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

% *Date of decision: 26th November, 2024*

\+ C.A.(COMM.IPD-PAT) 63/2024

SYNGENTA CROP PROTECTION AG .....Appellant

Through: Mr. Pravin Anand and Mr. Ashutosh Upadhyaya, Advocates.

versus

ASSISTANT CONTROLLER OF PATENTS .....Respondent

Through: Mr. Ankur Mittal, Mr. Rakshit Ranjan and Mr. Aviraj Pandey, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present appeal has been filed under Section 117A of the Patents Act, 1970 (hereinafter the 'Patents Act') and is directed against the impugned order dated 5th April, 2024 passed by the Asst. Controller of Patents and Designs (hereinafter the 'Controller'), whereby the Indian Patent Application No. 202117035647 titled *"Methods of Controlling or Preventing Infestation of Rice Plants by the Phytopathogenic Microorganism Gibberella Fujikuroi"* (hereinafter the 'subject patent application') has been refused.

BRIEF FACTS

2. Brief facts necessary for deciding the present appeal are set out below:

2.1. The appellant [Syngenta Crop Protection AG] is a corporation organized and existing under the laws of Switzerland. It is stated that the appellant is a globally recognized entity in the agricultural sector which is

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dedicated to enhancing global food security by equipping farmers with innovative crop solutions and enabling efficient utilization of resources.

2.2. It is averred that the appellant has several patented inventions to its credit and has launched products in various agricultural segments, which have significantly advanced the agricultural industry. It is further averred that the contributions of the appellant are known to have improved the farming practices globally in a comprehensive and impactful manner.

2.3. The appellant had filed the subject patent application on 6th August, 2021 with the Patents Office, Delhi. The bibliographic details of the application are given below:

Indian Application No.	202117035647
Applicant	SYNGENTA CROP PROTECTION AG
Priority Application No. & Date	EP 19153262.1; Dated January 23, 2019
International Application No. & Filing Date	PCT/EP2020/051310 dated January 20, 2020
International Publication No. & Date	WO 2020/152 117A1 July 30, 2020
PROSECUTION	
India Filing Date	August 06, 2021
Date of publication u/s 11A	November 19, 2021
Request for Examination	January 20, 2023
First Examination Report Issue Date	February 21, 2023
First Examination Report Response Filed	August 08, 2023

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on	
Hearing Notice Issued Date	November 15, 2023
Date of Hearing	March 15, 2024
Written Submissions under Section 14 filed by Applicant on	March 26, 2024
Controller Decision	April 05, 2024
Appeal due date	July 05, 2024

2.4. The subject patent application was filed as a national-phase application under the Patent Cooperation Treaty ('PCT') claiming priority date of 23rd January, 2019.

2.5. A request for examination of the said application was filed by the appellant on 20th January, 2023 and the First Examination Report (hereinafter referred to as 'FER') was issued on 15th November, 2023.

2.6. In reply to the objections raised in the said FER, the Appellant's Agent submitted a detailed response *via* letter dated 8th August, 2023.

2.7. Thereafter, a hearing was scheduled for 15th March, 2024 and the following objections were communicated to the appellant *via* the said hearing notice:

> ***"Invention u/s 2(1)(j)***
> *1. Claims 1-11 relate to the method of agriculture "method of CONTROLLING OR PREVENTING INFESTATION OF RICE " which is the method of agriculture hence the said claim lacks industrial applicability.*
> ***Non-Patentability u/s 3***
> *1. Claims 1-11 relate to the method of agriculture "method of CONTROLLING OR PREVENTING INFESTATION OF RICE " which is the method of agriculture hence the said claim attract section 3h of the Patents Act.*
> ***Other Requirement(s)***
> *1. If any amendments in the instant application violate section 59 of the Patents Act shall be treated as null and void.*"

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2.8. The hearing was attended and the written submissions along with Claims 1-11 were filed by the appellant before the Indian Patent Office on 26th March, 2024.

3. The impugned order was passed by the Patents Office on 5th April, 2024 rejecting the subject patent application on the ground that the claims of the subject patent application fall within the scope of the words 'method of agriculture' under Section 3(h) of the Patents Act.

