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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.06.2024**

CORAM:

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

CMA (PT) No.12 of 2023

Ajinomoto Co., INC,
Represented by its constituted
Power of Attorney,
Mr.R.R.Nair, 15-1, Kyobashi 1 – Chome,
Chuo-ku, Tokyo 104-8315, Japan.
Nationality: Japan

.. Appellant

..Vs.

The Assistant 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 03 January, 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.4039/CHENP/2014.

For Appellant : Mr.S.Shivathanu Mohan for
M/s.S.Ramasubramaniam Associates
For Respondent : Mr.K.Subbu Ranga Bharathi,
Central Government Standing Counsel

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JUDGMENT

This is an Appeal preferred against the order dated 03.01.2023, passed by the Controller of Patents and Designs, Chennai in respect of the Appellant's Application No.4039/CHENP/2014, rejecting the grant of Patent.

2. I have heard Mr.S.Shivathanu Mohan, learned counsel for Appellant and Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel for the Respondent/Controller.

3. The limited ground of attack on the impugned order is that the mandate of Section 13(3) of the Patents Act, 1970 has not been followed or complied with.

4. Originally the Appellant had made 13 claims, out of which, claims 1 to 12 were related to the coryneform bacterium and claim 13 was related to the method for producing a heterlogous protein. However, subsequent to the First Examination Report, the claims were amended to 11 in number and

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thereafter, finally six in number, out of which five related to coryneform bacterium and the sixth claim was pertaining to the method.

5. Section 13 (3) of the Patents Act, 1970 mandates that where the complete specification is amended before the grant of Patent, then the amended specification shall be examined and investigated in a like manner as the original specification itself.

6. I have carefully considered the arguments advanced by the learned counsel on either side and I have also gone through the impugned order of the Controller. From the records, it is evident that such procedure has not been followed by the Authority before rejecting the Patent Application of the Appellant.

7. Therefore, it is a good case where the matter has to be remitted to the Authority for fresh consideration, after giving an opportunity to the Appellant in terms of Section 13(3) of the Patents Act, 1970. Accordingly, this matter is remitted to the respondent for fresh consideration. To avoid any embarrassment, the appellant's Application shall be considered by

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a different Patent Controller. The hearing shall be expedited and the Application shall be disposed of within a period of three (3) months from the date of receipt of a copy of the judgment.

8. This Civil Miscellaneous Appeal is allowed with the above directions. No costs.

P.B.BALAJI,J.

rkp

21.06.2024

Index : Yes/No
Speaking/Non-speaking order
rkp

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

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