
**6TH SURANA & SURANA AND SHAASTRA IIT MADRAS,
INTELLECTUAL PROPERTY LAW MOOT COMPETITION
2022-2023**

**IN THE HIGH COURT OF HILED
(ORIGINAL JURISDICTION)
COMMERCIAL SUIT NO.6 OF 2023
(WITH PRAYER FOR RELIEF)**

IN THE MATTER OF:

SHRADDHA BHAMBANI

...Plaintiff

VERSUS

BROESHIM (INDIA) PRIVATE LIMITED

...Defendant

MEMORIAL ON BEHALF OF THE PLAINTIFF

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DISPARGING**

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INDIAN STATUTES

S. No.	Act Name	Articles/Sections Mentioned
1.	The Patents Act, 1970	2(1), 3, 10 (4), 25(1), 48, 64(1), 83, 84, 104, 122, 146(2),

INDIAN CASES

S. No.	Case Name	Citation Code
1.	Bristol Myers Squibb Holdings vs Sanjay Jain & Anr	2016 SCC Online Del 5966
2.	Bajaj Auto Limited v. TVS Motor Company Limited	2008 (36) PTC 417
3.	Farbwerke Hoechst and Ors. v. Unichem Laboratories and Ors	AIR 1969 Bom 255
4.	Raj Prakash v. Mangat ram Chowdhry and Ors	AIR 1976 Delhi 87
5.	Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries	(1979) 2 SCC 511
6.	Novartis Ag & Anr vs Cipla Ltd	(2015) 216 DLT 689
7.	National Institute of Virology vs. Mrs. Vandana Bhide	Patent Application 581 /BOM/ 1999
8.	Press Metal Corporation Limited v. Noshir Sorabji Pochkhanawalla	AIR 1983 Bom 144

FOREIGN CASES

S. No.	Case Name	Citation Code
1.	Royal Typewriter Co. v. Remington Rand, Inc.	168 F (2d. Cir. 1948)
2.	Eli Lilly and Co. v. Hospira Inc	Fed. Cir. 2019
3.	Clay v. Allcock and Co. Ltd.	1906 (23) RPC 745
4.	Biogen v. Medeva	PLC [1996] UKHL 18
5.	Paper Bag Co. vs E. Paper Bag Co.	210 U.S. (1908)

ARTICLES

S. No.	Article
1.	Raymond Bai, Patent laws: Advancing Innovation for the Public or Inflating Private Profits?
2.	Sitanshu Singh, Practice of Patent Asserting Entities: Boon or Bane: Global Innovations

BOOKS

S. No.	Book Name
1.	29 Halsbury Laws of England 27 (3rd edn. LexisNexis Butterworths).
2.	Agreement On Trade-Related Aspects of Intellectual Property Rights.
3.	Feroze Ali Khader, The Law of Patents, 2009 457 (Student Edition, LexisNexis Butterworths Wadhwa Nagpur 2009).
4.	Kalyan C. Kankanala, Arun K. Narasani, Vinita Radhakrishnan, Indian Patent Law and Practice (Oxford India Paperbacks)

WEB SOURCES

S. No.	Website
1.	www.manupatrafast.com (MANUPATRA)
2.	www.scconline.co.in (SCC ONLINE)
3.	www.judis.nic.in (SUPREME COURT OF INDIA OFFICIAL)
4.	www.indiankanoon.org (INDIAN KANOON)
5.	www.aironline.in (ALL INDIA REPORTER)

LIST OF ABBREVIATIONS

S. No.	Abbreviation	Full Form
1.	§/SEC.	SECTION
2.	&	AND
3.	AIR	ALL INDIA REPORTER
4.	ANR.	ANOTHER
5.	ART.	ARTICLE
6.	CO.	COMPANY
7.	HC	HIGH COURT
8.	HON'BLE	HONOURABLE
9.	LTD.	LIMITED
10.	ORS.	OTHERS
11.	PVT.	PRIVATE
12.	SC	SUPREME COURT
13.	SCC	SUPREME COURT CASES
14.	U.O.I.	UNION OF INDIA
15.	V. OR V	VERSUS
16.	INC.	INCORPORATION

STATEMENT OF JURISDICTION

The Petitioner has approached the Honourable High Court of Hiled under Section 104 of the Indian Patent Act, 1970 which read as follows–

*“Section 104. **Jurisdiction**—No suit for a declaration under section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:*

Provided that where a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

The present case arises out of a counterclaim which has been filed by the Defendant seeking revocation of the Plaintiff's patent titled “Sensor Embedded Airless Wheel Structure Technology” (Patent No.-23x4281) granted to her on 3-01-2023.