4. The impugned order holds that the process of treating fungus infection in crop of rice plant would fall within the scope of fundamental agriculture practices that are carried out by farmers and therefore, the invention in the subject patent application cannot be considered as a technical solution to agriculture challenges. Accordingly, the claims as filed were refused under Section 3(h) of the Patents Act. The relevant extracts from the impugned order are set out below:

> "*In the present application, the subject matter of amended claims 1-10 relates to a method of controlling or preventing infestation of a plant by the phytopathogenic microorganism Gibberella fujikuroi, comprising applying to a crop of rice plants, the locus thereof, or propagation material thereto, a compound according to formula (I). Claim 11 relates to the method for growing rice plants comprising applying or treating rice plants or a propagation material thereof with a compound as claimed in any one of claims 1 to 10, however claims 1-10 did not address the compound itself; rather, they addressed the application of the compound. As a result, dependency of claim 11 on claims 1-10 is not seems correct.* ***Further, claim 11 clearly fall section 3(h) for claiming the method for growing rice plants comprising applying or treating rice plants or a propagation material thereof with a compound as claimed in any one of claims 1 to 10. The process of treating fungus infection in a crop of rice plants by applying a compound of formula (I) falls under the scope of fundamental agricultural practices that are typically carried out by farmers and cannot be seen as distinct from agriculture. According to the claims, the invention***

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is utilized on rice plants, and a is to apply or spray chemicals with fungicidal activity to manage the pathogen. The applicant has not shown in the specification that applying a compound to plants, or seeds calls for any particular knowledge or experience, or that it must be done by a person who is not a farmer. Thus, the claimed method does not comprise any steps which indicate that it may not be considered as a method of agriculture. Further, the process of treating fungus infection in a crop of rice plants by applying a compound of formula (I) is not considered any technical solution to agricultural challenges only this is purely agricultural method which are typically carried out by farmers in their regular practice. Therefore, claims 1-10 & 11 in the instant application are not allowed under section 3(h) of the Patents Act."

[Emphasis Supplied]

SUBMISSIONS BY THE PARTIES

5. At the outset Mr. Pravin Anand, learned counsel appearing on behalf of the appellant seeks to amend the Claims 1-10 of the subject patent application and give up the Claim 11 of the subject patent application. In this regard, reliance is placed on the judgment passed by this court in ***Societe Des Produits Nestle SA* v. *The Controller of Patents and Designs*[1].**

6. In addition, following submissions have been made by Mr. Anand on behalf of the appellant:

6.1. The respondent has incorrectly applied the provisions of Section 3(h) of the Patents Act to the method of 'treatment of plants' in the present case. The present invention relates to '*method of controlling or preventing infestation of a plant by the phytopathogenic micro-organism Gibberella fujikuroi*', by applying the same to the crop of rice plants.

6.2. Attention of this Court is drawn to the amendments carried out in Section 3(i) of the Patents Act on 20th May, 2003 in terms whereof, the words

[1] 2023 SCC OnLine Del 582

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'*treatment of plants*' were deleted. It is submitted that the intention of the legislature in carrying out the aforesaid amendment was that the methods relating to 'treatment of plants' would not be hit by the bar of Section 3(i) of the Patents Act and would thus become patentable. In this regard, reliance is placed on the judgment passed by the Calcutta High Court in ***Decco Worldwide Post Harvest Holdings B.V. & Anr.* v. *The Controller of Patents and Designs & Anr*[2].**

6.3. The term 'agriculture' has been defined differently across various statutes such as the National Bank for Agriculture and Rural Development Act, 1981, the Agriculture Produce (Grading and Marking) Act, 1937, Tamil Nadu Protected Agricultural Zone Development Act, 2020 and the Telangana Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006. Therefore, there cannot be any universal definition of the term 'agriculture' and the definition has to be seen in the context in which it is used.

7. Per Contra, Mr. Ankur Mittal, Advocate appearing on behalf of the respondent has made following submissions:

7.1. The impugned order correctly holds that the subject invention is hit by the bar under Section 3(h) of the Patents Act as the subject matter of the patent application is a method of agriculture.

7.2. The word 'agriculture' used in Section 3(h) of the Patents Act has to be given a broad and liberal meaning. Reliance in this regard is placed upon the definition of 'agriculture' given in the Black's Law Dictionary as well as the Central Agricultural University Act, 1992, where the term 'agriculture' has been given a wide meaning to include the prevention of diseases in plants.

[2] 2023 SCC OnLine Cal 1140

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7.3. There is no infirmity in the finding of the Controller that the subject invention relates to the traditional methods of agriculture.

ANALYSIS AND FINDINGS

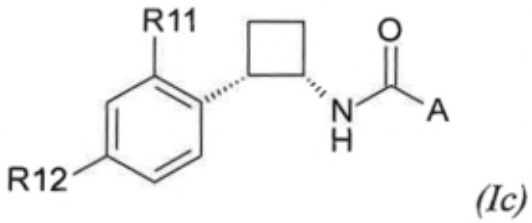
8. I have heard the learned counsel for the parties and examined the records of the case.

