

# Novartis Ag vs Controller Of Patents And Designs & Anr on 16 September, 2025

**Author: Manmeet Pritam Singh Arora**

**Bench: Manmeet Pritam Singh Arora**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of De

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W.P.(C)-IPD 50/2025 & CM 209-210/2025  
NOVARTIS AG

Through: Mr. Heman  
Mr. Siddh  
Tandon, A

versus

CONTROLLER OF PATENTS AND DESIGNS  
& ANR.

.....Responde

Through: Ms. Nidhi Raman, CGSC with Mr.  
Om Ram and Mr. Mayank Sansanwal  
Advocates for R-1  
Mr. C. A. Sundaram, Sr. Advocat  
and Mr. Dayan Krishnan, Sr.  
Advocate with Mr. S. Majumdar,  
Afzal B Khan, Mr. Samik Mukherj  
Ms. Amrita Majumdar, Mr. Domini  
Alvares, Ms. Manya Jain, Ms. Ro  
Musa and Mr. Abhishek Gupta,  
Advocates for R-2

+

W.P.(C)-IPD 51/2025 & CM 211-212/2025  
NOVARTIS AG

.....Pet

Through: Mr. Hemant Singh, Ms. Mamt  
Mr. Siddhant Sharma and M  
Tandon, Advs.

versus

CONTROLLER OF PATENTS AND DESIGNS  
& ANR.

.....Res

Through: Ms. Nidhi Raman, CGSC with

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W.P.(C)-IPD 50/2025 and connected matters

Om Ram and M  
Advocates for  
Mr. J. Sai De  
Mr. Abhai Pan  
Singh, Mr. Ma  
Agrawal, Mr.  
Shivani Singh  
Mr. Avinash S  
and Ms. Swati  
R-2

+ W.P.(C)-IPD 52/2025 & CM 213-214/2025  
NOVARTIS AG

.....Petition

Through: Mr. Hemant Singh, Ms. Mamta Jha,  
Mr. Siddhant Sharma and Mr. Abh  
Tandon, Advs.

versus

CONTROLLER OF PATENTS AND DESIGNS  
& ANR.

.....Responde

Through: Ms. Nidhi Raman, CGSC with Mr.  
Om Ram and Mr. Mayank Sansanwal  
Advocates for R-1  
Ms. Rajeshwari H., Ms. Garima J  
and Ms. Sawani Chothe, Advocate  
for R-2

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

%

JUDGMENT

MANMEET PRITAM SINGH ARORA, J:

W.P.(C)-IPD 50/2025

W.P.(C)-IPD 51/2025

W.P.(C)-IPD 52/2025

1. The issues arising for consideration in the present  
identical. The Petitioner is the holder of Indian Patent No. 4

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and Respondent No. 2 in each petition is the opponent who has  
grant opposition to the grant of the said patent. The petition  
common orders passed by the Respondent No. 1/Controller of Pat  
Designs ['Controller']. Learned counsel for the parties have a  
common arguments in these matters; therefore, all the petition  
disposed of by this common order, which shall govern and bind  
in each of the connected proceedings.

Factual matrix

2. For ease of reference, the facts of W.P.(C)-IPD No.

referred to.

3. The present writ petition has been filed by the Petitioner against the Controller's orders dated 19.08.2025 and 20.08.2025, where the Controller has declined the request for cross-examination of the experts. No. 2's Experts, Dr. Arvind Kumar Bansal and Dr. Kulbhushan Tikkoo, in their respective affidavits dated 05.07.2024, have opined that the subject patent IN'518 is not a valid patent as it lacks in novelty and the grant is in violation of Section 3(d) of the Patents Act, 1970.

4. The Petitioner filed Indian Patent Application No. 1/2007 on 08.06.2007. The subject patent IN'518 was granted by the Controller's order dated 14.12.2022.

4.1 Respondent No. 2 filed a post-grant opposition under Section 25 of the Act and filed further evidence under Rule 60 of the Patent Rules, 2003 ['Patent Rules'] in the form of affidavits of Dr. Arvind Kumar Bansal and Dr. Kulbhushan Tikkoo, dated 05.07.2024.

4.2 The filing of further evidence was contested by the Petitioner, which was permitted by the Controller and upheld by the Coordinate bench of the

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The Court ['High Court'] in W.P.(C)-IPD 18/2025 along with W.P.(C)-IPD 19/2025 and W.P.(C)-IPD 20/2025 ['earlier writ petitions'] vide its order dated 21.04.2025, while granting the Petitioner leave to file rebuttal evidence, in consequence of such leave, the Opposition Board's recommendation dated 17.03.2025, which had proposed revocation of the subject patent, were set aside by the same order. The High Court further directed the Controller to issue an order dated 21.04.2025, a specific timeline for filing rebuttal evidence, a fresh recommendation of the Opposition Board, and for a subsequent hearing before the Controller, so as to ensure an expeditious disposal of the post-grant opposition proceedings.

4.3 In accordance with the directions of the High Court vide its order dated 21.04.2025, the Petitioner filed rebuttal evidence in the form of affidavits of Prof. Allen S. Myerson dated 10.06.2025 and Dr. Pallavi Kawatra dated 13.06.2025.

4.4 The pleadings, evidence and documents relied upon by the parties were sent to the Opposition Board for giving its fresh recommendation within four (4) weeks as per the High Court's order dated 21.04.2025. The recommendation of the Opposition Board was scheduled to be received on 14.07.2025 [in terms of the timeline set out in the order dated 21.04.2025].

4.5 The Petitioner on 14.07.2025 filed Miscellaneous Petition under Rule 128 of the Patents Rules, 2003 ['Rule 128 petition'] seeking cross-examination of Respondent No. 2's Experts vis-à-vis the affidavits dated 05.07.2024.

4.6 The Opposition Board's fresh recommendation dated 14.07.2025, recommending revocation of the subject patent IN'518, was received by the Controller and shared with the parties on 15.07.2025 along with notice on 19.08.2025.

