



2023:CHC-OS:2304

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
INTELLECTUAL PROPERTY RIGHTS DIVISION

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

IPDPTA/3/2023

BASE SE (OA/7/2019/PT/KOL)
VERSUS
DEPUTY CONTROLLER OF PATENTS AND DESIGNS

For the appellant	: Ms. Vindhya S. Mani, Advocate Ms. Diya Mal, Advocate
For the Controller	: Mr. Indrajeet Dasgupta, Advocate Mr. Sourav Sengupta, Advocate
Heard on	: 16.09.2025
Judgment on	: 16.09.2025

Ravi Krishan Kapur J.

1. This is an appeal under section 117A of the Patents Act 1970 against an order dated 14 February 2018 passed by the Deputy Controller of Patents and Designs rejecting Patent Application No. 753/KOLNP/2009 dated 26 February 2009.
2. Briefly, the application initially titled "Pesticidal Mixture" comprised of 24 claims and the following active components, (a) an anthranilamide compound (b) at least one fungicidal compound selected from a group of compounds which are fully enumerated in the invention. The invention is aimed towards protecting plants from pests which include harmful fungi by using a mixture of compounds. In conclusion, the invention provides



a method for treating, controlling, preventing and protecting against infestation or infection by parasites which ultimately involves orally, tropically or parentally administering the compound mixture.

3. Upon filing of the application, the same was objected to in the First Examination Report dated 13 October 2014 where 24 claims were qualified under sections 2(i)(j), 3(e) , 3(h) and 3 (i) of the Act. In response to the FER, the claims were amended and reduced to 18. There was also a change to the title of the invention i.e. "Pesticidal Mixtures Comprising an Anthranilamide Compound".
4. Subsequently, a hearing notice was issued. By an order dated 8 July 2016 amended claims nos. 1 to 9, 17 and 18 were qualified under section 2(1)(j) and 3(e) of the Act and further amended claims 10-16 were qualified under section 3(h) and 3(i) of the Act. The amended claim no.18 was also qualified under section 3(d) of the Act. Pursuant to the above, the appellants filed their Written Submissions and further reduced their claims to 17. Diverse hearings were held and various interim orders were passed from time to time. Ultimately, the Deputy Controller granted claims 1-9 and 17, claim nos. 10-16 rejected under section 3(h) of the Act and the appellant was directed to cause necessary amendments.
5. On behalf of the appellant, it is contended that section 3(h) of the Act has no application whatsoever and the impugned order has been passed in violation of the principles of the natural justice. No effective opportunity of being heard was granted to the appellant. The impugned order



proceeds on a misinterpretation of the provisions of section 3(h) of the Act. The Written Submissions filed by the Controller have also not been adverted to. In any event, the respondent Controller ought to have granted a partial grant in respect of claim nos. 1-9 and 17. In support of such submissions, the appellant relies on an unreported decision dated 6 April, 2023 passed in *AID 15 of 2022 Protean Electric Ltd. vs. The Controller of Patents and Designs ; Siemens Engg. & Mfg. Co. of India Ltd. vs. Union of India (1976) 2 SCC 981*; Unreported decision dated 30 October 2023 passed by the High Court at Delhi in *C.A.(COMM.IPD-PAT) 471/2022 Syngenta Crop Protection AG vs. Assistant Controller of Patents; Low Heat Driers (P) Ltd. vs. Biju George and Ors. 2010 (2) KHC 566*.

6. On behalf of the respondent it is contended that, the impugned order has been passed under section 21 of the Act and is not appealable. There is no challenge to the prior order dated 5 December, 2017. In any event, there is no scope of granting any partial grant of patent in respect of part of the claims i.e. claim numbers 1 to 9 and 17. In any event, the interpretation of section 3(h) of the Act does not warrant any interference whatsoever. There has also been no violation of the principles of natural justice. In such circumstances, the appeal is liable to be rejected both on maintainability and on merits.
7. For convenience, sections 3(h), 3(i), 3(j), 15 and 21 of the Act and Rule 24B of the Rules are as follows:



3. What are not inventions.—*The following are not inventions within the meaning of this Act,—*

(h) a method of agriculture or horticulture;

(i) any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.

