

**BOEHRINGER INGELHEIM GMBH, ASSIGNEE OF JOHANNES KECK,
PETITIONER-APPELLANT, VS. HONORABLE COURT OF APPEALS, THE
HONORABLE DIRECTOR OF THE PHILIPPINE PATENT OFFICE AND
UNITED LA...**

G.R. Nos. L-47711-12. July 31, 1978

Ponente: SANTOS, J.

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SANTOS, J.:

This is a petition for review on certiorari, filed on February 11, 1978, of the resolution of November 16, 1977 of the Court of Appeals, which dismissed the two appeals of herein petitioner from the orders of the Director of Patents on the ground that said orders, being interlocutory in nature, are not appealable, and of the resolution of January 9, 1978 of the said Court denying petitioner's motion for reconsideration for lack of merit (Roll. p. 6, Annexes P & R, pp. 120-133, respectively).

It appears that on December 5, 1975, a "Petition for Compulsory Licensing" was filed by respondent United Laboratories, Inc. (United) with the Patent Office for a manufacturing license of the pharmaceutical preparations containing the patented compound "Novel Dihalo AminoBenzylamines and process for the preparation", which petition was docketed as Inter Partes Case No. 929. In said petition United--petitioner below, now one of respondent-appellees--prayed, inter alia, that (1) "it be authorized to manufacture and produce its own brand or brands of medicines or pharmaceutical preparations containing the aforementioned patented compound and to use, sell, distribute or otherwise dispose of the same in the Philippines", and (2) "the royalty to be paid by petitioner (United) to the patentee (respondent below, now petitioner-appellant BOEHRINGER) be reasonable". (Roll, p. 8, Annex A, p. 33).

At the pre-trial conference conducted by Hearing Officer Teofilo P. Velasco of the Patent Office, counsel for respondent-patentee, now petitioner (Boehringer) orally questioned the special power of attorney submitted by counsel for petitioner, now respondent (United) and moved to have the latter declared non-suited, on the ground that it was signed only by the President of United and not by the Board of Directors, which has the real power to grant such authority in accordance with laws and by-laws of said respondents. Said motion and the subsequent motion for reconsideration were both denied by the Hearing Officer. On September 10, 1976, petitioner filed a motion to dismiss and/or appeal to the Director of Patents alleging that the Hearing Officer in the Patent Office is not authorized to rule on a motion to dismiss which relies on jurisdictional questions involving violation of Rule 19, Revised Rules of Practice before the Philippine Patent Office[1] and Section 2, Rule 20 of the Rules of Court[2] on pre-trial of an inter-partes case for compulsory licensing, his authority being limited to receiving arguments for or against said motion for transmittal to the Director who shall personally and directly prepare the judgment signed by him (Roll. pp. 9-10).

The Director of Patents denied the motion to dismiss and/or appeal in the order dated October 14, 1976, portion of which reads:

"x x x In the intervening period, Counsel for Petitioner submitted a manifestation attaching a copy of the By-Laws of the United Laboratories, Inc. wherein it specifically stated therein under Article 3, Paragraph 4 thereof, that the President is authorized and we quote 'to sign all contracts, agreements, bonds and other documents in behalf of the corporation'.

In view of the foregoing, it is clear that the President is indeed authorized to sign said Special Power of Attorney and as consequence thereof, subject Motion to Dismiss and/or Appeal to the Director of Patents is hereby DENIED. x x x." (Roll. pp. 66-67; Annex F).

A motion for reconsideration was filed by petitioner (Boehringer) alleging that the failure of the Director in his October 14, 1976 Order to discuss or resolve the jurisdictional question of exercise by the Hearing Officer of the power to decide on a motion to dismiss amount to an abuse of his authority and lack of jurisdiction (Roll. p. 11, Annex G).

