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(T)CMA(PT) No.204 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM :JUSTICE N.SESHASAYEE

(T)CMA(PT) No.204 of 2023
(SR.No.6/2018/PT/CHN)

INTELLIGENT ENERGY LIMITED

(Through its constituted Power of

Attorney Holder Mr.Samridh Bhardwaj)

Charnwood Building, Holywell Park

Ashby Road, Loughborough

Leicestershire, LE11 3GB

United Kingdom.

... Appellant

Vs

1.The Controller General of Patents,

Designs & Trade Marks

Boudhik Sampada Bhawan

Antop Hill, S.M.Road

Mumbai - 400 037.

2.The Controller of Patents

Patent Office Chennai

Boudhik Sampada Bhawan

G.S.T.Road, Guindy

Chennai - 600 032.

... Respondent

PRAYER: Transferred Civil Miscellaneous Appeal (Patent) filed under
Section 117-A of the Patents Act, 1970, praying (a) to call for the records of



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the patent application No.3716/CHENP/2007 relating to the impugned order and issue an order setting aside/quashing the impugned order dated July 24, 2017 and direct respondent No.2 to grant a patent on the patent application No.3716/CHENP/2007 allowing the present appeal; (b) to amend, add or alter any ground of appeal and also be permitted to place on record relevant material including evidence in the form of an affidavit, written submissions and synopsis of case law; and to pass such other appropriate relief, order and/or direction as this Court may deem fit and proper in the circumstances of the case.

For Appellant : Mr.D.Subbin, Mr.Vineet Rohilla &
Mr.Rohit Rangi for M/s.Remfry & Sagar

For Respondent : Mr.C.Samivel
Senior Panel Counsel

JUDGMENT

Having lost its application for patenting its invention titled "*Hydrogen Generating Fuel Cell Cartridges*", which relates to a fuel system/gas generating apparatus which shows greater efficiency in the production of hydrogen with a longer shelf life, for lacking in inventive step within the meaning of Sec.2(1)(ja) of the Patents Act, the inventor has preferred this appeal.



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2. The brief facts are :

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- a) The title of the invention being what it is, what exactly the appellant strive to achieve through its invention is that, it has developed a technique to segregate the hydrogen which comes out as a byproduct of any chemical reaction and to capture the same for further industrial use. The process of captured hydrogen as a byproduct may be broadly stated to be an idea behind the appellant's invention.
- b) The appellant had filed its application for patenting before the second respondent where in it had made 42 claims, of which 4 are its independent claims. It eventually evoked the FER wherein the second respondent had taken objection to the appellant's invention for lack of novelty and lack of inventive step, and tried to back its preliminary conclusion with prior arts D1 to D9. The appellant responded to the same. It also amended claim No.1.
- c) The matter moved to the next step when the said respondent issued a hearing notice, in which he retained only prior arts D1 to D3 which he had cited in the FER, and added D4 as a new prior art. The Controller had also given up his initial objection of lack of

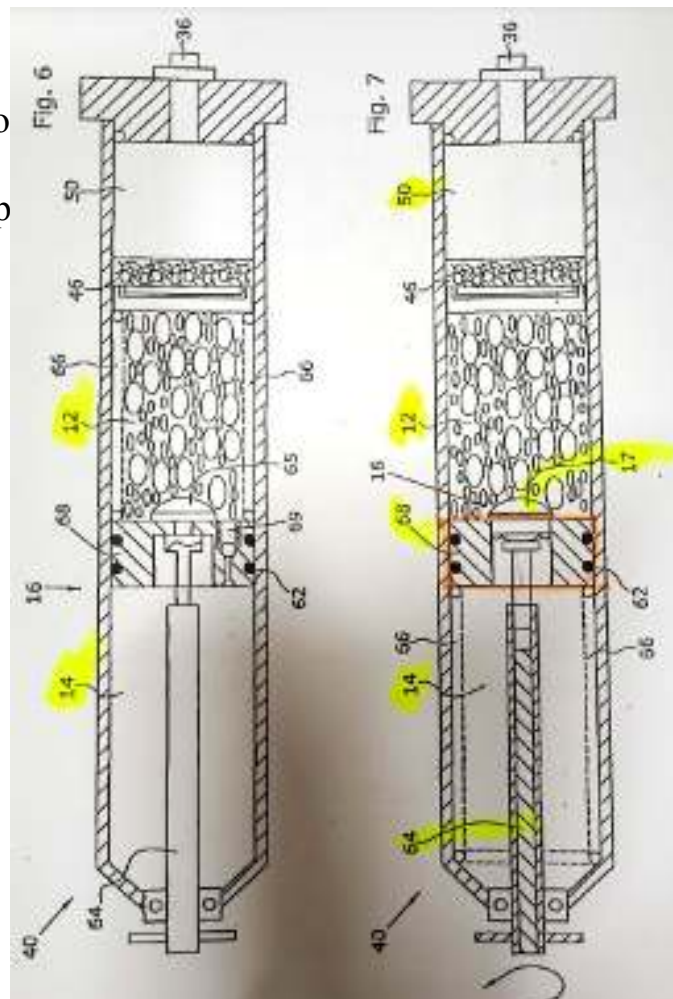


novelty in the invention of the appellant, but retained its objection of lack of inventive step.

