



2026:DHC:9379



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010734102024**+ **W.P.(C)-IPD 33/2024**Date of Decision: **06.10.2026****IN THE MATTER OF:**

TETRA TECHNOLOGIES, INC.
24955 INTERSTATE,
45 NORTH, THE WOODLANDS
TX 77380, UNITED STATES OF AMERICA
THROUGH RAKHEE JAIN,
PATENT AGENT & POWER OF ATTORNEY HOLDER
HAVING OFFICE AT
1001, VIKRANT TOWER,
4, RAJENDRA PLACE.
NEW DEIHI-110008

.....Petitioner

Through: Mr. Sanjeev Bindal, Advocate.

versus

UNION OF INDIA
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF INDUSTRIAL POLICY & PROMOTION,
MINISTRY OF COMMERCE AND INDUSTRY
UDYOG BHAWAN, NEW DELHI-1 10001 Respondent No. 1

BAUDHIK SAMPADA BHAWAN,
S.M. ROAD, NEAR ANTOP HILL
MUMBAI -400037

....Respondent No. 2

SH. NR MEENA
SENIOR JOINT CONTROLLER OF PATENTS AND DESIGN
BAUDHIK SAMPADA BHAWAN,

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PLOT NO.32, SECTOR 14, DWARKA
NEW DELHI-110078

....Respondent No. 3

Through: Ms. Nidhi Raman, CGSC with Mr.
Rishay Raj, Advocate.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGEMENT

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The instant writ petition has been filed under Articles 226 and 227 of the Constitution of India. It challenges the respondents' decision to treat the petitioner's Indian Patent Application No. 202017019804 as deemed to have been abandoned under Section 21(1) of the Patents Act, 1970 ('the Act'). The petitioner seeks a direction for the revival and further examination of the said application.
2. Briefly stated, the subject application is the national phase entry of International Application No. PCT/US2018/057202. It was filed on 11.05.2020 through the petitioner's patent agent, M/s Jain & Partners. In Form 1, the petitioner furnished its address for service, comprising a postal address at New Delhi and the e-mail address 'info@jainandpartners.com'. The application was published on 14.08.2020. Upon the filing of the request for examination in Form 18, the respondents claim to have issued the First Examination Report [FER] on 28.10.2021.
3. Learned counsel appearing on behalf of the petitioner submits that the application has been treated as abandoned on account of non-filing of the reply to the FER. On 28.10.2021, the respondents seem to have sent the FER by e-mail. According to their record, it was not replied to within six months,

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and therefore, the decision to treat the petitioner's application as abandoned has been taken. It is his case that the purported e-mail has never been received by the petitioner or its patent agent.

4. It is further submitted that the petitioner learnt of the abandonment only on 25.04.2023, upon checking the status of the application on the official portal. From 25.04.2023 to 08.11.2023, the patent agent addressed several e-mails to the officials of respondent No. 3, which were met with the stock reply that the FER had been 'successfully sent'. The grievance was also raised in the Open House sessions of January and February, 2024. Thereafter, a petition in Form 30 was filed on 05.03.2024, which remains undecided.

5. The said position has been disputed by learned counsel appearing on behalf of the respondents. It is submitted that as per Rule 24B(5) of the Patents Rules, 2003 ('the Rules'), the time for putting an application in order for grant under Section 21 of the Act is six months from the date on which the first statement of objections is issued to the applicant. The said period may be extended by three months under Rule 24B(6), on a request in Form 4 made before its expiry. Rule 138 excludes any further extension.

6. It is contended that, as per the database of the IT Division, the FER was transmitted on 28.10.2021, under Mail Reference PATEXAMFER-367766, to the e-mail address furnished by the petitioner in its application. Such electronic transmission is a permissible mode of communication under Rule 6(3) of the Rules. Since no reply was received within the stipulated period, the application came to be treated as abandoned. Reliance is placed upon an internal e-mail of the IT Division dated 11.05.2023 in support of the said dispatch.

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7. Learned counsel has further explained that during the Covid-19 period, i.e., 15.03.2020 to 28.02.2022, the respondents' office did not effect any *suo motu* abandonment. Therefore, the application of the petitioner was treated as abandoned on 29.12.2022. Placing reliance on ***The European Union represented by the European Commission v. Union of India & Ors.***,¹ and ***Telefonaktiebolaget LM Ericsson (Publ) v. Union of India & Ors.***,² particularly paragraph 14 thereof, it is contended that no interference is called for, since the respondents have adhered to the applicable Rules.

8. I have heard the learned counsel appearing for the parties and have perused the record.

9. Before advertng to the rival contentions, it would be apposite to refer to Section 21(1) of the Act, which reads as under:

“21. Time for putting application in order for grant.—(1) An application for a patent shall be deemed to have been abandoned unless, within such period as may be prescribed, the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.....”

10. Rule 5 of the Rules, which requires furnishing of an address for service, is also relevant. The same is extracted as under:

“5. Address for service. – [Every person, concerned in any proceedings to which the Act or these rules relate and every patentee, shall furnish to the Controller an address for service, including a postal address in India and an e-mail address, and

¹ 2022:DHC:2301

² 2010:DHC:1425



such address for service shall be treated for all purposes connected with such proceedings or patent as the address of the person concerned in the proceedings or of the patentee. Unless such an address for service is given, the Controller shall be under no obligation either to proceed or deal with any proceeding, or patent or to send any notice that may be required to be given under the Act or these rules and the Controller may take suo motu decision in the matter:

Provided that a patent agent shall also be required to furnish to the Controller a mobile number registered in India].”

