

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY CIVIL JURISDICTION

C.M. NO. OF 2019

IN

WRIT PETITION (CIVIL) NO. 5590 OF 2015

IN THE MATTER OF PUBLIC INTEREST LITIGATION:

Shamnad Basheer ... PETITIONER

VERSUS

Union of India & Others ... RESPONDENTS

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**Date:** 07.01.2019

**N. SAI VINOD**  
Advocate for Petitioner  
D-131 (Basement),  
Panchsheel Enclave,  
New Delhi – 110 001  
**Phone:** +91 – 88265 61767

**IN THE HIGH COURT OF DELHI AT NEW DELHI****EXTRAORDINARY CIVIL JURISDICTION****WRIT PETITION (CIVIL) NO. 5590 OF 2015**

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**VERSUS**

Union of India &amp; Others ... RESPONDENTS

**URGENT APPLICATION**

To

The Deputy Registrar,  
Delhi High Court,  
Shershah Road,  
New Delhi – 110 003

Sir,

We hereby request you to kindly treat the accompanying Application as **urgent** in accordance with the Rules of the Delhi High Court.

Yours faithfully,

**N. SAI VINOD**

Advocate for Petitioner

D-131,

Panchsheel Enclave,

New Delhi – 110 001

Phone: +91 – 88265 61767

**Date:** 07.01.2019

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**NOTICE OF MOTION**

To,

(1) **Mr. Amit Mahajan**  
Central Government Standing Counsel  
On behalf of Respondent No. 1 to 3

(2) **Ms. Pritha Srikumar**  
Advocate,  
Respondent No. 4

Sir,

TAKE notice that the accompanying application under Section 151 CPC is likely to be listed before the Hon'ble Court on or after 8<sup>TH</sup> January, 2019.

Date: 07.01.2019

**N. SAI VINOD**  
Advocate for Petitioner  
Phone: +91 - 88265 61767

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY CIVIL JURISDICTION

C.M. NO. OF 2019

IN

WRIT PETITION (CIVIL) NO. 5590 OF 2018

IN THE MATTER OF PUBLIC INTEREST LITIGATION:

Shamnad Basheer ... PETITIONER

VERSUS

Union of India & Others ... RESPONDENTS

AN APPLICATION FOR DIRECTIONS  
UNDER SECTION 151 OF THE CODE OF  
CIVIL PROCEDURE, 1908

To

The Hon'ble Chief Justice of the  
Hon'ble High Court of Delhi at New Delhi and  
His Companion Justices of the Hon'ble High Court

The Petitioner respectfully submit  
as under:

**MOST RESPECTFULLY SHOWETH:**

1. The present Application seeks immediate directions from this Hon'ble Court against Respondent Nos. 1 to 3 for wilful disregard of the Final Judgement dated 23.04.2018 passed by this Hon'ble Court and the breach of an important undertaking to this Hon'ble Court vide affidavit dated 20.04.2018. True Copy of the Final Judgment of this Hon'ble Court dated 23.04.2018 is annexed herewith as ANNEXURE A-1.

I. **BACKGROUND**

2. The captioned Writ Petition was filed in public interest seeking appropriate directions from this Hon'ble Court against the widespread non-compliance and irregularities pertaining to enforcement of patent working disclosures mandated under Section 146 of the Patents Act, 1970 and Rules thereunder. Furthermore, the Petitioner was aggrieved by the failure of Respondent Nos. 2 and 3 to strictly enforce the above statutory mandate and initiate penal action against errant patentees and licensees in accordance with Section 122 of the Patents Act. In view thereof, the Petitioner *inter alia* prayed for (a) a writ of *mandamus* to direct the Respondents to take appropriate steps to strictly enforce compliance with Section 146(2) read with Rule 131(1) by every Patentee and Licensee.
  
3. As per Section 146(2), every Patentee and Licensee is under an obligation to furnish periodic statements outlining the extent of commercial working of their patent. To this end, Rule 131 of Patents Rules, 2003 requires every Patentee and Licensees to specify the true extent of commercial working of their patent each year in accordance with 'FORM-27' specified under the Second Schedule to the Patents Rules. The non-compliance and other irregularities in FORM-27 filing requirement attracts fine of Rs.

10,00,000/- and imprisonment upto six (6) months under Section 122(1)(b).

4. As per the directions of this Hon'ble Court on 27.05.2015, the Petitioner submitted an Affidavit-in-Support of the Writ Petition dated 03.08.2015 highlighting some of the egregious violations to mandatory FORM-27 filing requirements. In a nutshell, the nature of lapses included:

- (a) Non-filing of FORM-27s by over 30% of Patentees during 2009 to 2012;
- (b) Arbitrary waiver of filing requirements upon Licensees, contrary to plain language of Section 146(2);
- (c) Perfunctory filing of FORM-27s by several Patentees, as several particulars were left blank; and
- (d) Outright refusal to disclose particulars by few Patentees, on grounds of confidentiality or inability to submit.

Copy of the Affidavit-in-Support of the Writ Petition filed on behalf of the Petitioner dated 03.08.2015 is annexed herewith as **ANNEXURE A-2.**

5. The Respondent Nos. 1 to 3, in reply to the Writ Petition, effectively conceded to lapses and other irregularities in FORM-27 filing requirement. To this end, the Contesting Respondents stated that a process of public consultation had been initiated in

connection with 'The Patents (Amendment) Rules, 2015' and that the Petitioner was at liberty to submit their comments and suggestions in this regard.

## II. ORDERS OF THIS HON'BLE COURT

6. On 10.01.2018, this Hon'ble Court took serious note of the various lapses in the FORM-27 filings as highlighted by the Petitioner. In particular, this Hon'ble Court expressed deep anguish at the nonchalant attitude displayed by the Contesting Respondents for failing to take any steps whatsoever to ensure compliance ever since the captioned Writ Petition had been filed. In pertinent part, this Hon'ble Court observed that:

“5. A bare glance of the above would show that despite the Controller General of Patents, Designs, Trademarks and Geographical Indications having issued 43920 patents during the year 2012-13, **returns as prescribed under Form-27 has been received only in 27946 cases; and, shockingly, the disclosure is only of 6201 patents as being worked by the patentees.**

....

17. This writ petition has remained pending in this Court since 2015. We also do not have any information as to whether there is any change in the status with regard to the filing of returns under Section 146 of the Patents Act, 1970 and whether any action taken by the Controller General of Patents and Designs under Section 122 of the Act.

18. Mr. Amit Mahajan, Id. CGSC prays for an adjournment to inform this Court with regard to the status of the amendment of the rule and the action taken under Section 122 of the Patents Act, 1970.” (emphasis added)



True Copy of the Order date 10.01.2018 is annexed herewith as **ANNEXURE A-3.**

7. Subsequently, the matter was listed on 18.01.2018, 25.01.2018, 05.02.2018 and 07.02.2018 for compliance with directions issued by this Hon'ble Court on 10.01.2018. Thereafter, the Contesting Respondents informed this Hon'ble Court that the present circumstances demanded certain modifications to the FORM-27 format and filing requirements. However, this Hon'ble Court expressed shock at the lack of seriousness and urgency on part of Respondents to resolve the issue. This Hon'ble Court expressed their dissatisfaction in the following words:

“2. We are informed by Mr. Amit Mahajan, learned CGSC that he has been instructed that the matter needs a relook.

3. Given the fact that this writ petition complaining of several pitfalls, illegalities as well as the admitted position on the part of the respondents that Section 146 of the Patents Act, 1970 has not been effectively worked, was filed as back as in the year 2015, this matter ought to have engaged the attention of the respondents long ago.

4. It is also astonishing that the matter has proceeded in this manner for a long period of 45 years since the statute was enacted. Be that as it may, expeditious steps regarding the working of the statutory provisions as well as the changes, if any, are required in the statute, rules and prescribed forms deserve to be taken.

5. In view thereof, the respondent no.1 shall place before this court, within two weeks from today, the timeline regarding the manner in which the steps required for effecting the necessary modification to the prescribed forms would be

undertaken. The same shall be placed on affidavit before us within this period with advance copy to all parties through counsels who are represented before us.”

True Copy of the Order date 07.02.2018 is annexed herewith as **ANNEXURE A-4.**

8. To this end, the Contesting Respondents issued a Public Notice dated 01.03.2018 inviting suggestions from various stakeholders. On 15.03.2018, this Hon'ble Court directed the Contesting Respondents to submit reasonable timelines to complete this process. True Copy of the Order date 15.03.2018 is annexed herewith as **ANNEXURE A-5.**
9. It is submitted that the Petitioner took part in the consultation process by sending his suggestions and also participated in the consultative meeting held on 06.04.2018 through his counsel. Furthermore, on 17.04.2018, the Petitioner through his counsel sent further comments and suggestions on specific invitation from the Controller General of Patents during the public consultation.

### **III. Undertaking to this Hon'ble Court**

10. In compliance with the aforesaid directions, the Contesting Respondent submitted that a consultative meeting with various stakeholders was held on 06.04.2018 at New Delhi. Furthermore, the Respondents sought approximately ten (10) more months to complete the whole process and specified the time required to

complete each step of the process. The detailed timelines specified by the Respondents is reproduced hereinbelow:

“3. Accordingly, the following sequential timelines to complete all the actions to be taken by the office of CGPDTM/Ministry related to this matter are submitted.

| <i>SL. No.</i> | <i>Action be the Office</i>   | <i>Likely time required</i> |
|----------------|---|-----------------------------|
| 1.             | <i>Stakeholders' suggestions received</i>   | <i>Before 23-3-2018</i>     |
| 2.             | <i>Stakeholders' suggestions/comments published in the IPO website prior to the Meeting</i>   | <i>02-04-2018</i>           |
| 3.             | <i>Stakeholder consultation meeting held at Delhi</i>   | <i>06-04-2018</i>           |
| 4.             | <i>Receiving further suggestions and study of international practices regarding working of patents</i>  | <i>1 month</i>              |
| 5.             | <i>Preparation of Draft of Amendments to the existing Rule 31 of Patent rule/Form 27 by CGPDTM to the Ministry</i>                              | <i>1 month</i>              |
| 6.             | <i>Approval by Competent Authority to the draft amendment to Rules/Form 27</i>  | <i>1 month</i>              |
| 7.             | <i>Gazette Notification of Draft amendment to Rules/Form 27</i>   | <i>2 Months</i>             |
| 8.             | <i>Receiving comments/suggestions from Stakeholders and consultation meeting on Draft amendment Rules/Form on Draft amendment Rules/Form 27</i> |                             |
| 9.             | <i>Final Draft of the amended Rules/Form 27 to be submitted to competent Authority</i>  | <i>1 Month</i>              |

|     |  |                 |
|-----|--|-----------------|
| 10. | <i>Vetting of the amended Rules/Form 27 by Law Ministry and inter-ministerial consultation</i> | <i>2 Months</i> |
| 11. | <i>Competent Authority approval and Gazette notification of a amended rules/Form 27</i>        | <i>1 Month</i>  |
| 12. | <i>Unforeseen delay, if any</i>  | <i>2 Months</i> |

True Copy of the Affidavit dated 20.04.2018 on behalf of Respondents is annexed herewith as ANNEXURE A-6.

11. In view of the above assurance, on 23.04.2018, this Hon'ble Court accepted the timelines suggested by the Respondents and disposed off the Writ Petition by directing the Respondents to strictly abide by the timeframe. In pertinent part, this Hon'ble Court stated that:

6. We accept the timelines suggested by the respondent no.1 who shall remain bound by the same. **Every effort shall be made to ensure that there is no deviation and the matter is treated in right earnest and given the seriousness which it deserves to be accorded to it.**

7. The respondents shall place a report before this court upon completion of the aforesaid noticed exercise.

8. In view of the above, this writ petition and application which sought the strict implementation of the law need not detain this court any further and are hereby disposed of. (emphasis added)

**IV. Subsequent Developments & Wilful Disobedience to directions of this Hon'ble Court**

12. As evident from the undertaking above, the Contesting Respondents had agreed to:

- i) publish the amended version of FORM-27 as approved by the Competent Authority (i.e., Department of Industrial Policy & Promotion) on or before 06.07.2018
- ii) Invite comments and suggestion before final approval by 06.10.2018.
- iii) Seek approval on the final draft for inter-ministerial vetting and publication by 06.12.2018.

13. In and around the first week of July 2018, the Petitioner (through his counsel) enquired from Dr. S. S. Singh, the Dy. Controller of Patents, on the status of the draft forwarded to the Competent Authority. However, the Petitioner did not receive any affirmative response. On 11.07.2018, the concerns of the Petitioner was forwarded to the Controller General of Patents by Dr. S. S. Singh. Subsequently, on 18.07.2018, the Petitioner once again requested the officials to give an update on the status of the consultation process. Subsequently, the counsel for the Petitioner sent a reminder on 29.07.2018 and 20.08.2018. Copy of the Email correspondence with Respondent Nos. 2 and 3 is annexed herewith as **ANNEXURE A-7 (Colly)**.

14. It is humbly submitted that the Petitioner's repeated enquires with Respondent Nos. 2 and 3 to learn about the status of the consultation process has not yielded any response. To the best of Petitioner's knowledge, the Contesting Respondents have not

bothered to take any steps for the disposal of the captioned Writ Petition. Till date, the Contesting Respondents have neither published the draft as approved by the Competent Authority nor held any further consultation on the subject.

