
(2014) 03 IPAB CK 0002

In the Intellectual Property Appellate Board

Case No : ORA/7/2011/PT/MUM And M.P. Nos. 22 & 23/2011 In ORA/7/2011/PT/MUM And ORA/8/2011/PT/MUM And M.P. Nos. 24 & 25/2011 In ORA/8/2011/PT/MUM, ORA/10/2011/PT/MUM And M.P. NOS. 28 & 29/2011 In ORA/10/2011/PT/MUM And ORA/11/2011/PT/MUM And M.P. Nos. 30 & 31/2011

Hewlett-Packard India Sales Pvt. Ltd

APPELLANT

Vs

Bharat Bhogilal Patel And Controller Of Patents And Designs

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 03 IPAB CK 0002

Hon'ble Judges : K.N. Basha, J; D.P.S. Parmar, Technical Member

Bench : Division Bench

Advocate : Ms. Tusha Malhotra, G.K. Muthukumar

Final Decision : Allowed

Judgement

K.N. Basha, J

1. In all these matters, the patents under challenge are Patent No. 188787 in ORA/7 & 10/2011/PT/MUM, 189027 in ORA/8 & 11/2011/PT/MUM. The above said patents were in the name of respondent No. 1. These two patents were revoked as per the order dated 12.06.2012 TRA/5 & 6/2008/PT/MUM and as per order dated 14.03.2013 in ORA/19 & 21/2010/PT/MUM and ORA/9 & 14/2011/PT/MUM. In view of the same these revocation applications must also be ordered. Mrs. Tusha Malhotra, the learned counsel for the applicant and Mr. G.K. Muthukumar, the learned counsel for the respondent appeared before us today in all these matters. It is brought to our notice that the very same two patents subject matter of these three applications have already been revoked as per order dated 12.06.2012 in TRA/5 & 6/2008/PT/MUM. Therefore, it is submitted by Mr. G.K. Muthukumar, the learned counsel for the respondent that all these matters have become infructuous and on that ground these matters may be disposed off.

2. It is also submitted by Mr. G.K. Muthukumar that the respondent No. 1 challenged the order dated 12.06.2012 by preferring the Writ Petition No. 18565 and 18566 of 2012 and the Hon'ble High Court was pleased to grant interim stay for the limited period and the said stay order was not extended further. The learned counsel for the respondent No. 1, Mr. G.K. Muthukumar would submit that as the result of Writ Petition filed before the Hon'ble Madras High Court, the parties have been given liberty to move an appropriate applications before this Board according to law.

3. Ms. Tusha Malhotra would contend that there is another application pending before this Board and the same is not listed. It is submitted that the even in the said matter ORA/10/2011/PT/MUM it is the Patent No. 188787. The learned counsel for the applicant would further submit that the applicant also filed further documents in all these matters.

4. Mr. G.K. Muthukumar, the learned counsel for the Respondent No. 1 would submit that the respondent was not served with the further documents till date. The learned counsel for the applicant would submit that the similar order may be passed in the other connected matter i.e. ORA/10/2011/PT/MUM which is not listed today.

5 . We have carefully considered the contentions of either side and also perused the earlier IPAB Order No. 69 of 2013 dated 14.03.2013 in ORA/19 & 21/2010/PT/MUM Allflex (I) Pvt. Ltd., Vs. Shri Bharat Bhogilal Patel and ORA/9 & 15/2011/PT/MUM-M/s Spinks India Pvt. Ltd. Vs. Shri Bharat Bhogilal Patel and Another

6. The fact remains that in respect of the very same subject matter Patent Nos. 188787 and 189027 the patents involved in all these four ORA's the patents were revoked earlier as per the order dated 12.06.2012 in TRA/5 & 6/2008/PT/MUM and as per order dated 14.03.2013 in ORA/19 & 21/2010/PT/MUM, ORA/9 & 14/2011/PT/MUM. Thi Board revoked the patents and allowed the ORA's. It is seen that challenging the earlier order dated 12.06.2012, the first respondent filed writ petitions Nos. 18565 and 18566 of 2012 and the same is pending on the file of the Hon'ble Madras High Court. In the said Writ Petitions, Hon'ble Madras High Court has granted limited stay and not extended further. Ms. Tusha Malhotra the learned counsel for the applicant would submit that the applicant is not a party in the writ petition. Therefore, it is submitted by Mr. G.K. Muthukumar, learned counsel for the first respondent that in view of the revocation of the very same patent numbers, the present matters have become infructuous.

7 . We are of the view that all these four matters have been filed on the basis of different cause of action though the patent numbers are one and the same. Therefore as this Board passed an order dated 12.06.2013 and 14.03.2013 revoking the subject patents all these four ORA's are allowed. At this juncture, it is also necessary to incorporate the reasons assigned by this Board in its earlier order dated 14.03.2013 at para 6 which is hereunder

We have revoked the patent on the ground that the invention was known, that there is neither any novelty nor any inventive step.

It is made clear that the parties namely the applicant and as well as the respondent are at liberty to challenge the order on the basis of outcome of the writ petitions if they are aggrieved, in a manner known to law.