



IPAB Intellectual Property Appellate Board
balancing ip-protection

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MP.NO. 12/2020 & 46-47/2020 IN ORA/2/2020/PT/CHN

TUESDAY, THIS THE 29TH DAY OF DECEMBER, 2020

**HON'BLE SHRI JUSTICE MANMOHAN SINGH
HON'BLE DR. B.P. SINGH**

**CHAIRMAN
TECHNICAL MEMBER (PATENTS)**

ANAGHAYA MILLION PHARMA LLP
2389, HUDSON LANG NEAR GTB
METRO STATION, KINGSWAY
CAMP, NEWDELHI- 110009

.... PETITIONER

(Represented by: Ms. Subha Shiny & Mr. Akash Suresh)

Versus

1.NIPPON SODA CO. LTD.,
2-LOHTEMACHI Z-CHOME,
CHIYODA-KU,
TOKYO 100-8165 JAPAN

..... RESPONDENT NO. 1

(Represented by: Mr. Solomon J. David)

2. THE CONTROLLER OF PATENTS,
BHOUDHIK SAMPADA BHAVAN,
GST ROAD,
GUINDY, CHENNAI - 600 032

.....RESPONDENT NO. 2

(Represented by: None)

ORDER

Hon'ble Shri Justice Manmohan Singh, Chairman

Hon'ble Dr. B.P. Singh, Technical Member (Patents)

1. This revocation petition has been filed by the ANAGHAYA MILLION PHARMA LLP under section 117D of the Patents Act,1970 for revocation of the Patent No. 280086 granted in pursuance of the patent application no 5365/CHENP/2011 in the name of NIPPON SODA CO. LTD, Respondent no.1, herein.

2. The petitioner has made the following statements with regard to their *locus standi*:
 - 2.1 The Petitioner herein is a pharmaceutical firm engaged in the research and development of compounds related anti-viral and anti-bacterial compounds which are used for management of respiratory afflictions. Influenza is one of the most prevalent infections caused by influenza virus, and epidemic every year in the world. Highly pathogenic avian influenza virus A(H5N1) in humans was identified in Hong Kong in 1997 and continuously causes outbreaks. Avian influenza A(H7N9) in 2013 in China, and pandemic influenza A(H1N1) in 2009 which caused 17,700 deaths in 2009, are of public health concern. Recently, viruses mediated by arthropod or wild animals are spreading in the world. Outbreaks of Ebola and Lassa viruses in Western Africa in 2014 raised a social concern over prevention and therapy if they occur. These viruses are highly pathogenic and cause fatal infections. The petitioner is conducting research on these compounds including favipiravir. As such the Petitioner has an interest in the anti-viral compounds and is an interested person.
3. Respondent No.1 herein, has filed a Miscellaneous Petition and raised the issue of *locus standi* of the Petitioner.
4. Hence, before going on the merit of the Revocation application, we have decided to first address the issue of *locus standi* of the petitioner to file this revocation petition.
5. On the last date of hearing on 14/12/2020, Mr. Akash Suresh, learned counsel appeared on behalf of the Applicant and sought adjournment on the ground that the main counsel Ms. Subha Shiny was unavailable. Mr. Solomon J. David, learned counsel who appeared on behalf of the Respondent No.1, strongly opposed the

adjournment. He pressed that they have filed a Miscellaneous Petition for dismissal of this revocation petition to be heard first as the petitioner lacks *locus standi*. It was stated by him that the Revocation Petitioner is a benami person who has filed the revocation and he is not the 'person interested' as envisaged in the Patents Act, 1970. It is also stated by the counsel of the respondent No.1 that the Petitioner as well as the same counsel has filed an earlier revocation application No. ORA/11/2020/PT/DEL, which was subsequently withdrawn after issuing the direction to giving the details of the Revocation Petitioner.

6. Later, Ms. Subha Shiny, learned counsel appeared on behalf of the Petitioner. On completion of the arguments, learned counsel of the petitioner expressed her willingness to withdraw the petition as she was unable to establish the *locus standi* of the petitioner to file the present revocation petition. The Board however, decided to pass a speaking order, in the interest of justice.