15. Whilst failing to respect the orders of the court and comply with the timelines above for reforming FORM-27, the Respondents have initiated other amendments through other Rules. Illustratively, Respondent No. 1 through the Department of Industrial Policy and Promotion ('DIPP') published a draft Patents (Amendment) Rules, 2018 on 04.12.2018, to amend Rules 18, 24C, and 55 and to insert FORM-28 to provide for the expedited examination of patent applications. Moreover, the DIPP has also invited feedback from various stakeholders on the draft Amendments, and the last date expires on 02.01.2019 (i.e., 30 days from the date publication in the Official Gazette). However, these draft Amendments to the Rules make no mention of Rule 122 and/or FORM-27 or the working of patents, despite a clear direction from the court.
16. Therefore, it is evident that the Respondents are in clear breach of their solemn undertaking before this Hon'ble Court and have shown scant regard for the binding directions issued by this Hon'ble Court vide Judgment dated 23.04.2018. Their present conduct is illustrative of the sheer callousness with which they have treated an important statutory mandate for many years. More worryingly,

even after being at the receiving end of a clear directions by this Hon'ble court, they have shown no improvement in their attitude.

17. The Petitioner is concerned that the wilful delay in completing the consultation process would result in *fait accompli* insofar as FORM-27 filing for the present calendar year, i.e., March 31, 2019.
18. In the above premises, the present application is being filed before this Hon'ble Court to seek appropriate directions to expedite the process of consultation. The present application is being filed *bona fide* in the interest of justice. No prejudice will be caused to the Respondents if the same is allowed.

#### PRAYER

In view of the above facts and circumstances this Hon'ble Court may be pleased to issue:

- i. Direct the Respondent Nos. 1 to 3 to revise the timelines proposed in the Affidavit dated 20.04.2018 and complete the process within on or before 06.03.2009;
- ii. Pass any order[s] as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

Date: 07.01.2019

**N. SAI VINOD**  
Advocate for Petitioner  
D-131, Panchsheel Enclave,  
New Delhi – 110 001  
Phone: +91 – 88265 61767

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRAORDINARY CIVIL JURISDICTION

C. M. OF 2018

IN

WRIT PETITION (CIVIL) NO. 5590 OF 2015

IN THE MATTER OF PUBLIC INTEREST LITIGATION:

Shamnad Basheer ... PETITIONER

VERSUS

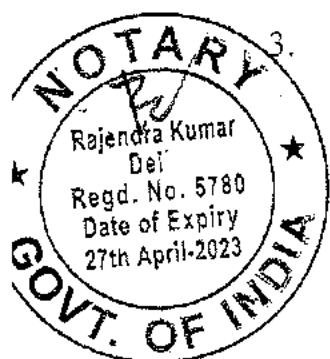
Union of India & Others ... RESPONDENTS

**AFFIDAVIT**

I, Shamnad Basheer, aged about 42 years, residing at Oasis Apartment, SF-2, Balaji Layout, Wheelers Road Extension, Bangalore - 560005 do hereby solemnly affirm and state as follows:

1. That I am the Petitioner and being well acquired with facts and circumstances of the matter as borne from personal knowledge and records and am as such competent to affirm the present affidavit.
2. That I have gone through the contents of the accompanying application. The contents of Paragraph 1 to 18. are facts true to my knowledge and the rest are prayers made to this Hon'ble Court.

3. That the annexure(s) filed along with the present Petition are true copies of their respective originals.



  
DEPONENT



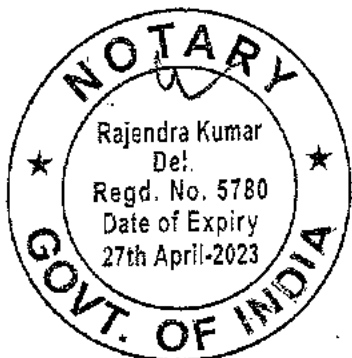
VERIFICATION

Verified at NEW DELHI on this 14 day of **December, 2018** that the contents of this affidavit are true and correct to the best of my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

*[Signature]*  
DEPONENT

*[Signature]*  
(N. SAI VINOD)  
P/3560/2013  
**IDENTIFIED**

ATTESTED *[Signature]*  
RAJENDRA KUMAR  
NOTARY DELHI-R-5780 8899446209  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Register Pg./S. No. ....  
14-12-2018



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTIVE WHO IS SEEMED PERFECTLY UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 14-12-2018 IDENTIFIED BY *[Signature]*  
IDENTIFY THE EXECUTIVE/DEPONENT WHO HAS SIGNED IN MY PRESENCE  
**IDENTIFIED** *[Signature]*

RAJENDRA KUMAR, NOTARY, Reg. No. 5780  
F No.-5(486) -  
EMPOWERED TO ADMINISTER THE OATH  
SECTION 139 OF CPC 1908  
SECTION 297 OF CRPC 1973  
(DELHI HIGH COURT RULES 1987  
PART-6, CHAPTER XVIII-207  
EVIDENCE BY AFFIDAVIT BEFORE NOTARY  
SUPREME COURT RULES, 2013  
ORDER IX.7  
12/14/2018

**ANNEXURE A-1**

**16**

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\*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5590/2015 & CM No.10090/2018

%

*Date of decision : 23<sup>rd</sup> April, 2018*

SHAMNAD BASHEER

..... Petitioner

Through : Mr. Abhimanyu Bhandari and  
Mr. N. Sai Vinod, Advs.

*versus*

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Amit Mahajan, CGSC for  
R-1/UIO  
Mr. Rajiv Nayyar, Sr. Adv.with  
Mrs. Saya Chaudhary, Mr.  
Ashutosh Kumar, Mr. Prateek  
Sehrawat, Mr. A. Joyaraj and Mr.  
Devanshu Khanna, Advs. for  
Intervenor-Ericsson  
Mr. Rajiv Kr. Choudhry, Adv.  
for Intervenor-TEMA  
Ms. Pritha Srikumar Iyer and Mr.  
Nishanth Kadur, Advs. for R-4

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT (ORAL)**

**GITA MITTAL, ACTING CHIEF JUSTICE**

1. This writ petition is concerned with issues relating to the working of patents under the Patents Act, 1970. It appears that concerned with

the several issues relating to Section 146 of the Patents Act, 1970 (as amended) read with Rule 131 of Patents Rules, 2003; Form 27 prescribed therein and the implementation of the provisions provided under Section 122, the office of the Controller General of Patents, Designs and Trademarks has initiated an exercise of examination of these provisions from the perspective as to whether changes/amendments thereto need to be effected.

2. In this regard, a stakeholder consultation meeting was scheduled to be held on 21<sup>st</sup> March, 2018. We are informed that pursuant thereto, a stakeholder consultation has actually been held at Delhi on 6<sup>th</sup> April, 2018.

3. By our order dated 15<sup>th</sup> March, 2018, we had directed the respondent no.1 to place before this court a reasonable timeline within which the consultation would be completed, suggestions received, examined and such amendments as may be deemed necessary, effected to the Patents Act, 1970 and Rules thereunder. Pursuant to our directions, respondent no.1 has filed an affidavit dated 20<sup>th</sup> April, 2018 by Dr. Suman Shrey Singh, Deputy Controller of Patents & Designs in the Patents Office, Delhi, who is also personally present in court.

4. We have been taken through this affidavit by Mr. Amit Mahajan, learned Standing Counsel for the Central Government. Alongwith this affidavit, the respondents have placed the following timelines for consideration of the matter and to effect such changes as may be necessary in the provisions of the Patents Act and the Rules :

"3. Accordingly, the following sequential timelines to complete all the actions to be taken by the office of CGPDTM/Ministry related to this matter are submitted.

| SL. No. | Action be the Office of CGPDTM/DIPP  | Likely time required |
|---------|--|----------------------|
| 1.      | Stakeholders' suggestions received   | Before 23-3-2018     |
| 2.      | Stakeholders' suggestions/comments published in the IPO website prior to the Meeting   | 02-04-2018           |
| 3.      | Stakeholder consultation meeting held at Delhi   | 06-04-2018           |
| 4.      | Receiving further suggestions and study of international practices regarding working of patents  | 1 month              |
| 5.      | Preparation of Draft of Amendments to the existing Rule 31 of Patent rule/Form 27 by CGPDTM to the Ministry                              | 1 month              |
| 6.      | Approval by Competent Authority to the draft amendment to Rules/Form 27  | 1 month              |
| 7.      | Gazette Notification of Draft amendment to Rules/Form 27   | 2 Months             |
| 8.      | Receiving comments/suggestions from Stakeholders and consultation meeting on Draft amendment Rules/Form on Draft amendment Rules/Form 27 |                      |

|     |  |                 |
|-----|--|-----------------|
| 9.  | <i>Final Draft of the amended Rules/Form 27 to be submitted to competent Authority</i>         | <i>1 Month</i>  |
| 10. | <i>Vetting of the amended Rules/Form 27 by Law Ministry and inter-ministerial consultation</i> | <i>2 Months</i> |
| 11. | <i>Competent Authority approval and Gazette notification of a mended rules/Form 27</i>         | <i>1 Month</i>  |
| 12. | <i>Unforeseen delay, if any</i>  | <i>2 Months</i> |

5. As noted above, the steps till serial no. 3 i.e. the stakeholder consultation meeting held on 6<sup>th</sup> April, 2018 stand completed.

6. We accept the timelines suggested by the respondent no.1 who shall remain bound by the same. Every effort shall be made to ensure that there is no deviation and the matter is treated in right earnest and given the seriousness which it deserves to be accorded to it.

7. The respondents shall place a report before this court upon completion of the aforesaid noticed exercise.

8. In view of the above, this writ petition and application which sought the strict implementation of the law need not detain this court any further and are hereby disposed of.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 23, 2018/kr

TRUE COPY

## ANNEXURE A-2

IN THE HIGH COURT OF DELHI AT NEW DELHI  
(Extraordinary Writ Jurisdiction)

WRIT PETITION (C) NO. 5590 OF 2015  
IN THE MATTER OF A PUBLIC INTEREST LITIGATION

SHAMNAD BASHEER ... PETITIONER

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

AFFIDAVIT-IN-SUPPORT OF THE WRIT PETITION  
FILED ON BEHALF OF THE PETITIONER

1. That the Petitioner has filed the abovementioned Writ Petition in public interest, under Article 226 of the Constitution of India, to draw the attention of this Hon'ble Court to the gross non-compliance and irregularities in the implementation of norms pertaining to patent working disclosures mandated under the Patents Act, 1970, and has therefore sought the following reliefs:

(1) A Writ of *Mandamus*, or any other appropriate writ or order against Respondent Nos. 2 & 3:

- i. To strictly enforce compliance with Section 146(2) read with Rule 131(1) of the Patents Act, 1970 and Rules by every Patentee and Licensee;
- ii. To initiate proceedings under Section 122(1) of the Patents Act, 1970 against errant Patentees and Licensees for non-compliance with the mandatory requirement under Section 146(2) read with Rule 131(1) of the Patents Act, 1970 and Rules;

- iii. To issue notices under Section 146(1) of the Patents Act, 1970 to Patentees and Licensees to furnish true and complete information in relation to incomplete disclosure of information on commercial working of the patent;
  - iv. To rectify the 'comprehensive online filing services for patents' to enable Patentees and Licensees to submit full and complete working information in accordance with the Patents Act, 1970 and Rules;
  - v. To publish and upload the entire information relating to commercial working of all patents for all years of operation of the patent on their website as per Section 146(3) of the Patents Act, 1970 and Rules thereunder;
- (2) To declare that the present format of FORM-27 as contained in Schedule II of the Patents Rules, 2003 is irrational and insufficient to sub-serve the purpose of the Patents Act, 1970;
  - (3) To constitute a committee of experts to suggest reforms to improve the public disclosure norms around the commercial working of patents.
2. That this Hon'ble Court on 27.05.2015 has granted permission to file the present Affidavit-in-Support of the Writ Petition to further substantiate the averments contained therein.
  3. That the contents of the present Affidavit may be treated as a part and parcel of the Writ Petition and thereby grant

such reliefs as this Hon'ble Court may deem just and appropriate in the interest of justice.

## I. STATUTORY BACKGROUND

4. The Patents Act confers exclusive 'rights' to manufacture, sell and import inventions, for a period of twenty (20) years, as a reward to the inventor for disclosing new and valuable scientific or technological information useful to the public. The state sanctioned monopoly is, however, subject to a promise that the inventor will work the patented invention for the benefit of public, by ensuring that patented goods are available in adequate quantities and for a reasonable price. To this extent, the patent regime not only grants exclusive 'rights' to Patentees to prevent others from manufacturing and distributing the patented invention, but also imposes 'duties' upon them to work the invention for the public good.
5. It is reiterated that the Statement of Objects and Reasons accompanying the Patents Act, 1970 lays great emphasis on the 'duties' of the Patentees in the following words: *"patent rights are not worked to the detriment of the consumer or to the prejudice of trade or industrial development"*. Furthermore, Section 83 of the Patents Act has succinctly codified the guiding principles behind the patent system as below:

- (a) that patents are granted to encourage inventions and to secure that the inventions are worked in India on a commercial scale and to the fullest extent that is reasonably practicable without undue delay;



- (b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;
  - (c) that the protection and enforcement of patent rights contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;
  - (d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;
  - (e) that patents granted do not in any way prohibit Central Government in taking measures to protect public health;
  - (f) that the patent right is not abused by the patentee or person deriving title or interest on patent from the patentee, and the patentee or a person deriving title or interest on patent from the patentee does not resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology; and
  - (g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public.
6. To mitigate the harm that may occur due to an abuse of patent monopoly, the Patents Act confers an array of extraordinary powers upon the Respondents, to enforce the patent working requirement, including the following:

- (a) The powers to issue a compulsory license, in accordance with Chapter XVI of the Act, if the Patentee has failed to enable access to the inventions at affordable prizes or to adequately meet the requirements of the public;
  - (b) The powers to revoke the patent, as per Section 85, if the patent has not been worked despite the grant of compulsory license;
  - (c) The powers to issue a compulsory license, in accordance with Section 92, in the event of national emergency or extreme urgency or to enable public non-commercial use; and
  - (d) The powers to issue a compulsory license, in accordance with Section 92A, to manufacture and export of patented pharmaceutical products to address public health concerns in countries with insufficient or no manufacturing capacity.
7. To this end, Section 146(1) confers powers upon Respondent Nos. 2 and 3 to require any Patentee or Licensee to furnish a statement on the extent of commercial working of their patent as and when directed to do so. More importantly, Section 146(2) imposes an express duty upon Patentees and Licensees to submit a statement on commercial working of their patent at periodic intervals, as maybe prescribed.
8. Rule 131 of Patents Rules, enacted pursuant to Section 146(2), obliges every Patentee and Licensees to disclose the true extent of commercial working of their patent, each

year, as per the format specified as 'FORM-27' under the Second Schedule to the Patents Rules. [See Appendix-B at Page No. 85] The form requires Patentees and their Licensees to disclose the following particulars:

- (b) whether the patented invention has been worked on a commercial scale within India for the year in question;
  - (c) if the patented invention is not worked, the reasons for such non-working;
  - (d) if the patented invention is worked, the rights-holder must:
    - i. specify the quantum and value of sale of product covered by the patent in India for the relevant year in question;
    - ii. specify the details of licences and sub-licences granted during the relevant year;
    - iii. state whether the patented invention is manufactured within the territory of India in the relevant year; and
    - iv. state whether the public requirement of the patented invention has been met either partly or adequately or the fullest extent at a reasonable price for the relevant year;
9. Section 146(3) read with Rule 131(3) of the Patents Act further authorize Respondent No. 2 to enable public access to FORM-27 filings and other information received under Section 146.
10. More importantly, Section 122(1)(b) confers powers upon the Controller of Patents to impose penalties which may extend upto Rs. 10,00,000 (Ten Lakh Rupees) against

errant Patentees and Licensees for failure to comply with the mandate provided under Section 146 of the Patents Act and Rules.

