



SOLVAY S.A.,
Opposer,

-versus-

D & L INDUSTRIES, INC.,
Respondent- Applicant.

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}
} IPC No. 14-2009-00172
} Opposition to:
} Appln. Serial No. 4-2008-015203
} Date Filed: 18 December 2008
} TM: "SOLVIT"
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NOTICE OF DECISION

VERA LAW
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Quezon City

GREETINGS:

Please be informed that Decision No. 2014 - 228 dated September 24, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, September 24, 2014.

For the Director:


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



SOLVAY S.A.,

Opposer ,

IPC No. 14-2009-000172
Case Filed: 13 July 2009

-versus-

Opposition to:
Application No. 4-2008-015203
Date Filed: 18 December 2008
Trademark: "SOLVIT"

D & L INDUSTRIES, INC.,

Respondent-Applicant.

Decision No. 2014- 228

x-----x

DECISION

SOLVAY S.A.¹ ("Opposer") filed an opposition to Trademark Application Serial No. 4-2008-015203. The application, filed by D & L Industries, Inc.² ("Respondent-Applicant"), covers the mark "SOLVIT" for use on "chemicals used in the industry; industrial cleaner" under Class 01 of the International Classification of Goods and Services.³

The Opposer alleges:

x x x

"9. Opposer believes that it would be damaged by the registration of the mark "SOLVIT" in the name of Respondent-Applicant.

"10. The registration of the mark "SOLVIT" in the name of Respondent-Applicant will violate and contravene Section 123.1 pars. (d), (e) and (g) and Section 165 par. (b) of the Intellectual Property Code.

"11. Section 123.1 pars. (d), (e) and (g) and Section 165 par. (b) provides, to wit:

x x x

"12 Opposer is the owner and prior user of the well-known marks "SOLVAY", "S and SOLVAY" and "SOLVIN" in various classes of goods including Class 01.

"13. Opposer first used the mark "SOLVAY" in Belgium in 1870, "S and Solvay" also in Belgium in 1938 and "SOLVIN" again, in Belgium in 1999. Since then, said marks have been continuously and extensively used.

¹ A foreign corporation duly organized and existing under and by virtue of the laws of Belgium, with principal office address at 33 Rue Du Prince Albert, B-1050 Bruxelles, Belgium.

² With address at 65 Industria Street, Bagumbayan, Quezon City.

³ The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. The 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.

"14. In its home country, Belgium, the mark "SOLVAY" was first registered in 1971 under Registration No. 040497, "S and Solvay" on 1971 under Registration No. 096056 and "SOLVIN" on 1999 under Registration No. 0649908. At present, Solvay S.A. has eight active trademark registrations in Belgium alone for the aforementioned marks.

"15. In the Philippines, the mark "SOLVAY" is registered in various classes, including Class 1, under Registration No. 4-2006-500169, "S and Solvay" also in various classes, including Class 1, under Registration No. 4-2006-500170 and "SOLVIN" also for Class 1, under Registration No. 4-2008-500280.

"16. In the Philippines, the mark "SOLVAY" and "S and Solvay" were first used in 1995, while "SOLVIN" was first used in 1999, through the company's local partners, including ITOCHU (THAILAND) LTD., CHEMI-SOURCE UNLIMITED CORP., HIMMEL INDUSTRIES INC., PROCTER & GAMBLE DISTRIBUTING, PHILEXPORT, and CHEM SETTER MARKETING CORPORATION

"17. The aforementioned marks, namely, "SOLVAY", "S and SOLVAY" and "SOLVIN" are likewise registered and/or pending application in various countries around the world, including Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Benelux, Bermuda, Bolivia, Bosnia, Brazil, Bulgaria, Burundi, Cambodia, Canada, Cayman Islands, Congo, Costa Rica, Cuba, Chile, China, Colombia, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Egypt, Estonia, Ethiopia, European Union, Finland, France, Gaza District, Germany, Georgia, Guatemala, Guernsey, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Iran Republic, Iraq, Israel, Italy, Jamaica, Japan, Jersey, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Kyrgyztan, Lao, Latvia, Lebanon, Liberia, Libyan, Liechtenstein, Lithuania, Macau, Macedonia, Malaysia, Malta, Mexico, Moldova Republic, Monaco, Mongolia, Montenegro, Morocco, Namibia, Nepal, Netherlands Antilles, New Zealand, Nicaragua, Nigeria,, Norway, O.A.P.I, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, Sabah, San Marino, Saudi Arabia, Serbia, Singapore, Syrian, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Taiwan, Tajikistan, Tanzania Thailand Tunisia Turkey Turkmenistan, Uganda, Ukraine United Arab Emirate, United Kingdom, United States, Uruguay, Uzbekistan, Venezuela, Vietnam, West Bank, Yemen Zambia Zanzibar, Zimbabwe.

