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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2025

CORAM :

The Hon'ble Mr.Justice SENTHILKUMAR RAMAMOORTHY

C.M.A. (PT) No.43 of 2024

TVS Motor Company Limited,
No.29, Haddows Road,
Chennai 600 006, Tamil Nadu, India. .. Appellant

Vs

The Controller of Patents & Designs,
The Patent Office, Intellectual Property
Building, G.S.T.Road, Guindy,
Chennai 600 032. .. Respondent

Prayer: Appeal filed under Section 117 A of the Patents Act, 1970, to set aside the order dated 31.05.2024 passed by the Respondent in Indian Patent Application No.6617/CHE/2014 and allow Indian Patent Application No. 6617/CHE/2014 to proceed for grant or based on the facts and circumstances, Patent Application No. 6617/CHE/2014 be remanded back to a different Controller for a fresh time bound consideration.

For Appellant : Mr.S.Harish
for M/s.Thriyambak J.Kannan

For Respondent : Mr.M.Karthikeyan
Central Govt. Spl. Panel Counsel

* * * * *

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JUDGMENT

This appeal is directed against the order dated 31.05.2024 rejecting Indian Patent Application No.6617/CHE/2014 dated 26.12.2024 in respect of a claimed invention titled "VEHICLE MONITORING SYSTEM AND METHOD THEREOF".

2. Pursuant to a request from the appellant, the first examination report was issued on 26.02.2020. In the said report, objections were raised *inter alia* on the ground of lack of invention step by citing two prior art documents (D1 and D2). The appellant replied to the FER on 26.02.2020. Hearing notice dated 05.03.2024 was issued thereafter and this was followed by a further hearing notice dated 03.04.2024. Pursuant to the hearing, the appellant also filed written submissions. It should be mentioned that the respondent cited an additional prior art, namely, Prior Art D3, in the subsequent hearing notice dated 03.04.2024. The order impugned herein was issued in these facts and circumstances.

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3. Learned counsel for the appellant referred to the complete specification and submitted that the claimed invention relates to a vehicle monitoring system for use in two wheelers. He pointed out that the vehicle monitoring system enables the collection of data relating to vehicle health on multiple parameters. It also provides data with regard to traffic conditions prevailing on the route traversed by the vehicle for purposes of suggesting alternative routes. In fact, he submits that it also enables the user to listen to a playlist on iTunes.

4. After referring to the current claims of the appellant, the first contention of learned counsel was that the priority date of the claimed invention is 26.12.2014. Consequently, he submits that prior art D3, which was published on 12.02.2015, does not qualify as prior art under the Patents Act, 1970. He further submits that prior art D1, which is the other prior art relied on under the impugned order is a non-patent literature pertaining to a vehicle health monitoring system. According to learned counsel, prior art D1 does not provide for the transmission of data collected by the system to the user through a Smartphone. In addition, he adds that such data would be

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available as per D1 only when the vehicle is switched on, whereas the claimed invention would provide such information to the Smartphone even if the vehicle is switched off. In support of this contention, he refers to the independent claim-1wherein it is stated *inter alia* "said vehicle being in one of switched on or stop condition".

5. By referring to the impugned order, learned counsel submits that the respondent discussed prior arts, D1, D2 and D3 in paragraph 11 and thereafter, concluded in paragraph 12 that the claimed invention does not comprise any feature making a technical contribution over the teaching of D1 and D3 and it cannot be regarded as involving an inventive step. Learned counsel submits that such conclusion was drawn without closely examining the features of the claimed invention in contra distinction to those of prior arts D1 and D3. Consequently, he submits that interference with the impugned order is necessary.

6. Learned counsel for the respondent refuted these contentions. With regard to the contention that D3 does not qualify as prior art, by referring to Sections 11 and 13 of the Patents Act, learned counsel submits

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that the priority date would be the date of lodging the provisional specification, provided the claims are fairly based on disclosures made in the provisional specification. By comparing and contrasting the summary in the provisional specification and the complete specification, he submits that the claims made in the complete specification are not fairly based on disclosures in the provisional specification. After pointing out that the complete specification was filed on 12.12.2015, he submits that D3, which was published on 12.02.2015, qualifies as prior art.

