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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-12-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP (IPD) No. 12 of 2025

1. Edward Charles Troppi Smythe
No.11478, Alborado Drive,
San Diego, California, Usa-92127

Petitioner(s)

Vs

1. The Controller General Of
Patents Designs
And Trade Marks, Boudhik
Sampada Bhavan, Antop Hill,
S.M.Road, Mumbai-400 037

2.Joint Controller Of Patents And
Designs
Patent Office Intellectual Property
Building, G.S.T.Road, Guindy
Chennai-600032

3.Union Of India
Rep By Its Secretary, Department
Of Industrial Police And
Promotion, Ministry Of Commerce
And Industry, Udyog Bhawan,
New Delhi-110 011

Respondent(s)

For Petitioner(s): Ms.Preeti Mohan
For Respondent(s): Mr.K.Subbu Ranga Bharathi
Central Government
Standing Counsel

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ORDER

This writ petition has been filed for the issue of writ of Mandamus directing the respondent to accept the petitioner's request for examination under Form 18 in the Indian Patent Application No.IN202447028876 and to process the same in accordance with law.

2. Heard Ms.Preeti Mohan, learned counsel for the petitioner and Mr.K.Subbu Ranga Bharathi, learned Central Government standing counsel for respondent.

3. The petitioner is a US Citizen and his US and International patent is pending for Prediction, Visualisation and Remediation of Satellite Conjunctions. The petitioner filed the provisional patent application in the USA on 10.09.2021. Thereafter on 08.09.2022, the petitioner filed the 2nd patent application in US. On 09.09.2022, the petitioner preferred Patent Co-operation Treaty (PCT) application claiming priority from both the previous US applications. The subject Application was filed in India by the Indian Patent agent of the petitioner. The subject application sought priority from the US application dated 10.09.2021.

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4. The further case of the petitioner is that US IP Attorneys were following up an Indian firm, which was engaged to prosecute the Indian application and to enquire if all the formal requirements have been made to prosecute the Indian Patent Application.

5. The specific case of the petitioner is that the Indian Patent Agent responded by confirming that all the formalities have been completed. Thereafter, the Indian Patent Agent vide email dated 14.10.2024 sent a reminder that the deadline to file a request for examination is only on 08.04.2025. Thus, there seems to be an inadvertent omission on the part of the Indian Patent agent, who erroneously calculated the deadline to file the request for examination, which is 31 months period prescribed under the statute, from the second priority patent application dated 08.09.2022 instead of the date of the first priority Patent application dated 10.09.2021. Due to this mistake, the deadline to file the request for examination which ought to have been made on or before 10.04.2024 was not done and as a result, the time period to lodge the request had lapsed.

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6. The Indian Patent Agent, who was under a mistaken notion, attempted to file the request for examination on 10.12.2024 but was unable to file the same since web portal of the Indian patent office did not accept the request and the action was designated as "Not valid".

7. When the petitioner was informed about the same, the petitioner had sent an email communication dated 10.12.2024 to the online services support of the respondent and request for assistance to file the examination request for this application. The status of the patent application was shown as "Awaiting request for examination" but the access to lodge such a request was not functional.

8. Ultimately on 30.12.2024, the Indian Patent Office responded stating that the time period to file the request for examination expired. It is under these circumstances, the present writ petition came to be filed before this Court.

9. The learned counsel for the petitioner submitted that there was an inadvertent omission on the part of the Indian Patent

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Agent and as a result, even though there was no intention on the part of the petitioner to abandon the application, the time period within which the request for examination had to be done had expired on 10.04.2024 which was inadvertently informed to the petitioner as 08.04.2025. The learned counsel also relied upon the judgement passed in ***[Chandra Sekar Vs. Controller of Patent and Designs and Another]*** reported in ***2022 SCC online Mad 5172*** where this Court had an occasion to deal with the similar issue under Section 11 B of the Patents Act [hereinafter referred to as the ***"Act"***].

10. The learned Central Government Standing counsel appearing on behalf of the respondent submitted that the time period to file the request for examination had expired and therefore, it was considered that the petitioner had abandoned the application and therefore, there is no ground to interfere with such a decision taken by the respondent.

11. Section 11B of the Act states that no patent shall be examined unless the applicant or any other interested person makes a request in a prescribed manner for such examination within the prescribed period.

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12. Rule 24B(1) of the Patent Rules, 2003 [hereinafter referred to as the ***Rules***] prescribes the time line for making a request for examination under Section 11B of the Act. Originally the request for examination shall be made in Form 18 within 48 months from the date of priority of the application or from the date of filing of the application whichever is earlier. This Rule underwent a change in the year 2024 w.e.f 15.03.2024 and the period was reduced to 31 months.

