

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 DEFENDANT

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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 Defendant, in the instant matter, hereby, most humbly and respectfully submits to the jurisdiction of the Hon'ble High Court of Hiled invoked 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 OR NOT THE PATENT IS VALID?

It is humbly submitted before the Hon'ble High Court of Hiled that the Patent No: 23x4281 granted on 3rd January, 2023 should be revoked because the invention for which the patent has been granted lacks novelty and utility. Furthermore, mere grant of the patent does not warrant its validity as has been stated under Section 13(4) of the IPA, 1970. The freshly granted patent must be revoked since the same falls within the ambit of the Section 3(f) of the Act. Hence, the claim is a vexatious one wherein the Plaintiff, a patent troll, is seeking to earn bucks out of the frivolous litigation.

ISSUE-II: WHETHER THE PATENT RIGHTS OF THE PLAINTIFF HAVE BEEN INFRINGED?

It is humbly submitted before the Hon'ble HC of Hiled that the patent rights of the plaintiff have not been infringed since the since the validity of the patent is questionable and the same is sought to be revoked. Such grounds for revocation serve as good defences in a suit for infringement. Furthermore, the plaintiff's claim is a vexatious one. This is because, she is a patent troll, lacks requisite credentials, there's an insufficiency of disclosure in her impugned patent, and, the suit was instituted as soon as the patent was granted.

ARGUMENTS ADVANCED

ISSUE-I: WHETHER OR NOT THE PATENT IS VALID?

(¶1.) It is humbly submitted before the Hon'ble High Court of Hiled that the Patent No: 23x4281 granted on 3rd January, 2023³ should be revoked because, *firstly*, it does not fall within the definition of 'Invention' u/s 2(1)(j) of the Indian Patents Act, 1970 (hereinafter referred to as 'the Act'), *secondly*, the product is not patentable, *thirdly*, mere grant of the patent does not presume its validity and, *lastly*, lack of patentability is a ground for revocation of a granted patent.

1.1 That the claimed invention does not fall within the definition of 'invention'

(¶2.) As per §2(1)(j) of the Act, which defines an 'invention',

"(j) "invention" means a new product or process involving an inventive step⁴ and capable of industrial application⁵;"

Invention is to find or discover something not found or discovered by anyone before and it is not necessary that invention should be something complicated.⁶ Mere simplicity is not necessarily an objection to the subject matter of an invention, though matters of ordinary skilled designing or mere workshop improvements are not inventions⁷. An interpretation that follows from the above stated provision is that "invention" entails three important characteristics for any claimed product/process to qualify as an invention under the Act viz. 'novelty,' 'inventive step' and 'capability of industrial application'.

1.1.1 That the claimed invention lacks novelty

(¶3.) 'Novelty' refers to the requirement that an invention must be new and not previously disclosed or made available to the public before the date of the patent application⁸. The subject matter disclosed prior to the filing of patent application will destroy the novelty of the invention. To constitute a prior disclosure of a patent, the matter relied upon as prior art must

³ Moot Proposition, ¶4.

⁴ Patents Act, 1970, §2(1)(ja), No. 39, Acts of Parliament, 1970 (India).

⁵ Patents Act, 1970, §2(1)(ac), No. 39, Acts of Parliament, 1970 (India).

⁶ Raj Parkash v. Mangat Ram Chaudhary, AIR 1978 Del 1.

⁷ Gillette Industries Ltd. v. Yeshwant Bros., AIR 1938 Bom 347.

⁸ Patents Act, 1970, §§29-34, No. 39, Acts of Parliament, 1970 (India).

disclose subject matter which, if performed, would necessarily result in infringement of the patent.⁹

(¶4.) “If the prior inventor's publication contains a clear description of to do or make, something that would infringe the patentee's claim if carried out after the grant of the patentee's patent, the patentee's claim will have been shown to lack the necessary novelty, that is to say, it will have been anticipated.”¹⁰ It is not necessary for the prior art to be equal in practical utility or to disclose the same invention in all respects as the patent in suit¹¹. Novelty is destroyed by prior use of a product if analysis of the product using available techniques shows the skilled person that it falls within the scope of the claims¹².

