



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-07-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**(PT) A No. 5 of 2026
in OP(PT) NO. 4 OF 2026**

Mr.R.Sukumar
Trading as M/s.Sri Sustainable Recycling,
SF No.241/1-18, 251/3,
Kallikudi Village, R.S.Mangalam Taluk,
Ramnathapuram-623535
Tamil Nadu.

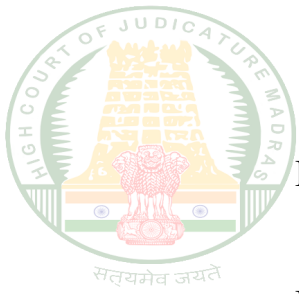
..Applicant

Vs

1. M/s.Arunachal Enterprises
rep. by its Partner, Mr.Jeyakodi,
207 A, Allwin Nagar,
1st Cross Road, Karur-639001
Tamil Nadu.
2. The Office Of The Controller General
OF PATENTS, DESIGNS AND
TRADEMARKS,
also known as Indian Patent Office,
Patent Office Intellectual Property Building,
Boudhik Sampada Bhavan,
GST Road, Guindy, Chennai-600 032.

..Respondent(s)

Judges Summons filed under Order XIV Rule 8 of O.S.Rules read with Section 24 of CPC, 1908 read with Rule 14 of the Madras High Court IPD, Rules, 2022, to transfer the Commercial Original Suit in COS.No.1 of 2026, pending on the file of the Hon'ble District Judge, Ramanathapuram, to this Hon'ble Court.



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For Applicant :

Mr. A.K.Rajaraman
for Mr.Kamalesh Kannan

For Respondents :

Mr.V.Natarajan
assisted by Mr.G.V.Subramaniam
for M/s. VNR Associates [R1]

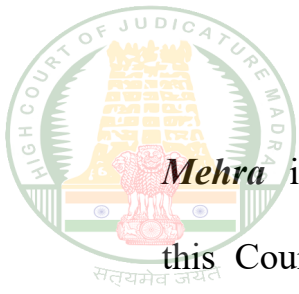
Mr.S.Sasikala
for Mr.J.Madanagopal Rao
Centra Government Standing Counsel [R2]

ORDER

This application has been filed to transfer the Commercial Original Suit in COS.No.1 of 2026, pending on the file of the Hon'ble District Judge, Ramanathapuram, to this Court.

2. The maintainability of the Original Petition seeking revocation of the patent and the application seeking transfer of the suit which has been laid by the 1st respondent in the Original Petition to be transferred to the file of this Court had been primarily objected to by the respondent by contending that the suit in C.O.S.No.1 of 2026 had been filed seeking the relief of permanent injunction restraining the petitioner herein from in any manner infringing the 1st respondent's registered patent and for further reliefs restraining them from passing off of the registered patent of the 1st respondent and for damages.

3. In support of the contention, the respondent had relied upon the judgment of the Hon'ble Apex Court in the case of *Aloys Wobben Vs. Yogesh*



Mehra in **Civil Appeal No.6718 of 2013**, dated 02.06.2014 and a judgment of this Court made in PT(A)No.3 of 2024 and OP (PT) No.1 of 2024 dated 19.12.2025.

4. The primordial contention of the respondent is that when a suit is filed, the revocation petition cannot be entertained and the only remedy available to the petitioner is, he has to file a counter claim in the said suit and he is not entitled to independently file an application for revocation.

