$~42

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Delivered on : 16.10.2026*

CNR No. DLHC010451872026

\+ W.P.(C)-IPD 42/2026, CM 242/2026 & CM 243/2026

ORION ENGINEERED CARBONS IP GMBH AND CO. KG. .....Petitioner

Through: Mr. Anshu Davar, Adv.

versus

THE PATENT OFFICE, DELHI & ANR. .....Respondents

Through: Mr. R.V. Prabhat, SPC with Mr. Neeraj Paulose Raj, Adv.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J [ORAL]

1. The present petition has been filed by the petitioner under Article 226/227 of the Constitution of India read with Section 151 CPC, seeking disposal of the petition dated 03.09.2025 filed by the petitioner under Rule 137 of the Patent Rules, 2003 [in short, 'Rules'].

2. Ms. Anshu Davar, learned counsel appearing on behalf of the petitioner submits that *vide* petition dated 04.11.2024, the petitioner filed a post-grant opposition to Patent No.470059.

3. While filing the opposition, it was uploaded in Form-30 instead of Form-7, as prescribed under Rule 55A of the Rules. Consequently, the fee deposited was also deficient inasmuch as the official fee to be deposited with application in Form 7 is Rs.40,000/-, whereas the fee paid with application in Form 30 is to the tune of Rs.12,000/-.

4. She submits that on realising the clerical error, the petitioner

Signature Not Verified
Digitally Signed By:NARENDRA SINGH ASWAL
Signing Date:24.10.2026 11:57:22

immediately informed the respondents on 03.09.2025 by filing a petition under Rule 137 of the Rules seeking correction of the Form 30 dated 04.11.2024, along with the requisite official fee for the correction.

5. She contends that as and when correction is permitted by the respondents, the petitioner shall deposit the deficient fee to the tune of Rs.28,000/-. She submits that the error in filing a post-grant opposition to Patent No.470059 in incorrect Form is inadvertent and not deliberate.

6. She further contends that despite the petitioner having filed the petition for correction way back in September, 2025, the same has not been disposed of by the respondents till date.

7. Notice was issued in the captioned petition *vide* order dated 22.09.2026 with a direction to the respondents' counsel to seek instructions.

8. Mr. R.V. Prabhat, learned SPC appearing for the respondents has returned with instructions to the effect that the Controller General of Patents, Designs and Trade Marks [hereinafter 'the Controller'] does not have the power or authority to condone the delay.

9. He further submits that Section 25 of the Patents Act, 1970 [in short, 'Act'] provides a timeline for filing an opposition to the patent. In terms of sub-section (2) of Section 25 of the Act, the opposition has to be filed before the expiry period of one year from the date of publication of grant of patent, and there is no provision for condonation of delay. Section 25(2) of the Act reads thus:

> *"**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—*
>
> *xxx xxx xxx*

Signature Not Verified
Digitally Signed
By:NARENDRA SINGH ASWAL
Signing Date:24.10.2026 11:57:22

(2) At any time after the grant of patent but before the expiry of a period of one year from the date of publication of grant of a patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:—

(a) that the patentee or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;

(b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim—

(i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or

(ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29."

10. He also places reliance on Section 142(3)[1] of the Act to contend that, if a document is not filed at the patents office along with requisite court fee within the prescribed time, the document shall be deemed not to have been filed.

11. He further submits that Section 2(1)(v)[2] of the Act defines the "*prescribed manner*" to include the payment of the prescribed fee.

12. In the above factual backdrop, Mr. Prabhat submits that since the application was not filed in the prescribed form along with the requisite fee,

[1] **SECTION 142. FEES. -**
(3) Where a fee is payable in respect of the filing of a document at the patent office, the fee shall be paid along with the document or within the prescribed time and the document shall be deemed not to have been filed at the office if the fee has not been paid within such time.

[2] **SECTION 2(1)(v)** "prescribed manner" includes the payment of the prescribed fee.

Signature Not Verified
Digitally Signed
By:NARENDRA SINGH ASWAL
Signing Date:24.10.2026 11:57:22

the petitioner cannot take advantage of Rule 137 of the Rules.

13. In rejoinder, Ms. Davar submits that insofar as the petition for opposition is concerned, the same was filed within the prescribed timeline i.e. within one year from the date of publication of grant of patent. The only error was in uploading of petition in the incorrect Form 30 instead of correct Form 7, which according to her was a clerical error which could be rectified under Rule 137 of the Rules.

