

Bilcare Limited vs The Supreme Industries Ltd. [Along With ... on 20 March, 2007

Equivalent citations: MIPR2007(2)13, 2007(34)PTC444(DEL), AIR 2007 (NOC) 1189 (DEL.)

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Bench: J.M. Malik

JUDGMENT

J.M. Malik, J.

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1. This order shall decide the two appeals mentioned above which entail similar questions of facts and law. The controversy in these two appeals swirls around the question, "is there any presumption in favor of the validity of the patent for grant of temporary injunction in favor of patentee." The present appeals are directed against the orders of the learned Trial Court dated 7th February, 2007, wherein the Trial Court dismissed the applications under Order XXXIX Rules 1 and 2 CPC filed by the plaintiff/appellant, the applications filed by the defendants/ respondents under Order XXXIX Rule 4 CPC were permitted and ex parte injunction orders dated 6th October, 2006 were vacated. However, the defendants/respondents were directed to maintain accounts of the sales they make of the impugned product. Page 0930 The defendants/respondents were also directed to submit the statement of accounts after every three months in the court and to submit undertakings that they would pay the damages to the plaintiff/appellant in case the plaintiff subsequently succeeds in this case. It was also observed that the respondents had already filed opposition to the patent before the concerned authorities but the impugned order would not in any way affect the decision of the concerned patent authorities regarding the disposal of opposition. However, during the arguments advanced before this Court, it transpired that above said opposition to the patent was filed only by one of the two respondents i.e. M/s Associated Capsules Pvt. Ltd.

2. The appellant's case is this. It has been manufacturing and marketing blister films made out of a variety of plastic materials including PVC for packing pharmaceutical products since 1997. The main drawback of PVC films is that these allow moisture to pass through these and therefore cannot be used for medicines, which are even slightly sensitive to moisture, like vitamin tablets, analgesics like Paracetamol with Nimuselide, Antibiotics and Antibiotic combinations like Tetracycline, Amoxycilin etc. For all these drugs, there was a need to use more expensive multi-layered films, which are sometimes as high as three times the cost of PVC film or else use aluminum foils, which are even

more expensive. The main idea was to protect the medicine from moisture. The appellant developed a process and a film was made using that process, by depositing a fine layer of aluminum on the surface of the PVC film. The said film had good moisture barrier properties and could protect sensitive medicines from moisture. It had unique property that it was translucent and therefore the medicine tablets and capsules could be easily identified by patients and the trade. This metallized translucent PVC film for pharmaceutical use was the first of its kind in the world. The film was invented in the year 2004 and a patent application was filed under No. 262/MUM/2004, dated 3rd March, 2004, at the Indian Patent Office. The application was accepted and no opposition was received within the statutory time. The said application was granted registration at serial number 197823. The said patent was also granted to the appellant in the United States of America. The scope of patent of 197823 was set out primarily in claim No. 1 which runs as follows:

(i) A multi-layer thermoformable, translucent pharmaceutical and food packaging film consisting of a core layer of 100 to 1000 microns thickness of food grade poly vinylchloride(PVC), devoid of plasticizers having vinylmonomer less than 1 ppm and a global migration of additives less than 60 ppm; and a metallized layer of thickness 0.02 to 2 microns provided at least on one side of the said core layer and at least one to 250 microns thick food and pharmaceutical grade polymeric layer provided at least on one side of the core layer.

3. The defendants/respondents were found to be manufacturing and marketing 2 and 3-layered PVC metallized film, and thereby infringing the appellant's registered patent. The plaintiff/appellant thought that it had a bone to pick with the respondents and as such it filed two separate suits against each of the respondents Under Section 48, 104 and 108 of the Patents Act for restraining respondents from infringing the patent No. 197823 and Page 0931 rendition of accounts. Applications under Order 39 Rules 1 and 2 CPC were also filed along with the Suits. The ADJ in his ex-parte order restrained the respondents from manufacturing, marketing, selling, utilizing, buying, offering for sale or importing any metallized PVC pharmaceutical packaging film that infringes the Appellant's patent No. 197823 on 6th October, 2006.

4. The respondents contested the above said applications and moved applications under Order 39 Rule 4 CPC for vacation of ex-parte injunction orders granted vide order dated 6th October, 2006. The respondents enumerated the following defenses.