11. Given the object and purpose of the Patents Act, it is submitted that the said information is critical for the Respondents to give complete effect to provisions on compulsory licensing and revocation of patent. Furthermore, the lack of transparent disclosure will make it impossible for honest competitors to assess their IP risks thereby stifling competition, innovation and industrial growth, and hence detrimental to public interest. This would, in turn, impact the public at large, who are denied potential access to the prospect of more affordable goods or services from competitors. The contents of the Writ Petition are reiterated and are not repeated herein for the sake of brevity.
12. As submitted in the Writ Petition, the rate and extent of compliance of FORM-27 filings by Patentees and Licensees has been abysmally low over the years. Even where Form 27s have been perfunctorily filed by patentees, it has been observed that there are several deficiencies, defects and incomplete/insufficient data in such submission. The Respondents, on the other hand, have failed to initiate any remedial or punitive action against errant patentees and licensees despite having complete knowledge such irregularities.
13. A summary of various discrepancies and irregularities observed by the Petitioner, along with illustrative references, are enumerated as below:

## A. NON-COMPLIANCE

| Description  | Reference                              |
|--|--|
| 1. 30% of Patentees have failed to comply with FORM-27 filing norms between 2009 to 2012                                     | Annex. P-7<br>at Page Nos.<br>106      |
| 2. Respondents appear to have arbitrarily waived the filing requirement for Licensees  | Annex. P-12<br>at Page Nos.<br>146-47  |
| 3. Respondents have failed to initiate any action against Patentees and Licensees for non-compliance                         | Annex. P-14<br>at Page Nos.<br>149-161 |
| 4. e-Filing facility of the Respondents fails to enable the Patentees to submit full and complete patent working information | Annex. P-13<br>at Page No.<br>148      |

## B. DEFECTIVE COMPLIANCE

| Description  | Reference                                    |
|--|--|
| 1. Patentees have refused to disclose working information on grounds of confidentiality                        | 109, 333, 334 ✓                              |
| 2. Patentees have expressed their inability to submit working information due to the nature of the invention   | 223, 227, 298,<br>302, 374, 424,<br>504, 507 |
| 3. Patentees have left the particulars (such as quantity and value) blank                                      | 126, 368, 369,<br>222, 227, 288 ✓            |
| 4. Patentees have not adequately explained the reasons for non-working   | 225, 349, 354,<br>501-503, 512,<br>524, 526  |
| 5. Patentees have failed to disclose the place of manufacture of the patented product                          | 222, 285, 374 ✓                              |
| 6. Patentees have claimed to have satisfied the demands of general public without any particulars              | 133, 134                                     |
| 7. NATCO Pharma failed to disclose the patent working information as per the order granting compulsory license | Annex. P-15<br>at Page No.<br>162-167        |

## II. NON-COMPLIANCE OF PATENT WORKING DISCLOSURES

### A. Non-compliance by Patentees

14. The Annual Report the Controller of Patents (2012-13), Respondent No. 2 herein, has revealed that a vast majority of patentees have failed to comply with FORM-27 filing requirement between the years 2009 and 2012. [See Annexure P-7 at Page Nos. 100-107] The table below presents the percentage of non-compliance by Patentees from 2009 to 2012:

| YEAR | PATENTS | FORM-27 |           | % NON COMPLIANCE |
|------|---------|---------|-----------|------------------|
|      |         | FILED   | NOT FILED |                  |
| 2009 | 37334   | 24009   | 13325     | 35.69            |
| 2010 | 39594   | 34112   | 5,482     | 13.84            |
| 2011 | 39989   | 27825   | 12,164    | 30.41            |
| 2012 | 43920   | 27946   | 15,974    | 36.37            |

### B. Non-compliance by Licensees

15. The requirement under Section 146(2) read with Rule 131(2), in no uncertain terms, applies equally to Patentee and their Licensee (whether exclusive or otherwise). Despite this clear statutory obligation, it appears that Licensees have not complied with the FORM-27 filing requirement. In response to an RTI application dated 06.03.2014 [See Annexure P-12(i) at Page No. 145], the Respondents, *vide* letter dated 12.03.2014, stated that no FORM-27 was received from Licensees. [See Annexure P-12(ii) at Page No. 145]
16. More problematically, the Respondents appear to have arbitrarily exempted Licensees from complying with the FORM-27 filing requirement. The reply from the

Respondents suggests that the Section 146 mandate to disclose patent working information applies only to Patentees and not to Licensees. The relevant excerpts of the correspondence is as follows:

| RTI Application dated<br>06.03.2014<br>[ANNEXURE P-12 (i)]   | Reply of Respondents<br>dated 12.03.2014<br>[ANNEXURE P-12 (ii)]  |
|--|---|
| State the number of valid patents for which duly filled FORM-27 applications was submitted by Licensees for the years 2009 to 2012 | Form 27 are filed by Patentees only, as such required information is not in possession of this authority. |

17. It is humbly submitted that the waiver of patent working disclosure requirements for Licensees by Respondent authorities is unfounded, arbitrary, illegal and violative of provisions of the Patents Act and Rules.

#### C. Defective e-Filing Facility

18. The "Comprehensive Online Filing Services for Patents" ('e-filing facility') introduced by the Respondents, in 2012, meant to foster a more convenient way for Patentees and Licensees to file various forms online, including FORM-27, is wholly defective and does not adhere to the format prescribed under Schedule II of the Patents Rules. [See Annexure P-13 at Page No. 148] The online version exempts Patentees and Licensees from declaring all relevant particulars under FORM-27. In particular, the online facility does not contain any space to enter particulars pertaining to the quantum of the patented product imported or manufactured. Moreover, the e-facility does not provide an option to submit any additional information that maybe relevant for

ascertaining the working of patent, even if Patentees desire to so submit.

#### D. Blatant Inaction

19. Despite extensive knowledge of the blatant and widespread contravention of Section 146 of the Patents Act, the Respondent No. 2 has failed to initiate any action against errant Patentees and their Licensees. In response to an RTI application filed by the Petitioner, pertaining to certain pharmaceutical inventions, the Respondents categorically admitted that no action has been taken against any Patentee or Licensee for non-compliance with the FORM-27 disclosure mandate. [See Annexure P-14 (Colly) at Page Nos. 149-161]
20. It is submitted that the failure of the Respondents to initiate proceeding against errant Patentees and Licensees under Section 122 for non-filing filing of FORM-27s is arbitrary, illegal, and a gross dereliction of a public duty.
21. More egregiously, the Respondent No. 2 has disregarded it's own order dated 09.03.2012 in C.L.A No. 1 of 2011, wherein it had granted India's first post TRIPS compulsory licence in favour of NATCO Pharma Ltd., a reputed generic pharmaceutical company. The compulsory licence, was in respect of *Sorefanib Tosylate*, an excessively priced anti-cancer drug (*Nexavar*®) patented by Bayer Corporation (Patent No. IN21578). While granting the licence, the Respondent No. 2 imposed several conditions on the licensee (NATCO), including an obligation to account for the sales of the licensed patented drug on a quarterly basis.



22. In a letter dated 12.02.2014, [See Annexure P-15(ii) at Page Nos. 164] and 06.02.2015 [See Annexure P-15(iv) at Page Nos. 167] the Respondents stated that NATCO had not submitted this information, in relation to an RTI request dated 10.02.2014 [See Annexure P-15(i) at Page Nos. 162-163] and 19.01.2015 [See Annexure P-15(iii) at Page Nos. 165-166]. Furthermore, the Respondents have admitted that no action has been taken against NATCO for this blatant contravention of an important licensing condition.
23. The inaction of Respondents against this flagrant violation of working disclosure norms by patent right-holders is illegal and arbitrary and a gross dereliction of their public statutory duty. It enables patent holders to evade public scrutiny of the manner in which they have used or abused a statutorily granted monopoly, and frustrates an important rationale underlying the patent system and the social bargain inherent within.
24. The inaction by Respondents also seriously prejudices the citizens' right to know as to how patents are serving the public interest. Unless concrete action is taken, Patentees will have no incentive to comply with an important statutory obligation. It is submitted that Patentees are often loathe to provide working information voluntarily and it is only the threat of statutory sanction that will compel them to do so. This is amply illustrated in the Petitioner's own case, wherein a detailed set of questions were addressed to Bayer Corporation in relation to its patented anti-cancer drug (Nexavar®) seeking clarifications on their FORM-27 filings. These clarifications were absolutely necessary as the Petitioner found several inconsistencies, gaps and errors in their submissions.

However, Bayer Corporation refused to comment on the issue, initially citing that the matter was *sub-judice* and later on simply refusing to respond on the apparent ground that other litigations were pending. The Petitioner published a detailed summary of the investigations, including various communications addressed to Bayer Corporation in a report titled '*Bayer's Nexavar and the Working of Compulsory Licensing: Mind the Patent (Information) Gap!*'. [See Annexure P-16 at Page Nos. 168-205]

### III. LIMITED PUBLIC ACCESS TO PATENT WORKING INFORMATION

25. Section 146(3) read with Rule 131(3) envisages the Controller of Patents, Respondent No. 2 herein, to enable public access to FORM-27 filings. In a laudatory move, Respondent No. 2 has enabled free public access to FORM-27 filings in an online searchable database. [See Annexure P-3 at Page No. 85] The said database is, however, significantly limited as it contains the FORM-27 filings pertaining to the calendar year 2012 and 2013 alone, and not prior years (i.e. 2003 to 2011).
26. Given the importance of patent working information, it is submitted that the statutory requirement of publication is *mandatory* in nature. The lack of transparent disclosure will make it impossible for honest competitors to assess their IP risks thereby stifling competition, innovation and industrial growth, and hence detrimental to public interest. This would in turn impact the public at large, who are denied potential access to the prospect of more affordable goods or services from competitors.

#### IV. WIDESPREAD DEFECTIVE COMPLIANCE

27. The Petitioner along with his Research Associates ('RAs'), have carefully examined the FORM-27 filings obtained from Respondent Nos. 2 and 3 under the RTI Act and from the aforesaid database. The Petitioner primarily examined FORM-27 filings in relation to the following three critical sectors:

- (i) pharmaceutical drugs (particularly life-saving drugs for fatal diseases such as Cancer, AIDS, Diabetes and Hepatitis)
- (ii) information and telecommunication technology and;
- (iii) inventions stemming from public sponsored research and development. ('R&D').

28. Given the enormous number of patents that are currently valid, the Petitioner limited the surveyed 270 FORM-27 filings relating to 143 major patents across the three sectors (above). [See Annexure P-4 at Page Nos. 87-94] It is submitted that the survey has revealed a significant number of defective declarations by Patentees. Many submissions were found to be grossly incomplete, incomprehensible or inaccurate. A brief summary of the nature of defects observed by the Petitioner are detailed below.

##### A. Refusal to Declare

29. The Petitioner noticed that certain Patentees have refused to declare the particulars contained in FORM-27 on the grounds of 'confidentiality'. For example, Ericsson Inc., a telecom giant, has refused to disclose patent working information to the public under the alleged veil of trade

secrecy. The relevant FORM-27 filings by them state that: "*as all the licenses are confidential in nature, the details pertaining to the same shall be provided under specific directions from the Patent Office.*" [See Annexure P-9 at Page Nos. 124-132] It bears noting that the FORM-27 filings for eight (8) of their patents investigated by the Petitioner are currently subject to anti-competitive investigations by the Competition Commission of India ("CCI"). In another instance, FORM-27 filing in relation to *VirafeonPeg*, a breakthrough Hepatitis C injection patented by Merck Sharp & Dohme Corp., a major pharmaceutical company, stated that "*item requests information that is confidential and sensitive business information and thus we provide only approximate information ...*" and further stated that "*the patentee humbly request leave to submit such details on a confidential basis in a sealed cover so that access to our competitors is denied.*" [See Annexure P-18 at Page Nos. 333-334]

30. It is submitted that the obligation on the Patentees to declare patent working information as per FORM-27 is *mandatory*. It is denied that the said information can be deemed to be *confidential* or in any manner detrimental to the patent holders. Therefore, the refusal to declare commercial working information is illegal and liable for punishment as per Section 122 of the Patents Act.

