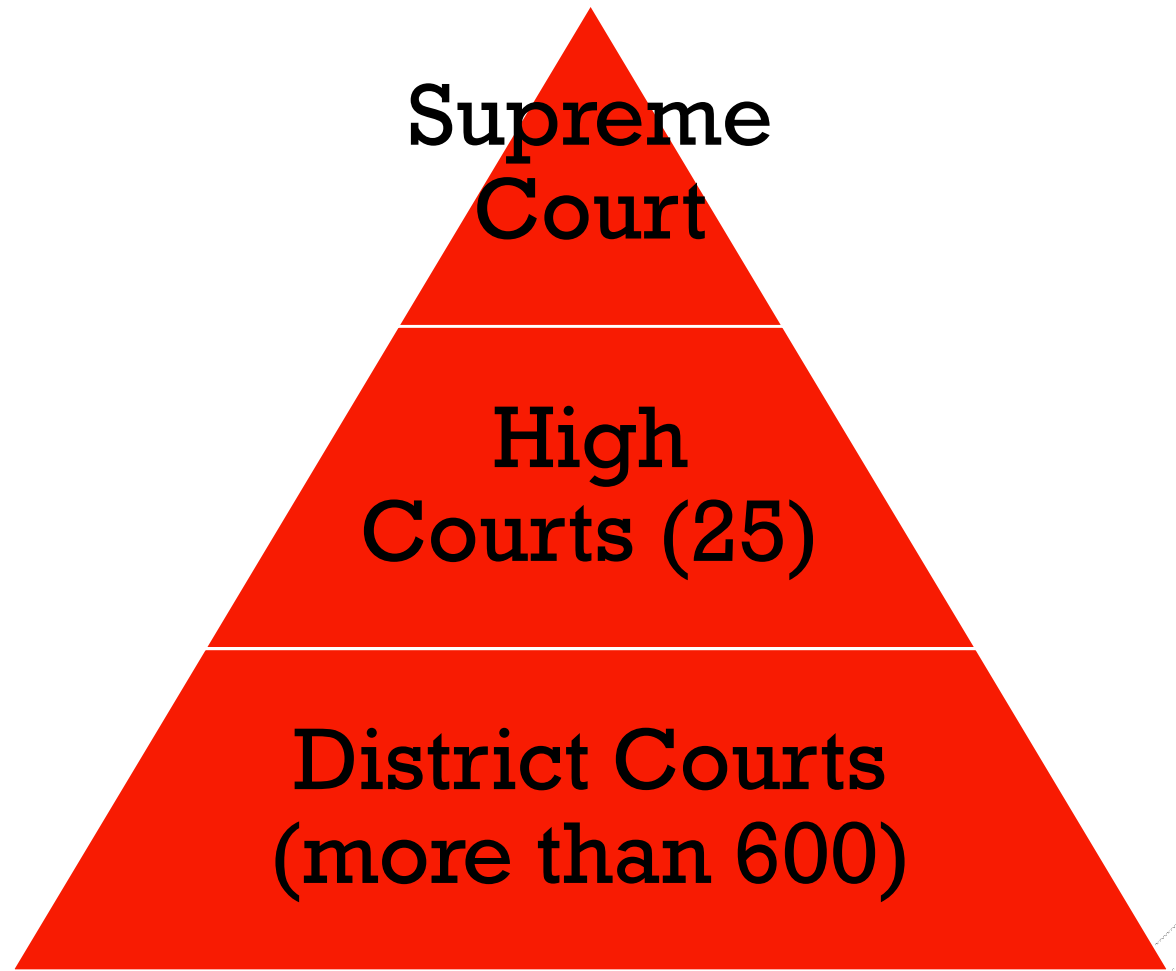
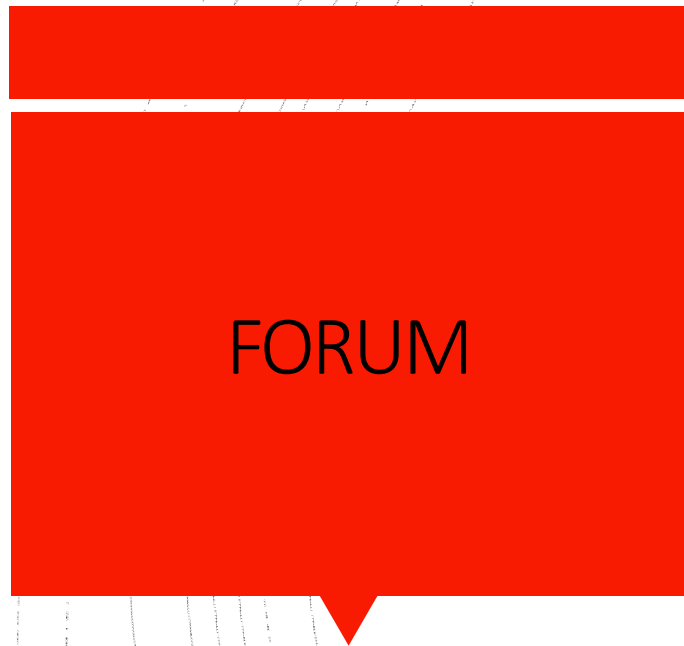


