

Prior art that teaches away from the claimed invention cannot serve as the foundation for anticipation. When multiple prior art documents are cited for lack of inventive step, there must be a common thread linking them and motivation for a person skilled in the art to combine them

The **Delhi High Court** in the case of **Communication Components Antenna INC vs Rosenberger Hochfrequenztechnik GMBH [CS(COMM) 653/2019]** dated April 01, 2026, has held that the prior art documents relied upon for anticipation must be read individually and not mosaiced; that to constitute anticipation, the prior art must disclose subject matter which, if performed, would necessarily result in infringement of the patent; and that a generic prior disclosure of an isolated feature does not anticipate a specific and claimed combination of features. The Court held that prior art that teaches away from the claimed invention cannot serve as the foundation for anticipation.

On inventive step, the Court stated that when multiple prior art documents are cited for lack of inventive step, there must be a common thread linking them and motivation for a person skilled in the art to combine them; that the Dartboard approach of hurling unrelated prior arts at a patent, each simply because they contain isolated words similar to those in the claims, constitutes impermissible hindsight bias and cannot satisfy the test of obviousness.

On insufficiency, the Court pointed out that a term used in a patent need not be defined with mathematical precision in the specification provided it is understandable to a person skilled in the art from a reading of the specification in context; that power and phase weightings disclosed in a complete specification as illustrative embodiments are sufficient disclosure where the skilled person would know how to modify the same to achieve the claimed result at different frequencies; that the rejection of a corresponding patent application by the EPO or its revocation in China, based on different statutory standards and the priority document rather than the granted specification, does not establish insufficiency under Section 10 of the Patents Act, 1970.

Hence, the High Court ruled that in a patent infringement suit, where both direct lost profits and price erosion cannot be solely attributed to the infringement, the appropriate measure of damages is the royalty equivalent to what the Defendants would have paid had they licensed the patent; that because the Defendants are not bona-fide negotiated licensees, the Court is entitled to award royalty at the higher end of the range disclosed in existing comparable license agreements; and that the date of the decree is the appropriate date for conversion of a foreign currency damages award into Indian Rupees.

As far as **lack of novelty under Section 64(1)(e) of the Patent Act** is concerned, the High Court noted the settled legal principle that for determining novelty, i.e., prior art documents cannot be 'mosaiced' or read in combination with each other, each document must be considered individually. A generic disclosure does not, by itself, defeat the novelty of a specific and limited disclosure.

The Court found that Gabriel deals with an antenna arrangement providing asymmetric horizontal polar diagrams through a phase shifter arrangement in conjunction with a downstream hybrid circuit. The asymmetry in Gabriel operates about a vertical plane perpendicular to the reflector face, whereas in IN'893, asymmetry is specifically introduced about the line of reference passing through the peak gain point of the main beam in the horizontal plane. The Court said that these are not different degrees of the same concept, rather, they are conceptually distinct forms of asymmetry operating on entirely different planes of reference.

The Court explained that while the TenXc Article refers to asymmetric patterns and higher order sectorization, it provides no technical details whatsoever as to how asymmetric patterns are generated, how higher order sectorization is achieved, or how the critical coverage area of the replaced antenna is maintained. In the absence of drawings, illustrations or technical details, a person skilled in the art, at the priority date, when prior art consistently taught symmetrical beams, would not have understood the reference to 'asymmetric patterns' as disclosing the specific asymmetrical beam patterns defined in IN'893. The article, at best, could be considered an indication of what was to follow.

The Court applied the principle from *Merck Sharp & Dohme v. Glenmark Pharmaceuticals*, 2015 (63) PTC 257 (Del), that to constitute anticipation, the matter relied upon as prior art must disclose such subject matter which, if performed, would necessarily result in infringement of the patent. Since none of the prior art documents satisfied this threshold, the Bench rejected the ground under Section 64(1)(e).

