

08.05.2025

Item no. DL/1
Court No. 41

Asraf, A.R.(Ct.)

IN THE HIGH COURT AT CALCUTTA
Intellectual Property Rights Division
Appellate Side

Case No. **WPA-IPD 1 of 2025**
(Old No. WPA 15335 of 2024)

**THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA & OTHERS.**

.... Petitioners

VS.

UNION OF INDIA & OTHERS.

....Respondents

For the Petitioners :

Mr. Abhratosh Majumder, Sr. Advocate
Mr. Paritosh Sinha
Mr. Amitava Mitra
Mr. Sayan Roychowdhury
Mr. Soumya Sen
Ms. Urmi Sengupta
Mr. Naman Agarwal

....Advocates

For the Respondent nos.2 & 3 :

Mr. Nandlal Singhania
Mr. Sunil Kr. Singhania

....Advocates

For the Respondent no.4 :

Mrs. Nanki Areja (via VC)
Mr. Gaurav Miglani
Mr. Balarko Sen
Mr. Soumyajit Mishra

....Advocates

The grievance of the petitioner is directed against non-consideration of an interlocutory application dated 5 December 2023 alongwith a representation dated January 29, 2024 by the Opposition Board.

Briefly, the petitioner had filed an international application for grant of a patent, titled "Methods and Compositions For RNA-Directed Target DNA Modification And For RNA Directed Modulation of Transcription" On 20 December 2024, the application was filed in India as national phase entry. Thereafter, the petitioner was duly granted and allotted Patent No.397884 and the grant was also published. Pursuant to the above, the respondent filed a post grant application to the above patent under section 25(2) of the Patents Act, 1970 without any supporting evidence. Subsequently, the petitioner filed their reply statement under Rule 58 alongwith evidence and same was duly served on the respondent no.4. Subsequently, the respondent no.4 filed its Reply evidence under rule 59 alongwith an affidavit dated November 1, 2023.

It is contented on behalf of the petitioner that in the garb of a Reply, the respondent has also filed its Reply evidence under rule 59 in support of his opposition and inserted new pleadings as well as documents which is impermissible.

In this background, the petitioner had filed an interlocutory application before the respondent authorities praying for rejection of the reply evidence of the respondent no.4 as not being maintainable. In addition, the petitioner had also filed a representation

dated 29 January, 2024 requesting for disposal of the interlocutory application.

In such circumstances, it is contended that the respondent nos.2 and 3 have acted contrary to law without disposal of the interlocutory application dated 5 December, 2023 alongwith the representation dated 29 January, 2024 by the Opposition Board prior to making its recommendation. In brief, it is contended that the Opposition Board could not have made any recommendation based on the documents filed (including the documents by the respondent no.4) and should have strictly confined itself to the evidence adduced by the petitioner.

Chapter VI of the Patent Rules 2003 provide for “Opposition Proceeding to grant of Patents” Rules 57, 58 and 59 of the Rules are as follows:

57. Filing of written statement of opposition and evidence.— The opponent shall send a written statement in duplicate setting out the nature of the opponent's interest, the facts upon which he bases his case and relief which he seeks and evidence, if any, alongwith notice of opposition and shall deliver to the patentee a copy of the statement and the evidence, if any.

58. Filing of reply statement and evidence.—(1) If the patentee desires to contest the opposition, he shall leave at the appropriate office a reply statement setting out fully the grounds upon which the opposition is contested and evidence, if any, in support of his case within a period of two months from the date of receipt of the copy of the written statement and Opponent's

evidence, if any by him under rule 57 and deliver to the opponent a copy thereof. (2) If the patentee does not desire to contest or leave his reply and evidence within the period as specified in sub-rule (1), the patent shall be deemed to have been revoked.

59. Filing of reply evidence by opponent.—The opponent may, within one month from the date of delivery to him of a copy of the patentee's reply statement and evidence under rule 58, leave at the appropriate office evidence in reply strictly confined to matters in the patentee's evidence and shall deliver to the patentee a copy of such evidence.

Upon the filing of the writ petition, by an order dated 6 February, 2025 this Court had *inter alia* directed that the pendency of the writ petition would not act as an embargo in the progress of the pending proceedings before the respondent authorities. By a communication dated 28 April, 2025, the respondent authorities informed this Court that, the Opposition Board had submitted its recommendation on 23 April, 2025 in accordance with Rule 56(4) of the Patent Rules. Thereafter, a Hearing Officer has also been appointed on 24 April, 2025 pursuant to the Office Order no.26 of 2016 to take further steps in the post grant opposition.

On behalf of the respondent no.4, it is contended that the entire premise of the petitioner that, no evidence had been filed by the petitioner with the reply statement under Rule 58 of the Patent Rules is factually incorrect. In fact, on a perusal of the pleadings in the writ petition and more particularly

paragraph 6, the petitioner has admitted that the petitioner had filed their Reply statement alongwith evidence within the extended period.

Admittedly, the matter is still at large before the respondent authorities. No final decision has yet been arrived at and the Hearing Officer appointed is yet to conclude the proceeding. The rights of the parties are fluid and yet to be adjudicated upon insofar as the merits of the case are concerned. There is also no challenge to the recommendation of the Opposition Board in this proceeding. It is also arguable as to whether any such decision is justiciable at this stage since the same is neither final nor binding. In view of the above, the pendency of this writ petition cannot possibly serve any purpose. On the contrary, the pendency of such proceedings unnecessarily procrastinate and cause delay in the main proceeding before the authorities.

It is always open to the petitioner to raise all grounds including procedural infirmity, if any, depending on the final outcome of the proceedings before the Hearing Officer. Similarly, any alleged infirmity of the Opposition Board or violation of the principles of natural justice can always be agitated after a final decision is taken by the Hearing Officer. The categorical submission made on behalf of the petitioner that no evidence had been filed alongwith

the Reply statement by the petitioner is belied by the averments in the writ petition.

To this extent, the writ petition is premature. There is no legal right which the petitioner can complain of which has been infringed. There is no real prejudice to the petitioner at this stage of the proceedings. In any event, any final decision by the Controller is appealable under section 117(2) of the Act.

In such view of the matter, WPA-IPD 1 of 2025 stands dismissed. It is made clear that there has been no adjudication on the merits of the case. All points are left open to be decided by the Hearing Officer in accordance with law.

Both parties are at liberty to take all points available in law, if the circumstances so warrant at the appropriate stage if necessary.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties after completion of all necessary formalities.

(Ravi Krishan Kapur, J.)