**(2010) 03 IPAB CK 0003**

**In the Intellectual Property Appellate Board**

Ushodaya Enterprises Private Limited APPELLANT

Vs

T.V. Venugopal Trading As Ashika Incence Inc. And The Registrar Of Trade Marks RESPONDENT

**Date of Decision :** 31-03-2010

**Acts Referred:**
Intellectual Property Appellate Board (Procedure) Rules, 2003 — Rule 11

**Citation :** (2010) 03 IPAB CK 0003

**Hon'ble Judges :** S. Usha, J;Syed Obaidur Rahaman, Technical Member

**Bench :** Division Bench

**Final Decision :** Allowed

## Judgement

S. Usha, J

1. This Miscellaneous petition has been filed by the appellant in the original rectification application praying to take on record the reply to the counter-

statement together with the additional documents annexure Nos. 23 to 25.

2. The grounds on which the petition is filed is that some other registration certificates became available at the time of filing of the reply to the counter

statement and also the auditor's certificate. The contention of the petitioner is that these documents do not alter the case or introduce new case. If

these documents are not taken on record, prejudice may be caused to the petitioner. On the other hand no loss or hardship will be caused to the

respondent if these documents are taken on record.

3. The respondent filed their counter to the miscellaneous petition as well as a counter to the reply to the counter statement. The main averment was

that the miscellaneous petition is baseless and false and therefore, the documents are to be rejected.

 

4. The miscellaneous petition came up before us for hearing on 17.03.2010. Learned Counsel Shri N.A.K. Sarma appeared on behalf of the applicant

and learned Counsel Shri G. Ramji appeared on behalf of the respondent No. 1.

5. Counsel for the petitioner re-iterated what was stated in the miscellaneous petition. Counsel for the respondent though did not advance oral

arguments, relied on the counter to the miscellaneous petition.

6. Before going into the merits of the miscellaneous petition, we are of the view that the counter to the reply to the counter-statement cannot be taken

on record as there is no provision for the same. The averment of the respondent is that it is a reply along with documents, hence, the reply to be taken

on record which cannot be done is our considered opinion.

7. As regards the miscellaneous petition, the reply has been filed along with documents as per Rule 11 of the IPAB (Procedure) Rules, 2003. The

documents filed are in addition to what were filed along with the rectification application and nothing new as contended by the petitioner. The

documents along with the reply to the counter statement are filed in accordance with the rules and are, therefore, taken on record. In view of the

above, miscellaneous petition is allowed.