

FIRST DIVISION

[G.R. No. 113388. September 5, 1997]

ANGELITA MANZANO, *Petitioner*, vs. COURT OF APPEALS, and MELECIA MADOLARIA, as Assignor to NEW UNITED FOUNDRY MANUFACTURING CORPORATION, *Respondents*.

DECISION

BELLOSILLO, *J.*:

The primary purpose of the patent system is not the reward of the individual but the advancement of the arts and sciences. The function of a patent is to add to the sum of useful knowledge and one of the purposes of the patent system is to encourage dissemination of information concerning discoveries and inventions. This is a matter which is properly within the competence of the Patent Office the official action of which has the presumption of correctness and may not be interfered with in the absence of new evidence carrying thorough conviction that the Office has erred. Since the Patent Office is an expert body preeminently qualified to determine questions of patentability, its findings must be accepted if they are consistent with the evidence, with doubts as to patentability resolved in favor of the Patent Office.¹

Petitioner Angelita Manzano filed with the Philippine Patent Office on 19 February 1982 an action for the cancellation of Letters Patent No. UM-4609 for a gas burner registered in the name of respondent Melecia Madolaria who subsequently assigned the letters patent to New United Foundry and Manufacturing Corporation (UNITED FOUNDRY, for brevity). Petitioner alleged that (a) the utility model covered by the letters patent, in this case, an LPG gas burner, was not inventive, new or useful; (b) the specification of the letters patent did not comply with the requirements of Sec. 14, RA No. 165, as amended; (c) respondent Melecia Madolaria was not the original, true and actual inventor nor did she derive her rights from the original, true and actual inventor of the utility model covered by the letters patent; and, (d) the letters patent was secured by means of fraud or misrepresentation. In support of her petition for cancellation petitioner further alleged that (a) the utility model covered by the letters patent of respondent had been known or used by others in the Philippines for more than one (1) year before she filed her application for letters patent on 9 December 1979; (b) the products which were produced in accordance with the utility model covered by the letters patent had been in public use or on sale in the Philippines for more than one (1) year before the application for patent therefor was filed.

Petitioner presented the following documents which she correspondingly marked as exhibits: (a) affidavit of petitioner alleging the existence of prior art, marked Exh. A; (b) a brochure distributed by Manila Gas Corporation disclosing a pictorial representation of Ransome Burner made by Ransome Torch and Burner Company, USA, marked Exh. D; and, (c) a brochure distributed by Esso Gasul or Esso Standard Eastern, Inc., of the Philippines showing a picture of another similar burner with top elevation view and another perspective view of the same burner, marked Exh. E.

Testifying for herself petitioner narrated that her husband Ong Bun Tua worked as a helper in the UNITED FOUNDRY where respondent Melecia Madolaria used to be affiliated with from 1965 to 1970; that Ong helped in the casting of an LPG burner

which was the same utility model of a burner for which Letters Patent No. UM-4609 was issued, and that after her husband's separation from the shop she organized Besco Metal Manufacturing (BESCO METAL, for brevity) for the casting of LPG burners one of which had the configuration, form and component parts similar to those being manufactured by UNITED FOUNDRY. Petitioner presented in evidence an alleged model of an LPG burner marked Exh. K and covered by the Letters Patent of respondent, and testified that it was given to her in January 1982 by one of her customers who allegedly acquired it from UNITED FOUNDRY. Petitioner also presented in evidence her own model of an LPG burner called Ransome burner marked Exh. L, which was allegedly manufactured in 1974 or 1975 and sold by her in the course of her business operation in the name of BESCO METAL. Petitioner claimed that this Ransome burner (Exh. L) had the same configuration and mechanism as that of the model which was patented in favor of private respondent Melecia Madolaria. Also presented by petitioner was a burner cup of an imported Ransome burner marked Exh. M which was allegedly existing even before the patent application of private respondent.

Petitioner presented two (2) other witnesses, namely, her husband Ong Bun Tua and Fidel Francisco. Ong testified that he worked as a helper in the UNITED FOUNDRY from 1965 to 1970 where he helped in the casting of LPG burners with the same form, configuration and mechanism as that of the model covered by the Letters Patent issued to private respondent. Francisco testified that he had been employed with the Manila Gas Corporation from 1930 to 1941 and from 1952 up to 1969 where he retired as supervisor and that Manila Gas Corporation imported Ransome burners way back in 1965 which were advertised through brochures to promote their sale.

