**PHILIPPINE COCO COIR EXPORTER. ASSOCIATION, INC. et. al.,**
*Petitioners,*

- versus -

**JUSTINO R. ARBOLEDA AND COCO TECHNOLOGIES CORPORATION,**

*Respondent-Registrants.*
x----------x

**IPC NO. 12-2014-00372**
**Case Filed on: 13 August 2014**

Cancellation of:
Utility Model Reg. No. 2-2013-00304
Date Filed: 19 July 2013

Title: **Coconut Fiber Net For Soil Slope Protection and Erosion Control**

Decision No. 2015 - ____

# DECISION

Philippine Coco Coir Exporter Association. Inc., [1] Pilipinas Eco-Fiber Corporation, [2] Pilipinas Coconut Derivatives, Inc., [3] Pontmain Resources, Inc., [4] Regwill Industries, Inc. [5] Sarangani Cocotech Corporation, [6] Coco Coir Business Integration and Development, Inc., [7] Gubat Agri-tech Industries Co., [8] Hung Coconet & Hydroseeding, Inc., [9] and Tropical Prime Coir Corporation, (Petitioners) [10] filed a Petition for Cancellation against Utility Model Registration No. 2-2013-000304 for "Coconut Fiber Net For Soil Slope Protection and Erosion Control"issued in the name of Respondents, Justino R. Arboleda [11] and Coco Technologies Corporation [12] (Respondent-Registrants).

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[1] Association duly organized and existing under the laws of the Philippines with office address at Eastern Shipping Lines Building, Anda Circle, Port Area Manila.
[2] Corporation duly organized and existing under the laws of the Philippines with office address at Km 79 Brgy. San Mateo, San Pablo City, Laguna.
[3] Corporation duly organized and existing under the laws of the Philippines with office address at98 M Dioquino St. Cubao, Quezon City, Metro Manila.
[4] Corporation duly organized and existing under the laws of the Philippines with office address at 727 B Florentino Torres St. Davao City.
[5] Corporation duly organized and existing under the laws of the Philippines with office address at R CastilloSt. Davao City.
[6] Corporation duly organized and existing under the laws of the Philippines with office address at Eastern Shipping Lines Building, Anda Circle, Port Area Manila.
[7] Corporation duly organized and existing under the laws of the Philippines with office address at Monbon, Irosin, Sorsogon.
[8] Corporation duly organized and existing under the laws of the Philippines with office address at Brgy. Payawin Gubat, Sorsogon.
[9] Corporation duly organized and existing under the laws of the Philippines with office address at Suite 305 Columbian Bldg. No. 160 West Avenue, Quezon City.
[10] All corporations organized and existing under the laws of the Philippines with business address at B10 L9 Muralla Industrial Park, Iba, Meycauayan, Bulacan.
[11] Corporation duly organized and existing under the laws of the Philippines with office address at 275 Quirino Highway, Baesa, Quezon City, Metro Manila

The Petition is grounded on the following: a.) that the claimed invention does not qualify for registration as a utility model and does not meet the requirements of registrability because it is not new and does not meet the requirements of novelty; and b.) that the owner of the utility model registration is not the inventor or maker.

The pertinent portions of the petition are quoted as follows:

> "19. As mentioned above, the filing date of the questioned Utility Model Registrationis July 5, 2013. The title of the same is Coconut Fiber For Soil Slope Protection and Erosion Control." This alleged utility model is certainly not new and has been known and used by as well as made available to the public internationally and locally long before July 5, 2013. The use of coconets for slope protection and erosion control, instead of concrete rip-rap or stone masonry, as well as related applications had been in place decades ago in India, Sri Lanka, Germany, United States, England, Japan, other European countries, etc and more recently in the Philippines, many years PRIOR to the filing date of the application of the abovementioned IPO registration. Many of the member companies of Petitioner PHILCOIR and their clients in fact have used this coconet technology way before the respondents filed their application on July 5, 2013.
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> 20. It must be noted that based on the abstract, field, background, objective, and detailed description of the questioned utility model of the Respondents, there is nothing unique or special in their utility model which makes it different from the coconets being produced, used, sold and installed internationally and locally. A close examination of these submissions of Respondents will readilyshow that the descriptionis very general and applies to any coconut fiber net or coconet being produced and used by the public both locally and internationallyfor erosion control and slope protection. Even the drawings accompanying the applicationof the Respondents do not show any detailed specifications such as the diameter of the twine, number of vertical and horizontal lines, weight of the coconet, etc. which will make it special or unique and different from others. Additionally, the installation procedure described as well as the use of bamboo or wooden pegs to anchor the coconets to the slope, use of coco twine to sew or join coconets together, use of fiber rolls or coco logs, use of vegetation, etc is not also unique as this is the same installation procedure used by all other companies or entities engaged in the business of producing, using, selling and installing coconets as erosion control or slope protection material. In fact, it can even be said that this installation procedure described by Respondents is merely copied from India which invented this coconet technology more than 50 years ago; used and implemented the same in India for erosion control and slope and channel stabilization, highway and river embarkments, etc.; and exported the technology and the coconets to many countries such as Sri Lanka, United States, Japan, Germany, United Kingdom, etc.
>
> 21. Documentary evidence showing that coconets used for erosion control or slope protection had been known or used by the public or made available to the public internationally long before Respondents filed their application for utility modelon July 5, 2014 are as follows:
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> a. An article on Goodcoir Mats & Matting Co of India from its website at www.goodcoir.tradeindia.com showing that it has been engaged in the business of coir geotextile, an organic fiber product from coconut husk, among other coir products, since 1953. x x x

[12] Corporation duly organized and existing under the laws of the Philippines with office address at 275 Quirino Highway, Baesa, Quezon City, Metro Manila

b. Write-up on "Coir, the Natural Geotextile" of the Directorate of Coir Development of India describing coir as a geotextile, its applicatio, coir netting for erosion treatment, benefits of using the material, and installation procedure. Please note the similarity in installation procedure and diagrams in this write-up with those described and stated in the utility model of Respondents. x x x

c. An article in the Sunday Observer dated April 14, 2002 titled "Exclusive patent hits new coir-tex export" by Don Asoka Wijewardena reports that US based Sri Lankan, Lanka Shantha was able to secure a patent in the USA for the "exclusive right to export coir based geo-textiles made of woven coir fibre and manufactured in a variety of sizes." Please note that the patent granted to Lanka Shantha in 1992 was for geo-textiles used for preventing soil erosion, which are the same as the coconut fiber nets covered by the utility model of Respondents. x x x

d. An article titled "Facts on Coir: Lessons from the Past" written by Lanka Santha and Calista Santha of Rolanka International, Inc. 1998 which describes the use of coir products, particularly coco fiber nets for erosion control and slope protection. x x x

e. Profile of the National Coir Research & Management Institute of India with website at www.ncrmi.org showing its establishment in 1994 to cater to the various needs of the coir sector of Kerala, India including coir coconets for erosion control. The article also shows the various geotextile projects of the NCRMI. x x x

f. Bureau of Indian Standard (BIS) for Coir Geotextiles by Leksmi Nair, P.K. Ravi & Dr. U.S. Sarma, Central Coir Research Institute published in November 2009 in the COIR News, a publication of the Coir Board, Ministry of Micro, Small & Medium Enterprises, Government of India. The article includes the Specification of Coir Geotextiles (Provisional) and the application of Coir Geotextiles for rain water erosion control in roads, railway embankments and hill slopes-guidelines. x x x

g. A visit to and examination of the website of the International Erosion Control Association (IECA) at www.ieca.org which is the "world's oldest and largest association devoted to helping members solve the problems caused by erosion and its by product-sediments" with 2,500 members particularly its Coir Mat Erosion Control Product will readily disclose that this alleged coconet technology registered by Respondents as a utility model had been widely used and known throughout the world with numerous companies engaged in this business long before the filing date of Respondents. It must be noted from an examination of the websites of the companies engaged in the business of Coir Mat Erosion Control Product or coconets that the description, background, abstract, objective, drawings, and other submissions of Respondents in their application for utility model registration for coconut fiber net are very similar to the materials found in such websites and must have been just copied therefrom.

