

Breather for DuPont as IPAB sets aside grant of trademark to Galpha

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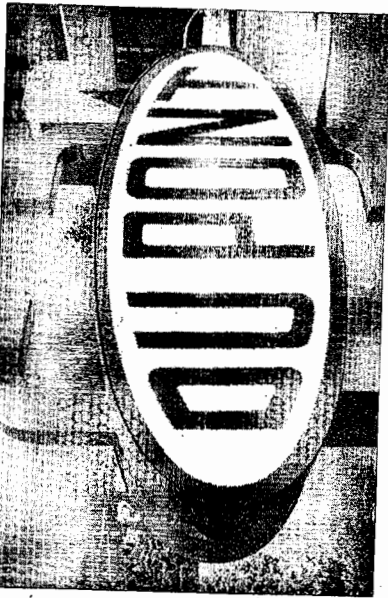
Chemist, Dec 4: In a reprieve for US-based DuPont, a global leader in innovation with a footprint in diverse industries, the Intellectual Property Appellate Board (IPAB) has set aside an order granting registration to a trademark — Nomex — in the pharmaceutical class to Mumbai-based Galpha Laboratories. The IPAB also directed the assistant registrar, trademarks, Mumbai to consider the matter afresh, affording opportunity to both the parties in the next three months. DuPont is the registered owner of the Nomex mark for flame-resistant fibre and other products in a number of countries, including India.

The IPAB bench, consisting of Justice KN Basha, chairman and Sanjeev Kumar Chaswal, technical member, trademarks, said: "After hearing both the parties as well as pursuing the impugned or-

der, we are of the considered view that order was passed in gross violation of principles of natural justice. Accordingly, the impugned order is set aside. The assistant registrar shall consider the matter afresh by affording opportunity to both sides and pass orders on merits in accordance with the law within a period of three months."

The appeal arises out of assistant registrar's March 11, 2009 order, which allowed registration of Nomex mark in Class 5 (pharmaceuticals) to Galpha Laboratories, rejecting the opposition filed by DuPont.

Arguing its case, DuPont highlighted its association with India since 1802, when it used to supply raw material for black powder for explosives. The company had obtained registration of Nomex trademark in many countries, including India in various classes, except pharmaceutical goods. It



that Galpha Laboratories had filed an application for registration of Nomex in pharmaceutical class in 1988, it filed an opposition in 1999. However, on completion of arguments, the assistant registrar passed an order on March 11, 2009 allowing the mark to be registered. Aggrieved by the order, DuPont moved the IPAB.

Ordering in favour of DuPont, the IPAB bench said the assistant registrar had rendered a short cryptic order without assigning cogent reasons by simply quoting the provisions under the Trade and Merchandise Act 1955. The order does not disclose on what grounds or on what material records he allowed the registration to go ahead by rejecting the contentions of DuPont.

"The assistant registrar does not disclose any judicious reasoning while exercising his discretionary powers vested with him for granting the registration," the

bench noted.

The bench further observed that the assistant registrar, on the one hand, admits in his order that the marks are similar and identical without divulging sound reasons as to how he had arrived into conclusion that the mark, though identical, led to no confusion and deception.

The assistant registrar had held that there was no possibility of confusion and deception as the goods of DuPont were entirely different.

DuPont submitted before IPAB that the assistant registrar had failed to appreciate its use of the Nomex trademark in the international market since 1963 and India since 1984.

Galpha Lab, however, argued it had taken care and prior search in selection, adoption and found that there was no prior use of the Nomex trademark in pharmaceutical industry.

According to DuPont, the company has Nomex mark registered in Class 16 (paper goods and printed matter), Class 17 (rubber goods), Class 22 (cordage & fibres), Class 23 (yarns & threads) and Class 24 (fabrics).

When DuPont came to know

claimed that it had spent a huge amount of time, money and effort in promoting the trademark. DuPont further submitted that it was the owner of many other trademarks in several countries, including India, and has been renewing the marks regularly.

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