

G.R. No. 167715, November 17, 2010.

PHIL PHARMAWEALTH, INC., *Petitioner*, **vs. PFIZER, INC. AND PFIZER (PHIL.) INC.,**
Respondents.

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Resolutions dated January 18, 2005^[1] and April 11, 2005^[2] by the Court of Appeals (CA) in CA-G.R. SP No. 82734.

The instant case arose from a Complaint^[3] for patent infringement filed against petitioner Phil Pharmawealth, Inc. by respondent companies, Pfizer, Inc. and Pfizer (Phil.), Inc., with the Bureau of Legal Affairs of the Intellectual Property Office (BLA-IPO). The Complaint alleged as follows:

x x x x

6. Pfizer is the registered owner of Philippine Letters Patent No. 21116 (the "Patent") which was issued by this Honorable Office on July 16, 1987. The patent is valid until July 16, 2004. The claims of this Patent are directed to "a method of increasing the effectiveness of a beta-lactam antibiotic in a mammalian subject, which comprises co-administering to said subject a beta-lactam antibiotic effectiveness increasing amount of a compound of the formula IA." The scope of the claims of the Patent extends to a combination of penicillin such as ampicillin sodium and beta-lactam antibiotic like sulbactam sodium.

7. Patent No. 21116 thus covers ampicillin sodium/sulbactam sodium (hereafter "Sulbactam Ampicillin"). Ampicillin sodium is a specific example of the broad beta-lactam antibiotic disclosed and claimed in the Patent. It is the compound which efficacy is being enhanced by co-administering the same with sulbactam sodium. Sulbactam sodium, on the other hand, is a specific compound of the formula IA disclosed and claimed in the Patent.

8. Pfizer is marketing Sulbactam Ampicillin under the brand name "Unasyn." Pfizer's "Unasyn" products, which come in oral and IV formulas, are covered by Certificates of Product Registration ("CPR") issued by the Bureau of Food and Drugs ("BFAD") under the name of complainants. The sole and exclusive distributor of "Unasyn" products in the Philippines is Zuellig Pharma Corporation, pursuant to a Distribution Services Agreement it executed with Pfizer Phils. on January 23, 2001.

9. Sometime in January and February 2003, complainants came to know that respondent [herein petitioner] submitted bids for the supply of Sulbactam Ampicillin to several hospitals without the consent of complainants and in violation of the complainants' intellectual property rights. x x x

x x x x

10. Complainants thus wrote the above hospitals and demanded that the latter immediately cease and desist from accepting bids for the supply [of] Sulbactam Ampicillin or awarding the same to entities other than complainants. Complainants, in the same letters sent through undersigned counsel, also demanded that respondent immediately withdraw its bids to supply Sulbactam Ampicillin.

11. In gross and evident bad faith, respondent and the hospitals named in paragraph 9

hereof, willfully ignored complainants' just, plain and valid demands, refused to comply therewith and continued to infringe the Patent, all to the damage and prejudice of complainants. As registered owner of the Patent, Pfizer is entitled to protection under Section 76 of the IP Code.

x x x x^[4]

Respondents prayed for permanent injunction, damages and the forfeiture and impounding of the alleged infringing products. They also asked for the issuance of a temporary restraining order and a preliminary injunction that would prevent herein petitioner, its agents, representatives and assigns, from importing, distributing, selling or offering the subject product for sale to any entity in the Philippines.

In an Order^[5] dated July 15, 2003 the BLA-IPO issued a preliminary injunction which was effective for ninety days from petitioner's receipt of the said Order.

Prior to the expiration of the ninety-day period, respondents filed a Motion for Extension of Writ of Preliminary Injunction^[6] which, however, was denied by the BLA-IPO in an Order^[7] dated October 15, 2003.

Respondents filed a Motion for Reconsideration but the same was also denied by the BLA-IPO in a Resolution^[8] dated January 23, 2004.

Respondents then filed a special civil action for *certiorari* with the CA assailing the October 15, 2003 and January 23, 2004 Resolutions of the BLA-IPO. Respondents also prayed for the issuance of a preliminary mandatory injunction for the reinstatement and extension of the writ of preliminary injunction issued by the BLA-IPO.

