

PROCESO CHUA  
Junior Party-Applicant,

INTER PARTES CASE NO. 1385

INTERFERENCE BETWEEN

Application Serial No.: D-3734  
Filed: January 3, 1980  
Applicant: Proseso Chua  
For: STRUCTURAL FRAME MEMBER

- and -

Application Serial No.: UM-6064  
Filed: December 4, 1979  
Applicant: Benedicto G. Dolleton  
For: STEEL FRAME SECTION

- versus -

INTER PARTES CASE NO. 1386

INTERFERENCE BETWEEN

Application Serial No.: D-3736  
Filed: January 3, 1980  
Applicant: Proseso Chua  
For: STRUCTURAL FRAME MEMBER

- and -

Application Serial No.: UM-6063  
Filed: December 4, 1979  
Applicant: Benedicto G. Dolleton  
For: STEEL FRAME SECTION

BENECITO G. DOLLETON  
Senior Party-Applicant.  
x-----x

PROCESO CHUA  
Junior Party-Applicant,

INTER PARTES CASE NO. 1387

INTERFERENCE BETWEEN

Application Serial No.: D-3731  
Filed: January 3, 1980  
Applicant: Proseso Chua  
For: STRUCTURAL FRAME MEMBER

- and -

Application Serial No.: UM-3696  
Filed: December 4, 1979  
Applicant: Benedicto G. Dolleton  
For: STEEL FRAME SECTION

- versus -

INTER PARTES CASE NO. 1388

INTERFERENCE BETWEEN

Application Serial No.: D-3742  
Filed: January 3, 1980  
Applicant: Proseso Chua  
For: STRUCTURAL FRAME MEMBER

- and -

Application Serial No.: UM-6065  
Filed: December 4, 1979  
Applicant: Benedicto G. Dolleton  
For: STEEL FRAME SECTION

BENECITO G. DOLLETON  
Senior Party-Applicant.  
x-----x

PROCESO CHUA  
Junior Party-Applicant,

INTER PARTES CASE NO. 1389

INTERFERENCE BETWEEN

Application Serial No.: D-3735  
Filed: January 3, 1980  
Applicant: Proseso Chua  
For: STRUCTURAL FRAME MEMBER

- and -

Application Serial No.: UM-6058  
Filed: December 4, 1979  
Applicant: Benedicto G. Dolleton  
For: STEEL FRAME SECTION

- versus -

INTER PARTES CASE NO. 1426

INTERFERENCE BETWEEN

Application Serial No.: D-3733  
Filed: January 3, 1980  
Applicant: Proseso Chua  
For: STRUCTURAL FRAME MEMBER

- and -

Application Serial No.: UM-6057  
Filed: December 4, 1979  
Applicant: Benedicto G. Dolleton  
For: STEEL FRAME SECTION

BENECITO G. DOLLETON  
Senior Party-Applicant.  
x-----x

PROCESO CHUA

Junior Party-Applicant,

INTER PARTES CASE NO. 1427

INTERFERENCE BETWEEN

Application Serial No.: D-3738  
Filed: January 3, 1980  
Applicant: Proceso Chua  
For: STRUCTURAL FRAME MEMBER

- and -

Application Serial No.: UM-6056  
Filed: December 4, 1979  
Applicant: Benedicto G. Dolleton  
For: STEEL FRAME SECTION

BENECITO G. DOLLETON  
Senior Party-Applicant.

x-----x

DECISION NO. 90-15 (TM)  
March 2, 1990

### DECISION

This is a consolidated interference proceeding between Senior Party-Applicant, Benedicto G. Dolleton, a Filipino citizen residing at 42 San Guillermo Street, Bayanan, Muntinlupa, Metro Manila; and Junior Party-Applicant, Proceso Chua, also a Filipino citizen residing at 39 N. Domingo Street, Quezon City, involving seven (7) interference cases, namely:

- (1) INTER PARTES CASE NO. 1385: Interference between Application Serial No. UM-6064 filed on December 4, 1979 by Benedicto Dolleton, herein Senior Party-Applicant, for the utility model "Steel Frame Section"; and Application Serial No. D-3734 filed on January 3, 1980 by Proceso Chua, herein Junior Party-Applicant, for the design "Structural Frame Member";
- (2) INTER PARTES CASE NO. 1386: Interference between Application Serial No. UM-6063 filed on December 4, 1979 by Benedicto G. Dolleton (Senior Party-Applicant) for the utility model "Steel Frame Section"; and Application Serial No. D-3736 filed on January 3, 1980 by Proceso Chua (Junior Party-Applicant) for the design "Structural Frame Member";
- (3) Inter Partes Case No. 1387: Interference between Application Serial No. D-3696 filed on December 4, 1979 by Benedicto G. Dolleton (Senior Party-Applicant) for the design "Steel Frame Section"; and Application Serial No. D-3731 filed on December 4, 1979 by Benedicto G. Dolleton (Senior Party-Applicant) for the design "Steel Frame Section"; and Application Serial No. D-3731 filed on January 3, 1980 by Proceso Chua (Junior Party-Applicant) for the design "Structural Frame Member";
- (4) INTER PARTES CASE NO. 1388: Interference between Application Serial No. UM-6065 filed on December 4, 1979 by Benedicto G. Dolleton (Senior Party-Applicant) for the utility model "Steel Frame Section"; and Application Serial No. D-3742 filed on January 3, 1980 by Proceso Chua (Junior Party-Applicant) for the design "Structural Frame Member";
- (5) INTER PAILITES CASE NO. 1389: Interference between Application Serial No. UM-6058 filed on December 4, 1979 by Benedicto G. Dolleton (Senior Party-Applicant) for the utility model "Steel Frame Section"; and Application Serial No. D-3735 filed on

January 3, 1980 by Proceso, Chua, (Junior Party-Applicant) for the design "Structural Frame Member";

- (6) INTER PARTES CASE NO. 1426: Interference between Application Serial No. UM-6057 filed on December 4, 1979 by Benedicto G. Dolleton (Senior Party-Applicant) for the utility model "Steel Frame Section"; and Application Serial No. D-3735 filed on January 3, 1980 by Proceso Chua (Junior Party-Applicant) for the design "Structural Frame Member"; and
- (7) INTER PARTES CASE NO. 1427: Interference between Application Serial No. UM-6056 filed on December 4, 1979 by Benedicto G. Dolleton (Senior Party-Applicant) for the utility model "Steel Frame Section"; and Application Serial No. D-3738 filed on January 3, 1980 by Proceso Chua for the design "Structural Frame Member".

Above utility model applications filed by the Senior Party-Applicant were found to be in interference, as to construction and appearance, with the design applications filed by the Junior Party-Applicant. The matter was filed by the Junior Party-Applicant. The matter was referred to the Office of the Director, pursuant to Rule 197 of the Rules of Practice in Patent Cases, for the declaration of interference cases between the above specified corresponding applications wherein the original and first maker/designer will be determined.

For the first five cases (Inter Partes Cases Nos. 1385 to 1389), the parties were notified of the afore-stated interference cases of their respective specified applications and required them to submit their respective sealed preliminary statements on or before June 19, 1980 and for the last two cases (Inter Partes Cases Nos. 1426 and 1427) on or before October 6, 1980, pursuant to Rules 202, 203 and 204 of the Rules of Practice in Patent Cases. Obliging, the parties submitted their respective preliminary statements for all the seven (7) interference cases.

The cases were assigned to and heard by several Hearing Officers but were later consolidated to Inter Partes Case No. 1385 in Order No. 82-265 dated July 19, 1962 due to identity of parties and issues involved therein.

From the time the cases were scheduled for hearing on the merits (January 28, 1981, Inter Partes Case No. 1385), the hearings were continuously reset from one date to another with the Junior Party failing to present his evidence. At the hearing of March 12, 1982, the parties manifested that they would be submitting a Compromise Agreement within thirty (30) days therefrom. The thirty-day period lapsed and no Compromise Agreement was submitted by the parties. The consolidated cases were thus scheduled for hearing but were merely reset again and again upon agreement of the parties.

For failure of Junior Party and/or counsel to appear at the hearing scheduled on February 14, 1984, counsel for Senior Party-Applicant moved in open court that the cases be considered submitted for judgment on the pleadings but was denied in Order No. 84-176 dated May 15, 1984 as this Bureau prefers a hearing on the merits.

