

Crystal Crop Protection Limited vs Sudpita Dey Assistant Controller of Patents and Designs & Ors.

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Court : Delhi

Decided On : Apr-08-2026

Judge : Hon'Ble Mr. Justice Tushar Rao Gedela

Appeal No. : C.A.(COMM.IPD-PAT)/86/2022

Appellant : Crystal Crop Protection Limited

Respondent : Sudpita Dey Assistant Controller of Patents and Designs & Ors.

Advocate for Def. : Mr. Amitabh Suman, Mr. Suman

Advocate for Pet/Ap. : Mr. Priyam Lizmary Cherian

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 16.02.2026

Judgment delivered on: 08.04.2026

+ C.A.(COMM.IPD-PAT) 86/2022 CRYSTAL CROP PROTECTION LIMITED
.....Appellant

versus

SUDPITA DEY ASSISTANT CONTROLLER OF PATENTS AND DESIGNS & ORS.Respondents Advocates who appeared in this case: For the Appellant : Mr. Priyam Lizmary Cherian and Ms. Shruti Jain, Advocates For the Respondents : Ms. Pratima N. Lakra, CGSC with Mr. Shailendra Kumar Mishra and Mr. Abhishek Sharma, Advocates for R-1 Mr.Ajay Amitabh Suman and Mr. Shravan Kumar Bansal, Advocates for R-3

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. Present appeal has been filed under Section 117A of the Patents Act,

1970 (hereinafter referred to as the Act) assailing the order dated 11.01.2022 passed by the Assistant Controller (hereinafter referred to as learned AC) of Patents and Designs under Section 25(1) of the Act, refusing the grant of patent application no.1607/DEL/2010 (hereinafter referred to as subject application).

C.A.(COMM.IPD-PAT) 86/2022 Page 1 of 47 BRIEF FACTS:-

2. The appellant had submitted the Patent Application no. 1607/DEL/2010

in respect of an Insecticidal Composition was filed on 08.07.2010. The First Examination Report (hereinafter referred to as FER) was furnished on 26.05.2017 and the response thereto was submitted by the appellant on 22.09.2017. The appellant had amended its claims vide communication dated 22.11.2019. It is stated that between the years

2017 and 2021, four pre-grant oppositions were filed against the said application and the appellant had filed replies thereto.

3. The first hearing notice was issued on 03.09.2021, however, the appellant sought adjournment, which was granted. Subsequently, the Assistant Controller heard the arguments on 23.11.2021 before passing the impugned

order on 11.01.2022. It is this order which is challenged before this Court by

way of the present appeal.

4. The appellant claims that the subject application provides a broad

spectrum insecticidal composition for controlling a wide range of insects, namely: (i) biting and chewing types (Spodoptera, Fruit Borer, Helicoverpa) and (ii) the sucking types (mites, leaf miners and thrips). The appellant claims that there does not exist a single insecticidal composition which is effective against a wide range of insects, which would include the biting and chewing types as also the sucking types. It claims that different types of insecticides are used for different varieties of insects, thereby increasing the cost and causing considerable economic loss.

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5. The appellant claims that to overcome the limitations in the prior art, a

broad spectrum insecticidal composition was needed and subject application is one such insecticidal composition. Primarily, the appellant claims the use of Fipronil, which is a member of the Phenyl-Pyrazole Class of pesticides, which is a systemic and contact insecticide disrupting the central nervous system by blocking the GABA (gamma-aminobutyric acid) receptor and glutamate-gated chloride channels (Glu Cl) and Emamectin Benzoate (EB), which is a member of the Avermectin

Class of pesticides and is a contact insecticide blocking the neurotransmitter GABA. The composition comprises Fipronil (F) and Emamectin Benzoate (EB) in specific weight concentrations namely, 3.5% w/w of F and 1.5% w/w of EB, formulated as a suspension concentrate (SC) formulation. It is claimed that the combination of F & EB exhibits an enhanced insecticidal activity at a much lower concentration than when either of them is used alone, thereby confirming a surprising synergistic effect. The appellant claims that if a combination of two active ingredients leads to a synergistic effect which is over and above the additive effect, then such a synergistic combination is entitled to patent protection as laid down by this Court in *Biomoneta Research Pvt. Ltd. vs. Controller General of Patents, Designs and Anr.*, reported in 2023 SCC OnLine Del 1482.

6. The independent claim 1 of the subject application is stated as under:

1. An insecticidal composition comprising synergistically effective amount of Fipronil and Emamectin Benzoate, wherein Fipronil weight concentration in the said composition is 3.5% w/w, Emamectin Benzoate weight concentration in the said composition is 1.5% w/w, and the said composition is in the form of a suspension concentrate (SC).

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7. The appellant states that the rejection vide the impugned order is on the grounds of (a) lack of novelty; (b) lack of inventive step and (c) non- patentability under Section 3(d) of the Act.

8. Learned counsel appearing for the appellant submits that a perusal of

the impugned order would reflect a clear non-application of mind with regard to the conclusion of lack of novelty, inasmuch as no reasons or grounds for reaching such a conclusion have been provided by the learned AC. Equally, she submits that so far as the conclusion of lack of

inventive step is concerned as well, no reasons whatsoever have been provided as to why the appellants submissions in that regard are not acceptable.

9. She further submits that the conclusion of the invention does not meet

the requirement under Section 3(d) of the Act has been reached without providing any reasons as to why the activity supplied in the complete specification is not acceptable. In fact, according to learned counsel, the impugned order merely reproduces the post-hearing submissions of the pre- grant opposition in lieu of recording independent findings, which are mandated to be provided by the learned AC, who functions as a quasi-judicial authority. Learned counsel submitted that the mere observations that the arguments regarding the instant composition as a suspension concentrate is not convincing, cannot be construed as a proper application of mind by the learned AC. On that short ground, Mr. Priyam Lizmary Cherian, learned counsel would contend that the impugned order be quashed and the appeal be allowed by remitting the subject application back to the learned AC for de novo consideration of the entire claims.

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10. In support of the above, learned counsel had advanced the following

submissions, which are reproduced in a tabulated form for the sake of clarity and convenience: Prior Arts for Rejection on Grounds of Lack of Novelty and Inventive Step Prior Art Discussion in the Impugned Order Principles of Patent law ignored by the

Impugned Order

Title: Disclosure of CN1969627 (CN627): The Ld. Controller has A Composite failed to deal with the Fipronil Insecticide CN627 discloses an

insecticide Appellants arguments (Relied on By comprising 3.5% Fipronil and 1.5% of that: Respondent No. 2,3,4 Eamectin benzoate (Please see 1. The specific and 5 in Pre grant embodiment 5 on page 19 of CN627). combination of 3.5% and Respondent No. CN627 also discloses that an w/w Fipronil (F) + 1.5% 1 in Refusal order) insecticide composition can be w/w Eamectin formulated as suspension. In particular, Benzoate (EB) in SC CN627 discloses in claim 8 an formulation without a insecticide composition in the form of synergist, as the present suspension. invention, is not CN627 also discloses a formulation disclosed in any claims comprising Fipronil and Eamectin of CN627. benzoate along with one or more 2. Claim 1 only discloses adjuvants, including wetting agent a range of 0.5-15% F, (Please see claim 2), 0.1-10% EB and other dispersant/dispersion agent (Please see auxiliary claim 2), emulsifying agent (Please see agents formulated as claim 5), solvent (Please see claim 5). miscible oil, wetting The amount of adjuvants is the same as powder, suspending that claimed in claim 4 of the impugned agent, or microemulsion. application. (Please see claims of It does not disclose the CN627). specific selection from CN627 also teaches that the said the range, and it does insecticide composition can be used for not disclose any controlling rice borer, plant hopper, formulation as a SC. diamondback moth, beet armyworm, Hence, generic cigarette beetle and cotton bollworm disclosure in the prior (Please see abstract and claim 1 of art may not necessarily CN627) take away the novelty of

C.A.(COMM.IPD-PAT) 86/2022 Page 5 of 47 Embodiment 5 of CN627: the specific disclosure. 5% Fipronil and Eamectin Benzoate 3. Embodiment 5 is an miscible oil (by weight): EC formulation and not SC, as claimed. EC and SC cannot be treated interchangeably. They are completely different chemical formulations having different properties such as (i) different size of active ingredients, (ii) SC is water based thus more environment friendly present set of claims of the impugned over EC which is an application; and not relevant for emulsifiable oil, Novelty.

