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WP(IPD) No. 22 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-10-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

WP(IPD) No. 22 of 2026

CNR: {HCMA011070772026}



Deakin University
Rep. by its authorised representative,
Mr. Abhijit Paul
1, Gheringhap Street, Geelong,
Victoria 3220, Australia.

..Petitioner(s)

Vs

The Controller General of
Patents, Designs and Trade Marks,
Intellectual property India,
G.S.T. Road, Guindy,
Chennai 600 032 India.

..Respondent(s)

PRAYER - This Writ Petition is filed under Article 227 of the Constitution of India, seeking Writ of Mandamus for a direction to the respondent to reinstate and restore India Patent Application No. 201747029902 to the position it would have occupied prior to being treated as deemed abandoned due to the negligence of the petitioner's former patent agents and condone the delay and take on record the Response to the First Examination Report filed on September 2, 20254 along with a petitioner under Rule 137.

For Petitioner(s): Mr.P.V.Balasubramanian, Senior Advocate
for MS.Maithreyi Canthaswamy Shrma

For Respondent(s): Mr. A.Zakir Hussain, CGSC

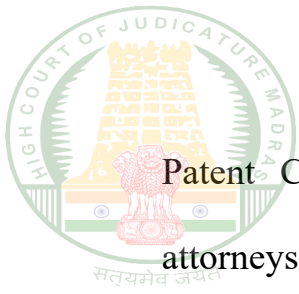


ORDER

The petitioner, Deakin University, is a public university in Australia. Its researchers developed a unit that simulates the use of a fire extinguishing system, so that firefighters can be trained hands-on before they face real fires. The petitioner applied for an Indian patent for this invention, titled Firefighter Training Unit, under Indian Patent Application No. 201747029902. The Patent Office raised objections in its First Examination Report ("FER") dated 25.11.2020. No reply was filed within the time allowed, and the application was therefore treated as deemed abandoned under Section 21(1) of the Patents Act, 1970 ("the Act"). The petitioner later asked the respondent, by a petition under Rule 137 of the Patents Rules, 2003 ("the Rules"), to revive the application, and filed its reply to the FER along with it. That petition has not been decided. The petitioner has therefore come to this Court seeking restoration of the application, condonation of the delay and a direction to take its reply on record.

2. The learned Central Government Counsel took notice for the respondent and filed a counter affidavit. Both sides have been heard.

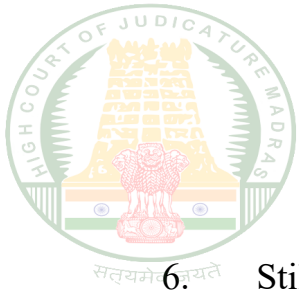
3. The petitioner filed Australian Patent Application No.2015900587 on 20.02.2015, and International Application No.PCT/AU2016/050115 under the



Patent Cooperation Treaty on 19.02.2016. Through its Australian patent attorneys, Phillips Ormonde Fitzpatrick ("POF"), the petitioner engaged a firm of Indian patent agents, Strategic Intellectual Property Solutions, Bangalore ("STRAT IP"), which filed the Indian national phase application on 23.08.2017. The FER was issued on 25.11.2020.

4. STRAT IP sent the FER to POF on 26.11.2020. The reply was due on 25.05.2021 and could be extended by three more months. On 21.05.2021, POF asked STRAT IP to seek the three-month extension. On 22.05.2021, STRAT IP replied that all deadlines stood automatically extended by the orders of the Hon'ble Supreme Court passed during the COVID-19 pandemic, and that no application for extension was needed at that stage. It also forwarded the Controller's notification dated 21.05.2021.

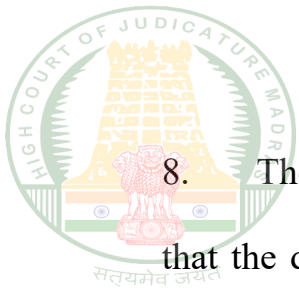
5. The petitioner states that after 22.05.2021, STRAT IP stopped communicating altogether. It never told POF of the later orders of the Hon'ble Supreme Court in **In Re: Cognisance for Extension of Limitation, Suo Motu Writ Petition (Civil) No.3 of 2020**, including the final order dated 10.01.2022, by which the extension of limitation came to an end. On the petitioner's own reading of that order, the reply to the FER had to be filed by 29.05.2022, or at the latest by 29.08.2022 if the three-month extension had been availed of.



