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

CNR No. DLHC011088352024

+ **C.A.(COMM.IPD-PAT) 6/2025**

UPL CORPORATION LIMITED & ANR.

.....Appellants

Through: Mr. Samik Mukherjee, Ms. Amrita Majumdar and Mr. Dominic Alvares, Advocates.

versus

ASSISTANT CONTROLLER OF PATENTS AND DESIGNS

.....Respondent

Through: Mr. Sumit Nagpal, SPC with Mr. Tanmay Saini, Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

10.08.2026

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1. This appeal is filed on behalf of the Appellants under Section 117A of the Patents Act, 1970 ('1970 Act') laying a challenge to impugned order dated 20.08.2024, whereby the Respondent has refused to grant patent on Indian Patent Application bearing No. 202011020608.

2. Appellant No. 1 is a Mauritius conglomerate and sister company of UPL Limited with diverse presence in pharmaceutical compositions, agrochemicals and herbicides, pesticides, seed treatments, fumigants and research and development and biofertilizers etc. and has been operating in India for over six decades. Appellant No. 2 is a sister concern of Appellant No. 1. Present case concerns patent application filed in Indian Patent Office by way of provisional application on 15.05.2020 pertaining to claimed



invention titled “*HERBICIDAL COMBINATION AND METHOD OF CONTROLLING HERBICIDE RESISTANT WEEDS*”. The bibliographic details are as follows:-

Indian Application No.	202011020608
PCT Application No.	PCT/IB2021/054051
Date of Indian Application	15.05.2020
Date of Section 11A Publication	19.11.2021

Date of issuance of First Examination Report (FER)	29.11.2021
Date of Response to FER	25.05.2022
Date of issuance of 1 st Hearing Notice	14.12.2023
Date of Hearing pursuant to the issuance of the 1 st Hearing Notice	16.01.2024
Written Submissions filed pursuant to the hearing held on 16.01.2024	31.01.2024
Date of issuance of 2 nd Hearing Notice	14.02.2024
Date of Hearing pursuant to the issuance of the 2 nd Hearing Notice	01.03.2024
Written Submissions filed pursuant to the hearing held on 01.02.2024	14.03.2024
Date of the Impugned Order	20.08.2024

3. Learned counsel for the Appellants submits that at this stage, Court need not go into the merits of the impugned order since there are procedural



violations by the Respondent leading up to the impugned order as also violations of principles of natural justice and on this short ground, matter deserves to be remanded to the Respondent for consideration of the patent application afresh. To make good this point, it is urged that the First Examination Report ('FER') was issued by the Patent Office on 29.11.2021 containing objections on grounds of lack of novelty under Section 2(1)(j) of 1970 Act; lack of inventive step under Section 2(1)(ja); lack of industrial applicability; and non-patentability under Section 3(h). Respondent cited prior arts D1 for lack of novelty and three prior arts D1-D3 for lack of inventive step. Appellants filed their response on 25.05.2022 contesting the objections and also filed amended set of claims to overcome the objections for the sake of expediting the process. Respondent issued the first Hearing Notice dated 14.12.2023 raising objection under Section 10(4) claiming lack of technical feature as also scope of claims and retained the objections of lack of novelty and lack of inventive step. In addition to objection under Section 3(h), an objection of non-patentability under Section 3(n) was added.

4. It is submitted that in the second Hearing Notice dated 14.02.2024, issued after the first written submissions were filed by the Appellants with amended set of claims, deleting claims 2-7, 11-12, 14 and 17-19 and adding features of claims 2, 5, 12 and 14 to claim 1 and narrowing the scope, objections under Sections 10(4) and 2(1)(j) were waived/dropped and retaining the other objections, an additional objection of lack of industrial applicability under Section 2(1)(ac) was added. Appellants filed second written submissions with pending claims 1-7, as follows:-



