



2026:DHC:2597

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **C.A.(COMM.IPD-PAT) 493/2022**

PRESIDENT AND FELLOWS OF HARVARD COLLEGE

..... Appellant

Through: Mr. Satya Pal Arora, Mr. Ashish
Sharma, Mr. Kuldeep Kumar Singh,
Advocates.

versus

**CONTROLLER GENERAL OF PATENTS DESIGNS AND
TRADEMARKS**

..... Respondent

Through: Mr. Balendu Shekhar, CGSC with Ms.
Tanisha Samanta Yadav, Advocates.
Dr. Bhanumathi R. Deputy Controller
of Patents and Designs (through VC)

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

05.04.2024

%

1. Counsel for appellant states that '*invention*' involves the generation of '*non-native*' pancreatic beta cells, which can be used for the treatment of diabetes when used as part of a composition, using various pharmaceutical excipients.
2. However, the essential objection seems to be under Section 3 (j) of the Patents Act, 1970 (the "Act"), which prohibits any aspect of a plant or an animal to be patented.
3. Dr. Bhanumathi R., Deputy Controller of Patents and Designs, who appears through VC, states categorically that the appellants invention ('*subject invention*') amounts to at best generating human cells, since cells cannot be created artificially without a basic source (which would reside in either a plant



2026:DHC:2597

or an animal). Therefore, the prohibition under Section 3(j) of the Act would not allow the grant of the patent to the subject invention.

4. Counsel for appellant insists that even though they are generating the cells from human sources, they are terming it as ‘*non- native*’ cells.

5. Dr. Bhanumathi R. states that there is no concept of ‘*non-native*’ cells which can be taken into consideration, since irrespective of the type of cell, it will still be a product of a part of a plant or an animal.

6. For clarification on this regard, both sides will file a brief note limited to the aspect of patentability of what appellant’s term as ‘*non -native*’ cells and including whether there are precedents of this type of cell being patented in India as well.

7. The said note be filed by appellant and by the Deputy Controller of Patents and Designs through their respective counsels, which will not be more than two-three pages each. This note will only be restricted to the issue as articulated above.

8. Although, there are other grounds of rejection of the patent *inter alia* on Section 10(4), 10(5) and 3(e) of the Act, this note would be essential to understand whether the appellant can cross the first and primary threshold, before proceeding to meet the other objections.

9. List on 13th May, 2024.

10. Order be uploaded on the website of this Court.

ANISH DAYAL, J

APRIL 5, 2024/RK/na