litigants. The elementary principle of interpretation of statutes is that where",,,

the language is clear, the intention of the legislature is to be gathered from the language used. Attention has to be paid to what has been said and also",,,

what has not been said. The plain words 'proceedings', 'litigation', 'claim' etc. used cannot be read so as to limit their meaning and that is also not the",,,

intention of the framer of the rules.,,

I n Hon'ble Supreme Court in MANU/SC/1025/2004 State of Jharkhand v. Govind Singh , it was held:",,,

When the words of a statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give",,,

effect to that meaning irrespective of consequences. The intention of the legislature is primarily to be gathered from the language used, which means",,,

that attention should be paid to what has been said as also to what has not been said.,,

As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless",,,

has to be avoided. As was noted by the Privy Council in Crawford v. Spooner,,

We cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there",,,

A similar view was reiterated by the Apex court in MANU/SC/0191/1991 State of M.P. v. G.S. Dall and Flour Mil Isand AIR 1998 SCC 1429 State,,

of Gujarat v. Dillipbhai Nathjibhai Patel. Speaking briefly, the Apex Court held ""it cannot reframe the legislation"", as noted in J.P. Bansal Case ""for the",,,

very good reasons that it has no power to legislate."",,

In the High Court of Delhi in a service matter (benefits) LPA No. 98/2005 between Govt. of NCT of Delhi and Ors. v. K.R. Jain and Ors. 2006 IV,,

AD (DHC) 529 J. Shiv Narayan Dhingra, held that",,

Where, therefore, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to",,

what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitutions of words or",,

which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case",,

here, but we have to give a benevolent interpretation only." {See Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests AIR at p.",,

1752; Shyam Kishori Devi v. Patna Municipal Corporation AIR at p 1682 and A.R. Antulay v. Ramdas Srinivas Nayak SCC at pp. 518, 519} J. Shiv",,

Narayan Dhingra, added",,

Indeed, the court cannot reframe the legislation as it has no power to legislate.",,

See State of Kerala v. Mathai Verghese SCC at p. 749 and Union of India v. Deoki Nandan Aggarwal AIR 1992 SC 96 at p. 101,,

The question is not what may be supposed and has been intended but what has been said. Statutes should be construed, not as theorems of Euclid",,,

Judge Learned had said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lehigh Valley Coal Co. v.",,

Yensavage 218 FR 547, 553.) The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama SCC p. 284, para 16",,

In "D.R. Venkatchalam v. Dy. Transport Commissioner" it was observed by the Lordships that "courts must avoid the danger of a priori determination",,

of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is,,

some what fitted. They are not entitled to usurp legislative function under the disguise of interpretation,,

8. Therefore, we find that after a very careful perusal of the above case laws and the provisions of the Act and the rules made thereunder, together",,

with guidelines available to the applicants, it is very clear, according to the statutory provisions, the Patent application and the specification is open to",,

the public for inspection or kept for public knowledge after the publication of

application for patent i.e., after a period of eighteen months only. In view",,,
of this provision, the applicant's specification was not open to public knowledge
till the same was published on 21st December 2007, though very late",,,
but being the 18th month publication according to the statutory provision.
Moreover the earlier application was deemed to have been abandoned under,,
section of the 21(1) of the Act. In fact there was no provision for withdrawal of a
patent application till the second amendment to the Act (effective,,
from 20.5.2003) and the applicants used to adopt the way of abandoning the
application for availing withdrawal facility. Further, there was no similar",,,
provision in the Indian law, like in the UK act and EPO provisions of law, to make
the later publication part of the state of art to act as anticipation for",,,
the later application destroying the novelty. In the absence of such provision in
the Indian law and under the above circumstances, we find that the",,,
earlier application of the applicant does not anticipate the respondent's
invention.,,,

As regards, the applicant's argument for prior claiming we shall see the criteria
for determining prior claiming; generally the following ""Criteria for",,,
prior claiming"" may be taken into consideration while examining a patent
application:",,,

In order to establish prior claiming it must be shown that the subject matter of a
claim in the respondent's specification forms the subject matter of a,,
distinct claim in the cited specification of the applicant. It is not sufficient if the
claim is merely comprehended in the subject matter of a claim in the,,
cited specification. This follows very clearly from the language applied in the
section. The comparison must be made between (and limited to) the,,
claims in the relevant specifications that is to say, it does not suffice to support
an objection to show that what is claimed in the respondent's",,,
application as a subject matter for protection is to be found somewhere
comprehended or described in the earlier specification. For the purpose of,,
justifying a finding of prior claim one must find a distinct claim in the earlier
specification, which, as a matter of substance, is equivalent to the claim in",,,
the applicants' specification.,,,

