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Delhi High Court Clarifies Maintainability Of Revocation Petition Post Patent Expiry And Concurrent Infringement Suit

- By Priti More

C.O.(COMM.IPD-PAT) 38/2022
Decided on: January 15, 2025
MACLEODS PHARMACEUTICALS LTD (Appellant) vs. The Assistant Controller of Patents & Designs (Respondent)

INTRODUCTION

In a recent judgment by the Delhi High Court in the case of *MACLEODS PHARMACEUTICALS LTD. (APPELLANT) VS. THE ASSISTANT CONTROLLER OF PATENTS & DESIGNS (RESPONDENT)*, the Court has examined key issues concerning the fate of a revocation petition filed under Section 64 of the Indian Patents Act, 1970 under certain circumstances. The Court considered the scenario where the petitioner, in an infringement suit, has already submitted written arguments invoking a defense of patent invalidity under Section 107 of the Act. Additionally, the judgment addressed how a pending or newly filed revocation petition is treated upon the expiration of the patent in question.

BACKGROUND:

Macleods Pharmaceuticals Ltd., the petitioner, is engaged in the manufacture and marketing of various pharmaceutical products, including anti-diabetic drugs. The respondent no. 2,*Boehringer Ingelheim Pharma GmbH & Co. KG,* is a German company involved in the development, production, and global distribution of pharmaceuticals, including in India.

The dispute revolves around **LINAGLIPTIN**, an anti-diabetic drug for which the respondent no. 2 holds Indian Patent IN 2433013. The patent was granted on October 5, 2010, with a priority date of August 21, 2023. Seeking to revoke this patent, the petitioner filed a revocation petition under Section 64(1) of the Patents Act, 1970, before the Delhi High Court on February 17, 2022. This filing came just days before the petitioner's planned commercial launch of its generic Linagliptin product on February 22, 2022.

In response, respondent no. 2 initiated an infringement suit against the petitioner on February 19, 2022, before the High Court of Himachal Pradesh, alleging patent infringement. The patent in question expired on August 18, 2023.

Meanwhile, the respondent no. 2 filed several applications. The first sought to dismiss the revocation petition, citing a 12-year delay since the patent was granted. The second requested the transfer of the revocation petition to the High Court of Himachal Pradesh for consolidation with the Himachal Suit. The third argued that the revocation petition was now moot since the patent expired in 2023 and should be dismissed. Meanwhile, the petitioner filed a transfer petition before the Supreme Court, seeking to move the Himachal Suit to the Delhi High Court, which is still pending.

SUBMISSIONS ON BEHALF OF *BOEHRINGER INGELHEIM PHARMA GMBH & CO. KG*

The learned counsel had provided the following contentions on behalf of respondent no. 2:

- **Risk of Conflicting Judgments:**
  It has been argued that as Macleods has already raised the defense of patent invalidity in the Himachal Pradesh High Court, hence allowing a separate revocation petition could lead to different rulings from two High Courts.

- **Invalidity Finding is Binding:**
  A finding of patent invalidity, whether in an infringement suit, counter-claim, or revocation petition, is binding on the patentee and renders the patent unenforceable. Such a ruling applies universally (in rem) and conclusively determines the rights and obligations related to the patent.

- **Infringement Suit is More Comprehensive:**
  The infringement case includes detailed evidence from both parties, therefore deciding the revocation petition separately would be unnecessary and redundant.

- **Patent Expired – No 'Person Interested':**
  Since the patent has expired, Macleods is no longer "person interested" under Section 2(1)(t) of the Patents Act. The respondent cited a previous judgment *(Dr. Reddy's Laboratories Ltd. vs. Controller of Patents, 2022)* to support this argument.

SUBMISSIONS ON BEHALF OF *MACLEODS PHARMACEUTICALS LTD.:*

In response to respondent no.2's contention, the counsel of the petitioner has submitted the following observations:

- **Distinct Jurisdictional Authority:**
  Revocation of a patent under Section 64 of the Patents Act can only be adjudicated by a High Court. In contrast, a defense of invalidity under Section 107 can be addressed by a District Court in an infringement suit. Therefore, the two proceedings are distinct and not duplicative.

