

DCA DESIGN INTERNATIONAL LTD., PETITIONER, VS. DIRECTOR GENERAL, INTELLECTUAL PROPERTY OFFICE, RESPONDENT.

Ponente: ANTONIO-VALENZUELA, J.

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ANTONIO-VALENZUELA, J.:

This is the Petition for Review[1] filed by DCA Design International Ltd. (“petitioner DCA”) assailing the Decision dated 17 December 2012[2] (“assailed Decision”) issued by the Director General (“DG”) of the Intellectual Property Office (“IPO”) in the appeal for the application for patent, docketed as Application Number 1-2004-501107.

The facts are as follows: Petitioner DCA filed the Petition for Revival[3] for the revival of the patent application for improvements in and relating to a medicament delivery device.

The Petition for Revival alleged: the IPO issued Official Action marked Paper No. 8, with the mailing date 08 August 2008; the deadline for filing the response to Paper No. 8 was 08 October 2008; Paper No. 8 was misfiled and was not located before 08 October 2008; petitioner DCA's counsel was not able to file a response before 08 October 2008, and the patent application was abandoned or withdrawn on 09 October 2008; two weeks from the date of abandonment, the IPO issued the Notice of Withdrawn Application marked Paper No. 9; petitioner DCA's counsel learned of the issuance of the Notice of Withdrawn Application upon verification of the status of the patent application; petitioner DCA's counsel did not officially receive the Notice of Withdrawn Application, and thus was not able to file a petition for revival within the reglementary period of four months from the mailing date, or on or before 27 February 2009; official actions like the Notice of Withdrawn Application and other documents for patent and trademark applications, were sometimes placed or forwarded in the wrong IPO box; the Notice of Withdrawn Application may have been placed or forwarded in the wrong IPO box, which is why petitioner DCA's counsel did not receive it.

The Petition for Revival prayed that the petitioner DCA's patent application be revived and remanded to the examiner-in-charge for further action.

The IPO denied the Petition for Revival.[4]

Petitioner DCA filed the Motion for Reconsideration.[5] The IPO issued the Resolution, which denied petitioner DCA's Motion.[6]

Petitioner DCA filed the appeal before the DG.[7]

On 17 December 2012, the DG issued the assailed Decision, which dismissed the appeal by the petitioner DCA.

Hence, this Petition for Review, with the following assignment of errors:

- A. Respondent committed serious error in fact and in law in dismissing the Petitioner's appeal and affirming the denial by the Director of Patents of the Petitioner's Petition for Revival that would warrant reversal of the questioned Decision because:

1. Unlike in the case of *Schuartz v. Court of Appeals*, 335 SCRA 493 (2000) which applied the principle of laches, the Petitioner did not receive at all a copy of the Notice of Withdrawn Application and thus is inapplicable in the case at bar,

2. Petitioner's evidence consisting of sworn notarial affidavits of witnesses clearly showing that the Notice of Withdrawn Application was never received by the Petitioner which resulted in its failure to file a Petition for Revival within the reglementary period is un rebutted,

3. Respondent has not rebutted Petitioner's evidence of misposting or non-posting of official actions due to the very nature of its IPO Box System,

4. Contrary to Respondent's findings, the Petitioner already filed a response to Official Action marked Paper No. 8 which was attached in [sic] Petitioner's Petition for Revival.

B. Respondent committed serious error in fact and in law in relying on the presumption of regularity in the performance of duties despite uncontroverted evidence to the contrary and serious encroachment on the Petitioner's Constitutional right to due process.

C. Respondent committed serious error in fact and in law in not giving the implementing rules liberal construction resulting in the denial to Petitioner's Constitutional right to property without due process of law.[8]

The issue is whether the DG erred in issuing the assailed Decision.

The Petition for Review[9] answers in the affirmative. The DG erred in issuing the assailed Decision.

The Petition for Review thrusts: the ruling in *Schuartz* was inapplicable, because petitioner DCA did not receive a copy of the Notice of Withdrawn Application from the Bureau of Patents; petitioner DCA only learned of the Notice of Withdrawn Application after checking on the status of the application; petitioner DCA was not guilty of laches, because the Director of Patents did not allege laches as a ground for the denial of the Petition for Revival, the DG did not approve the existence of laches, petitioner DCA immediately filed the Petition for Revival after learning of the Notice of Withdrawn Application, and the DG will not suffer any injury or prejudice in case the Petition to Revive was allowed; the DG did not consider the affidavits of Reynaldo E. Pineda ("Reynaldo") and Dhon Michael Zamora ("Dhon"), attesting that petitioner DCA's counsel did not receive the Notice of Withdrawn Application; the disregard of petitioner DCA's un rebutted evidence violated petitioner DCA's right to due process; presumption of regularity cannot be invoked to justify an encroachment of constitutional rights; Article 48(2)(a)(b) of the Patent Cooperation Treaty ("PCT") provides that any delay not referred to in subparagraph (a) in meeting any time limit may be excused; petitioner DCA's evidence consisting of sworn notarial affidavits were prima facie evidence of their execution, and were entitled to full faith and credit; there was no clear and convincing evidence that contradicted the sworn affidavits; neither the DG nor the Director of Patents denied the allegations in the Petition for Revival and the sworn affidavits; there were cases when applications/cases or office actions were erroneously placed in or forwarded to a different or wrong IPO Box, resulting in the non-receipt of official communications or documents; petitioner DCA submitted a response to the Official Action which was

