

(2011) 09 IPAB CK 0001

In the Intellectual Property Appellate Board

Case No : OA/03/2009/PT/CH And MP. No. 27/2009/PT/CH In OA/12/2009/PT/CH & OA/12/2009/PT/CH

A.R. Safiullah And Ors.

APPELLANT

Vs

N. Mariappan And Ors.

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Citation : (2011) 09 IPAB CK 0001

Hon'ble Judges : Prabha Sridevan, J;D.P.S. Parmar, Technical Member

Bench : Division Bench

Final Decision : Disposed Of

Judgement

D.P.S. Parmar, Technical Member

1. The present appeal is against the order of Respondent No. 2 dated 17.04.2009 for revoking the Patent No. 198079 granted for Patent application

No. 693/MAS/2000 for invention titled ""Food Grade Laminated Paper, Method and Apparatus for manufacturing the Laminated Paper.

2 . The appeal application came up for hearing on 30th August, 2011 & 2nd September, 2011.

3 . In OA/03/2009/PT/CH Shri P.S. Raman, Sr. Advocate appeared for the appellant/applicant and Shri Feroz Ali Khader appeared for the

respondent/opponent. In OA/12/2009 Shri Laxmi Narayanan & Shri Feroz Ali Khader appeared for appellant/opponent and Shri P.S. Raman appeared

for Respondent/opponent.

4 . OA/3/09/PT/CH & OA/12/09/PT/CH along with the revocation applications were taken up together as they relate to the same subject matter.

5. One of the arguments before us was the absence of Drawings in the

specification which according the appellant in OA/03/2009 is necessary for the sufficiency and clarity of the specification.

6. The respondent -2 in his order has revoked this patent based on the reasons that ""A specification can be considered to be sufficient in disclosure

provided it teaches scientific advancement over the closest prior art. However the patentee has not mentioned any prior art and the specification starts

with an object of the invention to give an impression that the apparatus for lamination were not known before the alleged invention. The apparatus was

not disclosed by way of figures explaining the operative components and their working inter relation. There are several lacunas in the patentee's

specification like,

1 . The title speaks about a food grade laminated paper method and apparatus for making the same but the specification doesn't give any clarification

about the food grade laminated paper.

2 . The applicant in paragraph (12) of their reply statement or opposition says that, ""the invention is not a laminating machine but a scented food grade

artificial banana leaf suitable for serving and packing hot Indian food retaining flavour and aroma and the apparatus to produce the same. But the

claims are silent about the product and the patent specification lacks clarity as to explain all the essential features of the product"".

3 . The various components of the apparatus as claimed in claim like the preheating roller, a laminating mould, pressure roller, heating device, roller

type spraying device an claimed are generic in nature and are not properly clarified with respect to their working relation.

4. The feature of the laminating mould as given in page 3 of the specification talks about 6 to 8 hours hardening time for the mixture of 60% plaster of

pairs and 40% Gum. The embodiment of the invention in page 6 speaks about direct application of 60% plaster of pairs and 40% um material without

specifying the hardening time. There care obscurity in these disclosures.

On reviewing about the facts I am of the view that there is insufficiency due to lack of clarity in explaining the features of the invention. The subject

matter of the patentees invention is different from the state of the art only in the product specified i.e. a ""food grade scented laminated paper for use

in food packing retaining aroma and flavour of Indian food"" as well as the ""compression type spraying device for spraying scented powder"". The

description neither gave a clear indication with regard to the parameters of this invention nor has specified the features. The impugned patent does not

disclose with clarity the working features like "a preheating roller", "a pressure roller", "a heating device", a roller type spraying device, "scented

powder" "granules" "heating temperature" and hence the subject matter of the specification are not sufficiently clear and complete for a skilled person

to carry out the invention. The opponent has succeeded in proving the ground of 'Insufficiency' under Section 25(2)(g). On careful review of all these,

I have come to a conclusion that a deeper analysis of the specification reveals that a skilled person cannot perform the invention after going through

this patented document due to lack of clarity. The basis essence of patenting is to give full and complete disclosure to public so that the invention can

be carried out based on the teachings of the specification and thereby give the monopoly right in exchange of these. The present patent fails to make

the clear and complete disclosure.

7 . The Respondent 2 held in favour of the patent applicant on all grounds except sufficiency of disclosure. According to the opponents the drawings

are absolute necessary for clear and sufficient disclosure of this invention. Mr. P.S. Raman, Senior Advocate for Appellant/Applicant submitted that

according to the applicant the complete specifications is sufficient for the purpose of 25(2)g. The various components like laminating mould, heating

device are all well-known and the patentability lies in the way he had brought it together to produce the simulated Banana leaf. He further submitted

that even now the applicant is ready to provide the necessary drawings.

Section 10(2) of the Applications of Patents which empowers the Respondent 2 relating to the requirement of drawing is reproduced below:-

10(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so requires, be supplied for the

purpose of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs be deemed

to form part of the specification, and references in this Act to a specification shall be construed accordingly.

8 . It may be noted that according to Section 10 (2) Controller (Res.2) shall obtain the drawings if he so desires. In the present case, it is clear that no

drawings were supplied and the drawings were not sought for in the initial stages

before granting the patent. However, Res. 2 while hearing the opposition found it necessary for the purpose of complete and clear description of the specification. In our opinion, the Controller (Res. 2) ought to have called for the submission of drawings and then considered the opposition on the patent. In the present case, the applicant was also not present to represent his case before the Respondent 2 and that has prejudiced him. In view of this, we feel that the appellant/applicant should submit the necessary drawings before the Respondent 2 who shall give his finding.

9 . The matter has been argued with regard to the other issues. Therefore while retaining the appeal, we send the matter back to the Respondent 2 for deciding this issue alone.

10. Appellant/Applicant is directed to submit the drawings within one month from the date of receipt of this order to the Respondent 2. Respondent 2 is directed to take the drawings on record as per the provisions of Law and then reconsider this case while giving the opportunities to both the parties and giving his findings and report the same to the Board.

11 . The case is therefore, sent back to the Controller for giving a finding on sufficiency as per our directions above. Orders in this case is reserved till the decision of the Respondent No. 2 is received in this matter.