IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2025

Delivered on : 05.01.2026

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CMA(PT) No. 9 of 2024

Flipkart Internet Private Ltd
Buildings Alyssa,
Begonia and Clove Embassy Tech Village,
Outer Ring Road, Devarabeesanahalli Village,
Bengaluru, 560103,
Karnataka, India.

Appellant

Vs

1. The Joint Controller of Patents and Designs
Through the Controller of Patents and Designs,
Patent Office Intellectual Property Building,
G.S.T.Road, Guindy, Chennai 600 032.

2.Voicemonk Inc.
5064 Amberwood Drive , Fremont CA 94555

Respondent(s)

PRAYER

a) to set aside the Impugned order dated 9.10.2023 in respect of the post-grant opposition and revoke the Indian Patent Number 312437;
b) to direct the Respondent No.1 to reconsider the present post-grant opposition in respect of the Indian patent number 312437 de novo by assigning the case to a different Ld. Controller; and
c) pass any further orders.

For Appellant: Ms.Sneha Jain for
Mr.Madhan Babu

For R1: Mr.Subburanga Bharathi,
Central Govt. Counsel

For R2: Mr.Ramesh Ganapathy

ORDER

The present Appeal has been filed under Section 117-A of the Patents Act, challenging the order dated 9.10.2023, passed by the first respondent dismissing the Post-grant Opposition against Patent Application No.312437.

2. Brief facts of the case are as under:-

a) The second respondent herein viz., VOICEMONK INC. through their agents Shri.Kartik Puttaiah of M/s.InvnTree IP Services had filed a patent Application in Application No. 312437 seeking registration of patent for their invention called "SYSTEMS AND METHODS FOR VIRTUAL AGENTS TO HELP CUSTOMERS AND BUSINESS" on 18.11.2016

b) According to the 2nd Respondent, the invention is meant to serve the customers, who intend to make online shopping with ease of access. The invention, according to the second respondent herein, would address the inconvenience involved in the normal way of exploration in the website in search of the products which the customers wish to purchase.

c) The invention takes into consideration the preferences of users and generates suggestions which may be suitable to the users. The system helps in suggestion and selection of products on a website or software application. Further, the system helps in speaking with customers and executing their orders. The system also helps customers to locate items in a brick and mortar store.

Thus, the invention will be advantageous at least in optimizing the process of selection of products and execution of actions of a user. Further, it is advantageous in providing better user experience and decreasing time and effort required from users end.

d) With regard to their invention, the second respondent herein has originally made, as many as 36 claims as on 18.11.2016.

e) On 16.7.2018, the Controller of Patents had issued the First Examination Report on the patent sought to be registered by the second respondent herein called for their reply. On 13.12.2018, the second respondent herein had submitted their reply with the amended claims.

f) On 21.2.2019, a hearing notice was issued by the Assistant Controller of Patents & Designs to the second respondent, bringing to their notice certain issues with regard to the claims made by the second respondent.

g) Thereupon, the second respondent had filed their written submissions and also the amended claims on 18.4.2019. Such amended claims are as under:-

> *"1. A system configured to execute actions based on user input, the system comprising a virtual agent (100) comprising a virtual agent client (202) and a virtual agent server (104) for an application, wherein the virtual agent is deployed by the virtual agent client (202) and the virtual agent server 104 to function with the application, wherein the virtual agent server (104) is configured to:*
> *receive at least an audio input from a user of the application;*
> *identify among a plurality of actions, using the input, an action*

desired by the user to be performed;
execute one or more actions among the plurality of actions; ***characterized in that,***
the virtual agent is configured to:
store, in the virtual agent server (104) correlation between the plurality of actions available in the application, wherein the actions comprise search, sort, select, submit and compare;
associate one or more of the plurality of actions with one or more tags; and
execute the one or more actions among the plurality of actions, based on the desired action and the correlation between the actions available in the application; and
display an output page to the user, wherein, in the absence of the virtual agent, the plurality of actions would result in display of more than one output page displayed one after the other.
2. The system according to claim 1, wherein the virtual agent is configured to extract the correlation between the actions by crawling through the application.
3. The system according to claim 1, wherein the actions of search, sort, select, submit and compare is initiated by the virtual agent client (202).
4. The system according to claim 1, wherein the virtual agent is further configured to carry out natural language processing on the audio input and determine a context corresponding to the action.
5. The system according to claim 1, wherein the virtual agent is further configured to incorporate the context while executing the one or more actions.
6. The system according to claim 1, wherein the correlation between the actions is at least one of sequential, hierarchical or lateral.
7. The system according to claim 1, wherein at least two of the executed plurality of actions have any one of a sequential correlation, a hierarchical correlation or a lateral correlation."

