

SECOND DIVISION

[G.R. No. 174379, August 31, 2016]

E.I. DUPONT DE NEMOURS AND CO. (ASSIGNEE OF INVENTORS CARINI, DUNCIA AND WONG), PETITIONER, VS. DIRECTOR EMMA C. FRANCISCO (IN HER CAPACITY AS DIRECTOR GENERAL OF THE INTELLECTUAL PROPERTY OFFICE), DIRECTOR EPIFANIO M. EVASCO (IN HIS CAPACITY AS THE DIRECTOR OF THE BUREAU OF PATENTS), AND THERAPHARMA, INC., RESPONDENTS.

DECISION

LEONEN, J.:

A patent is granted to provide rights and protection to the inventor after an invention is disclosed to the public. It also seeks to restrain and prevent unauthorized persons from unjustly profiting from a protected invention. However, ideas not covered by a patent are free for the public to use and exploit. Thus, there are procedural rules on the application and grant of patents established to protect against any infringement. To balance the public interests involved, failure to comply with strict procedural rules will result in the failure to obtain a patent.

This resolves a Petition for Review on Certiorari^[1] assailing the Court of Appeals Amended Decision^[2] dated August 30, 2006, which denied the revival of Philippine Patent Application No. 35526, and the Court of Appeals Resolution^[3] dated January 31, 2006, which granted the intervention of Therapharma, Inc. in the revival proceedings.

E.I. Dupont Nemours and Company (E.I. Dupont Nemours) is an American corporation organized under the laws of the State of Delaware.^[4] It is the assignee of inventors David John Carini, John Jonas Vytutas Duncia, and Pancras Chor Bun Wong, all citizens of the United States of America.^[5]

On July 10, 1987, E.I. Dupont Nemours filed Philippine Patent Application No. 35526 before the Bureau of Patents, Trademarks, and Technology Transfer.^[6] The application was for Angiotensin II Receptor Blocking Imidazole (losartan), an invention related to the treatment of hypertension and congestive heart failure.^[7] The product was produced and marketed by Merck, Sharpe, and Dohme Corporation (Merck), E.I. Dupont Nemours' licensee, under the brand names Cozaar and Hyzaar.^[8]

The patent application was handled by Atty. Nicanor D. Mapili (Atty. Mapili), a local resident agent who handled a majority of E.I. Dupont Nemours' patent applications in the Philippines from 1972 to 1996.^[9]

On December 19, 2000, E.I. Dupont Nemours' new counsel, Ortega, Del Castillo, Bacorro, Odulio, Calma, and Carbonell,^[10] sent the Intellectual Property Office^[11] a letter requesting that an office action be issued on Philippine Patent Application No. 35526.^[12]

In response, Patent Examiner Precila O. Bulihan of the Intellectual Property Office sent an office action marked Paper No. 2 on January 30, 2002,^[13] which stated:

The appointed attorney on record was the late Atty. Nicanor D. Mapili. The reconstituted documents provided no documents that will show that the authority to prosecute the instant application is now transferred to the present counsel. No official revocation on record is available.

Therefore, an official revocation of the Power of Attorney of the former counsel and the appointment of the present by the applicant is therefore required before further action can be undertaken.

. . . .

1. Contrary to what was alleged, the Chemical Examining Division's (CED) record will show that as far as the said division is concerned, it did not fail to issue the proper and timely action on the instant application. CED record shows that the subject application was assigned to the examiner on June 7, 1988. A month after that was July 19, 1988, the first Office Action was mailed but was declared abandoned as of September 20, 1988 for applicant's failure to respond within the period as prescribed under Rule 112. Since then, no other official transactions were recorded. This record is complemented by the Examiner-in-charge's own record

. . . .

