Huhtamaki Oyj And Anr vs Controller Of Patents on 26 May, 2023

Author: C.Hari Shankar

Bench: C.Hari Shankar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
\+ C.A.(COMM.IPD-PAT) 158/2022
HUHTAMAKI OYJ AND ANR ..... Appellants
Through: Mr. Ankush Verma, Mr. Debashish Banerjee, Mr. Pankaj Saini, Mr. Vineet Rohilla, Mr. Rohit Rangi, Mr. Tanveer Malhotra and Mr. Venkatesh Naik, Advs.

versus

CONTROLLER OF PATENTS ..... Respondent
Through: Mr. Harish Vaidyanathan Shankar, CGSC, Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
O R D E R (O R A L)

% 26.05.2023

1. I have, before me, yet another order passed by an Assistant Controller of Patents and Designs, whereby Application No. 6727/DELNP/2014, filed by the appellant, seeking registration of a patent, stands rejected, without even a word of independent reasoning, merely reproducing the contents of the hearing notice issued to the appellant.

2. Consequent to the submission of Application No. 6727/DELNP/2014, by the application, for registration of the aforesaid patent, First Examination Report (FER) was issued to the appellant on 28th May 2019. The appellant submitted its response to the FER on 19th November 2019, whereafter, hearing notice dated 16th July 2020 was issued to the appellant by the Assistant Controller, fixing hearing in the matter on 6th August 2020. Para 3 contained the surviving objections, and may be reproduced thus:

> "Objections Formal Requirement(s)
>
> 1. Format of all forms (Form 1, Form 3, Form 5 and Form 18) have not submitted

according to second schedule of Patent rules, 2003 (Tick/Cross whichever is applicable/not applicable). Strike out the column which is/are not applicable

2. Irrelevant portion of the complete specification shall be scored out.

3. A marked copy clearly identifying the amendments carried out and a statement clearly indicating the portion (page number and line number) of the specification or drawing being amended along with the reason shall also be filed Invention u/s 2(1)(ja)

1. Applicants argument with respect to the Inventive step are fully considered; they are not found persuasive in view of the following discussions. The applicant in his reply argues that D1-D3 teaches away from the claimed invention; Applicant argues that since D1 and D2 teaches a separate crystallization accelerator from the stereocomplex crystallites and the crystallization accelerator promotes the formation of homocrystals of polylactic acid, it teaches away from the instant invention. These arguments are not found satisfactory; D2 was used as a reference to teach the concentration of PDLA in the resin, not the presence of a nucleating agent in addition to the stereocomplex crystallites. Furthermore, the office action respectfully disagrees that the presence of a crystallization accelerator and stereocomplex crystallites in D2 does not teach away from the instant invention when the instant invention has both. D4 (US 2009/0186178) teaches a biodegradable polylactic acid (PLA) resin composition formed using a stereocomplex crystal structure (paragraph 0001). D4 teaches that the PLA resin contains poly D- lactic acid (PDLA) and excess poly-L-lactic acid (PLLA) in a ratio such that stereocomplex crystals are formed which act as a nucleating agent for the resin to increase the overall crystallization rate of the resin (paragraph 0030).D4 teaches that the PLLA contains L-lactic acid units in a range of 90 to 99 mol% and the PDLA contains D-lactic acid units in a range of 80 to 99 mol% (paragraph 0039). The office action notes that these ranges are close to the ranges recited in instant claim 1 for the purity of the PLLA and PDLA (less than 1 mol% of the opposite isomer). It has been held that obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that a person skilled in the art would have expected them to have the same properties.