h) On considering the above aspects, the Assistant Controller of Patents & Designs, by order dated 8.5.2019, had granted the patent with Patent No.IN312437, which was published in the journal number 19/2019 dated

10.5.2019.

i) Aggrieved against the same, the appellant, by contending that the patent lacks novelty and inventive features, had filed the Post grant Opposition on 28.09.2021 seeking revocation of the patent on the following grounds:-

> *1) Section 25(2)(b): that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim;*
> *2. Section 25(2)(d): that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim;*
> *3. Section 25(2)(e): that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;*
> *4. Section 25(2)(f): that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;*
> *5. Section 25(2)(g): that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed; and*
> *6. Section 25(2)(h): that the patentee has failed to disclose to the Controller the in information required by section 8 or has furnished the information which in any material particular was false to his knowledge.*

j) The first respondent herein had dismissed the Post grant Opposition filed by the appellant herein, by the impugned order dated 9.10.2023 and consequently allowed the Patent to continue.

k) Aggrieved against the same, the present Appeal has been preferred by the appellant.

3. The crux of the submissions made by the learned counsel for the appellant are as under:-

i) The first respondent has disregarded relevant materials, failed to provide reasoning in his order, applied incorrect test of novelty/inventive step, non-patentability under Section 3k of The Patents Act, 1970, written description and enablement, incorrectly interpreted claims and thereby, the impugned order violates the principles of *audi alteram partem.*

ii) A comparative study would reveal that the first respondent has disregarded the material facts in relation to the US Counterpart in US Patent 11068954.

iii) The present patent relates to virtual agent which assists the customers perform certain actions on a software application. The invention claimed in claim 1 of the IN'437 patent relates to a system for executing actions based on inputs received from a user. The patent, when initially filed to the Indian Patent Office on 18.11.2016, contained 36 claims and after objections raised in the First Examination Report, the claims were reduced to 7.

iv) Claim No.1 of IN'437 is an independent claim and claims 2 to 7 are dependent claims. Claim 1 of IN'437 envisages many aspects like

1) A technology for executing actions based on inputs received from a user;

2) A virtual agent (100) which further comprises:

a) a virtual agent client (202), and

b) a virtual agent server (104);

3) The virtual agent (100) is a third party application configured to interface and function with any software application;

4) Storing a correlation between plurality of actions that are:

a) search,

b) select,

c) sort,

d) submit, and

e) compare;

5) Executing one or more aforementioned actions based on desired inputs from user; and

6) Display an output page to the user, wherein, in the absence of the virtual agent, the plurality of actions would result in display of more than one output page displayed one after the other,

v) The claimed feature of "associate one or more of the plurality of actions with one or more tags" has no relevance to the claimed invention of IN'437 patent since the association of tags has no impact on the invention. The claimed feature of **"display an output page to the user, wherein, in the absence of the virtual agent, the plurality of actions would result in display of more than one output page displayed one after the other"** is a form of

negative claiming.

vi) The first respondent has failed to provide any reasoning to the finding or conclusions in the impugned order and therefore, the impugned order arbitrarily and manifestly violates the principles of natural justice. While analysing the lack of novelty and innovative step in respect of invention, the first respondent had failed to provide any reasoning for the findings and conclusions made therein.

vii) The first respondent has completely not looked into the objections raised by them with regard to claim No.1, claims 6 and 7.

viii) Claims 6 and 7 would show that, in correlation between two actions, atleast one would be sequential, hierarchical or lateral. Therefore, the scope of claims 6 and 7 does not require presence of two correlations and this would sufficiently show disclosure of any one of the correlations in the prior art to render the claims 6 and 7 invalid, however, the first respondent has erred in giving a finding in favour of the second respondent.

ix) There is no substantiated rationale drawn from the claim or the complete specification, however, it is noted that “in case of granted claims of IN-312437, the characterized portion of claim is a flow of sequential technical steps which indeed contributes to a technical factor and hence, cannot be considered as mere computer program per se, algorithm and hence, does not fall within the ambit of Section 3(k) of The Patents Act, 1970”.

x) The patent IN'437 has no technical contribution, technical advancement or technical effect over existing knowledge in view of the alleged sequential technical steps and the impugned order passed by the first respondent is without application of mind in respect of technical inventions and thus, it is liable to be set aside.

