



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Reserved on: 04.10.2024***  
***Judgment pronounced on: 02.12.2024***

+ CS(COMM) 301/2023, I.A. 9152/2023, I.A. 9154/2023, I.A. 16237/2023 and I.A. 3967/2024

JAY SWITCHES INDIA PVT LTD .....Plaintiff  
Through: Mr. Chander M. Lall, Sr. Advocate  
with Mr. Gaurav Choubey, Mr.  
Rishabh Agarwal, Mr. Naveen  
Nagarjuna, Mr. Ritik Raghuwanshi  
and Ms. Annanya, Advocates.

versus

SANDHAR TECHNOLOGIES LTD & ORS. ....Defendants  
Through: Mr. Adarsh Ramanujan, Mr. Tarun  
Khurana, Ms. Meenakshi Ogra, Mr.  
Rajat Sabu, Mr. Amarjeet Kumar, Mr.  
Rishi Vohra, Ms. Chhavi Pande, Mr.  
Anubhav Gupta, Mr. Samrat S. Kang  
and Ms. Yashika Chadha, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**AMIT BANSAL, J.**

**I.A. 9152/2023 (O-XXXIX R-1 and 2 of the CPC)**

1. By way of the present judgment, I shall decide the above-captioned application filed on behalf of the plaintiff company under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 [hereinafter the 'CPC'].
2. The present suit has been filed seeking relief of permanent injunction restraining the defendants from infringing the plaintiff's registered patent no. 427110, titled as "*Air Tight Fuel Cap*" [hereinafter the 'Suit Patent'] and



registered design no. 275676, titled as “*Fuel Tank Cap for Vehicle*”, passing off along with other ancillary reliefs.

3. Reply to the interim injunction application was filed on behalf of the defendants on 4<sup>th</sup> July, 2023, and the rejoinder thereto has also been filed by the plaintiff company on 17<sup>th</sup> July 2023.

4. On the first date of appearance i.e., 11<sup>th</sup> May 2023, the counsel appearing on behalf of the defendants, without prejudice to their rights and contentions, gave an undertaking before this court that till the next date of hearing, the defendants would not accept any fresh orders of the allegedly infringing products but will only continue to fulfil the outstanding liabilities of pending orders. The defendants were directed to file an affidavit in this regard.

5. Pursuant to the aforesaid order, affidavits of compliance were filed by the defendants on 24<sup>th</sup> May, 2023 and 10<sup>th</sup> July, 2023, giving details of purchase orders issued to the defendants prior to the order passed on 11<sup>th</sup> May, 2023. This court, *vide* order dated 11<sup>th</sup> September, 2023, permitted the defendants to honour its commitments with customers and directed them to be bound by the undertaking given on 11<sup>th</sup> May, 2023. The said undertaking has continued till date.

6. Arguments on the application were heard on 27<sup>th</sup> September, 2024, 30<sup>th</sup> September, 2024, 1<sup>st</sup> October, 2024 and 4<sup>th</sup> October, 2024, when the judgment was reserved. Subsequently, written submissions have also been filed on behalf of the parties.



### CASE SET UP BY THE PLAINTIFF

7. The case set up by the plaintiff company in the plaint in so far as relating to infringement of the Suit Patent is as follows:

7.1. The plaintiff company was incorporated in the year 1995 under the laws of India and operates out of 8 different locations in India. The plaintiff is engaged in the manufacturing of automotive parts and the key products of the plaintiff include tool room and design, horns, switches, suppressor caps, fuel locks, lights, locks, handles, reflectors, relays, and lock kits.

7.2. The Suit Patent was filed by the plaintiff on 19<sup>th</sup> March, 2010, *via* application no.664/DEL/2010 under Section 43 of the Patents Act, 1970 which was granted on 27<sup>th</sup> March, 2023. The bibliographic details of the Suit Patent for which enforcement is sought is as under:

<b><i>Application No.</i></b>	664/DEL/2010
<b><i>Date of Filing</i></b>	19 <sup>th</sup> March, 2010
<b><i>Publication</i></b>	27 <sup>th</sup> July, 2012
<b><i>Title of Patent</i></b>	“AIR TIGHT FUEL CAP”
<b><i>Pre-grant opposition-I</i></b>	21 <sup>st</sup> May, 2019
<b><i>Pre-grant opposition-II</i></b>	15 <sup>th</sup> September, 2021
<b><i>Pre-grant opposition-III</i></b>	22 <sup>nd</sup> December, 2022
<b><i>Patent Granted</i></b>	IN 427110
<b><i>Date of Grant</i></b>	27 <sup>th</sup> March, 2023
<b><i>Current Assignee/ Patentee</i></b>	JAY SWITCHES (INDIA) PVT. LTD.
<b><i>Status</i></b>	Active



8. Against the Suit Patent, three pre-grant oppositions were filed out of which, two were filed by the defendants. On 21<sup>st</sup> May, 2019, the defendant no.2 filed the first pre-grant opposition to the Suit Patent. The second pre-grant opposition was filed by 'Minda Vast Access System Pvt. Ltd' on 15<sup>th</sup> September, 2021. The third pre-grant opposition was filed on 22<sup>nd</sup> December, 2022 by one, Mr. Rakesh Gupta, who is stated to be an employee of the defendant. All three oppositions were filed on the similar grounds i.e., lack of novelty, lack of inventive step and insufficient description. The plaintiff filed replies to the aforesaid pre-grant oppositions on 21<sup>st</sup> January, 2021, 2<sup>nd</sup> May, 2022 and 9<sup>th</sup> January, 2023 respectively.