- **Distinct nature of Patent Invalidity Defense and Revocation Petition** :
  The defense under Section 107 in an infringement suit differs from a revocation petition under Section 64 of the Patents Act. While Section 107 allows a defendant to challenge a patent's validity, it does not grant the right to seek revocation. The reliefs in the revocation petition are distinct from those in the infringement suit, with reliance placed on Section 151 of the Patents Act.

- **Enforceability of Valid Patent Claims Despite Partial Invalidity:**
  In a patent infringement suit, if certain claims are declared invalid, the remaining valid claims can still be enforced against third parties under Section 114 of the Patents Act.

COURT'S ANALYSIS:

The Court has clarified the two main questions regarding the revocation petition.

1. Maintainability of the revocation petition if the defense of invalidity is taken in infringement suit:
The Court held that a revocation petition under Section 64 of the Patents Act is maintainable even if the petitioner has already raised a defense of invalidity under Section 107 in an infringement suit. These two proceedings are distinct and can proceed simultaneously without rendering either infructuous. The Court reasoned that:

Revocation Petition and Counter-Claim Options:
A revocation petition can be filed independently or as a counter-claim in a patent infringement suit. Only the High Court has the authority to hear a revocation petition, while a District Court can hear infringement suits under Section 104 of the Patents Act. If a counter-claim for revocation is filed in an infringement suit, the case must be transferred to the High Court as per the proviso to Section 104.

Effect of Patent Invalidity Findings:
A declaration of patent invalidity does not automatically remove the patent from the Register of Patents. To remove the patent, the defendant/petitioner must take further steps under Section 71(1) of the Patents Act. In contrast, once a revocation petition is successful, the patent is completely removed from the Register as if it never existed.

Amendment of Patent Claims:
Under Section 58(1) of the Patents Act, if a patent is found invalid in a revocation proceeding, the High Court may allow the patentee to amend the complete specification instead of revoking the patent. However, if invalidity is raised as a defense under Section 107, the Court cannot order amendments to the patent claims.

Impact of Revocation vs. Infringement Suit:
A successful revocation petition under Section 64 has an *"in rem"* effect, meaning the decision applies universally to all parties. On the other hand, an invalidity ruling in an infringement suit is *"in persona,"* meaning it only affects the parties involved in that specific case. An invalidity ruling does not automatically prevent the patentee from enforcing the patent against others.

Petitioner's Right to Choose Legal Recourse:
A petitioner has the right to choose whether to file a stand-alone revocation petition under Section 64 or a counter-claim in an infringement suit. The Patents Act imposes no restriction on this choice, allowing independent recourse under Section 64.

Court's Conclusion:
In this case, Macleods filed the revocation petition before the infringement suit was initiated. The fact that Macleods later raised a defense of invalidity in the infringement suit does not invalidate its right to file a revocation petition. Regarding concerns about conflicting judgments from different High Courts, the Court noted that Macleods' transfer petition was under consideration by the Supreme Court.

The Court concluded that the revocation petition was maintainable and could not be dismissed solely due to the pending infringement suit.

2. Sustainability of revocation petition after expiration of patent in question:

The second important issue to be addressed by the Court was *"whether a revocation petition can be filed or sustained (if already filed) after the expiry of the term of the patent."* The Court determined that the expiration of a patent does not nullify a pending revocation petition with the following observations:

- Under Section 64 of the Patents Act, a patent can be revoked by a petition filed by either: (i) A "person interested" or (ii) The Central Government.

- Section 2(1)(t) of the Patents Act defines a "person interested." A Co-ordinate Bench of the Delhi High Court in *Dr. Reddy's Laboratories Ltd.* (Supra) interpreted this definition.

- The petitioner is engaged in the manufacture and sale of the patented product and is a defendant in the infringement suit. Therefore, the petitioner qualifies as a "person interested" and is entitled to file the revocation petition.

- Respondent No. 2 argued that a revocation petition must be filed during the patent's term. However, in *Dr. Reddy's Laboratories Ltd.* (Supra), the Court held that Section 64 does not prescribe any time limit for filing revocation petitions. The mention of filing during the patent term was an *obiter dictum* and not a binding precedent.

- The infringement suit filed by respondent No. 2 seeks damages for alleged infringement during the patent's term. The expiry of the patent does not render the suit infructuous, as claims for damages still exist. Similarly, a revocation petition remains valid even after the patent has expired.