The PLLA and PDLA used in the inventive examples of D4 contain 98.5% and 99% of their respective isomers, respectively, (paragraph 0071) so that a person skilled in the art could be reasonably expected to use PLLA and PDLA purities that are closes to the purities required in the instant claims.D4 teaches that the PLLA and the PDLA are present in a molar ratio of from 95:5 to 60:40 (paragraph 0036). The office action notes that since D- lactic acid and L-lactic acid are isomers, a molar ratio would be the same as a mass ratio. Therefore, the concentration of PDLA in the resin of D4 overlaps with the range recited in instant claim 1 for the concentration of PDLA as component ☐ D4 teaches that the resin composition can contain inorganic fillers such as kaolin clay (paragraph 0045) which applicant discloses as having a lamellar

structure, instant specification (page 9, lines 9-1 0). D4 also teaches that the filler can be present from 1 to 28% by weight (paragraph 0046) which falls within the range recited in instant claim 1 for component ❑

D4 is silent as to the resin composition containing an inorganic nucleating agent and the nucleating agent always being different than the inorganic filler. D5 (WO 2011/024693- Reference taken from the family US 2012/0202944) teaches a polylactic acid stereocomplex and a method for production thereof, and a nucleating agent for polylactic acid (paragraph 0002). D5 teaches that the nucleating agent is present from 0.01 to 1 0 parts by weight (paragraph 0053) which overlaps in range recited in instant claim 1 for component ❑ It has been held that obviousness exists where the claimed ranges overlap or lie inside ranges disclosed by the prior art. D5 also teaches that the inorganic nucleating agent can be used in combination with organic nucleating agents (paragraph 0056). Although the list of preferred organic nucleating agents taught by D5 (paragraph 0055) does not include the stereocomplex crystals used as nucleating agents taught by D4, a person skilled in the art could reasonably interpret the stereocomplex crystals used as nucleating agents to fall within the category of organic nucleating agents. Therefore, a person skilled in the art could reasonably interpret the teaching of D5 to mean that the use of an inorganic nucleating agent is not excluded by the use of an organic nucleating agent such as stereocomplex crystals used as nucleating agents.

D4 is silent as to the resin composition containing 0.5 to 3% by weight of stereocomplex crystallites PLLNPDLA or of PLA/PDLA in a molar ratio of 1 :1. D2 teaches a polylactic acid composition where the poly-D-lactic acid can be present from 0.1 -20% by weight based on total resin weight (paragraph 0023). D2 also teaches that the stereocomplex crystallinity affects heat resistance and moldability. It would have been obvious to a person skilled in the art at the time of invention to lower the poly-D-lactic acid concentration in the resin composition of D4, as modified by D2, in the manner recited by the claim(s), since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Therefore, the amended claims 1-12 lacks inventive step in view of the above teachings of prior arts D1-D5, as required u/s 2(1ja) of the Indian Patents Act, 1970.

Non-Patentability u/s 4

1. The objection with respect to section 3(e) is still maintained, for being a substance obtained by a mere admixture of a thermo formable, biodegradable resin and a nucleating combination resulting in a thermo formable composition; mere admixture of ❑, ❑, ☐(as claimed in the principle claim) resulting in a nucleating combination; resulting only in the aggregation of the properties of the components or a process of producing such substance, in the lights of the teachings of D1-D5.

Other Requirement(s)

1. The instant invention fails to show the technical effect over the prior arts, where the solution for similar technical problem has provided as cited above.

2. When the invention relates an improvement to the existing process or product, a short description of the closest prior arts shall be given in the complete specification."

3. The appellant responded to the aforesaid objections vide letter dated 21st August 2020.

4. The impugned order has come to be passed three days later on 24th August 2020.

5. It reads thus:

"IN THE MATTER OF AN APPLICATION FOR PATENT Application number: 6727/DELNP/2014 DECISION In view of the outstanding objections after the response to FER was received, a hearing was offered on 06th August 2020 with a list of objections as follows: -

Pending Objections as communicated via hearing notices as follows: -

1. Invention u/s 2(1)(j):-

Formal Requirement(s)

1. Format of all forms (Form 1, Form 3, Form 5 and Form 18) have not submitted according to second schedule of Patent rules, 2003 (Tick/Cross whichever is applicable/not applicable). Strike out the column which is/are not applicable 2. Irrelevant portion of the complete specification shall be scored out. 3. A marked copy clearly identifying the amendments carried out and a statement clearly indicating the portion (page number and line number) of the specification or drawing being amended along with the reason shall also be filed Invention u/s 2(1)(ja).

