

Role of ‘Obviousness’ and ‘Person Skilled in the Art’ in the Enforcement of Patents

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INTRODUCTION

Grant of patent rights is an attempt to encourage research and creativity by granting exclusivity to the inventors. Such exclusivity enables the inventors to control the use of their invention by others and monetise it. ‘Novelty’ and ‘lack of obviousness’ are aspects which are considered prior to grant of a patent. However, ‘lack of novelty’ and ‘obviousness’ are also grounds for revocation of patents, or considered as defence in an action for infringement of patents. These grounds cast a shadow in enforcement of patent rights, resulting in prolonged litigation. This article examines the importance of ‘novelty’ and ‘lack of obviousness’ in patent law and their role in protection of patents.

STATUTORY FRAMEWORK AND THE REQUIREMENTS FOR PROTECTION

Only an ‘inventive step’ will qualify as an ‘invention’ eligible for grant of patent. Section 2(j)(a) of the Patents Act, 1970 (“Patents Act”) defines ‘inventive step’ as *“a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.”*¹ Grant of patent involves examination of the claim made in the patent application for novelty and lack of obviousness. A claim lacks novelty when it is anticipated in the ‘prior art’. Any claim obvious to a person skilled in the art will not qualify for grant of patent.

A patent application is a technical document. It is written by a person communicating his invention to another person skilled in the same field. Lord Diplock explains patent as *“a unilateral statement by the patentee, in words of his own choosing, addressed to those likely to have a practical interest in the subject matter of his invention (ie ‘skilled in the art’), by which he informs them what he claims to be the essential features of the new product or process for which the letters patent grant him a monopoly...”*² The patent protects an ‘invention’.³ In *Pope Appliances Corporation v Spanish River Pulp and Paper Mills Ltd*⁴ the Privy Council defined invention as: *“Invention is finding out something which has not been found out by other people.”* In *Union Carbide Corporation v BP Chemicals Ltd*⁵ the court defined invention differently. It said: *“Invention can lie in finding out that which those in the art thought ought not to be done, ought to be done”*.

The inventive concept would apply to all embodiments falling within the independent claims in a patent application. In *Brugger v Medic-Aid Ltd*⁶ Laddie, J., stated: *“It is not legitimate to define the inventive step as something narrower than the scope of the relevant claims. In particular it is not legitimate to identify a narrow sub-group of embodiments falling within the claim and which have certain technical advantages and*

1 See also, 35 U.S.C. §§ (02.10.2006) (novelty and obviousness); Article 6, Rule 3 of EAPC.

2 *Catnic Components Ltd v Hill & Smith Ltd*, [1982] R.P.C. 183.

3 Section 2(i) of the Patents Act, 1970 defines invention to mean *a new product or process involving an inventive step and capable of industrial application.*”

4 AIR 1929 PC 38.

5 [1998] R.P.C. 1.

6 [1996] R.P.C. 183.

then to define the inventive step in terms which apply to that sub-group but not the rest of the claim.”

Prior to grant of the patent, the patent examiners are required to check the prior publications and claims to ascertain the inventiveness and lack of obviousness. Patent confers a right on the patentee to restrict third parties to the process only with his consent.⁷ Although patent is granted after considering the tests of novelty and obviousness, it would still be subjected to the same tests even after its grant. Any interested person can apply for revocation of the patent on the grounds listed in section 64 of the Patents Act. Lack of novelty and obviousness can also be pleaded to assert that the claim involved in not an ‘invention’ for the purpose of the Patents Act. The same grounds are available as defences in an action for infringement of a patent.⁸

The grounds available for revocation of patents, or as defences in case of infringement, dilute the sanctity of the patent regime. In most cases of infringements, invalidity of the patent is taken as a defence. This position has been stated aptly by a court as: “[I]n 30 years experience of litigation in [patents], I have never come across a defendant who engaged in infringement knowing that what he was doing was wrong. They all thought that they either did not infringe or the patent was invalid or both. Most of those who lose think that they have been unlucky or worse.”⁹

These provisions show that grant of patent by the authorities after examining novelty and lack of obviousness is not final. This uncertainty casts a cloud on the rights of a patentee. The decision of the authorities under the Patents Act to grant a patent, in which they are expected to consider novelty and obviousness also, open for scrutiny again, casts a cloud on the rights of the patentee. However, this is accepted as a necessary safeguard to ensure that ineligible patents do not confer monopoly rights, thereby obstructing further research or industrial activity. Despite best efforts, it is widely acknowledged that in some cases patents are granted against applications that do not conform to patentability requirements and in some cases, the patent is not granted in eligible cases.