9. Before delving into the merits of the case, it may be relevant to decide the amendments sought by the appellant. The appellant seeks to amend the Claims 1-10 of the subject patent application and in addition wishes to give up the claim 11 of the subject patent application. The proposed amendment of the claims is reproduced below:

"Proposed Amendment in Claims

- *Previous claims 1-9 and 10 are deleted*
- *Previous claim 1 is merged with claim 10 to read the new proposed claim 1 as:*

1. *A method of controlling or preventing infestation of a plant by the phytopathogenic microorganism Gibberella fujikuroi, comprising applying to a crop of rice plants, the locus thereof or propagation material thereof, a compound according to formula (Ic):*



(Ic)

Wherein R11, R12 and A are as defined in the following table:

Compound	***A***	***R11***	***R12***
1	*2-trifluoromethyl-pyrid-3-yl*	*Cl*	*Cl*
2	*3-trifluoromethyl-pyrid-2-yl*	*Cl*	*Cl*
3	*3-trifluoromethyl-pyrid-2-yl*	*F*	*F*
4	*3-trifluoromethyl-pyrid-2-yl*	*Cl*	*F*
5	*3-chloro-pyrid-2-yl*	*Cl*	*Cl*
6	*2-methyl-pyrid-3-yl*	*Cl*	*Cl*
7	*2-trifluoromethyl-pyrid-3-yl*	*Cl*	*F*

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10. A reading of the as-filed claims of the subject patent application and the proposed amendment in the claims would suggest that the appellant is narrowing down the scope of the claims by deleting the Claims 2-9 and 11 of the subject patent application and by merging the Claims 1 and 10 to form the proposed claim.

11. Section 58(1) of the Patents Act empowers this Court to amend the patent claims. However, any amendment made under Section 58(1) is subject to Section 59 of the Patents Act. These provisions act as a 'check and balance mechanism' to ensure that no new subject matter is introduced and that the scope of the claims is not broadened. The consideration to be kept in mind is that the amended claims must remain consistent with the original claims and specifications.

12. In ***Societe Des Produits Nestle SA*** (supra) it was held that an amendment of a patent can be carried out at the appellate stage as well. The relevant portion is reproduced below:

> *" 30. **There is no provision in the Act, which specifically bars the amendment of a patent specification at the appellate stage. Amendment of patent applications and specifications are covered in Chapter X of the Act. Sections 57 to 59 of the Act are the provisions that govern the same.***
>
> ... .
>
> ***33. In view of the above, there is no specific bar for the amendment even at a subsequent stage. Only requirement under the Act is that the amendment has to fulfil the requirements under Section 59 of the Act and the consideration that has to be kept in mind is that the amended Claims are not inconsistent with the earlier Claims in the original specification**.*
>
> ... .

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> *36. Further, it is a settled position of law that an appeal is a continuation of the proceedings of the original court. The appellate jurisdiction involves a re-hearing on law as well as on facts. Reference in this regard may be made to a recent judgement of the Supreme Court in Ramnath Exports Pvt. Ltd. v. Vinita Mehta & Anr, (2022) 7 SCC 678.*
>
> ... .
>
> *39. Thus, in conclusion,* ***I observe that if the High Court, in appeal is considering the issue of grant of patent, it should necessarily have the same powers as given to the Controller under Section 15 of the Act, which includes power to require amendment. Further, the appellate proceedings challenging the refusal of grant of a patent, questions of facts need to be re-examined comprehensively and therefore, a liberal view has to be taken with regard to amendment of Claims."***

[Emphasis Supplied]

13. Having heard the learned counsel for the parties, in my considered view, the proposed amendments sought by the appellant do not alter the nature of the Complete Specification of the subject patent application. In fact, the amendments seek to narrow the scope of the claims.

14. In view of the above, I am inclined to allow the proposed amendments.

14.1. It is ordered accordingly.

15. Mr. Mittal submits that since the main ground of refusal in the impugned order was on the basis of Claim 11 which has now been given up by the appellant, the matter may be sent back to the Controller for a *de-novo* adjudication.

16. I am in agreement with the aforesaid submission and inclined to remand the matter back for a *de-novo* consideration by the Controller on the basis of the amendments to the claims carried out by the appellants. However, before I do so, I must clarify the position of law in respect of the scope of Sections

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3(h) and 3(i) of the Patents Act in respect of which extensive submissions have been made by the counsel for the parties.

17. To begin with, I shall examine the amendments carried out in Section 3(i) of the Patents Act on 20th May, 2003.

18. The table below illustrates the Section 3(i) of the Patents Act as it existed prior to the amendment and after the amendment:

Section 3(i) originally under The Patents Act, 1970	**Section 3(i) under The Patents Act, 1970 after amendment by Act 38 of 2002 (with effect from 20.05.2003)**
(i) Any process for the medicinal surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals ***or plants*** *to render them free of disease or to increase their economic value or that of their products.*	*(i) Any process for the medicinal surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.*

19. Prior to the amendment, Section 3 (i) of the Patents Act contained a bar on any process for the treatment of human beings or animals as well as plants so as to render them free of disease. By way of the aforesaid amendment, the legislature has chosen to specifically remove the expression '*or plants*' from the aforesaid Section 3(i) of the Patents Act. Clearly, the object of the amendment was to remove the bar on the patentability in respect of methods for the treatment of plants.

