IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

IPDPTA/6/2025

Huawei Techonologies Co. Ltd.
Vs.
The Controller General of Patents
Designs and Trademark and Anr.

For the appellant : Mr. Subhatosh Majumdar, Adv.
Ms. Mitul Dasgupta, Adv.
Mr. K. K. Pandey, Adv.
Mr. Dipro Dawn, Adv.

For the respondent : Mr. Pramod Kumar Drolia, Adv.
Mr. Santosh Kumar Pandey, Adv.

Judgment on : 22.04.2025

Ravi Krishan Kapur, J.:

1. This is an appeal challenging an order dated December 17, 2024 whereby the respondent no. 2 has rejected Patent Application No. 202237060506 which related to the field of communication technologies and in particular to a communication method and a device to reduce power consumption of a terminal in a paging process.
2. The impugned order has been passed on the sole ground of invalidity of the General Power of Attorney (GPA) filed by the agent of the appellant. By the impugned order, it has been held as follows:-

> *"18. Since the applicant has failed to meet the formal statutory requirements outlined in Sections 127 and 132 of The Patent Act, 1970 (as amended), as well as Rule 135 and Rule 126 of the Patent Rules, 2003 (as amended), the Controller has refrained from addressing the technical objections raised in the SER/hearing notice. The deficiencies in meeting the prescribed formal statutory requirements have prevented any further discussions of the technical aspects of the application."*

3. On behalf of the appellant, it is contended that the impugned order is an arbitrary and whimsical exercise of discretion by the respondent no. 2. The appellant had made extensive submissions both on merits and the objections which had been raised by the Controller. Written submissions had also been filed by the appellant covering both technical and formal issues addressed in the hearing notice. Significantly, there was no mention of any defective GPA in the FER. The objection regarding GPA had been only raised at a belated stage in the hearing notice and that to in respect of a copy of the GPA while the original GPA had been filed in another application. The reliance on Sections 127 and 132 of the Patent Act, 1970 read with Rules 126 and 135 of the Patent Rules, 2003 in the impugned order is also misplaced. There can be no dispute as to the acceptability of a GPA and copies of such GPA can be used for other transactions as stipulated in Departmental Circular No. 12 of 2009 issued on June, 2009 which has deliberately not been taken into consideration in the impugned order. There is also an allegation of bias which has been raised against the respondent no. 2 inasmuch the respondent no. 2 as General Secretary had on a prior occasion filed a complaint against the respondent no. 1 regarding the acceptance of GPAs in proceedings before

the Office. This indicates a pre-meditated approach adopted by the respondent no. 2 in passing the impugned order. In support of such contention, reliance has been placed on the decision in *Amit Roy vs. JyothendraSinhji Viramsinhji, 2016 SCC OnLine Karnataka 8793* to contend that there is nothing to indicate that a Power of Attorney has to be compulsorily notarized or registered.

4. On behalf of the respondent authorities, it is fairly submitted that there are no grounds to sustain the impugned order.

5. The impugned order has been mechanically passed without any application of mind. The technical ground on which the impugned order has been passed is purely procedural in nature. It was incumbent on the respondent no. 2 not to adopt a strictly formal and pedantic approach in passing the impugned order. The impugned order has also been passed in violation of the principles of natural justice without granting an opportunity to the appellant to cure any formal defect. It would be evident from the impugned order that the only ground for rejecting the subject application is non-compliance of the GPA allegedly not being in accordance with law.

6. Significantly, by a letter dated 2nd September, 2024, the respondent no. 2 had on a prior occasion complained against acceptance of GPA's being in violation of the Act and the Rules framed thereunder. The impugned order is a lengthy order running into 40 pages. In passing the impugned order, the respondent no. 2 has industriously analyzed not only the provisions of the Act and the Rules framed thereunder but also drawn comparison from

the European Patent Office. There is also a detailed analysis of the law and the principles of statutory interpretation including (a) violation of Section 84 of the Bhartiya Sakshyaadhiniyam, 2023; (b) non-compliance with Section 14 of Indian Notaries Act, 1920; (c) violation of Section 18(1) of the Indian Stamp Duty Act, 1899; (d) contravention of section 33(c) of the Indian Registration Act, 1908; (e) non-compliance with section 3(1) of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948; (vi) section 127 of the Patents Act, 1970; (vii) no provisions for General Power of Attorney under the Patents Act, 1970; (viii) relevant provisions in EP Rules; (ix) revenue loss due to non-payment of stamp duty; (x) administrative high-handedness and confusion; (xi) interference in Quasi-Judicial Functions; (xii) impact on quasi-judicial functions; (xiii) review mechanism; (xiv) training and awareness for officers; (xv) internal monitoring." In short, the respondent no. 2 has reproduced all the issues raised in the letter dated 2 September, 2024 which had been addressed to the Central Government and had not been responded to nor acted upon.

7. There is absolutely no adjudication on the merits of the case and there has been no discussion of the subject invention. The impugned order is a wasteful exercise of time, expense and money and serves no purpose whatsoever. Such a pedantic, formal and hyper-technical approach is counter-productive to the entire object behind grant of patents. Procedure is a handmaid of justice and not its mistress which highlights that procedural laws should not dominate the substantive rights of parties.

8. It is not disputed by the respondent that the practice followed before the Patent Office, if the original GPA document is submitted with one patent application and a self-attested copy of the GPA by the patent agent or the legal practitioner is filed in other applications with a forwarding letter or an attestation mentioning where the original GPA has been filed would be sufficiently compliant. To this extent, Departmental Circular no. 12 of 2009 dated 19th June, 2009 permits and allows such practice. The respondent Controller could also not controvert the fact that similar copies of GPA have been filed in numerous applications and a number of which have also proceeded to be finally allowed. Such practice also encourages consistency.

9. None of the provisions i.e. section 127 or 132 of the Act or Rule 135 or Rule 126 contemplate refusal of an application for patent on this ground alone. On the contrary, it would be evident that the same only provides for suspension of action on substantive issues pending removal of deficiencies pointed out by the respondent authorities. The use of "or" in Form 26 and power of attorney also indicates that either of the two can be used as a valid mode of authorization. Upon a plain reading of the above provisions, it is also evident that refusal of an application for patent on the ground of purported invalidity of the GPA is unjustified. There has also been violation of the principles of natural justice in not affording an adequate opportunity to the appellant in addressing the above issue raised which is the only basis for rejection. In *Amit Roy vs. JyothendraSinhji Viramsinhji (Supra)* it has been held as follows:

> *"20. Such being the scheme of Chapter X of the said Act, there is nothing to indicate that the power of attorney document has to be compulsorily notarized or registered."*

10. In view of the above, the sole ground for rejecting the subject application is untenable. In such circumstances, the impugned order is set aside. The matter is remanded to a different Hearing Officer to be heard and concluded within a period of four months from the date of passing of the order. All points are left open to be decided in accordance with law. It is made clear that there has been no adjudication on the merits of the case. To the above extent, IPDPTA/6/2025 stands allowed.

(Ravi Krishan Kapur, J.)