

OD-13

AID/1/2023
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

GOOGLE LLC
VS
ASSISTANT CONTROLLER OF PATENTS AND DESIGNS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 26th April, 2023.

Appearance:
Ms. Rajshree Kajaria, Adv.
...for petitioner.
Mr. Indrajeet Dasgupta, Adv.
Ms. Mary Datta, Adv.
...for Union of India.

The Court:-

1. This appeal is directed against an order dated 8 September, 2022 passed under Section 15 of the Patents Act, 1970 (the Act) whereby the subject application being Indian Patent Application number 1097/KOLNP/2015 has been rejected.
2. Briefly the appellant, Google LLC, a US based corporation had filed the subject application on 21 April, 2015 with the Patent Office, Kolkata. The appellant is one of the world's leading software companies known for its search engine.
3. The subject invention relates to a method and a system for facilitating the capture of contiguous images suitable for composition into a wide-angle or panoramic image.
4. It is contended that although improvements in image procession technology and processor power have been simplified, and in some cases, automated, the assembly of source images into panoramas, the efficient capture of

images that are suitable for “stitching” is still an area of development. Source images must meet certain criteria for successful assembly into a panorama. Photographers unaccustomed to creating panoramas may lack the experience or skill necessary for selecting and taking shots resulting in suitable images. Even a skilled photographer attempting to shoot a large panoramic scene may not be able to capture suitable images in time to create the desired panorama before the scene to be captured changes or is lost completely. The subject invention attempts to fill the lacuna to this extent.

5. It is contended that the respondent authority has unduly delayed the process of examination. The request for examination of the subject application was filed on April 27, 2015. However, the subject application was examined and First Examination Report (FER) issued on January 31, 2019 after a delay of almost four years. It is also contended that once the claims had been amended, the respondents ought to have examined the subject application in terms of the mandate under Section 13 (3) of the Act. It is further contended that the impugned orders have been passed in contravention of section 13(3) of the Act, since the claims of the subject application were amended on 24 February, 2021 and the respondent was statutorily obliged to have examined the amended application under section 13(3) of the Act and ought to have issued a Second Examination Report (SER). In view of the above, the impugned order is unsustainable and is liable to be set aside. The impugned order has been passed in contravention of the statutory provisions. In this connection, the appellant relies on the unreported decisions passed in *(Sysmex Corporation (OA/25/2020/PT/KOL)*

vs. The Controller of Patents And Designs And Ors) IPDPTA/28/2023 and in (Huawei Technologies Co Ltd. vs. The Controller General of Patents And Designs, Mumbai) IPDPTA/3/2022.

6. On behalf of the respondent authorities, it is fairly conceded that no Second Examination has been conducted notwithstanding the fact that the amendments were made to the subject application.
7. Admittedly, the impugned order has been passed without any Second Examination Report (SER) having being issued. Upon amendment of the claim the respondent has failed and refused to examine the amended application in the manner prescribed under the Act. There has been complete disregard with the provisions of Section 13 (3) of the Act.
8. In view of the aforesaid, the impugned order is unsustainable and set aside. The matter is remanded back to the Controller to consider and dispose of the subject patent application within a period of eight weeks from the date of communication of this order and after complying with all necessary formalities.
9. It is clarified that all observations made herein are *prima facie* and nothing in this order should influence the Officer whilst finally deciding the merits of the subject patent application.
10. With the aforesaid directions, AID/1/2023 stands allowed.

(RAVI KRISHAN KAPUR, J.)