Private respondent, on the other hand, presented only one witness, Rolando Madolaria, who testified, among others, that he was the General Supervisor of the UNITED FOUNDRY in the foundry, machine and buffing section; that in his early years with the company, UNITED FOUNDRY was engaged in the manufacture of different kinds of gas stoves as well as burners based on sketches and specifications furnished by customers; that the company manufactured early models of single-piece types of burners where the mouth and throat were not detachable; that in the latter part of 1978 respondent Melecia Madolaria confided in him that complaints were being brought to her attention concerning the early models being manufactured; that he was then instructed by private respondent to cast several experimental models based on revised sketches and specifications; that private respondent again made some innovations; that after a few months, private respondent discovered the solution to all the defects of the earlier models and, based on her latest sketches and specifications, he was able to cast several models incorporating the additions to the innovations introduced in the models. Various tests were conducted on the latest model in the presence and under the supervision of Melecia Madolaria and they obtained perfect results. Rolando Madolaria testified that private respondent decided to file her application for utility model patent in December 1979.

On 7 July 1986 the Director of Patents Cesar C. Sandiego issued Decision No. 86-56 denying the petition for cancellation and holding that the evidence of petitioner was not able to establish convincingly that the patented utility model of private respondent was anticipated. Not one of the various pictorial representations of business clearly and convincingly showed that the devices presented by petitioner was identical or substantially identical with the utility model of the respondent. The decision also stated that even assuming that the brochures depicted clearly each and every element of the

patented gas burner device so that the prior art and patented device became identical although in truth they were not, they could not serve as anticipatory bars for the reason that they were undated. The dates when they were distributed to the public were not indicated and, therefore, were useless prior art references. The records and evidence also do not support the petitioners contention that Letters Patent No. UM-4609 was obtained by means of fraud and/or misrepresentation. No evidence whatsoever was presented by petitioner to show that the then applicant Melecia Madolaria withheld with intent to deceive material facts which, if disclosed, would have resulted in the refusal by the Philippine Patent Office to issue the Letters Patent under inquiry.

Petitioner elevated the decision of the Director of Patents to the Court of Appeals which on 15 October 1993 affirmed the decision of the Director of Patents. Hence, this petition for review on *certiorari* alleging that the Court of Appeals erred (a) in relying on imaginary differences which in actuality did not exist between the model of private respondent covered by Letters Patent No. UM-4609 and the previously known model of Esso Standard Eastern, Inc., and Manila Gas Corporation, making such imaginary differences grounded entirely on speculation, surmises and conjectures; (b) in rendering judgment based on misapprehension of facts; (c) in relying mainly on the testimony of private respondents sole witness Rolando Madolaria; and, (d) in not canceling Letters Patent No. UM-4609 in the name of private respondent.

Petitioner submits that the differences cited by the Court of Appeals between the utility model of private respondent and the models of Manila Gas Corporation and Esso Standard Eastern, Inc., are more imaginary than real. She alleges that based on Exhs. E, E-1, F and F-1 or the brochures of Manila Gas Corporation and Esso Standard Eastern, Inc., presented by petitioner, the cup-shaped burner mouth and threaded hole on the side are shown to be similar to the utility model of private respondent. The exhibits also show a detachable burner mouth having a plurality of upwardly existing undulations adopted to act as gas passage when the cover is attached to the top of said cup-shaped mouth all of which are the same as those in the patented model. Petitioner also denies as substantial difference the short cylindrical tube of the burner mouth appearing in the brochures of the burners being sold by Manila Gas Corporation and the long cylindered tube of private respondents model of the gas burner.

Petitioner argues that the actual demonstration made during the hearing disclosed the similarities in form, operation and mechanism and parts between the utility model of private respondent and those depicted in the brochures. The findings of the Patent Office and the Court of Appeals that the brochures of Manila Gas Corporation and Esso Standard Eastern, Inc., are undated cannot overcome the fact of their circulation before private respondent filed her application for utility model patent. Petitioner thus asks this Court to take judicial notice of the fact that Esso Standard Eastern, Inc., disappeared before 1979 and reappeared only during the Martial Law years as Petrophil Corporation. Petitioner also emphasizes that the brochures indicated the telephone number of Manila Gas Corporation as 5-79-81 which is a five (5) numbered telephone number existing before 1975 because telephones in Metro Manila started to have six (6) numbers only after that year.

