

\$~29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 376/2016 & IA No.4760/2016 (u/O 39 R-1&2 CPC)**
BAYER INTELLECTUAL PROPERTY GMBH Plaintiff
Through: Mr. Pravin Anand, Mr. Aditya Gupta
& Mr. Utkarsh Srivastava, Advs.
Versus
VIPRO LIFESCIENCE & ANR. Defendant
Through: Mr. Rahul Chitnis & Mr. Piyush
Kumar, Advs. for D-1&2.
Mr. Aseem Mehrotra, Adv. for D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.11.2016**

1. This order is in continuation of the earlier orders dated 11th August, 2016, 29th August, 2016, 27th September, 2016, 25th October, 2016 and 21st November, 2016.
2. In compliance of the aforesaid Mr. Girish Bhatt, Director of the respondent no.2 Vaishali Lifecare Pvt. Ltd. is present in the Court and his statement has been separately recorded.
3. The counsel for the plaintiff reiterates his statement, that the plaintiff would not press for any damages against the defendants if the defendants no.1&2 disclose the countries and the entities to whom the defendants no.1&2 have exported the drugs "VARDENAFIL" and "VARDENAFIL HYDROCHLORIDE".
4. The counsel for the defendants no.1&2 draws attention to para 36 of the plaint to contend that the plaintiff has not even given any particulars of its claim for damages against the defendants and the present suit is a *quia*

timet action and now that the defendants no.1&2 have given an undertaking and are willing to suffer a decree for permanent injunction as claimed, there is no basis for the plaintiff to demand from the defendants no.1&2 the particulars of the countries and entities to whom the defendants no.1&2 in the past exported the infringing drugs and the question of the plaintiff being entitled to continue the suit for damages if the defendants no.1&2 do not furnish the said particulars does not arise.

5. Per contra, the counsel for the plaintiff has contended that the plaintiff had instituted as many as six suits in this Court to protect its patent and incurred expenses therein and all of which have been decreed. It is contended that the plaintiff will be unable to stem the infringement of its patent if different entities surreptitiously manufacture and export and upon plaintiff detecting, suffer decrees and another entity commences the same infringement. He has also contended that as per information available, the defendants no.1&2 have at least exported one consignment worth USD 25630 and the plaintiff would be entitled to pursue the suit for damages. It is contended that the plaintiff has sued for accounts and upon the plaintiff succeeding in the decree for rendition of accounts, the defendants no.1&2 in any case will have to furnish all the said particulars.

6. I have enquired from the counsel for the defendants no.1&2 of their hesitation in furnishing the said particulars.

7. The counsel for the defendants no.1&2 states that the defendants no.1&2 apprehend being involved in a fishing and roving enquiry.

8. The counsel for the plaintiff has made it clear that once the defendants no.1&2 furnish such particulars to the plaintiff, there will be no claim or enquiry against the defendants no.1&2 and the plaintiff may take appropriate action in the foreign jurisdiction against the entities who imported from the defendants no.1&2.

9. The counsel for the defendants no.1&2 after consultation with the aforesaid Mr. Girish Bhatt, Director of the respondent no.2 Vaishali Lifecare Pvt. Ltd. present in Court states that the said particulars will be handed over to the counsel for the plaintiff within two weeks in the form of an affidavit of a Director of the defendant no.2 Company.

10. Binding the parties to aforesaid, a decree is passed in favour of the plaintiff and against the defendants no.1&2 in terms of prayer paragraph 43 'a' and 'b' of the plaint and by further directing that subject to the defendants furnishing to the counsel for the plaintiff information as aforesaid within the time aforesaid, the plaintiff shall not press for damages or for accounts against the defendants no.1&2.

11. Subject to the aforesaid, the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

NOVEMBER 22, 2016

'gsr'..