

UNIVERSAL MOTORS CORP.,
Petitioner,

INTER PARTES CASE NO. 1766

PETITION FOR CANCELLATION

- versus -

Letters Patent No. D-2572
Issued : April 2, 1981
Patentee : Ricardo R. Pestano,
assignor to Master built
Industries, Inc.
For : PANORAMIC CREW
CAB

RICARDO PESTANO, assignor
to Masterbuilt Industries, Inc.,
Respondent-Patentee

x-----x

DECISION NO. 88-83 (TM)
August 18, 1988

DECISION

This is a Petition for Cancellation filed by petitioner, Universal Motors Corp., seeking the cancellation of Letters Patent No. D-2572 issued on April 2, 1981 to herein Respondent-Patentee, Ricardo R. Pestano, assignor to Masterbuilt Industries, Inc., for "PANORAMIC CREW CAB".

Petitioner is a domestic corporation holding office at 2232 Pasong Tamo, Makati Metro Manila, while Respondent-Patentee is a Filipino Citizen with postal address at 30 Road Street, Vergonville, Las Pinas, Metro Manila and its assignee, Masterbuilt Industries, Inc., is a domestic corporation located at 718 Quirino Avenue, Tambo, Paranaque, Metro Manila.

The Petition is based on the grounds that the alleged design patent is not new or patentable in accordance with Section 7, 8 and 9 of Republic Act No. 165, as amended; that Ricardo Pestano was not the true and actual designer or did not derive his rights from the true and actual inventor; and that it has been patented and described in publications, manuals, magazines, brochures in the United States or elsewhere including the Philippines, more than one year before the application was filed by the alleged designer.

After the Answer was filed, pre-trial conference ensued and for failure of the parties to reach an amicable settlement, the case proceeded to trial on the merits.

Admitted as Petitioner's evidence are documentary exhibits consisting of Exhibits "A" to "R", inclusive of their submarkings, and the testimonies of Petitioner's witnesses - - Romeo Fuster and Sotero Batan. On the other hand, Respondent-Patentee failed to present its evidence during the hearing scheduled therefor.

The issue to be resolved in this case is whether or not Letters Patent No. D-2572 issued to Respondent-Patentee is cancellable for being violative of Republic Act No. 165, as amended.

Section 55, 9 and 56 of Republic Act 165 read:

"SEC. 55. Design patents and patents for utility models. - (a) any new, original and ornamental design for an article of manufacture and (b) any new model of implements or tools or of any industrial product, or of part of the same, which does not possess the quality of invention, but which is a practical utility by reason of its form, configuration, construction or composition, may be protected by the author thereof, the

former by a patent for a design and the latter by a patent for a utility model, in the same manner and subject to the same provisions and requirements as relate to patents for inventions insofar as they are applicable, except as otherwise herein provided.

The standard of novelty established by section nine hereof for inventions shall apply to ornamental designs.”

x x x

“Sec. 9. Invention not considered new or 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 for the invention, or it was patented 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 a validly issued patent in the Philippines granted on an application filed before the filing of the application for patent therefor.”

x x x

“SEC. 56. Six months publication. - The period of one year specified in section nine, Chapter II, and section fifteen, Chapter II hereof, for inventions shall be six months in the case of designs.” (Underscorings supplied)

Basically, a design to be patentable must be new, original and ornamental and a design patent shall not be considered new; hence, not patentable if before the filing of an application therefor it is already known or used by others in the Philippines or if six months before such filing the design had been patented or described in any printed publications in the Philippines or in any foreign country.

The patent sought to be cancelled as shown in the specifications and drawing is characterized by adjoining front and rear setting compartments and a fixed glass at the opposed sides of the rear compartment which extends substantially up to the wagon floor. The date when Respondent-Patentee filed its application for a patent was October 10, 1980

Petitioner`s witness, Romeo Fuster, who is engaged in the business of conversion of pick-ups into passenger carrying vehicles testified that he already made the design patent of Respondent-Patentee as early as 1979. Exhibit “G”, which is a photograph of a 1978 Chevrolet pick-up converted by Mr. Fuster in the early part of 1980 into crew cab with rear seating compartment, adjoining the front seat and with fixed glass (panoramic) at the opposite sides of the van compartment extending to the pick-up floor is similar if not identical to the design claimed by Respondent-Patentee in his design patent. The idea of panoramic windows in the sides of the vehicle was already depicted in the Silver Books, 1978 Chevrolet Dealer`s Guide for Special Bodies and Equipment, marked as Exhibits “E” and “F”, long before the filing date by the Respondent-Patentee of its application. Likewise, the concept of providing a rear compartment seat in a double cabin pick up vehicle was already published as early as 1977 as shown by Exhibit “Q” (Manual of the 1977 Pick-up Line printed in Japan, 1977).

The foregoing evidence readily show that Respondent`s design is wanting originality and not considered new within the context of Sections 55, 9 and 56, supra, and therefore unpatentable at the same time of the filing of an application for letters patent.

WHEREFORE, premises considered, this Bureau GRANTS the herein Petition for Cancellation. Accordingly, Letters Patent No. D-2572 is ordered CANCELLED.

Let the records of this case be remanded to the Patent/Trademark Registry and EDP Division for appropriate action in accordance with this Decision.

SO ORDERED.

IGNACIO S. SAPALO
Director