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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 04.08.2025

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C.A.(COMM.IPD-PAT) 490/2022

CRODA INC

.....Appellant

Through: Mr. Ankush Verma, Mr. Debashish Banerjee, Mr. Rohit Rangi, Ms. Vaishali Joshi, Mr. Pankaj Soni, Mr. Vineet Rohilla, Ms. Gurneet Kaur and Mr. Tanveer Malhotra, Advocates.

versus

THE CONTROLLER OF PATENTS

.....Respondent

Through: Mr. Piyush Beriwal, Ms. Jyotsna Vyas and Ms. Ruchita Srivastava, Advocates for R1.

CORAM:**HON'BLE MR. JUSTICE TEJAS KARIA****TEJAS KARIA, J. (ORAL)****INTRODUCTION**

1. The present Appeal has been filed under Section 117A of the Patents Act 1970 (“Act”) challenging the Order dated 06.11.2020 (“**Impugned Order**”) passed by the Respondent refusing the Patent Application No. 1432/DELNP/2013 (“**Subject Application**”) primarily on the ground that the Claims recited in the Subject Application lacked Inventive Step under Section 2(1)(ja) of the Act and were Non-Patentable under Section 3(e) of



the Act.

FACTUAL MATRIX

2. A brief timeline of the Subject Application is as follows:

15.02.2013	Subject Application No. 1432/DELNP/2013 was filed before the Respondent.
12.01.2018	First Examination Report (“ FER ”) issued by the Respondent.
18.05.2018	Response to FER filed by the Appellant.
22.07.2019	Hearing Notice issued by the Indian Patent Office (“ Patent Office ”).
11.09.2019	Hearing attended by the Appellant.
25.09.2019	Appellant filed Written Submissions (“ WS ”) along with amended Claims.
06.11.2020	Impugned Order passed by the Respondent refusing the Subject Application on the ground of lack of Inventive Step under Section 2 (1) (ja) of the Act and Non-Patentability under Section 3(e) of the Act.
01.12.2022	Present Appeal was filed.

3. The Subject Application titled “AGROCHEMICAL ADJUVANTS AND FORMULATIONS” addressed the technical problem of reducing the antagonistic effect of two herbicides, i.e. non-selective and selective, which is achieved by the agrochemical formulation comprising an ethoxylated fatty acid mono-ester of sorbitan of formula (I), as recited in Claim 1.

4. The Respondent issued the FER raising the primary substantive objections on the following grounds:

- a) Lack of Inventive Step under Section 2 (1) (ja) of the Act regarding the Claims 1 to 19.
- b) Non-Patentable under Section 3(d) of the Act.
- c) Non-Patentable under Section 3(e) of the Act concerning Claims 8 to



17.

- d) Non-Patentable under Section 3(h) regarding Claim 19.
- e) Lack of Definitiveness of Claim 8 under Section 10(5) of the Act.
- f) Subject Matter of Claim 18 not constituting an Invention under Section 2(1)(g) of the Act.

5. The Appellant filed a substantive response to the objections raised in the FER with the amended Claims and pursuant thereto, the Respondent issued a Hearing Notice dated 22.07.2019 raising the primary objections on the grounds of lack of Inventive Step, Non-Patentability under Section 3(e) of the Act and Non-Patentability under Section 3(d) of the Act and lack of Definitiveness of Claim 1 under Section 10(5) of the Act.

6. The Appellant attended the Hearing on 11.09.2019 and made oral submissions, thereafter, on 25.09.2019, submitted the WS along with the amended Claims.

7. The Respondent *vide* Impugned Order dated 06.11.2020 refused the Subject Application on the grounds of lack of Inventive Step in view of Documents D1 to D3 and Non-Patentability under Section 3(e) of the Act.

8. Aggrieved by the Impugned Order, the Appellant has filed the instant Appeal.

SUBMISSION ON BEHALF OF APPELLANT

9. The learned Counsel for the Appellant submitted that the decision of the Respondent refusing the Subject Application is erroneous in law and is liable to be set aside. The Appellant further submitted that the Respondent misdirected itself in evaluating the oral submissions presented during the



Hearing and the WS, which vitiate the decision taken through the Impugned Order.

10. According to the Appellant, the Impugned Order is legally flawed as the Respondent has erroneously held that the invention claimed in Claims 1 to 8 is not inventive over the Prior Arts D1, D2 and D3.

