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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010206972026**+ **C.A.(COMM.IPD-PAT) 21/2026 & I.A. 13012/2026**Date of Decision: **01.10.2026****IN THE MATTER OF:****GLISTEN LLC**693 WASHINGTON BLVD,
MARINA DEL REY, CA 90292,
UNITED STATES OF AMERICA (US)

.....APPELLANT

(Through: Ms. Neha Chugh, Adv.)

versus

THE ASSISTANT CONTROLLER OF PATENTS & DESIGNS**THE PATENT OFFICE**BOUDHIK SAMPADA BHAWAN,
PLOT NO. 32, SECTOR 14, DWARKA,
NEW DELHI-110078

.....RESPONDENT

*(Through: Mr. Shivanshu Bhardwaj, CGSC with Mr. Sudhanshu Singh, Mr. Debashish Mishra (G.P.) and Mr. Raghuvansh Mishra, Adv.)***CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G E M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present appeal under Section 117A of the Patents Act, 1970

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[hereinafter referred to as “the Act”] assails the order dated 23.01.2026 [hereinafter referred to as “the impugned order”] passed by the respondent, the Assistant Controller of Patents and Designs, whereby the appellant’s Indian Patent Application No. 202017005875, titled ‘Gemstone Coating and Methods of Making and Using the Same’ [hereinafter referred to as “the subject application”], has been refused under Section 15 of the Act on the ground that claim nos. 1 to 17 lack inventive step under Section 2(1)(ja) of the Act.

2. The principal ground urged on behalf of the appellant is that the impugned order has been passed *de hors* the principles of natural justice. According to the appellant, the only objection on inventive step that survived in the hearing notice related to claim no. 18. Once that claim was given up, the respondent could not have refused the subject application by holding that claim nos. 1 to 17 lack inventive step, without first putting the appellant to notice of that objection and affording it an adequate opportunity to meet it.

3. The appellant filed the subject application before the Delhi Patent Office on 11.02.2020. A request for examination was filed on 08.06.2021.

4. The First Examination Report [hereinafter referred to as “FER”] was issued on 24.04.2023. In Part-I (summary) of the report, the appellant was called upon to meet, *inter alia*, an objection of lack of inventive step under Section 2(1)(ja) of the Act. It was stated that the subject matter of claim nos. 1 to 18 did not appear to involve any technical advancement or economic significance and appeared obvious to a person skilled in the art in view of documents D1 and D2. It was further stated that, by combining the features disclosed in D1 and D2 with common general knowledge, the alleged

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invention would be obvious to a person skilled in the art. The appellant was, therefore, called upon to explain why the claimed invention should not be held to lack inventive step.

5. The appellant filed its reply to the FER on 18.01.2024, within the extended period of time. In the reply, the appellant explained the claimed invention, distinguished the cited documents and justified its claims.

6. Thereafter, a hearing notice under Section 14 of the Act was issued on 14.06.2024. Insofar as the objection under Section 2(1)(ja) is concerned, the hearing notice stated as under:

“1. Since there is no support for the claim 18 in complete specification in terms of working examples as it claims a coated gemstone represented by Formula I: wherein R5, R6, R7, R8, R9, R10, R11, and R12 are independently selected from -H, C1 to C6 alkyl optionally substituted with halogen or hydroxy, C1 to C6 alkenyl optionally substituted with halogen or hydroxy, C1 to C6 alkynyl optionally substituted with halogen or hydroxy, C1 to C6 alkoxy, hydroxyl, halogen, C1 to C6 haloalkyl, C1 to C6 haloalkoxy, a mono-substituted amine(C1 to C6 alkyl), a di-substituted amine(C1 to C6 alkyl), a diamino-group, a polyamino, a diethergroup, and a polyether-; and X is a quest moiety represented the following structure: Therefore the inventive step cannot be acknowledged.

Therefore, the claim 18 lacks inventive step & fails to meet the requirement of section 2(1)(ja) of the Patents Act, 1970(as amended).”

7. It is evident from the above that the objection under Section 2(1)(ja), as carried into the hearing notice, was confined to claim no. 18 alone. Even that objection was founded on the absence of support for claim no. 18 in the complete specification in terms of working examples. The hearing notice, insofar as it deals with inventive step, does not state that claim nos. 1 to 17 are obvious over D1 and D2, does not identify the features of those claims which are said to be disclosed in the cited documents, and does not indicate how a person skilled in the art would combine D1 and D2 to arrive at them.

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8. The appellant attended the hearing and, thereafter, filed its written submissions along with amended claims. Claim no. 18 was given up, and the subject application proceeded on the basis of claim nos. 1 to 17.

