

BEFORE THE ASSISTANT CONTROLLER OF PATENTS
PATENT OFFICE, DELHI
THE PATENTS ACT, 1970

- In the matter of Patent no. **272351**
- Opposition Filed :
- On 30/03/2017 22:28:13 (E9/1/2017/DEL-CBR No.13352) , by Shantha Biotechnics Private Limited, of 5-10-173, Vasantha Chambers, 3rd & 4th floors, Fateh Maidan Road, Basheerbagh, Hyderabad – 500004, Telengana, INDIA.
- On 31/03/2017 19:19:47 (E9/2/2017/DEL-CBR No. 13534), by Biological E. Limited, of 18/1&3, Azamabad, Hyderabad, Telangana -500020.
- In the matter of Interlocutory Petition Hearing dated : 28.08.2017

PANACEA BIOTEC LIMITED.....The Applicant
Shantha Biotechnics Private Limited.....The Opponent
Biological E. Limited.....The Opponent

DECISION ON INTERLOCUTORY PETITION

(A) The patent was granted as IN272351 on March 30, 2016, notified u/s 43(2) in Indian Patent Office Journal dated April 1, 2016.

(B) On 30.03.2017; 22:28:13 and 31.03.2017; 19:19:47 the Opponents filed a post-grant opposition under Section 25(2) of the Patents Act, E9/1/2017/DEL-CBR No.13352 and E9/2/2017/DEL-CBR No. 13534 respectively.

On 5th April, 2017, the Petitioner was served with a copy of the notice of opposition and evidence by the said Opponent by courier service, by E-mail on 27th April 2017 and by Speed post- 1st May 2017 (agent of Patentee) and by 2nd May 2017 (Patentee).

(C) On 30/03/2017 22:28:13 (E9/1/2017/DEL-CBR No.13352) , Shantha Biotechnics Private Limited, of 5-10-173, Vasantha Chambers, 3rd & 4th floors, Fateh Maidan Road, Basheerbagh, Hyderabad – 500004, Telengana, INDIA, through Archana Shanker Of Anand and Anand ,Address of Service; Anand & Anand Advocates B-41,Nizamuddin East New Delhi – 110013, India. Phone No: 0091-11-24355076, 91-120-4059300 Fax No: 0091-11-24354243, 91-120-4243056-58 E-mail: email@anandandanand.com, had filed the opposition.

Kindly refer:-

(<http://ipindiaonline.gov.in/patentsearch/GrantedSearch/viewdoc.aspx?id=WxnBbj6%2fntDJv9iUV85IAA%3d%3d&loc=+mN2fYxnTC4l0fUd8W4CAA%3d%3d> with file name 'Form 7 [30-03-2017(online)].pdf')

On 31/03/2017 19:19:47 (E9/2/2017/DEL-CBR No. 13534), Biological E. Limited, of 18/1&3, Azamabad, Hyderabad, Telangana -500020, and INDIA, through Archana Shanker Of Anand and Anand Advocates Agent for the opponent. Address of Service; Anand & Anand Advocates B-41,Nizamuddin East New Delhi – 110013, India. Phone No: 0091-11-24355076, 91-120-4059300 Fax No: 0091-11-24354243, 91-120-4243056-58 E-mail: email@anandandanand.com, archana@anandandanand.com; Mobile No: +91 9717990240 had filed the opposition.

Kindly refer:-

(<http://ipindiaonline.gov.in/patentsearch/GrantedSearch/viewdoc.aspx?id=WxnBbj6%2fntDJv9iUV85IAA%3d%3d&loc=+mN2fYxnTC4l0fUd8W4CAA%3d%3d> with file name 'Form 7 [31-03-2017(online)].pdf')

(D) Reference to Rule 6:

6. Leaving and serving documents.—

(1) Any application, notice or other document authorised or required to be filed, left, made or **given at the patent office**, or to the Controller or to any other person under the Act or these rules, may be tendered by hand or sent by a letter addressed to the Controller at the appropriate office or to that person through post or registered post or speed post ("or courier service" omitted by 2016 amendment) **or by electronic transmission duly authenticated**. If it is sent by post or registered post or speed post ("or courier service" omitted by 2016 amendment) or by electronic transmission duly authenticated, it shall be deemed to have been filed, left, made or given at the time when the mail containing the same would have been delivered in the ordinary course of post or registered post or speed post ("or courier service" omitted by 2016 amendment), or by electronic transmission duly authenticated, as the case may be. In proving such sending, it shall be sufficient to show that the mail was properly addressed and transmitted: (1A) (Incorporated by 2016 amendment) Notwithstanding anything contained in sub-rule (1), a patent agent shall file, leave, make or give all documents only by electronic transmission duly authenticated, including scanned copies of documents that are required to be submitted in original:

Provided that the original documents that are required to be submitted in original, shall be submitted within a period of fifteen days, failing which such documents shall be deemed not to have been filed.; (end of insertion by 2016 amendment).

Notice of opposition in the present case was given at the Patent Office on 30/03/2017 22:28:13 (E9/1/2017/DEL-CBR No.13352) by Shantha Biotechnics Private Limited and on 31/03/2017 19:19:47 (E9/2/2017/DEL-CBR No. 13534) by Biological E. Limited. The documented dates and timeline for filling the oppositions were well within the stipulated timeline as stated u/s 25(2) of the Patent Act;

Section 25(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.....

In this respect the said oppositions were given at the Patent Office on 30/03/2017 22:28:13 (E9/1/2017/DEL-CBR No.13352) by Shantha Biotechnics Private Limited and on 31/03/2017 19:19:47 (E9/2/2017/DEL-CBR No. 13534) by Biological E. Limited, which is well within the stipulated time before the expiry of a period of one year from the date of publication of grant of a patent and it was by electronic transmission duly authenticated in this respect the online filling CBR's in both the oppositions are open to public for ready reference as well.

Patentee has admitted to the fact that the copy of Opposition (including written statement, evidence and notice) was received on 5th April 2017 by courier, and later by e-mail and speed post. Having admitted to the fact of receiving the Opposition, by not one but several modes and which cover the requisite timelines as well (see Para B & C above and Section 25(2)). The said oppositions are thus maintainable and are on official record.

Thus, the said Oppositions, as required by the Indian Patents Act and Rules, were filed at the Indian Patent office on or before the expiry of one year of publication under section 43(2), i.e. before 1st April 2017. Therefore, these are maintainable and are duly on record and documented.

(E) According to u/r 58 and petition u/r 138 for a period of extension of one-month by patentee is allowable and hence the extension to file a Reply Statement and Evidence from June 5, 2017 to July 5, 2017, is allowable and taken on record.

Rule 58:Filing of reply statement and evidence.—(1) If the patentee desires to contest the opposition, he shall leave at the appropriate office a reply statement setting out fully the grounds upon which the opposition is contested and evidence, if any, in support or his case within a period of two months from "the date of receipt of the copy of the written statement and Opponent's evidence, if any by mm under rule 5/ and deliver to the opponent a copy thereof.

Thus, the oppositions filed dated 30.03.2017; 22:28:13 and 31.03.2017; 19:19:47, by Shantha Biotechnics Private Limited and Biological E. Limited made against the Patent number 272351 are on record for the reasons stated above and are pending till further hearing.

Dated this on 20th day of April, 2018

(Dr. Rachna Yadav)

Assistant Controller of Patents & Designs