ODC- 14

IPDPTA/101/2023
IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
[Commercial Division]

CAMBRIDGE ENTERPRISES LTD. (OA/17/2019/PT/KOL)
VS
THE CONTROLLER GENERAL OF PATENTS AND DESIGNS AND ANR

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 23rd March, 2023.

Appearance:
Mr. S. Majumdar, Adv.
Mr. P. Sinha, Adv.
Mr. K. K. Pandey, Adv.
Mrs. M. Dasgupta, Adv.
Mr. M. Mukherjee, Adv.
Ms. A. Majumdar. Adv.
Ms. E. Saha, Adv.
Mr. D. Dawn, Adv.
…for the appellant

Ms. Rajashree Roy, Adv.
Ms. Rini Bhattacharyya, Adv.
…for respondent.

The Court:- The appeal has been filed against an order of the Deputy Controller of Patents & Designs passed on March 28, 2018 refusing Patent No. 2216/KOLNP/2009 filed by the appellant claiming the same to be beyond the prescribed time limit of 31 months calculated from the date of priority.

The short point for consideration which arises in this appeal is whether there has been any delay on the part of the appellant in the filing of the subject patent application in India.

It is submitted on behalf of the appellant that the patent application was filed on June 5, 2009 within the statutory deadline of 31 months, and not on June 15, 2009 as erroneously considered by the respondent no. 2 in the impugned order.

In this connection the relevant dates are as follows:

Date	Particulars
08.11.2006	Priority Application was filed in United Kingdopm, (GB)
6.11.2007	PCT Application filed under No. PCT/GB2007/004222.
05.06.2009	Filing Receipt having CBR No. 3834 dated 05.06.2009 was issued stating. *"Received documents purporting to be an application for a patent numbered "2216/KOLNP/2009" dated "05/06/2009" by "CAMBRIDGE, CAMBRIDGESHIRE, CB2 1TS relating to "LEAD RECYCLING" together with the "Complete Specification" and fee(s) of Rs. 10000 (Ten Thousand only).*
05.06.2009	A note-sheet was endorsed by an official of the Patent Office stating, "Deemed to have been filed on 5/6/09. *Could not be entered in software module as …. (illegible)".* The same is available uploaded by the Respondents on the official portal
02.11.2010	Request for examination filed and the same was allotted examination request serial RQ No. 4844/RQ-KOL/2010.
From November 2010 to January 2017	No steps taken by Patent Office, despite reminder letters send being sent by the Applicant/Appellant. On 16.05.2016 by a gazette notification No. G.S.R. 523(E) and exception was added to Rule 138 of the Patent Rules, 2003 whereby, inter alia, Rule 20 (time-lines for national phase applications) was excluded.
24.02.2017	First Examination Report issued in relation to the subject patent application
23.06.2017	Response to First Examination Report filed by Applicant/ Appellant.
20.12.2017	Hearing notice was issued scheduling the matter for hearing under the provisions of Section 15 of the Patents Act, 1970 on 31.01.2018.
31.01.2018	Hearing was conducted by Respondent No. 2 in presence of Applicant/ Appellant's representative.
15.02.2018	Written Submission filed by Applicant/ Appellant.
28.03.2018	Impugned order was passed by Respondent No. 2

In this background, it is contended that the impugned order fails to appreciate and consider the documents of respondent no.1 including the official filing receipt issued by them as well as the internal noting made by them on their note-sheet, both of which would conclusively indicate that the subject patent application was duly filed on 05/06/2009 within the statutory deadline of 31 months which ended on 08/06/2009. The respondents have also failed to appreciate the provisions of Rule 20 and 22 of the Patent Rules, 2003. The impugned order is also bad in law inasmuch as the same proceeds on the basis that the patent application has been deemed to be withdrawn under Rule 22 and for non-compliance with Rule 20 of the Patent Rules, 2003, as well as under Section 15 of the Act.

It is submitted on behalf of the applicant that it would also be ex facie evident from the records of the subject patent application that all formalities had been cleared, checked and only thereafter was the noting made by the respondents in the note-sheet as seen Online. Thereafter, the subject application was renumbered and processed for examination. Hence, the impugned order is liable to be set aside since the same has been rejected erroneously on the ground of limitation.

On behalf of the respondent no. 2, it is submitted upon instructions they have come to learn that the date of filing of the subject Patent Application is 5 June, 2009 and not 15 June, 2009 as recorded in the impugned order. Accordingly, the impugned order incorrectly reflects a mistake on the part of the respondents. There has been a computer generated error.

In such circumstances, the impugned order is set aside.

There is no delay in the filing of the subject patent application since the same had been filed on June 5, 2009. It is clarified that the application has been filed within the stipulated period.

In such circumstances, the respondent no.1 is directed to process Patent Application no. 2216/KOLNP/2009 expeditiously in accordance with law and positively within 3 (three) months from the date of communication of this order.

With the aforesaid directions, IPDPTA/101/2023 stands allowed.

The respondent authorities are also directed to make necessary corrections in their records to reflect the aforesaid filing date.

(RAVI KRISHAN KAPUR, J.)

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