- The infringement suit in Himachal Pradesh is still active despite the patent's expiry. If the revocation petition succeeds, the patent will be revoked, leading to the dismissal of the infringement suit. Therefore, the petitioner has a valid cause of action to pursue the revocation petition even after the patent's expiration.

CONCLUSION:

Perusing through all the above matters, the Hon'ble Delhi High Court upheld the maintainability of the revocation petition, ruling that it remains valid despite the petitioner's defense in an infringement suit or the patent's expiry. The Court affirmed that both proceedings serve distinct purposes and that the petitioner, as a "person interested," retains the right to challenge the patent's validity.

AIPPI IN ZAGREB: A SHORT YET IMPACTFUL GATHERING OF GLOBAL IP EXPERTS

AIPPI successfully held its 3rd Mid-Term Meeting in Zagreb, Croatia, on February 20-21, 2025, bringing together over 300 attendees for an engaging and insightful event. Our Managing Partner – Divyendu Verma, attended the meeting after completing his INTA Design Reform discussions in Brussels and his official meetings in Düsseldorf and Munich. The gathering was short but memorable, starting with a pre-meeting reception hosted by the AIPPI-Croatia National Group. The evening featured delicious Croatian food, drinks, and amazing music, setting the perfect tone for the discussions ahead.

The meeting opened with the Standing Committee Summit, where committee chairs provided annual updates and highlighted special initiatives. Among all the committees, the Design Committee stood out for its phenomenal contributions to the recently concluded Design Law Treaty (DLT) in Riyadh (November 2024). Special recognition was given to the Chair of the Design Committee, Christopher Carani (Chris), for his leadership. We are also proud to acknowledge that Mr. Verma played an instrumental role in the DLT negotiations, a contribution we have previously reported on multiple occasions. Later, the Standing Committee on Information Technology and the Internet held an informal session, attended by Mr. Verma, along with Stefan, Kiyoshi, Simona, and Mical. This session reviewed the committee's achievements and outlined future projects in the pipeline. AIPPI provided a standing lunch featuring Croatian delicacies, offering attendees a chance to network and discuss ongoing initiatives. The day continued with the Design Standing Committee meeting, where Mr. Verma actively participated. The evening concluded with a Young AIPPI Members Committee party, providing a relaxed and enjoyable setting for members to connect.

The second day began with an important panel discussion on AI & Copyright, followed by another standing lunch. In the evening, the AIPPI Bureau hosted a reception, where Bureau members themselves took charge of the bar, serving attendees. The night as well as the Mid-Term Meeting concluded with the highly anticipated AIPPI Soirée, leaving participants with lasting memories.

The post-meeting excursion took attendees on a walking tour of Zagreb, exploring the city's rich history and culture. The event concluded with a fantastic lunch in downtown Zagreb, offering the perfect farewell to an incredible gathering. As we departed from Zagreb, we promised to reunite at the AIPPI Annual Meeting in Yokohama in September 2025.

IP SNIPPETS:

PATENT CASES:

KONINKLIJKE PHILIPS N.V. (Plaintiff)vs. MAJ (RETD) SUKESH BEHL & ANR AND OTHERS (Defendants)

CASE NO.: CS(COMM) 423/2016 & I.As. 18701/2014, 20810/2014, 3550/2021

KONINKLIJKE PHILIPS N.V. (Plaintiff) vs. G.S KOHLI & ORS (Defendants)

CASE NO.: CS(COMM) 499/2018 & I.As. 3258/2017, 3509/2021

KONINKLIJKE PHILIPS N.V. (Plaintiff) vs. SURINDER WADHWA & ORS (Defendants)

CASE NO.: CS(COMM) 519/2018 & I.As. 10541/2012, 16494/2018,3549/2021
DECIDED ON: 20th February 2025

The present suit has been filed by the plaintiff seeking permanent injunction prohibiting the defendants from infringing the plaintiff's patent. The plaintiff alleged that the defendants have been engaged in large scale DVD replication using the plaintiff's patented technology without a license. The plaintiff states that the defendants directly involved the plaintiff's patented EFM+ encoding, deliberately infringing the plaintiff's patent. The defendants acknowledge replicating DVDs but denied infringement of the plaintiff's patent, claiming that the steps involved in the replication process are different from as disclosed in plaintiff's patent. Further, the defendants challenged the validity of the plaintiff patent.