11. The Appellant argues that the cited Prior Arts do not disclose an agrochemical formulation comprising an ethoxylated fatty acid mono-ester of sorbitan of formula(I). Additionally, none of the cited Prior Arts provides any motivation to a Person Skilled In The Art to lead to the present agrochemical formulation in the Subject Application.

12. The Appellant also contended that the Respondent failed to follow due process during the proceedings of the Subject Application, as the Prior Art Document D3, which was relied on by the Respondent in the Impugned Order, was not cited by the Respondent in the Hearing Notice. As a result, the Prior Art D3 was neither discussed during the hearing nor addressed in the WS filed by the Appellant after the Hearing. However, the Respondent has referred to the said Prior Art Document, while concluding the lack of Inventive Step in the Impugned Order at Page No. 10.

13. The learned Counsel for the Appellant submitted that the Respondent failed to provide a sufficient opportunity to the Appellant to respond to the arguments raised with respect to the cited Prior Art Document D3.

14. According to the Appellant, the Impugned Order has been passed with a preconceived notion to refuse the Subject Application, as is evident from the illogical reasoning in the Impugned Order.



SUBMISSIONS ON BEHALF OF RESPONDENT

15. The learned Counsel for the Respondent has submitted that the Appellant had to provide a considerable comparison of increased activities / efficacy achieved by the Invention as compared to the known from cited Prior Arts. On the contrary, in the present invention, the selection of a certain range of known elements with certain specific characteristics of active ingredients used in the present invention was unable to provide the inventive effect/ increased activity and, therefore, the subject matter of Claims 1 to 8 of the Subject Application lacks Inventive Step.

16. The Respondent further submitted that the Appellant has not mentioned the superiority / efficacy in terms of activities in the specification of the Subject Application.

17. The learned Counsel for the Respondent also contended that if a Person Skilled In Art tries to find out an alternative agrochemical formulation with specific activities, they may try by selecting the components from known Prior Arts with routine laboratory work. In the absence of superiority in activities, invention lacks Inventive Steps being obvious under Section 2(1)(ja) of the Act.

18. The Respondent also submitted that the product agrochemical formulation is not formed by definitive quantities in terms of weight percentage or mole ratio and, therefore, formulation of Claims 1 to 8 may be an admixture of any ingredients of any percentage of the fractions of the product. Further, the said agrochemical formulation is a substance obtained by a mere admixture, which results only in the aggregation of the properties of the components and, hence, falls under the scope of Section 3(e) of the



Act.

19. The Respondent has relied on the following Judgments:

- *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, (1979)2 SCC 511.
- *Novartis AG V. Union of India* (2013) 7 SCC 1.
- *F. Hoffmann-LA Roche Ltd. V. Cipla Limited* 2008 SCC Del 382.

ANALYSIS

20. The present Invention, under the Subject Application, relates to adjuvants for agrochemical formulations, to formulations including such adjuvants, and to the treatment of crops with such formulations.

21. In the objection raised in the Hearing Notice under Section 2(1)(j) of the Act, the Respondent argued that Amended Claims 1 to 14 filed on 15.05.2018 were not an invention in the light of Prior Arts D1 and D2. Regarding the objection of Non-Patentability under Section 3(e) of the Act, the Impugned Order also takes into consideration Prior Art D3.

22. The paragraphs of the Document D3 in the Impugned Order is considered are reproduced hereinunder:

“First Examination report FER (a first statement of objections as specified in Rule 24-B(3) of The Patents Rules, 2003 (as amended))

“Claim(s) (1-19) lack(s) inventive step, being obvious in view of teaching (s) of cited document(s) above under reference D1-D3 for the following reasons:

“Document D1 discloses the ethoxylated fatty acid mono esters of sorbitan which fall within the claimed scope and compositions containing them (see sorbitan monolaurates POE 9 and POE 15 in table 1 of D1). Further ethoxylated fatty acid mono esters of sorbitan are used as adjuvants in agrochemical formulations. At



present no unexpected effect is apparent over the adjuvants disclosed in D1 (sorbitan monolaurates POE 9 and POE 15). The comparative tests on page 13 take as reference Adj1 and Adj2 which are sorbitan laurate 4-EO and 20-EO.

