

IN THE HIGH COURT OF JUDICATURE AT DELHI
SPECIAL SUIT NO. ____/2006

IN THE MATTER OF:

SECTION 64 AND 104 OF THE PATENTS ACT, 1970, AND
SECTION 3 OF THE ENVIRONMENTAL PROTECTION ACT, 1986, AND
ARTICLE 14 AND 19(a) OF THE CONSTITUTION OF INDIA

BETWEEN:

1. SARV GYAN
2. ACHARYA SADANAND
3. WINRUS CORPORATION PLAINTIFFS

Versus

1. 'A'
2. THE PATENT CONTROLLER
3. UNION OF INDIA DEFENDANTS

RESPECTFULLY SUBMITTED BEFORE THE HON'BLE CHIEF JUSTICE OF THE HIGH
COURT OF DELHI AND HIS COMPANION JUDGES

Memorial on behalf of the Defendants

TABLE OF CONTENTS

1. INDEX OF AUTHORITIES	
I. Table of Cases	II
II. Table of Statutes	III
III. Books	III
IV. Miscellaneous	IV
A. Journals, Manuals and Periodicals	
B. Websites	
2. STATEMENT OF JURISDICTION	V
3. STATEMENT OF FACTS	VI
4. STATEMENT OF ISSUES	VII
5. SUMMARY OF ARGUMENTS	VIII
6. ARGUMENTS ADVANCED	
I. Whether Defendant No. 1's patent should be revoked?1
II. Whether Plaintiff No. 2 & 3's machine should be allowed to be developed?5
III. Whether Plaintiff No. 2 & 3's machine is an infringement of Defendant No's 1 patent?6
7. PRAYER	XV

INDEX OF AUTHORITIES

I. TABLE OF CASES

1	<u>Asahi Kasei Kogyo KK's Appln.</u> , [1991] RPC 485 (HL) at 536, 537, 540, 543	3
2	<u>Bedford v Hunt</u> , 3 Fed Cases 37 (No 1217)(C.C.D. Mass 1817)	3
3	<u>B.T.H. v. Metropolitan Vickers</u> , (1928) 45 RPC at 25	6
4	<u>Environmental Design Ltd v Union Oil Co.</u> , 463 US 1043 (1984)	1
5	<u>Enzo Biochem Inc v Calgene Inc</u> , 188 F. 3d 1362, 52 U.S.P.Q. 2d (BNA) 1129 (Fed Cir 1999)	3
6	<u>Exxon Research and Engineering Co. v United States</u> , 265 F. 3d 1371 (Fed Cir 2001)	3
7	<u>Farbwerke Hoechst v. Unichem Laboratories</u> , [1969] RPC 55 at 59 (Bom HC); AIR 1969 Bom 255	6
8	<u>F.H. & B. Corp v Unichem Laboratories</u> , AIR 1969 Bom 255	3
9	<u>Fromson v Advance Offset Plate Inc</u> , 720 F. 2d 1565, 219 U.S.P.Q. (BNA) 1137 (Fed Cir 1983).	3
10	<u>General Tire and Rubber Co. v Firestone Tyre and Rubber Co Ltd.</u> , 1972 RPC 457, 486	3
11	<u>Graham v John Deere</u> , 383 US 1 (1966).	2
12	<u>Hills v. Evans</u> , (1862) 31 LJ Ch 457, 463:	3
13	<u>In re Cortright</u> , 165 F. 3d 1353, 49 U.S.P.Q. 2d (BNA) 1464 (Fed Cir 1999)	3
14	<u>Lowell v Lewis</u> , 15 Fed cases 1018 (no 8568) (C.C.D.Mass);	3
15	<u>Martin and Biro Swan Ltd. v H Hillwood Ltd</u> , 1956 RPC 125;	3

16	<u>Mosanto Co. v Coramandal indag Products (P) Ltd.</u> , AIR 1986 SC 712	2
17	<u>Mond Nickel Company Ltd's Application</u> , 1956 RPC 189	4
18	<u>Raytheon Co v Roper Corps</u> , F. 2d 960 (Fed Cir 1983)	3
19	<u>Seymour v Osbourne</u> , 78 US 516 (1870);	3
20	<u>T. N. Godavarman Thirumalpad v Union of India</u> , (2002) 10 SCC 606	5
21	<u>United States v Adams</u> , 383 US 39 (1966)	1
22	<u>Vas Cath Inc v Mahurkar</u> , 935 F 2d 1555 (Fed Cir 1991)	4
23	<u>Windsurfing International Inc. v Tabur Marine (Greta Britain) Ltd</u> , 1985 RPC 59, 73	2