While the case was pending before the CA, respondents filed a Complaint^[9] with the Regional Trial Court (RTC) of Makati City for infringement and unfair competition with damages against herein petitioner. In said case, respondents prayed for the issuance of a temporary restraining order and preliminary injunction to prevent herein petitioner from importing, distributing, selling or offering for sale sulbactam ampicillin products to any entity in the Philippines. Respondents asked the trial court that, after trial, judgment be rendered awarding damages in their favor and making the injunction permanent.

On August 24, 2004, the RTC of Makati City issued an Order^[10] directing the issuance of a temporary restraining order conditioned upon respondents' filing of a bond.

In a subsequent Order^[11] dated April 6, 2005, the same RTC directed the issuance of a writ of preliminary injunction "prohibiting and restraining [petitioner], its agents, representatives and assigns from importing, distributing or selling Sulbactam Ampicillin products to any entity in the Philippines."

Meanwhile, on November 16, 2004, petitioner filed a Motion to Dismiss^[12] the petition filed with the CA on the ground of forum shopping, contending that the case filed with the RTC has the same objective as the petition filed with the CA, which is to obtain an injunction prohibiting petitioner from importing, distributing and selling Sulbactam Ampicillin products.

On January 18, 2005, the CA issued its questioned Resolution^[13] approving the bond posted by respondents pursuant to the Resolution issued by the appellate court on March 23, 2004 which directed the issuance of a temporary restraining order conditioned upon the filing of a bond. On even date, the CA issued a temporary restraining order^[14] which prohibited petitioner "from importing, distributing, selling or offering for sale Sulbactam Ampicillin products to any hospital or to any other entity in the Philippines, or from infringing Pfizer

Inc.'s Philippine Patent No. 21116 and impounding all the sales invoices and other documents evidencing sales by [petitioner] of Sulbactam Ampicillin products."

On February 7, 2005, petitioner again filed a Motion to Dismiss^[15] the case for being moot and academic, contending that respondents' patent had already lapsed. In the same manner, petitioner also moved for the reconsideration of the temporary restraining order issued by the CA on the same basis that the patent right sought to be protected has been extinguished due to the lapse of the patent license and on the ground that the CA has no jurisdiction to review the order of the BLA-IPO as said jurisdiction is vested by law in the Office of the Director General of the IPO.

On April 11, 2005, the CA rendered its presently assailed Resolution denying the Motion to Dismiss, dated November 16, 2004, and the motion for reconsideration, as well as Motion to Dismiss, both dated February 7, 2005.

Hence, the present petition raising the following issues:

- a) Can an injunctive relief be issued based on an action of patent infringement when the patent allegedly infringed has already lapsed?
- b) What tribunal has jurisdiction to review the decisions of the Director of Legal Affairs of the Intellectual Property Office?
- c) Is there forum shopping when a party files two actions with two seemingly different causes of action and yet pray for the same relief?^[16]

In the first issue raised, petitioner argues that respondents' exclusive right to monopolize the subject matter of the patent exists only within the term of the patent. Petitioner claims that since respondents' patent expired on July 16, 2004, the latter no longer possess any right of monopoly and, as such, there is no more basis for the issuance of a restraining order or injunction against petitioner insofar as the disputed patent is concerned.

The Court agrees.

Section 37 of Republic Act No. (RA) 165,^[17] which was the governing law at the time of the issuance of respondents' patent, provides:

Section 37. Rights of patentees. ¹ A patentee shall have the exclusive right to make, use and sell the patented machine, article or product, and to use the patented process for the purpose of industry or commerce, throughout the territory of the Philippines **for the term of the patent**; and such making, using, or selling by any person without the authorization of the patentee constitutes infringement of the patent.^[18]

It is clear from the above-quoted provision of law that the exclusive right of a patentee to make, use and sell a patented product, article or process exists only during the term of the patent. In the instant case, Philippine Letters Patent No. 21116, which was the basis of respondents in filing their complaint with the BLA-IPO, was issued on July 16, 1987. This fact was admitted by respondents themselves in their complaint. They also admitted that the validity of the said patent is until July 16, 2004, which is in conformity with Section 21 of RA 165, providing that the term of a patent shall be seventeen (17) years from the date of issuance thereof. Section 4, Rule 129 of the Rules of Court provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof and that the admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. In the present case, there is no dispute as to respondents' admission that the term of their patent expired on July

16, 2004. Neither is there evidence to show that their admission was made through palpable mistake. Hence, contrary to the pronouncement of the CA, there is no longer any need to present evidence on the issue of expiration of respondents' patent.