5. In such view of the matter, the relevant provisions of the Patents Act, viz., Section 64(1) reads thus:

“64. Revocation of Patents:_(1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may be revoked on a petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent by the High Court on any of the following grounds, that is to say

(a) That the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;

(b) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor;

(c) that the patent was obtained wrongfully in contravention



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of the rights of the petitioner or any person under or through whom he claims;

(d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;

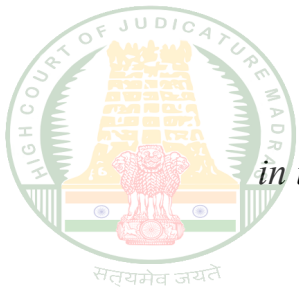
(e) that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in Section 13;

(f) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim;

(g) that the invention, so far as claimed in any claim of the complete specification, is not useful;

(h) that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, that is to say, that the description of the method or the instructions for the working of the invention as contained in the complete specification are not by themselves sufficient to enable a person in India possessing average skill in, and average knowledge of, the art to which the invention relates, to work the invention that it does not disclose the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim protection;

(i) that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed



in the specification;

(j) that the patent was obtained on a false suggestion or representation;

(k) that the subject of any claim of the complete specification is not patentable under this Act;

(l) that the invention so far as claimed in any claim of the complete specification was secretly used in India, otherwise than as mentioned in sub-section (3), before the priority date of the claim;

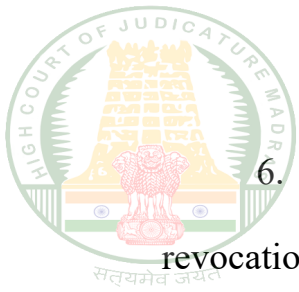
(m) that the applicant for the patent has failed to disclose to the Controller the information required by Section 8 or has furnished information which in any material particular was false to his knowledge;

(n) that the applicant contravened any direction for secrecy passed under Section 35 or made or caused to be made an application for the grant of a patent outside India in contravention of Section 39;

(o) that leave to amend the complete specification under Section 57 or Section 58 was obtained by fraud;

(p) that the complete specification does not disclose or wrongly mentions the source or geographical origin of biological material used for the invention;

(q) that the invention so far as claimed in any claim of the complete specification was anticipated having regard to the knowledge, oral or otherwise, available within any local or indigenous community in India or elsewhere.”



6. Sub Section (1) of Section 64 would indicate that an application for revocation by a person on the grounds indicated therein could be made. Apart from this, a counter claim in a suit for infringement filed by the registered patent holder on the grounds indicated therein could also be made.

7. In that regard, a thorough analysis of the judgment relied upon by the respondent would indicate that the defendant in the said suit had earlier filed a counter claim in the suit filed against him for infringement and thereafter, had filed an application for revocation and the same came to be the subject matter of challenge, wherein the Hon'ble Apex Court had held that once having chosen to avail the remedy of filing a counter claim, the application for revocation would not be maintainable.

8. For better appreciation, the relevant paragraphs are extracted hereunder:

“(5) It would be pertinent to mention that, the “patent infringement suits” were filed by the appellant Dr.Aloys Wobben, before the High Court. In the above suits, it was open to the contesting respondents, to raise as a “counter claim”, a prayer for the revocation of the patent, which constituted the basis of the “patent infringement suit”. After the appellant had filed the abovementioned “infringement suits”, the respondents filed “counter-claims” in response to some of the “infringement suits”. Illustratively, in response to the first suit bearing No.1349 of 2009, the “counter-claim” was filed on 9.9.2009; to the suit bearing No.1963 of 2009, the “counter-claim” was filed on 30.1.2010; to



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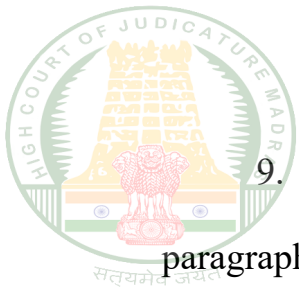


the suit bearing No.176 of 2010, the “counter-claim” was filed on 30.4.2010. Likewise, “counter-claims” were filed in the other suits as well.

(6) Enercon India Limited is stated to have also filed 4 further “revocation petitions” before the “Appellate Board”, after the appellant’s institution of the “patent infringement suits” (referred to above). These “revocation petitions” were filed by the respondents in 2010 and 2011. The preceding two paragraphs, as well as the instant paragraph, depict the timing of the filing of the “revocation petitions” (by the respondents), the “infringement suits” (by the appellant) and the “counter-claims” (by the respondents).