(¶5.) Whether an alleged invention involves novelty and an inventive step, is a mixed question of law and fact, depending largely on the circumstances of the case. Although no absolute criteria that is informally applicable in all circumstances can be devised, certain broad criteria can be indicated. Whether the manner of manufacture patented was publicly known, used and practised in the country before or at the date of the patent? If the answer to the question is ‘Yes’, it will negative novelty or ‘subject matter’¹³. In the instant matter, the defendant has been selling such product from a long time¹⁴, which works at negating the novelty.

(¶6.) Prior public knowledge of the alleged invention which would disqualify the grant of patent can be by word of mouth or by publication through books or other media.¹⁵ If the public once become possessed of an invention, by any means whatsoever, no subsequent patent for it can be granted either to the true or first inventor himself or any other person, for the public cannot be deprived of the right to use the invention... the public already possessing everything that he could give¹⁶.

(¶7.) The use of an invention for purposes of trade, whether by the inventor himself or by others, may constitute public user of the invention. Public sale of articles is strong evidence

⁹ Chakroun, N., ‘*Vagueness of Patent Claim Language, Claim Construction and Patent Infringement – What a Mess!*’, J. OF EUROPEAN & INT’L IP LAW 1097 (2020).

¹⁰ General Tire & Rubber Company v. Firestone Tyre & Rubber Company Limited, (1972) RPC 457; Monsanto Co. v. Coramandal Indag Products (P) Ltd, 1986 SCR (1) 120.

¹¹ Glaverbel SA v. British Coal Corporation, (1995) RPC 255.

¹² Packard Instrument B.V. v. FISOONS plc, T 0952/92.

¹³ Bilcare Limited v. Amartara (P) Ltd., (2007) 2 MIPR 42.

¹⁴ Moot Proposition, ¶2.

¹⁵ Marco, A.C., Sarnoff, J.D. and deGrazia, C.A.W., ‘*Patent Claims and Patent Scope*’, 48 RES. POL. 103790 (2019).

¹⁶ Bilcare Limited v. Amartara (P) Ltd., (2007) 2 MIPR 42.

that the user is commercial and not experimental. But to constitute evidence of public user, the sale must be open and in the ordinary way of business¹⁷. In the instant matter, the defendant has been selling tyres with a sensor to collect data and a puncture proof tyre material from 2017.¹⁸ Also, the product is being sold in India since January 2021¹⁹.

(¶8.) Moreover, mere arrangement or rearrangement or duplication of known devices²⁰ does not grant novelty to a product²¹. In the instant matter, the claimed invention is a mere hopscotch of the various long existing products²²; the products which have already been patented²³ and undisputedly fall within the ambit of prior art.

1.1.2 That the claimed invention does not involve an inventive step

(¶9.) After establishing the novelty, an invention is assessed for inventive step²⁴. The invention is not considered to involve an inventive step, if it is obvious to a person skilled in the art on the date of priority.²⁵ Mere collection of more than one integer or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent²⁶.

(¶10.) To judge the inventive step, the question to be answered is— “Would a person with ordinary skills in the art have thought of the alleged invention?” If the answer is No, then the invention is non-obvious. The question, “Is there an inventive step?” arises only if there is novelty in the invention²⁷. It has already been established above that the invention lacks novelty, therefore, the question as to the involvement of an inventive step does not arise. Certain it is that the invention does not involve an inventive step on account of lack of novelty.

(¶11.) It is an undisputed fact that the invention is a ‘combination invention’ and the structure of the claim follows the Jepson-type. However, when the invention is just an automatic or obvious extension of Prior Art, the invention lacks inventive step. The fact that an individual feature or a number of features were known from prior art does not conclusively show the

¹⁷ Lallubhai Chakubhai v. Chimanlal Chunilal & Co., AIR 1936 Bom 99; Monsanto Co. v. Coromandel Indag Products (P) Ltd., 1986 SCR (1) 120.

¹⁸ Moot Proposition, ¶2.

¹⁹ Moot Proposition, ¶2.

²⁰ Patents Act, 1970, §3(f), No. 39, Acts of Parliament, 1970 (India).

²¹ Staridipack Private Limited v. Oswal Trading Co. Ltd., (1999) 19 PTC 479.

²² Moot Proposition, ¶13.

