

**Team No. : .....**

**IN THE HIGH COURT OF MIMOSA**

***(Ordinary Civil Jurisdiction)***

**CIVIL PETITION NO. .... /2000**

In the matter of

1. Design-a-Flower Limited

.....Petitioner

Vs

2. Floralmania Limited

.....Respondent

(Civil Petition under.....  
Filled on behalf of Petitioner)

**ADVOCATES FOR THE RESPONDENT**

## **TABLE OF CONTENTS**

1.	INDEX OF AUTHORITIES	2
2.	STATEMENT OF JURISDICTION	4
3.	STATEMENT OF FACTS	5
4.	STATEMENT OF ISSUES	6
5.	SUMMARY OF ARGUMENTS	7
6.	ARGUMENTS ADVANCED	8
7.	Prayer for Relief	19

## **INDEX OF AUTHORITIES**

### **BOOKS**

1. Stephen P. Ladas, Patents, Trademarks and related rights national and international protection vol. III, HUP
2. W.R. Cornish, Intellectual Property - Patents, Copyright, Trademarks and Allied rights, second edition.
3. Jeremy Phillips, Alison firth, Introduction to Intellectual property law, 2nd edition.
4. P. Narayanan, 'Intellectual property Law' 2nd edition
5. David I. Bain Bridge, 'Intellectual Property'.
6. I.A. Shearer, "Starkes' International Law, eleventh edition
7. Vandana Shiva, "Biodiversity: A Third World Perspective.
8. NI Caner Perlas', Overcoming Illusions about Biotechnology (1994)
9. Mc Carthy on Unfair Competition.

### **INTERNATIONAL & MUNICIPAL CASES**

1. Barber V. Goldie Construction Co. Ltd., (1936) O.W.N. 383.
2. Squire V. Galipeau (1936),43 R.L.N.s. 147.
3. Schweyer electric & Mfg. co. V. N.Y. Central railroad Co., (1 934) Ex. C.R. 3 1; (1935) S.C.R. 665.
4. Wilson V. The King (1952), 13 Fox pat. c. 19 at 3 8 17 c.p.r. 7 1.
5. Reliable Plastics Ltd. v. Louis Marx & co. ine. et al. (1958),17 Fox pat. c. 184 at 201.
6. Unipak Cartons Ltd. v. Crown Zellerback Canada Ltd. (1960), 20 Fox.
7. M.S. Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries AIR 1982 SC 1444.
8. Catnic Components Ltd. v Hill & Smith Ltd. (1982) RPC 183 House of Lords.
9. Lord Chelmsford in Harrision v Anderston Foundry Co. (1 876) LR 1 App Cas 574.
10. EMI Ltd. v Lissen (1939) 56 RPC23 at 41.
11. Canadian Radio Patents Ltd. et al., v Hobbs Hardware Co. Ltd. [1929] Ex. 1 C.R. 238.