22. Concrete evidences showing that coconets used for erosion control or slope protection had been known or used by the public or made available to the public in the Philippines long before the filing date of Respondents' application for utility model on July 5, 2014 are as follows:

a. Petitioner PONTMAIN won in a public bidding conducted by the PNOC Energy Development Corporation (PNOC EDC) then a government owned and controlled corporation, in 1999 for the supply and installation of erosion control materials consisting of coconets and coco logs as fascines to protect the slope of its geothermal plant in Dumaguete.x x x Petitioner PONTMAIN has been producing, using, and selling coconets and coco logs for erosion control and slope protection since 1999. It is important to note that Respondent Justino R. Arboleda and/or his

company participated in the said public bidding at PNOC EDC but lost to Petitioner PONTMAIN.

b. A hard copy of the power point presentation of the Philippine Trade Delegation to China from July 10-20, 2005 composed of various producers and exporters of coco coir and peat products organized and led by the Bureau of Export Trade Promotion, Department of Trade and Industry, shows the many uses, and advantages of coco coir or coconets as a bio-engineering material for slope protection and erosion control. This presentation also shows the many slope protection projects using coconets in the Philippines, Japan (1996). Malaysia (1998), Germany (1995). USA (1996), and Europe (1996). It is interesting to note that Respondent Justino R. Arboleda and his company, Respondent Coco Technologies Corporation were part of this trade delegation to China. Petitioners PONTMAIN, REGWILL, COCOBIND and SARANGANI, among others, were also part of this trade delegation. x x x

c. A primer on "Coconets for Bioengineering, Frequently Asked Questions (Characteristics, Uses & Applications) published in March 2009 by the Foundation for Sustainable Society, Inc. x x x

d. An article on "Bioengineering with Coconets for Erosion Control" by Eduardo P. Kasilag and Roy Anthony C. Luna of the Institute of Civil Engineering, University of the Philippines, Diliman, Quezon City, x x x This article focuses on the use of coconets for erosion control as well as the general production and installation procedure of coconets.

e. Coconets of geotextiles have been used by the Department of Public Works and Highways (DPWH) in some important projects such as the Subic-Clark-Tarlac Expressway (SCTex), the rehabilitation of damaged slopes in Southern Leyte, and the construction of cross drain structures of the Baguio-Bontoc (Halsema) Road long before Respondents' filing date of their utility model. In fact, the DPWH prior to the filing date of the subject utility model had issued several Department Orders outlining the specifications of coconets and cocologs for slope protection and erosion control, the latest of which is Department Order No. 23 dated February 22, 2013 clarifying that all coconut coir fiber materials shall conform to the DPWH generic specifications as prescribed in item 622 – Coconet Bio-Engineering solutions which was issued through Department Order No. 06 series of 2012; revoking Department Orders No. 28 and 29, series of 2008; and amending Department Order No. 68, series of 2012 (Prescribing Guidelines on the Design of Slope Protection Works). x x x A careful reading of these DPWH Department Orders will disclose that the coconets described therein, their uses and installation procedure definitely embrace or include the coconut fiber net utility model of Respondents.

f. Office of the President Memorandum Circular No. 25 dated September 2, 2002 which directed all national and local government agencies, bureaus and other instrumentalities including agricultural institutions and councils to use cocopeat and fiber material for soil conditioning and erosion control in government projects nationwide x x x

g. Article on "Coir – Opportunities/Prospects of the Industry" taken from the FIDA website at www.fida.da.gov.ph/Templates/coir_opportunities_prospects.html x x x This article of the Fiber Industry Development Authority (FIDA) cites the wide acceptance of coir geotextiles or coconut fiber nets as alternative material for soil erosion control and road rehabilitation projects of the DPWH and the private sector, specifically mining companies property developers, and landscaping contractors.

