

DAVID CHEN,	)	INTER PARTES CASE NO. 2076
Junior Party-Applicant)	
	)	INTERFERENCE BETWEEN:
)	
	)	Application Serial No. D-6249
	)	Filed : March 24, 1987
	)	Applicant : David Chen
	)	For : AN AIRPORT
)	
	)	- and -
- versus -)	
	)	Application Serial No. D-6236
	)	Filed : February 23, 1987
	)	Applicant : Tseng Hsien Ling
	)	For : AN IMPORTED
	)	AIRPORT
)	
	)	<u>DECISION NO. 91-4 (TM)</u>
TSENG HSIEN LING,)	
Senior Party-Applicant.)	)	February 19, 1991
x-----x)	

DECISION

Submitted for consideration are the Motion to Declare Senior Party-Applicant as in default for failure to appear at the pre-trial conference and the Motion to Dissolve Interference on the basis of the existing records of this case.

The records show that this case was originally set for pre-trial conference on 3 May, 1990 but was subsequently reset to June 8, 1990 at 2:00 p.m. due to non-appearance of Counsel for Senior Party-Applicant. The corresponding notice of resetting of the pre-trial was sent to Counsel for Senior Party-Applicant by registered mail with return card on May 7, 1990 which he received on May 18, 1990.

It appearing that the Motion to Declare Senior Party-Applicant in default is meritorious, the same is hereby GRANTED and Senior Party-Applicant is, as he is hereby declared IN DEFAULT.

As to the motion to Dissolve Interference, the records will show that a preliminary statement of David Chen, Junior Party-Applicant in this case was filed with this Office and received on March 8, 1988. Senior Party-Applicant did not however, file any preliminary statement.

An examination of the preliminary statement of David Chen reveals as follows:

“DAVID CHEN, being duly sworn, disposes and says that he is the Junior Party-Applicant in the above-identified interference; that he designed the design (D-6249) set forth by the count of the interference; that;

1. The first drawing of the design in question was made sometime in the later part of 1984;
2. The first prototype of the design in question was made sometime in 1984;

3. The design in question was disclosed to a very limited number of friends and associates sometime in 1984;
4. Commercial exploitation of the design in question began on 2 January, 1985;
5. Junior Party-Applicant has no other pending application more or less related to the design in question.

SGD. DAVID CHEN
Junior Party-Applicant”

From the above quoted declaration of the Junior Party-Applicant which is under oath, it appears that subject “AIRPORT” design has already been in commercial use since January 2, 1985 or more than 6 months before it was applied for patent which is contrary to the provisions of Sec. 56 in relation to Secs. 55, 9 and 15 of Rep. Act 165, as amended.

Moreover, considering that the design for “AN IMPROVED AIRPORT” filed by Senior Party-Applicant has been found by this office to be substantially the same with the design for “AN AIRPOT” filed by Junior Party- Applicant, which has been in commercial exploitation since 2 January, 1985 or more than two years before their applications for patent were filed, therefore, both designs are no longer patentable.

IN VIEW THEREOF, this Interference is, as it is hereby, DISSOLVED. Accordingly, Application Serial Nos. D-6249 and D-6236 for “AN AIRPORT” and “AN IMPROVED AIRPORT” filed by Junior Party-Applicant David Chen and Senior Party-Applicant Tseng Hsein Ling on 24 March, 1987 and 23 February, 1987 respectively, are hereby REJECTED for lack of novelty.

Let both applications be forwarded to the Chemical examining Division for appropriate actions in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director