

Daily Orders for Case OS 2/2019

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20	S.R.KRISHNA KUMAR	07/03/2023	<p>COMMON ORDERS ON I.A.No.1/2019 FILED U/O 39 RULES 1 AND 2 CPC AND I.A.No.1/2019 FILED U/O 39 RULE 4 R/W 151 CPC The present suit in O.S.No.2/2019 has been filed by the plaintiff seeking the following reliefs:- (a) A decree of permanent injunction restraining the Defendant, their Directors, employees, officers, servants, agents, licenses, franchisees, distributors and all other acting for and on their behalf from using, manufacturing, selling, distributing, advertising, exporting, offering for sale, procuring and dealing and dealing, any other manner directly or indirectly, with any system/product/ technology covered by the Suit Patent bearing no. 309274 including using, manufacturing, selling, distributing, advertising, exporting, offering for sale, procuring and dealing any other manner directly or indirectly with the product Plutus Smart or any other device with a communication verification system capable of generating a transaction specific unique QR-Code on Point of Sale (POS) terminal;. (b) A decree for rendition of accounts of profits in respect of use, manufacture, sale export, import or any other infringing activity with any system/ product/ technology covered by the Suit Patent bearing No. 309274 including using , manufacturing, selling, distributing, advertising, exporting, offering for sale, procuring and dealing, any other manner directly or indirectly with the product Plutus Smart or any other device with a communication verification system capable of generating a transaction specific unique QR- Code on Point of Sale (POS) terminal and a decree for the amount so found and ascertained by this Hon'ble Court may be passed in favour of the plaintiff and against the Defendants; (c) A decree for delivery up of all system/product/ technology covered by the Suit Patent bearing No.309274 including the product plutus Smart or any other device with a communication verification system capable of generating a transaction specific unique QR-Code on Point of Sale (POS) terminal as available with the Defendant to an authorized representative of the plaintiff;. (d) A decree for seizure, forfeiture or destruction of all system/product/ technology covered by the Suit Patent bearing No.309274 including the product plutus Smart or any other device with a communication verification system capable of generating a transaction specific unique QR-Code on Point of Sale (POS) terminal; (e) A decree for damages in favour of the plaintiff and against the Defendant as stated hereinabove; (f) A decree for order for cost in the present proceedings in favour of the plaintiff and; (g) Such other reliefs that this Hon'ble Court deems fit and proper in the facts and circumstances of the present case. 2. The said suit was initially filed before the XVIII Addl.City Civil and Sessions Judge, Bangalore, in which the plaintiff filed an application, I.A.No.1 for ad-interim ex-parte order of temporary injunction against the defendant in the above terms. On 16.07.2019, the trial court passed an ad-interim ex-parte temporary injunction in favour of the plaintiff against the defendant. 3. Subsequently, on 23.07.2019, the defendant entered appearance before the trial court and filed its written statement together with a counter claim under Section 64(1) of the Patents Act, 1970 (for short 'the said Act of 1970') seeking revocation of the plaintiff's patent (for short, referred as the 'suit patent'). The defendant also filed objections to I.A.1 filed by the plaintiff. 4. After hearing the parties, the trial court invoked Section 104 of the said Act of 1970 and passed an order dated 24.07.2019 transferring the aforesaid suit to this Court and directed the interim order to be continued till the parties appear before this Court. Pursuant thereto, the suit with the entire records was transferred to this Court, before which the defendant filed I.A.1/2019 under Order 39 Rule 4 CPC seeking vacating of the order of temporary injunction passed in favour of the plaintiff, who filed objections to the said application. Subsequently, both sides filed additional documents in support of their respective claims and accordingly, both I.A.No.1 filed by the plaintiff and I.A.No.1/19 filed by the defendant have been taken up together and disposed off by this common order. 5. Briefly stated, the facts and contentions pleaded by the plaintiff are as under:- The plaintiff-company having been incorporated on 19.12.2002 have been involved in designing technology system including hardware and software components and in 2008, it launched India's first cloud payment acceptance platform. The plaintiff applied for the suit patent on 29.03.2017 and was granted by the Indian Patent Office on</p>

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			<p>15.03.2019. It is contended that the suit patent relates to a communication verification system for establishing secure communication between a terminal device and a target system. The underlying technology as claimed in the suit patent relates to a novel and innovative transaction specific unique quick response (QR) code based solution that can be used on existing credit / debit card Point of Sale (POS) terminal to enable UPI based and other QR based cashless payment. After referring to the UPI and its advantages, plaintiff contends that the suit patent involve the various steps narrated in para-25 of the plaint and provide a solution in the manner narrated in para-26 of the plaint and it is contended that the invention is commercially viable and had been invented after spending huge amount of money as narrated in paragraphs 27 to 30 of the plaint. 5.1 Plaintiff contends that subsequent to the grant of suit patent in its favour in 15.03.2019, it learnt that the defendant was marketing a new product, "Plutus Smart" based on the patented technology of the plaintiff, thereby infringing the suit patent of the plaintiff. In this context, it is contended that the suit patent comprising of the communication verification system which generates a transaction specific unique QR code on the POS terminal is exclusively patented in favour of the plaintiff under the suit patent and the activities of the defendant clearly indicates that has been clearly infringing the suit patent as detailed in paragraphs-31 to 36 of the plaint. 5.2 It is further contended that the plaintiff obtained an opinion from one technical expert Prof.V.Shridhar from IIIT, Bangalore, who submitted a report that there was infringement by the products of the defendant. It is also contended that on account of the acts of infringement by the defendant, plaintiff is being put to huge financial loss and as such, the plaintiff filed the present suit. 5.3 The defendant has filed its written statement inter alia disputing and denying the various allegations and claim made by the plaintiff. It is contended that the suit patent is invalid and accordingly, a counter claim for revocation sought for by the defendant under Section 64(1) of the said Act of 1970. It is further contended that there is absolutely no novelty in the suit patent and the same is liable to be revoked on this ground also. It is also contended that the suit patent lacks any inventive steps and prior art document including earlier patents there already in existence even before the plaintiff applied for the suit patent and the suit patent was also liable to be revoked on this ground. Defendant has also contended that the suit patent does not constitute an invention under Section 2(1)(j) of the said Act of 1970 and the same is liable to be revoked. The defendant has further contended that the suit patent is statutorily non - patentable under Section 3(k) of the said Act of 1970. It is further contended that the National Payment Corporation of India (NPCI) has also filed Post grant opposition to the suit patent and on this score also, the suit patent is liable to be revoked. 5.4 In the statement of objections to I.A.1/2019, apart from reiterating the aforesaid contentions, the defendant has contended that the plaintiff is guilty of suppression of material fact and has deliberately and intentionally not stated that originally, the plaintiff had put forth 15 claims for grant of patent, out of which, claim Nos. 1 to 8 were refused / rejected by the patent office and only claim Nos.9 to 15 were granted under the suit patent which are also liable to be revoked. It is contended that apart from the fact that the plaintiff had not made out any prima facie case, there is no act of infringement done by the defendant or its product and consequently, the balance of convenience is in favour of the defendant who would be put to irreparable injury and hardship if the temporary injunction is confirmed. It is therefore contended that there is no merit in the suit as well as I.A.1/2019 and that the same are liable to be dismissed. 6. Heard Sri.K.G.Raghavan, learned Senior counsel for the plaintiff along with Sri.Saurab Anand, Advocate. I have also heard Sri.Uday Holla, learned Senior for the defendant along with Ms.Maneesha Kongovi, Advcoate and perused the material on record. 7. In addition to reiterating the various contentions urged in the suit and I.A.1/2019 as well as the material on record, learned Senior counsel for the plaintiff submitted that the suit patent comprises of an invention which is the Communication Verification System (CVS) capable of generating a transaction specific unique QR code on a Point of Sale (POS) terminal. It is submitted that the suit patent was patentable and the plaintiff had correctly obtained the suit patent from the patent office and the defendant was not entitled to commit acts of infringement as against the suit patent. It was submitted that the CVS of the plaintiff which is comprised of in the suit patent is a</p>

