

ONG SHIAO KONG AND CU WU JOAM, PETITIONERS, VS. THE DIRECTOR OF PATENTS AND PESSUMAL TOLARAM, RESPONDENTS.

G.R. No. L-24112. July 23, 1974

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

The petitioners Ong Shiao Kong and Cu Wu Kiam (hereinafter referred to as the petitioners) seek a reversal of the decision of the Director of Patents in Inter Partes Case No. 248 cancelling letters patent No. UM-135 issued in their favor. They contend (1) that a hearing officer of the Philippines Patent Office has no authority (a) to hear cases filed with that office, (b) to compel the petitioners to testify as adverse witnesses, and (c) to receive evidence on a matter not raised in the respondent's petition for cancellation of the letters patent issued to the petitioners; (2) that Cu Wu Kiam, contrary to the findings of the Director of Patents, is a co-maker of the utility model (water heater) in dispute, and that even if he were not, this fact is not sufficient to warrant the cancellation of the letters patent; and (3) that the evidence does not support the conclusion that the utility model of the respondent Pessumal Tolaram (hereinafter referred to as the respondent) "dominates" that of the petitioners.

It appears that on November 20, 1961 the respondent filed a petition for cancellation of letters patent UM-135 issued by the Philippines Patent Office to the petitioners for a "flash water heater" upon the ground, among others, that the respondent's previously patented utility model (UM-66) of an "instant water heater" is substantially similar to that of the petitioners. At the hearing held below, the hearing officer, over the objection of the petitioners, ruled that the latter may be utilized by the respondent as adverse witnesses. The subsequent testimony of the petitioners disclosed that Cu Wu Kiam, contrary to what was stated in their patent application, was merely a financier, not a co-maker, of the article for which the petitioners sought and were able to obtain letters patent.

On February 11, 1964 the Director of Patents rendered a decision cancelling UM-135 on the ground that "under the great weight of (American) case law, if several persons obtained a joint patent for what was invented solely by one of them, that patent is void." On January 18, 1965 the Director of Patents amended his decision by holding further that the Ong-Cu model embodied the novel features of the respondent's model "in so far as it concerns the construction and arrangement of the electrodes or steel plates" through which water is heated, and that consequently the respondent has the right to exclude others from making, using and vending a water heater embodying his novel construction.

On February 4, 1965 the petitioners filed the present petition for review. Thereafter the Court gave due course to the petition, and issued a writ of preliminary injunction enjoining the Director of Patents from enforcing his decision pending appeal.

On March 24, 1966 the case was submitted for decision.

On June 17, 1974 we required the parties to show cause why the instant petition should not be dismissed for being moot and academic due to the expiration of the respective terminal periods prescribed for the allegedly conflicting letters patent by Section 58 of R. A. 165, as amended, which recites:

"Sec. 58. Term and extension thereof. — The term of the design patent and of the patent for a utility model shall be five years from the date of the grant thereof.

"Before the expiration of the five-year term, upon payment of the required fee, or within a further time thereafter not to exceed six months upon payment of the surcharge, the owner of the design patent or of a patent for a utility model may apply for an extension for an additional five years. The application for extension must be accompanied by an affidavit showing that the design or the model is in commercial or industrial use in the Philippines or satisfactorily explaining non-use. In a similar manner an extension for a third five-year period may be obtained."

We also required the Director of Patents to submit a certification on the current status of the letters patent in question. In compliance, the Director of Patents certified the following:

"(a) Letters Patent No. UM-66 issued on September 24, 1959 to Pessumal Tolaram for 'instant water heater' has EXPIRED on September 24, 1969 for failure of the Patentee to file an application for extension for additional five (5) years, six (6) months before September 24, 1969 or three (3) months after the said date, and

"(b) Letters Patent No. UM-135 issued on July 6, 1964 to Ong Shiao Kong and Cu Wu Kiam for 'flash water heater' has also EXPIRED on July 6, 1969 for failure to file an application for extension for additional five (5) years, six months before July 6, 1969 or three months after the said date, as required by Section 58 of Republic Act 165, as amended."

The respondent has manifested agreement that the present petition should be dismissed. The petitioners have failed to file any manifestation within the period of time given to them.

It being clear from the foregoing certification of the Director of Patents that the respective lifetime periods of the allegedly conflicting letters patent of the petitioners and the respondent have already expired, and that neither the respondent nor the petitioners have applied for extension of their respective letters patent, the Court is of the view that a resolution of the issues raised by the instant petition would serve no useful purpose and this case should now be declared moot.

ACCORDINGLY, the instant petition is dismissed, and the writ of preliminary injunction heretofore issued is hereby dissolved. No costs.

MakaJintal, C. J., Teehankee, Makasiar, Esguerra, and Muñoz
Palma, JJ., concur.

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