

LIANG CHI INDUSTRY PHILIPPINES, INC.,
Petitioner,

INTER PARTES CASE NO. 1415

PETITION FOR CANCELLATION

- versus -

Letters Patent No. 12285
Issued : December 13, 1978
Patentee : Emmanuel N. Grande,
assignor to Chemix
Manufacturers, Inc.
For : COOLING TOWER

EMMANUEL N. GRANDE,
assignor to Chemix
Manufactures, Inc.,
Respondent-Patentee.
x-----x

DECISION NO. 88-55 (TM)
July 22, 1988

DECISION

This is a Petition for Cancellation filed by Petitioner, Liang Chi Industry, Philippines, Inc., seeking to cancel Letters Patent No. 12285 for "COOLING TOWER" issued on December 15, 1978 in favor of Respondent, Chemix Manufacturers, Inc., assignee of the above-mentioned invention.

Petitioner is a private corporation organized and existing under the laws of the Philippines with principal place of business at Buting, Pasig, Metro Pasig, Metro Manila, while Respondent is a private domestic corporation with principal place of business at No. 3 San Lucas cor. San Isidro, Bo. Kapitolyo, Pasig, Metro Manila.

Claiming that it is damaged by the improper grant of the said letters patent, Petitioner filed this petition on the ground that the invention is not new, patentable or inventive within the meaning of Sections 7 and 9 of Republic Act No. 165, and Rule 24S in relation to Rules 31, 33 and 34 of the Revised Rules of Practice in Patent Cases, considering that:

- "a) The invention was known or used by others in the Philippines before the invention thereof by the inventor named in the letters patent;
- b) The invention was described in printed publication more than one year before the filing of the application for patent therefore by respondent with this Office on October 30, 1978;
- c) The invention had been in public use or sale in the Philippines more than one (1) year before the filing of the said application, inasmuch as since way back in November, 1975, Liang Chi Industry Co., Ltd. of Taiwan has been, exporting the same type of Cooling Towers to the Philippines."

Petitioner, reserving its right to present additional documentary evidence during the hearing, annexed and made an integral part of the petition the following documents:

Annexes

Description

"A"

Xerox copy of Chapter 21 of the Ashrae Handbook & Product Directory for 1975, pertaining to cooling towers.

“B” to
“B-5”

Documents pertaining to shipment of cooling tower by Liang Chi Industry Co., Ltd. to Basic Foods Corporation, Makati, Rizal on November 1975.

“C” to
“C-4”

Documents pertaining to shipment of cooling tower by Petitioner to the Bureau of Building and Real Property Management, Quezon City in April 1976.

In its Answer, Respondent-Patentee specifically denied all the material allegations in the Petition. The case was set for pre-trial conference. For failure of the parties to reach an amicable settlement, the case proceeded to trial on the merits.

The trial was concluded with only the Petitioner having presented its evidence. Despite proper notice, Respondent failed to appear at the hearings scheduled on November 17, 1983 for the reception of its evidence. Petitioner, who was present, moved that Respondent-Patentee be considered to have waived its right to present its evidence and that the case be submitted for decision.

This Bureau issued Order No. 83-308 dated December 6, 1983 declaring Respondent to have waived its right to present its evidence and, accordingly, considered this case submitted for decision based on Petitioner's evidence. Such waiver became conclusive when Respondent did not file a motion for reconsideration of the Order.

Extant in the record as evidence for the Petitioner are the testimonies of Leonardo G. de Jesus, Sales Manager of Liang Chi Marketing Corporation, a domestic corporation engaged in the sale and importation of cooling towers; Chen Guo Chen, Sales Manager of Liang Chi Industry Co., Ltd., a corporation under the laws of Taiwan engaged in the manufacture and export of cooling towers; Victor T. Chau, President of Liang Chi Industry Philippines, Inc., and Arsenio R. Sazon, a Mechanical Engineer practitioner who, for twenty (20) years has been engaged in the practice of his profession involving design, fabrication, installation and service refrigeration and air-conditioning system and other related mechanical works.

Along with and in support of the testimonies of the above-mentioned witnesses, Petitioner formally offered documentary evidences consisting of Exhibits “A” to “N”, inclusive of their submarkings which, in turn, were admitted by this Bureau for whatever worth they may serve. The objections of Respondent-Patentee as to their admissibility were duly noted and made part of the records of this case.

The issue to be resolved in this case is whether Letters Patent No. 1228 met the statutory requirements of novelty. Section 9 of Republic No. 165, as amended, reads:

“Invention not considered patentable. -An invention shall not be considered new or capable of being patented if it was known or used by others in the Philippines before the invention thereof by the inventor named in an application for patent or described in any printed publication in the Philippines or any foreign country more than one year before the application for a patent therefor: or if it is the subject matter of validly issued patent in the Philippines granted on an application filed before the filing of the application for patent therefor.” (Underscoring supplied)

Exhibits “A” to “F”, particularly Exhibit “F”, established the fact that Respondent-Patentee's “COOLING TOWER” had been described in printed publication way back in 1975 while Exhibits “G” to “N” show that “COOLING TOWER” had been sold and in public use in the Philippines more than one year before October 30, 1978, the filing date of the patent. The testimonies of witnesses also pointed out the same facts.

Moreover, a scrutiny of Respondent-Patentee's "COOLING TOWER", viz-a-viz, the "COOLING TOWER" described in Petitioner's documentary evidence, reveals there is no doubt that their construction are substantially similar. This conclusion finds support in the testimony of Arsenio R. Sazon, viz:

"6b. Going over the inventor's cooling tower component's description and his representation as shown on his Figs. 1 to 4 and comparing these with the brochure of SHINWA cooling tower featuring a model similar to the ones installed at Century Park, Sheraton Hotel in 1976, I found them identical in many respects to the cut-away view of SHINWA cooling tower. Even the access ladder, the louver supports and truss supports/legs and stand pipe configuration are the same.

6c. The specific locations of the main parts of the patented cooling tower like the propellers, the sprinkler system, the filling/ packing materials, air passages and the collecting basin readily identify the system as a mechanical draft cooling tower, induced type, which utilizes steady-flow, counter flow air to water heat exchange which is exactly the same type as the Shinwa cooling tower.

6d. The materials he plans to use on his cooling tower as described by the inventor are discussed in reference materials this type. Please refer to Annex C, ASHARE HANDBOOK SERIES 1975, page 215 under the heading of MATERIALS for Chapter 21.

6e. The features and advantages of him cooling tower which the inventor claims as differing from the conventional type of cooling tower such as that it is compact, non-directional, does not occupy a big space, made of corrosive-resistant materials are typical features of the SHINWA cooling tower we installed in 1976 at the Century Park Sheraton Hotel and as described in the SHINWA brochure, page 2 under the heading UNIQUE FEATURES: Construction of SBC series cooling tower."

WHEREFORE, the Petition for Cancellation is hereby given due course. Accordingly, Letters Patent No. 12285 issued on December 15, 1978 to Respondent for "COOLING TOWER" is hereby CANCELLED.

Let the records of this case be forwarded to the Application, Issuance and Publication Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director