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			<p>novel and inventive step and the various contentions urged by the defendant are false and devoid of merit. It was therefore submitted that the trial court was fully justified in passing an ex-parte order of temporary injunction and the same deserves to be made absolute by this Court. In support of his contentions, learned Senior counsel has placed reliance upon the following decisions:- (i) Dr. Aloys Wobben and another Vs. Yogesh Mehra and others - (2014) 15 SCC 360 ; (ii) Haryana Financial Corpn. v. Jagdamba Oil Mills -(2002) 3 SCC 496; (iii) CDE Asia Limited v. Jaideep Shekhar & Anr – 2020 (82) PTC 310 (Del); (iv) Telefonktiebolaget LM Ericsson vs. INTEX - (2015) 62 PTC 90; (v) Allani Ferid vs Assistant Controller of Patents & Designs- 2021(88) PTC 304 (IPAB); (vi) Vringo Infrastructure Inc. and Anr. v. Indiamart InterMesh Ltd. and Ors.- (2014) 60 PTC 437; (vii) CTR Manufacturing Industries Limited vs. SergiTransgormer Explosion Prevention technologies Pvt.Ltd.,- (2016) 65 PTC 262; (viii) Sergi Transformer Explosion Prevention Technologies Private Limited v. CTR Manufacturing Industries Limited &Ors. – 2015 SCC Online Bom 6984; (ix) CTR Manufacturing Industries Limited vs. Sergi Transformer Explosion Prevention Technologies Private Limited and Ors. - SLP (C) No. 34749-34751/2015 Dated: 16.12.2015; (x) Raj Parkash v. Mangat Ram Chowdhry - 1977 SCC Online Del 33; (xi) Novartis AG & Another vs. Natco Pharma Limited (2022) 89 PTC 1; (xii) F. Hoffmann La Roche Limited and Ors. vs Cipla Limited - (2009) (40) PTC 125(DB); (xiii) Strix Limited vs. Maharaja Appliance Limited - 2009 SCC Online Del 2825; (xiv) Bishwanath Prasad Radhey Shyam vs Hindustan Metal Industries - AIR 1982 SC 1444; (xv) F. Hoffmann-La Roche Ltd. v. Cipla Ltd., - 2015 SCC Online Del 13619; (xvi) American Cynamid C. vs. Ethicon Ltd. - 1975 2 WLR 316; (xvii) Colgate Palmolive (India) Ltd., vs Hindustan Lever Ltd.,- (1999) 7 SCC 1; (xviii) F. Hoffmann-La- Roche Ltd. and Ors. vs. Cipla Limited (MANU/DE/0517/2008); (xix) Metro Plastic Industries vs. Galaxy Footwear New Delhi (AIR 2000 Delhi 117); (xx) Union of India (UOI) vs. Ibrahim Uddin and Ors- [(2012) 8SCC 148]; (xxi) Bacchaj Nahar vs Nilima Mandal – (AIR 2009 SC 1103); (xxii) S.J.S.Business Enterprises (P) Ltd., vs. State of Bihar and Ors [MANU/SC/0236/2004]; (xxiii) Harkirat Singh vs. Amrinder Singh – AIR 2006 SC 713; (xxiv) H.B. Shamithkumar vs. A.M.Somanna and Ors. -[MANU/KA/2414/2017] 8. Per contra, learned Senior for the defendant in addition to reiterating the various contentions urged in the written statement and statement of objections as well as referring to the material on record, submitted that the plaintiff had not made out a prima facie case for grant of temporary injunction, particularly when the suit was filed before expiry of the period of 12 months from the date of grant of patent and within the post grant opposition period as contemplated under Section 25(2) of the said Act of 1970. It was submitted that the suit patent is not patentable in India under Section 3(k) of the said Act of 1970. It was also contended that in view of deletion of claims 1 to 8 from the original patent claim, the remaining claim Nos.9 to 15 are not patentable. It is further submitted that there are various ambiguities in the suit patent which is liable to be revoked on this ground alone. It is also submitted that the invention as claimed by the plaintiff is neither novel nor an inventive step, particularly in view of similar patent having been granted in the United States and other countries prior to the suit patent and on this ground also, the claim of the plaintiff is devoid of merit. It is further submitted that the expert opinion of Prof.V.Shridhar and the other two experts also contain various discrepancies and mutual contradictions / inconsistencies and no reliance can be placed upon the same by the plaintiff. 8.1 Learned Senior counsel submitted that there is absolutely no material placed by the plaintiff to establish that there was any infringement by the defendant and on this ground alone, the application for temporary injunction was liable to be rejected. He invited my attention to the plaint averments as well as the suit patent in order to point out that the patent sought for by the plaintiff was rejected insofar as original claims 1 to 7 as well as the terminal device – POS machine originally contained in claim No.8, consequent upon which, the suit patent comprising of only original claims 9 to 15 did not have any independent existence at all and consequently, the suit patent was liable to be revoked. It was further submitted that the suit patent claiming that the CVS of the plaintiff was novel, since for the first time, it enabled generation of a transaction specific QR code was factually incorrect, since the same was in existence from much earlier in India and being used by the State Bank of India, Bharat QR code,</p>