"18. Below is a summary of the application and registrations owned by Opposer for the mark "SOLVAY":

x x x

"19. Below is a summary of the application and registrations owned by Opposer for the mark "SOLVIN":

x x x

"20. In addition to the abovementioned trademark registrations and applications- which are extensive and numerous, Opposer also spent considerable sums of money for advertising and promoting the marks "SOLVAY", "S and SOLVAY" and "SOLVIN".

"21. Opposer also maintains various websites where information about the company and its products including "SOLVAY", "S and SOLVAY" and "SOLVIN" are available. Some of these websites are,

<http://www.solvinpvc.com/solvinservices/news/wave/0..5269-2-0.00.htm>,
<http://www.solvay.com/strategynew/sectorsapproach/0..778-2-0.00.htm>,
<http://www.solvayplastics.com/services/productsnew/suspensionpvc/0..71974-2-0.00.htm>,
<http://www.solvaychemicals.com/maarkets/>,
<http://www.solvinpvc.com/solvinservices/news/wave/0..5269-2-0.00.htm>.

"22. In addition to the above named websites maintained by Opposer, there are countless other websites on the web that features Opposer's marks and products.

"23. As a result of Opposer's extensive advertising and promotional activities, it's long and cherished history and the high quality of its products, the marks "SOLVAY", "S and SOLVAY" and "SOLVIN" have become synonymous with high quality and reliability.

"24. With the above factual circumstances, particularly, the numerous multi-country, multi-class registration of Opposer's marks and its worldwide presence on an unprecedented scale, there cannot be any doubt whatsoever that Opposer's marks "SOLVAY", "S and SOLVAY" and "SOLVIN" are well-known not only abroad but also in the Philippines.

"25. In addition, Opposer is doing business as "SOLVAY" S.A. The mark "SOLVAY", therefore, is not only a trademark for Opposer's products but also its trade name, one that has been globally recognized and respected.

x x x

"26. In the Philippines, Opposer is the registered owner of the well-known marks "SOLVAY", "S and SOLVAY" and "SOLVIN" for goods under various classes, including Class 01.

"27. Respondent's applied mark, "SOLVIT", which also covers goods under Class 01, is clearly confusingly similar to the registered and well-known marks, "SOLVAY" and "SOLVIN" owned by Opposer.

"28. The Supreme Court, in the case of Operators Incorporated vs. The Director of Patents, et. al. (October 29, 1965), ruled that "the similarities in appearance and sound between the marks AMBISCO and NABISCO, the nature and similarity of the products of the parties together with the fact that Opposer's Nabisco has been used in the Philippines for more than 55 years before AMBISCO was adopted by applicant, will likely result to confusion of purchasers".

"29. It should be noted that this case is perfectly at square with the aforesaid case. Opposer's marks, "SOLVIN" and "SOLVAY" are similar to Respondent's mark "SOLVIT" in appearance and sound. Moreover, the contending marks are used for similar or related goods. Given the circumstances above, it would be unjust to allow the registration of Respondent's mark as it will most likely result to confusion on the part of the purchasers.

"30. In another case, that of Marvex Commercial Co. Inc. vs. Petra Hawpia & Co. et.al. (December 22, 1966), the Supreme Court has said that "Similarity of sound is sufficient ground to rule that the two marks are confusingly similar when applied to merchandise of the same descriptive properties".

"31. In yet another case, that of Co Tiong Sa vs. Dir. of Patents (May 24, 1954), the Supreme Court held that adoption of the dominant characteristics of a mark is sufficient to rule that both marks are confusingly similar and declared further that "the dominant characteristic of oppositor's trademark FREEMAN has been imitated in applicant's trademark FREEDOM, such as to confuse the public and unwary customers and purchasers, and to deceive them into believing that the articles bearing one label are similar or produced by the same manufacturers as those carrying the other label".

"32. In American Wire and Cable Company vs. Dir. of Patents (February 18, 1970), the Supreme Court found "DURAFLEX" to be confusingly similar to "DYNAFLEX" because both marks share the common literal elements F-L-E-X. In the case of "SOLVIN", "SOLVIT" and "SOLVAY", all three marks share the common literal elements S-O-L-V-I.

