2023:MHC:4031

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

(T) CMA (PT) No.30 of 2023
[(OA)/1/2016/PT/CH]

Helion Biotech ApS
Egholmvej 10, Vanlose – DK – 2720
Denmark. .. Appellant

vs

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

Transfer Civil Miscellaneous Appeal filed under Section 117-A of the Patents Act, 1970 against an order of the respondent dated 21.08.2015 in No.3349/CHENP/2005.

For Appellant : Mr.P.Siddarth
for M/s.DE Penning and De Penning

For Respondent : Mr.M.Karthikeyan
SPC

JUDGMENT

The appellant had applied for grant of a patent in respect of antibodies to Mannan-Binding Lectin-Associated Serine Protease 2 (MASP-2). In response to such application, the First Examination Report (FER) was submitted on 01.06.2011. The appellant responded thereto on 16.04.2012. Eventually, by order dated

WEB COPY

21.08.2015, the application for grant of patent was rejected *inter-alia* on the ground that the claimed patent did not qualify as an invention both in terms of Section 2(1)(j) and Section 3(c) of the Patents Act, 1970 (the Patents Act). The impugned order also records the finding that some of the amended claims are outside the scope of Section 59(1) of the Patents Act.

2. When the matter was pending before the Intellectual Property Appellate Board, the appellant filed an application for permission to seek consideration of claims that were further amended after the appeal was filed.

3. Upon obtaining instructions, Mr.M.Karthikeyan, learned SPC, submits that the Controller of Patents is willing to examine such amended claims without making any concession on the merits of the application.

4. In view of the above submission, without expressing any opinion on the merits of impugned order dated 21.08.2015, the said order is set aside and the matter is remanded for the limited purpose of considering the amended claims placed before this Court as Claims 1 to 27 by the appellant. The appellant is directed to file

https://www.mhc.tn.gov.in/judis

WEB COPY

such amended claims before the respondent within a period of two weeks from the date of receipt of a copy of this order. In order to preclude the possibility of any pre-determination, the amended claims of the appellant shall be considered by any officer, other than the officer who passed the impugned order. After providing a reasonable opportunity to the appellant, a reasoned order shall be passed within a maximum period of four months from the date of receipt of amended claims from the appellant.

5. The appeal stands disposed of on the above terms without any order as to costs.

04.09.2023

Index:Yes
Neutral Citation:Yes
ssm

To

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

https://www.mhc.tn.gov.in/judis

WEB COPY

SENTHILKUMAR RAMAMOORTHY,J.

ssm

(T) CMA (PT) No.30 of 2023
[(OA)/1/2016/PT/CH]

04.09.2023