5. It was pointed out that opposition had already been filed by one of the respondents against the patent before the Patent Office, Mumbai. The patent is invalid and open to challenge on all grounds of lack of inventive step, public knowledge, prior art, wrongful obtaining and lack of novelty. The resistance to moisture and translucency upon thermoforming are prior art in the industry, the multi-layered film has been in vogue for over 10 years. The appellant's/plaintiff's alleged invention is of at least a three layered film while the defendants'/respondents' product is a two-layered film. The plaintiff/appellant got patent registered by claiming an invention which is already in public knowledge and has been used prior to the filing of its patent application. The respondents are aware of the drawbacks of PVC film with respect to its permeability to moisture and multi-layered options/aluminium foils used in the pharmaceutical packing. The plaintiff's patent in India is for a

multi-layered as against a two-layered film. The defendants' product does not infringe the appellant's patent being a two-layered film. The appellant has expressly disclaimed a two-layered film during its US patent application process by stating before the United States Patents and Trademark Office that its invention applies to at least a three-layered film as a two-layered film has been patented as long back as 1975 in the US by an inventor, Akao. The various properties set out in claim No. 1 of the complete specification are known in the industry or being prior art, as such no monopoly or exclusivity can be claimed by the plaintiff; the two and three layered composite films comprising PVC core layer, aluminium metallic layer and PVdC topcoat having the same thickness is known in the prior art.

6. I have heard the counsel for the parties at a considerable length. The learned Counsel for the appellant argued with vehemence that the appellant has proved that (i) it has a prima facie case (ii) the balance of convenience lies in its favor, and (iii) it would suffer irreparable injury if injunction is not granted. He has drawn my attention towards Sections 11A, 25, 43, 48, 64, 107, 108, 131 and 135 of the Patents Act, 1970. In order to buttress his arguments, he has cited the following authorities.

7. In *Dalpat Kumar and Anr. v. Prahlad Singh and Ors.*, it was held:

The phrases "prima facie case", "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and Page 0932 elasticity, to meet myriad situations presented by men's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience. The respondents can be adequately compensated on their success.

8. In *Anand Prasad Agarwalla v. Tarkeshwar Prasad and Ors.*, it was observed:

It may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction.

9. *Giridhari Balaram Radhakrishnani and Anr. v. Mahisa Electronics and Ors.*, was a case under the Patents Act. It was held:

10. The concept of the grant of interlocutory injunctions has been considered in *American Cyanamid Co. v. Ethicon Ltd.* (supra) 2nd 1976 Karnataka 426. Therefore, we will only refer to the principles referred thereto which read:

(i) There is no rule that a plaintiff must make out a prima facie case. "The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious issue to be tried".... So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction that the trial, the court should go on to consider whether the balance of

convenience lies in favor of granting or refusing the interlocutory relief that is sought.

(ii) It is no part of court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed agreement and mature considerations.

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It is also notice in that decision that as a rule of prudence if the patent is a new one a mere challenge at the bar would be sufficient for refusal of the temporary injunction, but if the patent is sufficient old and has been worked, the court would, for the purpose of a temporary injunction, presume the patent to be a valid one and indicate that the period of six years of actual use of the patent would give rise to such presumption.

15. The learned Judge noticed that no temporary injunction could be granted when the patent is a recent one and its validity is questioned. But the two questions to be considered in this case were as contended for the appellants that prima facie case as stated by the House of Lords in American Cyanamid Company's case should have been taken note of and examined the matter. Although, at one time the law as to the concept Page 0933 of prima facie case depended on various factors, now the predominant factor is that the appellants have a case to go for trial. In fact, the learned Judge noticed this position but declined to examine the question by securing a technical opinion in relation to the prima facie validity of the patent and prima facie infringement thereof on the ground that when the main issue to be decided in the case is the very question to be decided in the interim application, trial is the best process to be adopted. That means, in the view of the learned Judge there was a case to go for the trial. If there is a case to go for trial, obviously there is a prima facie case in terms of the language adopted by the American Cyanamid Co. case and that law has been approved by the Supreme Court in several decisions. Even otherwise, if the principles laid down in 52 Calcutta Weekly Note 253 are to be adopted none of the factors explained thereof has been taken note of by the learned Judge. Above all, in matters of this nature when two rival parties are contending for their respective rights to exploit the market in relation to certain goods by manufacturing the same and when one party is precluded to put forward a new product, in granting or refusal of injunction in such cases various factors have to be balanced by analysing the decision in American Cyanamid Company's case. Thus, we are of the view, with great respect to the learned single Judge that he should have taken note of the fact whether prima facie case is established or not in terms of the principles in 52 Calcutta Weekly Notes 253 or in terms of the decision in American Cyanamid Company's case and also the factor that if either injunction is granted in favor of the appellants whether they should be put on terms to make good damages by offering appropriate security or depositing money or ultimately if the appellants succeed, the matter may have to go for accounting and to safeguard the interest of the appellants, respondents should be put on terms for refusal of injunction. If such process is not adopted, justice cannot be done to either party.