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			<p>Axis Bank, Flipay and even earlier covered by the US patents. 8.2 Learned Senior counsel also submitted that the plaintiff was guilty of suppression of material facts, since the pleadings of the plaintiff did not disclose filing of 15 claims and rejection of 8 claims and that the suit patent comprised of only the remaining claims and having not come to the Court with clean hands, the plaintiff was not entitled to the discretionary and equitable relief of injunction. It was further submitted that the defendant or its product, plusus Smarters have not committed any acts of infringement as falsely claimed by the plaintiff and that the balance of convenience is in favour of the defendant and as such, if an order of temporary injunction is passed against the defendant it would be put to irreparable injury and hardship and justice would suffer. It was therefore submitted that there was no merit in the suit and the application and that the same was liable to be dismissed. In support of his contentions, learned Senior counsel for the defendant has placed reliance upon the following decisions:- (i) Alloys Wobben&Anr. v. Yogesh Mehra &Ors.,- (2014) 15 SCC 360; (ii) J.Mitra& Company Pvt.Ltd., v. Assistant Controller of Patents & Designs &Ors., - (2008) 10 SCC 368; (iii) Cipla Ltd., v. Union of India &Ors., - (2012) 13 SCC 429; (iv) F. Hoffman La- Roche Ltd. &Anr.v. Cipla Ltd., - 2009 (110) DRJ 452 (DB); (v) Novartis AG &Ors. v. Natco Pharma Ltd., - (2019) 80 PTC 403; (vi) Pharmacyclics LLC v. Union of India &Ors.- W.P.(C) 12105/2019, Delhi High Court, dated: 20.11.2019; (vii) ACME Tele Power Ltd., v.Sintex Industries Ltd., &Anr. - 2008 SCC Online Utt 10. (viii) National Research Development Corporation of India v. The Delhi cloth and General Mills Co.Ltd., &Ors. - AIR 1980 Del 132. (ix) Bilcare Ltd., v. AmartaraPvt.Ltd., - (2007) 34 PTC 419; (x) B. Braun Melsungen Ag &Ors. v. Rishi Baid&Ors., - (2009) 110 DRJ 127; (xi) Standipack Pvt. Ltd., &Anr. v. Oswal Trading Co.Ltd., - AIR 2000 Del 23; (xii) Lakshminarasimhaiah and Ors. v. Yalakki Gowda - AIR 1965 Mys 310; (xiii) Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries - (1979) 2 SCC 511; (xiv) Novartis AG v. Union of India &Ors., - (2013) 3 SCC (Civ) 227; (xv) F. Hoffman La-Roche Ltd. &Anr v. Cipla Ltd., - 2015(225) DLT 391; (xvi) Festo Corp. v Shoketsu Kinzoku KogyoKabushiki Co., - 535 U.S. 722 (2002); (xvii) Communication Components Antenna Inc. v. Ace Technologies Corp. &Ors. - (2019) 79 PTC 270; (xviii) Herbert Markman &Positex, Inc.v. Westview Instruments, Inc. & Althosn Enterprises, Inc. - 52 F.3d 967; (xix) European Central Bank Document Security System - (2007) EWHC 600 (Pat); (xx) Opposition Systems, World Intellectual Property Organization, WIPO Article; (xxi) Guidelines for Examination of Computer Related Inventions, 2017. (xxii) Electric & Musical Industries Ltd. & Boonton Research Corporation Ltd. v. Lissen Ltd. Anr., - (1939) 46 RPC 23. (xxiii) Natural Colour Kinematograph Co.Ld., v. Bioschemes Ltd., - (1915) 32 RPC 256. (xxiv) Press Metal Corporation Ltd., v. Noshir Sorabji Pochkhanawalla&Anr., - AIR 1983 Bom 144. (xxv) Ram Narain Kher v. Ambassdor industries New Delhi &Anr.- AIR 1976 Del 87. (xxvi) Manual of Patent Office Practise & Procedure, 26th November 2019. (xxvii) WIPO Patent Drafting Manual (xxviii) Boehringer Ingelheim International GMBH v. The Controller of Patents &Anr., C.A. (COMM.IPD-PAT) 295/2022. 9. By way of reply, learned Senior counsel for the plaintiff submitted that the plaintiff became absolutely entitled to the right granted under the suit patent from the very day it was granted i.e., 15.03.2019, and since infringement occurred within the period prescribed under Section 25(2) as regards post grant opposition, it cannot be said that the suit was not maintainable. It was submitted that the suit patent was not a computer programme per se and Section 3(k) of the said Act of 1970 was not applicable to the suit patent. It was further contended that original claim No.8 which was deleted is covered under granted claim No.1 of the suit patent and as such, deletion of original claim No.8 will not affect the granted suit patent. 9.1 Learned Senior counsel further submitted that the very grant of the suit patent in favour of the plaintiff establishes its validity prima facie and all rival contentions would have to be adjudicated only after a full fledged trial, including the expert opinion, reports etc., and the relevance and applicability of the earlier patents of other countries, SBI, Axis Bank, Bharat QR, Flipay etc., It was therefore submitted that apart from fact that the CVS of the plaintiff as per the suit patent is completely different from the technology involved in the other patents and payment mechanisms, no reliance can be placed upon the same by the defendant. 10. I have given my anxious consideration to the rival submissions and perused</p>

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			<p>the material on record. 11. The following points arise for consideration in the present application:- (i) Whether the plaintiff has made out a prima facie case for grant of temporary injunction? (ii) Whether the balance of convenience is in favour of the plaintiff? (iii) Whether the plaintiff will be put to irreparable injury and hardship if an order of temporary injunction is not passed in its favour? 12. Since all the points formulated above are interlinked, they are taken up for consideration together and answered as hereunder. 13. Before adverting to the rival contentions, it is relevant to state that it is an undisputed fact that the original patent application was filed by the plaintiff on 29.03.2017 comprising of 15 claims which are as under:-</p> <ol style="list-style-type: none"> 1. A method for establishing secure communication between a terminal device (105) and a target system (103), the method comprising: receiving, by a communication verification system (101), a communication request (107) from the terminal device (105) for establishing communication between the terminal device (105) and the target system (103), wherein the communication request (107) is generated at the terminal device (105) when a user initiates a transaction at the terminal device (105); verifying, by the communication verification system (101), the terminal device (105) and the target system (103) based on predetermined registration details (211), for validating the communication request (107); signalling, by the communication verification system (101), the terminal device (105) for generating a unique Quick Response (QR) code (111), corresponding to the communication request (107), upon validating the communication request (107); and establishing, by the communication verification system (101), the secure communication between the terminal device (105) and the target system (103) when the QR code (111) is processed by a predetermined verification interface configured in a user device (113), associated with the user. 2. The method as claimed in claim 1, wherein the communication request (107) comprises a transaction request, a unique transaction identifier and transaction-specific information. 3. The method as claimed in claim 1, wherein the predetermined registration details (211) comprises a terminal identifier, a target system (103) identifier, a Virtual Private Address (VPA) of the terminal device (105), and a target channel identifier. 4. The method as claimed in claim 1, wherein the unique QR code (111) generated by the terminal device (105) is displayed on a display interface (235) associated with the terminal device (105). 5. The method as claimed in claim 1, wherein processing the QR code (111) comprises: scanning the QR code (111) through the predetermined verification interface configured in the user device (113); decoding, through the predetermined verification interface, the QR code (111) for extracting information related to the transaction; generating, using the predetermined verification interface, a transaction payload (115) corresponding to the information related to the transaction; and transmitting, through the user device (113), the transaction payload (115) to the target system (103) for authorizing the transaction. 6. The method as claimed in claim 5, wherein the information related to the transaction comprises name of the user, a unique identifier of the user, a user-specific VPA, and the predetermined registration details (211). 7. The method as claimed in claim 5, wherein authorizing the transaction comprises: receiving, by the communication verification system (101), the information related to the transaction from the terminal device (105); receiving, by the communication verification system (101), a transaction authorization message from the target system (103), wherein the transaction authorization message is generated at the target system (103) upon validating the transaction payload (115) received from the terminal device (105); and comparing, by the communication verification system (101), the information related to the transaction with the transaction authorization message for authorizing the transaction between the terminal device (105) and the target system (103). 8. A terminal device (105) comprising: a data reception module (231) to receive a transaction initiation request from a user; a communication request generation module (232) to generate a communication request (107) upon receiving the transaction initiation request; a Quick Response (QR) code generator (233) for generating a unique QR code (111) corresponding to the communication request (107); and a display interface (235) for displaying the QR code (111). 9. A communication verification system (101) for establishing secure communication between a terminal device (105) and a target system (103), the communication verification system (101) comprising: a processor

