

RAYMUNDO P. DIMAANO,
Petitioner,

INTER PARTES CASE NO. 1950

PETITION FOR CANCELLATION

Letter Patent No. 13833
Issued : October 10, 1980
Patentee : Atanacio T. Vercide
For : HORIZONTAL FEED
MIXER

DECISION NO. 89-56 (PAT.)
August 3, 1989

ATANACIO T. VERICIDE
Respondent-Patentee.
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DECISION

On October 21, 1985, Petitioner Raymundo P. Dimaano, Filipino citizen, of legal age, residing at Barangay Marauoy, Lipa City, Batangas, filed a Petition for Cancellation of Letters Patent No. 13833 issued to Respondent-Patentee Atanacio T. Vercide, a Filipino citizen with postal address at 52 Times Street, Quezon City, on October 10, 1980 for "MACRO HORIZONTAL MIXER"

The letters patent in question relates to a horizontal feed mixer of the batch-type. It seeks to overcome the drawback of existing batch-type feed mixers which are complex in structure and entail high cost of operation and maintenance. As recited in its lone claim, what is claimed as new and patentable is:

"A horizontal feed mixer comprising an upright housing supported on a leg structure; a feed material bucket elevator positioned adjacent said housing being divided into an upper feed material chamber a middle mixing chamber and a lower discharge chamber;

"said feed material chamber consisting of laterally spaced dividers secured at the bottom thereof; a shutter assembly slidably supported underneath said dividers; means for manually sliding said shutter assembly to controllably cover or uncover the open spaces defined between said dividers;

Said mixing chamber comprising a horizontal shaft rotatable supported within said chamber; a layer of spiral beaters adjacently mounted on said shaft; an arcuate bottom wall having a lateral discharge opening pivotally supported on said bottom wall; a locking mechanism secured underneath said bottom wall to positively lock and release said cover; means for manually opening and closing while simultaneously releasing and locking said cover;

said discharge chamber being defined by converging sides and a semi-circular bottom wall provided with a discharge chute at one end thereof; a discharge screw conveyor rotatably mounted within said bottom wall; a clutch with a sprocket secured to the conveyor shaft; and a prime-mover drivingly connected to said spiral beaters and said discharge screw conveyor."

The grounds for cancellation are:

1. That the horizontal feed mixer machine covered by Letters Patent No. 13833 does not constitute new and original invention within the meaning of Section 7, 8, 9 and 55 of Republic Act No, 165, as amended;
2. That the patentee named in said Letters Patent No. 13833 is not the first, true and actual inventor of the machine describe and claimed therein, nor did he derive his rights from the first, true and actual inventor thereof.

In support if the foregoing grounds, Petitioner relied on the following facts:

“1. As early as 1984, patents on horizontal feed mixer machines substantially similar or identical as that of respondent-patentee’s alleged invention were already in existence;

2. The machine is question which is the subject of respondent’s alleged invention under Letters Patent No. 13833 has been known, used and distributed worldwide, even before the issuance of respondent’s Letters Patent; in fact, the same has been introduced in the Philippines in trade fairs and exhibits, as well as in printed publications.

3. Respondent-Patentee is not the original, first and sole inventor of the machine described and claimed ins aid Letters Patent or of any material or substantial part or parts thereof; the machine in question including all its material pieces and substantial parts thereof were known and used by other in this country and elsewhere, and were patented and described in printed publications here and abroad, and in public use and on sale long before the date of issuance of said Letters Patent.

4. Respondent-patentee got the ‘idea’ of the horizontal feed mixer machine covered by Letters Patent No. 13833 from his readings of printed publications and brochures and actual exposure in the manufacturing and/ or assembly of said machine thru seminars and exhibitions sponsored by foreign and local trade fairs.”

Pursuant to existing procedures, a notice was sent to Respondent-Patentee requiring him to file his Answer to the petition within the reglementary fifteen-day period from receipt thereof.

On March 12, 1986, instead of filing his Answer, Respondent-Patentee filed a motion to dismiss. The period to answer having lapsed, Petitioner, on March 31, 1986, filed a motion to declare Respondent in default. This was opposed by Respondent-Patentee who the filed an answer on April 4, 1986, and a motion to admit answer with counterclaim and motion to dismiss.

The foregoing motions were resolved in Resolution No, 86-11 dated May 29, 1986, the dispositive portion of which reads:

“WHEREFORE, in view of the foregoing premises, Petitioner’s Motion to declare Respondent in Default, as well as Respondent-Patentee’s Motion to Dismiss and Motion to Admit Answer are, as they are hereby DENIED. The Respondent-Patentee’s Motion to Dismiss, however, is hereby considered as an answer to the Petition for Cancellation.

