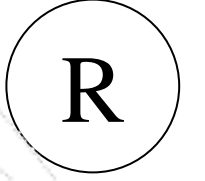


IN THE HIGH COURT OF KARNATAKA AT BENGALURU



*Dated this the 14<sup>th</sup> day of September, 2016*

BEFORE

THE HON'BLE MR.JUSTICE P.S. DINESH KUMAR

Miscellaneous First Appeal No.3009/2016 (IPR)

C/W.

Miscellaneous First Appeal No.3010/2016 (IPR)

**IN M.F.A No.3009/2016:**

**BETWEEN:**

1. M/s. INPHASE POWER TECHNOLOGIES  
PRIVATE LIMITED, A COMPANY INCORPORATED  
UNDER THE PROVISIONS OF THE COMPANIES  
ACT 2013, HAVING ITS REGISTERED OFFICE  
AT NO.59, KACHOHALLI VILLAGE  
CHIKKAGOLLARAHATTI  
MAGADI MAIN ROAD, MACHOHALLI  
DASANAPUR HOBLI, BENGALURU – 560 091  
REPRESENTED BY ITS MANAGING DIRECTOR
2. Mr. PANNALAL BISWAS  
S/O.GOUR CHANDRA BISWAS  
AGED ABOUT 47 YEARS  
RESIDING AT APARTMENT No.11  
7<sup>TH</sup> FLOOR, “B” BLOCK, PLATINUM CITY  
HMT MAIN ROAD, YESHWANTPUR  
BENGALURU – 560 022
3. Mr. NATESH MAYAVEL MKG  
S/O.GRAHAVEL MAYAVEL  
AGED ABOUT 31 YEARS,RESIDING AT No.1/415E  
N.G.O COLONY, SATCHIYAPURAM  
SIVAKASI WEST (POST)  
VIRUDHUNAGER DIST – 626 124  
TAMIL NADU

4. Mr.HASAN MYDIN J  
S/O.JAINOL ABIDEEN  
AGED ABOUT 32 YEARS  
RESIDING APARTMENT No.1223  
PLATINUM CITY, "O" BLOCK, HMT MAIN ROAD  
YESHWANTPUR, BENGALURU – 560 022
5. Mr.THIYANESWAR  
S/O.SOONDRIRAGAHAVAN  
AGED ABOUT 31 YEARS  
DIRECTOR, INPHASE POWER TECHNOLOGIES  
PRIVATE LIMITED, AT NO.59  
KACHOHALLI VILLAGE  
CHIKKAGOLLARAHATTI, MAGADI MAIN ROAD  
MACHOHALLI, DASANAPUR HOBLI  
BENGALURU – 560 091  
RESIDING AT 60-A-155  
TIRUVALLUVAR STREET  
TIRUMANGALAM, MADHURAI – 625 706
6. Mr.KAMALAKANNAN ELANGO VAN  
S/O.ELANGO VAN  
AGED ABOUT 31 YEARS  
DIRECTOR, INPHASE POWER TECHNOLOGIES  
PRIVATE LIMITED, AT NO.59, KACHOHALLI VILLAGE  
CHIKKAGOLLARAHATTI, MAGADI MAIN ROAD  
MACHOHALLI, DASANAPUR HOBLI  
BENGALURU – 560 091  
RESIDING AT No.4-143, PERUMAL KOIL STREET  
NACHANDUPATTI, THIRUMAYAM TALUK  
PUDUKOTTAI – 622 404  
TAMIL NADU
- ...APPELLANTS

(By Sri.JAYKUMAR S. PATIL, Sr. Adv., a/w.  
Sri.SHANKAR S. BHAT, Adv.,)

AND:

M/s. ABB INDIA LIMITED  
A COMPANY REGISTERED AND INCORPORATED  
UNDER THE PROVISIONS OF THE INDIAN  
COMPANIES ACT, 1956, HAVING ITS REGISTERED  
OFFICE AT 21<sup>ST</sup> FLOOR, WORLD TRADE CENTRE

BRIGADE GATEWAY, Dr. RAJ KUMAR ROAD  
MALLESHWARAM WEST  
BENGALURU – 560 055  
REPRESENTED BY ITS POWER OF  
ATTORNEY HOLDER, Mr.B.GURURAJ ...RESPONDENT

(By Sri.UDAYA HOLLA, Sr. Adv., a/w.  
Sri.ANIND THOMAS, Adv., for C/R)

THIS MFA IS FILED U/O 41 RULE 1(r) OF CPC, AGAINST  
THE ORDER DATED:20.02.2016 PASSED ON IA NO.4 IN  
O.S.NO.6254/15 ON THE FILE OF THE 18<sup>TH</sup> ADDITIONAL CITY  
CIVIL & SESSIONS JUDGE, ALLOWING IA NO.4 FILED U/O.39  
RULES 1 & 2 OF CPC.