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			<p>(203); and a memory (205), communicatively coupled to the processor (203), wherein the memory (205) stores processor-executable instructions, which on execution cause the processor (203) to: receive a communication request (107) from the terminal device (105) to establish communication between the terminal device (105) and the target system (103), wherein the communication request (107) is generated at the terminal device (105) when a user initiates a transaction at the terminal device (105); verify the terminal device (105) and the target system (103) based on predetermined registration details (211) to validate the communication request (107); signal the terminal device (105) to generate a unique Quick Response (QR) code (111), corresponding to the communication request (107), upon validating the communication request (107); and establish the secure communication between the terminal device (105) and the target system (103) when the QR code (111) is processed by a predetermined verification interface configured in a user device (113). associated with the user. 10. The communication verification system (101) as claimed in claim 9, wherein the communication request (107) comprises a transaction request, a unique transaction identifier and transaction-specific information. 11. The communication verification system (101) as claimed in claim 9, wherein the predetermined registration details (211) comprises a terminal identifier, a target system (103) identifier, a Virtual Private Address (VPA) of the terminal device (105), and a target channel identifier. 12. The communication verification system (101) as claimed in claim 9, wherein the processor (203) displays the unique QR code (111) generated by the terminal device (105) on a display interface (235) associated with the terminal device (105). 13. The communication verification system (101) as claimed in claim 9, wherein to process the QR code (111), the processor (203) is configured to: scan the QR code (111) through the predetermined verification interface configured in the user device (113); decode, through the predetermined verification interface, the QR code (111) for extracting information related to the transaction; generate, using the predetermined verification interface, a transaction payload (115) corresponding to the information related to the transaction; and transmit, through the user device (113), the transaction payload (115) to the target system (103) for authorizing the transaction. 14. The communication verification system (101) as claimed in claim 13, wherein the information related to the transaction comprises name of the user, a unique identifier of the user, a user-specific VPA, and the predetermined registration details (211). 15. The communication verification system (101) as claimed in claim 13, wherein to authorize the transaction, the processor (203) is configured to: receive the information related to the transaction from the terminal device (105); receive a transaction authorization message from the target system (103), wherein the transaction authorization message is generated at the target system (103) upon validating the transaction payload (115) received from the terminal device (105); and compare the information related to the transaction with the transaction authorization message to authorize the transaction between the terminal device (105) and the target system (103). 14. In pursuance of the same, the patent office issued an Examination Report under Sections 12 and 13 of the said Act of 1970 on 13.08.2018 by rejecting the claims as under:- B. Detailed observations on the requirements under the Act: NOVELTY: i) Claim(s) 1,2,4,7-10, 12, 15 lack(s) novelty, being anticipated in view of disclosure in the document cited above under reference D1 for the following reasons: The subject matter as described and claimed in claims 1, 2, 4, 7-10, 12, 15 lack novelty in the view of any the following prior art document: D1: US20160301530 A1 (13-10-2016) Regarding Claim 1: Document D1 disclose according to subject matter of claim 1 (the references between parentheses relate to said document) that Regarding Claim 1, D1 discloses(the references in parentheses applying to this document): A method for establishing secure communication between a terminal device(Fig. 1, operating terminal "140") and a target system(Fig. 1, server "120"), the method comprising: receiving, by a communication verification system(Fig. 1 auxiliary terminal "160"), a communication request from the terminal device for establishing communication between the terminal device and the target system(Fig. 5A, STEP "506"), wherein the communication request generated at the terminal device when a user initiates a transaction at the terminal device(paras. [0104], [010 verifying, by the communication verification system, the terminal</p>

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			<p>device and the target system based on predetermined registration details (Fig: SA, STEPS 501-506"; paras. [0100)-(0102], "decryption information the encryption information that correspond to the user account"), for validating the communication request(F SA STEPS 511-516"), signaling, by the Communication verification system, the terminal device for generate unique Quick Response (OR) code(Fig. 5C, two-dimensional code "04"), corresponding to the communication request, upon validating the communication request (paras. [01841, (0185)); and establishing, by the communication verification system, the secure communication between the terminal device and the target system when the QR code is processed by a predetermined verification interface configured in a user device, associated with the user (is implicit in paras [0187]-[0193]; para. [0239], "data line interface"). Hence, Claim 1 is not novel. Regarding independent claims: The reasoning used for independent Claim 1, can also be used for the corresponding independent Claims 8 and 9. Hence, claims 8 and 9 also do not meet the requirement of the section 2(1)(i) of The Patent Act, 1970 (as amended) since these features are directly derivable from the cited prior art document D1. Regarding dependent claims: Further, D1 discloses the communication request comprises a transaction request, a unique transaction identifier and transaction specific information (para. [0105]); the unique QR code generated by the terminal device is displayed on a display interface associated with the terminal device (paras. [0066], [0125]). Hence, Claims 2, 4, 7, 10, 12 and 15 are also not novel and do not meet the requirements of section 2(1)(i) of the Patents Act, 1970 (as amended) over the disclosure of document D1. Thus, in the view of all features of alleged invention described in D1, the subject matter as claimed in claims 1,2,4,7-10, 12, 15 is not novel and as such does not constitute an invention u/s 2(1)(i) of The Patent Act, 1970. The subject matter of Claims 3, 5, 6, 11, 13 and 14 is novel in view of disclosures of D1. INVENTIVE STEP: (ii) Claim(s) 1-15 lack(s) inventive step, being obvious in view of teaching (s) of cited document(s) above under D1 and D2 for the following reasons: The subject mater as in claims 1-15 lack inventive step in the view of following prior art documents D1. US:20160301530 A1 (13/10/2016) 02 US8175979 82 (08/05/2012) Claims 1, 2, 4, 7-10, 12, 15 are not inventive in view of the teachings of document D1. Regarding Claims 3 and 11, 02 discloses the predetermined registration details comprises a terminal identifier, a target system identifier, a Virtual Private Address (VPA) of the terminal device, and a target channel identifier(lines 51-55, 57-64 of Column 2) Regarding Claims 5 and 13, D2 discloses processing the QR code further comprises scanning the QR code through the predetermined verification interface configured in the user device, decoding, through the predetermined verification interface, the OR code for extracting information related to the transaction(lines 5-16 of Column 3), generating, using the predetermined verification interface, a transaction pay load corresponding to the information related to the transaction; and transmitting, through the user device, the transaction payload to the target system for authorising the transaction(lines 17-67 of Column 3 to lines 1-8 of Column 4). Regarding Claims 6 and 14, D2 discloses the information related to the transaction comprises name of the user, a unique identifier of the user, a user specific VPA and the predetermined registration details (lines 44-61 of Column 3). Thus, the teachings of Claims 3,5, 6, 11, 13 and 14 will be obvious to a person skilled in the art in view of documents D1 and D2. Hence, the subject mater of Claims 1-15 lacks inventive-step. Hence at the time of filing of this application, it would have been obvious to a person skilled in the art to combine the teachings of D1 with 02 to arrive at the subject matter of claim 1-15. Hence, a such does not constitute an invention u/s 2(1) of The Patent Act, 1970. INDUSTRIAL APPLICABILITY: (iii) Claim(s) lack(s) industrial applicability for the following reasons: Not Applicable NON PATENTABILITY: (iv) claim (s) 1-15 are statutorily non-patentable under the provision of clause (k) of Section 3 for the following reasons: Without prejudice the claims 1-15 fall within the scope of section 3 (k) of Patents Act 1970. The subject mater of the can seek to protect a method/system/device for carrying out transaction in a network by authenticating the user using a security code (QR) and then processing the transaction request. The same is nothing but a software having computer programming instructions as "the communication request is generated at the terminal device when a user initiates a transaction at the terminal device, verifying, by the communication verification By the terminal device and the</p>