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6. Still believing that time remained extended, POF sent STRAT IP detailed instructions for the reply on 26.08.2022. STRAT IP did not respond, nor did it respond to the reminders sent on 23.11.2022 and 24.11.2022. On 25.11.2022, POF approached another firm of Indian patent attorneys, M/s. Groser & Groser, and the petitioner learnt from them that the application had been treated as deemed abandoned.

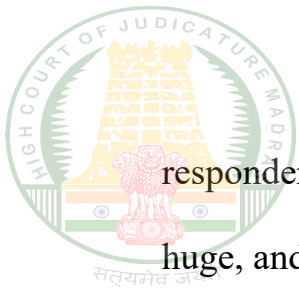
7. M/s. Groser & Groser filed Form 13 on 22.12.2022, with a fresh General Power of Authority and a fresh Form 1, to take over the application. On 03.09.2024, they filed a petition under Rule 137 dated 02.09.2024, together with the reply to the FER, the prescribed fee and twenty-two supporting exhibits. The petitioner states that five reminders followed, but that no response, acknowledgement or order was received. The reminder letters dated 16.05.2025 and 25.06.2025 have been filed for perusal of this Court. The first of these refers to earlier e-mail reminders of 29.11.2024 and 19.03.2025, and records that the Patent Office records still showed the application as Abandoned u/s 21(1).



8. The petitioner's case is that it never intended to abandon the application; that the default was entirely that of STRAT IP; that, as a foreign applicant, it had to act before the Patent Office through a registered Indian patent agent and had no means of watching the deadlines on its own; and that no third party would be harmed if the application is restored.

9. In the counter affidavit, the respondent states that the application is a PCT national phase application with a priority date of 20.02.2015, that the request for examination was filed on 19.02.2019, and that the FER was issued on 25.11.2020. The reply was due by 25.05.2021, extendable by three months on payment of fee under Rule 24B(6). As no reply was filed within the prescribed time, the application was treated as deemed abandoned under Section 21(1). The counter itself states that the earlier patent agents, STRAT IP, did not file the reply.

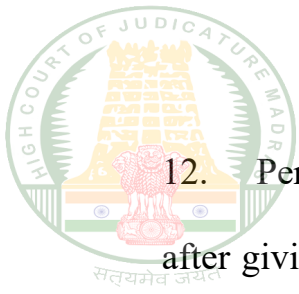
10. The respondent admits that M/s. Groser & Groser filed Form 13 on 22.12.2022, and that the Rule 137 petition, with the reply to the FER and the prescribed fee, was filed on 03.09.2024. It objects that the petitioner came to this Court before that petition was disposed of. It accepts that the time for reply fell during the pandemic, when the Hon'ble Supreme Court extended limitation by various orders which were later withdrawn step by step. Even so, the



respondent states that the failure was solely the petitioner's, that the delay is huge, and that the writ petition must be dismissed.

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11. The learned Senior Counsel for the petitioner submitted that the petitioner never intended to give up its application, and that the loss was caused by STRAT IP, which did not keep the petitioner informed of the later orders of the Hon'ble Supreme Court and did not act on POF's instructions. As soon as the petitioner learnt of the abandonment, it changed its agent and took steps to revive the application. Reliance was placed on **The European Union v. Union of India, W.P.(C)-IPD Nos.5 and 6 of 2022, dated 31.05.2022, 2022:DHC:2301 (Delhi High Court)**, which, according to the petitioner, arose from the default of the same patent agent; **Bry-Air Prokon Sagl v. Union of India, W.P.(C)-IPD No.25 of 2022, dated 17.10.2022, 2022/DHC/004439 (Delhi High Court)**; **NTT DoCoMo Inc. v. Assistant Controller of Patents and Designs, W.P.No.6594 of 2013, dated 28.03.2014 of this Court**; **Chandra Sekar v. Controller of Patents and Designs, 2022 SCC OnLine Mad 5172**; **Rafiq & Others v. Munshilal & Others (Civil Appeal No. 1415 of 1981)**, **State of Punjab v. Shamlal Murari (AIR 1976 SC 1177)** and **Saurav Chaudhary Vs. Union of India & Anr., W.P. (C)-IPD 25/2022**.



12. Per contra, the learned Central Government Counsel submitted that even after giving full effect to the orders of the Hon'ble Supreme Court, the time for the reply ran out by May 2022, whereas the reply was filed only on 03.09.2024.

