Delhi High Court on Technical Experts in Patent Matters

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The Delhi High Court recently delivered a judgment regarding the procedure to be followed in patent infringement lawsuits. A brief summary of the findings of the court:

1. An expert cannot give evidence beyond the scope of pleadings.
2. When documents are being filed, there should be a report by the technical expert, not necessarily in the form of an affidavit, which enumerates the essential points to be made by the expert.
3. In cases where an expert report is not filed, as long as the deposition of the expert is within the confines of the pleadings no difficulty will arise.
4. Such an expert remains a witness of the party litigant examining her/him, and whom the party opposite has a right to cross-examine.
5. Order VII Rule 1 of the Code of Civil Procedure (CPC) requires a plaint (as a counter-claim is) to contain facts constituting the cause of action. Thus, a party litigant defending a claim for infringement of patent on the ground of it being liable to be revoked (on one of the grounds under Section 64 of the Patents Act 1970) would be required to plead particulars of that ground.
6. A written statement to such counter-claim would require the patentee to plead why the invention is inventive. Merely pleading its non-obviousness or that it entails an inventive step would not constitute a defence.
7. The issues in a case should be detailed and clearly defined, not general; and should crystallize the real issue in controversy.
8. The onus of invalidity of the patent is on the defendant and the defendant should lead evidence on that issue in the first instance.
9. The Bench recommended to the Chief Justice to refer this case to the Rules Committee (under Section 123 CPC) for framing of rules as to the conduct and procedure of in respect of proceedings before the court under the Patents Act.

The court was hearing applications in a suit filed by the plaintiff seeking to restrain the defendants from infringing its drug patent. The defendants had submitted that an affidavit filed by an expert witness, along with supporting documents, went beyond the scope of plaintiff's pleadings.

F.Hoffmann-La-Roche Ltd. & Anr. v. Dr. Reddys & Anr, and F.Hoffmann-La-Roche Ltd. & Anr. v Natco; before the Delhi High Court; Order dated 21.03.2017

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