IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	29.11.2023
Judgment pronounced on	28.03.2024

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

OP (PT) No.1 of 2023
&
(PT) A 1 of 2023

Ollos Biotech Private Limited,
represented by its Director, Mr.Sudheeran Sugandhi,
Bhavanam, 11/381 C, Malayoor P.O.,
Ernakulam District, Kerala 683587 ... Petitioner

-vs-

1.Omega Ecotech Products India Limited
91/5D, Maha Nagar, Sarvanampatti
Coimbatore,
Tamil Nadu- 641 035.

2.The Deputy Controller of Patents,
The Patent Office, Intellectual Property Rights Building,
G.S.T. Road, Guindy,
Chennai-600 032. ... Respondents

PRAYER in OP (PT) No.1 of 2023: Original Petition (Patents) filed under Section 64 of the Patents Act, 1970 to revoke Patent No.411774,

which was granted by the 2nd respondent on 17 November 2022 and pass such other or further orders as this Hon'ble Court deems fit considering the facts and circumstances of the case.

For Petitioner : Mr.Ramesh Ganapathy
for M/s Mission Legal

For Respondent 1 : Mr.Surya Senthil
for M/s Surana & Surana

For Respondent 2 : Mr.C.Samivel, SPC

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ORDER

Background

By this petition, the petitioner seeks to revoke the patent granted by the second respondent to the first respondent *inter alia* on the grounds that the invention lacks novelty, inventive step and is patent ineligible under Sections 3(d) and (f) of the Patents Act, 1970 (the Patents Act).

2. The first respondent had applied for a patent for an invention titled 'Multi-stage aerobic bio-composter kitchen bin and a method of composting thereof' claiming priority from 30 March 2017. In the

background section of the complete specification, the petitioner identified the problems associated with conventional methods of disposal of organic waste, such as pollution of groundwater, greenhouse gas emission, leachate, foul odour, et cetera, and, thereafter, dealt with the prior art in composting in the form of about four patents. After stating that the prior art in composting has inherent disadvantages such as requiring a means for aeration and mixing, involving complex construction, high capital cost, leachate production, foul odour, breeding of ants and insects, etc., the first respondent recited that the invention enables rapid, convenient and odour-free composting of organic waste into high-quality manure.

3. In the summary of the invention, the first respondent recited that the invention provides for a multi-stage aerobic composter comprising a plurality of ventilated trapezoidal containers, having an open top end and a covered bottom end, wherein the said bottom end of the ventilated container is smaller in diameter than the top

end. Each container is separated by a divider and such divider has a perforation at its centre. The first respondent further disclosed that the invention contains a chimney with a detachable vented closure, which is located on the top lid, wherein said chimney is elevated and smaller in diameter than the top lid, and that a plate is placed at the bottom of the lowest container to ward off insects and rodents. The patent was granted on 17 November 2022 under Patent No.411774 by the second respondent.

4. The petitioner seeks revocation of this patent by contending that the subject of the claims thereof do not qualify as an invention within the meaning of the Patents Act. Revocation Revocation is also sought on the ground that the invention claimed in the claims is not novel and, in any event, obvious to a person skilled in the art. The contention that the invention is obvious and does not involve any inventive step is advanced by relying upon both patent (D1 and D2) and non-patent literature.

Apart from the above, the petitioner also assails the patent on the ground that the invention is patent-ineligible under Sections 3(d) and (f) of the Patents Act.

5. In the counter affidavit of the first respondent, the above contentions were refuted. The first respondent contended that all the features of the invention are not contained either in the cited patent or non-patent literature. As regards prior art D1, the first respondent contended that one of the objects of said prior art is heat retention, whereas heat retention is not relevant for an invention in India. The first respondent further asserted that moisture retention is relevant for the invention but not heat retention. As regards prior art D2, it was submitted that the invention disclosed therein is based on vermi-composting and, hence, does not qualify as analogous prior art. As regards non-patent literature, the first respondent contended that even the date of publication thereof was not specified by the petitioner. Consequently, it was contended that it is not possible to

ascertain whether such literature was published prior to or subsequent to the priority date of the invention. By asserting technical advancement and non-obviousness in multiple features such as the use of containers of trapezoidal shape; the presence of a plurality of perforations in each container; the use of separators with a central perforation between each container; the use of a chimney with a detachable closure with a vent; and the use of a bottom lid to prevent the entry of insects and rodents, the first respondent submitted that the invention is both novel and non-obvious.

Counsel and their contentions

6. Oral arguments were advanced by: Mr. Ramesh Ganapathy on behalf of the petitioner; Mr. Surya Senthil on behalf of the 1st respondent; and Mr. C. Samivel appeared on behalf of the 2nd respondent.

7. Mr. Ramesh contended that the claimed invention is obvious to a person skilled in the art both on the basis of prior arts D1 and D2 and the cited non-patent literature. By referring to prior art D1, he contended that said prior art also discloses a composter consisting of three containers with perforations. Although the shape of the containers in D1 is rectangular, he submitted that there is no technical advancement in the use of containers of a different shape. As regards the use of a chimney, he referred to the tender floated by the Trivandrum Corporation and pointed out that the Trivandrum Corporation had indicated in the tender document that there should be a method of releasing extra heat through the top lid of the composter. In effect, he contended that the first respondent produced a composter with a chimney in response to the specifications of the aforementioned tender.