"33. It should also be noted that Opposer owns a series of related marks, namely "SOLVIN" and "SOLVAY", thus any person who would hear the mark "SOLVIT" would easily assume that said mark is part of the "SOLVIN" and "SOLVAY" series of marks.

"34. Clearly and beyond any doubt, the mark "SOLVIT" is very confusingly similar to "SOLVIN" and "SOLVAY". In fact, when set side by side, one would be hard pressed to pick which of the three belongs to Opposer and which belongs to Respondent. To demonstrate below are the three marks:

"SOLVIN" "SOLVIT" "SOLVAY"

"35. Now, can anyone pick out which of the three belongs to Opposer and which belongs to Respondent? In fact, even one, who has already read this Opposition and has become familiar with the background of each mark, would still find it difficult to pick out which mark belongs to who. What more, in the case of an unsuspecting consumer!

"36. RA 8293 otherwise known as the Intellectual Property Code of the Philippines declares in no uncertain terms what may not be registered, to wit:

x x x

"37. The use of the mark "SOLVIT" by Respondent-Applicant is clearly prohibited under the aforecited provisions of the Intellectual Property Code.

"38. First, as has been established, Opposer is the owner and prior user of the marks "SOLVIN" and "SOLVAY". Opposer also has registrations for said marks in the Philippines and both Opposer's "SOLVIN" and "SOLVAY" and Respondent-Applicant's "SOLVIT" are for goods under Class 1. Hence, the registration of "SOLVIT" is contrary to Section 123.1 par. D (iii) of RA 8293, otherwise known as the Intellectual Property Code of the Philippines (IP Code).

"39. Second, for being confusingly similar to Opposer's mark "SOLVIN" and "SOLVAY", which are well-known, the registration of "SOLVIT" is prohibited by Section 123.1 par. E of the IP Code.

"40. Third, the use by Respondent of the mark "SOLVIT" will create the impression that Respondent's goods are manufactured by Opposer, just like "SOLVIN" and "SOLVAY", resulting in confusion of origin, source, sponsorship, quality and characteristics. Thus, the registration of the mark "SOLVIT" is prohibited by section 123.1 par. g of the IP Code.

"41. Finally, it should be noted that Respondent's applied mark "SOLVIT" is confusingly similar to Opposer's trade name, "SOLVAY". Therefore, the registration of the mark "SOLVIT" in the name of Respondent is prohibited by section 165.2 par. B of the IP Code.

"42. Again, and if only to re-iterate, below are the three marks:

"SOLVIN" "SOLVIT" "SOLVAY"

"43. Now, which one belongs to Opposer and which one belongs to Respondent-Applicant? Honestly, can anyone really tell which is which?

"44. Therefore for being contrary to the provisions of RA 8293, specifically Section 123.1 pars. (d), (e) and (g) and Section 165 par. (b), the registration of the mark "SOLVIT" in the name of Respondent should be denied.

The Opposer's evidence consists of copy of the duly executed Special Power of Attorney (SPA) in favor of Del Rosario Bagamasbad & Raboca Law Office; the verification and certification against forum shopping executed by Mr. Ruby Alonte by virtue of the aforementioned SPA; print-out of Respondent-Applicant's application details; and the affidavit-direct testimony of Atty. Bernadette Marie B. Tocjayao.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Applicant, D & L Industries, Inc., on 10 September 2009. The Respondent-Applicant filed their Answer on 10 November 2009 and avers the following:

x x x

"1. Respondent-Applicant DENIES the allegations in Paragraphs 1 and 2 of the Verified Notice of Opposition for lack of knowledge or information sufficient to form a belief as to the truth and veracity thereof.

"2. Respondent-Applicant ADMITS the allegations in Paragraph 3 of the Verified Notice of Opposition.

"3. Respondent-Applicant denies the allegation that Opposer has its real and effective commercial establishment in Paragraph 4 in Belgium for lack of knowledge or information sufficient to form a belief as to the truth and veracity thereof. Respondent however admits the allegations with respect to the provisions of Art. 2.1 in relation to Art. 16 and 42 of WTO (Uruguay Round) TRIPS Agreement.

⁴ Marked as Exhibits "A" to "C", inclusive.

"4. Respondent-Applicant also admits Paragraph 5 of the Verified Opposition.

"5. Respondent-Applicant admits the allegations in paragraph 6 that it is a corporation duly organized under the laws of the Republic of the Philippines and likewise confirms the address stated therein.

"6. Respondent-Applicant admits the allegations in paragraph 7 of the Verified Opposition.

"7. Respondent-Applicant DENIES the allegations in Paragraphs 8, 9 and 10 of the Verified Notice of Opposition for lack of knowledge or information sufficient to form a belief as to the truth and veracity thereof.

