



Intellectual Property Appellate Board

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OA/56/2020/PT/DEL

MONDAY, THIS THE 12TH DAY OF OCTOBER, 2020

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

CHAIRMAN
TECHNICAL MEMBER (PATENTS)

1. **HAWAR TECHNOLOGIES LIMITED**
4TH FLOOR, AL-KHALEEJ INSURANCE
BUILDING,
GRAND HAMAD AVENUE, P.O. BOX- 8822
DOHA, QATAR

...APPLICANT/APELLANT

(Represented by: Ms. Garima Sahney of SaiKrishna & Associates)

Versus

1. **THE ASSITANT CONTROLLER OF PATENTS**
BAUDHIK SAMPADA BHAWAN
PLOT NO. 32, SECTORE-14, DWARKA
NEW DELHI-110078

...RESPONDENT

(Represented by - None)

ORDER

Hon'ble Shri Justice Manmohan Singh, Chairman

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

1. The present appeal has been filed under section 117A of the Patents Act, 1970 against the order of respondent dated 29/01/2020 by which he has refused to grant patent on the patent application no. 2089/DELNP/2009; under section 15 of the Patents Act, 1970.
2. The instant patent application no. 2089/DELNP/2009 was filed on 30/03/2009 as Patent Cooperation Treaty (PCT) National Phase

application claiming priority from UK application no. GB 0617226.5 dated 08/09/2006. The first Examination Report (FER) was issued by the respondent on 20/02/2017. The invention was found to be novel but was objected to mainly on the grounds of ‘inventive step’, ‘unity of invention’, ‘sufficiency of disclosures’, ‘clarity and conciseness’ and ‘definitiveness’. The excerpts of the first examination report is quoted herein below:

a) *“INVENTIVE STEP:*

Claim(s) 1-21 lack(s) inventive step, being obvious in view of teaching (s) of cited document(s) above under reference for the following reasons:D1: US20060027208A1 D2: EP1630392A2 D3: WO1998007973A1 D4: JP2004218522A. In view of the cited documentD1, D2, D3 and D4, Invention claimed in claims lacking of inventive step and does not comply with under section2(1)(ja) of The Patents Act , 1970.....”

b) *UNITY OF INVENTION:*

Claim(s) 1, 12,15 lack(s) unity of invention as the claims do not relate to a single invention or to a group of inventions linked so as to form a single inventive concept:

The application lacks unity within the meaning of section 10 (5) of the Patents Act, 1970 because the following groups of inventions are not so linked as to form a single general inventive concept:(1) Claims 1-11, 21 claims an apparatus for controlling volume of air.(2) Claim 12-14 claims an internal combustion engine.(3) Claim 15-20 claims a method for controlling volume of air.

c) *SUFFICIENCY OF DISCLOSURE:*

The complete specification does not fully and particularly describe the invention and its operation and the method by which it is to be performed in respect of:

This invention does not comply with under section 10(4)(c) because specification does not end with claims defining the scope of the invention for which protection is claimed.

d) SCOPE:

e) Claim(s) does/do not define the scope of invention for which the protection is claimed for the following reasons:

Not Applicable

f) CLARITY AND CONCISENESS:

Claim(s) 1-21 are not clearly worded in respect of:

As the word 'characterized' is generally used for delineating the novel part from the prior art in claim statements, it will be clear/helpful, if that word is used only once in the Principle claim, so that, there will not be any confusion/vagueness in determining the alleged/proposed novel part according to that claim statement. As dependent claims are intended to elaborate the features of principle claim; it could not contain the phrase "characterized in that". Since the word 'characterized in that' is found to be used in subordinate claims, they are to be reworded.

Claim 1 has to be duly characterized in order to delineate the inventive part from the known features.

The subsequent claims should elaborate the features of principal claim after the phrase "as claimed in claim... wherein".

g) DEFINITIVENESS:

Claim(s) 2-7, 9-10, 12-14, 16-21 do not sufficiently define the invention for the reasons as follows:

The use of term “at least” make the claims too broad and vague. The claims are indefinite, too broad and do not define the scope of the invention.

The preamble of the claims consist the phrase “as claimed in any preceding claims” which makes the claims indefinite as the dependency of the claims is not definitive and it makes the reader confused regarding the dependency of the claims. Proper dependency of the dependent claims should be mentioned in the dependent claims and accordingly the claims should be redrafted.

The term “substantially/ further comprising” as used in Claims is ambiguous terms. Thus the claims are not definitive and are claiming broad invention rather than disclosing the exact scope. So this term should be deleted from the claims.

