



2025:DHC:7085-DB



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

+ **FAO(OS) (COMM) 6/2025 & CM APPL. 2659/2025**

JAY SWITCHES (INDIA)PVT. LTDAppellant

Through: Mr. Gaurav Choubey, Mr.
Samiron Borkataky, Mr. Ikshvaaku Marwah,
and Ms. Madhupreeta Nayak, Advs.

versus

SANDHAR TECHNOLOGIES LTD & ORSRespondents

Through: Mr. Adarsh Ramanujan, Ms.
Meenakshi Ogra, Mr. Tarun Khurana, Mr.
Samrat S Kang and Mr. Rajat Sabu, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **19.08.2025**

C. HARI SHANKAR, J.

1. A humble fuel tank cap has sparked an intense, and intellectually stimulating, debate regarding patent claim construction. So much, one may remark, from so little!

The Facts, the Dispute, and the controversy

2. Cars run on fuel. Fuel is stored in the fuel tank. The tank has to be capped. The appellant manufactures such a cap, and has a patent for it. The appellant alleges that the respondents have manufactured a cap which infringes the patent.



2025:DHC:7085-DB



3. Ergo, the appellant has instituted CS (Comm) 301/2023¹, before this Court, seeking an injunction restraining the respondents from infringing its patent. The respondents' asserts, *per contra*, that it is not infringing the appellant's patent², onto which the cap manufactured by it does not map.

4. The appellant filed, with its suit, IA 9152/2023, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking an interlocutory injunction restraining the respondents from continuing to manufacture and deal in the allegedly infringing fuel caps. By judgment dated 2 December 2024, a learned Single Judge of this Court has dismissed the IA.

5. Aggrieved, the appellant is in appeal before us.

6. The Suit Patent

6.1 The invention, patented under the suit patent IN 427110³, is disarmingly titled "Air Tight Fuel Cap". Legalese aside, it refers, quite simply, to a cap which is used to cap the fuel tank in motor vehicles. The patent was granted on 27 March 2023, and is presently subsisting. The inventive feature of the suit patent, *vis-à-vis* prior art, as explained to us by Mr. Gaurav Choubey, who appears for the appellant, is that it eliminates the chance of fuel leakage.

¹ **Jay Switches India Pvt Ltd v Sandhar Technologies Ltd**, hereinafter referred to as "the suit"

² "the suit patent" hereinafter

³ "IN '110" hereinafter



6.2 This aspect, too, however, did not detain us, as the patentability of the invention covered by the suit patent is not in dispute. The defence of the respondents, against the case that the appellant has sought to set up in its suit, is not that the suit patent is vulnerable to revocation on the ground of invalidity, but that the fuel cap manufactured by the respondents does not infringe the suit patent. The dispute, therefore, pertains to infringement, and not to validity.

6.3 The “Summary of the Invention” in the complete specifications relating to the suit patent, reads thus:

“Summary of the Invention

Accordingly, the present invention relates to a fuel cap to be secured intermittently to a fuel filler neck attached to an inlet of a feed oil pipe, comprising a cylindrical body comprising a top portion, a middle portion and a bottom portion, the said top portion being separated from the middle portion by a circular portion and *the said middle portion being separated from the bottom portion by a main circular plate*; a body cover encircling the middle portion of the cylindrical body, the said body cover *comprising a cylindrical trunk portion and a circular plate located on a top end of the cylindrical trunk portion, the said circular plate being provided with a pair of anti-rotation projections on a bottom surface thereof*; a turning handle being affixed to the circular plate of the body cover and encircling the top portion of the cylindrical body; a circular seal member accommodated by the bottom surface of the said circular plate of the body cover; and a cylindrical locking member encasing the cylindrical trunk portion of the body cover, the said cylindrical locking member comprising a pair of locking projections on an outside surface thereof; characterized in that each of the said locking projection of the cylindrical locking member is provided with a pair of beams on an inner surface thereof *that terminate at a predetermined distance from a bottom end of the locking projection, and the said predetermined distance being equal to 10% to 100% of the length of the main circular plate separating the middle portion of the cylindrical body from the bottom portion of the cylindrical body.*”

(Emphasis supplied)



The exact corpus of the dispute in the present case is the “main circular plate”, or MCP, which separates the middle portion of the fuel cap from the lower portion, particularly the thickness – which, for some strange reason, is referred to, in the complete specifications as well as in all the documents relating to the case, as the “length” – thereof.

6.4 18 claims were granted, in favour of the appellant. Of these, Claims 2 to 18 are dependent claims, dependent on Claim 1. For our purpose, it is necessary to refer only to Claims 1 and 2:

“1. A fuel cap (1) to be secured intermittently to a fuel filler neck attached to an inlet of a feed oil pipe, comprising:

a cylindrical body (2) comprising a top portion (21), a middle portion (23) and a bottom portion (24), the said top portion (21) being separated from the middle portion (23) by a circular portion (22) and the said middle portion (23) being separated from the bottom portion (24) by a main circular plate (241);

a body cover (3) encircling the middle portion (23) of the cylindrical body (2), the said body cover (3) comprising a cylindrical trunk portion (31) and a circular plate (32) located, on a top end of the cylindrical trunk portion (31), the said circular plate (32) being provided with a pair of anti-rotation projections (323) on a bottom surface thereof;

a turning handle (6) being affixed to the circular plate (32) of the body cover (3) and encircling the top portion (21) of the cylindrical body (2);

a circular seal member (33) accommodated by the bottom surface of the said circular plate (32) of the body cover (3); and

a cylindrical locking member (5) encasing the cylindrical trunk portion (31) of the body cover (3), the said cylindrical locking member (5) comprising a pair of locking projections (52) on an outside surface thereof;



characterized in that: each of the said locking projection (52) of the cylindrical locking member (5) is provided with a pair of beams on an inner surface thereof that terminate at a predetermined distance from a bottom end of the locking projections (52), and the said predetermined distance being equal to 10% to 100% of the length (1) of the main circular plate (241) separating the middle portion (23) of the cylindrical body (2) from the bottom portion (24) of the cylindrical body (2).

