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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 17th December, 2019

+ **W.P.(C) 12105/2019**

PHARMACYCLICS LLC

..... Petitioner

Through: Mr. Pravin Anand, Ms. Archana
 Shanker, Mr. Dhruv Anand, Ms.
 Udit Patro and Ms. Kaya,
 Advocates. (M:9313399860)

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Rohan Anand, Advocate for UOI.
 (M:9968791199)
 Ms. Rajeshwari and Mr. Saif Rahman
 Ansari, Advocate for R-3.
 (M:7409531351)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

CM APPL. 54097/2019

1. The main writ petition has been disposed of vide judgment dated 20th November, 2019.
2. In the present application, the Petitioner/Patentee (*hereinafter*, "*Patentee*") seeks relief to the effect that the further facts, arguments and evidence, which have been cited by Respondent No.3/Opponent (*hereinafter*, "*Opponent*"), in their written submissions dated 9th December, 2019 and in their presentation dated 22nd November, 2019, ought not to be taken on record, inasmuch as it is impermissible to raise fresh arguments during the course of hearing.
3. In support of the application, ld. counsel for the Patentee has placed on record the original statement of opposition, the additional evidence of



Mr. B. M. Choudhary dated 19th September, 2019, the power point presentation dated 22nd November, 2019 and the written submissions dated 9th December, 2019, to submit that there is a great variance in the manner in which the prior art documents are sought to be interpreted in these versions being filed by the Opponent.

4. It is submitted that the original notice for opposition cited few molecules which have been dealt with by the Patentee in its reply statement. However, as the case is progressing, the Opponent is citing more and more molecules and varied molecules, without giving any opportunity to the Patentee to rebut the same. It is thus the submission of the Id. counsel for the Patentee that such fresh arguments and evidence ought not to be taken on record.

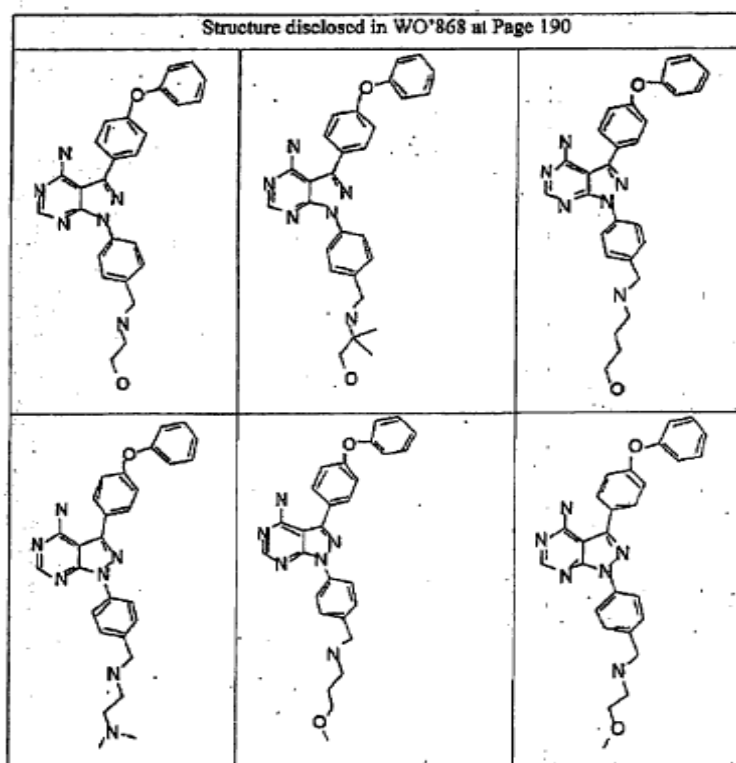
5. In response, Id. counsel for the Opponent submits that the new molecules which are being objected to by the Patentee are contained in the document titled WO'868 and the said family of patents. She submits that the original submission in the notice of opposition is that the compounds exemplified by this patent and the family have *phenoxyphenyl group attached at C-3 position* and substituted heterocyclic moiety at N-1 position of 4-amino pyrazolo [3,4-d] pyrimidine nucleus.

6. She submits that even in the new documents i.e., the written submission and the power point presentation, all that the Opponent has done is highlight the same argument through illustrative depictions of various molecules. Nothing fresh is argued, according to the Id. counsel for the Opponent.

7. This Court has perused the above four versions of the Opponent's case which has been presented. The fundamental submission of the



Opponent is as under:



“Table 4: Representative Compounds of WO’868

It can be seen from the above Table, that the compounds exemplified by WO’868 have phenoxyphenyl group attached at C-3 position and substituted heterocyclic moiety at N-1 position of 4-amino pyrazolo [3,4-d] pyrimidine nucleus. Therefore, it can be clearly seen that compounds having phenoxyphenyl group attached at C-3 position of pyrazolo [3,4-d] pyrimidine nucleus are already well established and well known in prior art for tyrosine kinase inhibitory activity.

Thus it is well established that the compounds having pyrazolo [3,4-d] pyrimidine nucleus attached at N-1 position with substituted piperidine ring, C-3 position with phenoxy phenyl group and C-4 position an amino group are already known for their tyrosine kinase inhibitory activity for the treatment of autoimmune diseases, inflammatory conditions and cancer.

Hence, all aspects of compounds of the impugned Patent



as claimed in claims 1 and 2 are obvious by disclosure in prior art and do not have any inventive merit.”

8. The above extract is from the original notice of opposition which was filed by the Opponent. According to the Opponent, the molecules extracted in tabular form are representative of the *phenoxyphenyl attachment at the C-3 position*, as stated in the opposition itself. The same has been further illustrated by citing various examples in the additional affidavit of Mr. B. M. Choudhary, as also the power point presentation and the written submissions.

9. Since the Opponent specifically submits before the Court that all the molecules which have been objected to as being fresh evidence are only in support of the above argument made in the original notice of opposition, as extracted above, this Court is of the opinion that the same does not constitute fresh evidence. However, since the molecules have been exemplified in the written submissions and in the powerpoint presentation, the Patentee is granted an opportunity to rebut the same, on or before 10th January, 2019. The Patentee may file written submissions or deal with these molecules in the form of a note and file the same before the Patent Office. It is submitted that the hearing already stands concluded on 22nd November, 2019. Upon the filing of the written submissions/note by the Patentee, the Patent Office shall decide the post-grant opposition expeditiously, in accordance with law.

10. With these observations, the application is disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 17, 2019/dj