



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **DR SNEHLATA C. GUPTE V. UNION OF INDIA & ORS**

AUTHORED BY - TANYA ARYA

**Citation: 2012 SCC Online Del 2259: AIR 2012 Del 182**

Composition of the bench and parties involved: -

Bench: A.K SIKRI

Appellant:

Dr. Snehlata C. Gupte represented by Mr. Sudhir Chandra, Sr. Adv. with Mr. SagarChandra, Ms. Ishani Chandra, Mr. Ankit Rastogi, Advs.

Respondents:

Union of India & Ors represented by Mr. Sachin Datta, CGSC for UOI Mr.Mahinder Singh, Sr. Adv. with Ms. Pratibha M. Singh, Adv.

## **INTRODUCTION**

The case of Dr. Snehlata C. Gupte v. Union of India & Ors, adjudicated by the Delhi High Court, delves into the intricacies of patent law under the Indian Patents Act, 1970. The core issue revolves around the timing and rules for filing pre-grant oppositions to patent applications, particularly regarding Section 25(1) of the Act and its impact on patent grants. With differing interpretations of the Controller's order, the definition of a "patentee," and concerns about misuse of pre-grant opposition procedures, the case raises important legal questions about patent issuance and fair procedures. This introduction sets the stage for a detailed examination of the court's decision and its potential effects on Indian patent law.

## **FACTS OF THE CASE**

J. Mitra & Co. Ltd. filed two patent applications in the Office of the Controller of Patents on 14.6.2001. Patent Specifications were published in the official gazette on 20.11.2004 in terms of Section 11A of the Patents Act.

As per provisions of Section 25 (unamended) of the Act, which held the field at that time, an opposition to the grant of patent could be filed within four months from the date of publication. Such a period could be extended by one month by the Controller on being satisfied by the reasons given for such a delay.

One M/s. Span Diagnostics Ltd. (SDL) filed pre-grant opposition. It was considered by the Controller and vide detailed order dated 23.8.2006, the Controller rejected this opposition.

On rejection of pre-grant opposition, the Controller ordered grant of patent on the application of the J. Mitra & Co. Ltd. putting a particular condition which read as hereunder-

*“In view of the above discussion and in consideration of the submissions of both the parties. I hereby order to grant [Patent No. 194639] on Patent Applicant No. 590/Del/2000 with the following condition: The Applicants shall give cross reference to the patent application no. 593/Del/2000 on page 2 of the complete specification and submit the amended/retyped page(s) within a week from the date of these orders. The Opposition on Patent Application No. 590/Del/2000 (194639) is disposed of in the above terms. No order to cost.”*

As per the appellant, she had sent pre grant opposition by courier on 22.8.2006 which was received by the Patent Office on 24.8.2006. As on that date, Section 25(1) of the Act stood amended by the Patents (Amendment) Act, 2005 with effect from 01.1.2005. As per the amended provision, the time for filing a pre-grant opposition stood extended till the grant of patent. According to the appellant, her pregrant opposition received on 24.8.2006 was within time as per the Amended provision of Section 25(1) of the Act inasmuch as there was no patent granted by that time. It was her case that the patent is not granted till such time it is not sealed and entered in the Register in terms of Section 43(1) of the Act and such a patent was granted on 22.9.2006.

The Controller initially accepted respondent No. 5's plea and rejected the appellant's pre-grant opposition without hearing them. The appellant then challenged this order through writ petitions. Subsequently, the Controller heard the appellant and issued an order rejecting the pre-grant opposition as time-barred on 22.5.2007. The appellant filed additional writ petitions under similar circumstances, i.e., after the rejection of earlier pre-grant opposition but before the patent was entered into the Register. The central question in these writ petitions was determining when a patent can be considered granted.



## ISSUE RAISED

1. When shall a patent be considered granted?
2. The timeline within which pre-grant oppositions can be made?

## CONTENTIONS OF THE PARTIES

### ❖ APPELLANT

Submission of Mr. Sudhir Chandra, learned Senior Counsel appearing for the appellant is that:-

#### 1. Nature of Controller's Order:

Mr. Chandra argued that the Controller's order on August 23, 2006, was not an explicit grant of the patent but rather a conditional directive.

He contended that the order only rejected the pre-grant opposition filed by SDL and did not finalize the grant of the patent.

Mr. Chandra emphasized that certain formalities outlined in the order needed to be fulfilled before the patent could be considered granted.

He pointed out that the order specified conditions to be met by respondent No. 5, indicating that the grant was contingent upon fulfilling these requirements.

#### 2. Definition of "Patentee" under the Act:

Referring to Section 2(p) of the Act, Mr. Chandra highlighted the definition of "patentee," which denotes the person entered in the register as the grantee or proprietor of the patent.

He suggested that the grant is not finalized until the patentee's details are entered into the register, emphasizing the importance of registration in determining the grant of the patent.

