
(2014) 08 IPAB CK 0003

In the Intellectual Property Appellate Board

Case No : COD No. 16/2014 In S.R. No. 216/2014/PT/MUM

Pfizer Products Inc

APPELLANT

Vs

Controller Of Patents

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Patents Act, 1970 — Section 117(A)

Citation : (2014) 08 IPAB CK 0003

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

Bench : Division Bench

Advocate : Archana Shanker

Final Decision : Dismissed

Judgement

K.N. Basha, J

` 1. This application is filed for seeking the relief of condonation of delay of 33 months and 12 days i.e. from 09/09/2011 to 27/03/2014.

` 2. Ms. Archana Shanker, the learned counsel appearing for the petitioner would submit that the petitioner challenged the order of the Controller dated 09/06/2011 by filing the review application and the same was rejected on 27/03/2014. It is contended that they are challenging the impugned order dated 09/06/2011 along with the dismissal of the review application order dated 27/03/2014. It is contended that the delay of 33 months and 12 days resulted only due to filing review application and its disposal and therefore the delay was neither willful nor wanton. It is submitted that in view of the said factors the petitioner has shown sufficient cause for condonation of the delay.

` 3 . We have carefully considered the contention of the learned counsel for the petitioner and also perused the reasons stated therein.

` 4 . The fact remains that being aggrieved by the rejection of application claiming for patent by the order dated 09/06/2011 the petitioner preferred the

review application and the same was also dismissed on 27/03/2014 which resulted in the delay of 33 months and 12 days. It is also brought to the notice of this Bench that the petitioner obtained the certified copy of the order on 20/08/2014. However, the limitation to file appeal is to commence from the date of decision i.e. on 09/06/2011. We are of the constrained view that the petitioner has not only assigned valid reason but also shown sufficient cause to condone the delay. The Hon'ble Apex Court has held in Catena of decisions that the "sufficient cause" has to be construed liberally taking note the right of the party coupled with the interest of justice. It is needless to state that the petitioner is having the statutory right to appeal as per provisions under section 117(A) of the Patent Act, 1970 and as such it is desirable to consider the matter on merit instead of preventing the petitioner from condoning the delay. Therefore petitioner's claim for condonation of delay cannot be thrown out on technical grounds.

` 5 . In view of the forgoing reasons we are constrained to condone the delay of 33 months and 12 days in filing the appeal in this matter. The Registry is directed to number the appeal if the appeal is otherwise in order.