12. Automatic Washing Machine Co. v Knight (1889), 6 R.P.C. 304. I
13. Incandescent Gas Light Co. v De Marc Incandescent Gas Light System (1896) R.P.C. 301.
14. Curtis v Platt (1863), 3Ch. D., 135n, 8 L.T.N.J. 657, I.H.L. 337, 10 L.T.N.S. 383.
15. Proctor v Beniis (1887), 4 R.P.C. 333.
16. Moore v Regents of the University of California 793 Pzd 473 (Cal 1990) where cell lines of human tissue and blood were patented.
17. Harward Oncomouse, T 19/90 (1998) 0.JI.E. po 46, M Tech. Bd. App (1991) E.P.O.R. 525, Ex. D. Unilever's (Davis) Application (1983) R.P.C. 219.
18. Glaverbal vs. British Coal Corp (1994) RPC 443 at 425-487.
19. Brogen vs Medeva (1995) FSR 4(CA).
20. PLG Research Ltd. vs. Arden International (1995) FSR 116 (CA)
21. Catuic vs. Hills & Smith (1982) RPC 183 at 243.
22. Devan Designs Inc. vs. Palliser Furniture Corp., 25 US PQ 2d 1991.
23. Brooks Shoe Mfg. Co. Vs. Suave Shoe Corp., 221 US PQ 536 (11th Cir. 1983);
24. In re Morton-Norwich Products Inc. 671 F. 2d 1332.
25. Boratio Boats Inc. v. Thunder Craft Bcoks Inc. 498 US 141
26. INS v. Associated Press 248 US 215 (dissent)
27. Phillip Morris, Inc. v. R.J. Reynolds Tobacco Co. 188 USPQ 289
28. Vulcan Detinning Co. v. American Con Co. 72 N.J. Fq. 387, 67
29. E.I. du Pont de Nemours & Co. v. Rolfe Christospher et al. 400 US 1024 (1971).
30. Kewanee Oil Co. v. Bircon Corp. 416 U. S. 470
31. Thole v. Hyster, N.J. (1 954), p. 90.
32. Spear v. Hausemannen Hotte, N.J. (1960) p. 415.
33. Sears, Roebuck & Co. v. Stiffel Co. 376 US 225.
34. Compco Corp. v. Day-Brite Lighting 376 US 231.
35. Fashion Originators Guild v. Federal Trade Commission 114 F. 2d 80, 84 (2d Cir. 1940)
36. Diamond V. Chakrabarty 447 US 303.

## **STATEMENT OF JURISDICTION**

The respondent Floralmania Ltd. with all due respect denices the Jurisdiction of the Hon'ble High Court of Mimosa to try the present matter.

## **STATEMENT OF FACTS**

1. Pollen and Mimosa, both sovereign countries, are both members of the United Nations and Signatories to the WTO and all other relevant treaties.
2. Mr. Anther, a national of Pollen invents a molecular manipulative technology by which designers plants can be created. He applied for a patent in Pollen, Mimosa and other countries through the PCT route. He then sets up a company known as Design-a-Flower Ltd. (DAF) for commercially producing designer flowers.
3. The National laws of Mimosa do not enable the filing of an infringement action before the patent is granted. However the damages can be claimed retrospectively from the date of publication of the contents of the specification in the official gazette for opposition purposes. Furthermore, under the laws of Mimosa, it takes 4 years for a patent application to be published and six years on an average for a patent to be granted.
4. Mr. Stigma, a national of Mimosa discovers that it is safe to copy the technology for a period of say 3 and a half years before it is published. Employing reverse engineers, he begins to commercially exploit Anther's technology under the name of Floralmania Ltd. He has a wider range of products including those that appealed to prurient minds. FLO's business in Mimosa picks up-enormously.

## **STATEMENT OF ISSUES**

1. Whether or not the Honorable Court has Jurisdiction over the present matter.
2. Whether the process patent leads to a colourable violation of the national law of Mimosa.
3. Whether or not the grant of a patent may be denied on social and ethical grounds.
4. Whether or not FLO is liable for unfair competition.

## SUMMARY OF ARGUMENTS

1. The court does not have Jurisdiction over the present matter.
  - There is no patent hence no infringement of the same
  - The jurisdiction to try for Unfair competition lies with the trial court at the just instance.
2. The grant of the patent leads to the colourable violation of national law of Mimosa.
  - The nature of the patent is such that it ultimately is a product patent i.e. a patent on life forms or Biological substance.
3. The grant of patent may be denied on social and ethical grounds.
  - Fears voiced by critics for the grant of patent in the field of biotechnology :
  - Indirect ecological danger
  - Reduction in the gene pool of the world, and
  - Ethical dilemmas
  - (a) Owning life
  - (b) Species integrity
4. FLO is not liable for unfair competition
  - In a free economy, free copying and imitation are the rule and exclusive rights are the exception
  - Flo is not liable for:
  - Appropriation and use of Trade Secret by improper means
  - Free riding
  - Misappropriation



## **ARGUMENTS ADVANCED**

### **1. WHETHER OR NOT THE HIGH COURT OF MIMOSA HAS JURISDICTION OVER THE PRESENT MATTER.**

Intellectual property rights comprises of a collection of rights which includes patents. A patent is a monopoly granted by the state to an inventor for a limited period in return for the disclosure the invention.