STATEMENT OF FACTS

1. The current cause of action has arisen between Shradda Bhambani (Plaintiff, a civil engineer) v. Broeshim (India) Private Limited (Defendant, a subsidiary of the parent company, Broeshim BV, Netherlands) within the jurisdiction of the Hon'ble Court of Hiled. From 2017, the defendant is selling tyres with a sensor to collect data and a puncture proof tyre material. It is also being sold in India from January 2021.
2. A patent was filed in India: "Sensor Embedded Airless Wheel Structure Technology" which claims a tyre with an embedded chip to collect data and a novel puncture proof mechanism that optimises rolling resistance, speed, control and noise. Filed on 2-03-2021 based on her intellectual property rights accruing from Patent No. 23x4281; it was published on 3-01-2023 in the Register of Patents as Patent Number 23x4281. The Plaintiff contends that the Defendant had malafidely and arbitrarily infringed her patent rights. Various reliefs, monetary and otherwise were sought by the Plaintiffs in Commercial Suit No. 6 of 2023.
3. A counterclaim was filed. It was also submitted: the claimed invention is also already in public use, which are grounds for revocation of a granted patent under Section 64(1)(a), (e) and (f) of the act. In addition, it must be revoked under Section 3(f) Section 64(1)(d) of the Act. The Defendant submits that the Plaintiff is a patent troll, who does not commercialise any of her patents; she has filed this suit with malafide intentions.
4. Also, as per Section 146(2) of the Patent Act read with Rule 131(1) of the Patent Rules, 2003 every Patentee must submit a statement of working to the controller patent in Form 27 every year after the grant of the Patent till its expiry. Plaintiff states: she got her patent granted in the year 2023 and she plans to commercialise the same.

ISSUES RAISED

ISSUE - 1

WHETHER THE PLAINTIFF'S PATENT RIGHTS HAVE BEEN INFRINGED OR NOT AND WHETHER THE PATENT STANDS TO BE REVOKED BY THIS HONOURABLE COURT?

ISSUE - 2

WHETHER GETTING A PATENT GRANTED WITHOUT SUBSEQUENT COMMERCIALISATION IS A VIOLATION OF THE OBLIGATION OF PATENT HOLDER UNDER THE INDIAN PATENT ACT,1970?

ISSUE - 3

WHETHER SUFFICIENT DISCLOSURE IS A NECESSARY STEP IN THE GRANT OF PATENT?

SUMMARY OF ARGUMENTS

ISSUE 1: THAT THE PLAINTIFF'S PATENT RIGHTS HAVE BEEN INFRINGED AND THE PATENT SHOULD NOT BE REVOKED BY THIS HONOURABLE COURT.

It is humbly contended before this Honourable Court that the patent rights of the Plaintiff have been malafidely and arbitrarily infringed by the Defendant Company under Section 48 of the Indian Patent Act, 1970. The patent of the subject matter of the suit which was filed by the Plaintiff in the Hiled Patent Office on 02/03/2021 has been rightfully granted to her on 3/01/2023. It is submitted that the technology patent granted to the Plaintiff fulfils all the patentability criteria laid out by the said act.

ISSUE 2: A PATENT GRANTED WITHOUT SUBSEQUENT COMMERCIALISATION IS NOT A VIOLATION OF THE OBLIGATION OF THE PATENT HOLDER UNDER THE INDIAN PATENT ACT, 1970.

It is humbly submitted before this Honourable Court that Commercialization is not a vital requirement for the grant of a patent. It is further contended that the Plaintiff has the intention to put her invention to use in the coming days.

ISSUE 3: SUFFICIENT DISCLOSURE IS NOT AN ESSENTIAL STEP IN THE GRANT OF A PATENT.

It is humbly submitted before this Honourable Court that the complete specification sufficiently and clearly describes the invention and enables a person with average skill in the art to practice the claimed invention. If the best method known to the applicant is disclosed in the specification, it satisfies the requirement of sufficiency of disclosure.

ARGUMENTS ADVANCED

1. THAT THE PLAINTIFF'S PATENT RIGHTS HAVE BEEN INFRINGED AND THE PATENT SHOULD NOT BE REVOKED BY THIS HONOURABLE COURT.

1.1 WHETHER THE PLAINTIFF'S RIGHTS HAVE BEEN INFRINGED OR NOT?

1. It is humbly submitted before the Hon'ble Court that Plaintiff's exclusive rights under section 48 of the Patent Act, 1970 have been infringed. The Defendant has malafidely and arbitrarily infringed plaintiff's patent rights subsisting in "Sensor Embedded Airless Wheel Structure Technology" which is an invention by the plaintiff.

2. The patent is for a tyre with an embedded chip to collect data and a novel puncture proof mechanism that optimizes rolling resistance, speed, control, and noise. The patent was filed before the Indian Patent Office on 02/03/2021. The said patent was published in the Register of Patents on 03/01/2023. The Plaintiff holds Patent No. 23x4281 granted on 03/01/2023.

3. Neither the Defendant's parent company nor the Defendant holds any filed, pending or granted patents in India. The defendant uses a similar technology in its products infringing the plaintiff's right as the defendant is selling tyres with a sensor to collect data and a puncture proof tyre material.

4. Section 48 of the Indian Patents Act 1970 confers exclusive rights upon the patentee to exclude third parties from making, importing, using, offering for sale, or selling the patented invention, patented product, or patented process. It can therefore be concluded that violation of monopoly rights would constitute infringement of a patent.

