
(2008) 07 IPAB CK 0001

In the Intellectual Property Appellate Board

Hindustan Unilever Limited

APPELLANT

Vs

Controller Of Patents And Design And Ors.

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Patents Act, 1970 — Section 2(1)(J), 12, 13, 13(3), 14, 15, 80, 117A
Constitution Of India, 1950 — Article 14

Citation : (2008) 38 PTC 379 (IPAB)

Hon'ble Judges : Z.S. Negi, J; S. Chandrasekaran, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Chandrasekaran, Technical Member

1. This is an original appeal under Section 117A of the Patents Act, 1970 (hereinafter referred to as the Act) is directed against the order dated

24.05.2007 passed by the respondent No. 2.

2. M/s Hindustan Unilever Limited, the appellant herein had filed a National Phase application for patent on 28.06.2004 numbered as

359/MUMNP/2004 in respect of an International PCT application No. PCT/EP02/14515 dated 18.12.2002 titled ""A Fabric Conditioning Kit"". The

respondent No. 2 had issued a first examination report on 31.01.2006 after conducting usual technical examination of the patent application. This first

examination report issued by the respondent No. 2 did not have any technical objections but only formal objection about filing procedural issues which

were duly complied with by the appellant by filing an immediate response dated 04.04.2006. The appellant had submitted the prosecution details of

corresponding PCT European Patent application and US application in compliance of the first examination report, as directed by the respondent No. 2.

Further the appellant had also stated that the corresponding European Patent has been granted under Patent No. EP 1461 412 B1.

3. On re-examination of the amended/re-submitted documents, the respondent No. 2 had communicated fresh technical objections which were not

raised in the first examination report, questioning the novelty of the invention citing few granted Patents (D1-D9). The appellant had amended the

claims and specification on the lines of the corresponding granted European Patent application and also distinguished the features of the invention vis-

a-vis the cited patent documents. The respondent No. 2 had maintained the technical objection again which has been raised the second office action

report, questioning the amendments effected in the claims. After necessary discussions with the respondent No. 3, the appellant had responded to the

office action, by stating that the appellant had only restricted the scope of the claims, by amending them based on the original disclosure in the

complete specification as filed. Further, the appellant, as an abundant caution, requested for an opportunity of being heard in the matter, in case, the

respondent No. 2 is likely to take an adverse decision against it.

4. The respondent No. 2 refused to grant the patent under Section 15 of the Act stating that the invention was obvious to a person skilled in the art in

view of the cited patent documents D1 to D3. Aggrieved by the impugned order of the respondent No. 2, the appellant filed a review petition, with a

specific prayer to dispose of the review petition expeditiously to enable him to prefer an appeal if necessary, within the statutory period to the

Appellate Board. Hence this appeal consequent to the inaction on the part of the respondent No. 2.

5. The matter came up before this Appellate Board on 11.06.2008. Learned Counsel Mr. S. Majumdar appeared for the appellant and Additional

Central Government Standing Counsel appeared for the respondents, but without any letter of authority either from the Ministry of Law and Justice or

from the respondents.

6. The learned Counsel for the appellant argued that the respondent No. 2 had refused the grant of patent on this national phase application, mainly

relying on the following points of facts:

(i) The respondent No. 2 ought to have given an opportunity of being heard under Section 14 or Section 80 of the Act before taking any adverse

decision against the applicant but acted in a manner by not offering a hearing, which is in disregard to the statutory provisions of law.

(ii) The respondent No. 2 made an error apparent on the fact of the record by refusing the grant of patent on technicalities and procedural

irregularities without a proper application of mind and effective adjudication/ application of the invention on merits as required under sections 12 to 15

of the Act.

(iii) The respondent No. 2 made an error apparent by failing to apply his mind to the facts and observations set forth by the appellant in their letters

dated 12.12.2006 and 24.01.2007, wherein the appellant had clearly distinguished the features of the invention with respect to the citations made in the

examination report.

(iv) The respondent No. 2, while issuing the first examination report, had raised only the trivial and formal objections but raised fresh technical

objections in the subsequent examination report and cited some prior art patents questioning the novelty of the invention which goes to show non-

application of mind and further making a glaring error apparent on the face of the record by passing a cryptic and non-speaking order rejecting the

patent application without going into the merits of the invention even though the appellant has clearly brought out the distinguishing features of the

invention with respect to the granted patents (D1 to D9) in their letters dated 12.12.2006 and 24.01.2007 and more particularly feature by feature

observations with respect to the cited (D1) document in their letter dated 31.01.2007.

(v) The respondent No. 2 has not bothered to dispose off the review petition filed by the appellant either within the appeal period or till date though a

specific prayer has been made to enable the applicant/appellant to prefer an appeal within the statutory period.

Finally the learned Counsel requested that the impugned order be quashed and the matter may be remanded back with a direction to afford an

opportunity of hearing and to finally grant the patent keeping in view of the grant of European Patent.

7. The Additional Standing Counsel for the respondents did not argue but said that he had not got any brief from the respondents.

