

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

**VOLUME 2 ISSUE 7**

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can*

*bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



14th, 2019

**Head & Associate Professor**

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March*

## Mrs.S.Kalpana

**Assistant professor of Law**

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*methodology and teaching and learning.*

*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **A SIMPLE INNOVATION IS ALSO** **PATENTABLE**

Authored By - Amresh Swarnkar

## **INTRODUCTION**

This blog talks about the the judgement of Avery Dennison Corporation v. Controller of Patents and Designs.

In this judgement an appeal has been filed by Avery Dennison Corporation to set aside the impugned order of The Controller of Patents and Designs in order to get their patent passed in the **High Court of Delhi**.

In this judgement the judge after hearing both the side allowed the appeal and granted the order to pass the patent and relied on two tests, which are-

1. Simplicity does not defeat an invention i.e. even simple inventions are patentable.
2. The inventive step has to be assessed on the basis of the date of priority of the subject patent and not after the publication of the same i.e. it is not permissible to do a hindsight analysis or an ex-post facto analysis.

## **PARTIES:**

*Avery Dennison Corporation* (Appellant) v. *Controller of Patents and Designs* (Respondent)

## **FACTS OF THE CASE:**

Herein the appellant i.e. Avery Dennison Corporation is engaged in the business of providing-branding, information labelling solution and enhance brand packaging, to carry or display information about products.

The present appeal is filed by the Avery Dennison Corporation (Appellant) to set aside the *inter*

*alia* order dated 12<sup>th</sup> August 2021 of the Controller of Patents and Designs (Controller) in which the Controller refused the applicants for the grant of a patent titled 'Notched Fastener'. To this Avery Dennison Corporation have approached the High Court under Section 117A (2) of the Act to side aside the *order dated 12<sup>th</sup> August 2021*. The Controller of Patents and Designs had denied granting the patent on the ground that the proposed invention does not constitute as an invention under Section 2(1) (j) of the Patent Act, 1970.

## **Avery Dennison Corporation v. Controller of Patents and Designs (Delhi High Court on 25<sup>th</sup> July, 2022 by Justice Pratibha M. Singh)**

### **JUDGEMENT BY THE COURT:**

In this judgement firstly the various tests related to inventive steps have been mentioned and the various judgements pertaining to these tests have also been cited although all these tests are not applicable in an overall manner in a given case whereas any one of them or even a combination of them is applied in cases based on the facts involved in such cases.

In this present case Hon'ble judge has relied on basically **two principles in assessing inventive step and the obviousness of an invention:**

1. Simplicity does not defeat an invention i.e. even simple inventions are patentable.
2. The inventive step has to be assessed on the basis of the date of priority of the subject patent and not after the publication of the same i.e. it is not permissible to do a hindsight analysis or an ex-post facto analysis – which means that an invention should not be thought to be a normal invention seeing it in today's time i.e. after it has been invented whereas it should be thought from the perspective of when that particular invention was made, then only the difficulty or the real effort behind the innovation involved will be able to be assessed.

3. **For example-** seeing a mobile phone in today's time will seem easy to build it but when it was built initially for the first time then only the difficulty or efforts behind building it can be thought of.

To substantiate the point that a simple invention is also patentable the judge relied on the cases of-

1. House of Lords decision – **Vickers v. Siddell**<sup>1</sup>

"If the apparatus be valuable by reason of its simplicity, there is a danger of being misled by that very simplicity into the belief that no invention was needed to produce it. But experience has shown that not a few inventions, some of which have revolutionised the industries of this country, have been of so simple a character that when once they were made known it was difficult to understand how the idea had been so long in presenting itself, or not to believe that they must have been obvious to everyone."

2. Privy Council decision- **Pope Appliance Corp. v. Spanish River Pulp & Paper Mills Ltd**<sup>2</sup>

"The principal objection seems to be that the invention is too simple, but that is not an objection that a practical paper-maker would take. It ought to be looked upon as a bold conception. Although air has been used, it has not been applied in the particular way in which it was applied by Pope. The man who correlated the elements of a forty-year old problem is entitled to a patent."

One of the sure tests in analysing the existence of inventive step would also be the time gap between the prior art document and the invention under consideration. If a long time has passed since the prior art was published and a simple change resulted in unpredictable advantages which no one had thought of for a long time, the Court would tilt in favour of holding that the invention is not obvious.

Terrel on Law of Patents (16th Edition) opines that the age of the prior art and why it was not done before is one of the factors to be considered while deciding on obviousness. The observations made in the judgement **Brugger v. Medic-Aid Ltd**<sup>3</sup> delivered by the UK Patents Court has been cited to substantiate to consider this factor:

---

<sup>1</sup> (1890) 7 R.P.C. 292

<sup>2</sup> (1929) 46 R.P.C. 23

<sup>3</sup> [1996] R.P.C. 635



“The fact that a piece of prior art has been available for a long time may indicate, contrary to first impressions, that it was not obvious to make the patented development from it. It is useful to bear in mind in this regard the concept of long felt want. This is a particularly efficient expression. An apparently minor development which meets a long felt want may be shown to be non-obvious because, although the prior art has long been available, the development was not hit upon by others notwithstanding that there was a need for improvement (the 'want') and an appreciation of that need (the 'felt'). In other words the age of prior art may be an indication that a development from it is not obvious if it can be shown that the circumstances in the relevant trade were such that a failure of the development to appear earlier is surprising.”

In the present case the judge found after comparing the prior art and the present innovation a clear advantage in the present innovation. The improvement in the prior art and the present innovation is clearly decipherable was declared by the judge.

The subject application in the present case discloses a technical advancement in comparison with the closest prior art and the features comprising inventive step are not obvious to a person skilled in the art and therefore, the subject patent application satisfies the test of inventive step.

The court on the basis of the aforementioned reasons set aside the Controller's order by stating that the Controller's finding that any person skilled in the art could make the variation and modifications in D2 (prior art) to arrive at the subject invention, is not tenable. The differences which the Controller describes as 'superficial' may appear simple but clearly have an impact on the product concerned. The description of the said differences as superficial would, therefore, be misplaced.

Hence, the appeal was allowed and the patent was held to be granted.

## CONCLUSION

After going through the present blog the readers will be able to understand the judgement of Avery Dennison Corporation v. Controller of Patents and Designs and will also come to know

that a **simple innovation is also patentable** i.e. even if a an innovation is a simple one it can be patented.

The judge in the present case relied upon the two tests to grant patent to Avery Dennison Corporation thereby setting aside the impugned order of the Controller of Patents and Designs and these two tests have also been discussed in the present blog, these tests are-

1. Simplicity does not defeat an invention i.e. even simple inventions are patentable.
2. The inventive step has to be assessed on the basis of the date of priority of the subject patent and not after the publication of the same i.e. it is not permissible to do a hindsight analysis or an ex-post facto analysis.

So overall we can say that the present judgement will help a lot of inventors because by the **precedent set by this judgement a simple innovation will also be patentable** and the various innovators in an industry will be able to take help of this judgement in getting a patent for their innovations.