#### **B. Inability to Submit**

31. Several Patentees in the telecom sector have expressed their inability to disclose information pertaining to quantum and value of the patented product due to the *nature* of the invention. Illustratively, Motorola Mobility Inc. in relation to Patent No. 239197 stated that: "*Due to the*

*nature of invention, it is not possible to determine the quantum and value of the above patented product or process.*" It is respectfully submitted that such statements appear to fly in the face of industry practice, given that Patentees in this sector usually license their patents on Fair, Reasonable and Non-Discriminatory ('FRAND') terms to competitors. In a majority of licensing agreements, the Patentees typically insist on the right to audit the sales and revenues of their licensees' products, so as to foster an accurate reporting and payment of royalties.

32. Therefore, it appears that there is a strong likelihood that some of these omissions are deliberate, with a view to escape public scrutiny of working of patents. As such, the alleged difficulty in disclosing the quantum and value of products that comprise the patent may not comport with the reality of business practices and does not amount to an insurmountable hurdle. Nonetheless, it is humbly submitted that the statutory mandate under Section 146 must be complied with.

### C. Failure to explain Non-Working

33. If the patent has not been worked in a certain year, the FORM-27 requires the Patentees to provide reasons for such non-working and the steps being taken to redress this non-working. Over 65% (i.e., 28 out of 42) of such FORM-27 filings either failed to address this query or provide a satisfactory explanation thereof. A small fraction of patentees have callously ignored this question and left the column blank. The following table contains the names of the Patentees and their corresponding number of

FORM-27 filings which have failed to explain the reasons for non-working is as under:

| Sector                          | FORM-27s  |
|---------------------------------|-----------|
| <b>Pharmaceutical</b>           | <b>10</b> |
| Allergan Inc                    | 2         |
| Bayer Corporation               | 3         |
| Bristol-Myers Squibb            | 2         |
| Merck Sharp & Dohme Corp.       | 1         |
| Novartis AG                     | 2         |
| <b>Telecommunications</b>       | <b>3</b>  |
| Samsung Electronics Co. Ltd.    | 3         |
| <b>Public Financed Research</b> | <b>15</b> |
| CSIR                            | 6         |
| Department of Biotechnology     | 4         |
| IITs                            | 5         |
| <b>TOTAL</b>                    | <b>28</b> |

#### D. Blank Submissions

34. Close to half of all submissions (40% approximately) surveyed failed to disclose either the value or quantity of their patented products. Many of such Patentees have left the relevant particular blank. Illustratively, in a FORM-27 filed in 2010 by Bayer, it does not indicate the value of the 4665 units that were imported in 2009. This column was left blank by the Patentee. [See Annexure P-9 at Page Nos. 124-132] Few patentees even went to the extent of flippantly stating that: "*information not readily available. Information will be provided if asked for*". The following table contains the names of Patentees and their corresponding number of FORM-27 filings which have failed to disclose either the value or quantity of their patented product:

| Sector                      | Undisclosed Value | Undisclosed Quantity |
|-----------------------------|-------------------|----------------------|
| Pharmaceutical              | 11                | 13                   |
| Allergan Inc                | 2                 | 2                    |
| Astrazenca AB               | 3                 | 3                    |
| Bayer Corporation           | 1                 | -                    |
| Bristol-Myers Squibb        | 0                 | 6                    |
| F. Hoffmann-LA-Roche AG     | 2                 | 2                    |
| Pfizer Products Inc.        | 2                 | -                    |
| Pharmacacia & Upjohn Co.    | 2                 | -                    |
| Telecommunications          | 60                | 58                   |
| Apple Inc.                  | 1                 | 1                    |
| Ericsson Inc.               | 16*               | 16                   |
| Motorola Inc.               | 13                | 13                   |
| Nokia Corporation           | 18                | 18                   |
| Research In Motion          | 7                 | 7                    |
| Samsung Electronics Co.     | 3                 | 3                    |
| Public Funded Research      | 13                | 8                    |
| CSIR                        | 9                 | 3                    |
| Department of Biotechnology | 2                 | 3                    |
| IITs                        | 2                 | 2                    |
| <b>TOTAL</b>                | <b>84</b>         | <b>79</b>            |

*\* Patentee has provided overall figures instead of the patent(s) in question*

#### E. Overall Sales

35. The FORM-27 filings provided by Ericsson Inc. contains the overall sales of the company, instead of limiting it to the specific patented product in question, thereby making it impossible to gauge the precise extent of working of the patent in question. [See Annexure P-9 at Page Nos. 124-132]

### F. Indeterminate Quantity of the Product

36. The FORM-27 requires the Patentees to declare the quantity of the patented product, either manufactured or imported. A vast majority of the FORM-27 filings (close to 60% approximately) have provided the import or sales figures in vague or indeterminate units of measurement, thereby preventing a fair assessment of the quantum of working. Illustratively, a perusal of FORM-27 filed in relation to *Nexavar*® (Patent No. IN21578) [See Annexure P-9 at Page No. 125-126] for the year 2009 by Bayer Corporation stated that 4665 units of the drug were imported and 1679 units of the drug were sold. But it does not indicate the number of tablets contained in each of 4665/1679 units. Nor does it indicate the number of such units required by each patient per month. The following table contains the names of Patentees and their corresponding number of FORM-27 submissions which have failed to indicate the precise quantity of their patented product:

| Sector                    | FORM-27s  |
|---------------------------|-----------|
| Pharmaceutical            | 71        |
| Allergan Inc              | 5         |
| Astrazenca AB             | 13        |
| Bayer Corporation         | 1         |
| Bristol-Myers Squibb      | 11        |
| F. Hoffmann-LA-Roche AG   | 4         |
| Genentech Inc             | 5         |
| Glaxo Group Limited       | 7         |
| Merck Sharp & Dohme Corp. | 4         |
| Novartis AG               | 9         |
| Pfizer Products Inc.      | 5         |
| Pharmacacia & Upjohn Co.  | 7         |
| <b>TOTAL</b>              | <b>71</b> |



G. Place of manufacture

37. FORM-27 requires Patentees to specify the quantity and value of patented invention manufactured in India. If the product is imported, the Patentee must provide country-wise details of the quantity and value of import. 109 out of 217 (approximately 50%) FORM-27 filings that claimed to have worked the patent did not indicate the place of manufacture of the patented invention. The following table contains the Patentee-wise FORM-27 submissions which have failed to indicate the place of manufacture of the patented product:

| Sector                       | FORM-27s   |
|------------------------------|------------|
| Pharmaceutical               | 27         |
| Allergan Inc                 | 7          |
| Astrazenca AB                | 6          |
| Bristol-Myers Squibb         | 8          |
| F. Hoffmann-LA-Roche AG      | 4          |
| Genentech Inc                | 2          |
| Telecommunications           | 74         |
| Apple Inc.                   | 1          |
| Ericsson Inc.                | 16         |
| Motorola Inc.                | 12         |
| Nokia Corporation            | 18         |
| Qualcomm Inc.                | 17         |
| Research In Motion           | 7          |
| Samsung Electronics Co. Ltd. | 3          |
| Public Financed Research     | 8          |
| CSIR                         | 7          |
| Department of Biotechnology  | 1          |
| <b>TOTAL</b>                 | <b>109</b> |

### H. Licensing information

38. FORM-27 requires patentees to furnish all available details relating to licences and sub-licences granted during the concerned year. One third of the FORM-27 filings failed to even indicate whether any license was granted during the year. Moreover, close to half of them which indicated to have licensed their patent did not disclose any details of their Licensees. The following table contains the Patentee-wise FORM-27 submissions which have failed to provide licensing related information:

| Sector                        | Undisclosed Licenses | Undisclosed Licensees |
|-------------------------------|----------------------|-----------------------|
| <b>Pharmaceutical</b>         | 46                   | 0                     |
| Allergan Inc                  | 1                    | -                     |
| Astrazenca AB                 | 4                    | -                     |
| Bayer Corporation             | 4                    | -                     |
| Bristol-Myers Squibb          | 11                   | -                     |
| F. Hoffmann-LA-Roche AG       | 2                    | -                     |
| Genentech Inc                 | 2                    | -                     |
| Glaxo Group Limited           | 1                    | -                     |
| Novartis AG                   | 8                    | -                     |
| Pfizer Products Inc.          | 6                    | -                     |
| Pharmacacia & Upjohn Co.      | 7                    | -                     |
| <b>Telecommunications</b>     | 31                   | 26                    |
| Ericsson Inc.                 | 16*                  | -                     |
| Motorola Inc.                 | 4                    | 9                     |
| Nokia Corporation             | 3                    | 17                    |
| Research In Motion            | 7                    | -                     |
| Samsung Electronics Co.       | 1                    | -                     |
| <b>Public Funded Research</b> | 12                   | 7                     |
| CSIR                          | 11                   | 0                     |
| Department of Biotechnology   | 1                    | 0                     |
| IITs                          | 0                    | 2                     |
| Indian Institute for Science  | 0                    | 5                     |

TOTAL 89 33

\* Patentee has refused to disclose the details of licensee on the basis of confidentiality.

I. Reasonable Requirements of the Public

39. If the patent has worked in a particular year, the FORM-27 requires the Patentee to indicate whether or not the reasonable requirement of public have been met, either partly, adequately or to the fullest extent, at a reasonable price. A vast majority of FORM-27 filings indicated that public requirements have been met, but failed to provide any factual data or evidence in support of such assertions. At least three Patentees claimed that they met this requirement through their various Patient Assistance Programs ('PAPs'). These Patentees, however, failed to disclose the specific extent of assistance provided to patients. Illustratively, the FORM-27 declaration filed in relation to Patent No. IN21578 covering Nexavar® (an anti-cancer drug) by Bayer Corporation for the year 2011, claimed that the reasonable requirement of public had been meet to the fullest extent. However, the Respondents found the exact opposite and went on to grant a compulsory licence over this patented drug in favour of NATCO, on the ground that the drug sold by the patentee was far too expensive and only 2% of the patient population had access to it. This finding has attained finality, with the Hon'ble Supreme Court of India upholding the grant of compulsory licence by the IPO vide Order dated 12.12.2014 [S.L.P (c) No. 30145 of 2014].

J. Value of sales in foreign denomination

40. FORM-27 requires the Patentees to provide the value of their patented products, (either imported or manufactured

in India), in terms of Indian National Rupee ('INR'). The survey revealed four (4) FORM-27 declarations containing the amount in currencies other than INR, and that too, without specifying the rate of conversion.

| Sector                  | FORM-27s |
|-------------------------|----------|
| Pharmaceutical          | 4        |
| Astrazenca AB           | 2        |
| Bristol-Myers Squibb    | 1        |
| Glaxo Group Limited     | 1        |
| IRBM Science Part S.p.A | 0        |
| <b>TOTAL</b>            | <b>4</b> |

41. The following table contains a summary of Petitioner's findings on defective declarations by patentees:

| NATURE OF DEFECTS     |                      | TOTAL |      |
|-----------------------|----------------------|-------|------|
|                       |                      | F-27s | %    |
| QUANTITY              | Undisclosed          | 79    | 38.3 |
|                       | Indeterminate Units  | 71    | 58.1 |
| VALUE                 | Undisclosed          | 84    | 38.3 |
|                       | Foreign Denomination | 4     | 0.1  |
| MANUFACTURE           | Location             | 109   | 50.3 |
|                       | Undisclosed          |       |      |
| LICENSING INFORMATION | Undisclosed          | 89    | 33.5 |
|                       | Undisclosed Details  | 33    | 50.4 |
| NON-WORKING           | Reasons              | 28    | 66.7 |
|                       | Undisclosed          |       |      |

42. It is submitted that the defective disclosures make a mockery of an important statutory obligation enshrined in Section 146 and Rule 131 of the Patents Act. If this practice is allowed to continue, the entire objective behind the working requirement stands defeated, thereby causing prejudice to innovation imperatives and the right of the public in ensuring that the patent is being worked for their benefit.

## V. DEFECTS IN FORM-27 FORMAT

43. The Petitioner humbly submits that the current format of FORM-27 is irrational and patently insufficient inasmuch it fails to fulfil the purpose sought to be achieved by the Patents Act. The present version of FORM-27 is vaguely worded and fails to call for a number of important particulars relating to the working of patents. Some of the glaring defects are highlighted below:

- (1) The operative portion of the FORM-27 vaguely requires the patentees and licensees to "*give whatever details are available*" pertaining to patent working information. It is submitted the present wording has permitted the Patentees and Licensees to arbitrarily exclude pertinent information or provide vague information.
- (2) Paragraph 3(i)(b) of the current FORM-27 fails to capture the actual sale of the patented invention in India. For it is not clear what is meant by "value" of the product. Furthermore, the present format is insufficient to assess the extent to which the patented invention or product is able to meet the reasonable requirement of public. When it comes to patented drugs, for instance, it is necessary to know the required dosage per patient to effectively assess as to how many patients are being served through the supply of the patented product.
- (3) Paragraph 3(ii)(b) of the current FORM-27 vaguely requires Patentees to disclose licensing information. The form states: "*give whatever details are available: the licences and sub-licences granted during the year.*" Due

to the lack of precision, a number of submissions do not adequately disclose details of licensees or licensing arrangements. Therefore, in order to make for a more effective assessment, this provision ought to clearly ask whether the patent has been licenced in the first place; if so, it must then call for more elaborate details, such as the names of licensees, broad terms of licence, whether products are being manufactured under the licence, whether such licenses are exclusive or not.

(4) The FORM-27 declaration merely requires Patentees to state whether or not the reasonable requirement of the invention to the public have been met. However, this vague and broad question is irrational, since it is likely to be met with only one standard response from all patentees, namely that they are satisfying the reasonable requirements of the public. One is hard pressed to think of any Patentee that would state otherwise, and our FORM-27 investigations do not disclose a single filing that states so. Instead, the FORM-27 declaration ought to call for specific information that would enable independent assessment on whether the reasonable requirement of patented invention has been met. Illustratively, the declaration should extract the following:

- i) estimated demand of the patented invention or product;
- ii) extent to which the demand has been met (i.e., availability);

iii) details of any special schemes or steps undertaken by the patentee to satisfy the demand.