2. The fuel cap (1) as claimed in claim 1, wherein the main circular plate (241) comprises of a pair of engagement projections (242) engaged within predetermined distance provided in the locking projections (52).”

6.5 What we are, here, exactly concerned with, may be more apparent from the following drawing, which also forms part of the complete specifications of the suit patent:

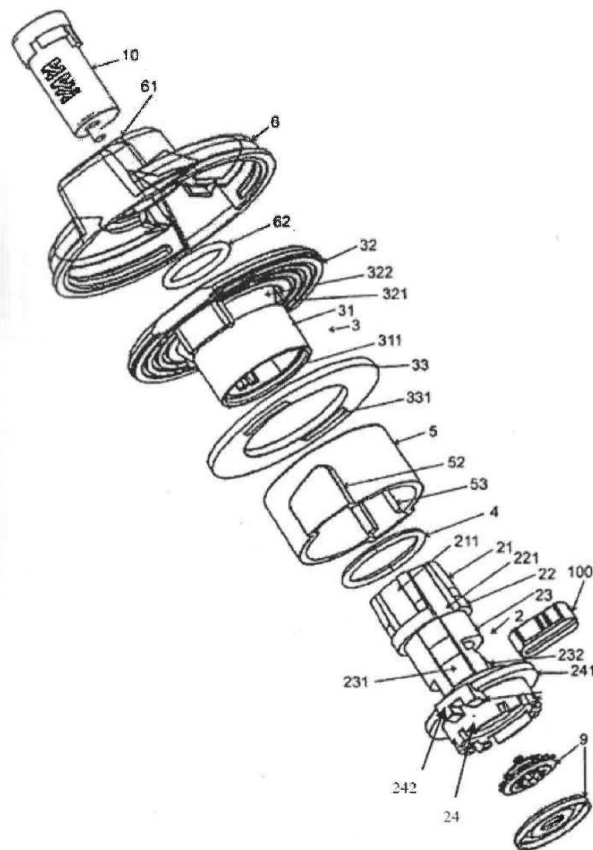


Figure 2



Figure 2, reproduced above, is, in effect, the disembowelled fuel cap which forms subject matter of the suit patent. The circular component numbered “241” is the MCP, and it is around this component that the dispute primarily revolves. The significance of this drawing would become more apparent from the discussion which follows.

6.6 It is also necessary to advert to three other drawings, forming part of the complete specifications of the suit patent and numbered Figures 4, 5a and 5b, as well as the explanations provided in relation to the said drawings, in the “Detailed description of the Invention” in the complete specifications:

Figures 4, 5a and 5b

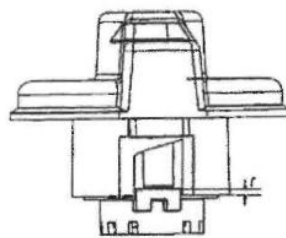


Figure 4

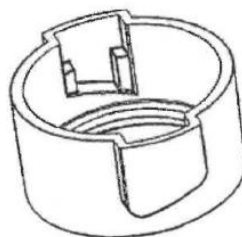


Figure 5a



2025:DHC:7085-DB

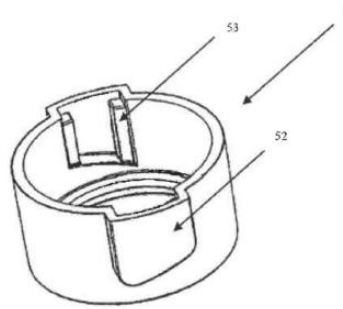
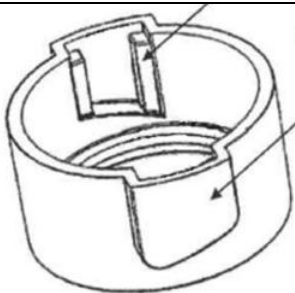
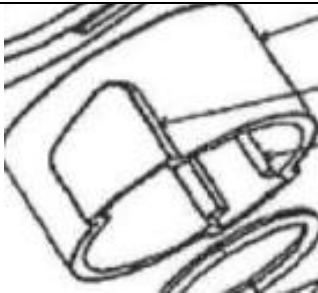


Figure 5b

Of these three drawings, Figure 5a represents the prior art, whereas Figure 5b is a component of the fuel cap forming subject matter of the suit patent which, in the complete specifications of the suit patent, is referred to as the “circular body”. To avoid confusion, it is necessary to point out that the circular body has, in Figures 5a and 5b, been shown upside down, whereas the upper open circular rim of the circular body is actually its lower edge, as is apparent from the same circular body as is reflected in Figure 2. In other words:

Circular body in Figure 5b	Circular body in Figure 2
	

6.7 The primary inventive step in the fuel cap forming subject matter of the suit patent, as compared to prior art, is in the sole distinguishing feature between Figures 5a and 5b, which becomes



apparent at a plain glance at the said figures. This is the distance between the lower “open” end of the beams and the open rim of the circular body. The suit patent asserts that, by reducing the said distance, *vis-à-vis* prior art – as would become apparent from a comparison of Figures 5a and 5b *supra* – the chance of fuel leakage has been minimized.

