

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL MISCELLANEOUS PETITION NO. 107 OF 2025

Deepak Nitrite Limited ...Petitioner

Versus

The Assistant Controller General of Patents and Designs ...Respondent

Mr. Hiren Kamod a/w. Mr. Priyank Gupta, Mr. Abhishek Shrivastava, Ms. Aditi Sharma, Mr. Rajspandan Nigam, Ms. Vithika Sharma, Mr. Deepak Pawar, Mr. Abhijeet Gidde, Ms. Sanika Gupte, Mr. Amey Kokare, Mr. harshit Bansal and Ms. Shravani Deshmukh for the Petitioner.

Mr. Yashodeep Deshmukh a/w. Mr. Ashutosh Mishra, Mr. Rutwik Rao Vaidehi Deshmukh for the Respondent.

CORAM : ARIF DOCTOR, J.

RESERVED ON : 8th MAY 2026

PRONOUNCED ON : 6th JULY 2026

JUDGMENT

1. The present Petition has been filed under the provisions of Section 117A of the Patents Act, 1970 (“**the Patents Act**”), and impugns an order dated 2nd March 2023 (“**the Impugned Order**”) passed by the Respondent, i.e., the Assistant Controller of Patents & Designs, Patent Office, Mumbai, refusing

the Petitioner's Patent Application No. 202021019409, titled "*A Free-Flowing Food Grade Sodium Nitrite and Production Method Thereof*" under Section 15 of the Patents Act, on the ground that the subject matter of claim nos. 1 to 8, as amended and filed, do not meet the requirements of Section 2(1)(ja) of the Patents Act.

Submissions on behalf of the Petitioner:

2. Mr. Kamod, Learned Counsel for the Petitioner, has assailed the Impugned Order on the following two grounds, corresponding to the two limbs of the claim, viz. (i) product claims and (ii) process claims.
3. Regarding the product claims (Claims 1 to 3), Mr Kamod pointed out that, on the face of the Impugned Order, the claimed product is distinguished from the cited prior art by its impurity profile, i.e., the presence of impurities in amounts different from those in the prior art. He pointed out that notwithstanding this admitted point of distinction, the Respondent has refused the product claims on the single footing that "*reduction in impurities*" cannot constitute an inventive step for the reason that it is "*common general*

knowledge" that no compound is ever 100% pure. He, however, took pains to point out that the Impugned Order does not (i) cite any reference, treatise, standard text, or other identifiable source from which the asserted "*common general knowledge*" is said to be drawn; (ii) consider whether the specific impurity profile claimed in the Petitioner's application is disclosed or suggested in the cited prior art documents; or (iii) engage with the Petitioner's submissions explaining that the controlled impurity profile is tailored to the achievement of a food grade, free-flowing sodium nitrite of the kind claimed.

4. Regarding the process claims (Claims 4 to 8), he pointed out that independent Claim 4 discloses a multi-step integrated process for obtaining free-flowing food-grade sodium nitrite, comprising, *inter alia*, (i) dissolving sodium nitrite powder in water to obtain a sodium nitrite liquor; (ii) heating the liquor under controlled temperature; (iii) feeding the liquor to an evaporator to obtain a slurry mass; (iv) filtering the slurry mass through a centrifuge to separate wet cake and mother liquor; (v) drying the wet cake in a drying unit having a cold zone; and (vi) coating the dried sodium nitrite material with a food-grade anti-

caking agent. He submitted that the inventive contribution lies in the synergistic combination and specific sequencing of the said steps, taken as a unit. He, however, pointed out that the Respondent had refused the process claims by isolating a single step, namely the filtration step, and holding such filtration to be commonly performed in the laboratory and, on that basis, failed to consider the invention as a whole. He submitted that the Impugned Order was, therefore, in this respect, a non-speaking order and was bereft of any reasoned analysis of the integrated process taken as a unit, which should have been assessed as such.