*"As per Section 48 of the Patents Act, 1970 plaintiffs have the right to take appropriate steps to restrain third parties from the act of making, using, offering for sale, selling or importing any product which infringes the subject matter of the patent"*¹

5. Consequently, because of India's commitment to be part of the WTO regime, a patent is

¹ Bristol Myers Squibb Holdings vs Sanjay Jain & Anr, 2016 SCC OnLine Del 5966.

granted after elaborate examination, scrutiny and inspection of the product and process, for ensuring its efficacy, novelty², existence of inventive step³ and industrial application.⁴ It can even be challenged by persons aggrieved, after its grant. If, after a patentee, rewarded for his toil - in the form of protection against infringement - were to be informed that someone, not holding a patent, would be reaping the fruits of his efforts and investment, such a result would be destructive of the objectives underlying the Patents Act. A patentee has, the untrammelled right to exclude anyone else from manufacturing, selling, importing, or marketing that product, by virtue of Section 48⁵. In the case of *Bajaj Auto Limited v. TVS Motor Company Limited*⁶ It was concluded that the **patent obtained** by the **patentee** could be given more weight for deciding the prima facie case.

6. According to Article 28 of the TRIPS Agreement, patent owners are guaranteed the following: ⁷

- *When a commodity is the focus of a patent, it is illegal for third-party candidates to use, create, offer for sale, sell, or import the commodity without the patent holder's permission.*
- *When a procedure is the focus of a patent, it is illegal for third parties to use, offer for sale or sell the procedure without the owner's permission.*
- *Additionally, patent owners are entitled to license agreements, patent assignments, and succession transfers.*

7. In the present case, the defendant is using a technology that is similar to that for which the patent has been granted to the plaintiff. While the technology used is not exactly the same, it does perform in a way that culminates in the same result. The Doctrine of Equivalents covers this form of indirect patent infringement. Sometimes, copying of the patent might not be a literal imitation, but may provide the same effect. If such copying is allowed, the purpose of

² Section 2(I), The Patents Act, 1970, No. 39, Acts of Parliament, 1970.

³ section 2(JA), The Patents Act, 1970, No. 39, Acts of Parliament, 1970.

⁴ Section 2(AC), The Patents Act, 1970, No. 39, Acts of Parliament, 1970.

⁵ The Patents Act, 1970, No. 39, Acts of Parliament, 1970.

⁶ *Bajaj Auto Limited v. TVS Motor Company Limited*, 2008 (36) PTC 417.

⁷ Agreement On Trade-Related Aspects of Intellectual Property Rights.

granting the patent rights to the inventor will be meaningless. It will become easy for any person to imitate the patent by making minor changes and enjoy returns larger than those accruing to the original inventor. To counter such behaviour, Doctrine of Equivalents was introduced. It was decided by court that infringement may occur even though the literal language of the claims was avoided.

8. A claim may be infringed under the doctrine of equivalents if it falls under the "triple test", i.e. equivalence holds when the substituted elements perform substantially the same function in substantially the same way to obtain the same result. The "All Elements", test says that the doctrine of equivalents must be applied to all the individual elements of the claims and not the claimed invention as a whole. It is necessary to prove that every element of the patented invention, or its substantial equivalent, is present in the accused product or process.

9. Under the doctrine of equivalents, a patent claim may be found to infringe if there is "equivalence" between the elements of the accused product or process and the claimed elements of the patented invention, even if that does not literally infringe upon the express terms of patent claims.

The doctrine of equivalents is a legal rule in patent law whereby a party can be liable for infringement even though the party does not literally or precisely infringe every limitation of a patent claim. In 1948, Judge Learned Hand described this as needed "to temper unsparing logic and prevent an infringer from stealing the benefit of the invention".⁸

10. In *Eli Lilly and Co. v. Hospira Inc.*⁹, the Court found that a description of administration of a pharmaceutical, while not literally infringing the articulated method of administering a drug for treating mesothelioma, did infringe under the doctrine.

1.2 WHETHER THE PATENT SHOULD BE REVOKED BY THE HON'BLE COURT?

It is humbly contended that the plaintiff's patent cannot be revoked under section 64(1)(a), (d), (e) and (f) of the Patents Act, 1970.

⁸ Royal Typewriter Co. v. Remington Rand, Inc., 168 F (2d. Cir. 1948).

⁹ Eli Lilly and Co. v. Hospira Inc, Fed. Cir. 2019.

1.2.A SECTION 64(1)(A) IS NOT APPLICABLE IN THE PRESENT CASE

11. According to section 64(1)(a) of the Act a patent may be revoked on the ground that the invention claimed in any claim of the complete specification was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India. The wordings of section 64(1)(a) are like section 32(1)(a) of the UK Patent Act, 1949. The object of the above provision is to ensure that patent for the same invention is not granted to different persons. A claim covered by an earlier patent cannot be the subject matter of a new grant. If the invention so far as claimed in any claim of the complete specification was claimed in a valid claim or earlier priority date contained in the complete specification of another patent granted in India, it would be ground for revocation.¹⁰

12. No invention in our case with similar specifications has been already granted in India with an earlier filing date or priority date. Plaintiff filed the patent before the Indian Patent Office on 02/03/2021. The said patent was published in the Register of Patents on 03/01/2023. The Plaintiff holds Patent No. 23x4281 granted on 03/01/2023.¹¹ Neither the Defendant's parent company nor the Defendant holds any filed, pending or granted patents in India.¹²

13. It is also submitted that no other party or individual in the country has filed, pending, or been granted a patent on similar specifications to that of the patent granted to the plaintiff.