"8. Respondent-Applicant admits the stated provisions of the Intellectual Property Code in paragraph 11 of the Verified Opposition.

"9. Respondent-Applicant DENIES the allegations contained in paragraphs 12 to 25 of the Verified Opposition for either lack of knowledge or information sufficient to form a belief as to the truth thereof or being unfounded conclusions of fact and law.

"10. Respondent-Applicant likewise DENIES all the allegations in paragraphs 26 to 44 of the Verified Notice of Opposition of Opposer's for either lack of knowledge or information sufficient to form a belief as to the truth thereof or being unfounded conclusions of fact and law.

"AFFIRMATIVE ALLEGATIONS AND/OR DEFENSES

"That the Verified Notice of Opposition states no cause of action against Respondent-Applicant:

"11. Opposer have not attached the copy of the alleged registration of the said marks "SOLVAY" and "SOLVIN" with the Intellectual Property Philippines being referred to as confusingly similar to that of Respondent-Applicant. Respondent-Applicant applied the mark "SOLVIT" with the Intellectual Property Philippines on December 18, 2008 with Application No. 4-2008-015203 under International Class 1. Attached are the Application for the said mark as "Exhibit 1", the corresponding label as Exhibit "2" and the acknowledgement receipt as Exhibit "3".

"12. That Respondent-Applicant begs to disagree that its mark, "SOLVIT" is confusingly similar to Opposer's mark "SOLVAY". The mark "SOLVIT" applied for registration by Respondent-Applicant is entirely and unmistakably different. The dissimilarities between the two marks become conspicuous, noticeable and substantial enough to matter especially in the light of the following variables that must be factored in, to wit:

- a. "Opposer's alleged trademark reads and sounds as "SOLVAY" while Respondent-Applicant's trademark reads and sounds "SOLVIT";

- b. "The fact is that SOLVIT and SOLVAY will clearly show that it has different letters used.

"With the foregoing comparison of the two marks "SOLVAY" and "SOLVIT", it should be pointed out that the two are different in many aspects: letters, spelling, pronunciation and general appearance which overall features of each prevent or render nil the possible confusion in the mind of the purchaser as to the nature and source of good bearing said marks; that the pictorial effect and appeal to the eye is so prominent and clearly dissimilar that the marks of one cannot be mistaken to that of the other. While Opposer is banking that it sounds the same with the word solvay/solvit, it should be noted that the trademark of Respondent's Applicant is "solvit" not solvay.

"13. Likewise, a check with the Intellectual Property Office's website will show that the mark SOLVIN was refused registration and only SOLVIN/DEV LOGO was allowed for registration.

"14. Notwithstanding there is no confusing similarity between the Respondent-Applicant's mark SOLVIT and Opposer's alleged marks.

"15. As time advances, and in line with and at tuned to the needs of a present-day trade and commerce, radical changes have been made lately in the jurisprudence of the Trademark Law especially in the field of confusing similarity. The following Supreme Court rulings on Trademarks were declared not confusingly similar to each other and should be taken into consideration in view of the glaring dissimilarities of the two marks; "ATUSSIN" and "PERTUSSIN" (Etepha vs. Director of Patents, et al., Vol. 16, SCRA, pp. 495-496); "ALASKA" and "ALACTA" (Mead Johnson & Co. vs. N.V.J. van Dorp. Ltd., L-17501, April 27, 1963, 7 SCRA 768); "SULMETINE" and "SULMET" (American Cyanamid Co. vs. Director of Patents, et. al., L-23954, April 29, 1977, 76 SCRA, p. 568); and "TANGO" and "TANGEE" (George Lo Luft Co., Inc. vs. Ngo Guan, L-21915, December 17, 1966), "STYLISTIC MR. LEE" and "LEE" [G.R. No. 100098. December 29, 1995 Emerald Garment Manufacturing Corporation, petitioner, vs. CA) noting with significance that the conflicting marks are used for the same class of goods.

"16. In Emerald Garment Manufacturing Corporation v. Court of Appeals, (G.R. No. 100098. December 29, 1995) The Supreme Court stated that in determining whether trademarks are confusingly similar, jurisprudence has developed two kinds of tests, the Dominancy Test and the Holistic Test. In its words:

x x x

"17. Applying the foregoing rules to the present controversy and taking into account the factual circumstances of this case, the trademarks involved should be looked into as a whole and in so doing, the Respondent-Applicant's mark "SOLVIT" is not confusingly similar to Petitioner's trademark "SOLVAY" and alleged mark "SOLVIN".