14. I have heard the learned counsels for the parties. It is not in dispute that the petitioner had made the application within the prescribed time i.e. within a period of one year from the date of publication of grant of patent and the error which appears to have been committed by the petitioner is that instead of uploading the opposition petition in correct Form 7, the same was uploaded in Form 30.

15. Consequently, the fee deposited was as per Form 30 i.e. a sum of Rs.12,000/- whereas the fee payable in case the form would have been uploaded in Form 7, was Rs.40,000/-.

16. To appreciate the rival contentions of the parties, it is apposite to refer to Rule 137 of the Rules, which reads thus:

> *"**137. Powers of Controller generally**.- Any document for the amendment of which no special provision is made in the Act may be amended and any irregularity in procedure which in the opinion of the Controller may be obviated without detriment to the interests of any person, may be corrected if the Controller thinks fit and upon such terms as he may direct."*

17. A reading of Rule 137 of the Rules clearly shows that it is akin to residuary provision, and provides that if there is no special provision for amendment of any document, the same may be amended and irregularity in

Signature Not Verified
Digitally Signed
By:NARENDRA SINGH ASWAL
Signing Date:24.10.2026 11:57:22

the procedure, can be corrected under this Rule. The only prerequisite condition is that the correction to be carried out, in the opinion of the Controller, should be such which could be removed without causing any prejudice to the interests of any person.

18. On a query posed by the Court as to whether there is any specific provision under which amendment or correction could be carried out if post-grant opposition is filed in an incorrect form, the learned counsel for the parties are *ad idem* that there is none. That being the position, Rule 137 would be applicable to the case in hand.

19. Since categorical stand has been taken by the respondents counsel that the Controller does not have the power under the Act or the Rules to condone the delay in the filing of post-grant opposition and the application has not been filed in the prescribed manner along with the requisite fee, no useful purpose would be served in issuing direction to the Controller to decide the petitioner's petition under Rule 137 seeking correction of the Form 30. Hence, it is deemed appropriate to decide all the objections raised on behalf of the respondents in the present petition itself.

20. As regard the objection as to the delay, this Court is of the view that there was no delay in filing the opposition inasmuch as the same was admittedly filed within the prescribed statutory period of one year from the date of publication of grant of patent, as provided under Section 25(2) of the Act. It is only on account of an inadvertent clerical error that the opposition was uploaded in the incorrect form i.e. Form 30 instead of Form 7.

21. The concomitant deficiency in the fee was also due to uploading of the opposition in the incorrect form.

22. Since the application was filed within the prescribed timeline, the other

Signature Not Verified
Digitally Signed
By:NARENDRA SINGH ASWAL
Signing Date:24.10.2026 11:57:22

aspects viz. uploading of opposition in incorrect form or deficiency in the fee, are only procedural errors or irregularities which could be rectified by invoking Rule 137.

23. It is trite law that while dealing with the procedural aspects, the old adage of procedural laws being the handmaid of justice must be kept in mind. The procedural rules are not to be read in a manner so as to defeat the basic purpose of statute or to hamper justice, unless the violation of procedure would itself amount to grave injustice.

24. In the given circumstances, when the opposition was undisputedly filed within the prescribed statutory period of one year from the date of publication of grant of patent, this Court is of the view that no prejudice will be caused to the patentee, and the correction could be obviated without detriment to the interests of any person, particularly since the error to be rectified is mere inadvertent clerical error.

25. Accordingly, the petition is allowed. The correction in Form 30 as sought by the petitioner in its petition dated 03.09.2025 filed under Rule 137 is permitted. The petitioner shall deposit the deficient fee within a period of three weeks from today.

26. Upon petitioner depositing the deficient fee, the respondents are directed to consider the Post-Grant Opposition Petition dated 04.11.2024 to Patent No.470059, filed by the petitioner, in accordance with law.

27. The petition is disposed of in the above terms. The pending applications, if any, are also disposed of.

VIKAS MAHAJAN, J

OCTOBER 16, 2026
aj/VB

Signature Not Verified
Digitally Signed
By:NARENDRA SINGH
ASWAL
Signing Date:24.10.2026
11:57:22