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4.7 The Controller's order dated 19.08.2025 deferring said Rule 128 petition and its subsequent order dated 20.08.2025 on the order on the post-grant oppositions has been impugned in the writ petitions.

Submissions on behalf of the Petitioner

5. Mr. Hemant Singh, learned counsel for the Petitioner, submitted the Petitioner's case as under: -

5.1 The Petitioner on 14.07.2025 filed a Rule 128 petition for cross-examination of Respondent No. 2's Experts.

5.2 The copy of the joint recommendations of the Opposition dated 14.07.2025 was sent by the Controller on 15.07.2025 at 15:13 P.M. with notice of hearing on post-grant oppositions scheduled for 19.08.2025.

5.3 The Petitioner on 24.07.2025 submitted a request for cross-examination of Respondent No. 2's Experts. The said request was reiterated on 12.08.2025.

5.4 The Controller sent an e-mail dated 14.08.2025 to the Petitioner stating that all relevant matters shall be discussed during the scheduled hearing on 19.08.2025.

5.5 At the hearing held on 19.08.2025, the Controller permitted the Petitioner to file a request for cross-examination, stating that she would first hear the opposition on merits and then decide the issue of cross-examination. The Petitioner, however, did not file a request for cross-examination. The Controller passed an order on the Rule 128 petition be passed prior to any hearing, relying on the mandate of Rule 62 of the Patents Rules. Pursuant to the said order, the Petitioner filed post hearing written submissions with reference to the Rule 128 petition.

However, the Controller continued to hear the Opposition on 19.08.2025.

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20.08.2025 and reserved final order in absence of the Petitioner.

5.6 The Petitioner could not have reached any decision on the necessity of cross-examination without first obtaining the opinion of its own experts in rebuttal, to the Expert evidence produced by the Opponent(s). Thus, such a request of cross-examination could not have been made at the time when the High Court passed its order dated 21.08.2025 in the earlier writ petitions.

5.7 The Petitioner after deliberating with its experts and the Respondent No. 2's Expert evidence affidavits dated 05.07.2025, did not obtain the consent of the Opponent(s) and also consent of its own witnesses to make the evidence available for cross-examination; on 14.07.2025 filed the Rule 128 petition. These are the grounds for explaining the time taken in filing the Rule 128 petition.

5.8 The request for cross-examination was made within the time limit and is not belated.

5.9 The Controller could not have issued notice dated 15.08.2025

hearing the post-grant oppositions on merits, in view of the p  
128 petition filed on 14.07.2025. He relies upon Section 79 of  
Rule 62 of the Patent Rules.

5.10 The right to cross-examination is not a matter of discret  
Controller under Section 79 of the Act, but a matter of right.  
placed on Onyx Therapeutics v. Union of India<sup>2</sup> (SJ), Onyx Ther  
v. Union of India<sup>3</sup> (DB) and Natco Pharma Ltd. v. Union of Indi

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Paragraph 11.4 of the petition.

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2019 SCC OnLine Del 7259, at paragraph nos. 32 to 36.

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2019 SCC OnLine Del 11881, at paragraph nos. 22 to 25.

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2019 SCC OnLine Cal 1609, at paragraph nos. 7 to 10.

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denial of right of cross-examination of experts opining adver  
validity of the patent IN'518 of the Petitioner would lead to  
injury and prejudice to the patentee and is in breach of natur

5.11 The delay in the determination of these post-grant opposi  
been caused due to Controller and the Opponent(s) who filed th  
evidence only at the stage of Rule 59 and Rule 60 of the Paten  
5.12 Delay cannot be a ground to deny the Petitioner its subst  
of cross-examination. The cross-examination can be completed w  
stipulated time. The rules of procedure should be applied to f  
justice and not to defeat substantive rights.

5.13 The recommendation dated 14.07.2025 of the Opposition Boa  
only advisory. Board can always make fresh recommendation on a  
bound manner based on evidence tested on anvil of cross-examin

5.14 The Court can fix a time schedule for cross-examination (w  
weeks) and for fresh recommendation of the Opposition Board (w  
weeks thereafter) and the entire process can be completed. Fur  
04 weeks due to this process would meet the ends of justice.

5.15 No prejudice would be caused to the Opponent(s) as the su  
IN'518 has not been enforced against any one of them. Whereas  
prejudice will be caused to the Petitioner if the patent is re  
year of the patent term, which is set to expire on 26.11.2026.

5.16 The Petitioner has filed its written note of submissions  
of dates.

Submissions on behalf of the Respondent No. 2 in W.P.(C)-IPD 5  
6. Mr. C.A. Sundaram, learned senior counsel appearing

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Respondent No. 2/IPA5 in W.P.(C)-IPD 50/2025 states that the of the prayer for cross-examination is to enable the Petitioner post-grant opposition proceedings till the eventual expiry of 08.11.2026, so as to render the oppositions as infructuous. He Respondent No. 2's case as under:

6.1 The further evidence of the Respondent No. 2's Experts 60 was filed on 08.07.2024.

6.2 The Petitioner had multiple opportunities to seek cross-examination of Respondent No. 2's Experts i.e., 02.09.2003.09.2024, 04.12.2024. The Petitioner on each of the aforesaid responded to the further evidence and also made an alternate rebuttal evidence.

6.3 The Petitioner filed earlier writ petitions impugning the order dated 17.03.2025 taking the further evidence on record; request for cross-examination was made in the said earlier writ.

6.4 The Petitioner in the aforesaid writ petition challenged the recommendation of the Opposition Board dated 17.03.2025 and sought its quashing. The Petitioner sought re-constitution of the Opposition Board and appointment of a different Controller. The High Court while granting relief to the Petitioner passed a detailed order on 21.04.2025 setting timelines to be adhered to so as to enable time bound disposal of the grant opposition proceedings.

No request for cross-examination of Respondent No. 2 was made before the High Court on 21.04.2025.