9. After dealing with the aforesaid oppositions and replies, the Deputy Controller of Patents and Designs dismissed the pre-grant oppositions and granted the Suit Patent with 18 claims on 27<sup>th</sup> March, 2023.

10. The plaintiff first came across the defendants' products in November, 2018 as it was being used on the production line of Tata Motors. A legal notice was also issued to the defendant no.1 on 28<sup>th</sup> November, 2018 which was duly replied by the defendant no.1 *via* reply dated 14<sup>th</sup> December, 2018. Being satisfied that the defendants were insignificant parties at that time and their products were not of satisfactory quality, the plaintiff did not pursue any further action against the defendants.

11. In March 2023, the plaintiff came across the defendants' fuel tank cap, which was being sold as Model No. COML-13 and "Suitable for Tata Ace" [hereinafter the "Impugned Product"] in the market. The plaintiff purchased the same against invoice dated 28<sup>th</sup> March, 2023. The plaintiff was informed



that the defendants were approaching the plaintiff's major customer, namely, the TATA Group, to sell the impugned products to them.

12. Subsequently, the plaintiff sent the impugned product to its in-house expert and co-inventor of the Suit Patent, Mr. Sunil Dutt, for analysis.

13. The defendant no.1 also sent a notice to the plaintiff on 27<sup>th</sup> April, 2023 seeking a declaration as to non-infringement of the Suit Patent. In the said notice, the defendant tried to differentiate its product from that of the plaintiff by providing the measurements of their products. Along with the impugned product, the said notice was also sent for expert analysis.

14. An affidavit dated 8<sup>th</sup> May, 2023 was filed by the plaintiff's expert analysing the impugned product purchased on 28<sup>th</sup> March 2023 and based on the defence raised by the defendants in the notice of non-infringement dated 27<sup>th</sup> April, 2023. In the affidavit, it was stated that the infringement of the Claims of the Suit Patent was established. A comparison of the features of the Suit Patent vis-à-vis the impugned product and its similar features was also given in the said affidavit which is annexed as Document 39 in the list of documents filed by the plaintiff.

15. It is stated that the detailed illustration of infringement of the plaintiff's patent through claim mapping proves that the defendants were well aware of the plaintiff's products and rights in the Suit Patent and the defendants have wilfully and knowingly infringed the Suit Patent, and are also passing off their products as those of the plaintiff.

#### **CASE SET UP IN THE WRITTEN STATEMENT**

16. In the written statement, in so far as relief of patent infringement is concerned, the defendants have pleaded as under:



16.1. The defendant no.1 [Sandhar Technologies Ltd.] is a company catering to Original Equipment Manufacturers, engaged in the manufacturing of various products including safety and security systems for automobiles. The defendant no.2 [Sandhar Centre for Innovation and Development] is the research and development centre of defendant no.1 which is duly recognised by the Department of Scientific and Industrial Research. The defendant no.3 [Sandhar Automotive Systems Pvt. Ltd.] is a manufacturer and exporter of various automotive accessories, which include locking systems, door handles, rear view mirrors, sheet metal components, handlebar assemblies, clutches and breaks, etc.

16.2. It is the case of the defendants that the prosecution history of the Suit Patent is of utmost importance while construing the claims, rather than mere claim mapping.

16.3. It is averred that the length of the main circular plate (MCP) is of the main circular plate (MCP) (241) alone, and the same does not include engagement projections (EP) (242). The measurement provided by the plaintiff is of the main circular plate (MCP) (241) along with the engagement projections (EP) (242) which adds up to 4.8 mm. Once the measurement of the main circular plate (MCP) (241) alone is considered, the same becomes 2.5 mm, which makes the predetermined distance (PD) of 3 mm as 120% of the length of the main circular plate (MCP) (241), thereby completely differentiating it from the Suit Patent. This calculation proves that the defendants' product is non-infringing.



### **SUBMISSIONS ON BEHALF OF THE PLAINTIFF**

17. Mr. Chander M. Lall, Senior Counsel, appearing on behalf of the plaintiff has made the following submissions in respect of the plaintiff's case of patent infringement:

17.1. The defendant's fuel cap prevents leakage by deploying an identical solution by limiting free space between the beams and the main circular plate (MCP), which is functionally and structurally identical to as disclosed and claimed in the Suit Patent.

