

SECOND DIVISION

[G.R. No. 118708. February 2, 1998]

CRESER PRECISION SYSTEMS, INC., *petitioner*, vs. COURT OF APPEALS AND FLORO INTERNATIONAL CORP., *respondents*.

D E C I S I O N

MARTINEZ, J.:

This petition for review on *certiorari* assails the decision^[1]. The decision of the Court of Appeals was penned by Justice Gloria C. Paras and concurred in by Justice Salome A. Montoya and Justice Hector L. Hofileña.

1 of the Court of Appeals dated November 9, 1994 in C.A.-G.R. SP. No. 34425 entitled "Floro International Corp. vs. Hon. Tirso D.C Cruz and Creser Precision System, Inc.", the dispositive portion of which reads:

"WHEREFORE, THE PETITION IS HEREBY GRANTED. THE COMPLAINT FOR INJUNCTION AND DAMAGES, CIVIL CASE NO. 93-1856 BEFORE THE RESPONDENT JUDGE IS HEREBY ORDERED DISMISSED AND HIS ORDERS THEREIN OF DECEMBER 29, 1993 AND MAY 11, 1994 ARE ORDERED SET ASIDE."

Private respondent is a domestic corporation engaged in the manufacture, production, distribution and sale of military armaments, munitions, airmunitions and other similar materials.^[2]

On January 23, 1990, private respondent was granted by the Bureau of Patents, Trademarks and Technology Transfer (BPTTT), a Letters Patent No. UM-6938^[3] covering an aerial fuze which was published in the September-October 1990, Vol. III, No. 5 issue of the Bureau of Patent's Official Gazette.^[4]

Sometime in November 1993, private respondent, through its president, Mr. Gregory Floro, Jr., discovered that petitioner submitted samples of its patented *aerial fuze* to the Armed Forces of the Philippines (AFP) for testing. He learned that petitioner was claiming the aforesaid *aerial fuze* as its own and planning to bid and manufacture the same commercially without license or authority from private respondent. To protect its right, private respondent on December 3, 1993, sent a letter^[5] to petitioner advising it for its existing patent and its rights thereunder, warning petitioner of a possible court action and/or application for injunction, should it proceed with the scheduled testing by the military on December 7, 1993.

In response to private respondent's demand, petitioner filed on December 8, 1993 a complaint^[6] for injunction and damages arising from the alleged infringement before the Regional Trial Court of Quezon City, Branch 88. The complaint alleged, among others: that petitioner is the first, true and actual inventor of an aerial fuze denominated as "Fuze, PDR 77 CB4" which is developed as early as December 1981 under the Self-Reliance Defense Posture Program (SRDP) of the AFP; that sometime in 1986, petitioner began supplying the AFP with the said aerial fuze; that private respondent's aerial fuze is identical in every respect to the petitioner's fuze; and that the only difference between the two fuzes are miniscule and merely cosmetic in nature. Petitioner prayed that a temporary restraining order and/or writ of preliminary injunction be issued enjoining private respondent including any and all persons acting on its behalf from manufacturing, marketing and/or profiting therefrom, and/or from performing any other act in connection therewith or tending to prejudice and deprive it of any rights, privileges and benefits to which it is duly entitled as the first, true and actual inventor of the *aerial fuze*.

On December 10, 1993, the trial court issued a temporary restraining order. Thereafter, hearings were held on the application of petitioner for the issuance of a writ of preliminary

injunction, with both parties presenting their evidence. After the hearings, the trial court directed the parties to submit their respective memoranda in support of their positions.

On December 27, 1993, private respondent submitted its memorandum^[7] alleging that petitioner has no cause of action to file a complaint of infringement against it since it has no patent for the *aerial fuze* which it claims to have invented; that petitioner's available remedy is to file a petition for cancellation of patent before the Bureau of Patents; that private respondent as the patent holder cannot be stripped of its property right over the patented *aerial fuze* consisting of the exclusive right to manufacture, use and sell the same and that it stands to suffer irreparable damage and injury if it is enjoined from the exercise of its property right over its patent.

On December 29, 1993, the trial court issued an Order^[8] granting the issuance of a writ of preliminary injunction against private respondent the dispositive portion of which reads: "WHEREFORE, plaintiff's application for the issuance of a writ of preliminary injunction is granted and, upon posting of the corresponding bond by plaintiff in the amount of PHP 200,000.00, let the writ of preliminary injunction be issued by the branch Clerk of this Court enjoining the defendant and any and all persons acting on its behalf or by and under its authority, from manufacturing, marketing and/or selling aerial fuzes identical, to those of plaintiff, and from profiting therefrom, and/or from performing any other act in connection therewith until further orders from this Court."