On the basis of the foregoing, the Court agrees with petitioner that after July 16, 2004, respondents no longer possess the exclusive right to make, use and sell the articles or products covered by Philippine Letters Patent No. 21116.

Section 3, Rule 58, of the Rules of Court lays down the requirements for the issuance of a writ of preliminary injunction, *viz*:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In this connection, pertinent portions of Section 5, Rule 58 of the same Rules provide that if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, a temporary restraining order may be issued *ex parte*.

From the foregoing, it can be inferred that two requisites must exist to warrant the issuance of an injunctive relief, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.^[19]

In the instant case, it is clear that when the CA issued its January 18, 2005 Resolution approving the bond filed by respondents, the latter no longer had a right that must be protected, considering that Philippine Letters Patent No. 21116 which was issued to them already expired on July 16, 2004. Hence, the issuance by the CA of a temporary restraining order in favor of the respondents is not proper.

In fact, the CA should have granted petitioner's motion to dismiss the petition for *certiorari* filed before it as the only issue raised therein is the propriety of extending the writ of preliminary injunction issued by the BLA-IPO. Since the patent which was the basis for issuing the injunction, was no longer valid, any issue as to the propriety of extending the life of the injunction was already rendered moot and academic.

As to the second issue raised, the Court, is not persuaded by petitioner's argument that, pursuant to the doctrine of primary jurisdiction, the Director General of the IPO and not the CA has jurisdiction to review the questioned Orders of the Director of the BLA-IPO.

It is true that under Section 7(b) of RA 8293, otherwise known as the *Intellectual Property Code of the Philippines*, which is the presently prevailing law, the Director General of the IPO exercises exclusive appellate jurisdiction over all decisions rendered by the Director of the BLA-IPO. However, what is being questioned before the CA is not a decision, but an interlocutory order of the BLA-IPO denying respondents' motion to extend the life of the preliminary injunction issued in their favor.

RA 8293 is silent with respect to any remedy available to litigants who intend to question an interlocutory order issued by the BLA-IPO. Moreover, Section 1(c), Rule 14 of the Rules and Regulations on Administrative Complaints for Violation of Laws Involving Intellectual Property Rights simply provides that interlocutory orders shall not be appealable. The said Rules and Regulations do not prescribe a procedure within the administrative machinery to be followed in assailing orders issued by the BLA-IPO pending final resolution of a case filed with them. Hence, in the absence of such a remedy, the provisions of the Rules of Court shall apply in a suppletory manner, as provided under Section 3, Rule 1 of the same Rules and Regulations. Hence, in the present case, respondents correctly resorted to the filing of a special civil action for *certiorari* with the CA to question the assailed Orders of the BLA-IPO, as they cannot appeal therefrom and they have no other plain, speedy and adequate remedy in the ordinary course of law. This is consistent with Sections 1^[20] and 4,^[21] Rule 65 of the Rules of Court, as amended.

In the first place, respondents' act of filing their complaint originally with the BLA-IPO is already in consonance with the doctrine of primary jurisdiction.

This Court has held that:

[i]n cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence in observance of the doctrine of primary jurisdiction. The Court has ratiocinated that it cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered. The objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. It applies where the claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.^[22]

Based on the foregoing, the Court finds that respondents' initial filing of their complaint with the BLA-IPO, instead of the regular courts, is in keeping with the doctrine of primary jurisdiction owing to the fact that the determination of the basic issue of whether petitioner violated respondents' patent rights requires the exercise by the IPO of sound administrative discretion which is based on the agency's special competence, knowledge and experience.

However, the propriety of extending the life of the writ of preliminary injunction issued by the BLA-IPO in the exercise of its quasi-judicial power is no longer a matter that falls within the jurisdiction of the said administrative agency, particularly that of its Director General. The resolution of this issue which was raised before the CA does not demand the exercise by the IPO of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact. It is settled that one of the exceptions to the doctrine of primary jurisdiction is where the question involved is purely legal and will ultimately have to be decided by the courts of justice.^[23] This is the case with respect to the issue raised in the petition filed with the CA.

