THE BARBIZON CORPORATION, Opposer, - versus -	) INTER PARTES CASE NO. 2049
	) OPPOSITION TO:
	<ul> <li>Application Serial No. 45011</li> <li>Filed : May 27, 1981</li> <li>Applicant : Pribhdas Mirpuri</li> <li>Trademark : BARBIZON</li> <li>Used on : Brassieres, girdles, bathing suits, nighties and panties</li> </ul>
	) <u>DECISION NO. 92-13 (TM)</u>
PRIBHDAS J. MIRPURI Respondent-Applicant xx	) June 18, 1992 .)

## DECISION

On 09 March 1987, the Barbizon Corporation, an entity organized and existing under the laws of the State of New York, U.S.A., filed its Verified Notice of Opposition (Inter Partes Case No. 2049) to Application Serial No. 45011 for the trademark BARBIZON used on brassieres, girdles, bathing suits, half slips, chemise, nighties and panties in Class 25, which application was filed on 27 May 1981 by Pribhdas J. Mirpuri of Parañaque, Metro Manila, Philippines.

The subject of this Opposition is the Application bearing Serial No. 45011 which is just a RE-REGISTRATION of the same mark BARBIZON, then applied for and registered in the name of Lolita R. Escobar (Application Serial No. 19010 maturing to Certificate of Registration No. 21920).

This Application Serial No. 19010, before it matured to Reg. No. 21920 on 11 September 1974, was originally opposed by the same Opposer herein, Barbizon Corporation, in Inter Partes Case No. 686. On 18 June 1974, the then Director of Patents issued his decision (Decision No. 804) dismissing the Opposition in that "the Opposer has not made out a case of probable damage by the registration of the Respondent-Applicant's mark "BARBIZON". Thus, Application Serial No. 19010 of the Respondent Lolita R. Escobar was GIVEN DUE COURSE.

Subsequently, Certificate of Registration No. 21920 was assigned to herein Respondent Pribhdas J. Mirpuri and recorded at page 73 of Book 13 of the Books of Assignment on 24 March 1984. The records, however, show that the corresponding Affidavit of use for the 5<sup>th</sup> year was not filed and, thus, Certificate of Registration No. 21290 was cancelled.

On 27 May 1981, successor-in-interest Pribhdas J. Mirpuri filed this subject application for re-registration of the mark BARBIZON. For the second time, herein Opposer BARBIZON CORPORATION filed an Opposition. Thus, Respondent Pribhdas J. Mirpuri through Counsel, raised the issue of <u>res judicata</u>, claiming that all the elements thereof are present to Opposer claims that the "third requisite (for <u>res judicata to apply</u>) is missing in this case, that is, the prior judgment must be a judgment on the merits (page 2, Reply-Memorandum for Opposer filed 27 March 1991). Decision 804 states that "Neither party took testimony or adduced documentary evidence, they submitted the case for decision based on the pleadings which together with the pertinent records have all been carefully considered". Thus, Opposer concludes that the same was not rendered on the merits. Opposer further argues that even if the case was decided on the merits, <u>res judicata</u> could not be invoked as Decision No. 804 "emanated from a summary

administrative proceedings", relying upon the case of <u>Nasipit Lumber Co., Inc. vs. NLRC.</u> 177 SCRA (1989).

We disagree with the Opposer.

In the more recent case of <u>National Association of Free Trade Union (NAFTU) vs. Mainit</u> <u>Lumber Development Company Workers Union-United Lumber and General Workers of the</u> <u>Philippines</u>, G.R. 779526, 21 December 1990, it was held that "(t)he rule which forbids the reopening of a matter once judicially determined by competent authority applies as well to judicial and quasi-judicial acts of public, executive or administrative officers and boards acting within their jurisdiction as to the judgments of courts having general powers". There is no question that the Director of Patents is exercising judicial powers in Inter Partes Cases. (See Wolverine Worldwide v. CA, G.R. 78298, 30 January 1989 and Puma Sportschuhfabriken Rudolf Dassler, K.G. v. Madayag, G.R. 90827, 19 July 1990, EN BANC).

With respect to the claim of Opposer that Decision 804 was not rendered on the merits, the same has no basis in law. In the case of <u>Escarte, Jr. v. Office of the President</u>. G.R. 58668, 4 December 190, it was held that:

"As a technical legal term, "merits" has been defined in law dictionaries as matter of substance in law, as distinguished from matters of form, and as the <u>real</u> <u>or substantial grounds of action on defense</u>, in contradiction to some technical or collateral matter raised in the course of the suit. A judgment is upon the merits when it amounts to a declaration of the law as to the respective rights and duties of the parties, based upon the ultimate facts or state of facts disclosed by the pleadings and evidence and upon which the right of recovery depends, irrespective of formal, technical or dilatory objections or contentions". (with emphasis)

And the Supreme Court went on to declare in the above-cited case that:

"Although there was no trial on the merits because the case was decided on Motion to Dismiss, there was <u>no formal presentation or reception of evidence</u> and an order, not a decision, was issued by the Trial Court, <u>still, the ruling was a</u> judgment on the merits". (with emphasis)

Decision 804 which was rendered after the case was voluntarily submitted by the parties for decision based on the pleadings, is, pursuant to the above-cited principles clearly a decision on the merits.

WHEREFORE, the present Opposition in Inter Partes Case No. 2049 is hereby DECLARED BARRED by <u>res judicata</u> and is hereby DISMISSED. Accordingly, Application Serial No. 45011 for the trademark BARBIZON filed by Pribhdas J. Mirpuri is GIVEN DUE COURSE.

SO ORDERED.

IGNACIO S. SAPALO Director