However, the office finds that, (iii), their interaction the composition of 3.5% w/w Fipronil with soil therefore and 1.5% w/w Emamectin Benzoate as differs and they have claimed in the claims 1 to 4 of the different environmental impugned application are being effects accordingly. anticipated by the disclosure of any one 4. Further, Embodiment of the CN627 or CN546. 5 necessarily comprises Therefore, the Novelty for the claims 1 a synergistic agent to 4 of the impugned application has which is absent in the not been acknowledged vis--vis claimed invention. Even, disclosure of CN627 or CN546. all the remaining other Embodiments, i.e. 1-4 and 6-12 comprise the combination of F and EB along with a synergistic agent (necessarily) and in a different formulation types other than SC formulation, as claimed in the present invention. Thus, the claimed invention cannot be hit by novelty in light of CN627. Hence, CN627

C.A.(COMM.IPD-PAT) 86/2022 Page 6 of 47 clearly teaches away from the claimed invention. The Ld. Controller has erred in relying on CN627 for both - novelty and for inventive step. The same prior art cannot render an invention as lacking novelty (when tested on a standalone basis) and also lacking inventive step (when it is combined with other prior arts).
Without Prejudice:

5. As synergistic agent is

an essential component of CN627, CN627 actually teaches away from engaging in experiment without a synergistic agent. Lack of synergistic agent is an essential component of claimed invention.

6. There is nothing in CN627 which teaches, suggests or motivates a person to experiment a combination of F+EB without a synergist.

7. There is also no teaching for SC, let alone preference for SC in CN627. There is no reason why a person skilled in the art would attempt a SC based on reading of CN 627 C.A.(COMM.IPD-PAT) 86/2022 Page 7 of 47 either alone or in any

combination/ mosaic with other prior art(s) or common general knowledge of the field.

8. Further, for an

invention to lack novelty, a single prior art must anticipate all the features of the invention, but the CN627 does not have all the features as claimed in the present invention. Hence, the Ld. Controller has erred in relying of CN627 for novelty. CN546 Disclosure of CN101019546 (CN546): The Ld. Controller has Title: A kind of failed to deal with the pesticide mixture of Example 5 of CN546 is describing the Appellants arguments emamectin benzoate active ingredients Emamectin Benzoate that: andfipronil (Relied (1.5%) and Fipronil (3.5%)), which is 1. The specific on exactly the composition claimed by the combination of 3.5% by Respondent No. subject matter of the present impugned w/w F + 1.5% w/w EB 2,3,4 application. in SC formulation and 5 in Pre grant without a synergist, as and Respondent No. Further, paragraph 6, page 4 of the present invention, is 1 in Refusal order CN546 distinctly states that the not disclosed in an claim composition can be formulated either of CN546. as emulsifiable oils, microemulsions 2. Claim 1 (Pg. 522 of and aqueous emulsions. Appeal paperback) only present set of claims of the impugned discloses a range of 0.2- application; and not relevant for 10% F, 0.1-10% EB and Novelty. However, the office finds that, other functional the composition of 3.5% w/w Fipronil aid/adjuvants, organic and 1.5% w/w Emamectin Benzoate as solvent or carrier. claimed in the claims 1 to 4 of the Hence, generic impugned application are being disclosure in the prior anticipated by the disclosure of any one art may not necessarily of the CN627 or CN546. take away the

C.A.(COMM.IPD-PAT) 86/2022 Page 8 of 47 novelty of the specific Therefore, the Novelty for the claims 1 disclosure. Further, to 4 of the impugned application has organic solvent is an EC not been acknowledged vis--vis formulation, in contrast disclosure of CN627 or

CN546. to the SC formulation, as in the present invention.

3. Although Example 5

(Pg. 525 of Appeal paperbook) teaches F as 3.5% and EB as 1.5% but only as a combination with organic solvent in an emulsion oil that is a EC formulation whereas the present invention is in SC formulation.

4. Further, Table at

page 525 of appeal paperbook discloses a combination of F and EB applied as emulsifiable oil at very higher dosage of 20g/mu (21.4g/acre) than in the claimed invention at 10g/acre. Thus, clearly the claimed invention cannot be hit by novelty in light of teachings in CN546. Similarly, the Ld. Controller has erred in relying on CN546 for both - novelty and for inventive step. The same prior art cannot render an invention as lacking novelty (when tested on a standalone basis) and also lacking inventive

C.A.(COMM.IPD-PAT) 86/2022 Page 9 of 47 step (when it is combined with other prior arts). Without Prejudice:

1. CN546 does not teach, suggest or motivate the person skilled in the art about the synergist, hence teaches away.
2. The present claimed invention does not comprise an organic solvent as present in CN546, hence teaching away. There is no reason in CN546 to make/prefer SC over emulsion oils.

3. Moreover, for an

invention to lack novelty, it must be fully disclosed and present in its entirety within a single prior art reference, accompanied by adequate information. In this context, CN546 fails to invalidate the present invention on novelty grounds, as it does not fulfil this criterion. CN037

Disclosure of CN1911037 (CN037): Principles of Patent law Title:
ignored by the Impugned

Compound CN037 discloses a composite Order

insecticides insecticide for controlling rice pests for controlling rice comprising combination of Fipronil and The Ld. Controller has Insects" (Relied on by Eamectin Benzoate, wherein the mass failed to deal with the Respondent No. 4 ratio of Fipronil to Eamectin Appellants arguments and 5 Benzoate is 0.25-10 : 0.01-5 (see, that:

C.A.(COMM.IPD-PAT) 86/2022 Page 10 of 47 in Pre grant and CN037, claims 5 and 6; and page 4,

1. The specific Respondent No. 1 in last two paragraphs and page 5, 1st combination of 3.5% refusal order) paragraph). w/w F + 1.5% w/w EB in SC formulation In addition, CN037 explicitly discloses without a synergist, as in examples of Fipronil-Eamectin the present invention, is Benzoate suspension concentrate (SC) not disclosed in any formulations (see, CN037, Page 9). claims of CN037 except Further, CN037 also demonstrates for a broad range. existence of synergism between Fipronil Hence, disclosure of a and Eamectin Benzoate (see, CN037, broad range in the prior Page 5, 5th paragraph; and Page 11, art will not by itself it under Field control experiment). renders as obvious. With regards to CN037, discloses an

2. The exemplified insecticide composition for the control formulation of CN037 of rice insects comprising Fipronil and as in the order at Eamectin benzoate, wherein the mass example 2 at page 536- ratio of Fipronil to Eamectin 537 of appeal paperbook benzoate is in the range of 0.25 to 10: discloses a combination 0.01 to 5 (covering the wt% of Fipronil of F and EB in a (3.5%) and Eamectin benzoate (1.5%) suspending agent as claimed in claim 1 of the impugned formulation, but

in application) formulated into suspension different concentrations, formulation. Hence, the claims of the as claimed in the present present impugned application (claims invention. 1-4) are obvious in view of the No teaching/motivation teachings of the document CN037 to deviate from the either singly or when taken in particular exemplified combination with either of documents concentration of F and CN546, CN627 or CN055. EB, let alone arrive at the specific From the disclosure of CN160 concentrations claimed [suspension concentrate (see page 4, in present invention. lines 19-21) pesticidal composition

3. Further, the Field comprises 5% Fipronil with 1% Control experiment in Eamectin benzoate; 3% Fipronil with CN037 teaches away 0.2% Eamectin Benzoate and 4% the person skilled in the Fipronil along with 0.5% Eamectin art from the present benzoate (See example 1)]; and CN037 invention with [suspension concentrate (see, CN037, combination of F and Page

9) pesticidal composition EB by teaching that the

C.A.(COMM.IPD-PAT) 86/2022 Page 11 of 47 comprises 0.25 or 10 wt% Fipronil with combination of fipronil 0.01 or 5 wt% Eamectin benzoate], it and chlorpyrifos is more is obvious for a person skilled in the art effective in control of to arrive at the teachings of the present rice leaf roller borer impugned invention without exercising over the combination of any inventive activity. Accordingly, all F and EB. Further, the the claims (claims 1-4) of the present combination of fipronil impugned application are obvious in + chlorpyrifos is more view of the teachings of the document effective in control of CN160 and/or CN037 either singly or rice stem borer over the when taken in combination with combination of F and common general knowledge; or when EB. (Pg 539 of appeal taken in combination with the paperback) disclosure of CN627 and/or CN546. The Ld. Controller is erred in relying on CN037 for inventive step as he has not disclosed the specific portion of the prior art that as per the order that teaches, suggests or motivates the person skilled in the art to arrive

at the claimed invention. Rather, CN037 clearly teaches away from the claimed invention. The Ld. Controller has erred in ignoring the settled principle of law that if a prior art teaches away, rather than towards the claimed invention is not even a relevant prior art for inventive step. ADDITIONAL PRIOR ARTS FOR REJECTION ON GROUND OF LACK OF INVENTIVE STEP ALONE CN055 Disclosure of CN101066055A The Ld. Controller has Title: A kind (CN055) failed to deal with the

