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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25th August, 2025
Pronounced on: 24th December, 2025

+ CS(COMM) 765/2024 & I.A. 38674/2024

AMITOJE INDIA PVT LTD & ANR.Plaintiffs

Through: Mr. Adarsh Ramanujan, Mr. Tarun Khurana, Ms. Meenakshi Ogra, Mr. Rajat Sabu, Mr. Samrat S. Kang, Mr. Parth Singh, Mr. Ritvik Jha, Ms. Divyanshi Bansal, Advocates
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versus

CLASSIC DISPLAY SYSTEMS PVT. LTD.Defendant

Through: Mr. Deepak Jain, Ms. Jaspreet Aulakh, Ms. Anoushka Singh, Ms. Dashampreet Kaur, Mr. Sajal Gupta, Mr. Arsh Raina and Mr. Devender Chauhan, Advs.
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CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGEMENT**MINI PUSHKARNA, J.****I.A. 38674/2024****INTRODUCTION**

1. The present suit has been filed by the plaintiffs seeking a permanent injunction to restrain the defendant from assembling, manufacturing, selling



and/or dealing with the products that infringe upon the plaintiffs' patent bearing no. IN 533643 ("suit patent / IN'643"), titled as "***A FOLDABLE PRODUCT DISPLAY UNIT***".

2. By way of the present judgement, this Court proceeds to decide an interim injunction application, i.e., I.A. 38674/2024, filed by the plaintiffs under Order XXXIX Rules 1 & 2 of the Civil Procedure Code, 1908 ("CPC"), seeking to restrain the defendant on the premise that the products of the defendant, i.e., display units, infringe upon the plaintiffs' patent, i.e., IN'643.

3. This Court notes that the defendant herein has filed a counter claim, i.e., C.C. (COMM) 35/2024 under Section 64 of the Patents Act, 1970 ("**the Act**"), against the plaintiffs herein, challenging the validity of the suit patent.

4. At the outset, this Court notes that earlier the defendant had filed an application being I.A. 49084/2024, wherein, the defendant sought to place on record additional documents, a purported prior art, US 20100051568A1 dated 04th March, 2010 amongst other documents. However, the defendant made a statement before this Court that the documents sought to be placed on record by way of I.A. 49084/2024, has no bearing on the adjudication of the present application. The statement of the defendant, as recorded *vide* order dated 03rd March, 2025, is reproduced as under:

"1. This Court notes the submissions of learned Senior Counsel for the plaintiffs, as well as learned counsel for the defendant, that the pending applications for additional documents pertain to the counterclaim, and the said documents have no bearing on the outcome of the present application, i.e., I.A. 38674/2024 (sic), being heard by this Court.

2. Accordingly, list for hearing of I.A. 38674/2024, for the submissions on behalf of the defendant, on 19th March, 2025."



(Emphasis Supplied)

5. Thus, on the basis of the aforesaid statement, *I.A. 49084/2024* was kept pending, while this Court proceeded to hear the present application.

6. However, subsequently during the course of hearing of the present application, learned counsel appearing for the defendant sought to rely upon the additional documents, which were part of the pending application of the defendant for placing on record additional documents, i.e., *I.A. 49084/2024*. The same was objected by the plaintiffs. Thus, an application being *I.A. 11573/2025* was filed on behalf of the defendant, wherein, it was stated that the additional documents as sought to be placed on record by way of the application, *I.A. 49084/2024*, are of utmost importance for adjudication of the present application. Thus, *vide I.A. 11573/2025*, the defendant prayed that application for taking on record additional documents, *viz. I.A. 49084/2024*, be decided prior to the present application.

7. Since, the present application was being heard by this Court as a part-heard matter, and not as part of the regular roster, and the application, *I.A. 49084/2024* was listed before the Roster Bench, in view of the submissions of the defendant that the said application, *I.A. 49084/2024* be decided prior to hearing of the present application, *vide* order dated 07th May, 2025, the present matter was released from part-heard by this Court.

8. However, subsequently, the plaintiffs filed an application, i.e., *I.A. 12341/2025*, seeking recall of the said order, by submitting that the plaintiffs are agreeable to addressing the contents of the additional document sought to be relied upon by the defendant, i.e., copy of US Patent No. US 20100051568A1 dated 04th March, 2010, while reserving its right *qua* the additional documents coming on record in the counter claim filed by the



defendant. Para 7 of the said application of the plaintiffs, I.A. 12341/2025, reads as under:

“xxx xxx xxx

7. Plaintiffs with utmost respect submits that in the interest of expeditious conclusion of hearing and disposal of the interim injunction application (I.A. No. 38674/2024 in CS(COMM) 765/2024), Plaintiffs are agreeable to addressing the contents of the single additional document on merits which was sought to be relied upon by the Defendant during the hearing held on 21.04.2025 i.e. copy of US Patent No. US2010005156A1 (referred hereto as “subject document”) – which document was part of additional documents filed with Defendant’s application in its counter-claim – I.A. No. 49084/2024 in CC (COMM) 35/2024, while reserving its rights qua the said additional documents coming on record in the Counter-claim, being CC (COMM) 35/2024. Petitioners/ Applicants submit that this submission is being respectfully advanced to facilitate and expedite final adjudication of the interim injunction application by this Hon’ble Court, thereby addressing the perceived complexity that would arise with the interim injunction application being sent back to the Roster Bench leading to re-hearing of the arguments on the interim injunction application afresh. Plaintiffs/ Applicants undertake to address their submissions on the subject document while impressing upon this Hon’ble Court qua inapplicability and irrelevancy of Subject Document as prior art vis-à-vis Plaintiff No. 2’s registered Patent No. IN533643, so as to enable this Hon’ble Court to effectively conclude and adjudicate the I.A. No. 38674/2024 without necessitating a re-hearing on the transfer.

xxx xxx xxx”

(Emphasis Supplied)

9. In view of the plaintiffs not raising any objection to the defendant relying upon the additional documents, i.e. US Patent No. US 20100051568A1 for the purposes of hearing of the present application, learned counsel for the defendant submitted he had no objection if the application of the plaintiffs, I.A. 12341/2025, recalling the order dated 07th May, 2025, is allowed. Thus, this Court *vide* order dated 22nd May, 2025, allowed the said application in the following manner:

“xxx xxx xxx



3. *Learned counsel appearing for the defendant submits that since the plaintiffs have not raised any objection to the defendant relying upon the additional documents, i.e., copy of US. Patent No. US20100051568A1 (sic), for the purposes of hearing the I.A. 38674/2024, he has no objection if the present application is allowed.*

4. *Accordingly, with the consent of both the parties, the order dated 7th May, 2025, is recalled.*

5. *The application being I.A. 38674/2024, shall be heard by this Court as Part-Heard.*

xxx xxx xxx”

(Emphasis Supplied)

10. By way of the aforesaid order dated 22nd May, 2025, this Court recorded that for the purposes of the present interim injunction application, the plaintiffs had no objection to the defendant’s reliance on the document, i.e., US Patent No. US20100051568A1 (“US’568”). Thus, keeping in view the aforesaid, this Court proceeds to deal with the present matter.

FACTUAL MATRIX

11. Facts, as relevant to the present case, are as follows:

11.1 The plaintiffs are in the business of manufacturing product display stands, store fixtures, motion displays, foldable units, tailor made displays, supermarket racks, retail shelf branding, promotional displays, retail carts, etc. The plaintiff no. 1 – Amitoje India Private Limited is a company, which has received authorisation *vide* Letter of Authorisation dated 30th October, 2018, from plaintiff no. 2 – Ms. Ravinder Kaur, to manufacture, market, promote and to sell/distribute the product corresponding the suit patent.

11.2 The suit patent has been registered/granted in favour of M/s Amitoje India whose sole proprietor is Ms. Ravinder Kaur. Further, the plaintiff no. 1 has three directors namely, Ravinder Kaur, i.e., plaintiff no. 2, Maniraj Singh Juneja and Bismanjeet Singh Juneja.



11.3 The defendant – Classic Display Systems Private Limited, is in the business of designing, development and producing displays, including, the impugned product, i.e., foldable display units, which as per the plaintiffs, infringe upon the plaintiffs’ suit patent, i.e. IN’643. The defendant also sells its products through its website, i.e., <https://classicdisplay.in/>.

11.4 The suit patent, i.e., IN’643, was filed *vide* application no. 201811039416 on 17th October, 2018. During the course of the prosecution before the patent office, a pre-grant opposition under Section 25 (1) of the Act was filed against the said patent application by the defendant herein on 19th February, 2020. A reply statement to the opposition was filed before the patent office on 06th February, 2021. The First hearing with respect to the pre-grant opposition took place on 15th December, 2021, and written submissions were filed by the plaintiff no. 2 and the defendant/opponent on 30th December, 2021 and 29th June, 2022, respectively. The claims of the suit patent were amended by plaintiffs on 16th June, 2023. The Second hearing before the patent office was held on 25th August, 2023, and again written submissions were filed by the plaintiff no. 2 as well as the defendant/opponent on 06th September, 2023. Pursuant to the same, the suit patent with the amended claims was granted in favour of plaintiff no. 2 on 18th April, 2024 and published in the post-grant journal on 26th April, 2024.

11.5 As per the plaintiffs, the suit patent by way of its claims, elaborates upon a foldable product display unit to provide efficient and convenient display into providing hassle free and reusable embodiments which can be used to store and advertise the products. Further, the object of the suit patent provides a foldable product display unit and provides a method for setting up the foldable product display unit.



11.6 The suit patent consists of an independent Claim 1 along with five dependent claims, and specifically discloses a foldable unit which comprises of one or more display panels, one or more back panels which is connected with one or more display panels, plurality of side panels which are connected with the one or more back panels by a first plurality of foldable joints and plurality of movable shelves which are connected with one or more back panels by second plurality of foldable joints and plurality of locking means.

11.7 As per the plaintiffs, the plurality of locking means are configured to lock the plurality of movable shelves and thereby restricting movement of the plurality of the movable shelves in locked configuration. Further, the invention under the suit patent is achieved by a specific arrangement of the components of the foldable product display unit along with its display mechanism used in order to work the invention, specifically, the back panel of the foldable product display unit which is movable and connected to the shelves of the display unit.

11.8 It is further described by the plaintiffs that after the shelves attached to the back panel are folded towards the back panel, the pair of side panels are moved together sideways in the same direction about respective of the pair of first foldable joints, thereby, requiring less space and simple installation. Also, on each of the plurality of side panel, the front portion of the plurality of movable shelves, the front portion of the one or more back panels and one or more display panels may be used for displaying advertisements for the purpose of branding and these can be changed to display advertisements without causing damage to the display advertisements.

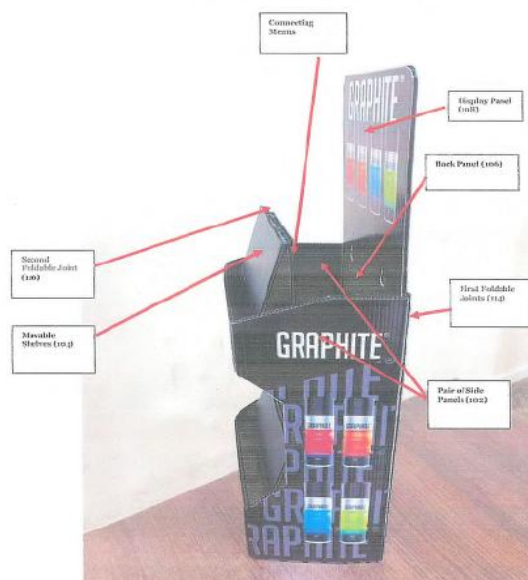


11.9 The plaintiffs have shown the physical units in accordance with the embodiments of the suit patent, in the following manner:

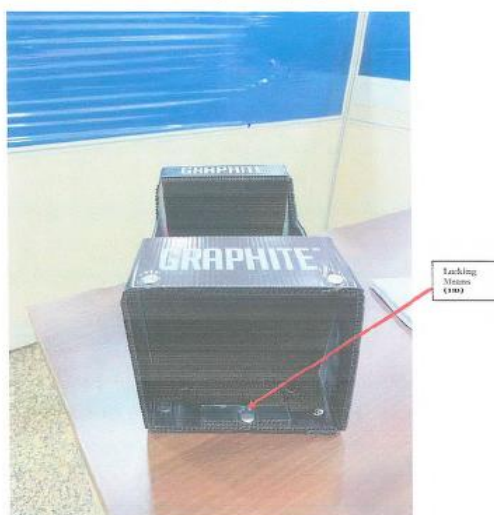
Front folded view of a foldable product display unit in accordance with an embodiment of the Suit Patent



Foldable Product Display Unit in accordance with the embodiment of the Suit Patent.



Bottom view of the foldable product display unit in order to show the locking means (110)



Photographs of Plaintiff's product based on the granted Patent No. IN533643 is filed hereto along with the list of documents as "DOCUMENT-14 (Colly)".

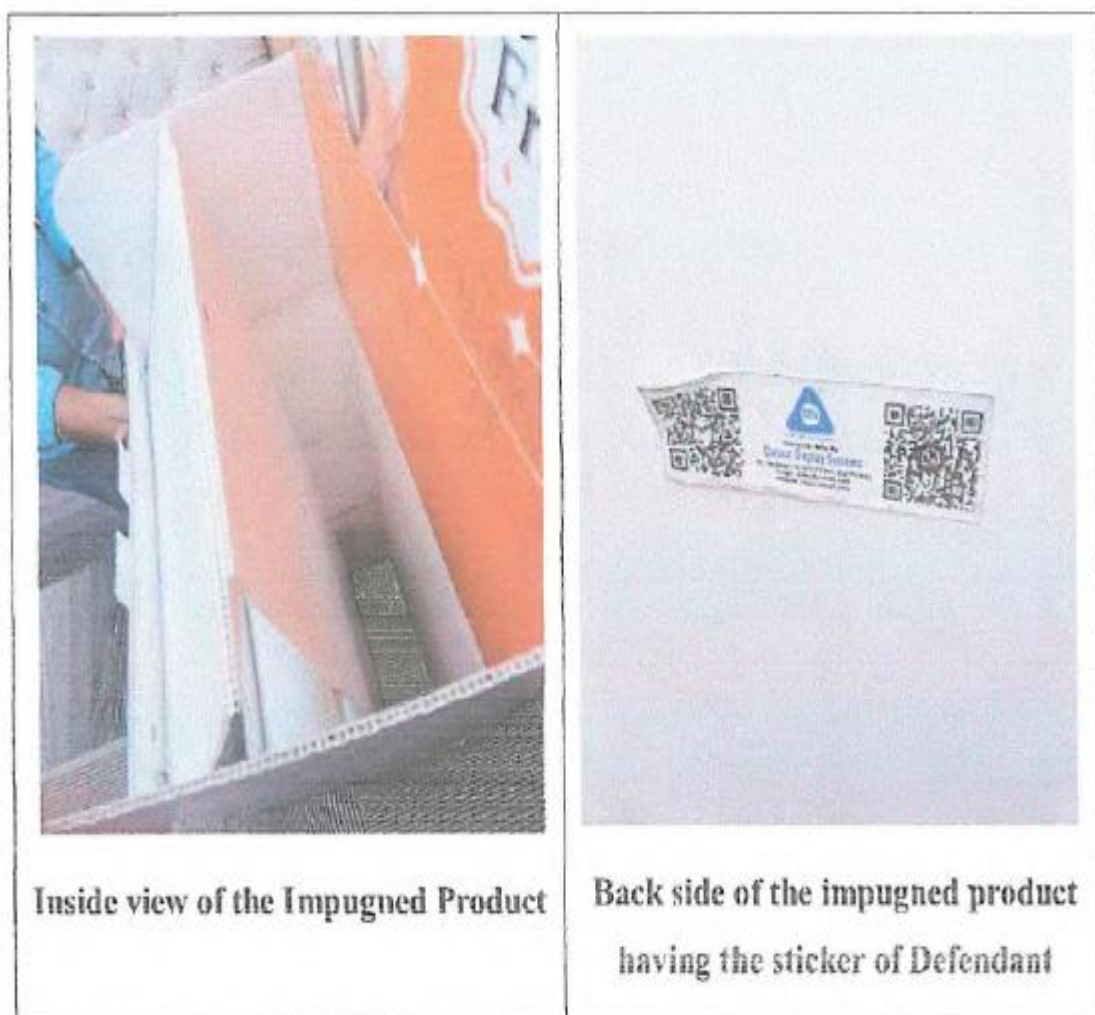


11.10 As per the plaintiffs the invention claimed under the suit patent specifically claims a foldable display unit having key features which are as follows:

- (a) Movable shelves (104) being interconnected with each other through a connecting means so that said movable shelves (104) can move together (i.e., fold and unfold) in tandem;
- (b) Side panels (102) being connected such that after the movable shelves (104) are folded, said side panels (102) move together sideways in the same direction about foldable joints (114).

