MANU/DE/0034/1976

Equivalent Citation: AIR1976Delhi87

IN THE HIGH COURT OF DELHI

I.A. No. 2392 of 1974 in Suit No. 399 of 1974

Decided On: 28.05.1975

Appellants: **Ram Narain Kher**
Vs.
Respondent: **Ambassador Industries New Delhi and Ors.**

Hon'ble Judges/Coram:
Prithvi Raj, J.

Counsels:
For Appellant/Petitioner/plaintiff: R.K. Makhija, Adv

For Respondents/Defendant: M.K. Anand, Adv.

Case Note:
The case focused on the application filed under Order 39 Rules 1 and 2 of the Civil Procedure Code, 1908, for ad-interim injunction restraining the defendants from adopting the method and process for manufacturing and selling air-coolers in infringement of plaintiff's patent - It was ruled that the Court would not be in a position to grant an interim injunction, if the defendant dispute the validity - It was observed that the plaintiff claim did not disclose the improvement over existing cooler - In view of the said fact, the Court would be reluctant to grant interim injunction

ORDER

1. The plaintiff claiming to be the registered proprietor and grantee of Indian Patent No. 1133W dated 29th November, 1967. Pertaining to air cooler by this application under Order 39, Rules 1 and 2 and Section 151, Civil Procedure Code seeks an ad interim injunction restraining the defendants, their servants, agents and representatives from adapting the method and Process for manufacturing, selling or offering for sale air coolers in infringement of the plaintiff's aforesaid patent with further relief for rendition of accounts.

2. The case of the plaintiff is that he has legal right to the aforementioned patent for the period ending 29th November 1983, and to refrain others from exploiting the said patent rights without permission from him. According to the plaintiff the air cooler of the subject patent has distinct advantages ever the air cooler presently known in the art and that the coolers of the subject patent have acquired status and reputation The Grievance of the plaintiff is that in January 1974, he came to know that the defendants have infringed and further intend to infringe the aforesaid patent by wrongfully adopting the plaintiffs process and method without his Permission and are selling their coolers in Delhi. The plaintiff accordingly avers that he is incurring heavy loss due to the adoption of his patent and due to manufacturing, selling or offering for sale air coolers by the defendants.

3. The defendants in their reply resisted the application, inter alia, on the around that the plaintiff's patent, if any, was not valid and had been known in India and abroad much prior to the date of the alleged patent. i.e., 29th November, 1967: that the

claims made by the plaintiff in the Patent were vague and did not describe the invention clearly and properly; that the patent was likely to be revoked on the ground that the air cooler of the plaintiff has no advantage and had been obtained by Playing fraud on the patent office; that the subject of any claim of the complete specification is not an invention within the meaning of the Indian Patents and Designs Act, 1911: that the invention so far as claimed in any claim of the complete specification is obvious and did not involve any inventive step; and that the complete specification did not sufficiently and fairly describe the invention and the method by which it is to be informed.

4. "Invention" as defined in Section 2(1) of the Patents Act. 1970. (herein called 'the Act') means any new and useful (i) art, process, method or manner of manufacture; (ii) machine, apparatus or other articles; (iii) substance Produced by manufacture and includes any new and useful improvement of any of them and an alleged invention.

5. It would Therefore be seen that having regard to the previous date of knowledge at the time the patent is granted to a Party it is essential that the party claiming patent should specify what particular features of his device distinguish it from those which had gone before and show the nature of the improvement which is said to constitute the invention.

6. A person claiming a patent has not only to allege the improvement in art in the form but also that the improvement effected a new and very useful addition to the existing state of knowledge.

7. The novelty or the invention has to be succinctly stated in the claim.

8. The function of the claim is "to define the scope of the invention claimed". Claim must be clear. The applicant must describe the advantage sought to be achieved by his invention in the claim.

9. In Clay v. Allcock and Co. Ltd., 1906 (23) Rpc 745 it was observed that, it is, a Part of the duty of a Patentee to tell the public of his claim taken with the specifications and drawings, what he claims as his own and what, Therefore, they (the opposite Party) must not do without infringing the Patent; in other words he "must mark out with adequate distinctiveness. The boundary of the territory that he claims to be exclusively of his own."

10. In Marconi's Wireless Telegraph Co. v. Mullard Radio Value Co. Ltd., (1924) 41 Rpc 323 it was observed that

> "if any claim for principle is made it must undoubtedly appear in the claim as that claim is stated and must not be left to an inference raised on a general review of the specification, or a general search among the language employed therein for the meritorious element of principle or idea".

11. In Clyde Nai (P) Company Ltd. v. Russel. (1916) 33 Rpc 291 Lord Parker observed at Page 306

> "that in describing and ascertaining the nature of an invention consisting in the selection between possible alternatives, advantages to be gained or the disadvantages to be avoided, ought to be referred to".