9 . Here the applicant firstly had not shown that how the respondent's claim was
equivalent to his earlier claim. Further we see that his application for,,
patent was abandoned under Section 21(1) of the Act and was not open to the

public. Before coming to the conclusion that the invention claimed in,,
the respondent's application is anticipated by prior claiming or not, we have to
satisfy ourselves that respondent's claim in the later specification is",,
claimed in an earlier specification of applicant's application to show that invention
is found to be distinctly same as claimed in the earlier specification.,,

Constructional

features/Process/function done",Applicant/petitioner for revocation,"for revocation

Respondent/Patentee

Raw Material beating by,Rotor struds,Thresher roller assembly

Raw material advancement,Helix Plates in the cover,cover Helically configured
guide rods

Threshing operation done by,Helix plates provided in the cover,"Thresher vanes
provided on the

longitudinal members

Threshing chamber has vacuum

creation during threshing operation","NO SUCH VACUUM CREATION

IN THE THRESHING CHAMBER","Portal Vacuum creation in the
threshing chamber

Threshing vane mounting,"Claim 1 defines only placement of

Helix plates in the cover","Claim 1 defining thresher roller

Assembly having threshing vanes in an

angular placement of 20° degrees

In *Verdegaal Bros. v. Union Oil Co. of California* 814 F.2d 628, 631, it was held:",,

A claim is anticipated only if each and every element as set forth in the claim is
found, either expressly or inherently described, in a single prior art",,

reference.,,

In *Pope alliance Corporation v. Spanish Siver Pulp & Paper Mills Ltd.*A.I.R. 1929
P.C. 38 it was held that,,

The specification which is relied upon as an anticipation of the invention must
give the same knowledge as the specification of the invention itself.,,

In the above case his Lordships have further held:,,

In patent law, in order to render a document a prior publication, it must be

shown that it contains all that is material to instruct the public how to put the",,,
invention in practice.,,,

Now we shall see as to whether a common knowledge on the date of the
patentee's claim would amount to anticipation by way of public knowledge,,

destroying the novelty. First we should note what is a common knowledge?,,

Criteria for ""Common General Knowledge""",,,

It is important to have a clear understanding of the meaning of the common
general knowledge. It is the background technical knowledge available to,,

all in a particular trade while doing or carrying out a product development
activity.,,,

The correct explanation was given by the Court of Appeal in *Beloit Technologies
Inc. v. Valmet Paper Machinery Inc.* (1997) RPC 489 at pages 494-,,

495:,,

The information in a patent specification is addressed to such a man and must
contain sufficient details for him to understand and apply the invention.,,,

It only lack an inventive step if it is obvious to such a man. It follows that
evidence that a fact is known or even well-known to a witness does not,,

establish that fact forms part of the common general knowledge. Neither does it
follow that it will form part of the common general knowledge if it is,,

recorded in a document.,,,

The Court of Appeal in *General Tire & Rubber Co. v. Firestone Tyre & Rubber Co.
Ltd.* (1972) R.P.C. 457, at page 482 line 33:",,,

The two classes of documents which call for consideration in relation to common
general knowledge in the instant case were individual patent,,

specifications and widely read publications.' As to the former, it is clear that
individual patent specifications and their contents do not normally form",,,

part of the relevant common general knowledge, though there may be
specifications which are so well known amongst those versed in the art that",,,

upon evidence of that state of affairs they form part of such knowledge and also
there may occasionally be particular industries (such as that of colour,,

photography) in which the evidence may show that all specifications form part of
the relevant knowledge.,,,

Laddie J. explained in *Raychem Corporations' Patents* (1988) RPC 31 at 40,",,

It includes all the material which he knows exists and which he would refer to as

a matter of course if he cannot remember it and which he generally,,
understands is sufficiently reliable to use as a foundation for further work.,,
In ICI Chemicals & Polymers Ltd., v. Lubrizol Corps⁴⁵ IPR 577 Emmett J.
stated,",,
the common general knowledge is the technical background to the hypothetical
skilled worker in the relevant art ...but also includes the material in the,,
field in which he is working which he knows exists and to which he would refer as
a matter of course.,,
Pumfrey J. in Novartis v. Ivas (2006) EWHC 2506 (Pat) at (27) stated.,,
It is well settled that the common general knowledge is knowledge that must be
attributed to the skilled person, without which the latter may be taken",,
not to be skilled. To it must be added any knowledge that every skilled person
should be taken to acquire before he embarks on the problem to which,,
the patent provides the solution.,,
Luxmoore, J. in British Acoustic Films 53 R.P.C. 221 at 250 stated:",,
It is not sufficient to prove common general knowledge that a particular
disclosure is made in an article, or series of articles, in a scientific journal, no",,
matter how wide the circulation of that journal may be, in the absence of any
evidence that the disclosure relates. A piece of particular knowledge as",,
disclosed in a scientific paper does not become common general knowledge
merely because it is widely read, and still less because it is widely",,
circulated. Such a piece of knowledge only becomes general knowledge when it
is generally known and accepted without question by the bulk of,,
those who are engaged in the particular art; in other words, when it becomes
part of their common stock of knowledge relating to the Article",,
Thus from the above cases, common general knowledge is the common
knowledge in the field to which the invention relates. It is generally known as",,
common knowledge and regarded as a good basis for further research activity by
those engaged in that art before it becomes part of their common,,
stock of knowledge relating to the art, and then becoming part of the common
general knowledge. It would appear therefore that when it is a question",,
of common general knowledge i.e., knowledge available in a country for a long
time, which every skilled worker in that field is, expected to know.",,
Then such knowledge would be sufficient to invalidate a patent. Again such
knowledge need not even be found in a particular document. In other,,