Claim 20 & 21 relies on references to the description and drawings and as such does not contain any clear technical features defining a subject-matter, rendering the present application unclear and not concise. Hence it shall be reworded/deleted”

3. It is worth noting here that respondent cited 4 prior art documents for proving lack of inventive step of the invention. One major conflict is noted in the FER that while in ‘sufficiency of disclosure’ segment the respondent mentions “This invention does not comply with (the requirements) under section 10(4)(c) because specification does not **end with claims defining the scope of the invention for which protection is claimed.**” and where he discusses scope of the

invention he holds as **“Not applicable”** [Emphasis added]

4. The applicant/ appellant submitted their response to FER on 17/11/2017. A Hearing Notice was issued by the Respondents on 05/07/2018 fixing the date of hearing on 04/10/2018 and communicating the official requirements mainly on the grounds as shown below:

i. D1: EP1630392A2 D2: WO1998007973A1 D3: EP1363002A1 D4: EP1541849A1 In view of the cited documents D1, D2, D3 and D4, Invention claimed in claims is lacking in inventive step and do not comply under section 2(1)(ja) of The Patents Act, 1970.....

ii. Clarity and Conciseness

Claim 1 has to be duly characterized in order to delineate the inventive part from the known features.

As the word ‘characterized’ is generally used for delineating the novel part from the prior art in claim statements, it will be clear/helpful, if that word is used only once in the Principle claim, so that, there will not be any confusion/vagueness in determining the alleged/proposed novel part according to that claim statement. As dependent claims are intended to elaborate the features of principle claim, it could not contain the phrase" characterized in that". Since the word ‘characterized in that’ is found to be used in subordinate claims, they are to be reworded.

iii. Definitiveness

The term “further comprising” as used in Claims is ambiguous terms. Thus the claims are not definitive and are claiming broad invention rather than disclosing the exact scope. So this term should be deleted from the claims.

The word used in claim specification “according to any of the preceding claim” should be reworded “as claimed in claim..., wherein”.

5. This hearing was not attended by the applicant and respondent refused their application vide his *ex-parte* order dated 26/09/2019. The applicant/appellant filed a review petition under section 77(1)(g) of the Patents Act, 1970, quoting reasons for their non- appearance during hearing as **non- receipt of hearing notice**. Considering that the hearing notice was actually not sent as evident by the order of respondent when he admits **upon verification of electronic records, it is observed that the said hearing notice was never delivered to the ld. agent for applicant and therefore opportunity to comply outstanding objections is hereby provided to the ld. agent for applicant.**; a fresh hearing notice was issued by the respondent on 23/12/2019 fixing the hearing on the review petition on 29/01/2020.
6. This time, vide a letter dated 30/12/2019, the applicant /appellant confirmed to attend the hearing on the scheduled date. The hearing took place on scheduled date i.e. 29/01/2020. The written submission of hearing was filed by the applicant on 03/02/2020 under Rule 28(3) of the Patents Rules, 2003. But the impugned order was issued on 29/01/2020 itself, i.e. on the date of hearing, without waiting for the written submission of the applicants , refusing the grant the patent.
7. Aggrieved by this impugned order, the appellant has preferred this appeal.
8. The appellant submits that the Learned Controller cited four prior arts namely D1:US20060027208A1; D2: EP1630392A2; D3: WO1998007973A1; and D4: JP2004218522A in FER. Later, in

hearing notice he dropped D1 and D4 of FER and retained D2 and D3 renaming them as D1 and D2 during the time of hearing notice and added two new prior arts D3: EP1363002A1; and D4: EP1541849A1 naming them D3 and D4 and dduring the course of the hearing, the respondent had also cited two “new” prior arts, namely, JP60230549, and JP02040056.

9. It is further submitted by the appellant, during the course of hearing in front of us, that earlier when the matter was fixed for the first time, the same was decided ex-parte by the respondent. Thereafter, the appellant has filed review petition. The hearing in the review petition was fixed on 29/01/2020. The learned counsel for the appellant states that the prior arts referred by the respondent has not been mentioned in the hearing notice. It is also stated that the copies of two prior arts were handed over to the counsel during hearing, which were in Japanese language and no translation was provided. Time was sought to go through the same, however, the order was reserved.
10. It is also stated by the learned counsel of the appellant that while she was still in the Patent office after completion of the hearing that the impugned order was received by her.
11. The learned counsel for the appellant states that in case the IPAB is inclined to remand back the matter, the same may be put up before some other Controller.
12. Let’s look at the operating portions of the impugned order:
“Further the ld. agents for applicant proposed fresh set of 1-13 amended claims in compliance to the requirements of objections 2 and 3 abovementioned.

