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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.06.2024	Pronounced on: 28.06.2024

CORAM:

THE HON`BLE MR.JUSTICE P.B.BALAJI

CMA (PT) No.10 of 2023

Green Cross Holdings Corporation,
Represented by its constituted Power of Attorney
Mr.R.R.Nair,
107, Ihyeon-ro 30 beon-gil, Giheung-gu,
Yongin-si, Gyeonggi-do 16924,
Republic of Korea.
Nationality: Republic of Korea. .. Appellant

..Vs.

The Controller of Patents and Designs,
Government of India, Patent Office,
Intellectual Property Rights Building,
GST Road, Guindy,
Chennai - 600 032. .. Respondent

Prayer: This Civil Miscellaneous Appeal filed under Section 117-A of the Patents Act, 1970 praying this Court to call for records of the respondent culminating in the impugned order dated 02.02.2023, rejecting the Grant of Patent and set aside the same and consequently direct Grant of the Patent in respect of the appellant's Application No.201747046586.

For Appellant : Mr.S.Shivathanu Mohan for

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M/s.S.Ramasubramaniam & Associates

For Respondent : Mr.K.Subbu Ranga Bharathi
Central Government Standing Counsel

J U D G M E N T

This appeal is preferred challenging the order dated 02.02.2023, rejecting the grant of patent and to consequently direct grant of patent in respect of the appellant's Application No.201747046586.

2.I have heard Mr.S.Shivadhanu Mohan for M/s.S.Ramasubramaniam and Associates and Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel for the respondent. I have also gone through the records.

3.The learned Counsel for the Appellant would submit that the appellant has applied for a patent for a method of preparation of Plasma-derived Hepatitis B Human Immunoglobulin Agent. The application was filed on 26.12.2017 and the first examination report was issued by the respondent on 31.12.2019. The appellant thereafter filed a reply to the objections raised in the first examination report, addressing all the objections of the respondent and a notice of hearing was issued and as scheduled on 21.07.2020, the hearing took place. The appellant also filed

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his written submissions on 03.08.2020 and thereafter the impugned order came to be passed on 02.02.2023.

4.The learned counsel for the appellant would submit that the grounds on which the patent application of the appellant has been rejected are by invocation of Sections 2(1)(j)(a) and Sections 10(4)(a) to 10(4)(c) of the Indian Patents Act, 1970. According to the learned counsel for the appellant, the objections raised by the respondent in the First Examination Report have all been duly addressed and without adverting to the same, the impugned order has been passed by the respondent. The learned counsel for the appellant would take me through the impugned order itself to fortify his contentions in this regard.

5.Per contra, the learned counsel for the respondent would submit that the order rejecting the appellant's patent application is well reasoned and does not require any interference and he would therefore seek for dismissal of the appeal.

6.I have carefully considered the rival submissions advanced by the learned counsel on either side and I have also gone through the records.

7.I find that though four prior arts were cited, however, the

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respondent, while deciding the application of the appellant in and by the impugned order, has not discussed the prior arts with specific reference to the method claimed to be invented by the appellant. The respondent, without even discussing the prior arts documents, namely D1 to D4, has summarily rejected the submissions of the applicant's agent that the application lacks inventive step. Further, it is seen from the records that the Patent Controller has arrived at a conclusion that the technical features of the claims are foreseeable by a person skilled in the art and therefore, there is no particular technical feature which can be claimed to be an inventive step under section 2(1)(j)(a) of the Indian Patents Act, 1970. Unfortunately, I find that such a conclusion is not arrived at by way of supplying any justifiable reasons.

8.Further, the Patent Controller has stated that no data has been provided regarding purity to show how the application is better compared with prior arts, especially, with regard to Chromatography (anion and cation), pH and salt concentration adjacent. This finding is also erroneous since the applicant has provided data by way of a tabular column along with his written submissions which has not been taken into account by the Patent Controller. Even with regard to the finding of the Controller that method in claim 1 lacks technical disclosure with method steps, I

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find the steps have been specifically set out by the appellant in the claim dated 26.12.2017 itself.

9.For all the above reasons, I deem it a fit case to be remitted to the respondent for fresh consideration, in accordance with law and after affording a fair opportunity of hearing to the appellant.

10.In fine, the appeal is allowed and the matter is remitted to the respondent to decide the patent Application No.201727046586 afresh, in accordance with law, after affording an opportunity by way of a fresh hearing to the appellant. In order to avoid embarrassment to parties, a different Patent Controller shall be assigned for the scrutiny of the patent application and such exercise shall be completed within a period of four months from the date of receipt of copy of this judgement. There shall be no order as to costs.

28.06.2024

Index : Yes/No
Speaking/Non-speaking order
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P.B.BALAJI,J.

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To

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