9. By the impugned order, the respondent has refused the subject application. The relevant portion of the impugned order reads as under:

Starting from D1 or D2, a skilled person would have been motivated to combine the teachings of both to arrive at the claimed coated gemstone and methods without exercising inventive skill. All claimed features, including host-guest chemistry, covalent anchoring, and anti-contamination effect, are derivable.

The functional limitation “configured to resist the accumulation of oil and dirt” merely defines a result to be achieved and does not confer additional technical distinction. Therefore, claims 1–17 do not involve an inventive step under Section 2(1)(ja) of the Patents Act, 1970.

In view of the foregoing, the subject matter of amended claims 1–17 is considered obvious over D1 in combination with D2, and hence cannot be regarded as inventive under Section 2(1)(ja).

Therefore, the claims 1-17 cannot be considered to involve an inventive step under Section 2(1)(ja) of The Patents Act, 1970.

13. *In view of the amendments and also from the elaborative hearing submissions (oral as well as written), all the other requirements raised in the hearing notice u/s 14 are met. The said objections are therefore rendered moot. The submission as submitted was found to be satisfactory and convincing, therefore accepted.*

14. *Thus, in view of the above findings and considering all the facts on record & submissions made by the applicant, I hereby conclude that the claims 1-17 of the instant application fail to meet the requirement of Sections 2(1)(ja) of the Patents Act, 1970 (as amended) and are still outstanding and not met. Hence, the application (202017005875) has been refused under section 15 of the Patents Act 1970.*

10. Ms. Neha Chugh, learned counsel appearing for the appellant, submits that the hearing notice is the document by which the Controller tells an applicant what case it has to meet at the hearing. In the present case, the



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hearing notice confined the inventive step objection to claim no. 18. The appellant met that objection by giving up claim no. 18. Had the respondent intended to pursue the objection of obviousness against claim nos. 1 to 17, it was incumbent upon it to say so in the hearing notice and to hear the appellant on it.

11. She contends that, had the respondent called upon the appellant to further explain claim nos. 1 to 17, the appellant would have been in a better position to satisfy the respondent. Since claim no. 18 was withdrawn and no further opportunity was granted to the appellant to address claim nos. 1 to 17, the impugned order is vitiated for want of compliance with the principles of natural justice.

12. The submissions are strongly opposed by Mr. Shivanshu Bhardwaj, learned counsel appearing for the respondent. He submits that, under the scheme of the Act, the Controller is fully empowered to look into all aspects of the matter at the time of passing the final order. Merely on the basis of the language of the hearing notice, there is no reason for the appellant to construe that the application qua the remaining claims had been accepted.

13. He further contends that the appellant, in its own understanding at the time of filing written submissions, was clearly called upon to explain its entire claim. All claims were open to adjudication and it was for the Controller to take a holistic view at the time of passing the final order. Therefore, on the basis of the language of the hearing notice alone, no fault can be found with the impugned order. He also contends that, even otherwise, the subject application does not disclose any inventive step so as to warrant grant of a patent. He has placed on record written submissions and material to justify the refusal.

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

15. The controversy lies in a narrow compass. The Court is not called upon, in the present appeal, to decide whether claim nos. 1 to 17 of the subject application involve an inventive step. The question is whether, given the manner in which the objection was framed in the hearing notice, the appellant had a fair and adequate opportunity to meet the ground on which the subject application was ultimately refused.

16. The examination of a patent application under Chapter IV of the Act culminates in Sections 14 and 15. Section 14 of the Act reads as under:

“14. Consideration of the report of examiner by Controller.— Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application, the specification or other documents to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate as expeditiously as possible the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed period, give him an opportunity of being heard.”

17. Section 15 of the Act, under which the subject application has been refused, provides as under:

“15. Power of Controller to refuse or require amended applications, etc., in certain cases.— Where the Controller is satisfied that the application or any specification or any other document filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may refuse the application or may require the application, specification or the other documents, as the case may be, to be amended to his satisfaction before he proceeds with the application and refuse the application on failure to do so.”

18. Section 80 of the Act further reinforces the requirement of a hearing before any adverse exercise of discretion by the Controller:



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“80. Exercise of discretionary powers by Controller.— Without prejudice to any provision contained in this Act requiring the Controller to hear any party to the proceedings thereunder or to give any such party an opportunity to be heard, the Controller shall give to any applicant for a patent, or for amendment of a specification (if within the prescribed time the applicant so requires) an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Controller by or under this Act.

Provided that the party desiring a hearing makes the request for such hearing to the Controller at least ten days in advance of the expiry of the time-limit specified in respect of the proceeding.”

19. A conjoint reading of these provisions shows that the power of refusal under Section 15 is wide, but it is not free standing. It is exercised at the end of a process which Section 14 sets up. Before disposing of the application, the Controller must communicate the gist of the objections to the applicant and, if the applicant so requires, give it an opportunity of being heard. The satisfaction contemplated by Section 15 must, therefore, be formed on objections which have been communicated to the applicant and on which the applicant has had a fair chance to be heard. Section 80 points the same way, since it requires a hearing before the Controller exercises any discretion adversely to an applicant.