The Hon'ble Delhi High Court examined the procedural aspects of the plaintiff's patent and accepted the validity of the patent. The Hon'ble Court ruled that the defendant was infringing the plaintiff's patented EMF+ modulation technology and granted a permanent injunction restraining the defendant from further infringing the plaintiff's patent. The Hon'ble Court ordered the defendant to pay damages for past infringements and directed the respondent to bear the legal cost incurred by the plaintiff.

F HOFFMANN-LA ROCHE LTD & OTHERS (Plaintiffs) vs. DRUGS CONTROLLER GENERAL OF INDIA (DCGI) & OTHERS (Defendants)

CASE NO.: I.A. 5639/2022 In CS(COMM) 540/2016

ROCHE PRODUCTS(INDIA) PRIVATE LIMITED AND OTHERS (Plaintiffs) vs. ZYDUS LIFESCIENCES LIMITED AND OTHERS (Defendants)

CASE NO.: I.A. 2192/2022 In CS(COMM)1119/2016
DECIDED ON: 18th February 2025

In the present suit, the plaintiff seeks relief of permanent injunction restraining the defendant 3 (Hetero Drugs Limited) and defendant 1 (Cadila Healthcare Limited) from launching, selling, marketing and/or distributing any purported bio-similar version of the plaintiffs' approved drug *'bevacizumab'* and *'trastuzumab'* and also raised concern regarding the invalid approval granted by the DCGI to defendant 1 and 3.

The plaintiffs argued that the defendants cannot claim protection of the International Non-Proprietary Name (INN) due to lack of bio-similarity between the defendants' drugs and the plaintiffs' drugs. The plaintiff alleged that the approval granted by DGCI is invalid as it has been obtained by suppressing and distorting material facts. The plaintiff further argued that the defendants have failed to produce application forms and the test results of the defendant's drugs at every stage. The defendant counter argued that the defendant's drug is approved to be bio-similar by the DCGI according to the Bio-similar Guidelines. The defendants also stated that the plaintiffs' patents have expired and is now an INN, therefore plaintiffs cannot claim monopoly over the same.

The Hon'ble Delhi High Court observed the following matter and stated that *"I am unable to accept the submissions of the defendants that the aforesaid discovery of documents is in the nature of roving and fishing enquiry to obtain sensitive and confidential information".* The Hon'ble Court directed to form a confidentiality club in both the suits who will be bounded by the protocol as mentioned in the Rules. The Hon'ble Court concluded that the present observation is only limited to deciding the present applications and have no contribution to the final outcome of the suit.

MR ABHISHEK SHARMA & ANR. (Appellant)vs. ASSISTANT CONTROLLER OF PATENTS AND DESIGNS (Respondent)

CASE NO.: C.A.(COMM.IPD-PAT) 4/2025, I.A. 3780/2025 & I.A. 3781/2025
DECIDED ON: 13th February 2025

The appellant has filed an appeal against the respondent for rejecting the appellant's patent application under Section 2(1)(j) of the Patents Act. The appellant has filed an appeal along with the condonation of delay of 701 days as the appellant was following up with the respondent for re-examining the appellant's patent application. The appellant submits that the patent application has been granted in Germany.

The Hon'ble Delhi High Court observed that the appellant has not filed or submitted any details regarding the patent application that has been granted in Germany. The Hon'ble Court stated that the respondent has correctly observed and passed a well-reasoned order that the present invention fails to solve any technical problem and therefore cannot qualify as an invention under Section 2(1)(j) of the Patents Act. The Hon'ble Court concluded by dismissing the present appeal on the ground of delay as well as on the merits of the appellant's patent application.

JUPENG BIO (HK) LIMITED (Appellant) vs. THE CONTROLLER OF PATENTS AND DESIGNS (Respondent)

CASE NO.: CMA(PT)/9/2023
DECIDED ON: 4th February 2025

The appellant has filed an appeal against the respondent for rejecting the appellant's patent application on the grounds of lack of novelty, non-patentability under section 3(d) of the patent act, and lack of inventive step. The appellant contended that the impugned order passed by the respondent is completely unreasoned and cannot be sustained. The appellant further argued that in the appellant's patent application the process generates yield at least 10 gram ethanol /(L-day) on the first day unlike in the cited prior art D7. The respondent counter argued the appellant's patent application lacks novelty in view of the cited prior art D7.