Agreeing to the amendments in the proposed claims, I now consider the amended claims 1- 13 for objection 1 of lack of inventive step in view of cited documents.

With regard to objection 1, the ld. agents for applicant submitted that the inventive feature lies in the provision of incompressible member (21) inside the combustion chamber as claimed in main claim 1, thereby achieving technical advantage.

During the hearing the ld. agents for applicant further agreed to delete claim 9 out of proposed claims 1-13.

*Prima facie after going through the verbal and written arguments and while reading through the above cited documents and **further documents JP60230549 and JP02040056** and the improvement/inventive feature claimed by the applicant ;at this juncture ,I am of the opinion the improvement claimed shall be obvious to a person skilled in the art.*

Therefore, this application is tagged as non-final refusal for lack of inventive step (u/s 2(1)(j) read with 2(1)(ja) in proposed amended claims 1-13 , u/s 15 of “The Patent Act 1970”. [Emphasis added]

13. The appellant further submits that the hearing was conducted on 29/01/2020 and during the hearing 2 new prior art were cited. These prior arts were shared with the Applicant for the first time during the course of the hearing itself, with no prior intimation to the applicant. Without giving an opportunity to the applicant to offer their counter arguments on the newly raised prior arts, the application was refused within minutes after completion of the hearing as submitted by the appellant. This is violative of principles of natural justice and against several of the IPAB decisions.

14. The appellant submit further that the rejection of the application

was mechanical without any application of mind. The fact that the order was passed within 10 minutes of conclusion of hearing, proves the respondent had already decided to reject the application irrespective of the merits of the case and the arguments advanced in the matter.

History of Prior arts		
FER	Hearing notice	Decision
D1: US20060027208A1	D1: EP1630392A2	D1: EP1630392A2
D2: EP1630392A2	D2: WO1998007973A1	D2: WO1998007973A1
D3: WO1998007973A1	D3: EP1363002A1	D3: EP1363002A1
D4: JP2004218522A	D4: EP1541849A1	D4: EP1541849A1
-	-	D5: JP60230549A (cited for the first time)
-	-	D6: JP02040056A (cited for the first time)

15. Bare perusal of the order passed by the Learned Controller in this matter, reveals that no reason has been provided as to why the invention is not inventive in light of prior arts D1 to D6. The order merely repeats the language of the objections cited in the FER/Hearing notice, while providing no explanation on how a person skilled in the art will be able to arrive at the present invention by combining all the prior arts.

16. It is a settled principle of law that the question of obviousness is a mixed question of law and fact¹. Therefore, its not a legal question but has to be dependent upon the appreciation of the prior arts and application of the scientific deductions arrived therefrom and then applying the test by asking “Whether the alleged invention is the obvious to the person skilled in art”. In the present case, far from appreciating the prior arts, the prior arts are merely quoted and thereafter straightaway the finding has been arrived at that the invention is obvious to the person skilled in art. The said finding is bereft of any reasons in terms of the appreciation of art and legal principles applicable therefrom. Therefore, the reasons contained in

¹ Bishwanath Prasad Radhey Shyam v Hindustan Metal Industries, (1979) 2 SCC 511

the impugned order are not even bare minimum to satisfy the enquiry as to assessment of inventive step and thus falling short of the said enquiry permissible in law.

17. It is the case of the appellant that the fact that the Controller had to cite 6 prior arts to negate an invention, is itself a proof of the weakness of the prior arts. Further, the patentability of the invention is also evident from the fact that the corresponding applications have been granted in CN, US, EP, and Korea.

18. It is a settled principle of law that a statutory appeal provided under the law a full fledged right available to the party amounting to reopening of the case and reappreciation of the same on factual as well as legal grounds. (Kindly see **Santosh Hazari v. Purshottom Tiwari**, (2001) 3 SCC 179 para 15 wherein it has been held that the appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law).

19. It is equally well settled that in the cases of the appeal provided by the statute, the standard of correctness is applicable wherein the court/ tribunal can correct the errors of facts as well as law. Likewise, the errors which the tribunal can correct also include substantive errors which are errors in law and procedural errors which are errors in procedure. Both substantive and procedural errors form intrinsic part of the justice delivery system and has to be complied with in any decision making by the tribunal or authorities be it judicial, quasi judicial or administrative in nature.