Private respondent moved for reconsideration but this was denied by the trial courts in its Order^[9] of May 11, 1994, pertinent portions of which read:

"For resolution before this Court is the Motion for Reconsideration filed by the defendant and the plaintiff's Opposition thereto. The Court finds no sufficient cause to reconsider its order dated December 29, 1993. During the hearing for the issuance of the preliminary injunction, the plaintiff has amply proven its entitlement to the relief prayed for. It is undisputed that the plaintiff has developed its aerial fuze way back in 1981 while the defendant began manufacturing the same only in 1987. Thus, it is only logical to conclude that it was the plaintiff's aerial fuze that was copied or imitated which gives the plaintiff the right to have the defendant enjoined "from manufacturing, marketing and/or selling aerial fuzes identical to those of the plaintiff, and from profiting therefrom and/or performing any other act in connection therewith until further orders from this Court." With regards to the defendant's assertion that an action for infringement may only be brought by "anyone possessing right, title or interest to the patented invention," (Section 42, RA 165) qualified by Section 10, RA 165 to include only "the first true and actual inventor, his heirs, legal representatives to assignees," this court finds the foregoing to be untenable. Sec. 10 merely enumerates the persons who may have an invention patented which does not necessarily limit to these persons the right to institute an action for infringement. Defendant further contends that the order in issue is disruptive of the *status quo*. On the contrary, the order issued by the Court in effect maintained the *status quo*. The last actual, peaceable uncontested status existing prior to this controversy was the plaintiff manufacturing and selling its own aerial fuzes PDR 77 CB4 which was ordered stopped through the defendant's letter. With issuance of the order, the operations of the plaintiff continue. Lastly, this court believes that the defendant will not suffer irreparable injury by virtue of said order. The defendant's claim is primarily hinged on its patent (Letters Patent No. UM-6983) the validity of which is being questioned in this case.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby denied for lack of merit.

SO ORDERED."

Aggrieved, private respondent on June 27, 1994, filed a petition for *certiorari*, mandamus and prohibition^[10] before respondent Court of Appeals raising as grounds the following:

- a. Petitioner has no cause of action for infringement against private respondent, the latter not having any patent for the aerial fuze which it claims to have invented and developed and allegedly infringed by private respondent;
- b. The case being an action for cancellation or invalidation of private respondent's Letters Patent over its own aerial fuze, the proper venue is the Office of the Director of Patents;
- c. The trial court acted in grave abuse of discretion and or in excess of jurisdiction in finding that petitioner has fully established its clear title or right to preliminary injunction;
- d. The trial court acted in grave abuse of discretion and/or in excess of jurisdiction in granting the preliminary injunction, it being disruptive of the status quo; and
- e. The trial court acted in grave abuse of discretion and/or in excess of jurisdiction in granting the preliminary injunction thereby depriving private respondent of its property rights over the patented aerial fuze and cause it irreparable damages.

On November 9, 1994, the respondent court rendered the now assailed decision reversing the trial court's Order of December 29, 1993 and dismissing the complaint filed by petitioner.

The motion for reconsideration was also denied on January 17, 1995.^[11] Hence, this present petition.

It is petitioner's contention that it can file, under Section 42 of the Patent Law (R.A. 165), an action for infringement not as a patentee but as an entity in possession of a right, title or interest in and to the patented invention. It advances the theory that while the absence of a patent may prevent one from lawfully suing another for infringement of said patent, such absence does not bar the first true and actual inventor of the patented invention from suing another who was granted a patent in a suit for declaratory or injunctive relief recognized under American patent laws. This remedy, petitioner points out, may be likened to a civil action for infringement under Section 42 of the Philippine Patent Law.

We find the above arguments untenable.