7. It is the case of the Respondent No.1 that :

7.1 The Respondent No. 1, Nippon Soda Co. Ltd., a company organized under the laws of Japan, having registered address of 2-1 Ohtemachi 2-chome, Chiyoda-ku, Tokyo 100-8165 Japan is engaged in the business of manufacturing and marketing of various agrochemicals, and pharmaceuticals.

7.2 The Respondent No. 1 is very well known and established agrochemical and pharmaceutical company. The Respondent No. 1 enjoys a very high reputation for its products because of its excellent quality and reasonable price. The products manufactured by the Respondent No. 1 under different brands enjoy and command high reputation amongst farmers, medical practitioners, trade and public and its products are sold all over the world. The Respondent No. 1 company is also engaged in extensive research and development of agrochemicals and

pharmaceuticals products and its preparations. The Respondent No. 1 work in the fields of agrochemicals, pharmaceuticals, functional materials, and precise synthetics as its four priority directive fields, and while performing regular strategic and systematic reviews in response to rapid changes in the business environment and technological progress, it work to bolster its core businesses by strengthening development in the peripheries of its priority businesses and to rise to the challenge of creating new businesses in the fields of agrochemicals, pharmaceuticals, environment, and information. To achieve these efforts, Respondent No. 1 has the Odawara Research Center (Odawara, Kanagawa) and Chiba Research Center (Ichihara, Chiba), as well as the production technology research centers located within the Nihongi, Takaoka, and Chiba plants. In the years 2018 and 2019, the Respondent No. 1 has spent over 12,368 million Japanese yen (about USD 112 million) on research and development. The Respondent No. 1 has employed over 350 peoples in the field of research and development.

7.3 It is submitted that the Petitioner (ANAGHAYA MILLION PHARMA LLP) has filed the above revocation petition before this Hon'ble Board for Revocation of our Patent No. 280086. The Respondent No. 1 has corresponding granted patents in USA, EP, Japan, China and South Korea. Neither a pre-grant opposition nor a post-grant opposition was filed against the IN 280086. The said Patent covers a "METHOD FOR PRODUCING DICHLOROPYRAZINE DERIVATIVE" and was granted on 14 January 2010.

7.4 It is submitted that the Revocation Petitioner has also filed the following five Revocation Petitions during the same time period.

1. ORA/3/2020/PT/KOL
2. ORA/4/2020/PT/KOL
3. ORA/5/2020/PT/KOL
4. ORA/6/2020/PT/KOL
5. ORA/11/2020/PT/DEL

It is submitted that ORA/11/2020/PT/DEL was listed at multiple occasions for admission and finally appears to be withdrawn by the Petitioner as they could not satisfy the Hon'ble Board about their *locus standi* in filing the revocation petition.

- 7.5 It is submitted that as per the decision of the Hon'ble Supreme Court in Carona Ltd. v. M/s Parvathy Swaminathan & Sons, (2007) 8 SCC 559 and several other cases, it is settled law that judicial authorities are under an obligation to enquire as to whether the "jurisdictional facts", being the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends, exist or not. It is the duty of every court or tribunal to satisfy itself as to its jurisdiction before passing any order on merits.
- 7.6 The Respondent No. 1 most respectfully states that the instant revocation petition is liable to be dismissed in limine on the ground that the revocation petitioner is not a 'person interested' within the meaning of Section 64 read with Section 2(1)(t) of the Patents Act, 1970. Under Section 64, a revocation against a granted patent can be filed only by a "person interested". Section 2(1)(t) of the Act defines 'a person interested' as

“person interested” includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;’ (emphasis added)

7.7 It is our strong contention that the present revocation petition filed by Revocation Petitioner i.e., ANAGHAYA MILLION PHARMA LLP is not maintainable on the sole ground that it has suppressed material facts as to the nature of its existence as an entity and is not qualified to be considered as a “person interested” in filing the revocation petition under the Patents Act, 1970. It is thus our strong contention that the revocation petition is not maintainable on this ground alone.

7.8 According to Section 64 of the Patents Act, 1970 only a "person interested" can file a petition for revocation of a granted patent. Thus, it is mandatory for the Petitioner to establish their interest with supporting documents in invalidating our Patent No. 280086. The interest must be direct and tangible. In the present case, the Petitioner has made only few vague statements in paragraph 1 of the revocation petition which is totally insufficient to establish their "*locus standi*" to file the present revocation petition.

