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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 214/2024**

NIRANJAN ARVIND GOSAVI AND ORS Plaintiffs

Through: Mr. Darpan Wadhwa, Sr. Adv. with
Mr. J.H. Jafri, Mr. Farrukh Khan,
Mr. Amique Khalid, Mr. Saif Uddin
Khan, Mr. Mohd. Affan &
Mr. Shahid Khan, Advs.

versus

INNOVATIVIEW INDIA PRIVATE LIMITED Defendant

Through: Mr. Adarsh Ramanujan, Mr. Yatin
Chadha, Mr. Mayank Chadha and
Mr. Gurvinder Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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13.03.2024

I.A. No.5539/2024 (exemption from filing certified, typed copies)

1. Exemption is granted, subject to all just exceptions.
2. Applicant shall file legible, clear, and original copies of the documents on which the applicant may seek to place reliance within four weeks from today or before the next date of hearing, whichever is earlier.
3. Accordingly, the present application is disposed of.

I.A. No.5537/2024 (seeking leave to file additional documents)

1. The present application has been filed on behalf of the plaintiff under Order 11 Rule 1(4) of the Code of Civil Procedure, 1908 (“CPC”) as applicable to commercial suits under the Commercial Courts Act, 2015 seeking to place on record additional documents.
2. Plaintiff, if it wishes to file additional documents at a later stage, shall do so strictly as per the provisions of the Commercial Courts Act, 2015 and the Delhi High Court (Original Side) Rules, 2018.



3. Accordingly, the present application is disposed of.

I.A. No.5538/2024 (exemption from instituting pre-litigation mediation)

1. Having regard to the facts of the present case and in light of the judgement of Division Bench of this Court in ***Chandra Kishore Chaurasia v. R.A. Perfumery Works Private Ltd.***, FAO (COMM) 128/2021, exemption from attempting pre institution mediation is allowed.

2. Accordingly, the application stands disposed of.

CAV 112/2024

Since counsel for the defendant has appeared, caveat stands discharge.

CS(COMM) 214/2024

1. Let the plaint be registered as a suit.

2. Upon filing of process fee, issue summons to the defendant by all permissible modes. Summons shall state that the written statement be filed by the defendant within 30 days from the date of receipt of summons. Along with the written statement, the defendant shall also file affidavit of admission/denial of plaintiffs' documents, without which the written statement shall not be taken on record. Liberty is given to plaintiffs to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the plaintiffs, affidavit(s) of admission/denial of documents filed by the defendant, be filed by plaintiffs, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the same shall be sought and given within the timelines.

3. List before the Joint Registrar for marking of exhibits on 17th May, 2024.



4. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

I.A. 5536/2024 (under Order XXXIX Rule 1 & 2 CPC)

1. This application has been filed by plaintiff under Order XXXIX Rule 1 & 2 of CPC as part of the suit seeking the following reliefs:

- i. A decree of permanent injunction restraining the Defendant, its directors, employees, officers, servants, agents and all others acting for and, on its behalf, including third parties using the services under the impugned services rendered by the Defendant either directly or through any channel, dealing with the method and system forming the part of the Technology that infringes the subject matter Indian Patent No. 336205, Patented in the name of Plaintiff nos. 1 to 3.
- ii. A decree of permanent injunction restraining the Defendant, its directors, employees, officers, servants, agents and all others acting for and on its behalf, including third parties from making any representation to the Government of India, including bid to Tender floated by any Governmental Agency or any other third party entity, that the Defendant and anyone claiming through the Defendant is entitled to render any service which infringes the subject matter of Indian Patent No. 336205, Patented in the name of Plaintiff nos. 1 to 3.



2. Plaintiff asserts Patent No. 336205 in its favour, granted to it with priority date of 9th July, 2019 in the subject patent (*Method and System for Generating and Validating Documents and Document Holder using Machine Readable Barcode*). The said patent is valid and subsisting. The subject patent relates to the field of offline authentication of data and the individual represented in the machine-readable barcode. It relates to a method for generating a secure barcode for a document and validating the secure barcode and its holder, for identifying fake and duplicate documents in an offline environment. Plaintiff nos. 1 to 3 have collaborated with plaintiff no.4, for commercial exploitation of the said process. The claims, which form part of the plaint, are as under:



1. A system for generating and validating documents using machine readable barcode, the system comprising:

a barcode generating device comprising at least one processor (102), a computer-readable medium (104), cause the at least one processor to perform operations;

a user interface (108) for receiving a plurality of input data including a face photo (301), a text data (302), a biometric data (303), and a Meta data, wherein said Meta data comprises at least one of a bar code issuer identifier, a plurality of secure barcode, digital signature algorithm and a barcode sequence number;

a barcode generator for generating a secure barcode comprising said digital signature of at least one of said plurality of input data and said Meta data (201) using an asymmetric key;

a printer (110) for printing, by the barcode generating device, said secure barcode embedded in an electronic document;

a bar code Scanner (110) configured to scans the said document containing secure barcode using an optical character recognition (OCR) system and validates the OCR content against data represented in the secure barcode;

a document validation device configured for validating said digital signature using a public key and validating said secure barcode in offline mode by comparing said digital signature of said secure barcode with respect to each of said plurality of input data and said Meta data, wherein said plurality of input data and said Meta data is accessed from at least one of a cloud engine or a digital device; and

a display means (106) for displaying said plurality of input data when said secure barcode is validated.

2. The system as claimed in claim 1, wherein said secure barcode is generated using a computer and hardware security module (HSM).

