



2026:DHC:1498



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

+ C.A.(COMM.IPD-PAT) 25/2023

FERTIN PHARMA A/S

.....Appellant

Through: Mr. Kshitij Saxena, Mr. Saransh Vijay
Vargiye and Mr. Daksh Oberoi,
Advocates.

versus

ASSISTANT CONTROLLER OF PATENTS AND DESIGNS

.....Respondent

Through: Mr. Arnav Kumar and Ms. Manya
Gupta, Advocates.

Date of Decision: 18th February, 2026

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J : (ORAL)

1. This is an appeal under Section 117A of the Patents Act, 1970 assailing the impugned order dated 07.02.2023 passed by the Assistant Controller of Patents and Designs under Section 15 of the Indian Patents Act, 1970, rejecting the grant of patent in patent application no.202017042442.

2. Having heard the learned counsel for the parties and having perused the impugned order, this Court is inclined to set aside the impugned order and remit back for *de novo* consideration. The reason as to why this Court is remanding the matter would be clear from a reading of the impugned order itself. It would be appropriate and apposite to extract the said order:-



“3.0 OBJECTIONS

Invention u/s 2(1) (i)

1. **(i) Subject matter claimed in claims 1-30 is not an invention with in meaning of section 2 (1) (i) of Patents Act, please refer to documents as cited in ISR.**

Sufficiency of Disclosure u/s 10 (4)

1. Amended claim 19 claimed as the tablet is provided as a three layer tablet. However there is no comparative example of three layers in the complete specification, the examples provided in the specification related to only two layer tablets.

Therefore the subject matter of amended claim 19 is inconsistent and beyond the scope of claim 1 and it not supported by the description u/s 10 (4) of Indian Patents act, 1970.

4.0 ANALYSIS

The following documents are as cited In International Search Report,

D1 W02015/070875

D2 W003/059082

D3 US2010/215799

D4 W02017/059858

Document D1-D3 disclose tablets (chewing gums) comprising calcium carbonate in an amount more than 30% by weight of the tablet and organic water-Insoluble components In an amount of more than 20% by weight of the tablet.

The release profile mentioned In claim 1 does not represent a technical feature further limiting the scope of the claim, but It is rather an effect of the composition,

The document D1-D3 also teaches multiplayer tablets and use of elastomers and resins, optimizing the percentage of the resins In the tablet Is routine experimentation for person skilled in the art, therefore subject matter claimed in amended claim 1is not meeting requirement of section 2 (1) (i) (a) of Patents Act.

5.0 CONCLUSION

Therefore, Subject matter of amended claim 1 is not meeting requirement of section 2 (1) (i) (a) and, thus it is refused to proceed.”

3. It is important to note that the FER which was issued vide the communication dated 28.02.2022, raised the objections on the following



grounds:

- Lack of inventive step under section 2 (1) (ja) of the Act.
- Lack of novelty under section 2 (1) (j) of the Act.
- Lack of sufficiency of disclosure under section 10(4) of the Act.
- Non-patentability under section 3(d), 3(e) and 3(i) of the Act.
- Definitiveness, other requirement and formal requirements.

4. Thereafter, the hearing notice which was issued *vide* dated 29.08.2022 while retrieving the objections of *lack of novelty* under section 2 (1) (j) and *lack of sufficiency of disclosure* under section 10(4) of the Act, removed all other objections.

5. Thereafter, the impugned order was passed on 07.02.2023 by the learned Controller specified the objection in the hearing notice i.e., novelty and lack sufficiency of disclosure.

6. It is apparent from the impugned order reproduced above, that the order starts with the objection of *lack of novelty*, and *lack sufficiency of disclosure*. Thereafter, the impugned order mentions how the cited prior art documents D1 to D3 would render the invention of the subject application “obvious” to person skilled in the art without discussion of the prior arts. The order merely mentions the name of the cited prior arts and arrives at a conclusion without reasons.

7. Therefore, this court is of the view that the impugned order has various infirmities such as lack of clarity of objection based on which the order rejects the subject application and lack of reasoning with respect to cited prior arts D1 to D3. Even if this Court assumes that the impugned order addresses the objection of *lack of inventive step* not *lack of novelty* as specified in the hearing notice, still the order does not provide sufficient reasons.



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8. The analysis in the impugned order appears to be cryptic for the reason that it only refers to the four prior arts i.e. D1, D-2, D-3 and D-4 to conclude that the amended claim no.1 does not meet the requirement of Section 2(i)(ja) of the Act and thus was refused. It is pertinent to note that the references to the documents D-1 to D-3 in the impugned order is only with respect to what is contained therein, however the claims are not juxtaposed against such prior arts documents D-1 to D-3 and elaborated as to how the claims does not fall within Section 2(i)(ja) of the Act.

9. The Assistant Controller is required, rather mandated by the Act as a quasi judicial authority to give reasons for such refusal. Apparently, there are no reasons mentioned in the impugned order other than reference to the prior art documents D-1 to D-3. This would not fulfill the mandate under Section 15 of the Act.

10. It is trite that reasons are the bedrock of all orders including those passed by the quasi judicial authorities. The appellants before the Controller are entitled to reasons as to why their claims have been rejected. This also stems from the fact that parties are entitled to know the grounds of rejection so as to make good its case for an appeal. In the absence of such grounds, the aggrieved party would have no basis to formulate its ground at all. In that view of the matter, this Court is of the considered opinion that the said order needs to be set aside with a direction for remittance.

11. Accordingly, the impugned order is set aside with a direction that the said patent application shall be considered *de novo* by an Assistant Collector of Patents other than the Assistant Controller who had passed this order. The aforesaid direction for a fresh consideration by another Assistant Controller is not to be taken as a reflection of any nature against the said Assistant Controller who had passed the present order.



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12. Accordingly, the application is allowed.

13. The patent application no.202017042442 shall be considered *de novo* after giving a notice of hearing to the appellant by the Controller. The said *de novo* consideration be completed within next four months from the date of receipt of this order.

14. The appeal disposed of in the above terms.

TUSHAR RAO GEDELA, J

FEBRUARY 18, 2026

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