

PARKE, DAVIS & COMPANY, PETITIONER, VS. DOCTOR'S PHARMACEUTICALS, INC. AND TIBURCIO S. EVALLE, IN HIS CAPACITY AS DIRECTOR OF PATENTS, RESPONDENTS.

G.R. No. L-27004. August 16, 1983

Ponente: TEEHANKEE, Acting C.J.

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TEEHANKEE, Acting C.J.:

In G.R. No. L-22221[1], which involved the same parties in the instant case, the Court affirmed, in a decision dated August 31, 1965 respondent Director of Patent's decision rendered on November 15, 1963 in Inter Partes Case No. 181 ordering petitioner Parke, Davis & Co. to grant respondent Doctor's Pharmaceuticals, Inc. a license to manufacture, use and sell in the Philippines its own products containing petitioner's chemical called "chloramphenicol."

The dispositive portion of respondent official's decision reads:

"Wherefore, the Respondent-Patentee is hereby ordered to grant the Petitioner a license under Letters Patent No. 50. The parties hereto are hereby ordered to submit to me, within THIRTY (30) days from their receipt of a copy of this decision a licensing agreement, and in default thereof, they may submit within the same period their respective proposals. It must be shown that the negotiations as to the terms and conditions thereof have been made between the parties, and if there are points of disagreement I shall fix such terms and conditions.

If, within the said period, no licensing agreement is filed or no negotiations therefor transpires between the parties, I shall issue the licensing agreement in such terms and conditions as may be just and reasonable under the circumstances."

Under Section 36 of Republic Act 165 (Patent Law), the Director of Patents is authorized, in case the parties failed to submit a licensing agreement, to fix the terms and conditions of the license. Thus, after the Court's decision in G.R. No. L-22221 became final and executory, without the parties submitting a licensing agreement, the Director of Patents, in a resolution dated March 25, 1966 and amended on November 25, 1966, issued a license in favor of respondent company under petitioner's Letters Patent No. 50 for the patented chemical "chloramphenicol", fixing the terms and conditions thereof and declaring that the license should take effect immediately. The license provides, among others, that respondent company should pay petitioner Parke, Davis & Co., a royalty, on all licensed products containing "chloramphenicol" made and sold by respondent company in an amount equivalent to Eight Percent (8%) of the net sales which petitioner company now claims as grossly inadequate and proposes that it be increased to 15%. Petitioner insists that the fixing of the royalty rate by the Director of Patents is arbitrary and without any support in evidence pointing out that the prevailing rate for compulsory licensing on the net sales of medicines containing the patented article is 15% and 18% of the selling price. In asking for a 15% royalty rate, petitioner alleges that it is the same rate prevailing in two compulsory licenses for patents on medicine in Great Britain, and that in the case of J.R. Geigy S.A.'s Patent in Canada, the rate of 12 1/2% based on net sales was allowed. On the other hand, respondent company points out that in a licensing agreement between Collett & Co. of Norway and Lexal Laboratories of the Philippines, royalties of 5%

on a vitamin preparation and 7% on a pharmaceutical pellet based on net, sales, were agreed upon.

It is settled that findings of fact of administrative bodies will not be interfered with by courts of justice in the absence of a grave abuse of discretion on the part of said bodies or unless the aforementioned findings are not supported by substantial evidence.[2]

The Court finds no abuse of discretion on the part of respondent Director of Patents considering that in fixing the royalty rate he made a compromise on the rate proposed by petitioner and those prevailing in other countries. The 8% royalty rate is midway between the rates in Canada and Norway. In developing countries like the Philippines, liberal treatment in trade relations should be afforded to local industry for as reasoned out by respondent company, "it is so difficult to compete with the industrial giants of the drug industry, among them being the petitioner herein, that it always is necessary that the local drug companies should sell at much lower (than) the prices of said foreign drug entities." [3]

The Court agrees with then Solicitor General, now retired Justice Antonio P. Barredo and then Asst. Solicitor General Pacifico de Castro, now Justice of the Supreme Court, that the 8% royalty rate is reasonable "considering that Doctor's Pharmaceutical, Inc. is a small manufacturing venture compared with Parke, Davis & Company, Inc. which is a subsidiary of the huge mother firm, Parke, Davis & Company of Michigan, U.S.A." (Annex D, Petition for Review). If Doctor's is making sufficient profit to justify an increase of royalty later, Parke, Davis & Co., Inc. can easily demand an increase, considering that the latter has access to the books and records of the former." [4]

The Solicitor General correctly states that "there is no showing that Parke, Davis & Co., Inc. would tend to suffer business losses by the imposition of the 8% royalty nor does it appear that it would cause other effects on the saleability of the antibiotics and consequently the health of the consuming public by the imposition of 8%." [5]

Petitioner's argument that respondent Director of Patents has no authority to declare the resolution containing the licensing agreement "shall take effect immediately" is untenable for any award, order or decision the Patent Office is immediately executory. This is clear from the provisions of Sec. 4, Rule 44 of the Rules of Court which pro-vides that appeal shall not stay the award, order or decision of the Public Service Commission, the Patent Office, and the Agricultural Inven-tions Board. Moreover, the resolution of respondent official was issued only after the herein parties failed to submit a licensing agreement and had left the same to the discretion of the Director of Patents.[6] As correctly argued by the Solicitor General "to hold that said Amended Resolution could not be made effectively would open the door for intermin-able litigation, thus rendering nugatory said compulsory licensing agree-ment sanctioned by the Director of Patents, as any implementing condition imposed therein could be the subject of litigation."

At any rate, the letter patent granted to petitioner on the particular process was to expire after seventeen years, and having been granted on February 9, 1950, the same already expired on February 9, 1967.

WHEREFORE, the instant petition is hereby dismissed and the questioned resolution of the Director of Patents is hereby affirmed in all respects. No costs.

Melencio-Herrera, Plana, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

[1] 14 SCRA 1053.

[2] La Mallorca & Pampanga Bus Co. vs. Mercado, 15 SCRA 343; Halili vs. Daplas, 14 SCRA 14.

[3] Brief for the Respondent Doctor's Pharmaceuticals, Inc., p. 13.

[4] P. 43, Rollo.

[5] Ibid.

[6] Annex "D", p. 30, Rollo.

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