7.9 In the above revocation petition, the Petitioner has stated that their name is ANAGHAYA MILLION PHARMA LLP with address at 2389, Hudson Lane, Near GTB Metro Station, Kingsway Camp, New Delhi- 110009. On conducting a preliminary search in the common public database, it is understood that the Petitioner has a website which is accessible by the url <anaghayamillion.com>. However, on accessing the website, it is noted that the entity's name is mentioned as ANAGHAYA MILLION LLP and not as ANAGHAYA MILLION PHARMA LLP, which is the name of entity as per the revocation petition filed.

Moreover, the address of the entity as per the aforementioned website is A-1209, Agarwal Towers, Nehru Place, New Delhi-110019, which is different from the address stated by the Petitioner in the revocation petition.

7.10 Further, a search was conducted in the records maintained online by the Registrar of Companies and Ministry of Corporate Affairs to verify the Limited Liability Partnership (hereinafter referred as LLP) details of the Petitioner i.e., ANAGHAYA MILLION PHARMA LLP, upon which the following information has been uncovered:

a) no LLP has been registered in the name of the Petitioner i.e., ANAGHAYA MILLION PHARMA LLP in India, so far

b) no name reservations have been made in the name of ANAGHAYA MILLION PHARMA LLP in India, so far

c) no LLP registration or name reservation even in the name of ANAGHAYA MILLION PHARMA LLP (as reflecting in their website) in India, so far

Relevant extracts showing the aforementioned results as obtained from the official e-database of Ministry of Corporate Affairs, Government of India are being enclosed herewith as Annexure A.

7.11 As per Section 11 of the Limited Liability Partnership Act, 2008, it is mandatory for every LLP to register with the Registrar of Companies to obtain the status of LLP. Contravention of the same is punishable under Section 20 of the said Act. As such, from the information available in Government databases, it is understood that ANAGHAYA MILLION PHARMA LLP is not even constituted as registered entity and the Petitioner has thus filed misleading and entirely false statements as to nature of their

existence. Therefore, the Petitioner cannot claim themselves to be "person interested" in filing the above revocation petition.

7.12 Further, in the website accessible by the url <anaghayamillion.com>, it has been claimed that the entity, ANAGHAYA MILLION LLP (referred as AMP in the website which is assumed to be abbreviation of ANAGHAYA MILLION PHARMA LLP) conducts clinical trials as part of their Research and development in India. If the very entity does not exist as per Government database, it escapes logic as to how could ANAGHAYA MILLION PHARMA LLP could have registered under the New Drugs and Clinical Trials Rules, 2019 so as to conduct clinical trials as claimed in their website. Relevant extracts of the website accessible by the url <anaghayamillion.com> is being enclosed herewith as Annexure B.

7.13 The Respondent No. 1 further states that in order dated 8th February 2010 passed by the Hon'ble Delhi High Court in W.P.(c) Nos. 332 of 2010 & 13295, 12006, 8393, 8392 & 8389 of 2009, the Court has made a clear distinction between "person interested" and "any person" (please refer para 13 of the said order). The Hon'ble Court has held that "...In other words, the post-grant opposition and the application for revocation cannot be filed by just about any person who is not shown to be a person who is "interested"...". It is therefore respectfully submitted that the instant revocation is liable to be dismissed in limine on this ground alone. The Respondent No. 1 craves leave before this Hon'ble Board to refer the said order at the time of hearing of the instant petition.

7.14 Respondent No. 1 most humbly submits that in any event, the Petitioner cannot be considered a 'person interested' as per the Act in view of the decision of the Hon'ble Delhi Court in

(Del.) which held as follows:

“60. It must be understood that prior to the amendment in Section 25 in the year 2005, even a pre-grant opposition could be filed only by any person ‘interested’. It is only after the amendment in 2005 that any person can now file the pre-grant opposition. The Act, therefore, makes a distinction between an opposer at the stage of pre-grant opposition, who could be ‘any’ person, and the opposer at the post-grant stage, who could only be a ‘person interested’. The legislative intent is that the right to file a post-grant opposition under Section 25 (2) is restricted to any person interested. The fact that the restriction of the time to file a pre-grant which results from the interpretation given by this court may impact the two classes of pre-grant opposers differently is consistent with the above distinction.

