

TC013

**6TH SURANA & SURANA AND SHAASTRA IIT MADRAS
INTELLECTUAL PROPERTY LAW MOOT COURT COMPETITION, 2023**

BEFORE THE HON'BLE HIGH COURT OF HILED

IN THE MATTER OF:

SHRADDA BHAMBANI..... PLAINTIFF

v.

BROESHIM (INDIA) PRIVATE LIMITED..... DEFENDANT

C.S. (COMM) 6/2023

(Under § 104 of the Patents Act, 1970 r/w § 20 of the CPC, 1908)

WRITTEN SUBMISSIONS ON BEHALF OF THE PLAINTIFF

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LIST OF ABBREVIATIONS

S.No.	ABBREVIATION	EXPANSION
1.	@	At
2.	§	Section
3.	¶	Paragraph
4.	¶¶	Paragraphs
5.	A.I.R.	All India Reporter
6.	ACC	Anticipation Claim Chart
7.	AD	Application Date
8.	CC	Claim Chart
9.	CGPDTM	Controller General of Patents, Designs and Trade Marks
10.	CL	Compulsory Licensing
11.	Co.	Company
12.	Ed.	Edition
13.	EJIPR	European Journal of Intellectual Property Rights
14.	Govt.	Government
15.	HC	High Court of Hiled
16.	HJLP	Harvard Journal of Law & Technology
17.	Hon'ble	Honorable
18.	I.L.R.	Indian Law Reporter
19.	IJIPL	Indian Journal of Intellectual Property Law
20.	IP	Intellectual Property

21.	IPAB	Intellectual Property Appellate Board
22.	IPD	Intellectual Property
23.	IPO	Indian Patent Office
24.	IPR	Intellectual Property Rights
25.	Ltd.	Limited
26.	MPOP	Manual for Patent Office Procedures
27.	No.	Number
28.	NPL	Non-Patent Literature
29.	OTR	Off the Road tyres
30.	PCR	Passenger Car Radial Tyres
31.	PCT	Patent Cooperation Treaty
32.	PCT NPE	Patent Cooperation Treaty National Phase Entry
33.	POSA	Person of Skilled Art
34.	R & D	Research and Development
35.	r/w	Read with
36.	S.C.C.	Supreme Court Cases
37.	S.C.R.	Supreme Court Reporter
38.	SC	Supreme Court
39.	TBR	Truck, Bus, and Radial Tyres
40.	u/a	Under article
41.	u/s	Under section
42.	UM	Utility Model
43.	v.	Versus
44.	WIPO	World Intellectual Property Organization

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STATEMENT OF JURISDICTION

The Counsel on behalf of the Plaintiff, in the instant matter, hereby, most humbly and respectfully invokes the jurisdiction of the Hon'ble High Court of Hiled under §104¹ of the Patents Act, 1970 r/w §20² of the Code of Civil Procedure, 1908.

¹ Patents Act, 1970, §104, No. 39, Acts of Parliament, 1970 (India).

² Code of Civil Procedure, §20, No. 5, Acts of Parliament, 1908 (India).

STATEMENT OF FACTS

~BACKDROP~

The Defendant's parent company Broeshim BV is a leading manufacturer of tyres with headquarters at the Netherlands. The Defendant, Broeshim India Pvt. Ltd. is a subsidiary of Broeshim BV. The Defendant has introduced various path breaking products in the Indian tyre industry which became synonymous within the tyre industry. The Defendant's parent company holds 600+ patents for its technology throughout the world. Neither the Defendant's parent company nor the Defendant holds any filed, pending or granted patents in India. It is the submission of the Defendant that the impugned patent be revoked on account of invalidity. The claimed invention is argued to be non-patentable and lacking novelty and non-obviousness. It is also the contention of the Defendant that the Plaintiff is a patent troll who does not commercialize her inventions and, thereby, is seeking dismissal of plaintiff's claim for infringement.

The Plaintiff is a civil engineer, with around 200 patents to her name in various fields of innovation and filed a patent in India for the technology titled "Sensor Embedded Airless Wheel Structure Technology" in March 2021. It is the contention of the Plaintiff that the Defendant had malafidely and arbitrarily infringed her patent rights. Various reliefs, monetary and otherwise were sought by the Plaintiffs in the aforementioned Commercial suit No. 6 of 2023.

