
PTC (Suppl)(1) 226 (Cal)

HIGH COURT OF CALCUTTA

O.O.C.S. No. 551 of 1977

Star Textile Engineering Works Ltd.....Petitioner

Versus

James Mackie Holdings Ltd. and Others.....Respondents

Salil K. Roy Chowdhury, J.

Decided on : June 6, 1977

Patents Act, 1970

Section 64--Patent--Revocation--Where there is no complete specification sufficiently describing the invention and the method by which it is to be performed, the patent can be revoked under section 64 of the Patents Act, 1970.

Held : The complete specifications of the said patent do not sufficiently and clearly describe the respective inventions and method by which it is to be performed and it is quite clear from the evidence that the said specifications by themselves are not sufficient to enable a person in India possessing average skill in and average knowledge of the art to which the respective invention relates to work that invention.

Further the specification does not disclose the best method of performing it which was known to the applicant. for the patent and for which the said applicant was entitled to protection. It was further established that the complete specification in the said patent applications is not sufficiently and clearly defined.

Further, the respective claims of each of the complete specifications is not sufficiently and clearly defined or that the respective claims of each of the respective complete specifications are not based on the matter disclosed in the respective complete specifications.

The petitioners have proved their case and established the ground for revoking the said patents under Section 64(1)(h), (i), (j) of the Patent Act, 1970.

Therefore, the applicant has proved this case and the ground for revocation has been proved and substantiated. It is also clear that a certified copy which has been produced from the custody of the Patent Office and admissible under the Patent Act, being Ext. C here, makes it quite clear that the complete specification on Indian Patent No. 87009 does not disclose the best method of performing it which was known to the applicant and also the complete specification does not sufficiently and fairly describe the respective invention and the method by which it is to be performed. Therefore, the applicant having made out the ground or revocation as alleged in the petition is entitled to protection as claimed.

Cases referred

North Eastern Marine Engn. Co. Ltd. v. Leeds Forge Co. Ltd.23 RPC 96

Valensi v. British Radio Corporation1973 RPC 337

Mr. S.B. Shah, Bar-at-Law for the Petitioner.

Mr. Khanna, Advocate for the Respondents.

Salil K. Roy Chowdhury, J.

1. This is an application for revocation of a patent under Section 64(1) of the Patent Act, 1970. The respondents are : (1) James Mackie Holdings Ltd., (2) Sugan Engineering (P) Ltd. and (3) Controller of Patents.

2. It appears that two of the patents have already expired and the third one will shortly expire. The respondents who appeared through Mr. Khanna, Advocate on Record, initially asked for some time for considering the question whether they are going to defend the proceedings. In view of the fact that two of the patents have already expired and the third one is going to expire very soon and as the matter was fixed long time ago specially and as the plaintiff's council Mr. S. B. Shah has come from Bombay to appear in this matter, it was not possible for me to adjourn the matter and I refused any adjournment. Mr. Khanna thereafter asked for leave to retire from the proceedings which was granted. Mr. P. K. Dutt, Advocate on Record, who also appeared for respondent No. 2 also asked for leave to retire from the proceedings. On the next occasion Mr. Rajan Dutt appeared and submitted that no costs should be allowed against respondent No. 2 in case the Court revoked the patent in these proceedings. Mr. Shah was fair enough to submit that he will not ask for costs against the respondents who were not appearing in these proceedings. The Controller of Patents has also not appeared but represented through a letter to this Court that he is not interested in the matter and the whatever order the Court will pass in these proceedings he will abide by the same.

3. The present application relates to three patents being patents Nos. 87007, 87008 and 87009 in respect of improvements relating to flyers for spinning and twisting machines. The patentees are respondent No. 1 James Mackie Holdings Ltd. and respondent No. 2 Sugan Engineering (P) Ltd.

4. The petitioners claim, as manufacturers of machinery for textile and jute industry, that through their research and development department they have developed several improvements in jute spinning machinery including the flyers and had applied for patents for such improvement. The petitioners claim that they have put in the market in the middle of 1974 the designation S-4 flyer incorporating some improvements of its own invention in respect of which an application for patent has been pending before the authority. Then after June 1976 the petitioner discontinued marketing of this said flyer S-

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4 and put in its place another flyer under the designation S-5 incorporating other improvements of its own invention which are now under application for a patent.