61. While restricting the time period for filing a pre-grant opposition to the time when such patent is granted may inconvenience "any person" who wishes to file a pre-grant opposition, it is certainly not going to inconvenience a "person interested". Even if such ‘interested’ person misses the bus at the pre-grant stage, the right of such person to oppose at the post-grant stage is preserved under Section 25 (2) of the Act. Therefore, the interpretation placed by this Court certainly cannot prejudice a person interested in opposing the grant of patent. As regards any person, other than a person interested, the legislative intent appears to restrict the scope of such person confined to the stage of pre-grant. It would be necessary, therefore, for such person (who may not be an „interested“ person) to be vigilant and to watch out for the date of advertisement of the complete specification and

understand that the limitation for filing a pre-grant opposition begins to run from that date onwards.”

7.15 It is submitted that the Petitioner has failed to provide details relating to research and development carried out by them particularly in the field of invention covered by present patent, scientific articles or papers published by them and details of patent applications filed by them in India and abroad which are mandatory requirement to establish “*locus standi*” in filing the present revocation petition.

7.16 It is therefore submitted that the Petitioner is not a person who is engaged in the research, development, manufacture or production of the product covered in the Patent No. 280086 and as such, it is not a “person interested” within the meaning of the Act. Moreover, this fact, as stated above, is clearly a “jurisdictional fact” and therefore is a preliminary issue that must be determined at the outset before any decision is passed on merits. It is submitted that allowing a person who does not satisfy the statutory requirement to continue to litigate would be contrary to the very object and intention of setting out the different rights. Therefore, in the instant case, it must first be determined if the Petitioner satisfies the requirement as otherwise, the very object of introducing the concept of ‘interested person’ and defining the same to ensure that a Patentee is not made to face challenges to its patent which has been granted after a vigorous process by persons who are not ‘persons interested’ would be defeated. If this Hon’ble Board were to determine such jurisdictional fact at the outset and hold against the Petitioner, substantial judicial time and costs would be saved and the Respondent No. 1 would also be greatly benefited. At the same time, no prejudice would be caused to the Petitioner for the various reasons stated above.

- 7.17 In the circumstances, it is our strong contention that the above revocation petition has been filed on malicious grounds by the Petitioner herein by falsely claiming to be "person interested" as required under the Patents Act, 1970 but in actuality, the Petitioner has no locus standi to initiate the same before this Hon'ble Board, thereby causing grave prejudice to us.
- 7.18 We crave leave of this Hon'ble Board to challenge and contest the issues raised in the revocation petition on merit at further stages.
- 7.19 Further, the revocation petition having been filed by suppressing crucial facts with misleading statements is wrought with legal infirmities and cannot be maintained.
- 7.20 The Respondent No. 1 states that there is no merit in the present revocation petition and that the instant revocation petition is liable to be dismissed in limine on the aforesaid ground alone.
- 7.21 The balance of convenience and inconvenience is wholly in favour of the Respondent No. 1 and against the Petitioner.
- 7.22 It is stated that the Respondent No. 1 will suffer irreparable loss and injury if the present petition is not heard and allowed.
8. This is a very serious issue. We have also reviewed and found that the website of the petitioner shows the following facts in the screen print shown below:

A-1209, Agarwal Towers
Nehru Place,
New Delhi- 110019
info@anaghayamillion.com
www.anaghayamillion.com

Name	Email	Telephone
Message...		
<input type="submit" value="Submit"/>		

9. It is seen that the name and address, all are incorrect and inconsistent with their submission in this revocation petition filed before this Board. Needless to tell that a proceeding such as revocation of granted patent under section 64 of the Patents Act, 1970 needs to be based on very sound footing; firstly the applicant necessarily has to be a 'person interested' and secondly on merit he has to prove that the patent is not maintainable. Therefore, if the objection is raised by the other party on the *locus standi* itself, we cannot for time being, proceed on merit, without deciding the issue of locus.
10. Going by the previous background of the petitioner, while adjudication of ORA/11/2020/PT/DEL, it is fact that the applicant could not establish their *locus standi* even after repeated opportunity provided by this Board to them. Many questions with regard to their income tax details and area of research were posed by this Board to which there was no answer. The Board had chosen to allow the withdrawal of the said application, then.
11. This is just astonishing to note that how the same petitioner can again file second revocation petition.
12. In a very recent judgment in Dhaval Diyora case¹, Hon'ble High Court of Bombay has imposed cost on such filer of pre-grant opposition, who was found to abuse the established system.