1.2.B SECTION 64(1)(E) WILL NOT BE APPLICABLE AS THE PLAINTIFF'S INVENTION IS NEW AND NOT PUBLICLY KNOWN OR PUBLICLY USED

14. The defendant makes allegations about plaintiff's patent that it is not valid and had been known in India and abroad much prior to the date of the patent further the defendant also alleges that claims made by the plaintiff in the Patent were vague and did not describe the invention clearly and properly, that the subject of any claim of the complete specification is not an invention within the meaning of the Indian Patents Act, that the invention so far as claimed in any claim of the complete specification is obvious and did not involve any

¹⁰ FEROUZE ALI KHADER, THE LAW OF PATENTS, 2009 457 (Student Edition, LexisNexis Butterworths Wadhwa Nagpur 2009).

¹¹ Moot proposition.

¹² Moot proposition.

inventive step; and that the complete specification did not sufficiently and fairly describe the invention and the method by which it is to be informed.

15. From a Perusal of the claim made by the plaintiff before the Patent authority it is not claimed that the invention proposed by the plaintiff is of complete tyre. The plaintiff filed a patent in India for the technology titled "Sensor Embedded Airless Wheel Structure Technology". The technology is new, and in the claim made by the plaintiff before the Patent authority, it is not claimed that the invention proposed by the plaintiff was an improvement on any Previously existing technologies. In the statement of claim, claims have been made but the plaintiff has not stated the advantage sought to be achieved by her invention; in other words, "the boundary of the territory that she claims to be exclusively of her own." It is most respectfully submitted that it is a well settled principle of Patent Law that in order to challenge novelty of the claimed invention on the basis of prior arts, it is necessary to prove that a prior art document relied upon to challenge the validity of a claimed invention unambiguously discloses each of the claimed features of the invention in such a manner that enables a skilled person to practice the invention without bearing the burden of further experimentation.

16. In order to establish anticipation/lack of novelty, a party is required to plead and show that each and every feature as claimed in the challenged patent application was previously disclosed in its entirety in one single document in an enabling manner inasmuch as it is impermissible for a party to mosaic documents while agitating lack of novelty¹³.

17. That brings me to the next ground of alleged invalidity of the plaintiffs' patent viz. want of novelty. The test of novelty as formulated by Halsbury,¹⁴ is in the following terms: "To anticipate a patent, a prior publication or activity must contain the whole of the invention impugned; i.e., all the features by which the particular claim attacked is limited. In other words, the anticipation must be such as to describe, or be an infringement of the claim attacked." Further, IPAB in *Sankalp Rehabilitation Trust v. F. Hoffmann-La-Roche AG and*

¹³ *Farbwerke Hoechst and Ors. v. Unichem Laboratories and Ors*, AIR 1969 Bom 255.

¹⁴ 29 Halsbury Laws of England 27 (3rd edn. LexisNexis Butterworths).

*Anr*¹⁵ held that, “To defeat Novelty, the appellant should show that an earlier document, disclosed all that the patentee is seeking to patent. And that each limitation of the claimed invention is found in a single prior art reference. The appellant has not done this. So the attack on novelty is rejected.”

18. In *Clay v. Allcock and Co. Ltd.*,¹⁶ it was observed that, it is, a Part of the duty of a Patentee to tell the public of his claim taken with the specifications and drawings, what he claims as his own and what, Therefore, they (the opposite Party) must not do without infringing the Patent; in other words he "must mark out with adequate distinctiveness. The boundary of the territory that he claims to be exclusively of his own."

19. The duty of the patentee with regards to the patent claim is to specifically demarcate the territory of technology that is being claimed exclusively. This was observed in the case of *Clay v Allcock and Co. Ltd*, wherein it was held that patentee was obligated to inform the public of his claim along with the specification and drawings of that he has claimed to be his own. In the present case, the plaintiff has complied with this obligation and as such has the exclusive rights to the patent.

20. In the case of *Raj Prakash v. Mangat ram Chowdhry and ors*¹⁷, it was stated that it is essential that the party claiming patent should specify what particular features of his device distinguish it from those which had gone before and show the nature of the improvement which is said to constitute the invention. The novelty or the invention has to be succinctly stated in the claim.

1.2.C THE EMBEDDING OF THE CHIP TO COLLECT DATA ALONG WITH THE PUNCTURE PROOF MECHANISM IS AN INVENTIVE STEP

21. The term "inventive step" has been defined with the provision of Section 2(1)(ja) of the Indian Patents Act 1970. This provision defines "an inventive step" as "a feature of an

¹⁵ Intellectual Property Appellate Board, Order 250/2012.

