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

% *Date of Decision:* 16th August, 2021

+ CS(COMM) 302/2021

**BRISTOL-MYERS SQUIBB IRELAND UNLIMITED
COMPANY & ORS.** Plaintiffs

Through Mr.Sudhir Chandra, Sr.Adv. with
Mr.Pravin Anand, Ms.Archana
Shankar, Ms.Prachi Agarwal,
Ms.Tusha Malhotra, Ms.Ridhie Bajaj
and Ms.Richa Bhargava, Advs.

Versus

MICRO LABS LIMITED Defendant

Through Mr.C.S.Viadhyanathan, Sr.Adv. with
Mr.J.Sai Deepak, Mr.Guru Nataraj,
Mr.Avinash K.Sharma, Mr.R.
Abhishek, Mr.Ankur Vyas and
Mr.Akshay Nagarajan, Advs.

**CORAM:
HON'BLE MR. JUSTICE JAYANT NATH**

JAYANT NATH, J. (Oral)

This hearing is conducted through video conferencing.

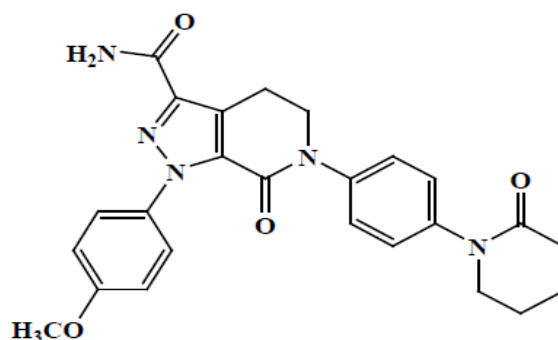
IA No.7681/2021

1. The present application is filed under Order 39 Rules 1 & 2 CPC seeking an ad interim injunction to restrain the defendant, its directors, etc. from infringing the registered patent of the plaintiffs being Patent No. 247381.



2. The accompanying suit is filed for permanent injunction to restrain infringement of the suit patent, disclosure & delivery, damages, etc. It is the case of the plaintiffs that the patent in question was granted in favour of plaintiff No. 1 which relates generally to lactam-containing compounds and derivatives thereof which are inhibitors of trypsin-like serine protease enzymes, especially Factor Xa, pharmaceutical compositions containing the same, and methods of using the same as anticoagulant agents for treatment, of thromboembolic disorders is called 'Apixaban'. It has been pointed out that the suit patent has not been subjected to any pre-grant or post grant opposition under Section 25(1) and 25(2) of the Patents Act. One Natco Pharma Ltd. had filed a petition seeking revocation of the said suit patent on 09.05.2016 which is pending adjudication. Revocation petitions have also been filed by BDR Pharmaceuticals International Pvt. Ltd. on 17.12.2019 and Micro Labs Ltd., the defendant herein, recently.

3. The said suit patent covers, a molecule having an International Non-Proprietary Name (INN) APIXABAN assigned to the molecule and the IUPAC name 1-(4-methoxyphenyl)-7-oxo-6-[4-(2-oxopiperidin-1-yl)phenyl]-4,5,6,7-tetrahydro-1H-pyrazolo[3,4-c] pyridine-3-carboxamide. It is used for the prevention and treatment of thromboembolic diseases. The empirical formula APIXABAN is $C_{17}H_{22}N_2O_6S_2$. APIXABAN has the following structural formula:



4. It is stated that being the rightful owner of the suit patent, by virtue of Section 48 of the Patents Act, the plaintiffs have the exclusive right to prevent third parties who do not have its consent from any act which tantamounts to infringement of the suit patent. The suit patent expires on 17.09.2022.

5. It is the case of the plaintiffs that in the past, they have instituted lawsuits before this court against various other parties which have expressed an intention to infringe or have infringed the suit patent. The plaintiffs were granted injunctive reliefs against such parties by this court. The details of the injunctive reliefs are given in para 8 of the application which read as follows:-

“a) Ad interim-injunctions (six) granted for the suit patent:

- i. Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Emcure Pharmaceuticals Limited, CS (COMM) No. 684 of 2019 – Order dated December 12, 2019.
- ii. Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Torrent Pharmaceuticals Limited, CS (COMM) No. 687 of 2019 – Order dated December 13, 2019.