8. We have considered the arguments and submissions of the learned Counsel for the appellant. It is a clear settled principle that if the invention claimed does not meet the requirements of the patentability criteria as laid down under Section 2(1)(J) of the Act, the Controller of Patents shall not grant a patent for the said invention. But once an application for patent is received the Patent Examiner shall do the technical examination and ordinarily make the report to the Controller along with the result of the investigations made under Section 13. The controller of patents shall in fact, as expeditiously as possible, give a gist of all the technical objections to the applicant which is called the first examination report. This report shall contain all the technical and formal requirements that have to be complied with by the applicant within the prescribed period. But it is also to be noted as per Section 13(3) of the Act which read thus: ""where a complete specification is amended under the provisions of this Act before the grant of a patent, the amended specifications shall be examined and investigated in like manner as the original specification"". Hence the Controller of Patents being the custodian of patent rights, according to law, shall always examine the patent application in totality and when the technical objections are communicated to the applicant, and when the applicant, as a reply, submits the observations distinguishing the features of the invention vis-a-vis cited specifications, shall always consider those observations fully and then take a decision either to grant or to refuse the grant of patent. Nevertheless, law of natural justice requires that the administering authority shall offer an opportunity of hearing to the applicant, in case an adverse decision is likely to be taken, i.e. grant of patent is likely to be refused.

9. It will be useful to briefly discuss the dominance of the principle in decision making in matters adversely affecting the interests of others. The principles of natural justice are known in the jurisprudence of administrative law or other specific enactments as the fundamental rules of justice. One of the essential pillars of principles of natural justice is Audi Alteram Partem. It is a Latin phrase meaning that a decision has to be given in the case of any person only after he is heard. Impliedly, any decision proposed to be taken, which is adverse to a party, should be taken only after giving a hearing prior to taking of such a decision. Therefore natural justice demands that a person who is likely to be directly affected by an administrative action be

given prior notice of what is proposed, so as to enable him to make proper representation to defend his case. The aim of the rules of natural justice is to secure justice. Soul of the rule is fair play in action. The message of the doctrine is that no one should be condemned without being heard. The concept has been evolved to uphold the rule of law. The rule was stated in the following words by Lord Denning M R in *Schmidt v. Secretary of State for Home Affairs* (1969) 2 Ch.D 149 that ""where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf"". Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Supreme Court of India had even gone to the extent of treating cases on the principles of natural justice as a part of Article 14 of the Constitution.

10. Perusing some of the famous reported cases on principles of natural justice, we notice in *Ross v. Medical University of South Carolina*, 328 S.C. 51, 68, 492 S.E.2d 62, 71 (1997), the South Carolina Supreme Court held that, ""law requires an administrative agency or authority to provide notice and an opportunity to be heard, but does not require notice and an opportunity to be heard at each level of the administrative process. It mandates notice and opportunity to be heard at some point before the agency makes its final decision"". An authority is required to act judicially whenever its actions are likely to result in any disadvantage to a person. ""Disadvantage"" as the Supreme Court stated in *Bhagwan v. Ramchand* ""may result from taking away of a right or a privilege or adverse effect on an interest. If it appears that an authority or a body has been given power to determine questions affecting the right of citizens, the very nature of power would inevitably impose a limitation that the power should be exercised in conformity with the principles of natural justice.

11. The Andhra Pradesh High Court in *Berulal Tiwari v. CIT* 173 ITR 280 held that ""We would express our disapproval of the way in which ITOs' drag on the assessment proceedings till almost the last minute and rush through the entire process of assessment when the limitation was about to set in without giving adequate opportunities to the assessee. The CIT, exercising

administrative jurisdiction over these officers, should keep a close watch on the proceedings and should discourage any attempt on the part of the tax officers in dragging on the duty to act fairly, which lies on all quasi-judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences of affecting rights of parties." Thus a quasi-judicial decision rendered and order made in violation of the Audi Alteram Partem Rule would be null and void. The order impugned in such case can be struck down as invalid on that score only and this view is fortified by numerous decisions as shown below. In case of State of Kerala v. K.T. Shaduli Grocery Dealers, Etc. the Hon'ble Supreme Court followed the provision of law laid down in case of Dhakeshwari Cotton Mills Ltd. and Suresh Koshy George and quashed the assessments which were found to be in violation of principle of natural justice. The principles of natural justice have been elevated to the status of fundamental rights guaranteed in the Constitution as is evident from the decision of the full Bench of the Supreme Court in the case of union of India v. Tulsiram Patel, holding that the principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 of the Constitution because of the new and dynamic interpretation given by the Supreme Court to the concept of equality and the violation of principles of natural justice.

12. In the present case, admittedly no notice for an opportunity of hearing was given to the appellant providing him a reasonable opportunity to defend his case. Not only that any hearing notice was given to the appellant, but even the appellant's review petition filed, requesting the respondent No. 2 to dispose off within two weeks to enable the appellant to decide further course of action within the appeal period of three months was ignored till date, the appellant had made an appeal here in this Appellate Board! The impugned order under consideration has been undisputedly made without affording an opportunity of being heard to the appellant, and that order does affect the appellant adversely. It appears to us that the impugned order is unreasonable in the sense that it is manifestly arbitrary and as such unsustainable. In the light of the above, we are of the opinion that the impugned order need be set aside. Accordingly we do so and remand the matter back for de novo consideration by the respondents in accordance with the law,

after affording the appellant a fair and reasonable opportunity of being heard. The appeal is allowed in part in the above terms. However, there shall be no order as to the costs.