¹ Dhaval Diyora vs Union of India and Ors Available at <https://indiankanoon.org/doc/41349461/>

13. Hon'ble High Court in the same case² held as follows before coming to the conclusion:

*“35. The Petitioner has annexed his opposition under section 25(1). The Petitioner has raised detailed grounds stating various scientific facts. The obvious question is how the Petitioner has intricate knowledge of pharmaceutical compounds when he is a businessman engaged in diamond business. We have not been informed about the educational background of the Petitioner. The Petitioner has made no statements on oath. It is argued that the Petitioner has employed a team of researchers. Particulars of these researchers and who pays the team are not given. Credential of the researchers are not informed. That the Petitioner has filed multiple oppositions does take his case further. It can also mean that he is habitual. Considering the totality of the circumstances, **we have serious doubt about the credentials of the Petitioner and find merit in charge of the Respondent no.4 that the Petitioner is a habitual frontman put up by those who intend to only delay the grant of patents.**”[Emphasis added]*

14. Further, Hon'ble Court held in the same case that *“The Petitioner has not been candid with the Court, and we agree with the contention of the Respondent no.4 that the conduct of the Petitioner is an abuse of the process of law.”*

15. Similar instances have been brought to our notice that such practices are even adopted by some elements at Patent office as well, while pre-grant oppositions to drag the case, indefinitely. This practice is very dangerous for a healthy IPR Regime in the Country. While IP Legislation in general and patents in particular are very well balanced legislations, which take care of rights of users as well as producers equally, such elements, who deliberately wish to drag the litigation in

² ibid

definitely, put a blot on the system. Not only the valuable rights of the creators are at stake but the Country's image is adversely affected by such hand full miscreants. While the law is intact to protect everyone's right equally; they should all try to use the system of law properly. No one should be allowed to misuse or abuse the system of law.

16. We are, therefore, inclined to address this issue once for all:

16.1 Filing pre-grant opposition:

16.1.1 The scheme of pre-grant opposition was streamlined vide Patents (Amendment) Act, 2005. A new scheme for post-grant opposition was also introduced.

16.1.2 Prior to this amendment the grant of patent could be opposed only by the "person interested" as defined in section 2(t) of the Patents Act 1970. There was also a provision under then prevailing section 27, that a grant of patent can be refused by the Controller, even without opposition, if prior- publication could come to his notice after acceptance of the application. However, this section was omitted from the statute book after the new scheme of pre-grant opposition was formulated under section 25(1) of the Act. The pre-grant opposition under section 25(1), has been seen by Hon'ble Courts also as aid in examination. It has been held by Hon'ble High Court of Delhi in M/S UCB Farchim case³ that *"This Court finds merit in the contention that the pre-grant opposition is in fact "in aid of the examination" of the patent application by the Controller."*

16.1.3 The main distinction which was brought in the statute through 2005 amendment is widening the *locus standi* of the

³ M/S UCB Farchim Sa vs M/S Cipla Ltd. & Ors Available at <https://indiankanoon.org/doc/187976027/>

person who files the pre-grant opposition. While it was to be filed only 'person interested' previously, the amendment authorized 'any person' to file pre-grant representation.

16.1.4 A look at the relevant portion of the Act:

“CHAPTER V

OPPOSITION PROCEEDINGS TO GRANT OF PATENTS

Section 25

Opposition to the patent

*(1) Where an application for a patent has been published but a patent has not been granted, **any person** may, in writing, represent by way of opposition to the Controller against the grant of patent on the ground—*

.....”

16.1.5 With regard to *locus standi* for filing a pre-grant representation, Hon'ble High Court of Bombay in *Dhaval Diyora vs Union of India and Ors*⁴ held as follows:

20. There is a reason for restricting the pre-grant oppositions before the Controller. The Patents (Amendment) Act, 2005, amended Section 25(1) to permit Any Person to oppose the grant of a patent where an application for a patent has been published, but a patent has not been granted. Earlier this right was restricted to the person interested. By enlarging the locus standi under Section 25(1), the legislature intends to bring transparency in the proceedings before the Controller. Patents confer a monopoly of use. Some monopolies could be detrimental to welfare measures

⁴ Supra 1

for the masses. The widened locus standi now permits any person, which can include researchers, non-governmental organisation, to oppose a patent application by submitting information to the Controller in the interest of the society.