Let this case be set for Pre-Trial Conference on June 16, 1986 at 9:30 A.M. Through this resolution and order, the parties and their counsels are hereby advised to comply with the requirements set forth in Rule 184-D of the Revised Rules of Practice in Patent Cases on Pre-trial Conference.”

For failure of the parties to reach an amicable settlement, the case proceeded to trial on the merits wherein both parties through their respective counsels presented testimonial as well as documentary evidences.

Challenging the validity of the subject invention patent, Petitioner Raymundo P. Dimaano presented his own testimony and that of his witness, Engr. Gregorio Mina.

Petitioner Raymundo P. Dimaano, a licensed Mechanical Engineer, testified that after his graduation, he worked with the Bureau of Public Works and Highways until 1965. He retired as a Public Superintendent in 1965 and put up a machine shop where he does his machine works. He was connected with Sun Flower Poultry and Livestock Corporation in 1976 as one of the members of the Board of Directors of said association (Exh. "C"). Being engaged in machine shop business, he usually fabricates machine equipments in accordance with the order of his clients who usually have the idea of what would be fabricated. One of the machines which he fabricated was an electrically operated grinder for coffee. He was taught about machines in college and from that teaching he was able to fabricate or improve them. Other sources of his ideas came from the various seminars he attended. From these seminars and plant visits to different companies, like the San Miguel Corporation, he was able to manufacture feed mixers of different types, such as the Horizontal Mixers, Automatic Bagging Mixtures and one Batch-Type Sowing Mixer.

His ideas were also taken from the various publications relating to the subject machines, namely:

- (1) Seedburo Equipment Company International Division Catalogue which illustrates:
 - a) bucket elevator (Exh. "D")
 - b) horizontal mixer 40 HP Motor and Drive (Exh. "E")
 - c) horizontal mixer (Exh. "E-1")
 - d) horizontal mixer (Exh. "F")
- (2) World Farming International Publishing Corporation which illustrates Hough heavy duty mixer (Exh. "G")
- (3) Hough Kennebec International Catalogue which illustrates Hough heavy duty mixer (Exh. "H")
- (4) Kent's Mechanical Engineering Handbook Design, Vol. 12th Ed. (Exh. "I") showing and describing the principle and functions of a screw conveyor which is used as guide in the manufacture and/ or fabrication of a screw conveyor feeder
- (5) Alpha Machinery and Engineering Corporation advertisements which illustrates:
 - a) Horizontal Mixer (Exh. "J")
 - b) Cyclone with filter, pre-bin for Mixers, Horizontal Mixer Unloading bin and Screw Conveyor (Exh. "J-1")

Witness Engr. Gregorio Mina, a Professional Mechanical Engineer who graduated from the Mapua Institute of Technology in 1952, testified that as a Mechanical Engineer, he was sent abroad, in Europe and the United States of America, for training and seminars of fabrication of different equipments. He is the General Manager of GM Resources Inc., with a sister company named GA Filipina, the latter a fabrication company producing Tonnel Buyers, Conveyors Bucket, Screw Belt Conveyors, Mixers, Blenders and even Broilers. They also fabricate all kinds of mixers, vertical, horizontal and U-shape. They used standard design in designing these mixers. Standard in the sense that they are no longer covered by exiting patent as they have been designed and built since agro-industrialization has started. The components of these

mixers are the cylindrical body, the main shaft, the bearings and the ribbon shaft mixer paddle. Engr. Mina also testified that he has been in business of fabricating a horizontal feed mixing machine for a long time and almost all countries that he visited have their own fabrication of this type of machine.

On cross-examination, Gregorio Mina testified that Exhibits "D", "E" and "F" were all standard designs; that from these exhibits, there is a mixer consisting of only one portion, while the others have two main portions; that Exhibit "E" is composed of three (3) main channels, namely, the bucket elevator, the hopper, and the main body; that the machine covered by Letters Patent No. 13833 is similar to the Amando-style and Coolermayer supplied to BMEC; that the feed mixer that was installed by the Coolermayer and Ed Keller (TSN, Feb. 3, 1988, pp. 2-8).

Along with and in support of the foregoing testimonies, Petitioner formally offered documentary evidences consisting of Exhibits "A" to "J", inclusive of their submarkings, which in turn were admitted by this Bureau for whatever worth they may serve, with the objections of Respondent-Patentees to their admissibility duly noted and made part of the records of the case.

On the other hand, defending the validity of his patent, Respondent-Patentee presented himself as witness. He testified that his patented horizontal feed mixer was a product of long experimentation taking into account the need to have a more efficient, fast and reliable feed mixer because at that time, feed mixers consisting only of one or two chambers were not efficient. His patented machine, consisting of three (3) chambers, has a very short mixing time, the mixing process being horizontally done by spiral ribbons.