- iii. Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Cipla Limited, CS (COMM) No. 688 of 2019 – Order dated December 13, 2019.
 - iv. Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Alkem Laboratories Limited, CS (COMM) No. 708 of 2019 - Order dated December 19, 2019.
 - v. Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Indoco Remedies Limited, CS (COMM) No. 731 of 2019 - Order dated December 24, 2019.
 - vi. Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. BDR Pharmaceuticals International Pvt. Ltd., CS (COMM) No. 27 of 2020 – Order dated January 30, 2020.
- b) Direction to maintain status quo ante:
- vii. Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Natco Pharma Limited, FAO (OS)(COMM) 160 of 2019 arising out of CS (COMM) No. 342 of 2019 – Order dated July 16, 2019.”

6. It is stated that recently on 14.06.2021, the plaintiffs were made aware that the defendant has filed a petition for revocation of the Patent No.247381 under Section 64(1) of the Patents Act before this court. In the said petition, the defendant has admitted its intention to launch the generic ‘Apixaban’ in June 2021 during the subsistence of the suit patent. It is stated that subsequently on receiving the above information, an investigation was conducted by an independent investigator. The investigation revealed to the plaintiffs various listings of the defendant’s generic ‘Apixaban product (2.5



mg and 5 mg tablets)’ under the probable brand name ‘APIVAS’ on various third party websites. It is stated that the defendant has also recently on 24.05.2021 applied for registration of the trade mark ‘APIVAS’ under Class 5 on a ‘proposed to be used’ basis before the Indian Trade Marks Registry.

7. Based on the above averments, an ad interim injunction is sought to restrain the defendant, its directors, etc. from using, making, selling, distributing, advertising, marketing, etc. directly or indirectly the generic ‘Apixaban’ product under any brand name including but not limited to ‘APIVAS’ that infringes the subject matter of Indian Patent No. IN 247381. Other directions are also sought.

8. This matter came up for hearing on 05.07.2021. However, as the court was not sitting on that date, the matter was not taken up.

9. I have on subsequent dates heard learned senior counsel for the plaintiffs and learned senior counsel for the defendant.

10. Learned senior counsel for the plaintiffs has heavily relied upon the earlier orders passed by a Coordinate Bench of this court granting interim injunction in favour of the plaintiffs in the various proceedings that have been noted above. All the above noted proceedings pertain to the same patent of the plaintiffs i.e. IN 247381.

11. I am told that against the above interim orders, appeals were filed before the Division Bench, which are pending adjudication. No interim order has been passed by the Division Bench.

12. In the above circumstances, it was put to the learned senior counsel for the defendant that the above noted orders, being orders of a Coordinate Bench, this court would be bound by the same. In any case, as there are interim ex parte orders passed in favour of the plaintiffs for the same patent,



a similar order was necessary to be passed in the present case. Learned senior counsel for the parties were requested to confine their submissions only to the above proposition. This request was made as it was not felt appropriate, at this stage to go into the merits of the contentions of the defendant in the absence of their reply on record. Further, in any case the Coordinate Bench had given a detailed reasoned order while passing interim injunction in favour of the plaintiffs herein. I may note that the injunction applications were not disposed of vide the said orders by the Coordinate Bench. The interim injunction applications are pending adjudication before this court now.

13. Learned senior counsel for the defendant has however urged various grounds to contend that this court is not bound by the earlier interim orders passed by this court. Firstly, reliance was placed on the observations of the Division Bench in FAO(OS)(COMM) 139/2020 titled as *AstraZeneca AB & ANR. vs. Intas Pharmaceutical Ltd.*, dated 20.07.2021 where the Division Bench observed that the suits arising from the same patent should be clubbed and heard by the same bench to save judicial time. It is urged that the first case in the present lot filed by the plaintiffs was CS(COMM) 342/2019 *Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Natco Pharma Limited* which came up before a Coordinate Bench on 05.07.2019. On that date, interim orders were passed by the Coordinate Bench. In appeal, the Division Bench on 16.07.2019 in FAO(OS)(COMM)160/2019, set aside the said interim order of 05.07.2019. Status quo as on 05.07.2019 prior to passing of the impugned order was directed to be maintained by the defendant. The Coordinate Bench was directed to, after hearing the parties, pass a fresh order uninfluenced by the



order passed in *Sterlite Technologies Ltd. vs. ZTT India Pvt. Ltd.*, CS(COMM) 314/2019 or the order dated 05.07.2019.