11.11 The plaintiffs in the first week of August, 2024, came across the impugned product which was being used to display oral care products in a departmental store named 'Modern Bazaar' in *East of Kailash, New Delhi*, for a brand named 'PERFORA' of Chipper Consumer Private Limited, wherein, on the back side of the product a sticker showed that the said product was manufactured and designed by the defendant no. 1. The photographs of the said impugned product, are reproduced as under:





11.12 The plaintiffs further confirmed that the impugned product sold for the brand 'PERFORA', had been sold by the defendant and the same was confirmed by the proforma invoice dated 29th November, 2022, shared by Chipper Consumer Private Limited with the plaintiffs.

11.13 Thus, the present suit came to be filed by the plaintiffs on account of the defendant infringing the suit patent, along with the present application seeking an interim injunction as the defendant is continuing to market, manufacture and sell the infringing product, and the same amounts to infringement of the suit patent, IN'643.



SUBMISSIONS OF PARTIES

Plaintiffs' submissions:

12. On behalf of the plaintiffs, the following submissions are made for the purposes of the present application:

12.1 The defendant has not denied infringement of the suit patent, nor have they been able to show that the impugned products of the defendant identified by the plaintiffs do not fulfil the elements in the claim of the suit patent. Therefore, a *prima facie* case of infringement is made out by the plaintiffs.

12.2 The argument of the defendant that there is confusion in ownership/inventorship of the suit patent, is frivolous and a red herring. The argument that Form-1 of the plaintiffs regarding the suit patent is different in plaint and in rejoinder filed before this Court, being defective, is untenable. This argument was never raised by the defendant in the pre-grant opposition before the patent office, nor in the written statement or in the reply of the present injunction application.

12.3 The multiple copies of Form-1 placed before this Court is in line with the patent office requirements under Ch.03.04.01 point no. 9 of Manual for Patent Office Practice and Procedure, 2019 (“**Indian Patent Manual**”), which mandates that Form-1 be signed by the applicant and/or the patent agent. Further, on account of change of the patent agent, the plaintiffs had to file a fresh Form-1 signed by the new agent, which contained the same substantive details as the first Form-1. Therefore, the first date of filing of Form-1 is 17th October, 2018 and the second filing of Form-1 is of 04th August, 2020. Further, a third Form-1 was also filed with a new agent, thereby, correcting the date of filing to the date of original filing, i.e., 17th



October, 2018. Therefore, the procedural aspect undertaken by the plaintiffs in regard to Form-1 is consistent with the established procedure and does not affect the validity of the patent application. Further, the difference between the Form-1s, if at all, is only in format, while the content remains the same.

12.4 The argument of the defendant that the plaint is not maintainable as the affidavit with the suit is signed and submitted by Ms. Ravinder Kaur, i.e., plaintiff no. 2 in her personal capacity, when the patentee of the suit patent is the proprietorship firm, M/s Amitoje Limited, is a specious argument and an attempt to confuse the Court, as the inventor in the suit patent, Mr. Maniraj Singh Juneja, has assigned the rights in the suit patent to M/s Amitoje India, of whom Ms. Ravinder Kaur, is the sole proprietor. Therefore, on account of the settled law that a sole proprietorship not being a separate legal entity and merely a trade name for the proprietor, it cannot be said that the suit is not maintainable, as Ms. Ravinder Kaur is the sole proprietor of M/s Amitoje India, and the patent has been assigned to the said proprietorship, the affidavit has been rightly filed by Ms. Ravinder Kaur.

12.5 The argument of the defendant that the inventor has not filed an assignment deed in favour of M/s Amitoje India, therefore, is in violation of Section 69 of the Act, is completely erroneous. Section 69 of the Act only applies for an assignment deed being compulsory for a granted patent, however, in the present case, the invention was assigned at the stage of application, and therefore, as per Section 6 and 7 of the Act, only a 'proof of right' under Section 7 (4) of the Act, is required. Further, as per the Indian Patent Manual, Chapter 03.01, under point no. 7, it is clear that 'proof of right' by way of endorsement in Form-1 is needed at the application stage, which was fulfilled in the present case as the Form-1 was signed and



submitted by plaintiff no. 2 before the patent office, which contained the declaration of the inventor, duly signed by the inventor, Mr. Maniraj Singh Juneja.

12.6 The argument of the defendant regarding the claim amendment during the suit patent's prosecution, going beyond the scope of the complete specification of the suit patent, and introducing new matter is *ex-facie* erroneous. The said amendment was dealt with comprehensively by the patent office and allowed under Section 59 of the Act. Further, the defendant, who was the opponent in the pre-grant opposition, never appealed or sought review against the grant of the amendment despite having complete opportunity to do so. Furthermore, as the present is a stage wherein the patent has been granted, therefore, any challenge to the patent based on the amendment can be done under Section 64 (1)(o) of the Act, and the same can be challenged only if the amendment was obtained by fraud, to which effect no arguments have been addressed by the defendant.

12.7 The defendant has failed to raise a credible challenge to the invalidity of the suit patent, as no proper analysis of the prior art indicating its relevance or expert opinion was given by the defendant. Therefore, the burden of proving a credible challenge has not been met by the defendant. Further, the defendant has relied upon its product called, 'Parasite' claiming it as a prior art, and alleging that they have been selling and manufacturing the same before the patent application of the plaintiffs. However, 'Parasite' is a generic term used in the display unit industry, for small footprint displays designed to be placed in several impulse purchase sites throughout a store, which have hundreds of types, and one of which having different constructions and mechanism of folding-unfolding has been patented by



plaintiff no. 2 under the suit patent. Moreover, the same is an admitted stand of the defendant. Therefore, reliance by the defendant upon its product, 'Parasite', is a mere attempt to mislead the Court.

12.8 The grounds as raised by the defendant in the present case are the exact same grounds raised before the patent office with regard to 28 prior arts and one alleged invoice dated 11th September, 2017, to show prior sale, and the same were rejected by the Ld. Controller of Patents in the pre-grant opposition to the suit patent filed by the defendant. Further, when the defendant has been unsuccessful in the pre-grant opposition on the same grounds, the defendant has to meet a higher degree of credible challenge, a threshold which the defendant has not met in the present case.

12.9 The defendant has never challenged the order dated 18th April, 2024 passed by the Controller of Patents, despite the Controller dealing with the objections of the defendant comprehensively and accordingly dismissing the same.

12.10 The contention of the defendant that the plaintiffs have visited the premises of the defendant and have purchased goods from a sister concern of the defendant, i.e., Classic Enterprises Limited, is completely erroneous. Further, the sister concern of the defendant was approached to purchase a common raw material, i.e., corrugated plastic sheets, which is used to make display boards, and the same has nothing to do with the mechanism of action of the patented product.

12.11 The contention of the defendant that they have 'prior user' based on the documents placed in the pre-grant opposition and fresh documents placed in the present suit, do not amount to credible challenge against the invalidity of the suit patent. Further, the fresh documents produced before



this Court are defendant's own documents which were in power, possession and control of the defendant, despite which, the same were not disclosed in the pre-grant opposition. Therefore, the fresh documents surfacing after 4-years, shows *malafide* and hints towards the same being doctored and obtained solely for the purposes of the present suit.

12.12 None of the documents or prior arts, showcase the same inventive step, as covered in the suit patent. Further, the defendant must show that the prior art discloses and enables all features of the claimed invention, to challenge the novelty of the invention under Section 64 (1)(e) of the Act.

12.13 The documents, correspondences, invoices, PPT slides, testimonials and videos shown by the defendant to substantiate and establish that the defendant has a prior user, has to be rejected as none of them disclose the construction and collapsing/folding mechanism, as claimed in the suit patent.

12.14 The argument of the defendant that the suit patent is anticipated and prior claimed by the US patent application, i.e., US'568 and therefore, vulnerable to challenge under Section 64 (1)(a), (e) and (f) of the Act, is not tenable, as the defendant has not done any claim mapping of the said alleged prior art with the suit patent. Therefore, no relevance of the said prior art has been shown by the defendant. Further, the US'568 is an abandoned US patent application which was published in the year 2010 and was in the public domain since then. However, the same was never relied upon by the defendant during the 4 year long pre-grant opposition.

12.15 The US'568 is fundamentally a different prior art from the claimed subject matter of the present invention in the suit patent, and the US'568 in fact teaches away from the invention under the suit patent. Further, US'568



is completely non-enabled in terms of having a completely inaccurate and inconsistent disclosure, which cannot even be utilized to understand the working/construction of the said reference.

12.16 The public interest consideration in the present matter would be to restrain the infringement by the defendant which has not been denied, and to protect the rights of a patentee.

12.17 The balance of convenience is in favour of the plaintiffs as the defendant has exhausted pre-grant opposition before the patent office, which the defendant lost. Further, the scope of injunction sought is narrow, as the plaintiffs do not seek to injunct the sales of all display units of the defendant, but only the specific impugned product. The defendant is free to make and sell other display systems which do not infringe the suit patent, and the business of the defendant is not being shut down. Thus, the balance of convenience is in favour of the plaintiffs.

12.18 The defendant has not taken any license from plaintiff no. 2. Further, the plaintiffs have spent enormous amounts of resources, capital, effort, etc. on research and development, advertising and promotional expenses for the device and technology as embodied in the suit patent. Therefore, the defendant by way of the infringing product will cause substantial loss in profits to the plaintiffs along with loss in goodwill and reputation.

12.19 The plaintiffs have been commercially implementing the suit patent since the date of its application. Thus, irreparable harm will be caused to the plaintiffs *qua* its reputation as well, if an interim injunction is not granted in favour of the plaintiffs and against the defendant.



Defendant's submissions:

13. On behalf of the defendant, the following submissions are made for the purposes of the present application:

13.1 The plaintiffs have *prima facie* materially mis-stated and misrepresented facts regarding the invention and ownership of the suit patent, as the plaintiffs in their plaint have contradicted their own pleadings with respect to the identity of the patentee and inventor, by specifically stating that the suit patent has been granted in favour of plaintiff no. 2, i.e., Ms. Ravinder Kaur. Further, the plaintiffs have now taken an inconsistent stand that plaintiff no. 2 is the sole proprietor of M/s Amitoje India, which is the patentee and the inventor of the suit patent. Nevertheless, a firm or proprietary concern cannot be an inventor under the scheme of the Act.

13.2 There is no valid deed of assignment in respect of the suit patent executed in favour of the plaintiffs. Therefore, the plaintiffs cannot claim any enforceable rights in respect of the suit patent. Further, there is no assignment in favour of plaintiff no. 1, but only an authorization letter to market and manufacture, which does not fulfil the requirements under Section 68 of the Act. Therefore, the claim of the plaintiffs is legally unenforceable, and no injunction can be granted in such circumstances.

13.3 The Form-1 filed by the plaintiffs suffers from serious defects and contradictions in the title of the invention, applicant particulars and dates, and three different versions of Form-1s have been filed with the plaint, rejoinder to the present application and replication.

13.4 The plaintiffs lack the locus to file the present suit as the true inventor of the suit patent, i.e., Maniraj Singh Juneja, has not been made a party to the suit in his personal capacity. Further, as long as the right to file a post-



grant opposition survives, the plaintiffs cannot file the suit for infringement, and therefore, the present suit is liable to be rejected on this ground alone.

13.5 There is no presumption of validity of the suit patent by virtue of being granted by the patent office. The prior art documents relied upon by the defendant before the Controller are sufficient for this Court to hold that the suit patent is invalid. The Controller, while dealing with the prior arts cited by the defendant returned a copy paste finding for each prior art, and therefore, demonstrated gross non-application of mind.

13.6 The plaintiffs have failed to provide any claim mapping or claim chart to demonstrate how the claims of the impugned patent are novel, or distinguishable from the prior art, therefore, in the absence of claim mapping, the assertion of infringement remains vague and unsubstantiated.

13.7 The suit patent is liable to revocation under Section 64 (1)(a) of the Act, as the subject invention, to the extent it is claimed, was already covered in valid claims of an earlier patent granted in India with an earlier priority date.

13.8 The suit patent is liable to revocation under Section 64 (1)(e) of the Act, as the alleged invention lacks novelty as the concept, design and utility of foldable display stands was already publicly known, used, and published both in India and internationally prior to the priority date of the suit patent.

13.9 The suit patent is liable to revocation under Section 64 (1)(h) of the Act, as the specifications in the suit patent do not disclose the invention in clear terms and instead merely assert general, sweeping claims for all foldability features without detailing any unique construction or mechanism.

13.10 The suit patent is liable to revocation under Section 64 (1)(i) of the Act, as the Claims of the suit patent are vague, and do not sufficiently



describe the invention. Moreover, the inventive step of the suit patent has not been articulated with clarity.

13.11 The suit patent is not an invention as it is a mere arrangement or re-arrangement or duplication of known/existing features of foldable units.

13.12 The product claimed under the suit patent has been displayed by the plaintiffs on their official website since the year 2016, and the patent application for the same was only filed on 17th October, 2018. Therefore, as per Section 31 and 32 of the Act, the plaintiffs cannot claim a patent over the invention after the invention has been in public domain for more than a year.

13.13 The plaintiffs have made contradictory statements before the Controller of Patents and this Court, regarding the inventive feature of the suit patent. The plaintiffs' shifting stand is inconsistent with the specification of the suit patent, and therefore, disentitles the plaintiffs from an equitable relief, such as an injunction.

13.14 The plaintiffs have unlawfully introduced amendments to the complete specifications of the initial claim in the year 2023, nearly five years after the original filing of the patent application. Further, these amendments go beyond the scope of the original disclosure, and were neither claimed, or disclosed in the originally filed claims or complete specification. Moreover, it is settled law that no amendment can be permitted which introduces a matter not disclosed in substance in the original specification.

13.15 The defendant is the prior user and inventor of the patented product and has been supplying identical foldable display units under the name of 'Parasite', long before the priority date of the suit patent. The same is substantiated by the documentary evidence in the form of email



correspondence from the defendant's reputed clients, which show that the same foldable display products were manufactured and commercially supplied by the defendant prior to the priority date of the suit patent. Further, the PowerPoint presentation showcasing the patented product was specifically shared with clients for sample and marketing purpose. The product claimed under the suit patent and termed as "Foldable Product Display Unit" is already widely known in the market by various names such as "Parasite/Hangers/CTU/FSU (Floor Stand Unit)/FSDU (Floor stand Display Unit)".

13.16 The plaintiffs have deliberately copied the defendant's product and design. The same can be corroborated by the fact that the plaintiffs have visited the premises of the defendant on multiple occasions and have purchased raw material from the defendant's sister concern as well. This repeated engagement gave the plaintiffs full visibility into the defendant's design, materials and manufacturing process.

13.17 The suit patent is plainly a replica of a known prior art, i.e., US'568. Further, the invention so far as claimed in the complete specification of the suit patent, is obvious and does not involve any inventive step, having regard to what was publicly known or used in India or elsewhere before the priority date of the claim under the suit patent. Moreover, the plaintiffs have failed to disclose the US'568 before the patent office and this Court, and the said prior art, i.e., US'568 discloses identical specification and drawings, which show an identical operation and structure to the suit patent. Therefore, the suit patent is not novel and lacks an inventive step.

13.18 The suit patent and the prior art both disclose foldable display units, and the suit patent has made mere modifications/substitutions which would



be obvious to a Person Skilled in the Art. Therefore, the suit patent lacks novelty, inventive step, and is entirely anticipated by the prior art, i.e., US'568. Therefore, the suit patent is vulnerable to revocation under Section 64 (1)(a), 64 (1)(e) and 64 (1)(f) of the Act.