<i>Date</i>	<i>Event</i>
1998	Broeshim India Pvt. Ltd. (Defendant) was incorporated.
From 2017	The defendant is selling tyres with a sensor to collect data and a puncture proof tyre material.
Since January 2021	The product is sold in India by the defendants.
2 March 2021	Plaintiff filed a patent in India for the technology titled 'Sensor Embedded Airless Wheel Structure Technology'.
January 3, 2023	Grant of patent to the Plaintiff.
January 2023	Plaintiffs instituted infringement proceedings against the Defendant before the Hon'ble HC of Hiled.

ISSUES RAISED

ISSUE-I:

WHETHER OR NOT THE PATENT IS VALID?

ISSUE-II:

WHETHER SALE OF THE PLAINTIFF'S PRODUCT BY THE DEFENDANTS
INFRINGES ON PLAINTIFF'S PATENT RIGHTS?

SUMMARY OF ARGUMENTS

ISSUE-I: WHETHER SALE OF THE PLAINTIFF'S PRODUCT BY THE DEFENDANT INFRINGES ON PLAINTIFF'S PATENT RIGHTS?

It is humbly submitted before the Hon'ble High Court of Hiled that the sale of the Plaintiff's 'patented' product, without her due permission, infringes on her patent rights. The product being a completely 'new invention' is the monopoly of the Plaintiff and she has an absolute right to restrict third parties from selling such product in India without her consent. Furthermore, the invention for which the patent has been granted is proven to be novel, non-obvious and capable of industrial application. The Plaintiff has the intention to commercialize her inventions and has sufficient credentials to be termed as an 'inventor'.

ARGUMENTS ADVANCED

ISSUE-I: WHETHER SALE OF THE PLAINTIFF'S PRODUCT BY THE DEFENDANT INFRINGES ON PLAINTIFF'S PATENT RIGHTS?

(¶1.) It is humbly submitted before the Hon'ble High Court of Hiled that the sale of the Plaintiff's 'patented' product, without her due permission, infringes on her patent rights. The product being a completely 'new invention' is the monopoly of the Plaintiff and she has an absolute right to restrict third parties from selling such product in India without her consent³.

1.1 That a valid patent was granted to the Plaintiff by the IPO

(¶2.) A patent for the invention, with a priority date of 2.03.2021⁴, was granted to the Plaintiff on 3.01.2023⁵. The claimed invention⁶ refers to a 'Sensor Embedded Airless Wheel Structure Technology' which satisfies the parameters of patentability, viz. novelty⁷, inventive step⁸, and industrial application⁹.

1.1.1. That the invention is novel

(¶3.) The claimed invention is novel¹⁰ since the same exhibits features as are not common to any other 'prior art' and, also, such features could not have been anticipated by a prior publication. For novelty¹¹ to be established, the invention, in any of its embodiments, is to be compared with the similar technology revealed by (1) prior publication, or (2) publicly known/use¹². In the instant matter, the novelty of the claimed invention can be known by

³ Patents Act, 1970, §48, No. 39, Acts of Parliament, 1970 (India).

⁴ Moot Proposition, ¶4.

⁵ Moot Proposition, ¶¶4, 6, 10.

⁶ Moot Proposition, ¶12.

⁷ Patents Act, 1970, §2(1)(l), 13, 29-34, No. 39, Acts of Parliament, 1970 (India).

⁸ Patents Act, 1970, §2(1)(ja), No. 39, Acts of Parliament, 1970 (India).

⁹ Patents Act, 1970, §2(1)(ac), No. 39, Acts of Parliament, 1970 (India).

¹⁰ Lallubhai Chakubhai Jariwala v. Chimanlal Chunilal and Co., (1936) 60 ILR 261, Blakey and Co. v. Lathem and Co., (1889) 6 RPC 184; Swofford v. B & W, Inc., (1968) 393 US 935; Graver Tank & Mfg. Co v. Linde Air Prod. Co., (1950) 339 US 605; Natural Remedies Private Limited Bangalore v. Indian Herbs Research & Supply Co & Ors., (2011) Kant 871; See Zeki Geven, *Novelty and Originality in Terms of Intellectual Property Law*, 2 J. Fac. L. Inonu U. 327 (2011).