PATENT  
LITIGATION IN  
INDIA

**JUDICIAL  
SYMPOSIUM IN  
INTELLECTUAL  
PROPERTY  
(JSIP 2019)**





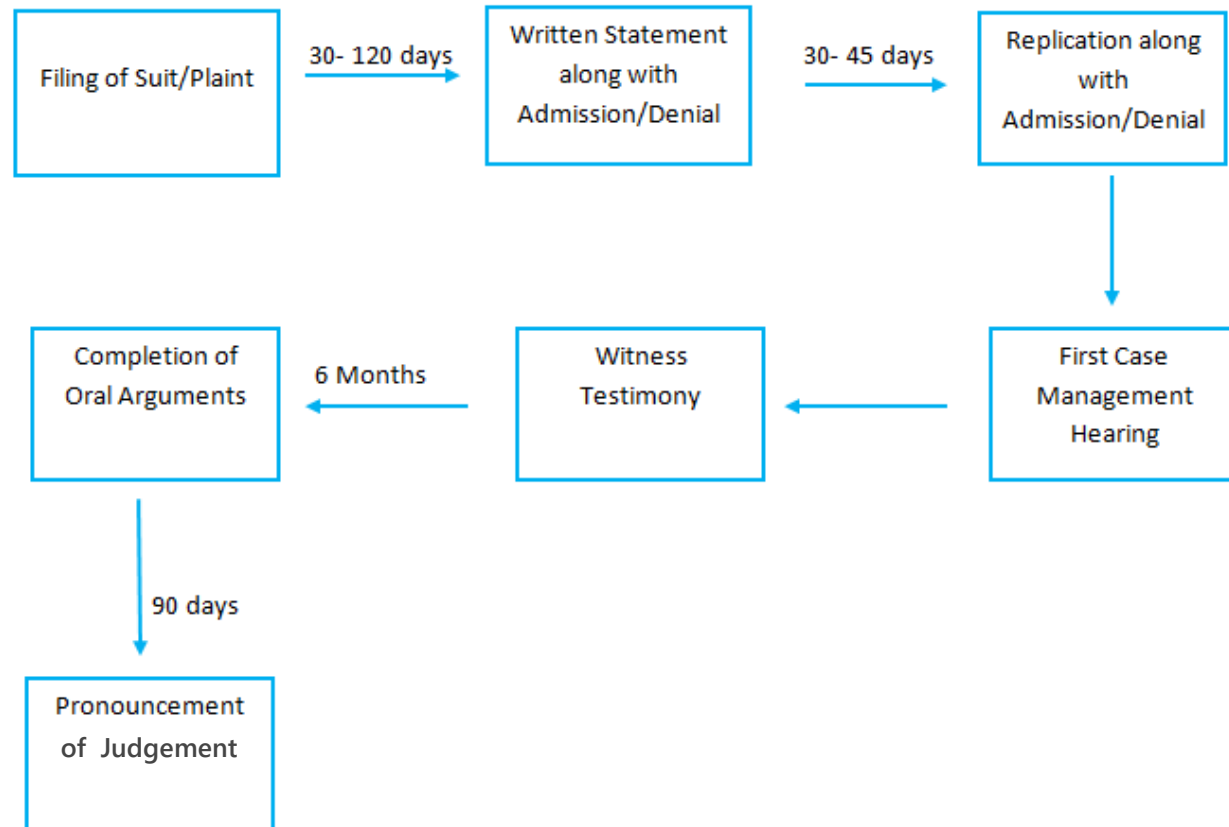
## FORUM

- High Courts with original jurisdiction - Delhi, Mumbai, Kolkata, Chennai and Himachal Pradesh.
- Section 104 of the Patents Act, 1970 deals with jurisdiction.
- Jurisdiction – Territorial and Pecuniary.
- Counter claim – suit transferred to High Court.

## COMMERCIAL COURTS ACT

- All IPR cases valued above USD 4000 are commercial disputes.
- Highlights of the Commercial Courts Act are:
  - Strict Timelines (reduced the time till trial)
  - Payment of Costs
  - Streamlined process
  - Introduction of case management hearing
  - Summary Judgment

# The Commercial Courts Act : Strict timelines



## Patent Invalidation Proceedings

- Defendant can challenge validity of a patent in infringement proceedings by filing a counter claim;
- If no counter claim filed, all grounds of invalidity can also be defense to infringement (section 107);
- As per Enercon case, if invalidity is challenged prior to infringement action, the Intellectual Property Appellate Board (IPAB) will decide.

