



IPAB Intellectual Property Appellate Board
balancing ip-protection

Guna Complex Annexe-I, 2nd Floor, 443 Anna Salai, Teynampet, Chennai-600 018.
Tele: 24328902/03 Fax: 24328905 email id: ipab.tn@nic.in Website: http://www.ipab.gov.in

OA/11/2020/PT/CHN

FRIDAY, THIS THE 08TH DAY OF JANUARY, 2021

**HON'BLE SHRI JUSTICE MANMOHAN SINGH
HON'BLE DR. B.P. SINGH**

**CHAIRMAN
TECHNICAL MEMBER (PATENTS)**

WISIG NETWORKS PRIVATE LIMITED

AN INDIAN STARTUP

OF 604 TURQUOISE BLOCK, MYHOME JEWEL APT,

MADINAGUDA, HYDERABAD,

TELANGANA- 500049

...

APPELLANT

(Represented by: Ms Shuti Dhyani)

**CONTROLLER GENERAL OF PATENTS, DESIGN,
TRADEMARK AND GEOGRAPHICAL INDICATIONS
PATENT OFFICE
BOUDHIK SAMPADA BHAWAN,
CHENNAI - THENI HWY, GUINDY, CHENNAI,
TAMIL NADU 600032**

Versus

balancing ip-protection

...

RESPONDENT NO.1

**ASST CONTROLLER OF PATENTS & DESIGNS
PATENT OFFICE
BOUDHIK SAMPADA BHAWAN,
CHENNAI - THENI HWY, GUINDY, CHENNAI,
TAMIL NADU 600032**

...

RESPONDENT NO.2

**THE EXAMINER OF PATENTS AND DESIGN
PATENT OFFICE
BOUDHIK SAMPADA BHAWAN,
CHENNAI - THENI HWY, GUINDY, CHENNAI,
TAMIL NADU 600032**

...

RESPONDENT NO. 3

(Represented by - None)

ORDER

Hon'ble Shri Justice Manmohan Singh, Chairman

Hon'ble Dr. B.P. Singh, Technical Member (Patents)

1. The present appeal is filed under Section 117A of the Indian Patents Act, 1970, against the order dated 14/01/2020, passed by the Respondent NO. 2, being the Assistant Controller of Patents & Designs, under Section 15 of the Indian Patents Act, 1970, refusing to grant the Appellant's Indian patent application no. 201847032415.
2. It is the case of the appellant that:
 - 2.1 The Respondents have failed to appreciate the facts of the matter and not correctly applied the principles of test of obviousness.
 - 2.2 The findings of Respondents in the Impugned order that the amendments to the claims made after the hearing as under *"A method for generating a waveform in a communication network to achieve low PAPR and to reduce cross correlation,"* has no support from the earlier filed claims therefore the amended set of claims are being considered as beyond the scope of the invention as filed; is not based on proper reasoning.
3. The appellant have submitted their argument to establish as to how the objection on lack of inventive step is wrongly sustained by the respondent and how the amendments made was under the statutory provisions. They also proposed to withdraw such amendments, if so required.
4. We have reviewed the order of the respondent no.2 and the operating portion is shown as under:

"...The cited prior arts disclose following in view of claimed subject matter of the instant invention:

D1 discloses a method for generating a waveform in a communication network in addition to this it also discloses user specific spreading operation (Abstract, paragraph [0195]).

D3 discloses a rotating the spreading waveform by a certain amount corresponding to the data to be transmitted. Further schemes of coding of data are also disclosed in, the pre-coded data using Discrete Fourier Transform (DFT) to generate DFT output data. D4 discloses communication includes allocating Low peak-to-average power ratio transmission and a low-PAPR signal that is spread over a large bandwidth (i.e., has large subcarrier spacing and transmitted in a wideband low-PAPR region) provides increased frequency diversity and immunity to fading. Such increased frequency diversity can be achieved using large subcarrier spacing

D2 discloses spread code generation method.

All the steps as claimed in the instant invention for generating a waveform in a communication network has been disclosed in the cited documents D1- D4; therefore the steps can be implemented by a person skilled in the art to perform the instant invention as claimed.

The oral argument and the written submission of the agent of the applicant have been carefully considered. However without prejudice, although the hearing submissions have attempted to address the other requirements, yet the substantive requirement of the Patents Act, 1970 i.e. Section 2(1)(j) and 59 is not found complied with. Hence, in view of the above and unmet requirements, this instant application is not found in order for grant....”

