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O.A.Nos.920 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2024

Pronounced on : 02.04.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

O.A.Nos.920, 921 and 1084 of 2023

&

Application No.5669 of 2023

in

C.S.(Comm.Div.)No.258 of 2023

and

O.A.Nos.946 and 947 of 2023

&

Application No.6006 of 2023

in

C.S.(Comm.Div.)No.271 of 2023

O.A.No.920 of 2023 in C.S.(Comm.Div.)No.258 of 2023

1.Maya Appliances Private Limited
and others

.. Applicants/plaintiffs

vs.

1.Vibrant Concepts and Designs
and others

.. Respondents/defendants

O.A.No.946 of 2023 in C.S.(Comm.Div.)No.258 of 2023

1.Maya Appliances Private Limited

.. Applicant/plaintiff

vs.



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1.Ramakrishna Metal Stores
and others

.. Respondents/defendants

For Applicants : Mr.P.S.Raman, Sr. Counsel
for Mr.Arun C.Mohan

For R3
in A.Nos.920/23 etc.
in C.S.No.258/23 : Mr.Abishek Jenasenan

For R3
in A.Nos.946/23 etc.
in C.S.No.271/23 : Mr.Sathish Parasaran, Sr.Counsel
Assist. by Mr.K.Prem Chander

For R2
in A.Nos.946/23 etc.
in C.S.No.271/23 : Mr.Anilkumar Singh

COMMON ORDER

The suits in C.S.(Comm.Div.)Nos.258 and 271 of 2023 have been filed by the plaintiffs for infringement of design and patent against the respective defendants. The plaintiff has also claimed damages against the defendants.

2. Pending the suits, O.A.Nos.920, 921 and 1084 of 2023 in C.S.(Comm.Div.)No.258 of 2023; and O.A.Nos.946 and 947 of 2023 in



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C.S.(Comm.Div.)No.271 of 2023 have been filed seeking for interim injunction. Application No.5669 of 2023 in C.S.(Comm.Div.)No.258 of 2023; and Application No.6006 of 2023 in C.S.(Comm.Div.)No.271 of 2023 have been filed seeking for appointment of an Advocate Commissioner.

3. Since the nature of the dispute is one and the same in both the suits and the infringements pleaded against the defendants in both the suits being one and the same, this Court is disposing of the aforesaid interlocutory applications by a common order.

4. For the sake of convenience and clarity, the parties are referred to as per their litigative status in the suits.

5. The plaintiff in both the suits claims to be the world's first inventor of frameless gas cooktops and they have obtained registration of their designs in respect of their frameless gas stoves and the details of the same are as follows:-



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Sl. No.	Date of Application	Design Registration No.	Design	Date of publication	Date of grant
1.	30.07.2014	264343	Gas stove	17.05.2019	14.05.2019
2.	30.07.2014	264344	Cooking stove	01.04.2016	17.03.2016
3.	28.09.2015	276080	Gas stove	19.08.2016	05.08.2016
4.	05.06.2015	272567	Burner Assembly for gas stove	01.01.2016	15.12.2015
5.	19.06.2015	272882	Cooking stove	12.08.2016	28.07.2016
6.	19.06.2015	272883	Cooking stove	06.11.2015	12.10.2015
7.	11.04.2018	304676	Cooking stove	06.07.2018	11.06.2018

6. According to the plaintiff, their lead registered design in respect of their frameless gas stoves is design No.304676, which the plaintiff contends that the defendants have infringed. According to the plaintiff, the defendants having dishonestly copied the plaintiff's design in respect of design No.304676 have committed an act of piracy of registered design attracting Section 22 of the Designs Act, 2000.

7. The plaintiff has also obtained a patent on 15.09.2023 having patent No.452008 and in addition to that, another patent through patent No.463327, dated 30.10.2023. According to the plaintiff, the patent



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obtained by them is for a cooking stove system having a frameless body.

The addition of patent through patent No.463327, referred to supra, has been granted for improvements made to the already existing patent. According to the plaintiff, the grant of patent confers upon the plaintiff exclusive rights to prevent third parties from the act of marketing, using, offering for sale, selling or importing of the similar products.

8. According to the plaintiff, their patent is a unique one and they have invented a product where the internal piping parts, including gas flow pipe, gas cock, bundy pipe and mixing tube etc. of the burner assembly are positioned and fixed into the frameless body in a manner to provide efficient visual feedback of the entire gas stove to the consumer in the event of gas leak. According to the plaintiff, the visual feedback allows uniquely, for the first time in the world, the user to see any leakages and also to see if any parts are loose/disconnected. According to the plaintiff, in a conventional stove, all 4 sides are covered and the internal piping mechanism is attached to the sides and runs through the sides. The plaintiff claims that they introduced VIDIEM AIR, which is the world's first frameless gas stove and thereafter, AIR 2 burner was



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introduced by the plaintiff, which is a glass cooktop, in which, 2 sides were closed. The plaintiff claims that they introduced Tusker series and VIVA series, which is the steel version of the AIR 2 burner. According to the plaintiff, all these cooktops are frameless cooktops invented by them.

9. According to the plaintiff, by mapping of the plaintiff's product with that of the defendants' product, it can be seen that the defendants have dishonestly copied the plaintiff's unique design, as seen from the following similarities:-

- (i) Both the designs are frameless;
- (ii) position of the mixing tube are the same;
- (iii) the step forming the leg position is also the same; and
- (iv) the step cut in the leg position are also same as could be seen in the different views.

10. According to the plaintiff, the defendants have committed an act of infringement of the plaintiff's unique design and they have also committed infringement of the plaintiff's patent. The pictorial



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representation of the plaintiff's product and the defendants' product in

both the suits are reproduced hereunder:-

In C.S.(Comm.Div.)No.258 of 2023:



In C.S.(Comm.Div.) No.271 of 2023:





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11. According to the plaintiff, a bare perusal and comparison of the above products of both the plaintiff and the defendants in both the suits, would ex-facie establish that the defendants have dishonestly infringed the plaintiff's registered design and patent. According to the plaintiff, the defendants have imitated each and every distinctive feature of the plaintiff's product. According to the plaintiff, the placement of each and every feature in the defendants' product is exactly the same as that of the plaintiff's products. According to them, unwary customers are bound to be misled to believe that the defendants' products emanate from the plaintiff and such confusion would further dilute the plaintiff's hard-earned reputation and goodwill.

12. The plaintiff states that its VIDIEM series including VIDIEM AIR, VIDIEM VIVA and TUSKER series are the world's only frameless cooktops. According to the plaintiff, the defendants have imitated all the features of the plaintiff's products, which amounts to design and patent infringement. According to the plaintiff, the very adoption of the plaintiff's designs by the defendants is with an intention to capture the market of the plaintiff by selling its infringing goods in order to derive



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illegal benefits. According to the plaintiff, the conduct of the defendants is fraudulent, dishonest and solely motivated to earn easy and illegal profits by misappropriating the plaintiff's goodwill and reputation.

13. The learned Senior counsel for the plaintiff in both the suits during the course of his submissions has reiterated the contents of the affidavit filed in support of these applications.