16.1.6 The Court⁵ observed very wisely that:

“33. The Legislative intent to widen the locus standi under the amended Section 25(1) is not to create individual right as such but to provide access to any person to assist the controller in taking a correct decision. The legislature has not conferred this right to be abused.”

17. It is, therefore, that we wish to bring in certain guiding principles, keeping ourselves well within the boundary of law, to curb such abuse of the process of law, by certain elements.

18. The law provides that filing of pre-grant representation can be done from the date of publication and till the grant of patent. What if the patent has been refused by the Controller? Can a pre-grant opposition be still filed as the patent is “not granted” yet. There are instances where the patent was refused by the Controller; the appeal was pending at IPAB. The Board reserved its order, between the date of ‘order reserved’ and the ‘pronouncement of reasoned order’ a pre-grant opposition was filed. Till the time, the reason decision of the Board is pronounced, the Controller’s order, refusing the patent, holds good and if there is no application for patent existing for consideration at the Controller, how the pre-grant opposition could be filed? The argument of the petitioner was that the “patent was not granted”. This argument is absurd and clear violation of the

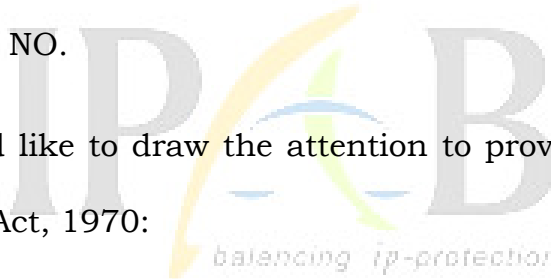
⁵ Supra 1

provisions of the Patent Law. If the patent is not granted then there could be several reasons for it, such as:

- a. The patent application is pending at any stage of the patent processing including secrecy direction etc. or
- b. The patent application was refused and then the Controller's refusal order was challenged at IPAB, and the IPAB decision is still pending, or
- c. The patent application has been refused or
- d. The patent application was abandoned or
- e. The patent application was withdrawn by the applicant himself

Does it mean that since the patent is not granted, any person can file the patent application for any scenario other than above? The answer is NO.

19. We would like to draw the attention to provisions of section 43 of the Patents Act, 1970:



“CHAPTER VIII⁶

GRANT OF PATENTS AND RIGHTS CONFERRED THEREBY

Section 43

Grant of patents

(1) Where an application for a patent has been found to be in order for grant of the patent and either-

(a) the application has not been refused by the Controller by virtue of any power vested in him by this Act; or

(b) the application has not been found to be in contravention of any of the provisions of this Act,

⁶ Available at <http://ipindia.nic.in/writereaddata/Portal/ev/sections/ps43.html>

the patent shall be granted as expeditiously as possible to the applicant or, in the case of a joint application, to the applicants jointly, with the seal of the patent office and the date on which the patent is granted shall be entered in the register.

(2) On the grant of patent, the Controller shall publish the fact that the patent has been granted and thereupon the application, specification and other documents related thereto shall be open for public inspection.”

20. As per the teaching of section 43(1)(a) as shown above, if a patent has been refused by the Controller, it can never be granted. Does it mean that on the same principle, that till it is granted, a pre-grant can be filed and entertained? No.

20.1 **We, therefore, recommend that the electronic filing module of the Patent Office for accepting pre-grant opposition to be carefully modified so that no such pre-grants are unduly accepted where the application for patent is not subsisting. It should need validation as to whether the patent application, against which this pre-grant is filed, is alive or not.**

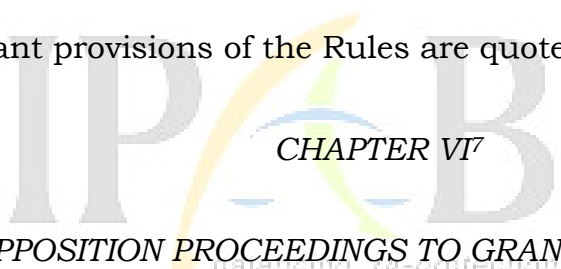
20.2 **To curb filing of pre-grant opposition by benami applicants, ‘any person’ filing the pre-grant opposition must submit his valid Aadhar Card/Voter id Card/ Passpost/Driving Licence to authenticate his identity. E-filing System at IPO should be suitably modified.**

