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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 28th May, 2014

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CS(OS) 3071/2011

NOKIA CORPORATION

.... Plaintiff

Through: Ms. Tusha Malhotra and Ms. Kirti
Balasubramanian, Advocates

versus

BHARAT BHOGILAL PATEL

..... Defendant

Through: None

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (Oral)

1. Plaintiff has filed the present suit for declaration of non infringement, restraining groundless threat of infringement proceedings and damage against the Defendant.
2. Summons were issued in the suit on 08.12.2011. Counsel for the Plaintiff submitted that this case is similar to the case of LG Electronics India Pvt Ltd Vs Bharat Bhogilal Patel & Ors, bearing CS(OS) No 2982/2011 in which order dated 30.11.2011 was passed. Also the operation of letter dated 29.09.2010 issued by Defendant was stayed. None appeared on behalf of the Defendant on various dates, consequently defendant was proceeded ex parte vide order dated 23.01.2014.
3. Plaintiffs have filed affidavit by way of evidence of Mr Varun Menon (PW-1), Director in legal department of plaintiff No. 2 and the consituted Attorney of plaintiff no. 1. Certified copy of the Letter of Delegation

dated April 10, 2013 and Power of Attorney issued in favor of PW1 have been exhibited as **Ex. PW-1/1** and **Ex. PW-1/2**, respectively.

4. PW1 has deposed that Plaintiff No.2 is a 99.99% subsidiary of Plaintiff No.1 and .01% subsidiary of Nokia Singapore. The Plaintiffs are one of the leading companies in the world dealing in, *inter alia*, mobile phones, manufacturing of mobile devices and their accessories and in converging internet and communication industries.
5. PW1 has further deposed that Plaintiffs have been employing the laser marking technology for making various parts of products (including but not limited to mobile phones) that are being imported into India or manufactured by the Plaintiffs. He has also deposed that the laser engraving process employed by the Plaintiffs for their products is a technology that has been available at least since the year 1957.
6. PW1 has also deposed that Plaintiff No. 1 has invested 20 billion Euros in Research and Development over the last five years and is the proprietor of 10,000 patent families worldwide and that the Plaintiff companies respect intellectual property rights of third parties and exercise due diligence to ensure that they do not violate the rights of third parties.
7. PW1 has next deposed that Defendant, Mr. Bharat Bhogilal Patel, who is the proprietor of Patent Nos. 189027 and 188787 (hereinafter referred to as “suit patents”), issued a letter dated March 27, 2007 addressed to the Plaintiff No.1 wherein the Defendant issued a groundless threat, claiming that the Plaintiffs have been using his patented proprietary technology and invention. A copy of the letter dated March 27, 2007 has been exhibited as **Ex. PW 1/6**.
8. Mr. Varun Menon, PW1 has further deposed that the parent company of the Plaintiffs, Nokia Inc. through its letter dated April 10, 2007, in response to the Defendant's letter dated March 27. 2007, requested the

Defendant to provide copies of the suit patents, as well as their respective claim charts that set forth the Defendant's position regarding the relation of his patents to Nokia's products. He has also deposed that the Plaintiffs have till date not received any response and/or clarification from the Defendant, as requested. The office copy of the letter dated April 10, 2007 addressed to Defendant has been exhibited as **Ex. PW 1/7**.

9. PW1 has also deposed that the Defendant had further sought registration of the suit patents under the Customs Notification no. 47/2007 and that the Unique Permanent Registration numbers that were issued to the Defendant's patents on February 20, 2010, in pursuance of his applications, are A0211NBBOM4PR and A02421NBOM4PR. It has also been deposed that the Defendant made representations to the Assistant Commissioner of Customs on March 11, 2010 and May 5, 2010 in order to request the Customs department to enforce the registrations against various importers including the Plaintiffs. Copies of the aforesaid representations have been filed by the plaintiffs in the present proceedings.
10. Further, being aggrieved that no action was taken on the registrations granted, the Defendant filed a writ petition before the High Court of Bombay against the Commissioner of Customs (Exports and Imports) and others, i.e. WP No. 1353 of 2010. A copy of the writ petition has been exhibited as **Ex. PW 1/8(colly)**. As per order dated August 3, 2010 passed by the Hon'ble High Court of Judicature of Bombay, the Customs representative offered to grant a hearing to the Defendant as requested in the writ petition. Accordingly, the writ petition was dismissed as withdrawn. Said order has been exhibited as **Ex. PW 1/9**. It has also been deposed that Mr. B.B. Langde, Deputy Commissioner of Customs made