13.19 The plaintiffs have argued that US'568 has been abandoned, and therefore, cannot be considered. However, the same does not preclude its use as a prior art, as prior art is only pivoted on the publication of any document either in India or elsewhere, and the same is clear from the bare reading of Section 13 of the Act. Further, as per the United States Patent and Trademark Office's Manual of Patent Examining Procedure ("MPEP"), particularly MPEP 2127 and MPEP 901, an abandoned patent application that has been published, are citable as prior art from their publication date to the extent of their disclosures.

13.20 The participation of the defendant in pre-grant opposition does not place an embargo on the defendant's right to seek revocation under Section 64 read with Section 107 of the Act, merely because of prior participation in pre-grant opposition. Further, as long as defendant's right to file a post-grant opposition persists, the plaintiffs' right to file a suit for infringement does not crystallise, rendering the present suit not maintainable.

13.21 The balance of convenience lies in favour of the defendant, as the defendant has made sales since the last two decades of the goods on which the plaintiffs are claiming a patent from the Financial Year 2004 -2005 till 2022-2023. In comparison, at the time of filing of the present suit, the plaintiffs have alleged sales only from the year 2021, which the defendant shall also challenge during deposition stage. This would show that the defendant has already made substantial investment in the manufacture and



sale of the product in question. Thus, balance of convenience would be in favour of the defendant and irreparable harm would be caused to the defendant if any interim injunction is granted.

FINDINGS AND ANALYSIS

14. I have heard learned counsels for the parties and have perused the records.

Suit Patent/IN'643

15. The suit patent relates to a foldable product display unit which as per the plaintiffs is an efficient and convenient display unit, which provides hassle free embodiments that can be used to effectively store and advertise products. Furthermore, as per the plaintiffs, the suit patent relates to a specific form of a foldable product display unit, which is distinct from the other similar units on account of the inventive features enumerated in the said suit patent. A detailed tabular representation pertaining to name, date of filing, and other details *qua* prosecution history of suit patent, is given as below:

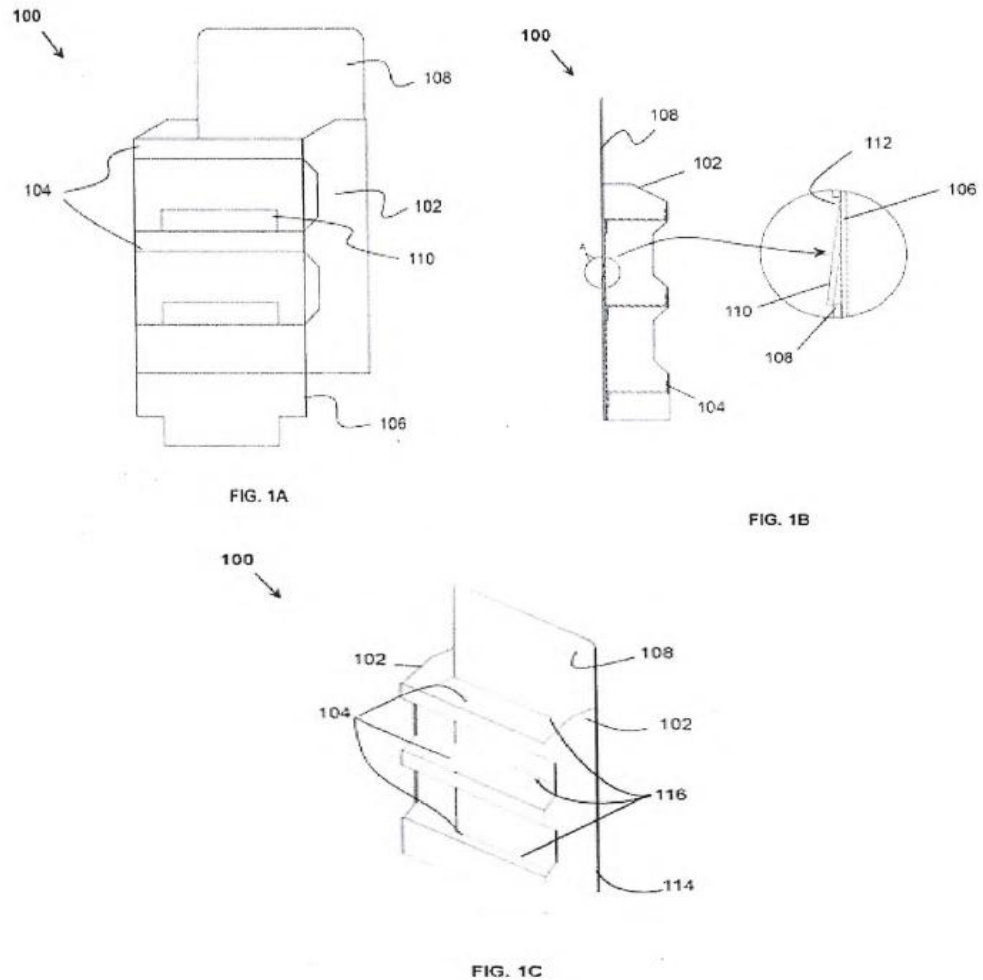
PATENT NO.	IN533643
TITLE OF THE PATENT/INVENTION	A FOLDABLE PRODUCT DISPLAY UNIT
APPLICATION NO.	201811039416
DATE OF FILING	17.10.2018
FIRST REQUEST FOR EXAMINATION FILED ON	21.11.2019
FIRST EXAMINATION REPORT (FER)	10.01.2020



RESPONSE TO FER SUBMITTED	10.08.2020
PRE-GRANT OPPOSITION FILED ON	19.02.2020
REPLY STATEMENT TO THE NOTICE OF OPPOSITION FILED ON	06.02.2021
REPLY EVIDENCE ON BEHALF OF THE OPPONENT IN RESPONSE TO REPLY STATEMENT	20.09.2021
PRE-GRANT HEARING NOTICE	12.11.2021
HEARING HELD ON	15.12.2021
WRITTEN SUBMISSIONS FILED BY THE APPLICANT/PATENTEE	30.12.2021
WRITTEN SUBMISSIONS FILED BY THE OPPONENT	04.01.2021
FORM 13 FILED ON	15.06.2023
PRE-GRANT EXTENDED HEARING NOTICE	14.07.2023
HEARING HELD ON	25.08.2023
WRITTEN SUBMISSIONS SUBMITTED BY PATENTEE AND OPPONENT ON	06.09.2023
DATE OF GRANT	18.04.2024
DATE OF ISSUANCE OF CERTIFICATE	18.04.2024
DATE OF PUBLICATION IN POST GRANT JOURNAL	26.04.2024



16. As per the plaintiffs, the suit patent specifically discloses a foldable product display unit that requires minimal efforts for the setup of the display unit. The drawings of the claimed invention of the plaintiffs under the suit patent, as filed before the patent office, is reproduced as under:



17. As per the plaintiffs, Fig. 1A illustrates a front folder view of a foldable product display unit, Fig. 1B illustrates a side sectional view of the foldable product display unit of Fig. 1A and Fig. 1C illustrates a perspective view of the foldable product display unit of Fig. 1A and Fig. 1B, all of which, are in accordance with an embodiment of the invention under the suit patent.



18. This Court notes that the claims of the suit patent were amended on 16th June, 2023, and the same were granted as the claims of the suit patent *vide* order dated 18th April, 2024, passed by the Controller of Patents. Further, Claim 1 of the suit patent is an independent claim and the other claims are dependent claims of Claim 1. The said claims under the suit patent, IN'643, as per the complete specifications, read as under:

“xxx xxx xxx

1. A foldable product display unit (100) comprising:

one or more display panels (108);

one or more back panels (106), connected with the one or more display panels (108);

a pair of side panels (102), connected with the one or more back panels (106) as well as the one or more display panels (108) by a pair of first foldable joints (114);

a plurality of movable shelves (104), connected with the one or more back panels (106) by a plurality of second foldable joints (116); and

a plurality of locking means (110) disposed on the one or more back panels (106), configured to lock the plurality of movable shelves (104), thereby restricting movement of the plurality of the movable shelves (104) in locked configuration;

wherein the plurality of second foldable joints (116) enable the plurality of movable shelves (104) to freely move upward and downward; wherein the plurality of movable shelves (104) interconnected with each other via a connecting means such that each of the plurality of movable shelves (104) move in tandem; and

wherein the pair of side panels (102) are connected to each other such that, after the plurality of movable shelves (104) are folded about the plurality of second foldable joints (116), the pair of side panels (102) are moved together sideways in the same direction about respective of the pair of first foldable joints (114).

2. The foldable product display unit (100) as claimed in claim 1, wherein the plurality of side panels (102), the plurality of movable shelves (104), the one or more back panels (106), the one or more display panels (108), the plurality of locking means (110), the connecting means are an integral unit.

3. The foldable product display unit (100) as claimed in claim 1, wherein the one or more display panels (108) is configured to provide



easy placement and replacement of artwork/branding.

4. The foldable product display unit (100) as claimed in claim 1, wherein the plurality of movable shelves (104) connected with the plurality of side panels (102) and with the one or more back panels (106), is configured to form a cavity for placing the products.

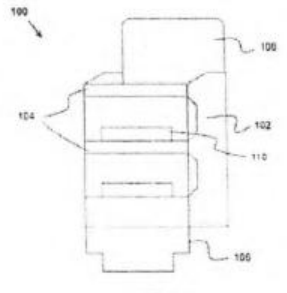
5. The foldable product display unit (100) as claimed in claim 1, further comprises of plurality of coupling means, being elastic in nature, running through a plurality of engagement means, connecting the foldable product display unit (100).

6. The product display unit (100) as claimed in claim 1, wherein the pair of side panels (102), the plurality of movable shelves (104), the one or more back panels (106), the one or more display panels (108), the plurality of locking means (110), the plurality of engagement means, connecting means, coupling means are made of material selected from a group comprising aluminium, steel, corrugated plastic and corrugated paper.

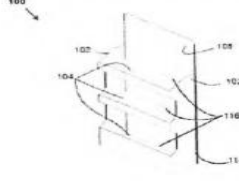
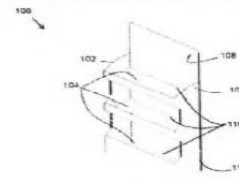
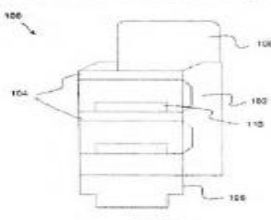
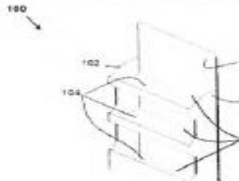
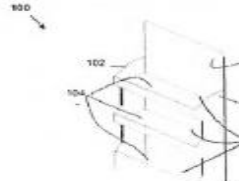
xxx xxx xxx”

19. A tabular representation showing mapping of elements of the independent Claim 1, with the figures filed before the patent office, as given in the plaint, is reproduced as under:

“xxx xxx xxx

Elements forming part of Independent Claim No. 1	Corresponding Fig. from the set of drawings to illustrate the invention
A foldable product display unit (100) comprising: one or more display panels (108); one or more back panels (106), connected with the one or more display panels (108);	 FIG. 1A



<p>a pair of side panels (102), connected with the one or more back panels (106) as well as the one or more display panels (108) by a pair of first foldable joints (114);</p>	 <p>FIG. 1C</p>
<p>a plurality of movable shelves (104), connected with the one or more back panels (106) by a plurality of second foldable joints (116); and</p>	 <p>FIG. 1C</p>
<p>a plurality of locking means (110) disposed on the one or more back panels (106), configured to lock the plurality of movable shelves (104), thereby restricting movement of the plurality of the movable shelves (104) in locked configuration;</p>	 <p>FIG. 1A</p>
<p>wherein the plurality of second foldable joints (116) enable the plurality of movable shelves (104) to freely move upward and downward; wherein the plurality of movable shelves (104) interconnected with each other via a connecting means such that each of the plurality of movable shelves (104) move in tandem; and</p>	 <p>FIG. 1C</p>
<p>wherein the pair of side panels (102) are connected to each other such that, after the plurality of movable shelves (104) are folded about the plurality of second foldable joints (116), the pair of side panels (102) are moved together sideways in the same direction about respective of the pair of first foldable joints (114)</p>	 <p>FIG. 1C</p>

xxx xxx xxx”



20. The suit patent, IN'643 has been described in the plaint by the plaintiffs, in the following manner:

“xxx xxx xxx

19. The claimed foldable product display unit comprises one or more display panels, one or more back panels which is connected with the one or more display panels, plurality of side panels which are connected with the one or more back panels by a first plurality of foldable joints and plurality of movable shelves which are connected with the one or more back panels by second plurality of foldable joints and plurality of locking means. Further, the plurality of locking means are configured to lock the plurality of movable shelves and thereby restricting movement of the plurality of the movable shelves in locked configuration.

20. Additionally, present invention is achieved by a specific arrangement of the components of the foldable product display unit along with its display mechanism used in order to work the invention. Specifically, the back panel of the foldable product display unit which is movable and connected to the shelves of the

xxx xxx xxx

27. After the shelves attached to the back panel are folded towards the back panel, the pair of side panels are moved together sideways in the same direction about respective of the pair of first foldable joints, thereby requiring less space and simple installation. Such easy installation and collapsible feature makes the invention herein of great utility, novel and exhibiting inventive step. Also, on each of the plurality of side panel, the front portion of the plurality of movable shelves, the front portion of the one or more back panels and the one or more display panels may be used for displaying advertisements for the purpose of branding and these can be changed to display advertisements without causing damage to the display advertisements.

xxx xxx xxx”



21. The suit patent can, thus, be described as one pertaining to a foldable product having:

- (i) One or more display panels;
- (ii) One or more back panels connected with one or more display panels;
- (iii) Pair of side panels that are connected with one or more back panels, as well as connected with one or more display panels by a pair of first foldable joints;
- (iv) Movable shelves connected with the one or more back panels by plurality of second foldable joints;
- (v) Locking means disposed on the one or more back panels.

22. The key features of the claimed invention as per plaintiffs in the suit patent, are as follows:

- (i) Movable shelves being interconnected with each other through a connecting means so that the said movable shelves can move together, i.e., fold and unfold, in tandem.
- (ii) Side panels being connected such that after the movable shelves are folded, the side panels move together sideways in the same direction above foldable joints.

23. From the above, it is evident that the suit patent relates to a foldable product display unit comprising one or more display panels, one or more back panels which is connected with one or more display panels, plurality of side panels which are connected with one or more back panels by a first plurality of foldable joints and plurality of movable shelves, which are connected with one or more back panels by second plurality of foldable joints and plurality of locking means, wherein, the connecting means enable



the movable shelves to move in tandem and wherein, the side panels move together sideways in the same direction.

24. This Court notes that the defendant has acknowledged that they are manufacturing and supplying identical foldable display units as claimed in the suit patent. In this regard, the defendant firstly, contends that it has a prior user in relation to the display units in question, and has been manufacturing and supplying identical foldable units, long before the priority date of the impugned patent. Secondly, it is the case of the defendant that the claimed invention under the suit patent is obvious and lacks inventive step. The said argument is further buttressed by the reliance of the defendant upon the prior art, US'568, which is publicly known and is available since the year 2010.

No Presumption of Validity of Patent and Degree of Credible Challenge:

25. At the outset, it is to be noted that even when the patent crosses the threshold of examination by the patent office, the validity of the said patent is not guaranteed. There is no presumption in favour of the validity of a patent. Thus, in the case of *Bishwanath Prasad Radhey Shyam Versus Hindustan Metal Industries*¹, Supreme Court has held as follows:

“xxx xxx xxx

32. It is noteworthy that the grant and sealing of the patent, or the decision rendered by the Controller in the case of opposition, does not guarantee the validity of the patent, which can be challenged before the High Court on various grounds in revocation or infringement proceedings. It is pertinent to note that this position viz. the validity of a patent is not guaranteed by the grant, is now expressly provided in Section 13(4) of the Patents Act, 1970. In the light of this principle, Mr Mehta's argument that there is a

¹ (1979) 2 SCC 511



presumption in favour of the validity of the patent, cannot be accepted.

xxx xxx xxx”

(Emphasis Supplied)

26. In the present case, the defendant herein had opposed the suit patent during the course of its prosecution before the patent office, by filing a pre-grant opposition on 19th February, 2020. The same was rejected by the patent office *vide* order dated 18th April, 2024. It is also noted that no post-grant opposition was filed by the defendant against the suit patent after its grant, and the period for filing the same also stands expired. However, even though, the pre-grant opposition filed by the defendant has been rejected, and thereafter no post-grant opposition or revocation has been filed by the defendant, validity of the suit patent, as such, cannot be presumed. Nevertheless, the defendant herein has filed a counter claim seeking to challenge the validity of the suit patent.

