
(2017) 11 DEL CK 0651

In the Delhi High Court

Case No : Civil Suit (OS) No. 4083 Of 2014

Vifor (International) Ltd

APPELLANT

Vs

Dharmendra Vora & Anr

RESPONDENT

Date of Decision : 07-11-2017

Acts Referred:

Patent's Act, 1970 — Section 48

Citation : (2017) 11 DEL CK 0651

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Pravin Anand, Neha Reddy

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. Arguments have been heard in the suit. Despite service, the defendants did not appear. They were proceeded ex parte vide order dated 29.07.2015.

2. The present suit is filed by the Plaintiff for permanent injunction restraining the Defendants from infringement of Indian Patent No. 221536; Delivery Up; Rendition of accounts; Damages etc.

3. It is the contention of the Plaintiff that it is a company incorporated under the laws of Switzerland and is one of the world's leading companies in treatment of iron deficiency and iron deficiency anaemia.

4. It is the contention of the Plaintiff that they are the registered proprietor of Indian Patent No. 221536 (hereinafter referred to as IN'536). It is contended that the patent in the suit is related to a "product-by-process" invention which is a novel water soluble iron carbohydrate complex which is a complex of iron (ferric) and oxidation product of one or more maltodextrins and a process for making the same. It is contended that the invention is used for intravenous treatment of iron deficiency. The properties of the complex makes high dosing up

to 1000 mg iron, which characteristics make the said invention the first non-dextran iron complex for high intravenous (I.V.) iron dosing.

5. It is the contention of the plaintiff that the said patent is an established, valid and subsisting patent and has a term of 20 years from 20.10.2003 in India. It is also contended that the Plaintiff in its interest to safe-guard its patents right had filed a suit wherein this Hon'ble Court granted an ex parte injunction in favour of the Plaintiff. It is further stated that the novelty and inventiveness of the patent was also upheld by the opposition division of the European Patent Office. The corresponding US Patent 7"612"109 has been listed on the US Food Drug Administration's Orange Book as the "drug substance" patent covering ferric carboxymaltose.

6. It is the case of the plaintiff that the plaintiff under section 48 of the Patent's Act, 1970 has the exclusive right to prevent others from using, making, selling, or importing any product protected by the said patent or obtained directly from the process protected by the said patent.

7. It is the contention of the plaintiff that they learnt of the defendant's infringing iron carboxymaltose on 22.12.2014 when they came across defendant's website <http://www.exim-pharm.com/> while conducting a routine market search. It is further contended that a perusal of the defendants' website revealed that they are developing, advertising and offering for sale inter alia its infringing version of iron carboxymaltose wherein the defendants claim to provide the drugs at cost-effective prices. It is further contended that the defendants are also making active invitations to offer on third party websites such as <http://trade.indiamart.com> for its infringing version of the compound.

8. Mr. Pankaj Pahuja, constituted attorney of plaintiff co., has led evidence on behalf of the plaintiffs as PW-1. He has stated that Plaintiff is involved in the development of innovative pharmaceutical products, particularly for use in the treatment of iron deficiency with or without anaemia; treatments for infectious diseases and consumer health products. He further stated that the Plaintiff is one of the world's leading companies in the treatment of iron deficiency and iron deficiency anaemia. The copy of patent certificate granted by the Indian Patent Office and ownership documents pertaining to the said patent is exhibited as Ex.PW-1/5. Certified copy of the e-register of the patent is exhibited at Ex.PW-1/7. He further stated that the Plaintiffs' rights in the corresponding patent in Pakistan have also been recognised and ex parte injunctions have also granted to the Plaintiff. Copies of the orders are being filed and exhibited as Ex.PW-1/15 (colly). He also stated that the defendants' website reveals that they are developing, advertising and offering for sale inter alia its infringing version of ferric carboxymaltose compound under a section "Newly Launched Drugs". The relevant extracts from defendants' website indicating the same is exhibited as Ex.PW-1/25.

9. In view of the averments made in the plaint and the un-rebutted evidence

filed by the Plaintiffs, the Plaintiffs have established that they are the registered proprietor of the Indian Patent No. 221536, thus they have a statutory right to the exclusive use of Iron Carboxymaltose. The infringing iron carboxymaltose (Ferric Carboxymaltose), used by the Defendants is in violation of the registered patent of the Plaintiffs. There is a clear violation of the rights of the Plaintiffs.

10. Accordingly, a decree is passed in favour of the Plaintiffs and against the Defendants in terms of para 29 (a), (b) and (c) of the prayer clause.

11. As far as prayer clause (d) is concerned, a perusal of the affidavit of PW-1 shows that a computation of the damages suffered by the plaintiffs is mentioned in para 45. Keeping in view the same, an amount of Rs. 5 lacs is awarded towards the damages. A decree is accordingly passed in favour of the plaintiff and against the defendant for Rs. 5 lacs. Plaintiffs shall also be entitled to costs.

12. Accordingly, suit stands disposed of. All pending applications, if any, also stands disposed off.