the following statements in his affidavit filed in the abovesaid writ petition:

- Engraving by laser beam is a known technology and available prior to invention of Mr. Bharat Bhogilal Patel.
- No evidence of infringement provided by Mr. Bharat Bhogilal Patel and has not discharged his burden of proof.
- No local manufacture of the suit patents.
- Mr. Bharat Bhogilal Patel seeking every opportunity to harass importers.
- Importers conducting their business for several years and therefore, balance of convenience lies in their favour.

11. PW1 has next deposed that the Defendant herein filed a Criminal complaint against the employees of Plaintiff No.2 before the Additional Chief Metropolitan Magistrate Court, Andheri, Mumbai for infringement of copyrights. Thereafter, on November 23, 2010, the Metropolitan Magistrate directed the police to register the Defendant's FIR and to investigate the same. It has also been deposed that the Defendant is harassing the Plaintiffs through these frivolous actions. A copy of the criminal complaint along with the order has been exhibited as **Ex. PW 1/10 (colly)**.
12. PW1, Mr. Varun Menon, has also deposed that subsequent to the order of the Hon'ble High Court of Bombay, the Office of Commissioner of Customs initiated proceedings bearing no. F. No. SIIB/GEN-42/2011 ACC (1) and have issued notice dated December 1, 2010 to Plaintiff No. 2. A copy of the said notice has been exhibited as **Ex. PW 1/11**. It has

also been deposed that plaintiffs presented their argument before customs authority in the form of written submissions through letter dated November 14, 2011 and same has been exhibited as **Ex. PW 1/16 (colly)**. Plaintiff also made representation before customs office for supply of complete set of documents submitted by defendant. Same has been exhibited as **Ex. PW 1/17**. At the hearings before the Customs authority, the Plaintiffs gave detailed explanations of the laser engraving process used by the Plaintiffs on the product imported and manufactured by them in order to show that these processes do not in any manner, infringe the Defendant's patent number 189027. He has also deposed that the Defendant has utterly failed to make any substantial arguments on merits to prove infringement of either of his patents and has repeatedly prayed for the suspension of the Plaintiffs' consignments.

13. PW1 has also deposed that the Defendant made representations to the Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion on various occasions. In response to the aforesaid representation, the Government of India, vide letter dated November 18, 2010, has clarified that Defendant's intellectual property rights may be enforced by pursuing remedies available under the relevant legislations by way of suits for enforcement or relief. A copy of the aforesaid response has been exhibited as **Ex. PW 1/18**.
14. PW1 has further deposed that Clause 4 of Circular 41/2007 dated October 29, 2007 issued by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India clearly stipulates that the Customs ought to exercise extreme caution at the time of determination of infringement of patent rights and recognizes that it will be difficult for the Customs authorities to determine infringement of patent rights unless the same has already been determined by a judicial

pronouncement and the Customs have to only implement such pronouncement. A copy of the said circular has been exhibited as **Ex. PW 1/19.**

