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

Date of Decision: 2nd November, 2022

+ **CS(COMM) 550/2021 and I.A. 6483/2022**

**BRISTOL-MYERS SQUIBB HOLDINGS IRELAND UNLIMITED
COMPANY & ORS. Plaintiffs**

Through: Mr. Pravin Anand, Ms. Tusha
Malhotra, Ms. Richa Bhargava and
Ms. Yamini, Advocates (M:
9878096700).

versus

ZEE LABORATORIES LIMITED & ORS. Defendants

Through: Ms. Sucharu Garg, Advocate for D-1
and 2 (M: 9650131453).

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present suit has been filed seeking permanent injunction restraining infringement in respect of the Plaintiffs' patent bearing Indian Patent No. IN 247381, titled "*Lactam-Containing Compounds and Derivatives Thereof as Factor Xa Inhibitors*". The same is a novel pharmaceutical preparation, also known by the INN name 'APIXABAN'. The patent was granted by the Patent Office on 4th April, 2011 and the term of the patent is till 17th September, 2022. The case of the Plaintiffs is that the Defendants were manufacturing and offering for sale generic Apixaban products under the brand names 'APIXAZ' and 'APIQUIS' on third party e-commerce websites and on social media platforms.
3. Vide order dated 8th November, 2021, an ad-interim injunction was

granted in the following terms:

“3. Accordingly, an ad interim injunction is passed in favour of the plaintiff and against 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 (including on the Defendant No. 2's website and on third party e-commerce website, www.indiamart.com), exporting, importing and offering for sale, or in any other manner, directly or indirectly, dealing in any product (in any form), including but not limited to the brand names 'Apixaz' and 'Apiquis' or any other brand name, that infringes the subject matter of Indian Patent Nos. 247381 and permanently delist and remove all advertisements/links relating to the infringing generic products 'Apixaz' and 'Apiquis' from any website, including but not limited to Defendant No. 2's website <https://zeelabpharmacy.com> and on third party website www.indiamart.com, that infringes the subject matter of Indian Patent Nos. 247381.”

4. Ld. counsel for the Defendants had entered appearance and vide order dated 14th January, 2022, the matter was referred to mediation. However, mediation had failed. At that stage, vide order dated 19th April, 2022, the Defendants were directed to file on record an affidavit disclosing the stock/quantum of the impugned products sold by them. The said directions in the order dated 19th April, 2022 read as under:-

“3. Let the Defendant file on record an affidavit, disclosing how much stocks/quantum of the impugned products were sold by them and the value of the impugned products, within two weeks.”

5. An application under Order XXXIX Rule 2A CPC was also filed by

the Plaintiff alleging that the Defendants continue to promote the impugned products on third party websites including IndiaMart. On 28th April, 2022, notice was issued in the said application and the Defendants had submitted that despite following up with the third-party website, the listings had not been removed. Accordingly, on the said date, Id. Counsel for IndiaMart had assured the Court that the listings would be removed within 36 hours of the Plaintiff providing them a list of the impugned URLs.

6. Today, Id. Counsel for Defendant Nos. 1 and 2 has handed over an affidavit of Sh. Chander Shekhar (Mb. No. 8130791122), the Assistant Manager of Defendant Nos. 1 and 2 companies, which reads as under:-

“I, the above name deponent, do hereby solemnly affirm and declare as under:

1. I say that I am the Authorized Signatory of Defendant No. 1 and 2 in the captioned Suit, and I am conversant with the facts and circumstances of the captioned case and as such I am competent to swear this Affidavit.

2. I say that the present suit has been filed by the Plaintiffs against the Defendants with regard to the alleged infringement of an Indian patent bearing No. 247381 dated September 17, 2022 having a validity till September 17, 2022.