The Hon'ble Madras High Court observed that the respondent failed to provide any reason for how the appellant's patent application falls within the scope of section 3(d) of the Patent Act, as section 3(d) has multiple limbs. The Court has also noted that the respondent has failed to consider and record findings on the contentions of the appellant. The Hon'ble Court concluded by directing reconsideration of the matter and providing a reasonable opportunity to the appellant.

GILEAD SCIENCES INC. (Petitioner) vs. UNION OF INDIA, AND OTHERS (Respondents)

CASE NO.: W.P. No.7449 of 2022
DECIDED ON: 19th December 2024

In the present case a writ petition has been filed by the petitioner challenging the impugned hearing notice filed by the 4th respondent (Low Cost Standard Therepeutics) in the post grant opposition. The petitioner argued that the impugned hearing notice violated statutory provisions of the Patents Act, 1970 and its Rules. The petitioner also argued that they did not even get an opportunity to produce evidence. The 4th respondent (Low Cost Standard Therepeutics) does not object to the prayer sought for the writ petition and suggest to send the matter back to the learned controller of patent to decide on petitioner's patent application by filing the additional documents along with the expert affidavit.

The Hon'ble Madras High Court analyzed that since no prejudice would be caused to any party, the Hon'ble Court quashed the impugned hearing notice and opposition board's recommendation. The Hon'ble Court ordered the petitioner and the 4th respondent (Low Cost Standard Therepeutics) to produce evidence in support of their respective contentions before the 3rd respondent (The Deputy Controller of Patents & Designs). The 2nd respondent (The Controller of Patents & Designs) and 3rd respondent (The Deputy Controller of Patents & Designs) were directed to pass final orders in the post grant opposition filed by the 4th respondent (Low Cost Standard Therepeutics). The Hon'ble Court further directed that the respondents shall obtain fresh recommendations from the respondents opposition Board constituted by the Patent office.

TRADEMARK CASES

HAVELLS INDIA LIMITED (Plaintiff) vs. CAB-RIO INDUSTRIES & ORS. (Defendants)

CASE NO.: CS(COMM) 995/2024 & I.A. 44614/2024
DECIDED ON: 17th February 2025

The present suit has been filed by the plaintiff seeking relief of interim injunction restraining the defendants from infringing and passing off the trademark of the plaintiff.

The plaintiff are the registered proprietor of the mark **"REO"** since 2012 which was also declared well-known by Delhi HC. Whereas the defendants are engaged in the business of manufacturing and selling identical products as that of the plaintiff viz. electrical cables/wires who are also registered proprietors of the impugned mark **"CAB-RIO"** since 2017.

The Hon'ble Delhi High Court held that, the prominent part of the defendants impugned mark **"CAB-RIO"** is **"RIO"** which is phonetically and structurally very close to plaintiff's mark **"REO".** The Hon'ble Court also found that one of the defendants' marks " CAB-LINE Unlimited Power... " is also very similar to plaintiff's mark " Life Line " .

Hence, the adoption of the impugned mark/logo by the defendants is not *bonafide* and it appears the same has been adopted to ride on the goodwill and reputation of the plaintiff. Therefore, the Hon'ble Delhi High Court granted the interim injunction in the favour of the plaintiff against the defendants, as the plaintiff were successful in establishing a *prima facie* case of infringement, passing off and balance of convenience also lied in their favour.

TATA POWER SOLAR SYSTEMS LIMITED & ANR. (Plaintiffs) vs. WWW.TATAPOWERSOLARDEALERSHIP.CO.IN & ORS. (Defendants)

CASE NO.: CS(COMM) 419/2024, I.A. 29729/2024, I.A. 35874/2024 & I.A. 41465/2024
DECIDED ON: 13th February 2025

The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the trademark of the plaintiffs, passing off their goods and services as that of the plaintiffs, along with other ancillary reliefs.

The plaintiffs have been using **'TATA'** and **'TATA POWER SOLAR'** formative trademarks since February 2020. The plaintiff no.2 is the registered proprietor of the trademark **'TATA POWER SOLAR'** and its formative marks under different classes in India whereas Defendants 1 to 18 are registrants of imposter domain names of **TATA** formative marks.