4. Per contra, learned counsel appearing for the contesting respondent viz., second respondent, pointing out the counter affidavit filed by them and the detailed analysis made by the first respondent, submits that the finding rendered by the first respondent is a well reasoned one and it does not warrant any interference and thereby seeks for dismissal of the present Appeal. In support of his contentions, the learned counsel appearing for the second respondent relied on the decision of the Delhi High Court in ***Lava International Limited vs. Telefonaktiebolaget LM Ericsson*** (2024 SCC OnLine Del. 2497).

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. What is to be determined in the present Appeal is *Whether the first respondent has considered the relevant materials while rendering their findings*.

7. Before proceeding with the merits of the case, this court feels that it would be appropriate to extract the diagram furnished by the second respondent to show, how their invention works out and the same is extracted hereunder:-

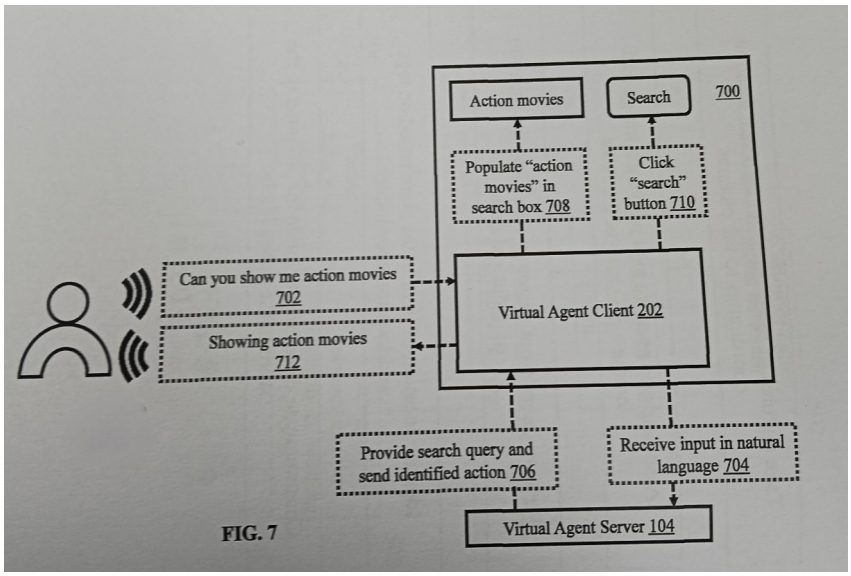

FIG. 7

8. To be precise, the invention of the second respondent herein is a system for executing actions based on an user input. It comprises a virtual agent 208 for an application 102, wherein, the virtual agent 208 is configured to store a correlation between actions available in the application 208. Further, the system associates one or more of the actions with one or more tags. The system receives at least an audio input 702 from a user of the application 102 and uses the input 702 to identify an action 706 desired by the user to be performed among the actions. Further, the system executes one or more actions based on the desired action and the correlation between the actions available in application 102.

9. It is seen that the entire case of the appellant rests on the ground of lack of novelty and inventive features in the invention of the second respondent. While deciding such questions, it would be appropriate to take the guidance of

the principles laid down in the decision of the Delhi High Court in ***Lava International Limited vs. Telefonaktiebolaget LM Ericsson*** (2024 SCC OnLine Del. 2497) with regard to the legal principles to be considered as guidance. The relevant portion of the said decision is extracted hereunder for ready reference:-

