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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.O.(COMM.IPD-PAT) 1/2024, I.A. 601/2024**
BDR PHARMACEUTICALS INTERNATIONAL PVT LTD

..... Petitioner

Through: Mr. Parag P. Tripathi, Sr. Advocate,
Ms. Rajeshwari, Ms. Garima Joshi,
Mr. Srinivas Ramaswami, Ms.
Saakshi Khandelwal, Advocates

versus

KUDOS PHARMACEUTICALS LIMITED & ANR..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC, Mr. Srish Kumar Mishra, Mr.
Alexander Mathai Paikaday, Mr.
Lakshay Gunawat and Mr. Krishnan
V., Advocates.
Mr. Pravin Anand, Ms. Vaishali R.
Mittal, Mr. Siddhant Chamola, Mr.
Shivang Sharma, Advocates.

+ **CS(COMM) 34/2024, I.A. 743-744/2024, I.A. 747/2024**
KUDOS PHARMACEUTICALS LIMITED & ORS. Plaintiffs

Through: Mr. Pravin Anand, Ms. Vaishali R.
Mittal, Mr. Siddhant Chamola, Mr.
Shivang Sharma, Advocates.

versus

BDR PHARMACEUTICALS INTL PVT LTD Defendant

Through: Mr. Parag P. Tripathi, Sr. Advocate,
Ms. Rajeshwari, Ms. Garima Joshi,
Mr. Srinivas Ramaswami, Ms.
Saakshi Khandelwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA



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ORDER
11.03.2024

I.A. 742/2024 in CS(COMM) 34/2024 (under Order XXXIX Rules 1 & 2 of CPC)

1. When the Plaintiff filed the present suit on 12th January, 2024, the suit patent IN 228720 [**“IN’720”**] was nearing the end of its term, with barely two months remaining. Recognizing the urgency, the Court endeavoured to expeditiously conclude hearing the instant injunction application. However, despite the diligent efforts of the counsel, it has not been feasible to wrap up the hearing within the anticipated timeframe. Thus, as we stand on the brink of the term of IN’720, which is set to expire tomorrow, a critical question emerges: should the Court persist in adjudicating this application for an injunction given the patent’s imminent expiration, and if so, what form of relief, if any, could reasonably be granted to the Plaintiff should they prevail?

2. Before arriving at any conclusions, it is pertinent to acknowledge that the matter concerning the looming expiration of IN’720 has been a subject of discussion in prior hearings as well. The decision to continue with the hearings was initially made pursuant to an argument made by Mr. Pravin Anand, counsel for the Plaintiff, whereby he urged that aside from the immediate relief sought, the instant case raises a significant legal question for this Court’s consideration — warranting the differentiation between the concepts of coverage and disclosure within patent law, specifically whether a species patent that falls under the umbrella of a genus patent could be deemed invalid under Section 53(4) of the Patents Act, 1970. Mr. Anand



suggests that this proposition extends beyond the injunctive relief sought in the current scenario, touching upon broader interpretative issues that could have broad-ranging implications for patent law jurisprudence.

3. Mr. Anand brings to the Court's attention that there currently exists divergent viewpoints within this Court's jurisprudence regarding the aforementioned proposition of law. There are a series of judgments in favour of the interpretation advanced by Mr. Anand¹, whereas a *contra* view has rendered in the line of judgments including *Boehringer*² and *Bayer v. Natco*³. Additionally, Mr. Anand submits that the ruling of the Supreme Court in *Novartis AG v. Union of India*⁴ has been considered and clarified by this Court in, *inter alia*, *FMC v. Natco*, *AstraZeneca AB v. Torrent* and *Novartis AG & Anr. v. Natco*.

4. In the above background, Mr. Anand places reliance on the recent decision in *Kudos Pharmaceuticals Limited & Ors. v. Natco Pharma Limited*⁵. This case, adjudicated by a coordinate Bench of this Court, pertained to the same suit patent IN'720 in the context of a similar set of facts as the present case. The Bench therein ruled in favour of the Plaintiff, reinforcing the position Mr. Anand advances in the present application.

5. Furthermore, regarding the issue of relief to be granted, Mr. Anand draws attention to the decision in *Vifor (International) Limited & Anr. v. MSN Laboratories Pvt. Ltd. & Anr.*⁶, wherein the Division Bench has made

¹ Reliance is placed on, *inter alia*, *AstraZeneca AB v. Emcure Pharmaceuticals Ltd.* (2020); *AstraZeneca AB v. Torrent Pharmaceuticals Ltd.* (2020); *FMC v. Natco* (2021); *Novartis v. Natco* (2021); *Novartis v. Natco* (2023); *Pharmacyclics v. Hetero Labs* (2023).

² *Boehringer Ingelheim Pharma & Ors. v. Vee Excel Drugs & Ors.*, MANU/DE/2179/2023

³ *Bayer Healthcare LLC v. Natco Pharma Limited*, MANU/DE/4260/2023

⁴ *Novartis AG v. Union of India & Ors.*, MANU/SC/0281/2013

⁵ Judgment dated 1st March, 2024 in CS(COMM) 29/2023; DHC Neutral Citation No. – 2024:DHC:1716

⁶ See Paragraph No. 184 in judgment dated 7th February, 2024 in FAO(OS)(COMM) 159/2023; DHC



pertinently observed that even when a patent expires, the Court retains the discretion to direct the Defendant to make deposits in the Court. This particular ruling, Mr. Anand points out, sets a precedent that allows this Court flexibility in shaping the relief to be granted, notwithstanding the patent's expiry status. Moreover, Mr. Anand emphasises the alleged misconduct of the Defendant, accusing them of initiating the launch of their product prior to the expiration of IN'720, thereby flagrantly breaching the Plaintiff's patent rights. Given this context of purported wrongdoing, Mr. Anand argues that it would be appropriate for this Court to order such a deposit as a form of remedial action.

6. Mr. Parag P. Tripathi, Senior Counsel for the Defendant, on the other hand states that since there are two different views taken by the Courts, as pointed out by Mr. Anand, this Court's decision would necessarily align with one of the two lines of reasoning. Thus, it would be futile for this Court to proceed any further in the present matter as it would ultimately fall upon the Division Bench to settle the position of law, as an appeal has been filed against the aforementioned order in ***Kudos (supra)***. Mr. Tripathi anticipates that pharmaceutical companies, which stand to be impacted by these conflicting judicial interpretations, are likely to seek intervention from the Court for a decisive resolution on the matter. Furthermore, Mr. Tripathi states that the Defendant is also considering approaching the Division Bench so that the instant proceedings can also be tagged along with the aforementioned appeal proceedings.

7. In the opinion of the Court, while the parties are at liberty to take

Neutral Citation No. – 2024:DHC:878-DB



steps in terms of the aforementioned submissions, considering the fact that the Court has already substantially heard arguments in the instant application, the Court finds it apposite to conclude hearing the instant application.

8. Accordingly, Mr. Anand has proceeded to complete his rejoinder submissions. However, Mr. Tripathi states that since the recent decision in *Kudos (supra)* has been substantially relied on by Mr. Anand, he should be afforded 15-20 minutes for addressing the same.

9. In view of the above, re-notify on 22nd March, 2024.

SANJEEV NARULA, J

MARCH 11, 2024

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