¹⁶ *Clay v. Allcock and Co. Ltd.*, 1906 (23) RPC 745.

¹⁷ *Raj Prakash v. Mangat ram Chowdhry and Ors*, AIR 1976 Delhi 87.

invention that involves a technical advancement over existing knowledge or has economic significance, or both, and that makes the invention not obvious to a person skilled in the art."

22. The Indian Patent Act of 1970 mandates that for an invention to be eligible for a patent, it must possess an inventive step or non-obviousness. This implies that the invention cannot be easily deduced by someone with ordinary skills and knowledge in the field, and it should be a novel and innovative contribution to technological progress. The purpose of the inventive step requirement is to ensure that patents are granted only to truly original and inventive creations that push the boundaries of existing products or processes, rather than minor enhancements or modifications.

23. In the present case, it is pertinent to note that the Plaintiff who is a civil engineer, with around 200 patents to her name in various fields of innovation filed a patent in India for the technology titled "Sensor Embedded Airless Wheel Structure Technology". The Patented Claim refers to-

"A plurality of separate compartments (2A,2B,2C,2D,2E & 2F) typically & essentially designed to cushion air within themselves.

A sensor chip embedded below the said compartments, provided with a circuit board which operates in a fully automatic as well as an optional manual mode and rest mode.

Characterised in that the sensor chip is connected to said compartments to operate in a plurality of road conditions."

24. In the case of *Biogen v. Medeva*¹⁸, The House of Lords observed "Whenever anything new is done for the first time it is the result of some addition of a new idea to the existing stock of knowledge. Sometimes, it is the idea of using established techniques to do something, which no one had previously thought of doing. In that case, inventive step will be doing the new thing. Sometimes, it is finding a way of doing something, which people wanted to do but couldn't think how to. Inventive idea would be the way of achieving the goal."

¹⁸ *Biogen v. Medeva*, PLC [1996] UKHL 18.

25. In the case of *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*¹⁹ the court started its analysis of inventive steps by stating that an 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 inventive step. It stated that to be patentable, the improvement or the combination must produce a new result, or a new article, or a better or cheaper article than what already existed. As per the Court, an invention would have an inventive step if the combination of old known integers may be so combined that their working interrelation produces a new process or improved result.

26. As per Section 2 (1) (ja) of the Patents Act, an invention will have inventive steps only if it satisfies two conditions—First, the invention should be technically advanced in the light of prior art or should have economic significance. And second, the invention should be non-obvious to a person with ordinary skill in the art in the light of prior art. However, the act does not define the terms or degrees of these factors. With respect to this definition, the patented product by the Plaintiff is a genuine and technically advanced product as it is sufficiently able to describe a product which boasts of an embedded chip which collects data and a novel puncture proof mechanism that optimises rolling resistance, speed, control and noise. This is also non-obvious to a person with ordinary skill in the art in the light of prior art to figure out.

27. It is here, that plaintiff's patented product shows an inventive step. Let us consider the earlier times when we used to have tires with tubes in them. To fix a puncture, it was a tedious task for the mechanic as he had to figure out where the problem was, identify and arrange the relevant material to fix it and then commence a long and arduous process of mending the same. This process was applicable not only to small vehicles but also to heavy motor vehicles. It is also pertinent to note here that this was a time when people used comparatively primitive tools to repair such tires and not everyone could afford to have and own such tools. Then came

¹⁹ *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, (1979) 2 SCC 511.

a revolutionary mechanism and technology: tubeless tires where the process significantly reduced the time taken to fix such tires and cut costs as not only did the process of fixing punctures become easier but also, the material used for such tires was upgraded. It became a key development in the motor vehicle industry as now the tire made it easier for the mechanic to identify the problem and fix it.

28. In these two processes, the major difference lies in the fact that with tube tires, the vehicle could not travel further without endangering the persons driving it or the tube bursting to cause any accident. Also, driving a vehicle with a punctured tire made the car undriveable in any road condition. Further, once punctured, there was no guarantee that it would not happen again, that too in the same spot. This was also a very expensive, labour oriented and non-economical process from all points of views. The tubeless tire materials revolutionised the motor vehicle industry as a vehicle with a punctured tire was at least driveable to a point where help could be found and a person was not stranded in the middle of the road, where his life could be endangered due to any reason. Tubeless tires have also completely avoided any issue with any sort of tube bursting to cause any accident. As is evident in today's time, the material used for such tires is also commonly found and is durable for any type of road condition in addition to being cost-effective. Further, the mechanism and tools involved for fixing such punctures is easily owned by several people in this industry. However, a major economical factor involved in the tubeless tires is that when the tire is punctured, though the car is still driveable to a certain point, the energy employed by the car to still function in this condition is of great magnitude. Given the current condition of oil prices and the market, this certainly proves to be a non-economical mechanism to some extent as well.