According to him, his design, which is a continuous batch system, was not yet available at that time. It is an improvement of other mixers which cost several thousand pesos. His design costs only a few thousand of pesos yet it produces the same capacity and quality of the mixed feeds.

In support of his defenses, Respondent-Patentee formally offered his documentary evidences consisting of Exhibits "1" to "7", all of which were admitted with the objections thereto by Petitioner duly noted and made part of the records of the case.

To buttress their positions, the parties filed their respective memoranda, after which this case was submitted for decision.

The issues to be resolved in this proceeding are:

- (1) Whether or not the horizontal feed mixer embodied in Letters Patent No. 13833 meets the statutory requirements of novelty;
- (2) Whether or not the horizontal feed mixes embodied in Letters Patent No. 13833 is an invention within the meaning of the law.

A major guidepost in the resolution of these issues is the general rule that the issuance of a patent for an invention regular on its face carries with it a prima facie presumption of validity of the patent and that the party challenging the validity of the patent has the burden of proving his contention. Thus, the issuance of a patent gives rise to a prima facie presumption of the existence of the requisite elements of patentability that the patentee was the original and first inventor, and of due compliance with all the requirements of the law (40 Am. Jur., Sec. 174, p. 656).

Tackling the first issue as to whether or not the horizontal feed mixer embodied in Letters Patent No. 13833 meets the statutory requirements of novelty, reference is made to Section 9 of the Patent Law:

“SEC. 9. Invention not considered new or patentable. – An invention shall not be considered new or capable of being patented if it was known or used by others in the Philippines before the invention thereof by the inventor named in an application for patent for the invention, or if it was patented or described in any printed publication in the Philippines or any foreign country more than one year before the application for a patent therefor; or if it had been in public use or on sale in the Philippines for more than one year before the application for a patent therefor; or if it is the subject matter of a validity issued patent in the Philippines granted on an application filed before the filing of the application for patent therefor.”

Hence, to negate novelty, one has to establish any of the following conditions:

- (1) That the invention was already known or used by others in the Philippines before it was invented by the inventor applying for patent;
- (2) That the invention was already patented or described in any printed publication in the Philippines or any foreign country more than one year before the filing date of the application;
- (3) That the invention had been in public use or on sale in the Philippines for more than one year before the filing date of the application.
- (4) That the invention is a subject matter of a validly issued patent in the Philippines granted on an application that was filed before the filing of the application for patent therefor.

Petitioner aimed to establish that the subject horizontal feed mixer was already known or used by others in the Philippines before it was invented by Respondent-Patentee; that it was already described in printed publications in the Philippines or any foreign country more than one year before it was filed; and that it has been in public use or on sale in the Philippines for more than one year prior to its filing in this Bureau.

“The burden of providing anticipation or lack of novelty of a method or device for which a patent has been granted must be sustained by clear and convincing proof, proof frequently characterized as so sufficiently clear certain and precise as to satisfy beyond reasonable doubt.” (Sec. 42-C, CJS, Vol. 69; underscoring supplied)

“Prior public use must be proved beyond reasonable doubt.” (Chicopee Mfg. Corp. vs. Columbus Fiber Mills Co., Inc., DC MG, 118 USPQ 53). And. “proof” of public use or sale must be clear and satisfactory (Southern Implements Mfg. Co., Inc., vs. McLemore /CA 57. 146 USPQ 680).

After a careful assessment and evaluation of the testimonial and documentary evidences, this Bureau finds that the subject invention, entitled “MACRO HORIZONTAL FEED MIXER”, is not anticipated by the prior art. Not one of the various pictorial representations of the prior mixers (Exhs. “E”, “E-1”, “F”, “G”, “H” and “J”) contains all the elements of the subject invention or their equivalents. Hence, the machines disclosed therein cannot be considered similar or substantially similar in construction with the subject invention.

In order to negate novelty, or to anticipate an invention, it is necessary that all the elements of the invention or their equivalents be found in one single description or structure where they do substantially same way (Stauffer vs. Slenderella Systems of California, Inc., 115 USPQ 347, CA 9 /1957/; Allied 'Wheel Products, et al. vs. Rude, 206 F2d, 752 CA 6 /1953/; underscoring supplied).

As to testimonies of the two witnesses they too failed to negate the novelty of the subject invention. Except for the identification of the documentary evidences, nowhere in the testimony of

witness Raymundo P. Dimaano could be found an assertion that he was already making or manufacturing a machine substantially similar to the subject invention prior to February 15, 1980, the filing date of the application for patent. It was only in 1985 that he started manufacturing a machine which was not an exact copy of the machine covered by Letters Patent No. 13833 (TSN, Sept. 23, 1987, pp. 21-23).