14. On the other hand, the contentions of the defendants in C.S.(Comm.Div.)No.271 of 2023 are as follows:-

(i) Suppression of material facts:-

(a) The plaintiff has suppressed material facts and has approached this Court without disclosing the past Court orders in respect of Design Registration Nos.272882, 272883, 276080, 272567, 264344, especially the order dated 09.01.2017 passed by this Court in C.S.No.677 of 2016, wherein this Court refused to grant interim injunction.

(b) Without disclosing the order dated 09.01.2017 passed in C.S.No.677 of 2016 to the patent office with respect to Patent No.452008, the plaintiff had obtained the said patent clandestinely



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suppressing material facts and only relying upon the order passed by this

Court based on a compromise entered into between the plaintiff and

Butterfly Gandhimathi Appliances.

(c) The plaintiff obtained registration pertaining to Patent Nos.452008 and 463327 recently in September, 2023, which is invalid for the following reasons:-

(ii) Grounds of invalidity of Patent No.452008:

(a) Insufficient description, as patent granted lacks clarity on the placement of internal piping within the frameless body for effective visual feedback during risky situations.

(b) Absence of details on how visual feedback is conveyed raise doubts about the claimed advantage.

(iii) Lack of novelty and anticipation:-

(a) Prior art document in US5046477 produced by the defendants discloses features similar to the alleged invention, such as, glass top panel with gas burners and a frameless structure.

(b) Similarity between patent US5046477 issued by the US patent office and the alleged invention of the plaintiff include top portion with apertures, burner assembly integration and connection mechanism.



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(iv) Obviousness and lack of inventive step:-

(a) The alleged invention claim of the plaintiff of providing visual feedback through a detachable structure is deemed impractical and illogical.

(b) Citing US patent US5046477 and other documents, the third defendant claimed that the visual feedback is a common and foreseeable aspect in the relevant field.

(c) The alleged patent lacks inventive step based on the cited prior art.

(v) Non-patentability:-

(a) The alleged invention may face challenges under Section 3(f) of the Patent Act due to reliance on known configurations and functionalities of cooking stoves.

(b) The claimed features work independently and do not demonstrate a substantial departure from established practices.

15. Grounds of invalidity of Patent No.463327:-

(i) Lack of novelty:-

(a) Prior art document US5046477 issued by the US patent office



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discloses features similar to the alleged invention, such as, glass top panel with gas burners and a frameless structure.

(b) Similarities between US5046477 referred to supra and the alleged invention include top portion with apertures, burner assembly integration and legs.

(ii) Lack of Inventive step:-

(a) The invention claim by the plaintiff is obvious and does not involve an inventive step based on the prior art.

(iii) Not an invention or not patentable:-

(a) The invention claim by the plaintiff based on patent No.463327 does not demonstrate from established practises.

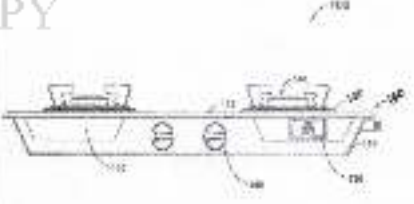
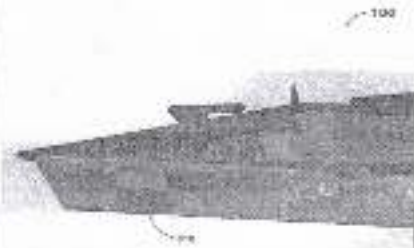
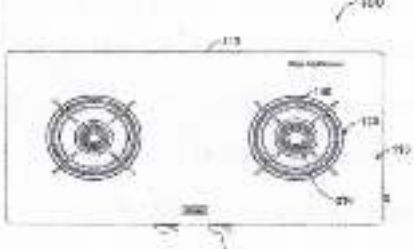
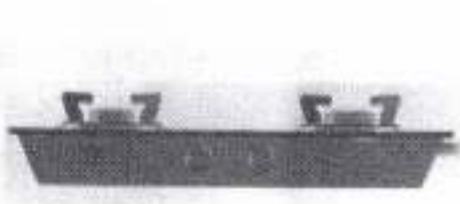
(iv) Drawings in patent No.452008 are prior published:-

The plaintiff had filed design application for same frameless gas stove under design No.264344 on 30.07.2014 and thereafter filed a patent application on 07.10.2014. The drawings mentioned in the patent application have already been presented in the design application as depicted below:-



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Images submitted in Patent No. 452008	Images in the Design Registration No. 264344
 FIG. 1  FIG. 2  FIG. 3	 FRONT VIEW  TOP VIEW

(v) Pre Grant-Opposition against Patent No.452008 -- closed without adjudication:-

It is pertinent to note that in relation to a similar suit filed by the plaintiff against Butterfly Gandhimathi Appliances in the year 2016 under C.S.No.677 of 2016, the respondent therein (Gandhimathi



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Appliances) filed a pre-grant opposition against the very same patent No.452008. However, said opposition was dismissed as withdrawn due to settlement between the parties. Despite there being several grounds in the pre-grant opposition, the patent office erred in granting the patent without adjudicating on the grounds in the said opposition and contrary to Section 13(4) of the Patents Act. The patent office has passed only a single page order dismissing the pre-grant opposition on the same day of grant of the patent. The third defendant has now filed a post-grant opposition against the patents issued to the plaintiff and the same is pending adjudication.

16. Invalid design registrations of the plaintiff:-

(A) The design registration Nos.272882, 272883, 264344, 276080 and 272567 obtained by the plaintiff are hit by Section 4(a),(b)&(c) of the Designs Act and the prior publication was also admitted by the plaintiff, which was duly recorded by this Court in its order dated 09.01.2017 passed in C.S.No.677 of 2016.

(B) Violation of Section 4(a)&(c) of the Designs Act, 2000:-

(i) The products for which the plaintiff sought for design



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registration are neither new nor original.

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(ii) The concept of frameless stoves has already been in existence and the claim made by the plaintiff that they are world's first manufacturer of frameless stoves are mere tall claims and lacks merit. The design registrations obtained by the plaintiff are trade variants of already existing products in the market and there is no novelty attributable to the alleged design registrations.

(iii) The defendants have submitted documents of third parties to show that frameless stoves have already been in existence and the plaintiff is not the first to manufacture frameless stoves.

(iv) The defendants have also filed certified copies of the design registration Nos.242795 and 242796 of LG Electronics registered in the year 2012. On a perusal of the design registration, it is apparent that the concept of framelessness was already in existence. Mere placement of legs on an already existing design will not render the design new and original. Infact, it is the plaintiff who has admittedly claimed that features, which are otherwise ornamental, such as, legs, knobs and trays, are not essential for comparison. Further, upon conducting a search, it was revealed that a third party “Green Chef Appliances” has also secured



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a registration bearing No.277833.

C. Prior published:-

As per Section 4(b) of the Designs Act, 2000, the designs that are subject matter of design applications should be disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way, prior to the filing date, or where applicable, the priority date of the application for registration. The following publications will illustrate how each of the alleged design registration has been published by the plaintiff prior to the date of application.