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			<p>target system based on predetermined registration details, for validating the communication request; signalling, by the communication verification system, the terminal device for generating a unique Quick Response (QR) code corresponding to the communication request, upon validating the communication request; and establishing by the communication verification system the secure communication between the terminal device and the target system when the QR code is processed by a predetermined verification interface configured in a user device, associated with the user: "the communication request comprises a transaction request, a unique transaction identifier and transaction specific information decoding, through the predetermined verification interface, the QR code for extracting information related to the transaction generating, using the predetermined verification interface, a transaction payload corresponding to the information related to the transaction", transmitting, through the user device, the transaction payload to the target system for authorizing the transaction": "comparing, by the communication verification system, the information related to the transaction with the transaction authorization message for authorizing the transaction between the terminal device and the target system. Clearly the above are computer programming instructions being executed on a general purpose software/computing platform So in pure structural sense the claims seek to protect a software, thereby the claims are deemed to fall under section 3(k) as computer program per-se. Therefore the said claims are not allowed. 15. In pursuance of the same, the patent office issued a hearing notice to the plaintiff, which is as under:- Regarding Claim 1: Document D3 discloses according to subject matter of claim 1 (the references between parentheses relate to said document) that receiving, by a communication verification system (101), a communication request (107) from the terminal device (105) for establishing communication between the terminal device (105) and the target system (103), wherein the communication request (107) is generated at the terminal device (105) when a user initiates a transaction at the terminal device (105); verifying, by the communication verification system (101), the terminal device (105) and the target system (103) based on predetermined registration details (211), for validating the communication request (107)(refer abstract, paragraphs 0004-0006); signaling, by the communication verification system (101), the terminal device (105) for generating a unique Quick Response (QR) code (111). corresponding to the communication request (107), upon validating the communication request (107) (refer claim 1); and establishing, by the communication verification system (101), the secure communication between the terminal device (105) and the target system (103) when the QR code (111) is processed by a predetermined verification interface configured in a user device (113), associated with the user (refer claim 1, paragraphs 0004-0006). Apart from D3, D4 also discloses the subject matter of claim 1 (refer abstract, paragraphs 0023-0028, 0043, claims 1, 3) Regarding independent claims: Though independent claims 8 and 9 are defined differently, yet the essential features of claims 8 and 9 are same as those of claim 1. Hence, claims 8 and 9 also do not meet the requirement of the section 2(1)() of The Patent Act, 1970 (as amended) since these features are directly derivable from the cited prior art document D3 or D4. Regarding dependent claims: Further, the dependent claims 2-7 and 10-15 do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of section 2(1)() of the Patents Act, 1970 (as amended) over the disclosure of document D3 or D4. Thus, in the view of all features of alleged invention described in D3 or D4, the subject matter as claimed in claims 1-15 is not novel and as such does not constitute an invention u/s 2(1)() of The Patent Act, 1970 Inventive Step: The same reasoning as given for novelty is also applicable mutatis-mutandis for inventive step also. However, without prejudice the subject matter as in claims 1-15 lack inventive step in the view of following prior art documents: Regarding Claim 1: Document D3 discloses one or more computer-readable storage media having stored thereon computer-executable instructions that, when executed by the one or more processors, causes the computing system to perform a method for performing a transaction using a quick response (QR) code, the method comprising the following receiving, from a purchaser, an indication of one or more toms that are to be purchased using a mobile wallet application determining a total price for</p>

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			<p>those terms that are to be purchased, receiving, from the purchaser, a tokenized QR code that includes embedded account information for the purchaser for use in processing transactions with sellers; generating a second, different tokenized QR code that includes encrypted account information for the seller, along with encrypted account information for the purchaser and the determined total price for the Items that are to be purchased; sending the second tokenized QR code to a transaction processing node, wherein the transaction processing node transfers money equivalent to node, the determined total price from the purchaser's account to the seller's account according to the encrypted account information in the second tokenized QR code; and receiving an electronic receipt indicating that the money was transferred from the purchaser's account to the seller's account (claim 1, paragraphs 0004- 0005 and abstract) Apart from D3, D4 also discloses completing a transaction at a point of sale device; determining if the transaction qualifies for the promotional credit generating the machine-readable code if the transaction qualifies for the credit, wherein the machine-readable code includes the promotional credit; capturing the machine-readable code with an end device; transmitting the machine-readable code to one or more servers or the point of sale device for authentication authenticating the machine-readable code, and transferring the credit to a user associated with the end device upon successful authentication of the machine-readable code; point-of-sale (POS) and mobile device implemented method of providing customer rebates via machine-readable codes, such as Quick Response (QR) codes. Specifically, a customer completes a transaction at a POS. The POS or remote servers determine if the transaction qualifies for a promotional credit or rebate. If the transaction qualifies for the promotional credit, then the POS generates the QR code, wherein the QR code includes the credit (refer abstract, paragraphs 0023-0028, 0043, claim 1) Hence at the time of filing of this application, it would have been obvious to a person skilled in the art to combine the teachings of D3 or D4 with common general knowledge to arrive at the subject matter of claim 1. Regarding independent claims: Though independent claims 8 and 9 are defined differently, yet the essential features of claims 8 and 9 are same as those of claim 1. Hence, claims 8 and 9 also do not meet the requirement of the section 2(1)(i) of The Patent Act, 1970 (as amended) since these features are directly derivable from the cited prior art document D3 or D4 in combination with common general knowledge. Regarding dependent claims: Dependent claims 2-7, 10-15 do not contain any features which, in combination with the features of claim to which they refer, meet the requirements of the section 2(1)(i) in respect of inventive step. The features of claims 2-7, 10-15 are merely implementations that a person skilled in the art would consider to be standard practice (or known to him from documents D3 or D4). Thus, in the view of features described in D3 or D4, the subject matter of Claims 1-15 is not inventive as it would be obvious to the person skilled in the art Hence, as such does not constitute an invention u/s 2(1)(i) of The Patent Act, 1970. Non-Patentability u/s 3 1. Without prejudice the claims 1-7 and 9-15 fall within the scope of section 3 (k) of Patents Act, 1970. The applicant submits that "the claims 1-7 and 9-15 of the instant invention disclose the aspect of establishing a secure communication based on verification of a unique QR code generated at a terminal device. In other words, the secure communication may be established only when the unique QR code generated at the terminal device is scanned by a user device associated with a user who has initiated the transaction at the terminal device and implementation of the claimed method involves using hardware components such as the terminal device, the user device, a communication verification system and a target system, and performing dynamic interactions between the said hardware components, although the method and system claims 1-7 and 9-15 involve hardware components interaction and user scanning the QR code but the steps as defined "wherein the communication request is generated at the terminal device when a user initiates a transaction at the terminal device; verifying by the communication verification system, the terminal device and the target system based on predetermined registration details, for validating the communication request; signaling, by the communication verification system, the terminal device for generating a unique Quick Response (QR) code: the QR is processed by a predetermined verification interface configured in a user device, associated with the user are nothing but computer instructions being executed in a sequential</p>