3. The system as claimed in claim 1, wherein said secure barcode is validated using a handheld device.



4. The system as claimed in claim 1, wherein the said digital signature 206 is created using asymmetric cryptography with a private key 205 and in order to validate the digital signature 206, the system 100 configured to decode the barcode, and validate the digital signature 206 using public key 205.

5. The system as claimed in claim 1, wherein said barcode scanner is connected with cloud engine configured for accessing said plurality of input data and said Meta data using a standard internet browser.

6. The system as claimed in claim 1, wherein the cloud service engine validates the signature represented in the barcode against the Meta data and data represented in the secure barcode and on successful validation of digital signature, the data is formatted as per the data formatting information represented in the data and sent back to browser for rendering.

7. The system as claimed in claim 1, wherein the said system 100 assign unique serial number for every barcode issued in the system by the issuer where the serial number of the old code issued for the same document holder may be stored in a blacklisted list of serial numbers for not allowing the verification application to validate the old code since new code may be issued to the same document holder with updated information.

8. A method for generating and validating documents using machine readable barcode employing the system as claimed in any of the preceding claims.

3. Plaintiffs' grievance arose in context of an e-tender floated by the National Testing Agency ("NTA") for selection of agency for providing enhanced QR Code Solution with encoded texts. Plaintiffs, considering themselves as eligible for the said tender, submitted their bid. It was their belief that the nature and scope of work specified under the e-tender was of such nature that it could only be achieved by using method/technology/process of the subject patent.

4. Defendant was also one of the bidders and the fact that defendant considered itself as a qualified bidder and complied with the specifications of the e-tender, according to plaintiff, was sufficient evidence to prove that



defendant was infringing the subject patent. It is plaintiffs' claim that said specifications of the e-tender can only be complied with by implementation and application of the subject patent. Defendant having bid for the said tender, had, according to the plaintiffs, adequately exhibited that they had applied the technology which formed part of the subject patent.

5. Plaintiffs nos. 1 to 3 served upon the defendant a cease-and-desist notice dated 10th February, 2024. Reply to the said notice was served on plaintiffs on 13th February, 2024 (*holding reply*) and 29th February, 2024.

6. Mr. Adarsh Ramanujan, counsel for defendant, appears on advance notice and states that they have their own technology which they have implemented, however, they have not applied for a patent in respect of the same. Further he submits that plaintiffs' subject patent itself would be invalid; however, he admits that there was no pre-grant / post-grant opposition to the subject patent by the defendant.

7. He further points out that they have been selected as the L1 bidder in February, 2024 and subsequent to further processes, may potentially be contracted in the said works. If so, he contends that he shall be protected, from a claim of patent infringement, under provisions of Section 47 read with 156 of Patents Act, 1970 ("**the Act**"). This, he states, has been interpreted by a Single Judge of this Court in *Chemtura Corpn. v. Union of India*, 2009 SCC OnLine Del 2634, while deliberating upon Section 47; it was held that a patent in respect of subject device may be used by or on behalf of government for the purpose clearly of its own use. Relevant part of Section 47 of the Act is extracted as under:

"Section 47

The grant of a patent under this Act shall be subject to the condition that—

(1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be



imported or made by or on behalf of the Government for the purpose merely of its own use;

(2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;”

8. Therefore, he states that both the government and the contracting agency will be insulated from a claim of infringement.

9. Mr. Darpan Wadhwa, Senior counsel for plaintiffs, however, refutes the same and states that these provisions can never possibly provide insulation to a potential infringer of patent, in this case, the defendant. Section 47 of the Act, according to him, clearly permits government to implement or use the patented technology for its own use. He, therefore, states that while the government cannot be precluded from using the patent for its own purpose, a potential infringer can certainly be enjoined.

10. Considering that any order passed by this Court at an *ad-interim prima facie* stage would impact completion and execution of the tendering process by NTA and may potentially impact the requirement and necessity of NTA, which is a pan India examination testing agency, this Court does not consider it fit to grant injunction at this *ad-interim* stage.

11. However, these aspects, as noted above, may be suitably brought to the attention of the NTA by plaintiffs, by supplying a copy of this order. In this regard it is also noted that an intimation was sent by plaintiffs on 9th February, 2024 to the Director General, NTA, pointing relevant facts and stating in conclusion as follows:

“In the aforesaid factual background, we would request your good office to kindly examine the nuances of the said patent infringement in the said tendering process, as delineated above, and further to ensure that the said tendering process does not become a vehicle for facilitating infringement of the said patent. Your good office is further requested to kindly withhold any further action in respect of the said tendering



process as it amounts to infringement of the said patent. Our Client, in due course, shall be initiating appropriate legal proceedings for protection of its rights and interest arising out of the said patent.”

12. It is made clear that no direction has been passed by this Court at this *ad-interim* stage and intimation to NTA is only for the purposes of information and record. Needless to say, the NTA, pursuant to information, may assess the situation in accordance with its own policies and process, taking note of the claim of plaintiffs as noted in intimation of 9th February, 2024 and in this Order.

13. It is also clarified that, in the event plaintiffs are successful in the suit, defendant shall be put to terms. For this purpose, it is directed that the defendant shall maintain full accounts of revenue earned, in case they do succeed in the final stages of the tendering process. Accounts will be filed on a quarterly basis in a sealed cover in this Court, as and when the stage arises. Technical specifications as bid for, will also be filed in a sealed cover within 3 weeks from today.

14. Registry is directed to accept the sealed cover and maintain it so, subject to further orders of this Court.

15. List before this Court on 22nd May, 2024.

16. Order be uploaded on the website of this Court.

ANISH DAYAL, J

MARCH 13, 2024/sm/rj