C.A.(COMM.IPD-PAT) 86/2022 Page 12 of 47 of pesticide Appellants arguments composition CN055 discloses Emamectin Benzoate- that: containing 0.1 to 5% with any combination of 1. The specific emamectin either Fipronil, chlorfenapyr and combination of 3.5% benzoate diafenthiuron in any proportion. w/w F + 1.5% w/w EB The Ld. Controller CN055 discloses a pesticidal in SC formulation has failed to deal composition containing 0.2% - 30% without a synergist, as in with the Appellants Fipronil and 0.1%-5% Emamectin the present invention, is arguments that: Benzoate (See claim 1 of CN055). In not disclosed in any

1. The specific example 5, Emamectin Benzoate is claims of CN055, rather

combination of 3.5% specifically mentioned to be 0.5% along CN055 is completely w/w F + 1.5% w/w with Fipronil-5% along with adjuvants. contrary in teaching the EB in SC formulation (See claims 1-5 of CN055). The presence of a synergistic without a synergist, adjuvants disclosed in CN055 include agent as an essential as in the present emulsifying agents, solvents and component in the invention, is not synergist (See claim 1 - 5 of CN055). following disclosure: disclosed in any Further, CN055 discloses that the a. Claim 1: EB (0.1 - claims amount of adjuvants is about 50% to 5%) + Compound B of CN055, rather 95% w/w (see claim 1 of CN055, (0.2% - 30%) + CN055 is completely composition 1 and 2 mentioned under Synergist- 0.1-5% + contrary in teaching Table 2, on page 9). Table 2 on page 9 Emulsifying Agent- (5- the presence of

a of CN055 showed the efficacy test 20%) +Solvent- (45- synergistic agent as results of the composition which is a 90%) (Pg. 546 of Appeal an essential mixture of Emamectin Benzoate (0.5%) paperbook) 7 component in the and Fipronil (5%), wherein the tests (Relied on by following disclosure: indicated the control efficiency of Respondent No. 2 and 3 a. Claim 1: EB (0.1 - 98.62%. in Pre grant And 5%) + Compound B Respondent No. 1 in (0.2% - 30%) + Similarly, from the disclosure of refusal order) Synergist- 0.1-5% CN055 & CN970, a person skilled in b. Example 5- F (5%) + + Emulsifying Agent- the art would not face any difficulty EB (0.5%) + Synergist (5-20%) +Solvent- whatsoever and would not be required (4%) + Emulsifying (45-90%) (Pg. 546 of to have any ingenuity to apply the Agent Appeal teachings of (15%) [Adjuvant] as EC paperbook) (Pg. 556 of Appeal cited documents CN055 and/or paperbook) CN970 to arrive at the present 2. All the remaining invention. Moreover, the claims of the other Examples, i.e. 1-4 present impugned application (claims and 6 comprise the 1-4) are obvious in view of the combination of EB with teachings of the document CN970 other active ingredient,

C.A.(COMM.IPD-PAT) 86/2022 Page 13 of 47 either singly or when taken in but not F+EB and also combination with either of documents present in a different CN546, CN627 or CN055 or formulation type than common general knowledge. SC formulation, as claimed in the present invention. Hence, CN627 clearly teaches away from the claimed invention.

3. Hence, it has not been

explained in the Order

as to why a person skilled in the art would consider synergist as an optional element when CN055 teaches away from this. It is trite that while mosaicking the prior art with the claimed invention, there must be a

coherent thread leading from the prior art to the claimed invention where tracing the thread must be an act which follows obviously, that was not the case present here.

4. Further, formulation

type EC as claimed in CN055 is different than the SC type claimed in the present invention, hence teaches away. CN160 Disclosure of CN1579160 (CN160): The Ld. Controller has Title: failed to deal with the "Synergistic CN160 discloses a synergistical Appellants arguments Pesticidal pesticide composition comprising that: Composition (Relied Fipronil and Eamectin Benzoate in 1. The specific on by Respondent No. the weight ratio of Fipronil and combination of 3.5%

C.A.(COMM.IPD-PAT) 86/2022 Page 14 of 47 2 in pre grant and Eamectin Benzoate is 1-50:1. (See w/w F + 1.5% w/w EB Respondent No. 1 in claim 2 of CN 160). Specific examples in SC formulation refusal order) are taught in CN160, wherein the without a synergist, as in pesticidal composition comprises 5% the present invention, is Fipronil with 1% Eamectin benzoate; not disclosed in any 3% Fipronil with 0.2% Eamectin claims or examples of Benzoate and 4% Fipronil along with CN160. 0.5% Eamectin benzoate (See 2. Claims 1 and 2 (page example 1). It is evident that the active 541 of Appeal ingredients Fipronil and Eamectin Paperback) disclose a benzoate and their amount are combination of F + disclosed in CN160. active ingredient B [B being EB (Abstract)] in CN160 also discloses that an the preferable range, 1-insecticide composition can be 30:1, in contrast to the formulated as suspension (Please see ratio of F and EB as abstract and claim 4 of CN160). In claimed in the present particular, CN160 discloses the invention, i.e., 2.33:1. method of preparation of the insecticide 3. Further, the table composition in the form of suspension (Exploit Example 2 at (Please see page 4, lines 19-21 of page 544 of Appeal CN160). paperback) in CN160 discloses the ratio of F CN160 discloses the use of

one or to EB showing the most more adjuvants in formulation effective control is at comprising Fipronil and Emamectin 1:1 contrary to the Benzoate (See claims of CN160). preferred ratio of 2.33:1 CN160 discloses a long list of as in claimed invention. adjuvants, including wetting agent (see claim 2), dispersant/dispersing agent The CN160 does not in (see claim 2), emulsifying agent (see any way teach, motivate claim 5), solvent (see claim 5). The or suggest the person amount of adjuvants is the same as that skilled in the art to claimed in claim 4 of the impugned particularly arrive at the application (See claims of CN160). invention as claimed herein and rather the CN160 discloses that the said disclosure therein insecticidal composition can be used teaches away. for preventing and treating various forest pests, such as rice stem borers, plant hoppers and vegetable aphids

C.A.(COMM.IPD-PAT) 86/2022 Page 15 of 47 (Please see abstract and claim 5 of CN160). CN970 Disclosure of CN101151970A The Ld. Controller has Title: (CN970) failed to deal with the Fipronil insecticidal Appellants arguments composition (Relied CN970 discloses insecticidal that: on by Respondent No. composition containing Fipronil and 1. The specific 3 and 4 in Pre grant Emamectin or its derivative Emamectin combination of 3.5% and Respondent No. Benzoate as active ingredients in a w/w F + 1.5% w/w EB 1 in refusal order) weight ratio of 1:10 to 10:1 between the in SC formulation active ingredients (See abstract of without a synergist, as in CN970), along with adjuvants (page 4 the present invention, is of CN970). Paragraph 4 describes the not disclosed in any various suitable dosage forms, eg. claims or examples of Wettable powder, water soluble CN160 rather none of powder, water-dispersible granule, pill, the Examples 1-3 of tablet, paste, aqueous suspension, CN970 disclose F+EB emulsion etc. Paragraph 6 describes in the claimed SC suitable adjuvants used in the claimed formulation. Hence, formulation. Example 2 and Example 3 there is no teaching in of CN970 which specifically discloses CN970 to arrive at the 2% Emamectin Benzoate and Fipronil presently claimed microemulsion formulation

(Fipronil- concentrations. 1% and Emeectin Benzoate-1%) and 2. Claim 2 (page 559 of 3.3% Emeectin Benzoate and Fipronil Appeal Paperbook) microemulsion formulation (Fipronil- discloses F (1:10) + EB 0.3% and Emeectin Benzoate-3%) (10:1) but in broad respectively. Control efficiency of these ranges. Hence, example 2 and example 3 preparations disclosure of a broad of CN970 were found to be 94.16% range in the prior art and 94.13% respectively (See page 5/7, will not by itself render example 8), which is beyond what is it as obvious. claimed in the present impugned 3. Further, the CN970 application. teaches away by noting that the combination of fipronil + Similarly, from the disclosure of avermectin is more CN055 & CN970, a person skilled in efficacious than the the art would not face any difficulty combination of F+EB whatsoever and would not be required (Pg. 566 of to have any ingenuity to apply the Appeal paperbook)

C.A.(COMM.IPD-PAT) 86/2022 Page 16 of 47 teachings of The Ld. Controller has cited documents CN055 and/or considered Suspension CN970 to arrive at the present Concentrate (SC) as a invention. Moreover, the claims of the stand-alone feature of present impugned application (claims the invention as a whole 1-4) are obvious in view of the and, for the purposes of teachings of the document CN970 inventive step, has either singly or when taken in wrongly opined that combination with either of documents formulating a SC forms CN546, CN627 or CN055 or part of the common common general knowledge. general knowledge. The office further finds that, While admittedly SC as formulation of a composition into a a formulation type is suspension form is a standard practice, known, the prior arts do practiced routinely by a person skilled not provide any in the art, and hence, formulating a preference for the same composition into a suspension form, or teaches functional using the method very well-known equivalence, let alone in conventionally, forms part of the the context of the common general knowledge to the presently claimed skilled person. There is thus nothing invention as a whole. surprising or inventive about choosing The Ld.