5. By its advocate's letter dated May 20, 1977, the respondent No. 2 charged the petitioner for the infringement of the said patents Nos. 87008 and 87009 by its flyer on the market and threatened action.

6. Thereafter the petitioners filed a suit and ultimately presented this petition on the 28th January, 1977 revocation of the said patents Nos. 87007, 87008 and 87009 on various grounds alleged in paragraph 11 and sub-paragraph (a) thereof which are practically the grounds mentioned in Section 64(1)(b)(i) and (j) of the Patent Act, 1970.

7. The petitioner called one Binayak Anant Wakankar who is a highly qualified textile machinery technologist to give evidence on their behalf. The petitioners also tendered the certified copy of the documents and papers filed before the Registrar in respect of the said patents Nos. 87007, 87008 and 87009.

8. From the evidence it is clearly established by the petitioners that the grounds made out in the petition by the petitioners have been substantiated by oral evidence of the said expert called on behalf of the petitioners i.e. the complete specifications of the said patent do not sufficiently and clearly describe the respective inventions and method by which it is to be performed and it is quite clear from the evidence that the said specifications by themselves are not sufficient to enable a person in India possessing average skill in and average knowledge of the art to which the respective invention relates to work that invention.

9. Further it is quite clear from the evidence that the specification does not disclose the best method of performing it which was known to the applicant James Mackie & Sons Ltd. for the patent and for which the said applicant was entitled to protection. It was further established in evidence of the said witness, called on behalf of the petitioners, that the complete specification in the said patent applications is not sufficiently and clearly defined.

10. Further, the respective claims of each of the complete specifications is not sufficiently and clearly defined or that the respective claims of each of the respective complete

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specifications are not based on the matter disclosed in the respective complete specifications.

11. It is further established that in the complete specification relating to patent No. 87009 numeral 12 has an ambiguous meaning and therefore the ground under Section 64(1) and (j) has been established.

12. On the materials before me, both documentary and oral, I am satisfied that the petitioners have proved their case and established the ground for revoking the said patents under Section 64(1)(h), (i), (j) of the Patent Act, 1970.

13. Mr. Shah submitted that though the patent has expired there is no bar for the Court revoking the same. He relied on a decision in North Eastern Marine Engineering Co. Ltd. v. Leeds Forge Company Ltd., 23 RPC 96 at page 101 and another decision reported in the same volume at page 529 having the same cause title that an action can be brought for infringement of a patent even after the term has expired and also an application for revocation is not barred even after the patent in question has expired.

14. Mr. Shah also cited a decision in Taylor's Patent reported in 26 R.P.C. 381 where it has been held that if the patentee in an application for revocation of the patent does not appear it amounts to an admission that the allegations in the applications are correct and, consequently, the patent was revoked. Relying on the said decision, and in my view quite rightly, Mr. Shah submitted that as in this case also both the patentee and the licensee were not chosen to appear and, therefore, it should be held that the allegations in the applications are admitted by them.

15. Mr. Shah also cited a recent decision in Valensi & Another v. British Radio Corporation, 1973 RPC 337 at page 377 where the man of art has been judicially defined and it was submitted that in this case also it must he held that the specification is not sufficient to enable a man of ordinary skill in the art to work the said invention.

16. Mr. Shah also pointed out that in exbt. A, being the said applications for patent No. 87007 filed on the 18th March, 1963, the date is not mentioned as in the other two specifications for the patent Nos. 8008 and 8009 reference has been made to the said patent No. 87007. Therefore, on the evidence both documentary and oral before me and after hearing the submissions of Mr. Shah I am satisfied that the applicant has proved

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this case and the ground for revocation stated in various sub-paragraphs of paragraph 11 of the petition has been proved and substantiated. It is also clear from the affidavit of John Kay Pringle Mackie that a certified copy which has been produced from the custody of the Patent Office and admissible under the Patent Act, being Ext. C here, makes it quite clear that the complete specification on Indian Patent No. 87009 does not disclose the best method of performing it which was known to the applicant and also the complete specification does not sufficiently and fairly describe the respective invention and the method by which it is to be performed. Therefore, the applicant having made out the ground or revocation as alleged in the petition is entitled to protection as claimed.

17. Therefore, I am passing the following orders :

18. There will be an order in terms of prayers (a) and (b). Having regard to the facts of this case, and particularly the applicant has not pressed for costs against the respondents, I will make no order as to costs.

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