IDENTIFICATION OF OBVIOUSNESS

Identification of obviousness or non-obviousness plays a crucial role in determining the validity of a patent. Several courts have attempted to elaborate the principles for such determination. In *Brugger*, the court observed: “[I]f a particular route is an obvious one to take or try, it is not rendered any less obvious from a technical point of view merely because there are a number, and perhaps a large number, of other obvious routes as well.”¹⁰ In *Graham v John Deere Co.*,¹¹ the Supreme Court of United States of America has listed three factors for determining the obviousness in any claim. They are (a) the scope and content of the prior art; (b) differences between the prior art and the claims at issue; and (c) the level of ordinary skill involved in the present invention. Grant of a patent in respect of the claims which are obvious has a negative impact on the scope of further research, and hindered the objective of the patent law, i.e., encourage inventions.¹² In *United States v Graham*,¹³ the U.S. Supreme Court prescribed that “known disadvantages in old devices which would naturally discourage search for new inventions may be taken into account in determining unobviousness.”¹⁴

In United Kingdom, the courts have prescribed four steps for determination of obviousness. They are (a) Identifying the inventive step embodied in the patent; (b) identifying whether the claimed inventive steps was common general knowledge to a skilled but unimaginative person, at the priority date; (c) Identifying the

7 Section 48 of the Patents Act, 1970.

8 Section 107 of the Patents Act, 1970.

9 Vaver, David. "Sprucing Up Patent Law." *Intellectual Property Journal* 23 (2011): 63. (quoting Laddie J in *Coflexip SA v. Stolt Comex Seaway MS Ltd.*, [1999] EWHC Pat 258).

10 Approved by the U.K. Supreme Court in *Actavis Group PTC EHF v ICOS Corporation*, [2019] UKSC 15.

11 383 U.S. 1 (1966). See also *KSR International Co. v Teleflex Inc.*, 550 U.S. 398 (2007). These tests have been acknowledged and followed by the Delhi High Court in *F.Hoffmann-La Roche Ltd v Cipla Ltd*, 148 (2008) DLT 598.

12 “withdraws what is already known into the field of its monopoly and diminishes the resources available to skilful men.” (*Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp.*, 340 U. S. 147, 152 (1950), explaining the reason for refusing patent for what is obvious). Also *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007).

13 383 U.S. 39 (1966).

14 *Id.* at 52.

differences between the prior art and the claims in the alleged invention and (d) Decide whether the invention was obvious to a skilled man.¹⁵ In India, the Supreme Court has set the test for determination of obviousness as: "*was it for practical purposes obvious to a skilled worker, in the field concerned, in the state of the knowledge existing at the date of the patent to be found in the literature then available to him, that he would or should make the invention the subject of the claim concerned?*"¹⁶

Lack of obviousness is often taken as a defence in a case of infringement of a patent or as a ground for its revocation. In *Genesis (U.K) Ltd v Daiichi Pharmaceuticals Co Ltd.*, a host of grounds seeking revocation of patent EP (UK) No.0206283 were taken. Genesis contended that '283 was invalid for lack of novelty, obviousness, Common General Knowledge ("CGK") etc., Obviousness was alleged in respect of certain publications referred as *Gerser I*, *Gerser IP* and *Rohling*, in the judgment. After a detailed analysis of these materials, the court held that these prior arts do not teach the necessary steps to a skilled person to reach the conclusion arrived at in the patent specification and rejected the challenge.

There are, however, some cases in which the validity of patents were successfully challenged on the ground of obviousness. Struthers filed a complaint against Nestle alleging that Nestle infringed several of Struthers' patents in manufacture and sale of soluble coffee. Nestle responded by filing applications for invalidation of Struthers' patents on grounds of, inter alia, prior art and obviousness. In *Struthers Patent Corp v Nestle Co.*,¹⁷ the court held that several of Struthers's patents viz., (a) 3,404,007 (b) 3,495,522 (c) 3,531,295 (d) 3,620,034 were invalid on grounds such as prior art, obviousness, aggregation, double patenting etc., After analysing the prior arts, the court concluded that the improvements which Struthers claimed over the prior art were cosmetic and without any real inventive steps that require protection.

