Case Comments

Patent Infringement, and Novelty in Khawaja Tahir Jamal v. A.R. Rehman Glass (2005 C.L.D. 1768)

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Abstract: This research explores the legal and procedural aspects of patent protection in Pakistan in the context of landmark case Khawaja Tahir Jamal v. A.R. Rehman Glass (2005 CLD 1768). The case primarily involves the Patents and Designs Act (II of 1911) and the Patents Ordinance (LXI of 2000), along with the Civil Procedure Code (V of 1908). The study highlights the judicial interpretation of the Patents and Designs Act, 1911, and the Patents Ordinance, 2000, emphasizing the territorial nature of patent rights and the strict grounds for opposition under Pakistan intellectual property (IP) laws. Court rulings, legal arguments, and evidentiary standards, indicate the Lahore High Court's validation of Khawaja Tahir Jamal's float glass technology patent established a precedent for novelty assessment, infringement remedies, and judicial balancing of patent rights against operational realities. The modified injunction by divisional bench allowed AR Rehman Glass continuing production but prohibiting marketing during litigation creating a unique compromise influencing Pakistani IP jurisprudence. The interpretation of "novelty" as domestic novelty under the Patents and Designs Act 1911 was due to being non-party to certain international patent treaties including TRIPS Agreement at the time of patent filing and grant.

Keywords: Pakistan; Novelty, Khawaja Tahir Jamal; AR Rehman Glass; Patents and Designs Act 1911; TRIPS Agreement

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1. Introduction

Intellectual property rights (IPRs), particularly patents, help promote innovation and technological progress, by offering exclusive rights to inventors and stimulating research and development. However, interpretation of patent laws is deeply rooted in the legal traditions, economic priorities, and international commitments of a country. The enforcement of patent rights often involves legal battles, particularly when infringement occurs (Saha and Sanjib 2011). Pakistani legal framework, governed initially by the Patents and Designs Act, 1911,[1] and later by the Patents Ordinance, 2000,[2] presents a territorial and universal model for patent protection respectively. A critical case highlighting the application of these laws is Khawaja Tahir Jamal v. A.R. Rehman Glass, decided by the Lahore High Court in 2005. This case confronted two fundamental questions of whether industrial process innovations in developing economies meet patent novelty requirements and should courts balance patent holder rights against economic disruption during litigation.

Khawaja Tahir Jamal v AR Rehman Glass was related to float glass technology (Idress et al. 2025). In "float glass" process, molten glass is floated on a bed of molten metal, typically tin, to produce a perfectly flat, uniform product. Sir Alistair Pilkington of UK invented the "Float" method of glass revolutionizing the Glass Industry (Patent No. GB769692, published on 1957-03-13). Germany, Japan, USA and China followed the UK in adopting float technology. Khawaja Tahir Jamal v AR Rehman Glass was adjudicated under the provisions of the Patents and Designs Act 1911.[3] This Act, a remnant of British colonial legislation, governed patent and design registration in Pakistan until its replacement by Pakistan Patent Ordinance 2000.[4] A defining characteristic of this 1911 Act, as

1 Patents and Designs Act, 1911. https://nasirlawsite.com/laws/patent11.htm
2 Patents Ordinance, 2000. https://ipo.gov.pk/system/files/%28112%29PatentsOrdinance2000_Amendmentsfinal_0.pdf
3 Ibid, 1
4 Ibid, 2

consistently interpreted by Pakistani courts, was its approach to the "novelty" criterion for patentability. Contrary to the "global novelty" standard prevalent in most developed countries (where an invention must be new globally to be patentable), Section 9 of the Patents and Designs Act 1911,[5] as judicially construed in Pakistan, embraced a "domestic novelty" or "local novelty" standard. This unique stance was largely influenced by Pakistan's historical status as a non-signatory to certain international patent conventions at that time that would have otherwise imposed a global novelty requirement.