14. It is urged that pursuant to the directions of the Division Bench, the said matter is still pending adjudication before a Coordinate Bench. Hence, it is urged that as that was the first suit filed by the plaintiffs, this court may transfer the present suit to be heard by the said Coordinate Bench in accordance with the directions of the Division Bench in FAO(OS)(COMM) 139/2020 alongwith CS(COMM) 342/2019. In the meantime, it is urged that an opportunity should be given to the defendant to file its reply/written statement and documents to demonstrate as to why on merits, no interim order should be passed in favour of the plaintiffs.

15. Secondly, it was urged by the learned senior counsel for the defendant that the orders of the Coordinate Bench, relied upon by the plaintiffs, were *per incuriam* and not binding on this court. Reliance was placed on the judgment of the Supreme Court in the case of *Sandeep Kumar Bafna v. State of Maharashtra & Anr., 2014 (16) SCC 623*. It was strongly urged that plaintiff No.1 has admitted that it was granted Indian Patent No.243917 on 11.11.2010 which expired on 17.12.2019. It is stated that the plaintiffs wrongly claimed that IN 243917 generically covers millions of compounds including Apixaban by virtue of the Markush claim which does not specifically disclose Apixaban. Hence, it is urged that the plaintiffs are seeking to claim that the product Apixaban is covered by two registered Patents, namely, IN 243917 which has expired and the present Patent IN 247381. It is pointed out that such a view was rejected by this court in *AstraZeneca AB & Anr. v. P.Kumar & Anr., MANU/DE/2521/2019* and *EISAI Co. Ltd. & Anr. v. Satish Reddy & Anr., (2019) 79 PTC 568*. The



interim orders in favour of the plaintiffs ignored all the above noted judgments which were the earlier view of this court.

16. It is further stated that the said view has also been rejected now categorically by the Division Bench in the aforementioned judgment of *AstraZeneca AB & Anr. v. Intas Pharmaceuticals Ltd.,(supra)*. It is urged that the earlier orders passed by the Coordinate Bench are not binding on this court and this court should not pass interim orders based on the above.

17. It is also strongly urged that in CS(COMM) 342/2019, i.e. the first suit filed by the plaintiffs titled as *Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. v. Natco Pharma Limited*, no interim order has been passed so far. It is pleaded that on a parity of facts, as the factual position in the present suit and the said suit being CS(COMM) 342/2019 are identical, this court should follow the said order which is the earlier order and not pass interim orders.

18. The third plea that was strongly urged before this court was that in any case, the facts of this case are virtually identical to the facts of the case that was decided by the Division Bench on 20.07.2021 in FAO(OS)(COMM) 139/2020, titled *AstraZeneca AB & Anr. v. Intas Pharmaceuticals Ltd.,(supra)*. Hence, it is urged that this court would be bound by the said Division Bench judgment.

19. Learned senior counsel for the plaintiffs has, however, strongly urged that the earlier orders pointed out by the plaintiffs as noted above are all interim orders. The concept of the law of *per incuriam* has no application to such interim orders. Reliance is placed on the judgments of the Supreme Court in the case of *State of U.P. & Anr. v. Synthetics And Chemicals Ltd. & Anr., 1991(4) SCC 139* and in the case of *Vishnu Traders v. State of*



Harayan & Ors., 1995 Supp.(1) SCC 461.

20. I will now deal with the first submission of the learned senior counsel for the defendant that this matter should be heard by the Coordinate Bench that is dealing with the first case filed by the plaintiffs against Natco Pharma Limited being CS(COMM) 342/2019 which had come up for the first time before the Coordinate Bench on 05.07.2019.

21. I may look at the judgments of the Coordinate Bench of this court. On 05.07.2019, in CS(COMM) 342/2019, in a suit filed by the plaintiffs for the said patent 'Apixaban', the Coordinate Bench granted an injunction in favour of the plaintiffs on the lines of the order granted in *Sterlite Technologies Ltd. vs. ZTT India Pvt. Ltd., (Supra)* restraining the defendant from infringing the suit patent No.IN 247381. In appeal being *Natco Pharma Ltd. vs. Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors., MANU/DE/2234/2019*, the Division Bench passed the following order:-

“41. The impugned interim order dated 5th July 2019 is hereby set aside. The status quo as on 5th July 2019, prior to the passing of the impugned order will be maintained by the Defendant. IA 8873 of 2019 shall be listed on 23rd July 2019 before the learned Single Judge. The Defendant will, on or before 19th July 2019, file its reply to the said application with an advance copy to the Plaintiffs. It will be open to the Plaintiffs to file a rejoinder thereto, if any, on or before 22nd July 2019.”