15. Mr. Varun Menon, PW1 has also deposed that the Defendant is aware of Circular 41/2007 and the availability of remedies under the Patents, Trade Marks and Copyright Acts. However, despite the aforesaid, the Defendant has not filed any suit for infringement against the Plaintiffs for enforcement of the suit patents. It has also been deposed that this conduct of the Defendant is merely to harass various importers including the Plaintiffs and seeking to take advantage of the difficulties faced by the Customs authority in determining infringement of patent rights.
16. Further, M/s. LG Electronics India Private Limited agitated a lawsuit against the Defendant herein before the High Court of Delhi, namely, CS(OS) 2982 of 2011 for issuing groundless threats and making representations before the Customs Authority to detain consignments of goods being imported legally by the Plaintiff therein. He has also deposed that the Court *vide* order dated November 30, 2011 had held that in the absence of a formal finding by a court of law on the issue of infringement, the Customs authority cannot restrict clearance of the Plaintiffs' consignments on the basis of an alleged patent obtained or on the complaint made by the Patentee (Defendant herein) and further, Court also granted a stay of the operation of the complaint filed by the Defendant herein against LG Electronics before the Customs authority. A copy of the order dated November 30, 2011 has been exhibited as **Ex. PW-1/20.**
17. He has also deposed that a third party, namely, Aditi Manufacturing Company moved revocation petitions against Patent Nos. 189027 and 188787 before the Learned Intellectual Property Appellate Board

numbered as TRA/5&6/2008/PT/MUM and Ld. IPAB *vide* order dated June 12, 2012 revoked the aforesaid patents on the ground that they lacked novelty and any inventive step. The aforesaid order has been exhibited as **Ex. PW-1/21**.

18. PW1 has further deposed that the Defendant instituted two writ petitions before the High Court of Judicature of Madras, i.e. WP No. 18565 and 18566 of 2012 challenging the order of the Ld. IPAB dated June 12, 2012 revoking Patent Nos. 189027 and 188787. A copy of the writ petition has been exhibited as **Ex. PW-1/22**. The Hon'ble Court *vide* order dated November 19, 2012 ordered that the matter be listed after six (6) weeks and in the meantime, was pleased to stay the order of revocation of the suit patents passed by the IPAB. A certified copy of the aforesaid order has been exhibited as **Ex. PW-1/23**.
19. PW1 has next deposed that credible challenges to the validity of the Defendant's patents have been raised and petitions for the revocation of the suit patents have been filed by various companies such as Samsung, Hewlett Packard, Allflex Private Limited and Spinks India Private Limited. He has also deposed that the Intellectual Property Appellate Board (IPAB) was pleased to allow the revocation petitions instituted by Allflex Private Limited and Spinks India Private Limited, i.e., ORA/19&21/2010/PT/MUM and ORA/9&14/2011/PT/MUM *vide* order dated March 14, 2013 on two grounds, firstly, that the matter had been considered on an earlier occasion in TRA/5&6/2008/PT/MUM by the Ld. Board and validity of the subject patents were considered thoroughly and found to lack novelty and inventive step *vide* its order dated June 12, 2012. Secondly, that even though the High Court of Madras had stayed the IPAB's order dated June 12, 2012, the said stay was limited to a period of six (6) weeks which lapsed on December 31, 2012. The aforesaid order

dated March 14, 2013 has been exhibited as **Ex. PW-1/24** and the revocation petitions instituted by Samsung and Hewlett Packard were taken up for hearing by the Ld. Board on March 7, 2014 and was pleased to allow the same based on its aforesaid order dated March 14, 2013.