In another instance, Apple and Samsung accused each other of violating their patents. Apple alleged that Samsung infringed certain patents including patent Nos. 8,074,172; 5,946,647 and 8,046,721. Samsung alleged that Apple violated patent Nos. 6,847,959 and 5,579,239. The jury found that Samsung violated Apple's aforesaid patents and Apple violated Samsung's patent 6,226,449. Both the parties challenged the validity of each other's patents on various grounds including obviousness. In relation to '721, Apple alleged that the "slide-to-unlock" function for portable electronic device touchscreens was covered in '721 and Samsung infringed it by incorporating it in its new range of smartphones.¹⁸ Samsung argued that the claim 8 of the '721 patent was the combination of two prior arts i.e., Neonode N1 Quickstart Guide and a paper published by one Catherine Plaisant. Apple did not dispute that these two prior arts together contained all the elements in claim 8, but contended that an ordinary skilled person would not be motivated to combine these two prior arts for making a smart phone containing the feature covered by claim 8 of '721. The Court of Appeal affirmed and reinstated the Panel verdict in relation to patents '959, '414, '239 and '449. The Court of Appeal reversed the remaining part of the Panel decision.¹⁹ This decision has a strong dissent, underscoring the nebulous nature of the obviousness test.

Obviousness, or anticipation from the prior art, largely depends on the language used in the claim. If there is lack of clarity in the prior art, that would be an obstacle in proving obviousness in a later patent.²⁰ In *General Tyre & Rubber*, the court held that ambiguity in a claim could not be filled by combining one reference with another. In order to establish anticipation, the defendant should prove that the prior art embodies all the elements in a claim.²¹

15 *Wind Surfing International Inc. v Tabur Marine Great Britain Limited*, 1985 R.P.C. 55. A similar approach was taken by the court in *Pozzoli v BDMO SA*, (2007) EWCA Civ 388. See also *F.Hoffmann-La Roche Ltd v Cipla Ltd*, 148 (2008) DLT 598.

16 *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, (1979) 2 SCC 511. 17558 F. Supp. 747.

18 *Apple Inc v Samsung Electronics Co., Ltd*, U.S. District Court, San Jose Division, Case 5:12-cv-00630-LHK Document 2203. "*The device of claim 7, further comprising instructions to display visual cues to communicate a direction of movement of the unlock image required to unlock the device*". (Claim 8).

19 *Apple Inc. v Samsung Electronics Co. Ltd*, 839 F.3d. 1034 (Fed. Cir. 2016).

20 *Schlumberger*, para 209. However, examination of the claim should not be made in hindsight with the claims in an invention in mind. If the invention is anticipated in a prior art, it must be proved specifically. See also *The General Tire & Rubber Company v The Firestone Tyre and Rubber Company Limited*, [1972] R.P.C. 457.

21 *Firestone v. Aluminum Co. of America*, 285 F.2d 928, 929-930

Proof of obviousness before the court is difficult in light of the tests applied by the courts. In *Optis Cellular Technologies LLC. v Apple Retail U.K. Ltd.*,²² Optis alleged that Apple violated two of its patents: (a) EP(UK) 2 187 549 B1 and (b) EP (UK) 2 690 810 B1 (810). Among other grounds, Apple contended that Optis's patents were invalid on the ground of obviousness and cited two prior arts. Apple contended that a document referred to as 'Panasonic' disclosed before the priority date and another set of documents collectively identified as 'Nokia' which were also disclosed before the priority date make Optis's claims obvious. The court analysed the claim of obviousness based on the tests listed out in *Pozzoli*²³ and after analysing the evidence adduced by the parties held that the prior arts do not teach the inventive steps involved in Optis's patent and that any suggestion of obviousness was artificial. Though the court was inclined to agree, in principle, with Apple's argument that obviousness or CGK would apply, the lack of teaching in the cited prior art would make Optis's patent valid. Some of the discussions and the conclusion reached by the court show that the case was decided on narrower grounds.

COMBINATION AND OBVIOUSNESS

In many cases, one of the grounds raised was whether a combination of known elements would be eligible for grant of a patent. The opinion of the court in *William Needham and James Kite v Johnson and Co.*²⁴ explains the circumstances in which a combination would be entitled to protection. The court held that

"Then comes the question, what is the infringement of a combination of elements in a machine? There is not an infringement if you have produced the same results by a different combination of different elements. That is another and a different combination, and is not either an improvement or anything else of the other. It is absolutely and wholly different, if there is a different combination of different elements."

