

(2010) 02 IPAB CK 0001

In the Intellectual Property Appellate Board

Case No : M.P. Nos. 2/2010, 3/2010 In ORA/66/2008/TM/DEL

V.K. Garg

APPELLANT

Vs

Tarun Enterprises Pvt. Ltd. And Ors.

RESPONDENT

Date of Decision : 19-02-2010

Acts Referred:

Intellectual Property Appellate Board (Procedure) Rules, 2003 — Rule 11
Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2010) 02 IPAB CK 0001

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

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Usha, J

1. Miscellaneous Petition Nos. 2 & 3 of 2010 are filed by the applicant to substitute the name of Y King Tools Manufacturing Company Limited, the assignee in the place of Mr. V.K. Garg, Proprietor M/s. Pro Trading Company, the assignor and to take on record the documents filed along with the rejoinder filed under Rule 11 of Intellectual Property Appellate Board (Procedure) Rules, 2003 respectively.

Miscellaneous Petition No. 2/2010

2. The miscellaneous petition was filed on the ground that there has been an agreement entered into between Mr. V.K. Garg, Proprietor of M/s. Pro Trading Company and M/s. Y King Tools manufacturing Company Limited. A deed of assignment dated 31/03/2009 has also been annexed. Hence, the substitution application. Necessary steps have also been taken to bring on record the change before the Registrar of Trade Marks.

3. The 1st Respondent filed their counter to the miscellaneous petition opposing

the substitution on various grounds. The main ground was that no application on Form TM-23 has been filed which should have been filed within six months. All the registered trade marks though assigned, the application on Form TM-23 did not mention all the registrations.

4. We have heard both the counsels. The counsels re-iterated what was stated in the miscellaneous petition and the counter respectively.

5. We have considered the arguments of the counsels and have gone through the pleadings and documents. The miscellaneous petition is for

substituting the name of the assignee in the place of the assignor the present applicant. The necessary documents like the deed of assignment as well

as to bring on record the subsequent proprietor necessary application before the Registrar of Trade Marks are placed before us and we are of the

view that the proposed applicant is only taking the position of the present applicant. The rights in the trade mark have been assigned to the proposed

applicant. Any change or amendment should not affect the interest of the other party. The miscellaneous petition is allowed with a direction to the

applicant to file the amended copy of the application within two weeks from the date of receipt of this order and the Respondent No. 1 may file his

additional counter statement, if any, within a period of two weeks thereafter.

Miscellaneous Petition No. 3/2010

6. Miscellaneous petition to take on record the documents filed along with the rejoinder to the counter statement. The applicant has taken out this

miscellaneous petition and has stated the reasons for not filing those documents along with the main application. The reason was that those documents

were not readily available at that point of time as it was misplaced in the auditors office.

7. The Respondent No. 1 filed their counter denying the various averments and had also stated that the reasons given for the delay are not clear and

the miscellaneous petition ought to be dismissed.

8. Both the counsels re-iterated what was stated in the miscellaneous petition and counter respectively. The counsel for the Respondent No. 1 during

the arguments relied on the provisions of Order 7 Rule 11 Code of Civil Procedure and submitted that the documents should have been filed at the

time of filing the application for rectification.

9. On perusal of the miscellaneous petition it is clear that the documents have already been filed along with the rejoinder as per the provisions of Rule 11 of the Intellectual Property (Procedure) Rules, 2003. The miscellaneous petition is only to take on record those documents. As per Rule 11 it is clear that the applicant may file his reply to the counter statement along with the documents and the same have been filed as per the rules. In such circumstances we do not think it necessary to decide the issue of delay at this stage. Therefore, the documents already filed along with the reply are taken on record and the miscellaneous petition is allowed. There shall be no order as to costs in both the miscellaneous petition.