20. Plaintiffs have also filed affidavit by way of evidence of Juha Vienonen, (PW2), having 8 years of experience in the field of laser technology, working with Plaintiff No. 1 since 2002. Certified copy of the Letter of Delegation issued in favour of PW2 on behalf of Plaintiff No.1 and Plaintiff No.2 has been exhibited as **Ex. PW-2/1** and **Ex. PW – 2/2**.
21. PW2 has deposed that the present suit pertains to the patents of the Defendant, namely, IN 189027 and 188787. Certified copies of the patent certificates granted to the Defendant have been as **Ex. PW–2/3** and **Ex. PW–2/4**, respectively. A copy of the relevant extract of the Official Gazette evidencing the publication of the aforesaid patents has been exhibited as **Ex. PW–2/5** and **Ex. PW–2/6**, respectively.
22. PW2 has also deposed that IN 189027 is entitled “A process of marking, etching and engraving through Laser technology” and describes a process of marking, etching and engraving through laser beam technology on metals and non – metals. Form 1, i.e., the complete specification as granted by the Patent Office has been exhibited as **Ex. PW–2/7**. It has also been deposed that the priority date claimed in the said IN189027 is September 21, 1998 and it was granted on August 14, 2003. IN 189027 consists of 1 independent claim and 2 dependent claims. It has further been deposed that Claim 1 of IN 189027 which is the independent claim, claims a three – step process. Claim 1 claims a process of manufacturing engraved design articles on metals and non – metals using laser beam technology consisting of a sequence of steps, namely:

- (a) Marking the required design on metal or non-metal;
- (b) Etching the outer and inner area of the design;
- (c) Engraving the etched area; and finally drilling the engraved area by means of laser beam through sequential command from a computer to obtain ornamented design.

It has also been deposed that to violate the IN 189027 patent of the Defendant, the alleged infringer must perform all the aforementioned steps.

- 23. PW2 has further deposed that IN188787 is entitled “*An Improved Laser Marking and Engraving Machine*” and it describes a laser marking and engraving machine comprising of a number of specific parts. Form 1, i.e., the complete specification as granted by the Patent Office has been exhibited as **Ex. PW-2/8**. The priority date of IN 188787 is September 21, 1998 while it was granted on October 24, 2003 and that IN 188787 consists 5 claims of which claim 1 is the sole independent claim and rest four are dependent on Claim 1.
- 24. PW2 has also deposed that claim 1 of IN188787 claims a laser marking and engraving machine consisting of the laser head comprising of head, mirror mount to mount the mirror, Q-switch to mount the Q-switch, aperture mount to regulate the aperture so as to vary the intensity of the laser beam, which is further provided with a beam bender for positioning the beam in a required direction which is supported in a rail and connected to a control panel provided with power supply, RF Driver, Heat Exchanger, Chiller to generate a laser beam of required intensity for marking/etching, engraving, scrubbing, cutting as per the required design programmable through a computer on metals and non-metals through beam steered galvo’s and flat field galvo’s/scanning heads.

25. PW2, Juha Vienonen, has next deposed that each of claimed steps in a process patent is essential to be performed by an alleged infringer to establish infringement. All the claimed steps of a process patent must be present in the process employed by the alleged infringer and further if the independent claim is not infringed then the claims dependent on such independent claim cannot be infringed.
26. Further, the Plaintiffs employ the laser engraving process for the manufacture of various products including mobile phones and that the Plaintiffs do not employ all the three steps as claimed in Claim 1 of IN189027 for the manufacture of any of its products as they do not perform the marking and etching processes. Therefore, the process employed by the Plaintiffs does not contain all the steps claimed by the Defendant in the aforesaid process patent.
27. PW2 has next deposed that the laser engraving process as employed for the Plaintiffs' product has been known at least since the year 1957 and that the process of manufacture employed by the Plaintiffs was known before the priority date of the invention in question and entirely falls within the scope of the prior art and therefore, cannot be considered to be an infringing process. Following documents further establish that the Laser engraving technology was known much prior to the Defendant's alleged invention:
 - a) Patent Document US 3636251 titled "LASER FACSIMILE SYSTEM FOR ENGRAVING PRINTING PLATES" which claims an apparatus for engraving using a Q – switched Nd:YAG LASER. This document was published on January 18, 1972, which is much prior to the Defendant's patent application. Same has been exhibited as **Ex. PW-2/9**.