²³ Moot Proposition, ¶7.

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

²⁵ F. Hoffmann-La Roche Ltd. & Anr v. Cipla Ltd., (2008) 37 PTC 71 (Del).

²⁶ M/s. Bishwanath Prasad Radhey Shyam v. M/s. Hindustan Metal Industries, AIR 1982 SC 1444.

²⁷ Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries, AIR 1982 SC 1444.

obviousness of a combination (T 37/85, T 666/93, T 1018/96); but whether the state of the art would lead a skilled person to this particular overall combination of possibly already known features. In such a case, it would be impossible for a combination consisting exclusively of known individual features to involve an inventive step (T 388/89, T 717/90, T 869/96).

(¶12.) If in fact the step taken was an obvious step, it remains an obvious step however astonishing the result of taking it may be. An added benefit, however great, will not find a valid patent if the claimed innovation is obvious²⁸. In the instant case, the claimed invention²⁹ is not just a prior art but also an invention that is *very* obvious to the POSA.

(¶13.) Therefore, “the selection of particular ingredients from already known prior art cannot amount to establish the inventive step and the variations appear merely workshop improvements achieved by a person skilled in the art without performing any substantial experiments and cannot be said to be technical advancement of an existing knowledge which is required by the definition of the "inventive step" as mentioned in section 2(l)(ja) of the Patents Act, 2005”³⁰ (No. IN/PCT/2002/00020/DEL, U/S 25(1); Patent No. 183455 (203/BOM/1997); ABT Hardware Ltd.'s Application (BL O/36/87)).

1.1.3 That the claimed invention is not capable of industrial application

(¶14.) The third criteria of patentability is that the invention should be capable of industrial application³¹. For industrial applicability, it is necessary that the claim language be such that there is necessary disclosure and that an ordinary person be able to replicate the said invention³². The instant invention suffers from insufficiency of disclosure³³ and, therefore, is not capable of being worked out industrially.

1.2 That the claimed invention is not patentable

(¶15.) As has been discussed above, the claimed invention does not fulfil the patentability criteria and is, therefore, sought to be revoked on the grounds of lack of novelty, non-

²⁸ Union Carbide Corporation (Hostettler's) Application, (1972) RPC 601; Hallen Co. v. Brabantia (UK) Ltd, (1991) RPC 195; Rickett & Colman of India Ltd. v. Godrej Hi Care Ltd., (2001) PTC 637.

²⁹ Moot Proposition, ¶12.

³⁰ Monsanto Company v. Coramandal Indag Products (P) Ltd., AIR 1986 712; Franz Zaver Huemer v. New Yesh Engineers, (1996) 16 PTC 164; Surendra Lai Mahendra v. Jain Glazers (1981) PTC 112 Del.

³¹ Patents Act, 1970, §2(1)(ac), No. 39, Acts of Parliament, 1970 (India).

³² Eastman Kodak Co. v. American Photo Booths Inc., (1927) 273 US 359.

³³ Moot Proposition, ¶13.

obviousness and incapability as to industrial application. Furthermore, there are certain inventions laid down in Chapter II that are termed as 'Not-Patentable'. The impugned invention falls within the ambit of the section.

(¶16.) §3(f), *verbatim*, states;

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

A mere juxtaposition of known devices in which each device functions independently is not patentable. It is accepted as sound law that merely side-by-side placement of old integers so that each performs its own function independently of the others is not a patentable combination³⁴.

(¶17.) A mere juxtaposition of features, already known before the priority date, which have been chosen arbitrarily from amongst a number of a different combinations, which could be chosen, is not a patentable invention. Further, when two or more features of an apparatus or device are known, and they are juxtaposed without any inter dependence on their functioning of the apparatus or device, they should be held to have been already known³⁵.

(¶18.) Moreover, the plaintiff cannot claim to be an inventor of the patent device as the device is already being used in machines for years in several countries including India³⁶, the defendant has set out details of the machines already being manufactured leading to an inference that there was nothing new in the plaintiff's device. Arrangement or rearrangement of the already known device does not amount to an invention. Therefore, a sufficient ground exists for revocation of the plaintiff's patent³⁷.

