

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 15.05.2020

+ **CS(COMM) 128/2020**

PFIZER INC & ORS.

.....Plaintiff

Through: Mr.Pravin Anand with Ms.Tusha
Malhotra & Ms.Rashi Punia, Advs.

versus

KWALITY PHARMACEUTICALS LIMITED & ORS.

.....Defendants

Through: Mr.Mohan Vidhani & Mr.Rahul
Vidhani, Advs. For D-1 & 2

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present matter has been taken up for hearing through video conferencing.

2. The plaintiffs nos.2 to 4 who are group companies of plaintiff no.1 claim to be owners of Indian Patent I.N no.209251 for the drug 'Sunitinib' and I.N no.268331 for the drug 'Tigecycline', which are commercially sold in India under the trade name of Sutent® and Tygacil® respectively, have filed the present suit seeking the following reliefs:-

a) A decree of permanent injunction restraining the Defendants, their directors, employees, officers, servants, agents, associate and

group companies and all others acting for and on their behalf from using, making, selling, distributing, advertising, exporting, importing and offering for sale, or in any other manner, directly or indirectly, dealing in any product that infringes the subject matter of Indian Patent Nos. IN 209251 (Sunitinib) and IN 268331 (Tigecycline composition)

b. An order for delivery up of all stocks of the impugned product and any printed and/or promotional material thereof including pamphlets, leaflets, brochures, product inserts etc. at present in possession of the Defendants which infringes the subject matter of Indian Patent Nos. IN 209251 (Sunitinib) and IN 268331 (Tigecycline composition);

c. An order for damages as may be ascertained in the present suit to be paid by the Defendants on account of infringement of patents, loss of reputation, goodwill and unfair competition;

d. An order for rendition of accounts as may be ascertained during the course of the present proceedings to be paid by the Defendants;

e. An order for costs in the proceedings;

3. The plaintiff thus primarily seeks a permanent injunction restraining the defendants directors, employees, officers, servants, agents, associate and group companies and all others acting for and on their behalf from using, making, selling, distributing, advertising, exporting, importing and offering for sale, or in any other manner, directly or indirectly, dealing in any product that infringes the subject matter of Indian Patent Nos. IN 209251(Sunitinib) and IN 268331(Tigecycline composition).

4. Learned counsel for the plaintiff submits that even though the aforesaid two patents of the plaintiffs are still valid and subsisting, the defendants are by infringing these patents of the plaintiff

manufacturing drugs and supplying to its various dealers including defendant no.3. He submits that upon learning about the infringement, the plaintiff appointed investigators and has reliably learnt that the defendants are unauthorisedly manufacturing drugs by using the plaintiff's patents for which purpose he places reliance on the report of the investigators, which have been placed on record.

5. Let the plaint be registered as a suit and summons be issued to the Defendants.

6. Mr.Mohan Vidhani, Advocate accepts notice on behalf of defendant nos.1 and 2 and fairly submits that the said defendants have no objection to a decree being passed in favour of the plaintiff in terms of the prayer (a) against the defendants. He further submits that, the defendants have till date not dealt with the product with IN patent no. 268331(Tigecycline composition) and assures the Court that the defendants will not, in any manner, deal with or infringe the subject matter of patent no.209251 till the life of the patent which is likely to expire on 15.02.2021.

7. At this stage, learned counsel for the plaintiff submits that since it is the plaintiff's case that the defendant no.3 was getting supply of the infringing goods from defendant nos.1 and 2, in the light of the fair stand taken by the learned counsel for the defendant nos.1 and 2, defendant no.3 may not be a necessary party and, therefore, makes an oral request for deletion of the said defendant. Accordingly, at the oral request of Mr.Pravin Anand, learned counsel for the plaintiff, defendant no.3 is deleted from the array of the parties. Amended memo of parties be filed within the next one week.

8. Learned counsel for the plaintiff further submits that once the defendant nos.1 and 2 have undertaken not to infringe the aforesaid two patents of the plaintiff, the plaintiff would be satisfied if it is paid a token damages/compensation of Rs.3.5 lakhs in lieu of prayer b to e in the plaint.

9. Learned counsel for the defendants, on instructions from the defendants, is agreeable to the said suggestion.

10. Having perused the record including the patent certificates in favour of the plaintiffs and the stand taken by the parties as noted hereinabove, the suit is decreed in favour of the plaintiffs and against the defendant nos.1 & 2 in terms of prayer (a) noted hereinabove with the clarification that the said injunction will be applicable only till the expiry/validity of the patents in favour of the plaintiffs. A further decree directing the defendant nos.1 & 2 to pay a sum of Rs.3.5 lakhs as compensation/damages to the plaintiffs within a period of two weeks is also passed.

11. The decree sheet be drawn accordingly.

IA Nos.3889/2020 (u/O XXXIX Rule 1 & 2 CPC), 3890/2020 (u/o 11 Rule 14 as amended by the Commercial Courts Act)

12. In view of the suit being decreed, no orders are called for in the present applications and the same are accordingly disposed of.

I.A.3891/2020 (exemption) & I.A.3892/2020 (for extension of time in filing court fee)

13. The plaintiff shall file the affidavits and court fees within two weeks of the lockdown being lifted.

14. The applications are disposed of.

15. The order be uploaded on the website forthwith. A copy of the order be also forwarded to the learned counsel through email.

REKHA PALLI, J

MAY 15, 2020

gm