29. Now coming to the Plaintiff's claim; her product boasts of a revolutionary "technology". To simply explain the patented claim, it refers to a method using several different compartments that has several different pockets between them that are designed to hold air and provide cushioning. It also has a sensor chip that is located beneath these mentioned

compartments, along with a circuit board that can operate in different modes. This embedded chip also collects data and a novel puncture proof mechanism that optimises rolling resistance, speed, control and noise.

30. When you drive over different types of roads, the sensor chip can detect this and communicate with the circuit board. The circuit board can then adjust the amount of air that is held in each pocket, based on the specific road conditions. This can help to make the ride more comfortable and smoother, especially if you are driving on a bumpy road which leads to efficiency of the moving vehicle.

31. The device can operate fully automatically, without any intervention from the user, or it can be controlled manually if desired. Additionally, it has a rest mode, which means it can be turned off when not in use to conserve energy. Overall, the working of the device involves the use of sensors, circuit boards, and air pockets to make driving more comfortable and enjoyable. Additionally, it is a cost saving mechanism as it significantly reduces the cost of fixing punctures manually several times as well as the time taken to travel from Point A to Point B as the driver can avoid any issues related to punctures during a journey.

32. This certainly provides a clear, distinctive, and unambiguous inventive step on the part of the Plaintiff. Hence, the argument of the Defendant on grounds of Section 64(1)(f) related to the inventive step in the patent is completely refuted based on the argument provided above also It is submitted that the Defendant failed to identify the inventive concept embodied in the Patent, rather, the Defendant has, in a vague and obscure manner, merely made bald statements on lack of inventive step by cherry picking words.

1.2.D THE CLAIM THAT THE INVENTION IS NOT AN INVENTION AND ONLY MERE RE-ARRANGEMENT IS FALSE AND BASELESS UNDER SECTION 3(f)

33. The plaintiff's patent is entirely different from any other machine anywhere for similar purposes and the said invention was made from years of hard work and innovation based on research and observation. In fact, the plaintiff's invention is much less identical to any than existing technology for similar use. It is submitted that the claimed invention qualifies the

parameters specified in the MPPP. That is to say that, firstly, the claimed invention satisfies the test of 'Novelty' and 'Inventive step'. Secondly, it is evident from a comparative reading of the instant patent Application THAT the claimed invention IS more than a 'mere workshop improvement', but the technology also involved is far more superior, advanced, accurate and produces superior results. Invention consists of features and systems/components/devices which are highly dependent on each other and do not work independently, and based on this reason alone, the invention claimed in the instant does not fall within the ambit of Section 3(f) of the Act. The PLAINTIFF submits that the instant ground of opposition based on Section 3(f) of the Act SHOULD BE rejected for being frivolous.

34. In opposition to for invention of "Safety Razor Blades"²⁰, it was held that even though the applicant's invention might appear to be a new combination of known devices, but the application of the combination is clearly meant to achieve a useful purpose in a better and simple way, and therefore, the applicant's combination was not a mere arrangement or re-arrangement of the known devices acting independently of one another in a known way.

*"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."*²¹

35. The arguments presented above, the plaintiff further contends that her patented product fulfils all the patentability criteria as mentioned under the Indian Patent Act and hence, the Patent does not stand to be revoked under Section 64(1)(d) of the same Act.

²⁰ PATENT NUMBER 139046.

²¹ Lallubhai Chakubhai Vs. Chimanlal and Co., AIR 1936 Bom 99.

2. THAT GETTING A PATENT GRANTED WITHOUT COMMERCIALISATION IS NOT A VIOLATION OF THE OBLIGATION OF PATENT HOLDER UNDER THE PATENT ACT, 1970

2.1. THAT IT IS TOO EARLY FOR COMMERCIALISATION

36. The Plaintiff is a civil engineer, with around 200 patents to her name in various fields of innovation. The Plaintiff got her patent granted in the year 2023 and has the intention to put her invention to use in the coming days. She has also applied for patent for the same technology in Germany and Australia.

37. Commercializing a patent in India requires a thorough understanding of the market, protecting the patent, creating a solid business plan, identifying potential buyers or licensees, negotiating agreements, enforcing the patent, and maintaining it. The plaintiff intends to commercialize their patent; however, this process requires several essential components such as time, market understanding, strategic planning, funding, and securing buyers. As such, the plaintiff requires additional time to successfully complete this endeavour. The Patent holder needs to analyze the Commercialization strategies in a way to hit the bull's eyes.

38. The U.S. Supreme Court has consistently and adamantly held that patents do not require patentees to use or commercialize their inventions. Rather, patents simply grant inventors the right to exclude others from using or producing their inventions. That exclusive right, once granted, cannot be taken away because of a right holder's failure to work the patent²². Patents simply grant inventors the right to exclude others from using or producing their inventions²³. That exclusive right, once granted, cannot be taken away because of a right holder's failure to work the patent²⁴. The grant of a patent comes with no affirmative duty on the part of the patent holder to use or commercialize the technology described in the patent's claims.²⁵

²² Paper Bag Co. vs E. Paper Bag Co., 210 U.S. (1908).

²³ 35 U.S.C. § 154(a)(1).