x x x

23. The strong support of President Benigno S. Aquino III for the coco coir industry, particularly its coconets and cocopeat products, and his directive to various

government agencies to help the coco coir industry, resulted in the holding of the first National Coco Coir Summit on March 30, 2011 in Davao City. As a result, the Special National Inter-Agency Task Force on Coco Coir was organized consisting of the Secretary of the Department of Trade and Industry (DTI), Secretary of the Department of Public Works and Highways (DPWH), Secretary of Department of Agriculture (DA), Secretary of the Department of Science and Technology (DOST), Administrator of the Philippine Coconut Authority (PCA), Administrator of the Fiber Industry Development Authority (FIDA), President of the Coconut Industry Investment Fund (CIIF), and President of the Philippine Coco Coir Inter-Agency National Technical Working Group was formed, jointly headed by the DTI and DA, which crafted and implemented a comprehensive National Coco Coir Development Plan for 2011-2016. This comprehensive plan addresses all the development and promotion needs of the coco coir sector, including coconut fiber net or coconet: technology, production and productivity, market, investments, financing, entrepreneurship training, industry planning and convergence and policy.

24. PHILCOIR and its members have been working with the Department of Trade and Industry (DTI), the Department of Public Works and Highways (DPWH), Department of Agriculture (DA), Department of Science and Technology (DOST), Philippine Coconut Authority (PCA) and other agencies of the government in the development and promotion of the coco coir industry, which includes coconet product, for many years prior to the application of Respondents Coco Technologies Corporation / Justino R. Arboleda for a utility model. PHILCOIR assisted the DPWH in crafting generic specifications for coconets and cocologs prescribed in items 622 which was issued through DPWH Department Order No. 06, series of 2012. PHILCOIR was likewise instrumental in the issuance of DPWH Department Order No. 23, series of 2013.

25. As a result of the strong and sustained support of the pertinent government agencies under the administration of President Benigno S. Aquino III, coconets and cocologs as bio-engineering materials for slope protection and erosion control became more widely known and used by the public, particularly the DPWH, mining companies, land developer, etc. This brought about the resurgence of the coco coir industry and the establishment of numerous coco coir companies all over the Philippines – micro, small, and medium enterprises (MSMEs) as well as cooperatives and associations engaged in the business of producing twines fom coconut fiber and the weaving of the twines into coconets together with the production of cocologs to serve the growing demands of DPWH, mining companies, and land developers for erosion control and slope protection projects. The DTI and PCA have even launched, undertaken, and funded programs in different regions of the country to train communities in making hand made twines and to a limited extent machine made twines as well as train them in weaving these twines into coconets. In addition, both DTI and PCA even distributed small decorticators to produce coconut fiber as well as twining devices and weaving looms to many parts of the country to promote the growth of the coconet business. Consequently, there are now hundreds of MSMEs, cooperatives, and associations engaged in the coco coir business – producing, using, and selling coconut fiber, coconets and cocologs, and providing livelihood to tens of thousand of people in the coconut regions of the Philippines.

26. In early 2013 (the foreword of DTI Secretary Gregory L. Domingo, DA Secreatry Proceso J. Alcala and DTI Undersecreatry Merly M. Cruz are all dated January 2013), prior to the filing date of the utility model in question, the government under the leadership of the DTI to which this goods office belongs, published a Coco Coir Industry Sourcebook which gives an overview of the Philippine Coco Coir Industry together with its history; various coco coir products, their applications and uses; and the many sources and suppliers of various coco coir and coir products, including coconets or geotextiles. This Honorable Office can easily check this Coco Coir Industry Sourcebook since it was published by DTI which is the same department that supervises this Honoable Office.

