

OIPD-9

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
(Intellectual Property Rights Division)

IPDPTA/77/2023

KAMTERTER PRODUCTS LLC (OA/3/2021/PT/KOL)
VS
THE ASSISTANT CONTROLLER OF PATENTS

BEFORE:

The Hon'ble JUSTICE RAVI KRISHAN KAPUR

Date : 26th June, 2025.

Appearance:
Mrs. Nanki Areja, Adv.
Mr. Balarko Sen, Adv.
Mr. Soumyajit Mishra, Adv.
...for the appellant/petitioner

The Court: This is an appeal directed against an order dated October 31, 2019 passed by the Learned Assistant Controller whereby an application for patent being IN 1044/KOLNP/2010 has been rejected under Section 15 of the Patent Act, 1970.

Briefly, the instant application titled “SEED TESTING METHOD AND APPARATUS” was filed by the appellant pertaining to a novel method of performing a seed test for measuring the viability and vigor characteristics of seeds exposed to a stress-inducing atmosphere, wherein the stress-inducing atmosphere comprises the level of moisture, the level of oxygen and the temperature of early spring soil. The steps as enumerated in the subject invention are set out hereinbelow:

- a. “Placing a moisture-soaked material into a sealable compartment;

- b. Inserting a sample of the seeds into the sealable compartment;
- c. Removing oxygen from said compartment until the stress level of oxygen is reached by placing a pack comprising an oxygen-scavenging material in the sealable compartment in the said compartment;
- d. Exposing the sealable compartment to a cold temperature, wherein the cold temperature is the stress-inducing temperature of early spring soil;
- e. Exposing said seeds to the stress-inducing atmosphere for a conditioning period;
- f. Removing the seeds from the stress-inducing atmosphere;
- g. Deterring the proportion of seedlings that develop normally from the seeds exposed to the stress-inducing atmosphere; wherein an indication of the viability and vigor characteristics of the seeds after exposure to the stress-inducing atmosphere is obtained based on the said proportion of normal seedlings that develop from the seeds."

Upon filing of the application, the FER was issued on 18th September, 2018. The response to the FER was filed by the agents of the appellant on February 8, 2019. A hearing notice dated September 9, 2019 was issued by the respondent. Pursuant to the above, written submissions were filed on 25th March, 2019 and the impugned order came to be passed on 31st October, 2019.

It is contended on behalf of the appellant that the impugned order is bereft of any reasoning and is liable to be set aside being in violation of the principles of natural justice. In support of such contention, the appellant relies on *Decco Worldwide Post Harvest Holdings B.V. and Another vs. Controller of Patents and Designs and Another* (2023 SCC OnLine Cal1130), *Protean Electric Ltd. Vs. The Controller of Patents and Designs* (MANU/WB/0740/2023), *Otsuka*

Pharmaceutical Co. Ltd. Vs. Controller of Patents (2022 SCC OnLine Del 4982), Dolby International AB Vs. Assistant Controller of Patents and Designs (2023 SCC OnLine Del 1521), Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota Vs. M/s Shukla & Brothers (2010 SCC OnLine SC 466).

On behalf of the respondent, it is submitted that there are no reasons in the impugned order and the matter be remanded to the Controller.

On a perusal of the impugned order, it appears that after considering the submissions of the appellant in detail and recording the counter arguments of the respondent, the Controller has concluded as follows:

“Therefore based on the above facts observation in the case, the objection regarding section 3(h) of the Indian Patents Act raised in the hearing notice is still not met. Therefore, I hereby refuse the grant of patent for the instant Patent application no. 1044/KOLNP/2010 with four (04) numbers of claims.”

There are simply no reasons in the impugned order. An order should reflect that the issues and contentions raised by the parties have been adequately dealt with. There must be an element of ‘*why*’ to justify ‘*what*’. Reasons form the soul of any decision and reflect the basis on which the Controller has applied his mind.

In view of the above and the submissions of the respondent, IPDPTA/77/2023 stands allowed.

The impugned order is set aside. The matter is remanded back to the Controller with a direction to dispose of the same within a period of two months from the date of communication of this order. It is made clear that

there has been no expression on the merits of the case and all issues are left open to be decided in accordance with law.

(RAVI KRISHAN KAPUR, J.)

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