Sl.No.	Design Reg.	Date of filing	Date of Publication
1	272882	19.06.2015	27.11.2014 on facebook 30.11.2014 on YouTube
2.	272883	19.06.2015	October, 2014 – Plaintiff's website 30.11.2014 on YouTube
3.	276080	28.09.2015	27.07.2015 on YouTube
4.	272567	05.06.2015	27.11.2014 on Facebook 30.11.2014 on YouTube
5.	264344	30.07.2014	Not a frameless stove
6.	264343	30.07.2014	Consist of front frame



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(D) Comparison of Preethi Glam Steel with Design Registration

No.304676 of the plaintiff:-

It is pertinent to note that while the plaintiff has alleged that Preethi Glam Steel Gas Stove violates its design registration bearing No.304676, the comparison of features of the gas stove has been made only with its design registration No.304676 and the suit is restricted to the same. The design application for registration No.304676 was made on 11.04.2018 for a gas stove with a frame protruding in the front. The third defendant already holds various design registrations for such kinds of gas stoves, especially design registration Nos.293464 and 293463 since 2017. Therefore, the gas stove under design registration No.304676 is neither new nor novel nor distinctive from prior published design registration of the defendants and hence, liable to be cancelled under Sections 4(a),(b) & (c) of the Designs Act, 2000. The plaintiff cannot assert any right over the defendants, as the defendants have already filed a cancellation petition against design registration No.304676.



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17. The patent registrations of the plaintiff are not infringed by the third defendant's product “Preethi Glam Steel”:-

(a) Despite the fact that the alleged patent registrations of the plaintiff are bad in law, the third defendant's gas stove “Preethi Glam Steel” is a gas stove with single metal body moulded as a frame, where the upper body is bent on the front side and also on the back side, to cover the entire body of the gas stove, hence, it is completely distinctive and not infringing the patent registration Nos.452008 and 463327, which is restricted to a flat sheet body (while body frame of impugned gas stove is not flat)

(b) In patent No.463327, which is a patent in addition for patent registration No.452008, the alleged claim of frameless portion of the gas stove has been clearly referred by the plaintiff restricting to a flat glass sheet and the same does not cover and is not applicable to any other frame or body.

(c) Preethi Glam Steel is made of stainless steel, which is opaque and does not provide any visual feedback. Hence, there is no iota of patent infringement which can be established by the plaintiff on the third defendant's product “Preethi Glam Steel”



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18. The plaintiff's design registrations not infringed by the third defendant's product “Preethi Glam Steel”:-

(a) Despite the fact that the alleged design registrations of the plaintiff are bad in law, the third defendant's gas stove “Preethi Glam Steel” has got nothing to do with the alleged design registration Nos.272882, 272883, 264344, 276080, 272567 and 264344, as they are irrelevant. No further averment is made in the plaint and no relief is claimed in the pleadings in respect of the above six design registrations. The above said six design registrations were wrongly granted against the Designs Act, 2000, and these design registrations are not novel and prior published and not registrable.

(b) As regards design registration No.304676, the features of the gas stove of “Preethi Glam Steel” are not infringing design registration No.304676, as seen from the plaintiff's product and the third defendant's product. Therefore, in the light of non-infringing features in the third defendant's product “Preethi Glam Steel”, the infringement claimed by the plaintiff is untenable and it does not amount to any kind of infringement of the alleged six design registrations as stated supra obtained by the plaintiff.



19. **The plaintiff's non-compliance of Section 15 of the Designs**

Act, 2000:-

As per Section 15(1)(b) of the Designs Act, 2000, the registered proprietor of the design has been mandated to mention on the articles about the design registration. However, the plaintiff has failed to comply with the statutory requirement in any one of its products by indicating that it is a registered design.

20. **Comparison of products:-**

Notwithstanding the fact that the alleged patent and design registrations are bad in law, it is a statutory mandate that the alleged infringing products are to be compared only with the patent claims and design registration certificate of the plaintiff and not products versus products. However, the plaintiff has produced various tables of comparison in the plaint, supporting affidavit and annexures comparing their products with the products of the defendants, which is inadmissible in law and against the settled principle of infringement of Patent and Design. Therefore, such comparison of the plaintiff's products with the third defendant's products is invalid and bad in law.



21. Existence of patent registrations:

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As per Section 2(d) of the Designs Act, 2000, protection will be granted under the statute only if the subject matter has an aesthetic/visual appeal to the eye without any functionality attributable to its shape. As per the own admission of the plaintiff in their plaint and common affidavit, they have admitted various functionality to the features of their alleged design. Furthermore, the patent registration has been granted for the same gas stove design under patent Nos.452008 and 463227. The illustrative photographs used by the plaintiff for the patent application are the same photographs filed for the design registrations. The illustrative photographs filed in the said patents have part numbers indicating how each of the parts of the alleged design registrations have a functional effect within the patent claims. Therefore, the design registrations are in violative of Section 2(2) of the Designs Act, 2000, and is liable to be cancelled.

22. Admission made by the plaintiff:-

(a) The plaintiff admitted in the rejoinder affidavit that the bending on the front and back side of the product is not included in the patent.



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(b) The plaintiff categorically displays a flat sheet to be the frameless body.

(c) The plaintiff is referring to a cooking stove without any frame.

23. Interlocutory orders, not to be granted:-

(a) The patent registrations have been granted recently only in September, 2023, without disclosing the order passed by this Court in C.S.No.677 of 2016, dated 09.01.2017, to the patent office.

(b) Post-grant opposition against the patent registrations and cancellation petition against design registration No.304676 have been filed and the same are pending.

(c) There is no prayer for passing-off of the plaintiff's product. Hence, no relief in respect of the same can be granted.

(d) The third defendant is not a fly by night operator and is a pioneer in Kitchen Appliances and can face trial to prove that the impugned gas stove does not violate any patent/design rights of the plaintiff.

(d) The defendants may be directed to maintain accounts of their sales and the matter may be posted for trial.



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24. The learned Senior counsel for the third defendant in C.S.(Comm.Div.)No.271 of 2023 has also reiterated the contents of the counter affidavit filed in these applications.

25. Insofar as the defendants in C.S.(Comm.Div.)No.258 of 2023 are concerned, they also reiterate the contentions of the defendants in C.S.(Comm.Div.)No.271 of 2023; and in addition to that, they have specifically contended as follows with regard to their products.

(a) Franke Faber India Private Limited/the third defendant is a company incorporated and registered on 11.04.1997 and is a leading kitchen appliances manufacturer. The third defendant has been the innovation driver in kitchen technologies all around the globe. The third defendant has pioneered and revolutionized the field of kitchen appliances by introducing technologically advanced products bearing the mark “FABER” with unique and attractive aesthetics.

(b) By virtue of sturdiness and long durable quality, coupled with new, original, unique and aesthetic appeal, the third defendant's products bearing the mark “FABER” have generated and acquired substantial goodwill and reputation in India.



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(c) Design Nos.264343, 264344, 276080, 272567, 272882 and 272883 obtained by the first plaintiff are absolutely irrelevant for adjudication of the present dispute, since the said designs are Glass-Tops. On the contrary, the Hilux gas stoves of the third defendant are framed and are made of stainless steel material.

26. Design is neither novel nor original:-

(a) The first plaintiff's design No.304676 and the corresponding product, i.e., 'Vidiem Tusker 3Burner' (gas stove) is not novel or original. The said design registration is liable to be cancelled by virtue of Section 19(1)(c) of the Designs Act, 2000, and this is evident from the Indian and International prior registrations.