(¶19.) In the instant matter, the claimed invention is nothing but a mere rearrangement of the already existing products³⁸; the products which have been in public use before the priority date³⁹, and therefore, there exists a sufficient ground for the revocation of the granted patent.

1.3 That lack of patentability is a ground for revocation of a granted patent

³⁴ British Celanese Ltd. v. Courtaulds Ltd, (1935) 52 RFC 171.

³⁵ Rampratap v. Bhabha Atomic Research Center, (1976) IPLR 28.

³⁶ Moot Proposition, ¶2.

³⁷ Franz Zaver Huemer v. New Yesh Engineers, (1996) 16 PTC 164.

³⁸ Moot Proposition, ¶13.

³⁹ Moot Proposition, ¶7.

(¶20.) §64⁴⁰ of Chapter XII of the Act deals with the revocation of patents. The aforementioned § along with certain relevant clauses is stated hereunder, *verbatim*:

“64. Revocation of patents— (1) *Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may, be revoked on a petition of any person interested or of the Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court on any of the following grounds, that is to say—*

(a) *that the invention, so far as 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;*

(d) *that the subject of any claim of the complete specification is not an invention within the meaning of this Act;*

(e) *that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the, documents referred to in § 13;*

(f) *that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim.”*

(¶21.) It is humbly submitted that, in the instant matter, as has already been established, the claim of the complete specification is not an ‘invention’ within the meaning of the Act. Furthermore, the ‘claimed invention’ lacks novelty, non-obviousness, capability as to industrial application and is an ‘already patented’ product. All of these are grounds for revocation of a granted patent. Thereby, considering the undisputed applicability of the aforementioned sections to the instant matter, the patent granted to the Plaintiffs by the IPO on January 3, 2023⁴¹ must be revoked.

1.4 That mere grant of the patent raises no presumption of the validity of the patent

(¶22.) §13(4)⁴² of the Patents Act of 1970, expressly, provides that a grant of a patent “shall not

⁴⁰ Patents Act, 1970, §64, No. 39, Acts of Parliament, 1970 (India).

⁴¹ Moot Proposition, ¶4.

⁴² Patents Act, 1970, §13(4), No. 39, Acts of Parliament, 1970 (India).

be deemed in any way to warrant the validity of any patent”. The court opined, ‘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’⁴³. Such distinct feature in regard to the presumption of the validity of a patent creates a need for “proving something more” than mere production of a certificate of a grant of patent to establish a *prima facie* case⁴⁴.

(¶23.) §13(4) of the Act gives an explicit mention of the above.

“13. Search for anticipation by previous publication and by prior claim.

(4) The examination and investigations required under § 12 and this § shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.”

(¶24.) Taking into consideration of § 13(4) of the Indian Patent Act, 1970, that denounces the presumption of validity of a patent merely by the grant and also considering the efficiency of the IPO, only the grant of patent by IPO may not be the sole satisfying factor towards the fulfilment of required criteria of the establishment of *prima facie* case by the plaintiff. Certain other requirements have to be fulfilled by the plaintiff such as to satisfy the court that the plaintiff has a higher probability to succeed.

(¶25.) It is to be understood in the backdrop of the circumstance in which courts have been relying upon such presumption for satisfaction of *prima facie* requirement in a patent infringement suit. It is also stated herein that for the grant of relief prayed for by the Plaintiff, she’ll have to prove the triple test⁴⁵;

⁴³Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries, AIR 1982 SC 1444; F. Hoffmann-La Roche Ltd. and Anr. v. Cipla Limited, (1924) 41 RPC 149 (UK); Bilcare v. Amartara Pvt. Ltd., (2007) 34 PTC 419 (Del); Nawab Mir Barkat Ali Khan v. Nawab Zulfiqar Jah Bahadur, AIR 1975 AP 187; Preston v. Luck (1884) 27 ChD 497; Dalpat Kumar and Anr. v. Prahlad Singh And Ors., AIR 1993 SC 276; Prakash Singh v. State of Haryana (2002) 4 Civil L.J. 71; Shri Kashi Math Samsthan v. Srimad Sudhindra Tirtha Swami, AIR 2010 SC 296; United Commercial Bank v. Bank of India, (1981) 3 SCR 300; S. Ram Kumar v. Union of India, (1985) 2 SCC 648; Seema Arshad Zaheer and Ors. v. Municipal Corpn. of Greater Mumbai and others, (2006) 5 SCC 282; M/S Best Sellers Retail(I) Pvt. Ltd v. M/S Aditya Birla Nuvo Ltd.& Ors, (2012) 6 SCC 792. See Shamnad Basheer, *Patent Oppositions in India: The "Efficacy" of Section 3(d)*, SPICY IP (Apr. 3, 2023, 9:29 PM), <https://spicyip.com/2009/09/patent-oppositions-in-india-efficacy-of.html>.