20. As regards procedural errors, the appellate court or the court hearing the judicial review is basically concerned with the procedural

fairness which is whether the tribunal below or authority below has provided due process of law or followed due procedure while arriving at the decision making against the party. The importance of the procedural fairness has been recently emphasized by Hon'ble Mr. Justice Sikri (as then was) sitting in Supreme Court and he culled out the jurisprudence behind the procedural fairness in the case Dharampal Satyapal Ltd. vs. Deputy Commissioner of Central Excise², MANU/SC/0615/2015 wherein it has been held as under:

“ In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice'. **The principles of natural justice developed over a period of time and which is still in vogue and valid even today were: (i) rule against bias, i.e. nemo judex in causa sua; and (ii) opportunity of being heard to the concerned party, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is duty to give reasons in support of decision, namely, passing of a 'reasoned order'.** (Emphasis Supplied).

“..... 22. The principles have sound jurisprudential basis.

² Dharampal Satyapal Ltd. vs. Deputy Commissioner of Central Excise MANU/SC/0615/2015

Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision making that decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong. (Emphasis)

23. This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as 'hearing the other side'. Prof. D.J. Galligan³ attempts to provide what he calls 'a general theory of fair treatment' by exploring what it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasizing that taking of correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the

³ On 'Procedural Fairness' in Birks (ed), the Frontiers of Liability (Volume One) (Oxford 1994)

social good is realised. For taking this view, Galligan took support from Bentham⁴ , who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:

On this approach, **the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial. The law and its processes are simply instruments for achieving some social good as determined from time to time by the law makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case.** At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved. (Emphasis Supplied)

Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit of common good involves the distribution of benefits and burdens, advantages and

⁴ A Treatise of Judicial Evidence (London 1825)

disadvantages to individuals (or groups). According to him, principles of justice are the subject matter of fair treatment.

However, that aspect need not be dilated.

24. Allan⁵, **on the other hand, justifies the procedural fairness by following the aforesaid principles of natural justice as rooted in rule of law leading to good governance.**

He supports Galligan in this respect and goes to the extent by saying that it is same as ensuring dignity of individuals, in respect of whom or against whom the decision is taken, in the following words:

The instrumental value of procedures should not be underestimated; the accurate application of authoritative standards is, as Galligan clearly explains, an important aspect of treating someone with respect. But procedures also have intrinsic value in acknowledging a person's right to understand his treatment, and thereby to determine his response as a conscientious citizen, willing to make reasonable sacrifices for the public good. If obedience to law ideally entails a recognition of its morally obligatory character, there must be suitable opportunities to test its moral credentials. Procedures may also be thought to have intrinsic value in so far as they constitute a fair balance between the demands of accuracy and other social needs: where the moral harm entailed by erroneous decisions is reasonably assessed and fairly distributed, procedures express society's commitment to equal concern and respect for all. (Emphasis Supplied)

It, thus, cannot be denied that principles of natural justice

⁵ 'Procedural Fairness and the Duty of Respect', (198) 18 OJLS 497

are grounded in procedural fairness which ensures taking of correct decision and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms. (Emphasis Supplied)

25. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

De Smith captures the essence thus-"**Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice**"....." (Emphasis Supplied)

21. From the reading of the illuminating observations discussing the procedural fairness laid down by the Supreme Court in the case of

Dharampal Satyapal Case (Supra), the following propositions are discernible which are relevant to the present case:

- a) The Procedural fairness value cannot be underestimated. The procedural fairness has significance both in terms of the statutory instrument as well as social good. The valuable rights of the parties are decided or deprived with certain treatment or procedures which the law expects to be provided to be party.
- b) The judicial, quasi judicial authorities are subject to the principles of procedural fairness. The said procedural fairness principles include the classical trinity of right to hearing, right against Bias, Nemo Judex Principle and also the reasoned decision. All these principles are intrinsic part of the procedural fairness doctrine.
- c) The principle of right to hearing is not empty formality, the hearing has to be considerate and the contents of the hearing principle can be expanded or curtailed depending upon the nature of the statute, kind of the powers exercised by the statutory functionaries, urgency of the situation, vitality of the decision and its impact on the parties etc. The said non exhaustive list will allow the court or tribunal to decide the contents of the procedural fairness.
- d) Where the scheme or instrument as discussed in Dharampal(Supra) itself provides for and indicates the procedural fairness and its limit to the same, if the court finds it just and fair can infer the contents of the right to hearing or approve the same.
- e) Where the statute does not provide for any rules of the procedural fairness, there exists an implied duty to provide procedural fairness and the courts/ tribunals will infer natural justice and procedural fairness rules. This has been expressly approved by Supreme Court in Dharampal Satyapal's case after surveying the jurisprudence as well as Indian case laws.