x x x

27. As discussed earlier, based on the abstract, field, background, objective, detailed description, and drawings of the questioned utility model of the Respondents, there is nothing unique or special in their utility model which makes it different from the coco nets being produced, used, and sold internationally and locally. There is no special design or distinguishing feature of this utility model of Respondents which sets it apart from all the others being produced, used, and sold internationally and locally. A close examination of these submissions of Respondents will readily show that the description and statements are very general and apply to any coconet being produced, used, and sold by the public both locally and internationally for erosion control and slope protection. Even the drawings accompanying the application of the Respondents do not show detailed specifications such as the diameter of the twine, number of vertical and horizontal lines, weight of the coconet, etc. that make the said coconet special and unique and differentiates it from all the others already being produced, used, and sold. Additionally, the installation procedure described in the utility model in question together with the use of bamboo or wooden pegs to anchor the coconets to the slope, use of coco twine to sew or join coconets together, use of fiber rolls or coco logs, use of vegetation, etc. is not also unique as this is the same installation procedure used by all other companies or entities engaged in the business of producing, using, selling, and installing coconets as erosion control or slope protection material. An evaluation and examination of the overwhelming documentary evidences enumerated above of herein Petitioners will readily disclose that the description. Abstract, drawings, installation procedure and other submissions of Respondents are merely copies of the coconet technology in other countries, particularly in India, which invented this technology more than 50 years ago and exported this technology and product to other countries.

28. Respondent Arboleda's claim that he is the maker or inventor of the utility model in question is a gross misrepresentation farthest from the truth, and a great injustice to the Indian inventors who cenceptualized and started the use of coconut fiber nets for erosion control and slope protection several decades ago, perhaps even before Respondent Arboleda was born.

29. It was also shown and discussed earlier that Respondents are well aware that the coconut fiber net utility model they applied for registration at this Honorable Office is the same as those already being produced, used, and sold by many MSMEs locally. And yet, Respondent went ahead and falsely claimed that Respondent Arboleda is the maker and inventor of the subject utility model. x x x

30. The registration of the subject utility model of Respondents is a great travesty of justice to the hundreds of MSMEs, cooperatives, and associations located all over the country that are presently engaged in the business of producing, using, and selling coconut fiber nets or coconets for erosion control and slope protection. The registration by this Honorable Office of the falsely claimed utility model of Respondents virtually created a monopoly of the coconut fiber nets or coconets business in the Philippines in favor of the Respondents considering that the said registration of utility model granted "unto the applicant/s or assign/s the exclusive right throughout the Philippines to make, use, sell, or import the utility model, and Unless sooner sooner terminated as provided for by law and the regulations, the term of this Registration shall be SEVEN (7) YEARS from the date of filing." x x x

32. A simple search in the internet, specifically google.com, under the topic "coconut fiber net used for erosion control or slope protection" would have readily disclosed the many articles and materials on this product including the numerous companies in different countries making, producing, using, selling, and installing the same kind of coconets described by Respondents in their utility model application for registration. x x x

33. Respondent Arboleda is an active player in the coco coir industry which includes coconets or coconut fiber nets. He knows most, if not all, of the Petitioner herein, including their representatives. He was a partner of Petitioner HUNG COCO in trading coconets and cocologs – buying and selling coconets and cocologs and supplying them to DPWH and private entities for their slope protection projects. As shown earlier, Respondent Arboleda and Respondent COCO TECH were part of the Philippine Trade Delegation to China from July 10-20, 2005 where Petitioners PONTMAIN, REGWILL and SARANGANI also participated. Respondents also competed in biddings against other Petitioners such as Petitioner PCDI, for the supply and installation of coconets and cocologs for government projects, paticularly the SCTex project. Respondent Arboleda, representing his company Juboken Enterprises, was a member and past president of now defunct Coconut Coir Industry Association of the Philippines, Inc. (CCIAPI) as well as suppliers of coco coir equipment. Respondent Arboleda was, however, unanimously expelled by the CCIAPI Board of Directors as a director and member committing acts inimical to the organization and members. He was also part of PHILCOIR during the early stages of the association. He is also very familiar with the programs undertaken by DTI for training of communities in the making of coconets as he was hired a few times by DTI to assist in the training program. In other words,Respondent Arboleda very well knows the condition and status of the coco coir industry, most of the companies engaged in the business of coco coir products such as coconets, and the efforts of the government, particularly DTI and DPWH in promoting the growth and development of the coco coir industry, particularly the coconet business. Thus, he knows very well the specifications and kind of coconets being produced by the players in the industry. x x x"