¹¹ Novartis AG v. Union of India (2013) 6 SCC 1; Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries AIR 1979 SC 687; F. Hoffmann-La Roche Ltd. & Anr v. Cipla Ltd., (2008) 37 PTC 71 (Del); Monsanto Technology LLC v. Nuziveedu Seeds Ltd., (2019) SCC OnLine Del 6924; Astrazeneca AB & Anr. v. Orchid Chemicals & Pharmaceuticals Ltd., (2008) 37 PTC 697 (Mad).

¹² Lallubhai Chakubhai Jariwala v Chimanlal Chunilal and Co., (1936) 60 ILR 261.

comparing such invention with the Defendant's product. The following chart highlights the differences:

~Tabular Chart 1.0~

Claim Element	Plaintiff's Patent	Defendant's Product
Plurality of separate compartments (2A, 2B, 2C, 2D, 2E & 2F) designed to cushion air within themselves	Present	Absent
Sensor Chip (embedded below the compartments)	Present	Present
Function performed by the Sensor Chip	Operation in a plurality of road conditions	Collect data
Circuit board operates in a fully automatic mode, optional manual mode and rest mode	Present	Absent
Puncture Proof Tyre	Mechanism	Material

(¶4.) The above chart clearly highlights the differences between the claimed invention and the infringer's product. While the two share certain similarities (similar enough to institute an infringement suit against the infringer/defendant), the substance of the invention depicts novelty and originality. Therefore, the defendant's claim as to the invention being a 'prior art'¹³ vis-à-vis the defendant's product is completely baseless since the two vary *substantially* in form and substance. Similarly, 'public use'¹⁴ is with reference to the defendant's non-patented product which differs substantially from the plaintiff's claimed invention.

(¶5.) W.r.t. the criteria of 'non-anticipation by a prior art', it is stated that "to anticipate the patentee's claim, the prior publication must contain clear and unmistakable directions to do what the patentee claims to have invented ... A signpost, however clear, upon the road to the patentee's invention will not suffice. The prior inventor must be clearly shown to have planted

¹³Moot Proposition, ¶7.

¹⁴Moot Proposition, ¶7.

his flag at the precise destination before the patentee."¹⁵

(¶6.) In other words, to be effective prior knowledge of an invention, prior publication¹⁶ should contain such information as would enable one conversant with the art to which the invention relates to perceive the very discovery and to carry it into practical use. In the instant matter, the new aspects brought about the plaintiff's invention could not have been perceived since the same weren't covered by the defendant's product.

(¶7.) Only by stating that they are the first in the field of manufacturing, the applicant company cannot be stopped from obtaining a patent unless the opponents establish that they were manufacturing an *identical product* before the date of filing¹⁷. Moreover, a "mosaic" of separate steps each known in manufacture, will not suffice to constitute such anticipation as to warrant the refusal of a grant of a patent. Thereby, in the instant matter the defendant cannot seek to invalidate the patent by referring to a 'slew of patent specifications'.¹⁸

(¶8.) **Nature of the Invention:** Furthermore, it is stated that the claimed invention is a combination invention and the claim follows the combined structure of a means plus function claim and a Jepson-type claim¹⁹ (Ex parte Jepson 1917 C.D. 62, 243 O.G. 525 (Ass't Comm'r Pat. 1917) or an improvement claim. "It is equally true that even when the invention 'was not itself new', 'the particular use of it for the purpose described in combination with the other elements of the system, and producing the advantageous results', would be a sufficient element of novelty to support the patent. It may be only a small step but that may be a step forward and that is all that is necessary so far as the subject-matter is concerned."²⁰

(¶9.) In the instant matter, the claimed invention is an improvement over the prior art and not just an aggregation of the known devices²¹. It is true that certain devices are known however, the combination of such devices produces synergistic effects, producing advantageous results, that grants novelty to the *entire tyre*²², and hence the claim.

¹⁵ General Tire & Rubber Company v. Firestone Tyre & Rubber Company Limited, (1972) RPC 457; Gujarat Reclaim & Rubber Products Ltd. v. Kamani Metallic Oxides Ltd., (1983) PTC 105; M/s. Crompton Greaves Ltd. Mumbai v. M/s. Bharat Heavy Electricals Ltd., (1984) 17 ELT 525; Union Carbide Corp. v. BP Chemicals Ltd, 4 F.3d 975.