2. Facts of Case

The plaintiff, Khawaja Tahir Jamal, owner of Khwaja Flat Glass Industries Pvt. Ltd. (herein after known as KFGI) secured a national patent number 133253[6] (application number 599/1993 filed on 16th December 1993 and granted on 5th March 1994) in Pakistan for a process titled "a process for the production of sheet glass" under the Patents and Designs Act, 1911, utilizing "Float Glass Technology". The plaintiff, established two sheet glass manufacturing units. The patent was sealed after following due procedures, including public advertisement in Gazette of Government of Pakistan (Part V), and remained unchallenged leading to its sealing. The plaintiff had an exclusive privilege to make, sell, and use the invention throughout Pakistan under Section 12(1) of the 1911 Act and Section 30 of the Patents Ordinance, 2000. The patent was valid, and renewal fees were regularly paid until the defendant, A.R. Rehman Glass, a business competitor, began establishing a float glass manufacturing unit, which the plaintiff alleged infringed his patent. The plaintiff's counsel argued that the patent, was valid until December 15, 2009, conferring exclusive privilege. The plaintiff sought a permanent injunction and, as an interim measure, a restraint order against the defendant from manufacturing, importing, launching, or offering for sale their disputed float sheet glass products.

They cited case laws, including *Jamshed Aslam Khan v. Mrs. Azra Jawed and 2 others 1995 CLC 436 and Azra Jawed and another v. Jamshed Aslam Khan 1996 MLD 1203*, to support that an exclusive right, once granted, holds until cancelled or revoked. They also argued that registration of a right establishes a prima facie case, citing *Merc & Co. Ing. and others v. Hilton Pharma (Pvt.) Ltd. 2003 CLD 407*. The counsel contended that the onus was on the defendants to prove the patent lacked novelty, referring to an Indian case *F.H. and B. Corporation v. Unichem Laboratories AIR 1969 Bombay 255*. They also argued that novelty is to be considered within Pakistan only, and since the defendant did not object after the patent's was published in Gazette of Pakistan, they were estopped from raising the plea of lack of novelty and misrepresentation.

Defendant argued that Pakistani patent 133253 is unlawfully copied intellectual property and asserted that public interest in competitive glass markets justified operations. Khawaja had obtained the patent through misrepresentation and fraud and had no legitimate rights in the patent. Patent No. 133253 was an exact copy of Pilkington U.K. Patent No. 769692 dated March 13, 1957 (Nascimento 2014). They asserted that the plaintiff's patent lacked novelty, as the Float Glass technology has been globally known since 1960 and licensed to 35 companies in 29 countries, and thus no proprietary rights accrued.[7] The defendant argued that Pilkington's invention had become public property after 20 years and could be adopted freely. They cited various cases to support their arguments regarding lack of novelty and the ability to revoke such a patent under Section 40 of the 1911 Act. They highlighted their significant investment of Rs. 1 billion, with public funds involved, and the project being near completion. They also argued that the plaintiff's claim for damages indicated that irreparable loss was not an issue, and the two-year delay in instituting the suit was grounds for refusing the injunction.

3. Lahore High Court's Observations and Decision

The court reviewed the record and noted that the defendant's attack on the patent relied on lack of novelty. Justice Hamid Ali Shah of Trial court (Single Bench of Lahore High Court) ruled Khawaja Tahir Jamal's patent valid under Pakistani law and found AR Rehman Glass guilty of infringement. The court held that, under the Patents and Designs Act 1911 (the law in effect at the time of patent grant), the meaning of "invention," "publicly used," or "publicly known" was restricted to Pakistan.8 The court highlighted that patent laws are territorial and limited to the boundaries of the country, and Pakistan was not a signatory to any international convention on the grant of patents. Therefore, the meanings of novelty and invention, including improvement, must be confined to the territories of Pakistan. The judgment explicitly clarified that the 1911 Act did not impose a global novelty standard. Therefore, the mere fact that float glass technology might have been known or patented elsewhere did not invalidate a patent properly granted in Pakistan, provided it was indeed new to the Pakistani public at the time of filing. While acknowledging similar UK patents existed, the court established that developing economies may validly protect locally adapted industrial innovations even when comparable technologies exist abroad.

