



MYRA PHARMACEUTICALS, INC.,
Opposer,

-versus-

ATTY. AMBROSIO V. PADILLA III,
Respondent - Applicant.

x-----x

}
} IPC No. 14-2013-00110
} Opposition to:
} Appln. Serial No. 4-2012-011401
} Date filed: 17 September 2012
} TM: "FOMAX"
}
}
}

NOTICE OF DECISION

OCHAVE & ESCALONA
Counsel for Opposer
No. 66 United Street
Mandaluyong City

ATTY. AMBROSIO V. PADILLA III
Respondent-Applicant
Unit 1001, 88 Corporate Streets
Sedeno corner Valero Streets
Salcedo Village, Makati City

GREETINGS:

Please be informed that Decision No. 2014 - 16 dated January 22, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, January 22, 2014.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



MYRA PHARMACEUTICALS, INC.,	}	IPC No. 14-2013-00110
Opposer,	}	Opposition to:
	}	
- versus -	}	Appln. Serial No. 4-2012-011401
	}	Date Filed: 17 September 2012
ATTY. AMBROSIO V. PADILLA III,	}	
Respondent-Applicant.	}	Trademark: FOMAX
x-----x	}	Decision No. 2014 - <u>16</u>

DECISION

MYRA PHARMACEUTICALS, INC.¹ ("Opposer") filed on 13 March 2013 a Verified Notice of Opposition to Trademark Application No. 4-2012-011401. The application, filed by Atty. AMBROSIO V. PADILLA III² ("Respondent-Applicant"), covers the mark FOMAX for use on "*pharmaceutical product for the treatment of osteoporosis in men and prevention of osteoporosis in post-menopausal women*" under Class 5 of the International Classification of goods³.

The Opposer alleges the following:

"7. The mark FOMAX owned by Respondent-Applicant so resembles the trademark MAX owned by Opposer and duly registered with the IPO prior to the publication of the application for the mark FOMAX.

"8. The mark FOMAX will likely cause confusion, mistake and deception on the part of the purchasing public, most especially considering that the opposed trademark FOMAX is applied for the same class and goods as that of Opposer's trademark MAX, *i.e.* Class 05 of the International Classification of Goods as pharmaceutical products.

"9. The registration of the mark FOMAX in the name of the Respondent-Applicant will violate Sec. 123 of the IP Code, which provides, in part, that a mark cannot be registered if it:

(d) is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

- (i) the same goods or services; or
- (ii) closely related goods or services; or
- (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion; (Emphasis supplied)

1 A domestic corporation duly organized and existing under the laws of the Philippines, with office address at 4th Floor Bonaventure Plaza, Ortigas Avenue, Greenhills, San Juan City, Philippines.

2 Appears to be an individual, with office address at Unit 1001, 88 Corporate Center, Sedeno corner Valero Streets, Salcedo Village, Makati City, Philippines.

3 Nice Classification is a classification of goods and services for the purpose of registering trademarks and service marks, based on a multilateral administered by the World Intellectual Property Organization. This treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

x x x

"10. Under the above-quoted provision, any mark, which is similar to a registered mark, shall be denied registration in respect of similar or related goods or if the mark applied for nearly resembles a registered mark that confusion or deception in the mind of the purchasers will likely result."

The records show, however, that in IPC No. 14-2013-00109⁴, which involves the subject trademark application, this Bureau already rendered a decision⁵, the dispositive portion of which provides, to wit:

"WHEREFORE, premises considered, the instant opposition is hereby SUSTAINED. Let the filewrapper of Trademark Application Serial No. 4-2012-011401, together with a copy of this Decision, be returned to the Bureau of Trademarks for information and appropriate action."

The parties did not appeal the afore-quoted decision. Thus, on 20 January 2014, this Bureau issued an Entry of Judgment/Execution of Decision stating that:


"The Decision became final and executory on November 14, 2013 and accordingly, is hereby recorded in this Bureau's Book of Entries of Judgments."

With the finality of the decision sustaining the opposition to the subject trademark application, there is no more actual controversy nor legal basis to proceed with this case.

WHEREFORE, premises considered, the instant opposition is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2012-011401 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 22 January 2014.


Atty. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

⁴ *Merck Sharp & Dohme Corp. v. Atty. Ambrosio V. Padilla III.*

⁵ Decision No. 2013-186 dated 08 October 2013.