2. Applicants argument with respect to the Inventive step are fully considered; they are not found persuasive in view of the following discussions. The applicant in his reply argues that D1-D3 (US 2010/0227963 A1, JP 2005/281331, US 2007/0084822 A1) teaches away from the claimed invention; Applicant argues that since D1 and D2 teaches a separate crystallization accelerator from the stereocomplex crystallites and the crystallization accelerator promotes the formation of homocrystals of polylactic acid, it teaches away from the instant invention. These arguments are not found satisfactory; D2 was used as a reference to teach the concentration of PDLA in the resin, not the presence of a nucleating agent in addition to the stereocomplex crystallites.

Furthermore, the office action respectfully disagrees that the presence of a crystallization accelerator and stereocomplex crystallites in D2 does not teach away from the instant invention when the instant invention has both. D4 (US 2009/0186178) teaches a biodegradable polylactic acid (PLA) resin composition formed using a stereocomplex crystal structure (paragraph 0001). D4 teaches that the PLA resin contains poly D- lactic acid (PDLA) and excess poly-L-lactic acid (PLLA) in a ratio such that stereocomplex crystals are formed which act as a nucleating agent for the resin to increase the overall crystallization rate of the resin (paragraph 0030).D4 teaches that the PLLA contains L-lactic acid units in a range of 90 to 99 mol% and the PDLA contains D-lactic acid units in a range of 80 to 99 mol% (paragraph 0039). The office action notes that these ranges are close to the ranges recited in instant claim 1 for the purity of the PLLA and PDLA (less than 1 mol% of the opposite isomer). It has been held that obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that a person skilled in the art would have expected them to have the same properties. The PLLA and PDLA used in the inventive examples of D4 contain 98.5% and 99% of their respective isomers, respectively, (paragraph 0071) so that a person skilled in the art could be reasonably expected to use PLLA and PDLA purities that are closes to the purities required in the instant claims. D4 teaches that the PLLA and the PDLA are present in a molar ratio of from 95:5 to 60:40 (paragraph 0036). The office action notes that since D-lactic acid and L- lactic acid are isomers, a molar ratio would be the same as a mass ratio. Therefore, the concentration of PDLA in the resin of D4 overlaps with the range recited in instant claim 1 for the concentration of PDLA as component ☐ D4 teaches that the resin composition can contain inorganic fillers such as kaolin clay (paragraph 0045) which applicant discloses as having a lamellar structure, instant specification (page 9, lines 9-1 0). D4 also teaches that the filler can be present from 1 to 28% by weight (paragraph 0046) which falls within the range recited in instant claim 1 for component ☐ D4 is silent as to the resin composition containing an inorganic nucleating agent and the nucleating agent always being different than the inorganic filler. D5 (WO 2011/024693- Reference taken from the family US 2012/0202944) teaches a polylactic acid stereocomplex and a method for production thereof, and a nucleating agent for polylactic acid (paragraph 0002). D5 teaches that the nucleating agent is present from 0.01 to 1 0 parts by weight (paragraph 0053) which overlaps in range recited in instant claim 1 for component ☐ It has been held that obviousness exists where the claimed ranges overlap or lie inside ranges disclosed by the prior art. D5 also teaches that the inorganic nucleating agent can be used in combination with organic nucleating agents (paragraph 0056). Although the list of preferred organic nucleating agents taught by D5 (paragraph 0055) does not include the stereocomplex crystals used as nucleating agents taught by D4, a person skilled in the art could reasonably interpret the stereocomplex crystals used as nucleating agents to fall within the category of organic nucleating agents. Therefore, a person skilled in the art could reasonably interpret the teaching of D5 to mean that the use of an inorganic nucleating agent is not excluded by the use of an organic nucleating agent such as stereocomplex crystals used as nucleating agents. D4 is silent as to the resin composition containing 0.5 to 3% by weight of stereocomplex crystallites PLLNPDLA or of PLA/PDLA in a molar ratio of 1 :1. D2 teaches a polylactic acid composition where the poly-D-lactic acid can be present from 0.1 -20% by weight based on total resin weight (paragraph 0023). D2 also teaches that the stereocomplex crystallinity affects heat resistance and moldability. It would have been obvious to a person skilled in the art at the time of invention to lower the poly-D-lactic acid concentration in the resin composition of D4, as modified by D2, in the manner recited by the claim(s), since it has been held that discovering an optimum value of a result