**IN M.F.A No.3010/2016:**

**BETWEEN:**

1. M/s.INPHASE POWER TECHNOLOGIES  
PRIVATE LIMITED, A COMPANY INCORPORATED  
UNDER THE PROVISIONS OF THE COMPANIES  
ACT 2013, HAVING ITS REGISTERED OFFICE  
AT NO.59, KACHOHALLI VILLAGE  
CHIKKAGOLLARAHATTI  
MAGADI MAIN ROAD, MACHOHALLI  
DASANAPUR HOBLI, BENGALURU – 560 091  
REPRESENTED BY ITS MANAGING DIRECTOR
2. Mr.PANNALAL BISWAS  
S/O.GOUR CHANDRA BISWAS  
AGED ABOUT 47 YEARS  
RESIDING AT APARTMENT No.11  
7<sup>TH</sup> FLOOR, “B” BLOCK, PLATINUM CITY  
HMT MAIN ROAD, YESHWANTPUR  
BENGALURU – 560 022
3. Mr.NATESH MAYAVEL MKG  
S/O.GRAHAVEL MAYAVEL  
AGED ABOUT 31 YEARS  
RESIDING AT No.1/415E  
N.G.O COLONY, SATCHIYAPURAM  
SIVAKASI WEST (POST)

VIRUDHUNAGER DIST – 626 124  
TAMIL NADU

4. Mr. HASAN MYDIN J  
S/O.JAINOL ABIDEEN  
AGED ABOUT 32 YEARS  
RESIDING APARTMENT No.1223  
PLATINUM CITY, “O” BLOCK, HMT MAIN ROAD  
YESHWANTPUR, BENGALURU – 560 022
5. Mr. THIYANESWAR  
S/O. SOUNDRI RAGAHAVAN  
AGED ABOUT 31 YEARS  
DIRECTOR, INPHASE POWER TECHNOLOGIES  
PRIVATE LIMITED, AT NO.59  
KACHOHALLI VILLAGE  
CHIKKAGOLLARAHATTI, MAGADI MAIN ROAD  
MACHOHALLI, DASANAPUR HOBLI  
BENGALURU – 560 091  
RESIDING AT 60-A-155  
TIRUVAILLUVAR STREET  
TIRUMANGALAM, MADHURAI – 625 706
6. Mr. KAMALAKANNAN ELANGO VAN  
S/O.ELANGO VAN  
AGED ABOUT 31 YEARS  
DIRECTOR, INPHASE POWER TECHNOLOGIES  
PRIVATE LIMITED, AT NO.59, KACHOHALLI VILLAGE  
CHIKKAGOLLARAHATTI, MAGADI MAIN ROAD  
MACHOHALLI, DASANAPUR HOBLI  
BENGALURU – 560 091  
RESIDING AT No.4-143, PERUMAL KOIL STREET  
NACHANDUPATTI, THIRUMAYAM TALUK  
PUDUKOTTAI – 622 404  
TAMIL NADU
- ...APPELLANTS

(By Sri.JAYKUMAR S. PATIL, Sr. Adv., a/w.  
Sri.SHANKAR SHIVARAM BHAT, Adv.,)

AND:

M/s. ABB INDIA LIMITED  
A COMPANY REGISTERED AND INCORPORATED

UNDER THE PROVISIONS OF THE INDIAN  
COMPANIES ACT, 1956, HAVING ITS REGISTERED  
OFFICE AT 21<sup>ST</sup> FLOOR, WORLD TRADE CENTRE  
BRIGADE GATEWAY, Dr. RAJ KUMAR ROAD  
MALLESHWARAM WEST  
BENGALURU – 560 055  
REPRESENTED BY ITS POWER OF  
ATTORNEY HOLDER, Mr.B.GURURAJ

...RESPONDENT

(By Sri.UDAYA HOLLA, Sr. Adv., A/W  
Sri.ANIND THOMAS, Adv., for C/R)

THIS MFA IS FILED U/O 41 RULE 1(r) OF CPC, AGAINST  
THE ORDER DATED:20.02.2016 PASSED ON IA NO.3 IN  
O.S.NO.6254/15 ON THE FILE OF THE 18<sup>TH</sup> ADDITIONAL CITY  
CIVIL & SESSIONS JUDGE, BENGALURU CITY, ALLOWING IA  
NO.3 FILED U/O 39 RULE 1 & 2 R/W SEC.151 OF CPC.

THESE MFAs HAVING BEEN HEARD AND RESERVED FOR  
JUDGMENT, THIS DAY, THIS COURT PRONOUNCED THE  
FOLLOWING:-

### **JUDGMENT**

These two appeals have been filed by the  
defendants before the Trial Court challenging the  
common order dated 20.2.2016 on IAs.No.2 to 6 in  
O.S.No.6254/2015. MFA No.3009/2016 is directed  
against order on IA.No.3 and MFA No.3010/2016  
against order on IA.No.4.

2. Heard Sri Jayakumar S. Patil, learned Senior Counsel for the appellants and Sri Udaya Holla, learned Senior Counsel for the respondent.