7. The exact controversy

7.1 With this introduction, it becomes easy to explain the exact controversy before us. The dispute essentially centres around three elements of the fuel cap, and their dimensions. With reference to Figure 2, they are

- (i) the vertical “beam” numbered “53”,
- (ii) the MCP, numbered “241” and
- (iii) the Engagement Projections⁴ forming part of the MCP, numbered “242”.

As already noted, the pivotal dimension of the fuel cap, which is central to the dispute, is the distance between the lower terminal point of the “beam” (53) and the lower circular rim of the circular body. For the sake of convenience, one may designate this dimension, which is referred to, in the complete specifications and in the context of the present controversy, as the “Predetermined Distance”⁵, in Figure 5b, thus:

⁴ “EP” hereinafter

⁵ “PD” hereinafter



2025:DHC:7085-DB

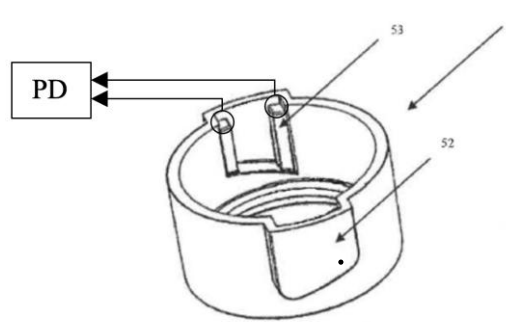


Figure 5b

7.2 One may, with this background, identify the core issue in controversy, on which the parties have joined issue, thus:

(i) The concluding recitals in Claim 1, in the complete specifications of the suit patent, read thus:

“characterized in that each of the said locking projection (52) of the cylindrical locking member (5) is provided with a pair of beams on an inner surface thereof that terminate at a predetermined distance from a bottom end of the locking projections (52), and

the said predetermined distance being equal to 10% to 100% of the length (1) of the main circular plate (241) separating the middle portion (23) of the cylindrical body (2) from the bottom portion (24) of the cylindrical body (2).”

(ii) Claim 1, therefore, provides that *the PD is equal to 10 to 100% of the length (i.e. the thickness) of the MCP*. It is this feature of the claim which is the fulcrum of the controversy.

(iii) According to the respondents, *the PD, in its fuel cap, is not equal to 10 to 100% of the thickness of the MCP*. Ergo, it does not infringe the suit patent.



(iv) This controversy, in turn, narrows down to the “length” (i.e. the thickness) of the MCP. The appellant contends that the thickness of the MCP is the thickness of the EP, numbered “24” in Figure 2, as the EP is part of the MCP. As against this, the respondent contends that the thickness of the MCP is the thickness of the circular plate numbered “241” in Figure 2.

(v) The thickness of the circular plate is 2.5 mm whereas the thickness of the EP is 4.8 mm. The PD in the respondents’ fuel cap is 3 mm.

(vi) The PD, as per Claim 1, has to be 10 to 100% of the thickness of the MCP. If the PD of the respondents’ fuel cap is 10 to 100% of the thickness of the MCP, it infringes the suit patent. If it is outside this range, it does not. The appellant contends the former. The respondents urge the latter.

(vii) The appellant contends that the thickness of the MCP, which has to be treated as the thickness of the EP, is 4.8 mm. The PD in the respondents’ fuel cap, which is 3 mm, is 62.5% of the thickness of the EP. 62.5% is between 10 and 100%. Ergo, submits the appellant, the respondents fuel cap infringes the suit patent.

(viii) The respondents’ contend, *per contra*, that the thickness of the MCP is the thickness of the circular plate alone, and not



2025:DHC:7085-DB



the thickness of the EP, even if it is a part of the circular plate. The thickness of the circular plate is 2.5 mm. 3 mm is 120% of 2.5 mm and is, therefore, outside the 10% to 100% range. Ergo, submit the respondents, the respondents' fuel cap does not infringe the suit patent.

7.3 Once the clouds have cleared, therefore, the only controversy is, therefore, whether the thickness of the MCP is to be treated as the thickness of the circular plate alone, or the thickness of the EP.

7.4 The enigmatic “l”:

7.4.1 Before proceeding with the findings of the learned Single Judge, one additional aspect deserves to be noted. The concluding recital in Claim 1 of the suit patent, at the cost of repetition, reads:

“and ...

the said predetermined distance being equal to 10% to 100% of the length (*l*) of the main circular plate (241) separating the middle portion (23) of the cylindrical body (2) from the bottom portion (24) of the cylindrical body (2).”

7.4.2 The parenthesized “*l*” (italicized and emphasized *supra*), after the words “of the length”, was subject of some controversy. When one scans the complete specifications of the suit patent for a clue as to “*l*”, one finds the *only* other reference to “*l*” to be in Figure 4. While it is somewhat difficult to discern what exactly “*l*”, in Figure 4, represents, it is perfectly clear that it *does not represent* the thickness of the EP, which is separately and prominently visible in Figure 4.



7.4.3 That said, the fact remains that Figure 4, too, does not clearly enlighten the exact dimension which the figure “l” represents. Thus, though there was some debate about the circumstances in which the parenthesized “l” came to be inserted in Claim 1 before it was finally cleared, we do not deem it necessary to dwell thereon. We have to live with the parenthesized “l”, and Figure 4, and make of them what we will.