In *Canadian General Electric Co. Ltd. Vs. Fada Radio Ltd.*²⁵ the Privy Council noted that "A new combination of well known devices, and the application thereof to a new and useful purpose, may require invention to produce it and may be good subject matter for a patent." The Bombay High Court has explained that a combination would be patentable if it produces the old result in an economical manner.²⁶ The court held that "A patentable combination is one in which the component elements are so combined as to produce a new result or to arrive at an old result in a better or more expeditious or more economical manner. If the result produced by the combination is either a new article or a better or a cheaper article than before the combination may afford subject for a patent..."²⁷ The Supreme Court affirmed this position holding that a mere collocation of many things would not fulfil the test of novelty.²⁸

The Madras High Court had an occasion to deal with the combination of known elements in *Gandhimathi Appliances Ltd v L.G. Varadaraju.*²⁹ The court observed that if the combination of known integers produce a new process or improved result by reason of the combination, it would be a novelty. However, the mere collection of more than one integer by itself would not qualify for grant of a patent.

In *Schlumberger Holdings Ltd v Electromagnetic Geoservices AS*,³⁰ Schlumberger initiated proceedings for revocation of three patents viz., (a) EP. 1,256,019 (b) EP.(UK) 1,309,887 and (c) UK. 2,399,640 issued to Electromagnetic on the grounds of CGK, obviousness and anticipation. It was admitted by both the parties that the inventive step claimed in the case involved a combination of two prior arts. Electromagnetic claimed

22 [2022] EWHC 561 (Pat).

23 In *Pozzoli*, the court approved the following four tests propounded in *Windsurfing International Inc v Tabur Marine (Great Britain) Limited*, [1985] R.P.C 59: (1) Identify the inventive concept which is subject matter of the patent in the suit; (2) Determine if the alleged inventive concept was common general knowledge to an unimaginative skilled person in the art; (3) Identify the difference between the prior art and the alleged invention and (4) Determine if the alleged invention is obvious to a skilled person without any knowledge of the alleged invention and determine whether the improvements require any degree of invention.

241884 (6) RPC 49.

25AIR 1930 PC 1.

26 *Lallubhai Chakubhai v. Chimanlal & Co.*, AIR 1936 Bom 99.

27 *Id.*,

28 *Bishwanath Prasad v Hindustan Metal Industries*, (1979) 2 SCC 511.

29(2000) 3 M.L.J. 85.

30(2009) RPC 571.

that there was an inventive step involved over the existing prior art and Schlumberger contended that such a claim is obvious to a person skilled in the art and that there is no novelty. The court concluded that the inventive step would be one obvious to the skilled person. The court also held that if combining two elements results only in aggregation of the benefits of each of the elements, the result is obvious.

Combination also has a different connotation in cases of infringement. Achieving the same results of a patent by different combinations is not a violation of a patent. In *TVS Motor Company Ltd v Bajaj Auto Ltd*,³¹ the court held that the defendant would succeed if he proves that he achieved the result by a different combination of different elements. This position was earlier stated in *William Needham and James Kite v Johnson and Co.*,³² in which the court held that if the same results are achieved by a different combination of different elements, the action for infringement would fail.

SKILLED PERSON AND OBVIOUSNESS TEST

In determination of obviousness or lack of it, the scale applied by the courts is the reaction of a skilled person. Accordingly, identification of the relevant 'skilled person' is important. The courts have said: "*The whole of the relevant prior art must be assumed to be in the mind of the skilled addressee and this may well produce, and would produce here, as the history of the matter shows, quite a different result from that which would be produced if a careful selection from prior art is made, having the invention which is sought to be attacked in mind.*"³³

Patents Act does not define the term 'skilled person'. Section 2(ja) of the Patents Act refers to 'a person skilled in the art' while defining the 'inventive step'.³⁴ In U.S.A., Section 103 of the Patents Act refers to skilled person and states that a claim would not qualify for patent if it is obvious to a skilled person.