10. In *K. Ramu v. Adyar Ananda Bhavan and Muthulakshmi Bhavan O.A. Nos. 535 and 536 of 2006* in C.S. No. 495 of 2006 (Madras High Court), it was observed:

It is an admitted fact that the Plaintiff has been issued with patent rights for both process and product. The process is for preparation of low glycemic sweets for a term of 20 years from 13.2.2003. Similarly they are also entitled to patent for the product for 20 years from July 2004. Thus the plaintiff has discharged his initial responsibility by proving that they are protected by the certificate issued by the authorities under the Patents Act 1970. In other words the plaintiffs have established a prima facie case on the strength of their two certificates. In such circumstances Section 48 of the Patents Act, 1970 will hold the field according to which a patent granted under this Act shall confer upon the patentee the exclusive right to prevent third parties from the Act of making, using, selling or importing that product in India if the subject matter of the patent is a product. Similarly if the subject matter of the patent is a process the patentee has the exclusive right to prevent 3rd parties from the act of using the process for sale, selling for those purpose the product obtained directly by that process in India.

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11. In *Ajay Industrial Corporation v. Shiro Kanao of Ibaraki City* AIR 1983 Delhi 496, it was held, It was observed in *Lallubhai Chakubhai v. Chimanlal & Co.* AIR 1936 Bom 99:

A new and useful application of an old principle may be good subject-matter. An improvement on something known may also afford subject-matter; so also a different combination of matters already known. A patentable combination is one in which the component elements are so combined as to produce a new result or arrive at an old result in a better or more expeditious or more economical manner. If the result produced by the combination is either a new article or a better or cheaper article than before, the combination may afford subject-matter of a patent.

12. In *Metro Plastic Industries (Regd.) v. Galaxy Footwear, New Delhi* , it was held that merely because a registration is recent, is by itself no ground for refusing an injunction. It was further held that that also would be a factor which could be taken into consideration by the Court.

13. I find force in the arguments urged by learned Counsel for the appellant in a measure but it cannot be made a rule of thumb that interlocutory injunction must be granted whenever a case is filed in this context. Other following factors are to be considered:

(i) Whether the Act in question is really an invention. It is to be proved that the device in question is new, non-obvious and inventive.

(ii) Whether it is not of recent origin?

(iii) Whether it pertains to three-layered product or two-layered product?

(iv) And uppermost, whether the damages will provide adequate remedy should the claim succeed?

(v). Last but not the least, whether it will be proper for the appellate court to upset the trial court order which has made perspicacious judgment?

All these knotty questions must be investigated or discussed down to the ground. If the answers are hidden behind the veil of impenetrable mystery or these are apparent from the materials available, injunction ought not to be granted. It is trite saying that it is nobody else but the appellant himself, who, is to carry the ball in proving its case. Let us examine these questions in view of literature and other authorities.

14. The respondents have drawn the attention of this Court towards a book titled as "Packaging Foods with Plastics" written by Wilmer A. Jenkins and James P. Harrington, which also finds a mention in the order of the learned trial court. This book was published in the year 1991. This book must be read in juxta position with the alleged invention made by the appellant. This book deals with various subjects/topics, including Impermeability to Oxygen and Water Vapor, Control of Packaging, Atmosphere, Odor Protection, Light Control and Packing appearance, metal coating, low temperature flexibility, thermo plastics, multi layer films, thermoforming, etc. (between pages 7 to 23). Page 0935 Under the head of Multi Layer Films at page 19, at the foot of the page it is clearly , specifically and unequivocally mentioned:

that probably the first use of coextrusion was to provide a glossy surface of crystal polystyrene to the dull finish of high impact polystyrene. Although the typical coextruded film or sheet only has three to seven layers, there have been operations where as many as eleven layers have been used.

15. A comparative study of this book and the scope of patent No. 197823 set out primarily in claim No. 1 has put a large question mark over the so called invention. An integument of doubt envelops the case of the appellant. This is a very intricate matter which requires evidence of experts, investigation and other evidence.