The impugned judgment

8. The following paragraphs, from the impugned judgment, encapsulate the reasoning of the learned Single Judge:

“33. A reading of the portions of Claim 1 extracted above shows that the range of 10% to 100% refers to the length of the main circular plate (MCP) (241). The words “*main circular plate*” in Claim 1 are followed by the numerical reference “241”. When numerical reference “241” is read in juxtaposition with Figure 2 of the invention, it becomes abundantly clear that the numerical “241” is in relation to the main circular plate (MCP). The numerical reference “242” which does not occur in Claim 1 but occurs in Claim 2, refers to the engagement projections (EP). As per Figure 2 above, the numerical “242” clearly indicates the engagement projections (EP).

35. In the present case, as discussed above, the numerical references clearly assist in understanding the technical features of the claim and therefore act as a useful aid for claim construction.

36. The expression “*main circular plate (241)*” in Claim 1 is followed by the expression “*separating the middle portion (23) of the cylindrical body (2) from the bottom portion (24) of the cylindrical body*”, which can only be in relation to the main circular plate (MCP) and not the engagement projections (EP). It is



2025:DHC:7085-DB



clear from Figure 2 above that it is the main circular plate (MCP) that separates the middle portion of the cylindrical body (2) from the bottom portion (24) of the cylindrical body and not the engagement projections (EP).

39. On behalf of the plaintiff, it has been vehemently contended that engagement projections (EP) are nothing but a part of the main circular plate (MCP). However, as noted above, the plaintiff has used the words “main circular plate (MCP)” and “engagement projections (EP)” in the Complete Specification in a separate and distinct manner, wherein the engagement projections (EP) (242) are referred to as attachments to the main circular plate (MCP) (241) for the locking purpose.

40. A reading of Claim 1 and Claim 2 also shows that Claim 1 does not make any reference to the engagement projections (EP), whereas Claim 2 makes a reference to both the main circular plate (MCP) as well as the engagement projections (EP). Claim 1 does not specify whether the main circular plate (MCP) has engagement projections (EP) or not. However, the dependent Claim 2 clearly envisages the main circular plate (MCP) having engagement projections (EP). Pertinently, Claim 2 does not talk about the range of 10 to 100% and the relationship between the predetermined distance (PD) and the length of the main circular plate (MCP), which is there in Claim 1. Thus, in my considered view, the aforesaid range of proportion given in Claim 1 cannot be read into Claim 2.

52. The aforesaid extract demonstrates the understanding of the plaintiff that expression “length” in the context of a “circular plate” means nothing but its thickness. Therefore, the expression “length” used in Claim 1 would refer to the thickness of the main circular plate (MCP) alone. By no stretch of imagination, can the engagement projections (EP) be considered to be a “circular plate”, and therefore, the expression “thickness” would not qualify the engagement projections (EP). It is also to be noted that the numerical references “241” and “242” have also been used in a functionally distinctive manner in the aforesaid extract.

53. Mr. Lall has drawn attention to the admissions made on behalf of the defendant in the drawings given in the post-hearing written submissions filed by the defendant no. 2 on 7th March, 2023, where numerical reference “242” is given in respect of the



main circular plate (MCP). Mr. Lall also pointed out that even in the expert affidavit dated 16th January, 2023 given on behalf of the defendants, the main circular plate (MCP) was marked with reference numeral “242”.

54. Mr. Ramanujan submits that the numerical references in the aforesaid drawings and the expert affidavit are typographical errors and this is borne out by the texts immediately preceding and succeeding the drawings.

55. A perusal of the paragraph succeeding the figure in the written submissions (para 10 of the written submissions) shows that the main circular plate (MCP) has been referred with the numerical reference “241” and not “242” and therefore, I find merit in the submission of the counsel for the defendant that use of the numerical reference “242” in the figure appears to be a typographical error.

56. Similarly, the reference to the main circular plate (MCP) as “242” in the figure given in the expert affidavit also appears to be a typographical error since in the preceding paragraph 32 of the expert affidavit the main circular plate (MCP) has been clearly referred to as “241” and in the succeeding paragraph 33 of the expert affidavit the engagement projections has been referred to as “242”.

CONCLUSION

57. Therefore, I am satisfied that the reference to the ‘length’ of the main circular plate in Claim 1 is to the ‘thickness’ of the main circular plate (MCP) (241) without the engagement projections (EP) (242) referred in Claim 2. Consequently, on a *prima facie* view, there cannot be any infringement by the defendants in respect of either Claim 1 or Claim 2.

59. In view of the discussion above, the plaintiff has failed to make out a *prima facie* case for grant of interim injunction. Balance of convenience is in favour of the defendants and against the plaintiffs. Irreparable injury and undue hardship would be caused to the defendants if the interim injunction is granted in favour of the plaintiff company.

60. Accordingly, the application for the grant of interim injunction is dismissed and the defendants are relieved from the undertaking given by the defendants in court on 11th May, 2023.”



9. The aspect of “utility” of the circular plate

9.1 Additionally, the impugned judgment also addresses an argument, of the Appellant, that the circular plate, by itself and without the EPs, was of no functional utility, and did not contribute to the invention. The learned Single Judge has rejected this submission.