1. *A method of controlling herbicide resistant weeds by applying subsequently or sequentially to a locus:*
 - (i) *a first application comprising glyphosate and/or glufosinate, and*
 - (ii) *a second application comprising glufosinate and/or an acetyl-CoA carboxylase (ACCase) inhibiting herbicide, wherein the acetyl-CoA carboxylase (ACCase) inhibiting herbicide is selected from haloxyfop, clethodim or mixtures thereof, wherein the herbicide resistant weed is Eleusine indica or Digitaria insularis, wherein the second application is applied 7 to 60 days after the first application and wherein herbicide combination of the first application and second application are applied at a rate of 0.1 to 10 L / ha.*
2. *The method as claimed in claim 1, wherein the second application is applied 7 days after the first application.*
3. *The method as claimed in claim 1, wherein the second application is applied 14 days after the first application.*
4. *The method as claimed in claim 1, wherein the second application is applied 35 days after the first application.*
5. *The method as claimed in claim 1, wherein said herbicide is applied in an amount of about 5 g/ha to about 500 g/ha.*
6. *The method as claimed in claim 1, wherein the herbicide combination of the first application and second application are applied at a rate of 0.5 to 8 L/ha.*
7. *The method as claimed in claim 1, wherein the herbicide combination of the first application and second application are applied at a rate of 1 to 5 L/ha.*

5. It is urged that, however, when the impugned order was passed, it was noticed that objection of lack of novelty in view of prior art D1 was taken as



one of the grounds to reject the application, despite having dropped the objection in the second Hearing Notice, which implied that Respondent was satisfied that the claims of the patent application were novel. Absence of the objection in the second Hearing Notice deprived the Appellants to meet the objection and put forward their arguments and it is trite that absence of an objection in the Hearing Notice necessarily amounts to waiver, as held by the IPAB in ***Cima Labs Inc. 7325 Aspen Lane, Brooklyn Park, MN 55428, United States of America v. The Controller of Patents, Patent Office, Intellectual Property Office Building, P-2, Sector V, Salt Lake City, Kolkata-700091, 2015 SCC OnLine IPAB 31.***

6. It is further argued that Respondent cited and relied upon seven new articles to define ‘common general knowledge’ for the first time in the impugned order without providing an opportunity to the Appellants to respond to them. None of these articles were cited either in the FER or in the two Hearing Notice. Respondent has placed heavy reliance on examples in the form of pictures to show that it is common in herbicides/pesticides industry to publish features of claimed method on the packets of herbicides/pesticides and this has seriously prejudiced the Appellants *sans* any opportunity to meet them and/or contest the teachings of these documents. The articles are as follows:-

- “(i) <https://ipm.ucanr.edu/QT/weedcontrolcard.html>;
- (ii) <https://www.upl-ltd.com/agricultural-solutions/crop-protection/herbicides>;
- (iii) <https://www.agric.wa.gov.au/grains/herbicide-application>;
- (iv) <https://www.business.qld.gov.au/industries/farms-fishing-forestry/agriculture/biosecurity/plants/invasive/manage/control/apply>;
- (v) <https://extension.umn.edu/herbicide-resistance-management/herbicideresistant-weeds>



(vi) <https://www.ahri.uwa.edu.au/wp-content/uploads/2014/10/573-Norsworthy-et-alWeed-Sci-2012-HR-BMPs.pdf>, <https://extension.oregonstate.edu/catalog/pub/pnw-437-herbicide-resistant-weeds-their-managemen>

(vii) <https://www.sciencedirect.com/science/article/pii/S0167880923004450#:~:text=Conventional%20hoeing%20causes%20150%25%20higher,aqmatic%20toxicity%20over%20other%20methods.>”

7. As for the objection of lack of inventive step, Respondent has not followed the five-step test elucidated by the Division Bench of this Court in ***F. Hoffmann-La Roche Ltd. & Anr. v. Cipla Ltd., 2015 SCC OnLine Del 13619***. Respondent has failed to identify the differences, if any, between the cited prior arts D1-D3 and the claimed invention and thereafter, to ascertain whether differences are ordinary application of law or involve various different steps requiring multiple, theoretical and practical applications. In fact, the prior arts have not been correctly referred and the only sentence in the entire order, which refers to their teachings is “*Documents D1-D3 indicate that herbicidal active ingredients are more effective when used in combination rather than individually. The prior art provides ample motivation and suggestions related to the claimed method*”. Respondent has failed to appreciate that D1 is a composition claim whereas the present invention relates to a method or process and D2 relates to herbicidal mixture comprising L-glufosinate or its salt and at least one lipid biosynthesis inhibitor, which is completely different from the present invention, which does not specify the enantiomer but rather the racemic mixture, which is completely against the teaching of D2, amongst other differences. D3 relates to a method of controlling glufosinate-resistant weeds comprising applying glufosinate or a salt thereof and one or more different herbicides to glufosinate-resistant weeds or a habitat of glufosinate-resistant weeds but