- f) Procedural fairness has not merely a legal significance. It rather has a social significance as well. The correct observance of the procedure serves the public good. This is in line with the seminal decision in the case of R. v. Sussex which is that Justice not merely has to be done but should be seem to be done. Therefore, the correct observance of the procedure serve social goals and public good.
22. If the present case is tested on the touchstone of the principles culled out above from the Dharampal Satyapal's case, it is clear that not merely there is a violation of the reasoned decision principle which is part of the procedural fairness, but in fact there is also violation of the hearing principle as well and thus there exists a complete violation of the procedural fairness in the present case.
23. As regards the violation of the hearing principle, it is clear that the Patent Acts and rules framed thereunder are code in itself and prescribes the contents of the natural justice and hearing principle. The natural justice in the context of the Patents Act is not merely confined to the hearing orally which according to us in the present case was mere formality and was not done a substantial hearing. But in fact the Patent Act and rules framed thereunder also provides for the provisions of the written submissions. The same reads as under:

“Rule 28(7)⁶ of the Patents Rules 2003 provides as follows:

(7) In all cases of hearing, written submissions and the relevant documents, if any, shall be filed within fifteen days from the date of hearing.”

Therefore, the contents of the natural justice or hearing principle in the context of the Patents Act is prescribed by the delegated

⁶ Available at <http://ipindia.nic.in/writereaddata/Portal/ev/rules/pr28.html>

legislation which are rules framed thereunder in the form of Rule 28 (7). In such kind of cases, as per Dharampal (supra), the instrument has to be followed and the same cannot be ignored. Therefore, no provisions of the Act or Rules should be rendered superfluous and the interpretation which should make the provisions workable should be followed.

24. The reason for the expanded version of the natural justice is fair and reasonably simple in the context of the Patents Act. The reason is that the Controller of the Patent is dealing with the technical matters which involve application of scientific principles along with the legal principles. A brief hearing of hour or so may not suffice as the evaluation of the prior arts and understanding requires extensive readings, appreciations as well as the deduction so as to form an opinion on novelty and inventive step. Therefore, so far as the Patent cases are concerned, the rules of procedural fairness including natural justice as per the Patents Act and Rules framed there under do not end with the hearing and in fact the natural justice continues until the filing of the written submissions which is provided under the Rules dealing with the prior arts enabling the controller to have a reading, appreciation and apply the same. So, in the present appeal, the trigger for violation of the procedural fairness is both the unreasoned decision as well as the violation of the expanded hearing principle, the contents of which are prescribed under the Patent Rules in the form of Rule 28 (7) of the Patent Rules. Therefore, the said violations of the procedural fairness vitiate the impugned order warranting interference in an appeal applying the correction standard.

25. **Conclusion:**

25.1 We have analysed the facts on the records, the submissions of

the appellant and noted the contents of the impugned order. It is surprising that respondent referred to two additional prior arts citations during the course of hearing, both of them in Japanese language and never gave any chance to the applicant for submitting the counter arguments in respect of those documents. This is not only the case of utter violation of principle of natural justice but it is also the violation of the teachings of the Patents Act 1970 and the Rules made thereunder.

25.2 The respondent even didn't wait for the prescribed period to get the written submission of the appellant and refused the application on prima facie evidence of lack of inventive step. He holds that *"Prima facie after going through the verbal and written arguments and while reading through the above cited documents and **further documents JP60230549 and JP02040056** and the improvement/inventive feature claimed by the applicant ; at this juncture ,I am of the opinion the improvement claimed shall be obvious to a person skilled in the art."*

25.3 Firstly, no time was given to the appellant to rebut the additional document cited during the hearing and secondly respondent did not wait for the prescribed time period of 15 days for the written submission from the appellant. It is noted that absolutely no reasoning was mentioned for lack of inventive step in his impugned order and the order is issued by the respondent refusing the application on *prima facie* grounds.

26. Considering the above facts, we arrive at the conclusion that the order of the respondent is arbitrary in nature and is not sustainable in the eye of law.

27. We, therefore, set aside the impugned order dated 29/01/2020 of the respondent and remand back the case for deciding it on merit in

accordance with law, after providing the applicant, a fair opportunity of being heard, strictly within 6 months from the issuance of this order.

28. As requested by the Appellant to put up the case before some other Controller in case of remand, we are of the view that, in the best interest of justice, the case may be referred to some other Controller u/s 73(4) of the Patents Act, 1970.

29. Appeal is allowed. No cost.

- Sd/-

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

-Sd/-

(Justice Manmohan Singh)
Chairman

Disclaimer: This order is being published for present information and should not be taken as a certified copy issued by the Board