(5) Few patentees have stated that the reasonable requirements of the public are met through Patient Assistance Programs ('PAPs'). However, they fail to disclose the extent of such assistance actually provided to patients.

(6) In the high technology sector, the same patent can be deployed in multiple products or technologies and therefore the working requirement should capture all of these potential manifestations of the patent. In all such cases, the Patentee must be made to disclose all of the technologies, applications and products where the patent is so deployed or used. Since the current FORM-27s do not call specifically for this information, patentees typically disclose only one application or product.

(7) Conversely, it is often the case with telecommunications and other technology sectors, that one product may contain multiple patents underlying it. Therefore, it is critical that the working disclosure norms require the rights-holder to furnish a complete list of patents and patent applications covering that particular technological product. Illustratively, if Siemens owns the patents covering the CDMA technology (a technology standard), it ought to disclose all related patents in each of the FORM-27 filings relating to the various patents covering CDMA technology. In short, every

patentee that holds multiple patents that cover a single product must disclose other "related" patents in their FORM-27 for each such patent. A failure to disclose such information adversely impacts innovation and competitors significantly, as it unduly increases their search costs in all cases where there are potentially multiple patents covering the same product.

44. In a nutshell, it is submitted that the information necessary for the Respondent authorities to effectively monitor the working of patents must contain such particulars as would enable one to determine whether or not the patented invention is satisfying the reasonable requirements of the public (through supply in adequate quantities as well as at a reasonably affordable price to the public). This information is absolutely critical for triggering the compulsory licensing and revocation provisions, and thereby ensuring that the public at large have the potential to access affordable medications.
45. The lack of access to patent working information directly impacts the possibility of such trigger and denies consumers and the wider public the potential to access more affordable patented technologies, a concern most starkly felt in the area of patented medicines and public health.

**FILED BY:**

Date : 03.07.2015  
Place : New Delhi

N. SAI VINOD  
Advocate for the Petitioner  
D-131, Panchsheel Enclave,  
New Delhi - 110 017



IN THE HIGH COURT OF DELHI AT NEW DELHI  
(Extraordinary Writ Jurisdiction)

WRIT PETITION (C) NO. OF 2015

IN THE MATTER OF A PUBLIC INTEREST LITIGATION

SHAMNAD BASHEER PETITIONER

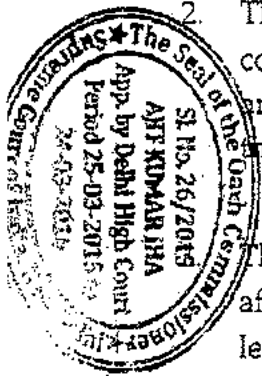
VERSUS

UNION OF INDIA & OTHERS RESPONDENTS

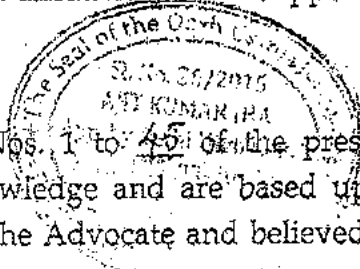
AFFIDAVIT

I, Shamnad Basheer, son of Mr. M. M. Basheer, aged about 38 years, resident of "Nishad", Kulathupuzha, Quilon District, Kerala - 691 310, having office at IDIA Charitable Trust, C/o. Spire, No. 45, 2nd Floor, Jubilee Building, Museum Road, Bangalore - 560 025, presently in New Delhi, do hereby solemnly affirm and state as follows:

1. That I filed the present petition as a Public Interest Litigation.
2. That I am Petitioner in the abovementioned matter and am conversant with facts and circumstances of the case and as such am competent to swear the present affidavit filed in support of the Writ Petition.



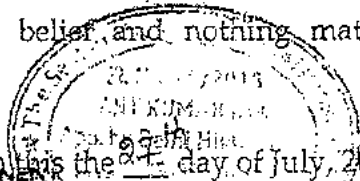
That the contents of Paragraph Nos. 1 to 45 of the present affidavit are facts true to my knowledge and are based upon legal advice received by me from the Advocate and believed to be true and correct.



*[Signature]*  
DEPONENT

VERIFICATION

I, the above named Deponent, do hereby solemnly affirm and verify that the contents of this affidavit are true to best of my knowledge and belief, and nothing material has been concealed therefrom.



*[Signature]*  
DEPONENT

CERTIFIED THAT THE DEPONENT'S affidavit was read & explained to him and he has affirmed that the contents of the affidavit which have been read & explained to him are true and correct to his knowledge.

Verified on this the 27 day of July, 2015 at New Delhi

*[Signature]*  
Oath Commissioner (Delhi)

I identified the Deponent in my presence. No objection from the Deponent was taken. 27/7/15

TRUE COPY

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**ANNEXURE A-3**

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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5590/2015**

**SHAMNAD BASHEER**

..... Petitioner

Through: Mr. Abhimanyu Bhandari  
with Mr. N. Sai Vinod and  
Ms. Roohina Dua, Advs.

versus

**UNION OF INDIA & ORS**

..... Respondent

Through: Mr. Amit Mahajan, CGSC  
for UOI.

Mr. Sanjoy Ghose, ASC  
with Ms. Urvi Mohan, Adv.  
for GNCTD.

Ms. Pritha Srikumar with  
Ms. Neha Mathen, Advs. for  
intervener.

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**

**10.01.2018**

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1. This writ petition highlights glaring non-compliance with the provisions of the Patents Act, 1970 on the part the Controller General of Patents: *Inter alia*, our attention is drawn to the scheme of the enactment and the object of issuance of patents as is manifested from Section 83 (b), (d) and (g) of the Patents Act, 1970 which deserves to be considered *in extenso* and read thus:

*"83. General principles applicable to working of patented inventions.-*

(a) xxx

xxx

xxx

(b) that they are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article;

(c) xxx      xxx      xxx

(d) that patents granted do not impede protection of public health and nutrition and should act as instrument to promote public interest specially in sectors of vital importance for socio-economic and technological development of India;

(e) xxx      xxx      xxx

(f) xxx      xxx      xxx

(g) that patents are granted to make the benefit of the patented invention available at reasonably affordable prices to the public."

2. Mr. Abhimanyu Bhandari, Id. counsel for the petitioner submits that the grant of patents results in the patentees getting exclusive rights over the inventions and therefore, it is imperative that the Controller General of Patents maintains a scrutiny as to whether the patent is being worked or not. To ensure that the patentees have not merely acquired rights over the invention and are actually working the same, the statutory scheme requires a patentee to submit periodic information. In this regard, Section 146 of the Patents Act, 1970 empowers the Controller General of Patents, Designs, Trademarks and Geographical Indications to call for information in a format prescribed in accordance with Rule 131 of the Patents Rules, 2003. The manner in which the information has to be submitted has been set out in Form-27 annexed to the Patents

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Rules, 2003. Failure to comply with the statutory requirements invites penalties and criminal action prescribed under Section 122 of the statute which includes imposition of fine as well as initiation of criminal proceedings.

3. Our attention is drawn to several admissions to the effect that the respondents are not ensuring compliance with the requirements of Section 146 of the Patents Act, 1970 and, despite failure of the patentees to conform to the requirements of Rule 131 of the Patents Rules, 2003 and Form-27, no action at all has been taken under Section 122 of the Patents Act, 1970.

4. In this regard, our attention is drawn to the Annual Report 2012-13 submitted by the Office of the Controller General of Patents, Designs, Trademarks and Geographical Indications. We extract relevant portions of this Report wherein the following disclosure is contained:

*“(i) Working of Patents (Under Section 146): The Patent Office received 27946 Form-27 during the reporting year, of which 6201 were shown to be working.”*

|                            | 2009-10 | 2010-11 | 2011-12 | 2012-13 |
|----------------------------|---------|---------|---------|---------|
| <i>Patents in force</i>    | 37334   | 39594   | 39989   | 43920   |
| <i>Form-27 received</i>    | 24009   | 34112   | 27825   | 27946   |
| <i>Reported as working</i> | 4189    | 6777    | 7431    | 6201    |

5. A bare glance of the above would show that despite the

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Controller General of Patents, Designs, Trademarks and Geographical Indications having issued 43920 patents during the year 2012-13, returns as prescribed under Form-27 has been received only in 27946 cases; and, shockingly, the disclosure is only of 6201 patents as being worked by the patentees.

6. The petitioner appears to have addressed a query under the Right to Information Act, 2005 seeking information as to the action taken against the patentees/licensees in case of non-submission of Form-27. The respondents have responded to the query on 09.01.2014 stating that no action has been initiated for non-submission of Form-27.

7. The second glaring instance of non-compliance with the statutory scheme of the Patents Act, 1970 is highlighted by the petitioner in respect of grant of a compulsory licence to M/s NATCO Pharma in relation to patent no.215758 by order dated 9<sup>th</sup> March, 2012 in C.L.A. No.1 of 2011 under Section 84 of the Patents Act.

It is pointed out that the order dated 9<sup>th</sup> March, 2012 imposed an obligation on NATCO Pharma in Para 15(b) thereof, to report accounts of sales to the Controller on a quarterly basis, on or before the 15<sup>th</sup> of each succeeding month.

8. By the RTI query dated 19<sup>th</sup> January, 2015, the petitioner sought *inter alia* information as to whether M/s NATCO Pharma had complied with the above condition imposed in para 15(b) of the order dated 9<sup>th</sup> March, 2012. The petitioner also queried the Controller General of Patents, Designs, Trademarks and

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Geographical Indications regarding the action in case M/s NATCO Pharma had failed to comply with the said requirements.

9. In its response dated 6<sup>th</sup> February, 2015, the Patent Office informed the petitioner that as per its records "*no details are available*".

10. Our attention is also drawn to yet another statutory non-compliance. Ld. counsel for the petitioner also points out that Section 146(2) read with Rule 131 of the Patents Act, 1970 makes it mandatory even upon licensees to submit Form-27 containing information on commercial working of the patented invention. Section 146 of the Patents Act, 1970 draws no distinction between the original patentees and license holders. Thus, it has been pointed out by the petitioner that license holders are also required to file the same information in Form-27 as a patentee.

11. Vide the response dated 12<sup>th</sup> March, 2014, the Controller of Patents & Designs, CPIO has informed the petitioner to the effect that "*Form-27 are filed by Patentee only*". There is certainly substance in the objection of the petitioner that this position is contrary to the statutory requirement.

12. Ld. counsel for the petitioner has also submitted that the respondents are not taking any action for notional or incomplete compliance with the provisions of Section 146 of the Act. In this regard, an instance has been pointed out wherein Form-27 was submitted by M/s Telefonaktiebolaget LM Ericsson (Pub.) in respect of patent no.203034 of 24<sup>th</sup> August, 1999. Against the column wherein the patentee was required to disclose information

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regarding "*the licenses and sub-licenses granted during the year*", this patentee stated as follows:

*"As all the licenses are confidential in nature, the details pertaining to the same shall be provided under specific directions from the Patent Office."*

13. It is pointed out that so far as the grant of patents are concerned, information in regard thereto is available on the website of the Patents Office. All that the patentees submitting Form-27 are required to submit, is the details of the licenses and sub-licenses. This information certainly cannot be termed "confidential" and therefore, the Patents Office has to treat such suppression as failure to comply with the requirements of Section 146 of the Patents Act, 1970 and to take action against the patentees who do not furnish the required information.

14. Ms. Pritha Srikumar, Advocate for the intervener has submitted that the petitioner has also pointed out that Form-27 itself was extremely vague and the same deserves a relook by the respondents. Mr. Srikumar would, therefore, contend that non-compliance of such form cannot be faulted with.

15. In our view, this submission is erroneous inasmuch as there can be no exemption from statutory compliance and that in case any query in Form-27 could not be complied with, the person submitting the return would be required to state so. So far as the submission that Form-27 deserves a relook is concerned, we find that in the counter affidavit, the official respondents have stated

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that they had issued a Notification dated 26<sup>th</sup> October, 2015 for a proposed draft amendment of the Rules by "*The Patents (Amendment) Rules, 2015*". The respondents have also submitted that the same included amendments to Form-27 and the same has been posted on the official website of the Department of Industrial Policy and Promotion (DIPP). The counter affidavit says that public comments have been invited.

16. This counter affidavit was filed on 7<sup>th</sup> December, 2015. We are not informed as to what is the fate of the public notice issued by the respondents or amendments to the said Rules. Mr. Amit Mahajan, Id. CGSC is unable to inform this Court as to whether the necessary amendments have been effected to Form-27.

17. This writ petition has remained pending in this Court since 2015. We also do not have any information as to whether there is any change in the status with regard to the filing of returns under Section 146 of the Patents Act, 1970 and whether any action taken by the Controller General of Patents and Designs under Section 122 of the Act.

18. Mr. Amit Mahajan, Id. CGSC prays for an adjournment to inform this Court with regard to the status of the amendment of the rules and the action taken under Section 122 of the Patents Act, 1970.

On his request, list on 18<sup>th</sup> January, 2018.



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A copy of this order be given *dasti* under the signatures of the Court Master.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 10, 2018/pmc

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**ANNEXURE A-4**

§-39

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5590/2015

**SHAMNAD BASHEER**

..... Petitioner

Through : Mr. Abhimanyu Bhandari,  
Mr. Sai Vinod, Ms. Roohina  
Dua and Ms. Kartika  
Sharma, Advs.

versus

**UNION OF INDIA & ORS**

..... Respondents

Through : Mr. Amit Mahajan, CGSC  
for R-1/UOI  
Ms. Pritha Srikumar Iyer  
and Ms. Arunima Kedia,  
Advs. for R-4  
Mr. Gopal Subramanian and  
Mr. Chander Lall, Sr. Advs.  
Ms. Rajshree, Mr. Ashutosh  
Kumar, Mr. Prateek  
Sehrawat and Mr. Adithya ,  
Advs. for Erricsson  
(Intervenor).