Controller has to formulate a composition as a also wrongly held that suspension/suspension concentrate formulating a SC form as claimed. The skilled person formulation is nothing would therefore combine the teaching surprising or inventive. of cited prior arts and will definitely In fact, the present prepare a suspension concentrate invention does not claim formulation of the pesticide that formulating the composition (comprising 3.5 wt% combination of actives Fipronil, 1.5 wt% Emamectin as SC is the surprising Benzoate). Therefore, the argument of or inventive aspect of the the Applicant is meritless and the invention. The Ld. subject matter of claims 1-4 of the Controller has also impugned application is obvious to a wrongly held that person skilled in art. inventive step requires a surprising result, which is contrary to the provisions of Section 2(1)(ja) of the Patents

C.A.(COMM.IPD-PAT) 86/2022 Page 17 of 47 Act. Considering the teachings of the aforementioned prior art, it is evident that none of the cited prior art documents establish the preference of formulation of a composition in a suspension form as a standard practice. Furthermore, the Ld. Controller has not substantiated this assertion with any additional prior art evidence. The claimed invention unmistakably demonstrates a technological advancement when compared to the cited prior art documents and thus ought to have granted patent protection. The Ld. Controller has only broadly mentioned the prior art Allan Knowles to rely for covering conventional and advanced formulation type including suspension concentrate formulation (Page 625 of Appeal paperbook) in one of the headings of the said prior art. However, they didnt emphasize that SC formulation is preferred

C.A.(COMM.IPD-PAT) 86/2022 Page 18 of 47 or considered a standard practice compared to other formulation types. Moreover, the Ld. Controller has not specifically extracted the relevant portions of the said prior art to support the reason. Surprisingly, the final conclusion on the lack of inventive step didnt even acknowledge this said prior art. Further,

the mosaicking of prior arts must collectively teach, suggest or motivate a person skilled in the art to arrive at the claimed invention as a whole. However, in this instance, each prior art is predominantly teaching away from the claimed invention, thereby losing its relevance as a prior art. Hence, the claimed invention cannot be deemed obvious to a person skilled in the art

11. Apart from the above, learned counsel submits that the learned AC has

considered suspension concentrate (SC) as a standalone feature of the invention and appears to have wrongly opined that formulating an SC forms part of the general knowledge. She further submitted that such an approach reflects a mischaracterisation of the invention, inasmuch as it isolates one C.A.(COMM.IPD-PAT) 86/2022 Page 19 of 47 feature without appreciating the invention as a whole. She would contend that while SC as a formulation type is known, however, none of the prior arts provide any preference for the same or teach functional equivalence. The

conclusion by the learned AC that the SC formulation is nothing surprising

or inventive is itself erroneous, as the present invention does not claim that formulating the combination of actives as SC is the only surprising or inventive aspect of the invention, whereas the synergistic effect also is an inventive aspect of the invention. She further submits that the impugned order, therefore, fails to consider the invention in its entirety, including the synergistic interaction between the components.

12. In regard to the objection sustained by the learned AC under Section

3(d) of the Act, learned counsel submitted that this objection was not raised in the FER. It is contended that raising a fresh ground at a belated stage, without prior notice in the FER, is contrary to the principles of natural justice. It is submitted by her that only respondent no.3 had made

a bald allegation with regard to Section 3(d) of the Act in its representation, which was duly clarified by the appellant by providing a clear explanation. Moreover, during the hearing, respondent no.3 did not urge this ground, thereby effectively conceding the issue. So far as respondent no.5 is concerned, no such objection regarding Section 3(d) of the Act was raised at all, nor was it agitated during the submission, only in the post-hearing submission it was noted that the subject application failed to prove that the SC formulation of the composition exhibits improved efficacy.

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13. In the aforesaid context, the learned AC is stated to have arbitrarily

noted that the suspension concentrate form of 3.5% w/w Fipronil (F) and 1.5% w/w Emamectin Benzoate (EB) is not allowable under Section 3(d) of the Act, in view of the disclosure of the cited prior arts and that the prior arts disclose either Emulsion Concentrate (EC) and/or SC, and the effectiveness of SC over the other is also comparable to the cited efficacy. Learned counsel would contend that, in terms of the settled law, the objection under Section 3(d) of the Act, in order to be sustainable and valid, has to be raised in the very first instance, i.e. the FER. Moreover, a specific known substance has to be first identified and it must be shown how the known efficacy of that known substance is the same as that of the latter claimed new-formed invention. It was further submitted that in the absence of such identification and comparative analysis, the invocation of Section 3(d) of the Act cannot be sustained. She stoutly contended that this legal aspect was not addressed by the learned AC, rendering the impugned order unsubstantiated. Accordingly, it is contended that the finding under Section 3(d) suffers from lack of reasoning and is liable to be set aside. CONTENTIONS OF RESPONDENT NO.3:

14. Per contra, Mr. Amitabh Suman, learned counsel for the respondent

no.3, opposed the arguments addressed on behalf of the appellant. He submitted that the impugned order does not suffer from any infirmity warranting interference by this Court. He specifically refuted the stand that AC has merely reproduced, by way of copy-pasting, the representations filed in the pre-grant opposition stage by the respondents in the impugned order,

C.A.(COMM.IPD-PAT) 86/2022 Page 21 of 47 which allegedly do not contain any independent application of mind or analysis by the learned AC. According to him, mere similarity of reasoning with the submissions of a party does not ipso facto establish non-application of mind. He would contend that the grounds of lack of novelty, lack of inventive step and non-patentability under Section 3(d) of the Act have been examined threadbare by the learned AC by referring to each and every prior art in respect of each of the objections, and that due application of mind is apparent from a plain reading of the impugned order. It is thus contended that the order qualifies as a reasoned determination passed in exercise of quasi-judicial powers.

15. The learned counsel for the respondent no.3 submitted that the

impugned patent application lacks novelty and is anticipated in view of the disclosure made in prior art CN1969627. He submits that the said prior art constitutes a clear and enabling disclosure of the claimed composition. He has cited pages, 497-520, specifically, 498, 500, 515, and claims 1, 5 and 8 of the prior art CN1969627. As per the learned counsel, Fipronil 3.5% and Emamectin Benzoate 1.5% is disclosed under the Embodiment 5 of the detailed specification of the said prior art. On this basis, he submitted that the essential features of the claimed invention stand disclosed in the prior art.

16. The learned counsel for the respondent no. 3 submitted that in view of

the disclosure made in CN'627, the subject application lacks novelty and is barred under section (25) (1) (b) of the Act. He further submitted that the statutory bar under Section 25(1)(b) of the Act squarely applies in the facts of the present case. C.A.(COMM.IPD-PAT) 86/2022 Page 22 of 47

17. While citing the prior art CN101019546, the learned counsel for the

respondent no.3 submitted that under Example 5 of the Complete Specification (CS) at page 525 of the prior art, Fipronil and Emamectin Benzoate at 3.5% and 1.5% respectively are disclosed. Further, citing page 521 of the said prior art, the learned counsel for the respondent no. 3 contended that the said prior art also discusses that the composition of the claimed invention can be prepared as EC, EW, and Suspending agent, etc. Thus, according to him, the form of formulation claimed by the appellant is also within the contemplation of the prior art. Citing the same prior art, the learned counsel for respondent no. 3 further submitted that claim 1 of the said prior art claims a kind of pesticide mixture of Emamectin Benzoate and Fipronil. The respondent also contended that as per pages 524 and 525 of the CS of the said document, adjuvants and organic solvents are disclosed. Further, citing page 528 of CN546, the respondent submitted that the said document discloses the synergism of the composition claimed under the said prior art. It is therefore contended that even the alleged synergistic effect is not novel. Further, citing example 5 of the cited document, the respondent submits that since it shows best co-toxicity efficient of the two active compounds, it teaches towards the present invention of the subject application.

18. Learned counsel for the respondent no.3, referred to the written

submissions on its behalf and while relying on the Manual of Patent Office Practice and Procedure, 2019, submitted that since the prior art is read through the eyes of a person skilled in the art, there is implicit disclosure of the present invention in the cited documents. C.A.(COMM.IPD-PAT) 86/2022 Page 23 of 47

19. The counsel for the respondent submitted that the cumulative reading of these cited prior arts renders the claimed invention obvious.