9.2 We do not deem it necessary to enter into this aspect either as, according to us, it is really tangential to the issue at hand. The controversy relates to the dimension which, according to the suit patent, has to be taken into consideration while assessing whether the PD falls within the 10% to 100% range of its thickness/length. Is this dimension the thickness of the circular plate per se, or is it the thickness of the EPs attached to the circular plate? The solution to the dispute lies in the answer to this query. To our mind, the answer has to be arrived at, by reference to the wordings of the claim, read with the complete specifications. It cannot in any way depend on whether the circular plate, *sans* the EPs is, or is not, of any functional utility or contributes to the utility of the invention covered by the suit patent.

10. The learned Single Judge has also adverted, at some length, to the prosecution history of the suit patents, prior to its being granted. Again, in our view, the dispute is capable of easy resolution by a mere reference to the claims in the suit patents read with the complete specifications, and it is not necessary for us to refer to the prosecution history.



Rival Contentions

Submissions of Mr. Choubey

11. Mr. Choubey submits that the learned Single Judge has erred in failing to accord sufficient importance to Claim 2 of the suit patent. He has referred to various decisions which hold that, in a given patent, the scope of the independent claim may be limited by the dependent claim. The scope of Claim 1 in the suit patent, he submits, has to be understood and limited by Claim 2. If this were to be done, no ambiguity in Claim 1 would remain.

12. Claim 2 of the suit patent, points out Mr. Choubey, clarifies that the EPs were a part of the MCP. This, by itself, he submits, would be sufficient to understand the length (thickness) of the MCP, to which Claim 1 refers, as including the thickness of the EPs. If the EPs are a part of the MCP, submits Mr. Choubey, it stands to reason that the thickness of the EPs would also have to be reckoned while considering the thickness of the MCP which could not, therefore, be limited to the thickness of the circular plate alone.

13. The view, of the learned Single Judge in the impugned judgment, that the EPs are not part of the MCP, submits Mr. Choubey, would result in Claim 2 becoming broader than Claim 1, which goes against the elementary principles regarding construction of claims. In fact, he points out, there is nothing, in the complete specifications of



the suit patent, which would point towards the EPs being elements of the invention covered by the suit patent, different or distinct from the MCP. Mr. Choubey has placed reliance on certain pages from Terrell on the Law of Patents to support his contention that the interpretation of the main/antecedent claim would have to be guided by the words of the subordinate claim.

14. Mr. Choubey further invokes the principle of “pith and marrow” of the granted claims. He submits that the manner in which the learned Single Judge has understood and interpreted the Claims forming subject matter of the suit patent result in the invention becoming absurd and meaningless, as the learned Single Judge has excluded, from the MCP, the EPs, which are the elements which are responsible for working of the invention.

15. Mr. Choubey further submits that the parenthesized numerals in the description of the claims cannot be used as aids to their understanding. The learned Single Judge, he submits, has fundamentally erred, therefore, in relying on the numerals. He has relied, for this purpose, on the judgment of the UK Court of Appeal in *Virgin Atlantic Airways Ltd v Premium Aircraft Interiors Group Ltd*⁶, which holds that reference signs, in complete specifications or in the claims granted in a patent, aid in the understanding of its technical features, but do not limit the scope of the granted claims. He has particularly emphasised para 16 and 17 of the said decision, which read:

⁶ [2009] EWCA Civ 1062



“16. It follows that we need to address what the skilled man would actually make of the two explicit drafting rules. As regards rule 29(7), Laddie J in *Telsonic AG's Patent*⁷ said that:

“Reference numerals ... are designed to be, and can be, useful tools to elucidate the inventor's intention. As such they may, depending on the circumstances, help to illustrate that the inventor intended a wide or narrow scope for his claim. On the other hand they cannot be used to import into the claim restrictions which are not foreshadowed by the language of the claim itself.”

17. We think that is not quite right. In particular we do not think that numerals should influence the construction of the claim at all – they do not illustrate whether the inventor intended a wide or narrow meaning. The patentee is told by the rule that if he puts numerals into his claim they will not be used to limit it. If the court subsequently pays attention to the numbers to limit the claim that is simply not fair. And patentees would wisely refrain from inserting numbers in case they were used against them. That is not to say that numbers are pointless. They help a real reader orient himself at the stage when he is trying to get the general notion of what the patent is about. He can see where in the specific embodiment a particular claim element is, but no more. Once one comes to construe the claim, it must be construed as if the numbers were not part of it. To give an analogy, the numbers help you get the map the right way up, they do not help you to read it to find out exactly where you are.”

16. Mr. Choubey has further emphasised the words “characterized in that each of the said locking projection of the cylindrical locking member is provided with a pair of beams on an inner surface thereof that terminate at a predetermined distance from a bottom end of the locking projection, and the said predetermined distance being equal to 10% to 100% of the length of the main circular plate separating the middle portion of the cylindrical body from the bottom portion of the cylindrical body”, as well as the second paragraph in the “Summary of the Invention”, which reads:

⁷ [2004] R.P.C. 38 § 26



2025:DHC:7085-DB



“According to another aspect of the present invention, the fuel cap is described wherein the main circular plate comprises of a pair of engagement projections engaged within predetermined distance provided in the locking projections.”

These paragraphs, according to Mr. Choubey, further go to indicate that the elements of the invention covered by the suit patent, which is actually of functional utility, are the EPs, which interlock and engage with the circular body within the PD. It would, therefore, be against the very grain of the invention covered by the suit patent to exclude, from the thickness (length) of the MCP, the thickness of the EPs.