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**

**07.02.2018**

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1. During the course of hearing, all the learned counsels have pointed out that one of the major difficulties in ensuring compliance with the provision of Section 146 of the Patents Act, 1970 is the manner in which Form-27 has been worded. It is

*page 1 of 4*

S7

submitted that this form was notified in the year 1970, and though amended in the year 2003, has failed to take into consideration the several scientific and technological requirements as well as the confidentiality issues relating to some of the patents.

2. We are informed by Mr. Amit Mahajan, learned CGSC that he has been instructed that the matter needs a relook.

3. Given the fact that this writ petition complaining of several pitfalls, illegalities as well as the admitted position on the part of the respondents that Section 146 of the Patents Act, 1970 has not been effectively worked, was filed as back as in the year 2015, this matter ought to have engaged the attention of the respondents long ago.

4. It is also astonishing that the matter has proceeded in this manner for a long period of 45 years since the statute was enacted. Be that as it may, expeditious steps regarding the working of the statutory provisions as well as the changes, if any, are required in the statute, rules and prescribed forms deserve to be taken.

5. In view thereof, the respondent no.1 shall place before this court, within two weeks from today, the timeline regarding the manner in which the steps required for effecting the necessary modification to the prescribed forms would be undertaken. The same shall be placed on affidavit before us within this period with advance copy to all parties through counsels who are represented before us.

6. It is pointed out by Mr. Gopal Subramaniam, learned Senior Counsel that on account of confidentiality attached to the issues relating to patents and agreements entered into between patentees and their licensees and sub-licensees, it is not always possible to disclose the terms on which the license has been issued. Mr. Subramaniam submits that in view thereof, the observations made by this court in para 13 of our order dated 10<sup>th</sup> January, 2018 may be treated as violation of Section 146 of the Patents Act, 1970 if a patentee furnishing Form-27 withholds the details of the contents and terms of the license granted by a patentee. There appears to be force in this submission. It is, therefore, made clear that the reference in para 13 of the order dated 10<sup>th</sup> January, 2018 to "details of licensees, licenses and sub-licensees" is only the specification with regard to number, date and particulars of the licensees and sub-licensees. In case, any party has reservation of any kind in furnishing details, it would have to disclose the reasons for such reservation and the patent office would be required to take a view in the matter so far as its satisfaction regarding compliance with the requirements of Section 146 is concerned.

6. In this regard, Mr. Bhandari has drawn our attention to Section 67 of the Patents Act which requires a register of patents to be maintained which contains the names and particulars of licensees. The information which is required to be furnished must comport to the requirements of Section 67 of the Patents Act as well.

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7. It is submitted by Ms. Rajshree, learned counsel appearing for the applicant in CM No. 2108/2018 that, in paras 7 to 9 of our order dated 10<sup>th</sup> January, 2018, this court has noted the submission on behalf of the petitioner that the applicant has not furnished the information in terms of Section 146 of the Patents Act, 1970. We may clarify that this court has only noted the submission of the petitioner in this regard and has not expressed any opinion on the merits of the petitioner's contentions.

8. List this petition on 1<sup>st</sup> March, 2018.

*Dasti* to parties.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 07, 2018/kr

page 4 of 4

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**ANNEXURE A-5**

§-2 and 61

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI****+ W.P.(C) 5590/2015, CM No. 10090/2018****SHAMNAD BASHEER**

..... Petitioner

Through : Mr. N. Sai Vinod, Advocate

versus

**UNION OF INDIA & ORS**

..... Respondents

Through : Mrs. Maninder Archarya,  
 ASG with Mr. Amit  
 Mahajan, CGSC/UOI  
 Mr. Rajiv Nayyar, Senior  
 Advocate with Mr. Ashutosh  
 Kumar, Mr. Prateek  
 Sehrawat, Mr. Aditya  
 Jayaraj and Mr. Devanshu  
 Khanna, Advocates  
 Ms. Rajeshwari H and Mr.  
 Tahir A.J. Advs. for  
 intervenor-Natco  
 Mr. Rajiv Kumar  
 Choudhary, Adv. for TEMA  
 Intervenor  
 Ms. Neha Mathen, Adv. for  
 R-4

**+ W.P.(C) 4676/2014****SHAMNAD BASHEER**

..... Petitioner

Through : Mr. N. Sai Vinod, Advocate

versus

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UNION OF INDIA & ORS

..... Respondents

Through Mrs. Maninder Archarya,  
ASG with Mr. Amit  
Mahajan, CGSC/UIO

**CORAM:**  
**HON'BLE THE ACTING CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**ORDER**

%

**15.03.2018**

**CM No. 10091/2018**

Exemption allowed subject to all just exceptions.

Application is disposed of.

**W.P.(C) 5590/2015, CM No. 10090/2018 and W.P.(C) 4676/2014**

1. Copy of the circular dated 1<sup>st</sup> March, 2018 has been handed over to this Court and the same is taken on record.
2. Vide this circular, the Office of the Controller General of Patents, Designs & Trade Marks has invited meeting of stakeholders regarding issues relating to working of patents under the Patents Act, 1970. The Controller General of Patents, Designs & Trade Marks has requested the stakeholders to submit their comments on the issues relating to working of patents i.e. Section 146 of the Patents Act, 1970 (as amended) read with Rule 131 of Patent Rules 2003 including Form 27, and penal provisions provided in Section 122.

3. Time has been given to stakeholders to submit comments till 16<sup>th</sup> March, 2018 and a meeting has been scheduled on the 21<sup>st</sup> of March, 2018. This is a healthy step for addressing the several issues flagged by the petitioner.
4. Mr. N. Sai Vinod, learned counsel who appears for the petitioner has drawn up our attention to an affidavit dated 13<sup>th</sup> March, 2018 (page 1080) wherein it is stated that the consideration of the comments; effectuating the necessary amendments in the statutory rules may take around 12 months.
5. We are informed by Ms. Maninder Acharya, learned ASG on instructions from Dr. Suman, Deputy Controller that this affidavit was actually drawn up in February, 2018 (as is manifested from the date thereon) when the circular dated 1<sup>st</sup> March, 2018 had not been issued.
6. We direct the respondent no.1 to place before this Court a reasonable time line within which the consultation would be completed, suggestions received examined and such amendments as may be deemed necessary would be effected under the Patents Act 1970. Such affidavit shall be filed within one week of 21<sup>st</sup> March, 2018, when the stakeholders meeting is proposed to be convened.
7. For enabling effective participation, let the comments received be immediately posted on the website.
8. List on 23<sup>rd</sup> April, 2018.



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9. *Dasti* under signatures of Court Master.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

MARCH 15, 2018

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TRUE COPY

ANNEXURE A-6

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. 5590 OF 2015

64

IN THE MATTER OF:

Sharnad Basheer

..... Petitioner

Versus

Union of India & Others

..... Respondent

AFFIDAVIT

I, Dr. Suman Shrey Singh S/o Dr. Vijay Pal Singh, Aged 56 years, Indian Inhabitant, presently working as Deputy Controller of Patents and Designs in the office of Patent Office Delhi under Office of Controller General of Patents, Design and Trade Marks Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India, and am authorised to file the present affidavit on behalf of the Respondent and do hereby, state on solemnly affirm and state as under :

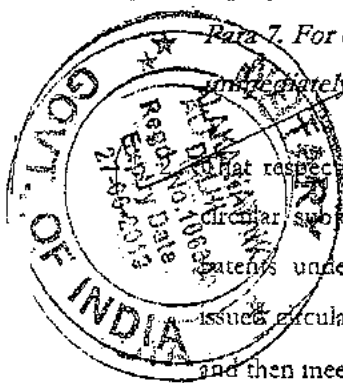
1. That the deponent is filing present affidavit in compliance with the directions issued by this Hon'ble Court during the course of hearing on 15.03.2018 as below:

*"Para 6. We direct the respondent no.1 to place before this Court a reasonable time line within which the consultation would be completed, suggestions received examined and such amendments as may be deemed necessary would be effected under the Patents Act 1970. Such affidavit shall be filed within one week of 21st March, 2018, when the stakeholders meeting is proposed to be convened.*

*Para 7. For enabling effective participation, let the comments received be immediately posted on the website."*

That respectfully submitted before this honourable court that in continuation of circular subject to stakeholders meeting regarding issues related to working of patents under the Patent Act, 1970 dated 01/03/2018, respondent has further issued circular for extension of date to receive comments up to 23<sup>rd</sup> March 2018 and then meeting on 6<sup>th</sup> April 2018.

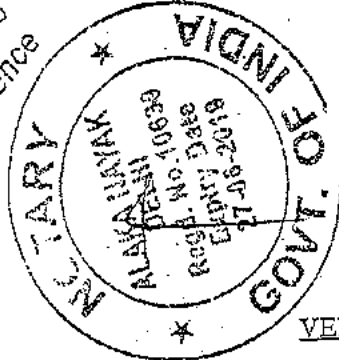
3. That respectfully submitted that office of Controller General of Patents, Designs and Trademarks; respondent has posted the compilation of all the representation as received from stakeholders in official website on 2<sup>nd</sup> April, 2018. Respondent has also prepared a summary of such comments and uploaded the same in official website along with compiled comments of stakeholders.



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4. That respectfully submitted that meeting as scheduled held at Intellectual Property Office, Dwarka, New Delhi at 3:00 PM. This meeting was attended by 43 stakeholders including counsel of petitioner as well as the interveners in the present petition. List of Participants is submitted as Annexure-1.
5. That respectfully submitted that minutes of the meeting are attached as Annexure-2.
6. That respectfully submitted that reasonable timelines as directed in para 6 of order dated 15<sup>th</sup> March 2018 are attached as Annexure-3.

*Mallika*  
I identified the deponent who has signed in my presence



*Singh*

DEPONENT

डॉ. सुमन श्रेय सिंह/Dr. Suman Shrey Singh  
उप निरीक्षक एकस्य एवं अभिकल्प  
Dy. Controller of Patents & Designs  
भारत सरकार/Govt. of India  
एकस्य कार्यालय, दिल्ली/The Patent Office  
द्वारका नई दिल्ली/Dwarka, New Delhi

VERIFICATION 20 APR 2018

I, Dr. Suman Shrey Singh, the above named deponent, do hereby verify that the contents of the above affidavit are true and correct, and nothing material has been concealed therefrom. Nor, any part of it is false.

Verified at New Delhi on this the 20 day of February 2018.

CERTIFIED THAT THE DEPONENT

Signature: *S.S. Singh*

Address: *Dwarka, New Delhi*

I do hereby certify that the above contents of the affidavit are true and correct, and nothing material has been concealed therefrom.

Notary Signature: *[Signature]*

Notary Seal: *[Seal]*

The contents of the affidavit have been

verified and are true & correct.

*Singh*

DEPONENT

डॉ. सुमन श्रेय सिंह/Dr. Suman Shrey Singh  
उप निरीक्षक एकस्य एवं अभिकल्प  
Dy. Controller of Patents & Designs  
भारत सरकार/Govt. of India  
एकस्य कार्यालय, दिल्ली/The Patent Office  
द्वारका नई दिल्ली/Dwarka, New Delhi

List of Participants: Stakeholders meeting held on 6<sup>th</sup> April 2018 at IPO Delhi  
on Working of Patents

| S.N. | Stakeholder name  | Location  | Category                           |
|------|---|-----------|------------------------------------|
| 1    | Venkatesh Krishnamoorthy,<br>Country Manager- India, BSA- The Software Alliance                                 | Delhi     | Industry                           |
| 2    | Dr. S.K. Murthy, Core-Committee Member,<br>In-House IP professionals (I-HIPP) forum                             | Bangalore | IP Lawyers Group                   |
| 3    | Archana Shankar, Anand & Anand  | Delhi     | IPR Professionals Firm             |
| 4    | Aparna Kareer, Obhan & Associates   | New Delhi | IPR Professionals Firm             |
| 5    | Mr. Sarjinder Sethi, (TCS), CII   | Delhi     | Industry Association               |
| 6    | Anubha Sinha, Centre for Internet and Society<br>(CIS) India  | Delhi     | IP related Organisation            |
| 7    | Hrishikesh Raychaudhury, Corporate Law<br>Group   | Delhi     | IPR Professionals Firm             |
| 8    | Dr. Mahendra Thakre,<br>Myian IP Legal Team, Myian Laboratories<br>Limited                                      | Hyderabad | Industry                           |
| 9    | Mr. Dipanjan Som,, De Penning & De Penning  | Chennai   | IPR Professionals Firm             |
| 10   | Dr. Raj S. Davé,<br>IPR Chair Professor for Excellence at Gujarat,<br>National Law University                   | Ahmedabad | Academician                        |
| 11   | Leena Menghaney<br>Delhi Network of Positive People and<br>Medecins Sans Frontieres( MSF) – Access<br>Campaign, | Delhi     | Forum for MSF- Access<br>Campaign  |
| 12   | Ms Priyam Lizmary Cherian   |           | Lawyers' Collective                |
| 13   | Dipankar Barkakati<br>Federation of Indian Chambers of Commerce<br>and Industry                                 | Delhi     | Industry Association               |
| 14   | Ms. Nilam Gadani, H. K. Acharya & Company,  | Ahmedabad | IPR Professionals Firm             |
| 15   | Suman Kumar Bhattacharya, Hindustan<br>Unilever Ltd.  | Mumbai    | Industry                           |
| 16   | Matthew ROSE,<br>Senior IP Counsel, Huawei Technologies Co<br>Ltd   | China     | Industry                           |
| 17   | Mr. Tanaka, Japan Intellectual Property<br>Association "JIPA",  | Japan     | Industry IP Association -<br>Japan |
| 18   | Mr. Sukahara, Japanese Intellectual Property<br>Group (JIPG), JETRO   | New Delhi | Industry IP Association            |
| 19   | Mr. Jyoti sagar, K & S Partners   | Gurgaon   | IPR Professionals Firm             |
| 20   | Lall Lahiri & Salhotra  | Delhi     | IPR Professionals Firm             |
| 21   | Dr. Malathi Lakshmikumar of<br>Laxmikumar & Sridhdaran  | Bangalore | IPR Professionals Firm             |
| 22   | Manisha Singh,<br>Managing Partner, Lexorbis IP Attorneys   | Delhi     | IPR Professionals Firm             |
| 23   | Narendra R. Thappeta,<br>Law Firm of Narendra Thappeta  | Bangalore | IPR Professionals Firm             |
| 24   | M. Adinarayana, Company Secretary & V.P.<br>NATCO PHARMA LIMITED  | Hyderabad | Industry                           |