17.2. The primary defence of the defendants for the non-infringement of the Suit Patent is based on the minor alteration of 0.5 mm made in the non-functional part of the main circular plate (MCP) and a misleading assertion that the engagement projections (EP) (242) and main circular plate (MCP) (241) are two separate components. As a result, the defendants' measurements of the main circular plate (MCP), which exclude the engagement projections (EP), show that the predetermined distance (PD) in their product is 120% of the length of the main circular plate (MCP) which exceeds the claimed range of 10-100% in the Suit Patent.

17.3. The defence taken is contrary to the Suit Patent, where the plaintiff has clearly and explicitly stated that the engagement projection (EP) is an integral part of the main circular plate (MCP). Therefore, the defendants have no valid basis for treating the engagement projections (EP) as distinct from the main circular plate (MCP). The defendant's approach in measuring a non-functional portion of the main circular plate (MCP) which does not contribute



to the claimed invention, is frivolous and disregards the fundamental principles of claim interpretation.

17.4. Claim 2 of the Suit Patent specifically limits the main circular plate (MCP) to include the engagement projections (EP), which is a part of the main circular plate (MCP) that interacts with the predetermined distance (PD). It is a well-established principle that independent claims are broader, while dependent claims serve to narrow the scope of the independent claim. Thus, Claim 2 is narrower and defines what is included in the main circular plate (MCP) with greater specificity, and its scope is narrower than that of the independent Claim 1.

17.5. The defendants cannot be allowed to approbate and reprobate as the defendants' case contradicts the stand taken in the written submissions made during the Pre-Grant Oppositions, wherein the defendants admitted that the main circular plate (MCP) includes the engagement projections (EP).

17.6. The Suit Patent clearly shows that the main circular plate (MCP), which includes the engagement projections (EP), is denoted by reference numeral "241", with "242" being used specifically for the engagement projections (EP). Reference numerals are used solely as identifiers and should not be seen as distinct elements as done by the defendants, while deliberately ignoring relevant text in the description. Reliance in this regard is placed on *Guidelines for Examination in the European Patent Office (4.18 Reference Signs)*<sup>1</sup>.

17.7. The claimed range of 10-100% for the predetermined distance (PD) and the main circular plate (MCP) was categorically agitated by the defendants in their two pre-grant oppositions, to which the plaintiff duly replied, and were

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<sup>1</sup> [https://www.epo.org/en/legal/guidelines-epc/2024/f\\_iv\\_4\\_18.html](https://www.epo.org/en/legal/guidelines-epc/2024/f_iv_4_18.html)





finally dealt with and decided upon by the Controller in the order granting the Suit Patent. The claimed range of 10-100% is crucial to the working of the invention.

17.8. The plaintiff submits that the letter “l” was never part of the original claims and had only been introduced in Claim 1 under the directions of the Controller during the hearing held on 6<sup>th</sup> and 7<sup>th</sup> December, 2022. Therefore, it is an obvious typographical error in the positioning of reference numeral which in no way amounts to misrepresentation.

#### **SUBMISSIONS ON BEHALF OF THE DEFENDANTS**

18. Mr. Adarsh Ramanujan, counsel appearing on behalf of the defendants has made the following submissions in reply:

18.1. The “*length of the main circular plate (241)*” as it appears in Claim 1 cannot be substituted with the “*length of the engagement projections (242)*” as they are distinct components. In the defendants’ product, the predetermined distance (PD) is 3 mm, and the main circular plate (MCP) (241) has a thickness of 2.5 mm, hence the defendants’ product does not infringe the Suit Patent.

18.2. The specification consistently differentiates between the main circular plate (MCP) (241) and engagement projections (EP) (242). The 10-100% range is defined solely in reference to the main circular plate (MCP) and not the engagement projections (EP). Moreover, the patentee has consciously marked the main circular plate (MCP) as “241” and the engagement projections as “242”. At no point have they used both the terms interchangeably.



18.3. The patentee's amendments and statements during the prosecution establish that the 10-100 % range refers only to the main circular plate (MCP) (241). This position is consistent with their prior submissions, the amendment made in January 2021 and their responses to pre-grant oppositions. The patentee is now estopped from taking a contrary view today.

18.4. The plaintiff's claim that the thickness of the engagement projections (EP) (242) is the core of the invention is misplaced. *Firstly*, the object of maintaining "air tightness" / preventing air leakage is admittedly fulfilled by a conjoint action of the main circular plate (MCP) (241), the spring (7) and the sealing member (33). The same position is accepted by the plaintiff in the prosecution history. *Secondly*, engagement projections (EP) (242) merely contribute to the locking function, not the sealing function. *Thirdly*, the thickness of the engagement projections (EP) is higher only in the downward direction, towards the bottom side. Increasing the thickness of these engagement projections (EP) does not affect how the engagement occurs or the sealing function.