On November 19, 1976, respondent United moved to detach petitioner's motion for reconsideration for alleged non-compliance with Section 45 of Rule 15 of the Rules of Court on notice of hearing (Roll. p. 76; Annex H). After an exchange of pleading on the motion to detach, the hearing of the petitioner's motion for reconsideration was set on January 14, 1977 but United failed to appear. On February 18, 1977 petitioner's motion for reconsideration and respondent United's motion to detach were denied (Roll. p. 120; Annex J).

On February 25, 1977, petitioner filed with the Philippines Patent Office and with the Court of Appeals its notice of appeal from the orders dated October 14, 1976 denying its motion to dismiss and/or appeal and of February 18, 1977 denying its motion for reconsideration. The appeal was docketed as CA-G.R. No. SP-06457-R (Roll. p. 13).

Meanwhile, at the Patent Office, United filed a motion for reconsideration of the order of February 18, 1978 which denied its motion to detach petitioner's motion for reconsideration of the resolution of October 14, 1976. On March 23, 1977, the Patent Office granted United's motion for reconsideration. Hence, petitioner appealed once again to the Court of Appeals, which appeal was docketed as CA-G.R. No. SP-06426 (Roll. p. 14).

The Court of Appeals dismissed the two appeals, and so the herein petition.

In Our resolution dated February 24, 1978, We required respondents to comment, not to file a motion to dismiss (Roll. 11. p. 136). On April 11, 1978, private respondent filed its comment (Roll. pp. 149-156). Petitioner filed its reply on April 25, 1978. (Roll. pp. 159-163).

This petition is devoid of merit.

As the Court of Appeals found and held:

"Respondent-patentee (Boehringer) itself admits that the jurisdiction of the Patent Office is not at issue but only that of the Hearing Officer inter-partes proceedings. In *American Tobacco Co. vs. Director of Patents*, No. L-26803, October 14, 1975, 67 SCRA 287, the Supreme Court held that the Director of Patents is authorized by the Revised Administrative Code, as well as by Republic Act No. 165 to designate Hearing Officers to hear inter-partes proceedings. As to the scope of the authority of such Hearing Officers, it was thus held that while they may make preliminary rulings on the myriad of questions raised at the hearing, the ultimate decision on the merits of all the issues and questions involved should, however, be exercised by the Director of Patents.

In the case at bar, it should be noted that the Hearing Officer only made a preliminary ruling on the motion to dismiss made by respondent-patentee during the pre-trial conference, the latter, however, was allowed to appeal said ruling to the Director of Patents. On October 14, 1976 the Director of Patents issued an order denying respondent-patentee's Motion to Dismiss. The final decision on the merits of the motion to dismiss was, therefore, exercised by the Director of Patents. It is thus clear that the point raised by respondent-patentee is merely procedural and not jurisdictional in nature." (Roll. pp. 122-123)

Petitioner's insistence that the Court of Appeals erred, firstly, in ruling that the questioned orders are interlocutory in nature "despite the fact that the jurisdiction of the hearing officer to decide on the merits the petitioner's motion to dismiss and its motion for reconsideration has been consistently assailed" (Roll. p. 16), and secondly, in "resolving that the hearing officer made only a preliminary ruling on the motion to dismiss, (otherwise, if it were indeed only preliminary, then it could not have been allowed as an appeal to the Director of Patents, thereby making the issue jurisdictional and not procedural)" (Roll. p. 17), is obviously untenable.

The authority--or lack of it--on the part of the hearing officer, of the Patent Office, to rule on petitioner's motion to dismiss and motion for reconsideration is no longer a valid issue at this stage, as the same has been rendered moot and academic^[3] by respondent appellee Director's negative definitive action thereon. Hence, the efforts directed against the hearing officer's assumption of authority to resolve the oft-repeated motions would be an exercise in futility.

Furthermore, the authority of the Director of Patents to take cognizance of private respondents' petition for compulsory licensing (Inter Partes Case No. 929) is not disputed by petitioner. The present action, therefore, serves no end but, instead, delays the resolution of the merits of the inter partes case just referred to. This is additional reason for the dismissal of this petition.^[4]

IN VIEW OF ALL THE FOREGOING, the Court Resolved to DENY as it hereby DENIES due course to this petition for lack of merit the issues raised therein having become moot and academic and the same is, for all intents and purposes, merely a dilatory maneuver.