3. For the sake of convenience parties shall be referred as per their rank before the Trial Court.

4. Respondent – plaintiff, a Public Limited Company filed the instant suit with several prayers. They may be summarised as under:

- an order of injunction restraining the defendants from misappropriating or distributing plaintiff's confidential information (IA.No.4);
- an order of injunction restraining the defendants from infringing patent No.206766 (IA.No.3);
- an order of injunction restraining the defendants from using plaintiff's trade mark "PQC STATCON"; and
- a direction to pay damages of Rs.5,50,00,000/- for breach of trust and infringement of patent No.206766.

5. Plaintiff also filed IAs.No.2 to 6 before the Trial Court seeking certain interim orders. IA.No.2 to appoint a Commissioner to seize the computers etc; IA.No.3 for an order of temporary injunction restraining the defendants from infringing Patent No.206766; IA.No.4 seeking an order of temporary injunction from misappropriating or distributing plaintiff's confidential information; IA.No.5 for an order of temporary injunction restraining defendants No.2 to 4 from soliciting plaintiff's customers or taking employment with the customers or competitors; and IA.No.6 seeking an order of temporary injunction restraining defendants No.2 to 4 from continuing employment with any other competitor. By the impugned common order, Trial Court has dismissed IAs.No.2, 5 & 6 and allowed IAs.No.3 & 4. Defendants are aggrieved by the common order so far as it relates to IAs.No.3 and 4.

6. Plaintiff's case in brief is that it is involved in the business of manufacture and supply of Proprietary Power Products, Low Voltage Products, Industrial Motors

and Drives, Power Grids, Electrical Equipment etc. Its products are marked under the brand 'PQC STATCON'. Defendants No.2 to 4 are former employees of the Plaintiff. Whilst they were in service, they were entrusted with significant amount of information relating to plaintiff's products and business.

7. Defendant No.1 is a private limited company incorporated on 31.7.2014. Defendants No.5 and 6 are Directors of Defendant No.1 – Company and they were acquainted with Defendants No.2 to 4. All of them have acted in collusion with each other to establish defendant No.1 – Company.

8. Plaintiff has patented its product, which is numbered as 206766 with the Patent Registry. Plaintiff has made certain developments and improvement in its technology. The said developments are subject matter of pending patent application bearing No.4428/CHE/2011.



9. Plaintiff learnt that 1<sup>st</sup> Defendant – Company is offering a product called ‘STATCOM’ described in its brochure as IPC 150-SCOM. It is ‘a reactive power compensator’ and claims to manage the unbalanced load compensation for a three phase network. It is based on Voltage Source Converter Technology, which makes use of semi conductor devices to control IGBT (Insulated Gate Bipolar Transistor). The defendants have unauthorisedly incorporated plaintiff’s patented invention in their product.

10. Plaintiff’s products were developed by a team of employees, which included 2<sup>nd</sup> and 3<sup>rd</sup> defendants also. They were paid additional ‘Intellectual Property remuneration for their contribution as per company’s policy’. Defendants are now marketing and offering for sale a product by name ‘Statcom’, which is deceptively similar to plaintiff’s trade mark. The name ‘Statcom’ is visually and phonetically similar to plaintiff’s Trade Mark.

11. In sum and substance, plaintiff's specific case is:

- that defendants No.2 to 4 have copied and transferred technical material created by plaintiff such as designs and drawings etc., by electronic mail to their personal emails, which has enabled them to develop a product IPC 150-SCOM; and
- that defendants' Trade Mark IPC 150-SCOM is similar to plaintiff's Trade Mark STATCON and PQC STATCON.

12. Challenging the impugned order, Sri Jayakumar S. Patil, learned Senior Counsel urged following contentions on behalf of the defendants:-

- (i) STATCON is a generic term. Plaintiff has not sought to register the same. Therefore, no injunction can be granted with regard to a trade name 'STATCON';
- (ii) Defendants have not violated any Copyright of plaintiff as the language contained in the brochure is based on a paper published by C.Schauder, M. Gernhardt, E. Stacey, T. Lemak

L. Gyugyi of Westinghouse Electric Corporation and two others. The information contained in the brochure of the defendants is available in public domain.

- (iii) The learned Trial Judge has misdirected himself by comparing the product IPC 150 AHF of the defendants with PQC STATCON, whereas the specific case of the plaintiff is that IPC 150 SCOM has infringed their patented product PQC STATCON;
- (iv) There is a classic difference in the machines manufactured by the plaintiff and defendants. Defendants' machine contains a harmonic filter, which is absent in plaintiff's machine;
- (v) There are large number of other differences in the products manufactured by the plaintiff and defendants. The learned Trial Judge has not critically analyzed the said differences, which are placed on record in the memorandum of appeal;
- (vi) The emails said to have been sent by defendants No.2 to 4 are allegedly recovered from the laptop belonging to the plaintiff – Company and used by the said defendants during the course of their

employment. Recovery of data is made by M/s. KPMG behind the back of the defendants. Therefore, the veracity of allegation is highly questionable;

- (vii) Document No.27 is fabricated as the name of M/s.AZB Partners is found on the print out. Therefore, it follows that the said Law Firm has opened the documents, whereas, the report is submitted by M/s. KPMG. Hence, the documents relied upon by the plaintiff are not authentic.

