Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT (L) NO. 822 OF 2015

AND

NOTICE OF MOTION (L) NO. 2174 OF 2015

Novartis AG & Anr. …Plaintiffs

Versus

Megafine Pharma Pvt. Ltd. …Defendants

Dr. Veerendra Tulzapurkar, Senior Advocate, *with Mr. Hemant Singh, Ms. Mamta Jha, Mr. Ashutosh Kane, Ms. Aditi Kulkarni & Ms. Janaki Bhide, i/b M/s. W.S. Kane & Co., for the Plaintiffs.*

Dr. Birendra Saraf, *with Mr. Nachiket V. Khaladkar, for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 10th September 2015

PC:-

1. By consent, the suit is called out and taken up for final disposal, with Dr Saraf for the Defendants waiving service. The following order is passed by consent in the suit itself:

(a) The Defendant has filed an Affidavit dated 22nd August 2015 and confirms and reiterates what is stated therein.

(b) The Defendant states that it has not and it undertakes that it shall not in future also either by itself or through its directors, licensees, franchisees, agents, distributors, dealers, stockists and all persons claiming through it, infringe the 1st Plaintiff's Indian Patent No. 212815 by launching, using, manufacturing, importing, exporting, selling, offering for sale either through website http://cobapharma.com or any other website or by any other means, directly or indirectly Active Pharmaceutical Ingredient (API), pharmaceutical products or formulation containing Vildagliptin alone or Vildagliptin in combination with any other compound or API or in any other form or in any other manner whatsoever. The said statement and undertakings are accepted.

(c) However, the Defendant is allowed to manufacture such quantities of "Vildagliptin", being the subject matter of the 1st Plaintiff's Indian Patent No. 212815 (hereinafter referred to as the "said drug") which are required solely for uses reasonably related to the development and submission of information required by the Defendant under Drugs and Cosmetics Act, 1940 (hereinafter referred to as the "said Act", or any other law in any country that regulates the manufacture, use, sale or import of the said drug. The Defendant agrees and undertakes to this Hon'ble Court that it shall maintain and keep accurate record of the said drug manufactured, used, sold or exported

by its solely for use for obtaining regulatory approvals and submission of information required under the respective legislations with copies of such documents evidencing such supply. In case the Defendant manufacturers and sells the said drug to a foreign party for uses required under law for the time being in force in such country, then and in that event it shall be a condition for such sale that the purchaser will use it for the aforesaid purpose only which will form the contact of sale. The Defendant further undertakes to supply information to the Plaintiff regarding the quantity so sold and the country where the goods are sold within 90 days of such sale.

2. It is clarified that this arrangement will continue during the subsistence of the Plaintiffs' patent. It is also clarified that this order is by consent in the peculiar circumstances of this case and shall not constitute a precedent in any other case, even between the same parties.

3. The Suit is disposed of in these terms with no order as to costs. Half the court fee is to be refunded in this view of the order. The Notice of Motion is also disposed of.

(G. S. PATEL, J.)