22. I am informed that the matter is pending before a Coordinate Bench of this court for hearing on the injunction application. The admitted fact is that the matter is not part-heard.

23. Learned senior counsel for the defendant has placed reliance upon



certain observations made by the Division Bench in the said judgment being *AstraZeneca AB & Anr. v. Intas Pharmaceuticals Ltd.*(supra) to support his plea for transfer of this case, which reads as follows:-

“5. From the proximity of the dates of the impugned orders/judgments, it appears that the hearing on the applications for interim injunction, before both the Hon'ble Judges, took place simultaneously. It is inexplicable, why the appellants/plaintiffs, who have argued all these nine appeals as one and not separately, did not have the two sets of suits clubbed before the same Commercial Division and which would have saved the judicial time spent in the adjudication undertaken by one of the Judges. It appears that the appellants/plaintiffs were taking a chance, of arguing on the same subject and controversy, before two Courts. However the appellants/plaintiffs failed before both.

24. Clearly, a perusal of the above para shows that the facts were entirely different in the aforementioned appeal being *AstraZeneca AB & Anr. v. Intas Pharmaceuticals Ltd.*,(supra). Two benches were concurrently hearing arguments on the interim injunction applications. In the present case, none of the benches, namely, the present bench where the above noted six suits filed by the plaintiffs are pending or the bench where CS(COMM) 342/2019 is pending has commenced hearing arguments on the injunction application. In these circumstances, I see no reason to transfer the present suit along with the six other suits that are pending before this court to another coordinate bench as was strongly urged by the learned senior counsel for the defendant.

25. I may now look at the interim orders passed by the Predecessor Bench of this court in the earlier suits filed by the plaintiffs for breach/violation of the same patent, namely, IN 247381. On 12.12.2019, another Coordinate Bench in the case of *Bristol-Myers Squibb Holdings Ireland Unlimited*



Company & Ors. vs. Emcure Pharmaceuticals Limited, CS (COMM) No. 684 of 2019 for the same patent 'Apixaban' noted as follows:-

“7. Prior to the suit patent IN-381 the plaintiff No.1 had been granted Indian Patent No.243917 for 'Nitrogen Containing Heterobicycles As Factor Xa Inhibitors'. on 11th November, 2010 the plaintiff No.1 filed an application in this regard which was numbered as PCT application on 22nd May, 2001 claiming priority date from 23rd December, 1998. Finally the plaintiff was granted a patent IN 243917 (in short 'IN-917') generically covering millions of compounds including APIXABAN by virtue of Markush claim but it did not specifically disclose APIXABAN. IN-917 expires on 17th December, 2019. Plaintiffs are the inventors of APIXABAN and are selling the same under the brand name Eliquis®.”

On the previous proceedings held before the Division Bench in FAO(OS)(COMM) 160/2019 dated 16.07.2019, the Coordinate Bench noted as follows:-

“13. In the light of these observations the Division Bench set aside the interim order dated 5th July, 2019 and directed status quo as on 5th July, 2019 before passing of the impugned order to be maintained by the defendant therein i.e. NATCO Pharma Ltd., for the application to be finally decided by the learned Single Judge. A perusal of the order of the Division Bench itself reveals that the Division Bench was of the view that the learned Single Judge in the order dated 5th July, 2019 did not advert itself to the triple test essential for grant of an interim injunction, that is, (i) a prima facie case, (ii) irreparable loss, and (iii) balance of convenience. The Division Bench despite having set aside the interim order dated 5th July, 2019 directed the defendant therein, that is, NATCO Pharma Ltd. to maintain status quo as on 5th July, 2019, that is, as on passing of the impugned order before it.”



The court further held as follows:

“18. Case of the defendant is that in case the admission of the defendant is being looked into that the defendant is selling the drug ZAPIXA which is a generic version of APIXABAN, the admission of the plaintiff that the drug APIXABAN is covered by the patent IN-917 validity whereof expires on 17th December, 2019 is also to be considered. This Court has already noted the pleadings of the plaintiffs both in the present plaint as also in the complaint filed before the United States District Court, District of Delaware titled as "BRISTOL-MYERS SQUIBB COMPANY AND PFIZER INC. Vs. APOTEX, INC AND APOTEX CORP." which is heavily relied upon by the defendant however, the consistent claim of the plaintiff is IN-917 is the genus patent for the markush formula covering millions of compounds however, the specific disclosure of APIXABAN is in IN-381.