13. In addition to the aforementioned contentions, learned Senior Counsel for the appellants/defendants adverted to several minute details with regard to technical specifications. He has relied upon the following Judgments in support of his case:

- (1) American Express Bank Ltd. v. Priya Puri (MANU/DE/2106/2006);
- (2) Franz Xaver Huemer v. Ne Yash Engineers (AIR 1997 Delhi 79);
- (3) The Pilot Pen Co., (India) Private Limited v. The Gujarat (AIR 1967 Mad. 215);

- (4) Bilcare Limited v. Amartara Private Limited  
MIPR 2007(2) 42.

In the case of *American Express Bank Ltd*, the Bank sought to make out a case against its employer with regard to confidentiality that 'once a customer of American Express, always a customer of American Express'. The Hon'ble High Court of Delhi repelled such contention by holding that:

47. ....“Freedom of changing employment for improving service conditions is a vital and important right of an employee which cannot be restricted or curtailed on the ground that the employee has employer's data and confidential information of customers which is capable of ascertainment on behalf of defendant or any one else by an independent canvass at a small expense and in a very limited period of time.”.....

In the case of Franz Xaver Huemer, learned Counsel relied upon the following passage:

“29. But, after the *American Cyanamid* case, several Judges have said that too rigid an approach based on 'triable issue' rather than 'prima facie case' might only benefit rich plaintiffs and that it would “be

*intolerable if Cyanamid case was allowed to become” a charter of success for all rich companies pitched against poor companies, especially if the latter were not expected to be capable of paying damages. If the defendant was already in a precarious financial state, injunction might drive him into insolvency and leave a monopoly in favour of the rich plaintiff. Courts must therefore be astute to prevent unfairness (Vernon 89) (Pulp Products) Ltd. v. United Pulp Containers Ltd., (1980) FSR 179 quoted in Brupat Ltd. v. Sandford Marine Products Ltd., (1983) RPC 61. The rigidity of Cyanamid was reduced by Lord Denning M.R. and Pennycuik V.C. (See Fellows v. Fisher, (1976) QB 122; Hubbard v. Pitt, (1975) 3 All ER 1, Dunford v. Johnston, 1978 FSR 143) and also in Australia (Firth v. Polyglas) (1977 RPC 213) and in South Africa (Beecham Group v. B.M. Group), 1972 RPT 220 (PDS Africa). Therefore in considering whether there is a triable issue, as per Cyanamid are, certain considerations concerning “prima facie” case are also to be taken into account, in intellectual property matters (Revlon v. Cripps & Lee) (1980 FSR 85); Mothercare v. Penguin Books, 1988 RPC 113; Mail Newspapers v Express Newspaper, 1987 FSR 90.”*

to contend that a poor Company as first appellant herein when compared with the respondent might be driven to insolvency if an order of injunction is refused.

In the case of *The Pilot Pen Co., (India) Private Limited*, Hon'ble High Court of Madras came to a conclusion on appreciation of facts of that case that the defendants therein had not infringed the patent.

In the case of *Bilcare Limited*, the plaintiff therein had alleged violation of patent by the defendants. On the facts of the said case, the Hon'ble High Court Delhi came to a conclusion that the plaintiff had failed to make out a *prima facie* case for continuation of interim injunction and has no bearing with the facts of this case.

14. Per contra, Sri Udaya Holla, learned Senior Counsel for the respondent/plaintiff made following submissions:-

- (i) plaintiff is a Company of International repute;
- (ii) Defendants No.2 to 4 are former employees of plaintiff. They were involved in the research and privy to confidential information;

- (iii) Defendants have not denied the emails sent by them. On the other hand, they have admitted to have sent those emails with untenable explanations;
- (iv) Whilst in service with the plaintiff, the defendants No.2 to 4 were actively involved with 1<sup>st</sup> defendant - Company. This is manifest by the use of email id provided by the 1<sup>st</sup> defendant;
- (v) The technical and commercial offer made by the defendants with regard to the product said to have manufactured by the defendant No.1 is in gross infringement of the Copyright of the plaintiff. In addition, defendants are also guilty of passing of confidential information;
- (vi) Though defendants have contended that 'STATCON' is a generic name, they have applied for a trade mark as 'PQC STATCON' to the Trade Mark Registry, Chennai on 5.8.2015;
- (vii) The grounds suggesting that the learned Trial Judge has not correctly compared the machines is untenable because it is a specific case of the plaintiff that the defendants are using the patent of plaintiff and manufacturing various products.



Plaintiff has produced brochure for both IPC 150 SCOM and IPC 150 AHF. The learned Judge has correctly compared them and granted an order of interim injunction. Hence, there is no legal infirmity with the impugned order,;

(viii) Argument with regard to harmonic filter is wholly untenable because harmonic filter is a part of the product of plaintiff.