(b) By virtue of the registered design No.304676, no new creation has come into existence, as the same is merely a trade variant. The plaintiffs have sought to monopolize common features with trivial changes in the instant case, which is ex-facie impermissible.

(c) The registrations relied upon by the third defendant have been existing for years before the filing date of first plaintiff's design No.304676, dated 11.04.2018.



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27. The third defendant's Hilux Gas Stove does not infringe the first plaintiff's registered design No.304676. From comparison of both the products, it is conspicuous that the design of the third defendant's gas stove is completely different from the first plaintiff's gas stove and therefore, the claim for design infringement does not hold any merit.

28. The first plaintiff's design No.304676 and Tusker 3Burner are generic and common to trade. Apart from the aforesaid prior registrations, various gas stoves/cooktops are currently available in the market having the same and/or similar shape, surface ornamentation and configuration as that of the first plaintiff. The plaintiffs themselves have admitted that Indian design No.275289 granted in favour of M/s.Shinag Allied Enterprises on 07.09.2015 possesses a frameless structure and is similar to the design No.304676 obtained by the first plaintiff. Merely stating that the product is not available presently in the market does not absolve the plaintiffs of being hit by prior art and in other words, the fact that the product is no longer available in the market holds no relevance. The said design was registered in the year 2015 and its availability at that time constitutes publication of said design prior to the plaintiffs and



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vitiates the plaintiffs' claim of novelty in their suit design.

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29. There is no specific novelty claim in the design registration. The first plaintiff has not claimed novelty to any specific features in any of its design registrations. Therefore, in the absence of such specific claim of novelty, the first plaintiff cannot claim novelty in the entire product, since the same is generic and common to trade.

30. There is a fundamental difference between the registration granted under the Trademarks Act, 1999, and the registration granted under the Designs Act, 2000. While Section 31 of the Trademarks Act, 1999, provides that the registration is *prima facie* evidence of validity, a similar provision is absent in the Designs Act, 2000, hence, there can be no presumption of validity of the design registration.

31. Test of design infringement:-

The plaintiffs have wrongly alleged in their claim that unwary customers are bound to be misled and/or confused after perusing the defendants' products. The test of infringement in claims of design



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infringement has to be assessed by applying the test of an instructed eye,

i.e., a person who possesses trade knowledge as well as awareness of prior art and not from that of an average consumer who is unaware of earlier design/prior art.

32. Functional nature of suit design:-

The fusing of piping created open space below the gas stove, which achieved functional effects of cleaning easily and detection of gas leakage in the suit design. Such placement of piping has a functional appeal and no aesthetics have been applied to the same. It is well settled law that a design, which has functional attributes, cannot be registered under the Designs Act.

33. The defendants have also reiterated the contention of the defendants in C.S.(Comm.Div.)No.271 of 2023 by contending that the first plaintiff's patent Nos.452008 and 463327 are invalid. They have also stated that the patent office, by total non application of mind, has granted patent to the plaintiff. Whatever was contended by the defendants in C.S.(Comm.Div.)No.271 of 2023 has been once again



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reiterated by the defendants in C.S.(Comm.Div.)No.258 of 2023. Since prior art documents were cited in a pre-grant opposition filed against the grant of patent, the patent office was required to consider those prior art documents before taking a decision to grant the patent. However, the patent office failed to consider the prior art documents, which taints the main patent granted to the plaintiffs.

34. Non-infringement of main patent and new patent:-

The allegations of the plaintiffs about the infringement of the patent committed by the defendants are ambiguous and vague, as they have not specified as to which claim of the patents is infringed by the defendants. The defendants' cooking stove has been compared with the plaintiffs' Tusker 3Burner Gas Stove. However, the body/frame material of the Tusker 3Burner Gas Stove on the website of the first plaintiff is mentioned as stainless steel. The Tusker 3Burner Gas Stove does not have a frameless body based on the interpretation suggested above. In spite of the aforesaid facts, the plaintiffs falsely asserted that their VIDIEM Tusker series cooking stoves are frameless gas stoves. This misrepresentation and suppression of material facts by the plaintiffs



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disentitle them from any equity relief including interim injunction.

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35. From the comparison of both the products, it is clear that defendants' cooking stove does not have a frameless body and does not provide any kind of visual feedback whatsoever. Therefore, the defendants' cooking stove does not have all the features recited in claim 1 and thus, cannot infringe claim 1 of the main patent. Since claims 2 to 4 of the main patent are dependent on claim 1, the defendants' cooking stove does not infringe claims 2 to 4 of the main patent as well. Likewise, since claims 2 to 11 of the new patent are dependent on claim 1, the defendants' cooking stove does not infringe claims 2 to 11 of the new patent as well.

36. Further, the features of Hilux gas stoves of the third defendant, especially, the bent stainless-steel frame, are known in the art and have been incorporated in the products available in the market for several decades and much prior to the filing date of the suit patents. The use of technology known in the prior art is, by itself, a valid defence to any claim of infringement that the plaintiff's may have. The predecessors of



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the third defendant's Hilux gas stoves provide knowledge to a person of ordinary skill, which makes the claims of the main patent and new patent invalid in the light of what was already available in the market.

37. The learned counsel for the third defendant in C.S.(Comm.Div.)No.258 of 2023 has also reiterated the contents of the counter affidavit filed in these applications.

DISCUSSION

38. This Court will have to first bear in mind that it is deciding only the interim applications filed by the plaintiff and is not deciding the main suit.

39. The well settled trinity principles, which are required to be satisfied by the plaintiff for obtaining interim injunction, are as follows:-

- (a) prima-facie case;
- (b) balance of convenience; and
- (c) irreparable hardship.



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40. The suit relates to infringement of design and patent. In order to decide these applications, it will be useful, if an overview of both the Patents Act and the Designs Act are illustrated.

41. First let us analyse the provisions of the Patents Act, 1970. The Indian Patent Act, 1970, provides a mechanism, that allows the public to raise objections against the grant of a patent by filing an opposition with the Patent Office. There are two types of opposition proceedings in place depending on the stage of grant of the patent:-

(a) Pre-grant opposition; where the opponent can challenge a pending application prior to the grant of a patent; and

(b) post-grant opposition; where the opponent challenges the validity of a patent that has already been granted.

42. Before 2005, only the pre-grant opposition system prevailed and there was no way to challenge a patent once it has been granted. However, the Indian patent system underwent a significant transformation with effect from 01.01.2005 pursuant to the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement. In



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order to comply with the international agreement, India amended its Patent Act and a post-grant opposition system was introduced in Section 25 of the Patent Act.

43. **Pre-grant opposition:-**

Section 25(1) of the Indian Patent Act, 1970, along with Rule 55 of the Patent Rules, 2003, lays down an exhaustive list of the grounds based on which the patent application can be opposed. These grounds are set out hereunder:-

(a) Wrongful obtainment:

The invention or any part thereof was wrongfully obtained from the opponent.

(b) Prior publication:

The invention was published before the priority date (earliest filing date which discloses the invention). This objection is subject to Section 29 of the Patents Act, which talks about situations where the publication does not constitute an anticipation of the product or process.

