

IN THE COURT OF SH. DEVENDER KUMAR JANGALA,
DISTRICT JUDGE(COMMERCIAL)-01,
NORTH WEST DISTRICT, ROHINI COURTS, DELHI.

CS (COMM.) 211/26
DEEPAK CHANDER Vs. RESPIMED BREATHING
SOLUTIONS AND ORS.
&
COUNTER CLAIM BEARING NO.16/26
RESPIMED BREATHING SOLUTIONS AND OTHERS
VS.
DEEPAK CHANDER AND ANOTHER

16.05.2026

Present: Sh.D. K. Yadav, Ms. Himani and Ms.Preeti Jha, Ld.
Counsel for plaintiff.
Sh.Akhil Pal Chhabra, Ld. Counsel for defendants.

1. Written statement and the reply to the application under order XXXIX Rule 1 and 2 CPC filed on behalf of defendants. Copy supplied.
2. **The defendants have also filed the counter claim under Section 64 of the Patents Act, to the suit of plaintiff for patent infringement. It be checked and registered separately.**
3. The defendants/counter claimants, in the counter claim have made the following prayers:-

“a. Allow the Counter Claim and Pass a decree for damages and litigation cost for a sum of Rs. 50,00,000/- (Rupees Fifty Lacs Only) in favour of the Counter claimant for the loss occurred by the counter claimant on account of ex-parte injunction granted to the Defendants for the month of April 2026 till 8th may and the future

continuing loss [to be computed at the final disposal proceedings]; and;

b. Pass an Order of revocation under section 64 of the Act for revoking of the suit patent 381112 granted to the Defendants as the same being not a valid and noval; and granted illegally and without proper disclosure of Prior Art;

c. Pass a decree of declaration under Section 105 of the Patents Act, 1970 declaring that the manufacture, sale, offer for sale, and dealing in the 'UNIQ FIT NIV/BiPAP Full Face Mask by the Counter Claimants does not constitute an infringement of Indian Patent No. 381112 granted to the Defendants; and

d. Pass a decree restraining the Defendants, their partners, agents, distributors, and assigns from issuing any cease and desist notices, making social media posts, or communicating in any manner to any third party characterizing the Counter Claimants or their products as infringers of the Defendants' patent pending final disposal of these proceedings.

e. Award the legal costs for the present Counter-Claim [to be computed at the end of the proceedings] in favour of the Counter Claimant and against the Defendants.”

4. It is submitted by Ld.counsel for parties that the defendants have filed the counter claim bearing no.16/26 titled as Respimed Breathing Solutions and Others Vs. Deepak Chander

and another, under Section 64 of the Patents Act to the suit of plaintiff for patent infringement with the prayer of revocation of patent in question and cancellation of design, therefore, in view of provisions of Section 104 of the Patent Act, the present suit alongwith the counter claim is required to be transferred to Hon'ble High Court for disposal.

5. Ld.counsel for plaintiff is having 'no objection' with regard to the submissions made by Ld.counsel for defendants/counter claimant.

6. Heard. Record perused.

7. Before proceeding further it is necessary to reproduce the relevant provisions contained under Section 104 of the Patent Act, which reads as under:-

"104. Jurisdiction.

No suit for a declaration under Section 105 or for any relief under section 106 or for infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:

Provided that where counter-claim for revocation of the patent is made by the defendant, the suit, alongwith the counter-claim, shall be transferred to the High Court for decision".

8. A plain reading of Section 104 of Patent Act would reflect that whenever a counter claim for revocation of patent has been filed by the defendant, the suit alongwith the counter claim shall be transferred to Hon'ble High Court. The legislature has used the word 'shall be 'in Section 104 Patent Act, which means

that it is mandatory that the suit alongwith counter claim shall be transferred to Hon'ble High Court.

9. Therefore, in the present facts and circumstances, it is directed that the present suit bearing CS(Comm) no.211/26 titled as Deepak Chander Vs. Respimed Breathing Solutions and Ors. and the counter claim bearing no.16/26 titled as Respimed Breathing Solutions and Others Vs. Deepak Chander and another be transferred to Hon'ble High Court as per provisions of Section 104 of the Patent Act.

10. Let, both the files be placed before the Hon'ble High Court for further directions/appropriate orders, through Ld.Principal District and Sessions Judge, North West, Rohini Courts, Delhi.

11. Both the parties are directed to appear before the Ld. Registrar General, Hon'ble High Court of Delhi on **21.05.2026 at 3.00 PM.**

12. Ahlmad is directed to immediately send the files complete in all respects with proper indexing and pagination today itself. Copy of this order be also placed in the counter claim.

(Devender Kumar Jangala)
District Judge (Commercial Court)-01
North-West, Rohini, Delhi.
16.05.2026