6.5 The timelines set out in the High Court's order dated 21.04.2025

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Indian Pharmaceutical Alliance

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adhered to by the parties. The Petitioner filed its rebuttal evidence on 14.06.2025 and the Opposition Board's recommendation were due on 14.07.2025 (as per the schedule set in the High Court's order). The request for cross-examination was made on 14.06.2025, when the Petitioner filed the rebuttal evidence.

6.6 The Petitioner filed the Rule 128 petition on 14.07.2025 and served the Respondent No. 2 on following date at 15.07.2025. In the facts, the Petitioner waived any right of cross-examination even if such right existed in its favour.

6.7 The Petitioner has raised false grounds to seek cross-examination. In its pleas raised in the earlier writ petitions, the Petitioner has submitted evidence affidavits of Respondent No. 2's Experts in extenso even without awareness of the relevance of the evidence led by the said Experts.

6.8 The Petitioner herein in another matter Natco Pharm Union of India<sup>6</sup> took a stand that cross-examination cannot be matter of right. The Petitioner was opposing the Opponent's pr cross-examination in those proceedings. In the said case the l Judge balanced the need of cross-examination by granting an op the Opponent to file rebuttal evidence.

6.9 The request for cross-examination ought not to be g not sought for, at the earliest opportunity. The right to seek examination is not an absolute right and it cannot be made at moment to derail the proceedings. He relied upon K.L. Tripathi Bank of India<sup>7</sup>.

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2022 SCC OnLine Del 5134, at paragraph nos. 15(v) and 22.

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(1984) 1 SCC 43, at paragraph no. 32.

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6.10 The High Court's order dated 21.04.2025 had the effect o the hearing under Rule 62 of the Patent Rules. The receipt of recommendation of the Opposition Board on 14.07.2025 and fixin hearing by the Controller on 15.07.2025 was expected as per th 21.04.2025. The present writ petition is solely motivated to c said timelines. The Coordinate Bench of this Court in Pharmacy v. Union of India<sup>8</sup> held that parties are not permitted to seek any further evidence once the hearing is fixed.

6.11 The reliance placed by the Petitioner on the judgment of Bench in Onyx Therapeutics (supra) is not maintainable as in t the said case, the patentee/party therein had sought cross-exa earliest opportunity; and there was no delay. Whereas in this request for cross-examination has been made after inordinate d afterthought.

6.12 The effect of permitting the Petitioner a right to cross- will set at naught the exercise of the Opposition Board which fresh recommendations on 14.07.2025, in due compliance with th Court's order dated 21.04.2025. It would also require fresh ar the Controller.

6.13 The Petitioner's request at prayer clause (c) of the capt petition, for change of a Controller is opposed. Similar reques Petitioner in earlier writ petitions was granted by High Court dated 21.04.2025. This request made yet again in this petition process.

7. Mr. Dayan Krishnan, learned senior counsel also ap

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2019 SCC OnLine Del 12193, at paragraph no. 26.

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of Respondent No. 2/IPA in W.P.(C)-IPD 50/2025 referred to judgment of the Division Bench of this Court in Arun Kumar Mishra v. Union of India<sup>9</sup> to state that a request for cross-examination made at that time ought not to be interfered in writ proceedings and party can approach the court for orders.

7.1 The Petitioner in the Rule 128 petition<sup>10</sup> itself called for evidence filed on 14.06.2025 has addressed the Respondent No. 2 witnesses. Thus, the request for cross-examination is an afterthought effort to delay the proceedings.

Submissions on behalf of the Respondent No. 2 in W.P.(C)-IPD 50/2025. 8. Mr. J. Sai Deepak, learned senior counsel appearing for Respondent No. 2/Micro Labs Limited in W.P. (C)-IPD 51/2025 stated that in addition to the submissions already made by Mr. Sundaram and Mr. Krishnan, he wanted to clarify that in the facts of this case, the Respondent No. 2 filed its further evidence of Dr. Harnam Singh on 09.04.2024.

8.1 In paragraph 8 of the captioned writ petition, the Respondent No. 2 stated that only upon perusing the evidence of Respondent No. 2, which was to be taken on record by the High Court vide order dated 21.04.2024, it would examine the veracity and credibility of the opinions expressed by Respondent No. 2's Experts and, consequently, filed a request for cross-examination at this belated stage. This assertion is false and incorrect inasmuch as the Petitioner had already filed its rebuttal evidence on 10.07.2024, well before the direction issued by the High Court in its writ petitions, and, in that rebuttal, had specifically pointed out

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2014 SCC OnLine Del 493, at paragraph 9, 10 and 11.

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At paragraph 6

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inconsistencies in the testimony of Dr. Harnam Singh, yet made a request for cross-examination at that time.

8.2 Even at latter stage when they filed rebuttal evidence of Dr. Kawatra on 14.07.2025, the Petitioner did not file the request for cross-examination.

8.3 He submits that the Petitioner had multiple opportunities to make a request for cross-examination, yet they chose not to file but when the evidence stage was closed, they made this request on 14.07.2025. This is a clear case of implied waiver of their right.



8.4 He submits that as per the scheme of post-grant opposition proceedings where first stage is before Opposition Board stage is hearing before the Controller.

In the first stage all the pleadings and evidence must be filed before the Opposition Board so that Opposition Board can make a joint recommendation and no further evidence is allowed thereafter except in exceptional circumstances.

8.5 Allowing request for cross-examination will again put in jeopardy the reconstitution of the Opposition Board and delay the proceedings. It is reiterated that the High Court in its order dated 21.04.2025, had fixed a strict timeline to file rebuttal evidence before the Patentee and making joint-recommendation by Opposition Board after conducting hearing by Controller in an expeditious manner. The Petitioner herein deliberately filed the request for cross-examination just before when the Opposition Board was supposed to give its recommendation. Therefore, the request for cross-examination filed by the Patentee is a tactical move to protract the opposition proceedings.