2. It was noted that it took thirteen (13) long years for the applicant to request for such Office Action. This is not expected of the applicant since it is an acceptable fact that almost all inventors/applicants wish for the early disposition for their applications.^[14]

On May 29, 2002, E.I. Dupont Nemours replied to the office action by submitting a Power of Attorney executed by Miriam Meconnahey, authorizing Ortega, Castillo, Del Castillo, Bacorro, Odulio, Calma, and Carbonell to prosecute and handle its patent applications.^[15] On the same day, it also filed a Petition for Revival with Cost of Philippine Patent Application No. 35526.^[16]

In its Petition for Revival, E.I. Dupont Nemours argued that its former counsel, Atty. Mapili, did not inform it about the abandonment of the application, and it was not aware that Atty. Mapili had already died.^[17] It argued that it discovered Atty. Mapili's death when its senior-level patent attorney visited the Philippines in 1996.^[18] It argued that it only had actual notice of the abandonment on January 30, 2002, the date of Paper No. 2.^[19] Thus, it argued that its Petition for Revival was properly filed under Section 113 of the 1962 Revised Rules of Practice before the

Philippines Patent Office in Patent Cases (1962 Revised Rules of Practice).^[20]

On April 18, 2002, the Director of Patents denied the Petition for Revival for having been filed out of time.^[21] The Resolution^[22] stated:

Propriety dictates that the well-settled rule on agency should be applied to this case to maintain the objectivity and discipline of the Office. Therefore, for cases such as the instant case, let the Office maintain its position that mistakes of the counsel bind the client,' regardless of the degree of negligence committed by the former counsel. Although it appears that the former counsel, Arty. Nicanor Mapili was remiss in his obligations as counsel for the applicants, the Office cannot revive the abandoned application because of the limitations provided in Rule 115. Clearly, the Petition for Revival was filed beyond the reglementary period. Since the law and rules do not give the Director of Patents the discretion to stretch the period for revival, the Office is constrained to apply Rule 115 to the instant case.

In view of the foregoing considerations, applicants' petition to revive the subject application is hereby denied.

SO ORDERED.^[23]

E.I. Dupont Nemours appealed the denial to the Director-General of the Intellectual Property Office on August 26, 2002.^[24] In the Decision^[25] dated October 22, 2003, Director-General Emma C. Francisco denied the appeal and affirmed the Resolution of the Director of Patents.

On November 21, 2003, petitioner filed before the Court of Appeals a Petition for Review seeking to set aside the Intellectual Property Office's Decision dated October 22, 2003.^[26]

On August 31, 2004, the Court of Appeals granted the Petition for Review.^[27] In allowing the Petition for Revival, the Court of Appeals stated:

After an exhaustive examination of the records of this case, this Court believes that there is sufficient justification to relax the application of the above-cited doctrine in this case, and to afford petitioner some relief from the gross negligence committed by its former lawyer, Atty. Nicanor D. Mapili[.]^[28]

The Office of the Solicitor General, on behalf of the Intellectual Property Office, moved for reconsideration of this Decision on September 22, 2004.^[29]

In the interim, Therapharma, Inc. moved for leave to intervene and admit the Attached Motion for Reconsideration dated October 11, 2004^[30] and argued that the Court of Appeals' August 31, 2004 Decision directly affects its "vested" rights to sell its own product.^[31]

Therapharma, Inc. alleged that on January 4, 2003, it filed before the Bureau of Food and Drugs its own application for a losartan product "Lifezar," a medication for

hypertension, which the Bureau granted.^[32] It argued that it made a search of existing patent applications for similar products before its application, and that no existing patent registration was found since E.I. Dupont Nemours' application for its losartan product was considered abandoned by the Bureau of Patents, Trademarks, and Technology Transfer.^[33] It alleged that sometime in 2003 to 2004, there was an exchange of correspondence between Therapharma, Inc. and Merck. In this exchange, Merck informed Therapharma, Inc. that it was pursuing a patent on the losartan products in the Philippines and that it would pursue any legal action necessary to protect its product.^[34]

On January 31, 2006, the Court of Appeals issued the Resolution^[35] granting the Motion for Leave to Intervene. According to the Court of Appeals, Therapharma, Inc. had an interest in the revival of E.I. Dupont Nemours' patent application since it was the local competitor for the losartan product.^[36] It stated that even if the Petition for Review was premised on the revival of the patent application, Therapharma, Inc.'s intervention was not premature since E.I. Dupont Nemours, through Merck, already threatened Therapharma, Inc. with legal action if it continued to market its losartan product.^[37]

E.I. Dupont Nemours moved for reconsideration on February 22, 2006, assailing the Court of Appeals' January 31, 2006 Resolution.^[38]

On August 30, 2006, the Court of Appeals resolved both Motions for Reconsideration and rendered the Amended Decision^[39] reversing its August 31, 2004 Decision.