(j) plants and animals in whole or any part thereof other than micro organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals.

15. *Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.*

21. *Time for putting application in order for grant.—(1) An application for a patent shall be deemed to have been abandoned unless, Within such period as may be prescribed, the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.*

Explanation.—Where the application for a patent or any specification or, in the case of a convention application or an application filed under the Patent Cooperation Treaty designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has re-filed it or the applicant proves to the satisfaction of the Controller that for the reasons beyond his control such document could not be re-filed.



(2) If at the expiration of the period as prescribed under sub-section (1),— (a) an appeal to the High Court is pending in respect of the application for the patent for the main invention; or

(b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the High Court may determine.

(3) If the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under subsection (1), to such further period as he may determine: Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court.

24B. Examination of application.

(5) The time for putting an application in order for grant under section 21 shall be six months from the date on which the first statement of objections is issued to the applicant to comply with the requirements.

(6) The time for putting an application in order for grant under section 21 as prescribed under sub-rule (5) may be further extended for a period of three months on a request in Form 4 for extension of time along with prescribed fee, made to the Controller before expiry of the period specified under sub-rule (5).

8. It is contended on behalf of the respondent that the appeal is not maintainable since the impugned order has been passed under section 21 of the Act. In support of such contention, the respondents have relied on the orders dated 5 December 2017 read with the order dated 1 February 2018. On the basis of such orders, it is contended that the impugned order has been passed under section 21 of the Act and is not appealable.



9. A reading of the impugned order would demonstrate that the same has been passed under section 15 of the Act. The merit of the matter was considered for the first time and findings returned only in the impugned order. Prior thereto, there is no finding nor decision on the contentions raised by the parties. The impugned order finds that “both the submissions are not persuasive” and it has also been held “*I hereby refuse to proceed further with this instant patent application number 753/KOLNP/2009 under section 15 of the Act.*” To this extent, all prior directions, orders and communications are deemed to have merged with the impugned order.
10. Under the scheme of the Act, the question of abandonment in terms of section 21 of the Act is arrived at only when an applicant fails to comply with the requirements imposed under the Act. To this extent, there is a distinction inasmuch as section 15 requires “satisfaction of the Controller”. In *Telefonaktiebolaget LM Ericsson (PUBL) vs. Union of India (UOI) and Ors.* 2010 (44)PTC 249 (Del), it has been held as follows:

14. Where in response to an examination report, an applicant does nothing by way of meeting the objections raised therein within the time stipulated, and does not seek extension of time for that purpose only then it can be said that such application should be “deemed to have been abandoned”. If he has replied but such reply is not found satisfactory, even after a further opportunity if any is given, then the Controller should proceed to take a decision in terms of Section 15, after complying with Section 14 of the Act.

15. As pointed out in Ferid Allani “abandonment” requires a conscious act on the part of the Petitioner which would manifest the intention to abandon the application. That judgment also refers to Section 80 of the Act and Rule 138 of the Patents Rules which gives discretionary powers to the Controller to extend the time for complying with a requirement. In the instant case the



Petitioner responded to each of the objections set out in the examination report in writing within the time prescribed. It cannot, therefore, be said that it failed to respond to the objections and, therefore, did not comply with the requirements imposed on it under the Act. In other words, the basic factual condition for attracting the deemed fiction of “abandonment” in terms of Section 21(1) of the Act, was non-existent in the instant case.

11. Similarly, in *The European Union vs. Union of India and Ors.*

2022:DHC:2301, it has been held as follows:

"58. The decisions discussed above would show that inadvertent errors or errors of patent agents have been liberally considered by the Court. The consequences of patent being abandoned is quite extreme Le., the Applicant is deprived of exclusivity for the invention completely. In the opinion of the Court, such a consequence ought not to visit the applicant for no fault of the Applicant. In the facts of these cases, the Applicant had no intention to abandon the application. It has taken all measures possible to prosecute these applications. The Applicant was conscious of the fact that the patent may be maturing for examination and took the initiative to keep in touch with the patent agent from the very inception."