#### 3. Purpose of Amendments to Section 25(1) of the Act:

Mr. Chandra argued that the amendments to Section 25(1) aimed to provide sufficient opportunity for objectors to file oppositions before the grant of a patent.

He asserted that this opportunity should not be circumvented and that the law on limitation should be interpreted strictly, adhering to its literal meaning.

#### 4. Concerns about Misuse of Pre-grant Opposition Process:

Mr. Chandra questioned the court's concerns regarding potential misuse of the pre-grant opposition

process.

He argued that sufficient safeguards were already provided in Rule 55 of the Rules to prevent misuse, suggesting that frivolous objections could be ignored.

## ❖ **RESPONDENT**

### 1. Nature of Controller's Order:

The respondents argued that the Controller's order on August 23, 2006, constituted the grant of the patent.

### 2. Procedural Formalities:

They asserted that the conditions imposed by the Controller were merely procedural formalities and did not affect the grant of the patent.

### 3. Independence of Patent Grant from Conditions:

The respondents contended that the grant of the patent was not contingent upon fulfilling the conditions specified in the Controller's order.

### 4. Timeline of Patent Application Processing:

They emphasized the timeline of patent application processing, indicating that by the time pre-grant oppositions were considered, the Controller had already examined the application's feasibility.

### 5. Empowerment of Controller post Opposition Rejection:

The respondents argued that once the pre-grant opposition was rejected, the Controller was empowered to grant the patent, as demonstrated in the present case.

### 6. Alleged Connection between Appellant and Span Diagnostics Limited:

They highlighted the sequence of events leading to the rejection of the appellant's pre-grant opposition and subsequent filing of writ petitions, suggesting a connection between the appellant and Span Diagnostics Limited, a business rival of the respondent No. 5.

## **JUDGEMENT**

The judge ruled that the Controller's order on August 23, 2006, constituted the grant of the patent, dismissing the appellant's argument that it was conditional. The court affirmed that the conditions imposed by the Controller were procedural formalities and did not affect the grant of the patent. It upheld the timeline of patent application processing, stating that the grant of the patent is determined by the Controller's decision, not the issuance of the patent certificate. Finding no merit in these appeals, it was dismissed with cost quantified @ Rs. 25,000/- each.

The court provided several reasons to support its judgment:

1. **Nature of Controller's Order:** The court emphasized that the Controller's order on August 23, 2006, was the grant of the patent and not conditional, as argued by the appellant.
2. **Procedural Formalities:** It reasoned that the conditions imposed by the Controller were merely procedural formalities and did not affect the grant of the patent itself.
3. **Independence of Patent Grant from Conditions:** The court rejected the appellant's contention that the grant of the patent was contingent upon fulfilling the specified conditions, asserting that once pre-grant opposition was rejected, the Controller was empowered to grant the patent.
4. **Timeline of Patent Application Processing:** The court upheld the timeline of patent application processing, highlighting that the grant of the patent is determined by the Controller's decision, not the issuance of the patent certificate.
5. **Discouraging Misuse of Patent Opposition Procedures:** The court emphasized the importance of vigilance in filing pre-grant oppositions and discouraged misuse of patent opposition procedures by dismissing the appellant's writ petitions and imposing costs on the appellants.

## **CASE ANALYSIS: -**

❖ It was held that the date of grant of a patent is the important factor in determining the timeline for allowing pre-grant opposition under section 25(1) of the Act.

- According to the Act and Rule 24 thereunder publication of the patent application shall be made only after 18 months from the date of application of the patent
- Also, according to Rule 55(1-A), no patent shall be granted before the expiry of six months from the date of publication of the patent as it is presumed that no one can have knowledge of application being made unless it is published in the official gazette.

- Hence, a patent cannot be granted before the expiry of the period of 24 months i.e. 2 years from the date of application of patent made before the Controller. Therefore pre-grant opposition can be made only within this period of 24 months from the date of application of patent.
  
- ❖ A patent can be granted by the Controller on grounds that
  - i) it is not opposed, and the opposition is not valid according to the Controller
  - ii) Such a patent is not in violation of any of the provisions of the Act.
    - Hence patent is considered to be granted sec 43(1) on the date when the Controller passes an order to that effect. So, as soon as the final order for grant of the patent is passed and noted on the file by the Controller it is supposed to be the date on which patent was granted. After such date of grant of patent, no pre grant opposition can be filed by anyone.
    - However the Act makes provision for post grant opposition ( form 7) which is still available for the person willing to oppose the grant of patent (EXCEPTION)

The court expressed concern about potential misuse of the amendment to Section 25 of the Patents Act, cautioning against indefinite filing of pre-grant oppositions after rejection. It warned that such practices could lead to abuse of provisions, causing unnecessary delays in patent granting and undermining the integrity of the system. The court emphasized the importance of discouraging frivolous challenges and maintaining the intended balance of providing adequate opportunity for opposition while preventing repeated challenges that could exploit the system's loopholes.

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