A patent is granted in accordance with the national laws of the granting state. The rights that accrue out of such grant are subject to the laws of state in which patent is sought.

It is submitted that a suit for infringement of a patent can be instituted only after the patent has been scaled / granted.<sup>1</sup>

Further, a monopoly term extends from the filing date of the application, infringers of the patent cannot be sued until the application has been first granted in fact<sup>2</sup> and has then been taken to be granted in law.<sup>3</sup>

The right to protection against infringement and claim damages accrues on the grant of the patent. Damages can only be claimed retrospectively from the date of the publication of the complete specifications of an invention.<sup>4</sup>

Consequently in the period from the date of filing of the application or the provisional specifications to the date of publication which may extend over a long time there can be no infringement.<sup>5</sup>

- 
1. Sec. 24 Indian Patent Act 1970' See. 25(1) Patents Act 1977 (UK) 2. See. 25(1) Patents Act 1977 (UK)
  3. See. 123(b) Patents Act 1977 (UK)
  4. See. 24 Indian Patent Act 1970; Sec.25(1) Patents Act 1977 (UK); See Seycon V. Lucas CAV (1 986) RPC 609 at 619
  5. L.M. Melville.. Precedents of Intellectual Property and International Licensey 2,,d Ed. at p 60; See. 45(3) Indian Patent Act 1970

Further it is submitted that any person who, before the issue of a patent has purchased constructed or acquired any invention for which a patent is afterwards obtained is permitted to use and sell to others the specific article machine, manufacture or composition of matter so purchased, constructed or acquired before the issue of the patent therefor, without being liable to the patentee for so doing.<sup>6</sup>

It is submitted that there cannot be any presumption of a right in favour of the inventor in lieu of the fact that an application for patent has been made is pending in the patent office, as there exists no presumption of validity of a patent after its grant by the comptroller<sup>7</sup>.

The primary condition for the grant of a monopoly under the patent law is the disclosure of complete information in regard of the invention. Till the same is not done there cannot be any right.

The laws of Mimosa clearly provide that the damages can only be claimed after the grant of the patent retrospectively from the date of publication. In the present case neither the complete specification have been published nor has the patent been granted.

It is submitted that as there exists no patent, there cannot be an infringement. It is also clear there exists no corresponding right which can lead to an action under the patent law of Mimosa.

It is further submitted that the honourable High Court of Mimosa cannot assume jurisdiction over the present matter in lieu of the petitioner's contention on the grounds of patent law, viz. Unfair competition etc. The High Court would be competent to go into the merit so the present matter only if there is a prima facie case of unfair competition etc. The facts for the case, it is submitted clearly show that the same cannot be so construed as to make a case of unfair competition, the only question being that of infringement of a patent.

---

6. See. 58 Canadian Patent Law; Barber V. Goldie Construction Co. Ltd., (1936) O.W.N. 383; Squire V. Galipeau (1936), 43 R.L.N.s. 147, Schweyer electric & Mfg. co.v. N.Y. Central railroad Co., (1934) Ex, C.R. 31; (1935) S.C.R. 665; Wilson V. The King (1952), 13 Fox pat. c. 19 at 38 17 c.p.r. 71; Reliable Plastics Ltd. v. Louis Marx & co. ine. et al. (1958), 17 Fox pat. c. 184 at 201; Unipak Cartons Ltd. v. Crown Zellerback Canada ltd. (1 960), 20 Fox.

7. M.S. Bishwanath Prasad, Radhey Shyam v M/s Hindustan Metal Industries AIR 1982 SC 1444.

It is first submitted that even if the court feels that a case of unfair competition, however weak, can be made out, the jurisdiction to try the same would be with the Trial Court at first instance.