⁴⁴ Bayer Corporation v. Union of India, (2009) SCC Online Bom 250; Merck Sharp & Dohme Corp. v. Glenmark Pharmaceuticals Ltd., (2015) SCC Online Bom 5626; Press Metal Corporation Limited v. Noshir Sorabji Pochkhanawalla (1982) PTC 259 (Bom).

⁴⁵American Cyanamid Co v. Ethicon Ltd (1975) 1 All. ER 504 (UK).

- (1) A prima facie case of infringement
- (2) Balance of convenience in its favour, and
- (3) Irreparable hardship or loss that may follow if injunction is not granted.

(¶26.) In the instant matter, the Plaintiff has clearly failed to establish a *prima facie* case for infringement and thereby, the infringement proceedings mustn't succeed. Moreover, the granted patent shall be revoked on the basis of grounds listed above and such grant shall not stand as a hurdle for revocation since the Act clearly lays down that 'mere grant of a patent does not warrant its validity'.

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

(¶27.) It is humbly submitted before the Hon'ble High Court of Hiled that the patent rights of the plaintiff have not been infringed since the validity of the patent is questionable and the same is sought to be revoked. Such grounds for revocation serve as good defences in a suit for infringement. Furthermore, the plaintiff's claim is a vexatious one.

2.1. That the grounds for revocation serve as good defences in a suit for infringement

(¶28.) Under the Indian Patents Act, 1970 (hereinafter referred to as 'the Act'), an invention can be patented only if it meets the criteria of novelty, non-obviousness and practical utility⁴⁶. The impugned patent is sought to be revoked since it doesn't qualify as an 'invention', in the first place. Chapter II of the Act gives an explicit mention of the 'Inventions that are not Patentable' and it is the contention of the Defendant that the claimed invention falls within the ambit of this chapter.

(¶29.) It shall be pertinent to refer to §3 (f)⁴⁷ of the Act with regard to the instant suit. §3(f) precludes those inventions from getting patented which define a mere arrangement or rearrangement or duplication of known devices each functioning independently of one another. It states that mere juxtaposition of features, already known before the priority date, which have been selected arbitrarily from amongst the number of different combinations, is not a patentable

⁴⁶ 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).

⁴⁷ Patents Act, 1970, §3(f), No. 39, Acts of Parliament, 1970 (India).

invention.⁴⁸ Mere collocation of more than one integer or things, which does not involve the exercise of any inventive faculty, does not qualify the grant of patent.⁴⁹

(¶30.) Furthermore, §64⁵⁰ of Chapter XII of the Act deals with the revocation of patents. §64 of the Act provides that a person interested⁵¹ can file a counter-claim in a suit for infringement of the Patent before the High Court, on any of the grounds mentioned in this section. It is submitted that the claimed invention apart from being what is already patented is also already in public use, which are grounds for revocation of a granted patent under section 64(1)(a)⁵², (e)⁵³ and (f)⁵⁴ of the Act. Moreover, since the subject of any claim of the complete specification is not an invention within the meaning of this Act, the impugned patent is revocable under §64(1)(d)⁵⁵ of the Act.

(¶31.) It is humbly submitted that, in the instant matter, as has already been established, the claim of the complete specification is not an ‘invention’ within the meaning of the Act. Furthermore, the ‘claimed invention’ lacks novelty, non-obviousness, capability as to industrial application and is an ‘already patented’ product. All of these are grounds for revocation of a granted patent. Thereby, considering the undisputed applicability of the aforementioned sections to the instant matter, the patent granted to the Plaintiffs by the IPO on January 3, 2023 must be revoked.