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W.P.(C)-IPD 50/2025 and connected matters

Submissions on behalf of the Respondent No. 2 in W.P.(C)-IPD 50/2025. Ms. Rajeshwari H, learned counsel appearing on behalf of Respondent No. 2/IPCA11 in W.P.(C)-IPD 52/2025, in addition to the submissions made by other counsels representing the Respondent No. 2, submitted as under:

9.1 In proceedings before the Controller, it is a norm to file affidavits by way of affidavit. However, in appropriate cases the Controller can receive oral evidence and permit cross-examination. (Re: Section 77(1)(c) of the Act) In either of the cases, it is the duty of the Controller who is required to make a determination whether or not a case for cross-examination. The Controller called for a hearing on 20.08.2025, however the Petitioner failed to appear despite communicating confirmation to join the proceedings. The Petitioner chose to not appear at the hearing expecting a mechanical allowance of its Rule 128 petition which is not envisaged under the Scheme of the Act. The Petitioner is electing to not appear before the Controller on 20.08.2025 precluding the determination of the Rule 128 petition.

9.2 The request for cross-examination is not to be granted as the Petitioner's action in abstaining from the hearing dated 20.08.2025 shows that Petitioner's believes it to be a mechanical process of Rule 128 petition.

9.3 The Respondent No. 2's evidence affidavit of Dr. Ashok Kumar filed on 10.08.2024. Petitioner never requested for cross-examination. Petitioner only sought leave of the High Court to file rebuttal evidence before the Controller. Thus, Petitioner intentionally waived its rights to

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examination and led to the hearing being fixed vide notice dated 09.09.2024. The Petitioner is delaying the process and defeating expeditious proceedings. The request for cross-examination at this stage is a procedural abuse.

9.5 Learned counsel refers to the judgment of this Court in *A S v. Union of India*<sup>12</sup> and *Nippon Steel Corporation v. Union of India*<sup>13</sup>.

#### Findings and Analysis

10. This Court has heard the learned counsel for the parties and perused the record.

#### Relevant facts

11. As noted above, this Court is referring to the facts of W.P.(C) 50/2025 for ease of reference as the facts are substantially similar. The grounds of challenge in the writ petitions are identical.

11.1 The Petitioner filed Indian Patent Application No. 4412/Del/2007 on 08.06.2007. The Controller passed an order dated 14.12.2022 granting the subject patent IN'518 to the Petitioner.

11.2 Respondent No. 2/IPA filed its post-grant opposition on 14.03.2023 under Section 25(2) of the Act. Petitioner filed its reply statement on 13.03.2024 to the said opposition under Rule 58 of the Patent Rules, 2003, along with copies of expert affidavits and research articles.

11.3 On 08.07.2024, Respondent No. 2 filed further evidence under Rule 60 of the Patent Rules in the form of affidavits of Dr. Arvind Kumar Singh and Dr. Arvind Kumar Singh.

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IPCA Laboratories Ltd.

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2022 SCC OnLine Del 1944, at paragraph nos. 21 and 24.

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2011 SCC OnLine Del 669, at paragraph nos. 25 and 27.

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dated 05.07.2024 and Dr. Kulbhushan Tikoo dated 05.07.2024. The Petitioner on 02.09.2024, filed a miscellaneous petition objecting to the admission of this further evidence on 02.09.2024 and as an alternate request for leave to file rebuttal evidence.

The Controller on 17.03.2025 passed an order admitting the evidence of Respondent No. 2, filed under Rule 60 of the Patent Rules, 2003, in the record. The Controller, however rejected Petitioner's request for leave to file rebuttal evidence.

11.4 The Opposition Board submitted its report dated 17.03.2025.

Controller, recommending revocation of the subject patent IN'512. Petitioner filed earlier writ petitions impugning the order dated 17.03.2025. It sought setting aside and quashing of the order dated 17.03.2025 as well as quashing of the recommendations of the Opposition Board dated 17.03.2025. In the earlier writ petition, Petitioner, in the grounds specifically pleaded that the Controller failed to grant an opportunity to the Petitioner to file rebuttal evidence, thereby violating the principles of natural justice. The relevant grounds are as under:

"L. BECAUSE the impugned order is based on the unfounded presumption that the Patentee/Petitioner had no additional evidence to submit in rebuttal to the evidence presented by Respondent No. 1. This presumption is erroneous, as the Petitioner had already submitted evidence under Rule 60 on 03.09.2024, seeking leave to submit additional evidence in the event that Respondent No. 1 permitted the additional evidence submitted by Respondent No. 2. Ignoring this request amounts to a violation of the principles of natural justice and hence, the order is set aside and the Petitioner is granted an opportunity to file rebuttal evidence.

M. BECAUSE the Respondent No. 1 erred in its finding that the Patentee/Petitioner had no additional evidence to submit in rebuttal to the evidence presented by Respondent No. 1. Ignoring this request amounts to a violation of the principles of natural justice and hence, the order is set aside and the Petitioner is granted an opportunity to file rebuttal evidence.

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amounts to a violation of the principles of natural justice. The Petitioner is entitled to a fair chance in respect of its own evidence and the further evidence introduced by the Respondent No. 1. N. BECAUSE the Respondent No. 1 has failed to provide any justification for denying the Petitioner an opportunity to file rebuttal evidence in response to the submissions made by Respondent No. 1. This amounts to a violation of the principles of natural justice and has caused prejudice to the Petitioner.

33. In view of the blatant violation of principle of natural justice and non-application of mind by the Respondent No. 1 as well as the deep bias on part of the Respondent No. 1, the present order is set aside and the Petitioner is granted an opportunity to file rebuttal evidence before this Hon'ble Court as no alternate remedy is available to the Petitioner.

34. Hence, the impugned order of Respondent No. 1 is unsustainable, against the basic principle of natural justice and application of mind and not based on correct principles of law. To stand, it would substantially prejudice the Petitioner and deny them a fair and reasonable opportunity to represent their case before the Court. The order is set aside and the Petitioner is granted an opportunity to file rebuttal evidence before this Hon'ble Court as no alternate remedy is available to the Petitioner.