Several judgments in different jurisdictions have attempted to define 'skilled person'. In *Atlantic Works v. Brady*,³⁵ the court described a skilled person as "any skilled mechanic or operator in the ordinary progress of manufactures."³⁶ In U.K, the skilled person is described as "The hypothetical addressee is not a person of exceptional skill and knowledge, and he is not to be expected to exercise any invention nor any prolonged research, enquiry or experiment."³⁷ In India, the IPAB has explained that "The 'notional skilled person' who is the addressee of the specification is normally described in various ways for various purposes. The skilled person is essentially a legal construct, and not a mere lowest common order of all the persons engaged in the art at a particular time."³⁸ The IPAB has further stated that "this hypothetical person is presumed to know all the prior arts as on that date, even non-patent prior art in theory available to public. He has knowledge of the technical advancement as on that date, and the skill to perform experiments with the knowledge of state of the art."³⁹

The technical competence of the 'skilled person' is also an issue. In some cases, the courts have held that the skilled person does not possess the inventive skills.⁴⁰ But not a dullard.⁴¹ The skilled person should be skilled in the 'relevant art'.⁴² The skilled person should be a qualified person who is neither the inventor nor his rival.⁴³ The IPAB has held that the skilled person is not a dumb and ignorant character.⁴⁴

31 2009(3) CTC 178.

32 1884 (6) RPC 49.

33 *The General Tire & Rubber Company v The Firestone Tyre and Rubber Company Limited*, [1972] R.P.C. 457. (Quoting Graham J)

34 Section 3 of the Patents Act, 1977 also deals with the skilled person in the same way.

35 107 U.S. 192 (1883).

36 *Id.* at 200.

37 *Valensi v British Radio Corporation*, (1973) R.P.C. 337.

38 *Enercon (India) Ltd v Alloys Wobben Aurich*, MIPR 2011 (1) 179.

39 *Id.* See also *General Tire & Rubber Company* note 33.

40 E.g., *Valensi*, note 18; *Beloit Technologies Inc. v Valmet Paper Machinery Inc.*, (1997) R.P.C. 489.

41 *Sankalp Rehabilitation Trust v Hoffman La Roche*, 2012 SCCOnLine IPAB 167.

42 See *Catnic* note 2. See also *Schlumberger*, note 46.

43 See *General Tyres* note 33.

44 *Fresenius Kabi Oncology Ltd v Glaxo Ltd*, 2013 SCCOnLine IPAB 117.

In some cases, the claims in a patent might be obvious to a skilled person in one field but it might not be obvious to a skilled person in another area. Still, the patent would fail. Reason for this expanded understanding of the skilled person is explained by the court: “*In some cases a patent claim may cover a wide field so that some parts of it will be obvious to the notional skilled person in one field and other parts will be obvious to the notional skilled person in another. That is not unfair to the patentee ... but [is] simply a reflection of the fact that the scope of the protection sought is wide.*”⁴⁵ In *Schlumberger Holdings Ltd v Electromagnetic Geoservices AS*,⁴⁶ the court posed the question as “*If the invention is obvious to a CSEM expert, why should the patentee be entitled to its exclusive use because it is not obvious to a geophysicist?*” and answered that the patent would fail on the ground of obviousness.⁴⁷

CONCLUSION

Analysis of the cases show that the ‘obviousness’ test and ‘identification of a skilled person’ are factors which may strengthen or weaken the validity of a patent. Some of the judgments show that the tests evolved by the courts for determining the obviousness or identification of skilled person in a given case, are nebulous. The courts determine these factors based on the circumstances of individual cases. It would, therefore, be prudent for the inventors to analyse the extent of the prior arts in detail and also to analyse the anticipation test by examining the skill set of the relevant skilled person prior to applying for a patent. Proof of obviousness or lack of it is a cumbersome and in many cases, the results show that the court’s view varies from cases to case. Duration taken by the courts in deciding these cases add to the uncertainty. The courts should devise procedures for speedy disposal of the patent cases to encourage research and protect the genuine inventions.