## **II. WHETHER THE PROCESS PATENT LEADS TO A COLOURABLE VIOLATION OF THE NATIONAL LAW OF MIMOSA**

A process patent application essentially seeks the protection of the method of production or use of a particular technology for the manufacture of a thing.

A patent application is accompanied by a specification. A patent specification is a unilateral statement by the patentee, in words of his own choosing, addressed to those likely to have a practical interest in the subject matter of his invention (i.e. skilled in the art) by which he informs them what he claims to be the essential features of the new product or process for which the patent grants him a monopoly<sup>8</sup>. Thus patent specifications are drawn to deal with conflicts.<sup>9</sup>

A complete specification contains the following

- (a) A full description of the invention and the method of its use
- (b) The best method of performing the invention which is known to the applicant
- (c) Claims, defining the scope of invention for which protection is claimed.

A claim is a portion of the specification which fulfills a separate and distinct function. It and it alone defines the monopoly.<sup>10</sup>

---

8. Catnic components Ltd. v Hill & Smith Ltd. (1982) RPC 183 House of Lords.

9. W.R. Cornish: Intellectual Property 2ed. at p.173

10. Lord Chelmsford in Harrison v Anderston Foundry Co. (1876) LR 1 App Cas 574, followed in EMI Ltd. v Lissen (1939) 56 RPC 23 at 41.

## Scope of claims

The construction that will be placed on the scope of a claim for a process may be stated in the following terms

- (1) Where a patentee has discovered a new process for obtaining an old result, any other person may use any other process for producing the same result or he may obtain a patent for a different process for obtaining that result even though it be analogous to the process contained in the prior patent.<sup>11</sup>
- (2) Where a patentee has discovered a process for obtaining a new product or result not hitherto known, his patent is a pioneer or master patent and will protect him against the use of any other equivalent process for arriving at the same result.<sup>12</sup>

It will thus be seen that where the process is one for the production of a new result or product, the doctrine of infringement by the substitution of equivalent applies.<sup>13</sup>

In the present case the invention of Anther comprises of three main features :

- (1) The technology or the process
- (2) The discovery of the specific Gene/DNA
  - (a) The Gene or DNA; which is patentable<sup>14</sup>
  - (b) The Genetic code or DNA configuration; which is copyrightable<sup>15</sup> as DNA sequences unlike the cells that they are inserted and modified are inanimate.<sup>16</sup>

---

11. Canadian Radio Patents Ltd. et al., v Hobbs Hardware Co. Ltd. [1929] Ex. C.R. 238, Automatic Washing Machine Co. v Knight (1889), 6 R.R.C. 304; Incandescent Gas Light Co. v De Marc Incandescent Gas Light System (1896) R.P.C. 30 1.

12. Ibid.

13. Curtis v Platt (1863), 3 Ch. D. 135 n, 8L.T.N.J. 657, 1. H.L. 337, 10L.T.N.S. 383; Proctor v Benlis (1887), 4 R.P.C. 333.

14. Moore v Regents of the University of California 793 Pzd 473 (Cal 1990) where cell lines of human tissue and blood were patented; Harward Oncomouse, T19/90 (1998) O.J.E. po 46,m Tech. Bd. App (199 1) E.P.O.R. 525, Ex. D. Unilever's (Davis) Application (1983) R.P.C. 219.

15. Irving Kayton "Copyright in living, Genetically Engineered, works", The George Washington Law Review, Vol. 50, No.2, Jauuary 1982, p. 194.

16. Ibid p. 205

(3) The product i.e. the designer flower; which cannot be patented under the national law of Mimosa.

It is submitted that even if the product patent is not sought or granted as the case may be, the grant of the process patent i.e. the first two claims shall virtually lead to a product patent thus resulting in the colourable violation of the national law of Mimosa.