18.5. The plaintiff's reliance on Claim 2 and specification to argue that the main circular plate (MCP) (241) includes the engagement projections (EP) (242) is incorrect. The defendant does not deny that engagement projections (EP) (242) are physically attached to 241. The issue in question is which length/thickness must be measured. From a claim construction perspective, the language in Claim 1 is clear. Only the thickness of the main circular plate (MCP) (241) is mentioned. The same cannot be amended *ex post facto* by incorporating the expression engagement projections (EP) (242) from Claim 2.



18.6. To infringe Claim 1, the predetermined distance (PD) must be less than or equal to the thickness/length of the main circular plate (MCP) (241). Since the predetermined distance (PD) in the defendant's product (3mm) exceeds the thickness of the main circular plate (2.5 mm), the defendant does not infringe Claim 1, regardless of whether the main circular plate (MCP) includes the engagement projections (EP).

18.7. Since Claim 1 is not infringed, Claim 2, which incorporates all the limitations of Claim 1, *ipso facto* Claim 2 is not infringed. Claim 2 further states that the main circular plate (MCP) (241) also comprises engagement projections (EP) (242). In ordinary language, this implies that the main circular plate (MCP) (241) physically comprises an additional component called engagement projections (EP) (242). Claim 2, in ordinary language, does not speak about the 10-100% measurement. For the 10-100% range, one is again required to go back to Claim 1 which requires only a comparison with the length/thickness of the main circular plate (MCP) (241) and not the length/thickness of the engagement projections (EP) (242). Hence, Claim 2 is also not infringed.

18.8. The alleged admission by the defendant in Post Hearing written submissions by Mr. Rakesh Gupta, where "242" is written alongside "main circular plate" in the drawings, is merely a typographical error. The paragraph immediately succeeding the Figure 2 therein clearly demonstrates that the main circular plate (MCP) was understood as "241", not "242". Similarly, in the Expert Affidavit filed by Mr. Rakesh Gupta, in both the paragraphs preceding and succeeding the Figure 2 therein, the main circular plate (MCP) has been correctly marked as "241", and the engagement projections (EP) is



correctly marked as “242”. An inadvertent typographical error cannot amount to an admission.

### ANALYSIS

19. I have heard the rival submissions and have also perused the record of the case.

20. At the outset, it may be noted that even though in the application for interim injunction, the plaintiff has sought interim injunction on the ground of design infringement as well, in its oral submissions, this aspect has not been argued and the plaintiff has only pressed for an interim injunction on the basis of the patent infringement.

21. Similarly, in the written statement filed by the defendants, various objections with regard to the invalidity of the Suit Patent have been taken by the defendants. However, in their submissions relating to interim injunction, only the ground of non-infringement has been pressed.

22. From the submissions made by the counsel, the entire dispute can be crystallised into the core issue of construction of Claim 1 of the Suit Patent.

23. One of the most significant issues that arise for consideration while deciding a patent infringement suit relates to the construction of the claims. According to section 10(4)(c) of the Patents Act 1970<sup>2</sup>, the claims define the scope of the invention. However, claims have to be read along with the Complete Specification. In this regard, a reference may be made to the

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<sup>2</sup> Section 10, Contents of specifications:

(4) Every complete specification shall—

xxx                      xxx                      xxx

(c) end with a claim or **claims defining the scope of the invention for which protection is claimed;**



observations made by the coordinate bench in the recent judgment *Guala Closures SPA v. Agi Greenpac Ltd.*<sup>3</sup>, which are set out below:

**“40. Claim construction is generally the first and foremost exercise carried out in adjudicating patent infringement suits, especially when confronted with products like tamper-evident closures which are based on mechanical features. The same has also been highlighted in ‘Chapter 9: Construction of the Specification and Claims’, in Terrell on the Law of Patents, Eighteenth Edition. As per Terrell, determination of the actual scope of the Claims of a complete specification, is one of the most significant issues, in litigation involving patents. Once the scope of the claims is clarified, questions regarding infringement and invalidity often find swift resolution. Therefore, it has been highlighted that patentees must navigate a delicate balance, as they have to assert their claim in such a way that the Claim is broad enough to cover infringement while not excessively broad to avoid coverage by prior art. On the contrary, it has been highlighted that Defendants, employ a ‘squeeze’ argument, often claiming that if a claim encompasses their activities, it must also encompass prior art. **This highlights the pivotal role of claim construction in patent litigation, shaping the foundation for determining infringement and assessing patent validity. The relevant extract from Terrell is set out below:****

***“Determination of the true construction of the claims of a patent specification, which are to be read in the context of the specification, is commonly one of the most significant issues, if not the single most significant issue, in litigation involving patents.”***”

[Emphasis supplied]