Submissions of Mr. Ramanujan

17. Responding to Mr. Choubey’s contentions, Mr. Ramanujan submits that the entire argument of Mr Choubey is predicated on a non-issue. He submits that the controversy is not whether the EPs are, or are not, part of the MCP. The issue in controversy is the element/dimension with respect to which 10% or 100% has to be reckoned, while measuring the PD. He submits that the reasoning of the learned Single Judge, in this regard, is unexceptionable. This position, he submits, is acknowledged even by the appellant in para 7 of the present appeal, which reads:

“7. The main issue in the proceedings before the Ld. Single Judge was narrowed down to one simple question of claim interpretation, i.e., whether in Claim 1, EP is to be considered part of and read along with the component MCP and whether the length of EP is to be measured when measuring MCP for the purpose of determining infringement. Both the parties were ad idem, that if EP is to be measured along with MCP, then the Defendant’s product is infringing.”



Thus, according to Mr. Ramanujan, the reliance, by Mr. Choubey, on Claim 2, and other references in the complete specifications of the suit patent, to contend that the EPs are part of the MCP, is completely misguided.

18. Mr. Ramanujan joins issue with Mr. Choubey on the aspect of whether numerical references, can be ignored. He submits that the decision in *Virgin Atlantic* was rendered in the context of Rule 29(7) of the Implementing Regulations to the EPC, as is noted in para 7 of the decision:

“7. The first matter relates to the use of numerals in a patent claim. Rule 29 (7) of the Implementing Regulations to the EPC provides that if the application contains drawings:

“... the technical features mentioned in the claim shall preferably, if the intelligibility of the claim can thereby be increased, be followed by reference signs relating to these features and placed between parentheses. These reference signs shall not be construed as limiting the claim.”

Mr. Ramanujan submits that Regulation 29(7) of the Implementing Regulations to the EPC has no application to the case at hand. Per contra, he submits, relying on Section 10(2)⁸ of the Patents Act, 1970 and Rule 13(4)⁹ of the Patent Rules, 2003, that drawings and

⁸ 10. **Contents of specifications -**

(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs, be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

⁹ 13. **Specifications –**

(4) Where the invention requires explanation through drawings, such drawings shall be prepared in accordance with the provisions of Rule 15 and shall be supplied with, and referred to in



numerical references are an integral part of complete specifications, as envisaged in the patent regime covered by the Patents Act applicable in this country. The learned Single Judge, therefore, he submits, was perfectly justified in relying on the numerical references contained in Claim 1 in order to understand the dimensional with respect to which 10% or 100% was required to be reckoned, as envisaged in the Claim.

19. In any case, submits Mr. Ramanujan, we are concerned with an appeal against an interlocutory order passed under Order XXXIX Rules 1 and 2 of the CPC. No case for interference, within the parameters chalked out by the following passage from *Wander Ltd v Antox India Pvt Ltd*¹⁰, in his submission, exists:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After

detail, in the specification, including the claims where the features illustrated in the drawings shall be followed by their respective reference signs in parentheses:

Provided that in case of a complete specification, if the applicant desires to adopt the drawings filed with the provisional specification as the drawings or part of the drawings for the complete specification, it shall be sufficient to refer to them in the complete specification as those left or filed with the provisional specification.

¹⁰ 1990 Supp SCC 727



2025:DHC:7085-DB



referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v Pothan Joseph*¹¹.

“... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v Jhanaton*¹² ‘...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case’.”

The appellate judgment does not seem to defer to this principle.”

Analysis

20. Having considered the issue, literally (and figuratively) in all its dimensions, we, for the following reasons, are of the view that no case for interference with the impugned judgment of the learned Single Judge is made out.

21. Reference Numerals and their utility

21.1 Before proceeding to state why we are not inclined to interfere, we reject, at the very outset and unequivocally, Mr. Choubey’s contention that numerical references, contained in the complete specifications or in the claims, as granted, can be ignored. We fail to understand how the patentee, who has drafted the complete specifications itself, and has obtained a patent on that basis, can wish away any part of the content of the complete specifications, as drafted. The numerical references in the claims have been provided by the appellant itself. If the appellant did not wish the numerical references

¹¹ AIR 1960 SC 1156

¹² 1942 AC 130



to be relied upon, it ought not to have provided them. We are clear in our view that numerical references in the claims or in the complete specifications, are reliable aids and guides to understanding the scope and ambit of the claims. In fact, they may even be determinative in that regard.

21.2 Judgments rendered overseas, even if they hold to the contrary, cannot be of any value in the patent regime in this country, which is governed by the Patents Act. As Mr. Ramanujan correctly points out, the contents of complete specifications in a patent are circumscribed by the provisions of the Patents Act in that regard. Section 10 of the Patents Act specifically deals with the “Contents of specifications”. It is exhaustive in that regard. Section 10(2) permits drawings to be supplied for the purposes of the complete specifications. Any such drawings, if supplied, are deemed to be a part of the specification. References, even in the Patents Act, to the complete specifications are also deemed to be references to the drawings as well. Section 10(4)(a)¹³ requires every complete specification to “fully and particularly describe the invention and its operation or use at the method by which it is to be performed”. The manner in which these features of the invention are to be “fully and particularly” described are, needless to say, left to the patentee. If the patentee desires to employ numerical references to describe the invention, those numerical references become part of the “full and particular description”, as envisaged by Section 10(4)(a). They are, therefore,

¹³ (4) Every complete specification shall—
(a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;



2025:DHC:7085-DB



unequivocally binding on the patentee.