Moreover, the interpretation of a patent as of any other written document is a question of law. It means that is in for the judge rather than the jury to decide, and that evidence of what the 1% patent means is not admissible, in particular of what the patentee intended.<sup>17</sup> The court should take regard to the surrounding circumstances as they existed at the date of publication of the specification (or perhaps the priority date).<sup>18</sup> In this case from the analysis of the patent on the whole and its implications and taking into account the facts of the case it is clear that the purpose<sup>19</sup> of the patent is for the product which is a life form or a biological substance and not for a micro biological process. By the application of the Doctrine of 'Pith and substance' it is evident that in substance the patent is for Designer flowers and not for the technology. The same cannot be allowed taking into consideration the national law of Mimosa.

---

17. Glaverbal vs. British Coal Corp (1994) RPC 443 at 425-487, see also Brogen vs Medeva (1995) FSR 4(CA) and PLO Research Ltd. vs. Arden International (1 995) FSR 1 1 6 (CA)

18. Supra at 8

19. Catnic vs. Hills & Smith (1982) RPC 183 at 243.

### **III. WHETHER OR NOT THE ACTS OF THE RESPONDENT AMOUNT TO UNFAIR COMPETITION.**

Unfair competition is defined in Article 10<sup>bis</sup> in the Stockholm Act (1967) of the Paris Convention as "any act of competition contrary to honest practices". In attempting to find a guideline to unfair competition, judges have referred to such things as "the rule of fair play", "means which shock the judicial sensibilities", "the morals of the market place" and "decent thing to do in trade".

It is submitted that in a free economy, free copying and imitation are the rule, and exclusive rights such as patents, trademarks and copyrights are the exception.<sup>1</sup> As Brandeis, J. Stated : "The general rule of law is that the noblest of human productions - knowledge, truths ascertained, conception and ideas - become, after voluntary communication to others, free as the air to common use."<sup>2</sup>

As a result, it is permissible in a competitive economy for the second comer to try to capture as much of the innovator's market as it can. The limitation is that such competition must not be accomplished by infringing on exclusive rights nor-by confusing customers into mistakenly purchasing the product, thinking it to be that of the first comer.<sup>3</sup>

In the present case, it is submitted that the petitioner having no patent cannot claim any right over his invention once it has been voluntarily put into market and the defendant in copying it, is not liable for unfair competition. "Once a product made by a secret process is placed on the market, anyone is free to copy features which it reveals, or to strip it and to discover how it operates or to reverse-engineer it in any other manner."<sup>4</sup>

---

1. Devan Designs Inc. vs. Palliser Furniture Corp., 25 US PQ 2d 1991; Brooks Shoe Mfg. Co. Vs. Siiave Shoe Corp., 221 US PQ 536 (11th Cir. 1983); In re Morton-Norwich Products Inc. 671 F. 2d 1 '332; Boratio Boats Inc. v. Thunder Craft Books Inc. 498 US 14 1.

2. INS v. Associated Press 248 US 215 (dissent)

3. Phillip Morris, Inc. v. R.J. Reynolds Tobacco Co. 188 USPQ 289 4. Vulcan Detinning Co. v. American Con Co. 72 N.J. Eq. 387, 67

Furthermore it is submitted that the acts of FLO do not fall under any of the "nominate" forms of unfair competition that have labelled. Article 10<sup>bis</sup>(3) of the Paris Conventions contains a non-exhaustive list of three types of acts of unfair competition, namely:

- i) acts likely to cause confusion
- ii) acts that discredit a competitor, and
- iii) acts that may mislead the public

The acts of FLO clearly do not fall under Art. 10<sup>bis</sup>. FLo is manufacturing wider range of products under its own name and is not indulging in any acts likely to cause confusion or discredit DAF. It is not even alleged that FLO is using misleading indication to influence consumer demand.