|    |  |           |                                   |
|----|--|-----------|-----------------------------------|
| 25 | Dr. Ajaykumar Sharma<br>Director, OPPI   | Delhi     | Industry Organisation<br>(Pharma) |
| 26 | Dr. Deepa Tiku<br>Jay A. Erstling Of Counsel Patterson Thuerste IP                                 | Delhi     | Patent Agent (USA)                |
| 27 | Ranjana Mehta Dutt<br>Remfry and Sagar   | Delhi     | IPR professionals Firm            |
| 28 | Mr. Majumdar, S. Majumdar & Co.  | Kolkata   | IPP Professionals Firm            |
| 29 | Mr. Kunal Setiya, S.S. Rana and Co.  | Delhi     | IPR professionals Firm            |
| 30 | Mr. Anoop Jain Samsung India Electronics<br>Pvt. Ltd.  | Noida     | Industry                          |
| 31 | Adv. Sai Vinod ( representative of Prof.<br>Shamrad Bashir )                                       | Delhi     | Academician                       |
| 32 | Devanshu Khanna, Singh & Singh Law Firm LLP  | Delhi     | IPR Professionals Firm            |
| 33 | Sunita K Sreedharan,<br>SKS LAW ASSOCIATES,  | Delhi     | IPR Professionals Firm            |
| 34 | Komal Katha, Senior Counsel,<br>United States Patent and Trademark Office-<br>Office of South Asia | Delhi     | US Government                     |
| 35 | Yogesh Pai, Assistant Professor, NLU Delhi   | Delhi     | Academician                       |
| 36 | Representative from ASSOCHAM   | Delhi     | Industry association              |
| 37 | Kanu priya, Representative, Kan and Krishme  | Delhi     | IPP Professionals Firm            |
| 38 | Anju Khanna, Lal & Sethi   | Delhi     | IPP Professionals Firm            |
| 39 | Dr. Sheetal Chpra Erricson   | Delhi     | Industry                          |
| 40 | Mayuree Sengupta,<br>Regional Centre for Biotechnology,<br>NCR Biotech Science Cluster             | Faridabad | R & D Organisation                |
| 41 | Naveen Varma, ZeusIP   | Delhi     | IPP Professionals Firm            |
| 42 | D Calab Gabriel, FICPI INDIA (LEX IP Care)   | Delhi     | IPP Professionals Firm            |
| 43 | Rajiv Kr. Choudhry   | Delhi     | Patent attorney                   |

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[End of Documents]

T-C

Minutes of meeting of stakeholders held at IPO Delhi on 6<sup>th</sup> April 2018 regarding provisions on Working of Patents in patents Act and Rules

A meeting of stakeholders who have submitted comments/suggestions on the provisions regarding Working of Patents provided under section 146 of the Patents Act read with Rule 131 of Patent Rules, Form 27 and penal provisions under section 122 was held at IPO, Delhi on 6<sup>th</sup> April 2018.

67 stakeholders from different fields i.e. IPR law firms, industry associations from the country and abroad, individuals, domestic and foreign industries, IPR activists, academicians, IP chairs etc. had sent their comments in response to the circular and 43 stakeholders, either themselves or through representatives, attended the meeting which was chaired by the CGPDTM.

Responses/suggestions "as received" from stakeholders were published in IPO website before the meeting date i.e. on 2<sup>nd</sup> April 2018 along with the Gist of Stakeholders' Comments in tabulated form, so that the comments of stakeholders are available to all, which would be helpful in facilitating discussions during the meeting.

At the outset, the Chair clarified that the scheduled meeting was to know the views of stakeholders on how to streamline the process of reporting regarding provisions of Working of Patents within the existing legislative frame work. It was clarified that the amendment of Patents Act is not under consideration. However, amendment to rules or Form 27 by way of addition/deletion/modification are to be discussed in the meeting and to be finalized after wider consensus in future.

Majority of Stakeholders presented their views in the meeting regarding provisions for Working of Patents under section 146 of the Patents Act read with rule 131 of Patent Rules, Form 27 and penal provisions under section 122.

*Gist of major issues raised /suggestions made in respect of Working of Patents during the meeting are as follows:*

1. Section 146 read with Rule 131:

i. Majority of stakeholders stated that :

Section 146(1) gives discretionary powers to Controller to call for any information related to patent in force and, such periodical statements as required, through a notice. Therefore, the controller, rather than calling all information through Form 27, shall use discretion under section 146 (1) to call only requisite information related to the patent.

Section 146(2) puts an obligation on patentee/licensee to furnish information, as may be prescribed. Therefore, the prescribed form i.e. Form 27 should be simple and easy so that all patentees/ licensees can fulfill the said obligation. Detailed suggestions on Form 27 are separately listed below.

*T-C*

The Controller shall use discretion given under section 146 (1) and 146 (2) so as to ensure that confidential information regarding patentee/licensee is not put in public domain unless required /specified by the statutory authority. These suggestions may be suitably incorporated and Rule 131 may be amended accordingly.

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- ii. However, some stakeholders expressed that all relevant information should be sought from patentee/ licensee and put in public domain, as envisaged by Section 146 .

## 2. Form 27:

There were differences of opinion among the stakeholders in this regard. Some wanted abolishment of Form 27 stating that no other country has such provision of specific form like our Form 27. However, majority of stakeholders wanted that the current Form 27 should be amended in respect of the scope of details sought from the patentee/licensee against different paras of Form 27.

- i. Some stakeholders wanted that the requirements should be made stricter in order to have full information in Form 27.

Stakeholders observed that the crucial information that is expected in Form 27 is skipped by many stakeholders due to rather vague structure of Form 27 which is insufficient to ensure that the patentees and licensees make a full and complete disclosure of the patent working information. Form 27 suffers from considerable ambiguity and omits to ask patentees for a number of important particulars that are necessary for an effective assessment of the commercial working of patented inventions. Due to these defects, Form 27 facilitates strategic non-disclosure of complete working information by patentees which is grossly incomplete, incomprehensible or inaccurate.

Further, it was stated that para 3 of form 27 merely asks patentees and licensees to "give whatever details are available", without mandating such disclosure in stronger terms, given that, it is a statutory mandate under section 146 of the Patents Act to disclose the full extent of commercial working of the patent. Owing to this wording, patentees and licensees have strategically provided rather vague and non-specific information that makes it impossible to determine the extent of working.

- that Form 27 should ask for more information on drug related patents.
- that Form 27 must be revised and should begin by asking whether the patent has been licenced in the first place. If so, it must then ask for more details, such as the names of licensees and broad terms of licence. It was stated that not all aspects of a license can be hidden away under the guise of confidentiality, rather, particulars such as the name of licensee/s must compulsorily be disclosed under sections 67-69 of the Patents Act. Other details can be disclosed only to the extent necessary to demonstrate that the patent has been worked.

*FC*

- that confidential licensing terms can be redacted at the option of the Patent Office and the statutory framework does provide leeway for this. instead, Form 27 ought to call for more particular information. in particular, the patentee ought to be asked to submit :a) estimated demand of the patented invention or product; b) extent to which the demand has been met (i.e. availability); and c) details of any special schemes or steps undertaken by the patentee to satisfy the demand.

ii. Most other stakeholders stated that the requirements are inappropriate, unnecessary, impractical and burdensome to stakeholders and want the Form - 27 to be revised to make it a simple, clear, practical, useful, concise and unambiguous.

*important amendments sought by stakeholders in this regard are as follows:*

- Form 27 should be in the form of self-declaration as to whether the patent is being worked or not worked; the information required to be submitted for non-drug patents under Form 27 should be minimal—preferably none; the option that "patentee/licensee can mention the disclosed information could be partial information" shall be added in Form 27;
- confidential information should not be published ; discretion to publish the information submitted by the Patentee available to the Controller should be used;
- one Form 27 may suffice for multiple patents if the working statement for each such multiple patents is the same; provision should be available where working of a patent may depend on other patents/ products; process patents should be removed from the ambit of working requirement;
- obligation to file Form 27 should be either on patentee or licensee and not on both;
- reporting frequency of Form 27 should be every three years;
- IPC classification should be used to analyse the information provided across all technologies;
- Rules/Guidelines on what information should be made available to the public for submitting Form 27;
- the revised Form 27 should have two sections viz., (i) one for first time filing (for patents granted within the last three years) and (ii) another section for those cases where the working statement had already been filed in the previous year and being continued).
- "the reasons for not working", " country-wise details of importation", "requirement of quantum and value of the patented product", "details of licenses and sub-licenses" and "statement as to whether public requirement are met" should either be removed from Form 27 or simplified in such a way to reduce the burden on stakeholders and remove uncertainty, impracticability and vagueness of the information asked for.

T-C



- online Form 27 should be rectified in line with the physical Form and the requirement should be same in both the versions and, hence, the drop list options and selection options on online Form 27 should be relooked.

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3. Section 122:

- Some stakeholders stated that the provisions regarding penalty was appropriate and that the Patent Office should set up an internal committee which would annually review whether the statement of working has been filed and take action on failure to comply with the requirement under Section 146. Further, Patent Office may also consider taking cognizance of failure to file Form-27 on the basis of any complaint by any person who bonafide believes that Form 27 has not been filed.
- Some stakeholders demanded that the current penal provisions as given in Section 122 (1)(b) and Section 122 (2) must be abolished as it is too harsh.
- Some stakeholders suggested various other alternatives to the provision in section 122, such as, revocation of patent can be prescribed instead of imprisonment in case of false declaration, non-compliance of the working requirement is a ground for a compulsory license which should be a sufficient deterrent to the patentee, provision should be made for delayed submission of Form 27 by paying extra fee and Form-4 may be modified to include provision for late submission of Form-27. If patentee fails or erroneously submits any incorrect information he should be able to get it rectified by filing the Petition under Rule 137.

After submission by all stakeholders, since it was observed that the majority of stakeholders want the Form 27 to be amended, the Chair called upon the stakeholders to submit the draft of revised version of Form 27 incorporating the amendments/changes, as they want in the revised Form 27.

The meeting ended with the vote of thanks.

[End of Documents]

*[Handwritten signature]*  
T-C

Proposed Timelines for effecting changes in the provisions regarding working of patents in the Patents Rules

1. Stakeholder consultation meeting was scheduled to be held on 21-3-2018 and stakeholders were requested to submit their comments up to 16-03-2018 on the provisions for working of patents under Section 146 of the Patents Act 1970 read with Rule 131 of Patent Rules 2003 including Form 27, and penal provisions provided in Section 122. Consequent to this, requests from various stakeholder/ attorney associations were received for extending the last date for submission of comments stating that several members from different countries are desirous to submit comments in this regard. In view of this and also to ensure wider stakeholder consultation, the last date for submission of comments was extended till 23rd March 2018 and, accordingly, stakeholder consultation meeting was held on 6th April 2018 at Intellectual Property Office, New Delhi.
2. As per Order dated 15/03/2018 of the Hon'ble Delhi High Court on WPC NO. 5590 of 15, the Respondent No.1 (Government of India) is required to file the affidavit regarding the timelines within which consultation would be completed, suggestions received examined and such amendments as may be deemed necessary would be effected under the Patents Act 1970.
3. Accordingly, the following sequential timelines to complete all the actions to be taken by the office of CGPDTM/Ministry related to this matter are submitted.

| Sl. No. | Action by the Office of CGPDTM/DIPP  | Likely time required |
|---------|--|----------------------|
| 1       | Stakeholders' suggestions received   | Before 23-3-2018     |
| 2       | Stakeholders' suggestions/ comments published in the IPO website prior to the Meeting                          | 02-04-2018           |
| 3       | Stakeholder consultation meeting held at Delhi   | 06-04-2018           |
| 4       | Receiving further suggestions and study of international practices regarding working of patents information.   | 1 month              |
| 5       | Preparation of Draft of Amendments to the existing Rule 131 of Patent rules /Form 27 by CGPDTM to the Ministry | 1 month              |
| 6       | Approval by Competent Authority to the draft amendment to Rules/Form 27  | 1 month              |
| 7       | Gazette Notification of Draft amendment to Rules/Form 27   | 2 months             |
| 8       | Receiving comments/suggestions from Stakeholders and consultation meeting on Draft amendment Rules/Form 27     |                      |

|    |   |          |
|----|---|----------|
|    | on Draft amendment Rules/Form 27  |          |
| 9  | Final Draft of the amended Rules/Form 27 to be submitted to competent Authority         | 1 Month  |
| 10 | Vetting of the amended Rules/Form 27 by Law Ministry and inter-ministerial consultation | 2 Months |
| 11 | Competent Authority approval and Gazette notification of a mended Rules/Form 27         | 1 month  |
| 12 | Unforeseen delay, if any  | 2 months |

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[End of Document]

*[Handwritten signature]*

BEFORE THE HIGH COURT OF DELHI AT NEW DELHI  
(CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) No.5590 OF 2015

74

IN THE MATTER OF :

Shamnad Basheer

.....Petitioner

Versus

Union of India & Ors.

.....Respondent

MEMORANDUM OF APPEARANCE

In the abovementioned case kindly enter my appearance on behalf of the  
Respondent.