"18. The dissimilarities between the marks "SOLVIT" and "SOLVAY" become conspicuous, noticeable and substantial enough to matter especially in the light of the following variables that must be factored in:

"First, Industrial Cleaner, which is the goods or service of the mark SOLVIT represents, is not ordinary household items like soap, soy sauce or catsup which are of minimal cost. Industrial Cleaners are not inexpensive. Accordingly, the casual buyer is predisposed to be more cautious and discriminating in and would prefer to mull over his purchase. Confusion, then, is less likely. In *Del Monte vs. CA.* (G.R. No. 78325. January 25, 1990), the Supreme Court noted that:

x x x

"Second, in line with the foregoing discussion, more credit should be given to the "ordinary purchaser." Cast in this particular controversy, the ordinary purchaser is not "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved.

"19. The Supreme Court has ruled that the issue of confusing similarity between trademarks is resolved by considering the distinct characteristics of each case. In the present controversy, taking into account the foregoing unique factors and dissimilarities there would be no sufficient ground to cause deception and confusion tantamount to infringement.

"The fact is that, when compared, the two trademarks are entirely different to each other considering that it does not have similarity in sound when read, it has different presentation. Thus, the overall impression created is that the two marks are not deceptively and confusingly similar to each other. Clearly, petitioner did not violate any trademark law that Opposer is alleging.

The Respondent-Applicant's evidence consists of the affidavit of Atty. Jimar Z. Tapulao attaching thereto the following: original trademark application for the mark SOLVIT; the label SOLVIT and the acknowledgement receipt issued by the Intellectual Property Office.⁵

On 14 January 2010, the Preliminary Conference was terminated. Opposer filed its position paper on 26 February 2010.

Should the Respondent-Applicant be allowed to register the trademark SOLVIT?

This Bureau takes cognizance via judicial notice of the fact that, based on the records of the Intellectual Property Office of the Philippines, the Opposer filed a trademark application for SOLVAY on 14 July 2006. The application covers the following goods: chemicals used in industry and science, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; fire extinguishing compositions; manures; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances, agents for the treatment of

⁵ Marked as Exhibits "1" to "3", inclusive.

leather; chemicals for the treatment of water, air and soil; adhesives used in industry. On the other hand, the Respondent-Applicant filed the trademark application subject of the opposition on 18 December 2008.

The competing marks, as shown below, are confusingly similar:

SOLVAY

SOLVIT

Opposer's trademark

Respondent-Applicant's mark

Respondent-Applicant's mark SOLVIT adopted the dominant features of Opposer's mark SOLVAY. SOLVIT appears and sounds almost the same as Opposer's trademark SOLVAY. Both SOLVAY and SOLVIT marks have six (6) letters. The first four (4) letters of both marks are the same. Both have two (2) syllables, "SOL-VAY" and "SOL-VIT". Respondent-Applicant's merely changed Opposer's last two letters A and Y with the letters I and T in coming up with the mark SOLVIT. Likewise, the competing marks are used on similar and/or closely related goods, particularly, chemicals used in the industry. Thus, it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.⁶

Public interest therefore requires, that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that the function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are

⁶ *Converse Rubber Corp. v. Universal Rubber Products, Inc. et. al.*, G.R. No. L-27906, 08 Jan. 1987.

procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.⁷

Records show that Opposer's filing of their trademark application for SOLVAY on 14 July 2006 preceded the Respondent-Applicant's trademark application (18 December 2008).

Succinctly, the field from which a person may select a trademark is practically unlimited. As in all other cases of colorable imitations, the unanswered riddle is why of the millions of terms and combinations of letters and designs available, the Respondent-Applicant had to come up with a mark identical or so closely similar to another's mark if there was no intent to take advantage of the goodwill generated by the other mark.⁸

The intellectual property system was established to recognize creativity and give incentives to innovations. Similarly, the trademark registration system seeks to reward entrepreneurs and individuals who through their own innovations were able to distinguish their goods or services by a visible sign that distinctly points out the origin and ownership of such goods or services.

WHEREFORE, premises considered, the instant Opposition to Trademark Application No. 4-2008-015203 is hereby SUSTAINED. Let the filewrapper of the subject trademark application be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 24 September 2014.


ATTY. NATHANIEL S. AREVALO
Director IV/Bureau of Legal Affairs

⁷ *Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999, citing *Ethepa v. Director of Patents, supra*, *Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).

⁸ *American Wire & Cable Company v. Director of Patents*, G.R. No. L-26557, 18 Feb. 1970.