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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-11-2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

CMA(PT) No. 7 of 2025
& CMP.No.12809 of 2025
CNR: {HCMA010726582025}

Case QR

Qualcomm Incorporated
International IP Administration, 5775 Morehouse Drive, San Diego, California 92121-1714, USA
Rep. by its Constituted Attorney Bejoy Sebastian.

..Petitioner(s)

Vs

Assistant Controller of Patents And Designs,
Patent office, Intellectual Property Building,
G.S.T. Road, Guindy, Chennai - 600 032 also at
Intellectual property office building, S.M. Road,
Antop Hill Mumbai - 400 037.

..Respondent(s)

To set aside the order of the Respondent dated 10th December 2024 passed in Indian Patent Application No.202147041228 and consequently direct the Respondent to expeditiously proceed with further prosecution of Indian Patent Application No.202147041228.

For Petitioner(s): Mr.N.C.Vishal

For Respondent(s): M/s.M.P.Jaisha
Central Govt. Standing Counsel

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JUDGMENT

This patent appeal has been filed to set aside the order of the respondent dated 10.12.2024 in Indian Patent Application No.202147041228 and consequently, direct the respondent to expeditiously proceed with further prosecution of Indian Patent Application No.202147041228.

2.I have heard Mr.N.C.Vishal, learned counsel for the appellant and M/s.M.P.Jaisha, learned Central Government Standing Counsel for the respondent.

3.Mr.N.C.Vishal, learned counsel for the appellant would straight away take me through the impugned order and contend that the rejection is not on merits of the claimed invention, but on a pure technical ground that has been found and alleged by the respondent. He would further state that the appellant had executed a power of attorney in favour of the agent, who represented the appellant before the patent Controller and according to the learned counsel for the appellant, without any basis, the respondent has unnecessarily gone into the validity of the power of attorney and erroneously held that the power of attorney is not valid and that it will not enable the agent to prosecute the patent application, on behalf of the principal.

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4.It is the further submission of Mr.N.C.Vishal, learned counsel to the appellant that neither the provisions of the Patent Act nor the Rules contemplate registration or even a notarization of a power of attorney, which is executed by a principal (patentee), empowering an agent to represent the principal and prosecute the patent application before the patent Controller. In this regard, he takes me through Sections 127 and 132 and Rules 126 and 135 of the Patent Act. He would also rely on the decision of the Calcutta High Court in *Huawei Technologies Company Limited Vs. The Controller General of Patents Designs and Trademark and another*, in *IPDPTA/6/2025* dated *22.04.2025*, where the Calcutta High Court, in an identical situation, set aside the order of rejection and remitted the matter for fresh consideration before a different hearing officer. It is therefore contended by Mr.N.C.Vishal, learned counsel to the appellant that the present case also is one where the order has to be necessarily set aside and the matter be remitted, to be decided on merits. He would therefore pray for the appeal being allowed.

5.Per contra, M/s.M.P.Jaisha, learned Central Government Standing Counsel for the respondent state that the Controller was well within his rights to see whether the power of attorney conformed to the requirement of the statute and the rules made thereunder. She would further contend that the power of attorney was not in conformity to the Form 26 which is prescribed under Rule 135 and is also mandatory. She would also invite my attention to the exercise of

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the powers for the Controller under Section 77(1)(c) of the Act being akin to powers of the Civil Court. She would therefore state that the Controller could have not in any event questioned the validity of the power of attorney. She would also state that the appellant was even given an opportunity to file an affidavit under Rule 126(3) to validate and the exercise the authenticity of the general power of attorney attorney and explain the irregularities and the appellant has failed to take advantage of the same and therefore, the impugned order of rejection is proper and it does not require any interference.

6.The learned Central Government Standing Counsel for the respondent, relying on Rule 126 of the Patent Rules, would contend that the power of attorney has to be as stipulated in Rule 126(3) and therefore, the power of attorney is clearly invalid and cannot be made use of. She would further contend that the power of attorney does even contain the patent application number and there is every chance of misuse of such powers of attorney, especially since multiple agents are appointed under one power of attorney.

7.I have carefully considered the submissions advanced by the learned counsel on either side.

8.Firstly, I find that the power of attorney has been executed by the appellant on an Indian non-judicial e-stamp of the value of Rs.500/-. The power

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of attorney was purchased in the national capital territory of Delhi and the power of attorney was prepared and sent for signature to the principal, Qualcomm Incorporated. The said power of attorney was executed by the principal on 03.05.2021 and based on the said power of attorney, the application was made, within the time stipulated, before the Controller. In view of an objection taken that the e-stamp was prior to the date of the power of attorney, the appellant also furnished an additional stamp paper by way of annexure, for a value of Rs.100/- non-judicial stamp paper and enclosed a sworn affidavit, stating that the annexed copy of the power of attorney is a true copy of the original, which has already been filed in Indian Patent Application No.202147021533 on 12.05.2021. The Controller has gone into minute details with regard to the said power of attorney and found it to be not being in compliance with the mandate of Form 26 and also found irregularities in the procedure adopted in execution of the said power of attorney, pointing out that the power of attorney is not even notarized or registered and that there is no explanation as to how the stamp paper date, namely the e-stamp of value of Rs.500/- could precede the date of execution of the power of attorney, that too in a different country.