¹⁶ Farbwerke Hoechst Aktiengesellschaft Vormals Meister Lucius v. Unichem Laboratories, AIR 1969 Bom 255.

¹⁷ M/s. Crompton Greaves Ltd. Mumbai v. M/s. Bharat Heavy Electricals Ltd., (1984) 17 ELT 525; Moot Proposition ¶7.

¹⁸ Pope Alliance Corp. v. Spanish River Pulp & Paper Mills Ltd., AIR 1929 PC 38; Moot Proposition ¶7.

¹⁹ Micron Technology, Inc. v Tessera, Inc., (2006) 423 F.Supp 2d 624.

²⁰ Ram Narain Kher v. Ambassador Industries, AIR 1976 Del 87.

²¹ Moot Proposition, ¶7.

²² Moot Proposition, ¶4.

1.1.2 That the invention involves an inventive step²³

(¶10.) After establishing the novelty, an invention is assessed for inventive step²⁴. The Supreme Court laid down the following criteria for assessing inventive step in *M/s. Bishwanath Prasad Radhey Shyam, Appellant v. M/s. Hindustan Metal Industries*²⁵, Respondent: “It is important that in order to be patentable an improvement on something known before or a combination of different matters already known, should be something more than a mere workshop improvement; and must independently satisfy the test of invention or an ‘inventive step’. 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 interrelation they produce a new process or improved result²⁶.”

(¶11.) In the instant matter, the combination of the ‘old known integers’ viz. sensor chip and certain other devices produces entirely different and advantageous results. It is a puncture proof *mechanism* that optimizes rolling resistance, speed control and noise²⁷; something that isn’t an outcome of the Defendant’s product. Moreover, the sensor chip, in combination with other devices, works in a way that makes the tyre an all-weather one²⁸.

(¶12.) Mere aggregation of features must be distinguished from a combination invention. The existence of a combination invention requires that the relationship between the features or groups of features be one of functional reciprocity or that they show a combinative effect beyond the sum of their individual effects²⁹.

(¶13.) A combination invention is to be judged whether these features or sets of features are functionally interdependent, i.e. mutually influence each other to achieve a technical success over and above the sum of their respective individual effects as assumed in the case of a combination of features³⁰.

(¶14.) In the instant matter, the combination of the devices produces synergistic effects, which

²³ *Windsurfing International v. Tabur Marine*, (1985) RPC 59; *Reckitt & Colman of India Ltd. v. Godrej High care Ltd.*, (2001) PTC 367; IP AND LEGAL FILINGS, https://www.ipandlegalfilings.com/novelty-non-obviousness-as-concepts-of-patent#_ftnref20 (last visited Mar. 31, 2023).

²⁴ Patents Act, 1970, §§2(1)(ja), 2(1)(l), No. 39, Acts of Parliament, 1970 (India).

²⁵ *M/s. Bishwanath Prasad Radhey Shyam v. M/s. Hindustan Metal Industries*, AIR 1982 SC 1444.

²⁶ *Canadian General Electric Co. Ltd., v. Fada Radio Ltd.*, AIR 1930 PC 1.

²⁷ Moot Proposition, ¶4.

²⁸ Moot Proposition, ¶12.

²⁹ *Minnesota Mining & Manufacturing Co v. Rennicks Ltd.*, (1992) RPC 331.

³⁰ *Glaxo Group Ltd.’s Patent*, (2004) RPC 43; *Biogen Inc v. Medeva plc*, (1997) RPC 1.

magnifies the result obtained by the individual components. Such symbiotic relation between the components grants novelty and non-obviousness to the *entire* product or tyre³¹.

1.1.3 That the invention is capable of industrial application

(¶15.) The third criteria of patentability is that the invention should be capable of industrial application³². Vague and speculative indication of possible objectives that might or might not be achievable by carrying out further research with the tool as described is not sufficient for fulfilment of the requirement of industrial applicability. The purpose of granting a patent is not to reserve an unexplored field of research for an applicant³³.

(¶16.) The fact that the claimed invention is capable of industrial application can be known from the language of the claim. Concise and lucid language has been used that describes the nature of the invention and the engineering behind the product. Thereby, the invention is completely workable and can be replicated by a POSA or any ordinary person in the field.