As far as **lack of inventive step under Section 64(1)(f)** is concerned, the Court observed that the Defendants' fact witness and Legal Manager lacked technical expertise and his evidence on inventive step was entirely based on briefings from the Defendants' technical team. Citing Terrell on the Law of Patents and Jacob LJ in *Technip France SA's Patent* [2004] R.P.C. 23, the Court stated that the primary evidence on obviousness must be that of properly qualified expert witnesses who give the court the reasons for their opinion, not mere conclusions. If the reasons do not stand up, the opinion does not stand.

The Court referred to the decisions of *F. Hoffmann La Roche v. Cipla*, 2015:DHC:9674-DB and *Guangdong OPPO Mobile Telecommunications Corp. Ltd. v. Controller of Patents and Designs*, to reiterate that when multiple prior art documents are relied upon, there must be a common thread linking them and showing that a person skilled in the art would be motivated to combine them. No such inter-linking was established.

As far as **insufficiency under Section 64(1)(h)** is concerned, the Court negated the core of the Defendants' challenge that: (a) the term 'critical coverage area' has not been defined in the specification; (b) the term 'asymmetry' is not precisely defined, and opined that this term is clearly understandable in the context of the invention and the telecommunications industry, and need not be defined with mathematical precision. The Court accepted that although asymmetry is not explicitly defined, it is implied from the text and fully understandable to a person skilled in the art.

The Court found that the EPO's rejection was based on the priority document and not the complete specification as granted; and the EPO standard for sufficiency under Article 83 EPC is not identical to the standard under Section 10 of the Patents Act, 1970. In India, Section 10 requires disclosure of the best method known to the patentee. The EPO's requirement that the claim itself must disclose all features differs from Indian practice. Neither the EPO objection nor the Chinese revocation, which were based on the priority document and different statutory standards, can be transposed to Indian law.

On false radiation patterns under Section 64(1)(j), the Defendants alleged that the radiation patterns in the specification are not obtainable from the power and phase values disclosed. However, critically, they admitted of not personally undertaken any simulation, and not conducting any MATLAB or other simulation to verify whether the power and phase weightings of the suit patent produce the described beam patterns. The Court held that until the Defendants proved, by simulation, that the beam patterns in the complete specification cannot be achieved, the argument of insufficiency under Section 64(1)(j) cannot stand.

The Court also held that the Defendants were unable to discharge the onus of proving that the subject invention was not novel, lacked inventive step, or was insufficiently described. The patent documents clearly set out the background, the problem, the invention, preferred embodiments and illustrative power and phase weightings. The suit patent IN'893 was accordingly held to be valid, and a certificate of validity under Section 113 of the Patents Act was also directed to be issued.

Moving ahead, the Court rejected the loss-of-profits-on-defendants'-sales measure, holding that the Defendants may have been able to sell more antennas due to various other factors, better sales and marketing, supplies, negotiation capabilities, after-sales service, apart from the patented technology. Similarly, the Bench declined to award damages solely on price erosion as the Plaintiff's price reductions could not be solely attributed to the infringement.

The Court held that the general principle for award of damages is that the innocent party must be restored by monetary compensation to the position it would have occupied but for the wrongful acts of the defendant. The Bench also held that the appropriate measure of damages in this case was royalty equivalent to what the Defendants would have been required to pay had they licensed the patent. After perusing the CommScope license agreement, the Court concluded that since the Defendants are not bona-fide licensees who negotiated a licence, they must pay the higher end of the royalty range.

Accordingly, a decree of permanent injunction was passed restraining the Defendants, their manufacturers, dealers, retailers, subsidiaries and associate companies from selling, offering for sale or promoting any antenna infringing IN'893, including all 11 identified infringing models and any other infringing models. A money decree of Rs. 1,52,32,36,783.90/- was passed towards royalty-based damages, payable by 30th June, 2026; 7% simple interest per annum thereafter. A certificate of validity under Section 113 of the Patents Act, 1970 was issued in respect of IN'893, and the Plaintiff was awarded actual taxed costs, to be determined by the Taxation Officer.