27. If the defendant is successful in raising a credible challenge to the validity of the suit patent, then no injunction can be granted in favour of the plaintiffs. Thus, this Court in the case of ***TEN XC Wireless Inc. & Anr. Versus Mobi Antenna Technologies (Shenzhen) Co. Ltd.***², held as follows:

“xxx xxx xxx

7.10 The well settled principles for grant of interim injunction in patent matters laid down by the Courts in the aforesaid judgments are summarized as under:—

xxx xxx xxx

7.10.5 The plaintiff is not entitled to an injunction if the defendant raises a credible challenge to the patent. Credible challenge means a serious question to be tried. The defendant need not make out a case of actual invalidity. Vulnerability is the issue at the preliminary injunction stage whereas the validity is the issue at trial. The

² 2011 SCC OnLine Del 4648



showing of a substantial question as to invalidity thus requires less proof than the clear and convincing showing necessary to establish invalidity itself.

7.10.6 At this stage, the Court is not expected to examine the challenge in detail and arrive at a definite finding on the question of validity of the patent. That will have to await at the time of trial. However, the Court has to be satisfied that a substantial, tenable and credible challenge has been made.

xxx xxx xxx”

(Emphasis Supplied)

28. Further, on account of the plaintiffs succeeding in the pre-grant opposition with the defendant, the plaintiffs have argued that the degree of credible challenge to be raised by the defendant is at a higher threshold. To support the same, the plaintiffs have relied upon the judgement of the Division Bench of this Court in the case of **3M Innovative Properties Ltd. & Anr. Versus Venus Safety & Health Pvt. Ltd. & Anr.**³

29. Perusal of the said judgment shows that a higher degree of credible challenge would be only required if the prior arts relied in the pre-grant/post-grant oppositions and before this Court are the same. However, in the facts of the present case, it is to be noted that the prior art, US’568 as relied upon in the present case, was not relied before the Controller during the course of prosecution of the pre-grant opposition under Section 25(1) of the Act. Therefore, this argument does not have merit.

30. Therefore, in view of the settled principles, if this Court comes to the conclusion that a credible challenge has been raised by the defendant or the suit patent is vulnerable, then no interim injunction can be granted in favour of the plaintiffs.

³ 2016 SCC OnLine Del 5232



Documents of Defendant – Claim of Prior Use:

31. The defendant has filed various documents along with the written statement to contend that there is documentary evidence in the form of E-mail correspondence from the defendant's reputed clients, which clearly demonstrate that the same foldable display products were manufactured and commercially supplied by the defendant, prior to the priority date of the suit patent. The defendant has also relied upon video links and screenshot of presentations (PPTs), which were shared with their clients along with invoices. Therefore, as per the case put forth by the defendant, these communications serve as clear admissions from third parties and establish the defendant's entitlement to prior use protection in relation to the foldable display products which is claimed by the plaintiffs under the suit patent.

32. In furtherance to the said contention, the defendant has also placed on record power point presentations of the same foldable display unit that was sent by the defendant to its clients for sample and marketing purposes. Thus, as per the defendant, these presentations confirm that the defendant has been consistently manufacturing and offering the same product, well before the priority date claimed by the plaintiffs in the suit patent.

33. However, the aforesaid documents as relied upon by the defendant to show prior user, cannot be accepted on their face value, as evidence would have to be led by the defendant to establish that the product manufactured and claimed by the defendant since a long time, contains the same features, as claimed in the suit patent.

34. The documents as relied upon by the defendant are also heavily disputed by the plaintiffs, and the genuineness of several of the documents as relied upon by the defendant has been questioned. Moreover, reliance on



emails, PPTs which have been shared by the defendant with their clients, would by themselves be subject to verification on account of the defendant not placing on record any substantial proof, as to the product in question as claimed in the suit patent, being the same product which the defendant asserts for its contention of prior use.

35. This Court notes that, the prior use in the case of a Patent cannot be established in the manner, as prior use is established in a case of Trade Mark. In case of a Trade Mark, to establish prior use of Trade Mark, a party must prove continuous and actual commercial use of the mark, with evidence like sales records, sale receipts, newspaper articles, registration certificates and other documentary evidence to show prior use of same/similar mark. However, in case of a Patent, prior use cannot be established by showing documentary evidence such as sale records, sale receipts, etc. The defendant would have to lead evidence to establish that the defendant was marketing and manufacturing similar product possessing key features as the claimed invention, at a prior point of time, than the priority date of the suit patent. The E-mails, correspondence, photographs, video and PPT presentations, invoices, placed on record by the defendant would have to be proved at the time of trial to establish that similar product with similar features as the suit patent, were actually being manufactured and marketed by the defendant, much prior to the suit patent. Such facts cannot be deemed to be setup merely by looking at the said documents, as placed on record by the defendant and would have to be proved by way of leading evidence at the time of trial. Therefore, contention of the defendant with regards to prior use, at the present interim stage, cannot be *prima facie* accepted.



Section 64 (1)(f) of the Act

36. The defendant has relied upon a prior art, US'568 to assert the challenge under Section 64 (1)(f) of the Act. The defendant contends that the US'568 contains identical specifications and drawings, as the claimed invention in the suit patent, and therefore the invention so far as claimed in the complete specification of the suit patent, is obvious and does not involve any inventive step.

37. The plaintiffs have sought to repel the said argument on the ground that US'568 is an abandoned US patent application before the United States Patent and Trademark Office (“USPTO”). Further, the said document is a fundamentally different prior art from the claimed subject matter of the present invention under the suit patent. As per the plaintiffs, the US'568, i.e., prior art, teaches away from the present invention by indicating that the side panels are to be folded towards one another, clearly indicating that they are not folded in the same direction, as in the suit patent. Further, there is no disclosure of a ‘connecting means’ as envisaged in the claimed invention, or that it enables the shelves to move in tandem.

38. Before considering the submissions of the parties with regard to US'568, it is imperative to consider as to whether this Court can consider the said document as a prior art. In this regard, it would be useful to refer to Section 64(1)(f) of the Act, which deals with grounds for revocation of patents, if the invention is either previously known or used publicly in India or what was published in India or elsewhere, before the priority date of the claim. The Section 64 (1)(f) of the Act, is reproduced as under:

“xxx xxx xxx

64. Revocation of patents.—(1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement



of this Act, may, [be revoked on a petition of any person interested or of the Central Government [* * *] or on a counter-claim in a suit for infringement of the patent by the High Court] on any of the following grounds, that is to say,—

.....

(f) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim;

xxx xxx xxx”

(Emphasis Supplied)

39. Thus, any invention having been published in India or elsewhere, before the priority date of the claim, can be considered for the purposes of assessing obviousness. Merely because US’568, as relied by the defendant, is ‘abandoned’ does not preclude its use as prior art against the suit patent, as prior art is to be pivoted on the ‘publication’ of the same either in ‘India or elsewhere’. Thus, any document, including, an abandoned patent application that is published and publicly available, qualifies as relevant prior art for the purposes of Section 64(1)(f) of the Act, regardless of whether it proceeds to grant or is ultimately abandoned. In the present case the prior art, US’568 was published on 04th March, 2010, and the suit patent was filed on 17th October, 2018, i.e., its priority date. Therefore, US’568 having a date of publishing much prior to the priority date of the suit patent, can be considered as a prior art document, for the purposes of a challenge under Section 64 (1)(f) of the Act.

40. At this stage, it would be pertinent to note the judgement of the Division Bench of this Court in the case of *F. Hoffmann-La Roche Ltd. &*



*Anr. Versus Cipla Ltd.*⁴, wherein, the Division Bench has laid down a five-step test for determination of obviousness/lack of inventive step, which are reproduced as follows:

“xxx xxx xxx

153. From the decisions noted above to determine obviousness/lack of inventive steps the following inquiries are required to be conducted:

Step No. 1 To identify an ordinary person skilled in the art,

Step No. 2 To identify the inventive concept embodied in the patent,

Step No. 3 To impute to a normal skilled but unimaginative ordinary person skilled in the art what was common general knowledge in the art at the priority date.

Step No. 4 To identify the differences, if any, between the matter cited and the alleged invention and ascertain whether the differences are ordinary application of law or involve various different steps requiring multiple, theoretical and practical applications,

Step No. 5 To decide whether those differences, viewed in the knowledge of alleged invention, constituted steps which would have been obvious to the ordinary person skilled in the art and rule out a hindsight approach.

xxx xxx xxx”

(Emphasis Supplied)

41. In a recent judgement in the case of *Tapas Chatterjee Versus Assistant Controller of Patents and Designs and Another*⁵, the Division Bench of this Court, has further conformed to the approach taken under *F. Hoffmann-La Roche Ltd. & Anr. Versus Cipla Ltd.*⁶, for the purposes of ascertaining obviousness and lack of inventive step. Thus, it was held as follows:

“xxx xxx xxx

21.4 The test in F. Hoffmann La Roche - erroneous application in the impugned judgment

⁴ 2015 SCC OnLine Del 13619

⁵ 2025 SCC OnLine Del 6369

⁶ 2015 SCC OnLine Del 13619



21.4.1 The learned Single Judge has, in para 25 of the impugned judgment, relied on the pronouncement of the Division Bench of this Court in *F. Hoffmann La Roche Ltd. v. Cipla Ltd.*, and we are in agreement with him that the said decision lays down principles which, for the present, may be regarded as the gold standard to determine whether a later invention is obvious from the teachings contained in an earlier patent. The Division Bench has identified the following steps, in this regard:

“Step No. 1 To identify an ordinary person skilled in the art,
Step No. 2 To identify the inventive concept embodied in the patent

Step No. 3 To impute to a normal skilled but unimaginative ordinary person skilled in the art what was common general knowledge in the art at the priority date

Step No. 4 To identify the differences, if any, between the matter cited and the alleged invention and ascertain whether the differences are ordinary application of law or involve various different steps requiring multiple, theoretical and practical applications,

Step No. 5 To decide whether those differences, viewed in the knowledge of alleged invention, constituted steps which would have been obvious to the ordinary person skilled in the art and rule out a hindsight approach.”

Having thus reproduced the steps that **Hoffman** envisages as being required to be followed, sequentially, while examining the aspect of obviousness and the existence of inventive step, the learned Single Judge, in para 26 of the impugned judgment, proceeds to observe that he would “start at Step 4 and identify the differences, if any between the prior art as identified by the Controller and the subject patent application”.

21.4.2 There are obvious errors in the manner in which the learned Single Judge has applied the procedure outlined in **Hoffmann**.

21.4.3 We are of the opinion that the learned Single Judge could not have commenced applying the principles in **Hoffmann** from Step 4. The error in starting from Step 4 is self-evident. It bypasses the person skilled in the art who, statutory and legally, is the person, from whose point of view the aspect of inventive step and obviousness has to be determined. Identification of the person skilled in the art is, therefore, the fundamental first step while examining a plea of obviousness and lack of inventive step.



21.4.4 Steps 2 and 3 are no less significant. To ascertain whether a later invention, that is sought to be patented, on which already stands patented, is obvious vis-à-vis prior art, the inventive concept of the prior art has to be understood and identified. It is only once the inventive concept of the prior art - as well as, we may add, the inventive concept of the later invention - are identified, that it would be possible to gauge the distance that would be required to be scaled, to leap from one to the other.

*21.4.5 We agree with Mr. Pravin Anand that the manner in which the learned Single Judge has applied the principles laid down in **Hoffmann** are contrary to the judgment itself.*

21.5 The finding, of the learned Single Judge, as also of the AC, that the process that the appellant desires to patent is obvious from the prior art documents D1 and D2 is not, therefore, in our view, supported by sufficient material to sustain it. It has, therefore, to be set aside.

21.6 The sequitur

The sequitur would not, however, be that the subject process, that the appellant desires to patent, would ipso facto be entitled to be treated as inventive, or not obvious, vis-à-vis the prior art documents D1 and D2. It is only an invention which is inventive, and is not obvious to a person skilled in the art possessed with common general knowledge and the teachings contained in the prior art documents, that can be patented. Whether the subject process satisfies this requirement would have to be determined by strictly following the tests laid down by the Division Bench in Hoffmann, and the principles outlined earlier in this judgment. While all the Steps identified in Hoffmann are important, we would lay particular emphasis on Steps 1, 2 and 5.

xxx xxx xxx”

(Emphasis Supplied)

42. In view of the aforesaid, this Court is of the considered view, that to ascertain whether the suit patent, IN’643, is obvious or lacks inventive step in relation to the prior art, i.e., US’568 under Section 64 (1)(f) of the Act, a stepwise approach as laid down in the aforesaid judgements of the Division Benches of this Court, has to be undertaken in the present case as well. Therefore, in light of the principles as laid down, this Court proceeds to deal with the present matter.



Step 1 – Identification of the Person Skilled in the Art:

43. The first step that is to be undertaken by this Court is to ascertain, who will be the Person Skilled in the Art, in terms of the present case. If a claimed invention would be obvious to the Person Skilled in the Art, on the basis of a prior art, or common publicly known knowledge, then subject matter claimed would lack inventive step. Delving on the aspect of a ‘Person Skilled in the Art’, as referred in Section 2(1)(ja) of the Act, this Court in the case of *Saint Gobain Glass France Versus Assistant Controller of Patents and Designs and Another*⁷, has held as follows:

“xxx xxx xxx

52. A ‘person skilled in the art’ as referred in Section 2(1)(ja) of the Act is not an ordinary person but a hypothetical person who is skilled in the relevant art. In this regard, a reference may be made to the judgment of the High Court of Madras in *Rhodia Operations v. Controller, Patents & Designs*. The relevant paragraph from the said judgment is reproduced below:

“27. Section 2(1)(ja) uses the word “skilled” as an adjective qualifying the noun “person”. Most standard dictionaries define the adjective “skilled” as referring to a person having the ability to do a job, task or activity well. I am mindful of Judge Learned Hand’s wise counsel in Markham v. Cabell, 326 US 404 (1945), that one should not make a “fortress of the dictionary”. So, I remind myself of the context: to determine whether the technical advance or economic significance or both would be obvious to a person skilled in the art. By reckoning that such skilled person could be from a range of disciplines depending on the field of invention, I ask myself what level of ability comes to mind if a person were to be described in any of the following ways: skilled medical doctor; skilled automobile engineer; skilled physicist; skilled carpenter; or skilled immunologist. In each case, the straightforward answer is a person possessing the necessary attributes to do the job well. I bear in mind statutory context, i.e. the absence of the qualifier “average” in Section 2(1)(ja) in contrast to its use in Section 64(1)(h). I recognise that the statute neither uses words that indicate enhanced levels of skill such as “highly”, “outstandingly” or “extraordinarily” nor words that

⁷ 2025 SCC OnLine Del 5919



indicate a low or average level of skill such as “low” or “ordinary” or “average” to further qualify the “skilled” person. By taking into account all of the above, on balance, in my view, the “person skilled in the art” as per Section 2(1)(ja) is a person whose skill level is good/greater than average. Because most disciplines/arts require a range of skills or skill set, this person should possess the skill set to do the job well. These aspects were considered in a judgment dated 12.06.2013 of the Intellectual Property Appellate Tribunal (the IPAB) in Enercon (India) Ltd. v. Aloys Wobben (Enercon), ORA/08/2009/PT/CH. In Enercon, the IPAB, speaking through Mrs. Justice Prabha Sridevan, held as under in two memorable paragraphs:

“35. It is true that the Roche extract is specifically with regard to the obviousness issue, but the Novartis extract is not. But it is clear from both the judgments that we should understand the concepts based on the sections as they are in our Act, and also contextualize it in our country. Roche v. Cipla also speaks of a person skilled in the art and not a person with ordinary skill in the art or average skill in the art. The respondent wants us to imagine a person of ordinary skill, conservative, unimaginative, will not go against established prejudice, and is in India. The law has not used the word ordinary. It had the laws of other jurisdictions before it and yet it eschewed the word “ordinary”. So it is very important for us while deciding obviousness not to conjure up a dullard or a moron. Why should we proceed as if “ordinariness” is inherent in the hypothetical person? If it makes the obviousness bar a bit higher, we must bear that in mind, for This is Our Law.”