Document D2 discloses the surfactant blend composition of at least one nonionic alkoxyate and at least one sugar-based surfactant, and its use as an adjuvant for pesticides comprising ethoxylated sorbitan, or sorbitol ester, or alkyl glucoside surfactant, or mixtures thereof, wherein said alkoxyatednonionic surfactant is an alcohol alkoxyated surfactant. Further it discloses the different amount of alkoxyated alcohol to sugar based surfactant.

Claim 2 of D2 further discloses the use ethoxylated fatty acid monoesters of sorbitan in which the carbon length of the fatty acids is from 6 to 22 and the overall degree of ethoxylation is on average from 10-30. The corresponding compound in Example 1 is a monolaurate whereof the chain length is 12. The degree of ethoxylation of the compound of Example 1 is 20, but given the fact that claim 2 specifies that is can be 10-30, the skilled will also read a monolaurate ester of sorbitan with 10 EO into this reference.

Document D3 discloses the use of PEG-10 sorbitan monolaurate. In Example 8 it is combined with various agrochemically active materials, including water and preservatives. The technical problem underlying the present application is seen as the provision of further adjuvants for the preparation of agrochemical formulations. Therefore Subject matter of claims 1-19 lacks the inventive step u/s 2(1)(ja) of the Patents Act, 1970. A marked up copy of claims must be submitted along with the examination report reply u/r 14(2) of the Patent Rule 2003 (as amended in 2016). Claim(s) (1-17, 19) are statutorily non-patentable under the provision of clause (d) of Section 3 for the following reasons:”
[Emphasis supplied]”

23. Furthermore, while discussing the Amended Claims Nos. 1 to 8 filed by the Appellant with the WS after the Hearing, the Impugned Order again considers the Document D3. The relevant paragraph of the Impugned Order



is reproduced hereinunder:

“Document D3 discloses the use of PEG-10 sorbitan monolaurate. In Example 8 it is combined with various agrochemically active materials, including water and preservatives.

The alleged invention in present application is to provide An agrochemical formulation, wherein the formulation composes a compound or mixture of compounds which is/are ethoxylated fatty acid mono-ester(s) of sorbitan of formula (1):

*The total $n1+n2+n3+n4$ has an average value from 8 to 12
 $n1$, $n2$, $n3$, and $n4$ each independently represent average values from 0 to 10*

Carbon chain length of the fatty acid is from 8 to 14 and

The overall degree of ethoxylation is on average from 8 to 12

A non-selective herbicide is one or more of a glyphosate type, a glufosinate type, or a bipyridyl type herbicide and another type of agrochemical active.

A selective herbicide and a graminicide is one or more acetyl-CoA carboxylase inhibitors;

A selective broadleaf herbicide is one or more of bentazon, bromoxynil, and 2,4-D amine and a graminicide is one or more acetyl-CoA carboxylase inhibitors ; or

A graminicide is one or more acetyl-CoA carboxylase inhibitors and a non-selective herbicide is one or more of a glyphosate type, a glufosinate type, or a bipyridyl type herbicide.

In relation to the subject matter of the present application, the Relevant provisions of the patents which were communicated to applicant are section 2(1)(ja), (Inventive steps), u/s 3(e) of the Patents Act, 1970.”

In relation to the alleged invention in claims 1-8, the closed prior art is D2. D2 discloses all main technical features of the invention in combination to D1, D2 and D3 as disclosed above. Instant application discloses the alternative provisions to provide the agrochemical formulation a compound or mixture of compounds



which is/are ethoxylated fatty acid mono-ester(s) of sorbitan of formula 1 and The total $n1+n2+n3+n4$ has an average value from 8 to 12

$n1$, $n2$, $n3$, and $n4$ each independently represent average values from 0 to 10

Carbon chain length of the fatty acid is from 8 to 14 and

The overall degree of ethoxylation is on average from 8 to 12

A non-selective herbicide is one or more of a glyphosate type, a glufosinate type, or a bipyridyl type herbicide and another type of agrochemical active.

[Emphasis supplied]

24. The Respondent has argued that the consideration of the Prior Art D3 was an error on the part of the Patent Office. However, it is important to note that the Impugned Order has substantially relied on the D3 while objecting to Section 3(d), 3(e) and 3(h) of the Act.

