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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(PT)/104/2023
(OA/15/2018/PT/CHN)

Monsanto Technology, LLC
800 North Lindbergh Boulevard,
St.Louis, MO 63167,
U.S.A.
Represented by
Mr.Chunping Li ... Appellant

Vs.

Assistant Controller of Patents and Designs,
The Patent Office,
Intellectual Property Building,
G.S.T. Road, Guindy,
Chennai – 600 032. ... Respondent

PRAYER: Transfer Civil Miscellaneous Appeal (Patents) is filed under Section 117A of the Indian Patents Act, 1970, seeking the following prayer;

a) The present appeal be allowed;
b) The impugned order of the Assistant Controller of Patents & Designs dated 13.10.2017 in 4824/CHENP/2010 be set aside;

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c) The Court may be pleased to hold that claimed invention in the present case is patentable subject matter and pass an order granting a patent on Indian Patent Application No.4824/CHENP/2010 and issue consequential directions to effectuate such grant;

d) The Court may pass any other orders in the interest of justice.

For Appellant : Ms.Vindhya S.Mani
for M/s.Lakshmikumaran and Sridharan

For Respondent : Mr.J.Madanagopal Rao,
Special Panel Counsel

JUDGMENT

The appellant herein challenges the order of the Assistant Controller of Patents and Designs dated 13.10.2017, by which the respondent refused to patent 2 out of 13 claims of the appellant.

2.Introducing her case, the learned counsel for the appellant submitted that the invention of the appellant relates to transgenic soybean plants comprising event MON87769, progeny plants, and seed.

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3.Vis-a-vis the said invention, the appellant has made 8 independent claims and 5 dependent claims for patenting them. The respondent however, had rejected the claim nos.1 and 10, both of which are independent claims.

4.Heard both sides.

5.The learned counsel for the appellant submitted that if the Controller of Patents has objected to patent 2 out of 13 claims, then he should have patented at least the remaining 11 claims. However, the impugned proceedings is silent on the same.

6.This Court perused the records to satisfy itself of the correctness of the statement made by the learned counsel for the appellant and finds it to be correct and appropriate.

7.Here is a situation where the respondent does not appear to have applied his mind wholly to the issues before him, since he has passed his opinion

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only to 2 out of the 13 claims made by the appellant for patenting its innovative steps.

8.The conclusion is to state the obvious. This appeal deserves to be allowed and the matter is required to be heard *de novo*.

9.This Court allows this appeal and remands the matter back to the respondent for a *de novo* consideration of the petitioner's claim. There shall be no order as to costs.

10.To save embarrassment for the Controller of Patents, who passed the impugned order, this Court requires that it be heard by another Controller of Patents.

11.This Court finds that the Application for Patent was filed sometime in 2009 and since the registration of patent will date back to the date of application, in the eventuality of the appellant's invention being patented, it will have a shelf value of only 5 years. Hence, this Court requires the

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Controller of Patents, who is now required to decide the matter, to dispose of the matter as expeditiously as possible, at any rate, not later than six (6) months from now.

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

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