words a patent application has to be accessed on the basis of not only what will be available from prior documents but also from the common general,,

knowledge on the subject, which may or may not be available in any such document.",,

But this is a factor to be proved by the applicant seeking the revocation of the impugned patent and in the absence of any objection or an agitation,,

from his side, patentee's invention claimed in his claim does not get affected by the fact what is known at the time of filing of patentee's application.",,

We shall also see whether applicant's claim according to his construction and functional aspect claimed in his claim, amounts to an anticipation by way",,,

of prior public document or prior public knowledge or prior public use, particularly when he has raised the issue that patentee's claim is anticipated by",,,

his claim in a general manner.,,

The Honourable Mr. Justice Neuberger said, in ""Amgen Parties v. Roche Parties (2001) EWHC Patents 433 (11th April, 2001), IN THE HIGH",,,

COURT O JUSTICE, CHANCERY DIVISION PATENTS COURT, Royal Courts of Justi Strand, London, WC2A 2LL, that,""in so far as",,,

construction of a claim, involve giving the words of a claim an unnatural meaning; it involves giving the words an unnatural meaning with the result that",,,

the claim is likely to be invalid, whereas giving the words their natural meaning will be more likely to render the claim valid."""",,,

As was said by Lord Brougham LC in Langston v. Langston (1834) 2CI & Fin 194,",,

you should lean towards that construction which preserves, rather than towards that which destroys""", which he described as ""a rule of",,,

common law and common sense.,,

It is a well settled law that a prior art reference cited anticipates the claim when its limitations are not expressly found in that reference but are,,

nonetheless inherent in it. Under the principle of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations",,,

it anticipates. Similarly on an analysis of whether a claim is patentable over the prior art begins with a determination of the scope of the claim. The,,

scope of the claim in a patent application is solely assessed on the basis of the claim language, but after giving the claim a broad construction in the",,,

light of the invention defined in the description of the specification as it would be

interpreted by an ordinary person skilled in the art that is comparable,,
 with the prior Art. These principles were expounded by Lord Diplock in the
 leading case of Catnic Components Ltd v. Hill & Smith Ltd. (1982),,
 RPC 183, which concerned a patent granted before 1977.",,
 The best-known statement of the status and function of the claims is given by
 Lord Russell of Killowen in Electric and Musical Industries Ltd v.,,
 Lissen Ltd. (1938) 56 RPC 23, 39:",,
 The function of the claims is to define clearly and with precision the monopoly
 claimed, so that others may know the exact boundary of the area within",,
 which they will be trespassers. Their primary object is to limit and not to extend
 the monopoly. What is not claimed is disclaimed. The claims must,,
 undoubtedly be read as part of the entire document and not as a separate
 document; but the forbidden field must be found in the language of the,,
 claims and not elsewhere.,,
 This is the recent authority found in the opinions in the House of Lords in Rodi &
 Wienenberger A.G. v. Henry Showell Ltd. (1969) R.P.C. 367. Here,,
 the question of the approach to construction was put thus by Lord Reid at 378:,,
 No doubt, if the reader of a specification is astute enough to see that the
 patentee has framed his claim so narrowly as to leave it open to him by some",,
 small modification to use the invention without infringing the claim, he is quite
 entitled to do that. He cannot be accused of sharp practice. He is within",,
 his legal rights. But claims are not addressed to conveyancers: they are
 addressed to practical men skilled in the prior art, and I do not think that they",,
 ought to be construed with that meticulousness which was once thought
 appropriate for conveyancing documents.,,
 Lord Reid then proceeded to consider the alleged infringing articles, holding that
 one infringed by taking two essential features of the claim and a",,
 functional equivalent of the third feature of the claim, whilst the other did not.
 Lord Morris on the approach to construction said this at p. 380:",,
 In the process of construing the claim (a process which must be independent of
 any consideration of an alleged infringement) words must be given,,
 their reasonable and sensible meanings as words in a document to be read by
 those versed in the subject and skilled in the prior Art. But if,,
 monopoly is to result it will only be for that which was been claimed. Protection
 will not extend to that which might have been claimed but which,",,

when definition was requisite, was not claimed.",,,

Lord Morris continued:,,

When there is an allegation of infringement it becomes, therefore, a question of considering substance rather than mere form. It was pointed out in",,,