Moreover, as discussed earlier, RA 8293 and its implementing rules and regulations do not provide for a procedural remedy to question interlocutory orders issued by the BLA-IPO. In this regard, it bears to reiterate that the judicial power of the courts, as provided for under the

Constitution, includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments.^[24] Judicial power also includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.^[25] Hence, the CA, and not the IPO Director General, has jurisdiction to determine whether the BLA-IPO committed grave abuse of discretion in denying respondents' motion to extend the effectivity of the writ of preliminary injunction which the said office earlier issued.

Lastly, petitioner avers that respondents are guilty of forum shopping for having filed separate actions before the IPO and the RTC praying for the same relief.

The Court agrees.

Forum shopping is defined as the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of *certiorari*), or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.^[26]

The elements of forum shopping are: (a) identity of parties, or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.^[27]

There is no question as to the identity of parties in the complaints filed with the IPO and the RTC.

Respondents argue that they cannot be held guilty of forum shopping because their complaints are based on different causes of action as shown by the fact that the said complaints are founded on violations of different patents.

The Court is not persuaded.

Section 2, Rule 2 of the Rules of Court defines a cause of action as the act or omission by which a party violates a right of another. In the instant case, respondents' cause of action in their complaint filed with the IPO is the alleged act of petitioner in importing, distributing, selling or offering for sale Sulbactam Ampicillin products, acts that are supposedly violative of respondents' right to the exclusive sale of the said products which are covered by the latter's patent. However, a careful reading of the complaint filed with the RTC of Makati City would show that respondents have the same cause of action as in their complaint filed with the IPO. They claim that they have the exclusive right to make, use and sell Sulbactam Ampicillin products and that petitioner violated this right. Thus, it does not matter that the patents upon which the complaints were based are different. The fact remains that in both complaints the rights violated and the acts violative of such rights are identical.

In fact, respondents seek substantially the same reliefs in their separate complaints with the IPO and the RTC for the purpose of accomplishing the same objective.

It is settled by this Court in several cases that the filing by a party of two apparently different actions but with the same objective constitutes forum shopping.^[28] The Court discussed this species of forum shopping as follows:

Very simply stated, the original complaint in the court *a quo* which gave rise to the instant petition was filed by the buyer (herein private respondent and his predecessors-in-interest) against the seller (herein petitioners) to enforce the alleged perfected sale of real estate. On the other hand, the complaint in the Second Case seeks to declare such purported sale involving the same real property "as unenforceable as against the Bank," which is the petitioner herein. In other words, in the Second Case, the majority stockholders, in representation of the Bank, are seeking to accomplish what the Bank itself failed to do in the original case in the trial court. **In brief, the objective or the relief being sought, though worded differently, is the same, namely, to enable the petitioner Bank to escape from the obligation to sell the property to respondent.**^[29]

In *Danville Maritime, Inc. v. Commission on Audit*,^[30] the Court ruled as follows:

In the attempt to make the two actions appear to be different, petitioner impleaded different respondents therein - PNOG in the case before the lower court and the COA in the case before this Court and sought what seems to be different reliefs. Petitioner asks this Court to set aside the questioned letter-directive of the COA dated October 10, 1988 and to direct said body to approve the Memorandum of Agreement entered into by and between the PNOG and petitioner, while in the complaint before the lower court petitioner seeks to enjoin the PNOG from conducting a rebidding and from selling to other parties the vessel "T/T Andres Bonifacio," and for an extension of time for it to comply with the paragraph 1 of the memorandum of agreement and damages. **One can see that although the relief prayed for in the two (2) actions are ostensibly different, the ultimate objective in both actions is the same, that is, the approval of the sale of vessel in favor of petitioner, and to overturn the letter directive of the COA of October 10, 1988 disapproving the sale.**^[31]

In the instant case, the prayer of respondents in their complaint filed with the IPO is as follows:

A. Immediately upon the filing of this action, issue an *ex parte* order (a) temporarily restraining respondent, its agents, representatives and assigns from importing, distributing, selling or offering for sale Sulbactam Ampicillin products to the hospitals named in paragraph 9 of this Complaint or to any other entity in the Philippines, or from otherwise infringing Pfizer Inc.'s Philippine Patent No. 21116; and (b) impounding all the sales invoices and other documents evidencing sales by respondent of Sulbactam Ampicillin products.