25. In ***Ucb Pharma Gmbh & Anr vs The Controller Of Patents And Designs***, 2025 SCC OnLine Cal 3002, the matter was remanded back to the Patent Office as the learned Controller has cited two new prior arts during the hearing, which were not considered in the hearing notice. The relevant extract is reproduced hereinunder:

“24. Documents D5:US2005/0079206 (US 8246979) and D4:EP2177217 were cited by the respondent for the first time during the hearing. The appellant was not aware of the objection of the respondent with regard to the said two documents and the appellant was also not aware of the teachings of the said documents according to which the respondent considered the invention to lack inventive steps in view of the said documents.

25. When the notice for hearing is sent, the appellant should clearly know the objections and the prior art that the Controller will be relying on during the hearing. The patent office while dealing with the grant of patent, exercises quasi-judicial power and quasi-judicial authority is not an adversary of the patent applicant. Any objection to the prior art must be known to the applicant before the date of hearing.”



26. The Respondent exercises *quasi-judicial* power while dealing with the grant of a Patent, and being a *quasi-judicial* Authority, it does not operate in an adversarial capacity against the Appellant. Therefore, any objection to the Prior Art must be known to the Appellant so that the Appellant has an opportunity to reply to such objection and make submissions during the hearing.

27. In *Man Truck Bus Se vs Assistant Controller Of Patents*, 2024 SCC OnLine Del 874, this Court remanded the Impugned Order back to the Patent Office on the ground that a Prior Art reference was cited in the Impugned Order, which had not been raised in the FER. The relevant paragraph of the decision is reproduced as hereinunder:

“14. In the opinion of this Court the impugned order faltered on the following aspects: Firstly, it does not provide any further analysis or discussion relating to documents D1-D4, in particular as to how the teaching of D1-D4 would make the subject invention obvious, and no analysis was offered; secondly, the objection relating to prior art D5 which seems to form the basis and fulcrum of the conclusion of the Controller in the impugned order, was never asserted or raised in the notice of hearing or any time prior to the same. Therefore, it would fall foul of the principles enunciated in Otsuka Pharmaceutical Co. (supra), Agriboard International (supra) and Perkinelmer Health Sciences (supra) as extracted above. These decisions had clearly reiterated that the Controller's order cannot be unreasoned, and if it provides reasons on any account, it cannot circumvent communicating the objection of prior art in the notice of hearing. No such opportunity having been given would put the appellant to a serious disadvantage at the stage of hearing. This has been highlighted and underscored



by the appellant in its written submissions filed before the Patent Office as well as its submissions before this Court.

“15. Therefore, without going into the merits of the issues arising out of prior art documents D1-D5, in the opinion of this Court, the omission by the Patent Office in not including the objection under document D5 in notice of hearing, as well as the complete lack of analysis in respect of objections under documents D1-D4 of appellant's response, vitiate the impugned order.

Accordingly, the impugned order is set aside and the matter is remanded back to the respondent for fresh consideration.

[Emphasis supplied]”

28. Since the Respondent in the Impugned Order has substantially relied on Document D3, the Appellant ought to have been given a chance to file submission with respect to Document D3. When the Respondent sent Hearing Notice, the Applicant should have been to notice of all the objections raised therein and the Prior Arts sought to be relied on by the Respondent. Relying on Prior Arts in the Impugned Order for the first time that were not discussed or considered in the FER or the Hearing Notice clearly vitiates the Impugned Order and is against the principles of Natural Justice.

29. Accordingly, the present Appeal is allowed. The Impugned Order dated 06.11.2020 passed by the Respondent is hereby quashed and set aside. The Subject Application is remanded back to the Respondent for fresh consideration.

30. The Respondent shall hear the Appellant after issuing a fresh Hearing Notice providing all the objections and after giving opportunity to the Appellant to place on record the submissions regarding all the Prior Arts to



be considered by the Respondent during the hearing. The Respondent shall decide the Subject Application as expeditiously as possible and preferably within six months from the service of this Order.

31. It is made clear that the Respondent shall decide the Subject Application afresh on the merits in accordance with law, uninfluenced by any observations made in this Order.

32. A copy of this Order also be sent to the learned Controller General of Patents, Designs and Trademarks for the necessary administrative action.

TEJAS KARIA, J

AUGUST 04, 2025/ 'K'