2024:MHC:1842

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

(T)CMA(PT) No.23 of 2023

Optimedica Corporation
3130 Coronado Drive, Santa Clara,
CA 95054, USA, a US corporation

.... Appellant

Vs

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

Prayer: This appeal came to be numbered by transfer of OA.No.75/12/PT/CH from the file of the Intellectual Property Appellate Board, Chennai praying this Court to set aside order dated 12.09.2012 and the application for patent be allowed to proceed toward grant.

For Appellant : Mr.Vineet Rohila
for M/s.Remfry and Sagar

For Respondent : Mr.Diwakar
Senior Panel Counsel

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JUDGMENT

Heard Mr.Vineet Rohila, learned counsel for the appellant, Mr.S.Diwakar, learned Senior Panel Counsel for the respondent and Mr.Saravanan, Joint Controller of Patents, who is present virtually.

2. A memo dated 23.04.2024 is filed by the respondent reading thus:

> *It is humbly submitted before this Hon'ble Court that the Patent application No.3483/CHENP/2007 dated 09.08.2007 filed by the Appellant herein was refused by the Respondent on 12.09.2012 U/s 15 of The Patents Act, 1970 as the subject matter of the alleged invention does not Constitute an invention under the provisions of Section 2(1)(j) of The Patents Act, 1970.*
> *It is further submitted that the Petitioner has filed Appeal against this order before the board and later it was transferred and Numbered (T)CMA(PT) No.23 of 2023 before the Hon'ble High Court of Madras. In the said Appeal, the Appellant filed an Amended claim (Auxiliary Request) provided in Annexure-L which is at page no.206 of the Form 1 along with the typed set. The Joint Controller of Patents, Mr.V.Saravanan who passed the Rejection order was present thru Video Conferencing before the Hon'ble Court today (23.04.2024). He stated that the Amended Claims will be considered for grant of patent if the matter was remitted back to the same officer within the prescribed time limit as fixed by the Hon'ble Court.*

3. The appellant has filed an amended claim along with the appeal and hence it would be appropriate that such amended claim be considered by the authority in accordance with law.

4. The matter is hence remitted to the file of the respondent for

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hearing and decision de novo. The appellant shall appear before the respondent along with documents, if any, in support of its claim on 30.04.2024 at 10.30. a.m. without awaiting any further notice in this regard.

5. The respondent, after hearing the appellant and considering the documents, if any filed, shall decide the claim and pass orders within a period of three (3) months, i.e., on or before 31.07.2024.

6. This Civil Miscellaneous Appeal is disposed in the aforesaid terms. No costs.

23.04.2024

Sl
Index:Yes/No
Speaking order
Neutral Citation:Yes

To

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

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Dr.ANITA SUMANTH,J.

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