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WP (IPD) No.2 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (IPD) No.2 of 2023

Wisig Networks Pvt Ltd.
Represented by its Authorized Representative
Manish Aryan,
604, Turquoise Block, Myhome Jewel Apt,
Madinaguda, Hyderabad,
Telangana - 500 049

.. Petitioner

VS

- 1.Controller of Patents
Intellectual Property Rights Building,
GST Road,
Guindy, Chennai - 600 032.
- 2.Controller General of Patents,
Designs & Trademarks (CGPDTM),
Boudhik Sampada Bhavan,
Antop Hill, SM Road, Mumbai - 400 037.

- 3.Union of India
Rep. by Ministry of Commerce & Industry
Departmental of Industrial Policy & Promotion,
Udyog Bhawan,
New Delhi - 110 011.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a writ of mandamus directing the first respondent
to take steps to update and modify the online e-filing system to
enable filing of divisional patent application under Section 16(1) of
Indian Patents Act, 1970.



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For Petitioner : Mr.Adarsh Ramanujan
Ms.Sonal Mishra
Mr.Antrilesh Subburaj

For Respondents : Mr.M.Karthikeyan,
SPC for R1

Mr.Rajesh Vivekanandan
Deputy Solicitor General
for R2 & R3

ORDER

The petitioner seeks a direction to the first respondent to take steps to update and modify the online e-filing system to enable filing of divisional patent applications under Section 16 (1) of the Patents Act, 1970 (the Patents Act).

2. The petitioner filed Patent Application No. 201847032415 on 29.08.2018 (the Parent Application). Upon considering the petitioner's response to the First Examination Report (FER), the application for grant of patent was refused by order dated 14.01.2020. The said order was assailed before the Intellectual Property Appellate Board (IPAB). By order dated 08.01.2021, the IPAB set aside the order of refusal and remanded the matter for re-consideration by the Controller of Patents. In those circumstances, the petitioner applied for re-consideration of the Parent Application and also presented an application for grant of



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divisional patent (the Divisional Patent Application) on 20.12.2022.

The said application was not taken on file by the respondents because the status of the Parent Application continued to be reflected as refused. The writ petition was filed in those facts and circumstances.

3. Learned counsel for the petitioner submits that the problem encountered by the petitioner herein is illustrative of the problems faced by a large number of applicants for patents. He further submits that unless the systemic issue is fixed in the near future, the problem would continue. As regards the petitioner, he submits that the Parent Application was argued and orders were reserved. Therefore, he submits that the respondents may be directed to receive a hard copy of the Divisional Application and be further directed to consider and decide the same before the Parent Application is decided.

4. Upon obtaining instructions, Mr.M.Karthikeyan, learned SPC, in all fairness, admits that there is a systemic problem. He submits that the software was developed in the year 2006 and that it does not provide for cases which are remanded. Consequently, he submits that the original status of refusal continues to be reflected.



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He also submits that the respondents are ready and willing to take necessary steps to make modifications to the software. As an interim measure, pending such modifications, he submits that the petitioner's Divisional Patent Application be received as a hard copy and acted upon.

5. In the interest of all stakeholders, the larger issue of making necessary modifications to the software so as to enable filing of such applications, upon matters being remanded, needs to be addressed on an urgent basis by the Controller of Patents. The petitioner's immediate concern is that the Parent Application may be disposed of in the meantime thereby rendering the petitioner's right to file the Divisional Application infructuous.

6. By taking into account the aforesaid concerns, W.P.(IPD) No. 2 of 2023 is disposed of with the following directions:-

(i) The petitioner shall submit a hard copy of the Divisional Application within one week from the date of receipt of a copy of this order.

(ii) Upon receipt thereof, the Controller of Patents is directed to consider such application and dispose of



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the same by a reasoned order.

(iii) Until the Divisional Application of the petitioner is received, the first respondent shall not pass orders on the Parent Application.

(iv) The respondents are directed to take all necessary measures to fix the glitches in the software within a maximum period of two months from the date of receipt of a copy of this order.

7. No order as to costs. List under the caption 'for reporting compliance' on 07.11.2023.

07.09.2023

Index:Yes
Neutral Citation:Yes
ssm
To

- 1.The Controller of Patents
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SENTHILKUMAR RAMAMOORTHY,J.

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