

(2022) 12 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Petition-IPD No. 59 Of 2021, Civil Miscellaneous No. 14 Of 2021

Sonya Kapur

APPELLANT

Vs

Controller General Of Patent, Designs And Trademark And Ors

RESPONDENT

Date of Decision : 12-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Patents Act, 1970 — Section 25

Citation : (2022) 12 DEL CK 0051

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Sataroop Das, Ashish Ranjan, Srish Kumar Mishra

Final Decision : Allowed

Judgement

C.Hari Shankar, J

1. As per the orders passed by the learned Joint Registrar in the present case, service already stands affected on all the respondents.

2. Despite that, Respondent 1 alone is represented. Respondents 2 and 3 are unrepresented. They have remained absent before the learned Joint Registrar as well. Today, the matter was called out twice. They continue to remain absent.

3. As such, Respondents 2 and 3 do not appear to be serious in contesting the present proceedings. The Court, therefore, proceeds in their absence.

4. This petition under Article 226 of the Constitution of India assails order dated 31st March 2021, passed by the Patent Office, whereby Patent No. 363697 has been granted to Respondent No. 3 without considering the pre-grant opposition filed by the petitioner.

5. No reply to this petition has been filed by any of the respondents including Respondent 1. However, Mr. Srish Kumar Mishra, learned Counsel for Respondent

1 submits that, though a pre-grant opposition was filed by the petitioner, opposing the grant of Patent No. 363697, the opposition was not filed in the proper format and following the proper procedure, as a result of which it could not be considered. He submits, on instructions, that he has no objection to the impugned order being set aside and the matter being remanded to the Patent Office for re-consideration, after taking into account the pre-grant opposition filed by the petitioner.

6. The right to oppose an application for grant of a patent is statutorily conferred by Section 25 of the Patents Act, 1970. It is a valuable right, and cannot be permitted to be defeated on technical considerations. The absence of a pre-grant opposition also confers rights on the patent holder, once the patent is granted.

7. In that view of matter, and given the fact that it is conceded that a pre-grant opposition was, in fact, filed by the petitioner, albeit in the wrong format, I am of the opinion that the interests of justice would require the said pre-grant opposition to be considered before the Patent Office takes a call on the grant of patent as sought by Respondent No. 3.

8. Accordingly, the impugned order dated 31st March 2021 is quashed and set aside. The application of Respondent No. 3 for grant of Patent No. 363697 is remanded to the Patent Office for re-consideration. The Patent Office would also take into account the pre-grant opposition filed by the petitioner.

9. Both sides would be given an opportunity of hearing before any view is taken in the matter.

10. As Respondents 2 and 3 have been absent in today's proceedings, let a copy of this order be communicated by the Registry by email as well as speed post to Respondents 2 and 3.

11. It is made clear that the Patent Office shall restrict its consideration to the pre-grant opposition filed by the petitioner and shall not allow any other pre-grant opposition to be filed, to the application filed by Respondent 3 for grant of patent.

12. The petition is allowed in the aforesaid terms with no order as to costs.