- b) Patent document US 4970600 titled “Laser Assembly with X-Y Assembly with Cut Control” which claims a laser engraver for engraving a pattern on a work piece. This document was published on November 18, 1990 which is much prior to the Defendant’s application. Same has been exhibited as **Ex. PW–2/10**.
28. PW2 has also deposed that the Plaintiffs do not manufacture or use any laser marking machine as claimed in claim 1 of IN188787 and Plaintiffs do not possess any such machine within the territory of India. It has also been deposed that the Defendant has not adduced any evidence or documentation to prove infringement of his patents IN189027 and IN188787.
29. Juha Vienonen, PW2, has further deposed that the patents of the Defendant, namely, IN189027 and IN188787 are invalid and are liable to be revoked. It has also been deposed that following prior art references were not disclosed to the Patent Office by the Defendant:
- a. INSTAMARK: A Laser Engraver for Fast, Permanent Marking” dated October, 1979 and its technical brochure dated June, 1997. The above document has been exhibited as **Ex. PW – 2/11**.
 - b. Technical Literature of TRUMPF Gmbh + Co. dated November, 1997 consisting of the following patent documents. **Ex. PW – 2/12**
 - (i) US Patent No. US 4507789
 - (ii) US Patent No. US 5646765
 - (iii) US Patent No. US 5309273
 - (iv) US Patent No. US 5719372
 - (v) US Patent No. US 4769310

- (vi) US Patent No. US 4873414
- (vii) US Patent No. US 3931458
- (viii) WO patent 89/07302
- (ix) US Patent No. US 5373138
- (x) US Patent No. US 5168454

Aforesaid brochure by Trumpf dated November 1997 highlights the various elements of a normal laser machine namely, a laser head, a mirror mount, a Q switch, a beam bender, arrangements for power, a chilling arrangement and a galvo.

30. PW2 has also deposed that the Instamark brochure as stated hereinabove, wherein there is a drawing of a laser machine appearing and the said drawing has been slavishly copied/ imitated by the Defendant in both the patents i.e. IN 189027 and IN 188787. Instamark brochure which was in existence since October 1979 and the same was with the Defendant when he bodily lifted the drawing from the said brochure.
31. Further, the Defendant perpetrated a falsehood and committed three wrongs, namely:-
 - a. Bodily lifted the drawings from the Instamark brochure and reproduced it in his patent specification for Patent Nos. 188787 and 189027;
 - b. Made a claim that the said drawing is a machine invented by him at least 19 years after the said machine was in existence; and
 - c. Made statements on oath to the effect that he was the inventor of the said machine, which was clearly known at least 19 years prior to his claimed invention.
32. I have heard counsel for the plaintiffs and carefully perused the documents which have been placed on record along with the affidavits by way of evidence which have been filed. The evidence of plaintiffs have

gone un-rebutted and unchallenged. Plaintiffs have proved that the Defendant issued a groundless threat and did not substantiate the claim in the letter dated 29.09.2010 or in his pleading filed before the court.

33. In the case of *FDC Limited and Ors. Vs Sanjiv Khandelwal and Ors.*, reported at 2007(35) PTC 436 (Mad), following observations were made by the court with respect to the well settled law that onus of proving infringement lies on the patentee:

“24. As regards the burden of proof, a finding as to whether infringement has occurred or not in a case is a question of fact and the onus is on the party alleging infringement to adduce evidence of infringement. A mere allegation that infringement has occurred, without any cogent evidence or pleading in support thereof is not sufficient in law for a party to secure an injunction against another. It is not enough for a patent holder to merely allege that there has been infringement of his patent without any evidence of the said claim especially when the subject matter of the alleged infringement is a process which by its nature is invisible and hence cannot be compared side by side during juridical scrutiny to arrive at a conclusion as to the infringement.....”

34. Further, *Terrell on the Law of Patents, Sweet and Maxwell*, (17th Ed.), lays down that

“The onus of proving infringement lies in general on the claimant, as with any other cause of action. It is up to him to produce sufficient evidence to establish infringement on the balance of probabilities..... While the onus initially lies on the patentee to prove infringement, if he is able to make out a prima facie case that there has been, the onus may thereafter shift to the defendant to answer such case.”