20. While citing the prior art CN1969627, the counsel for the respondent submitted that at page 500, Example 8 uses 10 -75% of water as a solvent. The counsel also cited the claim 1 of the said document. Thus, according to him, demonstrates that aqueous formulations were already known.

21. The second document relied on by the counsel for the respondent is CN101019546. Citing Example 7 (Pg.525) of this document, the respondent submitted that Fipronil 3.5% and Eamectin Benzoate 1.5 % by weight is disclosed. As per the respondent, at page 524, the said document discloses adjuvants and organic solvents up to 100%.

22. The counsel for the respondent also cited document CN1579160 and contended that at page 544, the examples in the table discloses reagent + Eamectin Benzoate, where the reagent is the structure of Fipronil. Under the abstract, it also discloses Suspending Agents and EC.

23. As per the written submission of the respondent, CN101066055, at page 546, discloses the active ingredient Fipronil (02. to 5%) and Eamectin Benzoate (01. to 5%). Further, the respondent also relied on the abstract of the said cited document. It is contended that the claim ranges fall within the disclosed ranges of the prior art.

24. The next document relied on by the respondent to support the objections under Section (25)(1)(e) of the Act is CN101151970. The counsel for the respondent submitted that at page 556, the said document discloses 5%

C.A.(COMM.IPD-PAT) 86/2022 Page 24 of 47 Fipronil and 0.5 % Eamectin Benzoate. The responder also argued that the said document also discloses emulsifier, wetting agent and disintegrator.

25. The counsel for the respondent submits that the present invention under

claim 1 specifies that said composition is in the form of a suspension concentrate (SC), which is already disclosed in the prior arts. He submits that the selection of SC as a formulation does not involve any inventive step. The respondent has relied on claims 1 and 8 of CN1969627, Examples A, B, C and D of CN1911037, at page 536 and Annexure A-35 (page 567-700) of prior art Alan Knowles. Citing these documents, the respondent argues that a person skilled in the art would be aware of the advantages of using a water-based suspension concentrate (SC) in place of an Emulsifying Concentrate.

26. The counsel for the respondent submitted that the present invention

under claims 2 and 3 claims that the formulation may comprise one or more adjuvants and that adjuvants may include a solvent, an emulsifying agent, a dispersant, a wetting agent, and a foaming agent. The use of adjuvants is disclosed in claims 2 and 5 of CN1969627, page 524 of CN101019546, page 540 of CN 1579160, the abstract of CN 101066055 and page 56 of CN101151970. It is contended that the use of such adjuvants forms part of routine formulation practice.

27. As to the contention of the appellant that the impugned order is

suggestive of copy-pasting the submissions of the respondent by the learned AC, and non-application of mind is apparent, he would submit that there is no bar to the adjudicating authority agreeing with the contentions of one of the parties and expressing the same. He submits that concurrence with a party's

C.A.(COMM.IPD-PAT) 86/2022 Page 25 of 47 reasoning does not vitiate an order, provided independent satisfaction is discernible. He would further submit that even if such portions of the impugned order are eschewed from consideration, though without admitting to the same, if the patent lacks any one of the aspects, i.e., lack of novelty or lack of

inventive step, or is barred under the provisions of Section 3 of the Act, such an order is sustainable in law. He submits that the impugned order is independently sustainable on merits. Thus, according to him, there is no substance in such a contention.

28. In the overall conspectus, learned counsel would forcefully contend that

in view of the clear findings recorded in the impugned order regarding lack of inventive step and obviousness, coupled with prohibition under section 3 (d) of the Act, the present appeal be dismissed as being devoid of merit. ANALYSIS AND CONCLUSION:

29. Having heard Mr. Priyam Lizmary Cherian, learned counsel for the appellant and Mr. Suman, learned counsel for respondent no.3, and having perused the pleadings and examined the documents on record, the following

order is passed. For the sake of clarity and structured adjudication, the issues

are analysed in a topic-wise manner as set out hereinafter. THE INVENTION

30. The present invention is titled as INSECTICIDAL COMPOSITION

and pertains to an insecticidal formulation comprising a synergistically effective amount of active ingredient Fipronil and Enamectin Benzoate, wherein the said composition is claimed to exhibit excellent insecticidal efficacy. The invention is stated to provide effective control over a wide

C.A.(COMM.IPD-PAT) 86/2022 Page 26 of 47 spectrum of agricultural pests. The Field of the Invention given under the Complete Specification (CS) of the subject application is reproduced hereunder: The present invention relates to an insecticidal composition comprising synergistically effective amount of a first active ingredient Fipronil and a second active ingredient Enamectin benzoate, wherein the composition exhibits excellent insecticidal properties and is capable of controlling major

insects/pests in agricultural crops. More particularly, the present invention relates to a broad spectrum neurotoxic insecticidal composition with contact, systemic and trans-laminar activity. The composition is highly effective in low doses and is also environment friendly.

Problem claimed to have been solved by the present invention

31. According to the appellant, existing insecticidal compositions do not

effectively address piercing and sucking insects as well as biting and chewing insects in a single formulation. It was further contended that such conventional formulations are often associated with high cost per unit dosage, thereby limiting their commercial viability.

32. It has also been asserted that there are few petrochemical-based

materials which can be safely absorbed into the environment and that the availability of environment-friendly and bio-degradable compositions is very low. Therefore, it is desired to have an insecticidal composition that is active against a wide range of insects, that is, a composition with contact/systemic as well as trans-laminar activity against these insects. Additionally, the claim also considers the problem of washing-out of sprayed insecticides due to rain/irrigation. Hence, the need for a broad-spectrum insecticidal composition

C.A.(COMM.IPD-PAT) 86/2022 Page 27 of 47 which is capable of controlling major insects/pests in various agricultural crops and of overcoming problems associated with the prior art is established.

33. As per the Summary of the Invention, the present invention seeks to

provide an efficacious solution for controlling a wide range of agricultural pests through a combination of Fipronil and Emamectin Benzoate. A key feature of the present invention is the alleged synergistic interaction between the two active ingredients, resulting in enhanced insecticidal activity. The

summary of the present invention is reproduced hereunder:

SUMMARY OF THE INVENTION It is an object of the invention to provide a combination of two different active ingredients which are well known insecticides; thereby providing a highly effective and efficacious solution for controlling major insects and pests in various agricultural crops, wherein the two active ingredients are fipronil and emamectin benzoate. Another object of the invention is to provide a broad spectrum insecticide effective against both piercing and sucking type as well as biting and chewing type of insects for all the agricultural crops. The invention encompasses a broad spectrum neurotoxic insecticidal composition with contact, systemic and trans-laminar activity.

Yet another object of the invention is to provide a synergistic composition comprising fipronil and emamectin benzoate in synergistically effective amount, wherein each ingredient significantly enhances and abets the activity of the other ingredient. This way, the combination of both the active ingredients exhibits a synergistic effect resulting in a faster and higher mortality of the insect pests. The enhanced mortality ensures reduction in crop damage by insect pests, thereby resulting in a significant increase in the overall yield of the crop. Also, the combination of both has made it possible to achieve a higher insecticidal effect for a larger spectrum of insects/pests. Another object of the invention is to provide an insecticidal composition that is effective even when used in far lower amounts as compared to other insecticides that are usually very expensive; thereby being highly cost effective. Further, since the dose of individual active ingredient, i.e. fipronil and emamectin benzoate in this composition is far less than the

C.A.(COMM.IPD-PAT) 86/2022 Page 28 of 47 doses required when used alone, the residue in the soil as well in crop is also lower than their individual residues when used alone. This eliminates any possible

side/adverse effects. Consequently, this combination is environmentally safer than its parental compounds. Individually, in such infinitesimally low concentrations, both the components of the combination are very safe to the environment as well as to any non-target organisms including human beings. Therefore, the present composition turns out to be highly economical, effective against a large number of insects and is also environmental friendly. Another object of the present invention is to provide a composition that does not get washed even after two hours of rains following foliar application. This prevents any wastage as well as enhances the effective time period of the application. This also enables the insecticidal composition to act against insects lying on the lower surface of the leaves or other hidden areas which are more prone to attack. It is also an object of the invention to provide a method of preparing the insecticidal composition and its formulations thereof comprising fipronil and emamectin benzoate. Further object of the invention is to provide a method of controlling insects wherein the insects, their habitats and/or plants are treated with the composition of the present invention.

