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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM

MR.JUSTICE N.SESHASAYEE

(T)CMA(PT)/56/2023
(OA/42/2020/PT/CHN)

Gala Industries, Inc.
181 Pauley Street,
Eagle Rock,
Virginia 24085,
USA. ... Appellant

Vs.

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

PRAYER: Transfer Civil Miscellaneous Appeal (Patents) is filed under Section 117A of the Indian Patents Act, 1970, praying that;

(1) The impugned order dated 01 August 2020 passed by the Respondent to be set aside and the subject application to be granted considering the Written submission as required under Rule 28(7) of the Patent Rules, 2003, and the claims filed on May 9, 2018.

(2) Pass such orders as this Honourable Court may deem fit and proper

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in the circumstances of the case and render justice.

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

For Respondent : Mr.M.Karthikeyan,
Special Panel Counsel

JUDGMENT

The appellant herein is the unsuccessful applicant before the respondent when its application seeking grant of patent for its invention on *'Centrifugal Pellet Dryer Screen With Integral Embossed Deflector Strips'* was rejected.

2.The above said invention is a part of a dryer for plastic pellets during its recycling process and the invention, according to the appellant is an improvised version of the said dryer. His technique was rejected on the ground that it lacked inventive step within the meaning of Section 2(1)(j)(a) of the Patents Act and to justify the same, the respondent had relied on two prior arts, D1 and D3. Aggrieved by the same, the appellant is now before this Court.

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3.Heard both sides.

4.Introducing the invention, the learned counsel for the appellant submitted that the dryer has an outer screen with a deflector mounted to its inner wall with a nut and bolt. This deflector enables leveling the pellets towards the rotar, which is more towards the center of the dryer. The inventive step according to the appellant, involves a single molded screen with a deflector. In other words, it dispenses with the nut and bolt technique to bind the deflector to the screen. In technical parameters, it is called embossing the deflector on to the screen.

5.The application goes to the next stage and the FER was made available, wherein the respondent cited three prior arts, D1 to D3. The appellant had given his explanations to the same. The matter went for hearing and post hearing, the appellant had also submitted his written submissions.

6.The contention of the appellant is that the Controller had relied on prior arts D1 and D3, but had failed to consider either the explanations offered by

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the appellant nor has it taken note of the written submissions made after the conclusion of hearing. His second grievance is that neither of the two prior arts has anything to do with the embossed technique adopted by the appellant for designing its deflector. The prior arts talk in general terms about the dryer *per se,* but not about the embossed dryer as was invented by the appellant. The Controller of Patents, in essence, has held that embossing is a general technique, but what he had failed to note is that the claim is not for obtaining embossing as a technique, but the use of embossing as a technique to come out with a single screen- cum-deflector.

7.This Court carefully perused the papers and finds there is considerable merit in the submissions of the learned counsel for the appellant. D1 essentially describes about a prior art and according to it, it has a screen plus a deflector, which is nut-bolted to the screen. The invention of the appellant is right in this segment, where it claims to have improvised D1 as it dispenses with the nut and bolt technique, but molds the same into one single window by using embossing as a technique. Prior art D3 deals with cloth dryers and it only indicates that there are vertical deflectors in the

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inner wall of the screen, which would rotate the clothes. This does not appear to be the area of invention, for which the appellant seeks patent. Further, there is not a whisper about the explanation offered by the appellant to the prior arts, in the impugned order.

8.The conclusion is to state the obvious. The order of the respondent has to be set aside and the matter has to be revisited *de novo* by the Controller of Patents. To save embarrassment to the Controller of Patents, who had passed the impugned order dated 01.08.2020, this Court requires that the matter be decided by some other Controller of Patents.

9.Since the appellant has filed this application in 2009, even if he succeeds in having its invention patented, it will have a shelf value of barely five years. Therefore, this Court directs the Controller of Patents, who would now be assigned the responsibility of considering the appellant's application to dispose of the matter within a period of six (6) months, from the date on which such Controller of Patents takes charge of the issues involved.

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10.In the result, the Appeal stands allowed. No costs.

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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