3. I say that in due compliance of Order dated 08.11.2022 passed by this Hon'ble Court, the Defendant no. 1 and 2 have stopped selling the said alleged impugned products 'Apixaz' and 'Apiquis'. Further, in terms of the order dated 19.04.2022 passed by this Hon'ble Court, the details of stocks/quantum of the alleged impugned products sold by Defendant no. 1 and 2 and the value of the same is mentioned hereinbelow:

<i>Brand</i>	<i>Quantum of sales (No. of Tablets)</i>	<i>Value of sales (INR)</i>	<i>Unsold stock (No. of Tablets)</i>
<i>APIXAZ- 2.5 mg Tablets</i>	<i>6900</i>	<i>25896.01</i>	<i>23100</i>
<i>APIXAZ-5 mg Tablets</i>	<i>1200</i>	<i>8232.01</i>	<i>31800</i>
<i>APIQUIS- 2.5 mg Tablets</i>	<i>37980</i>	<i>411933.06</i>	<i>11520</i>
<i>APIQUIS- 5 mg Tablets</i>	<i>30840</i>	<i>301304.66</i>	<i>18360</i>

4. I say that Defendant no. 1 and 2 have sold a very limited quantity of the alleged impugned products 'Apixaz' and 'Apiquis', that too during the COVID period when the demand for the said products was high and due to increased market pressure during the said time.

5. I say that without prejudice to the rights and contentions of Defendant no. 1 and 2 in the alleged impugned products 'Apixaz' and 'Apiquis', Defendant no. 1 and 2 do not intend to contest the present suit against the Plaintiffs as the suit Patent No. 247381 expires on September 17, 2022, and subject to the Plaintiffs not pressing for costs against the Defendants in the present suit. Further, Defendant no. 1 and 2 voluntarily appeared before this Hon'ble Court on the first date of hearing on 29.10.2021 on advance service even before issuance of notice in the present suit and offered to settle the present suit, which shows the bona

fide on part of Defendant no. 1 and 2.”

7. Heard and perused the affidavit. It is noticed that the term of the suit patent has expired as of 17th September, 2022. Moreover the Defendants had entered appearance on the first day upon receiving advance copy of the suit and had not contested the matter. In fact, Mr. Anand, Id. Counsel for the Plaintiff, submits that the total sales made by the Defendants is to the tune of approximately Rs.8,00,000/- and some further stock is still lying with the Defendants.

8. Considering these facts and circumstances, as also that the term of the patent itself expired, there can be no injunction on the manufactured stock lying with the Defendants, from being sold as on date. Mr. Anand, Id. Counsel, also agrees that since the patent has lapsed, there can be no injunction *qua* the manufacture of the existing stock. However, he submits that the Defendants may be directed to pay nominal costs for the manufacture of impugned products during the life of the patent.

9. Considering the above and that the Defendants have not contested this matter, the present suit is disposed of with the direction that the Defendants shall contribute to the cost of two purifiers which shall be procured by the worthy Registrar General of this Court for use in the premises of this Court.

10. In so far as the contempt application being **I.A.6483/2022** is concerned, it is also brought to the Court's notice that Defendant No.3 is the retailer of the Defendant Nos. 1 and 2, who appears to be continuing to sell the impugned products on e-commerce platforms. However, he is not represented in Court today.

11. Accordingly, the Plaintiff and Defendant Nos.1 and 2 shall issue

notices, within a week, to all e-commerce platforms and intermediaries to take down the said listings, within 48 hours of receipt of such notices. Defendant No. 3 shall file a proper affidavit setting out an apology for the non-removal of online listings of the products, despite the same being injuncted by this Court. Let the said affidavit be filed within two weeks.

12. The present suit, along with all pending applications, is disposed of in the above terms.

13. Copy of this order be communicated to Defendant No. 3 through the Plaintiff's counsel as also through Id. Counsel for Defendant Nos. 1 and 2.

14. Ld. counsels to appear on 17th November, 2022, before the worthy Registrar General to enable the payment by the Defendants for the purchase of two air purifiers.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 2, 2022
MR/MS

