

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

AID NO.16 OF 2022

IN THE MATTER OF
GROZ-BECKERT KG

Vs

UNION OF INDIA & ORS.

For the petitioner : Mr. Adarsh Ramanujan, Advocate
Mr. S. Das, Advocate
Mr. Aditya Mondal, Advocate
Mr. C. Pal, Advocate

For the respondent : Mr. Ranjan Kumar Sinha, Advocate.

Reserved on : 19.12.2022

Judgment on : 18.01.2023

Ravi Krishan Kapur, J.:

1. This is an appeal under section 117A (2) of The Patents Act, 1970 (the Act). The appellant assails an order dated 10 March, 2022 passed by the Assistant Controller of Patents and Designs (the order) rejecting the appellant's patent application no.938/KOLNP/2015 dated 7th April, 2015.
2. Briefly, the appellant is a leading manufacturer of industrial machine needles, precision parts and fine tools meant for production and

joining of textile fabrics. The appellant has a worldwide presence and provides products and service support in the textile process of knitting, warp knitting, weaving, felting, tufting, carding and sewing. The appellant has a significant global presence and is engaged in research and development of new product use in the textile industry. The present invention titled "HEALD FOR PROCESSING TAPE-SHAPED MATERIAL AND METHOD FOR MANUFACTURE THEREOF" is aimed to heald the processing of tape-shaped material as a method for manufacture thereof. The invention claimed by the appellant has been granted in over 11 jurisdictions after fulfilling the same criteria of novelty, inventive steps etc.

3. By the order, the application for registration has been rejected on the following grounds:

A. The subject matter of the claims 1-13 of the instant application lack(s) inventive step and being obvious in view of teaching (s) of cited document(s) D4: US2007/0144603A1 under section 2(1)(ja) of the Patents Act, 1970 (as amended).

B. None of the documents indicate the date of submission of the Proof of Right in the Patent Office. The documents are neither acknowledged by the Patent Office nor available in the list of documents uploaded in the Patent Office database.

4. On behalf of the appellant, it is contended that, the Controller has erred in not considering the subject invention as a whole. Each of the claims by the appellant comprise of multiple features which should

have been taken into consideration. On the contrary, the impugned order erroneously segregates the subject invention.

5. I find from the order that the Controller has dissected the subject invention into two isolated elements. The impugned order characterizes the subject invention as having two main features provided as follows:

Feature-1: At least one component (6, 7) which limits the thread eyelet (8) is held between the two banks (2, 3)

Feature-2: Inter alia by a normal force in relation to the longitudinal healed direction (L) that is generated by the fact that at least one of the two bands (2, 3) in its fitted position in the heald (1), is in a mechanically stressed state in the region between the two first joins (13, 14).

6. Paragraph 9.03.03.02 of the Indian Manual of Patent Office Practice and Procedure provides as follows:

“The “obviousness” must be strictly and objectively judged. While determining inventive step, it is important to look at the invention as a whole.

Accordingly, the following points need to be objectively judged to ascertain whether, looking at the invention as a whole, the invention does have inventive step or not:

- i. Identify the “person skilled in the art”, i.e. competent craftsman or engineer as distinguished from a mere artisan;
- ii. Identify the relevant common general knowledge of that person at the priority date;

- iii. Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;
- iv. Identify what, if any, differences exist between the matter cited as forming part of the “state of the art” and the inventive concept of the claim or the claim as construed;
- v. Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the Person skilled in the art or do they require any degree of inventive ingenuity?”

7. Thus, in determining inventive steps, the invention should be considered as a whole. In other words, it is not sufficient to draw the conclusion that a claimed invention is obvious merely because individual parts of the claim taken separately are known or might be found to be obvious. The contention that an invention is obvious in relation to a particular item must be treated with care and caution. In doing so, the whole picture presented should be taken into consideration and not a partial one. There should be an element of preciseness about what is asserted to be common general knowledge. The “obviousness” must also be strictly and objectively judged. (*Bishwanath Prasad Radhey Shyam vs. Hindustan Metal Industries (1979) 2 SCC 511 paras 24 & 25, F. Hoffman La Roche Ltd. Vs. Cipla Ltd. PTC 1 paras 13, 143*).

8. I find the impugned order is erroneous inasmuch as it dissects the subject application into two isolated elements. Moreover, the critical feature of having technical advance, as described by the appellant has also been ignored. The impugned order primarily relies on a document

marked D4 which is the appellant's own patent and fails to consider the subject invention at hand which is an improvement thereon. The impugned order fails to apply the test of determination of inventive steps and consider the invention as a whole. The conclusion that the invention lacks inventive steps is also unreasoned. This finding is also based on incomplete facts and is bereft of reasons. (*State Bank of India & Anr. Vs. Ajay Kumar Sood, 2022 SCC Online 1067*).

9. Insofar as the contention of proof of right is concerned, I find that the formalities for filing the proof of right as laid down in Chapter 03, (Para 03.01) of the Manual of the Patent Office Practice and Procedure has also not been taken into account in the order.
10. In view of the aforesaid, the impugned order is unsustainable and is set aside. The matter is remanded back to the respondent no.2 to consider the application of the appellant afresh within a period of three months from the date of communication of this order and after giving a right of hearing to the appellant. In hearing the case afresh, the Controller shall not be bound by any observation made in this order insofar as the merits of this case are concerned. With the aforesaid directions, AID 16 of 2022 stands allowed.

(Ravi Krishan Kapur, J.)