## Milestones in a litigation

- **Completion of pleadings and filing of documents**
  - **Plaint to be filed with all documents.**
  - **Written statement by the defendant with all documents.**
  - **Response by the plaintiff.**
- **Inspection/discovery/Admission and Denial of documents/Exhibit marking**

## FIRST CASE MANAGEMENT HEARING

- Brief arguments by counsel;
- Issues are framed by Court;
- Section 104A – onus in patent cases;
- Schedule is fixed for trial
  - Appointment of Local Commissioner;
  - Filing of list of witnesses;
  - Filing evidence by way of Affidavit;
  - Recording of testimony/cross-examination in the presence of the Local Commissioner on a day to day basis;
  - The Delhi High Court (Original Side) Rules, 2018 – recognizes Confidentiality Club and Hot Tub procedure
  - Court may appoint an independent scientific expert, to assist the court under section 115 of the Act;
- Final Arguments;



## Issues framed in an infringement suit

- Issues that are typically framed in a patent infringement suit:
  - Whether the court has the jurisdiction to decide the issues in the suit (onus on Plaintiff);
  - Whether the Plaintiff is the registered owner of the suit patents (onus on Plaintiff);
  - Whether the Defendant is infringing the suit patents (onus on Plaintiff/ onus on Defendant where subject matter of the patent is a process);
  - Whether the Plaintiff is entitled to seek an injunction restraining the Defendant from infringing the suit patents (onus on Plaintiff);
  - Whether the Plaintiff is entitled to damages (onus on Plaintiff);
  - Whether the suit patents are invalid in nature and liable to be revoked (onus on Defendant, if the Defendant chooses to raise this ground as part of defence);

## Onus: infringement

- Section 104A of the Patents Act, 1970
- Subject matter of patent is process for obtaining a product
- Defendant's and Plaintiff's products are identical
- Court may direct defendant to prove that process used is different
- Patentee has been through reasonable effort unable to determine the process
- Provided patentee proves that the products are identical
- Court will not require disclosure of manufacturing or commercial secrets

## Damages/ rendition of accounts

- Section 108 – relief.
- onus to prove damages is on a plaintiff.
- Usually it is a percentage of sale of a product.
- In pharma and SEP cases, the disputes have been settled for several millions of dollars.
- Actual costs are being awarded.
- Section 111 of the Act .
- Section 11(A)(7) of the Act.

## Status Of The Mock Trial

- Pleadings have been completed
- Parties have conducted admission/denial of documents
- First Case Management Hearing (SCENE 1)
- Plaintiff is directed to file evidence by way of affidavit of its expert witness;
- Cross-examination of Plaintiff's witness (SCENE 2)
- Final arguments addressed by the parties(SCENE 3)
- Pronouncement of judgment (SCENE 4)



**END**

# JSIP, 2019: MOCK TRIAL BY INDIA

Participants:

Hon'ble Ms. J, Prathiba M Singh

Mr. Pravin Anand (representing the Plaintiff)

Mr. Hemant Singh and Ms. Saya Choudhary Kapur (representing the Defendant)

## PLEADINGS STAGE: MOCK TRIAL

- Pleadings have been completed;
- The Defendant chose not to file a counter claim;
- However, invalidity of the suit patent raised as a defence in the written statement;
- Parties have conducted admission/denial of documents filed by the other side;
- Admitted documents can be relied upon during course of final arguments without having to prove the same;
- Matter listed before court for framing of issues;

# SCENE I



## KEY ISSUES

1. Construction of the claims of patent no 20190925 and specifically
  - Whether all features of the car navigation system need to be installed inside the car
  - The interpretation and scope of first memory means and second memory means
2. The impact and effect of the prosecution history on claim construction

## OPENING ARGUMENTS: PLAINTIFF

1. Although claim construction is ultimately a question of law, but it may involve underlying factual disputes [*Teva v Sandoz*, 574 U.S. (2015)]

*Construction of written instruments often presents a “question solely of law”, at least when the words in those instruments are “used in their ordinary meaning”. Great Northern R. Co. v. Merchants Elevator Co., 259 U.S. 285, 291 (1922). But sometimes, say when a written instrument uses “technical words or phrases not commonly understood”, id., at 292, those words may give rise to factual dispute. If so, extrinsic evidence may help to establish a usage of trade or locality”*

2. The admitted facts are:
  - The Plaintiff has a patent for a car navigation method whose validity is not in question;
  - What the Defendants are doing is admitted and not in dispute
3. The inventive concept – complete specification: (i) a method not requiring previous locational knowledge of places of interest and (ii) having simplified operation for display

