
(2012) 12 IPAB CK 0008
In the Intellectual Property Appellate Board
Case No : ORA/8/2008/PT/DEL

Ramesh Kumar	Vs	APPELLANT
Suneeta Khanna		RESPONDENT

Date of Decision : 28-12-2012

Acts Referred:

Patents Act, 1970 — Section 2, 2(1)(j), 2(1)(l), 64, 64(d), 64(e), 64(f), 64(1)(d), 64(1)(e), 64(1)(f), 71(b), 117B, 117D

Citation : (2012) 12 IPAB CK 0008

Hon'ble Judges : S. Usha, J; D.P.S. Parmar, Technical Member

Bench : Division Bench

Advocate : Surya Senthil, Sachin Gupta

Final Decision : Dismissed

Judgement

S. Usha, J

1 . The above revocation application is to revoke the patent No. 194620 (782/DEL/1996) under section 64(d), (e), (f), 71(b), 117B and 117D of the

Patents Act, 1970 granted to Mrs. Suneeta Khanna for invention titled ""An improved metal fixture useful for holding electrical bulb"". Certificate of

grant was received by the Patentee on 09/11/2009. The brief facts are:

The applicant firm is engaged in the business of production and manufacturing of Bakelite Bulb holder brass rings for several years and that they are

the true owner. The impugned patent relates to an improved metal fixture useful for holding electrical bulb and provides a method and technology for

manufacture of meal fixture. The patentee is not the inventor of the said invention described in the patent. The same was known in the prior art

several years prior to the filing of the disputed patent. All claims are forged, fictitious, incorrect and illegal.

2. Originally, the production and marketing of Bakelite Bulk holder rings was started on 01/04/1986 by one Smt. Premalatha Devi under the brand

name/Trade Mark DTC Asiad. Thereafter, one Shri Shiv Kumar Maurya started production and marketing of same Bakelite Bulb holder rings with

effect from 29/01/1994 in the name of M.K. Engineering under the brand name and trade mark M.K. duly registered under the Trade Marks Act,

1999 under No. 773596B dated 09/12/1996 in class 9 claiming user since 29/01/1994. Due to closure of the manufacturing unit no opposition was filed

during the prosecution of the patent impugned herein.

3. Since the manufacturing unit stood closed, the applicants did not apply for grant of the patent. The applicant meanwhile surreptitiously applied for

grant of patent on 11/04/1996 portraying herself as the original inventor with malafide intention and at the back of the original inventors.

4 . Prior to the commencement of the respondent's production unit, a number of production units were also making production of same Bakelite Bulk

Holder brass rings and parts thereof since 1988 and are still continuing their production un-interruptedly without any objection on the part of the

patentee or anybody else.

5 . The applicant was supplying Brass Sheet and Brass scraps and some parts of Bakelite Bulb Holder rings to various others since 1990. The

applicant had gradually developed his own production unit and secured Trade Tax registration certificate and Industrial Licence from Directorates of

Industries and was proceeding for patent registration of his products when he became aware of the impugned patent.

6. The applicant was the sole proprietor of the firm M/s. Ganesh Enterprises only for a period from 2003-2005. The firm was registered in the year

2003 and got closed on 31/10/2005. On the date of filing of this application for revocation, the firm was not in existence. The applicant is not engaged

in any such business of production or marketing of Bakelite Bulb holder brass rings at the time of filing of this application for revocation and hence is

not a person interested or aggrieved by the grant of the patent. In view of the admission by the applicant that the product in question is an invention the

issue of inventive step or inventiveness does not arise. The respondent is the true and 1st inventor of the invention.

7 . The impugned patent may be revoked on the ground that the claims in the

complete specification is not an invention within the meaning of the provisions of the Patents Act, 1970. The three pre-requisites of an invention i.e. novelty, inventive step and industrial application in section 2(1)(j) should be satisfied for an invention to be qualified for a patent under the Act. The impugned patent is neither novel nor does it involve any inventive step. It does not satisfy the test laid down under section 2 and fails to be qualified to be an invention and is therefore liable to be revoked under section 64(1)(d) of the Act.