20. Now a reference may be made to the Section 3(h) of the Patents Act, which is set out below:

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> ***"3. What are not inventions**.—The following are not inventions within the meaning of this Act,—*
> *.... …. ....*
> *(h) a method of agriculture or horticulture; "*

21. The Calcutta High Court in ***Decco Worldwide (Supra),*** while examining a similar issue with regard to the patentability of the method of 'treatment of plants' in respect of the patent titled '[*a*] *Fungicidal treatment for Black Sigatoka'* which is a method of treatment of plant, held that the method of 'treatment of plants' does not fall under Section 3(h) of the Patents Act. The relevant observation of the Court as made in paragraph 11 of the judgment is set out below:

> *"**11. In passing the impugned order the Controller has failed to explain why the subject patent application falls within the category of "agriculture". In fact, no reasons have been given by the Controller as to why a method of treatment of plants to treat fungal diseases would fall within section 3(h) which covers traditional methods of agriculture. The Controller has also failed to explain why prevention of disease or treatment would fall under agriculture, when there is a separate provision under section 3(i) of the Act. It is evident from section 3(i) of the Act that, the treatment of plants do not fall within the purview of non patentability and the Manual being a mere guiding factor to the statutory provisions of the Act cannot have an overriding effect over the Act. Thus, the finding that the subject invention falls within the definition of "agriculture" does not deal with the submissions of the appellants**. In this connection, reliance was also placed by the appellants on the numerous inventions dealing with treatments of plants enumerated in the petition which have been totally ignored in the impugned order. Reasons are the foundation of any order passed by any judicial or quasi judicial authority. The main objective of providing reasons in any order is to provide clarity to the reader and to understand how and why and how the matter has been proceeded and dealt with by the Authority [Kranti Associates Private Limited & Anr. vs. Masood Ahmed Khan & Ors. (2010) 9 SCC 496, Uniworth Resorts Ltd. & Anr. vs. Ashok Mittal & Ors. 2007 SCC OnLine Cal 535 and Santanu Ghosh & Ors. Vs. The State Bank of India & Ors. (2013) 3 CLT 486]."*
>
> [Emphasis supplied]

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22. After recording the aforesaid findings, the Calcutta High Court remanded the matter to the Controller for fresh consideration.

23. I am respectfully in agreement with the aforesaid view taken by the Calcutta High Court. In my opinion, a method of treatment of plants would not fall under the purview of 'method of agriculture' as defined in Section 3(h) of the Patents Act. It cannot be the intention of the legislature to remove the bar on patentability in respect of the method of 'treatment of plants' under Section 3(i) of the Patents Act and yet include the same within the purview of 3(h) of the Patents Act.

24. Mr. Anand has handed over a copy of the order passed by the Controller pursuant to remand by the Calcutta High Court. The order reflects that the Controller went on to grant the patent to the applicant therein, noting that the method of plant treatment does not fall under the purview of Section 3(h) of the Patents Act.

25. The ***Manual of Patent Office Practice and Procedure*** (version 3.0) dated 26th November, 2019 also cites various examples of the subject matter that are excluded from patentability under Section 3(h) of the Patents Act, which are reproduced below:

> "***A method of agriculture or horticulture is not an invention.***
> *Examples of subject matters excluded from patentability under this provision are:*
> *a)* ***A method of producing a plant****, even if it involved modification of the conditions under which natural phenomena would pursue their inevitable course (for instance a greenhouse).*
> *b)* ***A method of producing improved soil*** *from the soil with nematodes by treating the soil with a preparation containing specified phosphorathioates.*
> *c)* ***A method of producing mushrooms.***
> *d)* ***A method for cultivation of algae.***
> *e)* ***A method for removal of weeds."***

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26. Clearly, none of the aforesaid exclusions would cover the methods of ‘treatment of plant’.

27. In view of the discussion above, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the Controller for a fresh examination in light of the legal position laid out above.

28. The appellant shall place before the Controller the amended claims within three weeks from today and the Controller shall proceed to examine the same in the light of the aforesaid legal position within three months.

29. The Registry is directed to supply a copy of the present order to the office of the Controller General of Patents, Designs & Trademarks of India on e-mail- llc-ipo@gov.in for compliance.

AMIT BANSAL, J

NOVEMBER 26, 2024/PB

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