Respondent/UOI

THROUGH

*For* *Mahajan*  
AMIT MAHAJAN  
CENTRAL GOVT. STANDING COUNSEL  
CH. NO.461, LAWYERS CHAMBERS,  
DELHI HIGH COURT, NEW DELHI - 110 003  
ENO.D-474-R/1998  
PH.:011-23381256, MOB.: 9811191920

NEW DELHI

DATED: 24.04.2018

TRUE COPY

ANNEXURE A-7  
(COLLY) 75

M Gmail

Sai Vinod <nayanisaivinod@gmail.com>

Fwd: WPC- 5590 of 2015-Shamnad Basheer Vs Uoi-Disposed on-23-04-2018

10 messages

11 July 2018 at 22:00

Dr. S. S. Singh <ss.singh@nic.in>

To: OFFICE OF CGPDTM <cgoffice-mh@nic.in>, HO-CGO-ATP <atpatre.ipo@nic.in>, CGO-Kundan Kumar <kundankumar.ipo@nic.in>

Cc: N Sai Vinod <nayanisaivinod@gmail.com>

Sir,  
I have been enquired by the counsel of petitioner in above writ as to the latest developments w.r.t. to the timelines submitted in court. Please provide the same as to enable me to reply satisfactory in the same.

With Regards,  
Dr. S. S. Singh,  
Dy. Controller of Patents and Designs  
General Patent Matters including Court Matters  
CPIO and Nodal Officer AEBAS  
PATENT OFFICE DELHI  
Govt. of India, Ministry of Commerce & Industry-DIPP  
Plot No 32, Sector-14, Dwarka, New Delhi-75  
Phone:11-25300208 Mob. 9650167859.

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----- Original Message -----

From: "Dr. S. S. Singh" <ss.singh@nic.in>

Date: Jun 19, 2018 9:03:44 PM

Subject: Fwd: WPC- 5590 of 2015-Shamnad Basheer Vs Uoi and others-Order 23-04-2018-Latest

To: Dhumane <vm.dhumane@nic.in>

Cc: CPIO CGO Kundan Kumar-EX <kundankumar.ipo@nic.in>, OFFICE OF CGPDTM <cgoffice-mh@nic.in>, Dr K S Kardam Sr JC & HO <kardam.ks@nic.in>

Sir,

Please update about 'Preparation of Draft of Amendments to the existing Rule 131 of Patent rule /Form 27 by CGPDTM to the Ministry'. I am being enquired by the stakeholders in the same.

Regards

Dr SSSingh

----- Original Message -----

From: "Dr. S. S. Singh" <ss.singh@nic.in>

Date: Jun 7, 2018 3:30:25 PM

Subject: WPC- 5590 of 2015-Shamnad Basheer Vs Uoi and others-Order 23-04-2018-Latest

To: Dhumane <vm.dhumane@nic.in>, HO-CGO-ATP <atpatre.ipo@nic.in>, CGO-Kundan Kumar

<kundankumar.ipo@nic.in>, OFFICE OF CGPDTM <cgoffice-mh@nic.in>

Cc: Dr K S Kardam Sr JC & HO <kardam.ks@nic.in>, DIPP-Director-Sh Sushil Satpute <sushil.satpute@nic.in>, CGPDTM-Sh O P Gupta <cg.ipindia@nic.in>

Dear Dhumane ji / Patre ji and Mr Kundan,

I am to vibrate in the affidavit finally submitted before High Court of Delhi in this matter and Judgement(Oral) dated 23rd April 2018. That will be kind of you to share as to latest.

For ready reference please:

[Para 4. We have been taken through this affidavit by Mr. Amit Mahajan, learned Standing Counsel for the Central Government. Alongwith this affidavit, the respondents have placed the following timelines for consideration of the matter and to effect such changes as may be necessary in the provisions of the Patents Act and the Rules :  
"3. Accordingly, the following sequential timelines to complete all the actions to be taken by the office of CGPDTM/Ministry related to this matter are submitted.

| Sl. No. | Action by the Office of CGPDTM/DIPP   | Likely time required  |
|---------|---|-----------------------|
| 1       | Stakeholders' suggestions received  | Before 23-3-2018      |
| 2       | Stakeholders' suggestions/ comments published in the IPO website prior to the Meeting                         | 02-04-2018            |
| 3       | Stakeholder consultation meeting held at Delhi  | 06-04-2018            |
| 4       | Receiving further suggestions and study of international practices regarding working of patents information.  | 1 month<br>06-05-2018 |
| 5       | Preparation of Draft of Amendments to the existing Rule 131 of Patent rule /Form 27 by CGPDTM to the Ministry | 1 month<br>06-06-2018 |

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|    |  |                        |
|----|--|------------------------|
| 6  | Approval by Competent Authority to the draft amendment to Rules/Form 27                                    | 1 month<br>06-07-2018  |
| 7  | Gazette Notification of Draft amendment to Rules/Form 27   | 2 months<br>06-09-2018 |
| 8  | Receiving comments/suggestions from Stakeholders and consultation meeting on Draft amendment Rules/Form 27 |                        |
| 9  | Final Draft of the amended Rules/Form 27 to be submitted to competent Authority                            | 1 Month<br>06-10-2018  |
| 10 | Verfing of the amended Rules/Form 27 by Law Ministry and inter-ministerial consultation                    | 2 Months<br>06-12-2018 |
| 11 | Competent Authority approval and Gazette notification of a mended Rules/Form 27                            | 1 month<br>06-01-2019  |
| 12 | Unforeseen delay, if any   | 2 months<br>06-03-2019 |

Para 6. We accept the timelines suggested by the respondent no.1 who shall remain bound by the same. Every effort shall be made to ensure that there is no deviation and the matter is treated in right earnest and given the seriousness which it deserves to be accorded to it.

Para 7. The respondents shall place a report before this court upon completion of the aforesaid noticed exercise.

Para 8. In view of the above, this writ petition and application which sought the strict implementation of the law need not detain this court any further and are hereby disposed of.

ACTING CHIEF JUSTICE C.HARI SHANKAR, J APRIL 23, 2018]

With Regards,  
Dr. S. S. Singh,  
Dy. Controller of Patents and Designs  
General Patent Matters including Court Matters  
CPIO and Nodal Officer AEBAS  
PATENT OFFICE DELHI  
Govt. of India, Ministry of Commerce & Industry-DIPP  
Plot No 32, Sector-14, Dwarka, New Delhi-75  
Phone:11-25300208 Mob. 9650167859.

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----- Original Message -----

From: "Dr. S. S. Singh" <ss.singh@nic.in>

Date: Apr 30, 2018 11:06:39 PM

Subject: WPC- 5590 of 2015-Shamnad Basheer Vs Uol and others-Order 23-04-2018-Disposed off

To: CGPDTM-Sh O P Gupta <cg.ipindia@nic.in>, AA-RTI-PO Delhi <kardam.ks@nic.in>, DIPP-Director-Sh Sushil

Satpute <sushil.satpute@nic.in>

Cc: GPM2-Pritam Singh-OS <gpm2delhi.ipc@nic.in>, CGSC-Amit Mahajan <amitmahajan17@gmail.com>

Respected Sir,

I am just able to take reference of judgement dated 23-04-2018 recently hosted in official website of court. I am attaching herewith the copy of the same for your ready reference any further necessary directions please.

As per timelines submitters, we have to complete the activity of 'receiving further suggestions and study of international practices regarding working of patents' by 6th May 2018, preparations of draft amendments in Rule 131 and Form-27 by 6th June 2018 and finally complete whole exercise by March 2019.

| Search Result For Type :W.P.(C) No :5590 year :2015* are : 1 |  |  |   |
|--|--|--|---|
| S. No.   | Diary No. / Case No. [STATUS]  | Petitioner Vs. Respondent  | Listing Date / Court No.                    |
| 1.   | W.P.(C) 5590/2015<br>[DISPOSED OFF]<br><a href="#">Order(s) Judgement(s)</a> | SHAMNAD BASHEER<br>Vs. UNION OF INDIA & ORS<br>Advocate : N. SAI VINOD | Court No. : 1<br>DISPOSED OFF on 23/04/2018 |

Page : 1

With Regards,  
Dr. S. S. Singh.

77




Dy. Controller of Patents and Designs  
General Patent Matters including Court Matters  
CPIO and Nodal Officer AEBAS  
PATENT OFFICE DELHI  
Govt. of India, Ministry of Commerce & Industry-DIPP  
Plot No 32, Sector-14, Dwarka, New Delhi-75  
Phone:11-25300208 Mob. 9650167859.

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With Regards,  
Dr. S. S. Singh,  
Dy. Controller of Patents and Designs  
General Patent Matters including Court Matters  
CPIO and Nodal Officer AEBAS  
PATENT OFFICE DELHI  
Govt. of India, Ministry of Commerce & Industry-DIPP  
Plot No 32, Sector-14, Dwarka, New Delhi-75  
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3 attachments

-  Case History as on 7th June 2018.pdf  
124K
-  Affidavit-Approved-Filed.pdf  
141K
-  WPC-5590 of 2015-Judgement 23-04-2018.pdf  
195K

Sai Vinod <nayanisaivinod@gmail.com> 18 July 2018 at 19:29  
To: Dr Suman Shrey Singh <ss.singh@nic.in>  
Cc: cgoffice-mh@nic.in, atpatre.ipo@nic.in, kundankumar.ipo@nic.in, Shamnad Basheer <shamnad@gmail.com>

Dear Sirs:

As per the timelines indicated before the Delhi High Court, the Patent Office was supposed to have published the draft Rules as on 6<sup>th</sup> July and invite comments/suggestions from stakeholders. As you are aware, the timeframe has been adopted as a bidding direction by the Delhi High Court. To our knowledge, no such draft Rules have been published or any consultation has been scheduled.

In view of the above, we urge you to inform us the present status of proposed amendments to Patent Rules, (including FORM-27). In the meanwhile, we also request you to share a copy of the draft amendments forwarded to the Competent Authority for approval.

This communication is being issued on behalf of Prof. Shamnad Basheer, the petitioner before the Delhi High Court, who is copied to this email.

Warm regards,  
Sai Vinod.  
[Quoted text hidden]

Dr. S. S. Singh <ss.singh@nic.in> 18 July 2018 at 21:11  
To: OFFICE OF CGPDTM <cgoffice-mh@nic.in>, CGO-Kundan Kumar <kundankumar.ipo@nic.in>, Dhurane <wm.dhumane@nic.in>, Dr Usha Rao AC <druharao.ipo@nic.in>  
Cc: Shamnad Basheer <shamnad@gmail.com>, Sai Vinod <nayanisaivinod@gmail.com>

FNA Please.  
[Quoted text hidden]

Dr. S. S. Singh <ss.singh@nic.in> 19 July 2018 at 17:34  
To: Sai Vinod <nayanisaivinod@gmail.com>

Dear Sai Vinod,  
I have forwarded your email to the office of CGPDTM for further action in the same.

Warm regards.

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With Regards,  
Dr. S. S. Singh,  
Dy. Controller of Patents and Designs  
General Patent Matters including Court Matters  
CPIO and Nodal Officer AEBAS  
PATENT OFFICE DELHI  
Govt. of India, Ministry of Commerce & Industry-DIPP  
Plot No 32, Sector-14, Dwarka, New Delhi-75  
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[Quoted text hidden]

---

Sai Vinod <nayanisaivinod@gmail.com>  
To: Dr Suman Shrey Singh <ss.singh@nic.in>

19 July 2018 at 17:44

Thank you Sir.  
[Quoted text hidden]

---

Sai Vinod <nayanisaivinod@gmail.com>  
To: Shamnad Basheer <shamnad@gmail.com>

19 July 2018 at 17:44

FYI.

----- Forwarded message -----  
From: Dr. S. S. Singh <ss.singh@nic.in>  
[Quoted text hidden]  
[Quoted text hidden]

---

Sai Vinod <nayanisaivinod@gmail.com>  
To: Dr Suman Shrey Singh <ss.singh@nic.in>

28 July 2018 at 16:33

Sir, any update?  
[Quoted text hidden]

---

Dr. S. S. Singh <ss.singh@nic.in> 29 July 2018 at 10:55  
To: Dr Usha Rao AC <drusharao.ipa@nic.in>, Dhumane <wm.dhumane@nic.in>  
Cc: Dr K S Kardam Sr JC & HO <kardam.ks@nic.in>, CGPDTM-Sh O P Gupta <cg.ipindia@nic.in>, Sai Vinod <nayanisaivinod@gmail.com>

Dr. Usha and Dr Dhumane,  
As you were connected to/in procedures regarding the same, please provide update to counsel of petitioner in above writ as a concerned person.  
Regards  
Dr SSSingh

----- Original Message -----  
From: Sai Vinod <nayanisaivinod@gmail.com>  
Date: Jul 28, 2018 4:33:50 PM  
Subject: Re: WPC- 5590 of 2015-Shamnad Basheer Vs Uoi-Disposed on 23-04-2018  
To: Dr Suman Shrey Singh <ss.singh@nic.in>

[Quoted text hidden]

---

Sai Vinod <nayanisaivinod@gmail.com> 20 August 2018 at 16:03  
To: Dr Suman Shrey Singh <ss.singh@nic.in>  
Cc: cgoffice-mh@nic.in, kundankumar.ipa@nic.in, "wm.dhumane" <wm.dhumane@nic.in>, drusharao.ipa@nic.in, Shamnad Basheer <shamnad@gmail.com>

Dear Sirs,

In continuation of my previous email, could you please let us know the present status on draft proposed Rules on FORM-27s.

As per the schedule proposed and time-frame committed before the Hon'ble Delhi High Court, the draft proposed Rules (as approved by Competent Authority) should have been published in gazette and invite comments/feedback from public. All these steps should have been complete by Sep. 6, 2018.

To our knowledge, the draft proposed Rules have not been published. We are not even sure if any proposal was sent to the Competent Authority. If already sent, we are not aware of the views expressed by the Competent Authority.

In view of the above, in the interest of transparency, we urge you to inform us the present status and future course of action proposed in this regard. We eagerly await your response.