this is not the case with the present invention.

8. It is urged that Respondent has also incorrectly held that the claims are non-patentable under Section 3(n). Subject invention does not fall within the scope of this provision inasmuch as development of a method of application of a herbicidal combination after optimizing the various parameters, including selection of active ingredients, dosage, rate of application, sequence of application, duration between different treatment etc., involve intensive research and efforts and such information cannot be construed as being devoid of any technical feature. Respondent has erred on this on two counts. Firstly, Respondent has not appreciated this distinction and secondly, the examples brought forth in the impugned order to exemplify that herbicides/pesticides industries used to publish the features of claimed method on packets/packaging, were cited only in the impugned order for the first time without giving opportunity to the Appellants to respond to these examples.

9. Be it noted that Respondent has chosen not to file any reply despite opportunity to do so and has filed written submissions. Reading of the submissions shows that there is no response to the specific grounds taken in the appeal with regard to violations of procedures and principles of natural justice and hence, the averments to this effect are uncontroverted.

10. Having heard counsels for the parties and on examination of the record before the Respondent, I find merit in the contention of the Appellants that there are violations of procedure as also principles of natural justice. Appellants are right in submitting that objection of lack of novelty under Section 2(1)(j) in view of prior art D1 was dropped in the second Hearing Notice dated 14.02.2024, however, one of the grounds to reject the



patent application in the impugned order is lack of novelty and therefore, Appellants did not have the opportunity to deal with the objection under an impression that it was dropped or waived. Court also finds that the impugned order refers to seven documents, as referred to in the earlier part of this order, which were admittedly not cited either in the FER or in the two Hearing Notices. Therefore, Appellants had no opportunity to deal with them and present their case to rebut and/or explain the documents. The rejection of the patent application on ground of novelty, which objection was dropped in the second Hearing Notice as also citing fresh documents in the impugned order for the first time, does lead to violation of procedure as also principles of natural justice and on both these grounds, the impugned order deserves to be set aside. It is trite that no party can be condemned unheard and *audi alteram partem* is a facet of Article 14 of the Constitution of India.

11. Appellants are also right in the next submission that Respondent has not followed the five-step test delineated by the Division Bench in ***F.Hoffmann (supra)***, while examining the application for lack of inventive step. Coordinate Bench of this Court in ***Agriboard International LLC v. Deputy Controller of Patents and Designs, 2022 SCC OnLine Del 940***, has highlighted three elements that need to be considered while determining whether the claimed invention lacks inventive step, however, in the instant case, the subject application has not been examined in consonance with the said judgment. This apart, Appellants are also right in urging that reference to prior arts D1-D3 is absolutely sketchy and there is no analysis or discussion on how the teachings therein would lead a person skilled in the art to arrive at the invention claimed. The alleged differences brought out by



the Appellants in the prior arts and the claims in the subject application have not been considered and to this extent, the order is unreasoned and non-speaking.

12. For all the aforesaid reasons, as rightly flagged by the counsel for the Appellants, without going into the merits of the case, the matter deserves to be remanded for a fresh consideration. Accordingly, the impugned order dated 20.08.2024, whereby Respondent has refused to grant patent on Indian Patent Application bearing No. 202011020608 filed on 15.05.2020, is set aside. Respondent is directed to consider the application afresh, in accordance with law and after granting opportunity of hearing to the Appellants and considering the factual and legal pleas raised. The decision shall be taken within a period of five months from today.

13. Appeal is disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 10, 2026

S.Sharma