## OPENING ARGUMENTS: PLAINTIFF

4. It is a cardinal principle of claim construction that the claim must be interpreted on its own language, and if it is clear then resort cannot be had to subsequent statements or documents either to enlarge its scope or to narrow the same - *F. Hoffman La Roche Ltd & Anr v. Cipla Ltd.*, RFA (OS) 92 of 2012 , High Court of Delhi (paragraph 94)
5. Claims use terms “first memory means” and “second memory means”
  - Means cum function format
  - Means is a NONCE word, neutral of any particular structure [*Williamson v Citrix, Fed. Cir., Nov. 5, 2014*]

*This claim limitation is in the traditional means-plus-function format, with the minor substitution of the term “module” for “means.” The claim language explains what the functions are, but does not disclose how the functions are performed. In this case, the term “module” is a “nonce” word, a generic word inherently devoid of structure.*

## OPENING ARGUMENTS: PLAINTIFF

6. Embodiments are only illustration of invention. Cannot limit claims [WIPO Patent Drafting Manual, 2007, p 67]

*The patent agent needs to understand the differences between three legal constructs related to patents: inventions, embodiments and claims. An “invention” is a mental construct inside the mind of the inventor and has no physical substance. An “embodiment” of an invention is a physical form of the invention in the real world. The “claims” must protect at least an “embodiment” of the invention – but the best patent claims will protect the “invention” itself so that no physical embodiments of the invention can be made, used or sold by anyone without infringing the claims.*

*Assume that an inventor invents the first cup to have a handle. He makes a physical embodiment of his invention in the form of a red clay cup with a handle. His patent agent could simply claim just the physical embodiment of the red clay cup with a handle but this would still allow others to make non-infringing cups, such as plastic cups with handles. If the patent agent understands the invention, he will claim the “invention” of the cup with a handle in his broadest claim and subsequently claim the red clay cup embodiment in a narrower claim.*

## OPENING ARGUMENTS: PLAINTIFF

7. The Defendant copied core inventive concept
  - Terminal within vehicle with screen, and means for selection;
  - Storage of spot data
  - Storage of memo data
  - Display on map
    - They clearly infringe
  
8. Terminal with screen has to be inside vehicle. First and second memory can be inside, outside, on a server in a building, on a cloud ... anywhere.

## PLAINTIFF'S ARGUMENTS: PROSECUTION HISTORY

- Prosecution history does not alter the interpretation of the terms
- Sufficient capacity battery to protect RAM was distinguishing feature
- Also available in D-server
- Location of battery in car relevant only for one embodiment

## OPENING ARGUMENTS: DEFENDANT

- The asserted claim reads as under:

**Control method for car navigation system** that displays a map on a display screen, the method comprising steps of:

*reading, from first memory means in which facility data comprising display data indicative of a plurality of service facilities and coordinate data indicative of existing positions of the service facilities have previously been stored, the display data to display the plurality of service facilities on the display screen;*

*designating one of the plurality of service facilities displayed on the display screen in accordance with an operation;*

*reading coordinate data corresponding to the designated one service facility from the first memory means;*

*storing the read coordinate data as user registered data in second memory means; and*

*displaying a position indicated by the coordinate data read from the second memory means by superimposing a predetermined pattern on to the map when the map is displayed on the display screen.*

## OPENING ARGUMENTS: DEFENDANT

- Suit patent is a method applied to car navigation system as described (composite and wired );
- Plaintiff's case is based on reading of claims in isolation;
- Claims and specification must be read together as a composite document to understand the invention (composite navigation system);
- Patentee is duty bound to FULLY describe the invention and its working (no reference to wireless system);
- Claims lack clarity in terms of memory means, their arrangement and mode of interaction;



## OPENING ARGUMENTS: DEFENDANT

- Purposive construction( cost effective and convenient navigation system)
- Construction preserving validity of the claim( manner in which cited prior art distinguished);
- Equitable Claim construction and prosecution history estoppel (navigation system stalled in car)
- Approbate and reprobate not permissible

## ISSUES: MOCK TRIAL

- *Whether the court has the jurisdiction to decide the issues in the suit? (onus on Plaintiff);*
- *Whether the Plaintiff is the registered owner of the suit patent? (onus on Plaintiff);*
- ***Whether the Defendant is infringing the suit patent? (onus on Plaintiff/ onus on Defendant where subject matter of the patent is a process);***
- *Whether the suit patent is invalid in nature and liable to be revoked? (onus on Defendant)*
- ***Whether the Plaintiff is entitled to seek an injunction restraining the Defendant from infringing the suit patent? (onus on Plaintiff);***
- *Whether the Plaintiff is entitled to damages? (onus on Plaintiff);*

## PRE-TRIAL CONSIDERATIONS

- Validity of the suit patent is not being discussed;
- The features of method used in the Defendant's navigation system are also not in controversy;
- Primary issue to be decided is of INFRINGEMENT;
- Claim construction to be conducted to determine scope of the patented invention;
- Based on claim construction, infringement to be determined;
- Evidence is thus being led *qua* scope of patent and infringement;