The petitioner also came to this Court without waiting for the Rule 137 petition to be decided.

13. The point for decision is whether this is a fit case for this Court, under Article 226 of the Constitution of India, to restore an application which the law treats as deemed abandoned, to condone the delay in replying to the FER, and to direct the reply to be taken on record.

14. Under Section 21(1) of the Act, read with Rules 24B(5) and 24B(6), the reply to the FER had to be filed within six months, extendable by three months. These time limits are mandatory, and the Controller has no power to extend them. The respondent is therefore right that the time could not be extended by the Patent Office. But it does not follow that this Court is powerless. The Delhi High Court in **The European Union (supra)** and in **Bry-Air (supra)** has held that, in extraordinary cases, a writ court may restore such an application where the applicant never intended to abandon it and the loss was caused by the default of its patent agent. The mistake of a patent agent is treated like the mistake of an advocate, for which a litigant ought not to suffer, and



abandonment, being a conscious act, cannot be presumed. This Court took the same view in **NTT DoCoMo (supra)**. At the same time, since the words of Section 21(1) cannot be ignored, the power is to be used sparingly, and only where the applicant shows from the record that it never gave up the application and that its loss was the result of its agent's default.

15. Both are shown here. The correspondence placed before the Patent Office shows that POF asked STRAT IP to seek an extension on 21.05.2021, sent detailed instructions for the reply on 26.08.2022, and sent reminders on 23.11.2022 and 24.11.2022. STRAT IP, the registered agent to whom the FER was sent, had told its client on 22.05.2021 that time stood extended. It never informed its client when the Hon'ble Supreme Court's orders on limitation later changed, and it neither acted on nor acknowledged the instructions it received. When the petitioner learnt of the abandonment on 25.11.2022, it changed its agent within a month and later filed the Rule 137 petition with its reply. The respondent does not dispute this correspondence, and its own counter states that it was STRAT IP that did not file the reply.

16. The petitioner states that its attorneys held the FER from November 2020 but sent instructions only in August 2022, and after learning of the abandonment it took until 03.09.2024 to file the Rule 137 petition, and the



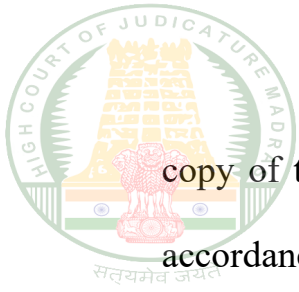
petitioner side submits that they occurred while the petitioner was relying on its agent's advice, and the delay after 25.11.2022 came after the loss and did not

cause it. Throughout, the petitioner kept taking steps to pursue the application.

Nothing on record shows that it ever gave it up.

17. Restoration only revives the examination of the application on its merits; it does not grant a patent, and no prejudice to the respondent or to any third party has been shown. Since the Controller has no power to extend the time, sending the matter back to decide the Rule 137 petition, which has remained pending since 03.09.2024 despite reminders, would serve no purpose. This Court is therefore satisfied that this is a fit case for exercise of the writ jurisdiction.

18. In the result, the writ petition is allowed, and it is ordered as follows. Indian Patent Application No.201747029902, titled "Firefighter Training Unit", is restored to the position it occupied before it was treated as deemed abandoned under Section 21(1) of the Patents Act, 1970. The delay in replying to the First Examination Report dated 25.11.2020 is condoned. The respondent shall take on record the reply to the First Examination Report dated 02.09.2024, filed with the petition under Rule 137 on 03.09.2024, and shall show the restored status of the application in its records within four weeks from the date of receipt of a



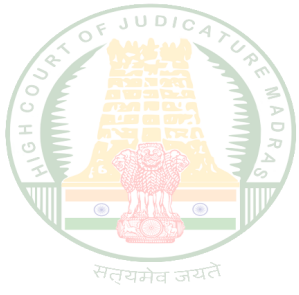
copy of this order. The respondent shall thereafter examine the application in accordance with the Patents Act, 1970 and the Patents Rules, 2003, and shall endeavour to complete the examination within six months. If any order adverse to the petitioner is contemplated, the petitioner shall be given an opportunity of being heard. Nothing in this order is an expression of opinion on whether the invention is patentable. There shall be no order as to costs.

01-10-2026

GSA

To

The Controller General of
Patents, Designs and Trade Marks,
Intellectual property India,
G.S.T. Road, Guindy,
Chennai 600 032 India



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Order QR

DR.A.D.MARIA CLETE J.

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