

CO SAN ALIAS CO KING CHONG, RECURRENTE Y APELANTE, CONTRA CELEDONIO AGRAVA, COMO DIRECTOR DE LA OFICINA DE PATENTES, Y JOSE ONG LIAN BIO, RECURRIDOS Y APELADOS.

G.R. No. L-5943. April 12, 1954

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DIOKNO, M.:

La cuestion legal que la apelacion plantea es si el Director de la Oficina de Patentes tiene facultad para considerar la cancelacion de patentes de disenos industriales que ha librado cuando se alega que no son nuevos y originates, sino meras copias de los que el mocionante viene usando en los articulos que manufactura y que estan tornados de catalogos impresos de manufactureros americanos de articulos identicos.

Se trata de unas franjas ornamentales en los bordes de maletines de viaje por las que el Director de Patentes concedio dos patentes de diseno industrial al recurrido Jose Ong Lian Bio, sin previa notification publica o privada. Habiendose enterado de las patentes a los tres meses de concedidas, el recurrente acudio al Director de Patentes pidiendo la cancelacion de las mismas por los motivos arriba brevemente mencionados, pero, a motion del recurrido Ong, el Director sobreseyo la petition ppr creerse sin autoridad legal para considerarla. Contra esta resolution el recurrente apelo para ante esta Cqrte de conformidad con los articulos 61 al 66 de la Ley de la Republica No. 165.

La expedition de patentes de disenos industriales esta regulada por el articulo 55 de la Ley citada, que dice asi, segxin esta enmendado:

"SEC. 55. Design patents and patents for utility models.—(a) Any new, original, and ornamental design for an article or manufacture and (b) any new model of implements or tools or of any industrial product, or of part of the same, which does not possess the quality of invention, but which is of practical utility by reason of its form, configuration, construction or composition, may be protected by the author thereof, the former by a patent for a design and the latter by a patent for a utility model, in the same manner subject to the same provisions and requirements as relate to patents for inventions in so far as they are applicable, except as otherwise herein provided.

"The standard of novelty established by section nine thereof for inventions shall apply to ornamental designs.

"A utility model shall not be considered 'new' if, before the application for a patent, it has been publicly known or publicly used in this country, or has been described in a printed publication or publications circulated within the country, or if it is substantially similar to any other utility model so known, used or described within the country.

"Applications for design patents and patents for utility models shall be subject to interference proceedings as authorized in section ten of this Act, as amended by section one of Republic Act Numbered Six hundred and thirty-seven.

"Patents for designs and for utility models shall be subject to compulsory license as authorized in section thirty-four of this Act. They shall not be subject to the payment of annual fees provided for invention patents in

Chapter V hereof."—Republic Act No. 165, as amended by Republic Act No. 637, and further amended by Republic Act No. 864, section 1.

Y el artículo 28 de dicha ley, según esta enmendado, dice:

"SEC. 28. General grounds for cancellation.—Any person may on payment of the required fee petition the Director within three years from the date of publication of the issue of the patent in the Official Gazette, to cancel the patent or any claim thereof, on any of the following grounds:

(a) That the invention is not new or patentable in accordance with sections seven, eight, and nine, or that the design or utility model is not new or patentable under section fifty-five thereof;

(b) That the specification in the case of an invention does not comply with the requirement of section fourteen, Chapter III hereof; or

(c) That the person to whom the patent was issued was not the true and actual inventor, designer or author of the utility model or did not derive his rights from the true and actual inventor, designer or author of the utility model."—Republic Act No. 165, as amended by Republic Act No. 864, section 2.

Este artículo es aplicable a este caso, no solo porque concierne al procedimiento de cancelación de patentes de diseños industriales indebidamente expedidos, sino también porque refleja la correcta interpretación del artículo 55 de la Ley, en el tiempo en que se presentó la petición de cancelación de patentes de diseños industriales, en relación con los artículos que le preceden de la misma ley.

En virtud de lo expuesto, se revoca la decisión apelada, y se devuelve el asunto para ulteriores trámites de acuerdo con la ley, con las costas al recurrente Ong en esta instancia. Descartese al Director de Patentes como parte recurrida en esta apelación. Así se ordena.

Paras, Pres., Pablo, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, y Concepción, MM., están conformes.

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