

\$~A-10

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

+ W.P.(C) 3582/2020

LAURUS LABS LIMITED

..... Petitioner

Through Mr.Parag P.Tripathi, Sr.Adv. with
Ms.Rajeshwari H., Adv.

versus

INTELLECTUAL PROPERTY APPELLANT BOARD AND ORS

..... Respondent

Through Mr. Pravin Anand, Ms. Archana
Shanker, Mr. Dhruv Anand, Mr. Devinder Singh
Rawat, and Ms. Uditia M. Patro for R-3

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

%

17.06.2020

This hearing is conducted through Video Conferencing.

1. This writ petition is filed by the petitioner seeking appropriate directions to quash/set aside the interim order dated 12.6.2020 passed by the IPAB.
2. Some of the relevant facts are that Indian Patent No.262968 was granted in favour of respondent No.3. The petitioner on 24.9.2015 filed post Grant Opposition. On 14.9.2017 the opposition board issued recommendations to maintain the said patent. Thereafter on 4.3.2020

Controller of Patents passed an order revoking the said patent in question. It is at this stage that respondent No.3 has filed an appeal against the said order of the Controller of Patents. By the impugned order the IPAB has stayed the order of the Controller revoking the patent.

3. There are other proceedings which have also gone on in this court. Respondent No.3 has filed a writ petition in this court being W.P.(C)12105/2019 which was disposed of on 20.11.2019. Respondent No.3 has also filed a suit for injunction against Natco Pharma Limited who is the licensee of the petitioner. The suit is pending adjudication and is now said to be adjourned sometime in August 2020. It has been pointed out that there are no interim orders in favour of respondent No.3 in the said order.

4. I have heard learned counsels for the parties.

5. Learned senior counsel for the petitioner has vehemently urged that the interim order dated 12.6.2020 is virtually a non-speaking order in the sense that it does not record the submissions of the petitioner and of course does not deal with the submissions of the petitioner. It merely reproduces the contentions raised by respondent No.3 and has recorded a finding of a prima facie case in favour of respondent No.3 without recording any reasons as to why a prima facie case is made out in favour of respondent No.3. He has stressed that this court in WP (C) 12105/2019 had on 20.11.2019 permitted the Controller to take into account the additional documents and evidence filed by the petitioner.

6. Learned counsel for respondent No.3 submits that he refutes the contentions of learned senior counsel for the petitioner. He states that the impugned order passed by the Controller is blatantly erroneous for reasons as submitted in the written submissions.

7. The impugned order of 12.6.2020 reads as follows:-

“1. Notice in the main appeal has already issued for 9.7.2020 for final hearing.

2.The interim prayer sought by the appellant is opposed by Mr Parag P Tripathi the learned senior counsel appearing on behalf of respondent no. 3 who has supported the impugned orders and stated that the respondent no 2 has complied with all directions of the order dated 20.11.2020 passed by the Hon’ble Delhi High Court in W.P(C) 12105/2019.

3.On the other hand Mr Pravin Anand, advocate appearing on behalf of appellant has made his submissions on few issues on merit involved in the matter. It is also stated by him that in case the interim orders are not passed, his clients suit for infringement of Patent being CS(COMM) 709/2019 filed by his client may lead to the dismissal on 16.6.2020. It is also submitted by him that respondent no 2 disregarded the order of the Hon’ble High Court wherein it was directed to ensure that the members of Opposition Board are present so that new documents and evidences are discussed in the presence of the Opposition Board.. The said documents/ Additional evidences were not sent mainly on the reasons as given in the impugned order that it will cause further delay of six months and there is no procedure. It is also argued by him that all other issues including novelty has been decided in favour of the Appellant except the issue of obviousness which is a mix question of law and fact as per settled law. It is argued by him that even the said point of obviousness is decided against the settled law and without application of mind.

4.As per material available on record, we are of the view that the appellant has made a strong prima facie case in its favour. The balance of convenience is also in favour of the appellant and if interim order is not passed, the appellant will suffer irreparable loss and injury.

5. Consequently, till the next the order is modified or vacated the operation of the impugned order dated 4.3.2020 shall remain stayed.

6. Copy of order be communicated to both parties by Email also.”

8. IPAB has given a short date. The matter is coming up for hearing on 9.7.2020.

9. Keeping in view the facts and circumstances of the case it would be appropriate that the petitioner, if it so desires, can move an appropriate application for vacation of the interim order before IPAB where all the submissions urged before this court may be raised. In case such an application is filed IPAB is requested to deal with the same as per law as expeditiously as possible.

10. It is also directed that on the next date of hearing before IPAB, namely, on 9.7.2020 respondent No.3 shall not seek any adjournment.

11. Nothing further survives in this petition. Petition is disposed of. All pending applications, if any, also stand disposed of.

12. This order is passed without prejudice to the rights and contentions of the parties keeping all issues open.

JAYANT NATH, J

JUNE 17, 2020

n