15. During the course of the arguments, learned Senior Counsel adverted to various documents. He has placed reliance on several judgments. The relevant among them, which were stressed by the learned Senior Counsel are discussed in the later part of the judgment.

16. In sum and substance, the learned Senior Counsel for the plaintiff submitted that the learned Trial Judge has adverted to the pleadings on record and critically analyzed the contentions of the parties and come to a right conclusion that the plaintiff is entitled for an order of temporary injunction pending trial. With these submissions, he prayed for dismissal of these appeals.

17. I have given my careful consideration to the submissions made by learned Senior Counsel for both the parties and perused the material papers and the Judgments relied upon by the parties.

18. Based on the pleadings, the Trial Court framed the following points for it's considerations:-

*(1) Whether the plaintiff has made out a prima facie case for continuation of temporary injunction granted on 25.7.2015 on IA.3 & 4?*

*(2) Whether the plaintiff has made out a prima-facie case for grant of temporary injunction as prayed in IA.5 & 6?*

*(3) Whether the plaintiff has made out a ground to allow I.A.2?*

*(4) In whose favour balance of convenience lies?*

*(5) Whether the plaintiff will be put to irreparable loss and hardship if an order of temporary injunction is vacated?*

Answering point No.1 in the affirmative; points No.2 and 3 in the negative, the Trial Court has granted temporary injunction as prayed for in I.As.No.3 & 4.

19. Though elaborate arguments were addressed on behalf of the appellants adverting to very minute technical specifications of the machines and the veracity of the emails were questioned, the whole endeavour on behalf of the appellants was to drive home a point that the product manufactured and offered for sale by the defendants differs from the product manufactured by the plaintiff. This was sought to be established by adverting to various minute technical differences. On the other hand, the case of the respondent/plaintiff is that they hold a patent over the design and manufacture of their products; defendants No.2 to 4 were their employees; they have colluded with other defendants No.5 and 6 to float defendant No.1-company; whilst defendants No.2 to 4 were in employment with the plaintiff, they have illegally transferred confidential information.

20. Based on the pleadings, records and submissions, following points fall for consideration of this Court:

1. Whether the product manufactured by the defendants infringes the registration of patent obtained by the plaintiff?
2. Whether defendants No.2 to 4 have denied the allegation with regard to transfer of data via e-mails?
3. Whether defendants No.2 to 4 have *prima facie* established that they did not possess an e-mail I.D. provided by the first defendant whilst they were in service?
4. Whether plaintiffs have made out a *prima facie* case in their favour?
5. Whether the order passed by the Trial Court requires interference?

21. As per plaint averments, defendants No.2 to 4 were employees under the plaintiff. They tendered their respective resignations and their last dates of working with the plaintiff were 12.8.2014, 8.7.2014 and 5.8.2014, respectively. Defendant No.2 was

Assistant Vice President. The nature of duties entrusted to him involved design, manufacturing, sale, marketing strategy including local and global business strategy. The defendant No.3 was working as a Team Manager and defendant No.4 as a Senior Engineer. The relevant particulars with regard to dates of resignation, their designation and the last date of employment are given in the following tabular column extracted from the plaint.

Defendant No.	Date of Joining	Date of Resignation	Last Working day at the Plaintiff Company	Designation	Nature of Plaintiff intellectual property and Plaintiff Confidential Information accessible to the Defendant
2	January 02, 1995	May 14, 2014	August 12, 2014	Assistant Vice President	Design and manufacturing, Sales and Marketing strategy, client details including local and global business strategy
3	January 02, 2007	April 9, 2014	July 08, 2014	Team Manager	Design and manufacturing, Sales and Marketing strategy, client details.
4	December 20, 2010	May 7, 2014	August 5, 2014	Senior Engineer	Product knowledge, Sales and Marketing strategy, client details.

22. It is pertinent to note that the defendants have not traversed and replied the averments in paragraphs No.1 to 7 and the written statement starts with reply to paragraph No.8 onwards.

23. It is the specific contention of the plaintiff that defendant No.2 was using an E-mail account provided by the first defendant company (pannalal.biswas@inphase.in) even while he was in service with the plaintiff. Plaintiff has categorically contended in paragraph No.42(a) that defendant No.2 sent an E-mail using the said account on 6.7.2014 whereas his last date of working was 12.8.2014. It is also contended that he forwarded certain e-mail/s to his personal yahoo E-mail address. Another specific allegation in the plaint is that defendant No.3 on 3.7.2014 sent an E-mail using an account provided by first defendant Company (natesh.mayavel@inphase.in) to defendants No.2, 4 to 6 requesting for company's profile of first defendant. It is pertinent to note that the defendants in their common written statement have not denied that

defendant No.2 and 3 were using the E-mail I.Ds provided by 1<sup>st</sup> defendant-company. On the other hand, it is their contention that as on the date of accusation, defendants No.2 to 4 had already resigned and they were serving their notice period; their resignation was initiated months prior to the said event; that merely having an I.D. does not guarantee that the defendants were either working with or part of 1<sup>st</sup> defendant - company. It is also contended by them that it is possible to modify digital contents and therefore authenticity of communication is doubtful. However, they have not denied a vital fact that they possessed the e-mail I.Ds, provided by first defendant-company and they were actively using them. It is relevant to note that the domain namely *@inphase.in* belonged to the defendant company. The email ids namely, *pannalal.biswas@inphase.in* and *natesh.mayavel@inphase.in* were being used by 2<sup>nd</sup> and 3<sup>rd</sup> defendants while they were still serving with the plaintiff's Company. Therefore it would be reasonable to hold that defendants No. 2 and 3

were in association with 1<sup>st</sup> defendant-Company even while they were on the rolls of Plaintiff-Company.