REFERENCES

- [1] See also, 35 U.S.C. §§ (02.10.2006) (novelty and obviousness); Article 6, Rule 3 of EAPC.
- [2] *Catnic Components Ltd v Hill & Smith Ltd*, [1982] R.P.C. 183.
- [3] Section 2() of the Patents Act, 1970 defines invention to mean a new product or process involving an inventive step and capable of industrial application.”
- [4] AIR 1929 PC 38.
- [5] [1998] R.P.C. 1.
- [6] [1996] R.P.C. 183.
- [7] Section 48 of the Patents Act, 1970.
- [8] Section 107 of the Patents Act, 1970.
- [9] Vaver, David. "Sprucing Up Patent Law." *Intellectual Property Journal* 23 (2011): 63. (quoting *Laddie J in Coflexip SA v. Stolt Comex Seaway MS Ltd.*, [1999] EWHC Pat 258).
- [10] Approved by the U.K. Supreme Court in *Actavis Group PTC EHF v ICOS Corporation*, [2019] UKSC 15.
- [11] 383 U.S. 1 (1966). See also *KSR International Co. v Teleflex Inc.*, 550 U.S. 398 (2007). These tests have been acknowledged and followed by the Delhi High Court in *F.Hoffmann-La Roche Ltd v Cipla Ltd*, 148 (2008) DLT 598.
- [12] “withdraws what is already known into the field of its monopoly and diminishes the resources available to skilful men.” (*Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp.*, 340 U. S. 147, 152 (1950), explaining the reason for refusing patent for what is obvious). Also *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007).
- [13] 383 U.S. 39 (1966).

⁴⁵*Inhale Therapeutic Systems Inc v Quadrant Healthcare plc* [2002] RPC 21.

⁴⁶ [2009] RPC 571.

⁴⁷*Id.* para 72.

- [14] *Id.* at 52.
- [15] *Wind Surfing International Inc. v Tabur Marine Great Britain Limited*, 1985 R.P.C. 55. A similar approach was taken by the court in *Pozzoli v BDMO SA*, (2007) EWCA Civ 388. See also *F.Hoffmann-La Roche Ltd v Cipla Ltd*, 148 (2008) DLT 598.
- [16] *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, (1979) 2 SCC 511.
- [17] 558 F. Supp. 747.
- [18] *Apple Inc v Samsung Electronics Co., Ltd*, U.S. District Court, San Jose Division, Case 5:12-cv-00630-LHK Document 2203. “The device of claim 7, further comprising instructions to display visual cues to communicate a direction of movement of the unlock image required to unlock the device”. (Claim 8).
- [19] *Apple Inc. v Samsung Electronics Co. Ltd*, 839 F.3d. 1034 (Fed. Cir. 2016).
- [20] *Schlumberger*, para 209. However, examination of the claim should not be made in hindsight with the claims in an invention in mind. If the invention is anticipated in a prior art, it must be proved specifically. See also *The General Tire & Rubber Company v The Firestone Tyre and Rubber Company Limited*, [1972] R.P.C. 457.
- [21] *Firestone v. Aluminum Co. of America*, 285 F.2d 928, 929-930
- [22] [2022] EWHC 561 (Pat).
- [23] In *Pozzoli*, the court approved the following four tests propounded in *Windsurfing International Inc v Tabur Marine (Great Britain) Limited*, [1985] R.P.C 59: (1) Identify the inventive concept which is subject matter of the patent in the suit; (2) Determine if the alleged inventive concept was common general knowledge to an unimaginative skilled person in the art; (3) Identify the difference between the prior art and the alleged invention and (4) Determine if the alleged invention is obvious to a skilled person without any knowledge of the alleged invention and determine whether the improvements require any degree of invention.
- [24] 1884 (6) RPC 49.
- [25] AIR 1930 PC 1.
- [26] *Lallubhai Chakubhai v. Chimanlal & Co.*, AIR 1936 Bom 99.
- [27] *Id.*,
- [28] *Bishwanath Prasad v Hindustan Metal Industries*, (1979) 2 SCC 511.
- [29] (2000) 3 M.L.J. 85.
- [30] (2009) RPC 571.
- [31] 2009(3) CTC 178.
- [32] 1884 (6) RPC 49.
- [33] *The General Tire & Rubber Company v The Firestone Tyre and Rubber Company Limited*, [1972] R.P.C. 457. (Quoting *Graham J*)
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- [39] *Id.* See also *General Tire & Rubber Company* note 33.
- [40] E.g., *Valensi*, note 18; *Beloit Technologies Inc. v Valmet Paper Machinery Inc.*, (1997) R.P.C. 489.
- [41] *Sankalp Rehabilitation Trust v Hoffman La Roche*, 2012 SCCOnLine IPAB 167.
- [42] See *Catnic* note 2. See also *Schlumberger*, note 46.

[43] See General Tyres note 33.

[44] Fresenius Kabi Oncology Ltd v Glaxo Ltd, 2013 SCCOnLine IPAB 117.

[45] Inhale Therapeutic Systems Inc v Quadrant Healthcare plc [2002] RPC 21.

[46] [2009] RPC 571.

[47] Id. para 72.