²⁴ 5 Cont'l Paper Bag, 210 U.S. 429-30.

²⁵ *Id* 22.

39. In the case of *Novartis Ag & Anr vs Cipla Ltd*²⁶ Merely the grounds and conditions stipulated under section 83 of the Act do not absolve the defendant to infringe the registered patent. A patentee or a licensee must furnish information regarding commercial working of their patent in Form 27 every calendar year, but in this case the plaintiff has been granted patent in January 2023, she still has more than 7 months to file the same. As such it cannot be construed that the plaintiff has no intention of commercialising.

40. The defendant's claim that the 200+ patents held by the plaintiff are pertinent to the present case is unfounded, as a thorough review of the MOOT PROPOSITION has revealed that none of the patents in question are applicable to the subject matter or claims at issue in this.

2.2 DEFENDANT SUBMISSION THAT PLAINTIFF DOESNOT HAVE ANY TECHNICAL KNOWLEDGE OR QUALIFICATION IS GROUNDLESS

41. In The case of the *National Institute of Virology vs. Mrs. Vandana Bhide*,²⁷ the patent controller reached clear conclusions on the question of inventorship. Where it stated various factors while assessing an inventor which laid down that, *“If a person is to be called an inventor, he or she must have contributed intellectually to the outcome of the scientific work that led to a patent.”* According to section 6 of the patent act 1970 (1) *Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say,*

(a) *by any person claiming to be the true and first inventor of the invention;*

(b) *by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application.*

42. According to the provisions set forth in Section 6 of the Patent Act, it can be inferred that there is no explicit requirement for an individual to possess any particular qualification or technical knowledge in order to be recognized as an inventor, and furthermore, there is no

²⁶ *Novartis Ag & Anr vs Cipla Ltd*, (2015) 216 DLT 689.

²⁷ *National Institute of Virology vs. Mrs. Vandana Bhide*, Patent Application 581 /BOM/ 1999.

mandate for the submission of any document or evidence indicating proficiency or expertise in the relevant field.

2.3. THAT THE DEFENDANT’S REMARK ABOUT PLAINTIFF IS DISPARAGING

43. THE DEFENDANT HAS CLAIMED THAT PLAINTIFF IS A PATENT TROLL who does not commercialise any of her patents, and who has filed this suit with the sole intention of harassing and arm twisting the Defendant and to gain monetary benefit.

44. Defining a patent troll is a very difficult task. THE WORD HAS NOT BEEN DEFINED IN THE ACT. A 2015 study done by Raymond Bai and published in the Western Journal of Legal Studies on the regulation of patent trolls and its deteriorating effects on innovation is “*Patent Laws: Advancing Innovation for the Public or Inflating Private Profits?*”²⁸ This paper analyses that how entities known as “patent trolls” abuse this protection to strike settlements with small as well as medium-sized companies, who are unable to afford the associated legal costs or are of the mind that there is a lot at stake to litigate. The effect of such practices is such that the corporations who sought to invest some capital in research and development are drained of financial resources, which ultimately has a deteriorating effect on technological innovations.

45. HERE, IN THIS CASE, the defendant, along with their parent company, is among the foremost manufacturers of tyres, with a notable global presence in the tyre manufacturing industry. The defendant, being the leading supplier and manufacturer of tyres in India, has become synonymous with excellence in the industry. Moreover, as a financially robust entity, they can easily bear legal costs and possess ample capital and financial resources.

46. Another study which was conducted by Sitanshu Singh, Regarding the regulation of patent trolling activities in India in his work – *Practice of Patent Asserting Entities: Boon or Bane Global Innovations*²⁹ gives a meticulous analysis suggesting that the provisions of the Indian

²⁸ RAYMOND BAI, PATENT LAWS: ADVANCING INNOVATION FOR THE PUBLIC OR INFLATING PRIVATE PROFITS?, (2015) 6:1 online: UWO J Leg Stud 4.

²⁹ SITANSHU SINGH, *Practice of Patent Asserting Entities: Boon or Bane: Global Innovations*, , 6IIPRD Blog - Intellectual Property Discussions. (2014). (April 7, 2023, 10:04 AM),

Patent Act have a positive and statistically significant effect on restraintment of patent trolling practices. As per the author in India, patent trolling does not pose any major threat in view of the amendments to the laws which fairly controls the patent troll activity in India.³⁰

It should be noted that the defendant's attempt to divert attention from the primary issues at hand only serves to further undermine the integrity of the legal system and hinder progress towards a more just and equitable society.