effective variable involves only routine skill in the art. Therefore, the amended claims 1-12 lacks inventive step in view of the above teachings of prior arts D1-D5, as required u/s 2(1ja) of the Indian Patents Act, 1970.

Non-Patentability u/s 3

1. The objection with respect to section 3(e) is still maintained, for being a substance obtained by a mere admixture of a thermo formable, biodegradable resin and a nucleating combination resulting in a thermo formable composition; mere admixture of ❑, ❑, ❑(as claimed in the principle claim) resulting in a nucleating combination; resulting only in the aggregation of the properties of the components or a process of producing such substance, in the lights of the teachings of D1-D5.

Other Requirement(s)

1. The instant invention fails to show the technical effect over the prior arts, where the solution for similar technical problem has provided as cited above. 2. When the invention relates an improvement to the existing process or product, a short description of the closest prior arts shall be given in the complete specification.

Agent for the applicant attended the hearing. Filed reply for the objections raised in the hearing notice within the stipulated time in the Patents Act, 1970. However, the objections raised in the hearing notice stands in view of the following Analysis:-

> The present relates to essentially biobased and optionally biodegradable thermoformable Composition consisting of
>
> (a) at least one poly-L-lactide with less than 1 mol % of D-

lactoyl units (PLLA) or at least one poly-L-lactide with from 1 mol% to 5 mol% of D-lactoyl units (PLA) as thermoformable, biodegradable resin,

(b) a nucleating combination of ❑) 0.5 to 5% by weight, based on the total amount of the thermoformable resin a), of PLLA/PDLA or PLA/PDLA stereocomplex crystallites in a molar ratio of 1:1, ❑) 0.1 to 25% by weight, based on the total amount of the thermoformable resin a), of an inorganic nucleating agent, and ❑) greater than 10 to less than 30% by weight, based on the total amount of the thermoformable resin a), of at least an inorganic filler with lamellar structure and

(c) optionally, one or more additives selected from the group consisting of UV stabilizers, heat stabilizers, anti- oxidants, flame retardants, impact modifiers, plasticizers, rheology modifiers, antistatic agents, mold release agents, lubricants, and degassing agents, wherein the component (❑) is always a different compound than any inorganic nucleating compound used as component (❑)"

> D2 was used as a reference to teach the concentration of PDLA in the resin, not the presence of a nucleating agent in addition to the stereocomplex crystallites.

Furthermore, the office action respectfully disagrees that the presence of a crystallization accelerator and stereocomplex crystallites in D2 does not teach away from the instant invention when the instant invention has both.