8. The next contention of learned counsel for the petitioner was that the invention relates to a mere use of a known process, machine

or apparatus without such known process resulting in a new product or a mere arrangement or rearrangement or duplication of known devices functioning independently of each other in a known way. Therefore, he contended that the patent is liable to be revoked as patent ineligible as per clauses (d) and (f) of section 3 of the Patents Act. In order to substantiate this contention, he submitted that the invention uses the known process of stacking containers with perforations for aerobic composting. Since the invention involves mere rearrangement of such known devices, he contended that it also falls within the purview of clause (f) of section 3. He also relied upon non-patent literature, such as the use of terracotta pots for composting and pointed out that there is neither technical advancement nor non-obviousness when the invention is compared with such non-patent literature.

9. In response to these contentions, learned counsel for the first respondent submitted that leachate formation is inevitable unless the

temperature is maintained between 30°C and 40°C. If there is leachate formation, he submitted that a bad odour emanates and there is methane emission. By combining trapezoidal-shaped containers with a plurality of perforations and a chimney with a detachable vented closure, he contended that the aforesaid problem is resolved. When objections were raised in the first examination report (FER), he pointed out that the first respondent distinguished the prior art by referring to features such as the chimney with a detachable vent and the use of trapezoidal containers with multiple perforations.

10. In response to the contention that the invention was produced in response to the tender specifications of the Trivandrum Corporation, he pointed out that the tender required provision for leachate collection, whereas the invention does not envisage any leachate formation. As regards prior art D1, he contended that one of the key objects of said invention is heat retention, whereas the first

respondent's invention is not designed for heat retention. As regards prior art D2, he pointed out that it uses vermiform composting which is non-analogous. With regard to the non-patent literature, he pointed out that the terracotta pots have very large perforations and provide for leachate collection. By relying on the judgment of the Bombay High Court in *Farbewerke Hoechst v. Unichem Laboratories and others, AIR 1969 Bom 255*, particularly paragraph 15 thereof, he contended that an invention cannot be characterised as lacking novelty unless all the features of such invention are contained in a single prior art.

11. By way of rejoinder, learned counsel for the petitioner submitted that temperature maintenance is not mentioned in the complete specification. Learned counsel further submitted that the tendering authority not only identified the problem but also suggested that the hot air cup should be ventilated and thereby pointed the first respondent in the direction of a chimney.

Discussion, analysis and conclusions

12. In light of the rival contentions, at the outset, I deal briefly with whether the petitioner qualifies as a person interested. The petitioner is in the same line of business as the first respondent and received a cease and desist notice in relation to the use of a composting device from the first respondent. Therefore, the petitioner qualifies as a 'person interested' under section 2(t) for the purposes of maintaining the revocation petition under the relevant clauses of Section 64(1) of the Patents Act.

13. Before proceeding to examine whether revocation is warranted, it is instructive to set out sub-section (1) of Section 64 of the Patents Act and the relevant clauses thereof under which the petitioner seeks revocation:

> *"S.64. Revocation of patents. (1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement*

of this Act, may be revoked on a petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent by the High Court on any of the following grounds, that is to say -

(d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;

(e) that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in section 13:

(f) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim:

(k) that the subject of any claim of the complete specification is not patentable under this Act;"

14. Keeping in mind the above statutory context, the next aspect to be examined is whether the claimed invention fulfils the requirements of novelty and inventive step. I first deal with novelty. Section 2(1)(l) of the Patents Act defines novelty as under:

> *(l) "new invention" means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art;*

As correctly contended by learned counsel for the first respondent, unless all features of the invention are contained in a prior art, it cannot be concluded that the invention lacks novelty. The first respondent's invention consists of three trapezoidal containers with multiple perforations; each container is separated from the next by a divider with a hole in the centre; a chimney is fitted to the top lid

with a detachable closure with a vent; and a plate is placed at the bottom to ward off rodents and insects. These features are cumulatively not contained in any cited prior art. Hence, it may be concluded that the device satisfies the requirements of novelty although the process or method claims are required to be independently evaluated in this regard.

15. I turn to the question of inventive step next. Section 2(1)(ja) of the Patents Act defines 'inventive step' as below:

> *(ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;*

From the plain language of the section, it follows that the assessment of inventive step of a claimed invention is to be made by a two-step process:

> (i) identification of feature(s), if any, that involve technical advancement over prior knowledge or having economic significance or both; and

(ii) determination of whether the technical advance or economic significance or both of said feature(s) makes the invention not obvious to a person skilled in the art.