16. In Bishwanath Prasad Radhey Shyam v. H.M. Industries AIR 1989 SC 1444, it was held,

18. The fundamental principle of Patent Law is that a patent is granted only for an invention which must be new and useful. That is to say, it must have novelty and utility. It is essential for the validity of a patent that it must be the inventor's own discovery as opposed to mere verification of what was already known before the date of the patent.

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To be patentable the improvement or the combination, must produce a new result, or a new article or a better or cheaper article than before. The combination of old known integers may be so combined that by their working inter-relation they produce a new process or improved result. Mere collection of more than one integers or things, not involving the exercise of any inventive faculty does not qualify for the grant of a patent. It is not enough said Lord Davey in *Rickmann v. Thierry* 1896-14 RPC 105 (HL) that the purpose is new or that there is novelty in the application so that the article produced is in that sense new, but there must be novelty in the mode of application. By that , I understand that in adopting the old contrivance to the new purpose, there must be difficulties to be overcome requiring what is called invention, or there may be some ingenuity in the mode of making the adoption'. As Cotton L.J. put in *Blakey and Co. v. Lathem and Co.* (1889) 6 RPC 184 (CA), "to be new in the patent sense, the novelty must show invention." In other words, in order to be patentable the new subject matter must involve 'invention' over what is old. Determination of this question, which in reality is a crucial test has been one of the most difficult aspects of patent law, and has led to considerable conflict of judicial opinions. xxxxx

33. It is noteworthy that the grant and sealing of the patent or the decision rendered by the Controller in the case of opposition, does not guarantee the validity of the patent, which can be challenged before the High Court on various grounds in revocation or infringement proceedings. It is pertinent Page 0936 to note that this position viz. the validity of a patent is not guaranteed by the grant, is now expressly provided in Section 13(4) of the Patents Act, 1970. In the light of this principle, Mr. Mehta's argument that there is a presumption in favor of the validity of the patent cannot be accepted.

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51. In our opinion the findings of the learned trial Judge to the effect that the patent is not a manner of new manufacture or improvement, nor does it involve any inventive step having regard to what was known or used prior to the date of patent, should not have been lightly disturbed by the Appellate Bench.

17. In *Dhanpat Seth and Ors. v. Nil Kamal Plastic Crates Ltd.* 2006 (33) PTC 339 (HP), it was observed,

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In support of this argument, he placed reliance upon *American Cyanamid Co. v. Ethicon Ltd.* (1975) 1 All ER 504.

13. The precedent, relied upon by the learned Counsel, is of no avail to the plaintiffs/petitioners for the simple reason that the statutory law prevailing in India is contrary to the law laid down therein. Section 13(4) of the Patents Act, 1970 says that the validity of the patent is not warranted by the grant. The Hon'ble Supreme Court in *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries* , has held as follows, vide para 33 at page 1450 (already cited above).

18. In *Monsanto Company v. Coramandal India Products (P) Ltd.* it has been held that to satisfy the requirement of being publicly known as under in Clauses (e) and (f) of Section 64(1) of the Patents Act, 1970, it is not necessary that it should be widely used to the knowledge of the consumer public. It is sufficient if it is known to the persons who are engaged in the pursuit of the knowledge of the patented product or process either as men of science or men of commerce or consumers. The section of the public who, as men of science or men of commerce, were interested in knowing about herbicides which could destroy weeds but not rice, must have been aware of the discovery of the active agent. There was no secret about the active agent as claimed by the plaintiffs since there was no patent for the agent. The process was known, the product was known, the use was known and then there was no invention.

19. In *Ram Narain Kher v. Ambassador Industries New Delhi and Anr.* , it was observed:

When an invention is not itself new, the particular use of it for the purpose described in combination with the other elements of the system producing the advantageous results would be a sufficient element of novelty to support the Patent and in a claim for Patent pertaining to air cooler the claimant must specify what particular features of his device distinguish it from those which had gone before and show the nature of Page 0937 the improvement which is said to constitute the invention and the claim that there would be 25 per cent additional advantage of added cooled air by fixing the fan at the top of the cooler than in the customary way hitherto known in the front of the cooler must be succinctly stated in the claim before the Patent authority and must not be left to an inference raised on a general review of the specification. (Head note)