The case was set anew for hearing on the merits to May 28, 1984 but was again reset to June 20, 1984 pending further negotiation for an amicable settlement of the case. At the June 20 hearing, counsel for Junior Party again requested for a resetting of the hearing to July 26, 1984.

Unsatisfied with their hearing track record, the Bureau on October 31, 1985 sent the parties a letter requesting them to "inform this Office within fifteen (15) days from receipt of x x x letter if (they) are still interested in pursuing these cases so that necessary actions will be done".

The cases were set for hearing to April 24, 1986 but was reset to May 13, 1986, then to June 20 for the last time, then July 22 with no appearance by the Junior Party, no record of hearing for the whole year of 1987, three hearings for 1988 (June 7, July 7 and September 23) where counsel of Junior Party appeared only once on July 7, 1988. For the year 1989, both

counsels appeared at the hearing scheduled for May 26, 1989 but counsel for Junior Party failed to appear at the hearings of June 23 and July 21, 1989 and so the motion of counsel for Senior Party-Applicant made in open court at the last hearing for a judgment on the pleadings was granted in Order No. 89-601 dated August 3, 1989.

Junior Party-Applicant's counsel filed on September 1, 1989 a motion for the reconsideration and setting aside of aforesaid Order 89-601 but was denied in Order No. 90-66 dated February 13, 1990, hence, these cases are now considered submitted for judgment on the pleadings, pursuant to Rule 211 of the Rules of Practice in Patent Cases which provides that "If a junior party to an interference fails to file a statement, or if his statement fails to overcome the prima facie case made by the filing date of the application of a senior party, such junior party shall be notified by the Director that judgment upon the record will be rendered against him at the expiration of a time fixed by the Director, not less than 30 days, unless cause be shown why such action should not be taken. x x x"

The records of all the cases before and after consolidation show that the Junior Party-Applicant, who bears the burden of proof, has had all the chances to present proofs that it has the better right to the design patents he applied for, but he inexcusably let those opportunities pass by without due regard to speedy litigation process. These circumstances, of course, are taken against said party, especially now that the Bureau is embarked in unclogging its dockets of old pending cases. These cases have been pending for the past nine years since May, 1980.

Upon the other hand, counsel for the Senior Party-Applicant has a superior record of appearances in the scheduled hearings. In fact, in its desire to accelerate the proceedings, counsel for the Senior Party-Applicant made three attempts, by way of motions in open court, to have the cases adjudged on the pleadings, which was previously denied but finally granted on August 3, 1989 in Order I-la. 89-601 as stated above.

Furthermore, the records show that the Utility Model Applications Nos. UM-6064, UM-6063, UM-6064, UM-6058, UM-6057 and UM-6056 and Design Patent Application No. D-3696, all for "Steel Frame Section"; were all filed by the Senior Party-Applicant on December 4, 1979 earlier than the Design Applications Nos. D-3734, D-7736, D-3731, D-3742, D-3735, D-3733 and D-3738, all for "Structural Frame Member", filed by the Junior Party-Applicant on January 3, 1980. Under Section 10, Republic Act 165, it is provided that:

"The right to the patent belongs to the first true and actual inventor, his heirs, legal representatives, or assigns. x x x 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."

Clearly, the Senior Party-Applicant was ahead of the Junior Party-Applicant by thirty (30) days in the filing of their respective patent applications. Consequently, the Bureau finds for the Senior Party-Applicant the Junior Party-Applicant not being able to disprove such presumptions established under the law in favor of the Senior Party-Applicant.

WHEREFORE, based on the foregoing premises, consolidated Inter Partes Case Nos. 1385, 1386, 1387, 1388, 1389, 1426 and 1427 are all DISSOLVED in favor of Senior Party-Applicant. Accordingly, Utility Model Patent Application Nos. UM-6064, UM-6063, UM-6065, UM-6058, UM-6057, UM-6056 and Design Patent Application No. D-3696 filed by the Senior Party-Applicant are all given due course.

Let the records of these cases be forwarded to the Mechanical and Electrical Examining Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO  
Director