24. Plaintiff-company has obtained registration of patent No.206766. Both the products manufactured by the plaintiff as well as the first defendant-company are used in power sector. It was strenuously contended on behalf of the appellants - defendants that there are several fine differences in technical specifications between the product manufactured by the plaintiff-company and the 1<sup>st</sup> defendant. The trial Court has examined in extenso and carefully considered respective contentions of the parties. Defendants' principal ground in these appeals is that the learned trial Judge has not correctly compared the specifications of the machines manufactured by the plaintiff and first defendant. In a case of this nature, at this stage what is required to be examined is whether the plaintiff has made out a *prima facie* case. The plaint averments and the replies in the written statement referred to hereinabove clearly point to the fact that



defendants No.2 to 4 who were ex-employees of plaintiff-company were in league with defendants No.5 and 6.

25. The next aspect for consideration would be whether the data/information was transferred. The answer to this question should be in the affirmative because according to the plaintiffs, a product of akin kind is offered by first defendant-company. Defendants have asserted that their product is different in many ways. It is settled that unessential features in an infringing article or process are of no account. In the case of *Raj Parkash v. Mangat Ram Chowdhry & others* reported in *ILR (1977) II Delhi 412*, cited by the learned senior Counsel for the respondent, it is held as follows:

*“25. The patented article or where there is a process then the process has to be compared with the infringing article or process to find out whether the patent has been infringed. This is the simplest way and indeed the only sure way to find out whether there is piracy. This is what was done in the hair-pin case, above-referred to, and is, indeed, always done. Unessential*

features in an infringing article or process are of no account. If the infringing goods are made with the same object in view which is attained by the patented article, then a minor variation does not mean that there is no piracy. A person is guilty of infringement if he makes what is in substance the equivalent of the patented article. Some trifling or unessential variation has to be ignored. There is a catena of authority in support of this view. We need not cite all those cases which were brought to our notice at the Bar. Suffice it to quote the words of Lord Denning, M. R. in Beecham Group Limited v. Bristol Laboratories Ltd. and another, 1967 (16) F.P.C. 406 (12) :-

*“The evidence here shows that in making hetacillin in the United States the defendants use a principal part of the processes which are protected here by the English patents. The importation and sale here is prima facie an infringement.*

*There is a further point. A person is guilty of infringement if he makes what is in substance the equivalent of the patented article. He cannot get out of it by some trifling or unessential variation..... On the evidence as it stands, there is ground for saying that hetacillin is*

*medically equivalent to ampicillin. As soon as it is put into the human body, it does, after an interval, by delayed action, have the same effect as ampicillin. In these circumstances, I think there is a prima facie case for saying there was an infringement. The process is so similar and the product so equivalent that it is in substance the same as ampicillin”.*

*(emphasis supplied)*

26. It was argued on behalf of the plaintiff that, there are bound to be modifications even in the machines manufactured by the plaintiff in view of continuous research and development. Adverting to the case of *Ravi Kamal Bali vs. Kala Tech & ors.* reported in (2008) 6 AIR Bom R(NOC 1103) 360, it was contended that only a patentee of main invention is entitled to improve or modify the main invention. The relevant portion reads as follows;

*“38. Sections 54 and 55 in terms establish the link between the main invention and the patent of addition. It posits that the patentee of the main invention and the patentee of the*

patent of addition, are the same. Section 54 permits the grant of a patent of addition only if the applicant thereof applies or has applied for a patent of the main invention in respect whereof the notification or improvement is claimed. It is obvious therefore that only the patentee of the main invention is entitled to improve or modify the main invention for otherwise it would permit anybody to benefit from it by exploiting the main invention, A stranger to the main invention cannot apply for a patent of addition in respect of any modification or improvement of the main invention.

