# Imperial Chemical Industries Ltd. vs Controller General Of Patents, Designs ... on 4 July, 1977

## Equivalent citations: AIR1978CAL77, AIR 1978 CALCUTTA 77

## Author: Sabyasachi Mukharji

## Bench: Sabyasachi Mukharji

JUDGMENT

Sabyasachi Mukharji, J.

1. This is an appeal under Section 16 of the Patents Act, 1970. This appeal is out of an order passed on 7th Jan. 1977 under Section 88(3) of the Patents Act, 1970. In order to appreciate the contentions urged in this appeal, it is necessary to refer to certain facts. Patent No. 77950 was granted to the appellant Imperial Chemical Industries Ltd. in respect of an invention of a catalyst which, if used, in the steam reforming of hydrocarbons achieved results which were not, according to the appellant, possible before the invention. The said invention, as the patent certificate stated, related to the catalyst suitable for use in hydrocarbons steam reforming process. In respect of the said patent, the appellant had claimed:

> 1. A catalyst composition for use in steam reforming of hydrocarbons in the form of discrete particles comprising between 3.0% and 80% by weight of nickel calculated as nickel oxide and from 97% to 20% by weight of refractory oxide material calculated as oxide on the sum of the weights of these components in the composition after calcination at 900 C, and a potassium compound present as modified in an amount calculated as potassium oxide of at least 0.5% of the sum of the weights of the other materials, calculated as aforesaid, or equivalent weight of other alkali or alkaline earth metals."
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> 2. Claims 2 to 16 related to claims for catalysts comprised of different contents of nickel and other materials, which need not be set out in detail for the present purpose, claims 17 and 18 were as follows:--
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> "17. Catalyst for steam reforming of hydrocarbons substantially as described with reference to Examples 1, 2 and (ii).
>
> 18. Catalyst as claimed in any Claims 1 to 12 in which the modifier is an alkali metal or alkaline earth and metal compound which is readily soluble in water and is applied to the nickel and refractory oxide material catalyst components by impregnation."

3. The said patent contained several examples indicatory of the operations of the catalyst. Claims 19 to 24 according to the appellant dealt with the methods of producing the catalyst as indicated in Claims 1 to 19 above. These were as follows:--

> "19. Method of preparing e steam reforming catalyst according to any of Claims 1 to 18 which comprise precipitating a nickel compound which readily yields the oxide on heating by mixing an aqueous solution of a nickel compound with the solution of a carbon or bicarbonate, adjusting the PH of the mother liquor to slightly alkaline, mixing with the said precipitate refractory oxide materials, preferably as an aqueous suspension filtering of mixture optionally diluted with more water, washing the filter substantially free from alkali, drying ingiting at about 400 C, tailing the product, mixing it with about one third of its weight of aluminous cement, pelleting and crushing the pellets to small grains, mixing the grains with upto 5% by the weight of graphite, pelleting, heating in a moist atmosphere upto 200 C, soaking, in water to set the cement drying, immersing in an aqueous solution of an alkali metal hydroxide and drying.
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> 20. Process as claimed in Claim 19 in which the modifier is an alkaline earth metal compound which is substantially insoluble or only slightly soluble in water and is applied to the catalyst composition being mixed with a wet mud or filter cake of the nickel and refractory, oxide material components.
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> 21. Process as claimed in Claim 19 in which subsequently to the step of milling the product the procedure is as follows: the milled product is mixed with about one third of its weight of aluminous cement and then with an amount of water, somewhat less than the amount of the aluminous cement, the mixture is pelleted, the pellets are sprayed with water and allowed, to harden, the hardened pellets are treated with aqueous alkali, and are thereafter dried.
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> 22. Process for the production of a steam reforming catalyst substantially as described in Example 1.
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> 23. Process for the production of ft steam reforming catalyst substantially as described in Example 2.
>
> 24. Process for the production of a steam reforming catalyst substantially as described in Example 4 (ii)."

4. Claims 25 to 39 according to the appellant dealt with the processes of using the catalyst. It is not necessary for the present purpose to set out the said claims in detail.