24. It is a settled position of law that claims have to be read as ordinary English sentences and words cannot be added or subtracted therefrom. A claim has to be understood by reference to the words used therein and not the subjective intent of the patentee. (Please refer *Novartis A.G. & Ors. v. Natco Pharma Limited*<sup>4</sup>)

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<sup>3</sup> 2024 SCC OnLine Del 3510

<sup>4</sup>2021 SCC OnLine Del 4849



## COMPLETE SPECIFICATION ALONG WITH CLAIMS

25. In *Guala Closures Spa* (Supra), it was also held that the crux of the invention is described where the expression “characterized” is used in the claim. The relevant portion is set out below:

*“46. Whenever the expression “characterised” is used in a claim it is meant to describe the invention. Such characterisation forms the crux of the invention. The same has been explained in the claim construction segment of “Landis on Mechanics of Patent Claim Drafting” by Robert C. Faber, Third Edition, as under:*

*“In European country applications, including claims separating prior art elements from the inventive contribution by a transition phrase, the transition phrase is usually translated into English as something like “characterized in that” or “characterized by comprising.””*

26. In light of the legal position explained above, a reference may be made to the relevant extracts from Claim 1, which are set out below:-

*“1. A fuel cap (1) to be secured intermittently to a fuel filler neck attached to an inlet of a feed oil pipe, comprising:*

....  
....  
....  
....

***characterized** in that each of the said locking projection (52) of the cylindrical locking member (5) is provided with a pair of beams on an inner surface thereof that terminate at a predetermined distance from a bottom end of the locking projections (52), and*

***the said predetermined distance being equal to 10% to 100% of the length (l) of the main circular plate (241) separating the middle portion (23) of the cylindrical body (2) from the bottom portion (24) of the cylindrical body (2).**”*

[Emphasis supplied]



27. On behalf of the plaintiff, it is contended that the predetermined distance (PD) in Claim 1 should be interpreted to mean “10% to 100% of the length of the main circular plate along with engagement projections”. On the other hand, the case of the defendants is that the predetermined distance (PD) in Claim 1 should be interpreted to mean “10% to 100% of the length(l) of the main circular plate (MCP)”.

28. It is an undisputed position that if the interpretation canvassed by the plaintiff is accepted, the product of the defendant would infringe the patent of the plaintiff. If on the other hand, the interpretation canvassed by the defendant is accepted, there would not be any infringement of the Suit Patent.

29. Mr. Lall, appearing for the plaintiff has placed reliance on the wording of dependent Claim 2 to contend that the independent Claim 1 has to be read in conjunction with the dependent Claim 2 and a reading of the dependent Claim 2 would clearly demonstrate that the engagement projections (EP) is a part of the main circular plate (MCP).

30. Since reliance has also been placed by the plaintiff on the dependent Claim 2, the same is also extracted below:-

*“2. The fuel cap (1) as claimed in claim 1, **wherein the main circular plate (241) comprises of a pair of engagement projections (242) engaged within predetermined distance provided in the locking projections (52).**”*

[Emphasis supplied]

31. To better understand the purpose and scope of the invention, a reference may be made to the description of the ‘*field of invention*’ given by the plaintiff in the Complete Specification of the granted Suit Patent, which is set out below:-



***“Field of the Invention***

*The present invention relates to a fuel cap for fuel tank of a motor vehicle. More particularly, the present invention relates to a fuel cap which is able to maintain the required air pressure within a fuel tank and avoid fuel spillage out of the fuel tank during running of a motor vehicle.”*

[Emphasis supplied]

32. At this stage, it would be useful to refer to the figure illustrating the Suit Patent. Figure 2 as given in the Complete Specification is reproduced below:

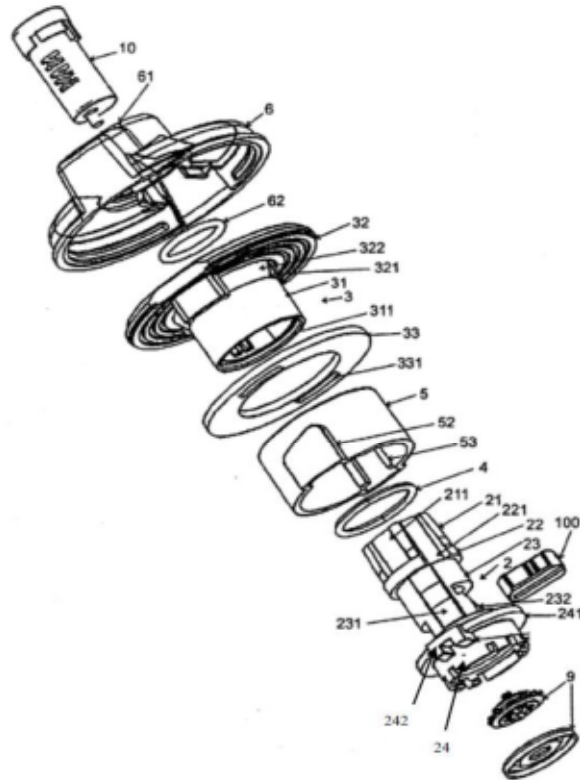


Figure 2

33. A reading of the portions of Claim 1 extracted above shows that the range of 10% to 100% refers to the length of the main circular plate (MCP)





(241). The words “*main circular plate*” in Claim 1 are followed by the numerical reference “241”. When numerical reference “241” is read in juxtaposition with Figure 2 of the invention, it becomes abundantly clear that the numerical “241” is in relation to the main circular plate (MCP). The numerical reference “242” which does not occur in Claim 1 but occurs in Claim 2, refers to the engagement projections (EP). As per Figure 2 above, the numerical “242” clearly indicates the engagement projections (EP).