D4 (US 2009/0186178) teaches a biodegradable polylactic acid (PLA) resin composition formed using a stereocomplex crystal structure (paragraph 0001). D4 teaches that the PLA resin contains poly D- lactic acid (PDLA) and excess poly-L-lactic acid (PLLA) in a ratio such that stereocomplex crystals are formed which act as a nucleating agent for the resin to increase the overall crystallization rate of the resin (paragraph 0030).D4 teaches that the PLLA contains L-lactic acid units in a range of 90 to 99 mol% and the PDLA contains D-lactic acid units in a range of 80 to 99 mol% (paragraph 0039). The office action notes that these ranges are close to the ranges recited in instant claim 1 for the purity of the PLLA and PDLA (less than 1 mol% of the opposite isomer). It has been held that obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that a person skilled in the art would have expected them to have the same properties. The PLLA and PDLA used in the inventive examples of D4 contain 98.5% and 99% of their respective isomers, respectively, (paragraph 0071) so that a person skilled in the art could be reasonably expected to use PLLA and PDLA purities that are closes to the purities required in the instant claims. D4 teaches that the PLLA and the PDLA are present in a molar ratio of from 95:5 to 60:40 (paragraph 0036). The office action notes that since D-lactic acid and L-lactic acid are isomers, a molar ratio would be the same as a mass ratio. Therefore, the concentration of PDLA in the resin of D4 overlaps with the range recited in instant claim 1 for the concentration of PDLA as component ☐ D4 teaches that the resin composition can contain inorganic fillers such as kaolin clay (paragraph 0045) which applicant discloses as having a lamellar structure, instant specification (page 9, lines 9-1 0). D4 also teaches that the filler can be present from 1 to 28% by weight (paragraph 0046) which falls within the range recited in instant claim 1 for component ☐

D4 is silent as to the resin composition containing an inorganic nucleating agent and the nucleating agent always being different than the inorganic filler. D5 (WO 2011/024693- Reference taken from the family US 2012/0202944) teaches a polylactic acid stereocomplex and a method for production thereof, and a nucleating agent for polylactic acid (paragraph 0002). D5 teaches that the nucleating agent is present from 0.01 to 1 0 parts by weight (paragraph 0053) which overlaps in range recited in instant claim 1 for component ☐ It has been held that obviousness exists where the claimed ranges overlap or lie inside ranges disclosed by the prior art. D5 also teaches that the inorganic nucleating agent can be used in combination with organic nucleating agents (paragraph 0056). Although the list of preferred organic nucleating agents taught by D5 (paragraph 0055) does not include the stereocomplex crystals used as nucleating agents taught by D4, a person skilled in the art could reasonably interpret the stereocomplex crystals used as nucleating agents to fall within the category of organic nucleating agents. Therefore, a person skilled in the art could reasonably interpret the teaching of D5 to mean that the use of an inorganic nucleating agent is not excluded by the use of an organic nucleating agent such as stereocomplex crystals used as nucleating agents. D4

is silent as to the resin composition containing 0.5 to 3% by weight of stereocomplex crystallites PLLNPDLA or of PLA/PDLA in a molar ratio of 1 :1. D2 teaches a polylactic acid composition where the poly-D-lactic acid can be present from 0.1 -20% by weight based on total resin weight (paragraph 0023). D2 also teaches that the stereocomplex crystallinity affects heat resistance and moldability. It would have been obvious to a person skilled in the art at the time of invention to lower the poly-D-lactic acid concentration in the resin composition of D4, as modified by D2, in the manner recited by the claim(s), since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Therefore, the amended claims 1-12 lacks inventive step in view of the above teachings of prior arts D1-D5, as required u/s 2(1)(ja) of the Indian Patents Act, 1970.

Order:-

> In view of the above facts and on the circumstances of the case, the undersigned is of the opinion that the application filed in pursuance thereof, does not comply with the requirements of the section 2(1)(ja) of The Patents Act, 1970. Hence, the application no. 6727/DELNP/2014 is refused u/s 15 of the Patents Act, 1970.
>
> Dated this 24th August 2020.
>
> Bommineni Ramamuni Assistant Controller of Patents & Designs"
>
> (Emphasis supplied)
>
> 6. A comparison of the impugned order with the hearing notice dated 16th July 2020 reveals that the order may be divided in the following parts:
>
> (i) With respect to the objections relating to Section 2(1)(ja) of the Patents Act, the impugned order first notes the appellant's argument, thus:
>
> 1. Applicants' argument with respect to the Inventive step are fully considered; they are not found persuasive in view of the following discussions. The applicant in his reply argues that D1-D3 (US 2010/0227963 A1, JP 2005/281331, US 2007/0084822 A1) teaches away from the claimed invention;