34. The independent claim 1 of the present invention claims an insecticidal

composition which comprises a synergistically effective amount of Fipronil and Emamectin Benzoate. Fipronil weight concentration in the composition is 3.5% w/w while the weight concentration of Emamectin Benzoate is 1.5% w/w, and the said composition is in the form of a suspension concentrate (SC). The claims which were considered in the impugned order are as follows: We Claim:

1. An insecticidal composition comprising synergistically effective

amount of Fipronil and emamectin benzoate, wherein Fipronil weight concentration in said composition is 3.5%w/w, emamectin benzoate weight concentration in said composition is 1.5%w/w, and said composition is in the form of a suspension concentrate (SC).

2. The composition as claimed in claim 1, further comprising one or more adjuvants. C.A.(COMM.IPD-PAT) 86/2022 Page 29 of 47

3. The composition as claimed in claim 2, wherein the adjuvant is selected from the group consisting of solvent, emulsifying agent, dispersant, wetting agent, foaming agent, and combinations thereof.

4. The composition as claimed in claim 2, wherein the weight concentration of adjuvant is in the range of 50% to 95%w/w. [Emphasis Supplied]

35. This Court will now proceed to examine the prior arts to determine whether the reasoning provided by the learned Controller under the objection of lack of novelty and inventive step is sound. LACK OF NOVELTY:

36. The first issue for determination is whether the subject invention satisfies the requirement of novelty under the Act. Prior Art CN1969627 (CN' 627):

37. As per the Embodiment 5 of CN627, an insecticidal composition

comprising 3.5% Fipronil and 1.5% of Eamectin Benzoate is expressly disclosed. The said prior art further teaches that such compositions may be formulated as suspensions, including suspension concentrates.

38. Further, claims 2, 5 and 8 of CN627 disclose formulations comprising

Fipronil and Eamectin Benzoate with one or more adjuvants, such as wetting agents, dispersants/dispersing agents, emulsifying agents, and solvents. It is important to note that the amount of adjuvants here is the same as that claimed in claim 4 of the subject application.

39. As per the abstract and claim 1, CN627 also teaches that the insecticide composition can be used for controlling rice borer, plant hopper, diamond

C.A.(COMM.IPD-PAT) 86/2022 Page 30 of 47 back moth, beet armyworm, cigarette beetle and cotton bollworm. The abstract and claim 1 of CN627 are reproduced as follows:

[57] Abstract A composite Fipronil insecticide, belonging to the technical field of pesticide formulation, particularly relates to a composite formulation of Fipronil and emamectin benzoate. It is characterized by that, the composite insecticide comprising 0.5~15% of Fipronil and 0.1~10% of emamectin benzoate by weight, and the rest is being additives formulated miscible oil, or wettable powder, or miscible oil, or suspending agent, or micro-emulsion. When compared with single component type and composite Fipronil insecticide of the prior art, the composite Fipronil insecticide provided by present invention has significantly higher efficiency, improved in efficacy speed, long lasting validity period, strong insecticidal activity, reduced dosage, low toxicity and environmental friendly for controlling rice borer, plant hopper, diamondback moth, beet armyworm, cigarette beetle and cotton bollworm. 1. A composite Fipronil insecticide, characterized in that, the composite insecticide comprises of 0.5~15% of Fipronil and 0.1~10% of emamectin benzoate by weight, and the rest is additives formulated miscible oil, or wettable powder, or miscible oil, or suspending agent, or micro-emulsion. [Emphasis Supplied]

40. Further, claim 8 of CN627 claims a composition containing, 0.5-15%,

Fipronil and 0.1-10% Emamectin Benzoate along with other components. It is important to note that claim 8 clearly claims such a composition in the form of a formulated suspending agent. claim 8 of CN627 is reproduced hereunder: 8. A composite Fipronil insecticide according to Claim 1, characterized in that, the formulated suspending agent comprises of the following components in percentage by weight: Fipronil 0.5~15%, emamectin benzoate 0.1~10%, wetting agent 1%~40%, dispersing agent 0.3~20%, spreading agent 0.1~15%, stabilizer 0.1~30%, synergistic agent 0.5~25%, penetrant 0.1~10%, thickener 0.1~25%, anti-freeze agent 0.05~12%, defoamer

C.A.(COMM.IPD-PAT) 86/2022 Page 31 of 47 0.01~5%, PH adjusting agent 0.01~5% and water 10~75%. The sum of the components is 100%. [Emphasis Supplied]

41. Embodiment 5 of CN627 in the following table discloses the Fipronil percentage by weight as 3.5% and Emamectin Benzoate at 1.5% by weight. The Embodiment 5 is reproduced as follows: Prior Art CN101019546 (CN'546):

42. CN546 similarly discloses a pesticide composition comprising Fipronil

(3.5%) and Emamectin Benzoate (1.5%) under Example 5. This reinforces the disclosure of identical concentration ranges as claimed in the present invention. For clarity, Example 5 is reproduced hereunder: Exploit Example 5: emamectin benzoate takes up 1.5%, fipronil occupies 3.5%, and other functional adjuvants and organic solvent supplement to 100%.

43. Additionally, at paragraph 6 of page 4 of CN546 states that the composition can be formulated as emulsifiable oils, microemulsions and aqueous emulsions. The said relevant para is reproduced hereunder:

C.A.(COMM.IPD-PAT) 86/2022 Page 32 of 47 The preparation method of the present invention is the same with the preparation methods of mixed pesticides, especially EC(emulsifiable concentrate), micro-emulsion and EW(Emulsion in Water), in the existing technology. These preparation methods shall be deemed as part of the present invention.

This document under example 5 shows that if Emamectin Benzoate and Fipronil is taken with concentration of 1.5% and 3.5% respectively the Co-toxicity Coefficient is maximum which is 146.5511. This cited document at page 8 further discloses that since Co-toxicity Coefficient is more than 100, it can be concluded that there is an obvious synergistic effect. At page 8, the prior art describes that 5% Emamectin Benzoate emulsifiable concentrate - Fipronil shows optimal control effect on the

rice leaf rollers. The relevant paragraph is reproduced hereunder:
.....It is thus clear that 5% emamectin benzoate emulsifiable concentrate fipronil shows optimal control effect on the rice leaf rollers. The above processing pesticides show no sterile reaction during the growth and development stage of the rice. For the area where 5% emamectin benzoate fipronil emulsifiable concentrate has been applied, the paddy rice grows well with comely leaves, and ears well in later period.

44. Therefore, as discussed above, the abstract as well as claim 1 of

CN627 shows that the composition of 3.5% w/w Fipronil and 1.5% w/w Emamectin Benzoate as claimed in claims 1 to 4 of the subject application is being anticipated by the disclosure of the CN627, which discloses 0.5-15% of Fipronil and 0.1-10% of Emamectin Benzoate by weight in various solutions. Additionally, the invention under the prior art CN'546 under Example 5 describes the active ingredients Emamectin Benzoate (1.5%) and Fipronil

C.A.(COMM.IPD-PAT) 86/2022 Page 33 of 47 (3.5%). Therefore, in view of the disclosure of the active ingredients and their concentrations of the present invention in CN627 and CN546, it leads to anticipation and makes the present invention not novel under Section 2(1)(j) of the Act. Therefore, this Court is of the view that the objection of lack of novelty is well-reasoned in the impugned order.

45. Therefore, in the light of the cited prior arts CN627 and CN546, individually/together, the invention under the subject application is not novel.

46. Accordingly, this Court is of the considered view that the finding of lack of novelty recorded in the impugned order is justified and does not warrant interference. LACK OF INVENTIVE STEP:

47. The next question which arises for consideration is whether the claimed invention involves an inventive step within the meaning of Section 25(1)(e) and Section 2(1)(ja) of the Act.

48. The impugned order has upheld the objection of lack of inventive step

while rejecting the subject application. In order to examine the correctness of the reasoning adopted by the AC on this ground, this Court shall proceed to analyse the cited prior arts forming the basis of the impugned order. CN101066055A (CN'055)

49. Under claim 1, CN055 clearly discloses a pesticidal composition

comprising Emamectin Benzoate in the range of 0.1 to 5%, with chlorfenapyr or the mixture of any one/ more of compounds Fipronil, Diafenthiuron, beta cypermethrin and cyhalothrin, in varying proportion. CN055 discloses a pesticidal composition containing 0.2% - 30% Fipronil and 0.1%-5% C.A.(COMM.IPD-PAT) 86/2022 Page 34 of 47 Emamectin Benzoate. Under Example 5 as well as claims 1-5, Emamectin Benzoate is mentioned to be 0.5% with Fipronil 5% along with adjuvants. The adjuvants disclosed include emulsifying agents, solvents and synergists. In

order to appreciate this aspect, claim 1 of CN055 is reproduced hereinbelow:

1. A kind of pesticide composition containing emamectin benzoate, it is characterized in that its weight ratio structure is: Emamectin Benzoate: 0.1%- 5%, Active Ingredient B: 0.2% - 30%, Synergist: 0.1% - 5%, Emulsifying agent: 5.0% - 20%, Solvent: 45% - 90%, Wherein: The above mentioned active ingredient B can be chlorfenapyr or the mixture of any one or more of the following substances in any ratio: diafenthiuron, fipronil, beta cypermethrin and cyhalothrin. [Emphasis Supplied]

Further, under claim 1 and Table 2 at page 9 of CN'055, it is disclosed that the total amount of adjuvants ranges between 50% to 95% w/w. Table 2 specifically discloses a composition comprising Emamectin Benzoate (0.5%) and Fipronil (5%), demonstrating the control efficiency of 98.62%. However, this Court also notes that the synergist is also used in the abovementioned claims, in Example 5, and in Table 2.