“37. In this case the art is wind energy. Since this obviousness test is the most frequently debated issue in patent litigations, it may be better if in the future, the pleadings or evidence tells us who this person is. This person is skilled in the art. This person is presumed to know the state of that art at that time, and to have the knowledge that is publicly available. The Act is quite clear and free from ambiguity. The person is skilled in the art and has more than average knowledge of the state of the art and also has common sense. Indian law expects the non obviousness to be tested against this person and not the person who is the touchstone in U.S. Law. She is Ms. P. Sita (Person Skilled in the Art) and not Mr. Phosita or Mr. Posita who are both ordinary by definition.”

Attributes of a person skilled in the art

28. I turn next to the attributes of a person skilled in the art. Depending on the art, educational/academic or vocational qualifications are likely to be required. Work experience would



certainly be required because one does not ordinarily describe a person with the requisite educational qualifications but no work experience as skilled in the art. What about ability to use the tools of trade? Clearly, a person skilled in the art would be adept at using the tools of trade. With regard to knowledge, as held in Lily Icos, on account of the underlying public policy requirement that no monopoly right should be granted over matters previously known in the art or obvious to a person with knowledge of prior art, a level of knowledge that a real person skilled in the art is unlikely to possess is imputed to the hypothetical person. Such imputation of knowledge is not, however, unqualified and is restricted to matters previously known in the art in which such person or team of persons is skilled. The legislative intent, as gleaned from text, is certainly not that this person should be omniscient. This leads to the question: in what respects should this notional person be different from a real person skilled in the art?

29. For instance, is it necessary that this person should be forgetful of other prior art once she identifies the closest prior art? I do not think that it is necessary to impute such trait although it is necessary to be mindful of the risk of hindsight-based mosaicing. Should this person be lacking in imagination? While the extent of imaginativeness varies from person to person, imagination is an inherent human quality and the underlying public policy of fostering inventiveness does not justify banishing imagination in the notional person. What about inventiveness? Plainly, the text of the statute requires a patent applicant to establish the existence of an inventive step and, if obviousness is examined from the perspective of a skilled person with ingenuity and inventive capacity, every patent application would fail as would the public policy of fostering genuine invention. Indeed, even de hors the public policy justification, the expression “person skilled in the art” does not ordinarily connote a person with inventive capability. Thus, except to the extent that statutory prescription or the underlying public policy call for a departure from the characteristics of a real person skilled in the art, the notional person should, in my view, mirror a real person as closely as possible. Adopting such approach has the benefit of enhancing the quality of obviousness analysis by ensuring that it remains rooted in the real world. In sum, other than the unreal levels of knowledge imputed to the notional person, such person should possess all the qualities that a real person proficient in the art would possess.

Identifying the person skilled in the art

30. Is it always necessary for the adjudicator to identify the person skilled in the art? If the patent applicant and the relevant



patent office agree on the person skilled in the art, identification by the adjudicator is not necessary. By contrast, whenever there is disagreement, the adjudicator has to identify the person skilled in the art. Where does one begin? The obvious starting point is the field of the claimed invention. Sometimes the person skilled in the art can be readily identified from the field of invention. By way of illustration, if the claimed invention is a pure automobile patent, the person skilled in the art would be an automobile engineer. The identification process could get more complicated - and, the person skilled could even be a team of persons with requisite skills - if the claimed invention also embraces a customised software embedded in a system/hardware. Depending on the nature of the claimed invention, the person, or team of persons, skilled in the art could be from a specific industry or industries or be proficient in technology with use cases in multiple industries. While undertaking this exercise, it is necessary to bear in mind that the object is certainly not to identify a person or team of persons with the capacity to invent in the field of the claimed invention. It is useful to refer to a couple of cases to understand how the person skilled in the art is identified.”

[Emphasis supplied]

53. From a reading of the above extracted paragraphs, it can be discerned that Indian patent law has a higher standard of ‘person skilled in the art’, when compared with major foreign jurisdictions such as the United States of America (USA) and the European Union (EU).

53.1. The United States patent law, 35 U.S.C. § 103, provides that the question of obviousness should be analysed from the perspective of a ‘person having ordinary skill in the art.’ Similarly, Article 56 of the European Patent Convention (EPC) provides that an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a ‘person skilled in the art’.

53.2. The Guidelines for Examination in the European Patent Office further clarify that ‘person skilled in the art’ refers to a hypothetical person of average skill and knowledge in the technical field concerned. In contradistinction, a ‘person skilled in the art’ under Section 2(1)(ja) of the Act is a notional professional with greater-than-average competence, relevant qualifications, practical experience, and common sense, presumed to know all prior art in the field but lacking inventive capacity.

xxx xxx xxx”

(Emphasis Supplied)



44. In the present case, the suit patent relates to a foldable product display unit. To identify the Person Skilled in the Art, in relation to the field of foldable product display units, this Court would need to ascertain the field of invention in the claimed invention of the suit patent. Thus, it would be appropriate to make reference to the field of invention as used by the plaintiffs in the suit patent as shown in the complete specifications of the suit patent. The ‘*Technical Field*’ of invention, in the complete specifications of the suit patent is reproduced as under:

“xxx xxx xxx

TECHNICAL FIELD

Embodiments of the present invention relate generally to display units and more specifically to a foldable product display unit enabling effortless setup and replacement of artwork/branding.

xxx xxx xxx”

(Emphasis Supplied)

45. From the above, it is manifest that the suit patent has a field of invention, i.e., foldable product display units, and the suit patent deals with providing an invention having a similar nature of technology. Therefore, for a foldable product display unit, a hypothetical individual possessed with common general knowledge and the teachings contained in the prior art documents of the said technical field, and who would have greater than average competence, with working experience and who can also be a skilled craftsman in the field of foldable product display units, and who would be adept in using the tools of the said trade, without having inventive capacity, would be the Person Skilled in the Art, for the purposes of the present matter.

46. Thus, considering the law as aforesaid, this Court proceeds to consider as to whether the features of the claimed invention would be



obvious to a Person Skilled in the Art on the basis of the prior art/common general knowledge.

Step 2 – Inventive concept embodied in the suit patent:

47. Under this step, the Court would be required to ascertain the inventive concept in the suit patent.

48. The subject matter of the claimed invention, under the suit patent pertains to a foldable product display unit. The relevant portions in relation to the claimed invention as produced in the complete specification of the suit patent, is reproduced as under:

“xxx xxx xxx

TECHNICAL FIELD

Embodiments of the present invention relate generally to display units and more specifically to a foldable product display unit enabling effortless setup and replacement of artwork/branding.

BACKGROUND ART

Appropriate branding of products is one of the biggest challenges for any company, especially in today's dynamic era where companies have to keep changing their branding in order to retain customers. Many display boards are used for presenting the advertisement of various products launched by a company to create awareness among the customer. Such display boards could only be used for the purpose of advertising and simply occupied space.

One of the important aspects of appropriate branding is accurate display of products with minimum expenses and in the most efficient way possible. There has been number of solutions provided in this regard, such as multi-shelf display units, flexible display units that may be used as shelves for keeping products as well as used for advertisements/branding. These may be portable and assembled at the display site. **However, these solutions still have number of limitations and shortcomings such as, but not limited to, complex assembly of the display units by skilled person at the store/s, changing branding stickers by trained salespersons only, not suitable for all weather conditions i.e. outdoors/indoors. Additionally, the load bearing capacity of the display units is limited i.e. only lighter products may be kept for display the display unit.**



Therefore, in light of the discussion above, there is need for a foldable product display unit that requires minimal effort for the setup of the display unit and replacement of artwork/branding and does not suffer from above mentioned deficiencies.

OBJECT OF THE INVENTION

An object of the present invention provides a foldable product display unit.

Another object of the present invention provides a method for setting up the foldable product display unit.

SUMMARY OF THE PRESENT INVENTION

The present invention is described hereinafter by various embodiments. This invention may, however, be embodied in many different forms and should not be construed as limited to the embodiment set forth herein. Rather, the embodiment is provided so that this disclosure will be thorough and complete and will fully convey the scope of the invention to those skilled in the art.

*According to an aspect of the present invention, there is provided a foldable product display unit. The foldable product display unit comprises one or more display panels, one or more back panels is connected with the one or more display panels, a plurality of side panels are connected with the one or more back panels by a first plurality of foldable joints, a plurality of movable shelves are connected with the one or more back panels by a second plurality of foldable joints and a plurality of locking means is disposed on the one or more back panels is configured to lock the plurality of movable shelves, thereby restricting movement of the plurality of the movable shelves in locked configuration. **Further, the first plurality of foldable joints enables the plurality of side panels to move sideways. Further the second plurality of foldable joints enable the plurality of movable shelves to freely move upward and downward. Further the plurality of movable shelves interconnected with each other via a connecting means such that each of the plurality of movable shelves move in tandem.***

In accordance with an embodiment of the present invention, the plurality of side panels, the plurality of movable shelves, the one or more back panels, the one or more display panels, the plurality of locking means, the connecting means are an integral unit.



In accordance with an embodiment of the present invention, the one or more display panels may be configured to provide easy placement and replacement of artwork/branding.

In accordance with an embodiment of the present invention, the plurality of movable shelves is connected with the plurality of side panels and with the one or more back panels may be configured to form a cavity for placing the products.

In accordance with an embodiment of the present invention, the foldable product display unit further comprises a plurality of coupling means being elastic in nature are running through a plurality of engagement means may be connecting the foldable product display unit.

In accordance with an embodiment of the present invention, the plurality of side panels, the plurality of movable shelves, the one or more back panels, the one or more display panels, the plurality of locking means, the plurality of engagements means, connecting means, coupling means are made of material, but not limited to, aluminium, steel, corrugated plastic, corrugated paper or any other materials.

xxx xxx xxx

DETAILED DESCRIPTION OF DRAWINGS

xxx xxx xxx

The invention works in following manner:

As shown in figure 1, the one or more display panels (108), the one or more back panels (106), the plurality of side panels (102), the plurality of movable shelves (104), the plurality of locking means (110) are connected with each other. In order to achieve an unfold state i.e. unfold the foldable product display unit (100), user may pull and rotate the plurality of side panels (102) about the first plurality of foldable joints (114). The pulling force causes the plurality of side panels (102) to move right/left side of the one or more back panels (106), achieving the box-like shape with the plurality of movable shelves (106) being in unlocked state. The plurality of movable shelves (104) may then be pulled up about the second plurality of foldable joints (116) and locked to the one or more back panels (106) using the locking means (110). The interconnection between the plurality of movable shelves (104) through the connecting means may cause the plurality of movable shelves (104) to move in tandem to unfold and form the foldable product display unit (100) as shown in figure 1A.



The locking means (110) may restrict the movement of the plurality of the movable shelves (104) with the plurality of engagement means (112) as shown figure. 1B. In locked configuration, the plurality of movable shelves (104) forms a cavity for placing the products with the one or more backpack panels (106) and with the plurality of side panels (102). The locked configuration makes the unfoldable foldable product display unit (100) ready to be used for receiving the products for display in the plurality of movable shelves (104) as shown in figure 1C.

In one embodiment, the first plurality of foldable joints (114) and the second plurality of foldable joints (116) may be configured to facilitate the one or more display panels (108), the one or more back panels (106), the plurality of side panels (102), the plurality of movable shelves (104) into multiple folds. In accordance with an embodiment of the present invention, the plurality of locking means (110) may block the first plurality of foldable joints (114) and the second plurality of foldable joints (116) from collapsing the foldable product display unit (100).

Further, in order to achieve a folded state in the foldable product display unit (200), release the restricting force of the plurality of locking means. As a result, one or more back panels (106), a plurality of movable shelves (104), a plurality of side panels (102), connected with each other by the first plurality of foldable joints (114), and the second plurality of foldable joints (116) may move in tandem and collapse to the folded state.

In another embodiment of the present invention, the plurality of side panels (102) are coupled with the plurality of one or more back panels (106) by plurality of the engagement means with help of a plurality of coupling means as shown in figure 2B. To unfold the foldable product display unit (200), user may pull from any of ends at the plurality of side panels (102). The pulling force may provide the sideways motion to the plurality of side panels (102) and upward motion to the plurality of movable shelves (104) in tandem to unfold the foldable product display unit (200).

After unfolding the foldable product display unit (200), the plurality of locking means may lock the one or more back panel (108) with the plurality of movable shelves (104). The plurality of locking means may restrict the motion of the foldable advertising and promotion unit (100) against the restoring force/energy of the plurality of coupling means. The plurality of locking means may stop the motion of the plurality of movable shelves (104) the plurality of



engagement means in places. In locked configuration, the plurality of movable shelves (104) forms a cavity for placing the products with the one or more backpack panels (106) and with the plurality of side panels (102) and cause the unfold able foldable product display unit (200) is ready to be used for receiving the products for display in the plurality of movable shelves (104) as shown figure 2C.

Further, the foldable product display unit (100) may achieve foldable state by release the restriction of the plurality of locking means against restoring force/ energy from the plurality of coupling means. As a result, one or more back panels (106), a plurality of movable shelves (104), a plurality of side panels (102), connected with the plurality of coupling means using the engagement means (112) may move in tandem and collapse to the folded state.

The present invention offers a number of advantages. The foldable product display unit offers a simple, easy to implement and a cost-effective solution to the problems of prior arts. Additionally, the present invention offers a quick on-site setup of the foldable product display unit without requiring any professionals, thereby saving a lot of time and effort. Also, the present invention offers a higher load bearing capacity than the prior art and can easily handle the weight of the products placed on the shelves. Furthermore, Moreover, each of the plurality of side panel, the front portion of the plurality of movable shelves, the front portion of the one or more back panels and the one or more display panels may be used for displaying advertisement for the purpose of branding.

xxx xxx xxx

We claim

1. A foldable product display unit (100) comprising:

one or more display panels (108);

one or more back panels (106), connected with the one or more display panels (108);

a pair of side panels (102), connected with the one or more back panels (106) as well as the one or more display panels (108) by a pair of first foldable joints (114);

a plurality of movable shelves (104), connected with the one or more back panels (106) by a plurality of second foldable joints (116); and

a plurality of locking means (110) disposed on the one or more back panels (106), configured to lock the plurality of movable shelves (104), thereby restricting movement of the plurality of the movable



shelves (104) in locked configuration;

wherein the plurality of second foldable joints (116) enable the plurality of movable shelves (104) to freely move upward and downward; **wherein the plurality of movable shelves (104) interconnected with each other via a connecting means such that each of the plurality of movable shelves (104) move in tandem;** and

wherein the pair of side panels (102) are connected to each other such that, **after the plurality of movable shelves (104) are folded about the plurality of second foldable joints (116), the pair of side panels (102) are moved together sideways in the same direction about respective of the pair of first foldable joints (114).**

2. The foldable product display unit (100) as claimed in claim 1, wherein the plurality of side panels (102), the plurality of movable shelves (104), the one or more back panels (106), the one or more display panels (108), the plurality of locking means (110), the connecting means are an integral unit.

3. The foldable product display unit (100) as claimed in claim 1, wherein the one or more display panels (108) is configured to provide easy placement and replacement of artwork/branding.

4. The foldable product display unit (100) as claimed in claim 1, wherein the plurality of movable shelves (104) connected with the plurality of side panels (102) and with the one or more back panels (106), is configured to form a cavity for placing the products.

5. The foldable product display unit (100) as claimed in claim 1, further comprises of plurality of coupling means, being elastic in nature, running through a plurality of engagement means, connecting the foldable product display unit (100).