This Bureau issued a Notice to Answer on 27 August 2014 copies of which were served to the Respondent-Registrants on 29 September 2014. On 29 October 2014, the Respondent-Registrants filed a Motion for Extension to File Answer which this Bureau granted. Subsequently, on 27 November 2014, the Respondent-Registrants filed a Second Motion for Extension to File a Verified Answer which was again granted by this Bureau. In spite of the said extensions, the Respondent-Registrants however, failed to file an Answer. Accordingly, an Order dated 27 November 2013 was issued declaring the Respondent-Registrants in default. On 20 March 2015, the Petitioners submitted compliance attaching supporting evidence.

The Petitioners submitted the following evidence to support their petition:

1. Secretary Certificate from Philippine Coco Coir Exporters Association, Inc. (PHILCOIR);
2. Secretary Certificate from Philippine Ecofiber Corporation;
3. Secretary Certificate from Pilipinas Coconut Derivatives Incorporated;
4. Secretary Certificate from Pontmain Resources, Inc.;
5. Secretary Certificate from Regwill Industries, Inc.;
6. Secretary Certificate from Sarangani Cocotech Corporation;
7. Secretary Certificate from Coco Coir Business Integration and Development, Inc.;
8. Partners' Certificate from Gubat Agritech Industries Company;
9. Secretary Certificate from Hung Coconet & Hydroseeding, Inc.;
10. Secretary Certificate from Tropical Prime Coir Corporation;
11. Copy of the article on Goodcoir Mats & Matting Co. of India at www.goodcoir.tradeindia.com;
12. Copy of Write-up on "Coir, the Natural Geotextile" of the Directorate of Coir Development of India at www.coir.kerala.gov.in;

13. Copy of article in the Sunday Observer dated April 14, 2002 titled "Exclusive patent hits new coir-tex export" by Don Asoka Wijewardena;
14. Copy of article titled "Facts on Coir: Lessons from the Past" written by Lanka Santha and Calista Santha of Rolanka International, Inc.;
15. Copy of the Profile of the National Coir Research & Management Institute of India at www.ncrmi.org;
16. Copy of the publication of of the Coir Board, Ministry of Micro, Small & Medium Enterprises, Government of India November 2009;
17. Copy of certification dated January 27, 2000 issued by PNOC EDC;
18. Copy of Powerpoint Presentation of the Philippine Trade Delegation to China from July 10-20, 2005;
19. Copy of primer on "Coconets for Bioengineering, Frequently Asked Questions published in March 2009 by the Foundation for Sustainable Society, Inc.;
20. Copy of article on "Bioengineering with Coconets for Erosion Control" by Eduardo P. Kasilag and Roy Anthony C. Luna of the Institute of Civil Engineering, University of the Philippines, Diliman, Quezon City;
21. Copy of DPWH Department Order No. 23 series of 2013;
22. Copy of DPWH Department Order No. 68 series of 2012;
23. Copy of Office of the President Memorandum Circular No. 25 dated September 2, 2002;
24. Copy of Article on "Coir-Opportunities/Prospects of the Industry" from the FIDA website;
25. Copy of Coco Coir Industry Sourcebook dated January 2013; and
26. Registrability Report on Utility Model Application No. 2-2013-000304.[13]

Should Utility Model Reg. No. 2-2013-000304 be cancelled?

Section 109 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") provides:

> "Sec. 109.4 In proceedings under Section 61 to 64. The utility model registration shall be cancelled on the following grounds:
> a.) That the claimed invention does not qualify for registration as a utility model and does not meet the requirements of registrability, in particular having regard to Subsection 109.1 and Sections 22, 23, 24 and 27.
> b.) That the description and the claims do not comply with the prescribed requirements;
> c.) That any drawing which is necessary for the understanding of the invention has not been furnished;
> d.) That the owner of the utility model registration is not the inventor or his successor in title."

In relation to the above provision, Section 109.1of the IP Code provides for the requirements of registrability of utility models.