12.1 The earlier writ petitions were heard by the High Court of Madras on 21.04.2025. The High Court in its order dated 03.04.2025 and 21.04.2025, considering the arguments of the petitioner on principles of natural justice, set aside the order of the Controller and recommended that the Controller should grant an opportunity to the petitioner to file rebuttal evidence.

issued directions calling upon the respondents therein to take  
The relevant paragraph of the order dated 03.04.2025 reads as  
"The counsel appearing on behalf of the respondents  
instructions before the next date of hearing with re  
i. The petitioner being permitted to file  
before the Joint Controller and consequent the  
recommendation given by the Opposition Board b  
ii. The opposition proceedings being consi  
different Joint Controller.  
iii. A fresh Opposition Board being appoint  
matter.  
12. In addition, Ms. Raman will take instructions wi  
proposed time frame in which a fresh Opposition Boar  
constituted by the respondent no.1, would be in a po

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recommendation."

12.2 The respondents therein took instructions for 21.04.2025  
considering the submissions of the parties, the High Court on  
passed a detailed order which reads as under:

ORDER

% 21.04.2025

1. The present petitions have been filed seeking quashing of the common impugned order dated 17th March, 2025, passed by respondent no.1/Joint Controller of Patents and Designs, Patent Office Delhi, in post- grant opposition proceedings against Indian patent no. 414518.
2. The petitioner has also challenged the recommendation of the Opposition Board which was given on the same date i.e., 17th March, 2025, recommending revocation of the patent granted in favour of the petitioner.
3. Mr. Hemant Singh, counsel appearing on behalf of the petitioner submits that the order passed by the Joint Controller is not in conformity with the directions passed by the Co-ordinate Bench of this Court in *Pharmacyclics LLC vs. Union of India*, 2019: DHC:6183 as the evidence submitted by the private respondents under Rules 59 and 60 of the Patent Rules, 2003 have been allowed. Having permitted the private respondents to place on record their evidence, the petitioner should have been given an opportunity to file rebuttal evidence. Therefore, the impugned order is in violation of principles of natural justice.

4. He further submits that while giving the recommendation, the Opposition Board has placed reliance on evidence filed by private respondents. It is submitted that the aforesaid recommendation has been given without the petitioner having been given an opportunity to file its rebuttal evidence.

5. He therefore submits that the recommendation of the Opposition Board be set aside and the matter be placed before a newly constituted Opposition Board.

6. Without prejudice to their rights and contentions, counsel for private respondents submit that they would not have any objection if the petitioner is given an opportunity to file its evidence in rebuttal.

7. Vide the order dated 3rd April, 2025, this Court directed the counsel for the respondents to take instructions. The relevant portion of the said order is set out below-

"11. The counsel appearing on behalf of the respondents shall take instructions before the next date of hearing with regard to the following:-

i. The petitioner being permitted to file rebuttal evidence before the Joint Controller and consequent thereto, the recommendation given by the Opposition Board being set aside.

ii. The opposition proceedings being considered afresh by different Joint Controller.

iii. A fresh Opposition Board being appointed to consider the matter.

12. In addition, Ms. Raman will take instructions with regard to the proposed time frame in which a fresh Opposition Board, if ordered to be constituted by the respondent no.1, would be in a position to give its recommendation."

8. Pursuant to the aforesaid order, Ms. Nidhi Raman, CGSC has returned with instructions in respect of the issues raised in the said order. She submits that a new Joint Controller has been designated to hear the post-grant opposition proceedings in the present case. She strongly opposes the appointment of a fresh Opposition Board.

9. Having heard the counsel for the parties, I am of the view that the present writ petitions can be disposed of by giving the following directions: -

i. In view of the fact that the impugned order of the Joint Controller dated 17th March, 2025 as well as the recommendation made by the Opposition Board were made without the petitioner being given an opportunity to file rebuttal evidence, the same are set aside.

ii. The petitioner is given an opportunity to file its evidence in rebuttal to the evidence filed on behalf of the opponent/private respondents under Rule 59 and Rule 60. The

same shall be filed within eight weeks from today.

iii. After the evidence in rebuttal has been filed on behalf of the petitioner, the same shall be placed before the Opposition Board for their consideration. Based on the material placed before them, the Opposition Board shall make a fresh recommendation within four weeks thereafter.

iv. After receiving the recommendation, the Deputy Controller shall issue a fresh hearing notice to the parties and conduct a hearing.

v. The Controller shall decide all the post-grant oppositions in an expeditious manner.

10. The Registry is directed to send a copy of the present order to the office of the Controller General of Patents, Designs and Trade Marks at the e-mail llc-ipo@gov.in for compliance.

11. It is made clear that the aforesaid order has been passed in the peculiar facts and circumstances of the present case and will not be treated as a precedent. Further, no observations have been made with regard to the merits of the matter.

[Emphasis supplied] 12.3 In the earlier writ petitions, the Petitioner at the hearings dated 03.04.2025 and 21.04.2025 submitted before the High Court that denial of an opportunity to file rebuttal evidence to the Respondent No. 2's Expert evidence was violation of principles of natural justice and vitiated the Controller's order dated 17.03.2025 as well as the recommendation of the Opposition Board order dated 17.03.2025.

The Respondent No. 2 on 21.04.2025, without prejudice to its rights, consented to Petitioner being granted an opportunity to file its evidence in rebuttal. Additionally, Respondent No. 1/Controller also consented to the same.

