

CR 17922/2021
18/2/2021

S.S.D
Party in person

Order Sheet

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In the Court of PRL. CITY CIVIL AND SESSIONS JUDGE

FR No. : O.S./440/2021

Registration No. : O.S./532/2021

O.S. 532/2021

Plaintiff Vs Defendant

1) SRINIVAS S DEVATHI

1) OFFICE OF GENERAL COUNCIL , UNITED STATES PATENT AND TRADEMARK OFFICE

2) HULSEY P C

Nature of Case :

INTELLECTUAL PROPERTY RIGHTS

Provision of Law :

U/o VII Rule 1 and 2 of CPC ,

Advocate for Plaintiff Sri./Smt. :

PARTY IN PERSON

Date of Filing :

20-01-2021

Date of Registration :

20-01-2021

Relief :

PRAYS TO PASS DECLARATORY JUDGMENT IN FAVOUR OF ME AGAINST THE DEFENDANTS AND FURTHER ORDER THE DEFENDANT 1-USPTO TO WITHDRAW AND DELETE THE FABRICATED PRIOR ART (COBB, PRICE, SAENGER, AND HALE) AND GO ON TO WITHDRAW AND DELETE THE FABRICATED ISR ISSUED ON THE PCT APPLICATION NUMBER PCT/US2014/046619 WITH A FABRICATED DATE AND AS PRAYED IN THE PLAINT.

Date of Cause of action :

Receipt No.

Purpose and

Bank Name

Amount

Date

Mode

25888/2020-2021
20-01-2021

Court Fee on Plaint
Cash

100.00

CAO/CMO

Registered and made over this case to disposal according to law.

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court for

PRL. CITY CIVIL AND SESSIONS JUDGE
BENGALURU

21/01/2021

P- Party In person

party in person's
presence.

To hear on maintenance

of suit by

12/2
21/1



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12/02/2021

P- Party in Person

- To hear on maintainability

Heard the pt on maintainability of the suit.

For orders by

10/2

12/2

15/02/2021

P- Party in person

- for orders on maintainability

For orders by

17/2

12/2

17/02/2021

P- Party in Person

- for orders



ORDER ON MAINTAINABILITY OF THE SUIT:

Heard plaintiff on the maintainability of the present suit. The present suit is filed for declaration seeking the further order directing the defendant No.1 USPTO, USA, to withdraw and delete the fabricated prior art (Cobb, Price, Saenger and Hale) and go on to withdraw and delete the fabricated ISR issued on the PCT application No.PCT/US-2014/046619 with a fabricated date and direct the defendant No.1 to issue a correct, new, clean ISR, to the PCT application No.PCT/US-2014/046619; which is consistent with the patent grant US 8, 910, 998. that would be correct ISR to the replica PCT Application No.PCT/US-2014/046619 and direct the defendant No.1 to send out correction communication to WIPO and all other 153 PCT contracting states in the world; to their respective PTOs, issuing the corrected new ISR replacing the fabricated the ISR; further to order defendant No.1 to issue grant on his continuation patent application in USA, application No.14/535, 867 and the present suit is valued for Rs.1,000/- and court fee of Rs.100/- is paid u/s.26(c) of KCF & SV Act. It is also mentioned in the valuation slip that his invention is valued at 93 trillion dollars.

On perusal of the entire plaint and documents, it discloses that the plaintiff had approached Defendant No.2 Law firm M/s Hulsey Calhoun, Texas in connection with his invention of vehicular colour change technology and the Defendant No.2 had issued a report dated 25.02.2014 stating that his invention is still available for registration and the report had disclosed only 7 citations of Prior Art Search. Subsequently, he has applied for Patent before the



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1st Defendant USPTO through 2nd Defendant on 27th March 2014 (USA National Priority Application) was filed with USPTO.

That on 05.08.2015 to his shock and surprise, he received an email from 2nd defendant. In the said email the report showed Cobb Patent No. US7516764B1 dated 04.04.2009 Price Patent No.563669 dated 10.06.1997, which did not contain in the search result of the Defendant No.2 dated 25.02.2014.

Plaintiff contends that the Defendant No.1 and 2 colluded together to get the Patent No. US7516764B1 dated 04.04.2009 Price Patent No.563669 dated 10.06.1997 to discard the legitimate claim of the Plaintiff.

In order to decide the maintainability of the present suit, it is relevant to refer to the following provisions of law.

Section 104 of Patent Act Act,1970 provides as follows:

Jurisdiction:

"No suit for a declaration under Section 105 or for any relief under Section 106 or for infringement of a patent shall be instituted in any court inferior to a District Court having jurisdiction to try the suit"

Section 20 of Civil Procedure Code Provides as follows:

Other suits to be instituted where defendants reside or Cause of Action arises. — Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction —

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works



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for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

(c) The cause of action, wholly or in part, arises.

[Explanation].—A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

On perusal of the entire plaint averments and documents, it shows that his grievance is with respect to the act of Defendant No.1 and Defendant No.2 who are situated in the United States of America and they are not within the jurisdiction of this court and the cause of action has also not arose within the jurisdiction of this court.

Though the plaintiff has argued that he is citizen of India and India has signed a Patent Cooperation treaty on 7.12.1998, therefore, the plaintiff being a citizenship of India can maintain a suit against the defendants before this court, the plaintiff has not filed any materials to show that he can file a suit with respect to his grievance alleged against the defendants in India. The entire plaint does not disclose the cause of action that arose in India. Even the suit is not one for Declaration under Sec.105 or any relief under sec.106 or for infringement of patent as contained in section 104 of Patents Act 1970.

Though Cause of Action and applicability of law are different, the present suit is not



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maintainable for want of Cause of Action and for non-applicability Indian Law. Every process of Court has got legal sanctity. Summons cannot be blindly issued just because some suit is filed. The court cannot simply assume jurisdiction in this case and proceed further. The same would amount to coram-non-judice. I also rely on the Hon'ble Apex Court three bench decision in Auto Engineering Works vs. Bansal Trading Company & others reported in 2001 (10) SCC 630, wherein it was held that once the court finds that there is no territorial jurisdiction, the court is bound to return the plaint.

As it can be perused, United States Patent and Trademark Office is a Government Branch of United States and there is a bar contained under Sec.86 of Civil Procedure Code that "No foreign state may be sued in any court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a secretary to that Government". Therefore, it would be proper to return the plaint to present it before the Jurisdictional Foreign Court if the foreign law permits. Hence, the following:

ORDER

Office is directed to return the plaint to present it before the proper forum/court.

[Dictated to the judgment writer, computerised and print out taken by him, corrected and then pronounced in the open court on this day the 17th February 2021.]

SADANANDA NAGAPPA NAIK

(SADANANDA NAGAPPA NAIK)
XVIII Addl. City Civil Judge,
Bengaluru



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18/2

(S/E)