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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

CMA(PT)/25/2023

Daikin Industries Ltd.
Umeda Center Building, 4-12, Nakazaki-Nishi 2-Chome
Kita-ku, Osaka-shi, Osaka 530-8323, Japan
Nationality: Japan
Rep. by its Authorized Representative Mr.Raghavan Ravindran Nair
De Penning & De Penning, Having office at
No.120, Velachery Main Road, Guindy, Chennai 600 032

... Appellant

Vs.

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

... Respondent

PRAYER: Civil Miscellaneous Appeal (Patents) is filed under Sections 117-A of the Indian Patents Act, 1970, to call for the records of the respondent culminating in the impugned order dated 21.09.2021 rejecting the Grant of Patent and set aside the same and consequently direct Grant of Patent in respect of the Appellant's Application No.201947021074.

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For Appellant : Mr.S.Shivathanu Mohan
for M/s.S.Ramasubramaniam & Associates

For Respondent : Mr.J.Madhana Gopal Rao
Senior Panel Counsel

JUDGMENT

The appellant herein approached the patent office with its application dated 28.05.2019 seeking patent for a certain chemical composition which the appellant introduces as a 'FLUORINATED POLYMER AND SURFACE TREATING AGENT COMPOSITION'. In all, he made 15 claims. On 12.03.2020, the respondent came out with its First Examination Report (FER) raising certain objections. The appellant herein has responded to the same with its reply dated 17.08.2020 along with certain amendment to the claims originally made. This was followed by a hearing notice with certain other objections. The appellant had responded to the same with its written submissions dated 23.07.2021 with further set of amendments to its earlier claims. The respondent would then proceed to pass his final proceedings and rejected the appellant's application for grant of patent vide its order dated 21.09.2021. This is now under challenge.

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2.Heard both sides.

3.Introducing his case as narrated above, the learned counsel for the appellant submitted that the chemical composition which the appellant had invented is entirely a new composition, which when used in textile goods or even paper will make the material on which the said compound is applied oil and water resistant.

4.Shifting his focus to the impugned proceedings, the learned counsel submitted that the respondent had not addressed the issues that was finally before him. The appellant has made atleast 3 amendments to the original claim it has made, but the respondent has cherry picked some claims as was originally made and picked few other from the amended claim and mismatched both the claims, and demonstrated the same by comparing the impugned proceedings with the amendments he had made to his original claim. He submitted that what deserves to be considered is the final claims he had made along with the written submissions untouched by the initial

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impression of the respondent which he has conveyed through the FER. The learned counsel has also circulated seven paged comparative table and has listed in how many different places the patent controller was in error.

5.This Court perused the entire record and finds that the table the appellant has provided fits in with the facts disclosed by his typed set of papers. Very obviously, the respondent has been in error as he has not done a complete job of his responsibility. This has resulted in instituting what this Court considers as an avoidable litigation. In other words, a little care on the part of the respondent could have easily avoided the present litigation.

6.To conclude, this Court chooses to allow this appeal and sets aside the proceedings of the respondent dated 21.09.2021 and remands the matter back to the respondent for denovo consideration of the appellant's application for patent. To save embarrassment for the patent controller who passed the impugned proceedings, this Court directs that the application be now considered by another controller. The patent controller who would now be considering the application of the appellant is required to do a

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complete job of his responsibility and he is required to dispose of the application as expeditiously as possible.

7.In the result, this appeal stands allowed. There shall be no order as to costs.

01.02.2024

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Index : Yes / No
Neutral Citation: Yes / No

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