

IN THE HIGH COURT OF DELHI AT NEW DELHI

19.12.2008

BRISTOL -MYERS SQUIBB COMPANY & ORS Vs. DR. BPS REDDY & ORS

Advocate : ANAND & ANAND

Present: Mr. Pravin Anand with Ms. Taapsi Johri, Advocates for the plaintiffs.

CS(OS) No. 2680/2008

The plaint be registered. Issue summons to the defendants upon the plaintiffs taking requisite steps, returnable before the Joint Registrar on 6th March, 2009.

IA No. 15775/2008 (u/S 149 CPC)

The counsel for the plaintiffs states that the court fee has already been deposited. The time for filing the full court fee is extended till filed.

The application is disposed of.

IA No. 15773/2008 (u/S 151 CPC)

The documents in accordance with rules and original documents be filed not later than with the filing of the replication, if any.

The application is disposed of.

IA No. 15772/2008 (u/O 39 R 1 and 2 CPC)

The counsel for the plaintiffs has drawn attention to the patent certificate dated 16th November, 2006 (date of filing 12th April, 2000) with respect to A COMPOUND 2-AMINO-THIAZOLE-5-CARBOXAMIDE. It is pleaded and argued that though the patent is in the aforesaid name but the invention otherwise is known as 'DASATINIB'. The counsel for the plaintiffs has argued that the patent subject matter of the suit is an old patent and no proceeding for cancellation thereof is pending. It is further stated that the defendants have applied to the Drug Controller General of India for marketing a drug

violating the aforesaid patent of the plaintiffs, though no approval for marketing is stated to have been given to the defendants as yet. The counsel for the plaintiffs has also drawn attention to the various communications sent to the defendants, bringing to the attention of the defendants the aforesaid patent of the plaintiffs and reminding the defendants of its statement in relation to another product to in respect of which the defendant had assured the plaintiffs that they were committed to honour and respect the intellectual property rights. The plaintiffs have in the said communications referred to both DASATINIB and A COMPOUND 2-AMINO-THIAZOLE-5-CARBOXAMIDE. It is stated that no reply whatsoever has been received from the defendants to the aforesaid communications. Considering the conduct of the defendants of having replied to the earlier communication of the plaintiffs in relation to another product, the silence of the defendants this time around when the plaintiffs apprised the defendants about its patent and warned the defendants that the drug for which the defendants have sought approval for marketing is in breach and violation of the said patent of the plaintiffs, is surprising. The counsel for the plaintiffs has further submitted that there is no procedure before the Drug Controller General of India of entertaining the opposition of the plaintiffs and/or for satisfying that the drug, approval for marketing whereof has been applied for is not in violation of the patent of any other party/person. It is stated that for this reason only no representation has been made by the plaintiffs to the Drug Controller General of India.

Though the defendants address is of outside the territorial jurisdiction of this Court but it is stated that the defendants are carrying on business in Delhi and have an office in Delhi with respect whereto additional affidavit will be filed. Cause of action is pleaded to have accrued to plaintiffs within territorial jurisdiction of this Court.

The plaintiffs have made out a prima facie case for grant of ex parte ad interim order.

The defendants are restraining from manufacturing, selling, distributing, advertising, exporting, offering for sale or in any manner dealing directly or indirectly in any product infringing the plaintiffs' patent subject matter of the suit bearing No. 203937.

The plaintiffs have also sought ex parte relief of restraining the defendants from pursuing their application before the Drug Controller General of India. It is expected that the Drug Controller General of India while performing statutory functions will not allow any party to infringe any laws and if the drug for which approval has been sought by the defendants is in breach of the patent of the plaintiffs, the approval ought not be granted to the defendants. The plaintiffs to within one week make a representation to the Drug Controller General of India making out a case for the drug for which approval has been sought by the defendants being in breach/violation of the patent of the plaintiff.

Issue notice. Reply be filed within four weeks. Rejoinder, if any, be filed within four weeks thereafter. To be listed for hearing after completion of service, pleadings and admission/denial of documents.

The provisions of Order 39 Rule 3 CPC be complied within one week.

IA No. 15774/2008 (u/O 26 R 9 and 10 CPC)

The counsel for the plaintiffs does not press this application. The application is dismissed as withdrawn with liberty to apply afresh if need arises.

RAJIV SAHAI ENDLAW,J

December 19, 2008