(c) Prior claim: The invention was previously claimed in another Indian patent application, which was published on or after the priority



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date of the applicant's claim but whose priority date is earlier than that of the applicant.

(d) Prior knowledge or use: The invention is known or used by the public before the priority date. In the case of a process that is being patented, it is deemed to have been publicly known or used if a product made by that process was imported in India, before the first date of filing of the application.

(e) Obviousness: The invention is obvious and does not involve any inventive step. This means that no advancements have been made to the existing use or literature on the subject.

(f) Non-patentable subject matter: The subject of the application is not considered to be an invention under the Patent Act or falls in the category of “non-patentable inventions”.

(g) Insufficient description: The patent specification does not properly explain the invention or the method of performing it.

(h) Non-disclosure: The applicant has failed to disclose all the details which were required under Section 8 of the Patents Act.

(i) False disclosure: The applicant has provided materially false information.



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(j) Time limit: The conventional application was not filed within the specified period of 12 months from the date of the first patent application made in a conventional country.

(k) Biological material: The specification failed to disclose the origin or source of the biological material, if any, used in making the invention or has mentioned the incorrect source.

(l) Traditional knowledge: The invention was anticipated taking into consideration the knowledge possessed by indigenous communities anywhere in the world.

44. Procedure for pre-grant opposition:-

The procedure for filing the opposition is given in Rule 55 of the Patent Rules. The rule states that all representations for opposition must be made in accordance with Form 7A of the Patents Act to the Controller General of Patents. The Indian legislature has intentionally made a provision that prohibits the grant of patents until a period of 6 months from the date of publication has gone by. This gives a sufficient window to third parties who wish to oppose the patent. If the examiner believes that the arguments put-forth in the statement of opposition are without



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merit, he will reject the opposition by passing a speaking order. On the other hand, if the statement is found to have merit, the Examiner shall send a notice to the applicant. The applicant is then required to submit his own statement and evidence, if any, within a period of three months from the date of the notice. The Controller considers the statement and issues a speaking order, which may;

- (a) grant the patent;
- (b) refuse the patent, and
- (c) require the amendment of the patent specification or other documents after which the patent can be granted.

45. Once the patent has been granted, there is still a way for third parties to oppose the grant. This was done by way of a 'notice of opposition'. The notice has to be filed before the Controller of the appropriate patent office at any time within 12 months from the date on which the grant of the patent was published in the Indian Patent Journal. Unlike pre-grant opposition, this type of opposition can only be filed by an 'interested party'. Section (1)(t) of the Patents Act gives an inclusive definition of the term 'person interested'. It includes an individual



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involved in or promoting research in the same field to which the invention pertains. It may also refer to an entity that has a manufacturing, trading, or financial interest in the patented goods.

46. Under the Patents Act, there is no difference in the grounds on which pre-grant and post-grant oppositions can be made. Section 25(2) specifies the same grounds which were listed in sub-section (1), which pertains to pre-grant opposition. Nevertheless, there are substantial differences in the procedures of both the oppositions, which will be discussed in the forthcoming paragraphs.

47. Rules 55A to 70 of the Patents Rules, 2003, lay down the procedure for a post-grant opposition. The notice of opposition under Section 25(2) of the Patents Act has to be filed before the Controller of the appropriate office in accordance with Form 7.

48. Rule 56 provides that once the Controller receives the notice of opposition, he shall establish an 'Opposition Board' comprising 3 members. The duty of the board is to examine the notice filed, along



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with statement and evidence of both the parties, and issue a report with reasons regarding each ground challenged by the opponent.

49. Rule 62 states that any party who wishes to be heard must send a notice along with the fee as specified in the First Schedule to the Controller. After hearing both the parties and taking into consideration the recommendation made by the Opposition Board, the Controller shall decide the case. The decision of the Controller of both pre and post-grant opposition can be appealed to the High Court within a period of 3 months from the date of the order.

50. Having analysed the Patents Act with regard to pre-grant opposition and post-grant opposition, we shall now discuss the striking features of the Designs Act, 2000.

51. Section 2(d) of the Designs Act provides the definition of 'design'. It states that design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article, whether in two dimensional or three dimensional



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or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which, in the finished, appeal to and are judged solely by the eye. However, the following are excluded from the meaning of 'design' as provided under Section 2(d) of the Designs Act:-

(a) Any mode or principle of construction or anything which is in substance a mere mechanical device.

(b) Any trademark as defined under [Section 2\(1\)\(v\)](#) of the [Trade and Merchandise Marks Act, 1958](#).

(c) Property mark as defined in [Section 479](#) of the [Indian Penal Code, 1860](#).

(d) Any artistic work as defined under [Section 2\(c\)](#) of the [Copyright Act, 1957](#).

52. Section 4 of the Designs Act deals with prohibition of registration of certain designs. A design which,

(a) is not new or original; or

(b) has been disclosed to the public anywhere in India or in any other country by publication of tangible form or by use or in any other way prior to the filing date; or



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(c) is not significantly distinguishable from known designs or combination of known designs; or

(d) comprises or contains scandalous or obscene matter;
shall not be registered.

53. Section 5 of the Designs Act contains provisions for filing of an application for the purpose of registration of designs. It states that any person claiming to be the proprietor of any new or original design, which has not been previously published anywhere and is not against any public policy or morality, can make an application for registration of the design and accordingly, the controller may register the design after examination by the examiner.

54. Section 19 of the Designs Act incorporates provisions relating to the cancellation of registration of a design which is already registered. It states that any person can present a petition to the Controller for the purpose of cancelling the registration of a design. The grounds for the cancellation of registration as per Section 19 of the Designs Act are as follows:-



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- a) The design has been previously registered in India; or
- b) The design has been published in India or in any other country prior to the date of registration; or
- c) The design is not a new or original design; or
- d) The design is not registrable under the Designs Act; or
- e) The design is not a design as defined under Section 2(d) of the Designs Act.

55. Section 22 of the Designs Act incorporates provisions relating to piracy of registered design. Piracy of registered design is equivalent to an infringement of the copyright in the design.

56. Section 22(1) of the Designs Act states that during the existence of copyright in the design, it shall not be lawful for any person to do the following acts without the license or written consent of the registered proprietor:

- a) For the purpose of sale, to apply or cause to be applied, to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation, or to do anything with a view to



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enabling the design to be so applied;

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b) To import for the purposes of sale, any article belonging to the class in which the design has been registered.

c) To publish or cause to be published or exposed for sale of the article after having knowledge of the fact that the design or any fraudulent or obvious imitation has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor.

57. It must be noted that any of the aforesaid acts shall constitute piracy only if they have been done in the course of commerce and not merely for personal use. It must be further noted that if any question regarding the ascertainment of infringement of a design crops up, the court will consider the design from the point of view of an average customer. This simply means that the court will see if there is any confusion which is apparent in the minds of the customers as far as the impugned articles are concerned. It is also to be noted that when a design gets registered, the registered owner of the design gets copyright in the design for a span of ten years from the date of registration.



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WEB COPY 58. Having analysed the provisions of the Patents Act, 1970, and the Designs Act, 2000, this Court will have to now discuss under what circumstances interim injunction can be granted in IPR (Intellectual Property Rights) matters, more particularly, in Patent and Design matters, which are the subject matters of consideration in these applications.