12. Now let us see what is the claim of the plaintiff.

> "(i) An air cooler comprising a cabinet having openings in one or more walls

thereof water soaking material applied to the walls of the cabinet for the air drawn through the wall or walls to contact therewith, a trough frame with openings in its base above the walls for releasing water to soak the said soaking material, an exhaust fan at the top of the cabinet a deflector above the said fan, a discharge duct above the said exhaust fan for receiving the air from the said deflector, said duct having the axis of its outlet at an angle to the vertical axis of the cabinet;

(ii) An air cooler as claimed in claim M comprising a cabinet in which one or more walls thereof have slots or perforations with lining of water soaking material a trough frame with Perforated base above the said walls for releasing water to soak said material, an exhaust fan within or above the said, frame deflector above the said fan and discharge duct above the deflector, said discharge duct having its outlet, mouth at an angle to the cabinet, said deflector deflecting the air blown by the said exhaust fan to the said discharge duct:

(iii) An air cooler as claimed in claims (i) and (ii) in which a water tank is placed at the base of the cabinet to receive the water trickling from the soaking material;

(iv) An air cooler as claimed in claim (iii) in which a Dump is installed adjacent the cooler and forming a part of the tank receiving the trickled water for Pumping water from the lower tank into the trough;

(v) An air cooler as claimed in Previous claims in which one of, the walls, is fitted a panel of triangular shape with Perforations to cover the pump and the discharge Pipe;

(vi) A cooler as claimed in claims (i) and (ii) in which a rod with diverter discs is fitted at the mount of the discharge duct; and

(vii) A cooler as claimed in claims M and (ii) in which the discharge duct is of triangular shape having a wide opening which forms the discharge opening."

13. From a Perusal of the claim made by the plaintiff before the Patent authority it is not claimed that the design proposed by the plaintiff was an improvement on any Previously existing coolers in that there would be 25 per cent, additional advantage of added cooled air by fixing the fan on the top of the cooler than in the customary way hitherto known in the front of the cooler as was sought to be urged during the course of arguments.

14. In the statement of claim yen claims have been made but the plaintiff has not stated the advantage sought to be achieved by his invention; in other words "the boundary of the territory that he claims to be exclusively of his own."

15. The defendants contend that Pie plaintiff in his claim has not claimed improvement in the article nor has he claimed the way of putting the fan, producing a new result.

16. It is no doubt true that the aim made is addressed to the skilled Persons in the art or trade and not to a common man yet there can be no escape from the fact that the novelty of the, claim or the advantage derived by the, invention has to be succinctly stated in the claim and must not be left to an inference raised on a general review of the specification.

17. It is equally true that even en the invention "was not itself new" but "the Particular use of it for the purpose described in combination with the other elements of the system, and producing the advantageous results", would be a sufficient element of novelty to support the patent. It may be only a small step but that may be a step forward and that is all that is necessary so far as the subject-matter is concerned (see Canadian General Electric Co. Ltd. v. Fada Radio Ltd., Air 1930 Pc 1 but the advantages Produced by the particular use of the invention and the step resulting in the said advantages has to be claimed in the claim filed with the -patent authority. The claim in the instant case is descriptive and "left to an inference raised on a general review of the-specification" before one is able to ascertain the meritorious idea resulting in the 25% additional advantage of added cooled air as sought to be explained during the course of arguments that by putting the fan on the top more space is gained to throw more cooled air.

18. It is incumbent under Section 10(4) of the Act to fully and particularly describe the invention and its operation or use and the method by which it is to be Performed and disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection ending with a claim or claims defining the scope of the invention for which protection is claimed.

19. The claim of the plaintiff is singularly silent on the above-said aspect.

20. The defendants by their plea that the invention and the advantages claimed by the plaintiff had not been adequately described in the Patent and adequately claimed in the claim to bring it within the ambit of the term "invention" within the meaning of the Act raise arguable matters thereby disputing the validity of the patent in question.

21. The defendants having specifically raised the ground that the claims made by the plaintiff in the Patent were vague and did not describe the invention clearly and Properly, are competent to claim revocation of the patent on that ground on terms of Section 64(1) of the Act.

22. In this view of the matter the contention of the learned counsel for the plaintiff that he started manufacturing the patented cooler in 1967: that his advertisements in the various papers in respect of his cooler were not opposed by anybody; that no frontal reply was given by the defendants to his notice dated 30th January. 1974, but on the contrary the defendants gained time to concoct a defense and that the defendants in fact had bought a cooler from him which circumstances by themselves show that the coolers manufactured by the plaintiff were already not known to the public as such, are not required to be considered for the purposes of disposing of this application.

23. The Court will be reluctant to grant an interim injunction if the defendants dispute the validity of the grant. Kerr on Injunctions 6th Edn. page 320 has remarked that if the Patent is new and its validity has not been established in a judicial proceeding till then, and if it is endeavored to be shown that the patent ought not to have been granted, the court will not interfere by issuing a temporary injunction. (See also V. Manioka Thevar v Star Plough Works, Melur, MANU/TN/0222/1965 : AIR1965Mad327).

24. Further the contention urged on behalf of the plaintiff that the claim made by him read as a whole does disclose an improvement over the already existing coolers and as such he could not be non-suited because of the challenge of the defendants that the claim was not succinctly and specifically made before the patent authority in terms of clause (i) of Section 64 of the Act, is of no consequence.

25. In the circumstances ad interim injunction granted by Shri G. C. Jain, Additional District Judge, on 11th June 1974 is vacated. The defendants, however, are directed to maintain correct and regular accounts of their business in respect of the coolers and file a copy of the accounts regularly in Court every month with a copy to the plaintiff. The parties, in the circumstances of the case, are left to bear their respective costs.

26. The observations made by me above shall, however, be without prejudice to the merits of the case.

27. Order accordingly.