A number of acts not expressly mentioned in Art. 10<sup>bis</sup> of the Paris Convention have been recognised by the courts as unfair competitive practices. Of particular interest in this connection are:

- 1) Trade secret protection
- 2) Protection against free-riding
- 3) Protection against misappropriation

### **Trade Secret**

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to, obtain an advantage over competitors who do not know or use it.<sup>5</sup> The protection accorded to the trade secret holder is against disclosure or use when the knowledge is gained in confidence or when it is gained, not by the owner's volition but by some "improper means" which may include theft, wire tapping or even aerial reconnaissance.<sup>6</sup> "A trade secret, however does not offer protection against discovery by fair and honest means such as by independent invention or by so-called reverse engineering, that is, by

---

5. Restatement of Torts

6. Restatement of Torts; E. du Pont de Nemours & Co. v. Roffe Chritospher et al. 400 US 1024 (1971).

starting with the known product and working backward to devise the process which aided in its development or manufacture.”<sup>7</sup> FLO which has simply reverse-engineered the designer flower is therefore not liable for appropriation and use of trade secret by improper means.

## **2. “Free-riding”**

Free riding on another person’s market achievements can be defined as any act that a competitor undertakes with the intention of directly exploiting another person’s industrial or commercial achievements for his own business purpose without making any proper effort to depart substantially from the original achievement.

What makes the act of imitation unfair is copying of characteristics not necessary for the functioning of the article<sup>8</sup>, so that there is possibility of confusion as to the origin of the products and that this is done despite the fact that alternative ways of competing effectively were available. In the present case there is no imitation of non-functional characteristics. Moreover the copying of the technology cannot be termed servile because there exists no alternative way of effective competition in the same field. FLO will have to use that technology if it has to complete at all, let alone effectively, in that field.

## **3. Misappropriation**

The doctrine of misappropriation was for the first time laid down in INS v Associated<sup>9</sup>. The court was willing to depart from the traditional concepts of unfair competition and held that there was unfair competition, even absent a showing of “palming off”: “... the defendant... substitutes misappropriation in the place of misrepresentation and sells complaint’s goods as its own”.

---

7. Kewanee Oil Co. v. Bircon Corp. 416 U.S. 470

8. Netherlands Supreme Court (Hoag Road) decision of June 26, 1955 in Thole v. Hyster, N.J. (1954), p.90 and Spear v. Hausemann Hotte, N.J. (1960) p. 415: Denmark Supreme Court Decision of June 30, 1939 Prop Ind. (1939), p. 163.

9. 248 U.S. 215



The decision was seriously called into question in the *Sears-Compco*<sup>10</sup> and other decisions<sup>11</sup> which held that free copying limitation was the rule to which the federal patent was an exception. Therefore, if a product/technology is not protected by the federal patent, it is in the 'public domain' and free to be copied, Any decision to the contrary, it was held, would interfere with & preempt the federal policy.

In light of the above decision the doctrine of misappropriation itself was called into question and therefore there is no question of misappropriation the complainant's technology under this doctrine.

Even if the doctrine still holds good, it would not apply to the present case because INS itself laid down that misappropriation is an equitable residuary doctrine which is to be applied only if the statute did not preempt the area by making the article patentable/copyrightable.

#### **IV. WHETHER OR NOT THE PATENT MAY NOT BE GRANTED ON ETHICAL OR SOCIAL GROUNDS.**

Article 27(2) of TRIPS<sup>12</sup> reads as follows:

"Member states may exclude from patentability invention, the prevention of the commercial exploration of which is necessary to protect "ordre public" or "Morality ... plant life or health ... or ... environment.

Similarly Article 53(a) and (b) of EPC<sup>13</sup> excludes patentability on grounds of "ordre public" 11 or "Morality"; "... plant varieties or essentially biological processes for the production of plants or animals."

The reasons for the above mentioned exclusions are grounded in ethical mores of a civilized society and also voice our concerns regarding the protection of our biodiversity and eco-systems.

