2024:MHC:4165

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **17.12.2024**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA (PT) No.22 of 2024

Thales,
Place des Corolles-Esplanade Nord 92400,
Courbevoie, France,
represented by its power agent Tanmay Joshi .. Appellant

-vs-

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

Prayer: This Civil Miscellaneous Appeal filed under Section 117-A of the Patents Act, 1970 prays that this Court may be pleased to allow the present appeal and issue an order setting aside the impugned order dated March 10, 2022 for being unjust, illegal and arbitrary and consequently issue direction to the respondent to grant a patent on the Patent Application No.8821/CHENP/2012.

For appellant : M/s.Vineet Rohilla and D.Subbin

For respondent : Mr.S.Janarthanam,
SPCGSC

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JUDGMENT

This Appeal has been filed under Section 117-A of the Patents Act, 1970, challenging the order dated 10.03.2022, refusing to grant patent to the appellant on the ground that the appellant's claimed invention lacks inventive step under 2(1)(j) of the Patents Act, 1970.

2.The appellant has primarily challenged the impugned order on the following grounds:

a)By total non-application of mind to the prior art documents relied upon by the respondent, which does not pertain to the appellant's claimed invention, the respondent has refused to grant patent to the appellant;

b)The impugned order is a cryptic order and is a copy-pasted order, which is also a non-speaking order with regard to the contentions of the appellant to the objections placed by them to the FER (First Examination Report).

3.Learned counsel for the appellant drew the attention of this Court to the impugned order and the relevant paragraph therein and would submit that no reasoning whatsoever has been given by the respondent as to how

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the prior art documents, namely, D1 to D3, referred to therein, applies to the appellant's claimed invention. According to him, the prior art documents, namely, D1 to D3 have no applicability for the appellant's claimed invention. Learned counsel for the appellant also drew the attention of this Court to the additional documents filed before this Court during the course of hearing today, which are the orders passed by the very same Controller, who has passed the impugned order and would submit that in all those orders, the paragraphs disclosed in the impugned order with regard to the reasoning for refusing to grant patent have been copy-pasted. According to him, there is no independent assessment made by the respondent and by total non-application of mind, the impugned order, refusing to grant patent, has been passed against the appellant on the ground that the appellant's claimed invention lacks inventive step.

4.Learned counsel for the appellant also drew the attention of this Court to the decisions, rendered by the Delhi High Court and they are as follows:

a)Dolby International AB vs. The Assistant Controller of Patents and Designs, a judgment dated 14.03.2023 passed in C.A. (COMM.IPD-PAT) 10/2021; and

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b)Synthes GMBH vs. Controller General of Patents, Designs and Trade Marks and another, a judgment dated 12.05.2023 passed in C.A. (COMM.IPD-PAT) 88/2022.

5.Relying upon the aforesaid judgments, the learned counsel for the appellant would submit that the Controller, who has passed the impugned order, had also passed certain impugned orders, which were quashed by the Delhi High Court through the aforesaid decisions on the ground that the impugned orders were passed by total non-application of mind to the prior art documents and also violates the principles of natural justice. According to him, in those decisions as well, the very same Controller, who has passed the impugned order, had copy-pasted the reasoning from various other orders passed previously which has no relevance to the claimed invention.

6.Learned Standing Counsel appearing for the respondent reiterated the contents of the impugned order by stating that only due to the fact that there are prior art documents, namely, D1 to D3, the respondent has rightly come to the conclusion that the appellant's claimed invention lacks inventive step and has rightly refused to grant patent to the appellant.

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7.As seen from the impugned order, D1 does not disclose the following features:

- a first step (11) of forming N interlocked sub-antennas, each sub-antenna n comprising a number of identical sensors, the phase centers of the sub-antennas exhibiting a given offset relative to one another;

- a second step (12) of forming, for each sub-antenna n, M primary reception beams, from the sensors forming the sub-antenna concerned;

- a third step (13) of forming M secondary reception beams, each secondary beam m being formed from the primary beams m corresponding, for the N sub-antennas, to the same direction of observation, this step is performed by implementing an adaptive processing of the signals produced by the primary reception beams;

The sensors forming one and the same sub-antenna being determined so that the phase centers of any two sub-antennas n and n' are separated from one another by a distance less than

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the spatial correlation distance of the noise or of the spurious signal that is to be eliminated.