5. Mr. Kamod then placed reliance upon the decisions in *Medipack Global Ventures Private Limited v. Assistant Controller of Patents and Designs*¹, *F. Hoffmann-La Roche Ltd. v. Cipla Ltd.*², *Groz-Beckert KG v. Union of India and Ors.*³; and *AGFA NV and Anr. v. The Assistant Controller of Patents and Designs*⁴ to point out that when assessing inventive step, it is incumbent

¹ Order dt. 23rd March 2026 in COMMP (L) No. 19258 of 2024 passed by Bombay High Court.

² 2015 SCC OnLine Del 13619.

³ 2023 SCC OnLine Cal 111.

⁴ 2023 SCC OnLine Del 3493.

upon the Controller to *inter alia*, (i) to identify ordinary person skilled in art; (ii) to identify inventive concept in the patent; (iii) to impute common general knowledge in the art at the priority date, to an ordinary person; (iv) to identify differences; (v) to identify the source of asserted common general knowledge (vi) to consider the invention as a whole and not in parts; (vii) to give independent reasons supporting grant/rejection of the patent application.

6. Mr. Yashodeep Deshmukh, Learned Counsel appearing on behalf of the Respondent, at the outset submitted that there was no infirmity in the Impugned Order and that the Respondent had refused the Petitioner's Patent Application after due examination and application of mind. He thus submitted that the Petition ought to be dismissed in *limine*.
7. However, upon being asked by this Court to point out from the Impugned Order where the independent analysis of the process claims for 'inventive step' was in the Impugned Order in light of the test laid down in the decisions upon which reliance was placed by the Petitioner, in particular the decision of the Delhi High Court in the case of ***F. Hoffmann-La Roche Ltd. v. Cipla***. Mr.

Deshmukh submitted that the Impugned Order must be read as a whole and the absence of such independent analysis would not *ipso facto* render the ultimate conclusion erroneous. He, however, fairly conceded that the Impugned Order did not contain the analysis in the manner which was laid down by the Delhi High Court in the case of *F. Hoffmann-La Roche Ltd.* and followed by this Court in the case of *Navya Network Inc. v. Assistant Controller of Patents and Designs*⁵.

8. Mr. Deshmukh then, without conceding to the fact that the Impugned Order was in any manner infirm, fairly conceded, and it would have been more appropriate for the Respondent to have considered the invention as a whole. Therefore, *qua* the process claims, i.e., Claims 4 to 8, Mr. Deshmukh has very fairly conceded that the matter can be remanded for fresh consideration.
9. However, in the context of the product Claims, i.e., Claims 1 to 3, he opposed any remand, contending that the Impugned Order, in that respect, was sustainable on the footing that the difference in the impurity profile was, in

⁵ Order dt. 15th April 2026 in COMMP (L) No. 15327 of 2025 passed by Bombay High Court.

any event, accounted for by common general knowledge. However, on a query from the Court as to what, according to him, would constitute "*common general knowledge*" and where from the record the same could be discerned, Mr Deshmukh was unable to do so.

10. In my view, it is wholly impermissible for the Respondent, in a quasi-judicial order under Section 15 of the Patents Act, to invoke "*common general knowledge*" as a self-sufficient ground for rejecting a patent application without setting out and substantiating the sources of such common general knowledge on the day of patent application. This position is well-settled by the Delhi High Court in *AGFA NV v. Assistant Controller of Patents and Designs*, wherein the Delhi High Court, *inter alia*, held that the Controller is required to identify the source of the asserted common general knowledge and to demonstrate that such source was published prior to the priority date of the application.

11. In light of the above, in my unhesitating view, a bald assertion of “*common general knowledge*” without setting out the identifiable source/s and/or basis on which such “*common general knowledge*” is asserted is not only impermissible but is also wholly arbitrary and contrary to the principles of natural justice. To allow this would, in my view, effectively amount to permitting a Controller to pass an order on his mere *ipse dixit* by relying upon undisclosed “*common general knowledge*” or personal knowledge without recording any reasons. Needless to state, such an approach would also deprive a party against whom an Order is passed from having the benefits of the reasoning on which the order was passed and therefore affect the ability of such a party to effectively challenge the same.

