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

+ CS(COMM) 343/2019

BAYER HEALTHCARE LLC Plaintiff

Through: Mr. Sudhir Chandra & Mr. P.V. Kapoor, Sr. Advs. with Mr. Pravin Anand, Ms. Archana Shankar, Mr. Dhruv Anand, Ms. Udit Patro, Ms. Kavya Mammen & Mr. Devendar Rawat, Advs.

Versus

NATCO PHARMA LIMITED Defendant

Through: Mr. Sandeep Sethi, Sr. Adv. with Ms. Rajeshwari H., Mr. Tahir A., Ms. Nupur Goswami & Mr. Saif Rahman Ansari, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.07.2019**

Caveat No.659/2019

1. The counsel for the caveator / defendant appears.
2. The caveat stands disposed of.

IA No.8881/2019 (under Section 149 CPC)

3. Accepting the undertaking of the counsel for the plaintiff that the deficiency in court fees will be made up within one week, the time for depositing the entire court fees is extended by one week.
4. If the court fees is not filed, the Registry to put up the matter before this Court.
5. The application is disposed of.

IA No.8880/2019 (for exemption)

6. Allowed, subject to just exceptions.

7. The application is disposed of.

IA No.8879/2019 (under Order XI Rule 1(4) for filing additional documents).

8. The application is disposed of by permitting the plaintiff to file additional documents latest along with the replication if any filed to the written statement of the defendant.

9. The application is disposed of.

CS(COMM) No.343/2019 & IA No.8878/2019 (under Order XXXIX Rules 1&2 CPC)

10. The plaintiffs have sued for permanent injunction restraining infringement of Indian Patent No.IN 240207.

11. I have straightaway asked the senior counsel for the defendant as to why the interim order in terms of the order dated 31st May, 2019 in CS(COMM) No.314/2019 titled *Sterlite Technologies Ltd. Vs. ZTT India Pvt. Ltd.* should not be passed till the completion of pleadings and hearing of the application for interim relief. A copy of the order dated 31st May, 2019 in *Sterlite Technologies Ltd.* supra has also been handed over to the senior counsel for the defendant.

12. The senior counsel for the defendant draws attention to para no.9 of the plaint, where the plaintiff has disclosed Indian Patent No.IN 215758 also held by it and has contended that the plaintiff, while applying for Indian Patent No.IN 215758 has disclosed what is the subject matter of suit patent being Indian Patent No.IN 240207, and made a claim with respect 'REGORAFENIB' but subsequently deleted the same. It is argued that Indian Patent No.IN 240207 is invalid for this reason only, because the plaintiff, after making a disclosure of Indian Patent No.IN 240207 could not

have subsequently sought separate patent therefor and was not entitled thereto on account of waiver and acquiescence. It is also contended that there is no inventive step.

13. In my view same would be a ground for invalidity of the patent. The same would also be a ground for defeating the suit and if the suit is defeated, the consequences as provided in the order dated 31st May, 2019 in *Sterlite Technologies Ltd.* supra would not apply.

14. The said argument is thus not a ground at least till the next date of hearing, for not passing orders in the terms of *Sterlite Technologies Ltd.*

15. Issue summons / notice to the defendant.

16. Summons / notice are accepted by the counsel for the defendant.

17. Pleadings be completed within the prescribed time.

18. Replication / rejoinder within 30 days of filing of the written statement / reply.

19. List for consideration on 19th September, 2019.

20. Till the next date of hearing, there shall be an interim order, in terms of order dated 31st May, 2019 in *Sterlite Technologies Ltd.* supra, copy of which, for convenience, is annexed to this order, restraining the defendant from infringing the Indian Patent No.IN 240207.

Dasti under signatures of Court Master.

RAJIV SAHAI ENDLAW, J

JULY 05, 2019

‘gsr’..