- d) The appellant would now amend its claims and brought down the total number of claims from 42 to 39 claims, and also its independent claims from 4 to 1 claim.
- e) The appellant had participated in the hearing and also filed its written submissions.

Ultimately, the Controller of Patent had passed his impugned order dated 24.07.2017 rejecting the appellant's application for patent on the ground that it lacked inventive step, since it bears close resemblance to the invention detailed in D1. Aggrieved by the aforesaid order, this appeal is preferred.

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There are three chambers in the appellant's design. The bottom is denoted as "14", where water will be stored; then there is a middle chamber, which is denoted as "12", where a chemical reaction takes place; and the third and the top most chamber is denoted as "50" where hydrogen which comes out as a byproduct of the chemical reaction, is collected. Between the bottom chamber (in "14") and the middle chamber (in "12"), is a piston (denoted as "68"), on whose top is mounted, what the appellant calls as "globe valve". The globe valve is managed by the piston which operates by a rotational action. This portion where rotational action takes place is shown about the middle of the lower chamber. Water is one of the reactant and it is stored in the lower chamber. In the middle chamber will be stored the primary



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reactant. According to the appellant's invention, due to the rotational movement the globe valve mounted on the piston will be pushed upward and it makes way for the water from the lower chamber to move to the middle chamber to enable its reaction with the primary reactant. During this reaction, hydrogen is generated. This hydrogen has another purpose in that, when the pressure inside the middle chamber is increased, it will push the globe valve down, and stops the inflow of the water from the lower chamber to the middle chamber. And when the pressure of the hydrogen in the middle chamber comes down, then it automatically opens the globe valve to let water from the bottom chamber to get into the middle chamber. And the pressure of hydrogen in the middle chamber is adjusted through a permeable membrane which separates the middle chamber from the upper chamber. To state it differently, once the hydrogen generated in the middle chamber increases, it pushes the globe valve and closes the water inflow to the middle chamber and moves upwards and gets in the top most chamber, and when hydrogen goes to the top chamber, it automatically finds its way out of the valve fitted on the top of the upper most chamber (No.36 in the diagram). Once hydrogen escapes through this valve, its pressure gets reduced which in turn gets reflected in the function of the globe valve, and it acts as described



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above.

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3.2 The learned counsel submitted that where the appellant's invention differs from D1 is that in the invention of the appellant, the movement of the secondary reactant to the chamber where the reaction takes place is managed by the pressure of the byproduct of the reaction and not independent of it. This is a significant improvement over the known technique and it is hence this invention is novel. And it is this improvement over the all known invention makes appellant's invention unique.

4. The learned counsel for the appellant made the following submissions :

- (a) When once the Controller was satisfied that the appellant's invention was novel, then it is obligatory on his part to state how it lacked inventive step.
- (b) It appears that more than 3/4th of the order of the Controller is a literal copy-pasting of the contents of the hearing notice and D1. He has not chosen to make a meticulous study to explain how the appellant's invention is too obvious to a person skilled in the art.



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5. This Court weighed the submissions of the learned counsel carefully and finds that there is a point in what he submitted. The learned counsel has explained elaborately how D1 functions and also explained how the appellant's invention functions. And as the learned counsel submitted about 4/5th of the order of the Controller is essentially a reproduction of the hearing notice as well as D1. And the Controller has not adequately made evident how the appellant's invention will be obvious to a person skilled in the art, especially when the invention of the appellant makes a marked deviation/improvement over D1. To repeat, in the appellant's case, the secondary reactant and water from the lower chamber is fed into the upper chamber through the valve system, which valve is managed by the process of the byproduct hydrogen and not de hors of it. This, to this Court appears as a marked improvement over D1 which does not claim that the reactants meet to start a reaction through the process of the byproduct of the reaction.

6. This Court now considers that the appellant's invention requires a fresh consideration. Accordingly, it allows this appeal, sets aside the impugned proceedings of the respondent dated 24.07.2014, and remands the matter back for a *de novo* consideration. To save embarrassment to the Controller



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who has passed the impugned proceedings, this Court directs that appellant's application now be considered by some other Controller. The appellant has made his application sometime in 2005, and in the eventuality of its invention is considered for being patented, it will have an effective shelf value of perhaps a year from now. Hence, this Court now requires the Controller incharge of the appellant's invention to dispose of the appellant's application within a period of four months from the date on which he/she takes cognizance of the same. No costs.

06.03.2024

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Index : Yes / No

Speaking order/ Non-speaking order



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To:

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