6. The product display unit (100) as claimed in claim 1, wherein the pair of side panels (102), the plurality of movable shelves (104), the one or more back panels (106), the one or more display panels (108), the plurality of locking means (110), the plurality of engagement means, connecting means, coupling means are made of material selected from a group comprising aluminium, steel, corrugated plastic and corrugated paper.

xxx xxx xxx”

(Emphasis Supplied)

49. From the above, this Court notes that the ‘Background Art’ in the complete specification shows that the suit patent attempts to provide a solution for the foldable product display units to overcome deficiencies such



as complex assemblies, changing of stickers by only a trained salesperson, not being suitable for all weather conditions, and limitation with regards to the load bearing capacity of the display unit. Further, as per the plaintiffs, the suit patent provides for a product that does not suffer from the abovementioned deficiencies. Furthermore, the '*Detailed Description of Drawings*', provides for advantages of the invention under the suit patent, wherein, it is stated that the suit patent overcomes limitations as are existing in the other prior arts, by providing a quick on-site setup of the product without requiring professionals, a higher load bearing capacity, and use of all the panels in the unit for displaying advertisement/branding.

50. *Apropos* to the above, when observing the '*Summary of the Present Invention*', '*Detailed Description of Drawings*' and the '*Claims of the Invention*', it comes to the fore that as per the plaintiffs the key features of the claimed invention under the suit patent in the foldable display unit are in relation to the manner of foldability, i.e., folding and unfolding, of their product display unit, wherein, the movable shelves are interconnected with each other through a connecting means, so that the movable shelves can move together in tandem. Further, the side panels being connected, such that after the movable shelves are folded, side panels move together sideways in the same direction about foldable joints. Thus, based on the said features the plaintiffs have professed that their claimed invention under the suit patent, provides for an easy setup and disassembling without professional help, when the same is put in comparison to the other foldable product display units in the market, and therefore, their product is distinct/inventive.



51. This Court also notes that the plaintiffs in their written submissions have asserted and confirmed that the inventive features of the claimed invention under the suit patent, are as follows:

“xxx xxx xxx

- (a) Movable shelves (104) being interconnected with each other through a connecting means so that said movable shelves (104) can move together (i.e., fold and unfold) in tandem;
- (b) Side panels (102) being connected such that after the movable shelves (104) are folded, said side panels (102) move together sideways in the same direction about foldable joints (114).

xxx xxx xxx”

52. Therefore, from perusal of the relevant portions of the complete specification of the suit patent and the submissions of the plaintiffs, it is apparent that the inventive concept, which as per the plaintiffs, make their invention distinct from the other foldable display units in the market, are as follows:

- i. The movement of shelves in a tandem through the connecting means,
- ii. Folding of side panels sideways in the same direction.

53. Therefore, keeping in view of the said inventive concepts, this Court proceeds to the next step to analyse the common general knowledge applicable for the purposes of the present case.

Step 3 – Identifying the Common General Knowledge:

54. The aspect of what amounts to ‘Common General Knowledge’ has been delved into by this Court in the case of ***AGFA NV and Another Versus***



*Assistant Controller of Patents and Designs and Another*⁸, in the following manner:

“xxx xxx xxx

39. In this regard, reference may be made to a passage from Terrell on Law of Patents, 16th Edition, which specifically discussed the aspect of proof for ‘common general knowledge’. The relevant extract of the said passage is reproduced as under:

“Proof of common knowledge is given by witnesses competent to speak upon the matter, who, to supplement their own recollections, may refer to standard works upon the subject which were published at the time and which were known to them. In order to establish whether something is common general knowledge, the first and most important step is to look at the sources from which the skilled addressee could acquire his information.

The publication at or before the relevant date of other documents such as patent specifications may be to some extent prima face evidence tending to show that the statements contained in them were part of the common knowledge, but is far from complete proof as the statements may well have been discredited or forgotten or merely ignored.” Evidence may, however, be given to prove that such statements did become part of the common knowledge.”

40. From the above extract, for the Controller to rely on ‘common general knowledge’ as a ground for refusing a patent application, it is essential to specify the source of the said knowledge. It would be essential that the said source of the ‘common general knowledge’ would have been published before the priority date of the patent application. In addition, the fact that a theory or principle or knowledge has become common knowledge needs to be substantiated by some evidence. The said evidence could be in the form of references to the ‘common general knowledge’ textbooks or research articles or standard documents.

41. The judgment of the UK Patents Court in Generics (UK) Ltd. v. Daiichi Pharmaceuticals Co. Ltd., [2009] R.P.C. 4, has also given some guidance on what subject matter forms part of the ‘common general knowledge’. In the said judgment it has also been clarified that there is no requirement for the knowledge to be at the

⁸ 2023 SCC OnLine Del 3493



forefront of the mind of the person skilled in the art. The relevant extract of the said judgment is set out below:

“Thus the common general knowledge is the common knowledge in the field to which the invention relates. The notional skilled addressee is the ordinary man who may not have the advantages that some employees of large companies may have and information does not form part of the common general knowledge simply because it is known to some persons in the art. It must be generally known and generally regarded as a good basis for further action by the bulk of those engaged in that art before it becomes part of their common stock of knowledge relating to the art, and so part of the common general knowledge. That is not to say the skilled person must have it at the forefront of his mind. As Laddie J. explained in Raychem Corp-orations' Patents [1998] R.P.C. 31 at 40, it includes all the material which he knows exists and which he would refer to as a matter of course if he cannot remember it and which he generally understands is sufficiently reliable to use as a foundation for further work.”

xxx xxx xxx”

(Emphasis Supplied)

55. Therefore, for the purposes of ascertaining the common general knowledge of a Person Skilled in the Art in the related field, i.e., field of foldable product display units for the present case, the said person would be possessed with knowledge of all the material which he could refer to in the matter of course, and which is not just limited to prior arts, but other documents as well, *albeit* with the caveat that the said knowledge would only become part of the common general knowledge, if it is published or in public knowledge prior to the priority date of the patent in question.

56. Therefore, for a Person Skilled in the Art in the relevant field of invention, i.e., field of foldable product display units, for the purposes of the suit patent, on account of the prior art, US’568, also being an invention in the same field, will verily form part of the common general knowledge of the Person Skilled in the Art.



57. The assessment of obviousness must also take into account the common general knowledge in the field, which includes widely known and accepted technical information that a Person Skilled in Art would know and possess.

58. On the aspect of common general knowledge regarding the foldable product display unit, it would be useful to refer to the admissions made by the plaintiffs as regards the existence of different types of display units in the market, having different constructions and mechanism of folding-unfolding. The following paragraphs from the rejoinder filed by the plaintiffs, are extracted for this purpose:

“xxx xxx xxx

5. Finally, Plaintiff would like to make it amply clear that Defendant has relied upon one of its product called ‘Parasite’ claiming it as “prior art” which it claims to have been manufacturing and selling prior to the Suit Patent Application. Plaintiffs submit that ‘Parasite’ is a generic term used in the Display Unit Industry, for small footprint displays designed to be placed in several impulse purchase sites throughout a store. **Infact, there are hundreds of different types of ‘Parasite’ Units having different constructions and mechanism of folding-unfolding, only one of which has been patented by Plaintiff No.2 vide the Suit Patent. This is in fact an admitted stand of the Defendant itself evident from their own website, screenshot of which is being placed below for better clarity:**





Some of the websites of other companies offering and describing "Parasite" display units are also filed hereto as "**DOCUMENT-A (Colly)**".

It is therefore evident from above that 'Parasite' Units are used for merchandising products in areas inside, for instance a retail environment allowing for additional purchase points. Therefore, Defendants' endeavour to try and mislead this Hon'ble Court by stating that Parasite' Units corresponding to the Suit Patent are being sold for several years prior to the date of filing of the Suit Patent and therefore Suit Patent is invalid, is completely false and a blatant attempt by the Defendant to play fraud before this Hon'ble Court. It has been amply clarified in the Plaintiff itself that Plaintiff No.2's Suit Patent claims a very specific construction, wherein the movable shelves (104) are interconnected with each other via a connecting means such that each of the plurality of movable shelves (104) move in tandem: and wherein the pair of side panels (102) are connected to each other such that, after the plurality of movable shelves (104) are folded about the plurality of second foldable joints (116), the pair of side panels (102) are moved together sideways in the same direction about respective of the pair of first foldable joints (114). The said 'parasite' unit referred to in the alleged sale invoice has not been shown in any which way as being working/ functioning in the manner as is claimed in the Suit Patent.

6. It is also being clarified by the Plaintiff that a Display Unit can be of Different types, such as Free Standing/ Floor Standing Units (FSU's), Parasite Units (as explained above) and Hangers that hang on the wall, all of which are generic terms and used across the industry for several years. Vide the Suit Patent, Plaintiff is only claiming a specific display unit construction having the



abovementioned technical limitation, having regard to the collapsibility of the Display Unit.

xxx xxx xxx

12. Perusal of the sale invoice dt.11.09.2017 being relied upon by the Defendant and filed before the Controller only refers to product called "Complan Parasite", without specifying/ explaining the details of working mechanism/ functioning of the said display unit. Plaintiff has already in the preliminary submissions above explained that Parasite Units are of hundreds of types having different construction and folding/unfolding mechanism, and therefore, while looking at the invoice dt.11.09.2017 at best shows that Defendant had made and sold "a Parasite Unit" for Complan and nothing beyond it. What the construction and mechanism of action of this Parasite Unit was cannot be assumed by anyone by just looking at the sale invoice, and therefore in Plaintiffs humble submissions, said invoice cannot be said to be relevant to show/ defend claim of infringement made against the Defendant in the instant proceedings. Plaintiffs would also like to place on record that they dispute the authenticity and originality of each and every one of these invoices/documents placed on record by the Defendant and believes that these invoices/documents have been created/ generated fraudulently and backdated by the Defendant to suit their convenience. Nevertheless, Plaintiffs would, without prejudice deal with all these documents in the interest of expeditious disposal of the instant interim application.

xxx xxx xxx

21. The contents of Para No. 7 of the preliminary objections are denied as being false and incorrect and not substantiated, being only a figment of imagination of Defendant, not backed by any evidence in any manner whatsoever. While Plaintiffs deny that the Defendant has been in the market since 2004 as claimed, even if arguendo it is assumed that Defendant has been in the market, it does not prove anything as regards the validity of the Suit Patent as not a single document has been placed on record by the Defendant that evidences that the products claimed to be sold by the Defendant since 2004-2005 implements the claims as covered by the Suit Patent i.e. the movable shelves (104) are interconnected with each other via a connecting means such that each of the plurality of movable shelves (104) move in tandem; and wherein the pair of side panels (102) are connected to each other such that, after the plurality of movable shelves (104) are folded about the plurality of second foldable joints (116), the pair of side panels (102) are moved together sideways in the same direction about respective of the pair of first foldable joints (114).



As already being mentioned above, there are several types of display units such as Free Standing/Floor Standing Units (FSU's), Parasite Units, and Hangers that have been existing for several years, but the instant Suit Patent has been granted for a specific construction of a Display Unit having the above- mentioned limitation which has been blatantly copied by the Defendant as evidenced in the Plaint. Therefore, merely because Parasite Units / Hangers/ FSU's have been in the market for several years does not mean that they all had the same construction/ limitation on the basis of which the Suit Patent has been granted in favour of the Plaintiff No.2. In fact, because the Defendant has not been able to place reliance upon, and/or point to a specific document that shows the exact same collapsing mechanism as claimed in the Suit Patent substantiates the novelty and inventive step of the Suit Patent.

xxx xxx xxx”

(Emphasis Supplied)

59. From the aforesaid, it is evident that the plaintiffs admit and acknowledge that the concept of folding/collapsibility of a display unit *per se*, is known in the art. However, the plaintiffs have claimed protection over one specific way of folding/collapsing, as per the claimed invention in the suit patent. Thus, it is manifest that various folding/collapsible display units are already available in the market. The collapsing/folding mechanism, concept, design and ability of foldable display stands, was already publicly known and used in India and internationally and the same would also amount to common general knowledge for the purpose of ascertaining obviousness for a Person Skilled in the Art.

Step 4 – Differences between the suit patent with the prior art, US’568:

60. In order to compare the key features of the suit patent and ascertain the differences between the suit patent and the cited prior art, it would be pertinent to analyse the prior art.

61. The ‘*Field of the Invention*’ of the prior art, i.e., US’568, is as follows:

“xxx xxx xxx



FIELD OF THE INVENTION

[0004] *The present invention relates to display devices, and more particularly, to a **foldable, portable cardboard display for supporting articles of merchandise.***

xxx xxx xxx”

(Emphasis Supplied)

62. A perusal of the ‘Field of the Invention’ shows that the prior art belongs to the field of foldable displays for supporting articles of merchandise. As noted earlier by this Court, the suit patent belongs to the field of foldable product display units. Thus, it comes to the fore that both the suit patent and the prior art belong to the same field of invention, i.e., foldable display units, for products or articles of merchandise.

63. The “Background of the Invention” of the prior art is reproduced as follows:

“xxx xxx xxx

BACKGROUND OF THE INVENTION

[0005] *Corrugated fiberboard (i.e., cardboard) is a well-known structural material commonly used for manufacturing storage boxes and the like. The relative inexpense of the material, its structural qualities, and the ease with which it can be manipulated has resulted in an ever growing number of items manufactured from it. The use of this material in merchandising displays is well known and range from its use as a structural component with an advertising message to various support structures for display of merchandise in an aesthetically pleasing manner. In general, these merchandising displays are box-like structures with bins or shelves sized to hold the merchandise for sale. The displays can be quite bulky and difficult to transport in their assembled state and hence are generally shipped flat and assembled at the point of use. **The displays, however, often consist of multiple pieces and, as these displays become ever more sophisticated, the degree of expertise and training necessary to assemble them increases accordingly.***

[0006] **What is currently needed is a merchandising display device that is easy to assemble, yet equally sturdy and aesthetically pleasing in use. Preferably, the device ships flat for easier transport and is then assembled on site when needed. More preferably, the device can also be easily disassembled and re-used.** Any such display should be



easy to manufacture and its design should entail a minimum of wasted material during construction.

[0007] Collapsible displays that may be used for merchandising are known in the prior art. U.S. Pat. No. 2,150,743 issued Mar. 14, 1939 is a foldable display device for merchandise constructed from a single sheet of material. The device includes front and rear members “foldably connected” to one another at opposing edges and an “upright sheet member” displaced between them. Flap-like shelves cut from the center panel form shelves that are attached to the front member and the floors of the pockets at the front side are formed from foldable flaps 20 cut from an upright sheet member 21. The shelves of the '743 patent are formed from the apparatus' center panel and the material is cut out to create the openings in its exterior panels. Additional material must also be affixed to the center panel. In contrast, the present invention utilizes material from its exterior panels to form its shelves, thereby minimizing waste and simplifies construction by eliminating the need for additional materials to form its rearward facing shelves.

*[0008] U.S. Pat. No. 4,854,246 issued Aug. 8, 1989 is a free standing device for supporting and displaying merchandise. Shelves cut from and hingedly attached to its front and rear walls partially overlap and interlock to form individual shelving units. **No center panel is used to coordinate positioning of the shelves or for additional support, and the strength of the shelving is therefore limited.***

*[0009] Similarly, U.S. Pat. No. 1,625,294 issued Apr. 19, 1927, and U.S. Pat. No. 6,848,371 issued Feb. 1, 2005 are heavier duty structures, and in the '294 patent is made from sheet metal. Both employ centrally hinged folding shelves. Like the '246 patent discussed above, **no center panel is present and the strength of the shelves is due exclusively to the interlocking of their components, therefore limiting their ability to support substantial merchandise weight.***

xxx xxx xxx”

(Emphasis Supplied)

64. Upon a perusal of the ‘Background of the Invention’ of the prior art, it can be ascertained that the prior art also addressed the need for “easy to assemble” display units, the limitation in coordinating positioning of shelves



and the strength of the shelves due to the lack of a centre panel, along with absolving the need for a skilled person or a person with expertise or training in assembly. This portion of the prior art also indicates that both the prior art and the suit patent identify the same problems existing in the other prior arts in their comparison.

65. At this stage it would be apposite to refer to the ‘Abstract’ of the prior art, which is reproduced as follows:

“xxx xxx xxx

ABSTRACT

A one-piece, easily erected, collapsible cardboard display for merchandise. Shelves formed from its rear and front panels attach to a longitudinally displaceable center panel providing support for the device and facilitating assembly and disassembly thereof.

xxx xxx xxx”

(Emphasis Supplied)

66. Perusal of the ‘Abstract’ of the prior art shows that the centre panel provides for support and facilitates the assembly and disassembly of the foldable display unit. The same acts as a connecting means to the shelves and the mechanism of folding and unfolding in the prior art occurs due to the presence of the centre panel.