# SCENE 2

## EVIDENCE

- Plaintiff has produced, Mr. Rajiv Bhatnagar as its technical expert;
- Qualifications of Mr. Bhatnagar are as under:
  - ❖ Bachelor of Technology in Electronics from IIT, Kanpur;
  - ❖ 45 years of experience in R&D on Electronics and Control Systems;
  - ❖ Patent Attorney for past 10 years;

## EVIDENCE

- Plaintiff conducts examination in chief;
- Defendant conducts cross-examination;
- The Court also questions the expert;
- Subsequent to the same, Defendant elects not to lead any evidence on the ground that as per its belief, the Plaintiff has failed to establish infringement;
- Evidence concluded;
- Matter re-notified for final arguments;

# SCENE 3

## CLOSING ARGUMENTS: PLAINTIFF

- 'If claims clear, the width and amplitude cannot be narrowed by specification, prosecution history or even extrinsic documents
- Common general knowledge of POSA can supplement information in patent document (example: dictionaries)
- Memory broadly understood by POSA (ROM, RAM, External, Cache etc.)
- POSA familiar with data storage on external server or even cloud (large data)
- Server solution - less costly and more effective
- Communication means and network interfaces well-known for interchange of data between devices
- Decentralization – global norm
- Nothing to indicate that device limited to an onboard type could be offboard or de-localized.



# DICTIONARY MEANING OF "MEMORY"

1. *SHORTER OXFORD ENGLISH DICTIONARY – Fifth Edition, Volume I*

“Memory: A device (usually a part of a computer) in which data or program instructions may be stored and from which they may be retrieved when required: capacity for storing data etc. in this way”

2. *OXFORD ENGLISH DICTIONARY – 2<sup>nd</sup> Edition, Volume IX*

“Memory: A device (usually a part of a computer) in which data or program instructions may be stored and from which they may be retrieved when required”

3. *WEBSTERS ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE – First Edition*

The capacity of a computer to store information subject to recall. The components of the computer, in which such information is stored.

4. *BUSINESS DICTIONARY (ONLINE EXTRACT SUPPORTED BY S. 65B, EVIDENCE ACT, 1872 CERTIFICATION)*

Two main types of computer memory are:

(1) Read only memory (ROM), smaller part of a computer's silicon (solid state) memory that is fixed in size and permanently stores manufacturer's instructions to run the computer when it is switched on.

(2) Random access memory (RAM), larger part of a computer's memory comprising of hard disk, CD, DVD, floppies etc., (together called secondary storage) and employed in running programs and in archiving of data.

## CLOSING ARGUMENTS: PLAINTIFF

- ‘NONCE word (means function format) makes its width amply clear
- Defendant adopted inventive concept in totality (pith and marrow)
- Parts need not be interconnected as “method” claim
- Wired v wireless. Inventive concept works the same for storage of data.
- Cost not an objective of the invention . Mentioned in embodiment only – There can be other less costly embodiments
- The doctrine of equivalence or purposive construction (*Catnic, Improver, Kirin Amgen, Actavis*) are meant to widen or broaden the scope of a claim, and not to narrow it.

