

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

IPDPTA/8/2025

CYRIL BATH COMPANY
VS
CONTROLLER OF PATENTS AND DESIGNS AND ORS

For the appellant	: Mr. Sourojit Dasgupta, Adv. Mr. Sudhakar Prasad, Adv.
For the respondents	: Mr. Pramod Kumar Drolia, Adv. Mr. Santosh Kumar Pandey, Adv.
Judgment on	: 01.09.2025

Ravi Krishan Kapur, J.:

1. Affidavit in Reply filed be kept with the records.
2. This appeal is directed against an order dated 22 September, 2023.
3. Briefly, the appellant had filed a divisional application being application no. 1376/KOLNP/2013. By the impugned order, the divisional application has been cursorily rejected on the ground that there is no power to seek modification of an application in such manner. Any such modification could only be sought for through the route of an amendment.
4. The relevant portion of the impugned order is as follows:

“From above it is clear that for international application under PCT designating India title, description, drawing, abstract and

claims cannot be modified for national phase application though only deletion of claim is possible according to Rule 20(1) of The Patents Rules. Thus addition and modification of claim for PCT national phase application is not possible. The present application is a further application based upon PCT national phase application where claim modification is not possible. But for the present application claim modification was done though as per Section 10(4A) claim modification cannot be done for the route application or parent application, thus claim modification of the present application cannot be allowed as per the said provision too.”

5. It is contended on behalf of the appellant that the impugned order is unsustainable and bereft of any reasoning. On a plain reading of Section 16 the Act, the section itself provides a right to every applicant, after the filing of a main application, to file a divisional application, if the facts and circumstances so warrant.

6. In this context, section 16 of the Act reads as follows:

“16. Power of Controller to make orders respecting division of application. (1) A person who has made an application for a patent under this Act may, at any time before the grant of the patent), if he so desires, or with a view to of the complete specification relate to more than one invention, ile a further remedy the objection raised by the Controller on the ground that the claims application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

(2) The further application under sub-section (1) shall be accompanied by specification shall not include any a complete specification, but such complete spec matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.”

7. A perusal of the impugned order reflects that after quoting the sections of the Act, i.e. sections 10, 11, 16, 13, 14, 15, 25(1), 57 to 59, the Controller has simply concluded as above. There are no reasons in the order.
8. In an unreported decision in *AID 17 of 2022, Toyo Engineering Corporation vs. The Controller General of Patents Designs and Trade Mark GPDTM & Anr.* this Court had held as follows:-

“Orders of such nature need to meet the twin tests of "why" and "what". It is the "why" which sustains the "what". Reasons are the safeguard against the ipsi dixit of the decision-making process. They discuss how the mind has been applied to the matter in issue and convey the nexus between the matters which have been considered and the conclusion based thereon. The justification and the reasonableness of a conclusion can only depend on the reasons given in support thereof. The order impugned has no element of "why" for the "what" therein to stand on (Uniworth Resorts Limited and Ajay Prakash Lohia Versus Ashok Mittal & Ors. reported in (2008) 1 CalLT 1).”

9. In such circumstances, the Controller was obliged to pass a reasoned order. On the contrary, the Controller has without furnishing any reasoning concluded that the divisional application could not have been filed *suo moto* and it was impermissible to seek modification of the parent application.
10. It is now well settled that such orders are unsustainable, in the absence of reasons. The impugned order, *ex facie*, discloses no reasoning whatsoever. There is no element of “*why*” for the “*what*” to stand on (*Union Public Service Commission vs Bibhu Prasad Sarangi (2021) 4 SCC 516*).

11. The blind reliance on the decision in *Boehringer Ingelheim International GMBH vs. Controller of Patents and Another*, 2022 SCC OnLine Del 3777 without adverting to the subsequent decision passed by the High Court at Delhi in *C.A.(COMM.IPD-PAT) 471/2022, Syngenta Limited vs. Controller of Patents and Designs* dated 13 October 2023 is erroneous in law. There has simply been no discussion of either of the said decisions or applicability thereof in the impugned order.

12. To the above extent, IPDPTA/8/2025 is allowed. The impugned order is set aside. The matter is remanded back to the Controller to decide the divisional application in accordance with law within a period of 3 months from the date of communication of this order. It is made clear that there has been no expression or adjudication on the merits of the case and all issues are left open for the Controller to decide independently.

(RAVI KRISHAN KAPUR, J.)

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