Wyeth LLC vs. Union of India, WP(C) 4027/2018 – A brief

News & Updates • August 16, 2018

Background: Wyeth (Petitioner) filed this writ petition impugning an Office Order no. 48 of 2017 dated 04.12.2017 passed by the Controller General of Patents, Designs & Trade Marks. By the said order, the Controller had transferred the Review Petition filed by Panacea Biotech (Respondent No. 5) under Section 77(1)(f) and 77(1)(g) of the Patents Act, 1970 seeking review of the order dated 11.08.2017, whereby the pre-grant opposition filed by Panacea against Wyeth's patent application for a pneumococcal vaccine (marketed under the brand name Prevenar 13), was dismissed. This transfer order was issued during the pendency of the review proceedings, wherein the review petition was transferred to another officer, on the ground that Mrs Nilanjana Mukherjee (Respondent No. 4) who had passed the pre-grant order, had recused herself from the matter. Wyeth's case was that the general principle of review is that it shall always be heard by the same authority which has passed the order. This is also evident from the provision of Section 77(1)(f) of the Patents Act, 1970 which provides that the Controller under the Patents Act has the power to review his "own decision". As a result, the review petition ought to be heard by Mrs. Mukherjee and not by the newly appointed hearing officer. It was also Wyeth's case that Mrs. Mukherjee had not indicated her reasons while requesting for recusal from the matter and that a Judge/hearing officer may recuse from a matter (i) should he have a financial interest in the outcome of a case; or (ii) should there be a reasonable apprehension of bias or a real danger in him deciding the case; or (iii) should he be interested in a cause which is being promoted by one of the parties to the case. During the proceedings in this writ petition, the Court had directed Mrs. Mukherjee to file an affidavit disclosing the reasons for her recusal and whether she has any conflict of interest in the matter (pecuniary or not pecuniary). The affidavit filed by Mrs Mukherjee indicated that "she has no conflict of interest in the matter whether of a pecuniary or non-pecuniary nature. She also indicated that Panacea has alleged in the review petition that the Controller has not observed principles of natural justice, the decision is biased, etc.

Order: Hon'ble Justice Vibhu Bakhru disposed of the writ petition vide Order dated 14.08.2018 with the following findings:

- Justice Bakhru observed that in an ordinary course, a review petition is required to be heard by the same authority which has passed the order and that the same is evident from the provisions of Section 77(1)(f) of the Patents Act.
- Justice Bakhru observed that from the affidavit of Mrs. Mukherjee, it does appear that there was no impediment on her from hearing Panacea's review petition. He further observed that there appears to be no reason for Mrs. Mukherjee to have recused from hearing the matter.
- Justice Bakhru, called upon Mrs. Mukherjee to reconsider her decision of not hearing the review petition since, in his view there appeared to be no reason for her to have recused from hearing the

matter and also because Panacea had, during the proceedings, unequivocally stated that it has no reservation in the concerned officer (Mrs Mukherjee) deciding the review petition. Justice Bakhru further noted that should Mrs. Mukherjee reconsider her position and decide to hear the matter, the Controller shall pass an appropriate order transferring the files to her, and should she stand by her decision to not hear the same, the review petition would be considered and disposed of by the officer presently appointed.

The Anand and Anand team representing the Petitioner comprised of Pravin Anand, Archana Shanker, Tusha Malhotra, Rashi Punia and Arpita Kulshrestha.

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