

Bajaj Auto Ltd vs. TVS Motor Company Ltd

Case History

July 16,2002

Bajaj files patent application



October 30,2003

Bajaj files international patent applications in foreign countries



July 7,2005

Bajaj granted a patent on DTS-i technology



August 24,2007

Revocation petition filed by TVS seeking cancellation of patent granted to Bajaj



February 2008

Injunction on TVS for manufacture of Flame



March 10,2008

TVS launches with single spark technology



May 20,2009

Revocation of injunction by Madras High Court

Bajaj Patent No.195904

“An improved Internal Combustion Engine working on four stroke principle, **having two valves per cylinder** for efficient burning of lean air fuel mixture used in engines where the **diameter of cylinder bore ranges between 45 mm and 70 mm** characterized in that said Internal Combustion Engine comprises a pair of spark plugs”

- Bajaj filed a patent application for DTS-i technology on July 16,2002 in the Indian Patent Office
- It also filed a PCT application for exclusive rights in other countries on October 30,2003
- The patent was granted on July 7,2005

Revocation petition by TVS

- Six days before the launch of its bike “Flame” and nine days before the launch of “Exceed” by Bajaj, TVS filed a revocation petition against Bajaj’s patent claiming that the technology used by Bajaj had already been patented by Honda and that the technology was commonly used. The patent by Honda was to expire in 2005 and Bajaj had filed its application in 2002

Technology

- Bajaj - Four stroke engine, having two valves per cylinder for efficient burning of lean air fuel mixture, comprising of two spark plugs
- TVS – Four stroke engine, having three valves per cylinder, comprising of two spark plugs
- Honda - The patent was on a combination of two spark plugs with three valves in a single cylinder which is exactly what the TVS model was based on

Bajaj's Reply

- Bajaj filed a suit for injunction against TVS alleging that TVS had infringed on Bajaj's patent for twin spark technology and that the revocation petition was invalid
- Bajaj argued that s.48, after the 2002 Amendment Act, laid increased emphasis on the rights of the patentee for it allowed him to prevent third parties from using the patent. According to Bajaj, this enhanced protection translated into a presumption in favour of the patent which had been granted until it is revoked in a manner prescribed by law.

Bajaj's Reply (contd.):

- Bajaj claimed that the TVS engine was essentially similar to its engine in usage, size and design and that the third valve in TVS's engine was ornamental and had no functional value
- Bajaj also pointed out that the conduct of TVS subsequent to the grant of patent to Bajaj and prior to the launch of Flame was suspicious. This is because TVS was silent for over 4 years after the patent grant to Bajaj but filed a revocation petition under s.64 of the Patents Act before the IPAB on 24-08-2007, just six days before the launch of its impugned model Flame.

TVS's counter attack on Bajaj's reply

- To this, TVS countered that the revocation bid negated any presumptive validity of the Bajaj patent. TVS relied on s.13(4) of the Patents Act which states that examination and investigation or any proceeding consequent to it carried out pursuant to s.12 of the Act did not in itself warrant any kind of validity to the patent. “Any proceeding consequent” includes grant as well.

Injunction granted against TVS

- Madras High Court granted injunction to Bajaj on the following grounds –
 - Usage, purpose and design of TVS's engine was essentially similar to that of Bajaj
 - Inactivity on part of TVS for five years after grant of patent to Bajaj
 - The fact that Bajaj had exported its product to many countries and had sold 3.07 million units by that time highlighted the delay on TVS's part
 - The court relied on the above mentioned details as it was not well versed with technological aspects of the case

Injunction granted against TVS (contd.):

- The Court also held that mere filing of a revocation petition under s.64 did not give rise to a presumption against the validity of the patent and that a final decision of the validity of the patent involved a plethora of complex issues which the Court was not required to consider for only a prima facie view was required.
- On infringement, the Court again reiterated that the third valve was not of much use though the issue had to be decided at the trial stage. It was of the opinion that even if the third valve was considered a material addition to the TVS model, since the essential features of the Bajaj patent had been used in Flame; it amounted to infringement because the consent of the patentee was absent.
- TVS launched “Flame” with single spark technology after the injunction order

Revocation of injunction

- A division bench of Madras High Court comprising Justice S J Mukhopadyay and Justice F M Ibrahim Kalifulla revoked the injunction
- TVS was allowed to manufacture “Flame” as the bench felt that there was a difference between the technologies of the two competitors
 - Combustion process in TVS’s engine was not exclusively based on twin spark technology but on the three valve technology patented by AVL GmbH, Austria which had been licensed to TVS

Revocation of injunction (contd.)

- The court opined that simply because Bajaj had a patent on the twin spark technology, did not mean that it had a prima facie case of infringement against TVS especially when the validity of its own patent was in question
- In revoking the injunction order the court disregarded the existence of irreparable loss and the question of balance of convenience

Bajaj approaches Supreme Court

- After revocation of injunction, Bajaj approached the Supreme Court in appeal to the order of the Division Bench of the Madras High Court which allowed the launch of TVS' Flame in the market