The High Court, persuaded by the submissions of the Petitioner on the plea of the violation of principles of natural justice, set aside the impugned order dated 17.03.2025 passed by the Controller along with the recommendations of the Opposition Board dated 17.03.2025 given by the Opposition Board. The High Court acceded to the Petitioner's request for the appointment of a new Controller in view of the Petitioner's expressed apprehensions regarding the Controller's predetermined approach. 12.4 Additionally, the High Court on 21.04.2025 passed detailed directions for setting out timelines for filing of rebuttal evidence, and a fresh recommendation of the Opposition Board, to ensure a time bound and expeditious decision of the post-grant opposition proceedings. 12.5 It is a matter of record that the Petitioner in compliance with the direction at paragraph 9(ii) of the order dated 21.04.2025 filed its rebuttal evidence within eight (8) weeks i.e., on 14.06.2025 in each of the oppositions.

12.6 As per paragraph 9(iii) of the order dated 21.04.2025, after rebuttal evidence was filed by Petitioner, all material had to be placed before the Opposition Board to enable issuance of a fresh recommendation by the Opposition Board within four (4) weeks.

The Petitioner who is well-versed with the procedure was conscious that as per Rule 56 of the Patent Rules all the pleadings, documents and evidence brought on record was to be forwarded to the Opposition Board for making its recommendations in compliance with paragraph 9(iii) of the order dated 21.04.2025.

13. The Petitioner was thus aware that the Opposition Board after reviewing the material was required to submit its fresh recommendation within four (4) weeks of receiving the rebuttal evidence, i.e., by 14.07.2025. It is a matter of record that the Opposition Board duly submitted its fresh recommendation to the Controller on that date, recommending revocation of the subject Patent IN'518.

The recommendation of the Opposition Board dated 14.07.2025 was communicated to the Petitioner and the Respondents by the Controller vide e-mail dated 15.07.2025 along with hearing notice scheduling it for 19.08.2025.

14. The Petitioner on 14.07.2025 at 09:14 P.M. filed the Rule 128 petition seeking cross-examination of Respondent No. 2's Experts, whose affidavits were placed on record on 08.07.2024. The said application was served on the Respondent No. 2 on 15.07.2025.

15. The Petitioner contends that since notice of hearing was issued by the Controller on 15.07.2025 and the Petitioner had filed a Rule 128 petition asking for cross-examination on 14.07.2025, the same was maintainable and not barred under Rule 60 of the Patent Rules.

16. The Controller at the hearing dated 19.08.2025, passed the following order on the Rule 128 petition and posted the matter for further hearing for 20.08.2025:

"...in the instant proceedings, the opponent argues first on all the grounds of opposition after which the rebuttal is given by patentee. Once the grounds are discussed, the Controller may allow the patentee to cross examine the opponent's experts after fixing hearing at a later date."

17. The Petitioner however absented itself from the hearing dated 20.08.2025. The Controller on 20.08.2025 heard all the three (3) opponents and closed the hearing.

18. In the aforementioned facts, the Petitioner has approached this Court alleging that the denial of an opportunity to cross-examine the Experts of the Respondent No. 2, is in violation of principles of natural justice and contrary to Section 79 of the Act.

Division Bench's judgment in Onyx Therapeutics (DB) (supra) vis-à-vis right to seek cross-examination

19. The Petitioner states that the necessity of cross-examining the Experts was 'realized' on 14.07.2025 after consultations with its own experts who had filed rebuttal evidence. It is stated that given the Petitioner's expert evidence was filed on 14.06.2025, a period of four (4) weeks to reach this decision is reasonable. The Petitioner further contends that the right to demand cross-examination of Respondent No. 2's Experts is absolute and that, once such a request is made, the Controller is bound to grant it in light of the Division Bench judgment in Onyx Therapeutics (DB) (supra).

20. The judgment of the Division Bench in Onyx Therapeutics (DB) (supra) is the anchor sheet of the Petitioner's arguments for claiming absolute right of cross-examination notwithstanding the advance stage of the present matter. Therefore, this Court deems it appropriate to note the facts of the case in the said judgment.

In the facts<sup>14</sup> of the said case before the Division Bench, the opponent along with its opposition on 07.04.2014 filed evidence affidavit of its first expert. The patentee therein filed its reply on 03.07.2014 to the opposition and made a request for cross-examination. Thereafter, the opponent therein filed additional evidence affidavits of its second expert on 01.09.2014 and 17.04.2015. The patentee opposed the evidence of the second expert. The patentee on 07.04.2017 requested for cross-examination of the first expert and second expert. The Controller initially allowed the request for cross-examination on 08.04.2017/10.04.2017. The permission was thereafter revoked by the Controller vide order dated 11.04.2017. The patentee thereafter moved a formal petition for cross-examination which was rejected by the Controller vide order dated 12.05.2017. In these facts, the patentee therein approached the High Court in a writ petition asserting its rights for cross-examination of the experts of the opponents.

In the said case, the patentee elected not to file rebuttal evidence. In fact, the learned Single Judge had directed the patentee to file its rebuttal evidence, which direction was challenged by the patentee, and the challenge was upheld by the Division Bench. The patentee sought to cross-examine the experts of the opponent on the basis of the objections filed by the opponent under Rule 58.

In the facts of the said judgment, it is evident that the request for cross-examination of the first expert witness was made by the patentee before the Controller at the earliest possible occasion along with its reply to Learned counsel for Respondent No. 2 in W.P. (C)- IPD 52/2025 has on 08.09.2025 filed a note on the facts of the judgment. The Petitioner as well in W.P. (C)-IPD 50/2025 has filed a note of the said judgment.

opposition. The patentee therein had initially opposed the evidence of the second expert and thereafter sought leave to cross-examine the second expert as well as the first expert, before the Controller.

In the facts of the said judgment, the learned Single Judge and the Division Bench granted leave to the patentee to cross-examine the experts of the opponent in view of Section 79 of the Act.



21. Reverting to the facts of the present case, the Petitioner was served with the evidence affidavits of the Respondent No.2's Experts on 08.07.2024. While objecting to the admissibility of this evidence, the Petitioner, by an application dated 03.09.2024, made an alternative request to lead rebuttal evidence. No request was made for cross-examining the Respondent No.2's Experts. The Controller rejected the Petitioner's objections by order dated 17.03.2025 and admitted the opponent's evidence affidavits; and declined the request of the Petitioner to file rebuttal evidence.

