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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.07.2024	Pronounced on: 02.08.2024

CORAM:

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

(T) CMA (PT) No.34 of 2023
(OA/8/2017/PT/CHN)

KUBOTA CORPORATION
2-47, Shikitsuhigashi 1- chome,
Naniwa-ku, Osaka-shi,
Osaka 556-8601,
Japan. .. Appellant

..Vs.

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

Prayer: This Civil Miscellaneous Appeal filed under Section 117-A of the Patents Act, 1970, pray for the following reliefs:

(i) The refusal order of the respondent dated 23.06.2016 be stayed pending disposal of the appeal;

(ii) The application be remanded back to the Patent Office, but to a different Controller for reconsideration and understanding of the facts and merits; and

(iii) The refusal order of the respondent dated 23.06.2015 be set aside and the application for patent be allowed to proceed to grant.

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For Appellant : Mr.S.Shivathanu Mohan for
M/s.De penning and De penning

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

JUDGMENT

The appellant, aggrieved by the rejection of its Patent Application No.2342/CHE/2008 dated 23.06.2016, has preferred the present appeal.

2.The appellant sought for patent for its invention "operation parameter display system for working vehicle fitted with working implement".

3.I have heard Mr.Shivathanu Mohan, learned counsel for M/s.Depenning and Depenning, learned counsel for the appellant and Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel for the respondent.

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4.After issuing the First Examination Report on 31.10.2013, citing Section 3(k) of the Patents Act that the invention lacks novelty and inventive steps with the prior arts D2, D3 and D4, the appellant attended the hearing and filed written submissions.

5.Mr.Shivathanu Mohan, learned counsel for the appellant would take me through the impugned order and submit that there was technical advancement over prior art D1 which has not been noticed by the respondent/Controller, despite the appellant clearly elucidating the same in the written submissions. He would further submit that the impugned order was the only prior art, D1, which was discussed and put against the claimed invention. The learned counsel for the appellant would further submit that even in the written submission, the appellant had clearly set out as to how the claimed invention was a technical advancement having novel features over prior art, D1. However, the same has not been even considered objectively by the respondent/Controller and the Controller has merely concluded saying that the appellant has not shown any essential feature of the alleged invention, that too, the invention lacks novelty in view of the prior art D1. The learned counsel further submitted that the appellant's claim was

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a device claim and merely because of the use of computer program, it would not render it a computer program. He therefore prays for the appeal being allowed.

6.Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel for the respondent would submit that the Patent Controller has passed a reasoned order and he sought for dismissal of the appeal.

7.Admittedly, the claim of the appellant is only a device with a parameter display system which is fitted in the vehicle and it records the details in a memory and also carries a display device which displays the relevant data. However, the respondent has proceeded to find that Section 3(k) of the Patents Act which deals with mathematical or business method of computer program *per se* or algorithms.

8.Here, the invention is a device which incorporates some computer applications for processing the data and thereafter displaying the same. Therefore, when the device is sought to be patented, the respondent ought not to have held it to be hit by Section 3(k) of Patents

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Act. However, I find that even the application that has been made by the appellant is only in the field of mechanical engineering and not in the field of computers or mathematics.

9.It is also brought to my notice that the very same invention has been granted patent in Japan as early as on 09.01.2009 and the class of registration is controlling engines, such controlling being peculiar to the devices driven thereby, the devices being other than parts or accessories essential to engine operations. Therefore, even from this angle, I find that there is clear non application of mind on the part of the respondent in scrutinizing the patent application of the appellant in a proper perspective.

10.For all the above reasons, I deem it a fit case to be remitted to the respondent for fresh consideration, in accordance with law and after affording a fair opportunity of hearing to the appellant.

11.In fine, the appeal is allowed and the matter is remitted to the respondent to decide the patent Application No. 2342/CHE/2008 afresh, in accordance with law, after affording an opportunity by way of a fresh

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hearing to the appellant. In order to avoid embarrassment to parties, a different Patent Controller shall be assigned for the scrutiny of the patent application and such exercise shall be completed within a period of three months from the date of receipt of copy of this judgement. There shall be no order as to costs.

02**.08.2024**

Index : Yes/No
Speaking/Non-speaking order
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P.B.BALAJI,J.

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To

The Deputy Controller of Patents and Designs,
Government of India, Patent Office,
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