9.At the outset, I am unable to appreciate the very approach of the respondent. The principal, who has appointed the power agent is not disputing the power of attorney. No doubt, the power of attorney should comply and

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conform to the requirements of the statute, namely the Patents Act r/w Patent Rules. As rightly pointed out by Mr.N.C.Vishal, learned counsel for the appellant, I do not see any requirement for a power of attorney to be either notarized or registered under the provisions of the said Act or Rules made thereunder.

10.Further, I do not see any illegality or infirmity for the stamp paper bearing an earlier date. There is no provision or requirement that the document has to be executed only on the date on which the stamp paper is issued. It would be an illegality only if the date of the document precedes the date of issuance of stamp paper. It is not so in the instant case. Therefore, I am unable to countenance the argument of the learned Central Government Standing Counsel for the respondent in this regard. Though the learned counsel for the respondent has invited my attention to Section 77(1)(c) of the Patents Act, I do not see how the said Section will come into operation for holding that even at the stage of filing of an application by the agent, the powers conferred upon the Controller under Section 77 could be exercised, that too, to reject the application. Moreover, the Rule does not contemplate the patent application to only conform to Form 26. The word used is “or” Rule 126 only contemplates either Form 26 to be followed or a power of attorney. Therefore, I am unable to countenance the arguments of M/s.M.P.Jaisha, learned Central Government Standing Counsel for the respondent that an irregular defect in procedure has occasioned

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in not complying with request of Form 26. Further, neither the Act nor the Rule require a power of attorney of the principal, who has applied for patent to be either notarized or registered. The provisions of the Transfer of Property Act or the Registration Act or Stamp Act are also not made applicable to the Patent Act and its Rules. In such circumstances, the Controller was clearly in error in rejecting the very patent application, on the ground that the power of attorney does not comply with the requirement of Form 26.

11.Equally, no strength can be drawn, relying on Section 77(1)(c) of the Patent Act, vesting powers of a Civil Court on the Controller. It is only for the limited purposes of filing of affidavits or evidence to clarify the factual issues, for which Section 77(1)(c) has been enacted and it cannot be extended to a case of this nature where the patent application is presented by an agent, on the strength of power of attorney executed by the principal, especially when the principal does not disown the power of attorney or question the authority of the agents.

12.The Calcutta High Court, in fact, as rightly contended by the learned counsel for the petitioner, in identical facts, held that a plain reading of the relevant provisions clearly point to the fact that the invalidity of the power of attorney is not a ground to refuse the application for patent. The Calcutta High Court also followed the decision in *Amit Roy Vs JyothendraSinhji Viramshinhj*i,

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reported in *2016 SCC Online Karnataka 8793*, where the High Court held that the scheme of Chapter 10 of the Patents Act does not indicate the requirement of power of attorney to be notarized or registered. These two decisions would squarely apply to the facts of the present case and in any event, as long as the principal, who has executed the power of attorney is not questioning the capacity of the agent to present the patent application, I do not see how, in the absence of any statutory requirement for either notarizing or registering the power of attorney, the Controller, on his/her own motion, can question the validity of the said power of attorney.

13.Further, in any event, it cannot be a ground to reject the patent application, especially being a technical objection, which is always curable. However, in the facts of the present case, I find that the technical objection itself is wholly without substance and therefore, on the strength of the power of attorney, the agent was certainly entitled to present and prosecute the patent application before the respondent.

14.Insofar as Rule 126 of the Patents Rules, firstly, I find that the said Rule applies only to affidavits that are filed at the patent office. No doubt, such affidavits executed outside India will have to be sworn before diplomatic or Consular Officer. In such country or place or before the notary of the country or place, recognized by the Central Government under Section 14 of the Notaries

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Act or before a Judge or Magistrate of the country or place. However, this Rule cannot be extended to a power of attorney, which is admittedly not dealt with in the Rules. Rule 126, at best, can refer to affidavits required under the Act or Rules framed under the Act, namely the Patent Rules, 2003.

15.As far as the reliance placed on Section 84 of the BSA, 2023, the said provision only creates a presumption of authenticity on a power of attorney, which is executed before an authenticated by recognized authority/notary public or Indian Consular Officer. As long as the principal has not disputed the execution of such power of attorney and there is no specific requirement of the power of attorney being notarized or registered under the Patents Act or Rules made thereunder, I do not see how Section 84 can be made applicable to a power of attorney executed by the person applying for patent, empowering his agent/agents to file and prosecute patent applications in India.

16.Though it is contended by the learned Central Government Standing Counsel for the respondent that Rule 126(3)(b) mandates authentication requirement of affidavits and documents executed outside India to be authenticated to diplomatic officer, Consular Officer or a notary public recognized under Indian law and that it equally applies to a power of attorney submitted in the place of Form 26, I am unable to see how such argument can be sustained. As already discussed herein above, neither the Act nor the Rule

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require any such authentication of a power of attorney executed by the patentee in favour of his agent. Further, the conjunction used in the Rule is 'or' and in the absence of any stipulation that the power of attorney also should comply with Rule 126(3), I am unable to accept the argument of the learned Central Government Standing Counsel in this regard. Therefore, the respondent has clearly fell in error in rejecting the patent application itself and adopting such a hyper-technical approach, that too, on non available grounds.

17.In the light of the above, the Civil Miscellaneous Appeal (Patent) is allowed and the order of the Respondent dated 10.12.2024 in Indian Patent Application No.202147041228 is set aside. The matter is remitted to the respondent, with a direction that it would be heard by a different Patent Controller and after affording a fair opportunity to the appellant, the respondent shall pass final orders, within a period of four months from the date of receipt of a copy of this order. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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P.B.BALAJI, J.

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