

# Merck Sharp And Dohme Corp. & Anr vs Honour Lab Limited on 25 June, 2020

**Author: Rajiv Shakdher**

**Bench: Rajiv Shakdher**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (COMM) 195/2020

MERCK SHARP AND DOHME CORP. & ANR.

.....Plainti

Through Mr. Pravin Anand with Ms. Tusha  
Malhotra and Ms. Pankhuri Malik,  
Advs.

versus

HONOUR LAB LIMITED

Through None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 25.06.2020 [Court hearing convened via video-conferencing on account of COVID-19]

1. Allowed. The plaintiffs are permitted to file additional documents. 1.1 The additional documents will be filed within 30 days of the lockdown qua this Court being lifted.

I.A. No. 4803-05/2020

2. Allowed, subject to the plaintiffs curing the deficiencies referred to in the captioned applications within five days of the lockdown qua this Court being lifted.

CS (COMM) 195/2020 & I.A. No.4801/2020

3. Issue summons in the suit and notice in the captioned application.

4. It is claimed by plaintiff No.1 that it is in the business of manufacturing various drugs, which includes the drugs for treatment of diabetes as well.

4.1 Plaintiff No.1 further avers that it is the owner of the Indian Patent No.209816, which covers, amongst others, a molecule having an International Non-Proprietary Name (INN), namely "SITAGLIPTIN". 4.2 It is further averred that plaintiff No.2 is the licensee of plaintiff No.1. 4.3 It is claimed by the plaintiffs that the defendant is attempting to supply the Active Pharmaceutical Ingredient [in short "API"] SITAGLIPTIN and, thus, infringing the rights, which inhere in plaintiff No.1's patent i.e. IP No.209816.

5. Counsel for the plaintiffs, in order to establish that the defendant is embarking on the said course, have drawn my attention to the transcripts which relate to the conversations held between the investigator appointed by the plaintiffs and the representative of the defendant. The transcripts, which are available on record, pertain to conversations held on 01.06.2020 and 04.06.2020.

5.1 Furthermore, the counsel for the plaintiffs, have also referred me to the defendant's website, which is indicative of the fact that the defendant is representing to the world at large that it is in a position to supply, amongst other APIs, the API in issue i.e. API SITAGLIPTIN.

5.2 Besides this, it was also contended that though the defendant seeks to portray that API SITAGLIPTIN is being supplied for research and development purposes, it is actually being used for commercial purposes as well. For this purpose, my attention was drawn to pages 282-286 and 293-295 of the documents filed by the plaintiffs.

5.3 I am further informed that even though the defendant was served via email on 24.06.2020, the defendant has not joined the proceedings.

6. It is in these circumstances that the plaintiffs have approached this Court for interim relief.

7. I have heard the counsel for the plaintiffs and perused the record.

8. I am of the view that, at least at this stage, the plaintiffs have been able to establish a prima facie case in their favour. 8.1 Since it is averred that the defendant has not launched, commercially, the subject API i.e. API SITAGLIPTIN, the balance of convenience is also in favour of the plaintiffs.

8.2 It appears that if the plaintiffs are not protected, their interest would get jeopardized. Furthermore, it would also affect the interest of the public at large, since, the plaintiffs are dealing in drugs, which are commonly used by the patients suffering from diabetes.

9. Accordingly, the defendant, its directors, employees, officers, agents and all others acting for and on its behalf are restrained from manufacturing, using, selling, distributing, advertising, exporting, offering for sale, and in any other manner, directly or indirectly, dealing in either the subject API i.e. API SITAGLIPTIN or its intermediates or any product, which infringes plaintiff No.1's patent i.e. Indian Patent No.209816.

10. The plaintiffs will comply with the provisions of Order XXXIX Rule 3 of the CPC within five days of the receipt of a copy of the order.

11. Renotify the matter on 17.07.2020.

JUNE 25, 2020  
pmc/KK

RAJIV

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