21.3 Section 10(2) is statutorily made “subject to any rules that may be made in this behalf” under the Patents Act. It is, therefore, subject to the Patents Rules, which have been promulgated in exercise of the powers conferred by Section 159 of the Patents Act. Rule 13 of the Patents Rules deals with “Specifications”. Rule 13(4) stipulates that, where the invention requires explanation through drawings, the drawings would be prepared in accordance with Rule 15, and would be detailed.

21.4 As Mr. Ramanujan correctly points out, there is, in the Patents Act and the Patents Rules, no provision similar to Rule 29(7) of the Implementing Regulations to the EPC, on the basis of which the UK Court of Appeal handed down the decision in *Virgin Atlantic*. The principle, in that decision, that numerical references could not limit the scope of a claim, and were not of substantial importance in understanding a claim, cannot, therefore, apply to patent jurisprudence in our country.

21.5 In fact, other references cited by Mr. Choubey militate against his submission that the reference numerals contained in the claims can be ignored.

21.6 WIPO Guidelines



21.6.1 The guidelines contained in the WIPO¹⁴ Manual, while dealing with reference numerals, state thus:

“Reference numerals and expressions in parenthesis:

In some jurisdictions, claims are encouraged and/or required to recite reference numerals with which particular elements in the patent application’s drawings are labeled. For PCT international applications, such reference numerals shall preferably appear in parentheses after each of the corresponding elements in the claims. Thus if figure 1 of a patent application shows a computer memory and this computer memory is labeled “123,” for example, any reference to this particular computer memory element in the claims will be followed by the reference numeral “(123).”

In those jurisdictions in which the use of reference numerals is encouraged, this practice can support comprehension of the claims by establishing clear connection between the claims and the drawings. If, however, there are a large number of different embodiments, only the most important embodiments typically need to be incorporated in the claim(s) and indicated in this way.

In many countries, the patent laws explicitly state that reference numerals shall not be interpreted as limiting the extent of the matter protected by the claims. Their sole function is to make claims easier to understand. The patent drafter may even want to make a comment themselves to that effect in the description.”

(Emphasis supplied)

These guidelines clearly defeat the submission advanced by Mr. Choubey. They hold, clearly, that, in jurisdictions where reference numerals are used, they are of considerable assistance in supporting comprehension of the claims “by establishing clear connection between the claims and the drawings”. Where, however, as in the case of the Regulations under consideration in ***Virgin Atlantic***, the applicable patent laws specifically state that reference numerals *shall not* be interpreted as limiting the extent of the claimed matter, the

¹⁴ World Intellectual Property Organisation



position would be different.

21.6.2 The WIPO guidelines, therefore, clearly demonstrate the error in Mr. Choubey's contention, which is predicated on a decision rendered in a jurisdiction in which there is specific delimitation of the use of reference numerals, as compared to India, where there is no such limitation applicable.

21.7 EPO Rules

The Rules of the European Patent Office¹⁵ are equally explicit. They state:

“If the application contains drawings, and the comprehension of the claims is improved by establishing the connection between the features mentioned in the claims and the corresponding reference signs in the drawings, then appropriate reference signs need to be placed in parentheses after the features mentioned in the claims. If there are a large number of different embodiments, only the reference signs of the most important embodiments need be incorporated in the independent claim(s). Where claims are drafted in the two-part form set out in Rule 43(1), the reference signs need to be inserted not only in the characterising part but also in the preamble of the claims.

Reference signs are not however to be construed as limiting the extent of the matter protected by the claims; their sole function is to make claims easier to understand. A comment to that effect in the description is acceptable (see T 237/84).”

21.8 We, therefore, unequivocally reject Mr. Choubey's contention that reference numerals cannot be relied upon, to understand the scope of a claim. Besides the fact that the various Guidelines to which Mr. Choubey refers themselves indicate to the contrary, we are of the view

¹⁵ “EPO” hereinafter



2025:DHC:7085-DB



that, once a patentee has chosen to incorporate reference numerals in his claims as aids to understanding their scope and effect, they are part of the “full and complete description” of the invention covered by the suit patent, and the patentee is bound thereby.

21.9 Besides, the parenthesized numerals employed in the wording of the claim in the complete specifications of the suit patent cross refer to the drawings contained in the complete specifications. Providing of drawings to understand the scope of the claim is expressly envisaged in Section 10(2) of the Patents Act. They, therefore, have statutory significance. The drawings themselves are not merely pictorial figures but contain various numerical references. The numerical references, therefore, are an inherent part of the drawings and, inasmuch as the drawings themselves are an inherent part of the complete specifications of the patent, as contemplated by the Patents Act, the numerical references are of equal significance. Neither can the drawings be completely understood without alluding to the numerical references, nor would the numerical references make sense, unless one refers to the drawings. Even for this reason, therefore, the numerical references, parenthesized in the wordings of the claims, are of pivotal significance in understanding their scope and ambit.

21.10 Quite clearly, therefore, the appellant cannot wish the numerical references away, having itself chosen to incorporate them in the wording of its claims.

22. Claim 1



22.1 Viewed thus, the wording of Claim 1 in the suit patent, as granted, in our view, completely defeats the appellant's case. It clearly refers to "the main circular plate (241)". As the learned Single Judge has correctly held, when this is juxtaposed with Figure 2 *supra*, it is clear that the number "241" refers to the MCP, and not to the EP. The appellant has itself consciously assigned, to the MCP, the number "241" and, to the EP, the number "242". This, in our view, cannot be ignored, especially when the appellant, as the person who has drafted the claim, has equally consciously parenthesised the number "241" after the words "the main circular plate" in claim 1 of the suit patent. The obvious intent was that the thickness would be of the circular plate and not of the EP which was designated in Figure 2 by the numeral "242".