Section 42 of R.A. 165, otherwise known as the Patent Law, explicitly provides:
SECTION. 42. *Civil action for infringement.* – Any patentee, or anyone possessing any right, title or interest in and to the patented invention, whose rights have been infringed, may bring a civil action before the proper Court of First Instance (now Regional Trial court), to recover from the infringer damages sustained by reason of the infringement and to secure an injunction for the protection of his right. x x x

Under the aforequoted law, only the patentee or his successors-in-interest may file an action for infringement. The phrase "*anyone possessing any right, title or interest in and to the patented invention*" upon which petitioner maintains its present suit, refers only to the patentee's successors-in-interest, assignees or grantees since actions for infringement of patent may be brought in the name of the person or persons interested, whether as patentee, assignees or grantees, of the exclusive right.^[12] Moreover, there can be no infringement of a patent until a patent has been issued, since whatever right one has to the invention covered by the patent arises alone from the grant of patent.^[13] In short, a person or entity who has not been granted letters patent over an invention and has not acquired any right or title thereto either as assignee or as licensee, has no cause of action for infringement because the right to maintain an infringement suit depends on the existence of the patent.^[14]

Petitioner admits it has no patent over its *aerial fuze*. Therefore, it has no legal basis or cause of action to institute the petition for injunction and damages arising from the alleged

infringement by private respondent. While petitioner claims to be the first inventor of the *aerial fuze*, still it has no right of property over the same upon which it can maintain a suit unless it obtains a patent therefor. Under American jurisprudence, an inventor has no common-law right to a monopoly of his invention. He has the right to make, use and vend his own invention, but if he voluntarily discloses it, such as by offering it for sale, the world is free to copy and use it with impunity. A patent, however, gives the inventor the right to exclude all others. As a patentee, he has the exclusive right of making, using or selling the invention.^[15]

Further, the remedy of declaratory judgment or injunctive suit on patent invalidity relied upon by petitioner cannot be likened to the civil action for infringement under Section 42 of the Patent Law. The reason for this is that the said remedy is available only to the patent holder or his successors-in-interest. Thus, anyone who has no patent over an invention but claims to have a right or interest thereto cannot file an action for declaratory judgment or injunctive suit which is not recognized in this jurisdiction. Said person, however, is not left without any remedy. He can, under Section 28 of the aforementioned law, file a petition for cancellation of the patent within three (3) years from the publication of said patent with the Director of Patents and raise as ground therefor that the person to whom the patent was issued is not the true and actual inventor. Hence, petitioner's remedy is not to file an action for injunction or infringement but to file a petition for cancellation of private respondent's patent. Petitioner however failed to do so. As such, it cannot now assail or impugn the validity of the private respondent's letters patent by claiming that it is the true and actual inventor of the *aerial fuze*.

Thus, as correctly ruled by the respondent Court of Appeals in its assailed decision: "*since the petitioner (private respondent herein) is the patentee of the disputed invention embraced by letters of patent UM No. 6938 issued to it on January 23, 1990 by the Bureau of Patents, it has in its favor not only the presumption of validity of its patent, but that of a legal and factual first and true inventor of the invention.*"

In the case of *Aguas vs. De Leon*,^[16] we stated that:

"The validity of the patent issued by the Philippine Patent Office in favor of the private respondent and the question over the investments, novelty and usefulness of the improved process therein specified and described are matters which are better determined by the Philippines patent Office, composed of experts in their field, have, by the issuance of the patent in question, accepted the thinness of the private respondent's new tiles as a discovery. There is a presumption that the Philippine Patent Office has correctly determined the patentability of the improvement by the private respondent of the process in question."

In fine, in the absence of error or abuse of power or lack of jurisdiction or grave abuse of discretion, we sustain the assailed decision of the respondent Court of Appeal.

WHEREFORE, the decision of the Court of Appeals is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Mendoza, JJ., concur.

^[1] *Rollo*, p. 6

^[2] *Rollo*, p. 131.

^[3] *Id.*, p. 137.

^[4] *Id.*, p. 154.

^[5] *Id.*, pp. 155-156.

^[6] *Rollo*, pp. 71-80.

^[7] Memorandum, CA Records, *Rollo*, p. 98.

^[8] *Rollo*, pp. 108-111.

^[9] *Id.*, pp. 112-113.

^[10] Petition, CA Records, *Rollo*, pp. 2-29.

^[11] *Rollo*, p. 69.

^[12] *Moore vs. Marsh*, 7 Wall 5125, 19 L.Ed.37e.

^[13] *Anchor Hocking Glass Corp. vs. White Cap., Co.*, D.C. Del., 47 F Supp. A451, 453 cited in *21 Words and Phrases*, p. 634.

^[14] *Peck vs. Collins*, 103 U.S. 660, 26 L.Ed. 512 cited in *60 Am. Jur.*, 2d, p. 687.

^[15] *Bauer and Cie vs. O'Donnel* 229, US 1, 57 L.Ed.38 Sct. 616.

^[16] 111 SCRA 238.