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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

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MR.JUSTICE N.SESHASAYEE

CMA(PT)/16/2023

3M INNOVATIVE PROPERTIES COMPANY
3M Centre, P.O.Box 33427
Saint Paul MN 55133-3427, USA
Nationality: US
Represented by its Power of Attorney
Mr.Raghavan Ravindran Nair
De Penning & De Penning, Having office at
No.120, Velachery Main Road, Guindy
Chennai 600 032 ... Appellant

Vs.

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

PRAYER: Civil Miscellaneous Appeal (Patents) is filed under Sections 117-A of the Indian Patents Act, 1970, praying to call for the records of the respondent culminating in the impugned order dated 28.01.2022 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.1248/CHEN/2013.

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For Appellant : Mr.S.Shivathanu Mohan
for M/s.S.Ramasubramaniam & Associates

For Respondent : Mr.M.Karthikeyan
Senior Panel Counsel

JUDGMENT

The petitioner's application for patenting his invention vis-a-vis a compound which is used for inducing a known compound namely 'CYTOKINE - BIOSYNTHESIS', which makes the compound useful for treating a variety of conditions such as viral diseases and tumors in animals. The ground for rejection was two fold:

a) that it lacked inventive step within the meaning of Section 2(1)(ja) of the Patents Act, 1970; and

b) that it falls within Section 3 (d) of the Patents Act, 1970.

2.Heard both sides.

3.The learned counsel for the appellant submitted that after the First Examination Report, the respondent issued a hearing notice in which it relied on three prior arts to which the appellant produced its written

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submissions plus necessary evidence. However, in the impugned order, the respondent chose not to discuss anything about the written submissions and the evidence which the appellant had produced. Indeed, the learned counsel argued that the respondent chose only to extract certain passages from the FER even when he discussed one of the prior arts which was marked as D1.

4.This Court perused the papers and satisfied itself that the submissions made by the learned counsel for the appellant are not out of place. It is very apparent that the Controller of Patents could have bestowed greater care in deciding the issue before it.

5.Left with little option, this Court is now constrained to set aside the impugned order of the Controller dated 28.01.2022 and remands the matter back to the respondent. To save embarrassment to the Controller who passed the impugned order, this Court requires some other Controller to examine the application of the appellant. Such Controller who may now take up the issue is advised to dispose the appellant's application within a reasonable period, at any rate not later than six (6) months from the date

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on

N.SESHASAYEE, J.

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which he takes cognizance of the application for patent. It is underscored that the appellant had filed his application in 2013 and the application is already 10 years old and it is absolutely obligatory on the part of the respondent to attend to the application in right earnestness since patent office should not be seen as killing the scientific temper of the citizens of this country.

6.In the result, this appeal stands allowed. There shall be no order as to costs.

29.01.2024

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Index : Yes / No
Neutral Citation: Yes / No

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