

Bristol Myers Squibb Holdings Ireland ... vs Triveni Interchem Private Limited & Ors on 6 October, 2021

Author: Jayant Nath

Bench: Jayant Nath

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 490/2021 & I.As. 13088-13094/2021
BRISTOL MYERS SQUIBB HOLDINGS IRELAND
UNLIMITED COMPANY & ORS.

..... Plainti

Through Mr.Pravin Anand, Ms
Agarwal, Ms.Tusha M
Ms.Ridhie Bajaj and Ms.Richa
Bhargava, Advs.

versus

TRIVENI INTERCHEM PRIVATE LIMITED
& ORS.

..... Defenda

Through Mr.Naman Joshi, Mr.Guneet Sidh
and Mr.Abhishek Arora, Advs. f
3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH
ORDER

% 06.10.2021 I.As. 13089-13092/2021(exemption) Allowed subject to just exceptions.

In view of the averments made in the present application, the same is allowed.

The plaintiff is exempted from pre litigation mediation.

Court fees may be filed within 15 days, if not already filed. Application is disposed of.

CS(COMM) 490/2021 Let the plaint be registered as suit.

Issue summons.

Learned counsel for defendant No.3 accepts summons. Summons be issued to defendant Nos. 1 and 2 by e-mail and speed post, returnable for 08.12.2021.

1. This is an application under Order 39 Rules 1 and 2 CPC seeking the following reliefs:

"a. An order of ad interim injunction restraining the Defendant Nos. 1 and 2, their its directors, employees, officers, servants, agents, stockists, retailers, semi-stockists,

wholesalers, marketers, distributors, any other entity/person in the chain of supply and all others acting for and on its behalf from using, making, selling, distributing, advertising (including on the Defendant Nos 1 and 2s' websites and on third party e-commerce websites), exporting, importing and offering for sale, or in any other manner, directly or indirectly, dealing in generic Apixaban product, that infringes the subject matter of Indian Patent Nos. 247381;

b. An order of ad interim injunction directing Defendant No. 3 to:

i. delist and permanently remove all advertisements/links relating to generic Apixaban product including but not limited to the Apixaban API in powder form sold by the Defendant Nos. 1 and 2, or any of its directors, employees, officers, servants, agents, associate and group companies and all others acting for and on their behalf, from its platform and on the websites of the Defendant Nos. 1 and 2, and in the future, not permit any user/seller to offer for sale, advertise and sell the infringing Apixaban products on the said websites without any due authorisation or permission from the Plaintiffs; ii. cease all existing orders, whether collected in the past or present or in future, placed through the Defendant No. 3's website pertaining to generic Apixaban product including but not limited to the Apixaban API in powder form sold by the Defendant Nos. 1 and 2.

c. An order directing the Defendant Nos. 1 and 2 to recall the products from the market and to remove any references to generic Apixaban product or any other products/ drugs covered and/or claimed under the subject matter of Indian Patent No. 247381 (Apixaban) including removal from their websites and write to third party websites wherein the said drugs are being advertised under the name of the Defendant Nos. 1 and 2.;

d. An order directing the Defendant Nos. 1 and 2 to state and disclose on affidavit all the impugned generic products, infringing the suit patent including the quantity manufactured; quantity supplied; batch details; details of the units where the said products were and/or are being manufactured; details of the retailers, wholesalers, distributors, stockists, hospitals, dispensaries to which the said products have been supplied, or any other details as this Hon'ble Court may deem fit to direct, from the date of the institution of the present suit; e. An order directing the Defendant Nos. 1 and 2 to state the exact sales figures of the impugned product, if any of the said products have been distributed by them in the Indian market on an affidavit and file the same before this Hon'ble Court;"

2. Learned counsel for the plaintiff had drawn my attention to an earlier order passed by this court in CS(COMM) 302/2021 being BRISTOL- MYERS SQUIBB IRELAND UNLIMITED COMPANY & ORS. vs. MICRO LABS LIMITED wherein after hearing arguments of the parties on 16.08.2021 this court passed the following order:-

"xxx

35. Having noted the observations of the Division Bench, in my opinion, for purpose of passing of an interim order, the facts and the circumstances of each case would be different. There would not be complete parity in the facts that were subject matter of the order of the Division Bench in AstraZeneca AB & Anr. v. Intas Pharmaceuticals Ltd.,(supra) or in the earlier orders of the Coordinate Bench in AstraZeneca AB & Anr. v. P.Kumar & Anr., (supra) or in EISAI Co.

Ltd. & Anr. v. Satish Reddy & Anr., (supra). In any case, as noted above, appeals against the interim orders of the Predecessor Bench are pending before the Division Bench and are coming up for hearing on 31.08.2021. The pleas which are raised by the defendant have to be considered either at the time of arguments before the Division Bench or at the time of disposal of the interim injunction applications that are pending adjudication now before this court. It would be improper for this court to ignore the aforesaid injunctions orders passed by the Predecessor Bench for the stated infringement of the same patent filed by the same plaintiffs.

36. Accordingly, an ex-parte ad- interim injunction is passed restraining the defendant, its directors, employees, officers, servants, agents, stockists, wholesalers etc. from using, making, selling, distributing, advertising, marketing, exporting, offering for sale in any generic Apixaban product under any brand name, including but not limited to 'APIVAS', which infringes the suit Patent IN 247381. The defendant will also recall the impugned generic products which infringe the suit patent from its distributors, wholesalers etc."

3. Accordingly, an ex parte injunction is passed in favour of the plaintiff and against defendant Nos. 1 and 2, its directors, employees, officers, servants, agents, stockists, retailers, semi-stockists, wholesalers, marketers, distributors, any other entity/person in the chain of supply and all others acting for and on its behalf from using, making, selling, distributing, advertising (including on the Defendant Nos. 1 and 2s' websites and on third party e-commerce websites), exporting, importing and offering for sale, or in any other manner, directly or indirectly, dealing in generic Apixaban product, that infringes the subject matter of Indian Patent Nos. 247381.

4. Defendant No.3 is also directed to delist and permanently remove all advertisements / link relating to generic Apixaban product including but not limited to the Apixaban API in powder form sold by defendant Nos. 1 and 2 or any of its directors, employees, etc.

5. Issue notice.

6. Learned counsel for defendant No.3 accepts notice. Learned counsel appearing for defendant No.3 also clarifies that there are no existing orders as of now pending with defendant No.3.

7. The above statement is taken on record.

8. Notice be issued to other defendants by speed post and e-mail, returnable for 08.12.2021.

9. Plaintiff to comply with Order 39 Rule 3 CPC within five days.

JAYANT NATH, J.

OCTOBER 6, 2021/st