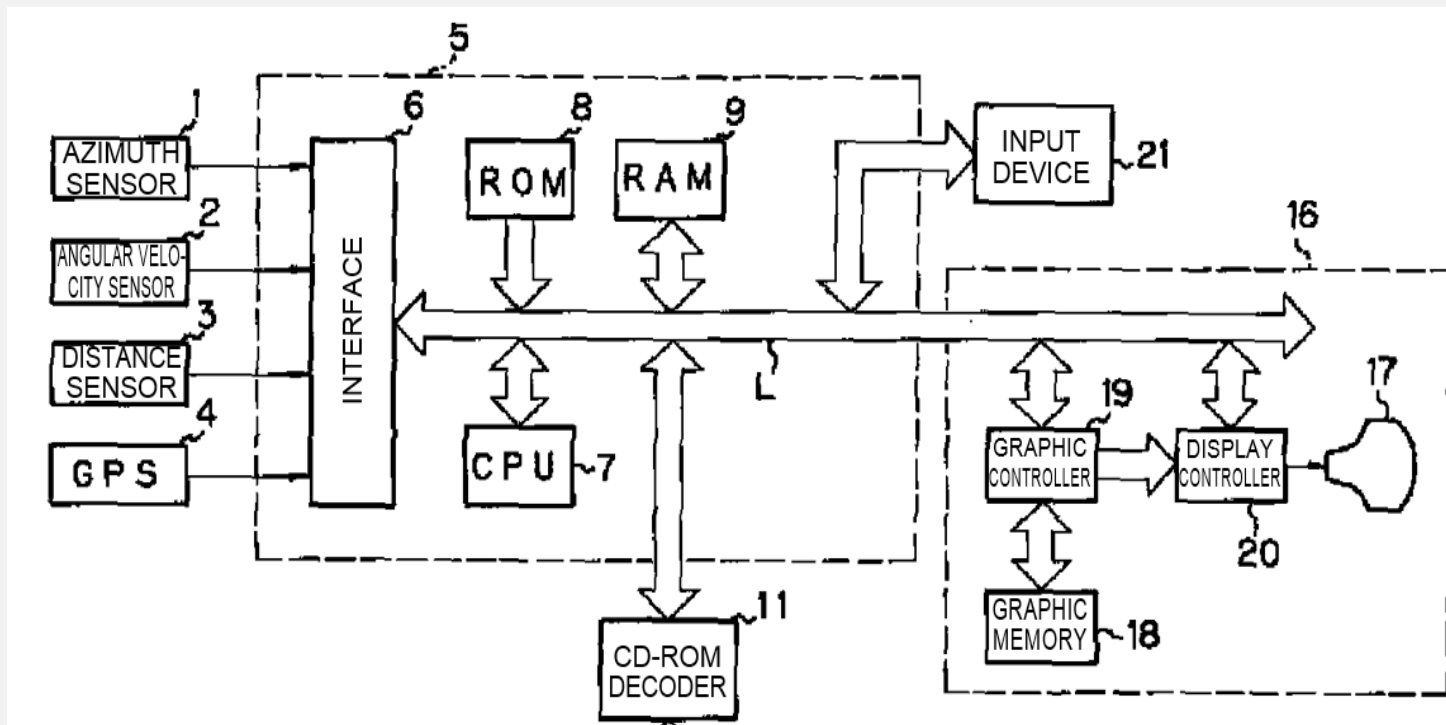
## CLOSING ARGUMENTS: PLAINTIFF

- The first and the second memory means can be in the same memory device, just as two files can be in the same hard disk.
- The distinction between the first memory means and second memory means in the patent specification in the language of Lord Hoffman, “in *Improver Corporation v. Remington Consumer Products Limited* – 1990 FSR 181 – “Words or phrases having not a literal but a figurative meaning (being a form of synecdoche or metonymy)
- No plausible reason advanced and no evidence led by Defendants as to why a rational patentee would want to limit the scope of the invention.
- The unscrupulous copiest cannot escape the patent by making unimportant and insubstantial changes and substitutions in the patent

## DEFENDANT'S ARGUMENTS

- Claimed invention is a method for a car navigation system described in the specification and is therefore limited in scope to such a car navigation system only;
- Purpose is to have a convenient, efficient and cost effective navigation system;
- Features can be achieved only when system installed/localized in car;
- Remote server, and wireless connectivity not envisaged by the patent;
- D's method is thus not infringing;
- Patentee must be bound to his statement made during prosecution of the suit patent;
- Claim must be interpreted in a manner that is consistent with the representation made for its grant before the Patent Office;
- Scope must be narrowed on purposive construction;
- Aprobate and Reprobate not permissible;
- Claims are invalid if the invention includes wireless connectivity which forms part of the method covered by the prior art.

# CAR NAVIGATION SYSTEM SHOWN AS EMBODIMENT



# CASE LAW RELIED UPON BY DEFENDANT

## I. THE CLAIM HAS TO BE READ WITH THE SPECIFICATION AND NOT IN ISOLATION

### **Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries [(1979) 2 SCC 511]**

*“As pointed out in **Arnold v. Bradbury [(1871) 6 Ch A 706]** the proper way to construe a specification is not to read the claims first and then see what the full description of the invention is, but first to read the description of the invention, in order that the mind may be prepared for what it is, that the invention is to be claimed, for the patentee cannot claim more than he desires to patent. In **Parkinson v. Simon [(1894) 11 RPC 483]** Lord Esher, M.R. enumerated that as far as possible the claims must be so construed as to give an effective meaning to each of them, but the specification and the claims must be looked at and construed together.”*

*The learned trial Judge precisely followed this method of construction. He first construed and considered the description of the invention in the provisional and complete specification, and then dealt with each of the claims, individually. Thereafter, he considered the claims and specification as a whole, in the light of the evidence on record.”*

## CASE LAW RELIED UPON BY DEFENDANT

2. SINCE THE TERM “MEANS” IS BROAD AND THE PATENT IS A METHOD PATENT, THE RULES OF PURPOSEIVE CONSTRUCTION AND NOT LITERAL CONSTRUCTION SHOULD BE ADOPTED FOR INTERPRETING THE CLAIMS.

i. **F. Hoffman-La Roche Ltd. v. Cipla Ltd. [(2015) 225 DLT 391 (DB)]**

“31. ...

*In the impugned judgment, this takes the form of purposive construction and the learned Single Judge goes on to adopt the reasoning in the decision reported as (1982) RPC 153 Catnic Components Ltd. v. Hill & Smith Ltd. approach to purposive claim construction, extended to chemical compounds in the decision reported as 2004 RPC Merck & Co. Inc. v. Generic UK Ltd, which advocates giving effect to ‘the real purpose for which the product was invented’ and explicitly involves a substituted judgment as to what the real purpose of the product is.”*

“114. ...