39. A view to the contrary would lead to the most incongruous results. A view to the contrary would dilute if not obliterate the rights of a patentee in respect of a main invention entirely. For instance, if the patentee of the main invention and the patentee of the patent of addition are different, the validity of the patent of addition would continue only till the validity of the patent of the main invention. Even if the patent in respect of the main invention is revoked, the validity of the patent of addition can under the proviso to section 55, continue

*only for the remainder of the term for the patent of the main invention”.*

*(emphasis supplied)*

27. In the case of *Sirmour Remedies Private Limited & Anr. vs Kepler Healthcare Private Limited & Ors.* reported in 2014 SCC OnLine Cal 2703, it is held that an ex-servant would not make an improper use of an information and he could be restrained from doing so. The relevant portion of the said judgment wherein opinions of English Courts have been extracted reads as follows:

*“The plaintiff argues that the second defendant was their Sales Manger in Ahmedabad. He held a very responsible position. He knew their trade secrets and held their confidential information. He was aware of the plaintiff’s coinage of the eleven marks. He had misutilised the information for this gain and causing loss to his employers.*

*The case of Lamb v. Evans, a Court of Appeal decision and reported in 1893 (1) CH 218 cited by Mr. Kapur, learned Senior Counsel was a copyright case. A trade dictionary of*

advertisements was arranged under careful composed headings. The Court of Appeal declared that copyright existed in those headings. The next two cases cited by the same learned Counsel *Morison v. Moat* reported in 9 HARE [241] 492 and *Amber Size And Chemical Company, Limited v. Menzel* reported in 1913 (2) CH 239 are more important. *Morison v. Moat* related to a secret process of preparing a medicinal preparation. It appears that the medicinal preparation was the product of a secret compound of a person called Morison. It was held that Morison had a right to the trade secret not being divulged and could restrain anybody from doing so. Similar was the case of *Amber Size and Chemical Company, Limited v. Menzel* reported in 1913 (2) Ch 239, although this case concerned a secret process of manufacture. The principles laid down in this decision go far enough to say that whenever an information had been communicated to an ex-servant with the understanding expressed or implied that he would not make an improper use of it to the detriment of his master, he could be restrained from doing so. The following passage in the judgment of the said decision is very important:

*“In my view, after giving the authorities the best attention I can, the law stand thus:- The Court will restrain as ex-servant from publishing or divulging that which has been communicated to him in confidence or under a contract by him, express or implied, not to do so. Morison v. Moat (1), and generally from making an improper use of information obtained in the course of confidential employment: Truck & Sons V. Priester (2), and, further, from using to his late master’s detriment information and knowledge surreptitiously obtained from him during his, the servant’s, employment: Robb V. Green.(3)”.*

*In the case of Saltman Engineering Co. Ltd. v. Campbell Engineering Co. Ltd. reported in [1963] 3 ALL ER 413 (The citation is wrong. It is a much earlier case reported in 65 RPC 203), also cited by Mr. Kapur, Lord Greene sitting in the Court of Appeal said that an information to be confidential must have the necessary “quality of confidence about it”. It must have some originality. The Court said “what makes it confidential is the fact that the maker of the document has used his brain and thus produced a result which can only be produced by some body should goes through some process”. The*

Court referred to a formula, a plan, a sketch or something of that kind”.

Lord Greene added:

“If a defendant is proved to have used confidential information, directly or indirectly obtained from a plaintiff, without the consent, express or implied of the plaintiff, he will be guilty of an infringement of the plaintiff’s rights.”

The springboard concept was of Roskill J in *Cranleigh Precision Engineering Ltd. v. Bryant* reported in [1964] 3 ALL E.R. 289 at pages 301 and 302, relied on by Mr. Kapur. His lordship observed as follows:

“As I understand it, the essence of this branch of the law, whatever the origin of it may be, is that a person who has obtained information in confidence is not allowed to use it as a springboard for activities detrimental to the person who made the confidential communication, and springboard it remains even when all the features have been published or can be ascertained by actual inspection by any member of the public.” (emphasis supplied)

28. In more or less similar set of facts, the Hon’ble High Court of Delhi in the case of *John Richard Brady and*



*others v. Chemical Process Equipments P. Ltd. and another*, reported in 1987 SCC Online Del 236 has held as follows;

“34. Apart from the striking general similarity between the defendants’ Machine and the Drawings of the plaintiffs being obvious to the eye, though the defendants’ claim that there are some functional difference between their Machine and the FPU, the defendants had access to the Drawings of the plaintiffs as discussed above, and, the rapidity with which the defendants have produced the Machine lead to the inference that the Defendants have copied the Drawings of the plaintiffs. It is significant to point out that the defendants have not shown how in fact they had arrived at their Machine. In such circumstances, the inference is unescapable that the plaintiffs have established a prima facie case of copying to which the defendants have to answer. This prima facie view formed by me is supported by the principles laid down by the House of Lords in *L.B. (Plastics) Limited v. Swish Products Limited* 1979 RPC 551”.

29. The learned Senior Counsel for the plaintiff also contended that defendants No.2 to 4 had all vital

information in their possession and such information could be used as a springboard to manufacture identical machines though with minor modifications. In support of his contention, he placed reliance on paragraph 45 in the case of *Bombay Dyeing And Manufacturing Co. Ltd. v. Mehar Karan Singh* reported in 2010 (7) *Mh.L.J.*48 which reads as follows:

“45. Relying upon the decision in the case of *Cranleigh Precision Engineering Co. Ltd. vs. Bryant*, (1956) 3 *All England Report* 301 holding that person, who obtained information in confidence, is not allowed to use it as a “springboard” for activities detrimental to the persons who made the confidential communication, it was held that breach of confidential information depended upon the broad principle of equity that he who receives information in confidence shall not take unfair advantage of it.

