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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 754/2018

**BAYER INTELLECTUAL PROPERTY GMBH
& ANR**

..... Plaintiffs

Through

Mr. Pravin Anand with Mr. Sanchith
Shivakumar, Advocates

versus

A SRIVASTAVA & ANR

..... Defendants

Through

Ms. Saya Choudhary with
Mr. Prateek Sehrawat and
Mr. Adithya Jayaraj, Advocates

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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20.08.2018**I.A. 7523/2018**

Present application has been filed on behalf of defendant no. 2 under Section 152 read with Section 151 CPC seeking correction of inadvertent omission in the order dated 7th May, 2018 passed by this Court in CS (COMM.) 754/2018.

Learned counsel for the applicant submits that as per the terms of the settlement agreed upon during the course of hearing on 7th May, 2018, the expression/words “*to the Court if required under the due process of law*” had been inadvertently omitted from the ‘Terms of Settlement’ recorded in the aforesaid order.

Since the aforesaid expression forms the part of the aforesaid settlement terms jointly presented by the parties to this Court, present application is allowed and the aforesaid order dated 7th May, 2018 shall read as under:-

“Present suit has been filed for permanent injunction restraining infringement of Patent No.211300, damages, rendition of accounts, etc.

Today, both the learned counsel for parties have handed over duly signed Terms of Settlement. The same is taken on record. The Terms of Settlement are as under:-

“TERMS OF SETTLEMENT

- 1. The Defendants agree to not infringe upon the Plaintiff's patent bearing number IN 211300 in any manner.*
- 2. The Defendants shall provide a prominent disclaimer that Rivaroxaban is only being manufactured and offered for sale for the purpose defined in Section 107A of the Patents Act, 1970.*
- 3. The Defendants shall ensure that invoices pertaining to any sale of Rivaroxaban will prominently indicate that “This sale is for regulatory test and approval purposes only”. The Defendants shall supply Rivaroxaban to third parties only after ensuring that such party is using the same solely for regulatory test or approval purposes and that such party's use is permitted under Section 107A of the Patents Act, 1970, by obtaining a declaration to this effect from such party.*
- 4. The Defendants shall disclose the details of the sales of Rivaroxaban made by them till date including the quantities of product sold and exported against each purchasing entity, in an affidavit to be filed in Court. It is clarified that names of purchasing entity need not be disclosed.*
- 5. The Defendants shall maintain complete and accurate books of accounts of all future sales of Rivaroxaban made by them*

*(domestic or export) and shall disclose details of the same including country of export and quantity exported **to the Court if required under the due process of law.***

6. *All sales by the Defendants, including the exports of Rivaroxaban made by the Defendants, even if for regulatory purposes, shall be subject to the outcome of the appeal in Bayer Intellectual Property GmbH & Anr. v Alembic Pharmaceuticals Ltd. [RFA(OS)(COMM) 6 of 2017] and Bayer Corporation v Union of India & Ors. [LPA 359 of 2017] pending before the Division Bench of the Delhi High Court or any other appeals arising therefrom.”*

In the opinion of this Court, the Terms of Settlement are fair and reasonable.

Consequently, the same are accepted and the suit is decreed in accordance with the Terms of Settlement. Registry is directed to prepare a decree sheet accordingly.

With the aforesaid observations, present suit and pending applications stand disposed of.”

Accordingly, the present application stands disposed of.

MANMOHAN, J

AUGUST 20, 2018

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