67. Further, the ‘Summary of the Invention’, ‘Brief Description of the Drawings’, ‘Detailed Description of the Invention’ and the ‘Claims’ in the prior art, are reproduced below:

“xxx xxx xxx

SUMMARY OF THE INVENTION

[0010] The present invention is a multi-shelved merchandising display made from corrugated cardboard or a similar lightweight board-like material. In its collapsed state it is substantially flat thereby minimizing the space needed for storage and ensuring easier transport. When needed, the apparatus is assembled by simply



squeezing its sides towards one another or displacing a central panel, thereby extending its front and rear panels causing the attached shelves to position themselves in a horizontal orientation. Locking tabs in the center panel interlock with slots formed in the side panels of the display in order to lock it into place.

[0011] The instant invention is simple to manufacture, minimizes waste, is easy to assemble, and otherwise solves the aforementioned problems noted in the discussion of the prior art. The primary superstructure of the device is die-cut from a single sheet of corrugated cardboard and folded along score or fold lines to create its front, rear, and side panels. Its center panel may also be cut from the same sheet of cardboard material. Whereas previously known devices utilize shelves formed from a center panel, thereby requiring additional materials and additional manufacturing steps, the instant invention employs flap-like shelves cut into its front and rear panels. The free ends of these shelves are then attached to the center panel in order to support them when assembled. In assembling the display, the user need only displace the center panel lengthwise or press the sides of the device towards one another. Movement of the center panel thereby erects the display, including positioning the shelves in a generally horizontal position.

[0012] Known display devices require that apertures be cut from the front and rear panels for access to the shelves formed from the center panel, with the additional result that the waste material from creating these apertures is usually discarded. Forming the shelves of the instant invention from the front and rear panels of the device also creates the apertures through which items displayed on the shelves may be accessed or more clearly visualized, thereby minimizing waste and the materials needed for manufacture. Additionally, the present design allows the center panel to remain intact, if desired, (i.e., without shelves cut therefrom) in order to maximize the structural rigidity of the device.

[0013] It is an object of the invention to provide an inexpensive display device which is sturdy in construction and capable of supporting the weight of the articles of merchandise being exhibited thereon.

[0014] It is another object of this invention to provide an attractive display device for arranging articles of merchandise thereon.

[0015] It is yet another object of this invention to provide a box-like display device having display niches, pockets, or shelves therein for



the merchandise.

[0016] *It is still another object of this invention to provide a merchandising display device having article displaying areas on opposing front and rear sides.*

[0017] *It is another object of this invention to provide a display device suitable for displaying articles of merchandise.*

[0018] *It is a further object of this invention to provide a display device which is easily set up and collapsed by simple folding operations and when set up in its display position, is locked against being collapsed accidentally.*

[0019] *It is an object of this invention to provide a display device which is easily collapsed for transport and is reusable.*

[0020] *It is yet another object of this invention to provide a merchandising display which is easy to assemble and does not require any particular degree of skill or training to assemble.*

[0021] *It is another object of this invention to provide a corrugated cardboard merchandising display which is simple to manufacture, with minimum waste.*

[0022] *The invention will be better understood and objects other than those set forth above will become apparent when consideration is given to the following detailed description thereof Such description makes reference to the annexed drawings wherein.*

xxx xxx xxx

DETAILED DESCRIPTION OF THE INVENTION

[0035] *While the invention is described in connection with certain preferred embodiments, it is not intended that the present invention be so limited. On the contrary, it is intended to cover all alternatives, modifications, and equivalent arrangements as may be included within the spirit and scope of the invention as defined by the appended claims.*

[0036] *This invention may be constructed from any board-like material that is amenable to precision cutting and is easily foldable. In preferred embodiments, the invention is manufactured from corrugated cardboard. The invention may also be constructed from fiberboard, pulpboard, or corrugated board.*



[0037] The preferred embodiment of the apparatus and best mode is rendered in FIGS. 1 through 6. An alternative embodiment is depicted in FIGS. 7 through 12. The elements described herein apply to both the aforementioned preferred and alternative embodiments.

[0038] FIGS. 1-2 are perspective views of the preferred embodiment. In FIG. 1, the display device 100 is depicted fully erect and ready for use. FIG. 2 is a partially collapsed view 101 of the display device. The present device is constructed with a rear panel 20, front panel 30, and side panels 40 comprising its superstructure. Flap-like shelves 31 are formed from the rear 20 and front 30 panels with a leading edge section 32 being the remainder of the respective rear panel 20 and front panel 30 after shelf 31 has been folded back. The leading edge section 32 is perpendicular to the ground with biased end cuts 35 shown in FIGS. 1 and 2 which allow it to be folded in a recessed manner back into the side panels 40 so that it will not engage passersby. A trapezoidal shaped center panel engagement flap 34 is also formed on the trailing end section of the shelves which facilitates mounting of the shelves 31 to a center panel 41. The center panel engagement flaps 34 have a length which is less than the shelf length, with the top of the flaps 34 or trailing end being positioned adjacent the bottom of the center panel apertures 45. The center panel 41 is longitudinally displaced during erection and disassembly of the apparatus 100 and serves to position and provide support to the shelves 31 at their trailing end section 34. Locking tabs 43 on the center panel 41 engage locking slots 42 cut formed along score lines 47 in the side panels 40 of the device to lock the device in its erect position. The top and bottom tabs 43 define an upper vertical slot 48 while the middle tab 43A has a trapezoidal shape without a slot.

[0039] FIGS. 5-6 show the die cut material from which the display device 100 is constructed. Solid lines indicate cuts through the material. Dashed lines indicate score lines or creases created, for example, by embossing pressure or by a plurality of periodic incisions along the desired crease. Apertures 44 are formed in the side panels 40 of the display 100 to create an aesthetically pleasing effect and allow viewing of the stored merchandise. Center panel apertures 45 permit the viewing of merchandise on either the rearward facing or forward facing shelves 31 and eliminate weight. The center panel apertures 45 facilitate use of each adjacent rearward facing shelf 31 as a single contiguous shelf. The shelves 31 which are formed from the rear and front panels 20, 30 of the device are single piece shelves. It is also clear from these figures that in order for the device to function properly, the depth of the shelves 31 formed from the rear and front



panels 20, 30 are approximately one half the width of the side panels 40.

[0040] The apparatus is assembled by simply affixing assembly flap 50 of the die cut sheet to the opposing free end of the sheet thereby forming a box structure. The side panels 40 are folded along the longitudinal side panel score lines 47, which during disassembly facilitates collapsing the box. The center panel 41 is then inserted and the trailing end section or center panel engagement flaps 34 of the shelves 31 are then affixed to the center panel 41 such that, when erected, the shelves 31 are in a generally horizontal position with the center panel engagement flaps 34 parallel and adjacent the center panel 41. Locking slots 42 incised in the side panels 40 congruent with the side panel score lines 47 engage locking tabs 43 and 43A on the center panel 41 maintaining the apparatus in an erect sturdy position. It is noted that the general position of the shelves 31 relative to the base of the display 100 may be varied according to the positioning of the center panel engagement flaps 34 on the center panel 41. Mounting the center panel engagement flaps 34 at relatively higher or lower positions on the center panel will result in shelves 31 having a forward or rearward cant as desired.

[0041] To operate the preferred embodiment 100, one need only press the initially folded side panels 40 towards one another thereby causing the center panel 41 and shelves 31 attached thereto to move downward until locking tabs 43 of the center panel 41 engage the locking slots 42 of the side panels 41. Simple manipulation of the locking tabs 43 and Slots 42 locks the apparatus 100 in its fully erect position with generally flat, horizontal shelves ready to display the desired merchandise.

[0042] FIGS. 7-8 are perspective views of an alternative embodiment. In FIG. 7, the display device 102 is depicted fully erect and ready for use. FIG. 8 is a partially collapsed view 103 of the display device. The apparatus is constructed with a rear panel 120, front panel 130, and side panels 140 comprising its superstructure. Flap-like shelves 131 are formed from the rear 120 and front 130 panels with their leading ends sections 132 being the remainder of the respective panel 120, 130 after shelf 131 has been folded back. The leading end section 132 of the shelf 131 is perpendicular to the ground with biased end cuts 135 which allow it to be folded in a recessed manner back into the side panels 140 so that it will not engage passersby, as is seen in FIG. 8. A trapezoidal center panel engagement flap or rear end section 134 is also formed from the rear and front panels 120, 130. which facilitates mounting of the shelves 131 to a center panel 141. The flap



134 is folded downward from the plane of the shelf 131. The center panel engagement flaps 134 have a length which is less than the shelf length, with the top of the flaps 134 being positioned above the top of the center panel apertures 145. The center panel 141 is longitudinally displaced during erection and disassembly of the apparatus 102 and serves to position and provide support to the shelves 131 at their trailing end sections 134. Locking tabs 143 in the center panel 141 engage locking slots 142 cut along score lines 147 in the side panels 140 of the device to lock the device in its erect position. The locking tabs 143 define a downwardly oriented slot 148, as shown in FIG. 12, which allows the center panel 141 to be secured in locking slots 142 of side panels 140.

[0043] FIGS. 11-12 show the die-cut material from which the present display device is constructed. Similar to FIGS. 5-6, solid lines indicate cuts through the material and dashed lines indicate score lines or creases. Center panel apertures 145 permit the viewing of merchandise on either the rearward facing or forward facing shelves 131, eliminate weight, and facilitate use of each adjacent rearward facing and forward facing shelf 131 as a single contiguous shelf.

[0044] The display device 102 is assembled by simply affixing assembly flap 150, shown in FIG. 11, of the die cut sheet to the opposing free end of the sheet thereby forming a box structure. The side panels 140 are folded along the longitudinal side panel score lines 147, which during disassembly facilitates collapsing the box. The center panel 141 is then inserted and the center panel engagement flaps 134 of the shelves 131 are affixed to the center panel 141 such that the shelves 131 are in a generally horizontal position with the center panel engagement flaps 134 parallel and adjacent the center panel 141. Locking slots 142 formed in the side panels 140 engage locking tabs 143 of the center panel 141 thereby maintaining the apparatus in its erect position.

[0045] Embodiment 102 is assembled similarly to display 100 by displacing its center panel 141 upward, thereby causing the initially folded side panels 140 of the device to unfold into their erect position. The shelves 131 of the embodiment 102 move upwards in conjunction with the upward displacement of its center panel 141 until they reach their erect, generally horizontal position thereby forming lipped display surfaces which may be locked into place via a set of locking tabs 143 and locking slots 142. Because the center panel 141 and shelves 131 are displaced upwardly in the alternative embodiment 102, an additional display bin 121 is created on the top-most shelf 131A and the upper portions of the apparatus' rear, side,



and front panels 120, 140, 130 define an open-topped, flat bottom volume. The upper portions of the rear, side, and front panels 120, 140, 130 are then simply folded onto themselves to create an aesthetically pleasing display bin 121. The bottom portion of rear and front panels 120 and 130 are cut out at 125 to form the appearance of legs 126.

[0046] The principles, preferred embodiments and modes of operation of the present invention have been described in the foregoing specification. However, the invention should not be construed as limited to the particular embodiments which have been described above. Instead, the embodiments described here should be regarded as illustrative rather than restrictive. Variations and changes may be made by others without departing from the scope of the present invention as defined by the following claims:

What I claim is:

- 1. A collapsible merchandising display comprising: a display assembly with a rear panel, a front panel, and side panels defining a generally rectilinear box shape having top and bottom portions; said side panels being foldable along a score line running between said top and bottom portions bifurcating said side panels; a plurality of rear and front shelves formed from said rear and front panels, said shelving having leading edges foldably secured to said rear and front panels, a center section and a rear lip section engaging a center panel; and, a center panel mounted to said display assembly side panels.*
- 2. A collapsible merchandising display as claimed in claim 1 wherein said merchandising display is manufactured from a material selected from the group consisting of cardboard, card board, fiberboard, fiber board, fibreboard, fibre board, pulpboard, pulp board, and corrugated board.*
- 3. A collapsible merchandising display as claimed in claim 2 wherein said display assembly is a single sheet of material.*
- 4. A collapsible merchandising display as claimed in claim 1 wherein said central panel has locking tabs which are mounted in locking slots formed in said side panels to maintain said merchandising display in an assembled conformation.*
- 5. A collapsible merchandising display as claimed in claim 1 wherein said center panel defines a plurality of apertures, said apertures in said center panel being adjacent to and positioned above single contiguous shelves when said display is in an assembled condition.*



6. A collapsible merchandising display as claimed in claim 1 wherein said leading edge of said shelves is recessed in said side panels.

7. A collapsible merchandising display as claimed in claim 1 wherein said display is substantially flat when collapsed.

8. A collapsible cardboard merchandising display comprising: a cardboard rear panel, front panel, and side panels defining a generally rectilinear box shape having top and bottom portions; said cardboard side panels being foldable along a score line running between said top and bottom portions bifurcating said cardboard side panels;

cardboard rear and front shelves excised from and rearwardly folded from said rear and front panels, with leading end sections of said cardboard shelves being foldably attached to said cardboard rear and front panels and the trailing end sections being adapted to engage a center panel;

said side panels defining a plurality of apertures adjacent said flat cardboard rear and front shelves;

and, a cardboard center panel, with the trailing end sections of said cardboard shelves mounted thereto, said center panel defining apertures adjacent to and positioned above said shelves.

9. A collapsible cardboard merchandising display as claimed in claim 8 wherein said merchandising display is manufactured from a single sheet of cardboard.

10. A collapsible cardboard merchandising display as claimed in claim 8 wherein said central panel has locking tabs which are mounted in locking slots formed in said side panels to maintain said merchandising display in an assembled con-formation.

11. A collapsible cardboard merchandising display as claimed in claim 8 wherein said center panel defines a plurality of apertures, said apertures in said center panel being adjacent to and positioned above single contiguous shelves when said display is in an assembled condition.

12. A collapsible cardboard merchandising display as claimed in claim 8 wherein said leading end of said shelves is recessed in said side panels.

13. A collapsible merchandising display as claimed in claim 8 wherein said display is substantially flat when collapsed.

14. A collapsible cardboard merchandising display comprising: a unitary cardboard rear panel, front panel, and side panels defining a generally rectilinear box shape having top and bottom portions; said cardboard side panels being foldable along a score line running between said top and bottom portions bifurcating said cardboard side panels;



lipped cardboard shelves excised from and upwardly folded from said rear and front panels to form front and rear shelves with a leading end section of said cardboard shelves being foldably attached to said cardboard rear and front panels;

a cardboard center panel engaging the trailing end sections of said cardboard shelves, said center panel defining apertures adjacent said cardboard shelves;

and, said cardboard rear panel, front panel, side panels, and shelves defining an open-topped, generally rectilinear volume.

15. *A collapsible cardboard merchandising display as claimed in claim 14 wherein said merchandising display is manufactured from a single sheet of cardboard.*

16. *A collapsible cardboard merchandising display as claimed in claim 14 wherein said central panel has locking tabs which are mounted in locking slots formed in said side panels to maintain said merchandising display in an assembled conformation.*

17. *A collapsible cardboard merchandising display as claimed in claim 14 wherein said center panel defines a plurality of apertures, said apertures in said center panel being adjacent to and positioned above single contiguous shelves when said display is in an assembled condition.*

18. *A collapsible cardboard merchandising display as claimed in claim 14 wherein said leading end section of said shelves is recessed in said side panels.*

19. *A collapsible merchandising display as claimed in claim 14 wherein said display is substantially flat when collapsed.*

20. *A collapsible merchandising display as claimed in claim 14 wherein said cardboard rear panel and said cardboard front panel define cutouts to form legs.*

xxx xxx xxx”

(Emphasis Supplied)

68. From the aforesaid, the key components of US’568, the relied upon prior art, can be culled out as follows:

- I. It relates to foldable and portable cardboard display device.
- II. It is multi-shelved, constructed with a rear panel, front panel and side panels comprising its superstructure.
- III. The shelves of the embodiment move upward in conjunction with the upward displacement of its centre panel, until they reach their erect position.



