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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ C.A.(COMM.IPD-PAT) 210/2022

KABUSHIKI KAISHA TOSHIBA ..... Appellant

Through: Mr. Pravin Anand, Adv.

versus

ASSTT. CONTROLLER OF PATENTS AND DESIGNS

..... Respondent

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R (O R A L)

% 10.01.2023

C.A.(COMM.IPD-PAT) 210/2022

1. By this appeal, the appellant seeks to challenge decision dated 23rd December 2020 passed by learned Assistant Controller of Patents and Design, whereby Application No. 5817/DELNP/2013, filed by the appellant before the Patent office on 28th June 2013 for registration of a process patent claiming a state monitoring device was rejected.

2. The impugned decision reads thus:

DECISION

> **1.** An application for patent bearing number 5817/DELNP/2013 was filed in Patent office on 28/06/2013. The request for examination was filed vide RQ, No. 6480/RQ-DEL/2013 dated 28/06/2013 under rule 24B of the Patents Rules, 2003(as amended). The said application was examined under sections 12 and 13 of the Patents Act, 1970 (as amended) and First Examination report was issued on 16/05/2018. In

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response to the First Examination Report, applicant's agent submitted its reply on 13/11/2018.

2. After considering the reply filed in response to the first examination report by the applicant's agent and the report of the examiner on such reply, it was observed that the said patent application was not in order for grant. Keeping in view the provisions of the Patents Act, 1970 (as amended) and with a view to provide natural justice to the applicant, a hearing was offered to the agent of the applicant dated 14/07/2020.

3. The intimation of said hearing (hearing notice) was sent to applicant's agent through e-mail along with the objections which were found outstanding in the application:

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4. In view of claims made in written submission following observations with respect to instant invention made:

> "The invention of the present application performs monitoring of a process in a plant. So, the present application completely differs in contents from the document D1 that monitors the state of a process of a program **as claimed in the written submission**, cited prior art D2 discloses a monitoring device 1 displays a trend graph and a radar chart based on the measurement values collected from the water treatment plant 2 by the measurement value collection device 3. Here, the measurement value collection device 3 collects measurement values indicating the operation state of the equipment from the water treatment plant 2, and stores the collected measurement values in the measurement value data list file F-1 in time series **(paragraph [0008], figure 1: D2)**.
>
> The alleged invention further claims "calculating, by a calculation unit (16), diagnosis data from two or more measurement variables acquired from a monitoring target (30), and to detect an abnormality of the monitoring target (30) from the diagnosis data" in view of this D1 discloses a fault-tolerant method and system for a distributed program, which can sequentially start a program process deployed on different fault-tolerant clients. When any process with a dependency relationship crashes, the fault-tolerant server can The configured policies perform corresponding operations, and the fault-tolerant client only needs to use the existing monitoring program to perform monitoring, report the status of the process, and receive and execute instructions sent by the fault-tolerant server or issued by the operation and maintenance

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personnel. Start the above processes in order to ensure that the work can proceed normally **(paragraph [0007]: Dl)**.

Further alleged invention claims to display the monitored/diagnosis data, In view of this D2 discloses the monitoring device 1 displays a trend graph and a radar chart based on the measurement values collected from the water treatment plant 2 by the measurement value collection device 3**(paragraph [0008], figure 1: D2)**.

D1 further discloses a fault tolerance server can execute the corresponding operation according to a strategy configured on the fault tolerance server, and the fault tolerance clients can start the processes according to the sequence as long as the fault tolerance clients utilize a traditional monitoring program to execute monitoring, take charge of reporting the process status and receive and execute an instruction transmitted by the fault tolerance server or issued by the operation maintenance personnel so as to ensure that the operation can be normally carried out **(Abstract: Dl)**.

The combined cited prior arts D1-D2 discloses all the features of monitoring a process in the industrial/machine set up and execute appropriate action as per the policy in place after diagnosis of the collected/monitored data; hence the alleged invention failed to show any further Inventive features in view of cited prior arts.

5. The oral argument and the written submission of the agent of the applicant have been carefully considered. However without prejudice, although the hearing submissions have attempted to address the other requirements, yet the substantive requirement of the Patents Act, 1970 i.e. Section 2(1)(j) is not found complied with. Hence, in view of the above and unmet requirements, this instant application is not found in order for grant.

6. Therefore, keeping in view the above facts, the submissions of the agents during hearing and subsequently through the written submission, as well as the outstanding official requirements, instant application no. 5817/DELNP/2013 dated 28/06/2013, does not comply with the requirements of The Patents Act, 1970 (as amended). I, therefore, hereby order that the grant of a patent for application no. 5817/DELNP/2013 is refused under the provisions of Section 15 of The Patents Act, 1970 (as amended).

7. This is to be noted that the aforesaid observations, and decision thereof, are based solely on the electronically uploaded documents to date."

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3. The impugned decision is completely unreasoned. Such a decision cannot sustain the scrutiny of law. Reasons, it is trite, are the life and soul of every judicial or quasi-judicial decision. Absent reasons, the Court is unaware as to why the learned Assistant Controller deemed it necessary to reject the application of the appellant.

4. As such, the impugned order is quashed and set aside. Application No. 5817/DELNP/2013 filed by the appellant before the learned Controller of Patents is remanded to the learned Controller for *de novo* decision. The decisions shall be taken after hearing learned Counsel for both sides and if possible within a period of two months from today. For the said purpose, both sides would present themselves before the concerned officer on 17th January 2023.

5. Appeal stands allowed accordingly.

C.HARI SHANKAR, J

JANUARY 10, 2023
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