Marconi v. British Radio Telegraph & Telephone Co. Ltd.(1911) 28 R.P.C. 181 that 'no one who borrows the substance of a patented invention can,,

escape the consequences of infringement by making immaterial variations' (see p. 217) and also that 'everyone who produces the same results by,,

using the essential parts of the combination or process is an infringer, even though he has, in fact, altered the combination or process by omitting some",,,

unessential part or step and substituting another part or step which is, in fact, equivalent to the part or step he has omitted, the question here, again, is a",,,

question of the essential feature of the invention said to have been infringed.,,,

To the same effect were the words of the court in Birmingham Sound Reproducers Ltd. v. Collaro Ltd. (1956) R.P.C. 232, 245 - 'The question",,,

therefore appears to be whether the allegedly infringing apparatus consists of substantially the same parts acting upon each other in substantially the,,

same way as the apparatus claimed as constituting the invention. It is not enough to find that the parts comprised in the defendants' apparatus,,

individually or collectively perform substantially similar functions to those performed individually or collectively by the parts comprised in the apparatus,,

claimed as the plaintiffs' invention, or that the defendants' apparatus produces the same result as the plaintiffs' apparatus. It must be shown that the",,,

defendants' selection and arrangement of parts is substantially the same as the plaintiffs' selection and arrangement of parts, for it is in such selection",,,

and arrangement that the plaintiffs' invention resides.',,

10. We do not dispute that applicant's claim may, upon its proper construction, cover products or processes which involve the use of technology",,,

unknown at the time the claim was drafted. The question is whether the person skilled in the art would understand the description in a way which was,,

sufficiently general to include the new technology. There is no difficulty in principle about construing general terms to include embodiments which,,

were unknown at the time the document was written. We do not think that the generalizations from the applicant's document though earlier can cover,,

the specific disclosure in the latter's document. Let us take a simple example.

Suppose the prior art says two items are to be ""screwed together."" ,,

There will not be anticipation of a claim in which the items are ""nailed or riveted"" together in the later claim, but if the later claim were to a generalized",, conception viz., ""fixed together"" , then there would be anticipation. More difficult is the case where it is the earlier document which has the generalized",, conception and the later the specific. Hypothetically considering the above example, suppose the earlier document said ""fixed together"" and in that",, event, would it anticipate a later claim to have the feature ""screwed together"" or indeed any other later claim which condescended to the obvious detail",, of how the fixing was done?,,

Certainly 'yes' to this question and there would be something odd if there were no anticipation here. In an extreme case the later claim could even,, specify every known method of fixing with the result that the later man could foreclose the earlier from all self-evident ways of implementing his,, invention. This suggests that one has got to examine the concept of novelty with care. Therefore it is not a mere mechanical application of mind or an,, inevitable result"" rule.",,

One could argue about a number of points, and it will not always be possible to decide cases on logical grounds alone. We should not however lose",, sight of two things:,,

â?¢ Examination as to novelty should not be restricted to a purely formal comparison with known prior art, but it must include the actual information",, content which goes beyond the words used.,,

â?¢ Earlier applicants must be given reasonable scope to defend their inventions.,,

11. Therefore, we accept the respondent's argument. The reader or any member of the public will not be misled by incorrect nomenclature or other",, errors of description in the applicant's document. We are sure that the respondent is right when he states that it is sufficient if the document sets out,, the useful constructional features of the technical advancement and identifies a practical route which achieves it. That does not mean that the general,, description in the earlier document is to be ignored and only the specific constructional features to be looked at. The earlier document must be read as,, a whole and its general description is no less a part of the technical content than the specific features if any it contains. Whereas the respondent has,,

specifically characterized the inventive features in his principal claim defining the scope of the invention which he sought to protect. Therefore we are,,

of the opinion that the applicant's document does not anticipate the respondent's claim.,,

12. Then the applicant went on to show the advertisements which have appeared in the Tamil dailies prior to date of filing of the respondent's,,

application. But we do not find the copies produced before us which are photocopies of apparatus claimed, did not show any constructional aspects or",,

the important features of the threshing cum separating machine. Accordingly the application for revocation of Patent 204322 is dismissed.,,

However, there shall be no order as to costs.",,