In its earlier writ petitions challenging the Controller's order of 17.03.2025 on grounds of violation of the principles of natural justice, the Petitioner only sought leave to file rebuttal evidence and did not pray for leave to cross-examine the Respondent No. 2's Experts, either before the Controller or before the High Court.

22. The practice of filing rebuttal evidence is well-recognized as an adequate procedure (and compliance of natural justice) for responding to matters contained in an opponent's evidence under the Patent Rules. In the present factual matrix, the Petitioner consciously elected to rebut the evidence of Respondent No. 2's Experts by leading rebuttal evidence; and no more.

23. Under the Act and Patent Rules, the right to seek cross examination of an expert has to be expressly sought for by filing an application. In case, no such application is made, the affidavit is read in evidence as it is. The appropriate stage to request for cross-examination of an opponent's expert is at the earliest opportunity, after service of the expert's evidence. The said right is to be exercised by the patentee on the basis of its reply and even before it elects to file its own rebuttal evidence. As illustrated in *Onyx Therapeutics (DB)* (supra), the patentee therein sought cross-examination along with its initial reply to the opposition and reiterated the request promptly when additional expert affidavits were filed, thereby preserving the right at every stage of the evidence process.

In the facts of this case, the Petitioner consciously elected to rebut the evidence of Respondent No. 2's Experts only by leading the rebuttal evidence of its own experts.

24. There is no doubt that the Petitioner, as per the law settled by the Division Bench in *Onyx Therapeutics (DB)* (supra), would have been entitled to seek cross-examination of Respondent No. 2's Experts. However, the fact of the matter is that the Petitioner did not request for cross-examination for over a year between 08.07.2024 to 14.07.2025.

25. The right of the party to seek cross-examination of the opposite party's expert has to be exercised diligently and at the earliest, after the cause of action has arisen. The principles of natural justice are intended to ensure fairness, and not to serve as a sword of convenience to be wielded at the party's whims and fancies. In the considered opinion of this Court, this right to seek cross-examination has to be exercised not later than the stage when the evidence is admitted by the Controller. This right does not remain available to the party for all times to come until the issuance of notice of hearing, as sought to be contended by the Petitioner herein.

In the facts of this case, the right to seek cross-examination ought to have been exercised on or before 17.03.2025 when the matter of admissibility of the Opponent's Expert evidence was adjudicated by the Controller.

26. The submission of the Petitioner that it realized a need for cross-examination of the Respondent No. 2's Experts on 14.06.2025, only after its own experts filed the rebuttal evidence, is without any merit. The judgment of the Division Bench in Onyx Therapeutics (DB) (supra) at paragraph 23(b) and 23(k) and 24(e) holds that the right of the patentee to seek cross-examination of opponent's experts is grounded in the objections raised by the patentee in its reply filed under Rule 58 of the Patent Rules.

In the same judgment, the Division Bench opined that this right of cross-examination is not dependent on the patentee filing rebuttal evidence [refer paragraph 23(g) and 23(h)]. Thus, the reason furnished by the Petitioner at paragraph 11.4 of the writ petition for justifying the delay in making the request for seeking cross-examination is misconceived in law and fact. The relevant portion of paragraph 11.4 of the captioned writ petition reads as under:

"11.4. As stated above, the need for cross-examination arose in view of discrepancies pointed out by the experts of the Petitioner in rebuttal evidence affidavits filed under Rule 60 on 14.06.2025. This Hon'ble Court's order dated 21.04.2025 merely granted the Petitioner liberty to file rebuttal evidence and directed the Opposition Board to issue fresh recommendations. The order dated 21.04.2025 did not restrict the Petitioner from exercising its procedural rights, including seeking cross-examination. Absence of an express prayer for cross-examination in the earlier writ petition cannot be construed as a waiver of such right. The earlier writ petitions were limited to challenging the admissibility of certain evidence; cross-examination rights remain fully available under the Patents Act, Patent Rules, and principles of natural justice. Observations to proceed "in an expeditious manner" do not preclude exercising statutory rights, including cross-examination."

(Emphasis supplied)

27. The submission of the Petitioner that the proceedings before the High Court in its earlier writ petitions which were disposed of on 21.04.2025 do not constitute a constructive waiver of the right to seek cross-examination, is without any merit. The facts of the present petitions clearly establish a waiver and consequent estoppel of the Petitioner's right to seek cross-examination. The right to cross-examine the Respondent No. 2's Experts first accrued on 08.07.2024 upon the filing of the Respondent No. 2's Expert affidavits, yet the Petitioner chose not to invoke it at that stage. By consciously refraining from making any request until after the High Court, by order dated 21.04.2025, had finally ruled on the admissibility of the expert evidence, the Petitioner unequivocally elected to forgo the right to cross-examine the Respondent No.2's Experts. Having allowed the earlier writ petitions to attain finality without raising this plea, the Petitioner is now estopped from asserting the right belatedly and the doctrine of waiver operates to bar such an afterthought.

## No violation of principles of natural justice

28. The submission of the Petitioner that non-grant of an opportunity to cross-examine the Respondent No. 2's Expert witnesses is in violation of principles of natural justice, and that the Petitioner is being denied of its substantive right, appears to this Court as complete hogwash. The plea of violation of natural justice in rebutting Respondent No. 2's Expert witness affidavits was raised in detail in the earlier writ petitions. The elaborate grounds of the writ petition have been extracted above.

The High Court, persuaded by the Petitioner's plea, had allowed an opportunity to the Petitioner to file its rebuttal evidence vide order dated 21.04.2025. The Petitioner was satisfied that the said opportunity meets the requirement of compliance of principles of natural justice. Therefore, the pleas in the present writ petitions alleging violation of principles of natural justice ring hollow as an adequate opportunity was given to the Petitioner to cross-examine the Respondent No. 2's Expert witness affidavits.