Applicant argues that since D1 and D2 teaches a separate crystallization accelerator from the stereocomplex crystallites and the crystallization accelerator promotes the formation of homocrystals of polylactic acid, it teaches away from the instant invention.

(ii) Thereafter, the first three pages of the impugned order, starting with the words "D2 was used as a reference to teach the concentration of PDLA in the resin" till the words "a short description of the closest prior arts shall be given in the complete specification" are a verbatim reproduction of the objections contained in the hearing notice dated 16th July 2020.

(iii) The impugned order proceeds to provide what the Assistant Controller calls "Analysis".

(iv) The "Analysis" starts by reproducing the claim in the appellant's application, thus:

> "The present relates to essentially biobased and optionally biodegradable thermoformable Composition consisting of
>
> (a) at least one poly-L-lactide with less than 1 mol % of D-lactoyl units (PLLA) or at least one poly-L-lactide with from 1 mol% to 5 mol% of D-
>
> lactoyl units (PLA) as thermofo
> biodegradable resin,
>
> (b) a nucleating combination of) 0.5 to
> weight, based on the total amount of the
> thermoformable resin a), of PLLA/PDLA or
>
> PLA/PDLA stereocomplex crystallites in a molar ratio of 1:1, ❑ 0.1 to 25% by weight, based on the total amount of the thermoformable resin a), of an inorganic nucleating agent, and ❑ greater than 10 to less than 30% by weight, based on the total amount of the thermoformable resin a), of at least an inorganic filler with lamellar structure and
>
> (c) optionally, one or more additives selected from the group consisting of UV stabilizers, heat stabilizers, anti-oxidants, flame retardants, impact modifiers, plasticizers, rheology modifiers, antistatic agents, mold release agents, lubricants, and degassing agents, wherein the component (❑ is always a different compound than any inorganic nucleating compound used as component (❑"

(v) Thereafter, the impugned order once again reproduces the entire content of the hearing notice, already reproduced in the first three pages of the impugned order, starting with the words "D2 was used as a reference to teach the concentration of PDLA in the resin" till the words "therefore the amended claims 1-12, the claims 1 to 12 lacks inventive step In view of the above teachings of prior arts D1-D5, as required u/s 2(1)(ja) of the Indian Patents Act, 1970".

(vi) The order concludes thus:

> "Order:-

> In view of the above facts and on the circumstances of the case, the undersigned is of the opinion that the application filed in pursuance thereof, does not comply with the requirements of the section 2(1)(ja) of The Patents Act, 1970. Hence, the application no. 6727/DELNP/2014 is refused u/s 15 of the Patents Act, 1970."

7. It is obvious that the Assistant Controller has completely abdicated the duty cast on her to dispassionately consider the petitioner's application seeking a grant of patent.

8. This is yet another order which reflects the apparently endemic problem in the office of the Controller of Patents and Designs, reflected in order after order coming before this Court, to reject patent applications by merely reproducing the objections issued to the proposed patentee, without even a word of reference to the reply of the patentee filed in response thereto, and totally without any application of mind whatsoever.

9. This Court is really at a loss to what is to be done in these circumstances. Repeated strictures, in order after order, may end up doing more harm than good.

10. I am unable to understand why adjudicating officers in the patent office have apparently made a habit to pass orders which merely cut and paste paragraphs from the record before the officer, and reflect no application of mind at all to the case that the applicant seeks to set up.