22.2 As Mr. Ramanujan correctly submits, the issue in controversy is not whether the EPs are, or are not, part of the MCP. The controversy revolves entirely around the understanding of the stipulation, in Claim 1 of the suit patent, that "the said predetermined distance (is) equal to 10% to 100% of the length of the main circular plate..." We are concerned only with the interpretation, while understanding this stipulation, of the words "of the main circular plate"; specifically whether the reference to the "main circular plate", in these words, is a reference to the circular plate per se, or the EPs.

22.3 In fact, one of the submissions advanced by Mr. Choubey is also instructive in this regard. He sought to submit, repeatedly, that



2025:DHC:7085-DB



the “length of the main circular plate” to which Claim 1 refers should be read “length of the main circular plate with the extended projections”. Apart from the fact that this would require us to rewrite the claim, the submission even by itself merits outright rejection, for the simple reason that the thickness of the main circular plate and the thickness of the EPs are different. There can, therefore, be no question of any “length of the main circular plate with the extended projections”. The reference can either be to the length of the MCP, or to the length of the EPs.

22.4 The appellant has itself chosen, in Claim 1, to provide that the PD has to be 10% to 100% of the length of the MCP. It was quite open to the Appellant to provide, instead, that the PD would be 10% to 100% of the length/thickness of the EPs. It has not chosen to do so. It cannot, therefore, seek to rewrite its claim at this stage.

23. Claim 2

23.1 The reliance, by Mr. Choubey, on Claim 2 is, in our view, misguided. Claim 2 does not in any way militate against the view that the learned Single Judge has taken. Claim 2 merely states that the EP is part of the MCP. That does not in any way enlighten as to the figure with respect to which 10% or 100% has to be reckoned while working out the predetermined distance vis-à-vis the length of the main circular plate. It was the appellant’s choice as to select the base with respect to which the figure of 10% or 100% was to be taken for working out the PD. The appellant has consciously selected the



thickness/length of the MCP as the basis for working out 10%/100%.

23.2 The fact that EP may be a part of the MCP is, therefore, completely tangential to the issue at hand. Even if the ECP is to be treated as part of the MCP, it cannot be denied that the MCP would be then of two thicknesses. One would be the thickness of the circular plate and the other would be the thickness of the EP. In such a situation, if the appellant has, in the claims which have been ultimately granted by the patent office, claimed an invention in which the PD is 10% to 100% of the thickness of the circular plate, that cannot be wished away on the ground that the EP is also a part of the circular plate. It was open to the appellant to specify that the figure of 10% or 100% would have to be with reference to the thickness/length of the EP. It has not done so. Nowhere in the complete specification of the suit patent do we find anything to indicate that the PD has to be 10% or 100% of the thickness/length of the EP. As such, the manner in which the claim has been understood by the learned Single Judge is in accordance with the complete specifications as well.

24. Applicability of *Bishwanath Prasad Radhey Shyam*

24.1 Mr. Choubey also sought to place reliance on the well-known decision of the Supreme Court in *Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries*¹⁶ to contend that the claims have to be understood in the light of the complete specifications, and not vice versa.

¹⁶ AIR 1982 SC 1444



2025:DHC:7085-DB



24.2 There can possibly be no cavil with the proposition. We do not see, however, how it comes to the aid of Mr. Choubey. There is nothing, in the complete specifications, when seen apart from the claims themselves, in the suit patent, which would indicate that the PD has to be 10% to 100% of the length/thickness of the EPs. At the highest, the complete specifications merely state that the EPs are part of the MCP, and interlock in the PD provided in the circular body of the fuel cap. These facts are inconsequential in deciding whether the claim in the suit patent envisages the PDS being 10% to 100% of the thickness of the circular plate per se, or of the EPs. On this aspect, the stipulations in Claim 1 are self-sufficient. When seen in the company of the drawings provided in the complete specifications, they are also unambiguous. Claim 1, seen with the numerical references in the drawings contained in the complete specifications, makes it unequivocally clear that the PD is required to be 10% to 100% of the length/thickness of the circular plate per se, and not of the EPs.

25. For the same reason, the argument that the MCP was non-functional or that the EP was the functional element in the invention of the appellant, does not take the case any further. The question is the element with respect to which the appellant had, in its claim and complete specifications, reckoned the PD to be worked out as 10% to 100%. We find nothing in the suit patent which militate against the view of the learned Single Judge, which is based on a correct understanding of Claim 1 of the suit patent, that the PD has to be 10% to 100% of the thickness of the circular plate.



2025:DHC:7085-DB



26. The passages from ***Wander***, extracted in para 14 *supra*, makes it clear that appeals against interlocutory orders passed by the Commercial Court, adjudicating applications under Order XXXIX of the CPC, in intellectual property matters, are appeals on principle. So long as the Commercial Court has applied the correct principles, and the view taken is a plausible view on the facts and the law, the appellate court is proscribed from interfering. The appellate court would not interfere merely because, on its own assessment, it would have arrived at a contrary finding.

27. In the present case, our reading of Claim 1 is perfectly in sync with the manner in which the learned Single Judge has interpreted the Claim.

28. We, therefore, decline to interfere with the impugned judgment of the learned Single Judge.

29. The appeal is dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 19, 2025

AR/ng