OIPD-8

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

IPDPTA/68/2023
IA NO: GA/1/2023

SHAPERON INC. (OA/6/2018/PT/KOL)
VS
THE CONTROLLER GENERAL OF PATENTS AND DESIGNS, MUMBAI AND ANR.

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 26th June, 2025.

Appearance:
Mrs. Mitul Dasgupta, Adv.
Mr. K.K. Pandey, Adv.
Ms. Pooja Sett, Adv.
Mr. Teesham Das, Adv.
Ms. Mallika Bothra, Adv.
…for appellant.

Mr. Indrajeet Dasgupta, Adv.
Mr. Gourab Maiti, Adv.
…for the Controller.

The Court: This is an appeal under Section 117A of the Patents Act, 1970 arising out of an order dated June 15, 2017 passed by the Deputy Controller of Patents & Designs, Kolkata in Patent Application No.4278/KOLNP/2009.

Briefly, the invention, titled "Biological Surfactant as Anti-inflammatory agent and Tissue Preservative Solution" is an anti-inflammatory agent and a tissue preservative solution comprising a biological surfactant which blocks a reaction of a proinflammatory factor with a receptor by emulsifying the proinflammatory factor.

On receipt of the request for examination, on 9 May, 2011 the above application was examined. The applicant had filed 10 (ten) claims. The First Examination Report (FER) was issued on 30th December, 2014. Pursuant to the above, a detail response against the objection was filed on December 17, 2015. Thereafter, a hearing was offered to the appellant on March 1, 2017. The hearing was finally concluded on April 13, 2017. The appellant had also filed their Notes of Submissions before the authorities.

The short point raised in this appeal pertains to violation of the principles of natural justice. It is contended on behalf of the appellant that in passing the impugned order the Deputy Controller failed to consider and take into account the expert evidence of Dr. Seung-yong Seong dated April 21, 2017. It is submitted that despite reference to the said expert of Dr. Seong, the same was neither discussed nor adverted to before passing of the impugned order.

On behalf of the Deputy Controller it is fairly submitted that the above expert evidence by way of affidavit has been ignored and there is no discussion of the same in the impugned order. In such view of the matter, the Deputy Controller has no objection if the matter be remanded for hearing afresh.

A reading of the impugned order clearly demonstrates that there is no reference to the above affidavit dated 21 April 2017 filed by Dr. Seong. The Deputy Controller has neither discussed nor taken into account the said expert evidence. A perusal of the affidavit would *prima facie* show that the appellant had furnished expert evidence including experimental data to show the effect and technical advancement of the subject invention. The said affidavit also seeks to enumerate the surprising and advantageous effects of sodium taurodeoxycholate

over other bile salts, such as sodium cholate or sodium deoxycholate in terms of anti-inflammatory effects and cytotoxicity. In such circumstance, the affidavit deserved consideration before passing of the impugned order.

In view of the above, the impugned order is unsustainable and set aside. The matter is remanded to the Controller to decide the matter afresh in accordance with law within three months from the date of communication of this order and after taking into account the above affidavit. It is made clear that there has been no adjudication on the merits of the case and all issues are left open to be decided in accordance with law.

With the above directions, IPDPTA/68/2023 stands allowed.

The application being IA No.GA/1/2023 also stands disposed of in view of the above directions.

(RAVI KRISHAN KAPUR, J.)

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