19. Supreme Court in the decision reported as 2013 (6) SCC 1 Novartis AG vs. Union of India (UOI) and Ors. held as under:

125. Nevertheless, both Mr. Andhyarujina and Mr. Subramanium strenuously argued that the coverage or the claim, and the disclosure or the teaching, have different parameters in a patent, and that the former may have an extended boundary within which disclosure or teaching may be confined to a narrower extent. In support of the submission, Mr. Andhyarujina relied upon a decision of the Court of Appeal in A.C. Edwards Ltd. v. Acme Signs and Displays Ltd. (1992) R.P.C. 131 and Anr. of the High Court of Justice Chancery Divisions Patent Court in Astellas Pharma Inc v. Comptroller-General of Patents (2009) EWHC 1916 (Pat).

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134. However, before leaving Hogan and proceeding further, we would like to say that in this country the law of patent, after the introduction of product patent for all kinds



of substances in the patent regime, is in its infancy. We certainly do not wish the law of patent in this country to develop on lines where there may be a vast gap between the coverage and the disclosure under the patent; where the scope of the patent is determined not on the intrinsic worth of the invention but by the artful drafting of its claims by skillful lawyers, and where patents are traded as a commodity not for production and marketing of the patented products but to search for someone who may be sued for infringement of the patent

20. Thus the decision in Novartis AG (supra) does not rule out that when a genus patent has been granted no species patent can be granted, however the caution raised by the Supreme Court is that the Courts should determine the scope of the patent from the intrinsic worth of the invention and not on the artful drafting of the claims.

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23. Considering the contentions of the parties, facts noted above, pleadings in the suit as well as the documents filed as also the documents handed over by learned counsel for the defendants it is clear that the validity of the suit patent IN-381 is till 17th September, 2022 which suit patent specifically discloses APIXABAN, the plaintiffs have made out a strong prima facie case in their favour. In case the plaintiffs are not granted an adinterim injunction, the plaintiffs would suffer an irreparable loss as per the own showing of the defendant as noted in para 17 above which notes that the Oral Anticoagulant market is worth of 399 Cr. and growing at the rate of 17%. It also notes that Apixaban is having highest CAGR of 56% among all Oral Anticoagulants available in market. The balance of convenience also lies in favour of the plaintiffs and against the defendant for the reason admittedly the defendant is yet to launch its product in the market.



24. Consequently, an ad-interim injunction is granted in favour of the plaintiffs and against the defendant in terms of prayer –A in the application and the defendant is directed to maintain status quo as on 12th December, 2019 qua launching of its product ZAPIXA till the disposal of the application.”

26. Subsequently, on 13.12.2019 two more matters were heard by the same Coordinate Bench being CS (COMM) No. 687 of 2019, *Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Torrent Pharmaceuticals Limited* and CS (COMM) No. 688 of 2019, *Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Cipla Limited*. In both the matters, the Coordinate Bench passed the similar interim orders.

27. Another matter came on 19.12.2019 being CS (COMM) 708/2019 titled as *Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Alkem Laboratories Limited* before the same Coordinate Bench. Again the Coordinate Bench passed a similar order for the same patent. A similar order was also passed in CS(COMM) 731/2019 titled as *Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. Indoco Remedies Limited* on 24.12.2019. Another interim order was passed on 30.01.2020 in CS(COMM) 27/2020 titled as *Bristol-Myers Squibb Holdings Ireland Unlimited Company & Ors. vs. BDR Pharmaceuticals International Pvt Ltd. & Anr.*

28. Hence, there are six interim orders passed by a Coordinate Bench of this court based on the same patent restraining defendants in six different suits filed by the plaintiffs from infringing the said suit patent in question.

29. The legal position is quite settled, namely, that a coordinate bench is bound by an order of another coordinate bench. If for some reason, a



coordinate bench disagrees with the earlier order of another coordinate bench, the proper course is to refer the matter to a larger bench.

30. In this context, reference may be had to the judgment of the Supreme Court in the case of *Rajasthan Public Service Commission & Anr. v. Harish Kumar Purohit & Ors.*, (2003) 5 SCC 480. Relevant portions of the said judgment read as follows:-

“13. The position was highlighted by this Court in a three-Judge Bench decision in *State of Tripura v. Tripura Bar Assn.* [(1998) 5 SCC 637] in the following words:

“4. We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of *Durgadas Purkayastha v. Hon'ble Gauhati High Court* [(1988) 1 Gau LR 6] . If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench. In the circumstances, we are unable to uphold the impugned judgment of the High Court insofar as it relates to the matter of inter se seniority of the Judicial Officers impleaded as respondents in the writ petition. The impugned judgment of the High Court insofar as it relates to the matter of seniority of the respondent Judicial Officers is set aside. The appeals are disposed of accordingly. No costs.”