20.3 **Even if some person has filed a pre-grant opposition in such a situation wherein no application for patent is pending such application should be rejected forthwith. However, in case of all pending pre-grant oppositions, if the pre-grant opponent has not filed proof for his identity, he should be given one chance to submit the same within 15 days from**

the date of such communication, failing which the pre-grant opposition shall be rejected forthwith. The e-module of IPO shall be modified accordingly.

21. Further, certain cases were brought to our notice where series of pre-grant oppositions were filed by group of persons. We cannot say whether they had joined hands or not but one thing is very sure that such multiple oppositions are certainly filed as delay tactics, if filed repeatedly, on the same grounds and facts. Let us deal with a situation wherein a pre-grant opposition was correctly filed by 'any person' during the subsistence of the patent application; but it appears to the Controller that the system is likely to be abused by the applicant, he shall adopt the norms discussed herein below:

22. The relevant provisions of the Rules are quoted herein below:


CHAPTER VI⁷
OPPOSITION PROCEEDINGS TO GRANT OF PATENTS

Rule 55

Opposition to the patent

(1) Representation for opposition under sub-section (1) of section 25 shall be filed in Form 7(A) at the appropriate office with a copy to the applicant, and shall include a statement and evidence, if any, in support of the representation and a request for hearing, if so desired.

(1A) Notwithstanding anything contained in sub-rule (1), no patent shall be granted before the expiry of a period of six months from the date of publication of the application under section 11 A.

⁷ Available at <http://ipindia.nic.in/writereaddata/Portal/ev/rules/pr55.html>

(2) *The Controller shall consider such representation only when a request for examination of the application has been filed.*

(3) *On consideration of the representation if the Controller is of the opinion that application for patent shall be refused or the complete specification requires amendment, he shall give a notice to the applicant to that effect.*

(4) *On receiving the notice under sub-rule (3), the applicant shall, if he so desires, file his statement and evidence, if any, in support of his application within three months from the date of the notice, with a copy to the opponent.*

(5) *On consideration of the statement and evidence filed by the applicant, the representation including the statement and evidence filed by the opponent, submissions made by the parties, and after hearing the parties, if so requested, the Controller may either reject the representation or require the complete specification and other documents to be amended to his satisfaction before the patent is granted or refuse to grant a patent on the application, by passing a speaking order to simultaneously decide on the application and the representation ordinarily within one month from the completion of above proceedings.*

(6) *[omitted]*

23. It is evident that sub Rule 3 of Rule 55, quoted above, requires that “*On consideration of the representation **if the Controller is of the opinion** that application for patent shall be refused or the complete specification requires amendment, he shall give a notice to the applicant to that effect.*”, hence the Controller’s opinion with regard to maintainability of the pre-grant opposition becomes very vital. It is not that in each and every case of pre-grant opposition, he shall give notice to the applicant. Only in such cases where after consideration, he opines that the patent shall be refused or the complete

specification requires amendment before grant, he should notify the applicant.

24. **The sub- Rule, therefore, requires that the Controller shall consider the pre-grant representation in each and every case and if he opines that the patent application shall be refused or requires amendment, then before giving notice to the applicant of patent, he should make such opinion annotated in the patent application file, even if such file is maintained electronically. The e-module should be updated to that effect.**

25. It is often observed that the system of filing pre-grant opposition is abused also by filing serial pre-grant opposition. These serial pre-grant oppositions can be seen to have been filed in two ways

a) Multiple pre-grant oppositions received within a short span of time,
or

b) A single pre-grant opposition is filed. It goes through the complete procedure as prescribed in the Rule 55, quoted above; The Controller has heard both the parties and finally has reserved the order. If somehow, the intention of Controller to reject the pre-grant opposition and subsequently grant the patent is revealed then second or subsequent pre-grant oppositions are filed and the chain continues.

The scenario as mentioned in (a) is comparatively easy to handle by the Controller, wherein he may decide the case by providing a single hearing to all the opponents together with the applicant and decide the matter on merit once for all. However, scenario (b) is often used by the abusers of the system and this should be curbed.