(¶17.) Thereby, it is apparent that the notions of “industrial applicability” and “utility” are broad and, at least in part, overlap. Further, they relate to other substantive requirements of patentability. Therefore, for the purposes of full harmonization of substantive patent law, the industrial applicability/utility requirement cannot be considered separately from other requirements. In this regard, the substantive patentability requirements are examined *as a whole*, without giving too much focus on the terminology “industrial applicability” or “utility”³⁴.

1.1.4 That the invention fulfils the patentability criteria

(¶18.) Chapter II of the IPA, 1970 deals with the ‘Inventions–Not Patentable’. It is the contention of the Defendants that the claimed invention does not fulfil the patentability criteria and that the said invention falls within the ambit of §§ 3(e), 3(f) and 3(p)³⁵. However, apart from fulfilling the basic grounds required for patentability viz. novelty, inventive step and industrial application, it is contended that the claimed invention does not lie within the scope of the aforementioned sections.

³¹ Moot Proposition, ¶12.

³² Patents Act, 1970, §2(1)(ac), No. 39, Acts of Parliament, 1970 (India).

³³ Patents Act, 1970, §83(a), No. 39, Acts of Parliament, 1970 (India).

³⁴ THE INTERNATIONAL BUREAU, THE PRACTICAL APPLICATION OF INDUSTRIAL APPLICABILITY/UTILITY REQUIREMENTS UNDER NATIONAL AND REGIONAL LAWS (2001).

³⁵ Moot Proposition, ¶7.

(¶19.) §3(f), *verbatim*, states;

“The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way.”

It is an established fact that a combination resulting into synergistic properties of a mixture is not considered as mere combination. Hence, such inventions are patentable. Moreover, while assessing the inventive step involved in an invention based on a combination of features, consideration must be given to whether or not the state of the art was such as to suggest to a skilled person precisely the combination of features claimed. The fact that an individual feature or a number of features were known does not conclusively show the obviousness of a combination³⁶.

(¶20.) A mere aggregation of features must be distinguished from a combination invention³⁷. The existence of a combination invention requires that the relationship between the features or groups of features be one of functional reciprocity or that they show a combinative effect beyond the sum of their individual effects. The features should be functionally linked together which was the actual characteristic of a combination invention.

(¶21.) In general, all the substances which are produced by mere admixing, or a process of producing such substances should satisfy the requirements of synergistic effect in order to be patentable. The synergistic effect should be clearly brought out in the description and examples by way of comparison at the time of filing of the application and should be stressed in the principal claim³⁸.

(¶22.) In the instant matter, the structure of the invention and the entire methodology shows up in the language of the principal claim³⁹. The interdependence of various devices and the synergistic effect produced, thereof, makes the invention patentable⁴⁰.

(¶23.) In case the presence of one or more components of the composition influences the properties of the other components of the composition with the result that the ultimate properties of the composition would be different from the aggregation of the individual

³⁶ Miyazawa, T. and Osada, H., ‘*Patent Claims and Invalidity*’, 4 INT’L J. OF PVT. LAW 354 (2011).

³⁷ Schankerman, M., ‘*How valuable is patent protection?*’, RAND J. OF ECONOMICS, 29, 77-107 (1998).

³⁸ Marco, A.C., Sarnoff, J.D. and deGrazia, C.A.W., ‘*Patent Claims and Patent Scope*’, 48 RES. POL. 103790 (2019).

³⁹ Moot Proposition, ¶12.

⁴⁰ R. RADHAKRISHNAN ET. AL., INTELLECTUAL PROPERTY RIGHTS: TEXTS AND CASES 225-31 (Excel Books, 2008).

properties of the components thereof, such a combination would be patentable under the Patents Act, 1970 (Patent No. 63/Bom/75 Decisions on Patents and Designs, published by The Patent Office Technical Society).

(¶24.) It was observed in *Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries*⁴¹ that it is important to bear in mind that in order to be patentable an improvement on something known before or a combination of different matters already known, should be something more than a mere workshop improvement; and must independently satisfy the test of invention or an 'inventive step'. 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. Mere collocation of more than one integers or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent.

(¶25.) The expression "workshop improvement" refers to an alteration to an existing device which the person skilled in the art would have come to as a matter of routine, "proceeding along previous lines of inquiry and having regard to what was known or used."⁴² Plaintiff's claimed invention is not a workshop improvement since the same could not have been anticipated by a prior publication or the PHOSITA⁴³. It, also, isn't a mere collocation of the integers since the interaction or cooperation of the components produces a combined effect greater than the sum of their separate effects.