---

10. *Sears, Roebuck & Co. V. Stiffel Co.* 376 US 225; *Compco Corp. v. Day-Brite Lighting* 376 US 231

11. *Fashion Originators Guild v. Federal Trade Commission* 14 F.2d 80, 84 (2d Cir. 1940)

12. *Agreement on Trade Related Aspects of Intellectual Property Rights*, 1994

13. *European Patent Conventions and Protocols*

In the field of bio-diversity, there are three major fears voiced by critics for not granting patents in that area:

1. Indirect ecological dangers,
2. Reduction in the gene pool of the world, and
3. Ethical dilemmas

Diversity is characteristic of nature and the basis of ecological stability'. There is a fear that reliance on particular strains of engineered "Super" animals or plants would be dangerous because of the loss of diversity of a wild (i.e. non-engineered) population to the extent that genetically identical animals/plants displace naturally diverse species, they introduce the risk that all might die when exposed to a novel disease or pest if the original parent cell did not include a gene conferring resistance to the new threat. Without genetic engineering, probably only some would die. The Southern corn Deaf Blight Epidemic of 1970s in America is a vivid example.

In the present case, the natural- flowers which was once cherished are now ignored. Soon they would be wiped out because of a lack of market which would result in a neglect of a bio- diversity, many of the uses of which are still unknown. Designer-flowers because of their molecular manipulative technology may be susceptible to a particular disease or organic attack or may introduce changes in the ecosystems such as reduction soil fertility or an increase in the aridity of the ecosystem thereby wiping out other forms of life.

It is submitted that "at times, human ingenuity seems unable to control fully the force it creates - that, with Hamlet, it is sometimes better "to bear those ills we have than fly to others we know not of'. The concerns over the bovine growth hormone has proven to be justified Its use resulted in the increased incidence of mastitis, a serious disease in milking cows.

Even if it is argued that patents have been granted in the area of biotechnology in many cases <sup>14</sup> what is significant is that in all those cases it was believed there was a "careful weighing up of risks" but the grant of a patent for Chakraborty's bacteria raised serious questions as to the justifiability of such a grant. Mr. Chakraborty surrendered his patent when he realised the implications of what he had produced. The possibility of his oil breaking bacteria escaping to the oil beds beyond his control sent a panic. Thus to produce something might be easy but it might not be the same when it comes to controlling it or realising its future irreversible impact on the ecosystem. In the present case not only there are serious possible risks to the ecology but there is also no way in which this technology serves the interest of the mankind.

Patent may also be denied on ethical grounds. Intellectual property rights tantamount to ownership and exclusive claims to small components of living systems tantamounting to owning life itself. Life has special properties that are beyond the realms of science; owning life is a form of secular sacrilege - it violates a fundamental sense of the proper order of things."<sup>15</sup> In addition it smacks of 'hubris', because we are, after all, one of the many species on the earth.

The second major ethical objection to patents on life forms centers on the concept of species integrity. Each species has a right to have its genetic composition left alone. In this view, genetically engineered plants should be banned because producing them violates the integrity of both the host and the donor species.

In the present case, a natural flower has the right to remain as it is without adding genes or other biotechnological material to it for the sake of a 'fad'. For example a rose as a species has the right to remain and bloom in its natural capacity without being denigrated by addition of 'cheeks' or 'spots' to it in a similar way as much as a human being has a right to exist as he is without the addition of, say, extra arms or designs to him. We as human beings are also one of the many species on earth and have no right to denigrate other species or think ourselves capable of owning life forms such as plants, genetic materials etc. for mere pleasure.

14. Diamond V. Chakraborty 447 US 303; Haryardon Co-Mouse (1991) E.P.O.R. 525, Ex-D.

15. P.Singer, *Animal Liberation: A New Ethics for our Treatment of Animals* (1975)

## **PRAYER FOR RELIEF**

Wherefore in the light of the submissions presented it is respectfully submitted that this court may be pleased to :

- **Declare**, that FLO has not contravened any law of Mimosa
- **Declare**, that FLO is not liable for infringement of a patent right or unfair competition
- **Declare**, that FLO cannot be held liable in any other manner.

**All of which is respectfully submitted**

**Counsels for the Respondent**