attached to the Petition for Revival; the presumption of regularity of performance of official duty is not absolute, and only arises in the absence of contradicting details that would raise doubts on the regularity in the performance of official duties; the presumption that the mail matter was received in the ordinary course of business did not apply to the IPO mailing system since the IPO mailing system was different from the registered mail delivered by the Philippine Postal Corporation; delivery through registered mail required the signature of the recipient on a receipt; the IPO and the Bureaus under its control and supervision considered the “mailing date” to be the date of dropping the communications in the IPO Box of counsel or resident agents; Paper No. 6 cannot be considered substantial evidence, because there was no categorical statement that petitioner DCA's counsel received the Notice of Withdrawn Application, no identification of the signature in Annex “A,” and no identification of the records officer referred to; Annex “A” of the Official Action cannot be considered evidence of receipt, because there was no specification of the manner, date and recipient of the delivery; the non-receipt of the Notice of Withdrawn Application without any fault or negligence of the party was a compelling circumstance which would warrant the suspension or relaxation of the rule on the reglementary period; there will be manifest failure of justice, and petitioner DCA will be denied of a property right without due process of law; reviving and giving due course to the patent application will not prejudice the IPO or the general public.

The Comment (Re: Petition for Review dated January 28, 2013),^[10] through the Office of the Solicitor General (“OSG”), answers in the negative. The DG did not err in issuing the assailed Decision.

The Comment (Re: Petition for Review dated January 28, 2013) parries: Rule 930 of the Bureau of Patents Rules and Regulations on Inventions provided that a withdrawn patent application may be revived within a period of four months from the mailing date of the notice of withdrawal; the transmittal records indicated that the Notice of Withdrawn Application was sent to petitioner DCA via registered mail on 27 October 2008, and petitioner DCA did not file any petition within four months from such date; to rebut the presumption of regularity, petitioner DCA presented the sworn affidavits of petitioner DCA's paralegals Reynaldo and Dhon; petitioner DCA did not present corroborating evidence; nothing in the affidavits showed that petitioner DCA's failure to file a petition for revival was due to fraud, accident, mistake or excusable negligence; petitioner DCA's bare and self-serving denial cannot prevail over the DG's positive evidence; petitioner DCA was afforded due process; petitioner DCA did not deny receipt of Paper No. 8, with the mailing date of 08 August 2008; Paper No. 8 informed petitioner DCA that per Rule 929 of the Bureau of Patents Rules and Regulations, the reglementary period to respond was two months from the date of mailing, otherwise, the application shall be deemed withdrawn; petitioner DCA failed to file its reply to Paper No. 8 within the reglementary period, and instead filed the reply only on 13 January 2010, more than a year after receipt of Paper No. 8; petitioner DCA was given the opportunity to be heard, hence petitioner DCA cannot claim that it was denied due process; the Rules and Regulations on Inventions were promulgated to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights; petitioner DCA failed to justify why the rules should be liberally construed in its favor; petitioner DCA failed to exercise due diligence in prosecuting its patent application; petitioner DCA neither submitted any response nor filed a petition for revival within the reglementary period; petitioner filed the Petition for Revival only on 13 January 2010, or over 13 months from the time the patent application was deemed withdrawn, and 16 months from the issuance of Paper No. 8.

THE COURT'S RULING

The Court rules in the negative. The DG did not err in issuing the assailed Decision.

Rule 930 of the Rules and Regulations on Inventions is applicable. It reads:

Rule 930. Revival of application. - An application deemed withdrawn for failure to prosecute may be revived as a pending application within a period of four (4) months from the mailing date of the notice of withdrawal if

it is shown to the satisfaction of the Director that the failure was due to fraud, accident, mistake or excusable negligence.

A petition to revive an application deemed withdrawn must be accompanied by (1) a showing of the cause of the failure to prosecute, (2) a complete proposed response, and (3) the required fee.

An application not revived in accordance with this rule shall be deemed forfeited.

Rule 930 of the Rules and Regulations on Inventions provides that the reglementary period for the filing of a petition for revival is four months from the mailing date of the notice of withdrawal. Any application not revived within the four-month reglementary period is deemed forfeited.

In this case, the Notice of Withdrawn Application was sent to petitioner DCA through registered mail on 27 October 2008. From this date, petitioner DCA had four months, or until 02 March 2009,[11] to file a petition for revival. However, petitioner DCA filed the Petition for Revival only on 13 January 2010. Hence, the DG correctly dismissed petitioner DCA's Petition for Revival, because the Petition was filed beyond the reglementary period.

In addition, we agree with DG's observation that petitioner DCA was guilty of laches in the prosecution of the patent application. Petitioner DCA admitted receipt of Paper No. 8, which stated that petitioner DCA had two months to file a response, before the patent application was deemed withdrawn. Despite receipt of Paper No. 8, petitioner DCA deliberately filed a response beyond the two-month period, absent good cause. Clearly, the inaction of petitioner DCA's counsel cannot be excused a second time, and rewarded through a liberal construction of procedural rules and the revival of the patent application.

We DISMISS the appeal, and AFFIRM the Decision dated 17 December 2012 issued by the Director General of the Intellectual Property Office in the appeal of Application Number 1-2004-501107.

IT IS SO ORDERED.

Lampas Peralta, F., Chairperson and Cruz, S.C., JJ., concur.

[1] C.A. Rollo, p. 07.

[2] Annex "A," C.A. Rollo, p. 39.

[3] Annex "I," C.A. Rollo, p. 82.

[4] Denial of Petition for Revival, Annex "J," C.A. Rollo, p. 91.

[5] Annex "K," C.A. Rollo, p. 92.

[6] C.A. Rollo, p. 105.

[7] Notice of Appeal, Annex "M," C.A. Rollo, p. 111; Appeal Memorandum, Annex "N," C.A. Rollo, p. 112.

[8] Supra, at note 01.

[9] Id..

[10] C.A. Rollo, p. 288.

[11] 27 February 2009 was a Saturday, and the next working day was 02 March 2009, Monday.

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