

ABBOTT LABORATORIES
(PHILS.) INC.,
Petitioner,

INTER PARTES CASE NO. 2071

PETITION FOR CANCELLATION

- versus -

Letters Patent No. UM-4048
Issued: June 13, 1980
Patentee: Arturo C. Ludan
For: COMPOSITION OF ORHYDRATE
ELECTROLYTE CONCENTRATE

FOR ORAL

REHYDRATION

ARTURO C. LUDAN
Respondent-Patentee.

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DECISION NO. 90-36 (TM)
September 4, 1990

DECISION

Captioned case pertains to the Petition for Cancellation filed by Abbott Laboratories (Phils.) Inc., a corporation organized and existing under the laws of the Philippines, with address at 102 Epifanio de los Santos Avenue, Mandaluyong, Metro Manila.

Sought to be cancelled is Philippine Patent No. UM-4048 issued on June 13, 1980 in the name of Arturo C. Ludan, a citizen of the Philippines and a resident of No. 70 Scout Tuazon, Quezon City, Metro Manila.

Philippine Patent No. UM-4048 relates to a "COMPOSITION OF ORHYDRATE ELECTROLYTE CONCENTRATE FOR ORAL REHYDRATION". More particularly, it relates to a balanced formulation of electrolytes which consists of sodium chloride, sodium bicarbonate, potassium chloride and potassium gluconate or citrate with the addition of glucose and sucrose. This present concentrate formulation is useful for the preservation or correction of dehydration caused by acute diarrhea in infants, children and adults.

The grounds for cancellation are as follows:

"4. Respondent's Letters Patent No. UM-4048 is invalid and cancellable under Section 28 of Republic Act No. 165, as amended, otherwise known as the Patent Law, for the reasons that:

- a. A chemical composition like respondent's formulation cannot legally be the subject of a utility model patent under the Patent Law.
- b. Plaintiff's utility model is not new or patentable because –

b.1. The ingredients of plaintiff's formulation have been publicly known in the Philippines and/or described in publications circulated in the Philippines before March 31, 1980 when plaintiff filed his patent application with the Philippine Patent Office.

b. 2. The ingredients of plaintiff's formulation in his Letters Patent No. UM-4048 had been described in printed publications in foreign countries more than six (6) months before March 31, 1980.

- c. Plaintiff is not the true and actual inventor or author of the utility model and/or did not derive his rights from the true and actual inventor or author of said utility model.
- d. Plaintiff's specification does not comply with the requirements of the Patent Law.
- e. The issuance of the patent is contrary to the pertinent provisions of the Patent Law.

5. Letters Patent No. UM-4048 is deemed ipso facto cancelled for failure of Respondent to comply with Section 58 of the Patent Law with respect to the renewal of the utility model because Respondent has not shown in his affidavit in support of his renewal application that his utility model is in commercial or industrial use in the Philippines; neither did Respondent satisfactorily explain the reason for his non-use of the utility model.”

On August 1, 1990, while this case was still at the trial stage for reception of Respondent's evidence, the parties assisted by their respective counsels filed a Joint Motion to Dismiss, stating that:

“1. They have decided to terminate their dispute that led to the filing of the present case and other related cases.

2. As part of their comprehensive settlement, the parties have agreed to release each other from all claims, demands, rights or causes of action which are included in, or which could have been included in, all pending cases between them and to withdraw and dismiss all such cases with prejudice, including the present case.

3. The parties accordingly and jointly manifest that they are no longer interested in pursuing the present case and now jointly move that it be considered withdrawn and dismissed for all intents and purposes.

4. The parties further mutually release and discharge one another from any and all claims, and causes of action of whatever kind and nature which they, at any time, had or have, or might have, against one another, at law or in equity, by reason, or arising out of, any act, matter or thing relative, or pertaining to, the claims and disputes subject of the present case, the intention of the above-named parties being to completely and absolutely free one and the other from all claims, demands, and causes of action, whether or not pleaded by them in the instant case, arising wholly or partially, directly or indirectly, from the claims and disputes being litigated in the instant case.”

Finding said joint Motion to Dismiss to be in order and not contrary to law, same is hereby GRANTED.

WHEREFORE, this case is considered WITHDRAWN and DISMISSED, with prejudice. Accordingly, Philippine Patent No. UM 4048, entitled "COMPOSITION OF ORHYDRATE ELECTROLYTE CONCENTRATE FOR ORAL REHYDRATION" issued on June 13, 1980 remains valid and subsisting for the duration of its term, unless sooner cancelled in accordance with law.

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

SO ORDERED.

IGNACIO S. SAPALO
Director