*The Learned Single Judge has correctly applied the principle in the decision reported as AIR 1969 Bom 255 F.H & B v. Unichem, in stating that in case of any ambiguity of the Claim of the suit patent then resort can be taken to the specification of the said suit patent and nothing else. He correctly recognized that a Purposive Construction of the claims is necessary in order to not construe claims too narrowly.*

...”

## CASE LAW RELIED UPON BY DEFENDANT

### ii. **Merck Sharp and Dohme Corporation v. Glenmark Pharmaceuticals [FAO (OS) 190/2013 Decided on 20th March, 2015]**

“59. ...

*Whilst it may be appealing at first blush to limit a pharmaceutical patent only to the exact and precise compounds and chemical structures disclosed, that may render genuine medical inventions to naught. Patents cannot be construed so broadly so as to risk granting the patentee an unduly broad monopoly, but equally, one must not construe them narrowly and risk allowing competitors pick the closest imitation and frustrate the monopoly. Such broad claims - or even amendments limiting them later - have not been permitted as being “covetous” (John William Howlett); wide and indeterminate or vague claims are construed as insufficient (Rf. Eastman Kodak (supra)). The answer - the via media - lies in determining the context of the industry involved, the nature of the technical contribution and whether the crux of the invention is reflected in the combinations claimed. This is the approach of the English Courts as well when they refer to the rule of “purposive construction” of patent claims.*

...”



## CASE LAW RELIED UPON BY DEFENDANT

3. ONCE A PATENTEE OBTAINS A PATENT ON A NARROW READING OF THE CLAIM, IT IS NOT UNFAIR TO BIND THE PATENTEE TO A NARROW CONSTRUCTION OF THE CLAIM

**i. Furr v. C.D. Truline [[1985] FSR 553]**

*“It seems to me that it would be very strange if the plaintiffs should now be in a position to prevent the defendants marketing their single-flange Crocodile profiles when the first plaintiff, the patentee, only obtained the grant of the patent upon his meeting Patent Office objections to his application for the patent by expressly limiting (a) the method claims to the use of a double-flange member so as to exclude from the ambit thereof the use of single-flange members and (b) the article claims to a double-flange member so as to exclude single-flange members from the ambit of such claims.*

...  
”  
...

## CASE LAW RELIED UPON BY DEFENDANT

### ii. **Merck & Co. Inc. v. Generics UK Ltd. [[2004] R.P.C. 31]**

*“It seems to me that what the Protocol requires is that the monopoly should cover all embodiments, whether explicitly mentioned in the claims or not, which the notional skilled reader would conclude, with reasonable confidence, the inventor wanted to cover. Where it is clear that the patentee did not intend to obtain protection for particular variants, it is not open to the court to extend the monopoly to cover them. Similarly, if a notional skilled addressee cannot conclude with reasonable confidence that the inventor wanted to obtain protection for a particular embodiment, it must follow that the patent conveys the message that the patentee might well have intended to exclude that embodiment. To give protection in such circumstances would run the risk of going against the intention of the patentee, thereby being unfair to him, and would not be giving third parties a reasonable degree of certainty as required by the Protocol.”*

## CASE LAW RELIED UPON BY DEFENDANT

### 4. APROBATE AND REPROBATE NOT PERMISSIBLE.

#### **R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683]**

*“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage”. [See : *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd.* [(1921) 2 KB 608, 612 (CA)] , Scrutton, L.J.] According to Halsbury's Laws of England, 4th Edn., Vol. 16, “after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside”. (para 1508)”*

## REJOINDER ARGUMENTS BY PLAINTIFF

- Defendant has not led any evidence on infringement – adverse inference to be drawn;
- Plaintiff's patent is 16 years old;
- PSIA knows cost of remote memory location is cheaper than a localized memory located in the vehicle;
- Portability/location of memory not an issue since method claim;
- File wrapper estoppel ought not to be taken into consideration;

## JUDGEMENT RESERVED

- After hearing arguments from both sides, judgment is reserved;
- After judgment is written, the same is shown in the daily cause list a day before it is to be pronounced;
- Counsel attend Court on the day of pronouncement of judgment;

# SCENE 4

**CAUSE LIST DATED 25.09.2019  
DELHI HIGH COURT**

Court No. 24

Hon'ble Ms. J, Prathiba M. Singh

For pronouncement at 10.30 am

**CS(COMM) No.  
1234/2019**

**Pony Corporation Vs.  
Donkey Corporation**

**Mr. Pravin Anand, Mr.  
Hemant Singh, Ms. Saya  
Choudhary Kapur**

# JSIP 2019

MOCK TRIAL JUDGMENT-PONY CORPORATION V.  
DONKEY CORPORATION

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# BRIEF FACTS

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- Patent infringement suit filed by **Plaintiff-Pony Corporation** seeking permanent injunction, delivery-up and damages of 10 million USD;
- Patent No. 20190925- “Control method for a car navigation system”;
- Priority date of the patent-25<sup>th</sup> September, 2002. Expiry- 24<sup>th</sup> September 2022;
- **Defendant – Donkey Corporation** – started offering DK car navigation service in India from 25<sup>th</sup> September, 2013;

# BRIEF FACTS

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- Defendant's method to control a car navigation system includes:
  - A server managed and operated by the Defendant;
  - The D terminal held by the user.
- The server program exclusively customized for the D method – installed in Defendant's server. Subscription charges – Rs. 210 per month.