35. Plaintiffs have been able to establish that the patentee failed to adduce any evidence, let alone cogent evidence, to prove the infringement of the process as claimed in IN 189027 in the said letter dated 29.09.2010. Further, patentee also failed to establish that plaintiff no. 2 is employing an identical process employing three steps sequentially as is claimed in claim 1 on IN 189027.
36. It is a settled law that each of the claimed steps in a process patent is essential to be performed by the alleged infringer before infringement can be established. The steps involved are not alternates to each other but they are cumulative i.e. all must be present in the process employed by the plaintiffs. This principle in Patent Law is referred to as “All Elements Rule”. Reliance is placed on *Chisum on the Law of Patents*, A treatise on the Law of Patentability, Validity and Infringement where it is laid down that:

“Claims in patents are typically drafted in the form of a preamble, transition and one or more elements. Each element constitutes a limitation or narrowing of the scope of the claim. It follows that a claim will not cover or ‘read on’ any device or process unless that device or process contains all elements of the claim...the rule in fact is a universal one of claim drafting and construction.”

37. In *Pennwalt Corporation Vs Durand-Wayland Inc.* reported at 833 F.2d 931 similar principle was laid down. It was observed by the United States Court of Appeals for The Federal Circuit as under:

“Every Supreme Court decision which has addressed the issue of infringement of a patent claim, beginning with *Prouty v. Draper*, U.S. (16 Pet.) 335, 10 L.Ed. 985 (1842) - and the precedent is voluminous - has held that where a part of the claimed invention, that is, a limitation of the claim, is

lacking in the accused device exactly or equivalently, there is no infringement.

38. Applying the above principle to the facts of the present case, Plaintiffs did not employ all the three steps as claimed in clam 1 of IN 189027, as the plaintiffs do not perform the marking and etching processes in manufacturing any of their products and therefore, as per the well settled “all element rule”, the process employed by the importer does not infringe IN 189027.
39. The plaintiffs have succeeded prima facie in showing that the process employed by the plaintiff i.e. laser engraving process have been known in the art for decades. Since the process employed by the plaintiffs was known before the priority date of the invention and entirely falls within the scope of the prior art, the same cannot be considered to be an infringing process.
40. In *Shri Ravi Raj Gupta v. Acme Glass Mosaic Industries* reported at 56 (1994) DLT 673 in para 14 it was observed by this court as under:

“14. The learned counsel for the defendant has placed reliance on the law laid down in *Gillette Safety Razor Co. Vs. Anglo-American Trading Co.*, 30 Rpc 465 which has come to be known as 'Gillette defense' in patent infringement cases. Terrell on the Law of Patents (1982 edition, at pages 170171) sums up the law of Gillette defense vide para 6.41 as under:-

6.41 "Infringement not novel" (Gillette defense)

Since no relief could be obtained in respect of an invalid patent, if the defendant could prove that the act complained of was merely what was disclosed in a publication which could be relied on against the validity of the patent, without any substantial of patentable variation having been made, he

had a good defense. This is the so-called Gillette defense arising out of the world of Lord Moulton in *Gillette Safety Razor Co. VS. Anglo American Trading Co.* where he said: "I am of the opinion that in this case the defendant's right to succeed can be established without an examination of the terms of the specification of the plaintiff's letters patent. I am aware that such a mode of deciding a patent case is unusual, but from the point of view of the public it is important that this method of viewing their fights should not be overlooked. In practical life it is often the only safeguard to the manufacturer. It is impossible for an ordinary member of the public to keep watch on all the numerous patents which are taken out and to ascertain the validity and scope of their claims. But he is entitled to feel secure if he knows that that which he is doing differs from that which has been done of old only in non-patentable variations such as the substitution of mechanical equivalents or changes of material, shape or size. The defense that 'the alleged infringement was not novel at the date of the plaintiff's letters patent,' is a good defense in law, and it would sometimes obviate the great length and expense of patent cases if the defendant could and would put forth his case in this form, and thus spare himself the trouble of demonstration on which horn of the well-known dilemma the plaintiff had impaled himself, in validity or non-infringement."