> *"**6.2.3. LACK OF NOVELTY - LEGAL PRINCIPLES***
> *81. Before delving into the analysis on the assessment of novelty or the lack of novelty, it is crucial to define the concept of novelty in relation to an invention. Guidance on what constitutes novelty can be found in the judgment of the Bombay High Court in Farbewerke Hoechst & Bruning Corporation v. Unichem Laboratories & Ors. In the said decision, while addressing the allegation of a patent's invalidity due to 'want of novelty,' the Court adopted the test for novelty as formulated in Halsbury's Laws of England. The relevant observations are set out below:*
> *"To anticipate a patent, a prior publication or activity must contain the whole of the invention impugned; i.e., all the features by which the particular claim attacked is limited. In other words, the anticipation must be such as to describe, or be an infringement of the claim attacked." (Emphasis supplied)*
> *83. In my opinion, the seminal guidance on determination of novelty has been provided in the decision of the House of Lords in Hills v. Evans10, wherein it has been concluded that the test of novelty evaluates whether an invention is truly new by assessing if it was previously disclosed in a manner that would allow a person skilled in the art to reproduce the invention without additional research or experimentation. The relevant extracts from the said decision are set out below:*
> > *"I have therefore to consider, and to give my opinion upon, the question that has been argued, namely, whether there be or be not anything in these specifications which has rendered the Plaintiff's invention matter of public knowledge, and therefore matter of public property, anterior to the granting of the patent... With regard to the specification of a prior patent it is not to be distinguished in principle from any other publication. The only peculiarity attending the specification of a prior patent is this, that it must of necessity be considered as a publication. There has been some doubt with regard to books and documents under particular circumstances, whether they can be considered as amounting to a publication. With regard to a specification there can be no doubt, because the specification is that which the patentee gives to the public and makes a matter publici juris in return for the privilege*

which he receives. But upon all principle a specification is not to be distinguished from any prior publication contained in a book published in the ordinary manner. The question then is, what must be the nature of the antecedent statement? I apprehend that the principle is correctly thus expressed-the antecedent statement must be such that a person of ordinary knowledge of the subject would at once perceive, understand, and be able practically to apply the discovery without the necessity of making further experiments and gaining further information before the invention can be made useful. If something remains to be ascertained which is necessary for the useful application of the discovery, that affords sufficient room for another valid patent. By the words of the statute of James, it is necessary for the validity of a patent that the invention should not have been known or used at the time. These words are held to mean "not publicly known or publicly used." What amounts to public knowledge or public user is still to be ascertained. One of the means of imparting knowledge to the public is the publication of a book, or the recording of a specification of a patent. If, therefore, in disproving that an allegation which is involved in every patent, that the invention was not previously known, appeal be made to an antecedently- published book or specification, the question is, what is the nature and extent of the information thus acquired which is necessary to disprove the novelty of the subsequent patent? There is not, I think, any other general answer that can be given to this question than this: that the information as to the alleged invention given by the prior publication must, for the purposes of practical utility, be equal to that given by the subsequent patent. The invention must be shown to have been before made known. Whatever, therefore, is essential to the invention must be read out of the prior publication. If specific details are necessary for the practical working and real utility of the alleged invention, they must be found substantially in the prior publication.

Apparent generality, or a proposition not true to its full extent, will not prejudice a subsequent statement which is limited and accurate, and gives a specific rule of practical application.

The reason is manifest, because much further information, and therefore much further discovery, are required before the real truth can be extricated and embodied in a form to serve the use of mankind. It is the difference between the ore and the refined and pure metal which is extracted from it.

Again, it is not, in my opinion, true in these cases to say, that knowledge, and the means of obtaining knowledge, are the same. There is a great difference between them. To carry me to the place at which I wish to arrive is very different from merely putting

me on the road that leads to it. There may be a latent truth in the words of a former writer, not known even to the writer himself, and it would be unreasonable to say that there is no merit in discovering and unfolding it to the world.

Upon principle, therefore, I conclude that the prior knowledge of an invention to avoid a patent must be knowledge equal to that required to be given by a specification, namely, such knowledge as will enable the public to perceive the very discovery, and to carry the invention into practical use." (Emphasis supplied)

84. In addition, in General Tires & Rubber Co. v. Firestone Tyre &Rubber Co. Ltd11, it has been held that even if not all details are present in the earlier document cited as novelty destroying prior art, it is possible that the prior art document and the patent in question essentially convey the same message but in different terms. The key question to resolve in such instances is whether the prior art document provides clear and unmistakable instructions that, if followed, would inevitably lead to a result that falls within the scope of the patent's claims or inventive concept. The relevant General Tires & Rubber Co. v. Firestone Tyre & Rubber Co. Ltd, RPC 486 89.17.457 extract from the said decision is set out below:

"As to novelty, one must consider in relation to each of the documents cited whether all the specific details are disclosed and if not, whether the reader would assume from his ordinary knowledge that he should carry out the steps in question and if so how. One must also instruct oneself with the surrounding circumstances as they exist; Hills v. Evans (supra). If one cannot find all the details in the early document, it may still be possible that the prior document and the patent-in-suit were really saying the same thing in different words. The question to be answered in such a case is; does the prior document give clear and unmistakeable directions which when carried out will inevitably result in something coming within the claims of the patent?" (Emphasis supplied)

88. When assessing the novelty of an invention, a Judge or even a patent examiner ought to follow a systematic approach to ensure a thorough and unbiased analysis of the invention claimed and the prior art cited. Another important aspect of the test for assessment of novelty in an invention is to maintain a distinction between the test of novelty and test for inventive step or lack of obviousness. I am of the view that the following steps, which may be referred to as the 'Seven Stambhas12 Approach' serve as guiding Stambhas are referred to as columns or pillars in Indian Architecture principles and provide a clear framework for assessing novelty, reflecting the distinction between novelty and non-obviousness:

(i) Understanding of the Claims of the Invention

• The determination of lack of novelty should begin with the understanding of the Claims of the invention as it is the Claims that define the boundaries of the invention and what the applicant considers as their novel contribution.

(ii) ***Identify Relevant Prior Art***

• Collecting the prior art, including any public disclosure, publication, patent, or patent application that predates the filing date of the patent application which is relevant to the Claims of the patent.

(iii) ***Analyse the Prior Art***

• Conducting a detailed analysis of the identified prior art to ascertain its relevance to the Claims of the invention. This step involves searching and documenting both the similarities and the differences, if any, between the Claims of the invention and the text of the prior art. This step requires comparing the technical details and features of the prior art against those claimed in the invention.

(iv) ***Determine Explicit and Implicit Disclosures***

• Examining whether the prior art explicitly or implicitly discloses the same invention. Explicit disclosure means the prior art directly describes the invention claimed. Implicit disclosure refers to whether the prior art describes elements or aspects so similar to the claimed invention that a direct link can be drawn.

(v) ***Assessment material differences while considering the entire scope of the Claims***

• Identifying the material differences between the claimed invention and the prior art, if any, such that a material difference would indicate that the claimed invention has not been disclosed in the prior art and, therefore, the invention, is novel.

(vi) ***Verifying Novelty in light of Comprehensive Scope and Specific Combination of Claimed Elements***

• Evaluation of novelty of the invention is carried out in light of the comprehensive scope of its claims, not just individual elements.

• The invention is novel only if the combination of claimed elements as a whole has not been previously disclosed.

(vi) ***Documentation of the Analysis and Novelty Determination***

• Specify the finding of the examination of novelty, while providing a clear rationale for the said determination. The specific documentation must include references to specific sections of the prior art examined and a reasoning as to how the section affects the novelty of the claims and the inventive concept of the invention.

• Based on the analysis, issue a formal decision, if the invention or any of its claimed elements is found in the prior art, the invention is not novel. Conversely, if the invention is not disclosed by the prior art, it is considered novel."

10. In the case on hand, it is seen that before the first respondent, the appellant herein had raised six grounds for post grant objection and the first respondent has rendered his finding with regard to each ground. So far as the first ground in respect of Section 25(2)(b) of the Patents Act, 1970 that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim is concerned, the appellant herein had cited three documents namely D1, D2 and D3. The admitted priority date insofar as the present patent being 20.11.2015, D1 seems to be an invention named "***Routing queries based on carrier phrase registration***" published on 7th August 2012, held by Goggle LLC. D2 seems to be an invention named "Intelligent automated assistant" published on 11th December 2012, held by Apple Inc. and D3 seems to be an invention named "Predicting and learning carrier phrases for speech input" dated 8th December 2011, held by Google LLC.

11. The first respondent has taken into consideration those inventions viz., D1 to D3 also for analysis and comparison with the present patent. The Characterized feature of the present patent, as considered by the first respondent is as under:-

Characterized feature (F-Feature)

F1: Store, in the virtual agent server (104), correlation between the plurality of actions available in the application, wherein the actions comprise search, sort, select, submit and compare;

F2: Associate one or more of the plurality of actions with one or more tags.

F3: Execute the one or more actions among the plurality of actions, based on the desired action and the correlation between the actions available in the application.

F4: Display an output page to the user, wherein, in the absence of the virtual agent, the plurality of actions would result in display of more than one output page displayed one after the other.