# ISSUES

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## ISSUE NO.1

**Whether the court has the jurisdiction to decide the issues in the suit? (onus on Plaintiff);**

Defendant's website evidence that D services available within jurisdiction of Court - Issue decided in favour of the Plaintiff.

# ISSUES

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## ISSUE NO.2

**Whether the Plaintiff is the registered owner of the suit patent?  
(onus on Plaintiff);**

Certified copy of e-register filed by Plaintiff, and not denied by Defendant – Issue decided in favour of the Plaintiff.

# ISSUES

---

## ISSUE NO.3

**Whether the Defendant is infringing the suit patent? (onus on Plaintiff/onus on Defendant where patent is a process);**

Issue decided in favour of the Plaintiff– dealt with in detail later.



# ISSUES

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## ISSUE NO.4

**Whether the suit patent is invalid in nature and liable to be revoked? (onus on Defendant)**

No counter-claim filed by Defendant hence patent deemed valid – Issue decided in favour of the Plaintiff.

# ISSUES

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## ISSUE NO.5

**Whether Plaintiff entitled to seek an injunction restraining the Defendant from infringing the patent? (onus on Plaintiff);**

Issue of consequential relief dealt with in detail later.



# ISSUES

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## ISSUE NO.6

**Whether the Plaintiff is entitled to damages? (onus on Plaintiff);**


Issue of consequential relief dealt with in detail later.





# FINDINGS AND ANALYSIS

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- Claims have to be interpreted in the context of the invention, and are not alien to the specification;
  - The term “means” cannot be interpreted in restrictive manner;
  - Purposive interpretation in the context of the invention, and objective sought to be achieved by the invention;
  - Section 10 – “best method” to be disclosed, cannot be treated as the “only method”;
  - Restrictive interpretation – injustice to the patentee;
- 


# FINDINGS AND ANALYSIS

---

- D method uses primary and secondary memory means along with a terminal;
- Physical location of the terminal or server does not take the invention outside the claim;
- D's navigation system achieves the same purpose/objective using the same method;
- Method claim, even otherwise cannot be restricted by features of a system;

# FINDINGS AND ANALYSIS

---

- Doctrine of Equivalents recognized in India;
  - Unessential or trifling variations would not obviate infringement;
  - Location of primary and secondary means is not an essential feature of the claim;
  - Purpose/objective of the invention fulfilled even by non-localized memory means;
- 

# FINDINGS AND ANALYSIS

---

- Entire file wrapper not placed on record by the Defendant;
- Mere reliance on statement made during prosecution history in an isolated manner not sufficient to read invention narrowly.
- Cited prior art ought to have been produced;
- Expert evidence ought to have been led;
- Statements made during prosecution are 'less useful' for claim construction;

# FINDINGS AND ANALYSIS

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- Patent Office could have restricted or Defendant could have challenged the claims;
- In absence of either, Court cannot read the claims as the Defendant wants, thereby importing limitations which do not exist. The claim would have then read as – “*Control method for car navigation system installed in the car....*”.
- The same is not warranted in the facts of the case;
- Defendant has the option of approaching IPAB seeking revocation or restriction of claims;


# CONSEQUENTIAL RELIEF

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- Plaintiff has sought permanent injunction;
- The Court while considering the grant of a permanent injunction has to keep in mind apart from the infringement analysis, the balance of convenience and the irreparable loss and injury;
- Patent was filed in 2002 – only three years of duration left;
- Defendant launched navigation system in 2013, but suit filed only in 2018 – in 5 years period, Defendant's system sold to millions of user;

# CONSEQUENTIAL RELIEF

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- No evidence from Plaintiff regarding loss caused to it, whether its system is successful, and commercialized or not;
  - User numbers not available;
  - Court can mould relief;
  - Hence, permanent injunction denied;
  - Defendant system held to be infringing – directed to render account of sales, and deposit Rs. 5 per every system sold;
  - Plaintiff can withdraw the amount after filing BG;
- 

# CONSEQUENTIAL RELIEF

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- If IPAB revokes or restricts patent – amount to be refunded to defendant with 6% interest;
- If patent held valid, BGs will stand automatically discharged;



THANK YOU

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