20. The submission of learned counsel for the respondent that the Controller is fully empowered to look into all aspects of the matter at the time of passing the final order is correct only to a limited extent. The Controller is not bound to grant a patent merely because a particular objection does not find mention in the hearing notice. However, if the Controller proposes to refuse the application on a ground, that ground must first be put to the applicant. The breadth of the power under Section 15 does not dispense with the requirement of notice under Section 14.

21. The requirements of Sections 14 and 80 are a statutory expression of



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the rule of *audi alteram partem*. The Supreme Court in ***Biecco Lawrie Ltd. and Anr. v. State of West Bengal and Anr.***,¹ has observed that hearing both sides in a dispute is fundamental to fair procedure, and that service of a proper notice is an essential ingredient of a fair hearing. The material portion of the judgment reads as under:

“24. It is fundamental to fair procedure that both sides should be heard—audi alteram partem i.e. hear the other side and it is often considered that it is broad enough to include the rule against bias since a fair hearing must be an unbiased hearing. One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of notice and opportunity to respond result in making the administrative decision as vitiated.”

22. In ***Canara Bank v. V.K. Awasthy***,² the Supreme Court, described adherence to the principles of natural justice to be of “supreme importance” where a quasi-judicial body determines disputes or where administrative action involving civil consequences is in issue. Paragraph 10 of the said decision reads as under:

“10. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an

¹ (2009) 10 SCC 32.

² (2005) 6 SCC 321.



approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate”. In the celebrated case of *Cooper v. Wandsworth Board of Works* the principle was thus stated: (ER p. 420)

“[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam’ (says God), ‘where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?’”

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.”

23. The Supreme Court in ***Assistant Commissioner, Commercial Tax Department v. Shukla and Brothers***,³ has explained the three basic essentials of the doctrine of *audi alteram partem* in the following words:

“9. ... The doctrine of *audi alteram partem* has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.”

24. The Controller, while deciding whether an application for a patent should be granted or refused, discharges a quasi-judicial function, and the refusal of a patent application carries serious civil consequences for the applicant. This Court in ***Agriboard International LLC v. Deputy Controller of Patents and Designs***,⁴ after noticing *Shukla and Brothers* (supra), observed as under:

“23. The said reasoning has been reiterated by the Supreme Court in *Manohar v. State of Maharashtra & Ors.* AIR 2013 SC 681 wherein it has been categorically observed that application of mind and recording of

³ (2010) 4 SCC 785.

⁴ 2022 SCC OnLine Del 940.



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reasoned decision are the basic elements of natural justice. There can be no doubt that scrupulous adherence to these principles would be required while rejecting patent applications.”

25. In the specific context of patent examination, this Court has consistently held that the hearing notice must set out every objection on which the Controller proposes to rely, and that a refusal founded on a ground not put to the applicant before the hearing cannot be sustained. In **Perkinelmer Health Sciences Inc. and Ors. v. Controller of Patents**,⁵ this Court observed as under, as extracted in **Proprietect L.P. v. Controller of Patents**:⁶

“7. The hearing notice dated 12th February, 2018 makes no mention of objection under Section 3(f). Appellant ought to have been made aware of all grounds of objection before the hearing and afforded sufficient opportunity to contest the same at the time of hearing. It was incumbent upon Respondent to have raised this objection in the notice of hearing itself. Albeit the Appellant had submitted written submissions subsequent to the hearing and not given any response qua Section 3(f) of the Act, that does not absolve the Respondent of its obligations under the Circular to communicate objections prior to the hearing and provide reasonable opportunity to the applicant/ Appellant. Objection under Section 3(f) of the Act has ex-facie been raised for the first time at hearing stage as is apparent from afore- extracted portion of the impugned order. There is thus merit in the submission of Mr. Banerjee that Respondent has violated the principles of natural justice.”

26. Following the said decision, this Court in **Proprietect L.P.** (supra) held as under:

“19. Therefore, raising new grounds in the Hearing Notice or, as in this case, in the final Order is not permissible as it does not provide a reasonable opportunity to the applicant to be heard.

xxx xxx xxx

25. By raising a new ground i.e. objection under Section 10(5) of the Act, in the final Order, the Respondent has not given sufficient opportunity to the Appellant to present its case. Additionally, by passing the Impugned

⁵ 2023 SCC OnLine Del 8590.

⁶ C.A.(COMM.IPD-PAT) 168/2022, decided on 29.07.2025.