34. In *Virgin Atlantic Airways Limited v. Premium Aircraft Interiors Group Limited*<sup>5</sup>, the England and Wales Court of Appeal (Civil Division) has held that the reference signs aid in the understanding of technical features, however, they do not limit the scope of the claim.

35. In the present case, as discussed above, the numerical references clearly assist in understanding the technical features of the claim and therefore act as a useful aid for claim construction.

36. The expression “*main circular plate (241)*” in Claim 1 is followed by the expression “*separating the middle portion (23) of the cylindrical body (2) from the bottom portion (24) of the cylindrical body*”, which can only be in relation to the main circular plate (MCP) and not the engagement projections (EP). It is clear from Figure 2 above that it is the main circular plate (MCP) that separates the middle portion of the cylindrical body (2) from the bottom portion (24) of the cylindrical body and not the engagement projections (EP).

37. One of the key arguments made on behalf of the plaintiff is that the main circular plate (MCP) is a non-functional part which does not contribute to the invention. To examine the role of the main circular plate (MCP) in the

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<sup>5</sup> [2009] EWHC 26 (Pat)



Suit Patent, a reference may be made to the detailed description of the Complete Specification of the Suit Patent, the relevant extracts from which are reproduced below:

*“.... This predetermined distance is equal to 10% to 100% of the length of the main circular plate 241 dividing middle and bottom portion of the cylindrical body 2. **Further, the main circular plate 241 is provided with a pair of engagement projections 242 that engage within the locking projections 52. More particularly, these engagement projections 242 engage within the predetermined distance provided in the locking projections 52. Thus, this engagement of engagement projections 242 in the locking projections 52 helps in right fitment of fuel cap 1 on to the mouth of the fuel filler neck. More particularly, the circular seal member 33 tightly abuts the mouth of the fuel filler neck, thus leaving no space for any release of air pressure present within the fuel tank or the fuel itself***

*A seal ring 4 which has a rectangular cross section is accommodated on top surface of the main circular plate 241. More particularly, the lower end of the trunk portion 31 which rests on top surface of the main circular plate 241 has a step 311 towards its inner surface so as to accommodate a seal ring 4.*

... ..  
*The trunk portion 31 of the body cover 3 is encompassed by a coiled spring 7. More particularly the coiled spring 7 is encased inside the locking member 5. More precisely, the coiled spring 7 rests between upper surface of the main circular plate 241 and lower surface of a step 51 provided on inside surface near to top edge of the locking member 5.*

... ..  
*The contraction of coiled spring 7 is responsible for axial movement of locking member 5 with respect to cylindrical body 2, thus urging the circular seal member 33 to fit tightly against the mouth of the fuel filler neck.”*

[Emphasis supplied]

38. The aforesaid extracts make it clear that the main circular plate (MCP) (241) has a significant role in the working of the Suit Patent. More



specifically, the main circular plate (MCP) (241) serves as a structural component for housing and aligning key elements like the seal ring (4), coiled spring (7), and engagement projections (EP) (242) to enable airtight sealing through interaction with the circular seal member (33). It also works as a platform for spring compression, facilitating the locking and securing mechanism of the fuel cap. Hence, the argument of the plaintiff that the main circular plate (MCP) is a non-functional part cannot be sustained.

39. On behalf of the plaintiff, it has been vehemently contended that engagement projections (EP) are nothing but a part of the main circular plate (MCP). However, as noted above, the plaintiff has used the words “main circular plate (MCP)” and “engagement projections (EP)” in the Complete Specification in a separate and distinct manner, wherein the engagement projections (EP) (242) are referred to as attachments to the main circular plate (MCP) (241) for the locking purpose.

40. A reading of Claim 1 and Claim 2 also shows that Claim 1 does not make any reference to the engagement projections (EP), whereas Claim 2 makes a reference to both the main circular plate (MCP) as well as the engagement projections (EP). Claim 1 does not specify whether the main circular plate (MCP) has engagement projections (EP) or not. However, the dependent Claim 2 clearly envisages the main circular plate (MCP) having engagement projections (EP). Pertinently, Claim 2 does not talk about the range of 10 to 100% and the relationship between the predetermined distance (PD) and the length of the main circular plate (MCP), which is there in Claim 1. Thus, in my considered view, the aforesaid range of proportion given in Claim 1 cannot be read into Claim 2.