59. The power of the Civil Court to grant interim injunction is found in Order XXXIX of the Civil Procedure Code (CPC). The intended consequence of an interim injunction is the maintenance of status quo between the litigants during the course of litigation. The purpose of maintaining such status quo is to ensure that a vulnerable litigant does not suffer irreparable damage on account of the alleged illegal activities of the other litigants during the course of litigation. An interim injunction cannot be claimed as a matter of right, and can be secured at the discretion of the judge alone. The judge is required to consider the relevant facts before the court and then decide if an interim injunction is an appropriate relief for the concerned litigant. If the alleged illegal actions of the other litigants could render the litigation



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altogether futile, then the relief of interim injunction could become vital in preserving the real substance of the litigation.

60. The discretion of the Judge in granting an interim injunction is not regulated by statute, and the provisions of Order XXXIX are silent about the standards governing this discretion. However, just as the exercise of executive discretion is subject to minimum standards, the exercise of this judicial discretion is subject to certain minimum judicial standards as well. The decisions of the Hon'ble Supreme Court in the past few decades reveal that a formal judicial standard has been established for the exercise of judicial discretion with respect to granting interim injunctions. The Hon'ble Supreme Court has repeatedly held that an interim injunction cannot be granted except on the concurrent satisfaction of the following three binding conditions;

- (i) the presence of a prima facie case in favour of the litigant seeking the injunction;
- (ii) the reasonable chance of irreparable damage being done to the litigant seeking the injunction if the injunction is not granted; and
- (iii) the damage effects of the injunction being minimal for the



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other litigants so that the balance of convenience lies in favour of the litigant seeking the interim injunction.

61. The decision of the House of Lords in *American Cyanamid Co. Vs. Ethicon Ltd [1975 A.C. 396]* is the most important decision in the development of the law in respect of interim injunctions in patent infringement matters in U.K. In that case, the House of Lords allowed an application for an interim injunction prohibiting the infringement of a patent in respect of surgical sutures. The House of Lords criticised the rigid judicial standards governing the administration of interim injunctions and emphasized the flexible nature of the judicial discretion in administering interim injunctions. However, the most fundamental change brought through that decision was the reinterpretation of the requirement of establishing a prima facie case to mean establishing of a triable issue or bonafide dispute. The assessment of the relative strengths of the cases of the litigants was reduced to the status of a mere tie-breaking factor that was considered in order to resolve the balance of convenience in favour of one of the litigants. The litigant seeking



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interim injunction was no longer required to establish his legal rights before trial on the basis of untested pre-trial evidence, and it was sufficient if the litigant could show a real and substantial legal dispute, and the decision of the House of Lords has an immense and beneficial impact on civil litigation and patent infringement litigation in particular. If the decision of **American Cyanamid** was applied, it was for the patent holder to secure interim injunction without the burden of proving their patent rights on the basis of technical and untested pre-trial evidence. The Indian Courts have applied in its decisions both the ***Pro-Cyanamid approach*** and ***Anti-Cyanamid approach***. In the *Anti-Cyanamid* approach, it was opposed to the approach adopted in American Cyanamid case (cited supra) by the House of Lords and insisted to use of pre-trial appreciation of evidence to determine a prima facie case. While adopting *Anti-Cyanamid* approach, the Hon'ble Supreme Court has stated that if the litigant seeking interim injunction is able to demonstrate a strong case in his favour on the basis of affidavit and other evidence prior to trial, and is able to establish a good chance of his success at trial, then, in those circumstances alone, a prima facie case will stand established.



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WEB COPY 62. Whether the Court adopts *Amercian Cyanamid's case* (cited

supra) or not, it is obvious that the approach in *American Cyanamid* opens the field of vision as far as judicial standards governing interim injunctions are concerned, as it allows a judge to look beyond mere untested affidavit and oral evidence and grant interim injunctions on the basis of broader and more just considerations. It avoids time consuming evaluations of the relative strengths of the cases of the litigants in most cases and creates a more efficient method for protection of litigants from irreparable injuries in the course of litigation.

63. The first distinctive feature of patent infringement litigation is the detailed and technical nature of such litigation that often requires a thorough analysis of the scientific and technical aspects of the patent. The high degree of technical and scientific expertise required to appreciate patent infringement litigation on merits is a usual characteristic of such litigation and is absent in usual civil litigations. It is natural that the burden on the litigant to establish a strong case in his favour on the basis of oral and affidavit evidence is more onerous and



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difficult in patent infringement litigation as compared to usual civil litigation. The same also holds good to some extent while deciding infringement application under the Designs Act for infringement of designs.

64. In the case on hand, the plaintiff claims that they are the first inventor of frameless gas cook-tops. They have also obtained registration of their designs under the Designs Act, 2000, as detailed supra. However, insofar as the present suit and interlocutory applications are concerned, the registered design, which according to the plaintiff, has been infringed by the defendants, pertains to design No.304676. The plaintiff has also obtained patent for their gas stove on 15.09.2023 having patent No.452008, and subsequently, addition was also made to the said patent by the Controller of Patents through addition of patent No.463327, dated 30.10.2023. According to the plaintiff, they have obtained for a cooking stove system having a frameless body, and the addition of patent has also been granted for improvements made to the already existing patent. According to them, this confers upon them exclusive rights to prevent third parties from the act of marketing, using,



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offering for sale, selling or importing of the similar products. According to the plaintiff, the uniqueness of their patent is that the plaintiff invented a product where the internal piping parts, including gas flow pipe, gas cock, bundy pipe and mixing tube etc. of the burner assembly are positioned and fixed into the frameless body in a manner to provide efficient visual feedback of the working of the entire gas stove to the consumer during a risk. The plaintiff also claims that the visual feedback provided in their cooking stove system allows uniquely for the first time in the world the user to see any leakages and also to see any parts are loose/disconnected. According to the plaintiff, in a conventional stove, all 4 sides are covered and the internal piping mechanism is attached to the sides and runs through the sides. The plaintiff also claims that they introduced the VIDIEM AIR, which is the world's first frameless gas stove, and thereafter, AIR 2 burner was also introduced by the plaintiff, which is a glass cook-top, in which 2 sides were closed. They also claim that Tusker series and VIVA series were also introduced by them. According to them, all these cook-tops are frameless cook-tops of the plaintiff. According to the plaintiff, the defendants are also selling gas cook-top, that is similar to the designs and patents of the plaintiff, and



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therefore, they have committed an act of patent and design infringement.

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65. However, on the other hand, the defendants in C.S.(Comm.Div.)No.271 of 2023 would dispute the contentions of the plaintiff by raising the following defences:-

(a) Their kitchen appliances under the well-known brand “PREETHI” are marketed all over India and exported to many countries.

(b) The plaintiff has approached this Court with unclean hands by suppressing certain material facts, as they have approached this Court without disclosing the previous court orders passed in respect of design registration No.272882, 272883, 276080, 272567 and 264344, especially the order dated 09.01.2017 passed by this Court in C.S.No.677 of 2016, wherein it is made clear that there cannot be any interim injunction granted in favour of the plaintiff with regard to the functionality of the frameless gas stove of the plaintiff under the Designs Act, which does not give such a protection.