I. TABLE OF STATUTES/REGULATIONS

- i. The Patents Act, 1970 as amended by Patents (Amendment) Act 2005
- ii. Patents Rules as amended by Patents (Amendment) Rules 2006
- iii. The Constitution of India, 1950
- iv. Environmental Protection Act, 1986

II. BOOKS

- i. Arora, Manish, GUIDE TO NEW PATENTS LAW, 2003, Universal Law Publishing Co. Pvt. Ltd.
- ii. Bently, Lionel & Sherman, Brad, INTELLECTUAL PROPERTY LAW, First Indian Edition, Oxford University Press, 2003
- iii. Colston, Catherine, PRINCIPLES OF INTELLECTUAL PROPERTY LAW, Cavendish Publishing Limited, 1999

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- iii. Soni, Dr. Ashok, Complete Referencer Of Intellectual Property Rights Laws, Volume-2, First Edition, Snow white, 2003

B. Websites

- i. <http://www.wipo.int>
- ii. <http://www.daviddarling.info/encyclopaedia>
- iii. <http://www.indian-skeptic.org/html>
- iv. <http://news.bbc.co.uk/1/hi/sci/tech/2049048.stm>
- v. <http://news.bbc.co.uk/2/hi/science/nature/3777589.stm>

STATEMENT OF JURISDICTION

This Hon'ble Court has jurisdiction to adjudicate upon this matter under Section 151 of The Code of Civil Procedure. Section 151 of the Act states that:

“Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

STATEMENT OF FACTS

1. An American inventor 'A', on his way to a bus stand on a road close to the airport realized that he was teleported a distance of 50 meters.
2. He set out to explain the aforementioned phenomenon and applying a range of subjects like gravitation physics, hyperspace physics, wormhole electromagnetic theory, quantum physics, the nature of human energy field including the Chinese breathing principles of Chi-kung and the Chakra Vortex Accelerator discovered that a pulsed gravitational wave generated by the two propellers rotating out of phase with each other of a twin turboprop airplane flying in the distance crossing above the road while making a shallow descent produced the teleportation.
3. Thereafter 'A' used the same principles to develop a full body teleportation system.
4. The inventor 'A' applied for a patent for "a full body teleportation system consisting of: generating a pulsed gravitational wave which propagates through magnetic vortex wormhole generator; and generating a wormhole with the magnetic vortex generator whereby the pulsed gravitational wave traverses through the wormhole and enters into hyperspace where the wave is enormously magnified due to the lower speed of light in that dimension."
5. The patent was applied in India but opposed by "Sarv Gyan" an Association of Spiritual Leaders who feel that teleportation, as a method is traditional knowledge known to the Indian swamis, yogis and holy men who have it used for 5000 years.
6. Acharya Sadanand subscribed to the philosophy that if the West could use an ancient wisdom to create inventions, why cannot we do the same and applying these ideals, has developed basic principles and created a rudimentary machine in collaboration with Winrus Corporation, which can be programmed to teleport humans.
7. The Government banned the said machine as being opposed to public interest, safety, ecology, morality etc.
8. There were appeals and writs filed against both the orders and decisions which on account of the "gravity" of the issues raised were tried by a special bench.

STATEMENT OF ISSUES

- I. Whether Defendant No. 1's patent should be revoked?
- II. Whether Plaintiff No. 2 and 3's machine should be allowed to be developed?
- III. Whether Plaintiff No. 2 and 3's machine is an infringement of Defendant No. 1's patent?

SUMMARY OF ARGUMENTS

I. Whether Defendant No. 1's patent should be revoked?

Defendant No. 1's patent should not be revoked under section 64(a), (b), (c) and (d) of the Patents Act, 1970 since it is an invention under section 2(j) due to the ingenuity displayed by Defendant No. 1 in obtaining it and due to its unparalleled scope for industrial application. Furthermore the invention was never publicly known or used in India or anywhere in the world hence it cannot be revoked under Sections 64 (e), (f), (l) and (q). The invention can be performed to obtain what the patentee promises to perform hence it cannot be revoked under Section 64(g). Furthermore the specification of the patent in suit is enabling and definitive, hence the patent cannot be revoked under section 64(h) and (i).

II. Whether Plaintiff No. 2 & 3's machine should be allowed to be developed?

The Plaintiffs' machine should not be allowed to be developed since the ban on the said machine is in public interest. The Environment Protection Act, 1986 enables the Central Government to take any measure necessary to protect the environment. Hence as the Hon'ble Supreme Court has held that man is a part of the environment, the Central government can ban the impugned machine, which is potentially fatal to the individual to protect the individual and in turn protect the environment.