IV. The shelves are positioned horizontally, thereby forming lipped display surfaces, which may be locked into place via set of locking taps and locking slots.

V. The side panels are foldable towards one another.

69. A Person Skilled in the Art would unquestionably use the said prior art, as it relates to a foldable display unit system, and has an earlier date of publication. Moreover, even the bare reading of the background of both the suit patent and the prior art, would show that both the inventions attempted to provide solutions and improvements upon similar problems common to the field of foldable display units.

70. Furthermore, from perusal of the relevant portions of the prior art, US'568, as reproduced above, it becomes apparent that in the prior art the shelves move upwards in conjunction with each other due to presence of a centre panel, which is similar to the claimed invention, i.e., the shelves moving in tandem with each other with a connecting means. While the claimed invention requires the side panels to move/fold in the same direction, in the prior art, the side panels move towards one another. Therefore, the embodiment of the claimed invention of the side panels moving/folding in the same direction, is different from the embodiment in the prior art, where the side panels fold/move towards one another.

71. However, the fundamental and essential embodiments of the claimed invention and the prior art is that both pertain to a foldable product display unit, wherein, the shelves which are placed horizontally move in conjunction and in tandem with each other. Thus, it is to be assessed as to whether the difference between the claimed invention and the prior art, i.e., the direction in which the side panels are folded would be obvious to a Person Skilled in



the Art, being aware of the prior art, coupled with the common general knowledge.

Step 5 – Assessment of obviousness by a Person Skilled in the Art:

72. The inventive features in the claimed invention of the suit patent by the plaintiffs is the shelves moving in tandem and the side panels folding in one direction. A Person Skilled in the Art and equipped with the knowledge of the prior art and the existing technical literature, would be persuaded to modify and achieve the plaintiffs' claimed invention under the suit patent without exercising any inventive skill. The claimed invention under the suit patent involves change in direction of folding of a display unit, wherein, the side panels fold in one direction. The plaintiffs have already admitted to folding and collapsible display units as known in the art. Thus, change of direction of the side panels on one side would be obvious to a Person Skilled in the Art who is possessed with the common general knowledge of the present field of invention, without any undue experimentation.

73. Furthermore, a Person Skilled in the Art would be persuaded to address and modify the existing folding and collapsible display units, by folding of side panels in one direction. Similar folding and collapsible display units are part of common general knowledge before the priority date of the claimed invention. At the time of the alleged invention, it would have been obvious to a Person Skilled in the Art, to arrive at the claimed features in the light of prior art and common general knowledge. Thus, viewed in the context of common general knowledge, the claimed invention does not meet the threshold for inventive step under Section 2 (1)(ja) of the Act.

74. Looking at the prior art as relied upon by the defendant and the admission of the plaintiffs regarding various foldable display units available



in the market, it is evident that the invention, so far as claimed in the complete specification, is obvious and does not involve inventive step. The cited prior art as well as the claimed invention, disclose foldable display units constructed from panels with integrated shelves, that are assembled through the movement of side panels or a centre panel. The claimed invention merely replaces the centre panel and locking mechanism of the prior art with locking means on the back panel, which performs the same function. The shelves in both the claimed invention and prior art, move in tandem during the folding/unfolding process, and the side panels fold sideways together in an identical manner in both designs. Moreover, the prior art, US'568 is also an indicative of one manner of folding direction that may be used, i.e., side panels folding towards each other. Therefore, in view of the prior art being part of the common general knowledge of a Person Skilled in the Art, the folding of side panels in one direction as espoused in the suit patent, would be obvious to a Person Skilled in the Art.

75. A design of a foldable product display unit, which as per the plaintiffs themselves is a known public art called as 'Parasite', having been folded in one particular direction as claimed in the suit patent, wherein, the said folding of a display unit in the manner as described under the suit patent, can only have limited possibilities in the manner of folding, *prima facie* cannot be non-obvious to a Person Skilled in the Art.

Workshop Improvement

76. The Supreme Court in the case of ***Bishwanath Prasad Radhey Shyam Versus Hindustan Metal Industries***⁹, has categorically held that an

⁹ (1979) 2 SCC 511



invention should not be a mere workshop improvement, but should satisfy the test of inventive step independently. Thus, it was held as follows:

“xxx xxx xxx

21. It is important to bear in mind that in order to be patentable an improvement on something known before or a combination of different matters already known, should be something more than a mere workshop improvement; and must independently satisfy the test of invention or an “inventive step”. To be patentable the improvement or the combination must produce a new result, or a new article or a better or cheaper article than before. The combination of old, known integers may be so combined that by their working inter-relation they produce a new process or improved result. Mere collection of more than one integers or things, not involving the exercise of any inventive faculty, does not qualify for the grant of a patent. “It is not enough”, said Lord Davey in *Rickmann v. Thierry* [(1896) 14 Pat Ca 105] “that the purpose is new or that there is novelty in the application, so that the article produced is in that sense new, but there must be novelty in the mode of application. By that, I understand that in adopting the old contrivance to the new purpose, there must be difficulties to be overcome, requiring what is called invention, or there must be some ingenuity in the mode of making the adoption”. As Cotton, L.J. put it in *Blackey v. Lathem* [(1888) 6 Pat Ca 184] “to be new in the patent sense, the novelty must show invention”. In other words, in order to be patentable, the new subject-matter must involve “invention” over what is old. Determination of this question, which in reality is a crucial test, has been one of the most difficult aspects of Patent Law, and has led to considerable conflict of judicial opinion.

22. This aspect of the law relating to patentable inventions, as prevailing in Britain, has been neatly summed up in Encyclopaedia Britannica, Vol. 17, p. 453. Since in India, also, the law on the subject is substantially the same, it will be profitable to extract the same hereunder:

“A patent can be granted only for ‘manner of new manufacture’ and although an invention may be ‘new’ and relate to a ‘manner of manufacture’ it is not necessarily a ‘manner of new manufacture’ — it may be only a normal development of an existing manufacture. **It is a necessary qualification of a craftsman that he should have the knowledge and ability to vary his methods to meet the task before him — a tailor must cut his cloth to suit the fashion of the day — and any**



monopoly that would interfere with the craftsman's use of his skill and knowledge would be intolerable.

A patentable invention, therefore, must involve something which is outside the probable capacity of a craftsman — which is expressed by saying it must have ‘subject-matter’ or involve an ‘inventive step’. ‘Novelty’ and ‘subject-matter’ are obviously closely allied ... Although these issues must be pleaded separately, both are invariably raised by a defendant, and in fact, ‘subject-matter’ is the crucial test, for which there may well be novelty not involving an ‘inventive step’, it is hard to conceive how there can be an ‘inventive step’ without novelty.”
there can be an ‘inventive step’ without novelty.”

xxx xxx xxx

24. The expression “does not involve any inventive step” used in Section 26(1)(e) of the Act and its equivalent word “obvious”, have acquired special significance in the terminology of patent law. The “obviousness” has to be strictly and objectively judged. For this determination several forms of the question have been suggested. The one suggested by Salmond, L.J. in *Rado v. John Two & Son Ltd.* [(1967) RPC 297] is apposite. It is: “Whether the alleged discovery lies so much out of the track of what was known before as not naturally to suggest itself to a person thinking on the subject, it must not be the obvious or natural suggestion of what was previously known.”

xxx xxx xxx

25. Another test of whether a document is a publication which would negative existence of novelty or an “inventive step” is suggested, as under:

“Had the document been placed in the hands of a competent draftsman (or engineer as distinguished from a mere artisan), endowed with the common general knowledge at the ‘priority date’, who was faced with the problem solved by the patentee but without knowledge of the patented invention, would he have said, ‘this gives me what I want?’ (Encyclopaedia Britannica; *ibid*). To put it in another form: ‘Was it for practical purposes obvious to a skilled worker, in the field concerned, in the state of knowledge existing at the date of the patent to be found in the literature then available to him, that he would or should make the invention the subject of the claim concerned?’ [Halsbury, 3rd Edn., Vol. 29, p. 42 referred to by *Vimadalal, J. of Bombay High Court in Farbwerke Hoechst &*



**B. Corporation v. Unichem Laboratories [AIR 1969 Bom 255
(Bom HC)]**

xxx xxx xxx

50. In our opinion, the findings of the learned trial Judge to the effect that the patent is not a manner of new manufacture or improvement, nor does it involve any inventive step having regard to what was known or used prior to the date of patent, should not have been lightly disturbed by the Appellate Bench. These were, as already observed, largely findings of fact, based on appreciation of the evidence of witnesses and the trial court had the initial advantage of observing their demeanour in the witness box. Moreover, the approach adopted by the trial court was quite in conformity with the basic principles on the subject, noticed in an earlier part of this judgment. The patented machine is merely an application of an old invention, known for decades before 1951, for the traditional purpose of scraping and turning utensils, with a slight change in the mode of application, which is no more than a “workshop improvement”, a normal development of an existing manner of manufacture not involving something novel which would be outside the probable capacity of a craftsman. The alleged discovery does not lie outside the track of what was known before. It would have been obvious to any skilled worker in the field, in the state of knowledge existing at the date of patent, of what was publicly known or practised before about this process, that the claim in question viz. mere addition of a lever and bracket did not make the invention the subject of the claim concerned. There has been no substantial exercise of the inventive power or innovative faculty. There is no evidence that the patented machine is the result of any research, independent thought, ingenuity and skill. Indeed, Sotam Singh frankly admitted that he did not know whether Purshottam had made any research or any experiments to produce this combination. Nor does this combination of old integers involve any novelty. Thus judged objectively, by the tests suggested by authorities, the patent in question lacked novelty and invention.

xxx xxx xxx”

(Emphasis Supplied)

77. As aforesaid, the only difference between the suit patent and the prior art lies in the direction in which the side panels fold, i.e., the side panels move towards each other in the prior art, while the side panels move in the same direction in the suit patent.



78. Thus, a perusal of the decision in *Bishwanath Prasad Radhey Shyam (Supra)*¹⁰ would show that one of the factors as elucidated by the Supreme Court was that the quality/qualification of a craftsman would include such person having knowledge and ability to vary his methods to meet the task before him. Further, any monopoly that would interfere with the craftsman's use of skill and knowledge would not be tolerable.

79. In this context, when approaching the facts of the present case, the qualification of the Person Skilled in the Art/skilled craftsman, would include such person having the skill and knowledge of folding different components of a display unit in different directions, as well as the ability to vary his method to meet the task before him.

80. If then, such a Person Skilled in the Art/skilled craftsman, who is also aware of the common general knowledge, and is given the prior art, is faced with the challenge as identified in the suit patent, i.e., complex assembly of display units, then this Court is of the opinion that folding the side panels in the same direction, would be obvious to the person skilled in the art.

81. This is because the alteration in the direction in which the side panels fold, is at best, a routine design choice, which would come as a natural suggestion to the Person Skilled in the Art, while he is engaged in assembling or folding a display unit in a workshop. The change in direction would not lie outside the probable capacity of the said Person Skilled in the Art, as he is expected to have the ability to vary his methods of folding, and thus, folding the side panels in the same direction would be in his predictable variant of the prior art, requiring no ingenuity. This alteration would not require the Person Skilled in the Art to conduct undue

¹⁰ (1979) 2 SCC 511



experimentation, given that there are limited possibilities in which the side panels can be folded. Thus, the folding of the side panels in the same direction cannot be said to be exceeding the skill/technique that is expected of a Person Skilled in the Art, in his routine work.

82. In view of the aforesaid detailed discussion, this Court is *prima facie* of the opinion that folding the side panels in one direction is a normal development of the existing knowledge, i.e., folding of the side panels towards each other, and required no ingenuity. Thus, this Court is of the *prima facie* opinion that the alteration in the direction of folding of side panels, is nothing more than a mere workshop improvement/incremental advancement, in relation to what was known before, and the probable capacity of the Person Skilled in the Art.

Teaching Away

83. The plaintiffs have contended that the folding of side panels in the same direction in the suit patent is not obvious to a Person Skilled in the Art, as the prior art teaches away from the same.

84. While citing *Chisum on Patents*, this Court in the case of *Sulphur Mills Limited Versus Dharamaj Crop Guard Limited and Another*¹¹, held that a prior art is said to teach away when it discourages or diverts a person skilled in the art from following a particular path. The relevant portions of the said judgement are reproduced as under:

“xxx xxx xxx

85. Thus, unless and until the Defendant No. 1 is able to show that the fertiliser product which is contained in IN'429, was in the knowledge of the Plaintiff at the time when the first patent was filed, the invention cannot be held to be obvious. **Moreover, it is a fundamental principle**

¹¹ 2021 SCC OnLine Del 3874



of patent law that if a prior art reference teaches away from the invention, the objection as to obviousness would not apply:

“Chisum, D., 1978. Chisum on patents: a Treatise on the Law of Patentability, Validity, and Infringement. New York, pp.5-124, Vol. I:

“Numerous decisions recognize that an invention that otherwise might be viewed as an obvious modification of the prior art will not be deemed obvious in a patent law sense when one or more prior art references “teach away” from the invention.”

Chisum, D., 1978. Chisum on patents : a Treatise on the Law of Patentability, Validity, and Infringement. New York, pp.5-130, Vol. II:

“A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant. The degree of teaching away will of course depend on the particular facts; in general, a reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought.”

xxx xxx xxx”

(Emphasis Supplied)

85. Therefore, in order to hold that a prior art teaches away from the inventive step, it must be shown that the prior art discourages or diverts a Person Skilled in the Art from following the path that leads to the inventive step in question. Merely because the prior art teaches a particular solution, without discouraging a Person Skilled in the Art from following another solution, would not amount to the prior art “teaching away” from the latter solution. Moreover, the prior art also attempts to provide similar solutions/advantages to the problems which are addressed by the plaintiffs in the suit patent.



86. Considering the aforesaid, a perusal of paragraphs [0010] and [0041] of the complete specifications of the prior art, US'568 reveals that the prior art merely states that the side panels are moved towards each other in order to collapse the foldable display unit. The complete specifications of the prior art nowhere discourages or diverts a Person Skilled in the Art from folding the side panels in the same direction. Thus, the contention of the plaintiffs that the prior art teaches away from folding the side panels in the same direction, cannot be accepted.

87. Accordingly, this Court is of the *prima facie* view that the claimed invention would be obvious to the Person Skilled in the Art, and therefore, the defendant has been able to raise a credible challenge to the validity of the suit patent under Section 64(1)(f) of the Act.

88. Therefore, given that this Court has *prima facie* found that the defendant has raised a credible challenge to the validity of the suit patent under Section 64 (1)(f) of the Act, this Court does not deem it necessary to deal with the other contentions raised by the parties for the purposes of the dealing with the present application and at this interim stage.

89. In view of the aforesaid detailed discussion, this Court is of the considered view that the plaintiffs have failed to make out a *prima facie* case for grant of injunction. Further, considering the fact that the defendant has also been in the business of foldable product display units for a long time, balance of convenience lies in favour of the defendant and against the plaintiffs. Further, no prejudice shall be caused to the plaintiffs, as the plaintiffs can be compensated, in case the plaintiffs ultimately succeed in the suit, post trial.



90. In view of the findings as aforesaid, this Court is not required to adjudicate on the other issues as raised by the defendant, which shall be decided at the time of final arguments after conclusion of evidence.

91. Accordingly, in view of the foregoing reasons, this Court is not inclined to grant injunction in favour of the plaintiffs. However, the defendant is directed to file an affidavit, to place on record the details and quantum of the products manufactured and sold by the defendant, having the same mechanism of foldable display unit, as claimed in the suit patent. The said affidavit shall be filed by the defendant within a period of four weeks. Further, the defendant shall continue to file similar affidavits on quarterly basis, to bring on record the details and quantum of the foldable product display units manufactured and sold by the defendant, as the suit patent.

92. It is clarified that this Court has given only a *prima facie* opinion for the purposes of deciding the present interim application. Nothing contained herein shall be construed as an expression on the merits of the case, which shall be adjudicated post-trial, at the time of final hearing.

93. Consequently, the present application is dismissed.

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94. List before the Roster Bench on 16th January, 2026.

**MINI PUSHKARNA
(JUDGE)**

DECEMBER 24, 2025

au/kr/sk/ak