8.The aforesaid steps are involved in the appellant's claimed invention. There is no reason whatsoever given in the impugned order as to how D1, the prior art document applies to the appellant's claimed invention. There is a bald reference to D1, but no reasons have been given as to how it can be made applicable to the appellant's claimed invention, which contains the aforementioned step. Similarly, the prior art document, which the respondent has relied upon under the impugned order, namely, D2 as contended by the appellant, it pertains to the field of rador to use surface antennas with beam-forming by calculation, intended to detect, locate and classify targets or sources. Such an antenna generally consists of an array including up to several thousand sensors arranged so as to form a rectangular planar surface. According to the appellant, these sensors generally have an identical directivity pattern. This basic directivity pattern does not have a sufficient resolution for the performance required from the antenna in location. According to the appellant, the invention of D2 is mainly used in aircraft, missiles, satellites, balloons, road or rail vehicles,

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whereas the appellant's claimed invention will be used for a total different purpose.

9.Under the impugned order, the respondent has not given reasons as to how D2 (prior art document) is applicable to the appellant's claimed invention. Similarly, according to the appellant, prior art document D3 relied upon by the respondent focuses mainly on compensating for the movement of the antenna for a sonar that risk disturbing the reception of the acoustic signals. According to them, D3 focuses on all types of sonars in which it is possible to compensate for the movement of the antenna or antennae in this way. According to the appellant, D3 also does not disclose the essential features of the appellant's claimed invention and therefore, it has got no applicability to the appellant's claimed invention.

10.As seen from the impugned order, once again no reason has been given by the respondent as to how D3 has been made applicable to the appellant's claimed invention for refusing to grant patent in favour of the appellant.

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11.During the course of the learned counsel for the appellant's submission, he placed reliance on various orders passed by the very same Controller, who has passed the impugned order and submitted that the impugned order is a cryptic order and is a copy-pasted order and is a non-speaking order.

12.In support of his submissions, he placed reliance on various orders passed by the very same officer on behalf of the respondent, which have been filed as additional typed set of documents dated 17.12.2024. He also drew the attention of this Court to the orders passed by the Delhi High Court in respect of orders passed by the very same Controller, who has passed the impugned order refusing to grant patent.

13.As seen from the aforementioned orders, as rightly contended by the learned counsel for the appellant, the orders passed by the respondent are cryptic and are copy-pasted orders. There has been a verbatim re-production in all the orders passed by the very same respondent, which have been filed as additional documents before this Court.

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14.The respondent, being a quasi judicial authority, necessarily, any order passed by them, should not violate the principles of natural justice and should be a speaking order. As seen from the impugned order and as observed supra, the impugned order has been passed by total non-application of mind to the contentions of the appellant as raised in this appeal and no reason whatsoever has been given by the respondent as to how the prior art documents D1 to D3 are made applicable to the appellant's claimed invention. The respondent has also copy-pasted the order from various other orders which according to the appellant, has no significance to the appellant's claimed invention. The verbatim re-production of the orders earlier passed by the very same respondent are also evidenced from the orders placed on record before this Court by the learned counsel for the appellant in the additional typed set of documents, filed before this Court today.

15.The Hon'ble Delhi High Court has also quashed some of the impugned orders passed by the very same Controller on the ground that the said orders were passed by total non-application of mind and are copy-pasted orders.

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16.For the foregoing reasons, the impugned order passed by the respondent has to be necessarily quashed on the ground of a)violation of principles of natural justice; b)non-speaking order; and c)copy-pasted order and the matter has to be remanded back to the respondent for fresh consideration of the appellant's Patent Application, on merits and in accordance with law, after affording a fair hearing to the appellant.

17Accordingly, the impugned order passed by the respondent is quashed and the matter is remanded back to the respondent for fresh consideration of the appellant's patent application, on merits and in accordance with law and this appeal is disposed of by issuing the following further directions:

a)The respondent shall appoint any officer instead of the officer, who has passed the impugned order in the interest of justice to avoid any pre-determination;

b)Such re-consideration shall be undertaken by taking into account the observations set out in this judgment;

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c)Amendments, if any, to the complete specification or claims shall be permitted if within the frame work of the complete specification;

d)A fresh order in Indian Patent Application No.8821/CHENP/2012 shall be issued within three months from the date of receipt of a copy of this order.

No costs.

17.12.2024

vga
Index: Yes/No
Speaking/Non Speaking Order
Neutral Citation Case: Yes/No

To

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

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