

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 17th DAY OF SEPTEMBER 2010

THE HON'BLE MR. JUSTICE S. RAJESWARAN

O.A. No. 993 OF 2010

IN

C.S.NO.801 OF 2010

1. F.Hoffmann-La Roche Ltd.,
Group Headquarter,
Grenzacherstrasse 124,
CH-4070 Basel,
Switzerland,
Represented by its Constituted attorney,
Ms.Sujatha Subramaniam.

2. OSI Pharmaceuticals, Inc.,
41. Pinelawal Road,
Melville,
New York 11747,
United States of America,
Represented by its Constituted attorney,
Ms.Sujatha Subramaniam.

...Plaintiff's/Applicant's

-vs-

Matrix Laboratories Limited,
1-1-151/1, 4th floor,
Sai Ram Towers,
Alexander Road,
Secunderabad 500 003.

...Defendant/Respondent

This Original Application praying that this Hon'ble Court be pleased to grant an order of ad-interim injunction restraining respondent/defendant, its directors, employees, officers, servants, agents, men representatives and all other acting for and on their behalf from launching, making, selling, distributing, advertising, exporting, importing, offering for sale and in any other manner, directly or indirectly, dealing in any product that infringes the subject matter of Indian Patent No.196774 pending disposal of this suit.

This Original Application coming on this day before this court for hearing the court made the following order:

O.A.No.993 of 2010 has been filed by the applicants/plaintiffs in C.S.No.801 of 2010 to grant an order of ad-interim injunction restraining respondent/defendant, its directors, employees, officers, servants, agents, men, representatives and all others acting for and on their behalf from launching, making, selling, distributing, advertising, exporting, importing, offering for sale and in any other manner, directly or indirectly, dealing in any product that infringes the subject matter of Indian Patent No.196774 pending disposal of this suit.

2. C.S.No.801 of 2010 has been filed by the applicant/plaintiff for permanent injunction.

3 The case of the applicant/plaintiff is that they are the inventors of the compound - 'Erlotinib Hydrochloride' for treating lung cancer and pancreatic cancer. According to the plaintiffs, they applied for International patent of the 'Erlotinib Hydrochloride' on 30.3.1995 in America which has been granted to them. They applied for patent in India on 13.3.1996 and the patent has been approved by the Government of India on 06.07.2007 which is valid upto 12.3.2016. The pharmaceutical compound Erlotinib Hydrochloride covered by Indian patent No.196774 sold under the trademark TARCEVA. It has also been duly registered with the respective competent authorities in India. While

so, the applicants/plaintiffs discovered to their utter shock and dismay that the respondent/defendant had openly stated their intention to manufacture same compound Erlotinib Hydrochloride, without due authorisation from the applicants/plaintiffs, which would amount to an infringement of the plaintiffs' statutory rights. This has come to the knowledge of the plaintiffs only from their revocation application filed by the respondent before the Intellectual Property Appellate Board in Chennai during August 2010. A perusal of that revocation application would make it clear that the respondent have clear intention of marketing this compound Erlotinib Hydrochloride, soon which is a clear infringement of Indian Patent No.196774 belonging to the applicants/plaintiffs. Therefore, this suit has been filed for the aforesaid prayer. Along with the suit this application for interim injunction has been filed.

4 I have heard Mr.P.S.Raman, learned senior counsel appearing for the applicants/plaintiffs. I have also gone through the documents available on record.

5 From the documents available it could be seen that the applicants/plaintiffs have applied for International patent in America on 30.3.1995 which has been granted in 1998. Subsequently, they have also applied for Indian Patent registration in India on 13.3.1996 which has also been approved by Controller on 06.07.2007. By virtue of this, they have the right to manufacture and market this special compound intended for lung and pancreatic cancer up

to 12.3.2016. Further, from the documents available it could be seen that they have done elaborate laboratory research and for the pharmaceutical invention covered by the suit patent. The respondent/defendant, without any authority has proposed to launch similar compound which affects the interest of the plaintiffs, and it is prima facie a clear that there is an infringement of the patent of the plaintiffs by the respondent.

6 In the light of the above and the documents produced, I am satisfied that a prima facie case has been made out by the applicants/plaintiffs and the balance of convenience is also in their favour for an order of interim injunction.

7 Accordingly, there will be an order of interim injunction as prayed for for a period of eight weeks. Notice. Order 39 Rule 3 CPC to be complied with.

Sd/- S.R.J

17.09.2010

//Certified to be a true copy//
Dated this the 20th day of September 2010.

R. S/20.09.2010

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

K. Kaniappan
COURT OFFICER
20/9/10

HIGH COURT, MADRAS

ORIGINAL SIDE

CA. No. 10395/W

Applicant 2019/W

Respondent

Stamp paid to 2019/W

Ready

2019

2019/2019
C.O. (O.S.)