7. Upon considering the rival contentions, the first aspect to be considered is whether D3 qualifies as prior art or not. The provisional specification was filed on 26.12.2014 and the appellant claims priority from the said date. D3 was first cited in notice dated 03.04.2024 for a hearing on 30.04.2024. In the written submissions filed after such hearing, the appellant did not raise the contention or any objection that D3 does not qualify as prior art. Instead, the appellant proceeded to distinguish the claimed invention from D3. In those circumstances, the impugned order does not contain a discussion or finding on whether D3 qualifies as prior art or not.

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8. When the complete specification of the claimed invention is examined, it appears to be a vehicle monitoring system which is computer implemented and linked to the user's personal device such as a Smartphone or Tablet. In order to appreciate the nature of the claimed invention, it is relevant to set out the independent claim 1 and dependent claims 8 and 9, which are as under:

> *"1. A real-time vehicle monitoring system for a two wheeled vehicle, said real time vehicle monitoring system comprising:*
>
> *a controller (2) configured to receive and process signals received from sensors provided in said vehicle containing digital and analog information about said vehicle,*
>
> *a processed signal (1) being converted into a processed data; and characterized in that,*
>
> *a communication device (3) that communicates said processed data related to digital and analog information about said vehicle, to a Smartphone having a display screen (7), wherein said vehicle being in one of switched ON or stopped condition."*

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8. *The real-time vehicle monitoring method of claim 5, wherein said user and traffic can be traced, and said user being intimated in advance by predicting traffic on usual driving path of said user and suggests alternative route using GPS and GPRS modules that communicates with said controller (2).*

9. *The real-time vehicle monitoring method of Claim 5, wherein in case of song list, preferences being already known and used in several applications online, including as a playlist on iTunes.*

9. The independent claim 1 discloses that the claimed invention is a real-time vehicle monitoring system for a two-wheeled vehicle. Prior art D1, which was published in 2012, is a non-patent literature titled "Vehicle Health Monitoring System". It discloses an embedded system for detecting vehicle condition by monitoring internal parameters. *Prima facie*, it does not appear to involve the use of a Smartphone or Tablet for transmission purposes. Prior art D2 is a patent literature published on 12.09.2013. From paragraphs [0014] and [0015], it appears that it provides for a centralised control to the user for use in lieu of knobs, switches and buttons so as to enable operation of vehicle parts and accessories. Prior art D3 is a patent

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literature titled "Automatic Communication Method between Smartphone and Navigation Device using Sensor". From independent claim 1 appended thereto, it appears that it is a navigation device used with Smartphone and enables data transmission between Smartphone and the navigation device.

10. In the impugned order, the respondent set out the features of D1, D2 and D3 in paragraph 11 thereof. Thereafter, independent claim 1 of the claimed invention was set out. This is followed by these conclusions:-

> "*As claim 1 does not comprise any feature making a technical contribution over the teaching of D1 and D3, it cannot be regarded as involving an inventive step.*
> *Independent claim-5 is a method claim w.r.t. above system claim. Hence independent claim-5 is also not involving an inventive step.*
> *The additional features of dependent claims 2-4 and 6-10 do not add anything inventive features to the claims on which they depend.*
> *Therefore the dependent claims 2-4 and 6-10 are also not considered to be inventive."*

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11. Although the respondent has drawn reference to the judgment of the Division Bench of the Delhi High Court in ***F.Hoffmann-La Roche Ltd. vs. Cipla Ltd. (2012)*** and the judgment of the Hon'ble Apex Court in ***Biswanath Prasad Radhey Shyam vs. Hindustan Metal Industries Ltd., (AIR 1982 SC 1444)***, there is no indication in the impugned order as to how the claimed invention is obvious from D1 to D3. Instead, the respondent has merely recorded the conclusion that the claimed invention is novel inasmuch as all the features of the claimed invention are not contained in the cited prior arts, but it would be obvious to a person skilled in the art. The order contains no discussion as to whether there are cues or pointers in the cited prior art which would lead the person skilled in the art to the claimed invention. Consequently, the impugned order calls for interference.

12. Therefore, the impugned order dated 31.05.2024 is set aside and the appeal is allowed. The matter is remanded for re-consideration on the following terms:

1) In order to preclude the possibility of pre-determination, an officer other than the officer who issued the impugned order shall undertake re-consideration;

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2) After providing a reasonable opportunity to the appellant, a reasoned decision shall be issued within four months from the date of receipt of a copy of this order; and

3) For the avoidance of doubt, it is clarified that no observations have been made herein on the merits of the patent application.

There shall be no order as to costs.

27.02.2025

Index : No
NC : No
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To

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Senthilkumar Ramamoorthy, J.

(sra)

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