The Court of Appeals ruled that the public interest would be prejudiced by the revival of E.I. Dupont Nemours' application.^[40] It found that losartan was used to treat hypertension, "a chronic ailment afflicting an estimated 12.6 million Filipinos,"^[41] and noted that the presence of competition lowered the price for losartan products.^[42] It also found that the revival of the application prejudiced Therapharma, Inc.'s interest, in that it had already invested more than P20,000,000.00 to develop its own losartan product and that it acted in good faith when it marketed its product.^[43]

The Court of Appeals likewise found that it erroneously based its August 31, 2004 Decision on E.I. Dupont Nemours' allegation that it took seven (7) to 13 years for the Intellectual Property Office to act on a patent application.^[44] It stated that while it might have taken that long to issue the patent, it did not take that long for the Intellectual Property Office to act on application.^[45] Citing *Schuartz v. Court of Appeals*,^[46] it found that both E.I. Dupont Nemours and Arty. Mapili were inexcusably negligent in prosecuting the patent application.^[47]

On October 19, 2006, petitioner E.I. Dupont Nemours filed before this Court this Petition for Review on Certiorari.^[48] Both respondents Intellectual Property Office and Therapharma, Inc. were directed to comment on the comment on the Petition.^[49] Upon submission of their respective Comments,^[50] petitioner was directed to file its Consolidated Reply.^[51] Thereafter, the parties were directed to file their respective memoranda.^[52]

The arguments of the parties present several issues for this Court's resolution, as follows:

First, whether the Petition for Review on Certiorari complied with Rule 45, Section 4 of the Rules of Court when petitioner failed to attach certain documents to support the allegations in the complaint;

Second, whether petitioner should have filed a petition for certiorari under Rule 65 of the Rules of Court;

Third, whether the Petition for Review on Certiorari raises questions of fact;

Fourth, whether the Court of Appeals erred in allowing the intervention of respondent Therapharma, Inc. in petitioner's appeal;

Fifth, whether the Court of Appeals erred in denying petitioner's appeal for the revival of its patent application on the grounds that (a) petitioner committed inexcusable negligence in the prosecution of its patent application; and (b) third-party rights and the public interest would be prejudiced by the appeal;

Sixth, whether *Schultz* applies to this case in that the negligence of a patent applicant's counsel binds the applicant; and

Lastly, whether the invention has already become part of public domain.

I

The question of whether the Court of Appeals may resolve a motion for intervention is a question that assails an interlocutory order and requests a review of a lower court's exercise of discretion. Generally, a petition for certiorari under Rule 65 of the Rules of Court will lie to raise this issue in a limited manner. There must be a clear showing of grave abuse of discretion for the writ of certiorari to be issued.

However, when the Court of Appeals has already resolved the question of intervention and the merits of the case, an appeal through a petition for review on certiorari under Rule 45 of the Rules of Court is the proper remedy.

Respondent Therapharma, Inc. argues that the Petition should be dismissed outright for being the wrong mode of appeal.^[53] It argues that petitioner should have filed a petition for certiorari under Rule 65 since petitioner was assailing an act done by the Court of Appeals in the exercise of its discretion.^[54] It argues that petitions under Rule 45 are limited to questions of law, and petitioner raised findings of fact that have already been affirmed by the Court of Appeals.^[55]

Petitioner, on the other hand, argues that Rule 65 is only available when there is no appeal or any plain, speedy remedy in the ordinary course of law. Since a petition for review under Rule 45 was still available to it, it argues that it correctly availed itself of this remedy.^[56] Petitioner also argues that there are exceptions to the general rule on the conclusiveness of the Court of Appeals' findings of fact.^[57] It argues that it was necessary for it to discuss relevant facts in order for it to show