41. Further in *Shri Ravi Raj Gupta(supra)* at para 17, it was observed as under:

"In *Press Metal Corporation Ltd. vs Noshir Sorabji*, 1983 Bom 144, placing reliance on *Godd and Mason vs Mayor and C. of Manchester*, (1892) 9 RPC 516, it has been held :-

"a patent for the mere new use of a known contrivance, without any additional ingenuity in overcoming fresh difficulties is bad and cannot be supported. If the new use involves no ingenuity, but is in manner and purpose analogous to the old use, although not quite the same, there is no invention....."

42. In the case of *Biswanath Prasad Radhey Shyam Vs H.M Industries*, reported at 1982 SC 1444, it was observed by Supreme Court as under:

"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 improvement or the combination must produce a new result, or a new article or a better or cheaper article than before."

"The fact that the Controller has granted patent does not give rise to presumption in favor of the validity of the patent. 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. Now, in regard to IN 188787, plaintiffs have submitted that the claim 1 of the patent claim is a laser marking and engraving machine which plaintiffs do not manufacture or use. The scope of the said patent is merely the machine or apparatus and does not by any means include the process by which laser marking is conducted or the products of such process. The Plaintiffs do not possess any such machine within the territory of India and hence have not infringed patent IN 188787.
44. Further, as per circular 41/2007 dated October 29. 2007 issued by the Central Board of Excise and Customs, Department of Revenue. Ministry of Finance, Government of India, customs shall act as an implementing authority under the orders of the court and further it will be difficult for the customs authorities to determine infringement of patent rights unless the same has already been determined by a judicial pronouncement and the customs have to only implement such pronouncement.

45. In a similar case before this court, *LG Electronics India Pvt Ltd vs. Bharat Bhogilal Patel & Ors* reported at 2012(51)PTC513(Del), plaintiff therein filed a similar suit against the same defendant herein after receiving a cease and desist letter from the defendant. It was observed after a careful analysis by this court as under:

“97. It is already seen that the true import of the rules of 2007 is that the customs shall act as an implementing authority under the orders of the court, therefore if any proprietor or the right holder issues a notice to the custom officials and the custom officials act upon the same by causing restricting the imports of consignments of any party without the determination (prima facie or otherwise) of the factum of infringement of patent by the appropriated designated authority which is civil court under the governing law, then such notice by the right holder to the third party which is customs and the actions thereof by the customs either in the form of notice to that party or otherwise calling upon the party to explain its stand which no such position exists in law are all unnecessary illegal threats to that party.”

46. Court further confirmed the interim injunction holding that the action of the defendant (defendant herein) is a groundless threat. It was held as under:

“109. The plaintiff has thus made a prima facie case for the grant and confirmation of the injunction as the actions of the defendant no. 1 and defendant no. 2 are ground less threats in view of no such power exists under the law with customs to interdict the goods on the basis of infringement of patent under the rules framed in the present form except to the extent of performing the role of implementing authority. The balance of convenience also lies in favour of the plaintiff and against the defendants as the plaintiff's reputation shall be damaged and it shall be inconveniences if the defendants shall continue to indulge into such illegal acts without

approaching the civil court for proper adjudication. The irreparable loss shall also ensue to the plaintiff and not to the defendants.”

33. For the reasons stated above, the plaintiffs have made out a case of Declaration of Non Infringement restraining groundless threat of Infringement proceedings by Defendant. Accordingly, the order dated 28.05.2014 is confirmed and suit is decreed in favor of plaintiffs in terms of the prayers (a), (b) and (c) of para 36 of the plaint and against defendants and operation of the complaint dated 29.09.2010 filed by the Defendant is stayed as far as the plaintiff is concerned.
34. Decree sheet be drawn up accordingly.

(G.S.SISTANI)
JUDGE

MAY 28, 2014
dkb