(¶26.) A new and useful application of an old principle may be good subject-matter⁴⁴. An improvement on something known may also afford subject-matter; so also a different combination of matters already known⁴⁵. 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 patent⁴⁶.

(¶27.) Therefore, the merit of a new combination depends upon the result produced. Where a

⁴¹ M/s. Bishwanath Prasad Radhey Shyam Appellant v. M/s. Hindustan Metal Industries, AIR 1982 SC 1444.

⁴² Nicaro Holdings Pty Ltd v. Martin Engineering Co., (1990) 16 IPR 545.

⁴³ Marco, A.C., Sarnoff, J.D. and deGrazia, C.A.W., 'Patent Claims and Patent Scope', 48 RES. POL. 103790 (2019).

⁴⁴ RADER, RANDALL ET. AL., PATENT LAW IN NUTSHELL 219-31 (3rd ed. West Academic Publication, 2018).

⁴⁵ Colston, C., *Principles of Intellectual Property Law*, ROUTLEDGE-CAVENDISH, (Mar. 27, 2023, 3:32 PM), <https://doi.org/10.4324/9781843142812>.

⁴⁶ Lallubhai Chakubhai Jariwala v Chimanlal Chunilal and Co., AIR 1936 Bom 99.

slight alteration turns that which was practically useless into what is useful, important and relatively more advantageous, it is fit subject matter for a patent.⁴⁷ Hence, the invention is patentable as it fulfils all the pre-requisites required for such patentability.

1.2 That the sale of the Plaintiff's patented product by the Defendants infringes on Plaintiff's patent rights.

(¶28.) It is humbly submitted before the Hon'ble High Court of Hiled that the patent rights of the Plaintiff have been infringed. This is because, *firstly*, the plaintiff claims a novel, non-obvious and useful invention, and is a prolific inventor. The same can be testified from the fact that patents act as reliable credentials, they being issued by a legitimate authority after proper administrative examination. *Secondly*, the plaintiff is not a patent troll. She got her patent granted in the year 2023, and has the intention to put her invention to use in the coming days.⁴⁸ *Lastly*, the disclosure of the claimed subject matter has to be sufficient enough to enable a person skilled in the art to perform the invention.

1.2.1. That the Plaintiff possesses requisite credentials

(¶29.) It is to be noted that patents serve as powerful evidence that an individual is an inventor.⁴⁹ Just as a doctoral degree in history might indicate that one is a historian or an award from a community organization might be seen as a bona fide certification of one's commitment to public interest, obtaining a patent shows that the person named on its face is a real-life, government-certified inventor.⁵⁰

(¶30.) In India, patents are issued by the Indian Patent Office, which is under the control of the Office of the Controller General of Patents, Designs and Trademarks (CGPDTM), which operates under the Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry, Government of India. Beyond their social meaning, patents exhibit the attributes of a high-quality credential. They are issued by an entity that possesses substantial legitimacy.

⁴⁷ Lallubhai Chakubhai Jariwala v Chimanlal Chunilal and Co., AIR 1934 Bom 407.

⁴⁸ Moot Proposition, ¶10.

⁴⁹ William Hubbard, *Inventing Norms*, 44 CONN. L. REV. 401 (2011).

⁵⁰ William Hubbard, *Inventing Norms*, 44 CONN. L. REV. 401 (2011).

(¶31.) Since a patent is issued only after administrative examination, the patent indicates with at least modest credibility that the requirements for patentability have been met and that the patentee is the creator of a meaningful new invention.⁵¹ And while the basic requirements to obtain a patent are simple enough for everyone to understand, the facts that satisfy these requirements are often quite complex and require a high level of substantive technical knowledge to understand and analyse under the legal requirements—hence the necessity for relying on the credential.⁵² It is to be noted that intellectual property rights, in general, serve as some kind of credential to creators.⁵³

(¶32.) It is submitted that it is possible for a marketing professional to be listed as an inventor on a patent application if they have made a significant contribution to the conception and development of the invention. The Patents Act, 1970 does not prescribe any pre-requisite for a person to be termed an ‘inventor’. The claimed invention should, however, be novel, non-obvious and capable of industrial applicability. Furthermore, §3⁵⁴ of the Act contains a list of inventions that are not regarded inventions within the meaning of this Act, and, hence, not eligible for grant of patent.