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Order without considering the explanations / justifications offered by the Applicant, it vitiates the process followed by the Respondent. Accordingly, the Impugned Order is liable to be set aside, and the matter is required to be remanded back to the learned Controller for a de-novo consideration.”

27. More recently, in **Phillip Morris Products S.A. v. Assistant Controller of Patents and Designs**,⁷ this Court reiterated the principle in the following terms:

“33. Court finds merit in the submission of the Appellant. It is a settled law that no party can be condemned unheard and if the Respondent intended to rely on these documents, they should have been notified to the Appellant before taking the final decision, to enable the Appellant to deal with them. Impugned order reflects that these Reports have weighed heavily with the Respondent in upholding the objection under Section 3(b) and rejecting the submission of the Appellant on this aspect and thus ought to have been given to the Appellant prior to the decision or not relied upon and the defence that the documents were not prior arts cannot be accepted. In Otsuka Pharmaceutical Co. Ltd. v. Controller of Patents, 2022 SCC OnLine Del 4982, this Court has held that no person can be condemned unheard and all or any objection on which the Respondent wishes to place reliance, must be put to the applicant at the stage of issuance of FER/hearing notice. This position was affirmed in Perkinelmer Health Sciences Inc and Others v. Controller of Patents, 2023 SCC OnLine Del 8590, wherein it was observed that no new grounds can be taken by the Controller/Examiner at the time of hearing and an applicant must be made aware of all objections before the hearing and afforded sufficient opportunity to contest. Similar view was taken by the Calcutta High Court in ITC Limited v. The Controller of Patents Designs and Trademark, MANU/WB/1167/2025. Therefore, reliance on the three documents without giving opportunity to the Appellant to address arguments on them, violates principles of natural justice and is fatal.”

28. The position that emerges is this. The FER opens the examination, and the applicant's reply answers it. The hearing notice under Section 14 is the Controller's statement of what, after considering the reply, still stands against the application. It narrows the dispute to the objections that remain.

⁷ C.A.(COMM.IPD-PAT) 29/2025, decided on 09.09.2026.



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An applicant is entitled to take the hearing notice at face value and to prepare for the hearing on the objections listed in it. If the Controller intends to revive an objection which the hearing notice does not carry forward, or to raise a fresh one, requires that the applicant be told so, and be given a real opportunity to answer it, before an adverse order is passed.

29. Tested on the above principles, the impugned order cannot be sustained. As noticed in paragraph 7 above, the inventive step objection in the hearing notice was confined to claim no. 18, and rested on the absence of working examples in support of that claim. The hearing notice did not inform the appellant that the respondent continued to regard claim nos. 1 to 17 as obvious over D1 and D2. The appellant responded to the hearing notice by giving up claim no. 18. In these circumstances, the appellant could reasonably understand that its reply to the FER had answered the objection of obviousness *qua* claim nos. 1 to 17.

30. The impugned order, however, refuses the subject application on precisely that ground. It undertakes a claim-by-claim analysis of claim nos. 1 to 17 against D1 in combination with D2, and rejects the wear test results relied upon by the appellant on the reasoning that “no unexpected technical effect, synergistic effect, or surprising improvement is demonstrated”. This is the first occasion on which the appellant was told that this was the case against claim nos. 1 to 17 at the final stage. Further, paragraph 13 of the impugned order records that all the other requirements raised in the hearing notice stand met. Once claim no. 18 was given up, the only inventive step objection in the hearing notice had nothing left to operate upon. The refusal, therefore, rests entirely on a ground which was not carried into the hearing notice.

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31. Even if it is assumed that the appellant's written submissions defended its claims generally, that cannot take the place of notice. An applicant who defends its claims in general terms, without knowing what objection it has to meet, is not in the same position as one who answers a specific objection. As held in **Perkinelmer** (supra), the filing of written submissions after the hearing does not absolve the Controller of the obligation to communicate the objections before the hearing.

32. The prejudice caused in the present case is also apparent from the impugned order itself. The appellant's wear test data was found insufficient for want of an unexpected technical effect. That deficiency was never put to the appellant. Had it been, the appellant may have addressed it by further explanation or material.

33. The Court is, therefore, satisfied that the procedure followed by the respondent does not meet the requirements of Section 14 of the Act and the principles of natural justice. On that ground alone, the impugned order deserves to be set aside.

34. Accordingly, the appeal is allowed. The impugned order dated 23.01.2026 is set aside, and the subject application, i.e., Indian Patent Application No. 202017005875, is revived and restored to the file of the respondent for fresh consideration, to be taken to its logical conclusion in accordance with the Act, and the Patents Rules, 2003.

35. All rights and contentions of the parties are left open.

36. Observations made hereinabove are confined to the question of compliance with the principles of natural justice, and shall not influence the respondent while deciding the subject application on merits.

37. The appeal stands disposed of in the above terms, along with the



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pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

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