12. Having observed so and on considering the reply submitted by the second respondent herein, the first respondent has found that D1 teaches methods/systems and program products for receiving a voice query at a mobile computing device and generating data that represents the content of voice query and the features F1, F2 and F3 found in the present invention are not present in the teachings of D1 and hence, the present patent is novel over D1.

13. Coming to D2, the first respondent, having analysed the same with the present patent, found that D2 teaches an intelligent automated assistant system and it engages with the user in an integrated conversational manner using natural language dialogue and invokes external services when appropriate to obtain information or perform various actions. Further, having compared claim-wise the present patent with D2, the first respondent found that though D2 also teach and talk about sequential correlation or similar and identical correlation, the context of lateral correlation is absent in the teachings of D2 and D2 lacks the feature of F1, F2 and lateral correlation and thereby the present patent is novel over the teachings of D2.

14. Similarly, the first respondent, having compared the features of D3

with the present patent in respect of each claim, found that F1 and F3 of the present patent are not present in the teachings of D3 and thereby the present patent was considered as novel over D3 and as a consequence, the first respondent held that the objection made under Section 25(2)(b) of The Patents Act, 1970 is moot and hence, found to be null and void.

15. Insofar as the ground of objection under section 25(2)(d) of The Patents Act, 1970 is concerned, the first respondent, having observed that though the appellant had sought to take such a ground by comparing the subject matter with that of SIRI by Apple, the appellant has not made any technical comparison and thereby held that ground as moot.

16. It is seen that in respect of the third ground viz., Section 25(2)(e) of The Patents Act, 1970, that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim, the appellant had relied on D1 to D7.

17. Since a view has been taken with regard to D1 to D3 in respect of the ground under Section 25(2)(b) of The Patents Act, 1970, the first respondent has proceeded with analysis of D4 to D7 alone. For ready reference, D4 to D7 are enlisted hereunder:-

D4 - US20140297284A1, titled "Using context information to

facilitate processing of commands in a virtual assistant", published on 20th October 2014 filed by Apple Inc.

D5 - US8326634B2, titled "Systems and methods for responding to natural language speech utterance", published on 4th December 2012, filed by Voicebox technologies Corp.

D6 - US8095419B1, titled "Search score for the determination of search quality", filed on 17" October 2005, by Yahoo! Inc.

D7 - US9612892B2, titled "Creating a correlation rule defining a relationship between event types", published on 23 January 2014, filed by Hewlett Packard Enterprise Development LP.

18. Here also, the first respondent had compared the present patent with D4 to D7 and rendered his finding. So far as D4 is concerned, it was found that it is a teaching virtual assistant using context information to supplement natural language or gestural input from a user and the context helps to clarify the user's intent and to reduce the number of candidate interpretations of the user's input and reduces the need for the user to provide excessive clarification input. However, on comparing with each claim, the first respondent had observed that the teaching aspects of the present patent are absent in the disclosure of D4 other than an indirect comparison and explanation.

19. So far as D5 is concerned, again the first respondent, having found that D5 teaches systems and methods provided for receiving speech and non-speech communications of natural language questions and / or commands, transcribing the speech and non-speech communications to textual messages

and executing the questions and / or commands, and having compared the patents, claim-wise, observed that the subject matter of granted claim 5 of the present patent is totally not present in the teachings of D5.

20. In respect of D6 and D7, the first respondent has analysed the Characterizing Features of such patents viz., F1 to F4 with the present one and having observed that no such features are available in D6 and D7 while F4 alone is available in D6, found that both D6 and D7 fail to disclose any kind of particular and significant relevance to the claims granted in respect of the present patent and ultimately, concluded that D1 to D7 fail in respect of claims 1 to 7 of the present patent. The first respondent has specifically found that the characterized portions of claim 1 viz., F1 to F4 alongwith the 3 modes of correlations viz., sequential correlation, hierarchical correlation or a lateral correlation are not found individually altogether and as a whole in D1 to D3 nor in a combined manner in D1 to D7. Further, the first respondent has furnished a tabular statement showing the summary of analysis, which is extracted hereunder for ready reference:-

Inv.Feat/ Doc. cited	F1	F2	F3	F4	Sequential Correlation	Hierarchical Correlation	Lateral Correlation
D1	No	No	No	Yes	Yes	Yes	No
D2	No	No	Yes	Yes	Yes	Yes	No
D3	No	Yes	No	Yes	No	Yes	No
D4	No	No	No	Yes	No	Yes	No
D5	No	Yes	No	Yes	No	Yes	No
D6	No	No	No	Yes	No	No	No
D7	No	No	No	No	No	No	No

21. On the above analysis, the first respondent has arrived at a conclusion that the ground in respect of Section 25(2)(e) of The Patents Act, 1970 has to be considered as moot and accordingly, found to be null and void.

