

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

IPDPTA/124/2023

ITC LTD
VS
THE CONTROLLER OF PATENTS DESIGNS AND TRADEMARK

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 25th June, 2025.

Appearance:

Mr. S.N. Mookherjee, Sr. Adv.

Mr. Sarathi Dasgupta, Adv.

Miss. Yamini Mookherjee, Adv.

Mr. Manosij Mukherjee, Adv.

Mr. K.K. Pandey, Adv.

Mr. Teeshan Das, Adv.

Mr. Dipto Ghosh, Adv.

Ms. Mallika Bothra, Adv.

...for appellant.

Mr. Swatarup Banerjee, Adv.

Mr. Rivu Datta, Adv.

Mr. R. Chatterjee, Adv.

...for respondents..

The Court: This appeal is directed against an order dated September 22, 2023 passed under Section 15 of the Patents Act, 1970 refusing grant of patent application no. 201731031948 in respect of an invention titled "Electronic Aerosol Generating Device".

In passing the impugned order the respondent has rejected the application on the ground of patentability of the invention. The impugned order of rejection has been passed on the sole ground of section 3(b) of the Act.

It is submitted on behalf of the appellant that during the pendency of this appeal, in similar proceedings, there have been two decisions of this Court which have been passed i.e. IPDPTA/13/2024 dated 20 May, 2025 and IPDPTA/121/2023 dated 30 April, 2025 remanding both matters to the

Controller. Significantly, all these appeals raise related questions of law and fact.

One of the principal grounds urged by the appellant is that the impugned order has been passed in violation of the principles of natural justice. It is contended that in passing the impugned order, the Registrar has relied on technical and scientific materials details of which were admittedly not brought to the attention of the appellant. Resultantly, the appellant had no opportunity to deal with such materials which appear from the impugned order.

Mr. Swatarup Banerjee, appearing on behalf of the respondent authority upon instructions submits that in view of the indisputable factual position that the above materials and data were not brought to the attention of the appellant, the impugned order is unsustainable and the matter be remanded back to the Registrar for hearing afresh.

In view of the submissions on behalf of the respondent, IPDPTA/124/2023 is allowed. The impugned order dated 22 September, 2023 is set aside. The matter is remanded to the respondent no. 1 for adjudication afresh in accordance with law. It is made clear that there has been no adjudication on the merits of the case and all issues are left open to be decided afresh. The above exercise ought to be completed within a period of 3 (three) months from the date of communication of this order to the respondent no.1.

(RAVI KRISHAN KAPUR, J.)

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