The Hon'ble Delhi High Court held that the defendants have slavishly copied the plaintiffs' registered and well-known trademark **'TATA'** and **'TATA POWER SOLAR'** formative marks and the products of the said defendants bearing the impugned marks are being used for identical services, i.e. solar energy solutions. Hence, a decree of permanent injunction was passed in favour of the plaintiffs as they were successful in establishing a clear case of infringement and passing off.

SVAMAAN FINANCIAL SERVICES PRIVATE LIMITED (Plaintiff) vs. SAMMAAN CAPITAL LIMITED & ORS (Defendants)

CASE NO.: I.A. 41270/2024, I.A. 43249/2024 and CRL. M.A. 32198/2024 IN CS(COMM) 871/2024
DECIDED ON: 10th February 2025

The present suit has been filed by the Plaintiff seeking permanent injunction restraining the defendants and its representatives from use of deceptively similar mark(s) as of the Plaintiff's registered Trade mark **"SVAMAAN".**

The plaintiff has been the registered proprietor of the **SVAMAAN** marks since 2019. Defendant no.1 has also applied for registration of the **SAMMAAN** marks with respect to identical services. The defendants were previously running their business under the name **"INDIABULLS"** and only recently in February 2024 applied for a change in their business name from **"INDIABULLS"** to **"SAMMAAN".**

The Hon'ble Delhi High Court held that the impugned mark **"SAMMAAN"** of defendants is deceptively similar to the Plaintiff's mark **"SVAMAAN"** as the only difference between them is deleted letter **"V"** and an added letter **"M"** in Defendants mark. There is a likelihood of confusion, also both the marks are based on similar semantic theme i.e., 'respect' as **"SAMMAAN"** means respect whereas **"SVAMAAN"** means "self-respect", hence plaintiff being the prior adopter the of the mark **"SVAMAAN",** was granted injunctive relief against the defendants.

SIR RATAN TATA TRUST & ANR. (Plaintiffs) vs. DR. RAJAT SHRIVASTAVA & ORS. (Defendants)

CASE NO.: CS(COMM) 104/2025 & I.A. NOS. 3238/2025, 3239/2025, 3240/2025, 3241/2025 & 3242/2025
DECIDED ON: 7th February 2025

The present suit has been filed by the Plaintiffs restraining the defendants owing to their unauthorized use of the Plaintiff's registered Trade mark '**TATA**' and '**TATA TRUSTS**', Plaintiff's copyright in the logo" " and the well-known personal name of late Ratan Tata and his photograph"

"The Plaintiff's sometime in December 2024 found out that the defendants were unauthorizedly using the well-known personal name **RATAN TATA** to host a misleading and unauthorized event by the name of "THE **RATAN TATA NATIONAL ICON AWARD** 2024" at the Maharashtra Sadan, New Delhi on 10th December 2024 for which they were charging Rs.3000 from Indian nationals and 100**USD** from foreign nationals for membership. Despite several notices and putting several comments on Defendants social media pages, defendants went on to use the above said well-known name of **RATAN TATA.**

The Hon'ble Delhi High Court held that this is a clear case of fraud and misusing the well-known name and trade mark(s) of Plaintiff's to defraud the public into paying them nomination fee. Since, the counsels for Plaintiff's gave up their prayer for costs and damages, the defendants were directed to file an affidavit with respect to their undertaking that they shall not use the mark **TATA or TATA TRUST** unauthorizedly, or deal with the marks of the plaintiffs, including, the name and photograph of late Mr. Ratan Tata in any manner whatsoever.