III. Whether Plaintiff No. 2 & 3's machine is an infringement of Defendant No.1's patent?

There being no Indian traditional knowledge or any other body of knowledge enabling a person to teleport except Defendant no. 1's patent specification Plaintiff No. 2 and 3's machine is based on Defendant's No. 1's specification and hence is an infringement on the former's patent. Furthermore the burden of proving non-infringement is on Plaintiff No. 2 and 3 as per Section 104 A of the Act.

ARGUMENTS ADVANCED

ISSUE I

Whether Defendant No. 1's patent should be revoked?

It is submitted before this Hon'ble Court that the patent granted to Defendant No. 1 is not revocable. Section 2(j) of the Patents Act 1970 defines an invention to be a new process or product involving an inventive step and being capable of industrial application. Defendant No. 1 has developed a process for teleporting the human, which is unprecedented. Section 2(ja) defines an inventive step as a feature not obvious to a person skilled in the art. The necessary considerations for determining the level of ordinary skill in the art are¹:

- Ø The educational level of the inventor
- Ø Types of problems encountered in the art
- Ø Prior art solutions to those problems
- Ø Rapidity with which inventions are made
- Ø Sophistication of the technology
- Ø Educational level of the active workers in the field

Upon due consideration of these factors it can be said that the ordinary level of skill in the art of the Defendant No. 1 will include a detailed and up to date knowledge of applied physics and an ability to understand complicated concepts and their applications. It is pertinent to note at this juncture that the person ordinarily skilled in the art will also have certain prejudices prevalent in his art and the fact that the inventor has overlooked those prejudices which would have deterred the former from following his process to obtain his invention goes a long way in establishing the non-obviousness of his invention².

¹ *Environmental Design Ltd v Union Oil Co*, 463 US 1043 (1984)

² *United States v Adams*, 383 US 39 (1966)

Moreover, the test for determining obviousness being³:

- Ø Identification of the inventive concept embodied in the patent in suit
- Ø Thereafter assuming the mantle of the normally skilled but unimaginative addressee in the art at the priority date, imputing to him what was, at that date, common general knowledge in the art in question.
- Ø Identifying what, if any, differences exist between the matter cited as being “known and used” and the alleged invention.
- Ø Then asking the question, whether viewed without any knowledge of the alleged invention, those differences constitute steps, which would have been obvious to the skilled man or whether they require any degree of invention.

Applying the abovementioned test the inventive concept in the patent in suit is the use of the amplified gravitational wave to manipulate the hyperspace energy being to teleport the human body. Till date the prevalent teleportation systems used entanglement theories and deconstruction theories. Defendant No. 1's teleportation system has not been even remotely considered till date. The patent in suit marks a complete departure from the prevalent concepts in the art. Given such a vast difference it is impossible for the normally skilled but unimaginative man to arrive at Defendant No. 1's invention without any degree of ingenuity or invention. Thus Defendant No. 1's invention involves an inventive step. Furthermore the invention claimed in the patent in suit has unparalleled scope for industrial application as it can potentially revolutionize the transportation industry along with numerous other ancillary applications. Thus Defendant No. 1 is the inventor of the subject matter of the patent in suit, which is an invention under the Act. Hence the grounds for revocation stated at Sections 64(a), 64(b), 64(c) and 64(d) are negated. Publicly known and publicly used in India means the invention is known to the persons who are engaged in the pursuit of the knowledge of the patented product or process either as men science or men of commerce or consumers⁴. Teleportation using a gravitational wave amplified in hyperspace to manipulate the human energy being and connected hyperspace quantum wells is a concept not publicly known or used within the meaning of this section. Prior publication in order to negate novelty in an invention must exhibit substantial representation of the invention such that one skilled in the art may make, construct and

³ *Windsurfing International Inc. v Tabur Marine (Greta Britain) Ltd.*, 1985 RPC 59, 73; See also *Graham v John Deere* 383 US 1 (1966).

