Date: 18/02/2021

BEFORE THE CONTROLLER OF PATENTS

PATENT OFFICE, CHENNAI

The Patents Act, 1970 | The Patent Rules, 2003

Application No: 1026/DEL/2012

Issue: Pending objections vide hearing notice dated 01/12/2020

Hearing held on: 21/12/2020

Present during hearing: Sanhita Chatterjee (IN/PA 2914), Agent for the Applicant

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DECISION

ADITYA VENKATESWARA N C

1. The instant decision pertains to application for grant of patent no. 1026/DEL/2012. For the said application, objections were found to be pending after the last date for putting the application in order for grant. A hearing was offered and held on 21/12/2020 to provide the applicant an opportunity to address the pending objections. The pending objections were conveyed to the applicant's agent vide hearing notice dated 01/12/2020. I have heard the arguments of the learned agent. The written submissions have been taken on record.

Non-patentability under Section 3(i):

2. The main pending objection is that the earlier claims 1-20 & 24 fall within the scope of Section 3(i) of the Act. During the course of the hearing the same was explained to the learned agent. The learned agent made arguments against the objection. In the process, the learned agent has also amended the claims and restricted their number to 14. However, I do not find the arguments persuasive.

3. In the written submission, this is what the learned agent has to say regarding the objection:

> *We resist the objection of the Controller and respectfully submit as discussed during the hearing that claims have been amended to impart further clarity and conciseness and the amended claims do not attract the provisions of Section 3(i) of the Act.*
>
> *Section 3(i) of the Act precludes from patentability "any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products".*
>
> *However, the present invention does not disclose any process of treatment of human beings or animals as misconstrued by the Learned Controller. Rather, the claims are directed towards a purely technical method of quantitation of one or more biomolecules in a sample.*

4. The contention of the learned agent that the present invention does not disclose any process of treatment of human beings or animals and should therefore be allowed is devoid of merit. The objection raised by the examiner did not claim that the claims recite a process of treatment of

human beings or animals. Rather, the objection is that **the claimed process is a diagnostic process**. The argument that the claims are directed towards a purely technical method of quantitation of one or more biomolecules in a sample also does not hold water. Just by saying that the method is a purely technical method of quantitation does not change the nature and final outcome of the method which is to provide information of diagnostic value.

5. Claim 1 of the latest set of claims reads as follows:

> *A method for quantitation of one or more biomolecules in a sample (50), the method comprising the steps of:(a) providing a sample holder (22) comprising a porous membrane (14) which comprises a hydrophilic region (24) surrounded by a hydrophobic region (26) for sample containment, wherein the hydrophobic region is created either by plasma treatment of a hydrophilic porous membrane or wherein the hydrophobic region is created by heat treatment of a hydrophilic porous membrane;(b) contacting the hydrophilic region of the membrane with a sample volume, wherein the hydrophilic region has a diameter;(c) drying the sample volume on the membrane; and(d) exposing the sample volume on the membrane to an infrared beam having a diameter equal to or larger than the diameter of the hydrophilic region, and comprising a wavelength in the spectral range of 4000-400 cm-1or any portion of the spectral range of 4000-400 cm-1, thereby to obtain an infrared absorption spectrum;wherein one or more absorption peak areas in the infrared absorption spectrum correlates with the quantity of the one or more biomolecules in the sample.*

6. Essentially, what is being claimed in claim 1 is **a method for detection of biomolecules in a sample**. Claim 2 recites that the biomolecule is *selected from the group consisting of* ***nucleic acids, proteins, lipids, polysaccharides and lipopolysaccharides****, optionally an* ***endotoxin****.* Claim 7 recites that *the sample comprises* ***a biological fluid*** *and, optionally, the biological fluid is selected from the group consisting of* ***blood, plasma, serum and urine****.* Therefore, it is evident that the claimed method is a diagnostic process which brings it into direct confrontation with Section 3(i) of the Act.

Conclusion

7. To conclude, the instant application claims subject-matter (claims 1-11) which is not an invention within the meaning of Section 3(i) of the Act. Therefore, I hereby order the instant application refused.

(Sd/-)
Aditya Venkateswara N C
Assistant Controller of Patents & Designs