26. **The legitimate way of curbing such abuse of right is, if the Controller has heard both the parties in accordance with the teachings of sub -rule 5 of rule 55 and has reserved the order, he**

shall go ahead with pronouncement of such order even if some pre-grant opposition is filed between the date on which he has reserved the order and the date of pronouncement of the order.

27. For the subsequent pre-grant opposition, the Controller shall make the opinion as to what substantial evidence, apart from those produced in the previous case is being produced which makes the second/subsequent pre-grant opposition maintainable. The Controller shall consider that whether any new ground has been established or any new documents have been relied upon; and if he so satisfies he should make a reasoned order sheet to that effect and annotate as to whether the second/subsequent pre-grant opposition is maintainable or not, in the patent application file, even if maintained electronically. The e-module shall be suitably modified to that effect.

28. Filing post-grant opposition:

28.1 In respect of post-grant opposition Hon'ble High Court of Delhi had formulated a guideline and this board incorporated the same in the order of "Pharmacyclic case"⁸. We are reiterating the same herein below with recommendation that the same shall be incorporated in the Manual forthwith.

"39. Therefore, the following general principles ought to be followed while dealing with a post-grant opposition:

i) The Opponent and the Patentee have adequate freedom to file their initial pleadings and evidence by relying upon all the documents and expert testimonies that they wish to;

ii) The Opponent in Rule 59 ought to be strictly confined to the Patentee's evidence.

⁸ OA/46/2020/PT/DEL

iii) *Once the Opposition Board is constituted and the material is transmitted to the Board, further evidence is not permissible;*

iv) *Under Rule 60, if any further evidence comes to light which either party wishes to rely upon, the same can only be done prior to the issuance of notice of hearing, with the leave of the Controller;*

v) *Under Rule 62(4), only publicly available documents i.e. publications, can be considered provided they are served to the opposing party, five days prior to the hearing and the date/time of the publications as also the relevant portions are highlighted, so that the opposite side can deal with the same at the time of hearing. Any document the authenticity of which is in doubt would not be entertained;*

vi) *The hearing, in the opposition would be usually granted upon request and Opposition Board Members may also be present in order to elicit their views and assist the Controller in deciding the post-grant oppositions.”*

28.2 No anti-advantages of privilege provided by Rule 62(4) should be allowed to be enjoyed by anybody. The bulk filing of documents, in guise of publications as mentioned in Rule 62(4) of the Patents Rules, should be checked and curbed.

29. Coming back to the case in hand, let us consider the definition of “person interested” as per Section 2 (t) of the Patents Act, 1970.

“Section 2⁹

Definitions and interpretation

(t) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;”

⁹ Available at <http://ipindia.nic.in/writereaddata/Portal/ev/sections/ps2.html>

30. We have considered the submissions of both the parties. The arguments and submissions made by the Respondent no.1 herein has shown beyond doubt that the petitioner who has filed the application for revocation of Patent No. 280086 granted in pursuance of the patent application no. 5365/CHENP/2011 in the name of NIPPON SODA CO. LTD. cannot be termed as “person interested” as per teaching of Section 2 (t) of the Patents Act, 1970. Further, we are also inclined to accept their plea that such company is a benami one; particularly in absence of its registration at various Public bodies.
31. It is further proved that the petitioner is a serial filer of revocation petitions and in one of the previous case ORA/11/2020/PT/DEL, has already failed to prove their *locus standi*. This is a subsequent application and again in this case also they failed to prove their credential and *locus standi*.
32. This Board is fully convinced that the petitioner being a habitual filer of such petitions without any *locus standi*, creates hardship to the patentees of valid patents. Such practices also lower the reputation of the Country in protecting valid rights of the patent owners.
33. We, therefore, take very serious note of such abuse of right and allow the Miscellaneous Petition filed by Respondent no.1 while simultaneously dismissing the Revocation Petition no. ORA/2/2020/PT/CHN for lack of *locus standi* of the petitioner without going into the merit of such Revocation Petition.

34. The MP stands allowed. The Revocation Application is dismissed.

No cost.

-Sd/-

(Dr. B.P. Singh)
Technical Member (Patents)

-Sd/-

(Justice Manmohan Singh)
Chairman

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