



LAW CHAMBERS *of*
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PATENT DISPUTE HYPOTHETICAL

You represent a mid-size Indian pharmaceutical company, Carimo, that owns a patent over a hand sanitizer composition. The patent, IN041119 was applied for on 1st April 2010 and granted on 1st November 2011, and is titled "*hand-sanitizing composition*".

Your client has spent several lakhs on R&D to develop the formulation and Governments of many countries source this product from Carimo. The inventor of the composition is Dr Jacinda Khalkho, who was Director of Research in your company, and assigned the patent to your client. She left the company on bad terms over the issue of her remuneration.

The patent has 6 Claims. For the purpose of this hypothetical, Claim 1 is relevant.

Claim 1 of the Patent reads:

"1. A water based hand sanitizing composition, by weight consisting of:

germicidal components of about 71% to about 76% of the composition, the germicidal components comprising isopropyl alcohol and cosmetic grade denatured alcohol,

wherein the isopropyl alcohol comprises about 9% to about 13% of the composition;

glycerin of about 6.75% to about 7%;

fragrance from about 0.0% to about 0.2%; and

the remainder water."

Carimo's hand-sanitizer product sold under the brand name "Kaiclean" has the above composition, is a very successful product and business has been booming since the Covid-19 pandemic started. Carimo donated a million bottles of sanitizers to the Government of India and to various non-profit organizations.

In 2015, Carimo had found out that a small 3-person startup, Invido Pharma, had started making hand sanitizers with the same chemical composition. You addressed a legal notice to them, attaching a copy of Carimo's patent, on 10th June 2015, asking them to cease and desist from infringing your patent. The legal notice was duly delivered but you received no response from them. Since they were no threat to Carimo's business, Carimo decided not to take any action against them.

Last week, your client found out that Invido is now a global company, and has begun extensively advertising its hand sanitizer product "Cocosha", and has secured contracts with all your major clients to supply its product.

Your client has found out that Invido's Director of Research is Dr Jacinda Khalkho. Your client doesn't know how long she has worked with them for.

Your client is shocked to find that its primary distributor, M/s Bababimp, is also the distributor for Cocosha. Your client called up the proprietor of M/s Bababimp, Mr Baba, but he has refused to answer your calls.

Your client sends a Cocosha sample for testing, and finds that it is a water-based hand sanitizing composition, consisting of:

- (i) germicidal components, including isopropyl alcohol and cosmetic grade denatured alcohol: 75%
- (ii) isopropyl alcohol comprises 11% of the composition;
- (iii) coconut oil of about 7%;
- (iv) fragrance from about 0.1% and the remainder water.

In one week alone, Invido's profits from Cocosha is 1.5 crores.

Carimo has decided to take legal action against Invido. Carimo is represented by its Authorized Signatory, Mr Jay Sharif.

Please draft a suit seeking the following reliefs:

- (i) Permanent injunction restraining infringement of patent IN041119
- (ii) Damages

Bear in mind that you will also be seeking an interim injunction, so mention the grounds for urgency in your plaint (even though, in practice before the

Delhi High Court, this will form part of a separate interim injunction application).

Use the following guidance to draft the plaint:

- (i) Note sections 48 and 111 of the Patents Act, 1970.
- (ii) Claims define the territory or scope of protection in a patent;
- (iii) The first claim is a parent or mother claim while remaining claims are referred to as subsidiary claims.
- (iii) First step is to determine the meaning and scope of the patent claims asserted to be infringed.
- (iv) Second step is to compare the properly construed claim with the infringing formulation.
- (v) For the purposes of this hypothetical, assume that coconut oil performs a function identical to glycerin (Look up *Raj Parkash v Mangat Ram*, Delhi High Court).
- (vi) You have a duty of disclosure of all material facts, to court, but you are welcome to style pleadings to make your client's case as strong as possible.
- (vii) You are filing this suit before the Delhi High Court, which has a minimum pecuniary jurisdiction of 2 crores.
- (viii) Keep your plaint brief. Don't exceed 7 pages unless absolutely necessary.
- (ix) Mention your names or your initials in your submission. I may take excerpts of some paragraphs from your submission that are well drafted, to show the audience what the standard of pleading should be.

If any doubts remain on the law, read the relevant Sections of this Guide:

<https://practiceguides.chambers.com/practice-guides/patent-litigation-2020/india>

Send your submissions latest by June 2nd to swathi@sukumar.in with "Carimo v Invido" in the subject line.