5. On 3rd May, 1975, the appellant received a letter from the Managing Director of Catalysts & Chemicals India (West Asia) Limited, being the second respondent herein, seeking from the appellant an agreement to enable the second respondent to undertake the manufacture in India

Naptha reforming catalyst covered by the said patent. On 29th March, 1976, an application was filed on behalf of the second respondent under Section 88(2) of the Patents Act, 1970 for settlement of the terms of licence under the aforesaid patent. On 30th March, 1976, the respondent No. 2 filed another application under Section 88(4) of the said Act for terms of interim licence. On 19th April, 1976 the appellant's patent attorneys received two notices in respect of said two applications. By the said notices, the appellant was called upon to file a statement containing the terms of the licence and settlement of interim terms. Interim reply was filed by and on behalf of the appellant on 4th May, 1976 and by way of abundant caution an application was also made for extension of time. The extension of time was, however, disallowed on 14th May, 1976 by the Controller General of Patents, Designs & Trade Mark. The application filed under Section 88(4) was heard by the Controller General of Patents, Designs & Trade Mark. On 28th May, 1976 the appellant's attorneys received an order from the said Controller General, being the first respondent herein, directing the appellant to file copies of the documents specified therein with a statement verified by an affidavit. On, 4th June, 1976 an order was made by the respondent No. 1 directing that the respondent No. 2 might use and work the invention, viz. the process of manufacturing the catalyst composition comprised in Claims 19 to 24 on certain terms and conditions. On 14th June, 1976 the appellant asked that under Rule 114 of the Patents Rules, 1972 read with Section 88(2) of the Patents Act, 1970 the appellant be given a hearing before the directions contained in the order dated 28th May, 1976 were given effect to. On 18th June, 1976 the appellant moved an application under Article 226 of the Constitution on which a rule nisi was issued and interim order was passed. The said matter was marked as Civil Revision Case No. 10517 (W) of 1976. The said Rule was disposed of by Chittatosh Mookerjee, J. on 13th Dec. 1976, (reported in (1977) 4 Cal HC (N) 99). The learned Judge discharged the Rule as the learned Judge did not think it fit to exercise his discretion to interfere at the interim stage as according to the learned Judge the parties would have the right of appeal after the final determination under Section 88(3) of the Patents Act, 1970. Learned Judge was further pleased to direct that the pending application should be disposed of by the Controller General in accordance with law. On 24th Dec. 1976 the said application under Rule 114 for review and for stay was dismissed by the respondent No. 1 and the respondent No. 1 fixed 7th, 8th and 10th Jan. 1977 for hearing the parties on the application under Section 88(3) of the Act. Order was passed under Section 88(3) on 7th Jan. 1977 under circumstances mentioned hereinafter. On 2nd Feb. 1977 appeal preferred by the appellant from the order of Chittatosh Mookerjee, J. referred to hereinbefore was dismissed as the appeal had become infructuous. On 18th Feb. 1977 the present appeal was filed.

6. Several contentions were urged in support of this appeal. The main argument in support of this appeal is that the respondent No. 1 had acted in violation of the provisions of law in settling the terms of the licence for operation of the patent by the respondent No. 2. In order to appreciate the contentions it is necessary to refer to the order impugned in this case. The said order dated 7th Jan. 1977 stated inter alia, as follows:

> "Accordingly, I have no material before me in support of the Patentees other than the statement filed by them under Sub-rule (2) of Rule 84 of the Patents Rules 1972 in connection with the application made by the applicants under Sub-section (4) of Section 88 of the patents Act, 1970 and the arguments of Shri A.R. Lall at the hearing before me on the 28th May, 1976. My findings on the submission made in the

statement filed under Sub-rule (2) of Rule 84 and Shri A.R. Lall's arguments are embodied in my order dated the 4th June, 1976. No fresh material has been placed before me for varying or amending my findings recorded in the said order, Shri Davar reiterated briefly the arguments placed before me on the 28th May, 1976 and requested that my order already given should be made final. In the circumstances, the only course open to me is to order the patentees to grant a licence to the applicants under their Patent No. 77950 on the terms and conditions specified at the end of my order dated the 4th June, 1976 namely at items (1) to (11), (13) end (15)."

As is apparent from the aforesaid order, the Controller General had confirmed the interim order he had made on the 4th June, 1976. Therefore, it is necessary to refer to the relevant portion of the said interim order. The said interim order ordered as follows:

"(1) The Applicants, Catalysts and Chemicals India (West Asia) Limited shall have the full licence and authority to use or exercise the process claimed in Claims 19-24 of Indian Patent. Specification No. 77950 and to use, sell, distribute and dispose of the catalyst manufactured by such manufacturer and hereby permit the person(s) purchasing the catalysts so manufactured by the licencees to use the same employing the process claimed in Claims 25-39 of the said specification subject to the terms and conditions hereinafter set forth for so long as Patent No. 77950 shall remain in force.