20. In *Standipack Pvt. Ltd. and Anr. v. Oswal Trading Co. Ltd. etc.* it was held,

15. It has been held in a series of judgments that no presumption of validity attaches to a patent granted by the Controller under the Act notwithstanding examination and investigation made under Sections 12 and 13. In this connection reference may be made to a decision in *Bishwanath Prasad v. Hindustan Metal Industries* , *Hindustan Lever Ltd. v. Godrej Soaps Ltd.* and *Niky Tasha India Pvt. Ltd. v. Faridabad Gas Gadgets Pvt. Ltd.* Reported in AIR 1985 Delhi 136 at 138. In *Surendra Lal Mahendra v. Jain Glazers* reported in 2nd 1981 (1) Delhi 257, the Delhi High Court relying upon the judgment in *Smith v. Grigg Ltd.* (1924) 41 RPC 149 (1), held that despite all the safeguards and circumspection contemplated in various provisions of the Act against grant of patent in respect of a spurious, purloined or fake invention, the Legislature minced no words in clarifying its intendment that no presumption of validity would attach to a patent granted by the Controller under the Act, notwithstanding examination and investigation made under Sections 12 and 13 thereof.

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It is settled law that in an action for infringement of a patent an injunction would not be granted where the validity of the patent itself has been questioned and a revocation petition has been filed.

In this connection reference may be made to a decision of the Madras High Court in *V. Manicka Thevar v. Star Plough Works*, wherein it was held that if from the objections raised by the defendant it is clear that a serious controversy exists as to whether or not the invention involves any new inventive skill having regard to what was known or used prior to the date of the patent; courts would not grant an injunction restraining the defendant from pursuing his normal business activity. It was also held that an interim injunction would not be granted if the defendant disputes the validity of the grant. In *Niky Tasha India Pvt. Ltd. v. Faridabad Gas Gadgets Pvt. Ltd.* AIR 1985 Delhi 136 at 140 (supra) it was observed by this Court that no injunction should be granted when there is a serious question of the validity of the design to be tried in the suit and an application for cancellation has been made.

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Thus the plaintiff relies upon and claims the right of patent in respect of the thickness of the films that have been used in the manufacture of the pouches. It may, however, be noted that thickness of the plastic film/layer depends upon the tolerance of the contents of the pouch. Thus the same is merely an arrangement and re-arrangement of the mixture of the material and cannot be termed as a novel concept and does not have any novelty. Such arrangement and re-arrangement of mixture of the material cannot become an invention, for it is only an improvement by adding microns as per the strength of the layers. Thus prima facie the invention claimed by the plaintiff in respect of the thickness of the layers of the aforesaid pouch cannot be called an invention as envisaged within the definition clause of the Patents Act. Besides the documentary evidence placed on record prima facie indicates that the claim made by the plaintiff is already known in the trade and patent was published.

21. In *National Research Development Corporation of India, New Delhi v. The Delhi Cloth and General Mills Co. Ltd. and Ors.* AIR 1980 Delhi 132, it was observed:

It is also a rule of practice that if a patent is a new one, a mere challenge at the bar would be quite sufficient for a refusal of a temporary injunction but if the patent is sufficiently old and has been worked the court would for the purpose of temporary injunction, presume the patent to be valid one. If the patent is more than 6 years old and there has been actual user it would be safe for the court to proceed upon this presumption.

22. The observation made in *Niky Tasha India Private Ltd. v. Faridabad Gas Gadgets Private Ltd.* AIR 1985 Delhi 136, neatly dovetails with the above said views. It was held, It is well settled, both in India and in England, that an interlocutory injunction will not normally be granted where damages will provide an adequate remedy should the claim succeed. Furthermore, the Court will not grant an interlocutory injunction unless satisfied that there is a real probability of the plaintiff succeeding on the trial of the suit.

23. In *Hindustan Lever Ltd. v. Godrej Soaps Limited and Ors.* 1997 PTC (17) 756, it was held,

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In patent cases the onus of showing a prima facie case justifying the grant of an injunction is a heavy one and it is comparatively easy for the respondent to establish a defense sufficient to prevent the grant of such an injunction in *Hubbard and Anr. v. Vosper and Anr.* (1972) 1 All ER 1023 at 1029, Lord Denning observed : "In considering whether to grant an interlocutory injunction, the right course for a Judge is to look at the whole case. He must have regard not only to the strength of the claimant but also to the strength, of the defense, and then decide what is best to be done. Sometimes, it is best to grant an injunction so as to maintain the status quo until the trial. At other times, it is best not to impose a restraint on the defendant, but leave him free to go ahead. For Page 0939 instance, in *Frazer v. Evans* (1969) 1 All ER 8, although the plaintiff owned the copyright, we did not grant an injunction, because the defendant might have a defense of fair dealing. The remedy by interlocutory injunction is so useful that it should be kept flexible and discretionary. It must not be made the subject of strict rules.

