



ATLAS HOME PRODUCTS,
Petitioner,

-versus-

ROGELIO D. FLORES,
Respondent-Patentee.

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} **IPC No. 12-2011-00379**
} Petition for Cancellation:
} UM Reg. No.2-2010-000165
} Date Issued: 20 September 2010
} Title: **"A CONTAINER FOR**
} **UTENSILS"**

NOTICE OF DECISION

ATTY. JORGE CESAR M. SANDIEGO
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GREETINGS:

Please be informed that Decision No. 2015 - 128 dated June 29, 2015 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 29, 2015.

For the Director:


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



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UTENSILS
Decision No. 2015 - 128

DECISION

ATLAS HOME PRODUCTS ("Petitioner"),¹ filed a petition for cancellation of Utility Model Registration No. 2-2010-000165. The registration, issued to ROGELIO D. FLORES (Respondent-Patentee)², is entitled "A CONTAINER FOR UTENSILS."

The Petitioners alleged that the Utility Model registration lacks novelty as the subject matters thereof particularly those described in Claims 1-4 thereof are already in the market, years prior to the filing of the application. Accordingly, the description, particularly, the drawings were vague and/or the drawings are not sufficient and/or proper which renders the whole registration void.

On 22 December 2011, the Respondent-Patentee, filed his Answer specifically denying the allegation of lack of novelty. He stated that the subject matter in the Claims 1-4 contained in the specifications were entirely novel including the functionality involved in the patent claim. Further, Respondent-Patentee alleged that Petitioner Atlas or its representative has continuously and deliberately refused to attend the mediation proceedings before this Honorable Office. Respondent-Patentee argues that he is entitled to the dismissal of the instant petition pursuant to Section 5 of the Revised Rules of Procedure in Inter Partes Case. Moreover, Petitioner or its representative likewise failed to appear during the preliminary conference called by this Honorable Office.

On 07 November 2012, Petitioner countered on its Memorandum that there's a ground for the cancellation of said utility model registration since the said registration is part of the prior art at the time the application therefore was filed and rendering the same unregistrable. Petitioner likewise averred that the counsel for the Respondent-Patentee has no ground for mediation, as the latter simply wants the cancellation case be withdrawn and the Petitioner to buy the products from them. Such position according to the Petitioner has been time and again intimated as not acceptable.

Sec 8 of Office Order No. 154 s. 2010 ("Rules of Procedure for IPO Mediation Proceedings") provides:

Sec. 8 Effect of the failure of parties to appear during the mediation – **The failure of the party who initiated the case,**

¹ A corporation duly organized and existing under the laws of the Philippines with head office located at 552 Escano St. Manila.

² With address at 22-B Evangelista Street, Xavierville 1 Subd., Loyola Heights, Quezon City.

such as the opposer, petitioner or complainant, to appear for mediation, including the meeting before the Mediation Office in accordance with Section 3 thereof, is ground for the dismissal of the case. On the other hand, if respondent fails to appear, he may be declared in default.

If circumstances warrant and on proper motion to the Mediation Head, a party absent in the succeeding mediation proceedings may be required to reimburse the other party up to the treble the costs incurred, together with the attorney's fees, for that day.

A party shall also be considered absent if the representative fails to show the appropriate and valid authorization.

Records including the Mediator's Report received by this Bureau on 30 April 2012 show that the Petitioner, in spite of due notices, consistently and repeatedly failed to attend the meetings before the Mediation Office scheduled on 01 January 2012, 29 February 2012, 30 March 2012, and 26 April 2012. No excuse or reason was given to justify the Petitioner's absences or non-appearances. That the Petitioner chose to ignore or comply with the rules and orders cannot be countenanced in the light of the clear and express provisions of the rules, and orders issued by this Bureau. The Petitioner's propensity to ignore this Bureau's notices/processes is further manifested by his failure to appear during the preliminary conference ordered by the Hearing Officer.

Hence, Respondent-Patentee correctly averred that he is entitled for the dismissal of the instant petition due to the repeated failure of the Petitioner to appear before the Mediation Office.

WHEREFORE, premises considered, the Petition for Cancellation of the Utility Model Registration No. 2-2010-000165 entitled "A CONTAINER FOR UTENSILS" is hereby **DISMISSED**. Let the filewrapper of the subject utility model be returned, together with a copy of this Decision, to the Bureau of Patents for information and appropriate action.

SO ORDERED.

Taguig City, 29 June 2015


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