12. In view of the above, the impugned order is not one of deemed abandoned as contemplated under section 21 of the Act but has been passed after consideration of the merits of the case under section 15 of Act. There is no conscious act on the part of the appellant which demonstrates an act to abandon. Thus, there is no merit in the contention of maintainability and the same is rejected.

13. Before advertng to section 3(h) of the Act, it is necessary to appreciate the true scope, purport and ambit of section 3(i) of the Act. The deletion of the word “plants” in section 3(i) by the Patents Amendments Act 2002 was intentional. Parliament had omitted “plants” in section 3(i) because non granting patents to a method or treatment of plants were considered



to be in violation of the TRIPS (Trade Related Aspects of Intellectual Property Rights) Agreement. In this context, the Ayyangar Committee had recommended as follows:

Clause 3- What is not patentable -

331. Para (d). Patents for inventions in the field of plant propagation by asexual methods which would fall under para (d)) are specifically permitted by the Patents Acts of the U.S.A. and of South Africa, but not in any other country. They have never been granted in India and the enactment of para (d) will remove any doubt that might exist as regards the patentability of such inventions.

14. Significantly, the Ayyangar Committee had suggested exclusion in section 3(i) in order to ‘*remove any doubt*’ as to the patentability of inventions in the ‘*field of plant propagation by asexual methods*’. Insofar as section 3(h) of the Act is concerned, the Ayyangar Committee, noted that methods of agriculture or horticulture were generally considered inherently unpatentable across the globe (except in the US and South Africa). As a consequence, the scope of section 3(h) should be interpreted to remain narrow and specific. In classifying and qualifying a patent application under section 3(h) of the Act, the Controller is to scrutinize whether the invention genuinely constitutes “a method of agriculture or embodies an innovative technical solution to agricultural challenges that might not fall within the exclusion of section 3(h) of the Act.” This requires a clear distinction between purely agricultural methods and those with technical or scientific foundations which address agricultural



problems. Thus, section 3(h) can only be aimed at a method of agriculture and not a method of treatment of plants. (Unreported decision dated 23 February 2024 passed by the High Court at Delhi in *C.A.(COMM.IPD-PAT) 196/2022 Mitsui Chemicals Inc vs. Controller of Patents @para 14*).

15. In conclusion, section 3(h) of the Patents Act, 1970, excludes from patentability “a method of agriculture or horticulture.” This provision reflects the legislative intent to preserve traditional and essential public-interest activities such as farming and gardening from being monopolized through exclusive rights. In such circumstances, unless the claimed invention is directly and integrally connected to traditional agricultural activities, it cannot be excluded under this clause. There is a need to distinguish between biological processes and human-invented, technical processes which points towards a narrow interpretation of section 3(h). There is a growing recognition that innovations at the intersection of science and agriculture should not be denied patent protection solely on the basis of broad textual construction. Section 3(h) remains a policy based exclusion to prevent monopolization of core agricultural practices and nothing else. *[(Decco Worldwide Post Harvest Holdings B.V. vs. Controller of Patents & Designs, (AID No.11 of 2021, passed by this court on 19 May, 2023); Monsanto Technology LLC v. Nuziveedu Seeds Ltd., (2019) 3 SCC 381]*.



16. *Prima facie*, an examination of the present application does not indicate that it can be described as a method of agriculture. On the contrary, there is a clear combination of compounds involving human and scientific and technical intervention which is contemplated under the invention and this aspect of the matter has been ignored in the impugned order. In any event, there are no reasons whatsoever in the impugned order in concluding that the subject invention was not patentable under section 3(h) of the Act. (Unreported decision dated 19 May, 2023 in AID No.11 of 2021 *Decco Worldwide Post Harvest Holdings B.V. and Ors. Vs. The Controller of Patents and Designs and Ors.* Para 10 & 11 and *Unreported decision dated 30 October 2023 in C.A.(COMM.IPD-PAT) 471/2022 Syngenta Crop Protection AG vs. Assistant Controller of Patents* Para 23 & 25).
17. In view of the above, the impugned order is unsustainable as it also misinterprets and erroneously concludes that the subject application falls within section 3(h) of the Act. A broad and literal interpretation whereby anything remotely to do with agriculture or horticulture is deemed to be unpatentable is unsupportable. Significantly, claims 10-16 mentions methods for controlling of crops from various threats by using compounds in claims 1-9 and there has been no discussion of the same in the impugned order.
18. Insofar as the plea for partial grant is concerned, the same is misconceived. A “partial grant” of a patent, wherein some claims are