(¶32.) It is further submitted that these grounds for revocation serve as good defences in a suit for infringement. §107⁵⁶ of the Act states, (*verbatim*)

“107. Defences, etc., in suits for infringement—

(1) In any suit for infringement of a patent every ground on which it may be revoked under section 64 shall be available as a ground for defence.”

Thereby, §64 is argued in defence, while also seeking the revocation of the impugned patent.

2.2. That the plaintiff’s claim is a vexatious one

⁴⁸ Ram Pratap v Bhabha Atomic Research Centre (1976) IPLR 28.

⁴⁹ Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries, AIR 1982 SC 1444; British Celanese Ltd. V Courtaulds Ltd (1935) 52 RFC 171.

⁵⁰ Patents Act, 1970, §64, No. 39, Acts of Parliament, 1970 (India).

⁵¹ Harmer, R., ‘*Construing Patent Claims In Light of the Specification Versus Importing Claim Limitations from the Specification: Is There Any Difference?*’, 4 AKRON IP J. (2010).

⁵² Patents Act, 1970, §64(1)(a), No. 39, Acts of Parliament, 1970 (India).

⁵³ Patents Act, 1970, §64(1)(e), No. 39, Acts of Parliament, 1970 (India).

⁵⁴ Patents Act, 1970, §64(1)(f), No. 39, Acts of Parliament, 1970 (India).

⁵⁵ Patents Act, 1970, §64(1)(d), No. 39, Acts of Parliament, 1970 (India).

⁵⁶ Patents Act, 1970, §107, No. 39, Acts of Parliament, 1970 (India).

(¶33.) It is submitted that the plaintiff's claim is vexatious because, *firstly*, she is a patent troll, *secondly*, she lacks requisite credentials, and, *thirdly*, there's an insufficiency of disclosure in her impugned patent.

2.2.1. That the plaintiff is a patent troll

(¶34.) Patent trolls may loosely be defined as entities that own and enforce patents without practising or making the underlying patented inventions.⁵⁷ Persons or companies involved in patent trolls⁵⁸ are opportunists, who buy or license patents with the sole intention of filing infringement suits, often with no intent of manufacturing or marketing the patented invention, but only to collect royalty or licensing fees.⁵⁹

(¶35.) It is submitted that requirements for domestic working of a patent are highlighted in §83⁶⁰ which upholds that patents are not granted merely to enable patentees to enjoy monopoly for the importation of the patented article. This means that patent laws are not tolerant of the basic objective of patent trolls to merely acquire patents without working them in the territory of India. Furthermore, §146(2)⁶¹ of the Act r/w Rule 131(1) of the Patent Rules, 2003 mandates every Patentee to submit a Statement of Working to the Controller of Patents in Form 27 every year after the grant of patent till the expiry of its 20-year term.

(¶36.) It is humbly submitted that the Plaintiff is a patent troll who acquires and enforces patents, but does not manufacture or sell any products or services herself with the sole purpose of suing other businesses for infringement and collecting licensing fees or damages⁶². The same can be known by the conduct of the plaintiff who does not commercialize any of her 200+ patents⁶³. The conduct of the Plaintiff shows that she never had any intention to manufacture or market the patented invention and their sole purpose seems to be to extort money through the present legal proceedings⁶⁴. This clearly points to the fact that the lawsuit is frivolous and has

⁵⁷ Edward Lee, Patent Trolls: Moral Panics, Motions in Limine, and Patent Reform, 19 Stan. Tech. L. Rev. 113, 149 (2015).

⁵⁸ Spice Mobile Ltd. v. Somasundar Ramkumar, ORA/17 of 2009/PT/CH & ORA/31 of 2009/PT/CH; Aditi Manufacturing Co. v. Bharat Bhogilal Patel, M.P.Nos. 41 & 42 of 2012 in TRA/05 of 2008/PT/MUM & TRA/06 of 2008/PT/MUM & TRA/05 of 2008/PT/MUM & TRA/06 of 2008/PT/MUM.

⁵⁹ John M. Golden, Patent Trolls and Patent Remedies, 85 Tex. L. Rev. 2111, 2162 (2007).

⁶⁰ Patents Act, 1970, §83, No. 39, Acts of Parliament, 1970 (India).

