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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-10-2026

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

CMA(PT) No. 2 of 2025

CNR: {HCMA012444352024}

Case QR

GERNAERT, Manuel-rene
Heubergredder 28, 22297 Hamburg, Germany
Nationality a German citizen rep. by its constituted
power of attorney, Mr.S.Anandan,
De Penning and De Penning, having office at
No.120, Velachery Main Road, Guindy,
Chennai - 600 032.

..Petitioner(s)

Vs

The Controller of Patents and Designs
Government of India, Patent office,
Intellectual Property Rights Building, GST Road,
Guindy, Chennai-600 032

..Respondent(s)

PRAYER: This Civil Miscellaneous Appeal is filed under Section 117-A of the Patents Act, 1970, to call for the records of the respondent culminating in the impugned order dated 26.09.2024, rejecting the Grant of Patent and set aside the same and consequently, direct grant of the patent in respect of the Appellant's Application No.202147029741.

For Petitioner(s): Mr.S.Shiva Thanu Mohan
for M/s.S.Ramasubramaniam And Associates

For Respondent(s): Mr.K.Subbu Ranga Bharathi,
Central Government Standing Counsel

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JUDGMENT

The present appeal has been filed challenging the order of the Controller of Patents and Design dated 26.09.2024. As a consequential aggrieved for grant of patent of the appellant's application No.202147029741.

2. I have heard learned counsel Mr.S.Shiva Thanu Mohan, learned counsel for M/s.S.Ramasubramanian and Associates for the appellant and Mr.Subbu Ranga Bharathi, learned Central Government Standing Counsel, for the respondent.

3. The invention relates to "CONTROL DEVICE FOR CONTROLLING REAL OR VIRTUAL AIRBORNE OBJECTS" and licence. The respondent has cited four prior arts and common general knowledge to deny patent in favour of the appellant. Mr.Shiva Thanu Mohan, learned counsel for the appellant would firstly contend that all the prior arts were one handed devices, whereas the petitioner/appellant's invention is two handed which ensures better efficiency and control of the device. He would further state that none of the prior arts or devices can be used with two hands and therefore, none of the prior arts could have been cited against the appellant's invention.

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4. As regards common general knowledge being put against the appellant, Mr.Shiva Thanu Mohan, learned counsel for the appellant would state that the respondent was duty bound to disclose the source of common general knowledge, which admittedly, is found wanting in the impugned order and thereby, the appellant has been deprived of a fair opportunity to even respond to the objection with regard to common general knowledge. He would also take me through the prior arts and the petitioner's invention in the comparative table and contend that the respondent has not noticed any of the distinctive feature which are clearly innovative, entitling the appellant to patent.

5. Per contra, Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel appearing for the respondent would submit that there is no perversity or error committed by the respondent in rejecting the patent, citing lack of innovation and common general knowledge. It is the further submitted by Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel that the impugned order clearly discusses all the prior arts viz., D1 to D4 and as to how the same would come in the way of the appellant claiming any innovation, entitling him to patent. He would therefore pray for dismissal of the appeal.

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6. I have carefully considered the submissions advanced by the learned counsel on either side and I have also gone through the records submitted by way of typed set of papers.

7. With regard to the lack of innovation citing four prior arts viz., D1 to D4, I have gone through the comparative table that has been placed in the typed set of papers and it is clear that apart from all the prior arts, D1 to D4, being single handed devices in contrast to the appellant's device being two handed, yet another innovative feature is the spring element feature which allows the control device to automatically return to zero position which is clearly absent and wanting in prior arts D1 to D4. The respondent has unfortunately not addressed these two crucial issues and clearly fell in error in holding that the patent application of the appellant lacks innovations. I am satisfied that the device of the appellant is clearly innovative in as much as it introduces new features, that have been invented for the first time and have not been in use, leave alone being invented at an earlier point of time. Therefore, on this ground, the appellant is certainly entitled to succeed.

8. However, at the same time it is not only based on prior arts D1 to D4 and citing lack of innovation that appellant's application has been rejected, but also on the ground of common general knowledge. It is by now settled law that when the Authority rejects a patent application citing common general

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knowledge, then the Authority has to specifically set out the source of common general knowledge, the absence of which would amount to a clear deprivation of a fair and reasonable opportunity to the person seeking patent, to effectively respond to the same.

9. In this regard, Mr.Shiva Thanu Mohan, learned counsel for the appellant has relied on the decision in of the Delhi High Court, *AGFA NV and another vs. The Assistant Controller of Patents and Designs and another,* in *C.A.(COMM.IPD –PAT) No. 477 of 2022 dated 02.06.2023*, where the learned Judge of the Delhi High Court, has held that if the Controller relies on 'common general knowledge', as a ground for refusing a patent application, then it is essential to specify the source of the said knowledge, besides also substantiating the said reason by some acceptable evidence that a theory or principle or knowledge has become common knowledge. The Court further held that when the Controller had failed to give any source of 'common knowledge' that has been referred to in the impugned order, then it cannot be construed as to what precise element of 'common general knowledge' has been considered, leading to rejection of the patent application. Ultimately, the Delhi High Court set aside the impugned order of the Patent Office and remitted the matter for fresh consideration. The facts of the said case, would squarely apply in the present case on hand.

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10. I have carefully read the impugned order and the source of common general knowledge has not been disclosed anywhere in the impugned order. Therefore, on this ground alone, the matter has to be necessarily remitted, while setting aside the impugned order with regard to the rejection of the patent application on the ground of lack of inventive steps. In other words, I hold that the petitioner's patent application has innovation and all the prior arts that have been cited against the petitioner's invention are not relevant or sufficient enough to refuse or accept the inventive steps/processes involved in the appellant's patent application.

11. The Civil Miscellaneous Appeal is therefore ***allowed***, the order dated 26.09.2024 is set aside insofar as lack of innovation is concerned. However, it is remitted to the respondent for fresh examination by a different Patent Controller, only on the ground of rejection of the patent application on the ground of common general knowledge. No costs.

12-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

The Controller of patents and designs
Government of India, Patent office, Intellectual property Rights Building, GST Road, guindy, chennai-600 032

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P.B.BALAJI, J.

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