Such common law doctrine would, therefore, apply even to the information which has been published or can be ascertained by the public. Such information cannot be used to the prejudice

*of the person who gave it without the consent of that person”.*

30. On a careful analysis of the law on the point, what follows is that an ex-employee may be enjoined from using the information in his possession and acting in a manner which can be detrimental to the interest of the plaintiff. A company which invests its time, money and manpower in research and development deserves protection against infringement and passing of. In the case on hand, the defendants have sought to defend the action on too fragile grounds, which can be hardly countenanced. Firstly, that e-mails are not authentic. Secondly, that there are differences in technical specifications vis-à-vis the product manufactured by the plaintiff and the first defendant. Thirdly, that the name of the product is generic. Fourthly, that a technical report prepared by one Dr.Vishwanathan Talasila relied upon by the plaintiff is vitiated.

31. The ground with regard to the authenticity of their e-mails can hardly come to the aid of appellants because the stand taken by the appellants No.2 and 3 is that at the material point of time, they had already tendered the resignation and they were under notice period. Thus, they have defended their act of possessing their e-mail ids connected to the domain of first defendant – Company.

32. The ground with regard to minute differences in technical specifications is untenable in view of various authoritative pronouncements discussed supra.

33. The ground with regard to the generic name of the product is *per se* contrary to appellants' conduct of applying for a patent in the name 'PQC STATCON'.

34. The ground impeaching the report prepared by Dr.Vishwanathan Talasila is equally fallible because no evidence is brought on record which may even remotely

suggests that the said report is biased for any extraneous consideration.

35. Before concluding, it is important to be reminded that a Court of appeal should be slow in interfering with the discretionary orders passed by the Trial Court, even if, a contrary view is possible by an appellate Court. The following two judgments were cited by Sri Udaya Holla on this point. The relevant portions of the judgment in the case of *Wander Ltd. and another v. Antox India P. Ltd.* reported in 1990 (Supp) SCC 727, reads as follows:

*“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of*

*interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles, Gajendragadkar, J. in *Printers (Mysore) (P.) Ltd. v. Pothan Joseph* said: (SCR p.721)*

*'... These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhonston* [1942] A.C. 130, "... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case".'*

*The appellate judgment does not seem to defer to this principle.”*

*(emphasis supplied)*

and in the case of *Skyline Education Institute (India) Private Limited v. S.L.Vaswani and another* reported in (2010)2 SCC 141, the relevant paragraphs No.21 and 22 are extracted hereunder:

**“21.** *The proposition of law laid down in Wander Ltd. v. Antox India (P) Ltd. was reiterated in N.R. Dongre v. Whirlpool Corpn, in which this Court considered the correctness of an order of temporary injunction passed by the learned Single Judge of the Delhi High Court in a suit filed by the respondents to restrain the defendants from manufacturing, selling, advertising or in any way using the trade mark “Whirlpool” or any other trade mark deceptively or confusingly similar to the trade mark “whirlpool” in respect of their goods. The claim of the respondent-plaintiff was based on prior user of the mark “Whirlpool”. After considering the rival pleadings and material placed before him, the learned Single Judge granted temporary injunction. The Division bench confirmed that order and dismissed the appeal*

*preferred by the appellant. This Court, declined to interfere with the discretion exercised by the learned Single Judge and Division bench of the High Court and held: (N.R.Dongre case, SCC p.727, para 18)*

*“18. Injunction is a relief in equity and is based on equitable principles. On the above concurrent findings, the weight of equity at this stage is in favour of the plaintiffs and against the defendants. It has also to be borne in mind that a mark in the form of a word which is not a derivative of the product, points to the source of the product. The mark/name ‘WHIRLPOOL’ is associated for long, much prior to the defendants’ application in 1986 with the Whirlpool Corporation, Plaintiff 1. In view of the prior user of the mark by the plaintiff 1 and its trans-border reputation extending to India, the trade mark ‘WHIRLPOOL’ gives an indication of the origin of the goods as emanating from or relating to the Whirlpool Corporation, Plaintiff 1. The High Court has recorded its satisfaction that use of the ‘WHIRLPOOL’ mark by the defendants indicates prima facie an intention to pass off the defendants’ washing machines as those of the plaintiffs or at least the likelihood of the*



*buyers being confused or misled into that belief.”*

*A somewhat similar view was expressed in Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.*

**22.** *The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.”*

36. In view of above discussions, the grounds urged on behalf of the appellants are untenable. Further, it is fairly well-settled that when the trial Court based on consideration of material on record comes to a conclusion,

as a rule, the same is ought not to be disturbed unless the same is *ex facie* perverse.

37. On a critical analysis of facts of this case coupled with law enunciated in various judgments cited on behalf of both parties, I am of the considered view that these appeals do not merit any consideration. Resultantly, they fail and are accordingly ***dismissed***.

No costs.

**Sd/-  
JUDGE**

cp\*