(2) The applicants shall pay to the Patentees, Imperial Chemical Industries Limited (hereinafter referred to as the 'patentee') a royalty of 3% of the net selling price ex-works of all the catalysts manufactured by the process claimed in Claims 19-24 and sold by them or on their behalf.

(3) .....

(4) .....

(5) .....

(6) The Applicants shall not, during the continuance of this permit, dispute the validity of the patent.

(7) The catalyst manufactured and sold under this permit shall be marked on their cartons or other containers with the words 'Licensed under Patent No. 77950' and the cartons or containers may be marked with the trade mark or trade marks if any, of the Applicant which trade mark or trade marks shall be notified to the patentees from time to time as soon as it is or they are brought into use for this purpose.

(8) .....

(9) The royalties specified at item (2) shall be paid in Indian Rupees to the credit of the Patentees account in such bank in India as the Patentees may notify to the applicants or to such person or per-sons as the Patentees may authorise on their behalf in writing.

(10) The royalties shall be subject to the taxes payable in India, (11) The applicants shall, at their own expenses, obtain from the Government of India and/or the Reserve Bank of India such permission as may be necessary before paying or remitting the royalties as specified at item (9).

(12) ...

(13) ...

(14) This permit, unless terminated earlier by the Applicants or the Patentees, shall remain in force upto the date of the Controller's order settling the terms of licence under the said patent on the application made by the applicants therefor on the 29th March, 1976.

(15) ...

7. As is apparent from the aforesaid, the respondent No 2 had been given the licence to use or exercise the process claimed in Claims 19 to 24 of the patent and to use, sell, distribute and dispose of the catalyst manufactured by such manufacturer and thereby permit the person or persons purchasing the catalysts so manufactured by the licencee to use the same employing the processes indicated in Claims 25 to 39 of the said Patent. It was contended that the catalyst in respect of which the petitioner had the patent was not endorsed and could not have been endorsed with the words "Licences of right" under Section 87 of the Act and the respondent No. 1 was not entitled to settle any term therefor. In order to appreciate this contention it is necessary to refer to the relevant provisions of the law. The instant patent, in fact, was given under the Patents Act, 1911 and therefore it is necessary to refer to the relevant provisions of the said Act. Sub-section (8) of Section 2 of Patents Act, 1911 defined invention and stated as follows :

"(8) 'Invention' means any manner of new manufacture and includes an improvement and an alleged invention;"

8. Section 5 of the Patents Act, 1911 dealt with the procedure of the application and Section 10 dealt with the grant and sealing of patent. Section 5 of the Patents Act, 1970 is to the following effect:

"5. In the case of inventions --

(a) claiming substances intended for use, or capable of being used, as food or as medicine or drug, or

(b) relating to substances prepared or produced by chemical process (including alloys, optical glass, semi-conductors and inter-metallic compounds), no patent shall be granted in respect of claims for the substances themselves, but claims for the methods or processes of manufacture shall be patentable."

Sections 87 and 88 of the Patents Act, 1970 are to the following effect:

"87. (1) Notwithstanding anything contained in this Act,--

(a) every patent in force at the commencement of this Act in respect of inventions relating to --

(i) substances used or capable of being used as food or as medicine or drug;

(ii) the methods or processes for the manufacture or production of any such substance, as is referred to in Sub-clause (i);

(iii) the methods or processes for the manufacture or production of chemical substances (including alloys, optical glass, semi-conductors and intermetallic compounds), shall be deemed to be endorsed with the words 'Licences of right' from the commencement of this Act or from the expiration of three years from the date of sealing of the patent under the Indian Patents and Designs Act, 1911, whichever is later; and

(b) every patent granted after the commencement of this Act in respect of any such invention as is referred to in Section 5 shall be deemed to be endorsed with the words 'Licences of right' from the date of expiration of three years from the date of sealing of the patent.