The bench imposed an increased evidentiary standard for claims against patent validity. AR Rehman's failure to produce documentary evidence showing Jamal knowingly misrepresented claims during patent examination proved fatal to their counterclaim. The ruling affirmed that patents enjoy presumption of validity absent conclusive proof of examiner deception. The court found that the plaintiff's patent, granted in 1994, had remained unchallenged until the defendant filed a counterclaim. The grant and sealing of the patent followed all formalities and was published in the official Gazette without objections from any local or foreign entity. The absence of any objections during this period further fortified the presumption of the patent's validity. In this case, the potential grounds for

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5 Ibid,1

6 This patent 133253 expired on 16th December 2009. As patent terms were increased from 16 years (Patent and Design Act 1911) to 20 years in Patent Ordinance 2000, applicant applied to the controller of patents to extend patent life. Upon denial from Controller of Patents, plaintiff approached Sind High Court (Karachi divisional bench) via Constitutional Petition 2701/2009 under Article 199 of the Constitution of Pakistan as Khawaja Tahir Jamal Vs Federation of Pakistan and others. The case was admitted on 14 December 2009 and was disposed of on Thursday 16 October 2014 without extending patent term.

7 The fundamental float process patent had already expired as patent term in most countries is 20 years since filing date. Improvements or modification in products, i.e., float glass or the process of manufacturing float glass patents can be patented as new patents.

8 Khawaja *Tahir Jamal v AR Rehman Glass*, 2005 CLD 1768 (Lahore High Court).

attacking the invention under Section 9 were that the invention's nature or performance was not sufficiently described, or that it had been publicly used or known in Pakistan. A patent, once sealed (under Section 10 of the 1911 Act), grants the patentee exclusive privilege to make, sell, and use the invention throughout Pakistan (Section 12 of the 1911 Act). Since the defendant failed to oppose the patent during the specified period and did not provide evidence that the process was publicly used in Pakistan, they were estopped from raising a belated novelty challenge.

Based on the established validity of the patent, the court recognized Khawaja's exclusive rights over the invention within Pakistan. The patent conferred upon Khawaja the exclusive right to make, sell, and use the invention throughout Pakistan, and any violation of this right would lead to an injunction. Thus, the plaintiff had a prima facie case for a temporary injunction, as long as the patent registration is uncancelled. Consequently, an interim injunction was granted, restraining AR Rehman Glass from the alleged infringing acts, emphasizing that the balance of convenience and irreparable loss in IP cases cannot be solely measured in monetary terms but rather on a "statutory balance". When a statute creates a right and provides a specific remedy, that remedy must be followed. Crucially, the court found no prima facie evidence on record to prove that at the time of the patent grant, float glass technology was publicly known in Pakistan or that the product was being imported into the country.

The court observed that the defendants had not specifically denied infringing the plaintiff's process in their written statement, nor had they produced evidence of Pilkington's original invention or a certificate to prove the plaintiff's patent was identical. The defendants also did not disclose their own manufacturing process.

Regarding the claim of damages, the court cited *Jamshed Alam Khan v. Mrs Azra Javed and 2 others 1995 CLC 436*, stating that a claim for damages by itself is not a ground for refusing a temporary injunction. The court noted that loss of reputation, goodwill, and popularity of a product can be irreparable and immeasurable in monetary terms. Rehman, instead of seeking revocation of the patent first, took a risk by establishing its own project. Consequently, the judge granted an interim injunction, restraining AR Rehman Glass from manufacturing, importing, launching, or offering for sale its disputed sheet glass product.