In order to undertake this exercise in accordance with statutory prescription, it becomes necessary to first identify the person skilled in the art (PSITA). Since the field of invention is an aerobic composting device and process, I conclude that PSITA is a compost scientist or a compost engineer. The determination as to whether the inventive step requirement is satisfied entails examination of the claims. The independent claims of the invention are, therefore, set out below:

> *" 1. A multistage aerobic composter for composting organic waste into high-quality organic manure, comprising of: a plurality of ventilated containers (120a, 120b, 120c), having an open top end (121) and a covered bottom end (122), wherein said bottom end (122) of the ventilated container is smaller in diameter than the said top end; a plurality of dividers (123a, 120b, 120 c), placed separating each of the*

ventilated containers, wherein said dividers provided with at least a perforation (131) placed at its centre; a top lid (124), placed on the open top end of the first ventilated container (128); a chimney (125) with a detachable vented enclosure (126), located on the top lid (124), wherein said chimney (125) is elevated and smaller in diameter than the said top lid (124); and a bottom plate (127), placed at the bottom end of the bottom ventilated container.

12. A method of composting the organic waste using the multistage aerobic composter, comprises of:

a) opening the top lid (124) of the first ventilated container (120 a);

b) layering of composting media and the organic waste as alternate layers starting from the bottom end (122) of the first ventilated container (128);

c) shifting the completely layered first ventilated container (128) to a lower level of the stack, wherein an empty ventilated container (120a or 120c) stacked at any of the lower level is transferred to 1st level of the stack,

d) layering the shifted empty container (120b or 120c) in the first level with composting media and organic waste as alternate layers;

e) allowing the contents of the completely filled lower ventilated containers to stand for composting;

f) emptying the contents of the lower ventilated container and collecting the high-quality manure upon completion of composting; and

g) repeating the cycle of layering and emptying the stacked ventilated containers."

16. Aerobic composting has been carried on for decades. For purposes of aerobic composting, it is common general knowledge that containers of varying shapes are used. It is also common general knowledge that such containers should contain perforations so as to enable the flow of oxygen. Prior art D1 discloses the use of rectangular containers for composting. While the first respondent is correct in contending that D1 is targeted at heat retention and that it

is distinguishable in that regard, the non-patent literature indicates use of terracota pots with perforations for aerobic composting. This leads to the question as to whether any features of the invention and, if so, which features represent technical advancement or economic advantage and, if so, whether those features would be obvious to a person skilled in the art.

17. The first respondent asserts that the use of trapezoidal-shaped containers with a plurality of perforations constitutes technical advancement and makes the invention non-obvious. The use of containers wherein the bottom end of the container has a smaller diameter than the top end is also part of common general knowledge in as much pots that are commonly used in composting in households contain the same feature. Does the trapezoidal shape with a plurality of perforations represent a technical advance? On closely examining the complete specification of the invention, at internal page 11 thereof, the first respondent recites as under in

respect of the invention:

> *"Provides a hassle free, convenient and rapid composting of organic material, which permits us to do the composting in a domestic residential environment."*

However, I find no comparative data therein to support the assertion that the use of containers with trapezoidal shape results in faster composting or that it is otherwise beneficial. As regards the use of a plurality of perforations, it would be obvious from common general knowledge and, in any case, the complete specification lacks experimental data to support an inference of technical advancement on that count. I next examine the use of dividers between the containers. The invention consists of dividers with a hole in the centre between each container. As regards these separators also, the complete specification does not contain recitals or disclosures with regard to the benefits accruing therefrom.

18. The other feature that the first respondent relies heavily on is the use of a chimney with a detachable closure with a vent. The question that arises in this context is whether the use of such chimney would be obvious to the PSITA. Chimneys have been used since times immemorial for purposes of releasing heat and emissions in kitchens, factories and the like. As pointed out by learned counsel for the petitioner, the Trivandrum Corporation called upon tenderers to provide ventilation for the hot air cap. Even otherwise, it would be obvious to a compost engineer armed with common general knowledge and acquainted with the prior art to use a chimney for maintaining the optimum aerobic conditions within the apparatus. It should also be borne in mind that a patent should not be granted for a mere workshop addition as held by the Supreme Court in *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, MANU/SC/0255/ 1978,* because it does not satisfy the test of inventiveness. As for leachate formation, it is the first respondent's contention that as opposed to the requirement in the tender for leachate collection,

the invention does not produce any leachate. However, internal page 10 of the complete specification mentions that the leachate generated during the composting process is collected in the lower ventilated containers thereby indicating that there is leachate formation.

19. The independent claims extracted earlier consist of a product claim and a method claim. The product claim for the composting device lacks an inventive step on the basis of the cited patent and non-patent literature for reasons set out above. As regards the method claim set out above, it even lacks novelty in as much as the method set out in independent claim 12 is well known in the art. In light of the above conclusion, it becomes unnecessary to examine whether the invention is patent ineligible under Sections 3(d) and 3(f) of the Patents Act read with Section 64(1)(k) thereof.

20. For reasons set out above, the petitioner has established a

case for revocation of patent. Hence, the patent granted to the first respondent is revoked and O.P. No.1 of 2023 is allowed without any order as to costs. Consequently, connected miscellaneous petition is closed.

28.**03.2024**

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

To

1.Omega Ecotech Products India Limited
91/5D, Maha Nagar, Sarvanampatti
Coimbatore,
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2.The Deputy Controller of Patents,
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SENTHILKUMAR RAMAMOORTHY J.

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