14. In the instant case, the position is still worse. The latter Bench did not even indicate as to why it was not following the earlier Bench judgment though brought to its notice. Judicial



propriety and decorum warranted such a course indicated above to be adopted.”

31. As already noted above the Predecessor Bench of this court/Coordinate bench in six different matters has passed interim orders in the six suits filed by the plaintiffs herein against different defendants who had sought to infringe the suit patent in question ‘Apixaban’/IN 247381. Against these interim orders, appeals were filed by the respective defendants in the said suits before the Division Bench, first of which appeal, it is stated, had come up for hearing on 19.12.2019. These are FAO(OS)(COMM) 371/2019, 372/2019, 377/2019, 3/2020 and 29/2020. These matters are pending before the Division Bench. At some stage, these matters were part-heard. However, no order has been passed staying the said interim orders passed by the Coordinate Bench. I am informed that the matters have now been listed by the Division Bench for arguments on 31.08.2021.

32. The above six orders noted detailed reasons for granting *ex-parte* injunction in favour of the plaintiffs and against the defendants respectively. The Division Bench did not stay the said orders and the appeals are pending. Different courts in suits filed for infringement of the same patent by the same plaintiff cannot pass different orders based on somewhat identical submissions raised by the different defendant. Such a step would not be in the interest of justice.

33. The next point that was strongly urged by the defendant was that in the suit filed by the plaintiffs being CS(COMM) 684/2019, in the judgment dated 12.12.2019 the court has specifically noted the plea of the defendants that there was an admission that the drug ‘Apixaban’ is covered by Patent IN



243917 which expired on 17.12.2019. This court noted that the consistent claim of the plaintiff is that IN 243917 is the genius Patent for the Markush formula covering millions of compounds. However, the specific disclosure of Apixaban is IN 247381. The court further held that the judgment of the Supreme Court in *Novartis AG v. Union of India & Ors., (2013) 6 SCC 1* does not rule out that when a genius patent has been granted, no species patent can be granted. The court accordingly passed the interim order.

34. It was further urged that the aforesaid view of the Coordinate Bench in the aforesaid six interim orders passed was contrary to the view taken by the other Coordinate Benches of this court in *AstraZeneca AB & Anr. v. P.Kumar & Anr.(supra)* and *EISAI Co. Ltd. & Anr. v. Satish Reddy & Anr.(surpa)*. It was also strongly urged that the legal position has been elaborated now by the Division Bench of this court in this case of *AstraZeneca AB & Anr. v. Intas Pharmaceuticals Ltd.,(supra)* in its judgment dated 20.07.2021. The Division Bench in the said judgment noted as follows:-

“46. In our opinion, a single formulation as DAPA, is incapable of protection under two separate patents having separate validity period. The appellants/plaintiffs, in their pleadings, are not found to have pleaded the difference, save for pleading that DAPA was discovered by further research. From the field of the invention subject matter of the two patents being verbatim same, at this stage, it also appears that there is no enhancement of the known efficacy, within the meaning of Section 3(d) of the Act, between the product subject matter of IN 147 and the product subject matter of IN 625.

47. To hold, that an inventor, merely on the basis of his work, research, discovery and prior art, but which has not yielded any product capable of commercial exploitation, is entitled, by



obtaining patent thereof, to restrain others from researching in the same field, would in our view, not be conducive to research and development and would also be violative of the fundamental duties of the citizens of this country, enshrined in Article 51A of the Constitution of India, to develop the scientific temper and a spirit of inquiry. The same will enable busy bodies to, by walking only part of the mile, prevent others also from completing the mile.”

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.

37. Issue notice.

38. Learned counsel for the defendant accepts notice.

39. Reply despite no order of the court has already been filed. Same be taken on record. Rejoinder be filed within four weeks from today.

40. List on 27.10.2021.

CS(COMM) 302/2021

Plaint be registered as a suit. The defendant have said to have filed written statement. It be taken on record. Replication be filed within 30 days.

List on 27.10.2021.

JAYANT NATH, J.

AUGUST 16, 2021/rb/v