(c) The grant of patent in favour of the plaintiff through Patent No.452008 is a non-speaking order without considering any of the grounds raised in the pre-grant opposition filed by Butterfly Gandhimathi



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Appliances, who had subsequently compromised the dispute with the plaintiff in C.S.No.677 of 2016. Only based on the compromise decree between the plaintiff and Butterfly Gandhimathi Appliances in C.S.No.677 of 2016 and without an independent assessment on the pre-grant opposition made by Butterfly Gandhimathi Appliances, the Patent Office has granted patent in favour of the plaintiff in Patent No.452008.

(d) The plaintiff's patent registration through Patent No.452008 and the addition of patent bearing No.463327 granted recently in the month of September, 2023, are invalid for the following reasons:-

- (i) Insufficient description;
- (ii) lack of novelty and anticipation;
- (iii) obviousness and lack of inventive step;
- (iv) non-patentability under Section 3(f) of the Patents Act, 1970;
- and
- (v) Drawings in patent No.452008 are prior published.

(e) The design registration obtained by the plaintiff is invalid for the following reasons:-

- (i) The design registration obtained by the plaintiff under design



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registration Nos.272882, 272883, 276080 and 272567 are hit by Section 4(a),(b)&(c) of the Designs Act, 2000, as the prior publication was admitted by the plaintiff, which is also recorded in this Court's order dated 09.11.2017 passed in C.S.No.677 of 2016 at paragraph Nos.75 and 76.

(ii) The products, for which, the plaintiff had sought for design registration and obtained the same are neither new nor original. The alleged design registrations are trade variants of already existing products in the market and there is no novelty attributable to the alleged design registrations.

(iii) The design registrations obtained by the plaintiff were already published by the plaintiff prior to the date of application. Since they were already published, the design registrations are hit by Section 4(b) of the Designs Act.

(iv) The third defendant already holds various design registrations in respect of the design registrations similar to the design registrations obtained by the plaintiff. Hence, gas stove of the plaintiff under design registration No.304676 is neither new nor novel nor distinctive from the prior published design registration of the third defendant. Therefore, the



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design registrations obtained by the plaintiff are liable to be cancelled under Section 4(a),(b)&(c) of the Designs Act.

(v) The plaintiff has already filed cancellation petition for cancellation of design registration No.304676 obtained by the plaintiff.

(f) The third defendant through their products “Preethi Glam Steel” have not infringed the patent registration obtained by the plaintiff. Preethi Glam Steel is a gas stove with single metal body moulded as a frame, where the upper body is bent on the front side and also on the back side, to cover the entire body of the gas stove and hence, completely distinct and not infringing the patent obtained by the plaintiff under registration Nos.452008 and 463327, which is restricted to a flat sheet body.

(g) On comparison of drawings of both the parties' patented products and registered designs would reveal that there are no similarities between the plaintiff's gas stove and the defendants' gas stove.

(h) The defendants also contend that Preethi Glam Steel is made of stainless steel, which is opaque and does not provide any visual



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feedback, and the said product is totally different from the plaintiff's design.

(i) The plaintiff has not satisfied the requirement of Section 15(1)(b) of the Designs Act. As per the said provision, the registered proprietor of the design has been mandated to mention on the articles about the design registration.

(j) On comparison of the products as disclosed in the patent and design registrations obtained by the plaintiff with that of the defendants' products, it is clear that there are no similarities. Hence, the defendants have not committed infringement of the plaintiff's patent and design.

(k) The existence of patent and design will come to the aid of the plaintiff only if the design has an aesthetic/visual appeal to the eye without any functionality attributable to its shape. Similarly, the patent registrations obtained by the plaintiff through Patent Nos.452008 and 463227 have to be cancelled, since there is no novelty in the products of the plaintiff, and the prior art documents produced by the defendants also would reveal that the plaintiff is not entitled for patent and design registrations.



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66. Apart from reiterating the contentions of the defendants in

C.S.(Comm.Div.)No.271 of 2023, the defendants in

C.S.(Comm.Div.)No.258 of 2023 have raised the following defences:-

(a) The third defendant is a leading manufacture in kitchen appliances and they have been in the market for the past 25 years in India.

(b) Both the suit patents are vulnerable and with regard to Patent No.452008 (main patent), a third party entity had filed a pre-grant opposition. However, owing to settlement between the third party and the plaintiffs, the pre-grant opposition was dismissed as withdrawn and the Patent Office did not consider and decide the opposition on merits, especially when there is no provision under the Patents Act to withdraw a pre-grant opposition. Therefore, the validity of main patent is doubtful.

(c) Both the main patent (452008) and the addition patent (463327) are liable to be revoked under Sections 64(1)(e) and 64(1)(f) of the Patents Act, 1970, for lack of novelty and inventive step. By citing documents D1 to D7 annexed in the typed set of papers, it is stated that these are all prior art documents cited in a pre-grant opposition filed



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against the main patent. However, without considering any of these documents, the Patent Office passed a non-speaking order, which taints the main patent granted to the plaintiffs.

(d) The third defendant is selling more than 60 types cooking stoves under the brand name 'FABER'. However, the plaintiffs have not specified as to which patent is infringed by the defendants. Therefore, the allegations of the plaintiffs about infringement of the patents are ambiguous and vague.

(e) The features of Hilux gas stoves of the third defendant, especially, the bent stainless-steel frame, are known in the art and have been incorporated in the products available in the market for several decades and much prior to the filing date of the suit patents. Therefore, they cannot claim monopoly over the products in question.

67. The pictorial representation of the defendants' gas stove, which the plaintiffs claim amounts to infringement of patent and design, is reproduced hereunder:-

In C.S.(Comm.Div.)No.258 of 2023:



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In C.S.(Comm.Div.) No.271 of 2023:



68. This Court has given a careful consideration to the defences raised by the defendants in both the suits. On a prima-facie consideration, it cannot be conclusive established one way or the other,



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as only a skilled person in the field of gas stove will be in a position to exactly point out as to whether the plaintiff's patent and design has been infringed by the defendants in both the suits or not.

69. The defendants in C.S.(Comm.Div.)No.271 of 2023 claimed that the design registration pertaining to subject matter of C.S.(Comm.Div.)No.271 of 2023 is also similar design as that of six other designs obtained by the plaintiff, for which, this Court, in its order dated 09.01.2017 passed in C.S.No.677 of 2016, did not grant any interim order as it involved functionality of the frameless gas stove of the plaintiff's registration under the Designs Act, which does not give protection for functionality. It is also settled law that under the Designs Act, the functionality of a product cannot be protected as the Designs Act protects only the shape, configuration, pattern or ornament.