(¶33.) §6(a)⁵⁵ of the Act states that any person claiming to be the true and first inventor of the invention may make an application for a patent for an invention. In the instant case, the plaintiff, being the first inventor of the claimed invention⁵⁶, is liable to grant of patent and the defendant, by selling the plaintiff’s product has directly infringed on her patent rights.

1.2.2. That the Plaintiff is a legitimate patent owner

(¶34.) A patent is an exclusive right granted for an invention. The invention, thus, cannot be commercially, made, distributed, imported or sold by others without the patent owner’s consent⁵⁷. In the instant case, the Plaintiff filed the infringement suit with the sole purpose of preventing the Defendant from commercialising the product similar to that of the Plaintiff. The sale of the product by the Defendant, thus, hindered the process of commercialisation by the Plaintiff, for which reason the instant suit had been filed.

⁵¹ See Hubbard, *supra* note 49, at 399.

⁵² See Hubbard, *supra* note 49, at 398.

⁵³ ROBERT P. MERGES, JUSTIFYING INTELLECTUAL PROPERTY 311 (2011).

⁵⁴ Patents Act, 1970, §3, No. 39, Acts of Parliament, 1970 (India).

⁵⁵ Patents Act, 1970, §6(a), No. 39, Acts of Parliament, 1970 (India).

⁵⁶ Moot Proposition, ¶12.

⁵⁷ WADHERA, BL., LAW RELATING TO INTELLECTUAL PROPERTY 98-104 (Universal Law Publishing, 2016).

1.2.3. *That the disclosure of the claimed subject matter is sufficient*

(¶35.) Besides the patentability requirements of novelty, inventive step, and being capable of industrial applicability, a patent application must also meet the enablement requirement⁵⁸ in order to be granted. A patent application is said to be enabled if the application provides sufficient details that enable a person of ordinary skill in the related field to *practice the invention*.

(¶36.) Under Article 29(1) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), member countries must include a requirement that patent applicants provide a disclosure that enables a person skilled in the art to practice the invention. Thus, the standard used is that of a person skilled in the art.

(¶37.) Since the invention is an improvement to an existing product, the claims should set the boundary very clearly by characterizing the invention with respect to the prior art. In such cases, the claim will have two parts separated by the word ‘characterized by’ or ‘wherein’.⁵⁹ The part coming before ‘characterized by’ is the prior art while that comes after will be the features of the invention.

(¶38.) In the instant suit, the part coming prior to ‘characterized in that’ is a prior art.⁶⁰ The part stated thereafter is an invention of the Plaintiff. The patent claim is, thus, a concise and precise statement which identifies all the technical features and the functional relationship between them. The patent is sufficiently complete to enable a POSA to replicate the invention, in that, it lucidly states the features of prior art i.e., plurality of separate compartments with a sensor chip embedded below them and the fact that the chip is connected to the said compartments to operate in a plurality of road conditions.⁶¹

⁵⁸ Chakroun, N., ‘*Vagueness of Patent Claim Language, Claim Construction and Patent Infringement – What a Mess!*’, J. OF EUROPEAN & INT’L IP LAW 1097 (2020).

⁵⁹ WILKOF, NEIL, AND SHAMNAD BASHEER, OVERLAPPING INTELLECTUAL PROPERTY RIGHTS 102-113 (Oxford University Press, 2013).

⁶⁰ Moot Proposition, ¶12.

⁶¹ Moot Proposition, ¶12.

PRAYER

Wherefore, in light of facts stated, issues raised, arguments advanced and authorities cited, it is most humbly prayed before this Hon'ble Court that it may be pleased to,

1. Uphold the validity of the patent.
2. Pass a decree for permanent prohibitory injunction restraining the Defendant from engaging in the sale of "Sensor Embedded Airless Wheel Structure Technology".
3. Award the costs of the suit in favour of the Plaintiff and against the Defendant.

AND/OR

Pass any other order it may deem fit in the interest of Justice, Equity and Good Conscience

All of which is most respectfully prayed and humbly submitted.

(Signed)

Date:

Place:

Counsel for the Plaintiff