13. Rule 138 of the Patent Rule, 2003 deals with the power of the Controller to extend the time prescribed for a period of one month.

14. A combined reading of Section 11 B of the Act and the Rules 24B and 138 of the Rules makes it clear that the date of request for examination is extended for a period of six months. If the application failed to adhere to the deadline, the application is deemed to have been withdrawn.

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15. In the case in hand, there is no dispute that this period came to an end on 10.04.2024. However, it has to be seen as to whether there was an intentional abandonment in pursuing the application or such error had taken place due to inadvertent mistake on the part of the Indian Patent agent who was advising the petitioner.

16. At this juncture, it will be relevant to take note of the judgement relied upon the learned counsel for the petitioner in the case of ***Chandra Sekar*** referred supra. Paragraph 14 of the judgement is extracted hereunder:-

> *14. Admittedly, the reason for delay, according to the petitioner is only due to the sheer negligence on the part of the Indian Attorney. It is also not the case of the respondents that there was contributory negligence on the part of the petitioner, and he had an intent to abandon the patent. In the absence of any material to show that the petitioner has intended to abandon his right to pursue the application for examination, this Court is of the view that the valuable statutory rights of the petitioner cannot be completely deprived of merely because the patent application for examination*

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has not been diligently presented by the agent. The petitioner being the citizen of US and he is depended on the Indian agent appointed by his attorney at US, the said situation cannot be ignored all together. Therefore, in the absence of any concrete material to show that the petitioner has not taken any steps to pursue his application, it cannot be presumed that he had intention to abandon his right.

17. It is also relevant to take note of the fact that this Court had taken into consideration the judgement of the Delhi High Court in ***Bry-Air Prokon Sagl Vs. Union of India in W.P.(C)-IPD 25/2022, dated 17.10.2022*** where the Delhi High Court had dealt with this issue regarding abandonment in detail. On considering the same, this Court held that unless and otherwise the petitioner intended to abandon his right to pursue the application for examination of the patent, such applicant cannot be completely deprived of such a right which was lost due to a mistake on the part of the Indian Agent who advised the petitioner and his attorney in US.

18. In the case in hand, there was a valid ground raised on the side of the petitioner to the effect that instead of calculating 31 months period from 10.09.2021 when the petitioner filed the original

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patent application due to inadvertence it was calculated from 08.09.2022 when the petitioner filed the 2nd patent application. As a result, the petitioner was under the bona fide impression that the time period expires on 08.04.2025 and whereas, it already expired on 10.04.2024. For the mistake committed on the part of the Indian Agent, the petitioner should not be deprived of pursuing the patent application in the absence of any concrete material to show that the petitioner has not taken any steps to pursue his application. In fact, the petitioner came to know about the expiry of the period only when the Indian Agent attempted to file the application on 10.12.2024 which came to be rejected on 30.12.2024 stating that the time period to file request for examination has already expired.

19. The abstract of what was invented by the petitioner is extracted hereunder:-

> ***The ever-increasing number of orbiting bodies in low Earth orbit has made it infeasible to calculate potential conjunctions between orbiting bodies more than a few days in advance, even with the aid of supercomputers. Disclosed embodiments utilize machine learning to predict potential conjunctions between orbiting bodies faster than state-of-the***

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art systems by orders of magnitude. This enables potential conjunctions to be identified well in advance (e.g., 30 days or more), so that they may be prioritized (e.g., for fine calculations), visualized, and remediated (e.g., via control of the impacted satellites).

20. Considering the nature of invention that is claimed by the petitioner and also considering the fact that the petitioner never intended to abandon the pursue of the patent application, this Court is inclined to allow the present writ petition.

21. In the result, there shall be a direction to the respondent to accept the petitioner's request for examination under Form 18 in Indian Patent Application No.IN202447028876 and process the same in accordance with law and pass appropriate orders, as expeditiously as possible.

22. Accordingly, this writ petition is allowed. No costs.

18-12-2025

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

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To

1.The Controller General Of
Patents Designs
And Trade Marks, Boudhik
Sampada Bhavan, Antop Hill,
S.M.Road, Mumbai-400 037

2.Joint Controller Of Patents And
Designs
Patent Office Intellectual Property
Building, G.S.T.Road, Guindy
Chennai-600032

3.Union Of India
Rep By Its Secretary, Department
Of Industrial Police And
Promotion, Ministry Of Commerce
And Industry, Udyog Bhawan,
New Delhi-110 011

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N.ANAND VENKATESH J.
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