3. THAT THE REQUIREMENT OF SUFFICIENT DISCLOSURE IS ALREADY MET BY THE GRANT OF PATENT

47. Section 10(4) of the patent act 1970 states that very complete specification shall,

(a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;

(b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and

(c) end with a claim or claims defining the scope of the invention for which protection is claimed;

48. In para 12 of the moot proposition the plaintiff has clearly fulfilled the (a), (b), (c)

49. Failing to meet the requisites of the sufficiency of disclosure in a patent application may lead to the refusal of the application during the examination, opposition (Section 25)

50. Section 25(1)(g) of the Patents Act: Any person to file a pre-grant opposition against a pending patent application on the ground that “*the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed.*”

51. In the matter of the Indian Patent Application No.396/DEL/1996 filed by Gilead Science Inc.,³¹ lead controller K.S. Kardam passed an order dated March 23, 2009, to refuse the application based on the pre-grant opposition filed by Cipla Limited. One of the grounds of refusal was insufficient disclosure. The controller stated:

<https://iiprd.wordpress.com/2014/10/20/practice-of-patent-asserting-entities-boon-or-bane-global-innovations/>

³⁰ *Ibid*

³¹ The Indian Patent Application No.396/DEL/1996

“In order to satisfy the requirement of sufficiency of disclosure, the applicant for patent is under public duty to satisfy at least following three conditions, namely:

- 1. The complete specification must describe an embodiment of the invention claimed in each of the claims,*
- 2. The description must be sufficient to enable those in the industry concerned to carry it into effect without making further invention or experiments and*
- 3. The description must be fair, i.e., it must not be unnecessarily difficult to follow.”*

52. Since the sufficient disclosure of the invention to the public through the specification is the basis of the patent grant, the controller [being the custodian of the public rights] has to consider the rights of the public so that the public can exploit the invention commercially [without doing further experiments] after the expiry of the term of patent. Therefore, the controller has to ensure that the description and claims provided in the specification are clear and succinct but not ambiguous to be understood by the ordinary skilled person.³²

53. This proves that in our case, after a thorough evaluation of the evidence presented by the plaintiff, it has been determined by the controller that the sufficiency of disclosure requirement has been satisfactorily met, and as a result, the patent has been granted to the plaintiff by the controller.

54. In the case of *Press Metal Corporation Limited v. Noshir Sorabji Pochkhanawalla*³³, it was held that: *“It is the duty of a patentee to state clearly and distinctly the nature and limits of what he claims. If the language used by the patentee is obscure and ambiguous, no patent can be granted and it is immaterial whether the obscurity in the language is due to design or carelessness or want of skill. It is undoubtedly true that the language used in describing an invention would depend upon the class of persons versed in the art and who intend to act upon the specification. In the present case as already stated above, the invention is described in an*

³² *Ibid*

³³ *Press Metal Corporation Limited v. Noshir Sorabji Pochkhanawalla*, AIR 1983 Bom 144

obscure and ambiguous language, and on the ground also the patent is liable to be refused under Section 25(1)(g).”

55. The grant of patent to the plaintiff clearly proves that the invention as described in the patent is not shrouded in obscure and ambiguous language, and the patentee has explicitly and unambiguously outlined the nature and limitations of what she claims.

56. Section 25(2)(g) of the Patents Act says: “*Any person interested to file a post-grant opposition against a granted patent (within one year of the date of grant) on the ground that ‘the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed.’*” No post grant opposition was filed by the defendant or any third party, specifically on the ground of insufficient disclosure or any other ground.

57. Along with being a valid ground for opposition, the insufficiency of disclosure is also a ground for objection by the examiner in the first examination report (FER). Most importantly, apart from the three prerequisites of patentability such as novelty, inventive step and capability of industrial applicability, the patent applications, however, may also be refused solely based on the grounds of insufficiency of disclosure. But here the plaintiff was granted a patent by the controller(custodian of public rights)³⁴

58. This proves that the scope of the inventions is covered broadly, disclosing the best mode of performing the invention in the specification at the time of filing the application since no new matter or additional information is allowed to be added at a later stage after filing the complete specification. The specification discloses at least one example in the description to explain the functional aspects of the invention. With regards to the claims, the patent claim or claims defining the scope of the invention for which protection is sought lays out the subject matter with proper support in the description that the inventor regards as the invention.

³⁴ The Indian Patent Application No.396/DEL/1996

PRAYER FOR RELIEF

WHEREFORE, in light of the issues raised, arguments advanced and authorities cited it is most humbly and respectfully requested that this Honourable Court may be pleased to adjudge and declare that:

(I) THAT THE PLAINTIFF'S PATENT RIGHTS HAVE BEEN INFRINGED AND THE PATENT SO GRANTED SHOULD NOT BE REVOKED ON ANY GROUNDS MENTIONED BY THE DEFENDANT.

(II) THAT THE PLAINTIFF MUST BE AWARDED WITH A PERMANENT INJUNCTION AGAINST THE DEFENDANT IN TERMS OF FURTHER SALE OR MARKETING OF THE PATENTED PRODUCT

(III) THAT THE DEFENDANT MAY BE HELD LIABLE FOR THE PAYMENT OF DAMAGES CAUSED TO THE PLAINTIFF AND COMPENSATE HIM FOR ANY LOSS CAUSED TO HIM DURING THE PENDENCY OF THE SUIT

And further pass any order as it may deem fit in equity, justice and good conscience.

For this the act of kindness, the Counsels as in duty bound, shall forever pay.

All of which is most humbly prayed

Counsels on behalf of the Respondents