

OCD-2

ORDER SHEET

IA No. GA/1/2023

In

IPDPTA/115/2023

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

[Commercial Division]

GTZ (INDIA) PVT. LTD.

-VS-

WEST BENGAL CHEMICAL INDUSTRIES LTD. AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : October 3, 2023.

Appearance:

Mr. Sayan Roy Chowdhury, Adv.

Mr. Tanmay Roy, Adv.

Mr. Soumen Mukherjee, Adv.

...for the petitioner

Mr. Saunak Sarbajna, Adv.

Mr. Sarosij Dasgupta, Adv.

Mr. Rohan Chatterjee, Adv.

...for the respondent no.1

The Court: The petitioner has filed the present application being GA/1/2023 praying for direction upon the concerned department to correct the case code of the present revocation application being IPDPTA No.115/2023 to IPDPAT and register the said application under the category of IPDPAT.

The petitioner has filed the present application under Section 64 of the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 for revocation of Indian Patent No. 370845 dated 31st March, 2017 granted to West Bengal Chemical Industries Limited, defendant no.1 herein.

At the time of filing of the present application under Section 64 of the Patents Act, 1970, the petitioner in the Presentation Form has mentioned the case type code as IPDPTA instead of IPDPAT. As per Notification dated 22nd November, 2022, original application filed under Section 64 of the Patents Act, 1970 is to be registered as IPDPAT and not under IPDPTA. As per the said Notification, IPDPTA is an appeal under The Patents Act but admittedly this is not an appeal under The Patents Act.

Counsel for the respondent no.1 has raised objection and submits that the petitioner has filed the application as an appeal and as such he has mentioned the case type code as IPDPTA and not IPDPAT. Counsel for the respondent no.1 also submits that he has taken the point of maintainability of the application filed by the petitioner on the same ground that this is an application not an appeal and at this stage if this Court will allow the petitioner to correct the case code from IPDPTA to IPDPAT, the defence of the defendant will be defeated.

Counsel for the respondent no.1 has further raised objection stating that IPDPTA No.115/2023 has been provided in the instant application and at this stage if this Court allows the petitioner to correct the case code as IPDPAT instead of IPDPTA, the number provided by the Office in IPDPTA/115/2023 will remain showing as pending in the system and the number 115/2023 could not be provided in IPDPAT. He has also submitted that the petitioner has not prayed for giving a separate number in the IPDPAT and as such the application filed by the petitioner is liable to be dismissed.

Considered the submission made by the counsel for the respective parties.

Perused the present application and the revocation application filed by the petitioner.

In the cause title of the revocation application, the petitioner has categorically mentioned that the petitioner has filed the present application under Section 64 of The Patents Act, 1970 as amended by The Patents (Amendment) Act, 2005 against the defendant no.1 company but it is found from the record that in the Presentation Form the petitioner has mentioned the case code as IPDPTA and the department has also registered the said case as IPDPTA and number has been provided. Admittedly, the petitioner has filed the present application under Section 64 of The Patents Act, 1970 and as per the notification dated 22nd November, 2022, any application filed under Section 64 of the Patents Act, 1970, the same is to be registered as IPDPAT instead of IPDPTA. IPDPTA is provided for appeal under the Patents Act, 1970.

In view of the above, this Court finds that the petitioner has inadvertently mentioned the case code as IPDPTA. Admittedly, the petitioner has filed an application under Section 64 of the Patents Act, 1970 and as such, if the case code is changed to IPDPAT from IPDPTA, none of the parties will be prejudiced and the rights of the respondent will remain there and he can challenge the application filed by the petitioner for revocation on merit.

In view of the above, the department is directed to correct the case code number of the present application by deleting IPDPTA/115/2023 and by giving a fresh case code number as IPDPAT.

The application being GA/1/2023 is thus disposed of.

The department is directed to correct the same within two weeks.

Affidavit-of-service filed by the petitioner be kept with the record.

(KRISHNA RAO, J.)