> "Sec 109.1 (a) An invention qualifies for registration as a utility model if it is new and industrially applicable.
> (b) Section 21 Patentable Inventions shall apply except the reference to inventive steps as a condition of protection."

Corollarily, Sections 23 and 24 of the IP Code provide:

> "Sec. 23. Novelty – An invention shall not be considered new if it forms part of a prior art.

[13] Annexes "A"to "X".

Sec 24. Prior Art – Prior art shall consist of:

24.1 Everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the invention; and

24.2 The whole contents of an application for patent, utility model or industrial design registration, published in accordance with this Act, filed or effective in the Philippines, with a filing or priority date that is earlier than the filing or priority date of the application: Provided, that the application which has validly claimed the filing date of an earlier application under Section 31 of this Act, shall be prior art with effect as of the filing date of such earlier application: Provided further, That the applicant or the inventor identified in both application are not one and the same."

In this regard, the utility model registration being challenged is coconut fiber net for soil slope protection and erosion control consisting of the following claims:

1. A device for soil slope protection and erosion control comprising a coconut fiber net for covering said soil, and anchoring members secured at a predetermined location to said coconut fiber net and soil.
2. A device for soil slope protection and erosion control in accordance with claim 1, wherein said coconut fiber net consist of spaced apart plurality of intersecting rows and columns of coconut fibers.
3. A device for soil slope protection and erosion control in accordance with claim 1, wherein said coconut fiber net is defined by 100% biodegradable, coir geotextile mats that is hand twisted yarn or machine spun twine.
4. A device for soil slope protection and erosion control in accordance with claim 1, wherein said anchoring members are defined by bamboo pegs
5. A device for soil slope protection and erosion control in accordance with claim 1, wherein for uneven surface of said soil coconut fiber rolls are secured.

The Petitioners submitted evidence to prove that the coconut fiber net had been used, both internationally and locally, in soil slope protection and erosion control much earlier than the date of application for utility model of the Respondent-Registrants.[14] The "Coco Coir Industry Sourcebook" published by the Department of Trade and Industry in January 2013, and thus, prior to the application of the instant utility model, extensively presented the various coco coir products and their application including the usage of coir geotextiles or coconets and biologs for soil erosion control, slope protection and land stabilization in the Philippines.[15] In fact, as early as the year 2002, no less than the Philippine Government, in Memorandum Circular No. 25 dated 2 September 2002 issued by President Gloria Macapagal Arroyo,[16] expressly directed all national and local government agencies and other instrumentalities to use coco peat or coir dust and coconut fiber materials for soil conditioning and erosion control.

Succinctly, the registrability report[17]issued by the Bureau of Patents bolters the Petitioner's position that the subject Utility Model lacked novelty at the time an application for registration was filed. The claims found on the instant utility model

[14] Annex "K" to Annex "X" of the petition
[15] Annex p. 11
[16] Annex "W" of the petition
[17] Annex E of Compliance

Sec 24. Prior Art – Prior art shall consist of:

24.1 Everything which has been made available to the public anywhere in the world, before the filing date or the priority date of the application claiming the invention; and

24.2 The whole contents of an application for patent, utility model or industrial design registration, published in accordance with this Act, filed or effective in the Philippines, with a filing or priority date that is earlier than the filing or priority date of the application: Provided, that the application which has validly claimed the filing date of an earlier application under Section 31 of this Act, shall be prior art with effect as of the filing date of such earlier application: Provided further, That the applicant or the inventor identified in both application are not one and the same."

In this regard, the utility model registration being challenged is coconut fiber net for soil slope protection and erosion control consisting of the following claims:

1. A device for soil slope protection and erosion control comprising a coconut fiber net for covering said soil, and anchoring members secured at a predetermined location to said coconut fiber net and soil.
2. A device for soil slope protection and erosion control in accordance with claim 1, wherein said coconut fiber net consist of spaced apart plurality of intersecting rows and columns of coconut fibers.
3. A device for soil slope protection and erosion control in accordance with claim 1, wherein said coconut fiber net is defined by 100% biodegradable, coir geotextile mats that is hand twisted yarn or machine spun twine.
4. A device for soil slope protection and erosion control in accordance with claim 1, wherein said anchoring members are defined by bamboo pegs
5. A device for soil slope protection and erosion control in accordance with claim 1, wherein for uneven surface of said soil coconut fiber rolls are secured.