### **PROSECUTION HISTORY**

41. As per Terrel on the Law on Patents 20<sup>th</sup> Edition, the prosecution history acts as an important aid towards the construction of the claim. The relevant extract from Terrel is set out below:

*“The US doctrine of “file wrapper estoppel”, under which statements made by or on behalf of the patentee during the course of prosecution may be taken as binding on issues of construction, does not exist as such under English law. **However, in Furr v Truline, Falconer J. accepted a submission that statements made by the patentee in the Patent Office file amounted to an admission against interest, so that it was not open to them to contend for a wider construction thereafter. (It should also be noted that in that case it was the patentee itself which originally put the documents in evidence, a matter regarded by Falconer J. as significant).**”*

[Emphasis supplied]

42. It is borne from the record that the Suit Patent has undergone detailed scrutiny prior to the grant of the patent. It is the case of both the plaintiff and the defendant that both sides have made admissions in the prosecution which are contrary to their current position. Therefore, at this juncture, a reference may be made to the prosecution history of the Suit Patent.

43. Initially, the claims as filed by the plaintiff did not contain any numerical reference signs. The patent application was amended by the plaintiff on 21<sup>st</sup> January, 2021 so as to insert the numerical references and the number (241) was specifically assigned to the main circular plate (MCP) and the numerical (242) was assigned to the engagement projections (EP).



44. Subsequently, the Claim 1 was amended by the plaintiff on 21<sup>st</sup> December, 2022 and the letter “*l*” was added to designate the length of the main circular plate (MCP). This amendment was made pursuant to a pre-grant opposition filed by the defendant no.2 in respect of lack of clarity with regard to “10-100% of the length of the Main Circular Plate”. The relevant portion of the pre-grant opposition dated 21<sup>st</sup> May, 2019 is set out below:

**“The length of the main circular plate is not properly described in the description of the claimed invention. The description does not clearly define what accounts as the length of the main circular plate. Hence, it is difficult to imply the meaning of the term ‘length’ of the main circular plate from the description of the claimed invention. As the term ‘length’ is not clearly supported in the description of the claimed invention, the opponent has assumed that the length may be the width of the main circular plate.”**

[Emphasis supplied]

45. By way of amendment, the plaintiff asserted that the letter “*l*” pertains to the length of the main circular plate (MCP). This is highlighted in Figure 4 of the Suit Patent, which is extracted below:

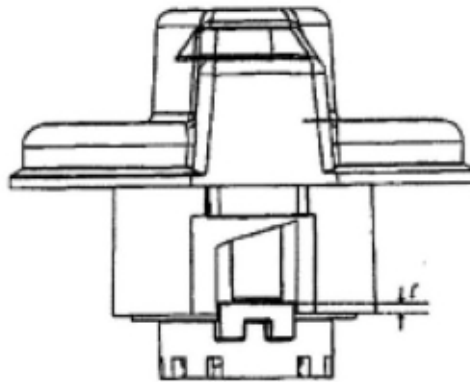


Figure 4

46. The plaintiff in its post-hearing written submissions filed on 21<sup>st</sup> December, 2022, filed after hearing in pre-grant opposition filed by the



defendant no.2, had also admitted that the length of the main circular plate (MCP) is clearly labelled as “l” in Figure 4 of the drawings filed along with the application. The relevant portion is reproduced below:

**“The Applicant further points out that the length of the main circular plate is described in the description along with a clear labelling ‘l’ in Figure 4 of the drawings filed in the present application. Therefore, the phrase, when read in light of the description and drawings, is abundantly clear and precisely defines the scope of the invention as claimed.”**

[Emphasis supplied]

47. In the present suit, a written statement has been filed on behalf of the defendants wherein the defendants have relied on the aforesaid amendment in the patent application. Subsequently, the plaintiff moved an application under Section 58 of the Patents Act, 1970 (I.A. 3967/2024) seeking to amend the Claim 1 once again, so as to delete the letter “l” after the word “length” and insertion of the said letter “l” after the words “pre-determined distance” in Claim 1.

48. In my opinion, this application is highly belated and has been filed only in order to defeat the defence taken by the defendants. As noted above, the plaintiff has clearly stated in its written submissions that the length “l” pertains to the length of the main circular plate (MCP). This submission of the plaintiff was duly acknowledged by the Controller in its order dated 27<sup>th</sup> March, 2023. Therefore, the contention of the plaintiff that the insertion of “l” was a typographical error in the positioning of the reference letter, cannot be accepted.



49. The insertion of the letter “l” by way of an amendment specifically in the context of the main circular plate (MCP) alone and not the engagement projections (EP), negates the submission of the plaintiff that the length referred to in Claim 1 would include the engagement projections (EP).