(2) In respect of every patent which is deemed to be endorsed with the words 'Licences of right' under this section, the provisions of Section 88 shall apply,

88. (1) Where a patent has been endorsed with the words 'Licences of right', any person who is interested in working the patented invention in India may require the patentee to grant him a licence for the purpose on such terms as may be mutually agreed upon, notwithstanding that he is already the holder of a licence under the patent.

(2) If the parties are unable to agree on the terms of the licence, either of them may apply in the prescribed manner to the Controller to settle the terms thereof.

(3) The Controller shall, after giving notice to the parties and hearing them end after making such enquiry as he may deem fit, decide the terms on which the licence shall be granted by the patentee.

(4) The Controller may at any time before the terms of the licence are mutually agreed upon or decided by the Controller, on application made to him in this behalf by any person who has made any such requisition as is referred to in Sub-section (1) permit him to work the patented invention on such terms as the Controller may, pending agreement between the parties or decision by the Controller, think fit to impose.

(5) In the case of every patent in respect of an invention referred to in Sub-clause (i) or Sub-clause (ii) of Clause (a) of Sub-section (1) of Section 87 and deemed to be endorsed with the words 'Licences of right' under Clause (a) or Clause (b) of that Sub-section, the royalty and other remuneration reserved to the patentee under a licence granted to any person after such commencement shall in no case exceed 4% of the net ex factory sale price in bulk of the patented article (exclusive of taxes levied under any law for the time being in force and any commissions payable) determined in such manner as may be prescribed.

(6) Save as otherwise provided in Sub-section (5), the provisions of Sub-sections (1), (2), (4) and (5) of Section 93 (regarding the powers of the Controller) and of Sections 94 and 95 shall apply to licences granted under this section as they apply to licences granted under Section 84."

9. Now, the contention is that the patent of the appellant was in relation to the substance produced by the manufacturer as well as the process. But, under Section 87 apart from food or medicine it was only the methods or processes for the manufacture or production of chemical substances which could be deemed to be endorsed with the words, 'Licences of right'. The substance or the catalyst, as such, in this case, according to the appellant could not be deemed to have been endorsed with the words 'Licences of right' under Section 87 of the Act, and therefore it was urged that in respect of that substance under Section 88 no terms could be settled either for interim or final purpose. But it was submitted that in the impugned order the Controller General had given the licence in respect of the catalyst manufactured by the manufacturer by the process as indicated in Claims 19 to 24. It was, therefore, urged that the same was in violation of the provisions of Sections 78 and 88 of the Act of 1970 and in so doing the Controller had acted illegally. It was, secondly, submitted that under the law the methods or process for the manufacture or production of chemical substances would be deemed to be endorsed with the words, "Licences of right". Therefore, there was no occasion for making any entry in the Register of Patents as was claimed to have been done in the instant case in 1972 end therefore, it was submitted that anything which was deemed by operation of law did not require any appropriate entry in the register. It was, thirdly, submitted that the Controller had acted improperly in not granting time to the petitioner when the petitioner was few minutes late on the 7th Jan., 1977, and in passing the final order ex parte in the facts and in the circumstances of the case. It was, lastly, urged that the terms and conditions settled by the Controller regarding the term of grant of the royalty, and the terms which required that the royalty would be paid in Indian Rupee and would be subject to taxes payable in India and with respect to the same the applicant, namely, the respondent No. 2, would obtain permission from the Reserve Bank of India, were unworkable or improper and therefore, should be interfered with,

10. I have gone through the relevant provisions of the Sections of both 1911 Act and the 1970 Act. Incidentally it may be mentioned that the definition of 'Invention' under Clause (j) of Section 2 of

the 1970 Act reads as follows :--

> "(j) "Invention" means any new and useful --
>
> (i) art, process, method or manner of manufacture
>
> (ii) machine, apparatus or other article;
>
> (iii) substance produced by manufacture, end includes any new and useful improvement of any of them, and an alleged invention";

In this connection I have mentioned before that the final order was passed on the 7th Jan., 1977. The minutes of that order read as follows :--