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			<p>manner for authentication/validation and connection establishment. The main novel and inventive features is rather implemented in form of a software. Thereby the claims as such defined refer to a software. So in pure structural sense the claims seek to protect a software, thereby the claims have been deemed to fail under section 3(k) as computer program per-se. Therefore the said claims are not allowed. 16. By way of response, the plaintiff has filed the following objections:-</p> <p>Objection 1-Invention u/s 2(1)(i): A. Novelty: The subject matter as described and claimed in claims 1-15 lack novelty in the view of any of the following newly cited prior art documents: D3: US20140172531 A1 (19/17/2014) D4: US20130110607 A1 (02/05/2013) As discussed during the hearing, Applicant would like to clarify that the instant invention is related to a method, a terminal device and a communication verification system for establishing secure communication between the terminal device and a target system. In an embodiment, the present disclosure enables users to complete transactions by processing transaction-specific Quick Response (QR) codes being generated and displayed on the terminal device For example, the terminal device may be an electronic device such as an Electronic Data Capture (EDC) machine. The QR codes generated at the terminal device may be processed using a predetermined verification interface such as Unified Payment Interface (UPI), installed on a user device. In other words, the claimed invention secures the communication between the terminal device and the target system using a two-step verification process. In the first step, the communication request originating from the terminal device is validated by verifying the target system based on predetermined registration details used during registration of the target system with the communication verification system. The second-level verification is completed when the transaction-specific QR code, generated and displayed on the terminal device, is scanned and verified using the predetermined verification interface configured in the user device. Regarding cited document D3: D3 discloses performing transactions using a first and a second tokenized QR codes. However, in D3, the first tokenized QR code is generated at the user device, and the second tokenized QR code is generated at a computer system, using the first tokenized QR code. Subsequently, the second tokenized QR code is transmitted to a transaction processing node, which completes the transaction. Thus, it is evident that, D3 does not disclose generating the QR codes on the terminal device. Further, the first tokenized QR code of D3 comprises purchaser- specific sensitive information such as account information of the purchaser and hence poses security risks to the purchaser, since the said purchaser-specific information is shared with the transaction processing node or merchant system during each transaction. Whereas, in the claimed invention, no customer- sensitive information is shared with the merchant/seller, thereby making the transaction/communication more secure for the users. Regarding cited document D4 Further, the cited document D4 discloses providing customer rebates such as cash back offers, reimbursements, promotional offers to customers using QR codes. In general, a reference/cited document may be considered non-analogous to the claimed invention if(1) the reference is not from the same field of endeavor as the claimed invention (or) (2) the reference is reasonably non-pertinent to the problem solved by the claimed invention. Here, the technical solution disclosed in the cited document D4 neither belongs to the same field of endeavour of the claimed invention, nor is pertinent to the technical problem solved by the claimed invention. Therefore, firstly, Applicant respectfully submits that D4 is non-analogous to the claimed invention. Further, in D4, the QR code is generated only upon successful completion of a transaction and is not used for carrying out the transaction. Moreover, in D4, the QR code is generated by matching receipt of the transaction with pre-stored transaction receipts, available in a database. Whereas, in the claimed invention, the QR codes are generated dynamically based on transaction-specific. In view of the above differentiating aspects, Applicant submits that the invention claimed in the amended claims 1-8 is novel over the cited documents D3 and D4. B. Inventive Step: Without prejudice the subject matter as in claims 1-15 lack inventive step in the view of following prior art documents: D3: US20140172531 A1 (19/17/2014) D4: US20130110607 A1 (02/05/2023) Further to the arguments provided with respect to the novelty objection, Applicant respectfully submits that neither D3 nor D4 disclose the aspect of generating a unique, transaction- specific QR code on</p>

