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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **11.12.2023**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

(T)CMA(PT)/122/2023
(OA/2/2020/PT/CHN)

Oswal, Ashok
148/1, Oswal House, Seth Sohan Lane,
Maharani Jhansi Road, Civil Lines,
Ludhiana, Punjab, India. ... Appellant

-vs-

The Assistant Controller of Patents and Designs,
The Patent Office, Intellectual Property Office Building,
CP-2 Sector V, Salt Lake City,
Kolkata 700091, India. ... Respondent

PRAYER: Transfer Civil Miscellaneous Appeal (Patents) is filed under Section 117-A of the Indian Patents Act, 1970, praying to set aside the impugned order July 02, 2019 passed by the Respondent in respect to the Application No.201811029748; and to order allowing the issuance of patent.

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For Appellant : Mr.Tarun Khurana
for M/s.Khurana and Khurana

For Respondent : Mr.A.R.Sakthivel, SPC
Ms.Swati Pandey,
Assistant Controller of Patents

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JUDGMENT

The appellant challenges an order dated 02.07.2019 by which Patent Application No.201811029748 in respect of the claimed invention entitled "System and method for determining quality attributes of raw material of textiles" was rejected. The above-mentioned application was filed along with a set of ten claims. Claims 1 to 8, as originally filed, were system claims, whereas claims 9 and 10 were method claims. Upon receipt of a request for examination, the first examination report (FER) was issued by the respondent on 14.12.2018. In the FER, objections were raised *inter alia* under Section 3(k) of the Patents Act, 1970 (the Patents Act) and on the ground of lack of inventive step. The appellant filed a

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response to the FER on 14.01.2019. The appellant also submitted amended claims. In the hearing notice, the respondent maintained the objections raised in the FER. Pursuant to a hearing, the appellant submitted written submissions along with amended claims. The amended claims of the appellant are set out below:

> "***I Claim:***
>
> *1. A method for determining in real time quality attributes of a raw material of a textile using one or more processors that executes instructions that are stored in a memory, said method comprising the steps of:*
>
> *receiving, by said one or more processors, one or more images of said raw material captured by the imaging device in real time, wherein said imaging device having an illuminating source to provide a flash of light or a continuous light, while capturing said raw material, to illuminate a dark scene or capture a quickly moving raw material or changing a quality of light;*
>
> *enhancing, by said one or more processors, one or more features dynamically selected from*

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said received one or more images in real time by varying dynamic range of said one or more features of said received one or more images to obtain dynamically enhanced one or more images, wherein said step of enhancing increases the dynamic range of said one or more features of said received one or more images without increasing essential information of said one or more images, said features being selected from any or a combination of grey level, contrast, sharpness, and noise level;

extracting, by said one or more processors, values of one or more attributes of said enhanced one or more images in real time, wherein said one or more attributes includes any or combination of staple length, fibre fineness, short fibre content, yarn hairiness, yarn count, yarn elongation, maturity and moisture content;

comparing, by said one or more processors, the extracted values with reference attribute values stored in a first database in real time; and

determining, by said one or more processors, quality of said raw material based on

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comparison of the extracted values with the reference attribute values in real time.

2. The method as claimed in claim 1, wherein the method comprises extracting Histogram of oriented gradients (HOG) features from each enhanced one or more images, and averaging extracted HOG features to obtain corrected said enhanced one or more images."

2. As is evident from the above extract, all the system claims were deleted by the appellant and all that remained were two method claims. By the impugned order, the claims were rejected both under Section 3(k) and Section 2(1)(ja) of the Patents Act. The present appeal arises in the above facts and circumstances.

3. By inviting my attention to the impugned order, learned counsel for the appellant pointed out that all the system claims were deleted when written submissions were filed pursuant to the hearing. However, he submits that the impugned order proceeds on the basis that the claims were system claims. According to learned counsel,

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this indicates complete non-application of mind. As regards the rejection of the amendment by reference to Section 59 of the Patents Act, he submits that, apart from extracting Section 59, the impugned order does not contain any reasons for rejecting the request for amendment. Similarly, as regards the rejection under Section 2(1)(ja), he submits that the impugned order merely refers to the cited prior arts.

4. In response to these submissions, it is submitted on behalf of the respondent that the cited prior arts were discussed both in the FER and the hearing notice. Therefore, it is stated that the order does contain reasons.

5. The operative portion of the impugned order is set out below:

> "*After attending the hearing on the stipulated date as mentioned above, Applicant's agent filed the written submission and relevant documents on date June 26th, 2019 regarding*

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above mentioned objections. Having considered all the facts and submissions made by the Applicant / Agent in the written note of arguments as well as in view of all the documents on record and also on the basis of my analysis and findings, it is found that the claims of the instant application are directed towards the monitoring quality of raw material of a textile. More specifically it pertains to methods for determining quality attributes of raw material of a textile. for determining quality related attributes of raw material of a textile. The quality attributes of a raw material of a textile, the system can include: a processor coupled with a memory, the memory storing instructions executable by the processor to: receive one or more images of said raw material captured by an imaging device; enhance one or more features of said received one or more images by varying dynamic range of said one or more features of said received one or more images to obtain dynamically enhanced one or more images; extract values of one or more attributes of said enhanced one or more images, wherein said

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one or more attributes includes any or combination of staple length, fibre fineness, short fibre content, yarn hairiness, yarn count, yarn elongation, maturity and moisture content; and compare the extracted values with reference attribute values stored in a first database, wherein quality of said raw material is determined based on comparison of the extracted values with the reference attribute values, the claims are purely functional thereby not having any inventive hardware features and hence not allowable u/s 3(k) of the Patents Act, 1970.

Further during hearing it has been clearly indicated that method claims are purely functional and fall under section 3(k).

Further the amendments of claims are not allowable under section 59 as "No amendment of an application for a patent or a complete specification or any document relating thereto shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of incorporation of actual fact, and no amendment of

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a complete specification shall be allowed, the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed or shown in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

Further claims of the instant application lacks INVENTIVE STEP u/s 2(1)(j) of the Patent Act, in view of the cited prior arts

D1: CN105678788A (15/06/2016)

D2: US8942468B1 (27/01/2015)

D3: WO2018097389A1 (31/05/2018)"

6. The above extract indicates conclusively that the system claims of the appellant, which were subsequently deleted, were considered while issuing the impugned order. The extract also indicates that no reasons were specified for rejecting the amendments and that the order merely extracts Section 59. Likewise, the conclusion regarding the lack of inventive step is also not backed by

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reasons. Since the impugned order contains no reasons in support of conclusions recorded therein, the order is unsustainable and is, hereby, set aside.

7. The necessity that a quasi-judicial authority should provide cogent reasons for its conclusions cannot be overstated. An applicant for patent asserts substantive proprietory rights and, therefore, it is of paramount importance that the submissions of the patent applicant be considered and dealt with in the adjudicatory order. It is also important that such order be self contained and self-explanatory.

8. Therefore, Patent Application No.201811029748 is remanded for re-consideration on the following terms:

(i) In order to preclude the possibility of pre-determination, an officer other than the officer who issued the impugned order shall undertake such re-consideration.

(ii) After providing a reasonable opportunity to the appellant, a reasoned decision shall be issued within a period of ***four months***

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from the date of receipt of a copy of this order.

(iii) It is made clear that no opinion is expressed herein on the merits of the application.

9. (T)CMA(PT)/122/2023 is disposed of on the above terms without any order as to costs.

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rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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