TAI CHIH CHIANG,
Sr. Party-Applicant

-versus-

KENNETH ANG,
Respondent-Applicant.
x----------x

INTER PARTES CASE NO.4221
Interference between:

Serial No.D-10800
Date Filed: 29 March 1995
Trademark: “Pull Tab for a Zipper”
and
Serial No.: D-10950
Date Filed: 28 June 1995
Title: “Slide Faster”

DECISION NO. 97-33

DECISION

This pertains to an Interference case declared by this Office between TAI CHIH CHIANG as Senior Party-Applicant and KENNETH ANG, as Junior Party-Applicant.

The declaration of interference arose from a similarity in appearance, shape, and the use of the patent design of which an embossed figure of a horse is the dominant figure of both in their respective patent applications.

As per records of this Office, Senior Party-Applicant, TAI CHIH CHIANG, whose postal address is at 60 Gen. Tinio St., Caloocan City, filed on March 29, 1995 patent design Application Serial No. D-10800 for PULL TAB FOR A ZIPPER while the Junior Party Applicant, KENNETH ANG, filed on June 28, 1995 an application for design patent for SLIDE FASTENER.

Records of this case further reveal that notices of interference were sent to the parties directing them to submit preliminary statements within fifteen (15) days from receipt of notice.

Thus, Sr. Party-Applicant who received said notices by registered mail on January 24, 1996, as per Registry Card No. G-370, filed its preliminary statements on February 02, 1996, within the following allegations:

“1. I am the Senior Party-Applicant in the above-identified Interference Case;

“2. I made the ornamental design subject of the Interference in the Philippines;

“3. The first drawing and written description of my new design was made sometime in February 01, 1995;

“4. The actual date of filing which is on March 29, 1995 is valid proof that the Senior party-Applicant was the original designer for a pull tab for a zipper;

“5. The actual product embodying my new design was first produced completed in April 1995;

“6. The first sale of the product embodying my new design was made sometime in May 01, 1995.”

On the other hand, the Junior Party-Applicant received the Notice of Declaration of Interference requiring him to submit within fifteen (15) days from receipt the Preliminary

Statement required under the Rules on January 20, 1996. Notwithstanding the lapse of the period given him, the Junior Party-Applicant did not file his Preliminary Statement.

Accordingly, this Bureau issued Order No. 96 -334 informing him that judgment upon the records will be rendered against him at the expiration of thirty (30) days from receipt of said Order in accordance with Rule 211, Rules of Practice in Patent Cases.

On June 27, 1996, Junior Party-Applicant received said Order. However, the thirtieth day period or July 27, 1996 expired without any Preliminary Statement nor any responsive pleading filed by herein Junior Party-Applicant.

Consequently, this office is constrained to decide this interference on the basis of the pleadings submitted by the Senior Party-Applicant.

Sec. 10 of R.A. 165 as amended specifically provides that:

> "The right to the patents belongs to the first true and actual inventor, his heirs, legal representatives, or assigns. If two or more persons have an invention jointly, the right to the patent shall belong to them jointly. If two or more persons have made the invention separately and independently of each other the right to the patent shall belong to the person who is the first to file an application for such invention, unless it is shown that the second to file an application was the original and first inventor.
>
> Whenever an application is made for a patent which, in the opinion of the Director, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the application [applicants], or applicant and patentee, as the case may be, and shall proceed to determine the question of priority of invention. And upon termination of the interference proceedings, the Director may issue a patent to the party who is adjudged the prior inventor." (underscoring provided)

Under the aforequoted rule, the Junior Party-Applicant being the later applicant has the burden of proving that he is the original and first inventor but failed to do so. As borne out by the patent applications subject matter of the instant interference proceedings, the Senior Part-Applicant filed his application for a design patent for "PULL TAB FOR A ZIPPER" on March 29, 1995 which is several months prior to that Junior Party-Applicant who filed his design patent application for "SLIDE FASTENER" on June 28,1995. The records also show that the Junior Party-Applicant failed to file the required Preliminary Statement, hence, he is deemed to have waived his right to present evidence. Moreover, in paragraph 4 and 5 of the Seniors Party-Applicant's Preliminary Statement, it used that the new design was produced/ completed in April 1995 and was first sold sometime by him on May 01, 1995. Consequently in accordance with the above-quoted provision of law, the Senior Party-Applicant who is the first to file the application shall have the right to the patent.

WHEREFORE, premises considered, the Senior Party-Applicant is hereby DECLARED to have priority of invention over the patent design "*PULL TAB FOR A ZIPPER".* As such, he is adjudged as the prior designer of the subject matter of this interference case.

Consequently, Application Serial No. D-10800 is hereby GIVEN DUE COURSE and Application Serial No. D-10950 filed by Junior Party-Applicant Kenneth Ang, is hereby, REJECTED.

Let the filewrapper of this case be forwarded to the Application Issuance and Publication Division for appropriate action in accordance with this Decision with a copy thereof to be furnished the Mechanical Examining Division for information and to update its record.

SO ORDERED.

Makati City, October 27, 1997.

EMMA C. FRANCISCO
Director