⁴ *Mosanto Co. v Coramandal indag Products (P) Ltd.*, AIR 1986 SC 712.

practice the invention without having to depend on either the patent or his own inventive skill⁵. Furthermore it has been held that for a disclosure to be effective against novelty it had to be an enabling disclosure i.e. it must disclose a method of working the invention. An invention was not made public merely by a published statement of its existence unless the method of working was so self evident as to require no explanation⁶. There was no such substantial disclosure in any prior publication so as to enable it to negate Defendant No. 1's invention hence section 64(e), (f), (l) and (q) are negated. "Utility" under patent law does not connote the practical usefulness or the commercial utility of the invention does not matter, nor does it matter if the invention is of any real benefit to the public, or particularly suitable for the purpose suggested, and that it is only failure to produce the results promised that will invalidate the invention. The utility of an invention depends upon whether, by following the discourse of the patentee the result, which the patentee preferred to produce can in fact be produced⁷. In the present case full body teleportation can be achieved by following Defendant No. 1's instructions thus rendering it useful hence the patent in suit cannot be revoked on grounds of inutility as specified at section 64(g). The description of the invention claimed in the patent to be termed, as a fair description has to fulfill two conditions:

- Ø It has to state in clear and intelligible language what the invention is; and
- Ø It has to state in clear and intelligible terms in what manner the patented invention is to be performed.

Furthermore if the meaning of the claim is discernable, even though the task may be formidable and the conclusion may be one over which reasonable persons will disagree the claim can be said to be sufficiently clear to avoid invalidity⁸. Moreover the inventor need not be aware of every scientific principle involved in his invention⁹. In the present case the specification of the patent in suit very clearly describes the invention and the best method to perform it. Given its complicated design it is

⁵ *Philips Electrical and Pharmaceutical Indus. Corp. v Thermal and Electrical Industries Inc.*, 450 F. 2d 1164, 1169 (3rd Cir. 1971); *Martin and Biro Swan Ltd. v H Hillwood Ltd* 1956 RPC 125; *Seymour v Osbourne*, 78 US 516 (1870); *General Tire and Rubber Co. v Firestone Tyre and Rubber Co Ltd.*, 1972 RPC 457, 486.

⁶ *Asahi Kasei Kogyo KK's Appln.* [1991] RPC 485 (HL) at 536, 537, 540, 543 applying *Hills v. Evans* (1862) 31 LJ Ch 457, 463;

⁷ *E.H. & B. Corp v Unichem Laboratories*, AIR 1969 Bom 255; *Lowell v Lewis*, 15 Fed cases 1018 (no 8568) (C.C.D.Mass); *Bedford v Hunt*, 3 Fed Cases 37 (No 1217)(C.C.D. Mass 1817).

⁸ *Exxon Research and Engineering Co. v United States*, 265 F. 3d 1371 (Fed Cir 2001); *Raytheon Co v Roper Corp.*, s F. 2d 960 (Fed Cir 1983).

⁹ *Enzo Biochem Inc v Calgene Inc*, 188 F. 3d 1362, 52 U.S.P.Q. 2d (BNA) 1129 (Fed Cir 1999); *In re Cortright*, 165 F. 3d 1353, 49 U.S.P.Q. 2d (BNA) 1464 (Fed Cir 1999); *Fromson v Advance Offset Plate Inc*, 720 F. 2d 1565, 219 U.S.P.Q. (BNA) 1137 (Fed Cir 1983).

only expected that practitioners of the concerned art might disagree over certain aspects of the patent specification but nonetheless the specification is on the whole verifiable and intelligible hence the patent cannot be revoked under section 64(h). To have a definite scope a specification must¹⁰:

- Ø Set forth the subject matter the applicants regard as their invention; and
- Ø Particularly point out and distinctively define the metes and bounds of the subject matter to be protected.

The specification in the present case clearly states that a teleportation system using a gravitational wave magnified in hyperspace to manipulate the human energy being and the hyperspace quantum wells connected to it to draw the human out of this dimension and to teleport him through hyperspace is the invention. Thus the specification distinctly defines and limits the claim thereby meeting both the requirements of the test. Hence the patent in suit cannot be revoked under section 64 (i). The considerations to determine a clear disclosure¹¹ are:

- Ø is the alleged invention broadly described in the specification
- Ø is there anything in the specification which is inconsistent with the alleged invention as claimed
- Ø is the specification wholly silent about any feature of the invention.

It is submitted that the invention is very intricately described in the specification in all respects and the former is completely consistent with the latter hence section 64(i) is negated. The subject matter is patentable as per Section 3 of the act hence section 64(k) is negated. Sections 64 (m to p) are not applicable in the present case.

In the light of the above arguments it is submitted before this Hon'ble Court that the patent granted to Defendant No. 1 cannot be revoked.

¹⁰ *Vas Cath Inc v Mahurkar*, 935 F 2d 1555 (Fed Cir 1991)

¹¹ *Mond Nickel Company Ltd's Application*, 1956 RPC 189

ISSUE II

Whether Plaintiff No. 2 and 3's machine should be allowed to be developed?