8 . The impugned patent is not new since it was publicly known and used in India before the priority date of claim. He submitted that as per section 2(1)(l) an invention is an invention or technology which has not been anticipated or used in a country before filing the patent application. Accordingly, the subject matter should not have fallen into public domain and if so it will be regarded as novel. The said patent is neither new nor an improvement over the existing product. He added that the granted patent results in prohibiting other prior users from continuing to manufacture the products. Persons who are already manufacturing and carrying on business should not be restrained from carrying on their business. The said patent is liable to be revoked under section 64(1)(e) of the Act. The present invention does not involve future technical advance over the existing state of art. Thus the invention is obvious to all persons skilled in the art. The patent is invalid and is liable to be revoked under section 64(1)(f) of the Act.

9 . The respondents filed their counter statement denying the allegations and averments made in the application for revocation. As per section 2(1)(j) of the Act, ""Invention means a new product or process involving an inventive step and capable of industrial application.

10. The invention herein relates to a new product which never existed in any of the prior art document. The inventive step in this patent is ""the use of brass rings without any joints and thickness of 'J' section which ensures that the bulb is held by a ring firmly and does not get twisted, distorted or loose by innumerable application of stress and pressure. Thus it provides lifetime durability to the ring"".

11. The utility of the ring is that the 'J' section will never get twisted or distorted as the ring does not have joint which can be separated by the stress and also because lower portion of the ring towards the 'J' section has been

deliberately kept thickest in width and gauge as compared to the upper portion which gets fixed to the Bakelite holder. The patent is thus a valid invention.

12 . The invention as claimed in the complete specification is novel and is not publicly known and used in India before the priority date of the claim.

The novelty lies in the use of an improved metal fixture comprising seamless molded metal sheet having variable thickness of the 'J' section which

ensures that the bulk is held by the ring firmly and does not get twisted, distorted or loose by innumerable applications of stress and pressure. Thus the

patent is not liable to be revoked under section 64(1)(e) of the Act.

13. The invention described in the complete specification is not obvious and does involve inventive step within the meaning of the provisions of the Act

and is not liable to be revoked under section 64(1)(f) of the Act. There were no teaching or prior art available which would enable a person skilled in

the art to arrive at a improved metal fixture useful for holding electrical bulb having all the inventive features required by claim 1 of the Indian Patent

No. 194620. The applicant has failed to provide any such prior art documents which makes the respondents invention obvious to the person skilled in

the art.

14. The claims of the complete specification is not anticipated by any prior art. In fact, no prior art is cited. No ground for revocation has been

substantiated. The respondent filed a suit against the parties mentioned by the applicants and obtained an interim injunction. The interim injunction was

vacated on the ground that the patent was not granted on the date of hearing of interim application.

15. The matter was listed for hearing on 31/08/2012 and Shri Surya Senthil, learned counsel for the applicant and Shri Sachin Gupta, learned counsel

for the respondent argued the matter.

16. The learned counsel for the applicant submitted that the application for grant of patent was filed on 11/04/1996. The patent granted is in

contravention of the provisions of section 64 of the Act. The specifications are already in existence. There is a slight variation and nothing more. The

patent is obvious to the people who are in the trade. The patent therefore ought to be revoked.

17. Learned counsel for the respondent submitted that there is no proof to say

that it is in public domain. Though the applicants state that there is nothing new or novel and that it is already known, they have not cited any prior art in proof of the same. Therefore, the application has to be dismissed.

18 . We have heard and considered the arguments of both the counsel and have carefully gone through the pleadings and documents.

19 . The applicants have based this application on their pleadings. The applicants main contention was that they are carrying on business of

manufacturing and marketing of Bakelite Bulb holding brass rings and that the impugned patent affected them. The applicants vehemently argued that

the invention is nothing new but a slight variation of whatever was existing and there no invention or anything novel and it does not satisfy the test of

invention. The applicants have not filed any document on evidence in support of their contentions. We do not find any evidence in support of their

contention that they are carrying on business in the same field. We find force in the arguments of the respondents that the applicants have not filed

any prior art document to prove their case. In view of the above reasons, we do not find any case made out by the applicants for revoking the granted

patent. We, therefore, dismiss the revocation application with no order as to costs.