⁶¹ Patents Act, 1970, §146(2), No. 39, Acts of Parliament, 1970 (India).

⁶² Moot Proposition, ¶8.

⁶³ Moot Proposition, ¶4.

⁶⁴ Moot Proposition, ¶13.

been brought solely for the purpose of harassing or annoying the defendant, rather than to seek a legitimate resolution of a dispute or claim.

2.2.2. That the Plaintiff lacks requisite credentials

(¶37.) It is to be noted that an inventor is someone who has contributed to the conception and development of a new and non-obvious invention. In general, inventors are individuals who come up with new ideas, processes, or products that are novel, useful, and non-obvious. These individuals typically work in R&D or technical positions and are involved in the research, design, and development of new products and technologies.

(¶38.) On the other hand, individuals who work in marketing are typically involved in promoting and selling products that have already been developed. While marketing professionals may contribute to the success of a product or technology by developing marketing strategies and campaigns, they do not generally have a role in the actual invention or development of the product.

(¶39.) It is submitted that the Plaintiff was working from 2005 to 2022 in the marketing department of companies in various industries and not in the Research and Development department. She does not possess any technical knowledge or qualification to become an inventor, as she has not produced any document to show her skill or knowledge in the relevant field.⁶⁵

2.2.3. That there's an insufficiency of disclosure in the plaintiff's impugned patent

(¶40.) The requirement of 'sufficiency of disclosure' under the Act, 1970 has been statutorily laid down in §10⁶⁶ of the Act read with Rule 13 of the Indian Patent Rules 2003 under the head 'Content of specification'. Particularly, §10 (4) of the Act provides that any 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; (c) end with a claim or claims defining the scope of the invention for which protection is claimed; (d) be accompanied by an abstract to provide technical information on the invention.”

⁶⁵ Moot Proposition, ¶11.

⁶⁶ Patents Act, 1970, §10, No. 39, Acts of Parliament, 1970 (India).

(¶41.) The aforementioned requirements under §10 (4) of the Act clearly cover the features that should be met by any patent application to meet the sufficiency of disclosure i.e. the disclosure of the claimed subject matter has to be sufficient enough to enable a person skilled in the art to perform the invention.

(¶42.) The concept of sufficient disclosure has been explained in *Farbwerke Hoechst Aktiengesellschaft Vormals Meister Lucius v. Unichem Laboratories*⁶⁷, where the court stated Halsbury's two branches of sufficiency of description: “(i) the complete specification must describe "an embodiment" of the invention claimed in each of the claims and that the description must be sufficient to enable those in the industry concerned to carry it into effect “without their making further inventions”; and (ii) that the description must be fair, i.e. it must not be unnecessarily difficult to follow.”

(¶43.) The basic essence of patenting is to give full and complete disclosure to public so that the invention can be carried out based on the teachings of the specification and thereby give monopoly right in exchange of these.⁶⁸ The detailed description lacks clarity with regard to the features of the claimed invention and also about its various components and their functions, that is insufficient for a person skilled in the art to carry out the invention.

(¶44.) It is submitted that, in the instant case, there is insufficiency of disclosure in the Plaintiff's impugned patent, since there is no data or information provided regarding the connectors between the various parts, how the parts work in tandem to facilitate the working of the entire invention, etc. The entire patent specification describes a theoretical model of a device that is hopscotch of the various long existing products.⁶⁹ The patent claim is, thus, vexatious and the sale of the product by the Defendant, in no way, infringes on Plaintiff's patent rights.

⁶⁷ AHUJA, VK, LAW OF COPYRIGHT AND NEIGHBORING RIGHTS – NATIONAL AND INTERNATIONAL PERSPECTIVES 2 (Lexis Nexis).

⁶⁸ HOWE ET. AL., CONCEPTS OF PROPERTY IN INTELLECTUAL PROPERTY LAW 561-78 (Cambridge University Press, 2013).

⁶⁹ Moot Proposition, ¶13.

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 hold, adjudge and declare,

1. Invalidity of the plaintiff's patent.
2. Dismissal of the plaintiff's claim for infringement.
3. Eliminate the amount of damages that the plaintiff seeks to recover and award the costs of the suit in favour of the Defendant and against the Plaintiff.

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 Defendant