11. A bare perusal of Section 21(1) of the Act shows that the period for putting an application in order for grant runs from the date on which the first statement of objections is forwarded to the applicant by the Controller. The deemed abandonment contemplated thereunder is, thus, founded upon the FER having been effectively communicated to the applicant at its address for service. It is trite that legal fictions are created only for some definite purpose, and that a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field, as held in ***Bengal Immunity Co. Ltd. v. State of Bihar***³.

12. In ***Telefonaktiebolaget LM Ericsson*** (supra), this Court, following ***Ferid Allani v. Union of India***⁴, observed that “abandonment” requires a conscious act on the part of the applicant manifesting an intention to abandon the application. Since the applicant therein had responded to the objections within time, the Court held that the basic factual condition for attracting the deemed fiction of “abandonment” in terms of Section 21(1) of the Act, was non-existent. In the considered opinion of this Court, the said principle applies with greater force where the very receipt of the FER is in

³ AIR 1955 SC 661

⁴ 2008 (37) PTC 448 (Del.)





serious doubt.

13. Insofar as the respondents have placed reliance on paragraph 14 of *Telefonaktiebolaget LM Ericsson* (supra), it is noted that the said paragraph holds an application to be deemed abandoned only where, in response to an examination report, the applicant does nothing within the stipulated time and does not seek an extension of time. The said observation itself presupposes that the examination report has reached the applicant. It cannot, therefore, come to the aid of the respondents where the receipt of the FER is itself in serious doubt.

14. Rule 5 of the Rules obliges every applicant to furnish both a postal address in India and an e-mail address for service. Rule 6(3) no doubt permits communication by “electronic transmission duly authenticated”, and Rule 6(4) treats the date of dispatch as the date of the communication. However, Rule 6(5) itself recognises that a communication sent by the patent office may be delayed in reaching the party, and empowers the Controller to condone the consequential delay. The scheme, therefore, does not treat mere dispatch as conclusive of actual receipt.

15. It is not the case of the respondents that the petitioner’s postal address in India was not available. The petitioner had duly furnished the postal address along with the e-mail address in Form 1. The petitioner has also brought on record screenshots of the inbox of the said e-mail account for the period from 23.10.2021 to 30.10.2021. These indicate that the e-mail purported to have been sent by the respondents was not received. In the absence of any proof of delivery of the said e-mail, there is no reason to doubt the position taken by the petitioner.

16. The material relied upon by the respondents shows that a system-

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generated e-mail was dispatched. That e-mail merely intimates the issuance of the examination report and with a link to INPASS and to the official document. Notably, it carries a disclaimer that the information is “under testing” and “not valid for any legal proceedings under the Patents Act 1970”. Such an intimation, without more, cannot be the sole basis for visiting the applicant with the drastic consequence of abandonment.

17. Even otherwise, nothing prevented the respondents from sending the FER to the postal address as well, or from re-communicating it once the petitioner raised a specific grievance of non-receipt. In **Saurav Chaudhary v. Union of India & Anr.**⁵, the FER had reached the patent agent but had not been conveyed to the applicant. This Court held there that the mere fact that the FER would be uploaded on the website may not be sufficient to hold that the Petitioner had notice of the FER. The said reasoning applies with greater force where the FER is not shown to have reached even the address for service.

18. Rule 24B(6) of the Rules itself provides for an extension of three months. This underscores that the scheme envisages a meaningful opportunity for the applicant to meet the objections raised. The decision on a patent application has to be taken after adhering to the principles of natural justice, as is also reflected in Section 80 of the Act and Rule 129 of the Rules. In **Uma Nath Pandey v. State of U.P.**⁶, the Supreme Court, quoting **Canara Bank v. V.K. Awasthy**⁷, held that notice is the first limb of the *audi alteram partem* rule. It further held that, in the absence of such notice and

⁵ 2024:DHC:4946

⁶ (2009) 12 SCC 40

⁷ (2005) 6 SCC 321





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reasonable opportunity, the order passed becomes wholly vitiated.

19. It is also seen that the petition filed on 05.03.2024, though styled under Rule 6(6) of the Rules, specifically raised the plea of non-receipt of the FER and sought its re-issuance. The record does not indicate that the same was ever considered or decided, or that any opportunity of hearing was afforded to the petitioner. The repeated grievances of the petitioner were met only with stock replies, including that “a duplicate FER cannot be issued in this case”.

20. The petitioner entered the national phase within time, filed its request for examination, and pursued the matter persistently upon learning of the abandonment. Such conduct is wholly inconsistent with any intention to abandon. In *The European Union* (supra), this Court held that courts exercising writ jurisdiction may, in rare cases, permit the application to be put in order after examining the factual matrix to see as to whether the applicant in fact intended to abandon the patent or not. This Court is conscious of the caution sounded therein. However, the instant case turns not merely on the condonation of a lapse, but on the absence of effective communication of the FER itself.

21. In the instant case, the application has been treated as abandoned only on account of non-filing of the reply by the petitioner. When the service of the FER itself is doubted, the impugned decision would not sustain. The Court, therefore, deems it appropriate to set aside the decision treating the subject application as deemed to have been abandoned, and to direct its revival on the records of the respondents.

22. The respondents shall furnish a copy of the FER dated 28.10.2021 to the petitioner’s patent agent or at such other address as may be intimated by

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the petitioner, at both the postal and the e-mail address for service, within one week from today. The petitioner is granted eight weeks' time from today to file the reply to the FER. If the petitioner does so, let the application of the petitioner be taken to its logical conclusion with due expedition and in accordance with the Act and the Rules.

23. It is clarified that this Court has not expressed any opinion on the merits of the subject application. The directions hereinabove have been issued in the peculiar facts and circumstances of the present case.

24. Accordingly, the petition stands disposed of, along with pending application(s), if any.

PURUSHAINDRA KUMAR KAURAV, J

OCTOBER 6, 2026 /tr/sa

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