50. Further, at page 4, CN055 encourages the use of pesticide mixtures in

combination with new surface-active agents in order to enhance efficacy and reduce resistance. The relevant paragraph is reproduced hereinbelow:- Thus, a new type of pesticides mixture with a new surface active agent cannot only play the role of original pesticide types to the greatest extent, but also can greatly reduce the occurrence of pesticide resistance. [Emphasis Supplied]

C.A.(COMM.IPD-PAT) 86/2022 Page 35 of 47 Prior Art CN101151970A (CN'970) :

51. The invention under CN970 relates to an insecticidal composition for

controlling diamondback moth, comprising Fipronil and Emamectin/its derivative Emamectin Benzoate, as active ingredients, wherein the weight ranges from 1:10 to 10:1. The abstract is reproduced hereinbelow: [57] Abstract An insecticidal composition for the prevention and control of diamondback moth on cruciferous vegetables, which is characterized in that it contains fipronil and avermectin or their derivatives emamectin benzoate as active components, and the weight ratio of fipronil to avermectin or their derivatives emamectin benzoate is 1 : 10 to 10 : 1.

52. The said prior art, under claim 2, specifically claims a composition

comprising Fipronil and Emamectin Benzoate in the ratio 1:10 to 10:1. It would be apposite to extract claim 2 hereunder: The insecticidal composition is characterized in that it contains fipronil and emamectin benzoate as active ingredients, and the weight ratio of fipronil and emamectin benzoate is 1 : 10 to 10 : 1.

53. Further, CN970 under Content of the invention discloses adjuvant in

suitable dosage forms including wettable powder, water-soluble powder, pill, tablet, plaster, aqueous suspension, water-dispersible granule and emulsion etc. The relevant paragraph is reproduced hereinbelow: The insecticidal composition of the invention can be prepared into various suitable pesticide dosage forms, such as wettable powder, water-soluble powder, water dispersible granule, pill, tablet, plaster, suspension agent, emulsion, etc. These preparations can be directly or through the addition of water to form aqueous dispersion in the form of spray, mist, powder spraying, and so on.

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54. Additionally, it is relevant to note that 2% Emamectin Benzoate and

Fipronil microemulsion formulation (Fipronil-1% and Emamectin Benzoate- 1%) and 3.3% Emamectin Benzoate and Fipronil microemulsion formulation (Fipronil -0.3% and Emamectin Benzoate-3%) respectively are disclosed under Examples 2 and 3 of CN970. Under Example 9 and 8, the Control efficiency of these Examples 2 and 3 was found to be 94.16% and 94.13% respectively. It may be pertinent and significant to note that the aforementioned efficiency is higher than what is claimed by the appellant in its patent application. However, this Court also notes that synergists are also used in the examples. The examples are reproduced hereunder:

C.A.(COMM.IPD-PAT) 86/2022 Page 37 of 47 Prior Art CN1911037 (CN'037):

55. As far as the invention under CN037 is concerned, it pertains to a

compound insecticide in respect of the compound insecticide technology for controlling rice stem borer as well as the rice leaf roller. This prior art discloses, under claims 5 and 6, a composite insecticide for controlling rice pests comprising a combination of Fipronil and Emamectin Benzoate, wherein the mass ratio of Fipronil to Emamectin Benzoate ranges from 0.25-10 : 0.01-

5. To make this clear, claims 5 and 6 of CN037 is reproduced hereinbelow:

5. The compound insecticide for controlling rice insects is characterized in that its effective components are (RS) -5-amino-1- (2,6-dichloro-4-trifluoromethyl) -4-trifluoromethylsulfinyl-3-nitrile and 4 - epi-methylamino-4 deoxyavermectin B1 benzoate.

6. The compound insecticide for controlling rice insects described in

Claim 5 is characterized in that (RS) -5-amino-1- (2,6-dichloro-4- trifluoromethyl) - 4-trifluoromethylsulfinyl-3-nitrile and 4-epi- methylamino - 4 deoxyavermectin B1, and the quality to mass ratio of benzoate is 0.25:10 : 0.015.

56. It may be significant to note that under the Technical Scheme 3 disclosed under the complete specification of prior art CN037, the composition of Fipronil and Emamectin Benzoate is disclosed. The mass ratio

C.A.(COMM.IPD-PAT) 86/2022 Page 38 of 47 of (RS) of these two compounds is 0.25-10:0.01-5. The scheme further discloses that the composition is low-cost, long-term and quick acting, and is capable of improving the control effect and simultaneously delaying the development of insecticide resistance. To understand this better, the Technical Scheme 3 is extracted hereunder: Scheme 3: the effective components are (RS) - 5-amino-1 - (2,6- dichloro-4-trifluoromethyl) - 4-trifluoromethylsulfinyl-3-nitrile (fipronil) and 4 epi-methylamino-4 deoxyavermectin B1 benzoate (mesaavermectin benzoate). (RS)-5-

amino-1-(2,6-dichloro-4-trifluoromethyl)-4- trifluoromethylsulfinyl-3-nitrile (fipronil) and a mixture of 4 epi- methylamino-4 deoxyavermectin B1 benzoate (emamectin benzoate) to form fluoroavermectin (fipronil and emamectin benzoate) is also low- cost, long-term and quick acting, which can improve the control effect and delay the development of insecticide resistance. The synergistic effect (CO toxicity coefficient) was 414.8. Among them, the mass ratio of (RS) - 5-amino-1 - (2,6-dichloro-4-difluoromethylphenyl) - 4- trifluoromethylsulfinyl-3-nitrile to 4 -epi- methylamino-4 deoxyavermectin B1 and benzoate is 0.2510 : 0.015. [Emphasis Supplied]

57. Additionally, at pages 8 and 9, the prior art CN037 discloses examples

of Fipronil-Emamectin Benzoate in suspension concentrate (SC) formulations. The same is extracted hereunder:- C. 15% fipronil / abamectin suspension Weigh 90% abamectin physical quantity 5.55kg (5kg), 95% fipronil physical quantity 10.53kg (10kg), adjuvant 10kg, reducing gum 0.3kg, benzoic acid 0.5kg, defoamer 0.5kg, glycol 5kg, water 67.62kg are added into the shear reactor, cut for 30 minutes, and then put into the primary sand mill, then the secondary sand mill, mix in the mixing reactor, carry out the measurement and sub packaging after passing the inspection, obtains the finished product.

C.A.(COMM.IPD-PAT) 86/2022 Page 39 of 47 D. 0.36% fipronil / abamectin suspension Weigh 90% abamectin physical quantity 0.11kg (0.1kg), 95% fipronil physical quantity 0.27kg (0.25kg), adjuvant 10kg, reducing gum 0.3kg, benzoic acid 0.5kg, defoamer 0.5kg, glycol 5kg, water 83.32kg are added into the shear reactor, cut for 30 minutes, and then put into the primary sand mill, then the secondary sand mill, mix in the mixing reactor, carry out the measurement and sub packaging after passing the inspection, obtains the finished product.