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28. Mr. Chakraborty, learned Counsel has submitted that in view of the above decision of the House of Lords, the view taken by a Division Bench of this Court in *Boots Pure Drug Co. v. May and Baker Ltd.* 1948 (52) CWN 253 should be taken as not laying down the correct principle of law. In that case, it was held that in order to get a temporary injunction against the infringement of a patent right, it is necessary that the plaintiffs should prove three things:

(a) that they have a prima facie, that is to say, they have such evidence as would lead the Court to come to the conclusion that the patent is prima facie a valid patent;

(b) they must prove by prima facie evidence that there has been an infringement on the part of the defendant; and

(c) that the balance of convenience is in favor of the plaintiffs.

29. As regards condition (a) it is a rule of practice (emphasis added) that if a patent is a new one, a mere challenge at the Bar would be quite sufficient for the refusal of a temporary injunction, but if the patent is sufficiently old and has been worked, the Court would, for the purpose of a temporary injunction, presume the patent to be a valid one. If the patent is more than 6 years old and there has been actual user it would be safe for the Court to proceed upon this presumption.

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48. Mr. Mukerjee has also referred to the following passage at pp.113 of Brain C. Reid's "A. Practical Guide to Patent Law" 2nd Edition (1993):

Nevertheless, the grant of interlocutory relief is by no means automatic; it remains, at the end of the day, an exceptional remedy given at the Court's direction for which exceptional cause to be shown. The leading modern decision in this area of the law generally, *American Cyanamid v. Ethico* (Interlocutory was in fact enunciated in a patent dispute in 1974.)

49. But the learned author at pp.116 of same treaties has drawn the attention to the danger inherent in mechanical application of the American Cyanamic approach; "In particular, the Court will not allow the American Cyanamic approach (which in principle is quite favorable to the patentee) to become by over-rigid application an engine of oppression. This is highlighted by the decision of the Court of Appeal in *Brupat v. Sandfod Maston Products* 1983 RPC 61 where a defendant of extremely modest financial standing (normally a good reason for grant of relief since it gives rise to doubt as to their eventual capacity to pay damages if infringement is found at the trial) was allowed to continue provided that he pay in the interim into an escrow account a reasonably royalty.

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24. Now I turn to one more significant aspect. The order passed by learned trial court appears to be flawless. In a case reported in *Telemecanique and Controls(I) Limited v. Schneider Electric Industries SA* 2002 I AD (DELHI) 451, it was held, It is appropriate to observe at this stage before considering the rival contentions advanced on behalf of learned Counsel for the parties that this appeal has to be decided within the parameters laid down by the Supreme Court in the case of *Wander Limited and Anr. v. Antox India P. Ltd.* 1990 (supp) SCC 727. Thus in terms of the said decision this Court will not interfere with the exercise of the discretion of the court of first instance, which is the order of learned Single Judge, and substitute its own discretion except where the discretion is shown to have been exercised arbitrarily or capricious or perversely or where a court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. This Court has also not to reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material placed before it. The mere fact that this Court may have reached to a contrary conclusion at the trial stage would not be thus good ground to interfere with the order of the learned Single Judge if the discretion has been exercised by the learned Single Judge reasonably and in a judicial manner. The fact that the appellate court would have taken a different view has been held by the Supreme Court not to justify interference with the trial courts exercise of jurisdiction.

25. After assessing the pros and cons of these cases the following factors emerge. The patent in question is new one. It was registered in the year 2004. The appellants filed the suit in the year 2006, i.e. after the lapse of two years only. By no stretch of imagination it can be said to be sufficiently old. There are no conflictions on the point that the patent is less than six years old. Secondly, there are tangible grounds for suspicion of the alleged invention. There lies no rub in granting damages which would provide an adequate remedy should the claim succeed. Above all it will not be proper to upset the well reasoned judgment of the trial court at this stage. The trial court has meticulously checked the record with precision and clarity. All the three essential conditions viz, prima facie case, balance of convenience and irreparable loss lean on the side of the respondents.

26. Appeal being merit-less is dismissed. The copy of this judgment be sent to trial court forthwith.

CM Nos. 2534-35/2007 in FAO 70/2007 CM Nos. 2538-39/2007 in FAO 71/2007 In view of the dismissal of the appeal, no further orders are required to be passed in these applications and the same are dismissed.