AR Rehman Glass appealed the decision to a Divisional Bench of the Lahore High Court. Justice Muhammad Akhtar Shabbir and Justice Shabbar Raza Rizvi upheld the original ruling but modified the injunction. This modification permitted AR Rehman Glass to continue the production of sheet glass but prohibited its marketing and sale until a final decision on the merits of the case. This modification acknowledged Rehman's argument about the significant investment made and the continuous nature of furnace operation, balancing it with the patent holder's rights. This pragmatic adjustment was aimed to balance the patent holder's rights with the practical realities of industrial operations, particularly the continuous nature of furnace operations in glass manufacturing, while still preventing the commercial exploitation of the alleged infringement. The partial stay on the injunction balanced patent holder rights with operational realities during litigation. Table 1 summarizes court decisions.

Table 1. Procedural History of Khawaja Tahir Jamal v. AR Rehman Glass.

Court	Key Holdings	Remedial Order
Lahore High Court (Trial)	• Patent validity upheld • Infringement established	Complete injunction against production and sales
Divisional Bench (Appeal)	• Affirmed patent validity • Recognized defendant's operational investments	Production allowed but sales prohibited pending final ruling

Unlike the U.S. four-factor test for injunctions (*eBay Inc. v. MercExchange*)[9], Pakistani courts prioritized operational preservation over patent exclusivity. The ruling contrasts with *Bajaj Auto v. TVS Motor*[10] where Indian courts issued complete injunctions regardless of operational consequences. This interpretation, while legally consistent with the 1911 Act, attracted criticism from those advocating for a harmonized global IP system. Opponents argued that it could lead to the "evergreening" of patents and potentially impede the free flow of technology, allowing local monopolies over technologies already in the public domain elsewhere.

Pakistan signed the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), in 1995.Being developing country Pakistan had grace period of 10 years so TRIPS applied in 2005. The TRIPS Agreement, inter alia, mandates a global novelty standard (Article 27.1)[11], stipulating that an invention must be new, involve an inventive step, and be capable of industrial application worldwide to be patentable. Consequently, Pakistan was legally bound to align its IP laws with TRIPS provisions. The Patents Ordinance 2000, which effectively replaced the Patents and Designs Act 1911 explicitly adopted a global novelty standard, defining an invention as new if it "does not form part of the state of the art," where the "state of the art" encompasses everything disclosed to the public anywhere in the world. Section 8 of the Patents Ordinance, 2000, explicitly defines "prior art" or "state of the art" to include "everything disclosed to the public anywhere in the world by publication in tangible form, by oral disclosure, by use or in any other way, before the filing date or the priority date, of the claimed invention." The Patents Ordinance, 2000, extended the term of a patent to 20 years from the filing date, a direct compliance with TRIPS requirements compared to 16

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9 *eBay Inc. v. MercExchange* . https://supreme.justia.com/cases/federal/us/547/388/
10 *Bajaj Auto v. TVS Motor* . https://www.theipmatters.com/post/bajaj-auto-ltd-vs-t-v-s-motor-company-ltd
11 TRIPS. https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

years term in 1911 act. It also introduced more detailed provisions for patentability criteria, infringement remedies, and compulsory licensing, aiming to provide a comprehensive and modern IP framework.

While the direct application of the domestic novelty standard from the *Khawaja Tahir Jamal* ruling became obsolete with the enactment of the Patents Ordinance 2000 in December 2000, the case is an important legal precedent for understanding the validity of patents granted under the pre-2000 regime and the unique legal principles that governed patentability during that era. It stands as a significant historical marker in Pakistan's journey toward modern intellectual property governance.

4. Conclusions

The legal document, Khawaja Tahir Jamal v. Messrs A.R. Rehman Glass, case number C.M. No.1 of 2005, was decided on July 25, 2005, before Syed Hamid Ali Shah, J. in Lahore. It represents a jurisprudential milestone that reconciled competing imperatives of intellectual property protection and industrial growth. By affirming patent validity while pragmatically modifying remedies, Pakistani courts legitimized locally adapted industrial innovations, prevented infringement profitability without causing enterprise collapse and signaled to international investors that process innovations receive enforceable protection. The "modified injunction" model pioneered here has been adopted in subsequent Pakistani IP cases across pharmaceutical, textile, and renewable energy sectors, demonstrating its viability as a template for developing economies navigating technology transfer and proprietary innovation conflicts.

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