> "Only shri L.S. Davar appeared at the hearing on behalf of the applicants. The patentees were not represented. Shri Davar very briefly reiterated the circumstances in which the application had been made and the submissions contained therein. He pointed out that the patentees had not filed the statement required under Rule 83 (3) of the Patents Rules, 1972 and that therefore the Controller has no material before him other than the 2 applications under Sections 88(2) and 88(4) and the documents filed in connection with the latter application. There was no material before the Controller for varying the terms of the interim order already passed on the 4th June, 1976. He prayed for final order on the same terms as the interim order.
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> The hearing was concluded at 11.15 A.M. At about 11.18 A.M. Mr. F.S. Groser of M/s. Remfry & Son informed that Shri A.R. Lall would be late by a few minutes and requested for delaying the healing. He was informed that the hearing had already been concluded. At about 11-27 A.M. Shri A.R. Lall and Mr. Groser called at the office for the purpose of the hearing. They were given a brief account of the hearing and that the same had been concluded at 11.15 A.M. He gave certain reasons for his delay in attending. He was informed that if he had only made a request before 11 A.M. or sent anybody at 11 A.M. explaining the reason for delay the request for delaying the hearing would possibly have been complied with. As the request was received late, i.e., after the conclusion of the hearing nothing could be done."

11. Counsel for the respondent No. 2 drew my attention to certain observations in the decision of Mr. Justice McTiernan of the High Court of Australia in the case Amp Inc Utilux Pty. Ltd. as reported in 1973 RPC 175. Though the questions involved in that case were not the same with which I am concerned in the instant case, it may be relevant to refer to the observations as appearing at p. 188 of the said decision. There the learned Judge referred to the observations of Lord Russel of Killowen in E. M. I. Limited v. Lissen Ltd., (1939) 56 RPC 23 at p. 41 to the following effect :--

> "A claim is a portion of the specification which fulfils a separate and distinct function. It, and it alone, defines the monopoly; and the patentee is under a statutory

obligation to state in the claims clearly and distinctly what is the invention which he desires to protect."

The learned Judge was further of the view that it could not be doubted that it was the claim alone which defined the monopoly. In this case reliance was also placed on certain observations in the case of Sharp & Dohme Inc. v. Boots Pure Drug Company Ltd., (1929) 45 RPC 153 and reference was made to the observations at pp. 174, 183 and 191 of the report.

12. The following propositions, it appears to me, are well-settled:

(1) The patent must be in respect of an invention and not a discovery.

(2) In respect of one single invention there must be one single patent.

(3) A patent may be in respect of a substance or in respect of a process.

(4) But it is not possible to bifurcate a patent and state that one relates to the substance and the other to the process.

(5) In order to have a complete patent, the specifications and the claims must be clearly and distinctly mentioned.

(6) It is the claims, and claims alone which constitute the patent.

13. In the instant case the contention of the appellant is that the patent was in respect of an invention which basically resided in the product in respect of which the patent was claimed, and the claims in respect of the process for the manufacture of the catalyst had been stated only to sufficiently and fairly describe the invention. Therefore, it was contended on behalf of the appellant that the patent could not, for that reason, amongst others, be deemed to have been endorsed with the word "Licences of right" under the provisions of Section 87 and Section 88 of the Act would not apply. It appears that the claims 19 to 24 were related to process of preparing steam reforming catalyst claimed in the claim Nos. 1 to 18. The processes claimed and illustrated in the examples are essentially chemical processes and involved at least one chemical reaction. The processes claimed in Claims 25 to 39 are steam re-forming of hydro carbons using the said catalyst, are also chemical process. In my opinion, one cannot bifurcate, in the instant case, from the process mentioned in Claims 19 to 24 the result produced in Claims 1 to 18. A person having the right to use a process patented under the Indian Patents and Designs Act, 1911 has also the right to make use, sell and distribute the product of the process if the product is inevitably the result of the process followed. If one has a right to use the process, then one acquires the right to use the end product unless the end product is different and separate from the process followed. Judged from the aforesaid point of view, in my opinion, the claims mentioned in Claims 19 to 24 in the patent in this case were endorsable with the words "Licences of right'' under Section 87 of the Act, and if that was the position then the licence in respect of the user of catalyst given to the respondent No. 2 in the instant case was not in violation of the provisions of law. Furthermore, in any event so long as the

said patent stands endorsed with the words "Licences of right", as it appears was made on the 23rd Dec., 1972 and published in the official gazette, if the appellant felt aggrieved should have moved under the provisions of Section 71 of the Act and unless that was done, the entry in the register should be deemed to be correct. So far as the argument that Section 87 made a deeming provision and there was no scope of making any correction or entry in the register, as was done in this case, I am unable to accept the contention. It is true that the law deems certain situation in this case apart from any action taken, but in order that such a situation is given practical effect to a rectification or a consequential correction in the register would be necessary as was done in this case for the benefit of public knowledge. There was nothing illegal or improper in that.