70. The grant of patent in favour of the plaintiff, on a prima facie consideration, has not dealt with the defences raised by the defendants in these suits. The defendants claim that the grant of patent through Patent No.452008 is a non-speaking order. According to them, despite the



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objections raised by Butterfly Gandhimathi Appliances in their pre-grant opposition, the Patent Office has not considered those objections, but, instead, based on the compromise reached between Butterfly Gandhimathi Appliances and the plaintiff, and based on the compromise decree passed by this Court in an infringement suit filed by the plaintiff against the Butterfly Gandhimathi Appliances, the Patent Office has passed an order granting patent to the plaintiff in respect of its gas stove through Patent No.452008. The grant of patent is an order where third parties interest are also involved, like that of the defendants in both the suits. Therefore, necessarily, irrespective of the settlement between the plaintiff and Butterfly Gandhimathi Appliances, the parties to C.S.No.677 of 2016, it is the duty of the Patent Office to consider the objections raised in the pre-grant opposition on merits and in accordance with law. Though the plaintiff has placed before this Court certain documents / communications with the Patent Office, those documents/communications are not reflected in the order passed by the Patent Office granting patent in favour of the plaintiff. The defendants in both the suits categorically contend that the patent registrations through Patent No.452008 and the addition of Patent bearing No.463327 granted



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very recently in September, 2023, are invalid for the following reasons:-

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- (i) Insufficient description;
- (ii) lack of novelty and anticipation;
- (iii) obviousness and lack of inventive step;
- (iv) Non-patentability; and
- (v) drawings of the patent No.452008 are prior published.

71. The defendants in C.S.(Comm.Div.)No.258 of 2023 have also categorically contended that the gas stoves of the plaintiffs and the gas stoves of the defendants are entirely different. They have also given the details of their gas stoves and their photographs in the counter affidavit as well as in the written statement to show that nowhere their products are similar to that of the plaintiffs' products. They have also claimed that they are in the market for a long number of years and further they would contend that the patents obtained by the plaintiff are based on prior art published and therefore, the patent registrations are invalid.

72. The third defendant in both the suits have already sought for cancellation of the patent and the cancellation petitions are pending on



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the file of the Patent Office. When, on a comparison of the plaintiffs' gas stoves and the defendants' gas stoves, this Court cannot conclusively come to the conclusion that the gas stoves are similar, necessarily, the parties will have to go for trial and only thereafter, the dispute can be adjudicated on merits and in accordance with law. No expert opinion in the field of gas stove is also available on record to give a finding one way or the other, that is, either to prove or disprove the plaintiffs' case.

73. Being a patent and design infringement matter, this Court with the available materials on record, cannot decide at this stage either in favour of the plaintiff or in favour of the defendants. Though the plaintiffs may contend that their gas stoves are newly invented by them, this Court, at the interlocutory stage, is unable to accept the plaintiffs' contention, as the defences raised by the defendants with supporting materials will lead this Court to come to the conclusion that only after trial, the dispute can be adjudicated.

74. The first distinctive feature of patent infringement litigation is the detailed and technical nature of such litigation that often requires a



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thorough analysis of the scientific and technical aspects of the patent.

The high degree of technical and scientific expertise required to appreciate patent infringement litigation on merits is a usual characteristic of such litigation and is absent in usual civil litigations. It is natural that the burden on the litigant to establish a strong case in his favour on the basis of oral and affidavit evidence is more onerous and difficult in patent infringement litigation as compared to usual civil litigation. The same also holds good to some extent while deciding infringement application under the Designs Act for infringement of designs.

75. The defendants in both the suits have also produced prior art documents and patents granted by the US patent office for similar gas stoves. Whether those prior art documents are identical to the plaintiffs' patent and designs is a matter for trial and cannot be decided in these interlocutory applications. Whether or not the defendants have committed patent and design infringement, considering the nature of the defences raised by the defendants, requires expert opinion of skilled persons in the field of gas stoves. Therefore, at this interlocutory stage,



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this Court is unable to conclusively decide one way or the other.

Necessarily, no interim relief can be granted and the parties should be directed to go for trial.

76. It is well settled law that the parties seeking interim injunction has to satisfy the trinity tests; namely, (i) prima-facie case; (ii) balance of convenience; and (iii) irreparable hardship. The defendants also claim that they are also reputed players in kitchen appliances and they are in the field for several decades. While that be so, the balance of convenience, considering the nature of the dispute and the defences raised by the defendants, is to relegate the parties to go for trial and not grant any interim relief, pending trial.

77. The defendants have also pleaded suppression of material facts by the plaintiffs by not disclosing the suit in C.S.No.677 of 2016, in which, this Court, by its order dated 09.01.2017, had refused to grant interim injunction, insofar as five other design registrations obtained by the plaintiffs, since the plaintiffs' claim arises out of the functionality of gas stoves, for which, designs were obtained by the plaintiffs.



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Eventhough the plaintiffs contend that there is no suppression of material facts as claimed by the defendants as the suit in C.S.No.677 of 2016 is no way connected with the present suit, which deals with different design registrations, the respective contentions cannot be adjudicated in these interlocutory applications and can be adjudicated only after trial. If the interim injunction is granted, the rights of the defendants, who are in the business for a long number of years and who are also reputed players in the market, will be greatly affected, and in case they succeed in the main suit, they will be put to irreparable loss and hardship. Therefore, after giving due consideration to the aforementioned factors and in view of the fact that the suits are patent and design infringement matters, where several defences have been raised by the defendants supported by documents, all the parties will have to necessarily go for trial and the question of granting interim injunction as prayed for by the plaintiffs in these interlocutory applications will not arise. The plaintiffs have not made out a prima-facie case and they have also not established balance of convenience and irreparable hardship. However, in order to protect the interest of the plaintiffs, in case they succeed in the suit, the interest of justice requires that the defendants are directed to maintain the accounts



O.A.Nos.920 of 2023 etc.

of sales pertaining to the impugned gas stoves till the disposal of the suits.

78. Apart from the reasons stated supra, this Court also took into consideration of the fact that the suit is a commercial suit, wherein strict time lines are fixed for disposal of the suit. Therefore, where, in a case, several defences have been raised, which are triable defences, in the interest of justice, it is better to direct the parties to go for trial, as the matter requires in-depth analysis, more particularly, scientific analysis insofar as the subject designs and patents are concerned.

79. For the foregoing reasons, O.A.Nos.920, 921 and 1084 of 2023 in C.S.(Comm.Div.)No.258 of 2023; and O.A.Nos.946 and 947 of 2023 in C.S.(Comm.Div.)No.271 of 2023 are dismissed. Consequently, in view of dismissal of interim injunction applications, A.No.5669 of 2023 in C.S.(Comm.Div.)No.258 of 2023; and A.No.6006 of 2023 in C.S.(Comm.Div.)No.271 of 2023 seeking appointment of Advocate Commissioner, are also dismissed. But, in order to protect the interest of the plaintiff, in case they succeed in the suit, the defendants are directed



O.A.Nos.920 of 2023 etc.

to maintain the accounts of their sales pertaining to the impugned gas stoves till the disposal of the respective suits. However, it is made clear that this Court has not expressed any opinion on the merits of the respective contentions as it is left open for the parties to agitate their respective contentions during trial and in the main suit.

Post both the suits for filing written statement on 29.04.2024.

02.04.2024

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes / No
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O.A.Nos.920 of 2023 etc.

ABDUL QUDDHOSE, J.
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**O.A.Nos.920, 921 and 1084 of 2023
&
Application No.5669 of 2023
in
C.S.(Comm.Div.)No.258 of 2023
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O.A.Nos.946 and 947 of 2023
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02.04.2024