The testimony of Petitioner's witness, Engr. Gregorio Mina, that the machine covered by Letters Patent No. 13833 is similar to the Amando-style and Coolermayer supplied to BMEC that was installed in late 1980 was not given weight because it was not corroborated by documentary evidence which could be verified and analyzed by this Bureau.

In fine all evidences of Petitioner were not able to convincingly establish that the patented invention of Respondent-Patentee was not new or novel. Hence, there are no compelling reasons for this Bureau to cancel Letters Patent No. 13833 on the basis of lack of novelty.

With respect to the second issue as to whether or not the horizontal feed mixer embodied in Letters Patent No. 13833 is an invention within the meaning of the law, this Bureau refers to Rule 34 of the Rules of Practice in Patent Cases:

“34. - Inventiveness essential. - In order to be patentable, an alleged and invention must not only be near and useful, but it must also actually be an invention, as the word ‘invention’ has been interpreted by the courts. If the conceit involved in an alleged invention is within the reach of those skilled in the art, there is no invention in the legal sense.”

On this issue, the main argument of the Petitioner is that any person who has access to the publications shown in Exhibits “E” to “J” could readily reproduce a horizontal feed mixer machine.

In other words, Petitioner is saying that the disclosures contained in Exhibits “D” to “J” will enable any person skilled in the art to make and construct a horizontal feed mixer machine that is similar to the patented invention.

To support this argument, Petitioner enumerated and defined the major components of a horizontal feed mixer as follows:

- (1) Feed Material Bucket Elevator. – This is one spare part of the machine which carries a measured amount of various feeds to the feed material chambers through the discharge chute of the material bucket elevator. This is not actually a new invention but an imitation of an already existing bucket elevator as shown in Exhibits “D”, “E”, “E-1”, “E-2”, “F”, “F-1”, “G” and “G-1”.
- (2) Feed Material Chamber. - This is one part of the machine (which is the upper part of the machine) which holds the feeds being discharged by the bucket elevator. The lower portion of the feed material chamber has a shutter assembly, the function of which is to control distribution of the feeds down to the mixing chamber. This is also not new invention but an imitation of an already existing spare part. (See Exhs. “E”, “E-1”, “E-2”, “F”, “F-1”, “G” and “G-1”.)
- (3) Mixing Chamber. – This is the middle part of the machine, the function of which is to mix the feeds discharged by the Feed Material Chamber through its shutter assembly. The mixer has a layer of spiral beaters that mix the feeds when on motion. At the bottom of the mixing chamber is lateral discharge down to the discharge chamber. This is not also a new invention but an imitation of an already existing spare part. (See Exhs. “H”, “H-1” and “H-2”.)

- (4) Discharge Chamber. - This is the lower portion of the machine which discharges the feeds through a discharge screw conveyor. This is not also a new invention but also an imitation of an already existing spare part as shown in Exhs. "I", "I-1" and "J-1".

Analysis and evaluation of Exhibits "D" to "J" reveal that if a person skilled in the art would combine and assemble the components disclosed therein, the resulting feed mixer would be entirely different from the subject "MACRO HORIZONTAL FEED MIXER".

This is so because nowhere is Exhibits "D" to "J" could be found the illustration, description and manner of assemblage of the following elements of the subject "MACRO HORIZONTAL FEED MIXER".

- (1) Upright housing divided into three (3) upper feed material chamber, a middle mixing chamber and a lower discharge chamber;
- (2) Laterally spaced dividers secured at the bottom of the feed material chamber;
- (3) A shutter assembly slidably supported underneath said dividers, including the means for manually sliding said shutter assembly;
- (4) An arcuate bottom wall with lateral discharge opening;
- (5) A locking mechanism secured underneath the arcuate wall to positively lock and release the cover for discharge opening;
- (6) Converging sides and semi-circular bottom wall of the discharge chamber; and
- (7) A clutch with a sprocket secured to the conveyor shaft.

The most that a person skilled in the art could make by following the teaching of the evidences of the Petitioner would be a horizontal mixer appearing on Exhibits "F" and "F-1", and not the subject patent.

Even assuming, arguendo, that the foregoing elements were contained in the exhibits presented by the Petitioner, the presumption that the subject horizontal feed mixer is an invention within the meaning of the law will still hold.

Invention cannot be defeated merely by showing that in one form or another, each element was known or used before (*Pointer vs. Six Wheel Corp.*, 177 F 2d, 153 CA 9 /19497/).

WHEREFORE, in view of all the foregoing, the Petition for Cancellation is hereby DENIED. Accordingly, Letters Patent No. 13833 issued to Atanacio T. Vercide for "MACRO HORIZONTAL FEED MIXER" remains valid and subsisting for the duration of its term, unless sooner terminated in accordance with law.

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

SO ORDERED.

IGNACIO S. SAPALO
Director