The Petitioners submitted evidence to prove that the coconut fiber net had been used, both internationally and locally, in soil slope protection and erosion control much earlier than the date of application for utility model of the Respondent-Registrants.[14] The "Coco Coir Industry Sourcebook" published by the Department of Trade and Industry in January 2013, and thus, prior to the application of the instant utility model, extensively presented the various coco coir products and their application including the usage of coir geotextiles or coconets and biologs for soil erosion control, slope protection and land stabilization in the Philippines.[15] In fact, as early as the year 2002, no less than the Philippine Government, in Memorandum Circular No. 25 dated 2 September 2002 issued by President Gloria Macapagal Arroyo,[16] expressly directed all national and local government agencies and other instrumentalities to use coco peat or coir dust and coconut fiber materials for soil conditioning and erosion control.

Succinctly, the registrability report[17]issued by the Bureau of Patents bolters the Petitioner's position that the subject Utility Model lacked novelty at the time an application for registration was filed. The claims found on the instant utility model registration generally cover a basic coco net or coir of intersecting rows of column of coconut fibers.

[14] Annex "K" to Annex "X" of the petition
[15] Annex p. 11
[16] Annex "W" of the petition
[17] Annex E of Compliance

| Category | Document Description | Relevant to Claim No. | Document No. |
|---|---|---|---|
| x | WO 2010 085075 (Natural Science Co., Ltd., et. al.) – 29 July 2010 | 1-2 | 1 |
| x | CN 2 887955 (Beijing IWHR KHL Corp Ltd) – 11 April 2007 | 1-2 | 2 |
| x | KR 2004 1014181 (Jung Eul Jun) – 10 December 2004 | 1-2 | 3 |
| x | US 5 849 645 (Lancaster) – 15 December 1998 | 1-2 | 4 |
| x | JPH 09252664 (Sumitomo Ringyo Ryokka KK, et. al.) – 30 September 1997 | 1-2 | 5 |

The documents cited as prior arts of the above utility model registration cover substantially the same device made up of coconut fiber net used for soil slope protection.[18] Verily, the subject utility model lacks novelty and should be cancelled.

In the case of Angelita Manzano vs. Court of Appeals[19], the Supreme Court has held that:

> The element of novelty is an essential requisite of patentability of an invention or discovery. If a device or process has been known or used by others prior to its invention or discovery by the applicant, an application for patent therefor should be denied; and if the application has been granted, the court, in a judicial proceeding in which the validity of the patent is drawn in question, will hold it void and ineffective. It has been repeatedly held that an invention must possess the essential elements of novelty, originality and precedence, and for the patentee to be entitled to the protection the invention must be new to the world.
>
> Hence, a utility model shall not be considered "new" if before the application for a patent it has been publicly known or publicly used in this country or has been described in a printed publication or publication circulated within the country, or if is substantially similar to any other utility model so known, used or described within the country."

Anent the Petitioners claim for damages, this Bureau has no legal basis or authority to grant or award damages in Inter Partes Cases, including petition for cancellation of utility model registration.[20]

**WHEREFORE**, premises considered, the instant Petition for Cancellation to the Utility Model with Registration No. 2-2013-00304 is hereby **GRANTED**. The Petitioner's prayer for award of damages is **DENIED.** Let the filewrapper of Utility Model with Registration No. 2-2013-000304 be returned together with a copy of this **DECISION** to the Bureau of Patent (BOP) for appropriate action.

**SO ORDERED.**

Taguig City, 22 July 2015.

**ATTY. NATHANIEL S. AREVALO**
Director
Bureau of Legal Affairs

[18] ibid
[19] G.R. No. 113388 September 5, 1997
[20] *See* Section 10.1 of the IP Code.