accepted while others are left unresolved, unpatentable, or indefinitely pending is not contemplated within the statutory framework of the Act or the Rules thereunder. A patent may be granted only when the applicant has amended the claims appropriately and brought the application wholly “*in order for grant*” in accordance with the law. The Act and Rules lay down a structured and time-bound process for examining and disposing of patent applications. Since patents confer statutory monopoly rights, they are granted only when an invention meets the legal requirements of inter alia novelty, inventive step, industrial applicability, and are not excluded from patentability.

19. Once a valid examination request is filed (section 11B), the Controller refers the application to an examiner (section 12) who conducts a substantive examination. Based on this, the First Examination Report (FER) is issued (section 14), listing all objections—typically regarding patentability (sections 2(1)(j), 2(1)(ja)), exclusions under sections 3 and 4 and issues relating to disclosure, clarity, and support of claims under section 10(4). In addition, under section 15, read with Rules 28 and 28A, the Controller may either reject the application or require necessary amendments to ensure compliance. Thus, the Controller has the authority to demand that any non-compliant claim be either corrected or deleted.
20. On a proper and complete reading of the Act and the Rules framed thereunder, the legislative scheme does not permit nor contemplate



leaving some claims in perpetual suspension while permitting 'partial grant' for other claims. It is axiomatic that the Act entrusts the applicant not the Controller with the responsibility to amend claims and put the application in order for grant. The Controller cannot unilaterally amend the specification and may only act post an applicant's compliance, whether in response to directions under section 15 or by way of voluntary amendment requests under sections 57 and 59, read with Rule 14.

21. On a combined reading of the relevant provision of the Act and the Rules framed thereunder, it is evident that the Controller does not have any express power to allow part of the claims and reject other claims. Nor does the Act or the Rules contemplate such an order for partial grant of patent. The claims of a specification relate to a single inventive concept and the grant of a partial patent is destructive to the entire basis for a single inventive concept. (*Manual of the Patents Office Practice and Procedure, version 3.0 dated 26 November, 2029*).
22. The grant of a patent signifies a conclusive determination of patentability for the entire scope of claims presented. In any event, the statutory framework inherently precludes the possibility of maintaining unpatentable claims in an indefinite "pending" status within the same application. The question of retaining partially accepted claims within a single application also goes against the rationale of section 16, which allows for the filing of divisional applications. This section permits an



applicant to file a separate application for any distinct invention disclosed in the original specification, moreso when objections are raised regarding lack of unity of invention. This ensures that each distinct invention gets a separate and duly examined patent. If applicants are permitted to leave rejected or unrelated claims pending in cases of a partially granted parent application, the incentive to file divisional applications would not remain. This would also erode the systematic framework which ensures orderly prosecution and the separation of distinct inventions into appropriately granted patents.

23. In addition, “partial grants” undermine the principle of *unity of invention* which lies at the core of the Act. The requirement of unity ensures that a patent protects a single, cohesive inventive concept, thereby preserving clarity, precision, and legal certainty necessary for both patentees and the public. Allowing fragmented or partial claims dilutes this foundational requirement, and opens the floodgates to ambiguous monopolies, unjustified extensions of protection, and undue advantage to applicants at the cost of statutory discipline. Such a practice erodes the structural integrity of the patent system and defeats the balance between incentivizing, innovation and safeguarding public interest. In the above facts and circumstances, prayer for partial grant of patent is untenable and stands rejected.
24. For the above reasons, the impugned order is set aside. The matter is remanded back to the Controller to decide the subject application afresh



in accordance with law. The Controller is to complete the above exercise and decide the same within a period of 3 (three) months from the date of passing of this order and after giving a right of hearing to the applicant. It is clarified that the Controller is not bound by any observation or finding in this order.

25. With the above directions, IPDPTA/3/2023 stands disposed of.

(Ravi Krishan Kapur, J.)