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			<p>the terminal device. Also, a combination of the teachings of D3 and D4 do not disclose, suggest or motivate a person skilled in the art to design a terminal device that is capable of generating the QR codes, which, upon successful processing, help in establishing secure communication between the terminal device and the target system. Additionally, the claimed invention also provides technical advantages over the cited documents D3 and D4. For instance, in the claimed invention, all customer-specific sensitive information such as customer account details are retained in the user device without transmitting to the merchant system. As a result, the said customer-specific sensitive information remains secured in the user device and the customers are protected from potential security issues, originating at the merchant system and/or intermediate network. In view of the aforesaid differences and the technical advantages, Applicant states that the invention claimed in the amended claims 1-8 is clearly inventive over the cited documents D3 and D4, considered separately or in any combination thereof. Therefore, the Ld. Controller is requested to waive this objection. Objection 2-Non-patentability u/s 3: Without prejudice the claims 1-7 and 9-15 have been deemed to fall under section 3(k) as computer program per se. Therefore, the said claims are not allowed. Regarding claims 1-7: Applicant has omitted the method claims 1-7 from the pending set of claims. Regarding claims 9-15 (currently claims 1-7): Applicant respectfully states that claims 9-15 [currently claims 1-7] of the instant invention are not mere computer instructions being executed in a sequential manner. Instead, amended claims 1-7 disclose a communication verification system which is configured to establish a secure communication between a terminal device and a target system based on verification of unique QR code generated at the terminal device. Further, amended claims 1-7 disclose dynamic interaction between various interrelated hardware/physical entities such as the terminal device, the user device and the target device, which may be located at discrete physical locations. Moreover, flow of the invention claimed in amended claims 1-7 is dependent on verification of the communication request and the QR code generated at the terminal device and shall never be considered to be executed in predetermined sequential manner. Further, the Guidelines for Examination of Computer Related Inventions (CRIs) published on 19 February 2016 [please refer section 4.5.4 of the guidelines] defines 'computer program per se claims as: (i) Claims directed at computer programs/set of instruction/Routines and/or Sub-routines. (ii) Claims directed at "computer program products" / "Storage Medium having instructions" / "Database" / "Computer Memory with instruction" i.e., computer program per se stored in a computer readable medium. Evidently, claims 1-7 do not disclose any of the subjected matter excluded under points (i) and (ii) above. Moreover, the invention claimed in claims 1-7 provides technical advantage of establishing secure communication between the terminal device and the target system using the dynamic QR codes generated at the terminal device. Therefore, for all the above reasons, Applicant submits that the communication verification system claimed in amended claims 1-7 shall not be considered as a computer program per se. Accordingly, Applicant states that amended claims 1-7 do not fall within the purview of Section 3(k). Therefore, the Ld. Controller is requested to waive this objection. In view of the above, Applicant believes that all the objections contained in the Hearing Notice have been duly met. Therefore, Applicant requests the Ld. Controller to place the present application in order for grant. However, if any issue is still outstanding, the Ld. Controller is respectfully requested to resolve the same by providing an opportunity of hearing to the Applicant, under Section 14 of the Indian Patents Act, 1970, before taking any decision or passing any adverse order against the Applicant. 17. Subsequently, after hearing the plaintiff, the patent office granted the suit patent whereby original claims 9 to 15 became amended claims 1 to 7. In this context, it is significant to note that original claims 1 to 7 described as a method and original claim No.8 comprising of a terminal device-POS machine was given up/deleted by the plaintiff and the suit patent was restricted and limited to original claims 9 to 15/amended claims 1 to 7 which was granted in favour of the plaintiff on 29.03.2019 as under: WE CLAIM 1. A communication verification system (101) for establishing secure communication between a terminal device (105) and a target system (103), the communication verification system (101) comprising: a processor (203); and a memory (205),</p>

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			<p>communicatively coupled to the processor (203), wherein the memory (205) stores processor-executable instructions, which on execution cause the processor (203) to: receive a communication request (107) from the terminal device (105) to establish communication between the terminal device (105) and the target system (103), wherein the communication request (107) is generated at the terminal device (105) when a user initiates a transaction at the terminal device (105). verify the terminal device (105) and the target system (103) based on predetermined registration details (211) to validate the communication request (107); signal the terminal device (105) to generate a unique Quick Response (QR) code (111), corresponding to the communication request (107), upon validating the communication request (107); and; establish the secure communication between the terminal device (105) and the target system (103) when the QR code (111) is processed by a predetermined verification interface configured in a user device (113), associated with the user. 2. The communication verification system (101) as claimed in claim 1, wherein the communication request (107) comprises a transaction request, a unique transaction identifier and transaction-specific information 3. The communication verification system (101) as claimed in claim 1, wherein the predetermined registration details (211) comprises a terminal identifier, a target system (103) identifier, a Virtual Private Address (VPA) of the terminal device (105), and a target channel identifier. 4. The communication verification system (101) as claimed in claim 1, wherein the processor (203) displays the unique QR code (111) generated by the terminal device (105) on a display interface (235) associated with the terminal device (105). 5. The communication verification system (101) as claimed in claim 1, wherein to process the QR code (111), the processor (203) is configured to: scan the QR code (111) through the predetermined verification interface configured in the user device (113); decode, through the predetermined verification interface, the QR code (111) for extracting information related to the transaction, generate, using the predetermined verification interface, a transaction payload (115) corresponding to the information related to the transaction; and transmit, through the user device (113), the transaction payload (115) to the target system (103) for authorizing the transaction. 6. The communication verification system (101) as claimed in claim 5, wherein the transaction payload (115) comprises name of the user, a unique identifier of the user, a user-specific VPA, and the predetermined registration details (211) 7 The communication verification system: (101) as claimed in claim 5, wherein to authorize the transaction, the processor (203) is configured to: receive the information related to the transaction from the terminal device (105). receive a transaction authorization message from the target system (103). wherein the transaction authorization message is generated at the target system (103) upon validating the transaction payload (115) received from the terminal device (105), and ; compare the information related to the transaction with the transaction authorization message to authorize the transaction between the terminal device (105) and the target system (103). 18. The aforesaid facts and circumstances indicate that the plaintiff gave up original claims 1 to 8 and amended the claim so as to include only original claims 9 to 15 by renumbering the same as amended claims 1 to 7 and requested the patent office to waive all objections and grant patent in favour of the plaintiff in respect of amended claims 1 to 7 (original claims 9 to 15) by excluding original claims 1 to 8 and same were granted in favour of the plaintiff. 19. As stated supra, the original claim for grant of patent comprised of 15 claims; claim No.1 to claim No.7 were described as the method for establishing secure communication between a terminal device and a target system and the same constituted only an algorithm and did not consist of any hardware component. As was claimed in original claim Nos.1 to 7, the same did not include either a terminal device (POS) or any other hardware and it merely related to an algorithm. It is therefore clear that the original claim Nos. 1 to 7 is a programme per se / algorithm simpliciter which is not patentable in view of Section 3(k) of the said Act of 1970. 20. A perusal of claim No.8 will also indicate that it comprises of a terminal device (POS machine) which consists of various hardware and software components as described in the original claim No.8. 21. A perusal of original claim Nos.9 to 15 which have been granted as the suit patent in terms of amended claims 1 to 7 is a communication verification system comprising of a processor and a memory which is communicatively coupled to</p>