B. After hearing, issue a writ of preliminary injunction enjoining respondent, its agents, representatives and assigns from importing, distributing, selling or offering for sale Sulbactam Ampicillin products to the hospitals named in paragraph 9 of the Complaint or to any other entity in the Philippines, or from otherwise infringing Pfizer Inc.'s Philippine Patent No. 21116; and

C. After trial, render judgment:

(i) declaring that respondent has infringed Pfizer Inc.'s Philippine Patent No. 21116 and that respondent has no right whatsoever over complainant's patent;

(ii) ordering respondent to pay complainants the following amounts:

(a) at least P1,000,000.00 as actual damages;

(b) P700,000.00 as attorney's fees and litigation expenses;

(c) P1,000,000.00 as exemplary damages; and

(d) costs of this suit.

(iii) ordering the condemnation, seizure or forfeiture of respondent's infringing goods or products, wherever they may be found, including the materials and implements used in the commission of infringement, to be disposed of in such manner as may be deemed

appropriate by this Honorable Office; and

(iv) making the injunction permanent.^[32]

In an almost identical manner, respondents prayed for the following in their complaint filed with the RTC:

(a) Immediately upon the filing of this action, issue an *ex parte* order:

(1) temporarily restraining Pharmawealth, its agents, representatives and assigns from importing, distributing, selling or offering for sale infringing sulbactam ampicillin products to various government and private hospitals or to any other entity in the Philippines, or from otherwise infringing Pfizer Inc.'s Philippine Patent No. 26810.

(2) impounding all the sales invoices and other documents evidencing sales by pharmawealth of sulbactam ampicillin products; and

(3) disposing of the infringing goods outside the channels of commerce.

(b) After hearing, issue a writ of preliminary injunction:

(1) enjoining Pharmawealth, its agents, representatives and assigns from importing, distributing, selling or offering for sale infringing sulbactam ampicillin products to various government hospitals or to any other entity in the Philippines, or from otherwise infringing Patent No. 26810;

(2) impounding all the sales invoices and other documents evidencing sales by Pharmawealth of sulbactam ampicillin products; and

(3) disposing of the infringing goods outside the channels of commerce.

(c) After trial, render judgment:

(1) finding Pharmawealth to have infringed Patent No. 26810 and declaring Pharmawealth to have no right whatsoever over plaintiff's patent;

(2) ordering Pharmawealth to pay plaintiffs the following amounts:

- (i) at least P3,000,000.00 as actual damages;
- (ii) P500,000.00 as attorney's fees and P1,000,000.00 as litigation expenses;
- (iii) P3,000,000.00 as exemplary damages; and
- (iv) costs of this suit.

(3) ordering the condemnation, seizure or forfeiture of Pharmawealth's infringing goods or products, wherever they may be found, including the materials and implements used in the commission of infringement, to be disposed of in such manner as may be deemed appropriate by this Honorable Court; and

(4) making the injunction permanent.^[33]

It is clear from the foregoing that the ultimate objective which respondents seek to achieve in their separate complaints filed with the RTC and the IPO, is to ask for damages for the alleged violation of their right to exclusively sell Sulbactam Ampicillin products and to permanently prevent or prohibit petitioner from selling said products to any entity. Owing to the substantial identity of parties, reliefs and issues in the IPO and RTC cases, a decision in

one case will necessarily amount to *res judicata* in the other action.

It bears to reiterate that what is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issue.^[34]

Thus, the Court agrees with petitioner that respondents are indeed guilty of forum shopping.

Jurisprudence holds that if the forum shopping is not considered willful and deliberate, the subsequent case shall be dismissed without prejudice, on the ground of either *litis pendentia* or *res judicata*.^[35] However, if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.^[36] In the present case, the Court finds that respondents did not deliberately violate the rule on non-forum shopping. Respondents may not be totally blamed for erroneously believing that they can file separate actions simply on the basis of different patents. Moreover, in the suit filed with the RTC of Makati City, respondents were candid enough to inform the trial court of the pendency of the complaint filed with the BLA-IPO as well as the petition for *certiorari* filed with the CA. On these bases, only Civil Case No. 04-754 should be dismissed on the ground of *litis pendentia*.

