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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2024

CORAM:

THE HON`BLE MR.JUSTICE P.B.BALAJI

(T) CMA (PT) No.123 of 2023

SAPPORO MEDICAL UNIVERSITY,
of 291, Minami 1 -jo, Nishi 17-chome,
Chuo-ku, Sapporo-shi
Hokkaido 060-0061,
Japan: A Japanese University.

.. 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: This appeal came to be numbered by transfer of IPAB Case OA.No.5/2019/PT/CHN from the file of the Intellectual Property Appellate Board, Chennai praying that the order dated 19.07.2018 issued by the respondent be set aside and the Application No.1899/CHENP/2010 for patent be allowed to proceed to grant.

For Appellant : Mr.Shivathanu Mohan
for M/s.De Penning & De Penning

For Respondent : Mr.K.Subbu Ranga Bharathi
Central Government Standing Counsel

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J U D G M E N T

This Appeal has been preferred against the rejection of the Patent Application of the appellant in Patent Application No.1899/CHENP/2010 dated 19.07.2018.

2. I have heard Mr.Shivathanu Mohan, learned Counsel for M/s.De Penning and De Penning and Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel for the respondent.

3. The learned counsel for the Appellant, Mr.Shivadhanu Mohan, would take me through order dated 19.07.2018 and submit that the respondent, has in a cryptic fashion, proceeded to decide the Application of the Appellant without any proper explanation or discussion of the prior arts viz-a-viz the claimed invention and also the explanation offered by way of written submission to the objections raised by the Respondent/Controller. In this connection, he would take me through the impugned order which is a mere one page order wherein the substantial portion of the order pertains to the description of the prior arts, D1 and D2 and explanation for the hearing notice and thereafter, the respondent has jumped to the conclusion that the claimed inventions lack inventive step under Section 2(1)(ja) of the Patents

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Act 1970.

4. Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel appearing for the respondent, per contra, submitted that the impugned order is a speaking and hence does not call for a remand.

5. I find absolutely no explanation as to how the claimed inventions has been tested in the light of the settled legal position with regard to the inventive steps. The respondent has also not considered the US and European Patent granted to the appellant already.

6. The very objection of the respondent with regard to the lack of inventive steps is that the person skilled in the art using D1 and D2 would obviously hit upon the cell growth. I find from the written submissions filed by the appellant that a detailed explanation has been offered by the appellant with regard to how the minimum use of Haparin would have a positive effect and a detailed discussion with regard to the prior arts and also the claimed invention have been furnished.

7. However, without referring to any of the explanations offered by the appellant, or any discussion for arriving at the conclusion, the

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respondent/Controller has merely come to the conclusion that the claimed invention lack inventive steps under Section 2(1)(ja) of the Patents Act, 1970 which is not supported by any of the material whatsoever.

8. I therefore deem it fit to remit the matter to the respondent for fresh consideration, in accordance with law, after affording an opportunity, by way of a hearing to the Appellant, by a different Patent Controller. Such an exercise shall be completed within a period of three (3) months from the date of receipt of the copy of this judgment.

9. In fine, the Appeal is allowed with the above directions. No costs

08.07.2024

Index : Yes/No
Speaking/Non-speaking order
rkp

To
Assistant Controller of Patents and Designs,
Government of India, Patent Office,
Intellectual Property Rights Building,
GST Road, Guindy.

P.B.BALAJI,J.

rkp

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