

MANU/SC/1353/2007

Equivalent Citation: MIPR2007(1)403, 2007(34)PTC173(SC)

IN THE SUPREME COURT OF INDIA

I.A. No. 3 in Civil Appeal No. 1970 of 2006

Decided On: 02.02.2007

Appellants: **Hetero Drugs Ltd.**

Vs.

Respondent: **Wockhart Ltd. and Ors.**

Hon'ble Judges/Coram:

B. P. Singh and H. S. Bedi, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Abhishek Manu Singhvi, Sr. Adv., Maninder Singh, Pratibha M. Singh, G. Sharma, Sudeep Chatterjee, Sumeet Bhatia and Maninder Singh, Advs

For Respondents/Defendant: K.V. Mohan, Adv.

Subject: Intellectual Property Rights

Disposition:

Application allowed

Case Note:

Patent Act- Validity of EMR only for five years or till the grant or refusal of Product Patent- Respondent's application for grant of product patent refused- Interim Injunction granted against the petitioner on the basis of the EMR vacated.

Ratio Decidendi:

The validity of Exclusive Marketing Rights (EMR) is only for five years or till the grant or refusal of product patent.

ORDER

1. This application has been filed on behalf of the appellant submitting that in view of the subsequent developments, the interim order made on April 05, 2006 ought to be vacated. It is submitted that the aforesaid interim order was passed in view of the fact that the respondents had been granted Exclusive Marketing Rights (EMR) in respect of the product in question. The aforesaid EMR in terms provided that it shall continue to be in force for a period of five years or till such time as the application for product patent is granted or refused.

I.A. No. 3 in C.A. No. 1970/2006.... (Contd.)

2. It is not disputed before us that by order dated 18th May 2006, the application made by the respondents for grant of product patent had been refused. The said order was challenged before the High Court of Bombay and by order dated 16th January 2007 prayer for interim relief was refused by the High Court. In this view of the matter, we are satisfied that the interim order of April 05, 2006 granting limited interim relief ought to be vacated in view of the subsequent developments. Accordingly, the said interim order is vacated. However, in case the respondents succeed before the High Court, it shall have liberty to apply before this court for appropriate directions.

3. The application is allowed accordingly.