14. So far as the settlement of the terms are concerned, it appears that the Controller in his order has given the background as to why the said terms were settled in the manner these have been done. He stated, inter alia, as follows :--

> "With regard to the royalty payable they have only stated that it should bear reasonable comparison with what the Indian Explosives Limited are agreeable to them. In para 7 of the Statement, it has been pointed out that Indian Explosives Ltd. are willing to pay them a lumpsum consideration of lb.200,000 but this is for the supply of process, know-how, design information as well as licence for working the patent. It is also premature to assume that the Central Government would agree to the payment of the consideration of lb.200,000 by Indian Explosives Limited to the patentees. The possibility of collaboration between the patentees and the Indian Explosives Limited extending even after the expiry of the term of Patent No. 77950 cannot be ruled out. Further, it is well-known that Indian Explosives Ltd. and the patentees are closely allied and associated; accordingly, whatever agreement may be made between Indian Explosives Limited and the patentees cannot be a factor in deciding the terms for interim working of the patented invention by the applicants. I am of the opinion that even the 3% royalty on the ex-factory sale price offered by Sunil Kumar Basu on behalf of the applicants, is apparently on the higher side. Accordingly, the patentees' term for a royalty of not less than 10% on the ex-factory sale price demanded at item 4 of the terms is ruled out.
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> "At item 5 of the terms, the patentees have suggested that the royalty for each quarter should be paid in sterling in a bank to be nominated by the patentees in London by the 15th of the month following the end of the quarter. I shall only order that the royalty would be paid in Indian Rupees in India and the patentees should seek necessary permission from the Reserve Bank of India to repatriate their royalties to the United Kingdom.
>
> "According to the terms specified by the patentees at Item 6, licenceees should be responsible for obtaining permissions from the Government authorities or the Reserve Bank of India and the sole responsibility for this should rest on the licencees. Under Section 9 of the Foreign Exchange Regulation Act, 1973, the person making any payment to or for the credit of any person resident outside India has to obtain an

exemption from the Reserve Bank.

"The condition specified at Item 7, namely that interest in sterling at the rate of 10% per annum, should be paid on overdue royalties is also an impossible condition. As I am deciding that the royalty shall be paid in Indian Rupees, the interest as hereinafter specified is also to be paid in Indian Rupees.

"I have taken into consideration the other terms contained in Items 8 to 11, in settling the terms for the interim working of the patented invention pending disposal of the application made by the applicants under Sub-section (2) of Section 88 of the Patents Act, 1970. I have also taken into consideration the statement contained in the affidavit of F.S. Groser filed in support of the patentees' statement which obviously does not add anything to the submissions made in the opponents' statement. I have also carefully considered the arguments and submissions made before me at the hearing by Sarvashri L.S. Davar and A.R. Lall on behalf of the applicants and the patentees, the application and the statements of the parties and their evidence. I hereby order that the applicants may use and work the invention namely the process of manufacturing the catalyst composition, claimed in Claims 19-24 under the following terms and conditions: *****"

As I have noticed that on the final occasion the appellant did not submit any objections, therefore, even though there might have been some cause for grievance for the petitioner it is not possible to interfere with the impugned order. The appellant instead of moving for setting aside the ex parte order under Rule 115 of the Patent Rules, which dealt with similar powers as under Order 9, Rule 13, of the Code of Civil Procedure has made and preferred this appeal. Of course there is one justification for the appellant in preferring this appeal because the appellant was here challenging the very basis of the right of endorsement of licences as of right. But it appears to me that the Controller had proceeded hastily on the 7th Jan., 1977 and I would have set aside the order and given the appellant an opportunity to agitate its grievances on the points about the settlement of the terms of the licence under which the respondent No. 2 would work the patent in spite of the fact that the appellant had not preferred an application for review under Rule 115 of the Patent Rules, but in view of the fact that the instant patent expires in July, 1977, this, in my opinion, will be an exercise in futility. In that view of the matter, I decline to interfere with the order passed by the Controller.

15. The appeal accordingly fails and is dismissed. Interim order, if any, granted is vacated but stay, if any, granted will continue for a fortnight. Each party will pay and bear its own costs.