12. Hence, in my view, the present Petition would have to be allowed, the Impugned Order would have to be set aside, and the matter remanded back for consideration afresh.

13. Mr. Deshmukh at this stage, upon instructions, informs me that the office of the Controller of Patents has now put in place a system whereunder, upon

remand, the application would be assigned to a different Controller, other than the one who passed the Impugned Order. The statement is accepted. In view of the statement made by the Learned Counsel for the Respondent, a specific direction to place the matter before the new Controller is not required. While this is a positive step, it does not take care of the endemic problem as noted by the Delhi High Court in the case of *Huhtamaki OYJ v. Controller of Patents*⁶ of Controllers passing Orders by reproducing the objections, without even any application of mind.

14. Unfortunately, nothing seems to have changed, and the frequency with which such orders are passed is only increasing. This Court has recently in the following decisions *Amogreentech Co. Ltd. v. Assistant Controller of Patents & Designs*⁷; *Navya Network Inc. v. Assistant Controller of Patents and Designs*, *JFE Steel Corporation v. Controller of Patents & Designs*⁸, and *Medipack Global Ventures Private Limited v. Assistant Controller of*

⁶ 2023 SCC OnLine Del 3272.

⁷ 2023 SCC OnLine Bom 1247.

⁸ Order dt. 3rd February 2026 in COMMP No. 52 of 2025 passed by Bombay High Court.

Patents and Designs set aside orders of the Patent Office and remanded matters for fresh consideration on account of similar and recurring infirmities, such as (i) recurring deficiencies in patent examination, including denial of a fair opportunity to meet objections; (ii) failure to consider the applicant's submissions and evidence; (iii) absence of reasoned findings on statutory objections; (iv) inadequate claim construction and inventive-step analysis; (v) reliance on hindsight or unsupported assertions of common general knowledge; (vi) improper combination of prior art; (vii) mechanical reproduction of material without independent reasoning; and (viii) non-speaking orders that frustrate effective appellate review.

15. I must also note that the infirmity lies not in the absence of departmental standards but in the recurring failure to apply them. The directions issued by various Courts have repeatedly addressed these very deficiencies. Yet, despite this, the pattern of unreasoned or inadequately reasoned orders has unfortunately persisted. The consequence is that this Court is frequently left with little option but to set aside and remand such orders for fresh

consideration, even in cases where the ultimate conclusion of the Controller may possibly, upon a proper analysis, prove to be sustainable. Such orders nevertheless require interference because they are lacking in (i) adequate reasoning, (ii) analysis of the rival submissions, (iii) discussion of the cited prior art and statutory provisions, (iv) objective findings supported by material on record, and (v) a discernible chain of reasoning connecting the facts to the conclusions ultimately reached. Remands necessitated solely on account of such orders result in avoidable consumption of judicial time, duplication of effort within the Patent Office, and additional delay and expense for applicants.

16. The Courts have consistently held that the Controller is under a mandatory obligation to pass a well-reasoned and speaking order which demonstrates independent application of mind and consider the objections raised and the responses thereto and the prior art relied upon. The mere reproduction of the FER, hearing notice, opposition pleadings, prior art documents cited, or positive findings that an invention lacks novelty, inventive step, or

patentability would not qualify as a reasoned and speaking order. The reasoning must disclose the basis on which the Controller has arrived at the conclusions recorded in the order.

17. Hence, the following Order:

- i. The Petition is disposed of in terms of prayer clause (a), and the Impugned Order dated 2nd March 2023 is set aside.
- ii. The Controller to decide the Patent Application No. 202021019409 after ensuring compliance with what is set out in paragraph 15 and 16 above.
- iii. The Application to be decided within a period of twelve weeks from the date on which a copy of this Order is communicated to the Controller.

[ARIF S. DOCTOR J.]