A. 5.25% fipronil / emamectin benzoate suspension 100kg Weigh 60% emamectin benzoate physical quantity 8.33kg (5kg), 95% fipronil physical quantity 0.27kg (0.25kg), adjuvant 10kg, reducing gum 0.3kg, benzoic acid 0.5kg, defoamer 0.5kg, glycol 5kg, water 75.1kg are added into the shear reactor, cut for 30 minutes, and then put into the primary sand mill, then the secondary sand mill, mix in the mixing reactor, carry out the measurement and sub packaging after passing the inspection, obtains the finished product. [Emphasis Supplied]

58. Apart from the above, it is also worthwhile to consider that at page 11,

the prior art CN037 also demonstrates the existence of synergism between Fipronil and Emamectin Benzoate. Thus, the appellants submission in this regard is negated by the existence of the synergism in the prior art, which the appellant claims to have discovered as not known hitherto before. For clarification, page 11 of the prior art is reproduced hereinbelow: The test data show that the field control effects of fipronil / phoxim, fipronil / avermectin, fipronil / emamectin benzoate and fipronil / chlorpyrifos on chilosuppressalis and rice leaf roller are obviously better than those of the control agents. [Emphasis Supplied]

59. As discussed above, it is noted that the prior art CN037, under its

claims 5 and 6, discloses a composite insecticide for controlling rice pests comprising a combination of Fipronil and Emamectin Benzoate, wherein the mass ratio of Fipronil to Emamectin Benzoate is 0.25-10 : 0.01-5. Moreover,

C.A.(COMM.IPD-PAT) 86/2022 Page 40 of 47 the prior art at page 9 discloses examples of Fipronil-Emamectin Benzoate, suspension concentrate (SC) formulation. At page 11, it also discloses that the field control effect of Fipronil and Emamectin Benzoate is far better than the control agents. In view of the above disclosures, it is difficult to accept the submissions advanced on behalf of the appellant.

Prior Art CN1579160 (CN'160):

60. The invention under CN160 pertains to a synergistic pesticidal

composition of reagent and Emamectin Benzoate. Claim 2 of the prior art CN160 discloses a synergistic pesticide composition which comprises Fipronil and Emamectin Benzoate, wherein the weight ratio of Fipronil to Emamectin Benzoate is 1-50:1.

61. Claim 4 of this prior art claims that the composition can be used with

routine plant protective agents, including suspending agents. In order to appreciate, claim 4 of this document, is reproduced hereinbelow: The preparation method of this synergistic pesticidal composition is characterized by the possibility to process the pesticide into routine plant protective agents, such as suspending agent, emulsifiable concentrate, micro-emulsion, wettable powder, granule and etc.

[Emphasis Supplied]

62. It may be pertinent and significant to consider at this stage that the

Example 1 in prior art CN160, which clearly discloses the various pesticidal compositions comprising (i) 5% Fipronil with 1% Emamectin Benzoate; (ii) 3% Fipronil with 0.2% Emamectin Benzoate and (iii) 4% Fipronil along with 0.5% Emamectin Benzoate, where the active ingredients are Fipronil and

C.A.(COMM.IPD-PAT) 86/2022 Page 41 of 47 Emamectin Benzoate. Furthermore, the abstract and claim 4 of prior art document CN160 specifically disclose that an insecticide composition can be formulated as a suspension. Particularly, at page 4, the said prior art under consideration discloses the method of preparation of the insecticide composition in the form of a suspension. Thus, it cannot be contended that none of the prior arts disclose that the insecticide composition can be formulated in suspension concentrate form.

63. A closer examination of the prior art CN160, reveals that the claims

under the said document disclose the use of one or more adjuvants in a formulation comprising Fipronil and Emamectin Benzoate. Particularly, the document under claim 4 discloses routine plant protective agents such as suspending agents, emulsifiable concentrate, micro-emulsion, wettable powder, granules etc. Further, CN160 under its abstract and claim 5 also discloses that the said insecticide composition can be used for preventing/treating forest pests such as rice stem borers, plant hoppers and vegetable aphids. The Example 1 is reproduced hereunder:

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64. The Complete Specifications of the prior art CN160 also discusses

surface-active agents including anionic and non-ionic surfactants. The relevant para is reproduced hereinbelow: Available surface active agents are anionic surface active agents and non-ionic surface active agents. Applicable agent can be alkyl sulfate, alkyl sulphonic acid alkali metal salt and amino, sodium dialkyl succinate sulfonate, pesticide adjuvant 2000 #, alkyl naphthalene sulfonate - alkyl polyoxyethylene ether sulfate, fatty acid or fatty acid ester sulfate, alkylphenoethoxylates, fatty alcohol polyoxyethylene ether and so on. Pesticide emulsifier 2000 series, 8202, lignosulfonate, NNO, dispersing agent MF and the like can be taken as examples. [Emphasis Supplied]

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65. As discussed above, specification of CN055, the new surface active

agent is encouraged to reduce pesticidal resistance. From the disclosure of CN055 and CN070 as discussed above, using the teaching of these two prior arts, a person skilled in the art would reach the present invention. Further, it is well established that the concept of water

dispersible granules, EC and SC etc. are common/well-known/routinely employed and are conventional forms in the agrochemical industry. Therefore, claim 1 of the present invention is obvious as per the teachings, in view of the cited document CN970 either alone or in combination with either CN546, CN627, CN055 or common general knowledge. Further, the above discussed disclosure in CN546 or CN627 or CN055 alongwith the disclosure and teachings of CN037, which discloses the SC and synergy between Fipronil and Emamactin Benzoate, would also render the present invention obvious. Additionally, as discussed above, CN160 at page 4 of the specification also discloses the SC and therefore, read with above-discussed disclosure in CN546, CN627 and CN055, the present invention would lack inventive step under section 2(1)(ja) of the Act. The present invention also fails to demonstrate any technical advancement or economic significance over the existing knowledge, as required under Section 2(1)(ja) of the Act.

66. Additionally, since all the cited prior art documents primarily discloses

the similar products as the subject matter of the present invention and belongs to crop protection formulation. Therefore, the submission of the appellant that there is no common thread between the prior arts cannot be accepted. In *Sterlite Technologies Ltd. v. HFCL Ltd.* 2022 SCC OnLine Del 2895., this

C.A.(COMM.IPD-PAT) 86/2022 Page 44 of 47 Court held that when multiple documents disclose substantially similar products to the patented products, then it is a reflection of the state of the art and would not amount to mosaicing. The relevant para is reproduced hereunder: 20.3 Since only these two documents are being used as prior art at this stage, this Court, at the outset, holds that the Plaintiffs claim of mosaicing lacks merit. The objection of mosaicing would normally apply when completely unconnected documents are presented in a combination to defeat the inventive step in the invention. However, the argument of mosaicing cannot be sustained when there are only two documents used as prior art and such documents are interconnected or

disclose similar products. When multiple documents are alleged to disclose substantially similar products to the patented product, then the same is a reflection of the state of the art and not mosaicing. [Emphasis Supplied]

67. Upon a harmonious and conjoint appreciation of the above

discussion, claim 1 of the present application cannot be said to be inventive. The arguments of Mr. Priyam Lizmary Cherian, learned counsel for the appellant, that the learned AC has merely copy-pasted the objections raised by various objections including respondent no.3 may appear to be superficially attractive, however, when viewed in the backdrop of the above observations and analysis, coupled with the fact that the learned AC had indeed examined the lack of inventive step in detail, the said contention is unfounded and is untenable.

68. Further, the objection on the ground of lack of inventive step is well reasoned, as the learned Controller has discussed all the necessary steps mandated by this Court in Agriboard International LLC vs. Deputy

C.A.(COMM.IPD-PAT) 86/2022 Page 45 of 47 Controller Of Patents And Designs, reported in 2022 SCC Online Del 940. The relevant paragraphs are reproduced hereinbelow:

24. In the opinion of this Court, while rejecting an invention for lack of inventive step, the Controller has to consider three elements-

the invention disclosed in the prior art, the invention disclosed in the application under consideration, and the manner in which subject invention would be obvious to a person skilled in the art.

25. Without a discussion on these three elements, arriving at a bare

conclusion that the subject invention is lacking inventive step would

not be permissible, unless it is a case where the same is absolutely clear. Section 2(1)(ja) of the Act defines 'inventive step' as under:

(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.

26. Thus, the Controller has to analyse as to what is the existing

knowledge and how the person skilled in the art would move from the existing knowledge to the subject invention, captured in the application under consideration. Without such an analysis, the rejection of the patent application under Section 2(1)(ja) of the Act would be contrary to the provision itself. The remaining prior arts which are cited by Id. Counsel having not been considered in the impugned order, the Court does not wish to render any opinion in this regard.

69. The learned AC has analysed: (i) the prior art, (ii) the subject invention and (iii) the manner in which the invention would be obvious to a Person Skilled in the Art (PSA), thereby satisfying the required three factors.

70. Based on the above reasoning, this Court is of the considered opinion that the learned AC has rightly refused the subject application for lack of novelty under Section 25(1)(b) and Section (2)(1)(j) and lack of inventive

C.A.(COMM.IPD-PAT) 86/2022 Page 46 of 47 step under Section 25(1)(e) and Section (2)(1)(ja) of the Act. Having rendered the aforesaid opinion, the requirement to examine the objection under Section 3(d) and Section 25(1)(g) of the Act is not necessitated.

71. As a result, the appeal fails and is dismissed as such, though without any order as to costs. TUSHAR RAO GEDELA (JUDGE) APRIL 08, 2026
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