5. It is evident that the above order narrates the brief feature(s) of the cited prior arts and straightway concludes that since *all the steps as claimed in the instant invention for generating a waveform in a communication network has been disclosed in the cited documents*

D1- D4; therefore the steps can be implemented by a person skilled in the art to perform the instant invention as claimed.

6. The order is totally void of any reasoning. There is no application of any tests of determination of inventive step either. The Respondent no. 2 is first adjudicating officer in patent matters and it is expected that his orders are based on fair reasoning.
7. Hon'ble High Court of Madras in the Collector vs K. Krishnaveni¹ referred Hon'ble Supreme Court of India² wherein Hon'ble apex Court, while testing the correctness of an order passed by the Assistant Commissioner of Sales Tax against the assessment, at Paragraph 10, held as follows:

"10. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless."

8. Hon'ble Supreme Court in *Kranti Associates Private Limited and another case*³ has considered a catena of decisions, some of which are mentioned hereunder:

- 8.1 *"15. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak and others vs. Union of India and others reported in AIR 1970 SC 150."*

¹ The Collector vs K. Krishnaveni Available at <https://indiankanoon.org/doc/33278368/>

² M/s.Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors. Available at <https://indiankanoon.org/doc/1933363/>

³ Kranti Associates Private Limited and another vs Masood Ahamed Khan and Others) reported in (2010) 9 SCC 496, Available at <https://indiankanoon.org/doc/1304475/>

8.2 “16. In *Kesava Mills Co. Ltd. and another vs. Union of India and others* reported in AIR 1973 SC 389, this Court approvingly referred to the opinion of Lord Denning in *Rigina vs. Gaming Board Ex parte Benaim* [(1970) 2 WLR 1009] and quoted him as saying “that heresy was scotched in *Ridge and Baldwin*, 1964 AC 40”.

8.3 “17. The expression ‘speaking order’ was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)”

8.4 “18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the ‘inscrutable face of a Sphinx’.”

8.5 “27. In *Siemens Engineering and Manufacturing Co. of India Ltd. vs. The Union of India and another*, AIR 1976 SC 1785, this Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, this Court held, as basic as following the principles of natural justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law (See para 6 page 1789).”

8.6 “31. In *Rama Varma Bharathan Thampuran vs. State of Kerala and Ors.*, AIR 1979 SC 1918, Justice V.R. Krishna Iyer speaking for a three-Judge Bench held that the functioning of the Board was quasi-judicial in character. One of the attributes of

quasi-judicial functioning is the recording of reasons in support of decisions taken and the other requirement is following the principles of natural justice. Learned Judge held that natural justice requires reasons to be written for the conclusions made (See para 14 page 1922)."

8.7 *"32. In Gurdial Singh Fijji vs. State of Punjab and Ors., (1979) 2 SCC 368, this Court, dealing with a service matter, relying on the ratio in Capoor (supra), held that "rubber-stamp reason" is not enough and virtually quoted the observation in Capoor (supra) to the extent that reasons "are the links between the materials on which certain conclusions are based and the actual conclusions." (See para 18 page 377)."*

8.8 *"51. Summarizing the above discussion, this Court holds:*

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone

to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

9. Coming back to the case at hand, it is observed that such orders may be a result of grading system of the examiner/ Controllers based on their quantifiable performance. No doubt certain degree of check on quantitative performance of the officers is essential, keeping in view the huge backlog of cases, but in such a pursuit, we cannot ignore the qualitative performance. In fact, IPO has, in recent past, worked on Quality Management in respect of International patent applications; but there appears need to focus more on National phase applications as well. The performance of officers should be a fine blending of their quantifiable and qualitative work. While the **speed** is necessary; the **accuracy** with the speed is also very essential. This case appears to have been a victim of hurriedly disposals.

10. Therefore, Keeping in view enormous judicial pronouncements which cast a duty on *quasi-judicial* authority to pass a reasoned

order, and finding that the order of respondent no. 2 is wholly void of reasoning, we are compelled to set aside his impugned order. While doing so, we categorically mention that we have not considered the merit of the case.

11. We set aside the order of the Respondent no. 2 dated 14/01/2020 and remand back the case to him to decide the matter on merit, within 3 months of issuance of this order and after giving a fair opportunity to the appellant of being heard, if so required.

12. Keeping in view the above facts and circumstances, the instant appeal is allowed. No cost.

-Sd/-

(Dr. B.P. Singh)
Technical Member (Patents)

-Sd/-

(Justice Manmohan Singh)
Chairman

Disclaimer: This order is being published for present information and should not be taken as a certified copy issued by the Board