Petitioner further contends that the utility model of private respondent is absolutely similar to the LPG burner being sold by petitioner in 1975 and 1976, and also to the Ransome burner depicted in the old brochures of Manila Gas Corporation and Esso Standard Eastern, Inc., fabricated by Ransome Torch and Burner Company of Oakland,

California, USA, especially when considered through actual physical examination, assembly and disassembly of the models of petitioner and private respondent. Petitioner faults the Court of Appeals for disregarding the testimonies of Ong Bun Tua and Fidel Francisco for their failure to produce documents on the alleged importation by Manila Gas Corporation of Ransome burners in 1965 which had the same configuration, form and mechanism as that of the private respondents patented model.

Finally, it is argued that the testimony of private respondents lone witness Rolando Madolaria should not have been given weight by the Patent Office and the Court of Appeals because it contained mere after-thoughts and pretensions.

We cannot sustain petitioner. Section 7 of RA No. 165, as amended, which is the law on patents, expressly provides -

Sec. 7. Inventions patentable. Any invention of a new and useful machine, manufactured product or substance, process or an improvement of any of the foregoing, shall be patentable.

Further, Sec. 55 of the same law provides -

Sec. 55. Design patents and patents for utility models. - (a) Any new, original and ornamental design for an article of 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 and subject to the same provisions and requirements as relate to patents for inventions insofar as they are applicable except as otherwise herein provided.

The element of novelty is an essential requisite of the patentability of an invention or discovery. If a device or process has been known or used by others prior to its invention or discovery by the applicant, an application for a patent therefor should be denied; and if the application has been granted, the court, in a judicial proceeding in which the validity of the patent is drawn in question, will hold it void and ineffective.² It has been repeatedly held that an invention must possess the essential elements of novelty, originality and precedence, and for the patentee to be entitled to the protection the invention must be new to the world.³

In issuing Letters Patent No. UM-4609 to Melecia Madolaria for an LPG Burner on 22 July 1981, the Philippine Patent Office found her invention novel and patentable. The issuance of such patent creates a presumption which yields only to clear and cogent evidence that the patentee was the original and first inventor. The burden of proving want of novelty is on him who avers it and the burden is a heavy one which is met only by clear and satisfactory proof which overcomes every reasonable doubt.⁴ Hence, 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.⁵

As found by the Director of Patents, the standard of evidence sufficient to overcome the presumption of legality of the issuance of UM-4609 to respondent Madolaria was not legally met by petitioner in her action for the cancellation of the patent. Thus the Director of Patents explained his reasons for the denial of the petition to cancel private

respondents patent -

Scrutiny of Exhs. D and E readily reveals that the utility model (LPG Burner) is not anticipated. Not one of the various pictorial representations of burners clearly and convincingly show that the device presented therein is identical or substantially identical in construction with the aforesaid utility model. It is relevant and material to state that in determining whether novelty or newness is negated by any prior art, only one item of the prior art may be used at a time. For anticipation to occur, the prior art must show that each element is found either expressly or described or under principles of inherency in a single prior art reference or that the claimed invention was probably known in a single prior art device or practice. (*Kalman v. Kimberly Clark*, 218 USPQ 781, 789)

Even assuming *gratia arguendi* that the aforesaid brochures do depict clearly on all fours each and every element of the patented gas burner device so that the prior art and the said patented device become identical, although in truth they are not, they cannot serve as anticipatory bars for the reason that they are undated. The dates when they were distributed to the public were not indicated and, therefore, they are useless prior art references.

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Furthermore, and more significantly, the model marked Exh. K does not show whether or not it was manufactured and/or cast before the application for the issuance of patent for the LPG burner was filed by Melecia Madolaria.