11. For the end time, this Court is reiterating that refusal of a patent application is a serious matter. A patent, once granted, survives only for 20 years. The statutory provisions reckon this period from the date of application for grant of the patent, and not from the date of grant. If patent applications are to be decided laconically, as has been done in the present case, patent applicants will have to keep knocking at the doors of the Court, wasting their time in unnecessary litigation. In such circumstances, even if the patent ultimately comes to be granted, the time that has been spent in prosecuting the application, and challenging unreasoned orders of rejection which are passed, leaves hardly any residual life for the patent.

12. This Court, therefore, is constrained to issue the following directions:

(i) Every order which either
(a) rejects an application seeking grant of a paten
(b) accepts, or rejects, any pre- or post-grant opposition to such applications,

shall be reasoned and speaking, and shall deal systematically and sequentially with each objection that requires consideration, whether contained in the FER, or the hearing notice, or in any pre- or post-grant opposition, and provide reasons as to why the objection is sustained or rejected.

(ii) If there is no pre- or post-grant opposition to the patent, and objections are raised only by the office of the Controller itself, in the FER or Hearing Notice, and the reply of the applicant in response thereto is found to be worthy of acceptance, then, too, the order granting the patent should briefly state why the applicant's reply is accepted, as this would facilitate any post-grant opponent,

who seeks to oppose the grant of the patent, or seek its revocation, after the patent is granted.

(iii) The requirement of a reasoned and speaking order would obviously not apply if the patent, as sought, is granted, and there is no objection in the FER or hearing notice, or pre- or post-grant opposition thereto.

13. These directions shall be strictly complied with. They would be duly publicized in the office of the Controller General of Patents and Designs, whether by display on the official Notice Board or otherwise. It may be advisable for the Controller General to circulate these directions by way of an official Circular so that they percolate to all adjudicating authorities in his office.

14. If, despite these directions, adjudicating officers dealing with applications for grant of patents, or oppositions thereto, continue to pass orders such as one under challenge in the present appeal, it may invite disciplinary action. What has happened, has happened. The learned Controller General is, however, requested to take steps to ensure and, if necessary, to properly instruct adjudicating authorities working under him, to ensure that such orders are not repeatedly passed and this Court, in turn, is not faced with the unhappy task of passing orders such as this.

A Postscript

15. This Court is unaware whether adjudicating officers in the office of the Controller General of Patents, who deal with applications seeking grant of patents and oppositions thereto, are imparted any training on how to write quasi-judicial orders. Stakes in such matters are so high, and the impact on public interest so great, that such training is imperative. The learned Controller-General may consider, as per his own discretion, whether a course of training in writing such orders, conducted by the Delhi Judicial Academy, presently under the stewardship of an excellent Director (Academics), may be useful. The learned Controller General is requested to discuss the matter with the Director (Academics) in the DJA, Dr. Aditi Chowdhury, and act as they jointly deem appropriate.

Conclusion

16. The impugned order is quashed and set aside.

17. Application No. 6727/DELNP/2014 filed by the appellant is remanded for de novo consideration.

18. The learned Controller General is requested to ensure that the application is taken up by an officer other than the one who has passed the impugned order.

19. The designated adjudicating officer is directed to grant opportunity of hearing to the appellant on 5 th June 2023. Consequent thereupon, let a final order be passed by the concerned adjudicating authority within a maximum period of three weeks from the date of hearing.

20. It is expected that the impugned order would deal with all submissions raised by the appellant in the response to the FER as well as the response to the hearing notice and any other oral submissions

which the appellant may desire to advance during the hearing, and would also reflect due application of mind.

21. This appeal stands allowed in the aforesaid terms.

22. Let a copy of this order be communicated, forthwith, to Mr. Harish Vaidyanathan Shankar, learned Standing Counsel for the office of the Controller General of Patents, for onward communication to the learned Controller General and necessary action as he may deem appropriate.

C.HARI SHANKAR, J MAY 26, 2023 ar