It is submitted before this Hon'ble Court that Plaintiff No 2 and 3's machine poses a serious threat to public interest and cannot be allowed to be developed. Section 3 of the Environment Protection Act 1986 enables Defendant No. 3 to take any measure whatsoever to protect the environment. The Hon'ble Supreme Court has held that an individual is a part of the environment¹², thus Defendant No 3 can take any step necessary to protect individuals under the said Act. Plaintiff No 2 and 3 have not disclosed any information regarding the mode of operation of the impugned machine. In the light of this fact Defendant No 3 had to resort to the knowledge prevalent at the time regarding teleportation. Such study has led the Defendant No 3 to understand that teleportation can be achieved through a process in which the human is deconstructed at one place and reconstructed at another. It is important to note at this point that there is no guarantee that the individual deconstructed at one point will be properly reconstructed at another. Any flaw in the system will result in the death or severe disfiguring of the individual. Therefore the impugned machine is clearly against public safety. Furthermore the said machine is absolutely untested and it is against public morality to use humans as test subjects for the potentially fatal machines. Thus this machine through its audacious claim has the potential of attracting and killing or severely mutilating several individuals. Hence it being so evidently harmful for humans is also detrimental to the environment. In the light of the above arguments it is submitted before this Hon'ble Court that the restriction imposed upon the development of the impugned machine be upheld as being valid in public interest.

¹² *T. N. Godavarman Thirumalpad v Union of India*, (2002) 10 SCC 606.

ISSUE III

Whether Plaintiff No. 2 and 3's machine is an infringement of Defendant No. 1's patent?

It is submitted before this Hon'ble Court that Plaintiff No. 2 and 3's machine is an infringement of Defendant No. 1's patent. It is contented that there is no Indian traditional knowledge regarding teleportation nor is there any other source of knowledge which can lead one to develop a machine to teleport humans except Defendant No. 1's patent specification. Hence it is contented that the Plaintiff's machine is based on Defendant No. 1's specification as it produces the same result. The mode of operation of the machine has not been disclosed. Though the general burden of establishing a case of infringement undoubtedly rests on the plaintiff (present Defendant No. 1), the burden of proving a particular fact, namely the process by which the defendant (present Plaintiff Nos. 2 & 3) prepared the substance in question would be on the defendant (present Plaintiff Nos. 2&3) since this is a fact specially within his knowledge.¹³ Hence as per section 104A of the Act as the mode of operation of the impugned machine is within the exclusive knowledge of Plaintiff No. 2 and 3 the burden of proving that it is not infringing Defendant No. 1's patent lies on the former, upon failing to discharge which it can be assumed that the impugned machine is infringing Defendant No 1's patent. Furthermore in Claim 4 Defendant No. 1 has been granted patent over "a teleportation system comprising generating a gravitational wave.....pulling the human energy being and physical body out of dimension...such that the person is teleported from one location to another through hyperspace and back again into our 4D space time dimension." Thus encompassing within its monopoly right, process of teleportation itself and any similar machine professing to the teleport humans in a like way will be an infringement of the patent as in the instant case. "The question for the court is not that of detecting absolute similarity, but is that of seeing whether the pith and marrow of the patent, to use Lord Cairns' phrase, has been taken, and if that has been done, there is an infringement in spite of any modification"¹⁴

Thus it is humbly submitted that Plaintiff No. 2 & 3's machine infringes upon the patent granted to Defendant No. 1.

¹³*Farbwerke Hoechst v. Unichem Laboratories* [1969] RPC 55 at 59 (Bom HC); AIR 1969 Bom 255 at 261 and ss. 101 and 106 of the Evidence Act.

¹⁴*B.T.H. v. Metropolitan Vickers* (1928) 45 RPC at 25

PRAYER

In light of the Issues raised, Arguments advanced and Authorities cited, it is humbly prayed that this Hon'ble Court be pleased to:

- i. Certify the patent granted to Defendant No. 1 as valid.
- ii. Uphold the ban imposed by Defendant No. 3 on the development of Plaintiffs No. 2 & 3's machine as being in public interest.
- iii. To further declare infringement of Defendant No. 1's patent by the use of Plaintiffs No. 2 & 3's machine.
- iv. To grant final injunction against the use of Defendant No.1's patent by Plaintiffs No. 2 & 3.

AND

Pass any other Order or direction or any such other relief in the nature thereof as this Hon'ble Court may deem just and equitable in the facts and circumstances of the case.

And for this act of kindness, the Defendants shall forever humbly pray.

Counsel for the Defendants