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**(2012) 05 DEL CK 0598**

**In the Delhi High Court**

**Case No :** Regular First Appeal (OS) 73 of 2009

M/s. National Research Development Corp.

APPELLANT

Vs

Ineos ABS Ltd.

RESPONDENT

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**Date of Decision :** 03-05-2012

**Acts Referred:**

Patents Act, 1970 — Section 68

**Citation :** (2012) 05 DEL CK 0598

**Hon'ble Judges :** Siddharth Mridul, J; Pradeep Nandrajog, J

**Bench :** Division Bench

**Advocate :** Dilip Kumar Jha, for the Appellant; N. Safaya, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pradeep Nandrajog, J.—Appellant's suit seeking decree in sum of ` 25,34,964.62 stated to be the royalty due under an agreement dated July 23, 1975 has been dismissed by the learned Single Judge, holding that the claim, being based upon a patent must fail for the reason Section 68 of the Patents Act, 1970 mandated an assignment of a patent by way of a license to be not only in writing but filed with the Controller of Patents for being registered with him. It is not in dispute that the license deed Ex.PW-1/3 upon which the suit has been filed was neither filed before the Registrar of Patents and thus was not registered.

2. It is the case of the appellant that Ex.PW-1/3 does not pertain to a patent but to a "know-how".

3. The learned Single Judge has noted that Clause 1 of the deed in question itself refers to the grant being to use the invention for the manufacture of ABS Resins covered by Indian Patent No. 110090 and 118359. The learned Single Judge has noted that the attempt was made to argue that a process and a patent are different concepts and that it was the case of the appellant that what was licensed was a process and not a patent.

4. With reference to Ex.P-6, P-8, P-11, P-13, P-15, P-17, P-19 and P-21, the

learned Single Judge has found that the contention urged was meritless.

5. Suffice would it be to state that learned counsel for the appellant has not been able to show to us from Ex.PW-1/3, a reference made to a process. If the grant was for a process, the same would have found a mention in Ex.PW-1/3. The document, does make a reference in the recital that the appellant has agreed to grant to the respondent the use of its invention and the process, but the operative part does not refer to any process. The grant is to use the invention patented by the appellant as per Indian Patent No. 110090 and 118359.

6. That apart, the finding of the learned Single Judge in para 11 of the impugned decision has not even been attacked. The finding is as under:

Considering from another angle, the patent number 118359 was registered in the name of Council for Scientific Industrial Research with effect from 31st October 1968. The defendant has placed on record the copy of the registration of this patent from the office<sup>3</sup> of Patent's office and the same is Ex.DW1/1. The patent expired on 31st October 1979 as per the register after eleven years of its registration. The entry of registration was made on 3rd January 1974 after processing the application made by CSIR in 1968. Similarly, the patent in respect of number 110090 was registered with effect from 5th April 1967 and it was closed on 2nd May 1981 as per the register. There is no dispute about the authenticity of these documents. The patents and copyrights are granted for a limited period to the authors so that authors can take exclusive benefit of the inventions and copyright for that period. After the limited period for which the patent is granted, the patent and the copyright material becomes public property and can be used by anyone. I, therefore, consider that the claim of the plaintiff based on a license would not lie after the date of expiry of patent. Even if the plaintiff had granted a valid license to the defendant in respect of a patent which had become public property the license would not be binding on the plaintiff.

7. That apart, a license to use an invention is equivalent to a license to make, use, exercise and vend the invention and thus confers the fullest right to the licensee. We concur with the view taken by the learned Single Judge and thus dismiss the appeal but refrain from imposing cost.