Fernando, (Chairman), Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Rule 19.-

"19. (a) Power of attorney of authorization.- Before any attorney-at-law or agent or other recognized person will be allowed to take action in any case or proceedings, ex-parte or inter-partes, a written power of attorney or authorization must be filed in that particular case or proceeding.

A substitute or associate attorney may be appointed by an attorney only upon the written authorization of his principal; but a third attorney appointed by the second will not be recognized.

(b) Revocation of power of attorney.- A power of attorney or authorization may be revoked at any stage in the proceedings of a case upon notification to the Director; and, when it is revoked, the Office will communicate directly with the applicant or with such other attorney or agent as he may appoint. An attorney or agent will be notified of the revocation of his power of attorney or authorization."

[2] Sec. 2, Rule 20 of the Revised Rules of Court.-

"Sec. 2. Failure to appear at pre-trial conference.- A party who fails to appear at a pre-trial conference may be non-suited or considered as in default."

[3] Courts exist to decide actual controversies; They do not give opinion on abstract proposition and moot cases;

They decline jurisdiction of moot cases. (CB vs. Vasquez, L-33593; December 13, 1971, 42 SCRA 530. Thus: The following cases were dismissed for being moot and academic. Mulato vs. Saldivar, L-38435, Feb. 25, 1975; Santos vs. Bueno, L-27801, Nov. 17, 1977; Catibog vs. Executive Secretary, et al., L-27230, May 24, 1977; Mayor of the City of Dumaguete vs. Hon. Boncaros, L-45414, Aug. 31, 1977; Castillo vs. Nerez, L-27078, Sept. 12, 1977; Dizon vs. CA, L-33650, April 25, 1977; Esteban vs. Cava, et al., L-21361, Feb. 26, 1965; Besa vs. Castellvi, et al., L-18421, Sept. 28, 1964; Gonzaga vs. Bico, et al., L-21291, Feb. 27, 1965; Mercader vs. Gabas, L-27037, June 3, 1976; Bautista vs. Calalang, et al., L-35345, Nov. 24, 1972; Pimentel vs. Hon. Walfrido de los Angeles, L-30418, June 15, 1972; Asejo vs. Chua Cia Planters Assn., Inc. vs. Bacolod Murcia Milling Co., L-23580, Oct. 31, 1969; Urdaneta Rural Bank vs. San Juan, et al., L-28346, June 29, 1968; Ortiz vs. Comelec, L-22065, April 27, 1967; Eastern Plywood Corp. vs. Commissioner of Internal Revenue, L-27075, April 27, 1972; Workmen's Ins. Co., Inc. vs. Alcance, et al. L-35826, June 29, 1973; Sarmenta vs. Garcia, et al., L-17296, July 30, 1966; Phil. Packing Corp. vs. Hon. Baldomero Reyes, L-30030, Nov. 29, 1971; People vs. Villasor, L-26828 & L-29567, Nov. 28, 1969; Arvos, et al. vs. Ardales, L-27344, May 28, 1970; Marinduque Mining & Industrial Corp. vs. De Joya, L-26330, Oct. 13, 1975; Martires vs. Iturralde L-21534, April 29, 1971.

[4] In a number of cases this Court dismissed petitions which served as mere dilatory maneuvers, to wit: Soriano vs. Abeto, L-19635, Feb. 28, 1964; Salazar vs. Castrodes, et al., L-25949, May 22, 1969; Tropical Building Specialties, Inc. vs. Nuevas, L-26968, Jan. 31, 1969; Uypuangco vs. Equitable Banking Corp., L-26879, April 30, 1969; Ferinion vs. Sta. Romana, et al., L-25521, Feb. 28, 1966; Manalo vs. CA, et al., L-27492, July 31, 1967; MRR vs. Ballesteros, et al., L-19161, April 29, 1966; Tiu vs. CA, L-32626, Jan. 28, 1971.

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