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			<p>the processor. 22. A careful perusal of original claims 1 to 15 will clearly indicate that; (a) original claim Nos. 1 to 7 relates / pertains to a computer programme / algorithm; (b) original claim No.8 pertains to a terminal device (POS machine); (c) original claims 9 to 15 (amended and patented claims 1 to 7) pertain / relate only to the communication verification system. In fact, original claim No.12 (amended claim No.4) makes a false statement that the processor comprised of in the CVS displays the unique QR code generated by the POS on a display interface associated with the POS, which is factually incorrect in as much as even according to the plaintiff, the unique QR code is generated and displayed at the terminal device (POS) and not on either the processor or the memory; further, a careful reading of original claim Nos. 9 to 15 is sufficient to establish that in addition to stating that the same comprises of a computer server consisting of a processor and memory, the methodology and the manner in which the entire process works which was already contained in claim Nos. 1 to 7 have been merely reiterated in claim Nos.9 to 15. 23. A perusal of the material on record will indicate that; (a) Original claim Nos. 1 to 7 comprising of method / algorithm have been deleted / rejected. (b) Original claim No.8 comprising of the terminal device (POS machine) has been deleted / rejected; (c) Suit patent did not include the computer programme / algorithm which was at any rate non-patentable in view of Section 3(k) of the said Act of 1970. (d) The suit patent did not include or comprise of the terminal device / POS machine; (e) The suit patent comprising of original claims 9 to 15 / amended claims 1 to 7 and described as a communication verification system; (f) Mere description of the functionality / working of the processor and memory and generation of a QR code on the POS machine does not indicate that either the POS machine or the method has also been patented under the suit patent. (g) The method described in original claims 1 to 7 has been verbatim repeated / reiterated in original claims 9 to 15 / amended claims 1 to 7 for the limited purpose of explaining the functionality and working of the devices and no patent has been granted in favour of the plaintiff as regards an entire system of communication comprising of a server, POS device and a computer programmes / algorithm. 24. The aforesaid facts and circumstances will clearly establish that the suit patent is limited and restricted only to a server simpliciter comprising of a processor and a memory which has been devised to a function / work for the purpose of secure communication for UPI/QR Code based payments; to put it differently, the CVS patented by the plaintiff is nothing more than a mere server simpliciter without having a patent either for a POS machine or the computer programme / algorithm embedded either in the POS machine or in the CVS. 25. In this context, a perusal of the plaintiff's averments and other pleadings and contentions of the plaintiff will clearly indicate that the plaintiff claims to have a patent over the POS machine as well as the methodology / computer programme / algorithm which is factually incorrect inasmuch as claims 1 to 8 have been deleted / rejected in the amended claim. Under these circumstances, I am of the considered opinion that the suit patent comprising of amended claims 1 to 7 are restricted / limited to a communication verification system comprising of a processor and memory and a description of how the said hardware components work and perform and nothing beyond the scope of the same. It follows therefrom that the claim of the plaintiff that the POS device is covered under the suit patent is clearly false and liable to be rejected. 26. According to the plaintiff, the suit patent covers the POS machine also and the defendant is guilty of infringement in making an identical POS machine under the name and style "Plutus Smart" which has the capacity to generate a dynamic transaction specific QR code. In this context, it is relevant to state that at paragraphs 34 and 35 of the plaint, the plaintiff has specifically contended that the infringing product of the defendant is the POS machine and that the plaintiff's technology is also the POS machine, both of them having the capacity to generate a QR code. As stated supra, this contention / allegation of the plaintiff is clearly false, since the plaintiff does not have any patent over the POS machine, irrespective of its functionality or the CVS covered under the suit patent; in other words, the undisputed material on record clearly establishes that the plaintiff has put forth an incorrect claim that the suit patent includes the POS machine also. In fact, a careful scrutiny of the suit patent will indicate that the same does not include or cover the POS machine and it is clear that the suit patent is restricted</p>

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			<p>and limited only to amended claims 1 to 7 and not the POS machine and the plaintiff does not have any patent or legal protection over the POS machine or its functionality / working and the suit patent and protection in favour of the plaintiff is only in relation to the server - CVS comprising of the processor, its memory and its functionality and working. 27. The entire claim of the plaintiff including the arguments advanced clearly proceeds on the basis that the suit patent comprising of the CVS includes a combination of both the POS machine and technology combined together for the first time and capable of generating a transaction specific dynamic unique QR code which is contrary to the material on record; on the other hand, undisputedly, the suit patent does not cover/include the POS machine / terminal device which actually generates and displays the QR code, albeit as a response to a signal from the CVS, particularly when the POS machine is capable of independently generating such a QR Code; further, the suit patent is restricted/limited to the CVS which is a server simpliciter enabled with the technology to secure communication for UPI/QR Code based payments; so also, neither the plaintiff nor its experts have either examined or scrutinized the defendant's server nor come to conclusion that the defendant's CVS/Server is functionally identical/similar in substance to the plaintiff's CVS/Server. It is also neither pleaded nor contended by the plaintiff that either the plaintiff or its experts have even examined or scrutinized the defendant's CVS/Server for the purpose of ascertaining or finding out any similarity of the same with the plaintiff's CVS/Server. 28. In this context, it is relevant to state that mere examination and comparison of the plaintiff's POS machine(over which there is no patent/ protection) and the defendant's POS machine can neither lead to an inference of similarity/infringement nor be made the basis to come to the conclusion that the defendant is guilty of infringement as sought to be made out by the plaintiff. 29. In other words, in order to establish infringement in the instant case, it was incumbent and absolutely essential for the plaintiff to establish that the defendant's CVS/Server is functionally identical/similar in substance to the plaintiff's suit patent comprising of CVS/Server and in the absence of any legal or acceptable material placed by the plaintiff in this regard, I am of the considered opinion that the plaintiff has failed to establish infringement of the suit patent by the defendant. 30. A perusal of the material on record will also indicate that the plaintiff has not placed any evidence to establish that there has been infringement of the suit patent comprising of CVS/Server comprising of the processor, its memory and its functionality and working; on the other hand, the entire claim of the plaintiff is based on alleged infringement of the POS machine of the plaintiff by the POS machine of the defendant. To reiterate, in the light of the fact that the suit patent does not include or cover the POS machine and is restricted and limited to only the CVS/Server, in the absence of any material to either establish that the CVS of the defendant or its functionality or working is identical or similar to the CVS/Server of the plaintiff, I am of the view that the plaintiff has not been successful in establishing that the defendant has committed any act of infringement of the suit patent of the plaintiff. 31. Under these circumstances, I am of the considered opinion that the plaintiff has failed to make out a prima - facie case of grant of temporary injunction restraining infringement and is consequently, not entitled to an order of temporary injunction. 32. Insofar as the other contentions urged by both sides as regards maintainability of the suit, validity of the plaintiff's patent, revocation of the plaintiff's patent as sought for by the defendant, whether the plaintiff's patent is novel, a novelty or an inventive step, effect of prior art and other patents on the validity of the plaintiff's patent, effect of the post grant opposition to the plaintiff's patent put forth by NPCI etc., all the said contentions would have to be decided at the time of final disposal of the suit; so also, the correctness or otherwise of the expert opinions / reports relied upon by both sides cannot be adjudicated upon , particularly when the reports relied upon by the plaintiff did not have the benefit of examining the CVS/Server of the defendant before submitting their reports; in any event, at this stage, suffice it to state that the plaintiff has not made out a prima-facie case to establish infringement by the defendant of the suit patent and consequently, is not entitled to an order of temporary injunction. 33. Accordingly, Point No.1 is answered against the plaintiff by holding that the plaintiff has not made out a prima facie case for grant of temporary injunction. It follows there from that it is not</p>

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			<p>necessary to advert to the aspect of balance of convenience and hardship in the facts and circumstances of the instant case and Point Nos. 2 and 3 do not arise for consideration. 34. Though both sides have relied upon various judgments in support of their respective contentions, having regard to the findings above recorded in the peculiar/special facts and circumstances obtaining in the instant case, the said judgments have not been gone into for the purpose of deciding the interim applications. 35. In the result, I pass the following:- ORDER (i) I.A.1/2019 filed by the plaintiff under Order 39 Rules 1 and 2 CPC is hereby dismissed; (ii) I.A.No.1/2019 filed by the defendant under Order 39 Rule 4 CPC is hereby allowed; (iii) Consequently, the order of temporary injunction passed earlier in favour of the plaintiff against the defendant stands vacated.</p>