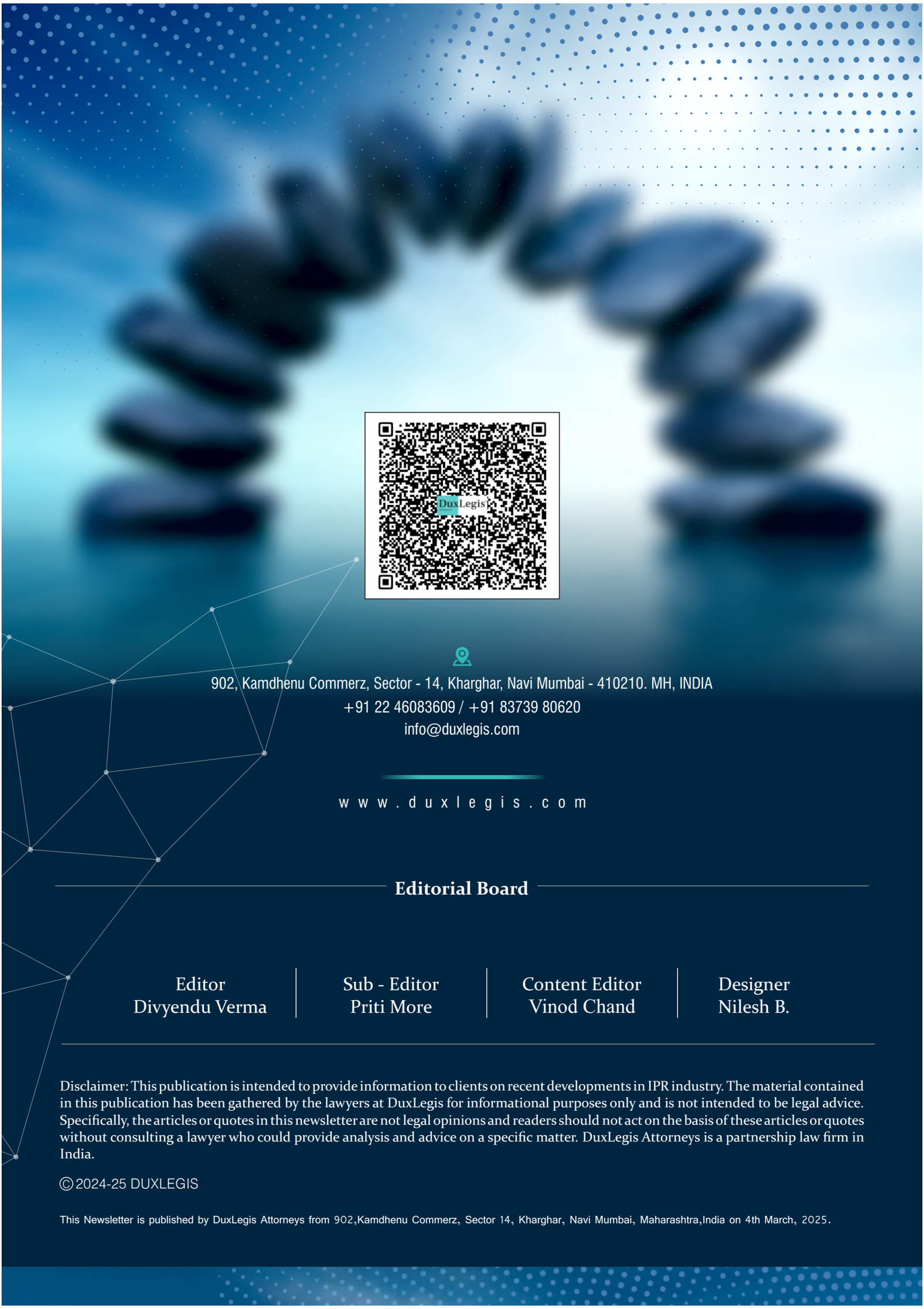
APEX LABORATORIES PVT. LTD. (Plaintiff) vs. MACLEODS PHARMACEUTICALS LIMITED (Defendant)

CASE NO.: C.S (Comm. Div.) No.232 of 2020
DECIDED ON: 25th January 2025

The present case is filed by plaintiff seeking a permanent injunction against defendant from infringing its registered trademark '**BILTEN**' or any other trademark deceptively similar to the plaintiff's registered trademark.

The plaintiff holds registration of mark '**BILTEN**' which was adopted in June 2019 and applied for registration on 25th July 2019. **Bilten** contains "**Bilastine**" as its main ingredient, which is an antihistamine. Whereas the defendant asserts that they adopted the impugned trademark "**BELATIN**" in May 2019 and applied for registration on 22nd June 2019 which is still pending registration.

The Hon'ble Madras High Court held that plaintiff having placed the registration certificate before Hon'ble Court has to be considered as the prior adopter, as defendant didn't start the commercial use of the impugned mark up until February 2020. The Hon'ble Court further stated that given the common origin of both the trade marks from the API, there is a deceptive similarity. On defendants' defense of honest and concurrent use, the Hon'ble Court stated that defense of honest and concurrent use is not available to a defendant in an action for infringement. Hence, granting injunction to the plaintiff.



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Editorial Board

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