50. In the reply dated 21<sup>st</sup> January, 2021 filed on behalf of the plaintiff to the pre-grant opposition initiated by the defendant no.2, the plaintiff has repeatedly stated that “*pre-determined distance*” is equal to “10% to 100% of the length of the main circular plate (241) that separates the middle portion (23) from the bottom portion (24) of the cylindrical body (2)”, which is identical to what has been stated in Claim 1 of the granted Suit Patent.

51. Another extract from the reply dated 21<sup>st</sup> January, 2021 filed on behalf of the plaintiff to the pre-grant opposition initiated by the defendant no.2, relevant for adjudication of the present application is set out below:-

*“It is submitted that the expression “The length of the main circular plate” is used to indicate the length of the main circular plate that separates the middle portion of the cylindrical body from the bottom portion of the cylindrical body. **It is most respectfully submitted that it is obvious for a person skilled in the art that in case of a circular plate, or any cylindrical section, its nothing but thickness. This thickness is routinely referred to as is its length in the art, while describing the extent of lateral (parallel) movement of another element with the cylindrical section. Accordingly, in the present patent application extent of movement of the engagement projections 242 with respect to the cylindrical member 5 is described as 10-100% of the length or the thickness of the main circular plate 241. The same is indicated by the reference numeral 241 in figures 2 of the present Patent Application, and the Applicant humbly submits that the above would be evident to a person skilled in the art. Hence, the objections of the Opponent in this regard ought to be dismissed as baseless and frivolous”.***

[Emphasis supplied]



52. The aforesaid extract demonstrates the understanding of the plaintiff that expression “length” in the context of a “circular plate” means nothing but its thickness. Therefore, the expression “length” used in Claim 1 would refer to the thickness of the main circular plate (MCP) alone. By no stretch of imagination, can the engagement projections (EP) be considered to be a “circular plate”, and therefore, the expression “thickness” would not qualify the engagement projections (EP). It is also to be noted that the numerical references “241” and “242” have also been used in a functionally distinctive manner in the aforesaid extract.

53. Mr. Lall has drawn attention to the admissions made on behalf of the defendant in the drawings given in the post-hearing written submissions filed by the defendant no.2 on 7<sup>th</sup> March, 2023, where numerical reference “242” is given in respect of the main circular plate (MCP). Mr. Lall also pointed out that even in the expert affidavit dated 16<sup>th</sup> January, 2023 given on behalf of the defendants, the main circular plate (MCP) was marked with reference numeral “242”.

54. Mr. Ramanujan submits that the numerical references in the aforesaid drawings and the expert affidavit are typographical errors and this is borne out by the texts immediately preceding and succeeding the drawings.

55. A perusal of the paragraph succeeding the figure in the written submissions (para 10 of the written submissions) shows that the main circular plate (MCP) has been referred with the numerical reference “241” and not “242” and therefore, I find merit in the submission of the counsel for the defendant that use of the numerical reference “242” in the figure appears to be a typographical error.





56. Similarly, the reference to the main circular plate (MCP) as “242” in the figure given in the expert affidavit also appears to be a typographical error since in the preceding paragraph 32 of the expert affidavit the main circular plate (MCP) has been clearly referred to as “241” and in the succeeding paragraph 33 of the expert affidavit the engagement projections has been referred to as “242”.

### **CONCLUSION**

57. Therefore, I am satisfied that the reference to the ‘length’ of the main circular plate in Claim 1 is to the ‘thickness’ of the main circular plate (MCP) (241) without the engagement projections (EP) (242) referred in Claim 2. Consequently, on a *prima facie* view, there cannot be any infringement by the defendants in respect of either Claim 1 or Claim 2.

58. Even assuming a best-case scenario for the plaintiff, the claims in the Suit Patent suffer from an element of ambiguity which is also reflected from the various amendments filed on behalf of the plaintiff. When the scope of claims itself is not clear, the Court cannot conclusively determine the scope of the patent at the stage of consideration of application for an interim injunction. The exact understanding of the claims and their interpretation by a person skilled in the art is a question of fact that requires evidence, including expert testimony, which can only be addressed during the trial.

59. In view of the discussion above, the plaintiff has failed to make out a *prima facie* case for grant of interim injunction. Balance of convenience is in favour of the defendants and against the plaintiffs. Irreparable injury and undue hardship would be caused to the defendants if the interim injunction is granted in favour of the plaintiff company.



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60. Accordingly, the application for the grant of interim injunction is dismissed and the defendants are relieved from the undertaking given by the defendants in court on 11th May, 2023.

61. However, it is directed that the defendants shall maintain complete accounts of the manufacture and sale of the impugned products and file the statement of accounts on a half-yearly basis.

62. Needless to state that the observations made herein are only for the purpose of deciding the present applications and shall have no bearing on the final outcome of the suit and the counter claim.

**AMIT BANSAL  
(JUDGE)**

**DECEMBER 02, 2024**