22. So far as the ground in respect of Section 25(2)(f) of The Patents Act, 1970 is concerned that the subject of any claim of the complete specification is not an invention within the meaning of the Act, or is not patentable under the Act, the first respondent has rightly observed that such a ground fails in view of the finding arrived in respect of grounds of novelty and inventive step under Section 25(2)(b) and 25(2)(e) of The Patents Act, 1970 viz., respectively.

23. Further, the first respondent has also dealt with the ground raised by the appellant that the present invention is non patentable in view of the bar under Section 3(k) of the Patents Act and found that the characterized portion of granted independent claim 1 shows sequential steps, which are technical in nature and are performed by the virtual agent and the dependent claims viz., claims 2 to 7 teach the aftermath of the steps which are characterized in claim 1, all of which are technical in nature and therefore, the granted claims 1 to 7 cannot be considered to be mere and pure computer programme per se or algorithms because of their technical validity. Further, the first respondent, having observed so, found that the invention does not fall within the ambit of Section 3(k) of The Patents Act, 1970 and hence, the ambit of granted claims 1 to 7 does not fall under Section 3(k) of The Patents Act, 1970, thereby rendering

the said ground as moot and null and void.

24. So far as the ground in respect of Section 25(2)(g) of The Patents Act, 1970 is concerned, the first respondent has clearly observed that such a ground was not raised at the First Examination Report stage nor was it raised in the hearing level and the claim amendments had been made twice, one vide Form 13 on 13.12.2018 and another vide Form 13 on 18.4.2019, well in line with the office requirements at that point of time and well supported by description and illustrations, which proves that the applicant had all intentions of getting a grant for IN'437 and make it industrially applicable on a commercial scale and hence, the ground was rendered moot and null and void.

25. Coming to the ground raised under Section 25(2)(h) of The Patents Act, 1970, viz., non-compliance of section 8 requirements, the first respondent has specifically found that Form 3 was filed initially on 18.11.2016 with 3 US filing entries and another Form 3 was filed on 13.12.2018 with an additional US filing entry with application entry 15/356,512 with a publication date of 25.5.2017 and the said form 3 was filed along with a petition under Rule137 requesting to condone the delay, more particularly, the said objection was no longer maintained in the hearing letter dated 21.12.2019 and thus, that ground was also rendered moot and hence found to be null and void.

26. Coming to the question of fairness on the part of the first respondent in giving opportunity to the other side, it is seen that the first respondent has

given sufficient opportunity to the appellant. It is noted that, to the notice of opposition filed by the appellant, the second respondent had filed their counter statement on 24.12.2021 and thereupon, evidence of the appellant was recorded on 17.3.2022. Thereafter, Post grant opposition hearing notice came to be issued to the second respondent on 14.08.2023. Further, on receipt of the report of the Opposition Board, the post grant hearing submissions of the appellant and the second respondent were also obtained and only after considering the entire aspects, the impugned order was came to be passed by the first respondent.

27. As discussed supra, the first respondent has analysed the technical aspects submitted by the second respondent and made a detailed analysis in respect of all the claims by considering all the submissions made by the appellant and the evidence submitted on their side while passing the impugned order rejecting the opposition. Therefore, I am of the considered view that the impugned order does not suffer from any infirmity and needs no interference.

28. In the result, the Appeal filed by the appellant is hereby dismissed. No costs.

05.01.2026

ssk.

Index:Yes
Speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1.The Joint Controller of Patents and Designs
Through the Controller of Patents and Designs, Patent Office Intellectual Property Building, G.S.T.Road, Guindy, Chennai 600 632.

2.Voicemonk Inc.
5064 Amberwood Drive
Fremont Ca 94555

N.SENTHILKUMAR J.

ssk.

PRE DELIVERY
JUDGMENT IN
CMA(PT) No.9 of 2024

Delivered on
05.01.2026