WHEREFORE, the petition is **PARTLY GRANTED**. The assailed Resolutions of the Court of Appeals, dated January 18, 2005 and April 11, 2005, in CA-G.R. No. 82734, are **REVERSED** and **SET ASIDE**. The petition for *certiorari* filed with the Court of Appeals is **DISMISSED** for being moot and academic.

Civil Case No. 04-754, filed with the Regional Trial Court of Makati City, Branch 138, is likewise **DISMISSED** on the ground of *litis pendentia*.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring; *rollo*, pp. 121-122.

[2] *Id.* at 144-148.

[3] *Rollo*, pp. 62-73.

[4] *Id.* at 64-66.

[5] Annex "E" to Petition, *rollo*, pp. 74-75.

[6] CA *rollo*, pp. 154-157.

[7] Annex "F" to Petition, *rollo*, pp. 76-77.

[8] CA *rollo*, pp. 32-33.

[9] Annex "I" to Petition, *rollo*, pp. 105-116.

[10] Records, Vol. 1, p. 382.

[11] Annex "J" to Petition, *rollo*, pp. 117-119.

[12] CA *rollo*, pp. 379-388.

[13] Annex "K" to Petition, *rollo*, pp. 121-122.

[14] Annex "K-1" to Petition, *rollo*, pp. 123-124.

[15] CA *rollo*, pp. 428-435.

[16] *Rollo*, pp. 11-12.

[17] An Act Creating a Patent Office, Prescribing its Powers and Duties, Regulating the Issuance of Patents and Appropriating Funds Therefor.

[18] Emphasis supplied.

[19] *Angeles City v. Angeles City Electric Corporation*, G.R. No. 166134, June 29, 2010.

[20] Sec. 1. *Petition for certiorari*. - **When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphasis supplied)

[21] Sec. 4. *When and where petition filed*. - The petition may be filed not later than sixty (60) days from notice of the judgment, order of resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60)-day period shall be counted from notice of denial of said motion.

If it relates to the acts or omissions of a lower court or of a corporation, board or officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. **If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.**

In election cases involving an act or omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction. (Emphasis supplied.)

[22] *Fabia v. Court of Appeals*, 437 Phil. 389, 402-403 (2002).

[23] *Geraldine Gaw Guy and Grace Cheu v. Alvin Agustin T. Ignacio*, G.R. Nos. 167824 and 168622, July 2, 2010; *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 266.

[24] *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, 456 Phil. 145, 159 (2003).

[25] *Id.*

[26] *Pulido v. Abu*, G.R. No. 170924, July 4, 2007, 526 SCRA 483, 497; *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation*, G.R. No. 150986, March 2, 2007, 517 SCRA 203, 213.

[27] *Pentacapital Investment Corporation v. Makilito Mahinay*, G.R. No. 171736 and *Pentacapital Corporation v. Makilito Mahinay*, G.R. No. 181482, July 5, 2010; *GD Express Worldwide N.V. v. Court of Appeals (Fourth Division)*, G.R. No. 136978, May 8, 2009, 587 SCRA 333, 346-347.

[28] *City of Naga v. Asuncion*, G.R. No. 174042, July 9, 2008, 557 SCRA 528, 541; *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation*, G.R. No. 150986, *supra* note 24, at 214; *Riesenbeck v. Maceren, Jr.*, G.R. No. 158608, January 27, 2006, 480 SCRA 362, 380; *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280 (1996); *Danville Maritime Inc. v. Commission on Audit*, G.R. Nos. 85285 & 87150, July 28, 1989, 175 SCRA701.

[29] *First Philippine International Bank v. Court of Appeals*, *supra*, at 307-308. (Emphasis supplied.)

[30] *Supra* note 28.

[31] *Id.* at 716-717.

[32] *Rollo*, pp. 70-71.

[33] *Id.* at 112-113.

[34] *Luis K. Lokin, Jr. v. Commission on Elections, et al.*, G.R. Nos. 179431-32 and *Luis K. Lokin, Jr. v. Commission on Elections*, G.R. No. 180443, June 22, 2010.

[35] *Chua v. Metropolitan Bank and Trust Company*, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 541; *Air Materiel Wing Savings and Loan Association, Inc. v. Manay*, G.R. No. 175338, April 29, 2008, 552 SCRA 643, 654.

[36] *Id.*