With respect to Exh. L, petitioner claimed it to be her own model of LPG burner allegedly manufactured sometime in 1974 or 1975 and sold by her in the course of her business operation in the name of Besco Metal Manufacturing, which burner was denominated as Ransome burner

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But a careful examination of Exh. L would show that it does not bear the word Ransome which is the burner referred to as the product being sold by the Petitioner. This is not the way to prove that Exh. L anticipates Letters Patent No. UM-4609 through Exhs. C and D. Another factor working against the Petitioners claims is that an examination of Exh. L would disclose that there is no indication of the time or date it was manufactured. This Office, thus has no way of determining whether Exh. L was really manufactured before the filing of the aforesaid application which matured into Letters Patent No. UM-4609, subject matter of the cancellation proceeding.

At this juncture, it is worthwhile to point out that petitioner also presented Exh. M which is the alleged burner cup of an imported Ransome burner. Again, this Office finds the same as unreliable evidence to show anticipation. It observed that there is no date indicated therein as to when it was manufactured and/or imported before the filing of the application for issuance of patent of the subject utility model. What is more, some component parts of Exh. M are missing, as only the cup was presented so that the same could not be compared to the utility model (subject matter of this case) which consists of several other detachable parts in combination to form the complete LPG burner.

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It must likewise be pointed out that Ong Bun Tua testified on the brochures allegedly of Manila Gas and of Esso Gasul marked Exhs. E and F and on the alleged fact that Manila

Gas Corporation was importing from the United States Ransome burners. But the same could not be given credence since he himself admitted during cross-examination that he has never been connected with Manila Gas Corporation. He could not even present any importation papers relating to the alleged imported ransome burners. Neither did his wife.⁶

The above findings and conclusions of the Director of Patent were reiterated and affirmed by the Court of Appeals.⁷

The validity of the patent issued by the Philippine Patent Office in favor of private respondent and the question over the inventiveness, novelty and usefulness of the improved model of the LPG burner are matters which are better determined by the Patent Office. The technical staff of the Philippine Patent Office composed of experts in their field has by the issuance of the patent in question accepted private respondents model of gas burner as a discovery. There is a presumption that the Office has correctly determined the patentability of the model⁸ and such action must not be interfered with in the absence of competent evidence to the contrary.

The rule is settled that the findings of fact of the Director of Patents, especially when affirmed by the Court of Appeals, are conclusive on this Court when supported by substantial evidence. Petitioner has failed to show compelling grounds for a reversal of the findings and conclusions of the Patent Office and the Court of Appeals.

The alleged failure of the Director of Patents and the Court of Appeals to accord evidentiary weight to the testimonies of the witnesses of petitioner showing anticipation is not a justification to grant the petition. Pursuant to the requirement of clear and convincing evidence to overthrow the presumption of validity of a patent, it has been held that oral testimony to show anticipation is open to suspicion and if uncorroborated by cogent evidence, as what occurred in this case, it may be held insufficient.⁹

Finally, petitioner would want this Court to review all over again the evidence she presented before the Patent Office. She argues that contrary to the decision of the Patent Office and the Court of Appeals, the evidence she presented clearly proves that the patented model of private respondent is no longer new and, therefore, fraud attended the acquisition of patent by private respondent.

It has been held that the question on priority of invention is one of fact. Novelty and utility are likewise questions of fact. The validity of patent is decided on the basis of factual inquiries. Whether evidence presented comes within the scope of prior art is a factual issue to be resolved by the Patent Office.¹⁰ There is question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation.¹¹

Time and again we have held that it is not the function of the Supreme Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower tribunal or office. The Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, its findings of fact being conclusive and not reviewable by this Court.

WHEREFORE, the Petition is DENIED. The Decision of the Court of Appeals affirming that of the Philippine Patent Office is AFFIRMED. Costs against petitioner.

SO ORDERED.

Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

Endnotes:

¹ 60 AmJur 2d 462.

² 40 AmJur 547.

³ Maguan v. Court of Appeals, No. L-45101, 28 November 1986, 146 SCRA 107.

⁴ 60 AmJur 2d 573.

⁵ Sec. 55. RA No. 165, as amended.

⁶ *Rollo*, pp. 143-167.

⁷ *Id.*, pp. 204-214.

⁸ Aguas v. de Leon, No. L-32160, 30 January 1982, 111 SCRA 238.

⁹ 60 AmJur 2d 573.

¹⁰ *Id.*, p. 582.

¹¹ Bernardo v. Court of Appeals, G.R. No. 101680, 2 December 1992, 216 SCRA 224.