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

+ W.P.(C) 11504/2017

GENERAL ELECTRIC COMPANY Petitioner

Through: Ms Rajeshwari H., Advocate.

versus

UNION OF INDIA AND ANR. Respondents

Through: Mr Anurag Ahluwalia, CGSC with
Mr Charitarth Bharti, Advocates with
Dr S. S. Singh, Deputy Controller of
Patents.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **16.02.2018**

1. The petitioner has filed the present petition impugning an order dated 07.07.2017 (hereafter 'the impugned order') passed by the Controller of Patents (respondent no.2), whereby the petitioner's application or grant of patent (application no.5052/DELNP/2008 dated 11.06.2008) was declined. The said application was captioned "*Apparatus And Method For Locating Assets Within a Rail Yard*". Respondent no.2 considered the said claims and has held that the same lack inventive steps in view of the prior arts: D1:US2002084387, D2: WO 01/26059, D3: WO2005/119630 and D4: US2004/102878.

2. It is seen that the petitioner had filed detailed submissions distinguishing the aforesaid prior arts. However, it appears from a plain reading of the impugned order that the detailed reasons, as furnished by the

petitioner, have not been considered.

3. The petitioner's claims have also been rejected on the ground that the flow chart furnished by the petitioner is an algorithm and, therefore, in terms of Section 3(k) of the Patents Act, 1970 (hereafter 'the Act') would not qualify as a patentable invention.

4. The examination of the flow charts furnished by the petitioner plainly indicates that the same are not algorithms. A bare perusal of the claims indicates that the petitioner had described the process by way of a flow chart. The learned counsel appearing for the petitioner also drew the attention of this Court to the guidelines for examination of Computer Related Inventions (CRI), which expressly provides that in case of any invention in a method, the necessary sequence of steps are required to be described with the help of flow charts.

5. Mr Ahluwalia, the learned counsel appearing for the respondents states that although, the petitioner has an equally efficacious remedy of approaching the Intellectual Property Appellate Board (IPAB); however, the technical member has not been appointed as yet and, therefore, the IPAB is not holding any hearings currently. He, however, states that by virtue of Section 77(f) of the Act, the petitioner has an alternative remedy for seeking the review of the impugned decision.

6. In view of the above, the present petition is disposed of by permitting the petitioner to file a review petition. In the event, such review petition is filed within a period of two weeks from today, the same would be considered by the respondent no.2 uninfluenced by any question of delay. Respondent no.2 shall expressly consider the features as articulated by the petitioner in the written submission filed before respondent no.2 and also

afford the petitioner an opportunity of being heard.

7. Respondent no.2 may consider the application uninfluenced by the *prima facie*, observations made in this order. It is clarified that all rights and contentions of the parties are reserved.

8. Order *dasti*.

VIBHU BAKHRU, J

FEBRUARY 16, 2018
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