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

+ **CS(COMM) 93/2023 & I.A. 3326/2023, I.A. 3327/2023, I.A. 3328/2023, I.A. 3329/2023, I.A. 3330/2023, I.A. 3331/2023**

ADAMA INDIA PRIVATE LIMITED Plaintiff
Through: **Mr. J. Sai Deepak, Adv.**

versus

FMC CORPORATION & ANR. Defendants
Through: **Mr. Sandeep Sethi, Adv.**

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **ORDER**
20.02.2023

CS(COMM) 93/2023

1. This is a suit under Section 105¹ of the Patents Act, 1970, whereby the plaintiff seeks a declaration that the process employed by the plaintiff for manufacture of Chlorantraniliprole (CTPR), as disclosed in the plaint, does not infringe process Indian process Patent No. IN 298645 (IN'645) held by the defendant for manufacture of CTPR.

¹ **105. Power of court to make declaration as to non-infringement.**—(1) Notwithstanding anything contained in Section 34 of the Specific Relief Act, 1963 (47 of 1963), any person may institute a suit for declaration that the use by him of any process, or the making, use or sale of any article by him does not, or would not, constitute an infringement of a claim of a patent against the patentee or the holder of an exclusive licence under the patent notwithstanding that no assertion to the contrary has been made by the patentee or the licensee, if it is shown—

- (a) that the plaintiff has applied in writing to the patentee or exclusive licensee for a written acknowledgment to the effect of the declaration claimed and has furnished him with full particulars in writing of the process or article in question; and
 - (b) that the patentee or licensee has refused or neglected to give such an acknowledgment.
- (2) The costs of all parties in a suit for a declaration brought by virtue of this section shall, unless for special reasons the court thinks fit to order otherwise, be paid by the plaintiff.
- (3) The validity of a claim of the specification of a patent shall not be called in question in a suit for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid or invalid.
- (4) A suit for a declaration may be brought by virtue of this section at any time after the publication of grant of a patent, and references in this section to the patentee shall be construed accordingly.



2. Let the plaint be registered as a suit. Issue summons in the suit. Summons is accepted on behalf of defendants by Mr. Sanjay Kumar.

3. Written statement, accompanied by affidavit of admission/denial of the documents filed by the plaintiff be filed within 30 days with advance copy to learned counsel for the plaintiff who may file replication thereto, accompanied by affidavit of admission/denial of the documents filed by the defendants within 30 days thereof.

4. List before the learned Joint Registrar (Judicial) for completion of pleadings, admission/denial of documents and marking for exhibits on 27th March 2023.

I.A. 3326/2023 (under Order XXXIX Rules 1 and 2)

5. This is an application seeking *ad interim* injunctive reliefs. Presently, Mr. Sai Deepak presses his application only to the extent of a direction to the defendant to not contact the distributors/stockiest/retailers or regulatory authorities to create any hindrance in the business of the petitioner in relation to the process claimed by the defendant in IN298645. He has invited my attention to order dated 23rd September 2022, passed by a Coordinate Bench of this Court in ***GSP Crop Science Pvt. Ltd. v. FMC Agro Singapore Pvt. Ltd.***² where a similar direction was issued.

6. Mr. Sandeep Sethi, learned Senior Counsel appearing for the defendant seriously opposes the prayer. He submits that ***GSP Crop***

² C.O.(COMM.IPD-PAT 68/2022)



Science was a revocation petition, whereas the prayer of the plaintiff in the present case is for a declaration under Section 105 of the Patents Act of non-infringement. Mr. Sethi also sought to submit that, in fact, the plaintiff has not complied with Section 105(1)(a) of the Patents Act, 1970 before instituting the present suit. For this purpose, he has invited my attention to the notice dated 6th February 2023 issued by the plaintiff to the defendants, the defendants' response dated 15th February 2023 and the plaintiff's response thereto dated 17th February 2023. He submits that the plaintiff did not furnish, with its notice under Section 105(1)(a), the full particulars in writing of the process employed by the plaintiff and that the particulars were not furnished despite the defendant having, by its response dated 15th February 2023, calling upon the plaintiff to do so.

7. The question of whether the particulars furnished by the plaintiff with its notice dated 6th February 2023 satisfied, or did not satisfy, the mandate of Section 105(1)(a) of the Patents Act is, in my opinion, a matter which has to be examined in greater detail and may not strictly be relevant for grant of the order as sought by Mr. Sai Deepak, which is essentially only to ensure that the plaintiff's business activities are not hampered during the pendency of the present proceedings.

8. In that regard, I am unable to regard the fact that GSP Crop Science was a revocation petition, whereas the present case is a suit under Section 105 of the Patents Act, as a ground to refuse the request to pass an order in terms of the order passed in *GSP Crop Science*. In either case, the defendant/respondent was the holder of a patent. The only difference between the two cases is that, in *GSP Crop Science*, the



petitioner sought revocation of the defendants' patent whereas, in the present case, the plaintiff seeks a declaration that the process employed by the plaintiff does not infringe the defendant's patent. The order of protection was granted on 23rd September, 2022 without entering into the comparative merits of the cases of both parties.

9. In that view of the matter, for the present, issue notice on this application. Notice is accepted by Mr. Sandeep Sethi.

10. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the plaintiff who may file rejoinder thereto within four weeks from today.

11. Till the next date of hearing, the defendants shall stand restrained from contacting the distributors/stockiest/retailers or regulatory authorities in order to create any hindrance in the business of the petitioner in relation to the process claimed in IN'645.

12. However, Mr. Sandeep Sethi seeks clarification that present order would not operate as a restraint against the defendant instituting a suit for infringement against the plaintiff if so advised. It is clarified that this order does not operate as a restraint in that regard.

13. List before the Court on 25th April 2023.

I.A. 3327/2023 (under Order XI Rule 1(4) of the CPC)

14. This application seeks permission to file additional documents.



15. The petitioner is permitted to place additional documents on record in accordance with Order XI Rule 1(4) of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act within 30 days from today.

16. The application stands disposed of accordingly.

I.A. 3328/2023(seeking exemption from filing original/certified copies)

17. Exemption allowed, subject to all just exceptions.

18. The application stands disposed of.

I.A. 3329/2023 (Extention of time to file court fee)

19. Court fees have been deposited. Accordingly, the application is rendered infructuous.

I.A. 3330/2023(seeking leave to file document in sealed cover)

20. This is an application which seeks permission to place certain documents in a sealed cover as they contain confidential material. Mr. Sai Deepak submits that the documents are already in the possession of the defendants. As such, the permission as sought is granted.

21. The application is allowed accordingly.



I.A. 3331/2023 (under Section 12 of the Commercial Courts Act, 2015)

22. In view of the judgment of the Division Bench of this Court in *Chandra Kishore Chaurasia v. R.A. Perfumery Works Pvt Ltd*³, exemption is granted from the requirement of pre-institution mediation under Section 12A of the Commercial Courts Act, 2015.

23. The application stands allowed accordingly.

24. Order to be uploaded on the website of this Court within 2 hours.

C.HARI SHANKAR, J

FEBRUARY 20, 2023

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³ 2022 SCC OnLine Del 3529