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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(PT)/112/2023
(OA/20/2018/PT/CHN)

Onco Therapy Science, Inc.
2-1, Sakado 3-chome,
Takatsu-ku, Kawasaki-shi,
Kanagawa 213-0012,
Japan, Nationality: a Japanese Company ... Appellant

Vs.

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

PRAYER: Transfer Civil Miscellaneous Appeal (Patents) is filed under Section 117-A of the Indian Patents Act, 1970, praying that the order dated 14 December 2017 and issued by the Respondent on 1 February 2018 be set aside and the application No.1487/CHENP/2010 for patent be allowed to proceed to grant.

For Appellant : Mr.P.V.Balasubramanian

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for M/s.De Penning De Penning

For Respondent : Mr.P.R.Ramesh Babu
Special Panel Counsel

JUDGMENT

The appellant herein challenges the order of the respondent dated 14.12.2017 by which it rejected the petitioner's application for patenting his invention. The petitioner describes his invention as a novel peptides that are effective as vaccines against cancers which highly express cell division cycle associated 1(CDCA1), such as lung cancer and cholangiocellular carcinoma, pharmaceuticals that include these peptides for treatment and prevention of tumors.

2.After the first examination, the Controller of Patents issued a notice dated 30.06.2017, wherein, he refers to certain prior patented inventions. The appellant herein has made his written submissions to the said notice on 20.09.2017. This apart, it had also provided additional materials to sustain his claim for patent on 26.09.2017.

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3.The grievance of the appellant is that despite providing his written submissions to the objections raised by the respondent and despite providing certain critical materials to sustain his claim, the respondent chose not to consider any of that but, merely lifted the objection in his notice, rephrased it and made it the contention of his proceedings.

4.Heard, Mr.P.R.Ramesh Babu, learned Special Panel Counsel for the respondent.

5.This case does not bother this Court much as this Court is merely required to examine as to whether the explanation offered by the appellant to the objection raised in the notice issued by the Controller of Patents were addressed by the Controller of Patents in the impugned order and this Court is satisfied the Controller of Patents does not whisper a word vis-a-vis the submissions made by the appellant to the notice issued by him. Necessarily, the matter deserves to be reconsidered.

6.Accordingly, this Court allows this appeal and remands the matter back to

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the respondent for a *de novo* consideration of the petitioner's claim. The respondent is now required to address the written submissions made by the appellant along with the materials he had made available and pass a speaking order addressing each of the submissions made by the appellant in response to the notice issued by him. There shall be no order as to costs.

7.So as to save embarrassment for the Assistant Controller of Patents and Designs, who had passed the order which is now under challenge, the matter may have to be considered by some other Controller of Patents.

10.01.2024

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

N.SESHASAYEE, J.

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