....

(25) In cases where the “infringement suit(s)” was/were filed by the appellant herein (as plaintiff in the “infringement suit”), before the “revocation petition(s)” was/were filed by the respondents (as defendants in the “infringement suit”), the respondents had the right to file “counter-claim(s)” to seek revocation of the patent, under the strength and authority emerging from Section 64(1) of the Patents Act. Having once filed a “counter-claim”, in response to the “infringement suit(s)”, on the same analogy as has been recorded above, it would not be open to the respondents herein (the defendants in the “infringement suits”) to file “revocation petition(s)”, as they would likewise be barred by the rule of res judicata. As such, “revocation petitions” filed later in point of time, than the institution of the “infringement suit”, would be unsustainable in law. In such cases, the prayer for revocation of the patent shall be adjudicated, while disposing of the “counter-claim” filed by the respondents. Therefore, in the above situation, while the “counter-claim” will have to be permitted to be pursued, the “revocation petition” cannot be permitted to be continued.”



9. Analysing the ratio laid down by the Hon'ble Apex Court in the paragraphs extracted supra would indicate that the Hon'ble Apex Court had held that a person opposing the patent, can either make a counter claim or file a revocation petition and not both. The said view had been followed by a learned Single Judge of this Court in the order dated 19.12.2025 in (PT) A No.3 of 2024, which is evident from the following paragraphs, which are extracted hereunder:

“18. It is to be noted that the petitioner in OP(PT)No.1 of 2024 has not made any objection at the pre-grant and post-grant stage of the Patent granted in favour of the applicant herein. It is also relevant that when a suit has been instituted by the applicant before the Delhi High Court in C.S(Comm) No.733 of 2023, where the first respondent herein has filed a written statement and had made specific claim with regard to revocation of patent as a counter-claim, the first respondent cannot now plead that the jurisdiction is not ousted in view of Section 107 of the Patents Act.

19. In the judgments relied on by the applicant herein, it has been categorically held that once a defence available to the first respondent herein has been exercised, the same cannot be re-agitated before any other forum or in any other manner. The judgments relied on by the first respondent herein/petitioner in OP(PT) No.1 of 2024 also reiterated the same proposition.”

10. It is further to be noted that Section 104 of Patents Act, vests the jurisdiction of the matters to be dealt with. For better appreciation, the relevant



provision is extracted hereunder:

“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 a counter-claim for revocation of the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.”

11. The above said provision mandates a suit for declaration and infringement under Sections 105 and 106 of the Patents Act. The suit filed under Sections 105 and 106 of the Patents act, should only be instituted in any Court not inferior to the District Court. The proviso appended therein would indicate that if a counter claim is filed in the said suit for revocation of a patent by the defendant in the said suit, then the said suit along with the said counter claim would have to be transferred to the High Court for a decision, this is because the power of revocation of patent could only be exercised by the High Court. Hence, even accepting the claim of the respondent that in a suit filed by the respondent before the District Court, which is imperative under proviso to Section 104 and if a counter claim along with the written statement is made by the petitioner herein, then the said suit would have to be transferred to the file of this Court for adjudication.



12. In such an event, I do not find any impediment in allowing the application seeking transfer. Accordingly, the following orders are passed:

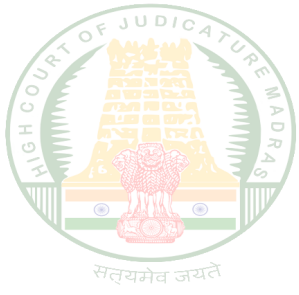
a. Preliminary issue as to the maintaining the OP (PT) No.4 of 2026 stands rejected.

b. The suit in COS.No.1 of 2026 on the file of District Court, Ramanathapuram, is withdrawn and transferred to this Court to be tried along the OP (PT) No.4 of 2026.

22-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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K.KUMARESH BABU J.

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