

(2023) 03 DEL CK 0095

Delhi High Court

Case No: C.A.(COMM.IPD-PAT) No. 10 Of 2021, I.A. No. 13552 Of 2021

Dolby International Ab

APPELLANT

Vs

Assistant Controller Of Patents
And Designs

RESPONDENT

Date of Decision: March 14, 2023

Acts Referred:

- Patents Act, 1970 - Section 2(1)(j), 2(1)(ja), 3(k)

Hon'ble Judges: C.Hari Shankar, J

Bench: Single Bench

Advocate: Vindhya S. Mani, Gursimran Singh Narula, Harish Vaidyanathan Shankar, Srish Kumar Mishra, Sagar Mehlawat, Alexander Mathai Paikaday

Final Decision: Allowed

Judgement

C.Hari Shankar, J

1. This appeal assails the order dated 29th January 2021 whereby Application No. 6570/DELNP/2009, of the appellant, has been rejected by the Assistant Controller of Patents.

2. I am constrained to observe that the impugned order, to say the least, most unsatisfactorily drawn up – it is hardly possible to treat it as written or drafted. To illustrate why I am constrained to express my anguish thus, I deem it appropriate to place the impugned order on record in the form of a screenshot thus:

3. It is impossible to understand, from the impugned order, where the reference to the claims begins, what part refers to the FER and where one is to find the reasoning of the Assistant Controller. In fact, in para 6 of the impugned order, a full page has been devoted to what appears to be a part of a diagram which has been cut and pasted by

the Assistant Controller apparently for no reason whatsoever.

4. Let us try to deconstruct the impugned order. Para 1 is formal. Para 2 cuts and pastes the objection which was found outstanding from those in the First Examination Report (FER), as communicated to the appellant by the Controller. Para 4 first reproduces the claim in the patent application and, thereafter, sets out the response of the appellant thereto. Para 5 initially records the observation of the Assistant Controller that he did not “find the submission persuasive” in view of the reasons which follow. What follows, however, is only the claim of the appellant in its application. Para 6, thereafter, starts with the reassuring comment that the “oral argument and written submission of the agent of the appellant have been carefully considered”. Thereafter, however, the impugned order first reproduces the objection in the FER relating to Section 3(k) of the Patents Act – which was, incidentally, not found “outstanding” in the notice of hearing, which merely sought the appellant’s response relating to Section 2(1)(ja). It then reproduces part of the drawing of the apparatus in question, with neither prelude nor preface, and with no clarification why it does so. The diagram too, incidentally, is not reproduced in full and, as reproduced, makes no sense whatsoever. Then follows the single sentence which may, if at all, be regarded as “reasoning” in the impugned order:

“Here the apparatus explained have no physical presence but only a method of programming as seen above (204, 222, 212) etc.”

Here, again, there is no reason forthcoming, whatsoever, for this finding. The impugned order, thereafter, sets out “VUI parameters” for the claimed invention, followed by a cut-and-paste reproduction of the objections regarding Section 2(1)(ja) as contained in the notice of hearing and the FER. Three prior arts, denoted as D1, D2 and again D1, are referred to therein. There is no reference, whatsoever, to the appellant’s explanation in response to the objections, and the order concludes, laconically, with the comment that “the substantive requirement of the Patents Act, 1970 i.e. section 2(1)(j) are not found complied with”. In so holding, the Assistant Controller also seems to have overlooked the fact that the objection was predicated not on Section 2(1)(j) but on Section 2(1)(ja). The application is ultimately rejected on the ground of Section 3(k) – which finds no place in the notice of hearing issued to the appellant – and Section 2(1)(j), which was never invoked at any stage.

5. Ms. Vindhya S. Mani is correct in her submission that the only single sentence in the impugned order of ten pages which can be likened to any kind of reasoning is this:

“Here the apparatus explained have no physical presence but only a method of programming as seen above (204, 222, 212) etc.”

6. Apart from the aforesaid sentence, there is no reasoning in the entire impugned order.
7. The Assistant Controller appears to be thoroughly confused both as to the nature of the claim for which the application was made as well as objections raised in the FER and in the notice of hearing. For example, with respect to the objections relating to Section 2(1)(ja), the impugned order first cuts and pastes the objections in the FER which is predicated on two prior arts noted as D-1 and D-2. Thereafter, it cuts and pastes part of notice of hearing and table from the FER, which refers to a third prior art, also denoted as D-1. Thereafter, without the courtesy of referring to the prior art with respect to which the Assistant Controller found a lack of inventive step, the order merely states that “the substantive requirement of the Patents Act, 1970, i.e. Section 2(1)(j) are not found complied with”. In fact, the impugned order reflects that parts – often incomplete – of various documents have been randomly cut and pasted together, leaving the reader of the order to divine, for himself, the reason why.
8. This Court is, frankly, aghast at the manner in which the impugned order has been passed. Such cut-and-paste orders do little justice to the solemn functions which have been entrusted on the officers in the office of the Controller of Patents and Designs. It is solely because of the completely arbitrary manner in which the impugned order has been passed, that the Court is not in a position to examine the order on merit. The appellant, having applied for a patent, has suffered an FER, a notice of personal hearing and, thereafter, the impugned and completely incomprehensible order, rejecting the appellant’s application.
9. It would well for the officers in the office of the Controller of Patents and Designs, who are discharging such functions, to bear in mind the fact that grant or rejection of a patent is a serious matter. A patent is meant to be a recognition of the innovative step that has been put into a crafting of an invention. Inventions increment the state of existing scientific knowledge and, thereafter, are of inestimable public interest. Any decision, whether to grant or refuse a patent has, therefore, to be informed by due application of mind, which must be reflected in the decision. Orders refusing applications for grant of a patent cannot be mechanically passed, as has been done in the present case.
10. The Officer adjudicating the claim for registration of a patent must bear in mind the fact that the life of a patent is reckoned from the date when the application is made, and not from the date when the patent is granted. Unreasonable delay in grant of a patent results in reduction of the residual life of the patent, which can itself be a serious disinclination for inventors who seek to invent new and innovative methods, products or processes.

11. The impugned order, which cannot be said to satisfy even the most fundamental requisites of an order adjudicating on a claim for registration of a patent is, therefore, quashed and set aside.

12. The matter is remanded to the Controller of Patents for reconsideration. Prior to deciding the matter afresh, the appellant shall be granted a hearing. Needless to say, the matter would not be decided by the officer who has passed the impugned order. Let the aforesaid exercise be completed and order passed within two months from today.

13. Needless to say, the de novo consideration would proceed completely uninfluenced by the impugned order.

14. This appeal is allowed accordingly. Miscellaneous applications does not survive for consideration and stand disposed of.