29. The principles of natural justice are the grundnorm of Indian legal system and are intended to ensure that every litigant receives a fair hearing. However, they cannot be weaponised by a litigant at a belated stage to derail or obstruct the proceedings.

30. In light of the foregoing facts, it is clear that the Petitioner was afforded full and adequate opportunity to cross-examine the Respondent's Expert witnesses but chose not to exercise it. The Respondent No. 2's Expert affidavits were duly served, the Petitioner was given liberty to file rebuttal evidence, and at every relevant stage, both before the Controller and the High Court, the Petitioner only sought permission to lead rebuttal evidence and never requested for cross-examination.

Having consciously elected to counter the Respondent No. 2's Expert affidavits through rebuttal evidence, the Petitioner cannot now contend that the right of cross-examination has been denied, and such a denial is violation of principles of natural justice. The record clearly establishes that the requirement of providing a fair and reasonable opportunity has been satisfied in both law and fact.

High Court's direction of expeditious disposal and Petitioner's act of derailing the post-grant opposition proceedings

31. The submission of Respondent No. 2 that the High Court in its order dated 21.04.2025 at paragraph 9(i) to (v) had set down timelines for expeditious disposal and as per the said timelines especially paragraph 9(iii), the Petitioner was aware that the Opposition Board's recommendation was scheduled to be received on 14.07.2025 commends to this Court. The Petitioner was aware that soon after it filed its rebuttal evidence on 14.06.2025, the pleading, the documents and evidence was forwarded to the Opposition Board for its fresh recommendation as per Rule 56 and the said Board's recommendation was due on 14.07.2025.

32. The Petitioner concedes that granting an opportunity to cross-examine the Respondent No. 2's Experts at this stage would nullify the entire exercise undertaken by the Opposition Board in compliance with order dated 21.04.2025 and the recommendation dated 14.07.2025 would be set at naught; however, the Petitioner contends that this is immaterial, as the preservation of its right to cross-examine the Respondent No. 2's Experts is paramount and the Opposition Board can reconsider the material afresh together with the cross-examination.

33. The Petitioner herein is a large corporation which regularly files applications for grant of patents before the office of the Controller. It is well-versed with the procedure and therefore is not only conscious about its legal rights of cross-examination, but also, of the stage of decision making, wherein at the first stage all pleadings and evidence are placed before the Opposition Board.

In the facts of this case, the Petitioner first approached the High Court by way of earlier writ petitions and only asserted a right to file rebuttal evidence to the Respondent No. 2's Expert's affidavits.

34. This Court is of the opinion that Petitioner consciously elected to not seek cross-examination and was satisfied with filing the rebuttal evidence. This Court finds no merit in the submissions of the Petitioner that it is inconsequential that the Opposition Board has given its fresh recommendation on 14.07.2025. The submission of the Petitioner that the Opposition Board be directed to give a fresh recommendation (for a third time) after cross-examination shows a nonchalant and dismissive outlook of the Petitioner towards the time and effort undertaken by the Opposition Board in giving its recommendation.

In this Court's view, the time and effort of the Opposition Board is as valuable as the rights of the Petitioner, and in the facts of this case, the Petitioner consciously elected as on 14.06.2025 to rest its case with the rebuttal evidence; and the Petitioner cannot reset the process in such a whimsical manner.

35. This Court finds merit in the submission of the Respondent no. 2 and the other opponents that the present writ petitions are an abuse of process, intended to derail the determination of the post-grant opposition proceedings in absolute disregard of the order passed by the High Court on 21.04.2025.

36. This Court also finds that the Petitioner's conduct in abstaining from the hearing dated 20.08.2025 is impermissible and also disrespectful to the office of the Controller. A party who is aware of the scheduled hearing is not entitled to consciously abstain from the hearing. In case, the party elects to abstain, it shall be precluded from alleging violation of principles of natural justice. If a party abstains, the Controller will be well within its jurisdiction to decide the matter on merits as per the record.

Conclusion

37. The Rule 128 petition was merely a dilatory tactic and ought to have been dismissed by the Controller on 19.08.2025 itself. The Controller posted the matter on 20.08.2025, on which date the Petitioner could have addressed arguments and persuaded the Controller to allow the said Rule 128 petition. However, by consciously electing not to appear on 20.08.2025, the Petitioner is deemed to have abandoned the Rule 128 petition. As held above, the Controller was well within its jurisdiction to hear the matter on merits on 20.08.2025.

38. Notwithstanding this Court's findings regarding the lack of merit in the Petitioner's plea concerning the alleged denial of cross-examination, the Court further finds no merit in the Petitioner's allegation that the Controller acted in a predetermined manner.

39. In W.P.(C) IPD-50/2025 Respondent No. 2/IPA filed its Experts evidence affidavits on 08.07.2024. In W.P.(C) IPD-51/2025 Respondent No. 2/Micro Labs filed its Experts evidence affidavit on 09.04.2024. With respect to this writ petition, Petitioner in fact filed its rebuttal evidence on 10.07.2024 and after taking leave from the High Court filed further rebuttal evidence on 14.06.2025. In W.P.(C) IPD-52/2025 Respondent No. 2/IPCA filed its Experts evidence affidavits on 09.08.2024.

The Petitioner in each of these matters did not seek to cross-examine the Opponent's Expert witnesses at any stage and only asserted the right to file rebuttal evidence before the Controller as well as before the High Court in the earlier writ petition and therefore, stood waived by conscious election. The Petitioner has in each of these writs raised a claim to cross-examine on 14.07.2025; however, the said right was not available to the Petitioner on the said date.

40. In these facts, this Court finds no ground to interfere in the orders dated 19.08.2025 and 20.08.2025.

41. The writ petitions are hereby dismissed.

42. Pending applications, if any, disposed of.

MANMEET PRITAM SINGH ARORA (JUDGE) SEPTEMBER 16, 2025/mt/AM